



# LIVING WITH WARRANTS: LIFE UNDER THE SWORD OF DAMOCLES

## REPORT TO THE COMMUNITY

Janelle Duda-Banwar, PhD, MSW

[jmdgcj@rit.edu](mailto:jmdgcj@rit.edu)

Senior Research Associate  
Visiting Assistant Professor

Jessica Burt  
Research Assistant

Center for Public Safety Initiatives  
Department of Criminal Justice, Rochester Institute of Technology



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Richard Westall

*The Sword of Damocles, 1812*

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## **Introduction**

Over 3,000 people in Monroe County have an active bench warrant on any given day. Bench warrants are issued for administrative reasons, such as failure to appear to a scheduled court date, not for new crimes. These warrants can stem from traffic violations to low-level misdemeanors to serious felony offenses. Violations that originally carried no jail time can escalate into arrest and incarceration for non-compliance with court orders. The critical implication of a bench warrant is that arrest is imminent, yet little is known about this practice and how it affects lives. The purpose of this work was to:

1. Understand the bench warrant issuance process in Monroe County
2. Understand why individuals fail to appear in court
3. Describe what it is like to live with a bench warrant
4. Describe how warrants are cleared
5. Provide recommendations on bench warrants locally

Interviews with criminal justice professionals, individuals with active or previous bench warrants, and trusted individuals of people with warrants (e.g., sister, friend, case manager) were conducted to understand bench warrant issuance and their impact on individuals. This report begins with a list of the recommendations and rationale for each recommendation. After the recommendations are presented, the background, methods, and findings are described. The reason for this unconventional order was to encourage action. More detail is provided in the background, methods, and findings sections.

## **Recommendations**

### **1) Make efforts to understand the scope of the problem of failure to appear**

In all of the interviews, it was clear that bench warrants are issued by a judge when someone fails to appear in court post-arraignment. However, the decision to issue a bench warrant is at the discretion of the judge; not all missed court appearances result in the issuance of a bench warrant. For example, if someone fails to appear to court, the judge can issue a bench warrant or can instead reschedule (adjourn) the court date. Currently, there is no data available on how frequently individuals miss court, the response to the missed court appearance (e.g., issue bench warrant, adjourn), or what patterns emerge about the characteristics of individuals or cases that miss court. One CJ professional respondent explained, "Many of the decisions made are personality driven and depend on the relationship between the judges and attorneys." This wide discretion can inadvertently create disparities in the criminal justice system, highlighting the need to track failure to appear (FTA) data and make data-informed decisions throughout case processing.

### **2) Adopt a court appearance reminder system**

Many individuals with warrants explained that they received a warrant simply because they forgot about their court date; most of these individuals also reported immediately calling court and/or turning themselves in. It would be useful to have an automatic court reminder system in place, as suggested by many of the CJ professional respondents. Appointment reminder systems are used for many other areas, including the behavioral health, medical, and beauty fields. Adopting a reminder system for court appearances is one way to improve court appearance. This can include text messaging, phone calls, or even postcards (PJCC, 2017). For example, NYC's

pilot program for individuals with low-level offenses texted court appearance reminders and the consequences if they failed to appear; this reminder resulted in a 26% reduction in FTAs (Mathew, 2018).

**3) Establish a process to determine willful versus unwillful payment of court costs and fines**

It is regular, local practice for judges to convert unpaid fines, fees, surcharges, and restitution to civil judgments. One Judge estimated, “One half to two-thirds of cases are converted to a civil judgment.” Per the Supreme Court case, *Bearden v. Georgia* (1983), it is illegal to incarcerate someone due to an inability to pay. The findings indicate that there are many defendants that do not have the money to pay, but instead of this fact triggering ability to pay or financial hardship hearings, it is regular practice to convert these unpaid amounts to civil judgments. It is unclear what the short- or long-term consequences of this pervasive practice are. These may affect credit scores or result in exclusion from certain housing and employment in addition to debt collectors intruding in people’s lives. None of the CJ professional respondents could provide information on ability to pay or financial hardship hearings. Other jurisdictions have established processes to determine whether failure to pay is willful. For example, Magnolia, TX offers Indigence Hearings for individuals that are living at or below 125% of the federal poverty level<sup>1</sup> and New York City’s Office of Administrative Trials and Hearings offers a financial hardship form for those who cannot afford to pay a penalty<sup>2</sup>.

**4) Review the current practice of converting unpaid fines and fees to civil judgements**

As described in the previous recommendation, it is regular practice to convert fines and fees to civil judgements, but better understanding the frequency of this practice and what types of defendants, cases, crimes, representation, or other patterns, emerge relevant to the conversion to civil judgments can help to identify any inequities with this practice. Further, it is unclear what happens once someone has a civil judgement against them issued by the city or county. Does the county or city actively pursue these cases? If so, how? Are there certain thresholds that must be met for the municipality to pursue (e.g. specific amount)? It is also unknown at what frequency the city or county actually receives the money owed.

**5) During pretrial assessment, offer and link people to services.**

It became clear in the interviews that there is a small, often identifiable, group of defendants that need intensive services or direct service connection. Not only will service coordination likely reduce the likelihood of missing court, it could also have longstanding benefits that would increase self-sufficiency and decrease criminal activity. During the pretrial assessment, additional items could be included to flag certain individuals that require more intensive services. The court could contract or employ social workers or probation or other human services staff to do this work.

**6) Be clear about how civil sanctions are associated with the goals of the criminal justice system**

It has been widely reported and accepted that there are numerous non-penal costs associated with both criminal punishment and court processing. *Criminal* sanctions include imprisonment

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<sup>1</sup> [www.cityofmagnolia.com](http://www.cityofmagnolia.com)

<sup>2</sup> <https://www1.nyc.gov/site/oath/hearings/financial-hardship-online-form.page>

and payment of fines. However, formal and informal *civil* sanctions are also used to punish individuals (Corda, 2018). Formal *civil* sanctions include driver's license suspension, payment of fees and/or mandatory surcharges, housing restrictions, housing loss, and social services loss (due to eligibility). Some of the criminal justice respondents identified specific formal civil sanctions as too burdensome and in need of reform. For example, license suspension was seen as often escalating problems for people already in marginalized situations. Criminal justice system professionals should inventory and assess all civil sanctions to identify the link between the underlying offense and the civil sanction (Corda, 2018).

**7) Find a way (across judges) to consistently and fairly handle failure to appear for nonjailable offenses and violations.**

As many states have shifted to decriminalizing some offenses, nonjailable has become a term used to describe the few criminal offenses that cannot result in a jail sentence. Unlawful possession of marijuana (UPM) was frequently cited in the interviews as a nonjailable offense, yet if someone fails to appear then they can have a bench warrant issued, almost always resulting in a jail stay for an original offense that cannot legally result in a jail sentence. The CJ professional respondents were split on how to handle missed court appearances for nonjailable offenses. Judges admitted that while there may be agreement that a judge can legally issue a bench warrant in these cases, in practice, at least one judge said that he does not issue bench warrants on these cases. Conversely, another judge reported that he issues bench warrants on these cases. Violations, such as harassment, are related to nonjailable offenses, because even though the law may allow for a sentence of up to 15 days in jail, in local practice, defendants are rarely sentenced to jail for criminal violations. Instead, according to the interviews, it is more likely that a fine will be required in these cases. However, bench warrants are still issued for these violations, resulting in at least one night spent in jail, for a charge that rarely results in a jail sentence. Some jurisdictions, such as San Francisco, have completely eliminated bench warrants for certain minor offenses (Thanawala, 2017).

