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# Before Bail Reform: Pretrial Bail Decisions and Outcomes in New York's Justice Courts

Report from the Upstate Reform Project  
In collaboration with the  
Data Collaborative for Justice  
and supported by  
Arnold Ventures

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## Executive Summary

New York's landmark 2019 criminal justice reforms were intended to reduce pretrial detention through changes in bail policy, increase due process protections through updated discovery laws, and address disparities in pretrial justice and collateral consequences for people charged with crimes. This report is a companion to the Data Collaborative for Justice May 2022 report examining the changes in bail policy through 2020. It presents baseline (pre-reform) data on a sample of Justice Courts – courts that process criminal matters in the towns and villages outside the state's incorporated cities. This report lays the groundwork for continued data collection and analysis, as data become available for cases arraigned in 2020 and 2021 that will allow comparison of pre- and post-reform bail decisions and outcomes.

### About New York's "Hidden" Justice Courts

The state's 1200 Justice Courts have caseloads that approximate those of non-NYC City Courts, they arraign and make bail decisions in felonies and misdemeanors, and they dispose and sentence misdemeanors (and, often, felony charges that are later reduced to misdemeanors). They are vestiges of post-colonial local courts, and have limited links to the state's current Unified Court System. They are not courts of record, and as such, their proceedings and decisions are not shared with state agencies nor archived as data. As a result, while they make decisions that affect many people, they are almost hidden in plain sight, and they are often missing from discussions of reform, justice, and public safety.

### Major Findings from the Current Report

This report provides information about arraignment outcomes in a sample of Justice Courts from four counties during the two-year period before the new laws went into effect.

- **Justice Courts handle significant numbers of cases:** Justice Court caseloads vary across counties. Across the four counties reported on here, the Justice Courts arraigned 19,060 new cases during 2018 and 2019, compared with City Courts' combined 17,393 cases.<sup>1</sup> But the balance varies across counties. In one of the counties under study, 2018 and 2019 combined saw 4253 misdemeanor and 540 felony arraignments in Justice Courts, compared to smaller totals of 1531 and 327, respectively, in City Courts. At the other end of the spectrum, another county arraigned 423 misdemeanor and 240 felony cases in Justice Courts, compared to larger volumes of 716 and 374 in City Court.
- **Justice Courts seldom dispose of cases at arraignment:** In 2018 and 2019, the sampled Justice Courts collectively disposed only 10% of misdemeanors and 1% of felonies at arraignment. Hence judges are making bail and release decisions on most cases.
- **Justice Courts ordered release without monetary conditions in most cases:** In 2018 and 2019, Justice Court judges from the sampled counties ordered non-monetary release in over half of their bail decisions (51% of felonies, and 75% of misdemeanors).

- **Justice Court decision-making is not uniform across counties:** Aggregate data may obscure significant variation across jurisdictions. Across the counties studied, Justice Courts' rates of release without bail ranged from 36% to 54% in felony cases, and between 66% and 78% in misdemeanors.
- **The Justice Courts under study were more likely to release people than City Courts from the same counties:** Compared with City Courts (and with a statewide sample of City and District Courts), Justice Courts appeared to make less restrictive bail decisions in felony and misdemeanor cases. Justice Courts in this study released 10% more felony and 25% more misdemeanor defendants, than did City Courts in the same counties.
- **Pretrial Decisions changed from 2018 to 2019:** While distributions of bail outcomes were relatively stable at the beginning of the 2018-2019 period, it appears that Justice Courts' decision-making began to shift in 2019. In particular, the rate of non-monetary release of individuals charged with felonies rose from 44% to 58%, with a corresponding reduction in bail setting.

## Conclusion

New York's Justice Courts are unfamiliar to much of the general public, many court researchers, and even some state policymakers. Since their place in the criminal justice system is not well documented or understood, and because data from these courts are not readily accessible, little is known about their potential impacts on pretrial detention, convictions, and sentencing patterns. As New York adopts reform policies aimed at remedying historic disparities in how cases are processed and disposed, it is important to investigate these possible impacts. The concluding section of this report describes the evolution of the original research questions, and avenues for further investigation.

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## **INTRODUCTION: New York Criminal Justice Reform**

In April 2019, the New York State Legislature passed a historic package of legislation that promised significant changes in the way criminal charges were processed in New York's courts. These reforms addressed post-arrest practices by law enforcement as well as pretrial decisions made by judges, prosecutors, and defense lawyers. A key provision in the reform legislation called for a reduction in the range of circumstances in which bail could be set as a condition of pretrial release at arraignment: almost all misdemeanor charges, and many felony charges, were designated as "not bail qualified," with a presumption of community release at arraignment. The primary objective of the bail reforms was to reduce courts' discretion in setting bail by limiting the circumstances under which judges could set bail, and subsequently reduce the use of pretrial detention. These new laws went into effect on January 1, 2020, and they apply in all trial courts in the state.<sup>2</sup>

This study examines pretrial decision making in a sample of New York's Justice Courts, and is a companion report to an investigation of bail reform in the state's City and District Courts (including New York City) by the Data Collaborative for Justice (DCJ) at John Jay College of Criminal Justice.<sup>3</sup> Justice Courts have jurisdiction over criminal cases in the approximately 1200 towns and villages outside cities' boundaries, and their authority parallels that of City and District Courts: arraignment and bail setting, and adjudication of misdemeanors and early stages of felony charges. However, Justice Courts have seldom been the subject of empirical analysis, because they are not courts of record. They are not obliged to submit case-level data to state agencies and hence their practices and decisions are not included in administrative data tracked by the state.<sup>4</sup> As a result, baseline information on their operations has generally not been included in studies of the state's courts, and the public, researchers, and even many policy makers are unaware of their role in the state's legal system. These courts are, from a researcher's perspective, almost invisible in plain sight. As a result, they are often overlooked in discussions of reform, equity, justice, and public safety. On a topic as critical as bail reform, the inclusion of the Justice Courts is essential to a full understanding of the implementation and potential impact of reforms.

The five counties included in this project are home to approximately 130 Justice Courts, 10% of all such courts in the state. This report provides descriptive analyses of Justice Court functions in 2018 and 2019, prior to implementation of the 2019 reforms, to establish baseline information from four of these counties.<sup>5</sup>

The following sections address:

- Research objectives and questions that guide analyses in this report;

- The role of town and village Justice Courts in the New York legal landscape;
- The impact of COVID-19 on courts and data collection;
- Research methodology, including site selection and data sources; and
- Analysis of caseloads and arraignments during the pre-reform two-year time period, as well as comparison of Justice Court outcomes with those of City Courts within the same counties, and with DCJ data findings on City and District Courts statewide.

### **OBJECTIVES: Research Questions**

The 2019 reforms were adopted in response to concerns about excessive use of pretrial detention. A primary objective was to significantly reduce courts' reliance on money bail to ensure returns for court appearances. The new legislation sharply reduced the number of charges for which any bail could be set (designating those as "bail qualified" offenses). It further instructed judges, in setting release conditions, to take into account individuals' ability to post bail, and to consider other forms of surety that did not require cash or traditional bail bonds. This report addresses descriptive and comparative questions about pre-reform release decisions, and compares caseload characteristics, bail decision outcomes, and demographic characteristics across four site counties' Justice Courts, across Justice and City Courts within these four counties, and chronologically between January 2018 and December 2019. These questions include the following:

- What types of charges comprised Justice Courts' caseloads prior to 2020?
  - Did caseloads – by size, and mix of charges – vary by county? Aggregate data can sometimes obscure significant variation across jurisdictions.
  - Did those caseloads remain stable over the 2018-2019 pre-reform period? An assessment of how successfully bail reform was implemented requires data from the period prior to its legislative adoption.
- How were bail decision outcomes – release, bail, remand decisions, and individuals' ability to post bail – distributed in Justice Courts prior to 2020?
  - Did Justice Courts' bail decision outcomes vary across the counties?
  - How were bail decision outcomes associated with top charge class, and with top charge category?
  - Did those distributions remain stable over the 2018-2019 pre-reform period?
- Were bail decision outcomes associated with individual characteristics such as sex, age, race, and ethnicity?

- How did Justice Court cases and outcomes compare with City Court cases and outcomes in these county sites, and how do they compare with DCJ analyses of City and District Court data across the state?
  - Are Justice and City Court caseloads comparable in terms volume, top charge levels, and top charge categories?
  - How did Justice Courts' bail decisions and outcomes compare with those of City Courts in the same counties?

### **THE RESEARCH SETTING: Justice Courts in Upstate New York**

What are New York's Justice Courts, and why do they merit study in the context of the 2019 reforms? Justice Courts play a significant role in criminal adjudication outside New York City. They possess the same authority as City and District Courts, but operate under different financial and professional conditions. Though they are numerous and ubiquitous, they are not familiar to much of the public and many researchers and policymakers, and they are often neglected in discussions about reform.

In New York's 61 cities (outside New York City), indicted felony charges are prosecuted in County Courts. Misdemeanors and violation-level offenses, as well as the preliminary stages of most felonies, including arraignment and bail setting, are processed in City Courts (and, in parts of Nassau and Suffolk Counties on Long Island, in District Courts). These courts are part of the state's Unified Court System, which standardizes and funds most court functions. Their judges and staff are also accountable to the state's Office of Court Administration, which archives case level data on arraignment, disposition, and sentencing.

Outside these cities and districts, criminal cases are arraigned in approximately 1200 Justice Courts, whose geographic jurisdictions are defined by towns' and villages' boundaries within counties.<sup>6</sup> These courts were established in post-colonial times to serve towns and a smaller number of villages within those towns, and they predate the formal structure of today's Unified Court System. Historically, these courts were charged with dispensing justice in both criminal and civil matters. They were easily accessible to involved parties, and the fact that justices were locally elected from small communities, and often known to litigants, defendants, and victims, was thought by many to be beneficial.

In New York today, almost all towns, and about half of the state's villages, have their own Justice Courts. Justice Court judges, like City and District Court judges, run for office in local partisan elections, but their roles are otherwise quite different. City Court candidates must be admitted to practice in the state bar for at least five years, but there

is no educational or professional requirement for Justice Court candidates, and most of them are not lawyers.<sup>7</sup> City Court judges must retire at age 70; there is no age limit for Justice Court judges. Justice Court judgeships are part-time positions, typically with court sessions scheduled for afternoons and evenings. While some larger Justice Courts are in session daily, most hold sessions one or two days a week, and a few hear cases as seldom as twice each month.<sup>8</sup> Many Justice Courts lack the trappings of formality encountered in City Courts, and are housed in post offices, fire stations, and all-purpose town buildings. The Justices who preside over these courts are traditionally expected to be available for arraignments at any time, including nights and weekends, though their compensation is not adjusted for those hearings.<sup>9</sup> Justice Courts are not "courts of record," so they are not obligated to keep formal written records of their proceedings.<sup>10</sup> Finally, unlike City and District Courts, Justice Courts are primarily funded with town and village revenue, not state appropriations, and they retain significant shares of the fines and fees that they impose on defendants.

