

Joint Legislative Budget Hearing on Public Protection

Written Testimony of Sebastian Solomon
Associate Director for Policy, Greater Justice New York
Vera Institute of Justice

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My name is Sebastian Solomon, and I am the associate director for policy of the Vera Institute of Justice's Greater Justice New York Program. Vera works to end mass incarceration, protect immigrants' rights, ensure dignity for people behind bars, and build safe, thriving communities.

In 2019, New York State enacted important, common-sense reforms to bail and discovery. We thank the legislature for continuing to champion this legislation, rather than succumbing to anecdotes and scare tactics. As Speaker Heastie and Majority Leader Stewart-Cousins have repeatedly stated, there is no evidence linking bail reform to an increase in crime.¹ For bail reform's opponents, however, the facts do not matter. Attacks from media and politicians began even before the new laws went into effect.² Those attacks have persisted even as the data consistently confirms that bail reform has not made New Yorkers less safe.

Bail reform moved New York away from a two-tiered system of justice in which wealth determined freedom. The governor herself has acknowledged the injustice that existed prior to the reforms.³ Now, the governor's proposed rollbacks would effectively gut the 2019 legislation and worse, eliminate long-standing protections in state bail law. Simply put: Governor Hochul's proposal would result in an even more unfair system for those charged with bail-eligible crimes than existed before the reforms.

There is no need for these changes: research shows that bail reform is good for New York.

The data collected and analyzed by Vera and others has shown time and again that bail reform has been good for safety and for justice. The statewide jail population decreased by 27 percent, from nearly 21,000 people in April 2019 to 15,000 in December 2021, meaning that thousands more people were able to keep their jobs, homes, and families together while awaiting trial.⁴

The reforms did not negatively impact public safety. In New York City, rearrest rates for people released pretrial went from 19 percent in 2019 to 20 percent in 2021.⁵ Outside New York City, rearrest rates increased from 16 percent in 2019 to 21 percent in 2021, though that increase was mostly due to a rise in nonviolent charges.⁶ Just this week, the governor said bail reform "has nothing to do" with any increases in crime.⁷

Similarly, bail reform is not responsible for an increase in gun violence, which cities across the country—including those without bail reform—experienced alongside the disruption of the pandemic. Of the more than 200,000 New Yorkers released pretrial in 2020 and 2021, just one percent were rearrested on a firearm-related charge.⁸

The purpose of bail has always been to ensure people's return to court, and by that metric, the reforms have been incredibly successful. In New York City, the failure to attend a court date decreased from 15 percent in 2019 to just 9 percent in 2021. Outside New York City, it has held steady around 18 percent.⁹

Governor Hochul's proposal will create greater judicial confusion and result in inconsistent, arbitrary decisions in bail setting.

The governor's proposal would eliminate the requirement that judges use the least restrictive means necessary to ensure that a person accused of a crime returns to court—without replacing it with any new legal standard. While the “least restrictive means” language was only made explicit in 2019, it existed in case law prior to these changes. Thirty-three states have adopted this standard through identical or similar language, including more conservative states like Texas, Tennessee, Nebraska and Ohio.¹⁰ The governor claims the changes are needed to address inconsistencies in the law that confuse judges, though the Office of Court Administration recently acknowledged that no such confusion exists.¹¹ Without a new legal standard, the governor's proposal will result in more confusion, not less.

The proposal would also eliminate the requirement that judges consider the likelihood of return to court for bail-eligible charges. This would implicitly allow judges to consider the likelihood that someone will commit another crime while awaiting the outcome of their case, establishing a “dangerousness” standard for the first time in New York's history. That alone is notable, but the proposal also provides no definition of “dangerousness” and no requirement of a due process hearing to determine the issue.

The proposed changes will result in arbitrary bail determinations, with no consistency between judges or across geographic regions. Years of evidence prove that offering judges such complete discretion will only widen the racial disparities the original legislation was intended to address.¹²

The new legislation will also turbocharge the increases in incarceration that have occurred since New York began steadily chipping at the reforms enacted in 2019. In New York City, where 36 people have died in custody over the last two years, the proposed amendments will exacerbate the current crisis at Rikers and thwart its timely closure, resulting in more death and devastation.

