

November 2022

A Year of Unprecedented Change

How Bail Reform and COVID-19 Reshaped Court Practices in Five New York Counties

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Executive Summary

In April 2019, New York passed historic bail reform that was intended to reduce the use of pretrial detention. The impact was quick and sizable: from April 2019 to March 2020, the number of people incarcerated in New York jails decreased by more than 30 percent. The unprecedented COVID-19 pandemic further decreased the number of people in jail. In July 2020, a daily average of 11,000 people were incarcerated in local jails across New York, hitting a two-decade low.¹ Two-thirds of these people were incarcerated in jails outside of New York City.

This report provides an extensive look at how five counties—Albany, Broome, Erie, Tompkins, and Ulster—implemented key provisions of the bail reform law. The analysis incorporates multiple data sources, including arrest, jail, and pretrial supervision administrative data; court observations; and system actor interviews.

The major findings are as follows:

1. Changes in pretrial admissions and likelihood of pretrial detention
 - Across the counties, pretrial populations decreased more than 35 percent after the implementation of bail reform.
 - The likelihood of pretrial detention after arrest decreased by more than 35 percent after the implementation of bail reform.
2. Putting policy into practice: Findings from 300 virtual court observations
 - Mandatory release effectively limited the use of money bail.
 - Prosecutors and judges relied on money bail where still allowed. Judges set bail in about a quarter of all arraignments and for almost 60 percent of cases with qualifying charges.
 - When setting bail, judges rarely considered ability to pay and often set bail above defense counsel requests. In more than 70 percent of cases for which judges set bail, discussion about the person's ability to pay remained absent from their arraignment hearing.
 - Prosecutors and judges relied on criminal history and severity of charge when assessing bail in more than a quarter of cases in which bail was set.
 - Although it occurred rarely, the 2020 amendments to bail reform allowed judges to use ambiguity in the statutes to set bail on charges that otherwise required mandatory release.
3. Twenty-six system actors' perceptions of bail reform
 - More than 90 percent of system actors interviewed supported the bail reforms.
 - Virtual arraignments, introduced in response to the COVID-19 pandemic, hampered attorney–client communication.

- Defendants faced many barriers in returning to court, including substance use, mental health, and financial struggles.
- Inconsistent practices in local and county courts created challenges to the successful implementation of the law.

4. Changes in the use of pretrial supervision after bail reform implementation

- The number of people admitted to pretrial supervision in Albany, Broome, and Ulster Counties decreased by more than one-third immediately after bail reform went into effect.
- COVID-19 resulted in short-term declines in pretrial supervision admissions in Albany, Broome, and Ulster Counties, and a more prolonged effect in Erie County.
- The share of new supervision admissions for misdemeanor cases dropped more than 30 percent at the beginning of the pandemic, then returned to prepandemic levels.
- Variations in the use of release conditions reveal different court practices across counties.
- Less than 15 percent of new pretrial supervision cases ended in revocation within six months, mostly for felony rearrest or failure to appear.

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Introduction

Criminal courts in New York State experienced seismic changes to their operations and procedures in 2020. The year started with the implementation of historic bail reforms passed the previous year. The legislation sought to restrict the use of money bail and reduce unnecessary use of pretrial detention, particularly for New Yorkers too poor to pay their way out of jail. The COVID-19 pandemic followed shortly after—creating an immediate halt to in-person court operations and ushering in virtual hearings to stem transmission of the disease. While in the middle of this raging public health crisis, state legislators passed amendments in April 2020 allowing judges to set bail and impose conditions of release in a wider range of circumstances.² All of this occurred against the backdrop of a massive loss of life and economic devastation fueled by the pandemic. The tragic death of George Floyd followed shortly after the passage of the bail reform amendments, fueling calls for racial justice in the criminal legal system.

In 2019, the Vera Institute of Justice (Vera) undertook a three-year study of the effects of bail reform—and subsequently COVID-19—on New York’s criminal legal system. This report is part of a series documenting these changes in counties outside of New York City.³ In this report, Vera describes five New York counties’ progress toward achieving the goals of bail reform during the first year of implementation.

Overview of research methods

Vera researchers drew on interviews, courtroom observations, and administrative data to conduct an in-depth analysis of the use of bail, pretrial release, and pretrial detention in Albany, Broome, Erie, Tompkins, and Ulster Counties. Vera selected the five counties in the sample because they provide diversity in population size, urbanization, incarceration rates, and racial makeup. To understand trends in jail incarceration and pretrial detention (Section 1), the researchers analyzed arrest and jail incarceration data for 2019 and 2020 collected by the New York State Division of Criminal Justice Services from state and county agencies. Trained Vera researchers observed 300 virtual hearings at local and county courts in Broome and Erie Counties between July 2020 and September 2020 to understand how courtroom actors incorporated new provisions of the new laws (Section 2).⁴ The data included observations from arraignment hearings with 34 judges, 34 prosecutors, and 58 defense attorneys. Vera also conducted semi-structured interviews with 26 system actors across all five counties—including prosecutors, defense attorneys, and probation officers—to understand their perceptions of the strengths and limitations of bail reform, identify challenges to implementation, and learn the potential for revisions (Section 3). Finally, to conduct a deeper analysis of pretrial supervision practices, the researchers were able to access information about every new pretrial supervision case opened in four counties (Albany, Broome, Erie, and Ulster) in 2020 along with detailed data from 2019 for three counties (Albany, Broome, and Ulster) (Section 4).⁵ Vera collected this data directly from the counties’ probation departments. For more details on the research methods and data sources used in this report, see Appendices I through IV.

Key findings in this report include the following:

1. Bail reform led to dramatic declines in the number of people detained pretrial and the likelihood of pretrial detention (Section 1).
2. Although mandatory release effectively limited the use of money bail, judges continued to set bail (where still allowed) without considering a person’s ability to pay bail. Judges either set bail or remanded a person to custody on almost two-thirds of bail-qualifying cases and rarely inquired about the person’s financial circumstances (in only three bail-set cases in Vera’s sample) (Section 2).
3. Prosecutors, defense attorneys, and probation officers described jail as an inadequate response to issues relating to mental health and substance use, and acknowledged the lack of community resources to address major barriers people face in returning to court (Section 3).
4. The volume of pretrial supervision did not increase after bail reform, but some judges ordered pretrial supervision—a more restrictive condition than “release on recognizance” (ROR)—on charges where they were no longer allowed to set bail (Section 4).

Vera hopes that this and other timely analyses will inform responsive, evidence-based policy decisions in future iterations of bail reform.

How did bail reform and COVID-19 alter court operations in 2020?

Legislators overhauled New York’s bail law in April 2019. Prior to these reforms, thousands of New Yorkers, mostly people of color, languished in jails while awaiting trial simply because they could not afford to pay bail.⁶ Effective in January 2020, the new law sought to remedy this disparity by

- mandating appearance tickets, instead of arrest, for many misdemeanors and Class E felony charges;⁷
- prescribing pretrial release with nonmonetary conditions for most misdemeanors and nonviolent felonies;
- instructing judges to set the least restrictive conditions that reasonably assure an accused person’s appearance in court; and
- requiring judges, when setting bail, to (1) consider an accused person’s ability to post bail without causing undue hardship and (2) designate at least three forms of bail, one of which must be a partially secured or unsecured bond.⁸

On March 17, 2020, in response to the COVID-19 pandemic, courts moved arraignments from in-person to virtual settings, and New York State Governor Andrew Cuomo suspended speedy trial laws, causing trial delays.

Meanwhile, reform opponents lobbied Albany to rein in the new bail law before its effect was revealed, relying on inaccurate and/or incomplete data about the effect of bail reform on crime and safety.⁹ The legislature followed suit, passing several amendments on April 3, 2020, which became effective on July 2, 2020. These changes

- decreased the number of charges for which judges are prohibited from detaining people on bail and
- allowed judges to set bail for certain offenses that include “harm to an identifiable person or property” charged against a person already on pretrial release for another offense arising from such harm.¹⁰

1. Changes in Pretrial Admissions and Likelihood of Pretrial Detention

The main goal of New York State’s bail reform was to make “a fairer criminal justice system” by reducing the number of people held in pretrial detention because of their inability to afford bail.¹¹ Many correctly predicted that the new law would lead to a drastic decline in the pretrial jail population across New York State.¹² The onset of COVID-19, which spread widely through congregate living facilities, also led to calls for rapid decarceration as a public health measure.¹³ In this study, Vera analyzed jail and arrest data to measure changes in the use of pretrial detention in five counties—Albany, Broome, Erie, Tompkins, and Ulster—from January 2019 to December 2020. See Appendix I for more information on Vera’s methodology.

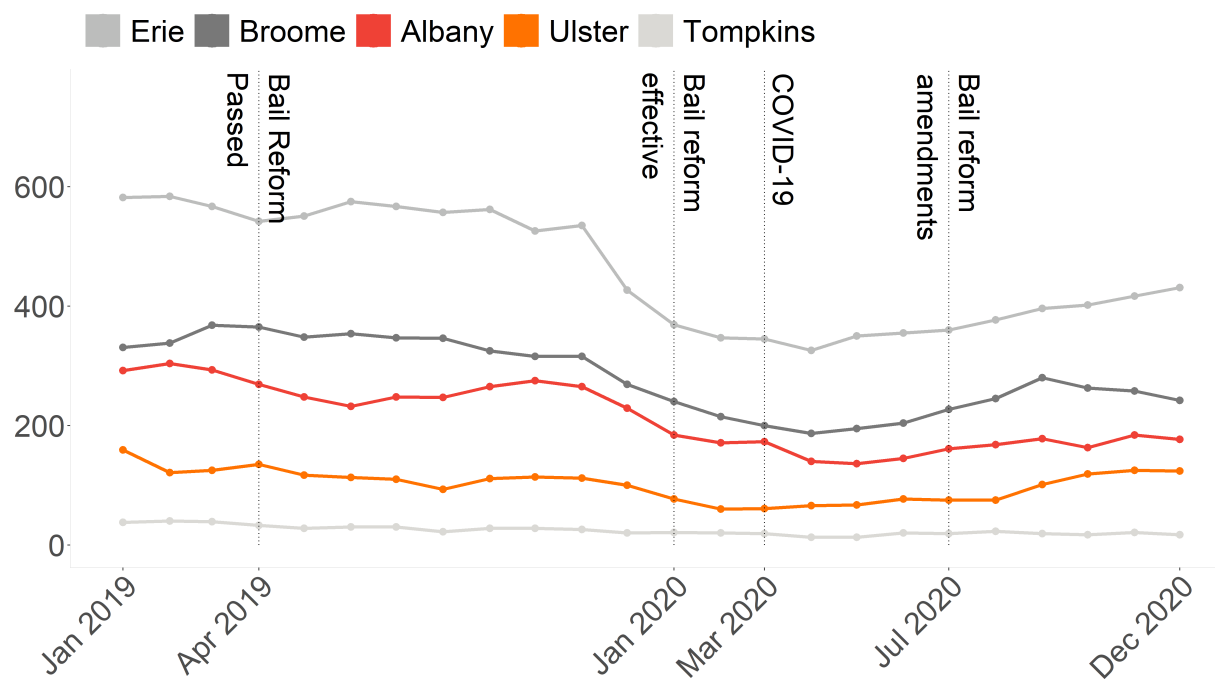
1.1 New York State’s pretrial population decreased more than 35 percent after the implementation of bail reform.

After the passage of bail reform in April 2019, many counties across New York began implementing its provisions before the law’s January 2020 effective date, by which point the statewide pretrial population had decreased by more than 35 percent.¹⁴ Fifty out of 62 counties showed a population decrease ranging from 2 percent to 45 percent.¹⁵ All five counties in this study showed a similar decrease in pretrial population, ranging from a drop of 32 percent to a drop of 43 percent (Figure 1). As this report explains, it becomes difficult to disentangle the impacts of bail reform from those of COVID-19 on jail populations later in 2020. However, many counties across New York experienced declines in their pretrial populations starting in late 2019, as district attorneys and judges began to change their practices in anticipation of the impending law change.¹⁶ The five counties in this study each experienced declines in their pretrial population of at least 12 percent from October 2019 to December 2019. This suggests that bail reform had an independent effect on the pretrial population.

