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Despite Public Outrage, Bail Reform Still Needed in New York City

Randal John Meyer

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In October 2014, New York City erupted in outrage at the story of Kalief Browder. Browder spent three years in confinement awaiting trial for stealing a backpack. Browder--who was 16 when he was first sent to Rikers--tragically committed suicide in 2015. He was held at Rikers because, like many of the City's most vulnerable residents, he could not post his \$3,000 bail.

Money bail, even when set in the hundreds of dollars, is a hurdle that keeps many of the City's least well-off residents behind bars--awaiting trial--for lengthy periods. A 2010 Human Rights Watch report on the City's jail system notes that 87% of those who had bail set at \$1,000 or less could not pay at their initial appearance, resulting in detention. According to former Chief Judge of the New York State Court of Appeals Jonathan Lippman, "[f]ar too many individuals awaiting trial who pose no risk to public safety are incarcerated simply because they cannot afford to post the bail amount set by the courts."

Despite calls for the City to shorten pretrial stays and to decrease the number affected, over the last decade, the average period of pretrial confinement in City jails has lengthened. Moreover, reform initiatives announced through the Mayor's Office fall far short of helping individuals who aren't flight risks but can't afford money bail to get out of Rikers.

NYC Criminal Justice Agency data notes that in 2003-04, the average length of pretrial detention was 18 days for accused misdemeanants and 51 days for felons. In fiscal year 2015, according to (non-disaggregated) information acquired by the Cato Institute through Freedom of Information Act requests, the average incarceration period for all pretrial detainees at Rikers Island was 55.6 days, up from 54.1 days in 2014. The median detention period, seven days, remains unchanged since 2004.

Notably, 55.04% of fiscal year 2015 pretrial confinements involved African Americans, totaling 29,223 detainees. While this is not necessarily indicative of racism in policing, reform would undoubtedly help alleviate the burden money bail places on the city's African American community.

For most misdemeanors cases, releasing on recognizance with pretrial supervision is a better option than money bail or incarceration because the vast majority of misdemeanants are not flight risks or otherwise dangerous to society at large. As Elizabeth Glazer of the Mayor's Office of Criminal Justice notes, "[m]ost people--93 percent in New York City--who are released without bail or other conditions before trial return to court within 30 days of their scheduled court date."

According to the same Criminal Justice Agency data, by a conservative estimate, nearly a third of felony detainees were not flight risks, and another 17% were low-to-moderate risks to society at large. In those cases, the Agency adds, supervised release or money bail would be more appropriate than custody--a policy that would help reduce the City's jail population.

Pretrial custody directly affects low-income individuals' ability to maintain employment. The longer the period that someone is in jail--with the financial and personal pressures imprisonment imposes--the more inclined that individual is to accept a plea bargain regardless of the strength of the state's case. Additionally, pretrial confinement is associated with more severe case outcomes, particularly in sentencing.

On July 8, 2015, Mayor Bill DeBlasio's Office announced a \$17.8 million initiative to reform the city's bail process. While the Mayor's initiative is laudable, reducing the population at Rikers will take bolder steps.

"City officials estimate that eliminating cash bail for defendants under the [Mayor's] program will cut the average daily population at Rikers--which is about 10,000--by about 200," reposts the *New York Times*. Yet, there are thousands of individuals awaiting trial on Rikers Island on an average day. The Independent Budget Office's 2014 Budget Options report notes that "[a]t any given time two-thirds of the inmates in Department of Correction (DOC) custody are pretrial detainees." In fiscal year 2015, 53,097 inmates were admitted as detainees and discharged from City Department of Corrections facilities. A reduction of 200 from the daily average is not enough.

After over a decade with little progress, City officials need to make more aggressive efforts, such as expanding underutilized pretrial supervision programs to more low-to-moderate-risk defendants and eliminating money bail in most, if not all, misdemeanor cases. State Senator Michael Gianaris recently proposed such an effort.

Ending cases like Browder's takes more than a drop in the bucket.

Randal John Meyer is a legal associate at the Cato Institute and a graduate of Brooklyn Law School.