Projecting the Impact of New York's Amended Bail Reform on the Pretrial Jail Population

A Technical Supplement

By Michael Rempel and Krystal Rodriguez

Center for Court Innovation

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Overview

This document serves as a technical supplement to *Bail Reform Revisited: The Impact of New York's Amended Bail Law on Pretrial Detention*.[1] Our main report can be found here: https://www.courtinnovation.org/publications/bail-revisited-NYS.

In what follows, we describe our methodology for classifying which criminal cases remain eligible for money bail or remand under the state's amended bail law (passed April 2020) and for projecting the impact on New York City's jail population.

Our methods were developed with input from staff at the New York City Council, the Mayor's Office of Criminal Justice (MOCJ), the Office of Court Administration, the Independent Commission on New York City Criminal Justice and Incarceration Reform (the Lippman Commission), the Vera Institute of Justice, The Bronx Defenders, and the Legal Aid Society.

The Legal Aid Society, in particular, provided an essential contribution by conducting an in-depth study of its case files to determine how often people charged with burglary in the second degree, second sub-section, were alleged to have committed the crime in a "living area" as opposed to a lobby or other common area of a building. (This charge is only bail-eligible if the alleged crime took place in a living area.) Alex Rhodd and Vincent Ciaccio, Ph.D., researchers at the Legal Aid Society, are the authors of the final section in this document, which presents the findings of their study.

Our accompanying publication, *Bail Reform Revisited*, acknowledges the many other individuals and agencies who provided important guidance and input as we finalized our methods. We, however, are solely responsible for all analytic choices and conclusions.[1] Readers may contact the authors for details beyond those included below.

[1] Many of our analyses relied on case-level data provided by the New York State Office of Court Administration (OCA). Any OCA data provided herein does not constitute an official record of the New York State Unified Court System, which does not represent or warrant the accuracy thereof. The opinions, findings, and conclusions expressed in this publication are those of the authors and not those of the New York State Unified Court System, which assumes no liability for its contents or use thereof.

Data Sources

The Center for Court Innovation obtained, coded, and analyzed case-level data from the first two sources listed below, while incorporating findings produced in an original study by the Legal Aid Society in the third instance.

Office of Court Administration

The NYS Office of Court Administration (OCA) provided the Center for Court Innovation with case-level data for all criminal cases arraigned or disposed in the New York City (NYC) courts in 2019. (The Center also received and, for select analyses, incorporated such data for earlier years.) This court data enabled coding legal eligibility for money bail or remand under both the original and amended bail reform laws. Although the case-level data only included top charges, OCA also provided aggregate information in one instance to aid in estimating the frequency of a key characteristic for a specific bail-eligible charge (obstruction of breathing or blood circulation in cases involving a domestic violence allegation).

Department of Correction

Each day, the NYC Department of Correction (DOC) posts an updated public dataset including all individuals in the NYC jail population (via NYC Open Data).[2] While more limited than the entire DOC dataset, this public data enables breaking out the pretrial sub-population from people held in jail for other reasons. The data also includes each person's top charge.

Legal Aid Society

As noted above, Alex Rhodd and Vincent Ciaccio, Ph.D. of the Legal Aid Society undertook and provided the Center for Court Innovation with the results of an original citywide study of 619 cases charged with burglary in the second degree, second sub-section in 2019. For each case, they reviewed the files and recorded the borough; exact charge (e.g., attempt or completed); location within the building (with a focus on coding whether the alleged crime was in a "living area"); and release status. In one of the 619 cases, the location was not indicated in the case file. Of the other 618 cases, the judge set bail in 353 and remanded the defendant in 13.

The results indicated that the alleged crime was in a living area in 63 percent of the 618 total cases; in 61 percent of the 366 cases where the judge ordered bail or remand; and in 65 percent of the remaining 252 cases that were released pretrial. We applied the 63 percent figure when estimating the percent of burglary in the second degree, second subsection cases in a living area among *all* NYC criminal cases and applied the 61 percent figure when forming estimates for individuals where bail or remand was set in 2019 or when estimating the number of individuals that the amended reforms would add to the jail population.

