



SAFETY FIRST:

THE IMPACT OF BAIL REFORM ON PUBLIC SAFETY

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Introduction

In New York, pretrial detention has been a tool for ensuring an individual charged with a crime's appearance in court. For the last fifty years, virtually all New Yorkers facing a misdemeanor or felony charge could have bail set – requiring the individual to pay a certain amount of money in exchange for their freedom while they await their trial. If an individual could not afford the bail amount set, they would remain incarcerated until their disposition.

On January 1, 2020, a new law went into effect in New York eliminating cash bail for most misdemeanor and nonviolent offenses. Cash bail and remand remain an option for most violent felonies, sex offenses, and criminal contempt charges involving domestic violence in violation of a protection order. For offenses that are no longer eligible for bail or remand, the court can either release the individual on their own recognizance or impose nonmonetary conditions. Judges are not statutorily limited as to what conditions they may set and can include conditions such as text message reminders, pretrial services, travel restrictions, and in some cases, electronic monitoring.

Ahead of the reform's passage, New Yorkers had long lamented and criticized New York's pretrial system. This system saw the wealthy able to buy their freedom to await trial, while those without the financial means remained in custody. Advocates rightly pointed out the ways in which this system produced unjust disparities along both class and race – highlighting avoidable tragedies such as the death of Kalief Browder in 2015 who committed suicide following three years on Riker's Island awaiting trial due to an unaffordable bail amount.

In addition to racial and class disparities, evidence indicates that pretrial detention has serious negative consequences on public safety. A 2017 report using data from New York City arraignments concluded, "although pretrial detention lowers the probability of rearrest while cases are being adjudicated, this reduction in criminal activity is mostly offset by an increase in recidivism within 2 years after disposition."¹ A 2013 study of defendants in Kentucky found that as the length of pretrial detention increased (up to 30 days), recidivism rates also increased for

¹ Emily Leslie and Nolan G. Pope, "The Unintended Impact of Pretrial Detention on Case Outcomes: Evidence from New York City Arraignments," *Journal of Law and Economics*, Vol. 60, August 2017. http://econweb.umd.edu/~pope/pretrial_paper.pdf

low- and moderate-risk individuals.² Low-risk individuals who were detained for as little as two to three days were up to 40 percent more likely to engage in new criminal activity before trial and 1.22 times more likely to fail to appear for court appearances than individuals held for less than 24 hours.³ Another study out of Colorado found that court appearance and new crime rates were the same for pretrial defendants released with secured bonds (requiring defendants to pay money before release) as for defendants with unsecured bonds (no requirement to pay upfront), regardless of whether the individuals were at low, moderate, or high risk.⁴

Relying on evidence from New York City, where cash bail has been in decline since the late 1980s, and data from states and jurisdiction across the country that have adopted bail reforms, this report will examine the association of pretrial reform and increased public safety.

New York City

New York's old bail system went into effect in 1971. The law granted judges the ability to either set bail, remand the defendant to custody, or release an individual on their own recognizance. In 1989, cash bail peaked in New York City, with bail set in 47 percent of all cases continued at arraignment (83,705 cases total).⁵ However, beginning in 1990 the use of cash bail began to gradually decrease in New York City without legislative intervention.⁶ In 2018, cash bail was set in only 23 percent of cases continued at arraignment (a total of 30,288 cases).⁷ Broken down by offense type, the rate of money bail for misdemeanors fell by 14 percentage points (from 27 percent in 1987 to 13 percent in 2018) and the rate of money bail for nonviolent felonies fell by 16 percentage points (from 56 percent in 1987 to 40 percent in 2018).⁸ The rate of money bail for violent felonies actually increased by 9 percent during that time period⁹; however, it is important to note that under the new law, bail remains an option for violent felony offenses

² Christopher T. Lowenkamp, Marie VanNostrand, and Alexander Holsinger, "The Hidden Costs of Pretrial Detention," Arnold Foundation, November 2013, 3.

https://craftmediabucket.s3.amazonaws.com/uploads/PDFs/LJAF_Report_hidden-costs_FNL.pdf

³ Ibid, 3.

