

**Evaluating the New York State Bail Reform Act: Impact on law Enforcement?**

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The subject of bail reform in the United States has been a topic that has been discussed frequently for decades. The idea behind bail reform is to give people who are accused of crimes the ability to post bail without having to pay a large amount of money in the form of cash. This subject took center stage in the State of New York in 2019. The New York State legislature passed a bill known as the New York State Bail Reform Act that was signed into law by Governor Andrew Cuomo. This law has affected both the procedures of law enforcement, as well as public safety. The New York State Bail Reform Act has set mandates forward that release people accused of non-violent misdemeanor (and occasionally felony) level offenses at arraignment or by an appearance ticket without having to pay bail in any form. This has affected the level of recidivism as well as public safety. The current hypothesis is that bail reform in New York State has affected public safety and law enforcement procedures in a negative manner. Recidivism, as well as the number of future crimes from first-time offenders will increase because of this act.

### **Literature Review**

Throughout the history of the world, different forms of bail have been used. Cash bail and property bond are among the most utilized forms of bail. Bail can be traced back to pre-American conventions of government across the world. Calaway and Kinsley (2018) state monetary bail is an ancient criminal justice tradition rooted in Anglo-Saxon history. Criminal justice practices throughout the world have been evolving since the days of the Old Testament and the code of Hammurabi. The criminal justice aspects of the United States were founded on precedents set forth in the Holy Bible. In modern times, the United States Constitution provides protection from cruel or unusual punishment, such as paying unreasonable bail.

In the United States, bail is a part of the criminal judicial system. Koepke and Robinson (2018) state historically, the goal of a bail hearing was to ensure a defendant's appearance for trial, and the question was what it would take to ensure the defendant's reappearance in court. The reason behind this process is because defendants would be released on their recognizance (ROR) and would not show up for court. This statement is especially true for defendants that are accused of violent felony crimes such as robbery, murder, sexual assault, and even gang violence. The New York State Bail Reform Act mostly addresses non-violent misdemeanor crimes, which account for a large majority of the crimes committed not only in New York State, but the entire United States. In the discussion section of the article, the author will discuss interviews with the Sheriff and District Attorney that highlight this statement.

Misdemeanor crimes range from simple petit larceny to assaults depending on the circumstances of the crime. While there are violation charges in state penal codes, these do not count towards the crime total, because a crime is defined as a misdemeanor or felony offense. Misdemeanor crimes are committed the most in the United States. Baughman (2020) states about 90 percent of arrests- and the majority of the 13.2 million annual convictions- are based on misdemeanor charges. One argument that is presented by people who are in favor of bail reform is that the problem is not the fact that people go to jail for misdemeanor crimes, but the fact that they are remanded to jail for inability to pay the bail. For example, if a person was accused of Aggravated Unlicensed Operation in the 3<sup>rd</sup> degree (a charge found in the New York State Vehicle and Traffic Law), which is an unclassified misdemeanor, the person might face a \$500 cash bail or \$1,000 property bond. The argument is that if someone is trying to fix their mistakes and they are caught driving, putting them in jail until further court hearings prohibit them from working to make money for their defense and trial fees.

The process of releasing or securing someone to the county jail starts at arraignment. Harvard Law Review (2018) states in most jurisdictions, a person may be detained pretrial only if there is a high risk that the person will not appear in court or that the person will be a danger to the community before trial. The price of bail is not the only factor that will determine if a person goes to jail on pretrial detention. For example, if a person is arrested on felony charges, and has previous violent criminal charges on their criminal record, they may be deemed a danger to society, and remanded to the custody of the Sheriff. This may also occur if the person has a history of bail jumping (being released on bail and then not showing up for court again). The idea that bail will serve as a device to secure a person's return to court is crucial for upholding law and order.

The New York State Bail Reform Act, also known as the Amended Bail Law on pretrial detention, was passed in the New York State Legislature in April of 2019. The law went into effect in January of 2020, which changed the way bail and pretrial detention was used in the courtrooms. Rempel and Rodriguez (2020) state the amended law eliminates the use of money bail and pretrial detention for people charged with most misdemeanors and many nonviolent felonies, while preserving money bail and detention as legal options in virtually all violent felony cases. Judges must ROR individuals for basic misdemeanor cases, such as Criminal Contempt in the Second Degree (i.e., violating a stay-away order of protection). The problem that is presented is some misdemeanor cases start out as non-violent, and once a defendant is released, they can commit more crimes.

