

AUTHOR: PETER MAYER

Justice, Safety, & Prosperity: New York's Bail Reform Success Story

In April 2019, New York passed a historic bail reform law that removed the threat of cash bail for most people charged with misdemeanors and nonviolent felonies across the state, allowing them to remain in the community while awaiting resolution of their cases rather than face pretrial detention. Despite suffering as a political punching bag, the law itself has been an astounding policy success. Not only have the 2019 bail reforms not driven any uptick in crime or failures to appear for court, the reforms also made an extraordinary and positive impact on the lives of the poor and working class New Yorkers who have historically been most harmed by cash bail and pretrial detention. That impact is measured in this report in the form of dollars saved by families, nights spent at home, and an overall shrinking of a jail system that loomed far too large in the lives of the very same New Yorkers who were already most disadvantaged and marginalized.

In the two years following enactment:

24,000

fewer people had bail set on their cases.

\$104 million

less was set in bail that could have otherwise been leveraged or lost by New York's poor and working class families.

1.9 million

nights that would have otherwise been spent in jail were spent at home.

15%

The pretrial population in New York jails decreased by 15% to its lowest levels in decades.

Using data released by DCJS and OCA in September 2021, FWD.us identified the cases in which people were charged with offenses that became ineligible for cash bail and pretrial detention as part of bail reforms that went into effect in January 2020 and were amended in July 2020. By isolating the categories of cases that were directly impacted by the legislative changes, FWD.us was able to conduct an apples-to-apples comparison of pretrial outcomes pre- and post-bail reform.

HOW BAIL REFORM HELPED INDIVIDUAL NEW YORKERS AND THEIR FAMILIES

In its first two years, New York's bail reform resulted in judges imposing bail on **24,400 fewer people** charged with misdemeanors and nonviolent felonies, or an average of **1,000 fewer people each month**.

FIG. 1:
TOTAL FEWER ARRAIGNMENTS HAVING BAIL SET, FIRST SIX MONTHS OF 2019 VS. 2020 AND 2021



Source: Division of Criminal Justice Statistics, Supplemental Pretrial Release Data File

Over the course of 2020 and 2021, the 2019 bail reform law spared an estimated 24,400 people from having bail imposed and facing incarceration because they could not afford to pay—about 1,000 people each month released to return to their lives in the community rather than confined to a jail cell while awaiting trial. In New York City, this meant 5,700 people did not have bail set thanks to bail reform. Courts outside New York City were setting bail at significantly higher rates before bail reform went into effect, particularly for people with misdemeanor and nonviolent felony cases. As a result, the effect of bail reform was far more pronounced outside of New York City, resulting in 18,700 people avoiding the threat of bail and pretrial incarceration. Previous research by FWD.us shows that rearrest rates for this group were not impacted by bail reform, and failure to appear rates actually declined, indicating that giving these individuals the ability to maintain their family lives and employment led to overall positive effects in the community.¹ In contrast to these positive effects, research shows even short stints of pretrial incarceration can increase recidivism and result in economic and social losses.²

Over the first two years of bail reform, New York residents and families faced **\$104 million** less in bail, or an average of **\$4,300** per case.



**AVERAGE BAIL SAVED
PER PERSON**

\$4,267

**ONE YEAR OF GROCERIES
FOR A SINGLE PERSON**

\$3,597

**FIVE MONTHS OF AVERAGE
RENT PER PERSON**

\$3,938

Source: Division of Criminal Justice Statistics, Supplemental Pretrial Release Data File, St. Louis Federal Reserve Economic Data, Per Capita Personal Consumption Expenditures by State, Annual: New York

Cash bail has been found to negatively impact health, housing, and family cohesion by disrupting people's lives and draining their resources.³ Bail reform resulted in judges imposing \$104 million less in bail throughout 2020 and 2021. That represents \$104 million less that New York households had to drain from savings needed for healthcare or try to raise by borrowing from their neighbors and family to pay for a loved one's bail. The money drained from communities by bail setting comes disproportionately from Black and Brown families. In the first 6 months of 2019, 47% of the people who had bail set in cases that would be affected by bail reform were Black and 23% were Hispanic, compared to the overall population of New York in 2021 which was 18% Black and 20% Hispanic or Latino.⁴

In the first six months of 2019, cases that would be affected by bail reform had an average of \$4,267 set in bail per arraignment. That's more than the average amount spent per person by New Yorkers on groceries in a year and almost half the average spent on rent and utilities.⁵ Bail is often paid for by the families of the incarcerated person, forcing them to forgo other basic needs, like healthcare, rent, or afterschool snacks, to raise the money needed to free their loved one. Almost one third of Americans say they would be unable to cover an unexpected expense of even \$400 without taking on debt, borrowing, or selling something, let alone over \$4,000.⁶ Moreover, one study found that of people that are incarcerated pretrial due to their inability to pay bail, well over half are parents of children under 18.⁷

The money saved by the people impacted by bail reform has enabled them to maintain their lives and keep money in local economies. Turning this savings into money spent at New York grocery stores, pharmacies, and on housing is beneficial for the state's economy.

