

Reform in Action: Expanding Pretrial Services

Initial Findings on Implementing Pretrial Services Reform in New York State



By Aimee Ouellet and Jennifer Ferone

This is the fourth 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

When New York passed a sweeping set of criminal legal reforms in 2019, it fundamentally changed who could go to jail and for what. With a main goal of the legislation being to reduce reliance on pretrial detention – including making processes like bail more equitable and less dependent on wealth – other systems had to step up to effectively and safely shift away from incarceration as a primary system response.

Robust pretrial services – supervision, in particular – is one of the systems that are essential to effective bail reform efforts. Pretrial supervision is an alternative to incarceration that merges case management, assessment, and linkages with supportive services to help people with ongoing cases in the criminal legal system meet their court dates and

avoid rearrest – as well as address the underlying needs of criminal legal involvement more broadly, such as mental health care, housing, or employment services. Other services typically include court notification and screening and assessment, as well as monitoring of compliance, court attendance, and mandates to necessary services.

A strong infrastructure was necessary to support a continuum of community-based release options that could effectively and appropriately serve those deemed unsuitable for release on recognizance (ROR) – release without any conditions other than returning to court – to ensure court appearance. Implementation of the legislation in early 2020 meant that pretrial supervision became one of the main avenues to serve people that previously would have been detained in jail. In turn, eligibility criteria for these programs had to expand to include individuals with a broader set of charges.



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

The CUNY Institute for State & Local Governance (ISLG), with support from Arnold Ventures, conducted a process evaluation assessing the implementation of various components of the legislation – including reforms related to pretrial services, appearance tickets, bail, and discovery – through a combination of interviews,² focus groups, document reviews, and data analyses with criminal legal system stakeholders collected between summer 2020 and fall 2022. This brief focuses on findings related to pretrial services, specifically the expansion of pretrial supervision, first distinguishing infrastructural variations between New York City (NYC) and other counties across the state, and then spotlighting NYC’s Supervised Release (SR) programming, which was fully operational in 2016 and provided a critical foundation for serving a newly expanded volume of individuals. In addition to this overview, more detailed findings on the expansion of pretrial services will be forthcoming in a final implementation report in fall 2023.

What did the legislation say about pretrial services?

The legislation changed and standardized a range of pretrial responsibilities, from oversight to the day-to-day operations of pretrial service providers, as well as expanded the types of clients they served. Though varying in size, prior to the reforms pretrial services operated and existed in various forms and capacities across New York State, all of which received differing levels of oversight from state agencies. Most counties operated some form of pretrial services entity pre-reform, either within their probation department (e.g., the Dutchess County Office of Probation and Community Corrections in Dutchess County) or through independent nonprofit providers (e.g., Pretrial Services of Monroe Bar Association in Monroe County and the NYC Criminal Justice Agency in NYC), which is still true post-reform. The legislation made it a specific requirement that all counties have a dedicated and certified pretrial service agency capable of providing the full suite of pretrial services and supervision to an expanded pool of people with a wider range of service needs.

Other Reform Requirements for Pretrial Services

- Requiring each county to have one public or nonprofit pretrial services agency approved by the Division of Criminal Justice Services (DCJS) and certified by the Office of Court Administration (OCA)
- Ensuring the court or pretrial service agency notify all individuals of court appearances using the individual’s preferred method of contact (e.g., text, phone call, e-mail, etc.)
- Allowing electronic monitoring (EM) for misdemeanor domestic violence and sex offenses, with EM decisions reviewed at least every 60 days

Recognizing the need for pretrial services to support released individuals in returning to court while also maintaining safety in the community, in 2022 Governor Hochul announced [\\$20 million in additional funding](#) to pretrial services outside of New York City.

² Overall, CUNY ISLG researchers conducted 189 total interviews and focus groups, including follow-ups, with 228 individuals. This included 50 line-staff members and people in leadership from seven pretrial service agencies. Twenty-two people with lived experience in the criminal legal system and pretrial services are also counted in this total number. For more on the study’s methodology, see “Reform in Action: Fact Sheets Take On-the-Ground Look at New York State Criminal Justice Reform Implementation” at <https://islg.cuny.edu/blog/reform-in-action-methods>.

