Evaluating Bail Reform in New York's Justice Courts

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Executive Summary

New York's landmark 2019 bail reforms were intended to reduce pretrial detention, restrict the role of money in determining whether people are released or detained, and address racial disparities in pretrial outcomes. The law's central provision designated most misdemeanor and nonviolent felony charges as ineligible for bail and pretrial detention. When setting bail, the law further directed judges to consider individuals' financial ability to post it. The law went into effect on January 1, 2020. Subsequent amendments made more cases eligible for bail but did not change the essential structure of the reform.

This study examines pretrial decision making, dispositions, and sentences in a sample of New York's underexamined Town & Village Justice Courts in the two years before and two years after bail reform implementation. It is a companion to research published by the Data Collaborative for Justice (DCJ), which is investigating bail reform in the state's City and District Courts, and it follows a report from the Finn Institute with baseline information on Justice Courts' bail decisions before the reform law went into effect.

About New York's Justice Courts

The state's approximately 1,200 Justice Courts have jurisdiction over felony and misdemeanor arraignments when the alleged offense took place inside the boundaries of New York's many rural or suburban towns and villages. Justice Courts are vestiges of post-colonial local courts and have limited accountability to the state's Unified Court System. They are not courts of record, and their proceedings and decisions are not reported to the state's Office of Court Administration, as City and County Courts are required to do. While Justice Courts' decisions affect many people, they are almost hidden in plain sight, and are frequently overlooked in discussions of reform, justice, and public safety.

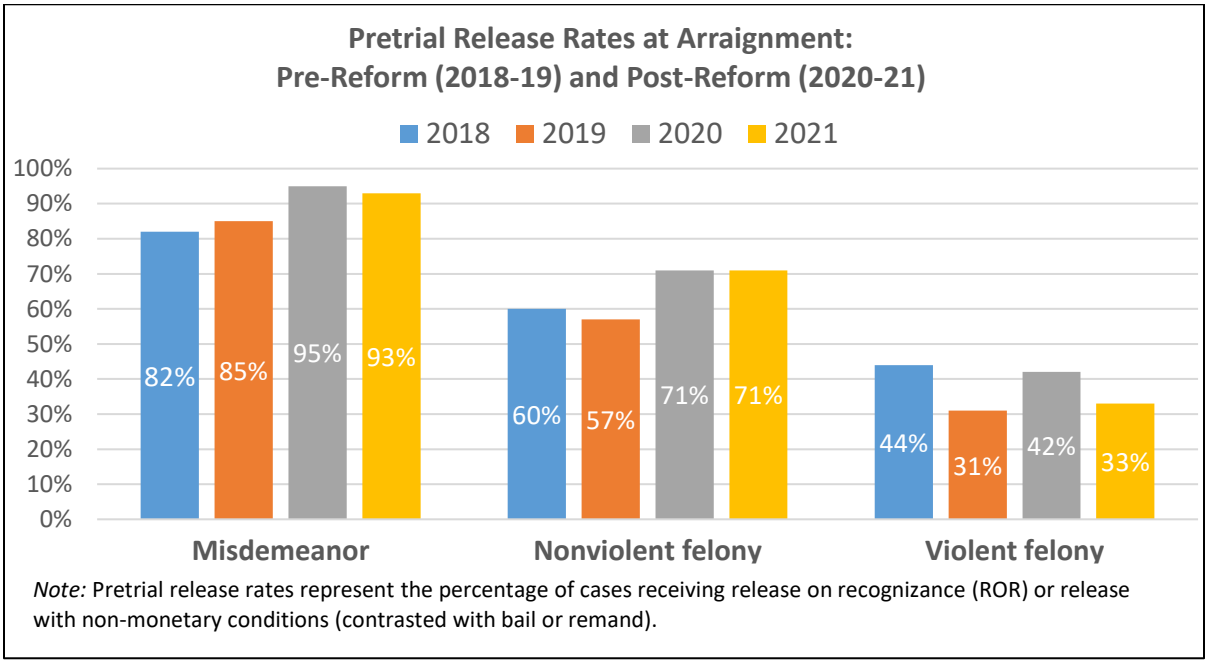
Purpose of the Current Study

This study addresses the gap in public knowledge about Justice Courts' bail practices by analyzing case data in five (anonymized) New York counties. Two of these counties are predominantly urban and suburban, while the other three counties are homes to small cities surrounded by sparsely populated rural towns. Across these counties, the Justice Courts and City Courts arraigned about the same number of cases. Justice Courts' caseloads included more misdemeanors (77% vs. 70%) and a smaller

share of violent felonies (4% vs. 10%), with nonviolent felonies making up the difference (about 20% of the caseload in both types of courts).

Major Findings

Pretrial Release Decisions: From the pre-reform to the post-reform years, judges released a higher percentage of cases without bail among misdemeanors (82% in 2018 vs. 93% in 2021) and nonviolent felonies (59% in 2018 vs. 71% in 2021). Very few violent felony charges had bail eliminated in the 2019 reforms, and release rates for violent felonies fluctuated from year-to-year, without a consistent directional pattern.



Note: Pretrial release rates represent the percentage of cases receiving release on recognizance (ROR) or release with non-monetary conditions (contrasted with bail or remand).

Racial Disparities in Release Rates: Unlike **prior studies** pointing to the unintended consequence of growing racial disparities in rates of release after bail reform went into effect in the state's City Courts, release rates were similar across racial and ethnic groups in the five counties' Justice Courts. Differences between Black and white people were marginal across all years. (In the second half of 2021, the Black-white difference in release rates was 2 percentage points or less for both misdemeanors and felonies.) Hispanic people were less likely than other racial/ethnic groups to be released in 2018 but slightly more likely to be released post-reform. In short, widely studied patterns of racial disparity in arrest and arraignment practices did not appear to be exacerbated by the arraignment process in the Justice Courts under study.

Bail Amounts and Bail Posting: **Echoing prior research** on the state's City and District Courts, bail amounts did *not* become more affordable, and people did *not* become more

likely to post bail, despite provisions in the reform law requiring judges to consider individuals' financial circumstances. Among people with bail set on misdemeanor charges, a smaller percentage saw cash bail amounts at or under $1,000 after the reforms went into effect (56% in 2018-2019 vs. 32% 2020-2021). Correspondingly, a smaller percentage of people could post bail within 24 hours (37% in 2018-2019 vs. 11% in 2020-2021). Shifts were more modest among felonies. Among nonviolent felonies, 15% of cases had bail set at or below $1000 in both the pre- and post-reform years.

Case Dispositions: Among felonies, bail reform did not appear to have a significant effect on Justice Courts' case dispositions, whether they were for violent or nonviolent charges. Among misdemeanors, bail reform was associated with modest *increases* in dismissals (including adjournments in contemplation of dismissal) over time. Rates of dismissals increased from 25% in 2018 to just under 35% in 2021. However, due to the overlap of bail reform implementation with the COVID-19 pandemic, it is not possible to draw a causal link between rising misdemeanor case dismissals and bail reform.

Sentencing: Higher release rates may have downstream consequences for sentencing. In cases targeted by bail reform, sentence severity declined. Among misdemeanors resulting in conviction, jail sentences declined from 11% in 2018 to 6% in 2021. Among nonviolent felonies, jail or prison sentences declined from 42% in 2018 to 30% in 2021. These results trend in the expected direction—less severe sentences corresponding with less use of pretrial detention under reform; yet we cannot establish a definite causal link.

Comparing Justice Courts to City Courts: Both Justice Courts and City Courts in the five counties experienced higher release rates after reform went into effect. It is also true that both pre- and post-reform, Justice Courts released people somewhat *more* often than did the City Courts. By 2021, less than 7% of people charged with misdemeanors were detained in the Justice Courts compared to 11% in the urban City Courts and 13% in the small City Courts from the same counties. To summarize, all four types of courts confirmed the expectation that reform would result in lower rates of pretrial detention. What was not expected was that Justice Courts set bail or remanded people to jail somewhat *less* often than City Courts both before and after the reforms went into effect.

Timing of Bail Reform Impacts: Consistent with prior research, analysis suggests that changes in bail decisions and case outcomes, including release without bail, dispositions, and sentences, began sometime in the second half of 2019, before the reform law went into effect in January 2020. At least in part, this is likely attributable to courts' preparation for bail reform implementation in mid-2019.

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Chapter 1. Introduction: Reform in New York's Justice Courts

In April 2019, the New York State Legislature passed laws that addressed pretrial decisions made by judges, prosecutors, and defense lawyers. The law's central provision reduced judicial discretion in setting bail as a condition of pretrial release at arraignment. The law designated most misdemeanor and nonviolent felony charges as ineligible for bail and pretrial detention. Even for charges that remained bail-eligible, the law also established a presumption of community release at arraignment except when individuals posed a demonstrable flight risk. The law further directed judges, when setting bail, to take into account individuals' financial ability to post bail. The law went into effect on January 1, 2020, and applied to all trial courts in the state.[1]

The reforms recognized that use of cash bail can result in unnecessary pretrial detention. People who are detained may suffer not only the deprivations and risks of even brief incarceration, but also potential job loss, loss of contact and support from family and friends, interruption of education, and reduced capacity to assist their lawyers in their own defense. In addition, pretrial detention can serve to coerce people to accept plea agreements they might have wished to contest had they been at liberty while the charges against them were pending. Therefore, bail reform may have implications for dispositions and sentences imposed at the end of a case.

This study examines pretrial decision making, dispositions, and sentences in a sample of New York's Justice Courts in the two years before and two years following implementation of these reforms. It is a companion to reports published by the Data Collaborative for Justice (DCJ) at John Jay College of Criminal Justice, which is investigating bail reform in the state's City and District Courts.[2] It follows a 2022 report by the Finn Institute that examined patterns of Justice Courts' arraignment and bail decisions before the law went into effect,[3] generating baseline information on which this report builds.

Why Investigate New York's Justice Courts?

New York state's City Courts, which operate in 52 of the state's 62 counties, have been well represented in studies of criminal pretrial practices, bookended by the Vera Institute's investigation of bail decisions in Manhattan in the 1960s, and the recent Data Collaborative for Justice reports on contemporary bail reform changes across the state.[4]

Prior research can inform policy and practice, but it has almost invariably omitted the state's Justice Courts.[5] As a result, many policymakers, researchers, and state

residents are not well informed about their functions or even their existence. Yet they play a significant role in criminal adjudication. It has been estimated that they process over two million criminal and civil matters per year, and that most citizens' only experience with the justice system will begin and end in one of these courts.[6]

There are more than 1,200 Justice Courts in the state's 57 counties outside New York City.[7] City Courts' jurisdiction is defined by city limits; outside those limits, counties are divided into towns, which include widely varying numbers of villages. All towns have a Justice Court, often designated as Town Court, and about half of villages have their own Village Courts.

In New York criminal adjudication is processed at two levels. County Courts adjudicate felony charges, while City Courts and Justice Courts arraign all felony and misdemeanor charges within their jurisdictions, and they adjudicate and sentence misdemeanor and violation cases.[8] Like City Courts, Justice Courts also handle small claims and landlord-tenant disputes. When needed, Justice Court judges fill in for counties' Family Court judges when those courts are not in session.

Justice Courts are vestiges of New York's post-colonial magistrate courts, which were intended to provide prompt local justice in both criminal and civil matters,[9] and they have remained largely untethered to the Unified Court System established by the state in 1977. They differ from City Courts in important ways. Candidates for City Court judgeships must be admitted to practice in the state bar for at least five years, but there are no educational or professional requirements for Justice Court candidates, and most of them are not lawyers.[10] City Court judges must retire at age 70; there is no age limit for Justice Court judges. Justice Court judgeships (and Justice Court clerks) are part-time positions, and court sessions are typically scheduled for afternoons and evenings.

