

# Empire State of Incarceration

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Lauren Jones,  
Quinn Hood, &  
Elliot Connors

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February 18  
2021



**Bail reform.****COVID-19.****Bail reform rollbacks.**

In any other year, any one of these events would have upended jails and incarceration in New York State. In 2020, they happened back to back.

Bail reform ushered in a period of considerable decarceration across the Empire State, and the number of people in jail dropped even further as authorities responded to the COVID-19 pandemic. The state's nearly 40 percent decline in jail populations proved that New York can reverse its decades-long investment in mass incarceration.

But bail reform was only the first step—one that New York should protect and expand. Next, the legislature must reach beyond jails to New York's prisons—which incarcerate over 30,000 people—by implementing parole and sentencing reforms. As advocates, impacted New Yorkers, and elected officials push forward in the fight against New York's reliance on jails and prisons, Vera will update this Empire State of Incarceration with relevant tools and data.

# How 2020 Reshaped Jails in New York

For decades, thousands of New Yorkers, primarily people of color, were held in jail pretrial—sometimes for years—simply because they could not afford to pay bail.<sup>1</sup> In April 2019, New York passed watershed bail reform legislation mandating pretrial release without requiring bail for most people accused of violations, misdemeanors, and nonviolent felonies.<sup>2</sup> As a result of the reforms, the number of people held in New York jails fell 31 percent—from more than 21,000 on any given day in March 2019, the month before bail reform passed, to an average of just over 14,550 in February 2020, after counties made changes based on the bail reform law. That means that on any given day, more than 6,000 New Yorkers—who in the past would have been held in jail—were free to return to their families, their homes, and their jobs while awaiting their day in court.

Then New York became an epicenter of the COVID-19 pandemic, which transformed the way the criminal legal system operated. Beginning in March, crime rates and arrests dropped steeply.<sup>3</sup> Court hearings became virtual. Courts cancelled jury trials.<sup>4</sup> And, understanding that jails could become hotspots driving outbreaks of COVID-19 both inside and outside the facilities, some elected officials, judges, prosecutors, and defense attorneys began working to reduce jail populations. From March to April 2020, the jail population fell another 17 percent—New York’s single largest one-month drop on record. The numbers continued to fall—to just more than 11,000 in July 2020, the lowest reported average daily jail population on record.

Under New York law, charges range in severity from violations to misdemeanors to felonies. Violations are noncriminal dispositions under the law, and a conviction on a violation-level charge does not result in a permanent criminal record. Typical violation offenses include disorderly conduct and driving while impaired. Misdemeanors are criminal dispositions that carry a maximum penalty of one year in jail. A conviction on a misdemeanor does result in a permanent criminal record, although not all misdemeanors receive a sentence of jail. Felonies are criminal dispositions that carry a range of sanctions—from a conditional discharge to probation to prison. The eligible sanction for a felony conviction is determined by state law, and prison time is mandatory for certain felonies.

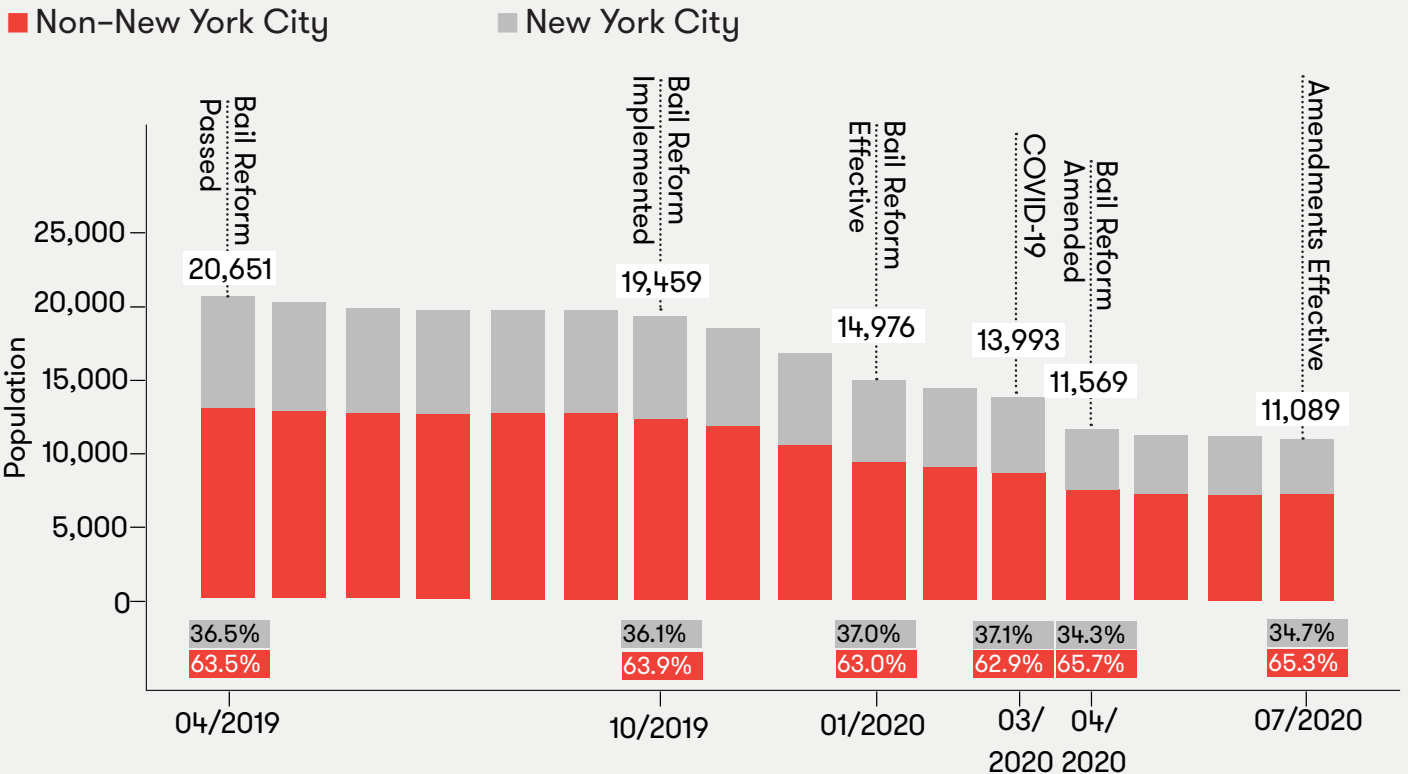
Source: N.Y. Penal Law §§ 70.15 (misdemeanors and violations) and 70.00-70.10 (felonies).

