

Summary of Major Findings

On January 1, 2020, extensive reforms to the laws governing bail and pretrial release went into effect in New York State. The reforms restricted which charges are legally eligible for bail and required judges to consider people's ability to pay before setting a bail amount. Even when bail remained a legal option, the reforms enjoined judges from setting it unless first finding that the individual poses a risk of flight and no less restrictive conditions, such as pretrial supervision, could assure court attendance.

Amendments that went into effect July 2, 2020 moved some charges that had become ineligible for bail back into the legally eligible category.¹

With support from Arnold Ventures, the Data Collaborative for Justice examined the extent to which New York's reforms reduced bail and pretrial detention, which prior research links to socioeconomic and psychological harms impacting both incarcerated people and their families.² Drawing on arraignment data for city and district courts in all 62 counties of New York State, we compared pretrial outcomes between 2019 (pre-reform) and 2020 (post-reform) both statewide and in each of three key regions (New York City, Suburban NYC, and Upstate). Suburban NYC encompassed Nassau, Suffolk, and Westchester.

Overall Arraignment Volume in 2019 and 2020

From 2019 to 2020, statewide arraignments declined by 38% from 341,411 to 212,958, with greater declines seen among misdemeanors and violations (both dropping by around 43%) than among felonies (dropping by 18%). The resulting charge composition modestly changed, with felonies growing from 19% to 24% of all cases across the state, misdemeanors declining from 70% to 65%, and violations declining slightly from 11% to 10%.

In both 2019 and 2020, over one-fifth of cases were resolved at their initial arraignment appearance (24% in 2019 and 21% in 2020). Almost a quarter of misdemeanors, but less than 3% of felonies, were resolved at arraignment.

The remainder of this summary focuses solely on patterns for cases that were not resolved at arraignment, for which a pretrial release decision therefore became necessary.³

Statewide Effects of Bail Reform on Pretrial Release Decisions

Bail reform's first year saw significant increases in pretrial release across all regions and charges. Had there had been no such increase, 24,204 more cases across the state would have faced bail or remand in 2020. Considering that people were unable to post bail at arraignment in 80% of the cases in which judges set bail, the reforms contributed to around 19,363 fewer cases sent to pretrial detention.

- **Overall Increase in Pretrial Release:** From 2019 to 2020, pretrial release increased from 74% to 83% of criminal cases not resolved at arraignment, while bail-setting dropped from 24% to 15%,

and remands directly to jail remained unchanged at 3%. Suburban NYC saw the greatest increase in release (from 70% to 85% of cases), followed by Upstate (62% to 75%), and NYC (82% to 87%).

- **Sizable Changes in Felony Cases:** From 2019 to 2020, judges released considerably more people charged with felonies (from 41% to 60% statewide). However, the felony patterns differed by region:
 - Highest Pre-Reform Release Rates in New York City: In the 2019 pre-reform year, NYC judges were more than twice as likely to release people facing felony charges (55%) than in Suburban NYC (26%) or Upstate (26%).
 - Largest Relative Change in Suburban NYC: From 2019 to 2020, felony release rates grew 2.4 times higher in Suburban NYC (26% to 63%). By comparison, felony release rates grew 1.9 times higher in Upstate (26% to 49%) and 1.2 times higher in NYC (55% to 66%). The net effect was that in 2020, NYC judges continued to be the most likely to release people, but the gap significantly narrowed between NYC and the two other regions.
- **Smaller Changes Among Misdemeanors and Violations:** Even before bail reform took effect, judges released the vast majority of people charged with misdemeanors, both statewide and in each region. Accordingly, bail reform contributed to a more modest change than with felonies (shown below).
- **Large Changes Among Drug Cases; Smaller Effect in Weapons Cases:** Drug cases (excluding marijuana) saw an especially large 26 percentage-point increase in pretrial release from 2019 to 2020 (57% to 83%). By contrast, cases involving a weapons charge (including weapons felonies and misdemeanors) saw a more modest nine percentage-point increase (39% to 48%).

