



College of Liberal Arts

Center for Public Safety Initiatives

The Impact of Bail Reform: What the Data Shows

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Introduction

The United States leads the world in total number of people incarcerated, with more than two million prisoners nationwide (World Population Review, 2023). This number is equivalent to roughly 25% of the world's total prison population and leads to an incarceration rate of 629 people per 100,000—one of the highest rates in the world (World Population Review, 2023). Bail practices contribute to our incredibly high rate of incarceration. Those who are presumed innocent but are held in jail on bail or without bail pending trial are more likely to be convicted and incarcerated than similarly situated people who are released because they have the money to post bail (Reaves, 2013). New York State enacted bail reform, effective January 1, 2020, in part to attempt to reduce the historic inequity and the disparate treatment that rich and poor have received in New York's criminal justice system. It is a bedrock principle of our criminal justice system that all citizens arrested by the government are presumed innocent unless and until they are convicted, regardless of financial status. The purpose of bail, particularly in New York, has always been to ensure people return to court, not to preemptively punish people without money who are presumed innocent. Recently many people, in Rochester and across the state, have been calling for rollback of parts of New York State's historic bail reform effort. Before anyone seriously considers advocating for such action, it is imperative to understand what the available data shows about the positive impacts of bail reform. It is also imperative to understand what the data shows about changes to the system as a result of bail reform.

Positive Impacts of Bail Reform

What does the data reveal about the positive impacts of bail reform? An analysis by the Vera

Institute (Kim & Gernon, 2023) documented that from April 2019 to June 2021, New York's jail population was reduced by 25%, with consistent reductions noted in both New York City and the remainder of the state. In addition, the same analysis showed that the reductions were driven by significantly fewer people being held pre-trial on misdemeanor and violation charges, and also non-violent felony charges. Interestingly, the Vera report notes that in the same time period since bail reform was implemented there has been a significant increase in the number of people held pending trial on violent felony charges. If we are going to incarcerate people who are presumed innocent pending trial, it would make sense that generally speaking, we would want it to be those charged with committing violent felony offenses and not those charged with misdemeanors and violations. Data from the same analysis indicates that there are about 3000 fewer people across New York State being held in jail pretrial on any given day since bail reform. This equates to approximately 1,100,000 fewer days (or nights) spent in jail pending trial by New Yorkers since bail reform. Vera calculated the cost per day to keep someone in local jail in New York (outside of New York City) to be \$225 per day (Harris-Calvin et al., 2022). Using that figure, New York has saved over \$247,000,000 per year as a result of bail reform, almost all savings are by counties which run the local jails. The Vera figure is high, and a much more reasonable figure may be \$69 per day as a marginal savings for every day in jail avoided as documented by DCJS in an October 2013 report, Cost Benefit Analysis for Criminal Justice (using 2011 dollars) (Schabbes, 2013). Using that far more conservative figure, New York has saved an estimated \$76 million dollars per year as a result of fewer people in jails due to bail reform. Data from the NYS Department of Criminal Justice Services (2022) indicates that in Monroe County, the pre-trial detained jail population was down an average of about 90 inmates per day in 2020

and 2021 (post-bail reform) compared to 2019 (pre-bail reform). This would mean 32,000 fewer days in jail per year, a savings of over 2 million dollars per year in Monroe County alone using the conservative \$69 per day marginal cost. These are very conservative estimates and do not include the savings in lost wages and other costs, both financial and human, associated with jailing thousands of New Yorkers every year who are presumed innocent awaiting trial on violations, misdemeanors, and non-violent felonies.

Before seriously entertaining any call to roll back the changes to our bail laws that have had such positive impacts, responsible leaders should demand proof that the changes to the bail laws have caused crime increases (as opposed to a correlation) and that the changes being advocated will address those causes. To date, every legitimate analysis of the data has made no such case for change. It is important to acknowledge that there have been, and will continue to be, people who are arrested and released only to commit another crime after release. This happened before bail reform, it has happened since bail reform, and will continue to happen in the future, unless we are prepared to say that we will hold every person arrested for a crime and presumed innocent, regardless of the amount of money they have, in jail pending the disposition of their case, a position that is neither practical or advisable.

