Research Report

Reform in Action

Findings and Recommendations from a 3-Year Process Evaluation of New York's 2020 Criminal Legal Reforms

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AUTHORS

Jennifer Ferone, Bryn Herrschaft, Kate Jassin, Cecilia Low-Weiner, Aimee Ouellet
CUNY Institute for State & Local Governance

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Introduction

The inequities inherent in this country's criminal legal system have been well-documented. Research and evidence repeatedly show that socioeconomic circumstances affect how people fare at all points, with those who are economically disadvantaged and Black, Indigenous, and People of Color (BIPOC) faring disproportionately worse, such as higher rates of arrest and incarceration. The pretrial period—which is after a person is arrested and charged but before they have been convicted of any crime—is no exception to this trend. In fact, disparities at this stage are particularly prevalent, having been exacerbated by the ever-expanding use of cash bail and pretrial detention across jurisdictions in recent decades. This has long-lasting implications: even one day in jail can lead to exposure to violence while incarcerated, and loss of housing and employment after release.[1]

In the past, efforts to reduce the harm caused by cash bail were often tied to particular system leaders making changes to administrative policies under their control (e.g., prosecutors not charging individuals with certain low-level offenses). In recent years, however, some states have taken up broader legislative reforms aiming to transform the system on a much larger scale; specifically, many have moved to eliminate or substantially reduce the use of cash bail as a major factor in determining when and for whom pretrial detention is used. In 2019, New York became one of these states, with the passage of the Criminal Justice Reform Act (Act) in April of that year (with reforms taking effect on January 1, 2020). The Act, fueled by increasingly abhorrent conditions at the Rikers Island jail complex in New York City (NYC), was hailed as one of the most ambitious bail reform packages in the country.

The comprehensive package of reforms was driven by the recognition of New York's systemic problems and the need to address them through an effort that was equally broad in scope and scale. At its core, the Act aimed to facilitate a presumption

of non-financial release to avoid the deleterious and inequitably distributed effects of pretrial detention. The New York State government (NYS) understood, however, that to effectively and safely shift away from incarceration as a primary system response—and to create a decision-making foundation that was not dependent on financial resources—a variety of local criminal legal processes beyond the bail decision had to shift as well. To that end, the legislation included provisions in other related areas. More specifically, the legislation aimed to reduce systemic inequities and harms through a comprehensive approach that incorporated significant changes to policy and practice in four key areas of pretrial decision-making:

1. **Law enforcement encounters:** Requiring the issuance of appearance tickets for most misdemeanors and E felonies, which are written notices to appear in court in response to an arrest, instead of being held in jail prior to the first court appearance;
2. **Cash bail:** Restricting the use of cash bail for misdemeanors and most non-violent felonies; and in cases where bail is set, ensuring that judges consider a person's ability to pay;
3. **Pretrial services:** Expanding and increasing the use of pretrial services and supervision to support the legislation's requirement to use the "least restrictive option" to ensure they return to court; and
4. **Evidence-sharing between prosecutors and defenders (discovery):** Overhauling requirements to ensure that all available evidence is shared between prosecution and defense according to a strict timeline, in compliance with the state's speedy trial requirements.

To effectively and safely shift away from incarceration as a primary system response. . . a variety of local criminal legal processes beyond the bail decision had to shift as well.

New York's reforms—the bail provision in particular—have been hotly debated both within the state and nationally. Despite the existence of similar efforts that have been implemented safely and effectively in other states, there has been a persistent public narrative criticizing the Act since it was announced, much of which has focused on community safety concerns. Behind the scenes, however, there were many other implementation and contextual factors at play. This includes a steep learning curve, time and resource constraints—including a short nine-month planning window and lack of additional state funding to support the changes—as well as limited public education around what bail reform meant in practice and a multitude of challenges created by the COVID-19 pandemic.

Despite these factors, and in response to mounting public pressure, the legislature passed a series of amendments that aimed to address these concerns. A first set of amendments was passed in April 2020, three months into the reform period, that primarily expanded the list of bail-eligible charges and provided a slight extension around discovery timelines. A second set of amendments passed in April 2022 was designed to address perceived public safety concerns in the absence of a "dangerousness" standard that reform critics pointed to as a key flaw of New York's statute, despite that being the law for over three decades. Finally, the most recent budget process concluding in May 2023 made additional changes to language addressing judicial discretion to consider the least restrictive option to facilitate court appearance. Legislative

supporters argued that these amendments would undermine the original intentions of the reforms and claw back any progress made with respect to detention and bail use. Indeed, each set of amendments changed initial projections regarding legislative impacts on key bail, jail, and equity outcomes. Further, some of the amendments were passed before any data or evidence was available to support them, particularly in the context of COVID-19 when typical case flows and decision-making were hampered by court closures and timeline suspensions.

Importantly, it centered the perspectives of those closest to the process—administrators, practitioners, direct service providers, and people involved with the criminal legal system. The study highlights these "on the ground" experiences to offer context for the outcomes that New York has seen to date.

To study how the initial and ongoing legislative changes were carried out, the Institute for State & Local Governance at the City University of New York (CUNY ISLG), with support from Arnold Ventures, carried out a multi-year process evaluation of how New York's reforms were planned, operationalized, and implemented across a diverse group of counties. The evaluation, which covered all four of the key areas of reform, aimed not just to document what the rollout looked like but to understand the factors and circumstances that facilitated or hindered success. Importantly, it centered the perspectives of those closest to the process—administrators, practitioners, direct service providers, and people involved with the criminal legal system. The study highlights these "on the ground" experiences to offer context for the outcomes that New York has seen to date.

This report summarizes the findings and conclusions of CUNY ISLG's work, and offers recommendations and lessons learned for future reform efforts both in and out of New York. Taking stock of successes, challenges, and where things currently stand is critical in creating a path forward. New York has invested nearly four years of effort into creating a fairer and more equitable criminal legal system, and policymakers and practitioners should use these experiences to solidify and celebrate successes, identify remaining gaps, and make course adjustments as needed to advance towards the overarching goals and objectives of the legislation. It is also important in the context of ongoing public discourse about the safety implications of the reforms, which continue to persist—sometimes without the data to back it up—after three sets of amendments have been enacted.

Overall, CUNY ISLG's study underscored just how much work local agencies across the state have done to enact the reforms. Though it did not come without tremendous challenges and adjustments, all agency representatives participating in the study described innovative ways they overcame obstacles. That said, growing pains were to be expected as local system agencies and stakeholders adjusted to what the myriad new provisions meant for their practices, the operational changes they needed to make to align with the goals of the Act, and the specific ways in which the changes would be implemented on the ground, which varied agency to agency and county to county. Participants from across groups identified several areas that require an ongoing focus.

This report will first present relevant context about CUNY ISLG's approach to the research and the New York State criminal legal setting. It begins with a description of the process evaluation sample, sites, and data sources. From there, it provides an overview of criminal legal process in New York, highlighting the major changes required by the 2019 Act. With that background set, the report centers the most attention on a discussion of findings and lessons learned.

FINDINGS ARE PRESENTED IN TWO CATEGORIES, EACH CORRESPONDING TO A KEY STAGE OF REFORM IMPLEMENTATION:

1. Planning for Success: How Early Planning and Strategizing Proved Critical for Implementation
An overview of the factors local agencies identified as critical to facilitating effective implementation of the reforms during the first rollout; additionally, how stakeholders addressed anticipated and unanticipated challenges throughout the process to ensure alignment with legislative intentions.

2. Experience & Results: Has Legislative Implementation Changed Policy and Practice as Intended?
A look three-plus years into the reform period, detailing whether and to what extent the legislation was implemented with fidelity and the ways processes and practices were changed. The section is organized by the key areas of focus for the study, corresponding with the key provisions of the Act—appearance tickets, bail decisions, pretrial services, and discovery—and discusses impacts on equitable decision-making and the effects of COVID-19.

Finally, the analysis draws on the lessons from New York's experience to identify key recommendations and action steps for other states that may be interested in implementing similar reforms. The recommendations are intended to address the barriers described by New York counties as they grappled with integrating state-level reforms into their local practices.

Process Evaluation Sample and Data Sources

CUNY ISLG's process evaluation of New York's Act aimed to document and assess how the major provisions were put into practice by local criminal legal agencies around the State, including any specific policies or directives adopted to facilitate implementation.

THE MAIN OBJECTIVES OF THE EVALUATION WERE TO:

1. **Document** the successes achieved and the challenges faced by NY counties and criminal legal agencies while adopting the legislative requirements;
2. **Assess** whether legislative implementation changed criminal legal processes and practices as intended;
3. **Extract** lessons learned from NY's experience for other jurisdictions exploring similar criminal legal reform and/or legislative change;
4. **Identify** how the COVID-19 pandemic and legislative amendments influenced implementation across the state; and
5. **Consider** to what extent NY criminal legal leaders and local practitioners centered equity in their planning and implementation efforts.

For reference and further detail, preliminary findings from a series of fact sheets, which centered the expectations and perceptions of stakeholders, can be found here

While COVID-19's role during implementation is documented in the findings, the pandemic also had implications for the study design, which relied on researchers being flexible, adaptable, and creative in a number of respects, namely aiming to lessen burdens of participation for agencies and allowing more time for data collection.

CUNY ISLG engaged in a purposive sampling strategy, reaching out to 129 relevant New York criminal legal system agencies by phone and email to assess interest in participating in the study, seeking to obtain both local leadership and line staff perspectives from a variety of stakeholder groups across a diverse range of counties. By the conclusion of the study, researchers interviewed a total of 228 participants from 30 agencies in 13 counties from different regions—including a mix of rural, urban, and suburban[a]—as well as NYC-wide and statewide entities *(see Figure 1 map)*. The majority of interviews and focus groups were with local system stakeholders (201 total), including executive leaders, managers, and line staff from police departments, prosecutor's offices, defense agencies, pretrial service providers, and one local corrections agency. CUNY ISLG also had group conversations with 22 individuals that experienced the criminal legal system directly in NYC as well as context setting discussions with five key staff from the New York State Division of Criminal Justice Services (DCJS) and the New York State Office of Court Administration (OCA).[b] *A more detailed breakdown of participants by stakeholder group and county can be found in Appendix A.*

a Dutchess, Monroe, and Westchester counties outside of NYC had the most participation in the study. Additionally, all 5 boroughs of NYC were represented in the study sample. There were also some participants from Columbia, Onondaga, Nassau, and Suffolk Counties that were included in this evaluation. See Appendix A for more information about the distribution of individuals included in each county.

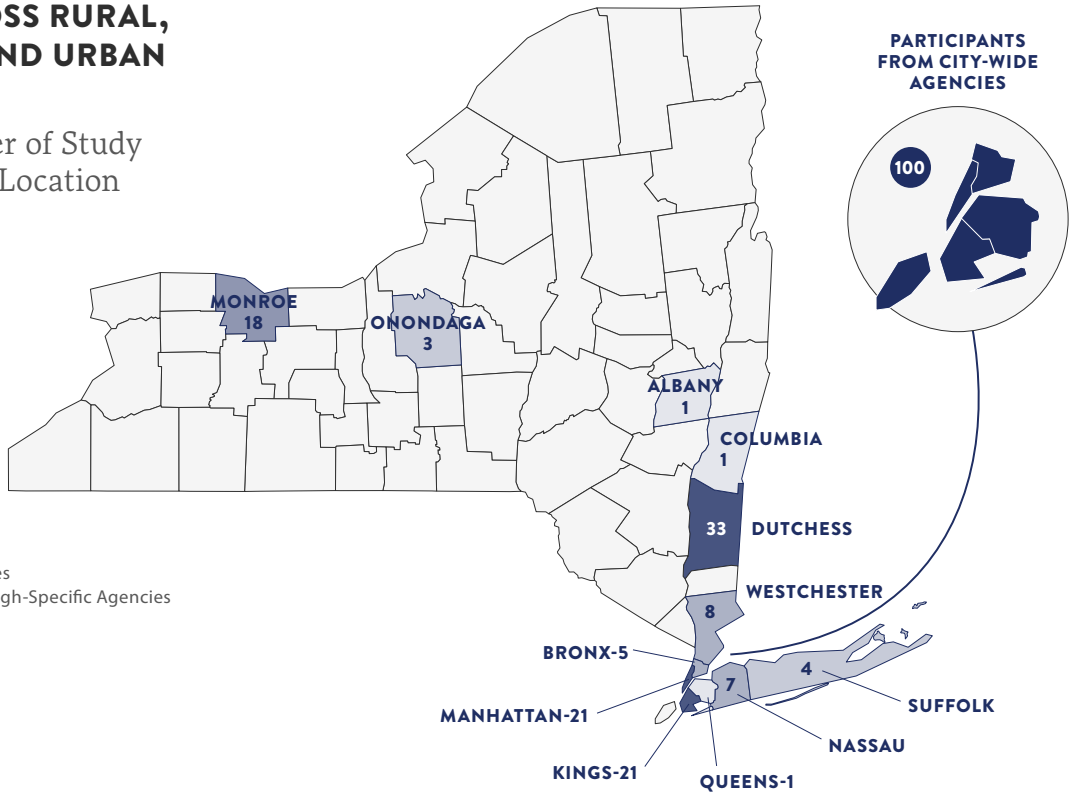
b OCA declined judicial participation in the study, so these perspectives are not included.

Interviews and focus groups took place in two rounds. In the first, which began in June 2020, questions focused on local planning efforts, operational or policy changes, shifts in staffing, expectations early in the process, and experiences implementing the reforms. During a smaller follow-up period, which took place between Spring 2022 and 2023 with a subset of participants,[c] the goal was to explore how things had changed after a year (or more) and what stakeholders had done, if anything, to combat challenges mentioned during initial conversations.

To supplement participant perspectives shared in interviews, CUNY ISLG collected and analyzed aggregate-level administrative data provided directly from agencies or—where available—published on their websites, in addition to case-level data released under a legislative mandate. Researchers also observed a selection of NYC arraignments and reviewed a range of other materials and resources, including training and policy documents shared by select participating agencies, publicly available resources and research reports, including public testimony, and media articles. It should be emphasized that supplemental data and materials were not used to prove or disprove participant statements, but rather to contextualize their experiences and deepen CUNY ISLG's understanding of what the rollout of the reforms looked like in practice. *More detail about methodology and analysis approach can be found in Appendix A.*

STUDY PARTICIPANTS WERE SPREAD ACROSS RURAL, SUBURBAN, AND URBAN COUNTIES

Figure 1: Number of Study Participants by Location



 # OF PARTICPANTS
5 from Statewide Agencies
100 from City-wide Agencies
123 from County and Borough-Specific Agencies
228 Total

c The intention for follow-up interviews was to speak to the same staff in the same agencies who had participated in the first round of interviews, but due to turnover and scheduling conflicts, this was not always possible. Instead, CUNY ISLG ensured follow-up interviews were not only conducted with a representative group of staff (e.g., leadership, line staff) within the same stakeholder agencies from the first round, but also tried to make sure these groups were representative of the criminal legal system stakeholder agencies impacted by the legislation.

