# Proposed Bail Reform

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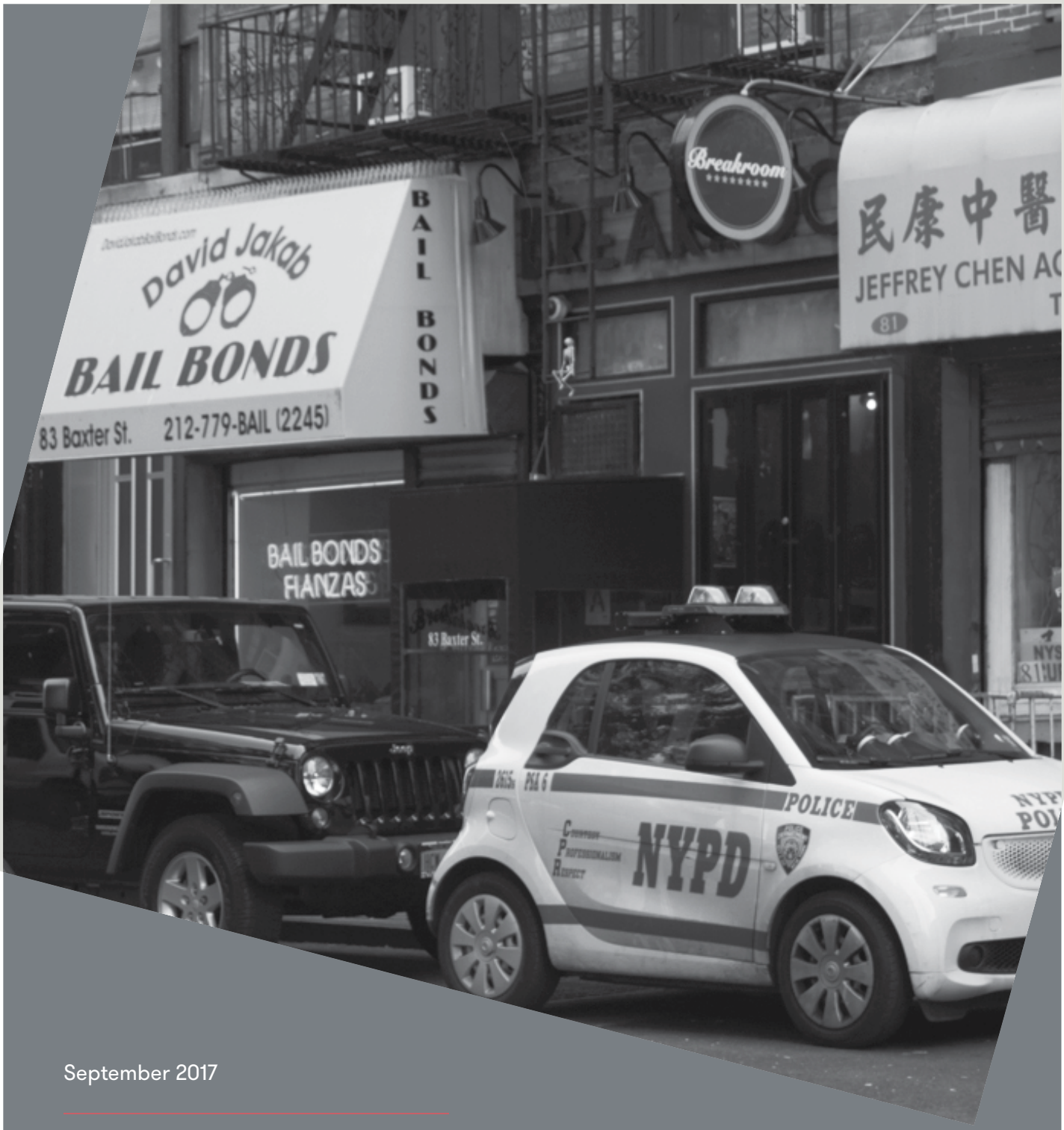


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# Against the Odds

## Experimenting with Alternative Forms of Bail in New York City's Criminal Courts

Vera
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# From the Director

"Judge, if you set that amount of bail the odds are my client won't make it."

Those words are uttered frequently by defense attorneys in arraignment courts throughout New York City. Annually, almost 50,000 admissions to the jails at Rikers Island and across the city are for those held pretrial because they cannot afford the bail set in their case.

Under New York law, the use of bail doesn't have to be this onerous. Judges may opt to set bail from nine forms, including bail that requires a deposit of no more than 10 percent of the total amount, or bail that requires no upfront payment at all. Although these "alternative" forms of bail—known as partially secured and unsecured bonds, respectively—have been available for decades, they remain underutilized in the courts, where judges traditionally set bail in the form of cash or an insurance company bail bond.

Why aren't alternative forms of bail used more widely and what would happen if they were? In partnership with the Office of Court Administration, Vera explored these questions in a three-month experiment designed to promote the use of alternative forms of bail in New York City arraignment courts. The results of that effort are documented in this report, along with insights about the procedural challenges associated with these forms of bail and recommendations to improve their use.

Up against a mandate in the next decade to close Rikers Island and to cut the average daily jail population by half, improving the bail system is critical to criminal justice reform in New York City. While there is movement afoot to eliminate money bail altogether, this experiment demonstrates that significant progress can be made right now, under the current law, to reduce the power of money as a determinant of liberty. The 99 cases that comprise the cohort of this project tell a fascinating story about the possibility of culture change in the use of bail in the city's criminal courts, and demonstrate the potential of alternative forms of bail to serve as one more tool to make the bail system fairer.

Today, the number of people incarcerated in New York City's jails is at an all-time low, as is its crime rate, with several thousand fewer arrests this year compared to last. New York City has already demonstrated that less incarceration can equal *more* public safety, yet we cannot stop there. In the months since this project's inception, more stakeholders already have become aware of these forms of bail and efforts are underway to increase their use. We hope this report contributes to the growing knowledge about alternatives to traditional bail and reinforces what recent research demonstrates all too clearly—money alone should not determine a person's pretrial liberty.

Nicholas R. Turner
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# Executive summary

Statistics show that money bail is unaffordable and out of reach for many New Yorkers. Even though the median bail amount on felony cases in New York City is $5,000—and even lower—at $1,000, on misdemeanor cases – over 7,000 people are detained pretrial at Rikers Island and other New York City jails on any given day because they cannot make bail.

Under New York law, the use of bail doesn't have to be this burdensome. In setting bail, judges have nine forms to choose from, including "alternative" forms such as partially secured or unsecured bonds, that require little to no upfront payment to secure a person's pretrial release. The traditional practice in the courts, however, is to ignore these options and impose only the two most onerous forms of bail to make: cash bail and insurance company bail bond.

The Vera Institute of Justice (Vera) launched a three-month experiment in New York City arraignment courts to examine what would happen if alternative forms of bail were used more often. In what kinds of cases might judges be willing to set these forms of bail? In what amounts? What impact would these alternatives have on a person's ability to make bail? What other pretrial outcomes might be expected?

Drawing from a cohort of 99 cases in which an unsecured or partially secured bond was set, these cases were tracked over a nine- to 12-month period to document bail-making, court appearance, pretrial re-arrest, and final case disposition. Interviews were conducted with judges, defenders, and court staff to better understand the results and develop recommendations for improving the use of bail in New York City.

The results were promising. Sixty-eight percent of the cohort made bail, and an additional 5 percent were released on recognizance. The use of alternative forms of bail in the cohort was not limited to low-level offenses or certain types of offenses. Approximately 54 percent of cases had a top charge of a felony, and the cohort—felonies and misdemeanors—spanned the gamut from drug possession, larceny, and robbery, to assault, criminal contempt, and weapons possession. Those released had a combined court appearance rate of 88 percent and a rate of pretrial re-arrest for new felony offenses of 8 percent. When released pretrial, the majority of cases resolved in a disposition less serious than the initial top charge at arraignment, with

fully one-third ending in dismissal and another 19 percent ending in a non-criminal conviction.

Ninety-nine cases out of the thousands where bail is set is a miniscule number in the larger scheme of New York City's bail system, yet this experiment illustrates the possibility of meaningful culture change.

The recommendations in this report offer strategies to increase and ease the use of alternative forms of bail:

- stakeholders should be educated about them;
- the associated paperwork and procedures to set these forms of bail should be simplified;
- they should be set routinely as an option in addition to traditional forms of bail; and
- when bail is set, it should be done with an individualized inquiry into a person's ability to pay.

# Introduction

Every day in New York City, people who have been arrested are brought before a judge to hear the formal charges filed against them by the state. This is the process of arraignment, which typically occurs within 24 hours after arrest.[1] At arraignment, if the case is not resolved with a dismissal or a plea, the judge must make a decision—to release a person on his or her own recognizance pending trial, or to set bail—a sum of money intended to serve as collateral. Although New York law allows judges to opt from nine forms of bail—some less burdensome than others—in practice, they select only two forms: cash bail and insurance company bail bonds.[2]

Out of the nine forms of bail available, these "traditional" forms of bail—those used most commonly—are the most difficult for individuals and their families to afford. Cash bail requires a full payment of money up front to the courts, which is returned to the payer at the end of the case minus a small administrative charge if a guilty plea or conviction is secured. An insurance company bail bond requires a person to pay a 10 percent premium and other nonrefundable fees to a for-profit bail bond company, and to satisfy conditions such as obtaining multiple payers and proof of employment. Many New Yorkers cannot meet the financial and other demands of these traditional forms of bail. As a result, when bail is set, slightly less than half of all defendants make bail before the end of their cases.[3] Instead, they remain detained pretrial at Rikers Island or other city jails, such as the Brooklyn Detention Complex; the Vernon C. Bain Center, colloquially known as "the Barge" or "the Boat"; or the Manhattan Detention Complex, often called "the Tombs."

Partially secured and unsecured bonds are alternative forms of bail that are as legitimate under New York law as the traditional bail options. Alternative forms of bail are also easier to afford, as they do not require people to put up large amounts of money or to pay nonrefundable premiums and fees. Yet in setting bail on more than 40,000 cases annually, judges in New York City rarely impose these alternatives.[4] This is despite a 2012 ruling from New York's highest court that judges are required to impose at least two forms of bail so that a person may choose whichever option is less onerous.[5]

In a moment of intense focus on bail reform nationally and locally, Vera partnered with the New York State Office of Court Administration on a

three-month experiment in arraignment courts across New York City to promote the use of alternative forms of bail and explore these questions: What would happen if partially secured and unsecured bonds were used more often? In what kinds of cases might judges be willing to set these forms of bail? If set, what impact would these alternatives have on a person's ability to make bail? What rates of appearance at future court dates or re-arrest pending trial could be expected? How would these cases resolve?

The project had three objectives:

- to educate judges and defense attorneys about alternative forms of bail and combat the overall lack of awareness about how to request, or set, a partially secured or unsecured bond;
- to create a cohort of cases in which these forms of bail were set and to analyze their outcomes, including bail-making, court appearance, pretrial re-arrest, and case disposition; and
- to develop a better understanding of why alternative forms of bail have rarely been used, what about the cases in the cohort inspired a different approach, and what efforts are needed going forward to promote the use of these forms of bail more widely.

This report documents the results and offers some recommendations for reform. Although the results provide some valuable insights, it is important to note their limitations. Because the project was not designed as a research study, the cases in the cohort are not necessarily representative of the typical cases on which judges set bail. Due to the lack of a control group, the data comparisons offered in this report between alternative and traditional forms of bail for pretrial outcomes on bail-making, failure to appear, and re-arrest rates are illustrative only, and not conclusive. It is important not to overstate these as findings or draw generalized inferences from this project. What the results in this report do offer, however, are insights into the reasons why alternative forms of bail have historically been underutilized, how their greater use might impact pretrial detention rates and pretrial measures of success, and some steps that can be taken to increase their use in New York City arraignment courts.

## How bail typically operates in New York City

Under New York law, the purpose of bail is to guarantee a person's appearance at subsequent court dates after an arrest.[6] The prevailing logic is that a financial stake hanging over a person's head serves as an incentive to appear in court or risk forfeiting that money. The request for bail comes initially from the prosecutor's office, with an assistant district attorney making a recommendation for a particular bail amount to be set based on the nature of the charges, the person's criminal history, any outstanding warrants, and other factors like ties to the community and employment status. When a person before the court is facing serious charges, has a long criminal record, or has a warrant history of missed court appearances, the amount of bail requested by the district attorney's office tends to increase.[7] The prosecution's bail request acts as an anchor, increasing the likelihood that the court will set bail, often at amounts beyond the reach of average New Yorkers.[8] In New York City, more than 50 percent of people cannot pay the bail amount imposed by the court, even though bail is set at lower amounts, on average, compared to other jurisdictions nationwide: the median bail amount set in New York City for misdemeanors is $1,000 and, for felonies, $5,000.[9] That many people cannot afford bail in the amount of $1,000, let alone $5,000, demonstrates New Yorkers' limited economic resources to make bail.[10]

Juan Gonzalez's case illustrates how the bail process typically works in New York City.[11] Juan found himself in handcuffs and under arrest when he tried to break up a brawl at the bar where he worked. After waiting in a cell for almost 24 hours until he met the public defender assigned to his case, he learned he was charged with felony assault. The public defender told him that based on experience the prosecutor would likely seek $15,000 bail, and the judge would likely set bail at $10,000.

Juan didn't have $10,000. He doubted his mother had that money either, but was sure she could come up with 10 percent of the amount and go to a bail bond company. His lawyer informed him that in addition to paying the 10 percent premium, Juan would also need at least one or two family members employed full-time to agree to sign for the bond and to show paystubs or tax returns. The public defender called Juan's mom, who in turn called his brother, uncle, and three other family members. Within a half hour, all six of them were at the courthouse, waiting anxiously for Juan to appear in front of the judge.

At the bail hearing, the prosecutor argued that bail should be set at $15,000 because Juan presented a flight risk, the assault charges were serious, he had a prior misdemeanor assault conviction, and recently had been arrested for theft of services—entering the subway without paying the fare—for which he had failed to complete his required two days of community service. Juan's lawyer argued for his release, detailing the circumstances of the brawl and his client's attempts to intervene. The public defender explained that the misdemeanor assault conviction was from five years prior, when Juan was 17 years old, and that he had successfully completed three years of probation and received youthful offender status. He further told the judge that Juan wasn't able to finish the community service on the recent arrest for jumping the turnstile because he had started working full-time and would have lost his job had he taken time off. The public defender pointed out Juan's family members in the courtroom, indicating Juan's strong ties to his community.

Nevertheless, the judge set bail at $7,500 insurance company bail bond or $5,000 cash. In practice, this ruling required Juan and his family either to pay more than $750 in non-refundable premiums and miscellaneous fees to a for-profit bail bond company, or to deposit $5,000 cash up front with the court. His family couldn't afford $5,000 in cash and, although his brother and uncle had $750 and were willing to sign for a bail bond, they couldn't find a bail bond company to underwrite the bond as neither Juan's brother, uncle, nor other family members were employed full-time. Despite potentially having a good defense at trial, Juan remained in jail for six weeks until he pled guilty to a misdemeanor and was released.

Filled with individuals like Juan Gonzalez who are unable to make bail, Rikers Island and other New York City jails face a crisis.[12] Upwards of 75 percent of people there on any given day are detained pretrial because they cannot make bail.[13] Almost half of those who enter are released from jail within seven days or less, illustrating the high levels of churn.[14] But although thousands of New Yorkers cycle quickly through the city's jails, another 10 percent of the jail population remains detained for at least six months, many for longer, awaiting resolution of their criminal cases.[15] The case of Kalief Browder, a 16-year-old arrested and held at Rikers Island for three years until his case was dismissed, brought into stark relief some of the most harmful consequences of bail and pretrial detention.[16]

## New York's alternative forms of bail

Bail wasn't intended to work this way. Historically, the purpose of bail was to *increase* pretrial release and to guard against unnecessary pretrial detention. (See "Why bail reform matters" on page 9.) However, the practical effect of requiring cash bail or bond fees and premiums to be paid in exchange for pretrial release is that many people, despite being presumed innocent, remain in jail while awaiting trial because they do not have enough money to make bail.

Almost 50 years ago, the New York State Legislature recognized the need for an alternative:

> On the one hand, a judge may commit the defendant to prison or fix bail—which may well be beyond the defendant's means. On the other, he may release the defendant upon his own recognizance. In many instances, none of these decisions seems attractive or satisfactory. With this in mind, the proposal inserts two intermediate devices, one termed an "unsecured bail bond" and the other a "partially secured bail bond."[17]

In 1970, the legislature reformed the state's bail laws to allow judges to consider less restrictive forms of bail than cash. The express objective of bail reform was to "reduce the un-convicted portion of our jail population."[18] In addition to prescribing cash bail and insurance company bail bonds, New York State Criminal Procedure Law §520.10 allowed for an additional seven alternative forms of bail, most of them secured or unsecured variations of surety or appearance bonds.[19]

For people held on bail, these alternative forms provide options as to who can pay bail for them, in what form, and in what amount. The first distinction is between surety and appearance bonds. A *surety bond* requires the payer—called the "obligor" in the statute—to be someone other than the defendant, although a defendant may serve as one of two or more obligors. An *appearance bond* requires the defendant to be the sole person paying the bond. The second distinction is between secured, partially secured, and unsecured bonds. A *secured bond* requires those responsible for the bond to deposit personal or real property with the court, while a *partially secured bond* requires a money deposit of no more than 10 percent of the bond, although a judge may set a lesser amount. An *unsecured bond*, in contrast, requires no deposit of either property or money, but simply a promise to be liable for the full amount of the bond if the person fails to appear at subsequent court dates and bail is forfeited.

To see how these alternative forms of bail would play out in practice, consider again the case of Juan Gonzalez. If the judge had still set bail at $7,500

bond or $5,000 cash, but set the form of bail as a partially secured bond, Juan and his family would only have had to deposit $750—money that would be returned to them at the end of the case if he appeared for all his court dates.[20] If the judge had set an unsecured bond, Juan and his family wouldn't have needed to make any deposit at all, allowing him to walk out of the courtroom after his arraignment on a promise that they would pay the full amount of the bond only if he failed to appear in court. In setting either alternative form of bail, the obligors—in this case, his family members—would still swear, under oath, to be liable for the full $7,500 and complete paperwork attesting to their liability. But Juan Gonzalez likely would not have spent the night—much less six weeks—in jail.

