Reform in Action: Overview

Initial Findings on Implementing Bail & Other Key Criminal Legal System Reform in New York State

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This is the first of a series of fact sheets that unpack different provisions of the 2019 New York Criminal Justice Reform (NYCJR) Act. The fact sheets are part of a larger research project conducted by the CUNY Institute for State & Local Governance (ISLG), with support from Arnold Ventures, that seeks to understand the development and implementation of the laws across the state.[1]

INTRODUCTION

For years, the overuse of pretrial detention has exacerbated the inherent inequities of the criminal legal system—especially for low-income and communities of color—with little to no public safety benefit. With momentum for state-level bail reform growing, in 2019, New York State passed one of the most ambitious reform packages in the country in an effort to create a fairer and more just system. While its bail component caught the most attention, the legislation, which took effect the following January, affected other parts of the criminal legal system as well. In all, the laws shifted how the state's 62 counties make pretrial decisions by:

- **Expanding eligibility criteria** for appearance tickets, which are written notices to appear in court in response to an arrest as opposed to being booked into jail;
- **Restricting the use of cash bail** for misdemeanors and most non-violent felonies;
- **Increasing the use of pretrial services and supervision** to support individuals now able to await trial in the community; and
- **Overhauling requirements related to evidence sharing**, also known as discovery, between prosecutors and defenders.

To examine how criminal legal system agencies put these reforms into practice, the CUNY Institute for State & Local Governance (ISLG), through support from Arnold Ventures, is conducting a process evaluation of these implementation efforts through a combination of interviews, focus groups, document reviews, and data analyses. This research focuses on how agencies—including law enforcement, prosecution, defense, and pretrial services—approached planning during the first several months of implementation, their perspectives on the successes and challenges of the changes, and the impacts on system processes and outcomes. It takes into account the amendments made in April 2020 after mounting public pressure from law enforcement, politicians, and some media outlets. Additional focus groups provided critical perspectives from people impacted by the system. Insights gathered through the evaluation can provide a blueprint for other jurisdictions seeking to implement similar types of reforms.

This fact sheet, the first in a series, centers on the

[1] An overview of the project and related briefs can be found at islg.cuny.edu/case-study-bail-reform-in-new-york

substantive areas of New York's legislation and provides an overview of stakeholder perspectives uncovered during the first stage of ISLG's interviews and focus groups taking place between summer 2020 and summer 2021. It aims to add to a growing body of research documenting the potential impacts of, and best practices in, implementing pretrial reform. It presents preliminary takeaways for the legislation more generally, as well as from the four main areas of reform: appearance tickets, bail and pretrial detention, pretrial services, and discovery.

KEY FINDINGS

Stakeholders generally subscribed to the spirit of the legislation, though they voiced challenges about its execution. These challenges were primarily driven by the short planning window—agencies only had nine months to prepare—and lack of additional resources provided by the state for counties to implement these reforms. Despite the difficulties, however, agencies made considerable changes to their operations leading up to implementation in order to align themselves with the four main substantive areas addressed by the reform package.

Described below are the intended effects of each stage of reform and the practical result and perceptions on the ground, as reported in interviews with stakeholders.

APPEARANCE TICKETS

INTENT

Prior to the legislation, law enforcement officers had a significant amount of discretion when deciding whether to make an arrest and issue an "appearance ticket"—allowing an individual to remain in the community until their court date—or to make a custodial arrest and detain them prior to arraignment. The legislation substantially reduced that flexibility by requiring officers to issue appearance tickets for most misdemeanor and E felony charges with limited exceptions. Further, the legislation enacted a strict timeline where previously there had been none; individuals issued appearance tickets had to return to court within 20 days for their first appearance before a judge. These changes sought to reduce the number of people kept in jail on lower-level charges who may be better suited awaiting arraignment in the community as well as expedite case processing to come to case resolution faster.

IN PRACTICE

Implementation of the appearance ticket provision was seen by most stakeholders as a relatively smooth process that required minimal planning. However, law enforcement officers and prosecutors claimed the lack of discretion built into the new law posed risks to community safety. Public defenders argued it made their clients less vulnerable to the discretion of individual police officers and helped individuals avoid the negative consequences of detention. With respect to return-to-court timelines, few questioned the motives for this provision, but many pointed out the unintended logistical challenges associated with it. For instance, there are some town and village courts in the state that convene monthly, making it impossible for them to meet the 20-day requirement. Additionally, some pretrial service providers in New York City stated the timeline was too tight for them to meet pre-arraignment enrollment and completion deadlines for relevant diversion programming. In the April 2020 amendments, however, both of these timeline concerns were addressed by adding exceptions for town and village courts and pre-arraignment diversion programming.