While some larger Justice Courts are in session daily, most hold sessions one or two days a week, and a few hear cases as seldom as twice each month.[11] Many Justice Courts are housed not in courthouses, but in post offices, fire stations, and all-purpose town buildings. Justice Courts are not courts of record, so their judges are not obligated to keep formal written records of their proceedings.[12] Finally, unlike City and District Courts, Justice Courts are primarily funded by town and village revenue, not state appropriations, and they retain significant shares of the fines and fees that they impose on people.[13]

While Justice Courts' settings have often been characterized as rural and remote, many serve predominantly suburban populations.[14] Although many Justice Courts have small caseloads, some process more cases each year than City Courts within their

counties.[15] Outside of New York City and Long Island (which relies on a mix of District, City, and Justice Courts), over 70% of the state's population reside under the jurisdiction of town and village Justice Courts. Twenty counties have no City Courts at all.

For at least a century, the Justice Courts have been the target of criticism and calls for reform, based on the arguments that all judges should have formal legal training, that there is little accountability for their decisions, and that their administration of the law differs from what occurs in City Courts. No fewer than four state commissions have advanced proposals that involved restructuring or replacement of the Justice Courts: Wickersham in 1931; Tweed in 1953; Dominick in 1973; and the Special Commission on the Future of New York State Courts in 2008. But none of these efforts resulted in significant changes, and it remains the case that much of what we know about Justice Courts' operations is based on anecdotes and speculation, not systematic empirical analysis.

To summarize: Because Justice Courts are not courts of record, and do not report data on case details to state agencies, their work is nearly invisible to policymakers and the public.

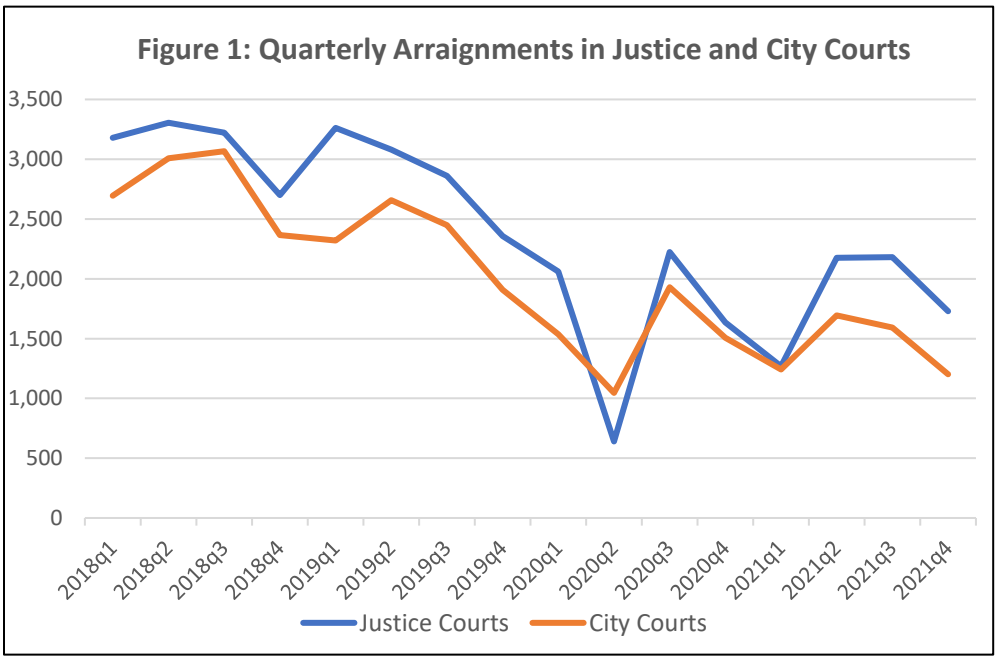
Research Questions

This report addresses the gap in public knowledge about Justice Court operations by gathering and analyzing data for such courts in five (anonymized) counties. We examine how judges' decisions in Justice Courts changed following the implementation of bail reform and compare these decisions with those of City Courts in the same counties. This report addresses the following questions:

1. Did arraignment decisions and outcomes – release, bail setting and bail amounts, bail posting, and levels of pretrial detention – change after bail reform was implemented? How were these decisions and outcomes associated with charge class (seriousness) and types of charges?
2. Did arraignment decisions have downstream effects on dispositions and sentences?
3. Did bail reform result in changes in racial and ethnic disparity in arraignments?
4. In the aggregate, did Justice Court arraignment outcomes resemble, or differ from, City Courts within the same counties?

Setting the Context: Changing Justice Court Caseloads

The implementation of bail reform took place amid significant changes in court caseloads. Generally mirroring trends found across the state, Figure 1 reports the number of arraignments in the five counties selected for the current study from 2018 through 2021. During those years, Justice Courts in these counties arraigned 31,408 misdemeanor and felony cases, and City Courts arraigned 30,551 cases (that had dispositions by early 2023). In every quarter except April-June 2020, Justice Courts arraigned more cases than City Courts in the same counties. While the highest number of Justice Court arraignments occurred in the second quarter of 2018, and the highest City Court arraignment count was in the second quarter of 2018, it is apparent that total arraignments, in both types of courts, were declining throughout 2019.



Distributions of these charge classes differ somewhat between Justice and City Courts. Justice Court arraignments included 4% violent felonies, 19% nonviolent felonies, and 77% misdemeanors, and this distribution was very stable over the four years. In City Courts, about 10% of arraignments were on violent felony charges, about 20% were on nonviolent felony charges, and about 70% were misdemeanors.

Chapter 2. Research Methodology: Sites and Data Collection

Research Sites and Data

Potential research sites were evaluated on three criteria: (1) representation of the diversity of counties (and their Justice Courts) across the state, (2) availability of case records that could be coded into useable and consistent data, and (3) key agency actors' willingness to participate in the study. Table 1 summarizes characteristics of the five counties included in the study. Data were extracted from the case management systems and paper files provided by indigent defense providers, district attorneys, and county sheriff's offices. The approximately 120 Justice Courts in these counties comprise about 10% of such courts across the states.

Two counties (identified below as counties D and E) are predominantly urban and suburban. Three counties (A, B and C) are homes to small cities surrounded by sparsely populated rural towns. Data were collected from criminal justice agencies within each county during multiple site visits. These data sources included District Attorney case files, Public Defender case files, and county jail records. In all sites, analysis of quantitative data was complemented by interviews, monitoring of local news coverage, and feedback on preliminary results from criminal justice practitioners.

We coded data on cases that were arraigned from January 1, 2018 through December 31, 2021. Though bail reform was adopted in 2019 and went into effect in 2020, we include data from 2018. In all sites, criminal justice practitioners told us that their agencies began adapting to the January 2020 start date by summer or fall 2019, so 2019 data alone may not accurately capture practices before formal implementation.

Cases were included if they were disposed by spring of 2023,[16] in compliance with Public Defenders' requests that we retain data only on closed cases. We retained cases involving new charges, excluding those that dealt with changes in legal status from previous cases (e.g., parole and probation violations, declarations of delinquency following conditional discharges, sex offender registry and residency hearings, and re-sentencing). We also excluded cases involving people under the age of 18.

In this report we distinguish between violent felony charges, nonviolent felony charges, and misdemeanors, in keeping with the reform legislation's distinctions. We include violent felony charges in order to provide contrast with the classes of cases that were subject to the bail legislation.[17] (Additionally, the reforms made ineligible for bail

certain subdivisions of burglary in the second degree and robbery in the second degree, both technically violent felony charges.)

Table 1: Characteristics of Site Counties

County	Demography	Primary Data Sources	Number of City Courts	Number of Justice Courts	Town Population Estimate	Population Per Square Mile
A	Rural/ Small City	Indigent defense program, sheriff	1	~25	65%	100
B	Rural/ Small City	Indigent defense program	2	~20	70%	150
C	Rural/ Small City	Indigent defense program	2	~25	85%	350
D	Suburban/ Large City	District Attorney, sheriff	1	~30	70%	600
E	Suburban/ Large City	Indigent defense program	1	~25	70%	1000

Caveats and Limitations

We acknowledge that these data have limitations. First, we note that the data in four counties were accessed from indigent defense program files, so they include only the caseloads handled by those offices' attorneys. It is commonly estimated that 85% or more of people charged with crime are eligible for, and represented by, those providers, but our samples are missing the small number of people affluent enough to pay for representation.[18]

Second, by restricting the data to cases that were closed out by early 2023, we are missing some cases, primarily from 2021, that were still open when we made our last data collection efforts. While in 2018 and 2019 about 90% of cases closed within a year of arraignment, those figures were lower for cases that were arraigned during 2020 and 2021. Practitioners in these sites attributed these longer times to disposition largely to the COVID pandemic's impact on the court system.

Third, we did not have access to person-level data that might render a misdemeanor or nonviolent felony case bail-qualified, such as a current open warrant or case. We also relied on what court actors designated as the "top charge," but it is possible that while a top charge was not bail qualified, a secondary charge was.

Fourth, we recommend caution in attributing ***causality*** to empirical associations between bail reform and court outcomes. The bail reform legislation also (1) changed standards for arrests, requiring appearance tickets rather than custodial arrests in most misdemeanors and E felonies, (2) required that people arrested on appearance tickets receive notification reminders of their next appearance dates, and (3) included overdue changes in discovery laws that expanded prosecutors' responsibility for turning over evidence. The reforms were also, in part, predicated on the existence of detention alternatives, such as pretrial supervision, that may be unavailable, particularly in small and rural counties. Researchers are only beginning to document the implementation and impacts of these new policies, and to assess how they complement, or perhaps complicate, the specific goals of bail reform.

Fifth, of course, just ten weeks after the laws went into effect in January 2020, the COVID-19 pandemic led to sudden shutdowns in most sectors of society, including the justice system. All New York courts were closed, and Justice Courts remained closed or partially closed longer than City Courts. In all sites this led to delayed prosecution and disposition, reductions in access to pretrial supervision and services, and efforts to reduce jail populations for public health reasons. It also resulted in a shift to remote video (rather than in-person) arraignments – a process seldom used in New York up to that point.

Lastly, on some of the outcomes measured here, changes seem to have begun before January 2020 and even before the legislation was passed, which suggests that there may have been other factors leading to new decision patterns, not merely legislative reform. With those caveats, we turn to analysis of decisions and outcomes.

Chapter 3. Impact of Reform on Bail Decisions and Outcomes

New York's bail reform legislation broadly designated bail-qualified cases by charge class: violent felonies, nonviolent felonies, and misdemeanors.[19] With limited exceptions, violent felony charges remained bail-eligible, which allowed judges to consider setting bail for the purpose of ensuring returns for court appearances. The law established a presumption of release in all other cases unless there was a demonstrated risk of flight; where such risk exists, judges can impose non-monetary conditions such as pretrial supervision and, if the case is bail-eligible, have the option to set bail if deemed necessary.[20]

Non-Monetary Release, Bail, and Remand and Charge Class

Table 2 summarizes release decisions for Justice Courts for each year by charge class.[21] We distinguished between judges' decisions to (1) release with no conditions or with non-monetary conditions[22] (2) set bail, or (3) remand to jail. In Table 2 we also combined bail and remand numbers to calculate the percentage of cases in which people faced the *possibility* (not only the certainty) of pretrial detention at arraignment: "*Bail or remand*."

Table 2: Justice Court Release Decisions by Charge Class

	Violent felonies				**Nonviolent felonies**				**Misdemeanors**			
	2018	**2019**	**2020**	**2021**	**2018**	**2019**	**2020**	**2021**	**2018**	**2019**	**2020**	**2021**
Released	44%	31%	42%	33%	59%	57%	71%	71%	82%	85%	95%	93%
Bail set	46%	61%	45%	53%	34%	35%	20%	9%	17%	14%	5%	6%
Remanded	10%	8%	13%	13%	6%	8%	9%	14%	1%	1%	1%	1%
Bail or remand	***56%***	***69%***	***58%***	***66%***	***40%***	***43%***	***29%***	***23%***	***18%***	***15%***	***6%***	***7%***

For both nonviolent felonies and misdemeanors, the percentages of people facing potential or certain detention (*bail or remand*) were steady in the pre-reform years. About 16% of misdemeanors had bail set or were remanded to jail, and about 42% of nonviolent felony cases resulted in that outcome. By 2021 those percentages decreased to 7% of misdemeanors and 23% of nonviolent felony cases. In violent felony cases, bail/remand cases made up a majority of cases, fluctuating between 56% and 69% across the four years represented, with no apparent decrease over time.