Meanwhile, opponents of bail reform worked hard to incite a backlash against the law, wrongly blaming it for new crimes and engaging in fearmongering about a broader danger to the public.<sup>5</sup> Faced with such opposition, in April 2020—even as the coronavirus pandemic raged in New York—the legislature amended the bail law. The changes, which went into effect in July 2020, allowed judges to set bail on 25 additional charges—including some misdemeanors and nonviolent felonies—and under other limited circumstances.<sup>6</sup>

Over the summer, as bail reform rollbacks went into effect and the crisis of the first wave of COVID-19 began to wane, jail numbers across the state began to climb. By November, when the state’s second wave of COVID-19 hit in force, the number of people incarcerated in New York on any given day surpassed 13,000—almost as high as it was in March, when New York first began responding to the pandemic.

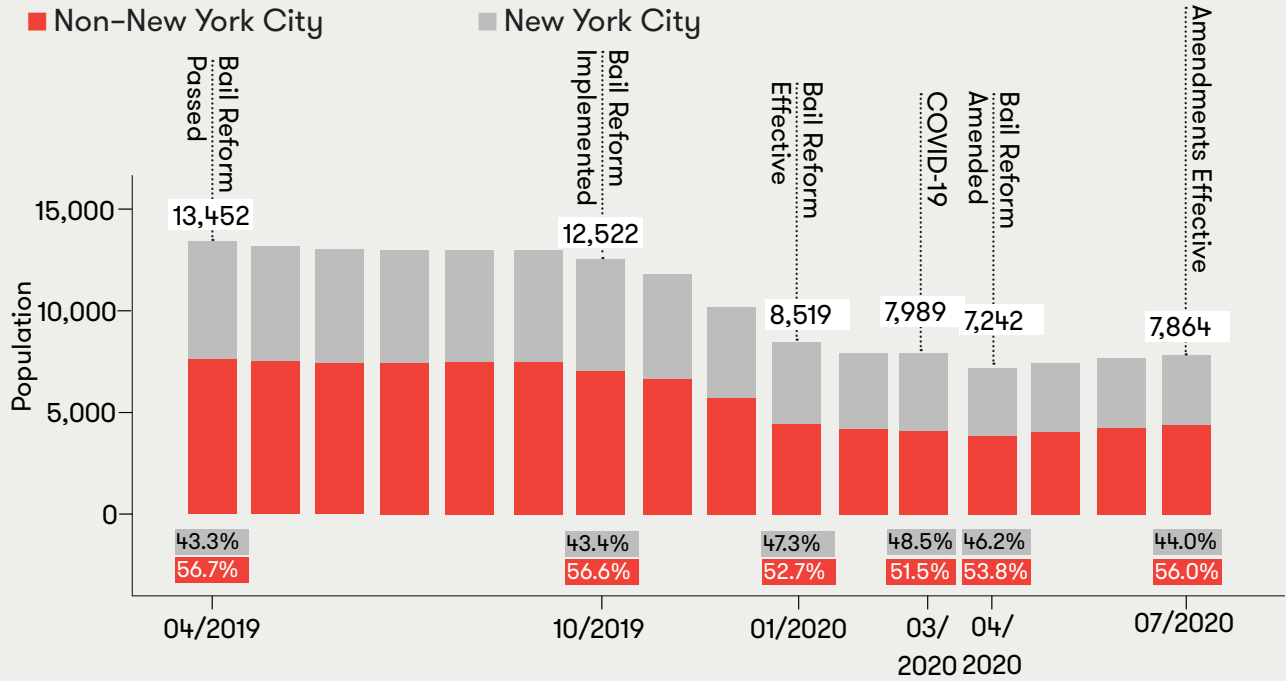
The bail reform amendment, for example, made second-degree burglary, vehicular manslaughter, and a number of other specific charges that had been ineligible for bail under the original reforms eligible for bail once more. It also allowed judges to set bail in some cases that would otherwise be ineligible for bail—including some misdemeanors—if, for example, the person was on probation at the time of arrest or if the person was on pretrial release for a case involving a specific victim when he was arrested for another case involving a specific victim. In practice, that means that judges can set bail when a person who is on pretrial release for petit larceny from a store (which falls under the definition of a “specific victim”) is arrested for another low-level theft.

### New York State daily jail population



Source: Monthly Jail Population Report, NYS Division of Criminal Justice Service

## New York State daily pretrial population



Source: Monthly Jail Population Report, NYS Division of Criminal Justice Service



### ▼ ABOUT VERA'S METHODOLOGY

Using information from the New York Department of Criminal Justice Statistics and data received through Freedom of Information Law (FOIL) requests sent to every county in New York State, Vera analyzed how bail reform and the COVID-19 pandemic changed who is in jail across New York State and why.

Vera researchers analyzed monthly jail population data published by the New York Division of Criminal Justice Services from January 2018 to June 2020, as well as 48 county-level jail admission and release datasets obtained from (a) FOIL requests (41 counties); (b) data-sharing agreements with sheriff's departments (two counties); and (c) the NYC Open Data site (five counties). Three counties were excluded from charge, bail, and custody status analyses because they did not provide complete data. See a more in-depth description of the methodology at [www.vera.org/downloads/publications/the-impact-of-new-york-bail-reform-on-state-wide-jail-populations.pdf](http://www.vera.org/downloads/publications/the-impact-of-new-york-bail-reform-on-state-wide-jail-populations.pdf)

# Bail Reform

ADMINISTRATION OF JUSTICE IS THE FIRMEST PILLAR OF GOOD

**THE NEW YORK STATE COURT SYSTEM  
INDEFINITELY HALTED - NOVEMBER 14,  
2020**

People wearing face masks walk past the United States Court House. (Photo by John Nacion / SOPA Images / Sipa USA) (Sipa via AP Images)

# Jail numbers fell by more than one-third in a matter of months

**B**efore bail reform went into effect, New York jail populations had been declining for several years. But they began to fall sharply in the fall of 2019, as counties started to implement the new bail law before its January 1, 2020, effective date. From March 2019, before bail reform passed, to February 2020—just before the COVID-19 pandemic hit—the number of people held in jails across New York fell by almost one-third, decreasing by more than 6,500 people incarcerated in jails on any given night.

How did things previously work in New York—and how did bail reform change the status quo?

## The state of the state before reform

On any given day in 2018, New York jails held more than 15,000 people in pretrial detention—two out of every three incarcerated people. The median bail amount preventing people’s release varied widely—from \$1,000 on a misdemeanor in New York City to \$5,000 for the same charge in Buffalo.<sup>7</sup> Regardless of the bail amount, the result was that thousands of people, predominantly people of color, were jailed every day because they could not afford to buy their freedom. Sometimes, counties held people in jail awaiting trial for years.

