

# New York's Reformed Bail Law

## What is it? What are its Effects?

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Presented via Zoom:  
*Before and After: Data on the Impact of Bail Reform*  
Wednesday, September 21, 2022

# New York State Historical Context

*Legal Rationale for bail: Ensure court appearance*

*Pretrial Options Pre-Reform:*

- Release on Recognizance (ROR)
- Money Bail
  - *No charge based criteria*
  - *No clear limits on use of amounts, BUT....*
  - *Alternative forms of bail were included*
    - *Surety and Appearance bonds*
- Detained without Bail (Remand)  
(for felonies)

# New York Reformed Bail Statute

Limits the use of money bail. But, how?

## 1. By Charge

- a. Qualifying offenses

## 2. By Factual Circumstances

- a. Allows for judicial discretion to use bail

## 3. By Considering Finances

- a. Ability to pay provision
- b. Alternative forms of Bail

## 4. By Prioritizing Release

- a. Presumption of Release
- b. Risk of Flight
- c. Least Restrictive Condition

# 1. By Charge

## Qualifying offenses

- **Violent Felony Offenses**
  - *Exceptions:*
    - Robbery 2<sup>nd</sup> Degree(1);
    - Burglary 2<sup>nd</sup> Degree(2)
- **Felony Witness Tampering**
- **Felony Witness Intimidation**
- **Class A Felonies**
  - *Exceptions:* Drug Offenses
  - *Exception to the Exception:* Penal Law 220.77
- **Felony & Misdemeanor Sex Offenses**
- **Conspiracy to Commit Murder**
- **Specific Felony Terrorism Charges**
- **Felony & Misdemeanor DV Criminal Contempt**
- **Specific felonies involving children**

# 1. By charge

## Qualifying offenses, continued

- **Specific Vehicular Assault Offenses**
- **Assault and Arson as Hate Crimes**
- **Aggravated Assault of a Child**
  - **Less than 11 years old**
- **Specific Gun offenses**
- **Specific Financial Crimes**
- **Failure to Register as a Sex Offender**
- **Bail jumping and Escaping Custody Offenses**

## 2. By Factual Circumstances

### Categories allowing for judicial discretion to use bail

- Felony charge and on probation or post release supervision
- Felony charge and potentially a persistent felony offender
- “Harm to Harm Provision”, Pending Felony or Class A misdemeanor involving:
  - Harm to an identifiable person or property, OR
  - Criminal Possession of a Firearm, as defined in 265.01-b, AND
  - Re-arrested for similar offense.

## 3. By Considering Finances

### a. Ability to pay provision

- If monetary bail is authorized,...the principal's **individual financial circumstances**, and, in cases where bail is authorized, the principal's **ability to post bail** without posing **undue hardship**, as well as his or her ability to obtain a **secured, unsecured, or partially secured bond**;

### b. Alternative forms of Bail

- The court shall direct that the bail be posted in any **one of three or more** of the forms...designated in the alternative, and may designate different amounts varying with the forms, **except that one** of the forms **shall be** either an **unsecured or partially secured surety bond**, as selected by the court.

# 4. By prioritizing release

## a. **Presumption of Release**

- Creates default of release with no conditions, UNLESS....

## b. **Risk of Flight**

- The court can make an individualized determination of risk of flight

## c. **Least Restrictive Condition**

- Once determination is made, the least restrictive condition should be applied to ensure court appearance and compliance with court orders.
- Non-monetary conditions include:
  - Contact with, supervision by pretrial service agencies
  - Mental health assessments
  - Mandatory programming (Counseling, treatment, IPV intervention programs)
  - Refrain from firearms possession
  - Maintain employment or educational enrollment



# Bail Reform & Pretrial Decisions

- 1. Less Bail & Detention:** *19,000 fewer cases detained in 2020 ([DCJ](#))*
- 2. Significant Variability by Region & County** *(multiple studies):*
  - ▶ **NYC:**        ↓ Bail, ↑ Supervised Release, ↓ ROR (75% → 67%, DCJS).
  - ▶ **Non-NYC:** ↓ Bail, ↑ Supervised Release, ↑ ROR (52% → 61%, DCJS).
- 3. Low ROR for Violent Felonies** *(required absent “risk of flight”):*
  - ▶ **NYC:**        37% → 24% (DCJS)
  - ▶ **Non-NYC:** 10% → 13% (DCJS)

# Bail Reform & Pretrial Decisions

## 4. More Bail-Setting Starting Spring 2020:

Bail + remand rates in felony cases, Quarters 1 vs. 4, 2020 ([DCJ](#)):

- ▶ **NYC:** 25% → 38%.
- ▶ **Suburbs:** 32% → 37%.
- ▶ **Upstate:** 48% → 56%.

## 5. Less Bail Payment (*despite affordability provisions*):

- ▶ **Cash Bail Amounts:** No change or increase (multiple studies).
- ▶ **Bail Payment Rates:** *Lower* in 2020 & 2021 (multiple studies).
  - ▶ **2021 Payment at Arraignment:** 10% NYC, ~11% Non-NYC (DCJS).
  - ▶ **2021 Payment within 5 Days:** Just over 20% statewide (DCJS).

# Bail Reform & Crime: Larger Context

## [Studies with Matched Samples & Tracking Periods]

- ▶ **Consistent Negative Effect of Pretrial Detention:**
  - ▶ **Step 1:** Modest pretrial recidivism ↓
  - ▶ **Step 2:** Modest post-disposition recidivism ↑
  - ▶ **Net:** No study supports detention ([NYC](#), [Houston](#), [Miami](#), [Pittsburgh](#), [Philadelphia](#), [Kentucky](#)).
  
- ▶ **Bail Reform Elsewhere: No Link to Recidivism:**  
[Cook County \(IL\)](#), [Harris County \(TX\)](#), [New Jersey \(statewide\)](#), [Philadelphia](#).

# DCJS Re-Arrest Data: What Stands Out?

- ▶ **Overall Pretrial Re-Arrest Rates:**
  - ▶ **Pretrial Re-Arrest Rates ~20%** (16%-22% based on year or region)
  - ▶ **Violent Felony Re-Arrest Rates  $\leq$  5%** (1%-5%)
  - ▶ **Firearm Re-Arrest Rates  $\leq$  1%** (0%-1%)
  - ▶ **Firearms Re-Arrest Rates on Initial Firearms Cases  $\leq$  3%** (2%-3%)

# Future Research: Key Requirements

- ▶ **True Apples-to-Apples Comparisons:**
  - ▶ Matched charge & criminal history composition.
  - ▶ Equal tracking periods (e.g., average pretrial period is longest in 2020).
- ▶ **Pretrial AND Post-Disposition Recidivism.**
- ▶ **Data Transparency:** DCJS & OCA data sharing.

# Available Resources

**Resource Page on the May 2022 Bail Convening Website:**  
<https://www.jjay.cuny.edu/bail-reform-conference>

- ▶ **Explainers** (About the 2019 Reforms; 2020 & 2022 Amendments)
- ▶ **Valid New York Bail Reform Research**
- ▶ **Links to NY Data Dashboards & Tools**
- ▶ **Relevant Research from Other Jurisdictions**

**Sources of Valid Research (*not exhaustive*):** Brennan Center for Justice, Center for Court Innovation, Criminal Justice Agency, Data Collaborative for Justice, Envision Freedom, NYC Comptroller, Vera Institute of Justice.

**Public Data & Dashboard Sources:** CJA, DCJS, MOCJ, OCA.