PURSUING PRETRIAL JUSTICE THROUGH AN ALTERNATIVE TO BAIL

Executive Summary

Findings from an Evaluation of New York City's Supervised Release Program

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BUILDING KNOWLEDGE
TO IMPROVE SOCIAL POLICY

This report presents the findings of MDRC's implementation and impact evaluation of New York City's Pretrial Supervised Release Program (the "Program"), which was designed to provide judges with the option of releasing some defendants to their communities under supervision instead of setting bail. Using a combination of regular check-ins with case managers and referrals to various services calibrated to the needs of the clients, the Program substantially decreased the use of money bail and pretrial detention while at the same time ensuring high court appearance rates. Although Supervised Release was not designed as a program to reduce re-arrest — because New York State's bail law largely forbids judges from considering public safety in setting conditions of release — the evaluation shows that the Program also resulted in low re-arrest rates for defendants.

The City worked with the NYC Criminal Justice Agency (CJA) in 2009 to pilot the Supervised Release Program in Queens to provide judges in the borough with an alternative to releasing defendants charged with non-violent felonies on their own recognizance, setting bail, or remanding them. The Program released defendants under the supervision of case managers at CJA, with whom defendants were required to check-in on a regular basis to ensure they appeared in court pending the resolution of their cases. The City expanded the Program citywide in 2016 following the success of the initial Queens pilot — along with similar successes in additional pilots in Manhattan[1] and Brooklyn — and in consultation with national experts and court stakeholders. The Mayor's Office of Criminal Justice (MOCJ) oversees the citywide Program operations. Client services in each borough are provided by three non-profit organizations that specialize in social services and alternatives to detention and incarceration. The Program initially served low- to medium-high risk defendants charged with non-violent felonies and misdemeanors. Supervised Release later became an option for all defendants with pending cases in the City, a change that was made following the historic bail reform legislation implemented by New York State in January 2020.

In 2016, the City engaged MDRC to conduct an evaluation of the Program to assess program implementation citywide and measure program impact on appearance rates, arrest rates, and overall case outcomes for its clients. To answer these questions, MDRC implemented a mixed-method approach that involved the review of program documents and interviews with prosecutors, defenders, judges, defendants, and providers as well as observation of courtroom proceedings. In addition, the MDRC researchers collected and analyzed administrative and programmatic data from New York City and State agencies as well as from Supervised Release providers. The results show that the Program:

- Substantially reduced the use of money bail and pretrial detention for those who were Program eligible
- Maintained high court appearance rates, even though those clients spent nearly twice as long in their communities pretrial as those in the comparison group
- Maintained low re-arrest rates for Program clients as compared to similar defendants

Overall, these findings suggest that the Supervised Release Program is a promising strategy for reducing the City's use of pretrial detention, while ensuring the maintenance of public safety and attendance in court.

The evaluation also found that the Program was successful in enrolling its target population: defendants who likely would have received bail pretrial in the absence of the Program.

The evaluation also identified some important challenges around Program implementation. These included case managers with heavy caseloads, issues with case managers balancing their social work and case-monitoring responsibilities, and issues dealing with difficult client cases. However, interviews with clients suggest clients were very satisfied with the Program, especially since it gave them a chance to avoid money bail and allowed them to spend their pretrial period living in their communities. In addition, judges approved of the Program's focus on clients' social service needs, which Supervise Release emphasized relative to other pretrial supervision programs across the country. These findings were helpful as MOCJ developed an expanded program in 2019, in which some of these issues were addressed, including adding staff to lower caseloads and hiring specialized staff for harder-to-reach populations.

These findings are particularly encouraging for MOCJ, demonstrating the success of one part of the City's strategy to improve public safety and promote fairness while reducing unnecessary arrests and incarceration. In addition to the importance of achieving these goals as a matter of fundamental fairness and decency, the City has also committed to replacing the dilapidated jails on Rikers Island with smaller, safer, and modern borough-based facilities. This plan anticipates that programs like Supervised Release and other approaches to reducing both crime and incarceration will ensure that the City continues to shrink the footprint of the criminal justice system in the lives of New Yorkers.

