

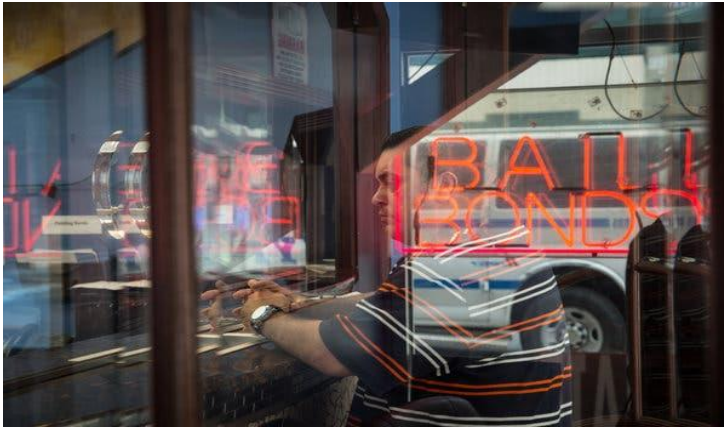
## Senate Bill 2: Eliminating Cash Bail - Article 1

<https://www.nytimes.com/2019/12/31/nyregion/cash-bail-reform-new-york.html>

*The New York Times*

### ***Why Abolishing Bail for Some Crimes Has Law Enforcement on Edge***

Democrats are hailing the new law, saying New York's old bail system punished the poor. Critics say it will put criminals back on the streets.



In the new year, cash bail will be abolished in New York, except for certain felonies. Credit...Michael Appleton for The New York Times

By [Jesse McKinley](#), [Alan Feuer](#) and [Luis Ferré-Sadurní](#)

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ALBANY, N.Y. — When Democrats pushed through a law last spring that sharply curtailed [cash bail](#) for nonviolent defendants, they hailed it as a landmark measure to stop the poor from being jailed before trial simply because they had few resources.

Now, as the rules take effect on Jan. 1, a backlash has arisen among numerous district attorneys, judges, county legislators and law enforcement officials, who are sounding alarms and raising the specter of dangerous criminals on the loose. Some Republicans are using the issue to paint Democrats as soft on crime.

“Estimates of what’s going to happen have ranged from ‘Much Ado About Nothing’ to something like the panic in the opening scene in ‘Escape From New York,’” said Greg Berman, the director of the Center of Court Innovation, a nonprofit group. “There are still a lot of unknowns.”

While New Jersey, California, Illinois and other states have limited the use of bail, New York is one of the few states to abolish bail for many crimes without also giving state judges the discretion to consider whether a person poses a threat to public safety in deciding whether to hold them.

That decision has many prosecutors and police officials worried the changes will have unintended consequences.

“When you have individuals that are standing before a judge and immediately being released, and essentially everyone in the room knows that this person is a danger to the community, I think we need to look at the system and make sure that judges can make common-sense decisions,” the New York City police commissioner, Dermot F. Shea, said in [a radio interview on 1010 WINS](#) in early December.

Under the new law, judges will no longer be able to set bail for a long list of misdemeanors and nonviolent felonies, including stalking, assault without serious injury, burglary, many drug offenses, and even some kinds of arson and robbery.

Thousands of people currently in jail awaiting trial across the state will be automatically released, and about 90 percent of new defendants each year in New York will remain free as their cases move through the courts. Most cities and counties will rely on supervised release programs — in which officials stay in touch with defendants through phone calls or meetings — to ensure people show up to court.

In New York City alone, 20,000 more people would have been released in 2018 under the law, according to [a report from the John Jay College of Criminal Justice](#).

Bail is a method to ensure people return to court that requires defendants to post cash or a bond, which they forfeit if they fail to show up for proceedings. Since the 1970s, New York judges have been able to consider only the risk of flight in setting bail, not public safety. The amount can range from a few hundred dollars to millions.

Opponents of cash bail have long argued that it criminalizes poverty, tilting the justice system in favor of wealthy defendants. In New York, the inequities of the system were crystallized when a Bronx teenager named Kalief Browder spent three years on Rikers Island because his family could not raise \$3,000, only to have charges dropped in 2013 for lack of evidence. He later took his own life.

After his death, the movement to abolish cash bail grew stronger, and last year the governor and the Democratic-led State Legislature passed the new law, which bans imposing bail for most misdemeanors and nonviolent felonies.

The rules require judges to impose the “least restrictive conditions” that will assure people return to court. Those include supervised release, travel restrictions and, for some serious offenses, electronic monitoring.

In recent weeks, courts around the state have begun releasing batches of defendants from jails under the new rules to avoid a rush as the new year starts, and the law’s opponents have pounced on recent cases in which people out on bail committed crimes as harbingers of the future.