Figure 1: New York Towns



While Justice Courts' settings are often characterized as rural and remote, many serve predominantly suburban populations.<sup>11</sup> While they are sometimes labeled "traffic courts" (by the many citizens whose only encounter with the justice system is a traffic offense), their arraignment caseloads include all offenses prosecutable under criminal codes. While many of these courts have small caseloads, some process more cases each year than the smaller City Courts within their counties.<sup>12</sup> Outside of New York City and Long Island (which relies on a mix of District,<sup>13</sup> City, and Justice Courts), over 70% of the state's residents reside under the jurisdiction of town and village Justice Courts. Twenty counties have no City Courts at all.

For at least a century, the Justice Courts have been the target of criticism and calls for abolition, much but not all of it focused on the lack of requirements for judges' formal legal training.<sup>14</sup> No fewer than four state commissions have advanced proposals that involved restructuring or replacement of the Justice Courts: Wickersham in 1931; Tweed in 1953; Dominick in 1973; and the Special Commission on the Future of New York State Courts in 2008. The last of these published a report that called for increasing accountability from these courts through significant reorganization.<sup>15</sup> None of these efforts resulted in significant changes, and changes seem unlikely, as evidenced by New York Chief Judge Janet Fiore's 2022 announcement of an otherwise ambitious proposal to streamline the entire state court system: it stated, simply, that "the Town and Village Justice Courts ... will not be affected by our proposal."<sup>16</sup>

To summarize: New York's Justice Courts play a significant role in the state's legal system, but that role is often overlooked in discussions of court reform. The Upstate Reform Project's objective is to complement and compare the DCJ's study of City Courts' adaptations to the 2019 reforms, by collecting and analyzing data from decisions and outcomes in a sample of Justice Courts. In the absence of state-level administrative data on these courts' decisions, the Finn Institute research team accessed information from county prosecutors' offices and indigent defense programs' case files. We identified ten counties as potential research sites, conducted preliminary investigations into those counties' suitability for (and amenability to) the study, and created a set of criteria that would ensure that the sites represented the state's diversity of demography, regions, and criminal justice system characteristics. In the following sections we summarize those selection criteria, the process of selecting final sites, and the research design decisions made to initiate and finalize data collection, prefaced by a brief description of the COVID-19's impacts on New York's criminal courts and the research project.

## **COVID-19: The Impact on Criminal Courts and Project Data Collection**

The analyses reported below are based on arraignment decisions and outcomes in 2018 and 2019, with data collection plans for 2020 through 2022, as groundwork for forthcoming comparative analyses of pre- and post-reform arraignment and court processing. Hence the data presented here were not affected by adaptations to the COVID-19 pandemic. But we would be remiss not to document COVID-19's impacts on the courts and on the project. Based on interviews and observations in our sites, as well as monitoring of reports from our research partners' offices, we have observed significant changes in criminal justice operations within and adjacent to the courts since March 2020. We briefly summarize those here.

Implementation of New York's court reforms preceded the state's first COVID-19 cases by ten weeks. On March 16, 2020 the Unified Court System announced a statewide suspension of all non-essential court functions. On April 6, courts were instructed to conduct virtual arraignments; that policy was expanded to include other essential functions on April 13, 2020. These arraignments required all parties to be in separate physical locations. In many counties, therefore, arrestees were arraigned from booking facilities or jails.<sup>17</sup>

In the first months of the pandemic arrests declined precipitously in many communities. Interviews with courthouse staff indicate that pretrial supervision practices were altered in most jurisdictions, and access to some types of diversion programs was compromised. Public defenders reported restrictions on personal contact with clients. Prosecutors reported challenges accessing victims and witnesses. Delayed court hearings resulted in significantly longer times to disposition.<sup>18</sup>

As the project continues, we will continue to track the effects of the pandemic on court processing, in order to accurately estimate the potential impacts of bail reform on pretrial and dispositional decisions and outcomes.

## **RESEARCH METHODOLOGY: Sites, Data, and Measures**

### ***Site Selection***

Potential sites were evaluated on three criteria: (1) representation of the diversity of counties (and their Justice Courts) across the state, (2) availability of case records that could be coded into useable and consistent data, and (3) key agency actors' willingness to participate in the study. We originally identified ten counties that were promising candidates on the first criterion, with the final goal of selecting five for study. Table 1

summarizes characteristics of the final five, of which four could provide data at the time of this report. (In this report the counties are identified by pseudonyms.) Data were extracted from the case management systems of indigent defense providers and district attorneys.

Two of these counties – Morton and Polar - are predominantly urban and suburban. The other three counties have small cities surrounded by suburban and/or rural towns. The counties are drawn from three of the state's eight economic regions. Overall, this sample of counties represents the mix of population demographics across upstate New York.

<b>Table 1: Characteristics of Upstate Reform Project Counties</b>								
<b>Note: county names are pseudonyms.</b>								
<b>County</b>	<b>Demography</b>	<b>Indigent Defense System</b>	<b>Number of City Courts</b>	<b>Number of Justice Courts</b>	<b>Total County Pop Estimate</b>	<b>Town/Vill Pop Estimate as % of County</b>	<b>Pop Per Square Mile</b>	<b>Economic Region</b>
Polar	Suburban/Urban	Public defender	1	~25	750,000	70%	1000	Finger Lakes
Bleek	Rural/Small City	Assigned counsel	1	~15	75,000	65%	100	Central New York
Lake	Rural/ Small City	Public defender	2	~20	100,000	70%	150	Finger Lakes
Hudson	Rural/ Suburban/ Small City	Public defender	2	~25	300,000	85%	350	Hudson Valley
Morton	Suburban/ Urban	Assigned counsel	1	~35	475,000	70%	600	Central New York

### ***Samples and Measures***

The first phase of the Upstate Reform Project involved collecting data on closed cases that were arraigned between January 1, 2018, and December 31, 2019. The analyses in this report cover the four counties with participating indigent defense programs, and we detail samples and data collection protocols for those counties' Justice Courts below.<sup>19</sup> Appendix A reports in greater detail on the procedures adopted in each site to maximize the reliability and consistency of data across the sites, which represent indigent defense caseloads, not absolute case counts in each jurisdiction.

As a companion project to DCJ's evaluation, this study adopted DCJ measures to the extent practicable.<sup>20</sup> The key measures, at the court level, include charge class, charge category, bail decision outcome, and the individual characteristics of sex, race, ethnicity, and age category. Table 2 summarizes the distributions of these variables in the four-county data.

**Charge class** denotes the highest arraignment charge: felony, misdemeanor, or violation. Violations are low-level offenses that, while subject to fines and other penalties, very seldom result in jail sentences, and they do not qualify as criminal convictions.

**Charge category** denotes the nature of an offense: person charges (those denoting direct threat or harm to another person); property charges; drug related charges (not marijuana); marijuana charges<sup>21</sup>; weapons charges; vehicle and traffic charges; and all others. We note that many cases involve multiple charges, so the charge with the highest level may not fully describe the alleged criminal behavior. For this report, we rely on the DCJ taxonomy of top charges. Appendix B summarizes the NY Penal Code Titles that are classified in the six categories noted above, and those that are grouped together in the "other" category.

**Bail decision outcome** incorporates both the judge's decision at arraignment to release or set bail, and people's success in posting bail. Consistent with the DCJ project, we distinguish between these outcomes:

- **Case disposed at arraignment:** The arraignment and disposition occur on the same day, most commonly through a guilty plea, dismissal, or adjournment in contemplation of dismissal.<sup>22</sup> In theory, such cases do not present the opportunity for bail to be either set or posted.
- **Release without bail, on recognizance (ROR), or under supervision (RUS):** The judge does not require bail at arraignment, so the defendant is at liberty. However, the judge may impose conditions on that liberty, including but not limited to orders of protection and requirements to report to pretrial services.
- **Bail set and posted:** The judge sets bail and sometimes bond. Bail can be posted at any time before disposition, and this was operationalized as posting within three days of arraignment (and in practice, typically on the day of arraignment), given the intent of the reform to reduce pretrial detention.
- **Bail set, not posted:** The judge sets bail, which is not posted, and the arraigned individual is booked into pretrial detention, typically at the county jail.
- **Remanded:** The judge does not set bail, and the individual is booked into pretrial detention at the county jail. Remands might occur when individuals are already

incarcerated in a facility at the time of arraignment, and when the charges are serious (e.g., Class A felonies), or in some cases involving prior felony records.

Indigent defense providers' records typically included information about whether or not their clients were booked into jail after the arraignment, information about whether bail and bond had been set (and if so, at what amounts), and whether bail had been posted. From those data points we scored the measure above. We classified cases as *disposed at arraignment* when arraignment dates coincided with case disposition dates; as *released without bail* when not disposed at arraignment with no bail set and no jail custody was recorded; as *bail set, posted* when records reflected that bail was set and posted, and when there was no booking record; *bail set, not posted* when case files recorded that bail was set and defendants were detained post-arraignment; and finally, *remanded* when no bail was set, disposition did not occur at arraignment, resulting in booking and incarceration.

However, we note that this seemingly straightforward classification of bail decision outcomes comes with some caveats. First, as important as whether or not bail is set is the question of how high bail is set. Prior to the legislative reforms, judges had broad discretion in setting bail, premised on the notion that the key purpose of arraignment was to increase the likelihood of a defendant returning for future court appearances -- in other words, presumably, judges set bail for those who were deemed at risk of non-appearance.<sup>23</sup> But in fact, one of the less noted elements of the reforms was the provision that judges should attempt to ascertain the level of bail that an individual could reasonably afford. We intend to investigate levels of bail set in future reports, to assess how much (if at all) judges' decisions on bail amount shifted.

Second, bail set at arraignment is subject to change during the case. Detained individuals may petition for lower bail, and it is not unusual for judges to release people on recognizance after they have been booked and detained. And people who are at liberty who fail to make court appearances, of course, risk having bail revoked. We hope to examine the persistence of initial bail decisions, knowing that some of those decisions are amended after arraignment, as the project proceeds.

Finally, until recently, longstanding New York law authorized arresting agencies to impose "desk bail" (also referred to as "stationhouse bail") on arrestees whose highest charge is an E felony; the levels for this bail were capped at \$750. Arrestees offered this option would have the opportunity to post bail at the arresting agency or booking center, on the spot, and be given a return date for arraignment. Hence, in our 2018-19 data, some people charged with crimes probably posted bail prior to arraignment, but that sort of bail would not be readily distinguishable from a judge's

decision at arraignment. We will be seeking our practitioner research partners' insights on whether those bails appear in their records; we expect that they do, and therefore that information will be included in future reports.