It’s worth noting that in New York, the only legal purpose of bail is to ensure that a person returns to court. Unlike in other states, judges in New York may not consider whether a person poses a risk to public safety.<sup>8</sup> Rather, in deciding whether to set bail—or release someone with or without supervision—judges must set the least restrictive conditions to ensure that the person returns to court. If they do set bail, they must consider the person’s ability to pay.

As a result, people awaiting trial filled jails across New York State, many accused—but not convicted—of low-level offenses, like petit larceny (shoplifting), low-level drug possession, and driving with a suspended license.

### ▼ PRETRIAL RELEASE PROGRAMS

Commonly called “release under supervision,” “pretrial release,” or “supervised release,” these programs provide judges with a middle ground between setting bail and releasing someone on their own recognizance. In larger cities, such as Rochester and New York City, nonprofits ran these monitoring programs meant to ensure that people returned to court.<sup>9</sup> In smaller and more rural courts, probation departments ran “release under supervision” programs, commonly referred to as RUS. Some counties extended no supervised release options at all.

Before bail reform, 31 counties offered RUS services at arraignment, allowing judges to release people under pretrial supervision. In 24 other counties, probation departments conducted interview assessments in local jails only after judges set bail and made release recommendations at subsequent court appearances, meaning that some people spent time in jail even if they would eventually be released under supervision. And seven counties had no pretrial services at all.<sup>10</sup>

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**Before bail reform, two out of every three people in New York jails were held pretrial.**



## Key elements of bail reform

Bail reform, passed in April 2019 and effective January 2020, mandated pretrial release for most violations, misdemeanors, and nonviolent felonies without bail obligations (except in limited cases involving sex offenses, domestic violence, or a few other specific charges listed in the law). The law required judges to set the least restrictive conditions necessary to ensure that people returned to court for future hearings. The rationale is that some people are inclined to attend subsequent court dates without criminal legal system intervention, but others may need release conditions in the form of supports and incentives, like supervision and bail, to return to court. The new bail law required all counties to offer supervised release at arraignments when deemed necessary by a judge. And in those cases for which judges could set bail (mostly violent felonies), the law required them to consider a person's ability to pay.

## Bail reform had an immediate—and dramatic—impact on jail populations across New York State

Statewide, the number of people held in jail—including those held simply because they could not afford to pay bail—plummeted as the reforms went into effect. From March 2019, the month before the legislature passed bail reform and counties began implementation, to February 2020, the month after its effective date, the number of people held pretrial in New York fell by more than 40 percent.

A significant drop in the number of people detained on unaffordable bail drove most of that change. Vera's analysis of data from sampled counties outside of New York City shows that in March 2019, one out of every two people who entered jails were held on bail they could not pay. In February 2020, after bail reform became effective, one in four people were detained on unaffordable bail.

Beyond transforming the overall number of people held pretrial, bail reform changed the severity of charges on which people were held.

### ▼ HOW BAIL REFORM VARIED ACROSS THE STATE

Bail reform had a bigger impact in some counties than others. In Broome and Monroe Counties, for example, pretrial admissions dropped by more than 80 percent from March 2019 to February 2020, whereas in Erie and Albany Counties, pretrial admissions dropped by 70 percent. The smaller counties of St. Lawrence and Cortland each experienced roughly 50 percent decreases.

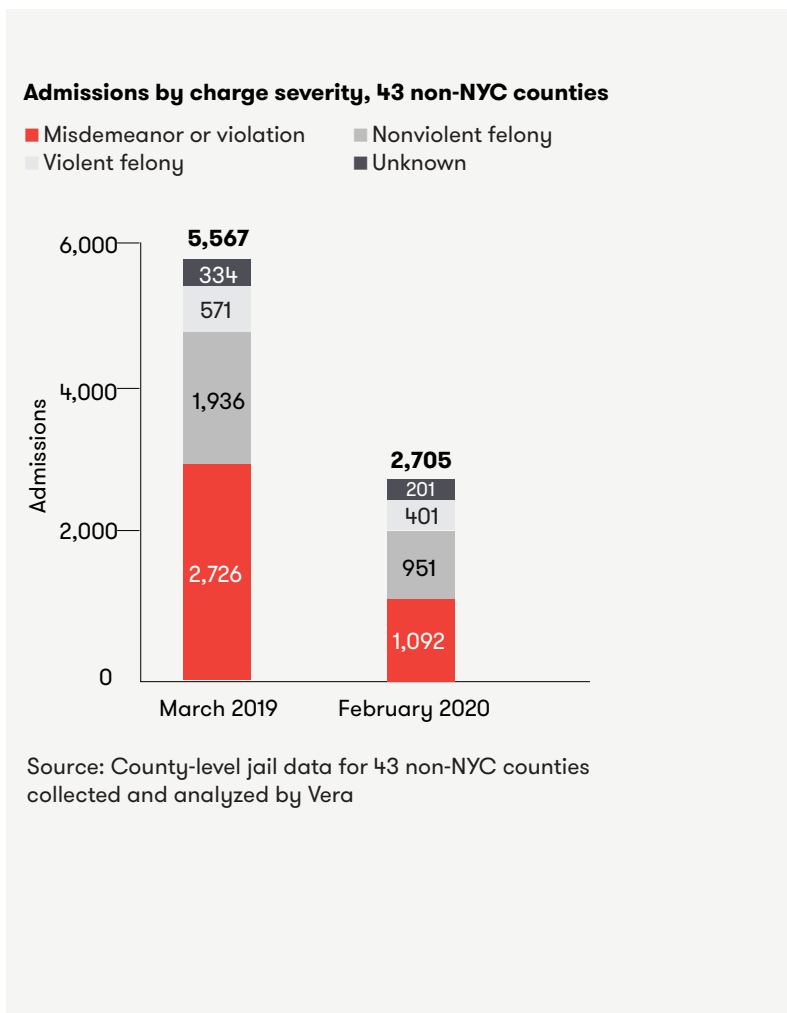
#### Pretrial admissions by county

County	Mar. 2019	Feb. 2020	Difference over time
Albany	138	41	-70.29%
Broome	97	19	-80.41%
Cortland	23	11	-52.17%
Erie	611	184	-69.89%
Monroe	297	47	-84.18%
St. Lawrence	39	19	-51.28%

## The number of people held pretrial for misdemeanors and nonviolent felonies fell sharply

In the past, New York counties filled jails with people charged with low-level offenses. Vera’s analysis of the March 2019 FOIL data shows that the most common offense underlying jail admissions outside of New York City was driving while intoxicated, followed by petit larceny (shoplifting). Low-level drug possession was the third largest driver of jail admissions.

