

# #FREEnewyork

A campaign led by JLUSA

## ORGANIZING GUIDE

### *Bail & Discovery Implementation for Decarceration and Equity*

*"We have rights only as long as we are willing to struggle for them."*

*– Ella Baker*

### WHY ORGANIZE AROUND IMPLEMENTATION?

Because of the unwavering advocacy of directly impacted people, a historic package of bail, discovery and speedy trial legislation passed in New York State on April 1, 2019. If the new bail law were implemented today, **at least 9,000 people** who are currently incarcerated in New York's local jails would instead be home with their families. This means a reduction by nearly half (43%) of the total number of people in New York's jails each day.

For decades, jails have perpetuated and hidden inequality, dehumanized Black and brown people including immigrants targeted by the police, economically disenfranchised people, and those who are homeless or struggling with mental illness or addiction. The new pretrial legislation will help to ensure that this is no longer the case. However, we must fight for a just implementation so that the newly passed pretrial bills achieve - in practice - decarceration and a reinvestment in our communities. **This is a guide for how to TAKE ACTION and organize for the just implementation of bail and discovery reform in YOUR county.**

### WHAT ARE OUR GOALS?

1. **FREE our people: MAXIMIZE DECARCERATION**
2. **Ensure pretrial support, not punishment: MINIMIZE NET-WIDENING**
3. **Build community power: CREATE PUBLIC ACCOUNTABILITY & COMMUNITY REINVESTMENT**

### WHO ARE OUR ALLIES?

Public Defenders: Public Defenders are in court everyday and are key potential allies. To start, schedule a meeting with your Chief Defender or public defenders in your county. Here are some starting points and initial questions you can ask:

- We want to make sure people do not languish in jail pretrial. Are you planning to file bail applications this summer or fall for all people who are currently incarcerated pretrial?
- After January 1, 2020 if people who are no longer bail eligible are still incarcerated pretrial, what is your plan for filing writs to help them win their pretrial freedom?

- We are concerned that DAs may overuse discovery protective orders to withhold important evidence in people’s cases. Will you keep us updated if this is happening so we can organize to push back?

Service providers & advocates: Talk to organizations in your county who provide or advocate for housing, healthcare, mental health services, education, or other community services and invite them into a conversation about divesting from jails and investing in community resources. You can start by making a list of service providers in your area and asking them:

- The newly passed bail legislation is going to result in fewer people incarcerated pretrial and we want to make sure the money saved by the county is reinvested in community-based services and supports. Do you have budget asks for the County Legislature?
- Would you join us in advocating that the County Legislature reduce the budget for the jail and invest in education, healthcare, and other community services?

County Legislators: Identify which of your county legislators may be an ally in prioritizing community-based services and support over punitive pretrial conditions. (More information on this in the “County Legislature” section below.)

## WHO ARE OUR TARGETS?

**Locally, we have three main targets:**

- 1. District Attorneys**
- 2. County Legislatures**
- 3. Judges who preside over arraignments are also a potential target**

## DISTRICT ATTORNEY

Schedule a meeting with your DA to discuss pretrial implementation. If there is an election happening, you can schedule meetings with all the DA candidates. To show strength and begin to build a network or coalition that can hold the DA accountable, try to have multiple organizations represented at the meeting. In the meeting, ask: What are your plans for pretrial implementation? Then lay out your community demands.

Template Demands: Please feel free to add or adjust based on your local dynamics.

**BAIL DEMANDS.** The DA's office must:

- Implement the new bail legislation now (not wait until Jan. 1, 2020) and stop requesting bail on charges that will no longer be bail eligible.
- Institute an office policy against upcharging as a strategy to coerce plea deals.
- Not request bail in felony cases where the DA's office is not seeking jail time.
- Must review the cases of all people currently in jail pretrial and support release on ROR or non-monetary conditions now for all people who will no longer be bail eligible in 2020.
- Collect and report on aggregate pretrial data, including: bail requests by prosecutors, total cases prosecuted, declinations to prosecute, recommendations for alternatives-to-incarceration and diversion programs, case outcomes (dismissals, acquittals, plea deals, convictions), average time period from arraignment to disposition, all disaggregated by charge, race, gender, and age.

**DISCOVERY DEMANDS.** The DA's office must:

- Implement the new discovery legislation now and begin the practices of early, open, automatic discovery turnover.