An Overview of Reform: How the 2019 Act Changed Criminal Legal Processes in New York State

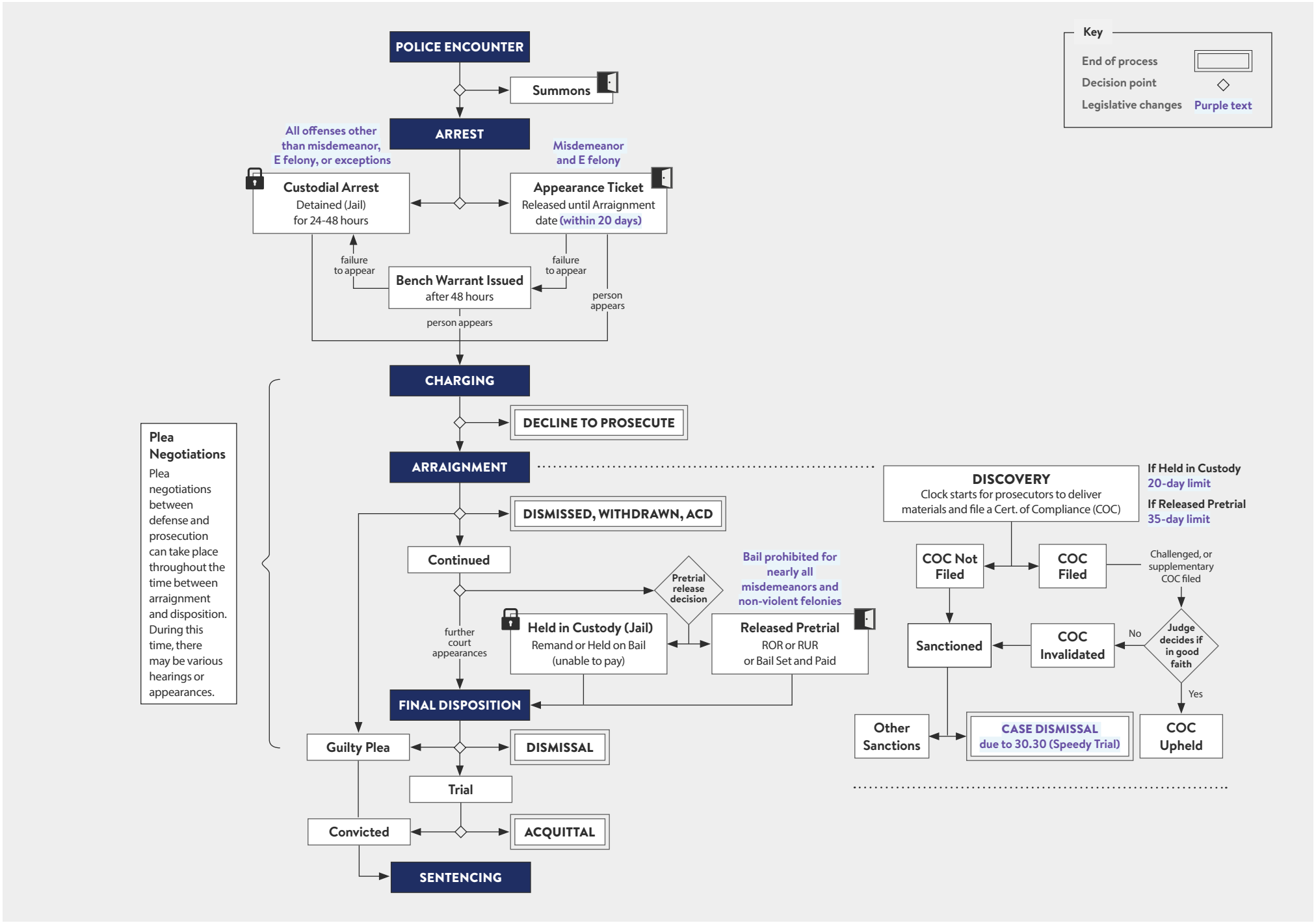
To provide context for process evaluation findings, this report section outlines the primary components of the legislative reforms and how they have changed the criminal legal system, particularly the pretrial system, in New York. Figure 2 provides an overview of that system, with new parameters established by the Act highlighted as relevant. Key provisions are discussed in more detail below, with an emphasis on how processes and decisions worked before and after they were rolled out. The table in Appendix B provides more detail about the ways the original legislative provisions evolved via amendments passed in 2020, 2022 and 2023 for each provisions area. It should be noted that New York is a diverse state; a person's experience in the criminal legal system can vary considerably across and within counties, which is why the process evaluation centered the experiences of local system agencies more specifically.

APPEARANCE TICKETS: STANDARDIZING WRITTEN NOTICES TO APPEAR IN COURT

For most people, the first contact with the criminal legal system is through an encounter with law enforcement. When a violation of the criminal or traffic law has been alleged, an officer can issue a summons, issue an appearance ticket (AT, known as Desk Appearance Ticket [DAT] in NYC), or make a summary (i.e., custodial) arrest. While the process for a summons and summary arrest have remained unchanged, the criteria for appearance tickets, which are a written notice to appear in court on a particular date for arraignment, were standardized and expanded as a result of the legislation. This expansion was intended to reduce the number of custodial arrests made by law enforcement, in turn reducing the number of people awaiting their arraignment hearing (which typically takes place within 24-48 hours of arrest) in jail. Instead, individuals were allowed to remain in the community until their arraignment date, thus reducing custodial arrests for people arrested on low-level and non-violent charges.

Prior to 2020, AT eligibility was guided by department policy—within the regulations of State law—and considered current charge(s), criminal legal history, court appearance history, outstanding warrants, and the current health and sobriety of the person under arrest. Generally, ATs were issued for violations and many misdemeanors, though officers were not always required to issue ATs for these charges. As a result of the Act, police officers were now required to issue ATs when the top charge is a misdemeanor or E felony, with three exceptions: 1) the individual has a demonstrated history of missing court (e.g., the individual has an open warrant); 2) the individual is charged with a certain offense (e.g., sexual misconduct charges, such as rape and sexual abuse); and/or 3) the officer has reason to believe the individual may do harm to themselves and/or others (this includes situations in which the officer believes the individual

FIGURE 2: THE CRIMINAL LEGAL PROCESS IN NEW YORK AS OF 2020



may have mental health needs). In addition to these exceptions,[d] the 2022 amendments added three crime categories to the list of charges that are not AT eligible, including people arrested for an alleged crime while out on pretrial release for another alleged crime, criminal possession of a weapon on school grounds (allegedly by an adult), and hate crimes (allegedly by an adult; most of which were already not eligible for an AT).

Beyond charge-based requirements, the legislation also standardized the length of time a person issued an AT had to return to court for arraignment in an effort to make case processing more efficient. The new timeline required a person's arraignment date be set no later than 20 days from the time they were issued an AT—a significant departure from timelines prior to 2020. For example, in 2019, roughly 75 percent of ATs in NYC had not been arraigned 30 days after issuance.[2] There were some exceptions to the specified return timeline that included enrollment in pre-arraignment diversion, though the 2020 amendments created an additional exception applicable to town and village courts, specifically—that AT return dates could be scheduled "at the next scheduled session of the appropriate local criminal court."[3] This was important to acknowledge as many town and village courts do not meet as regularly as other courts (more detail on town and village courts is provided in the next section).

ARRAIGNMENT & BAIL: LIMITING CASH BAIL IN RELEASE DECISIONS

In most cases in New York, a person's first appearance in court is at the arraignment, which determines whether a case will proceed to the next stage of criminal legal processing and, if so, whether they will remain in the community while the case is pending or remain in detention. To the extent possible, the prosecutor and the defense will meet prior to the arraignment to discuss the case, charges, and determine if a resolution can be reached at arraignment (e.g., a guilty plea to lesser charges). Prosecutors may also choose to dismiss or withdraw a case at this decision point if they do not feel the case is strong enough to proceed to trial. Therefore, a sizeable proportion of cases do not move forward in the criminal legal process at this stage.

For both felony and misdemeanor cases, arraignment takes place in Criminal Court, though many felony cases are ultimately disposed in Supreme Court. In addition, most counties outside NYC have town and village courts, collectively known as the Justice Courts, that are locally funded and authorized to handle matters involving misdemeanors and violations that take place within the boundaries of the town or village where it is located. There are over 1,200 town and village courts across the state.[4] They also conduct arraignments and preliminary hearings for felony cases. There is significant variation in the operation of these courts, depending on locality size and caseload, which often presents challenges with respect to arraignment timelines (as described in the last section) and ensuring that prosecutors and defense attorneys are available during operating hours. Some counties have implemented Centralized Arraignment Parts (CAPs) to make it easier to provide counsel at first appearance and arraign individuals in a timely manner. CAPs are not required by law, though in general terms when a CAP exists, the police officer may bring the arrestee to the CAP when no other court is open, or when a Justice Court is open but no defense counsel is present. The implementation of CAP structures varies widely across the state, though NYC has always operated in this fashion.

d ATs can still be issued in these exceptions—they are just not required.

Prior to arraignment, individuals who cannot afford a lawyer will have counsel appointed, and may receive pretrial assessments to help guide the arraignment decision. For counties who have such assessments in place, the assessed score and associated recommendation, along with the prosecutor's bail recommendation, will be used by the judge to help inform their pretrial release decision. Historically, judges have had four basic options, depending on charges and other factors: remand (meaning the individual is detained), set money bail (meaning a specified amount of money must be posted for that individual to be released), release on recognizance ("ROR," meaning the individual is released without any conditions), or release with conditions. Those conditions usually include one of the following: electronic monitoring, a diversion program, or some form of pretrial supervision or other services (see next section).

When considering bail, New York's statute has historically dictated that judges can only set bail to ensure an individual returns to court; they cannot take into consideration a person's "dangerousness," or the potential harm they may pose to the community. This has been the standard since 1970, when the State Legislature passed bail reform laws that explicitly excluded a "dangerousness" clause—one of the only states at the time to do so. The reforms passed in 2019 dictated that judges could not set money bail or remand individuals in most cases involving only misdemeanors and non-violent felonies, with some exceptions. Judges are still permitted to set bail for most violent felony offenses[e] and some other charges, such as in cases that include a charge of witness intimidation or a sex offense charge. Amendments to the reforms passed in 2020 and 2022 expanded the list of bail-eligible charges and circumstances in which bail could be set, including the "harm to harm" provision, making an individual eligible for bail if they were charged with an offense involving harm to an identifiable person or property and already had a pending case meeting the same criteria.[5] Additionally, in cases where all charges are no longer eligible for money bail or remand, judges are required to release individuals on their own recognizance or with the least restrictive conditions[f] that will ensure their appearance in court. Most recently, however, the legislature agreed to change the "least restrictive option" language to "the kind of degree and control necessary" to facilitate court appearance.

Finally, if a case includes a charge that is eligible for money bail, the legislation specified that a judge must consider an individual's financial situation and ability to pay before setting a money bail amount, including a requirement to provide at least three forms in which to post bail. Previously, judges were only required to set bail in two forms. In practice, judges typically set a "cash" amount (this amount would have to be posted directly to the court) and a "bond" amount (this is the amount a bail bond company would have to post on behalf of the individual). Now, judges must set bail in three forms, and one of those forms must be an unsecured or partially secured surety bond, which are typically less onerous options. In the case of partially secured bonds, an individual agrees to pay no more than 10 percent of the bail amount, and in the case of unsecured bonds, no upfront payment is required; however, in both cases, the individual who put up the bond agrees to pay the full amount if the person does not appear at their next court date.

e A violent felony offense (VFO) is defined by New York State Penal Law Section 70.02

f "Least restrictive" was defined by New York State Criminal Procedure Law Section 510.10 (see versions before most recently published version on July 7, 2023 as the least restrictive option was changed with the newest amendments).

PRETRIAL SERVICES: A CRITICAL FOUNDATION TO SUPPORT NON-FINANCIAL RELEASE

Robust pretrial services—supervision, in particular—merges case management, assessment, and linkages with supportive services to help people with ongoing cases in the criminal legal system meet their court dates and avoid rearrest—as well as address the underlying needs of the individual more broadly, such as mental health care, housing, or employment services. Other services typically include court notification and screening and assessment, as well as monitoring compliance, court attendance, and mandates to necessary services. The legislation changed and standardized a range of pretrial responsibilities, from oversight to the day-to-day operations of pretrial service providers, as well as expanded the types of clients they served. Though varying in size, prior to the reforms pretrial services operated and existed in various forms and capacities across New York, all of which received differing levels of oversight from state agencies. Most counties operated some form of pretrial services entity pre-reform, either within their probation department (e.g., the Dutchess County Office of Probation and Community Corrections in Dutchess County) or through independent nonprofit providers (e.g., Pretrial Services of Monroe Bar Association in Monroe County and the NYC Criminal Justice Agency (CJA) in NYC), which is still true post-reform.

The legislation made it a specific requirement that all counties have a dedicated and certified pretrial service agency capable of providing the full suite of pretrial services and supervision to an expanded pool of people with a wider range of service needs. Implementation of the legislation in early 2020 meant that pretrial supervision became one of the main avenues to serve people that previously would have been detained in jail, in large part due to the "least restrictive condition" language of the provision. In other words, if ROR does not "reasonably assure" an individual will appear in court, judges are required to consider the "least restrictive" conditions to meet the same objective. To accommodate this, the legislation required a considerable expansion of pretrial services throughout the state, with particular emphasis on providing alternative conditions of release. The change resulted in an influx of people who may have been previously held on bail, and unable to pay, who were now able to await the result of their case in the community under supervision.

DISCOVERY: GREATER TRANSPARENCY & EXPEDIENCY IN EVIDENCE-SHARING

In the course of investigating and prosecuting a case, law enforcement and prosecutors obtain numerous materials, which are required to be shared with the defense. These include—but are not limited to—physical evidence such as clothing or other materials supposedly owned by or in possession of the person accused of a crime, security camera footage, witness statements, 911 phone calls, forensic evidence, fingerprints, and DNA. The type of materials and the timeline on which they were to be shared with defense varies across the country; in New York, prior to the reforms, prosecutors were only required to provide "exculpatory" materials[6]—evidence that may absolve alleged fault or guilt—to the defense, meaning other materials could be withheld, including related police reports and witness statements. The previous law did not specify when exculpatory materials must be shared, but when the defense filed a written motion to request these materials, the prosecution had 15 days to turn over discovery or indicate why they would not. If the prosecution failed to respond within 15 days, there were typically no sanctions.

Historically in New York, discovery practices greatly varied by jurisdiction or office. Some District Attorney's (DA's) offices practiced an "open file" policy, which encouraged sharing more materials and on a faster timeline than the law

required. Others withheld discovery until a short time before the trial began, sometimes waiting until the night before to turn it over to the defense.[7] As a result, New York's discovery requirements were commonly referred to as "blindfold laws," as it was not uncommon for defense attorneys to consider plea offers for their clients with limited knowledge of the full scope of evidence.[8]

To address some of these inconsistencies, the new discovery statute required defense attorneys and their clients to receive discovery prior to the plea offer expiration date. Additionally, the legislation specified that prosecutors are required to turn over all material that "relates to the subject matter of the case," which is far more encompassing than exculpatory evidence only; they were also required to provide the discoverable material no later than 20 days after arraignment if the individual is detained and no later than 35 days if the individual is out of custody. Furthermore, the legislation ties the discovery provisions the state's speedy trial statute. Previously, prosecutors could "stop the clock" (i.e., not have days count toward the disposition deadlines, which are usually 180 days for a felony and 60-90 days for a misdemeanor) by saying they were ready for trial and their witnesses were available for testimony even if they had not turned over any discovery to the defense, meaning they were given the "benefit of the doubt" they had done everything required to bring the case to trial. The ability to "stop the clock" was particularly problematic for detained individuals whose pretrial period and time in jail was extended prior to disposition. Now, the law links trial readiness to discovery compliance, so when prosecutors state that they are ready for trial, they must file a certificate of compliance (COC), an assertion that they have shared all discovery required by law. The defense can challenge that COC and assert that there is missing discovery. The prosecutor must make a "good faith" effort[g] to share all discovery, otherwise risk judicial invalidation of the COC, which requires that the prosecutor share missing discovery before this speedy trial clock runs out. If a case has gone beyond the allowable time according to the speedy trial law, the case will likely be dismissed. Although the legislative changes to discovery primarily centered on prosecutorial responsibility, defenders also have reciprocal discovery requirements.

g "Good faith effort" is defined by New York State Criminal Procedure Law Section 245.50 and refers to the due diligence of the prosecutor to turn over all existing discovery and this has been done in good faith if the additional discovery did not exist at the time the original COC is filed.

