

Assessing Potential Impacts of 2020 Bail Reforms in New York City

DATA COLLABORATIVE for JUSTICE
STRENGTH IN NUMBERS
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Olive Lu, M.S., Quinn Hood B.A., Erica Bond, J.D., Maya Tellman, B.A., & Preeti Chauhan, Ph.D.

On April 1, 2019, New York State passed extensive legislative reforms (“2020 Criminal Justice Reforms”) aimed at transforming the criminal justice system and its impact on New Yorkers. Among the most significant changes are those to the laws governing bail in New York State (“2020 Bail Reforms”),¹ which will go into effect on January 1, 2020. These reforms will, among other things, restrict the charges eligible for bail, mandate that individuals be released on recognizance (ROR)² unless more restrictive conditions are needed to assure return to court, and require courts to consider an individual’s ability to pay bail. In order to provide the public with a sense of what can be expected once the 2020 Bail Reforms go into effect, this brief examines how the reforms would have impacted the number and proportion of cases resulting in pretrial release without bail in the past. Forthcoming research and reports from Data Collaborative for Justice (DCJ) at John Jay College will address other aspects of the 2020 Criminal Justice Reforms and will include a report estimating the potential impacts of the expanded use of desk appearance tickets (DATs)³ in lieu of custodial arrests as well as reports on actual impacts of the reforms post-implementation in January 2020.

KEY FINDINGS

DCJ conducted a retrospective analysis to determine how the 2020 Bail Reforms would have impacted pretrial release outcomes for prior years in New York City for felonies, misdemeanors, and violations. Specifically, DCJ assessed: (1) how 2018 pretrial release outcomes would have differed (across New York City and by borough) had the 2020 Bail Reforms been in effect that year, and (2) how pretrial release outcomes between 2005 and 2018 would have differed had the 2020 bail reforms been in effect during that 13-year period.

(1) How would 2018 pretrial release outcomes differ had the 2020 Bail Reforms been in place?

Across NYC

- **Had the 2020 reforms been in place in 2018, the courts would have been required to order some form of release without bail in an additional 20,349 cases compared to the number actually released without bail in 2018. The cumulative amount of bail set in these 20,349 cases was nearly \$200 million.⁴**
 - » In 2018, 105,161 cases resulted in pretrial release without bail (76.0% of the cases continued beyond arraignment⁵), the courts set bail in 31,609 cases (22.8% of the cases continued beyond arraignment), and in 1,617 cases the courts remanded the charged individual to jail (1.2% of the cases continued beyond arraignment).
 - » Had the 2020 reforms been in place in 2018, release without bail would have been required in 125,510 cases (90.7% of the cases continued beyond arraignment), courts would have been permitted to set bail in 11,260 cases (8.1% of the cases continued beyond arraignment). This assumes that the courts still remanded 1.2% of cases.

By Borough

- The impact of the 2020 Bail Reforms would not have been uniform across boroughs because of differences in the proportion of continued cases and charge type.
 - » The 2020 Bail Reforms would have had the most impact on cases in Manhattan – 91.3% of cases would likely have resulted in release without bail as compared to the 71.9% of cases where release without bail was actually ordered in 2018.
 - » In contrast, the 2020 Bail Reforms would have had less of an impact on cases in Brooklyn – an estimated 89.8% of cases would have resulted in release without bail as compared to the 78.7% of cases where release without bail was actually ordered in 2018.
- In 2018, the cumulative amount of bail set in cases that would no longer be eligible for bail in 2020 was \$86,408,750 in Manhattan, \$50,224,400 in Queens, \$33,616,350 in Brooklyn, \$12,484,950 in the Bronx, and \$10,130,950 in Staten Island.⁶

(2) How would pretrial release outcomes differ had the 2020 Bail Reforms been in place between 2005 and 2018?

- The courts would have been required to release individuals without bail in an additional 555,715 cases where bail was actually imposed between 2005 and 2018. (See Appendix)

Overview of 2020 Bail Reforms

Effective January 1, 2020, courts will no longer be permitted to set money bail for most people charged with misdemeanors,⁷ non-violent felonies,⁸ and certain violent felony robbery and violent felony burglary charges in the second degree;⁹ instead, the courts will be mandated to order some form of pretrial release. For those cases where pretrial release is not required – mostly violent felony charges – the courts will still be permitted to impose money bail or remand individuals to custody. In all cases (including those that are still eligible for money bail/remand), the courts will be required to release on recognizance, “unless it is demonstrated and the court makes an individualized determination that the principal poses a risk of flight to avoid prosecution.”¹⁰ If the court finds that an individual poses a risk of flight, the court is required to “select the least restrictive alternative and condition or conditions that will reasonably assure the principal’s return to court” and explain the pretrial release determination on the record or in writing.¹¹ For cases no longer eligible for bail, if the court finds on the record or in writing that ROR “will not reasonably assure the principal’s return to court,” the court is required to release the individual under the “least restrictive non-monetary conditions”¹² needed to assure court appearance. For all cases, in determining “the least restrictive kind and degree of control or restriction necessary to secure the principal’s return to court,” the court will be required to consider, based on available information, certain factors, including the current charge(s), the individuals’ criminal conviction record and the individual’s history of flight to avoid criminal prosecution.¹³ For cases where bail will still be permitted, the courts will be required to consider “individual financial circumstances,” “ability to post bail without posing undue hardship,” and “ability to obtain a secured, unsecured, or partially secured bond.”¹⁴ Finally, individuals who are detained pretrial (either because they were remanded or unable to pay bail) will be entitled to apply for a modification of the court’s pretrial release determination (e.g., ROR, release under non-monetary conditions or lower bail) and will be entitled to representation by counsel in this application.¹⁵

