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A DECADE OF BAIL RESEARCH IN NEW YORK CITY

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The methodology, findings, and conclusions of the study, as well as any errors, are the sole responsibility of the author.

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I. INTRODUCTION

A decade-long research project examining the bail system in New York City has recently been completed by the New York City Criminal Justice Agency, Inc. (CJA). The research was conceived in the context of CJA's mission of reducing unnecessary pretrial detention, and it continued in the midst of a national debate about the role of bail and the commercial bail bond industry in the criminal justice system. With the publication in 2011 of the last of a series of reports from this research, it is now time to take stock of what we have learned, and to consider how the findings might inform the ongoing public discussion. This final report of the bail project synthesizes the major findings, with the dual objective of making the research results more accessible by gathering them together in one place, while also introducing a level of clarity that is difficult to achieve when disparate findings are viewed only as separate pieces.

The bail research began in 2002 with a pilot project to determine the feasibility of collecting data from courtroom observations that would be of use in examining the factors that enter into judges' decisions to release or set bail for defendants at arraignment. The first published report from that study appeared in 2004. Findings from each phase of the research raised further questions, leading us to expand the study to investigate the part played by the prosecutor in the judge's bail decision, the role of commercial bonds in bail release, the association between release type and failure to appear (FTA), and the effects of pretrial detention on case outcomes. All together, eight full reports and seven Research Briefs were published between 2004 and 2011 presenting the results of the bail project. They are listed together in a separate section at the beginning of the References, and all are available on CJA's website at www.nycja.org/research/research.htm. (Two additional unpublished reports, also listed in the References, are not on the website.)

Two chapters included here are not based on any of the previously published reports. One of them (Chapter III) situates the New York City bail system within the country as a whole, comparing state bail statutes and presenting nationwide data pertaining to release and bail. This chapter provides essential context — not only for understanding how New York compares in release and detention of pretrial defendants, but also for understanding why national bail reform efforts occasionally focus on conditions that do not apply here.

The other chapter with new material (Chapter IV) presents current baseline data on release and bail in New York City, separately for felony and nonfelony cases, including the setting of cash alternatives. The research summarized in Chapters V through VIII used datasets that were compiled between 2002 and 2005. Chapter IV, along with a more detailed table in Appendix B, provides updated data describing release and bail in New York City as of 2010, the most recent year for which data were available.

CJA's concerns about the uses and effects of bail can be traced to the Agency's origins in the early 1960s. Upon learning that large numbers of impoverished defendants

were held in New York City jails awaiting trial — for no other reason than that they lacked money for bail — industrialist Louis Schweitzer established the Vera Foundation in 1961 to address this inequity. The Vera Foundation (now the Vera Institute of Justice) launched the Manhattan Bail Project, in conjunction with the New York University School of Law and the Institute of Judicial Administration, to study the feasibility of release on recognizance (ROR) as an alternative to bail. The Manhattan Bail Project showed that defendants with strong ties to the community would usually return to court without bail, and as a result of that research Vera developed a recommendation system based on objective community-ties information obtained by interviewing defendants. Since that time, the Vera recommendation system has served as a model for pretrial services programs nationwide, and ROR has replaced bail as the dominant form of release in New York.

The Vera recommendation system was administered by the NYC Probation Department until 1973, when the Pretrial Services Agency (PTSA) was created to take over its administration. In 1977, PTSA became independent from Vera and was incorporated as the New York City Criminal Justice Agency. From its inception, CJA has been responsible for interviewing virtually every defendant shortly after arrest to collect information that is used to calculate an objective score reflecting the estimated risk of nonappearance. The score provides the basis for assigning a recommendation category, which is provided to the court to assist in the release decision at arraignment.

The Agency is constantly reviewing and monitoring its recommendation system, which is described in detail in Appendix A. Data presented in each year's Annual Report show that the recommendation is effective in persuading judges to release low-risk defendants (Exhibit 12), and — no coincidence — that it is also effective in predicting which defendants are most likely to return to court without bail (Exhibit 18). The system was overhauled in 2003, and a new research project was recently launched to improve its predictive accuracy even further.

In spite of the success of the recommendation system in establishing ROR as the primary release type in New York City, judges are not bound by it, and in fact they are required to consider other factors as well. As a result, there are many cases in which the recommendation is not followed. Every year thousands of defendants who were recommended have bail set, and an even larger number who were assigned to the high-risk category are released without bail.[1] This observation formed the starting point for the bail project, which began by investigating the question of what — other than the CJA recommendation — influences judicial release and bail decisions.

This and related issues addressed by CJA's bail project have gained in importance as local and national criticism of the system of money bail has grown in recent years. U.S. jails are increasingly filled with pretrial detainees, as release rates drop and

[1] In 2010, over 8,000 cases with a recommended defendant had bail set, and ROR was ordered in more than 30,000 cases with a defendant who was not recommended (CJA 2011, Exhibit 12).

reliance on bail rises across the country (Clark 2010). Media and watchdog organizations have begun to put a spotlight on the shortcomings of the bail system in New York City, publicizing the plight of the thousands of New Yorkers "stuck behind bars because they're too broke to get out," as the *Village Voice* put it (Pinto 2012; see also Murphy 2007, Liptak 2008, Fellner 2010, and Eligon 2011a, 2011b). In December 2011 the New York County Lawyers Association held a public forum to discuss the topic.[2]

On a wider stage, a three-part National Public Radio series in January 2010 introduced the general public to the sad stories of people arrested for minor offenses and jailed for lack of bail money in Lubbock, Texas (Part 1), New York City (Part 2), and Broward County, Florida (Part 3). In the second part of the series, Martin Horn — then New York City Commissioner of Correction — commented on the difficult choice faced by individuals who do not wish to plead guilty and cannot afford bail. "'Individuals who insist on their innocence and refuse to plead guilty get held,' according to Horn. 'But the people who choose to plead guilty get out faster'" (NPR 2010).

