



BACKGROUND

In April 2019, New York State passed landmark bail reform legislation that limited the scope of New York's unjust money bail system for the majority of people accused of violations, misdemeanors, and nonviolent felony offenses. Enacted in January 2020, these reforms allowed thousands of

Being free pretrial has allowed New Yorkers to keep their jobs, housing and access to life-affirming services, such as mental health care and substance use treatment.

For **DAVID**, bail reform meant being home to witness the birth of his daughter, instead of being jailed pretrial.

JOHN, a Bronx resident, was able to enroll in a detox program to address his substance use issues while free pretrial.

people to remain at home while awaiting trial, able to fight their cases from a position of freedom. Since pretrial detention makes it more likely, not less, that people will be arrested again, fewer people in jail meant **fewer people were subjected to the cycle of violence caused by incarceration and its destabilizing effect on families and communities.**

While bail reform led to a significant decline in the statewide jail population, reaching record lows by summer 2020, it has since rebounded. This is largely due to the fact that judges still had unfettered discretion to set bail in dozens of instances. Judicial bail-setting discretion was further expanded in July 2020 when the legislation was rolled back.

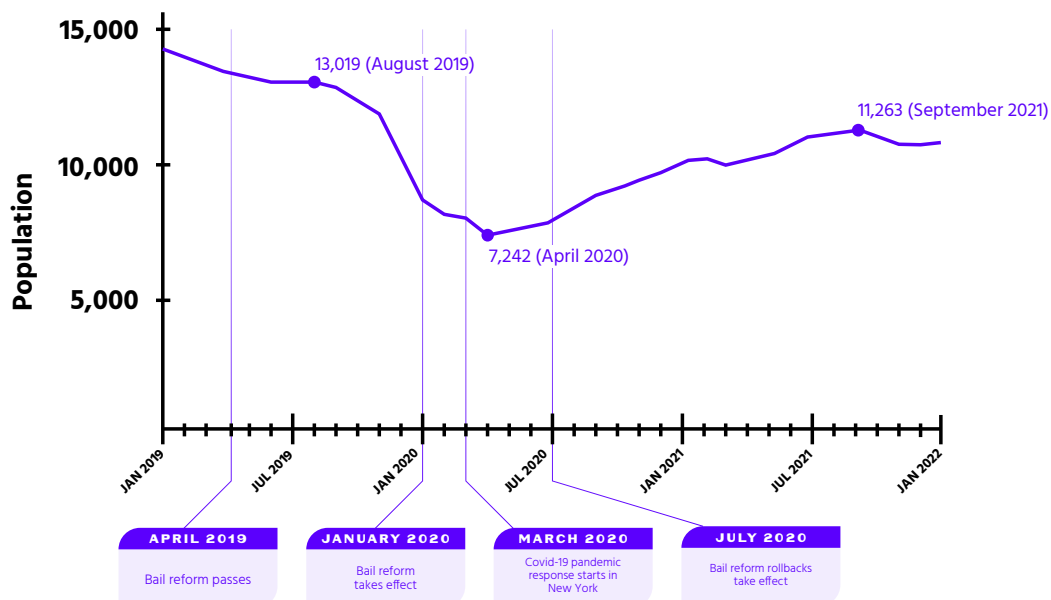
This report provides a summary of recent bail and pretrial detention trends across New York State, **underscoring the need for the outright abolition of money bail and pretrial detention.** As long as these harmful practices exist, the system and its actors will unjustly deploy them against low-income, working class communities of color.