Planning for Success: How Early Planning and Strategizing Proved Critical for Implementation

With the implementation of such a broad reform effort, CUNY ISLG anticipated that study participants would have differing perspectives regarding what to expect upon implementation and how to best prepare for the changes. As noted, the reforms covered multiple criminal legal decision points, each of which involved a complex set of structural, logistical, and operational considerations. Indeed, study participants discussed a multitude of challenges they faced throughout the process, which they felt posed significant barriers to implementation success. Despite these challenges, participants identified critical elements that facilitated a smoother legislative onboarding and adoption period. Starting planning processes early, therefore, was vital in establishing the foundation required to support such multi-dimensional changes to policy and practice. Though some counties took a "wait and see" approach, many of the counties involved in this study were proactive in their planning efforts. In fact, some of the agencies described their planning processes beginning as early as May 2019, mapping the legislative changes to their local interpretations and expectations for how the changes would play out on the ground.

This section discusses the factors that emerged as most important for supporting early planning and implementation efforts in CUNY ISLG's discussions with agency practitioners (as well as the challenges that occurred when those factors and circumstances were absent or more limited). It also speaks to some of the strategies these stakeholders developed to expound and integrate the reforms into their operations.

FINDINGS ARE ORGANIZED INTO FOUR KEY THEMES THAT CENTER THE IMPORTANCE OF

1. a reform-aligned culture,
2. well-resourced infrastructure and staffing capacity,
3. coordinated inter-agency relationships and collaboration with NYS, and
4. staff-oriented training as critical elements of success.

1. PRE-EXISTING ALIGNMENT WITH REFORM GOALS FOSTERED SMOOTHER TRANSITIONS

Existing office culture and practices that already aligned with the goals and objectives underpinning the legislation influenced how onerous the changes felt to study participants throughout implementation. Agency partners who described this alignment with the reforms seemed to perceive the changes (at least with respect to certain provisions) less dramatically and attested to a higher level of overall buy-in and readiness across their staff. In addition, some agencies were already implementing policies and practices that mirrored components of the legislation before it had even passed in the legislature. This theme was most pronounced across agencies in NYC; in discussions with CUNY ISLG, NYC agencies described pre-existing orientations toward many of the goals the

We see these things coming and prepare beforehand, but in this case we were already planning some of the legislation well before it was put in place.

legislation aimed to codify, particularly with respect to a reduced reliance on bail setting and alternatives to jail use. CUNY ISLG extrapolated that when reform-aligned culture was already established in this way, agencies were able to hit the ground running early in the planning period, which provided a longer runway to prepare for change. It also allowed agencies to direct their limited time and resources to aspects of the legislation that required the greatest operational changes given they already had a culture built around some of these now-required practices. In contrast, participants in offices where existing reform culture was not established and where leadership had not fully internalized the legislative changes saw shifts in policies and practices happening more slowly and had to stretch planning capacity across several dimensions, taking time away from areas that may have needed additional support.

Prosecutors from NYC agencies participating in the study placed particular emphasis on the importance of philosophical alignment with the reform, especially with respect to readiness to implement the bail provisions. Indeed, DAs who identified that their office philosophies emphasized alternatives over incarceration (and placed less emphasis on conviction as a measurement of success) were positioned to pivot their operational bail policies and procedures to more seamlessly implement the changes required by the law and reorient the way they make their bail recommendations in the courtroom. In fact, some of the DA's offices were implementing changes to their bail policies well before the reform bill was considered by the legislature. In Brooklyn, the Kings County DA's Office (KCDA) was one of them—DA Eric Gonzalez had been working with his prosecutors to revamp the way they made bail recommendations at arraignment since 2017, which involved reversing precedent by prohibiting prosecutors from automatically requesting bail. Under the new policy, prosecutors had to provide justification anytime they wanted to request bail. Prior to the rollout of the Act, the office was already making a concerted effort to stop seeking small amounts of bail on lower-level charges that posed little risk to community safety, and instead pursuing ROR or supervision for these cases. Given that these incremental changes were already taking place, study participants from KCDA shared that adjusting to the new legislation and bail eligibility requirements did not require a dramatic shift in office culture or policy; it simply mandated these practices for most low-level, non-violent charges. As one interviewee from KCDA stated:

> *"I was working with the DA and the other staff about what we want to do with bail long before the (legislative) changes. It was the DA's mandate to change (bail policies)—we were actually doing it since 2015—operationally making changes for misdemeanor cases; we weren't focused on felonies, but wanted to prevent unnecessary incarceration for the lower-level charges. We see these things coming and prepare beforehand, but in this case we were already planning some of the legislation well before it was put in place."*

Participants from the District Attorney's Office of New York (DANY) in Manhattan shared similar examples as they had shifted bail policy under former DA Cyrus Vance Jr. in the years leading up to statewide reform. Recognizing links to racial and ethnic disparities across prosecutorial decision-making,[9] DANY had stopped requesting bail in most nonviolent misdemeanor cases. Within these existing practices, these agencies were able to divert planning focus to other changes that would require a greater shift in practice, such as

discovery. That said, this policy did not apply to all newly bail ineligible charges required by the legislation so DANY Assistant District Attorneys (ADAs) still expressed difficulties shifting bail practice more universally.

In addition to bail provisions in specific prosecutor's offices, NYC policymakers had been working for years to cultivate a culture supportive of pretrial services and supervision options as an alternative to jail during the pretrial process. This foundation was substantially beneficial to reform implementation. NYC's efforts in this area, which began in 2009 with a pilot pretrial supervision program, referred to as Supervised Release (SR), provided a pre-reform continuum of pretrial service programs run by several non-profit agencies across the city, all of which offer community-based supports and supervision to people awaiting resolution on their cases. While changes created by the legislation still required significant operational changes and planning around expansion and eligibility criteria for these types of programs, NYC judges were familiar with the benefits and performance of supervised release programming; pretrial service providers participating in the study noted that judges had been able to observe the programming in action for quite some time, which made them comfortable referring cases there. As one SR provider said:

> *"Originally, SR was an alternative to bail. In 2016, all five boroughs were conducting a program like this. It gave the court another option instead of releasing someone for concerning reasons or the defense could use it if they felt ROR would not be an option. After bail reform, SR is now a part of the legislation, one of the non-monetary conditions they had to choose or look at first."*

With this foundation established, city providers had a unique advantage compared to the rest of the state, where capacity varied in this respect (largely due to infrastructure and resources as discussed in the next section). The legislation, which aimed to apply this approach to others across the state, may not have fully recognized these infrastructural differences.

2. ROBUST INFRASTRUCTURE SERVED AS A STRONG FOUNDATION FOR IMPLEMENTATION

In addition to alignment with reform goals, participants emphasized the importance of a solid infrastructure for supporting planning and implementation efforts. A solid infrastructure includes many components, primary among them funding that can be directed towards supporting changes as well as robust staffing structures, active data capacity, and up-to-date technology. Having sufficient capacity in at least some of these areas meant that a county and/or agency could transition with some sort of foundation already in place, allowing for more manageable, smaller-scale modifications to support implementation efforts as compared to a larger overhaul that required significant time and resources. Agencies with more limited infrastructures in place described the feeling of "building the plane as they were flying it," hindering feelings of readiness and their ability to make significant progress implementing the changes. Infrastructure and resources were especially integral to the implementation of the pretrial and discovery provisions, as these required particularly robust staffing structures, technology, and new and innovative service configurations.

Not surprisingly, counties across the state varied in their infrastructural capacity, and the differences were particularly notable between NYC-based agencies and other county agencies. NYC tended to have more capacity for implementation generally, given the size of its existing infrastructure and volume of individuals touching the criminal legal

system, resulting in greater resources. That said, some county agencies outside NYC highlighted strong infrastructural elements as well, and acknowledged the role that they played in helping them anticipate needs and challenges and create solutions to address them. In the remainder of this section, we discuss some specific themes that emerged around particular infrastructural elements.

Funding: The Lack of Legislative-Specific Financial Support Highlighted Significant Infrastructural Gaps Across Study Counties

It was well known upon its passage that the legislation did not provide for additional funding and resources for localities to draw upon to support implementation. Interviews suggested that this lack of funding created a deepening divide between the experiences in NYC and other counties across the state, particularly as it related to pretrial services. Many interview participants from counties outside of the city expressed feelings of dissatisfaction with legislators who they thought incorrectly assumed all counties could make the same pretrial service changes as NYC despite notably different infrastructural capacities. In addition to the foundation of practices and policies that were already in place there, NYC pretrial service providers were able to work with the Mayor's Office of Criminal Justice (MOCJ) to petition for additional financial support through the City government to both expand their service offerings and hire more staff, an ability more limited in other counties, particularly those that were much smaller and rural.

Though CUNY ISLG's study included only one agency representative of this type of smaller/rural county, funding challenges emerged very centrally during the interview. A pretrial provider interviewed in Columbia County remarked on the continuous slashing of their budget, noting that they were left with no choice but to make it work with what they had and that this had been a challenge they faced for several years prior to the legislation. Further, study participants that were part of the New York Association of Pretrial Service Agencies (NYAPSA) discussed similar observations for the smaller counties that comprised their membership. Indeed, a pretrial provider in Monroe County assessed the current situation of smaller upstate counties around them and argued:

> *"It's not reasonable to assume smaller agencies have the staff to do this. . . The State says it has no money, but they mandate things and that puts the counties in a bad position."*

In addition to pretrial service infrastructure, the lack of funding to support implementation efforts from NYS complicated the ability of DA's offices to support discovery requirements without creating significant burdens on existing staff. Prosecutors in and out of NYC discussed the need for additional funding to support new staff that could be dedicated to processing discovery, such as discovery expediters and paralegals, and for more ADAs to take on the anticipated rise in caseloads. Law enforcement agencies were also concerned with funding for discovery, as they anticipated the requirement to turn over all arrest information to DA's offices at the time of arrest would lead to increased overtime expenses. As one participant from the Monroe County District Attorney's Office stated:

> *"(It was) hard because the budget still hadn't been approved so they didn't know if we were getting more personnel, because we were talking about some bureaus adding 1,800 hours to handle the discovery requirements. To ask an overworked ADA to do another full-time job, it was tough, now knowing where we were going to be and what the people who controlled our money were going to say."*

Despite challenges with funding, some county agencies were able to work within their existing structures to shift resources to meet additional staffing needs, and strategized ways to support implementation by drawing on the resources they did have more readily available. For example, some DA's offices discussed ways they assessed existing staffing lines and current vacancies, identifying those lines they were able to shift towards new positions needed to implement reform efforts. One distinct example that emerged in interviews is the creation of a discovery expeditor position that served to collect and process all discovery across cases, which alleviated some of the burden put on individual ADAs. The legislative amendments passed in 2022 and 2023 seemingly recognized these challenges and provided some additional state-based support to both discovery and pretrial services.

Data Capacity: An Ability to Project Legislative Impacts Led to Better-Informed Decisions

Early planning efforts often included projection activities to assess the ways in which the legislation would impact various aspects of the criminal legal process, including the number of people that would be affected at each point. Projected flow into and out of the system set a baseline that allowed agencies to identify what their needs would be in order to put the reforms into practice, including funding requests and specific staffing requirements for expanded roles. Determining the additional staff needed for pretrial efforts was largely dependent on these types of projections as well as assessing existing services and how those services would need to be modified or expanded to align with the reforms and additional volume. However, not all agencies had the ability to effectively project operational impact. Similar to other infrastructural elements, NYC had an advantage over many other counties, in that it had a robust and centralized foundation of data that could be used to perform projections. Indeed, both pretrial service providers and MOCJ used this data during the planning phases to estimate changing caseloads and the evolving scope of service needs among those who would be supervised. These analyses, in turn, led to more informed decisions about how many staff to hire, types of specialized expertise that would be required among them, where they should be placed, and programming needs. Providers in the city projected substantial increases to caseloads for various programs, particularly for SR, and initiated efforts to hire hundreds of new social workers to support a reconfigured program. Dutchess County had similar abilities, as they have dedicated data support provided by an external researcher who is part of their Criminal Justice Council (CJC).

In addition to the availability of data, projecting anticipated volume also required an understanding of how other system actors—namely judges—would use their discretion in pretrial release decisions. For example, some counties outside of NYC reported difficulty making projections not solely due to data capacity issues, but because they were unclear about how judges would interpret aspects of the legislation that spoke to their responsibilities. Participants outside of NYC described feeling unsure about whether judges would automatically assign people

to ROR based on their reading of the legislation, resulting in less people on pretrial supervision, or if they would go in the opposite direction and place numerous conditions on released individuals. This confusion made it difficult for providers to plan for how their supervision caseloads might be affected.

Technology: New Technology Was Critical for Keeping Pace with Increased Discovery Demands

The changes required by the discovery reforms exemplified the importance of strong technology infrastructure. Prior to the reforms, agencies in many counties exchanged hard copies of evidence and materials; security camera footage was often stored on flash drives or CDs, witness statements obtained by the police were often transcribed, printed, and delivered to DA's offices, and police officer memo books were often photocopied and hand delivered. Not only did the changes in discovery requirements drastically increase the types of materials required to be shared, it also required agencies to shift to an electronic discovery (e-discovery) system, to be able to manage, process, and share these large volumes of discovery between agencies within short timelines. Some offices had already started working on an e-discovery case management system in the years leading up to the reform, which meant they had secured funding and built an IT infrastructure to manage the new systems. As one participant with the Monroe County District Attorney's Office stated:

> *"Luckily, the portal was already part of our process. In 2015, we had realized our case management system was coming up on 20 years old and it was time to get going on something better, and other DAs were using something through the District Attorney's Association, but at the time it didn't have e-discovery in it. Now it does, but (that was) one of the reasons we struck out on our own. By the time legislation was passed, we were well on our way to starting the new system and we had e-discovery built into it."*

Indeed, offices that had already implemented these technological changes or were in the process of shifting to e-discovery when reforms were passed described feeling better prepared for the dramatic increase in discovery that needed to be collected, processed, and shared between law enforcement, prosecutors, and defense counsel. Additionally, DA's offices that piloted their new e-discovery systems with line staff—including the day-to-day work of uploading and sharing electronic discovery—before the law went into effect allowed any challenges to be worked out in advance. Others that did not have this head start recounted all the challenges posed by having to request and secure funding, create new IT infrastructure, pilot the new system, and get to a point in which it was running smoothly enough to handle the substantial increase in volume. The need for proper planning was clear once reforms went into effect: one prosecutor interviewed noted that their discovery portal server crashed due to the volume of discovery that been uploaded to meet the specified discovery deadline two weeks into the implementation period. Overall, the takeaway from conversations with DA's offices was that without a technology infrastructure already in place, the scope and volume of change that had to be implemented in order to comply was simply too much to do in a sustainable manner within the timeframe that offices had to plan.

3. LOCAL COORDINATION AND COLLABORATION WAS ESSENTIAL TO THE PLANNING PROCESS

Perhaps not surprisingly, given the broad scope of the legislation and its impact across criminal legal decision points, coordination and collaboration was critical to the success of implementation efforts. Given the intertwined nature of the criminal legal process—i.e., what happens at one point directly influences what happens at others—county stakeholders had to work together to interpret the provisions, codify new operational procedures to align with the new requirements, and identify new

or revised policies that would be least disruptive to existing practice. Some even piloted new approaches during the planning phase with an aim to adjust to unanticipated challenges before the official start date, though the intensity of planning varied across provision areas.

