



Freedom, Then the Press, Volume II: New Data, Same Tricks

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This report, “Freedom, Then the Press, Volume II: New Data, Same Tricks,” builds on the in-depth media analysis from the first volume released in April 2021. Since the release of the first report, numerous data analyses have demonstrated that bail reform does not compromise public safety in New York. **Despite clear data showing that bail reform is not linked to an increase in crime, ongoing misinformation and a blitz of misleading media coverage has undermined support for bail reform.**

In 2019, New York passed historic bail reform that expanded pretrial freedom for tens of thousands of people. Yet, since passage of the law, it has been under constant attack from the media and other opponents. The onslaught of misinformation around bail reform contributed to the first set of rollbacks in 2020. **And two years later, even after the release of research showing no connection between bail reform and rising crime, a second round of rollbacks passed in April 2022.**

Over the course of 2021 and 2022, multiple data releases and studies from the state and local New York agencies showed that people released pretrial were rarely re-arrested, especially for violent crime. A new analysis compares people impacted by bail reform (those who were charged with a crime that requires release on recognizance) to people with similar charges before bail reform went into effect, showing that for cases impacted by bail reform, there was no change in re-arrest rates between 2019 and 2021. In addition, the vast majority of cases released under bail reform did not result in a re-arrest for a violent felony, a rate that also remained about the same (96.9% in 2019 and 96.4% in 2021).

These findings were mostly ignored by the media. Since the first study showing low re-arrest rates for violent crime was released in January 2021, at least 1,651 news stories have erroneously linked bail reform and crime.

Introduction and Timeline of New York Bail Reform

In April 2021, FWD.us published a groundbreaking report, “[Freedom, Then the Press](#),” which analyzed the role the media played in 2020 bail rollbacks in New York state. This follow-up report examines how, despite strong data confirming that bail reform does not lead to a rise in crime, media outlets have continued to spread misinformation and amplify the inaccurate arguments of bail reform opponents. Ultimately, the same poor media practices that contributed to bail rollbacks in 2020 contributed to additional bail rollbacks in 2022, and that misinformation continues today.

As explained in the initial report, New York legislators passed bail reform in 2019 in response to the two-tiered justice system in which a person’s income determined whether or not they were detained before trial. Before bail reform passed, more than 60,000 New Yorkers¹ were jailed before trial each year, often leading to deadly results,² declining mental and physical health, loss of income, and severed ties to family and loved ones.³

As a result of the historic changes made to the state bail laws in April 2019, pretrial release without bail was mandated for people charged with almost all misdemeanors and nonviolent

**APR
2019**



Historic bail reforms pass with 55% of New Yorkers believing the bail law will be good for the state.

**JAN 1
2020**

Bail reform takes effect. During the 9 month period between the bail law’s passage and enactment, there were 204 articles linking bail reform to crime and an 18-point drop in public support for the law.

**APR 3
2020**



The Legislature passes rollbacks to bail reform. During the 3 months directly preceding the bail rollbacks, there were 454 mentions of bail reform and crime in the media.

**APR 5
2020**

First COVID-related fatality is reported at Rikers Island.

**JAN
2021**

The New York City Mayor’s Office of Criminal Justice releases a study showing that nearly everyone released citywide pretrial (95%) were not re-arrested for any new crime in any given month between January and September 2020.

**APR 2
2021**

FWD.us releases “Freedom, Then the Press” report outlining how poor media practices led to a rollback of the original bail law.

felonies. While the reforms reduced the number of charges where judges were allowed to set bail, they did not fully eliminate bail or pretrial detention. **Judges maintained their ability to set bail for people charged with violent felonies and a select number of other offenses and circumstances. Furthermore, a person awaiting trial in the community could still be subject to bail or pretrial detention at a later point if they violated the rules of pretrial release.**

Despite the urgent need for bail reform, concessions given to law enforcement during the 2019 legislative session, and a lack of evidence connecting bail reform to rises in crime, opponents quickly began using media outlets to spread false information about the new law and create fierce public backlash against bail reform.⁴ **Only three months after bail reform went into effect, this backlash pressured lawmakers into rolling back components of bail reform in April 2020,** just weeks after the start of the COVID-19 pandemic. As a result of the initial 2020 rollbacks, judges gained the ability to set bail for over a dozen new charges, including but not limited to, burglary in the second degree, if the burglary occurs in the actual “living area” of a dwelling, an undefined term in the law. Judges also gained the discretion to set bail on class A misdemeanors or felonies where there was alleged “harm to an identifiable person or property” by someone released who has an open case where harm was alleged. Judges also received increased discretion to set bail or remand individuals who are charged with a new crime while awaiting trial.⁵

**SEP 27
2021**

FBI releases 2020 Crime Statistics outlining national rise in crime in all areas of the country including jurisdictions that had not passed bail reform.

