



**Testimony of Katie Schaffer**  
*Public Protection Budget Hearing*  
*February 12th, 2020*

Thank you, Senators and Assemblymembers. My name is Katie Schaffer and I am the Director of Advocacy and Organizing for the Center for Community Alternatives.

I want to begin by thanking the legislature for passing historic bail reform last year. Supported by communities across the state, bail reform is already working to protect the constitutional rights and pretrial liberty of thousands of New Yorkers. Like all necessary and transformative change, it will also - rightfully - require real shifts in practices and in funding, from jails to community-based services and resources.

For far too long, New York incarcerated tens of thousands of people - pretrial - each year. Money bail and mass pretrial incarceration violated the presumption of innocence, criminalized poverty, and devastated families. While people with wealth paid bail and returned to their families and jobs, people who could not afford it were locked behind bars, often losing their homes and their jobs. Many - despairing of any chance of due process - took plea deals with life-long consequences of housing and employment discrimination.

However, despite the necessity of these reforms, law enforcement and Republican officials have waged a fear-based political campaign in opposition to the new laws, seeking rollbacks or regressive changes. Although opponents of bail reform claim to care about safety, pretrial detention actually makes our communities less safe by destabilizing families and individuals and exacerbating root drivers of harm and violence, including poverty and untreated mental health needs.<sup>1</sup>

This year, we must use the budget to build on what we accomplished last year. I urge you to support the new bail reform law - as is - and instead focus on meeting the basic needs of all New Yorkers for housing, mental health services, education, and healthcare. It is these community-based resources - not money bail or pretrial jailing - that keep New Yorkers safe. We must also support investments in community-based pretrial services that will better ensure a person's return to court and in collecting the data our state needs to make fact-based evaluations of the new pretrial laws.

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<sup>1</sup> [http://econweb.umd.edu/~pope/pretrial\\_paper.pdf](http://econweb.umd.edu/~pope/pretrial_paper.pdf)



## **CREATE SAFETY AND STABILITY THROUGH HOUSING & MENTAL HEALTH SUPPORT**

New York State's new bail reform laws present a once-in-a-generation opportunity for a fundamental shift away from the ineffective and immoral use of jails as a response to mental health needs. This shift has already begun, as people released pretrial are receiving counseling and other services. However, to maximize the positive impacts of the reforms, resources for people with mental health needs must be strengthened and expanded. Similarly, family and community instability often begins with a lack of housing. By expanding the social safety net - including mental health resources and supportive housing - New York can move towards true support for healthy, safe communities.

### **Ensure Housing for All People & Families, Including Permanent Supportive Housing**

Safe and stable housing, coupled with individually tailored services, is a key foundation to support people who have become entangled in the criminal legal system, whether pretrial or post-release. In August, Center for Community Alternatives, in collaboration with the Syracuse Housing Authority, opened Freedom Commons, a new housing development that includes affordable housing, permanent supportive housing, and reentry housing.<sup>2</sup> Developments such as these must be brought to scale in order to ensure the housing that all New Yorkers deserve. In the budget, New York could support housing by:

- **Develop 20,000 Units of Supportive Housing:** In 2016, Governor Cuomo pledged to create 20,000 units of supportive housing, but so far his administration has only financed a fraction of these homes. The State must fund all 20,000 units of supportive housing units and accelerate the pace of production to meet the crisis.
- **Replicate Successful Supportive Housing Programs:** The state needs to provide supportive housing needs and replicate innovative models such as the Fortune Academy also (aka "The Castle") in Harlem and CCA's Freedom Commons in Syracuse. Doing so will provide recently released persons with longer initial stays (from 45 days to six months) and ensure that their move to permanent housing is successful.
- **Pass Home Stability Support (HSS) (S.2375/A.1620):** HSS is a statewide rent subsidy proposal that would bridge the difference between inadequate public assistance shelter allowances and actual rents for families and individuals who are homeless or at risk of homelessness.
- **Create Transitional Housing:** New York State Office of Temporary Disabilities Assistance (OTDA) should create a one-million-dollar (\$1,000,000.00) funding stream to support one upstate and one downstate transitional housing pilot program for formerly incarcerated people. This funding could provide six months or more of transitional

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<sup>2</sup> <https://www.syracuse.com/news/2019/08/freedom-in-syracuse-broken-family-reunites-in-first-ever-public-housing-for-ex-inmates.html>



housing for over 100 people to support rehabilitation and reintegration into society. In addition, the state should modify the Empire State Supportive Housing Initiative to include transitional housing.