As always, the City faces challenges ahead. The COVID-19 pandemic and the brutal killing of George Floyd have distilled those issues for us and strengthened our resolve to build a safer and fairer city. We have worked to ignite a virtuous cycle in which we look beyond the criminal justice system apparatus to ensure that New Yorkers are able to find the path towards a productive life, continuing an iterative shrinking of the touch of enforcement as the mechanism that keeps each of us safe. The Supervised Release Program is an important part of this effort to increase the well-being of all New Yorkers. We hope it can provide some ideas in other places in New York State and across the nation as they, like us, search for ways to promote fairness in the pretrial process.

Liz Glazer, Director
Mayor's Office of Criminal Justice

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[1] Solomon, Freda F., and Russell F. Ferri. 2017. "Reducing Unnecessary Pretrial Detention: CJA's Manhattan Supervised Release Program." Research Brief series, no. 42. New York: New York City Criminal Justice Agency, Inc.

Executive Summary

Pursuing Pretrial Justice
Through an Alternative to Bail:

Findings from an Evaluation of New York City's Supervised Release Program

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Overview

On any given day in the United States, nearly half a million people are detained in jail while awaiting the resolution of their criminal cases, many because they cannot afford to pay bail. Bail is meant to ensure that defendants appear for court dates and are not arrested for new charges while they wait for their cases to be resolved. However, research has shown that setting bail as a condition of release can lead to unequal treatment and worse outcomes for defendants who do not have the ability to pay, regardless of the risk they pose. Additionally, systemic racial inequities throughout the criminal justice system mean that communities of color are disproportionately affected by cash bail and pretrial detention.

In 2016, New York City rolled out a citywide program known as Supervised Release (SR). SR offers judges the option of releasing defendants under supervision in lieu of setting bail. Defendants released to SR are required to report to program staff members regularly and are offered reminders of their court dates, case management support services, and voluntary connections to social services. The city developed the SR program to reduce the number of defendants detained in jail because they could not afford to pay bail, while at the same time maintaining court appearance rates and public safety. The findings presented in this report offer strong evidence that SR achieved these overarching goals.

The vast majority of defendants in New York City were not considered for SR during the time of this study because the program targeted and screened for eligibility only those defendants facing misdemeanors or nonviolent felony charges who were likely to have bail set and for whom it was believed a judge would be willing to grant SR. The directly measurable effects of SR described in this report therefore apply only to the relatively small proportion of citywide defendants enrolled in the SR program. These findings include:

- Presenting judges the option of SR substantially reduced money bail and pretrial detention.

- SR produced comparable reductions in releases without conditions.

- SR enrollees were subject to court rules that are applied to defendants with open cases for significantly longer time periods. Nevertheless, they were not significantly more likely to have a bench warrant issued for failing to appear for a court date.

- SR did not increase arrests for new crimes during the nine months following case initiation.

- SR enrollees were less likely to be convicted and more likely to have their cases dismissed.

- SR's effects on money bail, pretrial detention, bench warrants, and new felony arrests did not differ meaningfully among defendants of different races/ethnicities or ages.

- When SR was presented as an option, judges assigned more than half of defendants to it.

- SR largely succeeded at enrolling its intended target population of moderate-risk defendants.

- SR focused more on clients' social service needs than many other pretrial supervision programs — an aspect that made the program appealing to some judges.

Acknowledgments

Executive Summary

This report presents results from the first independent evaluation of the implementation and impacts of New York City's pretrial Supervised Release program. The program is designed to address a major injustice: On any given day in the United States, nearly half a million people are detained in jail while awaiting the resolution of their criminal cases, despite the presumption of innocence.[1] Many of these individuals are held because they cannot afford to pay the bail that was set as a condition of their release. Bail is meant to ensure that defendants appear for court dates and are not arrested for new charges while they wait for their cases to be resolved. However, setting cash bail as a condition of release leads to unequal treatment and worse outcomes for defendants who do not have the ability to pay.[2] Furthermore, systemic racial inequities throughout the criminal justice system mean that communities of color are disproportionately affected by the setting of money bail and its harmful consequences.[3] To address these concerns, jurisdictions are seeking alternatives such as pretrial supervision that will allow them to release more defendants safely.

