

Bail Reform and Judicial Decision-Making in New York City

By Michael Rempel and Joanna Weill

New York's New Pretrial Landscape

Introduction

On January 1, 2020, New York State inaugurated a sweeping bail reform law, eliminating money bail and pretrial detention in nearly all misdemeanor and nonviolent felony cases. With this step, New York joined New Jersey, Chicago, and Philadelphia,¹ among other jurisdictions, in imposing significant new restrictions on money bail and its attendant harms.² State legislators then amended the reforms effective July 2, 2020, adding to the number of cases remaining legally eligible for bail and pretrial detention.

This report examines four questions regarding the effects over the first year of both the original and amended reforms on **judicial decision-making in New York City**.³

1. **Bail and Pretrial Detention:** Did the original and amended bail reforms reduce bail-setting and pretrial detention at arraignment? Conversely, to what extent were judges prompted to release more people on their own recognizance?
2. **Affordability of Bail:** Did the reforms lead judges to set more affordable forms and amounts of bail, as enjoined by the legislation? Did bail payment rates increase?
3. **Racial Disparities:** Did the reforms reduce preexisting racial disparities in people's exposure to bail and pretrial detention?
4. **Equal Justice and Fairness:** Did the reforms shrink disparities in decision-making at arraignment among different boroughs and judges?

To answer these questions, we examined judges' pretrial release decisions on criminal cases that were not resolved at arraignment—both before and after the reforms went into effect.⁴ Although we

focus on judges, who are ultimately responsible for pretrial decisions, their decisions may be influenced by others' throughout the arrest and arraignment process, including prosecutors' release recommendations.⁵ Most of our findings compare outcomes in 2019 (pre-reform) and 2020 (post-reform). Where our analysis detected notable variations within an individual year, we examined the trends across more specific periods of interest (specified later in this article).

Bail Reform Overview

Major Provisions

Pretrial Release. Bail reform ended bail and pretrial detention in over nine out of 10 misdemeanor and nonviolent felony cases and made **supervised release** universally available, regardless of a defendant's charge or criminal history. The law also created a new **presumption of release**, requiring judges to release defendants on their own recognizance, except when they pose a demonstrable "**risk of flight to avoid prosecution**." To mitigate this risk, judges must choose the "**least restrictive**" condition for reasonably assuring return to court and compliance with court conditions; even when bail remains an option, non-monetary conditions such as supervised release must be ordered if they can suffice to ensure court attendance. Although the reform law strengthened the threshold that must be overcome before a judge can set pretrial conditions, the law's focus on court attendance has been a core element of the state's bail statute for decades. *New York does not afford judges the ability to set bail or detain someone based on perceptions of their pretrial risk to public safety.*

Ability to Pay Bail. The reform requires judges to consider a defendant's "**individual financial circumstances**" when setting bail, and whether payment

would pose an "**undue hardship**." Judges are also required to allow payment in any of three forms, one of which must be either a **partially secured surety bond**, which requires upfront payment of only 10% or less of the total; or an **unsecured surety bond**, which requires no upfront payment. These forms of bail still hold the payer and the defendant responsible for the balance if the defendant absconds.

The Bail Amendments. The amendments added to the list of charges and categories of defendants remaining eligible for bail and pretrial detention. Additions included grand larceny in the first degree; remaining unlawfully in a "living area" under burglary in the second degree; two Class A-1 drug felonies; and any case where a judge deems both the current charge and a pending charge to involve "harm to an identifiable person or property," though this phrase has no formal definition in the penal law. The amendments also expanded the range of **non-monetary conditions** a judge can order, adding "mandatory programming" (i.e., treatment) and conditions to protect domestic violence victims.⁶

Results to Date

We previously found that the original reforms contributed to a 40% reduction in New York City's pretrial jail population as of March 2020. We then projected the amendments would result in a 16% re-increase.⁷ This projection assumed judges would make similar decisions as they did in 2019 in the types of cases covered by the amendments. But we cautioned that a change in the culture of pretrial decision-making could lead to either a greater or lesser effect than our projection anticipated. As of November 1, 2020, we found that the amendments were empirically responsible for a 7 to 11% increase

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over what the pretrial jail population would otherwise have been on that date.⁸

Beyond the effects of the amendments, data from the Mayor’s Office of Criminal Justice suggest that New York City’s judges overall were setting bail more often at the end of 2020 than the beginning of the year, a significant shift this report closely examines.⁹

Additional Major Events in 2019 and 2020

As shown in the timeline on page 7 (Exhibit 1.2), 2019 and 2020 saw a cascade of events that transformed the pretrial landscape.

- **COVID-19 Pandemic:** The pandemic upended court operations, resulting in a transition to video arraignments and court appearances (March 17, 2020) and the suspension of several new laws and court policies associated with bail reform (noted below).
- **Release Assessment:** In November 2019, the city rolled out a new science-based Release Assessment to help judges comply with the longstanding legal requirement—predating bail reform—to base release decisions on people’s likelihood of court attendance.¹⁰ The state court system suspended administration of the Release Assessment from March 17 to late September, 2020 due to a delay establishing a video-link for assessment interviewers at arraignment.
- **Supervised Release:** In December 2019, the city implemented a new program model, available to all defendants one month before the formal bail reform start date.¹¹ The court system then suspended supervised release from March 17 to mid-July, related to delays in setting up video technology.
- **Gun Violence:** In the summer of 2020, the city saw a 260 percent increase in shootings as compared to 2019 (not represented in the timeline as not related to a single event). Despite a lack of evidence, some public officials continue to claim that bail reform was a contributing factor.¹²

Criminologists have yet to isolate what, in fact, caused a nationwide increase in shootings as well as murders, although experts have reasoned it likely relates to socioeconomic disruptions caused by COVID-19.¹³

- **Steep Increase in the Pretrial Jail Population Since April 2020:** Following the effects of the original bail reforms and purposeful efforts to release people at the onset of the COVID-19 pandemic,¹⁴ on April 29, 2020, the city’s jail population reached a low not seen since the 1940s: 3,809 people—including 2,621 people held pretrial. But after touching that low point, the jail population has been steadily climbing for a range of reasons. These include the ones discussed in this report pertaining to judicial decision-making as well as higher arrest numbers since the initial months of the pandemic. The jail population reached 5,727 people on April 1, 2021, including 3,938 held pretrial.

Key Periods Within 2020

Given the events summarized above, we divided the year into four distinct periods:

1. **January 1-March 16, 2020:** Bail reform is officially implemented; no other significant events.
2. **March 17-July 1, 2020:** Onset of COVID-19 and related disruptions.
3. **July 20-September 30:** Bail amendments in effect (July 2) and supervised release restored to arraignments (mid-July).
4. **October 1-December 31:** Release assessment restored to inform judges’ decisions (partially on September 28 and fully in early October, but not in Staten Island).¹⁵

We omitted July 2 to July 19 from these periods given the implementation of a series of changes that might make these 18 days unique: the implementation of the bail amendments (July 2); restoration of supervised release in Manhattan and Queens (July 15); and restoration of supervised release in the remaining boroughs (July 20). When comparing judges’ decisions between 2019 and 2020, overall, all dates were included.

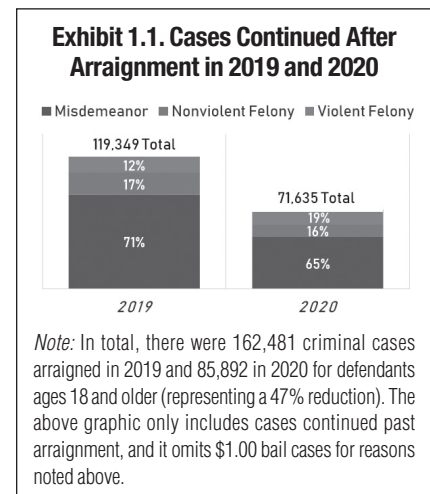
Changes in the Criminal Caseload

From 2019 to 2020, there was a 40% reduction in criminal arraignments requiring a release decision (Exhibit 1.1). But the magnitude of this reduction varied by charge severity: There was only a 4% reduction in violent felonies compared to about a 45% reduction in misdemeanors and nonviolent felonies. As a result, violent felonies rose from 12% of all cases in 2019 to 19% in 2020. This shift in the composition of criminal cases did not bias our findings, most of which isolated charge-based subgroups. To correct for the shift in case composition in select analyses including all cases combined, we relied on adjusted estimates, produced after first controlling for charge severity.

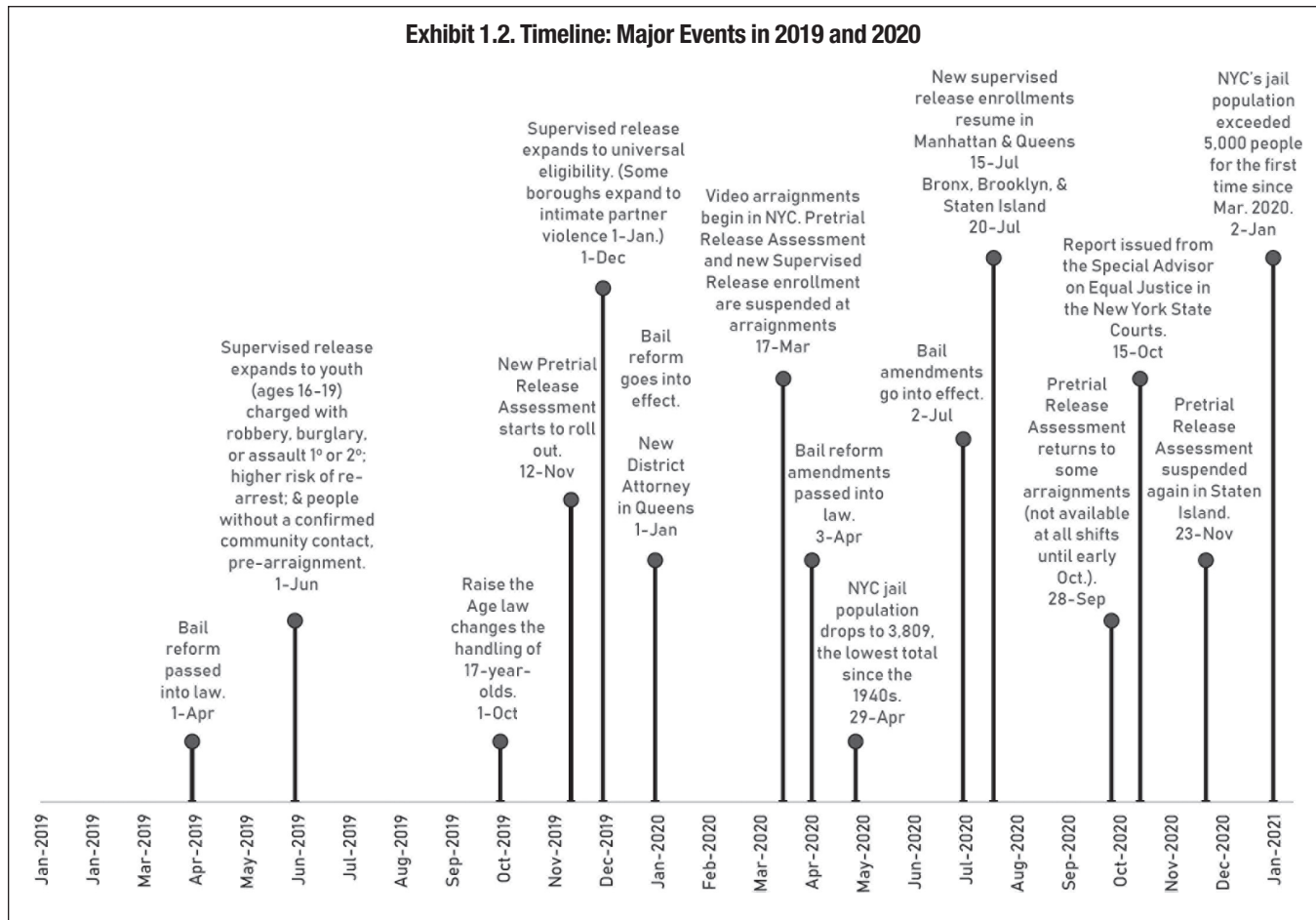
Bail-Setting and Pretrial Detention

Overall, New York’s bail reform experiment led to a significant reduction in bail-setting and pretrial detention in the first year of implementation. However, our findings point to a complex set of changes and significant swings in judges’ decisions within 2020.

We found that the original reforms led to a steep decline in the use of bail and detention as the new law went into effect in January 2020. This decline applied not only to charges ineligible for bail, but also to charges that remained bail-eligible, in which cases judges



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dramatically increased their use of supervised release.

