



NEW YORK CITY COMPTROLLER
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NYC Bail Trends Since 2019

March 2022

The purpose of bail is to ensure that a person who is arrested returns to court for trial. However, in practice, the impact of bail has been to detain tens of thousands of New Yorkers, presumed innocent, before trial and cost low-income families tens of millions of dollars every year.

To address these concerns, in April 2019 the New York State Legislature passed sweeping reforms to state bail laws. The guiding principle was that no one should be jailed because they are too poor to pay bail. The law prohibited bail-setting for most misdemeanor and non-violent felony charges, required judges to consider a person's ability to pay before setting bail, and required that defendants have at least three options for making bail, including less onerous options.

In the ramp-up to implementation of bail reform on January 1, 2020, the jail population dropped quickly, falling from about 7,100 on November 1, 2019 to 5,800 on January 1, 2020 and to 5,500 on February 1, 2020. When COVID-19 hit the city in March 2020, the jail population fell further, temporarily falling below 4,000 as arrests dropped and efforts were made to reduce the incarcerated population, including those at greater risk of severe illness, during the pandemic (see Chart 1 below).

In April 2020, the state legislature voted to roll back some of the reforms adopted in 2019 by expanding the number of bail-eligible offenses, including second degree burglary, and creating new categories of defendants who are eligible for bail or pretrial detention, such as persons arrested for any felony while on probation or parole. Those changes took effect in July and coincided with a temporary rise in gun arrests and COVID-related court delays, lengthening the average time before release or transfer. From the summer of 2020 through September 2021, the jail population steadily rose, temporarily exceeding pre-pandemic levels. During this time, COVID-related restrictions on structured activities and jail visitations, along with growing levels of staff absenteeism – both due to COVID and other reasons – fueled discord within the jails, as staff struggled to produce individuals for court dates, medical appointments and other crucial activities while also maintaining order and safety. During 2021, at least 16 people died within New York City jails, double the number in 2018 when the jail population was far higher.¹ As of the date of this publication, another three people have died while in custody in 2022, all within three weeks from late February through mid-March.

The impacts of bail reform have been hotly debated, with some claiming that bail reform is responsible for an increase in crime without providing evidence to support that claim. To assess the actual impacts of the 2019 bail reforms and the 2020 rollbacks, the Office of the New York City Comptroller analyzed data on bail for calendar years 2019, 2020, and 2021. We reviewed data provided by the New York State Office of Court Administration on bail setting and bail made, as well as data on pretrial release outcomes from the New York City Criminal Justice Agency. The review revealed the following:

- 1. Since state bail reforms took effect, the number of people subject to bail has significantly declined.** In calendar year 2021, bail was set in 14,545 cases, down significantly from 24,657 in 2019.
- 2. Nonetheless, bail-setting still leads to pretrial incarceration for many and continues to syphon money from low-income communities.** Despite the drop in the number of people subject to bail in 2021, defendants and their family and friends posted \$268 million in bail, up from \$186 million in 2020. Over 2020 and 2021, only half of defendants with bail set have been able to make bail at any point, and even among those who do, most are incarcerated for at least some amount of time before doing so.
- 3. Bail reforms that took effect January 1, 2020 included new requirements for judges to consider a person’s ability to pay when setting bail. Yet average bail amounts have risen, not fallen, and people continue to be unable to afford the price of their freedom.** In 2021, the average cash bail amount set at arraignment was \$38,866, double the \$19,162 average in 2019. While increases in average bail amounts likely stem from broad

¹ Michael Wilson and Chelsia Rose Marcus, “16 Men Died in New York City Jails Last Year. Who Were They?” *New York Times* (January 28, 2022), <https://www.nytimes.com/2022/01/28/nyregion/rikers-island-prisoner-deaths.html>; and David Brand, “More than 370 people have died in NYC jails since 2001” *The Brooklyn Eagle* (October 23, 2019), <https://brooklyneagle.com/articles/2019/10/23/deaths-nyc-jails/>.

restrictions on setting bail for lower-level charges, bail law explicitly requires judges to consider the defendant's financial circumstances.

4. **Commercial bonds that require non-refundable fees to private companies continue to be widely used to pay bail, extracting money from low-income communities of color.** Of bonds posted in 2020 in New York City Supreme Court – the City's trial court for felony cases – commercial bonds were used in 57% of cases. In 2021, a total of \$226 million was posted in bonds, including commercial bail and partially secured bonds, up from \$159 million in 2020 but down 3% from \$233 million in 2019.
5. **Despite new requirements to set at least three forms of bail, less onerous and punitive bail options, such as partially secured or unsecured bonds, have been used much less often than commercial bonds.** While commercial bonds with non-refundable fees were used in 57% of cases, partially secured bonds accounted for 20% of bail postings in Supreme Court during 2020. The least onerous mechanism, unsecured bonds that require no money upfront, were used only seven times in 2020, down from 24 times in 2019. The average dollar amount of partially secured bonds posted in Supreme Court jumped substantially, rising from an average of roughly \$11,900 from January through November 2019 to an average of more than \$40,000 in 2020.
6. **The data indicate that pretrial rearrest rates remained nearly identical pre- and post-bail reform.** Data released by the New York City Criminal Justice Agency and the Mayor's Office of Criminal Justice show that the share of released people awaiting trial who are rearrested remained roughly the same before and after implementation of bail reforms. In January 2019, 95% of the roughly 57,000 people awaiting trial were not rearrested that month. In January 2020, 96% of the roughly 45,000 people with a pending case were not rearrested. In December 2021, 96% were not rearrested. In each of those months, 99% of people, regardless of bail or other pretrial conditions, were not rearrested on a violent felony charge.²

Further rollbacks to the bail reforms passed in 2019 would primarily serve to extract more money from vulnerable communities and increase the number of people held in City jails awaiting trial. There is no evidence that they would lead to a reduction in crime.