Sampling Plan

Except when indicated otherwise, estimates in this report are based on an analysis of the almost 170,000 criminal cases arraigned in New York City in 2019 (using OCA court data) and a second analysis of the pretrial jail population on October 16, 2019 and March 5, 2020 (using public DOC data). In working with both data sources, we went charge by charge, coding each one for whether it is bail-eligible or not under, respectively, the original reform passed April 2019 and the amended reform passed April 2020. As described below, some criteria for distinguishing bail-eligible status required additional analysis.

Why Analyze the Pretrial Jail Population on October 16, 2019?

This first jail snapshot date was chosen purposefully. First and foremost, we had to analyze the pretrial jail population on a date *prior to January 1, 2020*, when the original reform law went into effect. Choosing a date *before* January 1 allowed us to determine the number of people who could be added to the jail population based on the recent amendments, compared to the pre-reform era. A post-January snapshot date alone would not provide any means of quantifying the re-increase in the jail population likely to be produced by the April 2020 amendments.

We also did not want to choose a snapshot date just prior to January 1, 2020. This is because the results of our analysis of 2019 court cases made clear that bail reform led to changes in release decisions *before* the new law's January effective date (see the two graphics towards the end of our main narrative). Hence, we chose a mid-October snapshot that was relatively recent—to avoid biases based on changing case volume and case composition compared to much earlier in 2019. October 16, 2019 sufficiently pre-dates January to be unbiased by bail reform implementation having, in practical effect, begun in the final months of the year.

Quantifying the ramifications of the April 2020 amendments required counting all of the people in pretrial detention on October 16, 2019, who were detained on charges that the original reform made *ineligible* for money bail but that the amended reform made money bail-eligible once again.

Why Analyze the Jail Population on March 5, 2020?

Neither the original nor amended bail reforms impact people who are in pretrial detention due to a warrant or some other legal matter necessitating incarceration *independent of the bail laws*. Although people detained due to parole violations can be easily separated out in the public DOC data, people detained due to any other type of hold cannot be discerned through available data. (The full DOC dataset enables coding holds that result from a warrant, but the relevant warrant fields are omitted from the data extract that is publicly accessible.)

Our way around this problem was our second step of analyzing the pretrial jail population on March 5, 2020. On this date, we assumed that anyone detained on a charge that was ostensibly made ineligible for money-bail in January must have, therefore, been incarcerated on a hold or some other legal matter or decision unrelated to the arraignment charge alone.[3]

We also specifically chose an early March date that preceded the COVID-19 crisis, so that counts of people in pretrial detention would be unaffected by causal dynamics specific to the coronavirus.[4]

Final Projection Math for Money Bail-Eligible Charges

From the total number of people detained on October 16, 2019 on charges that the original reform made subject to mandatory release but that the amended reform made money bail-eligible, we subtracted the number of people detained on March 5, 2020. (That is, we subtracted the subset assumed to be detained on unrelated mandatory holds.) This difference represented the projected numeric impact of the amended reform on the pretrial jail population, based on charge criteria alone. (Our handling of other criteria for determining money bail eligibility is discussed below.)

Domestic Violence

In both the original and amended reform laws, several charges are defined as money bail-eligible *only when there is an underlying domestic violence allegation*. (For example, this qualifier applies to criminal contempt charges under both reform schemes.) Whereas court data allows for computing an accurate domestic violence flag, there is no such possibility when analyzing jail data. Accordingly, we used court data to *impute* domestic violence status to an appropriate, equivalent percentage of jail cases. First, we sampled all 2019 court cases where the judge ordered bail or remand. Then, separately for every individual charge, we computed the percent of cases factually coded in court data as involving domestic violence. Then, whenever the result was less than 10 percent, we engaged in no imputation to jail data, but whenever the result was 10 percent or higher, we assumed that the same percent of people in pretrial detention on the given charge would also have an underlying domestic violence allegation. This method replicates one first developed for the Lippman Commission in 2017.[5]

Coding of Select Charges

For some charges, the amended reform included additional, fine distinctions that had to be carefully coded—sometimes in both the court and jail datasets and sometimes only in the jail data (where court data already accurately reflected the given distinction). These special challenges are described below.

