



# Freedom, Then the Press: New York Media and Bail Reform

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Before bail reform was enacted in 2019, New York's pretrial justice system was in a state of crisis. Although many New Yorkers charged with crimes, especially people in New York City, were released without bail, judges routinely set unaffordable bail amounts in tens of thousands of cases each year. **This created a two-tiered system in which a person's income determined whether or not they would be jailed—sometimes for years or months— before trial. As a result, more than 60,000 people were jailed before trial each year.**<sup>1</sup> Thousands of legally innocent New Yorkers sat behind bars each day, separated from their families and communities, often losing their jobs, simply because they could not afford to buy their freedom. Evidence shows that Black New Yorkers were especially vulnerable to this unjust system. **One study found that Black people were twice as likely as white people to spend at least one night in jail before trial.**<sup>2</sup>

# Introduction

In an attempt to reduce the number of people held in New York's jails and address racial and economic disparities in the criminal justice system, legislators passed historic changes to the state's bail laws in April 2019. These reforms mandated pretrial release without bail for people charged with almost all misdemeanors and nonviolent felonies. **As a result of these changes, bail and pretrial jailing were eliminated for 90% of statewide arrests.**<sup>3</sup> Although bail reform sharply reduced the number of bail-eligible crimes, the law stopped short of fully eliminating bail and pretrial detention. Judges maintained their ability to set bail for people charged with violent felonies and a select number of other offenses and circumstances. Furthermore, a person awaiting trial in the community could still be subject to bail or pretrial detention at a later point if they violated the rules of pretrial release.<sup>4</sup> In short, despite the efforts of advocacy groups across the state to fully eliminate bail and pretrial jailing and the overwhelming evidence that these practices are harmful, costly, and racially discriminatory, they remained a part of New York's criminal justice system and continued to impact thousands of people each month.

Despite the clear need to reform New York's bail laws and the many concessions granted to law enforcement during the legislative process, many law enforcement and other public officials vehemently opposed the reforms. Opponents of bail reform found a willing audience in press outlets across the state and used the media to wage a reckless campaign against the new laws. **Many news outlets printed irresponsible articles that falsely portrayed bail reform as harming public safety, stirring up public fears.** This onslaught of bad press began before the reforms were even implemented and only ramped up after bail reform took effect on January 1, 2020.

2016

More than 60,000 New Yorkers are jailed pretrial because they cannot afford bail.

APR 1  
2019



Historic bail reforms pass New York State Legislature.

APR 16  
2019

**55%**  
of voters  
support  
bail reform

DEC  
2019

Pix 11 falsely blames the new law for judges releasing arrested individuals

JAN 1  
2020



Bail reform legislation takes effect.

JAN 13  
2020

Newsday publishes inaccurate story falsely attributing the release of a man charged in a fatal DUI crash to bail reform.

JAN 21  
2020

**37%**  
of voters  
support  
bail reform

JAN 24  
2020

NYPD Commissioner Shea blames bail reform for spike in crime just 3 weeks after the law took effect.

In the months after these stories began appearing in news outlets across the state, public sentiment shifted against bail reform. In April 2019, 55% of voters supported bail reform; by January 2020, support had dropped to 37%.<sup>5</sup> This decline in support could not have been driven by the impact of the new laws, as they had only been in effect for a few days at the time of the January 2020 poll. **The shift in public sentiment is much more likely to have been caused by the torrent of negative articles about the reforms.**

The deluge of bad press and subsequent decline in public support for bail reform during an election year led lawmakers to reconsider bail reform, just weeks after the laws took effect. In April 2020, as COVID-19 was sweeping across New York State, the legislature passed rollbacks to the reforms that significantly increased the number of charges eligible for bail and pretrial jailing.<sup>6</sup>

**Those rollbacks took effect in July 2020. Since that time, the number of people held in jail pretrial has increased by 31%.<sup>7</sup>** In fact, without intervention, New York's pretrial population is on pace to exceed its size on January 1, 2020, the day when the original bail reforms took effect. These increases are much larger than the projected impact of the rollbacks<sup>8</sup> and suggest a secondary effect of the reactionary media coverage: shifts in judicial decision-making for people who are still eligible for bail and detention. In the past, judges have made more punitive decisions in response to critical media coverage and resultant shifts in public opinion.<sup>9 10</sup> That appears to be happening again.