The Comptroller's Office's findings make clear, however, that additional judicial and prosecutorial accountability and oversight of the bail system are needed, with the aim of strengthening implementation of the reforms and reducing the pretrial population. In particular, the Comptroller's Office recommends that the courts (a) mandate trainings on the

² New York City Criminal Justice Agency, "Pretrial Release Dashboard" (accessed February 14, 2022), <https://www.nycja.org/pretrial-release-dashboard>; and Mayor's Office of Criminal Justice, *How many people with open criminal cases are re-arrested?* (December 2021), <http://criminaljustice.cityofnewyork.us/wp-content/uploads/2021/12/Pretrial-Docketed-Rearrest-Contextual-Overview-December-2021-Update.pdf>.

provision of the law that requires judges to consider a defendant's ability to pay when setting bail and that the courts (b) direct judges to first consider and state any reasons for not setting an unsecured bond, to ensure judges are employing the least restrictive option, as required. The City and State should also redirect resources from the law enforcement and correctional systems to the programming, services, and treatment that can prevent incarceration and help people thrive and remain safely in their communities.

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This research brief uses data obtained from the New York State Office of Court Administration. Any OCA data provided herein does not constitute an official record of the New York State Unified Court System, which does not represent or warrant the accuracy thereof. The opinions, findings, and conclusions expressed in this publication are those of the authors and not those of the New York State Unified Court System, which assumes no liability for its contents or use thereof.

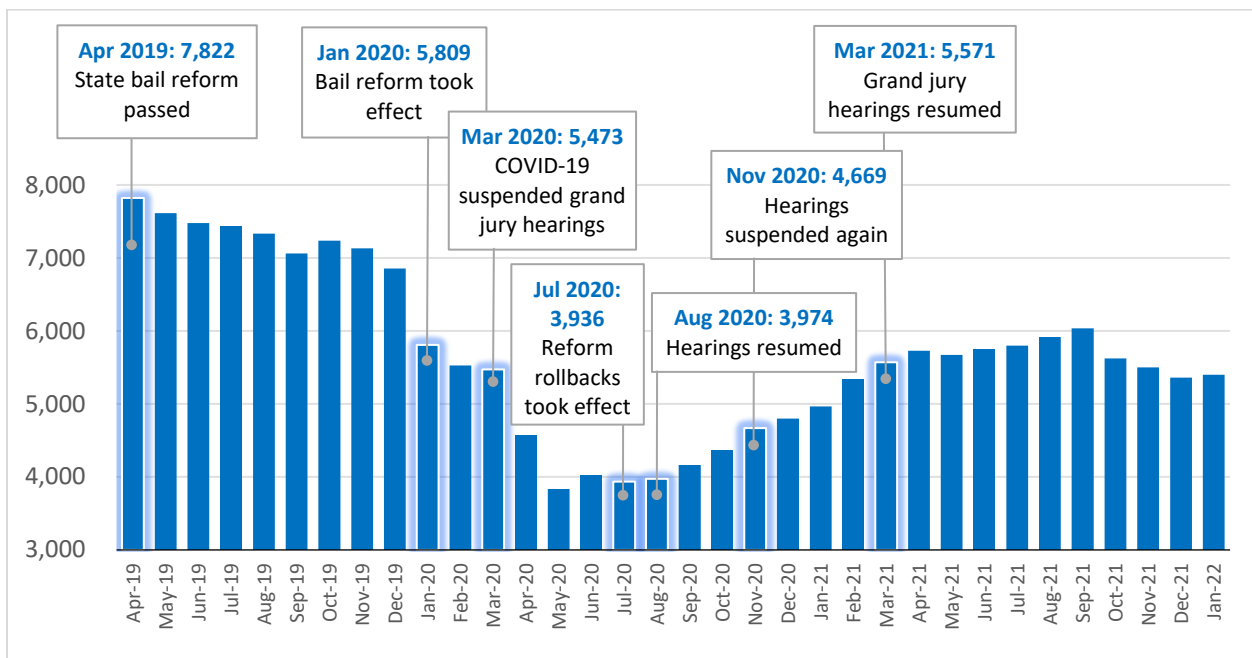
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The Fall – and Rise – of the NYC Jail Population

- When the New York State Legislature passed bail reform on April 1, 2019, the New York City jail population was 7,822. Leading up to implementation on January 1, 2020, courts began to follow the new laws, resulting in a 26% reduction in the jail population by the time the law took effect.
- When New York City reported its first confirmed case of COVID-19 on March 1, 2020, the jail population was 5,473. During the early stages of the pandemic, the jail population fell further as non-essential activities ground to a halt and the City and State made efforts to reduce the incarcerated population amid widespread transmission of the virus in the city.
- The pandemic also interrupted court proceedings, causing the suspension of grand jury hearings from mid-March to August 10, 2020 and again from November 16, 2020 to March 22, 2021. Court delays contributed to a steady rise in the jail population from July 2020 through September 2021, with the population briefly topping 6,000 before beginning a gradual descent.
- As of January 1, 2022, the city’s jail population had fallen back to 5,400, nearly the same as right before the pandemic hit the city.
- New York City plans to build four borough-based jails, in order to replace and close the jail facilities on Rikers Island. Those four jails are planned to be built to detain 3,300 people. Given the current census, reductions in the pretrial population will be necessary to meet these goals.

Chart 1: NYC Jail Population (as of first day of the month)



SOURCE: Office of the New York City Comptroller analysis of Vera Institute of Justice, Jail Viz 2.0.

What is Bail?

