

Bail Reform Initiative In New York City

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**Stage 1: Analyzing the Problem**

The United States has the highest rates of incarceration than any other nations. According to The Sentencing Project "American criminal justice system holds more than 2.3 million people in prisons and jails". The Department of Justice estimates that local jail population grew by 19.8 percent between 2000 and 2014; pretrial detainees accounted for 95 percent of that growth. Many of those cannot afford bail and are being held in detention as they await the resolution of their charge. Unfortunately, today and years ago bail remains a problem for poor people who are not able to meet financial bail requirement to secure their release from jail.

To address the bail problem in New York City, it is important to know how many people are at risk, how many cannot afford bail in the recent past and what characteristics they share. Riker's Island and other jails across New York City, annually admit around 50,000 pretrial defendants who cannot afford the bail set in their case (Rahman 2017). Median bail amount on felony cases in New York City is \$5000 and even lower cases at \$1000 on misdemeanors. However, over 7,000 people are detained pretrial at Riker's Island and other New York City jails daily because they cannot make bail (Rahman 2017). A 2010 data found that three-quarters of criminal caseload in state courts were represented by non-felony offenses (misdemeanors). According to CJA, Annual Report 2015 "In New York City, more than 50 percent of people cannot pay the bail amount imposed by the court, even though bail is set at lower amounts, on average, compared to other jurisdictions nationwide". Available evidence suggests that despite the low bail amount, overwhelming preponderance of New York indigent defendants who committed low-level offenses have limited financial resources to make bail.

**Problem: Unnecessary detention of poor individuals who do not pose significant risks of nonappearance or public safety.**

Historically, bail purpose was to ensure a defendant's appearance at their next court date. Setting bail is not a punishment because whether a crime has been committed has yet to be determined. The current reason defendants are in jail has not been proven beyond a reasonable doubt, however, they are serving time because are unable to pay for their pretrial release. If the accused cannot raise personal or familial funds or through a bail bondsman, he will remain incarcerated until the case is resolved by trial or a plea. When you compare defendants with the same criminal charges and similar backgrounds, the ones with money got to await trial out of jail and continue with their jobs while those with no money spent their weeks, months and sometimes years in jail awaiting a chance to review the charges, evidence and go to trial. Bail is determined based on individual's wealth and not based on the crime he committed. Poor defendants who pose no treat remain behind bars, meanwhile, wealthy people go free regardless of what danger they might pose because they have sufficient funds to afford bail. Therefore, a disproportionate number of poor people remain in jail simply because they cannot afford to post the bail required.

### **Potential Causes**

Scholars have focused on the impact of bail on case outcomes for indigent defendants. Heaton et al (2017) analysis suggests that bail causes worse case outcomes and induces innocent defendants to plead guilty in order to exit the jail. People that are detained on misdemeanor chargers are offered sentences for "credit for time served" or probation in exchange for a guilty plea. Schönreich (2013) focused on the length of pretrial detention and the harm it poses to individuals and families. The length of pretrial detention varies tremendously by jurisdiction and the particulars of given case. On average, the length of pretrial detention is about 15.7 days according to CJA. Some individual can spend days, weeks, months or even jail until their court

date. During that time, people in pretrial detention may lose their jobs due to their absence, housing or custody of their children. In fear of losing their assets and families, they plead guilty in order to be dismissed earlier from jail. Available evidence suggests that pretrial detention causes a higher risk of convictions mainly by coercing people to plead guilty.

### **System analysis**

Institutional actors such as judges, prosecutors, defense councils and law enforcement have strong incentives to rely on money bail practices. Law enforcement officers play a crucial role in a bail process by making arrests of individual's who had been suspected of committing a crime. Judges make decisions about which defendants are eligible for release pending trial and determine whether to decrease or increase the amount of bail that is set for an alleged offense. Judges exercise their discretion based on potential risks posed by release to the community of the individuals, prior criminal histories of an individual, ties to the community. Prosecutors position has a major influence on bail or pretrial custody. They present arguments for or against bail. Judges collaborate with prosecutors by offering credits for time served and plea deals. Defense attorneys participate in negotiations with prosecutors regarding admissible evidence, potential plea bargains and so on. Many people who are cannot afford bail are poor and they don't have sufficient financial resources to obtain a private attorney. The court appoints public defenders for indigent defendants who are unable afford legal assistance. Public defenders are overwhelmed with heavy caseloads and they rush to represent other offenders. As result, indigent clients receive ineffective assistance of counsel. The absence of defense attorney poses a great risk for defendants to take the plea.