Non-Monetary Release Across Specific Common Charges

Aggregate analyses of cases by charge severity offers some insight into changes in pretrial decision patterns. Here we take another approach to assessing change, by examining a sample of the most common specific charges in the data. We identified the six most common misdemeanor charges, the four most common nonviolent felony charges, and the three most common violent felony charges in Justice Court arraignments.[23] These were defined by title and charge class in the New York Penal and Vehicle and Traffic Law codes.[24] The charges analyzed here constitute 67% of all arraignments in the data.[25]

Common Specific Charges
Violent felony charges:
- **Criminal possession of a weapon 2nd, class C**
- **Assault 2nd, class D**
- **Burglary 2nd, class C**

Nonviolent felony charges:
- **Criminal possession of controlled substance 3rd, class B**
- **Burglary 3rd, class D**
- **Grand larceny 4th, class E**
- **Driving while intoxicated, class E**

Misdemeanor charges:
- **Petit larceny**
- **Trespass 3rd and trespass 2nd**
- **Criminal mischief 4th**

Vehicle and traffic law charges
Assault 3rd and menacing 2nd

Figure 2.a reports results for the three violent felony charges: assault in the second degree, weapon possession in the second degree, and burglary in the second degree. In early 2018 those charges had release rates of 50% to 60%. By 2021 release rates had risen slightly for assault, but had fallen for weapon possession (from 60% to 35%) and for burglary (60% to 45%). This would suggest that bail reform did not exert a spillover effect on these cases. Notably, many cases implicating the second subdivision of burglary in the second degree had the option to set bail eliminated by the reform law; it was one of just two violent felony charges seeing the elimination of bail.

Nonetheless, cumulative release rates modestly declined instead of increasing for this burglary charge.[26]

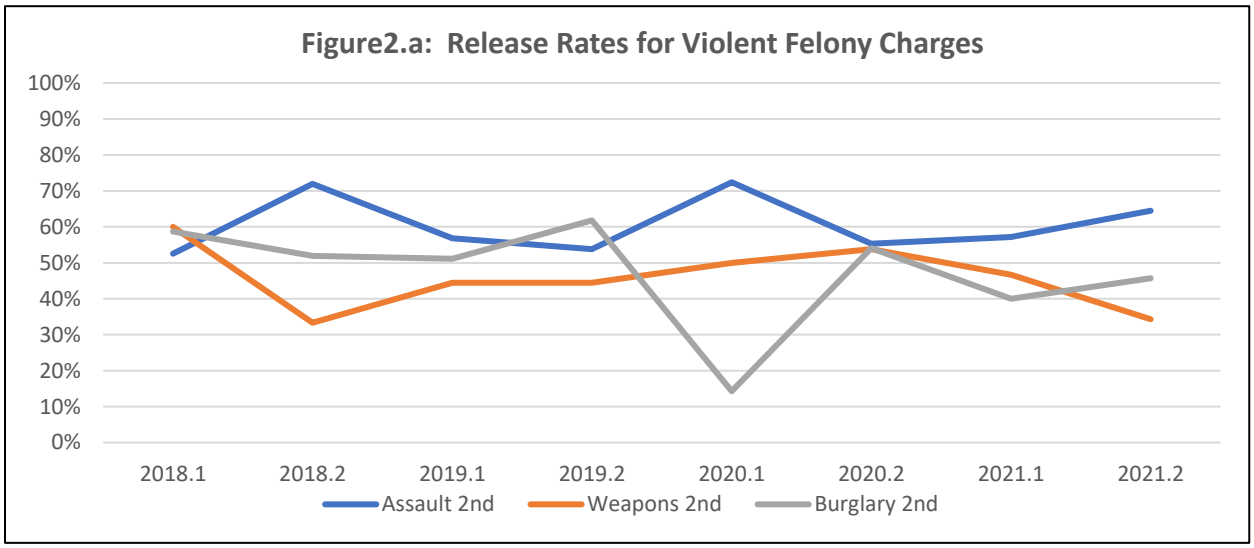
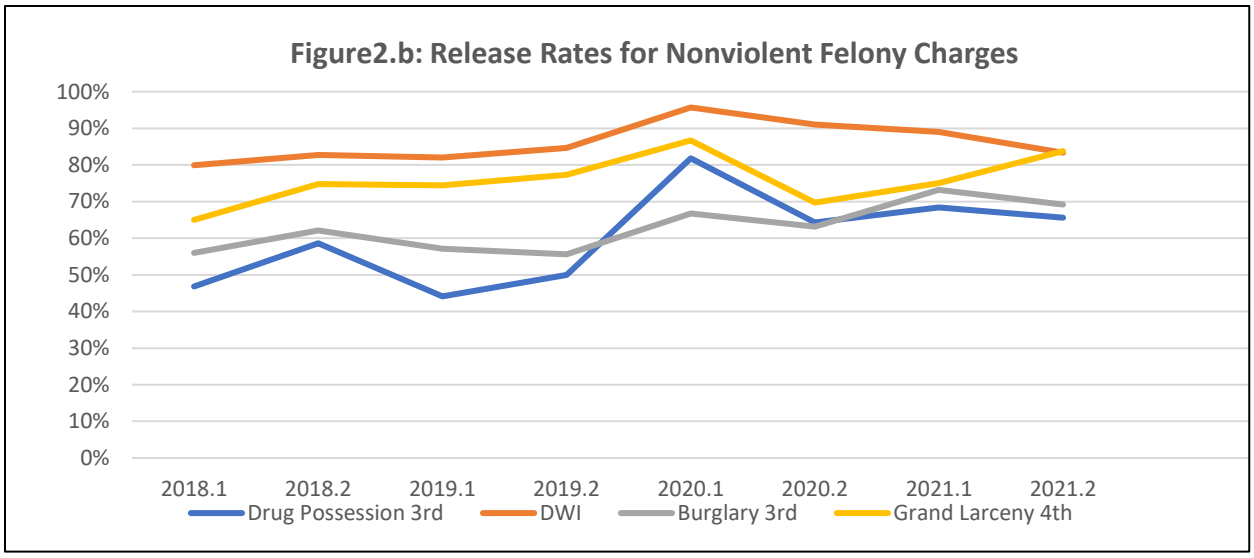
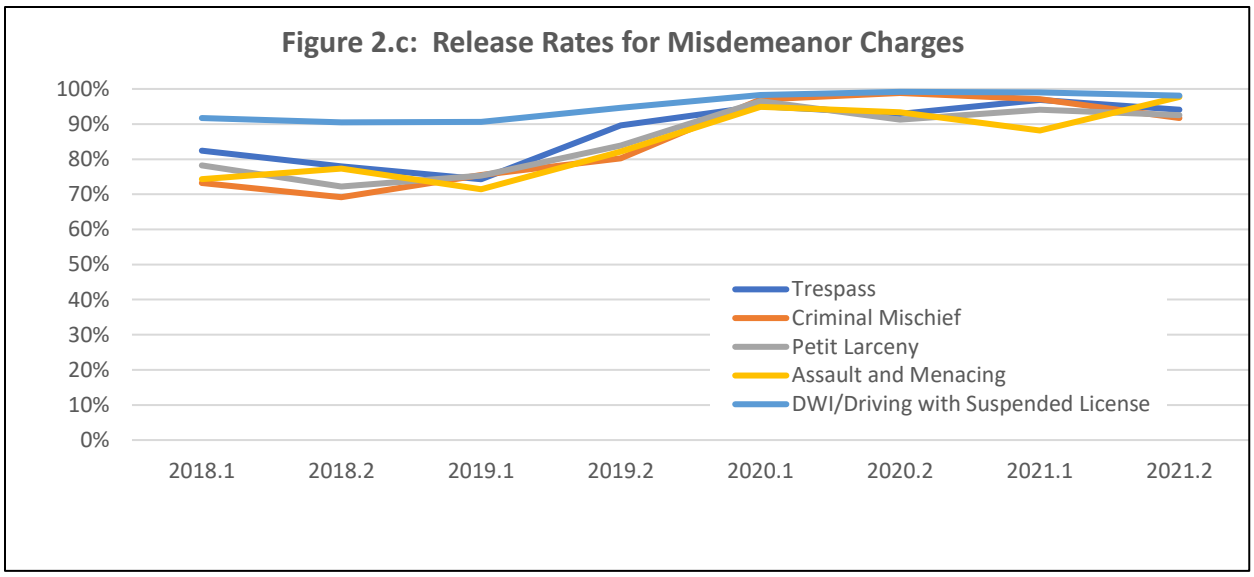


Figure 2.b reports release rates for four nonviolent felony charges: possession of a controlled substance in the third degree, burglary in the third degree, grand larceny in the fourth degree, and DWI. The latter two charges, the least serious in the group, had release rates of 65% and 80% in 2018, respectively; they converged at 84% by 2021. Burglary release rates also rose from 57% to 70% in that time period. Possession of controlled substances showed steady release rates of about 50% through 2018 and 2019, which increased to 69% by 2021. We note that Table 2 reported that 61% of all nonviolent felonies were released in 2018, a figure that rose to 71% by 2021. It appears that the likelihood of release in these cases is not uniform across charges, although the disparities in release across these common charges was reduced after bail reform.

Figure 2.c reports release rates (on recognizance or under supervision) for the five most common misdemeanor offenses: trespass, criminal mischief, petit larceny, assault/menacing, and two common vehicle/traffic law (VTL) offenses (misdemeanor DWI and driving with suspended license). Release rates for these offenses varied by about 10% in early 2018 (73% to 83%), and they rose significantly by early 2020. They converged at about 94% by the latter half of 2021. Over 90% of VTL arraignments ended in release in 2018 and that rate rose to nearly 100% by 2021. Most striking, assault and menacing charges resulted in release in about 75% of cases, but that rate rose to over 90% by 2022. Again, these results are consistent with what we would expect if bail reform were implemented with fidelity.





Summary: Over time, the misdemeanor charges tracked together with rising release rates, and disparities in release rates across specific misdemeanor charges were reduced. On the other hand, release in nonviolent felony charges showed more modest increases, and a significant minority of those charges did not result in release. As one would expect, release in violent felony charges remained steady.

Bail Amounts Before and After Reform

Among people facing nonviolent felony and misdemeanor charges, fewer faced the prospect of pretrial detention after bail reform was implemented. Given this finding,

it would not be surprising to find that average bail amounts increased in 2020 and 2021, if those cases presented more serious circumstances such as domestic violence and orders of protection, or evidence of previous failures to appear. On the other hand, bail reform legislation included a directive to judges to take into account, for those individuals on whom bail was set, financial ability to post bail at arraignment. The legislation also required judges to permit bail payment through either a partially secured or unsecured bond, the former of which requires only 10% of the total bail amount to be paid up front and the latter of which requires no up-front payment.

