



JANUARY 2025

SETTING BAIL TO FAIL

THE GAP BETWEEN
BAIL REFORM'S
GOALS AND
REALITY

Executive Summary

The 2019 New York bail reform law sought to reduce pretrial detention and address economic disparities in the state's criminal courts. While much focus has been on the law's elimination of bail for most misdemeanors and non-violent felonies, it also fundamentally changed how judges set bail in detention-eligible cases.

This report examines how the New York judiciary implemented the 2019 reform law in cases where judges decided to set bail between January 2020 and December 2023. Our analysis shows that judges followed rules requiring specific bail options but often set amounts that undermined the statutory intent to provide affordable alternatives, particularly to commercial bonds.

Key Findings:

- In 99.9% of cases, judges met the two statutory requirements requiring them to (i) set three or more bail options, and (ii) include either Partially Secured Surety Bond (PSSB) or Unsecured Surety Bond (USB) as one of the three options.
- In at least 82.1% of cases, judges did not set PSSB as the most affordable bail option, which conflicts with the legislature's intent when it passed bail reform.
- In at least 78% of cases, judges set commercial bonds as the most affordable bail option, which again conflicts with one of bail reform's aims, namely, to reduce reliance on the commercial bail industry.
- In at least 13.3% of cases, judges set PSSB amounts so high that the PSSB upfront payment exceeded the amount required to satisfy the total cash bail amount, effectively leaving defendants with only two bail options, cash bail and commercial bond.

Key Recommendations:

- Create a real-time public dashboard tracking judicial compliance with bail reform requirements.

- Implement a mandatory digital bail form that requires explanation when PSSB is set as less affordable than other options.
- Hold judicial training on the legislative intent behind bail reform and proper implementation of PSSB.
- Conduct interviews with judges to understand challenges in implementing the reform's requirements.
- Streamline the PSSB process to simplify and expedite payment under this option.

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Introduction

In 2019, the New York state legislature passed bail reform. This legislation, which went into effect on January 1, 2020, reshaped the state's approach to pretrial detention. In enacting this reform, the legislature followed an established body of research and data, which demonstrated that pretrial detention correlates with negative public safety outcomes, including higher recidivism rates,¹ exacerbated racial disparities,² and harsher case outcomes such as increased conviction rates, longer sentences, and prolonged incarceration.³

The 2019 bail reform law established new rules to reduce pretrial incarceration and address economic disparities in pretrial detention eligibility and judicial practices. The reform narrowed eligibility for pretrial detention by excluding most misdemeanors and non-violent felonies. Moreover, in cases where bail was set, the reform created two new bright-line rules. First, judges had to offer at least three forms of bail. Second, one of these three forms of bail had to be either a Partially Secured Surety Bond (PSSB) or Unsecured Surety Bond (USB).⁴

The inclusion of the PSSB/USB option in the reform law is noteworthy, as legislative history indicates these two forms of bail were intended to provide more affordable alternatives to the commonly used cash bail and commercial bonds. By expanding the minimum number of bail options and requiring that judges offer more affordable options, the legislature also sought to reduce reliance on commercial bonds.

This report examines how the judiciary implemented the 2019 reform law in cases where judges decided to set bail. We find that judges overwhelmingly followed the bright-line requirements to set a minimum of three forms of bail, one of which is a partially secured or unsecured surety bond option.

However, our analysis also shows that judges have not set bail amounts in line with statutory intent. In at least 82.1% of cases, judges did not set PSSB to be the most affordable bail option—as measured by the amount of money required to be paid upfront to obtain immediate release from detention. Indeed, in at least 13.3% of cases, judges

set PSSB amounts so high that the upfront payment was equal to or exceeded the full cash bail amount, effectively leaving defendants with only two viable bail options.

Moreover, we find that judges set bail amounts that made commercial bond upfront payments more affordable than both PSSB upfront payments and cash bail in at least 78% of all monetary bail cases.

Our findings reveal a pattern in which judges implemented the 2019 reform law in ways that contradicted the statutory intent. This pattern was not limited to specific geographic areas. As discussed in greater detail below, we present several potential explanations for our findings. These explanations range from resistance to the 2019 reform law to systemic challenges related to the time and other resources associated with the bail process.

To address our findings, we propose a range of immediate to long-term solutions that the state's court system can implement without requiring legislative action. By taking these steps, the judiciary can course-correct and better align its practices with the statutory intent of the 2019 reform.

This report has import beyond just understanding New York's implementation of bail reform. Our findings show that judges generally followed the statutory bright-line rules but also acted in ways that undermined statutory intent when the law permitted them to exercise their discretion without constraint. This finding should inform future legislative reforms, as well as provide a valuable lesson about how to guide and, when appropriate, constrain judicial decision-making.

Background: New York Bail Reform's Monetary Bail Provisions

New York's approach to bail and pretrial detention has long prioritized the presumption of innocence by limiting the basis for pretrial detention to defendants' likelihood of returning to court. Unlike most states and the federal government, New York prohibits

judges from considering a defendant's "dangerousness" when setting bail, allowing them to consider only the risk of flight.⁵

In 2019, New York enacted a bail reform law that significantly reshaped the state's pretrial detention system, aiming to reduce the number of individuals detained before trial. The law sought to achieve this by allowing more defendants to remain free while awaiting trial, primarily by rendering most misdemeanor and non-violent felony cases ineligible for pretrial detention.⁶ As a result, judges were prohibited from setting bail or detaining defendants in such cases. These changes have received the most attention from the media and the and have been the focus of considerable public debate.⁷ Appendix I contains a detailed timeline of the legislative history behind New York's 2019 bail reform, including public statements from elected officials.

However, the 2019 reform also changed the way detention-eligible cases are handled. These changes have received less attention, but they are equally important. Their intent was to not only reduce the number of people detained pretrial but also to alleviate the economic disparities and hardships experienced by defendants and their families when bail was imposed.⁸ To reduce the risk that defendants would be detained because they or their families could not afford bail, the legislature introduced the following new requirements to all detention-eligible cases where bail is set:

1. **Three Forms of Bail are Required.** The reform increased the minimum number of bail forms judges must set from two to three.⁹ Previously, judges could set a minimum of two forms out of the nine recognized by state law.¹⁰ The new law raised this minimum by one.
2. **PSSB (or USB) is Required.** One of the three forms of bail must be either a Partially Secured Surety Bond (PSSB) or an Unsecured Surety Bond (USB).¹¹ Previously, judges did not have to set either form of bail.¹²
3. **Must Consider Financial Circumstances.** Judges must consider a defendant's (i) "financial circumstances;" (ii) "ability to post bail without posing undue hardship;" and (iii) "ability to obtain a secured, unsecured, or partially secured bond," in deciding what amount of bail to set in each of the three forms of bail.¹³

In adding these new requirements, the legislature explicitly cabined judicial discretion through the imposition of bright-line rules and assessment of individual factors.

A Brief Primer on New York's Nine Forms of Bail

We begin by reviewing the different forms of bail available in New York State. While judges have nine options to choose from, they have historically favored cash bail and commercial bond.¹⁴ Following the 2019 reform, judges were required to set at least three forms of bail, including one option that must be either a Partially Secured Surety Bond (PSSB) or an Unsecured Surety Bond (USB).¹⁵

Our findings show that since the enactment of bail reform, judges have overwhelmingly used three forms of bail: cash bail, commercial bond, and PSSB. We therefore outline these three forms of bail, along with the other required form of bail, USB, below.¹⁶ A brief description of the other five forms of bail is provided in the footnote.¹⁷

Cash Bail. When a judge sets cash bail, the defendant—or their family or friends—must pay the full amount in cash to the court to secure release. Cash bail is generally refundable if the defendant returns to court for all appearances and meets all other court obligations, regardless of the case's outcome. This means that even if the defendant is found guilty, they are still entitled to a full refund of the cash bail, provided they have followed all court-imposed requirements.

Example: If a judge sets cash bail at \$10,000, the defendant or their family must pay the full \$10,000 to the court. The full cash amount of \$10,000 is then returned if the defendant follows all court orders.

Commercial Bond. When a judge sets bail in the form of a commercial bond, the defendant's family or friends must pay a non-refundable fee to a bondsperson. This fee is calculated on a sliding scale that changes based on the total bond amount: 10% of the bond amount for bonds under \$3,000, with a decreasing percentage for higher bond amounts.¹⁸ For larger bond amounts, the bondsperson may also require collateral

beyond the fee. Once the fee and any collateral are provided, the bondsman posts the bond with the court, and the defendant is released.¹⁹ If the defendant does not appear in court or meet other court mandates, the bondsman is liable to the court for the bond amount and may pursue the family or friends who paid for the bond to recover this amount. If the defendant meets all court obligations, any collateral is returned, but the initial fee is non-refundable, regardless of compliance.

Example: If a judge sets a bond amount of \$5,000, the total fee would be \$460, calculated at 10% for the first \$3,000 and 8% for the remaining \$2,000, according to the sliding scale required by law.²⁰ The commercial bondsman is responsible for the full \$5,000 if the defendant fails to meet court obligations but can recover the amount from the person who paid the fee (usually a family member or friend, as the defendant is typically held in jail). This \$460 fee is non-refundable.

Partially Secured Surety Bond (PSSB). A PSSB allows the release of a defendant by requiring only a partial deposit, rather than the full bail amount, which a family member or friend posts to the court as a guarantee. When a judge issues a PSSB, they set a total bond amount along with a required deposit percentage—often 10%, though it can be lower. The family or friends of the defendant must pay this deposit to the court.

Unlike commercial bonds, a PSSB deposit is fully refundable if the defendant meets all court obligations, regardless of the outcome of the case. There are no non-refundable fees. The family or friends who wish to pay the PSSB deposit must appear in court, complete paperwork, and verify their financial resources (such as income, savings, or property). This process includes acknowledging that they will be responsible for the remaining PSSB amount if the defendant fails to appear. A judge may decline a PSSB application if they determine the applicant lacks sufficient resources to cover the full PSSB amount in the event the defendant fails to meet court obligations. In such cases, more guarantors may be required to ensure the PSSB amount can be covered if needed.

Example: If a judge sets PSSB at \$100,000 with a 10% deposit, a third party (usually family members or friends) would need to pay \$10,000 to secure the

defendant's release. The \$10,000 is refunded to the family at the end of the case, provided the defendant has followed all court obligations. Otherwise, the third party would have to pay the remaining \$90,000 to the court.

Unsecured Surety Bond (USB). A USB allows the release of a defendant without any upfront payment. When a judge sets bail in the form of a USB, the defendant's family or friends must appear in court and formally acknowledge their responsibility to pay the full bond amount if the defendant does not follow court obligations. Other than this agreement, no fee, deposit, or collateral is needed to secure the defendant's release.

Example: If a judge sets a USB at \$20,000, a third party (usually family members or friends) would need to enter into a legal agreement with the court to pay the full \$20,000 if the defendant does not follow court obligations. Once this agreement is finalized, the defendant is released, with no upfront payment needed.

The Bail Reform Law Prioritizes Affordable Bail Options

The 2019 reform law required judges to offer defendants either PSSB or USB as one of three bail options. The legislature's clear preference for PSSB or USB warrants further discussion, as it highlights one of the reform's primary goals—namely, ensuring that defendants were given affordable bail options.

The legislature has long viewed PSSB/USB as more affordable bail options. In 1969, when the legislature proposed to amend the bail statute to add PSSB and USB as recognized bail options, the commission charged with drafting the bill described these two forms of bail as “intermediate devices” that struck a balance between releasing defendants on their own recognizance and setting unaffordable bail amounts.²¹ Indeed, the commission viewed PSSB and USB as an “endeavor to reduce the unconvicted portion of our jail population,” because these two new forms of bail would enable people

to be released on appropriate conditions to ensure their return to court, rather than be detained subject to bail they could not otherwise afford.²²

The legislature's view was also reflected in the authoritative McKinney practice commentary on the Criminal Procedure Law in New York, which referred to the legislative amendments to add PSSB and USB as "innovations... [that] represent *less burdensome forms of bail* than those previously available [such as cash bail and commercial bond]. They were added to vest the court with the utmost degree of flexibility..."²³

In short, since at least 1969, the legislature has recognized that PSSB and USB are more affordable than other types of bail. However, judges almost never chose these options when setting bail. Instead, from 1969 until 2019, when the reform law was enacted, judges overwhelmingly set only cash bail and commercial bonds.²⁴ Thus, the legislature's decision to make PSSB or USB a *mandatory* bail option suggests a deliberate decision to break with the past and to order change in judicial behavior, to ensure that defendants had access to financially affordable bail options.

