



Committee on Law & Major Contracts

~MINUTES~

Monday, March 18, 2019

12:00 PM

Committee Chair: Lyndon Williams

Committee Room, 148 Martine Avenue, 8th Floor, White Plains, NY 10601

www.westchesterlegislators.com

CALL TO ORDER

Joint with Public Safety

With a quorum present, Legislator Williams called the meeting to order at 12:27 p.m.

Attendee Name	Title	Status	Arrived
Lyndon Williams	Chair	Present	
Nancy Barr	D6 Legislator	Present	
Gordon A. Burrows	D15 Legislator (Minority Whip)	Present	
Kitley Covill	D2 Legislator	Present	
MaryJane Shimsky	D12 Legislator (Majority Whip)	Present	
Benjamin Boykin	D5 Legislator (Chairman)	Present	

Others In Attendance: BOL: Legislators Margaret Cunzio, Damon Maher, Catherine Borgia, Chris Johnson and Catherine Parker, Jill Axelrod, Committee Coordinator, Melanie Montalto, Chris Crane, Malcolm Clark

MINUTES APPROVAL

I. ITEMS FOR DISCUSSION

1. **(ID # 11321) Resolution – LEGISLATOR L. WILLIAMS, BOYKIN, A. WILLIAMS, SHIMSKY, BORGIA, JOHNSON, COVILL, MAHER, CLEMENTS, BARR, KAPLOWITZ AND PARKER: Overhaul Pretrial Laws:**

Forwarding a draft Resolution calling on the New York State Legislature to Overhaul Pretrial Laws.

The committee members discussed various amendments to the resolution. Legislator Burrows stated that he would be voting against the resolution because he disagreed with some of the wording, but would vote in favor without prejudice to move it out of the committee.

With a motion by Legislator Covill seconded by Legislator Shimsky, the item was approved with a vote of 6 -0, with Legislator Burrows voting in favor, without prejudice.

RESULT: SIGNED BY COMMITTEE

II. OTHER BUSINESS

Unfinished Business and any other agenda items to come before the Committee.

III. RECEIVE & FILE

ADJOURNMENT

Moved by Legislator Shimsky and seconded by Legislator Barr, the Committee adjourned at 12:56 p.m.

Draft Resolution

From the Westchester County Legislature
A Resolution Calling on the New York State Legislature to Overhaul Pretrial Laws

WHEREAS on any given day, 25,000 New Yorkers languish behind bars in jails across the state and every year, 162,000 New Yorkers are incarcerated in county jails outside of New York City;

WHEREAS 67% of the people incarcerated in New York's county jails are— legally innocent and overwhelmingly detained pretrial because they cannot afford bail;

WHEREAS, New York's money bail system drives mass jailing and discriminatory wealth- and raced-based detention;

WHEREAS, the presumption of innocence is a Constitutional guarantee that all people have the right to be considered innocent until proven guilty;

WHEREAS New York's current discovery law denies people facing criminal charges access to critical evidence about their case, impedes their ability to make informed case decisions and fails to protect Constitutionally granted rights to a fair and speedy trial and to Due Process;

WHEREAS racial disparity and socio-economic discrimination are rampant throughout the pretrial system and at all points of the pretrial process, and both statistical and qualitative evidence show that even brief periods of pretrial incarceration result in cyclical harm and structural instability for individuals, families and communities;

WHEREAS New York's jail system costs counties across the State approximately \$2.5 billion per year;

WHEREAS, in Westchester county, 1,000+ people – 61% of whom are pretrial - languish in jail each day at a cost of 144.1 million dollars annually;

WHEREAS structural overhaul of bail, discovery, and speedy trial laws in order to address a biased, injustice and misguided pretrial system are all possible through legislative action;

and WHEREAS bail overhaul legislation S.3579A/A.05033A and discovery overhaul legislation S.7722/A.10135 were introduced in the New York State Legislature in 2018,

BE IT RESOLVED that the Westchester County Legislature expresses its support for the bills referenced above and for the principles contained within those bills, including a transformed pretrial system that protects the presumption of innocence and ensures due process for all people; and be it further

RESOLVED that this Legislature urges our State elected officials to support a complete elimination money bail and a pretrial system that treats all people accused of crimes as worthy of release, fairness and the presumption of innocence. Every person whose case is under consideration for detention must be afforded a robust, evidentiary, individualized hearing, with neither broad preventive detention nor harmful technology – like algorithm-based risk assessment tools, electronic and GPS monitoring, etc. – taking the place of money bail.

RESOLVED that this Legislature urges our state elected officials to support a complete overhaul of New York's discovery law so that expanded discovery material is mandated to be turned over, automatically and without redactions, to people accused of a crime at the outset of the criminal procedure process;

Draft Resolution

RESOLVED that this Legislature urges our state elected officials to support the implementation of a true speedy trial law in New York State that captures and fulfills the ideals contained within the 6th amendment to the United States Constitution which guarantees a “fair and speedy trial”; and

RESOLVED that this Legislature urges our state elected officials to support the reinvestment of savings generated by these reforms back into communities most directly targeted or impacted by the criminal justice system in New York State.

Draft

The crisis of mass incarceration demands real and immediate solutions. On any given day, **25,000+** New Yorkers are held in county jails across the state. **Nearly 70% are legally innocent** – they have not been convicted, but remain caged because of our broken bail, speedy trial and discovery laws. Being trapped in jail results in unjust case outcomes. It has devastating, intergenerational impacts on people and their families. **New Yorkers must not languish behind bars while their Constitutional rights to due process and a fair trial are consistently violated.** People must have every opportunity for a fair shot at justice and freedom. New York State must prioritize justice-involved people being home with their loved ones and community in order to guarantee a fair trial and due process.

