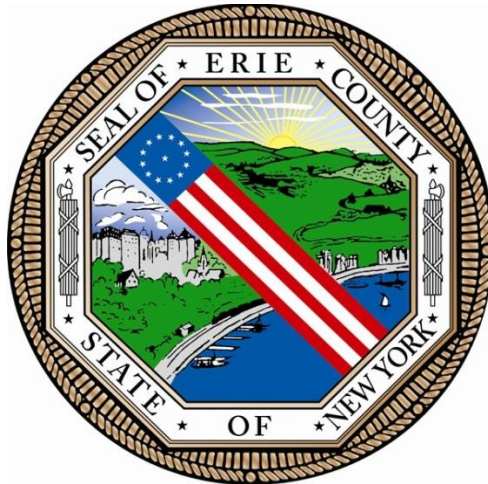


**February 2020**

**A Report on the Financial Impact  
of New York State's Bail Reform Efforts**



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**February 17., 2020**

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Dear Honorable Members:

The Erie County Comptroller's Office has completed a report on bail reform, its financial impact on Erie County government; what consequences, intended or otherwise may result from the reforms; and what conclusions we may be able to draw as to what future impact this reform may have. The report looked at not only the impact on the finances and operations of Erie County, but also what effects it could have on assistance/programming offered to a segment of Erie County's population.

Our objectives were to:

- Examine the initial changes seen in Erie County since bail reform took effect.
- Look at what impact those changes are having.
- Summarize the findings to be used in future budgetary decisions.

To accomplish these objectives, we reviewed data from law enforcement, courts, and other government entities.

As a result of our research, we have concluded that bail reform may be having a negative impact on the community with respect to safety, and is having a budgetary impact on local governments.

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## Background

Bail reform was passed by the New York State Legislature and signed by Governor Andrew Cuomo in 2019. Supporters of the legislation say there is an unfair imbalance for those who are held with bail, and that the system unfairly hurts the poor, minorities and those unable to afford bail. Advocates of this bail reform legislation say it will allow people arrested for non-violent crimes to be issued an appearance ticket, rather than be held in custody pending arraignment of their case.

According to the *Vera Institute of Justice*, in 2018, the average daily jail population in New York State was slightly less than 24,000 people on any day, and 70% of those were being held pretrial. The expectation from those who support this legislation is that New York will see a 40% reduction in overall pre-trial population.

It should be noted that New York is the only state in the country where a judge is precluded from taking into account any consideration of public safety when setting bail or imposing pretrial detention. Because of this some lawmakers pushed to have a public safety provision in the reform package, despite Governor Andrew Cuomo's effort to eliminate bail entirely. Instead, some provisions were added that would allow bail in some, albeit few cases. Opponents of this new bail reform law have stated that it goes too far, that while bail reform was necessary, proper consideration was not given to the impact such reform would have on the courts, law enforcement, district attorneys, public safety, and programming/assistance for those accused of crimes.

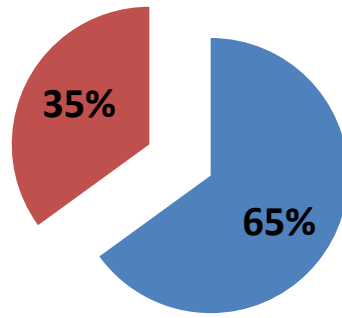
## Fees Collected from Fines and Bail

A report conducted by my office in 2018 looked at revenue collected from Town and Village Courts for Erie County Programs. For purposes of this report and to demonstrate by example how fines and fees are used, we will take a look at DWI fees to show how those funds are re-invested. What we found was 65% of annual DWI fine collections are paid back to the police agency that made the arrest, allowing for the further enforcement of DWI laws and to incentivize DWI enforcement. The remaining 35% was used to create a comprehensive campaign informing the public about DWI risks, supervise chronic offenders through probation, investigate DWI crashes, encourage strict prosecution of DWI cases, and supply services to DWI victims. That total fund in 2018 was \$149,025.00.