While not fully reversing the bail reductions seen at the outset of the year, we found a significant reversion towards bail-setting and detention from mid-2020 onward. While partly attributable to the bail amendments, this development largely stemmed from judges setting bail more often in cases where bail remained an option even under the original reforms. This unexpected shift demonstrates judges’ critical role in the implementation of bail reform.”

Big Picture: Major Trends in 2019 and 2020

Comparing the Pre-Reform and Bail Reform Years, Overall

Bail-setting and pretrial detention at arraignment significantly declined in

2020 compared to 2019. The largest decline was seen among nonviolent felonies, for which the percentage of cases detained at arraignment dropped from 35% to 14%. But even among violent felonies, nearly all of which remained bail-eligible, judges chose bail less often, leading to a drop in pretrial detention after arraignment (Exhibit 2.1).

The results also point to large increases in supervised release across all charge severities. Among violent felonies, most of which were ineligible for supervised release prior to the reforms, the use of supervised release grew seven-fold: from 2% of cases in 2019 to 14% in 2020.

The new presumption of release language included in the bail law, requiring people to be released on their own recognizance (ROR), except when there is a credible “risk of flight,” did *not* lead New York City’s judges to set ROR more often with misdemeanors or violent felonies—

although ROR rates rose among nonviolent felonies.

Month-by-Month Trends Within 2019 and 2020

Exhibit 2.2 demonstrates how the use of bail or remand changed month-by-month in 2019 and 2020. Although bail and remand are combined, as shown in Exhibit 2.1 above, straight remand to jail is rare. (Detention most often occurs when someone is unable to post bail.) The visual depiction draws attention to four key trends.

- **Gradual Decline in Bail-Setting Throughout 2019:** The trendlines point to a modest reduction in bail-setting in the first ten months of 2019—before bail reform went into effect. The pattern could partly reflect

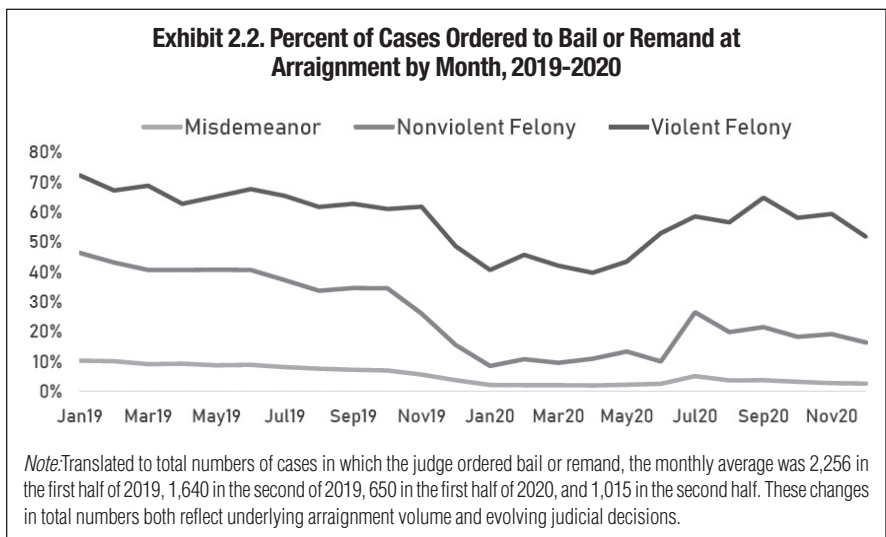
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Exhibit 2.1. Judges' Release Decisions at Arraignment: Criminal Cases Continued at Arraignment in 2019 or 2020

Year	Misdemeanor		Nonviolent Felony		Violent Felony	
	2019	2020	2019	2020	2019	2020
# Continued at Arraignment	85,129	46,794	19,853	11,088	14,346	13,753
ROR	89.0%	89.4%	50.8%	66.6%	34.0%	34.7%
Supervised Release	2.9%	7.9%	12.1%	18.5%	2.1%	13.8%
Bail	7.8%	2.5%	35.3%	13.9%	59.5%	47.7%
Remand	0.2%	0.2%	1.7%	1.0%	4.4%	3.9%
<i>Detained after Arraignment</i>	6.6%	2.4%	32.7%	13.4%	53.6%	44.6%

Note: All differences between 2019 and 2020 decisions were statistically significant ($p < .001$). "Detained after arraignment" excludes those whose bail was paid at the court before transfer to the Department of Correction.



an ongoing, general decline in judges' use of bail in New York City.¹⁶ It is also likely that once bail reform passed in April 2019, judges and prosecutors began altering their practices in anticipation of implementation.

- **Sharp Reduction in Bail-Setting Around the Implementation Date:** Judges' use of bail plummeted from November 2019 to January 2020, corresponding with the law's effective date. This dramatic change began in late 2019, as many of the city's courts sought to avoid mandatory mass releases on January 1, 2020, by transitioning about a month early to the reform regime; undoubtedly also playing a role, the city expanded its supervised release program to all charges in December 2019.

- **Re-Increase in Bail-Setting in the Summer of 2020.** From about May to September 2020—but most noticeably in the month of July—bail-setting re-increased. The trendlines in the last quarter of 2020 then point to a downward readjustment in bail-setting, although not nearly enough to reverse the preceding increase. By the end of 2020, bail-setting remained lower than it had been in 2019. However, among violent felonies, most of the bail reductions achieved back in January had been reversed.
- **Negligible Bail-Setting Among Misdemeanors:** New York City entered the reform era having already made release the norm with misdemeanors, only 10% of which faced bail in January

2019. Misdemeanor bail-setting then effectively disappeared once the reforms went into effect, dropping to 2% in January 2020 and remaining at 3% in December 2020.

Large Bail Reform Impacts in Early 2020

This section isolates the **early impacts of reform** from January 1 to March 16, 2020, prior to the courts' transition to video arraignments and additional disruptions related to COVID-19. During this period, bail-setting significantly declined across all charge severity levels compared to the equivalent first quarter of 2019 (see Exhibit 2.3).

- **Steep Bail Reduction Among Non-violent Felonies:** Comparing early 2019 to early 2020, the results point to an almost 80% relative reduction in bail-setting among nonviolent felonies (from 41% to 9%).
- **Significant Bail Reduction and Increase in Supervised Release Among Violent Felonies:** Although virtually all violent felonies remained bail-eligible in 2020, judges significantly reduced their reliance on bail (65% to 41%), opting in many cases to replace it with supervised release (from 0.2% to 23%).
- **Bail-Setting Remained Low at the Outset of the COVID-19 Crisis:** With the detection of COVID-19 on Rikers Island, city and state officials, along with judges, prosecutors, and defense attorneys, took steps to release people from the city's crowded jails and to minimize bail-setting on new arraignments.¹⁷ As shown in the trendlines above, bail-setting remained low even after the suspension of supervised release on March 17. In cases where judges would have ordered supervised release, they largely set ROR, until the increase in bail-setting began to accelerate in late spring.

Reversion to Bail-Setting in Mid-to-Late 2020

From the second to third periods of 2020, judges' bail-setting doubled among nonviolent felonies (10% to 20%) and

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Exhibit 2.3. Judges' Release Decisions across Four Key Periods of 2020

Periods Within 2020		1/1/2020 - 3/16/2020	3/17/2020 - 7/1/2020	7/20/2020 - 9/30/2020	10/1/2020 - 12/31/2020
Misdemeanor	Number of Cases	14,418	10,162	7,731	13,103
	ROR	87.4%	97.7%	85.7%	87.1%
	Supervised Release	10.7%	0.1%	10.5%	10.1%
	Bail	1.8%	2.2%	3.6%	2.7%
	Remand	0.2%	0.0%	0.3%	0.2%
	<i>Detained at Arraignment</i>	<i>1.8%</i>	<i>2.0%</i>	<i>3.5%</i>	<i>2.5%</i>
Nonviolent Felony	Number of Cases	3,006	2,761	1,971	3,068
	ROR	61.0%	88.3%	54.7%	60.0%
	Supervised Release	29.4%	0.2%	24.0%	22.1%
	Bail	8.5%	10.4%	20.4%	16.9%
	Remand	1.1%	1.0%	0.9%	0.9%
	<i>Detained at Arraignment</i>	<i>8.5%</i>	<i>9.9%</i>	<i>19.4%</i>	<i>16.4%</i>
Violent Felony	Number of Cases	2,973	3,433	3,113	3,726
	ROR	33.2%	55.5%	22.8%	26.5%
	Supervised Release	23.2%	0.2%	17.3%	17.2%
	Bail	40.6%	41.2%	55.2%	52.1%
	Remand	3.0%	3.1%	4.8%	4.2%
	<i>Detained at Arraignment</i>	<i>38.0%</i>	<i>38.7%</i>	<i>51.9%</i>	<i>48.0%</i>

Note: The differences in release decisions across periods for misdemeanors, nonviolent felonies, and violent felonies, respectively, were all statistically significant ($p < .001$). July 2-19 is omitted so that the third period could begin after both the bail amendments were in effect and supervised release was restored to arraignments. "Detained at arraignment" excludes those whose bail was paid at the court before transfer to the Department of Correction.

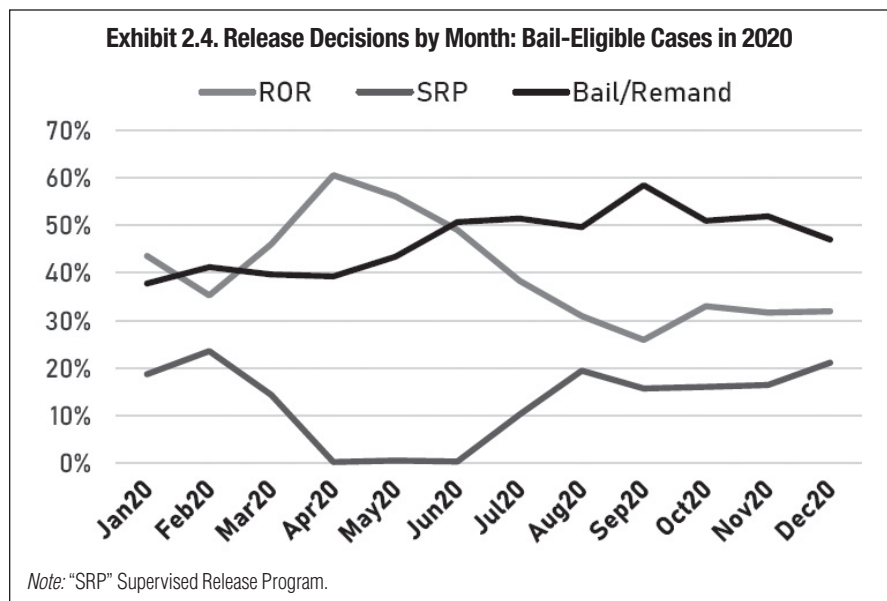
of the bail amendments, although as we will show below, the amendments were a contributing factor. Judges also significantly increased their bail-setting on cases that were eligible for bail throughout 2020—under the original reforms. When isolating these cases, judges' use of bail or remand increased by 20 percentage points from April to September (39% to 59%), before declining again to 47% in December (Exhibit 2.4). The increase in mid-year bail-setting came at the expense of ROR. The year-ending ROR rate of 32% in December 2020 was lower than as far back as January 2019 (38%), let alone its January 2020 percentage (44%).

While causal attributions for judges' mid-year reversion to bail-setting in a quantitative study are necessarily speculative, one influence that is impossible to ignore consists of the stream of news stories in 2020 inaccurately blaming bail reform for increased shootings and murders in New York City.¹⁸ This media narrative could well have affected judges and prosecutors,¹⁹ although the law requires basing pretrial decisions on an interest in securing people's return to court rather than a perceived risk to public safety. Another plausible explanation is that COVID-19, and the transition to video appearances, could have substantially

increased considerably among violent felonies (from 41% to 55%). Conversely, ROR rates dropped to their lowest level of any time in 2020—and ROR rates for misdemeanors and violent felonies dropped below their average 2019 levels. Judges also used supervised release less often after it returned as an option at arraignments among both nonviolent felonies (29% to 24%) and violent felonies (23% to 17%), when comparing the first and third periods, below. Judges' decisions swung again in the fourth quarter, with bail-setting declining modestly among all charge severities, though remaining significantly higher than in the initial post-reform, pre-pandemic portion of 2020.

