

Pretrial Justice in a Changing Landscape

Lessons Learned and Next Steps

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Michael Rempel & Krystal Rodriguez
Data Collaborative for Justice

DATA COLLABORATIVE FOR JUSTICE
AT JOHN JAY COLLEGE
STRENGTH IN NUMBERS

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Questions for Pretrial Service providers



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Opening Thought

Consider what lessons you have learned, what challenges you have overcome, and what remains a work in-progress.

The Bail Statute

- Lists offenses **eligible for cash bail**
 - Nearly all violent felonies
 - Few misdemeanors
 - “Harm on Harm”: Current & open case involve harm to person or property.
 - “Harm” includes property theft, unless negligible
 - “Harm” includes criminal possession of a firearm
- Requires courts to consider **ability to pay**
- Includes **non-monetary conditions**
 - Pretrial Supervision
 - Electronic Monitoring
 - Mandatory Programming (treatment)
 - Mental Health assessment

2023 Amendments

- Replaced “***Least Restrictive Condition***” requirement with similar wording:
 - “kind and degree of restriction or control necessary”
- **Bail plus a non-monetary condition**
- **Mandatory programming can include:**
 - Mental health & drug treatment.
 - Crisis stabilization centers

What did not change in 2023?

- **Purpose of bail:** To secure future court attendance.
- List of **bail eligible offenses.**
- **No explicit dangerousness/public safety** consideration in the statute.

What were the goals of bail reform?

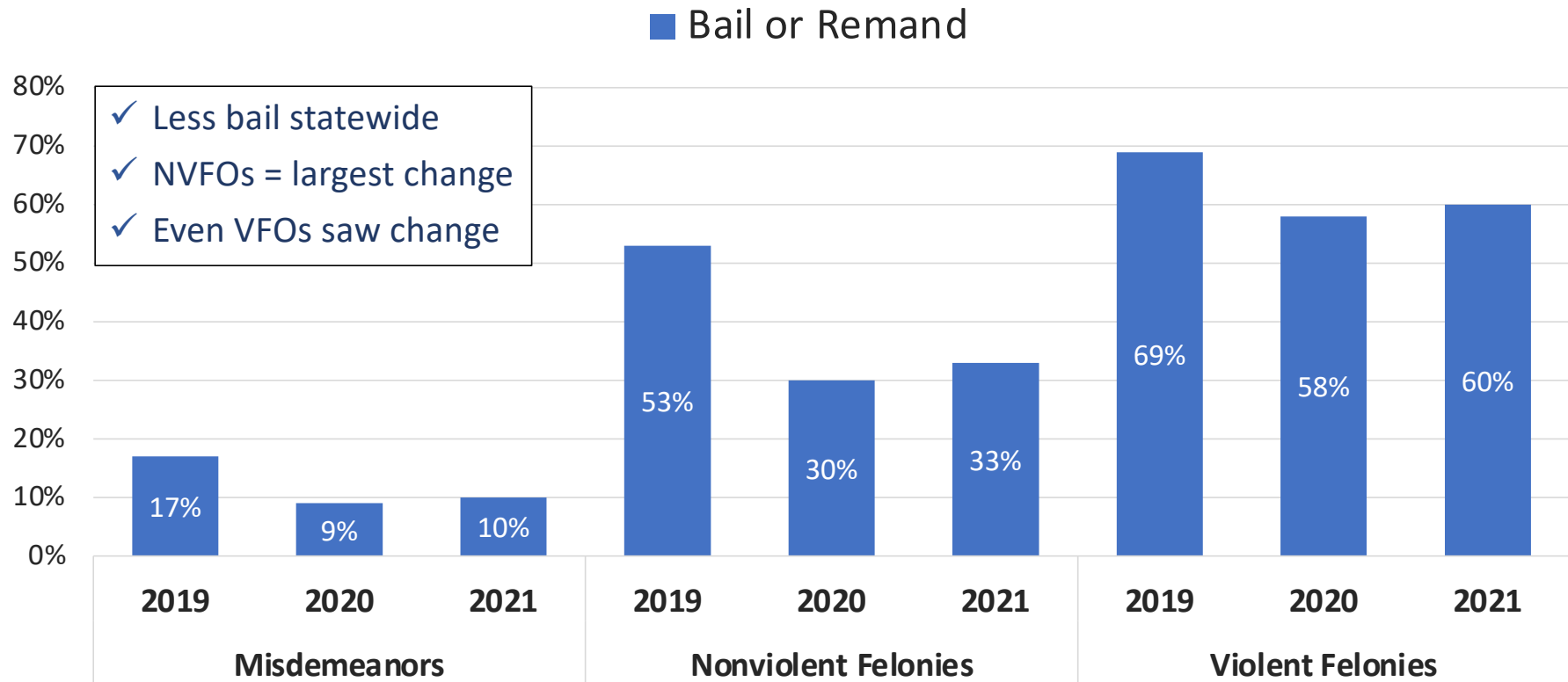
- 1. Reduce bail & pretrial detention.**
- 2. Curtail unaffordable bail (when bail is set).**
- 3. Increase access to supervision & services (in lieu of bail).**
- 4. Shrink racial disparities.**
- 5. Assure return to court.**
- 6. Maintain or increase public safety.**