BAIL AND PRETRIAL DETENTION

INTENT

Before 2020, judges had wide discretion in their pretrial detention decisions, through the use of

remand, bail, or release with conditions or on recognizance ("ROR"). With the new legislation, restrictions were added on what charges could invoke pretrial detention, essentially prohibiting the use of bail for all misdemeanors and non-violent felonies. For context, projections suggested that 43 percent of the individuals held pretrial in 2019 would have been released under the new

legislation had it been in effect.[2] This change sought to reduce the number of people detained during the pendency of their case solely because they were unable to afford bail.

IN PRACTICE

Stakeholders generally agreed with the stated goals of the provision; however, there was disagreement with respect to some of the specifics of the legislation—including charge eligibility and interpretations of statute language—and how it was enacted. Proponents of the legislation in public defender offices and pretrial service agencies suggested that these changes were monumental in limiting the harms of pretrial incarceration and leveling the playing field for those previously unable to afford bail. Further, defenders pointed to its help in achieving more just outcomes for their clients. On the other hand, law enforcement officials and prosecutors felt that restricting judges' discretion in making release decisions had far-reaching public safety implications. Prosecutors also noted impacts on the plea negotiation process, with individuals less likely to take pleas after the legislation went into effect. All said, the proportion of nonviolent felonies where bail was set dropped by half between 2019 and 2020 due to the legislative changes.[3]

PRETRIAL SERVICES

INTENT

Alongside restricting bail, the legislation set a presumption of release and mandated that judges consider the least restrictive means to ensure a person awaiting trial in the community returns to court, resulting in a significant expansion of pretrial services. These services, offered by the county or a contracted non-profit, screen individuals and connect them to resources and programming in order to ensure they make their court appearances, feel supported, and avoid subsequent charges as they await case resolution in the community.

IN PRACTICE

The changes to pretrial services required significant planning and training as pretrial service agencies had to prepare for an influx of clients—often with higher needs—due to the expanded eligibility for supervision. In New York City, for example, the number of individuals enrolled in supervised release increased from 5,651 in 2019 to 7,120 in 2020.[4]

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[2] Rodriguez, Krystal and Michael Rempel. *New York's Bail Reform Law: Summary of Major Components* (New York: Center for Court Innovation, 2019) https://www.courtinnovation.org/publications/bail-reform-NYS

[3] Rempel, Michael and Joanna Weill. *One Year Later: Bail Reform in New York City.* (New York: 2021, Center for Court Innovation) https://www.courtinnovation.org/publications/bail-NYS-one-year

[4] *Supervised Release Annual Scorecard 2019; Supervised Release Annual Scorecard 2020* (New York: Mayor's Office of Criminal Justice, 2020, 2021) https://criminal-justice.cityofnewyork.us/briefs/

The adjustments pretrial agencies were required to comply with underscored large disparities in resources—such as infrastructure and staffing—between New York City and other parts of the state. In addition to these limitations, pretrial service providers throughout the state reported challenges related to a lack of coordination with the judiciary. Some providers felt as if the judiciary in their communities may not have received official guidance on how to interpret certain open-ended aspects of the laws, or how to properly assign individuals to services, which hindered their ability to plan effectively.[5]

DISCOVERY

INTENT

The legislation repealed the old discovery statute, which required defense to make a formal written request for discovery with no set timelines for the prosecution to turn it over other than before the commencement of trial, which limited defense's ability to prepare. The new statute required automatic discovery within a set timeframe and enumerated discoverable materials prosecutors are required to turn over. The goal was to standardize the discovery timeline, potentially accelerating court processing time—and shorten time spent in jail during trial—as well as providing all the information necessary for the defense to effectively prepare and advise clients.

IN PRACTICE

Out of all the provisions in the legislation, stakeholders agreed that this change required the most planning and led to the greatest challenges. Discovery changes for law enforcement and prosecutors, in particular, were substantial and led to significant operational changes including an overhaul of existing infrastructures (e.g., electronic methods for transmitting discoverable materials to necessary stakeholders). Both law enforcement agencies and district attorney's offices reported feeling rushed to meet the timelines, particularly given the scope of materials now required, which often led to staff burnout and high turnover. Defenders, on the other hand, characterized the discovery reforms as a "sea change" that, like the restrictions on bail and appearance tickets, removed some of the ways prosecutors could negotiate the plea process and allowed their clients to make more informed decisions, leading overall to a fairer and more just process for their clients.

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In addition to these provision-specific findings, stakeholders discussed overarching themes that affected legislative implementation more broadly.

COVID-19 PANDEMIC

A confounding factor across implementation efforts was the sudden onset of the COVID-19 pandemic in March 2020, only three months after the legislation went into effect. The reduced capacity and shutdowns at almost every step of the criminal legal process made implementation harder: pretrial service programming was disrupted; speedy trial timelines were suspended, meaning the discovery deadlines were not in effect; and many cases were put in holding patterns because few appearances were being scheduled.