**8) Review the use of and need for defendants' appearance at compliance hearings**

Court appearances disproportionality impact low-wage workers, single parents, and those with limited access to transportation (Harris et al., 2010; Dolan & Carr, 2015). Multiple court appearances are often required throughout court processing. Interviews revealed that not all judges require appearances for status updates/compliance hearings. If someone has continued to meet the requirements, then this additional obstacle only creates more opportunities to miss court and a slew of negative consequences. A review of this process and its effectiveness may identify types of defendants that may benefit from compliance hearings and those that are further punished by compliance hearings, escalating problems for them.

**9) Establish an alternate process to handle AUOs**

"AUOs are the bane of my existence . . . we live in an area where we don't have a reliable, cheap way to get around easily. People need to drive, when that ability is taken away, how can someone pay off tickets if they can't get to their job?" Aggravated Unlicensed Operation of a Motor Vehicle (AUO) was identified as a big problem for people and the courts, and directly influencing the number of bench warrants. It may be worthwhile to explore different processes

for handling AUO cases through the courts. An AUO is often the result of non-criminal offenses (failure to pay traffic tickets) becoming criminal offenses. The process follows something like this: An individual receives a traffic ticket for \$100; the fine goes unpaid for whatever reason and the individual continues to drive. Failure to pay the fine results in license suspension by the Department of Motor Vehicles (DMV). The person continues to drive, risking getting pulled over for a suspended license. Driving with a suspended license is a criminal offense. “The \$100 fine is now \$350 and it’s a misdemeanor. If they have the money, then it’s easy to fix. They will pay it and say sorry, I didn’t realize it was suspended. And, more likely will get a 509(1) and get fined and you’re good.” However, if they do not have the money to pay it, then, “they are now talking about jail. AUO is very much a punishment for people who don’t have money,” as explained by one CJ professional respondent. For individuals that can afford to pay the increased fines and fees, 509(1) is under the New York Vehicle and Traffic Law (VAT) and is a non-criminal violation. However, for those who cannot afford to pay the increased fines and fees, they are charged with an AUO. This is one example of how differential responses to the same behavior (driving on a suspended license) can have enormously different consequences based on ability to pay, and how these charges can escalate. The creation of a specialty court or distinct process to handle AUOs may reduce time spent on these cases, and redirect resources to more serious charges.

**10) Provide an opportunity for defendants to explain themselves to the judge.**

Interviews with individuals with warrants revealed that defendants felt ignored by the courts. There are very real legal concerns about letting a defendant explain themselves to the judge, specifically as to why they did not complete their sentence (e.g. have not paid fines or fees; did not complete community service), but this may be worth pursuing if there is a way to do it that does not compromise civil rights. Whether it be in writing, verbally, or another mode, exploring a way for the defendant to explain their circumstances may contribute to rehabilitation.

**11) Coordinate these efforts with the bail reform movement**

Across the country and locally, bail reform has taken hold. Cash bail was originally intended to ensure that individuals returned to court, but recent studies have found that cash bail instead keeps poor defendants in pretrial detention simply because of a financial hardship: they cannot afford to pay bail. Cash bail is, “excessive, discriminatory, and costly for taxpayers and communities” (p. 1)<sup>3</sup>. In response to this, some judges and jurisdictions have eliminated cash bail for certain low-level offenses or as long as the individual is not at high risk of failing to appear in court or will be a danger to the community. This shift has resulted in an increased reliance on pre-trial risk assessment tools. These tools, however, risk overreliance and reinforcement of racially biased data (Harvard Law Review, 2018). Jurisdictions should monitor risk assessment items and processes and implement safeguards<sup>4</sup>. For example, when assessing for previous bench warrants, the length of time of the bench warrant should be included (e.g., 2 days versus 6 months) because a two day long bench warrant is likely indicative that the

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<sup>3</sup> N.A. (2018). Bail Reform and Risk Assessment: The Cautionary Tale of Federal Sentencing. *Harvard Law Review*, 131(4).

<sup>4</sup> Picard, S., Watkins, M., Rempel, M., & Kerodal, A. (2019). Beyond Algorithm: Pretrial reform, risk assessment, and racial fairness. Retrieved from [https://www.courtinnovation.org/sites/default/files/media/documents/2019-06/beyond\\_the\\_algorithm.pdf](https://www.courtinnovation.org/sites/default/files/media/documents/2019-06/beyond_the_algorithm.pdf)

individual forgot and when they realized, immediately took care of it, which is qualitatively different than someone that intentionally missed court and stayed on the run for six months.

## 12) Implement strategies to work towards change

The interviews revealed that there are different areas relevant to bench warrants that require much more discussion, data, analysis, and interpretation that would be useful to decision-makers. One potential way to move some of these recommendations forward is to establish a group of stakeholders that meet regularly, and includes representation from judges, court clerks, attorneys (defense and prosecution), and service providers/case managers. While a court working group may work within the confines of current legislation, another avenue is to review legislation relevant to bench warrants, including the bail jumping statute and warrant issuance for nonjailable offenses. Finally, there are other agencies doing this work, including the National Center for State Courts Task Force on Fines, Fees, and Bail practices<sup>5</sup> and the Fines and Fees Justice Center<sup>6</sup> that could provide guidance on best practices.

### Background

The purpose of this project was to understand and describe how low-level fugitive status affects lives, the process of becoming a low-level fugitive, and the bench warrant issuance process. The outcomes of the project are relevant to criminal justice system processing, treatment of individuals with warrants, and warrant issuance in practice.

A simplified flow chart of court processing is shown in the figure below. It often begins with an arrest, followed by arraignment before the judge where the charges are read to the individual. At this time, the individual pleads guilty or not guilty to the charge(s). Next, the court process usually moves quickly, with a plea agreement frequently offered in between arraignment and the second court appearance. Because more than 90% of misdemeanor cases result in pleading (American Bar Association & U.S. DOJ Bureau of Justice Assistance)<sup>7,8</sup>, the next appearance usually includes a defendant that pleads guilty as part of the plea bargain. The following court appearance is often where the defendant is given their sentence, if they were not sentenced when they plead. And, in many cases there are compliance hearings that defendants must appear for to either pay fines, fees, and surcharges or report on their progress. A bench warrant can be issued at any point after arraignment for missing a court appearance.



