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# Brooklyn Justice Initiatives

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Bail Reform Project  
2014 Annual Report

Based in New York City, the Center for Court Innovation is an independent, non-partisan, non-profit organization that seeks to reform the justice system by creating operating programs that test new ideas, by performing original research, and by providing technical assistance to reformers around the world.

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# Brooklyn Justice Initiatives: Bail Reform Project

## Context

Under New York law, criminal defendants who are deemed by the court to be a flight risk are typically required to post bail in order to be released from jail while their case is pending. The judge must consider several factors, including the defendant's ties to the community and past failure to appear in court.<sup>1</sup> Bail is routinely set in the cases of over 55,000 defendants each year in New York City alone, approximately half of whom are charged with low-level offenses (misdemeanors and violations).

Over 75 percent of non-felony bail cases in New York City involve bail amounts of \$1,000 or less—and yet in the vast majority of cases (65 percent), defendants are unable to post that amount. These individuals have been found guilty of no crime—indeed, approximately 25 percent of non-felony defendants detained pre-trial will end up having their cases dismissed.<sup>2</sup>

This use of pre-trial detention for non-felony defendants has enormous costs, both in terms of dollars and cents (taxpayer money that supports Rikers Island and other correctional facilities) and the impact on the lives of detainees and their families. It is worth noting that the overwhelming majority of pre-trial detainees

are black or Latino.<sup>3</sup>

Pre-trial detention also has a considerable impact on case outcomes. Research shows that non-felony defendants who are detained pre-trial are disproportionately likely to be convicted (a 92 percent conviction rate) compared with their released counterparts, even after controlling for case and defendant characteristics.<sup>4</sup> Pre-trial detainees also have an increased likelihood of receiving jail sentences.<sup>5</sup>

In his 2013 State of the Judiciary address, New York State Chief Judge Jonathan Lippman called for bail reform in New York. In addition to seeking legislative changes that would enable judges to consider public safety and allow for the presumption of release pre-trial, the chief judge asked the Center for Court Innovation to create a supervised release program that would reduce pre-trial detention for misdemeanor defendants. The resulting project, Brooklyn Justice Initiatives, launched in August 2013 operating out of Kings County Criminal Court.

## Results

In its first year of operation, Brooklyn Justice Initiatives enrolled 221 participants in its pretrial supervised release program, most of them young men of color. Ensuring participants remain in the community and avoid detention while their case is pending is the primary goal of the program. During its first year of operation, 85 percent of defendants enrolled in the program achieved this goal. Almost all of those who remained in the community during the pendency of their case also resolved their case with a non-criminal disposition. This is not a coincidence—avoiding pretrial detention changes the trajectory of the criminal case. Given what we know about collateral consequences, the reduction of criminal convictions is significant. These

defendants are more likely able to remain employed, enroll in educational programs, and stay in public housing. While participation in social services is not typically mandated as part of the supervised release program, clients are assessed for service needs and offered voluntary services. Almost half of participants accepted assistance and were connected to community-based services, most commonly for educational and employment services, followed by mental health counseling and drug treatment.

## How It Works

Brooklyn Justice Initiatives is an enterprise that requires the active participation of numerous stakeholders, including the Brooklyn District Attorney's Office, defense attorneys, and judges. What follows is a description of how the program operates and how it has navigated complicated questions of eligibility, information sharing, and case monitoring.

### *Screening and Enrollment*

Participants are screened for eligibility at arraignment, as well as on subsequent court dates. The in-court eligibility screening includes a review of defendants' charges, criminal histories, bail recommendation, and warrant history. The goal is to identify defendants at greatest risk of pretrial detention and ensure that participants are appropriate for community-based supervision.

To avoid “net widening” and ensure that only those defendants who would not otherwise be released on their own recognizance are enrolled in the program, defense attorneys serve as the gatekeeper. Almost 90 percent of participants were not recommended for release or deemed high risk of failure to appear

following an assessment by the Criminal Justice Agency.

After a defendant has been deemed eligible, the program alerts the defendant's attorney. If the defense attorney consents, program staff conduct a brief pre-arraignment interview with the defendant to explain the program, confirm interest, and verify contact information.

In most cases, the prosecution is seeking bail in the amount of \$500-\$1,500. When the defendant is arraigned, if a judge indicates she will not release the defendant on recognizance, the defense attorney advises the court that the defendant is eligible for the supervised release program. The court then considers whether participation in the program is appropriate in lieu of bail.

### *Supervision & Services*

Immediately after referral to the program, participants are taken to the on-site program office for an intake session with a case manager. This quick engagement is key to the program's success. A case manager uses a validated assessment instrument, the GAIN assessment, to determine service needs. Following the intake session, participants are placed in an intensive orientation period, which includes several in-person meetings and random phone calls from program staff over a two-week period.

Upon completion of the orientation period, all participants are assigned to a regular supervision schedule, determined by their individual needs and compliance during the orientation phase. In addition to providing supervision, case managers connect participants to voluntary community-based social services as needed.

### *Compliance Monitoring*

Rigorous compliance monitoring and swift notification of noncompliance is a hallmark of Brooklyn Justice Initiatives. If a participant fails to appear for an in-person meeting or fails to return a phone call within 24 hours, she will be moved to a more intensive reporting and supervision schedule. Likewise, supervision and reporting requirements are reduced for participants who remain in compliance. Non-compliance is immediately reported to the court. The court may then order the defendant continue participation in the program, perhaps with court-mandated conditions of release, or may set bail and terminate participation in the program.

