

# CITY BAR URGES BAIL REFORM IN 2019 NYS EXECUTIVE BUDGET

The City Bar supports efforts by the Governor and Legislature to fix New York's two-tiered bail system, which jails thousands of New Yorkers each year solely because they are unable to pay. New York must enact comprehensive bail reform that, consistent with the U.S. Supreme Court's instruction, will ensure that "liberty is the norm, and detention prior to trial or without trial is the carefully limited exception" (*United States v. Salerno*, 481 U.S. 739, 755 (1987)).

## COMPREHENSIVE BAIL REFORM SHOULD ADHERE TO 3 CORE PRINCIPLES:

1. **Freedom before trial must be the norm, not the exception**
2. **Profit motivations must be removed from pretrial practices**
3. **Race and wealth should not be factors in pretrial decisions**

Using the bail reform legislation as proposed in Part C of A.9505-A/S.7505-A as a basis, **we urge the Governor, Assembly and Senate to apply these core principles as they consider how to achieve much-needed bail reform in New York.** In addition to the Governor's proposal, model provisions can be drawn from the Assembly one-house budget bill (A.9505-C, Part C) and Senate bill S.3579-A (Sen. Gianaris).

## KEY BAIL REFORM PROVISIONS INCLUDE:

- **Monetary bail eliminated** for misdemeanor and nonviolent felony charges and commercial bonds removed from the forms of bail that judges can impose.
- Judges required to impose the **least restrictive release conditions** necessary to reasonably assure a defendant's return to court, and if bail is imposed, required to set a minimum of three forms of bail, including either an unsecured or partially secured bond. Judges explain their choice for imposing bail or non-monetary conditions on the record.
- Detainees who are unable to pay their bail are granted **automatic bail reviews**, within 24 hours of detention, where judges must consider the person's ability to pay and either set bail that the defendant is able to pay or set a different release condition.
- **Eliminate the presumption of detention** and preventive detention for non-felony charges, and limit preventive detention for failing to appear in court using the "willful and persistent" standard.
- **Evidentiary hearings** required for individuals facing preventive detention, with the burden on the prosecution to justify such detention under a clear and convincing evidentiary standard. Pre-hearing detention capped at two days.
- Use only **public or non-profit entities** for pretrial services and electronic monitoring.
- **Assessment tools** that measure flight risk should be free from discriminatory or disparate impact.