Bail reform changed that. In the counties outside of New York City that Vera analyzed, the number of people admitted to jail charged with violations or misdemeanors fell by 60 percent from March 2019 to February 2020. At the same time, the number of people admitted to jail who had been charged with nonviolent felonies dropped by more than half.



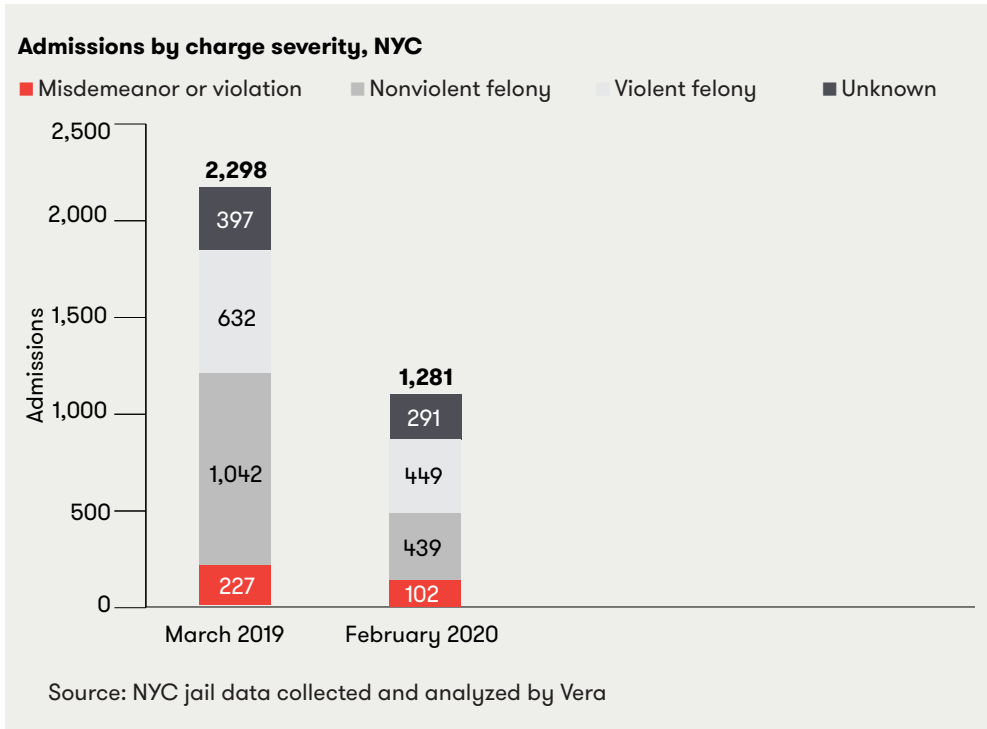
### ▼ HOW BAIL REFORM’S IMPACT VARIED ACROSS THE STATE

The impact of reform was not uniform across the state. In Erie and Albany Counties, for example, jail admissions for misdemeanors and violations fell by two-thirds from March 2019 to February 2020. In Monroe and Broome Counties, the admissions for misdemeanors and violations fell by about half.

New York City infrequently detained people on bail for violations, misdemeanors, or nonviolent felonies even before bail reform. After November 2019, when New York City started implementing the new law, fewer than one in 10 people admitted to jail pretrial were held on low-level charges.

**Misdemeanor and violation admissions by county**

County	Mar. 2019	Feb. 2020	Difference over time
Albany	63	21	66.7%
Broome	155	82	47.1%
Cortland	26	25	3.8%
Erie	477	166	65.2%
Monroe	310	153	50.6%
St. Lawrence	24	14	41.7%



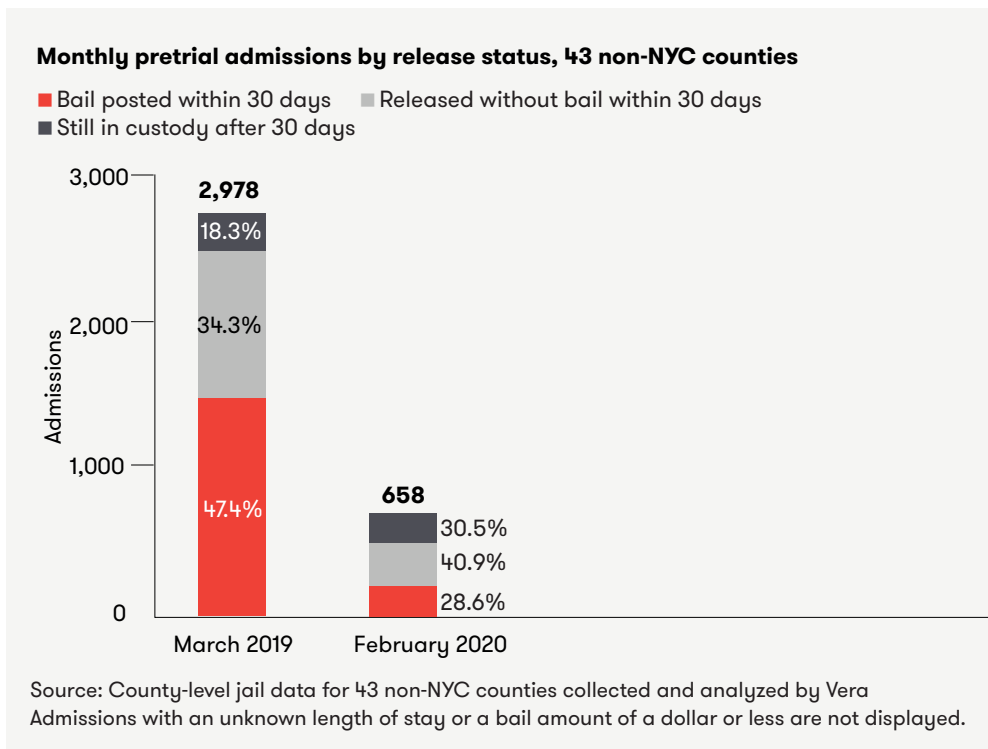
## For those people who remained in jail, bail became less affordable

In the counties that Vera sampled outside New York City, the number of people held on bail of less than \$1,000 declined nearly 85 percent from March 2019 to February 2020. Those people who were held on bail tended to be held on higher bail amounts. At least in part, that was because counties held fewer people on low-level charges.

## After bail reform, people languished in jail longer

Higher bail amounts meant that people took longer to scrape together the money to pay. In the counties Vera sampled outside of New York City, in March 2019, roughly 70 percent of people who posted bail posted it in one day or less. That number dropped to 55 percent in February 2020.

In March 2019, nearly half of people detained in counties outside of New York City were able to pay bail within 30 days. But by February 2020, less than 30 percent could make bail within a month.



