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Over 100 Law Professors From Every NYS Law School Reject Governor Hochul's Cruel and Ill-Conceived Proposed Changes to New York's Landmark Bail Reform Law

(NEW YORK, NY) - Over 100 professors from law schools throughout New York State released an [open letter](#) today addressed to Governor Kathy Hochul, Senate Majority leader Andrea Stewart-Cousins and Assembly Speaker Carl Heastie, condemning the Governor's proposed changes to New York's bail statute which will only lead to the more pretrial caging of Black and Latinx New Yorkers, undermining public safety.

The professors hail from every law school in New York State, including New York University Law School, Columbia University Law School, St. John's University Law School, Brooklyn Law School, CUNY Law School, Maurice A. Deane School of Law at Hofstra University and others.

In their letter, the professors write that Governor Hochul's proposal would undo the well-considered and long-standing purpose of bail:

Governor Hochul's proposal discards the 2019 codification of long-standing legislative principles, and is contrary to decades of New York's refusal to cave to racist and classist 'tough on crime' policies in the context of bail and pre-trial detention...

Our state lawmakers also explored future dangerousness and preventative detention during the 1960s, forming a temporary commission to provide recommendations to revise the penal and criminal procedure code. These considerations were soundly rejected after years of investigation and state hearings, leading to the passage of the bail laws in 1971 which affirmed the purpose of bail in New York: to ensure a person's return to court. In 1987, the Supreme Court declared in U.S. v. Salerno that "In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception."

Furthermore, the professors note that the Governor's proposal would exacerbate racial disparities and wealth-based detention:

Governor Hochul's proposal to eviscerate the long-codified purpose of bail would further increase these racial disparities. A decision-making vacuum would be left in its wake, primed to be filled with calculations of "future dangerousness". Studies have repeatedly shown that assignments of dangerousness are nothing more than a proxy for race. Indeed, a [2020 study](#) revealed that New York City judges were 50% more likely to set higher bail

for Black people accused of violent felony charges than for similarly-situated white people facing identical charges.

Lastly, the professors point out that the Governor’s proposal would further sow confusion among judges and criminal legal system stakeholders:

Contrary to the Governor’s false claims that the reforms stripped judges of discretion in their bail decisions, [the current law](#) in fact requires judges to consider a comprehensive list of factors, including a person’s past history and the current allegations against them, to determine whether that person presents “a risk of flight to avoid prosecution. If a judge finds the person poses a risk of flight, they then impose the “least restrictive conditions” necessary to ensure their return to court. This decision-making process is replete with opportunities for judicial consideration and discretion. What’s more, contrary to the Governor’s oft repeated assertion that judges are confused by the laws and unsure about their ability to impose bail on bail eligible offenses, the state court Chief of Administration Justin Barry has [clarified in public hearings](#) that judges are not confused and are thoroughly trained on the bail laws and procedures.

“All people deserve a criminal legal system that delivers on the promise of equal justice, one where race, class, and wealth do not shape outcomes. In keeping with that concern, the changes to New York’s bail law were enacted to ensure that a person’s pretrial freedom isn’t determined by what they can afford. The law has done exactly that, allowing people to be reunited with their families and loved ones, to continue pursuing education and employment, and to fight their cases outside of a jail cell, all at no cost to public safety. Rolling back the law now, and upending such critical reforms is not just a wrongheaded concession to media hysteria, it will mark a step backwards for New Yorkers pursuing a more fair and just criminal system,” said **Vincent M. Southerland, Assistant Professor of Clinical Law, Director of the Criminal Defense and Reentry Clinic, and Co-Faculty Director of the Center on Race, Inequality, and the Law at New York University School of Law**

“Gov. Hochul’s proposal to erode bail reform would only further cement the racism and unfairness inherent in the practice of pretrial detention. The proposed changes would give judges even more power to use racism--whether intentionally or not--to cage people because of the color of their skin. We should instead be moving in the other direction, toward recognizing that public safety can go hand in hand with freedom,” said **Jocelyn Simonson, Professor and Associate Dean for Research and Scholarship, Brooklyn Law School**

“Rolling back bail reform will not prevent future crimes from being committed. If we want safer communities we must focus on the root causes of crime: poverty, lack of access to education, housing, and proper mental health services,” said **Anna G. Cominsky, Associate Professor of Law Managing Attorney of NYLS Legal Services, Inc., Director, Criminal Defense Clinic, New York Law School**

“Cash bail laws led to mass incarceration, economic devastation, coerced pleas and destruction of families too poor to post bail, primarily those who were Black or brown. If a danger to the public could be determined by the crime charged, wealthy white individuals would also be jailed prior to trial. In a democracy all those who are presumed innocent should remain free,” said **Laurie Shanks, Clinical Professor Emerita of Law at Albany Law School.**

“The governor’s move to undercut landmark bail reform does nothing to keep our communities safe. Rather, it buys into the fear-mongering rhetoric that insists, without evidence, that bail is to blame for anything wrong with our criminal justice system,” said **Elizabeth Nevins of Hofstra Law School.**

“The presumption of innocence is the bedrock of our criminal law, yet pretrial incarceration coerces people to plead guilty. Using the least restrictive means to ensure a person’s return to court is a matter of fundamental fairness,” said **Martha Grieco, adjunct professor at St. John’s University School of Law.**

“Gov. Hochul’s justification for rolling back bail reform is solely alarmist. The data shows that bail reform has not led to an increase in violence or crime, but the consequence of her proposal is clear. Indigent clients will bear

the brunt of the changes and be forced to sit in jail pre-trial simply because they couldn't purchase their freedom," said **Natasha Chokhani, Acting Asst. Professor of Law at New York University School of Law.**

"Reversing bail reform will not keep New Yorkers safe, but will increase racial disparities and the unnecessary incarceration of people just because they're poor. The Governor's proposal ignores both data and common sense — instead it panders to ignorant fear-mongering and racialized 'dog whistle' politics," said **Cynthia Godsoe, Professor of Law at Brooklyn Law School.**

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