While the full impact of bail rollbacks remains to be seen, one thing is certain: **media outlets across New York played a major role in generating the fear and backlash that is driving the increase in the jail population and exposing thousands more people to the possibility of illness and death behind bars.** A more detailed analysis of media behavior can be found on the following pages.

**MAR 18  
2020**



First confirmed case of COVID-19 at Rikers Island

**MAR 27  
2020**



New York City's jail population drops below 5,000 for the first time in decades.

**APR 3  
2020**



New York State Legislature passes rollbacks to bail reform.

**APR 6  
2020**



First COVID-related fatality reported at Rikers Island.

**MAY  
2020**



New York's jail population begins to rise again.

**JUL 3  
2020**



Rollbacks to bail reform take effect.

**JUL 8  
2020**



**NYPD data contradicts Commissioner Shea's claim that bail reform caused spike in crime.**

**2021**



New York City's pretrial population grows larger than it was before bail reform took effect.

# Media Analysis

The media's mishandling of bail-related reporting was characterized by three practices:

1

Disseminating inaccurate and misleading information

2

Using dehumanizing language

3

Relying solely on law enforcement sources in their reporting

The sections below detail each of these practices with case studies and additional examples of each.

# 1

## Inaccurate Information

The most widespread of these practices was the dissemination of inaccurate information about the impact of bail reform in specific cases. Media outlets routinely attributed people's pretrial release to bail reform, even when bail reform was not a factor in their release. These stories ignored two critical facts about bail reform: 1) the reforms did not mandate pretrial release for all people charged with crimes; in fact, dozens of charges remained bail-eligible under the new reforms and 2) judges maintained their discretion to release people pretrial in cases where they could legally set bail. Judges often chose to release people pretrial before bail reform passed. In fact, three-quarters of people charged with crimes in New York state were released to await trial at home before the new reforms became law.<sup>11</sup> This remained common practice after bail reform was implemented. Despite these facts, **news outlets falsely claimed, over and over again, that people were released because of bail reform** when, in fact, their charges remained bail-eligible under the new laws and they were released because the judge decided they should be.

# Case Study 1

**Newsday**

JAN. 13, 2020

## Bellport man with 3 prior DWIs released after fatal crash<sup>13</sup>



1.16 million print subscriptions; 4.5 million unique digital visitors per month<sup>12</sup>

One of the clearest examples of inaccurate reporting was published by Newsday. **Newsday cited bail reform as the reason a man accused of a DUI in a fatal car crash was released to await trial at home.** In reality, the judge could have chosen to set bail in his case, because he was on probation at the time of his arrest.<sup>14</sup> However, the judge instead chose to release him without bail, a decision the judge could have made before or after bail reform passed.

Although Newsday later corrected the story,<sup>15</sup> the damage had already been done. The original January 13th story got approximately 30,500 interactions on Facebook, including likes, shares and comments. By contrast, the follow-up, corrected piece on January 15th only garnered 2,100 interactions on social media.<sup>16</sup> The original article with the misinformation reached far more people.

*Newsday is not alone in using inaccurate information to mischaracterize the impact of bail reform. See below for more examples of news outlets using inaccurate information in their bail reform coverage.*



## ***85-year-old man fatally stabbed inside Brooklyn apartment, female guest in custody<sup>17</sup>***

### WHAT DID THEY SAY

ABC 7 NY inaccurately reported that a woman charged with a fatal stabbing had been released because of bail reform before the alleged stabbing.