How New York can deliver justice and safety:

Instead of again rolling back bail reform, New York should invest in the community-based services proven to support and stabilize people during the pretrial period.¹³ Whereas jail exacerbates the instability that often leads to crime, thereby increasing the likelihood of rearrest, pretrial services make New York safer by providing people awaiting trial with services to address underlying circumstances, like needs for housing, treatment, and employment.¹⁴

Governor Hochul's budget maintains the \$20 million for pretrial services she provided last year. However, much more is needed to support expanded and enhanced services. The state should budget at least \$72 million to match New York City's annual budget for pretrial services. Such funding should go to programs run by independent, nonprofit service providers, who can build trust and link people to vital services.¹⁵ New York should also establish a statewide Office of Pretrial Services to manage funding, provide guidance, share best practices, monitor service quality, and collect and disseminate data.

We thank the governor for proposing millions in new funding for mental health and substance use care, doubled funding for alternatives to incarceration, and tripled funding for reentry services. Still, we urge the legislature to add additional funding for these and other critical public safety services, as well as to ensure that most of the money goes to proven, community-based programs and services, rather than items such as law enforcement-led programming and hospital beds.

The legislature must champion bail reform.

To move beyond scare tactics, New York’s elected leaders must speak boldly about the benefits of bail reform. Polling conducted by Vera Action highlights major opportunities to educate the public: approximately half of New Yorkers say they understand very little about what bail reform is. Moreover, many New Yorkers already know what impacts crime and safety: fifty percent of New Yorkers say they do not believe that tinkering with our bail laws will have any impact on public safety.¹⁶ It may feel like the fearmongering is working, but champions of justice reform can still win the public on this issue.

Evidence from other states demonstrates that legislators can successfully resist politically motivated backlash against reasonable reforms. In Illinois, anti-reform leaders attacked the state’s new bail reform law before its implementation, particularly to scare midterm voters.¹⁷ Instead of backing down, candidates who supported reform won in 2022.¹⁸ And despite millions spent on fearmongering, sixty percent of Illinoisians had a favorable or neutral view of bail reform.¹⁹

Changes to bail reform have become a matter of politics, not policy. New Yorkers understand the injustice of a system that sends people to jail because they are too poor to buy their freedom. They want and deserve proven approaches. Investments such as good schools, a living wage, affordable housing, mental health and drug treatment, together with cracking down on illegal gun sales, will do more to prevent crime than doubling down on punishment and incarceration.

When we blame the wrong problems, we find the wrong solutions. The numbers clearly show that bail reform is not the problem, and further rollbacks will not increase safety. We, therefore, urge the legislature to reject the legislation and instead focus on funding evidence-based services that enhance community safety.

Thank you again for the opportunity to provide testimony today. I am happy to answer any questions you may have, and please do not hesitate to contact me at ssolomon@vera.org if the Vera Institute of Justice may provide further support to you all.

Notes

¹ For example, see Deanna Garcia, “Assembly Speaker Carl Heastie discusses criminal justice reform laws,” *Spectrum News NY1*, October 13, 2022, perma.cc/A2KR-LURP; and Anna Gronewold, “New York Democrats didn’t defend their bail law changes. It bit them at the polls,” *Politico*, November 27, 2022, perma.cc/V3AC-FQ3P.

² Laura Bennett and Jamil Hamilton, *Freedom, Then the Press: New York Media and Bail Reform*, (Washington, DC: FWD.us, April 2, 2021), perma.cc/V9T7-UCCG.

³ Aliza Chasan, “Hochul says NY bail reform laws need improvements,” *NEWS10 ABC*, January 10, 2023, perma.cc/BS6M-93V3.

⁴ Jaeok Kim, Quinn Hood, and Elliot Connors, *New York State Jail Population Brief, January 2019—December 2020* (New York: Vera Institute of Justice, 2022), perma.cc/VED4-SX89; and New York State Division of Criminal Justice Services (DCJS), “Monthly Jail Population Trends,” November 1, 2022, perma.cc/B38P-E8C2.

⁵ New York State Division of Criminal Justice Services (DCJS), “Supplemental Pretrial Release Summary Tables 2019-2021,” 17, Table 9, perma.cc/R5XR-R3MQ.

⁶ *Ibid.*, 18, Table 9.

⁷ Joseph Spector, Twitter post, February 6, 2023, 10:53 AM, perma.cc/VV3V-5W5G.

⁸ *Ibid.*, 21, Table 11.