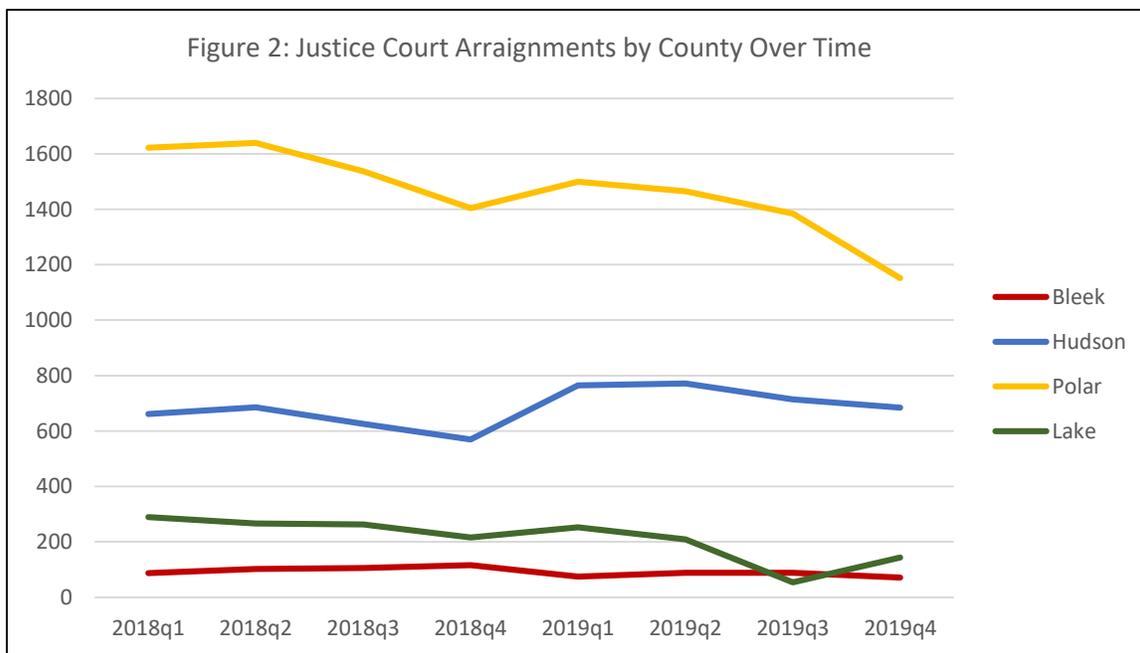
**Table 2: Descriptive Statistics for Justice Court Case Variables**

Variable	Values	n	%
County	Bleek	752	3.2
	Hudson	5477	27.3
	Lake	11985	59.8
	Polar	1818	9.1
Top charge class	felony	3188	15.9
	misdemeanor	15187	75.8
	violation	1628	8.1
	unknown	29	0.1
Top charge category	person	943	4.7
	property	4412	22.0
	drugs (not marijuana)	985	4.9
	marijuana	721	3.6
	weapons	122	0.1
	vehicle and traffic	8615	43.0
	other	4219	21.1
	unknown	15	0.1
Bail decision outcome	disposed at arraignment	1911	9.5
	released, no bail (ror, rus)	13604	67.9
	bail set, posted	1298	6.5
	bail set, not posted, detained	2105	10.5
	remanded	464	2.4
	unknown	650	3.2
Race	White	7059	35.2
	Black	4737	23.6
	unknown	8236	41.1
Ethnicity	non-Hispanic	16140	80.6
	Hispanic	1322	6.6
	unknown	2570	12.8
Sex	male	12676	63.3
	female	6044	30.2
	unknown	1312	6.4
Age category	18-21	2509	12.5
	22-30	6650	33.2
	31-40	4812	24.0
	41-50	2542	12.7
	51 and over	2298	11.5
	unknown	1221	6.1
		N=20032	

## BAIL DECISIONS AND OUTCOMES IN JUSTICE COURTS

### Justice Court Caseloads

**How did Justice Court caseloads vary across geography and time?** Figure 2 reports the number of arraignments in the four counties' Justice Courts, for each calendar quarter in 2018 and 2019. Polar is the most populous county; its Justice Courts are in largely suburban towns and villages. Hudson has a smaller population, and a mix of Justice Courts in suburban and rural jurisdictions. Bleek and Lake Counties are home to small City Courts, but mostly comprise rural towns and villages. Despite this demographic variation, in 2018, the annual ratio of Justice Court arraignments to town and village populations was approximately 1 to 100 in each of the four counties.



The mix of charge classes (felony, misdemeanor, violation) and charge categories vary somewhat across these counties' Justice Courts.<sup>24</sup> Three counties' arraignment caseloads are similar: 12% to 17% of top charges are felonies, and 75% to 81% are misdemeanors. Bleek County caseloads include a significantly larger proportion of felony top charges – 36% of all arraignments. The most common charge category in all counties involves vehicle and traffic law, which account for 27% to 50% of arraignments.<sup>25</sup> Bleek County's Justice Courts see the fewest vehicle and traffic cases. Hudson, Polar, and Lake Counties have significant stretches of suburban and rural interstate highway miles, which may account for this difference. Property offenses account for 15% to 26% of each site's caseload; personal offenses for 10% or less. Marijuana and weapons charges account for small fractions of caseloads in all counties.

How stable were Justice Court caseloads during the pre-reform years? Figure 2, above, indicates that Bleek County's Justice Courts did not experience much variation in caseloads throughout 2018 and 2019. Similarly, Lake County's caseloads were stable until a modest decline in mid-2019. Hudson's caseloads increased in early 2019, then leveled off. Most notably, Polar's Justice Courts, with the largest caseloads, dropped throughout these two years, with a notable decline (about 25%) by the last quarter of 2019. These shifts are variable and mostly modest, but they provide potentially useful background information for evaluating post-reform arraignment counts.

At the aggregate level the mix of charge seriousness and categories remained quite stable throughout these two years. Misdemeanors consistently accounted for about 75% of cases, felonies about 15%, and violations about 10%. Similarly, the distribution of top charge categories remained stable over time across the aggregated county data. Vehicle and traffic charges comprised slightly over 40% of arraignments; property charges made up about 20%; the categories of personal, weapon, and drug charges each made up about 5% of arraignments. It is worth noting that while marijuana offenses (as a top charge) accounted for a small proportion of arraignments, that proportion became even smaller after the state legislature decriminalized possession and use of marijuana in August 2019.

To summarize: Caseloads, measured in terms of distribution of charge seriousness and categories, were similar across the Justice Courts in these four counties, although Bleek County's distribution of charges differs from the other three sites. Bleek County also experienced a stable arraignment count over the two years, which distinguishes it from the remaining counties where case counts fluctuated. We report these findings as background for the next sections on patterns of bail outcomes, and on comparisons of Justice Courts and City Courts in three of the site counties. Moreover, these observations are useful because they document relative stability of caseloads in Justice Courts in the years immediately preceding implementation of reforms, and set the stage for a comparison with post-reform arraignments.

### ***Justice Court Arraignment Outcomes***

**How were bail decisions made in the two years preceding reform implementation?** Figures 3, 4 and 5 report distributions of bail outcomes across charge class, charge category, and county during the two years prior to the implementation of reforms.<sup>26</sup> As Figure 3 indicates, in these sites few cases were disposed at arraignment, and few were remanded without the opportunity to post bail. Most cases, including half of felonies, are released on recognizance (or under supervision). Bail was set in 40% of felonies and about 15% of misdemeanors, and in approximately 40% of those cases bail

was posted. We note that these outcomes differ considerably from those reported by the Data Collaborative for Justice's study of 2019 bail outcomes in New York City, most notably in rates of disposition at arraignment. Approximately 30% of cases are disposed at first appearance in New York City, compared with 10% in the Justice Courts.<sup>27</sup> A larger share of felony arraignments resulted in bail being set (40% in the Justice Courts, 47% in New York City courts), and the percentage resulting in bail being posted is higher in the Justice Courts than in the City Courts.

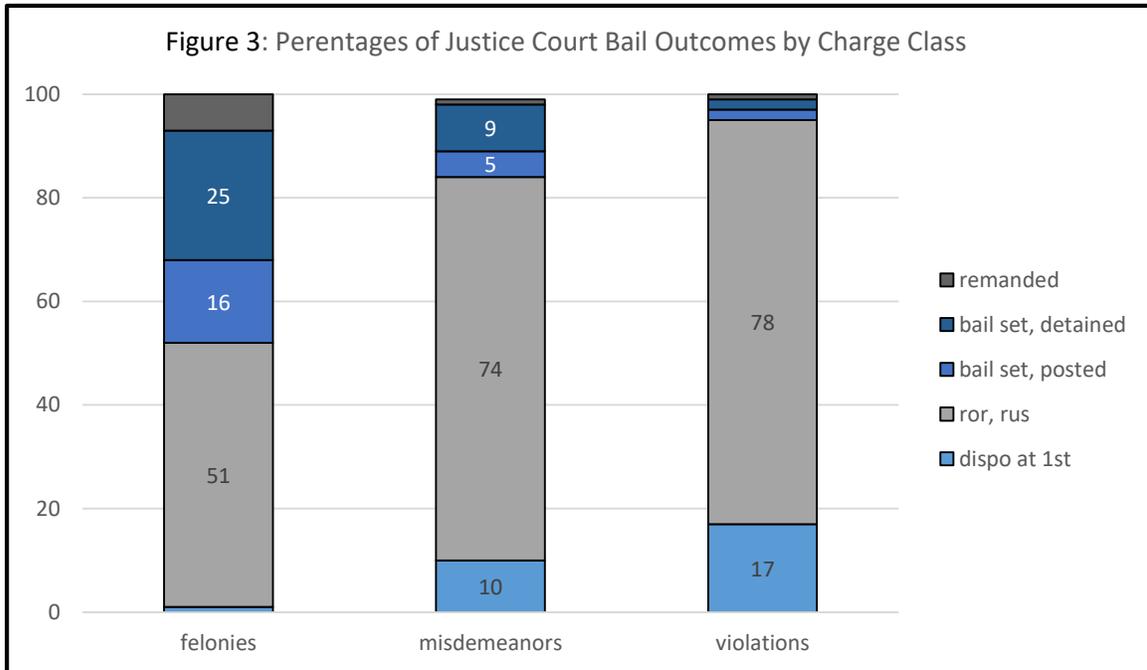


Figure 4 suggests that charge category is associated with bail decisions and outcomes. Not surprisingly, higher percentages of marijuana and vehicle/traffic charges are disposed at arraignment or result in release without bail. About two thirds of property and drug (non-marijuana) charges end in release without bail, and when bail is set, it is posted in about one in three cases. Fewer cases involving weapons and offenses against persons result in release without bail; in about 40% of such cases bail is set, and in 15% to 18% of cases bail is posted. We note that these differences may be attributable to varying mixes of offenses and offense seriousness within these charge classes and categories.

