

Brooklyn ^(BDS) Defenders

The Truth About New York's Bail, Raise the Age & Discovery Laws

Landmark new bail, Raise the Age, and discovery laws were enacted to address long standing inequities in New York's criminal legal system, to reduce unnecessary pretrial incarceration and to put an end to New York's process of automatically charging all 16- and 17-year-olds as adults. Despite the successes of these reforms, opponents have relentlessly used fear mongering to misinform and influence public and political opinion.

Bail Laws

New York's bail laws ensure that low-income people get the same right to a presumption of innocence that the wealthy have always had. Current law requires courts to release most people charged with *misdemeanors and nonviolent felonies* without money bail so that they can await their court dates from home without missing school, or losing their jobs or housing, and where they can continue to care for their families.

FACTS

- **Recent data shows success of New York's bail laws:** The recent data released by the state's Division of Criminal Justice Services shows that 98% of people awaiting trial between July 2020 and June 2021 were not re-arrested for serious crimes.
- **Rise in gun violence, nationwide, is not connected to New York's bail reform:** A nationwide rise in shootings is almost certainly driven by the massive societal disruptions caused by the pandemic, and based on available data, cannot be linked to bail reform. **In New York, fewer than 0.5% of people released pre-trial were rearrested for a gun-related charge.**
- **Bail eligibility:** Judges maintain the option to set bail for people charged with violent felonies, persistently miss court dates, violate orders of protection, rearrested on a second felony, are charged twice (or more) with any alleged offense involving harm to a person or property, or are on parole or probation charged with felonies.
- **Public safety & pretrial services:** Releasing someone into a pretrial program, such as mental health and substance use counseling services, is a bigger contributor to public safety than pretrial jail. Imprisonment often leads to more criminal activity and risks the health of individuals and communities.
- **The Danger of "Dangerousness":** If judges were able to use the dangerousness determination in setting bail, we would have even greater racial disparities. Risk assessment mechanisms powered by arrest data are still likely to yield discriminatory outcomes if such algorithms rely on discriminatory policing.

HELPFUL LINKS

[Debunking](#) the lies about
New York's Bail Laws

Making sense of the recent
[bail data](#)

The [danger of a
"dangerousness" standard](#)

Raise the Age

In 2017, New York enacted the Raise the Age (RTA) Law after recognizing that 16 and 17 year olds should not automatically be tried as adults. Opponents are using recent headlines to falsely blame these long-overdue reforms for the recent increase in gun violence in New York.

FACTS

- **Increased gun violence not linked to RTA:** Following months of lockdowns, deaths and uncertainty due to the pandemic, New York, as well as many other cities where criminal justice reforms were not enacted, saw an increase in gun violence. However, the rate of arrests for gun violence for 16 and 17 year olds was still far lower than in 2016 when these youth were charged as adults for all crimes.
- **We need root-cause solutions:** Trying children as adults and punitive approaches do not address root causes of violence. Real solutions mean investing in high-quality mental health services, youth engagement programs, jobs programs and violence intervention programs.
- **Felony cases are still filed in adult criminal courts:** Under RTA, all felony cases against all 16- and 17-year-olds continue to be filed in the adult criminal courts.
- **Family court offers more interventions for adolescents:** Family court uses a range of interventions, both pre- and post-sentencing including pre-trial detention, probation supervision and case monitoring services, mandated family and individual counseling, and long-term placement in residential facilities. In some cases, family court mandates are more intensive than those in adult court.
- **Expand RTA programming for youth:** Delays and interruptions caused by the pandemic have contributed to the lack of available community-based programming for youth. Programming and services must be expanded for New York to fully realize the impact and benefits of Raise the Age.

HELPFUL LINKS:

[Myths and facts](#) of New York's Raise the Age law

[Guns, Safety, and the Edge of Adulthood in NYC](#)

Discovery

For many decades, prosecutors and police in New York were not required to provide crucial evidence, known as “discovery” to people facing criminal allegations or their attorneys until the eve of trial. Instead, people were coerced to plead guilty blindfolded to the evidence, fueling mass incarceration and wrongful convictions. In 2019, New York passed comprehensive discovery reform, bringing the state from one of the worst on this issue to one of the best in the country.

FACTS:

- **New York cannot go back to the Blindfold Law:** Before the legislation was passed, prosecutors could withhold information on witnesses and key pieces of evidence until the eve of a trial, keeping people in the dark concerning the evidence in their cases. Absent early and complete discovery, the defense cannot adequately investigate, prepare for trial or make truly voluntary decisions about pleading guilty.
- **Discovery reform created specific timeframes for turning over evidence:** The 2019 discovery law mandated that prosecutors turn over evidence within the time frames specified in the statute. Until prosecutors have certified that they have completed the discovery process, the case cannot proceed to trial. Early disclosures guard against unnecessarily long delays in case dispositions where, in some cases, people languish in jail for years before their trials.
- **There are incentives to comply with the discovery rules:** One of the goals of discovery reform was to hold prosecutors and law enforcement accountable for failing to turn over evidence in a timely manner. Depending on the circumstance, if prosecutors fail to comply with the time frames outlined in the law, they would also be in violation of New York's speedy trial rules, potentially resulting in case dismissal. However, if both sides comply with the discovery statute, cases will proceed to trial much quicker, and often do.

HELPFUL LINK: [Undiscovered, The Marshall Project \(2017\)](#)