⁴ Michael Jones, "Unsecured bonds: The as effective and most efficient pretrial release option," Pretrial Justice Institute, October 2013, 3. <https://pdfs.semanticscholar.org/5444/7711f036e000af0f177e176584b7aa7532f7.pdf>

⁵ Aubrey Fox and Sephen Koppel, "Pretrial Release Without Money: New York City, 1987-2018," New York City Criminal Justice Agency, March 2019, 1. https://www.nycja.org/assets/CJA_RWM_March_2019.pdf

⁶ Ibid, 1.

⁷ Ibid, 1.

⁸ Ibid, Figure 3.

⁹ Ibid, Figure 3.

defined in New York Penal Code 70.02 (with the exception of specific subdivisions of robbery in the second degree and burglary in the second degree).¹⁰

The purpose of pretrial detention, and the pretrial phase of a criminal case, is to ensure that the individual appears at court. This is an important public safety factor, as individuals who regularly fail to appear can become a public safety concern. Data from 2007 to 2017 show that the reduced rate of money bail in New York City did not translate to a decrease in this important public safety metric; rather, appearance rates have increased. Evidence from New York City’s Criminal Justice Agency shows that the rate of appearance for individuals released on their own recognizance has increased by two percent across all defendants.¹¹ It has increased by three percentage points (from 86 percent to 89 percent) for violent felonies, one percentage point (from 85 percent to 86 percent) for nonviolent felonies, and two percentage points (84 percent to 86 percent) for misdemeanors.¹² This evidence led New York City’s Criminal Justice Agency to conclude: “New York City has shown that it’s possible to release a greater percentage of defendants with minimal conditions and improve court attendance at the same time.”¹³

In addition to an increase in releases on recognizance, New York City has increased its use of the Supervised Release program. The Supervised Release program allows people charged with nonviolent felonies and misdemeanors to remain free while awaiting trial on the condition that they adhere to a schedule of check-ins with a social worker.¹⁴ In 2016, the Supervised Release pilot programs were expanded to serve defendants across all five boroughs and in November 2019, the program was expanded with an investment from the Manhattan District Attorney’s Office and the New York City Council.¹⁵ Since the 2016 expansion, intake has increased by 54 percent.¹⁶ The program boasts an 88 percent court appearance rate and 92 percent of

¹⁰ New York Criminal Procedure Law § 510.10.

¹¹ Fox and Koppel, Figure 14.

¹² Ibid, Figure 15.

¹³ Ibid, 10.

¹⁴ “Supervised Release,” Center for Court Innovation, n.d.a.

<https://www.courtinnovation.org/programs/supervised-release/more-info>

¹⁵ “City Expands Award-Winning, Nationally Recognized Supervised Release Program in Response to State Bail Reform,” Office of the Mayor, November 8, 2019. <https://www1.nyc.gov/office-of-the-mayor/news/530-19/city-expands-award-winning-nationally-recognized-supervised-release-program-response-state>

¹⁶ “Supervised Release, Quarterly Scorecard,” New York City Mayor’s Office of Criminal Justice, March 2019, <https://criminaljustice.cityofnewyork.us/wp-content/uploads/2019/06/Scorecard-Jan-to-Mar-2019-TJ06072019-2-pgs.pdf>

participants city-wide have remained free of a new felony arrest.¹⁷ In Brooklyn, 183 participants were relieved of supervision and granted release on recognizance ahead of disposition.¹⁸ Ninety-five percent of these participants made all future court dates.¹⁹

For residents of New York City who are required to post bail, the financial hardships have been mitigated by various bail funds in operation in New York City. The Liberty Fund, New York City's first city-wide bail fund, posts bail under \$2,000 for indigent New Yorkers charged with low level offenses. Since 2017, the Liberty Fund has posted bail for 878 men and women charged with misdemeanor offenses.²⁰ The fund estimates that they have prevented approximately 4,000 days of pretrial detention²¹ and have serviced their clients with 200 referrals for social services such as housing, education, legal services, and substance use treatment.²² Consistent with the data for individuals without monetary conditions, Liberty Fund's clients had an 87 percent appearance rate.²³ Similarly, the Brooklyn Community Bail fund, which helps secure bail for low-income people in Brooklyn facing criminal charges, served 524 Brooklynites with an average bail of \$910 in 2015 and 2016.²⁴ The fund's clients have a 95 appearance rate.²⁵ While not the purpose of bail, it is important to examine the relationship between New York City's decreasing reliance on money bail – and decreasing jail population, which fell from 22,000 people city-wide in 1991 to 7,862 in 2019²⁶ – and crime rates. Since 2007, two decades after the beginning of New York City's gradual shift away from money bail, New York City's violent crime rate has fallen 72 points, from 613 offenses per 100,000 people to 541 offenses per 100,000 people.²⁷

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ "Year two outcomes," The Liberty Fund, n.d.a., 2.