In addition to this requirement and others focused on court notification and electronic monitoring, language in the legislation requiring people be subjected to the “least restrictive” condition requirement had direct implications for pretrial supervision services, in particular. The provision set forth that if ROR did not “reasonably assure” an individual would appear in court, judges are required to consider the “least restrictive” conditions to meet the same objective.³ To accommodate this, the legislation required a considerable expansion of pretrial services throughout the state, with particular emphasis on providing alternative conditions of release. The change resulted in an influx of people who may have been previously unable to afford bail, now able to await the result of their case in the community under monitored supervision.

What were key stakeholders’ initial reactions?

Pretrial service providers anticipated a range of benefits to the legislation, given it meant more people would be eligible to remain in the community until case resolution while also accessing services. One upstate provider, for example, felt the legislative changes would help standardize judicial decisions to release someone under pretrial supervision since there was now a statute to follow, making the process easier. One NYC provider called the expansion of pretrial release a “game-changer,” underscoring the impact of providing people with earlier linkages to much-needed supports and services while reducing the need to plead guilty to access the same services.

³ Criminal Procedure (CPL) CHAPTER 11-A, PART 2, TITLE H, ARTICLE 150: [Appearance ticket; where returnable; how and where served.](#)

While the expected benefits of expanded pretrial services appeared clear, providers noted they felt less certain about the anticipated impacts on program operations and the logistics required to effectively implement them, largely because of variations in capacity and resource across the state. Providers in counties outside of NYC interviewed for the process evaluation felt that legislators improperly assumed that all counties had the same capacity and were comparable to NYC in terms of having a preexisting infrastructure.

These providers outside NYC expressed they had to make do with what they had or turn to their county governments for assistance to comply with the legislation. Some of these agencies discussed how they had faced budget cuts in the years leading up to the legislation and yet were being asked to perform at the same degree or expand their services. Specifically, providers – even the more well-resourced ones – worried that they would not be able to hire the necessary staff or build the technological infrastructure necessary to handle the anticipated volume increase, nor would they easily be able to expand their services to align with the legislation. An interview participant from a pretrial services provider outside of NYC argued that: “It’s not reasonable to assume smaller agencies have the staff to do this...The State says it has no money, but they mandate things and that puts the counties in a bad position.”

These concerns, however, were not shared by all agencies, highlighting the varied starting points for implementation. Some providers both up- and down-state felt confident that their preexisting infrastructures and robust programming would create a strong foundation for a smooth transition from paper to practice, particularly if they had sufficiently prepared through in-depth training and planning efforts. In addition to infrastructural differences, there was ambiguity – largely outside the city – regarding how judges would interpret the changes, the pretrial release and supervision decisions that would subsequently be made, and what guidelines they would

receive from oversight agencies. For example, participants outside of NYC described feeling unsure about whether judges would automatically assign people to ROR based on their reading of the legislation, or if they would go in the opposite direction and place numerous conditions on released individuals – making it difficult for providers to plan for how their caseloads might be affected. One upstate provider explained that “Everyone tried to prepare the best they could, but didn’t know what the reaction would be, especially from the judiciary.”

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City providers, on the other hand, generally relayed they had a better sense of how judges may react to the reforms and their release decisions given their Supervised Release (SR) programming was already well-established and highly utilized across the five boroughs. However, NYC providers were still met with some concerns prior to implementation, including the anticipated “exponential growth” in individuals assigned SR as well as an increase in clients with more complex needs. This growth meant agencies needed to ramp up hiring efforts and train new and existing staff to meet the need. As one NYC provider explained, “Many more people, ideally, will be released – (this has) serious implications because those people may have a number of needs/challenges that will need to be addressed to ensure their return to court. (This is a real chance) for pretrial to be that opportunity to connect those individuals and communicate the importance of going back to court, help walk them through the court process.”

Supervised Release in New York City

As part of separate NYC Council-led reforms to reduce the number of people incarcerated in the city jail system, NYC piloted a pretrial supervision program in 2009 known as Supervised Release (SR). With oversight from the Mayor’s Office of Criminal Justice, this program was expanded and fully launched in 2016.

The unique model of SR involves several non-profit agencies across NYC, including Center for Alternative Sentencing and Employment Services (Manhattan), Center for Justice Innovation (Staten Island and Brooklyn), the Fortune Society (Bronx), and Criminal Justice Agency (Queens) that provide community-based supports and supervision to individuals waiting for their cases to conclude. Supervision is focused on engaging those individuals through services, ensuring their return to court, and connecting them to necessary resources and services in the community that can be utilized beyond a life of their case.