The legislature's preference for affordable bail options is further evident when comparing the financial structures of PSSB and USB. Both options can provide defendants and their families with greater financial relief than the commonly used forms of cash bail and commercial bonds.²⁵ Unlike cash bail, where the full amount must be paid upfront, PSSB allows for a defendant's release with just a deposit—a percentage of the total PSSB bond amount. PSSB also differs from commercial bonds because it is paid to the court rather than a for-profit business. As such, the PSSB deposit is fully refundable if the defendant follows court orders, while the commercial bond fee is kept by the bond company. Additionally, commercial bond companies can demand collateral beyond just a fee, which works as an added, hidden cost; the court cannot charge any such added fees under the PSSB option.

USB provides even more affordability, requiring no upfront payment at all and only imposing financial consequences if the defendant does not meet court obligations. These features underscore the legislature's intent to offer bail options that reduce

financial strain while still encouraging court appearances.

More recently, in the run-up to the passage of the 2019 reform law, city officials and experts characterized PSSB and USB as more affordable forms of bail. The Independent Commission on New York City Criminal Justice and Incarceration Reform, founded by former New York City Council speaker Melissa Mark-Viverito and chaired by former Chief Judge of the New York Court of Appeals Jonathan Lippman, played a key role in shaping the 2019 reform law. In two reports, the Commission noted that PSSB and USB were more affordable forms of bail compared to cash bail and commercial bonds.²⁶

In addition, some New York City judges recognized that the 2019 reform law's purpose was to ensure defendants had access to affordable bail options. For instance, New York County Supreme Court Judge Daniel P. Conviser noted that:

[T]he bail reform law was also *designed to significantly reduce disparities based on wealth* and reduce pretrial incarceration in any case where a court chose to set monetary bail. That is evident in two provisions. First, ... the law newly requires that three bail forms be set and that one such form be either an unsecured or partially secured surety bond set by the court. This requirement allows defendants, in every case where monetary bail is set, to attempt to obtain a bond from a friend, relative or acquaintance without paying a premium to an insurance company. ... These provisions were *obviously designed to reduce the number of defendants with bail conditions who would be unable to post bail* and would therefore remain incarcerated pending trial.²⁷

Similarly, now-retired Bronx Supreme Court Judge Ethan Greenberg contemplated the relationship between PSSB and commercial bonds, rejecting the idea that PSSB should be “many multiples higher” than commercial bonds, explaining that such an approach.

...would appear to fly in the face of the intent of the Revised Bail Law. Plainly, *the Legislature intended that some defendants who cannot afford an insurance company bail bond should still be able to afford a partially-secured surety bond;*

otherwise, the provision of the Revised Bail Law mandating the availability of partially-secured surety bonds would have no practical meaning.²⁸

In other words, Judge Greenberg correctly observed that, because the legislature meant to offer PSSB as an affordable alternative to commercial bonds, PSSB should not be priced higher than commercial bonds.²⁹

The Bail Reform Law Offered an Affordable Alternative to Commercial Bonds

The PSSB/USB requirement also suggests a legislative desire to offer affordable alternatives to commercial bonds. PSSB and commercial bonds are similarly structured, in that (i) a third party, such as the defendant's family member, must pay a percentage of the total amount to secure release; and (ii) the remaining balance of the total bond incentivizes the defendant's return to court, as the third party is liable for it.

However, unlike commercial bonds, PSSB does not require payment of non-refundable fees or posting of collateral, nor is it administered by a for-profit company. As a result, PSSB is less financially burdensome than commercial bonds while still offering a similar financial structure for judges seeking to balance incentivizing court appearances with affordability.

The political history leading up to the passage of the 2019 reform law also suggests that reducing the use of commercial bonds was a subject of public debate and a topic well known to the legislature. Over nearly a decade, reports, studies, and advocacy efforts highlighted the predatory practices of the commercial bail industry and their disproportionate impact on low-income defendants and their families.³⁰ Governor Cuomo, in 2016 and again in 2018, emphasized the need to reform the bail system and specifically criticized the commercial bail industry.³¹ In 2018, a year before the vote on the 2019 reform law, the New York City Comptroller and the New York City Bar Association called for the elimination of commercial bail bonds.³²

By making PSSB (or USB) a mandatory bail option, the legislature aimed to achieve several outcomes for defendants. First, it sought to promote a more affordable form of bail. Second, it provided judges with a financial tool that mirrored the structure of commercial bonds, without the predatory practices often associated with the commercial bond industry. This, in turn, gave judges a practical alternative that addressed concerns about court appearances while avoiding the pitfalls of the commercial bail system.

Research Questions

We assess judicial compliance with the monetary bail provisions of the 2019 reform law using data from cases where bail was set between January 1, 2020, and December 31, 2023. Unlike the changes to offense eligibility for pretrial detention, these three requirements for setting bail have received comparatively less attention and researchers have yet to study these changes.

Initially, we examine whether judges followed the bright-line requirements established by the 2019 reform law by asking:

1. Did judges set three forms of bail?
2. Did judges set either PSSB or USB?

In addition, we assess whether judges followed the statutory intent to utilize PSSB/USB as an affordable alternative to cash bail and commercial bond. We define affordability as the minimum upfront payment required for pretrial release under each bail form: the full amount for cash bail, a deposit percentage for PSSB, or a non-refundable fee for commercial bonds. While the legislature understood PSSB as an affordable alternative, its affordability depends on the bail amounts judges set. If judges set PSSB amounts higher than cash bail and commercial bond, they make PSSB financially unattractive and steer defendants and their families toward commercial bonds instead.

Thus, in evaluating the implementation of the 2019 reform, we examine the amount of bail set and ask the following questions:³³

3. Did judges set PSSB deposits lower than cash bail amounts and commercial bond fees, making PSSB the most affordable option for defendants and their families?
4. Did judges set commercial bond fees lower than PSSB deposits and cash bail amounts, steering defendants toward a predatory industry through cheaper upfront payments?

Data and Methodology

We rely on official court pretrial data to analyze judicial compliance with the bail provisions. The 2019 reform law requires the New York Office of Court Administration and the Department of Criminal Justice Services to publish detailed pretrial data covering all cases arraigned statewide starting on January 1, 2020.³⁴ We use all data available, which covers the period ending on December 31, 2023.³⁵ The data includes, among other information, the name of the judge, the charges in the case, and the bail forms and amounts set by the judge.

We filter this data and keep only cases where monetary bail was set. For a comprehensive discussion of the methodology used in this Report, see Appendix II.

Findings

We find that judges largely followed the two bright-line rules requiring them to offer three bail options, one of which must be Partially Secured Surety Bond (PSSB) or Unsecured Surety bond (USB). However, an examination of the bail amounts set yields mixed results. In most cases, judges set bail amounts in a way that made commercial bonds, rather than PSSB, the least expensive option.

We discuss our findings in greater detail below. Our findings, broken down by judge, are provided in Appendix III.

The Statutory Requirement to Set Three Forms of Bail

Judges overwhelmingly set three forms of bail. In 99.9% of cases (84,438), they set at least three forms of bail.

Judges rarely set more than the statutorily required minimum of three forms of bail.

While they followed the three-bail minimum requirement, judges rarely went beyond it: they set four forms of bail in just 10.4% of all cases and five or more forms in 0.9% of cases.

The most common forms of bail set were cash, PSSB, and commercial bond. Judges set each of these three forms of bail in over 95% of cases. Moreover, judges set these three forms of bail together, without any other form, in 83.4% of cases. When judges did go beyond the statutory requirement of three forms of bail, they most often set four forms (8.7%), with credit card bail being the fourth option offered alongside cash, PSSB, and commercial bond.

The Statutory Requirement to Set Either PSSB or USB

Judges overwhelmingly set PSSB or USB as one of the three forms of bail. They set either PSSB or USB in 99.9% of cases (84,438), leaving 98 cases without either bail option set.

Judges had a clear preference for PSSB over USB. They set PSSB in 83,821 cases (99.1%) compared to 497 cases for USB. Judges set both PSSB and USB in just 120 cases.

The Affordability of PSSB

We next examine whether judges are setting PSSB amounts in a manner that aligns with the 2019 statutory framework, which sought to offer affordable bail alternatives to cash bail and commercial bonds.³⁶

Methods

We assess bail affordability for each bail form by examining the minimum upfront payment required for a defendant's release—specifically, the PSSB deposit, the commercial bond fee, or the total cash bail amount.

This comparison method, though not capturing long-term financial implications, provides a clear, comparable measure across bail types and highlights the critical first step in securing a defendant's freedom. We choose this comparison because we assume that defendants and their families are most concerned with the immediate financial burden of securing the upfront payment needed for pretrial release. While other factors—total outstanding liability, potential collateral requirements, and the refundability of deposits—may influence preferences, focusing on upfront and immediate costs is most appropriate because of the urgent need many defendants and families feel to quickly secure release.

We specifically focus on cases where judges set *only three* forms of bail: cash bail, commercial bond, and PSSB. Judges set these three, and only these three, forms of bail in 83.4% of all monetary bail cases. By concentrating on these cases, we focus solely on instances where judges adhered to the statutory bright-line requirements and eliminate potential confounding factors from additional bail types. This approach more accurately assesses how bail amounts align with the legislature's understanding of PSSB as more affordable than the traditional bail forms, cash bail and commercial bonds, used before the 2019 reform.

Importantly, while we focus on these specific cases, we calculate all percentages using the *total number* of cases with monetary bail as the denominator, not just those with

the three forms of bail. This method of calculation offers a more comprehensive view of bail-setting practices across all monetary bail cases, ensuring our analysis captures the full context of judicial decision-making rather than presenting a potentially skewed perspective based solely on a subset of cases.

This methodological choice means our reported percentages represent minimum values - lower bounds that are definitively true across all monetary bail cases. When we qualify findings with “at least,” we acknowledge the actual percentage could be higher since some portion of the excluded cases may also exhibit the pattern we’re analyzing.

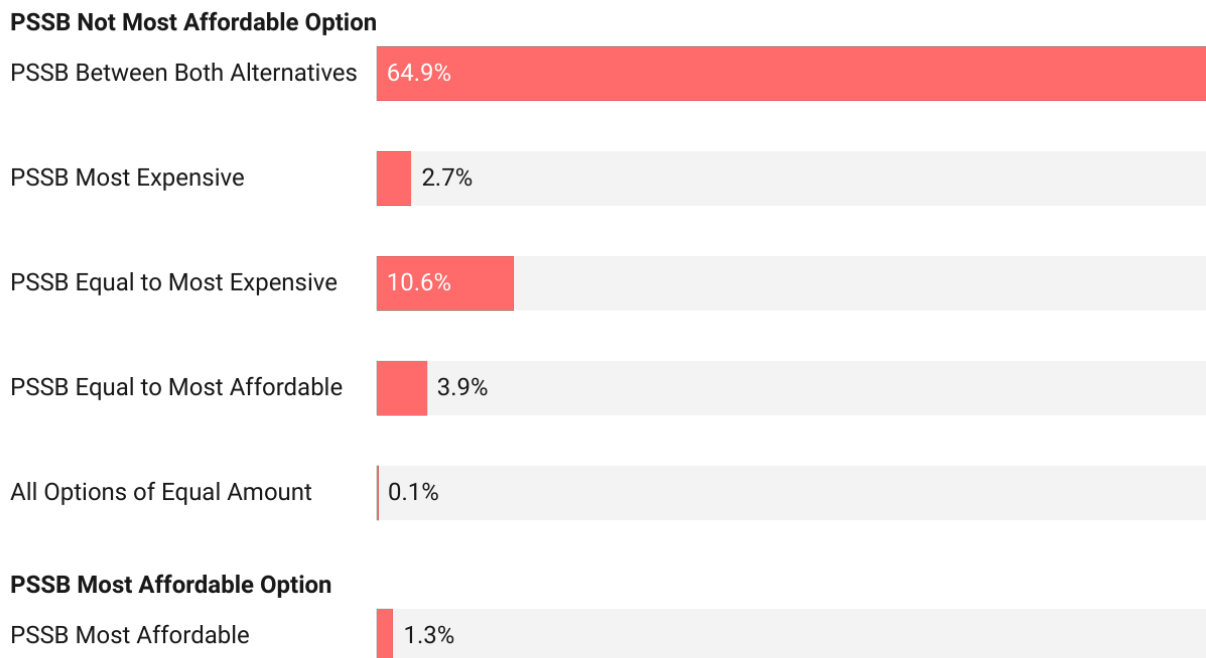
Findings

Judges set PSSB as the most affordable bail option in only a minority of cases.

Specifically, the PSSB deposit was the most affordable option in at least 1,127 cases,³⁷ or 1.3% of all monetary bail cases. In at least 3.9% of cases, the PSSB deposit was equal to one other upfront payment option and cheaper than the third.

In most cases, judges did not set PSSB as the most affordable bail option. In at least 82.1% of all monetary bail cases, judges set PSSB deposits at levels that were not more affordable than both other two bail options. In at least 2.6% of cases, the PSSB deposit was the most expensive bail option.