A Shift in Judicial Culture

The mid-year reversal towards greater bail-setting is *not* reducible to the effect



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altered the dynamics at arraignment.²⁰ A third explanation, also tied to the pandemic’s effects on court operations, is that without retraining, judges were less inclined to order supervised release in lieu of bail when the court system restored supervised release as an arraignment option after suspending it for four months, from mid-March to mid-July.

Bail-Eligible Charges of Interest

Another theory for why bail-setting increased in the second half of 2020 is that the composition of bail-eligible cases changed, perhaps towards more serious charges for which judges generally prefer to set bail.²¹ However, we fully disconfirmed this notion. First, we isolated the most common bail-eligible offenses and examined the 2020 trend for each of these offenses separately. Of 16,261 cases we identified as bail-eligible in 2020 under the original reforms—prior to the implementation of the amendments—two-thirds were violent felonies in five categories: (1) assault in the first or second degree (25%); (2) firearms or weapons charges (18%); (3) robbery in the first or second degree (16%); (4) murder or other homicide offenses (5%); and (5) rape or other sex offenses (3%). Confirming the pattern noted above, judges’ use of bail or remand in these cases was lowest in the first of 2020’s four periods and peaked in the third period—from mid-July to September 30 (Exhibit 2.5). The most

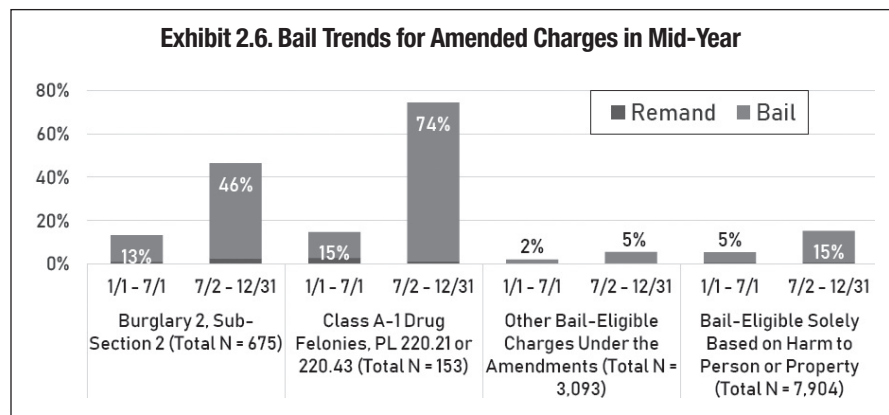
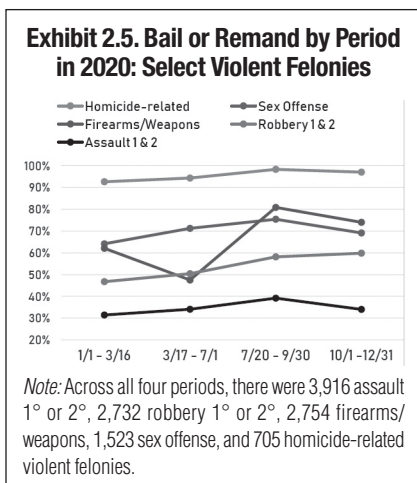
notable charge-specific variation was that bail-setting reached its low mark among firearms and weapons violent felonies immediately after the start of the pandemic (48% in the second period) and then rose sharply to 81% in the third period.

Second, for all cases defined as eligible for bail under the original reforms, we conducted a multivariable analysis to determine whether bail-setting and remand decisions indeed increased in the second half of the year, as reported above—after statistically controlling for charge type and severity, multiple measures of criminal history, the arraignment borough, and the defendant’s demographic characteristics. As expected, we found that judges were significantly more likely to set bail or remand with some charges (such as homicides, sex offenses, firearms or weapons cases, or Class A felonies, generally) than other charges throughout 2020. But after controlling for the effects of these charges and other background factors, a significant and undiminished effect persisted of the period within 2020 when a case was arraigned: All else equal, judges were most likely to set bail or remand in the third period shown above (odds ratio = 1.700 when compared to the initial January 1-March 16 period) and were next most likely to set bail or remand in the fourth quarter (odds ratio = 1.418).²² **Together, these findings indicate that the changes in release decisions in the latter half of 2020 cannot simply be attributed to changes in the types of charges and defendants coming before judges.**

The Impact of the Amendments

Although the mid-year amendments made more than two dozen charges newly eligible for bail,²³ only a few are commonly found among New York City criminal cases. Among the charges we coded as bail-eligible due to the amendments,²⁴ 67% involved a single misdemeanor: obstruction of breathing or blood circulation, when charged in connection with a domestic violence allegation. Another 27% involved burglary in the second degree; 3% involved either of two Class A-1 drug felonies (PL 220.21 or PL 220.43); while the remaining 3% were spread across 16 other charges. Replicating past coding decisions,²⁵ we then separately classified defendants with charges and pending cases that we believed judges might interpret as meeting the amendments’ “harm to an identifiable person or property” criterion, which has no definition in the law.

As expected, the amendments led to significantly more bail-setting—but there were enormous differences by charge (Exhibit 2.6). Judges especially took advantage of the expanded opportunity to set bail on burglary in the second degree (jumped almost four-fold to 46% starting July 2) and on the drug felonies listed above (jumped five-fold to 74%). The other impacted charges were mostly misdemeanors for which prior research indicates that the city’s judges have generally not chosen bail in recent years, even when it has been an option.²⁶



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(Notably, based on the top charge, there should not be *any* bail-setting prior to July 2 on the cases reflected in Exhibit 2.6. However, under the original bail reforms, there are several scenarios in which the top charge alone may not be determinative. For instance, while the top charge tends to be the most serious offense on a criminal case, but in some instances, other bail-eligible offenses may be charged in conjunction with the same case, without appearing as the “top charge,” which our dataset included. In addition, when a defendant has a pending felony *and* a new felony, the new felony charge makes the case legally eligible for bail. We did not isolate this repeat-felony scenario in our data.²⁷)

Viewed in absolute terms, we estimate that the harm to person or property and second-degree burglary provisions accounted for the vast majority (85%) of cases where judges set bail or remand due to the amendments. From July 2 to the end of 2020, we estimated that judges set bail or remand on 625 cases made bail-eligible on the harm to person or property criterion; 235 due to a second-degree burglary charge;²⁸ 58 on a Class A-1 nonviolent drug felony; and 86 on all other charges implicated by the amendments. (Because the burglary charge is a felony, likely to have longer case processing times than the many misdemeanor charges that fall under the harm to person or property provision,²⁹ stays in jail are likely to be longer under the burglary charge, elevating its relative contribution to any resulting increases in the city’s daily jail population.³⁰)

Overall, we estimate that of just over 6,000 cases, beginning July 2, in which the arraignment judge set bail or remand, 18% were eligible for those conditions due to the amendments.

Changes in Domestic Violence Cases

As described in a previous publication, the original reforms included several provisions to protect victims and increase judges’ options in domestic violence [DV] cases.³¹ For instance, the law preserved

bail-eligibility in criminal contempt cases involving an alleged violation of a DV order of protection. The law also required supervised release as a judicial option in all cases, whereas the city’s program previously excluded people facing allegations of intimate partner violence. Responding to the bail reforms, the city launched a new intimate partner violence track in January 2020, including an option for judges to order participation in a three-hour DV intervention, with adapted men’s, women’s, and LGBTQ class options.³²

Comparing 2019 to 2020, judges set bail less, increased supervised release, and used ROR at about the same rate (Exhibit 2.7). For instance, the use of supervised release grew from 1% of cases in classified as nonviolent felonies (mainly criminal contempt) and from 0.4% to 15% in violent felony DV. Corresponding to the pattern seen above, we also found that bail-setting peaked in felony DV cases from July to September, though in general, fluctuations were more modest than with other types of charges.

Presumption of Release in Operation

Judges did not appear to systematically increase their use of release on recognizance [ROR], notwithstanding the reform’s presumption of release, which requires ROR except when it is “demonstrated” that a defendant poses a “risk of flight.”³³ Shown in the previous section ROR rates significantly

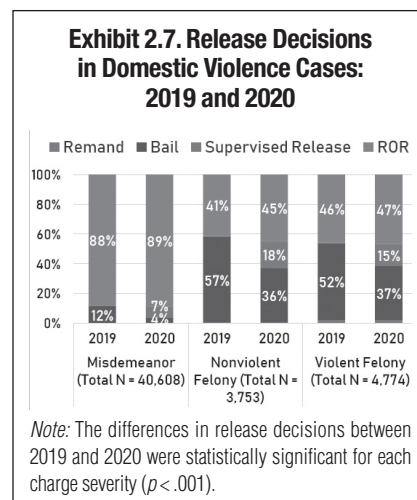
increased from 2019 to 2020 for nonviolent felonies (51% to 67%), but they remained unchanged for misdemeanors (89%) and violent felonies (within a percentage point of 35% both years). In fact, people charged with violent felonies saw their ROR rates *decline* in the second half of 2020, ending at 27% in the fourth quarter—compared to 34% in all of 2019 and 33% three years earlier in 2016.³⁴

Undercutting any rationale for such low violent felony ROR rates, prior research makes clear that the vast majority of the city’s defendants attend their court dates when released; and people facing violent felony charges are no more likely to miss court than others. To the contrary, among cases arraigned in 2018, 82% of misdemeanor, 83% of nonviolent felony, and 88% of violent felony defendants attended every scheduled date.³⁵

Judges may be understandably hesitant to set ROR when the current charge involves serious violence. At the same time, when building the science-based Release Assessment described below, charge severity (misdemeanor, nonviolent felony, or violent felony) and charge type were tested, and they were not good predictors of people’s likelihood of attending court.³⁶

The City’s Science-Based Release Assessment

The New York City Criminal Justice Agency (CJA) recently implemented a Pretrial Release Assessment, relying on statistical factors associated with people attending court in the city.³⁷ From its November 2019 rollout to its COVID-19-related suspension in mid-March 2020, even after applying a more inclusive definition of “risk of flight” for more serious charges,³⁸ the assessment recommended 90% of misdemeanor, 75% of nonviolent felony, and 74% of violent felony defendants for ROR.³⁹ Notably, the assessment only recommends ROR for a violent felony if the defendant averages a projected 90% rate of attending all court dates.⁴⁰ Defendants with lower likelihoods of court attendance are progressively



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divided by the assessment into “Consider All Options” or “ROR Not Recommended” categories.

Across all charges, it is noteworthy that research from late 2019/early 2020 found that the assessment recommended ROR for 84% of Black, 84% of white, and 86% of Hispanic/Latinx defendants, averting the racially disproportionate impact commonly found in assessments predicting risk of re-arrest,⁴¹ rather than likelihood of court attendance.

After its initial rollout, CJA found that when the assessment recommended ROR, judges followed the recommendation in 89% of misdemeanor, 67% of nonviolent felony, and only 44% of violent felony cases.⁴² Given the low adherence rate for violent felonies, we further explored judges’ decisions in these cases—both at the assessment’s rollout, and when the Release Assessment returned to video arraignments starting September 28 (Exhibit 3.1).

- **Recommended for ROR:** Judges set ROR in 44% of violent felonies statistically recommended for it at initial rollout—a figure that declined to 33% at the end of 2020.
- **Consider All Options:** The reform law’s provision to set the “least restrictive” condition when a flight risk is present suggests judges might gravitate to supervised release when “Consider

All Options” is recommended; but at the end of 2020, judges set supervised release in only 18% of such violent felony cases, ROR in 9%, and bail or remand in 72%.

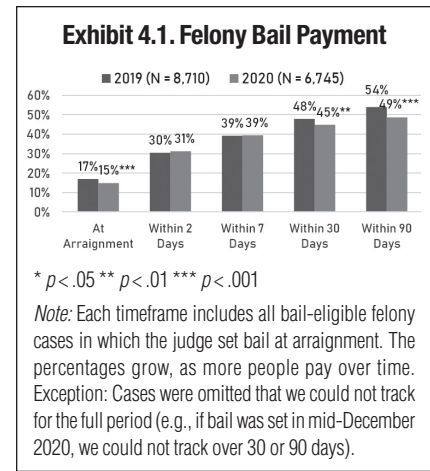
- **ROR Not Recommended:** At the end of 2020, judges set ROR in 2% of violent felonies in the highest flight risk category, while setting bail or remand in 76%.

Release on Recognizance in First Arrest Cases

People prosecuted on their first arrest in general lack any criminal or warrant history that could credibly point to a flight risk. Indeed, the Release Assessment always recommends ROR for people without a prior arrest or warrant in the past five years—except if they lack both a New York City address and a phone number, suggesting homelessness.⁴³ Yet, in the fourth quarter of 2020, judges set ROR in only 44% of violent felonies without any prior arrest in the past five years, while setting bail or remand in 39%.⁴⁴ (While data is unavailable to quantify this outcome, we assume that only a fraction of the 56% of defendants not receiving ROR would have posed a flight risk due to homelessness.)