Following the implementation of bail reform, far fewer people were detained pretrial after arrest due to new limits on judicial decision-making—namely, judges’ inability to set bail in most cases. This was particularly true for people arrested on misdemeanor and nonviolent felony charges, as the majority of these charges required mandatory release after bail reform. Between April 2019 and January 2020, the number of people incarcerated in the four study counties with available data—Albany, Broome, Erie, and Tompkins—decreased by 37 percent for misdemeanor charges, 27 percent for nonviolent felony charges, and 20 percent for violent felony charges.

Figure 1

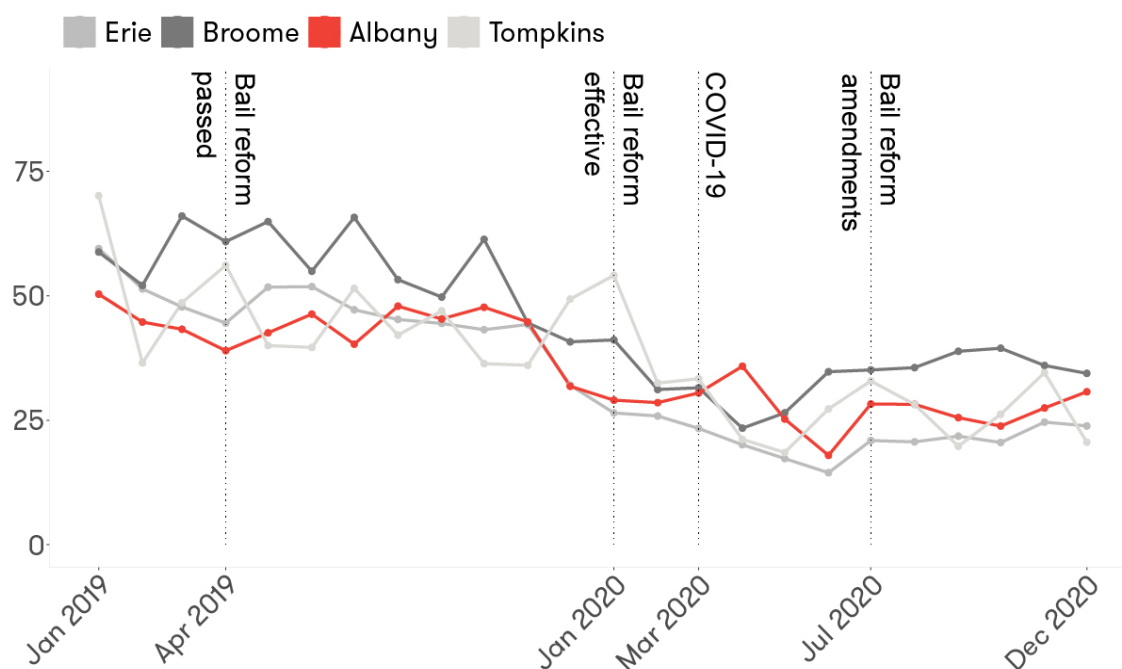
Pretrial Detention Populations by County



1.2 The likelihood of pretrial detention after arrest decreased by more than 35 percent after the implementation of bail reform.

The initial implementation of bail reform, along with the pandemic, substantially reduced the likelihood that an accused person would be held in pretrial detention. Between April 2019 and January 2020, pretrial admissions as a percentage of arrests in sample counties—Albany, Broome, Erie, and Tompkins—fell by more than 35 percent, on average (Figure 2). (Vera could not include Ulster County in this analysis due to a lack of reliable jail admission data.)

Figure 2
Monthly Jail Admissions as a Percentage of Arrest



Note: Ulster County was excluded because of lack of reliable jail admission data.

New York State became an early epicenter of the pandemic, and between March and June 2020, as the pandemic took hold, arrests decreased by 16 percent; moreover, an even smaller proportion of people arrested on misdemeanor and nonviolent felonies were placed in pretrial detention. In Albany County, the proportion of people held in pretrial detention upon arrest declined substantially from 30.5 percent to 17.9 percent. In Erie County, the proportion decreased from 23.4 percent to 14.5 percent, and in Tompkins County, it fell from 33.3 percent to 27.3 percent. In Broome County, however, the proportion of arrested people held in pretrial detention increased from 31.5 percent to 34.7 percent.¹⁷

Overall, from April 2019 to December 2020, the percentage of people arrested on misdemeanors or violations who ended up in pretrial detention dropped by more than half—from 28.3 percent to 10.4 percent—in the four counties for which Vera obtained jail admission data.¹⁸ For people arrested on nonviolent felonies, the proportion dropped from 68.1 percent to 26.1 percent.¹⁹

2. Putting Policy into Practice: Findings from Virtual Court Observations

The jail data illustrates bail reform’s effect on overall jail populations but does not provide insight into courtroom practices or court actors’ attitudes toward bail reform. To fill this gap, Vera researchers observed 300 virtual hearings between July and October 2020 in Broome, Erie, and Tompkins Counties, where virtual observations were permitted. Researchers documented key data points—such as charge details (severity of charge, domestic violence, open case, etc.), demography of the accused person perceived by researchers, and arguments made by judges and attorneys—using a combination of freeform notetaking and a structured observation tool. Some of the courtroom actors’ verbatim dialogue has been paraphrased. See Appendix II for more information on the research methodology.

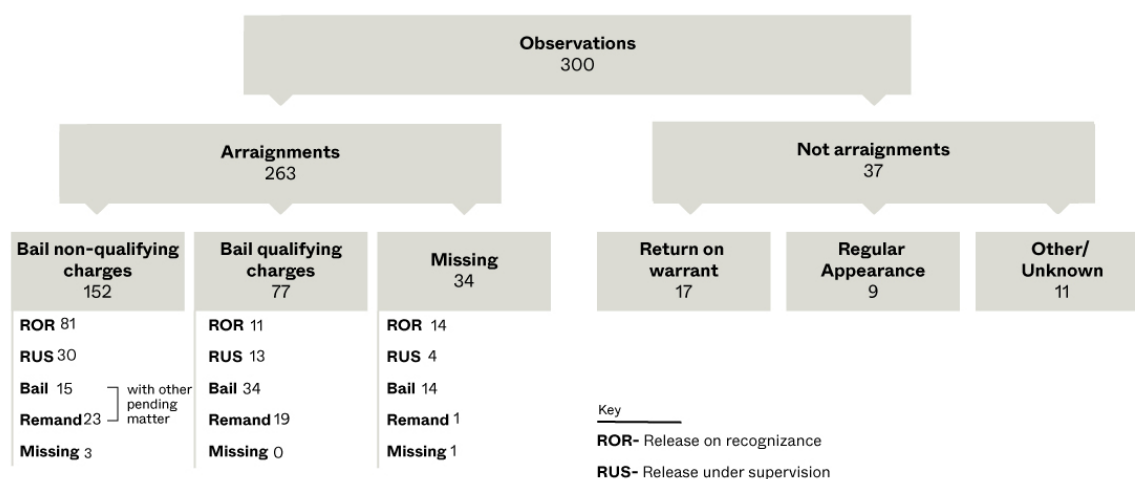
Almost 90 percent of the observed cases were arraignments (263), and the remaining cases were either return on a warrant without a new charge (17), regular court appearance (9), or other/unknown hearing types (11; Figure 3). More than half of the arraignments (152) were not eligible for bail, and less than a third (77) were cases where judges could set bail. (Bail eligibility was not known to the researchers in 34 cases.)

The new law introduced limits on judicial discretion by mandating release for most misdemeanors and nonviolent felonies. It also required judges to consider an accused person’s “ability to pay without posing undue hardship” when money bail remained available.²⁰ Vera researchers’ court observations revealed the following:

1. Judges followed the new law’s release provisions, despite occasional expressed misgivings about mandatory release.
2. In some instances, judges set bail on cases that had allowable exceptions—such as probation violations. Judges used these exceptions to set bail in about 10 percent of cases for charges that would otherwise require release without bail.
3. In about two-thirds of bail-eligible cases, judges either ordered people to pay bail before release or remanded them to custody.
4. Counsel and judges rarely raised a person’s ability to pay bail in eligible cases. The person’s ability to pay was not brought up in more than 70 percent of cases where judges set bail.

Figure 3

Hearing Types and Case Outcomes of Observed Cases



2.1 Mandatory release effectively limited the use of money bail.

Bail reform legislation curtailed judicial discretion for less serious charges. Around two-thirds of arraignments (152 out of 229 arraignments) observed by Vera researchers involved charges requiring mandatory release without money bail; judges released nearly three out of four people in these cases on recognizance (meaning, without any restrictions or conditions) or under pretrial supervision. In the remaining cases, judges identified other circumstances (e.g., a probation violation or an additional pending case) that allowed them to set bail or remand the accused person.²¹

Some judges and prosecutors expressed resistance toward the new law. (Vera observed this in 5 percent of the cases that did not qualify for bail.) Vera’s observational data documented

instances where judges explicitly stated that they were only releasing people because they were compelled to by the new law. As a result, some judges set pretrial conditions that were more restrictive than ROR—such as checking in with a pretrial officer, obeying court orders, and abstaining from alcohol and drugs—in lieu of bail. A county court judge lamented, “Although I think it is ridiculous . . . in light of bail reform . . . none of these are qualifying offenses. There is no doubt that he has a high flight risk in my mind, but I have no other options. . . . The least restrictive will be releasing the defendant on the pretrial release program.”

2.2 The 2020 amendments expanded circumstances that allowed judges to set bail but had a limited impact in practice.

The April 2020 amendments added additional charges and conditions in which judges can set bail. The expansion of the bail-eligible charge list seems to have had a limited impact in practice. In Vera’s sample, judges set bail in 34 cases that were eligible due to the charges of the case; of these, only six cases—three misdemeanor domestic violence cases and three cases involving “harm to an identifiable person or property” charged against a person already on pretrial release for another offense arising from such harm—would not have been eligible for bail before the 2020 amendments.²² Court observations show how, on a few rare occasions, some judges made use of the statute’s loopholes—that is, ambiguity in the harm exception—to set bail. On three occasions, Vera observed one judge engage in complex legal interpretations of the 2020 amendments in order to set bail. In all these instances, the judge ran through details of the case to identify a provision that might allow them to set bail on offenses for which the bail law otherwise mandated pretrial release.

For example, one city court judge detained the accused individual after recategorizing a first-degree reckless endangerment charge to make it bail eligible. The judge also took advantage of the vague nature of this new harm exception to dismiss the defense attorney’s procedural objections:

Defense Attorney: These are nonqualifying offenses; I ask for his release.

Judge: I don’t know what to say to that. . . . These are nonqualifying offenses. . . . What will make this [a] qualifying offense? What history does [the defendant] have here? Is he on bail or parole? He has four FTA [failure to appear incidents]. Do we have any identifiable person or property here? I believe we have it there. Then this reckless endangerment charge would indeed, in fact, be a qualifying offense. I will put a no contact order for [the alleged victim]. I believe this then makes this a qualifying offense. I will put bail on this.

Defense Attorney: This requires prosecution to show reasonable cause [for] both the instant crime and the underlying crime.

Judge: We will have that when we have this felony hearing.

Defense Attorney: I'm going to object here. The prosecution has to find reasonable cause now at this arraignment, not a felony hearing five days later.

Judge: I'm setting this down for a felony hearing. That just gives them a higher burden at the hearing. It doesn't say anything about "instantaneous" or having the hearing right then and there. Bail \$50,000 A [cash bail], B [insurance company bail bond], or E [partially secured surety bond].²³

Cases like this remain rare. Nonetheless, they illustrate how loopholes may undermine the original goals of bail reform and open the door for future amendments. This issue requires further research. (When interviewed by Vera researchers, defense attorneys lamented judges' use of loopholes, allowing them to set bail or remand people. Vera researchers were unable to get permission to interview judges. See "System Actors' Support of Bail Reform and Perceived Barriers to Successful Implementation" on page 15 for more findings from Vera's interviews.)

