
“[T]he bottom line [is] we all want the same thing, which is we want a system that is fair and equitable which can keep our communities safe.”

-Karol V. Mason, President, John Jay College of Criminal Justice

I. Introduction

On May 13, 2022, John Jay College of Criminal Justice, a national leader in educating for justice, hosted a public conference providing up-to-date research, policy ideas, and dialogue surrounding New York State's bail and pretrial laws, policies, and practices. [Bail Reform in New York: What Have We Learned? What's Next?](#) represented a partnership among John Jay's [Data Collaborative for Justice](#), [Future of Public Safety Initiative](#), and Office of External Affairs.

The conference brought together New York State legislators, agency leaders, law enforcement representatives, advocates, service providers, researchers, legal practitioners, journalists, and other subject matter experts from around New York State. Speakers covered a broad range of topics and offered a diversity of perspectives on the intent behind and operations of bail reform, research regarding bail reform locally and nationally, practitioners' challenges in implementation, and the law's impact on racial equity and public safety.

In her opening remarks, John Jay President Karol Mason pointed to broad community alignment around the goals of public safety, fairness, and equity, as well as the need for challenging conversations to build consensus. The program began with an interview featuring New York State Senate Deputy Majority Leader Michael Gianaris and a "lightning round" of criminal justice leaders with diverging opinions on bail reform, both moderated by Errol Louis, host of "Inside City Hall" at Spectrum News NY1. The day's sessions also included research presentations covering national and statewide bail reform trends; practitioners describing the successes and challenges of bail reform implementation; and practitioners and experts considering the racial inequities perpetuated by the cash bail system. Jeremy Travis, Executive Vice President of Criminal Justice at Arnold Ventures, provided closing remarks. (The full agenda is available in Appendix A.) The following sections discuss key conference themes, recent research findings, and legislative changes.

II. Key Conference Themes

The key themes of the conference raised practical considerations regarding bail reform implementation, social justice issues, as well as the crucial role of data and evidence in the discourse. Key themes are briefly summarized below.

1) Public safety is a priority, independent of support for or opposition to bail reform; and an honest dialogue informed by data and evidence is required to achieve public safety.

Several speakers discussed the polarization of the bail reform debate, as specific instances of crime, seemingly related to the bail laws, have been used to raise fear about the reforms. While there has been

a [nationwide spike](#) in shootings and murders since mid-2020, the specific causes can be attributed to a variety of factors, especially amidst complex social dislocations brought about by the COVID-19 pandemic.

Panelists embraced a need for continued conversation among decision-makers with different perspectives. Assembly Member Latrice Walker and former Senior Executive Queens District Attorney James Quinn, for example, articulated opposing views on the effects of bail reform, but agreed on the value of continuing conversations regarding both future changes to the bail statute and underlying causes of recent crime increases. Both sought to ground their views in data.

While speakers may have expressed differing views on how to promote public safety, many acknowledged the uptick in violent offenses in New York City, particularly shootings and murders, which began in 2020 (but declined in early 2023). They emphasized that any increase in violence should be immediately addressed to maintain community safety. Additionally, many speakers articulated the need to delve into the underlying causes that may have given rise to violent incidents to effectively prevent them in the future. An expert researcher indicated that “there is no evidence that bail reform has been linked to violent crime,” but that an uptick in violence should be taken seriously.

2) Different counties have taken different approaches to bail reform and pretrial services implementation, at least in part because of differences in the availability of resources. Many upstate jurisdictions lacked the resources to provide the same level of services and programming that New York City can offer for people released pretrial.

One theme was that the rollout and public dialogue about bail reform has differed across the State for a variety of reasons, including:

- **Funding & Pretrial Services:** The 2019 state budget coinciding with the passage of the original bail reforms did not include funding to support the ability of city or county governments to make supervised release or other non-monetary conditions available, even though the law required pretrial service agencies to be established for this purpose.¹ While New York City was not the only jurisdiction to develop a pretrial services program years before bail reform went into effect, its preexisting city-funded Supervised Release Program was one of the ways it differed from many upstate jurisdictions.
- **Rates of Pretrial Release:** The conversations regarding bail reform also differed, because New York City had higher release rates, as compared to upstate, before any bail reform rollout. Therefore, implementing the bail statute did not produce as sizable a shift from prior judicial practice in New York City, particularly for misdemeanors and nonviolent felonies.
- **Pretrial Compliance Barriers:** When considering remote areas of the State, transportation is a problem for many who lack access to a car. Providing pretrial services to individuals who live in remote areas and are unable to regularly commute to court or to pretrial service agencies presents unique challenges upstate. In contrast, New York City’s sprawling public transit system offers some advantages to people who must appear in court and do not own cars (though they may face other disadvantages such as lack of childcare, time off from work, etc.).