# 2018 Bail Fund Usage

Total fund: \$149,025

■ Paid Back to Arresting Police Agency    ■ DWI Risk Campaign Funds



As a comparison, in that report we also looked at bail fees collected pursuant to General Municipal Law Section 99-m, which allows the county to collect a total fee of 3% of bail money deposited. Two percent of that goes back to Erie County and 1% of that bail money goes as an additional credit to an alternatives to incarceration service plan approved by the New York State Office of Probation and Correctional Alternatives. Towns and villages may also collect that 2% fee, with the additional 1% fee to be deposited for alternatives to incarceration. That additional 1% will ultimately be forwarded to the county to be used to fund the alternatives to incarceration programs.

Previously this has amounted to about \$20,000 in bail fees for alternatives to incarceration programs. For this report, we did a comparison of bail only collected by the county in January, 2019 and January, 2020. We did not consider the difference in fees collected at the municipal level, but given that this legislation is applied equally across all levels of law enforcement, it is likely we can draw conclusions that those local agencies will be similarly impacted.

### Bail Fees Collected by Erie County Only:

January 2019	\$36,250
January 2020	\$3,000

In January 2019, a total of \$1,087.50 was deposited by Erie County for programs and other purposes. In January 2020, that total was \$90.

### Erie County Holding Center and Alden Correctional Facility

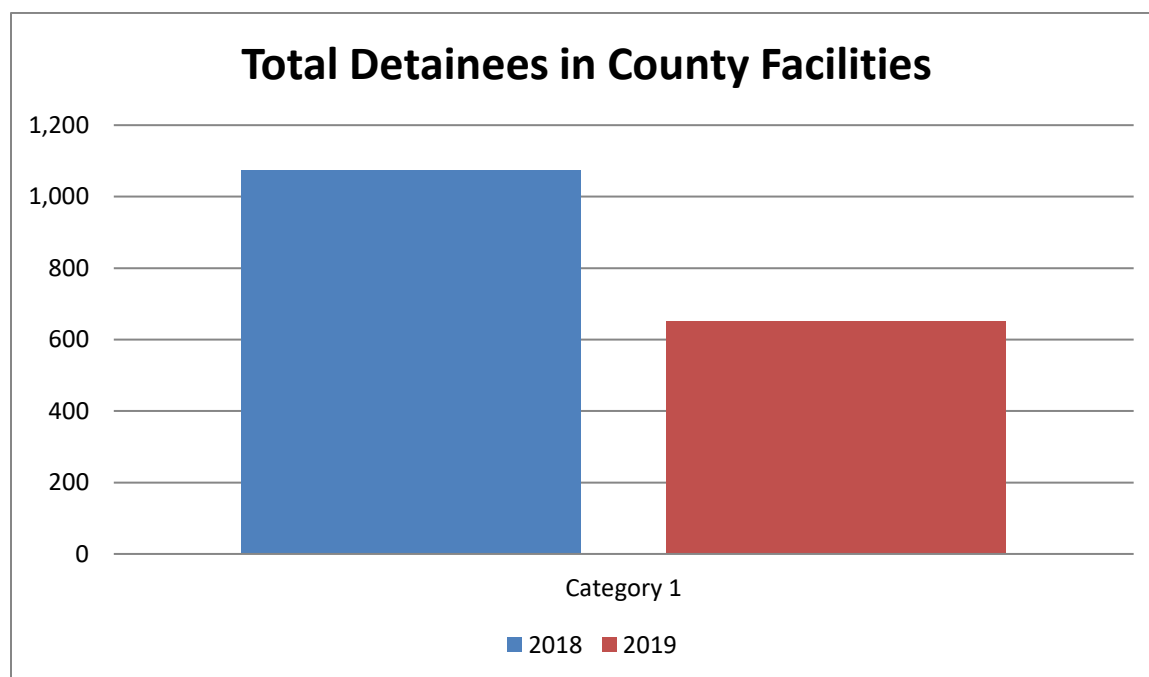
This report also sought to look at the impact bail reform will have on the Erie County Holding Center and Alden Correctional Facility operations. Specifically, we wanted to know what the current capacity is, and how that compares to prior years.

