Timothy Donaher 9:29 AM (2 hours ago)

to me

I felt I should express my thoughts on the recent movement by police and prosecutors to roll back criminal justice reform.

First, I would like to point out that "tweaks" is, in my opinion, not the goal of those who want to revisit criminal justice reform. Once you re-open the legislation, there exists a significant likelihood that wholesale changes will occur which will undoubtedly move us towards a system that over incarcerates the poor and persons of color. I should note that despite recent assertions from the police and prosecutors statewide that "they have always supported reform" or "we agree there needs to be reform, but these new statutes are too far", police and prosecutors have (over the years) actively opposed any reforms that had been proposed in the New York State Legislature to improve pretrial detention (and discovery reform). As a result, I find those statements hollow.

Second, the reality is that the examples of "bad cases" under the new criminal justice legislation that are being used to support a "tweak" of the legislation are not unique. They occurred under the old bail statutes. These examples and arguments seem to break down to three types.

The first is, "we must provide judges discretion" to incarcerate persons pretrial who they deem a risk to public safety. I should note that the purpose of any pretrial restrictions in New York (such as bail) are NOT to ensure public safety, but to ensure a return to court. This argument is designed to push for a "preventative detention" model of pretrial release that will undoubtedly negatively impact the poor and persons of color. And I should note that the reason there was a problem with the prior bail regime was that judges had "discretion". It was that "discretion" which lead to tens of thousands of New York citizens being incarcerated pretrial on bail they could not afford (most of whom upstate on minor offenses).

The second argument seems to point to crimes where the new laws mandate release to somehow argue the new bail statutes are ill-conceived. What this argument ignores is that under the old system people who had financial means (middle class and above) would always bail out – no matter the charge – while poor people would remain incarcerated. We saw that locally with the Charlie Tan case (charged with murder). Here is a very reasoned article (which are rare, most seem to parrot the position of the DAs and police) which notes this fact: https://www.timesunion.com/news/article/Churchill-Bail-reform-always-existed-for-the-rich-14947519.php The arguments made in that article are relevant to all of

New York. We certainly saw, under the old bail regime, non-indigent defendants charged with very serious crimes “bail out” – and no one complained about that.

The third argument seems to concentrate on people who are released under the new bail law and who commit new crimes as an indictment against bail reform. This one puzzles me the most, as the reality is that under the prior bail regime this happened all the time. The truth is that under any bail regime this will occur (unless we lock everyone up pretrial with no chance of release). If we “tweak” the bail reform laws to allow judges to hold people who may “reoffend”, we will be right back where we started: a system where the poor and persons of color are incarcerated and the non-indigent are freed. We cannot ignore the impact of bias (implicit, actual, and class-based) on our system of justice.

Under the new bail reform (and discovery reform) there will be cases where defendants who are released reoffend. But this must be balanced against the fact that tens of thousands of people who would have been incarcerated pretrial will now not suffer the significant, negative impacts of pretrial incarceration.

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