

# Two Years In: 2020 Bail Reforms in Action in New York State

December 2022

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The Data Collaborative for Justice (DCJ) at John Jay College of Criminal Justice houses a group of research initiatives that raise important questions and share critical research about the criminal legal system and its role in creating safe, just, and equitable communities. DCJ conducts data analysis and research on enforcement in the community, the adjudication of cases in the courts, and the use of confinement in jails and prisons. DCJ's work has informed policy reforms, facilitated partnerships between researchers and government agencies across the country, spurred new scholarly research on lower-level enforcement, and has been cited extensively in the press. For more information about the Data Collaborative for Justice please visit: <https://datacollaborativeforjustice.org/>

# Chapter 1 - Introduction

The main goals of New York State's 2020 Bail Reforms were to reduce the number of people held in pretrial detention, curtail the inequitable use of money bail to detain indigent people while they are presumed innocent, and shrink racial disparities.<sup>1</sup> This report examines the law's effects on each one of those goals by comparing pretrial outcomes in 2019 (pre-reform) to 2020 and 2021 (post-reform) for the entire state and its three major regions (New York City, Suburban NYC, and Upstate).

## About the 2020 Bail Reforms

On January 1, 2020, landmark reforms governing bail and pretrial release decisions went into effect in New York State. The reforms eliminated money bail for most misdemeanors and non-violent felonies and included a presumption of release on recognizance in all cases (with pretrial conditions permitted if judges determine that an individual poses a "risk of flight to avoid prosecution").

For charges still legally eligible for bail, the reforms also require judges to consider an individual's ability to pay before setting a bail amount and to offer at least three forms of bail. One of these forms (known as a "partially secured bond") must give people the option to pay only 10% or less of the total bail amount up-front, while remaining responsible for the balance in the event the individual facing charges absconds from court.

Amendments to the reforms went into effect in July 2020 and allowed judges the discretion to set bail on some charges that had become legally ineligible in January.

## The Impact of Bail Reform: What Have We Already Learned?

### Less Bail-Setting and Initial Declines in State Jail Populations

As previously documented by the Data Collaborative for Justice (DCJ) and elsewhere,<sup>2</sup> there were significant statewide declines in bail setting and pretrial detention in the first year of bail reform. In New York City, the changes accelerated what had already been an incremental longer-term trend towards less bail-setting, pre-implementation.<sup>3</sup>

By one measure, the changes led bail reform to achieve its goal of reducing the jail population, at least in the short term. By December 2020, the statewide jail population had declined by more than 34% since April 2019 when bail reform was first passed.<sup>4</sup> Moreover, the average daily population of people admitted on misdemeanors or violations and on non-violent felonies declined over this period by 61% and 45%, respectively. And while the state's pretrial population grew 10% from December 2020 to December 2021, it continued to fall short of 2019 levels by 20%.<sup>5</sup>

On the other hand, in 2022, the pretrial population has risen steadily and is about the same as pre-reform levels as of this report's publication<sup>6</sup>, a particularly worrying trend in New York City, which continues to grapple with a humanitarian crisis on Rikers Island.<sup>7</sup>

### No Link to Crime, Pending Future Research

Much of the public discourse around bail reform has centered on its impact on crime and recidivism. But as we previously documented, several factors including a lack of consistent data and prior relevant research cuts against arguments that bail reform undermines public safety.<sup>8</sup> Moreover, existing data consistently dispels the claim that bail reform is directly responsible for a concerning rise in violent crime, particularly gun violence.<sup>9</sup>

After a widely documented increase in the most serious violent crimes in 2020, there were fewer reported index crimes in New York State in 2021.<sup>10</sup> However, despite this overall decline in all index crimes combined, statewide shooting incidents and victimizations rose by another 4% from 2020 to 2021 (after having risen 72% from 2019 to 2020).<sup>11</sup> In addition, felony and misdemeanor arrests rose by approximately 7% in 2021 compared to 2020. These trends (and especially the violent crime increase of 2020) largely mirror those seen across the country, both in jurisdictions that have and have not recently implemented pretrial reforms.<sup>12</sup>

Moreover, in multiple other jurisdictions where bail reforms have been rigorously studied, there is no evidence linking them to increased crime or recidivism.<sup>13</sup> Most recently, a 2022 study by the Quattrone Center on the impact of bail reform in Harris County, Texas found that greater pretrial release was associated with less recidivism: a 6.1% reduction in the likelihood of a new case within three years.<sup>14</sup>

It is also the case that a truly rigorous study of how New York's reform impacts recidivism has not been completed, though DCJ plans to fill this gap (presumably along with other research institutes) in the months ahead. A meaningful study would have to examine rearrest rates before and after bail reform among statistically matched samples of people whose charges, criminal histories, and other characteristics are comparable, enabling researchers to isolate the effects of release under reform.

## Complex Dynamics Associated with Covid-19

Measuring the immediate impact of bail reform on both pretrial decision-making and recidivism has been hindered by the emergence of the Covid-19 pandemic, which brought about significant shifts in crime and enforcement activities throughout the state, interruptions to court operations, and varying efforts to reduce jail populations that waxed and waned as the pandemic unfolded. Moreover, throughout 2020 and for much of 2021, the pandemic caused seismic changes to the daily lives of all New Yorkers. The pandemic not only caused significant delays in court processing but also disrupted services and programs meant to protect against violence.

## Research Questions

This report addresses four main research questions:

- 1. Pretrial Release Decisions:** How have the proportions of pretrial release outcomes (release on recognizance, non-monetary conditions, bail setting, remand) changed a) within the first two years of bail reform implementation and b) in comparison to 2019?
- 2. Bail Setting and Payment:** For those ordered to pay bail, how have judges' decisions around bail amounts changed in the two years of reform implementation and how have resulting outcomes around bail payment changed?
- 3. Racial Disparities:** How do pretrial release outcomes vary by race/ethnicity in the two years of reform implementation and how have racial disparities changed over time?
- 4. Geography and Charge:** How have trends in pretrial release decisions and people's ability to pay bail varied by geography, charge severity (misdemeanor, non-violent felony, violent felony) and charge type?

## Data and Methods

DCJ analyzed Office of Court Administration (OCA) data from January 2019 to December 2021. The data includes cases arraigned in 69 city and district courts in 62 New York State counties and does not capture arraignments in the approximately 1,200 town and village courts that serve around 20 counties throughout the state. Violations and infractions are excluded from the analysis as they are not technically crimes and almost all rarely faced bail both before and after the reforms.

Because an earlier DCJ report detailed pretrial decision-making changes from 2019 to 2020,<sup>15</sup> most analyses in this report focus on changes within the period of implementation (2020 and 2021), rather than repeat detailed 2019-to-2020 comparisons presented previously.

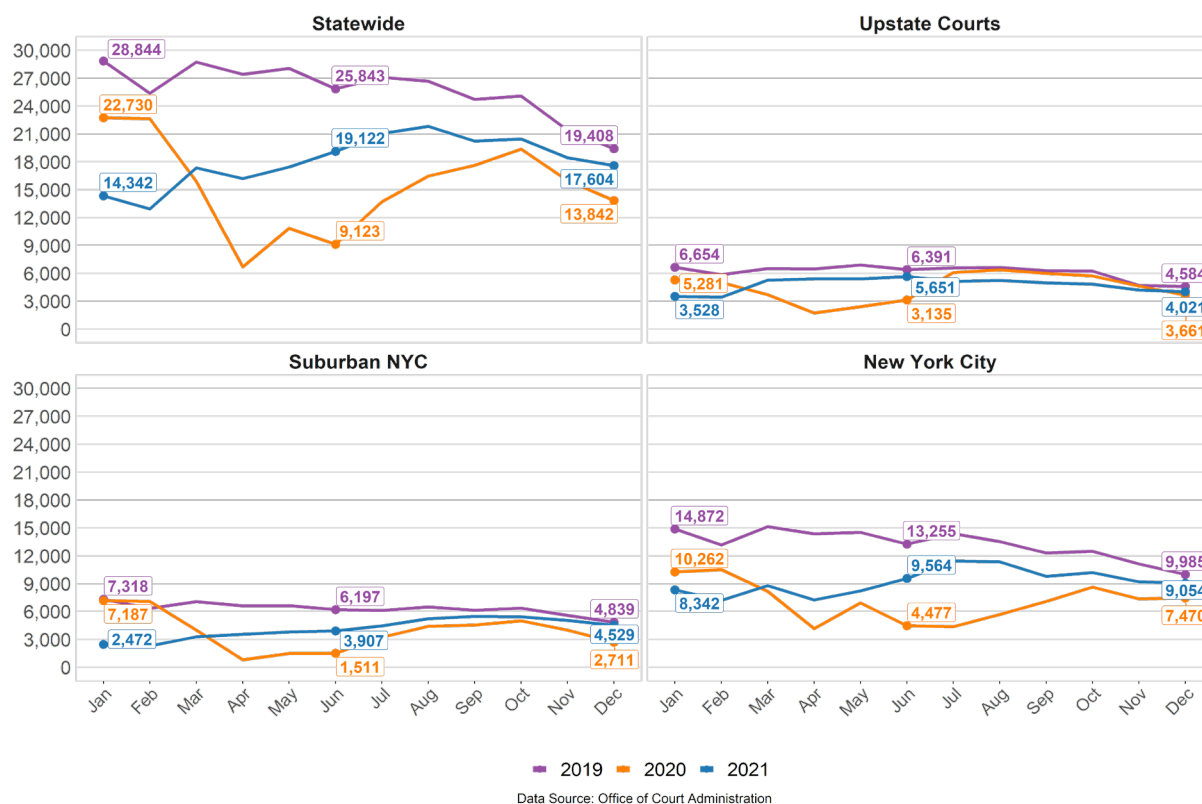
While the main narrative solely draws attention to geographic variations by region, Appendix A provides a basic distribution of pretrial release decisions in each New York county and court.

## Arraignments in New York State in 2019 and 2020

To understand the context in which judges make bail and release decisions, it is important to know how the volume of cases coming into the courts has changed over time. As previously documented by DCJ, felony and misdemeanor arraignments in New York State fell precipitously from 2019 to 2020.

Then from 2020 to 2021, felony and misdemeanor arraignments increased by 17% statewide, from 184,838 to 216,902, driven by a 30% increase in New York City (from 85,096 to 110,343). While there were 30% fewer arraignments in all of 2021 compared to all of 2019, figure 1 shows that by the final months of 2021, arraignment volume had returned to near 2019 levels throughout the state.

Figure 1: Monthly Felony and Misdemeanor Arraignments in New York State, 2019-2021



From 2019 to 2020, dispositions at arraignment followed a similar pattern of decline, driven by a 10 percentage-point drop in New York City. Then, just as arraignments in general increased from 2020 to 2021, cases disposed at arraignment also increased statewide and especially in New York City. In Upstate and Suburban NYC, the proportion of cases disposed at arraignment increased modestly from 2019 to 2021.

Table 1. Cases Disposed at Arraignment by Geography						
	2019		2020		2021	
	Total	%	Total	%	Total	%
<b>Upstate</b>	73,813	5%	53,734	7%	57,065	7%
<b>Suburban NYC</b>	75,683	7%	46,008	8%	49,494	9%
<b>NYC</b>	159,096	23%	85,096	13%	110,343	18%
<b>Statewide</b>	308,592	15%	184,838	10%	216,902	13%

## Chapter 2 - Pretrial Release Decisions

For cases continued at arraignment, 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** (such as pretrial supervision, mandatory programming, or electronic monitoring); (3) **money bail;** and (4) **remand** directly to jail. All release decisions are those made at the time of arraignment, including in cases where electronic monitoring was ordered as a non-monetary condition of release.

Because people usually cannot pay bail in time to avoid a jail stay (as this report will show), it is often helpful to combine percentages of people who face bail and remand into an umbrella category composed of those likely *exposed to pretrial detention immediately after arraignment*.

Note: A small portion of cases have bail set in the amount of \$1, an administrative practice when the judge is obligated to detain people for reasons other than the bail laws, such as an outstanding hold on another case. Because such cases do not involve a discretionary bail decision, we excluded them.<sup>16</sup>

### Release Decision Changes from 2019 to 2021

**On balance, bail-setting significantly declined from 2019 to 2020 and then modestly re-increased in 2021; non-monetary conditions increased each year; and judges' use of ROR unexpectedly declined from the latter months of 2020 into 2021** (see table 2 and figures 2-5).