If a judge determines that the person may cause public safety concerns or would be a flight risk, there are further steps that can be considered. Arnaud and Sims-Agbabiaka (2020-2021) state the statute further provides that a judge can impose non-monetary conditions on the accused person if the judge makes an individualized determination that the accused person poses a flight risk (a risk that they will not return to court). For example, a judge can require that the person must wear an electronic monitoring ankle bracelet and must report to Probation for a set number of times per week during the court process. The judge can take these steps even if a person cannot pay bail. Gutenplan (2021) states the bail reform laws eliminate cash bail for most defendants so that defendants are no longer detained before trial solely due to their inability to pay the bail amount. The purpose was to lower incarceration rates throughout New York State and to prevent individuals who were not convicted of a crime from having to sit in jail throughout the court process.

The New York State Bail Reform Act has not been without consequence. Maisel (2020) states for the month of February 2020, major crimes in New York City rose a whopping 22.5% when compared to the same period in 2019- with much of the blame going to repeat offenders who have been released under the criminal justice reforms that release many felons without bail. This instance is not isolated to New York City. Law enforcement officials throughout the State of New York are dealing with repeat offenders because of bail reform. Until 2020, securing a defendant to return to court was done through cash bail or property bond. After the enactment of the New York State Bail Reform Act, judicial discretion has been severely affected.

### **Research Questions and Hypotheses**

The following research questions were developed as a result of the Bail Reform Act:

1. What effect does the Bail Reform Act have on public safety?
2. Is there an increased risk of recidivism due to offenders being released without paying bail?
3. Is there an increased risk of victimization?

4. What effect does this have on people who are on community supervision?
5. What effect does the Bail Reform Act have on law enforcement?

The hypothesis is that the New York State Bail Reform Act severely affects public safety and enforcement in a negative manner.

### Method

After approval from the Institutional Review Board, an anonymous survey was sent out to multiple Sheriff’s Departments and a Police Department. The survey contained 20 questions that asked about the encounters that law enforcement officers have with subjects daily. This covered aspects of arrests, re-arrest, whether the offender was on community supervision (Probation or Parole), if the officers feel like public safety/discretion has been affected by the Bail Reform Act, and questions about domestic violence. These answers were collected anonymously by Google Forms.

The second part of the study involved qualitative interviews with a District Attorney and the Sheriff. After receiving consent to interview, both respondents answered a total of 6 questions that discussed the same concepts as the anonymous survey, but in greater detail. The phone interviews took approximately 30 minutes to 1 hour depending on the answers from the respondents. The questions in the interviews were focused on what the departments that the respondents represent are doing to combat issues brought on by the Bail Reform Act. For example, the first question asked the respondents what they were doing to combat the threat to public safety. The pretense for this is that offenders are being released without having to pay bail, or judges are simply release them because the new law requires them to for a variety of crimes listed in the New York State penal law.

### Results

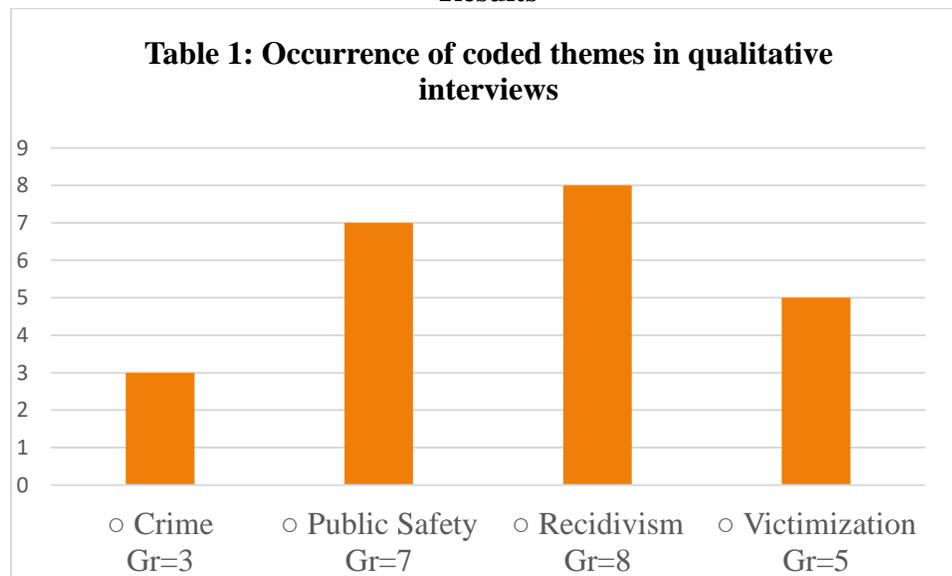


Table 1 shows the occurrence of coded themes that took place during the qualitative interviews. The major themes from the interviews are crime, public safety, recidivism, and victimization