Other circumstances that created exceptions to bail eligibility had a more substantial impact. About 30 percent of people arraigned during the observation period were subjected to bail, or remanded without bail, due to exceptions created by the 2020 amendments. Judges ordered a quarter of people charged with nonqualifying offenses to be detained pending payment of bail (15) or simply remanded based on an exception, such as probation or parole violations, open warrants, or concurrent open cases (23). Probation violations were the most common circumstances for which judges set bail on charges that otherwise required release without bail.

2.3 Judges sometimes ordered pretrial supervision as a bail substitute in mandatory release cases.

In Vera's sample, judges set release to pretrial supervision (RUS) for 46 cases. Most of these had no failure-to-appear history (40) nor any open case (41). More than half of the RUS cases had an order of protection issued (30). A similar percentage of cases with bail-ineligible charges and bail-eligible charges observed by Vera researchers resulted in pretrial supervision (20 percent and 17 percent, respectively). The following example shows how judges sometimes impose pretrial supervision on people charged with offenses requiring mandatory release as a more restrictive condition than ROR:

Prosecutor: We are requesting a no contact order of protection. With the defendant's criminal history, we are asking for RUS release.

Judge: You are to have no contact order with [complainants]. If you violate the order, you will be facing additional charges. He will be OR'd [released] to RUS [pretrial supervision]. This looks like to me that this is an undercharge, but that's for the DA to figure out. He will be OR'd because these are nonqualifying offenses, but he will be OR'd to RUS.

Referral to pretrial supervision varied across jurisdictions in the study, making it difficult to draw conclusions about judges' practices statewide. In both Broome and Erie—counties that have enough cases to compare—probation departments are in charge of supervision of people out in the community while pending trial. Broome County judges more frequently ordered pretrial supervision (23.5 percent of cases) than Erie County judges (8.2 percent of cases). This pattern held in both bail-eligible and bail-ineligible cases. Pretrial supervision officers played a key role in Erie County in determination of pretrial supervision. Unlike Broome County, where judges ordered pretrial supervision after hearing defense and prosecutor arguments, Erie County judges often actively solicited opinion from pretrial supervision officers at the hearing.

2.4 Prosecutors and judges relied on money bail where still allowed.

Bail reform mandated release for many misdemeanor offenses—such as aggravated unlicensed operation of a vehicle and petit larceny—for which judges had previously used their discretion to order a person detained pending payment of bail.²⁴ Prosecutors in the study requested bail or remand in most bail-eligible cases. In Erie County, as an example, prosecutors requested bail in 73.3 percent and remand in 23.3 percent of bail-eligible cases. Judges also required money bail in a substantial portion of eligible cases. Less than one-third of arraignments observed by Vera researchers were for bail-eligible charges. Judges set bail in 44.2 percent of these cases and remanded 24.7 percent of people. They released less than 30 percent on recognizance or pretrial supervision.

2.5 When setting bail, judges rarely considered ability to pay and often set bail above defense counsel requests.

The new bail law requires judges to consider a person's financial circumstances to avoid setting bail amounts that would result in undue financial hardship to the accused. In the vast majority of observed arraignments, neither the lawyers nor the judges raised the person's ability to pay. During the arraignments observed in Erie, Broome, and Tompkins Counties, prosecutors never raised a person's ability to pay on the record. In more than 70 percent of cases where judges set

bail (46 of 63), the person’s ability to pay remained almost entirely absent from the record. When ability to pay was mentioned, it was raised primarily by defense attorneys as a matter of indigency (10 of 17). On five rare occasions, after arguments levied by defense attorneys, judges inquired into the accused person’s employment status and income to determine an affordable bail amount.

Even when defense attorneys raised the issue, the bail amounts set by judges typically exceeded the accused person’s stated financial means. An excerpt from a town court hearing provides a salient example:

Defense Attorney: We did have a bail amount. Bail was set at an amount that he could not post. He has some concerns due to the fact that he is disabled. He has concerns [about] losing his residence. I would suggest he would have \$500 posting; that is quite a bit of money. We request ROR.

Judge (speaking to defendant): You’re no longer on probation?

Defendant: No sir.

Judge: I don’t see any failure to appear. I’m going to mimic what happened at county court: set bail at \$1,000 cash, \$2,000 property or unsecured, released on open container charge.

The new laws mandate that, if setting bail, judges must set three forms of bail, one of which must include a partially secured or unsecured surety bond.²⁵ Nearly all of the 63 cases in Vera’s sample for which bail was set had three forms of bail—cash, bond, and a third form of bail.²⁶ A partially secured bond option (PSB; 79.3 percent), which typically requires a person to put down 10 percent as deposit, was more common than an unsecured bond option (USB; 8.6 percent), which does not require any collateral to be released.

In most cases in which judges set bail, they set the third form of bail equal to the cash bail amount, which meant that the person needed to come up with 10 percent of the cash bail amount to secure release (for PSB). This was true for every case observed in Erie County; however, some judges in Broome County and Tompkins County set PSB or USB amounts much higher than the cash bail amount (11 out of 23 bail-set cases). These outcomes suggest that, in many cases, judges are reluctant to use alternative forms of bail that are more accessible and less burdensome.

2.6 Prosecutors and judges focused on severity of charge and criminal history when assessing bail.

The new law requires judges to impose the “least restrictive” means to ensure a person’s return to court during pretrial release. The statute steers clear of requiring judges to assess a person’s risk to the community when determining bail or other release conditions. Vera’s observation found that courtroom actors rarely discussed what might be the “least restrictive” means to ensure a person’s return to court, particularly when a complainant was involved. Instead, prosecutors often requested bail or remand based on severity of current charge and criminal

history rather than prior failures to appear or potential for future flight. In more than 25 percent of cases where bail was set, prosecutors invoked violence in their bail arguments by recounting the details of the alleged charge. Similarly, prosecutors relied on criminal history in their arguments to convey perceived threat or dangerousness in 20 percent of all bail set cases. Judges provided reasoning for their decision to set bail in less than half of the bail set cases (30 out of 63 total bail-set cases). In cases where judges provided reasoning for bail, they adopted prosecutors' arguments as the basis for ordering bail, as exemplified by one city court judge:

Prosecutor: Judge, the allegations are that he willfully violated the order of protection put in place by [the previous judge]. He strangled the complainant. She lost consciousness. He threw her to the ground. He has four priors. The people are requesting \$50,000 A [cash bail], B [insurance company bail bond], or E [partially secured surety bond].

Defense Attorney: My client is employed at [a local business] and at the time this allegedly happened, [the business] has video [of the defendant]. This is a classical difficult DV [domestic violence] situation that's going to work out in a wash. There's no evidence that she went to the hospital or received any treatment.

Judge: There is a notation that she has marks on her body and a bloody nose. Based on the allegations, I am going to set bail at \$10,000 A [cash bail], B [insurance company bail bond], or E [partially secured surety bond]. Do not have any contact with her.

Section Summary

Virtual court observations revealed that the new bail law effectively curtailed judges' discretion, sometimes despite their explicit reluctance, and led to the routine release—without bail—of people facing low-level charges. The 2020 amendments expanded the list of charges and circumstances where bail can be set. Vera's observations found that some circumstances (e.g., arrest while on probation or parole violation) were more common reasons for pretrial detention on bail or remand than others (e.g., harm to person or property). Judges demonstrated a preference for setting bail, assigning it in the majority (two-thirds) of bail-eligible cases, rather than ordering release with less onerous conditions. A pillar of bail reform was to make the pretrial process fairer and more equitable regardless of people's wealth. Notably, researchers found that the discussion about the least restrictive means to ensure the accused person's return to court was lacking. Also, judges rarely considered the accused person's ability to pay before setting monetary conditions.

3. System Actors' Support of Bail Reform and Perceived Barriers to Successful Implementation

Twenty-six interviews with defense attorneys, prosecutors, and probation officers revealed that most courtroom practitioners support the underlying goals of bail reform but have encountered obstacles to successful implementation. Vera was unable to include judges in these interviews. As such, the findings below are not inclusive of judges' opinions. These interviews also provided insight into the impacts of the pandemic on court operations and its interplay with bail reform. All names used are pseudonyms to protect the anonymity of respondents. See Appendix III for details of Vera's interview sample and methods. Key findings from these interviews include the following:

1. Overwhelmingly, defense attorneys, prosecutors, and probation officers supported reductions in jail population resulting from bail reform.
2. Defense attorneys and probation officers expressed frustration with inadequate community supports for people struggling with mental health and/or substance use issues, although counties varied in the availability of different resources. In particular, defense attorneys believed that existing treatment programs were unnecessarily punitive and reinforced the criminalization of these public health needs.
3. Prosecutors and defense attorneys pointed to a lack of consistency across local and county court operations as the primary challenge to implementation of bail reform and emphasized the need for additional judicial training.

3.1 Defense attorneys, prosecutors, and probation officers identified reducing unnecessary pretrial detention as the main goal of bail reform.

Defense attorneys, prosecutors, and probation officers acknowledged that, prior to bail reform, many people were held in jail on minor charges for long periods while they were waiting for trial. One of the main goals of the reform was to address this issue by reducing judicial discretion in bail setting on certain offenses and make a more equitable criminal legal system. A prosecutor illustrated these as follows:

Well, I think the initial goal is to limit the number of people who are incarcerated. . . . Two is obviously there is a question about whether realistically somebody should be incarcerated prior to their, um, being found guilty of a crime. That's a significant burden

on their liberties, obviously. I think another goal is to offer them alternatives to incarceration or resources that might help them address possible causes of criminal behavior, rather than simply putting them in jail.

3.2 Virtual arraignments impeded attorney–client communication.

The global pandemic forced New York courts to reconfigure the way they conducted business. Judges, attorneys, and court reporters joined arraignments via video conferencing software. People charged with crimes called in from police stations or local jails.²⁷ During Vera’s observations of arraignments, researchers noted how this setting created a virtual space in which communications occurred within earshot of all people in attendance. This lack of privacy rendered confidential attorney–client communication impossible, hampering attorneys’ ability to counsel their clients in real time. In addition, jail-imposed COVID precautions rendered in-person legal consultation very challenging, hampering the quality and effectiveness of attorney–client communications. Interviews with defense attorneys corroborated these findings. Defense attorneys also described difficulty in building rapport and communicating with clients through video or teleconferencing systems set up in jails.

Sabrina, a defense attorney, explained her frustration communicating with clients in a virtual setting:

It’s awful. I’m sure you get that from everyone. It is awful. . . . I can’t find a lot of my clients. And the very few that I have in custody, it’s impossible to have a really effective conversation. Now we set up a phone conference through a deputy. . . . They bring my client down to, I think, the visiting area where they hand him a cell phone and they stand within, like five feet.

3.3 People face many barriers in returning to court caused by substance use, mental health, and financial struggles.

Defense attorneys, prosecutors, and probation officers noted that bail reform achieved its goal of decarcerating New York jails by releasing a higher proportion of people who were arrested into the community while they were pretrial. They stressed, however, that the bail law did not address the many underlying barriers to New Yorkers’ ability to return to subsequent court dates. Interviewees cited issues of substance use and financial constraints as significant obstacles. A defense attorney illustrated these as follows:

I think the most common reason that people don't return to court is that they are in active addiction. I think people do, by and large, show up to court, but people who are struggling with housing stability, with addiction, with financial insecurity, and with a lack of transportation . . . because we're a rural area and, you know, it's like, how the hell are you getting out to the town of Groton at 5:00 at night, and then you have no way of getting home? I've driven clients to court before myself.

In some counties, interview participants posited that people with mental health or substance use needs do not receive adequate or appropriate support in the community and might experience more negative case outcomes than other people who don't have similar needs.²⁸

Arianna, a pretrial service case manager, stated, "People who have addiction issues are not returning to court. . . . You can't address their drug use because of the bail reform. You have to use the least restrictive form you're presented." Conversely, public defenders noted that incarceration is not an appropriate or helpful intervention for people with mental health or substance use needs, but they also questioned the efficacy of court-administered, community-based treatment services. They specifically pointed out that these treatment programs can be punitive, adding to the multiple ways defendants are punished for noncompliance or struggles with adherence.