### WHAT ACTUALLY HAPPENED

The woman's previous charge, Assault in the Second Degree, was not on the list of charges mandated for release by the 2019 reforms. The judge in this case chose to release her instead of setting bail, a choice available to the judge both before and after bail reforms passed.<sup>18</sup>

👁 1.48 million unique digital visitors per month<sup>19</sup>



## ***Suspect busted in Brooklyn subway station assault was freed through state's new bail reform laws<sup>20</sup>***

### WHAT DID THEY SAY

The New York Daily News used a sensational headline (the headline originally read "Set free to rape: Suspect busted in train station sex assault was freed through state's new bail reform laws") and inaccurate information to falsely claim that an individual was arrested for an alleged attempted rape after being released because of bail reform.

### WHAT ACTUALLY HAPPENED

In reality, this case had nothing to do with bail reform, as this individual was released several weeks before bail reform went into effect. Additionally, the individual mentioned in this story had not actually been charged with rape, or any sex offense, at all.<sup>21</sup>

👁 2.5 million weekly print readers; 28 million unique digital visitors per month<sup>22</sup>



## *Albany teens plead guilty in shooting of boy, 3, at day care center<sup>23</sup>*

### WHAT DID THEY SAY

The Albany Times Union falsely claimed that two teenagers were released after pleading guilty to weapons possession because of bail reform.

### WHAT ACTUALLY HAPPENED

In reality, this case had nothing whatsoever to do with bail reform. Bail reform only impacts pretrial detention. These individuals were released by a judge to await sentencing after they were convicted.<sup>24</sup>

👁 134,266 print subscriptions; 444,749 unique digital visitors per month<sup>25</sup>



## *Nassau's Top Cop Says New Law May Have Led To Victim's Deadly Beating At Hands Of MS-13<sup>26</sup>*

### WHAT DID THEY SAY

CBS 2 printed Nassau County Police Commissioner Patrick Ryder's claim that reform to state discovery laws, which passed as part of the same package of reforms as the new bail laws, requiring prosecutors to turn over more evidence to the defense resulted in the murder of a witness.

### WHAT ACTUALLY HAPPENED

The reforms played no role in the individual's death.<sup>27</sup> According to their lawyers, the defendants in this case never received information through the discovery process about the witness who later died.<sup>28</sup> The Police Commissioner later backtracked on his statement blaming the reforms, but CBS 2 New York did not change the article title to reflect this change.

👁 1.03 million unique digital visitors per month<sup>29</sup>

# 2

## Dehumanizing and Racist Language

In addition to inaccurate reporting, news outlets also employed dehumanizing and racist language in their coverage of bail reform. Rather than focusing on the facts of the case, many reporters used language that painted individuals accused of crimes as presumptively guilty and dangerous. This rhetoric stirred public outrage and generated fear of bail reform.

# Case Study 2

  CBS New York JAN. 08, 2020

## **‘Absolutely Ridiculous’: HIV-Positive Suspect Released By Judge After Attacking, Spitting In Port Authority Officer’s Mouth<sup>31 32</sup>**



1.03 million unique digital visitors per month<sup>30</sup>

CBS 2 provides a particularly egregious example of this trend. **This outlet published a dangerous article perpetuating a long-debunked and dehumanizing myth about the spread of HIV via saliva.<sup>33</sup>** This claim was made in a story about a man arrested after being accused of stealing yogurt at LaGuardia Airport who allegedly spit on a police officer. The man was later released to await trial at home.