For the quantitative research, 51 respondents answered the 20-question survey. Most of the questions were answered with “yes”. The data was collected anonymously through Google Forms and was converted to an excel spreadsheet. From there, a t-Test was conducted on the data collected from the survey. For the qualitative interviews that were conducted with the Sheriff and the District Attorney, thematic analysis was used to derive the four major themes from the interviews. The hypothesis  $H_0$ : Public safety is affected by the Bail Reform Act. The null

hypothesis is  $H_1$ : Public safety is not affected by the Bail Reform Act. Table 1 reflects the t-Test used for the anonymous survey. For the qualitative interviews that were conducted, thematic analysis was conducted, and a codebook was established.

### **Discussion**

The first interview the author conducted was with a Sheriff from one the county that the author resides in. During the interview, the Sheriff made some comments that show why the Bail Reform Act is causing great concern for public safety. The Sheriff's main point was that incarceration in New York State is being delayed by a total of two years in most cases. In some of the cases that were discussed with the Sheriff, he revealed that the criminal justice system in the State of New York does not take action on an offender until they have committed more than four crimes, including violent felony cases. The Sheriff also pointed out that the offenders who are being re-arrested are the same people that are committing crimes. Even with the Bail Reform Act, the Sheriff has advised the author that the daily jail population has only decreased slightly. The Sheriff also showed that substance abuse and domestic violence are getting worse. The Sheriff discussed reduced reasoning, which is occurring when an offender is under the influence of drugs or alcohol and how it affects recidivism and public safety. The Sheriff showed that reduced reasoning is creating more unnecessary victims.

The second interview the author conducted was with the District Attorney from the author's home county. The District Attorney highlighted the county's response to crime has not changed. The county utilizes diversion programs for mental health and substance abuse issues. Drug courts are also used, but the District Attorney pointed to this as a big driver for recidivism. Drug court offenders are placed on intensive supervision and are given an interim offer in court to complete drug court or be sentenced to incarceration. The Sheriff and administrative members of the New York State Police discuss these issues with the District Attorney on a daily basis. The District Attorney discussed a case with the author about a person who stole a family members car. This should have led to incarceration and post-release supervision. Due to the Bail Reform Act, the offender was released from jail, and committed an additional ten felonies over the course of six months. The offender's violent behavior escalated, and it led to a serious physical injury with a hammer. The District Attorney spoke about domestic violence victims and tied all answers into one major point: the Bail Reform Act is creating a feeling of lawlessness and is creating unnecessary victims. In the concluding moments of the interview, the District Attorney pointed out that the City of Rochester had 70 pending homicide cases at the time of the interview. The District Attorney also pointed out that because of reforms to Parole, subjects on Parole are traveling across the state and are conducting more crimes. Technical violations are no longer allowed because of this reform and subjects on Parole are released. This is an indicator of increased recidivism.

The qualitative interviews from administrators in the criminal justice system showed how much of a danger the Bail Reform Act has become to public safety. From these interviews, the author conducted a thematic analysis. Four major themes emerged from coding: crime, public safety, recidivism, and victimization. The theme that was discussed most in the interviews was recidivism. As the Sheriff pointed out, while there may be new people committing crimes, law enforcement agencies are continually dealing with the same subjects. This is reflected in the survey that road patrol officers completed. The second theme that was discussed the most was public safety. While this could include victimization, it is a separate category because it shows the risk that is created when offenders do not face jail time for most laws contained in the New York State Penal Law.

