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Why Bail Reform is Safe and Effective: The Case of Cook County

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Why Bail Reform is Safe and Effective: The Case of Cook County

Summary

Cook County's bail reform has resulted in increased use of non-financial pretrial release options (I Bonds) and declines in the monetary cost of bail set for detained felony defendants. These two impacts have served to reduce the number of defendants admitted to the Cook County jail and the duration of their incarceration. Furthermore, the number of people sentenced to state prison has been significantly reduced. As a result, the size of both the Cook County pretrial population and the Illinois state prison population has been significantly reduced. These impacts have occurred as the number of total crimes and violent crimes in Cook County have continued to decline. Claims by critics that crime has increased as a result of the bail reform effort have not been properly tested, are not credible and should be ignored.

Introduction

A number of jurisdictions are implementing reforms that seek to reduce or eliminate their reliance on money bail. Advocates for these reforms argue that people arrested and jailed on criminal charges should not be required to post bail to gain their freedom while their crimes are prosecuted. By law, there should be a presumption of release from jail unless a person poses a threat to community safety or is a flight risk.

A number of studies have shown that the vast majority (80% or higher) of people who are arrested and detained neither are re-arrested nor fail to appear (FTA) for any scheduled court dates while awaiting the disposition of their cases. Success rates would be even higher if applying the more stringent criteria of a conviction for a new crime or fleeing a jurisdiction. Finally, if re-arrested for a new crime, the proportion of those crimes that are violent in nature is extremely low (generally less than 3%).

Given that the vast majority of people arrested are suitable risks for release, the only reasons why so many people are detained is due either to their inability to post a bond set by the court, or to their failure to persuade the court to release them on some form of non-financial release (generally via own recognizance or other form of promise to appear).

Cook County's Bail Reform

Recently, Cook County implemented its own version of bail reform. Beginning in September 2017, the Chief Judge of the Cook County Circuit Court (Judge Timothy Evans) implemented an order requiring that bail should be based on defendants' ability to pay (General Order 18.8A). A comprehensive report (referred hereafter as the Study) issued by the Circuit Court in May 2019 summarized the impact of the Order on the setting of bail and pretrial releases.

The research was designed using a pre- and post-test analysis whereby 15 months of pretrial decisions on defendants charged with at least one felony crime prior to the Order were contrasted to 15 months of decisions on similar defendants after the Order was implemented.

Felony defendants were required to have been screened through the nationally recognized Public Safety Assessment (PSA) risk instrument in order to be included in the study.

The Study's primary findings regarding pretrial decision making are as follows:

"This report shows that the substantial reduction in the jail population did not lead to an increase in violent crime in Cook County. Following the implementation of G.O. 18.8A, there was a dramatic increase in the number of I-Bonds and No Bail orders issued while the use of monetary bail significantly decreased. When monetary bail was ordered, the amounts were more affordable." (2019, p.36)

In 2020, two critiques were published that narrowly focused on the Study's claim that the Order did not lead to an increase in violent crime. These two critiques claimed that 1) the volume of violent crime was much higher than reported by the Study and/or 2) the volume of crime committed by released defendants had increased significantly. One critique was made by the Chicago Tribune¹ and the other by Paul Cassell and Richard Fowles, who are associated with the S.J. Quinney College of Law, in Salt Lake City.²

The Chicago Tribune critique took the form of an investigative report by three reporters, who claimed that the Study undercounted the number of people who were released under the Order and subsequently re-arrested for murder and other violent crimes. The issues they raised are what criminologists would refer to as "measurement errors". In this case, the errors are under-reporting of the number of new misdemeanor and felony criminal court filings for released defendants for domestic violence and less serious violent crimes (battery and simple assault) that are typically not part of the FBI's Uniform Crime Reports (UCR) used to measure crime rates throughout the nation.

