



NEW YORK CITY
CRIMINAL JUSTICE AGENCY

RESEARCH BRIEF:

Pretrial Release Without Money: New York City, 1987-2018

In 2018 there were more than three times as many releases without money than money bails.

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

Introduction

Should New York end the use of money bail? What legislative framework would best limit the use of pretrial detention while promoting court appearance? As elected officials consider updating New York's 1970 bail statute, these questions have come under intense debate.

One place to start is by establishing a baseline of current pretrial practice in New York City. Although limited by the 1970 legislative framework, judges have broad discretion in making pretrial release decisions. Those practices may vary from judge to judge, but when viewed in the aggregate broad trends can be discerned.

“This research brief will document New York City’s embrace of pretrial release without money — a trend that accelerated in 2018.”

To analyze these trends, CJA compiled over 5 million pretrial release decisions from the last three decades. The data follow a clear pattern: from 1987 to the present, courts have moved further and further away from the use of monetary forms of pretrial release towards release without money. In fact, for the first time in over three decades, in 2018 the volume of release without money was more than three times that of money bail. At the same time, the city's jail population has declined, from a high of nearly 22,000 in 1991 to 7,862 at the beginning of 2019.

While New Jersey and California have recently abolished money bail by legislation, New York City has reduced its use by nearly two-thirds without legislative reform. At its peak, in 1989, judges set monetary bail in 83,705 cases continued at arraignment (47 percent). By 2018, that number had fallen to 30,288 (23 percent). Meanwhile the rate of release without money rose from a low of 50 percent in 1990 to a high of 76 percent in 2018.

This research brief will document New York City's embrace of pretrial release without money — a trend that accelerated in 2018. It will show that judicial willingness to release defendants without money has varied by a defendant's arraignment charge, with rates of nonmonetary release highest for defendants charged with a misdemeanor or less. It will also show differences by borough, with higher rates of release without money seen in the Bronx, Brooklyn and Queens. The data will also reveal a small improvement in already robust court appearance rates for defendants released on their own recognizance. Finally, it explores how pretrial justice in New York City compares to the rest of the country.

About The Data

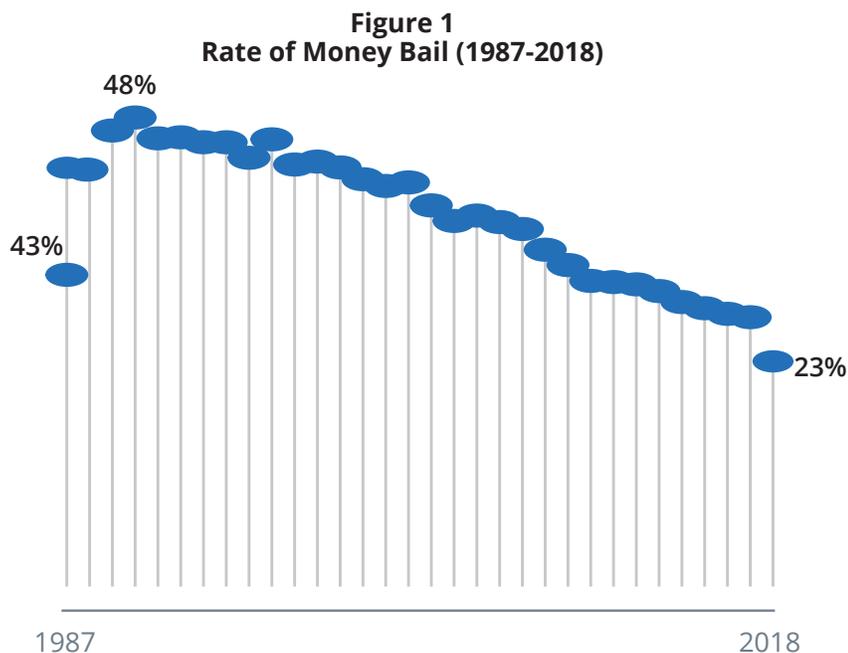
- The dataset used in the analysis was created by the New York City Criminal Justice Agency, the city's main pretrial justice agency, in partnership with the New York City Mayor's Office of Criminal Justice. It spans from 1987 to 2018 and includes over 5.3 million unique pretrial release decisions made 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, 1987-2018

The rate of money bail declined by 25 percentage points

In 1987, the rate of money bail was 43 percent. It rose to a high of 48 percent in 1990, before gradually declining to 23 percent in 2018, a 25 percentage-point decrease.

