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The John F. Finn Institute
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Evaluating the Impacts of Desk Appearance Ticket Reform in Rural and Suburban New York, 2018-2022

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Executive Summary

In April 2019 the New York State Legislature passed a suite of criminal justice reforms that went into effect on January 1, 2020. The reforms included significant changes in police officers' discretion to make custodial arrests, which lead people to be detained for up to 24 hours by law (and longer for those arrested on weekends or holidays in some counties). In almost all misdemeanors and many Class E felonies, the new law directed police to issue desk appearance tickets (DATs), which allow people to return home and appear for their arraignment at a later date. The same set of reforms also restricted judges' discretion in setting bail or detaining people at arraignment; they were directed to release people under recognizance, supervision, or conditions on most cases involving misdemeanor and non-violent felony charges.

In this report we examine the implementation and impact of DAT reform in a sample of New York's Town and Village Justice Court jurisdictions. The state's approximately 1,200 Justice Courts were established in counties' suburban and rural towns outside incorporated cities. Justice Courts perform the same functions as City Courts: arraignment of felony, misdemeanor, and violation charges arising within their geographic boundaries, bail and release decisions in those cases, and adjudication and sentencing in misdemeanor and violation charges. This report investigated the use of DATs in sample of arrests made in Justice Courts located in six counties: two largely suburban counties that include mid-sized cities, and four largely rural counties that are each home to one or two small cities. Our analysis of arrests and DAT issuance rates from 2018 to 2022 suggests the following.

Contextual Changes in Arrests and the Composition of Charges

- **Declining Arrests in the 6 Counties Studied: *The numbers of arrests in all classes of offenses declined from 2018 to 2022.*** The decline in arrests during 2020 was followed by a rebound in 2021; yet when arrest rates largely stabilized in 2021 and 2022, they did so at levels significantly lower than in 2018. This decline was most marked in misdemeanor arrests.
- **Small Number of Common Charges: *A small number of specific offense charges (13) account for about 75% of all arrests.*** Among misdemeanors in particular, the most common arrest charges in these suburban and rural jurisdictions were driving while intoxicated (40%), drug possession (16%), and petty larceny (9%).

Changes in DAT Issuance

- **Lack of Apparent Changes Linked to Reform:** Despite the intent of DAT reform, *there is little evidence of an overall increase in DAT issuance in misdemeanor arrests – about 75% resulted in a DAT across all 6 counties throughout the 2018-to-2022 study timeframe.* However, DAT rates in Class E felonies (a target of reform) and Class D felonies (not a target of reform) both increased substantially over time. These increases in DAT use in E and D felonies appear to have begun *prior to January 2020* – raising the possibility that pre-existing trends of fewer custodial arrests, and not the DAT reforms per se, may largely explain these patterns.
- **Results Varied by County: Context matters. The six counties demonstrated different patterns of DAT usage.** In misdemeanor arrests, DAT rates increased (albeit modestly) in three counties, decreased in one county, and remained stable in the other two counties.

Overlapping Policy Changes

Ensuring Access to Counsel in Justice Courts: DAT reform took effect in the midst of another statewide reform: ensuring the presence of counsel at arraignment in all courts. Prior to 2016, and as a result of their often non-regular, impromptu scheduling of arraignments, many and perhaps most custodial arrest arraignments in Justice Courts were conducted without the presence of a defense lawyer, a prosecutor, or both. In 2015, the final settlement of the landmark case *Hurrell-Harring v. State of New York* established the principle that the 6th Amendment right to counsel includes the right to an attorney at arraignment. The result was an imperative that courts find ways to ensure not only that arrested persons were arraigned in a timely fashion, but also that they had access to counsel at first appearance (CAFA). In principle, that imperative applied to all arraignments, whether they occurred in the aftermath of a custodial arrest or a DAT.

In Justice Courts, right to counsel reforms and DAT reforms may work at cross-purposes. From 2016 to 2022, Justice Courts in 26 counties established **centralized arraignment parts**, which meet daily in a single location to arraign custodial arrest cases from all Justice courts, with defense lawyers deployed to each arraignment session. For security reasons, these sessions are typically held in the visiting rooms of county jails. While these sessions safeguard the constitutional right to representation at first appearance in court, they may also result in several hours of detention for people who must wait in the jail until the court session convenes. Notably, these people may include individuals for whom bail reform prescribes pretrial release in lieu of detention. Thus, centralized arraignment courts are a novel strategy to advance

the right to counsel in rural areas, but they may inadvertently result in pre-arraignment detention.

Summary

The findings in this report indicate that DAT reform produced some of the outcomes that were expected in some counties. However, ***overall misdemeanor DAT rates did not change consistently across Justice Courts in the six counties studied.*** Class E and especially D felony DAT rates began to steadily increase months *before* DAT reform went into effect. Moreover, had DAT reforms produced its intended larger effect on DAT rates, it may have had unintended consequences. For example, county strategies to ensure legal representation at Justice Court arraignments, begun several years before the 2020 reforms, may inadvertently result in pretrial detention as individuals must wait for centralized arraignment sessions in detention. But these same county strategies represent a solution to what had previously been the inconsistent provision of counsel.

Further research is needed to (1) expand the scope of data collection in sampled counties to follow trends beyond the early implementation and pandemic time periods, (2) further assess the magnitude of detention associated with centralized arraignment parts, and (3) investigate the adaptations that local practitioners have made to optimize the impact of the reforms.

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Chapter 1. Introduction: Reform in the Context of New York's Town and Village Justice Courts

In April 2019, the New York State legislature adopted sweeping pretrial reforms that reinvented arrest practices, bail setting, discovery rules, and pretrial supervision of people arrested on criminal charges. Legislators passed these reforms primarily to reduce unnecessary pretrial detention by eliminating the use of cash bail in misdemeanors and nonviolent felonies, and directing judges to consider people's financial resources when they do set bail.

The same 2019 legislation also significantly changed laws governing police officers' use of desk appearance tickets (hereafter, DATs). In New York, a DAT is a form issued by a police officer that directs a person arrested for a crime to appear for arraignment on a designated later date, rather than be booked in jail pending arraignment. Typically, when an officer declines to issue a DAT, the individual is taken into custody and put in pre-arraignment detention for up to 24 hours by law (though, in practice, detention could be longer for those arrested on weekends in some counties). The goal of bail reform was to reduce the number of people whose pretrial detention is measured in weeks or months; the goal of DAT reform was to reduce the number of people whose pre-arraignment detention measured in hours or days.

Bail reform and discovery reform have been the subject of significant public, political, and media attention, but changes to DAT laws have attracted comparatively little notice. This report examines the implementation of DAT rules in a sample of rural and suburban jurisdictions in New York. Much of what we know about New York State's criminal courts has been based on data from City Courts, where arraignment protocols are relatively standardized. Outside those courts, the state's 1200 town and village Justice Courts function quite differently, particularly in processing arraignments. This report examines the impact of DAT reform on arrest and arraignment practices in a sample of these courts.

About New York's Desk Appearance Ticket Reforms

Put into effect January 2020, the reform law required police to issue DATs in lieu of custodial arrests for a wide range of offenses, including almost all misdemeanor charges and lower (Class E) felony charges. Exceptions include alleged domestic violence and sex offenses, cases where police have a reasonable expectation the court will issue an order of protection at arraignment, or a suspension of a driver's license; open warrants; a prior history of failure to return for court dates; and cases in

which the arresting officer cannot confirm the individual's identity. The new law also stipulated that arraignments must be scheduled within 20 days of DAT arrests, and required that officials provide court date reminders by the medium of the arrested person's choice (e.g., text, email, or post).

DAT reform was intended to alter the way most arrests are transmitted into court arraignments by reducing the frequency with which law enforcement agencies detain individuals after arrest, until arraignment. This report examines stability and change in arrest outcomes in the two years before, and the two and a half years after January 2020.

Research Questions Examined in this Report

We investigated the use of DATs in six counties' rural and suburban jurisdictions before and after the reforms took effect in January 2020, using data on arrests made by New York State Police officers in those counties, spanning the months from January 2018 through June 2022.

This report is a companion to studies of the state's City and District Courts that have been undertaken by the Data Collaborative for Justice (DCJ) at the John Jay College of Criminal Justice, and to a forthcoming evaluation of bail reform in Justice Courts.¹ We address the following questions:

- **Context: Justice Courts vs. City Courts in Upstate New York:** How are Justice Courts similar to and different from City Courts in upstate New York? What implications might those differences have for DAT reform implementation? As a prelude to presenting analyses of arrest practices before and after January 2020, we describe a suite of court reforms addressing the 6th Amendment right to counsel that emerged before (and largely independently from) bail and DAT reform, and that may have consequences for arrest practices and their aftermath as well.
- **Overall Arrest Trends:** How did arrest patterns change over time in these six counties' towns and villages, and what were the distributions of charge classes (felonies, misdemeanors, and violations) and common charge offenses?
- **Frequency of DAT Issuance:** How frequently did arrests result in DATs as opposed to a custodial arrest before and after the implementation of recent DAT reforms? Did DAT issuance rates vary over time within charge classes? Is there evidence of racial disparities in DAT issuance, over time and across charge classes?

- **Differences Based on Charges:** Does the use of DATs vary across charges, and how, if at all, did DAT reform affect preexisting differences in DAT issuance by charge (for misdemeanors and Class E felonies) and across specific common charges?
- **Differences Based on County:** Did the use of DATs vary across counties prior to reform, and did the adoption of new practices under reform vary?
- **Implications for Court Operations:** What implications might the increased use of DATs have for post-arraignment proceedings and outcomes?

Justice in Rural and Suburban New York: About Justice Courts

New York has two kinds of trial courts that adjudicate criminal charges.² The first are under the umbrella of the state’s Unified Court System, which oversees City Courts, District Courts and County Courts. The second is the post-colonial patchwork of **approximately 1,200 Justice Courts** that serve rural and suburban jurisdictions outside incorporated cities’ limits. Both City and Justice Courts arraign all charges that arise within their geographic jurisdictions, and both adjudicate and sentence misdemeanors and violations as well as felonies that when charges are reduced to misdemeanors. While most researchers, many state residents, and even policymakers are unfamiliar with the breadth of the Justice Courts’ work, these courts play a large role in processing criminal cases. **There is no absolute count of cases processed by the Justice Courts, but recent research in a sample of upstate counties reveals that in four out of the five counties Justice Courts arraigned more cases than did those counties’ City Courts.**³

While they have nearly identical responsibilities, these two sets of courts differ across many dimensions, including the protocols through which arrests proceed to arraignments.⁴ City Courts are overseen by judicial administrative districts. They adhere to the standards of the Unified Court System, and they report data to the state Office of Court Administration. City Court judges must be members of the state bar in good standing, and their courts are in session during the traditional work week. In short, they have the characteristics that are typically associated with criminal courts. Following an arrest in city jurisdictions, police have three options: (1) officers may (and as of 2020, usually must) issue an appearance ticket for most misdemeanor and Class E felony charges; (2) they may transport an individual to a court that is already in session for arraignment; or (3) if court is not in session they may detain the person, typically in the county jail or a designated pretrial detention facility, for up to 24 hours until court opens.⁵

In contrast, New York's Justice Courts are not courts of record and do not submit case data to state agencies.⁶ Justice Court judges need not have (and in fact, seldom hold) law degrees or bar membership. City Courts are funded by the state; Justice Courts are largely funded by town and village governments.