What were the goals of bail reform?

1. Reduce the use of bail & pretrial detention?

- ✓ Bail & detention significantly declined: > **19,000 fewer detained in 2020.**
- ✓ Largest reductions among **nonviolent felonies.**
- ✓ Modest reductions among **violent felonies** (*though still bail-eligible*).
- ✓ **Outside NYC** saw more bail pre-reform & larger reductions post-reform.
- ☒ **Reversion towards bail** since spring 2020—especially in NYC.

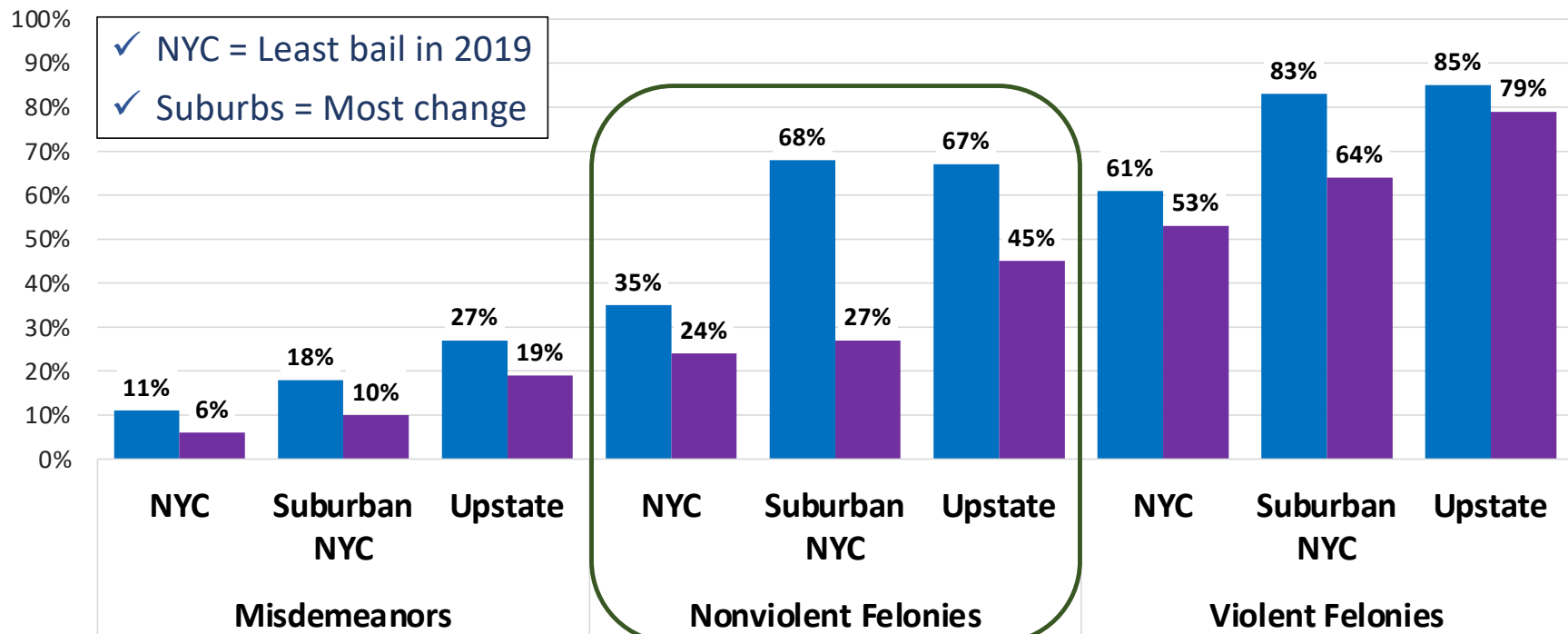
Statewide Release Decisions, 2019-2021



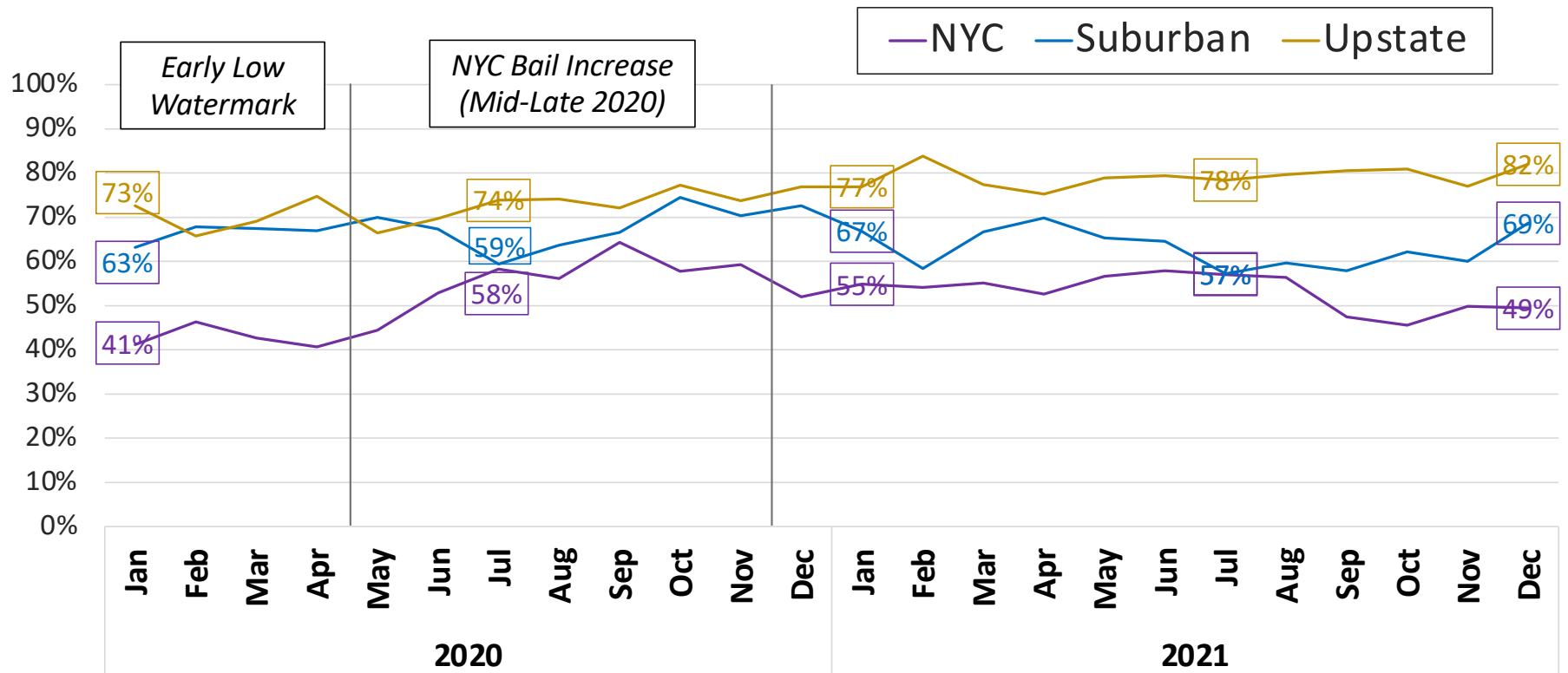
Source: [Data Collaborative for Justice](#).

Bail or Remand by Region, 2019-2021

■ 2019 ■ 2021



Violent Felony Bail-Setting by Month, 2020-21



Source: [Data Collaborative for Justice](#).

What were the goals of bail reform?