### **Previous interventions**

New York City has recognized that reliance on money bail has overwhelmingly resulted in detention of indigent defendants. Vera Institute of Justice in New York City launched the Manhattan Bail Project in 1961 to test the success of Release on Recognizance (ROR) and collected data on whether a person returns to court as required for appearance release on recognizance or making bail. The Projects findings showed that many people do return to court and that high bail was unnecessary to ensure defendants returned to court. (Kelleher, 2016).

Another intervention was when the mayor of New York City Bill de Blasio created a supervised release programs utilizing GPS monitoring to monitor defendants released back to their communities before trials. The goal of the program was to cut unnecessary pretrial detention and to reduce reliance on money bail. Reforming bail system in New York has been a priority, however critics note that this program is ineffective. According to Kelleher 2016 “the spots in supervised release program is extremely limited and “judges in New York who rely overwhelmingly on money bail system retain discretion regarding eligibility” pg. 817.

### **Stage 2: Setting Goals and Objectives**

**Goals-** Reducing reliance on money bail and decreasing the number of people detained pretrial, while seeking to ensure appearance rates among released and supervised defendants for their scheduled court dates.

**Objective –** After 12 months, reduced incidents of failures to appear in court are projected and fewer people will be held custody because of a lack of financial resources.

**Time Frame:** The policy will go in to effect on September 13, 2018, and follow defendants until September 13, 2019.

**Target Population:** Misdemeanants and non-violent felons who do not necessarily pose a public risk safety or a risk of not appearing in court, and would wait for a trial in jail because they cannot afford relatively low bail amounts (generally \$1,500 or less).

**Result:** Fewer number of low-level offenders who do not pose significant risks of nonappearance to court or public safety will be held in pretrial detention, instead participants will remain in the community rather than in jail while waiting for trial.

**Criterion:** The successful program outcome will be measured in three ways. The data reporting of released defendants will be recorded. The three measurements are (1) percentage of defendants who appear for all scheduled court appearances during the pretrial release period, (2) percentage of defendants who are not charged with a new offense during pretrial supervision, (3) percentage of defendant's compliance with pretrial special conditions.

Impact model:

**Policy:**

Kateryna Foundation Freedom and Society Bail Program will collaborate with Brooklyn Justice Initiatives Pretrial Release Program. The program will be supervised by the Supervising Judge Hon. Robert E. Torres. Kateryna Foundation Freedom and Society Bail Program will serve as the alternative form of bail which will replace jail for defendants who cannot afford bail. Eligible defendants who are accused of nonviolent crimes and misdemeanors will remain in their homes and communities pending the conclusion of their cases. The purpose of the program is to help the poor people gain release prior to trial and then provide them with advice and assistance to assure that they would return to court. Once defendants are determined to be eligible for the program, they will be provided with the services based on their needs. Participants will be

interviewed to determine their treatment needs and service history and to establish temporary housing and assign a case manager.

- **Cause of Problem**

The preponderance of criminal defendants in New York City are accused of nonfelony crimes, mostly misdemeanors such as smoking marijuana in public, turnstile jumping, or shoplifting remain behind bars because they cannot pay the amount of bail set by the judge. Heaton et al (2017) analysis of the misdemeanor pretrial detention suggests that pretrial detention harms individuals in countless ways: detained men and women lose income they and their families need and even their jobs; they cannot attend to substance abuse and mental health treatment programs.

- **Change**

The program will allow eligible defendants who cannot afford the low amount of bail to remain in the community rather in jail awaiting trial and assure that defendants make their scheduled court appearance. The program will also help to avoid the costs and burdens of pretrial detention at Rikers Island.

### **Development of Program**

The program is modeled on pilot Brooklyn Justice Initiatives Pretrial Release Program. The Brooklyn Justice Initiatives Pretrial Release Program has been rated as successful and the primary goal of reducing the use of pretrial detention has been met. Hahn (2016) analysis suggested that participants who entered the program are less likely to receive a jail sentence at the end of their case (11% vs. 34%) and receive a misdemeanor criminal conviction (21% vs. 38%) than those who didn't enter the program. Additional research shows the need for pretrial

release program and that a significant number of defendants make their court appearances while attending to the program (Rahman 2017 and Kelleher 2016). However, more research had shown that Brooklyn Justice Initiatives Pretrial Release Program largely focused on defendant surveillance ( e.g. Court appearance) and gave little attention to treatment needs of participants. Supervised Release staff and participants reported dissatisfaction with the use current program assessment tool to assess mental health and substance abuse issues. This program will be similar to Brooklyn Justice Initiatives Pretrial Release Program; however, I will increase the use of social services and treatment referrals while assuring defendants appearance to court.

### **Stage 3: Designing the Program or Policy**

**Target Population-** Misdemeanants and non-violent felons who do not necessarily pose a public risk safety or a risk of not appearing in court, and would wait for a trial in jail because they cannot afford relatively low bail amounts (generally \$1,500 or less).