3.4 Inconsistent practices in local and county courts created challenges to the successful implementation of the law.

Prosecutors and defense attorneys cited variability between local and county court operations as a major obstacle to bail reform implementation. Particularly, they reported inconsistencies in courtroom practices between local magistrates and county court judges. Prosecutors and defense attorneys pointed to a lack of formal training and legal education among town and village judges as a major point of contention. Some judges were unaware of the new bail laws, particularly at the beginning of the year, and tried to set bail on charges that were not qualified for bail because the judges were confused by the new statute. Defense attorneys pointed out that this happens more frequently with town and village judges. Jim, another defense attorney, highlighted the distinction between local and county court practices:

Well, I think the county court judges are most likely to follow the rules. They may put their, a very strongly worded, opinion on the record when they're releasing someone, and they want to make it very clear that they really don't want to release him, but they will still do it. Whereas sometimes maybe the local or city court judges will just do what they want and say county can deal with it. The county court judges obviously, they are all attorneys, they're more likely to just follow the law because of that. And I think some of it

is because for so many years the local court judges could just do what they wanted. I think they all still do that.

Section Summary

Vera's interviews uncovered substantial support for bail reform's goals among prosecutors, defense attorneys, and probation officers, particularly for reducing the number of people in pretrial detention. However, interviewees also highlighted areas in need of further investment. By increasing the proportion of people released pretrial, bail reform laid bare failings in the current criminal legal system: namely, people living with mental health, financial, and, in some counties, substance use issues are seen to be inadequately supported in the community. Interview participants noted that these underlying issues create barriers to people returning for subsequent court appearances. At the same time, they noted that jail is not a solution to these social problems; greater investment in community-based supports is needed for bail reform to achieve its greatest possible impact.

4. Changes in the Use of Pretrial Supervision after Bail Reform Implementation

The elimination of both money bail and pretrial detention for most charges was a core component of New York State bail reform. Although bail reform secured the freedom of many New Yorkers by reducing the use of pretrial detention, questions remain as to whether this led to an increase in the use of other restrictive measures, namely pretrial supervision. In 2020, a series of amendments to bail reform passed, including the expansion of the nonmonetary conditions judges can impose on people released before trial.

Vera explored trends in new admissions to pretrial supervision from 2019 to 2020 using data received from probation departments in four counties: Albany, Broome, Erie, and Ulster. See Appendix IV for details of Vera’s data and methodology. The analyses focus on understanding the ways that the initial bail reform laws, COVID-19, and amendments to bail reform may have impacted the use of pretrial supervision in 2019 and 2020. Key findings include the following:

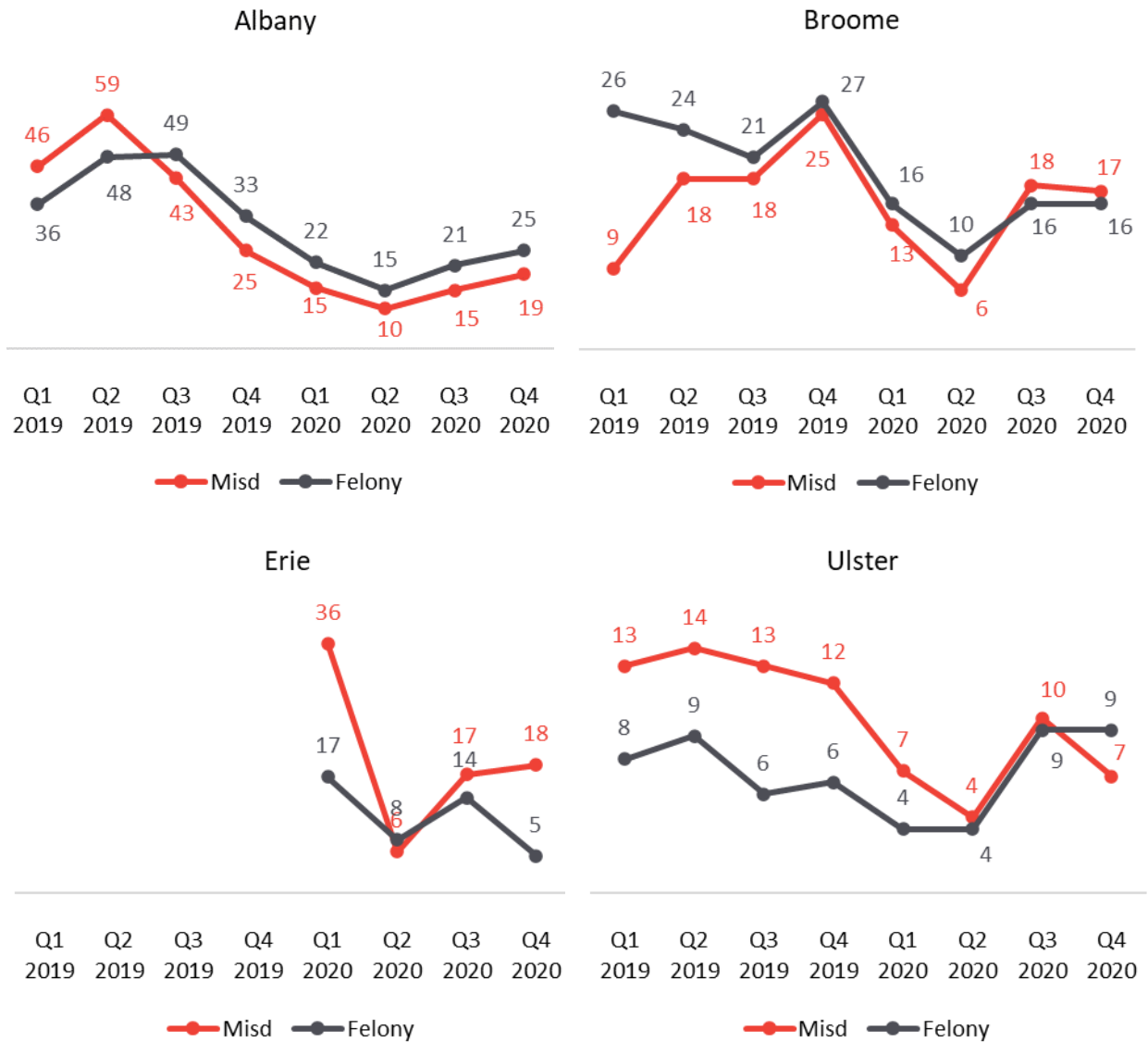
1. The use of pretrial supervision did not increase in the first quarter of 2020, immediately after the implementation of bail reform. In fact, the proportion of people arrested who were placed on pretrial supervision at arraignment decreased from the last quarter of 2019 to the first quarter of 2020.
2. The number of new admissions to pretrial supervision plummeted at the beginning of the COVID-19 pandemic, although longer-term changes varied across counties.
3. The total number of people assigned to pretrial supervision increased more than 50 percent from June to July 2020, particularly for misdemeanors and nonviolent felonies. This increase mirrors a simultaneous increase in arrests. This suggests that the bail reform rollbacks had only a limited impact on pretrial supervision.
4. Within each county, the types of release conditions imposed by judges did not change over the course of 2020. However, the types of release conditions varied widely between the four counties.
5. The pretrial revocation rate increased after the initial onset of COVID-19, particularly for new felony arrests, most likely due to delays in case processing and an increase in supervision lengths.

4.1 The number of people admitted to pretrial supervision decreased by more than one-third after bail reform.

The number of people admitted to pretrial supervision in the first quarter of 2020 decreased by more than one-third compared to the fourth quarter of 2019 in the counties for which Vera obtained data: Albany (from 58 to 37 cases), Broome (52 to 29), and Ulster (18 to 11; Figure 4).

Figure 4

Quarterly New Pretrial Supervision Cases by County

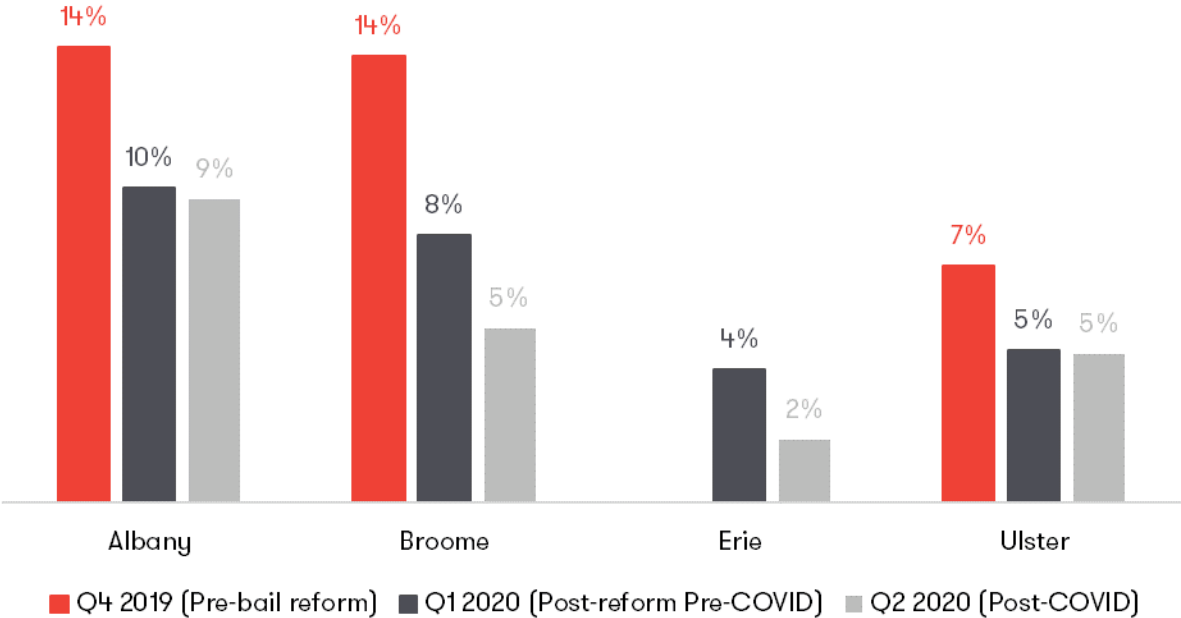


Note: Erie County did not have the 2019 data available.

Arrests decreased during this period, accounting for some of this decrease in new pretrial supervision cases. However, in all three counties for which Vera had available data from 2019, the probability of pretrial supervision after arrest also decreased postbail reform—meaning, the proportion of arrested people who were released to pretrial supervision also decreased (Figure 5). In Albany and Broome Counties, about 15 percent of monthly arrests resulted in pretrial

supervision before bail reform implementation (fourth quarter of 2019); this decreased to below 10 percent postbail reform (first quarter of 2020). The likelihood of pretrial supervision also decreased in Ulster County, from 7 percent to 5 percent.

