

# CRIMINAL JUSTICE REFORM

NY lawmakers eye bills on bail, discovery, trial

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ALBANY — Legislators say they are nearing agreement on bills to change key elements of New York's criminal justice system, including bail, discovery and speedy trial.

The most controversial proposal — and toughest to resolve so far — centers on the idea of ending cash bail for certain crimes. Advocates say stiff bail requirements set up a two-tiered justice system: One for the wealthy who are able to pay and one for the poor who aren't. It's an initiative sparked by the infamous case of Kalief Browder, who sat in Rikers Island jail for three years without being tried or convicted of a crime.

Though a majority in the State Senate and Assembly — as well as Gov. Andrew M. Cuomo — appears to favor the concept, lawmakers are having a harder time determining what crimes should be included and whether factors such as “danger to the community” should be considered.

## Proposal on evidence

A different proposal would allow defendants to receive evidence or “discovery” materials within days of being arrested, instead of months or years as it sometimes plays out, advocates say. The goal is to create a fairer process and plea bargains.

Another would set tighter deadlines on prosecutors to prevent trials from being delayed beyond expected start dates.

Though not moving as quickly as some advocates hoped, lawmakers could reach a consensus on all the bills by early March, said Assemb. Joseph Lentol (D-Brooklyn), chairman of the Codes Committee, which weighs all criminal justice legislation.

“I don't see that we won't be able to resolve this,” Lentol said.

County prosecutors around New York say they aren't trying to kill the criminal justice pack-



Thern Shivers of Hempstead joins other demonstrators outside the Garden City office of Sen. Kevin Thomas (D-Levittown) last week.

## Bills to change key elements of New York's criminal-justice system

**Bail:** End cash bail for certain crimes.

**Discovery:** Allow defendants to receive evidence within days of being arrested.

**Speedy Trial:** Set tighter deadlines to prevent trial delays.

age of bills, but say they want legislators to slow down. They contend the bills are too sweeping.

“All we're saying is, ‘Where's the fire? Slow this down,’” Nassau County District Attorney Madeline Singas said. “A lot of this sounds good in theory. But the people who have drafted it have never practiced criminal law.”

The state District Attorneys Association contends a new law mandating that prosecutors turn over all discovery materials to defense teams within 15 days of an arraignment is “unrealistic and unworkable.” Singas said such a requirement is “going to bring [district attorney] offices to their knees.”

The New York Civil Liberties Union counters that defen-

dants, under the current laws, often face “trial by ambush,” with surprise witnesses and evidence, and that only four states have more restrictive discovery laws than New York.

In addition, prosecutors want to maintain the power to ask a judge not to release criminal defendants in certain cases. They especially want to fight release if “there is a significant risk the defendant will not return to court or if the defendant poses a credible threat to an identifiable person or group of persons,” said Albany County District Attorney David Soares, who also is president of the statewide prosecutors group.

Soares noted the New York State Justice Task Force made the same recommendation in a report issued earlier this month. The panel was led by former state Chief Judge Jonathan Lippman, considered one of New York's more liberal justices during his tenure.

But Lentol and numerous other legislators say asking a judge to weigh a defendant's “dangerousness” will result in more people being held without bail.

“What do you think a judge is going to do?” Lentol said, answering that almost all judges

would send a defendant to jail because he or she won't want to face the public scrutiny that could come with releasing a prisoner.

“The district attorneys have a system that's stacked in their favor and they don't want to change it. That's human nature,” Lentol added. He said the proposals will restore “substantial justice” to the system.

## An inmate's tragedy

The move toward ending cash bail for minor offenses was sparked by the case of Kalief Browder. Arrested at age 16 for allegedly stealing a backpack, Browder sat in jail on Rikers Island for three years — two in solitary confinement — without being convicted or even tried of a crime. The charges were dropped, but Browder struggled after being released and committed suicide in 2015 at age 22.

New York City recently agreed to pay \$3.3 million to Browder's family to settle a lawsuit.

Browder's brother, Akeem, has been a leading face in the effort to change the bail and discovery laws. Activists also have received high-profile help from author and lawyer John Gr-

isham and former Obama adviser Van Jones.

Activists staged a “Justice Can't Wait” tour Thursday outside the offices of five Democratic senators on Long Island, criticizing them for not getting behind the package of bills.

“We need to do away with cash bail and to be able to have access to all the discovery the other side has so we can be better prepared to defend ourselves,” said Thern Shivers, a Hempstead resident, one of about two dozen protesters outside the offices of Sen. Kevin Thomas (D-Levittown).

“People don't understand what pressure they put on people when their loved ones are locked up,” said Mary Crosson, 71, whose granddaughter was once arrested for trespassing and faced a \$2,500 bail. “Sometimes we have to take money from our mortgage, our rent” to pay bail.

The freshman senator came outside to speak to the activists to say he supported the criminal justice proposals, saying bill drafters were working on the final wording.

“Don't worry,” he said. “I'm not one of those people who go back on their word.”

With Joan Gralla