

New York State Criminal Justice Reform

Implementation

Jennifer Ferone, Deputy Research Director



CUNY INSTITUTE
FOR STATE & LOCAL
GOVERNANCE

Discussion Roadmap

- **Legislative Overview**
- **CUNY ISLG's Process Evaluation**
- **Implementing Bail and Pretrial Provisions**
 - **Successes and Challenges**

Legislative Overview



CUNY INSTITUTE
FOR STATE & LOCAL
GOVERNANCE

Bail is the center point of the reform package

Appearance Tickets

Mandated appearance tickets be issued for all misdemeanors and class E felonies (with some exceptions); and specified that those issued ATs would be arraigned within 20 days

Bail

Prohibited cash bail for most non-violent charges (with some exceptions)

Established charges to include in bail eligibility list

Pre-trial Release

Included language for judges to consider the least restrictive option available to ensure court appearance; this included significant expansion of supervised release

Discovery

Reduced discovery timelines and expanded the information required to be shared between the prosecution and defense

Overarching goals: Ensure equitable decision-making, reduce reliance on pre-trial detention, expedite case processing

CUNY ISLG's Process Evaluation



CUNY INSTITUTE
FOR STATE & LOCAL
GOVERNANCE

Process Evaluation Sample and Data Sources

Site Selection

Criminal legal agencies within NYC and in several counties outside NYC

Interviews and Focus Groups

Interviews with key stakeholder groups across executives, managers and supervisors

Focus groups with line staff and those impacted by the system

Law enforcement, prosecution, defense, pretrial/probation, direct service, community members

Administrative Data

Collected aggregate data from some agencies

Reviewed publicly available data and research reports

Focused on criminal legal system outcomes

Context Setting Reviews

Reviewed documents provided by agencies, largely training curriculums and new policies/protocols

Observed a selection of NYC arraignment hearings

Reviewed public testimony

Media review

Bail and Pretrial Services



CUNY INSTITUTE
FOR STATE & LOCAL
GOVERNANCE

Stakeholder experiences: Bail

- Bail provisions required more minimal changes to agency operations, personnel, and resources compared to other provisions, but required culture shifts for courtroom workgroups
- There was broad support and agreement across stakeholders of the need for bail reform, though opinions differed on implementation approach
 - Leveling the playing field vs. community safety
 - Vague legislative language
 - Potentially NYC-centric

Stakeholder experiences: Pretrial Services

- Expected benefits of expanded pretrial services appeared clear, though providers felt less certain about the anticipated impacts on program operations and logistics required for effective implementation
- Counties with pre-existing infrastructures reported a stronger foundation to support legislative changes
- NYC: Concerns about exponential growth of the population; 3X as many people in supervised release by end of 2022
 - Hiring—demand surpassed staff capacity
 - Different need profiles

The Impacts of New York Bail Reform

-What has (*not*) changed?