**NOV 2
2021**



Eric Adams is elected as New York City mayor, running on a tough on crime platform, citing further rolling back bail reform as a top priority.

**JAN 11
2022**

The Times Union conducted a study of statewide bail data, provided by the Office of Court Administration (OCA) and Division of Criminal Justice Services (DCJS), related to pretrial releases between 2020 and 2021. Their analysis showed that of the nearly 100,000 cases where people were released due to the state's changed bail laws, nearly all (98%) were not re-arrested for a violent crime while awaiting trial.

**MAR 22
2022**

The New York City Comptroller's Office releases a report, citing data from the Mayor's Office of Criminal Justice and the New York City Criminal Justice Agency, concluding “that pretrial rearrest rates remained nearly identical pre- and post-bail reform” in New York City.

**MAR 28
2022**



As elected leaders consider further bail reform rollbacks, a poll of registered voters finds that a record low 30% of New Yorkers believe the law was good for the state, and 64% blame bail reform for an increase in crime.

**APR 7
2022**



The Legislature passes second rollbacks to bail reform. During the 3 months directly preceding bail rollbacks there were 381 articles linking bail reform and crime in the media.

However, opponents to bail reform continued to use misinformation to sow fear, which led to an additional round of rollbacks in April 2022. Those latest

amendments included “theft of or damage to property,” in the definition of harm, making it explicit that two allegations of petit larceny, for example, could be eligible for bail.

Additionally, the 2022 rollbacks expanded bail eligibility to possession of an unloaded firearm if the person was out on recognizance, under conditions, or had not yet been arraigned for a charge for which the person was given a desk appearance ticket. Finally, the 2022 amendments allow judges to consider additional factors when deciding whether or not to set bail on some specific felonies, including criminal history, allegations of harm, and previous possession of a firearm.⁶

Yet, even after bail reform was partially rolled back twice in three years,⁷ opponents continue to claim that bail reform is causing crime to rise and to spread misinformation about bail reform’s impact.

This narrative is particularly egregious since available data clearly indicates that bail reform is not responsible for the tragic increase of some crimes in New York.

**JUL 29
2022**

Bloomberg Analysis finds a 500% increase in monthly media stories about crime in NYC during the Adams administration, as compared to coverage during the prior mayoral administration.

**SEP 21
2022**

An analysis conducted by the Division of Criminal Justice Services shows that the share of cases where people are returning to court has increased. Failure to appear (FTA) rates declined in New York City from 15% to 9%, and remained about the same outside New York City.

**OCT
2022**

FWD.us analysis of OCA and DCJS data also confirms the success of bail reform by demonstrating that re-arrests rates for people directly impacted by changes to the bail law have remained about the same before and after bail reform, and that court appearance rates have improved.

**OCT 31
2022**

Another person dies in Rikers Island, bringing the death toll to at least 18 people in 2022, more than any year since 2013.

**NOV 8
2022**

More than 300 articles linking bail reform and crime are published in fewer than 6 weeks leading up to the 2022 midterm elections.

**NOV 15
2022**

Number of media stories falsely linking bail reform to crime since January 2019 reaches 2,688.

**DEC 11
2022**

Edgardo Mejias is reported to have died at Rikers Island, bringing the death toll to at least 19 people in 2022.



The Data Says Bail Reform is Not Leading to Rising Crime

Since bail reform passed, media outlets have continued to peddle false narratives surrounding crime and bail reform. Those false narratives are increasingly indefensible since multiple independent analyses show that bail reform works and has had no negative impact on public safety or court appearance rates. Opponents argue bail reform has led to an increase in violent crime and that pretrial incarceration is necessary to ensure court appearances. But analysis after analysis looking at New York City data and the statewide data show those arguments are simply not true.