ANALYSIS

In order to provide an estimate of the impact that the 2020 Bail Reforms will have on pretrial release decisions, the DCJ analyzed New York City Office of Court Administration (OCA) data. This data set includes cases that originated as custodial arrests as well as cases that were processed as “desk appearance tickets” but excludes the small percentage of cases that originate in Supreme Court (which adjudicates only felony cases) rather than Criminal Court (where all misdemeanors and most felonies are arraigned).¹⁶ DCJ examined how many cases where money bail was set in 2018 would likely have resulted in “release without bail” (ROR or non-monetary conditions ordered) had the 2020 Bail Reforms been in place.

DCJ cautions that the findings contained in this brief should not be interpreted as projections for 2020 and beyond. A variety of factors will influence outcomes including the fact that the number of cases and charge types arraigned in future years will not be the same as those arraigned in prior years. Further, significant additional criminal justice reforms will be implemented simultaneously with the 2020 Bail Reforms.

In addition to a citywide analysis of the impacts of the 2020 Bail Reforms on 2018 cases, DCJ conducted two additional analyses – a borough level analysis and an extended analysis of cases between 2005 and 2018 (See Appendix). The borough-level analysis shows that the impacts of the 2020 Bail Reforms would not have been uniform across the five boroughs of New York City. This is, at least in part, because the boroughs had different numbers and proportions of cases disposed at arraignment (thus changing the universe of cases eligible for bail) and differed with respect to the number and proportion of cases where bail was set. Additionally, boroughs vary in terms of volume and types of cases. The extended analysis of cases between 2005 and 2018 provides a sense of how the 2020 Bail Reforms would have impacted the criminal justice system during a period of higher levels of enforcement. DCJ has documented that enforcement of misdemeanors has declined significantly since 2010.¹⁷

DCJ analyzed the OCA data as follows:

1. Examined five outcomes for all cases at arraignment citywide in 2018: case disposed,¹⁸ release without bail, bail set and posted, bail set and not posted, and remand to jail. (See Figure 1: Arraignment Outcomes in 2018)
2. Isolated just those cases that were continued beyond arraignment in 2018 (i.e., those cases that were not disposed at arraignment through charges being dropped, a plea deal, or Adjournment in Contemplation of Dismissal [ACD]¹⁹) and therefore required a determination as to whether the individual should be released pretrial.
3. Identified the number and percentage of continued cases that resulted in one of the following outcomes in 2018: release without bail, bail set and posted, bail set and not posted, and remand to jail. (See Figure 2: Outcomes for Continued Cases in 2018)
4. Compared the actual number and percent of cases that resulted in release without bail in 2018 to the estimated number and percent of cases that would have resulted in release without bail had the 2020 Bail Reforms been in place. (See Figure 3: Actual Number and Proportion of Release without Bail in 2018 vs. Estimates Applying 2020 Bail Reforms)
5. Repeated steps 1-4 by borough (See Figures 4-6)
6. Repeated steps 1-4 for cases between 2005 and 2018 (See Appendix)