⁹ *Ibid.*, 16, Table 8. More specifically, outside New York City, the rate increased from 17 percent in 2019 to 19 percent in 2020 and then decreasing to 18 percent in 2021.

¹⁰ For Texas, see TX Code Crim Pro art 17.028 (2021), perma.cc/A65P-X2BN; for Tennessee, see Tenn. Code § 40-11-115, perma.cc/S3P5-NLHL; for Nebraska, see Neb. Rev. Stat. Ann. § 29-901 (West), perma.cc/SX7X-GN76; and for Ohio, see Ohio Crim. R. 46, perma.cc/X2H7-C484.

¹¹ Lia Lando, “Governor Kathy Hochul: ‘conflicting language’ in bail reform laws has led to confusion for judges,” WKBW ABC, February 2, 2023, perma.cc/D73Z-TF3X; and Joint Public Hearing: Criminal Justice Data, Hamilton Hearing Room B, Legislative Office Building, 2nd Floor, January 30, 2023, nysenate.gov/calendar/public-hearings/january-30-2023/joint-public-hearing-criminal-justice-data.

¹² David Arnold, Will Dobbie, and Peter Hull, *Measuring Racial Discrimination in Bail Decisions* (Chicago: University of Chicago, 2020), perma.cc/F89Z-BNXD.

¹³ Elisa Jácome, “How Better Access to Mental Health Care Can Reduce Crime,” *Stanford Institute for Economic Policy Research*, July 2021, perma.cc/94EZ-W69M; Hefei Wen, Jason M. Hockenberry, and Janet R. Cummings, *The Effect of Substance Use Disorder Treatment Use on Crime: Evidence from Public Insurance Expansions and Health Insurance Parity Mandates* (Cambridge, MA: National Bureau of Economic Research, 2014), perma.cc/6369-6ZXD; Center for Employment Opportunities, *Improving Long-Term Employment Outcomes: Promising Findings from New York State* (New York: Center for Employment Opportunities, 2019), perma.cc/9LHN-XRJP; Judd B. Kessler, Sarah Tahamont, and Alexander M. Gelber, et al., *The Effects of Youth Employment on Crime: Evidence from New York City Lotteries* (Cambridge, MA: National Bureau of Economic Research, 2021), perma.cc/32HX-A98B; and *Center for Supportive Housing, Advancing Supportive Housing Solutions to Reduce Homelessness for People Impacted by the Criminal Legal System: A Report for New York City Leaders* (New York: Center for Supportive Housing, 2022), perma.cc/SP24-MUN2.

¹⁴ Christopher T. Lowenkamp, Marie VanNostrand, and Alexander M. Holsinger, *The Hidden Costs of Pretrial Detention* (Houston, TX: Arnold Ventures, 2022), perma.cc/4UQV-4S4Q.

¹⁵ Vera Institute of Justice, “New York Should Establish and Fully Fund a Statewide Network of Community-Based Pretrial Services,” (New York: Vera Institute of Justice, 2023), perma.cc/7ETW-S59R; New York City Council Finance Division, *Report of the Finance Division on the Fiscal 2022 Preliminary Plan and the Fiscal 2021 Preliminary Mayor’s Management Report for the Mayor’s Office of Criminal Justice* (New York: The Council of the City of New York, March 16, 2021), perma.cc/B5R5-DW3H; and Aiden Cotter and Madeline Bailey, *Successful Pretrial Systems Rely on Supportive Pretrial Services* (New York: Vera Institute of Justice, 2022), perma.cc/8EAA-X86Q.

¹⁶ Polling conducted by Vera Action. Research is not yet published, but is available by request (please contact Sebastian Solomon at ssolomon@vera.org).

¹⁷ Akil Vicks, “Illinois is Eliminating Cash Bail. To Hysterical Conservatives, It’s the End of the World,” *Jacobin*, September 19, 2022, <https://perma.cc/9UHM-RZ86>.

¹⁸ Justin Kaufmann and Monica Eng, “Democrats Sweep the Illinois Midterms,” *Axios Chicago*, November 9, 2022, perma.cc/8WF3-2974.

¹⁹ Rich Miller, “SAFE-T Act Provision to End Cash Bail Likely to Remain in Limbo for a While,” *Chicago Sun Times*, January 6, 2023, perma.cc/EM3G-KK5R.