

# Analyzing Cash Bail Reform

**Kylie Murdock**

Special Advisor to Programs

[@kylieimmurdock](https://twitter.com/kylieimmurdock)**Jim Kessler**

Executive Vice President for Policy

[@ThirdWayKessler](https://twitter.com/ThirdWayKessler)

Republicans made crime a top issue in 2020 and 2022, pegging Democrats as “soft,” citing skyrocketing crime in blue cities, and highlighting certain policies like bail reform that can be defined as lax. But crime rose all across the country, murder rates were higher in red states than blue states every year this century, and America’s model bail reform law was actually passed under a Republican governor.

Attacks on cash bail reform hit their peak during 2022 elections in New York. Republican Gubernatorial candidate Lee Zeldin made crime the cornerstone of his campaign, which was credited for Hochul’s smaller- than -anticipated victory margin. Republicans also flipped three House seats and won two open races in New York, the current margin in the House.

In this paper, we look at bail reform through the lens of New Jersey, the first state to fully implement cash bail reform. Passed in 2014 under Republican Governor Chris Christie, reforms went

into effect in 2017, giving us several years of data to look at. Other states like New York (2019), California (2021), and Illinois (2021) enacted reforms more recently.

In a time of rising crime rates, bail reform can be politically difficult. But if bail reform is designed and defined as 1) public safety first, 2) best for taxpayers, 3) bipartisan, and 4) best for communities and fair to those accused, it can be successful.

## **What is cash bail reform?**

Judges use cash bail as a guarantee that a defendant will return for a trial or hearing. If they're unable to pay, they're held until trial. More than 10.5 million people are arrested every year, and only 5% of those arrests are related to violent crime. In fact, the vast majority (83%) of arrests were for low-level offenses. In most instances, bail reform ensures people arrested for non-violent crimes aren't in jail simply because they can't afford to pay bail.

On the flip side, our current bail system has traditionally allowed wealthier people who commit violent and non-violent crimes a better chance to buy their way out of pre-trial jail. It seems implausible that a person of means who commits a violent crime is less dangerous than a poor person who commits a non-violent crime. Yet that is the system that has sufficed for generations.

A push for bail reform should not come as a surprise. There have been enough accounts of judges handing down exorbitant bails for minor crimes to raise questions, like a man in San Francisco who was given a \$350,000 bail for stealing a \$7 bottle of cologne. And race has long been a factor, with non-white defendants experiencing higher rates of pretrial detention and receiving bail amounts twice as high as white defendants.

As a result of cash bail, around 500,000 people are held in local jails each year due to a lack of money, not because they are considered a danger to society. Pre-trial detention can often last months, with the average length ranging between 50 and 250 days, and have a number of negative consequences—losing a job, housing, or custody of children, negative effects on health and mental health.

Notably, bail reform is targeted toward those the criminal justice system deem not a risk to their community. In lieu of bail, judges may release people on their own recognizance or impose conditions to ensure a return to court for trial. In states that have passed bail reform, judges can still set bail for almost all violent felonies and certain nonviolent felonies. Supporters of bail reform say that success is to decrease the number of incarcerated people, minimize the pre-trial disruption a defendant can experience after an arrest, save taxpayer dollars, and address racial inequities in the criminal justice system all while keeping communities safe, saving taxpayer dollars, and ensuring defendants show up to trial.

In essence, the promise of bail reform is not that it's lax, but it's smart and will not increase crime as it treats many of those accused of crimes more deftly. The criticism is the opposite—cash bail

reform is lax, soft, naïve, and dangerous.

So far, data shows that it does not increase crime or recidivism rates. Crime rates have risen in states that have enacted bail reform, but they have risen just as much or more in states that have not enacted bail reform.

What follows is an analysis of one of the first major bail reform efforts in America, New Jersey's 2017 law, which sought to: 1) protect public safety, 2) save taxpayer dollars, 3) build bipartisan support, and 4) treat communities and those accused fairly.