According to a Gothamist follow-up article, the quote in the original headline (shown above) came from Port Authority Patrolmen Benevolent Association President Paul Nunziato.<sup>34</sup> A tweet from CBS 2 linking to the article read: “RELEASED AFTER HIV ATTACK.” After intense pressure, including a rally outside their offices, CBS 2 quietly changed the headline and language,<sup>35</sup> but not before the article received approximately 700 interactions on social media, including approximately 570 total likes, shares, and comments on Facebook and 148 retweets, likes, and comments on Twitter.<sup>36</sup>

*See below for more examples of outlets that used dehumanizing language in their reporting.*

## The Post Millennial.

### *New York's bail law lets violent criminals back on the street*<sup>37</sup>

#### WHAT DID THEY SAY

The Post Millennial falsely claimed that "New York's bail law lets violent criminals back on the streets."

#### WHY THIS IS WRONG

This article uses a sensationalized term ("violent criminals") to describe legally innocent people who have not been convicted of a crime, denying the presumption of innocence and reducing them to a crude stereotype. In addition, this intentionally misleading article ignores the well-known fact that almost all crimes defined as "violent" in New York law were not impacted by bail reform.

👁 5.8 million unique users<sup>38</sup>

## DAILY FREEMAN

### *GOP Assemblyman Tague says Democrats have 'blood on their hands' from bail reform*<sup>39</sup>

#### WHAT DID THEY SAY

The Daily Freeman printed quotes implying that bail reform caused violence and that the Democrats who supported the reforms are responsible for it.

#### WHY THIS IS WRONG

This article used dramatic and incendiary language and fails to present any evidence to back up the claims that bail reform caused anyone physical harm.

👁 23,984 print subscriptions; 60,321 unique digital visitors per month<sup>40</sup>



***‘Bail reform, it’s lit!’ NYC transit recidivist brags he can’t be stopped after his latest arrest for turnstile jumping, skipping court dates<sup>41</sup>***

**WHAT DID THEY SAY**

The New York Daily News characterized the individual in the headline with multiple arrests as a “serial subway crook.”

**WHY THIS IS WRONG**

Using these terms is dehumanizing because it reduces individuals to their previous convictions. These labels also remove any presumption of innocence and create an assumption that people cannot change. A later article in The City highlighted the struggles of, and repeated failure of the criminal justice system to provide any meaningful support or treatment for, the man in question.<sup>42</sup>

👁 2.5 million weekly print readers; 28 million unique digital visitors per month<sup>43</sup>



***BAIL REFORM – OUT OF CONTROL NYC: Man Who Attacked Six Jews Released Again; Another Thug Arrested 139 Times THANKS DEMOCRATS!<sup>44</sup>***

**WHAT DID THEY SAY**

The Yeshiva World used the word “thug” to describe a Black man.

**WHY THIS IS WRONG**

“Thug” is often used to provoke racist imagery of Black people. By using this term, The Yeshiva World is engaging in racial fearmongering in order to criticize bail reform.

👁 235,779 unique digital visitors per month<sup>45</sup>



## Relying Solely on Law Enforcement Sources

In their coverage of bail reform, many news outlets relied on law enforcement and public officials critical of bail reform as their only source of information. As a result, opponents of bail reform were able to use the media to present one-sided, anti-reform commentary that often went unchallenged, despite their frequent inability to back up their claims. This allowed bail opponents to hijack the public narrative and convince New Yorkers that bail reform was harmful to communities.

This practice is especially inexcusable in a state like New York, where there are multiple well-regarded research institutions studying criminal justice issues and dozens of grassroots and advocacy organizations publicly engaged in criminal justice reform. For example, the Center for Court Innovation<sup>46</sup>, the Vera Institute of Justice,<sup>47</sup> and FWD.us<sup>48</sup> each published multiple statutory and data analyses about the impact of bail reform, and more than 100 organizations<sup>49</sup> signed on to various letters of support for the original bail reforms.<sup>50</sup> Any of those organizations could have served as sources for media coverage of bail reform, and many of them in fact did in the instances that reporters reached out to them for comment.