Figure 5
Quarterly Proportion of Arrested People Who Were Assigned Pretrial Supervision

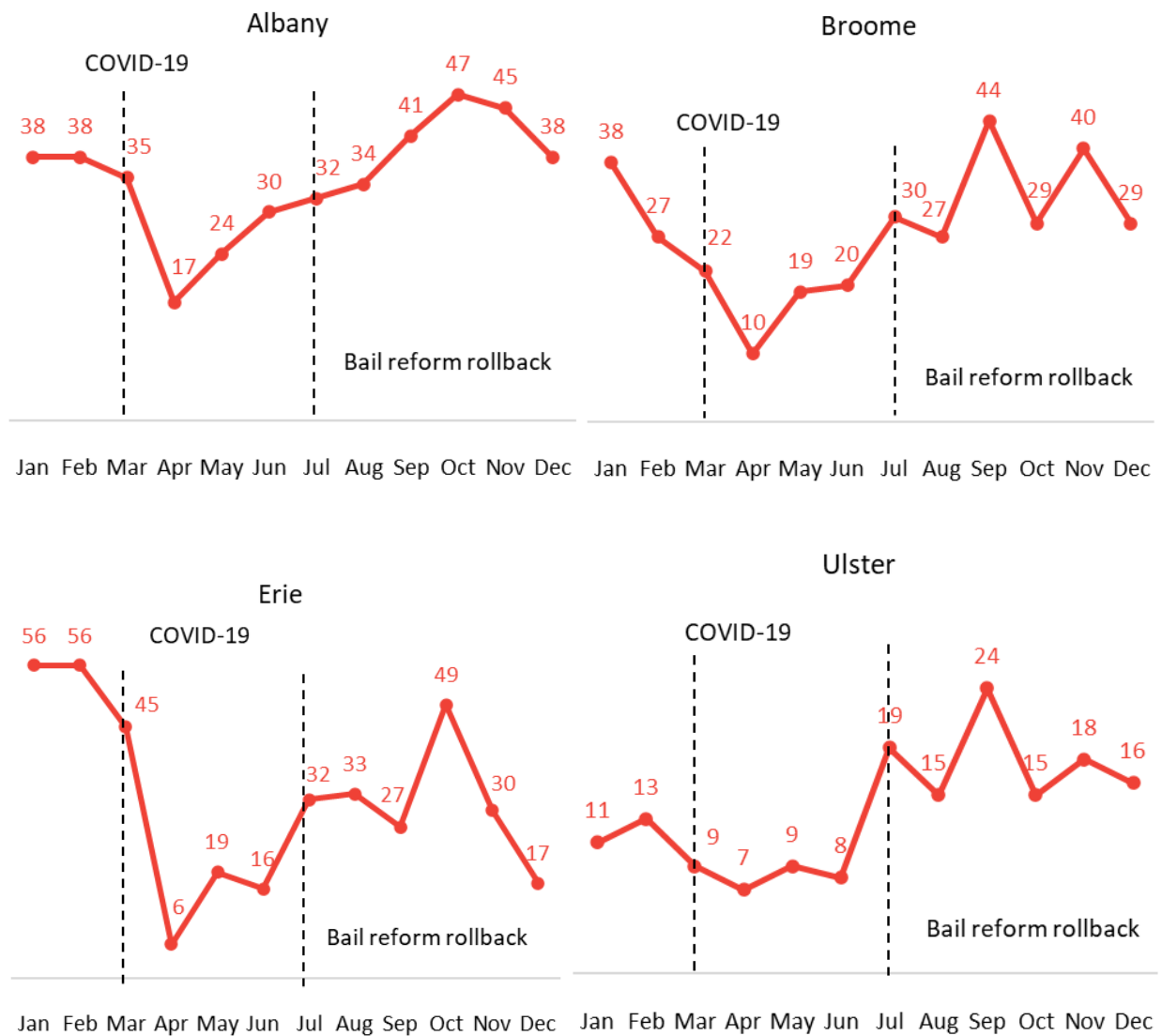


4.2 COVID-19 resulted in short-term declines in pretrial supervision admissions in Albany, Broome, and Ulster Counties, and a more prolonged effect in Erie County.

With the outbreak of COVID-19, monthly arrests dropped substantially in March and remained low through June 2020. Monthly admissions to pretrial supervision mirror this trend—monthly admissions were the lowest in April in all four counties and then gradually increased (Figure 6). On average, the number of people being admitted to pretrial supervision between April and June 2020 was 39 percent lower than those admitted January through March of that year. In Albany and Ulster Counties, this was mainly due to the decrease in arrests. The percentage of arrests that resulted in pretrial supervision remained stable in Albany (9 percent to 10 percent) and Ulster (5 percent) between the first two quarters of 2020 (Figure 5). In Broome and Erie

Counties, the percentage of arrests resulting in pretrial supervision further decreased after the onset of the pandemic (Figure 5).

Figure 6
Monthly New Pretrial Supervision by County, 2020



Counties also differed in admission trends in the second half of 2020. While the number of new pretrial supervision cases went back to pre-COVID levels in Albany, Broome, and Ulster Counties by the end of the year, new admissions to pretrial supervision in Erie County did not return to pre-COVID levels, except for a short uptick in October, suggesting a deeper shift in

pretrial supervision practice. Admissions to pretrial supervision in the second half of 2020 were 40 percent lower than pre-COVID levels in Erie County. Future research conducted by Vera will further investigate this marked difference.

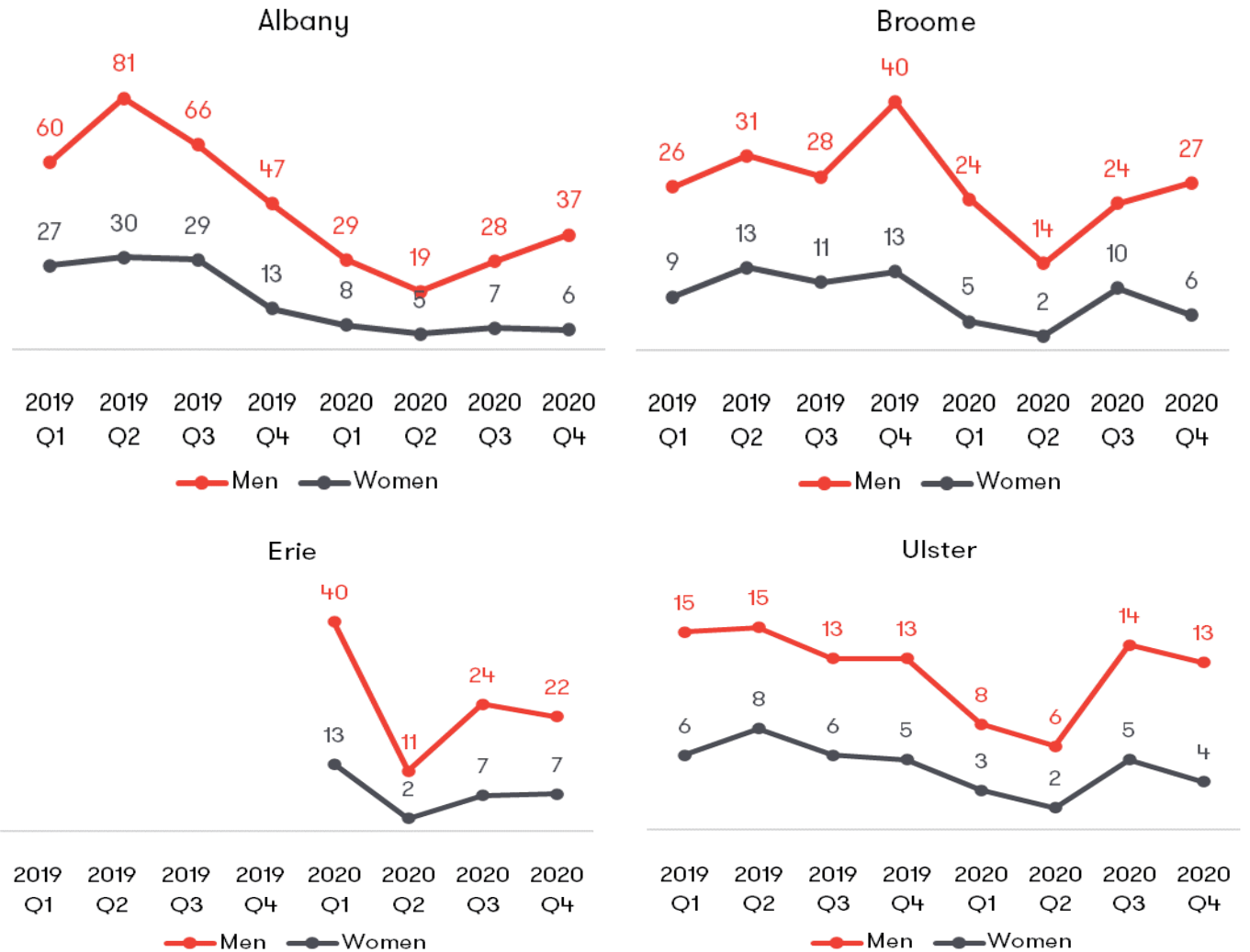
4.3 Rates of admission to pretrial supervision for women declined rapidly after bail reform and COVID-19.

With the outbreak of the pandemic, the number of people assigned to pretrial supervision initially decreased in Albany, Broome, Erie, and Ulster Counties. The total number of new cases fell more than 60 percent between March and April 2020 for both men and women.²⁹ While new pretrial supervision cases for men increased in May and returned to the prepandemic level in July, it took another month or more before the new supervision cases for women returned to prepandemic levels (Figure 7).

The decrease in women assigned to pretrial supervision did not simply result from a drop in arrests. The likelihood of pretrial supervision after arrest also decreased for women with the outbreak of COVID-19—falling from 27 percent in March to 13 percent in June. Further research is necessary to explore possible reasons why the likelihood of pretrial supervision dropped more for women than men.

Figure 7

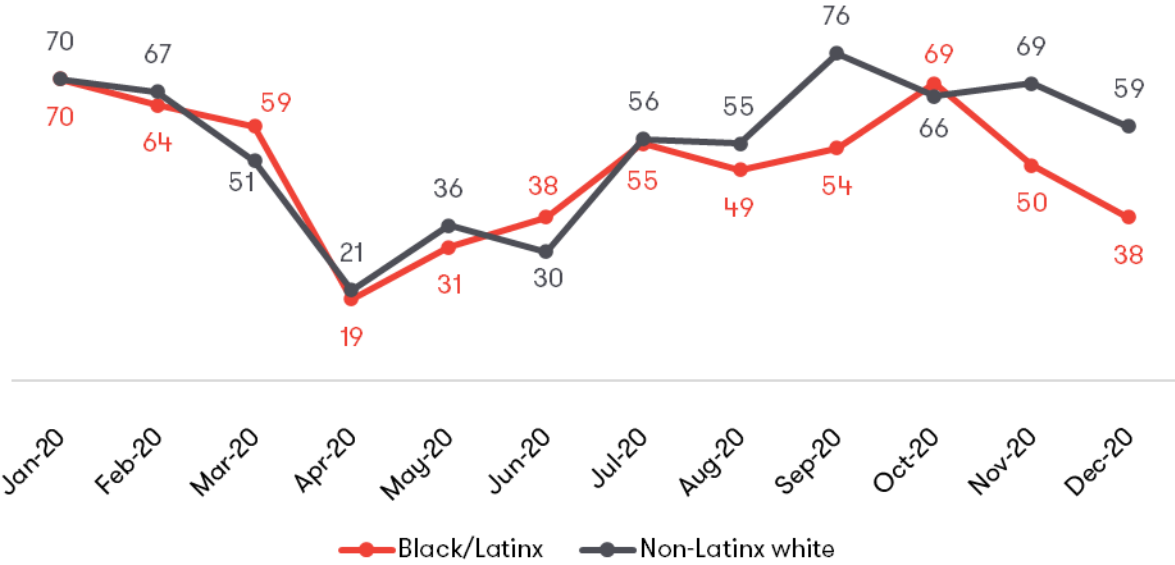
Average Monthly New Pretrial Supervisions by Gender, 2020



4.4 After the pandemic, new supervision cases fell for people of all races, mirroring a similar trend in arrests.

Overall, half of new pretrial supervision cases in 2020 were for Black or Latinx people.³⁰ The number of new cases declined across all racial and ethnic groups (Figure 8). From March to April 2020, right after the outbreak of the pandemic, new pretrial supervision cases for non-Latinx white people dropped from 51 cases to 21, and new cases for Black and Latinx people dropped from 59 to 19.

Figure 8
Monthly New Pretrial Supervisions by Race (Albany, Broome, Erie, and Ulster Counties), 2020



4.5 The share of new supervision admissions for misdemeanor cases dropped at the beginning of the pandemic, then returned to prepandemic levels.

Throughout Vera’s data analysis period, the proportion of people entering supervision with misdemeanor charges, as opposed to felony charges, changed. As courts prepared to implement bail reform in January 2020, the types of cases referred to supervision shifted in ways that varied across counties. In Albany County, misdemeanors constituted more than 50 percent of new pretrial supervision cases in 2019; the proportion decreased to 41 percent in the first three months of 2020. In Broome County, by contrast, the majority (75 percent) of supervision cases in the first quarter of 2019 were felonies; the share of misdemeanors and felonies became relatively equal leading up to January 2020.

