



**COURT
WATCH
NYC**

EYES ON 2020

**New York Bail Reform Accountability
and Implementation**



DECEMBER 2019

There are over 10 million admissions to jails across the United States every year. The vast majority are presumptively innocent people jailed pretrial simply because they can't afford to purchase their freedom.

On April 1, 2019, New York State passed bail reform legislation that will limit money bail and ensure pretrial freedom for New Yorkers accused of most misdemeanors and non-violent felonies. Unfortunately, the reform does not apply to people charged with more serious crimes, leaving a system of wealth-based detention intact and reinforcing pretrial incarceration as an acceptable outcome for particular people. The new law will go into effect January 1, 2020, and if it is implemented correctly, it is estimated that **over 90% of New Yorkers will be released pretrial**, no longer subject to the emotional and physical abuse of pretrial jailing for the inability to afford money bail.

What is bail?

The purported purpose of bail is to ensure people return to court by putting down a guarantee—usually in the form of money. Most accused people unable to post bail will spend over two weeks in jail, many much longer, awaiting trial. Single parents may lose custody of their children. Many miss work and risk losing jobs and/or housing. However, community bail funds—and thousands of other people across the state who have returned to court on their own accord—have proven that money bail is needless and cruel. More than 90% of bail fund clients across the state make all required court dates, no matter how numerous and without any financial incentive to do so.

To ensure that as many people are released as possible under this new law, Court Watch NYC will be monitoring its implementation and fighting to hold prosecutors and judges accountable. Court Watch NYC will also continue to push judges and prosecutors to use their discretionary power to grant pretrial freedom to all New Yorkers, no matter their charge.

Over the past two years, Court Watch NYC has trained more than 1,000 New Yorkers to observe criminal court arraignments to hold New York City prosecutors—the criminal legal system’s most powerful actor — accountable. **During that time, we’ve seen hundreds of families torn apart by unaffordable bail amounts.** During the same two-year period, individual prosecutors and the District Attorneys Association of the State of New York (DAASNY), the conservative mouthpiece for district attorneys across the state, have been mounting a proactive campaign aimed at stamping out, and more recently, subverting, bail reform. One recent effort hails from DAASNY’s training arm: a 90 minute podcast that gives tips to prosecutors on how to jail people who otherwise would be released under the new law. On November 21, 2019, prosecutors in nine counties across the state, including the Staten Island DA and acting Queens DA, organized press conferences to call for rollbacks of New York’s historic bail reform legislation.

We’ve seen these tactics play out over the past few months in real-time in court, **where prosecutors blatantly state on the record their aim to keep the status quo and deny people pretrial freedom.**



In early November, court watchers witnessed a case in Manhattan where a prosecutor working for the Office of the Special Narcotics requested \$1 million bail and up to 8 years prison time for a 64-year-old Latinx man who was charged with possession of a controlled substance for a large amount of cocaine. Prosecutor Keating stated that her office is considering increasing the charge to major trafficking **so it will be bail eligible in 2020.**



Even though New York State bail reform law doesn't go into effect for another few weeks, there's nothing stopping prosecutors and judges from implementing the legislation now and releasing people who won't be bail eligible in January so they can spend the holidays at home with their loved ones.

Despite the fact that prosecutors and judges have this discretion, **we've observed a number of cases where prosecutors are requesting bail on individuals whose freedom will be guaranteed in January.**

For example, last month in Queens, two middle aged men were arraigned for first degree marijuana possession, which, **in January once bail reform takes effect, will not be eligible for bail.** Yet prosecutor Sela requested \$200,000 bail for both men.

Later that month in Manhattan, a man was **charged with shoplifting food (so he could feed his family).** The prosecutor requested \$2,000 bail for the low-level misdemeanor that, come January, won't be eligible for bail. Although Judge Tsai ultimately released the man on his own recognizance, court watchers wondered:

Why did the Manhattan DA's office request \$2,000 bail for a man who couldn't afford a basic necessity like food? How would arresting him and possibly subjecting him to the trauma of jail improve his situation or fulfill his basic needs?

The new bail law ensures that people accused of most misdemeanors are issued a ticket and are allowed to go home, rather than spend 24 hours in detention before seeing a judge. **This is a big step forward. But, importantly, it is still a crime to be poor in New York State.**

We know that in 2020 prosecutors will circumvent legal protections to jail more people pretrial. We will be watching to call out subversion when we see it. We will be watching when judges give lip service to the importance of pretrial release but their decisions reveal their preference for incarceration. We will also be watching when judges and prosecutors impose so many conditions of release that it creates a virtual cage, making the accused's life on the outside unbearably cumbersome.

Every day in court, we see the impact of money bail and the current pretrial system on our fellow New Yorkers and their families.

While bail reform did not eliminate money bail nor end pretrial detention, on January 1, long-awaited bail and discovery legislation will take effect and usher in a new system that prioritizes freedom and fairness for many New Yorkers.

The new laws will begin to address the racism and classism of a system that has devastated low-income people and communities of color for decades. And despite fear-mongering by prosecutors, the reforms will also make our communities safer.

We're taking what we've learned from court watching over the past two years to closely monitor whether prosecutors are implementing bail reform in 2020 because we believe the presumption of innocence should apply to everyone, not just those who can afford the price tag on their freedom.

Check out the following page to see what we'll be watching for next year!





What We'll Be Watching in 2020

- For non-bail eligible/non-qualifying offenses, are prosecutors requesting and are judges releasing people on their own recognizance or imposing onerous conditions (such as curfews, drug testing, phone or in-person check-ins, or electronic monitoring)?
- What are the circumstances under which judges are imposing conditions of release and what are those conditions?
- Which non-monetary conditions are prosecutors requesting and judges setting?
- How often is bail being set, for whom, and under what circumstances are prosecutors requesting and judges imposing it?
- Are judges considering a person's ability to afford bail? How will they justify imposing bail on someone who is homeless or on a fixed income?
- Do judges set unsecured or partially secured bonds at the same amount as the cash/bond amount when setting bail? Are judges considering a person's ability to afford partially secured or unsecured surety bonds?
- How often are people being remanded?
- Is there evidence of net-widening? Are people who, in the past, were typically released on their own recognizance going to start having to comply with onerous conditions? Are people who used to have bail set going to be remanded?
- Are people being charged with more serious crimes for actions that in the past would have been equated to a lower charge?
- Are prosecutors skirting the mandatory release provisions by charging bail jumping or attempted burglary in the second degree to attempt to jail more people pretrial?

Court Watch NYC harnesses the power of New Yorkers to organize for transformative change toward abolition. We watch court proceedings, shift power in the courtroom, report what we see, and hold court actors accountable to ending the injustices in the criminal legal system that target Black, brown, indigenous, immigrant/migrant, queer and TGNC communities.

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