### Expand Mental Health Services

Community-based mental health services are vastly underfunded. In 2019, while counties outside of New York City spent \$1.25 billion on local jails, only \$500 million - less than half - was spent on mental health services. Many of the bias or antisemitic incidents that opponents of bail reform point to were not organized hate violence, but rather stemmed from mental health crisis. Expanding mass incarceration or jailing people with mental illness does nothing to combat hate in our society or to address the underlying mental health needs. In fact, pretrial jailing can cause people suffering from mental illness to further decompensate.<sup>3</sup> We must take a community-based, holistic approach to addressing mental health. New York must fund community-based organizations to deliver culturally competent counseling, support, and mental health services across the state. New York must also bring community-based and rapid response mental health services to scale, including:

- **Community-based crisis respite and stabilization centers** with trained mental health staff. These centers should provide opportunities for pre-arrest diversion as well as pre-arraignment and pretrial services.
- **Crisis response teams** as a non-police response when someone is experiencing a mental health crisis.
- **ACT (Assertive Community Treatment)** teams in each county. ACT is an evidence-based practice that improves outcomes for people with severe mental illness who are most at-risk of psychiatric crisis and hospitalization, as well as involvement in the criminal legal system. Currently, there are 100 ACT teams serving approximately 6,500 people. New York must increase funding and capacity in ACT.
- **Certified Community Behavioral Health Clinics (CCBHC)** which operate in both rural and urban locations and are required to provide crisis response services, including 24-hour mobile crisis teams that must deliver services within three hours. Currently, CCBHCs in New York operate in 70 locations through 13 providers.

## **COLLECT PRETRIAL DATA AND EXPAND COMMUNITY-BASED PRETRIAL SERVICES**

### Pretrial Data Collection

New York has the opportunity to invest in comprehensive pretrial data collection and publication to better identify and track county funding needs, ill-compliance, and racial inequities. The state lacks a centralized collection of data, leaving us to rely on piece-meal sources that provide only

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<sup>3</sup><https://www.nydailynews.com/opinion/ny-oped-a-tale-about-mental-illness-not-bail-20200203-3he4kpsvdzbtfoq7vtwwyusix4-story.html>



an incomplete picture of what is happening in our courts and jails statewide. Every other state that has overhauled its bail practices has centralized data on release and detention. In order to make informed and data-based decisions, New York should include S.6438B/A.8441B in the budget this year.

### Community-Based Pretrial Services

Over the next few years, counties should begin to see local budget savings from the reduction in pretrial incarceration. In New York City, the annual cost per detained person is over \$300,000, which is the equivalent of \$832 per day.<sup>4</sup> The five largest counties outside of New York City - Erie, Nassau, Suffolk, Westchester, and Onondaga - spend an average of 92 million dollars per year on their jail system, which amounts to \$88,000 per detained person per year. In response to reductions in jail populations stemming from pretrial reforms, the Governor rightfully included a proposal to allow counties to share local jails, rather than requiring each county to have a brick-and-mortar jail within their county boundaries. This should be included in the final budget proposal.

However, these savings will not materialize immediately and so it is incumbent upon the state to provide funding for community-based pretrial services. To begin with, as identified by the ATI Coalition, further study is needed to identify gaps in ATI, reentry and pretrial services. The ATI Coalition recommends \$200,000 for New York to fund a study, bringing together relevant state agencies, other stakeholders and organizations with experience in providing ATI, reentry and related services and individuals with direct personal experience to measure the impact of the laws while also assessing funding and program needs such as for ATI, reentry, and pretrial services. In order to develop this plan, it will be critical to identify existing service gaps, regional needs and organizational capacity, particularly in counties outside of New York City.

In developing these services, it is critical that funding is channeled into community-based organizations rather than probation as these departments have been set up to monitor people post-conviction and are often punitive in practice. Instead, pretrial services should be individualized, trauma-informed, and provided by organizations in the community. Funding should be linked to best practices - like transportation to and from court - and explicitly prohibit onerous conditions like mandatory drug testing, mandated programming, or frequent in-person check-ins. Effective pretrial services start with centering clients' presumptive innocence, their strengths, and their self-determination, by tailoring services to what they need and want to achieve. The bail system effectively overrides the presumption of innocence by subjecting people to jail before a guilty plea is entered; imposing services with a punitive lens only replicates this dynamic.

