

A MORE JUST NYC



Closing Rikers Island

A Roadmap for Reducing Jail in New York City

July 2021

Independent Commission on New York City
Criminal Justice and Incarceration Reform

Center for Court Innovation

morejustnyc.org

courtinnovation.org

Contents

| | |
|--|-----------|
| <u>Executive Summary</u> | ii |
| <u>Part One: Elevating Safety, Justice, Wellness, and Equity</u> | 1 |
| 1. Introduction | 2 |
| 2. Jail in New York City | 7 |
| 3. Racial Justice | 10 |
| <u>Part Two: Mapping Safe, Achievable Pathways to Decarceration</u> | 15 |
| 4. COVID-19 Case Backlog | 16 |
| 5. Pretrial Decisions | 18 |
| 6. Case Processing Delays | 30 |
| 7. Sentencing Options | 36 |
| 8. Parole and Reentry | 44 |
| 9. Priority Populations Based on Gender, Age, and Health Status | 48 |
| <u>Appendices</u> | 55 |
| A. Summary of Recommendations | 56 |
| B. Stakeholders Consulted | 61 |
| C. Data Sources | 63 |
| D. Projection Methods | 65 |
| E. Ability to Pay Bail Implementation Guidelines | 69 |
| <u>Endnotes</u> | 70 |
| <u>Authors' Note</u> | 84 |

How to Navigate this Report

Click on an entry in the table of contents to move to the given section. In the body of the report, click on an endnote superscript to move to the full endnote, and then click on the number within the notes section to move back to your place.

Executive Summary

New York City has embarked on a far-reaching effort to shutter its notorious Rikers Island jail complex. The effort hinges on safely reducing the number of people in city jails – an achievable goal that demands policy changes at a number of levels.

This report lays out a roadmap for safely limiting the use of jail in the years ahead, as a new set of elected policymakers will be tasked with bringing to fruition the end of Rikers.

The good news is that New York City will be building on decades of successful reforms that have already driven down both crime and incarceration.

Yet challenges lie ahead. The COVID-19 pandemic has been accompanied by a tragic increase in shootings in our city and nationwide. Nationwide protests prompted by the killings of Black Americans by police have highlighted vast racial disparities in who is arrested and incarcerated. Perennial problems at Rikers are growing worse, including intolerable conditions and unacceptably high levels of violence.

New Yorkers demand, and deserve, to live in safe communities. Efforts to reduce incarceration must be accompanied by meaningful efforts to prevent crime. But importantly, the available data contradict the notion that justice reforms are linked to the recent rise in shootings.

As the trends of the past three decades indicate, more jail does not equal more safety.

To the contrary, an emerging body of research indicates that the overuse of jail, while temporarily incapacitating people, can actually lead to more criminal activity and risks undermining the health of individuals, families, and entire neighborhoods. Those who go into jail with challenges – substance use, mental health concerns, joblessness, unstable housing, etc. – tend to come out with those challenges worsened.¹ Jail also comes at tremendous financial cost: incarcerating one person on Rikers for a year costs a staggering \$447,000.²

The strategies for reducing incarceration in this report draw on existing and original research and interviews with more than 60 criminal justice officials, practitioners, service providers, and advocates. We estimate that, once implemented, the strategies proposed here could safely reduce the jail population to between 2,700 and 3,150 people. Delivering on the promise of these strategies, and achieving the projected reductions in jail, will depend on political will, robust implementation, and ongoing monitoring to track progress.

New York City's Current Jail Population

On June 1, 2021, 5,753 people were held in the city's jails, compared to more than 20,000 on an average day in 1991 and almost 10,000 as recently as 2016.

- **Pretrial Detention Drives the Jail Population:** Eighty-five percent of the jail population consists of people held before trial due to unaffordable bail or a remand order (71%) or because of an alleged parole violation stemming from a pending charge (14%). Other key subgroups are held on a “technical” parole violation – such as missed appointments or failed drug tests (4%) – or a jail sentence of less than a year (4%). The number of people incarcerated pretrial has grown over the past year due to significant case delays from COVID-19 disruptions and increased bail setting. Jail sentences and technical parole violations have dropped considerably.
- **Stark Racial Disparities Persist:** Black New Yorkers represent 60% of the current jail population (up from 58% in 2016), but account for only 53% of those charged with a criminal offense in 2020 and just 24% of the city's general population. Hispanic/Latinx New Yorkers make up 27% of the jail population, whites 11%, and additional groups 2%. Troublingly, judges were almost 50% more likely to set bail on Black people accused of violent felony charges than on white people facing identical charges in the fourth quarter of 2020.³ Our analysis also points to racial disparities at the sentencing stage, even after accounting for differences in people's criminal history or charges.
- **The Jails Increasingly House People with Mental Health Conditions:** More than half (52%) of the people in jail have received mental health services, up from 44% in 2016. In 2020, an average of 17% were diagnosed with a “serious mental illness,” up from 10% four years earlier.⁴

Racial Justice

System players must address mounting racially inequitable outcomes, regardless of whether or not there is measurable overt bias in decision-making. As initial steps towards addressing persistent inequity, the city should empower a permanent working group on racial disparities to make concrete policy proposals, and track and publicly report on disparities at each stage of the criminal justice system. The city should also invest in community needs for predominantly Black and Brown neighborhoods that are disproportionately impacted by both crime and incarceration.

COVID-19 Case Backlog

Disruptions linked to COVID-19 have significantly exacerbated preexisting case delays, lengthening the average time people spend behind bars awaiting trial by close to three months (80 days) when comparing March 2020 to June 2021. The courts, district attorneys, defenders, and the city should prioritize the longest cases as an immediate response, and then return as

quickly as possible to pre-COVID operations. *Reverting to pre-COVID case processing times alone could reduce the daily jail population by **740 people**. Below, we also discuss strategies for improving pre-pandemic case speeds to further reduce incarceration.*

Pretrial Decisions

State law requires releasing people before trial – while presumed innocent – unless they pose a risk of flight. Few New Yorkers pose such a risk: 92% either attend all court dates or return from any missed date within 30 days, a rate that rises to 96% for people charged with violent felonies.⁵ And countering the conventional wisdom, research indicates that jailing people pretrial actually increases their likelihood of future arrest compared to similar individuals who are released.⁶ *Improvements throughout the pretrial decision-making process could collectively reduce incarceration by **750-1,110 people** on any given day.*

- **Promote the Use of Pretrial Release and Ability to Pay Assessment Tools:** The city's Pretrial Release Assessment, which classifies people's likelihood of making their court appearances, is empirically-based and, if adhered to more often, would reduce racial disparities in bail-setting, as well as incarceration.⁷ In addition, in 2020, only 15% of people could pay bail at arraignment.⁸ Formally assessing how much people can afford could aid courts in considering people's financial circumstances, as the law requires.
- **Encourage the Use of Supervised Release:** The city's supervised release program has proven successful with high rates of return to court and low re-arrest rates, even as it has expanded to all charge categories. Increased training and other steps could increase reliance on supervised release in cases where a judge has determined there is a risk of flight.
- **Implement More Deliberative Decision-Making:** Arraignment courts should adopt a rigorous two-step structure to minimize disparate outcomes. First, determine whether a credible risk of flight exists. If that is established, then consider arguments about the least restrictive conditions necessary for ensuring return to court.
- **Establish Population Review Teams:** Based on successful models in other cities, borough-specific interagency teams could periodically review jail population trends and identify people in jail whose cases could be resolved or who could be safely released (at both pretrial and later stages).

Case Processing Delays

Prior to COVID-19, the city's average indicted felony required over ten months to reach a disposition. *Assuming pretrial reforms are put into place, improved case processing could reduce incarceration by approximately **500-550 people** on any given day.*

- **Focus on People Detained Pretrial:** Leaders from the judiciary and other key agencies should prioritize reducing case delays for people in jail awaiting trial.

- **Institute Best Practices:** National evidence (confirmed by recent pilot results in Brooklyn that improved case speed by 28%) demonstrates that sizable improvements are possible with proven case management practices, such as: establishing a formal case timeline; limiting adjournments to the time needed to complete between-appearance tasks; and insisting that each court appearance achieves a meaningful purpose – all while ensuring due process.⁹
- **Allocate Resources Wisely:** The state court system should ensure sufficient judges are assigned to early pretrial proceedings. Adequate funding should be provided so that district attorneys’ offices and public defender agencies can quickly meet discovery obligations.

Sentencing Options

The number of people serving jail sentences has declined over the past several years, and the Mayor’s Office of Criminal Justice recently expanded the city’s already robust infrastructure of services and programs for people likely to receive these sentences. *Continued investment in proven alternative approaches to jail could reduce incarceration by **75-125 people**.*

- **Replace Jail with Proven Alternatives (with Limited Exceptions):** Depriving people of liberty for less than a year only to release them into the community in a worse condition rarely advances public safety. Community-based options that provide accountability and address individual underlying needs can capably replace jail sentences in most circumstances.
- **Expand Restorative Justice Programs and Mental Health Courts:** These models both have proven track records of reducing recidivism for people charged with violence, enhancing accountability, and meeting the needs of victims.¹⁰ The city should also expand programming to address people’s prior exposure to trauma.

Parole and Reentry

State law currently requires the automatic incarceration of anyone accused of a parole violation, no matter the severity, for both new criminal charges and “technical” violations. *The Less Is More Act, passed by the State Legislature on June 10, but yet to be signed into law by the Governor as of this report’s publication, would limit parole incarceration and could reduce the jail population by approximately **400-500 people** on any given day.*

- **Limit Parole Detention:** The Less Is More Act would limit incarceration for parole violations by ending automatic detention for people accused of parole violations, restricting the use of jail altogether for some violations, and requiring a court hearing before a person accused of a violation could be detained.
- **Invest in Reentry Services:** City and state government should devote resources to help meet the housing, employment, mental health, and other fundamental needs of people returning from prison, thereby fostering conditions for lasting stability and safety in the community.

Priority Populations Based on Gender, Age, and Health Status

People with mental health concerns, those aged 55 and up, and women, transgender, and gender non-conforming people face disproportionate health risks and/or abuse and discrimination in jail. Mental illness does not predict future criminal behavior, and people with mental illness tend to stay in jail far longer than others facing the same charges. *Women and people aged 55 and up are empirically less likely than others to engage in future violence.*¹¹ *Focused approaches to divert women and people 55 and over away from jail could reduce incarceration by approximately 100 people on any given day.*¹²

- **Provide Alternatives for People with Serious Mental Illness:** The city should fund additional outpatient treatment slots and community-based residential facilities – akin to supportive housing – for people with a serious mental illness.
- **Establish a Strong Presumption Against Incarceration for Certain Gender-and Age-based Subgroups:** Community-based residential facilities with wrap-around services – already piloted by the Women’s Community Justice Project – can serve many women, transgender, and gender non-conforming people who would otherwise be sent to Rikers. People ages 55 and up should routinely receive a needs assessment before a jail order, given the likelihood of unmet longstanding mental or physical health challenges.

Jail Reduction Projections

Our projections are based on our best efforts to conservatively model the impact of these strategies, guided by data, but we caution that actual outcomes will depend heavily on implementation and prevailing attitudes towards justice and incarceration in our city.

| Summary of Jail Reduction Projections* | |
|--|---|
| Reform Area | Projected Jail Reduction (low / high scenarios) |
| COVID-19 Backlog | 740 |
| Pretrial Decision-Making | 750 / 1,100 |
| Case Processing Delays | 500 / 550 |
| Expanded Sentencing Options | 75 / 125 |
| Parole Detention | 400 / 500 |
| Priority Groups | 100 |
| Current Jail Population (June 1, 2021) | 5,753 |
| Projected Post-Reform Jail Population (rounded to nearest 50) | 2,700 / 3,150 |

*The projections at each stage account for the impact of jail reductions due to reforms at prior stages. For example, the projections related to “pretrial decision-making” reforms assume that ending the COVID-19 backlog has already reduced the jail population by 740 people. This iterative approach also means that case processing reforms will have a *greater* impact (closer to 550 than 500) in the “low” scenario, because fewer people will have been diverted from jail due to pretrial reforms, and hence more incarcerated people will have their cases sped up by reducing case delay.

Part One

Elevating Safety, Justice, Wellness, and Equity

Chapter 1. Introduction

New York City has embarked on a far-reaching effort to shutter the notorious Rikers Island jail complex and lower the number of people incarcerated in city jails.

Isolated on an island in the East River, far from the courts, and barely accessible to visitors and service providers, the jails on Rikers have been a site of inhumanity for decades. They embody a counterproductive and costly approach to criminal justice.

Closing Rikers depends on safely reducing the number of people in jail on any given day – an achievable goal that demands policy changes at a number of levels.¹³ **The good news is that New York City is building on decades of successful reforms that already have driven down both crime and incarceration.**

Yet challenges lie ahead. The devastation of the COVID-19 pandemic has been accompanied by a tragic increase in shootings in New York City and nationwide, even as most other crimes continue to fall, giving rise to concerns of diminishing public safety. Massive protests against racial injustice prompted by the killings of Black Americans by police have brought renewed demands for sweeping changes in the way our city and country define “public safety,” and highlighted vast racial disparities in who is arrested and incarcerated. Alongside these developments, perennial problems within New York City jails remain, including brutal conditions and unacceptably high levels of violence.

A new set of elected policymakers, including a new mayor, will soon be tasked with addressing these pressing issues and bringing to fruition the end of Rikers.

This document lays out a roadmap for safely limiting the use of jail in the coming years, including ending case delays, reducing bail, reforming parole, investing in mental health treatment, and prioritizing proven alternative approaches. Our recommendations draw on past and original research, as well as interviews with over 60 judges, prosecutors, defense attorneys, service providers, activists, community representatives, and researchers. We estimate that, over time, they could safely reduce the jail population to between 2,700 to 3,150 people. Importantly, delivering on the promise of these strategies and achieving the projected reductions in jail will depend on political will, robust implementation, and ongoing monitoring to track progress.

Our goal of a more just New York City is not about reaching a jail population of any predetermined number. It is to set out a path to long-term safety for all New Yorkers by elevating justice and equity, preventing crime, and reducing counter-productive incarceration by focusing on effective policies and investments.

Building on Progress

Nationwide, jail incarceration more than doubled from the early 1990s to 2013.¹⁴ But over that same period, New York City both reduced incarceration by more than half and saw a steep and historic decline in murders, major crimes, and arrests.¹⁵ By

2018, compared to 60 other urban counties, New York City had the second lowest jail incarceration rate per 100,000 residents.¹⁶

This positive change, however, took place against the backdrop of deep concerns about the fairness of the criminal justice system, particularly for Black and Brown New Yorkers. The racial disparities are massive and shameful: almost 90 percent of people incarcerated in city jails are Black (60%) or Hispanic/Latinx (27%).¹⁷

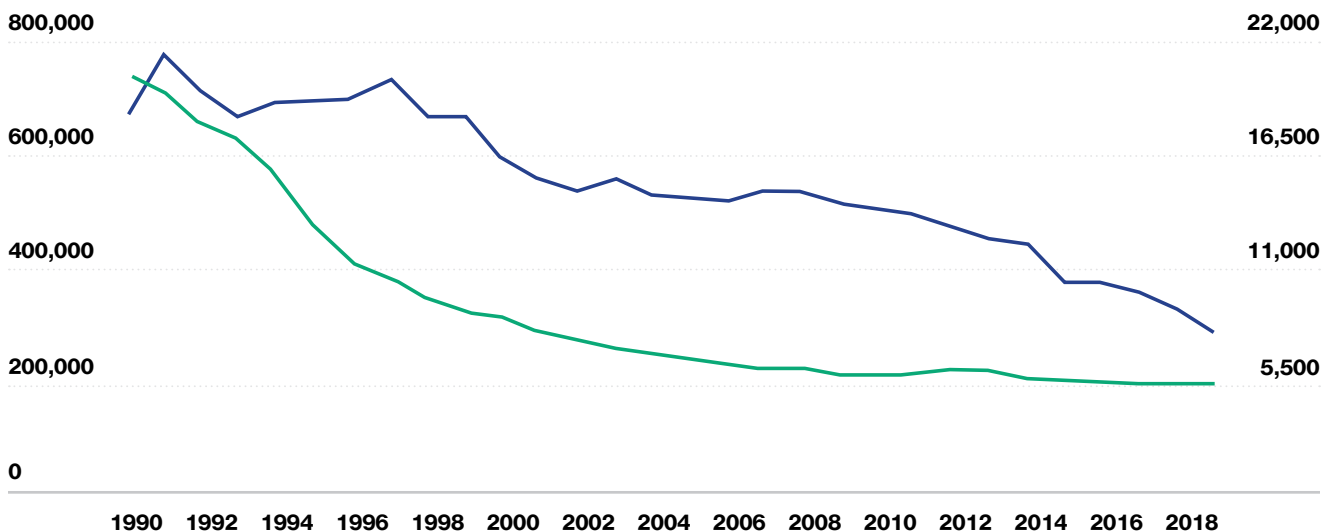
In 2016, galvanized by the #CLOSErikers campaign led by formerly incarcerated people and their families, then-City Council Speaker Melissa Mark-Viverito asked former New York State Chief Judge Jonathan Lippman to chair a commission to propose a path forward. Composed of more than two dozen civic leaders and criminal justice experts, our Commission unanimously concluded in

its [original 2017 report](#) that Rikers must be closed and identified a series of reforms to safely shrink the number of people behind bars.¹⁸

As our initial report was released, Mayor Bill de Blasio committed to closing the jails on Rikers. Two years later, in October 2019, the Mayor and City Council reached a landmark agreement to shutter Rikers by 2027.¹⁹ The plan envisions rebuilding jails in four of the boroughs, three of which will be next to borough courthouses, on the site of existing jails that are in decrepit and dangerous condition. Based on prior jail reductions, thanks in significant part to major investments in successful alternatives to incarceration, and the state's new bail reform law, the Mayor and Council agreed these jails would house a citywide daily population capped at 3,300 people.

Mapping New York City's Simultaneous Decline in Jail and Serious Crime, 1990-2019

— Index Crimes (Total) — Average Daily Jail Population



Sources: Jail Population: Vera Institute Incarceration Trends Project (1990-2018) and New York State Division of Criminal Justice Services' (DCJS) Annual Jail Population Trend (2019); Index Crimes: DCJS.

While the pandemic has interrupted progress towards these goals, we believe there is a clear path towards closing Rikers, promoting safety, and reducing incarceration.

Jail Reduction Starts with Crime Prevention

New Yorkers demand, and deserve, to live in safe communities. Efforts to reduce incarceration must be accompanied by efforts to prevent crime.

Over the past year, concerns about safety have risen to the forefront of public debate as New York City grapples with a steep rise in gun violence. This tragic increase has occurred in dozens of cities nationwide, not just our own. Notably, a recent analysis of more than 30 cities linked increased homicides to the social and economic upheaval produced by COVID-19 and found that increases in homicides were especially large where poverty and unemployment were highest.²⁰

The past year's tide of gun violence must be front and center for all policymakers, and arrest and prosecution have a role to play.

But importantly, the available data contradict the notion that bail and other justice reforms are linked to this rise in shootings. This includes a *New York Post* analysis of police data as well as figures from the Mayor's Office of Criminal Justice showing low re-arrest rates on violent charges (less than 1% per month) for people released pretrial.²¹

There are many short- and long-term interventions that can foster safer neighborhoods without the harms from

an overreliance on jail. These approaches range from violence interruption programs to expanded mental healthcare to investments in supportive housing, youth programs, special education, and other efforts to prevent violence and address fundamental needs in impacted communities. To this end, the community-based initiatives included in the [Points of Agreement](#) for closing Rikers represent a critical component of comprehensive criminal justice reform.²² Strategies rooted in community members defining their own priorities may prove more powerful than top-down approaches.²³ These methods also find support from people who have survived violence. In a nationwide survey, victims of crime overwhelmingly supported increased investments in crime prevention and community needs, rather than an increased reliance on incarceration.²⁴

More Jail Does Not Equal More Safety

As the trends of the past three decades indicate, more jail does not equal more safety. To the contrary, while jailing someone incapacitates them for a time, an emerging body of research indicates that, in many cases, jail incarceration can lead to more criminal activity and undermine the health of individuals, families, and neighborhoods. Studies in New York City and other jurisdictions across the country consistently show that people who are sent to jail are more likely to be re-arrested in the future as compared to similarly situated people who avoided jail.²⁵

The likely cause: jails disrupt people's family and work lives, deprive them of housing and access to treatment, and subject them to violence and trauma – especially in the harsh

and often chaotic environment of Rikers. People then return the community at a higher risk of recidivism based on those harms.²⁶ As we noted in our original report, those who go into jail with challenges – substance abuse, mental illnesses, unemployment, lack of education, etc. – tend to come out with those challenges worsened. Jail can also harm family members and others who depend on the incarcerated person as a caregiver or breadwinner.²⁷

The unavoidable truth is that these problems primarily impact Black and Brown people and communities in our city.

The financial impact of incarceration is also enormous. In FY 2020, the city spent just over \$2.6 billion to operate its jails. Jailing one person on Rikers for a year costs a staggering \$447,000.²⁸

Strategies for Safely Minimizing Jail

In the chapters that follow, we analyze jail trends (Chapter 2), describe policies that could begin to address racial disparities (Chapter 3), and identify strategies to safely reduce incarceration and project the potential impact of these strategies (Chapters 4-9).

Taken together, we estimate these reforms could safely reduce the New York City jail population to between 2,700 and 3,150 people over the next six years and help keep pushing that number lower.

Our projections are based on our best efforts to conservatively model the impact of these strategies, guided by data, but we caution that actual outcomes will depend heavily on implementation and prevailing attitudes towards justice and incarceration in our city.

Appendices D and E provides more detail on our projections and the underlying data.

The broad strategies are as follows, with projections summarized in the chart below:

- **Resolve the COVID-19 Backlog (Chapter 4).** The upheaval from the COVID-19 pandemic has contributed to a significant lag in resolving criminal cases, lengthening the amount of time people are spending in jail before trial. *Returning to pre-COVID case processing times—which themselves can be significantly improved, as discussed in Chapter 6—would result in at least 740 fewer people in jail on any given day.*
- **Reduce Pretrial Detention (Chapter 5).** The vast majority of people incarcerated in city jails are held pretrial. *Improvements throughout the pretrial decision-making process could collectively reduce incarceration by 750-1,100 people on any given day.*
- **End Case Delays (Chapter 6).** Case delays have long been endemic to New York City’s justice system. Comparable cases in the city take twice as long as in the rest of the state. Continued judicial leadership, a focus speeding up the cases of people detained pretrial, and adopting robust case management methods could improve outcomes for accused persons and crime victims alike. *Assuming pretrial reforms are put into place, improved case processing could reduce incarceration by approximately 500-550 more people on any given day. (Absent pretrial reforms, faster cases could reduce incarceration by 1,000 people or more.)*

- **Curtail Short Jail Sentences (Chapter 7).** While the number of people sentenced to jail in the city is at a historic low, continued investment in proven alternative approaches to jail could reduce incarceration by 75-125 people on any given day.
- **Reduce Detention for Parole Violations (Chapter 8).** Under state law, people accused of parole violations, either resulting from a new charge or non-criminal “technical” violations such as missed appointments or failed drug tests, are automatically incarcerated at Rikers for an average of over two months, while state authorities determine whether

to return them to prison. *Legislation to limit parole incarceration could reduce incarceration by approximately 400-500 people on any given day.*

- **Emphasize Community-Based Solutions for Certain Groups (Chapter 9).**

Women, older people, and those suffering from serious mental health or physical illnesses face particular risks in jail, while posing much less risk to others if they are released with adequate support. *Focused approaches to divert women and people 55+ away from jail could reduce incarceration by approximately 100 people on any given day.*²⁹

| Summary of Jail Reduction Projections* | |
|--|---|
| Reform Area | Projected Jail Reduction (low / high scenarios) |
| COVID-19 Backlog | 740 |
| Pretrial Decision-Making | 750 / 1,100 |
| Case Processing Delays | 500 / 550 |
| Expanded Sentencing Options | 75 / 125 |
| Parole Detention | 400 / 500 |
| Priority Groups | 100 |
| Current Jail Population (June 1, 2021) | 5,753 |
| Projected Post-Reform Jail Population (rounded to nearest 50) | 2,700 / 3,150 |

*The projections at each stage account for the impact of jail reductions due to reforms at prior stages. For example, the projections related to “pretrial decision-making” reforms assume that ending the COVID-19 backlog has already reduced the jail population by 740 people. This iterative approach also means that case processing reforms will have a greater impact (closer to 550 than 500) in the “low” scenario, because fewer people will have been diverted from jail due to pretrial reforms, and hence more incarcerated people will have their cases sped up by reducing case delay.

Chapter 2. Jail in New York City

Like local jails nationwide, New York City's jails overwhelmingly detain people who have yet to be convicted of a crime. On June 1, 2021, 85% of people were held before trial, either because a judge set unaffordable bail or remanded the individual directly to jail (71%) or because a parole officer filed a violation resulting from a new arrest (14%). Others were serving short jail sentences of less than one year (4%). Yet a third group (4%) consisted of people jailed on "technical" parole violations involving no alleged criminal acts.

Recent Trends

Compared to the 9,700 people held towards the end of 2016, the daily jail population had dropped significantly to about 5,800 in June 2021. In fact, the population bottomed out at a historic low of 3,809 people one year earlier on April 29, 2020, before increasing by 2,000 people over the past year.

Annual jail admissions also underwent a significant multiyear decline, from nearly 60,000 in 2016 to fewer than 16,000 in 2020, a 73% drop.³⁰

What explains these changes? Some of the driving factors behind the city's declining jail population include a 41% reduction in new felony arraignments from 2016 to 2020; the role of the city's supervised release program as an effective alternative to bail since its inception in March 2016; the effect of the state's bail reform in limiting cash bail and pretrial detention; and a longer-term trend towards less use of jail at both the pretrial and sentencing stages.³¹

In turn, the jail re-increase in the most recent year largely reflects the abandonment of the intensive efforts at the onset of the COVID-19 pandemic in March and April 2020 to release people from the dire health risks at Rikers;³² a sharp rise in judges' bail-setting on comparable cases in the second half of 2020; and the bail rollbacks that went into effect July 2020 and made more cases legally eligible for bail and detention.³³

Additionally, in the transition from in-person to remote court appearances and suspension of jury trials for most of the past year, over 700 people now facing longer waits for trial were added to the city's jail population (see Chapter 4).

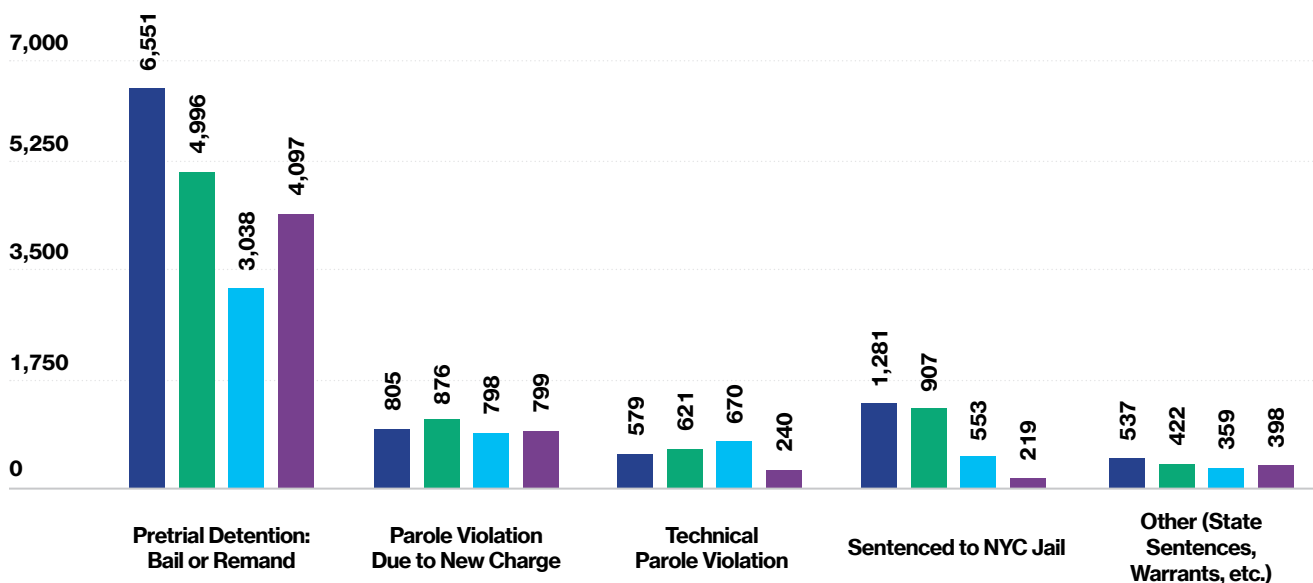
The June 2021 Jail Population

To gain a better sense of the current jail population, we took a one-day snapshot on **June 1, 2021**. On that day, **5,753** people were incarcerated at Rikers and other city jails.

- **Pretrial:** *Seven out of ten people (71%) were incarcerated before trial due to unaffordable bail or a direct detention order. Among this group, the majority (79%) were charged with a violent felony, with nonviolent felonies and misdemeanor or lesser charges making up 16% and 5%, respectively.³⁴ This reality underscores that further decarceration depends, in part, on a willingness to try a different approach with people whose alleged crimes involve violence.*

New York City's Jail Population, 2016-2021

■ September 29, 2016 (Initial Commission Analysis = 9,753) ■ March 18, 2020 (Post-Bail Reform Total = 5,418)
 ■ April 1, 2019 (Pre-Bail Reform Total = 7,822) ■ June 1, 2021 (Current Total = 5,753)



Source: NYC Department of Correction (data analyzed by the Center for Court Innovation).

- Parole Violations:** Nearly one out of five people were held on a parole violation resulting from a new charge (14%) or a technical parole violation (4%). They were mostly awaiting a revocation hearing, although some may have had their parole revoked and be serving a brief re-incarceration sentence at Rikers or awaiting transfer to a state prison. From 2016 to 2019, people accused of technical violations were the only subgroup that increased rather than declined,³⁵ although during the pandemic, the number of alleged violations have decreased. As for people held due to a new charge, this subgroup's numbers have barely budged for five years.
- Jail Sentences:** Four percent of the current jail population consists of individuals convicted of an offense who

received a short sentence. The sentenced population made up 13% of the jail population in 2016 and was as high as 10% as recently as mid-March 2020.

- Additional Subgroups:** The remaining 7% of the current jail population consists of people held temporarily while awaiting transfer to, or returning from, a state prison facility, or for other miscellaneous reasons, including a pending mental competency examination, the latter of which accounted for about 140 people.

Socio-Demographic Characteristics

- Demographics:** The June 1, 2021 jail population was predominantly Black (60%), Hispanic/Latinx (27%), and cisgender male (95%). Cisgender women made up 4%, transgender women 1%, and transgender

men 0.1% (4 people).³⁶ People ages 24 and under comprised 17% of the jail population – representing a decline from 24% in 2016. On the other end of the spectrum, 8% of the population was ages 55 and up, little changed from previous years.

