



# CHIEF DEFENDERS ASSOCIATION OF NEW YORK

## **LEAVE NEW YORK'S BAIL LAWS INTACT:** **Proposed budget measures would fatally compromise** **recent bail reforms and accelerate COVID-19 contagion in** **prisons and jails**

*Bail reform has been **working**. When the coronavirus epidemic reached New York, bail reform became a **blessing**. Because New York had already implemented bail reform, there were [6,800 fewer people incarcerated pretrial](#) each day in February 2020 than there had been a year earlier. This means 6,800 people who have not been exposed to a heightened risk of contracting COVID-19 *from the beginning of the pandemic*—and who are available to help their elderly and vulnerable family members during this crisis and after.*

New York is the epicenter of the coronavirus. Sound public policy—and common sense—calls for leaving the state's bail laws intact and continuing to decarcerate even further. Proposals to roll back bail reform or include provisions that would increase incarcerated populations are profoundly misguided. These measures will undermine efforts to reduce the numbers of people held in jails and prisons—and to mitigate the risk of infection to those incarcerated and those who staff prisons and local jails.

Despite widespread support for leaving the bail law intact at this time, from [the New York State Sheriffs' Association and New York State Association of Chiefs of Police](#) to [Human Rights Watch](#) and [more than 200 other groups](#) including the NAACP and the Labor-Religion Coalition, Albany is still considering rolling back the very reforms that have helped reduce spread of the coronavirus in correctional facilities. There is [significant evidence](#) that jails are a contributing factor to community spread of contagious viruses and that staff and residents of jails are at serious risk of debilitating illness and death due to cramped and unsanitary conditions and woefully inadequate healthcare. The Coronavirus infection rate at Rikers Island is [seven times that of New York City](#) and 87 times that of the United States as a whole. Thankfully, [creative solutions](#) to releasing people are happening every day.

Moreover, as we have seen in our local jails, corrections staff are also at high risk -- both of getting infected themselves and of spreading it to their families and communities. The only solution is to continue to reduce the jail population even further.

## CHANGES TO THE BAIL REFORM LAWS WOULD EXACERBATE A PUBLIC HEALTH CRISIS

The bail law rollbacks proposed by the Senate Democrats and under consideration by the Governor would increase the number of people in jails. Proposals to make people accused of non-violent felonies eligible for pre-trial detention would affect people in [more than 100,000 cases](#) every year. Going further, the State Senate has even proposed remand (i.e. detention without the possibility of making bail) for misdemeanors for the first time in New York's history.

Nationally, correctional healthcare providers, public health advocates and others are calling for decarceration efforts like those undertaken in New York through bail reform and immediate actions taken in response to the coronavirus – such as release from jails and reductions in prosecution and arrest for certain offenses. To begin *increasing* the numbers of persons incarcerated is to violate the directives issued by Gov. Cuomo that are intended to reduce the spread of the coronavirus.

Jails and prisons are uniquely poor sites for stopping or containing viral outbreaks. Social distancing is virtually impossible in the close-quarters of New York's correction facilities. Hand sanitizer is considered to be [contraband](#). Essential hygiene products, like soap, can only be purchased in the commissary, which requires people to have money. With the rapid spread of Coronavirus those held in jail lack the supplies to clean their own areas. In the last two weeks jail staff have tested positive for the coronavirus in [Albany](#), [Westchester](#), [Suffolk](#), and [Erie County](#). Incarcerated people held in [Nassau](#) and [NYC](#) jails have also tested positive. It is only a matter of time before all of the jail and prison facilities in New York State are facing epidemics.

