

SUMMARY

# Bail Reform Revisited

## The Impact of New York’s Amended Bail Law

In January 2020, New York State implemented landmark reforms precluding money bail and pretrial detention in almost nine out of 10 cases. Three months later, the state passed a series of amendments, which go into effect in July. This summary outlines those revisions and assesses their potential impact.

### Comparing the Two Reforms

A paramount goal of the initial reform was to reduce the number of people held awaiting trial, before any finding of guilt or innocence. The evidence is compelling that this goal was accomplished. Our analysis of data from New York City shows that, in the year following the April 2019 passage of the law, it contributed to a **40 percent** decline in the city’s pretrial jail population, with slightly greater reductions in the rest of the state.

We project that, relative to the jail reductions brought about by the original law (prior to the effects of COVID-19), the amended legislation

could lead to a **16 percent** increase in the city’s pretrial jail numbers.

That said, even under the amended law, approximately **84 percent** of New York City’s criminal cases will not be subject to bail or detention, a sea change when contrasted to the situation preceding either reform.

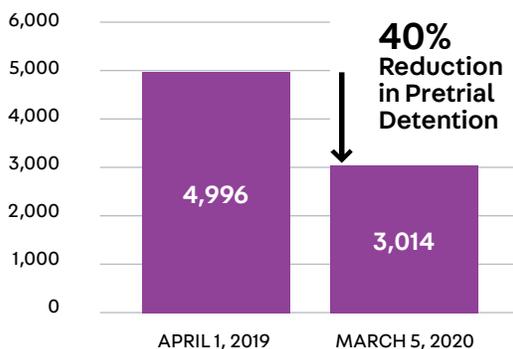
### More People Exposed to Pretrial Detention

In the initial reform, money bail and detention were eliminated for nearly all misdemeanor and nonviolent felony cases. The amended reform makes more than two dozen additional charges—most technically considered nonviolent felonies—again eligible for bail and detention.

The revisions also create **new categories of defendants** eligible for detention, such as individuals charged with a new case and a still pending case involving “harm to an identifiable person or property,” even if neither charge is otherwise eligible for bail. State law contains no definition of such “harm.”

Changes to just three charges—burglary in the second degree, criminal possession of a controlled substance in the first degree, and criminal sale of a controlled substance in the first degree—account for **nearly half** of the pretrial jail population increase we project will result from the amendments. None of these three charges involves violence or threats to another individual.

NEW YORK CITY’S PRETRIAL JAIL POPULATION



Source: New York City Department of Correction data via New York City Open Data (analysis by the Center for Court Innovation)

**New Release Conditions**

As introduced in the original statute, the amended law retains a **presumption of release in all cases**, unless there is a “risk of flight to avoid prosecution.” In cases where a risk is considered to exist, judges must use the “least restrictive condition(s)” necessary to assure the accused will return to court and comply with court conditions.

The revised law adds to the list of **non-monetary conditions**. Along with options such as pretrial supervision or travel restrictions, judges can impose conditions such as counseling, treatment, or intimate partner violence programming; maintaining employment or school attendance; or measures regarding victim safety.

**New Data Provisions Could Drive Reform**

The amended statute contains extensive new **data tracking and public reporting requirements** on pretrial outcomes, including breakdowns by charge, criminal history, race, ethnicity, and gender. The ability of reformers to highlight patterns in the data may push court players in the direction of less bail and detention and less restrictive release conditions, especially in regard to decisions resulting in racial disparities.

**Reasons to Anticipate a Trend Toward Greater Release**

There are many factors that could affect judges’ use of bail and detention that lie outside of

our ability to predict. To combat the spread of **COVID-19** behind bars, New York City has reduced its jail population to a level not seen since just after World War II. Along with a heightened recognition of the dangerous conditions people encounter in jails, these forced reductions and other changes to practice could produce a lasting shift in the direction of release.

Also of note is whether New York City’s judges will continue to make use of **supervised release**, or other non-monetary conditions, in lieu of bail. From the moment the option of supervised release was expanded to all cases by the initial reforms, court data shows that the city’s judges began taking advantage of it, *even in more serious cases that continued to be eligible for bail*. If this continues, the amended reform may produce a smaller increase in the jail population than we’ve predicted.

Factors potentially producing a trend *away* from release include the **broad discretion** permitted in certain cases—the “harm to an identifiable person or property” provision may be especially vulnerable to expansive interpretations by judges. The effect of **sensationalized media coverage** of individuals released pretrial is also challenging to predict.

The stakes in New York City are especially stark: reducing the city’s jail population to 3,300 by 2026—the number required to close Rikers Island—or falling short of this potentially transformative achievement.

PERCENTAGE OF 2019 CASES RECEIVING SUPERVISED RELEASE AT NEW YORK CITY ARRAIGNMENTS BY BAIL-ELIGIBILITY STATUS BASED ON THE ORIGINAL REFORM LAW

