

Vera Institute of Justice

Criminal Justice Issues and Prisoners' Rights

<https://www.vera.org/blog/chipping-away-at-new-york-citys-unjust-and-misguided-bail-system>

Public Facing Advocacy Writing

This is the first blog post in a series about bail reform in New York City.

New Yorks bail system is broken. The system is one epic bail fail. Bail reform is needed now.

These are some of the phrases and headlines splashed across New York City newspapers in the past year. From the *New York Times* to the *New York Post*, the Citys media is abuzz with talk of bail.

A couple of high-profile cases have punctuated these declarations. Kalief Browder, a Bronx teenager who was profiled in *The New Yorker*, was locked up at Rikers Island for years on \$3,000 bail, spending some of his time in solitary confinement, until his robbery charges were ultimately dismissed. After he tragically committed suicide, Kalief Browders case became synonymous with the injustice of being held in jail while presumed innocent simply for being poor. On the other end of the spectrum, Tyrone Howard, who shot and killed a uniformed police officer while out on \$35,000 bond, is cited as a cautionary tale of the bail systems failure to maintain public safety.

Though neither example fully captures the complexity of how bail works, or doesnt work, in New York City, they illustrate the point that our bail system is complicated. While there is no quick or easy fix, there is growing consensus that a reliance on money as the sole determinant of who is released and who remains in jail is unjust and misguided.

Taking a step back, heres how bail generally works in New York City:

When a person is arrested in one of the five boroughs, they appear before a criminal court judge to be arraigned. At arraignment, almost half of all cases are resolved with a plea or the case being dismissed. For the rest, the judge has the choice of releasing the person on her own recognizance (ROR) without requiring any money to be paid, or setting bail. Historically, judges have only used two forms of bail: cash and insurance company bail bonds. Both forms of bail require a defendant or her friends and family to pay money to secure her release.

With cash bail, a defendant or her friends and family must pay the full amount of the bond to the court and will get that money back regardless of whether the case ends in a conviction or an acquittal, so long as the defendant makes every court appearance. With an insurance company bail bond, a defendant or her friends and family pay a smaller amount of the bond—usually 10% of its face value—to a commercial bail bond company, plus put up some amount of collateral in the form of cash or property. The bail bond company then posts bail. With a commercial bail bond, at the end of the case the defendant wont see a dime of the money put up—even if she makes all her court appearances and is acquitted or the charges are ultimately dismissed.

Annually, over 300,000 cases are arraigned in New York Citys criminal courts. Of the 168,000 cases that continue past arraignments, approximately 70 percent are RORed without any bail being set. Its those remaining 50,000 cases that get caught up in our bail system. Ostensibly, the arraignment judge who set bail identified those particular defendants as posing some kind of flight risk. By setting bail, the thinking goes, if a person has a financial stake in her criminal case she will come to court to avoid losing that money.

But money as the sole determinant of a persons liberty is unjust. Half of all New Yorkers who have bail set dont have the money to ever afford it, and for a variety of reasons many are not eligible for commercial bonds (a forthcoming blog post will explain commercial bonds in more detail). The average bail set in New York City courts on a misdemeanor case is \$1,000, and on a felony case is \$5,000. For many New Yorkers, paying \$1,000 bail, let alone \$5,000, is beyond their reach. Held in pretrial detention at Rikers Island or other city jails, people suffer serious life consequences such as losing their jobs and housing. Beyond the human costs, the legal consequences of being detained pretrial are real. People held in pretrial detention may plead guilty just to get out of jail, or take pleas to misdemeanor and felony convictions that stay on their criminal records for the rest of their lives.

Furthermore, using money as the sole determinant of a persons liberty is misguided. Research shows that 86 percent of people who are RORed or make bail on misdemeanor cases make every court appearance in their case. People charged with felonies who are RORed or make bail come back to court at even *higher* rates. These statistics illustrate that money isnt necessary to ensure that a person comes back to court.

When we say New York Citys bail system is broken, were talking about those 50,000 cases. While there is no quick or easy fix, some promising new practices and programs in New York City are attempting to remedy the injustices wrought by our bail system.

For example, the Bronx Freedom Fund and the Brooklyn Community Bail Fund, nonprofit charitable bail organizations, began more than two years ago to bail out people held on misdemeanor charges where bail was set at \$2,000 or less. The initial results of the bail funds are impressive. To date, over 700 people have been bailed out by the two funds, and 97 percent of them have made every court date.

In arraignments, some judges are considering other forms of bail beyond cash and insurance company bail bonds. In the past few months, judges have set partially secured and unsecured bonds on more than a hundred cases across the five boroughs. In a partially secured bond, the defendant or her family and friends deposit no more than 10 percent of the bond amount directly with the court, and are only liable for the full amount if the defendant doesn't show up for future court appearances. At the end of the case, if she has made every court appearance, the family or friends get that 10 percent deposit back. In an unsecured bond, money is only owed if the defendant fails to show up to court.

The Mayor's Office of Criminal Justice is spearheading a citywide supervised release program where, instead of bail being set, people facing certain misdemeanor and non-violent felony charges are released while their cases are pending under the monitoring of community-based nonprofits.

And more change is on the way.

Former Chief Justice Jonathan Lippman of the New York Court of Appeals is leading an independent commission to study how to reduce the number of people at Rikers Island. Reforming the bail system to keep more defendants at liberty pretrial is one key means of reducing the jail population on the Island. In the next several months, the New York City Council is launching a \$1.4 million citywide bail fund to pay bail for people charged with misdemeanors who cannot pay it themselves.

And the Vera Institute and the Mayor's Office of Criminal Justice are hosting an open forum on bail reform, called [*Resetting Bail: the Price of Justice in New York City*](#), at the Schomburg Center in Harlem on May 11, 2016.

Slowly we're chipping away at the larger problems with our City's bail system. This blog series will feature opinion pieces from various perspectives, links to newsworthy articles, and updates about bail reform in New York City as we collectively tackle the failures of our system and work to create a better one.

Stay tuned.

Transformative change, sent to your inbox.

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