Individuals affected by bail reform were spared an average of **79 days** in jail while they tried to come up with the money demanded by the court. Overall, bail reform saved an estimated **1.9 million nights** that would otherwise have been spent in jail in its first two years.



Prior to bail reform, people charged with offenses that would later become bail ineligible under bail reform spent an average of 79 days in jail while they tried to come up with the money for their freedom. Those who were ultimately unable to afford their bail spent an average of 147 days—nearly 5 months—in jail awaiting disposition of their cases. Those who could pay bail still spent an average of eight days in jail before being released. Weeks and months spent in pretrial incarceration can devastate an individual's employment and family life.

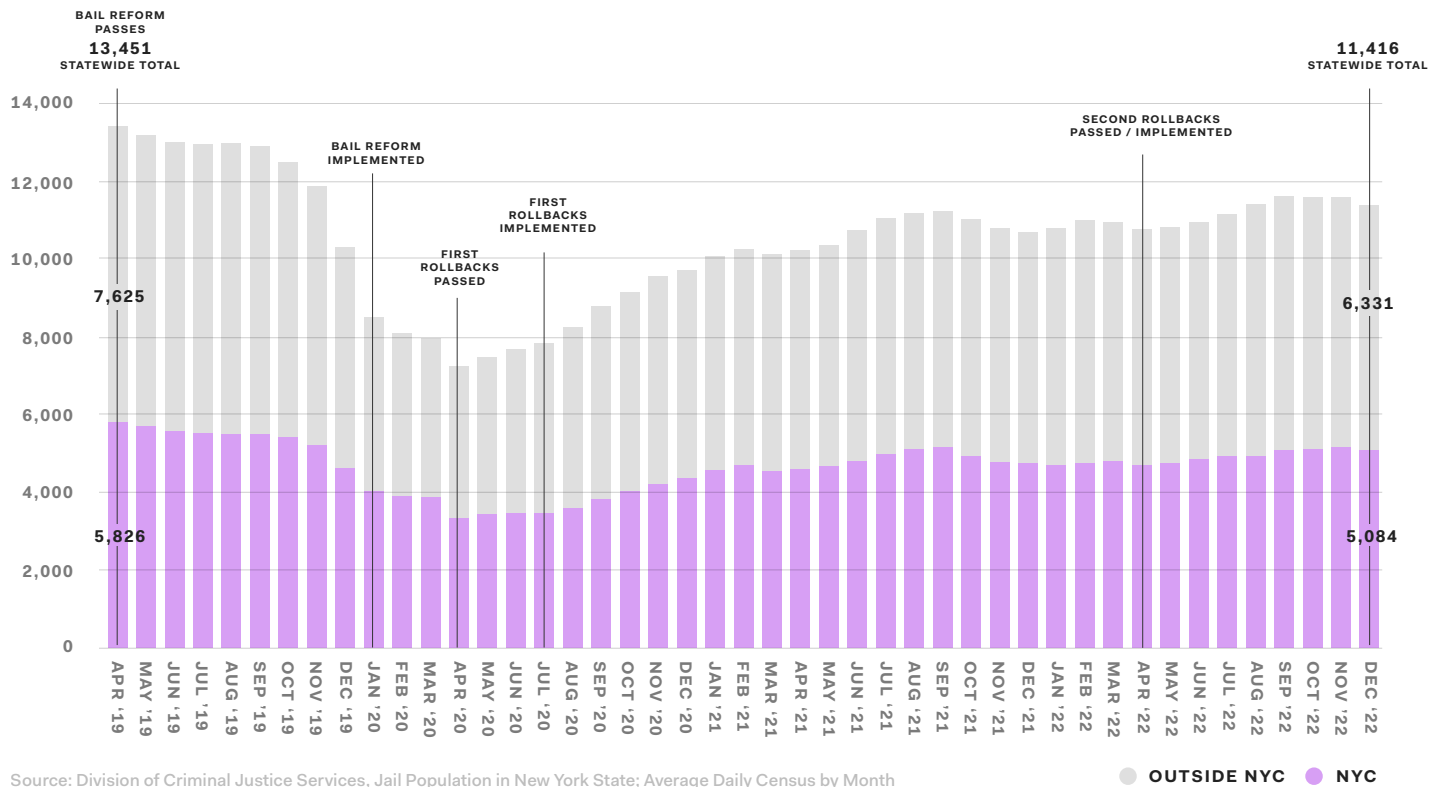
For each of the 24,400 people who avoided having bail set after bail reform was put into place, an average of 79 days in jail saved translates into an estimated total of 1.9 million additional nights spent out of jail across New York in the first two years of the reform. This restored time is unquantifiable in the benefits it provides for parents raising children, workers contributing to the economy, and people supporting their communities.