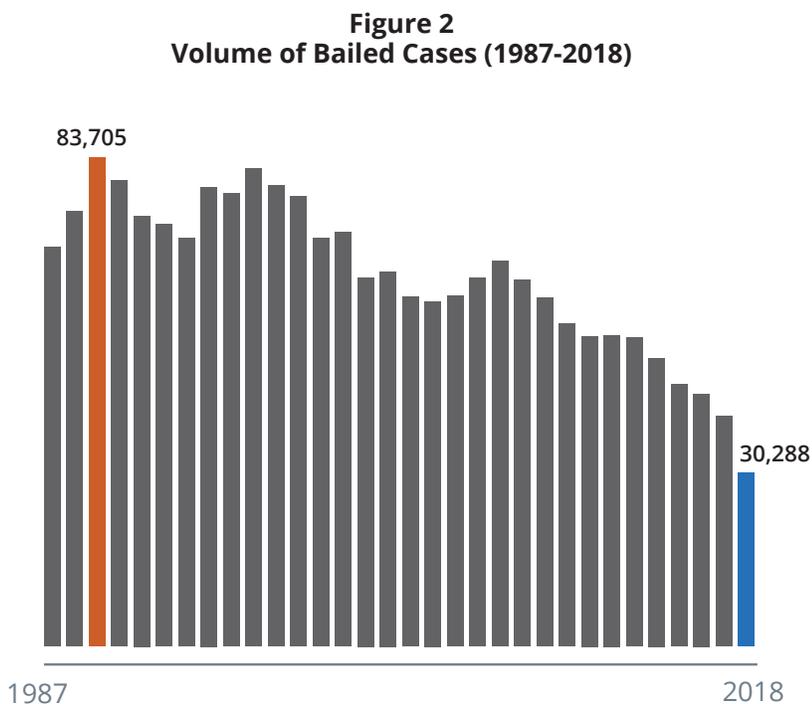
- ▶ **Rate of money bail** is the percentage of continued cases in which bail was set at arraignment.



The volume of money bail dropped by more than 50,000

In 1989, the volume of money bail reached a peak of 83,705, and fell gradually to 30,000 in 2018. 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.



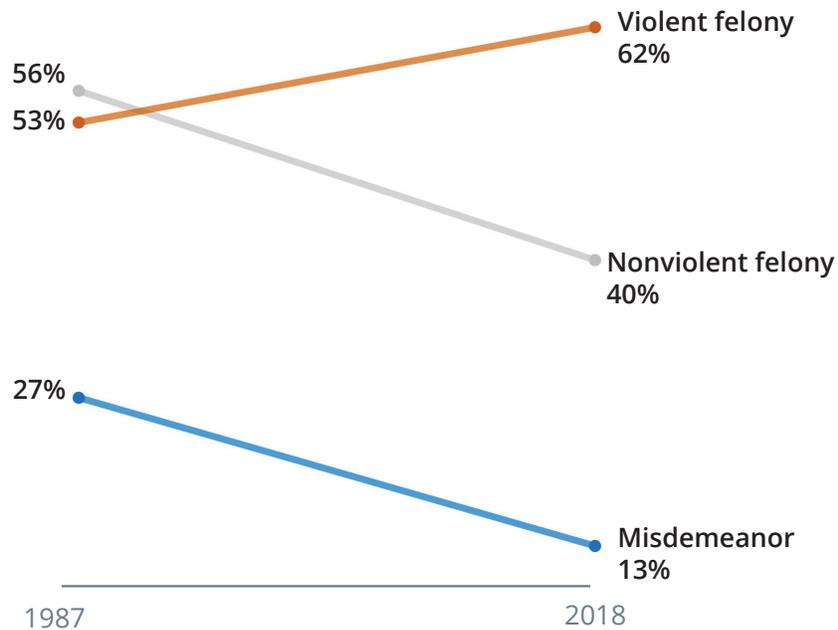
About The Data

- ▶ 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 except violent felony offenses

From 1987 to 2018, the rate of money bail fell for misdemeanors (14 percentage points) and nonviolent felonies (16 percentage points), but rose for violent felonies (9 percentage points).