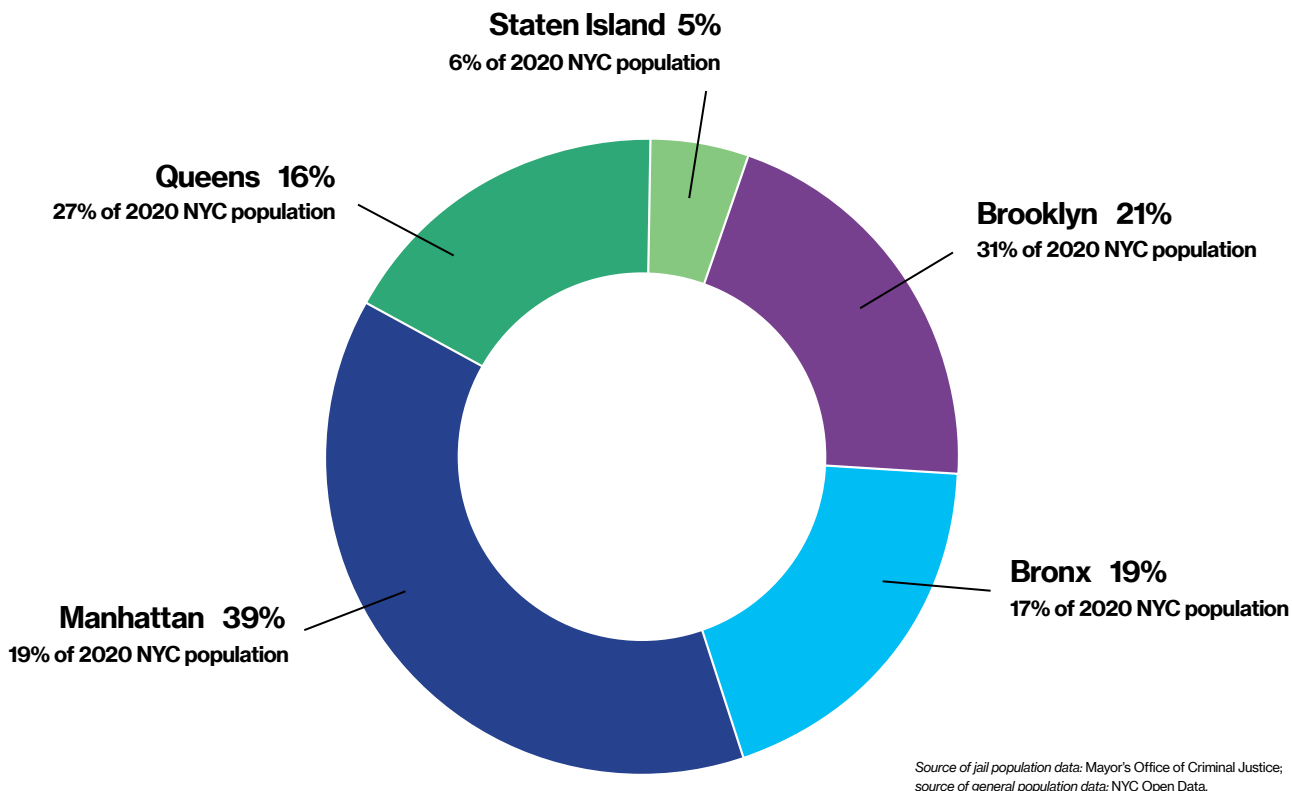
- **Mental Health:** Just over half (52%) of the June 2021 population had received mental health services during their jail stay. Not all of them had received a formal diagnosis. As of October 2020, 17% of the population was diagnosed with a “serious mental illness,” encompassing schizophrenia, other psychotic disorders, bipolar and

related disorders, depressive disorders, and post-traumatic stress disorder.³⁷

- **Borough:** People’s criminal cases originated in Manhattan far more than any other borough (39%), followed notably far behind by Brooklyn (21%), the Bronx (19%), Queens (16%), and Staten Island (5%), based on city data for the end of May 2021.³⁸

The next chapter further examines the data on racial disparities, and Chapter 9 does the same for the population’s gender, age, and mental health composition, both in 2021 and since 2016.

Borough Composition of the Jail Population on May 31, 2021



Chapter 3. Racial Justice

Racial inequity pervades New York City’s justice system, a fact brought home by either observing the city’s arraignment courts or analyzing the data. Black New Yorkers represent 24% of the city’s population but accounted for 53% of people charged with a criminal offense in 2020, and 60% of people incarcerated in jail as of June 1, 2021. In other words, decisions made once people enter the system are making disparities worse, not better.

Disparities in New York City’s Jail System

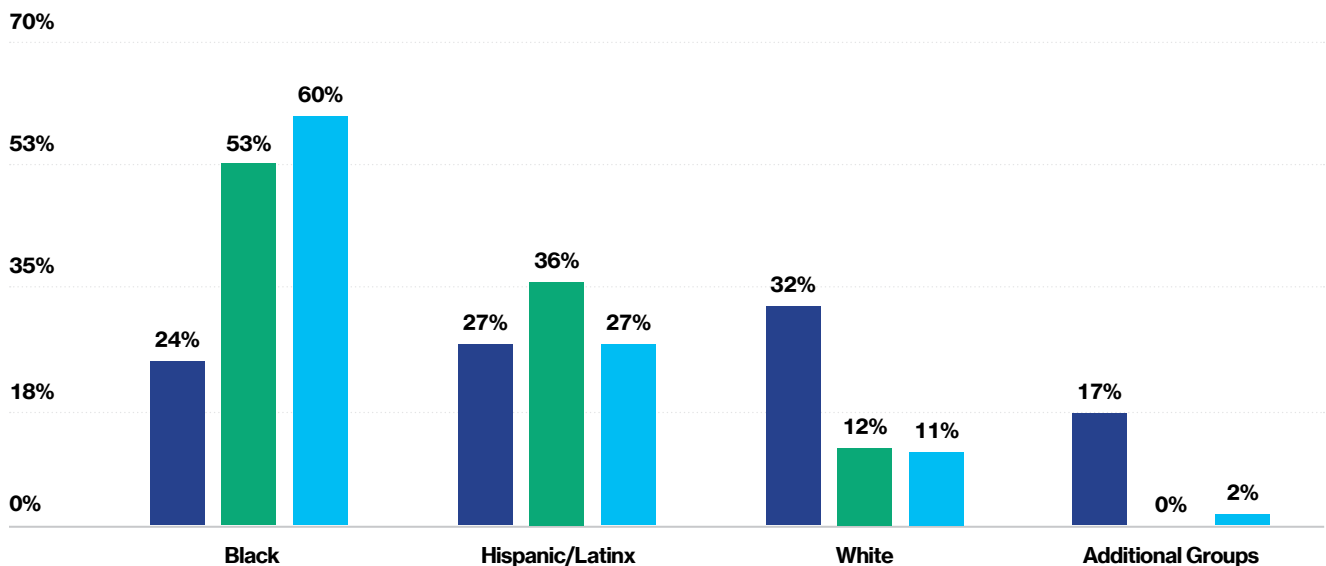
Disparities between racial and ethnic groups have persisted – and even increased – as

the city has made clear progress in reducing incarceration. A few examples:

- **Rising Disparities:** Compared to five years ago, the city’s jail population has become slightly *more* disproportionately made up of Black New Yorkers (58% in 2016 and 60% currently).
- **Pretrial Detention:** The bail reform law implemented in 2020 cut bail and pretrial detention by at least half when compared to 2019 across Black, Hispanic/Latinx, and white people, alike. But for people charged with a violent felony who remained eligible for bail, *relative disparities increased*

Racial Disparities in New York City’s Criminal Justice System

■ General Population ■ Criminal Arraignments ■ Jail Population



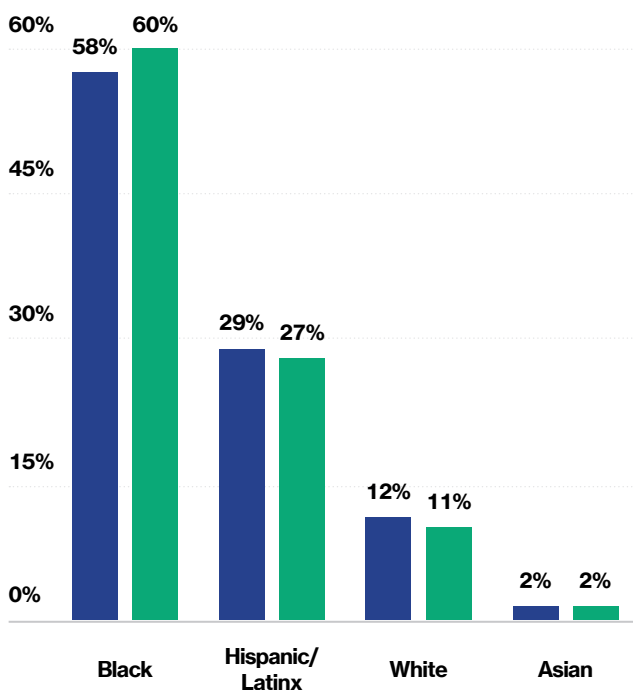
Sources: General Population: U.S. Census 2018; Criminal Arraignments: Office of Court Administration arraignments in 2020 (analyzed by the Center for Court Innovation); Jail Population: NYC Department of Correction on June 1, 2021 (analyzed by CCI). Note: Percent black is coded to include black/non-Hispanic individuals at all three stages. Percentages may not add up to 100% due to rounding. Race/ethnicity was missing for 6.9% of 2020 criminal arraignments and 0.3% (20 people) in the June 1, 2021 jail population.

threefold within 2020, due to a shift in judges' pretrial decision-making. In the fourth quarter, for people charged with a violent felony, judges set bail or remand at a rate 21 percentage-points higher for Black versus white people, compared to a 7 percentage-point Black-white disparity in the first quarter – an enormous change within a single year.³⁹

- **Alleged Parole Violations:** As of June 1, 2021, people held on a parole violation were 67% Black, 22% Hispanic/Latinx, and 9% white – an even greater disparity than exists among people sentenced or held pretrial.

The Racial and Ethnic Distribution of the NYC Jail Population, 2016 vs. 2021

■ September 29, 2016 ■ June 1, 2021



Source: NYC Department of Correction (data analyzed by the Center for Court Innovation). Note: There were 5 Native-American people in jail on September 29, 2016 and 9 on June 1, 2021. Missing cases are omitted from the reported percentages. There were 93 people missing race in 2016 and 20 missing in 2021.

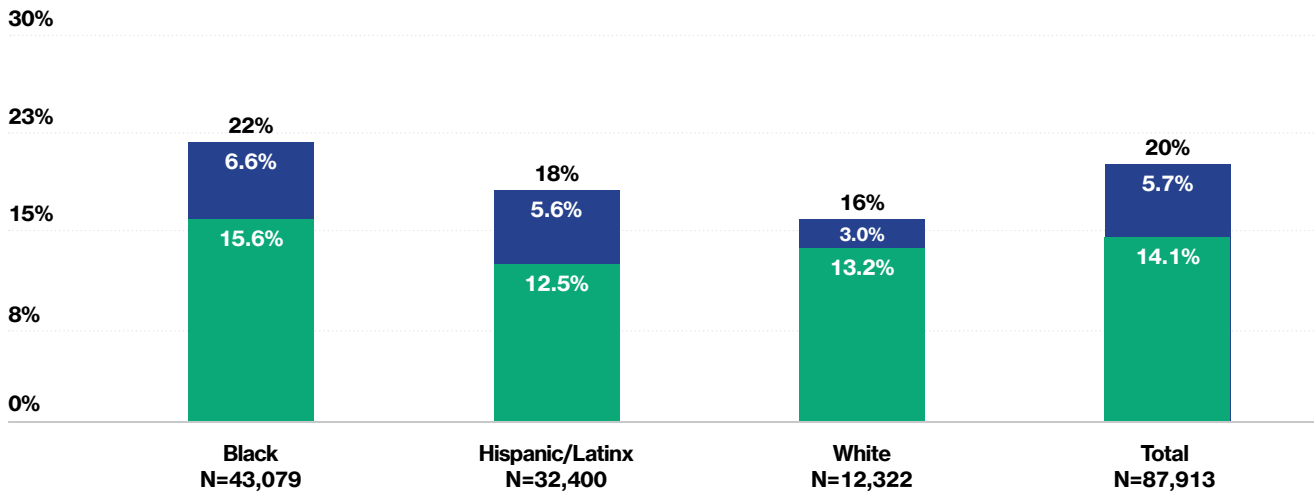
- **Conviction and Sentencing:** Spanning all criminal convictions in the city from 1990 to 2019, a recent report found people convicted were 54% Black, 33% Hispanic/Latinx, 12% white, and 2% from all other groups.⁴⁰ These disparities widen at the sentencing stage. As shown below, in 2019, people convicted of crimes were *most* likely to be sentenced to jail or prison if they were Black, and *least* likely if they were white. This Black-white gap persisted even after accounting for other factors, including people's criminal history and charge.⁴¹ Black individuals made up the most likely racial/ethnic group to receive a city jail sentence of one year or less at Rikers. These results replicate findings from earlier years, which pointed to significant sentencing disparities in Manhattan.⁴²

- **The Immense Impact of Disparate Incarceration:** Newly published research found that, from 2008 to 2017, jail incarceration in New York City fell disproportionately on Black men. Over this period, a stunning 27% of Black men had been jailed by the time they reached age 38, as compared to 16% of Hispanic/Latinx and 3% of white men. Among women, the equivalent percentages were 5%, 2%, and 1%. While the jail incarceration rate significantly declined for all three subgroups over the ten years measured, it declined by more among white than Black men, further increasing relative disparities.⁴³

In subsequent chapters, we set out a series of strategies for reducing the reliance on incarceration. These measures will perforce lessen the systemic impacts of jail on people

Racial Disparities in Incarceration at Sentencing in 2019

■ Prison ■ Jail



Source: Office of Court Administration (data analyzed by Center for Court Innovation). Note: Cases include those pleading guilty or convicted, with a sentence imposed in 2019. Race/ethnicity was missing for 6.7% of 2019 jail or prison sentences.

and communities of color. However, we also recommend explicit efforts to measure and mitigate racial disparities across all stages of the criminal justice system. Given the connection between deep-seated structural racism and inequity within the criminal justice system, there is no cure all solution within the four corners of that system. But the strategies described below provide a starting point.

Recommendations

1. Define institutional racism based on outcomes, rather than overt bias alone.

Historic discrimination, segregation in housing and education, the school-to-prison pipeline, and underinvestment in the city's predominantly Black and Hispanic/Latinx neighborhoods are all factors external to New York City's criminal justice system contributing to its stubborn racial inequity. Yet that is no excuse for not resolutely working to mitigate the harm that is within the justice system's control.

A recent analysis found that judges' bail decisions in 2020 significantly varied by race, but controlling for differences in people's criminal histories, charges, and other factors, there was no independent race effect. In other words, as far as can be told from the data, there was not individual bias on the part of judges. Rather, systemic bias created by differences in other characteristics – such as more accumulated prior arrests among often over-policed Black New Yorkers – led the criminal justice system to amplify preexisting disparities.⁴⁴ That said, an earlier study has pointed to a more overt form of bias in bail decisions,⁴⁵ and our own analysis for this report found a direct bias at sentencing, even after controlling for background.

Ultimately, whether overt bias can be detected or not, when people from one racial or ethnic group are more likely to be deprived of their liberty than another, system players should hold themselves accountable for minimizing these outcomes.

2. Establish a permanent Racial Disparities Working Group.

To ensure careful monitoring of racially disparate outcomes at every criminal justice decision-point (arrest, charging, pretrial decisions, and sentencing), the city should create a Working Group with broad representation from justice and community stakeholders, think tanks, and advocates. Justice stakeholders participating in this group should be individuals with authority within their home agencies to create and implement policy and practice changes agreed upon in the Working Group. The Working Group should also be staffed by a team of researchers – potentially from the Mayor’s Office of Criminal Justice – charged with conducting data analyses requested by group members and with producing regularly scheduled public reports. The Working Group should have wide latitude to make recommendations to the city, including to Mayor de Blasio’s recently formed Racial Justice Commission.⁴⁶ To promote accountability among system players charged with adopting them, these recommendations should be made public.

3. Monitor and publicize disparities in Release Assessment recommendations and pretrial decisions.

When it launched in late 2019/early 2020, the New York City Criminal Justice Agency’s (CJA) Pretrial Release Assessment recommended ROR for 84% of Black, 84% of white, and 86% of Hispanic/Latinx people facing charges,⁴⁷ a rare instance of a non-racially-disparate assessment tool. Particularly given evidence that other risk assessment tools have fostered biased

outcomes,⁴⁸ CJA and the city should monitor this tool’s outcomes to assess whether it continues to recommend ROR at comparable rates across race and ethnicity. The city should also monitor the degree to which judges are following the assessment tool’s recommendations, given that decisions running counter to the tool’s recommendations may reintroduce bias. Any such inequities should be brought to the attention of state court officials and shared with the public.

Indeed, the research cited above found that judges’ actual decisions throughout 2020 were similar across race/ethnicity for both misdemeanors and nonviolent felonies – but not for violent felony charges, where judges set bail or remanded 55% of Black, 49% of Hispanic/Latinx, and 42% of white people – creating a 13-percentage point Black-white disparity across all of 2020 that, as noted above, grew to 21 percentage points in the fourth quarter.⁴⁹ In that fourth quarter, judges set ROR in only one-third of cases involving violent felony charges where the Release Assessment recommended it.⁵⁰ Had judges adhered more faithfully to the assessment, the racial and ethnic disparities in pretrial outcomes would have been largely averted.⁵¹

4. Repair past harms of over-incarceration by reinvesting in impacted communities.

Research has amply demonstrated the devastating effects of incarceration on communities. Incarceration increases unemployment, reduces disposable income, and harms local businesses.⁵² It also undermines relationships among incarcerated mothers and fathers and their children,

harms other familial relationships, and disrupts social networks.⁵³

Research also points to a dynamic in which these community-level harms fall disproportionately on Black and Brown residents. For example, by age 38, Black men living in the poorest one-third of New York City zip codes had a jail incarceration rate of 33% from 2008 to 2017, compared to 22% among Black men living in all other neighborhoods. By contrast, regardless of their neighborhood's poverty rate, white men had statistically identical incarceration rates of 3.5% and 3.4%.⁵⁴

There are several areas in New York City with vastly disproportionate jail and prison incarceration rates.⁵⁵ They include the predominantly Black and/or Brown neighborhoods of Central Brooklyn (e.g., Brownsville, Ocean Hill, and East New York); East and Central Harlem; and Hunts Point, Mott Haven, and Morrisania-Melrose in the Bronx. In a recent study (albeit based on older 2010 data), the Prison Policy Initiative and VOCAL-NY found high correlations between socioeconomic, health, and school indicators – such as a neighborhood's rates of poverty and unemployment, standardized test scores among public school students, and students' asthma rate – with the rate of incarceration.⁵⁶ More recent 2013 to 2018 data broken out by city community district indicates poverty rates above 25% in Melrose and the three Central Brooklyn neighborhoods cited above, and a poverty rate of 24% in East Harlem.⁵⁷

While there is by no means a perfect correlation, the message of the data is clear: neighborhoods where there has been

collective underinvestment and high poverty also tend to be those that have suffered from disproportionate incarceration – perpetuating a vicious cycle in which incarceration further amplifies systemic disadvantage at the neighborhood level.

One important way to repair the harm is through community investment, including tangible justice reinvestment strategies in neighborhoods suffering from both poverty and over-incarceration. Building on initiatives already included in the Points of Agreement for closing Rikers, strategies could include prevention programs for youth, skills-based job training, investments in mental health and other human services, better parks and physical infrastructure, and a range of local development strategies such as affordable housing, largescale reforms to combat systemic segregation, and credit assistance for small businesses.⁵⁸ The Commission on Community Reinvestment, established as part of the close Rikers vote in October 2019 and set to issue its first set of recommendations before the end of the de Blasio administration, is an appropriate vehicle to provide guidance on these priority investments.⁵⁹

Part Two

Mapping Safe, Achievable Pathways to Decarceration

Chapter 4. COVID-19 Case Backlog

The COVID-19 pandemic significantly disrupted New York City’s criminal justice system. Beginning March 17, 2020, the city’s courts transitioned entirely to video arraignments. While this arrangement posed no delay in the timing of arraignments, the inability of the judge, attorneys, pretrial services staff, and the person facing charges to see each other in-person may have carried unintended consequences, given prior research linking video appearances to higher bail.⁶⁰

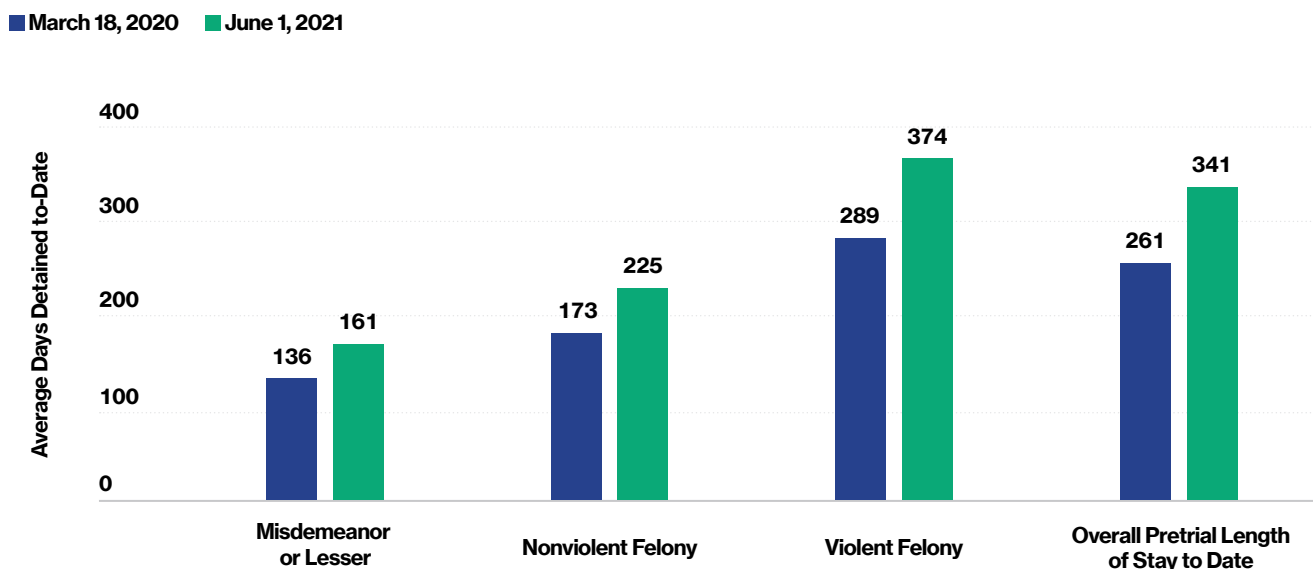
Once past arraignment, the courts have set longer than usual intervals between each pair of court dates and have continued to rely mostly on video court appearances. Given social distancing requirements and the dangers of COVID-19, the courts have been understandably unable to convene grand

juries or hold jury trials on a consistent basis. As one indication of the degree of disruption, New York City courts completed only eight jury trials from March 17 through December 2020, compared to 601 during the equivalent period in 2019.

Longer Stays in Pretrial Detention

People’s average length of stay in pretrial detention (ongoing for some) grew from 261 days among those held on March 18, 2020 to 341 days among those held June 1, 2021. The 80-day increase translates to an estimated **740 more people** in the June 1 jail population.⁶¹ Further illustrating the impact of lengthier cases, there was a 54% increase (472 to 729) in people held before trial between one year and two and a 166% increase (212 to 563) in people held two years or longer.

Average Pretrial Length of Stay: Pre-COVID-19 and Current Jail Population, March 2020 vs. June 2021



Source: NYC Department of Correction (data analyzed by Center for Court Innovation).

These findings suggest the return to pre-pandemic operations alone should lower the jail population by the same 740 people cited above.

Recommendation

Focus judicial, prosecutorial, and defender resources on shrinking the pandemic-related backlog.

In each borough, court administrators, the District Attorney's Office, public defender agencies, and mayoral representatives could form local task forces to collaboratively expedite the cases of people sitting in jail, especially the oldest cases. Where additional resources are needed by DAs, defenders, and courts to expedite cases, the state and city should provide those resources.

For starters, the players could agree to short intervals between court dates – *certainly less than 30 days* – for people detained. As of April 12, 2021, we found that only 19% of people detained before trial on a Supreme Court case had their next appearance scheduled within 30 days of the previous one. Of those whose cases had been disposed but were in jail awaiting sentencing, only 40% were set to have their next appearance within 30 days of the last. To facilitate reaching a disposition, court administrators could also ask judges to order immediate pretrial conferences in the cases of all detained individuals on their caseloads.

Chapter 5. Pretrial Decisions

“In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.”⁶² That was the ringing conclusion of the Supreme Court in its 1987 *United States v. Salerno* ruling. Yet today, seven out of 10 people in jail in New York City are there either because a judge set bail they could not afford, or less often, because they were remanded directly to jail. A further 14% of the jail population is being held pretrial due to a parole violation. (This second group is examined in Chapter 8.)

Research has consistently found that people who are jailed pretrial are *more* likely to be re-arrested than those who are released – a perverse outcome highlighting the importance of limiting pretrial detention to the subset of cases in which it is demonstrably appropriate.

This chapter identifies strategies to safely reduce the number of people held before trial, including ways to ensure the state’s bail reform law works effectively and as intended.

Importantly, these strategies involve – and require – long-term, durable changes in decision-making by institutional players, most notably the judiciary and district attorneys. Shifting the judicial and prosecutorial culture around the appropriate use of jail is integral to successful implementation. Creating this level of culture change will require political will, internal and external advocacy, and a commitment to ongoing training, information sharing, and honest evaluation.

While it is challenging to determine precisely how many people each recommendation

would divert from the jail population, rough estimates are possible using objective comparison points. For example, if courts reverted to the bail-setting practices in place in the first ten weeks of 2020 (prior to both the pandemic and the later rollback of the initial bail reforms), there would be approximately 760 fewer people in jail on any given day. As another example, if in most cases courts fully adopted the recommendations of the city’s Pretrial Release Assessment (described below), there would be approximately 1,000 fewer people in jail. These data points make clear that significant reductions in pretrial detention are well within reach.

High Court Attendance and Low Re-Arrest Rates

Several important considerations support minimizing pretrial detention:

Few New Yorkers released before trial pose a genuine flight risk. *In 2019, 84% of people released pretrial attended every court date, and 92% either attended every date or returned within 30 days of a missed date. Among people charged with a violent felony offense, court attendance was even higher: 89% attended every date, a rate that grew to 96% when including those who returned to court within 30 days.*⁶³

Re-arrest rates while people are released before trial are low, including for people charged with violent felonies. *Since bail reform went into effect, there has not been a single month when more than 0.8% of released people were re-arrested for a violent felony*

while awaiting a determination of guilt—and in most months it was 0.5% or 0.6%. Among people whose initial charge was a violent felony, an average of 1.2% had a violent felony re-arrest. Even when adding up all re-arrests, including low-level misdemeanors, the total pretrial re-arrest rate for people initially charged with a violent felony never exceeded 5% for any month. These pretrial re-arrest rates are virtually identical to the re-arrest rate in 2019, before bail reform was implemented.⁶⁴

The hard evidence does not support the idea that bail reform has contributed to crime.

New York City's recent spike in shootings and murders is a tragic development that is almost certainly driven by the wide societal disruptions occasioned by the pandemic. The rise in shootings in New York City is matched or outpaced by increases in cities nationwide, regardless of whether they have taken steps to reform their justice system.⁶⁵

The Harms of Pretrial Detention

The most rigorous evidence collected to date indicates that unnecessarily detaining people before trial tends to undermine public safety, legal fairness, and the wellbeing of individuals and communities.

- **Increased Recidivism:** Evidence over many years from multiple cities – including New York – indicates that spending time in jail before trial leads to higher re-arrest rates.⁶⁶
- **Leveraging Guilty Pleas and Incarceration:** Being jailed before trial pressures people to plead guilty and to accept longer terms of incarceration than people who are released pretrial – a powerful statistical relationship

confirmed in countless New York City studies.⁶⁷

- **Long-Term Psychological and Socioeconomic Effects:** The negative impact of pretrial detention on public safety results primarily from the socioeconomic repercussions of lost income, employment, and housing, and the traumatic effects of time spent in jail.⁶⁸ A recent report found that pretrial detention decreased people's likelihood of employment over the next three to four years by 25% and exerted its greatest effect in forcing down future earnings among those already at the lowest end of the socioeconomic ladder.⁶⁹

Pretrial Detention in the Bail Reform Era

New research by the Center for Court Innovation found that bail reform initially produced a sharp reduction in bail-setting and pretrial detention in early 2020.⁷⁰ Yet the same research also revealed that, in the late spring of 2020, judges began setting bail significantly more often in cases similar to ones in which they had released people at the outset of the year.⁷¹ The statewide partial rollback of the reforms implemented in July 2020 further contributed to this midyear shift towards more bail-setting. Brief data illustrations follow:

- **Bail Reform Decreased Bail-Setting and Pretrial Detention:** Comparing all of 2020 to 2019, there was a net decrease in pretrial detention among misdemeanors (8% of cases to 3%), nonviolent felonies (37% to 15%), and violent felonies (64% to 52%). Judges relied instead on more use of supervised release, made a universal option by the reforms, even for violent

felony offenses where bail remained a legal option (from 2% of cases receiving supervised release to 14%, a seven-fold increase).

- **Higher Bail-Setting in the Second Half of 2020:** Comparing the pre-pandemic period (January 1-March 16, 2020) to the final quarter of 2020, bail-setting rose from 10% of cases to 18% among nonviolent felony charges, and from 44% to 56% among violent felony charges. This pattern held up across a range of specific offenses.⁷²
- **The Bail Rollbacks Increased Detention:** Despite the amendments making more than two dozen categories of cases newly re-eligible for bail and detention, only two provisions accounted for about 85% of bail and remand decisions attributable to those amendments: making more second-degree burglary charges bail-eligible; and permitting bail when both a current and pending charge involves “harm to an identifiable person or property” (language that is not defined in the penal law).⁷³ Overall, from implementation in July 2020 to June 1, 2021, the amendments were responsible for about an 8-11% increase – about 350 people – in the pretrial population in New York City jails.⁷⁴
- **The Release Assessment Is Under-Used:** In the final quarter of 2020, judges granted ROR in only one-third of cases involving violent felony charges that were recommended for release by the city’s [Pretrial Release Assessment](#).⁷⁵ When the assessment recommends ROR for people charged with a violent felony, that indicates

the individual has a 90% likelihood of making all of their court dates.⁷⁶

- **Most People Are Unable to Pay Bail at Arraignment:** When opting for bail, judges are required by state law to assess people’s “individual financial circumstances” and whether paying bail would pose an “undue hardship.”⁷⁷ There is no indication this is happening. Rates of bail payment grew slightly worse from 2019 to 2020, the opposite of the bail statute’s intent.⁷⁸ Only 15% of people were able to pay bail at arraignment in 2020 – in time to avoid a stay in jail – and by the 90-day mark, the payment rate was still only about half (49%).

Recommendations

The strategies that follow apply throughout the pretrial decision-making continuum – from prosecutors’ initial case assessments to arraignment to subsequent reviews of incarcerated people to identify individuals who can be released.

1. Prosecutors should critically examine police reports and promote truth in charging at the earliest pre-arraignment stage.

Prosecutors are well-positioned to head-off unwarranted bail and pretrial detention, and later injustice at sentencing, before filing charges in the first place – potentially in the Early Case Assessment Bureau (ECAB), which reviews police reports prior to arraignment.

Prosecutors should critically examine the credibility of the arresting police officer.

An officer’s credibility is of utmost importance,

yet is rarely challenged, because few cases include pretrial hearings or ultimately go to trial. One way to mitigate this potential unfairness is for prosecutors to immediately determine whether the arresting officer was found to have been untruthful in the past or to have demonstrated racial bias. This can be done by determining whether the prosecutor's office has records suggesting that the officer has lied or not been credible in the past, whether the office has ever made a "Brady" disclosure in connection with the officer's conduct, or if there are glaring inconsistencies among officers or witnesses.⁷⁹ In such instances, the prosecutor should consider appropriate action, including dismissal. *At a minimum, any relevant information should be shared on the record at the initial arraignment.*⁸⁰ Experienced prosecutors with supervision capacity should be staffed in ECAB to assist with these credibility determinations and to ensure that other prosecutors reviewing the cases are implementing this review process. Recent reports of police officer misconduct suggest that proactive prosecutors will succeed at times in turning up relevant evidence meriting an early reassessment.⁸¹

Prosecutors should only charge offenses that can be proven beyond a reasonable doubt at trial, rather than simply charging the maximum possible offense. Overcharging can have a decisive early impact at arraignment if it means a case that should not be eligible for bail crosses the legal threshold into a charge category permitting judges to set bail and pretrial detention.

To illustrate the disparity between charges at arraignment and where cases ultimately land, of the city's 41,769 cases initially arraigned

as felonies and resolved in 2019, only one in four were actually convicted of a felony-level charge; the rest were downgraded or dismissed. Plea bargaining plays a role, but this statistic reflects the vast gulf between the initial charge that impacts exposure to pretrial detention and the charge that is ultimately sustained.

District Attorneys' Offices should monitor line prosecutors' bail requests at arraignment by requiring a memo justifying the request when it contradicts the Pretrial Release Assessment. Prosecutors should seek pretrial detention sparingly and only as appropriate, consistent with the bail statute. When the city's Release Assessment recommends "ROR," prosecutors should be required to write a memo to their supervisors explaining their decision to seek bail (analogous to a policy enacted by the Kings County District Attorney's office in 2017). These memos would describe the prosecutor's decision-making and provide a means for tracking and systematizing bail requests. (The assessment is further discussed below.)

2. Promote greater use of the city's Release Assessment to encourage data-driven decisions.

[Previous research](#) demonstrates that release decisions vary widely by judge.⁸² The city's Pretrial Release Assessment can help judges reach better informed and more consistent decisions. Administered by the NYC Criminal Justice Agency to the vast majority of people facing charges, the assessment presents the arraignment judge, prosecutor, and defense attorney with an assessment of the individual's likelihood of attending all court dates, along with one of three recommendations: (1) ROR;

(2) Consider All Options; and (3) ROR Not Recommended.⁸³ The assessment tool was recently updated based on several years of court data and was validated for accuracy.⁸⁴

Issue a policy directive encouraging proper use of the Release Assessment. While the CJA recommendation is not binding, there are many good reasons for state court leaders to embrace it.