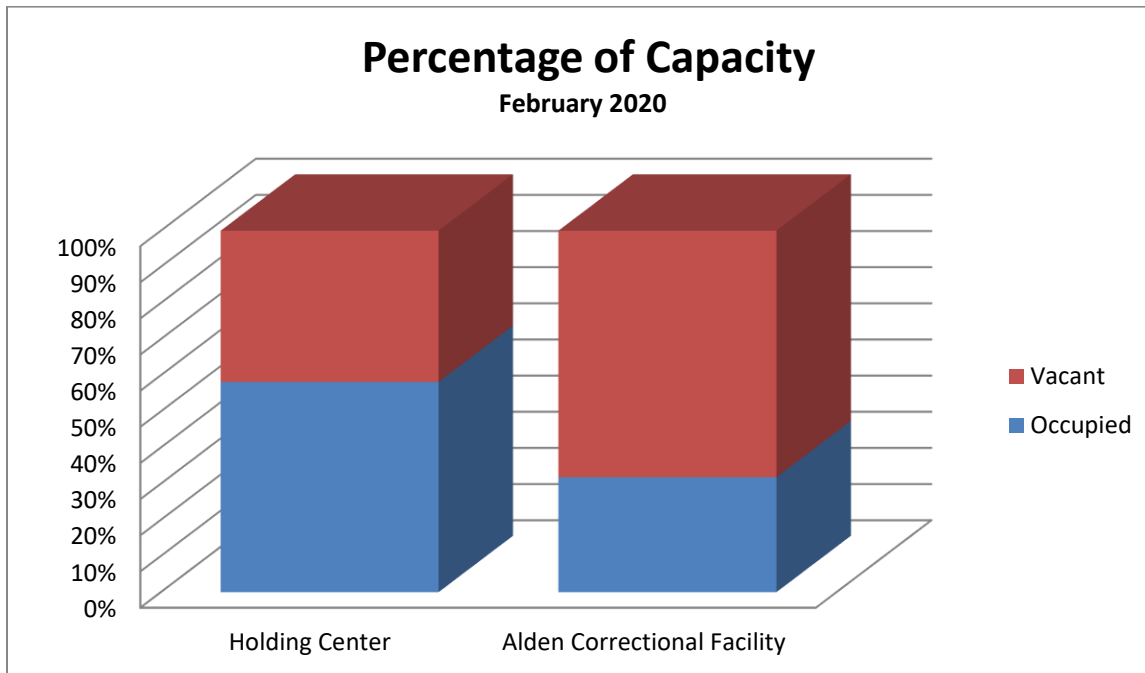
The Erie County Holding Center has a capacity of 638 and the Alden Correction Facility's capacity is 884.

On September 1, 2018, a total of 1,074 pre-trial detainees were being held at the Erie County Holding Center and Alden Correctional Facility. Shortly after, Erie County District Attorney John Flynn began his own policy of not asking for bail for a majority of misdemeanor offenses. As a result, by January 2019, the number of detainees at the Holding Center averaged 408 and the Correctional Facility averaged 424. This brought the total average to 832.

Once the state's no bail legislation was implemented, it greatly expanded the types of offenses that don't require bail. As such, the number of detainees dropped even further. In January 2020, the average number of detainees at the Holding Center was 301 and at the Correctional Facility it was 357. This brought the total average to 658.

As of February 5, 2020 there were a total of 652 detainees at the two locations. To break that down further, the two locations are at 47% capacity. If you look at those most recent numbers, 371 detainees are being held at the Holding Center at 10 Delaware Avenue in Buffalo, meaning that site is at 58% capacity. The Alden Correctional Facility is holding 281 detainees, leaving that facility at 38% capacity.





The number of detainees at the Holding Center and Alden Correctional Facility has significantly decreased to the point that all detainees could be held in the Alden Correctional Facility and there would still be space left over.