Figure 1: In at least 82.1% of cases, judges did not set PSSB as the most affordable bail option



Created with Datawrapper

In at least 13.3% of cases, judges set PSSB amounts so high that, while they followed the three forms of bail requirement, the practical effect of their order was to limit defendants to only two bail options.

To illustrate this finding, consider the following bail set by Judge Scott L. Volkman of Dutchess County in 2022:

1. Cash bail: \$100,000.
2. PSSB: \$1,100,000 at 10%, requiring a \$110,000 PSSB deposit.
3. Commercial bond: \$200,000, requiring a \$12,260 bond fee payment.

In a case like this, choosing PSSB requires paying a \$110,000 deposit, while also facing a potential \$990,000 in remaining liability if the defendant does not comply with court orders. In contrast, choosing cash bail requires paying \$100,000 without any

additional liability. Similarly, choosing to pay a commercial bond requires payment of only a \$12,260 bond fee, with a remaining liability of \$187,740. Both the cash bail and commercial bond options are thus more financially attractive, leaving defendants with, de facto, two bail options.

In at least 13.3% of cases, judges set PSSB amounts that *equaled or exceeded* cash bail, making PSSB less attractive than cash bail due to the additional liability defendants faced with PSSB, while cash bail carried no further liability.

Judges consistently set PSSB at amounts that were not the most affordable of the three bail options. Among the 362 judges who presided over 50 or more monetary bail cases, 358 (98.9%) set bail amounts where the PSSB deposit was *not* the most affordable form of bail, with 210 of these judges doing so in 90% or more of their cases.

When judges set PSSB at amounts that were not the most affordable, the potential financial impact on defendants and their families was substantial. In cases where PSSB was not the most affordable option— either because it was more expensive or equal in amount to another form of bail—the median difference between the PSSB deposit and the next most affordable bail option was \$1,140. The mean difference was even more pronounced at \$7,232. These figures underscore that when judges set PSSB as a less affordable option, they often did so by a significant margin.³⁸

Reducing the Appeal of Commercial Bonds

We also analyze cases in which judges set commercial bond as the most affordable option, meaning the commercial bond fee was *cheaper than both* the total amount of cash bail and the PSSB deposit.³⁹

To illustrate this scenario, consider the following bail set by judge Jerry M. Iannece of New York County in 2022:

- Cash bail: \$25,000.
- PSSB: \$50,000 at 10%, requiring a \$5,000 deposit.

- Commercial bond: \$25,000, requiring a \$1,760 bond fee.

In this case, paying a \$1,760 bond fee would secure the defendant's release, which is a cheaper option than paying either \$25,000 in cash bail or a \$5,000 PSSB deposit. In fact, the commercial bond fee is 2.84 times cheaper than the PSSB deposit and 14.2 times cheaper than cash bail. These bail amounts thus incentivize payment of commercial bonds.

Methods

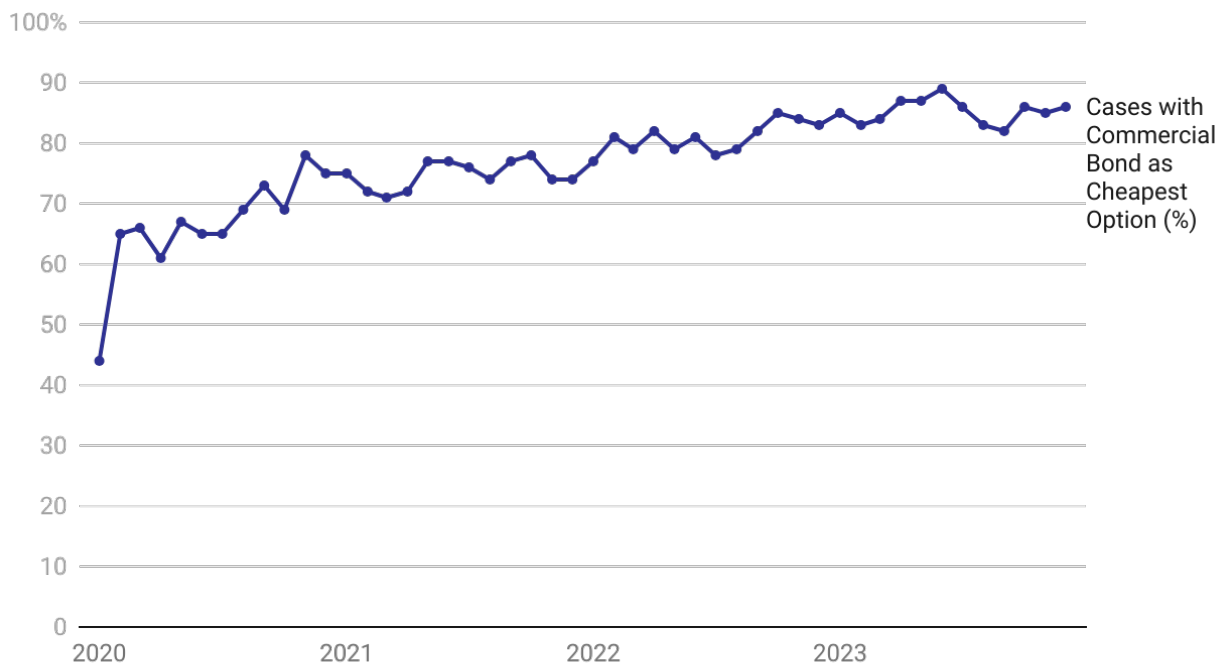
We employ the same methodology as in our PSSB analysis to examine commercial bond affordability. We compare the minimum upfront payments required for each bail type: the PSSB deposit, commercial bond fee, and cash bail amount. Our analysis focuses on cases where judges set only these three bail forms, representing 83.4% of all monetary bail cases. To maintain a comprehensive view, we calculate percentages using all monetary bail cases as the denominator. As with our PSSB analysis, this means our reported percentages represent minimum values, with actual rates potentially higher.

We note it is not possible to assess which form of bail defendants and their families select to pay because the New York Unified Court System has not released historical data that would allow for such detailed analysis. Specifically, the published data only distinguishes between bail paid by cash, credit card, or "bond," making it impossible to differentiate between PSSB and commercial bonds.

Findings

Judges set bail amounts that made commercial bond fees more affordable than both PSSB deposits and cash bail in at least 78% (65,896) of cases. This practice increased steadily from at least 68% of cases in 2020 to at least 85% in 2023. A monthly trend analysis, illustrated in Figure 2, highlights this rise over time, showing how the affordability of commercial bonds compared to other options has increased in the years following bail reform.

Figure 2: The Rising Affordability of Commercial Bonds Compared to Other Bail Options Post-Bail Reform



Created with Datawrapper

The practice of setting commercial bonds as the most affordable option was widespread. Among the 362 judges who presided over 50 or more monetary bail cases, 357 (98.6%) set bail amounts that made commercial bond fees more affordable than both cash bail and PSSB deposit alternatives, with 162 of these judges doing so in 90% or more of their cases.

The bail amounts set by judges create financial pressure for families to choose commercial bonds. This pressure stems from the significant difference between commercial bond fees and other bail payment options. Table 1 illustrates the disparities among cash bail, PSSB, and commercial bonds. The “Total Amount” columns show the overall monetary bail set, while the “Upfront Payment” columns indicate the amount required for pretrial release.

Table 1: Comparison of Bail Amounts and Upfront Payments

Bail Option	Median Total Amount	Mean Total Amount	Median Upfront Payment	Mean Upfront Payment
PSSB	\$30,000	\$115,707	\$3,000 (deposit)	\$11,566 (deposit)
Commercial bond	\$20,000	\$62,125	\$1,460 (fee)	\$3,959 (fee)
Cash Bail	\$10,000	\$32,281	\$10,000	\$32,281
Difference	-	-	\$1,200	\$7,017

Difference equals the median/mean of the lowest of cash bail or PSSB deposit, minus bond fee, across all cases.

Source: Scrutinize and The Zimroth Center at NYU Law • Created with Datawrapper

The median difference of \$1,200 between the commercial bond fee and the cheaper of the other two options represents the “discount” for choosing commercial bonds. This difference is not simply the PSSB deposit minus the commercial bond fee—rather, it compares the bond fee to whichever is cheaper between PSSB deposit and cash bail. While this amount may seem modest, it can form a significant portion of available resources for low-income families. The mean difference of \$7,017, calculated similarly, suggests that the actual “discount” can be considerably larger, intensifying the financial pressure to choose commercial bonds.

Table 1 also reveals that PSSB is often the least affordable form of bail, with the highest median and mean total amounts. The median PSSB total amount of \$30,000 is 1.5 times higher than the median commercial bond amount and 3 times higher than the median cash bail amount. This pattern persists in the mean total amounts, where PSSB significantly outpaces the other options.

The upfront payments for PSSB highlight its relative lack of affordability, in contrast to the comparative affordability of commercial bonds. The median PSSB deposit of \$3,000 is more than double the median commercial bond fee of \$1,460. While lower than the

median cash bail payment, this PSSB deposit still represents a substantial financial burden for many defendants and their families.

Discussion

Our analysis reveals mixed outcomes regarding the impact of the 2019 New York bail reform law. Judges have followed the straightforward, bright-line rules that require them to offer at least three forms of bail, one of which is either Partially Secured Surety Bond (PSSB) or Unsecured Surety Bond (USB).

However, our analysis of bail amounts suggests that defendants and their families are not reaping the full, intended benefits of the 2019 reform. In at least 82.1% of cases, judges *did not* set PSSB to be the most affordable bail option, while in at least 78% of cases, judges set bail amounts that resulted in commercial bonds being the most affordable option.

Our findings reveal a systemic pattern where judges implemented the 2019 reform law in ways that undermined its statutory intent. While judges followed the technical requirements by offering three forms of bail, they set amounts that limited defendants to one or two financially viable options. Rather than making PSSB an affordable alternative as the legislature intended, judges across New York consistently set PSSB amounts that made it financially unattractive. Instead, they made commercial bonds the most affordable option, contravening the reform's goal of reducing reliance on the commercial bail industry. The consistency and widespread nature of these practices suggests judges developed standardized approaches that satisfied the law's technical requirements while circumventing its purpose.

Ultimately, these findings extend beyond an analysis of New York's bail reform implementation. While judges largely adhered to the law's clear mandates, they often used their discretionary authority in ways that conflicted with the legislature's aims. These insights offer critical guidance for shaping future legislative reforms and underscore the importance of crafting measures that effectively direct and, when

necessary, limit judicial discretion.

Examining the Gap Between Legislative Intent and Judicial Outcomes

Our analysis demonstrates that while judges followed the bright-line rules set by the 2019 reform, they also exercised their discretion in ways that undermined the statutory intent. Specifically, they set bail amounts across the three forms of bail in a manner that (i) effectively eliminated PSSB as a more affordable option and (ii) incentivized defendants and their families to choose commercial bond as the most financially attractive bail option.

While the judges' bail orders did not reveal how or why they set bail in these amounts, we hypothesize several reasons for why judges set bail as reflected in the data, and why their decisions were not aligned with the statutory intent.

Judicial Resistance to the 2019 Reform Law

One possible explanation is that judges were deliberately resisting compliance with the 2019 reform law.⁴⁰ Indeed, there is support for this hypothesis in judicial public statements. For instance, Judge George Grasso, the then-Supervising Judge of Bronx Criminal Court, described bail reform as a “significant threat” to public safety and decried the “breathtaking” scope of its restrictions on judicial discretion.⁴¹ Judge Lawrence Marks, the then-Chief Administrative Judge of the New York Court System, echoed this sentiment, noting that many judges wanted more, not less, discretion in setting bail.⁴²

In some instances, judges intentionally violated the 2019 reform law and set bail on cases not eligible for pretrial detention. For example, in Cohoes City, Judge Thomas Marcelle set \$100 cash bail on a man accused of driving with a suspended license despite recognizing that the charges were not bail eligible,⁴³ and in Nassau County, Judge David McAndrews set \$10,000 cash bail and \$20,000 bond in a case that he

acknowledged was not bail eligible.⁴⁴

If these documented instances of judicial hostility to the 2019 reform law reflect the judiciary's collective attitude, then it seems reasonable to conclude that one possible explanation for our findings is that they represent yet another form of judicial resistance.⁴⁵

Misunderstanding PSSB and Commercial Bonds Upfront Payments

Another possible explanation of our findings is that judges may misunderstand how PSSB and commercial bond upfront payments are calculated, leading them to set commercial bond amounts at levels that incentivize defendants to choose the latter.