The **#FREEnewyork campaign** is building the power of New Yorkers most harmed by mass criminalization and calling for groundbreaking transformation of our criminal justice system. **#FREEnewyork** demands bold legislative reform that will deliver the clearly defined outcomes that impacted communities both need & demand: a fairer, more-just pretrial system that ends money bail, creates a thorough and expedited discovery process, and protects speedy trial rights. **True reform is comprehensive. It protects against collateral consequences. And it is defined by the measurable outcomes that it achieves.** Legislative reform to New York's bail, speedy trial and discovery laws must achieve these concrete outcomes:

- **INCREASE** transparency;
- **INCREASE** the efficiency of court proceedings;
- **CREATE** opportunities for earlier resolutions in cases;
- **CREATE** a more equitable and fair system; and
- **SAVE** taxpayer dollars currently being spent on pretrial detention;
- **ELIMINATE** uninformed guilty pleas and conviction-less incarceration;
- **ELIMINATE** wrongful convictions;
- **REDUCE** racial and socioeconomic disparities in the criminal justice system;
- **REDUCE** the number of New Yorkers being held in county jails;
- **REDUCE** unproductive court appearances;

JUSTICE requires overhaul of New York's bail, discovery & speedy trial laws.

Bail Reform MUST:

- Eliminate money bail;
- Protect the presumption of innocence & the right to freedom;
- Ensure the presumption of release in all cases;
- Protect against unnecessary and excessive supervised release conditions;
- Avoid the use of risk assessment instruments in the pretrial decision-making process; and
- Exclude dangerousness from the pretrial assessment process.

Discovery Reform MUST:

- Result in an open, early & automatic discovery system
- Create rules that make all admissible evidence discoverable from the start of a criminal case;
- Create procedures for the accused to obtain evidence from the prosecution; and
- Mandate enforceable sanctions for noncompliance with these rules.

Speedy Trial Reform MUST:

- End excessive and lengthy jail stays;
- Cover all crime categories; and
- Truly protect the right to a fair and timely trial.

PRETRIAL INJUSTICE: OUR STORIES, OUR LIVES

Prince was arrested for a crime he did not commit, but his family in Nassau County, still suffered. He was denied bail, causing a serious psychological impact on my family. Some even gave up on him believing he was never going home, because, in their minds, for the court to deny his bail, was another way of saying he was guilty. He was held in the Suffolk County Jail for 24 months without bail, without a speedy trial, and without the evidence that he needed to prepare a defense.

TJ and her then 12-year-old son experienced tremendous pain when she was arrested and briefly locked up in Nassau County jail. She expected that the judge would have given her a low bail considering she was on disability and only received \$695 a month of which \$432 went to her rent. But instead the judge made her bail 2500 over 2500 –she needed \$2500 cash or someone to bond her out. She had to go and borrow from other people and not pay her rent in order to get bonded out of jail. She is now fighting eviction, stemming from the downward spiral of having been arrested and needing to pay a bond she could not afford.

Darryl was arrested for a violent felony crime he did not commit. The judge at his arraignment set a \$70,000 bail he could not afford and he spent the next 14 months at Rikers Island fighting for the opportunity to examine the evidence that would eventually exonerate him. Finally, more than a year into his case, evidence was provided by prosecutors that led the judge to dismiss the charges against Darryl. For months prosecutors knew they did not have a case against him, and yet continued to pressure him into accepting a plea deal before sharing the evidence they had. Darryl lost everything as a result of this case: his housing, his employment and his stability; it has taken him months to get back on his feet.

Vincent from Long Island, was only 16 years old when he was arrested on drug-related charges and sent to Rikers Island. Bail was set at about \$4,000. He and his mother didn't have the bail money so he had to sit inside Rikers Island. Finally, after two months of being subjected to daily violence at Rikers, he was approached with a time served offer and asked to take a felony so he could go home. At 16 years old, he maintained his innocence, but he chose to take the deal to get out of Rikers.

Marvin from Brooklyn was arrested on a misdemeanor drug charge (Criminal Possession of a Controlled Substance (CPCS) in the Seventh Degree) and held on \$135,000 bail which he felt was designed specifically to prevent him from being released. Because he could not afford the bail, he lost his job and his car as a result of being incarcerated pretrial for 11 months in Nassau County Jail before feeling forced to take a plea.

These are the stories of #FREEnewyork Campaign Members and how New York's broken bail, discovery and speedy trial laws have impacted their lives.

We must do better. New York State must boldly overhaul our bail, discovery & speedy trial laws.

TO LEARN MORE

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<https://www.justleadershipusa.org/freenewyork>



NEW YORKERS NEED REAL BAIL REFORM S3579A (GIANARIS) / A5033A (O'DONNELL)

New York's current bail system **FUELS** mass incarceration, **VIOLATES** constitutional rights, and **WASTES MILLIONS** in taxpayer dollars being spent on pretrial detention.

New York's money-driven bail law has devastating impacts. It punishes and jails legally innocent people as they await trial. Nearly 70% of the people in New York's county jails are being held pretrial. They are not serving time as a punishment. They've been found guilty of no crime. Instead, they languish in jail because of unjust and discriminatory bail practices that disproportionately criminalize people experiencing poverty and people of color.

- Being detained before trial for only a few hours or days can set off a devastating downward spiral, impacting people already struggling economically: people lose their jobs, homes, custody of children, and their access to essential medical treatments.
- Bail and pretrial detention subject arrestees to unfair treatment, arbitrary incarceration, wealth discrimination, and other violations of their basic human rights.
- New York spends \$42 million per year to jail misdemeanor defendants held on bail amounts of \$1,000 or less.
- Being unable to pay bail forces people to plead guilty just to get out of jail, even when they are innocent, or in cases that are weak or involve unlawful arrests. If they don't, they may spend months behind bars awaiting trial.
- While pleading guilty lets people go home, they (and their families) carry a criminal record for life. Poverty robs people of the presumption of innocence and their right to a fair trial.