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<sup>4</sup> <https://comptroller.nyc.gov/newsroom/comptroller-stringer-despite-a-decline-in-incarceration-correction-spending-violence-and-use-of-force-continued-to-rise-in-fy-2018/>



## **REJECT ROLLBACKS OR REGRESSIVE CHANGES TO THE NEW BAIL LAW**

We oppose any efforts to make concessions in this year's budget that would rollback or weaken the pretrial reforms that went into effect on January 1st, including measures to expand a system of money bail or to incorporate a racist framework of "predictive dangerousness." Doing so would be a capitulation to cynical fear-mongers who have spread misinformation with the intent of undermining the progress New York has made.

### **Reject Proposals to Add Additional Charges to Bail or Detention Eligibility**

Adding new crimes to the list of bail-eligible penal law offenses will not make New Yorkers safer. Incarcerating people pretrial undermines family and community stability, which is why low-level charges, and commonly-filed charges that include no actual acts of violence are excluded from bail eligibility.

Low-level hate crimes that do not rise to the level of violent felonies must similarly be excluded. Hate violence and bias incidents are most effectively prevented in community, not by the police or by prosecutors. Jail cells will not solve the root causes of hate and prejudice. As Jewish, Muslim and other organizations have said forcefully: we need approaches that *prevent* violence through education and community-building, *interrupt* violence, through community-based upstander/bystander trainings and rapid response at the local level, and *repair* through restorative justice, counseling and peer-support. Zero-tolerance approaches are simply ineffective. Responses that are proportional to the harm and that protect the dignity and humanity of the accused are what best serve the long-term interests of all of our communities. In addition, communities need access to hostic, accessible mental health resources, as discussed above.

### **Reject Inclusion of "Predictive Dangerousness"**

New York must reject any changes to the law that would allow judges to preemptively detain people based on predictions of so-called "dangerousness." By definition, such a system, which has been continuously and rightfully rejected in New York State since the 1970s, would ensure that innocent people are locked up in jail pretrial and would exacerbate racial disparities in local jails.

We should not pretend that courts can decide with any certainty who is a danger to society before trial without relying on systemic racial biases. When judges are asked to lock people up based on a perceived threat to safety, judges are empowered to rely on factors that are less than factual or solely on criminal histories that are riddled with systemic biases due to existing racial disparities in policing, housing, health care, and education. Adding "dangerousness" to the bail law would codify racial profiling into pretrial detention decisions. Allowing a judge to lock



someone away based on speculation and guesswork, under the guise of “discretion,” will not make anyone safer. It will, however, stifle real bail reform by exacerbating racial disparities in the justice system and increasing pretrial detention across the state.

Risk assessment tools (RATs) are no better. In one study by ProPublica in 2016, researchers found that of the people predicted to commit violent crimes, only 20 percent actually went on to do so. The algorithm was “particularly likely to falsely flag black defendants as future criminals, wrongly labeling them this way at almost twice the rate as white defendants.”<sup>5</sup> The algorithms used in RAIs are based on data drawn from historically racist policing and prosecution practices, including, for example, from the era of Stop and Frisk in New York City and the War on Drugs, as well as housing and other data that are deeply influenced by poverty and other factors. Detaining someone based on an algorithm that spits out a score of supposed future “risk” will only reinforce and cement the racism that New York’s new pretrial reforms are designed to combat. A similar 2019 study from MIT concluded that pretrial risk assessments “do not guarantee or even increase the likelihood of better pre-trial outcomes” and thus will “simply shift or obscure problems with current pretrial practices.” Risk assessments work to solidify, not reduce, existing racial disparities. The legislature rejected requiring judges to rely on a risk assessment instrument to purportedly assess someone’s “future dangerousness” for exactly these reasons.

## **CONCLUSION**

In this year’s budget, New York must build upon the accomplishments of last year by requiring pretrial data collection, providing funding for pretrial services, and building out a robust system of mental health services and supportive housing. New York must not succumb to political campaigns or fear-mongering designed to undermine the new pretrial laws, and must instead fund the community-based services and resources that create stable, healthy, and safe communities.

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<sup>5</sup> Julia Angwin et al., *Machine Bias*, ProPublica, May 23, 2016, available at <https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing>. A subsequent analysis of the tool re-iterated the 2016 results, finding that Laurel Eckhouse et al., *Layers of Bias: A Unified Approach for Understanding Problems with Risk Assessment*, 46 *Crim. Justice & Behavior* 185-209, 186 (2019).