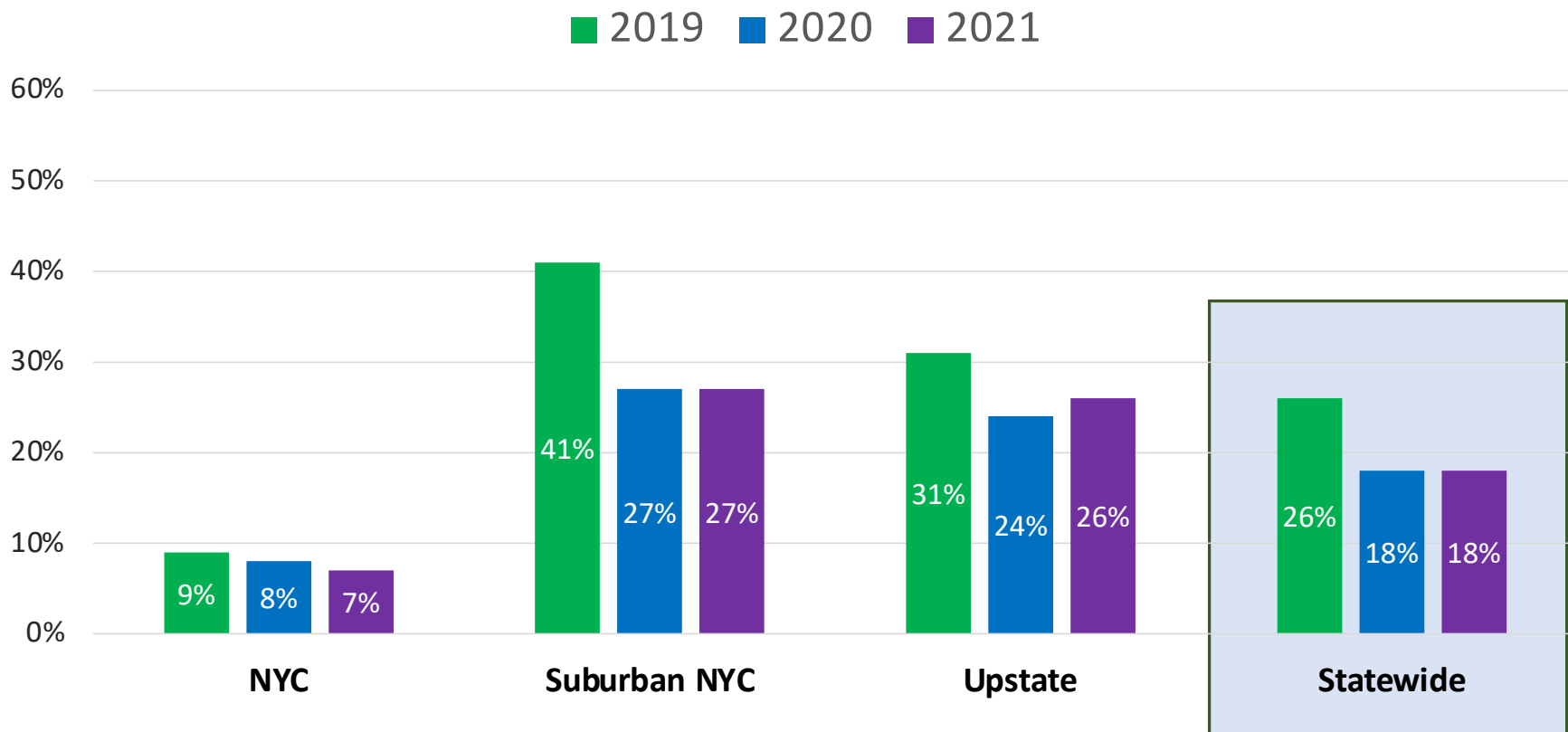
2. Curtail unaffordable bail / limit the role of access to money.

- ☒ Cash bail amounts modestly increased since 2019 (*multiple studies*)
- ☒ Cash bail amounts seem to reflect the charge, not ability to pay.

Charge	Median Bail in 2021
Misdemeanor	\$1,500
Nonviolent felony	\$7,500
Violent felony	\$15,000

- ☒ Ability to pay *not raised in 73% of bail cases* observed by [Vera Institute](#).
- ☒ Bail payment rates *declined*, post-reform.