The Tribune does not contest that these rates, regardless how measured, have changed since the Order was adopted, nor that only a small percent of the released defendants were re-arrested for violent crime. For example, the Study found that 99.4% of the 24,504 defendants released 15 months after the Order was implemented *were not* re-arrested for a violent crime, while the Tribune found that 97.6% *were not* re-arrested for violent crimes when domestic violence, battery and simple assault are included (or a difference of 1.8%, which is statistically and substantively insignificant). By either definition, the risk of violent crimes to the public is quite low. In order to eliminate the risk altogether, the justice system would have to needlessly jail

¹ "Bail reform analysis by Cook County chief judge based on flawed data, undercounts new murder charges" by David Jackson, Todd Lightly, and Gary Marx. February 13, 2020. <https://www.chicagotribune.com/investigations/ct-cook-county-bail-bond-reform-tim-evans-20200213-tkodxevelyvcp7k66q2v2ahboi4-story.html>

² Cassell, Paul G. and Richard Fowles. 2020. *Does Bail Reform Increase Crime? An Empirical Assessment of the Public Safety Implications of Bail Reform in Cook County, Illinois*. Salt Lake City, Utah: S.J. Quinney College of Law, research paper No. 349.

about 24,000 additional people a year who we know will not be re-arrested for any type of a violent crime.

The more detailed critique by Cassell and Fowles argues that crime substantially increased solely due to the adoption of the Order.

“This article concludes that, contrary to the Study’s assertions, the new changes to pretrial release procedures lead to an increase in crimes committed by pretrial releasees in Cook County. Properly measured and estimated, after the changes in release procedures the number of defendants who were charged with committing new crimes increased by 63%. And, more concerning, the number of pretrial releases who committed violent crimes increased by an estimated 49%.” (Cassell and Fowles, p. 1. 2020).

Table 1 summarizes the core data presented in the Study. In essence, the Order has increased the number of people able to secure release at the initial bond hearing by about 4,000 over a 15-month time frame, or 3,255 inmates per year. Misdemeanor, felony and violent felony re-arrest rates prior to criminal cases being disposed of remained the same. The total number of additional misdemeanor and felony arrests and subsequent criminal court filings is 487 for the 15-month time frame, or 390 per year.

By way of comparison, there were 134,590 adult arrests in 2018 in Cook County. So these “additional arrests” reflect only 0.3% (that’s 3 tenths of one percent) of the total arrests occurring each year – a number that is statistically and substantively insignificant.

The two groups had equivalent risk levels, based on the PSA risk instrument that was applied to both cohorts. The only difference between the two groups is that the follow-up period is 89 days shorter for the post-test group, which means there is less time for these individuals to be counted for new criminal court filings after release. The only way to correct for this bias is to conduct analysis that has equivalent follow-up time periods and directly measures each re-arrest that occurred prior to disposition of the felony cases.

The Cassell and Fowles critique tries to standardize the follow-up period, but along the way makes several incorrect assumptions about re-arrest rates for defendants who are benefiting from the new Order and how to measure them, among other errors and omissions. These misrepresentations include:

- equating arrests with crimes committed;
- using relative rate rather than the actual rate of change in estimates;
- using inflated and undocumented estimates for costs to victims³;
- omitting the costs of un-necessarily detaining thousands of people each year;

³ In a bizarre twist to the study, Cassell and Fowles argue that that stop and frisk policies should be implemented and that such a policy would save \$1.5 billion a year in victim costs (Cassell and Fowles, p.1663).

- failing to account for changes in prosecutorial policies that may have increased the number of felony filings⁴; and
- applying national state prison recidivism rates to Cook County pretrial releases.

Of these misrepresentations, the failure to estimate recidivism rates specific to Cook County's pretrial release population is most alarming. No credible researcher would assume that re-arrest rates for state prisoners are the same as for pretrial releases (which are uniformly lower) or could be used as a substitute for actually measuring re-arrests.

Such a study and analysis has yet to be done for Cook County. The Cassell and Fowles paper, which was not published in a peer-reviewed journal, therefore should not be viewed as a credible study of bail reform in Cook County. Until such a study is completed, any claims that the Order caused crime to increase in Cook County should be ignored.

