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NEW YORK CITY'S PRETRIAL SUPERVISED RELEASE PROGRAM

An Alternative to Bail

Across the United States, criminal justice policymakers, practitioners, and advocates have raised concerns about the large number of people who are detained in local jails while waiting for resolution to their criminal charges. While some defendants are held because they are deemed likely to flee or commit additional crimes if released, many others do not pose a significant risk and are held because they cannot afford to pay the bail amount set by a judge.¹ Incarcerating these relatively low-risk defendants is costly to taxpayers and disrupts the lives of defendants and their families, many of whom have low incomes and face other challenges. To address this situation, some jurisdictions are experimenting with new approaches to handling criminal cases pretrial, with the overarching goal of reducing unnecessary incarceration while maintaining public safety.

New York City's large-scale Supervised Release (SR) program is an innovative example of this trend. The SR program gives judges the option to release some defendants who would otherwise have been detained due to their inability to make bail. These defendants must report regularly to a nonprofit organization in the community, from which they may also get referrals to various services based on their needs. In June 2016, the City of New York contracted with MDRC and its research partner, the Vera Institute of Justice, to conduct an evaluation of the

1 By New York statute, the only legally permissible consideration when determining bail is securing a defendant's future appearance in court. Some jurisdictions consider other factors, including risk to public safety.

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TO IMPROVE SOCIAL POLICY

BOX 1

EVALUATION OVERVIEW

The Mayor's Office of Criminal Justice and the New York City Center for Economic Opportunity contracted with MDRC and the Vera Institute of Justice to conduct a process and impact study of the Supervised Release (SR) program.

The overarching goal of the process study is to understand and describe how SR operates in each of the five boroughs of New York City. Research activities include arraignment court observations and interviews with judges, prosecutors, defense attorneys, SR provider staff members, and clients.

The impact study will assess the effects of the program on key outcomes of interest, such as failure to appear rates, pretrial rearrests, pretrial detention, and case dispositions and sentencing, in order to determine whether the program is achieving its primary goals of ensuring clients' appearance in court and maintaining public safety, while reducing the use of pretrial detention and reliance on money bail. The impact study will rely on administrative data from a variety of local and state agencies and will employ a quasi-experimental design.

SR program. This brief introduces the SR program and its evaluation and provides some early findings; Box 1 gives an overview of the study. More comprehensive evaluation results will be presented in future publications.

THE ORIGINS OF THE SUPERVISED RELEASE PROGRAM

As shown in Figure 1, after an arrest in New York City, a case is processed in one of two ways: A person may be released from the police precinct with a notice to appear in court at a later date, or the individual may be brought to central book-

ing, located in the courthouse of each of the city's five boroughs, to be arraigned in criminal court. At arraignment — when an arrestee is formally charged — nearly half the cases are resolved with a guilty plea or dismissal.² For those cases that continue past arraignment, the judge determines whether to release the defendant on his or her own recognizance (ROR), without any financial conditions; set bail as a financial assurance that the defendant will return to court; or remand the defendant pending trial (detain without the option of bail). Approximately 70 percent of defendants in New York City receive ROR at arraignment — far more than in many jurisdictions across the country³ — and when judges do set bail, the bail amounts tend to be lower than the national average.⁴

Despite these relatively progressive bail practices in New York City, only a small proportion of defendants for whom bail is set are able to come up with the money at arraignment. Those who are not able to post bail are detained in jail until they can or until their case is resolved, a process that takes an average of four months.⁵ On an average day, just under 10,000 inmates are incarcerated in New York City jails; over 75 percent are pre-