- Bail is one tool available to judges to incentivize a defendant's return to court. However, because bail amounts are often higher than what a defendant can afford, bail-setting has historically led to high rates of pretrial detention.
- After a person is arrested and charged with a crime, a defendant appears before a judge who decides whether to release the defendant, set bail, or remand the person to jail (without an option for release). Judges' decisions are informed by recommendations from District Attorneys.
- In 2019, prior to bail reform, among continuing cases in New York City, 75% of defendants were released on their own recognizance, 19% had bail set, 5% were released under supervision, and 1% were remanded.³
- Reforms approved in 2019 in New York State prohibited bail-setting for most people charged with a misdemeanor or non-violent felony, while maintaining bail for most violent felonies. Changes to the reforms in April 2020 that took effect in July 2020 expanded the number of charges that are bail-eligible by more than two dozen, including second degree burglary and any crime that is alleged to have caused the death of another person.⁴ The State also created new categories of defendants who are eligible for bail or pretrial detention, such as persons arrested for any felony while on probation or parole.

Judges May Set 9 Types of Bail in New York:

1. **Cash:** The defendant pays the full bail sum in cash and is supposed to have bail returned if the person makes all court hearings.
2. **Commercial (Insurance) bond:** The defendant, or a family member or friend, pays a nonrefundable fee to a commercial bail company or bondsman who posts bail on behalf of the defendant. The bail provider may require collateral and a signed contract that imposes rules on the defendant and indemnifies that bail bondsman if the defendant fails to appear in court.
3. **Secured surety bond:** A third party, such as a family member, posts collateral (personal property equal or greater in value to the bail amount or real property having a value at least twice the bond amount) and promises to pay the full bond amount should the defendant fail to appear.
4. **Secured appearance bond:** Defendants post collateral (personal property equal or greater in value to the bail set or real property having a value at least twice the bond amount) and promise to pay the full amount should they fail to appear.
5. **Unsecured surety bond:** A third party promises to pay the full bail amount if the defendant fails to appear. No money or collateral is required up front.
6. **Unsecured appearance bond:** No money or collateral is required, but defendants promise to pay a certain amount if they fail to appear.
7. **Partially secured surety bond:** A third party pays a deposit, up to 10 percent of the full bail amount, to secure release and is responsible for paying the full amount should the defendant fail to appear.
8. **Partially secured appearance bond:** Defendants pay a deposit, up to 10 percent of the full bail amount, and are responsible for the full bail amount should they fail to appear.
9. **Credit Card:** The full bail amount is charged to a credit card. A processing fee may be imposed by the Court.

³ New York City Criminal Justice Agency, *2019 Annual Report*, p. 26, <https://www.nycja.org/publications/annual-report-2019>.

⁴ Center for Court Innovation, *Bail Reform Revisited: The Impact of New York's Amended Bail Law* (May 2020), <https://www.courtinnovation.org/publications/bail-revisited-NYS>.

- Judges are now required by law to offer at least three types of bail, among nine potential options, and must include a partially secured bond or unsecured bond. However, cash bail and commercial bonds remain the most common. Cash bail is supposed to be returned if the person makes all court appearances, but due to court delays, it may take many months, even years, after cases are closed before sureties receive the funds. After three years, unreturned funds are deposited with the State Comptroller’s Office.
- Roughly three-quarters of people who ultimately make bail spend some period of time incarcerated prior to release. Among people who had bail set at arraignment in 2019: 12% paid at arraignment; 38% went to jail and made bail post-arraignment; 15% were released on recognizance or under supervision post-arraignment; and 35% were not released before their case concluded.⁵