What is less certain is how funding or operations for various drug treatment, mental health, veteran, educational, health care and other services currently being provided by the Sheriff's Office and Office of Mental Health at these facilities will be impacted.

The state legislation does not include a public safety provision, meaning a judge cannot detain an alleged offender due to concern for public safety. Cash bail does remain, however, for most violent felonies; all sex-related charges; and SOME domestic violence cases. The final legislation that was approved eliminated money bail and mandated release for 90% of all arrests statewide.

**(See Appendix A for list of no bail offenses under the bail reform legislation)**

Additionally, electronic monitoring may not be imposed on most misdemeanor offenses unless the charge involves domestic violence or sex-related offenses, or the arrested individual has a prior violent felony conviction within the past five years, according to the **Vera Institute of Justice**. Furthermore, according to the Institute's report:

*"Most jurisdictions routinely impose mandates such as drug testing, electronic monitoring, participation in programs and counseling, and frequent check-ins as standard conditions of pretrial release. In many of those places, people are required to pay for their conditions of supervision, often at a cost of \$5 to \$20 a day. Under New York's new law, there are provisions to ensure judges set the least restrictive conditions that will reasonably assure a person's appearance in court and DO NOT REQUIRE PEOPLE TO PAY FOR THOSE CONDITIONS ... THE REQUIREMENT THAT ALL CONDITIONS OF PRETRIAL RELEASE MUST BE PAID FOR BY THE COUNTY WILL SERVE AS A CHECK ON UNNECESSARY MONITORING AND CONDITIONS SO THAT LOCALITIES ARE NOT BEARING UNNECESSARY PRETRIAL COSTS ..."*

In many cases, detainees receive their first care for issues such as drug addiction or mental health while being held at one of the Erie County Sheriff's two facilities.

Facility in-house programs include:

- **Education and Workforce Development:** the facilities partner with Buffalo Public Schools, and in school year 2015-16 helped 208 students. That same year, 17 detainees enrolled in high school equivalency classes, three with job training programs and 10 received post-release employment.
- **Empower Youth and Project Blue Re-entry Programs:** the facilities collaborate with Buffalo Public schools and Peaceprints of WNY to provide inmates with the tools necessary to get back on their feet post-release through programming such as a transitional work program, case management services, and various resources.
- **Public Library and Law Library:** allows inmates access to books and legal publications in order for them to research their cases.
- **Veterans Housing and Treatment:** facilities provide treatment programs, specialized treatment and discharge planning services for veterans who may be dealing with issues like PTSD.
- **Vivitrol Program:** provided in collaboration with Best-Self Behavioral Health where a constant observation treatment team can assess detainees who may need specialized therapy, counseling, medications, intervention.
- **Narcotics and Alcoholics Anonymous:** provides inmates the services, counseling and support available through these programs.

In fact, in the 2020 adopted Erie County budget, \$1 million was allocated to Erie County Mental Health to fund Suboxone for treating detainees with drug related or addiction issues. Whether or not that allocation is spent, or if detainees will be treated for mental health or drug related issues, counseling, therapy, etc., or whether additional educational programming would have benefited them cannot be quantified. Those programs are funded through grant dollars and county budget



allocations. If there is a smaller jail population will there be a need to fund these programs at the current level? Will those who receive their first access to these various programs when incarcerated still connect with this assistance in another way voluntarily? What are the long-term plans and expectations for this programming if fewer people are utilizing these resources?

## **IMPACT ON LOCAL POLICE AGENCIES AND COURTS**

While it is still too early to determine exactly how local police agencies and courts will be impacted by the bail reform, it is likely fewer fees will be collected (see page 4). One local police agency reported having to hire a clerk at a salary of \$42,000, plus benefits (estimate total cost \$70,000), to handle issues with discovery. Discovery is the rules that govern how and when the prosecution must turn over evidence to the defense. The law states the prosecution must provide the defense with all evidence within 15 days. Such evidence could include witness statements, surveillance or body cam footage, statements made by anyone linked to the case, electronic recordings, names and contact information for anyone who may be relevant to the case. Prosecutors argue that new time frame is extremely difficult to meet, and without the proper resources to pursue any and all evidence within that time requires additional staff.