In the most important development to date, Attorney General Eric Holder, together with the Pretrial Justice Institute, convened a National Symposium On Pretrial Justice on May 31 and June 1, 2011, in Washington, DC. Law enforcement officers, judges, prosecutors, public defenders, victims, elected officials, and pretrial organizations were represented. Calling the pretrial release decision-making process "deeply flawed," symposium organizers called on participants to help find solutions (PJI 2011b). The symposium harked back to the 1964 conference convened by Attorney General Robert F. Kennedy to bring attention to the injustice that had so disturbed Louis Schweitzer a few years earlier. Kennedy, like Schweitzer, argued that money should not be the only thing that matters in determining whether a defendant avoids jail while awaiting trial (PJI 2011a; Schnacke, Jones, *et al.* 2010). The Kennedy conference culminated in the Federal Bail Reform Act of 1966, which led to the increased use of ROR across the country. It remains to be seen what concrete changes will result from the 2011 National Symposium, but a long list of recommendations came out of the proceedings, all of which reflect standards the American Bar Association has endorsed for many years (ABA 2007). The adoption of the recommendations in their entirety by New York would require major changes in the way release and bail decisions are made. We will return to this topic in the concluding chapter of this report, where we present the National Symposium recommendations and discuss what changes would be entailed in bringing New York into compliance.

The role of the commercial bail bond industry in the U.S. forms a subtext to the public debate about bail. In some parts of the country (not New York) commercial

[2] "When Bail Meets Jail — Are NYC Criminal Courts Setting Bail Appropriately?" December 6, 2011. Panelists were Marika Meis of Bronx Defenders, Jamie Fellner of Human Rights Watch, and the author of this report. The forum was moderated by Alison Wilkey, Co-Chair of the NYCLA Criminal Justice Section.

bonds are nearly synonymous with release on bail, and the local pretrial service agency is responsible for supervising defendants on non-financial, conditional release. The bond industry has responded to this perceived competition for clients by launching an aggressive national campaign to discredit pretrial services agencies and to convince lawmakers and the public that bail bonds are the most effective form of release (see, for example, AIA 2010). In New York City, where the bond industry is relatively weak, it was unclear at the outset if enough bonds are posted here to conduct any meaningful research on their impact. However, the research soon revealed that bonds have re-gained a foothold in the City, enough to allow us to expand the bail project to include a study that eventually refuted some of the commercial bond industry's claims. This study would have been much more difficult to do in areas of the country where virtually all bail release is by a commercial bond because it would be impossible to distinguish the impact of the bondsman from the impact of money bail itself.

The most important findings from all the studies conducted as part of the bail project are grouped together in four chapters, addressing judicial decision making (Chapter V), bail release (Chapter VI), effects of release type on failure to appear (Chapter VII), and effects of pretrial detention on case outcomes (Chapter VIII). Most chapters summarize the findings from more than one report, and the order in which the research findings are discussed here is not necessarily the same order in which they were originally published. Many details, additional analyses, and discussions that were omitted here are included in the original reports. The reader is also referred to the original reports for full descriptions of the manual data collection procedures used to supplement data from the CJA database.

II. LITERATURE REVIEW

Literature reviews for the topics addressed separately in each report of the bail project are reproduced here with minor editing. Cited works may be discussed under more than one topic heading.

Release And Bail Decisions (Chapter V)

The factors affecting release and bail decisions have received attention from researchers from time to time, but much of this work was already out of date by the time the CJA bail project was initiated.

Work done by John S. Goldkamp, Michael R. Gottfredson and their colleagues in the 1970s and 1980s constitutes the most extensive research to date on release and bail decisions in the United States (Goldkamp 1979; 1984; 1985; 1987; Goldkamp and Gottfredson 1985; 1979; Goldkamp *et al.* 1995; Gottfredson and Gottfredson 1988; Jones and Goldkamp 1991). Large-scale projects to establish systems of voluntary bail guidelines in Philadelphia, Boston, Miami, and Phoenix were undertaken in an effort to reduce the use of money bail and to make bail decisions more visible and more equitable. At each site, the researchers interviewed judges, collected data and developed statistical models of bail decisions. The analyses were then used to construct guidelines reflecting the same factors that were already influential in the judges' decisions, as identified by the models. Through the guidelines projects and other research, these scholars have contributed the bulk of what we know about bail decisions in this country over the past thirty-five years.

Statistical models of ROR and bail amount in Philadelphia left more than half of the variance unexplained, leading the researchers to conclude that decisions were not being made systematically, and thus not equitably — a situation that improved after implementation of guidelines (Goldkamp and Gottfredson, 1979). Subsequently, Goldkamp also found judicial decisions in Boston, Miami, and Phoenix to be uneven and random in nature prior to the establishment of guidelines (Goldkamp *et al.* 1995). A lack of fairness in judicial bail decisions, stemming from disparities in the treatment of similarly situated defendants, is a major theme in this body of work. Goldkamp concluded one discussion of the state of bail decisions in the early 1980s with the statement that "Judicial bail practices have suffered because judges have conducted bail in a low-visibility, highly improvisational fashion with little meaningful guidance . . . What the Supreme Court has referred to as 'experienced prediction' in bail practice often amounts to guessing conducted in a vacuum" (Goldkamp 1985, p. 55; see also Goldkamp 1993).

At least one group of researchers has disputed this characterization. While acknowledging that numerous previous studies, including Goldkamp's, had found "undisciplined discretion and caprice" in bail decisions, Barnes and colleagues maintained that their own results argued against this view, at least for the federal district in California

that they studied. Most relevant to the current research is their finding that the strongest predictor of the bail decision was the Government's (i.e., the prosecutor's) recommendation (Barnes *et al.* 1989, p. 262).

