Does New York's Bail Reform Law Impact Recidivism? A Quasi-Experimental Test in New York City: Summary of Findings

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Passed April 1, 2019, New York's bail reform took effect on January 1, 2020, prohibiting cash bail for the vast majority of misdemeanors and nonviolent felonies. Judges could release people with these charges on their own recognizance, order non-monetary conditions such as supervised release, or in limited circumstances order electronic monitoring. But they could no longer set bail or detain people.

Bail reform also included provisions restricting the use of bail and detention even in legally eligible cases, including virtually all violent felonies: (1) The law made all cases eligible for supervised release regardless of the charge; (2) The law required judges to release people on their own recognizance unless they pose a demonstrable "risk of flight"; (3) Even when finding a risk of flight, judges must set the "least restrictive" condition(s) necessary to assure court attendance; and (4) Judges must consider what people can afford to pay before setting bail.

Three months into implementation, legislators amended bail reform in April 2020. Put into effect on July 2, 2020, the amendments returned discretion to judges to set bail or detain people for certain charges or circumstances originally made bail ineligible.

Purpose of the Current Study

With support from Arnold Ventures, we estimated the impact of the original bail reforms and the 2020 amendments on recidivism in New York City.

While recidivism is a critically important outcome on the minds of decision-makers and the public, we caveat that it is not the only outcome of interest when evaluating bail reform. Legislators passing bail reform laws in New York and elsewhere have sought to advance a range of goals that include maintaining people's safety as well as curtailing pretrial incarceration while people are presumed innocent of a crime, reducing the role of money over people's ability to secure their pretrial liberty, and addressing racial disparities in who is detained before trial and who is not. Prior studies consistently indicate that bail reform has significantly reduced the use of bail and pretrial detention. Yet people have *less* often been able to pay bail when it is set; and Black and Hispanic people still face bail more often than white people, despite evidence that race is not associated with court attendance.

Data Source and Key Measures

This report uses New York State Office of Court Administration (OCA) data for all New York City courts. We used non-public data obtained through a longstanding Data Use Agreement with OCA, enabling us to track recidivism beyond the immediate pretrial period and to ensure comparability of our bail reform and comparison samples across a wide range of criminal history, charge, and demographic measures. *(Additional details are available here in the main report and a separate technical supplement.)*

- **Defining the Sample:** We compared re-arrest rates for people who faced bail or remand at arraignment in the first half of 2019 (i.e., before the implementation of bail reform) with similar people who were released without bail in the first half of 2020 (i.e., after bail reform went into effect).

- **Recidivism Measures:** We examined four outcomes: whether there was (1) any re-arrest; (2) a felony re-arrest; (3) a violent felony re-arrest; or (4) a firearm re-arrest.

- **Re-arrest Timeframes:** For each set of analyses, we compared two-year re-arrest rates and conducted survival analyses tracking days to re-arrest (if one occurred) for up to 30 months. These timeframes afforded examining recidivism over both pretrial and post-disposition periods.

Quasi-Experimental Methodology: Propensity Scores and Weighting

We sought to produce a credible "apples to apples" analysis of the association between pretrial release status and recidivism. In technical terms, we generated propensity-score and inverse-probability weighted regression models to estimate the recidivism impact of release without bail. These methods corrected for differences in baseline characteristics, including charge, criminal history, and demographic background, between bail reform and comparison samples.

Estimated Impact of Eliminating Bail and Detention in Select Cases

Overall, the results indicate that eliminating bail for select misdemeanor and nonviolent felony charges significantly reduced recidivism. We found significant reductions in any re-arrest (44% vs. 50%) and felony re-arrest (24% vs. 27%) over two years. We did not find a difference in either direction in two-year violent felony or firearms re-arrest. "Survival analyses" examining how quickly people were re-arrested over a longer 30-month follow-up period found reductions in overall, felony, and violent felony recidivism (though the violent felony difference was small in magnitude).

In short, our research indicates that the original bail reforms led to a net reduction in recidivism in New York City.