- **Data-Driven, Not Arbitrary:** Because the assessment weighs the factors that are statistically most associated with missing a court date – such as recent failures to appear, criminal history, and contact information – it can offer judges reassurance that an independent source supports their decision.

Importantly, the tool does not eliminate but complements and guides judges' use of discretion. For instance, for people not recommended for ROR, the tool can prompt judges to dig deeper into what type of pretrial condition(s) might mitigate the person's risk of missing court.

- **Reduction in Racial Bias:** As we noted in Chapter 3, judges' pretrial decisions at the end of 2020 led to significant increase in racial disparities in violent felony cases.⁸⁵ By contrast, early Release Assessment data points to virtually identical recommendations for Black, Hispanic/Latinx, and white people.⁸⁶ **Greater adoption of this empirical assessment can help reduce both the sizable disparate outcomes associated with unaided judicial discretion and the racial biases commonly found in risk assessment tools that try to predict re-offense.**⁸⁷

- **Reliability and Due Process:** Reliance on the assessment can increase public confidence in the courts by producing more consistent decisions across judges and boroughs, including where prosecutors may make variable bail requests.⁸⁸
- **Shared Responsibility:** The assessment can reduce judges' exposure to unfair criticism. Judges have long set bail more often in violent felony cases partly due to the popular perception that releases are more likely to lead to crime, even though a violent charge has a small association with the likelihood of a violent re-offense.⁸⁹ Overheated media coverage of crime in New York City can put judges in a difficult position. By all players supporting greater adherence to a validated assessment tool that has buy-in from the city, there can be more sharing of responsibility to combat the political isolation of judges.

Provide supplemental training on the Release Assessment and institutionalize an onboarding protocol whenever a judge is newly assigned to an arraignment shift.

The current assessment was launched by CJA in November 2019. Due to the pandemic, the state court system suspended the assessment's administration between mid-March and late September 2020. This extensive break means judges need to be re-familiarized with how the tool can assist them in making consistent decisions responsive to the law.

An additional concern is that each year, or sometimes at other intervals, the courts assign a new group of judges to high-volume weekday arraignment shifts. Training in the

empirical basis and principles of the Release Assessment should become an automatic part of onboarding.

Lastly, it is common for civil court judges or others who infrequently make pretrial decisions to be assigned to evening, nighttime, or weekend arraignment shifts. At a minimum, these judges should all receive the Release Assessment bench card.⁹⁰

3. Encourage the use of supervised release or other non-monetary conditions when there is a credible risk of flight.

Over the past four years, the city has invested significant resources to develop its supervised release program. It has proven successful at all charge levels, with high rates of return and low rates of re-arrest – as described below.

Judges ordered supervised release significantly more often at the start of 2020, after an initial round of trainings. Later in the year, judges may have experienced a natural “reversion to the mean,” as the import of that training receded, combined with the more pressing fear of crime impacting decisions. New judges may also have been assigned to arraignments who were never trained. We recommend training all court players at regular intervals in available supervised release options.

Disseminate information on the effectiveness of supervised release. All indications are that supervised release is safe and effective. The city updated its [program model](#) at the end of 2019, increasing requirements for people assigned to the highest supervision level to accommodate the more serious types

of cases that became eligible under bail reform, while providing additional supports for individuals’ needs.⁹¹

Results are positive:

- **Court Attendance:** Of people who completed their program participation in 2019 (whether successfully or unsuccessfully),⁹² 87% attended every court date,⁹³ higher than the latest 84% citywide attendance rate for all people released before trial.⁹⁴
- **Recidivism:** In 2019, just 10% had a felony re-arrest at any time during their participation. An evaluation compared supervised release participants with similar people who did not participate and found no differences in re-arrest rates over a nine-month follow-up. Although the comparison group spent less time in the community due to pretrial detention, they accumulated as many re-arrests.⁹⁵
- **Positive Results After Expansion to More Serious Charges:** Participants in the Bronx, Brooklyn, and Staten Island completed 94% of their scheduled supervision appointments in 2019 and an identical 94% in 2020, despite the upgraded severity of the cases and disruptions to people’s lives during the pandemic.

Importantly, supervised release should not be used as an added layer of supervision in cases where release without conditions is appropriate or required by law.

Create a supervised release hotline distributed to incarcerated individuals and

prominently displayed in DOC facilities.

Calls from the city’s jails are already free. Creating a toll-free number to contact a supervised release provider would create one more way to link people who are incarcerated to pretrial services. Defense attorneys are often in the position to refer their client to supervised release, and judges may consider supervision at later court dates beyond arraignment. If potential participants could call supervised release directly, program staff could obtain crucial information, save time at court dates, coordinate with defense counsel and prosecutors, and ensure that staff attend the next court date to answer the judge’s questions.

Consider electronic monitoring for people otherwise languishing in jail. The statute introduced electronic monitoring (EM) as a pretrial condition. While EM is inappropriate for most people, it could be used as a post-arraignment bail review hearing outcome for those still in jail. Currently, there are about 50 bracelets available in New York City, but not all are used.

EM should be avoided for several subgroups: (1) unstably housed people with inconsistent access to charging capacity; (2) people engaged in prosocial activities, rendering limits to their movements counter-productive, or (3) people with cognitive challenges. *Defense attorneys can serve as gatekeepers, requesting EM when it represents a genuine alternative to pretrial detention and ensuring it is not overused or inappropriately used.*

4. Promote a consistent interpretation of bail-eligibility due to a burglary charge or “harm to an identifiable person or property.”

The two most impactful provisions in the bail amendments that made more cases re-eligible for bail are, also, arguably the most vaguely written:

▪ **Burglary in the Second Degree:**

The amendments made many more cases with this charge bail-eligible, but only if someone remains unlawfully in a “living area” – a distinction requiring case-by-case interpretation.

▪ **Harm to Persons or Property:**

The amendments made cases bail-eligible if both a current and pending case involves “harm to an identifiable person or property,” a qualification that has no definition in the law. The idea of “harm to property” is especially elusive, potentially ranging from criminal mischief charges only – where property is literally defaced or damaged – to almost any property charge at all on the theory that stealing it means “harming” it.

Cases impacted by the second-degree burglary and “harm to property” provisions (distinguished from harm to “person”) involve no actual violent element. At a minimum, the courts should provide regular updates and guidance, so that judges’ individual interpretations are not resulting in inconsistent and potentially racially disparate outcomes, which could undermine due process for all people facing charges.

Some stakeholders interviewed for this report added that the ambiguity of these provisions means defense attorneys cannot always anticipate when prosecutors will claim they apply. A fair procedure to maintain people’s due process rights – especially with the harm

to person/property provision – would be to allow the defense time to prepare arguments as to whether the case should be treated as bail-eligible whenever the prosecutor requests bail on the basis of these provisions. This would be a threshold matter to be resolved before choosing an appropriate pretrial condition.

5. Ensure people can afford bail by implementing an ability to pay assessment.

The purpose of money bail is to facilitate pretrial release while providing a financial incentive for people to return to court.⁹⁶ But because bail is routinely unaffordable, it frequently serves as a tool of de facto detention. In response, courts in California, Louisiana, Maryland, Massachusetts, and Texas have all recently found that someone's ability to pay must be assessed and considered when determining a bail amount.⁹⁷

In 2018, a State Supreme Court judge in Dutchess County, New York, ruled that failing to consider someone's ability to pay violates the equal protection and due process clauses of both the U.S. and New York State Constitutions.⁹⁸ Consistent with this ruling and those in other states, New York's bail reform law explicitly requires courts to consider an individual's ability to pay and whether paying bail poses a financial hardship.

As this Commission recommended in 2017,⁹⁹ the city should assist judges in this determination by instituting a formal ability to pay assessment. ***Viable methods exist for systematically assessing people's ability to pay bail.*** The Vera Institute of Justice piloted a bail calculator in the Bronx

and Queens, which offers the court an attainable bail amount and form. Similarly, the Center for Court Innovation worked with the city to create a tool that produces a bail recommendation drawing on the Federal Poverty Guidelines to establish a credible definition of indigence as well as to consider people's own financial resources and access to friends or family with money. California, Washington State, North Carolina, and Michigan, among other jurisdictions, have created ability-to-pay tools or bench cards promoting best practices.¹⁰⁰

The city should fund and test these methods in courts citywide, and the court system should support these efforts to better implement the bail statute. (For potential implementation guidelines, see Appendix E.) This should include an ability-to-pay assessment immediately after an arraignment judge sets bail (if one was not already conducted) and prompt submission of the findings to the court prior to the next court date. The city could also mandate public reporting of ability-to-pay data.

6. Make partially secured bonds and unsecured bonds more affordable.

A provision in New York's bail statute requires courts to provide traditionally underused forms of bail whenever bail is set. These additional forms make bail more accessible and affordable. Partially secured bonds require bail payers to pay upfront only up to 10% of the total bond amount to secure an individual's release. While unsecured bonds do not require any upfront payment, they also require the bail payer pay the full amount if the charged person is not compliant with the court.

Set partially secured surety bonds and unsecured surety bonds (as required by statute) at the same amount as cash amounts. Courts should ensure that forms of bail intended to make payment more affordable are set at the same amount as cash bail. For instance, people only have to pay 10% or less of the total amount of a partially secured bond upfront – but in 2020, judges in New York raised partially secured bond totals to a median of 2.66 times higher than the cash amounts they set on the same cases, effectively almost tripling the required upfront payment.¹⁰¹

Honor people’s good faith efforts to pay partially secured and unsecured bonds.

When someone facing charges or a friend or family member presents their signed affidavit and a deposit (in the case of partially secured bonds), courts should widely accept payment, as opposed to reports that some judges rejected partially secured bond payments for often unknown reasons.¹⁰² The bail statute permits an inquiry into bail payers’ source of payment, *but only after the prosecutor has raised the issue* and there is reasonable cause to believe the bail payer is in wrongful possession of the money or the money was earned illegally.¹⁰³ The state court system should remind judges to accept offers of payment, unless the prosecutor raises a credible objection.

7. Restructure arraignments to create a more deliberative, fair, and systematic process.

The state’s bail reform established a new **presumption of release** that applies to all cases and requires judges to release people on their own recognizance unless a “risk

of flight” is “demonstrated,” and, even in such cases, requires setting a non-monetary condition(s) such as supervised release unless it is deemed insufficient to mitigate any flight risk.¹⁰⁴ This provision applies equally to people charged with violence, who are as likely, if not more so, to attend court as others.¹⁰⁵ The arraignment process can be refined to encourage adherence to this release presumption.

Most arraignments are loosely structured. They take only a few minutes and consist of brief narratives from the prosecutor and from the defense attorney, and a decision by the judge. *Given the more specific requirements of the reformed bail statute, this process merits rethinking.*

Shift explicitly to a two-step process, both to improve implementation of the bail law and to yield more reliable decisions.

- **Step 1: Risk of Flight?** In their first round of oral arguments, judges could require prosecutors to consider solely whether there is a risk of flight, and if they believe one exists, to clearly state their justification – *before* recommending bail or other conditions. Defense attorneys would have an opportunity to respond, and judges would, in turn, state their finding regarding risk of flight – referencing the city’s Release Assessment as discussed above.
- **Step 2: Least Restrictive Condition(s)?** If there is a risk of flight finding, the judge would *then* entertain arguments pertaining to the least restrictive condition(s) able to reasonably ensure return to court. Special attention should be paid to people who are

unstably housed, for whom the assignment of bail generally serves as de facto remand, due to an inability to pay even small amounts, and to people arrested for the first time (who rarely pose a credible risk of flight).

Staggering the process into these two steps would make the presumption of release standard more meaningful in practice and create a clear record as to why a judge has chosen to set bail or other conditions.

Promote a graduated approach when deciding the least restrictive condition.

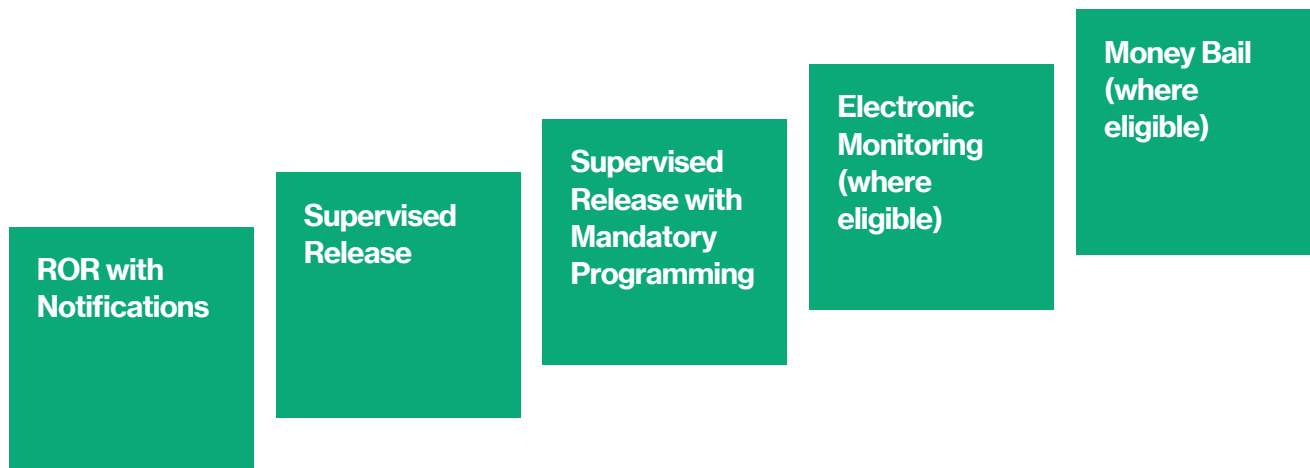
State court administrators could issue a policy directive requiring courts to explicitly consider

pretrial options sequentially during step 2: the least restrictive condition stage. Reflecting the bail statute and as illustrated below, courts would move through each degree of restriction, from ROR, to Supervised Release, to Supervised Release with mandatory programming, and then Electronic Monitoring (when eligible), before entertaining the option of money bail (when eligible).

We urge city and state officials to encourage the state court system to embrace a process akin to that described above (and illustrated below), in accordance with the state court system’s renewed commitment to promoting equal justice and fairness.¹⁰⁶

Sequential Assessment of the Least Restrictive Condition

Move up a level only if finding the previous one will not reasonably suffice to ensure court attendance and compliance with conditions.



8. Institute mandatory bail reviews during the pendency of a case.

Bail reviews should be systematically implemented throughout a case to ensure frequent examination of pretrial detention.

These reviews would occur for all cases and not be limited to setting an affordable bail amount. They should encompass consideration of programming options – including mental health or substance use treatment – job training, and youth

development opportunities, set as a condition of an individual's release.

Conduct 5-day Bail Reviews. Courts should schedule automatic early bail reviews when someone facing charges remains in custody immediately after the individual remains detained pursuant to Criminal Procedure Law §170.70 and §180.80.¹⁰⁷

9. Establish Population Review Teams in each borough to periodically review the jail population and identify people who should be released and/or have their cases resolved.

Jail population review teams (PRTs) are an innovative strategy to reduce the number of people in custody by periodically re-examining cases to determine whether current circumstances still support detention and whether there are cases that can be resolved. PRTs are already in place in several jurisdictions nationwide, including Lucas County, Ohio, St. Louis County, Missouri, and Pima County, Arizona. An evaluation found that the PRT in St. Louis County significantly reduced the size of its jail population.¹⁰⁸

While other jurisdictions' PRTs have mainly focused on the pretrial population, we recommend extending it to people held on parole violations and, potentially, to other groups.

- **Borough-Based Team Members:** Based on existing models, five borough-based PRTs could each include representatives from the borough's defense agencies, District Attorney's Office, and judiciary; the Mayor's Office of Criminal Justice (MOCJ); Department of Correction

(DOC), Correctional Health Services (CHS), Department of Corrections and Community Supervision (DOCCS); and borough-based service providers and community representatives. Each agency's representatives must have the authority to make decisions that would enable release (i.e. to ease bail, agree to admission to a program, or resolve a case).

- **Regular Meetings:** The teams should meet biweekly or monthly to review the jail population from the given borough. Prior to each meeting, representatives would receive a list of eligible individuals for release based on pre-agreed criteria. The parties would come to the meeting prepared to discuss non-jail options and agree on how to best facilitate release at the next court date or the soonest opportunity.
- **Reviewing Trends:** A second function of each PRT could be to review quantitative trends, such as whether jail admissions are increasing, variations in average length of stay, sub-populations that are overrepresented relative to prior months, racial and ethnic disparities, and health and safety concerns within the jails (including any increases in people in jail suffering from a serious mental illness or placed in punitive settings). The goal would be to adopt policies that are responsive to emerging problems in real time, ensuring that every system player is directly connecting their role to the jail population and is thinking critically about their own reliance on incarceration.
- **Establishing Release Criteria:** A starting point could be the same criteria city

officials, District Attorneys, judges, and DOCCS used at the beginning of the COVID-19 pandemic – when release efforts contributed to a jail population of just 3,800 people at the end of April 2020, the lowest total since the 1940s. Complete release considerations might include:

- **Health and Safety:** Ages 55 and up; chronic medical condition; women, or LGBTQ+.
- **Release Assessment Recommendation:** Categories other than “ROR Not Recommended.”
- **Inability to Pay Bail:** Held because of unaffordable bail.
- **Misdemeanor or Nonviolent Felony Charge:** With potential exceptions for domestic violence or sex offenses.
- **Case Processing Delays:** Significant time in pretrial detention, such as four or six months, post-indictment (part of the PRT discussion could include delay bottlenecks).
- **730 Holds:** Delays in completing mental competency exams/reports (e.g., no report submitted after more than 30 days).
- **Racial Disparities:** The lists distributed to the PRT should also include information about the race/ethnicity of the pretrial jail population overall and of people meeting the above criteria.
- **In-Jail Behavior:** Participation in programming while incarcerated and no disciplinary infractions after key periods (e.g., 30 days or 60 days). Demonstrating the relevance of this last criterion, recent research found that the completion of in-jail programming leads to significantly improved post-release behavior.¹⁰⁹

- **Role of City Leadership:** One stakeholder interviewed for this report emphasized that PRTs in other jurisdictions have been successful in large part due to the role of an active convener willing to push the parties and challenge the justification for continuing someone’s incarceration. Given their citywide coordination role, the Mayor’s Office of Criminal Justice should be provided with resources to staff and convene PRT meetings, analyze and share aggregate jail population trend data, and compile lists of incarcerated people for the borough-based teams prior to meetings, using specified criteria. Where people are released, victims in the associated criminal case should receive notification as soon as the decision to release has been made.

10. Collect, analyze, and share decisions made by individual arraignment judges.

With help from the Mayor’s Office of Criminal Justice or others, state court administrators could distribute quarterly reports to judges regarding their own bail decisions and de-identified breakdowns of theirs and others’ decisions by charge severity, CJA release recommendation, whether the case was a first arrest, whether the individual charged was homeless, race/ethnicity, and gender, among other factors. The information could be used as a training tool, identifying concerns with bail reform implementation or arbitrary decision-making patterns. We also support periodic public reports, with judges’ names de-identified.

Chapter 6. Case Processing Delays

Despite the Constitutional right to a speedy trial, the average felony case in pre-pandemic times lasted more than ten months, and people seeking to exercise their right to a trial had to wait on average more than 18 months, even prior to the current COVID-19 backlog. To put these delays in context, New York City takes almost 50% longer to resolve indicted felonies than the rest of the state.¹¹⁰ As evidence of the seriousness of this problem, Chief Judge Janet DiFiore has made reducing case delay a top priority of her [Excellence Initiative](#), which – before the massive disruption from COVID-19 – had made progress improving case processing speeds.¹¹¹

The stakes are high. People held in pretrial detention face prolonged exposure to appalling conditions at Rikers and other city jails. Evidence may grow stale and witnesses' memories may fade. Delays can deny justice to victims of crime, who are often anxiously awaiting closure in the matter that led to their victimization.¹¹² Case delays also impose huge costs on taxpayers, who pay an estimated \$1,226 for each day someone is incarcerated.¹¹³

Delay is by no means inevitable. National research has identified proven strategies for generating timely case resolutions.¹¹⁴

Recent findings from a pilot project in Brooklyn demonstrate that these strategies can be successfully applied in New York City, while simultaneously ensuring time for due deliberation and protecting the rights of accused people to contest the charges against them.¹¹⁵

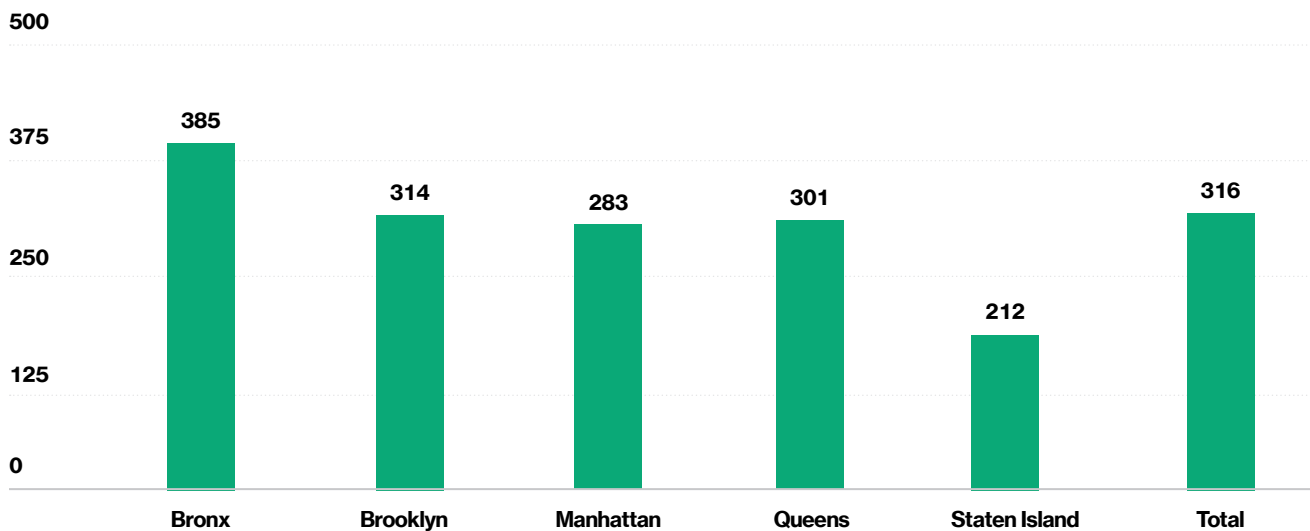
We project that even if no other strategies were undertaken, a substantial reduction of 1,030 people from the June 1, 2021 jail population is achievable by addressing case delay alone (in addition to the more than 700-person reduction from eliminating the COVID-19 backlog). If strategies from the preceding chapter led significantly fewer people to be put into pretrial detention in the first place, sustained case processing reforms could result in further reductions of approximately 500-550 people or more.

The Financial Costs of Case Delay

As an illustration of the costs of delay, the city's arraignment judges sent more than 8,700 people to pretrial detention in 2020, mostly by setting unaffordable bail. Every ten days behind bars these people averaged waiting for their day in court cost the city an additional \$107 million in taxpayer dollars.

For the almost 2,700 people detained for some period on pending felony indictments in 2020, we estimate the costs of case delay, defined as the absence of the concrete strategies recommended later in this chapter, at more than \$400 million.¹¹⁶

Average Days from Indictment to Disposition: Disposed Indictments, 2019



Source: Office of Court Administration (data analyzed by Center for Court Innovation).

The City's Felony Case Delay Problem

We analyzed case processing times for indicted felony cases disposed in 2019 (prior to the additional backlog resulting from COVID-19, discussed above in Chapter 4).

- **More Than 10 Months Required to Resolve Indicted Felonies:** In 2019, disposed felony indictments averaged more than ten months (316 days) – ranging from 212 days in Staten Island to 385 in the Bronx. (In 2020, with the pandemic likely partially responsible, the average grew to 331 days.)
- **One-Third of Cases Comply with State Standards:** Mirroring national best practices, New York State standards require resolving indicted felonies in six months (technically, 180 days).¹¹⁷ But in 2019, only 35% of disposed

felony indictments were resolved in this timeframe, a figure that dropped to 30% in 2020.

- **There is No Improvement When People are Incarcerated:** In 2019, people detained throughout their pretrial proceedings averaged 310 days from their indictment to a disposition, compared to a nearly identical 314 days for people who were released pretrial. (These averages were computed after statistically adjusting for differences in people's charges, criminal histories, gender, race/ethnicity, and age.¹¹⁸)
- **Trial Delays:** Most cases are ultimately resolved through plea agreements or dismissals – but when people exercise their constitutional right to a trial, they experience especially long waits. In

2019, 756 felonies were decided at trial, representing 6% of the city's disposed felony indictments. These cases averaged over a year and a half (557 days) from indictment to verdict. In the Bronx, this time grew to almost two years (708 days). The city's felony trials themselves generally run fewer than 10 days.¹¹⁹ The slowdown is not because of the trials themselves, but reflects the protracted proceedings leading up to a trial.

- **Excessive Adjournments:** In 2019, disposed felony indictments averaged 11 Supreme Court appearances prior to a disposition. An average of 33 days elapsed between appearances – reflecting a historic tendency to schedule adjournments at the next available court date for the attorneys after the passage of about one month, rather than varying adjournment length based on the nature of between-appearance tasks. Previous research controlling for a wide range of factors found that adjournment length was the most impactful quantitative predictor of how long an indicted case would take to reach a disposition.¹²⁰ Independent of adjournment length, research by the National Center for State Courts also draws critical attention to the importance of making each court appearance meaningful.¹²¹

Progress So Far

Prior years have seen several promising developments. In 2016, New York State Chief Judge Janet DiFiore launched the Excellence Initiative, which has made improved court performance a priority. Several years prior to the massive disruptions of the pandemic, the

courts made progress reducing misdemeanor backlogs.¹²²

In 2020, the state implemented discovery reforms setting aggressive timelines for the sharing of evidence between the prosecution and defense,¹²³ realizing another key recommendation in this Commission's 2017 report to foster open file ("automatic") discovery and earlier plea negotiations. The effects of discovery reform remain to be evaluated due to a temporary statewide suspension of criminal procedure timelines on March 20, 2020, less than three months after these reforms went into effect, due to disruptions brought about by the pandemic.¹²⁴

Recommendations

1. Judicial leadership is indispensable to overcome entrenched delays.

With a pattern of delay established over many decades across many different institutions, progress will require unflagging leadership at the highest levels from all institutional players, paired with a commitment to training, retraining, and faithful implementation. But as several stakeholders emphasized in interviews for this report, only the judiciary has the requisite authority to set expectations and enforce compliance in their courtrooms. In conjunction with the Excellence Initiative, continued efforts from state court leaders to communicate that delay is antithetical to justice and fairness – for people languishing in jail while presumed innocent, for crime victims, and for taxpayers who foot the bill while people are stuck unnecessarily at Rikers – will be essential to curtailing case delay.

2. Focus on people deprived of pretrial liberty.

Recognizing that it may be difficult to institute across-the-board changes at once, a reasonable first step would be to allocate judicial and defense and prosecutor offices' resources towards reforming practices for people deprived of pretrial liberty, who experience greater harms from case delay than those released before trial.

Conceivably, city stakeholders could come together and forge a practical consensus around target time limits for pretrial detention, such as 90 days for misdemeanors, six months for felonies, and perhaps higher for felony sex offenses and homicides, shown in prior research to require more time than other case types.¹²⁵ Each borough's Supreme Court Administrative Judge could hold a bail review hearing with a strong presumption of release whenever a case reaches the agreed-upon limit. On a separate track, state legislators might consider legislation comparable to a 2019 provision that proposed strict detention time limits with a carefully crafted and relatively tight set of permissible extensions.¹²⁶

3. Institute effective calendar management practices early in pretrial proceedings.

Experts at the [National Center for State Courts](#) found that caseload size and court structure do not predict performance.¹²⁷ What matters most is judicial adoption of **proactive case management practices throughout the case**, such as: setting interim deadlines in advance (e.g., for discovery, motion practice, and pretrial hearings); holding attorneys accountable for meeting deadlines; adjourning

cases only for as long as necessary to complete between-appearance tasks (e.g., not for routinized one-month periods); and ensuring each court appearance exists to achieve, and does achieve, a meaningful purpose.¹²⁸ Most of these best practice strategies pertain to early pretrial proceedings before a case is trial-ready.

Adapt key practices proven effective in a recent case processing pilot in Brooklyn.

A recent [pilot project](#) melded national evidence and its planners' direct experience of preexisting practices in the Kings County (Brooklyn) Supreme Court.¹²⁹ Compared to similarly charged indictments from one year earlier, the project increased the percent of cases disposed within six months from 40% to 51%. By the ten-month mark, the project increased dispositions from about 60% to 80% of cases. Key components underlying the model's positive effects included:

- **Written Guidelines:** *The project relied on a formal timeline, memorialized in a two-page bench card that stated what the parties should accomplish at each Supreme Court appearance and in between each set of appearances.*¹³⁰ The guidelines permitted case-specific deviations when appropriate and made clear that the purpose was not "speed for its own sake" but reducing unnecessary delays in tandem with promoting due process.
- **Recommended Adjournment Lengths:** *Based on between-appearance tasks, the guidelines included a proposed length of each adjournment.* Research showed that setting task-based adjournment targets in lieu of generic adjournments of a month or more had a real effect; cases in the

Brooklyn pilot project averaged 22 days between appearances, compared to 30 days for the comparison group.¹³¹

- **Pretrial Conference:** *Convened by a judge or court attorney, pretrial conferences bring the parties together outside of a formal appearance for an assessment of the evidence, discussion of a possible plea agreement, or scheduling of remaining pretrial proceedings.* Beyond the pilot project, such conferences are not universally implemented among the city's indicted cases until at least the one-year mark, by which point the cases are already six months late, based on official time standards. In the Brooklyn pilot, the guidelines required a case conference between the third and fourth appearance. In research interviews, some prosecutors and defense attorneys supported an earlier conference – and earlier might indeed make sense under new discovery timelines that will help the prosecution and defense assess each other's evidence sooner than in the past.¹³²

With a focus on detained cases, the court system could adapt the Brooklyn model for citywide rollout or could incorporate appropriate revisions after engaging each borough's stakeholders.

Insist on faithful implementation. We note that the Brooklyn pilot benefited from a committed leader – the Administrative Judge of the Kings County Supreme Court – and an effective judge, who sought to hold all parties accountable to the timeline.¹³³ Going to-scale citywide with dozens more judges would pose a greater challenge. But with judicial leadership at the highest levels

and a commitment to a more intentional and structured use of time by all parties, replication is entirely doable.

4. Ensure sufficient judges are assigned to pretrial proceedings.

Currently, a large number of Supreme Court judges exclusively hear trials, which may have the unintended consequence of leaving these judges with little to do on the many days when there are no trials to be heard. Illustrating this dynamic, based on data for two sample months in 2015 – when caseloads were significantly higher than they are today – the average Supreme Court judge heard zero cases on 23% of weekdays.¹³⁴ State court leaders could consider greater use of a hybrid model first developed years ago in Manhattan, where many judges maintained a limited pretrial caseload and presided over trials. A study using 2014 data found that while delays were still significant in Manhattan's Supreme Court, it was the best performer of the city's four large boroughs.¹³⁵

5. Fund more paralegals and state-of-the-art technology to help district attorneys and public defenders implement discovery reform.

The state's discovery reform requires prosecutors to share evidence within 20 days of arraignment if the person charged is detained, or 35 days if released, with a 30-day extension allowed when the judge deems it justified.¹³⁶ To meet these timelines, the city's district attorneys have requested funding for more paralegals and for state-of-the-art technology enabling police officers to efficiently upload discovery to prosecutors and, in turn, enabling prosecutors

to review, make necessary redactions, and pass evidence to the defense. Defense attorneys must, in turn, electronically store any discovery received and share reciprocal discovery within 30 days of the prosecutor complying with their discovery obligations. We agree that meaningful investments are merited to help prosecutors comply with the statute and, in turn, help all parties move early deliberations forward based on full knowledge of the case.¹³⁷

Forging a New Partnership to Solve an Old Problem

Since the Commission issued its original report four years ago, city and state leaders have come together to pass historic bail reform, expand pretrial supervised release, and invest in expanded sentencing options other than jail and prison. Case processing stands out as an area where more progress is needed. National research, combined with promising results in a Brooklyn pilot project, demonstrate that dedication among all relevant partners, an embrace of proven effective strategies, and judicial leadership for formalizing and committing to these strategies, can break old habits. We encourage legislators, court players, and advocates alike to look more to case processing as a key reform area with a tremendous fairness, due process, and incarceration reduction dividend.