## Why bail reform matters

Historically, the purpose of bail was to facilitate pretrial release.[a] Bail originated as a sorting mechanism to release those individuals likely to return to court during the pendency of their case and detain those who posed too high of a flight risk. However, over time, the shift from the use of personal sureties and unsecured bonds to cash bail and bail bonds issued by for-profit companies resulted in the disparity we see today—hundreds of thousands of people in jail awaiting trial and unable to afford their freedom, while those wealthy enough to make bail are set free.[b]

In 1961, troubled by how many men and women they saw in pretrial detention when they visited a Manhattan jail, Louis Schweitzer and Herbert Sturz started the Manhattan Bail Project. Over three years, the Bail Project interviewed thousands of defendants in Manhattan Criminal Court and recommended release on recognizance to the presiding judge if the person demonstrated he or she was not a flight risk based on employment history, local community ties, and past criminal record.[c] Data from the experiment showed that 98 percent of individuals released returned to court, and were 250 percent more likely to be acquitted at the end of their cases than those who remained in jail on bail. Building on the success of the Manhattan Bail Project's findings, Congress passed the Bail Reform Act of 1966 to revise bail practices so that people "were not needlessly detained . . . regardless of financial status."[d]

Despite these efforts, the use of bail and rates of pretrial detention across the United States continued to rise, especially in smaller jurisdictions.[e] The result is the current system, in which almost 450,000 presumptively innocent individuals are held in jail nationwide on any given day simply because they cannot afford their bail.[f] Recent research has shown that the effects of unnecessary pretrial detention defy conventional wisdom that incarceration equals public safety—even short stays in jail can lead to increased rates of failure to appear and recidivism.[g]

The failings of pretrial justice over the past five decades have galvanized efforts at bail reform among the courts, criminal justice stakeholders, and advocates, based on many of the same lessons learned from the Manhattan Bail Project. Nationally, litigation challenging the use of bail schedules has resulted in several jurisdictions reconsidering their use of bail in low-level and misdemeanor cases.[h] Recent reforms to the New Jersey bail system have yielded a dramatic reduction in the use of cash bail.[i] In New York City, many new initiatives provide an alternative to traditional bail.[j] For example, nonprofit charitable bail funds in the Bronx and Brooklyn pay bail for people held in jail on misdemeanor charges where bail is set at $2,000 or less.[k] Building on the success of the bail funds, the New York City Council approved funding for a bail fund in all five boroughs to be launched in 2017.[l] Another citywide program, called Supervised Release, began in March 2016. It provides pretrial supervision to 3,000 people annually who are at risk of having bail set.[m]

The fundamental problem with cash bail is this: How can it be that two otherwise similarly-situated individuals, with the same charges, criminal histories, and circumstances, face radically different fates based simply on their wealth? Collectively, recent bail reform efforts have shown that people do not need their own money at stake to return to court, and that money as the determinant of pretrial liberty is neither effective nor fair.

# Experimenting with alternative forms of bail: How it worked

## Project impetus: Why are alternative forms of bail underutilized?

Despite being legitimate forms of bail, judges rarely if ever set an unsecured or partially secured bond in New York City courts.[21] There are several theories as to why. In some cases, particularly those involving serious charges, judges may use cash bail as a means to secure pretrial detention in the absence of a preventive detention statute by setting bail out of reach. In other instances, judges may simply be unaware of the options to use less restrictive forms of bail.[22]

Many judges, especially those newer to the bench, are unaware that these forms of bail exist under New York law, or have never seen them imposed when bail is set in the courts. As one judge noted, "It's just part of the culture—cash or bond? When I became a judge, it's just what everyone was using."[23] Another judge recounted, "I've rarely been asked to consider an alternative form of bail. The first time I was asked to set a partially secured bond, I hesitated because I was unfamiliar with the paperwork or the process."[24] This lack of familiarity is especially common in arraignments, where by custom the most recently elected or appointed criminal court judges are assigned.

The burden does not lie solely with the bench. Judges rarely receive requests from defense attorneys to set alternative forms of bail, and most judges are unlikely to go against custom and impose a form of bail that was not requested. Many defense attorneys are unaware that partially secured or unsecured bonds are available under New York law, or do not know the procedure and paperwork required to secure them. As one prominent public defender wrote, "I am the first to admit that until a few years ago, I had never really looked at the bail statute. I certainly never asked a judge to set a form of bail other than cash or insurance company bond."[25]

To request one of these alternative forms of bail—a partially secured or unsecured bond—the Office of Court Administration requires at least one person paying to agree to sign paperwork and swear under oath to be

liable. That person must be able to demonstrate that he or she has a source of income and will pay the full amount if bail is forfeited.

Both judges and attorneys may be deterred from using partially secured or unsecured bonds at arraignments because of the complexity of the paperwork required and the time needed to complete it and take the necessary testimony from obligors. Three different forms must be completed to secure an alternative form of bail. The *bail bond* form states the type of bail set, the amount of bail, and the names of the responsible parties. If the bond is secured, the bail bond form lists the property posted and, if the bond is partially secured, the amount deposited. A *justifying affidavit* must also be completed for each person responsible for the bond, and requires information about their place of residence, employment, and income. The third form, *undertaking to answer*, must also be completed for each responsible party, and requires each to swear under oath to be responsible for the person's appearance in court and liable for the full amount of bail if he or she fails to appear and bail is forfeited.

## Project design and queries: What if alternative forms of bail were used more?

This experiment was conducted in criminal court arraignments in Manhattan, Queens, Brooklyn, and the Bronx over a three-month period. A total of 99 cases were identified from arraignment court calendars where an unsecured or partially secured bond had been set. Those cases were tracked over a nine- to 12-month period after arraignment to document bail-making, court appearance, pretrial re-arrest, and final case disposition.

***Educating stakeholders about alternative forms of bail.*** Before the project period began, Vera trained defense attorneys at every public defender office in Manhattan, Queens, Brooklyn, and the Bronx on how to request partially secured and unsecured bonds at arraignments.[26] Attorneys from these offices are present at arraignments in all five boroughs and collectively handle the vast majority of cases arraigned in New York City.[27] Public defenders who attended the trainings were educated on New York's bail statute, including the nine forms of bail, and trained on following the procedure and completing the paperwork required for requesting an alternative form of bail. The training included time for discussion to share borough-specific strategies to

increase the likelihood that arraignment judges would set partially secured and unsecured bonds. Vera staff shared training materials and a short guide to alternative forms of bail during the trainings, which were also disseminated by e-mail to all attorneys in each of the offices.

***Choosing and tracking a cohort.*** During the three-month project period, Vera, in collaboration with the New York State Office of Court Administration, reviewed the daily arraignment court calendars in Brooklyn, Manhattan, Queens, and the Bronx to flag cases in which an alternative form of bail was set. From December 2015 through March 2016, 99 cases were identified in which judges granted an unsecured or partially secured bond option in addition to traditional forms of bail. Prior to the project, court staff in arraignments routinely noted on the arraignment court calendar the outcome of every case heard during the shift, including information as to type and amount of bail set, and whether bail was made at arraignment. During the project period, court staff were instructed to note if a judge set an unsecured bond by listing "USB" next to that case, or "PSB" for a partially secured bond.

A daily review of completed court calendars identified all cases marked with "USB" and "PSB," which were then added to the project cohort. After documenting the docket numbers, defendant names, top charge, and other identifying information, Vera requested data from the Office of Court Administration on bail-making, future court appearances, case dispositions, and new arrests within the five boroughs for those cases. Vera's analysis of that data is documented below.

***Baseline comparison data.*** No control group exists as the project was not designed to be a research study. Given this limitation, generalized inferences from the results in this report cannot be made.[28] There is, however, readily available data that provides a valuable baseline comparison of key pretrial outcomes in New York City that can be used for illustrative comparisons on bail-making, failure to appear, and pretrial re-arrest rates. The New York City Criminal Justice Agency (CJA) documents overall outcomes for all criminal court cases arraigned in New York City. Vera compared data from the project cohort on bail-making and failure to appear in court to citywide data in CJA's 2015 Annual Report.[29] Vera also compared re-arrest data to a 2009 CJA study on pretrial re-arrest rates.[30]

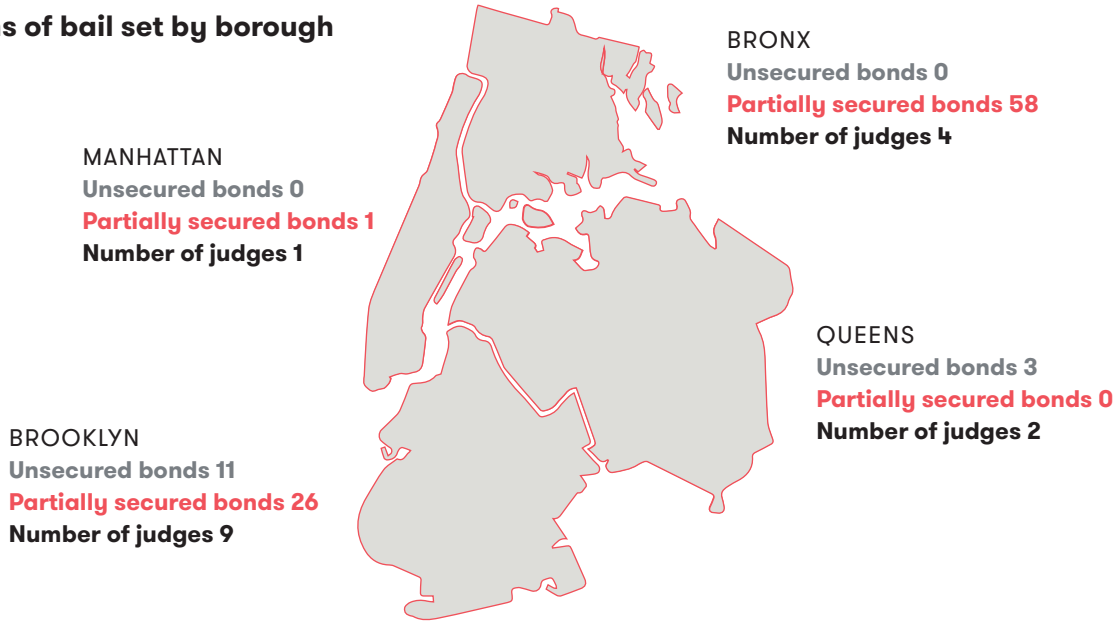
# Data analysis

The 99 cases that were evaluated were tracked for a nine- to 12-month period following arraignment to document appearance at future court dates, often scheduled six to 12 weeks apart, and to allow time for the majority of cases in the cohort to resolve. Vera staff obtained and analyzed case outcome data for the cases along the following measures: failure to appear, pretrial re-arrest, and ultimate case dispositions. From interviews with stakeholders, including judges, defenders, and court staff, Vera also gathered qualitative information to better understand why an alternative form of bail had been granted.

In all cases in the cohort, an alternative form of bail was set *in addition to* traditional bail options, such as cash or an insurance company bail bond.[31] Although this does not conclusively rule out the possibility that defendants in any of the cases in the cohort would otherwise have been released on recognizance but for the setting of an alternative form of bail, it suggests that bail would likely have been set in these cases regardless.

Figure 1

**Alternative forms of bail set by borough**



## Bail setting by borough and type of bond

By far the greatest use of partially secured and unsecured bonds during the project was in Brooklyn and the Bronx. Although each of the four boroughs included in the demonstration project had at least one case in which an alternative form of bail was set, and 16 judges set a partially secured or unsecured bond at least once, 96 percent of all cases (95 cases) came from these two boroughs. As shown in Figure 1 on page 13, in the cases studied, judges set an unsecured bond in 15 percent (14 cases), and a partially secured bond in the remaining 85 percent (85 cases).

## Forms of bail set by charge and offense type

Vera analyzed the use of alternative forms of bail for cases in the cohort by charge as shown in Figure 2.[32] Notably, the use of partially secured and unsecured bonds was not limited to only low-level offenses. More than half of the cases examined had a top charge of a felony—29 percent nonviolent

Figure 2

**Alternative forms of bail set by charge level**

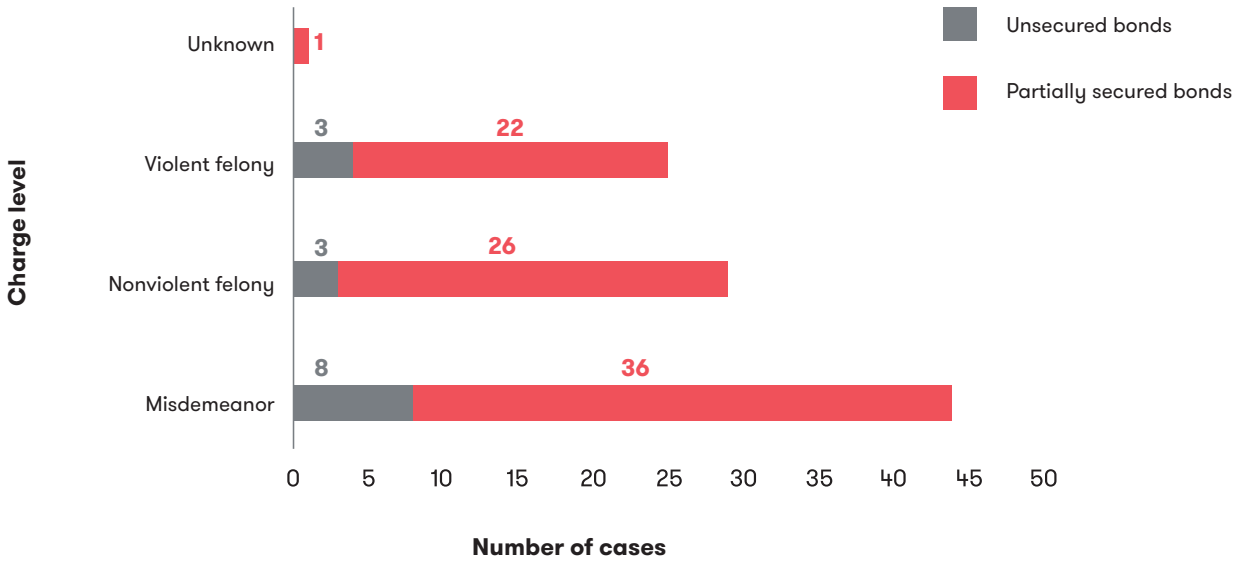
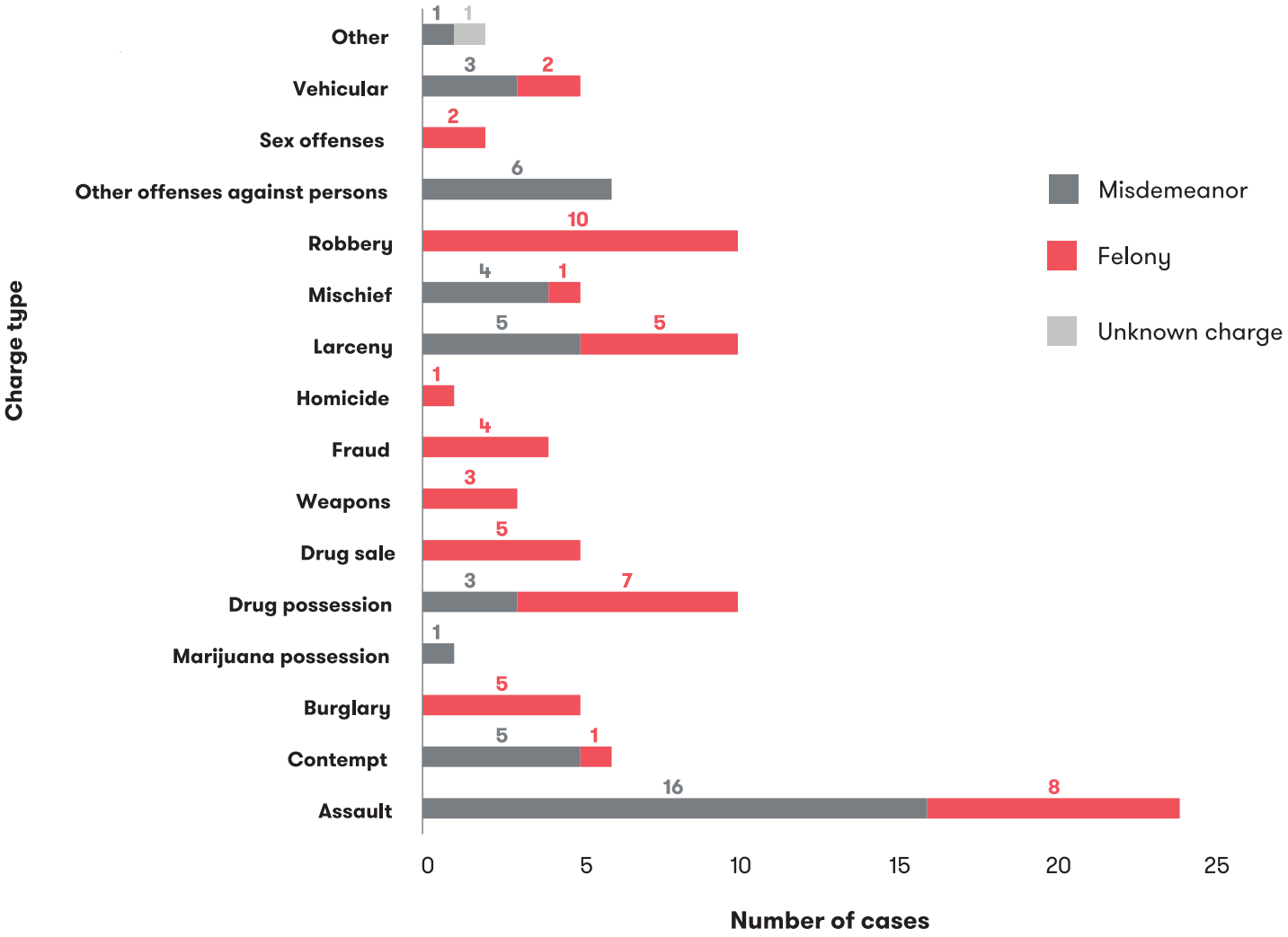