AFTER INITIAL DECLINE, PRETRIAL JAIL POPULATIONS ARE RISING

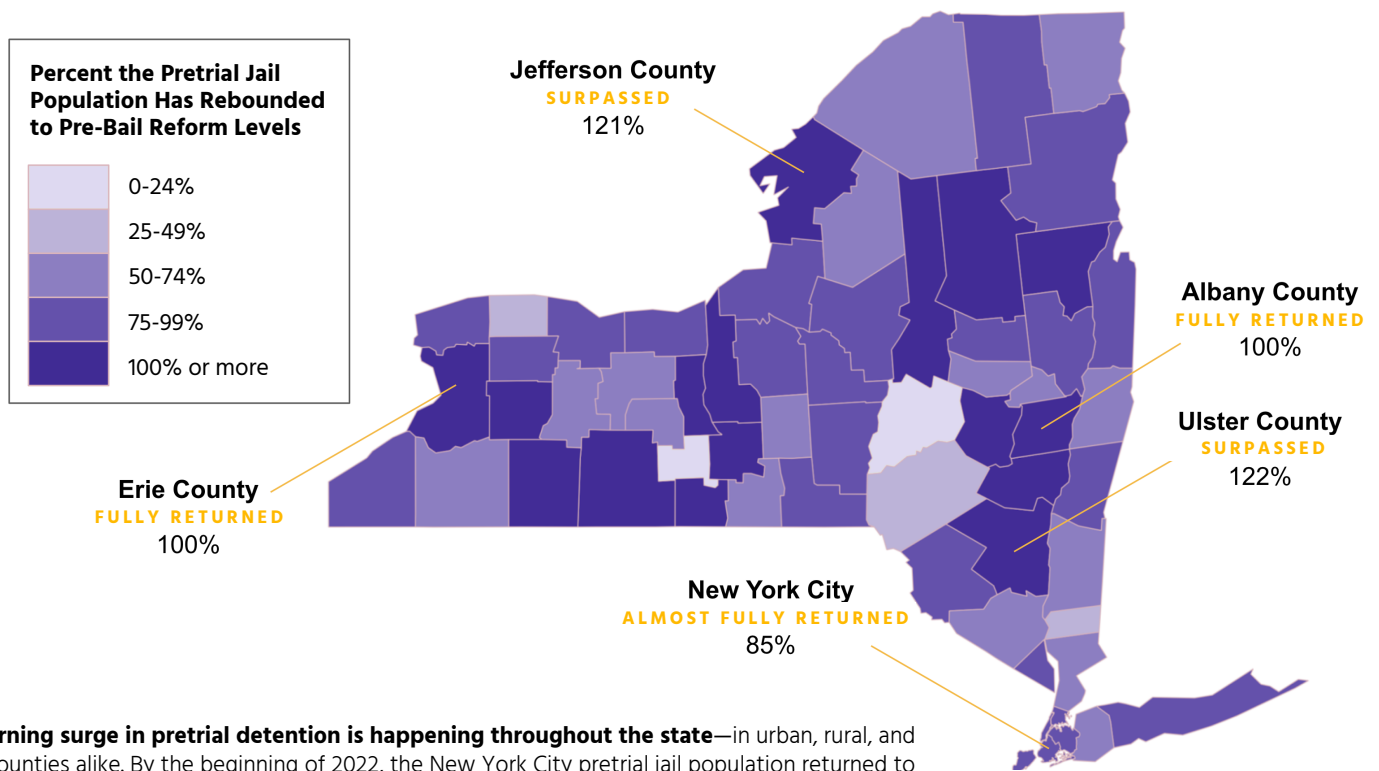
The confluence of bail reform—which took effect in January 2020—and emergency decarceration efforts in response to the COVID-19 pandemic resulted in an immediate and significant decrease in the statewide jail population. Between August 2019 and April 2020, the pretrial jail population fell 44%, from 13,019 people incarcerated pretrial across New York State to 7,242.

Unfortunately, months after the pretrial jail population reached record lows, it began to increase. From April 2020 to September 2021, New York's statewide pretrial jail population rose 56% and surpassed 11,000 people for the first time since 2019. We expect these numbers would be even higher if not for bail reform.

NEW YORK STATE PRETRIAL JAIL POPULATION OVER TIME



PRETRIAL JAIL POPULATIONS ACROSS THE STATE HAVE ALMOST FULLY RETURNED TO PRE-BAIL REFORM LEVELS



This concerning surge in pretrial detention is happening throughout the state—in urban, rural, and suburban counties alike. By the beginning of 2022, the New York City pretrial jail population returned to 85% of what it was in August 2019 (5,500 people were incarcerated in 2019, compared to 4,751 people in January 2022). In the 57 counties outside New York City, pretrial jail populations have returned to 81% of their 2019 levels. Some counties with bigger cities, like Erie County (Buffalo) and Albany County (Albany), have completely returned to their pre-bail reform population levels. In 13 smaller counties, pretrial jail populations as of January 2022 were even larger than they were in August 2019.

JUDGES OVERWHELMINGLY CONTINUE TO USE THEIR DISCRETION TO INCARCERATE

Statewide, bail amounts from July 2020 to June 2021 were exceptionally high. Across more than 25,000 bails set by judges during this period, amounts averaged over \$21,000, with **more than 1,000 bails set at \$100,000 cash or greater**. The median cash bail amount during this time was \$5,000.