THE SOLUTION: OVERHAUL OF NEW YORK'S BAIL LAW (S3579A – GIANARIS / A5033A O'DONNELL)

New York must overhaul its pretrial justice system to protect people's Constitutional rights, set strong limits on when & how any pretrial conditions are set, and protect against excessive community supervision.

Legally innocent New Yorkers must have every opportunity to protect their liberty, starting from the outset of their case.

Bail reform *must* address the profound structural inequalities of our pretrial system.

GOLD STANDARD BAIL REFORM (S3579A – GIANARIS / A5033A O'DONNELL) is the boldest bail law legislation in the country and would:

- **ELIMINATE** money bail and implement a transparent pretrial process;
- **REDUCE** racial disparities in the criminal justice system;
- **REDUCE** the number of New Yorkers being held in county jails;
- **PROTECT** the presumption of innocence & the right to freedom;
- **PROTECT** against mass community surveillance and criminalization;
- **GUARANTEE** individualized justice and due process;
- **CREATE** a more equitable and fair system;
- **ENSURE** pretrial detention decisions are based solely on clear & *convincing* evidence that the person presents high risk of intentional flight; and
- **REQUIRE** pretrial data to be collected and made public.

#FREEnewyork

A campaign led by JLUSA

On any given day, **25,000** New Yorkers are caged in county jails across our state. The abuse that occurs in these jails is rampant. Human rights violations, racial disparity, violence, and medical neglect are commonplace. **Our jails are unjust, unsafe and inhumane.** Despite a steady decrease in crime, numerous county jails have grown – some even doubling in size.

Shockingly, **67%** of the people held in our jails **have not been convicted.** They are **legally innocent** but denied their freedom because of New York's broken bail, discovery and speedy trial laws. **This is a mockery of justice, and New Yorkers deserve better.** Although the U.S. Constitution guarantees the right to a fair and speedy trial, these rights are consistently violated in New York State. Thousands languish in jail for months or years, and we know that even short jail stays have devastating impacts for individuals, families, and communities.

Mass incarceration affects every county and every corner of New York State. While much attention has been focused on the horrors of Rikers Island, less scrutiny has been given to jails in other parts of the state where a majority of our neighbors and loved ones are held. **63% of jailed New Yorkers are incarcerated outside of New York City.** The failure of our criminal justice system is a statewide problem that requires bold, state-level action. Solutions must be driven by the voices of directly impacted individuals.

#FREEnewyork, led by JustLeadershipUSA, in partnership with organizations and directly impacted communities, is building statewide power to demand fundamental change to New York's pretrial justice system. We cannot settle for partial reforms and half measures. To address the urgent jails crisis, **New York must pass groundbreaking legislative reform that overhauls our bail, discovery and speedy trial laws.**

- **New York must pass bail reform** that eliminates money bail, protects the presumption of innocence and the right to freedom, sets strong limits on when and how any pretrial conditions are instituted, and prohibits the use of biased risk assessment tools.
- **New York must pass a true speedy trial law** that dictates specific timelines by when a defendant must be brought to trial, covers all crime categories and enforces the right to a fair & timely trial.
- **New York must pass a discovery law** that is open, early, automatic, and mandatory, guaranteeing defendants access to vital information about their case.

Together, New Yorkers across the state are building a safer, more just world that invests in communities, not incarceration. Join us.

#FREEnewyork

A campaign led by JLUSA

#FREEnewyork Campaign Partners (List in formation, updated August 23, 2018)

1. Action Together Rochester (Rochester, Monroe County)
2. Ali Forney Center (New York City)
3. Alliance for Quality Education (AQE) (New York State)
4. Auburn Seminary (New York City)
5. Beacon Prison Action (Beacon, Dutchess County)
6. Bend the Arc (Long Island)
7. Black Lives Matter – Hudson Valley (Hudson Valley)
8. Black Lives Matter - Syracuse (Syracuse, Onondaga County)
9. Black Love Resists in the Rust (Buffalo, Erie County)
10. Black Youth Project 100-NYC (New York City)
11. Blackcuse Pride (Syracuse, Onondaga County)
12. Brooklyn Community Foundation (New York City)
13. Bronx Defenders (New York City)
14. Bronx Freedom Fund (New York City)
15. BronxConnect (New York City)
16. Brooklyn Community Bail Fund (New York City)
17. Brooklyn Defender Services (New York City)
18. Brooklyn Movement Center (New York City)
19. Buffalo Anti-Racist Coalition (BARC) (Buffalo, Erie County)
20. Campaign for Alternatives to Isolated Confinement (CAIC) (New York State)
21. Capital Area Against Mass Incarceration (CAAMI) (Albany, Albany County)
22. Center for Community Alternatives (Syracuse, Onondaga County)
23. Center for Law & Justice (Albany, Albany County)
24. Center for Safety and Change (New City, Rockland County)
25. Challenging Incarceration (New York State)
26. Citizen Action (New York State)
27. Civil Rights Corps (National)
28. College and Community Fellowship (New York City)
29. Color of Change (National)
30. Community Governance & Development Council (Yonkers, Westchester)
31. Community Voices Heard (Westchester County)
32. Criminal Justice Caucus, Columbia School of Social Work (New York City)
33. DriveChangeNYC (New York City)
34. Empire State Indivisible (, New York City)
35. End the New Jim Crow Action Network - Kingston (Kingston, Dutchess County)
36. End the New Jim Crow Action Network - Poughkeepsie (Poughkeepsie, Dutchess County)
37. Enough is Enough (Rochester, Monroe County)
38. Facing Race, Embracing Equity (FREE) (Rochester, Monroe County)
39. Federal Defenders of New York (New York State)
40. First Presbyterian Church of Brooklyn (New York City)
41. Flying Squirrel Community Space (Rochester, Monroe County)
42. Fortune Society (New York City)
43. Freedom Food Alliance (New York City)
44. Gathering for Justice (National)