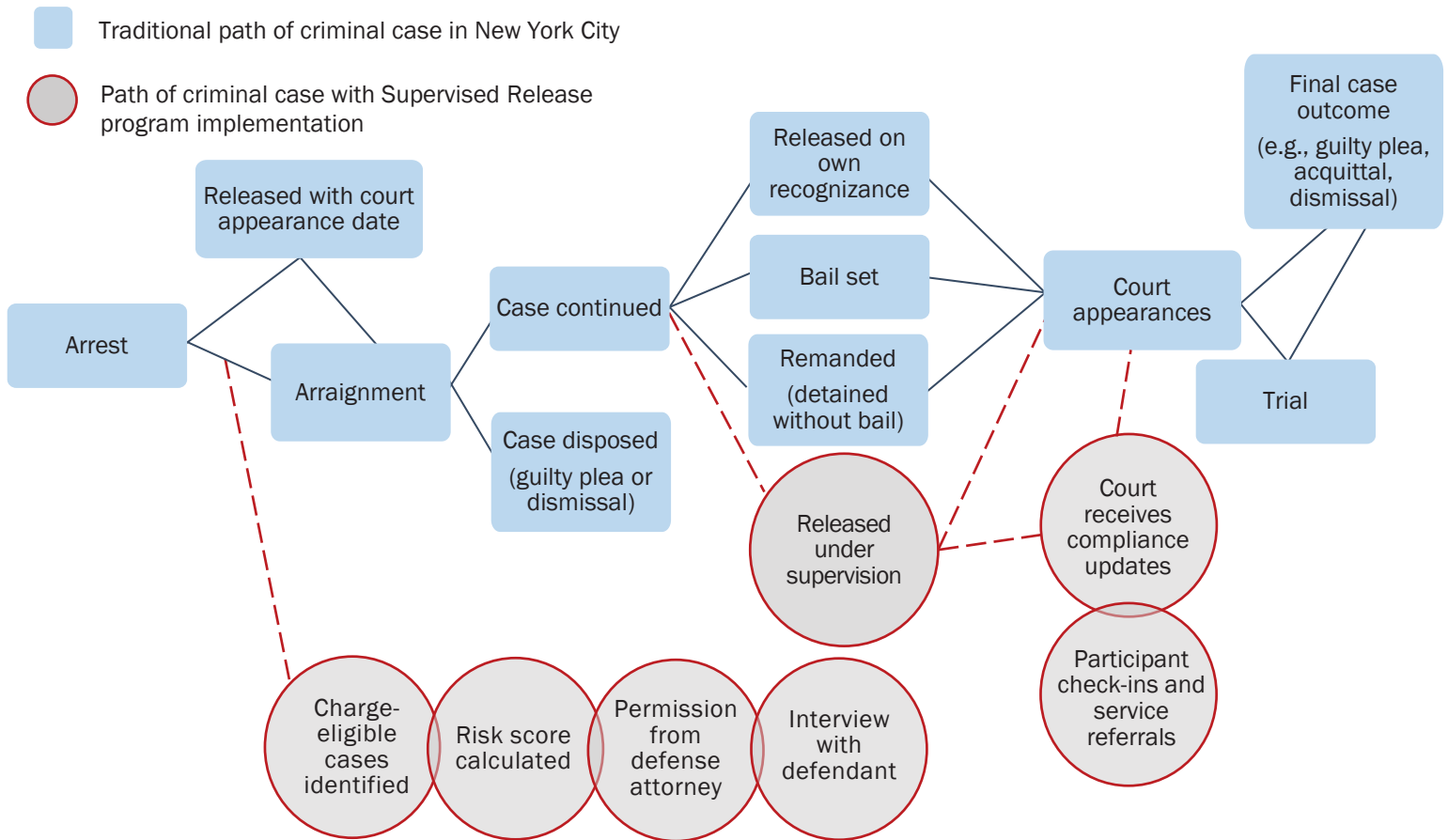
2 Criminal Court of the City of New York (2016).

3 New York City Criminal Justice Agency (2016); Mayor's Office of Criminal Justice (2017).

4 The median bail amount citywide was \$5,000 for felony cases and \$1,000 for nonfelony cases (New York City Criminal Justice Agency 2016). The median bail amounts nationwide are around \$10,000 (Council of Economic Advisers 2015).