Independent Analyses of Bail Reform Data

In January 2021, the New York City Mayor's Office of Criminal Justice released a study showing that 95% of people on pretrial release citywide were not re-arrested for any new crime in any given month between January and September 2020.⁸

Just a year later, in January 2022, the Office of Court Administration (OCA) and the Division of Criminal Justice Services (DCJS) released the first batch of statewide data required by the 2019 law for the purposes of tracking and evaluating outcomes of the reform. This data covered all pretrial releases between January 2020 and July 2021. The Times Union analyzed this data and showed that of the nearly 100,000 cases where charges fell into the mandatory release bucket and therefore were released due to the state's changed bail laws, nearly all (98%) were not re-arrested for a violent felony while awaiting trial.⁹

Despite both of these analyses, opponents of bail reform and some legislators continued to call for additional rollbacks to bail reform. While New York's elected leaders were considering more rollbacks to bail reform in March 2022, the New York City Comptroller released a report citing data published by the New York City Criminal Justice Agency and the Mayor's Office of Criminal Justice to conclude that there was no change in overall re-arrest rates in New York City before and after bail reform went into effect.¹⁰ In fact, based on this data, the Comptroller urged leaders to strengthen

implementation and invest in real evidence-based solutions to crime.¹¹ Despite the Comptroller's analysis and the two previous analyses discussed, lawmakers voted to further roll back bail reform in April 2022.

Following those rollbacks, in September 2022, OCA and DCJS released expanded data covering January 2019 through December 2021 allowing a statewide comparison in release rates, types, and outcomes from before and after bail reform went into effect. An analysis of this data conducted by DCJS revealed that the share of cases where people return to court has increased since bail reform went into effect. Failure to appear (FTA) rates declined in New York City from 15% to 9%, and remained about the same outside New York City.¹² This study also corroborated low re-arrest rates for all people released pretrial, both in New York City and the rest of the state.

While these studies clearly show bail reform is not undermining public safety, none of them provide an apples-to-apples statewide comparison using people affected by bail reform and a comparable group pre-bail reform. FWD.us conducted its own analysis in order to focus on those people who were impacted by bail reform and to compare outcomes before and after implementation.

New FWD.us Analysis of Statewide Pretrial Data

Using data released by OCA and DCJS in September 2022, FWD.us analyzed pretrial release outcomes of arraignments that occurred between January 1, 2019 and December 31, 2021. See Methodology section for more information on this analysis.

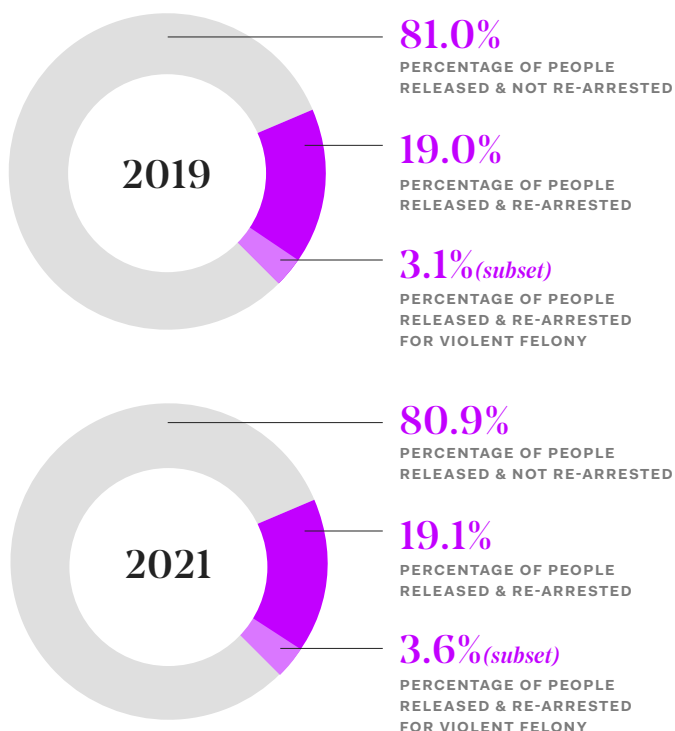
Arraignments were sorted into two categories based on the revisions to the bail reform law that went into effect in July 2020: those required to be released pretrial after bail reform went into effect and those not required to be released pretrial even under the new law. For those not required to be released pretrial, the system worked much as it did pre-bail reform. Judges could set bail on their cases and, if they had the funds to post, they could await their court dates from home. If they did not have the funds, they would await their court dates from behind bars. In some cases, judges could also remand people, meaning detain them before trial without bail. The group charged with crimes that required pretrial release without bail was the group most impacted by bail reform. The new law required they be released at arraignment to await their court dates at home without having to pay any bail amount. This analysis looks at how people charged with the same crimes fared in the community before and after bail reform went into effect.