Table 1. Key Preliminary Outcomes of Pre and Post Cook County Bail Reform

	Pre 15 Months	Post 15 Months	Difference
Total Felony Defendants	28,547	30,432	1,885
Detained	8,112	5,928	-2,184
Released	20,435	24,504	4,069
Release Rate	72%	81%	9%
Re-arrest Rate	18%	17%	-1%
Number Re-Arrested	3,678	4,166	+487
Felony Violent Arrest Rate	0.7%	0.6%	-0.1%
Days At Risk	243 days	154 days	-89

Source:

Putting the Order and Its Impact on the Jail Population in Perspective

Despite these methodological issues, much can be stated about Cook County's bail reform initiative and the impact to public safety. Prior to the Order, the Cook County jail population and, in particular, the pretrial jail population had declined from a high of about 8,500 to about 6,900 (Figure 1). The pretrial jail population continued to decline once the Order took effect, reaching the 5,800 level in 2019, where it has since stabilized.

Since the Order, there has been *a decline* in what is referred to as "confined releases". A "confined release" is a person who was booked and unable to secure immediate release, and is formally admitted to the jail to be housed at least one night. The total number of people brought to the jail has remained stable. This means that average "gap" between the total bookings and

⁴ The only way Cassell and Fowles were able to generate a higher volume of crime estimate is due to a higher number of felony case filings as bail reform was introduced which was unrelated to Judge Evan's Order that made bail more affordable and increased the use of I-Bonds.

total confined releases pre- and post-Order has averaged about 450 per month, or 5,400 fewer confined bookings/releases per year. The decline in confined releases has occurred because there is an increasing number of people who are arrested and brought to the jail for initial bail hearing but are quickly released without being processed into the jail system. These “non-confinement bookings” typically are defendants charged with misdemeanors or lower-level felonies who are able to post bail immediately after arrest and thus avoid an overnight (or longer) stay in the jail.

Since jail populations are the product of the number of admissions/releases and their Length of Stay (LOS), a decline in Cook County’s jail population with a modest reduction in confined admissions and releases must mean that the LOS has declined. This would make sense given that the intent of the Order would not impact the number of arrests, but rather lower their LOS by making release more accessible at the initial and subsequent bail hearings.