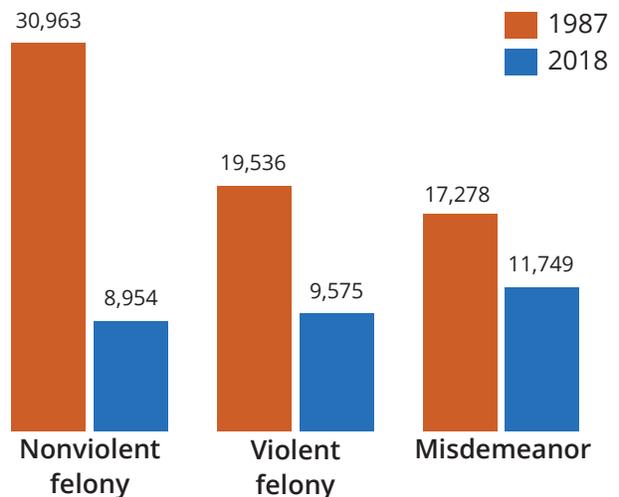
Figure 3
Rate of Money Bail by Severity (1987, 2018)



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

From 1987 to 2018, the volume of money bail fell for all classes of severity: 72 percent for nonviolent felonies, 51 percent for violent felonies, and 32 percent for misdemeanors.

Figure 4
Change in Volume of Money Bail by Severity (1987, 2018)



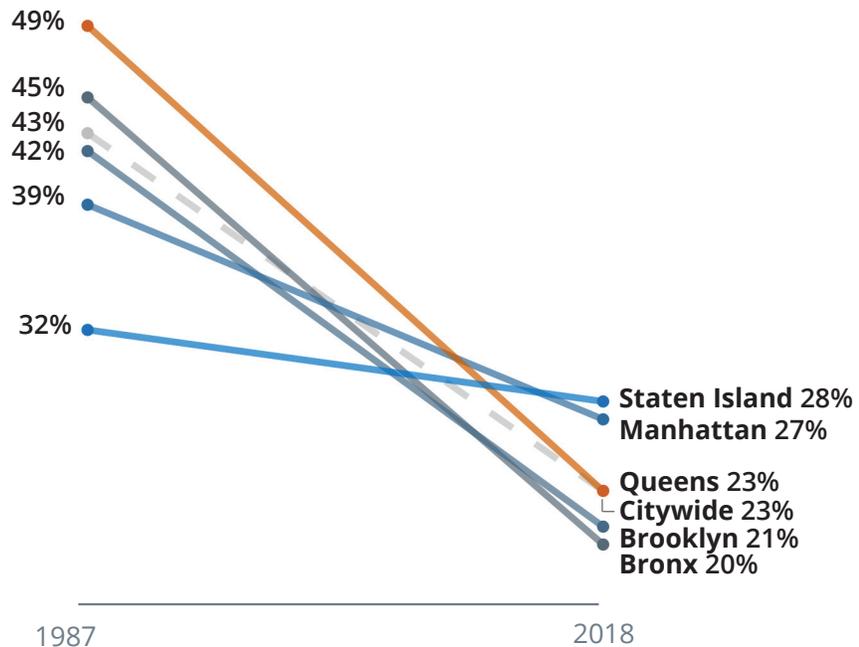
About The Data

- 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 2018, the rate of money bail fell in all five boroughs: 26 percentage points in Queens, 25 percentage points in the Bronx, 21 percentage points in Brooklyn, 12 percentage points in Manhattan, and 4 percentage points in Staten Island.