Estimated Impact of 2020 Bail Reforms on 2018 Cases Citywide

Figure 1: Arraignment Outcomes in 2018

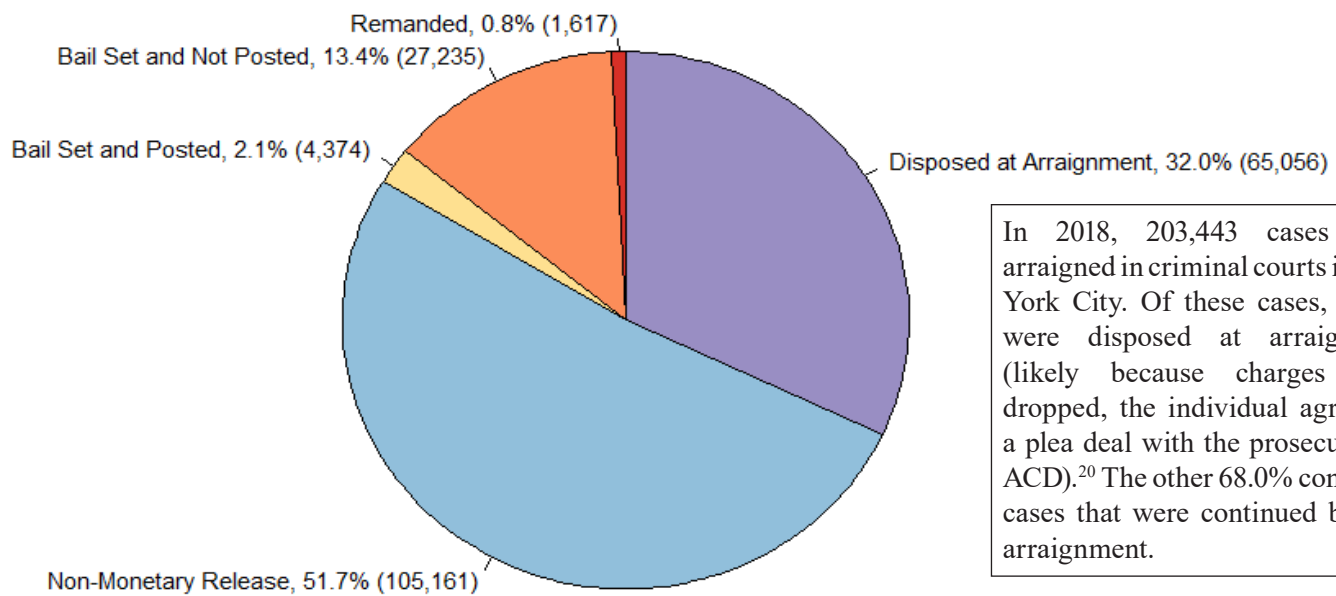
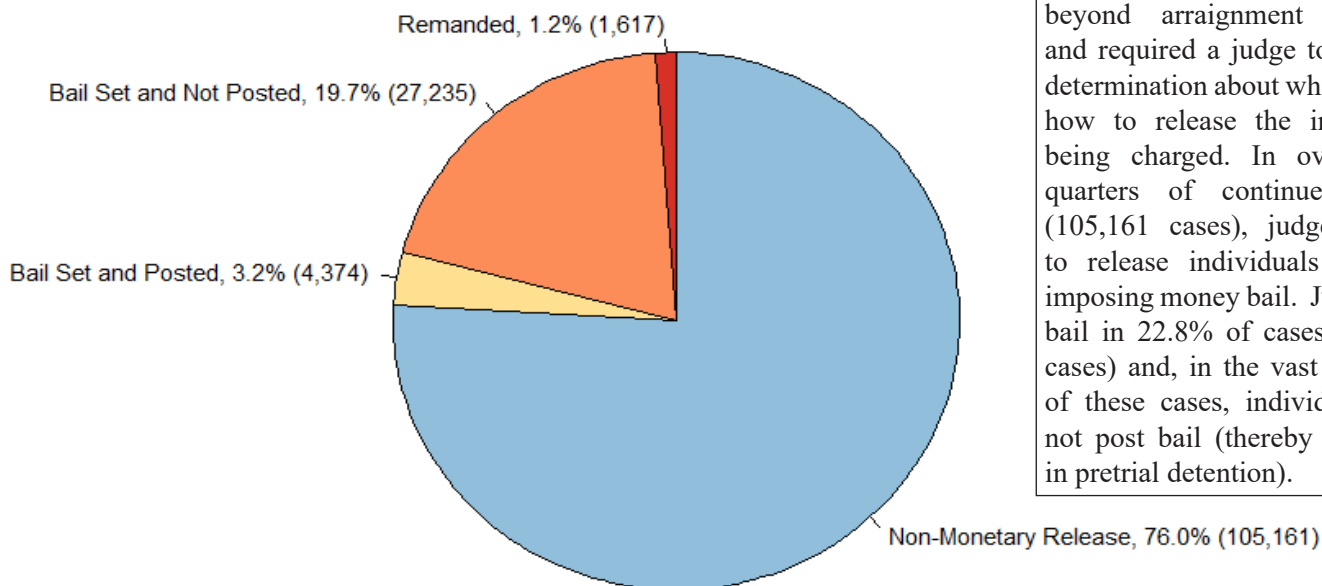
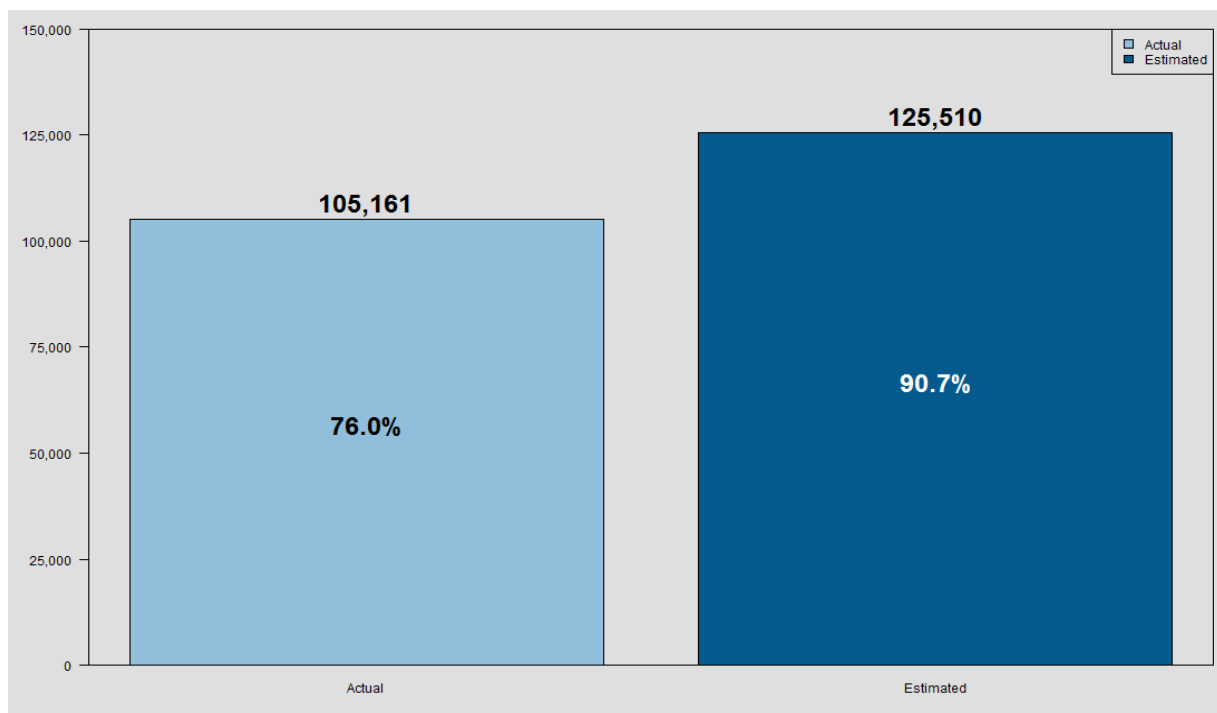