¹ Since the bail reform convening, the Governor has supplied upstate jurisdictions with [funding for pretrial service agencies](#), which provide supportive services to accused individuals during the pretrial period as a condition of their release.

Upstate speakers underscored the importance of broadening the conversation about bail reform to address the unique challenges and limitations faced by upstate residents and governments.

3) The statutory provisions governing bail are subject to varying interpretations because they are broadly and ambiguously written.

Some speakers lamented that the language of the statute is not always clear. The way the State's judges interpret the bail statute can have a direct impact on pretrial release rates and other outcomes. Some panelists specifically drew attention to provisions requiring the court to consider an individual's ability to afford bail and the provision colloquially known as "harm on harm." While the statute requires courts to avoid setting bail amounts that would cause undue hardship to the individual, there is no procedure for how courts should evaluate an individual's financial circumstances. The "harm on harm" provision permits courts to set bail if an individual is alleged to have caused harm to a person or property while they already have a case pending that involves similar allegations; however, the meaning of "harm" to a person or property is not explicitly defined in the statute, leading some speakers to cite a need for additional guidance.

If the statute is subject to multiple interpretations, it can create greater variations in the decisions of different judges, leading to the potential for inequities based on race of the individual charged or region of the State. As one speaker stated, "It's one system, it's one bail law, and it's two realities. And so, what the original bail reform was about, was trying to create a more equitable system. A system where somebody isn't held in on bail because they can't make \$500 bail."

4) Many individuals who come into contact with the criminal legal system are disproportionately Black and Brown and impoverished. There should be resources available to address their unmet needs resulting from systemic inequities.

Speakers on different panels raised the circumstances that often lead people into the criminal legal system. Many singled out the lack of access to mental health services and housing assistance and agreed that the criminal justice system is ill-equipped to address the very real needs of system-involved individuals. One speaker emphasized the importance of ending "revolving door" justice by tackling underlying problems.

Several speakers reminded the audience that beyond the crime statistics and jail population trends, the system impacts individual lives, both those victimized and those accused of crimes. Further, families and communities bear the brunt of pretrial detention as they manage childcare, elder care, financial obligations, and meet other needs in the absence of the detained individual. Many speakers advocated for a more holistic approach to individuals that appear before the court, as opposed to solely addressing the case for which they are accused, to improve public safety in the long-term.

Speakers considered how new policies might harness the bail statute to address shortcomings in the State's arraignment process. One speaker suggested having mental health providers² or homelessness services at arraignment to ensure immediate responsiveness to these needs and to encourage an alternative to pretrial detention for those who are simply in need of a community intervention.

² In New York City, such a program was enhanced and evaluated by the Vera Institute for Justice, in partnership with NYC's Correctional Health Services. The full report: Cloud, D., Siegler, A., Martelle, M., Pope, L., & Parsons, J. September 2017. "The Enhanced Pre-Arraignment Screening Unit." Vera Institute of Justice. New York, NY. Available at: <https://www.vera.org/downloads/publications/Enhanced-Pre-Arraignment-Screening-Unit-full-report.pdf>

One related point raised was the importance of addressing basic needs (including mental health, housing, and access to job and healthcare) outside of the criminal justice system before the individual has been arrested. Another speaker urged policymakers not to ignore the trauma caused by persistent poverty to prevent people from “revolving in and out of the system.”

5) It is essential to have open dialogue regarding racial justice to address the racially disparate impacts of the criminal legal system and effectively promote public safety.