Jaeok Kim, PhD

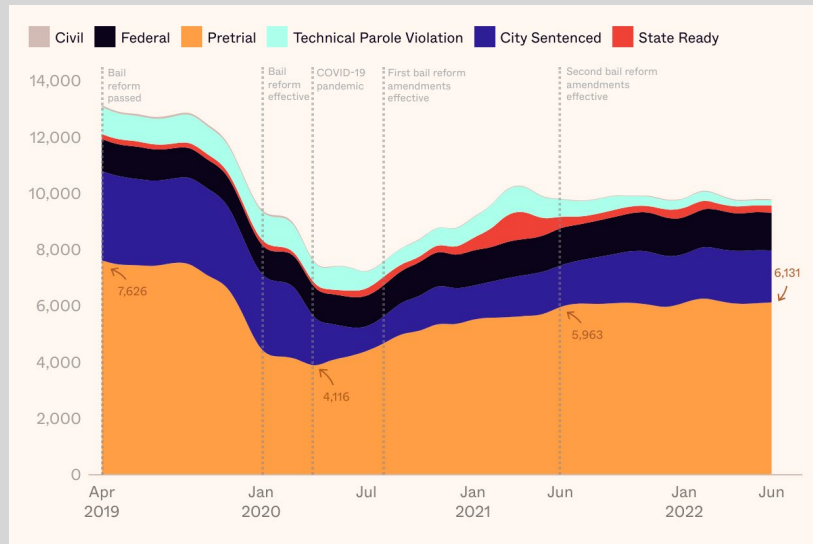
Vera Institute of Justice

Changes in Jail Incarceration

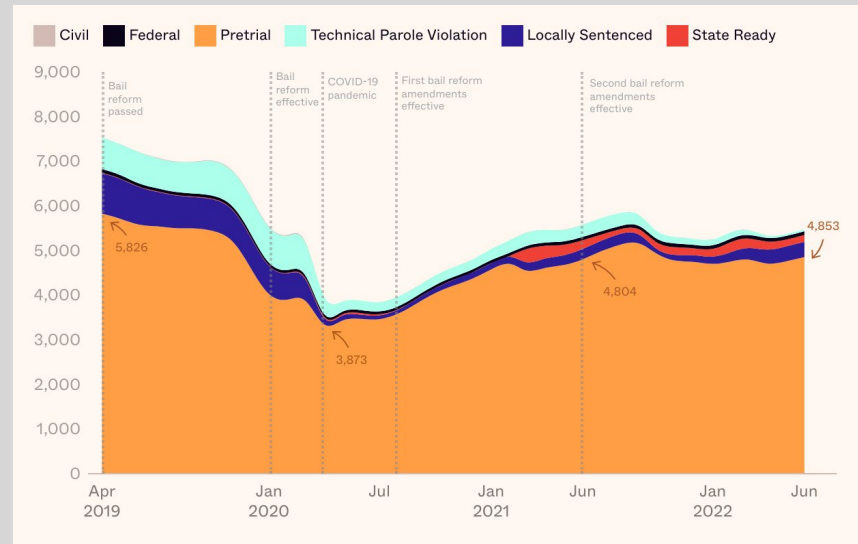
1. Pretrial detention
2. Racial disparity

Pretrial population decreased more than 18% since April 2019, but increased 37% since March 2020

Non-NYC counties



NYC



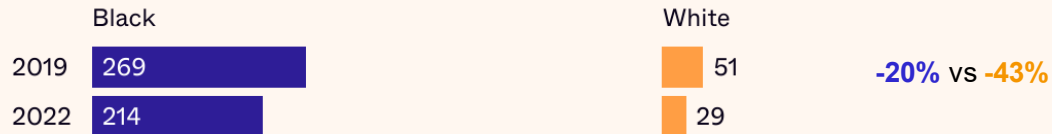
Racial disparities in jail incarceration increased after bail reform

Black White

Non-NYC counties



NYC



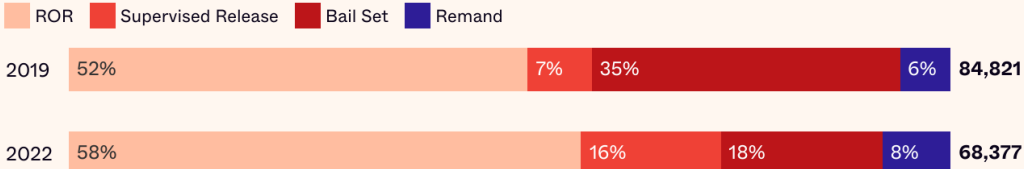
Source: Jail Administrative Data Collected by Vera Institute of Justice