For the purpose of examining the use of DATs, the most important differences between the two types of courts are these:

- **Schedule and Frequency of Operation:** While City Courts are open during regular business hours five days per week, Justice Court judges are part-time officials, and they hold court sessions as frequently as once a day (typically for several hours in evenings), or as seldom as twice per month.⁷
- **Off-Hours Arraignment Protocols:** Because arraignments must occur within a reasonable time after arrest (within 24 hours by State law), Justice Court judges are expected to make themselves available for arraignments, when needed, any time of the day or night, including weekends, if requested by law enforcement.

Thus, police officers face somewhat different arrest options in Justice Court jurisdictions. They may issue appearance tickets, typically with a return date of about two weeks. In the case of a custodial arrest, if the appropriate court happens to be in session, they can transport the person to court. But most of the time that court would not be in session, and the next court session might be days or even weeks away, so instead they have historically been expected to arrange for an off-hours arraignment by contacting one of the Justices in that town (or an adjacent town) to hold arraignment within the next few hours.

The Challenge of Assuring the Right to Counsel in the Justice Courts

As a result of their often non-regular, impromptu scheduling of arraignments, many and perhaps most custodial arrest arraignments in Justice Courts have been conducted without the presence of a defense lawyer, a prosecutor, or both. (For simplicity's sake, we shall use the term "off-hours arraignment" to refer to all arraignments that occur when police officers transport people to court, although a small number of them will occur when that court is actually in session.)

This practice, while allowing adherence to the state's requirement for timely arraignment, nonetheless is cumbersome and resource-intensive. It became even more challenging when reformers initiated policies and practices that would guarantee legal

representation at arraignments. In 2015 the final settlement of the landmark case *Hurrell-Harring v. State of New York* established the principle that the 6th Amendment right to counsel includes the right to an attorney at arraignment. The result was an imperative that courts find ways to ensure not only that arrested persons arraigned in a timely fashion, but also that they had access to counsel at first appearance (CAFA).⁸ In principle, that imperative applied to all arraignments, whether they occurred in the aftermath of a custodial arrest or a DAT.

At that time, many City and District Courts across the state had in place protocols that coordinated access to counsel at arraignment, and as state funds became available for CAFA programs the number of those courts increased.⁹ However, few Justice Courts had protocols for providing counsel for the majority of who appeared for arraignment. Even with additional resources, implementation of CAFA has been particularly challenging in Justice Courts, due to the large number of courts, small caseloads, and geographic dispersion of the courts.¹⁰ Most counties do not have enough indigent defense providers to staff court sessions across multiple courts or be on call for all off-hours arraignments.

By 2016, state authorities and defense providers began to converge on a solution that promised to streamline and consolidate arraignments while ensuring CAFA in Justice Courts: centralized arraignment parts (CAPs).¹¹ CAPs are sessions used only for arraignments, and they convene regularly in a central county location to arraign off-hours cases. By 2022 26 counties had established CAPs.¹²

While some early versions of CAPs met only on weekends, the most common model now are CAPs that convene twice each day, seven days a week, that have lawyers present, and that arraign all cases that resulted from a custodial arrest in the preceding twelve hours within a county.¹³ Justice Court judges take turns presiding over CAP sessions, which are held in county public safety buildings. In our site counties with CAPs, county jails had set aside cells for people awaiting arraignment. After arraignments, cases are returned to their jurisdiction of origin.

While the state's Office of Court Administration has strongly encouraged adoption of CAPs, fewer than half of upstate counties have created one, and those that have adopted CAPs are predominantly rural counties.

Significantly, where they do exist, CAPs have changed the decision matrix for police officers in towns and villages. Rather than calling judges' homes or offices subsequent to custodial arrests, they now have the option of transporting individuals to the CAP location. Because CAPs were created not for the convenience

of criminal justice agents but rather to ensure presence of counsel and briefer potential periods of detention (less than twelve hours), by 2020 they were widely regarded as the preferred remedy for the challenges to ensuring access to counsel at arraignments in suburban and rural courts.

The CAFA and CAP initiatives evolved before bail and DAT reform, and emerged from different authorities. CAFA and CAP were advanced by state agencies (the Office of Indigent Legal Services and the Office of Court Administration), while bail and DAT reforms were creations of the legislature.

Tradeoff: Weighing a DAT vs. Custodial Arraignment in Justice Courts

How might these intersecting reforms affect people facing arrest and arraignment in Justice Courts?

- **Benefits of a DAT:** It would seem, *prima facie*, that the arrest outcome most aligned with a key reform objective, reducing pretrial detention, would be issuance of an appearance ticket, which spares people the trauma, indignity, and inconvenience of being held, even for a few hours, prior to a court appearance.¹⁴
- **Potential benefits of a custodial arrest:** In counties with CAPs, custodial arrests are now channeled through a centralized arraignment part which guarantees the presence of legal counsel. But people who received appearance tickets may arrive at their scheduled court appearances and find that there is no lawyer present to assist them. On the other hand, being arraigned in a CAP court ensures counsel, but it comes with the prospect of up to twelve hours of detention while awaiting the next session.

Why does this matter? Research suggests that the presence of an attorney at arraignment makes a difference in release and bail outcomes. Recent studies reported that when an attorney is present, judges are more likely to release people on recognizance or under supervision, and, if bail is set, to set lower bail, across charge types.¹⁵ The evidence suggests that even with little time to confer before approaching the judge, an attorney can advise a client on court procedures, make a case for release and conditions for release, provide information on diversion options, and initiate eligibility determinations for public defender services. On the other hand, even brief detention – for the purpose of transport to a local court for arraignment, or while awaiting CAP arraignment, entails handcuffs and a ride in the back of a patrol car. In short, protocols that ensure CAFA may reduce pretrial detention after arraignment, but they may inadvertently increase pre-arraignment detention.

Summary: Evaluating DAT Reforms in Justice Court Settings

The hand-off from arrests to arraignment is challenging in Justice Courts because those courts are in session only a few hours per week, they are widely scattered across large rural and suburban areas, and police officers and judges are obliged to figure out ways to conduct arraignments in a timely manner, typically within 24 hours of arrests.

Furthermore, reforms underway prior to bail reform, particularly programs that were meant to ensure that defense lawyers are present at arraignments (CAFA) faced practical challenges based on geography, law enforcement resources, courtroom security, and judicial staffing. The emerging remedy to these challenges is the creation of centralized arraignment part courts (CAPs), which bundle arrests over 12-hour periods, are conducted in buildings that have appropriate security and holding facilities, and can be regularly staffed by defense lawyers. In practical terms, however, there may be a tradeoff between ensuring counsel at arraignment, and minimizing pretrial detention.

We have detailed these reforms – CAFA and CAPs – to document the context in which law enforcement and Justice Courts adapted to DAT reform. Below we describe the methods and data used to examine those adaptations.

Chapter 2. Data and Research Methods

We analyzed data from arrests made by New York State Police in towns and villages in six upstate New York counties from January 2018 through June 2022.

About the Six Sampled Counties

Table 1 describes the six counties. Two are home to larger cities, surrounded by predominantly suburban towns and villages (Counties 1 and 2). The other four are home to one or two small cities, but are otherwise populated by small rural communities. County names are anonymized by agreement with research partners in multiple agencies in these sites.

Five counties had a version of CAFA in place for Justice Courts arraignments during the entire study period; County A began to provide counsel in Justice Courts when it initiated centralized arraignment in February 2020. Three counties (Counties 2, 4, and 6) had some version of CAP in place by 2018; and two did not have centralized arraignment.

Table 2: Characteristics of Site Counties				
County	Demography	Number of Justice Courts	Town Population Estimate as % of County	Population Per Square Mile
County 1	Suburban / Large City	~25	70%	1000
County 2	Suburban / Large City	~30	70%	600
County 3	Rural / Small City	~25	85%	350
County 4	Rural / Small City	~20	70%	150
County 5	Rural / Small City	~25	65%	100
County 6	Rural / Small City	~40	60%	200

Data Source and Sampling Frame

Data were included on misdemeanor and felony arrests made by New York State Police officers in towns and villages from January 1, 2018 to June 30, 2022.¹⁶

We note that these data are a non-random sample of arrests processed in these jurisdictions. Besides the New York State Police, sheriff's deputies and town and village police department officers (where they exist) make arrests as well.¹⁷ For most of these analyses (those for which sample sizes are sufficient), we examine class D and class E felony charges and misdemeanors. Misdemeanors and E felonies were the target of DAT reform, but we also include D felonies, when feasible, to allow a comparison with a class of charges that, like E felonies, has a sentencing range that includes probation, or a sentence of one or more years, but was not subject to the DAT reforms. We also examine arrests broken out by specific common charges for misdemeanors.

The results reported below, and our interpretations of them, are informed not only by the data, but also by multiple site visits to our counties, conversations with practitioners, review of local media and press releases, and sharing of preliminary findings with key criminal justice actors to ensure that our interpretations of findings did not overlook local events or constraints that were not obvious to the casual observer.