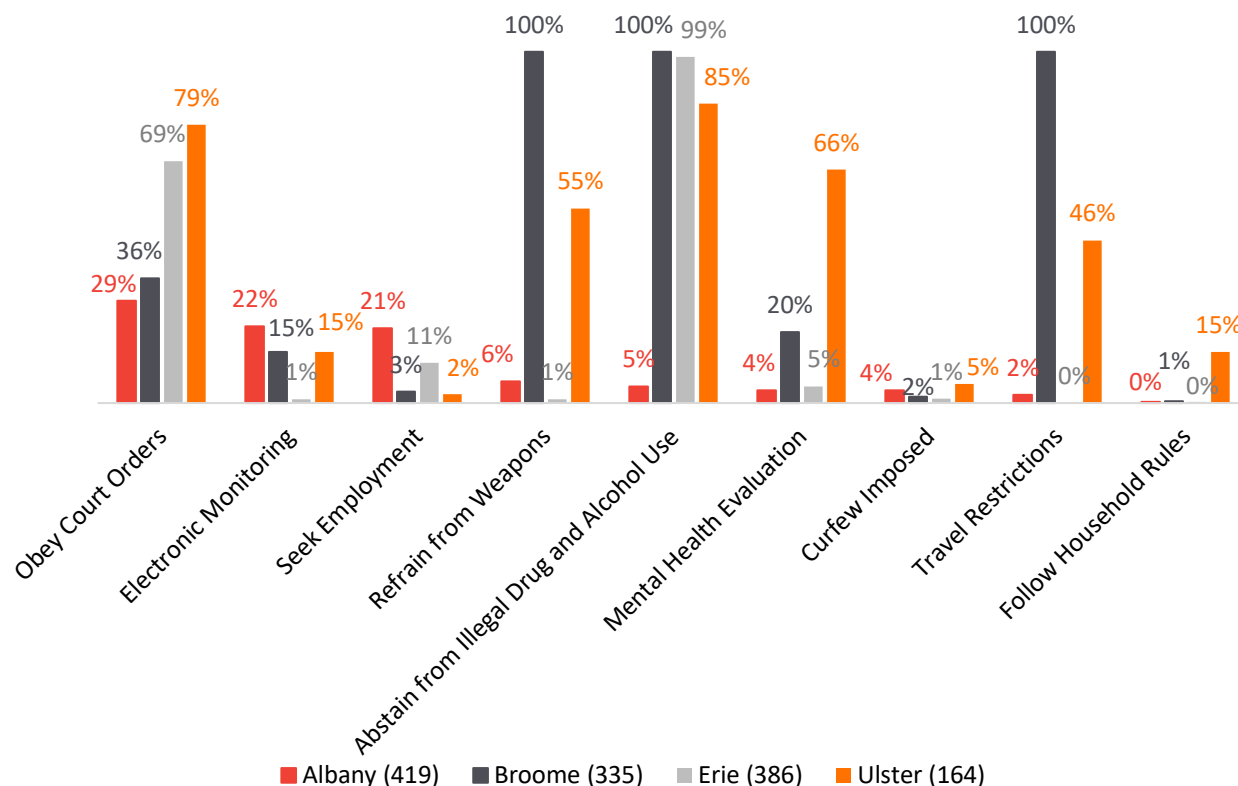
In all counties in Vera’s sample, the share of misdemeanor admissions decreased after the onset of the pandemic (April through June 2020). In all four sampled counties, the numbers reverted to prepandemic trends by the end of the year. This increase is also reflected in jail admissions. Statewide, new jail admissions for misdemeanors decreased following the onset of

COVID-19 but began to increase again starting in May 2020. The pattern is less clear in individual counties, but Albany, Broome, and Erie Counties all had more misdemeanor jail admissions at the end of 2020 than in April 2020, following the onset of COVID-19.

4.6 Variations in the use of release conditions reveal different court practices across counties.

Judges can require a range of conditions when they assign someone to pretrial supervision. Across all four sample counties, judges assigned an average of five conditions per case. However, this varied across the counties in Vera’s sample: Ulster and Broome Counties each had a higher number of conditions per case (6.5 and 6.3, respectively) than Erie and Albany Counties (3.9 and 3.1, respectively). In nearly all supervision cases, people are required to check in regularly with their supervisor and to not take part in any criminal activities. Beyond this, the types of conditions imposed by the courts varied across counties (Figure 9). For instance, the condition “refrain from weapons” was ordered in every single case in Broome County, while this condition was ordered in less than 10 percent of cases in Albany and Erie Counties. The number of conditions assigned did not vary by race within each county. The use of conditions within each county was consistent throughout the year, suggesting it was not substantially affected by bail reform or the pandemic.

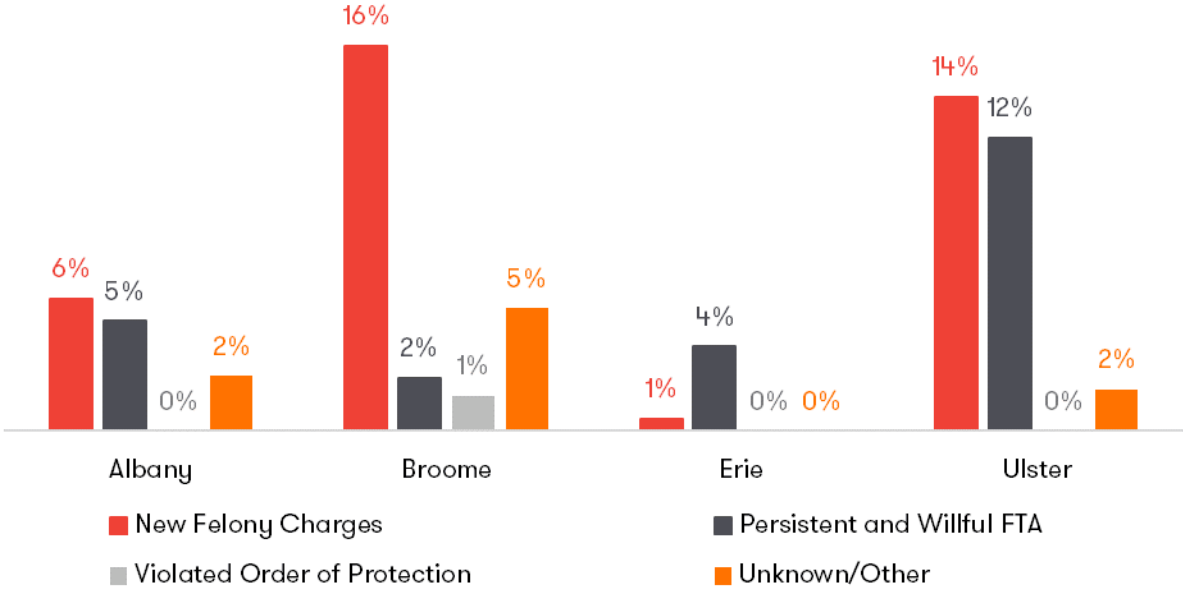
Figure 9
Conditions of Release by County, 2020



4.7 Less than 15 percent of new pretrial supervision cases ended in revocation within six months, mostly for felony rearrest or failure to appear.

Among all 608 new admissions to pretrial supervision in the first half of 2020, 14 percent were revoked within the first six months of supervision.³¹ Although the revocation rate varied widely across counties, ranging from 4 percent to 28 percent, the most common reason for revocation was either felony rearrests (43 cases total) or “persistent and willful failure to appear” (FTA; 27 cases total) in all four counties (Figure 10). Notably, cases for more serious charges, such as violent felonies, were revoked less frequently, on average, than cases for less serious charges.³² FTA was the most common reason for revocation in cases for people facing violent felony charges.

Figure 10
Percentage of Admissions to Pretrial Supervision Revoked within Six Months, by Reason for Revocation



Across all four counties, revocation rates within the first six months of supervision varied only slightly across race and gender, with a difference of 3 percentage points or less. Men had a slightly higher revocation rate (14 percent) than women (11 percent), and non-Latinx white people and Latinx people had a slightly higher revocation rate (15 percent) than non-Latinx Black people (12 percent). However, these dynamics differed between counties.³³ For example, in Broome County, Latinx people had lower revocation rates (20 percent) than non-Latinx Black people (23 percent) and non-Latinx white people (27 percent), but in Erie County, Latinx people had higher revocation rates (11 percent) than non-Latinx Black people (5 percent) and non-Latinx white people (1 percent).

4.8 Spotlight on Ulster County

Vera was able to obtain additional data from Ulster County that included everyone who was under pretrial supervision at any time in 2020 and all cases opened at any time in 2019. This gave Vera the unique opportunity to understand changes in revocations and length of supervision after bail reform and during the COVID-19 pandemic. With a total population of approximately 178,000 people in 2019, Ulster County is the 15th most populous county outside of New York City and the least populous of the four counties included in the analysis.³⁴

Ulster County's data revealed notable patterns in the length of pretrial supervision and use of revocation that were not possible to explore with data from other counties. While the results of Vera's analysis must be taken within the context of Ulster County, they indicate that future statewide analysis should include an additional focus on revocations and length of supervision.

Length of pretrial supervision increased substantially after the outbreak of the pandemic.

Pretrial supervision cases can be closed for a variety of reasons. For example, the person under supervision might plead guilty, the case might be dismissed or be resolved at trial, or the person may be remanded back into custody for breaking the terms of their supervision. In Ulster County, people whose cases were closed in the first quarter of 2020 (before the outbreak of the pandemic) spent an average of five months under pretrial supervision. The average length of supervision increased to nine months for cases closed in the third quarter of 2020. Court closures during the pandemic appear to have delayed case processing and increased the length of pretrial supervision.

Revocation rates were consistent after the implementation of bail reform, but they increased postpandemic.

About 20 percent of new pretrial supervision cases in 2019 were revoked within six months of the start of supervision.³⁵ This was consistent with the revocation rate for new cases in the first quarter of 2020. The six-month revocation rate increased to 38 percent for cases that began in the second quarter of 2020, indicating a potential impact of the COVID-19 pandemic on revocation rates.

With delays in case processing during the pandemic, cases went largely unresolved, except through revocation.

Before the onset of the pandemic, a guilty plea was the most common reason for case closure in Ulster County: 54 percent of cases closed at the start of 2020 were due to guilty pleas, while only 19 percent of cases closed were due to revocations. After the pandemic, the number of cases closed for all reasons except revocations dropped substantially. Although the total number of revocations did not increase, nearly all case closures (93 percent) in the second quarter of 2020 were due to revocations. This is likely due to court closures that prevented much of the typical case processing; without hearings, cases could not be resolved through a plea or case dismissal. Furthermore, as the length of supervision increased, the person

under supervision had more opportunities to violate conditions of release, including rearrest, and have their pretrial release be revoked.

Notably, the total number of cases revoked each quarter was consistent throughout the first nine months of 2020, until the final quarter of 2020 when both total cases closed and revocations increased dramatically, likely due—at least in part—to the reopening of courts and the resuming of court functions that were put on hold during the height of the pandemic.

Although Ulster County is only one of many counties in New York State and may not be reflective of statewide trends, the detailed data available helps us formulate possible hypotheses about the impacts of bail reform and COVID-19. Specifically, the findings suggest that pretrial revocation rates may have been impacted by the pandemic but not by bail reform. Additionally, COVID-19 seems to have had a large impact on the length of time people spent under supervision. Overall, this deep dive into data from Ulster County reveals that the COVID-19 pandemic may have had consequences for pretrial supervision that have yet to be explored.

Section Summary

Vera’s analysis found no evidence that bail reform led to an increase in pretrial supervision in the counties studied. While Vera was unable to analyze revocation rates throughout the entire study period, analysis of one county—Ulster County—suggests that bail reform did not result in a change in revocation rates. The same analysis suggested very strongly, however, that the onset of the pandemic and the subsequent delays in court processing may have had the effect of extending people’s time under supervision and, in so doing, increased the likelihood that their supervision would eventually be revoked.

Conclusion

This report is the first of its kind to examine the implementation of New York’s bail reform laws and the impact of the COVID-19 pandemic on pretrial practices in Upstate, Central, and Western New York.³⁶ It provides a comprehensive look at five counties—Albany, Broome, Erie, Tompkins, and Ulster Counties. It examines implementation of provisions of the bail reform using multiple data collection efforts, including arrest, jail, and pretrial supervision administrative data; court observations; and system actor interviews. Future research should incorporate the perspectives and experiences of those most impacted by the reforms—people facing charges in court and their communities.