## Bail reform required police to issue desk appearance tickets more often instead of making custodial arrests

At the moment of arrest, one of two things can happen: police can make a custodial arrest, or they can issue a desk appearance ticket (DAT). If the officer makes a custodial arrest, the person remains in police custody for up to 24 hours until arraignment. If the officer issues a desk appearance ticket, however, police release the person from custody—usually within a few hours—with instructions to appear in court for arraignment at a later date.<sup>11</sup> A DAT allows people to stay in the community between arrest and arraignment, free to return to their families, homes, and jobs.

In the past, police had wide discretion either to issue a DAT or make a custodial arrest. Statewide, police issued DATs in about three out of 10 cases, mostly for misdemeanors.<sup>12</sup> Whether someone received a DAT or was detained overnight, however, varied by location.

Bail reform changed that. Beginning in January 2020, police were required to issue DATs for all nonfelonies and some low-level felonies, with a few exceptions. Data is not yet available to show how often police issued DATs after bail reform went into effect.

# COVID-19



PHOTO BY STEVE SANCHEZ/PACIFIC PRESS. CREDIT:  
PACIFIC PRESS AGENCY/ALAMY LIVE NEW

Queens residents, part of a community group, demand that Queens District Attorney Melinda Katz take immediate action to stop the spread of COVID-19 in jail and decarcerate.

New York's first confirmed case of COVID-19 surfaced on February 29, and the state quickly became an epicenter of the pandemic.<sup>13</sup> A week later, Governor Cuomo declared a state of emergency and within the month issued a statewide stay-at-home order, closing all nonessential businesses and forbidding all nonessential gatherings.<sup>14</sup>

Court operations transformed, too. Arraignments and other criminal court hearings became virtual. Juries and grand juries were suspended. Criminal cases—even those in which jury trials had already begun—were paused.<sup>15</sup>

Meanwhile, jails—where social distancing is impossible, overcrowding is constant, and cleaning supplies are often scarce—became hotspots for the coronavirus. On March 18, Rikers Island, New York City's most notorious jail, confirmed its first case of COVID-19.<sup>16</sup> By the end of the month, 137 staff members and 167 people incarcerated in New York jails, including Rikers, had tested positive.<sup>17</sup> At that point, the infection rate on Rikers Island was seven times higher than in the rest of the city.<sup>18</sup>

# In the face of the pandemic, New York's jail population fell by almost one-quarter in four months

From March to April, the average daily jail population across New York fell 17 percent—the largest drop on record in a single month. Overall, from February to June 2020, jail populations statewide fell by almost one-quarter.<sup>19</sup>

But New York counties actually lagged behind those in other states. An analysis of jails across the country found that the average daily jail population in a typical U.S. jail fell by more than 30 percent from March to mid-May.<sup>20</sup> In New York, however, the average daily jail population in counties outside of New York City dropped by only 16 percent from March to May 2020. And the impact was not uniform.

From March to April 2020, only four counties in New York—Jefferson, Orleans, Oswego, and Schoharie—reduced their jail populations by more than 25 percent. Hamilton and Steuben Counties did not reduce their jail populations at all.

# As New York State went into lockdown, arrests fell sharply

Arrests had declined across New York State for several years, but they fell sharply after the COVID-19 pandemic hit. In March 2020, as Governor Cuomo first declared a state of emergency and then issued a stay-at-home order, cancelling all nonessential gatherings and shuttering all nonessential workplaces, law enforcement officers in 17 counties outside of New York City made 53 percent fewer arrests for misdemeanors and 35 percent fewer arrests for felonies than in March 2019.<sup>21</sup>

## Fewer arrests led to fewer people entering the pipeline leading to jail

As arrests fell and judges—realizing that a jail stay could be tantamount to a COVID-19 death sentence—began setting bail less frequently for those who were arrested, the number of people entering jail dropped steeply. In April, the counties Vera sampled outside of New York City admitted roughly half as many people to jail as they did in March.

## Policy and practice changes during the pandemic changed the makeup of New York's jails

People jailed during the first wave of the pandemic tended to be those charged with more serious offenses. In the counties sampled outside of New York City, nearly 40 percent of people entering jail in February 2020 had been charged with a violation or misdemeanor. By June 2020, that number decreased to around 30 percent. Conversely, the proportion of people admitted on violent felony charges increased from 15 percent in February 2020 to more than 25 percent in June 2020. In New York City, the proportion of people admitted on violent felony charges increased from 35 percent in February 2020 to 55 percent in June 2020.

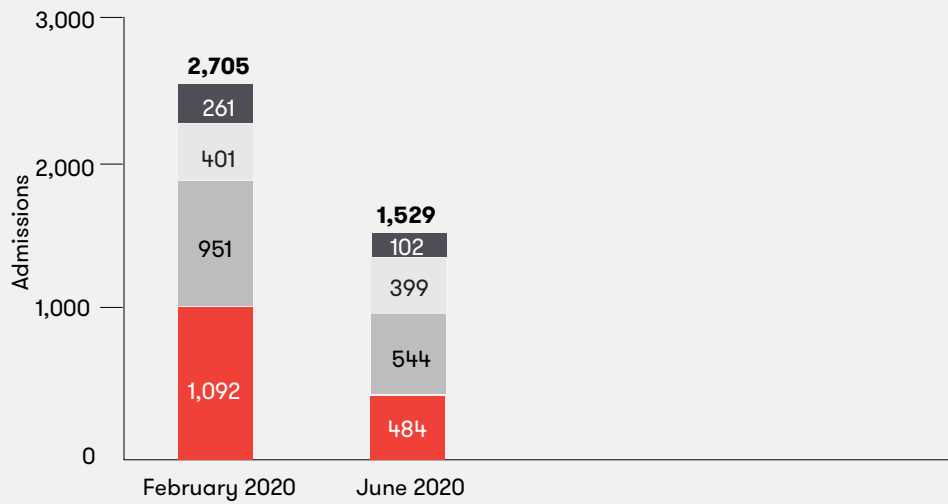
### ▼ READ MORE ABOUT HOW THE IMPACT VARIED ACROSS THE STATE

The response to COVID-19 varied significantly across the state. Officials took the biggest steps to reduce jail populations in New York City, where infection rates were the highest both inside the jails and in the community. The Brooklyn District Attorney, for example, announced on March 17 that his office would halt prosecuting low-level, nonviolent cases.<sup>22</sup> Judges across the city began setting bail less frequently. But counties outside New York City implemented less aggressive measures, resulting in June 2020 jail admission rates 3.6 times higher than in New York City, compared to 2.8 times higher in February 2020.