People arraigned in Albany County, Richmond County (Staten Island), and Bronx County were subjected to some of the highest dollar figures for bail during this period, where felony median cash bail amounts were as high as \$15,000. In the Bronx, 1 in 5 cash bails were higher than an entire year's income for the median household in the county (\$41,432).

County (Top 10 of 42 counties) ¹	Percent of Cash Bails Set Above the Statewide Median (\$5,000)
Queens	70%
Richmond (Staten Island)	67%
Albany	64%
Bronx	63%
New York (Manhattan)	62%
Kings (Brooklyn)	62%
Erie	56%
Nassau	56%
Dutchess	51%
Chautauqua	48%

¹Based on Pretrial Release Data on 42 of 62 counties for which records were available from July 2020–June 2021 (these counties account for 94% of the New York State population)

Judges wield enormous power in pretrial decision making. In addition to driving up the jail population through the discretion legally afforded to them, judges appear to be acting extralegally. Specifically, **judges are ignoring an “ability to pay” provision in the law** that requires judges, when they set bail, to do so in an amount the individual can afford.

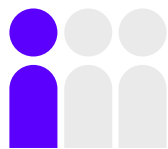
The “ability to pay” provision, if implemented properly, should dramatically reduce the pretrial jail population, whereby no one is incarcerated on bail. However, judges’ use of unaffordable bail—and deliberate misuse of the law—continues to keep large numbers of people jailed pretrial.

County (Top 10 of 42 counties) ¹	Percent of Total Bails Set Where the Person Can't Afford Bail After 7 Days ²
Broome	100%
Cattaraugus	97%
Onondaga	91%
St. Lawrence	89%
Madison	84%
Dutchess	84%
Oneida	82%
Clinton	80%
Herkimer	79%
Cortland	76%

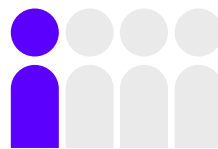
BAIL CONTINUES TO DRIVE PRETRIAL DETENTION RATES JULY 2020–JUNE 2021



1 in 2 people
spent **over 5 days** in jail
when bail was set



1 in 3 people
spent **over 15 days** in jail
when bail was set



1 in 4 people
spent **over 30 days** in jail
when bail was set

This is a conservative estimate of **the impact of bail setting on jail time**, as many people remain jailed after their case is transferred, accruing additional days, weeks, and months of jail time that publicly available data fail to capture. What’s more, many of those who managed to secure their release from jail did so by taking a plea—a deal that exploited their compromised position behind bars and almost certainly restricted their freedom in countless other ways, if not by imposing even more jail time.

BAIL AND PRETRIAL DETENTION CONTINUE TO HAVE RACIST & CLASSIST IMPACT ON COMMUNITIES

New York counties with the lowest median household income tend to jail people at the highest rates. The three counties (Broome, Jefferson, and Cayuga) with the highest per-capita pretrial jail population all have a median household income below \$60,000—well below the statewide median of \$72,000.

Broome County—home to New York State’s highest rate of pretrial jailing at 146 people per 100,000 residents in 2021—is in the bottom 10% of median household income (\$52,000) in New York.

In five counties with median household incomes above \$100,000 (Nassau, Suffolk, Westchester, Rockland, and Putnam), the pretrial jail population ranged between 18 and 40 per 100,000 residents—though these five counties, combined, still jailed 1,543 people pretrial on an average day in 2021.

In every county for which data was available, the proportion of Black and Latinx people sent to jail outweighs their representation in the overall population.

Across the state, Black and Latinx New Yorkers were over five times more likely to be incarcerated pretrial than white New Yorkers.

In NYC, while Black and Latinx people comprise 51% of the city’s overall population, they make up 92% of those sent to jail on remand or unaffordable bail.

In the counties outside of NYC, 66% of those sent to jail pretrial are Black or Latinx—triple their representation in the overall population (22%).

¹ Based on Pretrial Release Data on 42 of 62 counties for which records were available from July 2020–June 2021 (these counties account for 94% of the New York State population)

² Excludes cases that disposed, were transferred, or had securing orders change within the first seven days in jail on bail

ABOUT THE DATA

The findings in this report come from direct analysis of data published by government agencies. This approach gives us the most comprehensive statewide statistics available to the public, but the data is not without its limitations.

