

Beyond the Big Apple: The Impact of Bail Reform in Upstate, Central, and Western New York

Project Narrative

New York's new bail laws include provisions that mandate pretrial release, limit conditions of pretrial supervision, and impose more affordable forms of bail. As potentially one of the most far-reaching pieces of bail reform legislation passed in recent history, the opportunity for evaluation and measuring impact is profound. There is an urgent need to carefully monitor the implementation of the reforms so that successes can be noted, challenges can be addressed, and the unintended consequences can be readily spotted.

It is particularly important to develop a nuanced understanding of bail reform in counties outside of New York City—home to over 8 million New Yorkers and over 1,300 courts that process half of all arrests statewide. These parts of New York receive much less attention than downstate, which is why Vera will study the statewide impact of the new bail reforms with a focus on upstate, central, and western New York. We will (1) evaluate the law's impact on jail populations statewide; and (2) conduct site-based research in 6 counties outside of New York City to examine the impact on pretrial release and bail practices. Through this research, we will provide state and local policy makers, practitioners, and the public with a clear understanding of the impact of these reforms. We will also draw lessons for a national audience, particularly other states considering pretrial reform and closely watching to learn from New York's experience.

Part 1. Statewide Analysis of Jail Population

We will examine how front-end reforms, at arrest and arraignment, impact back-end outcomes, including the use of jails for pretrial detention and sentenced populations. Certain provisions of the new laws, including the use of appearance tickets, mandatory pretrial release on many misdemeanor and non-violent felony charges, and the consideration of ability to pay in cases that still qualify for bail, will likely have an impact on the number of people in jail—both in terms of admissions and length of stay. We would like to examine the impact of the new reforms on the statewide jail population using deidentified individual-level records obtained through data sharing agreements with county sheriffs' offices, monthly jail census reports provided by the New York State Division of Criminal Justice Services (NYS DCJS), and New York State and New York City Open Data. Using these combined data sources, we will:

1. Examine the change in jail admissions and daily jail population by custody status, charge, admission and discharge type after the implementation of the laws.
2. Examine the change in the length of stay after the implementation of the laws and how these changes differ by charge, admission, and discharge type.
3. Explore whether the impact of the legislative changes have disparate impacts across demographic groups, with a particular focus on race and ethnicity.
4. Compare and explore the characteristics of people detained pretrial before January 2020 and those detained pretrial after January 2020.
5. Explore the average amount of bail set and the length of time it takes for people to make bail.
6. Examine if these changes differ by county as well as between New York City and the rest of the state.

Part 2. Site-based Analysis of Pretrial Release and Bail Decisions in Six Counties

We will conduct an in-depth study in six counties to examine the impact of the new law on pretrial release, bail decisions, and subsequent court appearance and pretrial detention. Site selection will be finalized in the first three months of the project, but we hope to partner with a range of counties. Our target partners are Albany, Broome, Cortland, Erie, Greene, and Oneida counties based on regional diversity, size, and a variety of local criminal justice practices, including counsel at first appearance and centralized arraignment parts. We will collect data from local courts including city, town, and village courts to examine changes in decision-making at different

discretion points in the pretrial process. We will supplement court data with data from additional local sources including law enforcement, pretrial services providers, public defenders, assigned counsel, and prosecutors in the six counties.

For this site-specific part of the research, our project goals include:

Aim 1: Examine the impact of the new laws on pretrial release. The new law eliminates the use of money bail and mandates release for the majority of charges. Beyond this, the new law requires judges to consider the least restrictive means to ensure a person's appearance in court. We will compare counts and rates of release on recognizance and release under supervision between the pre-implementation period and post-implementation period in each county. We will examine any disparities in the types of conditions imposed on different demographic groups, including the use of electronic monitoring. We will also examine the effect of those pretrial decisions on court appearance and pretrial re-arrest rates.

Aim 2: Examine the impact of the new laws on bail setting and bail making. Money bail is still an option in the vast majority of violent felonies, some non-violent felonies, and limited misdemeanor charges under the new law. However, the legislation attempts to ensure that the use of bail is less onerous by requiring judges to consider a person's ability to pay and to utilize partially secured or unsecured bond options. We will examine changes in the forms and amounts of bail set, bail making, and length of pretrial detention before bail is posted between the pre-implementation period and post-implementation period. We will also examine how courtroom actors including judges, public defenders, and prosecutors interpret the new ability to pay provisions and change their practices accordingly.

Aim 3: Examine the impact of the new laws on failure to appear and re-arrest. Under the new law, judges may only issue a bench warrant for failure to appear after a 48-hour grace period and may only revoke pretrial release after a hearing if the person is found to willfully and persistently fail to appear for the purposes of avoiding prosecution. To examine the impact of these two provisions, we will compare the rates of pretrial noncompliance and the rates of pretrial detention between the pre- and post-implementation period. We will also examine what conditions courts set after revoking release and how courtroom actors define "willful and persistent" failure to appear.

Aim 4: Examine the perceived impact of the new laws by system actors and people impacted by the system. We will also apply qualitative research methods (e.g., interviews and court observations) to understand nuances in the implementation of the new laws and its impact. These methods will elucidate the process of implementing the new laws, provide insights on the perceived benefits and limitations of the reform, and identify any obstacles to successful implementation from the perspective of local stakeholders, including people who are directly impacted by justice system involvement. Through court observations, we will explore how system actors such as judges, prosecutors, and defense attorneys exercise their discretion in the use of risk assessment instrument and other tools to impose pretrial conditions and assess ability to pay. By analyzing transcribed interviews, we will identify common themes surfaced from multiple participants and explore differences across jurisdictions and system actors.

Aim 5: Examine the indirect effects of the law on arrests, sentencing and dispositions. We will also examine whether there are any unexpected and indirect impacts of the new laws on arrests, sentencing, and dispositions. We will explore the changes in the patterns of arrest to better understand how law enforcement may be changing their practices in response to this law. In addition, we will explore how cases are disposed and sentenced compared to similar cases before implementation. Although the law does not affect these practices directly, we want to monitor changes in these outcomes to see if the law has any indirect effect on "upstream" and "downstream" junctures in the life of a case.