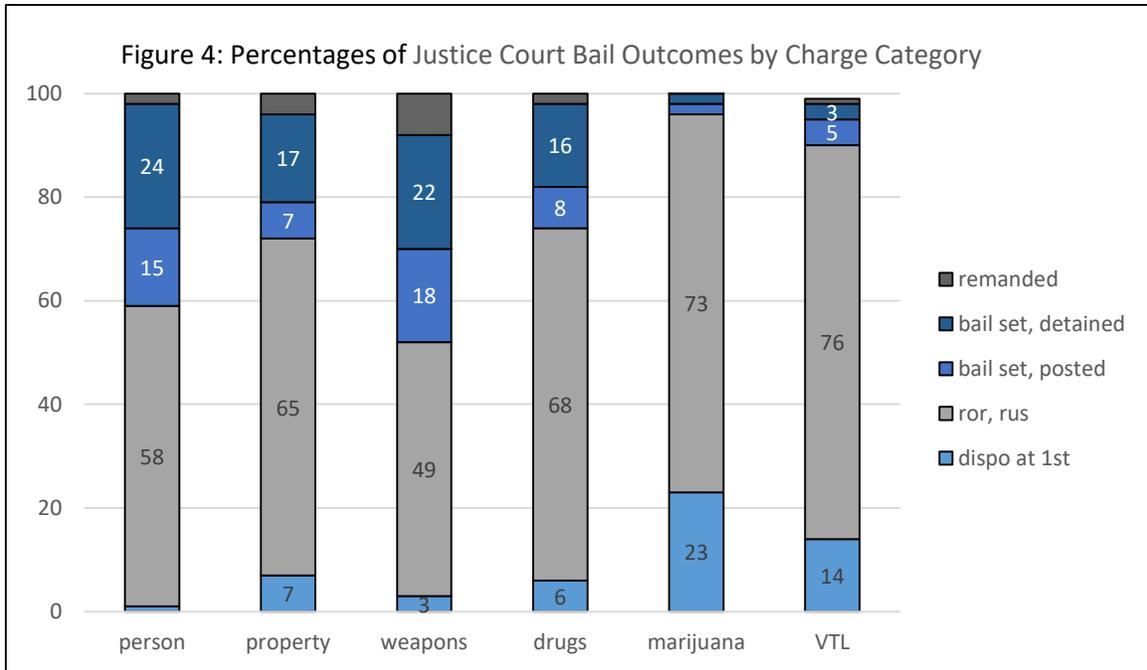
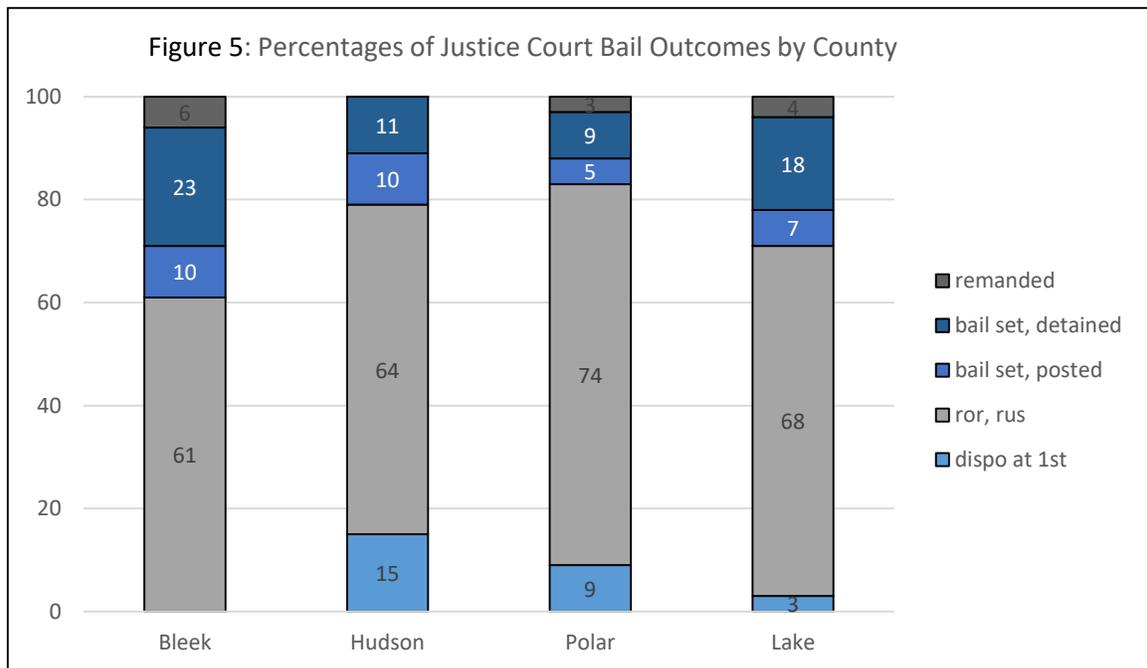
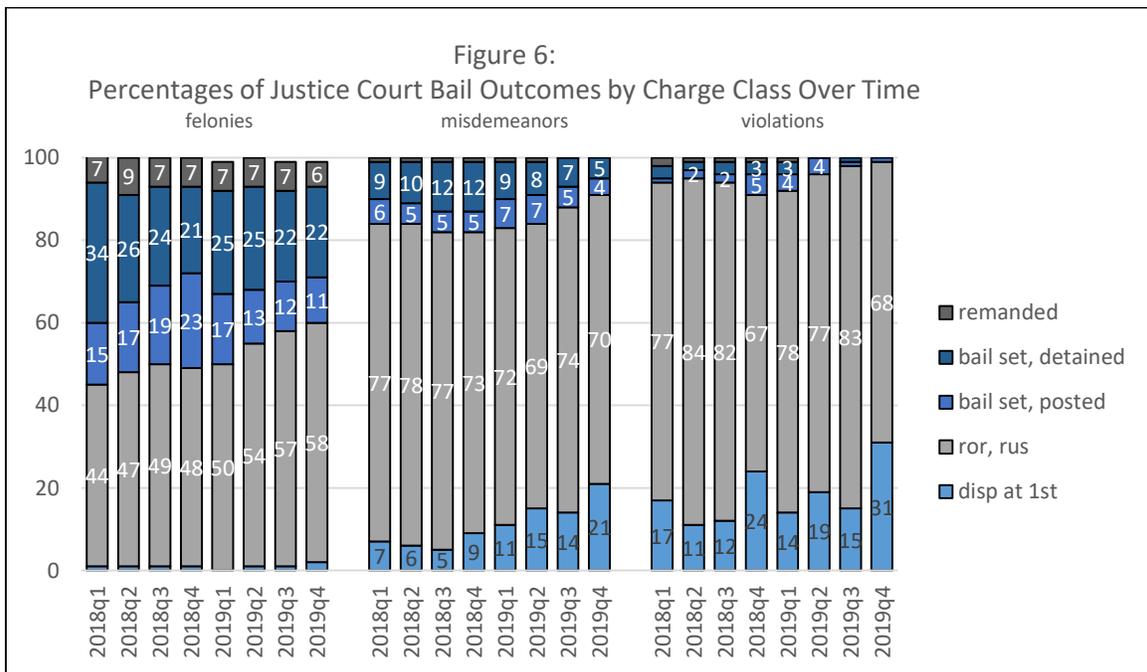


Figure 5 compares arraignment outcomes across the four counties' Justice Courts, and suggests that there are in fact differences in bail and release practices across these sites, notwithstanding their similar profiles of case classes and categories. Bleek County's courts set bail or remanded almost 40% of cases (perhaps a consequence of that county's higher percentage of felony charges).<sup>28</sup> Hudson, Polar, and Lake generated somewhat different patterns. Bail setting and remand were less common in



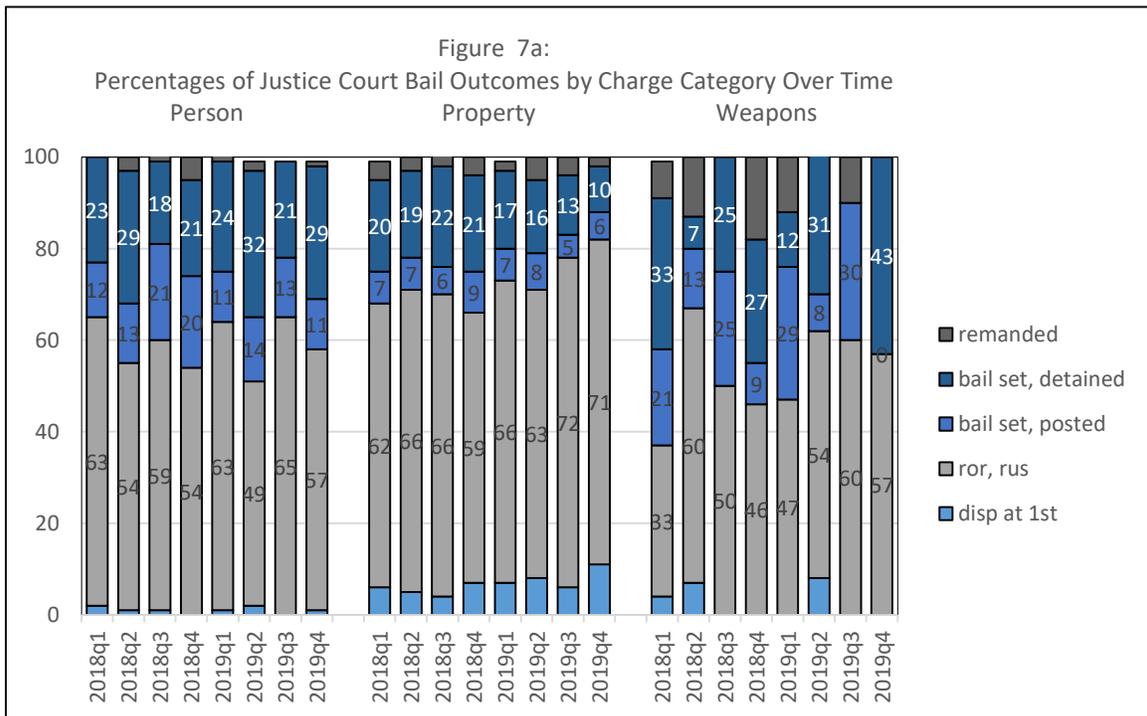
Polar County (totaling about 20% of arraignments), compared with about 30% in Lake County. Dispositions at arraignment occur in 15% of Hudson's cases, and almost none in Bleek and Lake Counties. These figures highlight the importance of examining not only aggregate Justice Court outcomes, but also variation across jurisdictions. As the research advances to compare pre- and post-reform patterns, it will be useful and important to examine bail decisions and outcomes under the reform legislation, which may diminish this variation as the new law standardizes judges' guides for release and setting bail.