Key findings include:

- **All Charges Combined:** About 20% of all continued cases had bail set or were remanded at arraignment in 2020 and 2021 (down from 27% in 2019).
  - ◊ **ROR decreased from 2020 to 2021**, though even in 2021, ROR accounted for over two-thirds of continued cases.
  - ◊ **Consistent with the reformed statute's intent, non-monetary conditions significantly increased** from 2019 to 2020 (4% to 9%), before reaching 11% in 2021.
- **Violent Felonies:** Although virtually all violent felonies remained legally eligible for bail, bail and remand declined from 2019 to 2020 (69% to 58%), followed by a 2-point uptick in 2021. ROR fell by 7 percentage-points to below a quarter of cases in 2021 while non-monetary conditions rose 5 percentage-points from 2020 to 2021. The figure 2 trendline points to a steady increase in non-monetary conditions throughout the 12 months of 2021.
- **Non-Violent Felonies:** Less than a third of non-violent felonies had bail or remand ordered in 2020 and 2021, compared to 53% in 2019. ROR fell by 7 percentage points to below 50% in 2021, while non-monetary conditions increased by 4 percentage points (16% to 20%). The trendline in figure 3 shows that these changes accelerated within 2021.
- **Misdemeanors:** From 2020 to 2021, there was a modest increase in non-monetary conditions (6% to 8%) and bail setting (9% to 10%) for misdemeanors having previously dropped from 16% in 2019; the small increases in non-monetary conditions and bail from 2020 to 2021 were balanced by a decline in ROR (85% to 81%).
- **Regional Differences:** For both violent and non-violent felonies, cases released with non-monetary conditions increased throughout 2021 — except for a 3 percentage-point drop in Upstate courts.

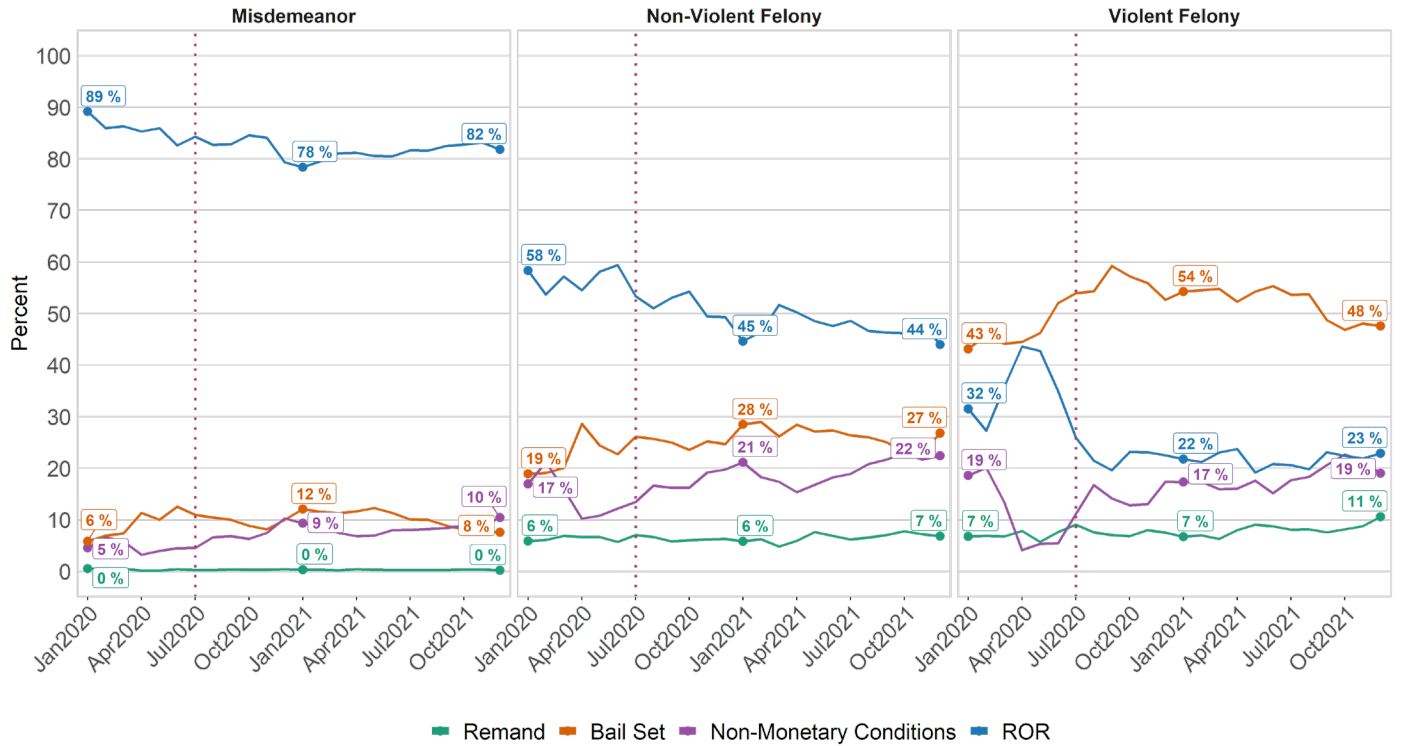
Indeed, in Upstate courts, the percentage of felony cases released with non-monetary conditions in 2021 was much smaller than in other regions. From 2020 to 2021, there was also a slight increase in bail setting for misdemeanors in Upstate courts (14% to 18%) but the same rates in Suburban NYC and NYC (consistently under 10%).

*By the final months of 2021, judges in NYC were generally less likely to set bail or remand than in other regions – with the greatest differences among violent felonies. In December 2021, bail/remand rates for violent felonies were 50% in NYC (figure 5), 67% in Suburban NYC (figure 4), and 82% Upstate (figure 3).*

	Table 2. 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
<b>All Continued</b>	<b>69,817</b>	<b>50,185</b>	<b>52,852</b>	<b>70,567</b>	<b>41,913</b>	<b>44,560</b>	<b>121,865</b>	<b>74,075</b>	<b>90,760</b>	<b>262,249</b>	<b>166,173</b>	<b>188,172</b>
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 Set	33%	21%	25%	27%	14%	15%	20%	16%	15%	25%	17%	18%
Remanded	6%	6%	6%	1%	1%	1%	1%	1%	1%	2%	2%	2%
Bail or Remand	39%	27%	31%	28%	15%	16%	20%	17%	16%	27%	19%	20%
<b>Violent Felonies</b>	<b>4,854</b>	<b>5,196</b>	<b>5,134</b>	<b>2,475</b>	<b>2,351</b>	<b>2,437</b>	<b>14,112</b>	<b>14,024</b>	<b>15,054</b>	<b>21,441</b>	<b>21,571</b>	<b>22,625</b>
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 Set	67%	55%	60%	78%	62%	57%	58%	48%	49%	62%	51%	52%
Remanded	18%	17%	19%	5%	6%	7%	3%	4%	4%	7%	7%	8%
Bail or Remand	85%	72%	79%	83%	68%	64%	61%	52%	53%	69%	58%	60%
<b>Non-Violent Felonies</b>	<b>14,232</b>	<b>11,858</b>	<b>11,929</b>	<b>10,030</b>	<b>7,152</b>	<b>8,266</b>	<b>18,854</b>	<b>11,602</b>	<b>11,919</b>	<b>43,116</b>	<b>30,612</b>	<b>32,114</b>
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 Set	48%	26%	30%	64%	25%	25%	35%	20%	23%	46%	23%	26%
Remanded	19%	15%	15%	4%	2%	2%	1%	1%	1%	7%	6%	7%
Bail or Remand	67%	41%	45%	68%	27%	27%	35%	20%	24%	53%	30%	33%
<b>Misdemeanors</b>	<b>50,731</b>	<b>33,131</b>	<b>35,789</b>	<b>58,062</b>	<b>32,410</b>	<b>33,857</b>	<b>88,899</b>	<b>48,449</b>	<b>63,787</b>	<b>197,692</b>	<b>113,990</b>	<b>133,433</b>
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 Set	26%	14%	18%	18%	8%	9%	10%	6%	6%	16%	9%	10%
Remanded	1%	1%	1%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Bail or Remand	27%	15%	19%	18%	8%	10%	11%	6%	6%	17%	9%	10%



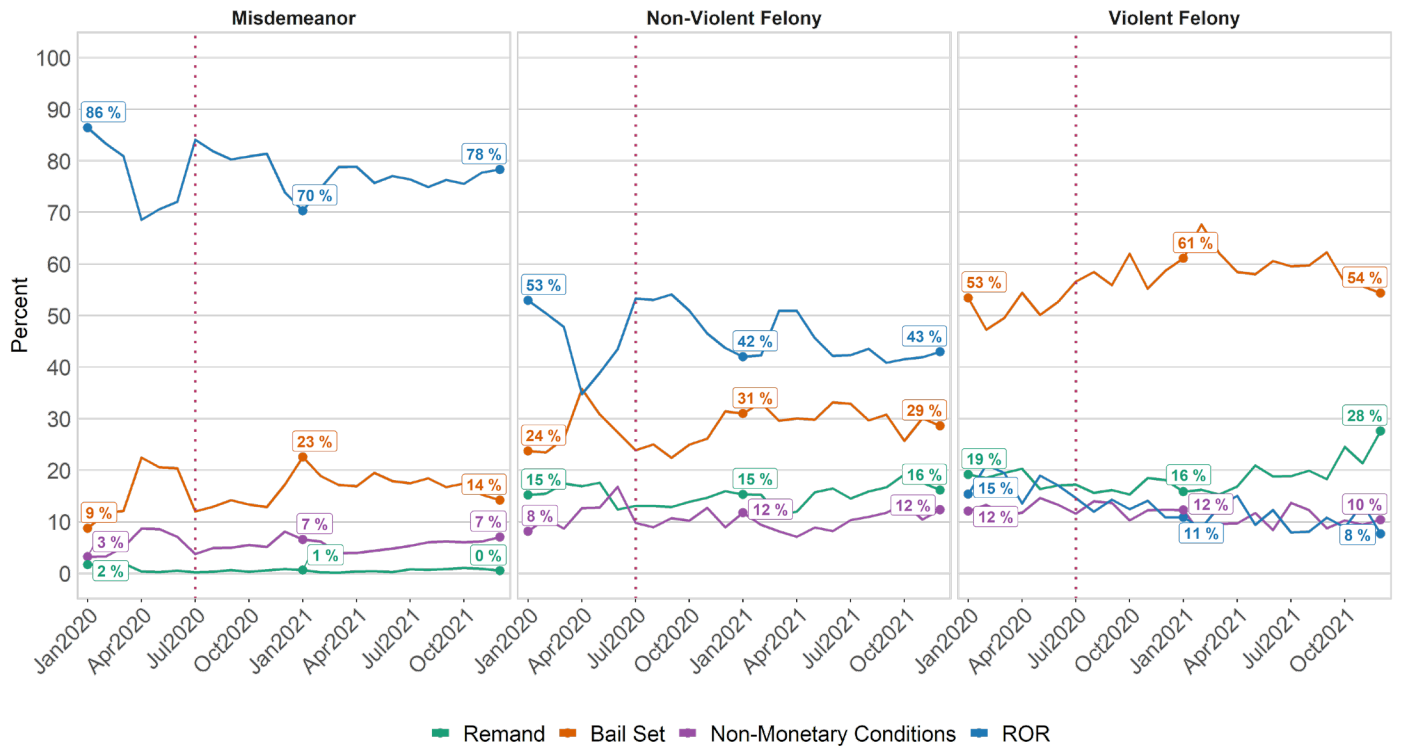
Figure 2. Monthly Release Outcomes by Charge Level 2020-2021, Statewide



Note: Dotted line marks when bail reform amendments went into effect in July 2020

Data Source: Office of Court Administration

Figure 3. Monthly Release Outcomes by Charge Level 2020-2021, Upstate Courts



Note: Dotted line marks when bail reform amendments went into effect in July 2020