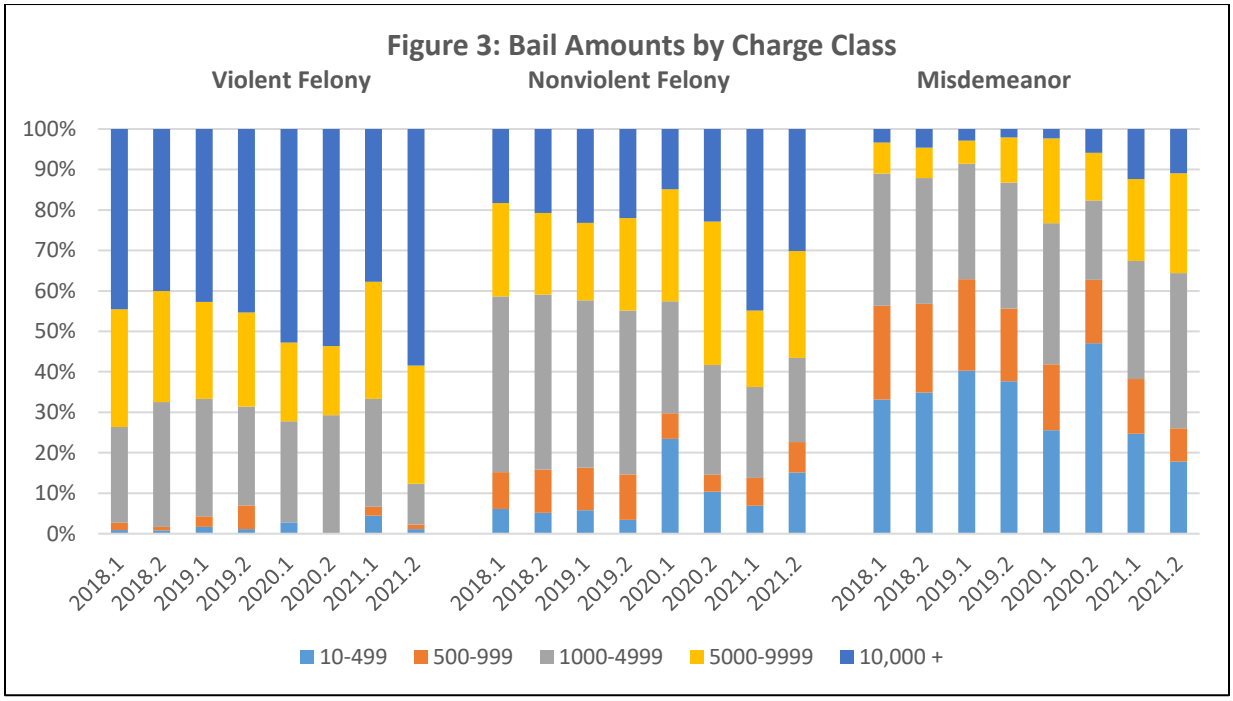
Figure 3 reports Justice Courts' bail amounts for violent felonies, nonviolent felonies, and misdemeanors in six-month periods from 2018 to 2021. (Bail amounts were coded from public defender, district attorney, and jail booking records and reflect cash bail amounts; when included in those records, insurance company bond amounts were typically twice the amount of cash bail, and information on other types of bond was not typically recorded.) We operationalized bail amount as a categorical variable: $10-$499 (18%), $500-$999 (14%), $1000-$4999 (33%), $5000-$9999 (17%), and $10,000 and above (18%). These categories approximated somewhat equal proportions of all bail decisions across the sites. They also reflect what we learned in conversations with defense lawyers about their clients' thresholds of affordability. Defense attorneys, across sites, believed that $500-$1000 was the maximum bail that most of their clients could produce at or shortly after arraignment.

Bail amounts increased for all three levels of charges in Justice Courts. The modal bail amount in violent felony cases was $10,000 or more - 43% of cases prior to reform, but rising to 52% in 2020-2021.1. By the second half of 2021 almost 90% of bails set exceeded $5000. This is an unexpected result, given the finding that, over time, violent felony cases maintained rather steady rates of release, bail setting, and remand, alongside a new legislative mandate for judges to consider people's financial circumstances in all cases, which might point to lower instead of higher bail amounts

In nonviolent felony cases higher bail also became more common following implementation of reform. Bail over $5000 increased from 40% to 60% of cases. This is consistent with the reduction in the number of cases where bail was set – presumably those cases that resulted in release after reform (but would have had bail set before) have, in judges' eyes, lower risk for failure to appear. On average, misdemeanor bails were set much lower than felony bails – 35% were set at or below $500 in 2018 and 2019 – but as with felonies, post-reform misdemeanor bails were set at higher levels. During 2018-19 13% of bails exceeded $5000; by 2021, 32% exceeded that level.

Using public defenders' estimates of what would constitute the outer range of affordable bail – bail under $1000 – very few people charged with violent felonies had bail set at these amounts (5% or less). The percentage of cases involving nonviolent felony charges that fall in this category rose from 15% to 23%, but the percentage of misdemeanor cases in this bail category dropped from 56% to 26%.

Summary: In both violent and nonviolent felonies, bail amounts were high before and after reforms were in place and shifted over time, and generally in the direction of higher bails. In misdemeanor cases, bail amounts were less high, overall, but also grew relatively higher after the implementation of the reforms.

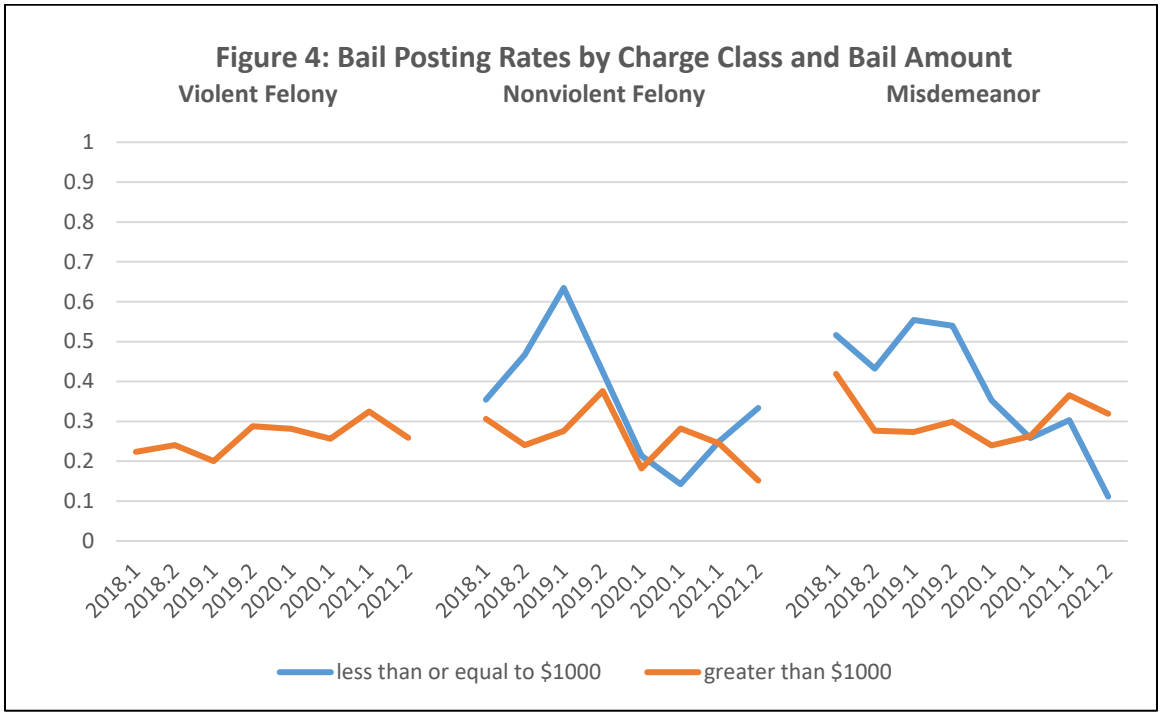


Bail Posting

The reforms were intended to make posting bail more accessible by setting bail amounts commensurate with individuals' ability to pay bail. However, the law did not stipulate a process or guidelines for judges to follow in assessing financial capacity. In four of the counties, the data are drawn from indigent defense providers' files. While counties' practices in determining indigency for legal representation vary, we might reasonably assume that most public defense clients are indigent. How faithfully have courts adopted processes that make posting bail possible?

Figure 4 reports the percentages of people who, among those for whom bail was set, succeeded in posting bail at or very shortly after arraignment. It distinguishes

between bails set at or below $1000, and those set above $1000. We operationalized posting bail as a record that an individual (1) had bail set but was at liberty within 24 hours, or (2) had bail set and was in custody after 24 hours.[27] We compare six-month periods from 2018 through 2021. Violent felony case bails at or below $1000 are excluded from Figure 4 because there were two few such cases to include.



Generally, as one would expect, rates of posting bail are lower at the higher bail amounts. In violent felonies, rates of posting bail ranged from 20% to 30%, and modestly increased over time.

In nonviolent felonies, where bail setting rates dropped from 35% before reform to about 10% after, rates of posting lower bail (less than or equal to $1000) fell following reform. A somewhat similar pattern emerges in misdemeanor charges. Few people had bail set in these cases after reform (approximately 15% in 2018 and 2019, and 5% in 2020 and 2021), but those who did were less likely to post bail promptly in 2021, compared with 2018. In both nonviolent felony and misdemeanor arraignments, people facing bails of more than $1000 were less likely to post, though that pattern is less pronounced.

We infer that people who failed to post bail lacked the resources to do so; we do not know how, if at all, judges would have rigorously assessed that.[28] In four of the five counties, however, all of the people in the data had been assessed as eligible for indigent defense services, sometimes by the judges making bail decisions, pointing to

some level of awareness among judges that they were setting bail people were unlikely to pay.

Summary: Rates of bail posting in violent felony cases, where almost all bails exceed $1000, varied between 20% and 30% over time. For nonviolent felonies and misdemeanors, while far fewer people had bail set, smaller percentages of them posted bail after reform, a trend more pronounced in cases with lower bails.

Racial Disparities in Bail Decisions and Outcomes

Long before bail reform went into effect, advocates and experts had documented racial disparities at many points in the criminal adjudication process. Insofar as racial and ethnic minorities are economically disadvantaged at higher rates than white people, they are more likely to suffer the adverse consequences of cash bail practices. By sharply reducing the use of cash bail, race-based disparities in pretrial detention and case processing might be mitigated.

Data on people's race and ethnicity were available in three of the five counties, and we limited analysis to those counties (C, D and E).[29] We operationalized racial and ethnic identity in three categories: Black, Hispanic, and white, and analyzed release at arraignment for nonviolent felony and misdemeanor charges. (Violent felony cases were omitted from this analysis due to very small cell sizes in some categories.)

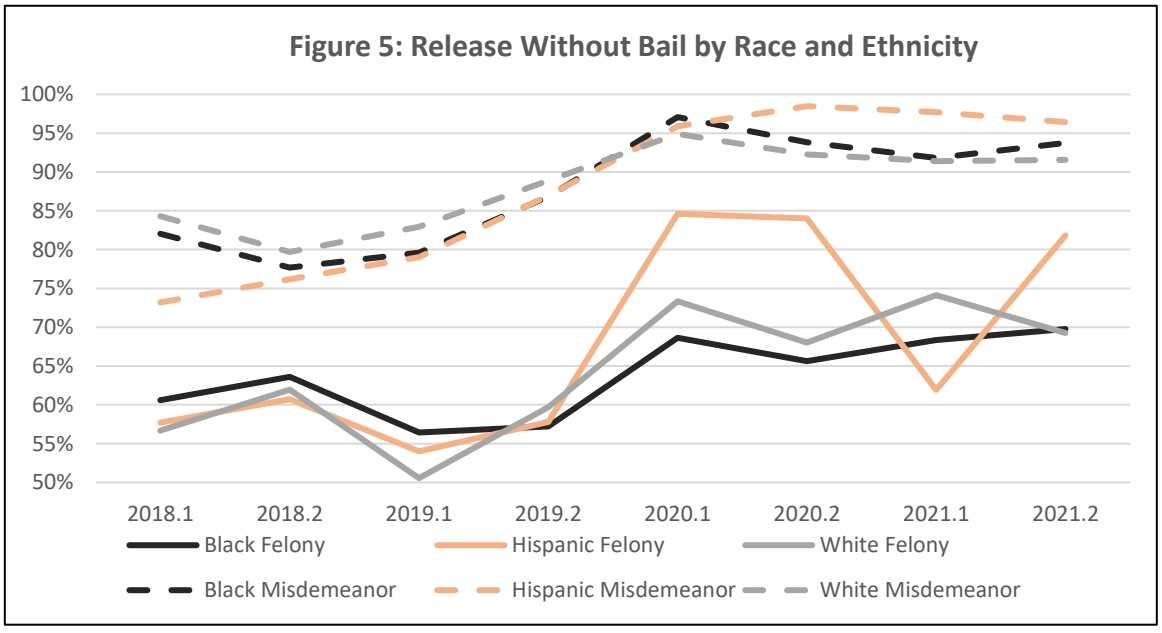


Figure 5 reports data on race and bail outcomes for nonviolent felony and misdemeanor arraignments in Justice Courts, again in six-month periods. In Justice Court nonviolent felony arraignments in 2018 and 2019, release rates were similar for Black and white people. The trendline for Hispanic people is less stable, but largely aligns with the lines for Black and White people. Misdemeanor arraignments for Black and white people were also equally likely to result in release throughout the study period; Hispanic people were less likely in 2018 to be released, but slightly more likely post-reform. We note that analyses of other bail outcomes addressed here – remand rates, bail amounts, bail posting rates – exhibit similar patterns (results available from authors).