Ability to Pay Bail

Although the reforms require judges to consider defendants’ “individual



financial circumstances” before setting bail, our evidence indicates that the average judge in New York City is not doing so. It is also true that there are not yet official guidelines to assist judges in assessing people’s ability to afford bail. We compared bail amounts and payment rates between 2019 and 2020. (Results did not meaningfully change within 2020.)

Bail Payment

To ensure comparable cases, we limited the analysis to felony charges remaining eligible for bail under the original reforms. (Relatively few misdemeanors faced bail in 2020.)

- **Bail Payment at Arraignment:** Less than one in five felony defendants who had to pay bail at arraignment could do so, both pre-reform and post-reform. Against expectations, payment rates modestly declined in 2020 (from 17% to 15%).
- **Bail Payment within 30 Days and 90 Days:** By the 30-day mark, payment rates came close to 50%. Again, rates were modestly lower in 2020 than 2019. After 90 days, payment rates grew to 54% in 2019, while remaining just under half (49%) in 2020.⁴⁵
- **Timing of Bail Payment:** Among people who successfully posted bail, the median time to payment was **one day**. About three-fifths of those who post bailed within 90 days did so within the first two days after arraignment (as shown above).

See BAIL REFORM, next page

Release Recommendation	ROR Recommended		Consider All Options		ROR Not Recommended	
	11/12/19 - 3/17/20	9/28/20 - 12/31/2020	11/12/19 - 3/17/20	9/28/20 - 12/31/20	11/12/19 - 3/17/20	9/28/20 - 12/31/20
# Assessments	2,952	2,526	727	498	329	195
ROR	44%	33%	14%	9%	9%	2%
RUS	20%	18%	23%	18%	28%	22%
Bail set	35%	47%	61%	70%	61%	72%
Remand	1%	2%	2%	2%	2%	4%

Source: New York City Criminal Justice Agency (CJA). Results for the November 2019 to March 2020 period were drawn from a published CJA report. (Exact assessment rollout dates varied by borough from November 12 to December 2.) CJA provided the current authors with unpublished results for the September 28 to December 31, 2020 period. CJA does not make recommendations in violent felony cases involving a murder charge and other select circumstances. Views and interpretations derived from CJA data are solely those of the current authors.

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In both years, most people could **not** pay bail at arraignment. But of those able to pay eventually (about half), most did so quickly, within only a few days—allowing those people to swiftly gain their liberty, while others continued to be detained.

Cash and Bond Amounts

As above, we focused on felonies remaining bail-eligible, as defined by the original reforms.

- **Low Bail:** In both years, judges set cash bail at less than \$1,000 in under 2% of cases. In these few cases, judges almost exclusively set standard amounts of \$100, \$500, or \$750.
- **Median Bail:** We did not detect a consistent change in judges’ median bail amounts from 2019 to 2020. Median cash amounts declined from \$7,500 to \$5,000 for nonviolent felonies, while remaining unchanged at \$10,000 for violent felonies. Insurance company bond amounts were generally higher than cash. From 2019 to 2020, the median bond amount was unchanged at \$10,000 for nonviolent felonies and rose from \$15,000 to \$20,000 for violent felonies.
- **Bail for Specific Charges:** Shown in Exhibit 4.2, cash amounts increased for some, though not all, common violent felonies.
- **Distribution of Cash Bail:** A more nuanced understanding emerges from the results in Exhibit 4.3. Focusing again on the violent felonies that comprised most bail cases post reform, there was a significant reduction in

cash amounts between \$1,001 to \$2,500 (on the relatively low end) and high cash amounts (over \$100,000) in 2020, balanced by a significant increase in the middle of the spectrum (\$2,501 to \$100,000). While indicative of a change in bail practices (though one defying a clear interpretation), the results continue to suggest that there was not a substantively meaningful shift in bail amounts or payment.

Expanded Forms of Bail in 2020

Bail reform required judges to set at least three forms of bail, of which one had to be a partially secured or unsecured surety bond. A “surety” is a friend or family member who pays the bail. It is rare for defendants to pay their own bail at arraignment, given that police officers typically permit defendants to keep no more than \$100 cash on their person. **The three most common forms of bail in 2020 were cash, insurance company bond, and a partially secured surety bond (Exhibit 4.4). Judges allowed payment by credit card in 27% of cases and by an unsecured**

surety bond in 1%. Not shown, each of four other forms of bail described in the reforms were set in less than 0.2% of cases (see the endnote for specifics).⁴⁶

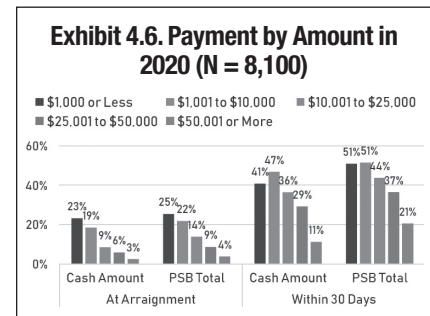
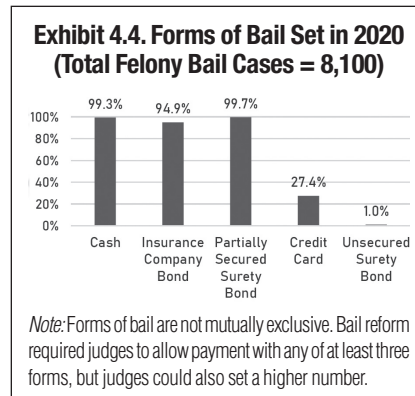
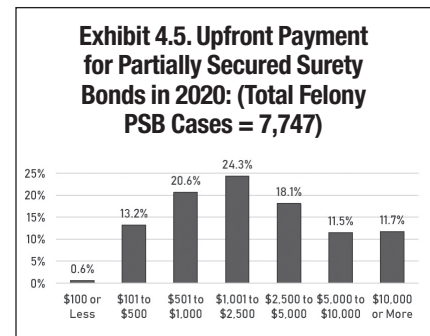
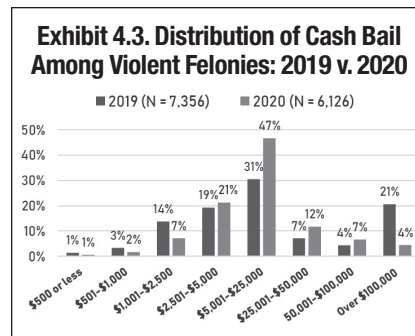
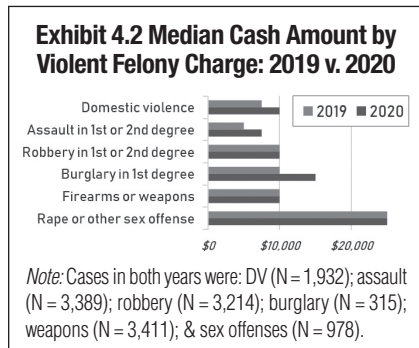
Partially Secured Bonds

Quantifying the PSB Discount. We found that in 2020, PSB total amounts averaged 2.66 times the cash amount, with a median ratio of 2.00. **In other words, while one might have expected PSBs to generate an upfront payment discount to 10% of the cash total, judges essentially inflated PSB totals to produce a lesser discount.**

Resulting Upfront Payment. After dividing judges’ PSB totals by ten, Exhibit 4.5 shows the distribution of upfront payments required in 2020. Less than 1% were \$100 or less, and another 13% ranged from \$101 to \$500.

Relationship of Bail Amount and Payment Rate

- **The Bail Amount Matters:** Lower bail led to higher payment rates (Exhibit 4.6).⁴⁷ Within 30 days, 51% of defendants could pay bail when the



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PSB total was \$1,000 or less, while only 21% could pay when the total was \$50,000 or more.

- Significant Inability to Pay:** Even in the lowest bail amount range, only about one-quarter of defendants could post bail at arraignment and about half could do so within 30 days—suggesting that judges may not be sufficiently matching bail to defendants’ and sureties’ specific financial resources, for instance with indigent defendants who lack social ties to people with money.
- Marginal PSB Advantage:** Comparing outcomes between cash and PSBs within each total range in Exhibit 4.6, payment rates are only marginally higher for PSBs—even though people must pay only 10% of the total. Even by the 30-day mark after arraignment, only 51% of people with a PSB of \$1,000 or less—requiring actual up-front payment of \$100 or less—were able to post bail. In this regard, New York Focus pointed to implementation deficits that may explain our findings. Their report found judges that may disallow PSB payment if they deem the payer to lack sufficient proof of employment or income; payers who find the PSB paperwork onerous; and payers who ultimately choose for-profit bail bond agencies instead, whose fees may be easier to pay quickly, but are non-refundable.⁴⁸
- Difficulties Securing Release with an Unsecured Bond:** Although unsecured bonds (UBs) require no up-front payment, the defendant or surety must sign that they will pay the bond amount if the defendant absconds, and judges may request proof of employment. Of the only 84 cases in 2020 where a judge allowed payment with a UB, the defendant posted bail at arraignment in just 18% (improving modestly from 14% in other cases); and posted bail within 30 days in 35% (*lower* than 40% in cases without a UB). The results suggest gaining release with a UB is far from guaranteed. Further research is

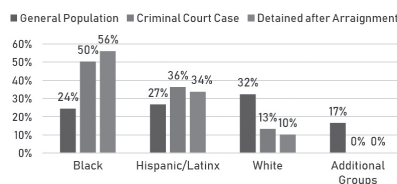
needed to explain this finding (e.g., difficulty completing paperwork, identifying a surety, or having the judge honor the surety’s signature on the bond form).

Racial Disparities in Pretrial Outcomes

It is well documented that people of color, especially Black and Hispanic/Latinx individuals, are disproportionately exposed to arrest, bail, and jail.⁴⁹ In 2019, Black New Yorkers comprised 24% of the city’s general population, 50% of people charged in a criminal court, and 56% of people sent to pre-trial detention at arraignment.

In general, we found that bail reform modestly reduced racial disparities in judges’ bail decisions at arraignment. But among violent felonies, specifically, racial disparities resulting from judges’ decisions grew significantly in the second half of 2020.

Exhibit 5.1. Racial Disparities in 2019



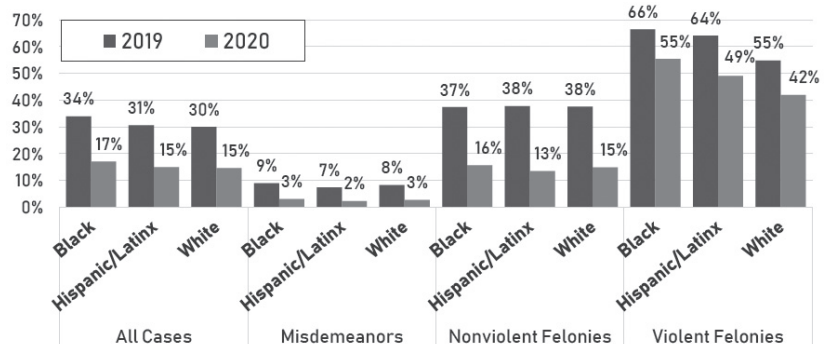
Sources: General Population: U.S. Census 2018 (coded in Statistical Atlas). Percent Hispanic/Latinx omits Black or Asian. Court data is for 2019 cases.

Disparities in Bail and Remand Decisions

Exhibit 5.2 displays the percent ordered to bail or remand in 2019 and 2020. (As documented above, remand was rare.)

- Significant Pre-Reform Racial Disparities:** In 2019, there were significant racial disparities in judges’ release decisions, almost exclusively driven by disparities among violent felonies. In violent felony cases, judges set bail or remand for 66% of Black, 64% of Hispanic/Latinx, and 55% of white defendants. There were only small differences by race/ethnicity among misdemeanors and nonviolent felonies (although, technically, the small disparities seen among misdemeanors were statistically significant).
- Bail Reform Leads to Reduced Bail-Setting for All Racial/Ethnic Groups:** In 2020, resulting from new restrictions on the use of bail and pretrial detention, judges ordered bail or remand significantly less often for all racial/ethnic groups. Thus, the change is towards *less* bail or remand in every single comparison shown in Exhibit 5.2.
- Mixed Impact on Relative Racial Disparities:** From 2019 to 2020, the relative disparity between bail or remand orders for Black compared to white defendants decreased slightly from 4 percentage points to 2 points; but among the violent felonies that remained eligible for bail in 2020, the

Exhibit 5.2. Bail or Remand by Race/Ethnicity



¹Results for all cases represent *adjusted estimates* after controlling for between-year charge severity differences.