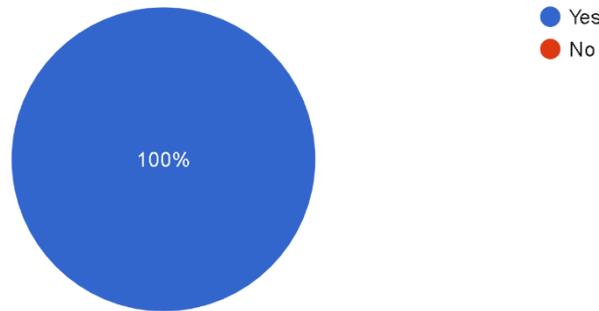
Results for individual questions from the anonymous survey are contained after the references section of this article. All questions favored the answer “yes” even in cases that discussed Parole violations. Most of the officers answered that they will arrest a subject and will again deal with the same subject within a 72-hour period. This period accounts for breaks in an officer’s schedule. For example, an officer can arrest a subject on a Friday afternoon, and then arrest them again for a new offense when they return to work on Monday morning. For question number ten, most of the officers answered that the Bail Reform Act has a negative effect on their department’s policies and procedures. The variation in answers is due to several factors. Officers are assigned posts or zones. One officer may answer questions differently than the other based on their call volume in their respective zones. Rank is another factor that affects the number of answers for a single question. Line officers, such as Lieutenants and Sergeants still work road patrol, but their experience changes due to administrative functions such as reviewing reports, personnel complaints, and other functions related to being a supervisor. In the survey, the officers’ answers show that there is both an increase in property crimes and crimes against people. While special populations were not used in this survey, there was a question that was related to the effect that it had on them. The special population that is probably targeted the most is elderly people. Elderly people are vulnerable to scams, fraud from family members/friends, and larcenies. This is probably why most of the officers said “yes” to this question.

Based on the results of the anonymous survey, the t-Test shows that the hypothesis  $H_0$ : Public safety is affected by the Bail Reform Act is accepted. The occurrence of coded themes in qualitative interviews show that public safety and recidivism are among the most discussed problems among criminal justice administrators in New York State. The code of crime is not used as frequently, and it is determined that the New York State Bail Reform Act shows more of an increase in recidivism versus new crimes being committed. Both respondents provided similar answers about public safety. They both highlighted that since the passage of the Bail Reform Act, crime has increased. While this is a general statement, the results from the anonymous survey show that there is an increase in crime across major categories: property, domestic violence, and special populations (elderly, pregnant females, and children). Recidivism has proven to be a major factor in this study. Even if the subject of parolees was not included in the study, there would still be an increase in recidivism, as highlighted by the Sheriff’s statement about dealing with the same subjects again and again.

While the t-Test for the anonymous survey is in the article, it is worth noting that most of the questions were answered “yes”. For example, question 11 asked respondents “Has the Bail Reform Act impacted public safety in a negative way?” The table below shows that all participants answered yes. While participants answered had different answers for questions involving jurisdiction, Parole and Probation violations, the main consensus was that public safety has been negatively affected. The hypothesis, based on data from a mixed-methods approach, can be accepted. The New York State Bail Reform Act has a negative effect on public safety, law enforcement, and crime has increased because of the act.

11. Has the Bail Reform Act impacted public safety in a negative way?

51 responses



A paired-samples t-test was conducted to compare the differences between the answers of yes and the answers of no. There was a significant difference in the scores for yes ( $M=44.45$ ) and for no ( $M=6.55$ ). Conditions are  $t(19)=1.05$ ,  $p=1.72$ . The test results use the one-tail test. Based on the results, the null hypothesis is rejected

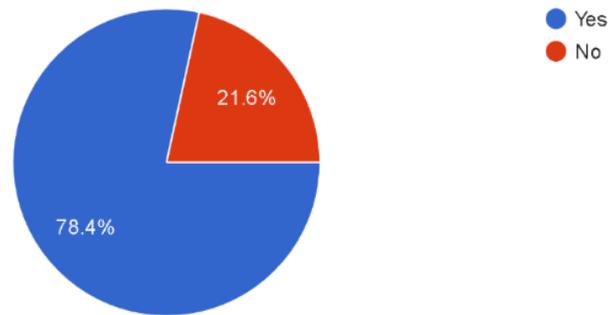
**Table 2: t-Test: Paired Two Sample for Means**

	<i>Yes</i>	<i>No</i>
Mean	44.45	6.55
Variance	38.4711	38.4711
Observations	20	20
Pearson Correlation	-1	
Hypothesized Mean Difference	35	
df	19	
t Stat	1.04548	
P(T<=t) one-tail	0.15446	
t Critical one-tail	1.72913	
P(T<=t) two-tail	0.30892	
t Critical two-tail	2.09302	

An important question is question 17: Is there an increased escalation of violence in domestic violence cases since the passage of the Bail Reform Act? The reason this question is important is because all four themes of crime, recidivism, public safety, and victimization can be derived from this single question. For example, if a domestic violence offender continues to escalate, it can lead cases of standoffs with the subject taking hostages. This increases victimization and threats to public safety. Crime and recidivism are addressed because the offenders has been committing more crimes with increased escalation of violence. These cases tend to become the most violent and the most traumatic for the officers and the victims. Officers may disagree on whether the Bail Reform Act negatively affects department policies and procedures, but they all agree that the act has a negative impact on public safety. Domestic violence calls show why officers all agree.