Figure 2: Outcomes for Continued Cases in 2018



In 2018, 138,387 cases continued beyond arraignment (68.0%) and required a judge to make a determination about whether and how to release the individual being charged. In over three quarters of continued cases (105,161 cases), judges opted to release individuals without imposing money bail. Judges set bail in 22.8% of cases (31,609 cases) and, in the vast majority of these cases, individuals did not post bail (thereby resulting in pretrial detention).

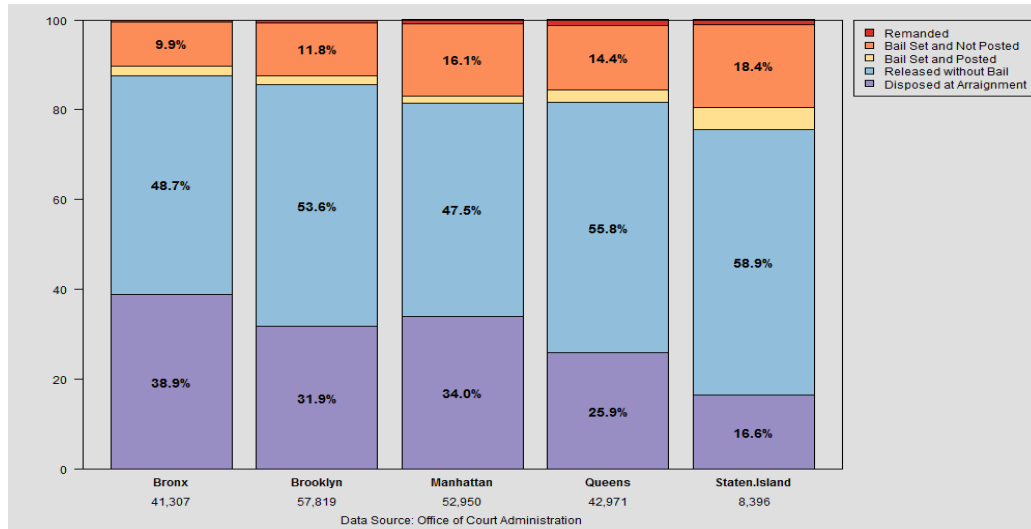
Figure 3: Actual Number and Proportion of Release without Bail in 2018 vs. Estimates Applying 2020 Bail Reforms



Had the 2020 Bail Reforms been in place in 2018, 20,349 of the 31,609 cases where bail was set would have resulted in release without bail. Thus, in 2018, a total of 125,510 cases (90.7%) would have resulted in release without bail assuming rates of remand and bail remained the same. Had the 2020 Bail Reforms been in place in 2018, money bail would have still been permitted in 11,260 cases, assuming rates of remand and bail for eligible cases remained the same.

Estimated Impact of 2020 Bail Reforms on 2018 Cases by Borough

Figure 4: Arraignment Outcomes by Borough in 2018



In 2018, there was variability by borough in terms of the number of cases and outcomes at arraignment.²¹ Some boroughs had a much larger proportion of cases disposed at arraignment thereby shrinking the pool of cases eligible for money bail. Figure 4 shows arraignment outcomes by borough. Brooklyn, which had the greatest number of cases (57,819), disposed 31.9% of its cases at arraignment. Bronx disposed 38.9% of its cases at arraignment while Staten Island disposed 16.6% of its cases.

Figure 5: Outcomes for Continued Cases by Borough in 2018

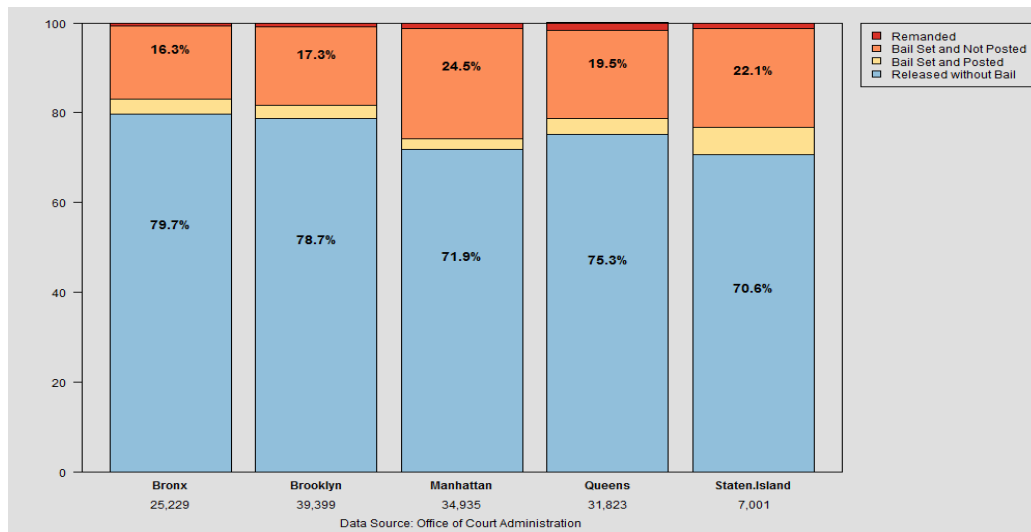


Figure 5 shows release outcomes for cases that continued beyond arraignment. The boroughs varied with respect to the number and proportion of continued cases where release without bail was imposed, bail was set or the individual being charged was remanded to jail. For example, of continued cases, Staten Island had the largest proportion (28.1%) where bail was set, whereas Bronx had the lowest (19.6%) proportion of cases.