## **New Jersey's Cash Bail Reform**

Bail reform hasn't always been a polarizing issue. New Jersey's bail reforms were championed by Republican Governor Chris Christie and passed the State Legislature with significant bipartisan support after a 2014 ballot initiative compelled the state to act. Governor Christie signed a law in 2017 eliminating the cash bail system in favor of a system that calculates the risk of recidivism. Instead of the default being cash bail, judges consider risk to community safety and individual victims when making pretrial decisions. If you are a risk to the community, you stay in jail.

On any given day, more than 5,000 people were being held in New Jersey jails because they couldn't afford to post cash bail. A 2012 report found that more than 1,500 people—12% of the entire New Jersey prison population—were being held because they couldn't pay a bail of \$2,500 or less. And 800 of those couldn't pay a bail of \$500. On average, pretrial detainees waited in jail for 314 days, nearly one year. The report also confirmed racial biases in the bail system, with 71% of detainees being Black or Latino, despite accounting for only 31% of the larger New Jersey population.

New Jersey's risk-assessment tool takes into account nine factors: age, type of offense, other pending charges, prior misdemeanor convictions, prior felony convictions, prior violent convictions, prior failure to appear in the past two years, prior failure to appear older than two years, and prior sentence to incarceration. A defendant is assigned a numerical score between 1 and 6 to "assess their risk of failing to appear, engaging in new criminal activity, and engaging in new violent criminal activity." Based on this score, a prosecutor can decide to recommend detention. Judges are allowed to reject detention but cannot detain someone of their own volition. If a defendant is released, the terms of their release could range from "wearing an electric monitor to periodic check-ins with court staff."

In 2021, 21.5% of those arrested were detained. The rest were released with different levels of monitoring based on the severity of their charge. 5.8% were released on their own recognizance (ROR). 18.4% were assigned Pretrial Monitoring Level (PML) 1, monthly phone reporting. 15.8% were assigned PML2, monthly in-person and phone reporting. 32.4% were assigned PML3, weekly in-person and phone monitoring. And 6.1% were assigned PML3+, electric monitoring or home detention.

And the law worked.

**It decreased the jail population.** Since its enactment, the number of people awaiting trial in jail fell by 40%. In October of 2012, there were 15,006 inmates in custody. In 2018, the year after enactment, the number of inmates fell to 8,482 and has hovered around there since.

**It ensured violent criminals were detained.** In 2021, 80% of defendants in New Jersey jails were charged with serious offenses. 55% of defendants were charged with violent crimes compared to just 35% in 2012. This is not due to an increase in violent crime but the change in focus to detaining violent offenders and releasing non-violent ones.

**Re-arrests during pretrial release didn't significantly increase.** The percent of people charged with a serious offense while on pretrial release in 2017 was 2.1%, a slight increase from 2014. (The New Jersey Courts noted that the small change in outcome measures "should be interpreted with caution and likely do not represent meaningful differences.") That number has since dropped to 1.2% in 2020.

**Court appearance rates increased.** When bail reform was first introduced, rates hovered between 89% and 91%, but hit 97% in 2020.

**New Jersey saved millions of taxpayer dollars.** In 2018 alone, reductions in jail populations saved the state \$68 million.