17. Is there an increased escalation of violence in domestic violence cases since the passage of the Bail Reform Act?

51 responses



Officers and administrators are in agreement that the Bail Reform Act has negatively affected public safety in New York State. There is an increased crime rate and increased violence in these crimes. Offenders are released without the guarantee that they will return to court, and this creates a higher risk of recidivism. In New York State, an offender has to commit multiple crimes to face pre-trial detention. Even in these cases, a judge is still required to release them under the provisions of the Bail Reform Act. If these cases involve domestic violence, the offender is free to go back to their home and commit more crimes against their victims. An order of protection can be enacted against the offender, but administrators point out that it is just a piece of paper in the eyes of the offender.

#### **Christian Worldview**

The Christian World View for this type of study revolves around the theme of criminal justice. Verses that apply discuss crime and justice. “When justice is done, it brings joy to the righteous but terror to evildoers” (*New International Version Bible*, 2011/1973, Proverbs 21:15). This verse represents the values and norms of society. Justice should always be achieved, and crime should be reduced. In the State of New York, this has reversed, and many criminals are not facing justice as they should. “For I, the Lord, love justice: I hate robbery and wrongdoing. In my faithfulness I will reward my people and make an everlasting covenant with them” (Isaiah 61:8). Criminals who do not face punishment because of laws like the Bail Reform Act will face judgment in another form. From a Christian standpoint, society must prevent crime and establish a rule of law that reduces victimization and recidivism.

#### **Conclusion**

The literature review for this article discussed the history of bail reform. The topic of bail reform is consistently debated, but in states like New York, laws were passed to change bail and pre-trial detention. The enactment of this law created an issue of public safety, which included increased crime rates and victimization. A mixed-method study involved an anonymous survey that was sent to road patrols across New York State, and qualitative interviews with criminal justice administrators. The survey contained 20 questions that all favored the answer “yes” in for their respective question. The Sheriff and District Attorney for the author’s home county provided interviews that discussed the dangers of the Bail Reform Act and provided four themes that were derived from coded thematic analysis. The data in this article proves the hypothesis

that the Bail Reform Act creates issues of public safety and has increased the crime rate in the State of New York. All data in the article support a major point that functions carried out by law enforcement officials has been severely affected. A Christian World View establishes the need for justice as this is something that the Lord demands from criminal justice systems.

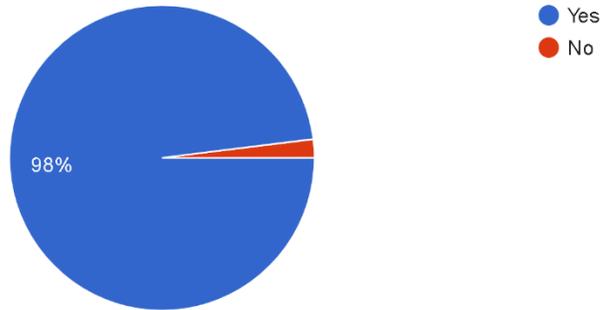
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## Tables and Figures

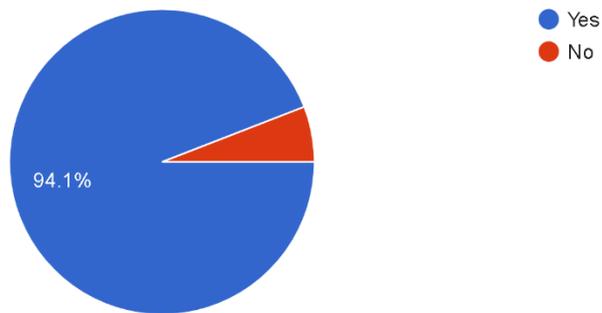
1. Since the Bail Reform Act been enacted, have you had multiple incidents with the same subject(s)?