The Pretrial Release Dataset from the New York Office of Court Administration (OCA) and Division of Criminal Justice Services (DCJS) provides data on bail amounts, length of time in jail, and pretrial jail admissions from July 2020 through June 2021. This dataset only covers 61 city courts and 2 district courts outside of New York City, limiting analysis to 42 of the state's 62 counties. The missing counties leave out about 6% of the state's resident population, and the dataset excludes many courts with authority to set bail and send people to jail pretrial, such as

town and village courts. Analyses of bail setting and pretrial jail admissions exclude dollar bail cases. Average bail amounts also exclude one case where the judge set \$150,000,000 cash bail. The dataset does not track time spent in jail after a transfer to a superior court, so the findings likely underestimate the portion of people held in jail beyond five, 15, and 30 days.

Findings on race and ethnicity use data from the OCA and DCJS Pretrial Release Dataset and are supplemented with population data from CDC Bridged-Race Population Estimates. Twenty-two percent of arraignment records for this analysis were excluded due to missing or "Unknown" race data. The dataset was also missing about 21% of entries for Ethnicity, meaning that our findings may underestimate Latinx representation in jail admissions and overestimate white representa-

tion. Pretrial jail admissions count cases where the accused was remanded or had bail set that they could not post at arraignment.

Jail population data come from the Annual Jail Population Trends and Jail Population by Month reports from DCJS using the "Other Unsentenced" population count to measure the pretrial jail population. DCJS collapses the five New York City counties for reporting purposes, so analysis involving individual county-level rates of pretrial detention are limited to 57 of the state's 62 counties.

The US Census Bureau's 1-Year Estimates for 2019 from the American Community Survey provides data on household income for 39 of the 62 counties in New York.

COUNTY-BY-COUNTY INFORMATION

COUNTY	MEDIAN CASH BAIL AMOUNT JULY 2020--JUNE 2021	PERCENT OF TOTAL BAILS SET WHERE THE PERSON CAN'T AFFORD BAIL AFTER 7 DAYS JULY 2020--JUNE 2021	MEDIAN HOUSEHOLD INCOME 2019	NUMBER OF PEOPLE IN JAIL PRETRIAL PER 100,000 RESIDENTS 2021	AVERAGE DAILY PRETRIAL JAIL POPULATION JANUARY 2022	PERCENT RETURN TO PRE-BAIL REFORM (AUG 2019) PRETRIAL JAIL POPULATION JANUARY 2022	PERCENT OF PRETRIAL JAIL ADMISSIONS WHERE ACCUSED PERSON IS BLACK JULY 2020--JUNE 2021	PERCENT OF PRETRIAL JAIL ADMISSIONS WHERE ACCUSED PERSON IS LATINX JULY 2020--JUNE 2021
New York State	\$5,000	59%	\$72,108	55	10,821	83%	62%	16%
New York City	\$10,000	49%	\$67,046	58	4,702	85%	71%	21%
Bronx County	\$10,000	52%	\$41,432	--	--	--	72%	26%
Kings County (Brooklyn)	\$10,000	36%	\$66,937	--	--	--	77%	16%
New York County (Manhattan)	\$10,000	63%	\$93,651	--	--	--	70%	23%
Queens County	\$10,000	45%	\$73,696	--	--	--	66%	24%
Richmond County (Staten Island)	\$15,000	55%	\$89,821	--	--	--	56%	21%
Non-New York City	\$3,500	67%	--	53	6,119	81%	54%	12%
Albany County	\$10,000	50%	\$69,953	62	247	100%	72%	5%
Allegany County	--	--	--	59	34	126%	--	--
Broome County	\$100	100%	\$52,010	146	268	77%	42%	4%
Cattaraugus County	\$1,000	97%	\$50,912	46	34	55%	8%	4%
Cayuga County	\$1,750	62%	\$58,665	104	79	111%	27%	3%
Chautauqua County	\$5,000	76%	\$50,272	86	109	79%	25%	14%
Chemung County	\$1,000	52%	\$60,782	98	79	105%	40%	2%
Chenango County	\$2,000	73%	--	88	43	75%	7%	4%
Clinton County	\$250	80%	\$60,198	64	42	58%	17%	6%
Columbia County	\$1,000	45%	--	45	35	73%	31%	6%
Cortland County	\$1,000	76%	--	61	27	60%	25%	2%
Delaware County	--	--	--	48	26	40%	--	--
Dutchess County	\$10,000	84%	\$85,901	48	159	70%	68%	12%
Erie County	\$10,000	47%	\$60,652	55	556	100%	61%	7%
Essex County	--	--	--	33	16	80%	--	--
Franklin County	--	--	--	46	30	88%	--	--
Fulton County	\$1,000	63%	--	81	46	74%	20%	6%
Genesee County	\$2,500	75%	--	53	41	89%	34%	3%
Greene County	--	--	--	4	18	See footnote*	--	--
Hamilton County	--	--	--	23	2	200%	--	--
Herkimer County	\$5,000	79%	--	39	35	184%	26%	0%
Jefferson County	\$1,000	66%	\$53,917	105	117	121%	25%	3%
Lewis County	--	--	--	53	11	61%	--	--
Livingston County	--	--	\$59,173	51	37	58%	--	--
Madison County	\$100	84%	\$62,918	57	36	90%	14%	6%
Monroe County	\$1,000	62%	\$62,103	60	497	90%	76%	12%
Montgomery County	\$5,000	63%	--	77	42	70%	28%	35%
Nassau County	\$10,000	65%	\$118,453	40	549	71%	49%	26%