Since implementation, more than 50,000 individuals have been diverted from jail.



How did the changes affect stakeholders on the ground?

To provide a comprehensive picture for how the legislation impacted pretrial service provision, NYC is used as a case study in this fact sheet. The sheer volume of people served in NYC created a unique set of implementation needs and challenges, particularly with respect to staffing, coordination, and changing population. Given the scope of interviews conducted across a majority of the SR providers⁴ in the city as part of the study, CUNY ISLG was well positioned to assess key challenges and lessons learned from its experience. Furthermore, the city’s data capacity and infrastructure has allowed for a systematic assessment of progress under the new laws, identifying where gaps still remain. While it must be acknowledged that NYC is grounded in a very different operational and resource infrastructure than other jurisdictions in the state, the story emerging during the study period provides a more fleshed out look at the full cycle – from development to pilot to full-scale implementation – of the practical considerations that should guide implementation of these types of reforms in any jurisdiction. As a whole, the state saw an increase in the number of cases that involved pretrial supervision and services. In NYC, these cases increased from 5 percent in 2019 to 16 percent in 2021; outside NYC, they went from 7 percent to 14 percent during the same time frame.⁵

TABLE 1. NUMBER OF INDIVIDUALS SUPERVISED: 2020-2022⁷

County *	Year		
	2020	2021	2022
New York City	7,947	18,000	28,000
Columbia	97	86	72
Dutchess	543	760	817
Monroe	1,516	638	946
Nassau	2,246	5,051	7,674
Suffolk	1,091	1,875	2,111

*New York City encompasses the counties of Bronx, Kings, New York, Richmond, and Queens

Table 1 presents the number of individuals supervised pretrial between 2020 and 2022 by the pretrial service agencies participating in CUNY ISLG’s study; as shown, NYC serves an overwhelming majority of individuals under supervision in the state.⁶ The information presented in the sections that follow is drawn from interviews and focus groups from across three of the four NYC SR providers and clients; a wealth of data collected by CJA, the Mayor’s Office of Criminal Justice (MOCJ), and The Office of Court Administration (OCA); and a review of public information sources on the topic. Taken together, these observations and take-aways highlight key considerations in implementing such an alternative model of support.

⁴ Of the 50 pretrial agency staff members CUNY ISLG researchers spoke to, 37 were from NYC-based agencies.

⁵ New York State Division of Criminal Justice Services, *Supplemental Pretrial Release Data Summary Analysis: 2019-2021*, PowerPoint Presentation, September 21, 2022, <https://datacollaborativeforjustice.org/wp-content/uploads/2022/09/FINAL-DCJS-Public-Briefing-on-Supplemental-Pretrial-Release-Data-9-21-22.pdf>

⁶ Please note that given the availability of certain data, the data included throughout this factsheet may cover different time points.

⁷ “Pretrial Services Agency Annual Report,” Division of Technology & Court Research, New York Courts, June 2023, <https://ww2.nycourts.gov/court-research/annualstatisticalreports.shtml>. This is aggregated from self-report data submitted by certified pretrial service agencies and it is possible supervised individuals are reported in multiple years depending on when a case is closed out.

DESPITE PREPARATION, SERVICE DEMAND OFTEN SURPASSED STAFF CAPACITY

City providers had a unique advantage in the form of an existing robust pretrial supervision system. However, the large number of people released in the five boroughs brought about its own set of challenges. When comparing the number of people released pretrial and in SR pre- and post-reform, there were roughly three times as many people in SR programming at the end of 2022 (n=8,082) compared to the end of 2019 (n=2,515).⁸ SR providers, in coordination with and oversight from MOCJ, were able to use data to project potential changes to caseloads prior to implementation, which allowed them to better prepare to meet the expected hiring and staffing capacity demands of the legislation.

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To plan and keep caseloads manageable, SR providers worked with MOCJ to get approval for funds to hire and onboard many new staff citywide. One pretrial service provider estimated their agency hired 150 people in the year after implementation, with a high percentage of those new staff members in the agency's SR program. Despite this, providers in the city did not approach January 1, 2020 feeling fully confident about what to expect. Additionally, though MOCJ took on the financial burden, agencies were expected to expand over the course of only a few months; providers reported that the funding provided was stretched thin. This funding gap may

⁸ Please note that given the availability of certain data, the data included throughout this factsheet may cover different time points.

create sustainability challenges over time, which providers have addressed by looking for ways to diversify funding to meet the demands.