<sup>5</sup> <https://www.ncsc.org/Topics/Financial/Fines-Costs-and-Fees/Fines-and-Fees-Resource-Guide.aspx>

<sup>6</sup> <https://finesandfeesjusticecenter.org/>

<sup>7</sup> [https://www.americanbar.org/groups/public\\_education/resources/law\\_related\\_education\\_network/how\\_courts\\_work/pleabargaining/](https://www.americanbar.org/groups/public_education/resources/law_related_education_network/how_courts_work/pleabargaining/)

<sup>8</sup> <https://www.bja.gov/Publications/PleaBargainingResearchSummary.pdf>

## Methods

The findings are based on in-depth interviews conducted in the fall/winter of 2018/19 with the following groups:

- 15 adults living in Monroe County with a current or previous bench warrant(s)
- 1 focus group of 4 adults living in Monroe County with a current or previous bench warrant(s)
- 11 trusted individuals in the lives of the warrant respondents (e.g., spouses, family members)
- 11 criminal justice (CJ) system professionals (criminal court judges, public defenders, private counsel, prosecutor, court clerk, and Rochester Police Department officers)

Recruitment of individuals with warrants and trusted individuals occurred through several sources, which included local agencies (including MC Collaborative and the Monroe County Office of the Public Defender) and snowball sampling (after interviews were completed, participants identified other potential individuals to be interviewed). Local Criminal Justice system experts were recruited through both existing relationships and community partners.

An interview guide developed by the first author was used in the interviews. Questions were open ended and included, “Could you describe how you got the warrant issued, from the beginning to the end?” and “Tell me about your experience with having a warrant.” Interviews with trusted individuals followed similar questioning, but from the point of view of the trusted person (e.g., “Could you describe what it is like to have a person close to you living with a warrant?”). Finally, interviews with the CJ professionals were focused on decision-making and processes associated with the issuance of bench warrants. The interview responses were analyzed to generate themes describing low-level fugitive status and to identify any gaps in practice and policy that may influence the warrant issuance process<sup>9</sup>.

## Findings<sup>10</sup>

The findings indicated that, in Monroe County, bench warrants are issued for missing court at any time during case processing post-arraignment (arrest warrants are issued prior to arraignment). Bench warrants are not *technically* issued for failure to pay, though someone may not appear at a compliance hearing because they cannot afford to pay their court fees and surcharges, with the failure to appear (FTA) resulting in a bench warrant. When a Judge issues a bench warrant, the attorney notifies the client through a letter in the mail. Most respondents described receiving this letter. Law enforcement receives notification of the bench warrant through the Court Clerk’s filing of the paper work. For Rochester warrants, RPD then makes multiple attempts to serve the warrant. Serving a bench warrant almost always results in being taken into custody and spending at least one night in jail.

All CJ professional respondents agreed that the purpose of a bench warrant is to get a defendant to court. Most agreed that bench warrants were serving this purpose, whether it was the threat of the bench warrant for failure to appear or the issuance and serving of bench warrants to compel someone to appear in court.

Demographics and background information on the warrant respondents and trusted individuals are in Tables 2, 3, and 4, which can be found at the end of this report.

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<sup>9</sup> For a more detailed description of the methods and analysis, please contact Duda-Banwar

<sup>10</sup> To maintain confidentiality, the pronouns of some of the CJ professional respondents may not reflect their identified gender and pseudonyms were created for the respondents.



## ***Living with a Warrant***

### *Reasons for Missing Court*

Warrant respondents gave a number of reasons for missing court. Reasons for failure to appear ranged from forgetting about court appearance to intentionally missing court because the respondent knew that they would go to jail. Respondents forgot for a variety of reasons, including substance abuse, homelessness (difficult to track appointments), and disorganization. For example one respondent said, “I actually pretty much missed the court date, sometimes I know I have appointments, but there’s times where I forget the dates so that’s actually how I got [the warrant].” Another respondent shared that he was sentenced to jail weekends and that he satisfied his first two weekends, but missed the third one because of transportation and financial issues. He failed to appear at his compliance hearing because he assumed that he would be taken into custody for missing the jail weekend; he did not want to go to jail.

One of the CJ professional respondents went on to describe challenges that work against getting people to court. These included: an inadequate public transportation system, children restricted from entering the criminal courtroom, and clients who often do not have strong support systems. However, a prosecutor described otherwise, “You’d be hard pressed in the city if the defense attorney can put on the record that they talked to the person today and they have car trouble or their kid is sick. Usually they [the defendant] just don’t show.”

It became clear early in the interviews that two groups of individuals emerged: those that intentionally missed court and those that unintentionally missed court. Intentionally failing to appear occurred when an individual knew and remembered the court date, had control over appearing, yet did not appear. Unintentional failure to appear was when someone either forgot their court date or knew their court date, but were not being able to make it due to something out of their control (e.g., transportation did not show up, late bus, childcare cancels). Individuals that intentionally missed court seemed to fail to appear during the court processing stage of compliance hearing (post-sentencing) and had not followed through with their sentence. For these individuals, there was more risk associated with surrendering as they would likely be resentenced and locked up for a period of time. Alternatively, for those that unintentionally missed court, failure to appear seemed to occur at all stages of court processing.

### *Themes*

The interviews with individuals with warrants and trusted individuals resulted in eight overarching themes (see Table 1 below). These themes came out of the interviews as individuals described why they missed court, bench warrant issuance, and then how their lives were impacted from missing court. In many cases, individuals also reported how they turned themselves in or how the police caught them.

Table 1. *Themes from Warrant Interviews*

Category	Working Definition
<b>Risk Calculation</b>	Assessment of risks and rewards associated with particular actions, people, and places
<b>Arrest Evasion</b>	Strategies utilized to avoid getting arrested for the warrant
<b>Surrender Planning</b>	Contemplating and/or preparation taken to turn oneself in
<b>Power Creation</b>	Taking control of status to feel a sense of power
<b>Escalation</b>	Increasing sanctions and/or problems
<b>Emotional Distress</b>	Intense negative emotions associated with warrant status
<b>Warrant Resolution</b>	The actions surrounding the warrant being cleared, either self-initiated or from an external source (e.g., law enforcement)
<b>Distrust in CJ system</b>	The belief that the CJ system, and actors within the CJ system, are unreliable and unfair

**Risk calculation** permeated the interviews, with constant assessments of how certain actions would play out. Respondents did not directly state that they weighed the pros and cons of doing something or assessing whether something was safe or unsafe, but instead when asked about their behavior, an overarching response was the need to determine how risky something was. For those that unintentionally missed court, once they realized that they missed court, they immediately turned themselves in, as explained by Ayanna:

I was upset, like oh my God I got a bench warrant, oh my God I'm going to go to jail. I kept thinking oh my God what are my kids going to think if their mommy is in jail, they're going to have to come down to the jail to see their mom. I don't want to have my kids come down to visit me downtown.

For those that immediately turned themselves in, the cost was too high to stay on the run (e.g. Ayanna's fear of her children visiting her in jail).