5 New York City Criminal Justice Agency (2016). Defendants may also be released on their own recognizance at later court dates while awaiting resolution of their charges. For cases that proceed to trial, the time to disposition exceeds the overall case average of four months.

FIGURE 1
PATH OF A CRIMINAL CASE IN NEW YORK CITY



trial detainees, most of whom are incarcerated because they are unable to pay their bail.⁶ Regardless of the amount of bail set, over 40 percent of defendants cannot produce that amount and remain incarcerated for the entire time it takes to resolve their case.⁷ Being held in jail pretrial can have far-reaching consequences, not only in areas such as employment and housing, but also on the outcome of a criminal case, as defendants are more likely to plead guilty and receive harsher sentences

if they are detained in jail pretrial.⁸ In response to the low number of defendants able to post bail at arraignment, the New York City Mayor’s Office, in partnership with other city agencies, implemented the SR program citywide in March 2016 as an alternative to bail and an additional option for judges at arraignment.

The citywide SR program builds on a pilot program that was started in 2009 by the New York City Criminal Justice Agency in Queens and expanded to Manhattan in 2013. The program,

⁶ Estimates are from the first half of 2016 (Mayor’s Office of Criminal Justice 2017).

⁷ New York City Criminal Justice Agency (2016).

⁸ Stevenson (2016).

which served defendants charged with selected nonviolent felony offenses, operated for several years with the goal of reducing reliance on money bail and decreasing the number of people detained pretrial, while seeking to ensure high rates of return for defendants' postarrest court dates. Initial data from the beginning of 2016 showed that 86 percent and 83 percent of defendants placed on supervised release in Queens and Manhattan, respectively, completed the program successfully.⁹ Additionally, a misdemeanor-only supervised release pilot program was operated by the Center for Court Innovation in Brooklyn beginning in 2013.

In March 2016, Mayor Bill de Blasio announced a citywide expansion of the SR program to allow eligible defendants in every borough the option of release under supervision. The Mayor's Office convened a steering committee of key court stakeholders and administrators, including judges, public defenders, and district attorneys from each borough. The committee provided early input on how best to structure the expanded SR program and continues to meet regularly to monitor the program. The expansion of SR adds over 2,000 program slots to the pilot, resulting in 3,000 total slots citywide. The Mayor's Office developed contracts with three nonprofit organizations with extensive experience providing services through the New York City courts to deliver SR:

- Criminal Justice Agency (CJA) in Queens
- Center for Court Innovation (CCI) in the Bronx, Brooklyn, and Staten Island
- Center for Alternative Sentencing and Employment Services (CASES) in Manhattan

⁹ New York City Criminal Justice Agency (2016).

By the end of summer 2016, SR providers were staffing every arraignment court shift across the city, including those taking place at night or on weekends, in order to screen potential SR cases and accept referrals.

SUPERVISED RELEASE SCREENING AND ENROLLMENT PROCESS

Upon arrest, defendants are arraigned in front of a judge within 24 hours. Before the arraignment hearing itself, the defendant is brought to central booking for processing; charges are filed in a criminal complaint by the district attorney's office; a rap sheet (a report of the individual's criminal history) is generated; the defendant is interviewed by a staff person from CJA to determine employment, school enrollment, and family or community ties; and the defendant meets with his or her attorney.¹⁰ The criminal complaint, rap sheet, and CJA interview report are made available to prosecutors, defense attorneys, and judges, who often rely on these materials to inform their arguments and decisions during the arraignment hearing. At arraignment, it is determined whether the case will be resolved via a plea or dismissal and, if the case is continued, whether the defendant will be ROR'd, have bail set, or be remanded. Because this hearing can resolve a case or determine whether an individual will fight the charges from home or from inside jail, it is often considered by defendants and their attorneys to be one of the most critical moments in a criminal case.

¹⁰ This role played by CJA citywide is not related to the agency's operation of the SR program in Queens. Defendant interviews take place in an area of the criminal courthouse known as the "pens," a location separate from central booking.