The final panel explicitly considered bail reform in relation to racial justice. One speaker, who leads a public defenders’ office, highlighted disparities through an analysis of media coverage. He compared the examples of a young Black man who was charged with assaulting an officer and a young white woman who was charged with assaulting and killing an elderly woman. He showed that both individuals were released after posting bail, and only the Black man received negative media attention upon release, for a case that was ultimately dismissed.

Throughout the day, speakers remarked on the use of bail and how it directly impacts Black and Brown communities, noting that Rikers Island, for example, is largely populated by Black and Brown New Yorkers. This led to a discussion about the intersection of racial justice and the criminalization of poverty. Speakers also acknowledged that an effective approach to public safety must include policies and practices that work to reduce disparities within the criminal legal system.

6) Victims’ rights and needs should be part of the dialogue about the justice system, and reforms should be more responsive to victims’ challenges.

Several speakers elevated the needs of crime victims. Audience questions raised the role of victims within the criminal legal system and the prospect of incomplete responses to-date to victims’ concerns. Speakers cited survivors of domestic violence as a particular group needing support, given their complex relationships to the accused, and possible financial and emotional dependency. Further, the unpredictable nature of arrest and prosecution practices, which sometimes lead to victims being prosecuted and incarcerated, requires better case evaluation of safety risks and resources that meet a victim’s needs.

7) Pretrial detention can cause significant harm to individuals detained and their families, due to dangerous conditions in jails (e.g., on Rikers Island) and the lack of services and supports to prevent criminal legal system involvement.

Pretrial detention is well known to cause harm to those incarcerated, their families, and [communities](#). Many speakers highlighted these harms, which can include immediate [loss of employment and housing](#) and [lifetime collateral consequences](#) to people’s socioeconomic wellbeing.

Although the day’s conversation broadly referred to New York State, many talked about pretrial detention in the context of the ongoing crisis at Rikers Island, citing the reports by the appointed [federal monitor](#) and the New York City Board of Correction. Recurring crises at Rikers Island played a significant role in motivating the changes to the bail statute and pretrial detention practices. For those arrested and prosecuted in New York City, pretrial detention often means being housed in decrepit jails with [rampant violence](#) and [inadequate oversight](#) of people held, often leading to violent events, medical emergencies, and deaths in custody. Throughout the day’s discussions, it became clear that harms caused by pretrial detention, particularly in the Rikers Island context, far outweigh any potential public safety benefit.

8) There has been limited data and media reporting on the positive impacts of bail reform, undermining the public's ability to accurately assess the full impact of bail reform on safety and justice.

In theory, reliable data has been the long-awaited salve to many of the most contentious debates regarding bail reform and criminal justice reform. Of particular interest is the impact of bail reform (if any) on crime and recidivism. However, what became apparent throughout the day's discussions was the limitations of data as of the conference's May 2022 date, including bail reform's impact on re-arrest rates and crime trends or its positive effects. (Below we summarize recent research findings emerging after the conference took place regarding bail and recidivism.)

There was a consistent call for "baseline" data on crime, recidivism, and criminal court outcomes that could offer a means of comparing the bail reform era to the pre-reform era. The general push for more credible information from both opponents and proponents of bail reform speaks to the need for continued data collection and analysis to inform future dialogue and policymaking.

Furthermore, various speakers directly or indirectly advocated that while data should inform any policy decision, there is a need to consider underlying values of fairness, justice, and equity, independent of what the data may show.

Finally, several of the speakers raised the role of the media in telling stories about bail reform. Speakers noted that much of what is published about specific crime incidents, in fact, has a tenuous connection to bail reform. They lamented the lack of success stories demonstrating that individuals presumed innocent have been able to remain in their communities, care for their families, or maintain employment or education, while avoiding re-arrest.

III. Points of Disagreement

The convening brought together a range of voices and there were points of disagreement that remain for future discussion.

1) In the absence of empirical evidence definitively linking increases in violent crime during the pandemic to bail reform, speakers relied on different data sources and analyses to argue in favor of or against bail reform.