A few other studies have also examined the effects of the prosecutor's recommendation, with mixed results. Goldkamp included it in the variables he analyzed, and found that the prosecutor played a dominant role in Boston, which had no pretrial services, but not in the other three cities, all of which did have pretrial services (though not necessarily provided by an independent agency, Goldkamp *et al.* 1995). In conjunction with the Vera Institute's Manhattan Bail Project, Suffet (1966) recorded prosecutors' and defense attorneys' recommendations in New York City and analyzed interactions among judges and attorneys. Suffet concluded that "the defense attorney is the least influential member of the bail-setting triad," and that when there was disagreement, the prosecutor usually prevailed (p. 318). In contrast to what was observed in the course of the present research, Suffet reported that about half of the time, the judge "simply fix[ed] bail without discussing the matter with either of the attorneys" (p. 323). The focus on courtroom interactions in this study provides an interesting glimpse of ways in which some things have changed in the past 40 years (the judges we observed nearly always asked both the prosecutor and the defense attorney for bail recommendations), while other things have stayed the same (the relative influence of the defense and prosecution).

Another early study found that when actual decisions were examined, bail was almost exclusively based on prosecutors' recommendations, but when presented with hypothetical cases, judges were strongly influenced by defendants' ties to the community (Ebbson and Konecni 1975, cited in Frazier *et al.* 1980). Frazier noted that attorney recommendations might explain some part of the large proportion left unexplained in statistical models from his own research on bail decisions in a southeastern state. Observers for that research had not recorded attorney recommendations, but thought the defense attorney rather than the prosecutor had greater influence (Frazier *et al.* 1980, p. 179). This was the only study we found that suggested a stronger influence for defense attorneys than for prosecutors.

Outside the United States, prosecutors' recommendations have recently been found to be important in bail decisions in Canada (Varma 2002) and in England and Wales (Dhami 2002). In the Canadian research the prosecutor's recommendation was of overwhelming importance in Youth Court cases. The British study was a mail survey asking judges to decide hypothetical cases; the recommendations of prosecutor and defense attorney ranked third and fourth respectively, behind charge severity and criminal history but above other variables, including community ties.

Complicating any comparison of results from prior research is the large variety of ways in which the bail decision has been conceptualized. Many studies (including the present one) have followed Goldkamp's lead in treating the ROR decision separately

from the bail amount, and they have usually found differences in the factors that influenced each (for example, Albonetti 1989; Bock and Frazier 1984; Frazier *et al.* 1980; Nagel 1983; Roth and Wice 1978). For various theoretical and practical reasons, some have been interested only in the ROR decision (Bynum 1982; Daly 1989; Kruttschnitt 1984; Kruttschnitt and Green 1984; Maxwell 1999; Maxwell and Davis 1999; Steury and Frank 1990). Others have elected to treat ROR and bail as a unitary decision, using a single continuous dependent variable to represent ROR and ranges of bail amounts (Bock and Frazier 1977), or to represent various combinations of different forms of bonds and other conditions coded from less to more restrictive (Barnes *et al.* 1989; Dhami 2002; Fleming *et al*. 1980; Stryker *et al*. 1983). A few researchers have extended the conceptualization to include a third step, whether to set a cash alternative for defendants for whom bail is ordered (Nagel 1983; Sviridoff 1986).

This and other methodological variations in prior research make it difficult to summarize the findings, but some generalizations can be made. In his authoritative criminal justice textbook, Don Gottfredson (1999) observes that "Over and over again, studies have shown that the seriousness of the charge and the prior criminal record of the defendant are the main factors that influence the bail decision" (p. 222). This was true in most, though not all, of the sites included in the Goldkamp guidelines research. Other examples include research in Florida (Bock and Frazier 1977, 1984) and in Washington DC (Albonetti 1989, Albonetti *et al.* 1989). In a study of federal judicial districts across the country, Stryker *et al*. (1983) reported that offense (including type of offense and severity) constituted the most important single category of variable, although non-legal factors were also significant.

In New York City, similar results have been obtained from the 1960s through the 1990s. In the Vera study, charge severity was found to have the strongest influence on both ROR and bail amount in Manhattan, with criminal record also affecting both aspects of the decision (Suffet 1966). (Suffet did not control for effects of the prosecutor's request, which he analyzed separately.) For a sample of cases arraigned in 1974 and 1975, Nagel concluded that charge severity was important for both the ROR decision and for bail amount, but much more so for bail amount (Nagel 1983). The Nagel study examined one (unidentified) borough of New York City.

Two CJA studies provided further evidence of the dominance of charge severity in release decisions in New York City in the 1980s and 1990s. The first was a study of New York City arraignment outcomes, including release decisions, using a sample of over 10,000 defendants arraigned in 1989 (Lee 1995). This research found that charge severity was the most important factor in ROR, citywide and in each borough, and criminal history was also important. The second study used a data set comprised of all Juvenile Offenders (JOs) arraigned within a 14-month period in 1996 and 1997 in New York City (Phillips 2000). In spite of the fact that every JO is by definition charged with

a felony, the severity class of the offense was still a strong predictor of ROR. Juveniles charged with a class C felony were much more likely to be released than those charged with class A or B felonies (class A is the most severe felony category). Criminal history was also among the more important factors affecting ROR for JOs. Neither of these studies analyzed factors affecting bail amounts.

The influence of community ties was found to be spotty at best in all the studies we examined. The success of the Manhattan Bail Project in increasing ROR rates in New York City without increasing failure to appear led to the establishment throughout the country of pretrial services agencies charged with providing information to judges regarding defendants' community ties (Goldkamp 1985; Clark and Henry 1997). However, simply supplying judges with more reliable information about the backgrounds and community ties of defendants provided no guarantee that they would use it, as noted by observers (Fleming *et al*. 1980, p. 973). Use of ROR did increase, but, in the words of Goldkamp and Gottfredson, "it is not clear that community ties ever became an important factor in judges' decisions" (Goldkamp and Gottfredson 1985, p. 22). Studies that found little or no connection between community ties and either ROR or bail amount in jurisdictions around (and outside) the U.S. include those by Albonetti *et al*. (1989), Barnes *et al*. (1989), Bock and Frazier (1977), Bynum (1982), Dhami (2002), and Goldkamp and Gottfredson (1979).