Chapter 7. Sentencing Options

On any given day, several hundred people are serving “city sentences” of less than one-year duration in New York City jails. These sentences involve an average of 39 days in jail and usually result from lower-level charges.¹³⁸ Research in New York City, mirroring results elsewhere, has found that jail sentences make it more likely that people will be re-arrested in the future, when compared to similarly situated people who did not receive a jail sentence.¹³⁹

The implication is clear: jail sentences are generally counterproductive and, in many cases, can be replaced with options that better address the underlying challenges that drive justice involvement. Over the past two decades, New York City has built a strong “alternative to incarceration” (ATI)

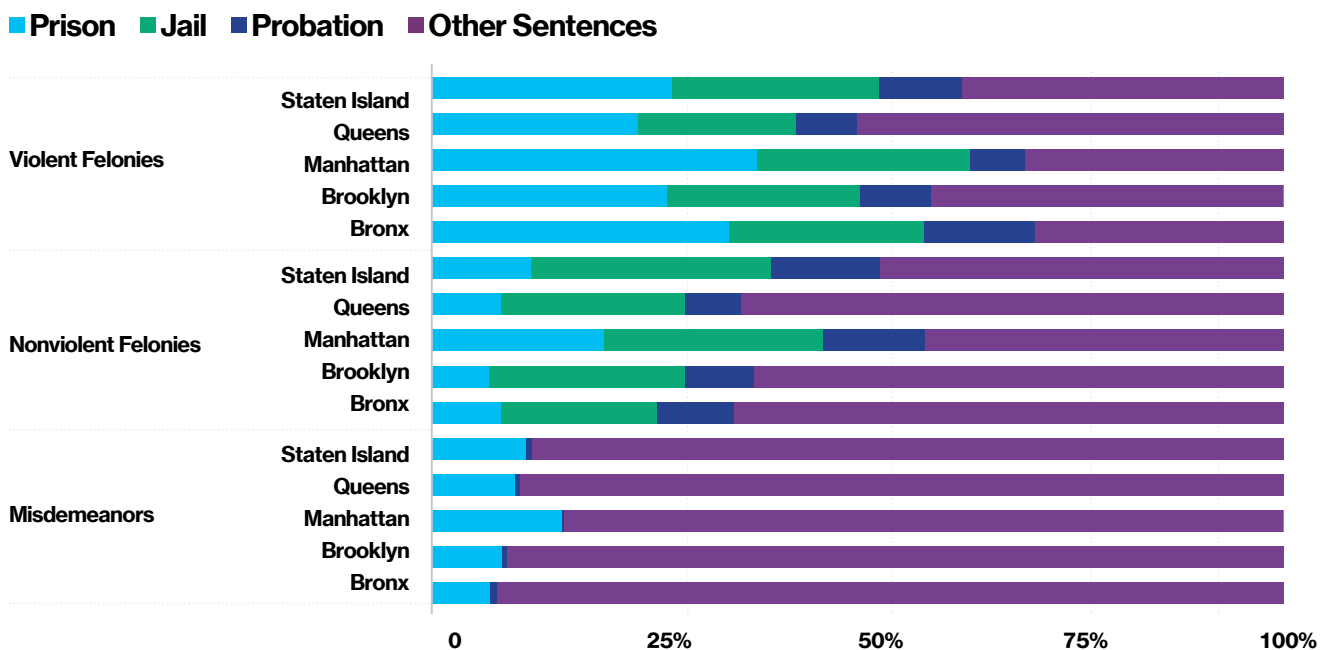
infrastructure, linked to recidivism reductions in research cited below. This has played a key role in producing sizable reductions in jail sentences, alongside historic declines in the city’s crime rate.¹⁴⁰

A continued focus on sentencing options other than jail could preserve and build on these important gains and reduce incarceration by a further 75 to 125 people on any given day.

City Sentences

In 2019, 14% of convicted cases were sentenced to serve a year or less in jail, including 10% of cases initially arraigned on a misdemeanor and 23% initially arraigned on a felony.¹⁴¹

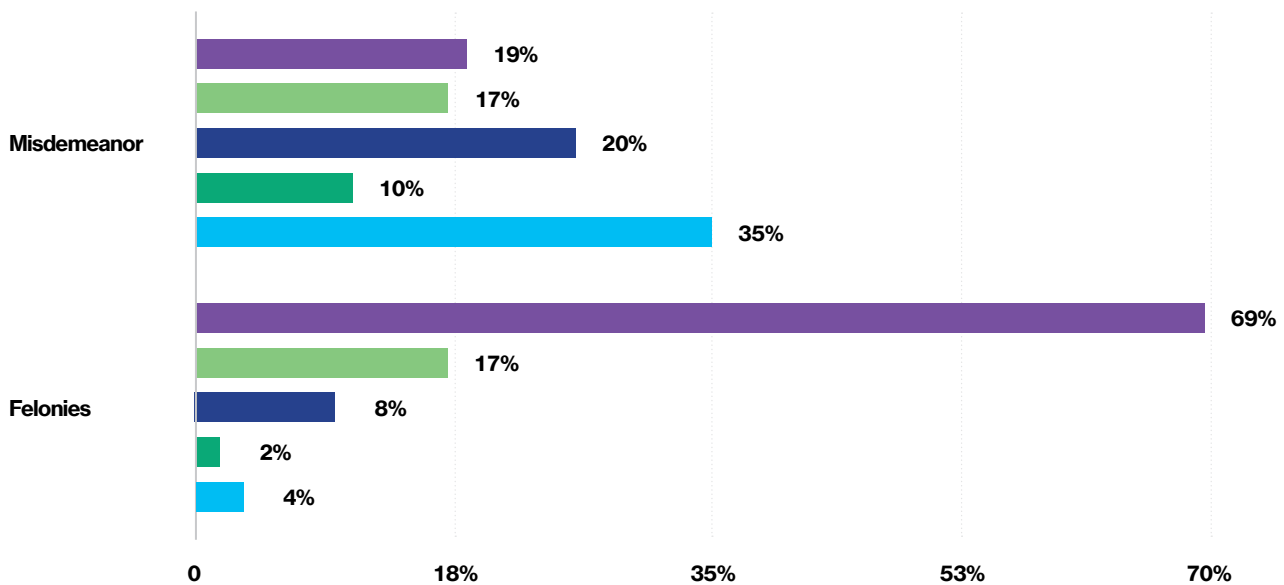
Sentencing in 2019



Source: Office of Court Administration (data analyzed by Center for Court Innovation). Cases include those pleading guilty or convicted, with a sentence imposed in 2019: 67,609 cases initially arraigned on a misdemeanor, 16,918 on a nonviolent felony, and 9,686 on a violent felony.

Jail Sentence Length in 2019

■ 30 Days or Less
 ■ 31 to 90 Days
 ■ 91 to 180 Days
 ■ 181 Days to 363 Days
 ■ One Year (364-365 Days)



Source: Office of Court Administration (data analyzed by Center for Court Innovation). There were 6,798 misdemeanors and 6,065 felonies sentenced to jail in 2019.

More than six of ten jail sentences overall (86% of misdemeanors and 36% of felonies) were for 90 days or less, with most people only serving two-thirds of their sentence length due to earned “good time” credits. In almost four out of five city sentences, people have already spent some period in pretrial detention, which is credited towards the sentence. Often this means when the sentence is imposed, all or most of the days have already been served.

What kinds of cases receive jail sentences? For the most part, they do not involve serious harm to people.

In 2019, the vast majority (81%) of jail sentences were for a misdemeanor or lesser conviction, while only 14% and 5% respectively stemmed from a nonviolent or violent felony conviction. Nearly half (45%) of all 2019 jail

sentences involved people convicted of just three charges: petit larceny, misdemeanor drug possession, or disorderly conduct (the last not technically a crime).¹⁴² As a caveat to these results, just over a third of misdemeanor convictions were pled down from what was initially a felony at arraignment. But even when focusing on the arraignment charge, people initially arraigned on a violent felony domestic violence, sex offense, weapons/firearms, or homicide charge made up only 4% of the city’s jail sentences in 2019, and all violent felony arraignment charges together made up just 17%.

Jail and Public Safety

Decades of national research demonstrates that evidence-based treatment such as that offered through city-funded programs can reduce re-arrest and re-incarceration.¹⁴³ New York City’s drug and mental health courts, for

example, have helped reduce recidivism for people facing felony charges.¹⁴⁴ The Brooklyn Mental Health Court has successfully treated people facing violent felony charges since the program’s inception in 2002.¹⁴⁵

Contrasted with the positive effects of treatment, researchers found that jail sentences increased people’s two-year re-arrest rate by seven percentage points, based on a comparison to similarly situated people who were not sentenced to jail.¹⁴⁶ Sentencing New Yorkers to jail increased subsequent recidivism regardless of whether the initial charge was a misdemeanor or felony.¹⁴⁷ ***In short, jail sentences tend to be criminogenic—and their deleterious effects extend to all charges and risk levels.***

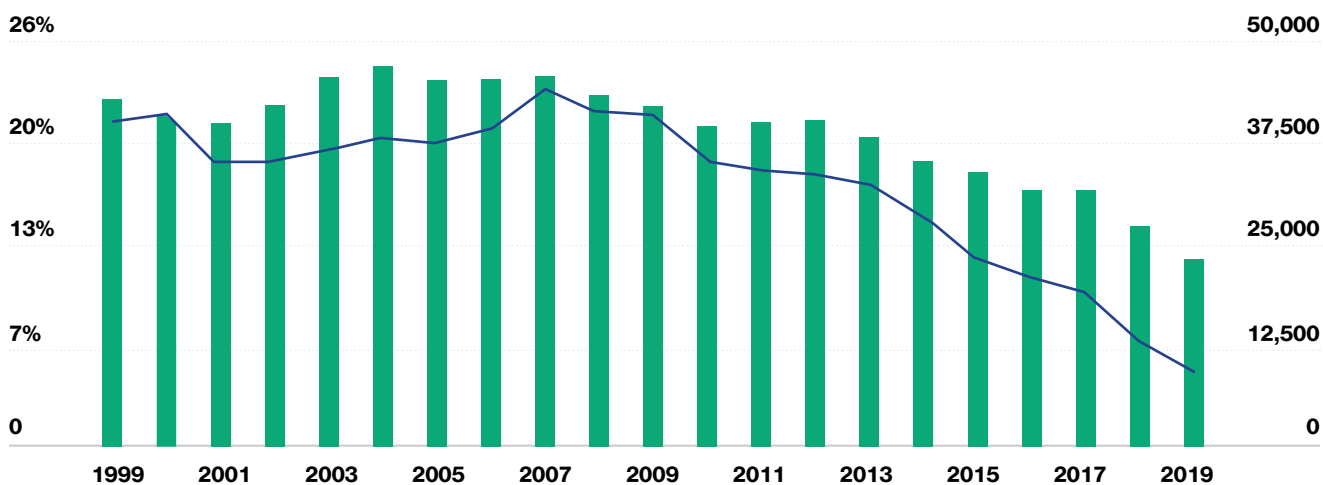
Building on Progress

From 1999 to 2019, the annual number of jail sentences in New York City declined by three-quarters – from more than 40,000 to just under 10,000.¹⁴⁸ While this partly reflects the long-term decline in crime and arrests, jail sentences also significantly declined as a percentage of each year’s cases. Many have connected this trend to the expansion of mental health courts, community courts, and additional “alternatives to incarceration,” which contributed to a cultural shift towards outcomes other than jail.¹⁴⁹

Adding to the city’s capacity to divert people from jail at sentencing, in July 2020 the Mayor’s Office of Criminal Justice (MOCJ) funded 15 nonprofit providers to offer comprehensive programming options in all five boroughs – extending to mental health

The Two-Decade Decline in New York City’s Jail Sentences, 1999-2019

■ Proportion of Convictions Sentenced to Jail ■ Number of Jail Sentences



Sources: New York State Division of Criminal Justice Services. DJCS, data.ny.gov (Adult Arrests by County: Beginning 1970). These numbers are a fair amount lower than MOCJ and NYPD. 2019 Only: Division of Criminal Justice Services “Dispositions of Arrests 2015-2019. Uploaded 5/2020.” <https://www.criminaljustice.ny.gov/crimnet/ojsa/dispos/nyc.pdf>.

and substance use treatment, individual counseling, job readiness, housing assistance, restorative justice, and other services.¹⁵⁰ The project's goal is to divert 7,300 people from jail or prison in the first year, but achieving this goal depends heavily on sentencing decisions made by prosecutors and judges.¹⁵¹

After a further reduction in jail sentences over the most recent year,¹⁵² 219 people were held in the city's jails on a sentence on June 1, 2021, compared to more than 1,000 three years earlier.¹⁵³

The COVID-19 Early Release Program

The city recently responded to urgent health risks posed by the COVID-19 pandemic by releasing almost 300 sentenced individuals early and placing them on daily remote supervision in the community. Known as the [Early Release \(6-A\) Program](#), participants were about evenly split between people charged with a felony (54%) and a misdemeanor (46%).

The results were promising. Re-arrest rates during enrollment (until the original sentence end date) were just 9% for any new offense and less than 1% (2 people in total) for a new violent felony charge.¹⁵⁴ People who had been sentenced on more serious charges were less likely than others to be re-arrested – only 4% of those sentenced on a felony were re-arrested – a lower re-arrest rate than those sentenced on a misdemeanor.¹⁵⁵

Recommendations

*Our goal is to deepen New York City's commitment to accountability and public safety by making proven, non-carceral approaches the default option and jail the alternative.*¹⁵⁶

Supervision and Services in the Early Release (6-A) Program

The Early Release Program was not only a mechanism to swiftly release people during the pandemic. It was a robust supervision and service provision model. People without a stable place to stay were housed in repurposed hotels. The program model included wraparound stabilization services from the nonprofit Exodus Transition Community. In daily check-ins, case managers asked participants about their health; provided counseling or crisis intervention; referred people to mental health, employment, or other services; and reiterated the consequences of noncompliance – which could include re-incarceration in rare cases. In short, the program provided an array of reentry supports, delivered with a compassionate social work mindset.

Importantly, district attorneys and other players should prioritize placing people in non-carceral programs rapidly, so they do not spend months or longer in jail before disposition and program enrollment. Program providers noted the additional challenges faced by people who had undergone extended pretrial incarceration, such as unemployment, loss of housing, and negative health impacts of jail.

In addition, we suggest a corresponding focus on crime victims' wellbeing. A starting point could be to conduct a thorough needs assessment to identify trauma counseling or other services or supports that could aid victims of violence and crime and their families. In a nationwide [2016 survey](#), victims overwhelmingly supported investments in prevention, treatment, and supervision and expressed skepticism regarding the benefits of incarceration.¹⁵⁷ The city should extend such investments both to people facing charges and to crime victims with pending or recent cases.

1. With limited exceptions, replace city jail sentences with more meaningful approaches.

Depriving people of liberty for less than a year only to release them back into the community generally in a worse condition rarely advances the goals of public safety.

The city's ATI infrastructure can ably replace jail in most circumstances. City-funded providers conduct comprehensive assessments and can match people to individualized interventions whose duration is legally proportionate to the severity of the conviction. Options range from short educational classes or group programming running for several weeks to replace briefer jail sentences, to rigorous court-ordered services running several months or longer for people sentenced to longer periods who have significant behavioral health concerns or additional complex needs. A first chance at diversionary programming may not eliminate all chance of recidivism, and in many cases, multiple chances at programming may provide

better results than jail, even for people with a prior criminal history.

We urge the mayor, district attorneys, courts, and defense agencies to support ending jail sentences with appropriate, but rare, exceptions, such as the categories listed below:

- **Otherwise Prison-Bound:** In some cases that would otherwise be bound for a prison sentence of a year or more, the parties might mutually agree to a local jail sentence.
- **Cases Involving Serious Harm:** Jail could be considered for certain cases such as convictions for weapons-related, domestic violence, sexual offenses, or hate crimes.
- **Brief Sanction for Noncompliance:** As further described in point 6 below, brief jail sanctions could be considered after exhausting non-jail options for holding individuals accountable who continue not to comply with court-ordered programs or services.

2. Build on the Early Release (6-A) Program instituted during the pandemic and continue to use appropriate legal mechanisms for early release.

The city can institute mechanisms to review people sentenced to jail, link them to services and supervision whenever reasonable, and mitigate the criminogenic effects of incarceration.

Have the city’s Conditional Release Commission review all cases after people serve 60 days. City Council legislation passed in 2020 established a local Conditional Release Commission as authorized under state law.¹⁵⁸ Upon an application from the incarcerated person, the Commission may release people early after they have served at least 60 days on any jail sentence whose length totals 120 days or longer.¹⁵⁹ Additional requirements in the state Correction Law include no prior conviction and a verified permanent residence or community contact.¹⁶⁰

Establish an early release process similar to the Early Release (6-A) Program. In circumstances where conditional release is not applicable, release into the Early Release Program may be appropriate, particularly where people have demonstrated good conduct while incarcerated – especially given the reality that a transition period from jail to supervision and services is likely to be more protective for the person serving a sentence and the public, alike, than brief incarceration followed by release with few if any reentry supports. Plans and criteria for implementing the program on an ongoing basis could be finalized in conjunction with the city’s Justice Implementation Task Force, which includes broad representation from the city, judiciary, prosecutors, defenders, and an array of community-based organizations and criminal justice experts.

In all cases, people released should have their housing needs met to assure stable reentry into the community and should consistently receive wraparound services, such as those provided by non-profits like Exodus Transitional Community and CASES for people released during the pandemic.

3. Expand restorative justice programming and treatment options for people convicted of violent crimes, while simultaneously doing more to meet the needs of crime victims.

Restorative justice seeks to directly engage people concerning the harm they caused, hold them accountable through meaningful consequences other than incarceration, reintegrate them into the community, and provide justice and healing for crime victims. Classic restorative justice programs involve facilitated sessions with both the individual who caused harm and the harmed party, or a representative of the harmed party.¹⁶¹ As in the nonprofit [Common Justice’s model](#), restorative justice sessions often end with agreements concerning further reparation, such as restitution, letters of apology, participation in programming, which can involve intensive interventions running for many months, and the performance of community service.¹⁶²

Because restorative justice combines healing for all parties with accountability for the individual who caused harm, it is especially appropriate in cases of violence, with the consent of the survivor. Key research findings include:

- **Restorative Justice Works:** According to one meta-analysis, restorative justice conferences led to reduced recidivism in nine out of ten studies.¹⁶³
- **Especially Effective with Violent Charges and High-Risk Populations:** Aggregating results across 12 separate randomized controlled trials, researchers found that restorative justice conferences consistently reduced recidivism for violent

crime – with the greatest effects among people with “high-frequency” justice involvement – while proving less effective with medium-risk people or those charged with property crimes.¹⁶⁴

- **Positive Outcomes for Crime Victims:** Multiple studies also found that after their participation, crime victims were more satisfied with how the courts handled their case and less “fearful” of revictimization than victims whose cases were part of the control group.¹⁶⁵
- **Promising Applications with Intimate Partner Violence:** A recent survey revealed 34 restorative justice programs across the U.S. that enroll participants involved in intimate partner and/or sexual violence.¹⁶⁶ A recent policy blueprint explains how New York City can expand restorative justice with intimate partner violence cases.¹⁶⁷

Currently, Common Justice provides a well-regarded restorative justice intervention for violent felony cases in the Bronx and Brooklyn, but available slots are limited. Given the positive research literature, a major expansion of restorative justice to all boroughs would be especially well-suited for people charged with violence, including those who have a history of justice involvement.

4. Permit incarcerated people to earn merit time credits for participating in educational, vocational, and rehabilitative programs while in jail.

While the de Blasio administration has maintained programming for people incarcerated in city jails, there are limited incentives for participation. Allowing people

to earn merit time credits off their sentences for successfully participating in educational, vocational, and rehabilitative programs would encourage attendance, promote good conduct, and help reduce the number of people in jail. There is a strong body of research showing that these programs reduce recidivism and incarceration, while saving money.¹⁶⁸ Other states have successfully instituted them.

Pending legislation in Albany would allow New York City and other jurisdictions to establish jail-based merit credit programs.¹⁶⁹ The current version of this legislation, however, provides too limited an incentive for participation and excludes the majority of people incarcerated in city jails because it does not apply to most charges that, post-bail reform, are eligible for pretrial detention. If modified to provide a more powerful incentive and to include people incarcerated on any charge, the legislation would be a helpful step towards improving conditions in the jails and limiting incarceration.

5. Expand access to the city’s mental health courts through state sentencing reform.

In 2019 and 2020, respectively, only about 210 and 90 people were enrolled in the city’s mental health courts (while just over half of the city’s jail population in June 2021 had received mental health services during their jail stay). While the reasons for this low volume cannot be rigorously explained, several stakeholders interviewed for this report cited prosecutors’ role as “gatekeepers,” frequently leading viable mental health court candidates to be rejected.

Pending legislation in Albany seeks to significantly expand access to this proven effective model.¹⁷⁰ The legislation would permit judges to order treatment in cases involving any “functional impairment,” regardless of the charge and, if necessary, over the objection of the prosecutor.¹⁷¹ The expansion of eligibility would be an important step forward that could be adopted even before any legislation is passed.

6. Limit jail sanctions in response to noncompliance with programs.

People enrolled in drug or mental health courts, or any ATI for that matter, can fall out of compliance with program requirements, especially if they are in recovery. Responding too readily with incarceration can limit these programs’ ultimate value. While the threat of jail or prison time can incentivize compliance,¹⁷² research shows that reminding people of their responsibilities, eliciting promises to comply, and deploying positive, not punitive, incentives can be equally effective without imposing the collateral harms and costs of jail.¹⁷³

Even to the extent that negative incentives can work, research has long found that the *certainty* of sanctions is significantly more impactful than their *severity*.¹⁷⁴ We encourage “problem-solving court” and ATI practitioners to use non-jail sanctions before declaring people to have failed these programs, and to draw from options such as community service, more frequent compliance monitoring by the judge, or additional meetings with a case manager. Jail should be limited to circumstances when other sanctions have been exhausted, and even in such cases, evidence indicates that a brief jail stay (e.g.,

one day or a weekend) is usually sufficient to incentivize future compliance.¹⁷⁵

7. Create programing to address prior exposure to trauma.

Several stakeholders we interviewed drew attention to the severe repercussions of experiencing a history of trauma, including exposure to both domestic and community violence, and the close link between this trauma and involvement in the criminal justice system. The Domestic Violence Survivors Justice Act, passed in 2019, permits judges to consider reduced sentences for domestic violence victims if their conviction is connected to the violence they have suffered (for example, harming their abuser).¹⁷⁶ However, a history of trauma should be considered at sentencing for a much wider range of individuals, and by prosecutors even earlier in a case during charge and evidentiary assessments and plea considerations.

Multiple stakeholders noted that incarcerated people often present with complex post-traumatic stress disorder, caused by repeated traumatic childhood events which can contribute to severe emotional dysregulation. Instead of incarceration, the stakeholders believe these individuals would benefit from intensive community-based options, including multi-systemic therapy and dialectical behavioral therapy, as well as ongoing support from clinical specialists or psychiatrists and, as needed, access to hospitals. Concrete steps could include early case and pre-sentencing assessments by clinical social workers and courts considering trauma history as a mitigating factor during sentencing.

Chapter 8. Parole and Reentry

Most people released from New York State prisons are subject to a term of community supervision, known as parole. Alleged violations of parole conditions can fall into two basic categories, one for people facing a new criminal charge and another for “technical parole violations,” such as missing appointments with a parole officer, living at an unapproved residence, missing curfew, and testing positive for drugs or alcohol.

Regardless of the nature of the alleged violation, state law requires the automatic incarceration of people accused of any parole violation in local jails to await a decision by the state Department of Corrections and Community Supervision (DOCCS) whether they will be “revoked,” that is, sent back to state prison.

In addition to disrupting re-entry and rehabilitation, this blanket incarceration policy is racially inequitable. In New York City, a recent report found that Black people on parole were 12 times more likely than white people to be jailed for an alleged technical violation, and Hispanic/Latinx people were four times more likely to be jailed for such alleged violations.¹⁷⁷

State legislation such as the Less is More Act, recently passed by the New York State Senate and Assembly, but yet to be signed by Governor Cuomo as of this report’s publication, would correct the overuse of incarceration for unadjudicated parole violations and would add other worthy reforms, such as positive incentives in the form of good time credits for people

complying with parole conditions and sensible limits on the severity of sanctions for noncompliance. Parole authorities could also more often adjust parole conditions in lieu of issuing formal violations, thereby limiting incarceration.

We estimate that reforms like these could reduce the number of people jailed in New York City for alleged parole violations by 400-500 people.

Alleged Parole Violations Due to a New Charge

The first major category of alleged parole violations includes people detained pretrial, because a new criminal arrest led parole authorities to file a violation. This category made up 14% of the June 1, 2021 jail population. These cases generally take five to eight times as long to resolve as other criminal cases.¹⁷⁸

Of the 799 individuals held in pretrial detention based on an alleged parole violation on June 1, nearly half (49%) faced a nonviolent, misdemeanor, or lesser charge. Based on the new bail law, many of these cases would have been ineligible for pretrial detention if not for the parole violation.

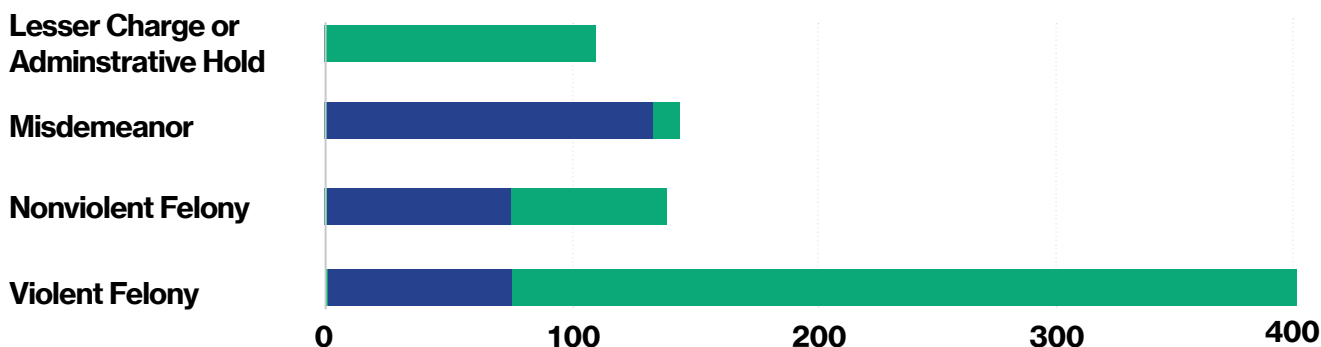
Due to a nuance of New York State law, criminal court judges often set bail on people who are incarcerated pretrial on parole violations to ensure their pretrial detention is credited toward any sentence of incarceration that may ultimately be imposed.¹⁷⁹ The amount of bail set comes into play only if the parole warrant is dropped. Tracking these bail

amounts provides an indication of whether a judge would have released the person if the parole violation had not made incarceration mandatory. According to the Mayor's Office of Criminal Justice, on May 31, 2021 there were 270 people held on a parole warrant with a new criminal charge who had bail set at less

than \$20, suggesting most of these people would have been released pretrial if not for the parole law. Another 75 people had bail amounts set between \$20 and \$10,000, some of whom would have posted bail and thus remained in the community pending resolution of their case if not for the parole violation.¹⁸⁰

Parole Violations Due to a New Charge: Charge Breakdown in the NYC Jail Population, May 31, 2021

■ Judge Set Less Than \$20 Bail on the Parole Violation ■ Additional Parole Violations



Source: NYC Department of Correction (data analyzed by the Mayor's Office of Criminal Justice as of May 31, 2021).
 Note: When a judge sets less than \$20 bail, it indicates that bail is solely serving as an administrative mechanism, and the judge would likely not have set bail if not for mandatory incarceration, as required by the current state parole law.

Alleged Technical Parole Violations

As the overall number of people in New York City jails declined by 25% from 2016 to 2019, the only group that increased was people accused of technical parole violations, which rose by 13% over this timeframe.¹⁸¹

At the outset of the COVID-19 pandemic in March 2020, policy changes at the state level as well as successful lawsuits by public defenders led to steep declines in the number of people locked up for alleged technical violations.¹⁸² Over the past six months, however, the number of people held for such violations crept upward. While the June 1, 2021 total of 240 people (4% of the jail population) remains far below the pre-pandemic total

of just under 600, it is possible that after the pandemic, technical violations will return to their previous levels.¹⁸³

People facing alleged technical violations were held on average for 63 days in 2019 and 76 days in 2020 while awaiting a final resolution.¹⁸⁴

There is growing consensus, in New York and nationwide, that incarcerating people for technical violations disrupts lives, wipes away progress towards securing housing, employment, education, and healthcare, and does little to advance public safety. In addition to the human impact, the financial costs are enormous. In 2019, New York City spent

an estimated \$273 million jailing people for alleged technical parole violations.¹⁸⁵

Echoing these concerns, a task force convened by the New York State Bar Association called on state policymakers to “reduc[e] the number of individuals on parole who are needlessly incarcerated” and “devote more resources and focus to the individuals under supervision who are most in need of supervision.”¹⁸⁶

State Impact

The impact of parole violations is also felt at the state level. If a technical violation is substantiated, the person on parole may be returned to state prison. **New York State incarcerates more people for parole violations than any other state in the country, accounting for a shocking 40% of annual prison admissions.** Six times as many people on parole are returned to prison for parole violations as for new felony convictions. Together with the Columbia Justice Lab, we recently estimated that New York State spent \$319 million to imprison people for parole violations in 2019, in addition to the more than \$364 million spent by counties (including New York City) to jail people accused of parole violations.¹⁸⁷

Recommendations

1. Enact and fully implement the Less Is More Act, limiting detention for parole violations.

Because the parole system is operated by the state government, the most effective way to reduce parole incarceration is through legislation at the state level.

While there is more than one way to facilitate people’s release through legislation, the Less Is More Act – now awaiting the Governor’s signature – has been endorsed by elected district attorneys, sheriffs, current and former law enforcement officials, and more than 280 organizations across New York State.

The Less Is More Act would give criminal court judges the discretion to release people held on a parole violation pending its adjudication.¹⁸⁸ This is akin to current practice for people on probation in New York.¹⁸⁹ It would also reduce the types of technical violations for which people could be incarcerated and how long they could be locked up for these types of violations, while enhancing non-carceral forms of accountability. Finally, it would incentivize good behavior by allowing people to earn good time credits that would reduce their term of supervision by 30 days for every 30 days they remain violation-free.

Many other states across the country have recently enacted reforms like those in the Less Is More Act – including good time credits and restrictions on incarceration for technical violations – with positive results: less incarceration, reduced costs, and declining crime.

Assuming the Governor signs Less Is More into law, robust implementation will be key to fully realizing its potential.

2. Reform DOCCS policies so that officers issue fewer parole warrants for people accused of most misdemeanors and appropriate felonies.

While awaiting legislation, DOCCS could refrain from filing parole violations – engendering automatic detention – in many cases involving alleged misdemeanors or nonviolent felony charges that would otherwise be ineligible for detention under New York’s bail laws. This would permit criminal court judges to set appropriate pretrial conditions after a thorough review of all relevant factors. Until several years ago, DOCCS rarely issued parole violations until after the resolution of a criminal case, allowing the judge’s ruling at arraignment on the criminal case to determine whether the person was released pending trial. Parole violation abstention would be particularly appropriate when a judge requires the person on parole to participate in supervised release or other supportive services intended to increase the likelihood of the person appearing at both their court hearings and any parole hearings.

To ensure a “second look” at people incarcerated on parole violations, DOCCS could participate in the borough-based Jail Population Review Teams described in Chapter 6 and agree to lift violations when the PRT deems it safe and appropriate.

3. Invest in programs to avoid incarceration for technical parole violations.

Anyone accused by parole authorities of a technical violation should immediately receive counsel, with a full mitigation workup

developed. The City Council currently funds the Osborne Association to assess people in jail for alleged technical violations and develop a plan to support releasing them to the community. While COVID-19 has caused significant challenges, the program is already showing positive results, reducing jail stays and curtailing new prison sentences.

4. Invest in resources and programs for people on parole to ensure successful reentry to society.

Beyond changes to the parole system, city and state government should devote resources to help meet the fundamental needs of people returning from prison, thereby fostering conditions for lasting stability, safety, and success in the community. Housing is a particularly important need: roughly 40% of people released from New York State prisons are sent directly to homeless shelters. Many also suffer from mental illness and substance use, and finding a job is extremely difficult. Failing to provide stabilizing resources and opportunities to these individuals makes compliance with parole rules more challenging and increases the likelihood of re-arrest.