**Admissions by charge severity, 43 non-NYC counties**

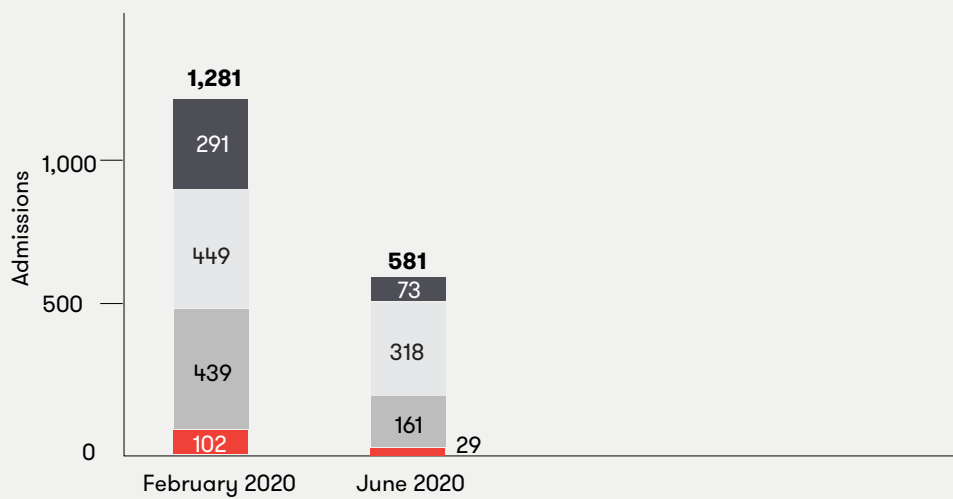
■ Misdemeanor or violation ■ Nonviolent felony ■ Violent felony ■ Unknown



Source: County-level jail data for 43 non-NYC counties collected and analyzed by Vera

**Admissions by charge severity, NYC**

■ Misdemeanor or violation ■ Nonviolent felony ■ Violent felony ■ Unknown



Source: NYC jail data collected and analyzed by Vera

## COVID-19 had the greatest impact on the number of people serving jail sentences

The pandemic's greatest impact on jail populations in New York State was on people serving jail sentences. From March to June 2020, jails' sentenced populations fell more than 60 percent, resulting partially from jury and grand jury suspensions and halted criminal case dockets. That meant fewer people were being sentenced to short jail stays. But the decrease in people serving jail sentences was also a result of policy decisions to release people earlier than pre-COVID-19. At the end of March 2020, for example, New York City announced plans to release hundreds of people, which they did over the next several months, to try to slow the outbreak at Rikers.<sup>23</sup>

In New York City, although the number of people held pretrial fell by more than 10 percent from February to June, because the number of people serving jail sentences plummeted so much, in June, nearly nine out of 10 people in New York City jails were there pretrial. Outside the city, six out of 10 people were detained pretrial.

## New York jailed fewer people on technical parole violations

In February 2020, there were more than 1,800 people held in jails in New York because of alleged technical parole violations—non-criminal behavior that nevertheless violates the rules of parole, such as a positive drug test or a failure to check in with a parole officer. On March 27, in an effort to contain COVID-19 outbreaks in jails, Governor Cuomo issued an order to release 1,100 people held on technical parole violations.<sup>24</sup> But the number of people held on technical parole violations fell by less than 600 from March to April. The numbers continued to fall over a period of months—to a low of just over 750 people held on technical violations in August—before beginning to rise once more to more than 860 people held on technical parole violations on any given day in December 2020.

## Although jail populations fell, counties held people in jail much longer than pre-COVID-19

As courts suspended grand juries and jury trials, people that remained were detained much longer than before the pandemic, endangering their constitutional right to a speedy trial. That also meant that, as counties began to decarcerate to protect people inside and prevent virus spread outside, those left behind often languished in dangerous jail conditions for months. In the counties Vera sampled outside of New York City, the average length of stay more than doubled, from 52 days in June 2019 to 113 days in June 2020. Meanwhile, in New York City, the average length of stay increased by close to 70 percent—from 102 days in June 2019 to 172 days in June 2020.

## Falling jail populations did not endanger public safety—they saved lives

In total, from March 16 to April 30, New York City released almost 1,500 people to prevent the spread of COVID-19. Data from the Mayor's Office of Criminal Justice shows that people released because of the pandemic were much less likely to be re-arrested than those released as part of the regular course of a case.<sup>25</sup>

During a pandemic, public safety and public health are one and the same. Studies have confirmed that notion. An April 2020 study by the American Civil Liberties Union (ACLU), for example, found that failing to significantly reduce communities' jail populations could lead to 100,000 additional deaths nationwide, both inside and outside correctional facilities.<sup>26</sup> A later study from the University of Chicago found that 16 percent—or more than one in six—of COVID-19 cases in Illinois could be traced back to the Cook County Jail.<sup>27</sup> New York's efforts to release people to stem COVID-19 outbreaks almost certainly saved lives, both inside and outside jails. And the failure to continue releases going forward will surely imperil them.

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**In New York City, the average length of stay increased from 102 days in June 2019 to 172 days in June 2020; outside of New York City, the average length of stay increased from 52 days in June 2019 to 113 days in June 2020.**

# Bail reform and decarceration in response to COVID-19 exacerbated racial disparities

As police made fewer arrests, district attorneys prosecuted fewer cases, judges set bail less frequently, and officials released people from jail, at least one group was too often left behind: Black people. In short, although jail populations fell significantly in the first half of 2020, racial disparities grew. In March 2019, Black people in New York City were 5.3 times more likely to be held in jail than non-Hispanic white people. By February 2020, that disparity had grown to 6.2 times. At the height of the pandemic in April, the disparity expanded further still: Black people in New York City were more than 6.4 times as likely to be incarcerated as their non-Hispanic white neighbors.

The same pattern emerged outside of New York City. In March 2019, before bail reform, Black people outside New York City were 5.2 times more likely to be in jail than non-Hispanic white people. By February 2020, that disparity had grown to 5.5 times. And by June, after COVID-19 policy and practice changes, the disparity had widened further to 6.4 times.

Put simply, as bail setting practices changed and counties moved to release more people to prevent the spread of COVID-19 across the state, Black people were left behind.

## ▼ HOW THE IMPACT OF BAIL REFORM VARIED ACROSS THE STATE

In some counties, the increase in racial disparities after bail reform was even more stark. In Erie County, for example, Black people were 7.7 times more likely to be in jail than non-Hispanic white people in March 2019. In February 2020, however, Black people were 9.3 times more likely to be held in jail than their non-Hispanic white neighbors. Meanwhile, in Broome County the disparity grew from 5.9 to 7.3 times.