On the other hand, some early researchers found the use of community ties in release and bail decisions to be relatively strong in New York City, where the CJA recommendation (or its precursor) constituted the measure of community ties. Lazarsfeld (1974) found that the ROR rate was more than double, controlling for charge severity, when defendants were recommended by PTSA (the pretrial services agency that became CJA in 1977). The ROR rate for recommended defendants charged with a class A or B felony was 19%, compared to 5% without a PTSA recommendation. Lazarsfeld concluded from this and similar findings for other levels of severity that "judges to a considerable extent follow the advice of the agency" (p. 3). Of course, that still left a large majority of serious felony offenders who were recommended for, but not granted, ROR.

Likewise, a 1983 survey of pretrial release studies cited CJA data from 1978 showing that 58% of recommended defendants were ROR'd compared to 40% for those who were not recommended. This author concluded that "even though judges used additional information in the bail release decision, they rely heavily on the assessment of community ties." This assessment was followed by a qualification noting that "even in New York City the CJA recommendations are frequently disregarded by judges. This is still considered a problem by the agency" (Eskridge 1983, p. 86).

Community ties may have declined in importance after the passage of the Bail Reform Act of 1984, which allowed pretrial detention in federal courts for the first time

on the basis of danger to the community. This was the conclusion of a study of federal cases in California that compared the periods immediately before and after the law went into effect (Barnes *et al*. 1989, p. 273). In the 1960s, the CJA recommendation was found to affect the bail decision in New York City, but not as much as charge and prior record (Suffet 1966). Just prior to the 1984 law Nagel found the CJA recommendation to be significant for ROR (and for the setting of a cash alternative), but not for bail amount (Nagel 1983). The CJA study of 1989 cases found a significant but weak association between the recommendation and ROR, leading the author to conclude that "a defendant's community ties were of little bearing" to the decision (Lee 1995, p. C2).

Forms Of Bail (Chapter VI)

The literature reviewed in this section focuses on the form in which bail is made, particularly changes over time in the use of commercial bail bonds in New York City.

The history of the commercial bond industry in New York City during the past half century can be sketched through the findings of three research studies, all of which were carried out under the auspices of the Vera Institute of Justice (or the Vera Foundation, its earlier name). A fourth study, by researchers at CJA, provides additional information on the bonding process in 1979 and 1980. Together, the studies show that commercial bondsmen were virtually the only route to release in the early 1960s, but their presence declined following the introduction later in that decade of release on recognizance (ROR) and cash alternatives to bonds. By the 1980s bondsmen had virtually ceased to function in New York City, and no subsequent data on their activities appeared in the research literature until publication of findings from the current study.

The earliest of the Vera studies was the Manhattan Bail Project, which fueled the bail reform movement of the 1960s and fostered the spread of pretrial service agencies and the use of release on recognizance throughout the country (Ares *et al.* 1963, Rankin 1964). The impetus for the project was the high proportion of defendants who were being held on bail in New York before disposition of their cases, and the power wielded by commercial bondsmen in deciding their fate. The ROR rate for the research sample of arrests in Manhattan during 1960 was a negligible 2% (Ares *et al.* 1963, Table 1, p. 77). (The handful of defendants released without bail were actually described as "paroled," as the study pre-dated the widespread use of the term "release on recognizance.") The authors declared that "the final decision as to whether a defendant is to be kept in jail usually rests in the hands of the professional bondsman." They further characterized the commercial bond industry as a "dominating" force on the American bail scene, often resulting in a defendant's detention "for lack of a premium, lack of collateral security, or any other reason" (ibid., p.69-70).

The data substantiated this claim. Of 2,389 defendants in the sample of cases with a felony charge who had bail set, 62% (about 1,481; exact number not given) post-

ed bail prior to disposition. Among them were 1,368 who posted a commercial bond, which works out to about 92% of all bail postings (ibid., Tables 3, 4, and 6, p. 80-81). Almost no one with a felony charge posted cash bail. (Data are for the entire calendar year but not all types of cases are included.)

Only a few insurance companies wrote most of the bonds: 43% were written by one company, and the rest of the bonds were distributed among five other companies (ibid., Table 6, p. 81). The company with the lion's share of the business provided the information that it wrote 19,397 bonds in 1957 (ibid, p. 82). (There is no indication of the geographical area included, which must have been wider than New York City.)

Although increased use of release on recognizance was the primary remedy urged by Ares *et al.*, an additional suggestion — mentioned only in a footnote — was that greater use be made of "alternative bail," defined as a cash deposit equal to the amount of the surety bond premium (ibid, p. 90, fn. 61). More than twenty years later, cash alternatives would become the focus of the third and latest Vera study addressing this topic.

Meanwhile, in response to serious overcrowding in detention facilities seven years after the research that commenced the Manhattan Bail Project, Vera researchers for the second time collected data on the use of bonds in Manhattan (Schaffer 1970). Unlike the earlier research, this study included cases of all severity classes. The sample consisted of cases with a post-arraignment appearance in Criminal Court during the first three months of 1967. The use of bondsmen among the 1967 cases was found to be much diminished compared to 1960, even when felonies alone were considered. Among felony cases, 880 were released on a bond compared to 676 on cash bail (Schaffer, op. cit, Table 2-a, no page number). The proportion of bonds among felony bail releases works out to 57% — still the majority, but well below the 92% reported for 1960. With misdemeanor and lesser offenses included in the calculation, the proportion of bonds among all bail releases was 53% (2,225 bonds and 1,934 cash bail releases; ibid.).

A further finding from the 1967 data was that gambling offenses were hugely over-represented among defendants who posted a bond. Gambling crimes constituted about 12% of the top arraignment charges among the universe of released defendants, but 37% of the cases in which a bond was posted, and only 7% of cases with cash bail posted. Conversely, almost two-thirds of all released defendants charged with a gambling crime posted a bond, while 15% posted cash bail.[3] No comparable data from other historical periods were found associating bonds with any particular crime type.

