

RESEARCH BRIEF:

Pretrial Release Without Money: New York City, 1987-2020

In 2020 there were more than five times as many releases without money than money bails.

BY Aubrey Fox & Stephen Koppel, J.D., Ph.D.

Introduction

How has pretrial release decision-making changed in 2020 in the midst of sweeping changes to the state's bail statute and a global pandemic that has dramatically impacted court operations? Does 2020 represent a sharp break from the past, or a continuation of longer trends? Has the bail reform statute, meant to (with some exceptions) eliminate the use of monetary bail for individuals charged with misdemeanor and nonviolent crimes, achieved its goals? What kinds of decisions are judges making where they largely retain their discretion to set conditions of pretrial release?

The second edition of Pretrial Release Without Money: 1987-2020 aims to answer these and other questions. The first edition, which covered the period from 1987 to 2018, compiled over 5 million pretrial release decisions to show broad trends in pretrial release decisions in New York City over the last three decades. This new edition extends those findings to 2020.

As this brief's first edition showed, New York City had embarked on a decades-long movement away from the use of monetary bail and towards nonmonetary conditions of release—meaning that it had already made substantial progress to meeting the ambitious reform goals outlined in state bail reform legislation.

Two additional years of data show a further acceleration of longer-term trends. Perhaps most significantly, the volume of money bail has plummeted since 2018. Comparing 2020 to 2018, money bail was set at arraignment only 11,493 times in 2020, compared to 30,288 in 2018 (and over 80,000 times in 1989). At the same time, the percentage of cases with nonmonetary release conditions set at arraignment increased from 77 percent in 2018 to 84 percent in 2020 (it was 52 percent in 1990).

This research brief will show that changes in pretrial release practice occurred in every borough in New York City, in particular for individuals charged with a misdemeanor or nonviolent offense. However, the pace of change is much more modest with respect to individuals charged with a violent felony offense, where judges retain considerable discretion to set terms of pretrial release. A final important change is the rapid expansion of Supervised Release, which despite a four-month pause in new admissions due to the Covid-19 pandemic, was set as a pretrial release condition nearly as often as monetary bail in 2020.

About The Data

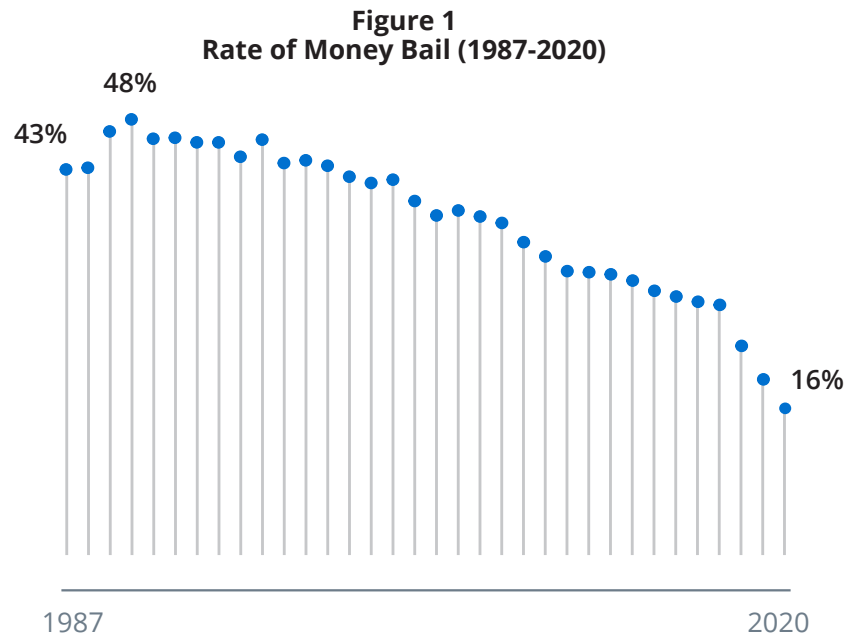
- The dataset used in the analysis was created by the New York City Criminal Justice Agency, the city's main pretrial justice agency, in partnership with the New York City Mayor's Office of Criminal Justice. It spans from 1987 to 2020 and includes over 5.5 million unique pretrial release decisions made by judges at a defendant's initial court appearance (i.e., arraignment). The analysis is restricted to cases continued at arraignment, arising from either (a) a summary arrest, or (b) a desk appearance ticket (DAT) in which the defendant appeared at the initial arraignment. This excludes all release decisions made subsequent to an initial arraignment.

Money Bail, 1987-2020

The rate of money bail declined by 32 percentage points

In 1987, the rate of money bail was 43 percent. It rose to a high of 48 percent in 1990, before declining to 16 percent in 2020, a 32 percentage-point decrease.

