

Reform in Action: Appearance Tickets



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Initial Findings on Implementing Appearance Ticket Reform in New York State

November 2022

By Aimee Ouellet and Jennifer Ferone

This is the second in a series of fact sheets that unpacks different provisions of the New York Criminal Justice Reform (NYCJR) Act. These fact sheets are derived from findings that are part of a larger research project conducted by the CUNY Institute for State & Local Governance (ISLG), with support from Arnold Ventures, that seeks to understand the development and implementation of the 2020 laws across the state.¹

Introduction

The first point of contact with the criminal legal system, for most people, is through an encounter with law enforcement. In New York State, there are two main pathways officers take when making a formal arrest:

- **Appearance ticket:** A written notice to appear at an initial court hearing for an alleged criminal misdemeanor or low-level felony. Depending on the county, the individual is either issued a ticket at the scene and released to await the initial court hearing or is released after being processed and fingerprinted at the police station
- **Custodial arrest** (also known as a summary or online arrest): Results in detention for up to 24 hours prior to the initial court hearing.

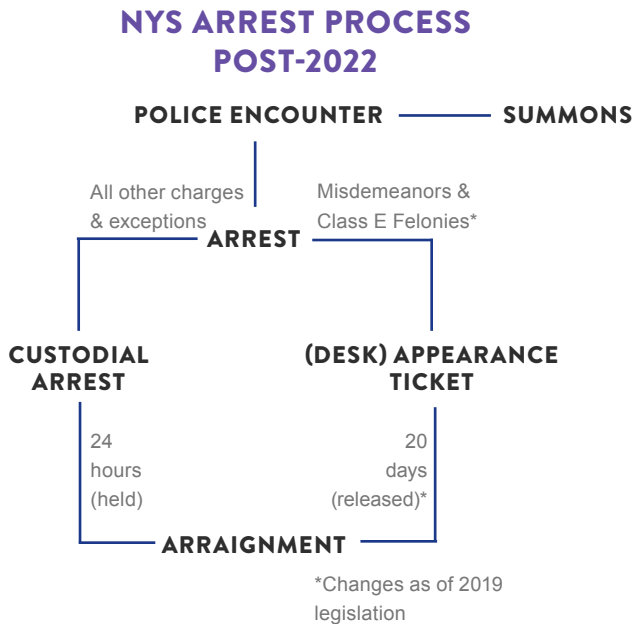
¹ An overview of the project and related briefs can be found at islg.cuny.edu/case-study-bail-reform-in-new-york

Though the 2019 changes to bail-setting practices often take center stage in discussions about the New York Criminal Justice Reform (NYCJR) Act, a supporting feature of the reforms included explicit requirements related to issuing an appearance ticket (AT). These requirements spoke to the legislation's goal of reducing reliance on detention by providing standardized guidance on ATs, which allow individuals to await resolution of their case while in the community—and stay connected to their support systems and jobs, and away from the many negative collateral impacts of incarceration.² Prior to the legislation, law enforcement officers had a significant amount of discretion when deciding whether to make an arrest and issue an AT. The legislation substantially reduced that flexibility by requiring officers to issue ATs for most misdemeanor and E felony charges with limited exceptions.

The CUNY Institute for State & Local Governance (ISLG), with support from Arnold Ventures, is conducting a process evaluation assessing implementation across various components of the legislation—including ATs, bail, pretrial services, and discovery—through a combination of interviews, focus groups, document reviews, and data analyses with criminal legal system stakeholders. This brief details our findings related to ATs, gathered from our

² Dobbie, Will, Jacob Golden, and Crystal S. Yang, "The Effects of Pre-Trial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges," *American Economic Review* 108, no. 2, Feb 2018: 201-240.

first round of data collection which spanned from the summer of 2020 through the summer of 2021; it includes discussion of amendments passed by the state in April 2020.



What did the legislation say about Appearance Tickets?

The NYCJR legislation required police officers to issue ATs for nearly all misdemeanor and E felonies, with some exceptions, and mandated return dates for those issued an AT within a strict timeline of 20 days. These expanded requirements meant that more individuals would be eligible for and issued ATs, in addition to getting to a case resolution quicker due to the mandated time limit.

How did the process change?

PRE-REFORMS

Eligibility: Varies by department policy or informal practice; police officers typically issued an AT for most misdemeanors but rarely any felonies, allowing them to weigh various factors outside of the charge in their decision to issue an AT.

Process: Individual brought into the precinct for fingerprinting and background check, then released.