Summary: There is a great deal of research on criminal justice practices that identifies patterns of racial disparity in arrest and arraignment practices, but it did not appear to be exacerbated by the arraignment process in the Justice Courts as we have measured it here, either before or after the reforms went into effect.

Chapter 4. Impact on Dispositions and Sentencing

Reducing pretrial detention was the primary objective of the bail reform legislation, but justice advocates and defense lawyers also expected that a reduction in pretrial detention would result in downstream consequences for case dispositions and sentences. They suggested that people who are released, rather than detained, would have more favorable outcomes in the short run and the long run, including avoiding the direct and collateral consequences of a jail stay, retaining social and familial support, and remaining in jobs or educational programs. It may also be the case that being at liberty increases one's ability to collaborate with lawyers on defense, and the opportunity to demonstrate one's candidacy for diversion or charge reduction.

We cannot measure those factors with these data, but we can measure the outcomes of these prosecutions, comparing the consequences of being detained or at liberty. One might expect that, to the extent bail reform was implemented, data from post-reform years would show larger proportions of cases resulting in dismissals (and adjournments in contemplation of dismissals), and perhaps in more cases being disposed with guilty pleas to lower charges. If that were the case, we would also expect sentencing patterns to change over time as well.

Dispositions Over Time

Figure 6 reports dispositions, before and after bail reform, for violent felonies, nonviolent felonies, and misdemeanors in Justice Courts. We measured dispositions as

(1) dismissal of all charges: judges' dismissals of charges, prosecutors' withdrawal of charges, and the rare trial exonerations;

(2) adjournment in contemplation of dismissals (ACD): a conditional dismissal of charges, contingent on a period of time (usually six months) of complying with judges' conditions and the requirement to follow the law, resulting in no criminal record and sealing of the case;

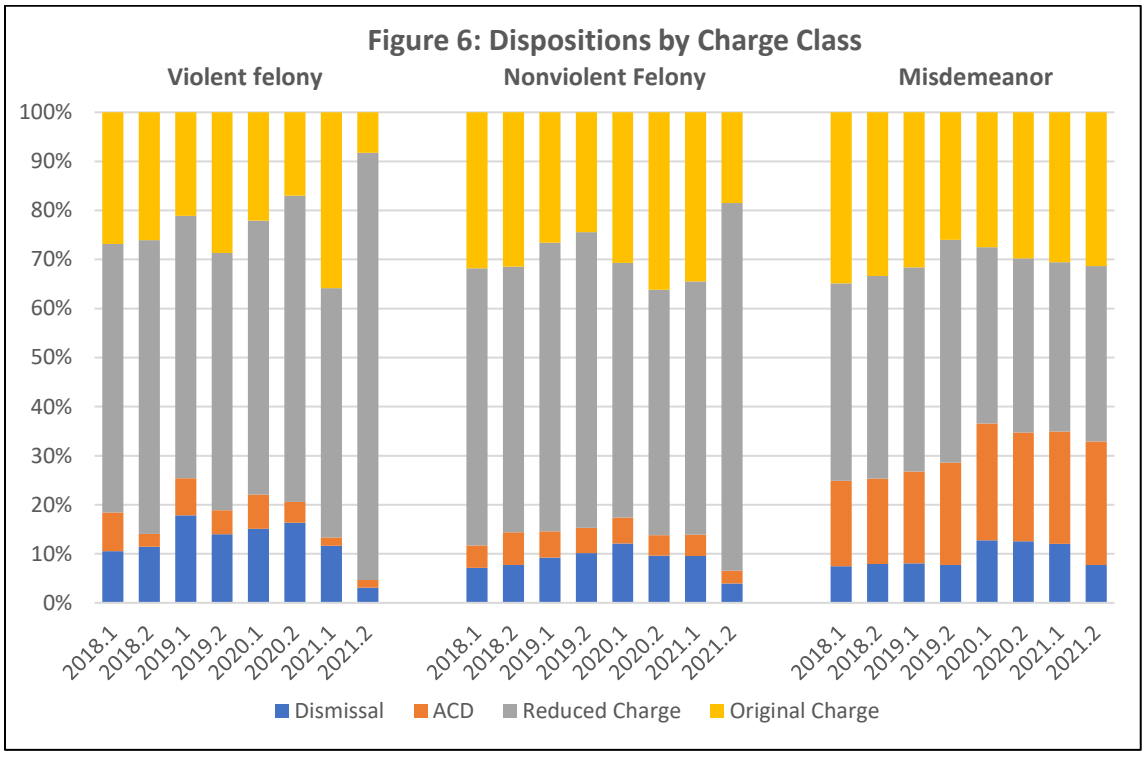
(3) finding of guilt on reduced charges; felony to misdemeanor, and misdemeanor to violation (violations are offenses that are not crimes, and typically involve a fine); and

(4) finding of guilt on original top charge: typically from a guilty plea, very seldom by bench or jury trial.

From the perspective of the individuals facing charges, the most favorable disposition would, of course, be dismissal on all charges, though ACD (adjournment in contemplation of dismissal) is a near equivalent, inasmuch as it usually results in

complete dismissal and sealing of the case. In violent felony cases, about 20% of pre-reform cases resulted in those outcomes, though that percentage declined in 2021. That year also marks a significant increase in convictions on reduced (misdemeanor) charges.

In nonviolent felony cases, we observe a parallel shift toward lower dismissal and ACD rates, and an increase in charge reductions. In misdemeanor cases, a different pattern emerges: together, dismissals and ACDs rose from 25% to about 35% by 2021. Conviction on misdemeanor charges hovered between 34% in 2018 and 31% in 2021.



Summary: Results from nonviolent felonies do not quite fit the pattern one might expect if bail reform had altered the conditions in which dispositions are made; in fact, violent felony and nonviolent felony case patterns look quite similar over time. Misdemeanor dispositions changed somewhat, due to increases in dismissals and ACDs in 2020. Among misdemeanor dispositions in 2020 and 2021, about a third resulted in dismissal (including ACD) compared to consistently less than 30% in 2018 and 2019.

Sentencing Over Time

Because many cases had multiple sentence components (e.g., probation and fine), we operationalized the most severe sentence at disposition to align with the categories used by the New York Division of Criminal Justices Services in reporting court data: (1) prison sentence, (2) jail sentence, (3) probation, (4) financial penalties (fines, fees, and surcharges), and (5) conditional discharge. In New York law, a conditional discharge is a finding of guilt, resulting in a criminal record, with a suspension of other legally possible penalties, such as a jail sentence, for people who adhere to court conditions, which might include obeying an order of protection or paying restitution. We note that in 15% of cases, none of those specific sentences was recorded from drop-down data fields in case management systems, but information on other sentences was sometimes included in free-field entries. However, these entries included a heterogeneous set of sanctions, including license revocation, community service, restitution, behavioral health treatment, but also time served, and probation and parole revocation. We excluded these cases from analysis.

Figure 7 depicts sentencing outcomes in Justice Court cases, for those cases that resulted in convictions. It is important to note that data in Figure 7 are classified by arraignment charges, not final charges (for those cases in which charges were reduced). Cases that were dismissed or adjourned in contemplation of dismissal are not included in these analyses.

The results suggest that sentencing severity declined over time in nonviolent felony and misdemeanor cases. Nonviolent convictions resulted in incarceration in about 40% of cases in 2018 but that percentage dropped to 31% in 2021. More strikingly, the use of conditional discharges more than doubled over the four years, from 17% to 41% of cases.

Misdemeanor cases show a similar trend: jail sentences became less common, and conditional discharges (as well as unspecified sentences) increased. Throughout the four years, financial penalties were the most frequently imposed sentence, for about 60% of cases across the years.

Summary: Analysis of sentencing, more sharply than that of dispositions, indicates a shift toward less severe sanctions over four years, for those classes of cases targeted by bail reform.

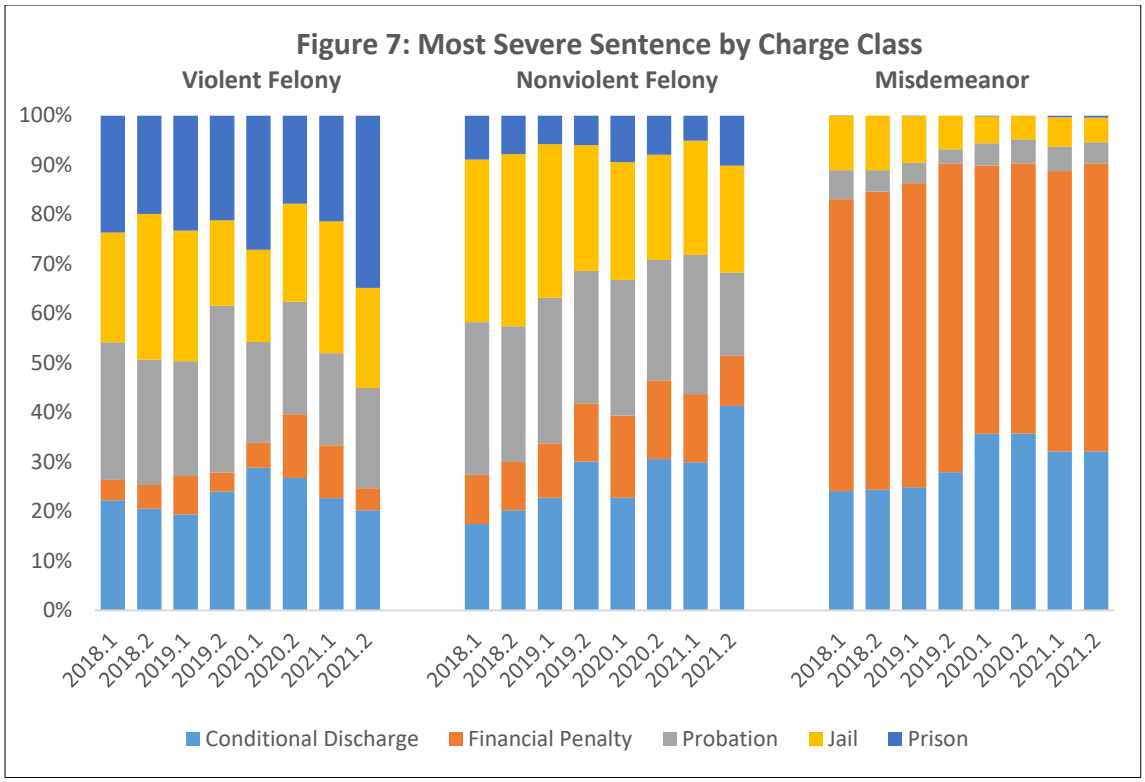


Figure 7: Most Severe Sentence by Charge Class
Violent Felony
Nonviolent Felony
Misdemeanor
100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
2018.1
2018.2
2019.1
2019.2
2020.1
2020.2
2021.1
2021.2
Conditional Discharge
Financial Penalty
Probation
Jail
Prison

Chapter 5. Reform in Context: Release Outcomes in Justice and City Courts

Thus far, we have reported on Justice Courts' implementation of the 2019 reforms, and the possible consequences of the reforms for dispositions and sentencing. In the absence of empirical studies, many professionals and policymakers have argued that the Justice Courts provide inferior justice – that their judges are ill-informed and sometimes biased, that their practices can disadvantage people who come before them, and that they are not held accountable for their outcomes. Implicit in those criticisms, of course, is the assumption that they operate differently from, and less effectively than, the City Courts in their counties.