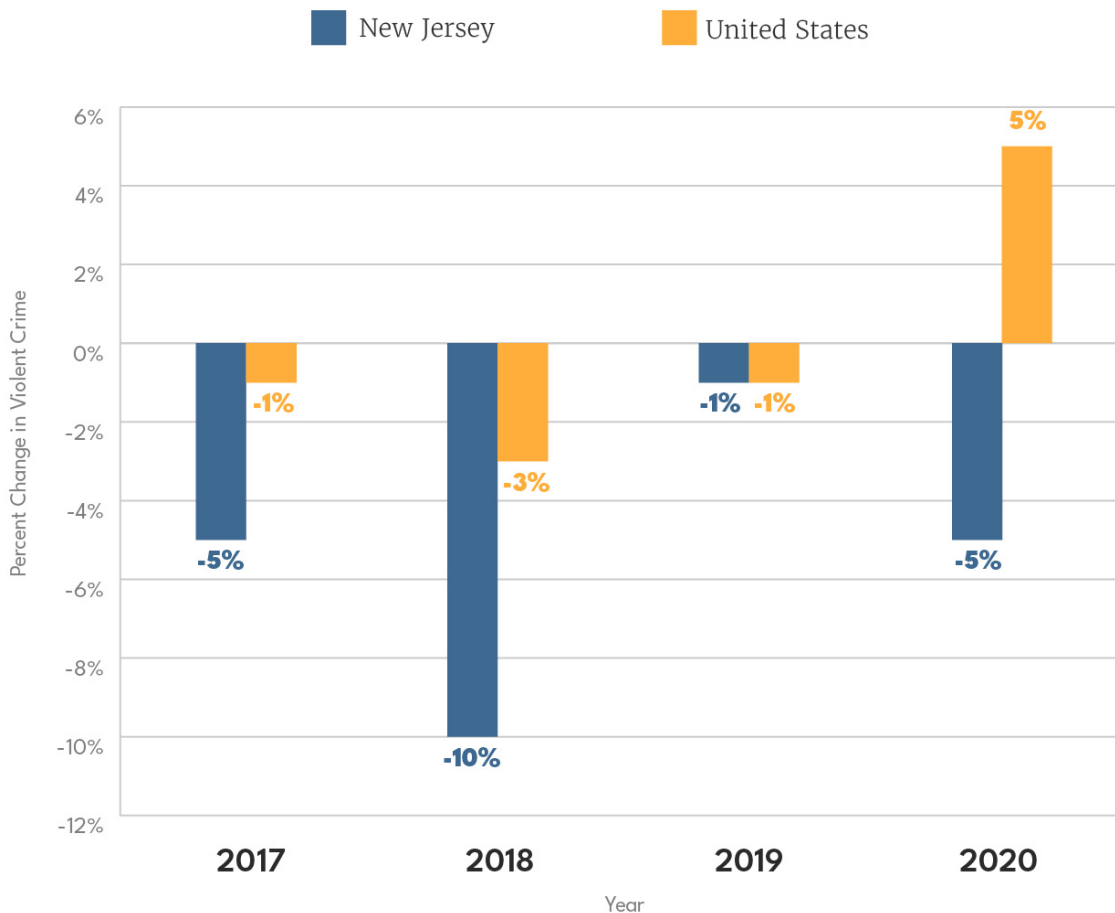
**And crime rates didn't increase after bail reform was enacted.** See below.

## **Crime Decreased in New Jersey**

Bail reform did not lead to an increase in crime in New Jersey. We pulled crime rate data for New Jersey from the FBI crime data explorer from 2016-2020. The crimes we looked at were overall violent crime, homicide, robbery, assault, overall property crime, burglary, and vehicle theft.

In 2017, the year cash bail reform was enacted, violent crime in New Jersey decreased by 5%, a steeper decline than the United States' 1% decrease. In 2018, violent crime decreased by 10%, more than the nationwide decrease of 3%. Overall, from 2017 to 2020, violent crime in New Jersey fell by 20%. Homicide rates fell by 12%, robberies fell by 50%, and assault increased by 4%. In comparison, nationwide, homicide rates increased by 20%, robberies fell by 28%, and assault increased by 13%. One of Republicans' main arguments against cash bail reform is that it will increase violent crime, but that wasn't the case in New Jersey.