Although this analysis is a better look at the actual impact of bail reform, it reinforces the findings of the litany of prior studies. As expected, re-arrest rates remained about the same before and after

bail reform. Eighty-one percent of cases impacted by bail reform did not result in any re-arrest for any kind of crime while awaiting trial, a number that remained the same in 2019 and 2021.¹³

Much like the prior studies, this analysis found that the vast majority of cases released under bail reform did not result in a re-arrest for a violent felony. There was also very little change in this number over time: in 2019, only 3.1% of cases impacted by bail reform resulted in a violent felony re-arrest. In 2021, that number was 3.6%.

FIG. 1:
PEOPLE IMPACTED BY BAIL REFORM WERE NOT ANY MORE LIKELY TO BE RE-ARRESTED IN 2021 THAN IN 2019



Moreover, among cases that required pretrial release, the number of cases that resulted in a re-arrest for a firearm crime went down since bail reform was enacted.

All of this shows clearly that bail reform is not responsible for any rise in crime. The people impacted by bail reform are not getting re-arrested at higher rates than before bail reform went into effect, and for certain crimes, they are actually getting re-arrested less than before.

Moreover, court appearance rates have improved since the implementation of bail reform. People are continuing to return to court, and at higher rates. The rate of issuance of bench warrants, which are given when someone fails to appear, decreased between 2019 and 2021 by nearly three percentage points (from 13% to 10%) for cases where pretrial release without bail was required by bail reform and by nearly two percentage points (from 14% to 12%) for cases where bail could still be set. As shown by multiple studies released over the past few years, bail reform is causing no harm to public safety, and no increase in failure to appear rates.

It is worth noting that while there has been a 1.9% rise in overall crime in New York between 2019 and 2021 and a 9.1% increase for some violent crimes, these trends mirror crime increases occurring across the country and cannot be blamed on bail reform.¹⁴ Homicide rates increased in rural and urban areas, in jurisdictions run by Democrats and Republicans, and in places that had passed recent criminal justice reforms¹⁵ and in those that had not passed any criminal justice reforms. In fact, New York City's percentage change in homicides from 2019-2020 was lower¹⁶ than numerous other cities including Omaha, Phoenix, Austin, Seattle, Chicago, and Madison, making it one of the safest cities in the nation.¹⁷ Moreover, New York state's homicide rate remains lower than the national average.¹⁸



How False Claims Have Continued to Dominate the Media, Despite Clear Data Showing the Success of Bail Reform

“Freedom, Then the Press: Volume 1” explored how media coverage of bail reform in New York misleadingly tied reforms to individual cases and relied on poor sourcing and biased language. This volume explores how these issues continue today but at a higher volume and with new false narratives: (1) that crime in New York state is at unprecedented highs (especially in New York City), and (2) that bail reform is to blame for a wide decline in public safety. As illustrated above, these claims have been debunked by local and statewide studies disproving any connection between bail reform and crime, and by national crime statistics showing that New York is not an outlier when it comes to crime increases.

This is not just a matter of content, but also an issue of volume. A recent report released by Bloomberg compared the number of shooting incidents that occurred between 2019 and 2022 to media coverage of shootings¹⁹ and found that the rise in coverage far outweighed the rise in the actual number of shootings. FWD.us repeated this analysis looking at the overall violent crime rate in New York City compared to the mentions of “bail reform” and “crime” and saw a similar jump in coverage linking the two that far outpaced the actual rise in crime.