## Individual Stories

Each individual participant in Brooklyn Justice Initiatives is unique, of course. Below are two examples:

Rick, 21, was arrested and arraigned on a charge of criminal mischief for allegedly damaging a neighbor's property, a misdemeanor carrying a sentence of up to a year in jail. Although Rick had a clean criminal record, the prosecutor requested \$2,500 bail because he had two other pending criminal cases, including a non-violent felony charge. Bail had already been set on one of his previous cases—his mother had barely managed to pay it and there was no way they could afford this bail too. Based on Rick's verifiable community contacts and his willingness to comply with the conditions of supervision, the judge released him at arraignment to the program. Rick then readily availed himself of voluntary educational services: he was able to earn a high school equivalency diploma and enroll in a college preparatory course. Throughout his time in the

program, Rick never missed a required phone call or an in-person meeting with his case manager, and he made it to every court appearance. After two months, Rick's criminal case was dismissed and sealed.

Chris, 56, was charged with misdemeanor assault after a dispute with a fellow subway passenger. This arrest was Chris's first contact with the justice system in almost twenty years. Though he had a difficult childhood, and had struggled with addiction in the past, he had obtained his GED and was now employed. Chris and his family could not afford the \$1,500 bail requested by the prosecutor, and he feared he would lose his job if he were sent to Rikers Island. At the request of his attorney, Chris was screened for participation in the supervised release program, and was released to comply with all supervision requirements. While in the program, he and his case manager discussed his future goals. While continuing to work, Chris's case manager helped him enroll in a computer program. At the end of the course, he was given his first computer. After a few months of participation in the supervised release program, Chris resolved his case with a non-criminal violation and a small fine.

## The Year Ahead

In a short time, the misdemeanor supervised release program has become institutionalized in Brooklyn. Defense attorneys, judges, and even some prosecutors now regularly flag cases that may be appropriate for supervised release. While some stakeholders initially expressed skepticism about whether defendants would engage in voluntary services, the model has proven that defendants are eager to accept help. The program is now poised to expand, and will explore including defendants

with more prior convictions (currently, eligible defendants have no more than six prior misdemeanors and one prior felony in the last 10 years) and defendants charged with selected nonviolent felonies.

In addition to expanding the pool of eligible participants, in the days ahead, the program will pilot the use of a new validated risk/needs screening tool being developed by the Center for Court Innovation with support from the US Department of Justice. This tool will be used as part of the pre-arraignment screening process to help determine eligibility for the program. The assessment tool will also be used to determine social service needs.

To further enhance the menu of social services available to participants, Brooklyn Justice Initiatives plans to create a short-term, on-site group counseling program for voluntary participants, a special track with additional supportive services for participants with behavioral health needs, and partnerships with agencies to swiftly enroll participants in health insurance and other healthcare services.

In 2015, researchers will complete a formal evaluation of the program's first year. In addition to documenting how the program was implemented, the evaluation will document impacts through a comparison of participants to similar misdemeanor defendants arraigned in the year prior to implementation. Some outcomes of interest are: pretrial detention, warrants issued, pretrial and post-disposition rearrests, and case outcomes (plea, conviction or dismissal). Finally, the evaluation will document the attitudes of judges, prosecutors and defense attorneys towards the program.

## About Brooklyn Justice Initiatives

Created in 2013, Brooklyn Justice Initiatives seeks to forge a new response to misdemeanor and non-violent felony defendants in Kings County, New York. Operating out of Kings County Criminal Court on Schermerhorn Street, Brooklyn Justice Initiatives is staffed by a team of court-based social workers, case managers, and court liaisons. By providing meaningful pre-trial supervised release and post-conviction sentencing options, Brooklyn Justice Initiatives seeks to use a misdemeanor or non-violent felony arrest as a window of opportunity to change the direction of a defendant's life and avoid the harmful effects of incarceration. Brooklyn Justice Initiatives focuses on two distinct populations: those with pending misdemeanor cases who face the possibility of bail they cannot afford and those who have been found guilty of misdemeanor and non-violent felony offenses and are deemed appropriate for community sanctions by the judge.

In addition to its pre-trial supervised release program, Brooklyn Justice Initiatives operates post-adjudication services at Kings County Criminal Court, specifically with adolescents and young adults, individuals arrested for prostitution-related offenses, and defendants with behavioral health needs. Brooklyn Justice Initiatives provides judges with a broad range of alternative sentencing options, including short-term social services, community restitution, and more intensive, longer-term clinical interventions onsite and in partnership with community-based providers. Short-term services include both psycho-educational group and individual case management sessions, tailored to the population, that address underlying issues including, trauma, decision-making, education and employment, and substance use. All services are

rigorously monitored to ensure compliance.

Brooklyn Justice Initiatives is a unique collaboration involving the New York State Court System, the Mayor's Office of Criminal Justice, Kings County District Attorney's Office, Brooklyn Defenders, Legal Aid Society, Criminal Justice Agency, Robin Hood Foundation, Probitas Foundation, and the Center for Court Innovation.

## Endnotes

1. New York State is among the only states where public safety concerns are not a valid consideration in deciding whether to set bail.
2. "A Decade of Bail Research in New York City" (2012). Criminal Justice Agency. p. 122. Available at <http://www.cjareports.org/reports/DecadeBailResearch.pdf>.
3. Approximately 85 percent of misdemeanor defendants are black or Latino. "The Price of Freedom: Bail and Pretrial Detention of Low Income Nonfelony Defendants in New York City" (2010). Human Rights Watch. Available at [http://www.hrw.org/sites/default/files/reports/us1210webwcover\\_0.pdf](http://www.hrw.org/sites/default/files/reports/us1210webwcover_0.pdf).
4. "A Decade of Bail Research in New York City" (2012). Criminal Justice Agency. p. 122. Available at <http://www.cjareports.org/reports/DecadeBailResearch.pdf>.
5. *Id.*

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