

## **A Great Start on Bail Reform with Room to Improve: Five takeaways from newly released New York pretrial data**

New data makes it clearer than ever that bail reform is off to a successful start in New York. Recently released data from the New York State Division of Criminal Justice Services (DCJS) and the Office of Court Administration (OCA) provides, for the first time, the opportunity to compare data pre- and post-bail reform.<sup>1</sup>

The new data shows that bail reform is working as intended to end the two-tiered system of justice in which wealth, not safety, determined who stayed in jail and who was released pending trial. The immediate takeaway is that bail reform has succeeded in eliminating the use of money bail for minor and low-level offenses, significantly reducing the number of people detained in New York jails, and maintaining public safety.

Although the law itself is working, bail reform has suffered from a lack of effective implementation and concurrent investment in other public safety measures. The data illuminates three opportunities for improvement:

- For people awaiting trial, support proper implementation of bail reform by investing in statewide pretrial services.
- Build supportive public safety infrastructure that breaks the cycle of crime and violence so that bail reform does not carry the burden of other shortcomings in the system.
- Double down on solutions to address racial disparities in bail setting that have persisted despite reform.

Below are five key takeaways from the data on bail reform:

### **TAKEAWAY 1:**

**After bail reform went into effect in New York, both money bail and the jail population declined immediately. However, rollbacks have stymied that initial success.**

In July 2020, months after the new bail law went into effect, the statewide jail population had dropped by 46 percent since the reforms passed, reaching a historic low of 11,089.<sup>2</sup> However, after two rounds of rollbacks to the law, as of October 2022 the jail population increased to more than 16,000—surpassing January 2020 and approaching December 2019 numbers.<sup>3</sup>

The immediate impact of bail reform was to virtually eliminate the use of money bail for low-level and minor offenses—leveling the playing field for New Yorkers who otherwise could not afford their freedom. In New York City, courts reduced the use of money bail by 38 percent (from 22,388 arraignments in 2019 to 13,942 arraignments in 2021).<sup>4</sup> Outside of New York City, the impact was even more dramatic: the use of bail dropped by 61 percent (from 29,952 arraignments in 2019 to 11,826 arraignments in 2021).<sup>5</sup>

### **TAKEAWAY 2:**

**Bail reform has maintained public safety and is not a driver of the recent marginal increase in crime or pretrial rearrests.**

Opponents of bail reform have falsely blamed the policy for New York’s overall increase in crime and violence over the past three years—despite no evidence showing it to be the driver. Rearrest rates have not significantly increased since bail reform. In New York City, rearrest rates for people released pretrial went from 19 percent in 2019 to 22 percent in 2020 and back down to 20 percent in 2021.<sup>6</sup> In the rest of the state, the rate went from 16 percent in 2019 to 23 percent in 2020 (mostly due to a rise in nonviolent charges) before dropping to 21 percent in 2021.<sup>7</sup>

An increase in gun violence, nationwide and in New York, also has no link to bail reform. Since bail reform’s implementation, of the more than 200,000 New Yorkers released in 2020 and 2021 (including those who paid bail), only 1 percent were rearrested on a firearm-related charge.<sup>8</sup> Even when isolating people accused of a firearm offense, rates of rearrest for new firearms cases remain low. In the first nine months of 2021, 2,629 people facing a top charge of a firearm offense were released or made bail. Of those, just 3 percent were rearrested for another firearm offense during the pretrial period.<sup>9</sup>

### **TAKEAWAY 3:**

**People are showing up to court at significantly higher rates after bail reform.**

One key provision in the bail reform law was a requirement to remind people of their upcoming court dates. Post-reform, New York experienced a remarkable decrease in missed court dates—especially in New York City, where the failure-to-appear (FTA) rate decreased from 15 percent in 2019 to just 9 percent in 2021.<sup>10</sup> Outside of New York City, the FTA rate has essentially held steady, increasing from 17 percent in 2019 to 19 percent in 2020 and then decreasing to 18 percent in 2021.<sup>11</sup>

### **TAKEAWAY 4:**

**Pretrial services remain an effective way to maintain public safety and support people during their pretrial release, but only if properly funded and implemented.**<sup>12</sup>

The new data illustrates the importance and effectiveness of New York’s supervised release programs as an alternative to detention. New York City, which launched its robust pretrial services program—called Supervised Release—before bail reform, has continued to invest \$72 million annually in the program citywide. This investment had paid off, with the program delivering even better results post-bail reform than before the law changed. While the number of people released to supervision in New York City nearly doubled from 2019 to 2021, more than 80 percent of people released to supervision in 2021 did not miss any court dates, a notable increase from 66 percent in 2019. Outside New York City, the rate held steady at approximately 76 percent from 2019 to 2021 despite an increase in people released to supervision and insufficient additional funding for pretrial services.<sup>13</sup>

Where pretrial services have struggled after bail reform is in preventing rearrest pending trial. Almost 36 percent of the 16,593 New Yorkers released to pretrial supervision in the first nine months of 2021 were arrested again. That trend is largely driven by activity outside New York City, where rearrest rates increased from 22 percent in 2019 to 30 percent in the first nine months of 2021. In New York City, which has robust pretrial services, the pre- and post-bail reform rearrest rates for people on supervision remained constant at 39 to 40 percent.<sup>14</sup> Even though these numbers are concerning, approximately 80 percent of rearrests are for misdemeanors and nonviolent felony charges. With increased funding for pretrial services, New York can reverse this trend.