The new SR process added a few additional steps that take place during the 20 or more hours that a defendant is waiting to be arraigned (as illustrated in Figure 1). Exact approaches vary slightly by borough, but during an arraignment shift, charge-eligible cases, including nonviolent felonies and misdemeanors that do not involve domestic violence, are identified. Defense attorneys have the option of requesting that SR providers screen charge-eligible cases using a risk assessment tool developed specifically for SR that incorporates data from the defendant's rap sheet and the CJA interview report. The assessment is based on risk of felony rearrest during the pretrial period. It considers eight factors, including age, number and type of prior arrests and convictions, warrants, open cases, and full-time activity (for example, employment or school). Individuals whose risk is assessed as high are not eligible for SR. If a defendant is eligible based on the charge and SR risk assessment score, the SR provider, with defense attorney permission, interviews the defendant to verify community ties and full-time activity and to gauge the defendant's interest in participating in the SR program.

At the arraignment, the defendant appears before the judge, and the prosecutor and defense attorney make bail arguments. The judge then decides whether to ROR, set bail, remand, or, with the introduction of the SR option, grant the defendant SR. Defendants released on their own recognition leave court and can remain at home, as long as there are no new arrests or failures to appear at subsequent court hearings. If bail is set, defendants must either pay bail or be detained in jail while their charges are pending. Before the citywide implementation of SR, ROR and setting bail were the two primary options available.¹¹ The SR option

¹¹ In New York City, remand is used only for a small

number of very serious cases. In 2015, just 1 percent of cases that continued past arraignment were remanded (New York City Criminal Justice Agency 2016).

gives judges some assurance that defendants who may be at moderate risk for failure to appear in court will be supervised in the community by a social worker from one of the provider organizations, be reminded of court dates, and potentially receive assistance with their needs.

A defendant who is assigned to SR meets with a social worker from the provider agency, who conducts a comprehensive needs assessment and determines a check-in schedule based on supervision level. As shown in Figure 2, supervision level is determined based on the risk score calculated at arraignment, charge type (misdemeanor versus felony), and an assessment of any aggravating factors, including defendant characteristics such as having an out-of-state criminal record, unstable housing, or serious mental health or substance abuse problems. Participants are then required to meet with the social worker in person one to four times per month and maintain regular phone contact (shown in Figure 2). Social workers can also provide referrals for community programs and services and encourage their use, although such services are voluntary for participants. The court receives regular progress reports from the SR provider at each court appearance. If an SR client does not comply with the SR reporting requirements or is rearrested, the provider must report this noncompliance to the court within 48 hours.

SUPERVISED RELEASE ENROLLMENT AND CLIENT CHARACTERISTICS

From program launch in March through December 2016, a total of 2,402 clients entered the SR

number of very serious cases. In 2015, just 1 percent of cases that continued past arraignment were remanded (New York City Criminal Justice Agency 2016).

FIGURE 2
SUPERVISION LEVEL DETERMINATION AND CONTACT REQUIREMENTS

Supervision level guidelines

Risk category	Misdemeanor	Misdemeanor with aggravating factors ^a	Felony	Felony with aggravating factors ^a
Low	1	2	1	2
Medium low	1	2	1	2
Medium	2	3	2	3
Medium high	2	4	3	4
High	Ineligible			

Monthly contact requirements by supervision level



Note: Only selected misdemeanor and nonviolent felony offenses are eligible for Supervised Release (SR).