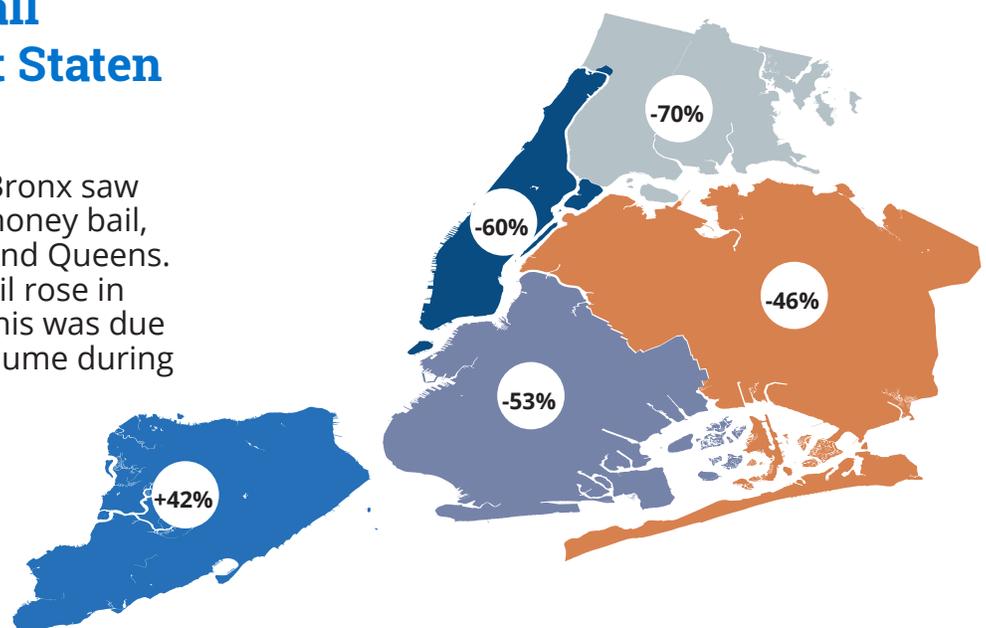
Figure 5
Rate of Money Bail by Borough (1987, 2018)



The volume of money bail dropped in all boroughs except Staten Island

From 1987 to 2018, the Bronx saw the sharpest decline in money bail, followed by Manhattan and Queens. The volume of money bail rose in Staten Island, although this was due to an increase in case volume during this time.

Figure 6
% Change in Number of Monetary Bails by Borough (1987, 2018)



Release Without Money, 1987-2018

The rate of release without money rose by 20 percentage points

In 1987, the rate of release without money was 56 percent. It gradually rose to a high of 76 percent in 2018.

- ▶ Rate of release without money bail is the percentage of continued cases released without a monetary condition at arraignment.

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

From 1987 to 2018, the rate of release without money rose for misdemeanors (15 percentage points) and nonviolent felonies (12 percentage points), but fell for violent felony offenses (10 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: 25 percentage points in the Bronx and Queens, 22 percentage points in Brooklyn, 11 percentage points in Manhattan, and 7 percentage points in Staten Island.

Figure 7
Release Without Money (1987-2018)

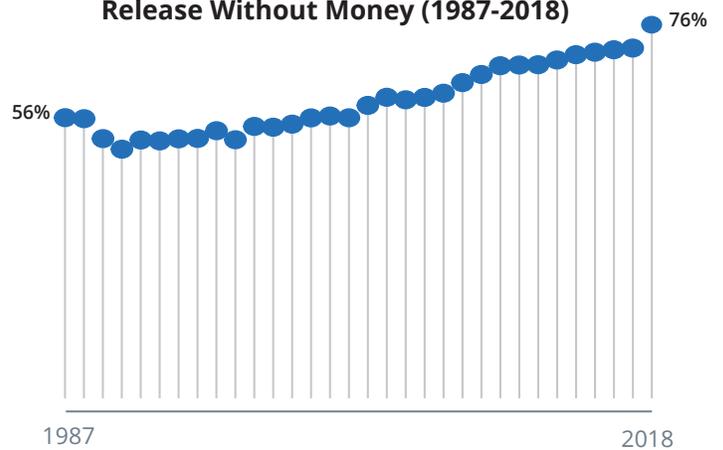


Figure 8
Release Without Money by Severity (1987, 2018)