Data Source: Office of Court Administration

Figure 4. Monthly Release Outcomes by Charge Level 2020-2021, Suburban NYC

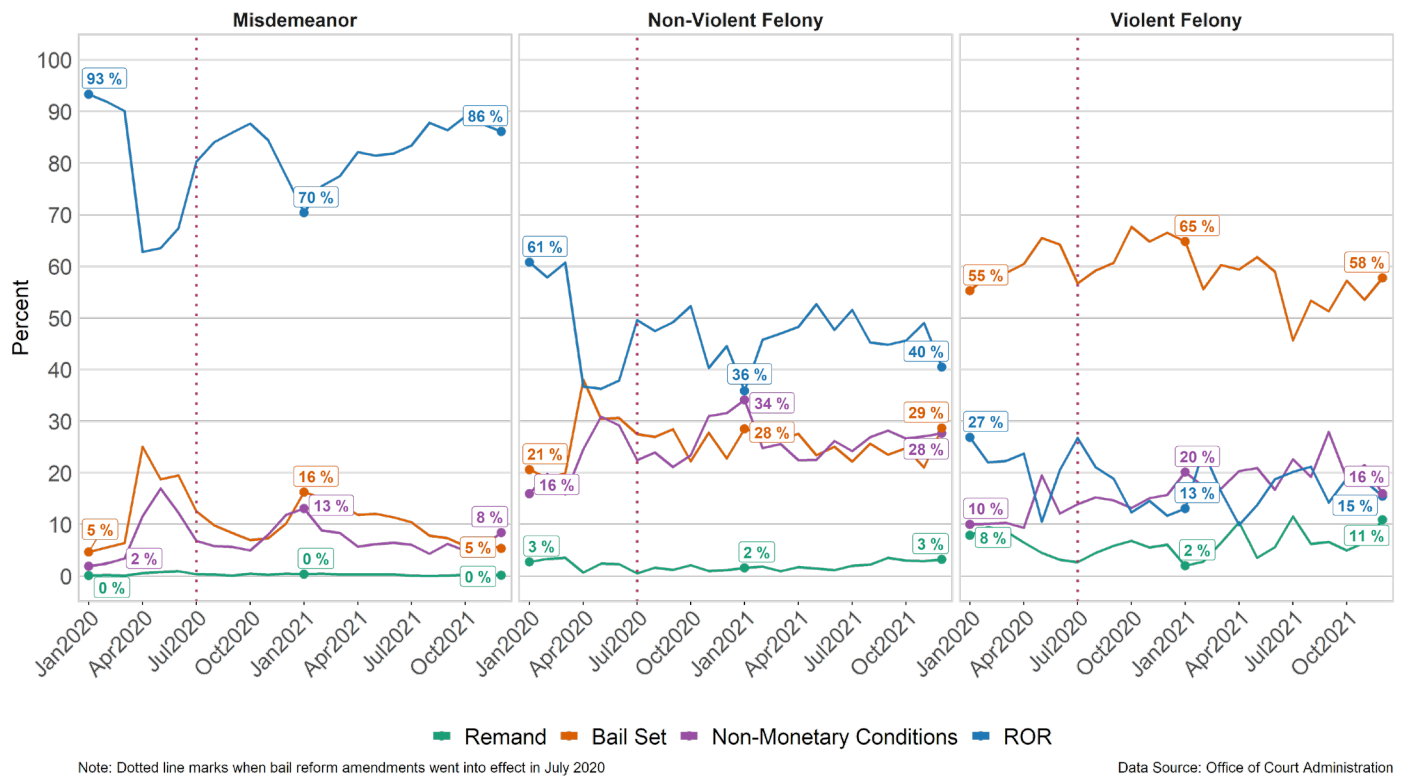
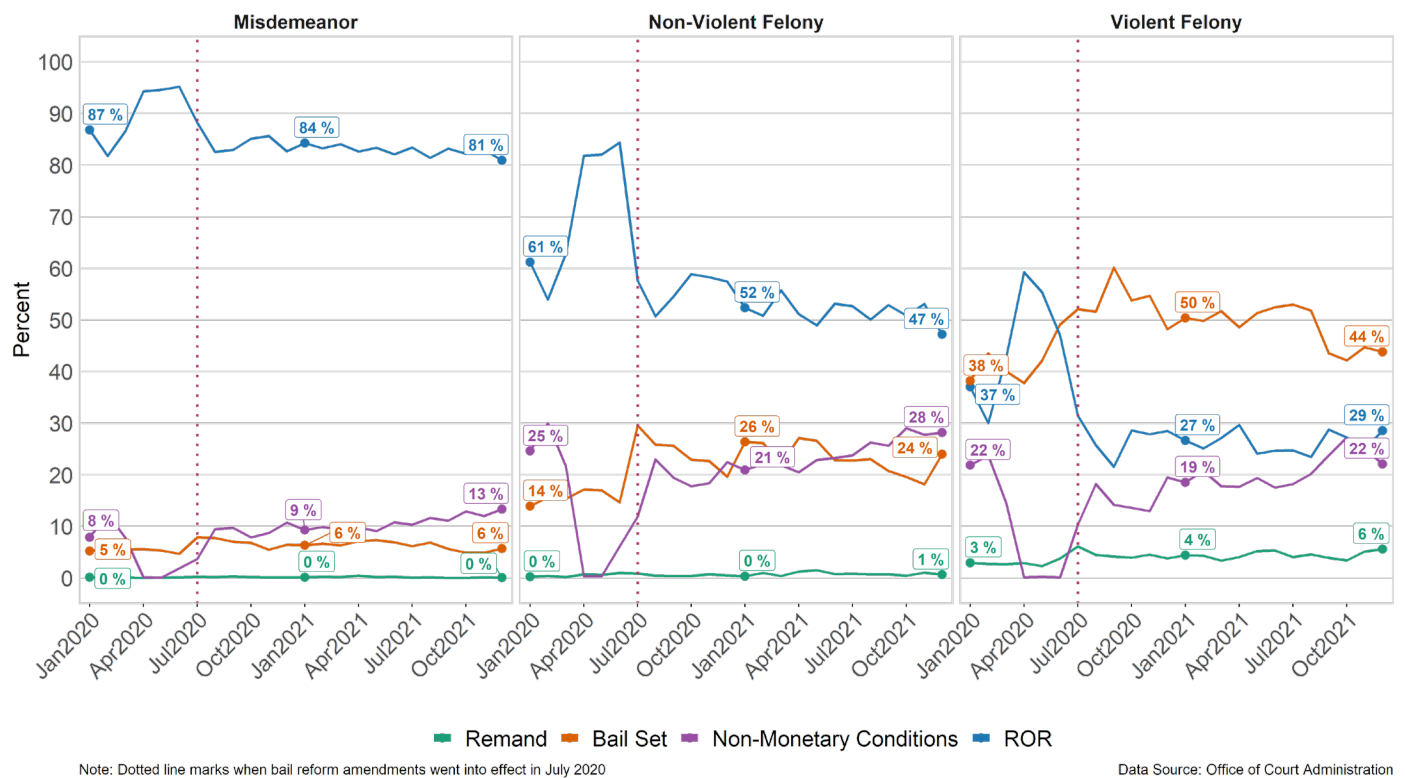


Figure 5. Monthly Release Outcomes by Charge Level 2020-2021, NYC

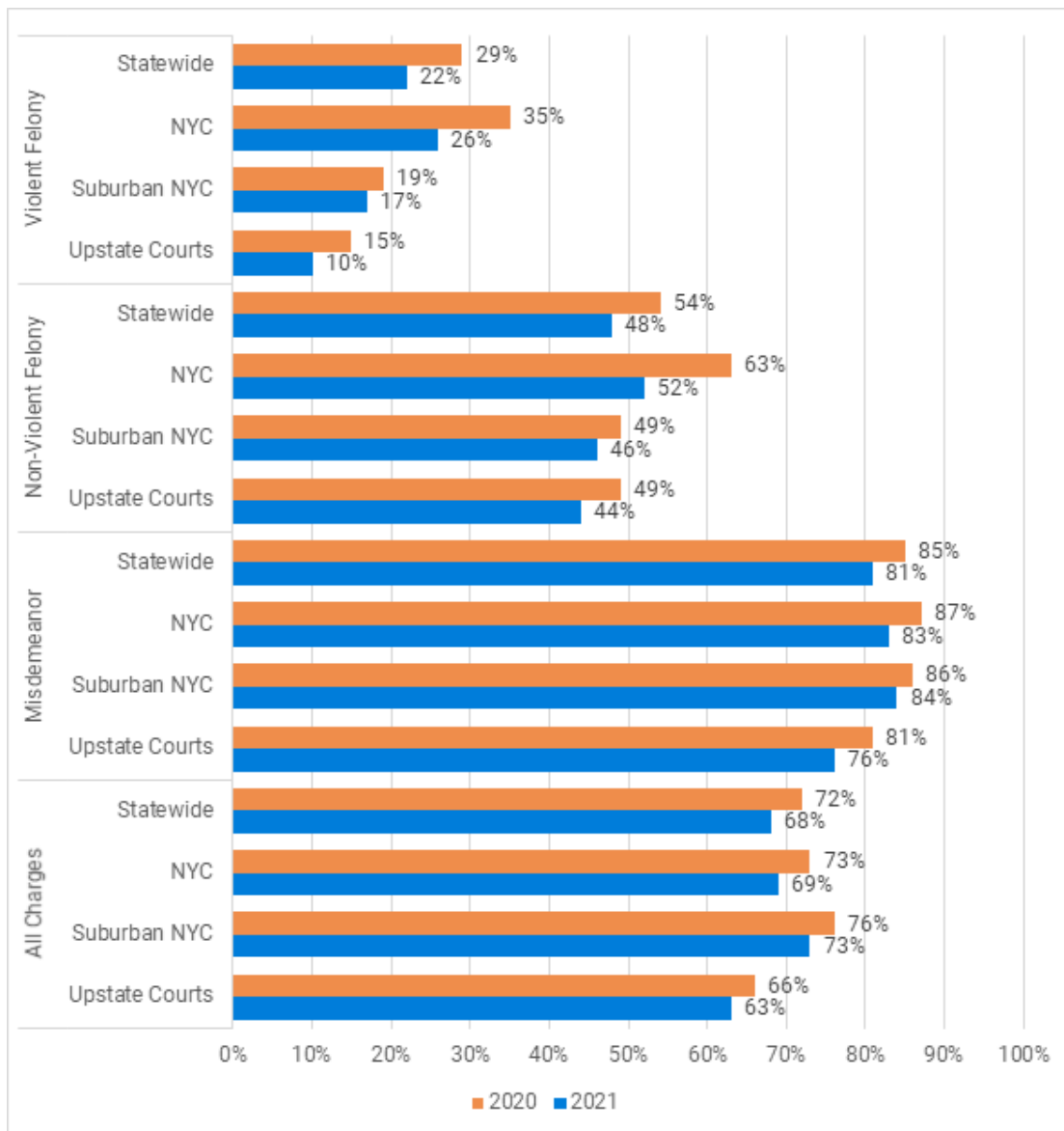


## ROR Rates

Because the reformed bail law establishes a presumption of release that requires ROR absent demonstrable evidence of a “risk of flight,” we expected ROR rates to increase. The data in table 2 confirms that this happened from 2019 to 2020 in Upstate and Suburban NYC (though not in NYC).

**But despite no further change in the applicable statute, ROR rates were lower in 2021 than 2020 for all charges and regions, with the largest declines in NYC among violent and non-violent felonies** (see figure 6). In both years, Upstate courts continued to have the lowest ROR rates for all charge types. NYC continued to have the highest ROR rate among felonies, while Suburban NYC had higher rates of ROR than NYC among misdemeanors in 2021.

Figure 6. ROR in 2020 and 2021 by Charge Level & Geography



## Electronic Monitoring

The reformed bail laws included several provisions related to non-monetary release conditions. One required pretrial supervision to be an option in all cases. Another allowed judges to order electronic monitoring for people charged with any felony and select misdemeanors,<sup>17</sup> where “no other realistic non-monetary condition or set of non-monetary conditions will suffice to reasonably assure a principal’s return to court.”

Overall, the use of electronic monitoring (EM) was more prevalent in Upstate and Suburban NYC than in NYC, where the use of EM has been negligible (only 5 cases in 2020 and 2021 combined) despite moves by the city in the early months of 2020 to release people held in jail to home confinement with EM in response to rising Covid-19 infections on Rikers Island.<sup>18</sup> Outside of NYC, EM was more often ordered in cases involving violent than non-violent felonies, particularly in Suburban NYC, where almost half (49%) of violent felony cases released with non-monetary conditions were ordered to EM, not pretrial supervision alone. In Upstate courts, EM was ordered in 16% of violent felony cases released with non-monetary conditions.