Timeline: Individual released with a ticket instructing the individual to return to court on a specific date, potentially weeks or months in the future.³

POST-REFORMS

Eligibility: Police officers mandated to issue appearance tickets instead of custodial arrest when the alleged offense is a misdemeanor or class E felony, with some exceptions (see Exceptions below), aiming to reduce officer discretion by standardizing charges.

Process: Virtually unchanged.

Timeline: Individual released with a ticket instructing them to return to court on a specific date, no later than 20 days after the ticket has been issued.

³ Lu, Olive, Erica Bond, and Preeti Chauhan, *Desk Appearance Tickets in New York State in 2018* (New York: 2021, Data Collaborative For Justice) <https://datacollaborativeforjustice.org/work/low-level-enforcement-desk-appearance-tickets-in-new-york-state-in-2018/>

To understand the potential impact, the Center for Court Innovation used data from the New York City Police Department (NYPD) to project the changes on the volume of ATs after the legislation took effect on January 1, 2020. In 2018, about 40,000 DATs were issued by the NYPD. The Center predicted that had the law been in effect during the same period, there would have been a 55 percent increase in the number of ATs issued, to a total of approximately 90,000 tickets.⁴ Although the number of ATs issued in 2020 did not quite reach the projection—likely due, in part, to changes in arrest patterns during the onset of COVID-19—there was an increase in the percentage of total arrests issued ATs, from 33 percent in 2018 to 42 percent in 2020.⁵ The percentage of total arrests issued ATs in 2021 remained consistent at 42 percent.⁶

What were key stakeholders' initial reactions?

Almost all of the public defender, district attorney, pretrial service agency, and law enforcement participants largely expressed support for the overall goal of this legislative provision. Interview participants spoke about the multitude of benefits offered by the AT pathway. First, ATs allow those charged with low-level offenses to remain in the community while their case is pending; often, given the lower-level

⁴ Appearance tickets in New York City are referred to as Desk Appearance Tickets (DATs).

⁵ “Desk Appearance Ticket Arrest Analysis Data,” New York City Police Department, <https://www.nyc.gov/site/nypd/stats/reports-analysis/dat.page>

⁶ Ibid.

nature of the alleged offense, ATs are resolved early in the process, allowing stakeholders to triage cases more effectively and reserve resources for people with charges that may pose the greatest risks to community safety. Further, because individuals issued an AT are able to remain in the community, they are able to maintain ties to employment, education, and housing, and avoid the damaging effects of incarceration—which can affect even those that stay for a short period of time—and give them a greater likelihood of achieving better outcomes.⁷ Finally, creating a standardized and more streamlined practice for issuing an appearance ticket makes the officer’s job more clear-cut and promotes a more consistent and fairer process for individuals who encounter the legal system.

That said, despite the benefits described, interview participants did outline some concerns related to anticipated impacts and implementation challenges. The sections below outline the details of participant’s early expectations and how implementation of the AT provisions played out in the early reform period with respect to the goals of reducing officer discretion and limiting time between issuing a ticket and arraignment. It also describes the unforeseen impacts on potential program net widening for this population.



⁷ D’Abruzzo, Diana, “The Harmful Ripples of Pretrial Detention,” *Arnold Ventures*, March 22, 2022, <https://www.arnoldventures.org/stories/the-harmful-ripples-of-pretrial-detention>

How did the changes affect stakeholders and the perception of safety?

Despite a list of exceptions to the AT provision that allow officers to consider additional factors outside of charge based considerations, nearly all 10 law enforcement participants interviewed in the first phase of the process evaluation voiced major concerns over what they saw as a universal limit on discretion in decisions to issue an AT.⁸ Based on the interviews with these officers, it seemed as though the directives coming down from superiors emphasized mandatory issuance to all misdemeanors and E level felonies, not necessarily the exceptions, and most regarded the provision as entirely limiting their discretion. Participants underscored that removing discretion in this way led to negative impacts on public safety and limited flexibility to better meet the needs of individuals they encounter and come to know in the community, particularly individuals with extensive arrest histories or individuals they felt may need to be held in detention due to perceived threats to themselves or others.

Indeed, 9 of the 10 officers interviewed—and some prosecutors—expressed concern that basing decisions to issue an AT primarily on charge would lead to an increase in crime. Officers cited examples where they felt having more discretion would have been beneficial once the legislation went into effect, such as when they encountered individuals that have been

⁸ Please note that the New York City Police Department were not interviewed at the time of this report and will have their perspectives incorporated in future reports.