Speakers who were skeptical of bail reform raised concerns about both the potential harm of releasing people who might commit crimes if released as well as insufficient resources to supervise and support people released pretrial. These speakers tended to cite overall crime or re-arrest rates without a valid "apples to apples" comparison; such a comparison would present pre- and post-reform data that specifically determines whether bail reform impacted the likelihood of arrest *among otherwise similar people—people with similar charges, criminal histories, etc.*

Speakers supportive of bail reform emphasized the lack of valid evidence linking the reforms to re-arrest and crime rates. It is important to note that definitive research regarding New York's bail reform had not been published as of the convening. However, speakers cited studies conducted in other jurisdictions finding that there was no link between implementing bail reform and increases in crime, such as in [New Jersey](#).

Since the time of the convening, the Data Collaborative for Justice completed a [report](#) finding that bail reform did not increase recidivism in New York City (see “Pertinent Research and Legal Updates” below).

2) Panelists had differing views as to whether to include dangerousness as a permissible factor for courts to consider when setting pretrial conditions, and whether to eliminate cash bail entirely.

Historically, New York State’s bail statute has always considered money bail or other pretrial conditions as a means of ensuring a person’s return to court. Other states also permit judges to incorporate their perceptions of an individual’s “dangerousness,” or risk to public safety. Although bail reform did not change the prior law’s omission of a dangerousness standard, the reform’s public prominence has nonetheless sparked conversations about this topic. Some speakers believed that bail reform should be amended to permit judges to set bail or detain people at arraignment based on perceived dangerousness. Other speakers disagreed, citing the potential for inaccurate judicial assessments of dangerousness, potentially leading people to be detained before trial who do not pose a threat to public safety, particularly individuals from marginalized groups.

Speakers also noted that New Jersey effectively eliminated money bail as a pretrial option. (In theory, [New Jersey’s statute](#) does not preclude bail, but the strict conditions under which it continues to be permissible have made it exceptionally rare.) The remaining pretrial conditions that could be imposed in lieu of bail include supportive services, monitoring by pretrial service agencies, and electronic monitoring, as well as the option to return to court without further conditions or, on the other end of the spectrum, preventive detention. Some speakers argued that eliminating bail would solve the issue of wealth-based detention. Others noted that eliminating cash bail as an option while still retaining preventative detention could lead to indeterminate pretrial detention periods without an opportunity for release, increasing incarceration for people presumed innocent of a crime on balance. New York State legislators previously [considered](#), but rejected, the full elimination of cash bail.

IV. Pertinent Research and Legal Updates

Key Research Updates

Over the last year since the convening, we have learned more about bail reform’s impacts. The New York State [Division of Criminal Justice Services](#) (DCJS) publicly released data and findings revealing that while the reform led to the pretrial release of more people, return to court rates remained high and stable across the state (91% in New York City, and 82% in the rest of the state). A report released by the Data Collaborative for Justice (DCJ), [Two Years In](#), found that judges’ rates of setting bail or remand declined from 17% to 10% for misdemeanors, from 53% to 33% for nonviolent felonies, and from 69% to 60% for violent felonies. The report also found that judges have set bail more often since the first few months of implementation. January 2020 through May 2020 saw the lowest rates of bail setting, and rates have increased since that time.

Responsive to questions raised at the conference, DCJ also released a [report examining bail reform’s impact on recidivism](#), comparing two-year re-arrest rates for people with similar charges, criminal histories, and demographics in New York City. The study focused specifically on comparing individuals who faced bail prior to the reforms with similarly situated individuals who were released after the

reforms went into effect. Overall, people released under reform did not see any increase in re-arrest rates. In fact, eliminating bail for most misdemeanors and felonies reduced the likelihood of a re-arrest (from 50% pre-reform to 44% post reform). For cases that remained eligible for bail (mostly violent felonies), the study found no evidence that greater rates of release led to any change in recidivism.

Released in May 2023, a study by the University of Albany [detected no link](#) between bail reform and rates of serious crimes across New York State.

The 2023 Bail Reform Amendments

In May of 2023, State legislators amended the bail statute to remove the “least restrictive condition” language that guided judges to impose the least onerous conditions possible while assuring an individual’s return to court. The replacement language reverted to what existed prior to bail reform: “the kind and degree of control or restriction necessary to reasonably assure the principal’s return to court.” Further, in cases remaining eligible for bail, legislators removed the presumption of release on recognizance which required that judges consider release to be a first option unless an individual demonstrates a risk of flight. (Judges must still incorporate flight risk into their decision-making.) The amendments also explicitly permitted judges to set a combination of bail and a non-monetary condition in a case, which would allow courts to set cash bail and, if bail is posted, require the individual to comply with further court conditions, such as pretrial supervision.