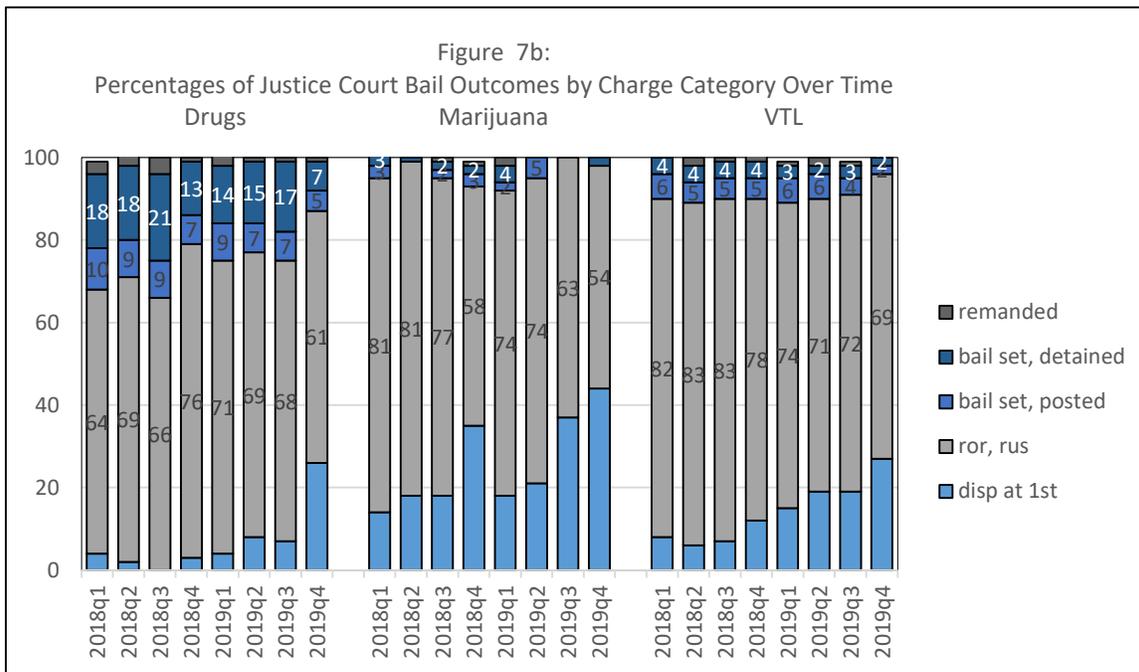
**Did bail decisions and outcomes remain stable during the pre-implementation period?** During site visits, several practitioners made the observation that at some time after the adoption of the new laws, and before their implementation, judges began adjusting their bail decisions in anticipation of the new policies. Figure 6 breaks down bail outcomes (aggregated across the Justice Courts) by charge class and by calendar quarters, to examine this speculation. These results suggest that increases in dispositions at arraignment were marked in misdemeanor cases (rising from about 6% of arraignments to 21%), but that pattern did not emerge in felony cases. However, higher percentages of felony arraignments resulted in release without bail over time, though the percentage of bail cases in which bail was posted did not change significantly. Bail outcomes for violations appear to mirror the pattern of misdemeanor arraignments. These findings are consistent with the prediction that at least some Justice Courts began adapting to bail reform in the months leading up to official implementation.



Figures 7a and 7b display bail decision outcomes, aggregated across the four counties' Justice Courts, over calendar quarters in 2018 and 2019, for six charge categories.<sup>29</sup> As noted above, larger percentages of cases were disposed at arraignment in 2019, particularly the last six months of 2019, in some charge categories: drugs, marijuana, and vehicle and traffic offenses. Percentages of dispositions at arraignment remained steady for person and property offenses. Notably, over this time period, judges set bail for diminishing percentages of cases, though the decreases were not dramatic, amounting to about a 5% absolute decrease in bail cases. In property cases, however, judges set bail in only 16% of cases in the latter half of 2019, compared with 25% of 2018 cases. For some charge categories, early dispositions appear to have displaced release without bail (ROR and RUS).

To summarize: Overall, the distribution of bail outcomes in this sample of Justice Courts began to shift before the bail reforms went into effect. We cannot know with certainty that this was due to court actors' anticipation and adjustments, but these patterns do suggest that, in the Justice Courts at least, 2019 data may not fully capture the possible impact of the new legislation on local court practices. The shift in cases disposed at arraignment is something of a surprise – nothing in the new laws would necessarily have led courts to these outcomes. Not surprisingly, and consistent with the notion that court actors adjusted ahead of the new laws' implementation, these effects are more pronounced in misdemeanor cases. And, importantly, the increase in early dispositions co-occurs with a decrease in cases in which bail was set.





**Individual Characteristics and Justice Court Bail Outcomes**

**Were bail decisions associated with characteristics of arraigned individuals in the pre-reform period?** A major objective of bail reform legislation was to reduce disparities in bail decisions and outcomes associated with individuals' characteristics. New York's reforms were aimed at reducing unnecessary prosecution, detention, and incarceration, but they are also intended to reduce the disparate impacts of justice involvement among people of color and economically disadvantaged individuals. Table 2 provides information about Justice Courts' caseloads based on age, sex, race, and ethnicity, for counties in which indigent defense programs routinely recorded that data. Information on client age was recorded in all four counties; information on client sex was recorded in three counties; information on race and ethnicity (recorded in case management systems as "Hispanic" or "not Hispanic") was available in Hudson and Polar Counties.

We note that across the Justice Courts in the four counties, age distributions did not vary. About 12% were 18 to 21 years old, 35% were 22 to 30 years old, 25% to 30% were 31 to 40 years old, about 14% were 41 to 50 years old, and the remaining 11% to 13% were over 50. In the three counties (Hudson, Polar, and Lake) that reliably recorded sex, approximately 30% of charged individuals were female, 65% were male, and a small number of cases were missing data on this variable.

In only two counties were individuals' race recorded in case data, and even in those, 20 to 35% of cases had missing values on this variable. In Hudson County's Justice Court arraignments, among those whose race was identified, about 27% were identified as Black; the figure for Polar County was close to 50%. About 10% of people arraigned in Hudson were identified as "Hispanic," compared with 6% in Polar County. Both Black and Hispanic individuals are overrepresented in the Justice Courts compared with the counties' total populations.

Figures 8 and 9 address the question of whether people of different ages, sexes, races, and ethnic identities face different bail outcomes. Across the Justice Courts, age appears to have a weak association with outcomes; a slightly larger percentage of younger individuals had more favorable bail outcomes in 2018 and 2019.

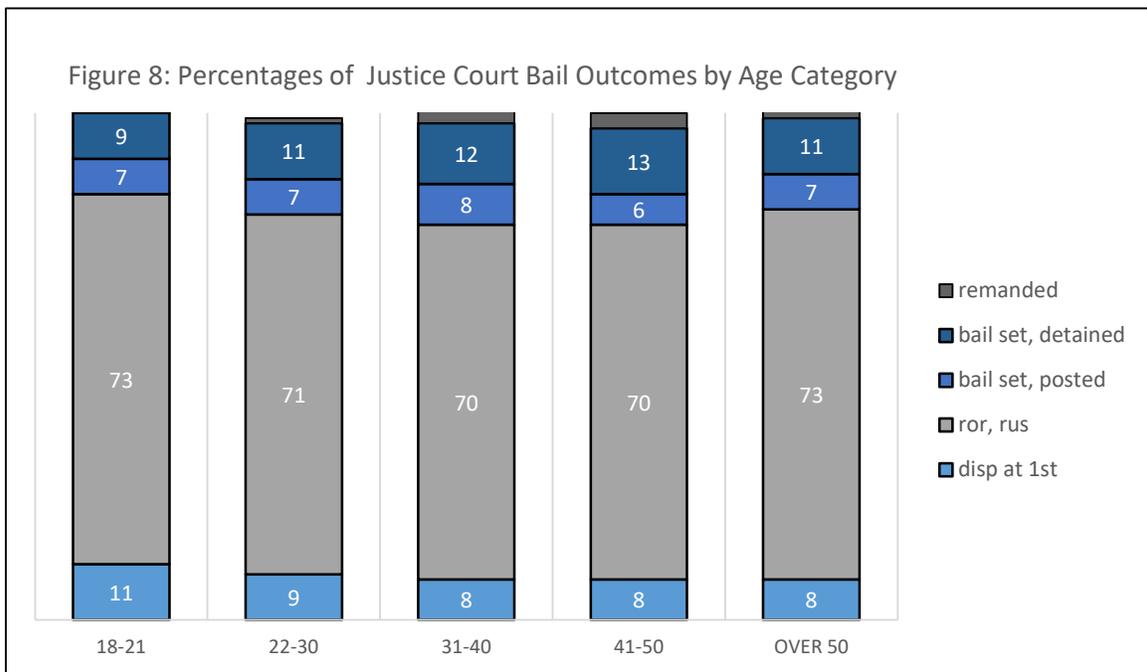
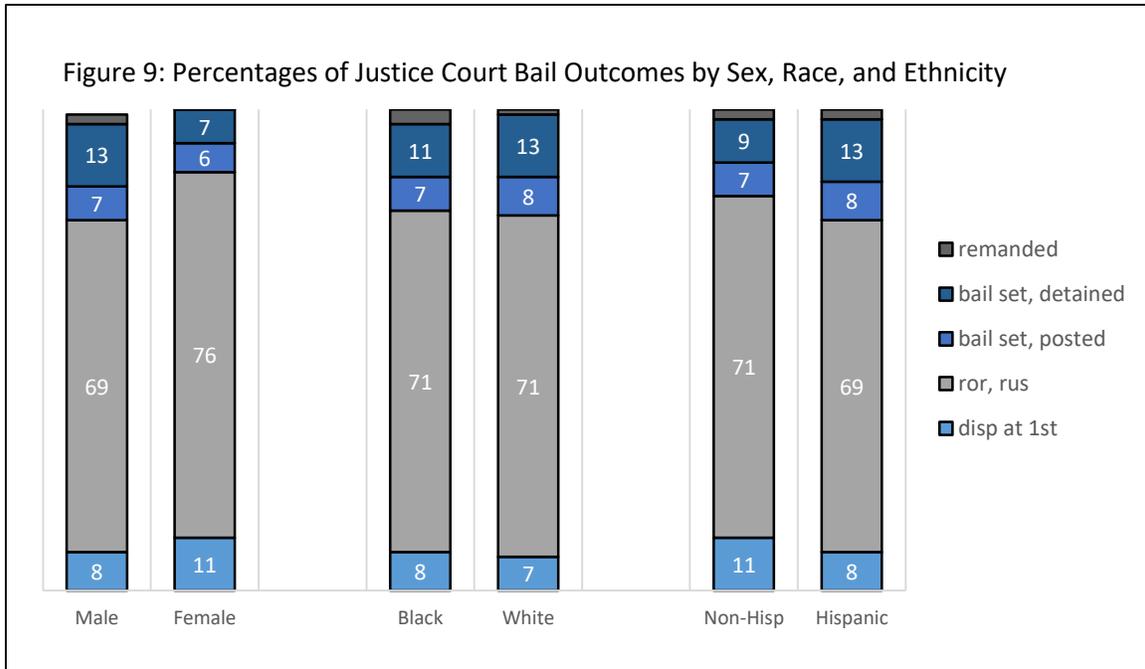


Table 9 suggests that, across the three counties with data on individuals' sex, judges released a slightly higher percentage of women on recognizance, and a higher percentage of women were able to post bail when it was set, compared with men. In defense program case files, race was typically recorded as Black, White, or other or unknown. There were no substantive differences between the percentages of various bail outcomes for Black and White individuals. Regarding ethnicity, a slightly larger percentage of non-Hispanic individuals have cases disposed at arraignment, or are released without bail, compared with those identified as Hispanic.



To summarize: these data suggest that larger percentages of younger people, and women, experience more favorable arraignment outcomes. These differences are slight, however, and they might be associated with bias but might also be consequences of confounding differences in charge category, charge level, and prior record. These data do not offer evidence of disparate outcomes based on race. However, among the small set of people identified as Hispanic, judges release a smaller percentage without bail, and when bail is set, a smaller percentage of people post bail. These pre-reform findings will be useful in assessing the impact of bail reform in advancing equitable justice.