In 2016, New York City rolled out a citywide program known as Supervised Release (SR). SR offers judges the option of releasing appropriate defendants under specific supervisory conditions in lieu of setting bail. Defendants released to SR are required to report to program case managers regularly and are offered reminders of their court dates, case management support services, and voluntary connections to social services. The city developed the SR program to reduce the number of defendants detained in jail because they could not afford to pay bail, while at the same time maintaining court appearance rates and public safety.

Pretrial supervision programs have existed since the 1970s and their use is increasing, but there is little research about their effectiveness.[4] Thus, lessons from this evaluation will help criminal justice policymakers nationally and in New York State, where monetary bail was recently eliminated for many cases involving misdemeanor and nonviolent felony charges, leading to a vast expansion of the city's SR program. This study evaluates the effects of New York City's SR program as it was implemented from 2017 to 2019, before statewide bail reform took effect in January 2020.

The overarching research questions for the evaluation are:

1. How was the SR program implemented?

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[1]Pretrial Justice Institute, "Why We Need Pretrial Reform," (website: www.pretrial.org/get-involved/learn-more/why-we-need-pretrial-reform, 2018).

[2]Pretrial Justice Institute (2018).

[3]The Sentencing Project, "Report of the Sentencing Project to the United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and Related Intolerance" (website: www.sentencingproject.org/publications/un-report-on-racial-disparities, 2018).

[4]Kristin Bechtel, Alexander Holsinger, Christopher Lowenkamp, and Madeline Warren, "A Meta-Analytic Review of Pretrial Research: Risk Assessment, Bond Type, and Interventions" (http://dx.doi.org/10.2139/ssrn.2741635, 2016).

2. What were the effects of the SR program on pretrial release conditions, pretrial detention, bench warrants for missed court appearances, new arrests, and case outcomes?

To address the latter research question, the evaluation uses a regression discontinuity design. The design compares the outcomes of defendants just above and just below an SR eligibility cutoff that was based on their scores on a risk assessment. Because these two groups of defendants were comparable at the outset but differed in their potential access to the SR program, any differences in their outcomes can be attributed to the SR program with a high degree of confidence.

Findings

The findings presented in this report offer strong evidence that SR achieved its overarching goals of reducing the use of money bail and pretrial detention while maintaining high court appearance rates and preserving public safety. These findings include:

- **SR was presented to judges as a release option at arraignment for only a small proportion of defendants in the system.**

At the time of the evaluation, the vast majority of defendants in New York City were not considered for SR because the program targeted and screened for full eligibility only the narrow group of defendants who were facing eligible charges (misdemeanors and nonviolent felonies that did not involve domestic violence allegations), who were likely to have bail set, and for whom it was believed judges would be willing to consent to SR. Defense attorneys acted as gatekeepers to the SR program: Defendants were screened only at their attorneys' request or with their permission. As a result, SR was a release option for fewer than 10 percent of all defendants arraigned on SR-eligible charges during the study time frame.[5] *The directly measurable effects of SR described in this report apply only to the relatively small proportion of citywide defendants enrolled in the SR program.*

- **The option of SR substantially reduced money bail and pretrial detention.**

When SR was presented as an option at arraignment hearings, it produced a sharp reduction in the use of money bail. Consequently, there was a similarly large reduction in the proportion of defendants detained in jail after their arraignment hearings.