By the 1980s, when the last of the Vera bail studies was completed, all this had changed. By that time, bail bondsmen played "almost no role in the New York City bail-

[3] The percentages given in Schaffer (op. cit, Table 2-a) are apparently in error: 830 were released on bond out of 1,294 released defendants with a gambling charge, which works out to 64.1% (the percentage given in the table is 69.5%). In addition, 188 were released on cash bail, which is 14.5% of 1,294 (the percentage given in the table is 15.7%).

making process" and almost everyone who posted bail did so with cash (Sviridoff 1986, p. 131). This study examined cases from all New York City boroughs with an arrest during a two-week period in October 1980, using data obtained from CJA. Then as now, CJA data did not include information on how defendants posted bail, so Vera researchers collected that data manually from court and correction bail-making records. Of the 685 defendants in the sample who made bail, only 23, or 3%, posted a bond (ibid, p. 135). Further, almost half of the bonds (11 of the 23) were posted in Brooklyn, with the remainder roughly equally divided among the other boroughs. This suggests that the number of bonds written in Manhattan—the correct comparison to the two earlier studies, both of which encompassed only Manhattan—must have amounted to even less than 3% of the Manhattan bail releases.

The Sviridoff research was initiated by concerns that the refusal of commercial bondsmen to write bonds in small amounts was responsible for the growing pretrial detention population. Because there were so few bonds written for the study cases, however, the focus of the research turned from the role of bondsmen to the role of cash alternatives in bail making. A lower cash alternative to the bond amount was set in 45% of cases, and this cash alternative was usually half of the bond amount or less. Only 7% of the cash alternatives were in an amount greater than half of the bond amount. About a third of the cash alternatives were exactly half of the bond amount, and the remainder—58%—reduced the "effective bail" (the lowest amount required to gain release) by more than 50% of the bond amount. Large borough differences were found in the frequency with which a cash alternative was offered: least often in Manhattan (42%) and most often in Queens (61%). A major conclusion of the research was that, although bondsmen did turn away clients with low bail (no bonds were written for less than $750), the setting of cash alternatives was a much more important factor in release than was the role of bondsmen, who were judged to be "too rare to be of much policy relevance" (loc. cit.).

Finally, an early CJA research project provides a picture of the bail-making process thirty years ago, including the posting of bonds, from the point of view of the sureties (Gewirtz 1980). The research objective was to learn more about the characteristics of sureties and the obstacles they faced in posting bail. Interviews were conducted with 109 sureties posting bail at correction facilities in Brooklyn, Queens, and on Riker's Island, including 9 who posted bonds and an additional 14 who had unsuccessfully tried to post a bond.[4] The proportion of bonds among the 109 bail releases in this study was 8%, but the sample was not a random selection of all cases with bail posted and cannot be compared to the statistics reported from the other three studies reviewed.

[4] Bonds can be posted only in court, although cash bail can be posted either in court or at any Department of Correction facility. The sureties who were interviewed at correction facilities and who reported posting a bond probably brought the discharge slip to the correction facility to get the defendant released after the bondsman had posted the bond in court.

However, the interview information from this interesting research fills in some of the gaps in conclusions based on statistical findings alone. For example, it points to the greater number of sureties who tried unsuccessfully to post a bond, compared to the number of successes, and the reasons for their lack of success. Of the 14 sureties who posted cash but had previously attempted to post a bond (14% of the 100 who posted cash), one just "decided" to post cash instead; two said that they were unable to find "a bondsman willing to write a bond for only $500"; the rest said that "the bondsman wanted too much money and would not accept their collateral" or "would accept only a bank book as collateral" (Gewirtz, op. cit, p. 24). Considering that the sample was restricted to people who eventually did succeed in posting bail, one can only speculate how many additional defendants never were released because of rejection by a bail bondsman. Further, the study found that for the bonds that were successfully posted, there was tremendous variation in the amount of the premium and the collateral required.

Information about failed attempts to post a bond and the outlays in cash and collateral required by bondsmen is crucial to understanding the role of commercial bonds in bail releases, but that information is unavailable to most research. Although the present study also lacks data on failed attempts, it incorporates a wealth of data on the amount of cash bondsmen collected in fees and collateral, non-cash collateral they accepted, and other requirements imposed on defendants released on bonds.

Failure To Appear (Chapter VII)

The research reviewed in this section addresses the issue of whether money bail has any advantage over ROR in assuring court attendance, and the related question of whether commercial bonds are more effective than either ROR or cash bail in this regard.

General

The best recent discussion of these issues was published by the Pretrial Justice Institute in a paper that reviews the history of bail, the waves of reform in the bail system that have swept through the United States since the 1960s, and the current efforts of the commercial bond industry to undermine these reforms (Schnacke, Jones, and Brooker 2010). Elsewhere the same authors — noting a growing body of empirical research that demonstrates the deficiencies of bail — have called for a "third generation of bail reform" (Schnacke, Brooker, and Jones 2010). This is a clear reference to the work of John Goldkamp, who famously described the reforms embodied in the Federal Bail Reform Act of 1966 as the "first generation," and the further reforms of the Bail Reform Act of 1984 as the "second generation" of bail reform (Goldkamp 1985).

The first generation of bail reform gained momentum from the Vera Institute's Manhattan Bail Project, which had demonstrated that for defendants with strong community ties, bail was not necessary to secure their return to court (Ares *et al.* 1963;

Rankin 1964). The federal law of 1966 was followed in many states by legislation allowing release on recognizance, and by the establishment of pretrial services agencies modeled on the one created by Vera. The history of CJA's origin in the Manhattan Bail Project has already been outlined in the Introduction to this report, and is described in more detail in each CJA *Annual Report* (see, for example, CJA 2011, p. 4).