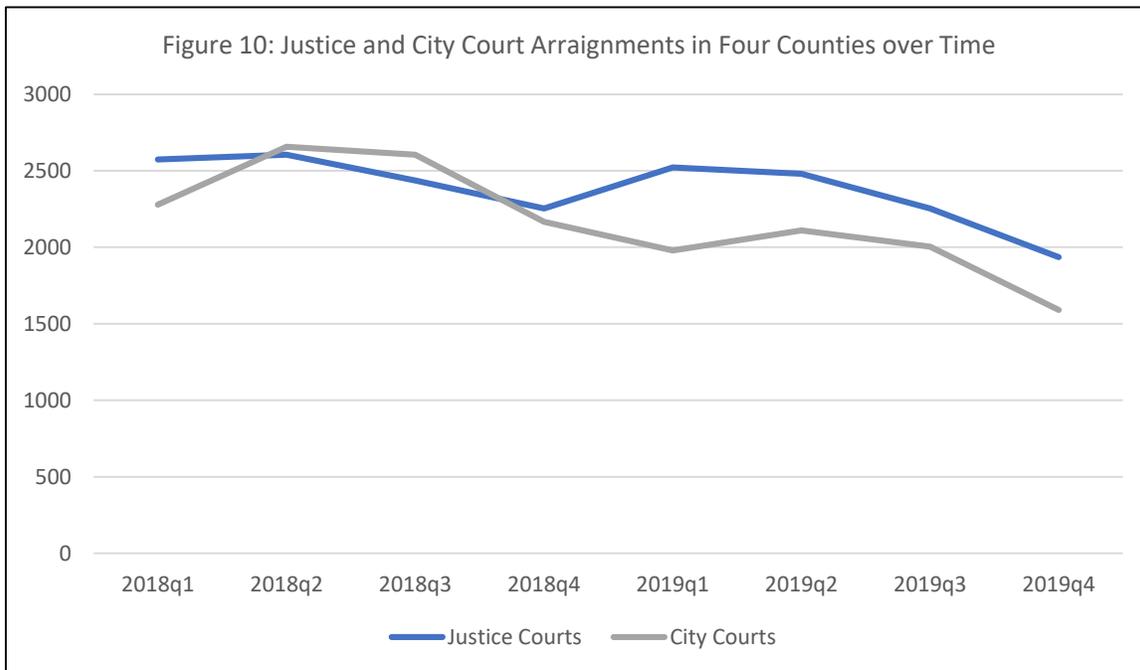
### **Comparing Caseloads and Arraignments in Justice and City Courts**

We now turn to our last inquiry: How do Justice Courts and City Courts compare on caseloads and bail decision outcomes in 2018-2019? To address this question, we first compared Justice and City Court outcomes in the four site counties, and then compared the project's City and Justice Court data with the results reported in the DCJ analysis of the statewide City and District Courts.

Aggregated across the four counties, it appears from Figure 10 that Justice Court caseloads are on average as large as those of City Courts, and sometimes larger. Within these four counties, Justice Courts processed 10% more cases than did the City Courts in 2018 and 2019. But there is considerable variation. Rural Bleek County's Justice Courts generate only 38% of its arraignments; rural Lake County's arraignments are evenly

divided between City and Justice Courts; and Hudson County and the urban/suburban Polar County's Justice Courts produce 64% of arraignments.

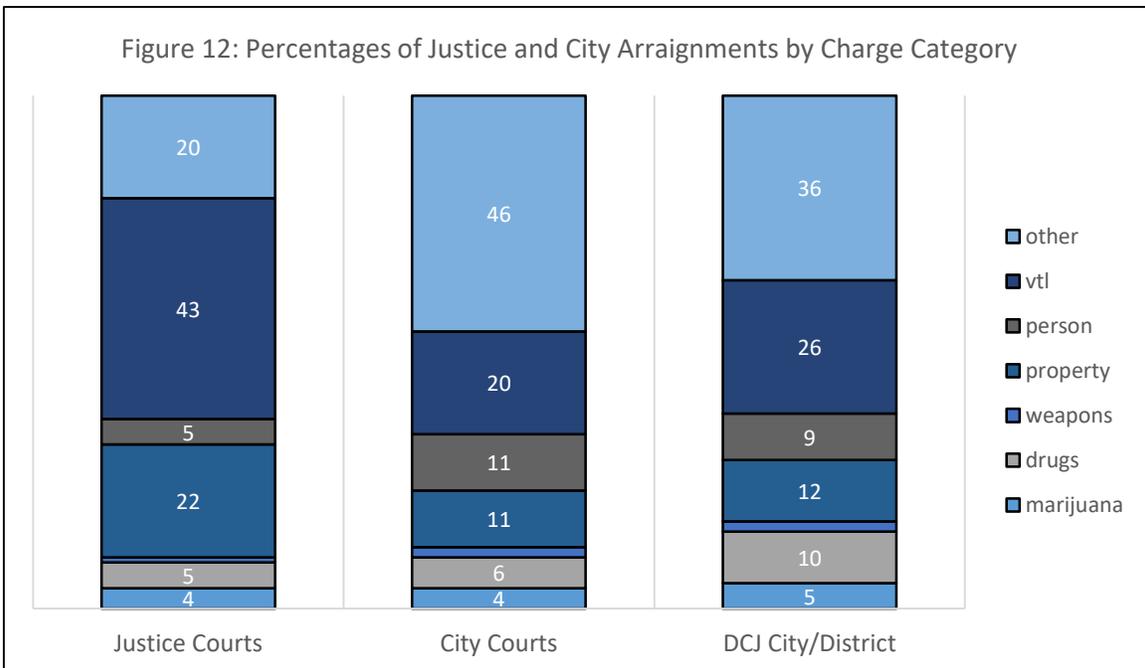
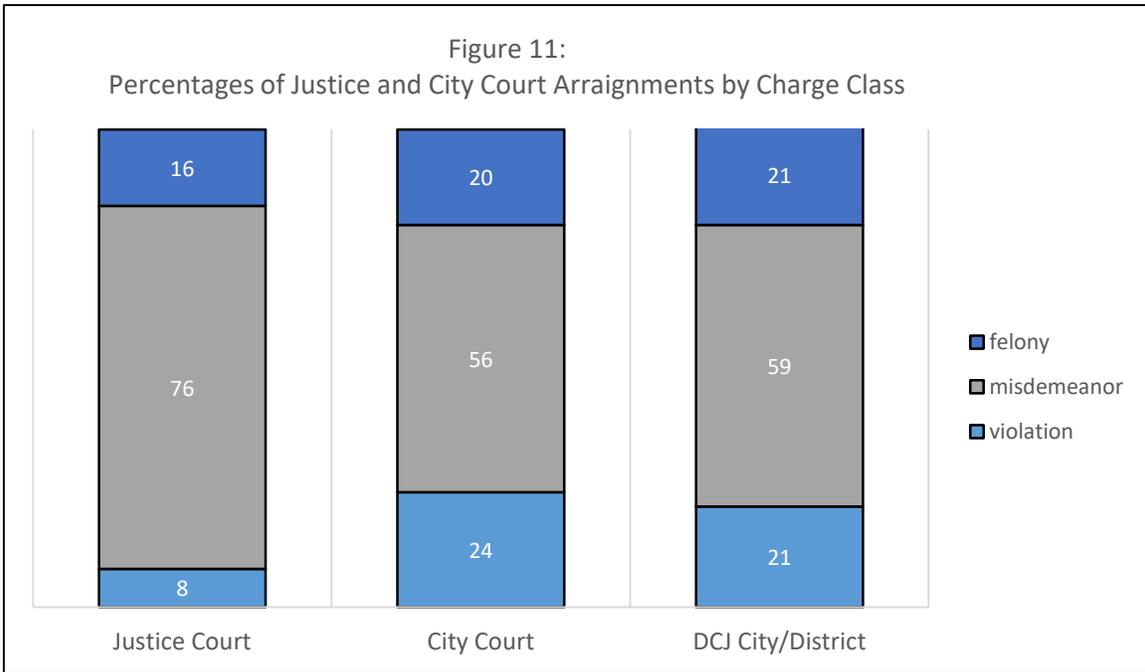
As observed previously, Justice Court caseloads appear to have declined during the two years before reform was implemented, and City Court caseloads declined somewhat more precipitously. In both sets of courts, caseloads were reduced by about 20% (Justice Courts) and 28% (City Courts) from a high point in the second quarter of 2018 to the last quarter of 2019.



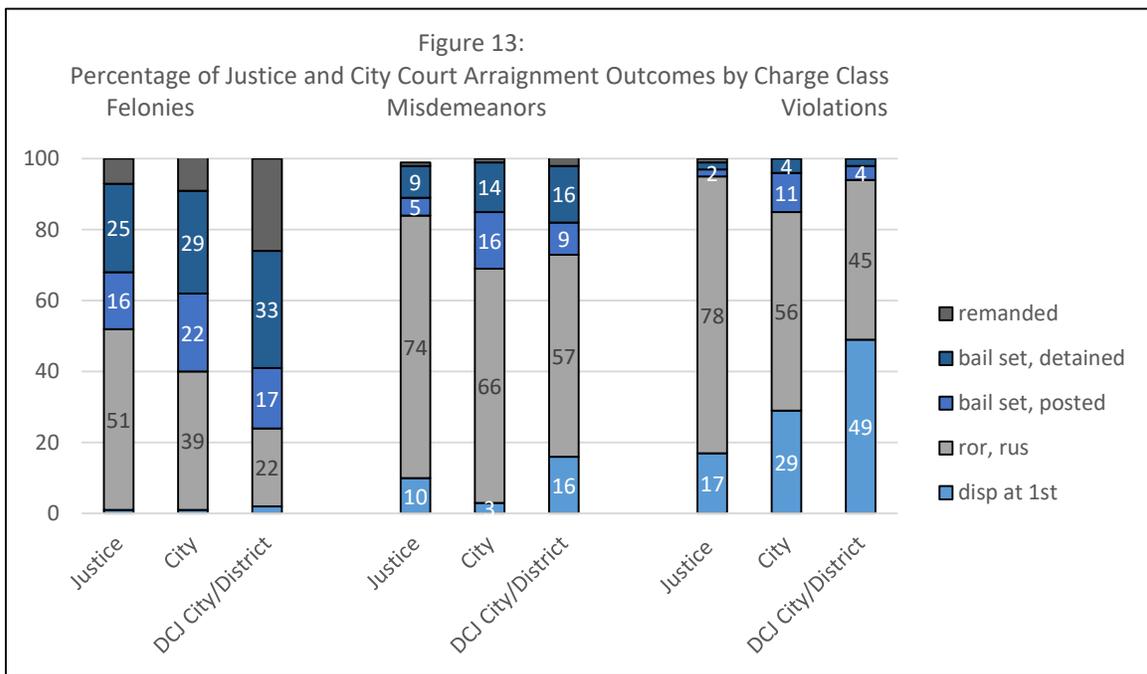
Figures 11 and 12 compare City and Justice Court caseloads, aggregated across the four counties. These figures also include, in the third column, data on all upstate City and District Courts as reported by DCJ. These caseload data are presented on two variables: top charge class and charge category. Figure 11 indicates that the Upstate Reform Project sites are, at least in this respect, representative of the City and District Courts across the state, exhibiting very similar percentages of felony, misdemeanor, and violation cases. But the Justice Courts process fewer violations, and proportionately more misdemeanors, than either sample of City Courts.