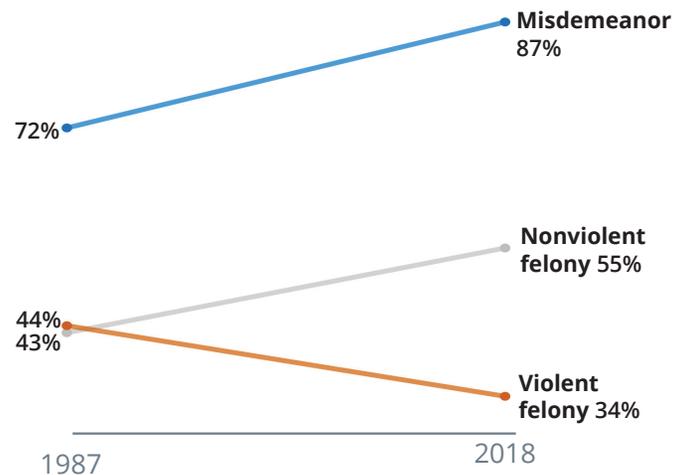
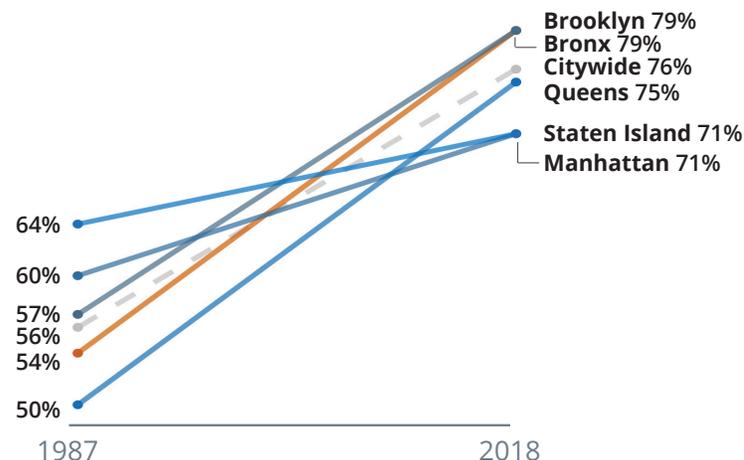


Figure 9
Release Without Money by Borough (1987, 2018)



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**, in every borough the rate of release without money increased from 1987 to 2018:

- ▶ 17 percentage points in Queens
- ▶ 15 percentage points in Brooklyn
- ▶ 15 percentage points and Manhattan
- ▶ 13 percentage points the Bronx
- ▶ 5 percentage points in Staten Island.

The variation for felonies was considerably greater by borough.

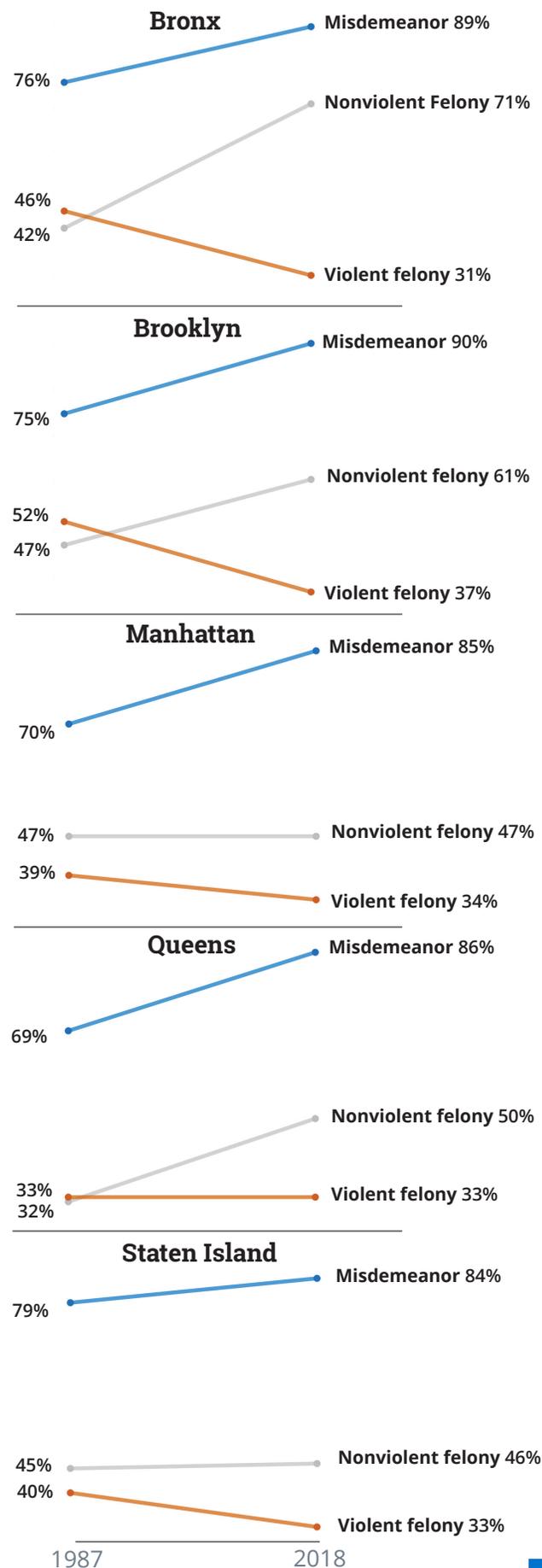
For **nonviolent felonies**:

- ▶ 29 percentage-point increase in the Bronx
- ▶ 18 percentage-point increase in Queens
- ▶ 14 percentage point increase in Brooklyn
- ▶ 1 percentage point in Staten Island
- ▶ No change in Manhattan.

For **violent felonies**:

- ▶ 15 percentage-point decrease in the Bronx
- ▶ 15 percentage-point decrease in Brooklyn
- ▶ 7 percentage-point decrease in Staten Island
- ▶ 5 percentage-point decrease in Manhattan
- ▶ No change in Queens.

Figure 10
Release Without Money by Borough and Severity
(1987, 2018)

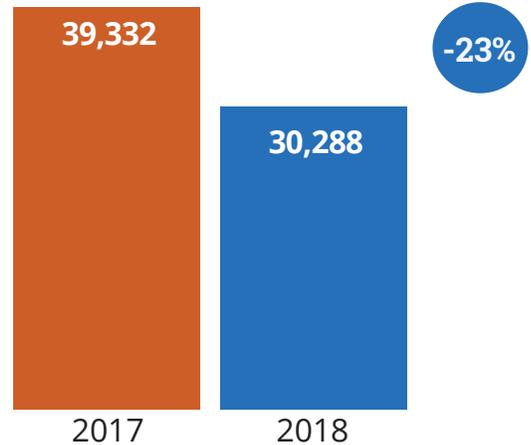


Trends in Pretrial Release in 2018

The volume of money bail fell by 23 percent

In 2018, the volume of money bail dropped from 39,332 in 2017 to 30,288 in 2018, a 23 percent decline. Meanwhile new admissions to city jails declined by 22 percent, and by the end of 2018 the average daily population had fallen by 980, according to the Mayor's Office of Criminal Justice.

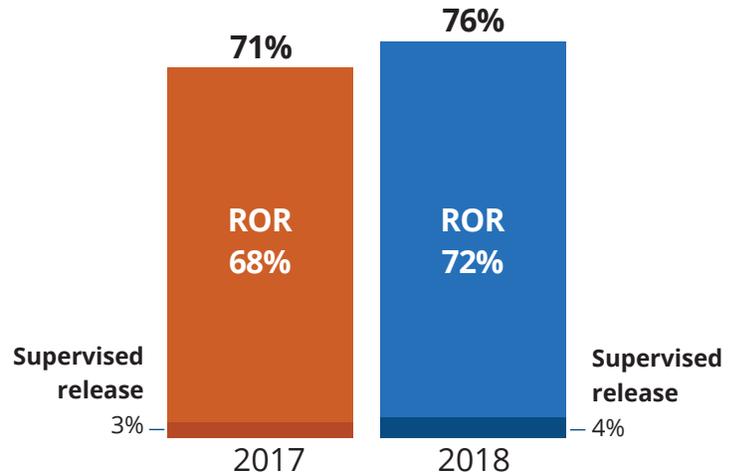
Figure 11
Volume of Money Bail
(2017-2018)



The rate of release without money increased by 5 percentage points

In 2018, the rate of release without money jumped 5 percentage points, from 71 percent in 2017 to 76 percent in 2018. This was driven by increases in both ROR and Supervised Release.