²¹ Ibid, 2.

²² Ibid, 2.

²³ Ibid, 2.

²⁴ "2015-2016 Annual Report," The Brooklyn Community Bail Fund, July 2016, <https://static1.squarespace.com/static/5824a5aa579fb35e65295211/t/583ca94a20099e25d0b56702/1480370510463/BrooklynCommunityBailFund-AnnualReport2015-16.pdf>.

²⁵ Ibid.

²⁶ Fox and Koppel, 1.

²⁷ Figures calculated using data from: "Crime in the US: 2007," Federal Bureau of Investigation, n.d.a, table 8. <https://ucr.fbi.gov/crime-in-the-u.s/2007> and "Crime in the US: 2018," Federal Bureau of Investigation, n.d.a, table 8. <https://ucr.fbi.gov/crime-in-the-u.s/2018/crime-in-the-u.s.-2018/topic-pages/violent-crime>

Further evidence of pretrial reform’s association with improved public safety can be seen in the New York City borough of Brooklyn. The rate of money bail in Brooklyn has declined by 21 percentage points since 1987, falling from 42 percent to 21 percent.²⁸ Additionally, in 2017, Kings County District Attorney Eric Gonzalez implemented an office-wide policy to not seek bail in most misdemeanor cases.²⁹ Following two years of this policy, DA Gonzalez announced historic declines in crime borough wide for 2019. Brooklyn had below 100 homicides for the second year in a row and saw a 6.8 percent decline in shootings despite a 3 percent increase city-wide.³⁰

Bail Reform Successes Outside of New York City

Outside of New York City, pretrial populations have surged. The number of people in pretrial detention in the U.S. surged to unprecedented levels, from 82,922 people in 1970 to 441,790 people in 2015.³¹ Burdensome financial conditions imposed on defendants during this period contributed considerably to the increase in the pretrial population. In response to this rise in pretrial populations, several states and the District of Columbia have enacted comprehensive bail reform measures such as eliminating monetary bail, implementing evidence-based risk assessment tools, and increasing defendants’ access to pretrial services to address issues related to pretrial detention. The results have been overwhelmingly positive. Kentucky, New Jersey, Maryland, and Washington D.C. have all achieved higher pretrial release rates (70 percent, 82percent, 60 percent and 91 percent, respectively)^{32,33} with no significant differences in failure to appear or rearrest rates, two key indicators of public safety.

²⁸ Fox and Koppel, Figure 5.

²⁹ “Brooklyn Continued to Record Historic Decline in Violent Crime in 2019,” The Office of District Attorney Eric Gonzalez, January 3, 2020. <http://brooklynda.org/2020/01/03/brooklyn-continued-to-record-historic-decline-in-violent-crime-in-2019/>

³⁰ Ibid.

³¹ Leon Digard and Elizabeth Swavola, “Justice Denied: The Harmful and Lasting Effects of Pretrial Detention,” Vera Institute of Justice, April 2019, 2. <http://www.safetyandjusticechallenge.org/wp-content/uploads/2019/04/Justice-Denied-Evidence-Brief.pdf>

³² Christine Blumauer et al., “Advancing Bail Reform in Maryland: Progress and Possibilities,” Princeton University, February 27, 2018, 30. https://www.princeton.edu/sites/default/files/content/Advancing_Bail_Reform_In_Maryland_2018-Feb27_Digital.pdf

³³ Colin Doyle, Chiraag Bains, and Brook Hopkins, “Bail Reform: A Guide for State and Local Policy Makers,” Criminal Justice Policy Program at Harvard Law School, February 2019, 45. http://cjpp.law.harvard.edu/assets/BailReform_WEB.pdf