Supporters of the bail law say critics are being alarmist: Judges will still be able to set bail for almost all violent felonies, they point out, and the old law unfairly discriminated against the poor. Neither Gov. Andrew M. Cuomo nor Democratic legislative leaders have given any sign that they might delay or significantly alter the law, despite the intensifying opposition.

“I know change is scary, change is hard,” said Senator Andrea Stewart-Cousins, the Westchester County Democrat who leads Albany’s upper chamber. “But, again, we are talking about justice.”

Backers say the new bail system will pay dividends by allowing people awaiting trial to remain in their homes with their families and jobs — all elements of maintaining stability in low-income communities. Moreover, they argue that law enforcement in New York — a liberal stronghold — should be embracing the changes, rather than fighting them.

Prosecutors and law enforcement officials say the law takes a critical decision away from judges. Even though under the old law judges were supposed to consider only the risk of flight in setting bail, as a practical matter judges still had the discretion to set a higher bail for people with long arrest records or who showed other signs they might commit another crime.

Image



“I know change is scary, change is hard,” said Senator Andrea Stewart-Cousins, the Democrat who leads Albany’s upper chamber. “But, again, we are talking about justice.” Credit...Patrick Dodson for The New York Times

Some states, like New Jersey, that have abolished or curtailed the use of cash bail have established a system for assessing the risk that a defendant might commit another crime, and allow judges to hold people to protect public safety. But New York simply eliminated bail for most nonviolent crimes.

“District attorneys do not believe in general that people should be held in jail just because they can’t afford to get out,” said David Hoovler, the district attorney in Orange County and president of the District Attorneys Association of New York. “But people who have done bad things and are repeat offenders will be getting out.”

Republicans facing elections next year have begun to wield the issue as a cudgel against Democrats. “I’m already campaigning on it,” Senator John J. Flanagan, the Republican minority leader, said at a news conference in mid-December in the State Capitol. “And I think we have an obligation to do so.”

On Tuesday, Mr. Flanagan and other Republicans on Long Island — where the G.O.P. lost four seats in 2018 and, with them, control of the State Senate — intensified their criticism. They decried recent cases in which defendants were set free under the new rules, including [Tiffany Harris](#), who was arrested a day after being charged with a bias attack on several Orthodox Jewish women in Brooklyn.

“This is not what justice looks like,” Mr. Flanagan said.

Senator Michael Gianaris, a Queens Democrat who is the deputy majority leader, said Republicans’ critiques of the new system were “intentionally misleading or ignorant.”

“We are taught that we have a system of innocent till proven guilty, but it was functioning as guilty till proven rich,” he said. “We fixed that.”

Incumbent Democrats in some suburban districts are also being hammered over the issue by law enforcement groups on [social media](#). Some, like Senator Todd Kaminsky of Nassau County, have responded by proposing bills to amend the law, making it possible to set bail for more offenses. For some types of sex offenders, Mr. Kaminsky, a former federal prosecutor, is seeking to add public lewdness and exposure to the list.

Mr. Kaminsky said while he understands “the unfairness of a cash bail system that favors wealthier offenders,” some of the offenses now eligible for release “are as serious, if not more serious, as felonies under cash bail reform that remain part of the criminal justice system.”

Democratic lawmakers privately worry the pushback will hinder their pursuit of a raft of additional criminal justice bills when they return to the State Capitol in January, including a measure to allow people with felony convictions to vote and serve on a jury.

Mr. Hoovler and other county prosecutors [argue](#) that the legislature rushed passage and implementation of the law.

Others, including the Manhattan district attorney, Cyrus R. Vance Jr., have faulted New York State for not providing more money to create or expand programs that will track defendants who are free awaiting trial.



Senator John J. Flanagan, the Republican minority leader, said his party would seek to use the changes to oust Democrats in 2020. Credit...Nathaniel Brooks for The New York Times

A few liberal prosecutors, including the Brooklyn district attorney, Eric Gonzalez, have embraced the changes, pointing to states that saw lower crime rates after they eliminated cash bail.

But many prosecutors and police officials worry that some defendants released under the new rules will continue to commit crimes, and a few may try to intimidate potential witnesses. They point out that the crimes for which people will not have to post bail includes drug sales.

“Someone who deals in drugs is not someone who, once arrested, will just decide to give it up and find legal employment,” said Patrick Swanson, the district attorney in Chautauqua County, on the state’s western border. “They will continue to sell drugs.”

Advocates for the law have moved to fend off the criticism. In early December, [New Yorkers United for Justice](#), a group that has spent more than \$2 million to champion the law, hosted dozens of Democratic lawmakers for [a two-day retreat](#) in Westchester County to discuss how to defend the changes. The group also created a television and mail campaign featuring Mr. Gonzalez.

“These reforms passed in late March,” said Khalil A. Cumberbatch, the group’s chief strategist. “The district attorneys across the state who are in opposition could have begun preparing, as opposed to last-minute fear-stoking.”

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