Figure 6: Actual and Estimated Number of Cases with a Release without Bail by Borough in 2018

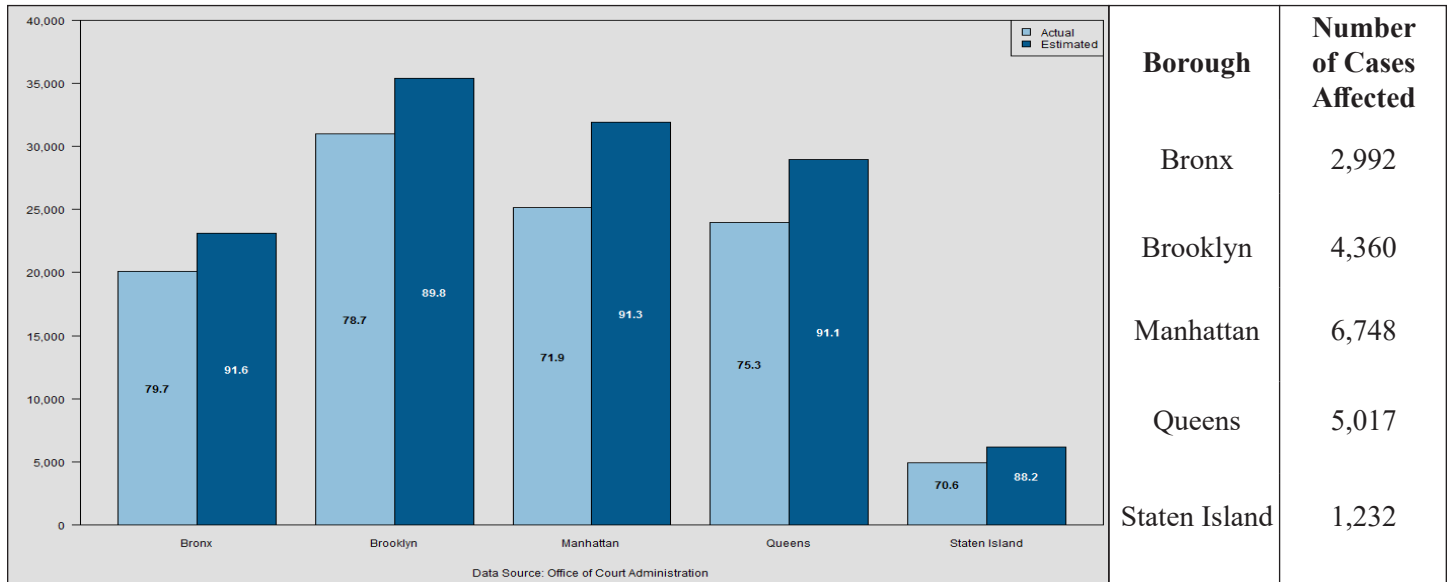


Figure 6 shows the number of actual releases as well as estimated releases in 2018. Even though Staten Island had the largest proportion of cases with bail set, Manhattan would have been the most impacted by 2020 Bail Reforms due to the volume and types of cases. Had the 2020 Bail Reforms been in place in 2019, an additional 19.4% of Manhattan’s cases would have resulted in release without bail compared to 11.1% in Brooklyn. In terms of volume, this translates to an additional 6,748 cases for Manhattan and 4,360 cases for Brooklyn.

CONCLUSION

Researchers, practitioners, and policymakers should closely track the impact of the 2020 Bail Reforms to ensure they are achieving the intended goals. Continuous, empirical assessment following implementation of the reforms can help guard against unintended consequences. For example, the law's emphasis on non-monetary conditions and alternative forms of supervision (such as electronic monitoring) could influence judges to impose conditions or supervision that might subject an individual to a greater risk of failure when they might otherwise have posted bail and simply returned to court. As another example, the new law may not significantly reduce the number of cases where low-income people are detained pretrial due to their inability to pay bail if the courts do not have a means for meaningfully assessing financial hardship. As New York moves forward with criminal justice reform, it is imperative that we continue to closely track and measure the impacts of these reforms to ensure that they are driving fairness in our system of criminal justice and safety in communities across the State.

The **Data Collaborative for Justice (DCJ)** at John Jay College of Criminal Justice houses a group of research initiatives that raise important questions and share critical research about the criminal justice system and its role in creating safe, just and equitable communities. DCJ conducts data analysis and research on enforcement in the community, the adjudication of cases in the courts, and the use of confinement in jails and prisons. DCJ's work has informed policy reforms, facilitated partnerships between researchers and government agencies across the country, spurred new scholarly research on lower-level enforcement, and been cited extensively in the press.