Chapter 3. Arrest Trends: January 2018 to June 2022

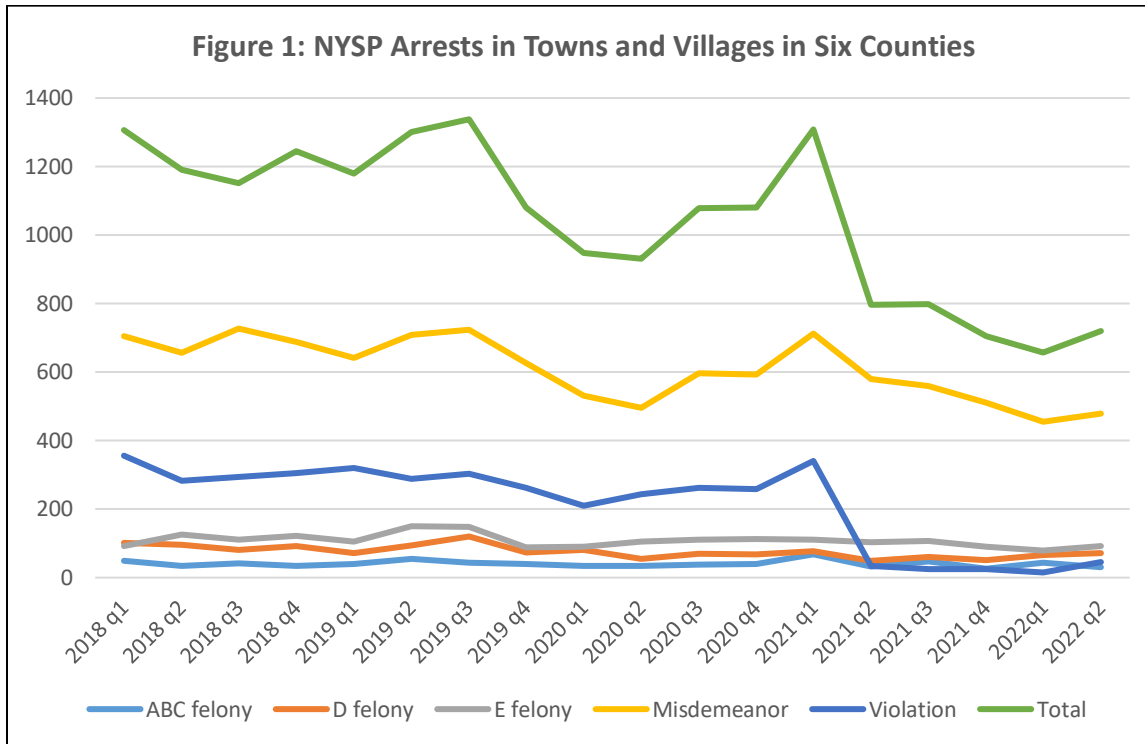
This chapter presents overall trends throughout the sampling period in custodial arrests and DATs combined, both for different classes of charges and for the most common E felony and misdemeanor offense types. The next chapter examines changes in DAT practices.

Arrest Trends by Charge Class

Figure 1 depicts trends in arrests across charge classes in the six sites, by quarter and year

- **Felonies:** Across all six counties, the number of New York State Police Class A, B and C felony arrests dropped slightly (from 85 in the first six months of 2018 to 73 in the first two quarters of 2022) as did the number of D felonies (197 to 157) and E felonies (219 to 171).
- **Misdemeanors:** The number of misdemeanor arrests remained stable, at about 700 per quarter, until the end of 2019; arrests, dropped in 2020, then returned briefly to that level in the first quarter of 2021, and then began a gradual decline.
- **Violations:** Violation-level offenses (which are non-criminal charges) also declined from 2018 through early 2021, and then dropped sharply in the second quarter of 2021. This decline may be due, at least in part, to changes in New York's marijuana laws.¹⁸
- **Changes in arrests over time:** Overall, arrests peaked in the third quarter of 2019, and dropped sharply by the 2nd quarter of 2020. After a second peak in the first quarter of 2021, the counts tapered off for the remainder of the study period. These shifts were most pronounced in DWI arrests.

Among violations – minor offenses that do not qualify as criminal charges and that do not result in a criminal record - 95% resulted in issuance of appearance tickets. For the remainder of this report, we set aside Class A, B and C felonies, and violations, and focus primarily on these three charge classes: misdemeanors and Class E and D felonies. (The DAT reform law did not affect Class D felonies, though data on them are presented for comparative purposes.) The data contains 10,441 arrests of individuals.



Arrest Trends by Common Charge Types

Table 2 reports the 5 most common E felony charges and the 8 most common misdemeanor charges, for six-month periods.

- Vehicle and traffic charges (VTL):** For both E felonies and misdemeanors, vehicle and traffic charges constitute over 40% of all top charges in NYSP arrests. New York’s VTL code includes many charges that are infractions or violations, and that do not create a criminal record upon conviction. We exclude them from these analyses.
- Five specific offenses dominate both felony and misdemeanor arrests:** Driving while intoxicated, driving with a suspended or revoked license, criminal mischief (property damage), theft, and contempt of court (typically violations of orders of protection).
- Offenses against persons:** Crimes that have identifiable victims constitute a relatively small percentage of all charges within classes: 8% of E felony arrests and 7% of misdemeanor arrests.

- **Marijuana:** 16% of misdemeanor top arrest charges involve drug possession, and this charge is primarily used for marijuana possession.

These five specific E felony charges comprise 72% of all E felony arrests, and these eight specific misdemeanor charges constitute 78% of all misdemeanor arrests. Figures 2a, 2b, and 2c report arrest rates for these charges across 6-month periods.

Table 2: Most Common E Felony and Misdemeanor Charges			
E Felony charges		Type	% total of class
VTL 511.03	Aggravated unlicensed operation of a motor vehicle	traffic	31%
VTL 1192	Driving while intoxicated	traffic	16%
PL 155.30	Grand larceny 4 th degree	property	9%
PL 145.05	Criminal mischief 3 rd degree	property	8%
PL 215.51	Criminal contempt 1 st	person	8%
Misdemeanor charges		Type	% total of class
VTL 1192	Driving while intoxicated	traffic	40%
PL 220.03	Criminal possession of controlled substance 7 th	drug	16%
PL 155.25	Petty larceny	property	9%
PL 145.00	Criminal mischief 4 th	property	4%
PL 215.50	Criminal contempt 2 nd	person	3%
PL 260.10	Endangering the welfare of a child	person	2%
PL 120.00	Assault 3 rd	person	2%
VTL 511.01	Aggravated unlicensed operation of a motor vehicle	traffic	2%

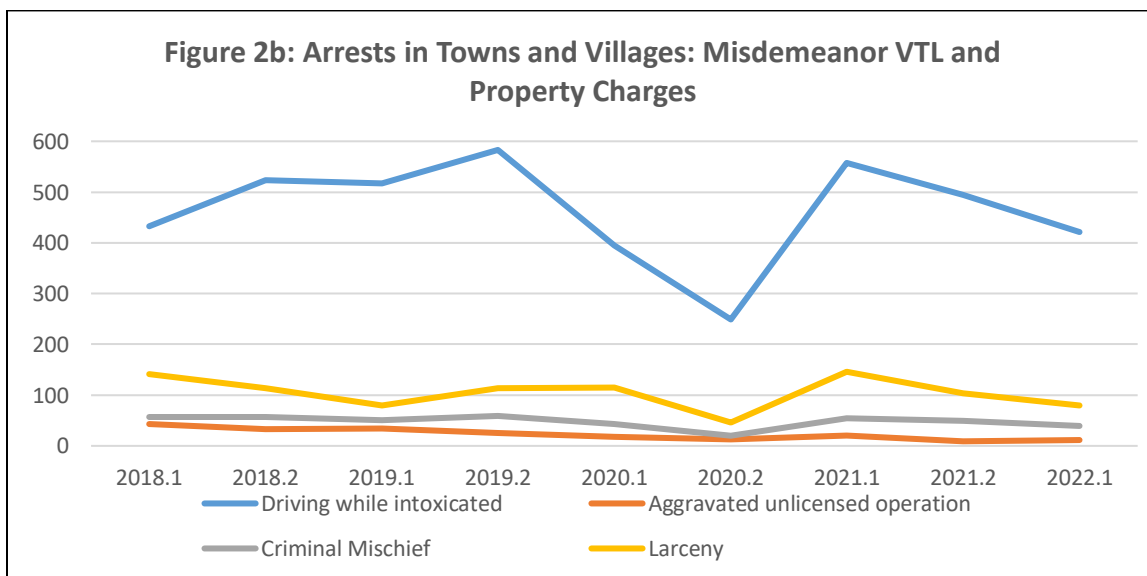
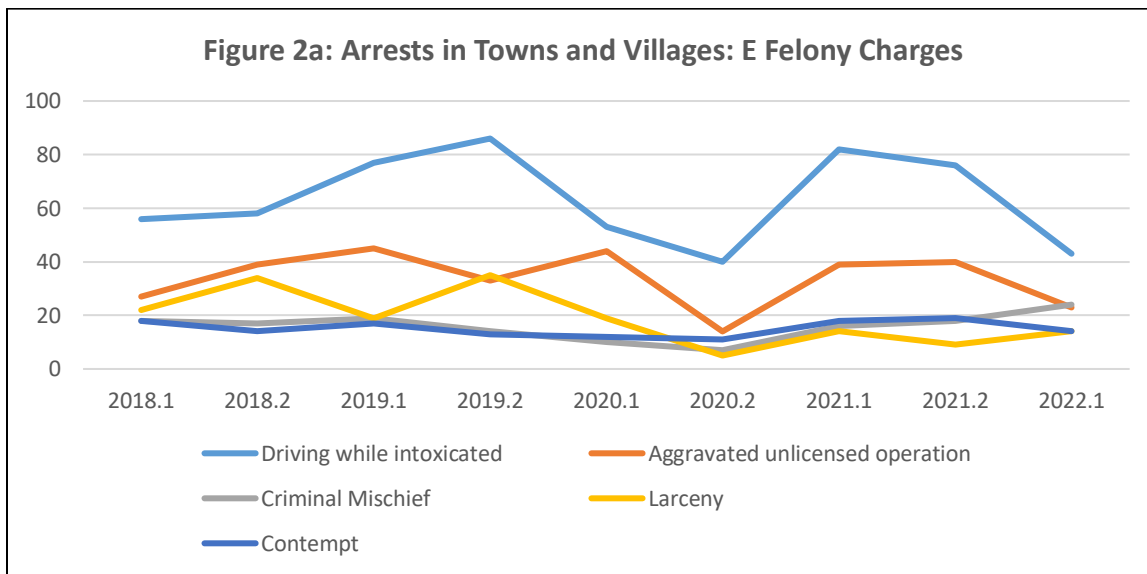
Within E felony charges, two vehicle and traffic offenses constitute a large share of arrests by the NSYP. Driving while intoxicated (as an E felony offense) ranged from 120 to 160 arrests per year. Aggravated unlawful operation of a motor vehicle – driving with a suspended or revoked license -- was relatively stable, at 60 to 80 arrests per year. The specific property offenses of criminal mischief (property damage) and grand larceny (theft) ranged modestly. Criminal contempt charges (which are predominantly associated in these data with violations of protection orders) were also relatively stable.