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Black-white gap modestly widened from 12 to 14 percentage points.

Significant Changes Within 2020

In the latter half of 2020, judges' decisions reversed gains from earlier in the year in reducing relative racial disparities—especially in violent felony cases. For all charges, the Black-white gap in decisions involving bail or remand declined in the first two periods of 2020 compared to the first quarter of 2019, but slightly re-increased thereafter. For violent felonies, there was a steep rise in the Black-white gap in late 2020. In the last quarter of 2020, Black defendants were

21 percentage points more likely than white defendants to face bail or remand in violent felony cases, compared to a 7-percentage-point Black-white gap in both early 2019 and early 2020.

For instance, at the outset of 2020, judges set bail in 46% of violent felony cases with Black defendants, 44% with Hispanic/Latinx defendants, and 38% with white defendants. In the fourth quarter, judges did so in 61% of such cases with Black defendants, 52% with Hispanic/Latinx defendants, and 41% with white defendants (after rounding).⁵⁰

Pretrial Detention Ramifications

While a judge's decision to set bail leads to a stay in pretrial detention in more than four out of five felony cases (shown

above), a small fraction of people do successfully pay bail at arraignment. We isolated and examined disparities in cases where people were detained after arraignment—either due to an inability to pay bail or, less often, a remand decision.

Mirroring the patterns reported above, for all cases combined, pretrial detention significantly declined in 2020 for all groups and, though racial disparities persisted, bail reform led to a reduction in the Black-white gap. Shown at right, only 15% of Black, 13% of Hispanic/Latinx, and 12% of white defendants were detained in 2020.

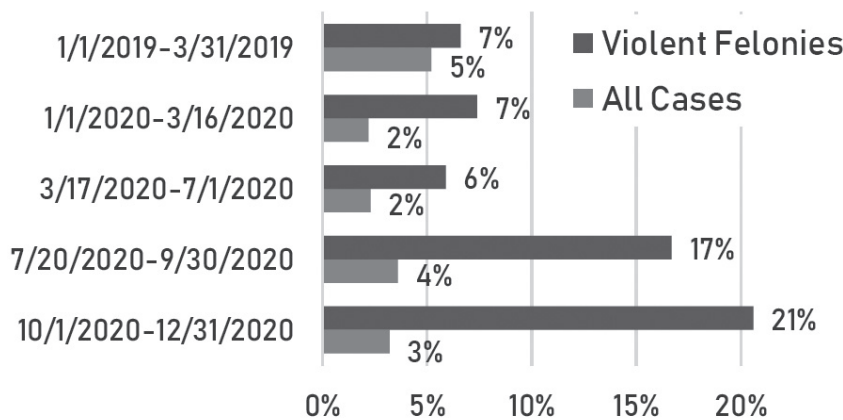
When isolating violent felonies, we detected these same patterns. However, mirroring our findings reported above, we conducted additional analysis (results not displayed) pointing to a re-increase in racial disparities during the second half of 2020. Among violent felonies arraigned in the fourth quarter, pretrial detention rates at arraignment were 52% for Black, 45% for Hispanic/Latinx, and 36% for white defendants.

Isolating the Effect of Race

As shown above, judges' bail decisions in violent felony cases, and their ramifications for pretrial detention, generated inequitable outcomes. This result is especially troubling considering evidence presented earlier that, if followed consistently, the city's Pretrial Release Assessment would have obviated racial/ethnic disparities. That said, judges may not have made disparate decisions due to race, per se; they may have, instead, weighed other factors, which are correlated with race. None of this changes the disparate outcomes reported above, but it is important in understanding to what extent those outcomes are generated by overt racial bias among individual judges.

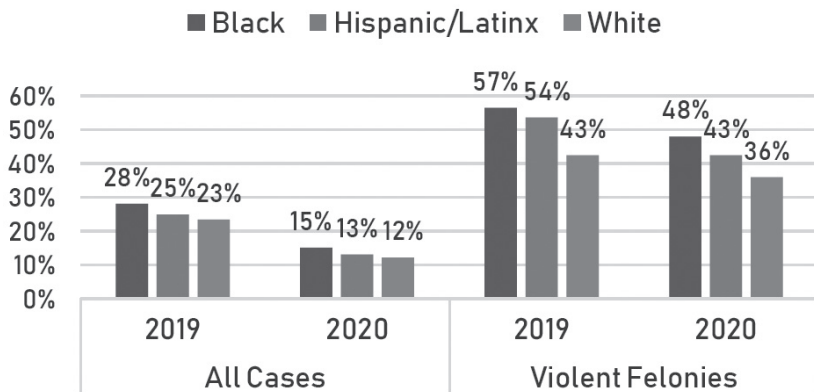
Accordingly, we also sought to answer a second question: Were judges' decisions intrinsically biased? To answer this, we controlled for factors that might influence judges' decisions such as criminal history, charges, and other factors whose distribution may differ by race due to prior disparities in, for example, policing and

Exhibit 5.3. The Black-White Disparity in Judges' Bail or Remand Decisions



¹Results for all cases represent *adjusted estimates* (see Exhibit 5.2).

Exhibit 5.4. Racial Disparities in Pretrial Detention Rates at Arraignment



Note: Differences are statistically significant for all comparisons ($p < .001$).

See BAIL REFORM, next page

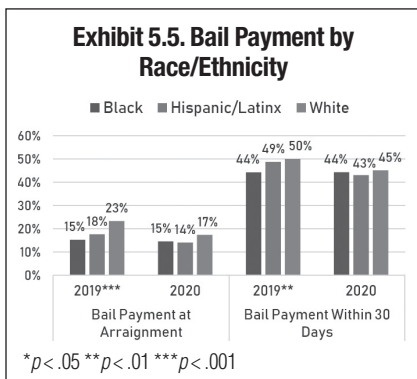
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criminalization, housing, or community resources disproportionately absent in predominantly Black or Brown compared to white neighborhoods.

We reexamined judges' bail or remand decisions after controlling for race/ethnicity and 21 additional measures, encompassing the current charge, criminal history, and demographics.⁵¹ After adjusting for the effects of each of these measures, we did not detect a strong independent race effect on judges' decisions. Race/ethnicity was not a significant predictor of disparities among all cases in either 2019 or 2020. (By contrast, a rigorous analysis of New York City cases from 2008-2013 previously pointed to overt bias among judges.⁵²) When focusing solely on violent felonies in 2019, judges set bail or remand significantly more often for Black (odds ratio = 1.190) and Hispanic/Latinx (odds ratio = 1.223) than white defendants, net of other factors; but this effect disappeared in 2020. In an additional analysis isolating the second half of 2020, when the results shown above pointed to large racial/ethnic differences in pretrial outcomes, even then, once controlling for other factors, we did not detect an independent race effect.

Disparities in the Ability to Afford Bail

We focused on bail payment outcomes in felony cases that remained eligible for bail under the original reforms.⁵³ In 2019, payment rates both at arraignment and within 30 days significantly differed by race/ethnicity (Exhibit 5.5). In 2020, these disparities disappeared—but only



because of lower bail payment rates among Hispanic/Latinx and white defendants, compared to 2019. Payment rates for Black defendants were identical both years. Lastly, we did not detect sizable or consistent racial disparities in bail amounts in either year.

Equal Justice Across Boroughs

Reflecting different judicial and prosecutorial cultures, people's exposure to bail and pretrial detention has varied across the city's five boroughs for more than three decades.⁵⁴ In recent years, bail-setting has tended to be highest in Manhattan and Staten Island.⁵⁵ But by imposing an outright ban on bail and pretrial detention in nearly all misdemeanor and nonviolent felony cases, it was conceivable bail reform would mitigate these inconsistencies.

As expected, bail-setting declined in all five boroughs in 2020, as did the relative magnitude of the differences among boroughs. Breaking down this overall result by charges, while this same pattern of reduced borough differences applied to misdemeanors and nonviolent felonies, borough variations persisted among violent felonies. We also found significant borough differences in how judges set partially secured bonds.

Borough Differences in Bail Decisions

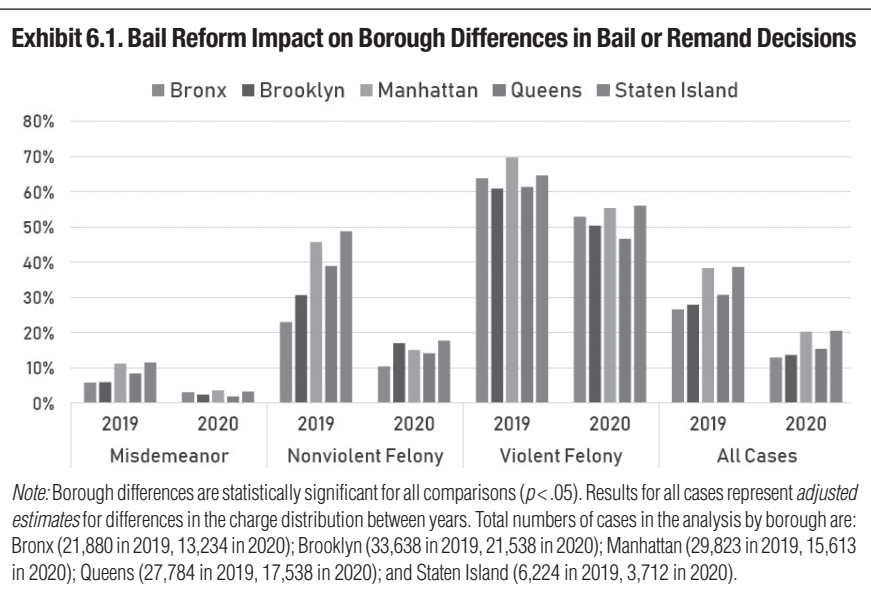
Baseline Borough Differences in 2019

In 2019, prior to bail reform, a defendant's likelihood of facing bail varied considerably by borough (Exhibit 6.1). Differences were especially steep among nonviolent felonies, for which judges in the Bronx set bail (or remand) in only 23% of cases, compared to a high of 49% in Staten Island.

Reduced Borough Differences Under Reform

Bail reform reduced bail-setting in all five boroughs and significantly reduced borough differences among misdemeanor and nonviolent felony cases.

- **Reduction in Overall Borough Differences:** Across all charges, the range from the lowest to the highest bail-setting borough was 12 percentage points separating the Bronx and Staten Island in 2019 (27% vs. 39%), compared to 8 points in 2020 (13% vs. 21%).
- **Large Impacts Among Nonviolent Felonies:** The greatest reductions in borough differences were for nonviolent



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felonies. A range of 26 percentage points separated the Bronx and Staten Island in 2019 (23% vs. 49%), but just 8 points in 2020 (10% vs. 18%).

- **No Effect Among Violent Felonies:** Among violent felonies, bail-setting declined in all five boroughs in 2020 compared to 2019, but there was no reduction in the magnitude of between-borough variations (with a range of 9 percentage points in both years). In short, continued judicial discretion in violent felony cases led to continued disparate decisions.

Unique Borough Patterns for Violent Felonies Within 2020

From examining our five key periods (the first quarter of 2019 and four periods within 2020), we detected additional variations across the five boroughs (Exhibit 6.2):

- **Increased Bail-Setting in Staten Island at the Outset of the Pandemic:**

Judges in Staten Island significantly increased their bail-setting at the height of the COVID-19 crisis, presumably because they were less willing to set ROR when supervised release was temporarily suspended. Judges in the four other boroughs, by contrast, only modestly changed their use of bail from March 17 to July 2 (see Exhibit 6.2-C, period 3).

- **Increased Bail-Setting in the Four Largest Boroughs, Second Half of 2020:** Judges in the four largest boroughs all increased their bail-setting in the second half of 2020, while bail-setting declined in Staten Island. By the final quarter of 2020, bail-setting in violent felony cases was lowest in Staten Island—an unexpected historic change from past years.
- **Large Swings in Brooklyn:** Bail-setting among Brooklyn’s judges swung profoundly twice within 2020: (1) When bail reform first went into effect, Brooklyn’s judges became the least likely of any borough to set bail in violent felony cases; (2) In the second half of 2020, Brooklyn’s judges

then became the most likely to set bail when deciding on a violent felony, another historic shift from past years (Exhibit 6.2-C).