## TAKEAWAY 5:

### **Despite overall declines in the number of Black and Latinx New Yorkers in jail, racial disparities persist in bail-setting practices.**

Bail reform reduced the total number of people of all races in New York’s jails, but that reduction was uneven and widened longstanding racial disparities. Across the state, the rate of incarceration of Black people compared to white people increased from 2019 to 2020. In New York City, Black people were 5.4 times more likely to be incarcerated in 2019 and 6.0 times more likely to be incarcerated in 2020. Outside New York City, the ratio increased from 5.5 in 2019 to 6.1 in 2020.<sup>15</sup>

### **Recommendations:**

1. To improve outcomes for people released pretrial, establish a statewide pretrial services system consisting of community-based providers that provide a continuum of care outside of existing law enforcement infrastructure, and provide funding that matches or exceeds the \$72 million spent annually by New York City.
2. To help stabilize people with mental health needs and keep them out of the criminal legal system, invest \$240 million annually for the next three years in community-based public safety services such as affordable and supportive housing, pretrial and reentry services, mental health and substance use care, alternatives to incarceration, community violence intervention programs, and public health approaches to community needs.
3. To reduce racial disparities and ensure consistent, fair bail determinations at arraignment, train judges to fully consider nonmonetary release conditions before resorting to setting bail in eligible cases. In cases in which bail is set as a last resort, provide judges with an ability-to-pay assessment formula so that a person’s individualized financial circumstances can be fully considered in the decision.

## Notes

<sup>1</sup> New York State Division of Criminal Justice Services (DCJS), “Criminal Justice Statistics,” [www.criminaljustice.ny.gov/crimnet/ojsa/stats.htm](http://www.criminaljustice.ny.gov/crimnet/ojsa/stats.htm), accessed December 1, 2022. In addition to the data, DCJS released another document analyzing some of the data. See DCJS, “Supplemental Pretrial Release Summary Tables 2019-2021,” [perma.cc/R5XR-R3MQ](http://perma.cc/R5XR-R3MQ). Additionally, the Data Collaborative for Justice at John Jay College has made available a recording of the webinar they hosted with DCJS discussing their findings, along with two related presentations. See Data Collaborative for Justice, “Webinar | Before and After: Data on the Impact of Bail Reform,” September 21, 2022, [perma.cc/ZBA8-EWPG](http://perma.cc/ZBA8-EWPG). Data and statistics referenced herein derive from the DCJS Summary Tables and Vera researchers’ quantitative analysis of the underlying data. When possible, we cite the DCJS Summary Tables for ease of reference.

<sup>2</sup> Benjamin Heller and Jullian Harris-Calvin, *New York’s Bail Reform Was a Necessary Step for Justice and Safety* (New York: Vera Institute of Justice, 2022), [perma.cc/Z3MW-MTYV](http://perma.cc/Z3MW-MTYV). Vera Institute of Justice, “People in Jail in New York State,” accessed December 6, 2022, [perma.cc/8N8S-JRPR](http://perma.cc/8N8S-JRPR).

<sup>3</sup> DCJS, “Monthly Jail Population Trends,” November 1, 2022, [perma.cc/B38P-E8C2](http://perma.cc/B38P-E8C2).

<sup>4</sup> DCJS, “Supplemental Pretrial Release Summary Tables,” 9, Table 3.

<sup>5</sup> *Ibid.* Courts across the state began changing their practices in the fourth quarter of 2019, before bail reform became law, resulting in thousands fewer cases in which bail was set than in each of the first three quarters of

2019. As a result, using 2019 as a benchmark understates the volume of cases in which bail was set prior to bail reform.

<sup>6</sup> DCJS, “Supplemental Pretrial Release Summary Tables,” 17, Table 9.

<sup>7</sup> DCJS, “Supplemental Pretrial Release Summary Tables,” 18, Table 9. It is important to bear in mind that just like any other arrest, people who are “rearrested” are presumed innocent, and the inclusion of a rearrest in the data should not be interpreted as a proxy for guilt.

<sup>8</sup> DCJS, “Supplemental Pretrial Release Summary Tables,” 21, Table 11.

<sup>9</sup> Ibid.

<sup>10</sup> DCJS, “Supplemental Pretrial Release Summary Tables,” 16, Table 8.

<sup>11</sup> Importantly, as a New York criminal court has recently explained, people miss court dates for a variety of reasons that have nothing to do with trying to “flee” prosecution. Indeed, many people who miss a court date show up for other, later, court dates. See *People v. Ayala*, 2022 NY Slip Op. 50870[U], C.A. No. CR-015859-22BX (Crim. Ct., Bronx County 2022), [perma.cc/BJ34-QNGS](https://perma.cc/BJ34-QNGS).

<sup>12</sup> Aiden Cotter and Madeline Bailey, *Successful Pretrial Systems Rely on Supportive Pretrial Services* (New York: Vera Institute, 2022), [perma.cc/8EAA-X86Q](https://perma.cc/8EAA-X86Q).

<sup>13</sup> DCJS, “Supplemental Pretrial Release Summary Tables,” 9, Table 3.

<sup>14</sup> DCJS, “Supplemental Pretrial Release Summary Tables,” 17-18, Table 9.

<sup>15</sup> Jaeok Kim, Quinn Hood, and Elliot Connors, *New York State Jail Population Brief, January 2019–December 2020* (New York: Vera Institute of Justice, 2022), [perma.cc/2TJV-SJBE](https://perma.cc/2TJV-SJBE).