Two-Year Re-Arrest Outcomes by Group *(N=15,860)*
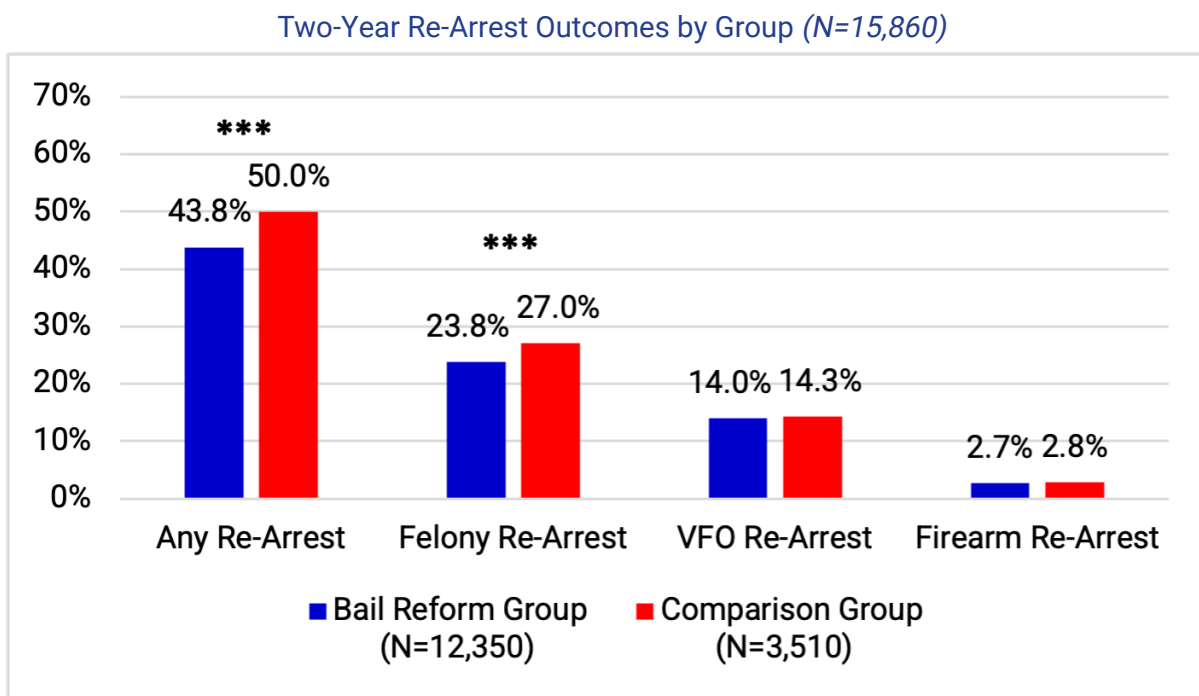
*Note:* Asterisks indicate statistical signifiance. *** p < .001 ** p < .01 * p < .05

Estimated Impact of Reducing the Use of Bail in Cases Remaining Legally Eligible

Even in bail eligible cases, courts set bail less often, reflecting provisions such as the universal availability of supervised release or requirement that courts set the least restrictive condition for assuring return to court. We used two different research designs to estimate the recidivism impact of reduced bail setting in these cases. Besides a pre vs. post comparison of cases released in the first half of 2020 versus similar cases facing bail or remand in the first half of 2019, we also used a contemporaneous design comparing similar cases within the first half of 2020 that judges respectively released versus set bail on or remanded. *(See the full report for more details on each approach.)*

On balance, each method yielded modest variations in the "bottom line." The pre vs. post analysis suggests a modest recidivism increase, whereas the contemporaneous analysis suggests a modest recidivism decrease. All differences were less than 3 percentage points (as shown below). Furthermore, survival analyses involving a longer 30-month tracking period saw almost no differences exceeding the statistical margin of error between bail reform and comparison groups coming out of either design.
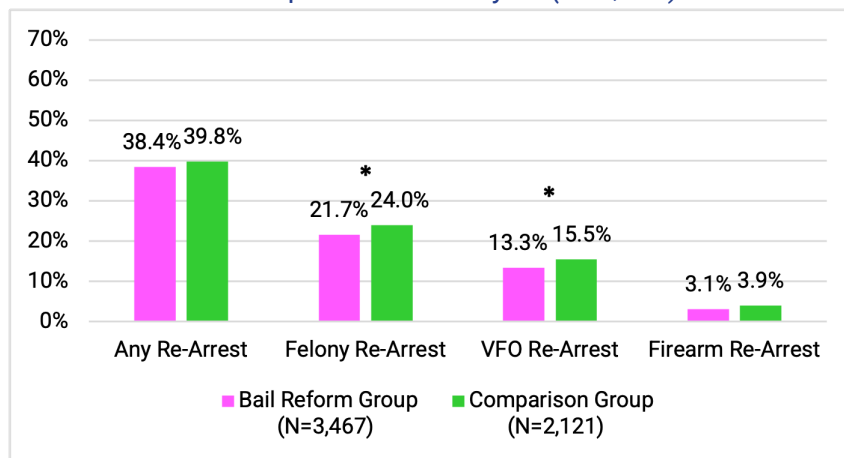
Overall, we found no clear evidence to conclude that releasing more bail eligible people either increased or decreased recidivism.