In this chapter, we compare City Courts' and Justice Courts' processing of misdemeanor arraignments. We make an additional distinction between Justice Courts and City Courts by also comparing their county settings. The five counties include two that have one large city served by a City Court with more than 100,000 residents, and multiple Justice Courts serving largely suburban towns and villages. The remaining three counties are largely rural, with one or two small cities (and City Courts), surrounded by rural towns and villages served by Justice Courts.

The analyses below report outcomes for each of these four demographic settings: rural Justice Courts, suburban Justice Courts, small City Courts, and urban City Courts. We ask these questions about misdemeanor bail decisions, dispositions, and sentences:

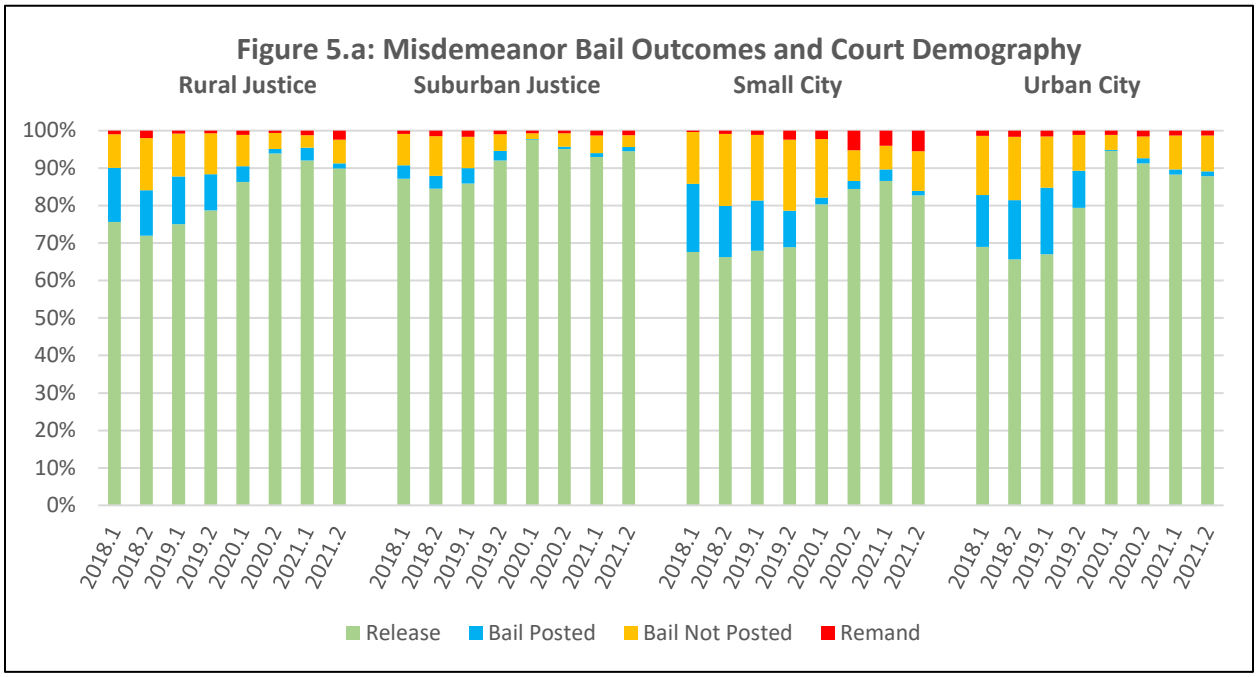
- How comparable were these four sets of courts in 2018, the year before bail reform was passed?
- How much, if at all, did these courts change over the four years? Did those changes reflect reformers' expectations?

Bail Decisions and Pretrial Detention

Figure 5.a reports misdemeanor bail outcomes for six-month periods. For this analysis we operationalized bail outcomes as a composite measure that distinguishes between release without money bail, bail set and posted promptly, bail set but not posted, and remand to jail without bail.

In 2018, more than 65% of people arraigned in each type of court were released without money bail. However, suburban Justice Court judges were significantly more likely to release people than either small or urban City Courts (85% vs. 67% in City Courts). Rural Justice Court judges were slightly more likely to release people as well in comparison to both types of City Courts. In 2018, 10% of people arraigned in suburban

Justice Courts were detained by remand or inability to post bail; those percentages were 12% for rural Justice Courts, and about 17% for both small and urban City Courts.



All four types of courts show changes in 2020 and 2021 among misdemeanors. By 2021, less than 7% of people were detained in the Justice Courts compared to 11% in the urban City Courts and 13% in the small City Courts. All four types of courts confirmed the expectation that reform would result in lower rates of pretrial detention. What was not expected was that, while these differences were not large, at the margins Justice Courts appeared less restrictive than City Courts in setting bail both before and after reforms went into effect. (It is also possible that the modest observed differences stem from the types of misdemeanors seen in each jurisdiction.)

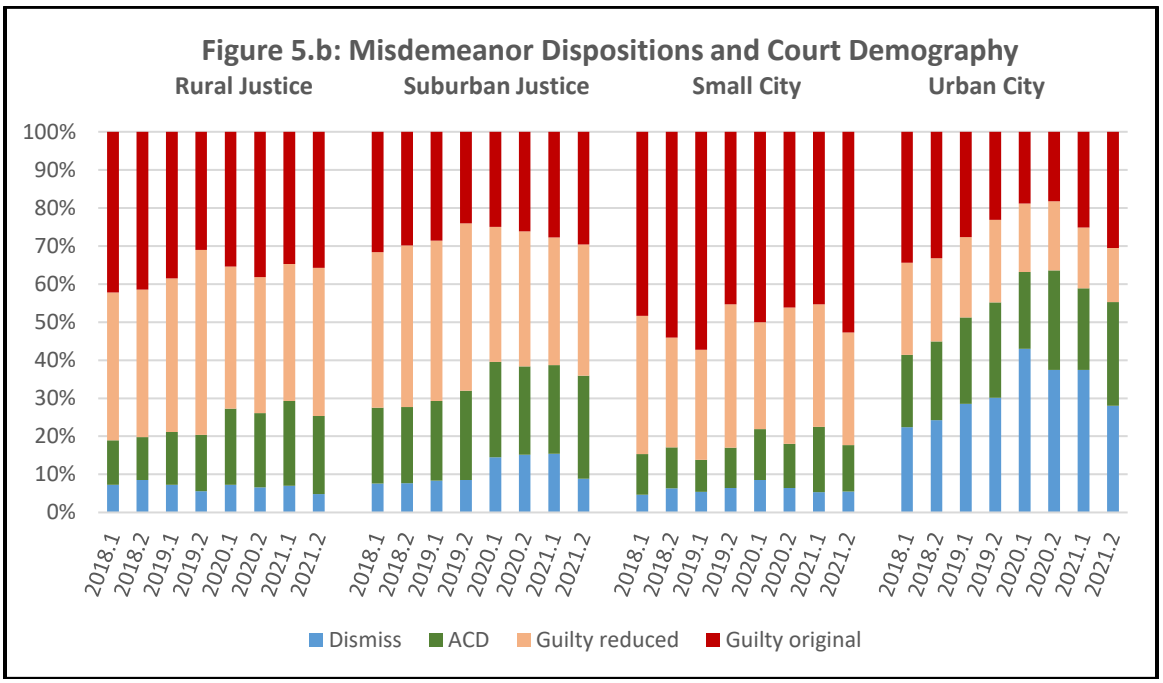
Dispositions

Figure 5.b reports disposition patterns across the four types of courts, distinguishing between dismissals, adjournment in contemplation of dismissal (a typically six-month period after which charges are dismissed), determination of guilt on a reduced charge, and determination of guilt on the original charge. In the misdemeanor cases under study, all reduced charge cases entail conviction on a violation, an offense that may carry a fine but does not create a criminal record.

In all four types of courts, convictions on misdemeanor charges (rather than reductions to violations) declined slightly during the middle of this time period (late

2019 and early 2020), but then returned to original levels. Those levels were highest in the small City courts in rural counties, where about 50% of cases resulted in convictions on misdemeanors in 2018. Perhaps the more notable development, particularly in urban City Courts, is the increase in dismissals. The rates of dismissals are low and fairly stable in both sets of Justice Courts and in smaller City Courts, ranging from 5% to 15% over the four years. But in large City Courts they climb from 22% in 2018 to a high of 43% in early 2020, then dropping back to about 35% in 2021.

Significantly, we find no evidence that Justice Courts' dispositions are more severe than those of City Courts; instead, they appear more consistent across rural and suburban settings, with patterns that are less severe than small City Courts, and less lenient than urban City Courts.



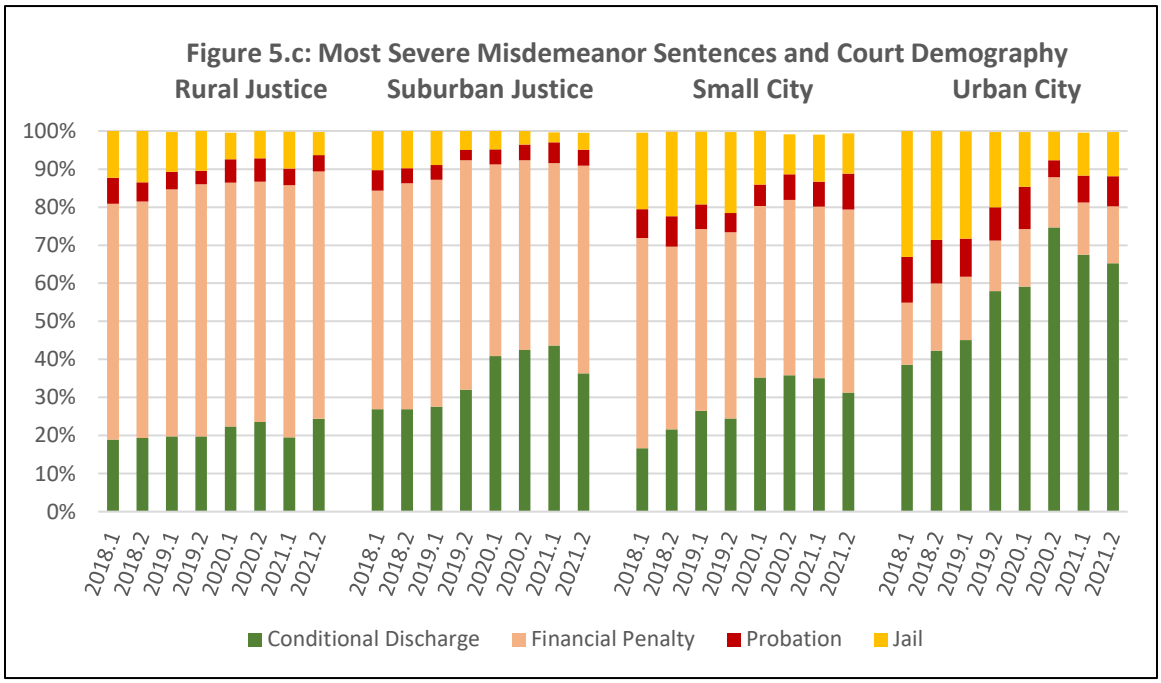
Sentencing

Finally, Figure 5.c reports the most severe sentences for misdemeanor charges. We distinguished among jail sentences, probation, financial penalties (including fines, fees, and surcharges), and conditional discharge (suspension of jail or probation pending one year of lawful behavior).