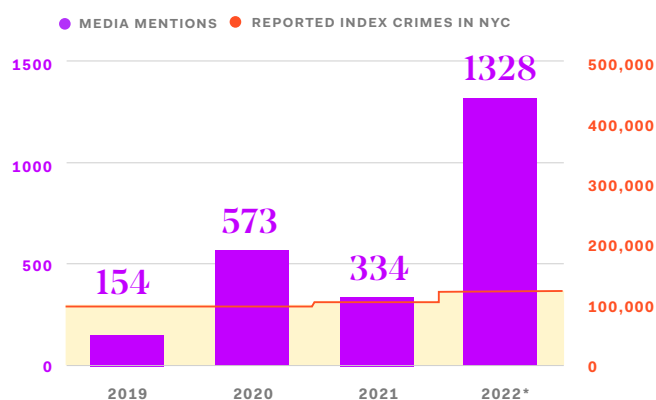
Articles exaggerating the nature of the increased crime rates often use hyperbolic language to instill a sense of fear in readers, referring to New York City as experiencing a “bloody summer,”²⁰ a “surge”²¹ of shootings, and being “hammered by violent crime.”²² The misleading implication behind these articles is that crime is exceptionally high in New York City, and beyond control.

The inflated coverage of crime in New York has also coincided with increased finger-pointing at bail reform — despite the wealth of published data revealing that bail reform is not responsible for rises in crime. Some of the most recent articles included fearmongering headlines such as “*As murders spike in New York City, NYPD Commissioner Keechant Sewell again calls on Albany to fix bail laws*”²³ and “*Not just in NYC: Upstate NY residents say bail reform fuels crime there, too*”²⁴ to falsely connect bail reform to increased crime rates, and frame bail reform as being responsible for a public safety crisis across New York state.

A clear consequence of increased media misinformation around bail reform has been increased public opposition to the law, resulting in lawmakers enacting two rounds of rollbacks. In April 2019 when bail reform passed, 55% of New York voters believed the bail law would be good for

FIG. 2:
THE RISE IN MEDIA COVERAGE LINKING BAIL REFORM AND CRIME IS FAR DISPROPORTIONATE TO THE ACTUAL RISE IN CRIME IN NEW YORK CITY

News articles mentioning both “Bail Reform” and “Crime” in New York City and Reported Index Crimes in New York City



Source: Index Crime: NYPD Compstat and Historical Crime Data; Media Mentions: FWD.us LexisNexis News Search

*2022 index crime and article count estimated using data through October 31, 2022

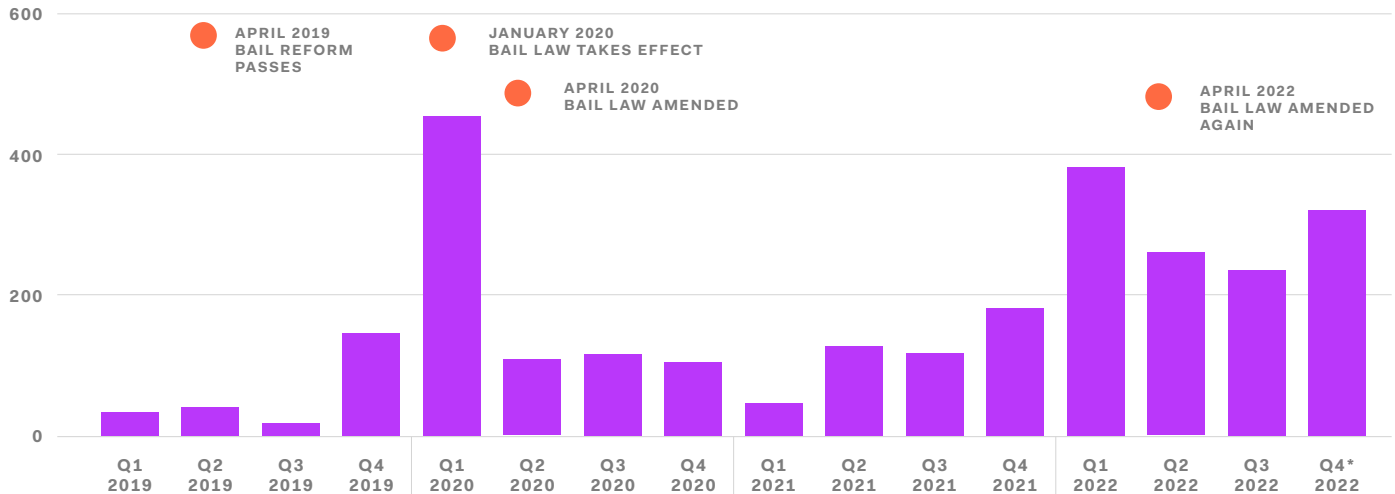
New York.²⁵ In January 2020 — three months before the first set of bail rollbacks passed - only 37% of voters surveyed believed that bail reform was good for New York state.²⁶ At this point, bail reform had not even been implemented.