51 responses



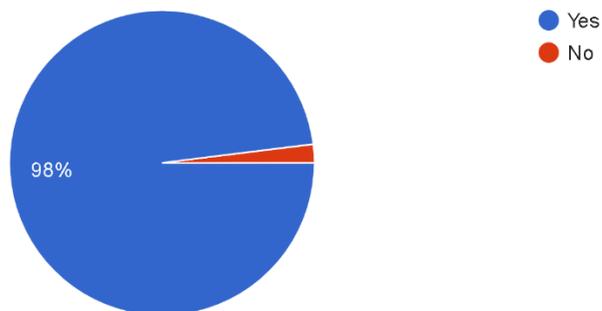
2. If you have had contact with the same subject multiple times, has it resulted in multiple arrests?

51 responses



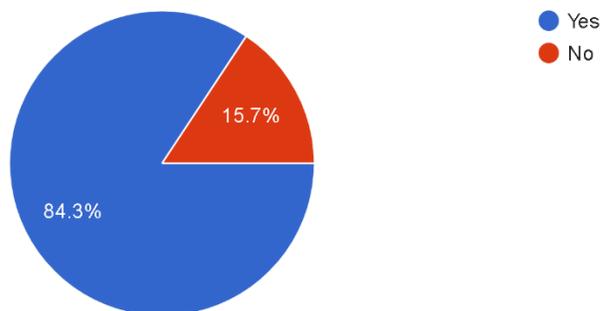
3. Are required by law to release subjects on appearance tickets in place of arraignment?

51 responses



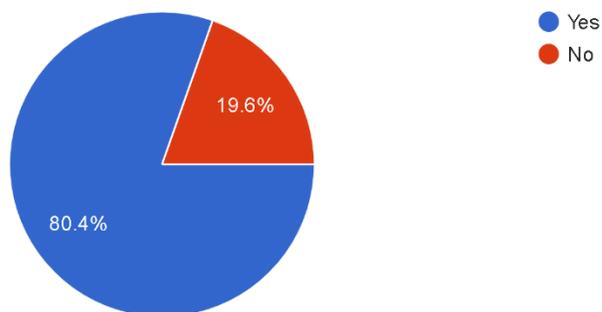
4. Have you had immediate contact with a subject within 72 hours of their previous arrest?

51 responses



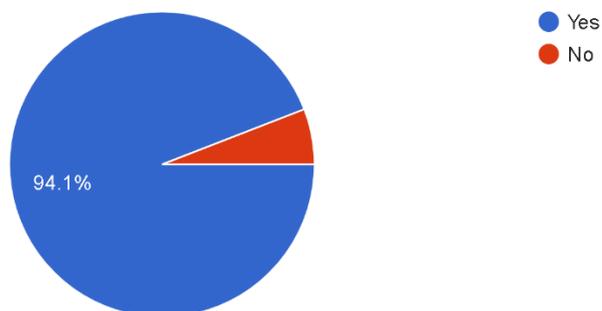
5. If you had immediate contact after 72 hours, was the subject re-arrested?

51 responses



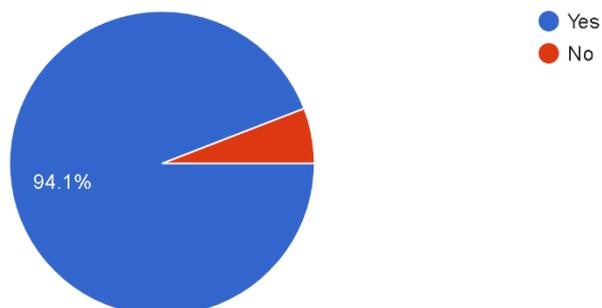
6. Are the subjects that you re-arrest committing the same crimes?

51 responses



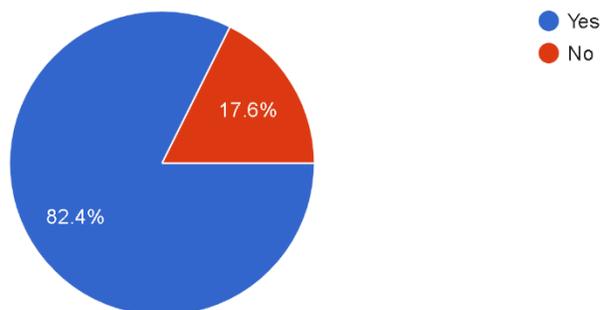
7. Are the majority of the crimes that you make arrests on qualifying offenses (offenses that require that the subject be released on their own recognizance)?