Figure 3

**Alternative forms of bail set by offense type**

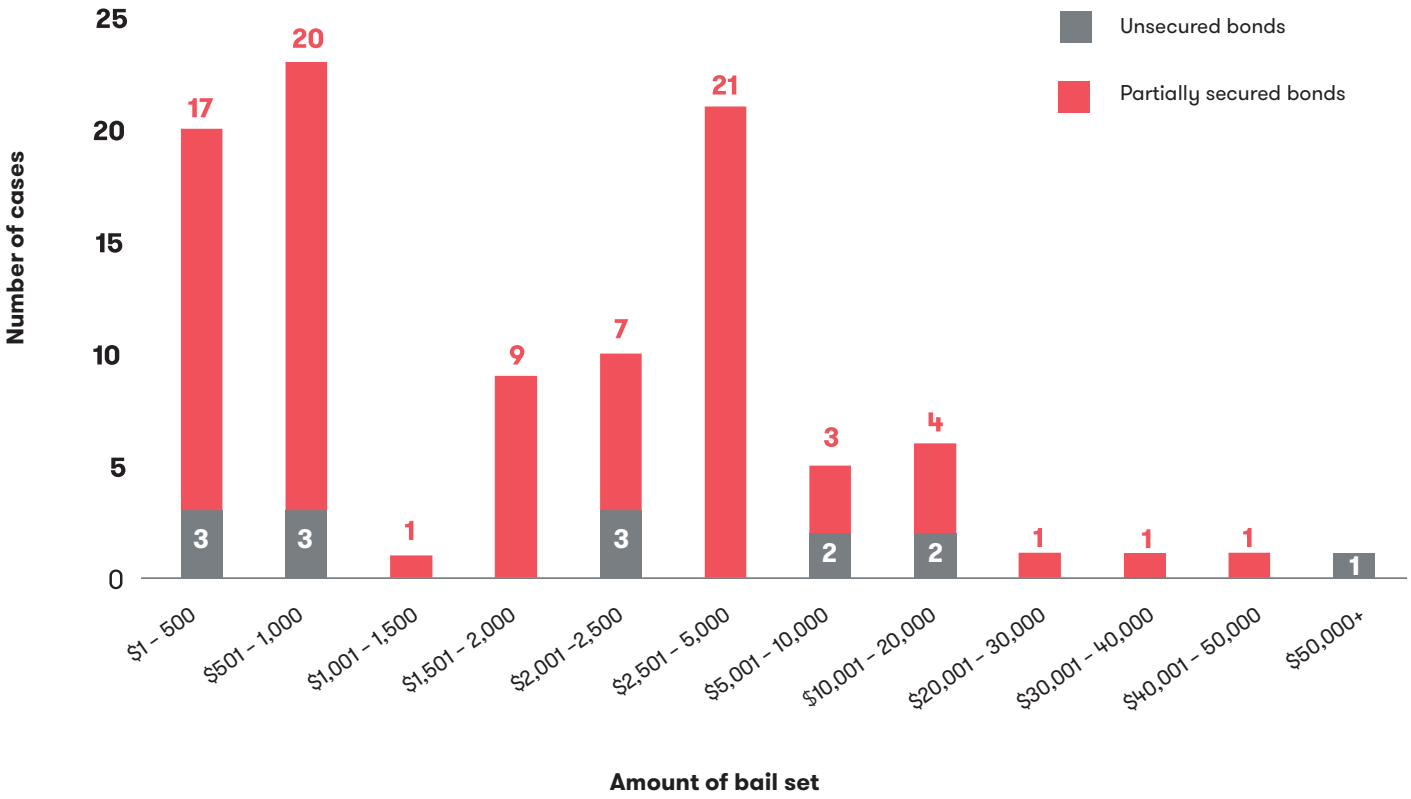



felonies (29 cases) and 25 percent violent felonies (25 cases). Forty-four percent had a top charge of a misdemeanor (44 cases).

The range of types of cases in which an alternative form of bail was set was similarly broad. Although felony and misdemeanor assault charges by far comprised the greatest number of cases in which an alternative form of bail was set, as shown in Figure 3, overall these forms of bail were set in cases as varied as vehicular offenses, drug sales, and weapons offenses.

Figure 4

**Amounts of bail set when an alternative form used**




## Bail amounts

Vera also tracked the amount of bail set in the 99 cases. During trainings with public defenders at the outset of the project, several attorneys expressed concern that even if judges were willing to set unsecured or partially secured bonds, they would only do so at higher than typical amounts. As one defense attorney noted, "If a judge traditionally sets $500 bail that my client can't pay, and instead sets a partially secured bond of $5,000, then there's no difference in outcome."[33] According to CJA, in New York City, the median bail amount for a misdemeanor is $1,000 and, for a felony, $5,000.[34] The cases in which a partially secured and unsecured bond were set did not deviate significantly from these baseline comparisons. As shown in Figure 4, while 15 percent of cases (15 cases) had a bond amount set higher than the New York City average for felonies, 43 percent (43 cases) had bail set at $1,000 or less.

Table 1

**Bail-making when alternative forms used**

| Outcome | Overall | Unsecured bond | Partially secured bond |
|---|---|---|---|
| Rates of bail made when an unsecured and partially secured bond was set | 68% | 100% | 64% |
| Number released on bail when an unsecured or partially secured bail was set | 68 out of 99 | 14 out of 14 | 54 out of 85 |
| Number released on recognizance after arraignment | 5 out of 99 | 0 out of 14 | 5 out of 85 |

## Bail-making rates

Vera also analyzed the rate at which bail was made in the cases in which an alternative form was set. As shown in Table 1, 68 percent of people made bail overall (68 cases). Because no deposit is required, where an unsecured bond was set, 100 percent of individuals were immediately released at arraignment (14 cases). Bail was made in 64 percent of cases where a partially secured bond was set (54 cases), predominantly at arraignment or within one week post-arraignment. In 6 percent of cases in which a partially secured bond was set, bail was not made but the individual was released on recognizance with no bail at a post-arraignment court date (5 cases).[35]

As a baseline comparison, the overall citywide average of bail-making at arraignment is 11 percent, with bail being made immediately in 10 percent of felony cases and 13 percent of non-felony cases.[36] When bail is set, in 12 percent of both felony and non-felony cases individuals are released on recognizance at a court date after arraignment without posting bail.[37] In an additional 34 percent of felony and 32 percent of non-felony cases, bail is made post-arraignment. Citywide, individuals in the remaining 45 percent of felony and 43 percent of misdemeanor cases do not make bail at any point prior to disposition.[38]

Table 2

**Time until bail made when a partially secured bond was set**

| Outcome | Misdemeanors | Nonviolent felonies | Violent felonies |
|---|---|---|---|
| Made bail at arraignment | 16 | 8 | 4 |
| Made bail within one week | 4 | 6 | 7 |
| Made bail between one and two weeks | 2 | 1 | 1 |
| Made bail between two and three weeks | 3 | 0 | 1 |
| Made bail within one month or after | 0 | 0 | 1 |
| Did not make bail | 11 | 9 | 6 |
| Bail not made but later released | 1 | 2 | 2 |

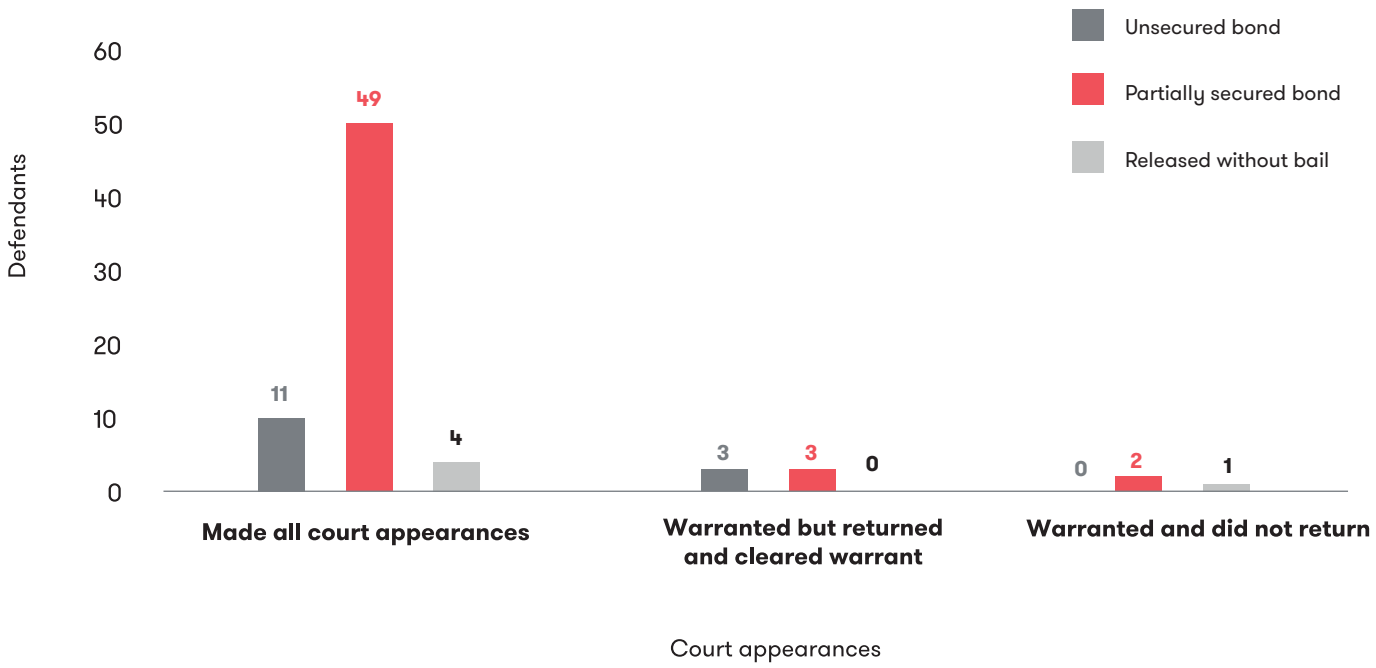
In looking at the 54 cases in which a partially secured bond was set *and* bail was made, 52 percent made bail immediately at arraignment (28 cases). An additional 31 percent made bail within one week after arraignment (17 cases). In line with other known statistics about bail-making in New York City, rates of making bail dropped off significantly after the first week.[39] Despite an alternative form of bail being set, almost one-third of all individuals in the cases studied did not make bail before disposition (26 cases). (See Table 2.)

## Impact on case outcomes

The experiment sought to measure the impact of alternative forms of bail on individual case outcomes over time. For the 73 cases in which people were released because they either made an alternative form of bail or were released on recognizance post-arraignment, Vera tracked pretrial failure to appear, new arrests while cases were pending, and final case dispositions. By the time the final data was compiled in February 2017, more than 90 percent of all cases in the dataset had been resolved.

Figure 5

**Failure to appear at future court dates by type of release**



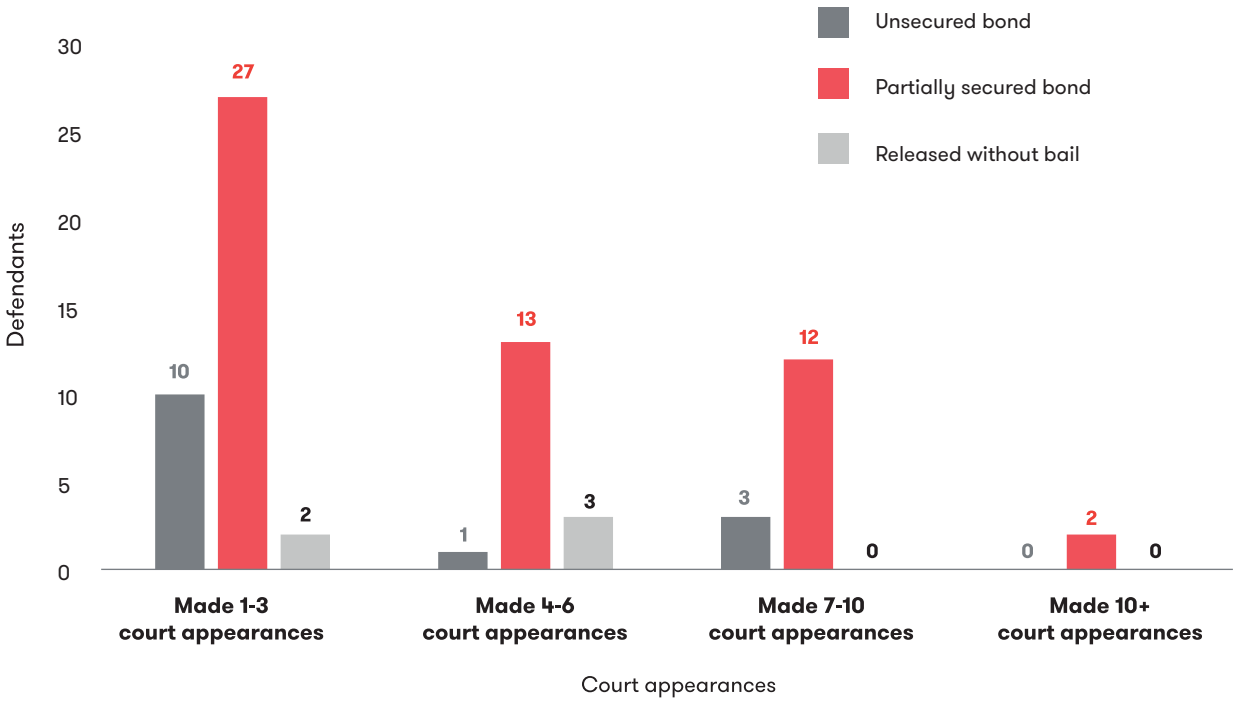

## Failure-to-appear rates

Failure-to-appear (FTA) rates measure whether a person returns to court as required for subsequent appearances after release on recognizance or making bail. In New York City, if a person does not appear in court on a scheduled court date, a judge may issue a bench warrant for the person's arrest.[40] If the person is released on bail, a bench warrant will result in bail being forfeited unless the person returns to court and provides a satisfactory explanation for the failure to appear.[41] In practice, judges may "stay" a bench warrant if a person does not appear in court on a scheduled court date but his or her lawyer provides an explanation for the failure to appear. In these instances, no bench warrant is issued and bail is not forfeited despite the defendant's non-appearance in court.

Warrants were counted any time a bench warrant was issued, including in cases in which a bench warrant was issued for a missed court appearance but the defendant returned to court voluntarily within a short time after and bail was ultimately not forfeited. "Stayed" bench warrants were not counted in this analysis, as technically no failure to appear or forfeiture of bail occurred. Overall, the FTA rate for cases in the cohort was 12 percent. (See Figure 5.) One hundred percent of people who were

Figure 6

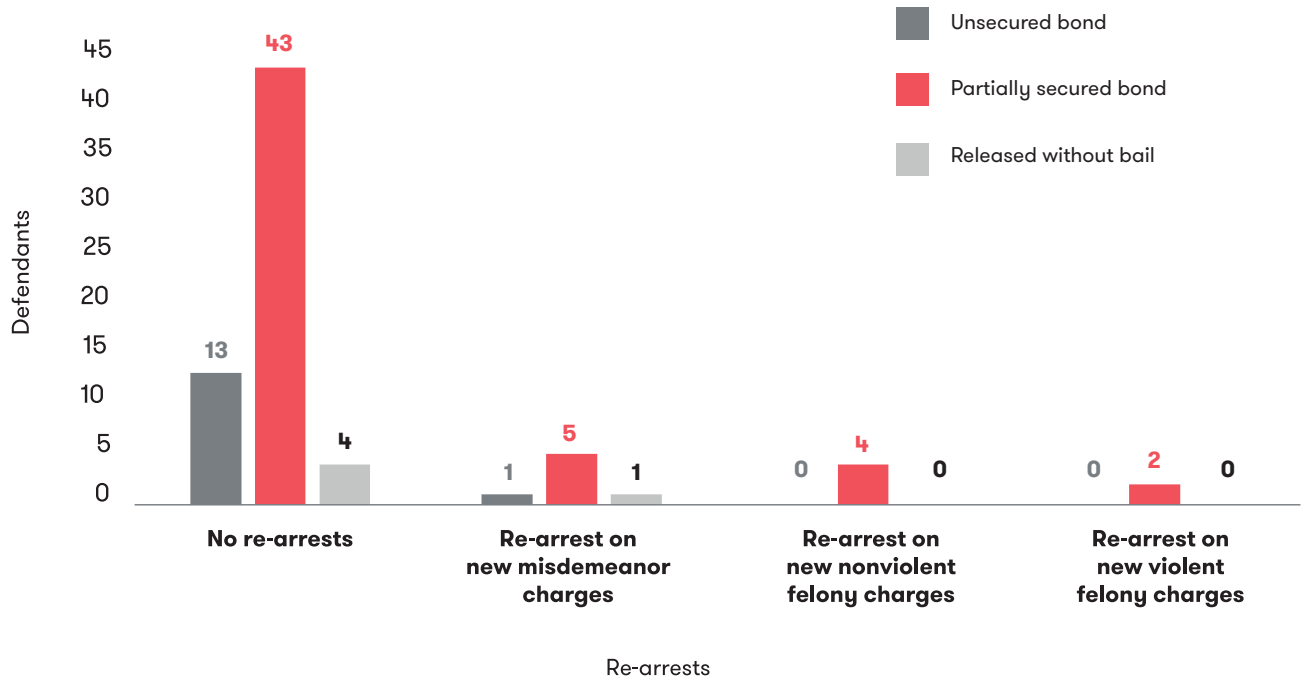
**Number of court appearances made by type of release**




either released or made bail on violent felony charges, including robbery and assault, made all court appearances. The FTA rate for people who were either released or made bail on nonviolent felony charges, such as drug possession or drug sale, was higher than the overall average for the cohort.[42] In six cases, people warranted at least once during the pretrial period but returned to court and were continued on bail. In three cases, individuals had warranted and had not returned to court. As a baseline comparison, these FTA rates closely mirror those in the cases analyzed by CJA in published citywide statistics on post-arraignment court appearance rates. Overall, the citywide average rate of failure to appear is 11 percent in felony cases and 14 percent in non-felony cases.[43]

A significant number of individuals in the cohort made several court appearances during the tracking period. Approximately one-half of the 73 cases were resolved within one to three court appearances after arraignment. In 17 cases, people appeared in court at least seven times or more within the tracking period. (See Figure 6.)