Figure 12 compares arraignment charge categories across these three samples of courts. Marijuana, other drugs, and weapons are uncommon top charges in both types of courts. But City Courts have a higher percentage of charges involving crimes against person, and Justice Courts have a higher percentage of property crime charge. Justice

Courts have a higher volume of vehicle and traffic charges, which may reflect the fact that four counties include stretches of major highways. However, the large number of top charges classified as "other" clouds this picture somewhat: almost half of City Court cases involve this category, while only about 20% of Justice Court cases do. Finally, it appears that the two samples of City Court data produce similar, though not identical, mixes of charge categories. The DCJ data include fewer charges classified as "other," and more cases involving vehicle and traffic law.



Finally, Figure 13 presents arraignment outcome data for these three samples, for felonies, misdemeanors, and violations. In felony cases, City Courts in the four counties differ from the statewide DCJ City Court data, insofar as arraignment outcomes are less restrictive: a higher percentage of cases resulted in non-monetary release, and a lower percentage of cases are remanded. Justice Court outcomes are even less restrictive: half of these cases result in non-monetary release, and even fewer are remanded. A somewhat similar pattern appears in misdemeanor charges. In both upstate City Court samples about 70% of cases are either disposed at arraignment or released without bail, and bail setting rates are similar. A higher percentage of Justice Court cases result in ROR or RUS or disposition at first appearance.



These findings suggest the following: At the county level, caseloads in Justice Courts can approximate or even exceed those in City Courts, if the four sites presented here are representative of the rest of the state. A comparison of this project's City Court data with DCJ's statewide data suggests that, at least in some respects, these four sites are generalizable. Moreover, Justice Courts may be less, not more, restrictive than City Courts when arraiving and setting bail in felony and misdemeanor cases. Finally, arraignment outcomes suggest that differences in caseloads' distribution of charge class (felony, misdemeanor, violation), as well as distributions of case categories (which vary across court type) may account for some differences in bail outcomes, a topic which merits further investigation.

## DISCUSSION, CONCLUSIONS, AND FUTURE RESEARCH QUESTIONS

This report summarizes descriptive analyses of data on Justice Court arraignments in the two years prior to implementation of bail reform legislation in January 2020. As a companion to the Data Collaborative for Justice's investigation of City Court outcomes, the Upstate Reform Project collected data from the files of public defense providers and district attorneys, augmented where needed with data from county booking facilities. We have collected data from counties that represent the diversity of Justice Court jurisdictions in upstate New York. These counties include approximately 130 courts, approximately 10% of such courts in the state.

### ***Summary of Key Findings***

The findings include descriptive information about Justice Courts as well as results of analyses of arraignment outcomes, and comparison of Justice Court arraignments with those of City Courts, and the statewide City and District Court data reported by DCJ.

**Justice Court caseloads:** We found that Justice Courts, in the counties studied here, process as many and sometimes more arraignments than do the city courts in the same counties. This is not altogether surprising, given population distributions across those jurisdictions. But it runs counter to the common stereotype of the Justice Court as miniature versions of City Courts, or courts that primarily adjudicate traffic and local ordinance violations. Moreover, this pattern holds in all four counties studied. This finding underscores the importance of including Justice Courts in a comprehensive study of the implementation and potential impacts of the 2019 court reforms.

Within counties, Justice Courts handle caseloads that are comparable to those of City Courts, which implies that their decisions affect the lives of comparable numbers of people who are arrested or otherwise involved in criminal adjudication. The mix of cases within those caseloads differ, however. Justice Courts appear to process more misdemeanor arraignments than do City Courts. Justice Courts' (and City Courts') mixes of case categories vary across counties, which may be attributable to real differences in the prevalence of offenses, or possibly to variation in law enforcement and prosecutorial priorities.

**Justice Court arraignments:** During the pre-reform period, over half of felony and 85% of misdemeanor Justice Court arraignments resulted in release on recognizance (or, more rarely, disposition at first appearance). However, these outcomes varied across the counties. In considering the impact of reform, researchers should be

attentive to this sort of variation, inasmuch as local practices or policies may not uniformly align with reform objectives, but such disparities may be obscured in aggregate analyses.

Justice Courts' arraignment outcomes were less restrictive than City Courts in the same counties. Justice Courts released without bail 10% more felony, and 25% more misdemeanor defendants than did City Courts.

Distribution of arraignment outcomes were relatively stable over the first part of the the two year period. By mid-2019, however, the rate of non-monetary release in Justice Court felony cases rose from 44% to 58%, with a corresponding reduction in bail setting. This probably represents a purposeful adaptation to the new policy on the part of court actors.

### ***Future Research Questions:***

As the project moves forward, the research staff will finalize data collection on cases opened from January 2020 through the first half of 2021. Here we highlight topics for more focused investigation and inquiry in future reports. In 2022-23, the Upstate Reform Project will address the following questions:

- What changes will be observed in comparing 2018-19 data with 2020-21 data? What was the impact of bail reform on Justice Court arraignments?
- Adjusting for changes in the frequency with which bail is imposed, what changes occurred in the amounts of bail set post-reform? Controlling for charge class and category, were bail amounts (when set) lower in 2020-21?
- What effects did bail reform have on the "downstream" outcomes in criminal cases – dispositions and sentencing? In particular, were reductions in pretrial detention associated with more use of diversion, reductions from felony to misdemeanor charges, and less punitive sentencing?
- Did bail reform result in more consistency in arraignment outcomes, dispositions, and sentences across Justice and City Courts?
- How much, and how consistently, did caseloads change in magnitude and in makeup post-reform? It is well established that arrests declined in 2020, and in some sites those declines have persisted. To what extent might changes in arrests and prosecutions be associated with changes in arraignment outcomes at the aggregate level?

## ***Conclusions***

New York's Justice Courts' are unfamiliar to many, including the general public, many criminal justice researchers, and even some state policy makers. Despite their low visibility (or perhaps in part because of it) they have historically survived efforts to incorporate them into the state's Unified Court System. Their place in the state's legal system is not well understood or documented. But their impact on justice outcomes is broad, and the decisions and outcomes in these courts are often underestimated as contributors to pretrial detention, convictions, and sentencing.

As New York and other states adopt reform policies that are aimed at remedying historic disparities in how cases are processed, it is important to ensure that lack of visibility does not result in lack of observed and measured impacts in overlooked parts of the criminal justice system. As the Upstate Reform Project continues to collect and analyze data, for this and subsequent reports, we hope to add to the small body of knowledge that exists, more fully describe variation and change in arraignment, bail, and disposition outcomes, and assess how progressive reform can be implemented in all corners of the legal system.

## **Appendix A: Data Coding and Standardization**

This appendix describes site-specific strategies for collecting and coding data, and the processes undertaken to ensure that measures were consistent across sites. We coded data only on closed cases, and hence at the time of this writing, we coded all variables of interest (including disposition, sentencing, and time to disposition) for the 2018 and 2019 samples, and we are in the process of doing the same with 2020 and subsequent data.

We retained in our samples only those cases that presented new criminal charges. We did not include cases that dealt with changes in legal status from previous cases (e.g., parole and probation revocations based on technical violations, sex offender registry and residency hearings, declarations of delinquency following conditional discharges, and re-sentencing). While counsel are assigned to these initial appearances, these do not present judges with the types of discretionary bail decisions that are the main focus of the 2019 reforms.

Extracting and standardizing data from these four sites (and the preliminary work for establishing protocols in the remaining site) was labor-intensive, and it required, as we expected, multiple site visits. The original plans for data collection, which were written in late 2019, began with a visit to two counties in January 2020, to familiarize project staff with local stakeholders and data sources. Needless to say, in the following twenty-four months, we have been obliged to adjust and readjust accessing our sites.

In Polar, Hudson, and Lake Counties the research team accessed the Public Defender's computer network to directly extract data from the PDCMS. In our fourth site, Bleek County, the assigned counsel program administrator gave us access to that office's paper records, including correspondence on assignment of counsel, eligibility applications from clients, and attorney vouchers (which detail dates and reasons for court appearances, as well as dispositions and sentences). In Morton County (to be included in future reports) we have accessed the District Attorney's case management system, and augmented those data with booking data from the county jail.

We note that data from the four sites reported here were coded from indigent defense program files, and those data do not represent the universe of cases filed, but rather, the caseloads that are handled by indigent defense providers. It is commonly estimated that 85% or more of people charged with crimes are eligible for indigent defense, so if our samples are not representative of the population of cases, we are missing only those cases in which defendants are deemed able to pay for counsel. Based on previous experience in these sites, we have observed that few applicants for counsel are turned away. Nonetheless, in this respect project data differ from the administrative data used in DCJ analyses.

## Appendix B: Operationalization of Charge Category

For the purposes of this preliminary report, the Upstate Reform Project adopted the DCJ operationalization of charge category in order to be consistent with their preliminary reports on NYC and other City Court data. This chart summarizes the charges (according to NY Penal Law Titles) associated with each category. It also details the charge categories that were combined as "other" in the DCJ categorization.

Charge Category	Penal Law Titles
Person	<ul style="list-style-type: none"> <li>• 120 (Assault and Related Offenses)</li> <li>• 121 (Strangulation and Related Offenses)</li> <li>• 125 (Homicide, Abortion and Related Offenses)</li> <li>• 130 (Sex Offenses)</li> <li>• 160 (Robbery)</li> </ul>
Property	<ul style="list-style-type: none"> <li>• 140 (Burglary and Related Offenses)</li> <li>• 150 (Arson)</li> <li>• 155 (Larceny)</li> <li>• 165 (Unauthorized use of property, possession of stolen property)</li> </ul>
Drugs	<ul style="list-style-type: none"> <li>• 220 (Controlled Substances )</li> </ul>
Marihuana	<ul style="list-style-type: none"> <li>• 221 (Offenses Involving Marihuana)* repealed March 2021</li> </ul>
Weapons	<ul style="list-style-type: none"> <li>• 265 (CPW, Unlawful Possession of Weapon, Criminal Sale of Firearm)</li> </ul>
VTL	<ul style="list-style-type: none"> <li>• All Vehicle and Traffic, including DWI, DWAI</li> </ul>

Other: All offenses **not located in the Penal Law** and **all offenses not included above:**

- 100 (Criminal solicitation)
- 105 (Conspiracy)
- 115 (Criminal Facilitation)
- 135 (Kidnapping, Coercion and Related Offenses)
- 145 (Criminal Mischief and Related Offenses)
- 156 (Offenses involving Computers)
- 158 (Welfare Fraud)
- 170 (Forgery and Related Offenses)
- 175 (Offenses Involving False Written Statements)
- 176 (Insurance Fraud)
- 177 (Health Card Fraud)
- 178 (Criminal Diversion of Prescriptions)
- 179 (Criminal Diversion of Medical Marijuana)
- 180 (Bribery)
- 185 (Frauds on Creditors)
- 187 (Residential Mortgage Fraud)
- 190 (Other Frauds)
- 195 (Official Misconduct)
- 200 (Bribery Involving a Public Servant)
- 205 (Escape and Offenses Relating to Custody)
- 210 (Perjury)

- 215 (Offenses Relating to Judicial Proceedings)
- 222 (Offense Involving Cannabis)
- 225 (Gambling Offenses)
- 230 (Prostitution Offenses)
- 235 (Obscenity and Related Offenses)
- 240 (Offenses Against the Public Order)
- 241 (Harassment of Rent Regulated Tenants)
- 242 (Offenses Against Service Animals and Handlers)
- 245 (Offenses Against Public Sensibilities)
- 250 (Offenses Against the Right to Privacy)
- 255 (Offenses Against the Marital Relationship)
- 260 (Offenses Relating to Children, Disabled Persons and Vulnerable Elderly Persons)
- 263 (Sexual Performance by a Child)
- 270 (Other Offenses Relating to Public Safety)
- 275 (Offenses Relating to Unauthorized Recordings)

## Notes

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<sup>1</sup> While the project team initially collected data on all arraignments, for analyses and reporting only new cases were included. This excluded, for example, arraignments on violation of parole or probation charges, and contempt charges stemming from existing order of protection violations.