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Practitioner agencies participating in the process evaluation linked higher levels of county-wide collaboration with pre-existing criminal legal councils or other regularly meeting bodies. These coordinating bodies facilitated early planning efforts and ongoing monitoring of the legislation's impact on operations, policies, practice, and outcomes. Other agencies recognized that more ad hoc planning processes, on the other hand, when coupled with the short planning period, resulted in a more disjointed experience and a greater likelihood that some agencies were left out of the process altogether. There was also a general sentiment across a majority of the local agency practitioners interviewed that state and government agencies should have played more of a role in coordinating implementation efforts, ensuring that concrete guidance flowed directly from the pertinent agencies providing oversight to the local level. What follows are some specific themes that emerged around the importance of local cross-agency collaboration and communication with the state.

Established Criminal Legal Coordinating Bodies Were Well-Positioned to Drive Collaborative Implementation Planning

Counties that noted they already had a strong multi-stakeholder coordinating body in place going into implementation planning said it was key to collaboratively updating policies and practices for this reform effort. Across these counties, an oft-mentioned advantage of having these entities was the long history of coordination and collaboration, which facilitated a much smoother planning and implementation process than otherwise would have taken place. Dutchess County, for example, established their CJC in 1993 with a general goal of enhancing criminal legal processes, as well as specific charges that included recommending strategies to improve case processing and management, evaluating the effectiveness of the county's criminal legal system, and encouraging cooperation between agencies and stakeholders.[10] With the DA, public defender, sheriff, and other stakeholders sitting on the CJC, participants noted that although in-depth planning was often done within individual agencies, each representative could report back to the council and discuss any needed coordination or problem-solve common issues. A Dutchess pretrial provider stated the importance of these preexisting relationships in implementing the reforms:

> *"We are fortunate in the county that there are solid and good working relationships between agencies, and that helps tremendously. It helped in the planning, and it helps everyday having that kind of network."*

Other counties that participated in the study had similar pre-existing groups—MOCJ in NYC and the Criminal Justice Coordinating Council (CJCC) in Suffolk County. Other counties participating in the process evaluation did not have this kind of structure in place before the reforms but created one specifically for bail reform efforts, and these

counties also emphasized the advantages of having such a group. Specifically, they discussed feeling better prepared for the reforms as a result of the relationships and enhanced collaboration that were supported by the body. With representatives from multiple practitioner agencies at the table, the results of in-depth planning taken on by individual agencies could be shared across all stakeholders and any coordination or troubleshooting could be worked out together in advance of legislative enactment.

Local Agencies Desired More Coordination, Communication, and Guidance from NYS to Better Prepare for Change

Local practitioners almost universally expressed that they desired more guidance from state-level agencies and departments. Pretrial providers from Suffolk County, for example, delayed planning until November 2019 as they waited for standardized rules and regulations from the Office of Probation and Correctional Alternatives (OPCA), but eventually realized they were not going to receive anything ahead of January. As one participant put it, "There [were] no top-down suggestions at all, it was crickets and tumbleweeds." Similarly, local agencies outside the courts reported craving statewide guidance from OCA on how judges were being instructed to interpret the legislative requirements and rule on specific components of the reforms that were seen as vague or otherwise difficult to translate. For both the bail and discovery provisions, for example, prosecutors and defenders were specifically interested in receiving guidance from OCA that would help them understand how judges would interpret bail eligibility and bail setting practices and discovery requirements/timelines so they could better prepare their own training materials and directives to their staff in the courtroom.

State agency representatives had a somewhat different perspective on this issue, offering examples of how they provided support to localities. OCA, for example, formed an internal justice task force to coordinate and facilitate implementation efforts across judges, and assisted with credentialing for pretrial service agencies who needed to implement new programs and services to meet the requirements of the legislation. Additionally, while local stakeholders felt a gap in NYS's efforts to provide clarity and support for their implementation efforts, they did highlight the role that statewide professional associations played in this effort, in many cases noting that this is where they received a lot of the most pertinent information throughout the process, as well as coordination efforts among agencies. According to prosecutors, for example, the District Attorney's Association of the State of New York (DAASNY) provided the necessary guidance for DA's offices across the state and set up avenues for them to coordinate. Similarly, pretrial service agencies relied on guidance from and coordination with NYAPSA.

Given that the majority of CUNY ISLG's assessment of implementation is guided by the perspectives of local stakeholders and was more limited in its ability to reach state-level representatives for their participation, it is difficult to fully ascertain the scope and scale of any centralized guidance that was provided by NYS outside of what is noted here. That said, there are a couple of potential explanations that may be playing a role in local stakeholders' experiences. One is that the supports provided by NYS didn't fully align with the needs of county agencies. The second is that the NYS's efforts were not as visible to on-the-ground staff as they should have been. Local interviews suggest that either or both explanations could be applicable, though they did not provide any definitive answer. On the latter point, it could be that the communication from state entities reached very high-level leadership, such as Commissioners, (who were not a part of this study) but did not trickle down to the line staff in a way that was

most responsive to the needs of those directly implementing practices supportive of the changes. This perceived lack of specific and concrete guidance was felt most acutely in counties with less cross-agency coordination and collaboration, resulting in an increased burden to both plan for and implement the reforms.

4. CONCRETE, PRACTICE-ORIENTED TRAINING FOR STAFF WAS FUNDAMENTAL TO SUCCESS

Ultimately, implementation of the reform provisions was the responsibility of local agency staff who were putting reforms into practice in the day-to-day of their jobs. Across agencies, line staff to whom CUNY ISLG researchers spoke discussed their reliance on the support and guidance from agency leadership to do this effectively; specifically, this meant reliance on leaders to provide interpretations, document expectations and changes to policies and practices, and provide mechanisms to troubleshoot and ask questions. Training was a critical component of early planning efforts, and it was one factor that emerged repeatedly in CUNY ISLG's interviews across stakeholders. According to study participants, training was essential to learn and internalize the legislation's provisions, and the concrete and practical implications of those provisions for their day-to-day work and decision-making. Interviewees often highlighted internal agency trainings as the most common source of information they obtained leading up to January 2020, though study participants also described county-wide and state-level training efforts as additional avenues for facilitating consistency and standardization across agency groups and jurisdictions.

Agencies utilized several strategies to deploy training to staff as quickly and meaningfully as possible. One successful strategy for the delivery of internal training was the appointment of a dedicated staff member or members to lead these efforts. Staff reported that trainings that were developed and delivered by a training director or specifically assigned staff members better met their needs and sufficiently prepared them for implementation, in part because these individuals were able to dedicate more focused time to the task at hand and ensure that trainings were not only comprehensive, but attentive to the daily responsibilities of staff. The training director at KCDA, for example, outlined strategies to assist staff in handling potential challenges with bail and discovery statutes, operational changes that were being made to support the new e-Discovery system, and other things.

The Scope and Depth of Trainings Varied Based on the Extent and Complexity of Required Changes

Internal agency training needs and resources varied in scope across provision areas, which is not surprising considering that some, like discovery, required a much bigger overhaul to existing processes and procedures than others. Most agencies described that internal training began early in the summer of 2019, allowing enough buffer time before the changes were fully enacted, particularly for more complex and complicated provisions. These internal agency trainings typically focused on educating agency staff on the new requirements for each provision area, outlining the operational and policy changes individual offices created to ensure compliance with the reforms as well as sharing tools, such as manuals and checklists, to directly provide guidance and organization as the changes were being implemented. Participants in this study shared the following types of training that took place around each provision area:

- **Appearance Tickets:** Law enforcement reported that minimal training was required because the procedures guiding issuing an AT largely remained the same; most of the training with respect to this provision area focused on the specific charges that were mandated to receive an AT and the exceptions to these parameters.

Though the process ultimately remained unchanged, the New York Police Department (NYPD) discussed their development of an internal working group that made the necessary modifications to their patrol guide and provided multiple retraining sessions across precincts.

- **Bail**: Training for prosecutors and defenders for the bail provisions mainly focused on the charges that were now considered bail eligible under the statute, any exceptions, possible interpretations of legislative language, and strategies to approach requesting bail (on which cases and why).
- **Pretrial Services**: Pretrial service provisions required more in-depth training sessions, which primarily focused on: the implementation of new release assessment tools; new programs that would be offered with the expansion of supervised release; how to work with a wider range of clients, including those with more significant charges, higher risk of flight, and greater needs for services; and how to respond to non-compliance.
- **Discovery**: Discovery training was the most comprehensive training described by stakeholders, in large part because it involved the biggest operational shift. For prosecutors, these trainings generally focused on the types of evidence required to obtain a COC and the processes behind it, the timelines prosecutors were required to adhere to in turning over discovery to the defense, and the components that threatened to curtail efficiency in gathering everything needed to ensure the case would not be dismissed due to an oversight. Training in public defender's offices focused on understanding what types of evidence they were entitled to during discovery, their obligations for reciprocal discovery in turning over evidence back to the prosecutor, and office policy regarding plea negotiations and missing discovery in their cases.

"The problem was they were training on something they didn't know either, all walking into this unknown, so they had to couch this on how we think the courts will interpret it."

Though training efforts were typically described as helpful supports for implementation, staff in DA's offices, in particular, felt that their trainings could have met their needs more directly. Some ADAs, for example, wanted more direct guidance on the daily work of managing their caseloads with such a dramatic increase in the volume of discovery required instead of the higher-level training on broad interpretations of the reforms that was available. As one participant from NYC stated:

> *"The training—it was too comprehensive. When they are trying to talk about statutory interpretations, I don't care. Give me an answer of what you want me to do. . . They need to give better trainings to each part in the life of a case."*

Line staff felt that it would have been helpful for leadership to seek input from line staff about what would be most helpful in internal training to prepare for implementation when planning the structure and focus of training. Instead, training was primarily planned by leadership and conversations suggested that there was at times a level of disconnect between executives and line staff in what content would be most meaningful. As one participant from NYC noted:

> *"The problem was they were training on something they didn't know either, all walking into this unknown, so they had to couch this on how we think the courts will interpret it. Hard to have certainty when things are new. Staff felt that the training was introductory and very surface level intro to the new laws."*

Until the reforms were actually implemented, however, ADAs recognized it was difficult for leadership to ascertain exactly how all of the courtroom actors would have to adjust, and how judges and other parties would interpret different parts of the statute. The case law, litigation, and precedent that would be acquired over the first several months of the reforms would be imperative to making these adjustments to training and practice, but that foundation was largely interrupted by COVID.

Select Local Agencies Delivered Training to Other Counties to Fulfill Perceived State-Level Gaps

Study participants in several stakeholder groups shared a perception that NYS did not offer any centralized training or resources around policy changes. In actuality, some state-level training and resources were available to some stakeholder groups. As mentioned previously, state-level organizations like NYAPSA and DAASNY conducted training sessions with their respective agency stakeholders. Additionally, OCA, for example, provided training to its judges in various forms, including summer judicial seminars, learning lunches, and ongoing trainings as provisions evolved. They also developed a bench book and web-based resources. In all of OCA's trainings, resources were focused on identifying areas for judges where language in the statute was open to interpretation and different ways to approach certain cases. That said, similar to the guidance conversation above, local stakeholders felt that training efforts were not as centralized as they could have been and instead, local agencies that had strong training curriculums stepped in for others that did not have this capacity to share their insights and preparations more broadly.

For example, NYC CJA provided training for other pretrial service providers on the ways the pretrial reforms would change the pretrial service and supervision landscape, and Brooklyn Defender Services offered training for public defender offices across the state on bail and discovery changes. Legal Aid partnered with law schools and other bar associations to do a series of mandatory full-day training for their staff that were also open to individuals who did not have access to training in their offices. Some county level agencies were asked to travel with their training materials—for example, the Monroe Public Defender's Office (MPDO) noted that they took their training "show on the road," traveling to other areas of the state to discuss the bail and discovery provisions.

COVID-19: An Unexpected Challenge

Shortly after the implementation of the reforms, New York State issued quarantine directives to suppress the impact of the COVID-19 pandemic. This pause and the pandemic itself complicated implementation efforts for all stakeholders in all counties across the State. COVID-19 wreaked havoc on the legal system during implementation and compounded the challenges agencies were already facing as a result of the required changes, especially with limited court processes due to social distancing and suspended trial procedures. However, agencies were able to rapidly develop and implement strategies to address the complications introduced by the pandemic and move forward in the face of an extremely difficult period.

Experience & Results: Has Legislative Implementation Changed Policy and Practice as Intended?

While a robust and early planning process emerged as critical for successful implementation, it was clear from interviews that counties varied significantly in their capacity to do this. This translated into varied experiences and results across counties in the months and years to come, including variation in the extent to which practices on the ground aligned with legislative intentions. Fidelity of implementation was influenced by a range of different contextual factors and circumstances, including, notably, the COVID-19 pandemic, which significantly altered criminal legal processes and operations. In turn, the nature and success of implementation itself greatly influenced progress toward overarching goals and objectives of the legislation, including reducing incarceration, increasing equity, and preserving public safety.

Though CUNY ISLG's study aims did not include a legislative outcome evaluation or impact assessment, these results have been examined and shared through other public sources, and when all of this is considered together, it paints a much richer and deeper picture of how, and to what extent, the legislation affected action on the ground. With that in mind, this section aims to compile, from multiple sources (including academic and governmental), an emerging and data-supported narrative of criminal legal reform in New York since 2020, highlighting where implementation successes and challenges have likely contributed to the impacts achieved to date or the areas where progress has not been made. Without question, the "on-the-ground" accounts offered by study participants provide much-needed context behind the numbers, and while overall the COVID-19 pandemic made it difficult to confidently assess reform progress in 2020 and 2021, 2022 brought a clearer picture of how things were going across key areas the legislation was designed to address.

THIS SECTION IS ORGANIZED BY THE KEY AREAS OF FOCUS:

1. **Appearance Tickets:** Straightforward to Implement, though Results Were Less Clear
2. **Bail:** Overall Use Declined, but Amounts Remained Out of Reach for Many
3. **Pretrial Detention:** Jail Populations Declined without Increasing Rearrests or Non-Appearances in Court
4. **Pretrial Release:** Expanded Supervision was Critical for Supporting Release Post-Reform
5. **Discovery:** Reform Increased Transparency, but Complicated Prosecutorial Practice
6. **Racial and Economic Disparities:** Inequities Persisted Despite Clearly Articulated Equity Goals

1. APPEARANCE TICKETS: STRAIGHTFORWARD TO IMPLEMENT, THOUGH RESULTS WERE LESS CLEAR

By expanding AT issuance, the legislation aimed to triage lower-level charges by allowing them to await arraignment in the community as opposed to being booked into jail. As noted, practitioners reported that the changes to AT issuance required fewer operational changes than other provisions, and therefore involved less planning. Law enforcement indicated that the process by which they issued ATs did not really change; it simply required that ATs were issued for specific charges. Changes to the AT requirements were predicted to have a significant impact on the volume of ATs issued: for example, in NYC, around 40,000 DATs were issued in 2018. Data analyzed by the Center for Justice Innovation (formerly the Center for Court Innovation) suggested that around 90,000 DATs would have been issued during this time period had the law been in effect given that most misdemeanors and E felony arrests would be required to get one.[11]

Overall, NYC has the most complete data on DAT trends before and after the legislation went into effect though the picture is mixed and difficult to fully assess with the data that is available. Though the projections above were ambitious in predicting a substantial increase in the number of DATs issued in NYC, the COVID-19 pandemic resulted in a decrease in the overall number of DATs issued in both 2020 and 2021. However, the proportion of arrests that were issued a DAT did change in this time period—in 2019, a little over a quarter of arrests, 27 percent, were issued a DAT. Over the course of the first two years of the reform period, that proportion had nearly doubled to 42 percent, though declined back to 29 percent by 2022.[12] Similarly, ATs accounted for about 30 percent of all arraignments in the state in 2019[13], which increased slightly to 34 percent in 2020 and 2021 before returning to pre-reform levels in 2022 (29 percent). These trends suggest somewhat of a

COVID-19 impact, as opposed to a legislative one, though data from OCA suggests that the proportion of individuals charged with a felony that were issued an AT increased 4 percentage points from 3 percent in 2019 to 7 percent in 2022. This small increase is likely due to the expanded charge eligibility criteria for ATs to include Class E felonies. This change may be greater in counties outside of NYC given the practice of issuing ATs for the majority of misdemeanors was already quite prevelant pre-reform.

