

Despite Some Rollbacks, New York’s Historic Bail Law Is Still Alive

The data unequivocally demonstrates that New York’s bail law delivers justice and protects public safety, but strong opposition from conservative corners of law enforcement, media, and the political class has tainted the public narrative on this successful reform. Even with rollbacks to the law in 2020 and again in 2022, bail reform is still very much alive and New Yorkers benefit from its core provisions. This fact sheet explains the controversy surrounding bail reform, the impact of the current law, and why protecting it paves the way for more criminal justice wins in the future.

Why did New York need bail reform in the first place?

For decades, thousands of New Yorkers, primarily people of color, were incarcerated pretrial simply because they could not afford to pay bail. In April 2019, New York passed legislation mandating pretrial release without bail for most misdemeanors and nonviolent felonies. Violent offenses remained “bail eligible,” and judges still have discretion to set bail.¹ Because of the reforms, the number of people incarcerated statewide fell by 44 percent within a year—from 20,651 in April 2019 to 11,569 by April 2020.² More than 8,000 New Yorkers who otherwise would have been jailed returned home to their families, jobs, and communities while awaiting trial.

The first round of backlash in 2020 and its impact on the bail law

The unprecedented impact of the law—with jail populations statewide shrinking dramatically almost overnight—prompted immediate and severe backlash from some police leaders, prosecutors, and elected officials.³ A few high-profile criminal cases, sometimes entirely unrelated to bail reform, were weaponized as front-page headlines in the press.⁴ The backlash was all it took to undermine the public’s support for a policy change that the majority of New Yorkers viewed favorably only months earlier. While 55 percent of New Yorkers supported bail reform at the time it passed in April 2019, by January 2020, only 37 percent did.⁵

Facing strong opposition and rapidly diminishing public support, in April 2020 the New York Legislature amended the bail law three months after it officially went into effect. The rollbacks expanded bail eligibility to:

- 25 additional misdemeanor and nonviolent felony charges;
- any felony if the person is currently on probation or parole; and
- if the person has more than one pending A misdemeanor or felony case involving “harm to a person or property,” even if the underlying charge alone—such as petit larceny or trespass—is not bail-eligible.⁶

By December 2020, the jail population had crept up to 13,575—a 15 percent increase from April 2020.⁷

Sustained backlash continues as shootings and homicides rise

Despite the first round of rollbacks, the sustained backlash against bail reform continued throughout 2020, 2021, and into 2022 as a result of many factors. Violent crime, especially shootings and homicides, rose significantly as the pandemic began.⁸ Even though bail reform eliminated bail for only misdemeanor and nonviolent felony offenses, and the courts retained discretion to set bail or preventively detain people facing violent felony charges, opponents publicly blamed the law for the increase in violence.⁹ Suburban Democrats painted as “soft on crime” lost several seats to Republicans at the polls in November 2021, and New York City elected a new mayor, Eric Adams, a former police officer who campaigned on a “law and order” platform.¹⁰

Yet bail reform is not the enemy of public safety, and blaming the wrong cause gets in the way of finding the right solutions. Nationwide, shootings and homicides have increased everywhere since 2020—in cities of all sizes and even in places that have not passed any kind of criminal justice reform.¹¹ A comprehensive analysis by the Brennan Center for Justice found no evidence connecting bail reform to the changes in New York’s crime rates.¹² Even generally hostile outlets, like the *New York Post*, debunked claims that bail reform was behind an increase in gun violence after analyzing the NYPD’s own statistics and finding that only *one* person released in the six months after the bail law took effect was charged with a shooting.¹³

Moreover, the evidence unequivocally demonstrates that New York’s bail law delivers justice and protects public safety. An analysis of the Office of Court Administration’s data suggests that up to 80,000 New Yorkers released because of bail reform not only avoided the harms of incarceration, but remained arrest-free during the pretrial period.¹⁴ Pretrial rearrest rates remained nearly identical pre- and post-bail reform—even after reform, more than 97 percent of people released pretrial were not rearrested for any violent felony offense.¹⁵

More amendments in the 2022 budget negotiations

Even though Governor Kathy Hochul began the 2022 legislative session by publicly committing to follow the evidence on bail reform, in the final two weeks of the budget—due on April 1—she reversed course and released a “10-point plan” that included many of the rollbacks Mayor Eric Adams had publicly called for.¹⁶ Even though some amendments passed, New York still protected the core provisions of bail reform, and most misdemeanor and nonviolent felony charges remain ineligible for bail.¹⁷ The amendments include:

- Lowering the number of guns required to prosecute a case as gun trafficking and expanding bail eligibility to all gun offenses.
- Expanding police discretion to make a custodial arrest instead of issuing a Desk Appearance Ticket on several misdemeanor and nonviolent felony offenses, including hate crimes and low-level gun possession. As a result, the police can now take a person directly to court to appear before a judge within 24 hours of arrest instead of being released from the precinct to appear in court on their own a few weeks later.
- Expanding discretion to make a custodial arrest in any class A misdemeanor or felony involving “harm to a person or property” if the person has an open pending arrest—not just an open case—that also involves “harm to a person or property.” This “harm + harm” provision was an amendment made during the 2020 rollbacks to allow judges to set bail in these repeat arrest cases. However, under the 2020 version of the law, police officers were required to still issue a Desk Appearance Ticket instead of making a custodial arrest if the person had not been arraigned on the first arrest and technically did not have an open case.
- Allowing judges to consider additional factors when considering release in bail-eligible cases, such as a person’s history of gun possession and whether the allegations include serious harm to another.
- Expanding judicial discretion to order mental health assessments and involuntary treatment.

