

25,000 New Yorkers are jailed statewide. 70% have not been convicted and are being detained pretrial. Across New York, jail populations are rising, largely due to increased pretrial detention. Through grassroots power-building and strategic legislative advocacy, the #FREEnewyork campaign advocates for overhaul of New York's pretrial justice system. Comprehensive speedy trial reform is essential to this effort.

This policy brief describes the imperative for speedy trial reform in New York State, an overview of how speedy trial law developed in the United States, and details New York's unique 'readiness rule' approach that is unmatched by any other state. The document lays out a 'gold standard' speedy trial proposal for New York State, developed in consultation with JustLeadershipUSA's directly impacted membership, statewide grassroots organizations, and numerous legal and issue experts. Gold standard reform requires passage of a true speedy trial law that dictates a specific length of time within which a criminally charged person must be brought to trial, and mechanisms for ensuring that this statutory mandate is followed.

SPEEDY TRIAL: THE IMPERATIVE FOR REFORM

- The right to a speedy trial is a longstanding and fundamental component of our Constitutional framework.
- New York has no speedy trial law. Instead, New York has a *ready rule*, and we are the only state to use this model.
- The *ready rule* requires prosecutors to declare that they are "ready for trial" within certain timelines, but the law does not set any limits on the time by which a defendant must actually be brought to trial.
- "Readiness" can be claimed then rescinded, again and again. As a result, New Yorkers' right to a speedy trial is constantly violated.
- Thousands of legally innocent New Yorkers languish in jail for weeks, months, and even years as they await their day in court. Families and communities suffer as a result.
- Pretrial detention imposes significant harm and often results in negative impacts on one's housing, employment, health, and family security.
- Crime survivors are also forced to endure these unreasonably long pretrial periods, despite 60% of survivors supporting rehabilitation over punitive measures for individuals who are ultimately convicted.¹
- Taxpayers bear the fiscal burden for the unnecessary detention of thousands of New Yorkers. The cost of detaining one person at Rikers is \$270,875 per year.²

SPEEDY TRIAL LAW: THE HISTORY

¹ <https://www.allianceforsafetyandjustice.org/crimesurvivorsspeak/>

² <https://comptroller.nyc.gov/reports/nyc-department-of-correction-fys-2007-17-operating-expenditures-inmate-population-cost-per-inmate-staffing-ratios-performance-measure-outcomes-and-overtime/>

- The basic principle of the right to a timely trial is enshrined in English Common Law, and was included in the constitutions of each of the original U.S. states.³
- Federally, the right to a speedy trial is enshrined in the 6th Amendment of the Constitution, which states, “In all criminal prosecutions, the accused shall enjoy the right to a speedy trial”⁴
- The Constitution does not, however, specify the amount of time by which accused persons must be brought to trial, therefore, onus falls upon individual states to protect this right.
- Most places in the U.S. have passed additional state laws that further establish the right to a speedy trial and include concrete time limits for when a defendant must be brought to trial.
- In 1972, the Supreme Court provided some guidance on how the federal speedy trial provision is to be interpreted.
 - Rather than impose an absolute time limit, the Court established a four-part balancing test for assessing compliance with speedy trial:
 - (1) the length of delay, (2) the reason for the delay, (3) the time and manner in which the defendant asserted his right, and (4) the amount of prejudice the delay has caused the defendant.⁵
- The Court further clarified that the only remedy for a violation of the speedy trial right is dismissal of the defendant’s case.⁶
 - Despite this, in relevant Supreme Court cases, decisions have not generally found lengthy delays to violate the Constitutional right to a speedy trial.⁷
- A speedy trial is widely acknowledged as important to the interests of both the government as well as the defense in a criminal or civil case.
 - Defendants benefit from a speedy trial by avoiding pre-trial incarceration, preventing damage to their reputations and unfounded perceptions of guilt, and limiting harmful collateral consequences to their jobs, housing and families.
 - The government also benefits from a speedy trial process by saving taxpayer dollars, conserving court resources, and ensuring witness availability.
- Despite this, enforcement of the right to a speedy trial – both nationally and in New York – is sporadic.

NEW YORK STATE & THE “READY RULE”

- New York’s ‘Ready Rule’ is governed by Criminal Procedure Law 30.30, which requires the prosecution to be *ready* for trial within certain time limits, but does not set any limits on the time by which a defendant must actually be brought to trial.⁸
- New York does not have an actual speedy trial law.
- The New York State Court of Appeals has guidelines regarding NY’s current speedy trial law:

³ See <http://www.shestokas.com/constitution-educational-series/sixth-amendments-speedy-trial-right-ancient-worthy-and-elusive/>.