The second generation of bail reform arose from growing dissatisfaction with the omission of public safety considerations from the 1966 federal law and from the state legislation that arose from it, which allowed judges to detain defendants in non-capital cases or to set bail only to ensure court attendance. A public debate arose concerning the use of preventive detention[5] of defendants who were a danger to the community. It was widely acknowledged that many judges, even without statutory authority, were already setting high bail with the intention of detaining defendants they considered dangerous. The 1984 Act amended the 1966 Act to include community safety as an additional consideration in the pretrial release decision, and authorizing preventive detention to address this concern. Most states followed suit, but New York did not. Securing the defendant's court attendance is the only consideration allowed by law in New York, and detention without bail is still not authorized to address public safety concerns. Fuller discussions of this issue follow in Chapter III (comparing the New York statute to other state laws) and Chapter V (presenting research on factors affecting the release decision in New York City).

Empirical research has informed the debate in many ways, but we limit the discussion here to studies investigating the associations between failure to appear (FTA) and various forms of release. We concentrate particularly on recent research that has figured in the competing claims heard from the bail bond industry and from its critics. Most have found that defendants released on recognizance tend to have a higher likelihood of FTA than defendants released on bail. Two exceptions to this generalization — neither of them recent, however — are discussed first.

Older Empirical Studies

Using a sample of New York City felony defendants arrested in 1971, Myers (1981) found not only that ROR reduced the likelihood of FTA, compared to bail, but also that cash bail reduced the likelihood of FTA compared to commercial bonds.[6] Higher bail amounts also reduced FTA, and this factor was controlled for in the analyses. This was a rigorous study, using multivariate econometric modeling techniques and control-

[5] Preventive detention is used with a very precise meaning here, to refer to the denial of bail for reasons of public safety. New York does not allow preventive detention, although the state does allow denial of bail in non-capital cases to ensure court attendance.

[6] Myers gives no data in his paper regarding the number of cases in the sample with each type of release. Judging from the sketchy history of the rise and fall of the bond industry presented in the text above, we can only guess that in 1971 the proportion of cases with a release on a commercial bond was somewhere between the highs recorded in the early 1960s and the lows of the 1980s.

ling for a wide range of criminal history, demographic, and case processing variables. The results are intriguing but outdated (also puzzling, in that both high bail and no bail apparently had the same effect).

The only other study with similar results is equally outdated, and methodologically inadequate as well. Clarke *et al.* (1976) found that for a sample of cases in Charlotte, NC, ROR significantly lowered the probability of FTA "compared to those released on bond" (no distinction was made between bond and cash bail, so it is unclear whether the "bond" category included both, or only commercial bonds). As Myers (ibid.) points out in his critique of this study, the analysis was based on contingency tables with no statistical controls for many relevant variables, including bail amount.

The importance of bail amount in predicting the probability of FTA was underscored by another study from this period using a sample of felony cases of defendants who had been represented by the Legal Aid Society in New York City (Landes 1974). Higher bail amounts had a negative effect on FTA in multivariate analyses, and this was the most important factor. In this study ROR was categorized as though the bail amount were zero, so this means that any bail was associated with a decreased probability of FTA compared to ROR. This conflicts with Myers's findings for the same year in the same city — 1971, New York — but it is more in accord with recent findings.

Research Using BJS Data

The recent debate over the effect of release type on FTA rates has focused on data collected and reported biennially by the Bureau of Justice Statistics (BJS) through its State Court Processing Statistics (SCPS) program. The data are collected for felony cases in 40 of the 75 largest counties and presented in aggregated statistics, including distributions of types of release and FTA rates. The most recent SCPS report on "Felony Defendants in Large Urban Counties" presented data from 2006, and also included trends data demonstrating that surety bonds have been the predominant type of release nationwide since about 1998 (Cohen and Kyckelhahn 2010).

The biennial reports do not present FTA rates by release type, but BJS statisticians have written two special reports using SCPS data focusing on pretrial release of felony defendants. Both compared FTA rates for different release types. The first pretrial release report presented 1992 data[7] showing that FTA rates for surety bonds were lower (15%) than for ROR (26%) or cash bail (22%) (Reaves and Perez 1994). No multivariate analytic techniques were used. The second pretrial release report used pooled SCPS data from 1990 through 2004 (Cohen and Reaves 2007). It presented bivariate statistics with similar results: 18% of defendants released on a surety bond were charged with a failure to appear, compared to 26% of those on ROR and 20% of defendants released on cash bail. However, a multivariate regression analysis was in-

[7] At that time what is now the SCPS program was called the National Pretrial Reporting Program (NPRP).

cluded in the second pretrial release report, which found that the difference between surety bond and ROR persisted but was not nearly as large after case processing and defendant characteristics were controlled for statistically. After the effects of the control variables were accounted for, the predicted probabilities of FTA were 20% for surety bond and 24% for ROR. Further, there was no difference between the predicted probabilities of FTA for surety bond compared to cash bail in the multivariate model.

Both of the BJS pretrial release reports have been cited by bail bond industry lobbyists in support of their cause, prompting responses from the Pretrial Services Resource Center (PSRC), its successor, the Pretrial Justice Institute (PJI), and the National Association of Pretrial Services Agencies (NAPSA). PSRC published a paper explaining how the bond industry was misrepresenting the NPRP (now SCPS) data by imputing a causal relationship where none was warranted because of the lack of controls for other factors that affect FTA (Kennedy and Henry 1996). The paper also pointed out that aggregated national data could not be used to infer any relationship between FTA and release type in a specific jurisdiction, and that NPRP data could not be used to infer anything about the supervisory effectiveness of pretrial services agencies because the relevant data were not collected.

Shortly after publication of the most recent BJS pretrial release report (Cohen and Reaves 2007), the American Bail Coalition, a lobbying group for the bail bond industry, made this widely circulated claim about its meaning: "The chief finding is that, beyond question, commercial bail is the most effective method of pretrial release."[8] PJI (2008) and NAPSA (2009) both responded with position papers disputing this claim. PJI's "Fact Sheet" reiterated the basic points made by Kennedy and Henry about the fallacies of making such inferences from the BJS data. The NAPSA "Facts & Positions" paper pointed out two other limitations of the BJS data as well: (1) only felony cases were included and, as a consequence, the findings do not apply to the more numerous misdemeanor and lower severity cases; and (2) no distinction was made between defendants recommended and not recommended for release, groups that in New York City have dramatically different FTA rates. NAPSA also pointed out that the there was no difference in FTA between cash bail and surety bonds in the multivariate analyses presented in Cohen and Reaves (2007), a finding that was ignored in claims made by the bond industry.