All five counties included in the report experienced a substantial reduction in their pretrial detention population after the implementation of bail reform, a main goal of the legislation. Court observations suggest that mandating release effectively limited the use of pretrial detention. When the charges did not qualify for bail, judges ordered release shortly after going through basic procedural questions with the accused person. However, Vera’s results also showed that judges often resorted to bail for nonqualifying charges when there were additional circumstances that are legally permitted, such as a probation violation. This suggests judges’ continued reluctance to release people pretrial without monetary conditions.

Vera’s results suggest that, even with targeted legislation (i.e., bail reform), changing courtroom culture is not easy. The research found that judges’ reliance on bail is deeply rooted. Moreover, judges rarely explain their reasoning when setting bail or explain why bail would be the least restrictive means to ensure the accused person’s return to court. For their part, prosecutors rarely discuss flight risk during bail discussions, preferring instead to focus on charge severity and criminal history without articulating how those factors are connected to flight risk. Particularly when the case involves a complainant, prosecutors may simply read out a person’s criminal history and recount the details of accusations. This practice risks shifting the focus of arraignment from ensuring the accused person’s return to court under the presumption of innocence to emphasizing a person’s perceived threat or “dangerousness.” These results suggest that prosecutors and judges might not view bail purely as collateral to ensure return to court—the original intent of bail. Future studies should further explore the underlying assumptions and mechanisms with which judges make bail decisions and how widespread this practice is across New York.

Further, despite the new requirement to consider a person’s ability to pay, discussions about the defendant’s financial circumstances and setting an affordable bail were nearly absent at arraignment hearings. Vera’s analysis suggests the legislature must amend the ability-to-pay requirement to better ensure fidelity to the spirit and letter of the law. Policymakers should also ascertain where and how noncompliance with the law occurs and explore solutions to increase judicial compliance.

While the sample counties experienced a substantial reduction in their jail populations, Vera did not see any evidence of net-widening in the use of pretrial supervision. After

implementation of the bail reform, a smaller proportion of arrested people were released to pretrial supervision, suggesting that bail reform did not lead to the expansion of nonmonetary conditions. Additionally, findings from Ulster County suggest that pretrial revocations for felony rearrest and failure to appear did not increase postbail reform. Future studies should examine whether these findings hold in the long term as counties recover from the pandemic and resume normal operations.

The findings from system actor interviews point to several areas of improvement and investment to build a better pretrial system. While most system actors interviewed by Vera supported the goal of bail reform to reduce pretrial detention, prosecutors and defense attorneys raised the need for judicial training to increase compliance with certain provisions of the new laws, including consideration of a person's ability to pay. The interviews with defense attorneys and probation officers identified a need for community investment to address substance use and mental health concerns. Future research should engage with people directly impacted by the system to identify the existing services and programs that are helpful and to learn more about the types of services and resources that are most needed in local communities.

Vera acknowledges that this report's focus on the perspectives of system actors may have left many of the potential benefits of bail reform unnoted. Maintaining one's freedom pretrial has been linked to a host of positive outcomes for people accused of crimes and their communities—allowing them to maintain housing, employment, and connections to their loved ones and decreasing the likelihood of both a custodial sentence and future system involvement.³⁷ It is therefore vital that future research incorporates the voices of impacted people and that New York State continues to monitor and strengthen the practice of pretrial release across all counties.

Appendix I. Methodology of Pretrial Detention Trend and Likelihood Analysis

Vera researchers used monthly pretrial population information available from the New York State Division of Criminal Justice Services (DCJS) website. For monthly admissions by charge severity, Vera researchers used charge-specific daily jail admission and release data received from sheriff's departments in Albany, Broome, Erie, Tompkins, and Ulster Counties. The researchers aggregated daily admission data to monthly admissions. The likelihood of pretrial detention after arrest was calculated using data from multiple data sources—individual-level arrest data from the DCJS from January 2019 to June 2020, monthly arrest data from the DCJS from July 2020 to December 2020, and individual-level jail admission data from each county sheriff's department from January 2020 to December 2020. Vera aggregated both sets of individual-level data to calculate monthly pretrial detention rates as a percentage of arrests.

Appendix II. Methodology of Virtual Court Observation Analysis

Data collection

From June through October 2020, Vera researchers conducted virtual court observations in Broome County (June to August), Erie County (September to October), and Tompkins County (June to August).³⁸ Most cases were observed in either city courts or town and village courts (Figure II-1). The researchers observed arraignment proceedings, which typically lasted anywhere between 30 minutes and two hours per session and during which multiple arraignments were heard.

Figure II-1. Number of observed cases by county and court type

	Broome	Erie	Tompkins
City Courts	13	90	2
Town/Village Courts	114	23	5
County Courts	44	0	9
Total	171	113	16

Vera researchers did not have access to administrative records, but they collected case-specific information during the observations—such as charges, hearing type, and whether there was an open warrant—along with defendants’ demographic information.³⁹ The researchers also collected qualitative data, including arguments made by judges and attorneys, interactions between court actors, and interactions between court actors and defendants.⁴⁰ Though researchers attempted to record court actors’ verbatim quotes, it should be noted that some dialogue presented in the report has been paraphrased for brevity.

Six researchers observed a total of 300 cases.⁴¹ The average arraignment lasted for nine minutes per case (Figure II-2). The data included arraignment hearings with 34 judges, 33 prosecutors, and 50 defense attorneys. A defense attorney was present in almost all cases while a prosecutor was present in two-thirds of the cases.⁴² The most common outcomes of arraignment were release on recognizance (ROR, 106) followed by bail set (63), release to pretrial supervision (RUS, 47), and remand in custody (43). In nearly half of the cases, judges issued an order of protection or had done so at a previous hearing.

Figure II-2. Average length of arraignment and number of observed system actors by county

	Broome	Erie	Tompkins	Total
Average length of arraignment (minutes)	8	5	18	9
Number of observed judges	20	6	8	34
Number of observed prosecutors	17	13	3	33
Number of observed defense attorneys	26	14	10	50
DA present				
<i>Yes</i>	67	95	5	167
<i>No</i>	73	0	10	83
<i>Unknown</i>	9	3	1	13
Issuance of order of protection				
<i>Yes</i>	56	67	4	127
<i>No</i>	93	31	12	136
Total Arraignments	149	98	16	263

Figure II-3. Demographics of court observation arraignment defendants as perceived by researchers

	Number	Percentage
Gender		
<i>Men</i>	208	79.1%
<i>Women</i>	47	17.9%
<i>Unknown</i>	8	3.0%
Race/Ethnicity		
<i>White</i>	108	41.1%
<i>Black</i>	107	40.7%
<i>Latinx</i>	8	3.0%
<i>Asian</i>	2	0.8%
<i>Other</i>	5	1.9%
<i>Unknown</i>	33	12.5%
Total	263	100.0%

Analytic strategy for qualitative data

Once data collection was complete, two qualitative researchers reviewed court notes and manually coded data for interrater reliability. This coding process consisted of both deductive

and inductive analysis. Through deductive analysis, Vera coded the data based on the predetermined research questions, while inductive analysis allowed Vera to identify codes that emerged from the data. In doing so, researchers identified broad themes and specified subsequent codes through analyzing and comparing codes across the data. All themes were discussed and agreed upon by the research staff.

Appendix III. Methodology of Systems Actors Interview Analysis

Study sample

Vera researchers conducted semi-structured interviews with a nonrandom sample of 26 respondents, ages 28 to 88 years old, from Albany, Broome, Erie, Oneida, Tompkins, and Ulster Counties in Upstate, Central, and Western New York. Interviews were conducted between September 2020 and December 2020, after the revision of bail reform went into effect.⁴³

Interview respondents included three groups: prosecutors (7); criminal defense attorneys (13); and probation officers, including pretrial supervision officers (6; Figure III-1).⁴⁴ Fourteen men and 12 women participated in the interviews (Figure III-2). The majority of respondents were white (Figure III-3). The respondents' names used throughout this report are pseudonyms assigned by the researchers.

Figure III-1. Occupation of interview respondents by county (N = 26)

Counties	Respondents			
	Prosecutor	Defense Attorney	Probation Officer	Total
Albany	0	2	1	3
Broome	0	4	0	4
Erie	3	4	3	10
Oneida	0	1	0	1
Tompkins	3	2	0	5
Ulster	1	0	2	3
Total	7	13	6	26

Figure III-2: Gender of interview respondents (N = 26)

Respondents	Women	Men	Total
Prosecutor	3	4	7
Defense Attorney	5	8	13
Probation	4	2	6
Total	12	14	26

Figure III-3: Race and ethnicity of interview respondents (N = 26)

Respondents	Asian	Latinx	White	Unknown	Total
Prosecutor	0	0	7	0	7
Defense Attorney	1	0	11	1	13
Probation	0	1	5	0	6
Total	1	1	23	1	26

Data collection

Researchers conducted semi-structured interviews from September 2020 to December 2020. The lists of eligible respondents were provided by the head of the organization (e.g., the district attorney, chief public defender, or director of probation). Researchers were able to interview most of the eligible candidates, with the exception of a few who did not consent to recorded interviews. Unfortunately, some county offices were unable to extend their support due to fiscal limitations or other external circumstances, and therefore, some counties are overrepresented in the sample.⁴⁵

Trained qualitative researchers conducted interviews via Zoom, a videoconferencing platform, or by phone, depending on respondents' preferences. Remote interviews were conducted in lieu of in-person meetings due to health precautions necessitated by the COVID-19 pandemic. The interviews lasted an average of 60 minutes (ranging from 27 to 100 minutes). In addition to demographic questions, the interview protocol contained a series of open-ended questions centered on the perceived successes and limitations of bail reform and implementation challenges. Additionally, all interviews were supplemented with field notes that were written immediately following the end of the interview to document reflections about the interview and to identify and develop concepts that might emerge from the data. Last, to ensure confidentiality, all interview transcriptions and field notes were assigned pseudonyms and stored in a secure system, managed by the qualitative researchers.⁴⁶

Analytic strategy

Two qualitative researchers—one who self-identifies as an African American woman and the other who self-identifies as a South Asian American woman—conducted data analysis. The researchers met weekly to listen to recorded interviews, review field notes, and code interview transcripts. During the first few meetings, researchers reviewed transcribed interviews and manually coded data thematically in Microsoft Word. Through a thematic analysis, the researchers identified broad themes and specified subsequent codes through analyzing, combining, and comparing codes across the data. Researchers coded the data independently and reconvened weekly to discuss coding schemes and any discrepancies, and to clarify coding procedures to improve the rigor of the analysis. All themes were discussed and agreed upon by the members of the research team.

Appendix IV. Methodology of Pretrial Supervision Data Analysis

Vera analyzed case-level pretrial supervision data collected by Vera through data sharing agreements with individual county probation departments. Probation departments shared data with the researchers using a standard data collection form created by the New York State Office of Court Administration. The data included information about every new pretrial supervision case opened in four counties (Albany, Broome, Erie, and Ulster) in 2020.⁴⁷ The data included the start and end dates of supervision for each case, the charges associated with each case, conditions imposed, and reasons for the end of supervision. The data also included demographic information about the people under pretrial supervision. In three counties, Vera obtained additional data for pretrial supervision referrals in 2019 and compared overall pretrial supervision referrals before bail reform to those after bail reform.⁴⁸ This data was not easily available in Erie County and, thus, was not provided for this report. Additionally, Vera used county-level arrest data to add context to the findings reported.

Credits

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The Vera Institute of Justice is powered by hundreds of advocates, researchers, and activists working to transform the criminal legal and immigration systems until they are fair for all. Founded in 1961 to advocate for alternatives to money bail in New York City, Vera is now a national organization that partners with impacted communities and government leaders for change. We develop just, antiracist solutions so that money does not determine freedom; fewer people are in jails, prisons, and immigration detention; and everyone is treated with dignity. Vera's headquarters is in Brooklyn, New York, with offices in Washington, DC, New Orleans, and Los Angeles. For more information, visit www.vera.org.

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Acknowledgements

The authors would like to thank Brandon J. Holmes (Freedom Agenda), Colleen Kristich (Partnership for the Public Good), Michelle Olszowy and Brendon Dickman (Erie County Probation Department), Nancy Schmidt and Valerie Naccarato (Ulster County Probation Department), Diana Spahia (Arnold Ventures), and Kristin Bechtel (Arnold Ventures) for their thoughtful reviews and feedback on the report. The authors thank the many system actors and advocacy groups who generously gave their time and expertise during the development of this report.