Burglary in the Second Degree, Second Sub-Section (PL 140.25[2])

We had to estimate the percent of cases with this charge where the individual remained unlawfully in a "living area" of a building as opposed to a common area. Following the findings of the above-noted study by the Legal Aid Society—whose key results are also published at the end of this report—we assumed that 63 percent of *all* 2019 cases arraigned on PL 140.25(2) involved a living area. For the *subset* of those cases where the judge ordered bail or remand, as well as for our analysis of jail population data, we then assumed that 61 percent involved a living area, also corresponding to the results of the Legal Aid study, in this case for the subsample of cases that were ordered to bail or remand.

Sex Trafficking (PL 230.34)

For this charge, sub-sections 5(a) and 5(b) are classified as violent felonies and, therefore, were already defined as money bail-eligible under the original reform passed April 2019. However, all other sub-sections of PL 230.34 were only made money bail-eligible under the amended reform. Our 2019 court data includes the sub-section for all charges, allowing for accurate coding. Jail data, on the other hand, lacks a sub-section field. To create an estimate for jail data, we sampled those PL 230.34 court cases that were arraigned in 2019 and where the judge ordered bail or remand. Of those, we computed the percentage involving sub-sections 5(a) or 5(b)—59 percent—and then applied this same percentage to the pretrial jail population. In other words, conversely, we assumed that 41 percent of cases detained on PL 230.34 are in the nonviolent felony category and, therefore, were removed from the pretrial jail population under the original reform but would be added back into it under the amended scheme.

Criminal Obstruction of Breathing or Blood Circulation (PL 121.11)

This charge became money bail-eligible under the amended reform—but only when domestic violence is alleged. Domestic violence status can be accurately coded from court data and imputed to jail data, as described above. Specifically, in 2019, 86 percent of PL 121.11 court cases where bail or remand were ordered involved domestic violence; this same percentage was then imputed to people detained on a PL 121.11 charge.

However, an additional challenge is that PL 121.11 is widely known often *not* to be top charge but, instead, to be an attached charge, accompanying a top charge of assault in the third degree (PL 120.00). Yet, neither court nor jail data available to the Center for Court Innovation includes charges other than the top charge.

To address this limitation, staff from OCA's Division of Technology graciously provided an analysis of all cases both charged with assault in the third degree and flagged as domestic violence, which were ever entered into OCA's Universal Case Management System. (This system came online in recent years, but not on the same date in all five NYC boroughs.) Of 146,961 such cases, OCA found that 37,812 (25.7 percent) had an attached PL 121.11

charge.[6] We then rounded down to 25 percent to avoid undue over-precision and incorporated an assumption that, of domestic violence cases with a top charge of assault in the third degree, 25 percent would have a PL 121.11 attached charge in both court and jail data.

Hate Crime Involving Assault in the Third Degree (PL 120.00)

In 2019, available NYC data indicate that 25 alleged hate crimes were disposed involving a charge of assault in the third degree (PL 120.00). Of these 25 cases, 5 were detained throughout the pretrial period and 2 were briefly detained until posting bail. The 5 cases detained throughout averaged 53 days held pretrial. This translates into an estimated jail population impact of a single jail bed on any given day.

Failure to Register as a Sex Offender (Correction Law 168-t)

Both court and jail data include this charge—but the amended reform technically makes the case bail-eligible only if the defendant is both required to maintain sex offender registration AND is designated a Level 3 offender. Given that Level 3 status is not in available data, we just assumed all failure to register cases are eligible for bail. This assumption resulted in a projection that 3 additional people would be added to New York City's daily jail population.