AT functions at the point of arraignment were also impacted by COVID-19 and other logistical considerations. Specifically, the legislation specified that arraignment dates should be set no later than 20 days from time of arrest for individuals issued an AT. Unfortunately, current publicly available data does not allow for in-depth analysis of this aspect of the legislation; some counties outside of NYC shared during interviews, however, that the original truncated timeline was problematic as it was logistically impossible to meet within 20 days, given that arraignments are scheduled much less frequently, particularly for town and village courts that meet only once or twice a month. Additionally, as courts began shutting down due to COVID-19, the timeline requirements were suspended

through May 2021, pushing AT return dates back for an indeterminate amount of time, leading to a large AT arraignment backlog. In NYC, return dates for DATs were stretched to 90 days to allow prosecutors and defenders to meet virtually to talk through cases prior to the scheduled court appearance and figure out how to triage them. A participant from DANY went on to say how, with defense, they would:

> *". . . take a good look at all these DATs, anything we'd normally offer an Adjournment in Contemplation of Dismissal (ACD) to (e.g., shoplift, trespass etc.), let's just dismiss that case. It's not the defendant's fault they can't get inside a court for six months. If they'd been in court and consented to an ACD, the case would be dismissed. So, we have like COVID-19 plea offers. Take things down a notch so we can dispose things in a fair and reasonable way."*

Additionally, as OCA was highly discouraging in-person appearances, counties needed to pivot to accommodate reductions in court schedules and the need for virtual appearances. Dutchess County, for example, created a consolidated court that city and county judges took turns presiding over and required a system of communication that ensured arraignments were covered.

2. BAIL: OVERALL USE DECLINED, BUT AMOUNTS REMAINED OUT OF REACH FOR MANY

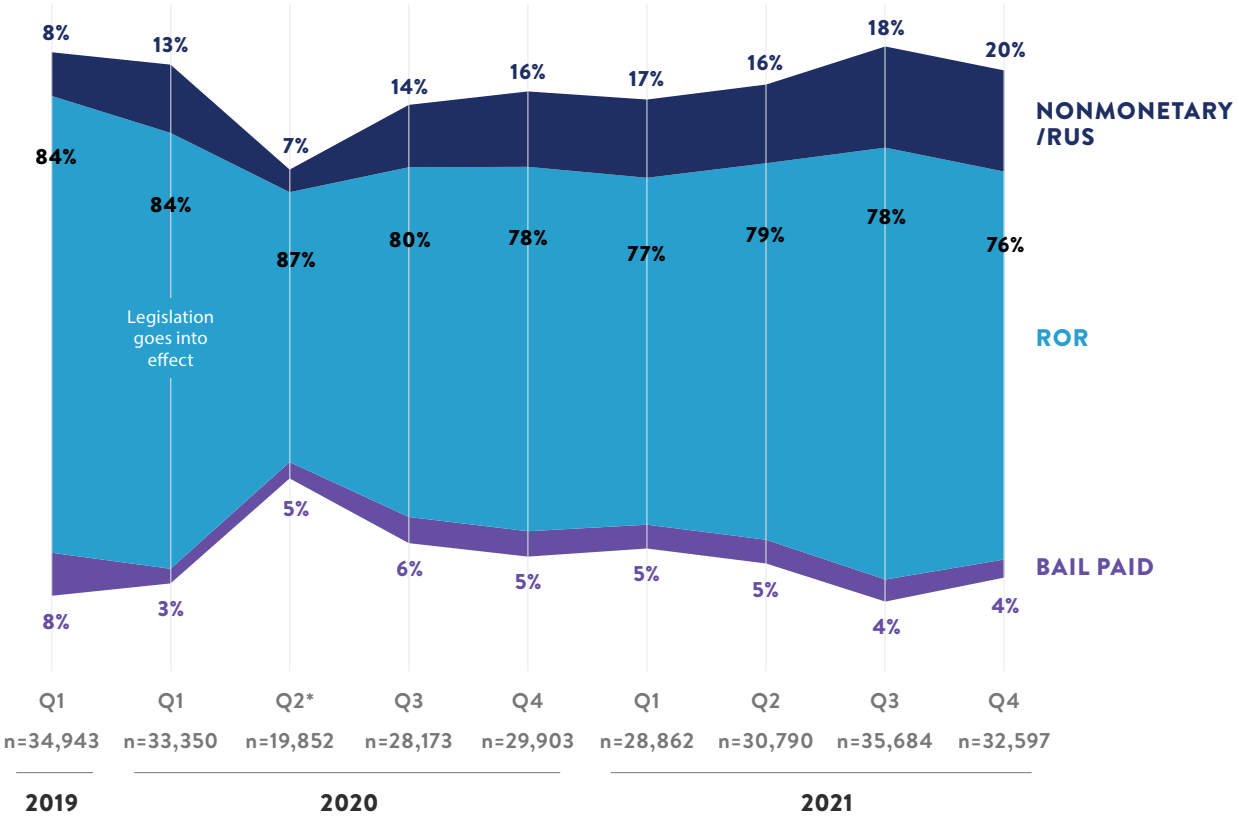
The bail provisions aimed to limit the number of people held pretrial by creating a more standardized set of considerations at the arraignment hearing. For cases that are not disposed of at the arraignment hearing, the case is continued to the next stage of the criminal legal process and a release determination is made by the judge, which is when bail decisions are made. Historically, bail has been the dominant form of pretrial release, with the rationale that it serves as an incentive to individuals to attend their court dates or forfeit the monetary amount paid.[14] This rationale overlooks the fact that inability to pay even small amounts of bail is one of the primary drivers of pretrial detention,[15] even in cases where there is little threat to community safety. The legislation aimed to limit the use of bail and financial conditions of release primarily to cases with serious charges.

The decreased use of bail, however, did not translate into the expected corresponding increase in pretrial releases, as they remained stable at 88 percent of all arraignments in NYC and had increased marginally from 75 percent to 79 percent outside of NYC. That said, the composition of pretrial releases did change post-implementation.

Overall, directly following implementation, the use of bail decreased; the percentage of cases with bail set at arraignment decreased from 21 percent (Q4 2019, pre-reform) to 12 percent (Q1 2020, post-reform).[16] After the 2020 amendments were passed in Q2 2020, the proportion of cases with bail set increased to 18 percent, though declined to 15 percent by the end of 2021. The decreased use of bail, however, did not translate into the expected corresponding increase in pretrial releases, as they remained stable at 88 percent of all arraignments in NYC and had increased marginally from 75 percent to 79 percent outside of NYC. That said, the composition of pretrial releases did change post-implementation. There was a substantial increase in pretrial release for non-violent felonies, many of which were no longer bail eligible, from 74 to 83 percent of cases released pretrial in NYC and 54 to 74 percent of cases released pretrial outside of NYC. There were also significant shifts in the

BAIL USED LESS OFTEN, NONFINANCIAL CONDITIONS OF RELEASE USED MORE OFTEN

Figure 3: Pretrial Releases in New York State by Quarter



*Represents the quarter directly following the emergence of the COVID-19 pandemic when emergency measures were implemented.
Source: DCJS Supplemental Pretrial Release Data

conditions and circumstances of those who were released—fewer individuals had to pay bail as a condition and a greater proportion were released on ROR or nonfinancial conditions, including release under supervision *(see Figure 3)*.

When bail or other release conditions were set, however, the degree to which they were truly standardized is debatable—a likely result, according to both defense and prosecution participants in the study, of the vague language included in the legislation that may have led to varied interpretation and inconsistency among judges. For example, in areas where judges still had broader discretion, like the selection of an alternative option to bail for pretrial release, there was still a tendency to select more conservative release options, such as release under supervision (RUS) as opposed to ROR (see the Pretrial Release section for more information about the increase in use of pretrial supervision). In fact, individuals were more likely to receive nonmonetary conditions/RUS in the last quarter of 2021 (20 percent) compared to the last quarter of 2019 (8 percent) and less likely to receive ROR (84 percent in Q42019 compared to 76 percent in Q42021).

Additionally, though consideration of ability to pay based on individuals' personal financial

circumstances was a requirement of the legislation, bail continues to be unaffordable for many people. For charges that remained bail eligible, judges were more likely to set higher amounts of bail. In fact, the percentage of cases with a bail set of $10,001 or more increased from 17 percent in 2019 to 32 percent in 2021 in NYC and 14 percent in 2019 to 22 percent in 2021 outside of NYC.[17] The legislation also required judges to set three forms of bail, one of which had to be a partially secured or unsecured bond, which would be less onerous for individuals, but some defense stakeholders suggested that judges were not setting bail any differently than before. As one defender in Monroe County stated:

> *"They aren't setting bail any differently than before. Just adding a third option. Calculating how to still make it hard. Okay, I have to set it with partially secured bail, so if 5,000 cash, then 5,000 is 10% of 50k so I'm going to set 50k partially secured bond so they still have to come up with 5k cash. How can I make sure this guy stays in. So that's been very disappointing."*

Though higher amounts of bail might be expected given that more serious charges remain bail eligible, bail is used in New York as incentive to return to court. For many individuals, even small amounts of bail can achieve that purpose. Following the legislation, however, the proportion of individuals who were able to pay bail when it was set had decreased. In 2019, 9 percent of individuals in NYC and 31 percent of individuals outside of NYC posted bail, but in 2021, 7 percent of individuals in NYC and 26 percent of those outside of NYC were able to.[18] According to a recent report, when observing arraignments across the state, only 30 percent of cases in which bail was set had any mention of ability to pay at arraignment.[19] In this study, public defenders interviewed suggested this component of the legislation had been neglected.

3. PRETRIAL DETENTION: JAIL POPULATIONS DECLINED WITHOUT INCREASING REARRESTS OR NON-APPEARANCES IN COURT

One of the primary purposes of the legislation was to reduce reliance on pretrial detention, and it aimed to do this by both reducing custodial arrests and limiting the amount of people held in jail because they could not afford bail.

Prior to rollout, an impact projection estimated that provisions would result in a 40 percent reduction in the state's pretrial jail population.[20] While in actuality the reduction was not quite this high, New York did reduce the use of pretrial detention, decreasing 10 percent from September 2019 to May 2023. Some of this reduction happened before the January 1, 2020 launch date; in fact, between September 2019 and January 1, 2020, the state's jail population had already declined 20 percent overall—by 16 percent in NYC and by 24 percent outside of NYC *(see Figure 4)*. Interestingly, areas outside of NYC accounted for the majority of this initial decline. This was likely a result of preparations that counties were putting into place in the lead up to January, including beginning to release people from jail who would no longer be bail eligible once the legislation went into effect.

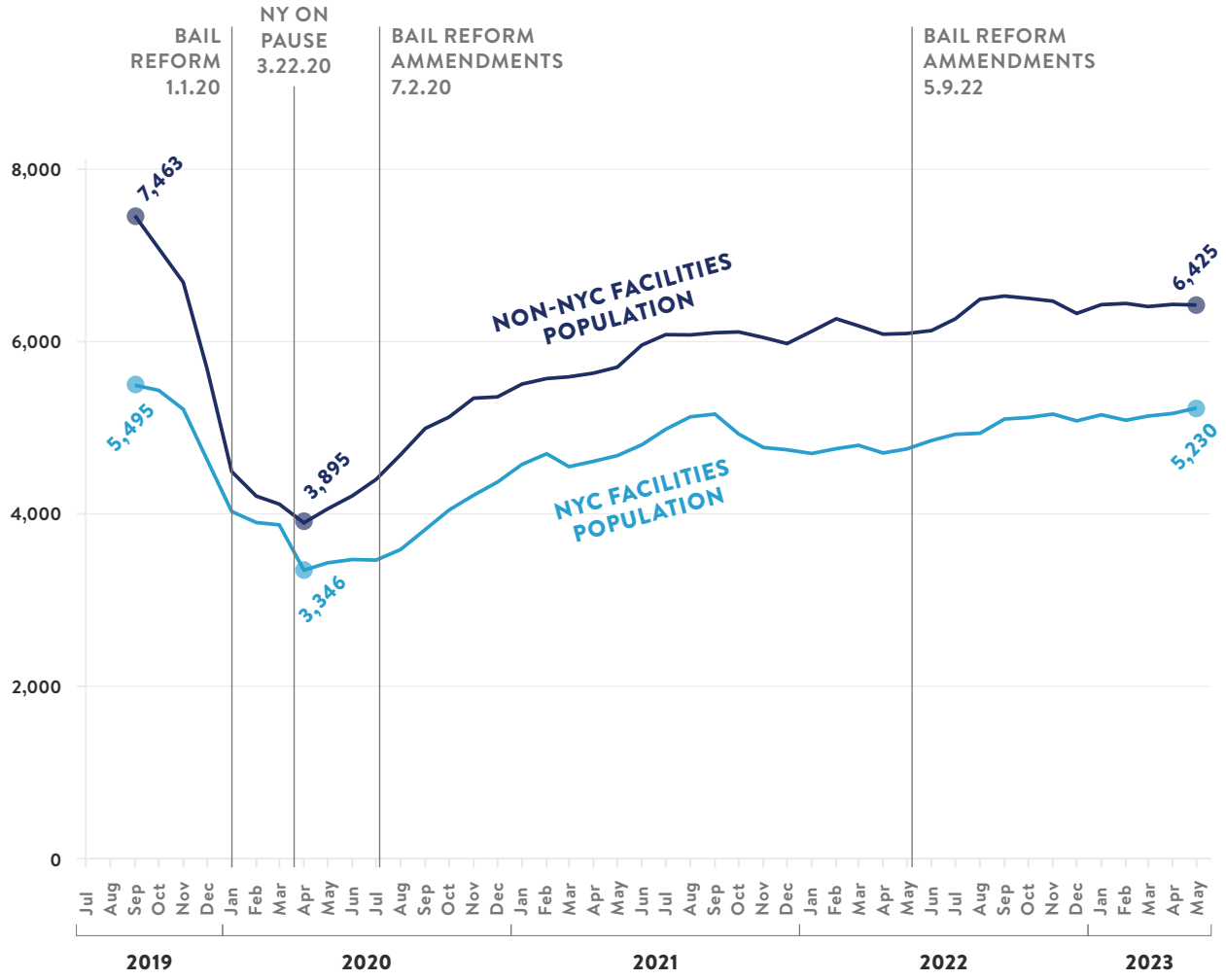
Trends following the rollout of the legislation are a bit more nuanced given the onset of the COVID-19 pandemic only a few months later. Following implementation of the Act in January 2020, but before the onset of the COVID-19 pandemic in March, the overall pretrial jail population decreased an additional 18 percent statewide, with steeper declines again taking place outside of NYC. Jail populations declined even further after the emergence of the COVID-19 pandemic, when most of the state's criminal legal system was put on pause (e.g., courts were shut down, arrests were limited through temporary policy changes); as a result, by April 2020, the overall pretrial jail population in the state had declined 44 percent since

September 2019 and in NYC, the jail population was at its lowest since 1946, having been reduced by 39 percent.[21]

It is difficult to assess what proportion of the additional decrease in the jail population was due to the collateral consequences of COVID-19—including emergency release measures, quarantine and

JAIL POPULATION CENSUS HAS BOUNCED BACK SINCE LOCKDOWNS, BUT REMAINS LOWER THAN PRE-REFORM

Figure 4: NYC and Non-NYC Jail Population Census—Average Unsentenced by Month



Source: DCJS Monthly Jail Population Data

isolation, and slowed court processing—and what proportion was driven by the reforms directly. It is even more difficult when considering the passage of two amendments to the legislation in 2020 and 2022, both of which likely increased the number of people detained relative to the initial months. Indeed, following the passage of these amendments, the statewide jail population did increase back to pre-pandemic and pre-reform levels (though remained lower than levels prior to October 2019). Despite this increase, however, the jail population has decreased overall by 5 percent in NYC and 14 percent outside of NYC, and there were still 1,303 less people in jail awaiting trial statewide in May 2023 compared to September 2019.