Although the amendments seem voluminous, their impact on the jail population is marginal—an estimated 500 more cases, at most, will be eligible for bail in the New York City courts each year as a result.¹⁸ The current average statewide jail population of 15,372 should not increase by much despite these changes to the law.¹⁹

Champions of bail reform have fought hard and won to protect the bail law

Given the headwinds, the marginal changes to the bail law in 2022 should be viewed by supporters of bail reform as a victory. The organizing and advocacy to protect bail reform demonstrated that reformers are a force to be reckoned with. Now is the time for New York to move beyond the backlash to the bail law, follow the evidence that justice and public safety can coexist, and focus on passing other critical justice reforms.

About

This fact sheet was written by the Vera Institute of Justice. For more information, contact Jullian Harris-Calvin at jharriscalvin@vera.org.

Endnotes

- ¹ Vera Institute of Justice, *New York, New York: Highlights of the 2019 Bail Reform Law* (New York: Vera Institute of Justice, 2019), <https://perma.cc/44QF-KU8Q>.
- ² Vera Institute of Justice, "Empire State of Incarceration," February 18, 2021, <https://perma.cc/4TPD-KWQQ>.
- ³ Karen Dewitt, "NY Bail Reform Rollback Takes Effect," WAMC Northeast Public Radio, July 2, 2020, <https://perma.cc/7KT6-FHLD>.
- ⁴ FWD.us, *Freedom, Then the Press: New York Media and Bail Reform* (New York: FWD.us, 2021), <https://perma.cc/V9T7-UCCG>.
- ⁵ Siena College Research Institute Poll, "Overwhelming Support for a Dozen of Cuomo's State of the State Proposals," January 21, 2020, <https://perma.cc/8WF9-KZSL>; and Siena College Research Institute Poll, Crosstabs, <https://perma.cc/8P25-4U4F>.
- ⁶ Michael Rempel and Krystal Rodriguez, *Bail Reform Revisited: The Impact of New York's Amended Bail Law on Pretrial Detention* (New York: Center for Court Innovation, 2020), <https://perma.cc/YT5Y-76DZ>.
- ⁷ Vera Institute of Justice, "People in Jail in New York State" January 20, 2022, <https://perma.cc/35BH-588W>.
- ⁸ Ali Watkins and Troy Closson, "Shootings Rise in New York, Coloring Perceptions of City's Safety," *New York Times*, April 6, 2022, <https://www.nytimes.com/2022/04/06/nyregion/shootings-new-york-city-safety.html>.
- ⁹ Ashley Southall and Jesse McKinley, "Spike in Crime Inflames Debate Over Bail Law in New York," *New York Times*, February 4, 2020, <https://www.nytimes.com/2020/02/04/nyregion/crime-stats-nyc-bail-reform.html>.
- ¹⁰ Joseph Spector and Anna Gronewald, "New York Democrats Pare Back Nation-Leading Bail Reform Amid Crime Wave," *Politico*, April 11, 2022, <https://perma.cc/JM23-BOC5>.
- ¹¹ Please contact the Vera Institute of Justice for an unpublished analysis of cause of death data from the Centers for Disease Control and Prevention, National Center for Health Statistics.
- ¹² Ames Grawert and Noah Kim, "The Facts on Bail Reform and Crime Rates in New York State," Brennan Center for Justice, March 22, 2022, <https://perma.cc/8YXJ-TNBX>.
- ¹³ Craig McCarthy, Carl Campanile, and Aaron Feis, "NYPD's Own Stats Debunk Claims of Bail Reform Leading to Spike in Gun Violence," *New York Post*, July 8, 2020, <https://nypost.com/2020/07/08/nypds-own-stats-debunk-claims-about-bail-reform-link-to-shootings/>.
- ¹⁴ Grawert and Kim, "The Facts on Bail Reform," 2020.
- ¹⁵ Vera Institute of Justice, *New York's Bail Reform Was a Necessary Step for Justice and Safety* (New York: Vera Institute of Justice, 2022), <https://perma.cc/R5EB-DK9Y>.
- ¹⁶ Sam Raskin, "Hochul Confirms Post Report That She Has 10-Point Plan to Fix Bail Reform in the Budget," *New York Post*, March 21, 2022, <https://nypost.com/2022/03/21/hochul-confirms-she-has-plan-to-fix-bail-reform-in-budget/>.
- ¹⁷ New York State FY2023 Adopted Budget, <https://perma.cc/ZQD4-KDSA>.
- ¹⁸ Chris Gelardi, Sam Mellins, and Akash Mehta, "Read the Senate's Draft Compromise on Bail Reform," *New York Focus*, March 30, 2022, <https://perma.cc/85KG-EFDM>.
- ¹⁹ New York State Division of Criminal Justice Services, *Monthly Jail Population Trends* (Albany, NY: New York State Division of Criminal Justice Services, 2022), <https://perma.cc/72W7-35J9>.