Endangering the Welfare of a Child (PL 260.10)

Cases with a charge of PL 260.10 are money bail-eligible only if the defendant must register as a sex offender and is also designated a Level 3 sex offender. The impact of this charge on the pretrial jail population would be negligible under any set of assumptions. In 2019, there were only 36 NYC cases detained for any duration on a PL 260.10 charge, and only 2 people with this charge were held pretrial as of our October16, 2019 jail snapshot date. These results would lead us to assume an increase to the daily jail population of 2 people. However, in cases with a top charge of PL 260.10, no sex offender registry-related variables are included in either court or jail data. Given this lack of registry data or of any basis for forming a final estimate, we did not assume that any PL 260.10 charges meet the additional sex offender criteria just outlined and, thus, did not classify any as eligible for bail.

Additional Bail-Eligible Situations at Arraignment

Besides making specific charges bail-eligible, the amended reform delineated three complex, multi-component situations as subject to pretrial detention at arraignment. In classifying OCA court data for 2019, we did not attempt to code for these complex situations. However, because they involve potentially serious charges and criminal histories that may make them especially likely to be sent to pretrial detention, we considered it extremely important to model for them in our projection of jail population impacts.

In all computations described below, *we isolated only cases that were not already bail-eligible due to the offense charged*. We also, in sequence, removed cases made bail-eligible due to prior multi-component situations to avoid double counting. For example, after we computed bail-eligible cases based on the probation status criterion noted just below, any such case that also met the persistent felony offender criterion was only considered to contribute to the jail population *once* (i.e., on probation status).

Another key element contained in all three computations below is that we isolated cases that were detained pretrial, and then distinguished the percent of those cases respectively detained throughout the pretrial period and detained for only part of this period. Then, for cases detained throughout, we used our court dataset for all cases disposed in 2019 to compute an average case duration of 146 days for any felony cases that are not bail-eligible based on charge alone. Using the same court dataset, we also computed an average duration of 102 days for felonies or misdemeanors that involve harm to an identifiable person or property. (The 146-day figure was used in the first two situations described below, and the 102-day figure was used in the third.) For people detained for only part of the case, we imputed an average length of stay of 20 days, drawing on results across a range of public reports issued by the Mayor's Office of Criminal Justice (MOCJ) to arrive at this estimate.[7]

Felony Charge While on Probation

To model this criterion, we drew upon a special person-based dataset constructed by Center for Court Innovation researchers from all cases disposed in 2018. The dataset draws on and merges criminal history information from other recent years—including past probation sentences and their duration. From this, it was possible to determine probation status as of the current 2018 case in question. We found that 146 people charged with a felony and not otherwise bail-eligible were both on probation and detained at arraignment, of which 34 percent were detained throughout the case and 66 percent for part of the case. From this information, and given other above-noted assumptions, we projected that the felony charge while on probation criterion would add 25 people to the daily pretrial jail population.

Persistent Felony Offender if Felony Conviction on Current Case

Defined in PL 70.10, a persistent felony offender has two prior felony convictions, each involving a sentence of more than a year, where the commission of the second felony does not predate the commission of and prison term for the first felony conviction. A subsequent third felony conviction makes the individual a persistent felony offender. The amended bail statute indicates that so long as the current case *could* produce persistent felony offender status in the event of a conviction, bail or remand may be ordered during the pretrial period.

In the same person-based dataset described in the above section, there were 119 people who were not otherwise bail-eligible, whose criminal history gave them persistent felony offender status in the event of a felony conviction on the current case, and who were detained at arraignment. Of these individuals, 71 percent were detained throughout the case and 29

percent for part. Given this information and other above assumptions, we projected that the persistent felony offender criterion would add 36 to the pretrial jail population.