**Upshot: Non-monetary conditions have almost exclusively involved pretrial supervision in NYC, while at the opposite end of the spectrum, by 2021 such conditions in Suburban NYC mostly meant electronic monitoring for violent felony cases.**

**Table 3. Electronic Monitoring as a % of Releases with Non-Monetary Conditions by Geography & Charge Level**

	2020		2021	
	Total	%	Total	%
<b>Upstate Courts</b>	<b>3,601</b>		<b>3,673</b>	
Violent Felony	655	13%	531	16%
Non-Violent Felony	1,269	10%	1,206	11%
Misdemeanor	1,677	6%	1,936	7%
<b>Suburban NYC</b>	<b>3,739</b>		<b>4,876</b>	
Violent Felony	317	40%	484	49%
Non-Violent Felony	1,701	28%	2,180	31%
Misdemeanor	1,721	16%	2,212	13%
<b>NYC</b>	<b>7,246</b>		<b>12,802</b>	
Violent Felony	1,813	0%	3,118	0%
Non-Violent Felony	1,951	0%	2,887	0%
Misdemeanor	3,482	0%	6,797	0%
<b>Statewide</b>	<b>14,586</b>		<b>21,351</b>	
Violent Felony	2,785	8%	4,133	8%
Non-Violent Felony	4,921	12%	6,273	13%
Misdemeanor	6,880	5%	10,945	4%

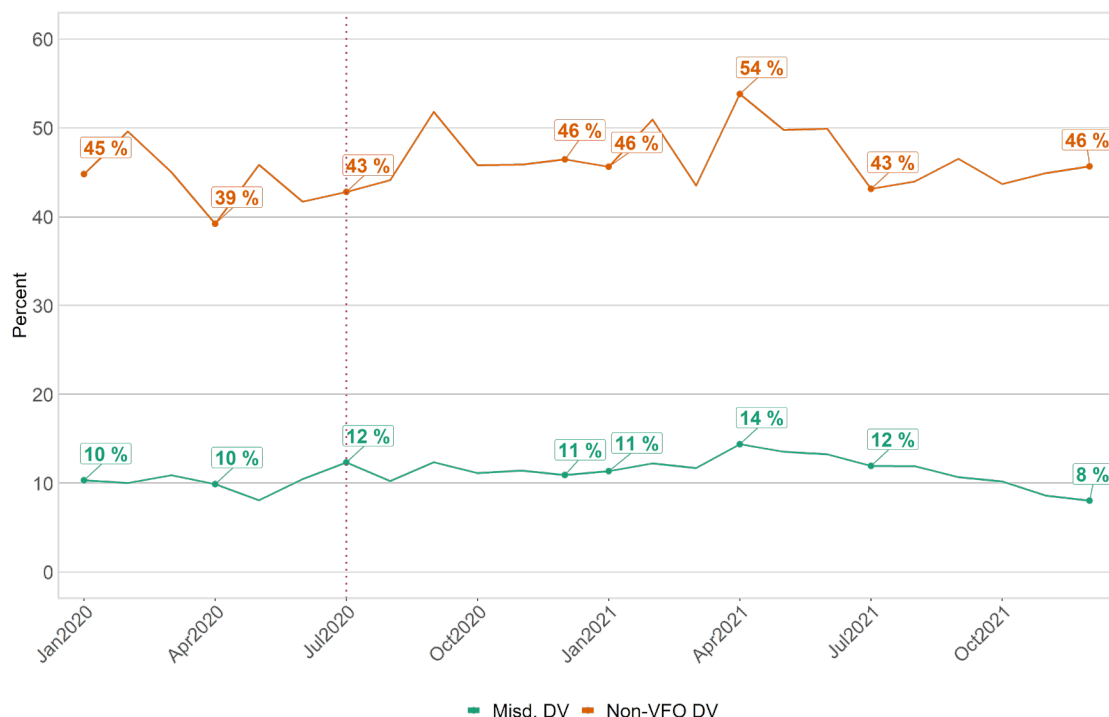
Note: Reliable data on the use of electronic monitoring prior to 2020 was not available.

## Statewide Rates of Bail & Remand by Charge Type, 2020-2021

Focusing on changes during bail reform implementation (2020 and 2021), we examined trends among 11 key categories of cases (see figures 7-9).

- Domestic Violence:** Statewide, bail and remand for misdemeanors and non-violent felonies involving domestic violence (DV) fell in the first few months of 2020 followed by an uptick immediately before the bail amendments went into effect in July 2020. (Misdemeanors comprise mostly assault 3<sup>rd</sup> degree [PL § 120.00]; non-violent felonies comprise mostly criminal contempt 1<sup>st</sup> degree [PL § 215.51]). From there, bail and remand for both categories of DV cases first increased and then remained relatively flat until April 2021, after which the proportion for misdemeanor cases decreased to less than 10% by December 2021 (see figure 7).
- Violent Felonies (*nearly all bail-eligible under reform*):** Bail/remand for violent felony offenses (robbery and burglary, assault, sex offenses, homicide, and firearms/weapons offenses) fell steeply in April 2020 (around the time of the pandemic's outbreak), followed by an overall 13 percentage-point increase from May to July (1,038 to 1,052 cases). From July 2020 onward, bail/remand remained relatively flat for most charges except for a moderate but consistent increase for felony weapon charges through to the end of 2021. *Bail/remand rates for four of these five charge types (except for assault) increased from the opening months of 2020 to the end of 2021—with robbery and burglary, as well as firearms/weapons cases, seeing the greatest net increases within the bail implementation period* (see figure 8).
- Additional Charges:** Amidst sizable month-to-month fluctuations, nonviolent felony drug cases and a range of nonviolent felony property cases<sup>19</sup> also had higher bail-setting at the end of 2021 compared to the beginning of 2020 (see figure 9).

Figure 7: Bail & Remand for Misdemeanor and Non-Violent Felony DV Cases, Statewide



Note: Dotted line marks when bail reform amendments went into effect in July 2020

Data Source: Office of Court Administration

Figure 8. Bail & Remand for Violent Felony Offenses, Statewide

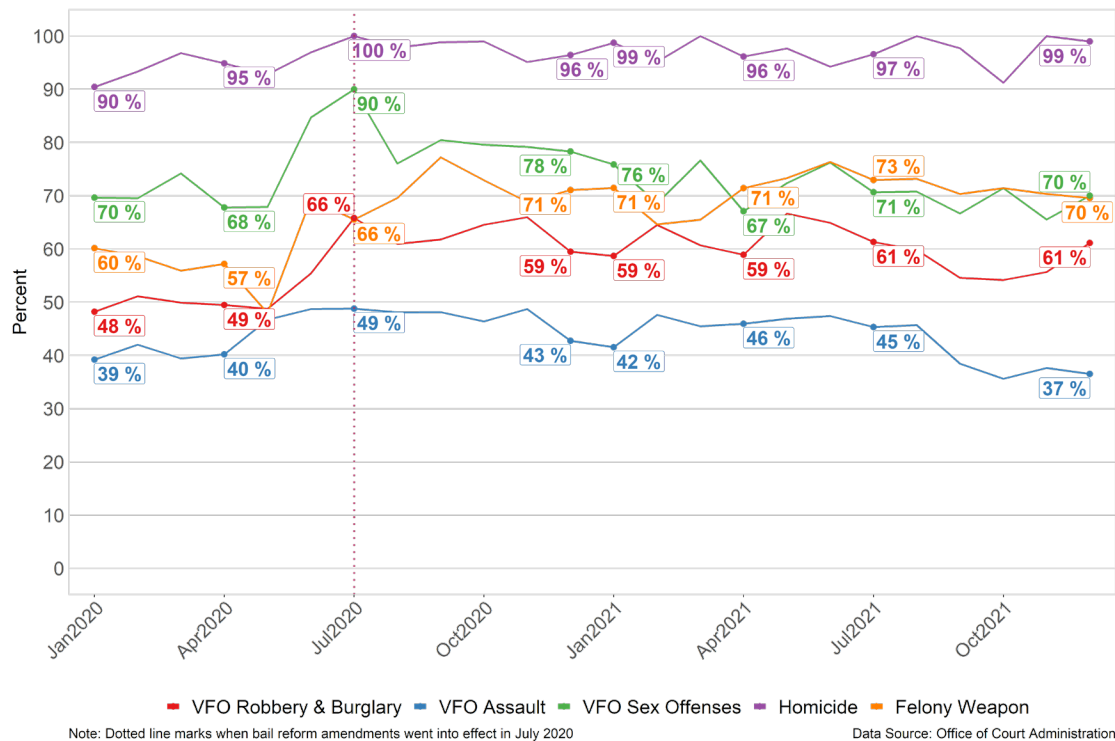
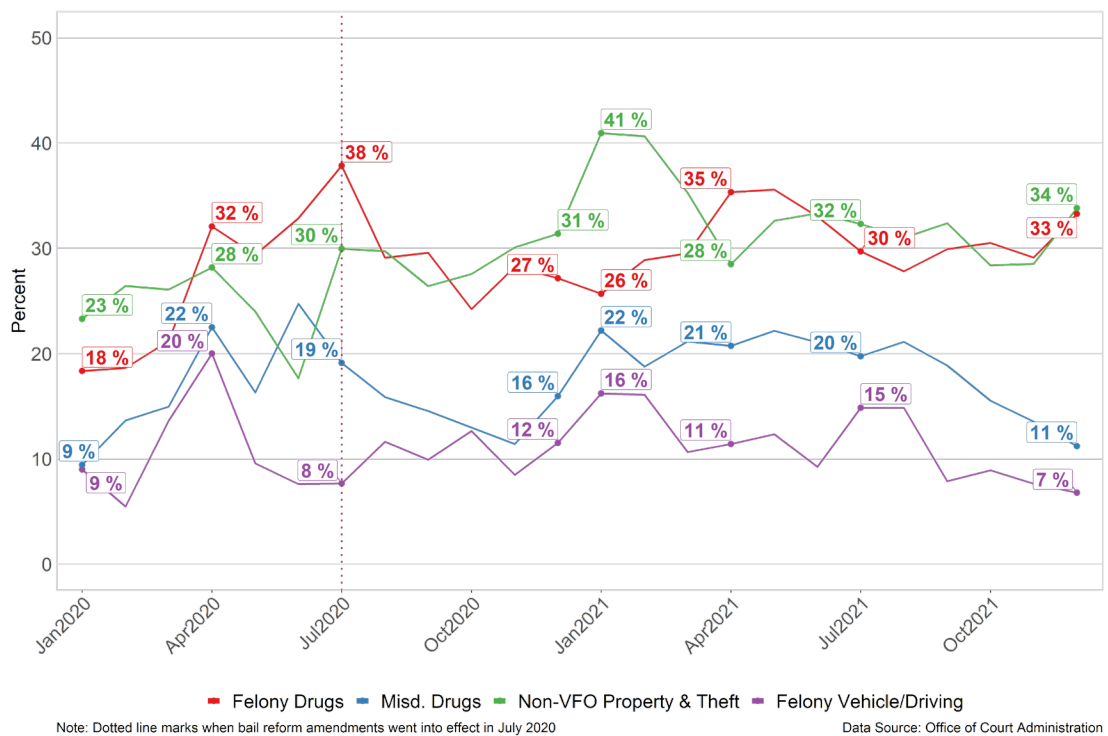


Figure 9. Bail & Remand for Drug Offenses, Non-VFO Property & Theft, and Felony Vehicle/Driving, Statewide



## The 2020 Bail Amendments: Statewide Rates of Bail & Remand for Burglary and Other Impacted Cases

Effective July 2, 2020, amendments went into effect making select categories of cases re-eligible for bail. In New York City, prior research found that the amendments' most impactful provisions were increasing bail eligibility for burglary in the 2<sup>nd</sup> degree, 2<sup>nd</sup> 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.<sup>20</sup> We examined these trends statewide (figures 10-13).

- **Burglary in the Second Degree:** Statewide, bail/remand for burglary in the 2<sup>nd</sup> degree (2<sup>nd</sup> subdivision) dropped from 37% in January 2020 to 33% in May. After modestly increasing from May to June, the bail/remand rate then spiked from 40% in June to 61% in July, when the 2020 amendments went into effect, before subsequently flattening out. This general pattern was most closely mirrored in NYC, where the June-to-July 2020 spike was from 27% to 61% facing bail or remand: a *34 percentage-point increase in a single month*. In Suburban NYC, while there was a far smaller change in the first month of the amendments, bail/remand ultimately increased from 24% in January 2020 to 73% by December 2020.
- **Harm to Person or Property:** For cases potentially falling under the "harm-harm" provision statewide, bail/remand fluctuated modestly from month-to-month, with no clear statewide change traceable to when the bail amendments went into effect. But compared to other regions this provision had a greater effect in NYC, where the bail/remand rate remained consistently higher in the six months after than before the amendments' effective date.
- **Other Amendment Provisions:** While the trendlines in figures 10-13 point to varying fluctuations, there was no dramatic effect attributable to the amendments in any of the three state regions when combining all other charges made re-eligible for bail in July 2020.