PSSB deposits are calculated using a percentage that is fixed by the judge. In contrast, commercial bond fees are calculated according to a legally mandated sliding scale based on the bond amount.⁴⁶ Consequently, judges may incorrectly assume that setting equal PSSB and commercial bond amounts ensures equal upfront payments. Yet, in most instances where these amounts are identical, the commercial bond fee is lower than the PSSB deposit due to the sliding scale's mechanics.

While this is a possible explanation for our findings, we note that it is not wholly persuasive. In over 44% of cases, judges set PSSB amounts higher than commercial bond amounts, suggesting that they deliberately made PSSB deposits more expensive, regardless of whether they misunderstood how upfront payments are calculated.⁴⁷ Moreover, even when judges set PSSB and commercial bond amounts equally, any misconception about calculating upfront payments cannot explain why they did not make PSSB a more affordable alternative.

Resource Constraints

Yet another explanation for the divergence in judicial bail practices from statutory intent is that resource constraints lead judges to make commercial bonds more affordable than PSSB and cash bail.

Unlike cash bail and commercial bonds, PSSB requires more judicial resources to administer. Payment of the PSSB deposit involves a third party filing forms, taking an oath, and answering questions posed by the judge, which delays other scheduled cases.⁴⁸ In contrast, payment of cash bail or commercial bonds reduces, if not eliminates, the work required by court staff and the judge, allowing judges to continue to move through cases at a quicker pace.⁴⁹ As a result, judges may, consciously or not, steer defendants and their families toward using commercial bonds or cash bail by setting lower amounts for these options, thereby reducing the likelihood of PSSB being chosen and slowing down their courtroom.

Judges, then, may set less affordable PSSB amounts because this approach reduces the use of judicial resources compared to cash bail or commercial bonds.

Commercial Bondsmen

Another possible explanation for our findings is that judges set lower commercial bonds amounts precisely because they want to outsource return-to-court concerns to commercial bond companies, rather than burden the court system. Judges may believe that private, for-profit companies are better equipped to ensure a defendant's return to court—either due to greater resources or stronger financial incentives to ensure compliance. Judges may thus believe that the financial incentives, experience, and resources of commercial bond companies better motivate defendants to follow court obligations than the incentives provided by the court system for cash bail or PSSB.⁵⁰ Indeed, commercial bond companies have a financial incentive to find absconding defendants, as they are liable to the court for the full bond amount.

However, this explanation does not clarify why judges would choose to outsource return-to-court concerns to commercial bond companies when the statutory framework of the 2019 reform law suggests that the legislature intended to do the exact opposite—reduce reliance on commercial bonds in favor of more affordable options.

Recommendations

The challenges in implementing the 2019 reform law—and the high stakes involved—require immediate and decisive solutions. While legislative clarification of the reform law could resolve some issues, we focus on concrete steps the judiciary can take to align their bail decisions with the statutory framework without requiring legislative action.

We propose a series of recommendations for short-term, mid-term, and long-term reforms. These recommendations rely on a mix of data collection, technological tools, and more traditional steps, such as training and feedback, to ensure that judges implement the 2019 reform according to the law’s intent.

Immediate Action

Create a Real-Time Compliance Dashboard

The New York Unified Court System should create an online public dashboard that provides real-time updates on judge and bail data. This dashboard would highlight cases in which judges did not follow the bright-line amendments or set PSSB amounts equal to or greater than cash bail or commercial bonds. This dashboard would allow judicial administrators to identify non-compliance and to quickly address these errors. By making the dashboard public, New Yorkers would be empowered to evaluate judicial decisions.

Establish a Mandatory Digital Bail Form

The New York Unified Court System should create a mandatory digital form for arraignments. Judges or their clerks would have to complete this form in all

cases to collect information about the bail amounts set for each type of bail ordered.

To ensure compliance, the form would only be submittable if proper information is filled in, *i.e.*, three forms of bail, one of which includes PSSB or USB. If the judge sets bail in a way that makes PSSB less affordable than cash bail or commercial bond, the form would upload the judge's name and case information to the compliance dashboard. Moreover, the digital form would require an explanation for this decision before submission. This explanation would then be publicly accessible on the compliance dashboard, promoting transparency of judges' reasoning in making decisions that do not align with statutory intent.

Mid-Term Integration

Hold Judicial Trainings

The New York Unified Court System should implement comprehensive, ongoing training programs for judges on the 2019 reform law. Such training should cover the statutory intent behind bail reform, proper application of the three-form and PSSB or USB mandates, and methods for meaningfully considering defendants' financial circumstances. The curriculum should include case studies highlighting best practices and common pitfalls. Regular refresher courses and updates on new data or research findings should be mandatory. This ongoing education will help ensure judges have the knowledge and tools to make informed, compliant bail decisions. While continuing education is already underway,⁵¹ our findings suggest that greater emphasis on PSSB affordability and a reduction in reliance on commercial bonds are necessary.

Conduct Judicial Interviews

The New York Unified Court System should hire an independent research organization to conduct periodic, structured, and anonymous interviews with

judges about their bail-setting practices. These interviews would provide valuable insights into judges' decision-making processes, challenges they face in implementing bail reform, and areas where they may need additional guidance or resources. The interviews should be conducted by a neutral third party and focus on understanding, not evaluating, judicial practices. Findings from these interviews should inform future training programs and policy adjustments. This process will foster open dialogue and help identify systemic issues that may hinder full implementation of bail reform.

Long-Range Transformation

Streamline the Partially Secured Bond Process

The New York Unified Court System should create a dedicated PSSB unit to simplify and expedite the PSSB process. This unit would implement a hybrid in-person and virtual system, allowing third parties to drop off signed documents at courthouses, conduct most of the process virtually, establish accessible payment systems, and provide expert assistance to families. This approach would reduce time burdens on judges and their clerks and increase PSSB utilization. This process would offer a viable alternative to commercial bonds, reducing reliance on the bail bond industry.

Appendix I: The Legislative History Behind the 2019 Reform Law

The legislative history behind New York’s 2019 bail reform reveals a decade-long transformation in how policymakers, advocates, and researchers understood pretrial detention. Multiple organizations conducted research highlighting economic and racial disparities in the state’s pretrial system, especially regarding commercial bonds. Their findings shaped public discourse and influenced the legislature’s decision to reform bail practices. Over time, these efforts coalesced into concrete legislative proposals that prioritized reducing pretrial detention and ensuring defendants had access to affordable bail options.

While the vision of some elected officials to fully eliminate cash bail and commercial bonds did not materialize, the New York Legislature, motivated by a commitment to tackling pretrial detention and economic inequities, enacted meaningful reforms to address these issues.

Research and Consensus Building (2010-2018)

In 2010, Human Rights Watch published a report examining the bail system in New York City and its impact on low-income defendants charged with nonfelony offenses.⁵² The report found that many defendants were unable to post even small amounts of bail, resulting in pretrial detention. Among defendants arrested in 2008 on nonfelony charges and given bail of \$1,000 or less, 87% were unable to post bail at arraignment and spent almost 16 days in pretrial detention.⁵³ The report argued that this practice disproportionately affected poor defendants and minorities, with blacks and Hispanics constituting 89% of pretrial detainees held on bail of \$1,000 or less.⁵⁴ Among other recommendations, Human Rights Watch called on judges to make “greater use” of “less financially onerous” forms of bail than cash bail and secured bonds.⁵⁵

In 2011, the New York City Criminal Justice Agency⁵⁶ studied the commercial bail bond industry's growing role in bail releases.⁵⁷ The study found some instances of illegal practices, including bondsmen charging fees above legal maximums in 5% of cases.⁵⁸ Based on these findings, the study advocated, among other recommendations, for greater use of PSSB and surety bonds, as a way to reduce usage of commercial bonds.⁵⁹

In 2015, the New York Civil Liberties Union (NYCLU) provided testimony to the New York City Council in opposition to the commercial bail bond industry.⁶⁰ The NYCLU argued that cash bail does not effectively ensure court appearances, with New York City's appearance rate of 86% being comparable to jurisdictions that have abolished cash bail.⁶¹ The testimony highlighted that cash bail disproportionately incarcerates poor individuals, with 88% of defendants unable to make bail at arraignment.⁶² The NYCLU recommended abolishing cash bail for misdemeanors and non-violent felonies, funding training for judges and prosecutors on bail alternatives, and investigating practices of the for-profit bail bond industry.⁶³

In 2016, Governor Andrew Cuomo announced his legislative agenda, which proposed an overhaul of the commercial bond industry. Citing the NYCLU's testimony noted above, the agenda stated:

Currently, bail bondsman [sic] are subject to little regulation, and as a result some bad actors engage in predatory pricing and contracting practices. These issues have a disproportionate negative impact on low income people and the [proposed] legislation will allow the Department of Financial Services to exercise greater control over this industry.⁶⁴

In 2017, the Brooklyn Community Bail Fund released a report on the commercial bail bond industry in New York City, documenting instances where bail bond companies violated laws and engaged in deceptive business practices.⁶⁵ That same year, a coalition of non-profit organizations collectively advocated for replacing commercial bonds with less onerous monetary alternatives to "eliminat[e] wealth- and race-based detention."⁶⁶

Over time, research broadened to focus not just on the commercial bond industry, but on the cash bail system more generally. Various research and advocacy organizations published reports that focused more generally on the problems with New York's system of pretrial detention,⁶⁷ and potential reforms and solutions.⁶⁸ Much of the research also highlighted the racial and economic disparities in the pretrial detention system,⁶⁹ while others discussed the negative consequences of pretrial detention, both for the defendant who was detained and for the larger community.⁷⁰

In 2017, the Independent Commission on New York City Criminal Justice and Incarceration Reform, led by Jonathan Lippman, the former Chief Judge of the New York Court of Appeals, issued a report on the City's criminal justice system.⁷¹ The Commission found that a significant proportion of the jail population consisted of individuals held pretrial due to an inability to afford bail.⁷² It recommended eliminating money bail, expanding pretrial supervision, and implementing alternative-to-incarceration programs.⁷³

Eventually, media coverage of these issues increased, with articles referring to bail as "The Bail Trap,"⁷⁴ exploring court delays in the Bronx that disproportionately affected pretrial detainees,⁷⁵ and reporting on advocates' efforts to use non-profit bail funds to release people pretrial.⁷⁶

As advocacy and research organizations and policymakers continued their public criticism of the bail system, it drew the attention of elected officials. For instance, in 2017, Governor Cuomo announced in his State of the State agenda that New York would "transform the State's antiquated bail system, which equates freedom with the ability to pay."⁷⁷ In response, 106 community and advocacy groups wrote the Governor a letter urging him to make good on his promise, writing that

There is a growing consensus in New York that we must close jails, eliminate racial disparities and wealth-based detention, and redirect resources to initiatives that support and build communities.⁷⁸

Governor Cuomo's push for bail reform continued into January 2018. At his annual State of State address, he stated that Kalief Browder "did not die in vain."⁷⁹ Mr. Browder's

tragic story had become emblematic of the deep flaws in New York's cash bail system. Arrested at 16 for allegedly stealing a backpack, Mr. Browder was unable to pay the \$3,000 bail and spent three years detained on Rikers Island awaiting trial.⁸⁰ The charges were ultimately dropped.⁸¹ Tragically, Mr. Browder took his own life in 2015 after his release.⁸² By 2018, his story symbolized the urgent need for reform and underscored the human cost of wealth-based detention.

The Push to For Legislative Action (2018-2019)

In 2018, in response to increasing public pressure, Governor Cuomo outlined an agenda for reforming pretrial detention in New York, stating:

Our bail system is biased against the poor, too many jails are cruel and inhumane... The blunt ugly reality is that too often, if you can make bail you are set free and if you are too poor to make bail you are punished. ... Race and wealth should not be factors in our justice system. It's that clear.⁸³

The next month, New York's Senate Democratic Conference announced a legislative package to reform the state's bail law. The members of the Conference issued statements criticizing the current system as penalizing people for being poor and highlighting the economic and racial disparities that it perpetuated.