THE BROADER IMPACTS OF BAIL REFORM

Individuals with cases that were made bail ineligible by bail reform were spared incarceration and financial burden, but the impact of bail reform can also be seen by zooming out and looking more broadly at New York courts and jails. The pretrial jail population in New York declined to its lowest in decades as courts across the state set bail less often and for fewer people.

New York’s pretrial jail population decreased by 15% to its lowest levels in decades following bail reform.

FIG. 2:
PRETRIAL JAIL POPULATION, AVERAGE DAILY POPULATION BY MONTH, 2019-2022



Source: Division of Criminal Justice Services, Jail Population in New York State; Average Daily Census by Month

● OUTSIDE NYC ● NYC

Since the passing of bail reform in April 2019, the pretrial jail population⁸ in New York has decreased significantly, from 13,451 to 11,416 in December 2022. The pretrial jail population is 15% lower—2,000 fewer people—than when bail reform was passed in 2019. This reduction was especially pronounced outside New York City, where bail reform had its greatest effect on bail-setting rates.

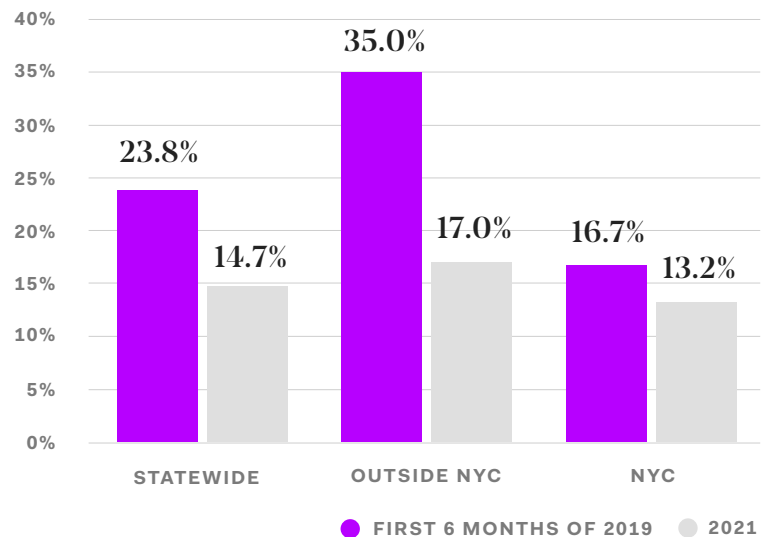
In April 2020, the pretrial jail population reached a historic low, followed by a steady increase into 2021 and a more gradual increase in 2022 (jail populations in 2020 were

especially low as the pandemic resulted in increased releases and decreased admissions). The jail population increase since spring 2020 is due, in part, to two separate rollbacks to the bail reform law and, in part, to a resumption of court and policing activity following the peak of the pandemic. Even with these increases, thousands fewer people are incarcerated pretrial today than were before bail reform. If bail reform is protected against further rollbacks, thousands will continue to be spared sitting in New York jails while awaiting trial.

New York courts set bail much less often and for far fewer people after bail reform.

Rates of bail setting were significantly lower in 2021 compared to the first six months of 2019. This trend was especially pronounced outside New York City, where the rate of setting bail in the criminal courts went from 35% in early 2019 to 17% in 2021. Statewide, the number of arraignments in which the court set bail decreased by thousands from 2019 to 2020 and remained significantly lower in 2021. This reduction in bail setting reflects the intended effects of bail reform to reduce the harms of pretrial incarceration, avoid unduly punitive measures, and ensure that a person's wallet doesn't determine their freedom.