In addition, one local municipality reported that in one week, 24 of 48 (50%) of defendants who were supposed to report to court failed to show. Some local municipalities have expressed concern about how their police departments will be impacted by having to handle additional warrants, to seek out those not reporting to court. Additionally, the issue of “no-shows” presents a backlog in the local courts. The impact of not having someone show up for arraignment two or three times means a warrant is issued, the person in question is brought into court and a bail hearing follows. This increases the time spent on a particular case. As an example of how many incidents move through a court, in the Town of Amherst over a recent two week period in January, 122 cases came through the courts.

Additionally, as another example, the Town of Orchard Park handles cases related to incidents at Buffalo Bills games. Prior to this bail reform legislation, if assaults or similar crimes occurred at or near the stadium, a person could be held in custody pending a bail hearing. In many cases now, that person will be released and issued an appearance ticket.

## **Impact on District Attorney Offices Statewide**

District Attorneys across New York State recently expressed concern about the cost of the bail reform legislation. They claimed implementation would cost about \$100 million, none of which was being funded by the New York State legislation. In Erie County, District Attorney John Flynn asked for, and received, additional money to hire additional personnel to address the issues relating to discovery. According to Flynn, he hired 18 additional positions in 2020 at a cost of about \$900,000.

## Impact on Probation Departments

For 2020, Erie County increased funding to the Probation Department by \$400,000, which also resulted in the addition of five positions. State bail reform is having a major impact on probation departments across the state. Warren County Probation Director Bob Lusi, who chairs the Justice Reform Task Force for the New York State Association of Counties, told the website LAW.COM that, *“If we open up the floodgates, so to speak, and have a large amount of people directed to report to us, we do not have the infrastructure to do this ... .”*

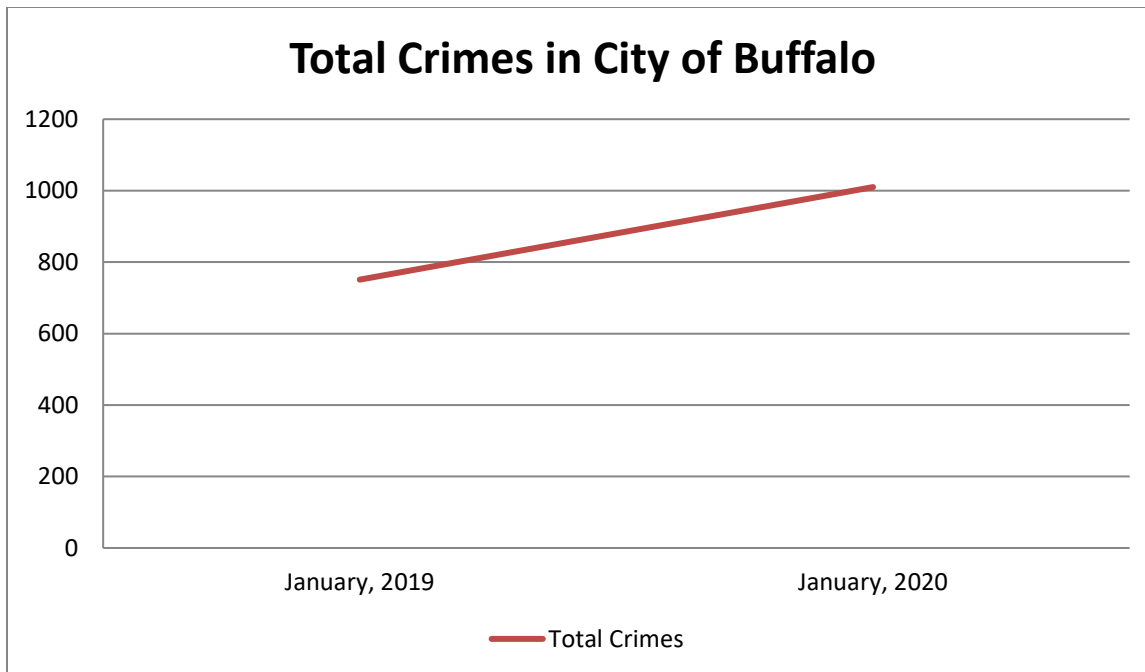
In addition, the New York State Bail Bondsman Association stated that the legislation is an unfunded mandate that pushes the entire financial cost of pretrial supervision programs onto each individual county’s probation department, with no state support. In 2019, the entirety of Erie County’s Probation Department budget was \$10,755,980.