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Before bail reform, outside of New York City Black people were 5.2 times as likely to be held in jail as non-Hispanic white people. In February 2020, after bail reform, the disparity grew to 5.5 times. And by June 2020, after the COVID-19 pandemic hit, the disparity grew further still—to 6.4 times.

A man in a dark suit is speaking at a podium with a microphone. He has his right arm raised and is looking towards the left. Behind him, several people are holding a black banner with white text. The word 'HEALTH' is clearly visible on the banner. The setting appears to be a large, ornate room with high ceilings and a circular light fixture hanging from the ceiling.

# Bail Reform Rollbacks and the Waning First Wave of COVID-19

**CINDY SCHULTZ FOR THE NEW YORK TIMES**

The State Capitol has been a popular site for protesters on both sides of the bail reform issue, including Marvin Mayfield, who pressed lawmakers to leave the law alone.

In July 2020, average daily jail populations hit a historic low. On any given day, roughly 11,000 people were held in jails across the state—less than half as many as before bail reform and the COVID-19 pandemic. But then jail numbers started to rise. By November, when the second wave of COVID-19 began to hit, there were more than 13,000 people held in jails across New York State on any given day—almost as many as in March, when the pandemic began.

Explaining this climb is difficult in real time because two critical things occurred at once: amendments to the bail reform law went into effect at the beginning of July and, as the crisis of the first wave of COVID-19 began to wane, in-person court operations slowly began to resume. Communities seemed to forget that overcrowded jails could—and almost inevitably would—become COVID-19 hotspots, endangering those inside and the broader community. It's important to understand both effects.



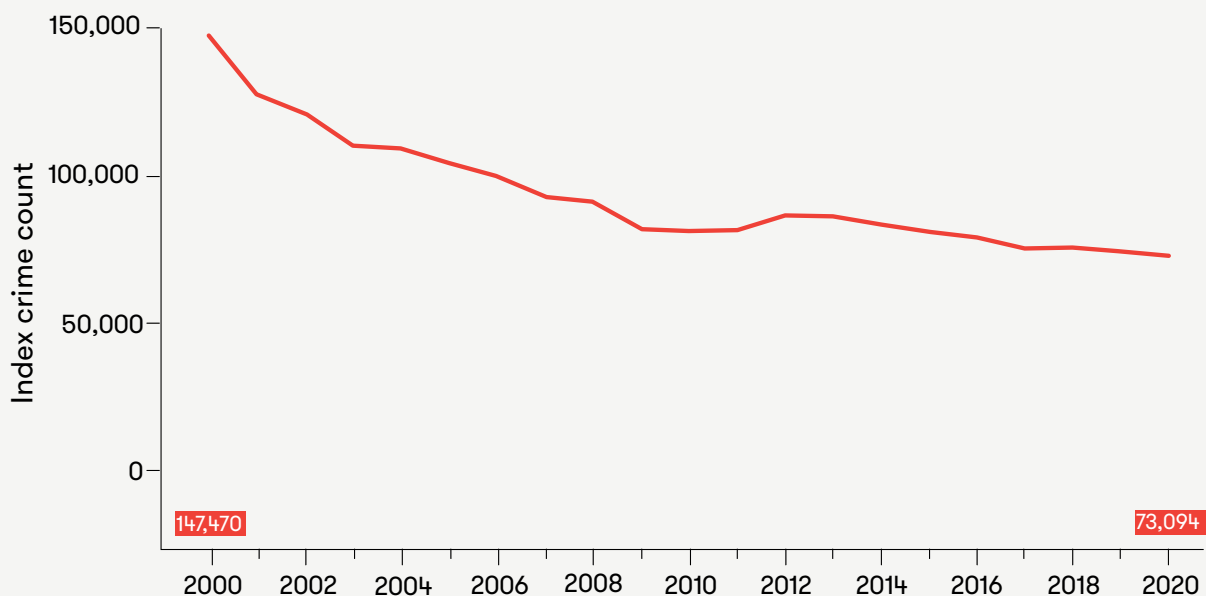
# Under pressure from bail reform critics, the legislature quietly rolled back parts of bail reform in April 2020

Critics of bail reform worked hard to discredit the bail reform law, falsely claiming that people released without bail were committing crimes and warning of a broader danger to the public.<sup>28</sup>

The data, however, told another story. In New York City, for example, there were fewer index crimes—the eight major crimes the FBI uses to define crime rates—in the first half of 2020 than during the same time in 2019, when crime was already at a historic low.

Nevertheless, the fearmongering worked. At the beginning of April, as the coronavirus pandemic raged, the legislature rolled back parts of bail reform. The amendments, which took effect in July 2020, allowed judges to set bail on 25 additional charges and in wider contexts, including instances in which a person was charged with a new crime while on probation.<sup>29</sup>

**New York City index crimes in the first six months of each year**



Source: NYPD CompStat 2.0

Major crimes include murder, rape, robbery, burglary, grand larceny of a motor vehicle, and felony assault.

# As the bail reform rollbacks took effect, courts slowly returned to in-person hearings—at least for a time

As the initial wave of the pandemic began to wane, court operations gradually returned to a semblance of normalcy. By the end of May, some court operations were starting in person in counties outside of New York City, and the city followed suit in June. Grand juries convened again in August, jury trials slowly started to resume in September, and the first criminal jury trial in New York City since the beginning of the pandemic began on October 26.<sup>30</sup>

As COVID-19 cases began to spike again in New York, however, courts reversed course. Despite numerous steps to prevent the spread of COVID-19 in courtrooms—including erecting plexiglass dividers with special filters, requiring witnesses to wear face shields, and separating jurors—in November alone, more than three dozen people who appeared in criminal courts throughout New York City tested positive for COVID-19.<sup>31</sup> The Chief Administrative Judge announced that, as of November 16, no prospective juries or grand juries would convene until further notice. Bench trials—trials in which a judge, not a jury, delivers verdicts—went virtual again.<sup>32</sup>

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**In total, New York City managed to conduct only nine criminal trials in nine months. By contrast, during those same months in 2019 there were more than 800 trials in the city.**

# How are bail reform rollbacks and changing COVID-19 policies impacting jails in New York?

The brief answer is that it is still too early to tell. Most data in New York—including the data that is publicly available and data that Vera collects through Freedom of Information Law (FOIL) requests—lags months or even years behind. What we do know now is that from July to December, jail populations across New York State climbed more than 20 percent.

An increase in the number of people held pretrial is largely responsible for the overall increase. From July to December 2020, the pretrial population grew more than one quarter. Future data will illuminate the true consequences of bail reform rollbacks as it becomes available.