For individuals that intentionally missed court, they already calculated the risk of appearance versus not appearing and determined that failing to appear had greater rewards, which was mainly staying out of jail (in the near term). Two important components of risk calculation were *probability* and *severity*. Probability was related to how likely it was that the behavior would lead to arrest. Severity was associated with how harsh the consequence of the action would be and was often related to the level of the original charge. Specifically, individuals distinguished between lower level offenses (e.g. violations) that result in zero or less than two weeks in jail versus higher level offenses (e.g., A or B misdemeanor) that result in longer jail stays (e.g., 30 days – 1 year). Whether the individual had been sentenced or not also was relevant to risk calculation. In some instances, the respondent assumed that he or she would be taken into custody to serve out the remainder of their sentence and so those individuals may be willing to go to further lengths, like jumping out of a window to avoid arrest, than others who had yet to be sentenced. When talking about her boyfriend at the time, Ava explains,

Q: So it sounds like your ex, he intentionally didn't show up in court?

Ava: Yeah, like if he would come up dirty on the urine he would just not go, you know.

Q: Yeah.

Ava: So he would avoid a dirty drug test and take a missed court date instead, you know what I mean.

Respondents who were employed often calculated that continuing to work was worth the risk of being captured. Malik explained that he had a bench warrant for a low-level offense and did not think that the police were looking for him, so he continued to work.

Check this out, this is how I got caught . . . One night I was working and the sheriffs come in, they literally come in and like they were are you, you know, they ask me my name and stuff and I was like nah that's not me. . . Yeah, and I'm like that's not me and they were like you sure cause we got a call saying that you were working here and you have a warrant. So I'm like no, no, and they do run my name and try and get a picture of me and they do and it's me so I got arrested for that warrant at my job.

Others explained that employment would make them vulnerable to capture. Some may continue working under the table, but others stopped working or were not working to begin with. Risk calculation included the need to protect family and friends from their status. For example, Julian would check in with his family, but never disclosed to them where he was living so that when the police knocked on his mother's door, she told the truth when asserting that she was unaware of where Julian was.

Risk was calculated at various levels, from who respondents could socialize with to whether they could go outside during daylight hours to driving. As respondents identified *strategies to evade arrest*, there was a constant assessment of potential outcomes associated with the behavior. Respondents' lives were guided by doing what was necessary to avoid arrest. Most behavior to evade arrest was strategic, in that the respondents intentionally acted to avoid arrest. Key components of evading arrest were: avoidance, social isolation, hypervigilance, unpredictability, and hiding in plain sight.

*Avoidance* permeated the interviews, especially efforts to stay away from the police. This was logical in that the police have the direct authority to take them into custody. For example, as explained by Taye, “. . . and there was some times literally jumping out of windows [to avoid police].” In addition to avoiding law enforcement, other systems were deemed unsafe and so must be avoided. There was a repeated concern that agencies with system affiliations (e.g., medical, public safety, human services, employment, and education) would share warrant status information or address information with law enforcement, leading to their arrest:

Q: Okay. What about like are you going to the doctors or is there anything ...

Julian: No I don't go to see any doctors right now because I fear making an appointment will appear on the computer system or something will appear there. . . . I have a lot of health issues, I have hypertension, I have diabetes, I've got a lot of stuff I need my medication for right now which I don't have because of the situation.

Q: Okay, so you're avoiding even getting your medication?

Julian: Yeah.

Julian avoided the pharmacy and so he stopped taking his high blood pressure medication, escalating his condition. *Escalation* was closely related to evading arrest as some strategies resulted in worsening problems for people. Medical institutions were commonly avoided, as were some shelters, and even public assistance. Specific to public assistance and housing, Erica, a case manager, explained:

So DHS is able to track warrants in their system and stuff like that so a lot of our guys will refuse DHS services and a lot of them won't tell us why. I mean people aren't really open to share that

they have warrants and things like that because they are afraid somebody is going to turn them in.

Other forms of avoidance included staying away from particular neighborhoods where there was a heavy police presence, certain streets, specific people that may bring them trouble, going out in the day time, and driving. For some respondents, entire states were deemed unsafe, but in specific cases it might be worth the risk to visit, as explained by Emma:

Q: So I mean in terms of your plans, you won't go back to New Jersey until you pay that \$500 which you hope will be soon?

Emma: You know I might but I'd just decide.

Q: Depending on if something went wrong?

Emma: If my mom were in the hospital I would go in a heartbeat, I would go yes.

Absolutely yes.

Q: But you would be as careful as could be and all that.

Emma: Yeah, and I don't know if I would let [my husband] drive because there's not a lot of Puerto Ricans where I come from so I don't know if they would [making hand gestures]...

Q: Profile him?

Emma: Yes, they're like that so I would have to drive."

*Social isolation* was commonly described among respondents. Respondents had to be aware of whom they were around so as to not bring attention to their circumstance, but many respondents described going further to isolate themselves from everybody, as Jason described:

I won't go out at all, you stay in the house, you eat, and sleep, and then you get bored and it's like I've got to go somewhere and the minute you go somewhere someone is like oh you know the police were looking for you . . . and now you go home again, you run back home.

In some cases respondents identified either family members or partners as being safe, but almost anyone outside of that small circle could not be trusted. Social isolation was intentional, but an unintentional consequence was that individuals withdrew from support and resources, often increasing problems.

Cultivating *unpredictability* was another strategy to evade arrest. Respondents shared examples of moving from place to place, not working, and being in touch with family erratically. Kiara explained, "Yeah I would move to different spots so I wouldn't be somewhere too long, like a couple different places, stay a couple days and then move to the next place." Unpredictability seemed to be more vital in instances where individuals knew that the police were actively looking for them.

In some cases the cost of running and leading an unstable life caught up with them. Risk calculation shifted to a concern about the future beyond their warrant. Mia goes on to say,

So eventually he turned himself in, he finally turned himself in. I think he got so fed up with the running and he had come to a point in his life where he was actually looking for a job and wanting to make that change in his life and obviously he couldn't because if I do get this job and I have this one they're going to pick me up at work, and so finally he turned himself in and I remember it like it was yesterday.

A few respondents continued their life as it were before, but in an effort to appear normal and not suspicious. *Hiding in plain sight* was identified as a way to avoid unwanted attention. Respondents would continue to do normal things, such as driving, walking in the community, and receive public assistance, but so as to not bring attention to themselves. A few respondents even continued working with the warrant.

Another strategy to evade arrest was to be *hypervigilant*. Hypervigilance came out mostly when asked about the police. Respondents, like Nick, explained “It just sucks because now every time I see a cop I have to look over my shoulder, you know what I’m saying.” When Jason’s warrant was cleared, he explained, “Then I was kind of glad that she did do that because you kind of want to get it over with because you don’t want to be looking behind your back every day trying to run from something that’s small.” Hypervigilance is about an enhanced sense of alertness and behavior that prevents assumed danger, which often led to emotional distress such as panic or anxiety in the respondents.

For example, avoiding medical treatment was worth the medical consequence if it meant that the individual would not be found by law enforcement. For some, living in isolation was worth the consequence if it meant that they would not be arrested; but for others, living so detached from society and holed up in a room was not worth avoiding capture. For those who remained on the run, it seemed that the emotional toll of being on the run was worth the cost because it meant that they were not in jail. It was better to live in the community even with a longstanding warrant over their head, than to turn themselves in.