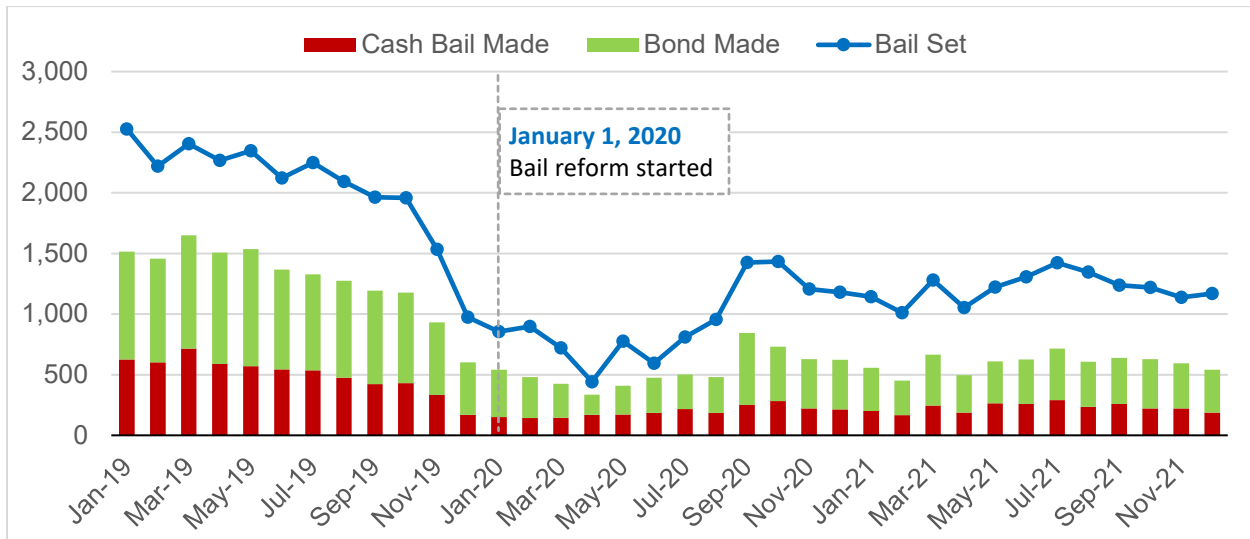
Bail-Setting and Jail Admissions

- A key component of the 2019 bail reforms explicitly requires judges to consider a person’s ability to pay before setting bail amounts. However, bail is made, either at arraignment or at a later date, just about half as many times as bail is set, driving continued pretrial detention and suggesting that for many defendants, bail was set far above their ability to pay.
- Prior to state bail reforms, bail was set in 24,657 cases in 2019 and paid 15,537 times (Chart 2). As reforms took effect on January 1, 2020, and the pandemic followed soon after, bail setting dropped significantly, totaling 11,294 in the entirety of 2020. In the same year, bail was made 6,477 times. However, the number of cases with bail set grew to 14,545 in 2021, as the economy progressively reopened.
- If a person cannot post bail at the arraignment hearing, then they are admitted to jail and remain incarcerated until a change in bail status or the conclusion of their case. While some individuals are eventually able to post bail, even relatively short jail stays can have harmful consequences for those incarcerated and their families and come at a cost to the City, as the Comptroller’s Office has charted in its annual reports on the cost of incarceration.⁶

⁵ *Ibid*, p. 35.

⁶ Office of the New York City Comptroller, “Department of Correction,” <https://comptroller.nyc.gov/reports/nyc-department-of-correction/>.

Chart 2: Number of Cash Bail Set, vs Bail Made

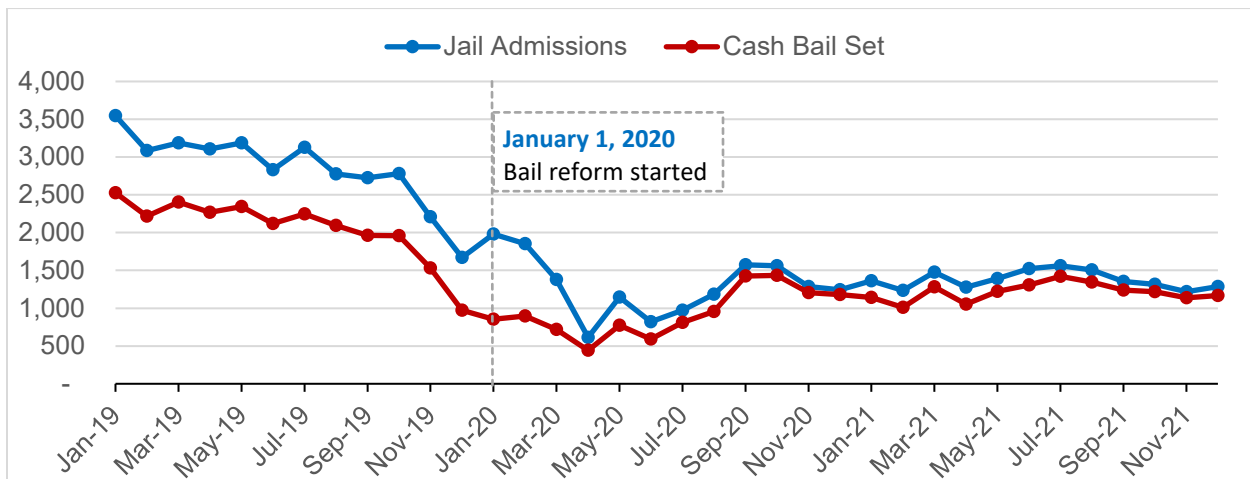


Note: "Bail made" includes bail made at any time, including at arraignment or at a later date. For any particular case, bail may be set in a different month than bail was made. "Bond" includes commercial bonds, partially secured bonds, unsecured bonds, secured bonds, and credit card bail. Includes New York City Criminal and Supreme Court.

SOURCE: Office of the New York City Comptroller analysis of data provided by the New York State Office of Court Administration.

- Bail setting and jail admissions are tightly correlated (Chart 3). As judges set bail 25,839 times during 2020 and 2021, city jails recorded 32,121 admissions. Other reasons for admission to jail include technical parole violations and sentences of less than one year.
- As of December 2021, monthly jail admissions were 3% above December 2020 but 23% below 2019.

Chart 3: Cash Bail Set at Arraignment, vs Monthly Jail Admissions

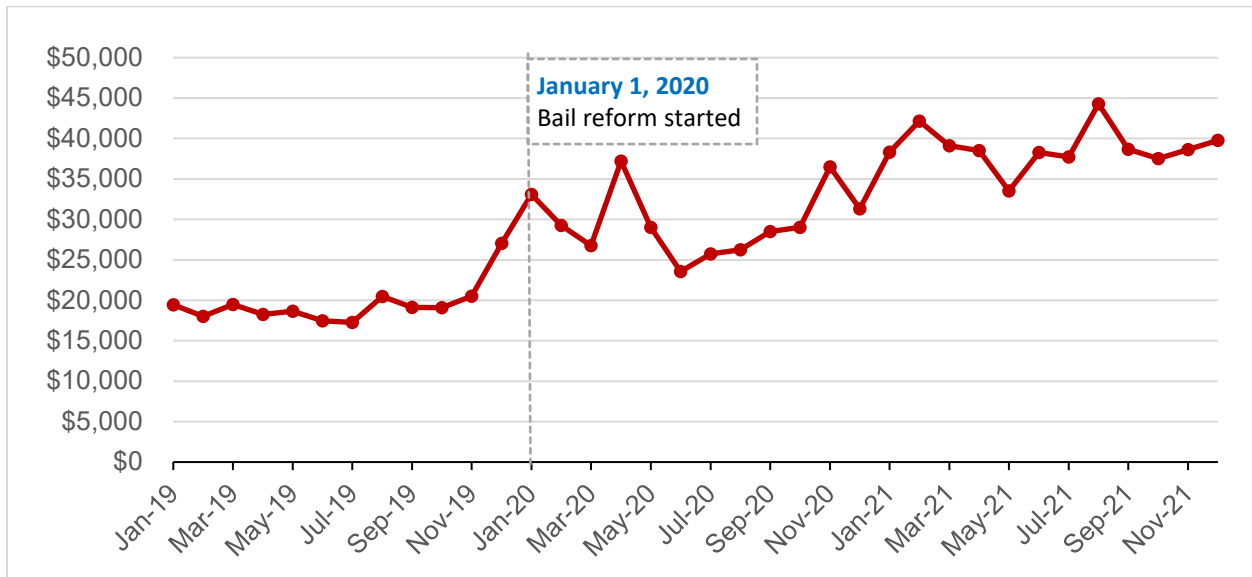


Note: Includes New York City Criminal and Supreme Court.