From the first to last periods within 2020, Brooklyn’s judges increased their violent felony bail-setting by 22 percentage points (37% to 59%). Over the same span, further analysis found that Brooklyn’s judges reduced their use of supervised release in violent felony cases by almost half (25% to 13%)—also a greater swing than in any other borough. We confirmed that these swings applied to individual violent felony charges as well, including robbery and firearms/weapons charges.

Borough Differences in Bail Amounts

Echoing the Criminal Justice Agency’s Annual Report for 2018, although differences were statistically significant in the technical sense, we did not find that cash bail amounts greatly differed by borough either before or after bail reform went into effect.⁵⁶ But implementation of the reform’s new partially secured bond requirement did vary by borough.

Taking into account that, with a partially secured bond [PSB], people only pay 10% of the total upfront, judges in Manhattan and Staten Island permitted upfront payments of \$1,000 or less in significantly fewer cases (21% and 22%, respectively) than in the other boroughs (30% or higher). As shown to the right,

Exhibit 6.2. Bail Reform Impact on Borough Differences in Bail-Setting in 2020

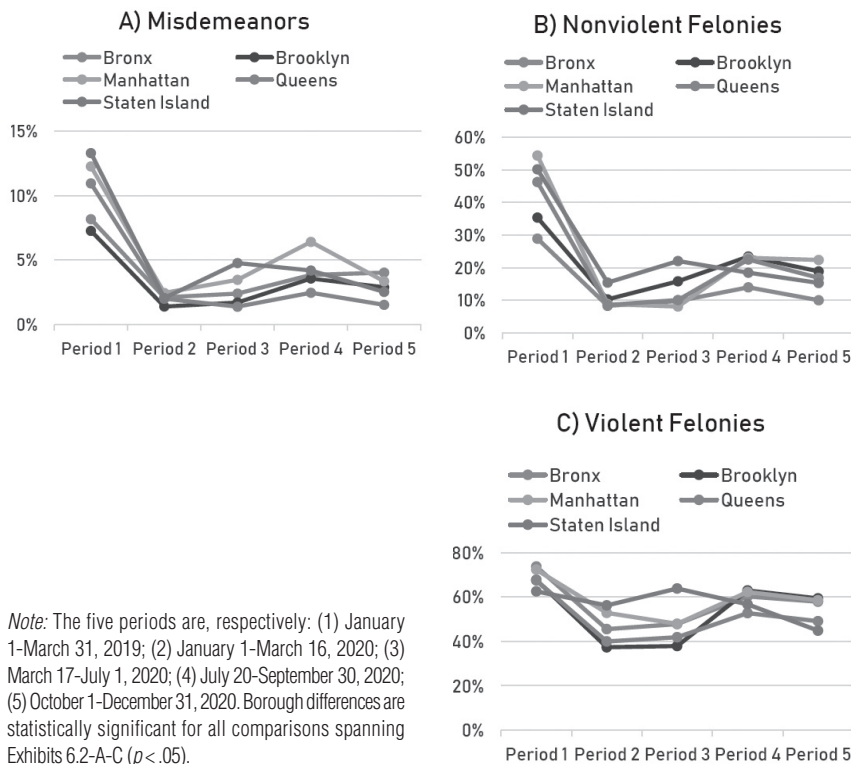
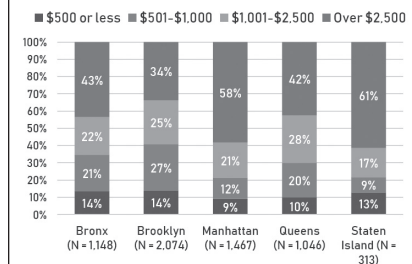


Exhibit 6.3. Partially Secured Bond Upfront Payment by Borough in 2020



Note: Results isolate violent felony cases eligible for bail throughout 2020. Differences across boroughs are statistically significant ($p < .001$).

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PSB amounts enabling upfront payment of \$500 or less were generally uncommon, ranging from 9-14%—and were lowest in Manhattan.

Further explaining this variability, we found that judges in Staten Island and Manhattan were especially likely to inflate PSB totals relative to cash. Judges set the median PSB total 3.3 times higher than the median cash amount in Staten Island, 3.0 times cash in Manhattan, 2.0 times cash in Queens, 1.7 times cash in Brooklyn, and 1.6 times cash in the Bronx. **Instead of having to pay 10% of the cash amount upfront when granted a PSB, people generally had to pay 30% or more in Staten Island and Manhattan (which, on the other hand, dropped to just over 15% of the cash amount in the Bronx and Brooklyn).**

Borough Differences in Bail Payment

Bail payment rates varied by borough both before and after reform implementation, with defendants having the greatest difficulty affording bail in Manhattan. Among felony defendants remaining bail-eligible throughout 2020, payment rates at arraignment varied from 11% in Manhattan to 22% in Staten Island in 2019; and from 8% in Manhattan to 19% in the Bronx and Queens in 2020. After 30

days, the borough gap widened. In 2020, payment rates within 30 days of arraignment were 32% in Manhattan, 46% in Brooklyn and Staten Island, 51% in the Bronx, and 53% in Queens. These differences could potentially reflect a combination of borough differences in bail amounts (higher in Manhattan than other boroughs, except Staten Island) and in defendants’ financial resources. Absent employment, income, and housing data, we could not adequately pinpoint these causal dynamics.

Judicial Variability at Arraignment

Previous research demonstrates that the identity of the arraignment judge can have a sizable impact on whether someone spends the pretrial period behind bars or not.⁵⁷ While it is perhaps inevitable that judges will have different decision-making tendencies when they exercise discretion, by limiting the charges eligible for bail in the first place, the reforms had the potential to not only reduce the use of bail, but to constrain inconsistency among judges. **Our analysis confirms that judges’ decisions varied significantly less under the reforms.**

The Impact of Bail Reform on Judges’ Variability

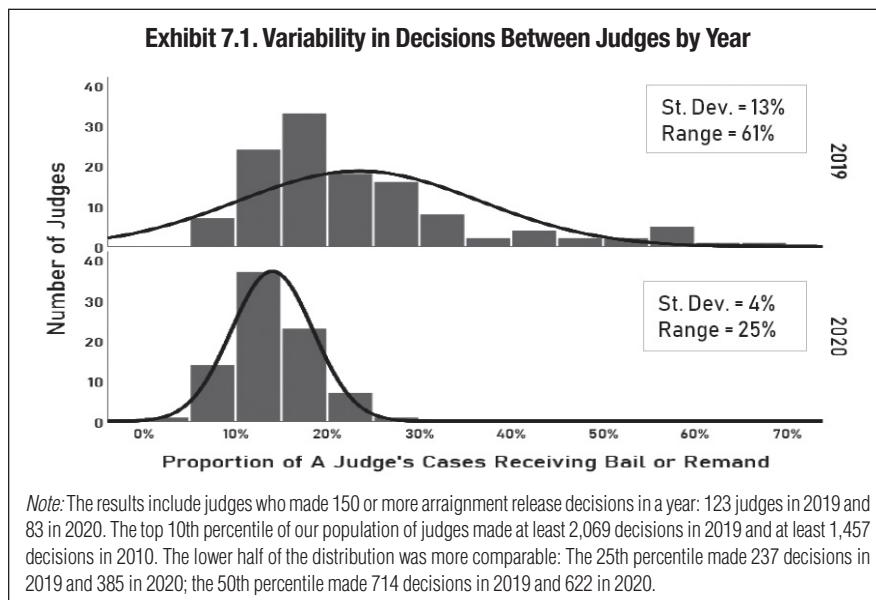
We tested the extent to which judges vary in how often they set bail or remand

defendants at arraignment—including all judges who made at least 150 release decisions in each analysis.⁵⁸ In interpreting the graphics in Exhibit 7.1, the greater the number of bars and the wider their distribution, the more that judges varied from each other in how often they set bail or remand. Major findings include:

- **Large Reduction in Judges’ Inconsistency Across All Cases:** In 2019, judges varied widely in how often they made decisions resulting in pretrial detention. As expected, the bail reforms significantly reduced this inconsistency—visually illustrated by the far wider spread of the purple bars in 2019 than 2020 (shown above). The standard deviation—a classic measure of variability—dropped by more than two-thirds, from 13% to 4%.⁵⁹
- **Reduction in Inconsistency Driven by Decisions in Misdemeanor and Nonviolent Felony Cases:** Variability significantly declined when judges decided on misdemeanors and nonviolent felonies, mirroring the overall trend (Exhibit 7.2). As measured by the standard deviation statistic, variability dropped by almost three-quarters among misdemeanors and by more than half among nonviolent felonies. Among nonviolent felonies, for example, different judges varied from ordering bail or remand as little as 14% of the time to as much as 70% of the time in 2019 (a range of 56%), while judges varied from ordering these outcomes in 7% to 25% of cases in 2020 (an 18% range).
- **Variability Remained in Violent Felony Decisions:** The reforms did not significantly impact violent felony cases (standard deviation = 10% in 2019 vs. 10% in 2020).

Variability in Supervised Release

Despite an overall reduction in judicial inconsistency regarding bail or remand decisions, variability grew in judges’ specific use of supervised release in 2020; in other words, when judges released someone, their likelihood of selecting



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Exhibit 7.2. Variability in Release Decisions between Judges						
	Misdemeanor		Nonviolent Felony		Violent Felony	
Year	2019	2020	2019	2020	2019	2020
# Judges	90	73	47	23	27	32
Standard Deviation	5.5%	1.4%	11.6%	4.8%	10.2%	10.4%
Range	36.2%	6.0%	56.2%	18.1%	35.1%	48.5%
Lowest-Highest	1.9%-38.1%	0.4%-6.4%	13.6%-69.8%	6.5%-24.5%	44.7%-79.8%	22.5%-71.0%

supervised release over another decision varied widely. For misdemeanors, the standard deviation in judges’ likelihood of ordering someone to supervised release at arraignment increased from 2% to 5%; for nonviolent felonies, the increase was 5% to 9%; and for violent felonies, the increase was 2% to 7%. For virtually all violent felony cases, 2020 was the first full year in which people were eligible for supervised release, explaining both its increased use and greater judicial variability. For instance, the frequency with which different judges ordered supervised release in a violent felony ranged from 0% to 7% of cases in 2019, compared to 3% to 29% in 2020.

Conclusions

1. Did the Reforms Reduce Bail and Pretrial Detention?

Yes, with qualifications.

Bail reform significantly reduced bail and detention by ruling out their use in most criminal cases. From 2019 to 2020, bail and remand decisions declined by an unprecedented degree among both misdemeanors (from 8% to 3% of cases) and nonviolent felonies (37% to 15%). Declines were more modest among violent felonies (64% to 52%)—but even in these cases where judges retained discretion, they set bail less often.

Judges took advantage of the newly universal option to order supervised release. The decrease in the use of bail or remand for violent felonies was largely

attributable to bail reform requiring all cases to be eligible for supervised release. Potentially aiding uptake, in late 2019, the Mayor’s Office of Criminal Justice organized separate trainings for judges, prosecutors, and defense attorneys in all five boroughs on the revamped program model—which included more intensive programming for people assigned to the highest supervision levels and a newly launched track for intimate partner violence cases.⁶⁰

On comparable cases eligible for bail and detention throughout 2020, judges reverted towards greater use of these outcomes in the second half of the year. This finding persists independent of any changes in the types of charges and defendants arraigned in each part of the year. Comparing the initial January 1 to March 16 period of 2020 with the year’s final quarter, judges released fewer violent felony defendants on their own recognizance (33% to 27%), while their use of bail and remand significantly increased (44% to 56%). Bail-setting peaked at 65% of violent felony cases in the month of September. Judges also made less use of supervised release for violent felonies (from 29% to 22%).

The bail amendments led to a further increase in bail and detention. Predictably, making more cases newly re-eligible for bail and detention in July increased judges’ use of both options. We found a mere two provisions accounted for 85% of the cases in which judges set bail specifically because the amendments made it again possible to do so: (1) burglary in the second-degree (23%); and (2) allowing bail when a judge deems the

current and a pending charge to involve “harm to an identifiable person or property” (62%), a standard not formally defined in the law.

It does not appear that judges are restricting pretrial conditions to people posing a credible flight risk. The reforms restricted bail to cases in which a “risk of flight” could be “demonstrated” and non-monetary conditions—such as supervised release—would not suffice to ensure court attendance. Using the statistically validated Pretrial Release Assessment as a barometer, for misdemeanors and nonviolent felonies, judges set ROR in a roughly similar percentage of cases as the assessment recommended. However, while the assessment recommends almost three-quarters of violent felonies for ROR—giving these cases a projected 90% likelihood of attending every court date—judges set ROR in just 34% of violent felony cases throughout 2020 (and 27% in the fourth quarter). In that fourth quarter, judges set ROR in only a third of the violent felony cases where the assessment specifically recommended ROR.