Two-Year Re-Arrest Outcomes by Group - Pre (2019) vs. Post (2020) Analysis *(N=7,641)*
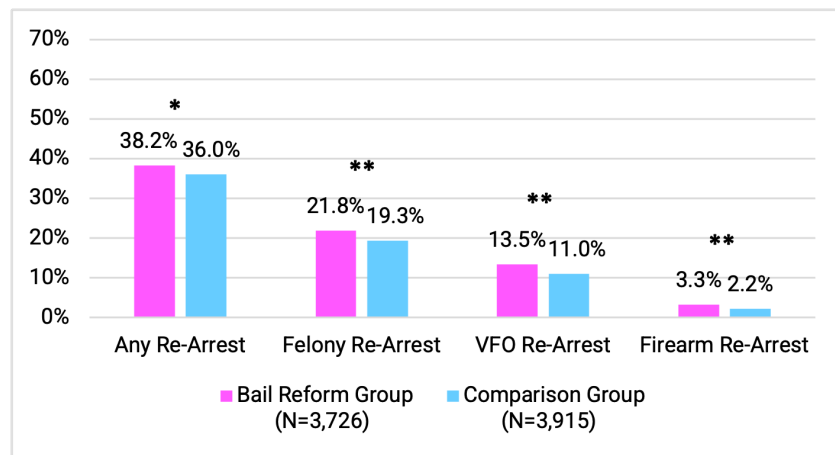
*** p < .001 ** p < .01 * p < .05

Two-Year Re-Arrest Outcomes by Group - Contemporaneous Analysis *(N=5,588)*

*** p < .001 ** p < .01 * p < .05

Estimated Impact of the July 2020 Bail Amendments

We isolated cases made ineligible for bail under the original reforms and made eligible for bail again under the 2020 amendments (involving 6% of all cases for which bail was originally eliminated). Nearly all cases impacted by the amendments, in practice, involved: (1) burglary in the second degree; (2) a case the judge deemed to involve harm to a person or property where an open case met the same criterion ("harm-harm"); or (3) a domestic violence case involving obstruction of breathing or blood circulation (usually with an assault in the third degree top charge).

The results suggest that for the particular cases impacted by the 2020 amendments, the *original* bail reforms led to an increase in overall, felony, and violent felony recidivism. Put differently, the 2020 amendments likely reduced recidivism for affected cases. This pattern held true for most amendments under analysis: Under New York's original reforms, re-arrest rates *increased* among affected second-degree burglary and "harm-harm" cases. However, re-arrest rates *decreased* among affected domestic violence cases involving obstruction of breathing under the original reforms.

For Which Additional Subgroups Did Pretrial Release Reduce Recidivism?

Further results suggest that bail reform had different effects depending on people's charges and criminal history. Both the mandatory release provisions and, to a lesser extent, provisions leading to the reduced use of bail in cases still eligible for it tended to *reduce* recidivism for people facing *less serious charges* and with *limited or no recent criminal history*, but tended to *increase* recidivism for people with *more substantial recent criminal histories*. (Some results displaying these patterns were significant, while other results were marginal or statistically non-significant. The full report details findings where such patterns did and did not appear. As in all other parts of the report, these findings are based on comparisons of statistically similar people in the same given subgroup who were respectively released under reform versus had bail set or were remanded.)

Accounting for Time Spent in Pretrial Detention

Our primary analyses tracked people's re-arrest rates continuously throughout the follow-up period, regardless of whether they were released or held in pretrial detention for any part of it. But we conducted supplemental analyses that accounted for the number of days (if any) that each person spent detained. In other words, these secondary analyses only tracked recidivism on days when people were not detained and, therefore, were at home in New York communities. We found that some—but not all—results became modestly more favorable to bail reform after isolating time in the community, but these modest shifts did not fundamentally alter any "bottom line" conclusions presented above or below.

What's the Upshot?

The study yielded four umbrella themes.

First, eliminating bail and pretrial detention for most misdemeanors and nonviolent felonies reduced recidivism in New York City. Second, reducing bail in the remaining cases still eligible for it yielded less consistent findings across two research designs; yet because all effects were small or statistically non-significant, the findings indicate that releasing more bail eligible people did not affect recidivism in any direction. Third, the 2020 amendments targeted a specific subgroup of people in a way that likely enhanced safety. Fourth, in addition to these overall findings, bail reform tended to reduce recidivism for people facing less serious charges and with limited or no recent criminal history, while tending to increase recidivism for people with substantial recent criminal histories.

What's Next?

This is the first in the Data Collaborative for Justice's **Bail Reform and Recidivism Series**. Additional studies forthcoming in 2023 will examine recidivism impacts elsewhere in New York State as well as by using alternative "controlled interrupted time series" methods to test for system-wide shifts in re-arrest rates across all cases subject to mandatory release from the pre-reform (2017-2019) to the post-reform (2020) legal context. In 2024, the present study will be updated over a longer tracking period.