Every respondent described **emotional distress** related to their warrant status. Respondents described intense negative emotions related to their warrant. This was often in the form of fear, depression, and/or anxiety. These feelings were intense and high-level on a daily basis. This negative psychological state seemed to permeate on a chronic basis, affecting health and mental well-being.

Ayanna explains, “I was scared when I first read it [the bench warrant notification], I was scared because I kept saying oh my God I’m going to go to jail, I don’t know what’s going on I don’t want to go to jail.” Kiara talked about how the stress impacted her, “Yeah sometimes I would wake up sick, I would wake up with headaches. Sweaty palms, I would pace back and forth.” Respondents talked about feeling panic, anxiety, paranoia, being worried, embarrassed, and even sadness about the warrant. The continuous threat of arrest weighed on people. Emma explained, “It’s a terrible thing to have to hold over your head all the time, to want to take someone and show them where you lived and have to worry about the police coming.”

Exhaustion was a key component of emotional distress and often coincided with surrendering or “giving up” when arrested for some individuals. Kiara explained, “I just came to a point where I was just being tired of running from house to house.” Taye affirms this exhaustion leading to his arrest.

Taye: Every time they came there I was there, they just didn’t know I was there that’s how quiet I was. The time that they came looking for me my door was actually unlocked and they opened it and I was sleeping, I was just laying in my bed asleep, just like tired.

Q: And that’s when they got you.

Taye: That’s when they got me, I was just tired.

Q: What do you mean you were tired?

Taye: Just tired of everything that was going on, just everything. That's when I was picked up on the bench warrant and I said I just want to do my time and get it over with. I'm going to be free.

Respondents expected that they would eventually be caught, and most respondents had a general sense that they would surrender at some point. These **surrender plans** ranged from contemplating the idea of turning themselves in, (e.g., Kiara stating, "Every holiday I would say okay you know what, after this holiday I'm going to go turn myself in.") to active surrender planning (e.g., Emma stating, "He's going to turn himself in in January.") For some, there was a need to get things "settled" before turning themselves in. Erica explained:

So most of the time when people are deciding to surrender it's very much about their situation, so if they got an apartment coming up in two days they're waiting until they get their apartment and you know then they have the sense of being settled, they know they're coming out of jail, you're coming to your apartment, you have these supports as opposed to these people who know they're coming out of jail and coming back to the streets or back to the shelter.

Motivation seemed to differ depending on the respondent. Some respondents described external motivation, like, Kiara's family, "It [an amnesty program] was on the news and my grandmother seen the news and she called me and she was like . . . well he's [the judge] doing this thing turn yourself in and he won't lock you up." While others, like Ayanna, described internal motivation to surrender, "I just came downtown at this point and [said] lock me up, I'm tired of running." James goes on to say, "People are very, if you kind of play the tape out and visualize it and then if people are really motivated by their children, you know, if there's a motivating factor then it works. I think if you think that everybody wants that then you're wrong . . . with some people that's not as important as we might think it is."

For some, surrender planning entailed getting money and resources together for their significant other, for others it was about saying their good-byes, and for still others, there was minimal planning, just that they showed up in court. Surrender planning could occur even while evading arrest. Respondents did not seem concerned with the logistics of surrendering, such as asking themselves "Will I be added onto the docket" or "Should I turn myself in at the Public Safety Building instead of court?" Respondents were more concerned about what they needed to take care of before they surrendered. Planning lasted months for some who were still in the contemplation stage of change, while it could last weeks for others, and last one day for still others. For those where the planning lasted such a brief time, it was often connected to this realization that they are exhausted from running, and now is the time to surrender. However, there were respondents who did not engage in surrender planning, and had no plans to surrender. This group planned to be on the run indefinitely.

Surrender planning was often related to **warrant resolution**. After planning was completed, individuals surrendered. Bench warrants were resolved through either respondents turning themselves in or being arrested by law enforcement. For those who surrendered, it was most common to show up at the Courthouse and ask to be added onto the docket. A few respondents called their attorney and some turned themselves into the police station. Jayden describes turning himself into the police:

I'm sitting on the bench and my mom was starting to cry now and I was like oh man what did I do . . . so they come get me and when they put me in handcuffs she was just like I can't watch

you, just leave, I'm good, just go ahead. I was processed and got through booking and sat there, they put me in a cell.

There were many respondents that surrendered as soon as they realized that they missed court or received notification that they had a bench warrant issued. Most of these respondents missed court because they forgot, and so had intended to appear. On the other end, were individuals who intentionally missed court and were "on the run," but were now ready to surrender. Some of these respondents described initial plans to never surrender, but then over time they became exhausted, and turned themselves in.

**Escalation** was embedded throughout this entire process, including an unintentional failure to appear resulting in being on the run or detaching from available support. Bench warrants often resulted in an increase in sanctions or negative consequences for respondents. Throughout the interviews, there were numerous examples of the warrant escalating their criminal justice sanctions and other aspects of their lives.

Jayden explained how his bench warrant escalated things for him:

I showed up to the first [court appearance] when I came to court and I went to jail I had to go to court, then I came to the next one, the third one I missed, the third one was going to be dismiss the whole case because that was disorderly conduct, a slap on the wrist and I prolonged that case because of missing court. So then I had to go through the program, I had to go to do an anger management program just to get the case cleared up. I had to do all these things just because I missed court, if I wouldn't have missed court I wouldn't have had to do all those steps.

One frequent consequence was employment-related. Almost every respondent that had a job prior to their warrant, lost their job post warrant issuance. Respondents that had calculated the risk was too high to work stayed away from employment and so had no resources to provide for their basic needs. Marcus shared about a young person that had a warrant, and the sheriff contacted Marcus (the employer) about the warrant. Marcus refused to turn in the person, but did speak with him and encouraged him to surrender. However, the warrant person instead stopped showing up to work, "so he ended up losing his job for no call, you know . . ."

Escalation often resulted in respondents getting disconnected from society and resources. For example, some respondents steered clear of public assistance and did not receive benefits that they were eligible for. This often led to instability for people. Phrases such as, "drop out of life," "people detach themselves," "limited parenting," and "throwaway people" all came up in the interviews.

Another aspect of escalation was for individuals that had an original non-criminal offense that resulted in being taken into custody because of their warrant. Jason was only charged with open container (non-jailable offense), but because of his failure to appear, when he was picked up, he spent seven days in jail. Other respondents confirmed that once arrested on the warrant, they would agree to plea deals simply to get out of jail.