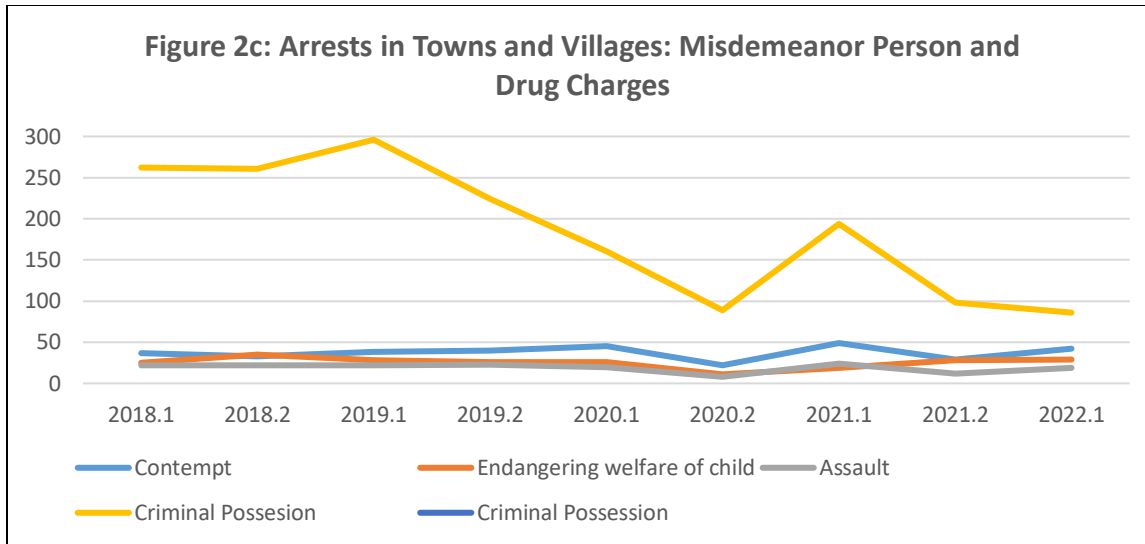
The most common misdemeanor charges included lesser versions of the E felonies described above, as well as two additional offenses against persons (endangering the welfare of a child, and assault) and criminal possession of a controlled substance (drug charges).

Among misdemeanor arrests, driving while intoxicated is the most common charge by a large margin, averaging about 1000 arrests per year. Larceny arrests range

from about 250 per year (2018) to about 200 per year in 2022. Driving while intoxicated charges dominate these misdemeanor cases, ranging about 1000 arrests per year. The property crime of criminal mischief was consistent at about 100 arrests per year.

Among misdemeanor offenses against persons, there was little change in arrest numbers over time. However, drug-related arrests dropped precipitously, from over 250 in the first half of 2018 to fewer than 100 in the first half of 2022.





Summary of Arrest Trends

From 2018 through the first half of 2022, arrests by NYSP dropped across all charge classes in the six counties, but the decline was most pronounced in violations (non-criminal infractions). Misdemeanors, the largest class of arrest charges, declined from about 700 to 500 per six month period. Only thirteen specific charge offenses make up about 75% of E felonies and misdemeanors, and vehicle and traffic charges dominate both class charges. Over time, most misdemeanor charges produced consistent numbers of arrests, with the exceptions of DWI (with a sharp decline in early 2020), and criminal possession of a controlled substance (with a consistent decline from 2018 to 2022).

Chapter 4. Post-Reform Changes in DAT Practices

The primary purpose of legislative DAT reform was to reduce the rate at which people are detained between arrest and arraignment. This chapter reports on how DAT rates have varied over time, and across charge classes (D and E felonies and misdemeanors), and specific charge types. Finally, we examine variation in DAT issuance patterns, over time, across the six counties.

Context: Police Options in Town & Village Justice Courts

In the towns and villages that make up Justice Court jurisdictions, police officers face three and, in some counties, four possible post-arrest scenarios. First, an officer might complete an appearance ticket without making a custodial arrest. Second, following a custodial arrest an officer can transport the person to court if it happens to be in session, or more likely, contact a judge to schedule an “off hours” arraignment immediately after arrest. Third, they may hold the arrested person for up to 24 hours¹⁹ before bringing a person to court.²⁰ There is a fourth option in counties with CAPs: officers may transport persons to the facility where arraignments are conducted, to be detained and supervised by security staff until their arraignment, and return to patrol.

New York State Police (NYSP) data designate arrestees’ status at the completion of the arrest report. The primary categories are “appearance ticket,” “held,” and several fields that indicate an off-hours arraignment was observed in court (“bail amount,” “cash bail,” “released on own recognizance”). The “held” category is somewhat ambiguous, though it clearly indicates detention; it would include (but not be limited to) detention for CAP arraignments. It might also include arrests of people who have statuses that justify custody, or who have lesser charges that trigger the hold, such as charges related to family violence. We infer that most of these “held” cases involved detention for CAP, insofar as the “held” rates were significantly lower in the two counties without CAP.²¹

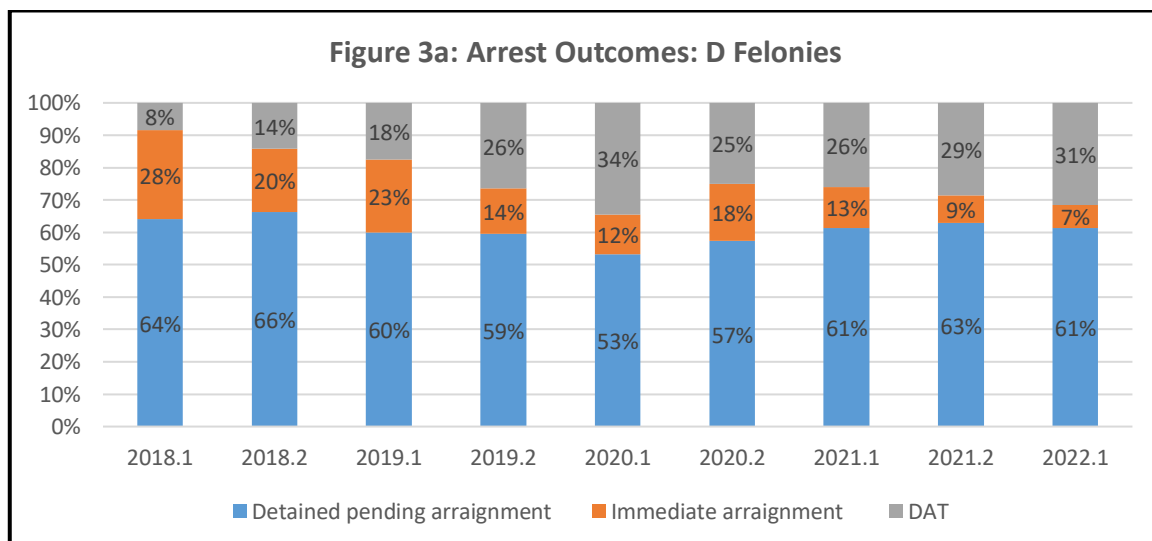
DAT Issuance Rates Before and After Reform: Charge Class and Race

The data indicate that across the six-month periods between January 2018 and June 2022 officers issued appearance tickets in 75% of all town and village D and E felony and misdemeanor arrests (n=10302). Among the remaining 25% of custodial arrests, half of people were transported to arraignment in Justice Court,²² and the other half were held pending arraignment. As we shall observe, most of those were detained in counties with centralized arraignment parts.

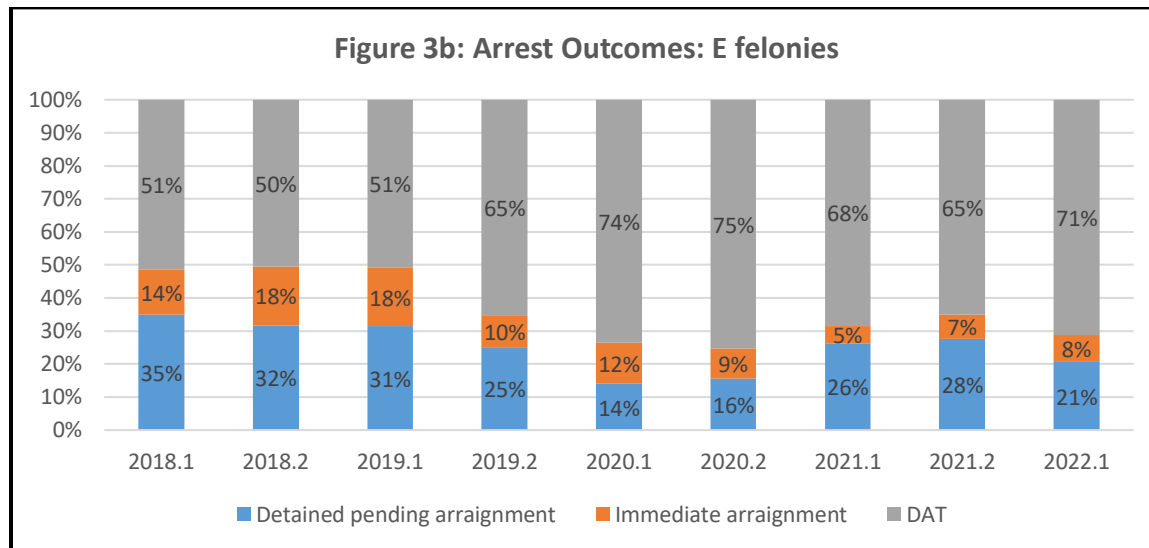
Despite the intent of DAT reforms, the evidence does not point to an overall increase in DAT issuance in this study's six counties. With the exception of 2020 and the first half of 2021 – months dominated by pandemic concerns – the rate of appearance tickets issued for all cases has been steady at just below 70%, both before and after the reforms were put into place. However, this seeming stability may be masking variation across charge classes and offense types, variation across the racial identity of arrested individuals, or variation across counties.

Figures 3.a, 3.b, and 3.c break down arrest outcomes in six-month periods by arrest outcomes for each of three charge classes: D felonies, E felonies, and misdemeanors. In these and all subsequent charts and figures, **“detained pending arraignment”** indicates transport to detention prior to arraignment, in many cases in CAP courts. **“Immediate arraignment”** indicates transport to the appropriate Justice Court for immediate, and usually off-hours, arraignment. **“DAT”** indicates issuance of an appearance ticket rather than a custodial arrest.