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45. Getting Out and Staying Out (GOSO) (New York City)
46. Girls Inc. of Long Island (Long Island)
47. Greater Hudson Initiative for Children of Incarcerated Parents (Columbia County)
48. Harm Reduction Coalition (New York State)
49. Hogarth Center for Social Action, Manhattanville College (Westchester County)
50. Housing Plus Solutions (New York City)
51. Human Rights Watch (National)
52. Immigrant Defense Project (New York State)
53. Jewish Voices for Peace - New York City (New York City)
54. Jews for Racial & Economic Justice (New York City)
55. John Brown Lives! (Westport, Essex County)
56. Just Resisting (Buffalo, Erie County)
57. Justice and Unity in the Southern Tier (JUST) (Binghamton, Broome County)
58. Justice Ministries Committee of NY Presbytery (New York State)
59. JustLeadershipUSA (National)
60. Labor-Religion Coalition (New York State)
61. LatinoJustice (National)
62. Legal Action Center (New York State)
63. Legal Aid Society (New York State)
64. Legal Aid Society of Westchester (Westchester County)
65. LGBTQ Community for Racial Justice (Kingston, Ulster)
66. Liberation Prison Yoga (New York City)
67. Long Island Progressive Coalition (Long Island)
68. Lower Hudson Valley Progressive Action Network (Westchester County)
69. LPS/LIFE Progressive Services Group Inc. (Mount Vernon, Westchester County)
70. M.A.D.E. Transitional Services (Rockland County)
71. Man Up, Inc. (New York City)
72. Men of All Colors Together/New York (New York City)
73. Metro Justice (Rochester, Monroe County)
74. My Sister's Place (Westchester County)
75. Nassau County Jail Advocates (Nassau County)
76. National Action Network (National)
77. National Alliance on Mental Illness (NAMI), Criminal Justice Committee (New York State)
78. National Alliance on Mental Illness (NAMI), Huntington (Huntington, Suffolk County)
79. Nazareth Jail Project (Rochester, Monroe County)
80. New York Civil Liberties Union (NYCLU) (New York State)
81. New York Communities for Change (NYCC) (Long Island and New York City)
82. New York County Defender Services (New York State)
83. NYS Prisoner Justice Network (New York State)
84. Office of the Appellate Defender (New York City)
85. One Thousand Arms (National)
86. OPEN Buffalo (Buffalo, Erie County)
87. Parole Justice (NYS, New York State)
88. Parole Preparation Project (New York City)
89. People Power New Rochelle (New Rochelle, Westchester County)
90. Preparing Leaders of Tomorrow (PLOT) (New York City)
91. Prison Action Network (New York State)

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92. Prison Writes (New York City)
93. Prisoners Are People Too (Buffalo, Erie County)
94. PUSH Buffalo: People United for Sustainable Housing (Buffalo, Erie County)
95. Release Aging People from Prison (RAPP) (New York State)
96. RFK Human Rights (National)
97. Rise Up Kingston (Kingston, Ulster County)
98. Roc ACTS (Rochester, Monroe County)
99. Rochester Prison Education Project (Rochester, Monroe County)
100. ROCitizen (Monroe County)
101. Rockland Immigration Coalition (Rockland County)
102. Sanctuary for Families (New York City)
103. Second Chance Reentry (Nassau County)
104. SEPA Mujer (Suffolk County)
105. Showing Up for Racial Justice (SURJ) - Capital District (Albany, Albany County)
106. Showing Up for Racial Justice (SURJ) - Hudson Valley (Hudson Valley)
107. Showing Up for Racial Justice (SURJ) - NYC (New York City)
108. Showing Up for Racial Justice (SURJ) - Rochester (Rochester, Monroe County)
109. Showing Up for Racial Justice (SURJ) - Westchester (Westchester County)
110. Social Justice Center (Albany, Albany County)
111. Social Justice Committee of the UU Congregation at Shelter Rock (Manhasset, Long Island)
112. Social Workers Against Solitary Confinement (National)
113. STEPS to End Family Violence (Westchester County + New York City)
114. STRONG Youth (Nassau County)
115. SURJ Buffalo (Buffalo, Erie County)
116. Syracuse Jail Ministry (Syracuse, Onondaga County)
117. T'ruah: The Rabbinic Call for Human Rights (National)
118. The Corridor Counts (TCC) (Nassau County)
119. The Haitian Academy (New York City)
120. The Innocence Project (National)
121. The West Side Commons (New York City)
122. Theatre of the Oppressed NYC (New York City)
123. United Voices of Cortland (Cortland, Cortland County)
124. Victory Bus Project (Hudson Valley)
125. VOCAL NY (New York City)
126. VOICE Buffalo (Buffalo, Erie County)
127. Washington Square Bail Fund (New York City)
128. WESPAC Foundation (Westchester County)
129. Westchester Children's Association (Westchester)
130. Westchester for Change (Westchester County)
131. WNY Peace Center (Buffalo, Erie County)
132. Working Families Organization (New York State)
133. Youth Represent (New York City)

PRESUMED INNOCENT FOR A PRICE: The Impact of Cash Bail Across Eight New York Counties

Attachment: RESO - Overhaul Pretrial Laws - DRAFT (11321 : Overhaul Pretrial Laws)



MARCH 2018

PRESUMED INNOCENT FOR A PRICE:

The Impact of Cash Bail Across Eight New York Counties

In eight of New York's 62 counties between 2010 and 2014, over 90,000 people spent a day or longer in custody on bail.

Across New York State tens of thousands of New Yorkers are held in city and county jails, not because they have been convicted of a crime, but because they cannot afford to pay for their release while awaiting trial.

The harms of unaffordable cash bail are unequivocal: people lose their jobs, homes and families while detained. People also forfeit their rights to trial when pleading guilty in exchange for release. Yet little has been known about how many people across the state have been locked up because they did not have the means to pay bail, about the charges they faced or how long they were kept in jail.