⁴ U.S. Const. Amend. 6.

⁵ *Barker v. Wingo*, 407 U.S. 514 (1972).

⁶ *Strunk v. U.S.*, 412 U.S. 434 (1973).

⁷ See, e.g., *Barker v. Wingo*, 407 U.S. 514 (1972) (no violation in case tried five years after arrest); *Boyer v. Louisiana*, 569 U.S. ___ (2013) (no violation in case tried seven years after arrest).

⁸ NY C.P.L. § 30.30, *et al.*

- Delays that the defense consents to do not count in calculating the amount of time – the “speedy trial clock” – by which the prosecution must be ready.
- If the prosecution requests an adjournment because it is not ready to proceed to trial, it can later file an “off-calendar” (out of court) statement of readiness that stops the “speedy trial clock”.⁹
- If the prosecution files an off-calendar statement of readiness, but later declares that it is actually *not* ready for trial, prosecution is supposed to establish a valid reason for not being ready.¹⁰
- Because of New York’s atypical approach – the way that time towards ‘readiness’ is counted on the speedy trial clock, combined with severe court congestion and difficulty of scheduling court dates in New York – the right to a speedy trial is constantly violated.
- This results in New Yorkers’ being detained for intolerably long periods, cases’ going on for months or years before being resolved, and detained individuals’ being dragged back and forth from jail to court all the while.
- The delays that result from the *ready rule* are particularly problematic in New York City, where stays at Rikers Island as long as 3 years or more are not uncommon.
- New York *must* shorten the time it takes to get a criminal case through the system. We must enact TRUE speedy trial reform.

GOLD STANDARD REFORM: TRUE SPEEDY TRIAL IN NEW YORK

- New York must enact a TRUE speedy trial law by amending CPL 30.30 to dictate specific time frames, varying with the seriousness of the charge(s), within which a defendant must be brought to trial.
- In - custody defendants must have accelerated speedy trial time limits.
 - *Note: This is the law in other states and is the practice, but not the law, in certain New York courts.
 - Felony charges: 180 days when released, 90 when detained
 - Misdemeanor charges punishable by a sentence of imprisonment of more than three months: 90 days when released, 60 when detained
 - Misdemeanor punishable by a sentence of imprisonment of less than three-months: 60 days when released, 30 when detained
 - Violation of a vehicle and traffic law infraction: 30 days
- All specified speedy trial time limits must begin at arraignment.
- The speedy trial mandate must cover all crime categories, including serious felonies.
- Judges must be required to enforce and adhere to this statutory speedy trial mandate.
- Prosecutors must be required to provide a certification of good faith compliance with the disclosure requirements on demand.
- Defendants held on bail must be released if the speedy trial law is violated.
- Charges should be dismissed if a defendant is not brought to trial within the specified time period.
- The mandate must include provisions for requesting a continuance, with set procedures to protect the defendant’s right to more time to prepare for trial with good cause (i.e. the need to get discovery material, conduct further investigations, etc.).

⁹ See, e.g., *People v. Stirrup*, 91 NY2d 434 (1998) (no speedy trial violation).

¹⁰ *People v. Brown*, 2016 NY Slip Op 08482 (no speedy trial violation).

- This right to a continuance must not extend to prosecution. Prosecutors may only request to continue the case and delay a case past the speedy trial cut-off in delineated, very narrow circumstances.
- After each continuance, a new speedy trial limit must be set. For example, if the judge gives a three-week continuance, the new court date will be on day 0/10, meaning that the defendant must get to trial within 10 days of the new date.

TRUE SPEEDY TRIAL: WHAT IT MEANS FOR NEW YORKERS

Passage of a true speedy trial law, along with comprehensive discovery and bail law reform, will put New York at the forefront of pretrial justice reform. Systemic reform is urgently needed, and has benefits that extend across our criminal justice system.

A TRUE speedy trial law will:

- Put an end to unnecessary and intolerably long periods of pretrial detention for legally innocent New Yorkers.
- Reduce the extensive collateral consequences of pretrial detention (e.g. employment and housing loss, and financial instability) as well as trauma to family and loved ones.
- Support crime survivors in achieving a sense of closure from the harms that they have suffered as cases are resolved more quickly.
- Decrease court congestion, as cases move through more efficiently over time.
- Save taxpayer dollars that are being unnecessarily and unjustly spent on pretrial detention of thousands of New Yorkers.

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