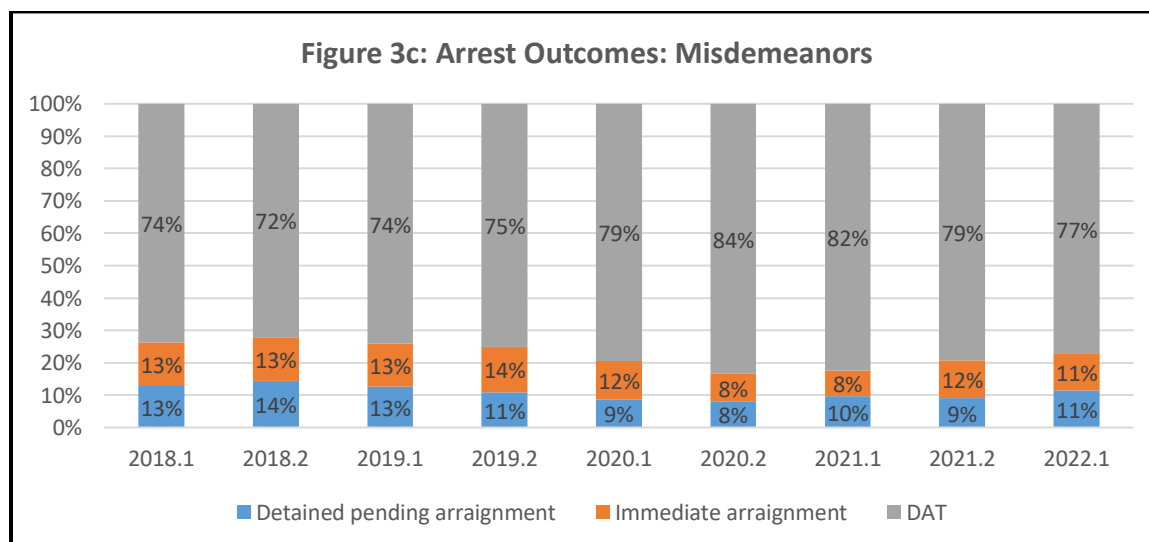
- **Class D Felonies:** Somewhat surprisingly, even though DAT reform did not stipulate changes in arrest practices for D felonies, people arrested for D felonies were more likely to be issued DATs over time – a shift from less than 10% in early 2018 to 31% by 2022. The increase in DATs was offset by a decrease in custodial arraignments (28% to 7%), a trend that began before the pandemic, and continued after lockdowns and court access restrictions ended.



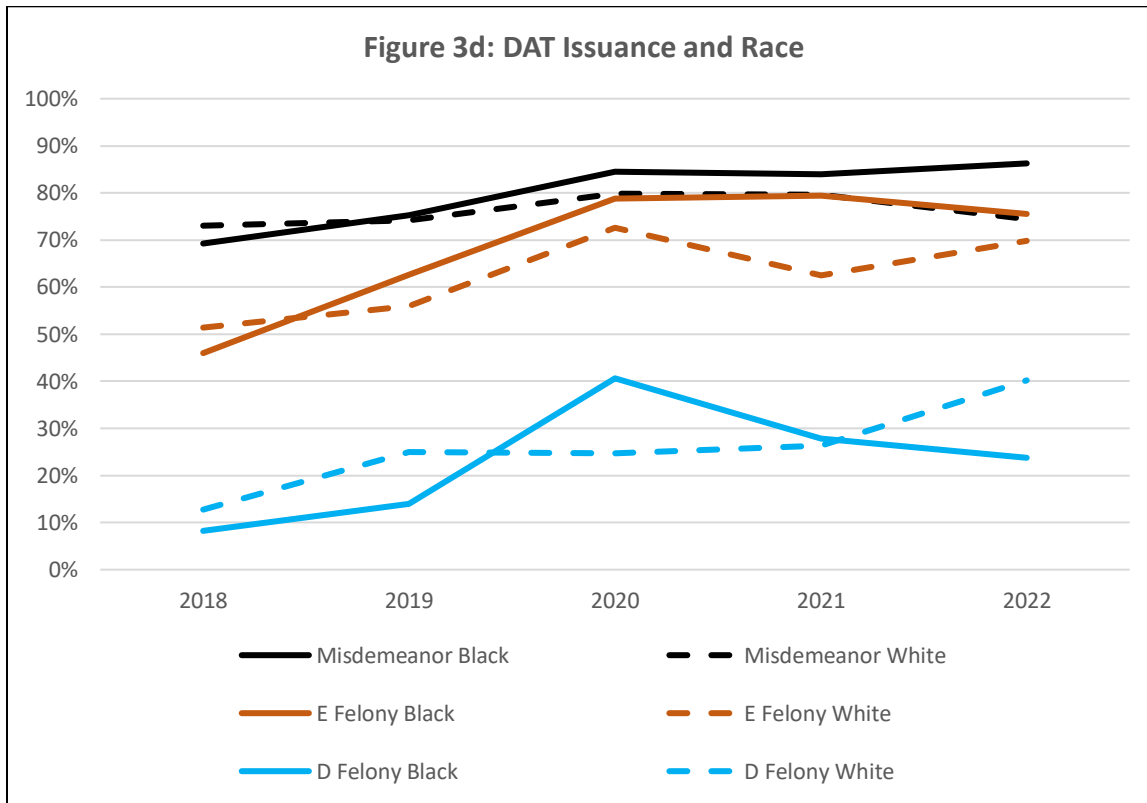
- Class E Felonies:** Over time, people arrested for E felonies were also significantly more likely to receive DATs – from about 50% in 2018 to about 70% in 2022. Detention before arraignment and immediate arraignment became less common (35% to 21%, and 14% to 8% respectively). We note that in both classes of felonies, the increase in DATs began before the new law went into effect.



- Misdemeanors:** We might expect the most marked change in the use of DATs for people arrested for misdemeanors, a category almost universally covered by DAT reform. However, the percentage of misdemeanor arrests that resulted in DATs, while increasing by about 10% in the second six months of 2020 (from 74% to 84%), has remained constant at about 75% from 2018 to 2022. The outcomes for arrested individuals who did not receive DATs are evenly split between being taken to CAP Court, and being arraigned in custody in Justice Court.



We also examined the data for patterns of racial differences in DAT issuance, over time and across charge classes. In this sample of arrests, 17% of people arrested were identified as Black. Overall, across all three charge classes and 4.5 years, Black people had a 69% chance of receiving a DAT; white people had a 70% chance. Figure 3d summarizes the percentage of Black and white people who were issued DATs for misdemeanors, E felonies, and D felonies. In 2018, there was a 5% difference between DAT rates for Black and white people for each charge class. For D felonies (the lowest lines on the chart) Black people were more likely to receive DATs in 2020, equally likely to receive DATs in 2021, and less likely in the first half of 2022. For both E felony and misdemeanor charges (the middle pair and top pair of lines on the chart, respectively), Black people were slightly less likely to receive DATs in 2018, but slightly more likely to receive them by 2019 and through early 2022.



To summarize: Compared with rates for felonies, misdemeanor DAT issuance rates are predictably higher, and those misdemeanor rates have been quite stable over the 4.5 years of data included in the study. But DAT rates have risen among Class E and even Class D felony arrests. These findings are somewhat unexpected: If DAT reform was intended to reduce unnecessary use of pretrial detention by increasing DAT use in misdemeanor and Class E felony arrests, why would arrests in D felonies follow a

trendline similar to that of E felonies, with increases in DAT issuance for both classes of charges? Why would these trends have begun prior to reform legislation? And why would DAT rates in misdemeanor arrests, the primary target of reform, stay relatively flat across time?

One possible answer is that DATs were used at higher rates in some types of charges, and lower rates in others, over time, which might be obscured by aggregating data across offense categories. Another possibility is that counties have different patterns and practices for DAT use, which might be obscured by aggregating data across counties. Below, we explore those possibilities by examining the use of DATs across twelve of the most common E felony and misdemeanor charges, and then examining county-level data to gauge different practices across those jurisdictions.

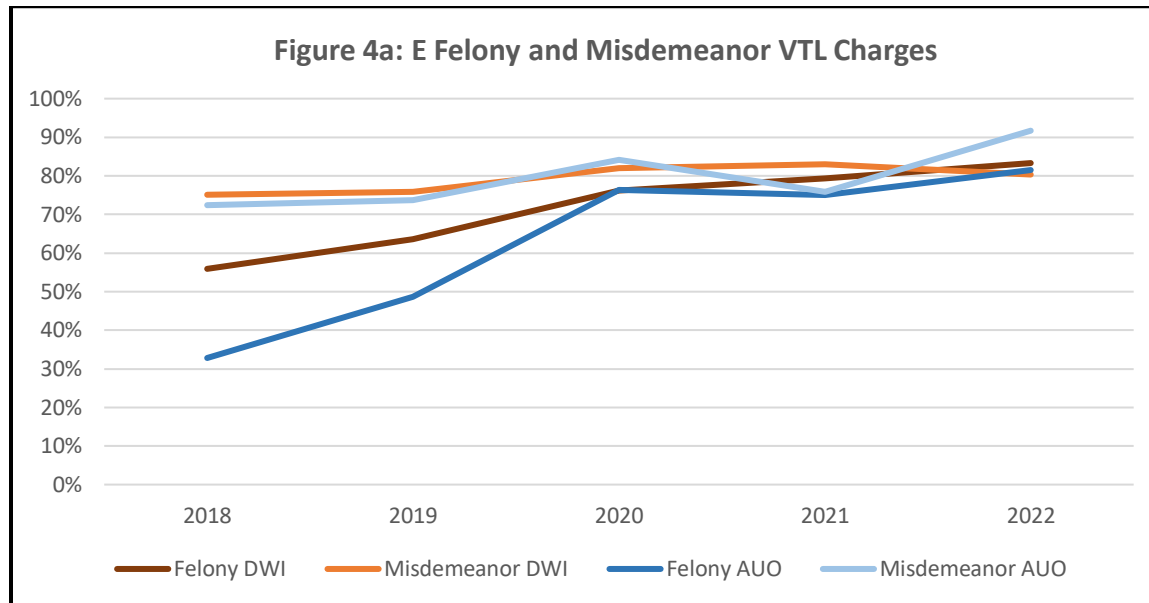
DAT Issuance Rates for Specific Common Charges: E Felonies and Misdemeanors

Which common charges are more likely to result in DATs?