Figure 7
**Pretrial re-arrest by type of release**




## Rates of re-arrest

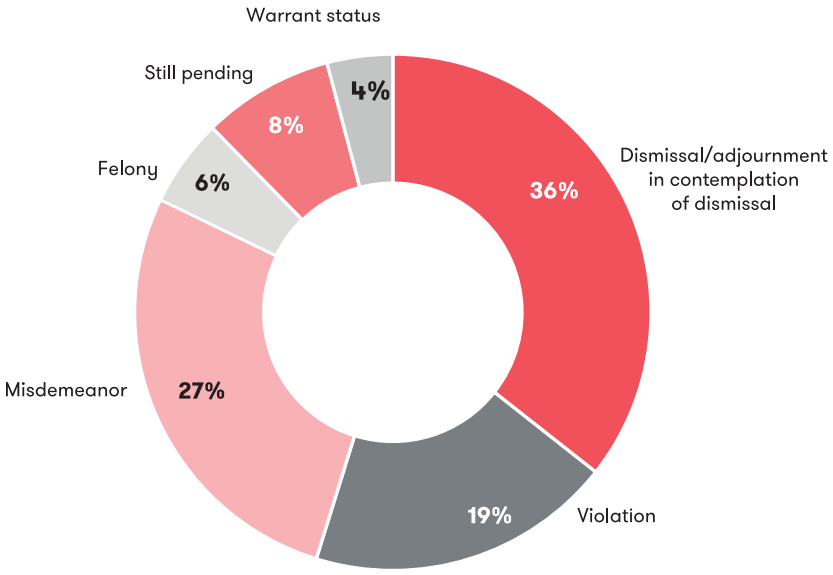
For all 73 cases in which the person was released or made bail, any re-arrest for a new misdemeanor, nonviolent felony, or violent felony offense was tracked in the Office of Court Administration's CRIMS database.[44] Overall, the re-arrest rate for any new offense was 18 percent. Nine percent of individuals had a new arrest on a misdemeanor charge, 5 percent on a nonviolent felony, and 3 percent on a violent felony offense. (See Figure 7.) As a baseline comparison, these rates of pretrial re-arrest are comparable to those published by CJA in a 2009 study, where overall pretrial re-arrest rates were 18 percent of individuals who were released on recognizance or made bail.[45]

## Case disposition

Case dispositions were tracked for all 73 cases in the cohort where bail was made or the person was released. (See Figure 8.) Slightly over one-third (26 cases) resulted in a dismissal or an adjournment in contemplation of dismissal, known colloquially as an "ACD," where charges are ultimately dismissed after a period of six to 12 months.[46] Another 19 percent (14 cases) resolved with a violation plea, which is a non-criminal class of offenses under New York law that does not result in a criminal conviction or a permanent record. Twenty-

Figure 8

**Case dispositions**




seven percent of cases (20 cases) resolved in a misdemeanor conviction, while only 6 percent of cases (4 cases) resolved in a felony conviction. At the time of data analysis, 8 percent of cases (6 cases) were still pending, and 4 percent (3 cases) were in warrant status where the defendant hadn't appeared at a scheduled court date or at a date thereafter.

# Overall themes and takeaways

The baseline comparison of pretrial measures of success between traditional forms of bail, as reported by CJA in bail-making, failure to appear, and pretrial re-arrest, and the alternative forms used in the experiment, suggest promising results and the need for a deeper, more methodologically rigorous study. A closer look at the cases generated as a result of the project also uncovered some interesting trends.

## Notable trends

***Alternative forms of bail were used in a wide range of cases.*** Courts set alternative forms of bail in a wide range of cases, both by level of offense and offense type. Judges did not limit the use of partially secured and unsecured bonds to only low-level cases—approximately half of the cases in the cohort involved felony-level charges. Moreover, a significant number

of the cases examined would not have been eligible for other existing bail initiatives in New York City, such as supervised release or the charitable bail funds. (See "Why bail reform matters" on page 9.) More than half involved a top charge of a felony, making them ineligible for a charitable bail fund; and at least one-third were excluded by charge from supervised release, which does not accept violent felony offenses or any charges where the allegations involve domestic violence or sexual misconduct.

In serious cases where pretrial release is appropriate but release on recognizance is not granted, alternative forms of bail may be a promising alternative. Judges, particularly when granting partially secured bonds, may feel confident that there is still "skin in the game." As one judge noted, "You could go with a 'more traditional' low cash bond, with an amount of $1,000 bond or $500 cash, but then you realize they would not be able to make it. The defense attorney tells you, 'Judge, they have $100.' Under those circumstances, I was very open-minded in the right case. That $100 to one family might be like $100,000 to another family. It might be more than enough to secure my confidence that this person would come back to court on the next date."[47]

***The majority of cases in which bail was made resolved in a dismissal or a low-level disposition.*** Another notable trend was that the majority of cases resolved in a disposition far less serious than a felony charge, even though half of all cases involved a top charge at arraignment of a nonviolent or violent felony. Fully a third of all cases where a partially secured or unsecured bond were made resulted in an outright or delayed dismissal, and almost half resolved with a conviction of a violation, or a misdemeanor-level charge. In contrast, fully 100 percent of cases in the cohort that were not released resolved in a misdemeanor or felony disposition. (See Figure 8 on page 22.)

The disposition outcomes of the project cohort closely resemble overall case outcomes in New York City where, according to the most recent annual report from the New York City Criminal Courts, approximately 42 percent of arraignments resolve in either an ACD or an outright dismissal.[48] What is notable about the project cohort of cases compared to the overall citywide numbers is that all defendants in cases in the project cohort had bail set, while the vast majority of defendants included in the citywide numbers were released on recognizance. Given recent studies that document the negative impact of bail on case dispositions, this trend in overall case dispositions suggests that setting an unsecured or partially secured bond instead of, or in addition to, a traditional form of bail may lessen the deleterious effect of bail on final case outcomes by increasing rates of pretrial release and removing the pressure to resolve a case with a guilty plea.[49] This possibility merits further study.

## Factors influencing adoption of alternative forms of bail

***The cases in which an alternative form of bail was granted were unique.*** Those instances in which a judge agreed to a partially secured or unsecured bond were cases that stood out in some way from the usual thrum—a case where the person accused had a particularly compelling story, or the facts were unusual, or an attorney made an especially forceful argument on the record on behalf of the client. In one case in Brooklyn, for example, a defense attorney reported that an unsecured bond was set only after he made an extensive record and spent several minutes describing to the court the unique circumstances that led to his client being arrested and charged with a violent robbery offense.[50] Another defense attorney noted, "Setting an alternative form of bail is great in theory, but if it's in an amount that isn't reflective of a person's actual financial circumstances it's not that helpful. Judges who have set partially secured or unsecured bonds often do so because the defense lawyer has presented a fuller picture of their client, their family, and their financial resources."[51]

Compared to the usually rushed three or four minutes most cases last in arraignment, with only cursory information given about the circumstances of the person accused, the level of detail provided in cases where an alternative form of bail was set may have influenced the judge to depart from imposing traditional cash or an insurance company bail bond. These cases often involved a more extensive back-and-forth and discussion of a person's circumstances, including financial ability to make bail, than is usually done at arraignment. As one judge described, "I like the process where you bring the surety up and you put the surety under oath. It adds gravity to the situation. When I set a partially secured bond, I almost invariably talk to the defendant and the family about losing that money. There's more in that circumstance because you have a family member saying, 'You better come back. I took an oath for you.'"

***Partially secured bonds could be used as an alternative to insurance company bail bonds.*** Partially secured bonds are seen by some judges as an effective alternative to insurance company bail bonds. Most such bail bonds require obligors to demonstrate full-time employment through paystubs and tax returns. Other sources of income, such as from public assistance or disability payments, are often not accepted. Nor will many bail bond companies underwrite low bails, especially those set at $1,000 or less, as they are not profitable for the company. Partially secured bonds operate almost like insurance company bail bonds, except that the 10 percent deposit is

refundable, meaning a person who makes all appearances loses no money. One judge equated partially secured bonds as the functional equivalent of an insurance company bail bond: "If we do a typical bail bond, there's a private bond company and they're responsible for the paperwork. With a partially secured bond, the company is taken out of the mix and it's the court that works with the defense to prepare the paperwork."[52]

Two judges, one in Brooklyn and the other in the Bronx, were primarily responsible for the 99 cases in the project where an alternative form of bail was set. One noted that the reason he began to set partially secured bonds was that it was increasingly requested by defense attorneys. He said, "What initially happened is that a partially secured bond was requested. I gave it thought and I did it. Initially, I met some resistance to completing the paperwork. It's more work for the defense attorney and for the court. But any time you're doing something new or different it takes time. Culture change. You can do it but it takes time."[53]

# Recommendations

The results of this experiment suggest that if New York City courts opted more frequently for alternative forms of bail, they could potentially reduce the use of pretrial detention without compromising other important considerations of compliance with court appearances and public safety. However, the challenge will be to make the process by which these forms of bail are requested and set easier, and to educate and encourage both the judiciary and the defense bar to actively embrace them.[54] Vera spoke with judges, defense attorneys, and court staff to better understand the barriers to using alternative forms of bail and to develop strategies for their increased use at arraignment, resulting in the following recommendations.

## Educate stakeholders about alternative forms of bail

Increasing outreach to key stakeholders so that they can develop comfort and familiarity with these forms of bail—and their potential to increase pretrial release without compromising failure to appear or public safety—is

critical to promoting their use. One of the judges involved in the project used his experience in setting alternative forms of bail as a guide for training other judges citywide, and the Office of Court Administration has included alternative forms of bail as part of their judicial seminar curriculum.

## Simplify the paperwork required

One deterrent to requesting a partially secured or unsecured bond is the complexity of the paperwork required to secure them. Even in cases where the eligibility criteria for issuing an alternative form of bail is met—willing sureties present in court, proof of income, money in hand to pay the deposit amount—most of the time no request for these forms of bail is ever made. In part that is because of the logistics of completing the paperwork. It takes, on average, at least 10 to 15 minutes to complete the forms. This process becomes onerous for attorneys and court staff during a busy arraignment shift, especially if multiple defendants are making requests for alternative forms of bail. To make the process easier, courts should simplify the paperwork. In lieu of the currently required three forms, the necessary information could be organized into a clear and simple double-sided single page specific to the type of bail being requested—partially secured, unsecured, or secured.

## Allow an alternative form of bail to be routinely set as a third option

Judges in New York are already required to set at least two forms of bail to give defendants and their families the option to make bail in the least onerous form. Typically, judges opt for cash up front or commercial bonds. In cases where an insurance company bail bond is set, one option is to automatically set a partially secured bond as a third option. A partially secured bond option would allow obligors to demonstrate their liability to the court for the full amount of bail with non-traditional sources of income typically not accepted by private bail bond companies. Moreover, unlike for-profit bond companies, courts are not dissuaded from using partially secured bonds in cases where low bail is set.

## Introduce an independent assessment of ability to pay

The mere act of requesting an unsecured or partially secured bond prompted a more thorough hearing in court of the circumstances of the case. In many cases where an alternative form of bail was set, either the defense attorney offered or the judge requested some information about ability to pay bail—why the person could not make cash bail or afford a commercial bond, and if there were any family members or friends who could serve as obligors. In cases where release on recognizance is not appropriate, the courts should consider introducing an independent assessment at arraignment of a person's ability to pay bail. That assessment would consist of an interview with the defendant to gather information about income, financial obligations, and potential obligors. The assessment would then provide the court with a recommendation for how much bail should be set and in what form.

# Conclusion

Ninety-nine cases out of a total of several thousand where bail is set is a miniscule number in the larger scheme of New York City's court system. Yet this small cohort tells a fascinating story of how a change in practice can potentially have a significant impact on reducing the use of pretrial detention without compromising public safety or rates of court appearance.

In a time where the larger mandate is to close Rikers Island and reduce the city's average daily jail population by half, using alternative forms of bail is one of many strategies that judges should have in their wheelhouse. Even with such alternatives, the role of money in our justice system still lurks within this endeavor. Is there a place for it? And if so, what should that place be? In the long term, our courts must grapple with and address those larger normative questions. In the short term, although money is still a factor in release, alternative forms of bail require the courts to truly consider a person's individual circumstances at the decision point of pretrial release. The move towards a more considered decision to detain or release may result in more equitable release determinations in which money is not the sole factor impacting a person's pretrial liberty.

## Endnotes

1 New York City also offers an alternative route to arraignment. Upon arrest, an officer has the discretion to issue a Desk Appearance Ticket (DAT) if the arrest charge is a violation, misdemeanor, or an eligible class E felony offense. When a DAT is issued, the person avoids being transported to central booking immediately after arrest. Instead, he or she is released from the precinct and given a date to appear for arraignment within the next several weeks. By New York Police Department policy, DATs may only be issued if the person arrested has no outstanding warrants and can provide state-issued identification at the time of arrest. In 2015, approximately 70,000 DATs were issued out of a total of more than 300,000 arrests. See New York City Criminal Justice Agency (CJA), *Annual Report 2015* (New York: CJA, 2016), 26. According to official statistics from the Office of Court Administration, in 2015 the New York City courts arraigned 314,815 cases, including DATs. See Criminal Court of the City of New York, *Annual Report 2015* (New York: Office of the Chief Clerk of the New York City Criminal Court, 2016), 7, https://perma.cc/NX5E-RD3E.

2 The bail statute itself uses the term "insurance company bail bond" to connote those bonds underwritten and proffered by private, for-profit companies. N.Y. Criminal Procedure Law §520.10(1)(b). These types of bonds are colloquially called "commercial bonds" and the companies that underwrite them "private bond companies" or "for-profit bond companies." The terms are used interchangeably in this report.

3 CJA, *Annual Report 2015* (New York: CJA, 2016), at 30. CJA interviews people arrested in the criminal courts in all five boroughs and generates a risk score for that person's likelihood of appearance in court based on their current residence, employment, contact information, and past criminal history. That risk score tells the arraignment judge whether the person has a low, medium, or high risk of failure to appear. CJA also collects data from arraignments on bail setting, bail-making, and failure to appear. According to its 2015 annual report, 60 percent of cases arraigned continued past arraignments. Ibid. at 17. The bail-making statistics above apply only to cases where bail was set that continued past arraignments.

4 Jamie Fellner, *The Price of Freedom: Bail and Pretrial Detention of Low Income Nonfelony Defendants in New York City* (New York: Human Rights Watch, 2010), 17, https://perma.cc/ZK2D-743R. The one exception is the use of credit card to pay bail, which has become more common since the New York State Office of Court Administration issued a directive governing its use in 2013. See Mary T. Phillips, *New York's Credit Card Bail Experiment* (New York: CJA, 2014), https://issuu.com/csdesignworks/docs/creditcardbail14/1?e=2550004/9230440.

5 *People ex rel. McManus v. Horn*, 18 N.Y.3d 660 (2012).

6 See N.Y. Criminal Procedure Law §510.30 (application for recognizance or bail; rules of law and criteria controlling determination).

7 For more on how prosecutors choose bail amounts, See Fellner, *The Price of Freedom* (New York: Human Rights Watch, 2010), at 41-46.

8 Ibid. at 41-42.

9 CJA, *Annual Report 2015*, 22. In comparison, the average amount of bail nationally for felony cases nearly doubled between 1992 and 2006 from $25,400 to $55,500. Justice Policy Institute, *Bail Fail: Why the U.S. Should End the Practice of Using Money for Bail* (Washington, DC: Justice Policy Institute, 2012), 10, http://www.justicepolicy.org/uploads/justicepolicy/documents/bailfail.pdf. Bail is also set less often in New York City compared to other cities across the United States. See New York City Mayor's Office of Criminal Justice, "Safely Reducing the New York City Jail Population," https://perma.cc/L5M2-YJZ2. Moreover, of the approximately 150,000 cases in New York City that continue past arraignments in a given year, nearly seven out of 10 individuals are released on recognizance (ROR) without any type of financial condition imposed. See Mary T. Phillips, *A Decade of Bail Research in New York City* (New York: CJA, 2012), 32.

10 To the extent that full-time employment or participation in education or a training program is a meaningful proxy for economic opportunity, only 46 percent of men and 38 percent of women assessed by CJA at the time of arrest reported having a full-time job or being engaged in training or school. CJA, *Annual Report 2015*, 9.

11 Based on a true account of an arrest and arraignment proceeding in Bronx Criminal Court, as narrated by the lawyer assigned to the case. Details have been changed to protect privacy.

12 See Nick Pinto, "The Bail Trap," *New York Times Magazine*, August 13, 2015, https://www.nytimes.com/2015/08/16/magazine/the-bail-trap.html.

13 New York City Mayor's Office of Criminal Justice, "Safely Reducing the New York City Jail Population," https://perma.cc/L5M2-YJZ2. This includes approximately 650 of the 10,000 people held daily at city jails who are there pending trial on misdemeanor charges. Ibid.

14 Ibid.

15 Ibid.

16 Jennifer Gonnerman, "Three Years on Rikers Without Trial," *New Yorker*, October 6, 2014, http://www.newyorker.com/magazine/2014/10/06/before-the-law.

17 Temporary Commission on Revision of the Penal Law and Criminal Code, *Proposed New York Criminal Procedure Law* (New York: West Publishing Co., 1969), Section 5, https://perma.cc/3VM5-FRLN.

18 Ibid. The law's drafters provided a hypothetical to illustrate the utility of alternative forms of bail: "[A] young man charged with burglary who has previously been embroiled with the law but resides in the community and whose father is a reputable person long employed in the same position at a fairly moderate but adequate salary. Here, a judge not inclined to release the defendant on his own recognizance doubtless would, under present law, fix bail, and in a fairly substantial and possibly burdensome amount . . . If so authorized, however, he might well be satisfied to release the defendant upon his father's undertaking to pay $1,000 (possibly accompanied by a $100 deposit) in the event of the defendant's failure of appearance."

19 N.Y. Criminal Procedure Law §520.10. The forms of bond now allowed include:
- Secured surety bond
- Secured appearance bond
- Partially secured surety bond
- Partially secured appearance bond
- Unsecured surety bond
- Unsecured appearance bond

The State Legislature also amended this section in 1986 to authorize bail to be posted by credit card.

20 In New York City courts, when cash bail or a deposit is posted on a partially secured bond, that full amount is returned at the end of a case, minus a 3 percent administrative fee when the case ends in a violation, misdemeanor, or felony conviction. A recent proposal by the New York City Council, the Mayor's Office of Criminal Justice, and other city agencies seeks to end the practice of taking a 3 percent fee in cases where bail is posted and all court appearances have been made. See New York City Council, "Speaker Melissa Mark-Viverito to Introduce Department of Correction Reform Package," press release (New York City: New York City Council, September 12, 2016), https://perma.cc/22WC-XPPU.

21 Fellner, 2010, 17.

22 Ibid.

23 Interview with sitting Criminal Court judge, December 9, 2016.

24 Interview with sitting Criminal Court judge, July 24, 2017.

25 Justine Olderman, "Fixing New York's Broken Bail System," *City University of New York Law Review* 16, no. 1 (2012), 9-20, http://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1319&context=clr.