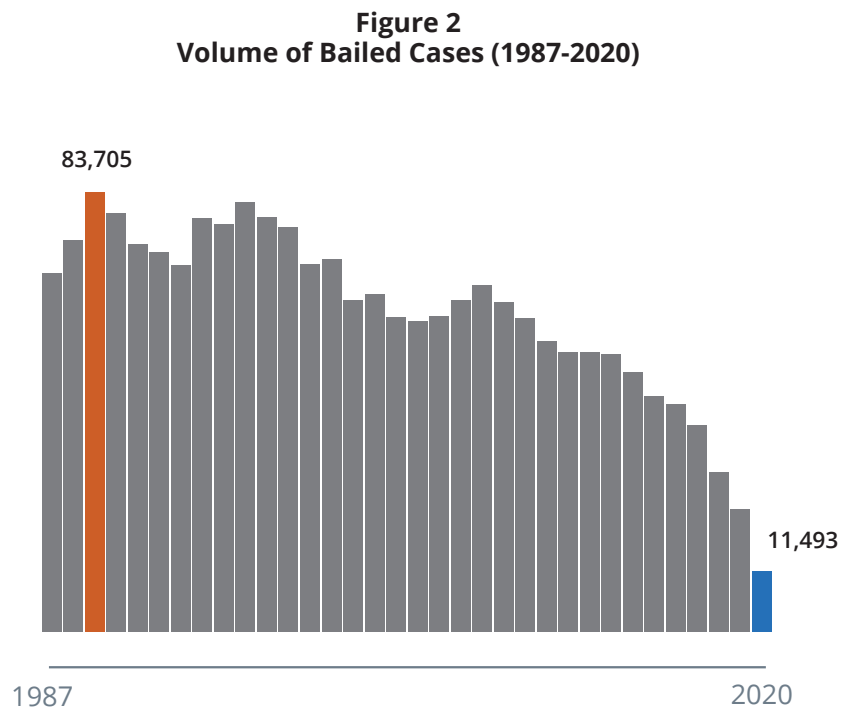
- ▶ **Rate of money bail** is the percentage of continued cases in which bail was set at arraignment.



The volume of money bail dropped by more than 70,000

In 1989, the volume of money bail reached a peak of 83,705, and fell gradually to 11,493 in 2020. This was partly due to the declining rate of money bail, as well as the shrinking overall volume of cases continued past arraignment (see: appendix for data on volume of continued cases).

- ▶ **Volume of money bail** is the total number of money bails set at arraignment.



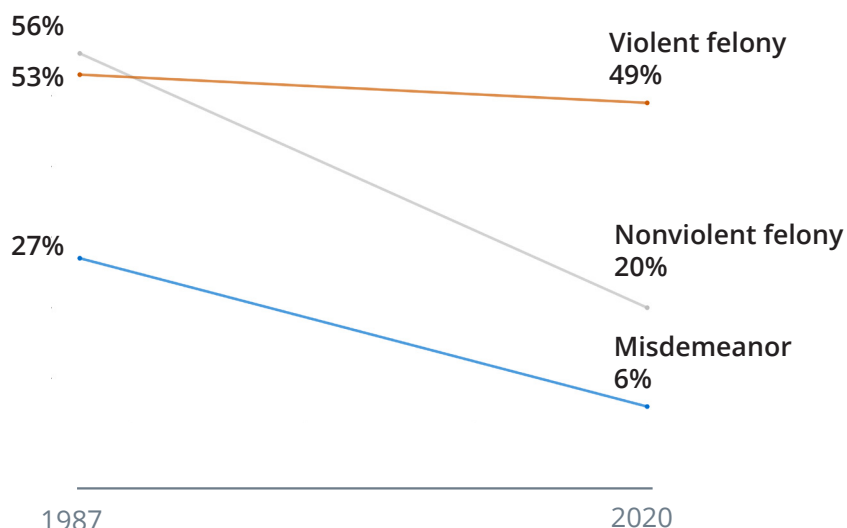
About The Data

- ▶ Monetary bail is defined as a financial condition of release, including cash bail and various bond types. Cases with a missing release status are excluded.

The rate of money bail fell for all crime severity categories

From 1987 to 2020, the rate of money bail fell for misdemeanors (21 percentage points), nonviolent felonies (36 percentage points), and violent felonies (4 percentage points).