# Case Study 3

**DAILY NEWS**

JAN. 24, 2020

## NYPD commissioner links crime spike to bail reform — says judges must be able to hold repeat offenders<sup>52</sup>



2.5 million weekly print readers; 28 million unique digital visitors per month<sup>51</sup>

This New York Daily News article is a potent example of the dangers of relying on a single source and reporting their claims as facts. **In this article, The New York Daily News allowed Commissioner Shea to make unsubstantiated claims that bail reform was leading to increased crime rates and witness intimidation. Commissioner Shea was not fact-checked nor were any supporters of bail reform directly quoted in the story.**

When the NYPD was finally forced to release data in July, that data contradicted their claims that bail reform led to a surge in gun violence.<sup>53</sup> Unfortunately, many New Yorkers were already exposed to this inaccurate and harmful narrative spread through lopsided and uncorroborated reporting. From its initial posting on January 24th, the article secured approximately 10,300 interactions on social media, including approximately 10,100 total likes, shares, and comments on Facebook and 204 retweets, likes, and comments on Twitter from individuals, such as Congresswoman Nicole Malliotakis and former NYC Police Commissioner William Bratton.<sup>54</sup>

*The article from the New York Daily News is just one example of news outlets relying solely on law enforcement sources when reporting on bail reform. See below for more examples.*



***CBS 6 Investigates: Flaws in bail reform laws pointed to as root cause for spike in crime<sup>55</sup>***

**WHAT DID THEY SAY**

CBS 6 conducted a series of interviews with law enforcement sources who failed to present any data to support their claims that bail reform caused a spike in violent crime. Although one additional source is briefly quoted, no researchers or supporters of bail reform were interviewed for this investigative piece.

👁 148,720 unique digital visitors per month<sup>56</sup>



***Suffolk County Sheriff: Bail Reform Law Is An 'Atrocity'<sup>57</sup>***

**WHAT DID THEY SAY**

WCBS 880 relied entirely on the Suffolk County sheriff and NYC Special Narcotics Prosecutor's opinion that bail reform is hurting more people than it is helping and harming victims without speaking to any other sources or showcasing other viewpoints.

957,300 weekly listeners<sup>58</sup>



***NYC has spike in shootings, other major crimes to start year<sup>59</sup>***

**WHAT DID THEY SAY**

The New York Post relied on NYPD sources to correlate a spike in crime with bail reform, despite there being no data to confirm their claim. They briefly quoted a spokeswoman for New York City Mayor Bill de Blasio but interviewed no researchers or supporters of bail reform. In fact, NYPD data later published by the Post itself contradicts this claim.

👁 2.11 million daily readers; 15.0 million unique digital visitors per month<sup>60</sup>

# Conclusion

These and many other irresponsible media stories about bail reform contributed to rollbacks that passed less than four months after the new laws were enacted. **Because of those rollbacks, thousands more people have been jailed during a deadly pandemic.**<sup>61</sup>

**Despite their role in these harmful rollbacks, news outlets have yet to change their reporting methods, and the misinformation, dehumanizing language, and reliance on law enforcement sources continues.** A September 2020 CBS 6 story claimed that an individual was released because of bail reform and later committed a murder. Once again, the story relied on law enforcement as a key source and, once again, those claims were false.<sup>62</sup> The reporter eventually tweeted out an update to the story, correcting the connection to bail.<sup>63</sup> However, it was too late. Before the correction, **the story already had nearly 1,000 interactions across Facebook and Twitter.**<sup>64</sup>

Unfortunately the tactics used by many New York media outlets are part of a larger, nationwide pattern of media negligence while reporting on criminal justice issues.<sup>65</sup>

**This irresponsible journalism shapes public opinion against criminal justice reform and drives lawmakers to make poor policy decisions that perpetuate mass incarceration.**<sup>66</sup>

New Yorkers and people across the country deserve news outlets that focus on the facts and do not use tactics that spread misinformation and fear, or that exacerbate racist and homophobic tropes. News outlets must acknowledge the impact of their poor reporting on bail reform and other criminal justice issues and immediately cease using these practices.

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