Changes in Courtroom Practices

1. Bail setting
2. Bail posting
3. Person's ability to pay
4. Bail decision

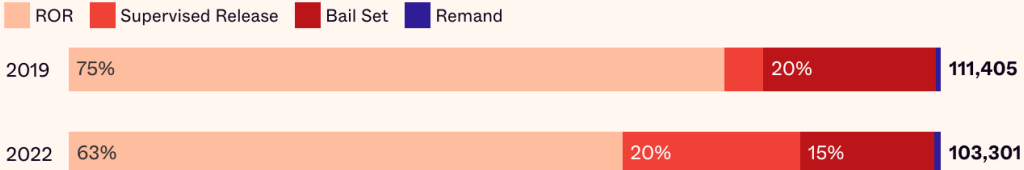
Bail is set less frequently

Non-NYC counties



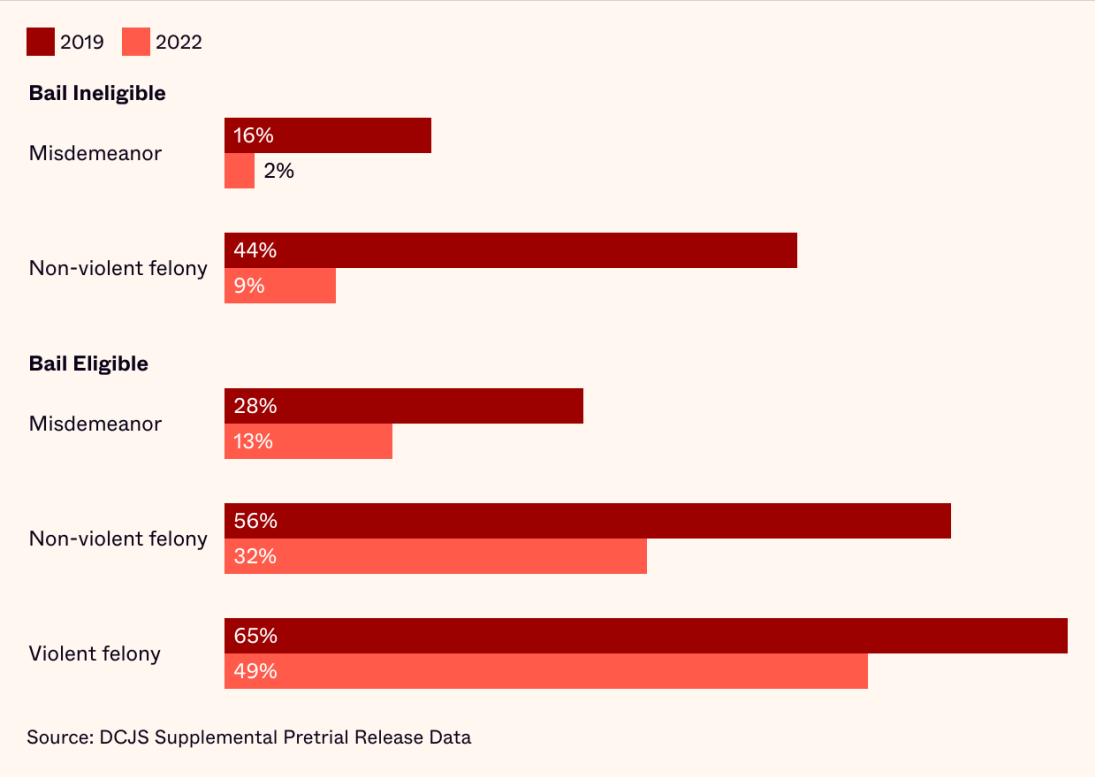
Source: DCJS Supplemental Pretrial Release Summary Tables 2019-2022