SOURCE: Office of the New York City Comptroller analysis of data provided by the New York State Office of Court Administration and data on Department of Correction jail admissions, available on New York City Open Data.

- Since state bail reforms took effect, average bail amounts have risen. In 2021, the average cash bail amount set at arraignment was \$38,866, up from \$19,162 in 2019 and \$29,742 in 2020 (Chart 4).
- Prosecutors tend to recommend higher bail amounts for more severe charges (disregarding the fact that bail is intended to function as an incentive to return to court, not a measure of severity of the alleged crime). The increase, then, can likely be attributed to the fact that most misdemeanor and non-violent felony charges are no longer bail-eligible.
- However, following the 2019 reforms, when setting bail, state law explicitly requires judges to consider a defendant's "individual financial circumstances" and "ability to post bail without posing undue hardship," not their "dangerousness," which has not been a permissible consideration under the statute since its creation in 1971, or the severity of charges.⁷

Chart 4: Average Cash Bail Dollar Amount Set at Arraignment



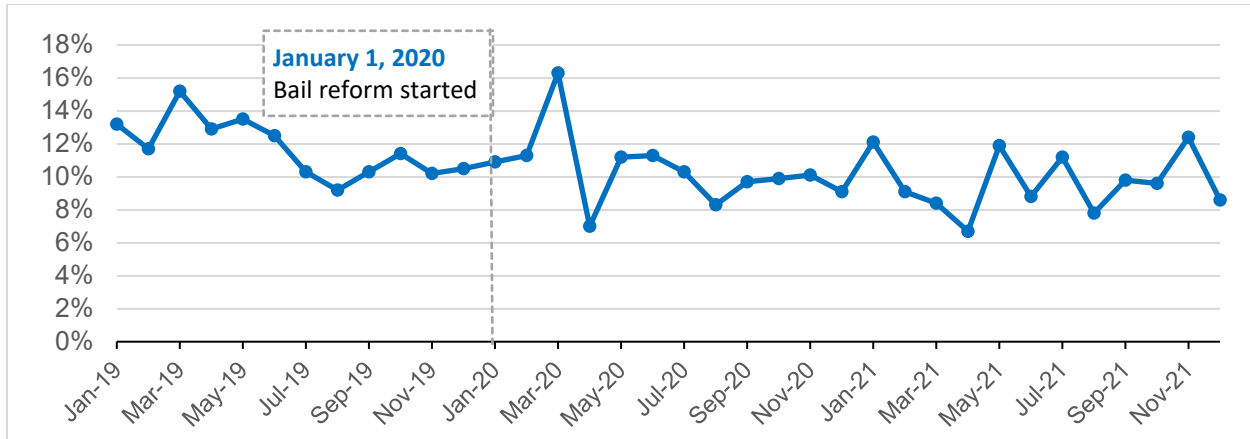
Note: Includes New York City Criminal and Supreme Court.

SOURCE: Office of the New York City Comptroller analysis of data provided by the New York State Office of Court Administration.

- Since state bail reforms were adopted, and the number of people with bail set has significantly declined, as shown in Chart 2, the share of people for whom bail is set who have been able to make bail at their arraignment hearing, and thus avoid time in jail, has steadily fallen (Chart 5).
- During 2021, an average of 9.7% of cases with bail set at arraignment were able to post bail immediately, a drop from 10.3% in 2020 and 12.0% in 2019.

⁷ New York State Criminal Procedure Law, Section 510.30, <https://www.nysenate.gov/legislation/laws/CPL/510.30>.

Chart 5: Bail Making at Arraignment

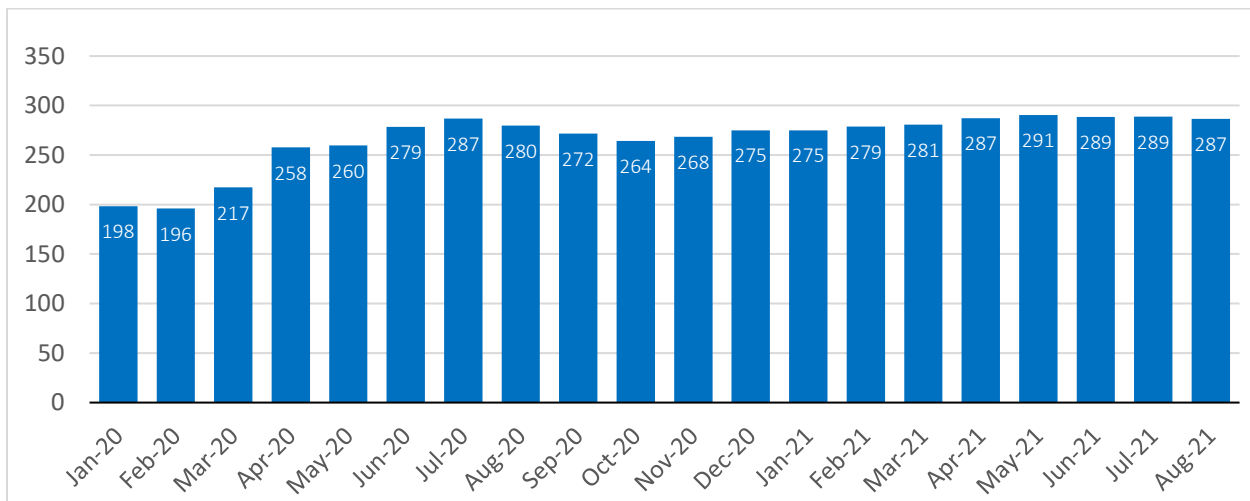


Note: Excludes \$1 bail, which indicates a mandatory hold. Bail making in March and April 2020 was likely impacted by the initial onset of the COVID-19 pandemic in the city.