Exceptions to issuing an Appearance Ticket

- Has one or more outstanding warrants
- Has documented history of failure to appear in court
- Has been given a reasonable opportunity to make their verifiable identity and method of contact known, and has been unwilling to do so
- Is charged with a crime or offense between members of the same family or household
- Is charged with a crime involving sexual misconduct
- Should, in the officer's estimation, be brought before the court for consideration of issuance of an order of protection
- Should, in the officer's estimation, be brought before the court for consideration of court-ordered restrictions on operation of a motor vehicle
- Should, in the officer's estimation, be brought before the court for consideration of court ordered medical or mental health assessment
- Is unlikely to return to court on the return date for reasons specific to the facts of the case that the officer can articulate in the information (reasons cannot solely rely on prior criminal history or place of residence)

issued an AT multiple times in the span of days. Several officers shared scenarios in their interviews that centered on what they called a “revolving door” of AT arrests with no option but to continue to release the individual 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. In contrast, public defenders argued that the AT provisions, along with their list

of possible exceptions, left a fair amount of room for officers to use their discretion, or in some cases still too much. Despite law enforcements' concerns about the reforms connection to violence, there is not yet sufficient evidence linking these changes to crime—particularly given how other factors, such as COVID-19 and its economic and social effects, may be influencing these trends.

In an effort to address the concerns of law enforcement and prosecutors, the latest 2022 budget added three crime categories to the list of those not eligible for an AT.⁹ Those changes, not included in the initial research period, include mandating custodial arrest for:

- 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)
- Hate crimes (allegedly by an adult; most of which were already non-eligible for an AT)

How did the legislation affect time from arrest to arraignment?

Beyond charge-based requirements, the legislation also standardized the length of time a person issued an AT had to return to court for

⁹ Gerald, Chris, "How New York State Just Rolled Back Criminal Justice Reforms," *New York Focus*, April 9, 2022, <https://www.nysfocus.com/2022/04/09/hochul-criminal-justice-budget-roundup/>

arraignment. This change was meant to make case processing more efficient. Further, coupling AT charge standardization with new timeline requirements streamlined decision-making by triaging cases so lower-level offenses may be resolved more quickly, freeing stakeholders to focus on more serious offenses. This new timeline specified an arraignment date set no later than 20 days from time of their 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.¹⁰ While the shortened timeline was not a major concern in theory, logistics became challenging outside of NYC, primarily due to decentralized arraignment structures. According to one public defender and one law enforcement officer in counties outside the city, the shortened timeline to arraign someone was problematic and logistically impossible given that some town and village courts only meet every few weeks or once a month. Upstate stakeholders interviewed said this issue, along with other components of the legislation, demonstrated how legislators were primarily thinking of NYC when the legislation was crafted and neglected the wide variation between NYC and other counties in the state. To address these concerns, and others that emerged in the early days of the legislation, amendments were passed that adjusted language to make exceptions for varying court scheduled sessions.¹¹

To defense stakeholders, the truncated timeline was generally seen as beneficial to clients; however, some interviewed said they had increased difficulty engaging clients prior to arraignment. Pretrial services agency stakeholders expressed similar concerns, suggesting that the new 20-day timeline made

¹⁰ Koppel, Stephen, David Topel, and Katie Bent-Koerick, *Annual Report 2019* (New York: New York Criminal Justice Agency, 2021, <https://www.nycja.org/publications/annual-report-2019>)

¹¹ NYS CPL § 150.40

it extremely difficult for individuals to participate in and complete pre-arraignment diversion programming. This was particularly challenging in NYC, where pre-arraignment diversion programs require providers to reach individuals and coordinate, schedule, and engage them in programming before arraignment. Early amendments addressed this issue by creating an exception for appearance ticket return dates to be later if the person is enrolled in pre-arraignment diversion, but only if granted permission by the court.¹² The timeline challenges were further compounded at the onset of COVID-19, where court closures meant an AT court date backlog.

Were there any unintended consequences?

As expected, there was a substantial increase in the volume of ATs issued in the first three months of 2020 after the legislation took effect. In addition to an increase in ATs, some stakeholders noticed

¹². Ibid.

an influx of people issued ATs assigned to pretrial services and community-based agencies for services. This concerned stakeholders because the AT population, usually comprised of those with lower-level offenses and in less need of supervision, are not typically served by these types of programs. This left service providers, particularly in NYC, concerned about “net-widening,” or expanded control over those who do not need it. The interviewees said that assigning individuals issued ATs to supervision was a contradiction to the legislation, as its goal was to reduce the amount of interaction those with ATs had with the legal system. Assigning this population to these programs could potentially produce unnecessary burdens and disruptions that may lead to violations of the conditions of supervision and further legal involvement. Stakeholders emphasized that administering programming to individuals who do not fit the target population is not a good use of resources. While these concerns of the potential for net-widening were voiced, more data is needed to determine whether these concerns were in fact realized.



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