Current and Open Case with Harm to a Person or Property

There is no formal statutory definition of either "harm to an identifiable person" or "harm to property," yet when a judge interprets that one of these criteria apply to both a current case and an open case, money bail or remand may be set. *After conferring with a range of stakeholders, we decided that the most plausible assumption for how judges might interpret this provision was an inclusive one*. Therefore, we assumed that any Class A misdemeanor or felony conceivably involving any physical threat or harm (including any weapons possession charge) would be defined as harm to a person.[8] We also assumed that any property charge would be defined as harm to property, with the sole exception of PL 165.15 (theft of services, usually turnstile jumping), which we did *not* assume any court would interpret as credibly involving such harm.[9]

We are not endorsing these inclusive definitions that we adopted for projection purposes. To the contrary, our own initial interpretation was that the literal meaning of "harm to property" would be limited solely to defacement or actual damage to property, as defined in Article 145 of the state penal law on criminal mischief and related offenses. As a practical matter, however, we decided it is more likely that courts will include a greater array of property crimes under the "harm to property" umbrella.

In the same person-based dataset described above, we found that there were 603 people who were not otherwise bail-eligible with both a current case and an open (pending) case involving harm to a person or property and who were detained at arraignment. Of these individuals, 38 percent were detained throughout the case and 62 percent for part. They contributed 85 people to the daily pretrial jail population.

Pretrial Detention Between Conviction and Sentencing

The amended reform permits judges to set bail or to remand people to pretrial detention who are not otherwise bail-eligible if they pled or are found guilty on the current case AND sentencing is adjourned to a later date. We assumed that judges would avail themselves of this option if, under pre-reform 2019 practices, judges had already detained the individual by the time of disposition and the case was headed for a prison sentence. There were 804 New York City cases disposed in 2019 that a) would not be money bail-eligible, b) were detained at disposition, with sentencing adjourned to a later date, and c) a prison sentence was ultimately imposed. These cases averaged exactly 30 days from the disposition date to the sentence date. Assuming 30 days in jail for each of these cases yields a projected average daily jail population impact of 66.

Additional Limitations to the Methodology

First, we may have slightly underestimated the re-increase in the jail population, due to dynamics associated with bail funds. In recent years, New York City's bail funds have frequently paid the bail of people facing misdemeanor charges with a bail amount of $2,000 or less. (These bail fund eligibility criteria are set by law.) However, over the past six months, NYC's bail funds disbanded in conjunction with the initial bail reforms, which led bail fund staff to shift their focus to the idea that access to money should not determine someone's liberty. Thus, fewer misdemeanor defendants, now made bail-eligible once again, may be able to post bail than at the time of our October 16, 2019 jail snapshot.

Second, for the original reform that formally went into effect January 1, 2020, we did not attempt to estimate how often judges will order bail or remand in response to pretrial misbehavior, such as "persistently and willfully" failing to appear for scheduled court dates or engaging in certain types of pretrial re-arrests.[10] It is conceivable that, over time, more severe judicial responses to pretrial misbehavior where bail can be set in response could limit the impact of both the original reforms and amended reforms, altering future jail population numbers in absolute terms.

Third, we did not make any projection related to the potential impact of either reform scheme on sentencing. Yet, previous New York City research makes clear that when people are detained pretrial, they are more likely to agree to plea deals involving jail time at the sentencing stage.[11] Based on this strong empirical relationship between pretrial detention and jail sentences, it is exceptionally likely that the original reforms reduced the size of the jail population held on a sentence and that the amendments will increase jail sentences to at least some degree. However, we did not attempt to model these effects statistically.

Fourth, our projections do not consider the possible mitigating effects of new criminal justice programs and policies in the forthcoming years—including both the required expansion of pretrial supervision and other non-monetary conditions under bail reform and, potentially, other diversion programs that some counties may choose to implement. Counties that make robust investments in alternatives to detention may see future jail reductions we cannot anticipate.

Finally, we lacked any basis to estimate with mathematical precision the existence or likelihood of a culture change in pretrial release decisions that could result in part from robust adherence to the bail reforms. Such a change could move either in the direction of greater release or greater detention, among cases for which bail and remand continue to be legal options. As we discuss in our accompanying publication, a broader shift in pretrial decision making across New York State represents a real possibility, even if it is one that we cannot reliably predict.[12]

Case Review of Burglary in the Second Degree, Second Subsection

By Alex Rhodd and Vincent Ciaccio, Ph.D.