During the nine month period (April 2019-December 2019) that public support for bail reform dropped by 18 points, there were 204 articles that linked bail reform and crime in the media. In the three months directly preceding the April 2020 rollbacks, that number skyrocketed to 454 articles. The only quarter with close to that many articles also immediately preceded rollbacks passing in 2022. These false narratives have contributed to a waning of public support for bail reform.²⁷ In March 2022, one month before further bail rollbacks passed, a record low 30% of New York voters surveyed believed the law was good for the state, and 64% blamed bail reform for an increase in crime.²⁸ The New York Post and Daily News alone published 70 articles connecting bail reform and crime in the first three months of 2020, and another 70 articles connecting bail reform and crime in the first three months of 2022 — both periods immediately preceding rollbacks to the law.

Nor did a second set of rollbacks stop the fearmongering or its consequences. The next highest quarter of coverage linking bail reform and crime was the as-yet-incomplete Q4 of 2022 — only one and a half months (October and half of November were included in this analysis) instead of three. In that time — during which the 2022 midterm elections took place - more than 300 articles linking bail reform and crime were published.

FIG. 3: MENTIONS OF “BAIL REFORM” AND “CRIME” WERE HIGHEST IN THE MONTHS LEADING UP TO ELECTIONS AND DIRECTLY PRECEDING ROLLBACKS

News articles mentioning both “Bail Reform” and “Crime” in New York

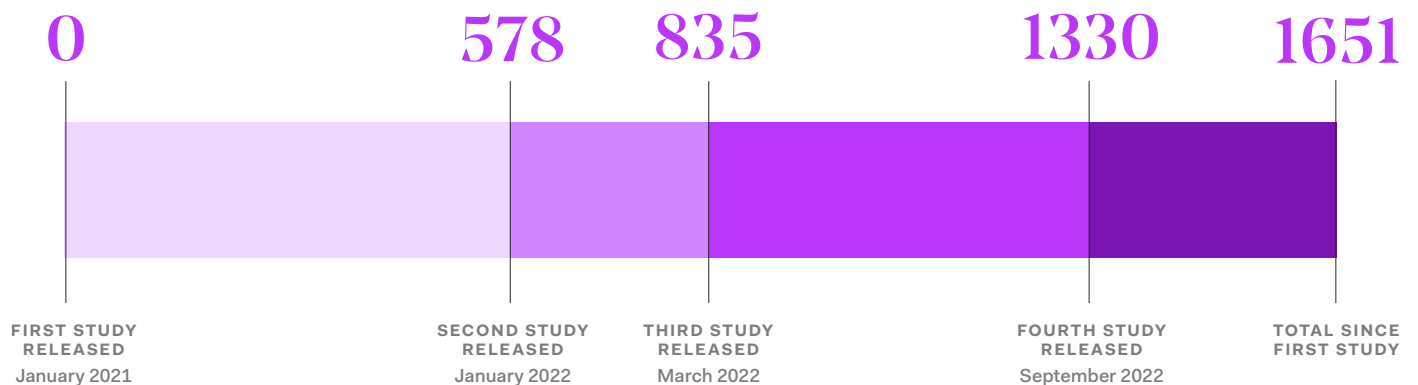


*Q4 includes articles published between Oct 1 and Nov 15, 2022. It is not scaled up to match other quarters.

These articles largely ignored or obfuscated the previously discussed evidence showing no link between bail reform and rising crime. Since the publication of the Mayor’s Office of Criminal Justice study showing no rise in re-arrests for people released pretrial, there have been 1,651 articles published linking bail reform and crime in the state. The majority of those (1,073) were published after The Times Union analyzed statewide data to show that people specifically impacted by bail reform have extremely low re-arrest rates for violent crime.

FIG. 4: NEW YORK MEDIA CONTINUED TO PUBLISH ARTICLES LINKING BAIL REFORM AND CRIME AFTER MULTIPLE STUDIES SHOWED THAT BAIL REFORM WAS NOT RESULTING IN HIGHER CRIME.