Pretrial Decisions at Arraignment in 2019 and 2020 (By Region and Charge Severity)

	New York City		Suburban NYC		Upstate		Total	
	2019	2020	2019	2020	2019	2020	2019	2020
All Cases	120,384	71,764	66,758	44,381	73,833	52,886	260,975	169,031
Remanded	1%	1%	1%	1%	8%	7%	3%	3%
Bail Set	17%	12%	29%	14%	29%	19%	24%	15%
Released	82%	87%	70%	85%	62%	75%	74%	83%
Violations	1,141	762	5,694	3,203	18,626	10,454	16,697	9,917
Remanded	0%	1%	0%	0%	1%	0%	1%	0%
Bail Set	4%	0%	14%	7%	9%	4%	11%	5%
Released	96%	99%	86%	93%	90%	95%	89%	95%
Misdemeanors	86,720	46,677	49,131	31,633	45,602	30,311	181,453	108,621
Remanded	0.2%	0%	0%	0%	2%	1%	1%	0.5%
Bail Set	7%	2%	21%	8%	26%	14%	16%	7%
Released	92%	98%	79%	91%	71%	85%	83%	92%
Felonies	32,523	24,325	11,933	9,545	18,369	16,623	62,825	50,493
Remanded	2%	2%	7%	4%	26%	19%	10%	8%
Bail Set	44%	32%	68%	33%	47%	32%	49%	32%
Released	55%	66%	26%	63%	26%	49%	41%	60%

Note: Percentages may not sum to 100% due to rounding.

Changes in Judicial Decision-Making Within 2020

Within 2020, judges released fewer people after the first quarter (opting for bail more often). Comparing the first and fourth quarters of 2020, felony release rates declined from 74% to 61% in NYC, 66% to 63% in Suburban NYC, and 51% to 40% in Upstate. Because bail remained a legal option for virtually all violent felonies, but was disallowed in most nonviolent cases, it is unsurprising that prior NYC research found that the city's reduction in release rates from the first to fourth quarters was greater among violent felonies (56% to 44%) than nonviolent felonies (90% to 82%).⁴ Despite the uptick in bail-setting after the first quarter of 2020, judges continued to set bail significantly less than in the 2019 pre-reform year.

The pattern of judges becoming less likely to release people from the beginning to the end of 2020 among felonies that continued to be legally eligible for bail could help to explain a finding from the Vera Institute of Justice that after the state's pretrial jail population reached a historic low of 7,242 people held on an average day in March 2020, it rose by 34% to 9,731 people in December 2020.⁵

The mix of factors explaining why judges reverted from release to more bail-setting within 2020 could include the midyear implementation of bail amendments making more cases legally eligible for bail; an effect of a nationwide spike in shootings and homicides influencing judges to release fewer people (despite a lack of evidence linking pretrial release to crime); or other unexplained dynamics resulting from the Covid-19 pandemic or related disruptions to court operations beginning mid-March 2020.⁶ Our full report reviews an array of research making clear the lack of any credible evidence to date linking bail reform or pretrial release to violent crime. We also recommend further rigorous research on the subject.⁷