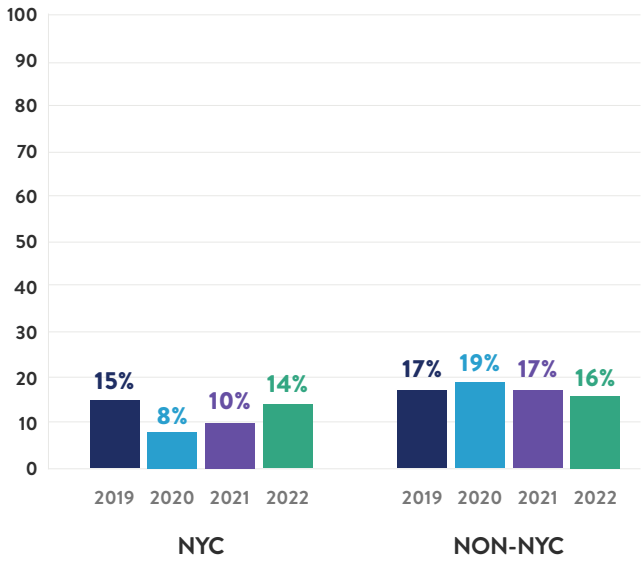
Bail reform, including the increased use of pretrial release and decreased use of money bail, was often linked to community safety concerns by the stakeholders in our study. In particular, law enforcement stakeholders and prosecutors noted during interviews that a combination of limited autonomy to assess cases on an individual basis and public perceptions that the criminal legal system is not holding people accused of crimes accountable, may lead to increases in crime and decreased confidence in the system from victims and witnesses. These concerns were exacerbated as crime rates began slowly increasing in NYC starting in 2020, picking up pace across the state by 2022 (though it is important to recognize that crime rates are affected by a complex interaction of many factors outside of criminal legal reform—and in this case, particularly the effects of the pandemic).

Recent data suggests that a reduced reliance on pretrial detention has been accomplished safely in New York. Indeed, a recent study found that individuals released pretrial post-reform were less likely to be rearrested for a felony offense within two years of release, as well as less likely to be rearrested for any offense within the same amount of time, than people with similar charges, criminal histories, and demographic characteristics released pre-reform.[22] Additional data provided by DCJS showed rearrests for individuals released in NYC on ROR at arraignment had decreased from 18 percent in 2019 to 16 percent by September 2021, decreased from 24 percent to 19 percent for those who paid bail, and remained relatively the same (39 percent vs. 40 percent) for those under supervision.[23] Outside of NYC, however, rearrest rates for individuals released pretrial did increase slightly over this same time period—from 16 percent to 21 percent, with all release types seeing an increase in rearrest.

In addition to crime considerations, it is important to assess how court appearance rates may have changed after the onset of the legislation. The limited data that is available suggests that individuals released pretrial continue to show up for court at similar rates as before the reform—the main consideration in a judge's pretrial release decision *(see Figure 5)*. From 2019 to 2020, NYC failure to appear (FTA) rates experienced an initial decline from 15 percent of all releases to 8 percent of all releases, likely a result of COVID-19 court closures. By 2022, however, FTA rates moved back to 14 percent of all cases, suggesting no change pre/post-reform. Outside of NYC, FTA rates experienced a slight increase between 2019 and 2020 from 17 to 19 percent, moving back to 17 and 16 percent in 2021 and 2022, respectively.[24] Provisions in the Act did require an expanded capacity to conduct court reminders and notifications. Though the City had universal capacity in this area pre-reform through CJA efforts and the role the agency played in pretrial assessment, OCA took on this responsibility for the rest of the state. Though CUNY ISLG's study did not focus on court notification aspects of the legislation directly, it did come up in conversations as a key research-informed[25] mechanism that supported court appearance.

FAILURE-TO-APPEAR RATES REMAINED RELATIVELY CONSISTENT

Figure 5: Statewide Failure to Appear Rates: 2019-2022



Source: DCJS Supplemental Pretrial Release Data and OCA Pretrial Release Data.

Though this data supports that bail reform can be done in a safe and effective manner, participants discussed unmeasurable and unquantifiable impacts on feelings around safety in communities that were brought about by the reforms, and, in particular, the structure of certain provisions (up until the latest set of amendments—see Appendix B for an overview of changes to address some of these concerns). Some NYPD participants indicated that components of the legislation, specifically around AT and bail, created the perception of an overall sense of lawlessness at the community level, and that the reforms impacted neighborhoods affected by crime. Though many of the AT-eligible charges were lower level and nonviolent, the crimes still came at a high cost to society. For example, officers discussed they observed businesses in certain neighborhoods having to close because the cost of daily shoplifting and theft was too high for them to remain open; now those businesses were unavailable to community members who relied on them. One officer noted:

> *"Crime is going up. We can go look for the guy, but he's going to come back again. I feel bad, their stuff is getting stolen, local businesspeople, it's not fair for them."*

Law enforcement stakeholders also noted that the AT and bail provisions had the potential to create a "revolving door" where individuals released to the community after an AT arrest or on bail after arraignment may then commit additional crimes within hours or days of their release. Several law enforcement officers across counties shared scenarios in which they were seeing the same people continually being arrested with no alternative option but to continue to release them back into the community each time with an AT and court date. They argued that this undermined the legislation's intent to promote public safety. The same sentiment was expressed for impacts on victim and witness cooperation and safety. Prosecutors in the study noted that victims and witnesses had expressed safety concerns relating to retaliation due to initial legislative requirements to turn over witness contact information to the defense as a part of discovery. An officer from an upstate police department explained,

> *"In quite a few of the murders we had, people will tell us who it is but nobody would testify. 20 days after the person is arrested, the entire case turned over. The DA has to request from the judge if the witness' name can be redacted. Our policy is, there is no guarantee that your name will be kept out of this. [Before reform], it may have been 7, 8, 9 months before someone knew who the witness was, now it is less than 30 days."*

In a follow-up interview, prosecutor stakeholders from NYC indicated victim and witness cooperation continued to remain an issue as some judges

routinely denied motions to keep witness identities confidential.

4. PRETRIAL RELEASE: EXPANDED SUPERVISION WAS CRITICAL FOR SUPPORTING RELEASE POST-REFORM

To support the goal of reducing reliance on pretrial detention, other systems had to step forward to effectively and safely shift away from incarceration as a primary system response. Pretrial supervision, already regularly utilized in NYC, but not as consistently utilized outside of the city, was a viable option for judges in considering the "least restrictive" means of ensuring court appearance. Based on DCJS data, there was an increase in the use of pretrial supervision overall from 5 percent of cases in 2019 to 16 percent of cases in 2021 in NYC and 7 percent to 14 percent of cases outside of NYC in that same time period.[26]

To provide a comprehensive picture for how the legislation impacted the pretrial service provision, this section uses NYC's SR program as a case study. The sheer volume of people served in NYC created a unique set of implementation needs and challenges, particularly with respect to staffing, coordination, and changing populations. Given the scope of interviews conducted across the majority of SR providers in the city as part of the study, CUNY ISLG was well positioned to assess key challenges and lessons learned from its experience. While it must be acknowledged that NYC is grounded in a very different operational and resource infrastructure than other jurisdictions in the state, the story emerging during this study provides a more fleshed out look at the full cycle—from development to pilot to full-scale implementation—of practical considerations made to guide additional reform efforts and the impact of the legislation on providers.

The goals and objectives of SR in NYC have largely been met both pre- and post-reform, in that a large majority of cases assigned to it are successful in meeting their court dates and remaining arrest-free during that time. For example, cumulatively from 2016-2020, 87 percent of individuals did not miss their court dates and the same percentage were not arrested on a new felony charge during their time in the program.[27] More recent data from more than halfway through 2022 suggest that just over three-quarters of people released pretrial

In NYC, there were roughly three times as many people in SR programming at the end of 2022 (8,082) compared to the end of 2019 (2,515).

(either through ROR, by posting bail, or on SR) are not rearrested for any new charge within six months.[28] Indeed, a public defender in NYC recalled that the SR program encouraged their clients to come back to court—clients they never thought would have returned given their history and record. This is in addition to the program's many benefits in facilitating community connections for individuals to provide support in various aspects of their lives. Participating in CUNY ISLG interviews, people who were under SR supervision in Queens shared that remaining in the community made it easier to speak with their attorney and maintain employment as well as resulted in less pressure to take a plea as their cases were winding through a very complex system towards resolution.

> *"Instead of looking forward to getting out of jail, I was looking forward to talking to someone about what we should we do next."*

They further expressed great appreciation for their case managers for advocating on their behalf and giving them the opportunity to address underlying mental health or substance use concerns. Another client in SR programming in the Bronx went on to explain why this type of programming is an effective alternative to bail:

> *"If you're released with supervision, you still have an incentive to comply because you're reporting to your case manager. So, it has the same effect as bail on appearance, but it's better because you can live your life, take care of your kids, work. It gives you the support you need."*

As a result of changes to eligibility for pretrial supervision, in NYC, there were roughly three times as many people in SR programming at the end of 2022 (8,082) compared to the end of 2019 (2,515).[29] This increase in volume significantly impacted pretrial staff caseloads, particularly during the pandemic when cases were not getting resolved and clients were not being discharged; this left caseloads stuck at much higher levels that were more difficult to manage. As an unintended consequence of the legislation, providers in the city suggested that there were too many people getting released under supervision who would be better suited for ROR, including some with ATs and lower-level misdemeanors. This increase in the use of supervision for misdemeanors was notable in NYC—in 2019, only 3 percent of individuals charged with a misdemeanor were assigned to SR, but that had increased to 12 percent by 2021.[30] In contrast, the percentage of individuals with misdemeanors assigned to supervision outside of NYC increased from 8 percent in 2019 to 11 percent in 2021.

The increase in less serious charges, however, coincided with an influx of participants with more serious charges as well. Indeed, pretrial service providers in NYC noted a shift in their populations as a result of the expanded eligibility and increased caseload volume—participants were presenting with more violent charges, including intimate partner violence (IPV) cases not previously eligible for pretrial services and higher rates of mental health, substance abuse, and housing issues. There was an increase in the number of people with felony charges released under supervision between 2019 and 2021, and that increase was notably substantial for violent felonies (3 percent to 23 percent in NYC and 6 percent to 15 percent outside of NYC).[31] Recent focus groups with staff from SR programs in NYC noted several themes they observed as a result of this evolving composition of clients: 1) increased safety concerns, for both staff and participants; 2) increases in

observed drug overdoses; 3) increased service needs, likely exacerbated by the pandemic, that reached beyond existing expertise; and 4) lack of client engagement made even more difficult due to social distancing protocols and virtual case management as a result of the pandemic. One pretrial provider shared:

> *"I have had some participants who are suicidal, (and) don't want to engage in services. They come in and they are decompensating. They should be admitted to hospital. (There needs to be) a program with more support. We can encourage (them and) implement these models, but if the client doesn't want it, or (is) just not in the right state of mind, then it's like what are we doing?"*

Though trends do indicate that, post-reform, more people are assigned to SR with more serious charges and more substantial histories of arrest, prosecution, and pending cases,[32] this represents a small percentage of the total released population to SR. However, it nonetheless reveals a potential gap in supervision services, given higher rearrest rates for this population,[33] that requires testing, trial and error, varied resources, and multiagency collaboration to develop a more effective response for this group—a conversation that is emerging in NYC and beyond as reforms take hold. Providers discussed the need to adapt quickly and efficiently to these challenges by implementing creative solutions. This included additional trainings for staff such as de-escalation training to address clients who became aggressive in the office, Narcan training and the adoption of a harm reduction framework to address substance use issues, and training in additional tools and techniques to enhance skills in working with clients with higher levels of need (e.g., motivational interviewing and other cognitive behavioral-informed interventions). Providers also hired more specialized staff (i.e., peer specialists and credible messengers) to provide clients with support from individuals who shared similar experiences and developed new ways to remain in contact with clients to keep them engaged with services.

4. DISCOVERY: REFORM INCREASED TRANSPARENCY, BUT COMPLICATED PROSECUTORIAL PRACTICE

Toward the overarching goal of creating a fairer and more equitable criminal legal system, the legislation created more prescriptive guidelines around discovery procedures, requiring a broader scope of information to be shared earlier in the case with both prosecution and defense. In addition to increased transparency, reform advocates believed the changes reduced case processing times, which in turn shortened stays in pretrial detention, reduced the likelihood of wrongful convictions, and ultimately led to fairer case outcomes (e.g., better plea offers, more community-based sentencing options, and more case dismissals). One public defender from Dutchess County shared:

> *"It's been awesome, [we've been] able to achieve much better results, able to go through things in so much detail and can negotiate with the DA for a better deal, let the client know the reality of their case. [We are] able to almost trial prep cases from the beginning as opposed to a discovery dump two weeks before trial. Really beneficial for us as lawyers, and more importantly for clients, to get best results."*

They also reported that more information was shared with them more quickly, leading to quicker case resolution—meaning people spent less time in jail and missed less work, family events, or other prosocial engagements to attend court cases. Defenders noted they were able to discuss the facts of their cases much earlier and much more thoroughly with their clients:

"I don't know what the numbers are—and its anecdotal—but certainly I am confident that people who are now charged with crimes are making far better, informed decisions."

More specifically, defenders participating in interviews suggested that having full discovery at the earliest stages of the case gave them more leverage during the plea negotiation process, which they incorporated into their defense strategy. Because the new discovery laws required prosecutors to certify trial readiness when all discovery had been shared, many defender agencies created office policies that aligned the timing of plea negotiations to COC filing so all information would be available when assessing a deal. For example, many public defender offices shared that they would not consider plea offers until prosecutors filed a COC with the court and would not waive their right to receive additional discovery while considering a plea offer. As defense attorneys believed prosecutors had routinely withheld discovery prior to reform, public defender's offices across the state also shared they had developed policies to challenge COCs on all cases to determine if any discovery was missing.

These observations were confirmed by some people with lived experience, who stated that being out of jail and back in the community made it easier to communicate with their attorney, allowed them to continue to work, and created less pressure to take a plea regardless of guilt just so they could return home:

"You can live your life, take care of your kids, work. Definitely helps in terms of not facing pressure to take a plea. If you're in, you can't do much to connect or fight your case."

While discovery reforms improved a number of aspects of the plea process for defense attorneys, they created some difficult circumstances for police departments and DA's offices. Prosecutors in counties across the state supported the goals of discovery reform, but questioned whether the amount of discovery and the short timelines on which they were required to share it were necessary to achieve fairer outcomes. Many ADAs shared anecdotes of electronic links to discovery files expiring after months of not being opened by the defense counsel, flagging for them that the defense also did not have the capacity to review the increased volume of discovery. It was these types of instances, in particular, that supported their initial skepticism of the utility of the requirements; each of these cases could have been at risk of dismissal had prosecutors not turned over that information within the specified timelines, but the time and resources that were dedicated did not actually end up being used by the defense.

