

On January 1, 2020, landmark reforms governing bail and pretrial release decisions went into effect in New York State. The new laws eliminated bail for most misdemeanors and non-violent felonies, required judges to consider people's ability to pay in cases still legally eligible for bail, and included a new presumption of release on recognizance in all cases except when an individual poses a "risk of flight." Amendments to the reforms went into effect in July 2020, moving some charges that had become ineligible for bail back into the bail-eligible category.

With support from Arnold Ventures, we assessed the statewide impact of the reforms on judicial decision-making, affordability of bail, and racial disparities two years post-implementation. As in a previous Data Collaborative for Justice [study](#) examining changes in the first year of reform (2020), this report includes data for city and district courts in all 62 counties of New York State.

Overall Arraignment Volume in 2019 and 2020

From 2019 to 2020, felony and misdemeanor arraignments in New York State fell by 40%, largely due to disruptions in the initial months of the Covid-19 pandemic that suspended normal court operations and shifted law enforcement priorities and practices. However, from the second half of 2020 through 2021, arraignments increased everywhere in the state and especially in New York City. By the end of 2021, monthly arraignments were near 2019 levels throughout the state.

Release Decision Changes from 2019 to 2021

We divide pretrial release decisions into four key categories, from least to most restrictive: **(1) release on recognizance (ROR)**; with no supervision or treatment conditions), **(2) non-monetary conditions** (e.g., pretrial supervision, mandatory programming, or electronic monitoring), **(3) money bail**, and **(4) remand** directly to jail. Bail and remand are more likely to expose people to pretrial detention at arraignment while ROR and non-monetary release are more likely to assure pretrial release.

Statewide Changes

- **Less Bail and Remand Under Reform:** Overall, judges' use of bail or remand declined by 8 percentage points from 2019 to 2020; and then stayed at around 20% in both 2020 and 2021. In contrast, non-monetary conditions increased each year (reaching 11% in 2021); and judges ordered less ROR in 2021 compared to 2020 but ROR still accounted for over two-thirds of cases overall.
- **Modest 2021 Bail Increases in Felony Cases:** For both violent and non-violent felonies, bail and remand increased modestly in 2021 after significant declines from 2019 to 2020.
- **Large 2021 Declines in ROR:** Although ROR remained high in 2021, especially among misdemeanors, there were declines from 2020 to 2021 for all charges. *ROR fell by 7 percentage points among violent (from 29% to 22%) and non-violent felonies (from 54% to 47%), and by 4 points among misdemeanors (from 85% to 81%).*
- **Ongoing Increases in Non-Monetary Conditions:** Consistent with the reformed statute's intent, release with non-monetary conditions increased from 4% in 2019 to 11% in 2021, particularly among violent (5-point increase) and non-violent felonies (4-point increase).

Regional Differences. Generally, judges in NYC were less likely to order bail or remand than in Upstate or Suburban NYC across all three years examined, with the greatest differences among violent felonies.

By 2021, judges Upstate and in Suburban NYC were less likely to release people with non-monetary conditions than in NYC. However, when cases were released with non-monetary conditions, judges in Upstate courts and Suburban NYC were far more likely to order electronic monitoring (EM) than in NYC. Data points to only 5 EM cases in NYC in 2020 and 2021 combined. Meanwhile in Suburban NYC, 49% of 484 violent felonies released with non-monetary conditions in 2021 involved EM compared to 16% of 531 in Upstate courts.

Net Increases in Bail/Remand During Implementation for Specific Violent Felony Charges. Rates of bail or remand for robbery and burglary, sex offenses, homicide, and felony weapon charges increased when comparing the initial months of 2020 to the end of 2021 – robbery and burglary and weapons cases saw the greatest net increase within the bail implementation period.