SOURCE: New York City Criminal Justice Agency.

- For people who do not make bail, average jail stays have become longer. The average number of days people were in custody in New York City jails rose from 198.4 in January 2020, or roughly six and a half months, to 286.5 days, or more than nine months, in August 2021 – a 44% increase (Chart 6).
- Due to COVID-19, grand jury hearings were suspended from mid-March to August 10, 2020, delaying the judicial process for incarcerated individuals awaiting court hearings.
- Hearings were again suspended on November 16, 2020. The courts resumed civil and criminal jury trials on March 22, 2021.

Chart 6: Average Time in Custody (Days) for People in Department of Correction Facilities

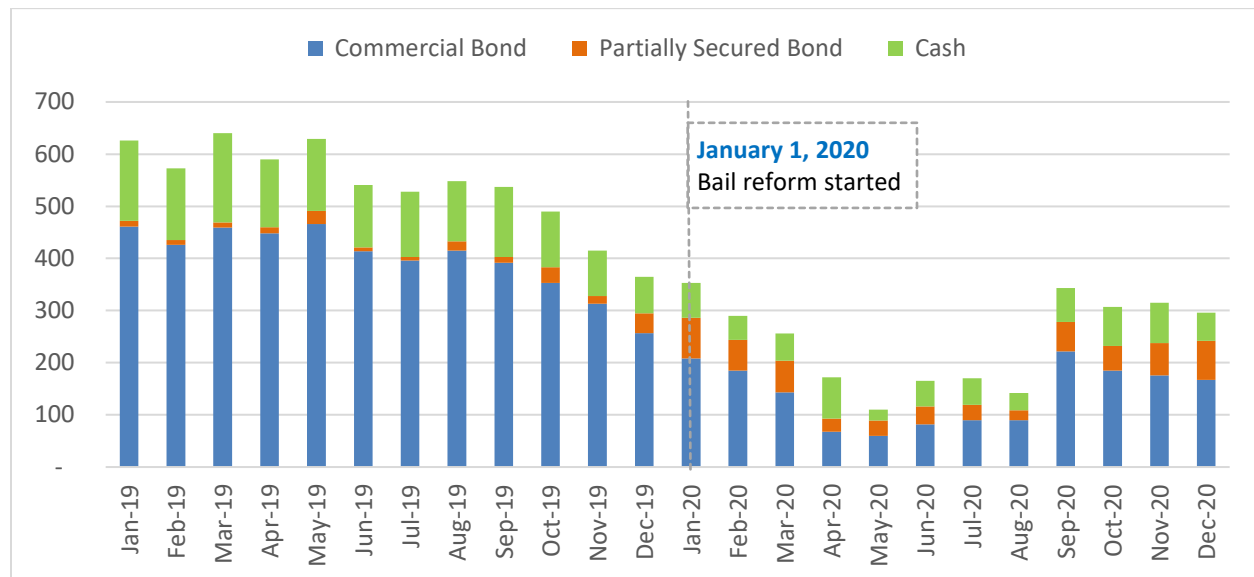


SOURCE: New York City Mayor's Office of Criminal Justice, *What's Behind the Jail Population Increase?* (October 2021).

Commercial Bail Bonds and Other Forms of Bail

- Since January 2020, judges have been required to set partially secured or unsecured bonds as an option when setting bail. Defendants may choose among the options that are set by the judge. However, commercial bonds continue to be widely used to pay bail.
- During 2020, among defendants who posted bail in Supreme Court – the City’s trial court for felony cases – commercial bonds were used in 57% of cases (Chart 7).⁸ In 2019 the share was 74%. Commercial bonds require non-refundable fees to for-profit insurance companies. State law limits the fee to 10% of bail amounts under \$3,000, plus an additional 8% for amounts above \$3,000 but below \$10,000, and another 6% for amounts above \$10,000.
- Use of partially secured bonds, which require up to a 10% deposit with the court, has increased, accounting for 20% of bail postings in Supreme Court during 2020, but were still used far less often than commercial bonds. Use of unsecured bonds, which do not require an upfront payment, has been almost non-existent. During 2020, unsecured bonds were used just seven times, down from 24 postings in 2019.

Chart 7: Bail Made by Type in Supreme Court



Note: Includes bonds posted only in Supreme Court.