<sup>2</sup> For a succinct analysis of the components of these reforms, see Michael Rempel and Krystal Rodriguez, 2019/updated 2020, *New York's Bail Reform Law: Summary of Major Components* (Center for Court innovation) at [https://www.courtinnovation.org/sites/default/files/media/document/2019/Bail\\_Reform\\_NY\\_Summary.pdf](https://www.courtinnovation.org/sites/default/files/media/document/2019/Bail_Reform_NY_Summary.pdf). The laws were subsequently amended in April 2020, with changes that took effect in July 2020. These changes primarily returned a number of specific charges to the “bail qualified” roster – cases for which judges had discretion to set bail.

<sup>3</sup> Olive Lu, M.S., Erica Bond, J.D., & Preeti Chauhan, Ph.D., *Assessing the Potential Impact of 2020 Bail Reforms on 2019 New York City Criminal Court Cases January 2021* (Revised February 2021) Data Collaborative for Justice, John Jay College. For more information on the DCJ's extensive work on bail reform, please see <https://datacollaborativeforjustice.org/work/courts>.

<sup>4</sup> While recent legislation directed OCA to begin collecting some case information from Justice Courts (to be made public in standardized form), that process was only initiated in late 2020 – too late to provide comparative data for evaluating the 2019 reforms.

<sup>5</sup> Complete data from one of the counties could not be fully accessed, coded, and cleaned at the time of this writing, largely due to COVID restrictions on access to agencies and facilities where the data reside. However, we include all five counties in our descriptions of site selection and data collection protocols, as a prelude to future data reports.

<sup>6</sup> In 2019 the Fund for Modern Courts estimated that there were approximately 1300 town and village courts in New York; see *Fines and Fees and Jail Time in New York Town and Village Courts: The Unseen Violation of Constitutional and State Law* (April 3, 2019) at <http://moderncourts.org/wp-content/uploads/2019/04/Fines-and-Fees-and-Jail-Time-in-New-York-Town-and-Village-Justice-Courts-The-Unseen-Violation-of-Constitutional-and-State-Law.pdf>. An earlier, more precise count was offered by the Office of the Comptroller in 2010: 1246 (T. DiNapoli, *Report on the Justice Court Fund*, Office of the State Comptroller, 2010), at <https://www.osc.state.ny.us/files/local-government/publications/pdf/justicecourtreport2010.pdf>

<sup>7</sup> New York Commission on Judicial Conduct, 2019. Town and Village Courts.

<sup>8</sup> K. Curtis and A.L.B. Davies, 2014. *Summary Report of the 2014 Survey of Town and Village Magistrates: Counsel at First Appearance*. Albany NY: New York State Office of Indigent Legal Services.

<sup>9</sup> Over the past five years many counties have experimented with centralized arraignment parts, which typically establish a schedule (often including evenings) of rotating judges who hold arraignments shortly after arrests. These CAPs not only ensure that counsel is present for all arraignees, but also relieve judges of being on call for off-time arraignments. They also have the potential to reduce unnecessary pretrial detention because individuals charged with crimes are arraigned quickly, without the possibility of 24-48 hour detention awaiting court opening.

<sup>10</sup> The Justice Courts are required to report fines and fees levied in criminal convictions to the state Office of the Comptroller, which allocates those monies, via a complex formula, to the state, to the county of origin, and, importantly, to the town or village that imposed the financial penalty. See *Office of the Comptroller: Justice Court Fund* at <https://www.osc.state.ny.us/local-government/required-reporting/justice-court-fund>. Justices are required to complete forms that list the names, charges, and sentences imposed on cases disposed in their courts, in order for their jurisdictions to be reimbursed. These forms are not, to the authors' knowledge, in the public domain; indeed, it appears that many of them are completed by hand, although an electronic filing option exists. See the *Justice Court Fund Handbook*: <https://www.osc.state.ny.us/files/local-government/publications/pdf/jch.pdf>. It is not clear whether these forms are retained in the Comptroller's office and, if so, for how long. These forms do not appear to include cases that did not involve financial penalties.

<sup>11</sup> Of the fifty most populous municipalities (populations 35,000 or more) in New York outside New York City, 27 are towns or villages.

<sup>12</sup> For example, as reported by the OCA, while Albany County's 2020 criminal caseload was concentrated in Albany City Court, the Colonie Town Justice Court processed more cases than the City Courts in both Cohoes and Watervliet. Likewise, in Erie County, Cheektowaga Town Justice Court arraigned about twice as many cases as

Lackawanna City Court and Tonawanda City Court put together. (*OCA-STAT Act Report*, NYCOURTS.GOV, Office of Court Administration, 2022; see <https://ww2.nycourts.gov/oca-stat-act-31371> )

<sup>13</sup> See *New York Courts.Gov – Court Outside New York City*, Office of Court Administration, at <https://www.nycourts.gov/courts/cts-outside-nyc-DISTRICT.shtml>, for more information on the structure and history of the District Court innovation.

<sup>14</sup> Jingyi Fei, 2022. *Lay Judges vs. Lawyer Judges: How Much Difference can a Law Degree Make?* (unpublished dissertation, University at Albany SUNY).

<sup>15</sup> Special Commission on the Future of the New York State Courts, *Justice Most Local: The Future of Town and Village Courts in New York State*, 2008. See also Joe Seton, *Despite Exposés and Embarrassments, Hundreds of Judges Preside In New York Without Law Degrees*, Pro Publica, 2017; and Matt Ford, *When Your Judge Isn't a Lawyer*, Atlantic Monthly, February 2017.

<sup>16</sup> The Honorable Janet Fiore. 2022. *State of Our Judiciary*. New York State Unified Court System, at [https://www.nycourts.gov/whatsnew/pdf/22\\_SOJ-Speech.pdf](https://www.nycourts.gov/whatsnew/pdf/22_SOJ-Speech.pdf).

<sup>17</sup> The abrupt shift to virtual arraignments was more challenging in some counties than in others. Virtual meetings were new to most court personnel in our site counties. Accessing adequate resources, and getting buy-in from court staff was important in ensuring that virtual court proceedings would not only work, but also be deemed an adequate alternative to in-person proceedings. In some site counties, judges encountered difficulty with unfamiliar software, and some resided in areas with limited or no internet access. Reopening plans for NYS courts were tied to infection rates as monitored by the state Department of Health, and “returning to normal” varied across time, and across jurisdictions. COVID-19’s medium- and long-term impacts on the courts cannot yet be fully documented, but we note that the disruption went beyond court hearings. In all sites, court staff went through multiple phases of working from home. As counties became alarmed about budgets, some staff were furloughed.

<sup>18</sup> The pandemic had implications for project data collection. Courthouses, public defenders, and district attorneys adopted safety protocols that limited access by non-employees. Project site visits were not possible during the first six months of the pandemic, and again at several stages during the following two years. The most significant consequence for the project was the longer lag between arraignment and disposition: data could not be coded for cases until they were disposed, which meant that many cases opened in late 2019 through early 2021 were not accessible on the timetable originally planned.

<sup>19</sup> In keeping with our IRB approval terms, we restricted coding to cases that were disposed, to ensure that we were not in possession of case information in ongoing matters. Because it can take over one full year for some cases to close out, coding was not completed until we estimated that 95% of cases opened during that time period had closed and could be added to the data.

<sup>20</sup> Personal correspondence with Olive Lu and the Data Collaborative for Justice. See also Olive Lu, M.S., Erica Bond, J.D., & Preeti Chauhan, Ph.D., *Assessing the Potential Impact of 2020 Bail Reforms on 2019 New York City Criminal Court Cases January 2021* (Revised February 2021) Data Collaborative for Justice, John Jay College.

<sup>21</sup> We note that in 2018 possession and use of marijuana was a misdemeanor and as of July 29, 2019 was decriminalized to a violation.

<sup>22</sup> In New York an adjournment in contemplation of dismissal (often abbreviated ACOD or ACD) is a disposition that puts the case on hold for six to 12 months, after which, if the charged individual has not been arrested on another charge or otherwise violated any conditions (such as adhering the protective order provisions), the case is automatically dismissed without a hearing, and the case is sealed, so that, at least in theory, there is no record that it was adjudicated.

<sup>23</sup> We note that New York law has long provided multiple options for bail, but our data suggest that upstate jurisdictions, at least through 2019, have relied almost exclusively on cash bail and traditional bail bonds.

<sup>24</sup> Detailed results on these frequencies available from authors.

<sup>25</sup> Vehicle and traffic law (VTL) cases, in these data, are not dominated by minor speeding and traffic infractions, because in most such cases people arrested on these charges would not be considered eligible for indigent defense. Less than 5% of the VTL cases in these samples are violation level offenses, about 80% are misdemeanors, and 15% are felonies.

<sup>26</sup> Approximately 2.5% of cases were missing adequate information on bail decisions and outcomes to permit coding of this variable. Those cases are omitted from these analyses.

<sup>27</sup> Olive Lu, Quinn Hood, Erica Bond, Maya Tellman, Preeti Chauhan. 2019. *Assessing Potential Impacts of 2020 Bail Reforms in New York City*. Data Collaborative for Justice, John Jay College of Criminal Justice.

<sup>28</sup> Notably, Bleek County had not yet begun its county-wide program to provide counsel at first appearance at the end of 2019, which no doubt accounts for the absence of dispositions at that point. Previous research suggests that counties that initiate programs to ensure counsel at arraignment experience reductions in pretrial detention, through various adaptations (for example, judges may release more arraignees on recognizance and more ROR and RUS, or lower bails set that defendants can post). See A.P. Worden, A. Davies, R. V. Shteynberg, K. A. Morgan, *Early Intervention by Counsel: A Multi-Site Evaluation of Presence of Counsel at Defendants' First Appearances in Courts*. National Institute of Justice, 2020 (see <https://nij.ojp.gov/library/publications/early-intervention-counsel-multi-site-evaluation-presence-counsel-defendants> ).

<sup>29</sup> Because the seventh category, "other," is a heterogeneous mix of charge categories, we did not expect any interpretable pattern to emerge from temporal analysis and do not include it in these results. See Appendix B for a breakdown of Penal Law Titles included in each category.