Many respondents rarely trusted anybody and trusted even fewer few systems, and so essentially went into hiding, further secluding themselves from society. Individuals would do things like isolate, avoid, and be hypervigilant in an effort to avoid arrest, but these often escalated the situation for individuals. Then, emotional distress such as fear often motivated individuals to act in a certain way (e.g., fail to

show up in court) or resulted in a physical or emotional toll that escalated the situation. As shown below, Mia's boyfriend avoided medical care to evade arrest:

Mia: You just reminded me, so one day I'm home and laying in bed, it's night time, I could start crying, back then I probably didn't cry because just the shit we go through. So one day he comes home and it's winter and it's about 11 or 12 and he says, he goes babe I just got hit by a fucking car . . . I said what? he said right down the street I was walking and the fucking car it just fucking hit me . . . and I was like well you got to go to the hospital and he's like fuck that, I just got up and I came home, I came home quickly, I hurried up and I came home, because he was scared of going to the hospital.

Q: Because of the warrant?

Mia: Because of his warrant. So he literally got hit by a car, got up off the ground, got up and walked home. Continued his journey home.

Q: Wow, so what happened in the moment?

Mia: So it kind of stopped, we just left it there.

Powerlessness was described by many of the respondents. This intersected with a view that the court was not vested in their best interest. Respondents repeatedly viewed the court system as being against them, not with them. Respondents generally acknowledged committing a form of the crime that they were charged with, but in very different ways. Some admitted to committing the crime exactly as charged ("I stole food for us to eat" (Julian)) but with vital context missing from the court proceedings ("we don't have no food, we don't have no income at that moment and we were starving" (Julian)), others committed crimes that were relationship-based and difficult to entangle. It was as if the court system stepped into the mediator role, but had the power to remove people from society when they did not follow a discretionary-based process. Respondents felt powerless and some refused to go down without a fight. The notion of *creating power* to take control was echoed in the sentiment of, "Catch me if you can." As explained by Kiara:

My family couldn't believe it, you're not scared, no I'm not. It's actually fun and I want to see if they can recognize who I am if I had the warrant or not, and so it's basically catch me if you can.

During the member checking focus group<sup>11</sup>, an entire discussion ensued about having a warrant being similar to a battle. One respondent explained that when you are on the run, it is a battle that you are winning while you are still out on the run; you lose upon arrest. Brandon created power by running from the police, "I was running because I'm basically going to jail for nothing, in my eyes I'm going to jail for nothing, smoking weed, they're about to take my life away."

James explained that often times these individuals have so little power that they will take any advantage that they can get. Sometimes the risk of getting caught was worth it for these individuals if it meant that they had exerted some power. Taking control could lead to warrant resolution because some respondents explained that they wanted to surrender on their own terms, while for others it could lead to escalation.

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<sup>11</sup> A member-checking focus group is a method of establishing trustworthiness in the interpretation of the data: the researcher goes back to individuals that have experienced the issue under study (e.g., had a bench warrant), to confirm that the emerging findings are consistent with the individuals' experiences.



Many of the respondents raised concerns with the current justice system, and identified it as being unfair and untrustworthy. Respondents described a system that did not respect, empathize, or show concern for who they were and their situation. In some cases, respondents provided examples of why they **distrusted the criminal justice system**. These examples were frequently connected to their personal prior experiences with different actors in the criminal justice system. The distrust was associated with judges and police, but also towards criminal laws in general. One respondent explained that he should not be facing such serious consequences for crimes associated with marijuana, while another respondent explained that the judge did not allow him to explain himself and his situation.

Other respondents gave examples of police, judges, or attorneys not looking out for their best interest. A recurring concern in the interviews was that the current system in place does not acknowledge individuals holistically. System was defined differently across the respondents, some included the police, while others only talked about courts and the judges, still others talked about their attorneys. Respondents wanted to have an opportunity to explain themselves and their actions in court.

Taye: No I don't really talk about certain things because that's just how I am, so it was just like there's no sympathy, there's no empathy, just you do the crime you're going to do the time, so anything else I'm dealing with personally I just feel like it's going to be looked upon and deemed irrelevant so it doesn't matter. . . . I care not to care because that's the attitude that I feel I'm receiving, I care not to care."

Distrust of the system was related to how respondents dealt with their warrant status. Respondents who gave specific examples and talked at length about the system being unfair and distrustful often used the phrase, "catch me if you can" when referring to evading the police.

### ***Bench Warrant Issuance Process***

#### *Judicial Discretion*

It became clear early on in the interviews that bench warrants are not issued every time someone misses court, instead there is wide discretion in the decision to issue bench warrants. One judge explained, "Judges have different philosophies as to when to issue [a bench warrant]." He went on to describe his philosophy, "If someone has been coming to court eight or nine times and then they miss and they have talked to their attorney, then I won't issue a warrant, but I will move the case to the next day or next week." He then explained that if someone misses court without a reason, then he issues a bench warrant. Another Judge made the point that he more readily issues bench warrants earlier in court processing to demonstrate an immediate consequence for missing court, while later on, if the individual has consistently appeared and then misses, he may not issue the bench warrant.

Another approach was taken by a different judge. This judge issued the bench warrant a few days after someone misses court. He explained that he would tell the attorney that the defendant needs to get in touch with the court within three days; if they do not, then he will issue the bench warrant. This provides a window of time for the individual to surrender without the consequences of having a warrant issued. This judge was concerned about the impact of a bench warrant, and described many legitimate reasons that individuals may miss court.

Interviews revealed that judicial discretion is built into the bench warrant issuance process at many stages. Discretion is the freedom to make a decision within certain constraints (e.g., sentencing

guidelines list the maximum sentences for crimes, but the judge determines the sentence within those parameters). Judicial discretion played a role in the following areas relevant to bench warrants:

- The issuance of a warrant for failure to appear (FTA)
- Court docket add-on policies for a bench warrant surrenderee
- Release on bail after arrested on bench warrant
- How fees and fines are paid (e.g. partial payment allowed or not)
- Defendant appearance at compliance hearings/status updates
- Conversion of nonpayment of fines and fees to civil judgments

Discretion in any profession often contributes to a lack of consistency and bench warrants were no exception. Throughout the interviews, there were many examples of inconsistency; however, research has shown that responding to the unique needs of each individual can be more effective than responding the same to everyone (Andrews, Bonta, & Wormith, 2006). Similar to the warrant respondents, judges seemed to conduct their own risk calculation; judges described constantly assessing the risks associated with issuing a bench warrant, adding someone onto the docket, or keeping someone in custody. While it seemed that the judges made these assessments based on their own experiences and philosophies, instead of empirical evidence, there was an ongoing assessment of risk. Some perceived risks may be related to releasing someone who goes on to commit a heinous crime.

#### *Non-Jailable Offenses*

Decriminalization of some crimes has led to some criminal offenses that cannot result in a jail term. In New York State, according to NY Penal Law, section 221.05, “Unlawful possession of marihuana is a violation punishable only by a fine of not more than one hundred dollars.” Another example of a nonjailable offense is a first time charge of an open alcoholic container in public<sup>12</sup>. However, bench warrants can still be issued for these charges, resulting in at least one night spent in jail, for a charge that cannot result in a jail sentence.

