

New York's Reformed Bail Law

What is it? What are its Effects?

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Presented via Zoom:
Before and After: Data on the Impact of Bail Reform
Wednesday, September 21, 2022

New York State Historical Context

Legal Rationale for bail: Ensure court appearance

Pretrial Options Pre-Reform:

- Release on Recognizance (ROR)
- Money Bail
 - *No charge based criteria*
 - *No clear limits on use of amounts, BUT....*
 - *Alternative forms of bail were included*
 - *Surety and Appearance bonds*
- Detained without Bail (Remand)
(for felonies)

New York Reformed Bail Statute

Limits the use of money bail. But, how?

1. By Charge

- a. Qualifying offenses

2. By Factual Circumstances

- a. Allows for judicial discretion to use bail

3. By Considering Finances

- a. Ability to pay provision
- b. Alternative forms of Bail

4. By Prioritizing Release

- a. Presumption of Release
- b. Risk of Flight
- c. Least Restrictive Condition

1. By Charge

Qualifying offenses

- **Violent Felony Offenses**
 - *Exceptions:*
 - Robbery 2nd Degree(1);
 - Burglary 2nd Degree(2)
- **Felony Witness Tampering**
- **Felony Witness Intimidation**
- **Class A Felonies**
 - *Exceptions:* Drug Offenses
 - *Exception to the Exception:* Penal Law 220.77
- **Felony & Misdemeanor Sex Offenses**
- **Conspiracy to Commit Murder**
- **Specific Felony Terrorism Charges**
- **Felony & Misdemeanor DV Criminal Contempt**
- **Specific felonies involving children**

1. By charge

Qualifying offenses, continued

- **Specific Vehicular Assault Offenses**
- **Assault and Arson as Hate Crimes**
- **Aggravated Assault of a Child**
 - **Less than 11 years old**
- **Specific Gun offenses**
- **Specific Financial Crimes**
- **Failure to Register as a Sex Offender**
- **Bail jumping and Escaping Custody Offenses**

2. By Factual Circumstances

Categories allowing for judicial discretion to use bail

- Felony charge and on probation or post release supervision
- Felony charge and potentially a persistent felony offender
- “Harm to Harm Provision”, Pending Felony or Class A misdemeanor involving:
 - Harm to an identifiable person or property, OR
 - Criminal Possession of a Firearm, as defined in 265.01-b, AND
 - Re-arrested for similar offense.

3. By Considering Finances

a. Ability to pay provision

- If monetary bail is authorized,...the principal's **individual financial circumstances**, and, in cases where bail is authorized, the principal's **ability to post bail** without posing **undue hardship**, as well as his or her ability to obtain a **secured, unsecured, or partially secured bond**;

b. Alternative forms of Bail

- The court shall direct that the bail be posted in any **one of three or more** of the forms...designated in the alternative, and may designate different amounts varying with the forms, **except that one** of the forms **shall be** either an **unsecured or partially secured surety bond**, as selected by the court.

4. By prioritizing release

a. **Presumption of Release**

- Creates default of release with no conditions, UNLESS....

b. **Risk of Flight**

- The court can make an individualized determination of risk of flight

c. **Least Restrictive Condition**

- Once determination is made, the least restrictive condition should be applied to ensure court appearance and compliance with court orders.
- Non-monetary conditions include:
 - Contact with, supervision by pretrial service agencies
 - Mental health assessments
 - Mandatory programming (Counseling, treatment, IPV intervention programs)
 - Refrain from firearms possession
 - Maintain employment or educational enrollment

Bail Reform & Pretrial Decisions

- 1. Less Bail & Detention:** *19,000 fewer cases detained in 2020 ([DCJ](#))*
- 2. Significant Variability by Region & County** *(multiple studies):*
 - ▶ **NYC:** ↓ Bail, ↑ Supervised Release, ↓ ROR (75% → 67%, DCJS).
 - ▶ **Non-NYC:** ↓ Bail, ↑ Supervised Release, ↑ ROR (52% → 61%, DCJS).
- 3. Low ROR for Violent Felonies** *(required absent “risk of flight”):*
 - ▶ **NYC:** 37% → 24% (DCJS)
 - ▶ **Non-NYC:** 10% → 13% (DCJS)

Bail Reform & Pretrial Decisions

4. More Bail-Setting Starting Spring 2020:

Bail + remand rates in felony cases, Quarters 1 vs. 4, 2020 ([DCJ](#)):

- ▶ **NYC:** 25% → 38%.
- ▶ **Suburbs:** 32% → 37%.
- ▶ **Upstate:** 48% → 56%.

5. Less Bail Payment (*despite affordability provisions*):

- ▶ **Cash Bail Amounts:** No change or increase (multiple studies).
- ▶ **Bail Payment Rates:** *Lower* in 2020 & 2021 (multiple studies).
 - ▶ **2021 Payment at Arraignment:** 10% NYC, ~11% Non-NYC (DCJS).
 - ▶ **2021 Payment within 5 Days:** Just over 20% statewide (DCJS).

Bail Reform & Crime: Larger Context

[Studies with Matched Samples & Tracking Periods]

- ▶ **Consistent Negative Effect of Pretrial Detention:**
 - ▶ **Step 1:** Modest pretrial recidivism ↓
 - ▶ **Step 2:** Modest post-disposition recidivism ↑
 - ▶ **Net:** No study supports detention ([NYC](#), [Houston](#), [Miami](#), [Pittsburgh](#), [Philadelphia](#), [Kentucky](#)).
- ▶ **Bail Reform Elsewhere: No Link to Recidivism:**
[Cook County \(IL\)](#), [Harris County \(TX\)](#), [New Jersey \(statewide\)](#), [Philadelphia](#).

DCJS Re-Arrest Data: What Stands Out?

- ▶ **Overall Pretrial Re-Arrest Rates:**
 - ▶ **Pretrial Re-Arrest Rates ~20%** (16%-22% based on year or region)
 - ▶ **Violent Felony Re-Arrest Rates \leq 5%** (1%-5%)
 - ▶ **Firearm Re-Arrest Rates \leq 1%** (0%-1%)
 - ▶ **Firearms Re-Arrest Rates on Initial Firearms Cases \leq 3%** (2%-3%)

Future Research: Key Requirements

- ▶ **True Apples-to-Apples Comparisons:**
 - ▶ Matched charge & criminal history composition.
 - ▶ Equal tracking periods (e.g., average pretrial period is longest in 2020).
- ▶ **Pretrial AND Post-Disposition Recidivism.**
- ▶ **Data Transparency:** DCJS & OCA data sharing.

Available Resources

Resource Page on the May 2022 Bail Convening Website:
<https://www.jjay.cuny.edu/bail-reform-conference>

- ▶ **Explainers** (About the 2019 Reforms; 2020 & 2022 Amendments)
- ▶ **Valid New York Bail Reform Research**
- ▶ **Links to NY Data Dashboards & Tools**
- ▶ **Relevant Research from Other Jurisdictions**

Sources of Valid Research (*not exhaustive*): Brennan Center for Justice, Center for Court Innovation, Criminal Justice Agency, Data Collaborative for Justice, Envision Freedom, NYC Comptroller, Vera Institute of Justice.

Public Data & Dashboard Sources: CJA, DCJS, MOCJ, OCA.