This increase significantly impacted pretrial staff caseloads and demanded new ways to meet the needs of individuals released under supervision to ensure an effective continuum of services.

Particularly during COVID-19-related court closures, when cases were not getting resolved and clients were not being discharged, pretrial providers interviewed said SR caseloads were stuck at much higher levels and were difficult to manage, especially when offices were short-staffed. Case managers reported high staff turnover due to stress and burnout from higher caseloads, adding to difficulties in meeting staffing retention targets.

EXPANDING TARGET POPULATION CHANGED SERVICE NEEDS LANDSCAPE

Compounded with the sheer number of people coming into the program, providers were now seeing a wider variety of risks and needs among pretrial supervision clients compared to pre-reform periods. Prior to reform, SR in the city was generally limited to people with lower-level offenses and more limited criminal histories. While this population continues to be served by SR programming, accounting for 45 percent of intakes citywide in 2020,⁹ legislative requirements expanded eligibility criteria to all individuals regardless of charge severity or assessed needs.

Post-reform, providers described seeing more referrals for clients stemming from more serious charges, including intimate partner violence (IPV) cases that had not previously been eligible for services; they also saw higher rates of clients presenting with mental

⁹ *Supervised Release Annual Scorecard 2020*, (New York: NYC Mayor's Office of Criminal Justice, 2021), https://criminaljustice.cityofnewyork.us/wp-content/uploads/2021/07/Supervised-Release_Annual-2020-Scorecard.pdf

health, substance use, and housing needs. This shifted the primary client population from lower-level misdemeanors and non-violent felonies to a mixture including some serious and, in some instances, violent charges. Looking at the data, there was an increase in the number of people with felony charges released under supervision and/or with non-monetary release conditions between 2019 and 2021 – an increase that was notable for violent felonies (3 percent to 23 percent in NYC and 6 percent to 15 percent outside of NYC).¹⁰ One city provider estimated roughly 40 percent of cases post-implementation were domestic violence-related, with another participant indicating they were seeing a quarter of staff case-loads being comprised of IPV cases. This increase in clients with more serious charges coincided with an influx of clients with less serious charges, as well.

City study participants expressed some concerns about connecting this evolving population to the appropriate levels of support, as the initial SR model focused on a different target group. To plan for this change in population, MOCJ and all NYC SR providers met weekly starting in the fall of 2019 to discuss how the SR program model would change. Much of the discussion focused on determining supervision tiers and levels that varied in intensity and contacts based on new bail eligibility criteria and CJA release assessment recommendations.^{11,12} However, as the legislation did not explicitly assign this task to any party, judges often assumed responsibility for assigning specific levels of supervision without consulting the providers, who historically had done this. Rather

¹⁰ New York State Division of Criminal Justice Services, *Supplemental Pretrial Release Data Summary Analysis: 2019-2021*.

¹¹ *A Guide to Supervised Release in 2020*, (New York: NYC Mayor's Office of Criminal Justice, 2020), https://criminaljustice.cityofnewyork.us/wp-content/uploads/2020/11/SR-2020_Benchmark_Citywide_Non_COVID.pdf

¹² CJA administers the release assessment to nearly every person arrested and held for arraignment in NYC, evaluating the likelihood those released pretrial will return for their next court appearance.

than assigning individuals to general SR, which would allow providers to determine the appropriate level of services based on an in-depth evaluation of needs – as was historically the process – judges were assigning specific levels of supervision directly.