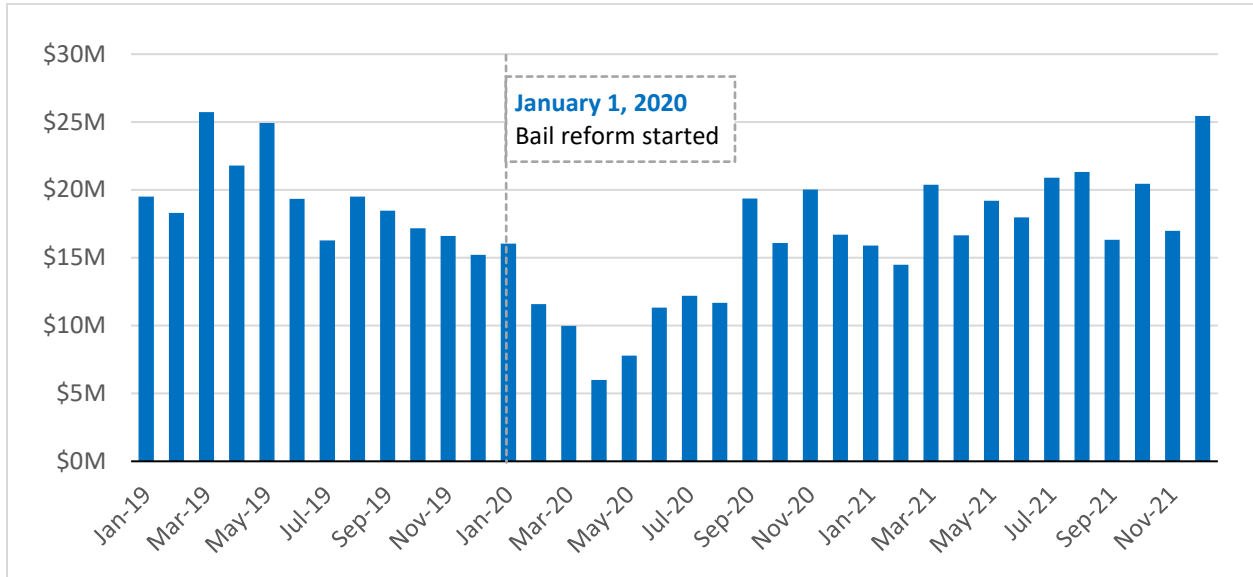
“Bond” includes commercial bonds, partially secured bonds, unsecured bonds, and secured bonds.

SOURCE: Office of the New York City Comptroller analysis of data provided by the New York State Office of Court Administration.

⁸ The Office of Court Administration’s data system is unable to separate different types of bonds posted in the City’s local Criminal Court.

- Consequently, commercial bonds and cash bail continue to extract millions of dollars from low-income communities.
- In 2021, \$226 million was posted in bail bonds, including commercial and partially secured bonds, up from \$159 million in 2020 but down 3% from \$233 million in 2019 (Chart 8). At the same time, the value of cash bail postings has grown from \$22 million in 2019 to \$27 million in 2020 to \$42 million in 2021.

Chart 8: Dollar Value of Bonds Made

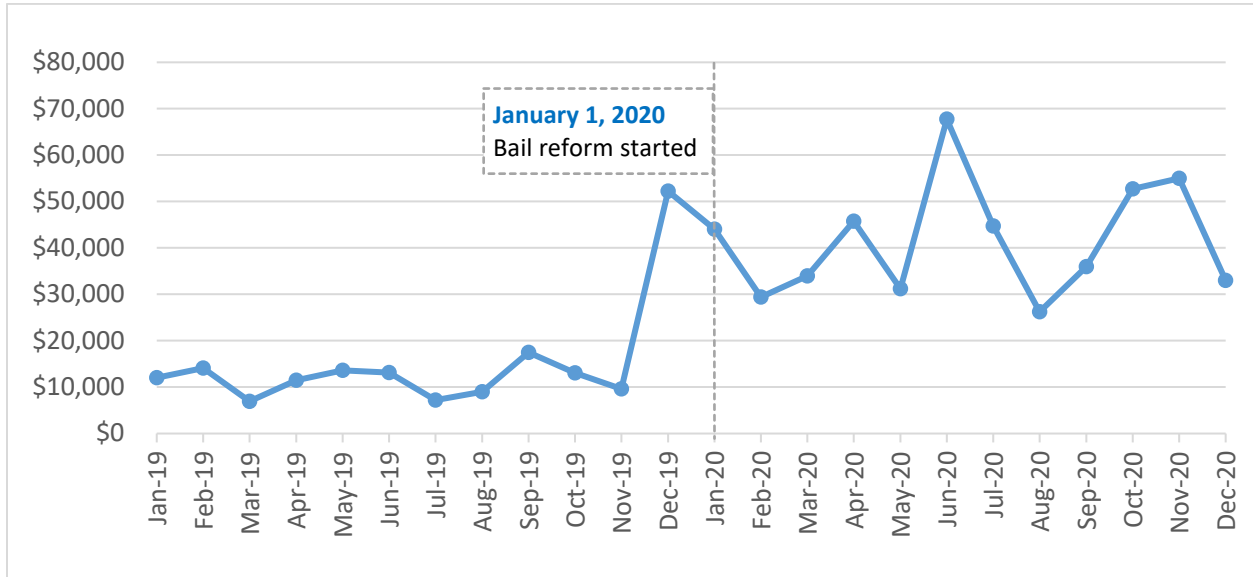


Note: Includes New York City Criminal and Supreme Court.

SOURCE: Office of the New York City Comptroller analysis of data provided by the New York State Office of Court Administration.

- Meanwhile, partially secured bonds, intended to be a more accessible option, are being set at amounts people cannot afford, likely contributing to the continued use of commercial bail. The average dollar amount of partially secured bonds made in Supreme Court jumped substantially, rising from an average of roughly \$11,900 from January through November 2019 to an average of more than \$40,000 in 2020 (Chart 9).
- The dollar value of partially secured bonds posted in Supreme Court has grown from \$4 million in 2019 to \$24 million in 2020.