Misleading claims linking bail reform to a documented uptick in gun violence in 2020 may have unduly influenced judges. A quantitative analysis cannot pinpoint *why* judges increased their bail-setting in the second half of 2020, even for similar cases that were also eligible for bail in the first half of the year. One plausible explanation is that COVID-19, and the transition to video appearances, could have substantially altered the dynamics at arraignment.⁶¹ Moreover, any number of dynamics associated with the pandemic’s multiple effects on normal court operations are possible factors. It is also likely that at least some judges were influenced by unsupported claims from public officials, frequently amplified in the media,⁶² that bail reform contributed to New York City’s spike in shootings and murders in 2020.⁶³ (Similar, often larger, spikes occurred in cities across the country with no recent bail reforms.) Beyond the lack of evidence for these claims, state law does not permit judges to base pretrial

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decisions on predictions of people's future risk to public safety (a longstanding component of New York's bail statute that was left untouched by the reforms).

2. Did the Reforms Succeed in Making Bail More Affordable?

No.

On average, judges did not appear to meaningfully incorporate people's ability to pay bail into their decisions. Cash and bond amounts did not appreciably change, and in both 2019 and 2020 judges set cash bail of less than \$1,000 in only 2% of cases. These results suggest that the bail amounts did not generally reflect what defendants could afford. The rate at which people were able to make bail modestly *declined* in 2020—opposite the intention of the reforms. While the statute requires an effort to consider people's "individual financial circumstances" and whether bail would pose "undue hardship" effective January 2020, these results suggest a need to offer judges constructive assistance through guidelines or assessment tools that could help them determine whether a defendant is indigent or, if not, what bail form and amount could be paid.

Judges set partially secured bond amounts substantially higher than cash bail amounts. A key bail reform provision required judges to set either a partially secured bond [PSB]—which requires only up to 10% of the total be paid upfront—or an unsecured bond, which requires no upfront payment. (The balance is due if the defendant absconds.) In what appears to be a workaround, when judges set a PSB, they significantly increased the total amount of the bond—a median of 2.66 times higher than the straight cash amounts set in the exact same cases. This effectively almost tripled the amount of the upfront payment due for the PSB—from 10% to 26% of the cash total. In Manhattan and Staten Island, PSBs were, respectively, 3.0 and 3.3 times the cash amount.

Judges rarely set an unsecured bond, and even when it was set people had difficulty paying this form of bail. Judges chose an unsecured bond in just 1% of cases. Perhaps due to the difficulties of making payments,⁶⁴ even in the 84 cases in 2020 where judges set an unsecured bond, defendants or their families successfully posted bail immediately following arraignment only 18% of the time, and only 35% of the time within the next 30 days.

People who could pay bail usually did so quickly, creating a two-tiered system. Among the approximately 50% of defendants who were able to make bail eventually, almost four in five did so within a week of arraignment. Consequently, in both 2019 and 2020, bail produced a two-tiered system: on one level, people able to quickly make bail and spend the remainder of their pretrial period at liberty; on the other level, people unable to afford bail and detained for the duration of their case.

3. Did the Reforms Reduce Racial Disparities?

Yes, overall, but not for violent felony cases.

People from all racial/ethnic groups faced considerably less bail and detention in 2020, and relative racial disparities modestly declined. The disparity in the rate bail was set for Black versus white defendants contracted from four percentage points in 2019 (34% of cases vs. 30%) to two points in 2020 (17% vs. 15%). We also found that 2019's bail payment disparities disappeared in 2020—though this occurred only because fewer white and Hispanic/Latinx defendants were able to pay bail; Black defendants experienced no improvement.

Increased bail-setting by judges on violent felonies in the second half of 2020 had a racially disproportionate impact. In the fourth quarter of 2020, judges set bail or remand for 41% of white, 52% of Hispanic/Latinx, and 61% of Black violent felony defendants. The stark 21 percentage-point Black-versus-white disparity (after rounding) was *three times* greater than the 7 percentage-point

disparity in the first months of 2020 (January 1 to March 16). Our findings suggest this was not the product of individual bias per se on the part of judges; the disparity disappeared after controlling for defendants' criminal histories and other background characteristics. Therefore, this bias reflects the larger systemic racism impacting the city's criminal justice system, rather than a bias in individual judges. Yet, due to this systemic bias, when bail-setting increased, overall, in the second half of 2020, it disproportionately impacted Black New Yorkers.

4. Did the Reforms Shrink Judicial Variability?

Yes, overall, but not for violent felony cases.

Limiting judicial discretion reduced inconsistencies among boroughs and among individual judges. The reforms limited longstanding variabilities in decision-making by borough and by individual judge. For example, among nonviolent felonies, the gap between the judges who were the least and most likely to set bail or remand in 2019 was 56 percentage points. That gap declined to 18 percentage points in 2020. Similarly, the gap between the least and highest bail-setting boroughs in nonviolent felony cases dropped by more than two-thirds—from 26 to 8 percentage points.

The reforms did not rein in inconsistencies among violent felonies. Although almost all violent felony cases remained bail-eligible, new criteria—such as restricting pretrial conditions to cases posing a credible flight risk—could have reduced inconsistencies, nonetheless. However, we found no change in borough- and judge-based variability. To the contrary, we identified inexplicably large swings among judges from specific boroughs. Within different periods of 2020, for example, Brooklyn's judges went from the least to the most likely to set bail in violent felony cases, while judges in Staten Island swung in precisely the opposite direction. This is suggestive, perhaps, of a volatile climate created both

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by the reforms and their subsequent partial rollback, and by the high level of media scrutiny, much of it predicated on an unfounded connection between bail reform and crime.

Bail Reform's Accomplishments at One Year

Although the bail amendments and a reversion in mid-2020 to increased bail-setting limited the impact of the reform, there was still a sustained reduction in bail-setting and pretrial detention in 2020 compared to 2019. Even in the fourth quarter of 2020, as judges' use of bail significantly increased relative to the beginning of the year, bail-setting was 24 percentage points lower for nonviolent felonies and 12 percentage points lower for violent felonies than it had been in the first quarter of 2019 (prior to when the original reforms were passed into law on April 1). If the substantial impacts seen in the first ten weeks of 2020 could be restored—or even expanded upon—and if judges could be urged to meaningfully consider people's financial means when setting bail-amounts, the result would be an unprecedented drop in New York City's reliance on pretrial incarceration.

End Notes

¹Since the original publication of this article, further modest amendments to New York's bail reform law were implemented in 2022 and 2023, respectively. While their effects have yet to be studied, their legal scope is more limited than either the original reforms or the first round of amendments that went into effect July 2020, which are the subject of this study. For descriptions and evaluations of new bail reform laws and policies in other jurisdictions: [New Jersey](#): Anderson, C., Redcross, C., & Valentine, E., with Miratrix, L. (2019). *Evaluation of Pretrial Justice System Reforms That Use the Public Safety Assessment Effects of New Jersey's Criminal Justice Reform*. MDRC. Available at: https://www.mdrc.org/sites/default/files/PSA_New_Jersey_Report_%231.pdf; [Chicago, IL](#): Stemen, D. & Olson, D. (2020). *Dollars and Sense in Cook County: Examining the Impact of General Order 18.8A on Felony Bond Court Decisions, Pretrial Release, and Crime*. Chicago, IL:

Safety + Justice Challenge. Available at: <https://www.safetyandjusticechallenge.org/wp-content/uploads/2020/11/Report-Dollars-and-Sense-in-Cook-County.pdf>; [Philadelphia, PA](#): Ouss, A. & Stevenson, M. T. (2020). *Bail, Jail, and Pretrial Misconduct: The Influence of Prosecutors*. Available at: <https://www.crimxiv.com/pub/qwte6ntg/release/1>

²See, e.g., Digard, L. & Swavola, E. (2019). *Justice Denied: The Harmful and Lasting Effects of Pretrial Detention*. New York, NY: Vera Institute of Justice. Available at: <https://www.vera.org/publications/for-the-record-justice-denied-pretrial-detention>; Dobbie, W. Goldin, J., & Yang, C. (2016). *The Effects of Pre-Trial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges*. Available at: https://scholar.harvard.edu/files/cyang/files/dgy_bail_august2016.pdf; Leslie, E. & Pope, N. G. (2017). "The Unintended Impact of Pretrial Detention on Case Outcomes: Evidence from New York City Arraignments." *Journal of Law and Economics* 60 (August 2017): 529-557. Available at: http://econweb.umd.edu/~pope/pretrial_paper.pdf; Lippman, J., Aborn, R., Cartagena, J. et al. (2017). *A More Just New York City*. New York, NY: Independent Commission on New York City Criminal Justice and Incarceration Reform. Available at: <https://static1.squarespace.com/static/5b6de4731aefde914f43628/t/5b96c6f81ae6cf5e9c5f186d/1536607993842/Lippman%2BCommission%2BReport%2BFINAL%2BSingles.pdf>; Rempel, M., & Pooler, T. (2020). *Reducing Pretrial Detention in New York City: Data-Driven Strategies for Decarceration*. New York, NY: Center for Court Innovation. Available at: <https://www.courtinnovation.org/publications/reducing-pretrial-detention>.

³Rempel, M. & Rodriguez, K. (2019). *Bail Reform in New York: Legislative Provisions and Implications for New York City*. New York, NY: Center for Court Innovation. Available at: <https://www.courtinnovation.org/publications/bail-reform-NYS>; Rempel, M. & Rodriguez, K. (2020a). *Bail Reform Revisited: The Impact of New York's Amended Bail Law on Pretrial Detention*. New York, NY: Center for Court Innovation. Available at: <https://www.courtinnovation.org/publications/bail-revisited-NYS>.

⁴About one-quarter of criminal cases are resolved at the initial arraignment court appearance, precluding the need for a pretrial release decision. Among cases continued after arraignment, we excluded defendants under the age of 18 to avoid conflating the effects of bail reform with the state's new "Raise the Age" law, which limited the criminal prosecution of 16- and 17-year-olds (see Gewirtz, M. [2020]. *The First Six Months of the Second Year of Raise the Age*. New York, NY: New York City Criminal Justice Agency. Available at: <https://www.nycja.org/publications/the-first-six-months-of-the-second-year-of-raise-the-age>). We also omitted cases involving \$1.00 bail, which signify the existence of a mandatory hold stemming from

a parole violation or some other matter, separate from the judges' decision on the pending case, which necessitates pretrial detention after arraignment. We excluded these cases, because we were interested in judicial decision-making, but judges lack discretion where mandatory holds are involved.

⁵Phillips, M. T. (2005). *Prosecutors' Bail Requests and the CJA Release Recommendation: What Do They Tell the Judge?* New York, NY: New York City Criminal Justice Agency. Available at: <https://www.nycja.org/publications/brief-no-9-prosecutors-bail-requests-and-the-cja-release-recommendation-what-do-they-tell-the-judge>.

⁶Rodriguez, K. (2020). *New York's Amended Bail Statute: Pretrial Options*. Available at: <https://www.courtinnovation.org/bail-revisited-bench-card>.

⁷Rempel, M. & Rodriguez, K. (2020a), Op Cit.

⁸Rempel, M. (2020). *COVID-19 and the New York City Jail Population*. New York, NY: Center for Court Innovation. Available at: <https://www.courtinnovation.org/publications/nycjails-covid>.

⁹Fertig, B. (December 21, 2020). "City's Jail Population Rises After Bail Reform Gets a Rewrite." *Gothamist*. Available at: <https://gothamist.com/news/citys-jail-population-rises-after-bail-reform-gets-a-rewrite>.

¹⁰Peterson, R. R. (2020). *CJA's Updated Release Assessment*. New York, NY: New York City Criminal Justice Agency. Available at: <https://www.nycja.org/publications/cjas-updated-release-assessment>.

¹¹NYC Criminal Justice. (2020). *A Guide to Supervised Release in 2020*. Available at: https://criminaljustice.cityofnewyork.us/wp-content/uploads/2020/11/SR-2020_Benchcard_Citywide_Non_COVID.pdf.

¹²Rodriguez, K., Rempel, M., & Watkins, M. (2021). *The Facts on Bail Reform and Crime in New York City*. New York, NY: Center for Court Innovation. Available at: https://www.courtinnovation.org/sites/default/files/media/documents/2021-02/Handout_Bail_Reform_Crime_02032021.pdf.