Low Remand Rates Except in Upstate New York

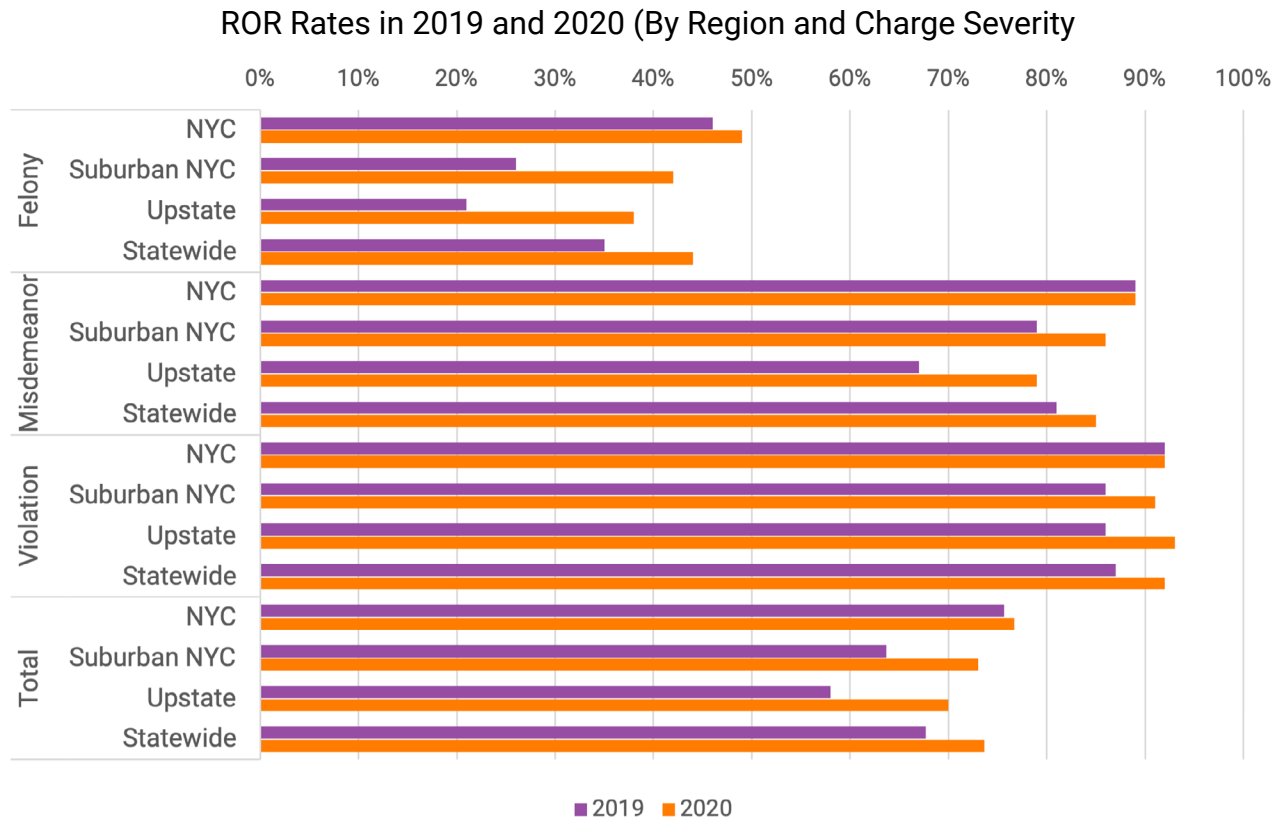
Both before and after reform, judges were not allowed to remand people charged with a misdemeanor or lesser offense directly to jail, which explains the tiny remand rates for these charges (the few misdemeanor remands shown in the chart above likely reflect instances of mandatory detention for people facing parole violations). By contrast, judges could remand people charged with any felony prior to reform and could continue to remand people charged with bail-eligible felonies under reform.

Yet the results shown above indicate that even in 2019, judges rarely remanded people in NYC or Suburban NYC. Upstate judges, by contrast, set remand in 26% of felony cases in 2019, with the reforms contributing to a modest decline to 19% in 2020. These findings mean that even if bail were to become more often affordable in the future, Upstate judges' current use of remand would produce greater ongoing rates of pretrial detention than in the two Downstate regions.

Changes in Release on Recognizance

People released before trial subdivide into three basic categories: those released on recognizance (ROR, with a promise to return to court on their own), ordered to supervised release, and given electronic monitoring.⁸ Considering that bail reform established a presumption of ROR that can be overcome only in cases of demonstrated flight risk, combined with prior evidence that most New Yorkers attend all of their court dates (e.g., 84% in New York City in 2019),⁹ we anticipated an increase in ROR rates in the first year of reform.

Indeed, judges use of ROR increased from 2019 to 2020,¹⁰ especially among felonies and especially in Suburban NYC and Upstate. For felonies in particular, ROR rates increased by more than 16 percentage-points in Suburban NYC and Upstate.



Bail Amounts

Despite the ability to pay provisions in the reform law, we found no evidence that judges systematically lowered their bail amounts in an effort to increase affordability. In Upstate, median cash bail for felonies was exactly \$5,000 in every quarter of both 2019 and 2020; and was \$500 in six of eight quarters for misdemeanors. In NYC and Suburban NYC, median bail modestly *increased* for both felonies and misdemeanors when comparing the second, third, and fourth quarters of 2019 to the same periods in 2020.

Pretrial Decisions by Demographic Background

Demographic data was only available in New York City for both the pre- and post-reform years. In general, NYC release rates increased by 3-7 percentage-points from 2019 to 2020 for most demographic groups.

- **Race/Ethnicity:** *New York City judges became more likely to release people across all racial/ethnic groups from 2019 to 2020 (with release rates rising by four percentage-points for Black, five points for Latinx, and six points for white people).* In the final quarter of 2020, most people secured their release across all groups – yet it was also true that stubborn disparities persisted, with release rates resting at 83% of Black, 87% of Latinx, and 91% for white people. When examining release

rates only among people charged with a felony, the fourth quarter saw a 15 percentage-point Black-white gap in the likelihood of release (59% for Black, 66% for Latinx, and 74% for white people). In short, while all groups saw comparable 2019-to-2020 pretrial release increases, bail reform in New York City has yet to rectify preexisting disparities.