There are many effective programs and options to assist with reentry, including efforts from a network of nonprofit providers in New York City such as the Osborne Association, Fortune Society, Exodus Transitional Community, and the Center for Employment Opportunities (CEO), to name just a few. Investments in housing, mental, and physical health care and jobs for people returning from prison can be funded in part by the enormous costs savings associated with incarcerating fewer people for parole violations.¹⁹⁰

Chapter 9. Priority Populations Based on Gender, Age, and Health Status

There are several groups of people for whom policymakers should adopt targeted approaches for decarceration, given the outsized harms of jail for these individuals and their lower risk of re-arrest. These groups include: (1) women and gender non-conforming individuals; (2) people ages 55 and up; (3) people suffering from trauma or mental health concerns; and (4) people with chronic medical conditions. Because people in these groups often require intensive services and medical attention, the excessive costs of jailing them provide yet another rationale for diverting as many as possible from a harmful jail environment.¹⁹¹

At the onset of the COVID-19 crisis, many public officials and advocates urged and achieved the prompt release of people specifically in these groups to lessen the dangers of COVID-19 in city jails,¹⁹² demonstrating the feasibility of policies targeted at diverting them from incarceration.

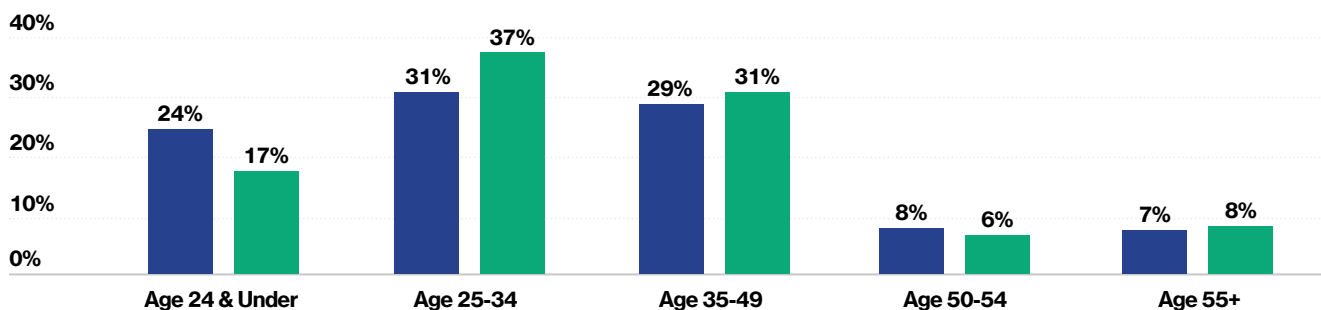
A Major Component of the City’s Jail Population

A total of 3,235 people – a combined 56% of the June 1, 2021 jail population – had at least one of the following characteristics: women, ages 55 and older, or flagged for a mental health concern. If this last category was limited to people *formally* diagnosed with a serious mental illness, the percentage with at least one of the three would fall to about 20%.¹⁹³

- Women and Transgender Individuals:** The June 1 jail population included 248 cisgender women as well as 46 transgender women, and 6 transgender men.¹⁹⁴ Of those, 77% were held pretrial.¹⁹⁵
- Ages 55 and Higher:** There were 488 people ages 55 and older held on June 1, of whom 65% were held pretrial and another 22% on a parole violation.

Age Distribution of the NYC Jail Population: September 2016 vs. June 2021

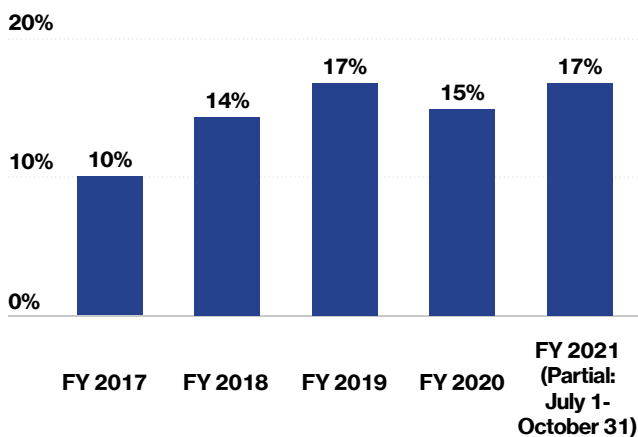
■ September 29, 2016 ■ June 1, 2021



Source: NYC Department of Correction (data analyzed by the Center for Court Innovation).
 Note: Missing six observations in 2016 and four in 2021.

- **Serious Mental Illness or Mental Health Concern:** As the overall jail population dropped in recent years, the percentage of people with mental health concerns increased. The proportion of incarcerated people formally diagnosed with a serious mental illness – such as bipolar disorder or schizophrenia – rose from 10% in FY 2017 to 17% in FY 2021, according to the Comptroller.¹⁹⁶ Similarly, as of June 1, 2021, 52% of incarcerated people had received mental health services in the jails (and were thus designated with a “Brad H” flag), a proportion that increased from 45% just one year ago. Once incarcerated at Rikers, people designated with a Brad H flag are, on average, held longer than others.¹⁹⁷ People with this flag on June 1, 2021 had been detained for an average of 357 days to-date, compared to 222 days for all others.

Prevalence of a Serious Mental Health Diagnosis in the NYC Jail Population, FY 2017-FY 2021



Source: NYC Comptroller. (2021). FY 2022 Agency Watch List: Department of Correction. New York, NY. Report available at: https://comptroller.nyc.gov/wp-content/uploads/documents/Watch_List_DOC_FY2022.pdf.

- **Chronic Medical Conditions:** After the COVID-19 crisis made people acutely aware of the severe health risks of incarceration for people with chronic medical conditions, 19% of people in jail in October 2020 were identified as having such conditions.¹⁹⁸

Recommendations

Women and Gender-Non-Conforming People

1. **Establish a strong presumption of non-incarceration for women, transgender, and gender non-conforming people by investing in proven community-based housing and supports.**

There are many compelling reasons to limit the incarceration of these gender-based subgroups to the greatest extent possible:

- **Exposure to Trauma and Harm:** Women are far more likely than men to report a history of trauma, abuse, and mental health concerns that can be exacerbated if they are sent to jail.¹⁹⁹ While an imperfect measure, on June 1, 2021, 86% of women held in jail received mental health services, as compared to 50% of men.
- **Impact on Families:** According to recent estimates, a quarter or more of incarcerated women are caretakers for young children. The incarceration of a parent or guardian has a profoundly harmful impact on a child’s mental and physical wellbeing and can disrupt education, housing, and other needs, with long-term negative consequences.²⁰⁰

- **Discriminatory and Abusive Practices:** Ample documentation points to discriminatory practices throughout transgender individuals' involvement with the criminal justice system,²⁰¹ as well as abysmal conditions and a history of sexual abuse by correction officers at the Rikers Island Rose M. Singer Center where all women are housed.²⁰²
- **Public Safety:** Research has long indicated that recidivism rates – especially for violence – are significantly lower for women than men.²⁰³ A recent study confirmed that justice-involved women in New York City had significantly fewer risk factors for violence than men, including fewer prior convictions, less gang involvement, and fewer justice-involved peers.²⁰⁴

In lieu of jail, New York City has already started establishing community-based **residential facilities** for women operated by the Women's Community Justice Project (WCJP) and its four-agency consortium of partners.²⁰⁵ The current facilities can serve up to 59 people and are not restricted based on charge; for example, they have effectively served women charged with homicide. The city plans to expand the capacity of these programs to 500 people over the next two years, but because at least some of the newly planned facilities will include cisgender men, we suggest reviewing planned contracts to ensure they will offer sufficient beds and wrap-around services for all those in need.

With this context in mind, we encourage courts and district attorneys to order women, transgender, and gender non-conforming individuals for whom there seems to be no

other viable option in the status quo into community-based residential facilities that are broadly analogous to supportive housing. The facilities would mostly serve people who would otherwise face bail or detention in the pretrial stages, but they could also include people after a disposition.

Modeled after the above-noted current facilities, they would have private rooms; programming space; trauma-informed services; appropriate services for LGBTQ+ or gender non-conforming people; and a health clinic capable of assisting pregnant women. The Department of Correction (DOC) would play no role, but housing in these facilities would still be ordered, not voluntary.

While the charges in cases involving women currently held in pretrial detention are often serious – with 29% involving an alleged homicide and another 53% involving other violent felonies – the WCJP's work demonstrates that non-jail approaches can be successful in many cases, reducing recidivism and better addressing underlying needs. As described above, the cases of women, transgender, and gender non-conforming individuals stand out, because they so commonly have a history of victimization (sometimes playing a direct role in the allegations against them). Many also may be coping with deep trauma – which is then exacerbated by pretrial detention – and are often subject to abuse and discrimination within the jails. We can do better.

People Aged 55 and Up

2. Establish a strong presumption of non-incarceration for people aged 55 and up and order a needs assessment to determine suitable treatment in lieu of jail.

Decades of research confirm that people's likelihood of re-arrest peaks in their late teens and declines throughout their remaining years.²⁰⁶ In cases of continued justice-involvement at advanced ages when most people's involvement has ended, we urge decision-makers to think about the individual's current charges and prior convictions in light of deep-seated unmet needs including mental health concerns, substance use issues, poverty, and homelessness. When a long criminal history is involved, that generally signals the repeated failure of incarceration and other traditional law enforcement responses earlier in the person's life, underlining the need for alternative approaches.

In response, the judiciary, city officials, and each borough's supervised release provider could implement a novel policy where judges would order a comprehensive needs assessment whenever they would otherwise set bail or detain someone aged 55 or up. In parallel, DOCCS could order parole officers to refer people ages 55 and up for a comparable assessment by a social worker or consulting psychiatrist before filing a violation. When it is determined that treatable needs are present, decision-makers could defer to community-based interventions, such as housing assistance and mental health or substance abuse treatment.

People with Mental Health Concerns

The rising proportion of people with serious mental illness in jail indicates that systemic changes in recent years have not impacted this population and highlights the importance of further specific interventions to address their needs.

While people with mental health concerns are often stigmatized and feared, symptoms of mental illness do *not* correlate to criminal behavior, nor is mental illness a statistical predictor of re-arrest.²⁰⁷

Over the long-term, the best way to keep people with serious mental illness out of jail and the criminal justice system is to address the broader failings of mental healthcare in our city and country through investments in healthcare, housing, and social infrastructure to help people heal and thrive at home. Only by addressing these three touchpoints simultaneously can we develop a comprehensive and effective approach to treating serious mental illness, one that has not been implemented to scale. The importance of addressing these long-term community needs was a consistent theme expressed by stakeholders we interviewed in connection in this report.

In the immediate term, we suggest several specific criminal justice-related interventions to help keep people with serious mental illness away from the harmful jail environment.

3. Develop and fund additional outpatient mental health treatment slots as well as community-based residential facilities to end the incarceration of

mentally ill people who are better served in the community.

When people with a mental illness are justice-involved, research shows that they tend to have disproportionate co-occurring risk factors – other than the mental illness itself – that could be effectively addressed with treatment.²⁰⁸ Most of these individuals do not need to be in a residential treatment setting if they already have stable housing and can be served with consistent outpatient services (see first bullet below). In cases of unstable housing or particularly severe mental illness, the city should invest in community-based supportive housing options that can offer mental health treatment and wrap-around services from highly trained professionals.

- **Respite Care:** The city could create pathways to 7-, 14-, or 30-day respite care for people experiencing severe mental health concerns at arraignment, a later court date, or in between dates, for instance as reported by a supervised release provider or via a DOMHH assessment.
- **Outpatient Mental Health Treatment:** The Office of Community Mental Health (formerly known as Thrive NYC) or the Department of Health and Mental Hygiene (DOHMH) could help to fill gaps in mental health services by dedicating outpatient treatment slots for people with serious mental illnesses needs, who do have stable housing, who a judge might otherwise incarcerate – a particular concern in the pretrial stages, when arraignment judges may be uncomfortable releasing someone without assurance that an immediate treatment option exists.

▪ **Community-Based Supportive Housing and Services for People Facing Jail:**

To provide additional options for people with serious mental illness who are charged with criminal offenses, the city and state should continue to invest in and further develop congregate supportive housing for people with mental illness at risk of violence that includes a rich array of services, including individualized mental health treatment, job services, youth development, and cognitive behavioral therapy. Several stakeholders recommended that these services encompass specific clinical and therapeutic responses to violence and aggression, including dialectical behavioral therapy (DBT). Staff for these facilities should be well-trained, well-compensated, and provided with resources and supports needed to fulfill their difficult but vitally important roles. While few examples current exist, city-funded Justice-Involved Supportive Housing (JISH) included, we note that stakeholders pointed to the model of Fountain House, which provides community resources, social infrastructure, and housing to people with serious mental illness, including a program for people leaving city jails co-operated with the Fortune Society.²⁰⁹

4. Invest in community-based treatment for people with a pending mental competency matter and then refer them to mental health court if found fit to stand trial.

According to MOCJ, as of May 31, 2021, about 140 people who were classified as held in jail for a miscellaneous “other reason” are,

in fact, jailed pending a mental competency examination per CPL § 730.²¹⁰

The city should create a community-based treatment option for individuals who are awaiting the appointment and results of their mental competency exam. Courts continue to use CPL § 730 to remand individuals who are ordered to complete a competency exam, even for charges that would otherwise be ineligible for bail and remand.²¹¹ These individuals could receive supports in the community to facilitate their attendance at the competency exam and subsequent court dates, as opposed to relying on jail to house them – especially if they would otherwise be released at arraignment (for instance, when the charge is ineligible for bail).

The city should create outpatient options for individuals who have been found “unfit” and need restoration to competency. When an individual is found to be unfit following their exam, they are routinely sent to an inpatient hospital setting. Yet the law permits the judge to order someone to outpatient treatment to restore the individual to competence. Despite this legal provision, the practical reality is that there are currently very few suitable outpatient providers to provide a service which can take years. This lack of options essentially requires an inpatient commitment, even for people who have a stable housing placement and family members or others who could provide community support.

People found fit to stand trial should be referred to mental health court. Once people are found fit or restored to fitness, interviews conducted for this report revealed that they are often returned to Rikers Island, where they decompensate – at times falling

out of fitness to stand trial and leading the process to repeat all over again. To address ongoing needs for mental health treatment after restoration, they should instead be automatically referred to the borough’s mental health court and admitted if deemed clinically appropriate, unless there is a defense objection (e.g., in the event the individual wishes to argue the legal merits at trial). Prosecutors should refrain from preventing people in these circumstances from enrolling in mental health court, absent extenuating circumstances.

5. Increase access to mental health providers by linking them to people in need and relevant agencies (i.e., the courts and Department of Correction).

Judges making pretrial decisions are not always aware of community-based options or may not know whether providers have the immediate capacity to serve more individuals.

- **Formalize a list of mental health providers and facilitate information sharing:** The city should identify providers that are able to serve justice-involved individuals and create an information sharing system among the providers and the supervised release program. Providers could share the services they offer and the number of spots available on a real-time (or close to real-time) basis, ensuring a rapid referral. If the court orders supervised release with mandatory programming, supervised release providers could more rapidly conduct an assessment and connect individuals to services. (These linkages should be reserved for individuals truly in need of an ongoing mental health intervention.)

The same information can be shared with DOC social workers during discharge planning. Oftentimes, jail release can be unpredictable; if such a list were available, DOC social workers would be in a better position to make appropriate referrals to facilitate reentry.

- **Emergency Mental Health Assessment Option:** For individuals demonstrating more pressing mental health concerns, the city should set up a program to provide judges – especially in arraignments – the option of ordering an immediate assessment to better inform a pretrial release decision in those cases that have not been assessed by existing Pre-Arrestment Screening Units or need further attention. Trained social workers or psychiatrists would be on-call 24/7 to report to any courthouse, conduct an assessment, make a recommendation to the court, and facilitate a referral, if needed, to a community-based provider.

which would allow CHS staff to notify the defense attorney, designated city officials, and the court. When incarceration is pursuant to a parole violation, notice would be also sent to DOCCS.

If the individual is held pretrial, upon receipt of a CHS notice, judges could calendar a bail review hearing on the next business day to consider community-based treatment in lieu of pretrial detention, as permitted by the state's bail law.²¹² If the individual is serving a city sentence, officials could effectuate prompt release to the Early Release Program.²¹³ If it is a parole case, the officer could vacate the parole warrant and, if deemed necessary, upgrade parole conditions.

We are not recommending a blanket policy of releasing everyone with a medical condition, but, given the grave risks to health, an automatic formal review with a rebuttable presumption of release would constitute due diligence.

People with Chronic Medical Conditions

6. Immediately notify the defense attorney and the relevant court or parole authority when a jail intake assessment reveals a chronic medical condition, prompting a formal hearing or review of the need for incarceration.

Jail conditions have always been unsanitary and dangerous. In cases in which a jail intake assessment reveals that an incarcerated person suffers from a chronic medical condition, Correctional Health Services (CHS) should institute a protocol to have their staff seek necessary HIPAA waivers for the disclosure of health information,

Appendices

Appendix A. Summary of Recommendations

Chapter 3. Racial Justice

1. Define institutional racism based on outcomes, rather than overt bias alone. Whether there is overt bias or not, when people from one racial or ethnic group are more likely to be deprived of liberty than another, system players should hold themselves accountable for minimizing these disproportionate outcomes.

2. Establish a permanent Racial Disparities Working Group.

The Working Group would ensure close monitoring of racial disparities at every criminal justice decision-point, have real authority to issue recommendations, and include a broad representation from justice and community stakeholders, think tanks, and advocates.

3. Monitor and publicize disparities in Release Assessment recommendations and pretrial decisions. So far, release recommendations made by the city's newly validated Release Assessment tool have been comparable across racial and ethnic groups, but outcomes should be continually monitored to detect any potential changes. The city should also compare the extent of any disparities in the assessment tool's

recommendations with disparities in judges' actual decisions.

4. Repair past harms of over-incarceration by reinvesting in impacted communities. The city should implement tangible justice reinvestment strategies in neighborhoods suffering from both poverty and over-incarceration, including through efforts to accelerate the work of the Commission on Community Reinvestment established in the Close Rikers Points of Agreement.

Chapter 4. COVID-19 Case Backlog

Focus judicial, prosecutorial, and defender resources on shrinking the pandemic-related backlog. Case delays stemming from COVID-era disruptions have driven up the jail population by approximately 740 people as of June 2021. Courts and other system players should make this backlog a top priority, including by setting short intervals between court appearances and holding immediate pretrial conferences for individuals who have been detained for long periods.

Chapter 5. Pretrial Decisions

1. Prosecutors should critically examine police reports and promote truth in charging at the earliest pre-arraignment stage. Prosecutors should critically examine the credibility of the arresting police officer and only charge offenses they genuinely believe can be proven beyond a reasonable doubt, rather than the maximum possible offense.

2. Promote greater use of the city's Release Assessment to encourage data-driven decisions. This empirically based tool indicates people's likelihood of court attendance, helping decision-makers apply the bail statute and avoid unnecessary pretrial detention.

3. Encourage the use of supervised release and other non-monetary conditions when there is a credible risk of flight. In cases for which release on recognizance (ROR) is inappropriate, supervised release has been shown to be an effective model – and the program model was recently updated to accommodate the more seriously charged individuals now eligible for the program under bail reform.

4. Promote consistent interpretations of bail-eligibility due to a burglary charge and “harm to an identifiable person or property.” Bail eligibility under burglary in the second degree and the harm to person property provisions both require interpretations of definitional matters not covered in the penal law. These provisions, apart from their ambiguity, are the provisions of the bail “rollback” amendments that are most responsible for increased pretrial detention.

5. Ensure people can afford bail by implementing an ability to pay assessment. Although bail reform requires judges to consider “individual financial circumstances,” bail payment rates did not improve in 2020, underscoring the importance of offering judges better information about bail amounts that people can afford.

6. Make partially secured bonds and unsecured bonds more affordable. Courts should set partially secured surety bonds and unsecured surety bonds at the same amount as cash amounts, and honor people’s efforts to pay partially secured and unsecured bonds in all cases, except when the prosecutor raises a specific and credible objection.

7. Restructure arraignments to create a more deliberative, fair, and systematic process. To ensure adherence to the legal presumption of release contained in the bail reform law, arraignments should implement a two-step process where risk of flight must be established before the court hears arguments about the least restrictive conditions needed to ensure return to court.

8. Institute mandatory bail reviews during the pendency of a case. Courts should institute formal bail reviews throughout the case to ensure frequent examination of pretrial detention, beginning with a formal review after five days for anyone still unable to pay bail.

9. Establish Population Review Teams in each borough to periodically review the jail population and identify people who should be released and/or have their cases resolved. Based on existing models in other jurisdictions, these teams (one per borough) would include representatives with decision-making authority from the Mayor’s Office of Criminal Justice, defense agencies, district attorneys’ offices, the judiciary, Department of Correction, Correctional Health Services, state parole, and borough-based service providers and community representatives.

10. Collect, analyze, and share decisions made by individual arraignment judges. The city and/or state court system should distribute this data in quarterly reports to the individual judges themselves as a training tool as well as provide de-identified data to the public.

Chapter 6. Case Processing Delays

1. Judicial leadership is indispensable to overcome entrenched delays. Progress will require continued judicial leadership, paired with a commitment to training, retraining, and faithful implementation from every agency with a stake in the outcome.

2. Focus on people deprived of pretrial liberty. The players should focus first on reforming practices for people deprived of pretrial liberty, who experience greater harms from case delay than those released before trial.

3. Institute effective calendar management practices early in pretrial proceedings. National research and a recent promising pilot program in Brooklyn show that significant improvements in case speed are achievable in New York City if courts use proactive case management practices, including: setting interim case deadlines in advance;

holding attorneys accountable for meeting deadlines; adjourning cases for only as long as necessary to complete between-appearance tasks; and ensuring each court appearance exists to achieve a meaningful purpose.

4. Ensure sufficient judges are assigned to pretrial proceedings. To make sufficient judges available in the critical pretrial stages when delays can accumulate, state court leaders could consider greater use of a hybrid model, where many judges maintain a limited pretrial caseload and preside over trials.

5. Fund more paralegals and state-of-the-art technology to help district attorneys and public defenders implement discovery reform. Sufficient resources could ensure early compliance with discovery timelines and help to advance deliberations.

Chapter 7. Sentencing Options

1. With limited exceptions, replace city jail sentences with more meaningful approaches. Depriving people of liberty for less than a year only to release them back into the community in a worse condition rarely advances the goals of public safety. The city's "alternative to incarceration" infrastructure can capably replace

jail sentences in nearly all circumstances.

2. Build on the Early Release (6-A) Program instituted during the pandemic and continue to use appropriate legal mechanisms for early release. Have the city's Conditional Release Commission review all cases after people serve 60 days and establish an early release process in other cases ineligible for review by this Commission.

3. Expand restorative justice programming and treatment options for people convicted of violent crimes, while simultaneously doing more to meet the needs of crime victims. Given the positive research literature, a major expansion of restorative justice would be especially well-suited for people charged with violence, including those who have a history of justice involvement.

4. Permit incarcerated people to earn merit time credits for participating in educational, vocational, and rehabilitative programs while in jail. Allowing people to earn merit time credits off their sentences for successfully participating in programs would encourage attendance, promote good conduct, advance rehabilitation, and help reduce the jail population.

5. Expand access to the city's mental health courts through state sentencing reform. The state should expand mental health court access by broadening treatment eligibility and allowing judges to order treatment over the prosecutor's objection.

6. Limit jail sanctions in response to noncompliance with programs. We encourage "problem-solving court" and "alternative to incarceration" practitioners to use non-jail sanctions before declaring people to have failed these programs, drawing extensively from options such as community service, more frequent compliance monitoring by the judge, or additional meetings with a case manager.

7. Create programing to address prior exposure to trauma. Concrete steps could include early assessments after arraignment and pre-sentencing assessments by clinical social workers and courts considering trauma history as a mitigating factor during sentencing.

Chapter 8. Parole and Reentry

1. Enact and fully implement the Less Is More Act, limiting detention for parole violations. Reforms that would end the automatic detention of people accused of parole violations,

limit incarceration for technical violations, and permit people on parole to earn good time credits – all of which are included in the Less Is More Act recently passed by the state legislature and awaiting the Governor’s signature – would promote better outcomes and reduce incarceration.

2. Reform DOCCS policies so that officers issue fewer parole warrants for people accused of most misdemeanors and appropriate felonies. Presently, the law requires incarceration without exception when a parole warrant is pending; in lieu of legal reforms, parole officers should mostly refrain from filing violations in the first place due to a new misdemeanor or nonviolent felony charge.

3. Invest in programs to avoid incarceration for technical parole violations. Anyone who parole authorities accuse of a technical violation should immediately receive counsel, with a full mitigation workup developed.

4. Invest in resources and programs for people on parole to ensure successful reentry to society. Failure to provide resources to engender stability makes compliance with parole rules more challenging and

increases the likelihood of recidivism.

Chapter 9. Priority Populations Based on Gender, Age, and Health Status

1. Establish a strong presumption of non-incarceration for women, transgender, and gender non-conforming people by investing in proven community-based housing and supports. Due to low risk of violence and severe health and safety risks of incarceration, we encourage courts and prosecutors to order women, transgender, and gender non-conforming individuals for whom there seems to be no other viable option than jail in the status quo into community-based residential facilities instead that are broadly analogous to supportive housing.

2. Establish a strong presumption of non-incarceration for people aged 55 and up and order a needs assessment to determine suitable treatment in lieu of jail. In cases in which justice involvement continues at advanced ages, we urge decision-makers to think about the individual’s current charges and prior convictions in light of underlying needs, including mental health concerns, substance abuse, poverty, and homelessness.

3. Develop and fund additional outpatient mental health treatment slots as well as community-based residential facilities to end the incarceration of mentally ill people who are better served in the community.

In cases of unstable housing or particularly severe mental health symptoms, the city should invest in community-based inpatient options that can offer mental health treatment and wrap-around services from highly trained professionals.

4. Invest in community-based treatment for people with a pending mental competency matter and then refer them to mental health court if found fit to stand trial. The city should create community-based treatment options for individuals who are awaiting the results of a mental competency exam and for individuals who have been found “unfit” and need restoration to competency. People restored to fitness should be referred to mental health court.

5. Increase access to mental health providers by linking them to people in need and relevant agencies (i.e., the courts and Department of Correction). Formalize a list of mental health providers and facilitate information sharing. For individuals demonstrating more

pressing mental health concerns, the city should afford judges the option of ordering an immediate Department of Health and Mental Hygiene assessment to better inform a pretrial release decision.

6. Immediately notify the defense attorney and the relevant court or parole authority when a jail intake assessment reveals a chronic medical condition, prompting a formal hearing or review of the need for incarceration.

Health risks should be considered when considering the harm of continued incarceration, allowing community-based treatment to be assigned when appropriate and necessary.

Appendix B. Stakeholders Consulted

From January to June 2021, staff with the Independent Commission and the Center for Court Innovation met (virtually) with representatives from a wide range of stakeholders to discuss their insight into strategies for reducing the jail population and seek feedback. We thank all of them for sharing their time and input.

New York City Officials

Marcos Soler, Director,
Mayor's Office of Criminal Justice (MOCJ)

Miriam Popper, Executive Director,
Office of Pretrial Justice Initiatives, MOCJ

Brenda Velazquez, Executive Director of Research Operations, MOCJ

Ashley Demyan, Consultant, MOCJ

Virginia Barber Rioja, Adjunct Assistant Professor,
Psychology Department,
New York University

Brian Crow, Deputy Director,
Justice Division, New York City Council

Max Kampfner-Williams,
Legislative Counsel, New York City Council

Agatha Mavropoulos, Legislative Counsel, New York City Council

Criminal Justice Agencies

Hon. Matthew D'Emic,
Administrative Judge for
Criminal Matters, Kings County
Supreme Court

Hon. George Grasso, Supervising
Judge, Bronx Criminal Court

Hon. John Walsh (ret.), Court
Attorney, Bronx Criminal Court

Hon. Lawrence Marks, Chief
Administrative Judge, New York
State Unified Court System

Justin Barry, Chief Clerk, New
York City Criminal Court

Paul Lewis, Chief of Staff,
Office of the Chief
Administrative Judge

Stan Germán, Executive Director,
New York County Defender
Services (NYCDS)

Christopher Boyle, Director of
Data, Research, and Policy, New
York County Defender Services

Renate Lunn, Training Supervisor,
NYCDS

Sergio de la Pava, Legal Director,
NYCDS

Marie Ndiaye, Supervising
Attorney, Decarceration Project,
Legal Aid Society (LAS)

Lorraine McEvilley, Director,
Parole Revocation Defense
Unit, LAS

Martin LaFalce, Staff Attorney,
Criminal Defense Practice, LAS

Carmen Facciolo, Assistant Chief
of Police, Montgomery County
(MD) (former Special Assistant
to Bronx District Attorney
Darcel D. Clark)

José Fanjul, Executive Assistant
District Attorney for Prosecution
Policies, District Attorney's
Office of New York (DANY)

Joan Illuzzi-Orbon, Executive
Assistant District Attorney and
Chief of Trial Division, DANY

Patricia Bailey, Chief of Special
Litigation Bureau, DANY

Michele Bayer, Deputy Chief,
Trial Division, DANY

Andy Warshawer, Deputy Chief,
Trial Division, DANY

Kristen Kane, Director of
Intergovernmental Affairs
and Policy, Queens District
Attorney's Office (QDA)

Jay Bond, Deputy Director of
Intergovernmental Affairs and
Policy, QDA

Social Service Organizations and Advocacy Groups

Sarita Daftary, Co-Director,
Freedom Agenda at Urban
Justice Center

Jennifer Parish, Director of
Criminal Justice Advocacy,
Mental Health Project, Urban
Justice Center

Victoria Phillips, Community,
Health, & Justice Organizer,
Mental Health Project, Urban
Justice Center

Rita Zimmer, President,
Women's Community Justice
Association (WCJA)

Sharon White-Harrigan, Executive Director, WCJA

Kristen Edwards, Program Director, The Women's Community Justice Project

Nick Encalada-Malinowski, Civil Rights Campaigns Director, VOCAL-NY

Catherine Shugrue dos Santos, Deputy Executive Director for Programs, New York City Anti-Violence Project (AVP)

Audacia Ray, Director of Community Organizing and Public Advocacy, AVP

Giles Malieckal, Senior Director of Pretrial Services, CASES

Kelsey Antle, Director of Evaluation (Pretrial Services), CASES

Aubrey Fox, Executive Director, New York City Criminal Justice Agency (CJA)

Joann De Jesus, Director of Special Projects, CJA

Kandra Clark, Vice President, Policy and Strategy, Exodus Transitional Community

Nicole Arzola, Communications and ATI Program Associate, Exodus Transitional Community

Andre Ward, Associate Vice President of the David Rothenberg Center for Public Policy, The Fortune Society

Rebecca Engel, Senior Policy Counsel, The Fortune Society

Hon. Judy Harris Kluger, Executive Director, Sanctuary for Families

Cheryl Roberts, Executive Director, Greenburger Center

Danielle Sered, Executive Director, Common Justice

Michael Polenberg, Vice President, Government Affairs, Safe Horizon

Ashwin Vasan, President and CEO, Fountain House

Mary Crowley, Senior Vice President & Chief External Affairs Officer, Fountain House

Institutes, Foundations, and Universities

Jeremy Travis, Executive Vice President of Criminal Justice, Arnold Ventures

Kristin Bechtel, Director of Criminal Justice Research, Arnold Ventures

Michael Jacobson, Director, Institute for State & Local Governance at the City University of New York (CUNY)

Insha Rahman, Vice President of Advocacy and Partnerships, Vera Institute of Justice

Jullian Harris-Calvin, Director, Greater Justice New York, Vera Institute of Justice

Sandra van den Heuvel, Senior Program Associate, Vera Institute of Justice

Alethea Taylor, Consultant, Criminal Justice Initiative, New York Women's Foundation

Susan Shah, Managing Director of Racial Justice, Trinity Church Wall Street

Tasha Tucker, Program Director, Racial Justice, Trinity Church Wall Street

Gregory Boles, Program Assistant, Racial Justice, Trinity Church Wall Street

Preeti Chauhan, Vice President, Justice Policy Center, Urban Institute (former Director, Data Collaborative for Justice at the John Jay College of Criminal Justice)

Erica Bond, Policy Director, Data Collaborative for Justice, John Jay College of Criminal Justice

Jeffrey Coots, Director, From Punishment to Public Health Initiative, John Jay College of Criminal Justice

Dr. Merrill Rotter, Director of the Division of Law and Psychiatry, Department of Psychiatry, Albert Einstein College of Medicine; Medical Director of EAC/NYC TASC Mental Health Programs.

Additionally, shortly before releasing this report, we had the opportunity to share its major themes and findings at a convening hosted by Freedom Agenda, a group that organizes people impacted by incarceration in New York City. We thank Brandon Holmes, Co-Director of Freedom Agenda, for facilitating this discussion.

Appendix C. Data Sources

We drew upon recent publications by ourselves and others and performed original data analysis to inform our assessment of the current jail population and recommendations to reduce it. While we conducted more quantitative analysis than space considerations permitted including in this report, questions or requests for additional population breakdowns may be directed to the Center for Court Innovation.

Office of Court Administration

The New York State Office of Court Administration (OCA) provided case-level data for all criminal cases arraigned or disposed in the New York City criminal courts in 2019 and 2020.