Of 670 burglary in the second degree, second subsection cases (PL 140.25[2]) arraigned in 2019 and represented by the Legal Aid Society, Legal Aid researchers drew a sample of 619 with complete data for nearly all relevant measures. The tables that follow display the breakdown of these 619 cases by New York City borough (Table 1); charge details (Table 2); incident location (Table 3); and incident location by release status (Table 4). One case was missing incident location, leading to a sample size of 618 for this measure.

To determine the percentage of these cases that are money bail and remand eligible under New York's amended bail law passed April 2020, we examined the percentage of cases where the incident location was in a "living area." As shown in Table 3, the alleged crime in 62.9 percent (rounded to 63 percent) of PL 140.25(2) cases was in a living area.

We then isolated cases where the judge set bail or remanded the defendant, since these cases would be most closely equivalent to those found in the NYC jail population. As shown in Table 4, the alleged crime in 61.5 percent (technically 61.48, rounded to 61 percent) was in a living area, compared to 65.1 percent of released cases (see Table 4, bottom two sections).

Table 1. Distribution of 2019 PL 140.25(2) Cases by Borough

County	Cases	Percent of Total
New York County	215	34.7%
Kings County (Brooklyn)	178	28.8%
Queens County	123	19.9%
Bronx County	67	10.8%
Richmond County (Staten Island)	36	5.8%
Total	**619**	**100.0%**

Table 2. Distribution of 2019 PL 140.25(2) Cases by Charge

Charge Breakdown	Cases	Percent of Total
140.25(2) Burglary 2º	573	92.6%
110-140.25(2) Attempted Burglary 2º	38	6.1%
140.25(2)X Burglary 2º – Sexually Motivated Felony	7	1.1%
140.25(2)H Burglary 2º – Hate Crime	1	0.2%
Total	**619**	**100.0%**

Table 3. Distribution of 2019 PL 140.25(2) Cases by Incident Location

Incident Location	Cases	Percent of Subtotal
In home	389	62.9%
Lobby	146	23.6%
Basement	34	5.5%
Business	30	4.9%
Outside	19	3.1%
Subtotal Non-Missing	***618***	***100.0%***
Location not indicated	1	0.2% of total
Total	**619**	**100.0%**

Table 4. Distribution of 2019 PL 140.25(2) Cases by Release Status and Location

Release Status and Incident Location	Cases	Percent of Release Status Category	Percent of Total
Bail Set but Not Posted	**337**	**100.0%**	**54.7%**
In home	208	61.7%	33.7%
Lobby	81	24.0%	13.1%
Business	20	5.9%	3.2%
Basement	18	5.3%	2.9%
Outside	10	3.0%	1.6%
Posted Bail	**16**	**100.0%**	**2.6%**
In home	11	68.8%	1.8%
Lobby	2	12.5%	0.3%
Outside	1	6.3%	0.2%
Business	1	6.3%	0.2%
Basement	1	6.3%	0.2%
Remanded without Bail	**13**	**100.0%**	**2.1%**
In home	6	46.2%	1.0%
Lobby	7	53.8%	1.1%
All Bail or Remand Cases Combined	**366**	**100.0%**	**59.4%**
In home (of bail or remand ordered)	225	61.5%	36.4%
All other categories	141	38.5%	22.8%
Released (ROR, Supervised Release)	**252**	**100.0%**	**40.6%**
In home (of released)	164	65.1%	26.5%
All other categories	88	34.9%	14.2%
Total	**618**		**100.0%**

Notes

[1] Rempel, M. & Rodriguez, K. (2020). *Bail Reform Revisited: New York's Amended Bail Law and its Impact on Pretrial Detention*. New York, NY: Center for Court Innovation. Available at: https://www.courtinnovation.org/publications/bail-revisited-NYS.

[2] NYC Open Data. *Daily Inmates in Custody*. Available at: https://data.cityofnewyork.us/Public-Safety/Daily-Inmates-In-Custody/7479-ugqb. All results are based on an original case-level data analysis by the Center for Court Innovation.