- **Gender:** *From 2019 to 2020, men saw a greater relative increase in their likelihood of release (five percentage-points) than women (three percentage-points).* Nonetheless, because men's release rates were considerably lower than women's back in 2019, they remained modestly lower throughout 2020 as well. In the final quarter of 2020, 84% of men and 95% of women secured their release, overall, which dipped to 59% for men charged with a felony and to 83% for women.

Conclusion

It is clear that bail reform contributed to dramatic changes in judges' pretrial decisions at arraignment in the direction of enhanced release and, conversely, reduced reliance on money bail. At the same time, shifts within different quarters of 2020 suggest that other factors besides the new law itself exerted evolving influences over judges' decisions, especially in cases where they retained discretion to set any condition. Dynamics directly or indirectly related to Covid-19 pose likely, yet unquantifiable, causal factors.

As the pandemic's impact on daily life at least somewhat receded in 2021 compared to 2020, future research extending the analysis to 2021 will yield firmer conclusions regarding bail reform's early impact. Besides extending the analyses in this report, the Data Collaborative for Justice (DCJ) plans to examine the use of specific non-monetary conditions of release, including supervised release, electronic monitoring, and mandatory programming. DCJ also intends to complete research rigorously testing the effects of reform on a series of post-arraignment outcomes, including failure to appear, re-arrest, violent felony re-arrest, case dispositions, and sentences.

Endnotes

1 Rempel, M., & Rodriguez, K. (2020). *Bail reform revisited. The impact of New York's amended bail law on pretrial detention*. New York, NY: Center for Court Innovation. Available at: <https://www.courtinnovation.org/publications/bail-revisited-NYS>.

2 See, e.g., Del Toro, J., Fine, A., Wang, M-T., Thomas, A., Schneper, L. M., Mitchell, C., Mincy, R. B., McLanahan, S., & Notterman, D. A. (2022). "The longitudinal associations between paternal incarceration and family well-being: Implications for ethnic/racial disparities in health." *Journal of the American Academy of Child & Adolescent Psychiatry*. 61(3): 423-433. Available at: [https://www.jaacap.org/article/S0890-8567\(21\)01300-9/fulltext](https://www.jaacap.org/article/S0890-8567(21)01300-9/fulltext); Digard, L. & Swavola, E. (2019). *Justice denied: The harmful and lasting effects of pretrial detention*. New York, NY: Vera Institute of Justice. Available at: <https://www.vera.org/publications/for-the-record-justice-denied-pretrial-detention>; Dobbie, W. & Yang, C. (March 25, 2021). *The economic costs of pretrial detention*. Brookings Papers on Economic Activity, BPEA Conference Drafts. Available at: https://www.brookings.edu/wp-content/uploads/2021/03/BPEASP21_Dobbie-Yang_conf-draft.pdf; Human Rights Watch. (2010). *The price of freedom: Bail and pretrial detention of low income nonfelony defendants in New York City*. New York, NY. Available at: https://www.hrw.org/sites/default/files/reports/us1210webwcover_0.pdf.

3 To provide information on all possible arraignment outcomes, the full report represents the percentages of cases disposed at arraignment in both the narrative and all charts.

4 Rempel, M., & Weill, J. (2021). *One year later: Bail reform and judicial decision-making in New York City*. New York, NY: Center for Court Innovation. Available at: <https://www.courtinnovation.org/publications/bail-NYS-one-year>.

5 Vera Institute of Justice. (2022). *People in jail in New York State*. New York, NY. Available at: <https://www.vera.org/people-in-jail-in-new-york-state>.

6 Rempel, M. & Weill, J. (2021), Op Cit.

7 Rempel, M. & Weill, J. (2021), Op Cit.

8 The reform law permits additional non-monetary conditions, such as mandatory treatment or seeking or maintaining employment or school attendance. However, available data points to miniscule use of conditions other than supervised release or electronic monitoring, the latter of which is only permitted in felonies, misdemeanor domestic violence, misdemeanor sex offenses, and an extremely limited number of other misdemeanors. In New York City, judges have also rarely ordered electronic monitoring to date.

9 Koppel, S., Topel, D., & Bent-Koerick, K. (2021). *Annual report 2019*. New York, NY: New York City Criminal Justice Agency. Available at: <https://www.nycja.org/publications/annual-report-2019>.

10 We used unweighted total percentages by assuming the same charge distribution in both years but if we instead calculate weighted percentages, results would somewhat vary. For example, in NYC, the weighted overall ROR rates are 78% in 2019 and 76% in 2020, whereas the unweighted rates are 76% and 77%, respectively.