- **For VTL cases, DAT rates diverged across charge type (DWI and AUO) and charge class in 2018, but rates steadily converged over time to over 80% for all four charges.**
- **Felony and misdemeanor criminal mischief DAT rates did not significantly increase over time.**
- **Felony and misdemeanor larceny DAT rates increased over time, but then felony DAT rates declined to below 2018 levels.**
- **In misdemeanor offenses against persons, the assault charges showed a significant increase in DAT rates over time (45% in 2018, compared with 72% in 2022). DAT rates for the charge of endangering the welfare of a child showed more modest increases. With the exception of 2020, contempt charges of either class remained low.**

For these analyses, we compared percentages of DAT arrests by charge type and class. (Not included in these charts is misdemeanor criminal possession of controlled substance, a charge most often levied in marijuana cases, for which the DAT rate ranged from 89% to 92% from 2018 to 2022.) Figure 4a reports DAT rates for both E felony and misdemeanor vehicle and traffic charges, driving while intoxicated (DWI) and aggravated unlicensed operation of a vehicle (AUO). Misdemeanor DWI and AUO arrests had high

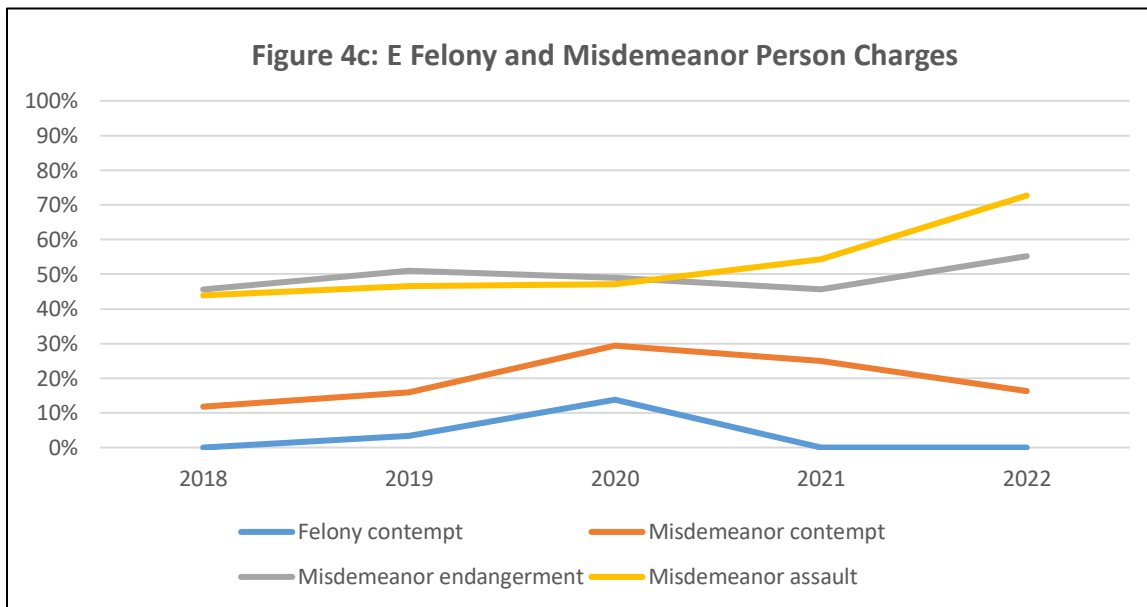
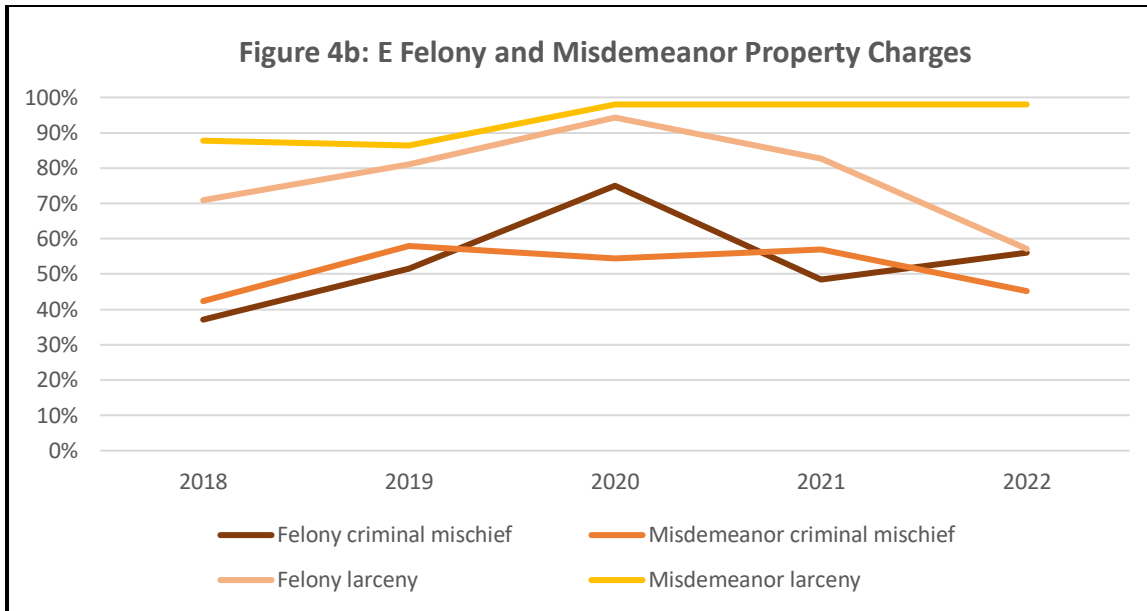
DAT rates in 2018 (75%) and both rates rose by 2022. The felony DWI DAT rate was 55% in 2018 and it rose significantly (from 56% to 83%). Even more markedly, the DAT rate for felony AUO climbed from 33% to 82%.



Criminal mischief involves property damage, including car break-ins and vandalism. DAT issuance rates are rather similar for the misdemeanor and E felony criminal mischief charges. About 40% of each set of arrests resulted in DATs in 2018; by 2022 DAT rates were higher for the felony than for the misdemeanor charge (56% vs. 45%). Grand larceny, an E felony, typically entails theft of property exceeding \$1000 (or auto theft, regardless of value), and petit larceny simply entails the theft of property (typically shoplifting). Petit larceny shows high DAT rates even in 2018, and that charge approaches 100% DATs by 2022. Grand larceny DAT rates declined in that time period, from 70% to 57%, after rising to near 90% in 2020.

Figure 4c reports DAT rates for both felony and misdemeanor contempt of court, charges that are most commonly associated with violations of protection orders. DATs in felony contempt cases were near zero, except for a 14% DAT rate in 2020 – not a surprising finding given that E felony criminal contempt is a charge that remained on the list of bail qualified offenses. Misdemeanor contempt arrests rose from 10% to 30% between 2018 and 2020, but declined by 2022.

DAT rates for misdemeanor endangerment of the welfare of a child rose 10%, from 45% to 55%, over time. Misdemeanor assault DAT rates began at the same level in 2018, but increased significantly to 70% by 2022.



In comparing the pre-reform rates with post-reform DAT rates, one might speculate that there was less movement in misdemeanor charges because law enforcement was already issuing DATs when they seemed appropriate, and they interpreted the new law to apply those standards to lower-level felonies (particularly E felonies). We note that the lower DAT rates in person, public safety, and property arrests may reflect circumstances in those cases that are not captured by top arrest

charge. As noted above, those cases may have secondary charges that make them eligible for custodial arrest.

We note two additional trends in these results, and an anomaly. First, particularly for the two classes of felonies, in both VTL and property offenses, increases in DAT rates began *before* January 2020. While this might indicate law enforcement's anticipation of new practices, for some charges the incline was emerging even before the legislation was passed. (For example, theft DAT rates rose from 10% to 20% by that time.)

Second, for several offenses DAT rates declined between 2020 and 2022 (e.g., felony larceny and criminal mischief, and both felony and misdemeanor contempt). Almost all offense types had upticks in DATs in the first half of 2020 (almost surely a consequence of pandemic court suspensions), but the variability of these lines over time suggests that researchers should continue to monitor DAT rates.

County Context in the Implementation of DAT Reform

So far, these analyses have relied on arrest data aggregated across the site counties. Another approach to analyzing these data is to examine county-level patterns.

There are many factors that might shape arrest patterns at the county level. District Attorneys may set priorities that influence law enforcement behavior. Indigent defense programs are organized at the county level in New York, and they have been largely responsible for organizing CAFA programs and promoting the use of centralized arraignment. Variation in counties' geographies, economies, and infrastructure shape the mix of cases subject to arrest. For example, police officers may make more arrests in VTL cases where busy highways crisscross their counties' borders. In the suburban towns and villages included in this study, shopping malls and big box stores may generate more calls about larceny than would be found in rural communities.

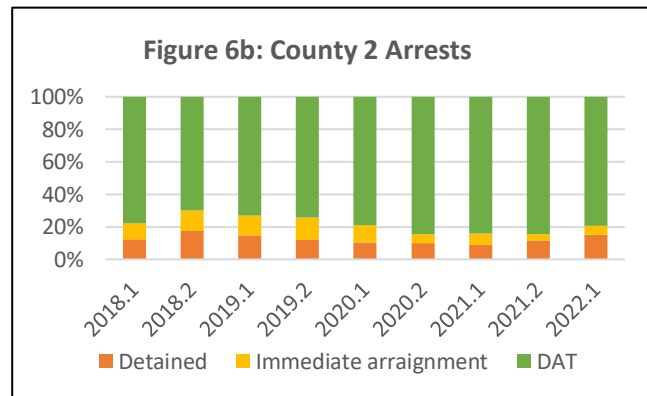
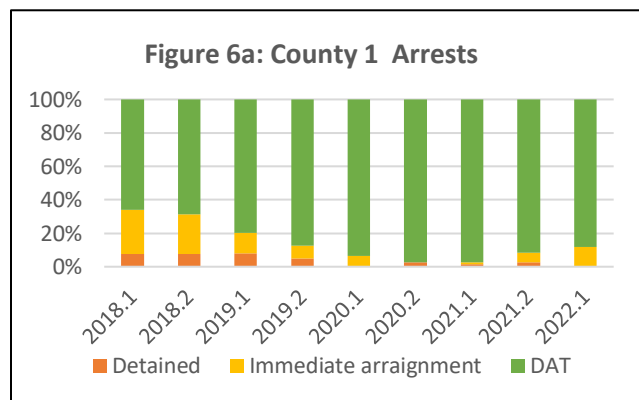
In this section, we explore the ways in which counties' adoption of counsel at first appearance programs (CAFA) and centralized arraignment parts (CAP) may have consequences for the implementation of DAT reform in misdemeanor arrests (or vice versa). All six counties had CAFA in place by 2018, though their protocols varied. Four of our site counties. The other two have not, although their Public Defenders were among the first in upstate New York to create CAFA programs that were available in Justice Courts.²³