These changes to the statute were limited and do not change the underlying purpose of bail to ensure court attendance. Future study of pretrial outcomes will be necessary to understand whether these changes have had any impact on judicial decision-making. A more [in depth analysis](#) of the 2023 bail amendments is available on the DCJ website.

V. Recommendations and Next Steps

The discussions at the Conference suggested that a number of common-sense next steps could be considered to help New Yorkers achieve shared goals related to public safety, racial equity and justice.

Recommendations for Data Collection and Research

1) Researchers, government agencies, and communities should continue to work together to publish data and research to help all stakeholders understand the full impacts of bail reform, including impacts on pretrial detention, recidivism, and crime.

On questions other than the bail reform-crime relationship, a significant quantity of [meaningful research](#) has already been conducted on New York’s bail reform. The state’s [Office of Court Administration](#) and [Division of Criminal Justice Services](#) have released data to the public that goes above and beyond what the statute requires. As discussed in the previous section, rigorous studies examining the effect of bail reform on crime or recidivism over both pretrial and post-disposition timeframes have begun to emerge; and more such valid studies can be expected over the months to come.

While traditional public safety metrics such as crime, arrest, and re-arrest rates will continue to be part of the conversation, stakeholders and researchers involved in policy discussions should develop

a list of other indicators that may offer a more comprehensive view of the effects of bail reform. For example, productive insights can emerge from new routinely reported metrics such as the number of people who were diverted from jail at a local level, pre- and post-reform, or the numbers of individuals who were offered and completed programming.

2) Government and community partners must conduct cost-benefit analyses of bail reform that take into consideration the “collateral” and unintended costs of incarceration, including research indicating that pretrial detention can increase recidivism, create economic instability, and disproportionately and negatively impact communities of color.

The cost of housing someone at Rikers Island has been estimated at about a [half million dollars per year](#). Included in the conversation regarding the economic impacts of bail and pretrial detention should also be the toll they extract from the individuals incarcerated, including the cost of losing and re-establishing housing (i.e., moving and storage expenses, application fees), employment (missed income opportunities), and connections with and custody of children (upkeep of child support payments). Speakers raised these “collateral” losses throughout the convening.

Further, research has shown that even a day in pretrial detention can increase the [likelihood of someone’s re-arrest](#), and any initial decrease in re-arrest due to the incapacitation caused by pretrial detention is often [offset within two years of the case being resolved](#). Further, the socioeconomic damage is long-lasting, preventing individuals from [participating in the formal labor market](#); and these adverse impacts disproportionately impact Black and Brown people based on research showing persistent [racial disparities in New York City’s jail population](#).

Recommendations for Policy

3) Key stakeholders, including government officials, legal practitioners, and community representatives should regularly engage in policy conversations, establishing common goals and values, sharing up-to-date research, centering racial justice, and working collaboratively to choose public safety initiatives that are evidence-based.

Future policy conversations should be informed both by research that is credible *and* by underlying values and goals. What do policymakers, leaders, and advocates hope to achieve through the criminal legal system and the bail statute? Which constitutional and human values are we seeking to uphold in the administration of justice? What values should be foregrounded to ensure continued system legitimacy? What are the policy ramifications of objectively valid data and research?

Developing consensus and buy-in can only be done through continued dialogue and engagement with those who hold the responsibility and power of implementing the statute. Conversations should consider issues such as what is the infrastructure necessary to realize the goals of the bail statute and what community supports are still needed to ensure an individual’s return to court and to make re-arrest a less frequent outcome.

Further, the [violent](#) and [dangerous](#) conditions at Rikers Island, underscored by several speakers, are well documented, as are the [deleterious effects](#) on people’s wellbeing when they are detained rather than released before trial. Consistently placing people in these conditions exposes them to levels of trauma and violence to which they may not have otherwise been exposed. While these impacts are difficult to quantify, they should have a central role in conversations on the use of jails.

4) Government should partner with community organizations to improve access to programming capable of meeting the underlying social and economic needs of justice involved people.