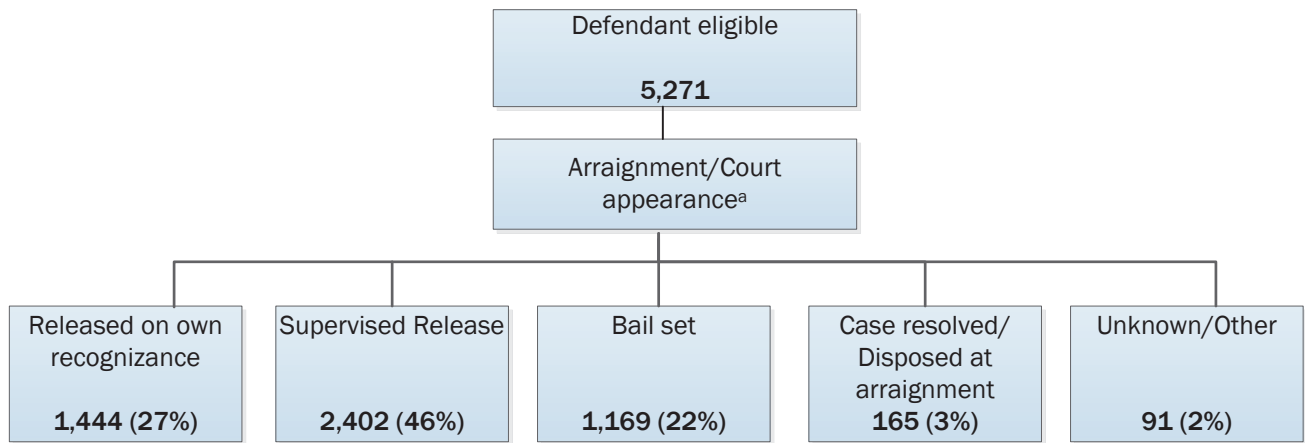
^aAggravating factors include defendant characteristics such as having an out-of-state record, unstable housing, or serious mental health or substance abuse problems.

program. As shown in Figure 3, this number represents just under half the defendants screened by providers and determined to be eligible based on their charge and risk assessment score; nearly all other eligible defendants were ROR'd or had bail set. Defendants enrolled in the SR program are not representative of all cases flowing through the New York City criminal courts. As explained above, eligibility criteria for the program automatically exclude high-risk defendants and those charged with violent felonies. Even defendants who are charge-eligible for SR may not be selected for screening by defense attorneys and providers if

they believe the defendant is likely to be ROR'd, or for other reasons.

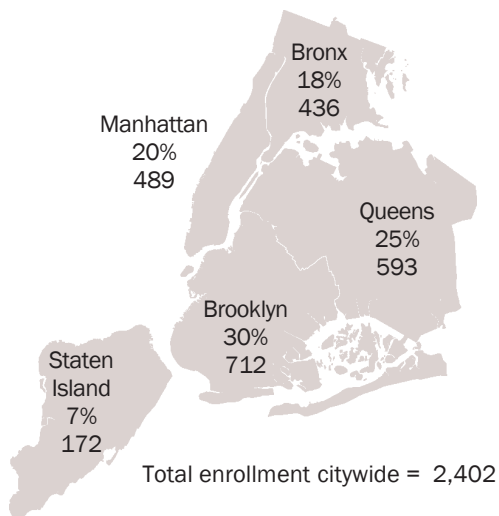
Figure 4 shows the distribution of enrollment in the SR program across the five boroughs of New York City. More than half the SR clients citywide were enrolled in the program in Brooklyn and Queens (30 percent and 25 percent, respectively). Defendants in Manhattan and the Bronx each constituted about one-fifth of the city's SR case-load. Staten Island, the least populous borough, accounted for about 7 percent of all SR clients. These figures are proportional to the total number

FIGURE 3
ARRAIGNMENT OUTCOMES FOR PROGRAM-ELIGIBLE DEFENDANTS,
MARCH-DECEMBER 2016



^a In rare circumstances, defendants may be released to the Supervised Release program at a later, postarraignment court appearance.

FIGURE 4
SUPERVISED RELEASE PROGRAM ENROLLMENT
BY BOROUGH, MARCH-DECEMBER 2016



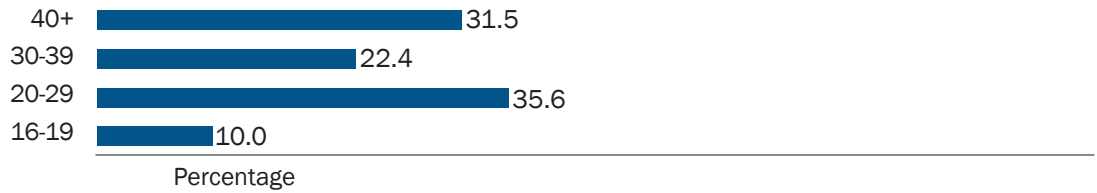
of arraignments in each borough in 2015, allowing for some variation.