26 The trainings were led by a Vera staff member who was a former public defender, and some of the trainings provided Continuing Legal Education credits to attorneys who attended. A total of nine trainings were conducted overall—at each borough office of the Legal Aid Society, and at The Bronx Defenders, Brooklyn Defender Services, the Neighborhood Defender Service of Harlem, and New York County Defender Services.

27 The Legal Aid Society, Bronx Defenders, Brooklyn Defender Services, Neighborhood Defender Service of Harlem, and the New York County Defender Services assign attorneys to arraignment parts across the five boroughs in New York City. With the exception of arraignments in Staten Island, these attorneys are present in arraignment courts seven days a week, 16 hours a day, including weekends and holidays. In FY2017, these indigent services providers represented more than 350,000 cases. See The Council of the City of New York, *Report of the Finance Division on the Fiscal 2018 Preliminary Budget* (New York: NYC City Council, 2017), 5, https://perma.cc/UJ3D-YXTP.

28 Some other limitations about the results should be noted. The information gathered from court calendars to identify cases in which a partially secured or unsecured bond was set relied on the accuracy of the entries in those calendars. Moreover, the information available on the calendars and from a match with the Office of Court Administration's court records database, called CRIMS, did not include age, race/ethnicity, or any other demographic information, nor did it include prior warrant or criminal history information about the individuals for whom an alternative form of bail was set, two factors which tend to bear heavily on the bail decision.

29 CJA, *Annual Report 2015*. For purposes of this project, Vera assumed based on anecdotal knowledge of bail setting practices in New York City that only traditional forms of bail were set in the cases reported by CJA, and that a partially secured or unsecured bond was the form of bail made in the cases tracked in the cohort. See Fellner, 2010, 17 (discussing customary practices in bail setting among city judges). An additional assumption was made that individuals in the cases in the project cohort would not

have been released on recognizance prior to the project, thus resulting in "net-widening."

30 Qudsia Siddiqi, *Research Brief: Pretrial Failure Among New York City Defendants* (New York: CJA, 2009), 3, https://perma.cc/G9JX-CPNN.

31 In all cases where an unsecured or partially secured bond was set, that option was a third (or even fourth) alternative to traditional cash bail, insurance company bail bond, or, in a limited number of cases, credit card bail.

32 For one case in which a partially secured bond was set, the top charge was missing in the dataset.

33 Interview with defense attorney, Brooklyn, New York, March 9, 2017.

34 CJA, *Annual Report 2015*, 22.

35 These are individuals who do not make bail but are released at a court date following arraignment because the district attorney does not yet have the necessary evidence to move forward on misdemeanor charges, or has not secured an indictment from the grand jury on felony charges. See N.Y. Criminal Procedure Law §170.70 (release of defendant upon failure to replace misdemeanor complaint by information) and §180.80 (proceedings upon felony complaint; release of defendant from custody upon failure of timely disposition).

36 CJA, *Annual Report 2015*, 30. Percentages in the CJA report may not total 100 percent because of rounding. Ibid. at 31.

37 See footnote 35. N.Y. Criminal Procedure Law §170.70 (release of defendant upon failure to replace misdemeanor complaint by information) and §180.80 (proceedings upon felony complaint; release of defendant from custody upon failure of timely disposition).

38 CJA, *Annual Report 2015*, 30. The CJA reports data on cases where bail is set at arraignment. The CJA data cited in this report combines overall bail-making on all cases—felonies and nonfelonies—at three junctures: at arraignment, post-arraignment, and when bail is not made prior to disposition. In addition to those measures, of cases where bail is initially set at arraignment, approximately 12 percent of felonies and 11 percent of nonfelonies are released on recognizance after arraignment. Those statistics were not included in the numbers cited in this report.

39 See New York City Mayor's Office of Criminal Justice, "Safely Reducing the New York City Jail Population," https://perma.cc/L5M2-YJZ2. Seventy-five percent of all individuals who make bail when it is set make bail within 0-6 days of arraignment.

40 A bench warrant is a judicial order that informs law enforcement and other authorities that a defendant can be taken into custody for a missed court appearance or another failure to comply with a judicial order. See Criminal Procedure Law §530.70 (order of recognizance or bail; bench warrant).

41 See N.Y. Criminal Procedure Law §540.10 (forfeiture of bail; generally).

42 During stakeholder interviews, both judges and defense attorneys were asked about the high rate of FTA for individuals charged with felony drug offenses compared to individuals charged with other offenses. Anecdotally, both judges and defenders noted that people arrested on felony drug offenses may often struggle with other challenges that impact court appearance, such as substance use disorders and housing instability.

43 CJA, *Annual Report 2015*, 33.

44 The CRIMS database only allowed for re-arrest information to be gathered for cases that were open or that resulted in a misdemeanor or felony conviction. Any arrests that resulted in a dismissal or a favorable, non-criminal disposition were not captured in the re-arrest statistics. Moreover, the CRIMS database only tracks arrests within the five boroughs of New York City, so any potential arrests outside that area were not captured.

45 Qudsia Siddiqi, *Pretrial Failure Among New York City Defendants* (New York: CJA, 2009), 3.

46 See N.Y. Criminal Procedure Law §170.55 (adjournment in contemplation of dismissal); and §170.56 (adjournment in contemplation of dismissal in cases involving marijuana).

47 Interview with sitting Criminal Court judge, December 9, 2016.

48 Criminal Court of the City of New York, *Annual Report 2015* (New York: Office of the Chief Clerk of the New York City Criminal Court, 2016), 17.

49 For research on the impact of bail and pretrial detention on case outcomes, see Paul Heaton, Sandra Mayson, and Megan Stevenson, "The Downstream Consequences of Misdemeanor Pretrial Detention," *Stanford Law Review* 69, no. 3 (2017), 711-794; and Timothy R. Schnacke, Michael R. Jones, and

Claire M. B. Brooker, *The History of Bail and Pretrial Release* (Maryland: Pretrial Justice Institute, 2010), 1-5.

50 Interview with defense attorney, Brooklyn, New York, March 9, 2017.

51 Interview with defense attorney, Bronx, New York, December 16, 2016.

52 Interview with sitting Criminal Court judge, December 9, 2016.

53 Ibid.

54 Though prosecutors were not included in this project, because of their primary influence on bail requests such education and outreach should include district attorney offices as well.

## "Why bail reform matters" (page 9)

[a] Timothy R. Schnacke, Michael R. Jones, and Claire M. B. Brooker, *The History of Bail and Pretrial Release* (Maryland: Pretrial Justice Institute, 2010), 1-5.

[b] For an overview of historical underpinnings of bail and its current use in the United States, see John Jay College of Criminal Justice and Prisoner Reentry Institute, *Pretrial Practice: Rethinking the Front End of the Criminal Justice System* (New York: John Jay/PRI, 2016), 15-17, https://perma.cc/9UED-5TX5.

[c] Joel L. Fleishman, J. Scott Kohler, and Steven Schindler, *Casebook for the Foundation: A Great American Secret: How Private Wealth is Changing the World* (New York: Public Affairs, 2007), 81-83.

[d] Bail Reform Act of 1966, 18 U.S.C. §§3146-3151.

[e] See Jacob Kang-Brown and Ram Subramanian, *Out of Sight: The Growth of Jails in Rural America* (New York: Vera Institute of Justice, 2017), 9-13, https://perma.cc/234F-MVK7.

[f] Prison Policy Initiative, "Mass Incarceration: The Whole Pie 2017," https://perma.cc/74JQ-XLAF.

[g] On the negative public safety consequences of even short terms of pretrial detention, see Christopher T. Lowenkamp, Marie VanNostrand, and Alexander Holsinger, *The Hidden Costs of Pretrial Detention* (New York: Laura and John Arnold Foundation, 2013), http://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF_Report_hidden-costs_FNL.pdf. On incarceration and public safety generally, see Don Stemen, *The Prison Paradox: More Incarceration Will Not Make Us Safer* (New York: Vera Institute of Justice, 2017), https://perma.cc/K5P8-L529.

[h] See, e.g., O'Donnell v. Harris County, Texas, No. 4:16-CV-01414 (S.D. Tex. December 16, 2016,) at 94, https://perma.cc/SX97-F9TX (holding that bond schedule that made no individualized determination of ability to pay violated constitutional rights of poor defendants). See also the work of Civil Rights Corps, a nonprofit organization that has filed lawsuits challenging the use of money bail and wealth-based pretrial detention policies, http://www.civilrightscorps.org/.

[i] For an overview of these reforms, see New Jersey Courts, *Criminal Justice Reform: Report to the Governor and Legislature* (Trenton, NJ: New Jersey Courts, 2016), 1, http://www.judiciary.state.nj.us/courts/assets/criminal/2016cjrannual.pdf.

[j] New York City Mayor's Office of Criminal Justice, *Justice Brief: The Jail Population—Recent Declines and Opportunities for Further Reductions* (New York: Mayor's Office of Criminal Justice, 2017), 15-18, https://perma.cc/CEG3-RFD6.

[k] See the work of the Brooklyn Community Bail Fund, https://brooklynbailfund.org/, and the Bronx Freedom Fund, http://www.thebronxfreedomfund.org/. These two organizations were established under the New York State Charitable Bail Act of 2012, which allows nonprofit funds to operate as bail payment agents without charging a premium or fee for their services. See Office of the Governor of the State of New York, "Governor Cuomo Signs Legislation to Help Low-Income Defendants Meet Bail Requirements," press release (Albany, NY: Office of the Governor of NY, July 18, 2012), https://perma.cc/KWC3-WBP6.

[l] See John Surico, "New York City is Creating a Bail Fund to Help People Get Out of Jail," Vice News, June 29, 2015, https://perma.cc/RW9B-B2KS.

[m] Cindy Redcross, et al., *New York City's Pretrial Supervised Release Program: An Alternative to Bail* (New York: MDRC/Vera, 2017), https://perma.cc/LLX8-AEH9.

## Acknowledgments

The partnership and collaboration of the Office of Court Administration (OCA) made this project and this report possible. In particular, Vera thanks the Honorable Lawrence K. Marks, chief administrative judge of the courts, for his commitment to improving bail practices in the New York City courts, and Justin Barry, chief clerk of the New York City Criminal Courts, for his precise guidance and shepherding of this project to completion. At OCA, several staff assisted with data collection and review, especially Eric Black, Carolyn Cadoret, Karen Kane, and Bob Roslan. Vera would also like to thank the following for their insight, guidance, participation in the project, and review of this report: Molly Cohen, associate counsel at the New York City Mayor's Office of Criminal Justice; Brian Crow, legislative counsel at the New York City Council; Bill Gibney, director of the Special Litigation Unit at the Legal Aid Society; the Honorable George Grasso, supervising judge; Kristin Heavey, supervising attorney at the Neighborhood Defender Service of Harlem; Linda Hoff, director of training in the criminal defense practice at Brooklyn Defender Services; Amanda Jack, attorney at Brooklyn Defender Services; Robyn Mar, deputy managing director of the criminal defense practice at the Bronx Defenders; Joshua Norkin, Decarceration Project at the Legal Aid Society; Kevin O'Connell, supervising legal director at New York County Defender Services; Justine Olderman, managing director at The Bronx Defenders; and Steve Zeidman, professor at the City University of New York School of Law. At Vera, we are deeply grateful to Jim Parsons, Nick Turner, and Susan Shah for their review and feedback on the final report; Cindy Reed and Ram Subramanian for editing; and Carl Ferrero for the report's design and layout. Many thanks also to Adam Murphy, a legal intern from New York University School of Law, who provided invaluable legal research and writing assistance.

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## Credits

 An electronic version of this report is available at www.vera.org/against-the-odds.

The Vera Institute of Justice is a justice reform change agent. Vera produces ideas, analysis, and research that inspire change in the systems people rely upon for safety and justice, and works in close partnership with government and civic leaders to implement it. Vera is currently pursuing core priorities of ending the misuse of jails, transforming conditions of confinement, and ensuring that justice systems more effectively serve America's increasingly diverse communities. For more information, visit www.vera.org.

For more information about this report, contact Insha Rahman, project director, at irahman@vera.org.

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# Bail and Pretrial Justice in New York State:

## Trends, Data, and Opportunities for Reform

**Insha Rahman, Esq.**
Project Director
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Vera

## Overview

**Trends**

- New York City is no longer the driver of pretrial incarceration across the state
- Misdemeanor pretrial detention is more prevalent outside of New York City

**Use of bail**

- Statewide comparisons of bail amounts from a one-day snapshot

**Opportunities for reform**

- Using alternative forms of bail
- Addressing resources and providing due process at arraignments

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# Trends

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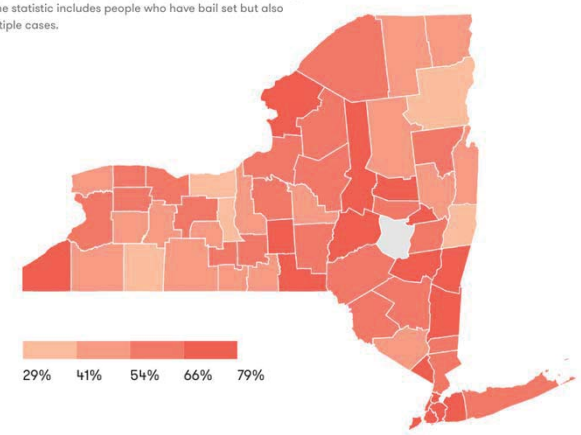
## The geography of pretrial detention in New York

**Pretrial population**

The pretrial population shows the percentage of the average daily census that is in jail because they have had bail set and have not made bail. The statistic includes people who have bail set but also have another hold, such as a warrant or multiple cases.




Source: New York State Division of Criminal Justice Services, 2016

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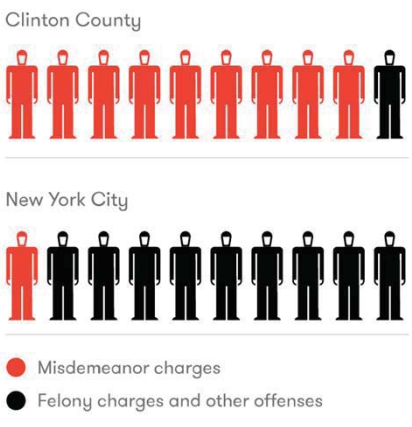
## Comparing misdemeanor jail incarceration




**Why people are in jail varies depending on where you are.**

In Clinton County, for example, nine out of 10 people in jail are there on misdemeanor charges.

In New York City, by contrast, only one out of 10 people in jail are there on misdemeanor charges even though misdemeanors make up two-thirds of all arrests in the city.

Source: Vera analysis of U.S. Bureau of Justice Statistics Annual Census of Jails data, 2015

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## Use of bail

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## Setting of bail

People held on misdemeanors with bail set at $1,000 or less:

- **72%** Monroe County
- **32%** New York City
- **27%** Onondoga County
- **10%** Chautauqua County

People held on felonies with bail set at $10,000 or more:

- **42%** Monroe County
- **68%** New York City
- **58%** Onondoga County
- **82%** Chautauqua County

**County by county, bail amounts on misdemeanor and felony charges vary tremendously.**

Seven in 10 people held on misdemeanors in Monroe County have bail set at $1,000 or less, compared to one in 10 in Chautauqua County.

That variation in bail holds for more serious offenses. In Monroe County, four in 10 people held on felony charges have bail set at $10,000 or higher, compared to eight in 10 in Chautauqua County.

Source: Vera analysis of bail amounts from a one-day snapshot of publicly available bail data, November 2017

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## Opportunities for reform: bail alternatives

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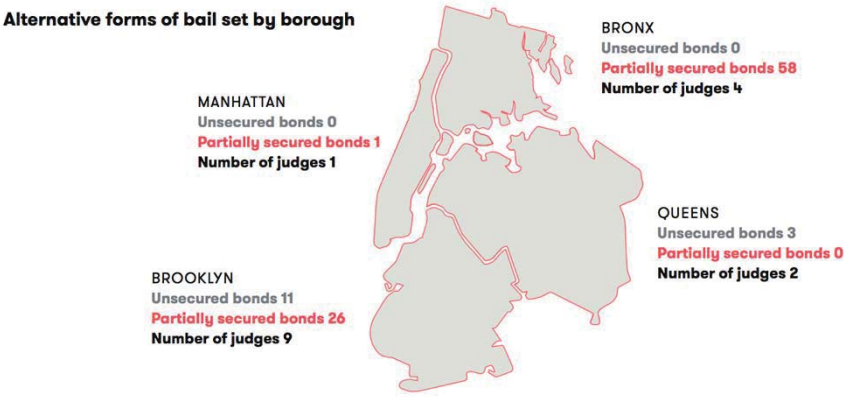
# Using alternative forms of bail




Source: Vera Institute of Justice, *Against the Odds: Experimenting with Alternative Forms of Bail*, September 2017

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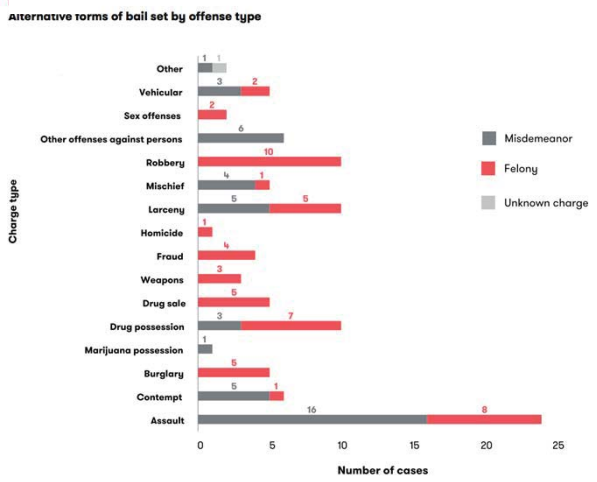
# Use of alternative forms of bail by charge




Source: Vera Institute of Justice, *Against the Odds: Experimenting with Alternative Forms of Bail*, September 2017