Release Decisions by Geography and Charge Level, Continued Cases												
	Upstate Courts			Suburban NYC			NYC			Statewide		
	2019	2020	2021	2019	2020	2021	2019	2020	2021	2019	2020	2021
All Continued	69,817	50,185	52,852	70,567	41,913	44,560	116,403	74,001	90,585	256,787	166,099	187,997
ROR	54%	66%	63%	71%	76%	73%	75%	73%	69%	68%	72%	68%
Non-Monetary	7%	7%	7%	2%	9%	11%	5%	10%	14%	4%	9%	11%
Bail or Remand	39%	27%	31%	28%	15%	16%	20%	17%	16%	27%	19%	20%
Violent Felonies	4,854	5,196	5,134	2,475	2,351	2,437	13,700	14,023	15,046	21,029	21,570	22,617
ROR	8%	15%	10%	13%	19%	17%	36%	35%	26%	27%	29%	22%
Non-Monetary	7%	13%	10%	4%	13%	20%	3%	13%	21%	4%	13%	18%
Bail or Remand	85%	72%	79%	83%	68%	64%	61%	52%	53%	69%	58%	60%
Non-Violent Felonies	14,232	11,858	11,929	10,030	7,152	8,266	16,466	11,595	11,895	40,728	30,605	32,090
ROR	25%	49%	44%	27%	49%	46%	52%	63%	52%	37%	54%	47%
Non-Monetary	9%	11%	10%	5%	24%	26%	13%	17%	24%	9%	16%	20%
Bail or Remand	67%	41%	45%	68%	27%	27%	35%	20%	24%	53%	30%	33%
Misdemeanors	50,731	33,131	35,789	58,062	32,410	33,857	86,237	48,383	63,644	195,030	113,924	133,290
ROR	67%	81%	76%	81%	86%	84%	86%	86%	83%	80%	85%	81%
Non-Monetary	7%	5%	5%	1%	5%	7%	3%	7%	11%	3%	6%	8%
Bail or Remand	27%	15%	19%	18%	8%	10%	11%	6%	6%	17%	9%	10%

Impact of 2020 Bail Amendments on Bail/Remand

Effective July 2, 2020, amendments went into effect making certain charges re-eligible of bail. Prior research found that the most impactful provisions from the amendments were increasing bail eligibility for burglary 2nd degree, 2nd subdivision (PL § 140.25[2]), and for cases involving “harm to an identifiable person or property” where another pending case met the same “harm-harm” criteria.