The first analysis published is a report from the NYC Mayor's Office of Criminal Justice (2021) in January 2021 looking at early data from New York City. The report notes that of those arrested and released between January and September of 2020, the overwhelming majority, about 95%, were not rearrested while awaiting trial, and that there was very little difference in rearrests rates before and after bail reform. In January of 2022, the Office of

Court Administration and the NYS Division of Criminal Justice Services released the first batch of statewide data on the impacts of bail reform, as required by the 2019 legislation. An analysis of that data conducted by the Albany Times Union looking at 100,000 cases where people were released as required by the new bail statute, found that nearly all (98%) were not rearrested for a violent felony offense while awaiting trial or disposition of their charges (Solomon, 2022). In March of 2022 the New York City Comptroller's Office released a report entitled New York City Bail Trends since 2019 (NYC Comptroller, 2022). In the report the Comptroller documented that arrest rates for those released pending trial remained nearly identical pre- and post-bail reform, with 95% to 96% of those released staying arrest free pending trial or disposition of their case, and 99% not being arrested for a violent felony offense. In September of 2021 DCJS released a Supplemental Pre-Trial Release Data Summary Analysis looking at 2019 to 2021 data. That report notes that the percentage of people released who failed to appear for future court dates in New York City actually declined from 15% in 2019 (pre-bail reform) to 9% in 2021 (post-bail reform) while failure to appear rates outside New York City remained relatively unchanged before and after bail reform. The report demonstrated that re-arrest rates remained relatively stable with slight increases post-bail reform (NYS DCJS, 2022). In December of 2022, *FWD.us* released a report regarding its analysis of data pertaining to bail reform in New York. Their analysis compared cohorts from 2019 and 2021 who were facing charges for which release was mandatory under the bail reform statute. This would be the group for which one would expect to find the largest differences, pre- and post-bail reform. The analysis revealed that 81% of the group from 2019 that was released was not rearrested, compared with 80.9% of the group from 2021. In 2019 (pre-bail reform), 3.1% of the group released was rearrested for a violent felony offense,

compared to 3.6% in 2021 (post-bail reform) (Hamilton et al., 2022). This analysis confirms the findings of prior studies finding very little change in re-arrest activity before and after bail reform. In March of this year the Data Collaborative for Justice at John Jay School of Criminal Justice released a report outlining the findings of a study of the impact of bail reform in New York City (they are working on a similar analysis for the rest of the state that is due out later this year) using quasi-experimental design methods to analyze data on the impacts of bail reform. The analysis found that the bail reform cohort, those for whom release was mandatory pursuant to bail reform, had lower two-year rearrest rates when looking at rearrest for any offense, a felony offense, or a violent felony offense, than the same cohort pre-bail reform. Bail reform actually reduced recidivism with this group. When they analyzed rearrest rates for those who are still bail eligible after bail reform, they found that the release of more bail-eligible people neither decreased nor increased recidivism. The analysis also found that the 2020 amendments to the bail reform statutes appear to have had positive impacts on recidivism rates (Ropac & Rempel, 2023).

It is important to acknowledge the possibility of localized impacts of bail reform. It is plausible that the impact of bail reform varies across jurisdictions and interacts with other local factors. Looking at statewide data alone may wash away some of those local differences. But even if that were the case, those local effect sizes likely only explain a small amount of variation in crime in those localities.