More broadly, prosecutors felt that, despite voicing their concerns early on, lawmakers did not consider the practical implications of the changes on their work. This meant that DA's offices did not have either the funding or the staff to track down the wide range of materials that were now discoverable for cases. They also worried that cases with strong evidence suggesting guilt could be

dismissed because a single piece of paper was not turned over to the defense, and that such case dismissals would increasingly occur for missing discovery that had no bearing on the case. As one participant from the Monroe County District Attorney's Office noted:

> *"No resentment about providing discovery—something we were providing and didn't have a problem. Resentment may have come with not being given the tools to do it. You're asking for a tremendous amount of extra work without providing additional resources to do it. I'm not exaggerating with the word tremendous—it would have been impossible without additional help and that's not fair."*

For both law enforcement and prosecutors, the discovery provisions created additional concerns for victim support and safety. Law enforcement shared concerns that officers were spending too much time drafting arrest reports and providing discovery and not enough time in the communities they are meant to protect; prosecutors felt they were spending more of their time filing paperwork to ensure compliance with the new discovery requirements and less time on legal strategy and victim advocacy. One ADA from NYC stated:

> *"I don't have an issue with the core idea of the discovery law. The issue is it is literally impossible for me to focus on the cases I need to focus on. We do not have the time to work with the paperwork and the witnesses. I don't have the ability to assess their safety as quickly as I should . . . Literally all I'm doing is yelling at officers and telling them to get me stuff I have to hand over to the defense attorneys and failing at that."*

Leadership in DA's offices described high staff turnover and difficulties hiring new staff due to this sentiment that they were less focused on assisting victims of crime and more focused on "chasing paper," which sometimes did not provide any additional information as to the strength of the case.

Dismissal data published by OCA bears out some of the concerns shared by prosecutors, at least with respect to dismissal trends, though the drivers of these trends are unclear. Between 2019 and 2020, dismissals increased from 37 percent to 41 percent, and jumped to 53 percent in 2021, settling at 48 percent in 2022. Dismissals due to speedy trial violations, in turn, nearly doubled between 2021 and 2022, going from 12 percent to 23 percent[h] (speedy trial timelines were suspended in 2020 due to COVID-19 so those numbers are less informative). To try and minimize dismissals due to noncompliance with discovery provisions, some DA's offices, particularly in counties with high caseloads, shared that they developed policies to "triage" their caseloads, prioritizing more serious cases and at times, to support this, declining to prosecute cases they may have normally pursued before reform. Prioritizing cases in this way did provide some relief; however, even with these strategies, prosecutors still reported observing high rates of dismissal on cases they felt should have moved forward in the court process, claiming a direct link between dismissal and missing discovery. Some DA's offices also anticipated that the first 15 days of implementation leading up to the first discovery deadline would be chaotic and chose to resolve existing lower priority cases to reduce what they anticipated to be an exponential increase in discovery. Offices who planned to resolve these open cases before January 1, 2020, were better able to reduce backlog and get ahead of the increased volume of discovery when the reforms went into effect.

h No pre-reform data on dismissals is available.

5. RACIAL AND ECONOMIC DISPARITIES: INEQUITIES PERSISTED DESPITE CLEARLY ARTICULATED EQUITY GOALS

It is well known that decision-making across the criminal legal system in New York and nationally, from arrest to pretrial release to subsequent points in case processing, creates a cumulative negative impact for economically disadvantaged communities and BIPOC. The way that cases progress through the system from arrest through disposition has also been linked to the power dynamics that come into play between those that write the penal code, as described by several defense attorneys in the study as "rich white dudes,", and those that are impacted by it (i.e., individuals coming from communities with limited resources). One of the paramount goals of the legislation, therefore, was to address the pervasive racial and economic disparities that existed in the criminal legal system, with bail recognized as a significant driver. People who cannot pay bail are detained in jail, even though they have not yet been convicted of a crime and despite the fact that they would walk free if they could afford it—a scenario that time and time again has been shown to disproportionately impact predominantly BIPOC communities and economically disadvantaged neighborhoods. As one defender noted,

> *"It's a step in the right direction in reinforcing to people that you are presumed innocent. None of this was controversial until it applied to poor people and people of color. No one thought twice of the rich white person getting the benefit of the doubt."*

The legislation and its accompanying provisions (e.g., limiting discretion in appearance ticket and bail decisions, requiring earlier and more extensive discovery) were designed to address disparities and many stakeholders felt that this was a crucial step to advance equity. As one public defender in Brooklyn stated:

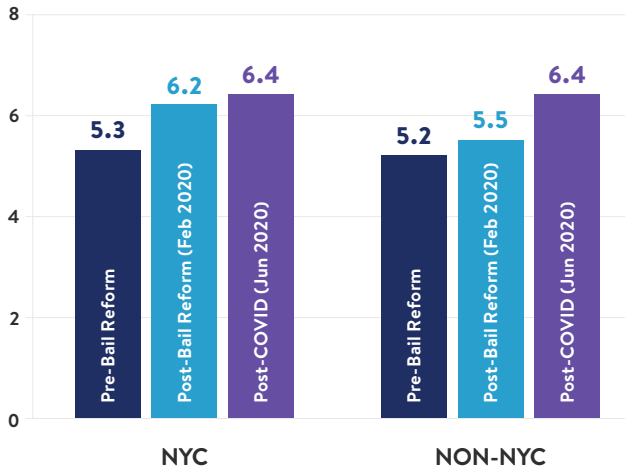
> *"[Reform] takes away what used to be the task of the judge, which was to look at someone and make a decision about if this person comes back to court. The problem when you look someone into the eye, there is all this other stuff that falls into sightline that can trigger reactions that have nothing to do with whether someone returns to court; implicit bias is a huge issue, especially with regards to race."*

This perception bore out to some extent, in that fewer BIPOC spent time in jail after the legislation went into effect. With that said, similar to many other criminal legal reform efforts, the overall reduction of these groups in jail did not translate into a reduction in disparities, which persisted in the first few years of reform rollout. Prior to bail reform, Black people were 5.3 times more likely in NYC and 5.2 more likely outside of NYC to be detained in jail compared to their non-Hispanic white counterparts *(see Figure 6)*.[34] By February 2020, one month after implementation of the legislation, disparities had increased for Black people in both NYC and across the state. The emergence of the COVID-19 pandemic only further exacerbated disparities for Black people in jail—by June 2020 they were 6.4 times more likely to be detained across the state. This can be explained by the fact that while fewer people were being held overall, the declines in pretrial detention for white individuals outpaced declines for Black individuals. While it is cause for celebration that reliance on detention has declined for all racial and ethnic groups and that these reforms have reduced the harm of incarceration generally, disparities and those continuing to suffer its consequences remain predominantly low-income BIPOC, particularly Black people.

Though many of the assessments made during interviews included overarching observations that the majority of clients on their caseloads remained from predominantly BIPOC communities, and that

DISPARITIES INCREASE DESPITE LESS PEOPLE IN DETENTION

Figure 6: Disparity Ratio in Jail Detention for Black People Compared to non-Hispanic White People



Source: Vera Institute of Justice, Empire State of Incarceration

those outcomes were still disparate, pretrial service and defense providers celebrated the wins of having fewer people held in custody overall. In Monroe County, for example, public defenders suggested that the number of people held on $200 bail—a group that was disproportionately comprised of BIPOC individuals and/or those with very few economic resources—declined significantly after the legislation took effect, calling it a "tremendous" improvement over a practice that they felt was much too common before 2020. More generally, an analysis conducted found that in the two years since bail reform, 1.9 million fewer nights had been spent in jail for those who avoided having bail set at arraignment and $104 million less had been spent by economically disadvantaged and working-class families on bail.[35]

As mentioned earlier, the mixed results in New York with respect to reducing system involvement for BIPOC is, unfortunately, not uncommon in reform efforts, even those that specifically aim to advance equity. This is due in part to misconceptions and a lack of information regarding the particular strategies that will make more significant impacts on disparities in the criminal legal system. Although stakeholders acknowledged advancing equity as a key goal of the legislation, there was little discussion during interviews about how they incorporated the goal specifically into their planning efforts or how they planned to assess and monitor the equity impacts of implementation. There was a somewhat misplaced assumption across many stakeholders that simply implementing the legislation, as written, would produce the intended results and automatically result in a reduction in racial and ethnic disparities. That conception, however, neglected that the requirements themselves may inadvertently benefit some groups over others in the way they are crafted (e.g., charges that remain bail eligible may be concentrated among BIPOC communities more so than white communities). Few stakeholders indicated that their offices had considered how the changes to their processes would impact equity in these ways, mainly due to limitations on time and resources and data capacity limitations.

Learning from New York: Recommendations to Support Successful Reform Efforts

The sheer scale of the reform effort in New York required changes across 62 counties and a diverse mix of criminal legal system agencies, from law enforcement to the judiciary. As laid out in the findings above, there was a lot of agreement among stakeholders that overall, the reforms and their intended goals were not just worthwhile but a necessary shift. With that said, the primary challenge stakeholders perceived was a lot of gaps in the guidance and support provided by NYS to local stakeholders who were responsible for putting the policy into action, and that this created significant challenges in their ability to implement the reforms. Indeed, for a number of criminal legal agencies, the legislative changes required some pretty substantial shifts in their day-to-day operations. Many agencies were thoughtful and innovative in coming up with ways to overcome the challenges they faced, though their ability to do this effectively was dependent on available resources and how closely the reforms aligned with their existing policy and practice directions. Even the experiences of counties that struggled more to meet the demands of the new policies revealed great insight into what does need to happen, both at the state level and among localities, to achieve a successful statewide rollout of a reform effort as transformative as this one.

This final section presents recommendations for planning and implementing a major statewide criminal legal reform effort, grounded in key lessons learned from the New York experience. The recommendations are primarily intended for jurisdictions that are considering or may consider in the future launching a similar type of effort, though some of them can be applied in New York even a few years into their own efforts and can help them address gaps that they are still working through, as implementation is an ongoing process. These recommendations address what can and should happen at the state level to support cities and counties in their implementation process because, ultimately, these types of reforms are a state-level effort, and the state should assume responsibility for the development and oversight of the reforms. By focusing on considerations that states and counties should make during the planning and implementation process, particularly during the early stages of planning, these recommendations address the critical period in laying a foundation for success and fostering preparedness among stakeholders. Importantly, many of them require coordination and collaboration across a variety of agencies and other partners at the state and local levels.

THE STATE-LEVEL RECOMMENDATIONS THAT EMERGED FROM THIS WORK ARE ORGANIZED UNDER FOUR BROAD OBJECTIVES:

1. **Facilitate coordination** between the state and localities, to ensure that all stakeholders voices are considered in the development, planning, and implementation of the legislation, and that they have the guidance they need;
2. **Establish mechanisms** to assess ongoing reform efforts and promote transparency;
3. **Ensure that localities have the infrastructure and resources** necessary to support their implementation efforts; and
4. **Enhance intentionality** in efforts to advance to equity.

1 FACILITATE GREATER COORDINATION BETWEEN STATE AND LOCALITIES TO ENSURE STAKEHOLDER VOICES ARE REPRESENTED

A recurring theme across local stakeholders was the perception that the legislation was developed without enough input from the practitioners who would be responsible for putting it into action and who, because of their critical operational and practical insights, could have anticipated some of the gaps and challenges that emerged during the implementation process. This was perhaps vocalized most loudly by prosecutors, who felt that the discovery provisions were finalized without a full understanding of the staffing and technological resources that they would require (and that were not built into the legislation). This sentiment was not limited to prosecutors, though—almost all of the key local stakeholder groups expressed to some extent that NYS missed opportunities to gain both an understanding of potential unintended consequences of the legislation and clarification on potential logistical and operational challenges. Local stakeholders who participated in the study felt that they were in the best position to understand the potential implications of the legislation on their work and the communities they serve, and that their perspectives early on could have made a valuable difference in how things played out on the ground further into the process. Incorporating these perspectives into the planning process would have also increased buy-in at the local level, which is critical to the success of implementation. To these points, NYS participants presented some alternative viewpoints that are also important to consider. Among them was the perspective that certain practitioners stayed away from the table intentionally and/or voiced only small concerns during the planning process, in an effort to be risk averse, realizing too late that the strategy needed work.

Beyond the perceived lack of input felt by local criminal legal stakeholders, many also felt that they did not receive enough guidance from NYS regarding how to operationalize the provisions or what kind of practical standards to enact on the ground. Participants felt that whatever guidance was provided by NYS was piecemeal in nature and did not always address the questions they had. It is possible that more was discussed between NYS officials and local agency leadership (as noted earlier, many study participants were on-the-ground line staff), but if that was the case it seemed to participants that it did not trickle down to them.

Policy champions can garner support for key provisions across political and/or other lines, and ultimately can shepherd the development and passage of a reform package with the potential for real impact.

Coordination between states and counties is critical for addressing these types of gaps, and there are a number of specific action steps that can be taken to build more collaboration and coordination into these types of planning process. This section outlines five sub-recommendations toward this objective.

1.1 Ensure Practitioner Champions are Among Those Driving Reform

For any legislative reform effort to be successful—especially one as broad in scope and scale as New York's—it needs to be driven by one or more champions who are deeply committed to the cause and have the influence to facilitate buy-in from other critical parties. These champions can be policymakers (i.e., elected legislators) or on-the-ground practitioners; while policymakers ultimately have the power to pass legislation, the buy-in of both groups is critical for ensuring that legislative bills are successfully put into practice. Policy champions can garner support for key provisions across political and/or other lines, and ultimately can shepherd the development and passage of a reform package with the potential for real impact. Practitioner champions, in turn, are critical for thinking through the implications of broad provisions on day-to-day practice; and represent the concerns and voices of local stakeholders who will ultimately be responsible for putting the reforms into practice and whose buy-in is essential.[36, 37]

In New York, both policymakers and practitioners were involved in the development of the legislation, but many of the local stakeholders who participated in this study felt that they did not have enough of a voice in the legislative planning process. They suggested this resulted in the practical operational considerations and impacts not being integrated enough into the final bill. It is possible that establishing one or more practitioner champions as recognized leaders may have changed how things played out. The field offers some examples of states that have had more apparent practitioner champions in bail reform efforts: New Jersey, in particular, had both judicial and defense leaders among those who helped shape the legislation, and these champions were able to, among other things, ensure that the legislation included funding and support for technology upgrades that were needed. Of course, New Jersey is only one example of how this can look; what is important for states to consider as they set up a planning infrastructure is the range of practitioner perspectives that are needed to create robust reform plans and to ensure that those perspectives are represented in some way in the champions that emerge.

1.2 Establish a Statewide Task Force That Includes On-the-Ground Stakeholders to Facilitate the Development and Implementation of a Reform Strategy

Giving local stakeholders a voice in the reform process is foundational to gaining their support. While having one or more practitioner champions can help facilitate this, it is also greatly beneficial to have more direct representation and involvement from the various groups that will be impacted the most by policy changes and who again have the operational insights to contribute to a more robust legislative approach. For this reason, states that embark on these types of policy reform should establish a planning and implementation task

force early on that includes local criminal legal stakeholders in addition to state-level representatives and officials. Incorporating local practitioners on a task force that is responsible for driving the development of legislative provisions and providing implementation support is perhaps the most direct way to ensure that important local operational and practical considerations are addressed by key provisions. It also provides a bigger opportunity to incorporate perspectives from a range of key stakeholder groups. At a minimum, local groups that should be represented are law enforcement, DA's offices, public defenders, judges, probation/pretrial services staff, and service providers. It would also be beneficial to include local community members with lived experience, and there may be other local stakeholders that are salient in particular local contexts as well. The composition of this group may of course also vary depending on the extent to which criminal legal system processes are centralized at the state level versus localized.