Figure 5 shows the characteristics of clients enrolled in the SR program, which are similar to the demographics of all defendants arraigned in New York City.¹² Over half were adults 30 years old or older. Over one-third of SR clients were between 20 and 29 years old and approximately 10 percent were between 16 and 19 years old. Just under half of SR clients identified as non-Hispanic black (47 percent), with another 36 percent identifying as Hispanic of any race and about 10 percent as non-Hispanic white, with the remainder identifying as non-Hispanic multiracial, Asian, or other. The vast majority of SR clients were male (82 percent). As for housing status at program entry, over half of SR clients lived in market-rate rental

¹² See New York City Criminal Justice Agency (2016) for more information regarding the characteristics of those arraigned citywide.

FIGURE 5
SUPERVISED RELEASE CLIENT CHARACTERISTICS,
MARCH-DECEMBER 2016

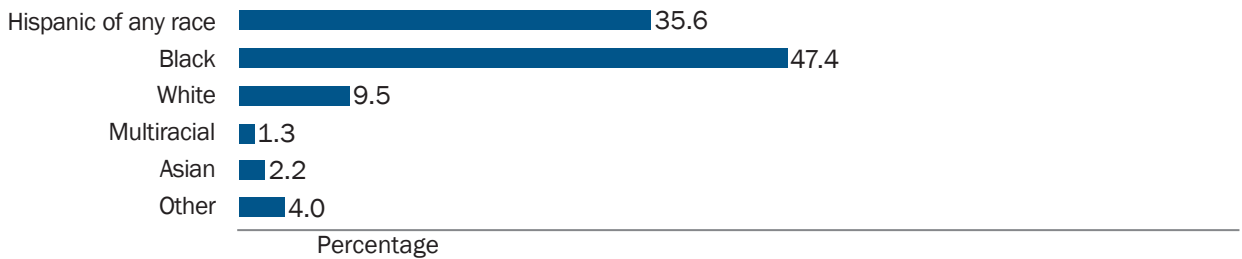
Age at program entry



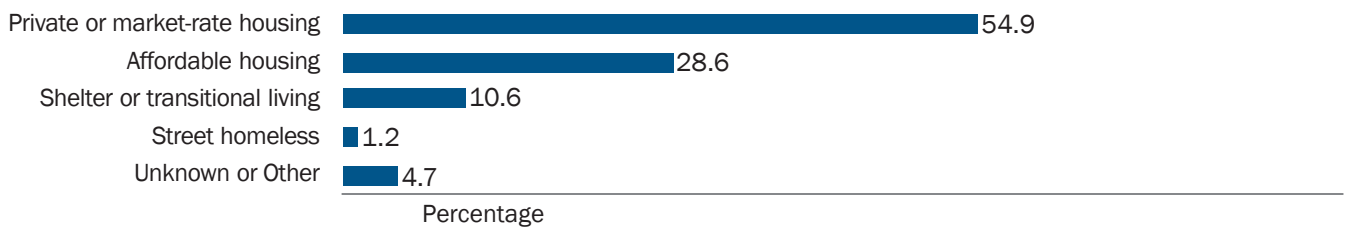
Gender



Race/ethnicity



Housing status at program entry

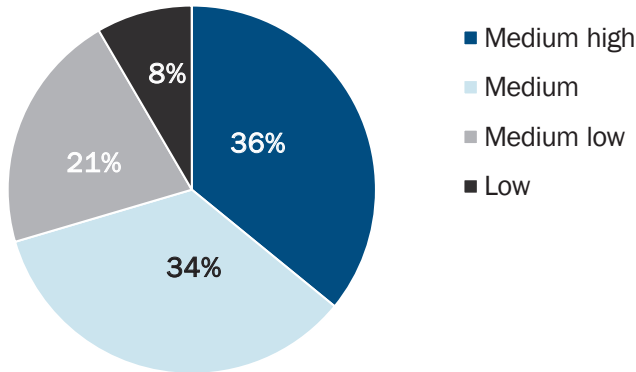


housing or owned their own homes, and more than one-fourth resided in affordable options such as public or Section 8 housing. About 10 percent lived in transitional or supportive housing or shelters. An eligibility criterion for SR is the confirmation of a residential address or community contacts through whom clients can be reached. This may help explain why fewer than 1 percent of SR clients were “street homeless,” or unsheltered.

The SR program was designed for defendants at moderate risk of pretrial felony rearrest. Thus it is not surprising that at program entry, most SR clients were assessed at the medium (34 percent) or medium-high (36 percent) risk level for pretrial felony rearrest (Figure 6). Approximately one-fifth of clients were assessed at a medium-low level and a much smaller proportion (8 percent) were determined to be low risk; a probable explanation

FIGURE 6

SUPERVISED RELEASE PROGRAM ENROLLMENT BY RISK LEVEL, MARCH-DECEMBER 2016



for this small proportion is that low-risk defendants are more likely to receive ROR at arraignment. By program design, high-risk defendants are not eligible for SR.

STAKEHOLDER AND PARTICIPANT PERSPECTIVES ON SUPERVISED RELEASE

Information gathered by the research team through stakeholder interviews and site visits to the criminal court in each borough and to each of the SR providers’ community-based offices provides an early sense of how the program is being integrated into arraignment processes, how supervision and case management are operating, and how stakeholders and participants view SR.¹³ This section gives a brief overview of these early findings.

¹³ The research team interviewed a total of 68 individuals, including judges, defense attorneys, prosecutors, provider staff members, and participants.