Several other studies on this topic using SCPS (or NPRP) data have been published, with fairly consistent findings (and with the same limitations). One, commissioned by the Maryland Bail Bond Association and written by a law professor, simply cited published NPRP bivariate tables to show lower rates for commercial surety bonds than for other forms of release (Warnken 2002). Two other studies used raw SCPS data to perform new analyses, and these are the studies most frequently cited by the bail

[8] The quote is from a letter from William B. Carmichael, President of the American Bail Coalition, dated May 11, 2007, and cited in both PJI (2008) and NAPSA (2009).

bond industry (Block 2005, Helland and Tabarrok 2004).[9] The Helland and Tabarrok research, which used SCPS data from the 1990s, is by far the more methodologically sophisticated of the two. The authors used propensity scoring to create matched samples of defendants in each release type category, and found that the surety bond group had significantly lower FTA rates than for any other release type category with the exception of cash bail. The bond group did have a slightly lower FTA rate than the cash bail group, but the difference was not statistically significant. The other study, by Michael K. Block, was partially funded by the bail bond industry (Nichols 2010). It addressed the economic implications of various release types in selected large California counties. The study found the FTA rates for surety bonds to be considerably lower than for ROR (there were too few cases with cash bail release to include), but no attempt was made to control for any other factors (Block, op. cit.).

The continued use of SCPS data by bond industry lobbyists to support their claim that commercial bonds are the most effective form of release eventually led BJS to issue its own "Data Advisory" (BJS 2010), spelling out once again the limitations of the data. BJS issued three specific caveats regarding use of SCPS data: (1) "SCPS data are insufficient to explain causal associations between the patterns reported;" (2) "Evaluative statements about the effectiveness of a particular program in preventing pretrial misconduct may be misleading;" (3) "The potential for misconduct is only one of many factors that jurisdictions consider in developing and implementing pretrial release policies."

Another study by a BJS statistician using SCPS data used pooled data from 2000 through 2004 to ask a slightly different question. Noting prior findings that surety bonds have the lowest FTA rates among various financial and non-financial forms of release, the author's objective was to figure out why this might be so (Cohen 2008). The hypotheses were that either *selection* (bond agents select only the clients most likely to come to court) or *supervision* (bond agents monitor their clients more effectively) could explain bondsmen's relative success. The analysis was done by comparing counties with and without a strong commercial bond presence. In a logistic regression model that controlled for age, charge, and criminal history, the odds of pretrial release were lower in the surety counties, suggesting "that more careful screening and hence selection processes are taking place in the counties that rely primarily on surety bond" (*ibid*, p. 30). On the other hand, surety counties were more likely than non-surety counties to release defendants with a prior failure to appear and with violent charges — suggesting "that monitoring capabilities, rather than selection effects, explain the efficacy of commercial surety bond in guaranteeing court appearances" (*ibid*., p. 36). Ultimately, no

[9] For an example of the way in which the bail bond industry cites these studies, see AIA (2010). For a journalistic account of some of the issues addressed in this paper, including an interview with the executive director of the Professional Bail Agents of the United States (PBUS) in which he cites both of these authors, see Nichols (2010). The bail bond industry's use of these papers in their publicity is also discussed in Schnacke, Jones, and Brooker (2010).

definitive conclusions were drawn from these mixed findings because of the limitations of the SCPS data (*ibid*, p. 45).

On a loosely parallel track, PJI recently examined elements of pretrial services programs hypothesized to be associated with lower FTA rates (Levin (2007). No comparisons were made to financial release in this study, as the purpose was limited to exploring what works best for nonfinancial release programs. SCPS data from 1990 – 2004 were combined with a 1999 national survey of pretrial programs to provide the dataset used in the analyses. Again, both selection and supervision seemed to provide the keys to success in lowering FTA. Some of the specific findings pointed to the value of empirically based risk assessment, ability to report noncompliance to the Court, the targeted use of mental health screening, and mental health supervision by the pretrial services program — all of which were associated with lower FTA rates.

Other Recent Research

Studies that address directly the issue of comparative FTA rates for defendants released on surety bonds versus other forms of release are, to the best of our knowledge, limited to the SCPS-based research described above. However, two contributions to the research literature using other data sources — and addressing other questions — do provide some additional pertinent information.

A validation study for the pretrial risk assessment instrument used throughout Kentucky found high pretrial release rates and low FTA rates (Austin *et al.* 2010). This is interesting because Kentucky outlawed commercial bonds in 1976, meaning that surety bonds were not responsible for any part of the low overall FTA rate of 8% — which is, incidentally, considerably lower than the aggregated FTA rate of 18% for felony defendants in the largest urban counties who were released through a surety bond in 2006 (Cohen and Reaves 2007). The Kentucky validation study included charges of all severity classes.

Finally, a federally financed study released in May 2011 provides data about misdemeanants' FTA rates, something missing from all of the studies described above but only marginally relevant here because type of release was not considered in the analysis (Bornstein *et al.* 2011). Using a dataset of arrests during 2009 and 2010 in 14 Nebraska[10] counties, the authors evaluated the effects of various types of notification reminders in reducing the baseline FTA rate of about 13%. Defendants were also surveyed regarding their perceptions of fairness and trust in the criminal justice system. The authors concluded that notification did lower FTA rates, although some types of notification were more effective than others, and that trust in the criminal justice system was also a significant determinant of return to court.

[10] Even if release type had been examined, surety bonds would not have been a factor because they are rarely used in Nebraska, although they are not illegal (Schacke, Jones, and Brooker 2010; Cohen and Reaves 2007).