51 responses



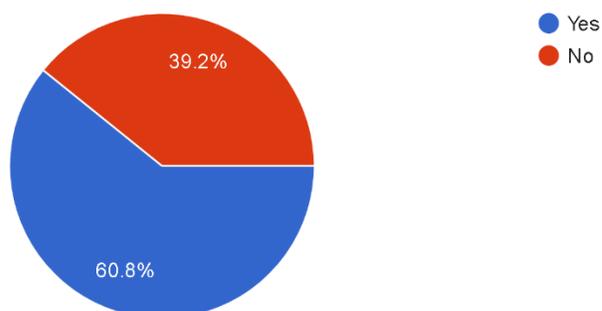
8. Have you ever made an arrest on a violent or felony crime (or both) where the subject was released immediately following arraignment?

51 responses



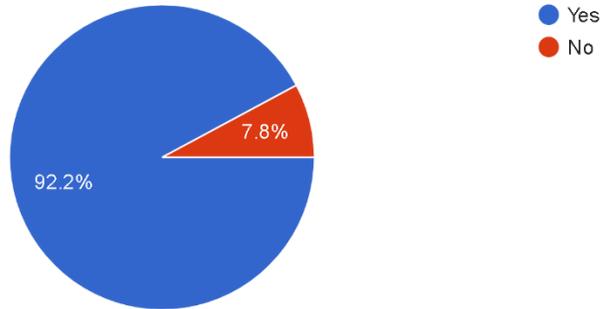
9. Does the Bail Reform Act limit your discretion to make arrests?

51 responses



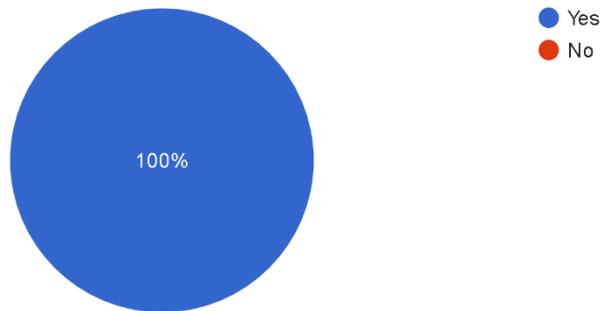
10. Has bail reform affected department policies and procedures in a negative way?

51 responses



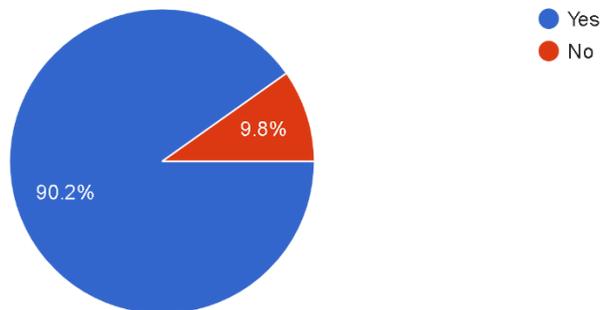
11. Has the Bail Reform Act impacted public safety in a negative way?

51 responses



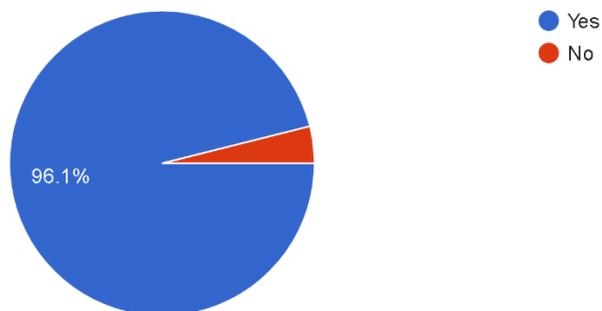
12. Is there more crime in your jurisdiction because of the Bail Reform Act?

51 responses



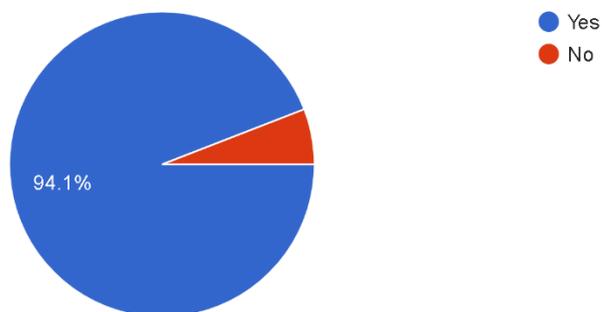
13. Has the number of crimes against people increased based on your observations?

