

NEWS

Bail reform emerges as new flashpoint in midterm messaging on crime

Opponents say that reducing pretrial detentions leads to an increase in crime, but multiple studies have disproven this.



— Inmates are seen through cell bars at the Hall of Justice in San Francisco on Dec. 1, 2015.

Lea Suzuki / The San Francisco Chronicle via Getty Images file

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By **Janelle Griffith**

Amid a [contentious midterm elections season](#) and [rising crime rates](#) in some areas, longstanding political attacks on criminal justice reform have found a new foe: bail reform.

Changes to the cash bail system in many states – which have allowed more people in jail awaiting trial to be released – have become a lightning rod for voter fears about crime. And advocates say that candidates from both parties are misleading voters about bail policies in order to score political points.

"You have had folks who belong to both parties try to weaponize changes to the pretrial system," Cook County, Illinois, Public Defender Sharone Mitchell Jr. said

Mitchell advocated for the passage of the Safety, Accountability, Fairness and Equity-Today, or SAFE-T, Act, which Illinois Gov. J.B. Pritzker, a Democrat, signed into law last year. It includes [an end to money bail](#) that will take effect in January 2023.

Illinois is among several locations that have made changes to their bail systems in recent years and other places have taken different approaches. In New York state, for example, a [2019 law](#) eliminated bail for many misdemeanors and nonviolent felonies, requiring judges to decide whether to detain a person accused of a crime primarily based on whether they are likely to return to court if released.

Progressive district attorneys in [San Francisco](#) and [Philadelphia](#) have also curbed the use of money bail and Detroit's 36th District Court, the largest in Michigan, [this week](#) agreed to change its bail practices in settling a lawsuit filed by two advocacy groups.

Supporters say ending or limiting cash bail makes the pretrial system fairer, keeping poor people out of jail simply because they can't afford to make bail. In New York City, for example, the average cost of bail in December 2021 was almost \$40,000, [according to an analysis provided by the city comptroller's office](#), while the [median income per capita is \\$41,625](#).

Opponents argue that relaxing the bail system leads to more crime. In Illinois, Pritzker's Republican opponent, Darren Bailey, said he plans to make bail reform a central platform of his campaign and use it to attack the governor in ads. Bailey, who has the support of former President Donald Trump, does not want to end money bail and plans to repeal the SAFE-T Act should he be elected, his spokesman Joe DeBose said. DeBose referred to the bill as the "coddle the criminals acts" and said that Bailey "will empower police, put more cops on the streets to stop crimes and ensure safer communities for every Illinoisan."



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"Defendants on home confinement now get 2 days a week to roam freely,
and some are getting in trouble" Chicago Sun-Times, 04/31/2022

— An attack ad against Martwick and LaPointe was sent out by the United Working Taxpayers PAC, which was funded by the FOP. United Working Taxpayers PAC/courtesy The People's Lobby

But it's unclear if Bailey's strategy will work with voters in Illinois, where two Democratic state lawmakers fended off attacks from primary challengers over their support of the bill. Democratic state Sen. Robert Martwick defeated Chicago police detective Erin Jones with about 66% of the vote and state Rep. Lindsey LaPointe defeated real estate broker Tina Wallace with about 75% of the vote. A mail ad funded by the police union claimed that Martwick and LaPointe voted for "the most radical, anti-victim, pro-criminal, anti-police legislation in the nation," claiming that the end of cash bail among other aspects of the bill "has made our communities far less safe."

But research calls those claims into question. A [Nov. 2020 analysis](#) from the Prison Policy Initiative that studied research from 12 jurisdictions where pretrial amendments had taken place – including New York, New Jersey, Philadelphia and San Francisco – found no evidence that crime increased as a result. A March [report](#) by New York City Comptroller Brad Lander said that "pretrial re-arrest rates remained nearly identical pre- and post-bail reform." And a 2022 [review](#) by The Civic Federation found that 80.4% of people charged with felonies in Cook County attend all of their scheduled court hearings and that 81.8% of people do not commit new crimes while on pretrial release.

And although [many areas](#) are [reporting higher crime rates](#), Scott Hechinger, a civil rights attorney and the founder of Zealous – a national criminal justice and advocacy organization – said it's misleading to tie bail changes to crime surges because "reforms happened in very few places, rising crime happened everywhere."

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— A coalition of bail reform groups hold a rally in front of the Nassau County Courthouse in Mineola, N.Y., on Jan. 25, 2020, to call for protections to a bail reform bill.

Andrew Lichtenstein / Corbis via Getty Images file

In New York, Gov. Kathy Hochul has also faced attacks over bail reform, including from within her own party. After the [Buffalo supermarket mass shooting](#) in May, Rep. Tom Suozzi, Hochul's opponent in the state's Democratic primary for governor, criticized her for the [2019 law](#).

"I think it's related to gun laws, but the major issue of bail reform," he told reporters in May, though he acknowledged that changes to the policy he's [proposed](#) wouldn't have prevented the [racially motivated massacre](#).

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Critics accused Suozzi of being "irresponsible" and "opportunistic" – and he [lost the primary](#) by more than 50%.

Lee Zeldin, a four-term New York congressman and the Republican nominee for governor, has also attacked Hochul over the 2019 law, [calling](#) it "ridiculously flawed." He has blamed the elimination of cash bail for nonviolent offenses for an increase in gun violence. Hochul, for her part, has generally been [in favor of](#) the law, though [she has also supported attempts to dial it back](#).

Ending or limiting the use of cash bail has also had positive impacts on racial and socioeconomic disparities in the criminal justice system in some areas.

In Texas, Harris County changed its use of cash bail in misdemeanor cases after [a federal judge ruled in 2019](#) that it was unconstitutional because it discriminated against people solely on their ability to afford bail.

According to a federal monitor [report](#) released in March, changes to the bail system enacted in Harris County over two years ago have not been accompanied by a change or increase in crime or repeat arrests, as many opponents of changes to the bail system have suggested. Instead, misdemeanor arrests and repeat arrests have declined.

"There had been data going back years, showing stark racial disparities in pretrial detention before the misdemeanor bail reforms in Harris County," said Brandon Garrett, a Duke University law professor who led the report. "We have found that those disparities in pretrial detention have vanished since these reforms were implemented."

Not all areas have seen the same impact. In March 2019, a month before the New York law passed, Black people in New York City were 5.3 times more likely to be held in jail than white people, [according to the Vera Institute of Justice](#), a nonprofit research group that supports [ending money bail](#). But a year later, in April 2020, that disparity rose to 6.4.

Hechinger and Mitchell said that many areas of the country – cities and suburbs, red states and blue states – are dealing with increases in crime, and some leaders want to blame bail reform

broadly.

"Every time the police or prosecutors or lawmakers say crime is up, they're admitting the abject failure of their own ideas, their own policies, their own interventions," Hechinger said. "And yet, we continue to throw more money at the bad and blame modest, meager changes that haven't even been given a minute, a second, two years, to actually take hold."



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