To better understand the impact of bail practices in New York, in 2015 the New York Civil Liberties Union sent Freedom of Information Law requests to a sample of eight small, medium and large counties across the state asking for five years of data. The information we received offers a stark glimpse into what New Yorkers have had to endure.

IN JUST EIGHT OF THE STATE'S 62 COUNTIES ALONE, WE FOUND THAT BETWEEN 2010 AND 2014:

- more than 90,000 New Yorkers spent a day or longer in custody on bail;
- more than 45,000 were held for a week or longer;
- black pretrial detainees were twice as likely as white pretrial detainees to spend at least one night in custody on bail;
- more than 35,000 New Yorkers spent at least one night in custody on a bail of \$1,000 or less, and more than 21,000 on \$500 or less;
- 60 percent of people held on bail had only a misdemeanor or violation as their most serious charge;
- more than 5,000 New Yorkers were held on bail charged only with violations; and
- *petit larceny* and *misdemeanor criminal possession of a controlled substance* were the most common charges, and the most serious charges against a fifth of all pretrial detainees.

Of the **45,651** pretrial detainees who spent one week or more in custody, one-fifth had a bail of **\$500 or less.**

Population and Length of Stay

In the five-year period between 2010 and 2014, 177,390 individuals were held in custody pretrial in the eight counties reviewed alone.¹ Of these pretrial detainees, 113,015 people, or 64 percent, had a bail set. **Ninety thousand New Yorkers spent at least one night in a county jail because they could not post bail.**² Over half of this group (45,651 people) was in custody for one week or more.

County	Total	1 or more days in custody	7 or more days in custody
Albany	12,733	10,391	5,816
Dutchess	12,309	9,196	5,691
Monroe	27,923	24,997	11,806
Niagara	11,800	6,483	2,369
Orange	12,657	8,617	2,501
Schenectady	4,508	3,023	1,249
Ulster	6,344	4,635	2,088
Westchester	24,741	22,734	14,131
Eight County Total	113,015	90,076	45,651

The proportion of people who were not able to post bail the day it was set varied widely across counties, ranging from 55 percent of pretrial detainees in Niagara County to 92 percent in Westchester County. The proportion of pretrial detainees who remained in custody for seven days or more ranged from just under 20 percent in Orange County to 57 percent in Westchester County.

Across the eight counties, people of color were detained pretrial longer than whites. While black and white New Yorkers each accounted for 45 percent of pretrial detainees who spent any time in custody after bail was set in their case, 48 percent of those who spent at least one night in custody were black compared to 41 percent white, and 50 percent of those who spent at least one week in custody were black compared to 38 percent white.³

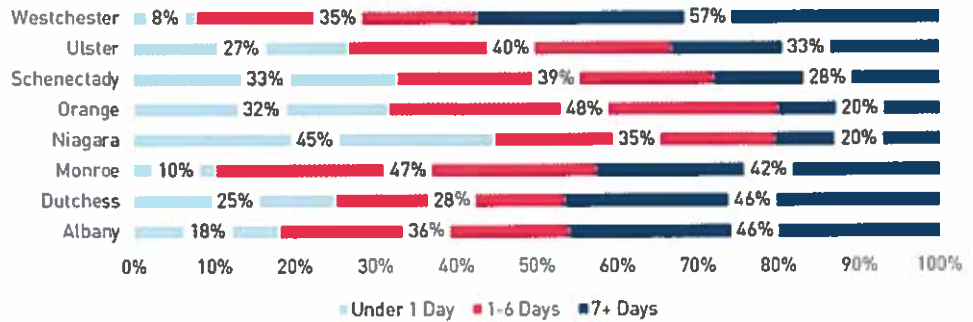
1 All numbers in this report exclude pretrial detainees with the following most serious charges: escape; fugitive; violations of probation/parole/conditional release; unspecified violations of Family Court Act; and court orders or punishments. These were excluded because factors associated with each may affect pretrial release eligibility.

2 Length of stay in custody refers to the number of calendar days between an individual's admission and discharge from custody.

3 Analysis of outcomes by race was limited to black and white pretrial detainees because only three counties had Hispanic or Latino as a category, and all other groups accounted for less than five percent of the pretrial population with a set bail.

FIGURE 1

Proportion of Pretrial Detainees with Set Bail by Length of Stay in Custody

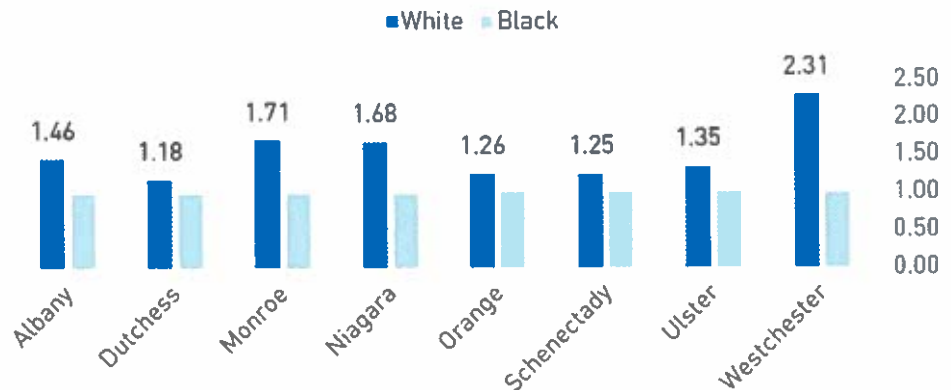


White New Yorkers were nearly two times more likely (27 percent) than black New Yorkers (14 percent) to be released the same day their bail was set, and in all counties sampled, remained in custody overnight at a lower rate. The disparity between the proportions of black and white pretrial detainees who were able to post bail the day it was set was the greatest in Westchester County.

White New Yorkers were two times more likely than black New Yorkers to be released the same day their bail was set.