51 responses



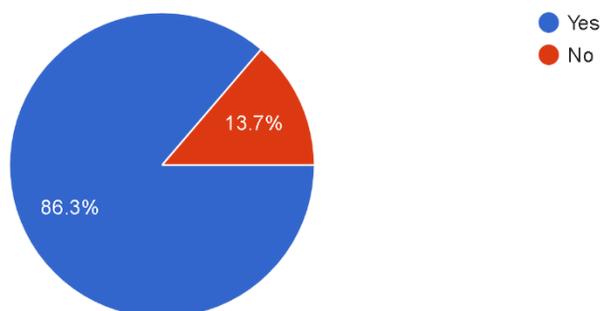
14. Has the number of property crimes increased based on your observations?

51 responses



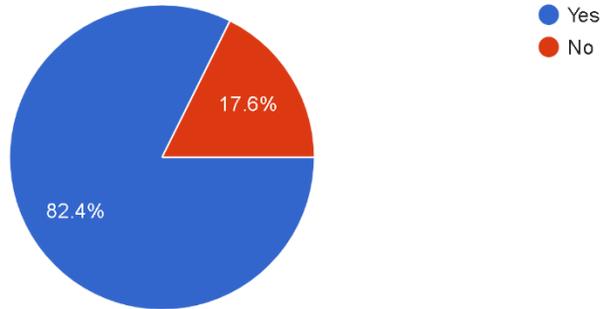
15. Have special populations (elderly, children, pregnant females) been affected in a negative way because of bail reform?

51 responses



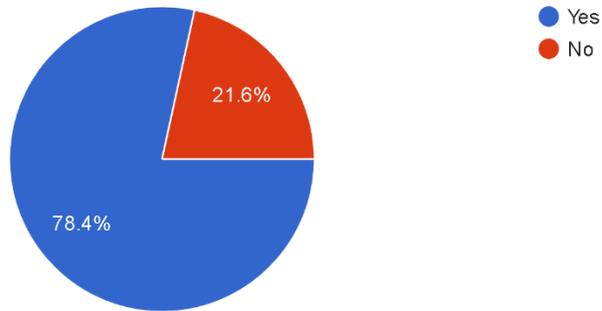
16. Has domestic violence crimes increased based on your observations?

51 responses



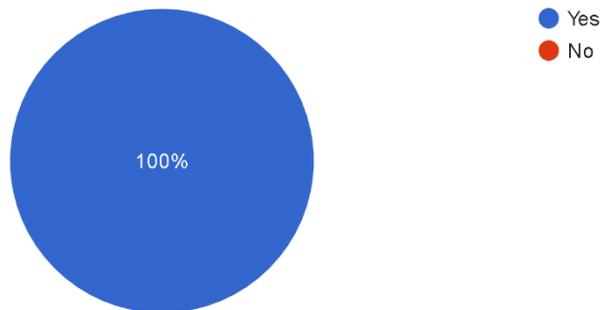
17. Is there an increased escalation of violence in domestic violence cases since the passage of the Bail Reform Act?

51 responses



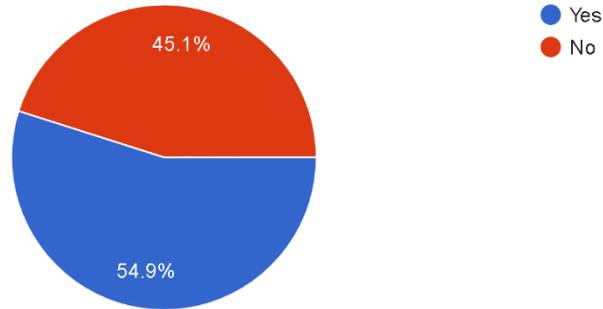
18. Are there subjects that you deal with that are on Probation, Parole, or some other type of community supervision?

51 responses



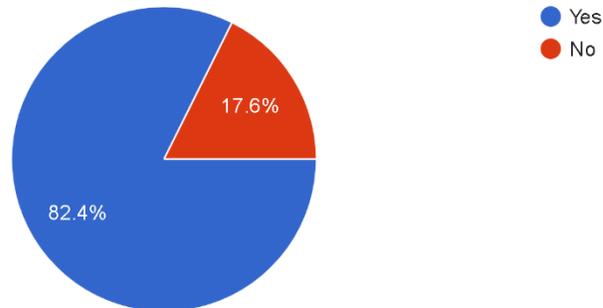
19. Do encounters with subjects on community supervision typically end with an arrest?

51 responses



20. Has the number of Parole/Probation violations increased since the passage of the Bail Reform Act?

51 responses



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**Table 2: Occurrence of coded themes in qualitative interviews**