- People in jail have disproportionately high rates of chronic illnesses that make them vulnerable to serious implications or death from coronavirus. According to the Bureau of Justice Statistics, [40% of incarcerated people](#) suffer from chronic health conditions, including 20% with asthma (versus 11% in the general population). This is related to the fact that most people who are in jails and prisons are poor, and many not have had adequate health care or access to proper nutrition.
- Healthcare in New York's prisons and jails has been chronically inadequate long before the COVID-19 pandemic. From 2013 to 2018, [50 people died](#) in New York State prisons from want of adequate medical care. In 2016, India Cummings died in the Erie County jail in a case ruled "[homicide by medical neglect](#)." In 2017, Nassau County renewed its contract with a for-profit company to provide healthcare in its jail, despite state findings that inadequate healthcare by the same company led to the [deaths of five people](#) incarcerated in the Nassau County jail in 2015.
- Many of the people now spared pretrial detention under New York's bail reform law would have spent [1-3 days](#) incarcerated pretrial under the prior system. These "short-stays" are the ones most likely to spread COVID-19 in both jails and the wider community. Before the pandemic, these short stays destabilized families and caused loss of employment and missed regents exams. Due to the reformed bail statute, the numbers of individuals held for these short stays had been drastically reduced prior to the

outbreak; this most likely contributed to slowing the rate of coronavirus infection. The proposed changes to the reformed bail law will serve to increase the rate of infection.

- There is no justification for the proposed rollback of the reform of the bail law. The public accepts that releasing people from jail is both good public health policy and humane. A [recent survey](#) showed that people in New York are against incarcerating people pre-trial on misdemeanor and non-violent felony charges, yet that is precisely what the proposals suggest should happen.
- Human Rights Watch recently called for [the preservation of the new pre-trial laws](#), citing in particular the risks of incarceration during COVID-19.

## **LOCAL GOVERNMENTS IN NEW YORK ARE REDUCING JAIL POPULATIONS -- STATE OFFICIALS MUST FOLLOW THEIR LEAD.**

- Local governments are taking action to further the positive decarceral impacts of bail reform by releasing more New Yorkers from jail every day. For example, in New York City, Mayor De Blasio released 300 people serving sentences due to expire soon and is continuing to work on releasing people who are vulnerable and at high risk from the virus.
- District Attorneys in New York City and Albany are working to release people currently being held in jail pretrial and alleged probation violations.
- The Division of Parole is working to release people held on technical parole violations.
- The bail law as written provides a wide variety of options that allow these life-saving measures to take place, including enhanced provisions promoting the use of unsecured and partially secured bonds. For example, the Genesee County Public Defender reports that a client arraigned via Skype on bail-eligible charges was released when the defense successfully urged the court to set unsecured or partially secured bonds, which are required by the bail law. The client's girlfriend was able to pay the partially secured bond and he is now home with his family.

## **RISKS TO PUBLIC HEALTH BEGIN IMMEDIATELY UPON ARREST**

There is no way to realistically keep people six feet apart as they are being arrested, then confined in a vehicle and moved from a precinct to central booking and then to court. People who are particularly vulnerable are held in close proximity to others who could be incubating the disease; this creates a life and death situation every minute of the day for the hundreds of people still being arrested throughout the state.

Arrest and incarceration endangers the entire community, including police officers, sheriffs and corrections officers who are at high risk of exposure to the virus through their daily work and who then present a risk of infection to their families and to the wider community. Due to the reformed bail law's mandatory desk appearance tickets, thousands were spared even the extended arrest-to-arraignment ordeal that could have cost them their life.

- In accordance with the mandatory appearance ticket provision in the new bail laws, Legal Aid Bureau of Buffalo reports that custodial arrests have plummeted and custody arraignments have been in the single digits each day since March 17th.

## **DELAYING IMPLEMENTATION OF ROLLBACKS IS NOT A SOLUTION**

- In a recent Rolling Stone article, a spokesperson for Governor Cuomo said that bail reform rollbacks would not take effect until after the pandemic, but this position is not tenable, nor does it address the underlying health risks of incarceration.
- No one knows when this pandemic will end, nor does anyone know when the next pandemic will come. There is widespread concern in the public community that after COVID-19 dissipates, it could re-surge in a matter of months. We also now know our own vulnerability and should not undo any strategies we have used until we have had time to look over the data and information and that cannot happen now.
- Any change now will be a message to the rest of the country now even if there is a delay in implementation. That message can seriously reduce the leadership New York has taken in addressing the COVID-19 epidemic. Plus, there is no reason to do so.