News articles mentioning both “Bail Reform” and “Crime” after release of studies showing no link between the two



Conclusion

Despite the multiple robust and publicly available independent analyses demonstrating that bail reform has not contributed to a rise in crime, media outlets and opponents of reform have continued to claim the opposite, and have scared the public and elected officials into believing that bail reform is harming public safety. They have done so by reporting on crime at a disproportionate rate to its actual occurrence, by associating bail reform with high crime rates, and by parroting law enforcement and bail opponents who explicitly blame crime on bail reform. These false claims have real consequences, and have contributed to two sets of rollbacks that undermine the overall purpose of bail reform: to safely reduce New York's jail population and to ensure that someone's freedom is not dependent on the amount of money they have.

Resources

There are multiple resources that can help the media more accurately cover crime, bail reform, public safety, and recidivism. In addition, it is critical to look at the available data and not just rely on blanket statements that directly conflict with the data. Resources such as [Justice Not Fear](#) and “[Alec’s Copaganda Newsletter](#)” dig into specific cases and provide accurate information about whether or not the case was impacted by bail reform and other critical information to help push back on media misinformation. In addition, if journalists are curious about the current data, you can reach out to organizations like FWD.us, the Vera Institute for Justice, the Data Collaborative for Justice, and the Center for Court Innovation who have experience understanding New York criminal justice system data.²⁹

Last year, FWD.us conducted research published in a report entitled “[People First: The Use and Impact of Criminal Justice Labels in Media Coverage](#)” to examine the impact of use of the harmful labels,

and found that terms such as “felon,” “offender,” and “inmate” bias news readers and viewers against directly impacted people and criminal justice reform. Also, the [Center for Just Journalism](#) provides guidance to journalists who are writing about these issues.³⁰

We also recommend following the guidelines outlined by authors Mariame Kaba and Andrea Ritchie in their initiative, “[interrupting criminalization](#),” along with the guidelines laid out in FWD.us’s “People First” report.

America’s criminal justice system cannot improve if voters and policymakers are regularly exposed to fearmongering and misinformation. News outlets have a responsibility to avoid manufacturing a public safety crisis that will only scare audiences into believing mass incarceration is the best solution to keep communities safe.

Methodology

MEDIA MENTIONS:

In order to analyze the ubiquity of media coverage of bail reform and crime, the number of articles mentioning both “bail reform” and “crime” was compiled using Lexis Nexis News search tools. The search terms “bail reform” and “crime” were combined to find any article published in New York state that included both terms. This search was run month by month, to identify the number of articles within each monthly time period from January 2019 through November 2022 (unless otherwise noted). This search was compiled on November 15, 2022, meaning that results for November 2022 are incomplete. To compare year to year, data on crime and number of published articles was adjusted to project the total for 2022 if trends were to continue.

BAIL ELIGIBILITY:

In order to determine bail eligibility and therefore which cases fell in the mandatory release category and be most impacted by bail reform, several

estimations had to be made with regards to broad categories allowing bail to be set. The goal of this analysis was to isolate bail ineligible cases to better understand the impact of bail reform on people who were very likely to be impacted by it, therefore estimations generally erred on the side of including cases as bail eligible when there was ambiguity in the data or when the possibility of discretion could put those cases into a bail eligible category.

When ambiguity existed in the data, broad categories were used to try to classify cases as either “bail eligible” or “bail ineligible.” These categories include: charges that require certain conditions (unidentifiable in pretrial dataset) be true in order to be bail eligible; any crime causing the death of another person; persistent felony offender status; and “harm on harm.”

The misdemeanors criminal contempt and criminal obstruction of breathing or blood circulation, as well as the felonies criminal contempt and unlawful imprisonment require that the underlying charge

be a domestic violence offense in order to be bail eligible. DCJS pretrial data contains no indicator for domestic violence. Cases that were possibly bail eligible based on these conditions were estimated to be bail eligible. This estimation is based on the fact that these charges are most often levied in domestic violence cases according to the experience of former practicing New York defense attorneys. Cases that were included as bail eligible based only on the estimation of an underlying domestic violence charge constituted 7.9% of the pretrial dataset.

