New York’s Reformed Bail Law
What is it? What are its Effects?

Krystal Rodriguez & Michael Rempel
(krodriguez@jjay.cuny.edu & mrempel@jjay.cuny.edu)
Data Collaborative for Justice at John Jay College

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)
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\textsuperscript{nd} Degree(1);
    - Burglary 2\textsuperscript{nd} 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
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
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 \( \approx 20\% \) (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


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