People are coming back to court more often after bail reform than before. Fewer people are spending time in jail after bail reform, resulting in significant savings. No analysis to date has documented a causal link between bail reform and increased recidivism, and some have

documented reduced recidivism rates tied to bail reform. To the extent crime rates have changed, there has been no analysis or study showing bail reform caused any increases. This was the subject of a prior CPSI working paper 2022-07, Gun Violence and Bail Reform - Correlation or Causation (Green, 2022). Noting these findings, why is public support for bail reform decreasing? The most likely answer appears in the *FWD.us* report cited above, namely a relentless public relations campaign to link bail reform and crime, with no evidentiary support. An analysis by Bloomberg in July of 2022 noted there were 800 media stories per month regarding crime starting in 2022, compared with an average of 132 before 2022. The same report documents how the increased articles about crime and shootings are wildly disproportionate to actual changes in shooting activity (Akinnibi & Wahid, 2022). *FWD.us* did their own analysis of media mentions of crime and bail reform in the same story and again found a massive increase in such stories that was hugely disproportionate to any actual increases in crime. They found over 1650 stories linking bail reform and crime in spite of the studies mentioned above that refute such a connection. (Hamilton et al., 2022) The same analysis also noted the link between the timing of the media coverage and the public support for bail reform. When bail reform was passed in April of 2019, 55% of New Yorkers polled supported the reform. On January 1, 2020, when bail reform took effect, and before any impact could be felt, public support for bail reform dropped by 18%.

It is also worth commenting on the current proposal to roll back bail reform that is being discussed, namely eliminating language requiring judges to set the least restrictive means available to ensure someone returns to court. One of the purposes of bail reform was to try and eliminate the inherent unfairness involved in using the amount of money a person has to impact whether they are held or released while their case is pending. Under our pre-bail

reform system, a person with money who commits the same crime and has the same background as someone who does not have money gets out of jail pending the disposition of a case, while the person without money sits in jail. And as noted above, that means the person with less money has a greater chance of being convicted and going to prison than the person with money. If a judge determines on a bail eligible offense that release to a pre-trial release support organization is sufficient to ensure someone returns to court to answer charges, current law would require a judge to release the person. Eliminating the least restrictive means language would allow that judge to set \$1000 bail instead of pre-trial release, even though the judge believed pre-trial release was sufficient to ensure the person's return to court. This would increase the unfairness of the system for those without money. Likewise, if the least restrictive means available to ensure that the person returns to court is \$1,000 bail, current law requires the judge to set no more than \$1,000 bail. If the least restrictive means language is eliminated, the judge in that same case would be free to set \$2,000 bail even though \$1,000 was in her judgement sufficient to ensure the person would return to court. While disparate treatment is inherent in any system that uses monetary bail, the least restrictive means language is an attempt to limit the disparity and ensure that those without means, often racial minorities in our society, have a similar experience in the criminal justice system as those with money. Eliminating this language will have the impact of increasing the disparate treatment of the poor in the criminal justice system.

Conclusion

The bail reform statute has already been amended twice. The first change expanded the cases eligible for bail and expanded the factors judges can consider when deciding bail,

giving judges significant additional discretion from the original statute. The original justification offered for amending or rolling back bail reform was rising gun violence rates. We are seeing gun violence in 2023 starting to return to pre-bail reform and pre-pandemic levels. In the GIVE jurisdictions (urban centers outside NYC) in New York State in the first two months of 2023, shooting incidents involving injury were down 37% from the same time period in 2022 and were 14% below the five-year average for the same time frame (NYS DCJS, 2023). In Rochester, there were 64 shooting victims in the first quarter of 2022 and 34 in the first quarter of 2023, only two more than the 32 recorded in the first quarter of 2020 (Canne, 2023). Before any additional changes to the statute are made that could jeopardize the positive impacts of bail reform noted above and increase the disparate treatment of the poor that has been historically engrained in the criminal justice system, we should demand that those advocating for such changes produce data and analysis showing that bail reform has caused systematic negative impacts and that the changes would address those impacts.

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The Center for Public Safety Initiatives is a unique collaboration between RIT's **Department of Criminal Justice**, the City of Rochester, and the criminal justice agencies of Greater Rochester including the Rochester Police Department and Monroe County Crime Lab. Its purpose is to contribute to criminal justice strategy through research, policy analysis and evaluation. Its educational goals include training graduate and undergraduate students in strategic planning and policy analysis.

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