The extent to which courtroom stakeholders, especially judges and defense attorneys, subscribe to SR can be measured through the take-up, or usage, of the program. As mentioned above, the program’s funding allowed for 3,000 annual slots citywide; it was expected that the program would not be operating at full capacity until its second year of operation. Between March and December 2016, the first ten months of operation, approximately 2,400 participants enrolled in the program. That figure, along with reports from each of the providers about the program’s capacity, indicates that take-up is higher than anticipated. In fact, providers have reported needing to hire additional staff members sooner than originally planned. While the enrollment numbers suggest that the program is well utilized, some stakeholders would like to see it used more frequently or argue for an expansion of the eligibility criteria.

Judges ultimately decide which cases end up in the SR program. Judges with whom the research team spoke had generally positive impressions of the program and believed that it added value by providing them with an additional option for defendants whom they did not feel comfortable simply releasing, but for whom they also did not want to set bail. Judges are enthusiastic about the case management services being offered to clients, believing that many could benefit from these services.

In general, defense attorneys expressed positive opinions of SR and said they appreciated having the program as an option to help their clients avoid pretrial detention. However, while supportive of the program overall, some defense attorneys expressed concern that some judges use SR when ROR would be more appropriate. This phenomenon, referred to as “net widening,” places defendants at higher risk because they could face consequences for failing to meet the SR reporting

requirements. Some defense attorneys also said they believed that the SR eligibility criteria should be less restrictive, particularly in regard to charge eligibility. In sum, while some defense attorneys favor changes to the program, for the most part they view SR as a necessary program that offers additional opportunities for their clients.

On the other side of the courtroom, prosecutors' responses to the SR program were more mixed. Some prosecutors did not see a need for it, believing that defendants would either return for their court dates or not, and that participation in the program would have no effect on this outcome. Others were more receptive, recognizing the program's role in reducing detention of indigent defendants charged with less serious crimes. Some prosecutors expressed interest in being part of the screening process and wanted to have the option of requesting SR when they believe it to be appropriate.