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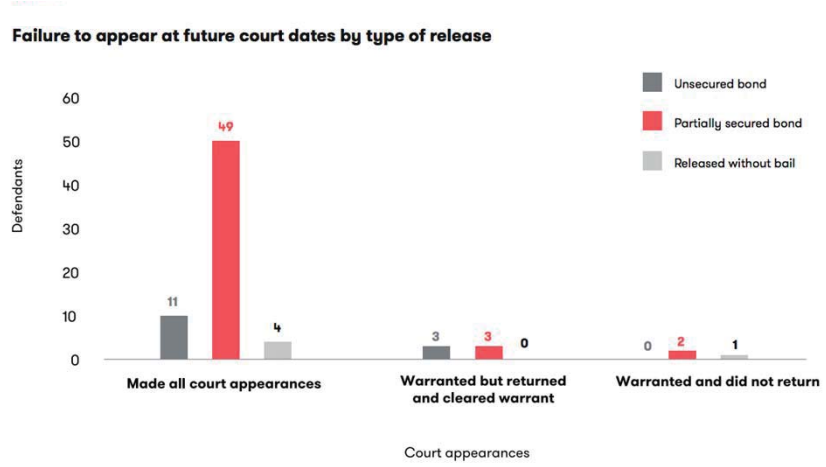
# Court appearance rates




Source: Vera Institute of Justice, *Against the Odds: Experimenting with Alternative Forms of Bail*, September 2017

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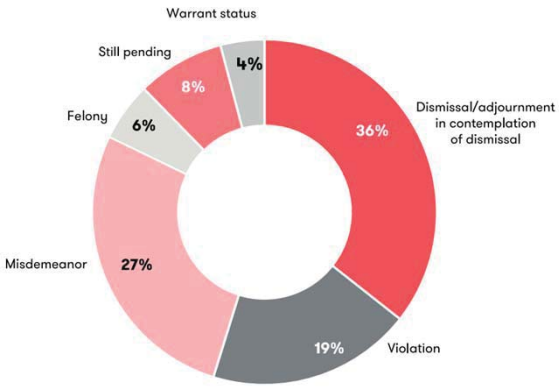
# Case dispositions




Source: Vera Institute of Justice, *Against the Odds: Experimenting with Alternative Forms of Bail*, September 2017

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# Opportunities for reform: due process

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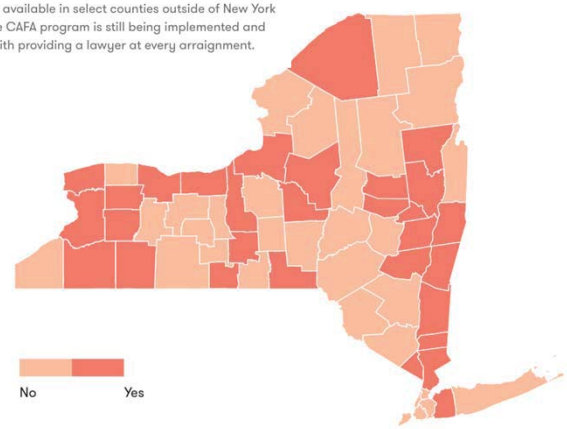
# Access to counsel

**Counsel at First Appearance**

The Counsel at First Appearance program is available in select counties outside of New York City to provide a lawyer at arraignment. The CAFA program is still being implemented and counties are at various stages of progress with providing a lawyer at every arraignment.




Source: New York State Office of Indigent Legal Services, 2017

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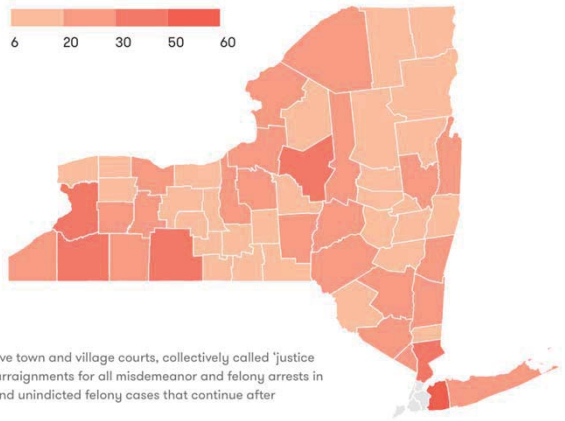
# Due process and centralized arraignments




**Town and village courts**

Counties outside of New York City have town and village courts, collectively called 'justice courts,' which have jurisdiction over arraignments for all misdemeanor and felony arrests in the county, and hear misdemeanor and unindicted felony cases that continue after arraignment.

Source: New York State Office of Indigent Legal Services and Office of Court Administration, 2017

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# Additional resources on New York bail reform

Independent Commission on New York City Criminal Justice and Incarceration Reform, "A More Just New York City," April 2017, morejustnyc.org

Vera Institute of Justice, "Empire State of Incarceration: Correcting the Overuse of Jail," December 2017, www.vera.org/state-of-incarceration

Vera Institute of Justice, "Against the Odds: Experimenting with Alternative Forms of Bail in New York City's Criminal Courts," September 2017, www.vera.org

Crime and Justice Institute, "Assessment of Pretrial Services in New York State," June 2014, http://www.criminaljustice.ny.gov/opca/pdfs/NYS-Pretrial-Release-Report-7-1-2014.pdf

Criminal Justice Agency, "A Decade of Bail Research in New York City," August 2012, www.nycja.org/library

Human Rights Watch, "The Price of Freedom: Bail and Pretrial Detention of Low Income Nonfelony Defendants in New York City," December 2010, www.hrw.org

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# Letter to Cuomo

**Sean Hill, Esq.**
Senior Legal Fellow,
Katal Center for Health, Equity, and Justice, NYC

**To:** **Governor Andrew Cuomo**
**From:** **Over 100 Community & Advocacy Groups across New York State**
**Re:** **Bail Reform in New York**
**Date:** **Submitted November 2017, new signatories added December 2017**

Dear Governor Cuomo,

We are aware that your administration is exploring bail reform as outlined in your previous State of the State addresses. As advocates for criminal justice reform, we share your desire to reduce New York's pretrial detention population.

While we urge your administration to take decisive action to reduce the State's pretrial detention population, we are deeply concerned about efforts to amend the existing bail statute to require that judges consider a person's risk of future dangerousness. **We, the undersigned organizations, are united in the belief that: we do not have to add dangerousness to New York's bail statute to reduce our pretrial detention population; the use of risk assessment instruments to predict dangerousness will further exacerbate racial bias in our criminal justice system; and the use of these instruments will likely lead to increases in pretrial detention across the state.**

Adding dangerousness is both counterproductive and unnecessary to the aim of decarceration. New York should, instead, build on existing law and implement changes to reduce pretrial detention statewide. New York's bail statute was specifically crafted to accomplish significant reductions in our pretrial detention population. Our statute, however, is not currently used to its full potential. Efforts in New York City to bring down the jail population and increase rates of pretrial release show what is possible within the context of current law. Rather than amend the statute to include dangerousness, your administration should encourage judges to fully implement our existing law. Comprehensive reform must (1) ensure strict limitations on the use of pretrial detention, (2) eliminate race- and wealth-based disparities, and (3) ensure individualized justice and thoughtful detention decisions through robust due process.

***"Dangerousness" Risk Assessments Are Ineffective, Exacerbate Racial Disparities, and Will Likely Increase New York's Jail Population***

**At a time when the public and policymakers have prioritized reducing the State's jail population, we should reject the inclusion of additional reasons to jail presumptively innocent people. We should, instead, seek a comprehensive approach to bail reform that will strengthen due process, ensure careful and thoughtful determinations about the use of pretrial detention, and guarantee reductions in its use.**

New York does not currently allow judges to consider the risk of future dangerousness in making bail determinations. This makes our bail statute one of the most progressive in the country. In fact, the Legislature specifically considered and rejected adding dangerousness to New York's bail statute when it was drafted,[i] based largely on concerns that such determinations would be too speculative and would disproportionately impact low-income communities of color.[ii] Those concerns are still valid today.

Adding considerations of dangerousness to the New York bail statute—coupled with the introduction of actuarial risk assessment instruments (RAIs)—might seem to offer a ready-made solution to the problems facing New York. New Jersey, for example, has experienced a reduction in its pretrial detention rates following recent reforms. However, there are important differences in criminal procedure and practice that do not guarantee New York would experience similar reductions. In New Jersey, pretrial detention decisions are reached only after a rigorous evidentiary hearing held within days of a defendant's first appearance. People accused of crimes have a robust right to discovery in advance of these hearings, ensuring that important evidence is turned over early and often, and they also have meaningful speedy trial rights if detention is ordered. In New York, on the other hand, evidence can be withheld from someone accused of a crime until the day of trial, and cases can drag on for months or even years in certain counties. The new pretrial discovery rule announced by Judge DiFiore is intended to address the lack of meaningful discovery under New York law, but is insufficient to ensure fairness and due process. RAIs are ultimately not a panacea or substitute for the hard work of creating more due process, more safeguards, and more alternatives to jail. Too often, these tools are expected to accomplish difficult culture changes inside our courts, but they can easily move culture to a worse, rather than better, position on pretrial release.

Dangerousness RAIs in no way guarantee reductions in the State's jail population, and there is good reason to believe that they would increase reliance on pretrial detention. A soon-to-be-published study by Professor Megan Stevenson of Antonin Scalia Law School at George Mason University finds that Kentucky's adoption of a new RAI "had negligible effects on the overall release rate, [failure to appear] rate, [and] pretrial rearrest rate."[iii] A separate report found that Lucas County, Ohio, actually saw its pretrial detention rates *increase* and the rate at which people plead guilty at first appearance *double* since implementing a dangerousness RAI.[iv] Adding dangerousness to New York's bail statute could very well lead to increases in the State's jail population, particularly on Rikers Island in New York City.

Further, RAIs present a false promise that we can accurately predict the future dangerousness of people charged with crimes. We can't—and attempts to do so will harm low-income communities and communities of color, while likely increasing local jail populations. Studies have shown that, **among people released pretrial, only 1.9% are actually re-arrested for violent felonies**.[v] While sensational cases in the media might suggest otherwise, **instances of re-arrest for violent felonies in New York are equally rare.**[vi] In turn, the ability of RAIs to predict the risk of violent crime accurately is exceedingly limited. Even among people labeled "high risk," rates of re-arrest for violent felonies are exceptionally low—well under 10%.[vii] Even on their own terms, they are of limited utility.

The inability of RAIs to accurately predict dangerousness is particularly troubling given that studies have shown that even facially neutral RAIs will inevitably place more people of color in "high risk" categories, mathematically guaranteeing that there will be a disproportionate number of "false positives" among people of color.[viii] Racial disparities of this type are hard-wired into RAI algorithms, with some studies finding that "bias in criminal risk scores is mathematically inevitable."[ix] This means that there will be a larger share of people of color who will *not* be re-arrested, but who will nonetheless be categorized as "high risk," leading to disproportionate rates

of pretrial incarceration and negative case outcomes. This would present a significant step backward in addressing structural racism in New York's criminal justice system.

RAIs are only as good as the data that goes into them; yet every one of these tools that is currently in use relies on data derived from a broken and discriminatory criminal justice system that disproportionately targets and harms people of color. This data is often outdated and incomplete, and based on arrest information rather than the outcome or facts of individual cases. Where initial inputs are tainted by structural racism, the resulting tools will inevitably reflect and exacerbate those disparities. Laurel Eckhouse, with the Human Rights Data Analysis Group, succinctly states this problem: "Inputs derived from biased policing will inevitably make black and Latino defendants look riskier than white defendants to a computer. As a result, data-driven decision-making risks exacerbating, rather than eliminating, racial bias in criminal justice."[x] For this reason, it is particularly concerning that any dangerousness RAI would necessarily draw on data from the era of Stop and Frisk and Broken Windows policing in New York City—as well as from statewide data that has been shaped by one of the great shames of our state, the Rockefeller Drug Laws. While those laws have been reformed, the legacy of their discriminatory impact carries on.

Finally, dangerousness RAIs are inconsistent with principles of transparency and individualized justice. RAIs, driven by opaque and often proprietary computer algorithms, present a complete "black box" to the public and, more importantly, to people charged with crimes whose futures would be determined by their results. More fundamentally, RAIs, particularly those that try to predict dangerousness, undermine the criminal justice system's commitment to individualized justice. RAIs tell us nothing about the specific person that they score, but instead rely on historical group data—the past conduct of other people—to place individuals into broad risk categories. The categories and labels these instruments produce could tremendously influence and change judicial behavior, and introduce biased data that undermines the presumption of innocence. At best, it is an open question whether risk assessments can exist in harmony with basic constitutional principles. This is particularly troubling in light of both our limited ability to predict future behavior with real accuracy and the potential for exacerbating racial disparities.

The primary goals of any bail reform effort should be reducing and limiting the use of pretrial detention and increasing fairness. Adopting dangerousness and RAIs would be a step in the opposite direction. We firmly believe that the existing bail statute's focus on ensuring people's return to court is appropriate and that there is no pressing or legitimate need to change the underlying considerations driving pretrial detention decisions.

***The Current Bail Statute Already Provides Tools to Shrink Jail Populations and Reduce Reliance on Money in Our Pretrial Detention System***

New York's bail statute, enshrined in Criminal Procedure Law §§ 500-540, includes a total of nine forms of bail and requires judges to consider a person's ability to pay when setting bail. Despite the menu of options available to judges, and a mandate to set *at least* two forms of bail, judges almost exclusively rely on the two forms of bail that can be the most difficult for people to afford—cash bail and insurance company bond—and rarely inquire into a person's ability to pay. This contradicts the core objective of the statute, which was specifically intended to reduce pretrial detention rates by creating four new forms of bail that would require little to no money be

deposited in order for a person to be released.[xi] One such form, an unsecured bond, requires no upfront cash payment and has been shown to be as effective as secured bonds in ensuring that a person comes to future court dates.[xii] For over thirty years, Madison County judges routinely approved unsecured bonds for bail in a highly successful process with a local community organization. Greater reliance on these bonds could end our two-tiered system, in which the rich go free and the poor do not, and would not require changing our existing statute.

All of these issues can be addressed under the *existing* bail statute by:

- Educating stakeholders, raising awareness of additional forms of bail, and encouraging judges to set alternative forms of bail that are less onerous than insurance company bonds;
- Simplifying the associated paperwork and procedures required for alternative forms of bail;
- Ensuring that courts are conducting the mandatory inquiry into a person's ability to pay before selecting a form of bail;
- Encouraging judges to impose the least onerous conditions necessary to ensure a person returns to court; and
- Holding the bail bond industry accountable through robust regulation and intensive oversight.

New York already has one of the most progressive bail statutes in the country. Your administration should take steps to ensure that it is used to its full capacity.

***There Should Be Strict Limitations on the Use of Pretrial Detention and Individualized Justice Should Be Strengthened***

We urge your administration to take the best of the existing bail statute and build on it. To fully realize the reduction in the State's jail population we all hope to see, we should: (1) strictly limit the use of pretrial detention, (2) mandate individualized justice and thoughtful detention decisions, and (3) work to eliminate race- and wealth-based disparities. Adoption of dangerousness RAIs will not achieve these goals. A more comprehensive approach to structural bail reform must embrace the following principles:

- New York must eliminate pretrial detention and money bail for all misdemeanors and nonviolent felonies and create a presumption of release for violent felonies.
- Pretrial conditions, including detention, must be determined through individualized evidentiary hearings held immediately after a person's first court appearance. On the record, judges must detail: why bail was set, why the amount and form of bail was selected, and why the individual will be able to gain release with the conditions that have been set. Judges must regularly revisit detention decisions whenever a person remains incarcerated over an extended period of time.
- For-profit bail bonds must be eliminated. Commercial bail bonds are a particularly onerous form of bail, and the only type of bail that requires consumers pay an upfront, non-refundable fee that families lose no matter the outcome of the case. An estimated $14 to $20 million in legally charged fees were paid to for-profit bail bond companies in New York City in 2016, alone.[xiii] This estimate does not even account for illegal fees that families are often charged or for the collateral that is withheld by bondsmen.

- If money bail is set, courts must set the amount and form at a level the person can afford.
- The state must track and regularly report on racial disparities in pretrial detention decisions in every county.

These are just the starting points for a discussion on true pretrial justice reform. Comprehensive reform will require stronger discovery laws, to ensure the prosecution cannot withhold evidence from the defense until the day of trial. It will also require robust speedy trial laws, to ensure no person is incarcerated for years before the resolution of their case.