Bail Payment at Arraignment, 2019-2021



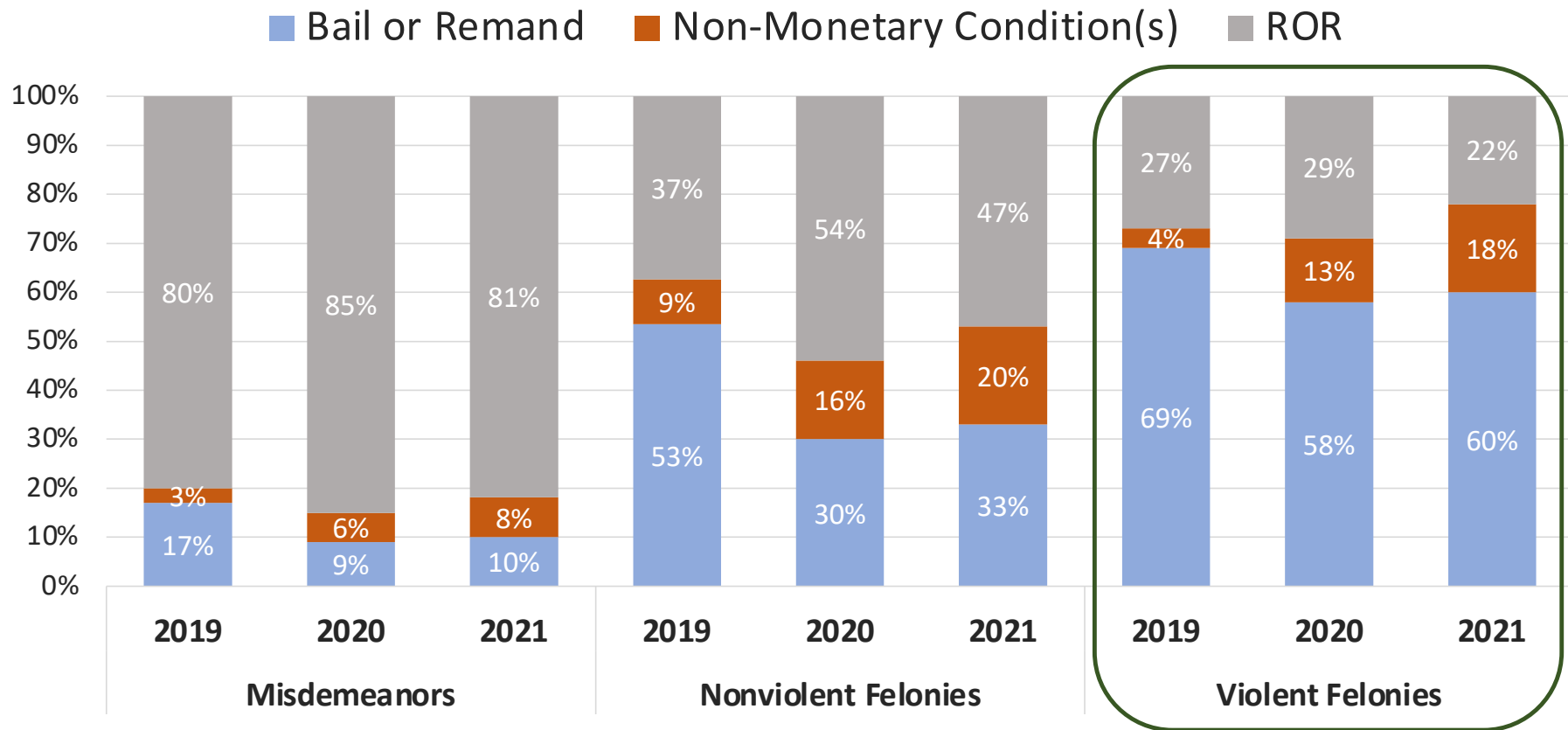
Source: [Data Collaborative for Justice](#).

What were the goals of bail reform?

3. Increase access to supervision & services?

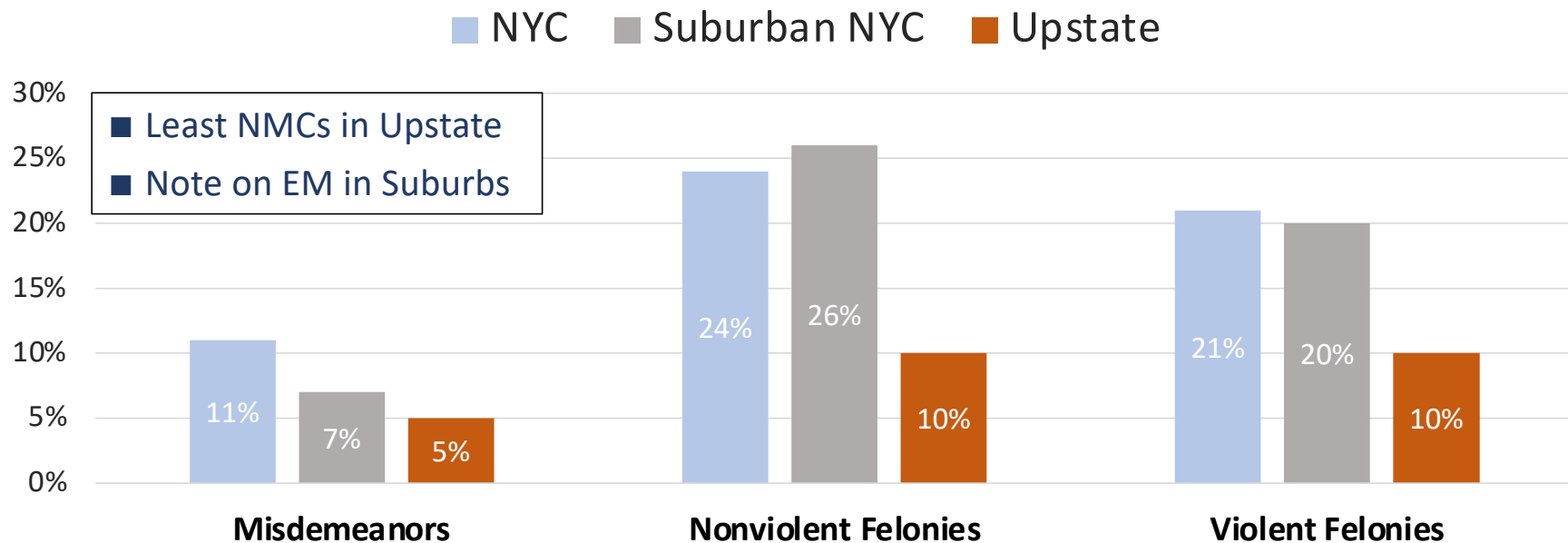
- ✓ More non-monetary conditions.
- ✓ Non-monetary conditions increase especially on bail-eligible cases.
- ☒ Less non-monetary conditions Upstate.
- Electronic monitoring often used in suburban violent felony cases.