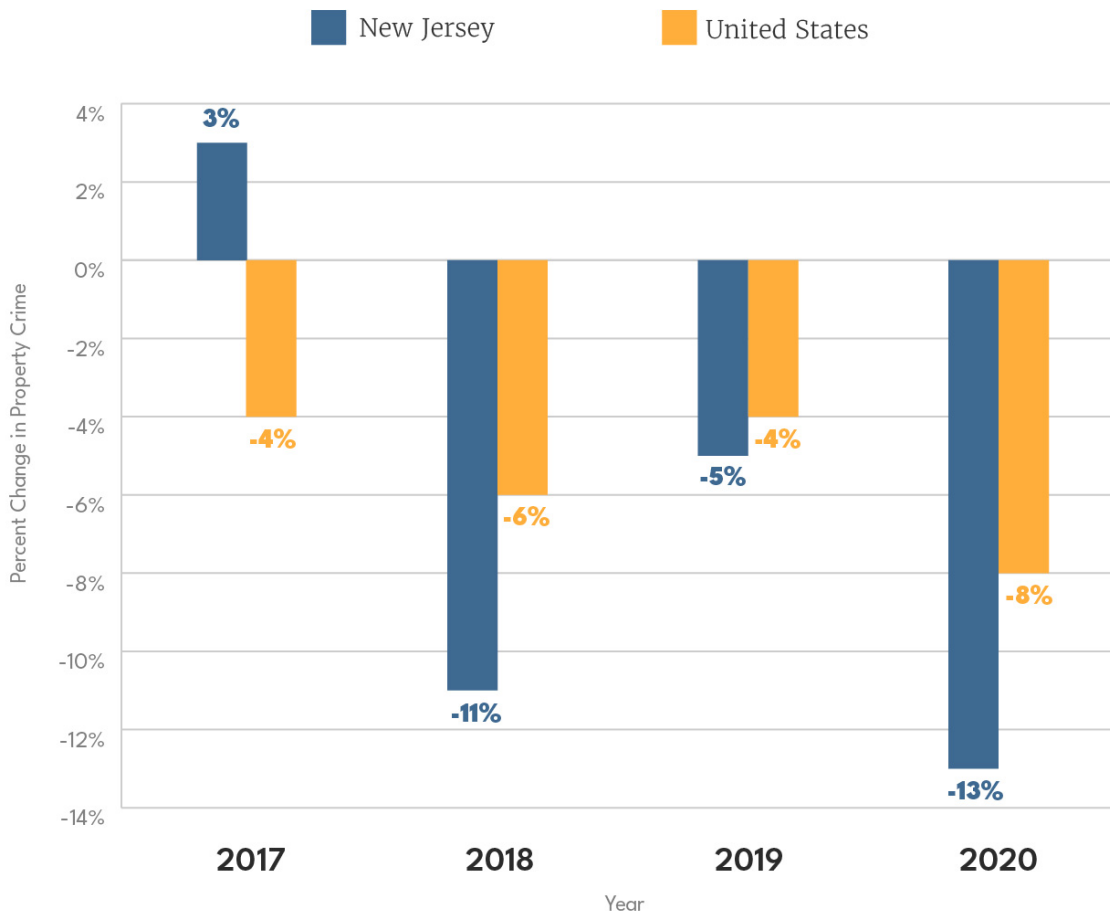
## Violent Crime Decreased at Steeper Rates in New Jersey 2017-2020



**Source:** Author's calculations based on the FBI's Crime Data Explorer.

New Jersey saw similar patterns with property crime. In 2017, property crime in New Jersey increased by 3%, but saw an 11% decrease in 2018. Between 2018 and 2020, New Jersey saw steeper declines in property crime than nationwide. From 2016 to 2020, property crime decreased by 25%. Burglaries fell by 48% and vehicle theft by 8%. Nationwide, property crime decreased by 20%, burglaries by 33%, and vehicle theft increased by 4%.

## Property Crime Decreased at Steeper Rates in New Jersey 2017-2020



Source: Author's calculations based on the FBI's Crime Data Explorer.

New Jersey has lower crime rates than the United States as a whole, and after enacting cash bail reform, saw steeper declines in crime than nationwide. Cash bail reform clearly didn't increase crime in New Jersey.

## Conclusion

Bail reform has become such a hot and partisan topic that even New Jersey is seeking reforms to its own laws. In this case, the Democratic Governor Phil Murphy is seeking to tighten the law to ensure that violent criminals don't easily return to the streets. Former Governor Christie is, predictably, distancing himself from the law he passed.

As crime increases across America, issues like bail reform take on a new tenor. By any reasonable measure, the New Jersey law has been a success. Tax dollars have been saved, crime is well below

national averages and national trends, those released have come to trial, prison crowding has eased. And the New Jersey law is thoughtful and remains a work in progress as tweaks are inevitably made.

Generally, a law like this with the outcomes observed would be considered a success. The politics, however, remain an unfortunate challenge. However, if bail reform is designed and defined as 1) public safety first, 2) best for taxpayers, 3) bipartisan, and 4) best for communities and fair to those accused, those challenges can be overcome.

#### TOPICS

**JUSTICE 46**