**Target Selection Process:** The process allows staff to identify defendants at greatest risk of pretrial and participants who are suitable for community-based supervision. Applicant suitability for the program involves the completion of an interview to gather information. An interview will review the defendant's charges, criminal history, warrant history, and release or bail recommendation by the judge.

Approximately 200 defendants will attend to the program. This program takes to account the evaluation of Brooklyn Supervised Release Staff and other researchers who recommended more social services and treatments referrals. Defendants who are eligible will be assisted prior to trial in securing any necessary employment, medical, drug, mental or other

health treatment, legal or other needed social services that would increase the chances of successful compliance with conditions of pretrial release.

### **Key Officials/Staff**

The primary responsibilities of staff would be interviewing defendants before initial appearance, getting reports to the court, and supervising defendants released by the court with specific conditions. Case managers are licensed social workers who conduct individual assessments, provide participant supervision, track participant progress. The social workers must evaluate the defendant's current emotional state, trauma, criminal thoughts and substance abuse to identify issues and mental illness. Understanding the participant's needs and circumstances helps to address any barriers to court, such as trauma due to prior criminal justice involvement, health problems, child care. The result of this assessment will determine defendant's placement to this program. Social workers will keep in regular contact with supervised release participants to assess how defendants are functioning in the community and to identify any issues he or she faces from external sources ex (family or financial).

The judge will actively participate in the decision for defendant's eligibility and refer a case to the program. The referral may come from a judge and defense attorney. The client will be assisted by the defense attorney and the defense attorney will provide referrals the court.

After the court releases the participant into the program, the case manager will screen individual needs (trauma due to prior criminal justice involvement, health problems, child care, mental health, substance abuse, housing or education). The participants will remain in the program until their scheduled court date, however, the supervised staff will follow up with participants after the completion of the program.

Participants will be assigned to a regular supervision schedule. They will be evaluated on their attendance to the program. There are 3 levels of the program frequency of in-person sessions. The first level is the one-week commitment in-person sessions. If a participant shows compliance and shows up for three weeks, he/she will move on level 2. On a level two, a participant will show up to in-person sessions every two weeks. After successfully showing up every for four weeks, a participant moves to level 3. On a level 3, participants attend to in-person sessions once a month. Each participant receives a weekly phone call from the case management staff and court date reminders. If the participant fails to respond to the phone calls or appear in person sessions and does not notify the case management staff within 24 hours, they move to a lower- level of frequency of in-person sessions. If the participant fails to attend to a lower- level of in-person sessions, the pretrial services agency or program will take prompt action to respond, including notifying the court of the nature of the noncompliance. Then, the judge may decide to remove a participant from the program.

Kateryna Foundation Freedom and Society Bail Program will focus on mental health and substance abuse issues of defendants, while assuring defendants appearance to court. I will need sufficient resources to address the treatment needs of participants. The resources listed below will allow defendants to access mental health treatment or other needed social services that would increase the chances of successful compliance with conditions of pretrial release.

#### **Stage 4: Developing an Action Planning**

##### Expenses

The program will be adding more staff members who will work with defendants suffering from mental illness and co-occurring substance abuse disorders. The staff will focus on the

complex interweaving between trauma, substance abuse, and mental health. Below the list of staff along with their salaries proposed.

- Supervising Social Worker: \$65,000
- 1 Mental Health Social Workers: \$54,000
- Case Manager for the supervised release program: \$48,000
- 2 Substance abuse counselors: each, \$42,000= 84,000

Additional Expenses

Health Insurance: \$100,000

Vacation pay: \$70,000

Rent costs: 12,000 per month, includes 6 different rooms, plus 2 restrooms. Total in one year = \$144,000.

Office Supplies: \$2,000 per month. Total in one year= \$24,000.

Equipment: \$10,000, includes 6 computers and two printers, 6 phones, 2 faxes and 2 scanners. Additional equipment might be needed. Approximately, 4,000 will be allocated.

Utilities: \$700 per month, includes water, heat, electricity, and phone. Total in one year = 8,400.

A total budget estimated to be \$700,000.

**Monthly Tasks:** At the beginning of the program, every month a participant will meet with social workers and counsels. The social workers must evaluate the defendant's current emotional state, trauma, criminal thoughts and substance abuse to identify issues and mental

illness. After evaluation, social workers will submit monthly reports to supervising social workers and update on any changes in a treatment.

**Quarterly tasks:** Social workers will keep in regular contact with supervised release participants to assess how defendants are functioning in the community and to identify any issues he or she faces from external sources (family or financial). They will submit reports to Supervising Judge Hon. Robert E. Torres. In addition, the supervised staff will follow up with participants after the completion of the program.