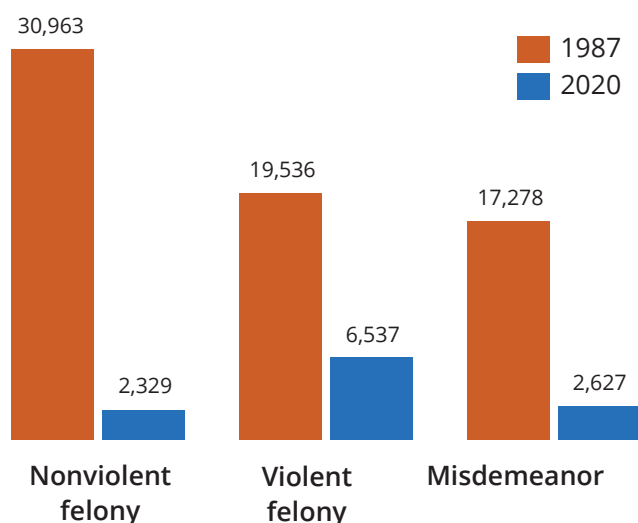
Figure 3
Rate of Money Bail by Severity (1987, 2020)



The volume of money bail dropped in all crime severity categories, most sharply for nonviolent felonies

From 1987 to 2020, the volume of money bail fell for all classes of severity: 92 percent for nonviolent felonies, 67 percent for violent felonies, and 85 percent for misdemeanors.

Figure 4
Change in Volume of Money Bail by Severity (1987, 2020)



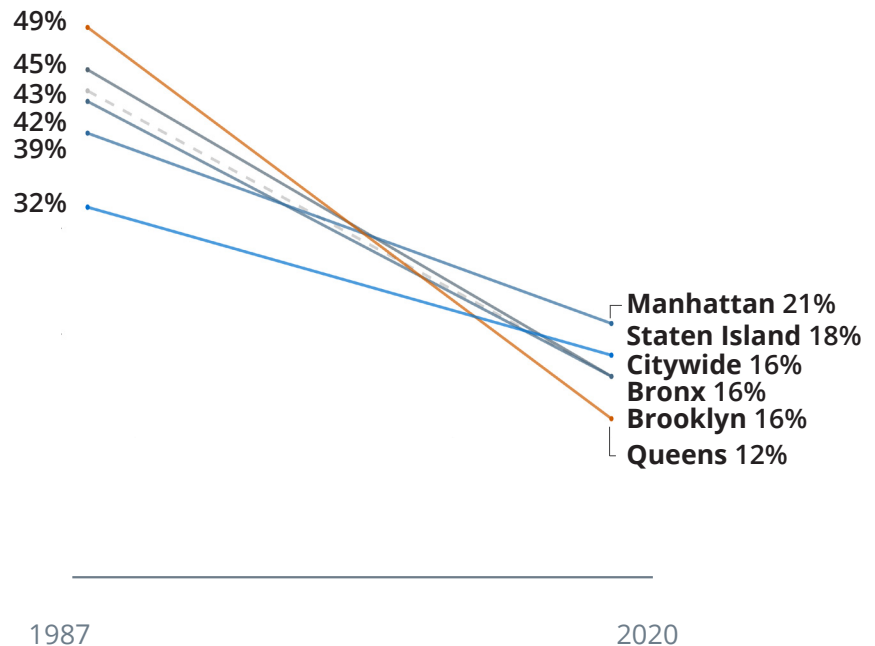
About The Data

- Severity is based on the top charge at arraignment. Violent felony offenses include VFOs, which are violent felonies subject to various restrictive sentencing provisions (e.g., manslaughter in the 1st degree, rape in the 1st degree, assault in the 1st degree), as well as other Class A violent felonies (e.g., murder in the 1st degree, murder in the 2nd degree, kidnapping in the 1st degree). Misdemeanors include lesser violations and infractions.

The rate of money bail declined in all five boroughs

From 1987 to 2020, the rate of money bail fell in all five boroughs: 37 percentage points in Queens, 29 percentage points in the Bronx, 26 percentage points in Brooklyn, 18 percentage points in Manhattan, and 14 percentage points in Staten Island.

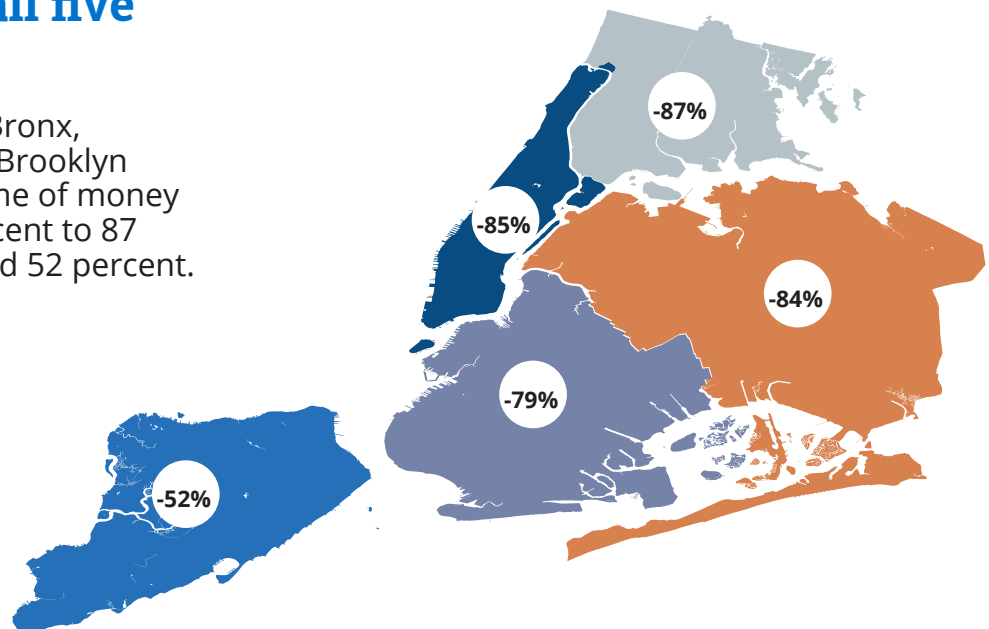
Figure 5
Rate of Money Bail by Borough (1987, 2020)