The findings are consistent across court types: all courts sentenced people to progressively less restrictive sanctions over time, in the categories of jail, probation, and financial penalties. Cases that resulted in conditional discharge and other sanctions rose steadily over time across courts. While financial penalties were by far the most common

sanctions in the Justice Courts and the small City Courts, they were seldom imposed in urban City Courts.

We note that the four groups of courts had distinct patterns of sentencing and sentencing change. Data from urban City Courts indicate highest use of the most lenient and most punitive sanctions, while data from the suburban Justice Courts indicate minimal use of jail and probation.



Summary of Comparisons Between Justice Courts and City Courts

Justice courts have been criticized for a lack of due process, improperly trained judges, and unwarranted sentences. But in misdemeanor cases, these results suggest that while courts of different types have distinctive patterns of bail reform implementation, the Justice Courts' decisions and outcomes are more consistent across demographic settings than are City Courts.

In 2018, release rates were high in both rural and suburban Justice Courts and rose to over 90% by 2021. In both small and urban City Courts bail was set in about 30% of cases pre-reform, but as fewer cases had bail set, a dwindling number of them had bail posted. Justice Courts dismissed cases at higher rates than small City Courts, and at lower rates than urban City Courts. Justice Courts sentenced fewer people to jail and probation than did City Courts. While Justice Courts made broad use of financial penalties, the same is true for small City Courts. In short, these data suggest that even

under conditions of significant policy and practice change, in these counties at least, Justice Courts are not aberrations from City Court norms.[30]

Chapter 6. Discussion, Conclusions, and Future Research Questions

This report summarizes descriptive analyses of data on Justice Court arraignments in the two years prior to implementation of bail reform legislation in January 2020, and the two years following. As a companion study to the Data Collaborative for Justice's investigations of City Court outcomes across the state, the project staff collected data from counties that represent the diversity of Justice Court jurisdictions in upstate New York. These counties include approximately 120 Justice Courts, approximately 10% of such courts in the state.

Summary of Key Findings

Justice Court Caseloads

- Justice Courts in the counties studied here process as many and sometimes more arraignments than do the City Courts in the same counties. Justice Courts also see the same range of offense types, although Justice Courts see a lower percentage of felony charges (10% vs. 30%). These findings underscore the importance of including Justice Courts in a comprehensive study of the implementation and potential impacts of bail reform and, indeed, all court reforms.

Justice Court Pretrial Outcomes

- For the types of charges impacted by the elimination of bail (excluding violent felonies), more people were released without monetary bail after reform was implemented; the difference in release rates were around 10% for misdemeanors and nonviolent felonies. During the pre-reform period, over 82% of misdemeanor Justice Court arraignments resulted in release without bail; this rose to 94% in the post-reform period. Nonviolent felony arraignments ended in release without bail more often in 2021 than in 2018 (71% vs. 59%). However, fewer violent felony cases resulted in non-monetary release after bail reform.
- Analyzing arraignment outcomes by specific offense charges reveals that there is significant variation in outcomes among individual charges. Across four of the most common nonviolent felony charges (drug possession, vehicle/traffic, burglary, and larceny), release rates ranged from 50% to 80% in 2018, and from 64% to 80% in 2021. Across three common misdemeanor charges (assault/menacing, drug possession, and vehicle/traffic) release rates ranged from

74% to 91% in 2018; by 2021 release rates for those charges ranged from 90% to 99%. Only among three quite similar specific misdemeanor charges (trespass, criminal mischief, and petit larceny) did release rates track together over time. In future studies of bail reform (and other court reforms) researchers should take a closer look at court actors' perceptions of the relative seriousness of offenses within classes.

- We did not find significant associations between people's race and ethnicity in Justice Courts' bail decisions. But we acknowledge the complexities of analyzing this issue with available data, and the possibility that data on arraignment charges may mask disparate treatment earlier in the criminal justice process. We also note that many public defense programs do not routinely record information about race and ethnicity because they wish to avoid communicating that those attributes are of any relevance to the quality of representation they provide.

Dispositions and Sentencing

- Bail reform did not appear to have a significant effect on felony dispositions, whether they were violent or nonviolent charges. Convictions on original charges remained relatively stable over time, and dismissals (and adjournments in contemplation of dismissal) evidence more decline in violent than in nonviolent felony charges.
- Among misdemeanor cases, bail reform was associated with modest increases in dismissals (and adjournments in contemplation of dismissal) over time. Rates of dismissals increased from about 25% in 2018 to about 35% in 2021.
- More marked temporal shifts in outcomes appear in sentencing data: In nonviolent felonies and misdemeanors, the most severe sentence type imposed dropped (from incarceration to probation to financial penalties to conditional discharge) over time.

Justice Courts, City Courts, and Demographic Context of Counties

- Justice Courts have often been depicted in the media, published reports, and legislative discussion as somewhat primitive institutions hidden off the backroads of rural upstate New York. In reality, however, these courts serve a range of demographic and economic settings. In the sites studied here, they can be generally classified as occupying rural towns and suburban towns, which are in turn associated with small cities and large urban areas.
- While all four types of courts experienced increases in non-monetary release rates after reform, both rural and suburban Justice Courts had higher release

rates in 2018-19, and retained higher release rates in 2020-21, compared with both urban and small City Courts from the same counties. We also observed more consistency on dispositions and sentencing among the Justice Courts than among the City Courts, based on demography.

Methodological Caveats and Stakeholder Perspectives

We would be remiss if we did not qualify our findings based on the limitations of the data, but more significantly, based on what we learned about local courts' experiences with bail reform implementation through site visits and conversations with practitioners.

This report presents results from aggregate data. Without data on other variables that might be correlated with pretrial decisions and outcomes, we cannot exclude the possibility that the differences that we observed could be attributed to variation across individuals' prior criminal history, including records of bench warrants for failure to appear, and characteristics of offenses that are not captured in official charges.

We also note that bail reform was part of a larger package of criminal justice reforms. The simultaneous implementation of the various reform pieces may have confounded, or enhanced, the impacts of bail reform. While the new bail laws have continued to be the subject of most political debate in the Capitol, practitioners who spoke with us over the last three years have often pointed to less visible pieces of the reforms as critical contributors to full implementation.

For instance, discovery reform, long overdue in New York, was passed but not initially adequately funded by the legislature, resulting in workload increases and, in some counties, dismissals of cases. At a state conference in November 2019, pretrial supervision staff discussed (with optimism) the need to prepare for an influx of people who would otherwise have been detained, but they expressed concerns about having sufficient personnel and resources to accommodate them. Electronic monitoring, one of the more restrictive of non-monetary conditions, is not available in many upstate New York counties; in those counties judges who might have opted to use it may have jailed people instead. In some jurisdictions it was not clear who had taken responsibility (legally assigned to the courts) to ensure that people who were issued appearance tickets received reminders about their court appearance dates (or even if such notices were routinely issued).

At the state level, independent of bail reform, between 2018 and 2022 the New York Office for Indigent Legal Services oversaw the gradual expansion, across and within

counties, of programs to ensure that defense attorneys were present to counsel people at their arraignments – an innovation that would seemingly enhance the effects of bail reforms. But it is likely that these reforms were administered unevenly, and perhaps even more unevenly in Justice Courts, particularly in rural counties with part-time staff and limited pretrial services. We cannot draw a straight line between any of these provisions and possible consequences for the bail and case processing outcomes reported here, but a full understanding of bail reform's implementation and impact would benefit from closer scrutiny of these coinciding reforms.

We also observe that reports of increases in crime rates have been mixed into discussions of retaining or revising the 2019 reforms, albeit with scant evidence. In the turbulent environment surrounding many conversations about reform, it is critically important to step back from rhetoric and invest instead in carefully designed empirical investigations of the impacts of reform. It is also important to identify places and contexts in which bail reform is working as intended, but also those places and contexts in which it has not achieved expectations. Only under those circumstances can reforms be fairly assessed and, if appropriate, modified or enhanced.

Finally, the COVID-19 pandemic caused immediate disruptions in court operations, but it has also had longer-term impacts on local criminal justice agencies' operations. As documented in our original report,[31] in March 2020 courts were closed for all but "essential" actions, which included arraignments, which were conducted virtually. This crisis resulted in large numbers of people who were hastily arraigned, and then left unattended by the criminal justice systems that might otherwise have overseen, documented, or at least registered their progress through the legal process. According to accounts we heard in field visits, this resulted in on-again, off-again hearings for in-process cases, concerns about jail capacity and safety, and some honest uncertainty about how court officers should proceed.

We also observed, across the five sites, the following: Practitioners reported unexpected resignations and retirements in their offices, and had difficulty filling those jobs. Jail officials reported reluctance to increase the number of people in pretrial detention for health and safety reasons. There were well-documented declines in arrests by police and in-person supervision by probation and parole officers; and there were significant declines in diversion to specialized "problem-solving" courts. For these reasons, we present our findings with caution. We do not yet know how much our findings reflect the impact of bail reform implementation, and how much they reflect the warping of legal systems by an historic medical crisis.

Directions for Future Research

Assessing the implementation and impact of bail reform is an iterative and cumulative project. While research is developing on questions about release decisions and outcomes, there is a growing agenda of topics that also merit attention:

- How effectively can counties (and agencies within counties) provide the services that were supposed to accompany bail reform? Can rural counties (and particularly, Justice Courts) access pretrial supervision and electronic monitoring as alternatives to bail and pretrial detention? Can residents of rural areas access obligations and opportunities that might follow release at arraignment, such as probation officer meetings, diversion programs, and problem-solving courts?
- Particularly in misdemeanor cases, non-monetary release increased by 10% after reform, but release rates were already higher than 80%. What can we learn about the characteristics of people and of cases that shifted from the bail column into the release column in 2020-21? If we had more detailed on those cases, could we assess how often bail is set for reasons justified by the law's exceptions, and how often it is not?
- When judges set bail, how do they assess a person's financial capacity? In four of our sites, every arraigned person had been designated as indigent, for the purposes of providing counsel. Would assessing capacity for posting bail require different criteria than assessing capacity for retaining counsel?
- The law renders non-violent felonies as not bail-eligible. But that is a large and heterogeneous assortment of offenses. Are courts differentiating among them in (1) setting bail and (2) setting bail amounts?
- How have concurrent reforms intersected the implementation of bail reform? These include broader use of appearance tickets rather than custodial arrest, new discovery rules, and, predating bail reform, ambitious efforts to expand access to counsel at first appearance rather than after charges and bail have been set.

Conclusions

New York's Justice Courts' function in the background of the state's legal system: They process large numbers of cases, but because they have not historically contributed to the Unified Court Systems' standardized data collection, little is known about what they do, and how they adapt to reform. What is not recorded cannot be analyzed and publicized. Hence for the general public, many

criminal justice researchers, and even many state policymakers, the Justice Courts fly under the radar that usually surveils criminal courts.

Despite their low visibility (or perhaps in part because of it) they have historically outlasted efforts to abolish them or to incorporate them fully into the state's Unified Court System. As New York and other states adopt policies that are aimed at remedying excessive use of pretrial detention and its collateral consequences, it is important to ensure that lack of visibility does not result in lack of observed and measured impacts in overlooked parts of the criminal justice system.

As bail reform in New York remains in the spotlight, it is imperative that future researchers continue to ask questions that address due process protections for people charged with crimes. While this report found little evidence that the Justice Courts have lagged behind the state's City Courts in complying with bail reform, we still do not know enough about how prepared they are to implement parallel policy changes, such as greater use of pretrial supervision, diversion, and specialized courts. In order to assess the success of bail reform, we should evaluate Justice Courts' capacity to provide constructive alternatives to detention.

