

KATAL

CENTER FOR EQUITY, HEALTH, & JUSTICE

Testimony

Joint Legislative Hearing on Public Protection for the
(FY) 2023-24 Executive Budget Proposal

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Submitted to

New York State Senate Finance Committee and
Assembly Ways and Means Committee

Tuesday, February 7, 2023 9:30 AM
Albany, NY

Thank you Senator Liz Krueger and Assemblymember Helene E. Weinstein for holding this joint legislative hearing on the Public Protection section of the Fiscal Year (FY) 2023-24 Executive Budget Proposal. We submit this testimony to bring your attention to Governor Hochul's proposal to jail more New Yorkers simply because they're unable to afford to buy their freedom. The governor's proposal to gut bail reform as part of the budget is bad for all New Yorkers, but will be particularly bad for Black, brown, and low-income New Yorkers across the state who will otherwise bear the brunt of this retrograde approach. This proposal will also further delay and could even outright wreck efforts to close the notorious Rikers Island Jail Complex. And this proposal will be, over time, very, very expensive for New York taxpayers, who are already picking up the excessive costs of pretrial detention around the state, including more than \$500,000 per year for every person held at Rikers. In short, the governor's proposal moves New York backward, and must be rejected.

This legislative body knows, by now, how the inherent unfairness and cruelty of the cash bail system undermines the promise of safety, equal opportunity, and equal justice under the law that New Yorkers cherish. The purpose of bail – and pretrial release in general – has been to ensure a person's return to court. It is wrong to hold people in jail simply because they cannot pay bail. It is racist to detain mostly Black and Latinx people at Rikers and other jails across the state while wealthier (and mostly white) defendants can pay their way to freedom. Before bail reform was passed in 2019, jails were crowded with people who couldn't afford to buy their freedom. About 23,000 people were detained in local jails across New York State—and even in early 2020, almost 70 percent of the people detained in New York City jails and nearly half of those in the state's other jails were pretrial; they had not been convicted of a crime.ⁱ

They were locked up because they couldn't afford bail. The overwhelming majority of those held in jails pretrial were Black and Latinx and poor. Though wealthier people accused of crimes could await trial in home confinement or with other restrictions, those who couldn't afford cash bail frequently wound up at jails like the notorious Rikers Island simply because they couldn't pay. For many years, I worked at a community bail fund in New York City. During this time, I paid bail for hundreds and hundreds of people who, but for the bail fund, would have continued languishing in the city's horrific jail system. For me it was a window into how utterly grotesque and unjust New York's pretrial system was.

That's why Katal and hundreds of community groups across the state worked tirelessly to get the state legislature to pass the transformative pretrial laws – including bail reform – in 2019. And it's why many members of this legislative body rightfully voted to support those reforms.

ⁱ For jail population data, see New York State Division of Criminal Justice Services (DCJS). Annual Jail Population Trends. Albany: DCJS, 2022, 1. criminaljustice.ny.gov/crimnet/ojsa/jail_pop_y.pdf. For pretrial data, see Jaeok Kim, Quinn Hood, and Elliot Connors. The Impact of New York Bail Reform on Statewide Jail Populations: A First Look. New York: Vera Institute of Justice, 2021, executive summary, i. vera.org/downloads/publications/the-impact-of-new-york-bail-reform-on-statewide-jail-populations.pdf.

In September 2022, the DCJS released data that proved that bail reform is working as intended: people are returning to court at higher rates while being afforded their liberty and it has had no impact on violent crime.ⁱⁱ

Of course, the opponents of justice and fairness and racial equity didn't like these reforms, they preferred the status quo of racially biased mass incarceration. And they've worked ever since to spread lies and misinformation about bail reform. Their racialized fearmongering and misinformation have led to two baseless and regressive rollbacks to the 2019 bail reforms. These rollbacks have not served public safety, but they did lead to more Black, brown, and low-income people to be held in cages simply because they can't afford their freedom. If politics followed the data, we wouldn't be here, because the data is clear: bail reform works, and we should do *more* of it. If politics followed the data, the governor's public safety proposals would be massive investments in housing, health care, education, jobs. But that's not how politics usually works. Unfortunately for New Yorkers, our policies are shaped by the politics of the day, and right now, the politics of the day, with regard to public safety issues, are too often detached from facts and reality.

So here we are again. In the proposed FY 2024 Executive Budget, Governor Hochul does not just call for further rollbacks to the 2019 bail reform, she takes it a step further by giving judges near limitless discretion to incarcerate people pretrial through unaffordable bail. The proposal removes the "least restrictive means" standard for judges, allowing them unfettered discretion to set unaffordable bail on the most marginalized New Yorkers. In 2019, the NY Legislature passed bail reform to address to exact issue, which had been plaguing communities of color for decades. But the Governor does not stop there, she proposes to drop off any reference that a judge needs to view factors to "ensure a person's return to court". This, therefore, creates a pseudo-dangerousness standard, with a lack of "least restrictive means" for determining pretrial release for qualifying offenses. This will further exasperate the racial disparities in the state's pretrial incarceration practices, drive up the number of people detained in jails pretrial, and create more deadly and unjust situations like the one Kalief Browder faced while being incarcerated at the violence-plagued Rikers Island Jail Complex.ⁱⁱⁱ

It is unconscionable that after a year in which 19 people passed away on Rikers – the most deaths on the island in the last decade and the worst death rate in 25 years – the Governor would put forth a proposal that will send more New Yorkers to be jailed there.^{iv} After years of a decline in both crime and the jail population, under Mayor Eric Adams, the NYC jail population is steadily increasing. Today there are nearly 6,000 people incarcerated at Rikers, with an overwhelming majority being held on bail.^v These people—neighbors, family, friends

ⁱⁱ Olivia Lu and Michel Rempel. Data Collaborative for Justice at John Jay College, 2022, Two Years In: 2020 Bail Reforms in Action in New York State, <https://datacollaborativeforjustice.org/work/bail-reform/two-years-in-2020-bail-reforms-in-action-in-new-york-state/>.

ⁱⁱⁱ Jennifer Gonnerman. "Kalief Browder: 1993–2015." The New Yorker. June 7, 2015. [newyorker.com/news/news-desk/kalief-browder-1993-2015](https://www.newyorker.com/news/news-desk/kalief-browder-1993-2015).

^{iv} Jan Ransom and Jonah Bromwich. "Tracking the deaths in New York City's jail system in 2022". New York Times. 2022. Retrieved from <https://www.nytimes.com/article/rikers-deaths-jail.html>.

^v For the 2023 data, see Vera Institute for Justice. "JailVizNYC." February 4, 2023. <https://greaterjusticenyc.vera.org/nycjail>.

— are innocent until proven guilty, but most of them are in jail because they can't afford bail. Why in the world would anyone want more of that, especially now when we know how deadly jails are and how unnecessary pretrial detention is?

We call on the state legislature to reject the governor's baseless proposal to amend the state's bail laws. Bail reform is working and must not be rolled back any more. Lawmakers must make sure that this year's budget furthers New York's pursuit of justice and combats the oppressive practice of pretrial jailing that corrodes public safety, trust, and the presumption of innocence. Instead of proposals that would increase jail populations and keep Rikers open, the governor must work with the legislature to pass a budget that will reduce the reliance on jails and prisons, close Rikers and other deadly jails across New York, and invest in real public safety: housing, health care, education, and jobs.