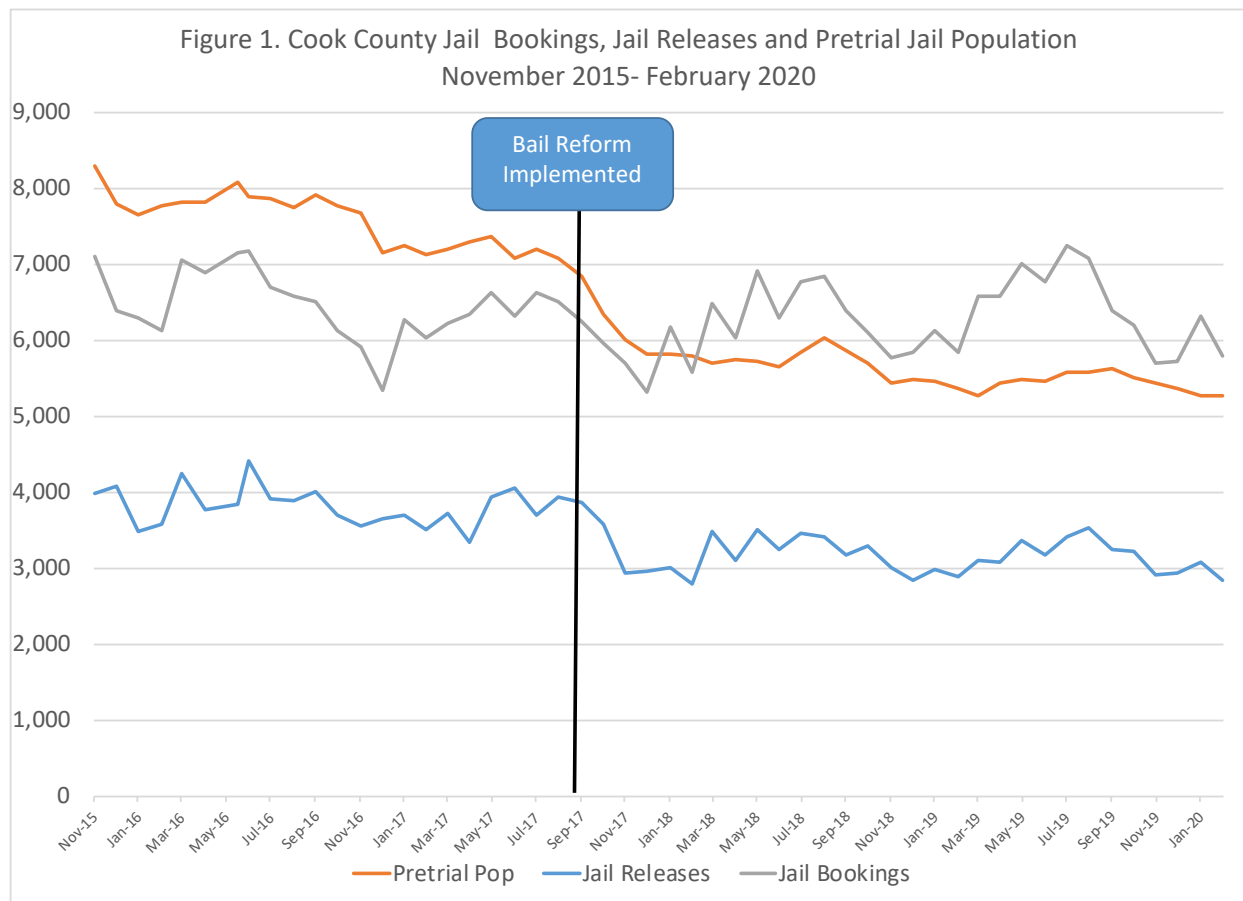


Table 2. Pre and Post Bail Reform Jail Bookings, Releases, ADP and LOS

Time Frame	Monthly Jail Bookings	Monthly Jail Confined Releases	Average jail Population	Estimated LOS (days)
15 Month Prior to the Order	6,292	3,766	7,765	63 days
15 Months After the Order	6,144	3,189	6,082	58 days
Difference	(148)	(577)	(1,683)	(5 days)

Source: Cook County Sheriff

It is possible to calculate the change in the overall LOS by knowing the number of jail releases and the average jail population (divide the average jail population by the number of annualized jail releases x 365 days). Table 2 compares these rates 15 months before and 15 months after the Order was implemented. The results show that while overall bookings decreased slightly by 148 per month, the number of confined bookings/releases dropped by 577 per month. The overall confined jail release's LOS declined by just 5 days which, combined with the drop in confined jail admissions/releases, reduced the jail population by nearly 1,700 inmates.

However, there is one sub-group of confined releases that has changed since the Order took effect. This sub-group includes people who are eventually sentenced to state prison after a lengthy period of incarceration. Table 3 is based on a previous JFA Institute study that examined the methods of release from the jail, both prior to and after the Order. Here one can see that after the implementation of the Order, there was a reduction in the number of offenders sentenced to state prison. This reduction by itself produced a 1,300 drop in the pretrial population, and is the major reason why the Cook County jail population has declined. Data from the Illinois Department of Corrections verify the association between the Order's implementation and the decline in the state prison population (Table 4).