Andrea Stewart-Cousins, Senate Democratic Leader stated:

[O]ur criminal justice system is broken and we must fix it. We need real reforms and not half measures. We have people not yet convicted of crimes sitting behind bars for months and years. The American value of 'innocent until proven guilty' has been forced to add '*but only if you can pay*'.⁸⁴

Michael Gianaris, Senate Democratic Deputy Leader stated:

Our criminal justice system has been responsible for too many injustices, *particularly against the poor*. Eliminating bail would represent a *big step*

towards greater fairness and would move us closer to the principle of innocence [sic] until proven guilty, instead of the other way around.⁸⁵

Brian Benjamin, a senator and one of the bill's sponsors, added:

Our criminal justice system is broken. As things stand, punishment is not just for the guilty, it is also for those too poor to pay for their freedom. At Rikers Island, 9 out of 10 detainees are Black or Latino and 85% of the population have yet to be tried for a crime. *Many of these New Yorkers are detained because they lack the resources to pay their bail.* They are not more of a threat and their crimes are not more serious—the only difference between those detained and those set free is their economic status and the color of their skin. ... It is a moral imperative that we correct these injustices and pass this vital package of legislation.⁸⁶

Shortly after the Democratic Conference acted, the New York State Assembly introduced a similar legislative package. In the press release for this package, under the subtitle “Economic Fairness,” it outlined the rationale for bail reform:

Economic barriers should not determine whether a person, who has only been accused of certain offenses but not convicted, is stuck sitting in jail. Recognizing this, the Assembly will introduce legislation to reform our bail process. This legislation would remove these barriers and create a more equitable bail process.⁸⁷

Stressing that equality and fairness underpin the Assembly’s proposals, Carl Heastie, the Assembly Speaker, noted:

Reforming our criminal justice system and *ensuring that everyone is treated equally* is tremendously important to me. ...This year, the Assembly Majority will continue to fight for legislation that brings fairness for all New Yorkers in our criminal justice system by enacting meaningful reforms that will make a difference in the lives of so many of our citizens.⁸⁸

Nick Perry, an assemblymember and the chair of the Black, Puerto Rican, Hispanic, and Asian Legislative Caucus, added:

For too long, our criminal justice system has *disproportionately burdened the poor and communities of color*. We can no longer ignore the impact that an unfair criminal justice system has on our communities. Without meaningful reform, the *revolving door of crime and poverty will continue to disrupt the lives of young men and women, especially men and women of color*.⁸⁹

At the same time, New York saw continued activism to eliminate the use of commercial bonds. Several Committees of the New York City Bar Association called explicitly for the elimination of for-profit commercial bonds in the State.⁹⁰ One statement noted:

The New York City Bar Association applauds the United States Department of Justice's March 2016 condemnation of bail and bond practices that disproportionately harm the poor and Governor Andrew Cuomo's State of the State addresses which decried the corruption and predatory practices that plague New York's bail bond system. ... Nowhere is the affront to justice more apparent than in the commercial bond industry. The for-profit surety system discriminates against and disproportionately harms poor defendants, creating the perception that different rules apply to rich and poor defendants in the criminal justice system.⁹¹

Similarly, the New York City Comptroller issued a report estimating that in 2017, the bond industry collected between \$16 million and \$27 million in nonrefundable fees from New York City detainees and their families.⁹² Based on these findings, the Comptroller recommended the immediate elimination of commercial bail bonds:

As New York moves toward a more equitable criminal justice system, in the near term the City should immediately address one of the most costly and punitive aspects of the justice system: commercial bail bonds. The reliance on exploitative and expensive commercial bail bonds, which have played a

growing role in the city's bail system, has been one of the most prominent drivers of inequities in the system. With that goal in mind, this report... calls for the immediate elimination of commercial bail bonds.⁹³

The Comptroller's report prompted the introduction of a new bill aimed at banning the use of commercial bonds.⁹⁴ The bill garnered support from prominent New York union leaders and nonprofit organizations,⁹⁵ though the proposed legislation ultimately did not pass.

A few months later, Governor Cuomo argued that bail reform was necessary to address the problems with the commercial bail bond industry:

These reforms are critical in our efforts to crack down on predatory practices in the bail bond industry and protect New Yorkers from unscrupulous activity and ensure that everyone, regardless of economic status, is provided fair and equal treatment under the law... We are actively working to reform our antiquated bail system to ensure New York remains a beacon of equality and justice for the nation.⁹⁶

In his January 2019 State of the State address, Governor Cuomo reiterated the importance of bail reform.⁹⁷ The Governor's legislative agenda for 2019 stated:

New York's system of bail remains one of the last vestiges of inequality in the criminal justice system. Currently, a presumed-innocent person's freedom before trial is determined by their wealth. If they have money, they can pay bail or pay a premium to a bail bondsman; if they don't, they sit in jail. This is antiquated and deeply unfair, and it must end.

Governor Cuomo is advancing legislation that will end cash bail once and for all, significantly reduce the number of people held in jail pretrial, and ensure due process for anyone awaiting trial behind bars. Right now, money stands in the way of freedom for too many presumed-innocent New Yorkers.⁹⁸

The Legislature Passes Bail Reform (2019)

In early 2019, the New York legislature enacted bail reform, and Governor Cuomo signed it into law as part of the state's budget bill. The legislation outlined the legislature's commitment to reducing pretrial detention, addressing economic and racial disparities, and limiting the role of commercial bonds in the pretrial system.

Governor Cuomo's executive proposal laid out its rationale for bail reform:

This part [of the bill] enacts into law major components of legislation which are necessary to reform the manner in which New York state pursues justice before trial. This state, like most across the United States, has for *far too long needlessly incarcerated those meant to be guaranteed a presumption of innocence simply because of an inability to pay bail...*⁹⁹

The New York State Executive Budget legislation contained the following proposed language:

Legislative findings. The legislature finds and declares that there is a present need to revise New York's procedures regulating the release of persons charged with criminal offenses pending trial...so that fewer presumed-innocent people are held behind bars pretrial... Then after arraignment, the bill *breaks the link between paying money and earning freedom*, so that defendants are either *released on their own recognizance* or, failing that, *released under non-monetary conditions*.¹⁰⁰

A Memorandum of Support for the executive's proposed 2019 budget legislation highlighted a comparable legislative intent:

Purpose: This bill would address injustice in the justice system by passing reforms to end cash bail...Summary of Provisions and Statement in Support: The Pre-Trial Justice Reform Act amends various sections of law to *ensure fairness in the criminal justice system*.

Reform Bail and Pretrial Detention: New York's current bail system fails to recognize that *freedom before trial should be the rule, not the exception*, and by tying freedom to money, it has created a *two-tiered system that puts an unfair burden on the economically disadvantaged...*

Budget Implications: Enactment of this bill is necessary...because it would reduce the number of individuals being held unnecessarily and unfairly in pretrial confinement, and provide more equal justice for all New Yorkers.¹⁰¹

Following the reform's passage, the Governor's office reiterated the goal of reducing pretrial detention as underpinning the legislation:

As part of groundbreaking legislation in the FY 2020 Enacted Budget, New York's bail system will be *dramatically transformed, significantly reducing the number of people held in jail prior to their trial*. Specifically, cash bail will be eliminated for misdemeanors and non-violent felonies... these reforms will ensure the vast majority – approximately 90% – of cases where people are charged, but not yet convicted of a crime, will remain out of jail before their day in court.¹⁰²

A Press Release from Assembly Speaker Carl E. Heastie's office noted:

Wealth should not determine whether a person, accused but not convicted of a crime, will be jailed while awaiting trial. ...The bail system continues for higher-level cases, but this law requires judges to consider the financial resources of each defendant, as well as alternate forms of bail, such as secured or unsecured bond.¹⁰³

Assembly Speaker Carl E. Heastie added on Twitter:

Since I became speaker in 2015, it has been my personal mission to correct the tilted scales of justice for New Yorkers, and this year's budget agreement makes a giant leap toward realizing these goals. ... *Wealth should not*

*determine whether a person, accused but not convicted of a crime, will be jailed while awaiting trial.*¹⁰⁴

Other elected officials praised the reform law for bringing fairness to the criminal legal system by ending wealth-based detention. For example, Assemblymember Latrice Walker added:

Every year, thousands of New Yorkers are incarcerated awaiting trial because of unreasonably high bail that is impossible for most minority families to meet. But change is upon us[.] This budget will reassure New Yorkers that in this state, justice is not for sale.”¹⁰⁵

Senator Jose M. Serrano, the Chair of the Senate Majority Conference, noted that the newly enacted reform law ensures “that no New Yorker is incarcerated due to their financial circumstances.”¹⁰⁶ Senator Gustavo Rivera added:

For years, the Senate Democratic Conference has fought to reform our state’s broken criminal justice system, which has caused countless of New Yorkers to lose their livelihoods, dignity, and tragically their lives... Together, these measures will ensure New Yorkers going through our criminal justice system have the ability to adequately defend themselves in court and *don’t have to wither away in jail waiting for their trial because they are too poor...*¹⁰⁷

Senate Deputy Majority Leader Gianaris, who was at the forefront of the effort to enact the bail reform law, said after its passage:

These reforms will deliver justice to thousands of people incarcerated without a conviction. I am proud to have helped usher in the most historic and dramatic reforms our troubled criminal justice system has seen.¹⁰⁸

The judiciary also recognized the reform law’s intent. Judge Daniel P. Conviser of the New York County Supreme Court, who previously worked extensively in the State Assembly and now chairs the Office of Court Administration’s Criminal Law and Procedure Advisory Committee,¹⁰⁹ wrote in a decision after the law’s passage:

[T]he bail reform law was also *designed to significantly reduce disparities based on wealth* and reduce pretrial incarceration in any case where a court chose to set monetary bail. That is evident in two provisions. First, ... the law newly requires that three bail forms be set and that one such form be either an unsecured or partially secured surety bond set by the court. This requirement allows defendants, in every case where monetary bail is set, to attempt to obtain a bond from a friend, relative or acquaintance without paying a premium to an insurance company. ... These provisions were *obviously designed to reduce the number of defendants with bail conditions who would be unable to post bail* and would therefore remain incarcerated pending trial.

Second, the [bail reform] statute newly requires that a court imposing monetary bail must consider the defendant's "individual financial circumstances" and their "ability to post bail without posing undue hardship, as well as his or her ability to obtain a secured, unsecured or partially secured bond".¹¹⁰

Similarly, now-retired Bronx Supreme Court Judge Ethan Greenberg contemplated the relationship between PSSB and commercial bonds, rejecting the idea that PSSB should be "many multiples higher" than commercial bonds, explaining that such an approach.

...would appear to fly in the face of the intent of the Revised Bail Law. Plainly, *the Legislature intended that some defendants who cannot afford an insurance company bail bond should still be able to afford a partially-secured surety bond*; otherwise, the provision of the Revised Bail Law mandating the availability of partially-secured surety bonds would have no practical meaning.¹¹¹

Bail Reform After 2020: A Nuanced Landscape

Following the successful passage of the bail reform law in 2019, the political landscape shifted, and the state legislature made several amendments to the bail statute. While some of the amendments vested judges with more discretion and enlarged the number of cases that were eligible for pretrial detention, the legislature did not retreat from its

commitment to reducing unnecessary pretrial detention and addressing the economic disparities in New York's pretrial system.

Between 2020 and 2023, the legislature made several changes to the 2019 bail reform law, including the following:

1. After initially shrinking the number of criminal charges that were eligible for pretrial detention, the legislature expanded the list of charges and circumstances under which judges were permitted to order such detention;¹¹²
2. After initially directing judges to impose the "least restrictive" conditions that would be consistent with ensuring a defendant's return to court, the legislature changed the language to require judges to impose conditions deemed "necessary" to ensure continued court appearances.¹¹³

Importantly, none of these changes affected the three aforementioned provisions that constrained judicial discretion in bail-eligible cases: judges were still obligated to offer defendants at least three forms of bail, one of which had to be either PSSB or USB, and they still had to take account of each defendant's unique financial circumstances.

Indeed, at least one amendment shows the legislature's continued commitment to making detention-eligible cases less financially onerous. In this amendment,¹¹⁴ judges were permitted to combine cash bail with non-monetary pretrial release conditions, such as electronic monitoring or mandatory check-ins, if bail is paid. This change may indicate a desire to encourage judges to combine alternatives to incarceration and to provide lower bail amounts in combination with other conditions, to secure a defendant's future court appearances.

Thus, the bail reform amendments left undisturbed the original statutory intent reduce the economic disparities in pretrial detention.

Appendix II: Methodology

Our analysis uses pretrial detention data from 2020 through 2023, provided by New York’s Office of Court Administration and the Division of Criminal Justice Services. The 2019 reform law requires the New York Office of Court Administration and the Department of Criminal Justice Services to publish detailed pretrial data covering all cases arraigned statewide starting on January 1, 2020.¹¹⁵ We use all data available, which covers the period ending on December 31, 2023.¹¹⁶ The data includes, among other information, the name of the judge, the charges in the case, and the bail forms and amounts set by the judge. The data set includes 1,054,773 entries.

Data Filtering and Preparation

Initial Arraignment Filtering. We kept only entries for initial arraignments, excluding Supreme Court arraignments (after indictment) and other forms that do not represent a defendant’s initial appearance before a judge. Data set entries after this step: 948,205.

Arraignment Outcome Filtering. We kept only entries where the release decision at arraignment corresponded to one of the following options: ROR (release on recognizance); nonmonetary release (release with conditions); remanded (detained without bail); and bail set. This removed entries where the release decision was unknown or cases that were disposed (through plea or dismissal) at arraignment. Data set entries after this step: 760,760.

