

# RESIST ROLLECKS TO BAIL REFORM IN NEW YORK

by Emily NaPier Singletary

New York State passed an historic package of pretrial justice reforms last year, eliminating cash bail for most defendants, closing loopholes that undermine the right to a speedy trial, and enhancing rules around prosecutors turning over evidence. But fewer than 90 days after the new laws took effect on January 1, they are already at risk of being rolled back as a result of racist fearmongering that continues to criminalize poverty. Bail reform has been the most controversial change, with district attorneys and other law enforcement officials doing their best to convince the public that we are all in imminent danger now that many people charged with nonviolent crimes will be released to fight their cases.

In order to dispel the lies being told about the new system, we must first understand how the system functioned prior to January 1. New York has always had one of the most progressive bail laws in the country; it did not allow judges to consider the defendant's "dangerousness" when setting bail. This framework was based on an understanding that the purpose of bail is simply to serve as incentive to ensure the person appear at their court dates. Because the US Constitution entitles us all to a presumption of innocence, a judgment about a person's dangerousness cannot be made prior to them being convicted of the crime of which they are accused.

When setting bail, judges were required to set two types, which almost always were cash and bond. If the person and their loved ones could afford to pay the full cash amount, it went directly to the court and was returned to the defendant upon the conclusion of the case (minus a 3 percent administrative fee if they were convicted). If families could not afford the full cash

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The logo of Unchained, the organization Emily and her husband Derek co-founded and co-direct. Graphic: Derek Singletary

amount, they had the option of going through a third party called a "bondsman" who agreed to pay the full amount to the court after charging the defendant or their loved ones a non-refundable premium (usually 10 percent) and, in some cases, requiring additional collateral like a car or a house. For example, if bail was set at \$2,500 cash or \$5,000 bond, the defendant would have three options: 1) pay \$2,500 in cash directly to the court which would return it at the conclusion of the case minus \$75 if convicted; 2) pay a bondsman a non-refundable premium of \$500; or 3) stay in jail, potentially for several months, if both of those options were unaffordable.

It's easy in this example to see how people are punished simply for being poor. And because we know that Black and Latinx people are disproportionately poor and overrepresented in the criminal legal system, this was a practice that perpetuated both economic and racial injustice. What many people don't know is that there were actually seven other types of bail, several of them non-monetary forms, that judges could have set to alleviate these disparities but chose not to.

The new law that took effect January 1 functions exactly the same as the old law

for people charged with violent felonies. But people charged with most misdemeanors and non-violent felonies are now required to be released on their own recognizance rather than being subjected to bail. Opponents of bail reform are calling for the law to be rolled back and to restore judicial discretion in bail decisions, but judicial discretion is exactly what got us into this mess in the first place. Judges routinely used only two of the nine bail options available to them and routinely set bail at amounts that people could not reasonably afford, in direct violation of the spirit of the bail law.

District attorneys and law enforcement want you to believe that bail reform makes us less safe because people charged with nonviolent crimes are now being automatically released while their cases are pending. But the reality is that people charged even with violent crimes were always free to fight their case – if they could afford to buy their way out of jail. A poor person is no more dangerous than a wealthy person charged with the same crime. Resist these attempts to enact policies based on fear and lies. Tell Governor Cuomo and your New York State Legislators, "No rollbacks to bail reform!" 🕊