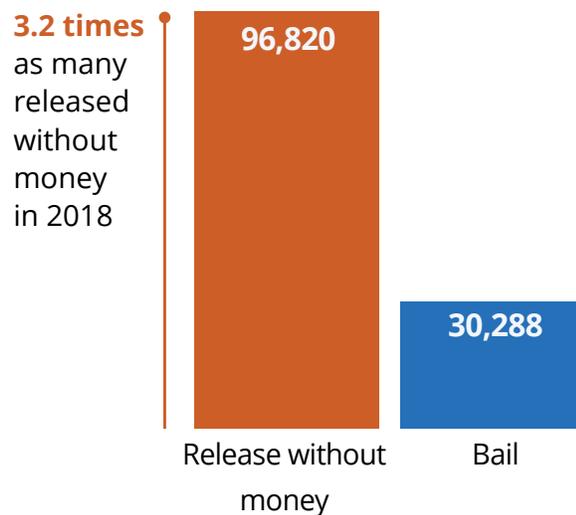
Figure 12
Rate of Release Without Money
(2017-2018)



The ratio of release without money to money bail is now 3 to 1

For the first time in three decades, in 2018 there were more than three times as many releases without money as bails. The ratio was 1.3 in 1987 and dipped to 1.1 in 1990.

Figure 13
Ratio of Release Without Money to Bail (2018)

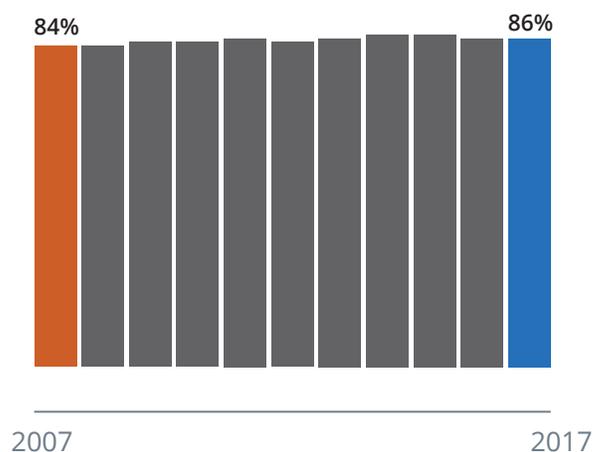


Court Appearance Rates, 2007-2017

The appearance rate for defendants released on recognizance improved by 2 percentage points

From 2007 to 2017, the rate of appearance increased from 84 percent to 86 percent.

Figure 14
Rate of Appearance for ROR'd Defendants (2007-2017)

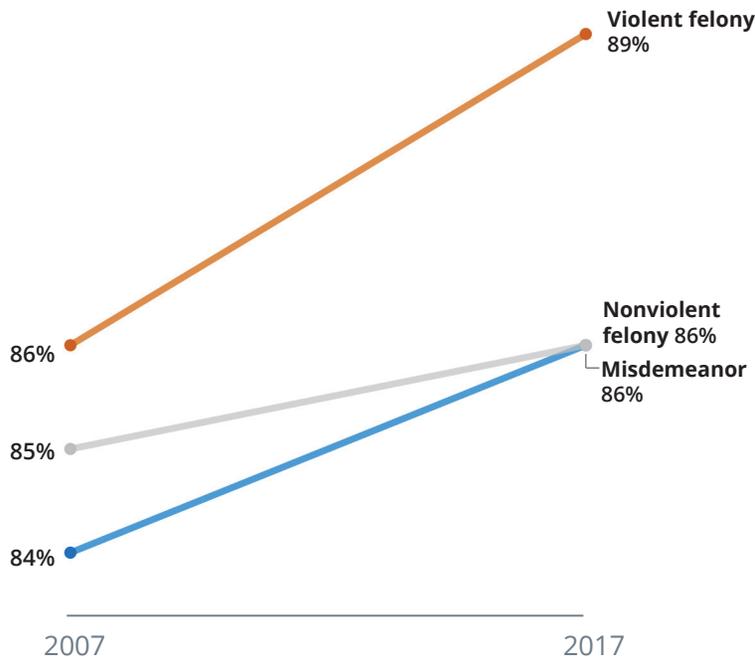


Appearance rates for defendants released on recognizance increased for all crime severity types

From 2007 to 2017, the rate of appearance increased in all crime severity categories: 3 percentage points for violent felonies, 2 percentage points for misdemeanors, and 1 percentage point for nonviolent felonies.

(This figure does not account for pre-existing risk of non-appearance. In 2017, judges ROR'd 81 percent of misdemeanor defendants, 40 percent of nonviolent felony defendants, and 31 percent of violent felony defendants. This suggests that judges are more selective in releasing defendants charged with more serious crimes.)

Figure 15
Rate of Appearance for ROR'd Defendants by Severity (2007, 2017)



About The Data

- ▶ The appearance rate indicates whether a defendant made all scheduled court appearances. Data from 2018 is not shown as many of these cases are still pending.