## **SIX WAYS THE STATE'S ELECTED OFFICIALS CAN PROTECT HEALTH AND SAFETY IN THIS MOMENT OF CRISIS**

1. **REJECT PROPOSALS THAT COMPROMISE BAIL-LAW REFORMS:** Governor Cuomo has built the trust of the public during the coronavirus epidemic centered in New York City. This is the moment to use that credibility to tell New Yorkers that releasing people on misdemeanor and non-violent felonies from jail is not a threat to their safety and it never was. There have been no adverse effects from bail reform this past January and none from the further release of people since the Coronavirus epidemic began. We call upon the Governor to tell New Yorkers that they can trust the reforms already passed and that no changes need to be made to the bail law to preserve public safety. By instituting a comprehensive pretrial data reporting system, Albany will be able to show this to the public with hard numbers.
2. **FUND PRE-TRIAL SERVICES:** The Legislature should use the savings obtained by reducing the jail population to provide healthcare, including mental health and drug treatment, as well as other programs and services that meet the needs of the community and help keep prevent arrests. These services, like in-patient drug treatment, cost a small fraction of incarceration and are more effective and humane. The Coronavirus crisis is going to exacerbate unemployment. This and the long times that people are in their homes subject to quarantine are causative factors leading to increased alcohol abuse and substance use, mental health issues like depression and other public health issues like violence in the home, all of which should be handled with community-based and data-driven solutions, not arrest and incarceration. It would be advantageous to work on appropriate resources now to avoid a ripple effect of trauma-based arrests in the future.
3. **REDUCE ARRESTS:** Governor Cuomo and legislative leadership should encourage local law enforcement agencies to curtail arrests and, when they do make arrests, to issue appearance tickets rather than put people into holding cells.

4. **DECLINE TO PROSECUTE AND REVIEW CURRENT PRE-TRIAL DETENTION RULINGS:** Governor Cuomo and legislative leadership must also urge District Attorneys statewide to follow the lead of Eric Gonzalez in Brooklyn and Darcel Clark in the Bronx by reviewing cases of incarcerated people and agreeing to release as many as possible. District Attorneys should also be encouraged to decline to prosecute new cases whenever possible.
5. **RELEASE PEOPLE DETAINED ON TECHNICAL PAROLE VIOLATIONS:** One large group of detainees throughout the State are people who are accused of violating a technical aspect of parole, like failing to report a new address. These individuals have not been re-arrested and they are under the active supervision of the Division of Parole. Governor Cuomo must order the release of the [1,821 people](#) detained on technical parole violations to assist localities in depopulating their jails.
6. **ISSUE MASS CLEMENCY:** Governor Cuomo and the Board of Parole should take action to release, through clemency or parole, people in prison and jail who are at risk of serious illness and death from COVID-19, including all people over 50, people with HIV/AIDS, people with chronic illnesses (including COPD, asthma, hepatitis, diabetes mellitus, hypertension, cardiac disease, and cancer), other immunocompromised people, people with comorbid medical conditions, pregnant people and trans people.

Since bail reform was implemented, the overwhelming majority of released people have made all their court appearances and have not been re-arrested. Bail reform had an unexpected benefit in that it kept thousands of people from being exposed to the coronavirus while incarcerated, which would have flooded the medical facilities in the jails and surrounding communities, increased the already astronomical rate of infection in the state and escalated the spread a lot earlier. Our new bail laws must be left intact. Let the courts do what they can to continue releasing as many people as possible for their own safety and for the safety of the community.