- **The option of SR produced comparable reductions in release without conditions (ROR).**

At the same time, SR produced a large reduction in release without conditions. This finding means that some defendants who would have otherwise been released without conditions had additional conditions imposed as a result of SR. This circumstance, referred to as "net widening," was not widespread because most defendants were never considered for SR, largely

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[5]This figure is among custodial arrests only — that is, arrests where the defendants were taken into custody. It does not include desk appearance ticket-based arrests, in which defendants were given tickets and told to appear for arraignment later.

because defense attorneys served as gatekeepers to the program. The vast majority of New York City defendants received ROR during the study time frame, as was true before SR was implemented. However, bail reform has changed New York City's pretrial process, and as of 2020 defense attorneys no longer serve in this gatekeeping role and all defendants can be considered for SR. Thus, it is important for the city to implement strategies to protect against widespread net widening, given the increased conditions and risks it places on individuals awaiting trial.[6]

- **SR enrollees were subject to court rules that are applied to defendants with open cases for significantly longer time periods.**

There are two reasons why SR enrollees were exposed longer to the potential for breaking a court rule, for example by missing a court hearing. First, SR enrollees had longer times to case resolution, and therefore probably had more required hearings. Second, they spent more days in the community (and not detained in jail). Taken together, these factors doubled the time that SR defendants were exposed to court rules. This issue is critical when measuring the effects of SR on outcomes such as bench warrants issued for failing to appear at court hearings.[7] Because SR enrollees were exposed longer to pretrial court rules, the evaluation sought to disentangle the effects of the SR program on failures to abide those rules from the effects of having to abide them for additional time.

- **Despite being subject to court rules for twice as much time, SR enrollees were no more likely to have bench warrants issued for failing to appear in court.**

The study found no statistically significant increase in the likelihood of receiving a bench warrant for failure to appear among SR enrollees, even though these defendants were at risk for twice as much time.

- **SR did not increase arrests for new crimes during the nine months following case initiation.**

The approach to isolating the impact of SR on new arrests was more straightforward than for bench warrants. Rather than focus on the pretrial period — which is subject to wide variation across individual defendants, and was dramatically affected by SR — the analysis assessed the effect on new arrests for a nine-month follow-up period common to all defendants. Enrollment in SR did not produce a substantial or statistically significant increase in new arrests overall or by type of charge.

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[6]In tandem with bail reform, the New York City Criminal Justice Agency — which administers release assessments to nearly every individual arrested and held for arraignment in New York City — began using an updated assessment that has greatly increased the proportion of cases recommended for ROR. The new assessment was developed based on a strategy of recommending as many individuals for release as possible while maintaining the city's high court appearance rate. The use of this new assessment may help counter the expanded potential for net widening.

[7]A bench warrant is issued by a judge, typically because a defendant has failed to appear for a mandated court hearing. It gives the police the authority to arrest the defendant.

- **Defendants enrolled in SR experienced lower rates of conviction and higher rates of case dismissals.**

Defendants who are detained awaiting trial will often plead guilty to their charges without extensive negotiation because they receive immediate or quicker release if they do.[8] Because SR reduced pretrial detention, it also reduced the incentive for defendants to plead guilty quickly. This circumstance probably made it more difficult for prosecutors to obtain guilty pleas for cases, requiring them to conduct more investigation and build substantial evidence to support their prosecution, simultaneously leading to longer times to case resolution. (Speedy trial requirements that apply to detained defendants, but not released defendants, may have also led to SR enrollees having longer case-processing times.) As a result of this combination of factors, SR ultimately reduced convictions and increased rates of case dismissal, meaning the prosecution dismissed charges or a judge determined there was not enough evidence for the case to proceed.

- **SR's effects on money bail, pretrial detention, bench warrants, and new felony arrests did not differ meaningfully among defendants of different races/ethnicities or ages.**

However, SR did have stronger effects on reducing the use of bail and on pretrial detention for felonies than misdemeanors, and had stronger effects on these outcomes in Manhattan than in the Bronx, Brooklyn, or Queens. There was no variation in effects on bench warrants or new felony arrests by charge class or borough.

- **When SR was presented as an option at arraignment, judges assigned more than half of defendants to it.**

When SR was rolled out citywide in 2016 it was a new option for most arraignment judges, since previously existing pilot programs had operated on a relatively small scale. It was not certain that judges would know enough about the program to feel comfortable using it in lieu of bail. Implementation study results show, however, that many arraignment judges did make use of SR: More than half of defendants were assigned SR when it was available as an option.