The CJ professional respondents were split on how to handle missed court appearances for nonjailable offenses. An attorney explained, “Some judges will and can argue that it is in the best interest of society to close the case, so they will do what they need to do to get the person into court.” Another attorney said, “It truly is dependent on what judge you are in front of,” when asked about the issuance of bench warrants on nonjailable offenses. Violations are similar to nonjailable offenses in practice because while someone can be jailed for violations (up to 15 days in jail), in local practice, defendants are rarely sentenced to jail for criminal violations. However, bench warrants are still issued for these violations, resulting in at least one night spent in jail, for a charge that rarely results in a jail sentence.

#### *Aggravated Unlicensed Operation of a Motor Vehicle*

Aggravated Unlicensed Operation of a Motor Vehicle (AUO) was identified by most respondents as a problem for people and the courts, and directly impacting the number of bench warrants. One judge explained, “AUOs are the most problematic and they are driving the number of warrants.” He then went into detail, describing the same vicious cycle that others outlined, “You get a traffic ticket, don’t pay, so

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<sup>12</sup> Municipal Code of the City of Rochester, § 44-9, G

now have a suspended license, but you have to get to work and court, and have these fees to pay for, but can't drive." Most CJ Respondents described AUOs as a pull on resources and that license suspension might not be an effective tool due to the restrictions placed on daily life. However, a few CJ respondents disagreed and saw driving as a privilege. As expressed by one judge, "AUOs are a big problem. Driving is a privilege. Not a right. People don't pay their fines, don't take responsibility, and shouldn't be driving." From this judge's perspective, license suspension is a consequence of not paying fines, and therefore the privilege should be taken away.

### *Plea Negotiations*

Bench warrant issuance can impact plea negotiations. Most cases in the criminal justice system are disposed of through a guilty verdict by way of a plea bargain; jury trials are an exception (Feeley, 1997; American Bar Association, 2013). As Dervan and Edkins (2013) point out in their study of innocent individuals willing to falsely admit guilt in exchange for a benefit, people, especially if in jail, can be more impressionable or coerced into admitting guilt in return for release from jail. For most defendants, bench warrant clearance results in detention, thus increasing the chance of pleading guilty in lieu of going to trial. A guilty plea creates long-term impacts for individuals, such as the guilty plea on their record, but also the sentence associated with the plea. Interviews revealed that failure to appear (FTA) is part of the assessment for pretrial release, and so FTAs can have significant impact on pretrial detention decisions and the outcomes of future criminal cases. This intersects closely with the bail reform movement, as bail reform relies heavily on assessing the likelihood of failing to appear (Koepeke & Robinson 2018).

### *Fines, Fees, Surcharges, and Restitution*

There are numerous costs associated with court processing and sentences. Fines are imposed at sentencing and guided by NYS Penal Law § 80.05. Mandatory surcharges are state mandated fees required in addition to the sentence. These include the New York State \$88 surcharge on all traffic violations and \$250 surcharge on DWI offenses; \$175 surcharge on all misdemeanor convictions and \$300 on all felony convictions; and \$25 crime victim assistance surcharge on all convictions. Another surcharge is the New York State DNA databank fee, which is required for all felony and misdemeanor penal law convictions, each time someone is convicted, whether they provide a new sample or not. Fees are associated with sentences, including monthly probation fees, payment for the continuous alcohol monitoring (SCRAM) bracelet, among other requirements. Restitution is a way to provide victims of crime with compensation, but is not always a part of sentencing, and was not brought up in any of the interviews.

Payment of fines and fees provides yet another discretionary point for judges, as one CJ professional respondent stated, "There's wide variability among judges on how they handle payment of fines." For example, some judges allow partial payment, while others do not. One judge stated that she does not allow partial payment for logistical reasons, "The reason is because the paperwork becomes too much to start offering partial payments." The CJ professional respondents revealed that it is entirely dependent on which judge an individual is before that determines when their payment is due, how the payment is paid over time, and if they must appear to report on their progress.

In addition to the sentence of the fine and the required fees, interviews revealed that the judge may then determine that a condition of the sentence is for the individual to report regularly on their

progress, referred to as a compliance hearing. These compliance hearings can (and do) occur at any frequency, dependent on the judge. Some of the CJ respondents expressed concern at the compliance hearings because they saw these as another opportunity for defendants to mess up and miss court, escalating things for them. While one judge said that he does not use compliance hearings, he explained that other judges use them, to keep track of defendants and to keep them engaged. The prosecutor agreed, "Most judges want to see progress." Interviews with warrant respondents revealed that there were instances when individuals intentionally missed compliance hearings because they did not have the money to pay their fines.

CJ professional respondents were asked about client's ability to pay the fines and fees. None of the CJ professional respondents could provide information on ability to pay or financial hardship hearings. However, some of the CJ professional respondents discussed the "notice and opportunity to be heard" requirement when it came to fines, fees, surcharges, and restitution. Essentially, defendants must be notified in court when they are required to pay fines, fees, surcharges, and/or restitution, but also afforded an opportunity to say that they do not have the ability to pay. However, when this requirement was observed in court, it was full of legal language that was unclear and did not come across as an opportunity for a defendant to say they are unable to pay.

Some CJ professional respondents insisted that criminalization of the poor is illegal and does not occur in the current system, pointing to the practice of converting fines and fees to civil judgments. However, this does not address the underlying problem: many individuals cannot afford the fines, fees, and mandatory surcharges associated with convictions. While the Court system may technically be abiding by the law by not incarcerating individuals, they are still placing impossible sanctions on low-income individuals.

When asked about fines and fees owed, many warrant respondents had no idea how much money they had paid, while others responded "thousands of dollars" and still others responded that they never paid anything because the amounts were converted to civil judgments. When asked about civil judgments, respondents seemed to appreciate this practice, and even relied on it so as to not have to serve jail time for nonpayment. However, they acknowledged that it made their credit worse, but with the qualifier that it was already abysmal. Respondents had no plans to pay any money towards the judgment.

Jurisdictions across the U.S. have been exploring ways to deal with these low-level crimes that tie up the system. The Brennan Center for Justice recommends that indigent defendants be exempt from user fees, payment plans, and other debt collection efforts (Bannon et. al, 2010). Dolan & Carr (2015) recommend that criminal justice agencies do not incarcerate someone for criminal justice debt until an ability to pay hearing occurs. These hearings would help to ensure that only individuals who can afford to pay but refuse to pay are incarcerated or receive other sanctions related to failure to pay. There are some local examples that could be used to guide this effort. NYS CPL 420.10 5(d) provides some guidance on how to assess for ability to pay. The Office of the Public Defender also assesses financial ability to determine whether someone is eligible to receive the services of a public defender. Both of these could be a starting point to develop a process locally to determine ability to pay.

### *Surrender Process*

When CJ professional respondents were asked about the surrender process, there was wide variation in how judges handle an individual's attempt to surrender. One CJ respondent explained that if someone

fails to appear in court, then they can contact their attorney who would then contact the court clerk to get on the judge's calendar. He goes on, "The judge could say yes or no to this, and locally it is across the board, some allow, some don't." Another defense attorney stated, "Depending on the judge, they may allow person to add-on. It's 50/50." In practice, this means that when someone cannot be added onto the docket, then the attorney will advise the client to turn him or herself into the Public Safety Building late at night, Monday through Thursday. This is to spend as short amount a time in jail as possible; as they will be added onto the docket the following weekday morning. Thus, for some people, getting a bench warrant can mean jail is inevitable, even if they choose to turn themselves in. One CJ respondent shared that each judge has different add-on policies, and so when someone contacts the clerk's office to be added onto the docket, the clerk refers to the judge's add-on policy to make the decision.