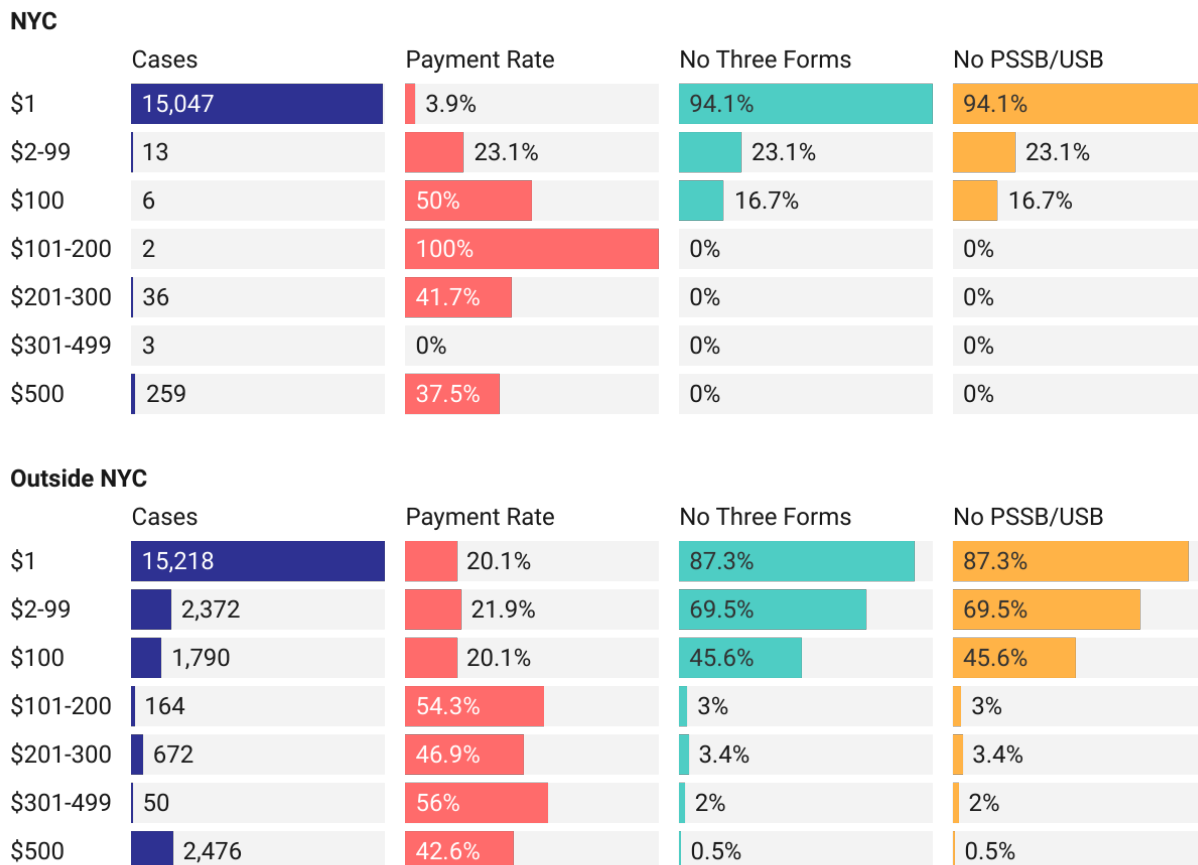
Removal of Non-Judge Entries. We excluded cases with placeholder names, such as “Test, Judge” or “Office, Clerk’s,” which likely do not correspond to actual judges. Data set entries after this step: 755,838.

Removal of Non-Monetary Bail Cases. We next remove all cases where (a) the defendant was detained on remand, meaning no bail was set, or where (b) the defendant was released without monetary bail. Data set entries after this step: 118,969.

Exclusion of Nominal Bail Cases. To refine our analysis, we exclude cases where judges appear to have set nominal bail—low amounts intended primarily for administrative purposes rather than to incentivize a defendant’s return to court. Nominal bail is typically set when a defendant is already detained on another case, a parole violation, or an outstanding warrant, allowing them to accrue jail credit on the current charge. These cases do not reflect a judicial assessment of the bail amount needed to ensure court appearance and are therefore unsuitable for inclusion in this study.

In New York City, nominal cash bail is most often set at \$1, while higher amounts are sometimes used in other parts of the state. Our data corroborates these regional differences. Figure 3 reveals that in NYC, most low cash bail amounts are set at exactly \$1 (15,047 cases), with only 13 cases involving amounts between \$2 and \$99. Payment rates for cases with \$1 cash bail cases are exceedingly low, at just 3.9%, and rise only slightly for amounts between \$2 and \$99 (23.1%). Outside NYC, cases with \$1 cash bail are also common (15,218 cases), but amounts between \$2 and \$99 are also frequent (2,372 cases), with similarly low payment rates of 20.1% and 21.9 %, respectively. For both NYC and non-NYC counties, bail payment rates increase sharply above \$100.

Figure 3: Payment Rates and Case Volumes Support \$100 Threshold for Identifying Nominal Bail



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Based on these findings, we exclude all cases with cash bail set at \$100 or below. This threshold captures nominal bail practices across both NYC and non-NYC counties while accommodating regional variations. Additionally, the significant increase in payment rates above this cutoff suggests that cash bail amounts over \$100 typically reflect genuine judicial assessments. Data set entries after this step: 84,589.

To ensure robustness, we exclude all cases where the minimum bail amount, across any of the nine forms of bail, is \$100 or less. This step drops cases that include instances of apparent nominal bail and potential data entry errors. For example, this process excludes a case presided over by Judge Joseph F. Kasper, where bail amounts were inconsistently set at \$50,000 cash bail, \$50,000 commercial bond, \$150,000 partially

secured surety bond (at a 10% deposit)—and \$50 credit card bail. Data set entries after this step: 84,559.

Since we lack data to determine whether a judge intended a bail amount to serve as nominal, we use this cutoff as a practical proxy. However, it is possible that some higher bail amounts, while above the cutoff, were also intended as nominal and are therefore not excluded from our analysis. Additionally, our analysis of bail payment (in the context of nominal bail amounts) for felonies is limited to the period up to indictment and does not extend to payments made afterward. For misdemeanors, we examine bail payment throughout the life of the case.

Note that our analysis in Figure 3 reveals that judges often fail to meet the statutory requirement of setting a minimum of three forms of bail, including partially secured surety bonds (PSSB) or unsecured surety bonds (USB) in nominal bail cases.

Removal of Data Entry Errors. We excluded cases due to apparent data entry errors in bail amounts. For instance, one 2022 case listed a bond amount of \$500,025,000, alongside a cash bail of \$5,000 and a PSSB of \$20,000. The bond amount strongly suggests a data entry error, likely intended to be \$25,000. We also exclude a small number of cases where the percentage of the partially secured surety bond (PSSB) required as a deposit is implausibly low, such as 0.1%. Such entries likely reflect an erroneous recording of the intended 10% deposit order. However, to err on the side of caution, we remove them from the analysis. As these and similar errors cannot be reliably verified, we removed such cases. Data set entries after this step: 84,536.

Bail Amount Calculation

We calculated the set bail amounts across different forms as follows:

- For each bail type, empty or null values were treated as zero (indicating no bail set in that form).
- For PSSB and commercial bonds, which are central to our analysis, we calculated the required upfront payment (deposit or fee). For commercial bonds, we used the

statutory formula,¹¹⁷ while for PSSB, we applied the judge-designated percentage provided in the data.

Identifying the Most Affordable Bail Option

To pinpoint cases where commercial bond was the most affordable option set by the judge, we flagged cases that met these conditions:

- Commercial bond, cash bail, and PSSB upfront payments are all greater than zero.
- Only three forms of bail were set (cash bail, commercial bond, and PSSB).
- The commercial bond fee is lower *than both* the PSSB deposit and cash bail amount.

Our focus on cases with only these three bail types is deliberate, as judges set this trio exclusively in 83.4% of monetary bail cases. This focus reduces potential confounding from other bail types, enabling a clearer assessment of judicial discretion.

Affordability of PSSB Relative to Other Bail Types

Similarly, we categorized cases where PSSB was not the most affordable option using the following criteria:

Basic Conditions:

1. Commercial bond, cash bail, and PSSB amounts are all greater than zero.
2. Only three forms of bail were set.

PSSB Cost Categories:

1. “pssb highest”: PSSB payment is the highest among the three bail types.
2. “pssb equal to highest”: PSSB matches the highest payment among the other two but is greater than the lowest.
3. “pssb middle”: PSSB is between the highest and lowest payments.

4. "pssb equal lowest": PSSB matches the lowest payment but is not the highest.
5. "pssb lowest": PSSB is the most affordable option.
6. "all three equal": Cash bail, bond, and PSSB payments are equal.

We apply these categories in our analysis to evaluate the comparative affordability of PSSB in each case.

Appendix III: Judge Data

This appendix presents detailed data on how individual judges implemented the 2019 bail reform law's monetary bail provisions between January 2020 and December 2023.

The data reveals that judicial practices diverged from the statutory intent behind the bail reform law. Judges generally followed the bright-line requirements by setting three forms of bail and including PSSB or USB. However, their discretionary decisions about bail amounts often made commercial bonds the most affordable option while rendering PSSB financially unattractive. This pattern appears across jurisdictions and throughout the study period, suggesting a systemic rather than isolated deviation from the reform's goals.

For each judge who set monetary bail during this period, Table 2 below shows:

1. The total number of cases where the judge set monetary bail.

As well as the percentage of these cases where the judge:

2. Set fewer than three forms of bail.
3. Did not set either PSSB or USB.
4. Did not set PSSB as the most affordable bail option.
5. Set commercial bond as the most affordable option.

Note: A searchable version of this table is available at www.scrutinize.org/setting-bail-to-fail.

Table 2: Judicial Compliance with Bail Reform Requirements by Individual Judge, 2020-2023

Judge	Monetary Bail Cases ▼	2 or Fewer Forms of Bail	No PSSB or USB	PSSB Not Most Affordable	Commercial Bond Cheapest
Quynda L. Santacroce	1,102	0%	0%	97%	89%
Marty J. Lentz	940	0%	0%	98%	94%
Kerry J. Ward	791	0%	0%	87%	82%
Simiyon S. Haniff	776	0%	0%	71%	69%
Archana Rao	755	0%	0%	73%	69%
Diego A. Freire	731	0%	0%	96%	91%
Scott A. Dunn	730	0%	0%	90%	90%
Jean T. Walsh	717	0%	0%	97%	87%
Joshua Glick	692	0%	0%	93%	90%
Maria T. Gonzalez	642	0%	0%	98%	98%

Additional 855 rows not shown.