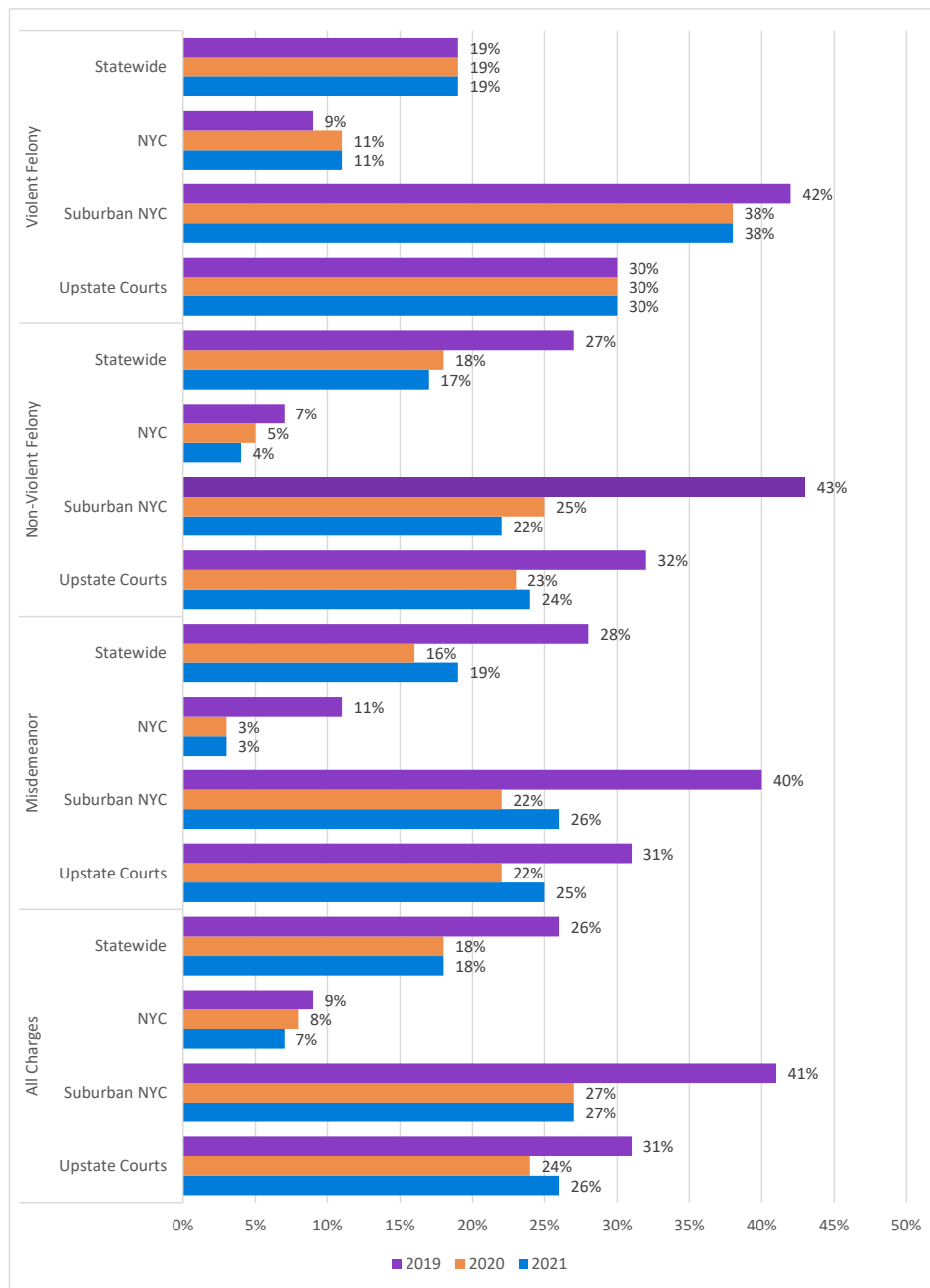
We found that statewide, bail/remand for burglary 2nd degree spiked from 40% in June to 61% in July 2020, before flattening out over the remainder of the bail implementation period. On the other hand, for cases falling under the “harm-harm” provision and other amendment provisions, there was no clear change when the amendments went into effect on a statewide scale (though in NYC, the bail/remand rate on potential harm-harm cases grew higher than before the amendments went into effect).

Bail Setting and Payment

Judges set higher bail amounts within the 2020-to-2021 implementation period, particularly in non-violent felony cases. Upstate, bail amounts for non-violent felonies doubled in 2021 and increased by 50% in Suburban NYC and NYC. Judges also set higher partially secured bond (PSB) amounts – at least three times the cash amount set in almost half of cases in 2021 – essentially inflating the amount of bond that an individual is required to pay. (With a PSB, people pay only 10% of the total amount up-front, but inflating PSB amounts acts to reduce the magnitude of the intended discount.)

Statewide, the percentage of people who posted bail set at arraignment declined from 26% in 2019 to 18% in both 2020 and 2021. Bail posting was mostly unchanged from 2020 to 2021, except for a small decline in NYC and a small increase in Upstate courts. Of people who did pay bail, around a third did so on the same day bail was set, while almost 80% posted bail within a week.

Bail Posting by Charge Level & Geography, 2019-2021



Racial Disparities

While all racial/ethnic groups saw their lowest rates of bail or remand in the first quarter of 2020 (January to March) and higher rates thereafter, Black people faced consistently higher rates of bail or remand in both 2020 and 2021 compared to Latinx and white people. Additionally, in both 2020 and 2021, racial disparities were largest in violent felony cases. In 2021, the Black-white gap in rate of bail or remand for violent felonies was 13 percentage points in NYC (56% vs. 43%), 16 points in Suburban NYC (66% vs. 50%), and 8 points in Upstate courts (82% vs. 74%).