More Non-Monetary Conditions (Orange)



Source: [Data Collaborative for Justice](#).

Non-Monetary Conditions in 2021



* **Electronic Monitoring (EM):** Suburban counties (especially Nassau) often use EM. Among 2021 violent felonies, EM = 49% of non-monetary conditions in Suburban NYC & 16% of NMCs in Upstate. (Some but less use with other charges.)

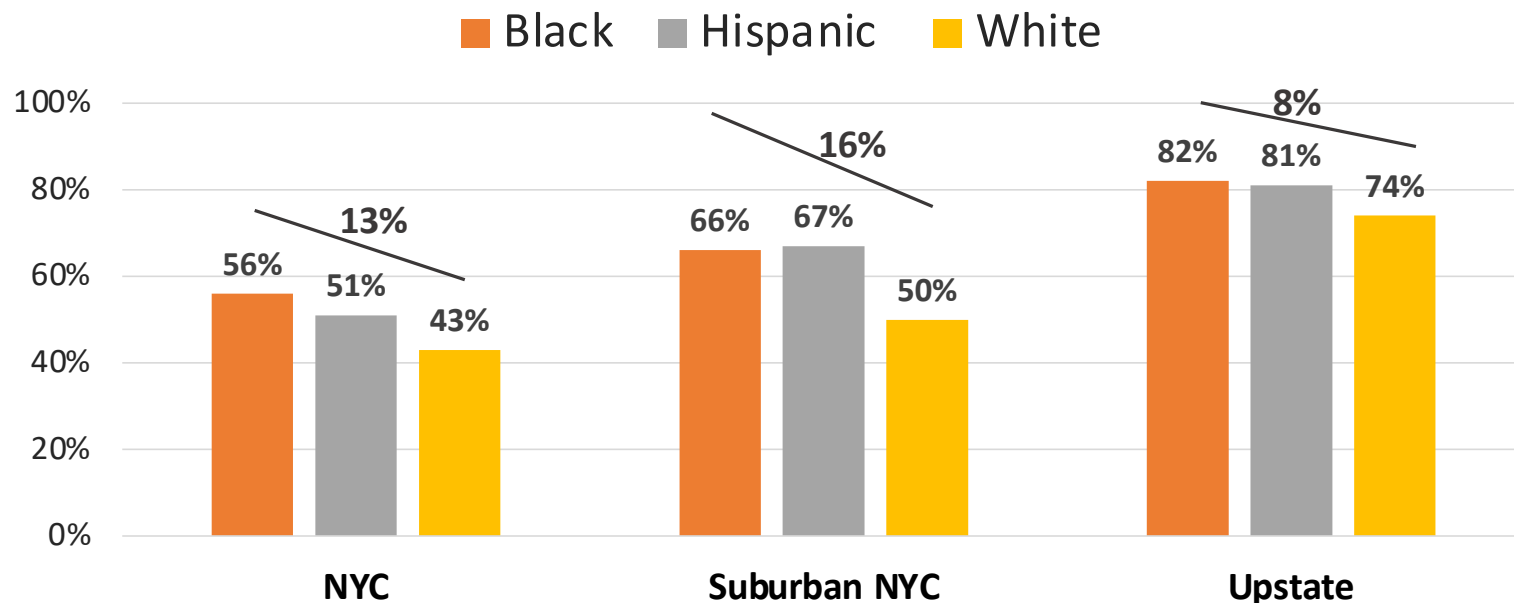
What were the goals of bail reform?

