

# **The Real Impact of New York's Bail Reform:**

*Rollbacks Would  
Disproportionately Harm  
Black New Yorkers and People  
Outside of the Five Boroughs.*



## Executive Summary

On January 1st, New York implemented historic bail reforms that were the result of years of debate and political negotiation in Albany. These reforms will reduce the impact of harmful pretrial incarceration by ensuring that New Yorkers charged with most misdemeanors and nonviolent felonies are released without bail and not detained in jails pending the resolution of their case. Opponents of reform want New Yorkers to believe the new law is an unprecedented shift in pretrial policy and have resorted to fear-mongering and misinformation to make their case.

The reality is that the vast majority of New Yorkers were released without bail prior to the recent reforms, and the impact of the new law will be a marginal yet critical step to making pretrial freedom the rule and not the exception. In the years just before the reforms passed, 76% of people charged with crimes in New York were released before trial. However, rates of pretrial release were significantly lower outside of New York City and among Black New Yorkers. While the rate of pretrial release under the new bail reform laws is only expected to increase 14 percentage points to 90%, this impact will be felt most strongly by the communities that have been most harmed by New York's incarceration crisis.

## Background

In 2019, the New York state legislature passed a package of pretrial reforms to reduce the state's reliance on money bail and ensure that fewer people await their day in court behind bars. The reforms are expansive and include a wide range of policies, but the reform that will have the largest impact on the number of New Yorkers held in jail on any given day is the change to the state's bail laws. The new law mandates pretrial release without money bail for people charged with almost all misdemeanors and nonviolent felonies.

This package of reforms is a historic and necessary step forward, but it is also the continuation of a decades-long effort in New York to safely increase pretrial release. Because of reforms made by cities and counties across the state, New York's pretrial incarceration rate **declined by 25%** between 1997 and 2015. During that time period, a growing majority of people were released to await trial at home in their communities. Meanwhile, **violent crime in the state declined by 45% and property crime fell by 50%**.

Despite this progress, tens of thousands of legally innocent people, disproportionately Black New Yorkers and people charged with crimes in the counties outside of New York City, continued to cycle through the state's jails each year because they could not afford bail. The 2019 legislative reforms were passed to address these lingering problems and make real the presumption of innocence for more New Yorkers across the state accused of misdemeanors and nonviolent felonies.

In spite of these well documented trends, opponents of the recently implemented bail reform have attempted to create the false impression that New York shifted overnight from a state in which everyone accused of a crime was incarcerated pretrial to a state in which no one is. The following analysis refutes this misinformation by documenting pretrial release trends prior to the passage of the recent reforms and demonstrating the marginal yet critical impact of these reforms.

## Pretrial Release Rates Not Equal Across Communities

According to the data used in this analysis, in the years just before bail reform passed, the vast majority of people charged with crimes in New York were released to await trial at home.<sup>1</sup> Statewide, 76% of individuals charged with crimes were released prior to the resolution of their cases.<sup>2</sup> Of this group, 86% were released with no bail, and the remainder were released after paying the bail set in their case. However, pre-reform release rates varied significantly across communities, and the new law will provide critical reductions in incarceration for groups that have historically been jailed at higher rates:

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<sup>1</sup> This analysis is based on Office of Court Administration data analyzed by the New York State Division of Criminal Justice Services. The dataset includes felony and fingerprintable misdemeanor cases that were continued beyond arraignment between January 2016 and June 2017. Because not all courts in New York State use a centralized record management system, the dataset does not include arraignments held in Town & Village Courts and a small number of other jurisdictions of New York State. However, the vast majority of courts in New York State are captured in this analysis.

<sup>2</sup> For the purposes of this analysis, we consider people who return home within five days of their arraignment to be "released to await trial at home."

## People charged with nonviolent felonies

While pre-reform release rates varied by offense type, a majority or near-majority of people charged with all offense types were released to await their day in court at home. The highest release rate was for people charged with misdemeanors at 86%. Fifty-seven percent of people charged with nonviolent felonies, and 45% of those charged with violent felonies were released pending trial. The biggest impact of the law will be on those charged with nonviolent felonies, far fewer of whom will be exposed to the harms of incarceration.

## People charged with crimes outside of New York City

Before bail reform was enacted, over two-thirds of people charged with crimes were released pending trial both in New York City and in the counties outside of the City. But the rate was significantly higher in New York City, where 82% of people awaited trial at home rather than in jail. That percentage was 68% outside of New York City. In other words, people charged with crimes outside of New York City were 17% less likely to be released pretrial.

## Black New Yorkers across the state

The share of people who awaited trial at home before reform varied significantly by race, particularly outside of New York City. In the City, White people were 9% more likely to be released than Black people. Outside of New York City, White people were 20% more likely to be released than Black people. These disparities worsen as charges grow more serious. White people charged with misdemeanors and nonviolent felonies were 7% and 18% more likely, respectively, than Black people to be released pretrial in the counties outside of New York City.

While the new law should reduce these disparities, additional reforms are needed to ensure racial equity in release decisions. The reforms will not impact people charged with violent felonies, for which racial disparities are even more extreme than those for misdemeanors or nonviolent felonies—White people were 56% more likely than Black people to be released when the alleged charges were for violent felonies outside of New York City. They also do not address the fact that Black and Latinx people are more likely to be arrested and charged with crimes in the first place.

## Impact of Reforms

While we do not yet have enough data to analyze detailed post-implementation release rates, historical data can provide some insight into the projected impact of bail reform. According to the [Vera Institute of Justice](#), the reforms will eliminate bail and mandate pretrial release for 90% of those charged with crimes across the state. This finding is confirmed by an analysis conducted by the [Data Collaborative for Justice](#) which found that 91% of those charged with crimes in New York City in 2018 would have been mandatorily released to await trial at home had the new laws been in effect. Thus, the new bail laws are expected to increase pretrial release rates by 14 percentage points (from a rate of 76% before reform to a rate of roughly 90% after reform).

## Conclusion

New York's recently enacted bail reforms have been the subject of extensive debate, with misinformation dominating much of the conversation. The best way to understand the true impact of the reforms is to look to data rather than anecdote. The analysis above shows that bail reform will result in a marginal, yet critically important, increase in pretrial release rates. The impact will be felt most strongly by Black New Yorkers and those charged with crimes, particularly non-violent felonies, outside of New York City.