## Conclusion

CJ professional respondents identified many challenges to the current process, including court appearance reminders, the issuance of bench warrants on nonjailable offenses, the volume of AUOs, payment of court costs, and lack of consistency across judges. Many warrant respondents' lives were organized around *evading arrest*. Avoidance of formal systems and hypervigilance were the most common strategies, while other strategies such as cultivating unpredictability or hiding in plain sight, were less common. Respondents ranged in how long these strategies would last, for some they would test the waters by coming out of hiding for a brief moment, often to find out that the police were looking for them, resulting in a return to hiding. Evading arrest was closely associated with *risk calculation*, *escalation*, and emotional *distress*. Individuals were constantly assessing the risks associated with different strategies and the intensity of each of these strategies (e.g. avoiding the police versus avoiding streets, employment, and driving) which often resulted in emotional distress such as depression or fear. Many individuals described *distrust of a justice system* that ignores their well-being. For some, this led to a need to *create power* and take control because they felt powerless.

This research revealed that bench warrants have a tremendous impact on the courts and individuals. It is anticipated that these findings will help to improve criminal justice system processing, legal policy and practice, while improving and stabilizing conditions for individuals with warrants.

## Next Steps

New York State's recently passed bail reform legislation directly impacts bench warrant issuance. The new law (effective January 2020) includes a bench warrant grace period for defendants<sup>13</sup>. Legislating a 48-hour window between when a defendant fails to appear and the issuance of a bench warrant will hopefully reduce the number of bench warrants issued for individuals that simply forgot their court date. A next step would be to include a court appearance reminder system, as suggested in recommendation two in the first section of this document.

Addressing individuals' needs during the pretrial process may be effective in disrupting the criminal justice cycle for some. Individuals have a responsibility to attend required court hearings, and social work interventions that strengthen individuals' ability to get to court could be useful. Encouraging more conversations about what can be done to reduce someone's likelihood of failure to appear might impact not only the individual, but result in more general solutions, such as text message or phone call court

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<sup>13</sup> <https://www.courtinnovation.org/publications/bail-reform-NYS>

appearance reminder notification system. Caution should be taken in implementing any changes, as court personnel are overburdened with enormous caseloads, so any reminder systems should be automatic and not require additional work by the attorneys.

The current bail reform movement aimed at using risk assessments to reduce pretrial detention relates closely to this work, as most risk assessment tools incorporate prior failure to appear into pretrial release decisions. Reviewing these assessment tools and advocating for more context other than simply the number and dates of failure to appear, such as length of time of warrant and reason for failure to appear, would provide for a more sensitive risk assessment.

Monroe County, as well as other jurisdictions, does not currently have a clear system in place to assess an individual's ability to pay. The regular practice of converting fines and fees to civil judgments still has the adverse consequences that comes with debt collection and debt owed: it reinforces the cycle of poverty. A first step may be to survey other jurisdictions that do have ability to pay hearings in place and then find ways to implement these hearings into jurisdictions, to ensure that the poor are not criminalized. This may include forming and facilitating a court working group to get these hearings implemented. As part of this work, social workers could encourage the courts to explore the option of offering community service programs that build job skills, interpersonal relationships, healthy living skills, and other prosocial behavior, instead of serving jail time or paying fines. Even further, when determining the sentence, policies should be in place that incorporate all combined sanctions for defendants, not just the criminal sanctions.

The regular use of converting unpaid fines and fees to civil judgments has received little empirical attention. Future studies should examine how rampant this practice is, the reason for issuing civil judgments, and the impacts on courts, individuals, and communities of this practice. There may be evidence that conversion to civil sanctions creates more harms than just those associated with debt collection.

Finally, because the respondents described discretion contributing to disparities in responses to missed court appearances and the surrender process, future research could address the gaps in knowledge associated with the actual frequency of missed court appearances, the rate in which bench warrants are issued for missed court appearances, and how warrants are cleared. The current state of knowledge is missing this important information that would help to better understand the nature of the problem, and particularly, how much of a toll bench warrants are at the system level.

Table 2. *Warrant and Trusted Individual Respondents Demographic Data*

	<b>Warrant Respondents (n=15)</b>	<b>Trusted Individuals (n = 11)</b>
<b>Age (in years)</b>		
Average	36.9	38.1
Range	21-57	20-50
<b>Gender</b>		
Male	8 (53.3%)	3 (27.3%)
Female	7 (46.6%)	8 (72.7%)
<b>Race/Ethnicity</b>		
Black	11 (73.3%)	1 (9.1%)
Latino	2 (13.3%)	2 (18.2%)
White	2 (13.3%)	8 (72.7%)
<b>Number of Current BWs</b>		
Average	0.64	-
Range	0 - 3	-
<b>Total BWs in Lifetime</b>		
Average	5.13	-
Range	1-20	-
<b>Relationship w/BW Person</b>		
Partner	-	5 (45.5%)
Client	-	4 (36.4%)
Brother	-	1 (9.1%)
Uncle	-	1 (9.1%)

Note: BW = bench warrant

Table 3. *Individual Level Characteristics for Warrant Respondents (n = 15)*

Pseudonym	Age (in years)	Gender	Race/Ethnicity	Number of Current BWs	Total BWs in Lifetime
Alonso	30	M	Dominican	unknown	7
Nick	36	M	AA/Black	1	close to 20
Tori	57	F	AA/Black	3	0
Malik	24	M	AA/Black	0	6 or more
Jason	50	M	AA/Black	0	15-20
Ava	24	F	White	0	1
Emma	50	F	White	1	0
Julian	52	M	Puerto Rican	2	1
Taye	38	M	AA/Black	0	2-3
Ayanna	29	F	AA/Black	1	2
Brandon	22	M	AA/Black	0	3
Kayla	34	F	AA/Black	1	4
Jayden	21	M	AA/Black	0	4-5
Kiara	34	F	AA/Black	0	4
Sydney	53	F	AA/Black	0	3

Note: BW = bench warrant

Table 4. *Individual Level Characteristics for Trusted Individual Respondents (n = 11)*

Pseudonym	Age (in years)	Gender	Race/Ethnicity	Person Close to them with BW
Christina	43	F	Latino/White	Brother
Erica	33	F	White	Client
Mia	41	F	Puerto Rican	Boyfriend
James	46	M	White	Client
Carrie	43	F	White	Husband
Lauren	27	F	White	Boyfriend
Ava	24	F	White	Boyfriend
Rachel	20	F	White	Uncle
Emma	50	F	White	Boyfriend
David	50	M	White	Client
Marcus	42	M	AA/Black	Client and Friends

Note: BW = bench warrant



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