1.3 Hold Public Hearings and Listening Sessions to Gain a Deeper Understanding of Reform Implications for Different Groups

While a task force will allow for more direct representation of key local criminal legal stakeholders in decision-making processes, it still only captures a small number of direct perspectives from key groups and does not provide opportunity for a broader range of individuals to weigh in, including people who have been impacted by the criminal legal system and the general public. It is important to incorporate these perspectives as well, for a variety of reasons. Creating mechanisms for a wider range of community perspectives, for example, will put the state in a better position to understand the full range of concerns, issues, and needs that will need to be addressed on the ground as reforms rollout, and will shed more light on how needs and capacity vary across localities. Incorporating perspectives from people with lived experience, in turn, provides critical insight into how current policies and practices have impacted them, the needs that they have, and what they would like to see the reforms address to make the system work better for them and/or others. Finally, support from the general public is critical to the success of these types of reform efforts and is an essential exercise of civic engagement. CUNY ISLG's media analysis illustrates the role that the media can play in shaping public opinion and how those perceptions in turn have the potential to affect policy down the line. With this in mind, bringing the public into planning efforts early on, hearing their concerns, and providing them with clear information can benefit all parties in the long term.

These types of listening sessions and public hearings can be helpful at a number of points throughout the planning and implementation of reforms, but a particularly critical point arrives when there is a version of the policy to share that has not yet been finalized. Going through the purpose and goals, key provisions, and intended impacts will not only provide an important foundation of knowledge to each of these key groups but will allow them an opportunity to provide feedback that can be considered and incorporated as appropriate before the legislation is finalized and passed. This is standard practice in many jurisdictions—the New York City Council, for example, holds a public hearing at the second stage of any bill introduced and leaves room to incorporate feedback before it comes up for a vote—and it can go a long way in generating buy-in.

1.4 Provide Concrete Guidance and Standards to Local Jurisdictions

With any legislation as complex and multifaceted as the New York reform package, it is crucial for the state to provide guidance to local jurisdictions who are tasked with implementation. While counties and cities must be responsible for figuring out how their local practices should be adapted to

In the absence of clear standards, many local stakeholders were unsure about how to translate the broad provisions from the legislation into practical, tangible processes and protocols.

comply with key provisions, to do so effectively requires clarity on the interpretation of the provisions and, critically, where interpretation can be more flexible versus where the state has specific operational requirements and standards that must be followed. Many of the participants in CUNY ISLG's process evaluation expressed a desire for more from NYS in this area. While there was certainly some effort at the state-level to provide information about specific provisions back to counties, agencies expressed feeling like they would have liked more specifics, and sooner in the planning process. For example, probation staff in Suffolk County, which provides pretrial supervision, were unsure of the standards around whether home visits would be required for supervision as OPCA had not provided any guidance by fall 2019 and their department had received conflicting information from their county administration and OPCA in response to inquiries. This made it difficult to plan for how many additional staff might be needed to cover additional home visits in a department already spread thin. State representatives recognized that this type of guidance would have been impactful in ensuring that counties would be able to establish more robust pretrial supervision structure to support the reforms. In the absence of clear standards, many local stakeholders were unsure about how to translate the broad provisions from the legislation into practical, tangible processes and protocols. Beyond that, such standards are critical for establishing consistent practices across jurisdictions.

With respect to the forms that this guidance can take, training and written resource documents are central among them. Ideally, these resources would be developed by the state authority that oversees a given area of reform work—for example, the court would put out guidance for judges on how to interpret and apply provisions related to pretrial release decisions, and a state prosecutor's organization could create guidance around discovery practices, including strategies for managing and triaging in the face of staffing shortages and large caseloads. Given the importance of coordination and collaboration, however, it will also be critical to connect all of these stakeholder-specific efforts, many of which will overlap in substance. To that end, the task force that was recommended above—which should include local representatives, whose input will be critical—could play that role and could serve as the entity that brings various groups together to align guidance to their respective stakeholder groups, centralizes all training and resource materials, and generally coordinates and drives a larger centralized strategy for guiding the implementation of the reforms across sites. Once implementation begins, in turn, this task force could drive and coordinate various types of ongoing support to local sites and state-level partners, including: helping localities troubleshoot issues; tracking relevant case law and norms that emerge from implementation and updating resources as things evolve; facilitating ongoing coordination with state agencies; and advising the legislature on potential revisions that emerge as needs from on-the-ground experiences.

1.5 Require Counties to Set Up Their Own Feedback Loops with Key Stakeholder Groups During Implementation Planning

Many criminal legal system reform efforts represent a significant cultural shift in agency practices. In addition to ensuring that state efforts and decisions are informed by local perspectives, it is equally critical that local leaders inform their own rollout efforts with perspectives from on the

ground staff, and others who will be impacted by what they do—including those with lived experience. The state must set the example for local jurisdictions in this respect, but it would also be beneficial to require counties themselves to set up their own mechanisms for local input. This can be done within agencies to collect targeted feedback and input on the provisions that most directly affect staff, but in the case of provisions that impact multiple agencies, coordinated feedback sessions can also provide helpful insights (as well as send a message of cooperation and support across partners).

The reasons for soliciting input from on-the-ground staff are varied, and they mirror those laid out above for local input to the state. Perhaps the most obvious one is the importance of this process for buy-in. As mentioned above, local stakeholder buy-in is critical to the state because local stakeholders are responsible for driving the implementation of policies and have a great deal of influence over how much time and effort goes into that process. Line staff, in turn, are the people who actually put reforms into practice; even if a local leader is bought into a policy, it does not necessarily mean that their staff will be. Indeed, a reform as sweeping and transformative as New York's Act represents a significant culture shift for a lot of agencies and people. Local staff need to understand and feel comfortable with new policies and practices just as much as local leaders do, and they also need to feel confident that they will be supported and given the tools and resources to execute successfully. This leads into the second key reason for engaging with line staff—they have the most insight into what needs to be in place operationally to comply with new state policies, including the kinds of tools and resources that are needed for effective implementation. As demonstrated by the New York experience, broad system reforms tend to generate new needs among existing staff as they take on new responsibilities and, in some cases, an expanded volume of work on top of that. Planning and developing solutions to address these needs is essential to positioning staff to succeed. Given all of this, staff feedback is without question invaluable to the development of a robust local plan.

2 ESTABLISH MECHANISMS TO ASSESS ONGOING REFORM EFFORTS AND PROMOTE TRANSPARENCY

Building ways to monitor implementation and impacts at the state level is necessary to promote data-driven decision-making and increase transparency and collaboration among all criminal legal system stakeholders involved in the implementation effort. For any change of this magnitude, instituting a broader data-informed structure will allow the state to draw on a variety of sources to assess implementation in multiple ways and share that information back to its localities and the broader public. More specifically, state-level officials can draw on this information to:

- **Document** the areas that have been operating as intended;
- **Examine** specific points in the process where challenges are emerging;
- **Link** potential solutions to address challenges; and
- **Enhance** transparency by sharing information back to counties and agencies that are responsible for implementation of informed adjustments.

The strategy—which should be supported by state and local sources of administrative data—will enable the state to maximize its support to

localities in an ongoing and iterative fashion. This can either be as part of required mandates to centrally collect data specific to the initiative or through data that already exists to track criminal legal system activities and outcomes, as well as qualitative accounts based on the experiences of local stakeholders responsible for implementing the reforms. Of course, in order to monitor implementation and impact in all of these ways, and to truly assess progress over time, there needs to be an accurate baseline for which to make comparisons. The state should prioritize projection activities to estimate expected impacts of various provisions.

While the Statewide Taskforce recommended above to oversee the legislative effort can coordinate this data-informed structure at a higher level, the strategy should likely be owned by the state agency with access to the most complete and accurate sources of data across multiple points of the criminal legal process, a capacity to analyze and interpret the data in a systematic way, and strong partnerships with other agencies to coordinate supplemental data collection and analysis efforts. This entity or agency can serve as a data liaison for the state. For example, New York's legislation required that DCJS and OCA work together to collect and track information pertinent to different provisions of the Act so that data on all aspects of the legislation was made available to the public.[38] The entities work together to publish case-level data tracking court events and outcomes from arraignment to disposition, in addition to supplemental dashboards synthesizing key aspects of the reform. Additionally, New York pretrial services agencies are required to collect and report data to OCA about their pretrial service offerings and utilization, which is aggregated and published on OCA's website. DCJS has also reported this data back to the Governor's Office and has hosted briefings and webinars open to the public sharing insights regarding the ways in which the reform may have impacted public safety and other outcomes. This section outlines two sub-recommendations toward these objectives.

A first step is for the state to identify the key metrics and outcomes that speak most directly to the goals and objectives of the reform initiative, and the impacts they hope to achieve through its implementation.

2.1 Assess State and Local Data Capacity as it Relates to Legislative Objectives

Data-informed strategies and processes should be contemplated early in the legislative process, upon legislative passage at the very least. This will be a critical time with which to assess data capacity and availability at the state- and county-level, and to identify existing gaps and ways they can be filled. A first step is for the state to identify the key metrics and outcomes that speak most directly to the goals and objectives of the reform initiative, and the impacts they hope to achieve through its implementation. This will provide a framework by which to identify data that is available at the state level to answer these questions and additional reporting needs that will likely be established at the local level. For example, given the very local nature of criminal legal system operations, the state will need to work closely with counties and individual agencies to provide regular data reports across key areas to supplement the information the state already collects with respect to arrest, prosecution outcomes, pretrial services, key stages of the court process (including release and discovery processes), and subsequent criminal legal involvement. It will be critical that data is provided

at regular intervals so that the information is most recent and meaningful to monitoring and assessment efforts. With this data inventory established, the state can assess progress with respect to their goals of reducing jail populations, reducing racial and ethnic disparities, reducing bail setting, reducing bail amounts, and shortening case processing times, all while ensuring communities are not experiencing increases with respect to crime rates, recidivism rates, and FTA rates, among other outcomes. In addition to administrative data collection, the state should leverage the recommendations offered in the last section to ensure that quantitative information is grounded in qualitative accounts of direct experiences on the ground. This will provide critical information by which to compare numbers that do not appear to align with legislative intentions, and ways they might be addressed to get implementation back on track.

2.2 Establish a Process and Feedback Structure to Regularly Review Data for Internal and External Monitoring

Once a data framework has been developed, and a data collection plan established, a process should be set in motion to analyze and review data on a regular basis to examine the rollout of the reforms as it takes place. Through regular implementation meetings, the Taskforce can convene its members to discuss trends emerging in the data, pairing that with any observations offered by its representatives on the ground regarding the contextual factors that may be driving trends, in addition to the experiences of other local stakeholders that may be raised through the listening sessions and direct outreach that may be conducted at various inflection points throughout the process. Over time, the group may meet less frequently, but the designated data liaison agency should continue to collect and monitor the data on an ongoing basis to protect against red flags that may require more immediate action.

In addition to these internal structures, the state should consider contracting with outside research and/or policy organizations to conduct a process evaluation to document how the reform is being put into action. A study of this type—similar to the one that is the topic of this report—can identify the factors and circumstances that facilitate or hinder implementation efforts. This partnership can also serve to formalize feedback loops between the state and its localities, leveraging an objective voice to ensure information is shared bi-directionally, where the counties offer feedback on the challenges they are facing and the state shares the information it has gathered with counties as well as provides them with the relevant tools, resources, and supports to fill existing gaps; reassess aspects of their policies or practices that are not working as intended; and actively use data to inform subsequent changes. Though this recommendation is framed in terms of what the state can do to centralize data informed processes, localities can also draw on them to ensure that they are directly monitoring their own activities and practices with data and other information to get ahead of the state in making necessary changes to practice. This type of ongoing monitoring structure is important at all levels and can be useful from planning through latter stages of implementation.

3 PROVIDE LOCALITIES WITH THE FUNDING AND TIME NECESSARY TO SUPPORT IMPLEMENTATION PLANNING

This study found that one of the biggest challenges to successful implementation for counties was inadequate funding and time to support the volume of work that was required of them. Agencies needed additional money to develop new processes and/or systems, hire additional staff, and provide meaningful training to comply with the reforms. Further, counties had approximately nine months to plan for the changes, which stakeholders noted was insufficient for a change of this magnitude. Other states implementing bail reforms provided much longer runways before legislative change went into effect—Illinois and New Jersey, for example, provided more than two years to prepare for change. Beyond the sheer necessity for both of these components to be in place to ensure success, the structure and parameters around funding and associated timelines to effectively plan for the reforms must be grounded in an understanding of the varying needs of agencies tasked with implementing them, including differences in size, scope, and capacity across jurisdictions.

Stakeholders participating in this study noted that additional funding would have been helpful to take into account as they were projecting staffing, technological, and data capacity needs that were critical elements in the preparations made leading up to January 1, 2020. In addition, ample time to carry out the planning activities within each provision area would have eased some of the logistical burdens faced, which would have likely been addressed if agency stakeholders had more time to workshop different scenarios about how the changes would play out on the ground. For example, these considerations would have provided longer lead times to be able to pilot new processes to anticipate challenges and issues in advance.

Pilot periods can be critical to ensuring implementation success, particularly when there are a diverse set of counties responsible for making state-based change. Using Indiana as one example, a pilot period implemented across 10 counties around the use of a new pretrial release assessment tool uncovered several issues related to a lack of consensus and validity issues.[39] As a result, the state was able to address these issues ahead of their proposed launch date, ensuring a process that was attentive to the contexts of their individual jurisdictions.[40] Engaging stakeholders in planning efforts at the outset can provide an opportunity for the state to have a better sense of the full scope of costs that will be incurred by local agencies as they integrate the reforms into their policies, practices, and operations and the infrastructural variations across them.

While state budget processes are nuanced, often contending with their own external constraints regarding the ways funds can be allocated, there may be creative and innovative ways to support counties to better meet implementation needs either directly or through alternative mechanisms at the county level. Any funding provided at the state level, however, should consider infrastructural capacity with respect to allocation method. For example, New York created the Criminal Justice Discovery Compensation Fund in spring 2020, allocating $40 million for assistance with discovery reform implementation.[41] However, though the fund was well-intended, the money was shared among all 57 counties outside of NYC based on the proportion of total state criminal court arraignments in each county rather than the existing infrastructure the DA's offices in each county may have had to support the reforms.[42] This allocation method did not take into account the differences in

infrastructural capacity across the DA's offices, and still did not cover the magnitude of expenses incurred to make the necessary changes. If it is not possible to provide funds directly, the state should provide support and guidance to local county executives and their agencies with respect to identifying sustainable and alternative funding approaches, and provide flexible timelines with which to carry them out.

4 IMPLEMENT CONCRETE AND SPECIFIC STRATEGIES FOR ADVANCING EQUITY

Ensuring equity in pretrial decision-making was a central goal of the legislative changes given that bail decisions often resulted in the racial, ethnic, and wealth-based disparities that are common across various stages of the criminal legal system. While most stakeholders participating in the study agreed that the legislation was a major step in the right direction to address these gaps, results from the process evaluation underscored a need for intentionality at both the design and implementation phases to achieve equitable outcomes. The sense from many participants, for example, was that simply implementing the changes would have the desired effect on reducing racial, ethnic, and wealth-based disparities at pretrial decision points. However, the data from the reforms in New York suggest that disparities have in fact increased, despite declining pretrial populations *(see figures 4 & 6 above)* suggesting the legislation has fallen short of its equity goals, possibly due to a lack of intentionality or efforts beyond what was explicitly in the legislation. More detail on the issue of equity and related recommendations as they relate to the reform legislation will be covered in a forthcoming supplemental research brief by CUNY ISLG in fall 2023.

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