SR providers worried individuals who did not need the added structure and supervision support may be overprescribed in certain instances. For example, NYC providers suggested too many individuals were getting released under supervision when they were better suited for ROR, including some with appearance tickets. As a response, one city provider recommended pretrial service staff advocate for ROR if SR was not appropriate. In follow-up interviews with providers, they expressed seeing some success in reducing supervision levels for clients improperly assigned earlier in the process. Despite significant planning efforts to support all combinations of cases, staff from SR programs encountered challenges requiring creative solutions to adapt to emerging issues quickly and efficiently:

- **Staff safety:** Providers implemented de-escalation training for staff to address clients in the office displaying challenging behaviors (e.g., anger, agitation, shouting) before they potentially become more aggressive.
- **Need for specialized training and hiring:** Providers trained new and established staff on additional tools and techniques to enhance skills for working with clients with higher levels of need, e.g., motivational interviewing and other cognitive behavioral-informed interventions as well as Narcan training for clients with substance use disorders. This also involved hiring staff with more specialized areas of expertise, e.g., peer specialists and credible messengers, to provide clients with support from individuals who shared similar experiences or circumstances.

Providers indicated there were clients who refused to engage in services or needed more support than SR could offer with existing resources. For example, one pretrial staff participant shared, “I have had some participants who are suicidal, (and) don’t want to engage in services. They come in and they are decompensating. They should be admitted to the hospital. (There needs to be) a program with more support. We can encourage (them and) implement these models, but if the client doesn’t want it, or (is) just not in the right state of mind, then it’s like what are we doing?”

The COVID-19 pandemic further exacerbated these challenges as pretrial service providers were forced to develop new ways to stay in contact with their clients due to social distancing protocols; many interviewed said the pandemic impacted the people they served in significant and detrimental ways. Indeed, more research needs to be conducted to ensure that pretrial supervision and pretrial services, more broadly, meet clients’ needs across the entire continuum – from those who need very little support to those who need it the most.



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IN MOST CASES, SUPERVISION A SUCCESS

The goals and objectives of SR in NYC have largely been met both pre- and post-reform, with a large majority of cases assigned successful in meeting their court dates and remaining arrest-free during that time. Rearrest data from the first six months of 2021 show, on average, people on SR had no new arrest in 93 percent of cases – a number that has remained relatively consistent over time.¹³ This is true before and after the legislation expanded services: from 2016-2020, 87 percent of individuals did not miss their court dates and the same percentage were not arrested on a new felony charge during their time in the program.¹⁴

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¹³ *How many people with open criminal cases are re-arrested?* (New York: NYC Mayor’s Office of Criminal Justice, 2021), <https://criminaljustice.cityofnewyork.us/wp-content/uploads/2021/12/Pretrial-Docketed-Rearrest-Contextual-Overview-December-2021-Update.pdf>

¹⁴ *Supervised Release Five Years Later*, (New York: Center for Justice Innovation, 2021), https://www.innovatingjustice.org/sites/default/files/media/document/2021/SRP_FiveYearsLater_10262021.pdf

Indeed, a public defender in NYC recalled that the SR program encouraged their clients to come back to court – clients they never thought would have returned given their history and record. This is in addition to the program’s many benefits in facilitating community connections for individuals to provide support in various aspects of their lives. Participating in CUNY ISLG interviews, people who were under SR supervision in Queens¹⁵ shared that remaining in the community made it easier to speak with their attorney, maintain employment, and resulted in less pressure to take a plea as their cases were winding through a very complex system towards resolution. One such participant shared, “Instead of looking forward to getting out of jail, I was looking forward to talking to someone about what we should we do next.”

They further expressed great appreciation for their case managers advocating on their behalf and giving them the opportunity to address underlying mental health concerns. Another client in SR programming in the Bronx went on to explain why this type of programming is an effective alternative to bail: “If you’re released with supervision, you still have an incentive to comply because you’re

¹⁵ All of the 22 people with lived experience CUNY ISLG researchers interviewed had been under supervision in NYC.

reporting to your case manager. So it has the same effect as bail on appearance, but it’s better because you can live your life, take care of your kids, work. It gives you the support you need.”

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However, as noted in the last section, trends do indicate that more individuals are assigned to SR with more serious charges, more substantial histories of arrest and prosecution, and pending cases.¹⁵ While this represents a small percentage of the total released population to SR, it reveals a potential gap in supervision services that requires testing, trial and error, varied resources, and multiagency collaboration to develop a more effective response for this group – a conversation that is emerging in NYC and beyond as reforms take hold.

¹⁶ Ropac, Rene and Michael Rempel, “Does New York’s Bail Reform Law Impact Recidivism? A Quasi-Experimental Test in New York City,” (New York: Data Collaborative for Justice, 2023), <https://datacollaborative-justice.org/wp-content/uploads/2023/04/RecidivismReport.pdf>



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