A study done by The Regional Economic Studies Institute at Towson University looked at the estimated costs of the bail reform legislation in New York State. It estimates that the price tag for the first year could be \$287.8 million, with recurring annual costs of \$202 million. New York State has not accounted for this funding in its budget, and notably to date local governments have absorbed the costs of this new legislation. Examples include Erie County allocating additional money to the District Attorney and Probation Offices, and municipal governments making additional hires.

## Crime Statistics

While it is still very early in this process to know with a degree of certainty what the long-term impact bail reform will have on crime statistics, according to a report in the New York Times, dated February 4, 2020, police data showed overall crime went up 16.9% in January 2020 compared to January 2019. However, the number of violent crimes, such as murder and rape, decreased.

New York City Police Commissioner Dermot F. Shea blamed the bail reform on the spike in overall crimes that fall into the no bail category. He stated, *“New York’s new bail laws harm public safety.”* He added that the new law forces judges to release people regardless of whether they believe the defendant poses a risk to others. In the City of Buffalo, according to a WKBW-TV report on February 4, 2020 based on Buffalo Police data, crimes that fall into the no-bail category have increased significantly. Total crimes went from 751 in January 2019 to 1,010 in January 2020. The Buffalo Police Department also notes that statistics show burglaries are up 42 percent from where they were one year ago.



A recent **Siena Poll** found that 49% of New Yorkers now oppose the bail reform legislation, while 37% approve. Law enforcement strongly opposes the law in its current form, highlighting some failures that they say this new legislation fails to address. Additionally, several county governments have said it amounts to another unfunded mandate from the state. Village of Freeport Mayor Robert Kennedy said in an article in **The New York Post, December 18, 2019** that he *“has to boost taxes on homeowners by 5.7% in 2020, just to comply with new discovery requirements ... .”* Mayor Kennedy said compliance for Freeport, with a population of 50,000 people, will cost an additional \$2.7 million.

## Conclusion

While the full costs and impact of bail reform are yet to be determined, an early analysis shows that fines and fees previously collected for bail and other offenses will likely be reduced significantly. That could have an impact on some of the alternative to incarceration programs that rely on those fees as a portion of their overall funding source. Additionally, detainees who previously accessed services as it related to their mental or physical health, education, counseling, therapy, etc. for the first time behind bars, may not be accessing those services as quickly, if at all, if that programming is not made available to them. Also, some judges have reported using counseling or drug treatment as tools in sentencings and other court proceedings. It’s a way to have the offender comply, and connect them with the assistance they need. It allows the courts the ability to provide the person with opportunities that would keep violations or offenses off their records. Without this tool, offenders could be negatively impacted.

The District Attorney's Office has experienced an increase in costs to meet discovery demands. Local courts and police agencies will also likely experience a backlog. Probation Department costs have increased to accommodate pre-trial demands.

Proponents say this legislation is long overdue and levels the playing field for non-violent offenders who don't have the means to meet bail requirements and who they claim receive different treatment because of race, background, socio-economic status. Opponents say it goes too far, allowing repeat offenders and violent criminals back onto the street with no consequences, and as such could result in increased recidivism.

This report can serve as a guide to local and county governments to anticipate what costs they might expect in the future, and what considerations are to be made during budget time for various programs, services, and implementation of bail reform. It can also serve as a reminder to our state delegation about how legislation passed without any funding source impacts local governments.