Provider staff members, including both court representatives who screen defendants in arraignments and case managers who supervise clients after SR has been granted, saw the SR program as a way to help prevent low-income people who are facing criminal charges from being unnecessarily detained. They further focused on SR as a vehicle for providing many of these individuals with needed supportive services. However, both court representatives and case managers reported experiencing challenges in performing their duties. For example, court representatives must establish and maintain good working relationships with judges, defense attorneys, and, to a lesser extent, prosecutors in order to get their cooperation and, ultimately, for the program to operate effectively. This effort requires building trust and carefully balancing the competing demands of each of these stakeholders. Several court representatives pointed to the need to maintain legitimacy in

the courtroom so that their organizations earned respect from judges as well as other key parties in the courtroom. If the providers are not viewed as having the capacity to ensure high rates of return to court, judges may be reluctant to assign them cases in the future. For this reason, they have to be careful to enroll people they believe they can work with effectively within the confines of the program. Case managers report different challenges, such as high caseloads that make it difficult to handle the cases as thoroughly as they would like.

Participants who were interviewed by the research team expressed universally positive views of the SR program. The vast majority believed that without the program they would probably be in jail and expressed appreciation for the opportunity to continue with their lives and face their charges "from the outside." They valued the support case managers provided, including reminders about check-in appointments and court appearances, as well as help understanding the status of their cases. A number of interviewees mentioned SR providers' willingness to work around their schedules and to lend a sympathetic ear. While not all participants were interested in additional help, some reported receiving referrals to needed services, including employment support and treatment for substance abuse and mental health problems. When asked whether he felt that supervised release had any negative consequences, one participant responded, "No, not at all. Everything is just to keep you on your Ps and Qs. You could've been in jail. You only have to do this once or twice per month. I'm cool with my social worker. I am glad I got [her]. She actually helps me."

An emerging sentiment among stakeholders is the idea that there is a "sweet spot," or specific type, of case that is best suited for the SR program. However, there is disagreement about which types of

defendants and cases fall into this category and how best to identify them, including the balance of responsibility for doing so. As highlighted above, the various stakeholders who are involved in the SR screening and program implementation processes have different priorities and goals, resulting in a complex dynamic, which later reports will explore further.

VARIATION IN PRACTICE ACROSS NEW YORK CITY BOROUGHS

Although the New York City Criminal Court is a citywide entity, courtroom culture and practices differ across the five boroughs. Similarly, while the SR program is overseen by a single city agency and has specific guidelines that apply universally, the program is operated by three different community-based organizations that have their own unique cultures of practice and experience.

The process for screening cases for SR eligibility is one key area of variation across boroughs and providers. In one borough, provider court representatives appeared to take a more proactive screening approach, reaching out to defense counsel to request permission to interview charge- and risk-eligible clients whom they had prescreened, rather than waiting for the attorney to request that a client be screened, as was more common in other boroughs.

There are also key differences in noncompliance reporting practices. In one borough, the provider must formally appear in front of the judge at a hearing to report that a client has missed a check-in, while in other boroughs an email to the court will suffice. Across and within boroughs, the response to noncompliance can vary depending on the circumstances and the judge's discretion. Responses range from simply waiting until the cli-

ent's next scheduled court date to see whether the client comes back into compliance to immediately issuing a bench warrant for the client's arrest.

Finally, to the extent that implementation practices differ across boroughs, the types of cases enrolled in the program may also differ. These variations in case characteristics and implementation could be important in understanding differences in the impacts of the SR program. Future reports will continue to examine the variation by borough in the implementation of the SR program.

NEXT STEPS

The evaluation includes a comprehensive process and impact study. While some preliminary findings are shared in this brief, a process study report, scheduled for release in late 2017, will include more detailed information about the implementation of the SR program. The impact study will address whether the program is achieving its intended goal of reducing pretrial detention while maintaining court appearance rates and public safety. A report on the impact study findings is expected in mid-2018.

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