New York City by Comparison

In 2018, New York City released 72 percent of defendants on recognizance, 4 percent under supervision, and 23 percent received money bail. How do these figures compare to other jurisdictions?

“Very few places release so many defendants without any conditions whatsoever. In this regard, New York City is a model for other jurisdictions.”¹

-Greg Berman & Julian Adler, Boston University Law Review (2018)

Data on pretrial justice outcomes elsewhere is scarce. At the national level, the Bureau of Justice Statistics (BJS) reported pretrial release outcomes for felony defendants in state courts from 1990 to 2004 in the 75 most populous counties.² It estimated that during this time 20 percent of defendants were released on recognizance.

At the state level, data is available from only a handful of jurisdictions. In upstate New York, the Division of Criminal Justice Services reported that, from 2016 to 2017 in 51 districts, 47 percent of defendants were released on recognizance, 6 percent were released under supervision, and 42 percent received money bail.³ For more serious crimes, the rates of nonmonetary release were even lower, with only 22 percent of nonviolent felony defendants and 8 percent of violent defendants released on recognizance.

In 11 California counties from 2011 to 2015, the Public Policy Institute of California reported that, excluding pre-arraignment releases, 30 percent of defendants were released on recognizance, 6 percent were released under supervision, and 52 percent received money bail.⁴

In New Orleans Court Watch NOLA reported that, in 2015, 11 percent of felony defendants were released on recognizance and 89 percent received money bail.⁵

How do pretrial release rates in New York compare to jurisdictions where money bail has been abolished? Washington, D.C. and New Jersey are two instructive examples. In Washington, D.C., where cash bail was eliminated in 1992, 84 percent of defendants were released at their initial appearance in 2017,⁶ while in New Jersey 94 percent of defendants were released in 2018,⁷ with the rest detained.

Another indication of New York City's lighter touch is the local incarceration rate. According to the Mayor's Office of Criminal Justice, New York City has the lowest use of jail among all large U.S. cities, with an incarceration rate of 136 per 100,000, compared to 172 in Chicago, 245 in Los Angeles, 289 in Houston, and 480 in Philadelphia.⁸ Given that pretrial detention accounts for three-quarters of the incarcerated population in local jails,⁹ New York City's low incarceration rate is at least partly attributable to its practice of releasing so many defendants without money.

Even with rising rates of pretrial release, New York City has maintained comparatively high rates of court appearance. According to the BJS, nationally 26 percent of felony defendants released on recognizance failed to appear.¹⁰ In New York City in 2017, only 14 percent of defendants released on recognizance failed to appear for even a single court date. Thus, New York City has shown that it's possible to release a greater percentage of defendants with minimal conditions and improve court attendance at the same time.

Appendix: Volume of Continued Cases, 1987-2018

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	128,197	23,188	36,422	31,773	30,233	6,581	91,021	22,068	14,995

References:

- 1 Berman G. & Adler J. (2018). Toward Misdemeanor Justice: Lessons from New York City. *Boston University Law Review*.
- 2 Cohen T.H. & Reaves B.A. (2007). Pretrial Release of Felony Defendants in State Courts. *BJS Special Report*.
- 3 Division of Criminal Justice Services, <https://www.scribd.com/document/375055296/BailStudyDCJS-012418>.
- 4 Public Policy Institute of California, https://www.ppic.org/content/pubs/report/R_0517STR.pdf.
- 5 Court Watch NOLA, <http://www.courtwatchnola.org/wp-content/uploads/2015-Data-and-Statistics-Report-1.pdf>.
- 6 Pretrial Services Agency for the District of Columbia, <https://www.psa.gov/sites/default/files/2016%20Release%20Rates%20for%20DC%20Pretrial%20Defendants.pdf>.
- 7 New Jersey Courts, <https://njcourts.gov/courts/assets/criminal/cjrreport2018.pdf?cacheID=LXLiNuK>.
- 8 NYC Mayor's Office of Criminal Justice, https://criminaljustice.cityofnewyork.us/wp-content/uploads/2019/01/Population-reduction-sheet_2019_Final.pdf.
- 9 Prison Policy Initiative, <https://www.prisonpolicy.org/reports/pie2018.html>.
- 10 *Supra*.



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