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Endnotes

1. See, e.g., Christopher Lowenkamp, *The Hidden Costs of Pretrial Detention Revisited*, Arnold Foundation (2022) (“Overall, these results show is that any time spent in pretrial detention beyond 23 hours is associated with a consistent and statistically significant increase in the likelihood of rearrest”), <https://craftmediabucket.s3.amazonaws.com/uploads/HiddenCosts.pdf>; Arpit Gupta, Christopher Hansman, and Ethan Frenchman, *The Heavy Costs of high bail: Evidence from judge randomization*, *The Journal of Legal Studies* 45(2):471–505 (2016), <https://www.journals.uchicago.edu/doi/full/10.1086/688907>; Paul Heaton, Sandra Mayson, and Megan Stevenson, *The Downstream Consequences of Misdemeanor Pretrial Detention*, 69 *Stan. L. Rev.* 711 (2017), <https://review.law.stanford.edu/wp-content/uploads/sites/3/2017/02/69-Stan-L-Rev-711.pdf>. Some studies have found that the recidivism may be offset by detention’s incapacitation effect, so that detention neither increases nor reduces the recidivism rate. See Will Dobbie, Jacob Goldin, and Crystal S. Yang, *The Effects of Pretrial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges*, *American Economic Review*, 108(2): 201–240 (2018), <https://www.aeaweb.org/articles?id=10.1257/aer.20161503>; Emily Leslie and Nolan Pope, *The Unintended Impact of Pretrial Detention on Case Outcomes: Evidence from New York City Arraignments*, *The Journal of Law and Economics* 60(3): 529–557 (2017), <https://www.journals.uchicago.edu/doi/abs/10.1086/695285>.
2. A study using 2010-2011 Manhattan criminal court data found that Black and Latinx defendants were more likely to be detained pretrial than similarly situated white defendants. Besiki Luka Kutateladze and Nancy Andiloro, *Prosecution and racial justice in New York County—Technical report*, Vera Institute of Justice (2014), <https://www.ojp.gov/library/publications/prosecution-and-racial-justice-new-york-county-technical-report>. Another study using New York City data found that approximately two-thirds of the average pretrial release rate disparity between white and Black defendants was due to racial discrimination. David Arnold, Will Dobbie, and Peter Hull, *Measuring Racial Discrimination in Bail Decisions*, *American Economic Review*, 112(9): 2992–3038 (2022), <https://www.aeaweb.org/articles?id=10.1257/aer.20201653>. Similar studies using Miami and Philadelphia data found evidence of “substantial bias against Black defendants” in pretrial bail determinations, with a later study assessing that Black defendants were four percentage points less likely to be released compared to white counterparts. David Arnold, Will Dobbie, Crystal Yang, *Racial Bias in Bail Decisions*, *The Quarterly Journal of Economics*, 133(4):1885–1932 (2018), https://www.law.nyu.edu/sites/default/files/upload_documents/Yang%20paper%20DEC%206%20ADY_RacialBias.pdf. A multitude of other studies confirm that racial disparities exist in bail determinations across multiple jurisdictions. See, e.g., *Summary of research studies related to racial disparities in pretrial detention*, Prison Policy Initiative (2019), https://www.prisonpolicy.org/reports/pretrial_racial_disparities_sources.html.
3. In New York City, a study by the Criminal Justice Agency found that defendants who were detained pretrial were “more likely to be convicted, if convicted they [were] more likely to be sentenced to incarceration, and if incarcerated, their sentences [were] likely to be longer.” Mary Phillips, *A Decade of Bail Research in New York City*, New York City Criminal Justice Agency (2012), <https://www.nycja.org/publications/a-decade-of-bail-research-in-new-york-city>. Studies from other jurisdictions are consistent with these results. See, e.g., Megan Stevenson, *Distortion of Justice: How the Inability to Pay Bail Affects Case Outcomes*, *The Journal of Law, Economics, and Organization* 34(4):511–542 (November 2018), <https://academic.oup.com/jleo/article/34/4/511/5100740?login=false>; Arpit Gupta, Christopher Hansman, and Ethan Frenchman, *The Heavy Costs of high bail: Evidence from judge randomization*, *The Journal of Legal Studies* 45(2):471–505 (2016), <https://www.journals.uchicago.edu/doi/full/10.1086/688907>; Paul Heaton, Sandra Mayson, and Megan Stevenson, *The Downstream Consequences of Misdemeanor Pretrial Detention*, 69 *Stan. L. Rev.* 711 (2017),

<https://review.law.stanford.edu/wp-content/uploads/sites/3/2017/02/69-Stan-L-Rev-711.pdf>.

4. For PSSB, a third party pays up to 10% of the bond set by the judge to secure the defendant's release and must cover the full amount if the defendant does not appear. For USB, a third party guarantees the full bail amount if the defendant does not appear, with no upfront payment or collateral required. A detailed explanation of these and other forms of bail in New York is provided below.

5. C.P.L. § 510.10(1) ("Except as otherwise required by law, the court shall make an individualized determination as to whether the principal poses a risk of flight to avoid prosecution, consider the kind and degree of control or restriction necessary to reasonably assure the principal's return to court, and select a securing order consistent with its determination under this subdivision."), <https://www.nysenate.gov/legislation/laws/CPL/510.10>. See also Courtney M. Oliva, *Preventive Detention in New York: From Mainstream to Margin and Back*, Center on the Administration of Criminal Law at NYU Law (2019) (history of rationale underpinning pretrial detention in New York). Notably, although state legislators recently revisited whether to join most states and the federal government in allowing defendants to be detained pretrial if they presented a "danger" to the community, they ultimately declined to do so. Krystal Rodriguez and Michael Rempel, *Explaining New York's 2023 Bail Reform Amendments*, Data Collaborative for Justice (2023), https://www.law.nyu.edu/sites/default/files/upload_documents/2017-CACL-New-York-State-Bail-Reform-Paper.pdf.

6. C.P.L. § 510.10(4) (outlining which offenses are eligible for pretrial detention post-reform), <https://www.nysenate.gov/legislation/laws/CPL/510.10>. See also Krystal Rodriguez, *Bench Card: New York's Bail Statute - Pretrial Options*, Data Collaborative for Justice (2024), https://datacollaborativeforjustice.org/wp-content/uploads/2022/06/Benchcard_Updated_May_2024.pdf.

7. See, e.g., John Whittaker, *Proposal Would Make Fleeing A Police Officer Bail-Eligible*, The Post-Journal (Aug. 12, 2024), <https://www.post-journal.com/news/top-stories/2024/08/proposal-would-make-fleeing-a-police-officer-bail-eligible/>; *During Questioning In Albany, NYPD Commissioner Shea Backtracks On Bail Reform Law As Big Reason For Gun Violence*, CBS News (Oct. 14, 2021), <https://www.cbsnews.com/newyork/news/bail-reform-nypd-commissioner-dermot-shea-assembly-hearing/>. See, generally, Peter Sterne, *A (not so) brief guide to New York's bail reform evolution*, City & State (May 5, 2023), <https://www.cityandstateny.com/policy/2023/05/not-so-brief-guide-new-yorks-bail-reform-evolution/385379/>.

8. Several elected officials directly addressed the 2019 amendments' goal of reducing economic disparities in pretrial detention. For example, Assembly Speaker Carl E. Heastie said:

Since I became speaker in 2015, it has been my personal mission to correct the tilted scales of justice for New Yorkers, and this year's budget agreement makes a giant leap toward realizing these goals. ... *Wealth should not determine whether a person, accused but not convicted of a crime, will be jailed while awaiting trial.*

Carl E. Heastie, *Twitter Thread* (2019). Similarly, Senate Majority Leader Andrea Stewart-Cousins said: "[We want to] make sure that we're not criminalizing poverty." Jesse McKinley and Ashley Southall, *Kalief Browder's Suicide Inspired a Push to End Cash Bail. Now Lawmakers Have a Deal*, New York Times (Mar. 29, 2019). For more legislative history establishing that one of the 2019 reform's aims was to reduce economic disparities in pretrial detention, see Appendix I.

9. C.P.L. § 520.10(2)(b), <https://www.nysenate.gov/legislation/laws/CPL/520.10>.

10. *Id.* (pre-2020 reform version).

11. *Id.* (post-2020 reform version).

12. *Id.* (pre-2020 reform version).

13. CPL § 510.10(1)(f), <https://www.nysenate.gov/legislation/laws/CPL/510.10>. Note that the statute lists several factors judges must consider when deciding whether to detain a defendant and, if so, the appropriate amount of bail. However, considerations related to the defendant's financial circumstances apply only when a judge decides to set bail ("If monetary bail is authorized...").

14. Insha Rahman, *Against the Odds: Experimenting with Alternative Forms of Bail in New York City's Criminal Courts*, Vera Institute of Justice (2017) ("Although these 'alternative' forms of bail—known as partially secured and unsecured bonds, respectively—have been available for decades, they remain underutilized in the courts, where judges traditionally set bail in the form of cash or an insurance company bail bond... The traditional practice in the courts, however, is to ignore these [alternative bail] options and impose only the two most onerous forms of bail to make: cash bail and insurance company bail bond."), https://vera-institute.files.svdcn.com/production/downloads/publications/Against_the_Odds_Bail_report_FINAL3.pdf. See also *People v. Portoreal*, 66 Misc.3d 497, 510 (Bronx Sup. Ct. 2019) ("Traditionally, courts operating under the former Bail Law have been very sparing in their use of both unsecured and partially-secured bail bonds, and have strongly preferred either cash bail or insurance company bail bonds."), https://www.nycourts.gov/reporter/3dseries/2019/2019_29385.htm.

15. C.P.L. § 520.10(2)(b), <https://www.nysenate.gov/legislation/laws/CPL/520.10>.

16. For legal definitions of many of the terms used, see C.P.L. § 500.10, <https://www.nysenate.gov/legislation/laws/CPL/500.10>. For a general overview of the nine forms of bail, see *NYC Bail Trends Since 2019*, New York City Comptroller (2024), <https://comptroller.nyc.gov/reports/nyc-bail-trends-since-2019/>; *Bail Information for Consumers*, New York Department of Financial Services (2024), <https://www.dfs.ny.gov/consumers/bail>; *Bail Bond Statement of Rights*, New York Department of Financial Services (2024), https://www.dfs.ny.gov/system/files/documents/2020/03/bail_statementofrights_english_0.pdf.

17. The additional forms of bail available in New York are:

Credit Card Payment: The full bail amount is charged to a credit card, potentially with an added processing fee imposed by the court.

Secured Appearance Bond: Requires the defendant to post collateral, such as personal property or real estate, to guarantee their return to court. If they do not appear, the full bond amount must be paid.

Unsecured Appearance Bond: The defendant promises to pay the full bond amount if they do not appear in court but is not required to provide any upfront payment or collateral.

Secured Surety Bond: A third party, such as a family member, posts collateral equal to or greater than the full PSSB amount with the court, which will be forfeited if the defendant does not appear in court.

Partially Secured Appearance Bond: The defendant pays a deposit, typically up to 10% of the bond amount, as an upfront payment. If they do not appear in court, they are liable for the entire bond amount.

18. Insurance Law § 6804(a), <https://www.nysenate.gov/legislation/laws/ISC/6804>. See also *Bail Information for Consumers*, New York Department of Financial Services (2024), <https://www.dfs.ny.gov/consumers/bail>; *Bail Bond Statement of Rights*, New York Department of Financial Services (2024), https://www.dfs.ny.gov/system/files/documents/2020/03/bail_statementofrights_english_0.pdf.

19. See, generally, C.P.L. § 520.20, <https://www.nysenate.gov/legislation/laws/CPL/520.20>.

20. An online calculator is available at *Bail Calculator*, New York Department of Financial Services (2024), <https://myportal.dfs.ny.gov/bail-bond-calculator>.

21. As stated in the 1969 proposed bill to amend New York's Criminal Procedure Law:

On the one hand, a judge may commit the defendant to prison or fix bail—which may well be beyond the defendant’s means. On the other, he may release the defendant upon his own recognizance. In many instances, none of these decisions seems attractive or satisfactory. With this in mind, the proposal inserts two intermediate devices, one termed an “unsecured bail bond” and the other a “partially secured bail bond”... The possible advantages of these new devices may be hypothetically illustrated by a case of a young man charged with burglary who has previously been embroiled with the law but resides in the community and whose father is a reputable person long employed in the same position at a fairly modest but adequate salary. Here, a judge not inclined to release the defendant on his own recognizance doubtless would, under present law, fix bail, and in a fairly substantial and possibly burdensome amount owing to the seriousness of the crime. If so authorized, however, he might well be satisfied to release the defendant upon his father’s undertaking to pay \$1,000 (possibly accompanied by a \$100 deposit) in the event of the defendant’s failure of appearance.

Temporary Commission on Revision of the Penal Law and Criminal Code, *Proposed New York Criminal Procedure Law 1969 Bill* (1969), <https://perma.cc/3VM5-FRLN>.

22. *Id.*

23. Peter Preiser, *Practice Commentary to Criminal Procedure Law* sec. 520.10, McKinney’s Consolidated Law of New York (annotated) (emphasis added), [https://1.next.westlaw.com/Document/N587C3701332A11EA99ABD2329View/FullText.html?originationContext=riContextAnalysis&transitionType=Document&contextData=\(sc.Search\)&docSource=45d77cd42e9544d9ba8a3721a26e5a4b&rulebookMode=false&ppcid=c03eadb7b06748dcbc4ed6afbcd5480a#co_endOfDocument](https://1.next.westlaw.com/Document/N587C3701332A11EA99ABD2329View/FullText.html?originationContext=riContextAnalysis&transitionType=Document&contextData=(sc.Search)&docSource=45d77cd42e9544d9ba8a3721a26e5a4b&rulebookMode=false&ppcid=c03eadb7b06748dcbc4ed6afbcd5480a#co_endOfDocument).

24. Insha Rahman, *Against the Odds: Experimenting with Alternative Forms of Bail in New York City’s Criminal Courts*, Vera Institute of Justice (2017) (“Although these “alternative” forms of bail—known as partially secured and unsecured bonds, respectively—have been available for decades, they remain underutilized in the courts, where judges traditionally set bail in the form of cash or an insurance company bail bond... The traditional practice in the courts, however, is to ignore these [alternative bail] options and impose only the two most onerous forms of bail to make: cash bail and insurance company bail bond.”), https://vera-institute.files.svdcn.com/production/downloads/publications/Against_the_Odds_Bail_report_FINAL3.pdf. See also *People v. Portoreal*, 66 Misc.3d 497, 510 (Bronx Sup. Ct. 2019) (“Traditionally, courts operating under the former Bail Law have been very sparing in their use of both unsecured and partially-secured bail bonds, and have strongly preferred either cash bail or insurance company bail bonds.”), https://www.nycourts.gov/reporter/3dseries/2019/2019_29385.htm.