- Institute an office policy to provide discovery at first appearance.
- Not abuse discovery protective orders, and publicly report the number of discovery protective motions filed each year, as well as the justifications.

*SPEEDY TRIAL DEMANDS.* The DA's office must:

- Not make plea deals contingent on waiving speedy trial rights.

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## COUNTY LEGISLATURE

First, identify who are likely allies in your county government. Begin by meeting with them and asking the following questions.

Initial questions to ask

1. What is the county doing to set up mandatory court notification?
2. What directives or policies are the police departments rolling out to comply with the mandatory appearance ticket provision?
3. What is the process by which the county is selecting a pretrial services agency? How do you plan to include community input and have an accountable and transparent process that orients towards services, not punishment?
4. How is the county working on complying with the mandate about considering ability to pay when judges do set bail?

Template Demands: Please feel free to add or adjust based on your local dynamics.

### GOALS FOR IMPLEMENTATION

1. **Maximize Decarceration:** The County Legislature should do everything in its power to ensure pretrial reforms have the greatest decarceral effect when implemented.
2. **Minimize Net-Widening:** The County Legislature must ensure that we do not see an expansion of onerous or punitive pretrial conditions.

### APPEARANCE TICKETS:

Under the new legislation, the police are required to issue field appearance tickets for the vast majority of violations, misdemeanors and E felonies rather than making a custodial arrest. This is a powerful component of the legislation as it will save New Yorkers from the traumatizing experience of a physical arrest. We ask that the County Legislature:

1. Require training for police departments to implement appearance ticket portion of the legislation and conduct oversight.
2. Ensure that the police are issuing field appearance tickets, not making custodial arrests.
3. Mandate that police department(s) keep track of and make public all instances when an officer does not issue an appearance ticket, including the reason why one wasn't issued (to ensure there is not an abuse of the exceptions to the new appearance ticket mandate).

### PRETRIAL SERVICES

Under the new legislation, County governments must select a pretrial services agency. In this capacity, we ask that the County Legislature:

1. Select a non-profit or independent governmental agency (not probation) as the pretrial services agency, as the punitive, burdensome nature of probation is well documented and not appropriate for providing pretrial support.

2. Ensure the selected organization is committed to providing supportive services, not punishment, and prohibit them from mandating ongoing drug testing or requiring in-person check ins more than once per week.
3. Establish additional limitations on the use of harmful pretrial conditions, including establishing more stringent restrictions on electronic monitoring.
4. Require that there be no categorical or charge-based restrictions on pretrial services (people accused of more serious charges must be eligible for release to pretrial services).
5. Set up a system for court date reminders that is monitored by the public defenders' office.

#### *COMMUNITY INVESTMENT:*

As these pretrial reforms reduce the number of people incarcerated pretrial, the county will see savings. We ask that the County Legislature:

1. Commit to reinvestment in community-based services and resources, such as education, housing, mental healthcare, and drug treatment.
2. Not allocate additional funding to the prosecutor's office to implement discovery reform.

#### *PROCESS:*

1. In order to have an accountable implementation process, we ask that the County Legislature set up a pretrial implementation committee that includes community organizations and impacted people.

#### Talking points

- Under the new legislation: courts must send out reminders prior to all court dates; counties must select a pretrial services agency that annually reports data; and pretrial conditions must be the "least restrictive" to ensure return to court.
- The vast majority of people make all their court dates. In NYC between 2007 and 2018, 86% of people who were released on their own recognizance, or RORed, made *all* court dates.
- People accused of more serious charges make all court dates at even higher rates. During the same time period, 89% of people accused of violent felony offenses made all court dates.
- The Pretrial Justice Institute (PJI) recommends court reminders as the "most effective intervention" for reducing failure to appear. They argue that "A simple telephone call or text message—like those employed by doctors' offices and hairdressers—can dramatically increase attendance. Conversely, research shows that over-supervising people produces contrary results."
- There is no evidence to support the utility of electronic monitors (EM). A 2011 survey of research on pretrial EM found that "utilizing EM as a condition of pretrial release does not reduce failure to appear or rearrest."
- Being on an electronic monitor can impact a person's mental health, and it can have consequences related to their employment. EM hinders a person on pretrial release from carrying on with their life and may, therefore, pressure them to take a plea bargain. They should not be subjected to this pressure.
- Probation is primarily oriented towards punishment, not support and therefore is a poor choice for a pretrial services agency. The most successful pretrial service agencies in the state are non-profits with a clear mission of supporting people's return to court.