NYC

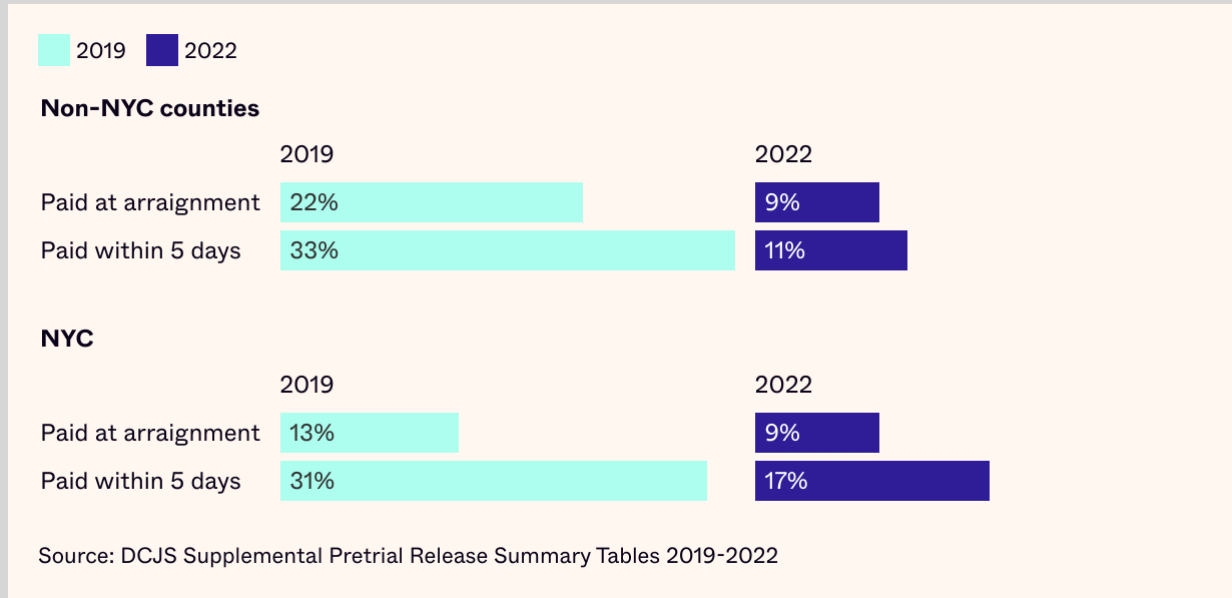


Source: DCJS Supplemental Pretrial Release Summary Tables 2019-2022

Bail is set less frequently for all charge severities



Still, more than 80% of New Yorkers could *not* afford bail



Upstate court actors' bail practices rarely changed

- Person's **ability to pay (ATP)** is rarely discussed.
 - ATP was raised in 22% of bail qualifying cases observed.
 - ATP was mostly raised by defense attorneys.
 - ATP was raised either as a matter of indigency or specific amount.
- Prosecutors emphasized charge severity and criminal history, often without making explicit connections to **flight risk**.
- Judges provided reasoning for their decision in 1/3 bail set cases.

Conclusions & Policy implications

1. **Effectiveness** of nondiscretionary reforms
2. **Difficulties** in changing courtroom cultures
3. **Differential impact** of policy reform on Black and brown New Yorkers

Thank You!

Questions?

jkim@vera.org

Does New York's Bail Reform Affect Recidivism?

René Ropac, Phd
Data Collaborative for Justice (DCJ)

DATA COLLABORATIVE FOR JUSTICE

AT JOHN JAY COLLEGE

STRENGTH IN NUMBERS



Impact of Bail Reform - Competing Theories

- Release under reform increases recidivism:

- *Necessary implication of not incapacitating people in jail*
- *Lack of deterrent effect*

vs.

- Release under reform reduces recidivism:

- *Avoids “criminogenic effects” of pretrial detention once people are released*

Research Questions

1. Overall recidivism impact of **eliminating bail and detention** for most misdemeanors and nonviolent felonies
2. Overall impact of reforms **reducing the use of bail in legally eligible cases** (violent felonies)
3. Impacts of bail reform by **charge** or **criminal history** characteristics
4. Impact of the **2020 amendments** that made certain cases bail-eligible once again

Data & Methods

Data: Office of Court Administration (OCA)

Relevant Comparison:

- Focus on the types of cases that would have likely been held pre-reform but were released without bail post-reform
- Cases bailed/remanded pre-reform vs. similar cases released under reform

Multiple Outcomes:

- Any re-arrest (*misdemeanor or felony*)
- Felony re-arrest
- Violent felony re-arrest
- Firearm re-arrest

RQ 1: Elimination of Bail and Detention – Overall Effects

New York City:

- Reductions in rates of any re-arrest & felony re-arrest
- No changes for violent felony & firearm re-arrest

NYC Suburbs & Upstate Regions:

- Little change in recidivism

RQ 2: Reduced use of Bail in Eligible Cases – Overall Effects

New York City:

- No effects on recidivism

NYC Suburbs & Upstate Regions:

- No clear effects on recidivism
 - Possibly modest increases in rates of any re-arrest or firearm re-arrest

RQ 3: Effects Vary Across Subgroups

Mandatory Release Cases		<u>NYC</u>	<u>NYC Suburbs/Upstate</u>
"low risk"	Misdemeanor charge	reduction	reduction
	No recent prior arrests	reduction	reduction
	No pending case	reduction	NA
	No recent prior VFO arrest	reduction	increase (firearm)
"high risk"	Felony charge	no change	increase
	Recent prior arrests	no change	increase
	Pending case	increase	NA
	Recent prior VFO arrest	increase	increase
Bail-Eligible Cases			
"low risk"	Misdemeanor/NVF charge	reduction	no change
	No recent prior arrests	reduction	no change
	No pending case	reduction	NA
	No recent prior VFO arrest	reduction	no change
"high risk"	VFO charge	no change	increase
	Recent prior arrest	no change/possible increase	increase
	Pending case	no change/possible increase	NA
	Recent prior VFO arrest	increase	increase

RQ 4: Impacts of the 2020 Amendments

Affected **15%** of all bail-ineligible cases (*arraigned in the first half of 2020*)

Most common cases affected:

- **Burglary** in the second degree (*where the burglary occurred in the actual “living area” of a dwelling*)
- **Domestic violence** cases involving the **obstruction of breathing or blood circulation**
- Cases judges deem to involve **harm to a person or property**, where an open case meets the same criterion (“harm-harm” cases)

Results:

- The 2020 amendments targeted a specific subgroup of people in a way that likely reduced recidivism