For more information about the Data Collaborative for Justice please go to: www.datacollaborativeforjustice.org

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Questions for Future Research

The analyses contained in this brief provide context for understanding the potential impacts of the bail reforms that will go into effect at the beginning of 2020. There are additional empirical questions about the reforms that are worthy of study, including:

1. How will judges assess an individual's ability to pay bail in those cases where bail is still permitted and how will this influence the number and proportion of cases where bail is set as well as the amount of bail set?
2. Will judges set bail more frequently in cases where the legislation specifically permits it and thus, to some extent, offset the expected reductions in the number of cases where money bail is set?
3. Will case outcomes including dispositions and sentences change as a result of more people being released without bail?
4. Given that more people will be released pending disposition of their case, rather than detained pretrial due to failure to pay bail, will court appearance rates be impacted?
5. How will the 2020 Bail Reforms impact jail populations in New York City and around the State?²²

DCJ is grateful to the following individuals and organizations for their thoughtful guidance and feedback on this brief: Chief Administrative Judge Lawrence Marks, Justin Barry, Karen Kane, and Carolyn Cadoret at the Office of Court Administration; Mike Rempel at the Center for Court Innovation; Nitin Savur at the District Attorney of New York; Aubrey Fox and Richard Peterson at the New York City Criminal Justice Agency; and Lucy Lang at the Institute for Innovation in Prosecution.

Endnotes

- 1 S.1509C, 2019 Reg. Session (NY, 2019)
- 2 Release on recognizance (ROR) means that an individual “. . . promise[s] to return for future dates without posting any bail.” New York State Unified Court System (n.d.). Retrieved from: <https://www.nycourts.gov/courthelp/Criminal/arraignments.shtml>
- 3 New York’s Criminal Procedure Law defines a desk appearance ticket (DAT) as “a written notice issued and subscribed by a police officer or other public servant. . . directing a designated person to appear in a designated local criminal court at a designated future time in connection with his alleged commission of a designated offense” (NY CLS CPL § 150.10. Appearance ticket; definition, form and content). Unlike a custodial arrest, which usually involved detainment of the arrested individual for up to 24 hours before arraignment, an individual who receives a DAT is generally released from a local precinct within several hours of being arrested and directed to appear for arraignment in several weeks or months. The 2020 Criminal Justice Reforms alter the laws governing DATs such that, starting in January 2020, police will be required to issue DATs for all crimes except for A, B, C, D, and certain E felonies (e.g. sex crimes and domestic violence cases) or when certain conditions are met (e.g., individual has open warrants, has failed to appear in the last two years, identity cannot be verified, an order of protection may be issued, individual’s driver license may be suspended or revoked) See NY CLS CPL § 150.20. Appearance ticket; when and by whom issuable [Effective January 1, 2020].
- 4 A total of \$192,865,400 in bail was set for the 20,349 cases in 2018 that would no longer be eligible for bail in 2020. The amounts ranged from \$100 to ~\$15 million. All bail calculations in this brief exclude \$1 bail amounts which typically represent holds rather than actual bail set.
- 5 Arraignment is the stage of a criminal proceeding when an individual first appears in court so that a prosecutor may formally file charges and a judge can determine what restrictions (e.g., pretrial detention) or requirements (e.g., the payment of bond), if any, are necessary to assure that individual will return to court to conclude their case. The Mayor’s Office of Criminal Justice provides a helpful overview of the criminal case process (“Anatomy of the Criminal Justice System”): https://criminaljustice.cityofnewyork.us/data_stories/anatomy-of-the-criminal-justice-system/
- 6 In Manhattan, bail was set in amounts ranging from \$100 to \$2 million. In Queens, bail was set in amounts ranging from \$100 to \$3 million. In Brooklyn, bail was set in amounts ranging from \$100 to ~\$15 million. In the Bronx, bail was set in amounts ranging from \$200 to \$500,000. In Staten Island, bail was set in amounts ranging from \$250 to \$500,000.
- 7 Certain misdemeanor offenses, including misdemeanor sex offenses, criminal contempt (generally involving criminal misconduct in and around courts), and violations of orders of protection in domestic violence cases are excluded under the statute. Individuals charged with these misdemeanors are still eligible for bail but not for remand. See NY CLS CPL § 510.10. Securing order; when required; alternatives available; standard to be applied. [Effective January 1, 2020].
- 8 Certain non-violent felony charges, including those relating to witness intimidation/tampering, operating as a major trafficker, conspiracy (second degree), money laundering (first and second degree), criminal contempt (first and second degree), sex offenses involving a minor, and luring a child are all excluded under the statute. Individuals charged with these non-violent felonies are still eligible for bail. See NY CLS CPL § 510.10. Securing order; when required; alternatives available; standard to be applied. [Effective January 1, 2020].
- 9 The revised bail statute prohibits the imposition of bail for those charged with burglaries which involve unlawful entry into a “building that is a dwelling” (NY CLS Penal § 140.25(2). Burglary in the second degree) or for robberies in the second degree, which cover the forcible stealing of property when aided by another person, when the stealing results in physical injury to someone not participating in the crime, when a firearm is displayed during the commission of the robbery or when the property stolen is a motor vehicle (NY CLS Penal § 160.10. Robbery in the second degree.) See NY CLS CPL § 510.10. Securing order; when required; alternatives available; standard to be applied. [Effective January 1, 2020].