About the OCA Data

For both the NYC Criminal Court and the city's Supreme Court, Criminal Term, data included: *demographics* (people's age, gender, race, and ethnicity); *borough*; *charges at each stage* (e.g., arraignment, indictment, and disposition); *release decisions* (ROR, supervised release, bail, or remand); *bail forms and amounts*; *date of bail payment*, where applicable (affording analyses of days to payment); *dispositions, sentences, and sentence*

length; and *case processing measures* (e.g., the number of court appearances and time to disposition after discounting any time spent on warrant or amidst mental competency proceedings).

Besides the above data for all of 2019 and 2020, OCA also provided the project team with an April 12, 2021 case-level snapshot file of all criminal cases pending in the Supreme Court. This file enabled determining the number of pending indictments in the Supreme Court – a critical distinction, because our case processing recommendations largely targeted this subgroup of cases. This data also enabled breaking out cases held in pretrial detention and distinguishing those in the pre-disposition stage from those that had reached a disposition but were held in jail while awaiting sentencing.

Applying OCA Data to Current Policy Recommendations

In some instances, we prioritized 2020 results, such as in examining the first year of bail reform implementation and the rollout of the city's Pretrial Release Assessment. In other instances, we prioritized 2019 over 2020 results, because they preceded dynamics related to the COVID-19 pandemic. A particular concern

was that the growing backlog of unresolved cases due to restrictions on courts' capacity to hold in-person appearances and jury trials could have led to higher-than-normal case delays and, potentially, to an unrepresentative (less complex-than-usual) set of cases that reached a disposition and sentence in 2020. For this reason, our case processing and sentencing chapters largely drew upon 2019 results – except when we were specifically seeking to quantify the added case backlog resulting from COVID-19 in 2020.

Beyond original analysis conducted for this report, many of our recommendations follow from OCA data results included in two recent Center for Court Innovation publications. The first concerned the effects of the state's bail reforms in 2020.²¹⁴ The second mapped citywide case processing trends over the past five years and quantified the potential benefits of relying on best practice case processing strategies along the lines of those recommended therein.²¹⁵

Disclaimer

OCA data provided herein does not constitute an official record of the New York State Unified Court System, which does not represent or warrant the accuracy

thereof. The opinions, findings, and conclusions expressed in this publication are those of the authors and not those of the New York State Unified Court System, which assumes no liability for its contents or use thereof.

New York City Department of Correction

Each day, the Department of Correction (DOC) posts to this [web page](#) an updated public dataset including all people in the NYC jail population.²¹⁶ While including a limited number of measures, this extract enables coding the detention status of each individual held in jail (pretrial, parole violation, city sentence, and a limited number of other categories).²¹⁷ The data also contains the charges for people held pretrial or on city jail sentences; an individual's gender, race,²¹⁸ and age; Brad H status (indicating that the individual received mental health services while incarcerated); and an individual's length of stay to date, measured from the admission date to the current date.

To track changes in the daily jail population over time, we used this public snapshot data for: (1) April 1, 2019 (the date the state's bail reforms were passed); (2) March 18, 2020 (the onset of the COVID-19 pandemic and date of the first positive case at Rikers

Island; and (3) June 1, 2021 (used to reflect the *current* NYC jail population as of this publication).

For some purposes, we also drew comparisons to the jail population on September 29, 2016, the date for which DOC provided the Independent Commission with a richer dataset for its original report.²¹⁹

Mayor's Office of Criminal Justice

The Mayor's Office of Criminal Justice (MOCJ) regularly posts [aggregate system data](#) on crime, arrests, arraignments, and basic facts about the jail population.²²⁰ We reported select MOCJ statistics, including the average length of stay for sentenced cases, and the borough-based composition of the jail population (omitted from the public DOC data).

MOCJ research staff also graciously shared the number of people held on a parole violation due to a new charge as of May 31, 2021, where the judge set nominal bail (typically \$1.00). MOCJ also shared a rough estimate of people whose jail stay was likely due to a pending mental competency exam.

Appendix D. Projection Methods

This appendix provides an overview of our projection methods for expected jail reductions from the reforms recommended in each chapter. These projections are based on our best efforts to conservatively model the impact of proposed strategies, guided by available data, but we caution that actual outcomes will depend heavily on implementation and prevailing attitudes towards justice and incarceration.

COVID-19 Case Backlog (Chapter 4)

The average length of stay for people in pretrial detention without parole warrants rose from 261 days among those held on March 18, 2020 to 341 days among those held June 1, 2021 (an additional 80 days). Over this same period, the number of people in jail pretrial without parole violations rose from 3,038 to 4,097. Notably, the average length of stay for people pretrial who also had parole warrants remained flat over this period.

To determine the impact of the extended length of stay for people awaiting trial, we used the formula $X = ((4097 - X) * 80) / 365$, in which X represents the population increase that is attributable to the 80-day increase in pretrial

length of stay. The increase (represented by X) also stands for the number of people that should be subtracted from the June 1, 2021 pretrial jail population if case processing speeds (and thus, length of stay) returned to pre-COVID March 18, 2020 levels.

Having established that $X = 737$, we rounded to 740 to avoid the impression of unmerited over-precision. The 80-day increase in case processing time thus translates to an estimated 740 more people in the June 1, 2021 jail population as compared to the March 18, 2020 jail population, indicating that a return to pre-pandemic operations should lower the jail population by the same 740 people.

Pretrial Decisions (Chapter 5)

Chapter 5 describes ten reform strategies. Measuring the likely jail reductions associated with individual strategies is challenging because each strategy would impact the others. In addition, some strategies are not susceptible to precise modeling, and others may have indirect effects that defy precise modeling.²²¹

With this in mind, we used two projection methods to establish a range of potential jail reductions associated with shifts in pretrial decision-making. In both instances, we applied our estimates only to people held in pretrial detention on charges other than homicide.

Method 1: Return to Bail-Setting Practices of the First Quarter of 2020

As described in Chapter 5, New York City's judges reduced their bail-setting when the state's bail reforms first went into effect in 2020 – but then reverted to greater bail-setting in the second half of the year on otherwise comparable cases. Drawing on prior analysis of bail trends from the Center for Court Innovation, we estimated by how much the pretrial jail population would decline if judges returned to their decision-making of the first quarter of 2020, while also adjusting for the effects of the midyear bail amendments in exposing more people to detention than in the beginning of 2020.²²²

If judges returned to the arraignment decision-making patterns of the first ten weeks of 2020, before COVID-related disruptions, pretrial detention

would decline by 32% among non-homicide cases, representing approximately 760 people.

Specifically, there would be a 33% reduction in pretrial detention for misdemeanors, a 48% reduction for nonviolent felonies, and a 27% reduction for violent felonies (homicides excluded) as compared to today's arraignment decision-making. These figures account for the impact of the bail reform "rollback" amendments that took effect in July 2021. After weighting these projected jail reductions to account for the distribution of charges (7.2% of non-homicide cases in pretrial detention were misdemeanors, 22.4% were nonviolent felonies, and 70.5% were violent felonies), we calculated a net pretrial reduction of 32.4%. We then applied this percentage to people in pretrial detention after first removing 737 people based on addressing COVID-19-related backlog to yield a projected reduction of 763 people, rounded to 750 when referenced in our main narrative.

Method 2: Greater Adherence to Pretrial Release Assessment Recommendations

In Chapter 5, we proposed that judges make greater use of the city's Pretrial Release Assessment, which uses an empirical analysis to classify

people's likelihood of attending court. In 2020, judges set bail or remand in 49% of cases in which the assessment recommended release on recognizance (ROR) and 72% when the assessment recommended "consider all options."²²³ The third possible result of the assessment is "ROR Not Recommended," for which judges set bail or remand 76% of the time, a nearly identical percentage to the middle "Consider All Options" category. Ostensibly, the middle "Consider All Options" category communicates that there is some risk of missing court that in most cases could be controlled by supervised release or another intermediate non-monetary condition. Since the bail statute requires judges to set the "least restrictive" condition whenever any flight risk is present, not to revert immediately to bail and detention, our assumption is that good fidelity to the statute should not trigger a conclusion that bail is necessary in most "Consider All Options" cases.

To project the impact of closer adherence to the recommendations of the Pretrial Release Assessment, we defined good implementation as judges setting bail or remand in 20% of cases involving violent felony charges in which the assessment recommended ROR and in 40% of cases involving violent felony

charges when the assessment yielded the middle-tier "Consider All Options" recommendation. This level of adherence would produce a 53% reduction in bail or remand decisions in cases involving violent felony charges, which would translate to a 42% reduction across all cases, regardless of the charge. When applied to non-homicide cases in the June 1, 2021 jail population, this would yield a pretrial jail reduction of almost exactly 1,000 people. As in the first pretrial method, we first removed the 737 people from the pretrial jail population, who we estimated would have already been impacted by jail reductions from adding COVID-19 backlog.

We ultimately propose that if reasonably well implemented, the ten pretrial reform recommendations presented in Chapter 5 would yield an 750-1,100 jail reduction. The high end of this range includes a final upward adjustment, given that our estimate had already reached 1,000 based solely on modeling the Release Assessment recommendation.

Case Processing Delays (Chapter 6)

To project the impact of reducing felony case delay, we first lowered the number of eligible cases based on our projected

reductions for the pretrial reforms outlined in Chapter 5, the reforms to cases in which people with new charges are detained on parole violations outlined in Chapter 8, and the reductions in specific sub-populations outlined in Chapter 9.

We then had to estimate by what percentage the remaining detained population could be reduced by implementing our recommended case processing strategies. For this purpose, we applied a 25% reduction in case delay, which would reduce the remaining pretrial population by 25%, to arrive at just over a 500-person projected reduction from improved case speeds. The 25% figure is based on the 28% reduction in case delay achieved by a recent pilot project in Brooklyn (the “Brooklyn Project”) that involved three of the current authors, is summarized in Chapter 6, and is more fully described in a separate recent publication.²²⁴

Given that project effects are not necessarily linear – and the survival curves in the published evaluation in fact confirm a non-linear relationship, we caution that this method is necessarily inexact. We offer it as a rough, yet statistically grounded, approximation for purposes of creating a defensible estimate. Based on these reductions, we arrived at a post-reform estimate

of just over 2,000 people held on a pending felony indictment, which we then reduced by 25%

Sentencing Options (Chapter 7)

To calculate the impact of jail reduction strategies on sentencing, we first identified jail sentences based on the most serious charges, defined as violent felony homicide, weapons, sex offense, and domestic violence charges. These charges accounted for 26 of the 219 people serving a jail sentence on June 1, 2021. We then assumed, with moderate implementation of a presumption against jail sentences except under limited circumstances, 50% of the remaining 193 sentences (i.e., 97 of them) could be diverted from jail to alternatives to incarceration, restorative justice programs, or other interventions, or would have their sentences shortened due to conditional release or earned merit credits. Given the broad nature of this assumption and the general lack of precision in Department of Correction data on people serving jail sentences, we projected a potential jail reduction range of 75 to 125 fewer people, rather than settling on a single figure.

Parole Detention (Chapter 8)

To calculate the impact of ending mandatory detention for paroled persons charged with new offenses, we multiplied the number of paroled persons detained on new charges for misdemeanors (260 people as of June 1, 2021), nonviolent felonies (133 people), and violent felonies (406 people) by the rate at which people charged with those categories of offenses were released on recognizance or under supervision in 2018, as set forth on page 23 of the Criminal Justice Agency’s Annual Report 2018 (respectively, 85%, 55%, and 35%). We then built in a 25% “implementation discount” to account for the likelihood that courts may be less likely to release paroled persons. The resulting estimated reduction was 327 people.

To calculate the impact of reducing detention for people accused of technical parole violations, we used the Less Is More Act as a baseline. This legislation would require DOCCS to issue a notice of violation to people accused of parole violations, establish a hearing process to determine whether pre-adjudication detention is appropriate, shorten case timelines, and cap the maximum period of incarceration for a

sustained technical violation to 30 days.

While the impact of the first three changes are difficult to predict, the fourth would have a more direct impact, because the current median length of stay for people held for an alleged technical violation is 69 days. Capping incarceration at 30 days for parole violations thus should reduce the number of people in jail for alleged technical violations by at least 65 percent. Based solely on modeling the 30-day cap, we estimate a reduction of 150 people (rounded down from 156).

To account for the uncertainty of these projections, we estimate a reduction of 400-500 people from parole reform strategies.

Priority Populations Based on Gender, Age, and Health Status (Chapter 9)

To project the impact of our recommendations related to people ages 55 and higher, women, transgender, and gender non-conforming people, we first assumed that they also would have benefitted from other reforms outlined above. Thus, we reduced the number of people in each group by the overall percentage reduction from the pretrial decision-making (Chapter 5) and parole warrants

with new charges (Chapter 8) strategies. We then added a 35% further reduction to account for the potential impact of specific strategies aimed at these subgroups. Although these strategies are intended to be considered even in serious cases where the individuals would otherwise be held in pretrial detention, we assumed this may not usually be the case. Among people in those groups held pretrial (including on parole warrants with new charges), 194 faced murder, sex offense, or weapons charges. Removing approximately two-thirds of the people who were not faced with these more serious charges would result in a 35% reduction of across these groups.

We have not specifically projected reductions in jail based on our suggested reform strategies for people with serious mental illness, given the absence of granular public data (such as charges) for people with these diagnoses.

Appendix E. Ability to Pay Bail Implementation Guidelines

A formal assessment of people's ability to pay bail could assist judges in setting affordable bail amounts, consistent with New York's bail statute and the historic purpose of bail. Such an assessment could enable individuals to be released during the pretrial period, while also incentivizing their court appearance. The assessment requires ample time to determine the defendant's and potential sureties' (i.e. friends and family members) ability to pay bail to offer a reliable recommendation to the court. In implementing an assessment, the courts should consider the following guidelines:

- **Second Calls:** Judges should permit a "second call" if they are considering bail. Essentially, the judge would adjourn the case for up to two hours to allow an opportunity for assessing the defendant, coordinating with potential sureties (friends or family members) to come to court, and assessing sureties' ability to pay bail. This proposed implementation strategy would also efficiently conserve resources. Time would not be spent assessing each individual's ability to pay prior to arraignment. If the judge plans to order ROR or supervised release from

the outset, those individuals would not be assessed for their ability to pay bail.²²⁵

- **Assessment Administration:** The ability to pay assessment would be administered by one of the City's pretrial service agencies, most likely the New York City Criminal Justice Agency (CJA). Results would be shared with the court, prosecution, and defense, including a recommendation of a bail form and amount that could be paid or, where appropriate, a finding that the individual has no ability to pay at all.
- **Consider Indigence:** Judges should reconsider monetary bail when there is no ability to pay and consider other conditions such as supervised release, supervised release with mandatory programming, or electronic monitoring in rare cases when supervision is deemed insufficient.
- **Honoring the Assessment:** State court policy should require that assessment results be shared on-the-record, be based on specific financial circumstances, and require bail at no more than 10% over an assessment's recommended amount.

- **Post-Arraignment Assessment:** In the event a bail decision is inadvertently finalized, but the judge lacked reliable ability to pay information, bail expeditors employed by CJA should administer the ability to pay assessment at the courthouse post-arraignment and before transfer to Department of Correction custody.²²⁶ (In the status quo, bail expeditors confirm whether a friend or family member is able to come to the courthouse and can place a legally permitted 12-hour hold on transporting the individual to DOC custody.)²²⁷ Results could be submitted to the court, prosecution, and defense immediately if feasible (i.e., before transport) or, otherwise, prior to the next court date.

Endnotes

Notes for the Executive Summary

1. See, e.g., Freudenberg, N., Daniels, J., Crum, M., Perkins, T., & Richie, B. E. (2005). "Coming Home from Jail: The Social and Health Consequences of Community Reentry for Women, Male Adolescents, and their Families and Communities." *American Journal of Public Health* 95: 10: 1725-1736. Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2518598/>.
2. New York City Comptroller. (March 2021). *NYC Department of Correction FYs 2010-20 Operating Expenditures, Jail Population, Cost per Incarcerated Person, Staffing Ratios, Performance Measure Outcomes, and Overtime*. New York, NY: New York City Comptroller's Office, Budget Bureau. Available at: https://comptroller.nyc.gov/wp-content/uploads/documents/DOC_Presentation_FY_2020.pdf.
3. Rempel, M. & Weill, J. (2021). *One Year Later: Bail Reform and Judicial Decision-Making in New York City*. New York, NY: Center for Court Innovation. Available at: <https://www.courtinnovation.org/publications/bail-NYS-one-year>.
4. New York City Comptroller. (March 2021). *FY 2022 Agency Watch List: Department of Correction*. Available at: https://comptroller.nyc.gov/wp-content/uploads/documents/Watch_List_DOC_FY2022.pdf.
5. Koppel, S., Topel, D., & Bent-Koerick, K. (2021). *Annual Report 2019*. New York, NY: New York City Criminal Justice Agency. Available at: <https://www.nycja.org/publications/annual-report-2019>.
6. Research from multiple cities is reviewed in Rodriguez, K., Rempel, M., & Watkins, M. (2021). *The Facts on Bail Reform and Crime in New York City*. New York, NY: Center for Court Innovation. Available at: <https://www.courtinnovation.org/publications/bail-crime-nyc>.
7. Peterson, R. R. (2020). *CJA's Updated Release Assessment*. New York, NY: New York City Criminal Justice Agency. Available at: <https://www.nycja.org/publications/cjas-updated-release-assessment>.
8. Rempel, M. & Weill, J. (2021), Op Cit.
9. See, e.g., Ostrom, B. J., Raaen, N., Schaffler, R. Y., & Hamblin, L. E. (2020). *Success in Criminal Caseflow Management: Lessons from the Field*. Williamsburg, VA: National Center for State Courts. Available at: https://www.ncsc.org/_data/assets/pdf_file/0018/53217/Success-inCriminal-Caseflow-Management-Lessons-from-the-Field.pdf; Weill, J., Rempel, M., Rodriguez, K., & Raine, V. (2021). *Reducing Felony Case Delay in Brooklyn: Evaluation of Jail Reduction Strategies in 2019*. New York, NY: Center for Court Innovation. Available at: <https://www.courtinnovation.org/publications/case-delay-brooklyn>.
10. Regarding restorative justice, see, e.g., Latimer, J., Dowden, C., & Muise, D. (2005). "The Effectiveness of Restorative Justice Practices: A Meta-Analysis." *The Prison Journal* 85: 2: 127-144. Available at: https://www.d.umn.edu/~jmaahs/Correctional%20Assessment/rj_meta%20analysis.pdf. Regarding mental health courts, see, e.g., Rossman, S. B., Willison, J. B., Mallik-Kane, K., Kim, K., Debus-Sherrill, S., & Downey, M. (2012). *Criminal Justice Interventions for Offenders with Mental Illness: Evaluation of Mental Health Courts in Bronx and Brooklyn*, New York. Washington, D.C.: The Urban Institute. Available at: https://www.urban.org/research/publication/criminal-justice-interventions-offenders-mental-illness-evaluation-mental-health-courts-bronx-and-brooklyn-new-york/view/full_report.
11. See, e.g., Peterson, J. K., Skeem, J., Kennealy, P., Bray, B., & Zvonkovic, A. (2014). "How Often and How Consistently do Symptoms Directly Precede Criminal Behavior Among Offenders with Mental Illness?" *Law and Human Behavior* 38: 5: 439-449. Available at: <https://www.apa.org/pubs/journals/releases/lhb-0000075.pdf>; Loeber, R., Farrington, D. P., & Petechuk, D. (2013). *From Juvenile Delinquency to Young Adult Offending (Study Group on the Transitions between Juvenile Delinquency and Adult Crime)*. Washington, D.C.: National Institute of Justice. Available at: <https://www.ojp.gov/pdffiles1/nij/grants/242931.pdf>.
12. These projections assume people 55+ and women, transgender, and gender non-conforming people also will have benefitted from other reforms outlined above. We do not specifically project reductions in jail for people with serious mental illness given the absence of granular public data (such as charges) for people with these diagnoses.

Notes for Chapter 1

13. For a summary of the plan to close the Rikers Island jail complex, see NYC Criminal Justice. (2019). *New York City is Leading A Historic Decarceration Plan*. New York, NY. Available at: <https://criminaljustice.cityofnewyork.us/wp-content/uploads/2019/10/Historic-Decarceration-Plan.pdf>.
14. Aiken, J. (2017). *Era of Mass Expansion: Why State Officials Should Fight Jail Growth*. Northampton, MA: Prison Policy Institute. Available at: <https://www.prisonpolicy.org/reports/jailovertime.html>; Maruschak, L. M. & Minton, T. D. (2020). *Correctional Populations in the United States, 2017-2018*. Washington, D.C.: Bureau of Justice Statistics. Available at: <https://www.bjs.gov/content/pub/pdf/cpus1718.pdf>.
15. See, e.g., Austin, J. & Jacobson, M. (2013). *How New York City Reduced Mass Incarceration: A Model for Change?* New York, NY: Brennan Center for Justice, Vera Institute of Justice, and The JFA Institute. Available at: https://www.brennancenter.org/sites/default/files/2019-08/Report_How_NYC_Reduced_Mass_Incarceration.pdf; Fox, A. & Koppel, S. (2021). *Pretrial Release Without Money: New York City, 1987-2020*. New York, NY: New York City Criminal Justice Agency. Available at: <https://www.nycja.org/publications/pretrial-release-without-money-new-york-city-1987-2020>; Glazer, E. & Sharkey, P. (2021). *Social Fabric: A New Model for Public Safety and Vital Neighborhoods*. New York, NY: The Square One Project, Columbia University Justice Lab. Available at: [Endnotes](https://squareonejustice.org/wp-</div><div data-bbox=)

- content/uploads/2021/03/Social-Fabric-A-New-Model-for-Public-Safety-and-Vital-Neighborhoods_Liz-Glazer-and-Pat-Sharkey_WEB_FINAL.pdf; Scrivener, L. & Tomascak, S. (2021). *Data Report: Trends in Admissions to New York City Jails, 1995-2019*. New York, NY: Data Collaborative for Justice at John Jay College. Available at: https://datacollaborativeforjustice.org/wp-content/uploads/2021/04/2021_04_05_DOC_Admissions_Report_Indesign.pdf.
16. Union County, New Jersey had the lowest incarceration rate of any major urban county in 2018. See Kang-Brown, J. *Incarceration Trends: Data Tool Providing Information on Jail and Prison Populations in Every U.S. County*. New York, NY: Vera Institute of Justice. Available at: <https://www.vera.org/projects/incarceration-trends>.
17. At the end of 2011, Black people made up 57% of the NYC jail population, while Hispanic/Latinx people made up 34%. NYC Department of Correction. (Dec. 29, 2011). *NYC DOC at a GLANCE*. 1st Quarter Fiscal Year 2012, July-September. Available at http://www.nyc.gov/html/doc/downloads/pdf/doc_at_a_glance.pdf.
18. Lippman, J., Aborn, R. A., Cartagena, J., et al. (2017). *A More Just New York City*. New York, NY: Independent Commission on New York City Criminal Justice and Incarceration Reform. Available at: <https://static1.squarespace.com/static/5b6de4731aef1de914f43628/t/5b96c6f81ae6cf5e9c5f186d/1536607993842/Lippman%2BCommission%2BReport%2BFINAL%2BSingles.pdf>.
19. NYC Criminal Justice. (2019), Op Cit.
20. Rosenfeld, R., Abt, T., & Lopez, E. (2021). *Pandemic, Social Unrest, and Crime in U.S. Cities: 2020 Year-End Update*. National Commission on COVID-19 and Criminal Justice. Available at: https://cdn.ymaws.com/counciloncj.org/resource/resmgr/covid_commission/Year_End_Crime_Update_Design.pdf.
21. Rodriguez, K., Rempel, M., & Watkins, M. (2021). *The Facts on Bail Reform and Crime in New York City*. New York, NY: Center for Court Innovation. Available at: <https://www.courtinnovation.org/publications/bail-crime-nyc>; McCarthy, C., Campanile, C. & Feis, A. (July 8, 2020.) "NYPD's Own Stats Debunk Claims of Bail Reform Leading to Spike in Gun Violence." *New York Post*. Available at: <https://nypost.com/2020/07/08/nypds-own-stats-debunk-claims-about-bail-reform-link-to-shootings>; Pereira, S. (July 9, 2020.) "Data Contradict NYPD's Claim That Bail Reform And COVID-Releases Drove Shooting Spike." *Gothamist*. Available at: <https://gothamist.com/news/data-contradicts-nypds-claim-bail-reform-and-covid-releases-drove-shooting-spike>; New York City Mayor's Office of Criminal Justice. (2021.) *How Many People with Open Criminal Cases are Re-Arrested?* Available at: <http://criminaljustice.cityofnewyork.us/wp-content/uploads/2021/06/Pretrial-Docketed-Rearrest-Contextual-Overview-March-2021-Update.pdf>.
22. Fuleihan, D. (October 18, 2019). *Borough-Based Jail Plan Points of Agreement*. New York, NY: Office of the Mayor, The City of New York. Available at: http://council.nyc.gov/data/wp-content/uploads/sites/73/2019/10/BBJ_Points_of_Agreement_Rikers.pdf.
23. Francois, R. (June 29, 2020). "Why the Government Should Leave It to Local Communities to Define What Public Safety Means to Them." *Blavity*. Available at: <https://blavity.com/why-the-government-should-leave-it-to-local-communities-to-define-what-public-safety-means-to-them?category1=opinion&category2=politics>.
24. Alliance for Safety and Justice. (2016). *Crime Survivors Speak: The First-Ever National Survey of Victims' Views on Safety and Justice*. Available at: <https://allianceforsafetyandjustice.org/wp-content/uploads/documents/Crime%20Survivors%20Speak%20Report.pdf>.
25. For New York City, see Leslie, E. & Pope, N. G. (2017). "The Unintended Impact of Pretrial Detention on Case Outcomes: Evidence from New York City Arraignments." *Journal of Law and Economics* 60: 3 (August): 529-557. Available at: http://www.econweb.umd.edu/~pope/pretrial_paper.pdf; for Miami and Philadelphia, see Dobbie, W., Goldin, J., & Yang, C. (2016). *The Effects of Pre-Trial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges*. NBER Working Paper Number 22511. Available at: <https://www.nber.org/papers/w22511.pdf>; for Philadelphia and Pittsburgh, see Gupta, A., Hansman, C., & Frenchman, E. (2016). *The Heavy Costs of High Bail: Evidence from Judge Randomization*. New York, NY: Columbia University. Available at: <http://www.columbia.edu/~cjh2182/GuptaHansmanFrenchman.pdf>; for Harris County (Houston), Texas, see Heaton, P. S., Mayson, S. G., & Stevenson, M. (2017). "The Downstream Consequences of Misdemeanor Pretrial Detention." *Stanford Law Review* 69: 711-794. Available at: <https://review.law.stanford.edu/wp-content/uploads/sites/3/2017/02/69-Stan-L-Rev-711.pdf>; for Kentucky, see Lowenkamp, C., VanNostrand, M., & Holsinger, A. (2013). *Investigating the Impact of Pretrial Detention on Sentencing Outcomes*. Houston, TX: The Laura and John Arnold Foundation. Available at: http://www.arnoldfoundation.org/wpcontent/uploads/2014/02/LJAF_Report_state-sentencing_FNL.pdf.
26. See, e.g., Freudenberg, N., Daniels, J., Crum, M., Perkins, T., & Richie, B. E. (2005). "Coming Home from Jail: The Social and Health Consequences of Community Reentry for Women, Male Adolescents, and their Families and Communities." *American Journal of Public Health* 95: 10: 1725-1736. Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2518598/>; Listwan, S. J., Sullivan, C., Agnew, R., Cullen, F. T., & Colvin, M. (2013). "The Pains of Imprisonment Revisited: The Impact of Strain on Inmate Recidivism." *Justice Quarterly* 30: 1: 144-167. Available at: https://www.researchgate.net/publication/233104110_The_Pains_of_Imprisonment_Revisited_The_Impact_of_Strain_on_Inmate_Recidivism; Rempel, M. & Pooler, T. (2020). "Reducing Pretrial Detention in New York City: Data-Driven Strategies for Decarceration." *Sistemas Judiciales*. Revista 23: 124-137. Available at: <https://www.courtinnovation.org/publications/reducing-pretrial-detention>; Spohn, C. (2007). "The Deterrent Effect of Imprisonment and Offender's Stakes in Conformity." *Criminal Justice Policy Review* 18:1: 31-50.

27. See works cited in *supra* note 27.

28. New York City Comptroller. (March 2021). *NYC Department of Correction FYs 2010-20 Operating Expenditures, Jail Population, Cost per Incarcerated Person, Staffing Ratios, Performance Measure Outcomes, and Overtime*. New York, NY: New York City Comptroller's Office, Budget Bureau. Available at: https://comptroller.nyc.gov/wp-content/uploads/documents/DOC_Presentation_FY_2020.pdf.

29. These projections assume people 55+ and women, transgender, and gender non-conforming people also will have benefitted from other reforms outlined above. We do not specifically project reductions in jail for people with serious mental illness given the absence of granular public data (such as charges) for people with these diagnoses.

Notes for Chapter 2

30. Based on Department of Correction data made available at NYC Open Data, the exact admissions total for 2016 was 58,437, and the total for 2020 was 15,573. Available at: <https://data.cityofnewyork.us/Public-Safety/Inmate-Admissions/6teu-xtgp>.

31. See, e.g., Fox, A. & Koppel, S. (2021). *Pretrial Release Without Money: New York City, 1987-2020*. New York, NY: New York City Criminal Justice Agency. Available at: <https://www.nycja.org/publications/pretrial-release-without-money-new-york-city-1987-2020>.

32. See, e.g., Rempel, M. (2020). *COVID-19 and the New York City Jail Population*. New York, NY: Center for Court Innovation. Available at: <https://www.courtinnovation.org/publications/nycjails-covid>. In addition, during interviews conducted for the current report, several stakeholders confirmed what the hard data supported: types of cases released in March and April 2020 have not been released to nearly the same extent since that time.

33. Rempel, M. & Weill, J. (2021). *One Year Later: Bail Reform and Judicial Decision-Making in New York City*. New York, NY: Center for Court Innovation. Available at: <http://www.courtinnovation.org/publications/bail-NYS-at-one>.

34. The most common pretrial charges include murder (30%), robbery (14%), assault (10%), weapons/firearms (8%), sex offenses (6%), and burglary in the second degree (6%) – the latter of which was made re-eligible for pretrial detention under a partial rollback to the state's bail reforms put into effect July 2020.

35. Nims, T., Katznelson, Z., Syldor, M., Lawson, V., DeWolf, E., & Spencer, K. (2019). *A More Just New York City: Closing the Chapter on Rikers*. The Independent Commission on New York City Criminal Justice and Incarceration Reform. Available at: <https://static1.squarespace.com/static/5b6de4731aef1de914f43628/t/5da60eb59dac4376675bfe93/1571163845478/AMJNYC+-+Closing+the+Chapter+on+Rikers+%28Oct.+2019%29.pdf>.

36. Data on the transgender population was obtained from

the New York City Board of Correction. *Weekly COVID-19 Update: Week of May 29 – June 4, 2021*. New York, NY: Board of Correction. Available at: <https://www1.nyc.gov/site/boc/covid-19.page>.

37. Rioja, V. B. (November 30, 2020). "Mental Health Services in the NYC Jails: Impact of Bail Reform." *Correction Health Services, NYC Health + Hospitals*. Presented at Mental Health Issues & the New York State Courts 2020. Practising Law Institute.

38. NYC Mayor's Office of Criminal Justice. *System Data*. Available at: <https://criminaljustice.cityofnewyork.us/system-data/>. Reported borough data is for May 31, 2021.

Notes for Chapter 3

39. Rempel, M. & Weill, J. (2021). *One Year Later: Bail Reform and Judicial Decision-Making in New York City*. New York, NY: Center for Court Innovation. Available at: <http://www.courtinnovation.org/publications/bail-NYS-at-one>.

40. Cadoff, B., Bond, E., Chauhan, P., & Meizlish, A. (2021). *Criminal Conviction Records in New York City (1980-2019)*. Data Collaborative for Justice at John Jay College. Available at: <https://datacollaborativeforjustice.org/work/communities/criminal-conviction-records-in-new-york-city-1980-2019/>.

41. The difference between white and Black individuals was statistically significant ($p < .05$) in a logistic regression model controlling for borough, charge severity, any prior arraignment, any prior felony arraignment, open cases, gender, drug charges, marijuana charges, domestic violence charges, prior warrants, warrant on the instant case, whether the individual was detained at arraignment, and whether they were detained at disposition.

42. Kutateladze, B. L. & Andiloro, N. (2014). *Prosecution and Racial Justice in New York County*. New York, NY: Vera Institute of Justice. Report Submitted to the National Institute of Justice. Available at: <https://www.vera.org/publications/race-and-prosecution-in-manhattan>.