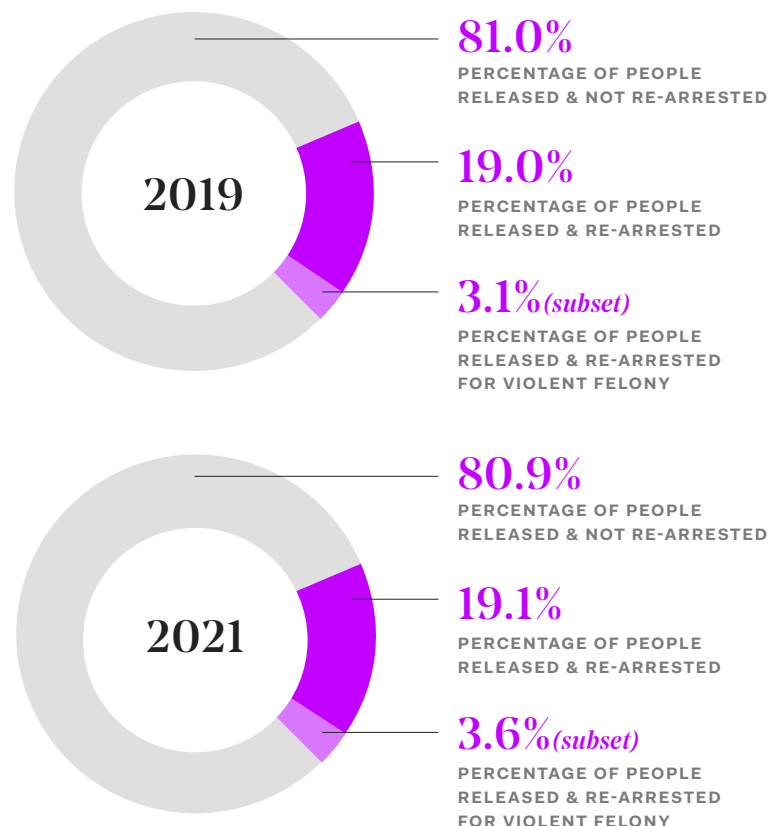
FIG. 3:
RATES OF SETTING BAIL, FIRST 6 MONTHS OF 2019 VS. 2021



Source: Division of Criminal Justice Statistics, Supplemental Pretrial Release Data File

Bail reform has provided immeasurable benefits for New Yorkers going through the courts without compromising public safety. Re-arrest rates for cases affected by bail reform remained largely the same before and after the implementation of bail reform.

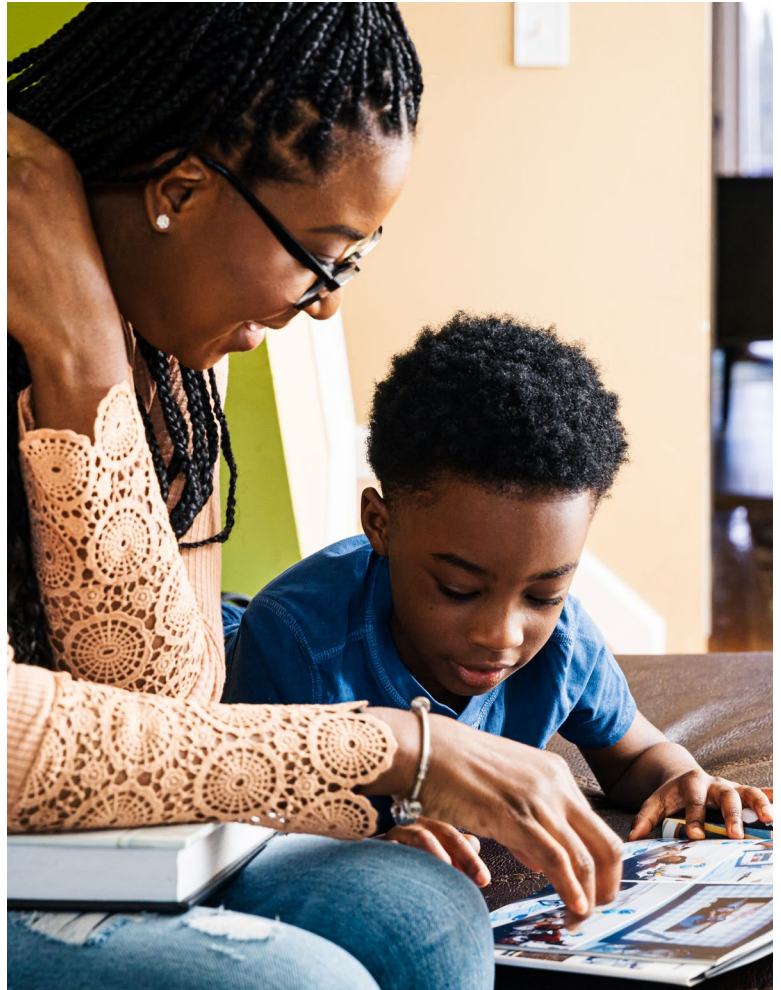
FIG. 4:
PEOPLE IMPACTED BY BAIL REFORM WERE NOT ANY MORE LIKELY TO BE RE-ARRESTED IN 2021 THAN IN 2019