The volume of money bail dropped in all five boroughs

From 1987 to 2020, the Bronx, Manhattan, Queens, and Brooklyn saw declines in the volume of money bail ranging from 79 percent to 87 percent, and Staten Island 52 percent.

Figure 6
% Change in Number of Monetary Bails by Borough (1987, 2020)



Release Without Money, 1987-2020

The rate of release without money rose by 27 percentage points

In 1987, the rate of release without money was 56 percent. It rose to a high of 83 percent in 2020.

- ▶ **Rate of release without money bail** is the percentage of continued cases released without a monetary condition at arraignment (i.e., released on one's own recognizance or Supervised Release).

The rate of release without money rose in all crime severity categories

From 1987 to 2020, the rate of release without money rose for misdemeanors (22 percentage points), nonviolent felonies (35 percentage points), and violent felony offenses (6 percentage points).

The rate of release without money rose in all five boroughs

From 1987 to 2018, the rate of release without money went up in all five boroughs: 37 percentage points in Queens, 29 percentage points in the Bronx, 26 percentage points in Brooklyn, and 18 percentage points in Manhattan and Staten Island.

Figure 7
Release Without Money (1987-2020)

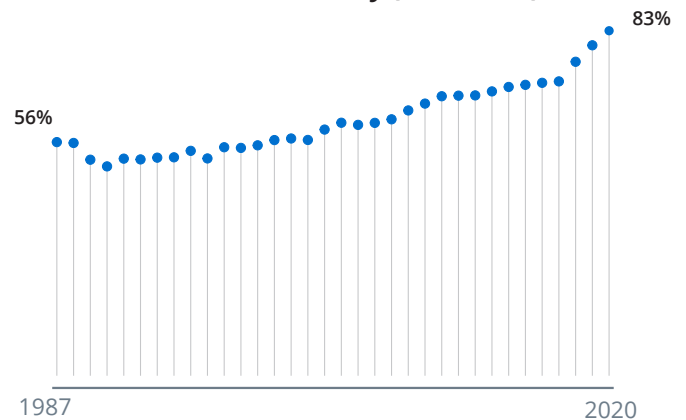


Figure 8
Release Without Money by Severity (1987, 2020)

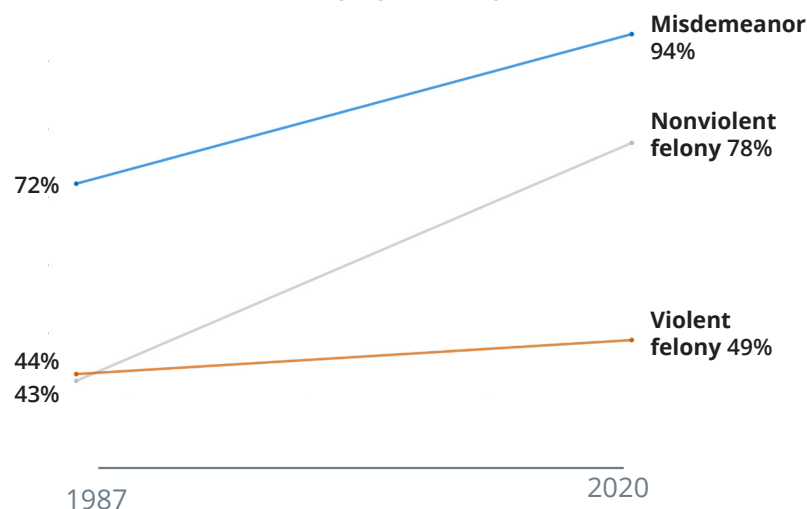
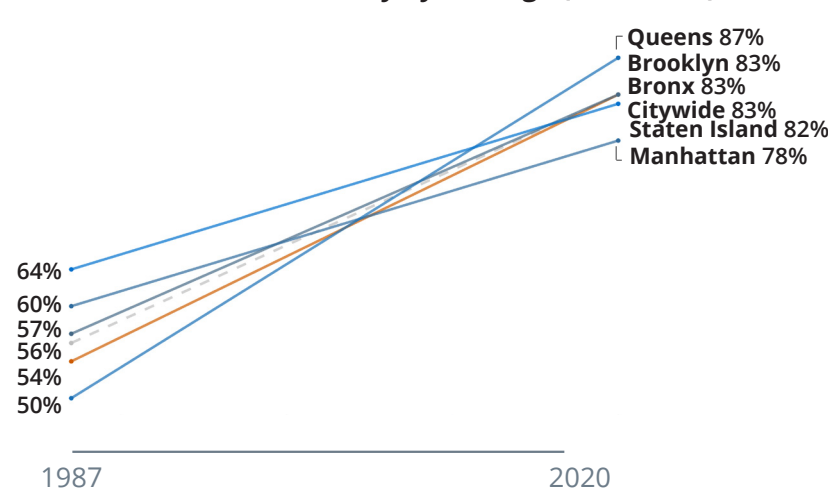