Felony failure to register as a sex offender if the person charged is required to register as a level 3 sex offender. DCJS pretrial data contains no indicator of sex offender status. These cases were estimated to be bail eligible due to the relatively small subsample size and the likelihood that some of these cases would involve individuals required to register as level 3 sex offenders. Cases that were included as bail eligible based only on estimation of level 3 sex offender status were a very small subset of the pretrial dataset (less than 0.05%).

Felony burglary in the second degree requires that the offense occur in the living area of a dwelling in order to be bail eligible. DCJS pretrial data contains no indicator as to whether burglary occurred in the living area of a dwelling. These cases were estimated to be bail eligible based on the advice of former New York defense attorneys and the intention of this analysis to more accurately isolate bail ineligible cases. Cases with the top charge of felony burglary in the second degree that were included as bail eligible constituted 1.3% of the pretrial dataset.

Any crime causing the death of another person is bail eligible. DCJS pretrial data does not contain any indicator for death of a victim (besides charges like homicide that necessarily result in the death of a person). New York Penal Law was examined for

offenses that include causing the death of a person. In this dataset, the number of cases that could have caused death and were not otherwise bail eligible constituted a very small subset (less than 0.05%). These cases all included offenses that result in the death of a person and were therefore all estimated to be bail eligible.

Any felony offense where the person charged would qualify as a persistent felony offender as defined by New York Penal Law is bail eligible. DCJS pretrial data does not include any indicator for persistent felony offender status, but it does include prior felony conviction counts. There is no indicator of the date of prior felony convictions, making estimations of persistent felony offender status difficult. After analyzing possible combinations of prior felony convictions and conferring with former New York defense attorneys, only those cases that seemed most likely to possibly be qualified as persistent felony offender status were included as bail eligible. Cases that were included as bail eligible based on persistent felony offender status constituted a small subset of the dataset (1.1%).

Cases that include offenses that would qualify as “harm on harm” are bail eligible. In order for a case to be considered “harm on harm,” a person charged must either be released on a felony and arrested for a felony OR released on a felony and arrested for a class A misdemeanor causing harm to an identifiable person or property or criminal possession of a firearm OR released on a class A misdemeanor causing harm to an identifiable person or property or criminal possession of a firearm and arrested for a felony. DCJS contains indicators for pending felony arrests and pending misdemeanor arrests, however, pending misdemeanor arrests are not categorized by severity. Cases with a pending felony arrest and current charges that were class A misdemeanors involving harm to an identifiable

person or property were included as bail eligible. “Harm to an identifiable person or property” is a broad condition based on the discretion of the court, and does not have a universal definition in the New York Penal Law. In order to estimate bail eligibility, a broad definition of this condition was used, including any offenses that could possibly be interpreted as harm to person or property. Cases that were included as bail eligible based on the estimated harm on harm condition constituted 5.2% of the dataset.

Altogether, 19.3% of the dataset fell clearly into bail eligibility, 66.4% fell clearly into bail ineligibility the group referenced as ‘impacted by bail reform’ in this report, and 14.3% were in one of the listed categories and were classified as bail eligible for the purposes of this analysis.

RE-ARRESTS AND FAILURE TO APPEAR:

For this analysis, FWD.us analyzed re-arrest rates and failure to appear rates among bail eligible and bail ineligible cases. In order to make an apples to apples type comparison, bail eligibility was defined as it existed after bail reform amendments were implemented in July 2020. Using these conditions, re-arrest rates and failure to appear rates were compared among cases that would have been bail eligible/ineligible pre and post bail reform. Because the latest DCJS pretrial data was produced in May of 2022, arraignments in the fourth quarter of 2021 would not have reached a minimum of six months pending as of the creation of this data. For this reason the arraignments in the fourth quarter of

2021 were excluded from re-arrest and failure to appear rate analyses.

Re-arrest rates were compiled by analyzing the number of cases with re-arrests that occurred sometime between arraignment and final disposition. Failure to appear rates were estimated by analyzing the number of cases in which a bench warrant was issued sometime between arraignment and final disposition. Re-arrest and bench warrant rates were measured as a percentage of releases, or arraignments that resulted in release on own recognizance, non-monetary release conditions, or in which bail was paid within 5 days.

Endnotes

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- 3 The Bail Project, "After Cash Bail", <https://bailproject.org/after-cash-bail/> , last accessed November 1, 2022.
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