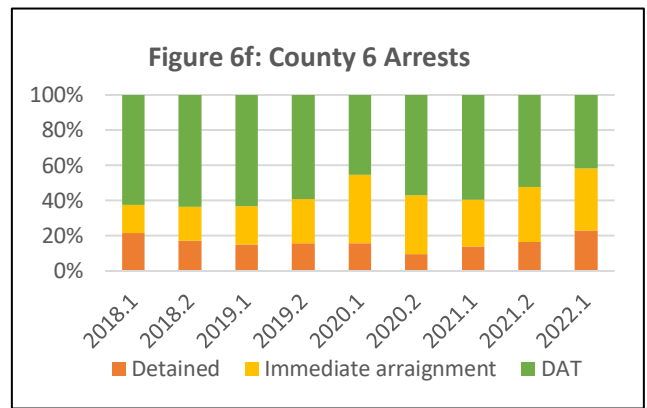
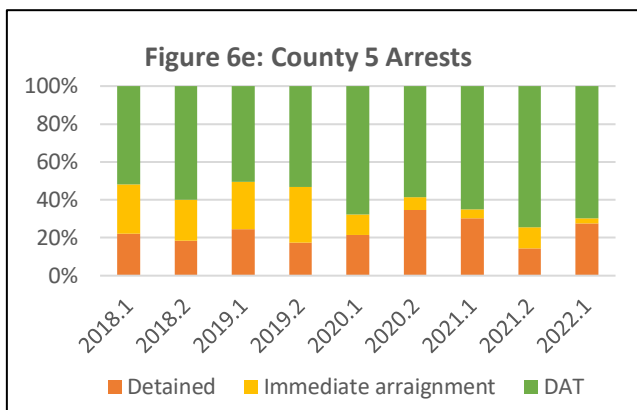
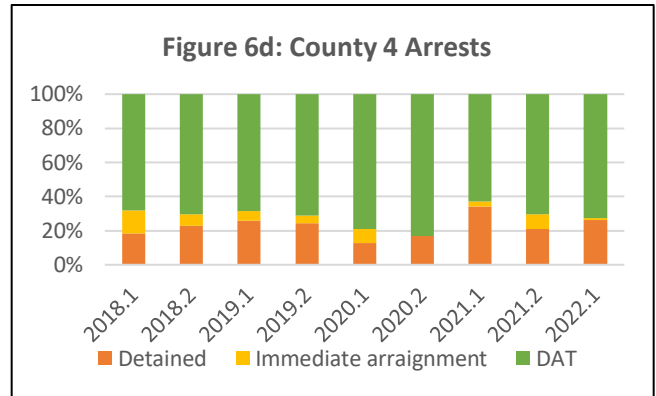
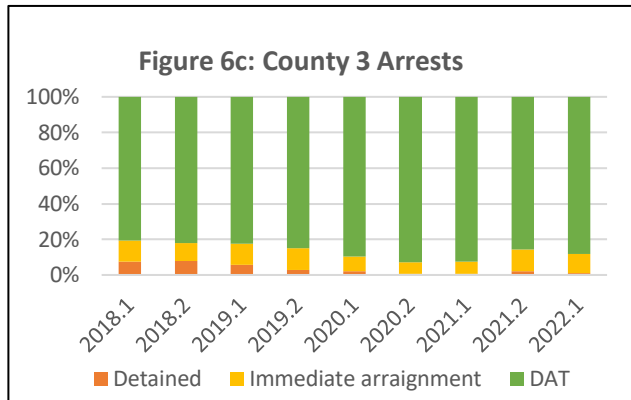
Where CAPs have been established, one (and often two) sessions are regularly scheduled per day, including weekends, typically in the county's sheriff's headquarters,

often in the jail building.²⁴ They are staffed by defense attorneys, district attorneys, and a rotating cast of Town Court judges, who read charges, hear pleas, and then release, remand, or set bail for people. These attorneys and judges are reimbursed for the hours that they spend in CAPs.

What to make of these findings? In two of the counties with established CAP courts in 2018, Counties 2 and 4, little changed in misdemeanor arrest outcomes over time. In County 1 it appears that DATs displaced off-hours arraignments after DAT reform, as one might expect. In County 5, we might infer that DATs displaced off-hour arraignments when CAP was established in 2020, but the percentage of people detained remained stable, at 10% in County 2 and about 20% in the other three CAP counties.

This leads us back to the potential tradeoff discussed previously. CAPs were established primarily to ensure that people who are arrested will have counsel at their arraignments. In Justice Courts, CAFA proved inefficient and sometimes inadequate, since it often required custodial arrests to be followed by off-hours arraignments, scheduled on a case-by-case basis. Public defenders seldom had sufficient staff to deploy to those arraignments, or to assign to Justice Courts to cover arraignments in the busiest regular sessions. Hence people who received appearance tickets were at risk of having no attorney present when they went to court. By centralizing off-hours arraignments (a large majority of custodial arrest cases in Justice Courts), CAFA could be guaranteed. But CAPs also draw down resources from indigent defense programs, and reduce their capacity to send lawyers to the Justice Court sessions where appearance ticket cases are arraigned. We cannot accurately estimate the magnitude of this tradeoff, but future research should investigate it and, if possible, identify adaptations that can reconcile the goals of ensuring legal representation and minimizing pre-arraignment detention.





Chapter 5. Summary and Discussion

This report is an investigation into the use of DATs before and after the implementation of the 2019 legislation that prescribed use of DATs for some low-level felonies and nearly all misdemeanors, with limited exceptions outlined in Chapter 1. To our knowledge it is the first study of this sort conducted in Justice Court jurisdictions. Justice Courts have the same functions as upstate New York's City and District Courts, but their history, accountability to the public and state government, geography, caseloads, and courtroom practices are very different.

Study Limitations

There are limitations to this study, and highlighting them directs us toward further research to remedy them. First, our data are based on New York State Police arrests. While data quality was very high, we estimate that the percentage of NYS SP arrests in the towns and villages within the six counties (rather than sheriffs' deputies, or less commonly, town and village police departments) overall is about 50%.

Second, while the data allowed us to identify arrests that involved warrants (which would not generally be eligible for DATs), we could not systematically identify other factors, such as the presence of additional charges that would suggest family violence, that would lead officers to make a custodial arrest.

Third, the threats to validity in this research design were unanticipated and unavoidable. The new bail and DAT laws went into effect on January 1, 2020. Ten weeks later a statewide emergency was declared due to the rapidly spreading COVID-19 pandemic. This prompted the Unified Court System to restrict all courts to performing only "essential court functions," which suspended all non-custodial criminal matters, and required that custodial matters be conducted remotely. It was not until May 2021 that all courthouses in the state returned to full in-person proceedings, and Justice Courts were among the last. Often functioning in remote areas, in small courtrooms, and without consistent information technology and services, Justice Courts were not prepared for sudden adaptations such as video arraignments and occupancy restrictions.²⁵ Relatedly, the shift to temporary centralized virtual arraignments, as a pandemic response, may itself have had lasting effects on police officers' willingness to issue DATs. Finally, law enforcement agencies, including NYS SP, experienced workforce reduction during this time period, which may have contributed to reductions in arrests but also to finding more efficient ways of processing them.

Summary of Findings

- **Downward Arrest Trend:** Arrests generally declined in the six counties' Justice Courts throughout the sampled period from January 2018 to June 2022. Arrests in the most common class of charge, misdemeanors, began a decline in the second half of 2019, though arrests returned to earlier rates by early 2021, and have since declined again.
- **No Reductions in Post-Arrest Detention for Misdemeanors Subject to DAT Reforms:** While many advocates and reformers expected to see substantial reductions in post-arrest detention with the passage of the DAT reforms, these data suggest that reductions were negligible in the largest class of charges, misdemeanors. About 75% of arrests on a misdemeanor top charge resulted in a DAT from 2018 to 2022, hitting a maximum high in the second half of 2020, at the height of pandemic restrictions.
- **Increases in DAT rates in both D and E Felonies:** There were increases in DATs for E felonies, from about 50% to 70% over time, as one might have predicted. Interestingly, however, those increases were mirrored by DAT increases for D felonies, from about 10% to 30%. We note that these increases appear to have begun prior to implementation of reforms in 2020. These increases, particularly in Class D felonies, may have resulted from police officers' assessments of the likelihood of judges releasing arraigned people. Changes in bail law eliminated bail for misdemeanors and *non-violent felony* charges. For the latter, police officers may have concluded that custodial arrests in some D and E felony charges were inappropriate because they would often result in pre-arraignment detention of people who were going to be released anyway as a result of the bail reforms. That said, this possible explanation is necessarily speculative.
- **Little Variation in DAT Rates by Misdemeanor Charge:** For misdemeanors, DAT rates did not vary much by charge category. DATs were issued in about 80% of arrests for theft, vehicle and traffic, and drug charges. Analysis of specific charges suggests that those that might involve partner or family violence (criminal mischief, endangering the welfare of a child) were less likely, over time, to end in DATs.
- **County Context Matters:** In misdemeanor arrests, the 2018 county rates of DATs varied from 50% to 80%. Three counties experienced little net change over the next four years; two counties saw significant increases (in County A, from 50% to 70%, and in County F, from 65% to 90%); and one county's DAT rate (C) declined, from 60% to 40%. This variation in baselines and time trends suggests that the forces that

account for faithful implementation of reforms vary, and that variation can be significant. Just as blending cans of primary paint colors yields brown paint, aggregating data across counties may result in statistics that match none of the original sources, and may yield inadequate or even misleading information for reforms that continue to be revised and revisited and, importantly, that will be implemented at the local level.²⁶ This is especially true in the Justice Courts, which are not subject to most of the Unified Court System's policies that standardize City Courts' operations.

- **The Role of Critical Overlapping Reforms:** The most significant criminal justice reform to precede (and intersect) bail and DAT reform was the emergence of programs to ensure counsel at arraignment (CAFA). This has entailed creation of centralized arraignment parts for Justice Court arrests. CAP protocols often entail up to 12 hours of detention, which is an outcome at odds with DAT reform. On the other hand, more DATs in Justice Courts may, paradoxically, result in less counsel at arraignment in regular Justice Court sessions. We state this as a speculation, not as an empirically established fact, and also as a possibility that we intend to investigate more directly in the future. Compared with the durations of pretrial detentions for people who cannot make bail, CAP detentions are brief. However, we suggest that under a presumption of innocence standard, even brief detention is stigmatizing, and can set off immediate consequences (e.g., failing to show up for a work shift or a childcare pickup) that are not inconsequential.

Questions and Directions for Future Research

Further research is warranted on the implementation and impact of DAT reforms, and it should be linked to ongoing research on bail reform. Are officers' decisions about custodial vs. DAT arrests conditioned on their expectations or predictions about judges' bail or release decisions? Among those misdemeanor and E felony arrests that are custodial, how many are accompanied by conditions (such as an outstanding warrant or lack of identification) that the law carves out as exceptions? How are indigent defense providers strategizing to provide counsel at DAT arraignments when their counties have centralized arraignment (or even when they do not)?²⁷

Much has been made, in media and political discussions, of the potential impacts of DATs (as well as bail reform) on re-arrests and failures to appear in court, and these are important concerns. However, to date there is little empirical evidence on either outcome. Has the percentage of people with DATs who fail to appear at arraignment changed? If there has been an increase (or decrease), is it associated with particular offense charges or individuals' characteristics? For example, the DAT law restricts police

officers from basing a DAT decision on someone's prior record – are those people at higher risk of non-appearance? How much time elapses between arrest and arraignment dates, and how might that time be reduced in Justice Courts?