FIGURE 2

Rate of White Detainees Released Day Bail Set per Black Detainee Released Day Bail Set



Bail Amounts

In the eight counties sampled over the five-year period, more than 110,000 people spent time in custody after bail was set in their case. Nearly two-thirds of bails were set at \$2,500 or less, half at \$1,000 or less and one-third at \$500 or less. Thousands of people in each county could not readily pay these amounts to be released.

Table 2: Numbers of People Held on Bail by Amount

Bail	Albany	Dutchess	Monroe	Niagara	Orange	Schenectady	Ulster	Westchester	Total
Any Amount	12,733	12,309	27,923	11,800	12,657	4,508	6,344	24,741	113,015
\$5,000 or less	7,605	8,323	24,226	10,897	10,969	3,875	5,232	17,446	88,573
\$2,500 or less	4,581	6,088	20,468	10,031	9,483	3,500	4,207	12,827	71,185
\$1,000 or less	2,246	4,464	16,071	8,701	7,235	2,767	3,073	7,373	51,930
\$500 or less	962	2,837	11,667	6,659	4,786	1,845	1,719	3,481	33,956
\$250 or less	605	1,122	5,325	4,487	2,172	817	505	1,057	16,090

Of the more than 90,000 pretrial detainees who spent at least one night behind bars after bail was set, 40 percent (35,679 people) had a bail of \$1,000 or less and 24 percent (21,833 people) had a bail of \$500 or less. In eight counties alone, nearly 10,000 New Yorkers stayed overnight in jail on a bail of \$250 or less.

Table 3: Numbers of People Held on Bail One Day or Longer by Amount

Bail	Albany	Dutchess	Monroe	Niagara	Orange	Schenectady	Ulster	Westchester	Total
Any Amount	10,391	9,196	24,997	6,483	8,617	3,023	4,635	22,734	90,076
\$5,000 or less	5,805	5,507	21,361	5,631	7,087	2,479	3,606	15,612	67,088
\$2,500 or less	3,411	3,639	17,804	4,855	5,860	2,190	2,739	11,249	51,747
\$1,000 or less	1,631	2,441	13,859	3,742	4,181	1,657	1,912	6,274	35,697
\$500 or less	655	1,351	9,991	2,388	2,580	1,013	992	2,863	21,833
\$250 or less	402	484	4,483	1,255	1,046	408	265	876	9,219

Of the 45,651 pretrial detainees who spent one week or more in custody, half (22,205 people) had a bail of \$2,500 or less, one-third (14,940 people) had a bail of \$1,000 or less, and one-fifth (8,808) had a bail of \$500 or less. In Monroe County alone, more than 1,900 people spent one week or more behind bars on a bail of \$250 or less.

Table 4: Numbers of People Held on Bail Seven Days or Longer by Amount

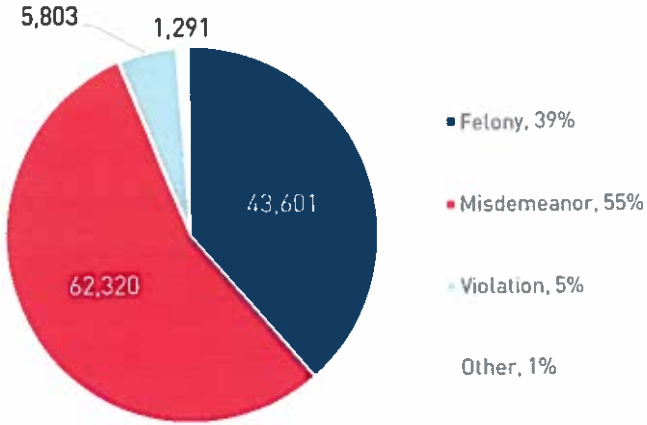
Bail	Albany	Dutchess	Monroe	Niagara	Orange	Schenectady	Ulster	Westchester	Total
Any Amount	5,816	5,691	11,806	2,369	2,501	1,249	2,088	14,131	45,651
\$5,000 or less	2,803	2,794	9,754	1,848	2,030	938	1,456	8,584	30,207
\$2,500 or less	1,531	1,641	8,215	1,513	1,610	826	1,034	5,835	22,205
\$1,000 or less	736	1,000	6,673	1,082	1,061	642	695	3,051	14,940
\$500 or less	302	485	4,760	642	596	382	347	1,294	8,808
\$250 or less	189	160	1,914	304	222	150	76	362	3,377

60% of people held on bail had only a misdemeanor or violation as their most serious charge.

Most Serious Charges⁴

Most New Yorkers held on bail had been charged with minor offenses. In the eight counties alone in this five-year period, more than 60 percent of pretrial detainees who spent time in custody after bail was set (68,000 people) were charged with only misdemeanors or violations. The proportion of pretrial detainees with these low-level charges was greater than half in each of the eight counties, ranging from 55 percent in Albany County to 71 percent in Niagara County.

FIGURE 3
Most Serious Charges Against People Held on Bail

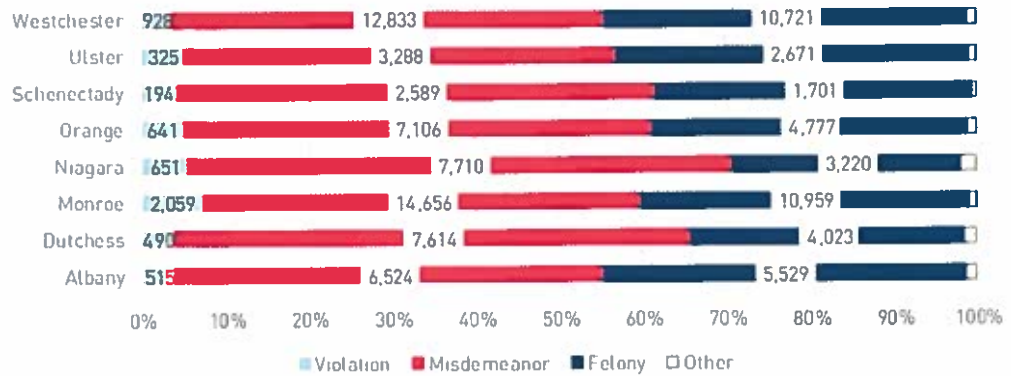


⁴ A misdemeanor is a criminal offense other than traffic infraction of which a sentence in excess of 15 days but not greater than one year may be imposed. A violation is the least serious type of proscribed activity, a non-criminal offense other than a traffic infraction for which a sentence to a term of imprisonment of up to 15 days or a fine of up to \$250 may be imposed. (New York State Penal Law, Article 10). <https://www.omh.ny.gov/omhweb/forensic/manual/html/chapter1.htm>.