25. For a general overview of the nine forms of bail, see *NYC Bail Trends Since 2019*, New York City Comptroller (2024), <https://comptroller.nyc.gov/reports/nyc-bail-trends-since-2019/>; *Bail Information for Consumers*, New York Department of Financial Services (2024), <https://www.dfs.ny.gov/consumers/bail>; *Bail Bond Statement of Rights*, New York Department of Financial Services (2024), https://www.dfs.ny.gov/system/files/documents/2020/03/bail_statementofrights_english_0.pdf.

26. Independent Commission on New York City Criminal Justice and Incarceration Reform, *A More Just New York City* (2017) (calling cash bail and commercial bond “most onerous forms” of bail, before discussing PSSB and unsecured surety bond), <https://static1.squarespace.com/static/5b6de4731aef1de914f43628/t/5b96c6f81ae6cf5e9c5f186d/1536607993842/Lippman%2BCommission%2BReport%2BFINAL%2BSingles.pdf>; Independent Commission on New York City Criminal Justice and Incarceration Reform, *A More Just New York City: Progress Report and Legislative Agenda* (2018) (supporting legislative reforms to modify the bail system, including providing defendants with “more options to post bail. There are nine types of bail permitted in New York, but courts typically impose the two forms that are hardest to pay: cash bail and insurance company bail bonds. The law

should require courts to give people the option to post bail in three or more ways, including a partially secured or unsecured bond.”), <https://static1.squarespace.com/static/5b6de4731aef1de914f43628/t/5c198f9af950b7863cd60bac/1545179066057/Progress+Report.pdf>.

27. *People v. Steininger*, 66 Misc.3d 693, 705 (NY County Sup. Ct. 2019) (emphasis added, citations removed), https://www.nycourts.gov/reporter/3dseries/2019/2019_29397.htm.

28. *People v. Portoreal*, 66 Misc.3d 497, 512 (Bronx Sup. Ct. 2019) (emphasis added), https://www.nycourts.gov/reporter/3dseries/2019/2019_29385.htm.

29. Judge Greenberg correctly recognized that the statutory intent of partially secured surety bonds (PSSB) is to offer an affordable alternative to commercial bonds. However, he paradoxically suggested in the same decision that PSSB amounts be set higher than commercial bonds:

[T]he amount of the partially-secured bond ordinarily should not be more than triple the amount of the insurance company bail bond, because otherwise the Revised Bail Law’s requirement that a partially-secured bond be made available as an alternative form of monetary bail would be rendered meaningless as a practical matter.

Id. Despite acknowledging that PSSB must function as an affordable alternative, the judge’s “rule of thumb” and the amounts he set in this case—PSSB at \$250,000 with a 10% cash deposit and a commercial bond at \$200,000—created an irreconcilable tension. *Id.* While PSSB is intended to be more accessible, the amounts effectively make it less affordable than the commercial bond, undermining the reform’s purpose.

This inconsistency may stem from a misunderstanding of how commercial bond fees and PSSB deposits are calculated. Typically, commercial bond fees in such cases are much lower than the required PSSB deposit. We explore this potential explanation for Judge Greenberg’s decision—and similar outcomes—further in the Discussion section.

30. For more information, see the detailed discussion of the 2019 bail reform law’s legislative history in Appendix I.

31. *Press Release: Governor Cuomo Announces Reforms to Improve Standards and Increase Transparency in the Bail Bond Industry*, New York Department of Financial Services (2018) (“These reforms are critical in our efforts to crack down on predatory practices in the bail bond industry and protect New Yorkers from unscrupulous activity and ensure that everyone, regardless of economic status, is provided fair and equal treatment under the law.”), https://www.dfs.ny.gov/reports_and_publications/press_releases/pr1808211. Andrew M. Cuomo, *Built to Lead: 2016 State of the State* (2016) (“Currently, bail bondsman are subject to little regulation, and as a result some bad actors engage in predatory pricing and contracting practices. These issues have a disproportionate negative impact on low income people and the [proposed] legislation will allow the Department of Financial Services to exercise greater control over this industry.”), https://www.governor.ny.gov/sites/default/files/atoms/files/2016_State_of_the_State_Book.pdf.

32. New York City Comptroller, *The Public Cost of Private Bail: A Proposal to Ban Bail Bonds in NYC* (2018) (“With that long-term goal in mind, in order to build a pretrial justice system that relies less on money and more on fairer, faster, more humane, and less costly forms of release, this report recommends that the use of commercial bail bonds in New York City be immediately eliminated.”), https://comptroller.nyc.gov/wp-content/uploads/documents/The_Public_Cost_of_Private_Bail.pdf; New York City Bar Civil Rights Committee and Criminal Justice Operations Committee, *Written Testimony of the Criminal Justice Operations Committee and Civil Rights Committee* (2018) (“While the Committees believe that there are modest steps the State can take to help curtail predatory practices within the

[bond] industry, ultimately we recommend the elimination of for-profit commercial bail bonds in New York.”), <https://www.nycbar.org/reports/nys-bail-bond-reform-listening-session-written-testimony/>. See also New York City Bar Criminal Justice Operations Committee, Criminal Courts Committee, and Corrections and Community Reentry Committee, *Recommendations Concerning the Bail Bond Industry in the State of New York* (2017) (“The commercial bond industry is a powerful lobbying force, and bringing an end to it will take time and political will. However, statewide and national momentum is building to end for-profit bond practices that disproportionately harm poor people. The City Bar joins Governor Cuomo in condemning for-profit policies that target the poor, and urges the legislative changes recommended by CJA and the ABA to eliminate commercial bonds in New York.”), https://www.nycbar.org/wp-content/uploads/2023/05/201744-BailBondIndustryNYS_FINAL_4.26.17.pdf.

33. Our findings show that judges rarely set USB, which is why it is not a focal point of this analysis.

34. Judiciary Law 216(5), <https://www.nysenate.gov/legislation/laws/JUD/216>.

35. *Pretrial Release Data*, New York State Unified Court System (2024), <https://ww2.nycourts.gov/pretrial-release-data-33136>. We do not use Town and Village court data, as this data is currently only available for arraignments starting on July 1, 2023.

36. Our findings show that judges rarely set USB, which is why it is not a focal point of this analysis.

37. We say “at least” because our analysis in this section covers only the 83.4% of cases where cash bail, PSSB, and commercial bond were the only bail options. It is possible that PSSB was the most affordable option in some of the remaining 16.6% of cases, and hence that the number of cases where PSSB is the most affordable option is in fact higher.

38. The median and mean calculations account for cases where the PSSB deposit matched the most affordable alternative bail option, resulting in a \$0 difference.

39. We exclude cases where the bond fee is equal to or greater than either the cash bail or PSSB deposit and only include cases where the bond fee is strictly less than both the cash bail and PSSB deposit.

40. See, generally, Evelyn Malavé, *Criminal Courteaucracy*, American Criminal Law Review (Forthcoming) (2024), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4470328; Angelo Petrich, *Judicial Resistance to New York’s 2020 Criminal Legal Reforms*, Journal of Criminal Law and Criminology 113(1): 108-174 (2023), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4383808.

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42. Bernadette Hogan and Bruce Golding, *NY judges agree with Mayor Adams on fixing bail-reform law, court official says*, New York Post (January 25, 2022), <https://nypost.com/2022/01/25/ny-judges-agree-with-eric-adams-on-fixing-bail-reform-law-court-official-says/>. See also Douglass Dowty, *Judge: NY killers, burglars, robbers, bail jumpers must be freed under ‘dangerous’ bail law*, Syracuse.com (January 3, 2020) (Judge calls bail reform law “dangerous” and claims legislature “usurped” the discretion of the judiciary with the reform law), <https://www.syracuse.com/crime/2020/01/judge-ny-killers-burglars-robbers-bail-jumpers-must-be-freed-under-dangerous-bail-law.html>.

43. Bernadette Hogan and Bruce Holding, *Upstate judge challenges bail reform law with traffic case ruling*, New York Post (February 5, 2020), <https://nypost.com/2020/02/05/upstate-judge-challenges-bail-reform-law-with-traffic-case-ruling/>; *People v. Johnston*, 67 Misc.3d 267 (N.Y. City Ct. 2020), https://www.nycourts.gov/reporter/3dseries/2020/2020_20024.htm.

44. Lorena Mongelli, *Long Island judge ignores bail law, refuses release of ‘menace to society’*, New York Post (January 28, 2020), <https://nypost.com/2020/01/28/long-island-judge-ignores-bail-law-refuses>

[release-of-menace-to-society/](#).

45. While our data cannot show whether a judge intentionally failed to comply with the 2019 reform law, repeated violations of clear, bright-line provisions may be more telling than other types of intentional noncompliance. Specifically, instances where judges consistently set fewer than three forms of bail or failed to set the more affordable options, in direct violation of explicit bright-line requirements, suggest intentional disregard for the law.

46. Insurance Law § 6804(a), <https://www.nysenate.gov/legislation/laws/ISC/6804>. See also *Bail Information for Consumers*, New York Department of Financial Services (2024), <https://www.dfs.ny.gov/consumers/bail>; *Bail Bond Statement of Rights*, New York Department of Financial Services (2024), https://www.dfs.ny.gov/system/files/documents/2020/03/bail_statementofrights_english_0.pdf.

47. We calculate this figure by focusing exclusively on cases where the judge set the PSSB deposit at 10% of the PSSB amount, which accounts for 99% of all monetary bail cases.

48. For general discussions of the process of paying PSSB, see Insha Rahman, *Against the Odds: Experimenting with Alternative Forms of Bail in New York City's Criminal Courts*, Vera Institute of Justice (2017), https://vera-institute.files.svdcdn.com/production/downloads/publications/Against_the_Odds_Bail_report_FINAL3.pdf. See also Akash Mehta, *A Broken Bond: How New York Judges are Getting Around Bail Reform*, New York Focus (2020), <https://nysfocus.com/2020/10/12/new-york-judges-are-rolling-back-bail-reform>.

49. Defense attorneys may unintentionally reinforce this trend. Some may find it simpler to direct families to bail bondspeople rather than help them navigate the long PSSB process. This preference could influence their advocacy for lower PSSB amounts.

50. A version of this reasoning was articulated in 2019 by now-retired Bronx Supreme Court Judge Ethan Greenberg, emphasizing that PSSB/USB provide minimal incentive for indigent defendants to appear in court, whereas the immediate forfeiture of cash or pledged assets under cash bail or insurance bonds serves as a stronger deterrent to nonappearance. *People v. Portoreal*, 66 Misc.3d 497, 511 (Bronx Sup. Ct. 2019), https://www.nycourts.gov/reporter/3dseries/2019/2019_29385.htm.

51. *New York State Courts Announce Expansion of Judicial Trainings in 2024, With Emphasis on Bail and Securing Orders*, New York State Unified Court System (2024), https://www.nycourts.gov/LegacyPDFS/press/pdfs/PR24_14.pdf.

52. Jamie Fellner, *The Price of Freedom: Bail and Pretrial Detention of Low Income Nonfelony Defendants in New York City*, Human Rights Watch (2010), <https://www.hrw.org/report/2010/12/03/price-freedom/bail-and-pretrial-detention-low-income-nonfelony-defendants-new>.

53. *Id.*

54. *Id.*

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57. Mary T. Phillips, *Commercial Bail Bonds in New York City: Characteristics and Implications*, New York City Criminal Justice Agency (2011), <https://www.nycja.org/assets/BailBonds11.pdf>.

58. *Id.*

59. *Id.*

60. *Id.*
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64. Governor Andrew M. Cuomo, *Built to Lead: 2016 State of the State* (2016), https://www.governor.ny.gov/sites/default/files/atoms/files/2016_State_of_the_State_Book.pdf.
65. The report is mentioned in a later report by Envision Freedom Fund but could not be located. See *Bail Bond Industry Compliance: An Examination of Commercial Bail Bond Consumer Protection Practices in New York City*, Brooklyn Community Bail Fund (2019), https://envisionfreedom.org/wp-content/uploads/2021/09/BCBFBailBondIndustryComplianceAnExamination_2019.pdf.
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67. See, e.g., *Preventive Detention in New York: From Mainstream to Margin and Back*, Center on the Administration of Criminal Law at New York University School of Law (2017), https://www.law.nyu.edu/sites/default/files/upload_documents/2017-CACL-New-York-State-Bail-Reform-Paper.pdf; Mary T. Phillips, *Commercial Bail Bonds in New York City: Characteristics and Implications*, New York City Criminal Justice Agency (2011), <https://www.nycja.org/assets/BailBonds11.pdf>; Elise White et al., *Navigating the Bail Payment System in New York City: Findings and Recommendations*, Center for Court Innovation (2015), <https://www.innovatingjustice.org/sites/default/files/documents/Bail%20Payment%20in%20NYC.pdf>.
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