¹³For an examination of crime trends in 2020 throughout the United States, see, e.g., Rosenfeld, R., Abt, T., & Lopez, E. (2020). *Pandemic, Social Unrest, and Crime in U.S. Cities: 2020 Year-End Update*. National Commission on COVID-19 and Criminal Justice. Available at: https://cdn.ymaws.com/council-on-cj.org/resource/resmgr/covid_commission/Year_End_Crime_Update_Design.pdf

¹⁴Rempel, M. (2020), Op Cit.

¹⁵The Release Assessment returned to Staten Island for one and a half months from about September 28 to November 23, when administration was suspended anew. The assessment again returned to arraignments on January 25, 2021.

¹⁶Fox, A. & Koppel, S. (2019). *Pretrial Release Without Money: New York City, 1987-2018*. New York, NY: NYC Criminal Justice

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Agency. Available at: <https://www.nycja.org/publications/test-3>.

¹⁷Rempel, M. (2020), Op Cit.

¹⁸See, Rodriguez, K. et al. (2021), Op Cit. In addition, for a comprehensive analysis of misleading media reports regarding the effects of New York's bail reform, see Bennett, L. & Hamilton, J. (2021). *Freedom, Then the Press: New York Media and Bail Reform*. FWD.us. Available at: https://36shgf3jsufe2xojr925ehv6-wpengine.netdna-ssl.com/wp-content/uploads/2021/04/Bail_Reform_Report_040221.pdf.

¹⁹Fertig, B. (December 21, 2020), Op Cit. Within this article, one court administrator is cited linking judges' increased use of bail to news stories related to crime.

²⁰Diamond, S. S., Bowman, L. E., Wong, M., & Patton, M. M. (2010). "Efficiency and Cost: The Impact of Videoconferenced Hearings on Bail Decisions." *Journal of Criminal Law and Criminology* 100: 3: 869-902. Available at: <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=7365&context=jclc>.

²¹Rodriguez, K. et al. (2021), Op Cit.

²²Logistic regression results for a model solely including the period of 2020 in which the case was arraigned and for a second model introducing background controls are available from the authors upon request. The second model included the following additional independent variables: race/ethnicity; defendant's age; defendant's gender; arraignment borough; domestic violence case; Class A felony top charge; top charge of: (a) assault in the first or second degree; (b) robbery in the first or second degree; (c) burglary in the first degree; (d) burglary in the second degree; (e) firearms/weapons; (f) homicide; or (g) sex offense; any prior arrest; any prior felony arrest; any prior conviction; any warrant issued on a prior case; current open case; and current open violent felony case. The prior arrest measures are, in fact, arraignment-based and track history from 2014 onward. The key finding is that the odds ratios for the period within 2020 barely changed from Model 1 to Model 2. With a reference category of period 1 (January 1-March 16), the odds ratios of the two respective models were: period 2 (March 17-July 1): 1.153 and 1.006; period 3 (July 2-September 30): 1.732 and 1.700; period 4 (October 1-December 31): 1.499 and 1.418. The only meaningful change after introducing controls is that the modest effect of an arraignment in period 2 as compared to period 1 fell out of statistical significance when introducing controls.

²³Rempel, M. & Rodriguez, K. (2020a), Op Cit.

²⁴We replicated a coding methodology described in Rempel, M. & Rodriguez, K. (2020b). *Projecting the Impact of New York's Amended Bail Reform on the Pretrial Jail Population: A Technical Supplement*. New York, NY: Center for Court Innovation. Available at: <https://www.courtinnovation.org/sites/>

default/files/media/documents/2020-05/bail_reform_projections_technical_supplement_5.4.2020.pdf.

²⁵See Rempel, M. & Rodriguez, K. (2020b), Op Cit.

²⁶Fox, A. & Koppel, S. (2019), Op Cit.

²⁷Our data limitations are described in Rempel, M. & Rodriguez, K. (2020b). Of further interest, the bench card that may be found in Rodriguez, K. (2020), Op Cit. provides a comprehensive, yet brief, cheat sheet on all bail-eligible charges and circumstances after the passage of the amendments.

²⁸Our data precluded identifying whether an alleged burglary in the second degree took place in a "living area," which makes it eligible for bail under the amendments. Although prior research indicated that most of the applicable burglary in the second degree, second subsection cases *would* be classified as in a "living area" (same citation as the prior endnote), some would not; therefore, some of the cases in the denominator in Exhibit 2.6 should have been omitted, because the amendments did not make them bail-eligible.

²⁹Rempel, M., Fisler, C., Kerodal, A., Spadafore, J., Lambson, S. H., & Berg, R. (2016). *Felony Case Processing in New York City: Findings and Recommendations*. Submitted to the NYC Mayor's Office of Criminal Justice and the New York State Unified Court System. New York, NY: Center for Court Innovation. Available at: https://www.courtinnovation.org/sites/default/files/media/document/2021/Felony_Case_Processing_NYC_2016.pdf.

³⁰See Rempel, M. & Rodriguez, K. (2020a), Op Cit.

³¹Rodriguez, K. & Rempel, M. (2019). *Bail Reform and Domestic Violence: Implications of New York's New Pretrial Statute*. New York, NY: Center for Court Innovation. Available at: <https://www.courtinnovation.org/publications/NYS-bail-DV>.

³²Please contact the authors for more information on this track or for an FAQ document describing the domestic violence intervention, *Tactics and Choices: Frequently Asked Questions*.

³³New language added to the state's bail statute reads, "In all such cases except where another type of securing order is shown to be required by law, the court shall release the principal pending trial on the principal's own recognizance, unless it is demonstrated and the court makes an individualized determination that the principal poses a risk of flight to avoid prosecution. If such a finding is made, the court must select the least restrictive alternative and condition or conditions that will reasonably assure the principal's return to court. The court shall explain its choice of release, release with conditions, bail or remand on the record or in writing (CPL 510.10[1])."

³⁴Lippman, J., et al. (2017), Op Cit.

³⁵See, e.g., Koppel, S., Topel, D., & Wang, R. (2020). *Annual Report: 2018*. New York, NY:

New York City Criminal Justice Agency. Available at: <https://www.nycja.org/publications/cja-annual-report-2018>.

³⁶Personal communication with Marie VanNostrand at Luminosity, co-lead investigator on the development of the Release Assessment.

³⁷Luminosity & the University of Chicago's Crime Lab New York. (2020). *Updating the New York City Criminal Justice Agency Release Assessment: Maintaining High Court Appearance Rates, Reducing Unnecessary Pretrial Detention, and Reducing Disparity*. Available at: <https://www.nycja.org/assets/Updating-the-NYC-Criminal-Justice-Agency-Release-Assessment-Final-Report-June-2020.pdf>.

³⁸Luminosity & the University of Chicago's Crime Lab New York. (2020), Op Cit.

³⁹Peterson, R. R. (2020), Op Cit.

⁴⁰Luminosity & the University of Chicago's Crime Lab New York. (2020), Op Cit. The report does not directly provide the statistical likelihood that violent felony defendants recommended for ROR will appear at all court dates. However, the current authors performed this calculation, based on the statistical likelihood associated with each individual point score falling within the ROR recommendation category, along with the percent of cases projected to receive that score. (This underlying information was contained in the above validation report.)

⁴¹See, e.g., Picard, S., Watkins, M., Rempel, M., & Kerodal, A. (2019). *Beyond the Algorithm Pretrial Reform, Risk Assessment, and Racial Fairness*. New York, NY: Center for Court Innovation. Available at: https://www.courtinnovation.org/sites/default/files/media/document/2019/Beyond_The_Algorithm.pdf.

⁴²Peterson, R. R. (2020), Op Cit.

⁴³Peterson, R. R. (2020), Op Cit.

⁴⁴Technically, our data was for first arraignment on any date as far back as 2014.

⁴⁵Our data was complete through December 31, 2020. Therefore, in computing bail payment within 30 days, cases were only included whose arraignment was December 1, 2020 or earlier to allow for at least 30 days of tracking. For the same reasons, in computing bail payment within 90 days, cases were only included whose arraignment date was October 2, 2020 or later. In addition, cases were excluded from these analyses if they were disposed prior to the given date. (For example, any case disposed within 20 days would not be included in the 30-day analysis.)

⁴⁶The four other forms of bail and frequency with which judges set them in 2020 were: (1) partially secured appearance bond (0.0%), unsecured appearance bond (0.2%), secured surety bond (0.1%), and secured appearance bond (0.1%). "Surety" bonds are paid by a friend, family member, or other contact of the defendant, while the defendant personally pays "appearance" bonds.

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⁴⁷After controlling for the charge, both the cash and partially secured bond amount had a significant correlation ($p < .001$) with payment at arraignment (-.110 and -.134, respectively) and within 30 days (-.175 and -.183, respectively).

⁴⁸Mehta, A. V. (2020). "A Broken Bond: How New York Judges are Getting Around Bail Reform." *New York Focus*. Available at: <https://www.nysfocus.com/2020/10/12/new-york-judges-are-rolling-back-bail-reform/>.

⁴⁹For example, past New York City-based research pointing to significant racial disparities in pretrial decision-making include Arnold, D., Dobbie, W. S., & Hull, P. (2020). *Racial Discrimination in Bail Decisions*. NBER Working Paper 26999. Available at: https://www.nber.org/system/files/working_papers/w26999/w26999.pdf; Leslie, E. & Pope, N. G. (2017), Op Cit.; Lippman, et al. (2017), Op Cit.; and Picard et al. (2019), Op Cit.

⁵⁰Results for only three racial/ethnic groups are shown. In 2019 and 2020 combined, 0.1% of cases continued at arraignment and, also, of cases facing bail or remand involved people who were Asian or from additional groups.

⁵¹Logistic regressions predicting judges' decisions to order bail or remand included the following independent variables: race/ethnicity; charge severity; borough; defendant's age; defendant's gender; bail-eligible charge under the original reforms (yes/no); bail-eligible charge under the amended reforms (yes/no); current and open case with a charge a judge might deem to involve harm to person or property (based on methods described in Rempel & Rodriguez [2020b], Op Cit.); domestic violence case; Class A felony top charge; top charge of: (a) assault in the first or second degree; (b) robbery in the first or second degree; (c) burglary in the first degree; (d) burglary in the second degree; (e) firearms/weapons; (f) homicide; or (g) sex offense; any prior arrest; any prior felony arrest; any prior conviction; any warrant issued

on a prior case; current open case; and current open violent felony case. The prior arrest measures are, in fact, arraignment-based and track history from 2014 onward.

⁵²Arnold et al. (2020), Op Cit.

⁵³Although there were fluctuations in disparities within 2020, there was no clearly interpretable pattern, and low sample sizes for white defendants within periods made a comparison of years more reliable.

⁵⁴Fox, A. & Koppel, S. (2019), Op Cit. Fox, A. & Koppel, S. (2019), Op Cit.

⁵⁵Op Cit.; Lippman, et al. (2017), Op Cit.; Rempel, M., Kerodal, A., Spadafore, J., & Mai, C. (2017). *Jail in New York City: Evidence-Based Opportunities for Reform*. New York, NY: Center for Court Innovation. Available at: <https://www.courtinnovation.org/publications/jail-new-york-city-evidence-based-opportunities-reform>.

⁵⁶Koppel, S. et al. (2020), Op Cit.

⁵⁷Barry-Jester, A. M. (2018). *You've Been Arrested. Will You Get Bail? Can You Pay It? It May All Depend on Your Judge*. FiveThirtyEight. Available at: <https://fivethirtyeight.com/features/youve-been-arrested-will-you-get-bail-can-you-pay-it-it-may-all-depend-on-your-judge/>.

⁵⁸The analyses include judges who made at least 150 release decisions at arraignment within the given timeframe and charge type. Levene's test for equal variances found that variances significantly differed at the $p < .001$ level for nonviolent felonies, misdemeanors, and decisions for all cases combined, regardless of charge severity.

⁵⁹In theory, the new CJA assessment implemented in November 2019 could have contributed to this reduction in variability. However, as our discussion demonstrates, judges continue to not follow the guidance of the CJA assessment tool, especially for violent felonies.

⁶⁰NYC Criminal Justice. (2020), Op Cit.

⁶¹Diamond, S. S., Bowman, L. E., Wong, M., & Patton, M. M. (2010). "Efficiency and Cost:

The Impact of Videoconferenced Hearings on Bail Decisions." *Journal of Criminal Law and Criminology* 100: 3: 869-902. Available at: <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=7365&context=jclc>.

⁶²Bennett, L. & Hamilton, J. (2021), Op Cit.

⁶³Rodriguez, K., et al. (2021), Op Cit.

⁶⁴Mehta, A. (2020), Op Cit.

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