43. Western, B., Davis, J., Gantera, F., & Smith, N. (2021). "The Cumulative Risk of Jail Incarceration." *PNAS* 118: 16: 1-6. Available at: <https://www.pnas.org/content/pnas/118/16/e2023429118.full.pdf>.

44. Rempel, M. & Weill, J. (2021), Op Cit.

45. Arnold, D., Dobbie, W. S., & Hull, P. (2020). *Racial Discrimination in Bail Decisions*. NBER Working Paper 26999. Available at: https://www.nber.org/system/files/working_papers/w26999/w26999.pdf; Leslie, E. & Pope, N. G. (2017). "The Unintended Impact of Pretrial Detention on Case Outcomes: Evidence from New York City Arraignments." *Journal of Law and Economics* 60: 3 (August): 529-557. Available at: http://www.econweb.umd.edu/~pope/pretrial_paper.pdf.

46. City of New York. (March 23, 2021). "A Recovery for All of Us: Mayor de Blasio Announces Nation's First Ever Racial Justice Commission to Root Out Systemic and Institutional

Racism.” Official Press Release. Available at: <https://www1.nyc.gov/office-of-the-mayor/news/212-21/recovery-all-us-mayor-de-blasio-nation-s-first-ever-racial-justice-commission>.

47. Peterson, R. R. (2020). *CJA's Updated Release Assessment*. New York, NY: New York City Criminal Justice Agency. Available at: <https://www.nycja.org/publications/cjas-updated-release-assessment>.

48. Angwin, J., Larson, J., Mattu, S., & Kirchner, L. (May 23, 2016). “Machine Bias: There’s Software Used Across the Country to Predict Future Criminals. And It’s Biased against Blacks.” *ProPublica*. Available at: <https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing>; Picard, S., Watkins, M., Rempel, M., & Kerodal, A. (2019). *Beyond the Algorithm Pretrial Reform, Risk Assessment, and Racial Fairness*. New York, NY: Center for Court Innovation. Available at: https://www.courtinnovation.org/sites/default/files/media/document/2019/Beyond_The_Algorithm.pdf.

49. Rempel, M. & Weill, J. (2021), Op Cit.

50. Rempel, M. & Weill, J. (2021), Op Cit.

51. Peterson, R. R. (2020), Op Cit.

52. See, e.g., Dobbie, W. & Yang, C. (March 25, 2021). “The Economic Costs of Pretrial Detention.” *Brookings Papers on Economic Activity, BPEA Conference Drafts*. Available at: https://www.brookings.edu/wp-content/uploads/2021/03/BPEASP21_Dobbie-Yang_conf-draft.pdf; Venkatesh, S. A. (2006). *Off the Books: The Underground Economy of the Urban Poor*. Cambridge, MA: Harvard University Press.

53. See, e.g., Clear, T. R., Rose, D. R., Waring, E., & Scully, K. (2003). “Coercive Mobility and Crime: A Preliminary Examination of Concentrated Incarceration and Social Disorganization.” *Justice Quarterly* 20: 1: 33–64; LeBlanc, A. N. (2004). *Random Family: Love, Drugs, Trouble, and Coming of Age in the Bronx*. New York, NY: Scribner & Sons; Phillips, S. D., Erkanli, A., Keeler, G. P., Costello, E. J., & Angold, A. (2006). “Disentangling the Risks: Parent Criminal Justice Involvement and Child’s Exposure to Family Risks.” *Criminology & Public Policy* 5: 4: 101–206.

54. Western, B., et al. (2021), Op Cit.

55. See, e.g., Prison Policy Initiative and VOCAL-NY. (February 19, 2020). *Mapping Disadvantage: The Geography of Incarceration in New York State*. Available at: <https://www.prisonpolicy.org/origin/ny/report.html>. In addition, in an analysis conducted for the original Independent Commission report that relied upon 2014 data, we explored the percentage of citywide jail or prison sentences originating in arrests from several key areas of the city. All told, more than a third (35 percent) of all incarceration sentences came from police precincts in Central Brooklyn (10.4%), the South Bronx and adjacent University Heights and Bedford Park (13.9%), and just four police precincts spanning East to West Harlem (10.4%).

56. Prison Policy Initiative and VOCAL-NY. (February 29, 2020), Op Cit.

57. The Mayor’s Office for Economic Opportunity. *Poverty in NYC: Data Tool*. Available at: <https://www1.nyc.gov/site/opportunity/poverty-in-nyc/data-tool.page>.

58. Fuleihan, D. (October 18, 2019). *Borough-Based Jail Plan Points of Agreement*. New York, NY: Office of the Mayor, The City of New York. Available at: http://council.nyc.gov/data/wp-content/uploads/sites/73/2019/10/BBJ_Points_of_Agreement_Rikers.pdf.

59. See Mack, D. (April 1, 2021). “In Plan to Close Rikers, Community Reinvestment is Key to Repairing Harms of Incarceration.” *City Limits*. Available at: <https://citylimits.org/2021/04/01/opinion-in-plan-to-close-rikers-community-reinvestment-is-key-to-repairing-harms-of-incarceration/>.

For the underlying legislation passed in 2019, see New York City Council Local Law 193. (2019). Available at: <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4146411&GUID=7CFA7B7C-1203-4CFA-B180-BF9B41961CD2&Options=&Search=>.

Notes for Chapter 4

60. Bannon, A., & Adelstein, J. (2020). *The Impact of Video Proceedings on Fairness and Access to Justice in Court*. New York, NY: Brennan Center for Justice. Available at: <https://www.brennancenter.org/sites/default/files/2020-09/The%20Impact%20of%20Video%20Proceedings%20on%20Fairness%20and%20Access%20to%20Justice%20in%20Court.pdf>; Diamond, S. S., Bowman, L. E., Wong, M., & Patton, M. M. (2010). “Efficiency and Cost: The Impact of Videoconferenced Hearings on Bail Decisions.” *Journal of Criminal Law and Criminology* 100: 3: 869-902. Available at: <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=7365&context=jclc>; Vavonese, L. B., Ling, E., Joy, R., & Kobor, S. (2020). *How Video Changes the Conversation: Social Science Research on Communication Over Video and Implications for the Criminal Courtroom*. New York, NY: Center for Court Innovation and National Legal Aid and Defender Association. Available at: <https://www.courtinnovation.org/publications/video-changes-conversation-social-science-research-communication>.

61. The increase in the jail population attributable to case backlog was computed by comparing the pretrial portion of the jail population on March 18, 2020 (the day after the transition to remote proceedings) and on June 1, 2021. In this time, the pretrial population rose from 3,038 to 4097. The calculation had to determine the number of people by which the pretrial population increased, given a rise in length of stay to date of 80 days. In the formula for this determination, $X = ((4097 - X) * 80) / 365$, X simultaneously represents this number (left side of the equation) and, for that reason, also represents the number that should be subtracted from the June 1, 2021 pretrial jail population before then calculating the increase. (The increase should obviously be calculated off what the population *would have been* had the increase not taken place.) Having established that $X = 737$, we rounded to 740 to avoid an unmerited over-precision.

Notes for Chapter 5

62. *United States v. Salerno*, 481 U.S. 739 (1987).
63. Change to: Koppel, S., Topel, D., & Bent-Koerick, K. (2021). *Annual Report 2019*. New York, NY: New York City Criminal Justice Agency. Available at: <https://www.nycja.org/publications/annual-report-2019>.
64. NYC Criminal Justice. (2021). *How Many People with Open Criminal Cases are Re-Arrested?* New York, NY: Mayor's Office of Criminal Justice. Available at: <http://criminaljustice.cityofnewyork.us/wp-content/uploads/2021/06/Pretrial-Docketed-Rearrest-Contextual-Overview-March-2021-Update.pdf>.
65. Rodriguez, K., Rempel, M., & Watkins, M. (2021). *The Facts on Bail Reform and Crime in New York City*. New York, NY: Center for Court Innovation. Available at: <https://www.courtinnovation.org/publications/bail-crime-nyc>.
66. See all works cited in *supra* note 26.
67. See, e.g., Hahn, J. (2016). *An Experiment in Bail Reform: Examining the Impact of the Brooklyn Supervised Release Program*. New York, NY: Center for Court Innovation. Available at: <https://www.courtinnovation.org/publications/experiment-bail-reform-examining-impact-brooklyn-supervised-release-program>; Phillips, M. T. (2012). *A Decade of Bail Research in New York City*. New York, NY: New York City Criminal Justice Agency. Available at: <https://www.nycja.org/publications/a-decade-of-bail-research-in-new-york-city>; Rempel, M., Kerodal, A., Spadafore, J., & Mai, C. (2017). *Jail in New York City: Evidence-Based Opportunities for Reform*. New York, NY: Center for Court Innovation. Available at: <https://www.courtinnovation.org/publications/jail-new-york-city-evidence-based-opportunities-reform>.
68. Evidence on the manifold harms of pretrial detention in New York City and nationwide is reviewed in, e.g., Digard, L. & Swavola, E. (2019). *Justice Denied: The Harmful and Lasting Effects of Pretrial Detention*. New York, NY: Vera Institute of Justice. Available at: <https://www.vera.org/publications/for-the-record-justicedenied-pretrial-detention>; Human Rights Watch. (2010). *The Price of Freedom: Bail and Pretrial Detention of Low Income Nonfelony Defendants in New York City*. New York, NY. Available at: https://www.hrw.org/sites/default/files/reports/us1210webwcover_0.pdf; Rempel, M. & Pooler, T. (2020). "Reducing Pretrial Detention in New York City: Data-Driven Strategies for Decarceration." *Sistemas Judiciales*. Revista 23: 124-137. Available at: <https://www.courtinnovation.org/publications/reducing-pretrial-detention>.
69. Dobbie, W. & Yang, C. (March 25, 2021). "The Economic Costs of Pretrial Detention." *Brookings Papers on Economic Activity, BPEA Conference Drafts*. Available at: https://www.brookings.edu/wp-content/uploads/2021/03/BPEASP21_Dobbie-Yang_conf-draft.pdf.
70. Rempel, M. & Weill, J. (2021). *One Year Later: Bail Reform and Judicial Decision-Making in New York City*. New York, NY: Center for Court Innovation. Available at: <http://www.courtinnovation.org/publications/bail-NYS-at-one>.
71. IBID.
72. IBID.
73. IBID. The authors could not estimate bail or remand decisions attributable to having made people eligible for bail or pretrial detention if they are a "persistent felony offender" or are charged with a felony and on probation.
74. Methods for computing this estimate are comparable to those described in Rempel, M. (2020). *COVID-19 and the New York City Jail Population*. New York, NY: Center for Court Innovation. Available at: <https://www.courtinnovation.org/publications/nycjails-covid>. The current estimate includes an expanded upper limit to properly approximate the significant but unquantifiable number of people who may be held in jail based on the ambiguous provision related to "harm to an identifiable person or property." This provision's role in jailing people was shown to be significant in Rempel, M. & Weill, J. (2021), Op Cit., yet it is impossible to pinpoint who is in jail for this reason using available jail data.
75. IBID. In addition, information about the city's Release Assessment can be obtained from the New York City Criminal Justice Agency. *Pretrial Release Assessment*. New York, NY: Available at: <https://www.nycja.org/release-assessment>.
76. Peterson, R. R. (2020). *CJA's Updated Release Assessment*. New York, NY: New York City Criminal Justice Agency. Available at: <https://www.nycja.org/publications/cjas-updated-release-assessment>.
77. C.P.L. § 510.30(1)(f); see also, Rempel, M. & Rodriguez, K. (2019). *Bail Reform Revisited: The Impact of New York's Amended Bail Law on Pretrial Detention*. New York, NY: Center for Court Innovation. Available at: <https://www.courtinnovation.org/publications/bail-revisited-NYS>.
78. Rempel, M. & Weill, J. (2021), Op Cit.
79. It has been reported that several New York City district attorneys' offices maintain lists of police officers whose credibility is in question. See, e.g., Annese, J. (Nov. 6, 2019). "Brooklyn D.A. Releases List of Cops with Credibility Problems." *New York Daily News*. Available at: <https://www.nydailynews.com/new-york/nyc-crime/ny-brooklyn-da-releases-list-of-cops-with-credibility-problems-20191107-nc546s2xuvbvzypnautt6rkeq-story.html>. Pursuant to the United States Supreme Court's ruling in *Brady v. Maryland*, 373 U.S. 83 at 87 (1963), prosecutors are required to turn over materials that include information that exculpates the person charged, mitigates their culpability, supports a defense, impeaches a prosecution witness, or raises questions as to the identification of the individual as a perpetrator.
80. Consistent with already existing obligations, prosecutors should always offer judges credible information and notify both judges and the defense as soon as possible when information

may be unreliable for known reasons or where prosecutors possess exculpatory information. See C.P.L. § 245.20(1) (k), which also requires that such information be shared expeditiously upon receipt, if obtained sooner than the timeline requirement referenced below.

81. See, e.g., Joseph, G. (May 4, 2021). “22 NYPD Officers Were Convicted of Dishonesty, Corruption, And Other Misconduct. Should Convictions They Helped Secure Stand?” *Gothamist*. Available at: https://gothamist.com/news/22-nypd-officers-convicted-dishonesty-corruption-misconduct-convictions?mc_cid=89ce55414b&mc_eid=58726354f0.

82. Barry-Jester, A. M. (2018). “You’ve Been Arrested. Will You Get Bail? Can You Pay It? It May All Depend on Your Judge.” *FiveThirtyEight*. Available at: <https://fivethirtyeight.com/features/youve-been-arrested-will-you-get-bail-can-you-pay-it-it-may-all-depend-on-your-judge/>.

83. Luminosity & the University of Chicago’s Crime Lab New York. (2020). *Updating the New York City Criminal Justice Agency Release Assessment: Maintaining High Court Appearance Rates, Reducing Unnecessary Pretrial Detention, and Reducing Disparity*. Available at: <https://www.nycja.org/assets/Updating-the-NYC-Criminal-JusticeAgency-Release-Assessment-Final-Report-June-2020.pdf>.

84. IBID. See, also, Peterson, R. R. (2020), Op Cit.

85. Rempel, M. & Weill, J. (2021), Op Cit.

86. Peterson, R. R. (2020), Op Cit.

87. Angwin, J., Larson, J., Mattu, S., & Kirchner, L. (May 23, 2016). “Machine Bias: There’s Software Used Across the Country to Predict Future Criminals. And It’s Biased against Blacks.” *ProPublica*. Available at: <https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing>; Picard, S., Watkins, M., Rempel, M., & Kerodal, A. (2019). *Beyond the Algorithm Pretrial Reform, Risk Assessment, and Racial Fairness*. New York, NY: Center for Court Innovation. Available at: https://www.courtinnovation.org/sites/default/files/media/document/2019/Beyond_The_Algorithm.pdf.

88. Barry-Jester, A. M. (2018), Op Cit. See, also, Rempel M., & Weill, J. (2021), Op Cit.

89. See, e.g., NYC Criminal Justice. (2021), Op Cit.; Rempel, M., et al. (2017), Op Cit.

90. New York City Criminal Justice Agency. *Guide to Pretrial Release Assessment*. Available at: <https://www.nycja.org/assets/RA-BENCH-CARD-11-13-19.pdf>.

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

92. This analysis includes all individuals whose program

participation concluded in 2019, whether it concluded because the case was disposed, the individual received ROR amidst case processing, or the judge set bail or remand amidst case processing.

93. NYC Criminal Justice. (September 2, 2020). *Supervised Release Annual Scorecard 2019*. New York, NY. Available at: https://criminaljustice.cityofnewyork.us/wp-content/uploads/2020/09/Supervised-Release-Annual-Scorecard-2019_September-2020.pdf.

94. Koppel, S., et al. (2021), Op Cit.

95. Skemer, M., Redcross, C., & Bloom, H. (2020). *Pursuing Pretrial Justice Through an Alternative to Bail: Findings from an Evaluation of New York City’s Supervised Release Program*. MDRC. Available at: https://www.mdrc.org/sites/default/files/Supervised_Release_Final_Report.pdf.

96. IBID.

97. For example, in California, see: *In re Humphrey*, No. S247278, (Supreme Court of California, Mar. 25, 2021). In Louisiana, see, *Caliste v. Cantrell*, No. 17-6197, 2018 U.S. Dist. LEXIS 43338 (E.D. La. Mar. 16, 2018). In Maryland, see *Bradds v. Randolph*, 239 Md. App. 50 (2018) (decided 2/20/18). In Massachusetts, see *Brangan v. Commonwealth*, 477 Mass. 691 (2017) (decided 8/25/2017). In Texas, see *Daves v. Dallas City*, 341 F. Supp. 3d 688 (N.D. Tex. 2018) (decided 9/20/2018).

98. *People ex rel. Desgranges v. Anderson*, 59 Misc. 3d 238 (Sup. Ct. 2018) (decided 1/31/18).

99. Lippman, J., Aborn, R. A., Cartagena, J., et al. (2017). *A More Just New York City*. New York, NY: Independent Commission on New York City Criminal Justice and Incarceration Reform. Available at: <https://static1.squarespace.com/static/5b6de4731aef1de914f43628/t/5b96c6f81ae6cf5e9c5f186d/1536607993842/Lippman%2BCommission%2BReport%2BFINAL%2BSingles.pdf>.

100. For example, see the bench card used in North Carolina in Markham, J. M. (2018). *Monetary Obligations in North Carolina Criminal Cases*. Available at: <https://nccriminallaw.sog.unc.edu/wp-content/uploads/2018/08/2018-07-31-20180094-Monetary-Obligations-Card-for-proofing.pdf>; see the bench card used in Mecklenburg, NC in Mecklenburg County District Court. (2019). *Bench Card: Imposition of Fines, Costs, Fees, and Restitution*. Available at: <https://finesandfeesjusticecenter.org/content/uploads/2018/11/Mecklenburg-Final-Imposition-Bench-Card-10.16.17.pdf>; see the bench card used in Michigan in Michigan Supreme Court. (2015). *Ability to Pay Work Group: Tools and Guidance for Determining and Addressing an Obligor’s Ability to Pay*. MI: State Court Administrative Office. Available at: <https://courts.michigan.gov/Administration/SCAO/Resources/Documents/Publications/Reports/AbilityToPay.pdf>; lastly, the Minority and Justice Commission of the Washington State Courts has made its fines and fees ability to pay tool publicly accessible at: <https://beta.lfocalculator.org/>.

101. Rempel, M. & Weill, J. (2021), Op Cit.; see, also, Mehta, A. (October 12, 2020). “A Broken Bond: How New York Judges Are Getting Around Bail Reform.” *New York Focus*. Available at: <https://www.nysfocus.com/2020/10/12/new-york-judges-are-rolling-back-bail-reform/>.

102. Mehta, A. (Oct. 12, 2020), Op Cit.

103. C.P.L. § 520.30(1).

104. CPL 510.10[1] reads, “In all such cases, except where another type of securing order is shown to be required by law, the court **shall release** the principal pending trial on the **principal’s own recognizance**, unless it is demonstrated and the court makes an individualized determination that the principal poses a **risk of flight to avoid prosecution If such a finding is made, the court must select the least restrictive alternative** and condition or conditions that will reasonably assure the principal’s return to court. The court shall explain its choice of release, release with conditions, bail or remand on the record or in writing.” (Bold added for emphasis).

105. Luminosity & the University of Chicago’s Crime Lab New York. (2020). *Updating the New York City Criminal Justice Agency Release Assessment: Maintaining High Court Appearance Rates, Reducing Unnecessary Pretrial Detention, and Reducing Disparity*. Available at: <https://www.nycja.org/assets/Updating-the-NYC-Criminal-Justice-Agency-Release-Assessment-Final-Report-June-2020.pdf>.

106. Johnson, J. (2020). *Report from the Special Advisor on Equal Justice in the New York State Courts*. New York, NY. Available at: <http://www.nycourts.gov/whatsnew/pdf/SpecialAdvisorEqualJusticeReport.pdf>.

107. Criminal Procedure Law § 170.70 and § 180.80 requires the prosecution to file corroborating information to remove hearsay in a Criminal Court complaint, in the case of a misdemeanor, and requires the prosecutors establish probable cause in a hearing or a grand jury presentation, in the case of a felony, in order to continue a person’s detention.

108. Huebner, B. M., Lentz, T. S., & Gibson, M. (2020) “Systematic Case Review Strategies: An Application for Jail Population Reduction.” *Justice Quarterly* 37: 7: 1261-1276. Available at: <https://www.tandfonline.com/doi/full/10.1080/0741825.2020.1819384>.

109. Hamilton, Z., Duwe, G., Kigerl, A., Gwinn, J., Langan, N., & Dollar, C. (2021). “Tailoring to a Mandate: The Development and Validation of the Prisoner Assessment Tool Targeting Estimated Risk and Needs (PATTERN).” *Justice Quarterly*. Available at: <https://www.tandfonline.com/doi/full/10.1080/0741825.2021.906930>.

Notes for Chapter 6

110. O’Brien, B. (2019). *Does It Take the Court System Longer in New York City to Process Indicted Felony Cases Than Elsewhere in the State?* New York, NY: New York City Independent Budget Office. Available at: <https://ibo.nyc.ny.us/iboreports/court-case-length-2019.pdf>.

111. New York State Unified Court System. *Excellence Initiative*. New York, NY. Information available at: <https://www.nycourts.gov/excellence-initiative/>.

112. Chan, M. (2021). “‘I Want This Over.’ For Victims and the Accused, Justice Is Delayed as COVID-19 Snarls Courts.” *Time*. Available at: <https://time.com/5939482/covid-19-criminal-cases-backlog>.

113. New York City Comptroller. (March 2021). *NYC Department of Correction FYs 2010-20 Operating Expenditures, Jail Population, Cost per Incarcerated Person, Staffing Ratios, Performance Measure Outcomes, and Overtime*. New York, NY: New York City Comptroller’s Office, Budget Bureau. Available at: https://comptroller.nyc.gov/wp-content/uploads/documents/DOC_Presentation_FY_2020.pdf.

114. See, e.g., Ostrom, B. J., Raaen, N., Schauffler, R. Y., & Hamblin, L. E. (2020). *Success in Criminal Caseload Management: Lessons from the Field*. Williamsburg, VA: National Center for State Courts. Available at: https://www.ncsc.org/_data/assets/pdf_file/0018/53217/Success-inCriminal-Caseload-Management-Lessons-from-the-Field.pdf; Steelman, D. C. & Griller, G. M. (2013). *Rethinking Felony Caseload Management to Create a Culture of High Court Performance*. Williamsburg, VA: National Center for State Courts. Available at: <https://napco4courtleaders.org/wpcontent/uploads/2018/12/Rethinking-Felony-CFM.pdf>; Steelman, D. C. (2008). *Improving Caseload Management: A Brief Guide*. National Center for State Courts. Available at: <https://ncsc.contentdm.oclc.org/digital/collection/ctadmin/id/1022/>.

115. Weill, J., Rempel, M., Rodriguez, K., & Raine, V. (2021). *Reducing Felony Case Delay in Brooklyn: Evaluation of Jail Reduction Strategies in 2019*. New York, NY: Center for Court Innovation. From the same authors, see, also, the overview of major findings, *Felony Case Delay in New York City: Lessons from a Pilot Project in Brooklyn*. Both available at: <https://www.courtinnovation.org/publications/case-delay-brooklyn>.

116. Based on Office of Court Administration data analyzed by the current authors, there were 8,752 unique individuals sent to pretrial detention after their arraignment in 2020. (Multiple cases involving the same person were only counted once.) After multiplying by a cost of \$1,226 per day, each additional day they averaged in jail cost \$10.7 million; or ten days cost \$107 million. To estimate the costs of delay for indicted felony cases, specifically, we used court data as of an April 12, 2021 snapshot date to determine that there were 4,348 Supreme Court cases – virtually all indicted felonies – held in jail prior to a case disposition. To be clear, this number *omits* cases disposed but awaiting sentencing; and it *includes* cases held pretrial in which there is also a parole violation. (Court data did not enable separately analyzing pretrial cases with parole violations.) It was appropriate to isolate these cases because our recommendations all focus on reforming how indicted felonies are processed within the Supreme Court. We reduced the initial 4,348 number by 656, a reasonable estimate of cases impacted by COVID-19 case backlog. While we previously estimated that COVID backlog accounted for 737 cases, because some of this total would have experienced backlog after a disposition was

reached but before sentencing, we reduced the 737 number by 11%, since 11% of all pending cases represented in Supreme Court data had reached the sentencing stage. We were left with 3,692 Supreme Court felonies held in jail for reasons unrelated to COVID-19.

We then had to estimate by what percentage this number could be reduced by implementing our recommended strategies. For this purpose, we applied the same 28% reduction in case delay achieved by the Brooklyn Project, which involved three of the current authors, is summarized in this chapter, and is fully described in Weill, J., et al. 2021, see especially pages 28-30. Using survival-analytic techniques, we determined that cases in the Brooklyn Project averaged 187 days to a disposition, a 28% reduction from the 261 days averaged by the evaluation's matched comparison group. Given that project effects are not necessarily linear – and the survival curves in the published evaluation in fact confirm a non-linear relationship, we caution that this method is necessarily *inexact*. We offer it as a rough, yet statistically grounded, approximation for purposes of creating a defensible, yet far from perfect, *estimate*, supporting our conclusion that the dollar costs of delay are undoubtedly in the hundreds of millions.

The math concludes straightforwardly as follows: Reducing 3,692 Supreme Court felonies languishing in pretrial detention by 28% means eliminating 1,034 people from the jail population. (This number is rounded to 1,030 when reported in the main narrative.) Their annualized jail-bed costs would be \$447,000 per person according to the New York City Comptroller (March 2021), Op Cit.; and, thus, \$462 million in total.

117. Van Duizend, R., Steelman, D. & Suskin, L. (2011). *Model Time Standards for State Trial Courts*. Williamsburg, VA: National Center for State Courts. Available at: <http://www.ncsc.org/Services-and-Experts/Technologytools/-/media/Files/PDF/CourtMD/Model-Time-Standards-for-State-Trial-Courts.ashx>.

118. Absent any statistical adjustments, the average time from an indictment to a disposition was 327 days for detained and 311 days for released individuals. But we controlled statistically for any variations between detained and released cases in their indictment charge severity (violent or nonviolent felony); charge type (e.g., homicide, domestic violence, sex offense, assault, robbery, burglary, grand larceny, drug felony, DWI, firearms/weapons-related, or forgery-related); prior misdemeanor convictions; prior felony convictions; and any prior arrest.

119. Rempel, M., Fisler, C., Kerodal, A., Spadafore, J, Lambson, S. H., & Berg, R. (2016). *Felony Case Processing in New York City: Findings and Recommendations*. Submitted to the NYC Mayor's Office of Criminal Justice and the New York State Unified Court System. New York, NY: Center for Court Innovation. Available at: https://www.courtinnovation.org/sites/default/files/media/document/2021/Felony_Case_Processing_NYC_2016.pdf.

120. Rempel, M., et al. (2016), Op Cit.

121. See, e.g., Ostrom, B. J., et al. (2020), Op Cit.; Steelman, D. C. (2008), Op Cit.

122. New York State Unified Court System. *Excellence Initiative*, Op Cit.

123. Rodriguez, K. (2020). *Discovery Reform in New York: Major Legislative Provisions. (Updated after the April 2020 Amendments.)* New York, NY: Center for Court Innovation. Available at: <https://www.courtinnovation.org/publications/discovery-NYS>.

124. Cuomo, A. (March 20, 2020). *Executive Order No. 202.8. Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency*. State of New York, Executive Chamber. Available at: https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.8.pdf.

125. Rempel, M., et al. (2016), Op Cit.

126. Senate Bill S2101A, 2019-2020 Legislative Session (Sponsor: Michael Gianaris). (January 22, 2019). State of New York. Available at: <https://legislation.nysenate.gov/pdf/bills/2019/S2101A>.

Penal Law § 545.60 from this proposed bill includes strict pretrial detention time limits. The bill set an outer limit for pretrial detention of 120 days on a felony and 30 days on a Class A misdemeanor – with the possibility of two 20-day extensions on felonies and a single 10-day extension on misdemeanors. The bill enumerated a carefully crafted, tight list of permissible delays that would not count against time limits (e.g., “timely filing of motions,” “request of the defendant,” and a range of circumstances related to any pending mental competency matters).

In returning to this framework, a final approach might provide for higher time allowances for felony sex charges and homicides, given the extreme severity of these types of offenses, coupled with prior research indicating that they require significantly more time to dispose than other felonies (see Rempel et al. [2016], Op Cit.).

Contrasted with the proposed detention limits in this legislation, existing state law employs a “ready rule” in all cases regardless of pretrial detention status (CPL § 30.30). It places the onus on the prosecutor to be ready for trial within six months on a felony, 90 days on a Class A misdemeanor, and 60 days on a Class B misdemeanor. But once the prosecutor asserts trial-readiness, the speedy trial clock stops ticking, rendering the law toothless in practice.

127. Ostrom, B. J., Hamblin, L. E., & Schauffler, R. Y. (2020). *Delivering Timely Justice in Criminal Cases: A National Picture*. Williamsburg, VA: National Center for State Courts. Available at: https://www.ncsc.org/_data/assets/pdf_file/0017/53216/Delivering-Timely-Justice-in-Criminal-Cases-A-NationalPicture.pdf.

128. IBID. See, also, Ostrom, B. J., et al. (2020), Op Cit.; Steelman, D. C. & Griller, G. M. (2013), Op Cit.; Steelman, D. C. (2008), Op Cit.

129. Weill, J., et al. (2021), Op Cit. The model was piloted with

all newly indicted cases arraigned in the Supreme Court from February 11 to May 10, 2019, with a limited number of charge exclusions (including domestic violence, sex offenses, and homicides). In full disclosure, the project involved three of the current authors and the leadership and oversight of Hon. Matthew D'Emic, a member of the Independent Commission and Administrative Judge for Criminal Matters in the Kings County Supreme Court.

130. Rodriguez, K. (2021). *Recommended Case Processing Guidelines*. New York, NY: Center for Court Innovation. Available at: <https://www.courtinnovation.org/publications/case-delay-brooklyn>.

131. Weill, J., et al. (2021), Op Cit.

132. Rodriguez, K. (2020), Op Cit.

133. Weill, J., et al. (2021), Op Cit.

134. Rempel, M., et al. (2016), Op Cit.

135. Rempel, M., et al. (2016), Op Cit.

136. Rodriguez, K. (2020), Op Cit.

137. One of the stakeholders we interviewed conducted for this report strenuously emphasized the need for updated technology to facilitate proper implementation of the new discovery timelines.

138. New York's Penal Law § 70.15 was amended in April 2019, making the maximum jail sentence that can be served for a misdemeanor conviction 364 days, as opposed to a year (365 days). This amendment became effective on April 12, 2019.

Notes for Chapter 7

139. Rempel, M., Kerodal, A., Spadafore, J., & Mai, C. (2017). *Jail in New York City: Evidence-Based Opportunities for Reform*. Report submitted to the Annie E. Casey Foundation and the New York City Mayor's Office of Criminal Justice. New York, NY: Center for Court Innovation. Available at: <https://www.courtinnovation.org/publications/jail-new-york-city-evidence-based-opportunities-reform>.

140. Berman, G. & Wolf, R. V. (2014). "Alternatives to Incarceration: The New York Story." *Government, Law and Policy Journal* 16: 2: 36-40. Available at: <https://www.courtinnovation.org/sites/default/files/media/documents/2018-07/bermanwolf.pdf>.

141. Among those arraigned on a felony charge, 19% were sentenced to state prison time of one year or longer (12% of nonviolent and 31% of violent felonies). Other sentences included probation, fines, and conditional discharges, often with conditions attached that can include community services or other court-ordered programming.

142. Prior to plea bargaining that often results in charge reductions, petit larceny or misdemeanor drug possession made up 26% of the initial arraignment charges on cases

ultimately sentenced to jail. Looked at differently, of cases convicted of petit larceny, 24% were initially arraigned on a felony charge, as were 32% of misdemeanor drug possession convictions and 14% of disorderly conduct convictions.

143. See, e.g., Andrews, D. A. & Bonta, J. (2010). *The Psychology of Criminal Conduct 5th ed.* New Providence, NJ: LexisNexis; Lipsey, M. W., Landenberger, N. A., & Wilson, S. J. (2007). *Effects of Cognitive-Behavioral Programs for Criminal Offenders*. Oslo, Norway: The Campbell Collaboration. Available at: <https://onlinelibrary.wiley.com/doi/epdf/10.4073/csr.2007.6>.