The authors would also like to thank Léon Digard for editing the report and Abbi Leman, Jac Arnade-Colwill, Kate Epstein, and EpsteinWords for editorial support. This report has been made possible by funding from Arnold Ventures.

Endnotes

- ¹ Jaeok Kim, Quinn Hood, and Elliot Connors, *New York State Jail Population Brief, January 2019–December 2020* (New York: Vera Institute of Justice, 2022), <https://perma.cc/78DV-54S9>.
- ² For details of charges that are affected by initial bail reform and subsequent amendments, see Michael Rempel and Krystal Rodriguez, *Bail Reform Revisited: The Impact of New York’s Amended Law* (New York: Center for Court Innovation, 2020), <https://perma.cc/T4EU-AGYU>.
- ³ Jaeok Kim, Quinn Hood, and Elliot Connors, *The Impact of New York Bail Reform on Statewide Jail Populations: A First Look* (New York: Vera Institute of Justice, February 2021), <https://perma.cc/4Q95-H9H4>.
- ⁴ Vera conducted court observations before the release of statewide pretrial data by the Office of Court Administration (OCA) and New York State Division of Criminal Justice Services (DCJS), <https://ww2.nycourts.gov/pretrial-release-data-33136>. In response to Judiciary Law 216 (5) / Executive Law 837-U, OCA and DCJS released datasets that include arraignment decisions and dispositions of cases arraigned in 2020 and 2021. The original dataset was released in December 2021 and updated in July 2022. In September 2022, a supplemental dataset that includes cases arraigned in 2019, prior to bail reform, was released.
- ⁵ Vera collected and analyzed pretrial supervision data before the release of statewide pretrial data by the Office of Court Administration (OCA) and New York State Division of Criminal Justice Services (DCJS). Also, the statewide pretrial datasets do not include pretrial supervision cases that were arraigned from town and village courts.
- ⁶ Insha Rahman, *New York, New York: Highlights of the 2019 Bail Reform Law* (New York: Vera Institute of Justice, 2019), 6, <https://perma.cc/49LN-YBA4>.
- ⁷ In New York, felony charges are classified from A to E, where A felonies are the most serious. Misdemeanor charges are classified from A to B.
- ⁸ A partially secured bond is a bond that requires a person to deposit no more than 10 percent of the bond to the court to be released. Unlike an insurance company bond, the deposit is returned if the person returns to court. An unsecured bond is a bond that does not require the person to pay any deposit to be released. It is the promise that the person will pay the bond if they fail to appear at future court dates. Read NY CPL §500.10, <https://perma.cc/PP48-VK59>.
- ⁹ Laura Bennett and Jamil Hamilton, “Freedom, Then the Press: New York Media and Bail Reform,” FWD.us, April 2021, <https://perma.cc/8MML-JDBL>; Lauren Jones, Quinn Hood, and Elliot Connors, *Empire State of Incarceration* (New York: Vera Institute of Justice, 2021), <https://perma.cc/2JZN-L3KW>.
- ¹⁰ NY CPL §530.40, <https://perma.cc/J2SU-TK7M>.
- ¹¹ New York State Government, “Governor Andrew Cuomo Announces Highlights of the FY 2020 State Budget,” April 1, 2019, <https://perma.cc/GVG7-FCY9>.
- ¹² Rahman, *New York, New York*, 2019; Michael Rempel and Krystal Rodriguez, “Bail Reform in New York: Legislative Provisions and Implications for New York City,” Center for Court Innovation, April 2019, <https://perma.cc/7BVK-L47Z>; Taryn Merkl, “New York’s Latest Bail Law Changes Explained,” Brennan Center for Justice, April 16, 2020, <https://perma.cc/ZV33-ADXP>.
- ¹³ Rory Lancman, “Decarceration Is a COVID-19 New Normal We Must Stick With,” *Daily News*, May 14, 2020, <https://www.nydailynews.com/opinion/ny-oped-decarceration-new-normal-20200514-74cal5edbbgu3mkifpyp25eb2a-story.html>; John Bowden, “New York City Has Released 900 Inmates in Response to Coronavirus Pandemic,” *The Hill*, March 31, 2020, <https://perma.cc/3W7Y-8GSL>; Mary Bassett, Eric Gonzalez, and Darren Walker, “Andrew Cuomo, Stop a Coronavirus Disaster: Release People From Prison,” *New York Times*, March 30, 2020, <https://perma.cc/3QAD-WP2N>.
- ¹⁴ Mike Desmond, “Erie County Judges Already Implementing Cash Bail Reforms to Take Effect Statewide Jan. 1,” WBFO NPR, November 21, 2019, <https://perma.cc/ZP63-ZHDP>.

¹⁵ Vera Institute of Justice, “People in Jail in New York State,” January 20, 2022, <https://www.vera.org/people-in-jail-in-new-york-state>.

¹⁶ Desmond, “Erie County Judges Already Implementing Cash Bail,” 2019; Rebecca Rosenberg and Bruce Golding, “Nearly 900 City Inmates May Be Freed Even Before Bail-Reform Law Takes Effect,” *New York Post*, November 3, 2019, <https://perma.cc/9DJV-FY4B>; Joseph Spector, Chad Arnold, Jonathan Bandler, and Steve Lieberman, “Bail Reform Results in Hundreds of Empty Jail Cells,” *Times Herald-Record*, January 23, 2020, <https://perma.cc/47WU-39SD>.

¹⁷ Vera was unable to calculate the probability of pretrial detention as a percentage of arrest for Ulster County because reliable monthly jail admission data was not available.

¹⁸ The likelihood of pretrial detention for misdemeanor or violation arrest differed by county. From April 2019 to December 2020, the likelihood decreased from 17.2 percent to 8.6 percent in Albany, from 45.4 percent to 17.1 percent in Broome, from 26.8 percent to 8.4 percent in Erie, and from 37.8 percent to 6.5 percent in Tompkins.

¹⁹ The likelihood of pretrial detention for nonviolent felony arrest differed by county. From April 2019 to December 2020, the likelihood decreased from 59.5 percent to 37.1 percent in Albany, from 86.5 percent to 57.1 percent in Broome, from 66.7 percent to 27.9 percent in Erie, and from 100 percent to 40 percent in Tompkins.

²⁰ New York SB S1509-C (2019) and New York AB A2009-C (2019), <https://perma.cc/UVX9-PJNS>.

²¹ Remand indicates that a defendant remains in jail while a case is pending, without bail or other condition.

²² NY CPL §530.40, <https://perma.cc/QP42-ASKA>.

²³ A partially secured bond requires a person to deposit no more than 10 percent of the bond to the court to be released. Unlike an insurance company bond, the deposit is returned if the person returns to court.

²⁴ Jaeok Kim, Quinn Hood, and Elliot Connors, *The Impact of New York Bail Reform on Statewide Jail Populations: A First Look* (New York: Vera Institute of Justice, February 2021), 23, <https://perma.cc/JDW5-7UTX>.

²⁵ CPL §520.10(2)(b), <https://perma.cc/F2DS-BTHD>.

²⁶ These bail-set cases do not include nominal bail, which is a placeholder to ensure the person received jail credit on their case.

²⁷ The location where defendants were arraigned differed by county. In Broome and Erie Counties, all defendants were arraigned in a centralized location, such as a jail or detention center, whereas defendants arrested in Tompkins County were arraigned at the police station.

²⁸ This finding is also supported by other research. A report by the Criminal Justice Agency identified needs for people who are going through the pretrial process. Joanna Thomas and Dalia Sharps, “Factsheet: Identifying and Addressing Pretrial Needs,” New York City Criminal Justice Agency, October 25, 2021, <https://www.nycja.org/publications/factsheet-identifying-and-addressing-pretrial-needs>.

²⁹ The immediate decline in cases for women at the start of the pandemic was not as distinct in Ulster County as it was in the other counties in Vera’s sample.

³⁰ According to arrest statistics by DCJS, Black or Latinx people made up 44 percent of total arrests in study counties in 2020; New York State Division of Criminal Justice Services, “Adult Arrest Demographics by County and Region: 2020,” <https://www.criminaljustice.ny.gov/crimnet/ojsa/adult-arrest-demographics/2020/index.html>.

³¹ The data Vera accessed did not allow for an analysis of change in revocation rates across the full study period.

³² Class A felonies were excluded here due to the small number of cases (seven) admitted in the first half of 2020.

³³ The data that Vera received used the ethnicity category label of “Hispanic” rather than “Latinx,” used here.

³⁴ U.S. Census Bureau, “Ulster County, New York,” 2019, <https://data.census.gov/cedsci/profile?g=0500000US36111>.

³⁵ Four percent of cases opened in 2019 were revoked for new felony arrests, and 13 percent were revoked for FTA.

³⁶ The CUNY Institute for State & Local Governance (ISLG) conducted a process evaluation of bail reform in New York. For more information see Jennifer Ferone, Russell Ferri, Kate Jassin, Cecilia Low-Weiner, and Aimee Ouellet,

New York State Criminal Justice Reform Interim Report: Early Findings from CUNY ISLG’s Process Evaluation: 2020–mid 2021 (New York: CUNY Institute for State & Local Governance, 2022). (On file with the authors.)

³⁷ See Léon Digard and Elizabeth Swavola, *Justice Denied: The Harmful and Lasting Effects of Pretrial Detention* (New York: Vera Institute of Justice, 2019), <https://perma.cc/V6JR-AJEU>.

³⁸ Observation periods differed by county because of how Vera obtained access to virtual arraignment links. Researchers began conducting observations in Broome County. After a couple of days, Vera’s observations became more systematized as the researchers familiarized themselves with the arraignment schedule. Cases were typically arraigned in the morning and evening. As such, a schedule was created to ensure at least two researchers joined the Skype line at appropriate times. In the absence of Centralized Arraignment Parts, however, cases in Tompkins County were far less predictable and much more erratic. A researcher stayed on the Skype line all day (8 a.m. to 8 p.m.) and began observations if court actors joined the line. In Erie County, case frequency was the highest of all three counties in Vera’s sample, and the team attended hearings until a sufficient number of cases were documented.

³⁹ Orders of protection must be issued on the record at arraignment. Judges are required to consider FTA history and the presence of open cases when making release and bail decisions. Therefore, Vera assumes that courtroom actors (judges, prosecutors, and defense attorneys) discuss these at arraignment when such records exist.

⁴⁰ All researchers who conducted observations participated in court observation training to ensure standardized note-taking procedures.

⁴¹ Seventy-one cases were observed by more than one researcher. The percentage agreement for appearance type was 86 percent. The percentage agreement for race/ethnicity was 63 percent, although in 17 out of 26 of the cases in which there was a disagreement, one person did not record race/ethnicity.

⁴² In Erie County, a prosecutor was present in nearly all cases.

⁴³ The interview questions focused on the overall change after bail reform and did not differentiate the initial reform and the revision.

⁴⁴ In some counties, pretrial services are provided by Office of Court Administration–certified agencies other than the county probation department; see New York State Unified Court System, “Pretrial Services Information—List of Agencies,” <https://perma.cc/MMP7-AWUE>. All pretrial supervision officers who participated in Vera’s study were probation officers.

⁴⁵ Although researchers found consistent themes emerged from interviews across six counties, the interview findings should not be construed as the general opinions of system actors from all six counties. See Figure III-1 for details on the interview participation for each county.

⁴⁶ Interview questionnaires are available; see Jaeok Kim, Quinn Hood, Shirin Purkayastha, Sandra van den Heuvel, Diana Spahia, and Stuart Buck, “Beyond the Big Apple: The Impact of Bail Reform in Upstate, Western, and Central New York,” April 17, 2020, https://osf.io/nt4gs/?view_only=b981a88fe99e42b59d75ec2e29845f52.

⁴⁷ Ulster County data includes additional cases, encompassing everyone who was under pretrial supervision at any time during 2020 as well as all cases opened at any time in 2019.

⁴⁸ Different levels of 2019 data were obtained from Albany, Broome, and Ulster Counties. In Albany, the data was aggregated by quarter, while in Broome, the data was aggregated by month. The Ulster County data was individual-case level, in the same format as the 2020 data.