Kentucky

Kentucky banned commercial bail bonds and instituted pretrial services in 1976.³⁴ In 2013, Kentucky was the first state to implement the Laura and John Arnold Foundation’s Public Safety Assessment (PSA) tool statewide.³⁵ The PSA is a risk-based assessment tool used to determine a defendant’s likelihood to appear in court or pose a danger to the community. It scores defendants on the risk of new criminal activity (NCA), failure to appear (FTA), and new violent criminal activity.³⁶ The PSA does not dictate a judge’s decision, rather, it is intended to provide judges with a metric to consider when making their decisions regarding pretrial release and monitoring.³⁷ However, pretrial officers can release on recognizance defendants facing nonviolent, nonsexual misdemeanors with low-to-moderate risk scores without presenting these findings to the court.³⁸ Within six months of introducing the risk assessment, pretrial release rates increased from 68 percent to 70 percent and NCA fell by nearly 15 percent.³⁹ More than 90 percent of defendants who are released are out within three days of arrest.⁴⁰ Two years after implementation of the PSA, court appearance rates increased too, from 89 percent to 91 percent.⁴¹ On average, less than 10 percent of those released fail to appear for their scheduled court dates or are rearrested while on release.⁴²

New Jersey

In 2017, New Jersey’s Criminal Justice Reform Act (CJRA) went into effect.⁴³ New Jersey is the only state in the nation to receive an “A” grade from the Pretrial Justice Institute for its near elimination of money bail and adoption of a pretrial risk assessment tool.⁴⁴ New Jersey also uses the PSA as its risk assessment tool and implemented a Decision Making Framework (DMF)

³⁴ Ibid, 45.

³⁵ Ibid, 39.

³⁶ “Developing a National Model for Pretrial Risk Assessment,” The Arnold Foundation, November 2013, 5. https://craftmediabucket.s3.amazonaws.com/uploads/PDFs/LJAF-research-summary_PSA-Court_4_1.pdf

³⁷ Ibid, 4.

³⁸ Doyle et al., 40.

³⁹ Blumauer et al., 24.

⁴⁰ Doyle et al., 42

⁴¹ Blumauer et al., 24.

⁴² Doyle et al., 42.

⁴³ Ibid, 44.

⁴⁴ “The State of Pretrial Justice in America,” Pretrial Justice Institute, November 2017, 18.

<https://university.pretrial.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=484affbc-d944-5abb-535f-b171d091a3c8&forceDialog=0>

to ensure consistency across the state.⁴⁵ In 2013, a study by The Drug Policy Alliance found that pretrial detainees made up nearly 75 percent of New Jersey’s jail population – nearly 40 percent of whom remained in jail simply because they could not afford bail.⁴⁶ Two years after New Jersey’s bail reform measures were put into place, the New Jersey judiciary found significant programmatic successes. New Jersey’s pretrial jail population had declined 43.9 percent since December 31, 2015.⁴⁷ The percentage of complaint-summons increased 17 percent between 2014 and 2017, from 69,469 to 98,473, meaning fewer people went to jail in the first place.⁴⁸ Pretrial defendants attended their scheduled court dates at substantially the same rate as they had prior to bail reform (92.7 percent in 2014 and 89.4 percent in 2017)⁴⁹ with no indications of a reduction in public safety. In fact, violent crime rates in New Jersey dropped during this period (208.1 incidents per 100,000 people in 2018⁵⁰ and 245 per 100,000 in 2016).⁵¹ The judiciary concluded that “concerns about a possible spike in crime and failures to appear did not materialize.”⁵²

Maryland

A rule change enacted by the Maryland Court of Appeals in 2017 revolutionized the state’s bail system. The number of defendants as to whom courts imposed cash bail has dropped by 21 percent, and average bail amounts, when set, have dropped nearly 70 percent since 2015.⁵³ More defendants were also offered unsecured bail (11.5 percent after the rule versus only 7.6 percent prior).⁵⁴ There has also been an increase in the number of high-risk defendants held in detention without bail.⁵⁵

⁴⁵ Glenn A. Grant, “Report to the Governor and the Legislature,” New Jersey Courts, April 2, 2019, 30. <https://njcourts.gov/courts/assets/criminal/2018cjrannual.pdf>

⁴⁶ *Ibid*, 25.

