



MEMORANDUM

TO: Benjamin Boykin, Chair

CC: NY State Senator Andrea Stewart-Cousins
NY State Senator Shelly Mayer
Assembly Member Amy Paulin
Assembly Member Steven Otis

FROM: Damon R. Maher, Legislator – 10th District

DATE: January 27, 2020

RE: **NYT Article on Bail Reform Ending Mass Incarceration**

Please add the attached NY Times article date January 24, 2020 entitled “*There’s a Strong Case for Sticking With Bail Reform*” by Emily Bazelon and Insha Rahman to the Public Safety, Social Services and Legislation committees on behalf of Legislator Maher.

Here is a link to the article: <https://www.nytimes.com/2020/01/24/opinion/sunday/bail-reform-new-york.html>.

There's a Strong Case for Sticking With Bail Reform

The New York law has been on the books for less than a month and already the critics are on the attack.

By **Emily Bazelon** and **Insha Rahman**

Ms. Bazelon is a staff writer for The New York Times Magazine. Ms. Rahman is the director of strategy and new initiatives at the Vera Institute of Justice.

Jan. 24, 2020

Since bail reform began in New York on Jan. 1, opponents have been hard at work to create a backlash against the new law, sometimes wrongly blaming it for the commission of crimes by people they say should have been jailed for earlier offenses, and warning of broad danger to the public.

Using this old script, prosecutors and police chiefs are demanding rollbacks as a public opinion survey shows that support for bail reform is falling. Largely untold are the stories of thousands of New Yorkers who have been released without incident, and allowed to return to their families, jobs and communities while charges against them are pending. The law is unusual, compared with those in some other states, and that's one reason it's politically vulnerable. But it has the potential to end mass incarceration as we know it in New York, with an anticipated drop in the jail population statewide of 40 percent. It deserves a chance to prove itself.

Before the new law, 21,000 New Yorkers were in jail on any given night around the state. More than 60 percent were being held before trial, primarily because they couldn't afford to pay bail. The new law has already reduced the number to 15,000 by making release before trial automatic for people accused of most misdemeanors and nonviolent felonies, which make up 90 percent of the roughly 400,000 arrests each year.

Judges still have the authority in all cases to impose conditions like oversight by a case manager, referrals to treatment or counseling, and in some cases, electronic monitoring. For example, take the case of Tiffany Harris, who was arrested and charged with slapping three Orthodox Jewish women on the street in Brooklyn, released without bail, and then rearrested for hitting someone else. A judge could have ordered mental health counseling after the first incident that might have helped her instead of just letting her go.

Judges can also still set bail on almost all violent felony offenses, any case involving sexual abuse or misconduct, all felony and some misdemeanor domestic violence offenses, and witness intimidation and tampering cases. The most common charges for which release must now be allowed are drug possession, theft and unlicensed driving.

The best evidence for the success of bail reform comes from Brooklyn. Prosecutors there stopped demanding bail for almost all misdemeanors in April 2017. Over the next year, the number of people held on bail in Brooklyn declined by 43 percent, and Brooklyn has also experienced a decline in crime, with fewer shootings and the lowest number of murders in the borough's history in 2019, according to the district attorney's office.

In 2019, the Bronx and Manhattan followed Brooklyn's lead with similar results. The real impact of bail reform is being felt in upstate New York, where 60 percent of the people in jail are charged with misdemeanors. Already, there have been major drops in the number of people in jail in counties like Herkimer and Onondaga, with no upticks in crime.

Despite those facts, bail reform is in political trouble mainly because the state is the only one in the country that bars a judge who is deciding if bail is warranted from considering whether a person poses a threat to public safety. For decades, New York judges have been allowed to consider only the likelihood that the defendant will appear for

future court dates (though it is likely that at least some judges factor in public safety in their calculus).

When bail reform was debated last year, the New York State Legislature considered adding a public-safety provision for a small subset of serious cases. But many proponents of reform, especially defense lawyers, feared such a provision would give judges too much leeway to impose preventive detention. The Legislature and Gov. Andrew Cuomo instead struck a compromise that left money bail as an option for almost all violent crimes, the same small subset of serious cases for which a public-safety provision was considered and rejected. Now the governor is mostly defending bail reform, but he also called it an “ongoing process” in his budget address Tuesday.

If New York decides to tweak its law, it should do so based on months, not weeks, of data. Any amendments should safeguard the principle that the state cannot have two systems of justice, one for the rich and one for the poor. If the Legislature decides to allow judges to detain people for the sake of public safety, it should also eliminate money bail entirely, so that wealthy people aren't released while others facing the same charges are jailed. And a public-safety provision should apply only to serious offenses, and require a hearing with facts showing that the person is likely to threaten someone else's physical safety.

The results of bail reform in New Jersey show the benefits of staying the course. In 2017, New Jersey courts essentially stopped imposing cash bail for all criminal charges. Early on, opponents said things like, “Nobody's afraid to commit crimes anymore,” and one mother sued the state after her son was killed, allegedly by a man who had been released on a gun possession charge. The New Jersey Supreme Court made it easier to detain people accused of gun crimes or repeat offenses, but otherwise, the state weathered the criticism. In 2017, according to state data, less than 3 percent of people released before trial were rearrested for a serious violent felony or for gun possession. On any given day in 2018, 6,000 fewer people were in jail than had been six years earlier. At the same time, violent crime in New Jersey continued to fall.

The experience of other states also shows the value of another element of New York's new law: reducing the time that prosecutors have to turn over evidence in their possession to the defense. New York's so-called blindfold law had allowed prosecutors to withhold key evidence until the morning of trial, and had contributed to wrongful convictions, according to the state bar association.

North Carolina and Texas enacted laws in the last decade requiring broad disclosure of evidence, known as discovery. At first, prosecutors said the requirements were unworkable and put witnesses and victims at risk by potentially disclosing their identities. But judges in those states — and in New York — can limit disclosure when necessary. Over time, the laws in North Carolina and Texas proved their worth. A 2016 study of North Carolina's law found that 91 percent of prosecutors reported the law was working well. Texas prosecutors have urged New York to view their state as a model for discovery practices.

Studies show that it takes only two or three days behind bars to increase the risk that someone charged with a minor, nonviolent crime will be arrested again. It may seem counterintuitive, but jailing people leads to less, not more, public safety. Jail destabilizes people who may already be struggling to pay the rent or get to work. Fear-mongering makes for spicy headlines but terrible policy. New Yorkers should not give in to it.

Insha Rahman is the director of strategy and new initiatives at the Vera Institute of Justice.