Figure 10: Bail & Remand for Burglary 2<sup>nd</sup> Degree and Amended Provision, Statewide

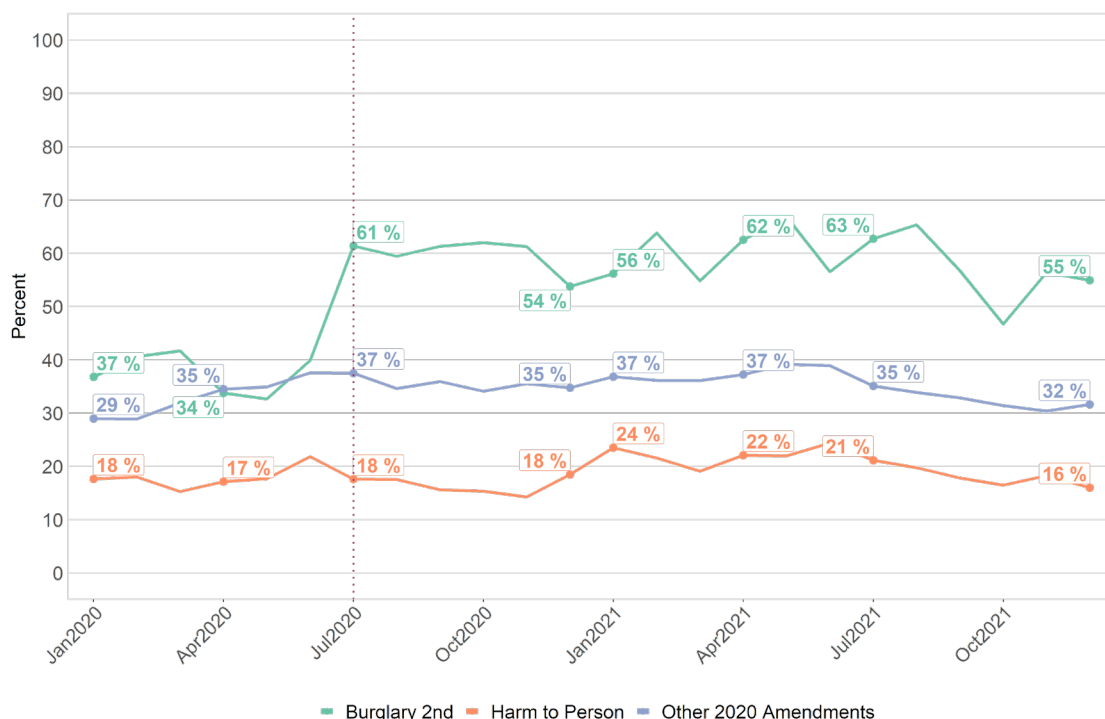




Figure 11. Bail & Remand for Burglary 2<sup>nd</sup> Degree and Amended Provisions, Upstate Courts

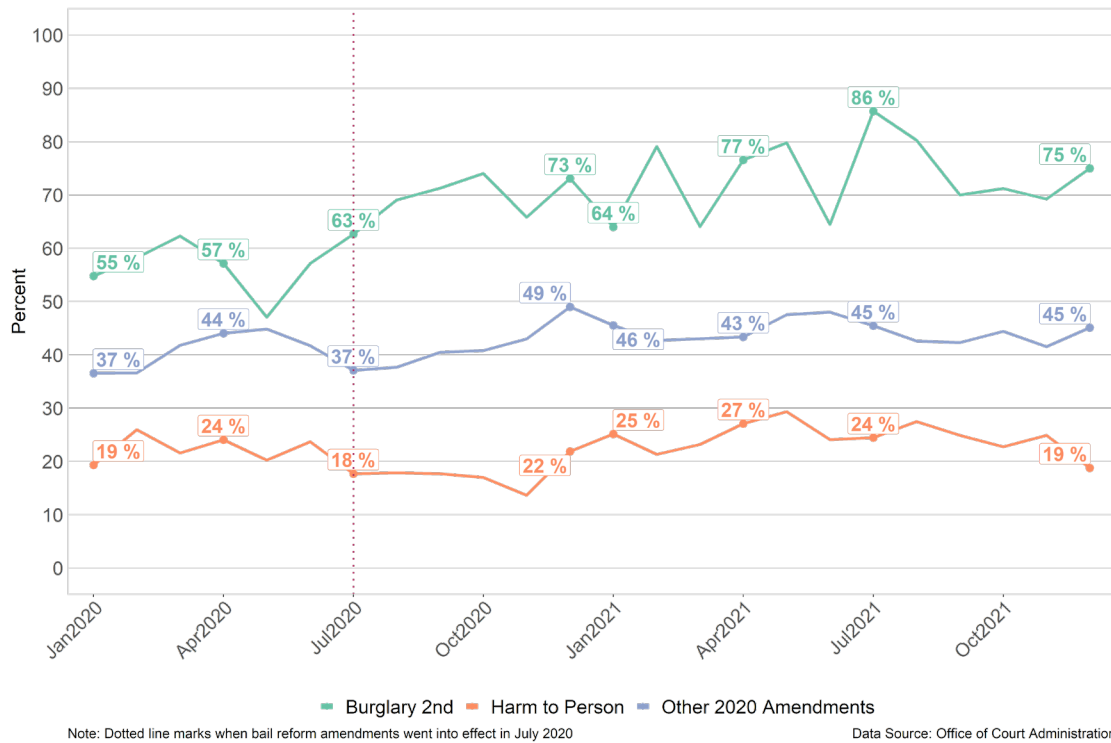


Figure 12. Bail & Remand for Burglary 2<sup>nd</sup> Degree and Amended Provisions, Suburban NYC

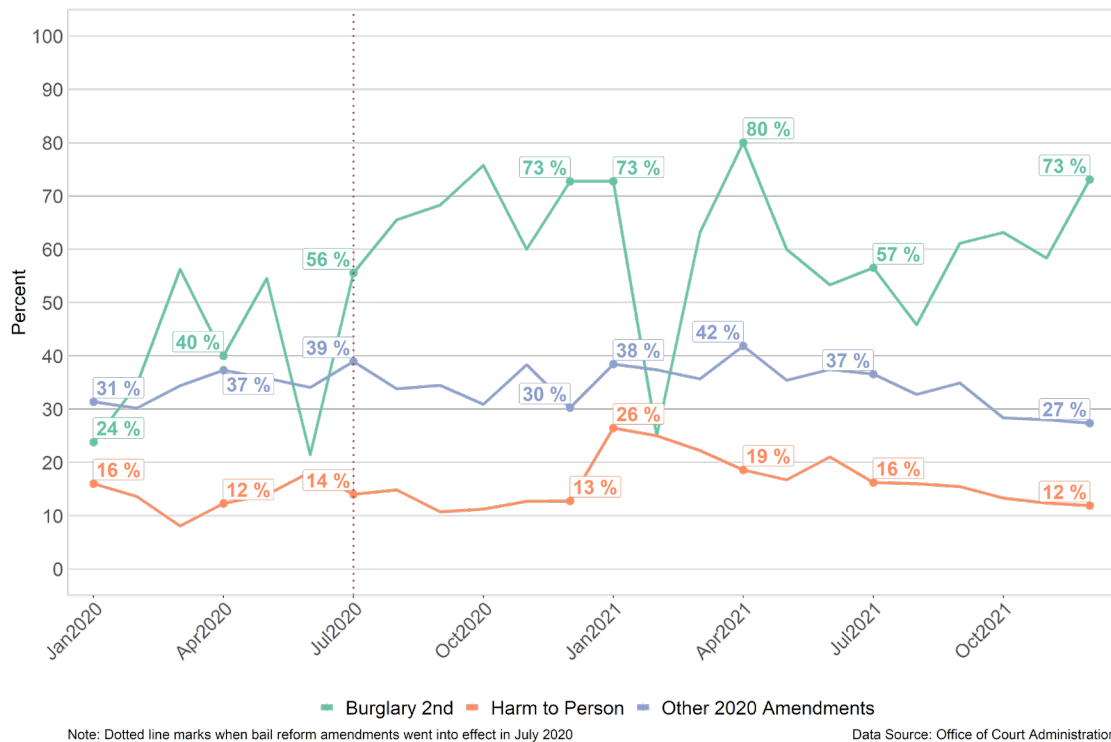
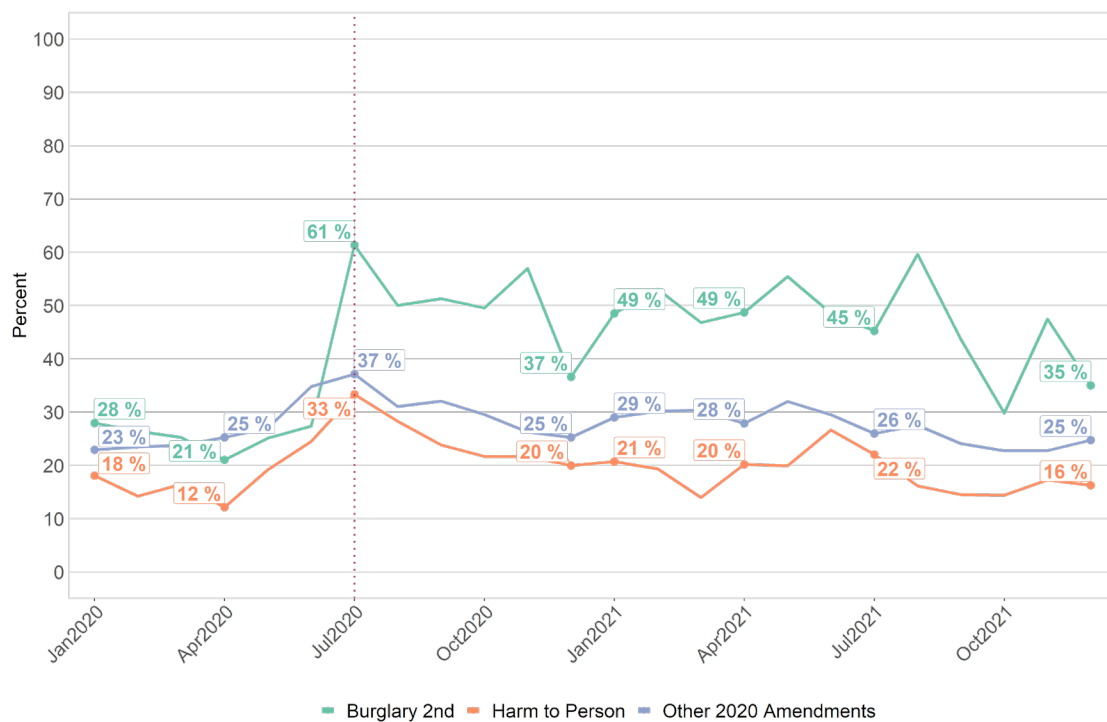




Figure 13. Bail & Remand for Burglary 2<sup>nd</sup> Degree and Amended Provisions, NYC



## Chapter 3 - Deep Dive into Bail Amounts and Payment Rates in 2020 and 2021

### Bail Amounts

Statewide, judges set higher bail in 2021 than in 2020, overall, driven by increases in bail amounts set on non-violent felony cases. Within regions, bail for non-violent felonies doubled Upstate and increased by 50% in Suburban NYC and NYC. Bail amounts also increased by 50% in violent felony cases in NYC and in misdemeanor cases in Suburban NYC. These increases are notable considering that there was no systemic change to bail amounts in either direction from 2019 to 2020.

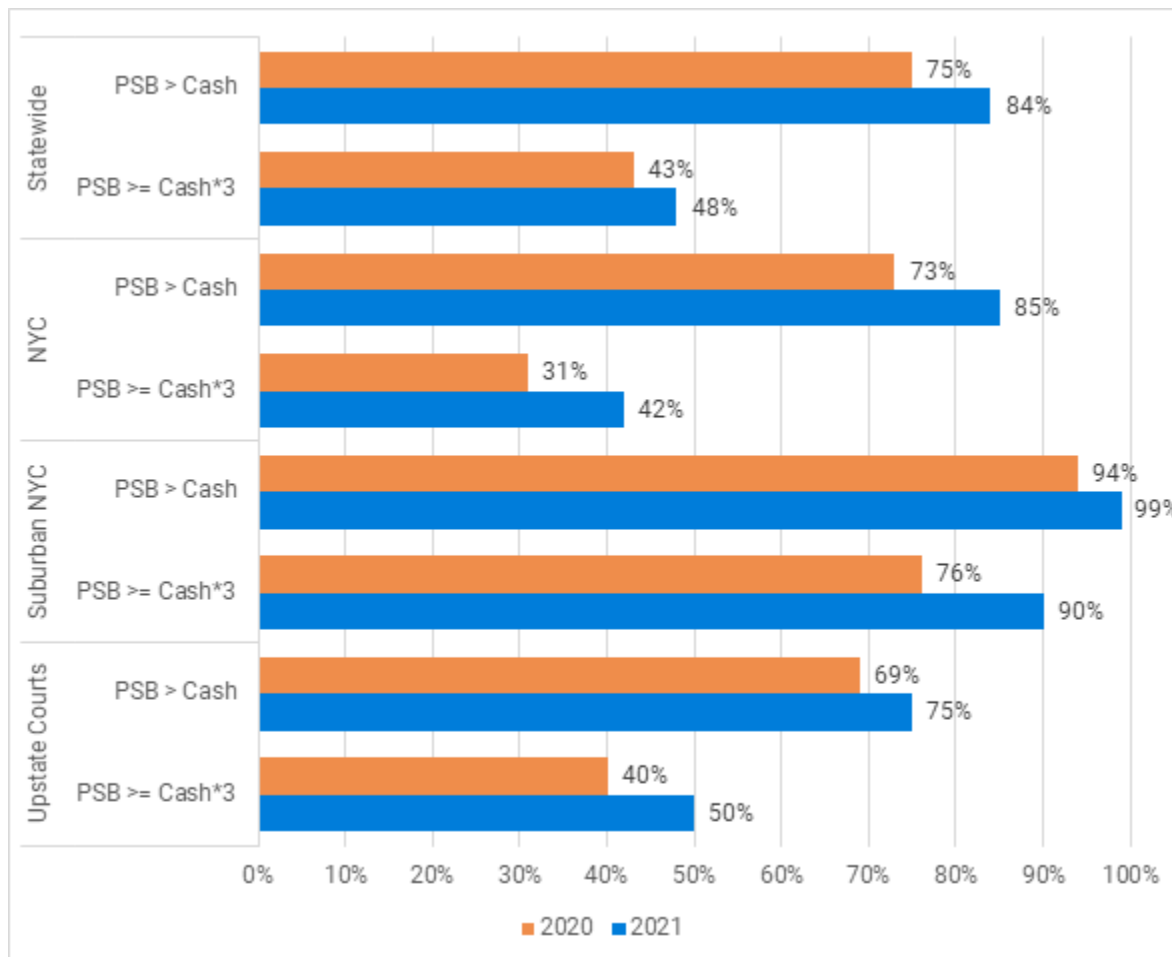
Table 4. Median Bail by Geography & Charge Level				
	2020		2021	
Upstate Courts				
Violent Felony	\$	10,000	\$	10,000
Non-Violent Felony	\$	2,500	\$	5,000
Misdemeanor	\$	500	\$	500
All	\$	2,500	\$	5,000
Suburban NYC				
Violent Felony	\$	15,000	\$	15,000
Non-Violent Felony	\$	5,000	\$	7,500
Misdemeanor	\$	1,000	\$	1,500
All	\$	5,000	\$	7,500
NYC				
Violent Felony	\$	10,000	\$	15,000
Non-Violent Felony	\$	7,500	\$	10,000
Misdemeanor	\$	2,500	\$	2,500
All	\$	7,500	\$	10,000
Statewide				
Violent Felony	\$	10,000	\$	15,000
Non-Violent Felony	\$	5,000	\$	7,500
Misdemeanor	\$	1,000	\$	1,500
All	\$	5,000	\$	7,500