Chart 9: Average Dollar Amount of Partially Secured Bonds Made in Supreme Court



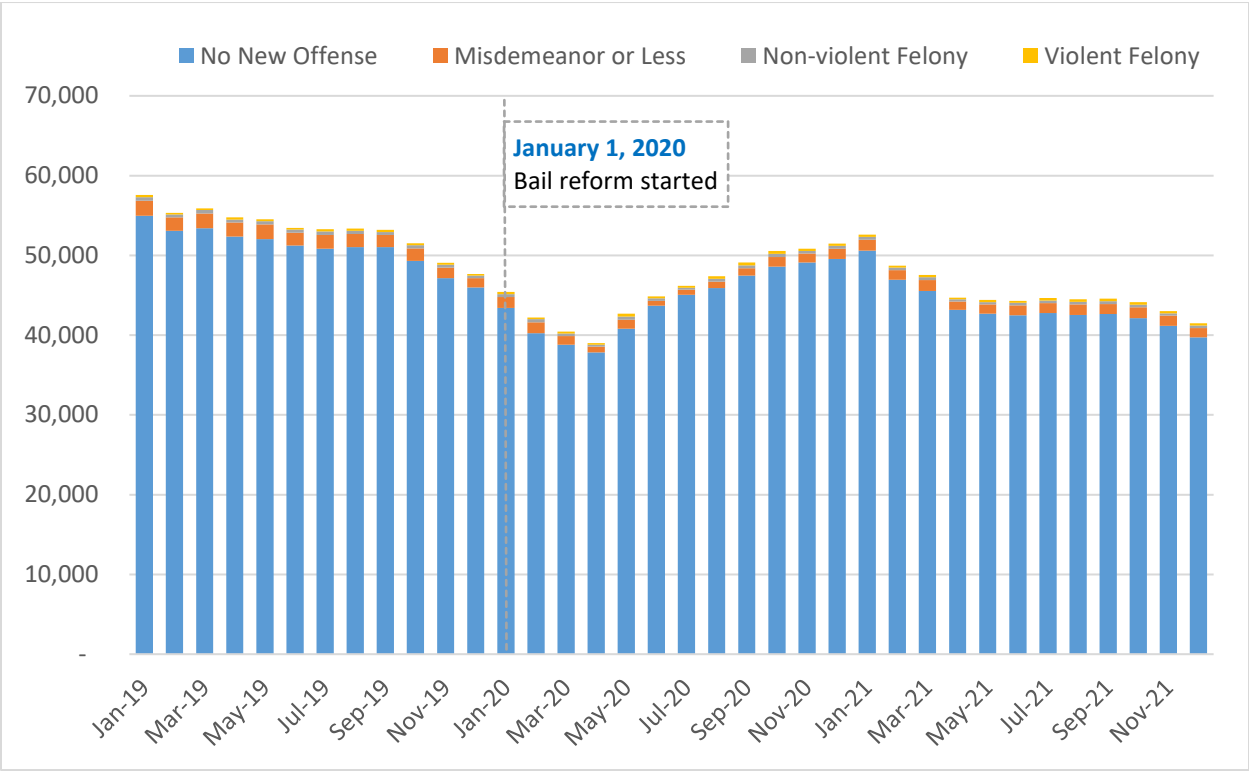
Note: Includes New York City Supreme Court.

SOURCE: Office of the New York City Comptroller analysis of data provided by the New York State Office of Court Administration.

Pretrial Release Outcomes

- Data released by the New York City Criminal Justice Agency show that the share of people awaiting trial in the community who are rearrested remained nearly identical before and after implementation of bail reforms.
- In January 2019, 95% of the roughly 57,000 people awaiting trial in the community with a pending case were not rearrested that month.
- In January 2020, 96% of the roughly 45,000 people awaiting trial in the community with a pending case were not rearrested that month.
- In December 2021, 96% of the roughly 41,000 people awaiting trial in the community with a pending case were not rearrested that month.
- In each of those months, 99% of people, regardless of bail or other pretrial conditions, were not rearrested on a violent felony charge.

Chart 10: Rearrest Outcomes for People On Pretrial Release



SOURCE: New York City Criminal Justice Agency, "Pretrial Release Dashboard" (accessed February 14, 2022), <https://www.nycja.org/pretrial-release-dashboard>.

Conclusion

Bail reform legislation by the New York State Legislature in 2019 reduced the number of people subject to bail meaningfully, lowering the number of cases in which bail was set from 24,657 in 2019 to 14,545 in 2021. Meanwhile, the vast majority of people awaiting trial in the community were not rearrested on new charges.

Still, despite the fact that the New York State Legislature intended for defendants to be able to afford bail in those cases where it still applies, data on bail set and made in 2020 and 2021, a full two years into implementation of the reforms, makes clear that bail setting continues to be a driver of pretrial incarceration.

This suggests that at least some of the actors primarily responsible for ensuring the reforms are implemented—namely, judges and prosecutors—are not abiding by all aspects of the new bail laws, including the mandate to consider defendants’ financial circumstances.

The Comptroller’s Office’s analysis points toward ways in which implementation of the reforms can be strengthened to ensure the spirit and letter of the law is upheld. The Comptroller’s Office recommends that the New York State Office of Court Administration (OCA) provide guidance and clear instructions to judges on how to assess a defendant’s ability to pay and mandate trainings on this provision of the law. Additionally, to ensure judges use the least restrictive condition in setting bail, as required, OCA should direct judges to first consider an unsecured bond and justify on the record their reasons for not using that option before setting a partially secured bond.

To significantly curtail the use of pretrial detention, New York should also advance strategies that address root causes of criminal legal system involvement, redirecting resources from the law enforcement and correctional systems to social supports that promote stability and safety and create economic opportunity, such as mental health care, substance use prevention and treatment, affordable housing, youth programming, and quality education.

Making additional charges eligible for bail and further rolling back the hard-won reforms, as recently proposed by some, is not a real solution for violence but rather a means for syphoning money from vulnerable communities and jailing those too poor to make bail. Rollbacks to bail reform should be rejected.