

SUMMARY

One Year Later: Bail Reform in New York City

One year into New York State’s sweeping restrictions to the use of bail and pretrial detention, the reform has produced sustained reductions in the reliance on both. But, at least in New York City, the reform’s impact has been significantly diminished—most notably, by an unexpected mid-year spike in bail-setting by judges. What follows is a summary of major findings from our analysis of the first year of bail reform in New York City.

A New Pretrial Landscape

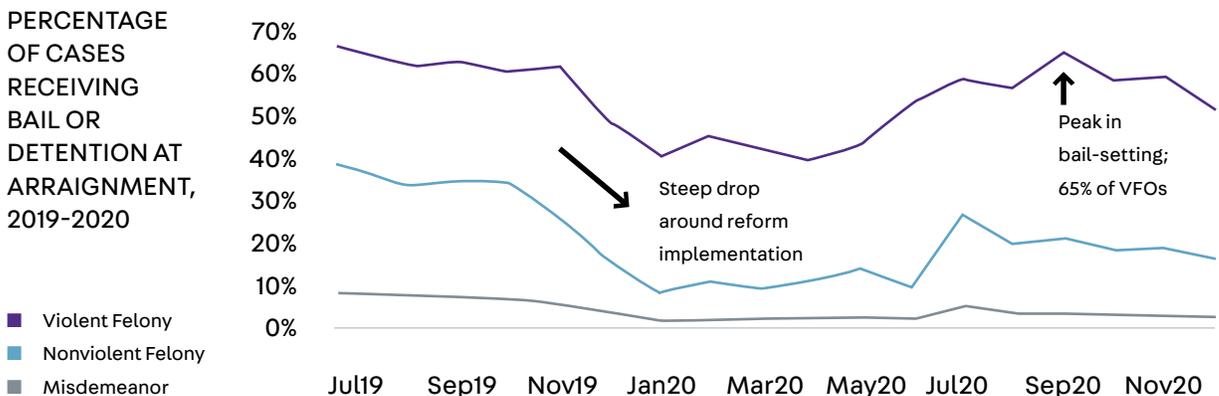
The state’s reforms eliminated bail and pretrial detention for most misdemeanors and nonviolent felonies. The impact is starkly captured in the numbers, beginning in the months leading up to the January 2020 effective date. **Comparing 2019 to 2020, judges significantly reduced their use of bail and detention across all charges.** The decline was most evident with nonviolent felonies, where the proportion dropped by more than half—from 37% to 15% of cases. But a more modest decline was also seen in violent felonies—64% to 52%. Here judges took advantage of the reform provision making supervised release an option in *all* criminal cases, increasing its use for violent felonies seven-fold—from 2% of cases to 14%.

A Mid-Year Reversal

While the use of bail declined *overall* in 2020, the results are more complicated within the year itself. Judges never lost the discretion to set bail or detention in virtually any violent felony case. Yet they did so dramatically less in the first ten (pre-pandemic) weeks of 2020—44% of cases compared to 65% in the first quarter of 2019.

But beginning in May 2020, and increasing throughout the summer, **judges reverted to setting bail more often, peaking at 65% of violent felonies in September.** Judges’ use of supervised release and release on recognizance [ROR] declined correspondingly in the summer and fall.

While there are many plausible reasons for this, judges may have been influenced



by [unsupported claims](#) from public officials, amplified in the media, that bail reform was a primary factor in New York City’s spike in shootings and murders in 2020. (Similar, often larger, spikes occurred in cities across the country with no recent bail reforms.)

The Effect on Racial Disparities

The marked increase in bail-setting in more serious cases in the latter half of 2020 had a powerfully disproportionate impact. In the first quarter of 2020, in the violent felony cases where judges retained discretion, the disparity in the rate Black vs. white defendants faced bail or detention was 7 percentage-points; by the final quarter that disparity *tripled* to 21 percentage-points. Our analysis suggests judges overall did not overtly discriminate based on race. The bias was systemic as judges increasingly detained people based on factors such as criminal history that correlate with race, reflecting historic effects such as disparate policing, segregated housing, and the underfunding of services in predominantly Black and Brown communities.

3x

increased disparity in rate at which Black vs. white people had bail set in violent felonies

Presumption of Release

Bail reform required ROR in all cases unless evidence points to a credible “risk of flight.” Yet judges granted ROR in only 27% of violent felonies in the fourth quarter of 2020, dropping below the 34% receiving ROR in 2019. We found that **judges frequently overrode the recommendations of the city’s empirically based Pretrial Release Assessment**; in the fourth quarter of 2020, they set ROR in only one-third of violent felonies where the Assessment recommended it. (People in these cases had a 90% likelihood of appearing at every court date.) Had judges consistently followed the Assessment, racial and ethnic disparities would have been largely averted.

Amendments Led to More Detention

Effective July 2020, amendments to the law made more cases again eligible for bail. Those changes led to significantly more bail-setting

and detention before trial. We found just **two provisions accounted for 85% of cases where judge set bail specifically as a result of the amendments**: allowing bail in more second-degree burglary cases (a charge without violent elements); and instances when a judge deems the current and a pending charge to involve “harm to an identifiable person or property,” a standard not defined in the law.

Ability to Pay Disregarded

In 2019, less than one in five people facing bail on a felony charge were able to pay at arraignment. The reform required judges to consider people’s financial means—though no formal mechanism has been put in place for this—and offer bail in different, easier-to-pay forms. Instead, **bail payment rates slightly decreased in 2020** (landing at 15% at arraignment and 49% after 90 days). We also found judges were significantly reducing the effect of the law’s requirement to offer a “partially secured” bond (with only a 10% upfront payment). On aggregate, judges almost *tripled* the total bond relative to the cash amount they set in the same cases, effectively making the upfront payment higher.

15%

people were able to pay bail at arraignment in 2020

Two Roads

Propelled by the factors described above, New York City’s jail population—about seven of 10 of whom are awaiting trial—has been rising steadily since May 2020 and now stands higher than before the onset of the COVID-19 pandemic. Along with an urgent threat to public health, this trend poses a challenge to the city’s plan to shutter its notorious Rikers Island jail facility.

A paramount goal of the initial reform was to reduce the number of people held while presumed innocent. Our analysis shows it was working. If the substantial impacts seen in the early months of 2020 could be restored—or even expanded upon—and if judges can be urged to consider financial means when setting bail amounts, the result could be an unprecedented and lasting drop in New York City’s reliance on pretrial incarceration.