### Partially Secured Bond

Under the new bail laws, judges are required to allow people to pay bail in any of at least three forms, one of which must be either a partially secured bond (PSB) or an unsecured surety bond. A partially secured bond only requires to people to pay an up-front deposit of 10% or less of the total bail amount. An unsecured bond does not require any up-front payment. In theory, judges should set PSB amounts equal to or less than the amount they set for cash bail, which must be paid in full. If judges do this, the PSB would offer people the opportunity to pay only 10% of the cash amount up-front, making it more affordable. (People would still be responsible for paying the balance if the individual absconded.) But in practice, the amount of a PSB is often higher than cash, essentially inflating the amount of bond that an individual is required to pay over the intended discount to 10%.

In 2020, judges set a higher PSB in 77% of 19,636 cases statewide, which increased to 84% of 15,194 in 2021. Moreover, PSB was at least three times the cash amount in almost half of cases in 2021.

Figure 14: Partially Secured Bond versus Cash by Geography, 2020-2021



The inflation of PSB amounts was especially prevalent in Suburban NYC, where judges almost never set a PSB at the same amount as cash and where the average ratio of PSB to total cash amount declined from 3.33 (individuals pay 33% of total bail amount instead of 10%) in 2020 to 5 (individuals pay 50% of total) in 2021.

Table 5. Average Ratio of PSB to Cash by Geography		
	2020	2021
Upstate	1.67	1.43
Suburban NYC	3.33	5.00
NYC	1.11*	2.00
Statewide	1.67	2.00

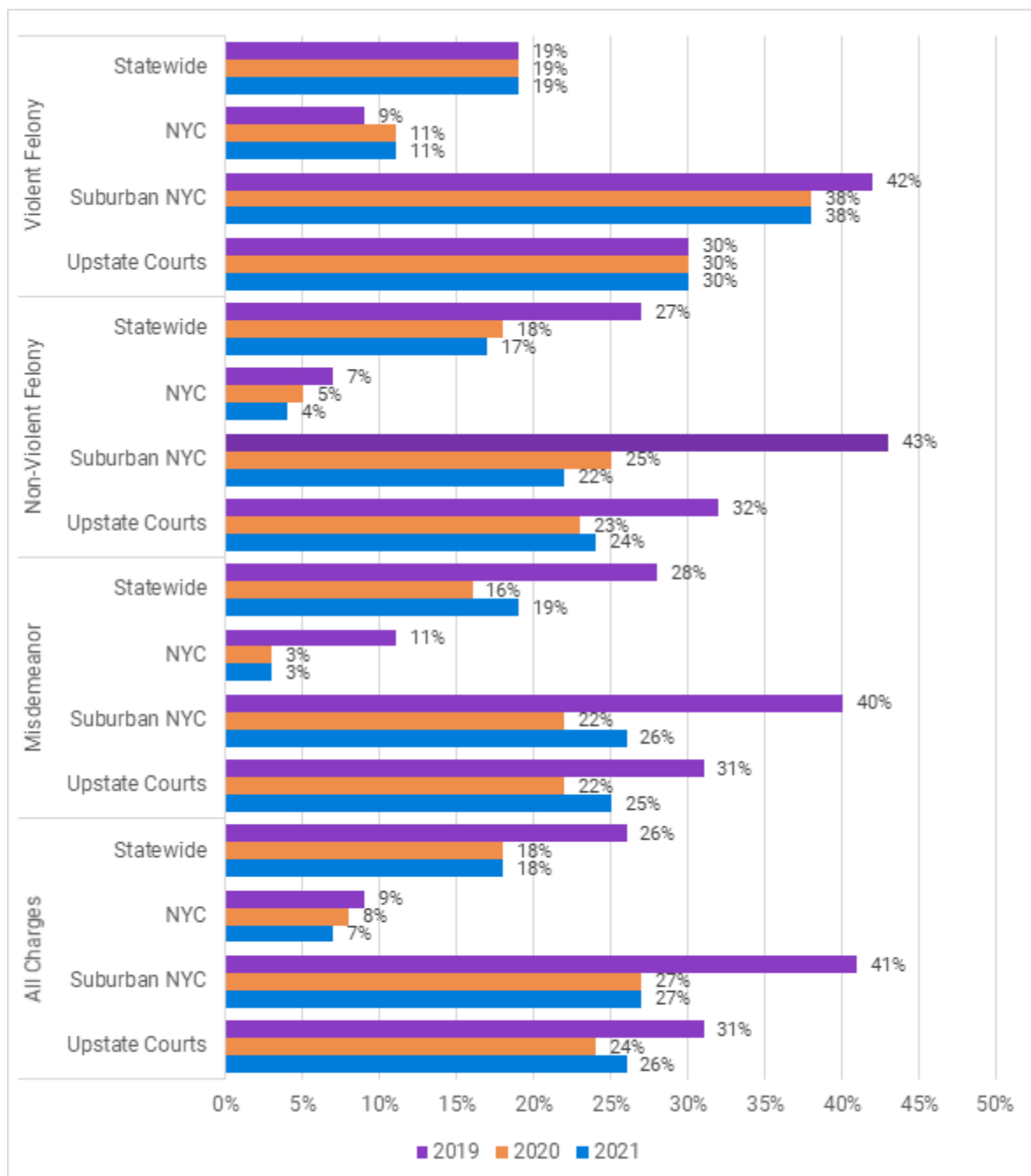
Note: Given the average ratio for 2021 and prior research suggesting that the average ratio for 2020 is greater than 2.0, there remains uncertainty regarding data quality for this data point.

## Bail Posting

While bail amounts increased for all charges statewide, the rate of bail posting was unchanged at 18% in 2020 and 2021 following an 8 percentage-point drop from 2019. Suburban NYC especially saw a 14 percentage-point decline from 2019 with just a small decrease in NYC and an uptick in Upstate courts in 2021.

In all years, people were more likely to post bail Upstate and in Suburban NYC compared to NYC. However, statewide, people charged with non-violent felonies and misdemeanors were much less likely to post bail in 2020 and 2021, especially in Suburban NYC with an 18 percentage-point drop from 2019. On the other hand, there was less change in violent felonies cases except for a 4 percentage-point decline in Suburban NYC.

Figure 7. Bail Posting by Geography & Charge level, 2019-2021



## Time to Payment

Statewide, of people who did post bail, around a third of bail payments were made on the same day that bail was set, while almost 80% were made within a week.<sup>21</sup> In NYC, almost 90% of bail was posted within a week, while a larger percentage of people Upstate took up to a month to post bail. People charged with violent felonies (e.g., assault, felony weapon charges) were most likely to make same-day payments (in almost 40% of cases) and posted bail within a week in around 90% of cases. On the other hand, people charged with petit larceny took the longest to post bail – up to three months in almost a quarter of cases in 2021.

Table 6. Time to Bail Posting (If Paid Bail) by Geography								
	Upstate Courts		Suburban NYC		NYC		Statewide	
	2020	2021	2020	2021	2020	2021	2020	2021
<b>Total</b>	<b>2,473</b>	<b>3,305</b>	<b>1,506</b>	<b>1,729</b>	<b>3,217</b>	<b>3,084</b>	<b>7,196</b>	<b>8,118</b>
<b>Same day</b>	34%	37%	31%	28%	34%	36%	33%	35%
<b>1 Week</b>	35%	35%	44%	43%	52%	52%	45%	43%
<b>1 Month</b>	22%	19%	13%	17%	11%	10%	15%	15%
<b>3 Months</b>	8%	9%	12%	11%	4%	2%	7%	7%

## Chapter 4 - Racial Disparities

Throughout the state, all racial/ethnic groups saw their lowest rates of bail-setting early into bail reform implementation (January to March 2020) and higher rates thereafter (see figure 16). Yet in relative terms, Black people had consistently higher rates of bail setting and remand in both 2020 and 2021 compared to Latinx and white people (see figures 17-18).

### Large Racial Disparities Among Violent Felonies

**In general, violent felonies—virtually all of which remained bail-eligible—saw larger racial disparities than non-violent felonies or misdemeanors in both 2020 and 2021.**

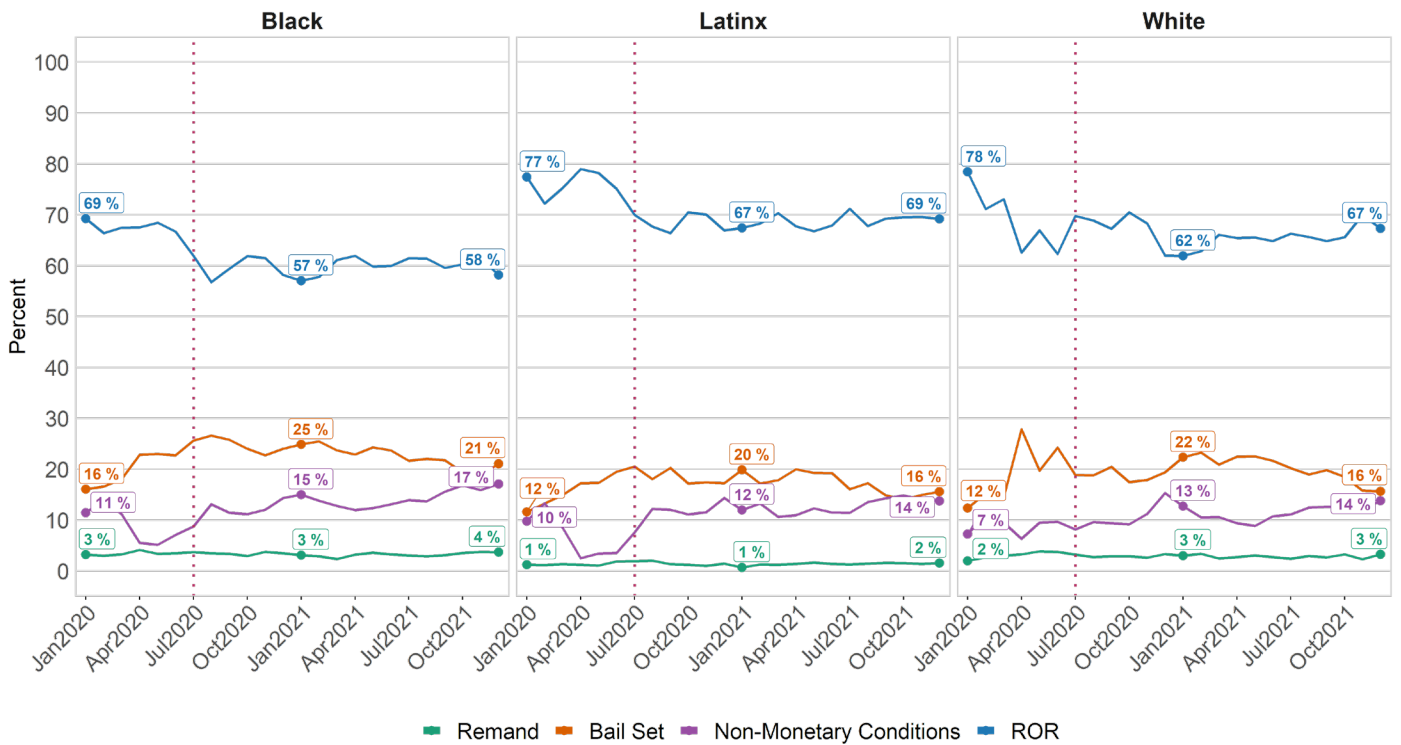
- **Upstate:** For violent felonies, the Black-white gap decreased slightly from 2020 to 2021; by 2021, 82% of Black people and 81% of Latinx people faced bail or remand on violent felony charges compared to 74% of white. For non-violent felonies, there was a smaller, 6 percentage-point Black-white gap in 2021.
- **Suburban NYC:** The Black-white gap for people charged with violent felonies reached 16 percentage points in 2021, with 66% and 67% of Black and Latinx people facing bail or remand compared to 50% of white people — more than three times the gap for non-violent felonies.
- **NYC:** On violent felony cases, the Black-white gap stood at 11 percentage points in 2019, 14 percentage points in 2020, and 13 percentage points in 2021 (when 56% of Black, 51% of Latinx, and 43% of white people charged with a violent felony faced bail or remand). Unlike in other regions, the gap was wider for non-violent felonies in 2021.<sup>22</sup>
- **Bail versus Remand Disparities:** For violent felonies, Latinx people faced the highest rates of bail setting in Upstate and Suburban NY in 2020 and 2021; but because Black people were more often remanded in general (see figure 16), there were marginal Black-Latinx differences for bail/remand combined.