4. Shrink racial disparities?

- *Race is not associated with return to court* ([CJA research](#) in NYC; similar findings in pending DCJ study).
- ✓ All groups saw reduced bail-setting, post-reform.
- ☒ Racial disparities remain among violent felonies (bail-eligible) especially.

Racial Disparity in 2021 Bail or Remand Rates

2021 Bail or Remand Rates for Violent Felonies



* Some evidence of modestly increasing *Black-white disparities* since 2019.

What were the goals of bail reform?

5. Assure return to court?

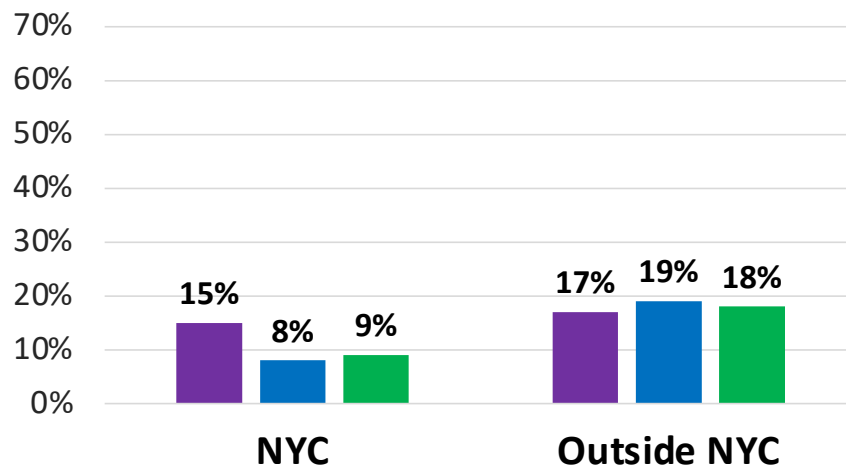
- ✓ No evidence of increased failure-to-appear (FTA), post-reform.
- ☒ Courts set conditions far more often than people would FTA.

Failure to Appear, 2019-2021

Failure-to-Appear (FTA) Rates

(Released Cases)

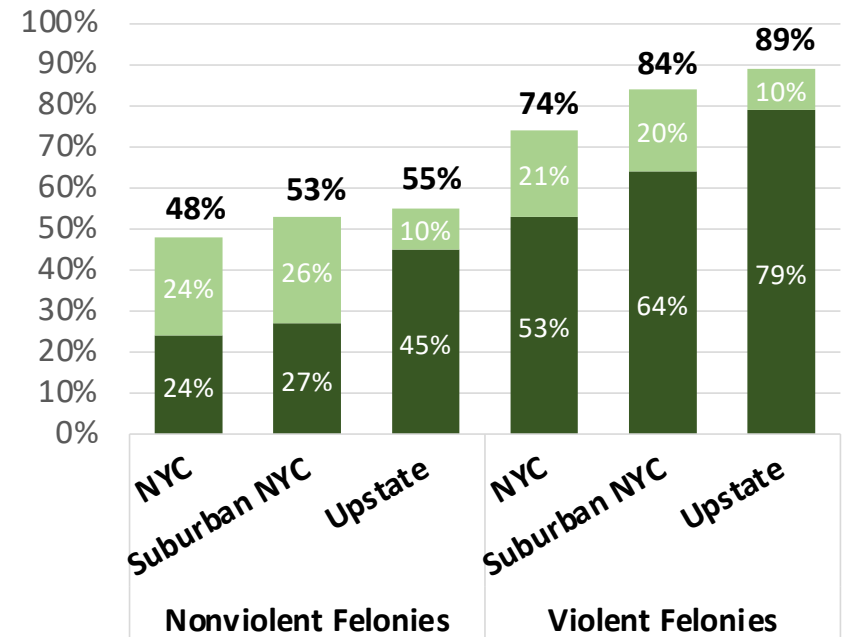
■ 2019 ■ 2020 ■ 2021 (Jan-Sept)



Note: [Prior research](#) indicates little relationship between the severity of the charge and FTA rate.

2021 Pretrial Condition Rates

■ Bail or Remand ■ Non-Monetary Conditions



Source: [Data Collaborative for Justice](#).

What were the goals of bail reform?