- **SR largely succeeded at enrolling its intended target population of moderate-risk defendants.**

Compared with defendants whose charges made them eligible for SR but who were not considered for the program, SR enrollees were more likely to be facing felony charges, were at a higher risk of being arrested for new felonies while awaiting trial, and were less likely to be recommended for ROR based on their likelihood of returning to court if released. At the same time, the SR eligibility criteria during the study excluded defendants at high risk of incurring new felony arrests while their cases were pending, as well as those facing violent felony charges.

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[8]Will Dobbie, Jacob Goldin, and Crystal S. Yang, "The Effects of Pretrial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges," *American Economic Review* 108, 2 (2018): 201-240 (https://doi.org/10.1257/aer.20161503).

- **SR focused more on clients' social service needs than many other pretrial supervision programs — an aspect that made the program appealing to some judges.**

New York City's approach to supervised release differs from that of many other jurisdictions because the program is operated by community-based providers; is staffed by trained social workers, clinicians, peer mentors, and others; and includes a strong emphasis on counseling, case management, and connections to services, all to address clients' underlying needs. (Many other jurisdictions that operate supervised release programs house them in an office of the courts or probation. Such programs focus more on monitoring and compliance than on case management.)

Looking Ahead

Once New York State's bail reform legislation took effect in January 2020, the vast majority of defendants were no longer eligible for bail (except those arrested for most violent felony offenses), and instead had to be released without monetary conditions. These changes effectively limited judges' options to ROR or SR. *All defendants became eligible for SR at arraignment, with no exclusions based on charge or risk.* These shifts led to a significant expansion of the New York City SR program: SR began serving both a larger number of defendants and defendants with different characteristics and types of cases than in the past (until the COVID-19 pandemic temporarily disrupted SR enrollment beginning in March 2020). Rollbacks to portions of the original bail reform legislation went into effect in July 2020 and those may result in further changes to SR, though the program will probably continue to serve a larger, more varied caseload than it did before bail reform. Although this study cannot directly speak to the impact SR will have moving forward in light of its expansion and ongoing changes to New York's pretrial rules, the results presented in this report remain highly relevant as policymakers consider tools to support the goals of bail reform: to maximize pretrial release rates while maintaining defendants' court appearance rates and the safety of communities.

About MDRC

MDRC is a nonprofit, nonpartisan social and education policy research organization dedicated to learning what works to improve the well-being of low-income people. Through its research and the active communication of its findings, MDRC seeks to enhance the effectiveness of social and education policies and programs.

Founded in 1974 and located in New York; Oakland, California; Washington, DC; and Los Angeles, MDRC is best known for mounting rigorous, large-scale, real-world tests of new and existing policies and programs. Its projects are a mix of demonstrations (field tests of promising new program approaches) and evaluations of ongoing government and community initiatives. MDRC's staff members bring an unusual combination of research and organizational experience to their work, providing expertise on the latest in qualitative and quantitative methods and on program design, development, implementation, and management. MDRC seeks to learn not just whether a program is effective but also how and why the program's effects occur. In addition, it tries to place each project's findings in the broader context of related research — in order to build knowledge about what works across the social and education policy fields. MDRC's findings, lessons, and best practices are shared with a broad audience in the policy and practitioner community as well as with the general public and the media.

Over the years, MDRC has brought its unique approach to an ever-growing range of policy areas and target populations. Once known primarily for evaluations of state welfare-to-work programs, today MDRC is also studying public school reforms, employment programs for ex-prisoners, and programs to help low-income students succeed in college. MDRC's projects are organized into five areas:

- Promoting Family Well-Being and Children's Development
- Improving Public Education
- Raising Academic Achievement and Persistence in College
- Supporting Low-Wage Workers and Communities
- Overcoming Barriers to Employment

Working in almost every state, all of the nation's largest cities, and Canada and the United Kingdom, MDRC conducts its projects in partnership with national, state, and local governments, public school systems, community organizations, and numerous private philanthropies.