Acknowledgements: *We gratefully acknowledge the support of Arnold Ventures, and our partnership with the Data Collaborative for Justice at John Jay College of Criminal Justice. We are especially appreciative for the contributions of Michael Rempel and Olive Lu at DCJ, whose comments and suggestions proved invaluable, and those of Preeti Chauhan and Erica Bond during their time at DCJ in the first two years of this project. We also thank Tyrell Connor, of Arnold Ventures, for his insights; and the criminal justice professionals who offered access to their data in our sites. Their continuing assistance, enthusiasm, and interpretations of empirical findings strengthened our conclusions. Finally, we wish to express our appreciation to the Finn Institute staff – especially Hannah Cochran, Madison Bryant, Kenan Worden and Theresa Foster – for their expertise in coding, cleaning, and analyzing the data.*

Endnotes

[1] For a succinct analysis of these reforms, see Michael Rempel and Krystal Rodriguez (2019, updated 2020). *New York's Bail Reform Law: Summary of Major Components*. Center for Court Innovation https://www.courtinnovation.org/sites/default/files/media/document/2019/Bail_Reform_NY_Summary.pdf The laws were subsequently amended in April 2020, with changes that took effect in July 2020. https://datacollaborativeforjustice.org/work/jail/assessing-the-potential-impact-of-2020-bail-reforms-on-2019-new-york-city-criminal-court-cases/ These changes primarily returned a number of specific charges to the "bail qualified" roster – cases for which judges had discretion to set bail.

[2] An ongoing series of Data Collaborative for Justice (DCJ) reports examining changes to bail decisions, pretrial detention, racial disparities, and re-arrest rates associated with the implementation of New York's bail reforms may be found at: https://datacollaborativeforjustice.org/work/bail-reform/. For bail reform studies by other organizations focused on New York and jurisdictions across the country, see DCJ's resources page at: https://datacollaborativeforjustice.org/work/practitioner-resources/resources-bail-reform-in-new-york-across-the-us/.

[3] Alissa Pollitz Worden and Kaitlin Moloney (2022). *Before Bail Reform: Pretrial Decisions and Outcomes in New York's Justice Courts.* John F. Finn Institute for Public Safety, Inc. https://finninstitute.com/wp-content/uploads/2022/11/Before-Bail-Reform-New-Yorks-Justice-Courts-Finn-11-14-22-final.pdf

[4] Scott Kohler (1962). *Vera Institute for Justice: Manhattan Bail Project.* Ford Foundation.

[5] Alissa Pollitz Worden, A. Davies, Reveka Shteynberg, Kirstin Morgan (2020). *Early Intervention by Counsel: A Multi-Site Evaluation of Presence of Counsel at Defendants' First Appearances in Courts.* National Institute of Justice. https://www.ojp.gov/pdffiles1/nij/grants/254620.pdf
https://www.ojp.gov/pdffiles1/nij/grants/254620.pdf

[6] Thomas DiNapoli (2010). *Report on the Justice Court Fund.* Office of the New York State Comptroller. https://www.osc.state.ny.us/files/local-government/publications/pdf/justicecourtreport2010.pdf

[7] In 2019 the Fund for Modern Courts estimated that there were between 1200 and 1300 Town and Village courts in New York; see The Fund for Modern Courts (2019). *Fines and Fees and Jail Time in New*

York Town and Village Courts: The Unseen Violation of Constitutional and State Law. http://moderncourts.org/wp-content/uploads/2019/04/Fines-and-Fees-and-Jail-Time-in-New-York-Town-and-Village-Justice-Courts-The-Unseen-Violation-of-Constitutional-and-State-Law.pdf.

[8] Violations in New York penal law are charges that do not carry incarcerative sentences, and are not recorded as part of a criminal record.

[9] Jingyi Fei (2022). *Lay Judges vs. Lawyer Judges: How Much Difference can a Law Degree Make?* University at Albany dissertation.

[10] New York Commission on Judicial Conduct (2019). *Annual Report 2019*. https://cjc.ny.gov/Publications/AnnualReports/nyscjc.2019Annualreport

[11] K. Curtis and A.L.B. Davies (2014). *Summary Report of the 2014 Survey of Town and Village Magistrates: Counsel at First Appearance.* Albany NY: New York State Office of Indigent Legal Services.

[12] The Justice Courts are required to report fines and fees levied in criminal convictions to the state Office of the Comptroller, which allocates those monies, via a complex formula, to the state, to the county of origin, and, importantly, to the town or village that imposed the financial penalty. See *Office of the Comptroller: Justice Court Fund* at https://www.osc.state.ny.us/local-government/required-reporting/justice-court-fund . Justices are required to complete forms that list the names, charges, and financial penalties imposed in cases disposed in their courts, in order for their jurisdictions to be reimbursed. These forms are not, to the authors' knowledge, in the public domain; indeed, it appears that many of them are completed by hand, although an electronic filing option exists. See the *Justice Court Fund Handbook*: https://www.osc.state.ny.us/files/local-government/publications/pdf/jch.pdf

[13] The New York State Comptroller reports that in 2022, 60% of the $189,000,000 collected from financial penalties in Justice Courts (fines, civil fees, surcharges, and forfeitures), 60% was returned to the towns and villages, 36% went to state coffers, and the remaining 4% was returned to counties. See Office of the New York State Comptroller (2022). *The Justice Court Town and Village Court Revenue Report, https://wwe1.osc.state.ny.us/localgov/justice-court-fund/jc-dataviz.cfm*

[14] Of the fifty most populous municipalities (populations 35,000 or more) in New York outside New York City, 27 are towns.

[15] For example, as reported by the New York State Office of Court Administration, while Albany County's 2020 criminal caseload was concentrated in Albany City Court, the Colonie Town Justice Court processed more cases than the City Courts in both Cohoes and Watervliet. Likewise, in Erie County, Cheektowaga Town Justice Court arraigned about twice as many cases as Lackawanna City Court and Tonawanda City Court put together. See Office of Court Administration (2022). *OCA-STAT Act Report*, NYCOURTS.GOV https://ww2.nycourts.gov/oca-stat-act-31371)

[16] Data gathering began in early 2020, was interrupted by COVID shutdowns, and then continued through the first half of 2023. We agreed with Public Defenders to collect information only on cases that were disposed. Analysis of pre-COVID caseloads revealed that 95% of cases closed out within one year. Because COVID interruptions increased times from arraignment to disposition, we included only cases arraigned through December 2021 in order maximize our sample. It remains the case that we are missing cases that took longer than usual to close. We hope to return to our sites in the future to add back in cases that were arraigned in later 2021 and the first part of 2022.

[17] While adopting the distinction between nonviolent and violent felonies, many charges that might be considered violent by the general public are not designated in New York law as "violent felonies," such as aggravated vehicular homicide (B class), arson in the 2nd degree (C class), robbery in the 3rd degree (D class), and rape in the third degree (E class). Conversely, a few violent felonies may seem unlikely candidates for that designation, such as falsely reporting an incident in the first degree (D violent felony).

[18] In the three site counties where we accessed data from public defender offices, some cases were diverted to secondary systems for indigent defense, typically part-time conflict defenders or assigned counsel, because they represented conflicts of interest. For example, the public defender's office may have previously represented someone alleged to have been a victim in a new case. Fewer than 2% of people whose cases were arraigned by public defenders were later found financially ineligible for free representation.

[19] The law refers to specific charges only when creating exceptions to the presumptive release standard. For example, bail jumping and escape 3rd (PL 215.55 and PL 205.05), and tampering with a witness 3rd (PL 215.11) are examples of about 25 misdemeanor and nonviolent felony charges on which judges have the option of setting bail.

[20] Arrest reform legislation, passed at the same time as bail reform, drew a different line for determining whether officers made appearance ticket or custodial arrests: misdemeanors and E felonies for the former; A, B, C, and D arrests for the latter.

[21] A small percentage of arraignments were disposed the same day (2% in Justice Courts disposed, 7% in City Courts). Disposition at first appearance, historically, is far less common in upstate counties than in New York City. In these cases, no bail decision was made, so these cases are excluded from the analyses.

[22] We note that we could not consistently distinguish between release on recognizance and release under supervision or with conditions, and conversations with practitioners indicated that pretrial supervision was limited in some counties or parts of counties. For example, electronic monitoring is not in use in many counties in upstate New York. Other conditions might involve orders of protection, check-ins with probation officers, or compliance with diversion or treatment stipulations.

[23] These two charges, 120.00 and 120.14, are under the same title (assault and related offenses), as are trepass 3rd and trespass 2nd , 140.10 and 140.15 (titled burglary and related offenses). In two sites we could not distinguish between the these two pairs of charges because subsections were not routinely recorded.

[24] In some sites the level of precision in identifying top charges was limited. For example, there are multiple charges under the Title 140: Burglary and Related Offenses, and two of those are misdemeanors: trespass 3rd and trespass 2nd (140.10 and 140.150. We combined these, and did the same for misdemeanor assault (which includes assault 3rd and menacing 2nd, 120.00 and 120.14; and also misdemeanor VTL, which includes driving while intoxicated (1192) and aggravated unlicensed operation of a motor vehicle (511).

[25] The prevalence of specific charges within charge classes are as follows: Assault 2nd – 80% of D felonies under Title 120; Burglary 2nd – 100% of C felonies under Title 140; Weapon possession 2nd – 98% of C felony cases under Title 265; Burglary 3rd – 99% of D felonies under Title 140; Grand larceny 4th – 100% of E felony cases under Title 155; Criminal possession of controlled substance 3rd – 90% of B felonies under Title 220; Assault 3rd and Menacing 2nd - 85% of misdemeanor cases under Title 120; Trespass 3rd and trespass 4th – 100% of misdemeanor cases under Title 120; Criminal mischief 4th – 98% of misdemeanor cases under Title 145; Petty larceny – 100% of misdemeanor cases under Title 155.

[26] Under the initial reforms put into effect in January 2020, all cases involving the second subdivision of burglary in second degree became bail ineligible. Under subsequent amendments that went into effect July 2, 2020, that charge became eligible for bail once again whenever the allegations took place in someone's "living area."

[27] We note that there is some imprecision in this measure. In some sites where we relied on indigent defense providers' data, evidence that bail was set was gathered from City Court assignment of counsel forms, from assigned counsel eligibility forms (on which people facing charges supplied this information), and from public defenders' case records. In two counties (A and D), we supplemented that office's information with data from the booking center at the county pretrial detention facility. It was not uncommon for judges to reconsider release on recognizance, or reduce bail amounts, days or weeks after arraignment; nor was it rare for judges to revoke bail after issuing bench warrants for failure to appear. Hence these data cannot tell us how much time people spent in pretrial detention. In future research, we hope to supplement these data with information from booking officers that would allow us to estimate how long people were actually detained after arraignment.

[28] Based on interviews in the five counties, we did not find consistent practices. For example, in one of the project sites, practitioners did not describe any process through which such determinations were made. In another county, the Public Defender explained that because all people had counsel present at arraignments, those lawyers took on responsibility for gathering financial profiles to present to judges. In yet another, pretrial services staff attempted to assess financial capacity for the cases at which they could be present at arraignment.

[29] Race and ethnicity are entered in case management systems as two separate fields, and some people were identified as both Hispanic, and either Black or White. We combined these fields to create a variable that identified an individual as white, or Black, or Hispanic if the person was designated as Hispanic regardless of race. In two of those counties, race was entered as "other" or "unknown" in about 25% of cases. The only ethnicity regularly recorded was "Hispanic." We note that we use the term "Hispanic" rather than some potentially preferred alternatives because it is the word used in all case management systems.

[30] We considered the possibility that, while all cases in this analysis were misdemeanors, some specific charge types may have been more prevalent in subsets of court. Urban City Courts had higher percentages of assault and burglary, and criminal mischief; small City Courts had lower rates of larceny; drug possession cases were similar across court settings; and vehicle/traffic cases were less common in urban City Courts.

[31] Alissa Pollitz Worden and Kaitlin Moloney (2022). *Before Bail Reform: Pretrial Decisions and Outcomes in New York's Justice Courts.* John F. Finn Institute for Public Safety, Inc. https://finninstitute.com/wp-content/uploads/2022/11/Before-Bail-Reform-New-Yorks-Justice-Courts-Finn-11-14-22-final.pdf