**Table 3. Primary Methods of Release by LOS and ADP
Pre and Post Order**

	March 2018 - February 2019			September 2016- August 2017		
Confined Release Reason	Confined Releases	Average LOS (days)	Jail ADP	Confined Releases	Average LOS (days)	ADP
Total	36,162	60 days	5,950	44,882	67 days	8,196
Transferred to IDOC	6,630	196 days	3,549	9,845	181 days	4,873
Bond	6,697	19 days	345	9,369	17 days	423
I Bond	5,305	18 days	266	3,531	23 days	221
Charges Dismissed	5,154	52 days	728	6,268	55 days	949
Sentence expired	4,607	25 days	309	6,521	27 days	475
Probation	3,620	54 days	534	5,095	58 days	808

Source: JFA Institute

**Table 4. Illinois Prison New Court Commitments, Cook County and Rest of the State
2010-2019**

Year	Rest of Illinois	Cook
2010	13,136	12,974
2011	11,267	10,466
2012	11,053	11,164
2013	11,923	12,128
2014	11,070	12,019
2015	10,122	11,080
2016	9,402	9,709
2017	9,275	9,095
2018	8,679	7,986
2019	8,687	6,944

Source: Illinois Department of Corrections

The Order may well be the reason why thousands of people are no longer being sentenced to state prison. Defendants who are not in pretrial detention have less incentive to plead guilty, especially to a prison sentence.⁵ If this is true (and it requires further assessment), one of the unintended consequences of the Order has been to further reduce the state prison population. This finding contradicts speculation by Cassell and Fowles that bail reform may not have an overall impact on incarceration (jail and prison).

“Another point that appears to have been often overlooked in discussions about bail reform is that a defendant who is released pretrial will often be convicted and then sentenced to a term of incarceration. If that defendant had been detained pretrial, he would receive credit for time served as part of his sentence. Unless bail reform is coupled with lower terms of imprisonment—a separate issue—the mere fact of pretrial release does not necessarily equate with cost savings from shorter terms of imprisonment. (Cassell and Fowles, p. 38. 2020).

Did Crime Rates Increase Because of Bail Reform in Cook County?

To answer this question, one can compare the number and rate of crimes reported to police prior to and after the Order was issued. However, there would still be significant limitations on claims that bail reform *caused* crime to increase. All that a researcher can do is see if there is an association between implementation of the Order and Cook County crime rates.

At the outset, one must note that crime rates (rates per 100,000 population) have been declining dramatically since the mid-1990s. This is true for the U.S., Illinois, Cook County and everywhere

⁵ See Dobbie, Will, Jacob Goldin, and Crystal S. Yang. 2018. The Effects of Pretrial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges. *American Economic Review* 2018, 108(2): 201–240

else, whether bail reform was implemented. For example, New Jersey, which also implemented bail reform, has seen its pretrial population drop by nearly 50% while its crime rate declined slightly (Table 5).⁶