⁴⁷ Doyle et al., 44.

⁴⁸ Grant, 6.

⁴⁹ Grant, 5.

⁵⁰ “Crime in the United States: 2018,” Federal Bureau of Investigation, N.D.A., table 5. <https://ucr.fbi.gov/crime-in-the-u.s/2018/crime-in-the-u.s.-2018/topicpages/tables/table-5>

⁵¹ “Crime in the United States: 2016,” Federal Bureau of Investigation, N.D.A., table 3. <https://ucr.fbi.gov/crime-in-the-u.s/2016/crime-in-the-u.s.-2016/topic-pages/tables/table-3>

⁵² Grant, 5.

⁵³ Blumauer et al., 4.

⁵⁴ *Ibid*, 21.

⁵⁵ *Ibid*, 17.

In 2014, prior to the rule change, upwards of 65 percent of Maryland’s jail population comprised pretrial defendants (7,000-7,500 defendants with an average length of stay of 39 days).⁵⁶ Many were detained because they could not afford bail. In an effort to address this issue and increase the use of pretrial monitoring, the Pretrial Services Program Grant Fund was established to give Maryland counties the resources to provide pretrial services programs. Research shows that when defendants are released to pretrial service programs, recidivism rates drop, court appearance rates increase, and taxpayer costs are reduced.⁵⁷ Eleven of Maryland’s twenty-four counties have pretrial service programs. St. Mary’s County pretrial services program – STEER (Stop, Triage, Educate and Rehabilitate) – worked with over 200 defendants in its first year.⁵⁸ STEER participants had increased court appearance rates (85 percent to 98 percent) and 91 percent were not rearrested for new crimes in the pretrial period.⁵⁹

District of Columbia

Washington D.C. pioneered bail reform in the early 1960s.⁶⁰ Notably, the city eliminated money bail and established an independent Pretrial Services Agency that provides supervision and monitoring as well as referrals for pretrial defendants to mental health and substance abuse treatment, employment assistance, housing and other essential support services.⁶¹ The District of Columbia Pretrial Services Agency serves approximately 17,000 people each year with an average of 100 days of supervision per defendant.⁶² The Agency has identified key performance indicators for minimizing rearrest rates, including compliance with substance use and mental assessments and treatment. In fiscal year 2018, compliance rates were as follows: 95 percent for mental health assessments, 89 percent for referrals to mental health services, 91 percent for substance use assessments, and 55 percent for placement in substance abuse treatment.⁶³

⁵⁶ “Bail Reform: A Practical Guide Based on Research and Experience,” National Task Force on Fines, Fees, and Bail Practices, 43.

<https://www.ncsc.org/~media/Files/PDF/Topics/Fines%20and%20Fees/format%20revisions/Bail%20reform%20guide%203%2012%2019.ashx>

⁵⁷ Blumauer et al., 25.

⁵⁸ Doyle et al., 74.

⁵⁹ Blumauer et al., 35.

⁶⁰ Doyle et al., 35.

⁶¹ Ibid, 36.

⁶² “Congressional Budget Justification and Performance Budget Request Fiscal Year 2020,” Pretrial Services Agency for the District of Columbia, March 18, 2019, 1.

<https://www.psa.gov/sites/default/files/FY2020%20PSA%20Congressional%20Budget%20Justification.pdf>

⁶³ Ibid, 23.

Taken together, money bail and pretrial service reforms in D.C. have led to significant positive outcomes – 94 percent of defendants are released pretrial, 91 percent make their scheduled court dates and 98 percent are not arrested for a violent crime while awaiting trial.⁶⁴

Conclusion

Pretrial reform and the reduction in the use of money bail has taken several forms throughout the country. And while the approaches may vary, the results paint a clear picture with regards to public safety. Reducing the use of pretrial detention and money bail does not create long term problems for public safety. To the contrary, empirical evidence demonstrates that the use of alternatives to money bail that reduce pretrial incarceration actually improves public safety.

About NYUJ

New Yorkers United for Justice is a statewide coalition of diverse nonprofit organizations engaged in New York that is leading a movement bringing urgent criminal justice reform to the Empire State. NYUJ is a fiscal project of Dream Corps.

⁶⁴ Doyle et al., 38.