***Conclusion***

There is a growing consensus in New York that we must close jails, eliminate racial disparities and wealth-based detention, and redirect resources to initiatives that support and build communities. Dangerousness and RAIs will not achieve these goals. A more comprehensive approach is needed. **We would welcome the opportunity to work with you on developing a plan of action to safeguard constitutional rights, reduce jail populations, and build communities. Thank you for considering our views.**

Sincerely,
*Listed in alphabetical order by org name*
*131 Signatories as of 2:20 pm on 12/18/2017*

- **5 Boro Defenders** (NYC)
- **Albany County Public Defender**
- **Allegany/Cattaraugus Legal Services, Inc.**, Annette Harding
- **Allegany County Public Defender**
- **Alliance for Quality Education** (Statewide)
- **Alliance of Families for Justice** (Harlem, Albany, and Statewide)
- **American Friends Service Committee** (Statewide)
- **Amistad Long Island Black Bar Association**
- **Antiracist Alliance** (Statewide)
- **Association of Legal Aid Attorneys – UAW Local 2325** (NYC)
- **Bernard Harcourt**, Professor of Law & Professor of Political Science, Columbia University
- **BOOM!Health** (Bronx)
- **BronxConnect (Urban Youth Alliance)**
- **Bronx Defenders**
- **Bronx Freedom Fund**
- **Brooklyn Community Bail Fund**
- **Brooklyn Defender Services**
- **Brooklyn Law School National Lawyers Guild**
- **The Brotherhood/Sister Sol** (NYC & National)
- **CAAAV Organizing Asian Communities** (NYC)
- **Campaign for Alternatives to Isolated Confinement** (NYC)
- **Capital Area Against Mass Incarceration**
- **Center for Appellate Litigation** (NYC)
- **Center for Community Alternatives, Inc.** (Syracuse & NYC)

- **Center for Family Representation**
- **Center for Law and Justice** (Albany)
- **Challenging Incarceration** (Statewide)
- **Chemung County Public Advocate's Office**
- **Chief Defenders Association of New York**, Mark Williams
- **Child Welfare Organizing Project** (NYC)
- **Citizen Action of New York** (Statewide)
- **Columbia County Public Defender**, Robert Linville
- **Common Justice** (Brooklyn & the Bronx)
- **Community Service Society of New York**
- **DAYLIGHT** (NYC)
- **Decarcerate Tompkins County**
- **Defending Rights & Dissent** (National)
- **Discovery for Justice** (Bronx & Statewide)
- **Drive Change** (NYC)
- **El Centro del Inmigrante** (NYC)
- **Enlace**
- **Erie County Bar Association Assigned Counsel Program**
- **Families Together in New York State**
- **The Fortune Society** (NYC)
- **Genesee County Public Defender**, Jerry Ader
- **Grand St. Settlement** (Lower East Side)
- **Harm Reduction Coalition** (Statewide & National)
- **The Homeless and Travelers Aid Society of the Capital District, Inc.**
- **Housing Works** (Statewide & National)
- **Human Rights Watch** (US Program), John Raphling
- **Immigrant Defense Project** (NYC)
- **Innocence Project** (Statewide)
- **The Interfaith Center of New York**
- **Interfaith Impact of New York State**
- **International Concerned Family and Friends of Mumia Abu-Jamal**
- **Jewish Voice for Peace – New York City**
- **Jews for Racial & Economic Justice** (NYC)
- **Justice and Unity for the Southern Tier** (Binghamton)
- **JustLeadershipUSA** (NYC & National)
- **Katal Center for Health, Equity, and Justice** (Albany & Statewide)
- **Labor-Religion Coalition of New York State**
- **LatinoJustice PRLDEF** (National)
- **Legal Action Center** (Statewide)
- **The Legal Aid Society** (NYC)
- **Legal Aid Society of Nassau County**, N. Scott Banks
- **Legal Aid Society of Westchester County**
- **The LGBT Bar Association of Greater New York**
- **LGBTQ Community for Racial Justice** (Hudson Valley)
- **LPS/LIFE Progressive Services Group, Inc.** (Mount Vernon)
- **Madison County Bail Fund, Inc.**, Marianne Simberg
- **Make the Road New York** (Statewide)

- **Middle Collegiate Church** (NYC)
- **Mid Hudson Jews for Racial Justice** (Statewide)
- **Milk Not Jails** (Statewide)
- **Mobilization for Justice** (NYC)
- **NAACP Legal Defense Fund** (National)
- **Nassau County Criminal Courts Bar Association**
- **Nassau County Jail Advocates**
- Second Chance Committee, **National Action Network** (NYC)
- **National Alliance on Mental Illness, NAMI-NYS (Criminal Justice)**
- **National Alliance on Mental Illness, NAMI-Huntington**
- **Neighborhood Defender Service of Harlem**
- **New York City Books Through Bars**
- **New York City Jails Action Coalition**
- **New York Civil Liberties Union**
- **New York Communities for Change**
- **New York County Defender Services**
- **New York Harm Reduction Educators** (NYC)
- **New York State Association of Criminal Defense Lawyers,** John Wallenstein
- **New York State Council of Churches** (Statewide)
- **New York State Prisoner Justice Network** (Albany & Statewide)
- **NYU Black Allied Law Students Association**
- **NYU Law Prison Reform & Education Project (PREP)**
- **The Office of the Appellate Defender** (NYC)
- **One Thousand Arms**
- **Onondaga County Bar Association Assigned Counsel Program, Inc.**, Kathleen Dougherty
- **Partnership for the Public Good** (Buffalo)
- **Peace and Justice Task Force of the Unitarian Church of All Souls** (New York)
- **Peer Network of New York** (Statewide)
- **Policing and Social Justice Project, Brooklyn College**
- **Presbytery of New York City Justice Ministries**
- **Prison Action Network** (Statewide)
- **Prisoners' Rights Task Force** (Buffalo)
- **Prison Families Anonymous** (Long Island)
- **Queens Law Associates**
- **Queer Detainee Empowerment Project** (Statewide)
- **Release Aging People in Prison/RAPP Campaign** (Statewide)
- **Rikers Debate Project**
- **Second Chance Reentry, Inc.** (Long Island)
- **Social Responsibilities Council of Albany Unitarian Universalists**
- **Southern Tier AIDS Program** (Ithaca)
- **St. Ann's Corner of Harm Reduction** (Bronx)
- **STEPS to End Family Violence** (NYC)
- **Steuben County Office of the Public Defender**
- **Showing Up for Racial Justice** (NYC)
- **Syracuse Jail Ministry**, Keith Cieplicki
- **Tompkins County Assigned Counsel Program**
- **Ulster County Public Defender**

- **United Voices of Cortland**
- **Urban Justice Center** (NYC)
- **VOCAL-NY**
- **VOICE-Buffalo**
- **Washington Heights CORNER Project**
- **Washington Square Legal Services Bail Fund**
- **Wayne County Public Defender**, James Kernan
- **WESPAC Foundation** (Westchester)
- **The West Side Commons** (NYC)
- **Women & Justice Project**
- **Woodstock Jewish Congregation Task Force to End the New Jim Crow**
- **Working Families Party**
- **Youth Represent** (NYC)

**For more information, or to be added as a signatory, please contact:**
**Sean Hill II, Esq. | Senior Legal Fellow | *shill@katalcenter.org* | 347.921.0826**

[i] David Burnham, "State Unit Drops Detention Plan," *The New York Times* (Sept. 3, 1969), *available at* http://query.nytimes.com/mem/archive/pdf?res=9405EFDF1031EE3BBC4B53DFBF668382679EDE.

[ii] Aryeh Neir and Neil Fabricant, "NYCLU Legislative Memorandum #20" (Feb. 6, 1969), *available at* http://www.nycourts.gov/library/nyc_criminal/penal-law-bartlett/099.pdf.

[iii] Megan Stevenson, "Assessing Risk Assessment," 54, *George Mason University Law and Economics Research Paper Series* (Forthcoming, 2017) (acknowledging the use of risk assessment instruments *before* the state shifted to use of the Arnold Foundation's RAI, the Public Safety Assessment).

[iv] Human Rights Watch, "Not in it for Justice," 99-100 (April 11, 2017), *available at* https://www.hrw.org/report/2017/04/11/not-it-justice/how-californias-pretrial-detention-and-bail-system-unfairly.

[v] Baughman, Shima Baradaran and McIntyre, Frank, "Predicting Violence," 527, *Texas Law Review*, Vol. 90 (2012), *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1756506.

[vi] Qudsia Siddiqi, "Predicting the Likelihood of Pretrial Failure to Appear and/or Re-Arrest for a Violent Offense Among New York City Defendants: An Analysis of the 2001 Dataset,"12, *NYC Criminal Justice Agency* (January 2009), *available at* https://goo.gl/WK2813 (finding that, in their 2001 at-risk sample, only 3% of accused people were re-arrested for a violent offense).

[vii] For example, the Laura and John Arnold Foundation found that only 8.6% of people flagged as "significantly more likely to commit an act of violence if released before trial" by their RAI (the Public Safety Assessment) were actually arrested for a new violent crime. *See* Laura and John Arnold Foundation, "Results from the First Six Months of the Public Safety Assessment-Court in Kentucky" (July 2014), *available at* http://www.arnoldfoundation.org/wp-content/uploads/2014/02/PSA-Court-Kentucky-6-Month-Report.pdf.

[viii] *See* Julia Angwin et al., "Machine Bias," *ProPublica* (May 23, 2016), *available at* https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing.

[ix] Julia Angwin & Jeff Larson, "Bias in Criminal Risk Scores Is Mathematically Inevitable, Researchers Say," *ProPublica* (Dec. 30, 2016), *available at* https://www.propublica.org/article/bias-in-criminal-risk-scores-is-mathematically-inevitable-researchers-say.

[x] Laurel Eckhouse, "Big data may be reinforcing racial bias in the criminal justice system," *The Washington Post* (Feb. 10, 2017), *available at* https://www.washingtonpost.com/opinions/big-data-may-be-reinforcing-racial-bias-in-the-criminal-justice-system/2017/02/10/d63de518-ee3a-11e6-9973-c5efb7ccfb0d_story.html?utm_term=.e78f54f265d9.

[xi] "Proposed New York Criminal Procedure Law: 1969 Bill," XVIII, *available at* http://www.nycourts.gov/library/nyc_criminal/penal-law-bartlett/196.pdf.

[xii] "Brief of Pretrial Justice Institute and the National Association of Pretrial Services Agencies…", 9-12, *Walker v. City of Calhoun,* Docket No. 16-10521 (Aug. 18, 2016).

[xiii] Brooklyn Community Bail Fund, "License & Registration Please…", 2, *available at* https://static1.squarespace.com/static/5824a5aa579fb35e65295211/t/594c39758419c243fdb27cad/1498167672801/NYCBailBondReport_ExecSummary.pdf.

# New York State Bar Association

# 2018 Annual Meeting

# Materials for Panel Discussion on Bail Reform

# Wednesday, January 24, 2018

**Michael C. Green, Esq., Executive Deputy Commissioner,**

**NYS Division of Criminal Justice Services, Albany, NY**

**New York State Pretrial Release Decisions and Bail Outcomes**

- The Division of Criminal Justice Services (DCJS) conducted an analysis of pretrial release outcomes at local criminal court arraignments using a data file provided by the Office of Court Administration (OCA). The analysis included arraignments held for felony and finger-printable misdemeanor arrests for the 18-month period between January 2016 and June 2017. The OCA files were matched to DCJS computerized criminal history records as part of the analysis.

- More than 400,000 arraignments were included in the analysis, which was based on the Criminal Records Information Management System (CRIMS) records for New York City and the Universal Case Management System (UCMS) records in the rest of state. Due to the limited availability of data on pretrial release outcomes outside of New York City, there are some limitations to the analysis:

    - Town and Village Courts do not use the CRIMS or the UCMS system, so information on arraignments held in these courts are not included. About 45% of local arraignments outside of New York City are held in Town and Village Courts, so a significant percentage of the pretrial release decisions outside of New York City are not known. Statewide, Town and Village Courts represent about 20% of the total local court arraignments.

    - Because the rollout of UCMS to City and County Courts outside of New York City was underway at the time the file was prepared, data was not available for several large-volume courts outside of NYC (such as Rochester and Suffolk county) and only limited cases were available for other large courts. The following non-NYC courts each had 1,000 or more cases included: Nassau District Court, Buffalo, Syracuse, Utica, Troy, Newburgh, Kingston, Binghamton, Middletown, Cortland, Saratoga Springs, and Poughkeepsie.

- Overall, local arraignments held between January 2016 and June 2017 for all New York City Criminal Courts and 51 non-NYC District and City Criminal Courts were included in the analysis.

- In New York City, about 28% of the cases were disposed at arraignment, with no pretrial release decision made. These cases are not included in this analysis of pretrial release outcomes.

- Information on pretrial release outcomes included:

    - Release on Recognizance (ROR)
    - Release Under Supervision (RUS)
    - Bail set and made at arraignment (within 2 days)
    - Bail set but not made at arraignment
    - Remand

- The OCA files with pretrial release outcomes were matched to DCJS computerized criminal history records to include defendant information such as age, race and gender, as well as current charges, criminal history and bench warrant history.

The tables in the attached analysis (Slides 3,11, 13 and Tables 1 and 2) show annual numbers of pretrial release outcomes that were estimated based on 2016 reported arraignments. All non-NYC annual estimates as well as reported outcomes exclude Town and Village Court activity. The outcomes shown on slides 6 – 14 are based on bail outcomes within 5 days of arraignment.

**ROR Rates are much greater in NYC than non-NYC.**

- In New York City, 72% of defendants were released on their own recognizance (ROR), compared to a 47% ROR rate in non-NYC. (Slides 1 and 2)

**Bail is imposed more frequently in non-NYC.**

- Bail was set in 42% of non-NYC cases and 25% of NYC cases. (Slides 1 and 2)

**It can take several days to make bail, and most cases who have bail set have not made bail 5 days after arraignment.**

- When bail was set in NYC, 88% were unable to pay the day of arraignment. After 2 days, 77% were still detained; after 5 days, 69% remained detained. (Slide 3)

- In non-NYC, 77% were not able to pay at arraignment, with 70% detained after 2 days, and 64% still detained after 5 days. (Slide 3)

**The median bail amount is $2,500.** (Slide 5)

**Many defendants who do post bail still end up detained for at least several days.**

- 69% of NYC cases and 64% of non-NYC cases with bail set had still not paid bail 5 days after arraignment. (Slide 6)

- Even for defendants with the lowest bail amounts - $500 or less – a large proportion are not able to pay. (Slide 6)

**Overall, 82% of NYC cases and 68% of non-NYC are released to the community within 5 days of arraignment.**

- The majority of defendants not released were held due to nonpayment of bail. (Slide 7)

**Release decisions and ROR rates vary by charge type and by region.**

- In NYC, 10% of misdemeanors, 35% of nonviolent felonies and 46% of violent felonies were detained due to inability to pay bail. (Slide 9)

- In non-NYC, 21% of misdemeanors, 37% of nonviolent felonies and 52% of violent felonies were detained due to inability to pay bail. (Slide 10)

**There is racial disparity in pretrial release rates, with black defendants released at the lowest rates.**

- Pretrial release rates in NYC were higher among whites (85%) than among blacks (79%) or Hispanics (82%). (Slide 12)
- In non-NYC, release rates were higher among whites (73%) than among blacks (61%) or Hispanics (69%). (Slide 14)

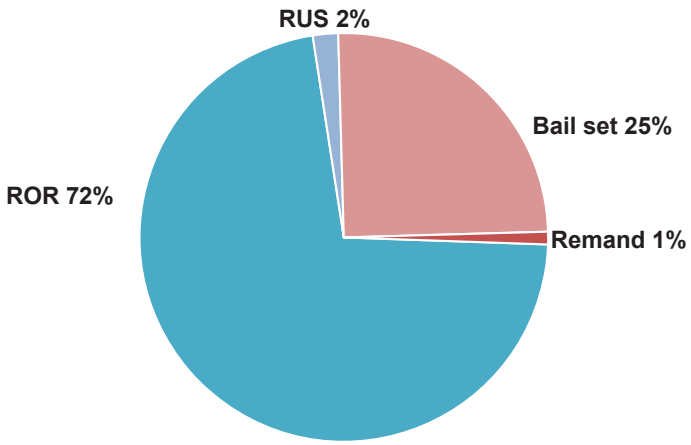
**A large number of defendants are held for misdemeanors and nonviolent felonies.**

Tables 1 and 2 show annual estimates of pretrial outcomes broken out by race and crime type. This includes the estimated number of defendants who pay bail and are released at arraignment, 1-2 days after arraignment, or after 3-5 days. The highlighted column shows the number who are still unable to pay after 5 days:

- In NYC, an estimated 12,100 misdemeanant defendants, and 9,600 nonviolent felony defendants were held due to inability to pay bail, representing 74% of the 29,300 held. The vast majority (80%) were black or Hispanic.
- In non-NYC, an estimated 14,400 misdemeanant defendants, and 9,100 nonviolent felony defendants were held due to inability to pay bail, representing 84% of the 27,900 held. A total of 51% were black or Hispanic. (Does not include Town and Village court cases.)

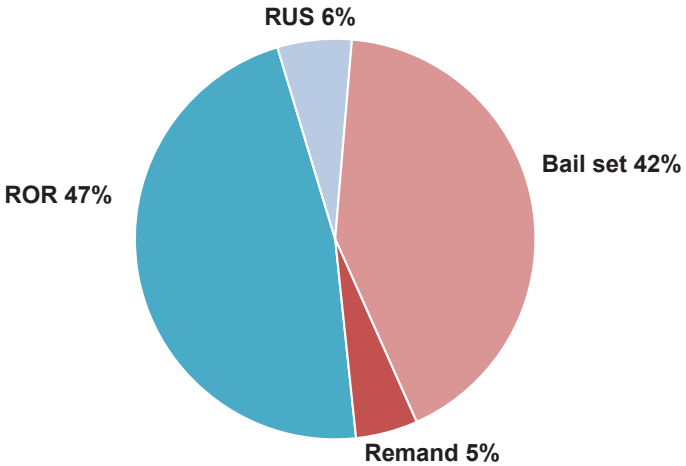
1

## NYC Pretrial Release Decisions




2

## Non-NYC Pretrial Release Decisions



3

## Percent of Bail-Not Paid Among Bail-Set Cases

| | Bail Set | | Bail Set/ Not Paid At Arraignment | | Bail Set/ Not Paid within 2 days of arraignment (cumulative) | | Bail Set/ Not Paid within 5 days of arraignment (cumulative) | |
|---|---|---|---|---|---|---|---|---|
| **NYC** | | | | | | | | |
| Total | 42,200 | 100% | 37,000 | 88% | 32,600 | 77% | 29,300 | 69% |
| Misdemeanor | 18,600 | 100% | 15,700 | 84% | 13,600 | 73% | 12,100 | 65% |
| Non Violent Felony | 13,200 | 100% | 11,900 | 90% | 10,600 | 80% | 9,600 | 73% |
| Violent Felony | 10,500 | 100% | 9,500 | 90% | 8,500 | 81% | 7,600 | 72% |
| **Non-NYC** | | | | | | | | |
| Total | 43,300 | 100% | 33,500 | 77% | 30,100 | 70% | 27,900 | 64% |
| Misdemeanor | 22,800 | 100% | 17,000 | 75% | 15,400 | 68% | 14,400 | 63% |
| Non Violent Felony | 14,300 | 100% | 11,300 | 79% | 10,000 | 70% | 9,100 | 64% |
| Violent Felony | 6,300 | 100% | 5,300 | 84% | 4,800 | 76% | 4,400 | 70% |

* Based on study outcomes applied to 2016 arraignments.

4

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5

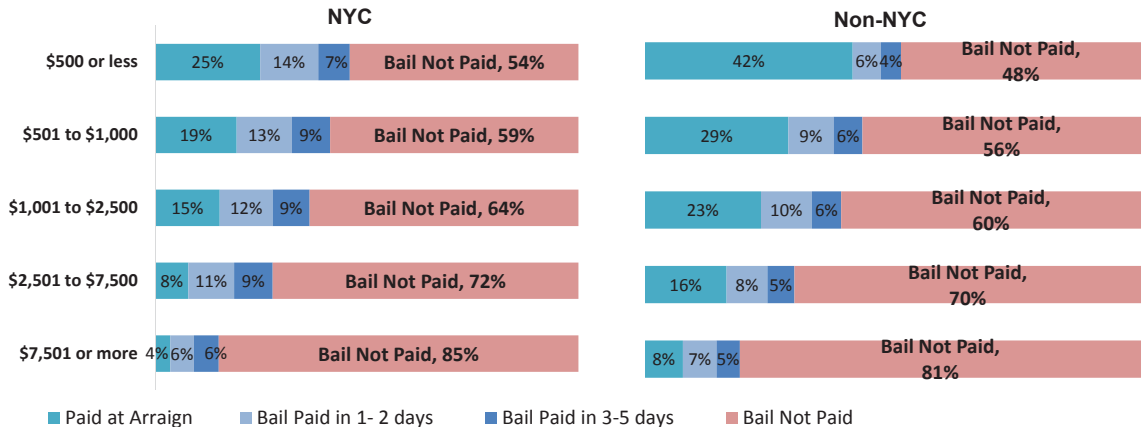
# Bail Amounts Set

| Bail Amount (US Dollars) | NYC | Non-NYC |
|---|---|---|
| $500 or less* | 14% | 20% |
| $501 to $1,000 | 19% | 13% |
| $1,001 to $2,500 | 23% | 20% |
| $2,501 to $7,500 | 21% | 23% |
| $7,501 or more | 23% | 24% |
| Total | 100% | 100% |
| Median Bail Amount | $2,500 | $2,500 |

* Excludes cases where bail was set at $1.