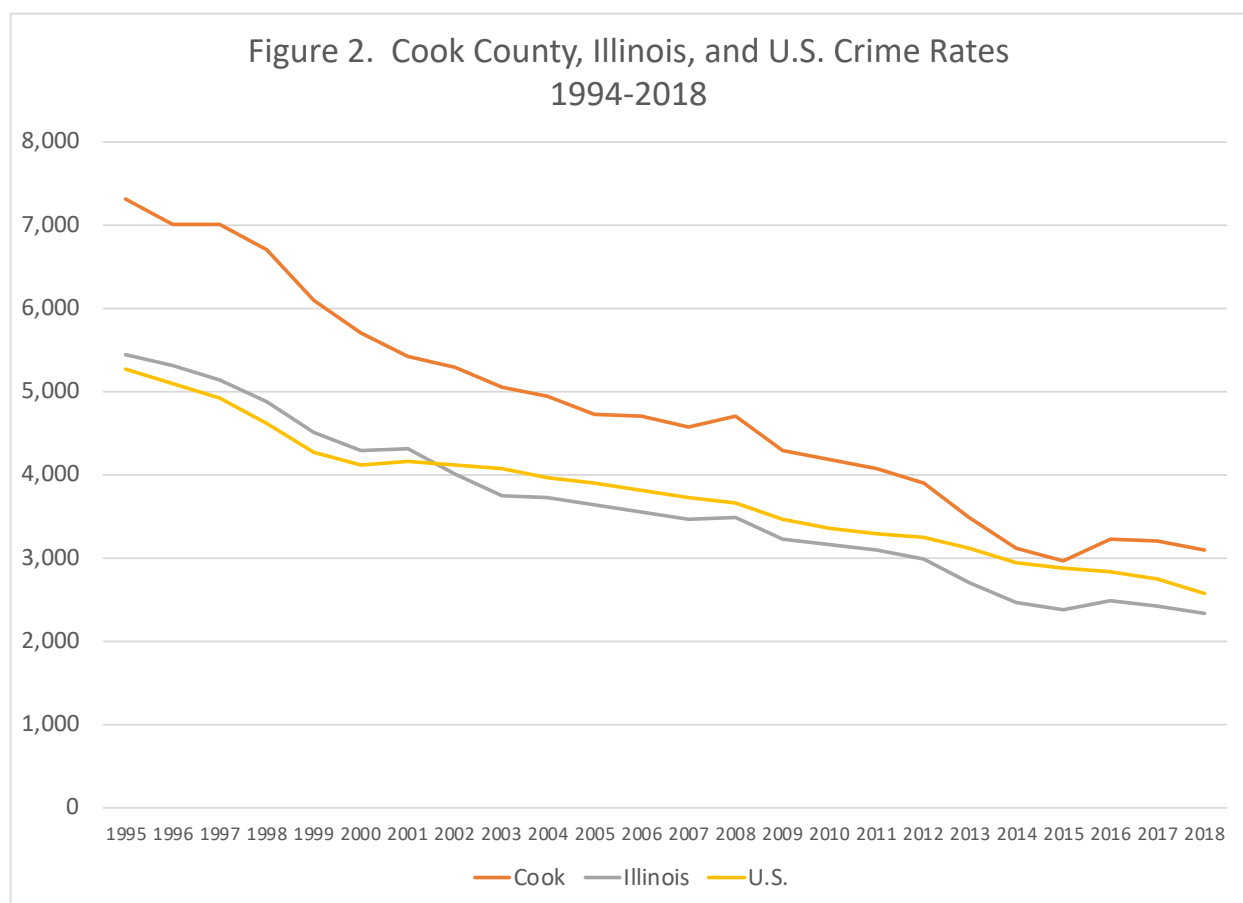
**Table 5. New Jersey Pretrial Jail Population and Crime Rates
2015-2018**

Year	Pretrial Population	Crime Rate Per 100,000
2015	8,899	1,887
2016	7,058	1,790
2017	5,718	1,808
2018	4,995	1,613
Difference	(3,504)	(274)