Figure 9
Release Without Money by Borough (1987, 2020)



About The Data

- ▶ New York City introduced the Supervised Release program in 2009. Although release into this program is counted as non-monetary, data on Supervised Release was not recorded as a discrete outcome until its expansion citywide in 2016.

Within the boroughs the rates of release without money varied by severity

For **misdemeanors**:

- +27** percentage points in Queens
- +21** percentage points in Brooklyn
- +20** percentage points in Manhattan
- +18** percentage points in the Bronx
- +15** percentage points in Staten Island

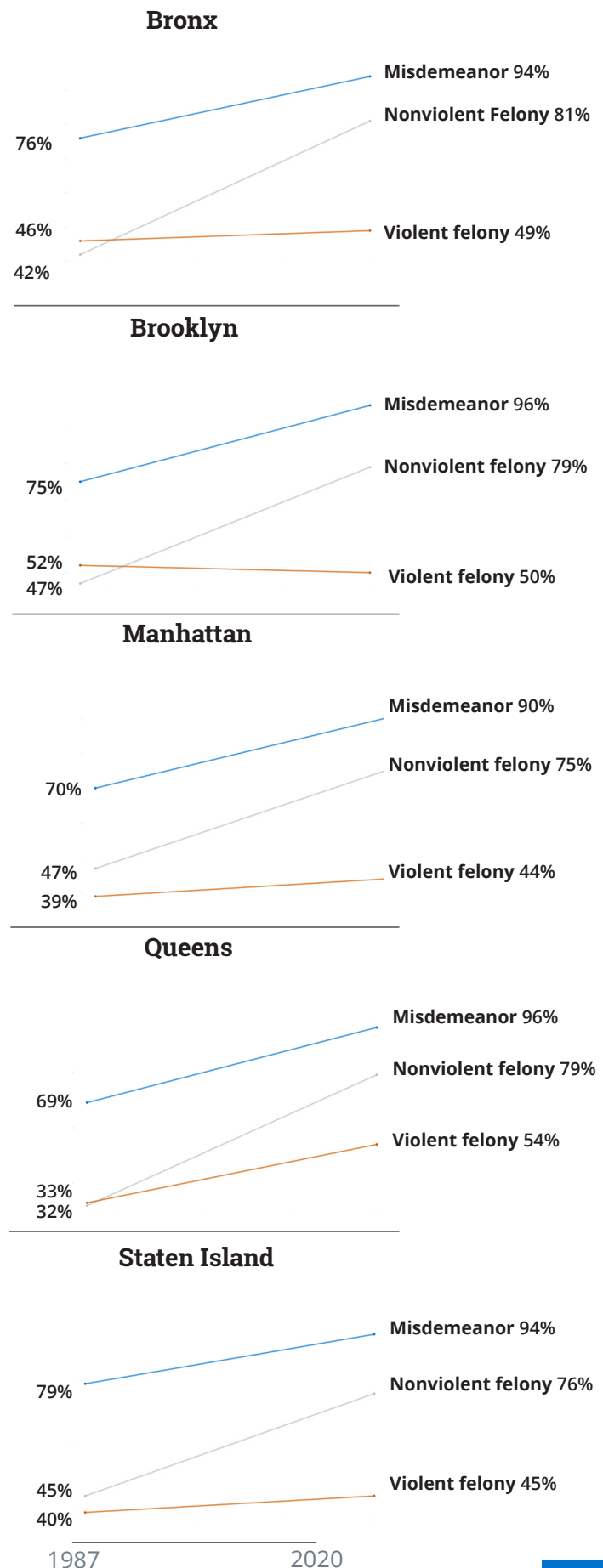
For **nonviolent felonies**:

- +47** percentage points in Queens
- +39** percentage points in the Bronx
- +31** percentage points in Staten Island
- +28** percentage points in Manhattan
- +20** percentage points in Brooklyn

For **violent felonies**:

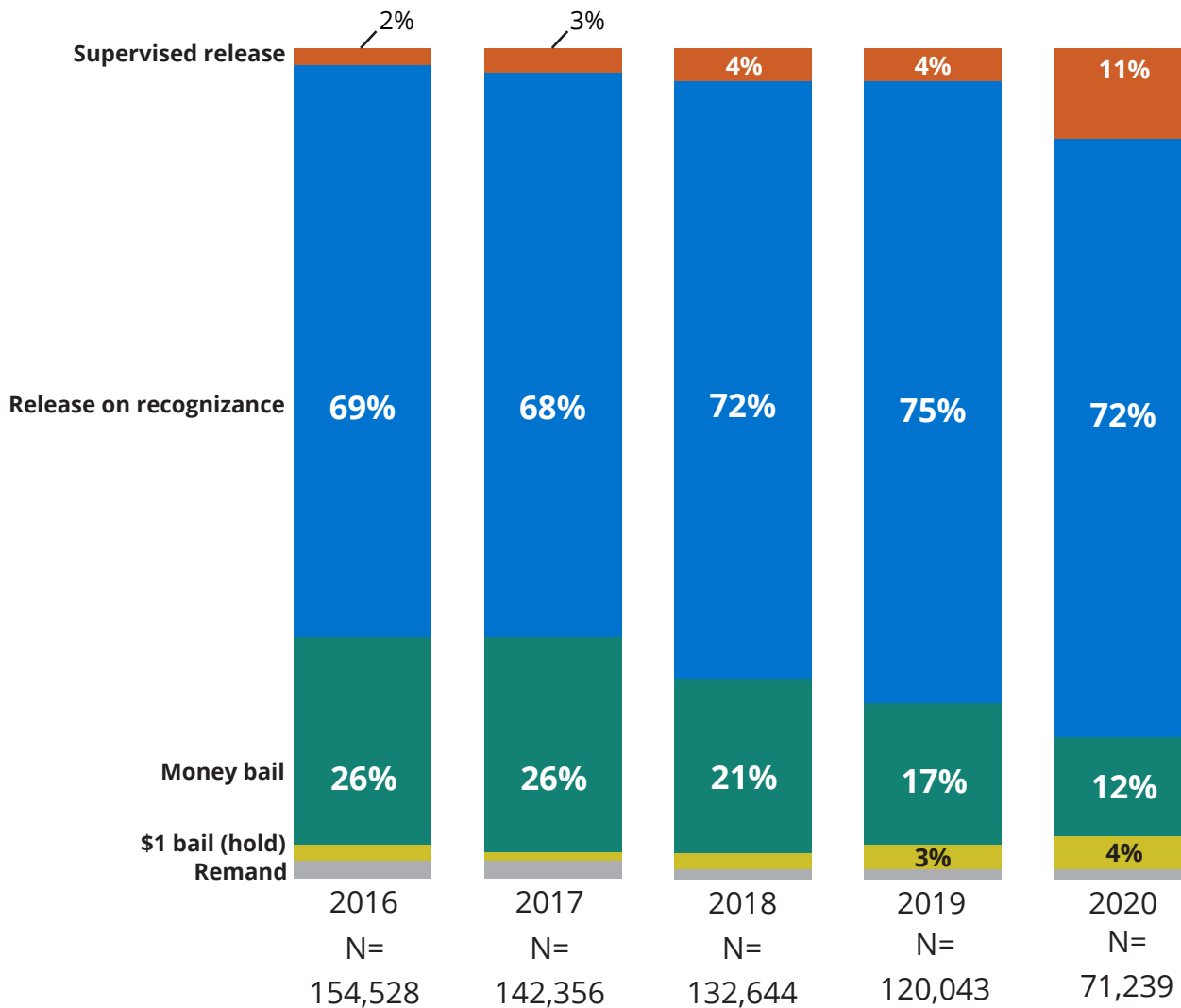
- +21** percentage points in Queens
- +5** percentage points in Manhattan
- +5** percentage points in Staten Island
- +3** percentage points in the Bronx
- 2** percentage points in Brooklyn

Figure 10
Release Without Money by Borough and Severity
(1987, 2020)



Breakdown of Arraignment Outcomes, 2016-2020

Figure 11
Arraignment Outcomes
(2016-2020)



The rate of Supervised Release rose to 11 percent

In 2020, Supervised Release accounted for 11 percent of all pretrial release outcomes, despite the program not taking any new cases during a four month period as a result of COVID-19. In previous years its share of pretrial release outcomes was much smaller.