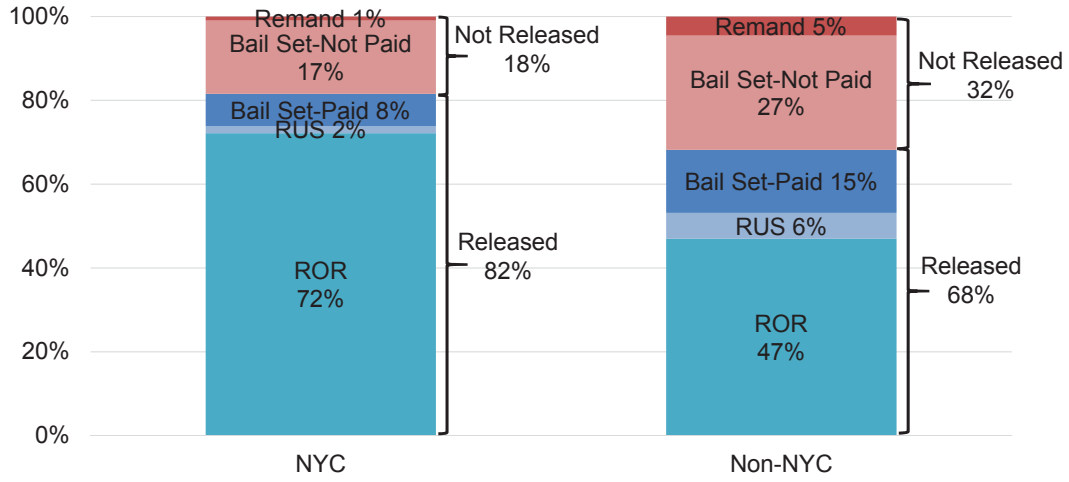
6

# Among Cases with Bail Set: 69% of NYC Cases and 64% of Non-NYC Cases Do Not Pay Bail within 5 days of Arraignment



7

## Current Pretrial Release Outcomes - Total Felony and Misdemeanors




Based on bail paid/ not paid within five days of arraignment.

8

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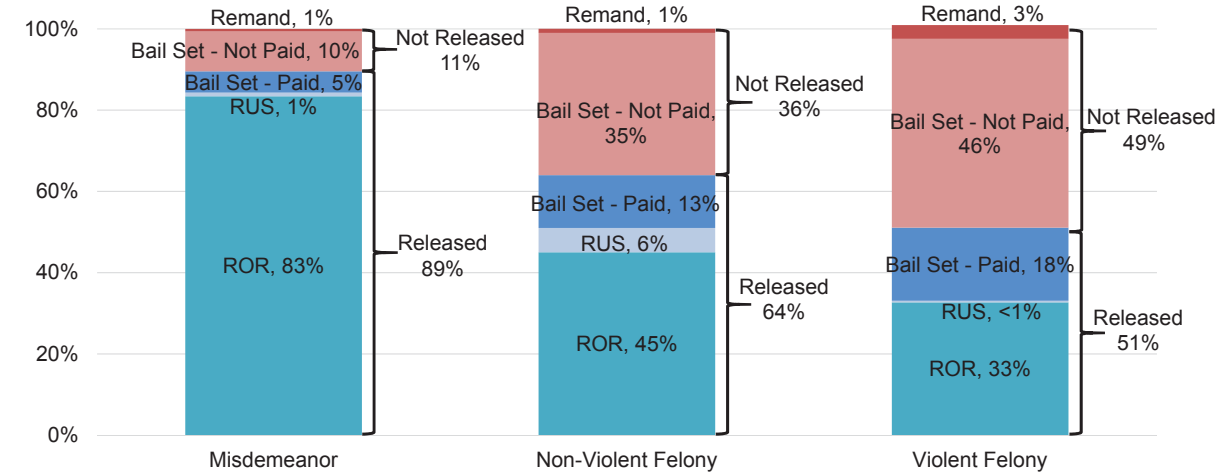
9

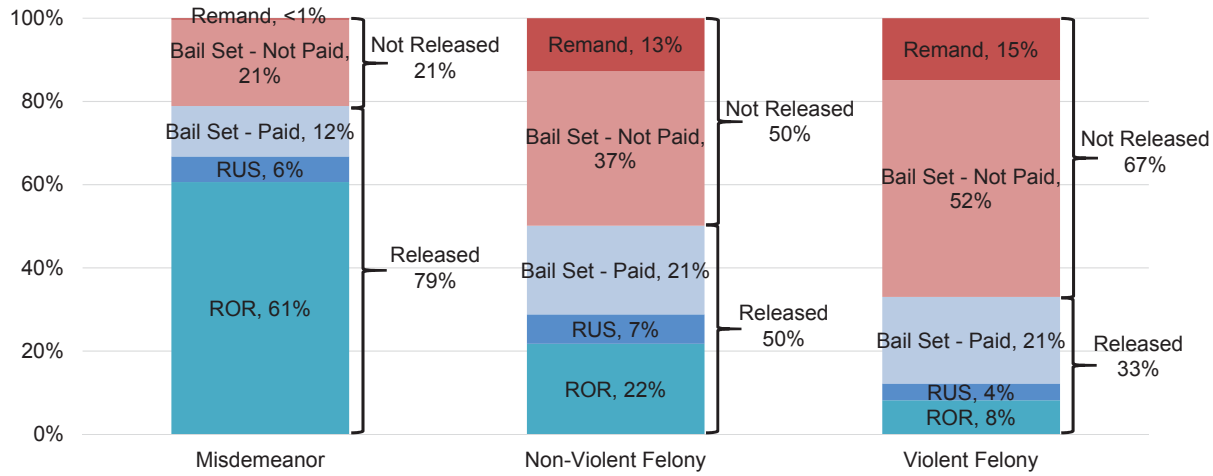
## NYC Pretrial Release Outcomes by Charge Type




Based on bail paid/ not paid within five days of arraignment.

10

## Non-NYC Pretrial Release Outcomes by Charge Type




Based on bail paid/ not paid within five days of arraignment.

11

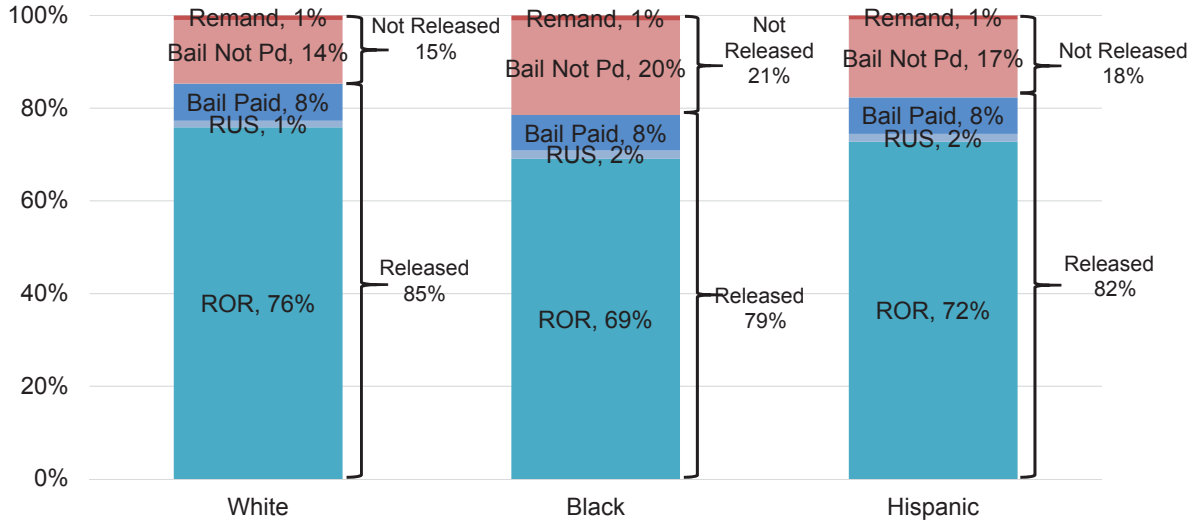
# NYC Estimated Annualized Outcomes by Race*

| | White | Black | Hispanic | Other | Total |
|---|---|---|---|---|---|
| **Not Released to Community** | | | | | |
| Remanded without Bail | 200 | 900 | 500 | 100 | 1,700 |
| Bail Set - Not Paid within 5 days of Arraignment | 2,800 | 16,300 | 9,300 | 900 | 29,300 |
| **Total - Not Released** | 3,000 | 17,200 | 9,800 | 1,000 | 31,000 |
| **Released to Community** | | | | | |
| Bail Set - Paid within 5 days of Arraignment | 1,600 | 6,100 | 4,400 | 800 | 12,900 |
| RUS | 300 | 1,400 | 1,000 | 100 | 2,800 |
| ROR | 15,400 | 55,200 | 41,000 | 9,300 | 120,900 |
| **Total - Released to Community** | 17,300 | 62,700 | 46,400 | 10,200 | 136,600 |
| **Total** | 20,300 | 79,900 | 56,200 | 11,200 | 167,600 |

* Based on study outcomes applied to 2016 arraignments.

12

# NYC Pretrial Release Outcomes by Race




Based on bail paid/ not paid within five days of arraignment.

13

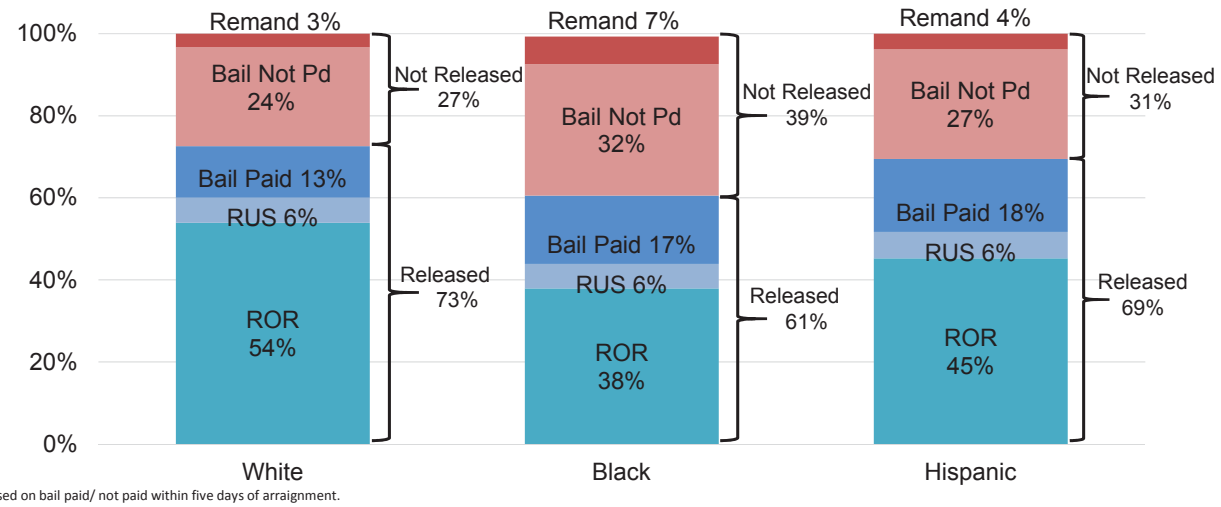
# Non-NYC Estimated Annualized Outcomes by Race*

| | White | Black | Hispanic | Other | Total |
|---|---|---|---|---|---|
| **Not Released to Community** | | | | | |
| Remanded without Bail | 1,600 | 2,500 | 500 | 100 | 4,700 |
| Bail Set - Not Paid within 5 days of Arraignment | 11,200 | 12,100 | 3,900 | 700 | 27,900 |
| Subtotal - Not Released | 12,800 | 14,600 | 4,400 | 800 | 32,600 |
| **Released to Community** | | | | | |
| Bail Set - Paid within 5 days Arraignment | 5,900 | 6,200 | 2,500 | 800 | 15,400 |
| RUS | 2,900 | 2,200 | 900 | 400 | 6,400 |
| ROR | 25,100 | 14,100 | 6,500 | 2,400 | 48,100 |
| Subtotal - Released to Community | 33,900 | 22,500 | 9,900 | 3,600 | 69,900 |
| **Total** | 46,700 | 37,100 | 14,300 | 4,400 | 102,500 |

* Excludes arraignments held in Town & Village courts. Based on study outcomes applied to 2016 arraignments.

14

# Non-NYC Pretrial Release Outcomes by Race




Based on bail paid/ not paid within five days of arraignment.

| Table 1. NYC: Estimated Annual Pretrial Outcomes at Local Arraignments | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | ROR | RUS | Bail Paid At Arraignment | Bailed Paid within 1-2 Days | Bail Paid within 3-5 Days | Bail Not Paid | Remand | Total |
| **Misdemeanor** | 103,000 | 1,200 | 2,900 | 2,100 | 1,600 | 12,100 | 800 | 123,700 |
| White | 13,500 | 200 | 500 | 200 | 200 | 1,400 | 100 | 16,100 |
| Black | 46,500 | 600 | 1,200 | 1,000 | 800 | 6,700 | 500 | 57,300 |
| Hispanic | 35,300 | 400 | 1,000 | 800 | 500 | 3,600 | 200 | 41,800 |
| Other | 7,700 | 0 | 200 | 100 | 100 | 400 | <100 | 8,500 |
| **Non-Violent Felony** | 12,600 | 1,600 | 1,200 | 1,300 | 1,000 | 9,600 | 300 | 27,600 |
| White | 1,400 | 100 | 200 | 100 | 100 | 1,000 | 100 | 3,000 |
| Black | 5,900 | 800 | 500 | 600 | 500 | 5,100 | 100 | 13,500 |
| Hispanic | 4,000 | 600 | 400 | 500 | 400 | 3,200 | 100 | 9,200 |
| Other | 1,300 | 100 | 100 | 100 | <100 | 300 | 0 | 1,900 |
| **Violent Felony** | 5,300 | 0 | 1,100 | 1,000 | 800 | 7,600 | 550 | 16,300 |
| White | 500 | 0 | 200 | 100 | <100 | 400 | <100 | 1,200 |
| Black | 2,800 | 0 | 500 | 500 | 500 | 4,500 | 300 | 9,100 |
| Hispanic | 1,700 | 0 | 300 | 300 | 300 | 2,500 | 200 | 5,300 |
| Other | 300 | 0 | 100 | 100 | <100 | 200 | <100 | 700 |
| **Total** | 120,900 | 2,800 | 5,200 | 4,400 | 3,300 | 29,300 | 1,700 | 167,600 |
| White | 15,400 | 300 | 900 | 400 | 300 | 2,800 | 200 | 20,300 |
| Black | 55,200 | 1,400 | 2,200 | 2,100 | 1,800 | 16,300 | 900 | 79,900 |
| Hispanic | 41,000 | 1,000 | 1,700 | 1,600 | 1,100 | 9,300 | 500 | 56,200 |
| Other | 9,300 | 100 | 400 | 300 | 100 | 900 | 100 | 11,200 |

| Table 2. Non-NYC: Estimated Annual Pretrial Outcomes at Local Arraignments | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | ROR | RUS | Bail Paid At Arraignment | Bailed Paid within 1-2 Days | Bail Paid within 3-5 Days | Bail Not Paid | Remand | Total |
| **Misdemeanor** | 42,100 | 4,250 | 5,800 | 1,600 | 1,050 | 14,400 | 300 | 69,500 |
| White | 22,300 | 1,900 | 2,500 | 600 | 500 | 6,700 | 200 | 34,700 |
| Black | 12,000 | 1,500 | 2,000 | 700 | 400 | 5,500 | 100 | 22,200 |
| Hispanic | 5,800 | 600 | 1,000 | 200 | 100 | 1,900 | 0 | 9,600 |
| Other | 2,000 | 250 | 300 | 100 | <100 | 300 | 0 | 3,000 |
| **Non-Violent Felony** | 5,300 | 1,700 | 3,100 | 1,300 | 850 | 9,100 | 3,150 | 24,500 |
| White | 2,500 | 800 | 1,100 | 400 | 300 | 3,400 | 1,100 | 9,600 |
| Black | 1,800 | 600 | 1,300 | 600 | 400 | 4,100 | 1,700 | 10,500 |
| Hispanic | 600 | 200 | 500 | 200 | 100 | 1,300 | 300 | 3,200 |
| Other | 400 | 100 | 200 | 100 | <100 | 300 | <100 | 1,200 |
| **Violent Felony** | 700 | 450 | 900 | 500 | 300 | 4,400 | 1,250 | 8,500 |
| White | 300 | 200 | 300 | 100 | 100 | 1,100 | 300 | 2,400 |
| Black | 300 | 100 | 400 | 300 | 100 | 2,500 | 700 | 4,400 |
| Hispanic | 100 | 100 | 200 | 100 | 100 | 700 | 200 | 1,500 |
| Other | <100 | <100 | <100 | <100 | <100 | 100 | <100 | 200 |
| **Total** | 48,100 | 6,400 | 9,800 | 3,400 | 2,200 | 27,900 | 4,700 | 102,500 |
| White | 25,100 | 2,900 | 3,900 | 1,100 | 900 | 11,200 | 1,600 | 46,700 |
| Black | 14,100 | 2,200 | 3,700 | 1,600 | 900 | 12,100 | 2,500 | 37,100 |
| Hispanic | 6,500 | 900 | 1,700 | 500 | 300 | 3,900 | 500 | 14,300 |
| Other | 2,400 | 400 | 600 | 100 | 100 | 700 | 100 | 4,400 |

Excludes arraignments held in Town & Village courts.