144. Rempel, M., Kralstein, D., Cissner, A., Cohen, R., Labriola, M., Farole, D., Bader, A., & Magnani, M. (2003). *The New York State Adult Drug Court Evaluation: Policies, Participants, and Impacts*. Report submitted to the New York State Unified Court System and the Bureau of Justice Assistance. New York, NY: Center for Court Innovation. Available at: <https://www.courtinnovation.org/publications/new-york-state-adult-drug-court-evaluation-policies-participants-and-impacts>; Rossman, S. B., Willison, J. B., Mallik-Kane, K., Kim, K., Debus-Sherrill, S., & Downey, M. (2012). *Criminal Justice Interventions for Offenders with Mental Illness: Evaluation of Mental Health Courts in Bronx and Brooklyn, New York*. Washington, D.C.: The Urban Institute. Available at: https://www.urban.org/research/publication/criminal-justice-interventions-offenders-mental-illness-evaluation-mental-health-courts-bronx-and-brooklyn-new-york/view/full_report.

145. Rossman, S. B. et al. (2012), Op Cit. Regarding the serious target population served at the Brooklyn Mental Health Court, including over 30% of participants formally charged with a violent felony, see, also, O'Keefe, K. (2006). *The Brooklyn Mental Health Court Evaluation: Planning, Implementation, Courtroom Dynamics, and Participant Outcomes*. New York, NY: Center for Court Innovation. Available at: <https://www.courtinnovation.org/publications/brooklyn-mental-health-court-evaluation-planning-implementation-courtroom-dynamics-and>.

146. Rempel, M., et al. (2017), Op Cit.

147. Rempel, M., et al (2017), Op Cit.

148. Division of Criminal Justice Services. (2018). *Dispositions of Arrests 1993-2016*. [For 1999-2013 data]. Division of Criminal Justice Services. (2019). *Dispositions of Arrests 2014-2018*. [For 2014-2018 data]. *Division of Criminal Justice Services*. (2020). *Dispositions of Arrests 2015-2019*. [For 2019 data]. Available at: <https://www.criminaljustice.ny.gov/crimnet/ojsa/dispos/nyc.pdf>.

149. See, e.g., Berman, G. & Wolf, R. V. (2014), Op Cit.; Hakuta, J., Soroushian, V., & Kralstein, D. (2008). *Do Community Courts Transform the Justice Response to Misdemeanor Crime? Testing the Impact of the Midtown Community Court*. New York, NY: Center for Court Innovation. Available at: <https://www.courtinnovation.org/publications/testing-impact-midtown-community-court-updating-outcomes-decade-later>.

150. NYC Criminal Justice. (October 2020). *Alternatives to Incarceration: Court Mandated, Supportive, Community-Based Services*. Available at: <http://criminaljustice.cityofnewyork.us/>

[wp-content/uploads/2020/11/Alternatives-to-Incarceration-Program-Booklet_2020.pdf](https://www.courtnyc.gov/wp-content/uploads/2020/11/Alternatives-to-Incarceration-Program-Booklet_2020.pdf).

151. The Council of the City of New York. (March 16, 2021). *Report of the Finance Division on the Fiscal 2022 Preliminary Plan and the Fiscal 2021 Preliminary Mayor's Management Report for the Mayor's Office of Criminal Justice*. Available at: <https://council.nyc.gov/budget/wp-content/uploads/sites/54/2021/03/098-MOCJ-2.pdf>. The actual number in the first year is expected to be well below 7,300 due to COVID-19 related case backlog in cases reaching the disposition and sentencing stage.

152. From 2019 to 2020, jail sentences declined from 10% to 6% for cases initially arraigned on a misdemeanor, 23% to 16% for nonviolent felonies, and 22% to 19% for violent felonies. However, it is possible that sentencing outcomes in 2020 could provide a biased reflection of the state of practice. Complex jail- (or prison-) bound cases could have been disproportionately left unresolved at the end of 2020, stemming from the pandemic-related case backlog. For this reason, we heavily rely on 2019 results to understand the city's sentencing status quo.

153. There were 1,082 people in jail on a city sentence exactly three years earlier on June 1, 2018 according to the Vera Institute of Justice. *People in Jail in New York City: Daily Snapshot*. Available at: <https://greaterjusticenyny.vera.org/nycjail/>.

154. Center for Court Innovation, New York City Criminal Justice Agency, and CASES. (2020). *The Early Release 6A Program Documented Results: Six Month Update (September 22, 2020)*. New York, NY. Available at: <https://www.courtinnovation.org/publications/Rikers-early-release>. Re-arrest rates were tracked over six months, by which point 267 of 296 people had reached their original sentence end date and were discharged from the 6-A program.

155. IBID.

156. Mansky, A. (March 11, 2021). "Don't Call It 'Diversion.'" *The Crime Report*. Available at: <https://thecrimereport.org/2021/03/11/dont-call-it-diversion/>.

157. Alliance for Safety and Justice. (2016). *Crime Survivors Speak: The First-Ever National Survey of Victims' Views on Safety and Justice*. Available at: <https://allianceforsafetyandjustice.org/wp-content/uploads/documents/Crime%20Survivors%20Speak%20Report.pdf>.

158. The New York City Council 2020/06. (2020). *Local Law 60: A Local Law to Amend the Administrative Code of the City of New York, in Relation to Establishing a Local Conditional Release Commission*. Available at: <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4522536&GUID=89DE342E-BF0F-4C4C-A41A-6B58B125E28F>.

159. Days held in pretrial detention count towards the 60 days served.

160. New York Consolidated Laws, Correction Law, Article 12, § 273. *Conditional Release: Procedures for Application*

and Determinations. Available at: <https://www.nysenate.gov/legislation/laws/COR/A12>.

161. It is also common to invite friends, family, or other support people for each party to restorative justice sessions.

162. Common Justice. *The Common Justice Model*. Available at: https://www.commonjustice.org/the_common_justice_model. In an alternative model for circumstances where the victim wishes not to participate or where cases involve harm to a community more than to a specific victim (e.g., drug-related or public order offenses), community members can attend sessions and relay the negative effects of the harm to the community and its residents. For example, at a pre-arrest diversion program in the Bronx called Project Reset, one or two community volunteers come together with program participants and a facilitator to discuss stories from the participants' past and their arrest experience and to explore how they can begin to move forward from their arrest in a positive way; see, e.g., Project Reset Bronx. Available at: <https://www.projectreset.nyc/bronx>; Campbell, R. (2000). *There Are No Victimless Crimes: Community Impact Panels*. Available at: <https://www.courtinnovation.org/sites/default/files/No%20Victimless%20Crimes1.pdf>.

163. Strang, H., Sherman, L. W., Mayo-Wilson, E., Woods, D., & Ariel, B. (2013). *Restorative Justice Conferencing (RJC) Using Face-to-Face Meetings of Offenders and Victims: Effects on Offender Recidivism and Victim Satisfaction. A Systematic Review*. *Campbell Systematic Reviews*. Available at: <https://restorativejustice.org.uk/sites/default/files/resources/files/Campbell%20RJ%20review.pdf>; see, also, Latimer, J., Dowden, C., & Muise, D. (2005). "The Effectiveness of Restorative Justice Practices: A Meta-Analysis." *The Prison Journal* 85: 2: 127-144. Available at: https://www.d.umn.edu/~jmaahs/Correctional%20Assessment/rj_meta%20analysis.pdf.

164. Sherman, L., Strang, H., Barnes, G., Woods, D., Bennett, S., Inkpen, N., Newbury-Birch, D., Rossner, M., Angel, C., Mearns, M., & Slothower, M. (2015). "Twelve Experiments in Restorative Justice: The Jerry Lee Program of Randomized Trials of Restorative Justice Conferences." *Journal of Experimental Criminology* 11: 4: 501-540. Available at: <https://link.springer.com/article/10.1007/s11292-015-9247-6>. See, also, Sered, D. (2019). *Until We Reckon: Violence, Mass Incarceration, and a Road to Repair*. New York, NY: The New Press; Sherman, L. W. (2003). "Reason for Emotion: Reinventing Justice with Theories, Innovations, and Research." *Criminology* 41: 1-37; Sherman, L. W. & Strang, H. (2007). *Restorative Justice: The Evidence*. The Smith Institute. Available at: https://www.iirp.edu/pdf/RJ_full_report.pdf.

165. Sherman, et al. (2015), Op Cit.

166. Cissner, A., Sasson, E. Hauser, R. T., Packer, H., Pennell, J., Smith, E. L., Desmarais, S., & Burford, G. (2019). *A National Portrait of Restorative Approaches to Intimate Partner Violence: Pathways to Safety, Accountability, Healing, and Well-Being*. New York, NY: Center for Court Innovation, North Carolina State University, and University of Vermont. Available at: https://www.courtinnovation.org/sites/default/files/media/document/2019/Report_IPV_12032019.pdf.

167. Sasson, E. & Allen, C. (2020). *Using Restorative Approaches to Address Intimate Partner Violence: A New York City Blueprint*. New York, NY: Center for Court Innovation. Available at: https://www.courtinnovation.org/sites/default/files/media/document/2021/Guide_RJBlueprint_01282020.pdf.
168. Bernstein, D., & Staley, E. M. (2007). *Merit Time Program Summary: October 1997 - December 2006*. State of New York, Department of Correctional Services. Available at: https://doccs.ny.gov/system/files/documents/2019/09/Merit_Time_Through_2006.pdf; Drake, E. K. Barnoski, R., & Aos, S. (2009). *Increased Earned Release from Prison: Impacts of a 2003 Law on Recidivism and Crime Costs, Revised*. Olympia, WA: Washington State Institute for Public Policy, Document No. 09-04-1201. Available at: https://www.wsipp.wa.gov/ReportFile/1039/Wsipp_Increased-Earned-Release-From-Prison-Impacts-of-a-2003-Law-on-Recidivism-and-Crime-Costs-Revised_Full-Report.pdf; Guzman, C., Krisberg, B., & Tsukida, C. (2008). *Accelerated Release: A Literature Review*. National Council on Crime and Delinquency. Available at: <https://www.voiceofsandiego.org/wp-content/uploads/2013/05/d8a54574-4dad-11df-bd7d-001cc4c03286.pdf.pdf>; Hamilton, Z., et al. (2021), Op Cit.; Lawrence, A. (2009). *Cutting Corrections Costs: Earned Time Policies for State Prisoners*. National Conference of State Legislatures. Available at: <https://www.ncsl.org/research/civil-and-criminal-justice/earned-time-policies-for-state-prisoners.aspx>.
169. New York State Senate S606, New York State Assembly A4251. (2021-2022 Legislative Session). Available at: <https://www.nysenate.gov/legislation/bills/2021/S606>.
170. Rossman, S. B., et al. (2012), Op Cit.
171. Judicial Diversion Programs (2021). NY Senate Bill S2881. Retrieved from https://www.nysenate.gov/legislation/bills/2021/S2881?utm_content=new_same_as&utm_campaign=bill_alerts&utm_source=ny_state_senate&utm_medium=email.
172. National Association of Drug Court Professionals. (2013). *Adult Drug Court Best Practice Standards: Volume 1*. Alexandria, VA. See "Incentives, Sanctions, and Therapeutic Adjustments" (pgs. 26-37). Available at: <https://www.nadcp.org/standards/adult-drug-court-best-practice-standards/>.
173. Adler, J., Barrett, J., & Rempel, M. (2020). *The Myth of Legal Leverage: Toward a Relational Framework for Court-Based Treatment*. New York, NY: Center for Court Innovation & Practising Law Institute. Available at: <https://www.courtinnovation.org/publications/leverage-myth>; Marlowe, D. B. & Wong, C. J. (2008). "Contingency Management in Adult Criminal Drug Courts." In Higgins, S. T., Silverman, K., and Heil, S. H. (eds.). *Contingency Management in Substance Abuse Treatment* (pp. 334-354). New York, NY: Guilford Press; Wampold, B. (2015). "How Important are the Common Factors in Psychotherapy? An Update." *World Psychiatry* 14: 3: 270-277. Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4592639/>; Young, D., & Belenko, S. (2002). "Program Retention and Perceived Coercion in Three Models of Mandatory Drug Treatment." *Journal of Drug Issues* 22: 2: 297-328. Available at: https://www.researchgate.net/publication/232567013_Program_Retention_and_Perceived_Coercion_in_Three_Models_of_Mandatory_Drug_Treatment.
174. Cissner, A. B., et al. (2013), Op Cit. Nagin, D. (2013). "Deterrence in the Twenty-First Century." *Crime and Justice* 42: 1: 199-263. Available at: <https://www.journals.uchicago.edu/doi/10.1086/670398>.
175. Hawken, A. & Kleiman, M. (2009). *Managing Drug Involved Probationers with Swift and Certain Sanctions: Evaluating Hawaii's HOPE*. Submitted to the National Institute of Justice. Available at: <https://www.ojp.gov/pdffiles1/nij/grants/229023.pdf>; Hawken, A., Kulick, J., Smith, K., Mei, J., Zhang, Y., Harman, S., Yu, T., Carson, C., & Vial, T. (2016). *HOPE II: A Follow-up to Hawaii's HOPE Evaluation*. Submitted to the National Institute of Justice. Available at: <https://www.ojp.gov/pdffiles1/nij/grants/249912.pdf>.
176. Office of the Governor of the State of New York. (2019). *Governor Cuomo Signs Domestic Violence Survivors Justice Act*. Available at: <https://www.governor.ny.gov/news/governor-cuomo-signs-domestic-violence-survivors-justice-act>.
- Notes for Chapter 8**
177. Bradner, K. & Schiraldi, V. (2020). *Racial Inequities in New York Parole Supervision*. New York, NY: Columbia University Justice Lab. Available: <https://justicelab.columbia.edu/content/racial-inequities-new-york-parole-supervision>.
178. A More Just NYC. (June 2019). *Stopping Parole's Revolving Door: Opportunities for Reforming Community Supervision in New York* (Jun. 2019). Available at: <https://static1.squarespace.com/static/5b6de4731aef1de914f43628/t/5d091deb8e2d2c0001558b09/1560878571898/Stopping+Parole%27s+Revolving+Door+%28June+2019%29.pdf>.
179. White, E., Labriola, M., Kerodal, A., Jensen, E., & Rempel, M. (2015). *Navigating the Bail Payment System in New York City: Findings and Recommendations*. New York, NY: Center for Court Innovation. Available at: <https://www.courtinnovation.org/sites/default/files/documents/Bail%20Payment%20in%20NYC.pdf>.
180. The Mayor's Office of Criminal Justice graciously provided the current authors with bail data for parole violations held in jail as of May 31, 2021.
181. A More Just NYC. (2019). *Closing the Chapter on Rikers*, pg. 10. Available at: <https://static1.squarespace.com/static/5b6de4731aef1de914f43628/t/5da60eb59dac4376675bfe93/1571163845478/AMJNYC+-+Closing+the+Chapter+on+Rikers+%28Oct.+2019%29.pdf>. See, also, NYS Division of Criminal Justice Services. (2021). *Annual Jail Population Trends 2010-2020*, pg. 2. Available at: https://www.criminaljustice.ny.gov/crimnet/ojsa/jail_pop_y.pdf.
182. The initial reductions were primarily attributable to a March 27, 2020 decision by DOCCS to lift parole warrants for approximately 650 people accused of technical parole violations statewide to reduce the risk of COVID-19 transmission in county jails. Successful lawsuits by the Legal

Aid Society also led to the release of about 200 or more people who had been held on technical violations in New York City. Even after these early reductions, incarceration on technical violations has remained relatively low as a result of pandemic-related supervision protocols that suspended the requirement that paroled people meet in-person with their parole officers and imposed additional supervisory reviews before warrants could be issued. For a description of changing parole visitation policies in response to COVID-19, see New York Department of Corrections and Community Supervision. *Suspensions, Restrictions & Cancellations in Response to COVID-19: Community Supervision Restrictions for Office Visits*. Available at: <https://doccs.ny.gov/suspensions-restrictions-cancellations-response-covid-19>.

183. Weill-Greenberg, E. (February 10, 2021). "New York City Has People on Parole at Rates Not Seen Since the Early Pandemic." *The Appeal*. Available at: <https://theappeal.org/new-york-city-jails-highest-number-technical-parole-violations-pandemic/>.

184. NYC Mayor's Office of Criminal Justice. *System Data*. Available at: <https://criminaljustice.cityofnewyork.us/system-data/>.

185. Nims, T., Bradner, K. Margalotti, J. Katznelson, Z., & Schiraldi, V. (2021). *The Enormous Costs of Parole Violations in New York City*. New York, NY: A More Just NYC and Columbia University Justice Lab. Available at: https://justicelab.columbia.edu/sites/default/files/content/Cost_Parole_Violations_in_New_York.pdf.

186. New York State Bar Association. 2019. *Report of the New York State Bar Association Task Force on the Parole System*, pg. 1. Available: <https://nysba.org/app/uploads/2019/12/NYSBA-Task-Force-on-the-Parole-System-Final-Report.pdf>.

187. Nims, T., et al. (2021), Op Cit.

188. New York State Senate S1144, New York State Assembly A5576. (2021-2022 Legislative Session). Available at: <https://www.nysenate.gov/legislation/bills/2021/s1144>.

189. NYS Criminal Procedure Law Section 410.60.

190. Nims, T., et al. (2021), Op Cit.

Notes for Chapter 9

191. See, e.g., McKillop, M. & Boucher, A. (2018). *Aging Prison Populations Drive Up Costs*. Pew Trusts. Available at: <https://www.pewtrusts.org/en/research-and-analysis/articles/2018/02/20/aging-prison-populations-drive-up-costs>; Osborne Association. (2014). *The High Costs of Low Risk: The Crisis of America's Aging Prison Population*. Available at: <http://www.osborneny.org/resources/resources-on-aging-in-prison/osborne-aging-in-prison-white-paper/>.

192. For examples of statements or letters urging the release of people in these categories, see Board of Correction. (March 17, 2020). *New York City Board of Correction Calls for City to Begin Releasing People from Jail as Part of Public*

Health Response to COVID-19. Available at: <https://www1.nyc.gov/assets/boc/downloads/pdf/News/2020.03.17%20%20Board%20of%20Correction%20Statement%20re%20Release.pdf>; <https://council.nyc.gov/brad-lander/2020/03/18/public-advocate-jumaane-williams-and-council-member-brad-lander-call-on-city-and-state-officials-to-immediately-halt-broken-windows-arrests-and-release-most-rikers-detainees-over-50-to-limit-spread-of/>; NYC Defenders. (March 12, 2020). *Joint Defender Statement Calling for Immediate Release of Vulnerable Incarcerated New Yorkers in Response to Coronavirus*. Available at: <https://legalaidnyc.org/wp-content/uploads/2020/03/03-12-20-Joint-Defender-Statement-Calling-for-Immediate-Release-of-Vulnerable-Incarcerated-New-Yorkers-in-Response-to-Coronavirus.pdf>; or Williams, J. & Lander, B. (March 18, 2020). *Public Advocate Jumaane Williams and Council Member Brad Lander Call on City and State Officials to Immediately Halt Broken Windows Arrests and Release Most Rikers Detainees over 50 to Limit Spread of COVID-19*. Available at: <https://council.nyc.gov/brad-lander/2020/03/18/public-advocate-jumaane-williams-and-council-member-brad-lander-call-on-city-and-state-officials-to-immediately-halt-broken-windows-arrests-and-release-most-rikers-detainees-over-50-to-limit-spread-of/>. For reporting on the city's unsanitary jail conditions at the onset of the pandemic, see Pinto, N. (2020). "Coronavirus Has Arrived at Rikers Island: Inside New York City Jails, Where the Pandemic is Set to Explode." *The Intercept*. Available at: <https://theintercept.com/2020/03/18/coronavirus-rikers-island-jail/>. For more recent reporting, see Closson, T. & Bromwich, J. E. (March 12, 2021). "A Ticking Time Bomb: City Jails Are Crowded Again, Stoking Covid Fears." *New York Times*. Available at: <https://www.nytimes.com/2021/03/10/nyregion/nyc-jail-covid.html>.

193. Precise data is unavailable on people with a serious mental illness or on the overlap between these people and women or individuals ages 55 and older.

194. New York City Board of Correction. *Weekly COVID-19 Update: Week of May 29 – June 4, 2021*. New York, NY: Board of Correction. Available at: <https://www1.nyc.gov/site/boc/covid-19.page>.

195. Board of Correction data, the only source that provides a transgender breakdown, does not indicate the percentage pretrial, which is therefore calculated from the public Department of Correction dataset used throughout this report, which generally combines cis female and trans female into a "female" category.

196. New York City Comptroller. (March 2021). *NYC Department of Correction FYs 2010-20 Operating Expenditures, Jail Population, Cost per Incarcerated Person, Staffing Ratios, Performance Measure Outcomes, and Overtime*. New York, NY: New York City Comptroller's Office, Budget Bureau. Available at: https://comptroller.nyc.gov/wp-content/uploads/documents/DOC_Presentation_FY_2020.pdf.

197. Salas, N. R. & Fiorentini, C. (2015). *Looking Back at the Brad H. Settlement: Has the City Met Its Obligations to Provide Mental Health & Discharge Services in the Jails?* New York, NY: New York City Independent Budget Office. Available at: <https://ibo>.

nyc.ny.us/iboreports/looking-back-at-bradh-settlement-has-city-met-obligations-provide-mental-health-discharge-services-in-jails-51115.pdf.

198. Rioja, V. B. (November 30, 2020). "Mental Health Services in the NYC Jails: Impact of Bail Reform." *Correction Health Services, NYC Health + Hospitals*. Presented at Mental Health Issues & the New York State Courts 2020. Practising Law Institute.

199. See, e.g., Lynch, S. M., Dellart, D. D., Belknap, J., & Green, I. (2013). *Women's Pathways to Jail: Examining Mental Health, Trauma, and Substance Use*. Washington, D. C.: Bureau of Justice Assistance. Available at: <https://bja.ojp.gov/sites/g/files/xyckuh186/files/Publications/WomensPathwaysToJail.pdf>; Swavola, E., Riley, K., & Subramanian, R. (2016). *Overlooked: Women and Jails in an Era of Reform*. New York, NY: Vera Institute of Justice. Available at: <https://www.vera.org/publications/overlooked-women-and-jails-report>; Rempel, M., Lambson, S. H., Picard-Fritsche, S., Adler, J., & Reich, W. A. (2018). *Understanding Risk and Needs in Misdemeanor Populations: A Case Study in New York City*. New York, NY: Center for Court Innovation. Available at: https://www.courtinnovation.org/sites/default/files/media/document/2018/Misdemeanor_Populations_Risks_Needs.pdf.

200. Prisoner Reentry Institute. (2018). *Women InJustice: Gender and the Pathway to Jail in New York City*. John Jay College of Criminal Justice. Available at: <https://www.nywf.org/wp-content/uploads/2017/04/Women-Injustice-Gender-and-the-Pathway-to-Jail-in-New-York-City.pdf>.

201. See, e.g., Carpenter, L. F. & Marshall, R. B. (2017). "Walking While Trans: Profiling of Transgender Women by Law Enforcement, and the Problem of Proof." *William & Mary Journal of Women and the Law* 24: 5. Available at: <https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1461&context=wmjowl>; White, E., Swaner, R., Genetta, E., Lambson, S. H., Dash, J. J., Sederbaum, I., & Wolf, A. (2017). *Navigating Force and Choice: Experiences in the New York City Sex Trade and the Criminal Justice System's Response*. New York, NY: Center for Court Innovation. Available at: <https://www.courtinnovation.org/publications/NYC-sex-trade>.

202. See, e.g., Singer, S. (May 12, 2020). "The Women's Jail at Rikers Island Is Named for My Grandmother. She Would Not Be Proud." *New York Times*. Available at: <https://www.nytimes.com/2020/05/12/opinion/womens-jail-rikers-island-covid.html>; Weiser, B. (May 9, 2017). "\$1.2 Million City Settlement with Rikers Inmates Who Accused Guard of Rape." *New York Times*. Available at: <https://www.nytimes.com/2017/05/09/nyregion/rikers-inmates-who-accused-guard-of-rape-settle-suit-for-1-2-million.html>.

203. See, e.g., Alper, M., Durose, M. R., & Markman, J. *2018 Update on Prisoner Recidivism: A 9-Year Follow-up Period (2005-2014)*. Washington, D.C.: Bureau of Justice Statistics. Available at: <https://www.bjs.gov/content/pub/pdf/18upr9yfup0514.pdf>.

204. Rempel, M., et al. (2018), Op Cit.

205. The current consortium includes HousingPlus, which oversees the Women's Community Justice Project, Greenhope Services for Women, Hour Children, and Providence House. See the website at: <https://housingplusnyc.org/the-womens-community-justice-project/>.

206. Loeber, R., Farrington, D. P., & Petechuk, D. (2013). *From Juvenile Delinquency to Young Adult Offending (Study Group on the Transitions between Juvenile Delinquency and Adult Crime)*. Washington, D.C.: National Institute of Justice. Available at: <https://www.ojp.gov/pdffiles1/nij/grants/242931.pdf>.

207. See, e.g., Bonta, J. & Andrews, D. A. (2007). *Risk-Need-Responsivity Model for Offender Assessment and Rehabilitation*. Public Safety Canada. Available at: <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/rsk-nd-rspnsvty/rsk-nd-rspnsvty-eng.pdf>; Peterson, J. K., Skeem, J., Kennealy, P., Bray, B., & Zvonkovic, A. (2014). "How Often and How Consistently do Symptoms Directly Precede Criminal Behavior Among Offenders with Mental Illness?" *Law and Human Behavior* 38: 5: 439-449. Available at: <https://www.apa.org/pubs/journals/releases/lhb-0000075.pdf>.

208. Skeem, J. L., Winter, E., Kennealy, P., Loudon, J. E., & Tatar, J. R. (2014). "Offenders with Mental Illness Have Criminogenic Needs, Too: Toward Recidivism Reduction." *Law and Human Behavior* 38: 3: 212-224. Available at: http://risk-resilience.berkeley.edu/sites/default/files/journal-articles/files/2014_offenders_with_mental_illness_have_criminogenic_needs_too_toward_recidivism_reduction.pdf.

209. See Vasan, A. & Allon, T. (June 14, 2021). "Solving New York's Mental Health Crisis." *City & State*. Available at: <https://www.cityandstateny.com/articles/opinion/opinion/solving-new-yorks-mental-health-crisis.html>.

210. Mental competency involves specific requirements, such as the individual demonstrating an understanding of the charges against them and the court process. People ordered to complete a competency exam should not be confused with the many others held in jail who have a mental health concern, often serious, yet not showing signs of impacting their technical competence to stand trial. Via personal communication, MOCJ staff explained that to identify cases detained pending a mental fitness exam, they tally people whose charge description field in Department of Correction data reads "court order." There were 140 people in jail meeting this description on May 31, 2021. On one hand, in some cases, there could be other reasons why some people are in jail with a generic "court order" description instead of a listed charge; on the other hand, if the judge previously set bail or remanded the individual and then later ordered a competency exam, the data would list the initial charge and give no indication that the individual might be held longer than would have otherwise been the case due to an exam.

211. *People v. Suero*, 121 N.Y.S.3d 524 (Sup. Ct. 2020) (decided 1/28/20).

212. C.P.L. § 500.10(3-a) (f).

213. Center for Court Innovation, New York City Criminal Justice Agency, and CASES. (2020). *The Early Release 6A Program Documented Results: Six Month Update (September 22, 2020)*. New York, NY. Available at: <https://www.courtinnovation.org/publications/Rikers-early-release>.

Notes from Appendices

214. Rempel, M. & Weill, J. (2021). *One Year Later: Bail Reform and Judicial Decision-Making in New York City*. New York, NY: Center for Court Innovation. Available at: <http://www.courtinnovation.org/publications/bail-NYS-at-one>.

215. Weill, J., Rempel, M., Rodriguez, K., & Raine, V. (2021). *Reducing Felony Case Delay in Brooklyn: Evaluation of Jail Reduction Strategies in 2019*. New York, NY: Center for Court Innovation. Available at: <https://www.courtinnovation.org/publications/case-delay-brooklyn>.

216. NYC Open Data. *Daily Inmates in Custody*. Available at: <https://data.cityofnewyork.us/Public-Safety/Daily-Inmates-In-Custody/7479-ugqb>. Except where otherwise noted, all reported results relying on Department of Correction data are based on an original case-level data analysis by the Center for Court Innovation.

217. Although the raw status variables in the DOC dataset are flawed, since 2016 the Center for Court Innovation (CCI) has adopted a coding method combining information from multiple measures to yield a virtually accurate sub-division of the jail population into five basic categories: (1) pretrial; (2) parole violation due to a new charge; (3) technical parole violation; (4) city jail sentence; and (5) "other" cases (e.g., including people awaiting transfer to state, prison, and miscellaneous warrants and court orders). The most significant flaw in the raw data provided by DOC is that DOC miscodes some people held on post-disposition warrants into the pretrial category. CCI can identify these people by the fact that their charge information is missing. In 2016, when CCI had access to a richer DOC dataset, CCI was able to validate that its coding method is generally accurate, understanding that accuracy is unlikely to extend literally to 100% of cases.

218. Unfortunately, the public DOC data contains race, but not ethnicity, although counting "other" race as Hispanic/Latinx represents a reasonable approximation, based on testing the effect of this coding method with the September 29, 2016 snapshot date, for which we previously possessed data with both race and ethnicity.

219. Lippman, J., Aborn, R. A., Cartagena, J., et al. (2017). *A More Just New York City*. New York, NY: Independent Commission on New York City Criminal Justice and Incarceration Reform. Available at: <https://static1.squarespace.com/static/5b6de4731aef1de914f43628/t/5b96c6f81ae6cf5e9c5f186d/1536607993842/Lippman%2BCommission%2BReport%2BFINAL%2BSingles.pdf>.

220. NYC Mayor's Office of Criminal Justice. *System Data*. Available at: <https://criminaljustice.cityofnewyork.us/system-data/>.

221. For example, one strategy involved providing judges who wish to set bail with the results of a credible ability to pay assessment. In San Francisco, recent research suggested that when faced with a mandate to consider what people could afford before setting bail, judges simply set bail less often in the first place, opting for supervised release instead. (It is also possible that many people had no ability to pay whatsoever, and this reality is what led courts to rely on supervised release.) While fewer people were detained, the manner through which this positive effect emerged was unlikely to have been credibly predicted in advance. See Lacoë, J., Skog, A., & Bird, M. (2021). *Bail Reform in San Francisco: Pretrial Release and Intensive Supervision Increased after Humphrey*. California Policy Lab. Available at: <https://www.capolicylab.org/wp-content/uploads/2021/05/Bail-Reform-in-San-Francisco-Pretrial-Release-and-Intensive-Supervision-Increased-after-Humphrey.pdf>.

222. Rempel, M. & Weill, J. (2021), Op Cit.

223. Rempel, M. & Weill, J. (2021), Op Cit.

224. See, especially, pages 28-30 in Weill, J., Rempel, M., Rodriguez, K., & Raine, V. (2021). *Reducing Felony Case Delay in Brooklyn: Evaluation of Jail Reduction Strategies in 2019*. New York, NY: Center for Court Innovation. Available at: <https://www.courtinnovation.org/publications/case-delay-brooklyn>.

225. In the alternative, the courts, defense attorneys, and prosecutors could establish criteria to determine which individuals would receive an ability of to pay assessment prior to arraignment. For example, all individuals charged with a bail eligible offense could be assessed for their ability to pay before their case is called in arraignments.

226. Koppel, S., Topel, D., & Wang, R. (2020). Annual Report: 2018. New York, NY: New York City Criminal Justice Agency. Available at: <https://www.nycja.org/publications/cja-annual-report-2018>.

227. 2017 N.Y.C. Local Law No. 124, N.Y.C. Admin. Code §§ 9 – 148.

Authors' Note

This report is authored by Michael Rempel, director of jail reform at the Center for Court Innovation; Krystal Rodriguez, director of law and justice policy at the Center for Court Innovation; Tyler Nims, executive director of the Independent Commission on New York City Criminal Justice and Incarceration Reform; Joanna Weill, senior research associate at the Center for Court Innovation; Zachary Katznelson, policy director of the Independent Commission on New York City Criminal Justice and Incarceration Reform; and Madison Volpe, research and data associate at the Center for Court Innovation.

The authors are grateful to their Center for Court Innovation colleagues, Camille Wada and Tia Pooler for research assistance, and to Matt Watkins for his careful editing. We are also indebted to Ashley Demyan at the Mayor's Office of Criminal Justice for graciously sharing key data on the city's jail population.

The report was designed by MacKenzie Schroeder.

Partnering Agencies

The Independent Commission on New York City Criminal Justice and Incarceration Reform is a group of civic leaders and criminal justice experts that seeks to improve the functioning of the justice system, permanently close the jails on Rikers Island, and significantly reduce incarceration in New York City. The Commission's work on this report is made possible by generous support from Arnold Ventures and Trinity Church Wall Street, and we are also grateful to the Robin Hood Foundation, the Ford Foundation, and the New York City Council for their support for our work.

The Center for Court Innovation works to achieve justice and equity; create safe, healthy, and thriving communities; and ultimately transform justice systems. The Center's work on this report is made possible by generous support from Arnold Ventures and Trinity Church Wall Street.