About The Data

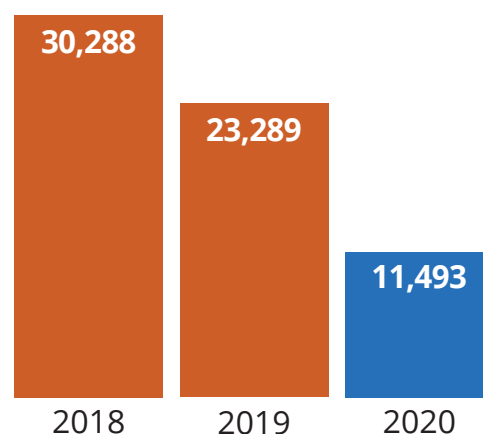
- Cases with \$1 bail are classified separately as this amount indicates a nonmonetary pretrial hold. The number of \$1 bails has remained roughly constant over time, but has increased as a share of all bails as the volume of bail has declined. In 2020, about 1 in 4 bailed cases was a nonmonetary \$1 hold.

Trends in Pretrial Release in 2020

The volume of money bail fell by 51 percent

The volume of money bail fell from 23,289 in 2019 to 11,493 in 2020, a 51 percent decline.

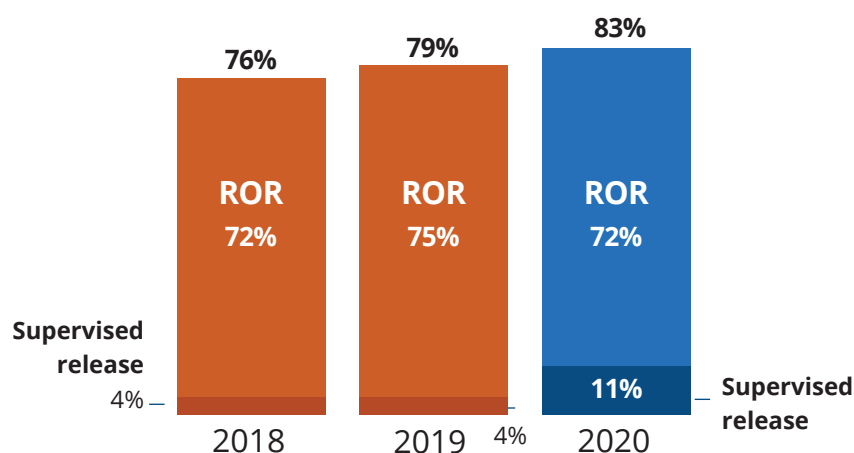
Figure 12
Volume of Money Bail
(2018-2020)



The rate of release without money increased by 4 percentage points

The rate of release without money increased 4 percentage points, from 79 percent in 2019 to 83 percent in 2020. This was driven by increases in Supervised Release.

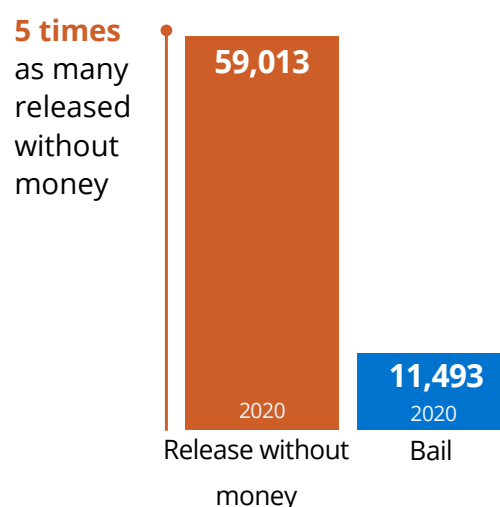
Figure 13
Rate of Release Without Money
(2018-2020)



The ratio of release without money to money bail is now 5 to 1

In 2020 there were more than five times as many releases without money as bails. The ratio was 1.3 in 1987 and dipped to 1.1 in 1990.

Figure 14
Ratio of Release Without Money to Bail (2020)



Thinking Fast and Slow

In 2020, the New York City courts have grappled with sweeping changes to the state's bail statute, a global pandemic and mid-year revisions to the bail statute—all in a single year. At the same time, the city experienced worrying increases in homicides and gun crime, which has led to a heated debate over how much this has been fueled by individuals on pretrial release.

However, cities across the country with very different pretrial release practices have seen similar increases. And notably, with decreases in grand larcenies, rapes, robberies, and felony assaults, New York City ended 2020 with fewer overall “index” crimes than in 2019.

“even before 2020, New York City had already moved towards an embrace of nonmonetary forms of pretrial release.”

This research brief has sought to examine pretrial release outcomes for more than a three-decade long period. Doing so serves as a corrective to the desire to come to immediate conclusions about the impacts of bail reform. By making nonmonetary forms of pretrial release the overwhelmingly likely outcome for individuals charged with misdemeanors and nonviolent felonies, bail reform has accomplished one of its main goals. Yet even before 2020, New York City had already moved towards an embrace of nonmonetary forms of pretrial release.