*The average pretrial jail population reported for this county in August 2019 was zero

COUNTY-BY-COUNTY INFORMATION (CONTINUED)

COUNTY	MEDIAN CASH BAIL AMOUNT JULY 2020—JUNE 2021	PERCENT OF TOTAL BAILS SET WHERE THE PERSON CAN'T AFFORD BAIL AFTER 7 DAYS JULY 2020—JUNE 2021	MEDIAN HOUSEHOLD INCOME 2019	NUMBER OF PEOPLE IN JAIL PRETRIAL PER 100,000 RESIDENTS 2021	AVERAGE DAILY PRETRIAL JAIL POPULATION JANUARY 2022	PERCENT RETURN TO PRE-BAIL REFORM (AUG 2019) PRETRIAL JAIL POPULATION JANUARY 2022	PERCENT OF PRETRIAL JAIL ADMISSIONS WHERE ACCUSED PERSON IS BLACK JULY 2020—JUNE 2021	PERCENT OF PRETRIAL JAIL ADMISSIONS WHERE ACCUSED PERSON IS LATINX JULY 2020—JUNE 2021
Niagara County	\$1,000	64%	\$56,304	75	153	92%	47%	3%
Oneida County	\$2,000	82%	\$57,391	77	167	91%	53%	8%
Onondaga County	\$2,500	91%	\$61,577	89	396	79%	75%	3%
Ontario County	\$1,000	64%	\$66,568	45	48	56%	26%	18%
Orange County	\$1,500	58%	\$84,458	48	169	68%	54%	23%
Orleans County	--	--	--	28	12	33%	--	--
Oswego County	\$500	75%	\$58,459	52	63	90%	20%	4%
Otsego County	\$1,000	60%	--	27	5	16%	20%	0%
Putnam County	--	--	\$106,204	18	18	44%	--	--
Rensselaer County	\$5,000	41%	\$71,574	45	70	64%	59%	5%
Rockland County	--	--	\$100,916	20	62	79%	--	--
Saratoga County	\$2,000	67%	\$89,932	37	82	90%	20%	2%
Schenectady County	\$2,500	44%	\$65,773	62	91	63%	63%	9%
Schoharie County	--	--	--	26	9	See footnote*	--	--
Schuyler County	--	--	--	34	1	13%	--	--
Seneca County	--	--	--	50	25	139%	--	--
St. Lawrence County	\$500	89%	\$52,108	67	53	61%	7%	5%
Steuben County	\$100	75%	\$52,951	98	103	116%	14%	7%
Suffolk County	\$5,000	71%	\$106,228	39	623	87%	47%	24%
Sullivan County	--	--	\$60,137	98	77	73%	--	--
Tioga County	--	--	--	58	21	54%	--	--
Tompkins County	\$3,000	71%	\$58,626	24	26	113%	38%	4%
Ulster County	\$5,000	65%	\$64,087	71	113	122%	65%	10%
Warren County	\$500	74%	\$64,985	69	55	120%	18%	0%
Washington County	--	--	--	36	26	74%	--	--
Wayne County	--	--	\$61,730	27	19	76%	--	--
Westchester County	\$5,000	66%	\$101,908	36	371	64%	64%	27%
Wyoming County	--	--	--	68	35	121%	--	--
Yates County	--	--	--	61	11	58%	--	--

*The average pretrial jail population reported for this county in August 2019 was zero