LEGISLATIVE PROCESS AND INTERPRETATION

Law enforcement agencies and district attorney's offices expressed frustration at the legislative process that begat the reforms. They felt their voices had not been heard and their concerns and needs were not addressed in the legislation. Many of

[5] The New York Office of Court Administration (OCA) did not participate in this study.

those interviewed attributed these frustrations to the legislation passing as part of the state budget rather than as a piece of standalone legislation, reducing the amount of input stakeholders might have had.

Consensus from stakeholders was that the language in the statute was often vague and subject to different interpretations, which takes time to clarify and rectify through case law and litigation. Accumulating this case law to guide practice was hampered by pandemic-related limitations and disruptions to the courts and other relevant agencies. Stakeholders agreed these types of difficulties made the first months of reform challenging, requiring them to focus on specific details that could have been more directly specified in the legislation itself.

To many interviewees, the fact that legislative amendments were enacted only three months into implementation illustrated both the problems with the process by which the legislation was enacted and the content of the original reforms. To others, it was a sign of public pressure driven by media coverage hyper-focused on claims of rising crime.

EQUITY AND RACIAL JUSTICE

While most interviewees described the legislation as a way to make progress towards eliminating racial and ethnic disparities, there were often no explicit descriptions of ways equity was tied directly into planning processes or implementation efforts. While it was a goal of the legislation, many defense attorneys and pretrial service providers stated the racial, ethnic, and socioeconomic breakdown of their clients stayed the same. An initial analysis of disparities post-reform suggests that disparities persisted or, in fact, increased between January 2019 and the end of 2020. Outside NYC, Black individuals were incarcerated at a rate of 6.1 times the rate of white individuals; an increase from 2019, when Black people were 5.5 times more likely to be incarcerated than White individuals. In NYC, Black people were 6 times more likely to be incarcerated than White people in 2020, up from 5.4 times in 2019.[6]

Early Lessons in Implementation

Despite the issues noted throughout the interviews with agencies from across the state, some of them implemented required changes more seamlessly than others. Here are some early lessons learned from the first phase of the evaluation that may guide other jurisdictions in planning for similar reforms in the future.

ENGAGE WITH STAFF AT THE OUTSET TO BETTER SUPPORT TRAINING

Agencies should consider engaging with all levels of staff more directly to inform the development of trainings and ensure their relevance to the day-to-day operation of staff.

REGULARLY COORDINATE WITH OTHER CRIMINAL LEGAL SYSTEM STAKEHOLDERS

States and individual counties/localities should

[6] Kim, Jaeok, Quinn Hood, and Elliot Connors, *The Impact of New York State Jail Population Brief, January 2019-December 2020* (New York: Vera Institute of Justice, 2022) https://www.vera.org/downloads/publications/new-york-state-jail-population-brief-2019-2020.pdf

consider convening a criminal legal advisory council or body comprised of representatives from across the criminal legal system to engage in planning efforts, facilitate timely inter-agency communication, and assess implementation over time.

GET AHEAD OF REQUIRED CHANGES

Criminal legal system agencies should—to the extent possible—determine which changes can be implemented more quickly and easily, and do so before deadlines imposed by the state or their jurisdiction. Implementation is a process that takes time, particularly for such a sweeping set of changes. Incremental rollout, when possible, can protect against overwhelm and burnout. Lawmakers should also consider longer planning periods and phased rollouts to assist in these efforts.

USE DATA TO INFORM DECISION-MAKING

Agencies in the criminal legal system should work to develop their capacity to collect and analyze data to inform operations, performance, and implementation. While research and analytical efforts require time and resources, in the long run such efforts are likely to be cost-effective because they allow agencies to make better decisions on how to allocate personnel and resources.

BE AWARE OF AND RESPONSIVE TO ISSUES OF RACIAL AND ECONOMIC EQUITY

Jurisdictions considering pretrial reform should take stock of existing inequities within their local criminal legal system and ensure that the changes they are proposing do, in fact, contribute to reducing racial and economic disparities based on both data projections and community input. For implementation, agencies in the criminal legal system should make efforts to understand how their policy and operational changes—whether initiated by the agency or required by law—will affect low-income communities and communities of color.

INCLUSIVITY ACROSS STAKEHOLDERS

An inclusive process, where all stakeholders feel they have a voice at the table, can help secure early buy-in from across criminal legal system actors and tighten public communications and education efforts. Holding regular meetings between stakeholders, whether formal or informal, can serve as a starting point to building trust, especially if some of the time in these meetings is spent establishing common ground and shared goals.

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