### Paradoxical Effects Statewide Versus Within Region

**In all comparisons, racial disparities are smaller for the entire state than for each of the three regions, individually.** In fact, across both 2020 and 2021, there is no statewide Black-white difference on non-violent felonies, even though the graphs in figure 16 point to modest racial disparities in all three regions.

**Explanation:** Because there are far larger percentages of white people living outside than inside NYC, and because bail-setting is generally more prevalent outside NYC, white people facing charges are disadvantaged based on where they live. However, regional disparities notwithstanding, judges within each of the three regions tend to set bail more often for Black and Latinx than white people. In short, regional differences in racial/ethnic composition and judicial decision-making contribute to inequities; in the end, race affects people's outcomes regardless of where they live.

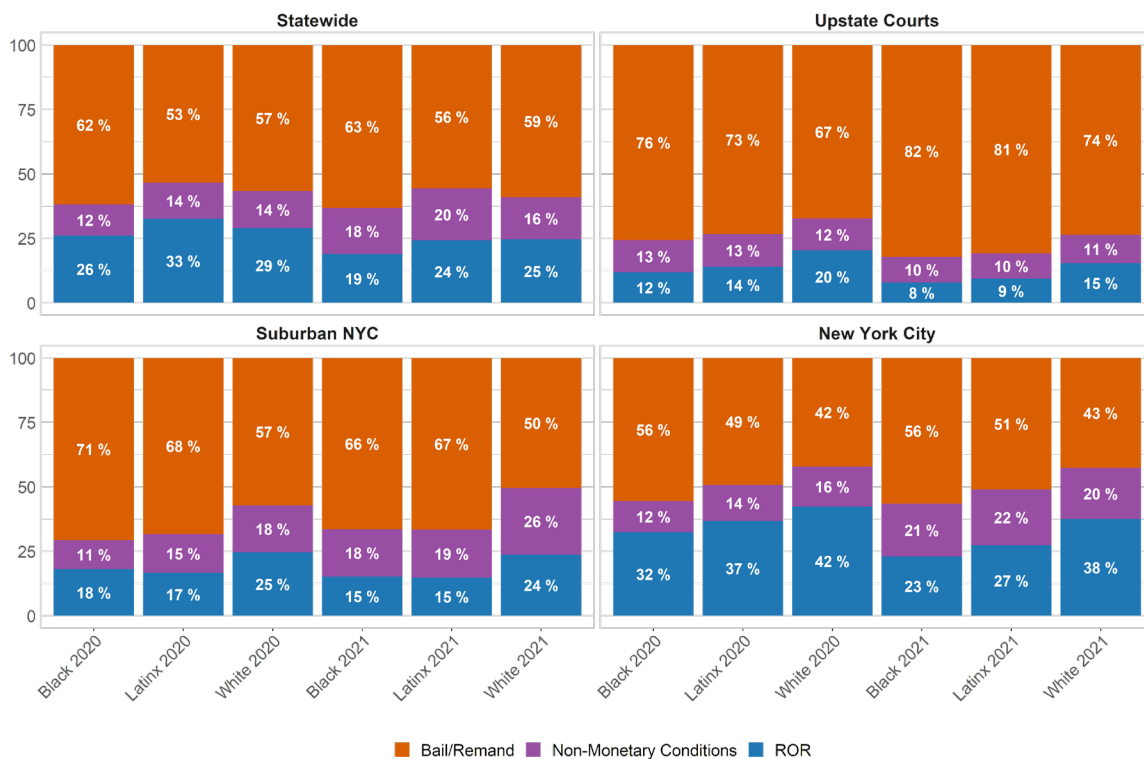
Figure 16. Monthly Release Outcomes by Race, Statewide



Note: Dotted line marks when bail reform amendments went into effect in July 2020

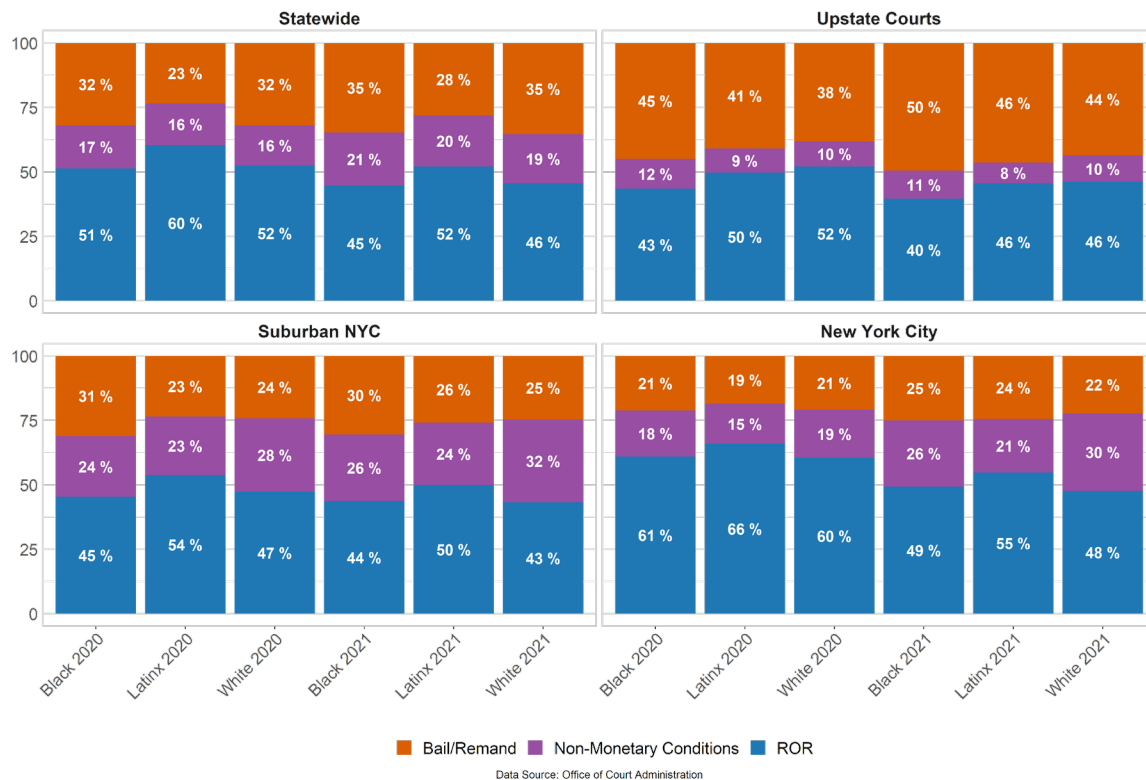
Data Source: Office of Court Administration

Figure 17. Annual Release Outcomes for VFOs by Race, Statewide



Data Source: Office of Court Administration

Figure 18. Annual Release Outcomes for Non-VFOs by Race, Statewide



## Racial Disparities in Bail Setting

Bail amounts were generally higher in 2021 and there was more variation between groups compared to 2020. In non-violent felony cases, the Black-white gap decreased to almost 1:1 while in misdemeanor cases, bail amounts in 2021 were higher for white people compared to Black people. In contrast, the difference in bail amounts between Latinx and white people in non-felony and misdemeanor cases was greater in 2021 than in 2020. Bail amounts in violent felony cases increased for all groups equally, and there were no disparities between groups in 2020 or 2021.

Table 7. Median Bail by Charge Level & Race/Ethnicity				
	2020		2021	
Violent Felony				
Black	\$	10,000	\$	15,000
Latinx	\$	10,000	\$	15,000
White	\$	10,000	\$	15,000
Non-Violent Felony				
Black	\$	7,500	\$	8,000
Latinx	\$	5,000	\$	5,000
White	\$	5,000	\$	7,500
Misdemeanor				
Black	\$	1,000	\$	1,000
Latinx	\$	1,000	\$	1,500
White	\$	1,000	\$	1,125



Table 7. Median Bail by Charge Level & Race/Ethnicity (Continued)					
		2020		2021	
All Charges					
Black	\$	7,500	\$	8,000	
Latinx	\$	5,000	\$	5,000	
White	\$	5,000	\$	7,500	

## Bail Payment Rates by Race

Although bail amounts generally increased, white people had higher rates of bail posting in 2021, especially in misdemeanor cases, while there was little change in rates of bail posting for Black and Latinx people. White people also had the highest rates overall and posted bail in a quarter of violent felony cases compared to 20% among Black and Latinx people even though median bail was \$15,000 for all groups. In contrast, Latinx people had the lowest rates of bail posting especially in non-violent felony cases despite having lower median bail amounts, while bail posting among Black people generally reflected rates statewide, which stayed consistent at 18% in both 2020 and 2021.

Table 8. Bail Posting by Charge Level & Race/Ethnicity				
	2020		2021	
	Total	%	Total	%
<b>Violent Felony</b>	<b>10,458</b>		<b>11,241</b>	
Black	6,322	18%	6,928	18%
Latinx	2,669	16%	2,832	17%
White	1,437	25%	1,431	25%
<b>Non-Violent Felony</b>	<b>6,647</b>		<b>7,834</b>	
Black	3,378	18%	3,800	17%
Latinx	1,329	15%	1,713	13%
White	1,909	19%	2,275	20%
<b>Misdemeanor</b>	<b>8,653</b>		<b>11,487</b>	
Black	4,172	14%	5,314	15%
Latinx	1,629	14%	2,206	13%
White	2,807	19%	3,874	23%
<b>All</b>	<b>25,758</b>		<b>30,562</b>	
Black	13,872	17%	16,042	17%
Latinx	5,627	15%	6,751	15%
White	6,153	20%	7,580	23%

## Conclusion

This report looks at pretrial release and bail outcomes in New York State in the first two years of bail reform implementation. In addition to an update to previous DCJ work on the early impacts of bail reform, this report takes a deeper dive into bail and release decisions including the use of electronic monitoring as a non-monetary release condition, as well as a more focused examination of bail setting and bail payment. Our findings show that by year two of bail reform implementation, Covid-19 disruption and other policy changes notwithstanding, New York State judges generally reduced bail setting and increased the use of non-monetary conditions in adherence with the new statutes. Moreover, we find that racial disparities in bail setting and remand were slightly smaller in 2021 in the aggregate, although the Black-white gap widened within regions.

## ACKNOWLEDGEMENTS

This work would not have been possible without support from Arnold Ventures. The Data Collaborative for Justice (DCJ) is especially grateful to Jeremy Travis, Executive Vice President of Criminal Justice, Kristin Bechtel, Director of Criminal Justice Research, and Tyrell Connor, Criminal Justice Research Manager, for their ongoing support.

Thanks also to Carolyn Cadoret and Karen Kane at the Office of Court Administration, and Leigh Bates at the New York State Division of Criminal Justice Services for their thoughtful guidance and feedback on this report.

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The opinions, findings, and conclusions expressed in this publication are those of the authors and not those of Arnold Ventures.