[3] Tyler Nims, Executive Director of *A More Just NYC*, first proposed this strategy as a method for properly modeling and discounting people in pretrial detention on holds that are unaffected by either bail reform scheme. *A More Just NYC* is the nonprofit agency that carries out the work of the Lippman Commission.

[4] Department of Correction (DOC) data was also downloaded and analyzed on the following dates in near proximity to March 5, 2020, yielding virtually identical results: February 27, March 3, March 4, March 17, and March 18.

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

[6] The analysis of domestic violence cases with a top charge of PL 120.00 and an attached charge of PL 121.11 was performed by Carolyn R. Cadoret, senior IT analyst, and Marina Swartz, principal court analyst, at the Division of Technology of the New York State Office of Court Administration.

[7] See Mayor's Office of Criminal Justice (MOCJ). (2020). *Local Law 86: Quarterly and Semi-Annual Reporting of Individuals in DOC Custody: Fourth Quarter, 2019*. New York, NY: MOCJ. Available at: https://criminaljustice.cityofnewyork.us/data_reports/; and MOCJ. (May 2019). *Jail: Who is in on Bail?* New York, NY: MOCJ. Available at: https://criminaljustice.cityofnewyork.us/wp-content/uploads/2019/05/Bail_2019_May_draft-23.pdf.

[8] Specifically, we defined harm to an identifiable person to include all charges in these penal law articles: PL 120 (assault and related); PL 121 (strangulation and related); PL 125 (homicide and related); PL 130 (sex offenses); PL 135 (kidnapping, coercion, and related); PL 150 (arson); PL 240 (public order offenses); PL 241 (harassment of rent regulated tenants); PL 260 (child, disabled person, and elderly person offenses); PL 263 (sexual performance by children offenses); PL 265 (firearms and weapons offenses); and PL 270 (public safety offenses). Additional specific charges were then added, including witness intimidation and tampering (PL 215.10-15), juror tampering (PL 215.23-25), obstructing governmental administration (PL 195.05, 07, and 08), obstructing first responders (PL 195.15 and 16), obstructing government by means of a bomb or related device (PL 195.17), and promoting or compelling prostitution (PL 230.20-33). Conversely, three specific loitering charges from Article 240 (PL 240.35, 36, and 37) were removed from the harm to person criteria. Finally, regardless of the charge, any case involving domestic violence was also defined as involving harm to a person.

[9] Specifically, we defined harm to property to include all charges in these penal law articles: PL 140 (burglary and related); PL 145 (criminal mischief and related); PL 155 (larceny); PL 156 (offenses involving computers); PL 160 (robbery); and PL 165 (other theft offenses—but excluding theft of services, PL 165.15).

[10] For a summary of when money bail or remand can be ordered in response to pretrial misbehavior under both the original and amended reforms, see Rempel, M. & Rodriguez, K. (2019). *Bail Reform in New York: Legislative*

Provisions and Implications for New York City. Available at: https://www.courtinnovation.org/publications/bail-reform-NYS. The relevant provisions were left unchanged by the 2020 amendments.

[11] Hahn, J. (2016). *An Experiment in Bail Reform: Examining the Impact of the Brooklyn Supervised Release Program*. New York, NY: Center for Court Innovation. Available at: https://www.courtinnovation.org/publications/experiment-bail-reform-examining-impact-brooklyn-supervised-release-program; Leslie, E. & Pope, N. G. (2017). "The Unintended Impact of Pretrial Detention on Case Outcomes: Evidence from New York City Arraignments." *The Journal of Law and Economics* 60: 3 (August): 529-557. Available at: http://www.econweb.umd.edu/~pope/pretrial_paper.pdf; Rempel, M., Kerodal, A., Spadafore, J., & Mai, C. (2017). *Jail in New York City: Evidence-Based Opportunities for Reform*. New York, NY: Center for Court Innovation. Available at: https://www.courtinnovation.org/publications/jail-new-york-city-evidence-based-opportunities-reform.

[12] Rempel, M. & Rodriguez, K. (2020), Op Cit.