Supervised Release provides another good example of the value of long-term thinking. The program, which links individuals on pretrial release to trained social workers, began as a pilot in a single borough in 2009 and was expanded on a limited basis citywide in 2016, and again in December 2019 to serve all charges. When combined with the removal of monetary bail as a pretrial release option for most individuals charged with a misdemeanor and nonviolent felony, this fueled a rapid increase in judicial mandates to the program. In 2020, Supervised Release accounted for 11 percent of all pretrial releases, despite a four month pause in new admissions due to the global pandemic.¹

Whether New York City is able to sustain its commitment to nonmonetary forms of pretrial release will in large part depend on the ability of practitioners to build confidence in the Supervised Release program, particularly for individuals charged with a violent felony offense where judges retain the discretion to set monetary bail as a pretrial release condition.

For New York City, the challenge remains the same: maintaining a longstanding commitment to nonmonetary forms of pretrial release while carefully tracking impacts on critical outcomes.

¹ CJA runs the Supervised Release program in Queens. The Center for Court Innovation and CASES operate the program in other boroughs.

Appendix: Volume of Continued Cases, 1987-2020

Year	Citywide	Bronx	Brooklyn	Manhattan	Queens	Staten Island	Misdemeanor/ Violation	Nonviolent felony	Violent felony
1987	160,431	34,001	38,581	56,835	26,859	4,155	63,354	55,384	36,863
1988	174,209	35,262	42,311	60,756	31,156	4,724	66,739	64,487	39,364
1989	178,952	35,254	47,443	60,888	30,761	4,606	63,237	70,055	43,045
1990	165,797	33,129	39,494	58,762	29,703	4,709	59,511	65,035	39,875
1991	160,444	33,296	39,495	53,904	28,705	5,044	57,272	60,982	40,883
1992	156,857	33,074	38,914	52,657	27,725	4,487	61,234	56,136	37,848
1993	153,258	33,047	36,134	51,862	27,680	4,535	61,121	53,514	36,445
1994	172,659	34,858	45,388	54,951	31,928	5,534	77,741	57,191	36,125
1995	176,473	33,747	46,904	55,565	33,126	7,131	82,152	58,089	34,588
1996	178,315	34,051	49,543	55,714	32,282	6,725	87,933	57,551	30,398
1997	182,351	35,130	50,657	55,594	33,220	7,750	96,113	54,698	28,820
1998	176,877	36,131	48,928	53,826	30,350	7,642	92,091	54,909	27,117
1999	162,736	34,533	44,464	49,166	27,379	7,194	89,762	47,088	23,147
2000	169,879	35,129	50,575	48,045	28,848	7,282	102,020	43,538	21,518
2001	153,759	34,292	43,825	44,297	25,038	6,307	93,190	37,728	20,350
2002	154,824	34,470	39,769	47,459	26,974	6,152	94,435	37,771	19,931
2003	152,961	34,525	39,227	46,797	26,821	5,591	97,375	32,632	19,718
2004	157,521	34,293	39,450	49,782	28,269	5,727	100,309	34,078	19,091
2005	157,881	31,434	43,055	47,436	29,724	6,232	99,101	35,696	19,422
2006	168,811	35,016	46,725	47,781	31,976	7,313	107,592	37,984	21,020
2007	180,073	38,007	50,651	51,374	32,785	7,256	117,024	38,834	21,902
2008	181,486	37,243	51,104	51,527	33,607	8,005	119,849	36,513	22,589
2009	180,782	38,347	48,811	51,711	34,220	7,693	123,252	34,201	20,915
2010	176,171	38,873	47,810	48,395	34,027	7,066	121,089	31,777	20,622
2011	170,090	37,079	48,030	44,782	33,165	7,034	117,450	29,985	20,461
2012	171,863	35,767	51,196	44,813	32,837	7,250	119,904	29,530	20,082
2013	174,313	35,706	50,952	44,791	35,873	6,991	121,829	30,601	19,349
2014	169,089	34,407	48,774	41,628	36,524	7,756	119,516	30,895	17,840
2015	157,181	30,752	44,646	40,071	35,141	6,571	109,230	29,592	18,209
2016	154,510	28,578	44,968	39,303	34,023	7,638	107,670	28,907	17,800
2017	142,376	25,873	41,546	35,444	32,399	7,114	100,070	25,624	16,524
2018	132,644	24,078	37,481	33,060	31,251	6,774	94,687	23,372	14,471
2019	120,045	21,894	33,911	29,639	28,401	6,200	86,392	19,933	13,598
2020	71,517	12,786	21,078	16,080	17,927	3,646	46,167	11,919	13,293



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