- 10 NY CLS CPL § 510.10. Securing order; when required; alternatives available; standard to be applied.
[Effective January 1, 2020]
- 11 NY CLS CPL § 510.10. Securing order; when required; alternatives available; standard to be applied.
[Effective January 1, 2020]
- 12 NY CLS CPL § 510.10. Securing order; when required; alternatives available; standard to be applied.
[Effective January 1, 2020]
- 13 For a full list of the information the court is required to consider in effectuating the law’s requirement for the least restrictive manner of pretrial release necessary to assure court appearance, please *see* NY CLS CPL § 510.30. Application for securing order; rules of law and criteria controlling determination. [Effective January 1, 2020]
- 14 NY CLS CPL § 510.30. Application for securing order; rules of law and criteria controlling determination.
[Effective January 1, 2020]
- 15 NY CLS CPL § 510.20. Application for a change in securing order. [Effective January 1, 2020]
- 16 Michael Rempel, Director of Jail Reform at the Center for Court Innovation, estimates that, in 2018, approximately 1,980 cases originated as indictments in Supreme Court (personal communication, July 2, 2019). DCJ is grateful to Mr. Rempel for his assistance in providing this information.
- 17 Patten, M., Hood, Q. O., Low-Weiner, C., Lu, O., Bond, E., Hatten, D., & Chauhan, P. (2018, December). Trends in Misdemeanor Arrests in New York, 1980 to 2017. New York: New York
- 18 The most common dispositions at arraignment are Pled Guilty, ACD, and Dismissed. Notably, felony cases cannot be disposed at arraignment.
- 19 An Adjournment in Contemplation of Dismissal allows a court to defer the disposition of a case for between six months and a year and, if the defendant does not engage in criminal conduct or violate terms set by the court during that time, the case will be dismissed without a conviction.
- 20 Following implementation of the 2020 Criminal Justice Reforms, it is possible that the proportion of cases disposed of at arraignment may change as a result of changes to the law with respect to desk appearance tickets (which police will be required to issue instead of making a custodial arrest for most misdemeanors and non-violent felony arrests) as well as discovery practices (prosecutors will no longer be permitted to offer pleas absent disclosure of all discovery materials).
- 21 Given that felony cases cannot be disposed at arraignment, boroughs with higher rates of felony cases will have lower rates of disposed at arraignment.
- 22 For discussion of potential impacts of bail reform on the New York City jail population *see* Rempel, M. & Rodriguez, K. (2019). Bail Reform in New York: Legislative provisions and implications for New York City, New York: Center for Court Innovation.

APPENDIX: Analyzing the Impact of 2020 Bail Reforms on Cases from 2005 through 2018

Approximately 4.4 million cases were arraigned in New York City from 2005 to 2018. The total number of arraignments has decreased considerably from a high of 358,933 in 2009 to 203,443 in 2018. Figure 7 shows arraignment outcomes over time. Between 2005 to 2015, the most common outcome at arraignment was that the case was disposed, with a peak of 49.6% of cases in 2009. Starting in 2016, the most common disposition was release without bail (most often ROR) ranging from 41.6% in 2016 to 51.7% in 2018.

Figure 7: Arraignment Outcomes (2005-2018)

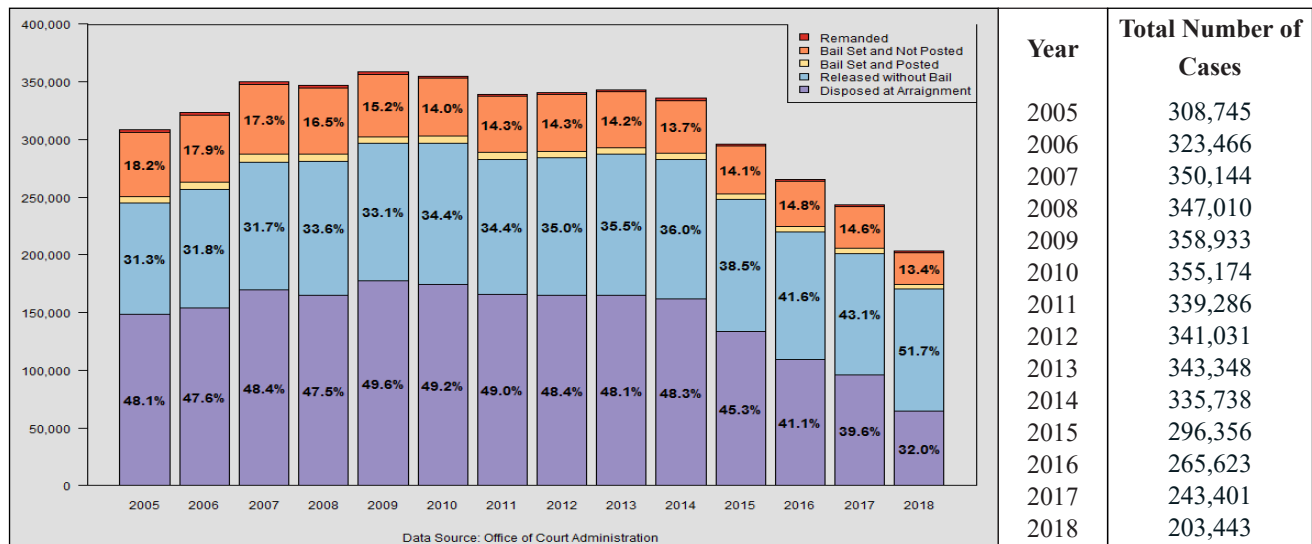


Figure 8: Outcomes for Continued Cases (2005-2018)