The results reported here indicate that counties can have significantly different rates of DATs, even when all the arrests within those counties are made by the same statewide agency; how much wider might those disparities be when measuring all arrests within the counties, and when comparing Justice Court and City Court cases? On these questions, future research can build on the pre-reform and post-reform baselines in this report, and extend data collection and analysis to a broader range of law enforcement agencies, and to an extended period of time, to assess the medium- and long-term impacts of reform.

Acknowledgements: *We gratefully acknowledge the support of Arnold Ventures, and our partnership with the Data Collaborative for Justice at the John Jay College of Criminal Justice. We are especially appreciative of the contributions of Michael Rempel and Olive Lu at DCJ, whose comments and suggestions proved invaluable. We also thank Tyrell Connor, of Arnold Ventures, for his insights; and the criminal justice professionals who offered access to their data in our sites. Their continuing assistance, enthusiasm, and interpretations of empirical findings strengthened our conclusions*

Endnotes

¹ Olive Lu and Michael Rempel (2022). *Two Years In: 2020 Bail Reforms in Action in New York State*. Data Collaborative for Justice; Olive Lu, Erica Bond, Preeti Chauhan, Michael Rempel (2020). *Bail Reform in Action: Pretrial Release Outcomes in New York State 2019-2020*. Data Collaborative for Justice; Olive Lu, Erica Bond, Preeti Chauhan (2021). *Desk Appearance Tickets in New York State in 2019*. Data Collaborative for Justice.

² Law enforcement in New York, as is the case in most states, is organized geographically. Outside New York City, the state's 61 incorporated cities are served by city police departments. About one third of the towns and villages outside those city limits are served by their own local town and village police departments, although most of them are small and rely heavily on sheriffs and the New York State Police for public safety functions. All counties have sheriff departments, and all are encompassed in one of the NYSP's 9 regional divisions.

³ Alissa Pollitz Worden and Kaitlin Moloney (2022). *Before Bail Reform: Pretrial Bail Decisions and Outcomes in New York's Justice Courts*. John F. Finn Institute for Public Safety.

⁴ Both types of courts conduct preliminary proceedings for all cases arising within their geographic jurisdictions; if the charge is a felony, the case will be arraigned and sent to County Court; and if a plea agreement reduces the charge to a misdemeanor, the case is typically returned to the original court for disposition and sentencing.

⁵ Article 20 Section 500A of New York Corrections Law (as of April 24, 2020) permits holding of adults in county correctional facilities for specific counties, including four included in this study (Counties C and E, for persons awaiting arraignment in any court, and in County F, for persons awaiting arraignment in City Court). The law also permits jails to be used for detention of pre-arraignment individuals in any county that has established an off-hours arraignment part.

⁶ Beginning in late 2021, Justice Courts were charged with submitting data on some cases to state agencies, but those data do not mirror the data that are submitted by City Courts.

⁷ For example, Albany County has 15 Town and Village Courts. The largest of them serves the town of Colonie, and has arraignment sessions calendared for every morning of the week, but this is uncommon in town courts. The Town of Guilderland is more typical: it has regularly scheduled criminal sessions on Thursdays at 5:30; Bethlehem Town schedules criminal matters only on the second and fourth Tuesdays at 5:00.

⁸ A new state agency, the Office of Indigent Legal Services, was charged with overseeing this transition. Initially the terms of the Hurrell-Harring settlement applied only to the five counties that were named in the lawsuit, but those expectations have since been extended to many counties throughout the state, due in part to state funds earmarked for developing Counsel at First Appearance (CAFA) programs.

⁹ Some City Court judges set aside particular hours each day for arraignment and arrange to have public defenders present at those times. In others, indigent defense offices assign lawyers to be on call during court hours to provide counsel at arraignment if arrested people are brought in. It is not uncommon for judges to tap a public defender, present in court for another case, as a stand-in when needed.

¹⁰ Some Justice Court judges have established specific days and hours to conduct arraignments, and indigent defense providers have scheduled lawyers to attend such sessions, but not all appearance tickets will designate those specific days or hours for return to court so some people will be arraigned without counsel. Lawyers may be dispatched to Justice Courts only to find that no arraignments will be held that night. Providing CAFA in custodial arrests during off-hours arraignments is particularly challenging since that requires getting notice to on-call attorneys about when and where an arraignment is about to take place, and ensuring appropriate security in that setting. The challenges of designing CAFA programs that could function in Justice Courts were sufficiently daunting

that in 2013, few counties had adopted such programs, and when the state’s Office of Indigent Legal Services offered grants that would pay for programs that would increase CAFA coverage, only half of the counties submitted applications.

¹¹ In 2016, Judiciary Law was amended to permit each judicial district’s chief administrative judge to establish off-hours arraignment parts. At that time chief administrative judges were asked to establish off-hours arraignment parts, with the explicit intent of facilitating CAFA for off-hours arraignments. Although the original intent of the law was to have CAP in all counties by 2023, at the time of this writing there are still numerous counties that have not developed or finalized CAP plans. It remains a work in progress.

¹² New York State Office of Indigent Legal Services. (2022). *Statewide Plan for Implementing Counsel at Arraignment; Year Four Report*.

¹³ New York State Office of Indigent Legal Services (202). *Statewide Plan for Implementing Counsel at Arraignment; Year Three Report*.

¹⁴ For the small minority of arrested people who can afford to retain counsel, an appearance ticket offers time to consult with or retain a lawyer. But most people cannot afford representation, and may not even realize that they need it, before they appear in court.

¹⁵ Shamena Anwar, Shawn Bushway, John Engberg (2023). *The Impact of Defense Counsel at Bail Hearings*. Science Advances 9:18, 2023; Geoffrey Burkhart (2018). *Austin TX: Indigent Defense Innovation*. Texas Indigent Defense Commission, 2018; Alissa Pollitz Worden, Kirstin A. Morgan, Reveka V. Shteynberg & Andrew L.B. Davies (2018). *What Differences Does a Lawyer Make? The Impacts of Early Counsel on Misdemeanor Bail Decisions and Outcomes in Rural and Small Town Courts*. Criminal Justice Policy Review 29(6-7): 710; Alissa Pollitz Worden, Andrew L.B. Davies, Reveka V. Shteynberg & Kirstin A. Morgan (2017). *Court Reform on Trial: Why Simple Solutions Might not Fail? A Case Study of Implementation of Counsel at First Appearance*. Ohio State Journal of Criminal Law 14(2): 521; Sixth Amendment Center and the Pretrial Justice Institute (2014). *Early Appointment of Counsel: The Law, Implementation, and Benefits*; Ernest Fazio, Sandra Wexler, Thomas Foster, Michael J. Lowy, David Shepard & Juliet A. Musso (1984). *Early Representation by Defense Counsel Field Test: Final Evaluation Report*. Washington DC: U.S. Department of Justice, National Institute of Justice; Scott Kohler (1962). The Ford Foundation.

¹⁶ We excluded cases in which the top charge was a parole or probation violation, a violation of conditional discharge terms, or a sex offender reporting violation. We also excluded cases where the NYSP indicated the presence of a warrant.

¹⁷ We rely on New York State Police arrest data for this study, but we recognize that data from county sheriffs (and, to a lesser extent, Town and Village police departments) might produce findings that diverge from those reported here. Based on data collected for the parallel project on bail reform implementation, which includes data from county agencies that represent all or most of arraignments in the state, we estimate that NYSP data capture the following percentages of town and village arrests during our time period for five of the six counties: County A: 60%; County B: 55%; County C: 56%; County E: 48%; County D: 49%’ and County F: 2%. We note that County F has an unusually large and active Sheriff’s Department, which handles most of the non-city law enforcement issues in the county.

¹⁸ The state legislature decriminalized possession of marijuana for recreational use on March 30, 2021, when the governor signed the Marijuana Regulation and Taxation Act 3-31-21. Prior to that date, since July 2019, possession of small quantities of marijuana had been a violation level offense.

¹⁹ NYSP stations do not have short-term “lockup” cells but it is not uncommon for officers to hold arrested persons at their barracks, under supervision, until they can be transported to court. Alternatively, if the county jail has appropriate facilities, they may leave persons in jail custody.

²⁰ New York Criminal Procedural Law 140.20 states that police a police officer must “without unnecessary delay bring the arrested person or cause him to be brought before a local criminal court and file therewith an appropriate accusatory instrument charging him with the offense or offenses in question.”

²¹ This inference was affirmed in conversations with members of the NYSP and senior staff in counties’ jails.

²² Among those arraigned shortly after arrest, officers recorded the arraignment outcome as release 75% of the time, and bail or bond set at 25% of the time.

²³ Before CAPs, indigent defense providers who created CAFA programs followed one of two general models. First, some established “Public Defender nights”: lawyers were dispatched to the the busier Justice Courts for sessions in which judges had agreed to prioritize arraignments. This resulted in less comprehensive coverage than one might expect, since arresting officers did not always know which courts held PD nights, and when they were held, so people who had received appearance tickets did not consistently have counsel. Second, some CAFA programs assigned on-call duty to one or more attorneys, but this could result in lack of counsel when multiple people were arraigned in different courts during the same time. Even with state grants to fund these programs, the inefficiency of both models led some counties to limit CAFA to particular types of cases. For example, in St. Lawrence County’s first CAFA program, public defenders were sent to Justice Courts only for felony cases. In Allegany County, counsel is provided only in custodial arrests in which the case is bail eligible.

²⁴ All of the CAP facilities we have visited held arraignments in a space outside jail cells, often in rooms used for visitation.

²⁵ For a timely and informative retrospective on courts’ adaptations to the pandemic, see *Pandemic Practices Working Group, State of New York (2023), New York Courts’ Response to the Pandemic: Observations, Perspectives, and recommendations*.
<https://www.nycourts.gov/LegacyPDFS/press/pdfs/NYCourtsPandemicPracticesReport.pdf> .

²⁶ We note that the DCJ’s research on 2019 City Court DAT rates found that in that, DAT arraignments ranged from a low of 8% to a high of 60% in Cornell City Court. This reinforces the need to examine variations at the local level, not just aggregates across court types.

²⁷ The Finn Institute research staff have begun a pilot investigation of CAP arraignments in one site county, and plan to build on that to include additional counties, including those who have not created CAPs. We also intend to apply the methodology used in this report to arrests made by other law enforcement agencies operating outside cities, such as sheriff’s departments.