

2020  
January



WDN Regional Council  
Meeting Summary

Host: RTS  
Topic Discussion: New York State 2020 Criminal Justice Reforms

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### Difficult Discussion

#### New York State 2020 Criminal Justice Reforms:

Participants reviewed two summaries of the case for and against the new criminal justice reform laws in New York State and then addressed four questions about them in small discussion groups of three. The summaries and questions follow:

#### **The case for the reforms:**

In 2018, according to the Vera Institute of Justice, an average of 24,000 people a day were sitting in New York's jails, 70% of them in pre-trial detention because they were denied or could not make bail. The median misdemeanor bail for prisoners stuck in jail in Buffalo? Just \$1,000. In New York City? \$5,000.

Beginning Jan. 1, criminals charged with most misdemeanors and Class E felonies will be released from jail without having to post cash or a bond. The goal is to not criminalize poverty by keeping someone in jail only because they can't afford to get out.

Cash bail will no longer be demanded from people charged with misdemeanors in New York (exceptions: misdemeanor sex offenses and protection order violations in domestic violence cases), and pretrial detentions for those defendants are eliminated. Money bail will be eliminated for most non-violent felonies, with exceptions related to witness intimidation, crimes toward children, and other high-risk cases. Money bail will still be permitted for most violent felonies.

When a judge does demand money bail, he or she will be required to consider the defendant's financial resources and provide several choices. The goal here is to prevent defendants from being stuck behind bars simply because they don't have money for bail, and to reserve pre-trial detention for defendants who may commit additional crimes as their cases wind through the courts.

Under the new guidelines, according to the Center for Court Innovation, only about 10 percent of defendants arraigned for crimes in New York City in 2018 would have been subjected to cash bail demands.

The criminal justice system tends to apply pressure on defendants to get them to plead guilty without the hassle of a trial. Cash bail is one of those mechanisms—a defendant who cannot afford bail for a minor crime is much more likely to accept a guilty plea.

Poor black and Hispanic New Yorkers are disproportionately affected by the cash

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bail system, while wealthier people accused of crimes can afford to await trial in home confinement or under other restrictions.

Also with the start of 2020, new discovery rules require prosecutors to hand over much more evidence—including grand jury testimony and police reports—to the defense within 15 days of arraignment. These "new" rules are similar to discovery regulations in the rest of the country already.

Prosecutors who withhold evidence have the upper hand with defendants who are offered plea deals without fully understanding the strength of the case against them. The pressure of case bail and state-friendly discovery rules have contributed to 98 percent of all felony convictions in New York being obtained via plea deal.

#### **The case against the reforms:**

New York's new law, which effectively bans the imposition of bail for defendants accused of non-violent misdemeanors, only became effective on Jan. 1, but it already has prompted an outcry from prosecutors, judges and law enforcers. Judges no longer have the power to intervene if there are warning signs in a defendant's background. Under the new law, people arrested for misdemeanors such as stalking, burglary, arson or assault without serious injury must be released without posting bail.

New York City Councilmen have repeatedly spoken out against the initiative, especially as anti-Semitism continues to rise."For two years, we have been sounding the alarm and asking for resources to confront rising anti-Semitism. That fact is that our constituents have been seeing video after video of their neighbors being beaten on the street and harassed. Then they have watched as the attackers walk out of the courthouse scot-free, with a City-sponsored gift card in their wallet."

Bail reform, which will revamp the criminal justice system and release thousands of suspected offenders onto the streets, is of grave concern to many. While there are certainly crimes that should be punishable by just a ticket (such as a traffic violation), that is not the case with many others. Crimes like selling drugs to children, arson, promoting a sexual performance by a child, assault, and stalking are serious offenses that could potentially result in extended prison time.



Disallowing judges to use discretion in such cases will result in the release of dangerous criminals onto the streets.

The new bail and discovery laws will require law enforcement to warn crime victims and witnesses that, more than likely, their attackers will either be on the street or have their names and contact information much faster. In addition, grand jury testimony has to be turned over, when historically it was secret — a factor that helped get witnesses to work with prosecutors. People are already very anxious about cooperating and these changes to the law are going to be a disincentive to cooperate.

“Without giving judges the ability to evaluate the dangerousness of a defendant, we have the potential to release people back into our communities who may reoffend within days or even hours,” Orange County District Attorney David Hoovler, president of the District Attorneys Association of the State of New York, said in a statement.

#### Discussion questions:

- Do you agree with the bail reforms? Why or why not?
- Definitely! We have decades of institutional, racist practices impacting predominantly, people of color and minority groups.
- Judges have no training in implicit bias, and overwhelmingly deny bail at the request of prosecutors.
- Yes. It removes the inequity imposed by privilege of wealth. Cash bail is not possible for many people and the impact of enforced jail time for the accused creates hardship in lost jobs, family disruption, etc.
- Yes, simply because persons who cannot afford bail for a minor crime (before they are found guilty) causes people to plead guilty to lesser charges or lesser time in order to be out of the harsh conditions of jail sooner than they would if they pursued real justice.
- 50/50 – we need something – not sure we got it right yet
- A colleague engages you in a conversation about the recent bail reforms in New York and is clearly upset about them and the negative impact they will have on public safety. How do you respond?
- There is so much misinformation out there that facts have been wildly distorted. Also, the law is only two weeks old. We need to allow it to work so we know if or where there is a need to tweak it.



Many of the fears regarding public safety are based on inaccurate or exaggerated reading of the law's provisions

- 98% of convictions in New York State being determined by plea deal and not actual conviction, is not justice. That argues that people who have been accused of crimes are more dangerous if they are poor than those who can afford bail.
- Too much slanted media. Need to give it time, get statistics
- Do you have examples of how people have been impacted by the bail elements of the criminal justice system, directly or indirectly?
- Stories heard directly by family members who have experienced loss of jobs, family disruption and loss of housing by the current system
- No, but I do know that many people have no available resources to post bail.
- Are there any elements of the reforms that you would like to see changed?
- Before recommending reform, we need to allow it to do its work.
- The policy is too black and white. Needs some discretion. Need data and statistics first. Kids breaking into cars are in jail vs bomb threats are released.

### Featured Presentation Identity Privilege

At our meeting, we examined the idea of identity privilege in small and large group discussions and how all of us are affected by it. Following are the key discussion points:

- What is "identity privilege?"
- Any unearned benefit or advantage one receives in society by nature of their identity. Examples of aspects of identity that can afford privilege: Race, Religion, Gender Identity, Sexual Orientation, Class/Wealth, Ability, or Citizenship Status
- Each person experiences their privilege and lack thereof within the context of their own community and the people they interact with at the time. As such, privilege is relative, and we need to talk about it that way.
- Our identities are complex and intersectional.
- Just because we benefit from one form of privilege doesn't mean that we benefit from all forms of privilege.

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So often, when introduced to the idea that they have privilege they did not earn, people respond in two ways that relate to guilt:

- Defensiveness: “I’m not going to feel guilty for what I inherited. If some people don’t have those same privileges, it’s not my responsibility.”
- Paralyzing guilt: “This is just so unfair, but what am I supposed to do about it!? I never asked for this, and one person can’t change a system that’s been around for hundreds of years!”

In both cases, we need to remind the person in question that feeling guilty doesn’t even need to enter the equation.

They’re right – they didn’t do anything to earn those privileges. So feeling guilty about them doesn’t make a lot of sense.

The fact remains, “If we inherit injustice, we should never feel guilty. We are not responsible for that past. However, if we choose to do nothing about it going forward, then we have plenty to feel guilty about.”