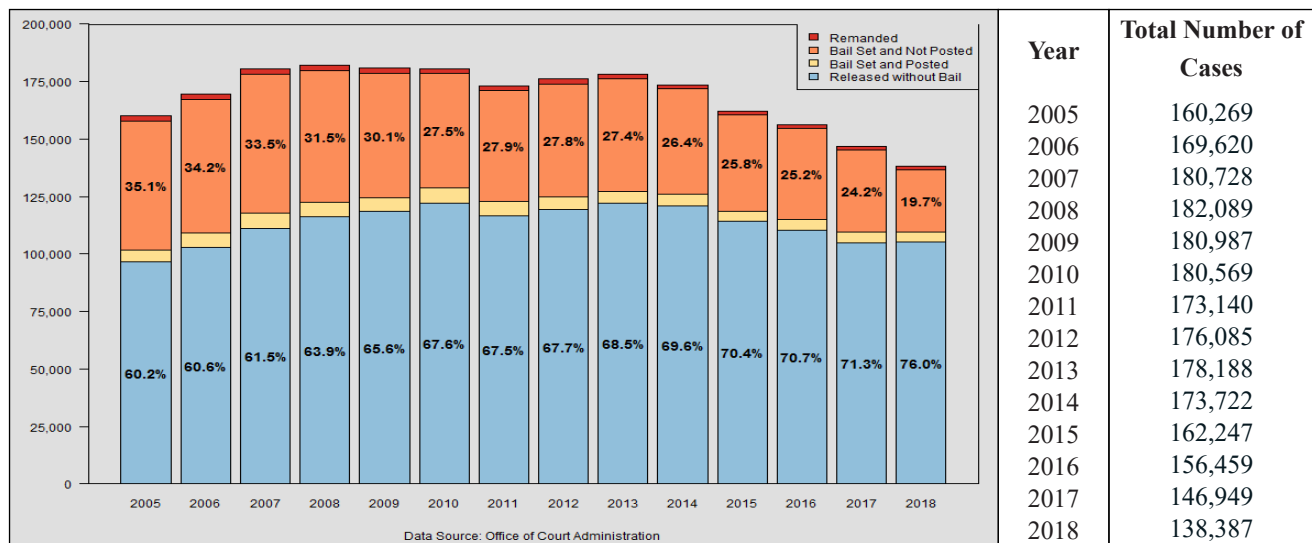


Figure 8 shows the outcomes for continued cases. From 2005 to 2018, the proportion of cases released without bail increased from 60.2% (96,503 cases) in 2005 as compared to 76.0% (105,161 cases) in 2018.

Figure 9: Actual and Estimated Number of Cases with a Release without Bail (2005-2018)

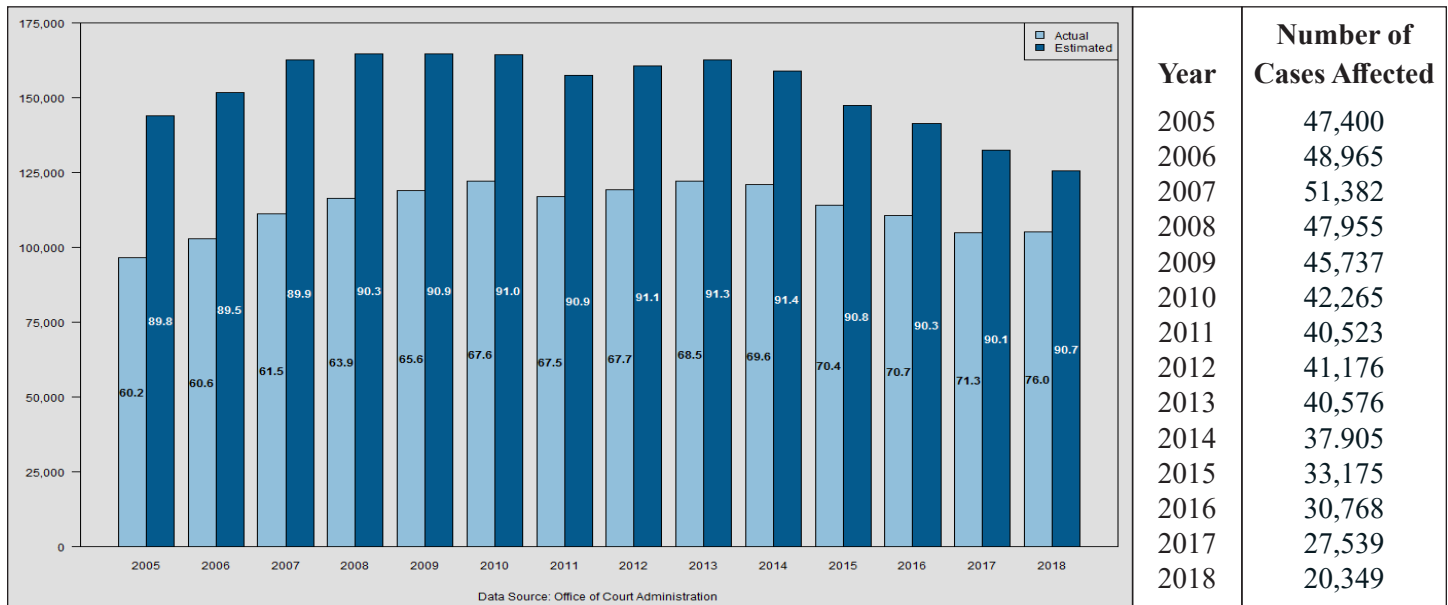


Figure 9 shows the number of actual releases as well as estimated releases had the 2020 Bail Reforms been in place from 2005 to 2018. The actual release represents all cases where there was a release without bail. The estimated release represents cases that would have been eligible for mandatory release under the new law. If the new law had been in place, 555,715 additional cases would have required release from 2005 to 2018.