### **Stage 5- Implementation and Monitoring**

**Participant/ Staff Surveys-** Supervised Release participants will participate in the survey questionnaire. They will be asked to provide their feedback on the use of program assessment tool to assess mental health and substance abuse issues. Also, we will conduct semi-structured interviews with staff members (social workers and case managers). The topics will include the strengths and challenges of the program.

**Failure to appear in court data:** Failure to appear rates will measure whether a defendant returns to court as required for subsequent appearances after release on a making bail. Also, the data will be collected on a bench warrant issued by judge for person's arrest. Warrants will be counted any time a bench warrant was issued, including in cases in which a bench warrant was issued for a missed court appearance.

**Days in Pretrial detention:** Case managers will collect data on defendant's days spent in pretrial detention and demonstrate whether the program met its primary goal of reducing the use of pretrial detention.

**Additional Information:** The case managers will be generating daily and weekly compliance memorandums listing client's mandate, upcoming court dates, and outcomes. Also, they will provide written and oral updates to the court including defense attorneys, Assistant District Attorneys, and Judges on a regular basis. The supervising social worker will coordinate with stakeholders and clients to notify the court of non-compliance and re-arrests.

### **Stage 6- Evaluating Outcomes**

#### **Impact evaluation**

We want to compare the actual outcomes and desired outcomes. To assess the program goals and 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, this analysis tests the impact of the Kateryna Foundation Freedom and Society Bail Program on the following criminal justice outcomes: (1) warrants issued for failure to appear in court; (2) release status and days spent in pretrial detention during the case; (3) re-arrests ( misdemeanor, felony or violent felony). The primary mechanisms used to supervise pretrial defendants in Kateryna Foundation Freedom and Society Bail Program were in-person contact, home contact, telephone contact, contact with those knowledgeable about the defendant's situation and also court date reminders.

The data was compared to program participants and those who didn't participate in the program. Reminding participants to of their upcoming court date improved appearance rate. In comparison 20% to 40%, participants were more likely to appear on scheduled court date and less like to receive warrants compared to non- participants. Participants were contacted by the case managers and supervising social workers. Case managers phone called participants and

notified them about their court date. Simply calling defendants lowered rates of failure to appear. However, many of the participant's showed non-compliance with the program. They did not meet the supervision requirements and failed the program.

Supervised defendants were less likely to re-arrested compared to defendants without supervision. Compared to non-participant's only 40% of participants were more likely to be re-arrested on misdemeanor charges, no participants were re-arrested on violent felony charges. The data also showed that defendants who participated in the program were less likely to spent time in detention than the others. (Comparison 3 vs 20 days). This finding demonstrates that the primarily of reducing the reducing the use of pre-trial detention. Social services and treatment services increased the participants pretrial success. Not all, but many participants found access to mental health services helpful. The program was able to provide and facilitate adequate care for participants.

One of the confounding factors that can occur is that the participants who were selected for the program were very carefully screened. Judges ultimately decide which cases result end up in the program. The Kateryna Foundation Freedom and Society Bail Program was designed for defendant who committed minor offences. Most the target population were misdemeanants and non-violent felons. Which can be explained why none of the participants were re-arrested on violent felony charges. Also, participants who completed the program were more likely to type of social support (e.g., being in a relationship, having children, receiving support from friends and family, or receiving behavioral health services like counseling). While other group didn't receive much of support. Upon completion of the program, participants showed lower failure rates.

Implementing this program can be very challenging and hard. Program staff may need to engage in ongoing outreach and conversations with court players at all levels, including judges, prosecutors, clerks and court officers. Most often, participants are terminated due to repeated noncompliance or having been re-arrested for a serious offense. Data about participants non-compliance is monitored by case managers and provided to stakeholders.

#### **Stage 7: Reassessment and Review**

The Kateryna Foundation Freedom and Society Bail Program has been successful. The program showed positive results and participants do appear to their court scheduled dates when they are reminded about their court dates. Implemented policy has the resources to effectively implement the policy. The mental health and substance abuse issues of defendants adequately understood through wide consultation and proper analysis and for which the policy is being implemented considered adequate and in the right direction. To test the effectiveness of the program the questionnaire data was collected from participants and program staff.

The program has good intentions and ambitious goals. However, a lot of participants did fail the program and some of the re-arrests were issued. The goals met the objectives because the defendants who were eligible for the program were less likely to remain in jail while awaiting for resolution of their charge. Those who successfully completed the program were less likely to commit addition crime and receive criminal conviction. It important for the program staff to keep in close contact with participants as well as their friends and family, and provide participants with clear and repeated information about requirements (dates of court appearances and program check ins), expectations and potential consequences.

## References

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