Attachment: RESO - Overhaul Pretrial Laws - DRAFT (11321 : Overhaul Pretrial Laws)

FIGURE 4

Numbers of People Held on Bail by Most Serious Charge



Misdemeanors

More than half of New Yorkers held on bail had a misdemeanor as their most serious charge. Of the 62,320 people who could not readily post bail for misdemeanor charges, 78 percent had a bail of \$2,500 or less, 61 percent had a bail of \$1,000 or less, and 42 percent had a bail of \$500 or less. Nearly 19 percent (12,000 people) of those who had a misdemeanor as their most serious charge spent time in custody on a bail of \$250 or less.

Table 5: Numbers of People Held on Bail with Misdemeanor as Most Serious Charge

Bail	Albany	Dutchess	Monroe	Niagara	Orange	Schenectady	Ulster	Westchester	Total
Any Amount	6,524	7,614	14,656	7,710	7,106	2,589	3,288	12,833	62,320
\$5,000 or less	5,316	5,880	14,537	7,518	6,854	2,539	3,100	10,294	56,038
\$2,500 or less	3,294	4,515	13,910	7,242	6,341	2,477	2,730	8,004	48,513
\$1,000 or less	1,632	3,350	12,267	6,589	5,158	2,151	2,130	4,809	38,086
\$500 or less	690	2,121	9,315	5,385	3,548	1,507	1,242	2,323	26,131
\$250 or less	419	711	3,966	3,691	1,531	674	338	663	11,993

More than 25,000 pretrial detainees with a misdemeanor as their most serious charge spent one week or more in custody. Sixty-five percent had a bail of \$2,500 or less, 46 percent had a bail of \$1,000 or less, and over one-quarter had a bail of \$500 or less. Ten percent of those who spent a week or more in custody with a misdemeanor as their most serious charge (nearly 2,500 people) had a bail of just \$250 or less.

Bail	Albany	Dutchess	Monroe	Niagara	Orange	Schenectady	Ulster	Westchester	Total
Any Amount	2,859	3,465	6,871	1,121	1,741	697	1,020	7,427	25,201
\$5,000 or less	2,080	2,046	6,795	999	1,590	666	900	5,369	20,445
\$2,500 or less	1,180	1,249	6,449	881	1,332	636	714	3,854	16,295
\$1,000 or less	565	761	5,641	666	891	510	500	2,075	11,609
\$500 or less	235	357	4,094	423	498	303	262	895	7,067
\$250 or less	140	95	1,485	191	169	120	57	242	2,499

While misdemeanors encompass a broad range of charges, the majority are non-violent. Of the more than 62,000 people who spent time in custody with a misdemeanor as their most serious charge, the three most common charges were:

- Petit Larceny, which is the unlawful taking of property or services valued under \$1,000,
- Misdemeanor Criminal Possession of a Controlled Substance, which does not involve sales, and
- Criminal Contempt in the Second Degree, which can include insolent behavior in the courtroom.

Of those held on bail for any amount of time with a misdemeanor as their most serious charge, 34 percent (or 21,141 people) had one of these three charges as their most serious charge. This share increased to 40 percent for those held in custody for a week or longer (9,965 people). Of the more than 45,000 pretrial detainees held for one week or longer on *any* charge, these three misdemeanors accounted for 22 percent.

Violations

In the eight counties sampled, 5,803 people spent time in custody charged with no more than a violation. Nearly three-quarters spent at least one night behind bars, and more than 20 percent spent one week or more in custody. More than 70 percent of those held on a violation had a bail of \$500 or less. Of those who spent one week or more in custody, more than half had a bail of \$500 or less.

	Albany	Dutchess	Monroe	Niagara	Orange	Schenectady	Ulster	Westchester	Total
Spent time in custody	515	490	2,059	651	641	194	325	928	5,803
Held 1 or more days	383	308	1,821	232	325	143	211	818	4,241
Held 7 or more days	116	108	535	20	55	61	43	365	1,303

The most common violations charged were Harassment in the Second Degree, Disorderly Conduct, and Trespass, which combined accounted for charges against 85 percent of all pretrial detainees who had a violation as their most serious charge. New York State's General Criminal Statute stipulates that the maximum fine punishable for any of these three violation is \$250.⁵ Of those who had one of these three charges as the lone charge in their case, 41 percent had a set bail that exceeded the maximum fine they could have been required to pay if found guilty.

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JUSTICENY.**

RECOMMENDATIONS

The purpose of bail is to ensure someone returns to court, not to exact punishment before conviction. Yet data from the counties sampled over this five-year period reveal that tens of thousands of New Yorkers were jailed without having had their day in court simply because they could not pay.

To reduce the numbers of New Yorkers trapped in the state's bail system, and to ensure justice does not depend on the size of someone's bank account, **New York needs to make the following reforms to its bail practices:**

- People charged with misdemeanors and nonviolent felonies should be released before trial.
- Jail time before trial should **only** be used when a court finds that nothing else will ensure a person will return to court.
- Bail amounts should not exceed what someone can afford to pay and should not be set without lawyers present.
- Judges should be required to consider alternatives to money bail and should put their reasoning for any bail decision in the record.
- Whenever someone remains in custody because they cannot afford to pay bail, judges should be required to revisit their bail decision.
- Risk assessment tools, which rely on flawed and often biased data, should not be used to make bail decisions.
- Courts should no longer allow for-profit insurance bail bonds.