## What does all of this mean for the future of incarceration in the Empire State?

In short: it's complicated. New York is once again at a crossroads. It has the opportunity now to build on bail reform and other policy changes that dramatically reduced jail incarceration rates, keeping New Yorkers—both inside and outside correctional facilities—safer. It can take bold steps to reduce not just jail populations, but the racial disparities that have plagued jails—and the criminal legal system more broadly—since the founding of this country. It can reimagine community safety, diverting money from half-empty jails to education, housing assistance, and employment services. New York has an opportunity to lead the nation in criminal legal reforms.

# Solutions

NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES  
AND COMMUNITY SUPERVISION

Queensboro Correctional  
Facility

• ANTHONY J. ANNUCCI •  
ACTING COMMISSIONER

• DENNIS BRESLIN •  
Superintendent

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ABSOLUTELY  
**NO**  
CELL  
PHONES

FREE  
THE  
NOV

JUAN  
Mosquero

Nov. 27, 1961 -  
March 30, 2020

(PHOTO BY LEV RADIN/PACIFIC PRESS)

CREDIT: PACIFIC PRESS AGENCY/  
ALAMY LIVE NEWS

New York, United States. April 14, 2020.  
Activists protest against incarceration  
of people in jails and prisons amid  
COVID-19 pandemic and death  
of Juan Mosquero at Queensboro  
Correctional Facility.

# Continue to shrink the footprint of New York's jails

## **Release more people to save lives—both inside and outside jails—in the face of COVID-19.**

Beginning in March 2020, realizing that public health and public safety were one and the same during the pandemic, counties took significant steps to reduce jail populations. Between March and April, New York experienced the single biggest one-month drop in jail populations on record. But by the summer, counties seemed to forget those lessons, and jail numbers began to creep back up to prepandemic rates. As COVID-19 once again rages in New York, counties need to take bold and decisive steps to reduce jail populations, including reassessing cases in which people are held on bail and releasing people serving jail sentences. Absent that, jails in New York could be responsible for many more COVID-19 cases and deaths.

## **Stop requesting bail and set bail infrequently, if at all.**

Some recently elected prosecutors across the country—from San Francisco to Philadelphia—have stopped requesting cash bail on all or most cases.<sup>33</sup> A University of North Carolina study of the Philadelphia District Attorney's decision to stop requesting bail for people charged with one of 25 misdemeanor and felony offenses found that the policy shift decreased the number of people who spent at least one night in jail and did not increase failures to appear for court or re-arrests of people out on bail.<sup>34</sup> District attorneys in New York should follow suit, and judges—regardless of whether district attorneys choose to request bail—should decline to set bail.

New York’s bail reform rollbacks allow—but do not require—judges to set bail in cases previously ineligible for bail. The first few months of bail reform implementation showed that releasing more people pretrial made communities no less safe. And now that every county has pretrial services, judges have the option to release people with extra supports to ensure they return to court. It is important for judges to release people—and under the least restrictive conditions—so that they can return to their homes and their families, free to work with their lawyers and fight their cases from within the community.

### **Eliminate incarceration for technical parole violations.**

Before COVID-19, nearly 1,800 people were held in jail every day as a result of technical parole violations. New York now has the opportunity to lead the nation in eliminating incarceration as a response to technical parole violations. Instead, New York should institute positive incentives, such as shortening parole with compliance credits and recognizing people for meeting milestones. Research shows that community-based responses to failure to comply with supervision requirements, such as connecting people to substance use treatment, are more effective in changing people’s behavior and promoting success on parole than incarceration.<sup>35</sup> Eliminating incarceration as a sanction for technical parole violations, therefore, would not only shrink jail populations, but would also help people succeed in their transition home, building safer communities in the long term. See how eliminating incarceration for technical parole violations would impact New York prison populations.

### **Change jail staffing requirements so that communities can spend fewer tax dollars on jails and invest instead in things that help to build healthy and safe communities.**

Average daily jail populations have fallen substantially in New York, but outdated laws and regulations mean that the New York State Commission of Correction requires counties to staff jails as

though they held their maximum capacity, not their average daily jail population. Ultimately, jails could be half empty but staffed—and financed—as if they were full. Vera’s January 2021 analysis found that if New York changed those regulations and permitted counties to set staffing commensurate with their jail populations, counties outside of New York City could collectively save more than \$638 million. Counties could invest that money in education, employment and housing assistance, and behavioral health, which studies show are more effective at reducing crime and building safe communities than incarceration. To learn more, visit [The Cost of Incarceration in New York State](#).

### **Review jail rosters and assess why people charged with bail-ineligible offenses are still being held.**

New York’s bail reform law mandated release before trial for most people charged with violations, misdemeanors, and nonviolent felonies. At least in theory, no one should have remained in jail pretrial on those charges after January 2020. But that was not the case. Across the state, people continued to be held pretrial on charges ineligible for bail in 2020. One possible explanation is the presence of other underlying circumstances that may explain at least some of the detention, including holds for probation violations, but it is impossible to tell for sure with the available data. Judges, district attorneys, and defense attorneys in each county should review jail rosters on a regular basis to ensure that people are not being held on bail for bail-ineligible charges.



# Improve data reporting to diagnose problems and help pinpoint solutions

**Require comprehensive data reporting about race, which will allow New York to identify and target the most egregious drivers of racial disparities in jails—and throughout the criminal legal system.**

Although both bail reform and policy changes during the onset of the COVID-19 pandemic led to substantial reductions in jail populations, racial disparities increased during both. In this moment, New York must take bold and decisive action to eliminate racial disparities in its criminal legal system. The first step to fixing the problem, however, is understanding its roots and scope. New York requires very little data reporting, particularly in real time, about many parts of the criminal legal system, including information about race and ethnicity. The legislature should pass a bill requiring comprehensive, timely, and publicly available data reporting broken down by race and ethnicity about everything from arrests and bail setting to sentencing and parole. Only after understanding which parts of the system create the largest racial disparities—and what is driving such different outcomes for Black people than their white neighbors and is likely contributing to disparities for Latinx people as well—will New York be able to address these problems effectively.

**Create a publicly available statewide database tracking COVID-19 cases and deaths in jails, including among those who are incarcerated and those who work in the jails.**

The New York State Department of Corrections and Community Supervision provides regular updates about COVID-19 cases in New York prisons, but no existing database tracks COVID-19 outbreaks in jails.<sup>36</sup> To address outbreaks properly—and prevent unnecessary deaths inside jails and in communities—the public needs to see, in real time, what is happening in jails around the state.

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*For interactive incarceration models and county-level fact sheets on jail populations, visit the Empire State of Incarceration data clearinghouse at [www.vera.org/empire-state-of-incarceration-2021#data-clearinghouse](http://www.vera.org/empire-state-of-incarceration-2021#data-clearinghouse).*

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