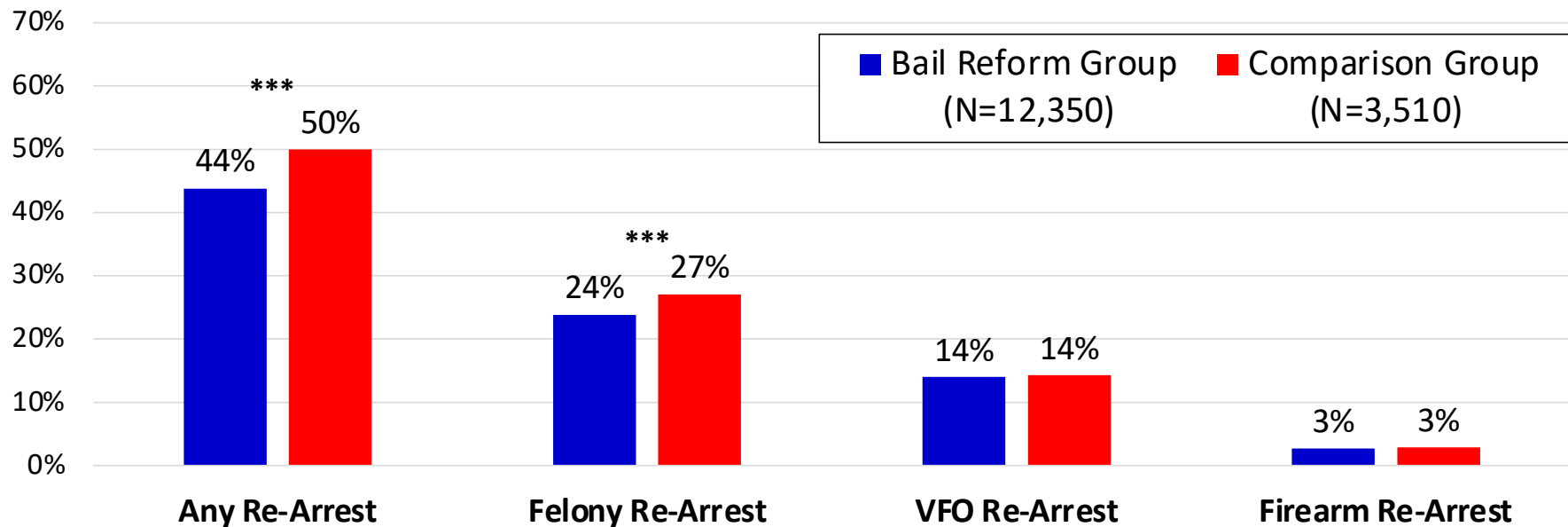
6. Maintain or increase public safety?

- ✓ **Crime (statewide):** No net change ([University of Albany study](#)).
- ✓ **[DCJ study](#) on recidivism in NYC:**
 - ✓ **Cases seeing bail elimination:** *Reform reduced re-arrest.*
 - ✓ **Bail-eligible cases:** *No clear effect in either direction.*
- **Recidivism Outside NYC:** Pending / modestly less positive than NYC.

Results for Cases Seeing Bail Elimination

Two-Year Re-Arrest Rates for Matched Samples

(Released under reform in 2020 vs. with bail or remand set in 2019)



Results for Varying Subgroups

In all regions, pretrial release tends to:

- Reduce recidivism especially for **less serious charges & no criminal history**.
- Increase recidivism where there is **recent criminal history** (e.g., in past 2 years), especially a recent prior violent felony.

Two-Year Re-Arrest (Any Charge)				
	Bail Reform	Comparison	Difference	Effect Favors?
Entire Samples	44%***	50%	6%	Bail Reform
No Criminal History	26%***	38%	12%	Bail Reform
Prior VFO Arrest	72%***	62%	10%	Comparison

Four Years Later (Since NYAPSA 2019)

Like many large-scale reforms, bail reform is seeing imperfect implementation. It is also already accomplishing many important goals – with fewer people detained, more receiving pretrial services, and crime and re-arrest rates certainly not increasing.

Discussion Questions

- What is your pretrial services agency's role in determining pretrial conditions?
- What kinds of noncompliance are you seeing most often? How are courts handling those instances of noncompliance?
- What might better serve "high risk" individuals in the community?
- What key problems persist? Who needs to act to solve them?
- What is working? Could you share a lesson you learned or a problem you resolved?

For more information:

Email:

mrempel@jjay.cuny.edu

krrodriguez@jjay.cuny.edu

Bail Reform Resources Page

<https://datacollaborativeforjustice.org/work/practitioner-resources/resources-bail-reform-in-new-york-across-the-us/>