Bail reform has contributed to the prosperity of New York by allowing people to maintain their lives in their communities rather than remain in jail awaiting trial. It also has not compromised public safety, demonstrating, once again, that effective criminal justice policy can reduce incarceration while maintaining safety. Analysis by FWD.us showed that the vast majority of cases affected by bail reform did not result in a rearrest for a violent felony, and overall re-arrest rates remained stable pre- and post-bail reform.⁹

Bail reform has been a success and helped thousands of families, but there is still more work to do to safely reduce pretrial incarceration and eliminate wealth-based detention.

Bail reform has helped tens of thousands of New Yorkers directly and many more indirectly, saved millions of dollars for New York families, and decreased the pretrial jail population. While two rounds of rollbacks that each expanded the scope of people exposed to pretrial incarceration have blunted the overall possible impacts of the original bail reform law, significant and impactful parts of the law remain and the benefits are felt broadly across New York. These ongoing economic, justice, and public safety successes of New York's bail reform should inspire celebration and vigorous protection.



Methodology

In order to estimate the number of people impacted by bail reform, FWD.us categorized arraignments from DCJS pretrial data based on bail eligibility. Average pretrial outcomes from the first six months of 2019 for cases that would become ineligible for bail due to the bail reform law (as it stood after the 2020 rollbacks) were used as a baseline measure for comparison. For these cases, the rates of bail-setting, the average bail set, the average number of days to pay bail, and the average number of days from arraignment to disposition for cases in which bail was not paid were calculated to estimate the impacts of bail reform. Bail reform was passed in April 2019 and though not implemented until January 2020, the passage impacted court behavior. For this reason the first 6 months of 2019 were determined to be a more accurate indicator of the pre-bail reform “normal.” The rates of bail-setting were then applied to 2020 and 2021 bail ineligible cases to estimate the number of cases that would have had bail set had bail reform not been in effect. The difference between this number and the actual number of cases with bail set was estimated to be a measure of the number of people impacted by bail reform.

Endnotes

- 1 Hamilton, Jamil, and Sivin, Alana. "Freedom, Then the Press Volume II: New Data, Same Tricks." FWD.us, December 15, 2022. <https://www.fwd.us/news/freedom-then-the-press-vol-ii/>
- 2 Lowenkamp, Christopher. "The Hidden Costs of Pretrial Detention Revisited." Arnold Ventures, March 21, 2022. <https://craftmediabucket.s3.amazonaws.com/uploads/HiddenCosts.pdf>

Preston, Allie. "5 Ways Cash Bail Systems Undermine Community Safety." Center for American Progress, November 3, 2022. <https://www.americanprogress.org/article/5-ways-cash-bail-systems-undermine-community-safety/>
- 3 Ibid.
- 4 United States Census Bureau, "New York Quick Facts, July 1, 2021, <https://www.census.gov/quickfacts/fact/table/NY/PST040221>
- 5 In 2021 the per capita personal consumption expenditure for New York on "food and beverages purchased for off-premises consumption was \$3,597, and the amount spent on "housing and utilities" was \$9,450. Economic Research Federal Reserve of Bank of St. Louis, "Per Capita Personal Consumption Expenditures by State, Annual: New York," <https://fred.stlouisfed.org/release/tables?rid=391&eid=218412#snid=218421>
- 6 "Economic Well-Being of U.S. Households in 2021." Board of Governors of the Federal Reserve System, May 2022. <https://www.federalreserve.gov/publications/files/2021-report-economic-well-being-us-households-202205.pdf>
- 7 Sawyer, Wendy. "How Does Unaffordable Money Bail Affect Families?" Prison Policy Initiative, August 15, 2018. <https://www.prisonpolicy.org/blog/2018/08/15/pretrial/>
- 8 Pretrial jail population estimated as the "Other Unsentenced" category in monthly jail populations. This category also includes people who violated parole and have been rearrested.
- 9 Hamilton, Jamil, and Sivin, Alana. "Freedom, Then the Press Volume II: New Data, Same Tricks." FWD.us, December 15, 2022. <https://www.fwd.us/news/freedom-then-the-press-vol-ii/>