While community-based organizations and agencies already provide mental health, housing assistance, and other services, speakers lamented missed opportunities to link people to services immediately at arraignment. Creating a shared interactive database including designated service providers, the providers' intake appointment availability, their capacity to take on new participants, and a full description of services offered—accessible by pretrial services representatives—could reduce delay between an individual's interaction with the court and their connection to services. Pretrial service agency representatives could immediately link individuals to comprehensive programming, presenting viable and effective alternatives to incarceration.

VI. Additional Data and Information on Bail Reform

To continue to inform policymakers, legal practitioners, and the public, the Data Collaborative for Justice has established the following resources:

- A [bail reform resources webpage](#) that will be regularly updated with research and legal analysis on New York's reform as well as additional relevant studies in jurisdictions across the country.
- The [conference website](#) from the May 2022 convening, which now includes:
 1. Conference highlights video.
 2. Conference agenda and video recordings of all conference panels.
 3. Video recording of an online event with journalists, discussing the media's role in bail reform.
 4. Video recording from a September 2022 event co-hosted with the New York State Division of Criminal Justice Services (DCJS) that provided new data and analysis of pretrial release decisions for arraignments between Jan. 1, 2019, and Dec. 31, 2021.

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APPENDIX: Conference Agenda

Welcome: President **Karol V. Mason**, John Jay College of Criminal Justice

Marquee Plenary

Moderator: **Errol Louis**, Political Anchor, Spectrum News NY1

Part 1. The Origins and Evolution of Bail Reform:

The Honorable Michael Gianaris, Deputy Majority Leader, New York State Senate

Part 2. A “Lightning Round” of Ideas on Bail Reform:

Panelists:

- **The Honorable Latrice Walker**, New York State Assembly
- **James Quinn**, Former Senior Executive District Attorney, Queens District Attorney’s Office
- **Alice Fontier**, Managing Director, Neighborhood Defender Service of Harlem
- **Charles Billups**, Chairperson, Grand Council of Guardians
- **Kevin Sylvester**, Chief of Police, Ossining Police Department
- **Akash Mehta**, Editor-in-Chief, New York Focus

Panel One: Bail Reform, Crime, and Pretrial Incarceration

Moderator: **Michael Rempel**, Director, Data Collaborative for Justice at John Jay College

Panelists:

- **Sandra Smith**, Professor of Criminal Justice, Harvard Kennedy School
- **Aubrey Fox**, Executive Director, New York City Criminal Justice Agency
- **Olive Lu**, Senior Research Associate, Data Collaborative for Justice at John Jay College
- **Jaek Kim**, Associate Director of Research, Vera Institute of Justice
- **Aubrey Fox**, Executive Director, New York City Criminal Justice Agency
- **Jennifer Ferone**, Associate Research Director, CUNY Institute for State & Local Governance

Student Roundtable

Moderator:

- **Andre Ward**, Associate Vice President of the David Rothenberg Center for Public Policy, Fortune Society

Panel Two: Courts and Communities – Implementation of Bail Reform

Moderator: **Krystal Rodriguez**, Policy Director, Data Collaborative for Justice at John Jay College

Panelists:

- **The Honorable David Soares**, Albany County District Attorney
- **Sarita Daftary**, Co-Director, Freedom Agenda
- **Yung-Mi Lee**, Legal Director, Criminal Defense Practice, Brooklyn Defender Services
- **Martha Bailey**, Executive Director, Wayne County Pretrial Services
- **Awinna Martinez**, Former Project Director of the Staten Island Justice Center, Center for Court Innovation

Panel Three: Bail, Pretrial Detention and Racial Equity

Moderator: **Insha Rahman**, Vice President, Advocacy & Partnerships, Vera Institute of Justice

Panelists:

- **The Honorable Russ Immerigeon**, Hillsdale Town Court
- **The Honorable Phara Souffrant Forrest**, New York State Assembly
- **Stan Germán**, Executive Director, New York County Defender Services
- **Katie Schaeffer**, Director of Advocacy & Organizing, Center for Community Alternatives

Closing Remarks: **Jeremy Travis**, Executive Vice President of Criminal Justice at Arnold Ventures and Former President of John Jay College of Criminal Justice