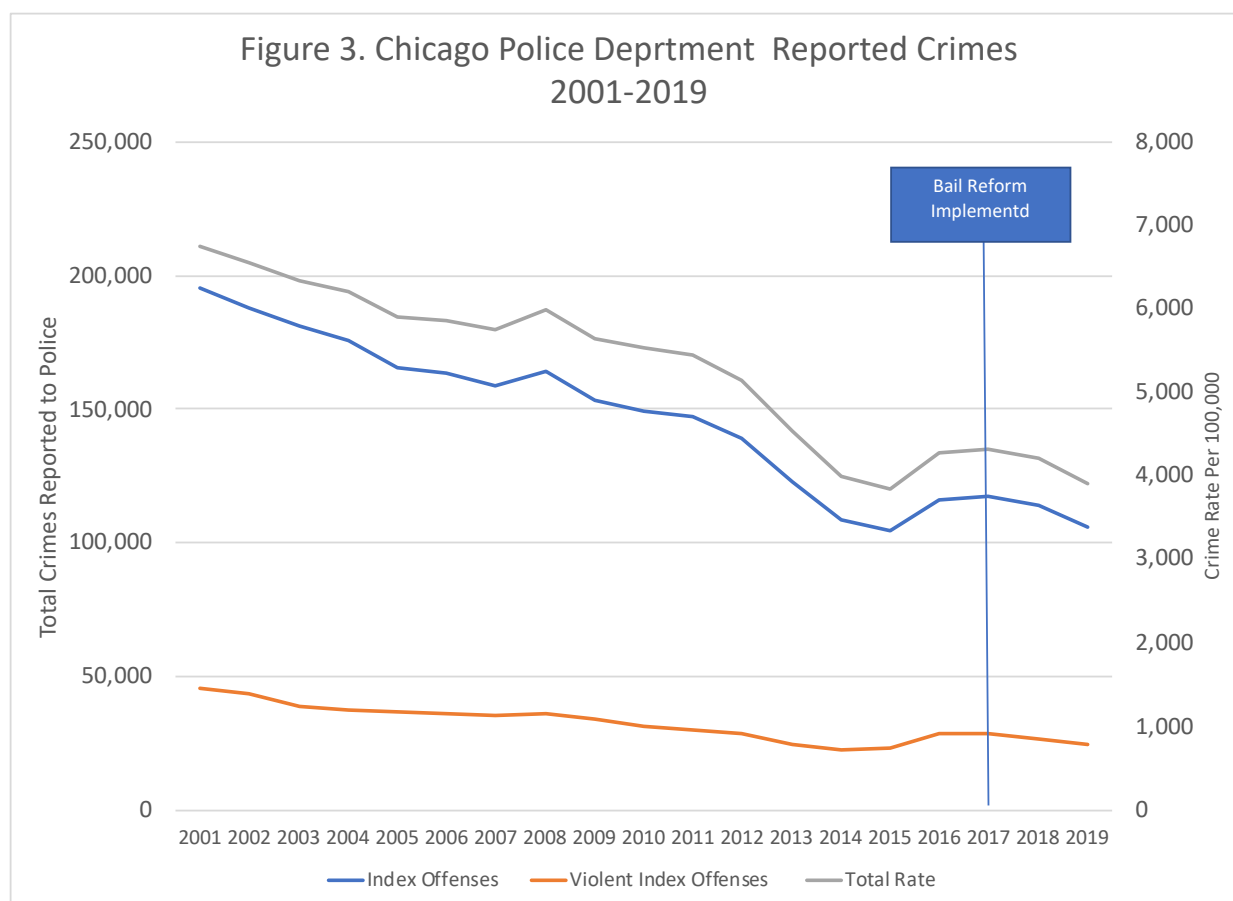
Sources: New Jersey Court and U.S. DOJ, FBI, UCR

As shown in Figure 2, there has been a steady decline in Cook County's crime rate through the end of 2018, which is similar to trends in the U.S. and Illinois. Figure 2 also shows that the 2018 crime rate was lower than the 2017 crime rate. We can also look at Chicago Police Department data, which is available through 2019. That data show a similar declining crime rate through 2019, including rates of violent crime.

⁶ <https://www.arnoldventures.org/stories/new-jersey-set-out-to-reform-its-cash-bail-system-now-the-results-are-in/>



Source: Illinois Criminal Justice Information Authority and U.S. DOJ, FBI, UCR



Source: Chicago Police Department

Summary

Cook County's bail reform has resulted in increased use of non-financial pretrial release options and declines in the amount of bail set for detained felony defendants. These two impacts have served to reduce the number of defendants admitted to the Cook County jail and the duration of their incarceration. Further, the number of people sentenced to state prison has been significantly reduced. As a result, the size of the pretrial population and the state prison population has been reduced.

All of this has occurred as the number of total crimes and violent crimes have declined. This is not to say that bail reform caused crime rates to decline. They have been falling for over 20 years due to more powerful demographic (aging population, lower and delayed birth rates, smaller households, declining juvenile arrests) and economic (lower interest rates, low inflation) factors. Crime and jail rates can decline at the same time (as they have in Illinois and Chicago) because they are not meaningfully related to each other.⁷

⁷ Austin, James, Todd Clear, and Richard Rosenfield. 2019. *Explaining the Past and Projecting Future Crime Rates*: Washington, DC: JFA Institute.

Judge Evans' Order has resulted in over 3,000 people each year who no longer are needlessly jailed because they can't afford bail. Thousands more are either spending less time in jail or avoiding prison sentences. And crime rates have dropped. By any reasonable measures, bail reform in Cook County works and is safe to use.