⁵ NYPL § 80.05 (4) <https://www.nysenate.gov/legislation/laws/PEN/80.05>



NEW YORKERS NEED REAL DISCOVERY REFORM S7722 (BAILEY/BENJAMIN) / A10135 (BLAKE)

New York's current DISCOVERY law leads to **INCREASED** wrongful convictions, **INCREASED** court delays, and **INCREASED** taxpayer dollars spent on pretrial detention.

New York's discovery law (CPL 240), which governs the process by which parties in court cases disclose evidence to each other prior to a trial, is **oppressive, inequitable, and leads to mass incarceration**. New York is one of four states (alongside Louisiana, South Carolina, and Wyoming) that have not modernized their discovery laws. This means that people charged with crimes have to make huge decisions about their case without information about the case against them - impacting their freedom and whether they and their families will suffer from a life-long criminal record.

- 25,000+ New Yorkers are held in jail on any given day because of a wealth and race-based pretrial system that routinely violates constitutional rights.
- In New York, prosecutors and police are not required to provide police reports and other crucial evidence until just before trial begins.
- The current discovery system is driven by unchecked prosecutorial power. People wait months and sometimes years waiting to see the most basic facts related to the charges being brought against them.
- 97% of criminal cases in New York end in a plea deal. This means that thousands of individuals being prosecuted in New York plead guilty before seeing the evidence collected by the police and prosecutors. People plead guilty because they feel like they have no other way to fight their case.

THE SOLUTION: **S7722 (BAILEY/BENJAMIN) / A10135 (BLAKE)** **OPEN, EARLY, AUTOMATIC and MANDATORY DISCOVERY**

- **ELIMINATE** uninformed guilty pleas;
- **REDUCE** wrongful convictions;
- **REDUCE** racial and socioeconomic disparities in the criminal justice system;
- **REDUCE** unproductive court appearances;
- **INCREASE** transparency;
- **INCREASE** the efficiency of court proceedings;
- **CREATE** opportunities for earlier resolutions in cases;
- **CREATE** a more equitable and fair system; and
- **SAVE** taxpayer dollars currently being spent on pretrial detention.

Open: Open-file discovery gives the defense access to all unprivileged information that is known or should be known to the prosecution, law enforcement agencies, or any other agencies working on behalf of the prosecution.

Early: A prosecutor's initial discovery obligation begins at the very start of a case.

Automatic and Mandatory Disclosures: Discovery material must be handed over in one initial phase then turned over automatically as prosecution gathers additional discovery material throughout the case. Disclosure of specified information is mandatory.

NEW YORK MUST PASS DISCOVERY REFORM - S7722 (BAILEY/BENJAMIN) / A10135 (BLAKE)

RESOLUTION -2019

WHEREAS, on any given day, 25,000 New Yorkers languish behind bars in jails across the state and every year, 162,000 New Yorkers are incarcerated in county jails outside of New York City; and

WHEREAS, 67% of the people incarcerated in New York's county jails are- legally innocent and overwhelmingly detained pretrial because they cannot afford bail; and

WHEREAS, New York's money bail system drives mass jailing and discriminatory wealth- and raced-based detention; and

WHEREAS, the presumption of innocence is a Constitutional guarantee that all people have the right to be considered innocent until proven guilty; and

WHEREAS, New York's current discovery law denies people facing criminal charges access to critical evidence about their case, impedes their ability to make informed case decisions and fails to protect Constitutionally granted rights to a fair and speedy trial and to Due Process; and

WHEREAS, racial disparity and socio-economic discrimination are rampant throughout the pretrial system and at all points of the pretrial process, and both statistical and qualitative evidence show that even brief periods of pretrial incarceration result in cyclical harm and structural instability for individuals, families and communities; and

WHEREAS, New York's jail system costs counties across the State approximately \$2.5 billion per year; and

WHEREAS, in Westchester county, 1,000+ people – 61% of whom are pretrial -languish in jail each day at a cost of \$44.1 million dollars annually; and

WHEREAS, structural overhaul of bail, discovery, and speedy trial laws in order to address a biased, injustice and misguided pretrial system are all possible through legislative action; and

WHEREAS, bail overhaul legislation, S.2101/A.02726 discovery overhaul legislation, S.1716/A.01431, and speedy trial legislation, S.1738 were introduced in the New York State Legislature in 2019; **NOW THEREFORE BE IT**

RESOLVED, that the Westchester County Legislature expresses its support for the bills referenced above and for the principles contained within those bills, including a transformed pretrial system that protects the presumption of innocence and ensures due process for all people; and be it further

RESOLVED, that this Legislature urges our State elected officials to support a complete elimination of cash bail and a pretrial system that treats all people accused of crimes as worthy of release, fairness and the presumption of innocence. Every person whose case is under consideration for detention must be afforded a robust, evidentiary, individualized hearing, with neither broad preventive detention nor harmful technology -like algorithm-based risk assessment tools, electronic and GPS monitoring, etc. – taking the place of money bail; and be it further

RESOLVED, that this Legislature urges our state elected officials to support a complete overhaul of New York's discovery law so that expanded discovery material is mandated to be turned over, automatically and without redactions, to people accused of a crime at the outset of the criminal procedure process; and be it further

RESOLVED, that this Legislature urges our state elected officials to support the implementation of a true speedy trial law in New York State that captures and fulfills the ideals contained within the 6^h amendment to the United States Constitution which guarantees a "fair and speedy trial"; and be it further

RESOLVED, that this Legislature urges our state elected officials to support the reinvestment of savings generated by these reforms back into communities most directly targeted or impacted by the criminal justice system in New York State.

Dated:
White Plains, New York

COMMITTEE ON