## APPENDIX A: RELEASE DECISIONS IN 2020 AND 2021 BY COURT

	2020				2021			
	Total	Bail/Remand	Non-Monetary Conditions	ROR	Total	Bail/Remand	Non-Monetary Conditions	ROR
<b>Upstate Courts</b>	<b>50,185</b>				<b>52,852</b>			
Albany County								
Albany City Criminal Court	1,742	28%	9%	62%	2,357	32%	10%	58%
Cohoes City Court	391	14%	14%	72%	498	19%	13%	67%
Watervliet City Court	178	26%	9%	65%	306	23%	15%	62%
Broome County								
Binghamton City Court	1,827	33%	6%	61%	1,833	33%	6%	61%
Cattaraugus County								
Olean City Court	471	20%	5%	76%	542	29%	4%	67%
Salamanca City Court	297	28%	5%	67%	422	23%	3%	74%
Cayuga County								
Auburn City Court	766	34%	1%	65%	835	33%	1%	66%
Chautauqua County								
Dunkirk City Court	384	22%	5%	73%	432	30%	9%	61%
Jamestown City Court	2,289	31%	10%	59%	2,298	37%	14%	49%
Chemung County								
Elmira City Court	1,107	34%	1%	66%	1,257	37%	1%	62%
Chenango County								
Norwich City Court	296	30%	15%	55%	349	41%	2%	57%
Clinton County								
Plattsburgh City Court	529	30%	15%	55%	507	27%	12%	61%
Columbia County								
Hudson City Court	222	11%	21%	68%	250	19%	20%	61%
Cortland County								
Cortland City Court	508	30%	5%	66%	561	30%	3%	66%
Dutchess County								
Beacon City Court	218	19%	3%	78%	176	14%	5%	81%
Poughkeepsie City Court	610	42%	11%	47%	559	46%	10%	44%
Erie County								
Buffalo City Court	7,433	29%	1%	70%	6,446	36%	0%	64%
Lackawanna City Court	341	22%	18%	59%	414	24%	23%	52%
Tonawanda City Court	301	24%	15%	61%	356	19%	6%	76%
Fulton County								
Gloversville City Court	341	43%	7%	50%	372	51%	6%	42%
Johnstown City Court	157	7%	0%	93%	230	16%	0%	84%
Genesee County								
Batavia City Court	442	28%	12%	61%	637	30%	11%	59%
Herkimer County								
Little Falls City Court	62	27%	2%	71%	120	29%	0%	71%

	2020				2021			
	Total	Bail/Remand	Non-Monetary Conditions	ROR	Total	Bail/Remand	Non-Monetary Conditions	ROR
Jefferson County								
Watertown City Court	905	27%	4%	69%	1,090	29%	4%	67%
Madison County								
Oneida City Court	584	17%	0%	82%	675	20%	0%	79%
Monroe County								
Rochester City Court	5,844	27%	14%	59%	5,131	30%	11%	58%
Montgomery County								
Amsterdam City Court	414	21%	0%	79%	592	20%	0%	81%
Niagara County								
Lockport City Court	585	18%	0%	81%	616	25%	1%	74%
Niagara Falls City Court	2,177	19%	12%	69%	2,115	23%	12%	65%
North Tonawanda City Court	407	27%	2%	71%	534	29%	3%	68%
Oneida County								
Rome City Court	631	22%	2%	76%	1,129	28%	1%	70%
Sherrill City Court	8	-	-	100%	14	50%	-	50%
Utica City Court	1,684	27%	2%	71%	1,746	28%	3%	59%
Onondaga County								
Syracuse City Court	5,170	30%	12%	57%	5,089	35%	12%	52%
Ontario County								
Canandaigua City Court	270	17%	9%	74%	236	22%	8%	69%
Geneva City Court	270	19%	16%	65%	253	28%	10%	62%
Orange County								
Middletown City Court	845	21%	0%	79%	1,144	26%	0%	74%
Newburgh City Court	915	23%	2%	75%	1,239	21%	1%	77%
Port Jervis City Court	257	18%	1%	81%	374	25%	-	75%
Oswego County								
Fulton City Court	409	15%	1%	84%	647	23%	2%	75%
Oswego City Court	847	26%	1%	73%	915	25%	3%	72%
Otsego County								
Oneonta City Court	214	22%	-	78%	238	24%	0%	76%
Rensselaer County								
Rensselaer City Court	137	15%	9%	75%	148	16%	3%	80%
Troy City Court	1,183	22%	13%	65%	1,128	27%	13%	60%
Saratoga County								
Mechanicville City Court	241	11%	7%	81%	256	8%	13%	79%
Saratoga Springs City Court	815	20%	17%	63%	788	19%	12%	68%
Schenectady County								
Schenectady City Court	1,764	30%	9%	62%	1,963	33%	11%	56%

	2020				2021			
	Total	Bail/Remand	Non-Monetary Conditions	ROR	Total	Bail/Remand	Non-Monetary Conditions	ROR
St. Lawrence County								
Ogdensburg City Court	333	32%	8%	60%	416	33%	3%	64%
Steuben County								
Corning City Court	445	23%	5%	72%	408	24%	3%	69%
Hornell City Court	258	14%	7%	82%	388	22%	6%	72%
Tompkins County								
Ithaca City Court	369	27%	1%	72%	396	24%	4%	72%
Ulster County								
Kingston City Court	814	15%	2%	82%	863	22%	3%	75%
Warren County								
Glens Falls City Court	478	21%	5%	74%	564	29%	9%	63%
<b>Suburban New York City</b>	<b>41,913</b>				<b>44,560</b>			
Nassau County								
Glen Cove City Court	102	-	-	100%	92	5%	-	95%
Long Beach City Court	146	11%	7%	82%	284	15%	4%	81%
Nassau District Court	10,604	15%	20%	65%	15,210	11%	20%	69%
Suffolk County								
Suffolk 1st District Court	24,535	11%	6%	83%	22,424	15%	6%	79%
Suffolk 2nd District Court	14	-		100%	21	-		100%
Suffolk 5th District Court	3	-		100%	5	-		100%
Suffolk 6th District Court	10	-		100%	8	-		100%
Westchester County								
Mount Vernon City Court	1,422	21%	0%	79%	1,193	20%	1%	79%
New Rochelle City Court	850	29%	-	71%	958	26%	5%	69%
Peekskill City Court	399	23%	1%	76%	471	27%	0%	72%
Rye City Court	72	6%	7%	88%	101	7%	1%	92%
White Plains City Court	1,079	26%	1%	73%	1,136	26%	2%	72%
Yonkers City Court	2,677	33%	6%	61%	2,657	36%	15%	49%
<b>New York City</b>	<b>74,075</b>				<b>90,760</b>			
Bronx	13,510	15%	5%	79%	15,114	16%	10%	73%
Brooklyn	22,074	16%	9%	74%	26,927	14%	13%	72%
Manhattan	16,607	21%	16%	63%	22,139	20%	20%	59%
Queens	18,044	12%	9%	78%	21,739	11%	13%	74%
Staten Island	3,840	17%	14%	68%	4,841	16%	13%	70%

## Endnotes

- 1 Bail Elimination Act of 2019, S.B. 2101, 2019-20202 Reg. Sess. (NY, 2019). Retrieved from <https://www.nysenate.gov/legislation/bills/2019/s2101/amendment/original>.
- 2 Lu, O., Bond, E., Chauhan, P., & Rempel, M. (2022). *Bail reform in action: Pretrial release outcomes in New York State, 2019-2020*. New York, NY: Data Collaborative for Justice. Available at <https://datacollaborativeforjustice.org/work/bail-reform/bail-reform-in-action-pretrial-release-outcomes-in-new-york-state-2019-2020/>; 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/sites/default/files/media/document/2021/One\\_Year\\_Bail\\_Reform\\_NYS.pdf](https://www.courtinnovation.org/sites/default/files/media/document/2021/One_Year_Bail_Reform_NYS.pdf); New York State Division of Criminal Justice Services. (2022). *Supplemental Pretrial Release Data Summary Analysis: 2019-2021*. Available at <https://datacollaborativeforjustice.org/wp-content/uploads/2022/09/FINAL-DCJS-Public-Briefing-on-Supplemental-Pretrial-Release-Data-9-21-22.pdf>.
- 3 Bail setting was already declining pre-reform, from around 13% of arraignments at the start of 2019 to around 5% in January 2020. See Lu, O., Bond, E., Chauhan, P., & Rempel, M. (2022). Op. cit.; This decline is due in part to NYC's already well-established supervised released programs. See also Fox, A., & Koppel, S. (2021). *Pretrial release without money: New York City, 1987-2020*. New York, NY: New York Criminal Justice Agency. Available at <https://www.nycja.org/publications/pretrial-release-without-money-new-york-city-1987-2020>.
- 4 Kim, J., Hood, Q., & Connors, E. (2022). *New York State jail population brief, January 2019-December 2020*. New York, NY: Vera Institute of Justice. Available at <https://www.vera.org/downloads/publications/new-york-state-jail-population-brief-2019-2020.pdf>. An update to this report with data through the first half of 2021 is forthcoming and will be available at <https://www.vera.org/publications/the-impact-of-new-york-bail-reform-on-statewide-jail-populations>. We recognize that some results in the Vera report do not align with findings presented here (such as the differences in jail population and arraignments), due to ways our analyses differ fundamentally in terms of data source, unit of analysis, time frame, and geographic coverage. Therefore, readers should exercise caution before making direct comparisons between the two reports. The Data Collaborative for Justice and Vera Institute of Justice shared their reports and compared data sources and methods in advance of publication in order to reach this conclusion.
- 5 New York State Division of Criminal Justice Services. (2022). *Monthly jail population trends*. Available at [https://www.criminaljustice.ny.gov/crimnet/ojsa/jail\\_population.pdf](https://www.criminaljustice.ny.gov/crimnet/ojsa/jail_population.pdf).
- 6 As of October 2022, the pretrial jail population in New York State was 11,622, compared to 10,310 in January 2020.
- 7 In 2021, 16 people died at the Rikers Island jail complex by suicide, drug overdose, Covid-19 complications, or other fatal health emergencies. An investigation by the New York City Board of Correction found systemic failures around staffing, supervision, medical intervention, and emergency response that contributed to the deaths. Deaths in 2022 have so far outpaced 2021, with 14 as of September 14<sup>th</sup>; four by suicide and four from overdose. See NYC Board of Correction. (2022). *Report and recommendations on 2021 suicides and drug-related deaths in New York City Department of Correction custody*. Available at <https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/2021-suicides-and-drug-related-deaths-report-and-chs-response.pdf>. See also Ransom, J., & Bromwich, J.E. (2022, September 27). Tracking the deaths in New York City's jail system in 2021. *New York Times*. Retrieved from <https://www.nytimes.com/article/rikers-deaths-jail.html>. For more data on jail conditions, operations, and population characteristics, see NYC Comptroller. (2022). *Department of Correction (DOC) – Dashboard*. Available at <https://comptroller.nyc.gov/services/for-the-public/department-of-correction-doc/dashboard/>.



8 These factors include similar increases in violent crimes in other jurisdictions across the country with and without recent bail reforms, research showing the decreases in crime after bail reform implementation, and the extreme economic and social disruptions caused by Covid-19. For an extended discussion see Lu, O., Bond, E., Chauhan, P., & Rempel, M. (2022). Op. cit.

9 While crime has increased in New York in the same time frame as bail reform implementation, no available reliable data points to bail reform as the primary driver of this increase. Analyses of state data show that 20% of people released under the new law were rearrested for any offense and only 2% were rearrested for a violent felony offense. In NYC, NYPD data shows that in the first half of 2020, only one person released under bail reform was charged with a shooting offense. See Grawert, A., & Kim, N. (2022). *The facts on bail reform and crime in New York State*. New York, NY: Brennan Center for Justice. Available at <https://www.brennancenter.org/our-work/research-reports/facts-bail-reform-and-crime-rates-new-york-state>.

10 New York State Division of Criminal Justice Services (2022). *Index crimes for New York State, New York City, and non-New York City*. Retrieved from <https://www.criminaljustice.ny.gov/crimnet/ojsa/stats.htm>.

11 New York State Division of Criminal Justice Services (2022). *Shooting incidents, shooting victims, and individuals killed by gun violence*. Retrieved from <https://www.criminaljustice.ny.gov/crimnet/ojsa/GIVE%20Monthly.pdf>.

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16 Less than 1% of cases in 2019 had bail set at \$1 (1,119), compared to 4% in 2020 (7,403 cases) and 5% in 2021 (10,344 cases).

17 Rempel, M., & Rodriguez, K. (2019). *Bail reform in New York: Legislative provisions and implications for New York City*. New York, NY: Center for Court Innovation. Available at [https://www.courtinnovation.org/sites/default/files/media/document/2019/Bail\\_Reform\\_NY\\_full\\_0.pdf](https://www.courtinnovation.org/sites/default/files/media/document/2019/Bail_Reform_NY_full_0.pdf).

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19 Non-violent felony property and theft includes burglary 3<sup>rd</sup> degree (PL § 140.20) and criminal trespass (PL § 140.15 and PL § 140.17), criminal mischief and related offenses (PL § 145), robbery 3<sup>rd</sup> degree (PL § 160.05), and other theft-related offenses (PL § 165).

20 Rempel, M., & Weill, J. (2021). Op. cit.

21 Since the data does not follow felony cases through indictment and transfer to Superior Court, we cannot account for instances where an individual pays bail at a later point post-transfer. Therefore, we may be overestimating the proportion of cases where bail is paid within a week of bail setting.

22 Data for 2019 is only available for New York City and, therefore, not displayed in graphics.



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STRENGTH IN NUMBERS