Summary of the literature on the relationship between release type and FTA

A body of empirical research done since the late 1990s has consistently found that commercial bonds are associated with lower FTA rates than ROR, but these findings come with many qualifications. In the few studies that have used multivariate statistical procedures to control for other relevant factors that also affect FTA, the differences between commercial bonds and non-financial forms of release were much reduced — and the difference between commercial bonds and cash bail disappeared completely.

In addition, this body of research relies on a single source of data, which is restricted to felony cases and which does not include the data that would be necessary to sort out the effects of supervision by pretrial services agencies (some of which are responsible for supervision of bond clients as well as defendants on other types of release). A further limitation is that none of the studies controlled for the kinds of community-ties factors that have long been known to be strong predictors of a defendant's likelihood of nonappearance. Nor was bail amount controlled for in any of the comparisons between cash bail and surety bonds, even though it has been established that high bail is associated with both lower FTA and bonds. (The positive association between high bail and bonds in New York City was demonstrated in Phillips 2010a, b).

Finally, aggregated national data cannot be used to draw conclusions about any specific jurisdiction, since the national averages obscure wide local variations. For felony cases nationwide, about a third of releases are by ROR or cash bail (Cohen and Kyckelhahn 2010); for New York City, over 90% of releases in felony cases fall into one of those two categories (Phillips 2011a). This alone is enough to suggest that results for New York City might differ from results based on national averages. The fact that early research using New York City cases did reach different conclusions from the SCPS-based studies reinforces this caveat.

Pretrial Detention (Chapter VIII)

Two separate studies addressing the relationship between detention and case outcomes were undertaken as part of Vera's Manhattan Bail Project. The earlier one used retrospective data from over 3,000 Manhattan cases with an arrest in 1960 (Ares *et al.* 1963). The sample was restricted to defendants 21 years of age or older who were charged with a felony. Case outcomes for defendants who were released at the time of disposition were compared to outcomes for defendants who were in detention at disposition, controlling for charge type. Within every charge type, it was found that detained defendants were more likely to be convicted; and if convicted, were more likely to be sentenced to prison. However, the researchers acknowledged that more statistical controls would be necessary to determine if the relationship is a causal one.

The second Vera study addressed the question of causality by examining the effect on case outcomes of other factors, such as the defendant's criminal record, bail amount, family integration, and employment stability (Rankin 1964). The sample, drawn prospectively for the Manhattan Bail Project, consisted of felony arrests during 1961 and 1962. The relationships between detention and conviction, and between detention and incarceration, were not accounted for by these other factors, leading to the conclusion that the findings "provide strong support for the notion that a causal relationship exists between detention and unfavorable disposition" (ibid., p. 655).

These conclusions quickly gained wide acceptance in the criminal justice community, and the Rankin study in particular continues to be frequently cited. However, its generalizability is limited. The sample size was small (N = 732), it was restricted to felony cases, and it excluded certain types of defendants (those with a recent drug charge or who admitted using drugs) and certain offenses (homicide, rape, and a few other violent charges). More important, in an effort to focus on *indigent* defendants, the sample was restricted to defendants with public defenders; it was further restricted to defendants for whom bail was set. (The earlier Ares study had included defendants released on pretrial parole, as release on recognizance was called, but this was a rarely used option prior to the work of the Manhattan Bail Project.) Paroled defendants were purposely excluded from the Rankin sample "because release on recognizance in itself may have an effect on disposition in addition to the effect of freedom pending trial" (ibid., p. 642). As a consequence of the pioneering Vera research, the use of ROR became routine, and populations of defendants on pretrial release came to consist predominantly of people released without financial conditions. Released defendants in the Vera studies therefore may not be directly comparable to the majority of released defendants today, in New York or elsewhere.

Another limitation of the Vera research is that it was done before advances in computerized statistical techniques made it feasible to perform sophisticated multivariate analyses controlling simultaneously for a large number of factors. The Vera researchers relied on cumbersome crosstabulations that greatly limited the number of variables that could be controlled for. Charge severity, for example, was not controlled for even though the severity class of the felony charge could reasonably be assumed to affect both likelihood of pretrial detention and the probable sentence.

Efforts to replicate and improve upon the Vera studies quickly followed. In the early 1970s, the Legal Aid Society undertook a study in support of a lawsuit brought on behalf of detained defendants in Brooklyn (Legal Aid Society of the City of New York 1972).[11] Like the Rankin study, the Legal Aid research was also restricted to defend-

[11] *Wallace v. Kern*, 481 F.2d 621, 1973. The class action lawsuit was started by seven indigent defendants in the Brooklyn House of Detention, who later brought in attorneys from the Center for Constitutional Rights (CCR) and the National Lawyers Guild as counsel. The Association of Legal Aid Attorneys (ALAA)

ants with public defenders in Manhattan, but the sample included defendants released on recognizance as well as on bail; and it included misdemeanor as well as felony cases (although the size of the sample was only slightly larger). The research design was more ambitious in that it controlled for a far greater number of factors, including a variety of offense variables (severity, type, and aggravated circumstances), weight of evidence, criminal record, family ties, employment status, and bail amount. The findings supported the Vera conclusions and went a step further: compared to released defendants, detained defendants were not only more likely to be convicted and sentenced to incarceration; if incarcerated, they were also sentenced to longer terms. The memorandum presented to the court in support of the lawsuit argued that the study provided hard data to prove "something which has been known by veteran criminal lawyers for a long time: The court's decision at arraignment to detain or release the accused is a crucial factor affecting the outcome of a case" (ibid., p. 460).

Much additional research has provided further evidence of a link between pretrial detention and dispositions, as attested to in recent reviews of the literature (e.g., Free 2005; Spohn 2000). However, this relationship was the primary focus for only a few studies, some decades old (e.g., Brocket 1973; Landes 1974; Clarke and Koch 1976; Koza and Doob 1975). More often, pretrial detention was one of many factors tested in studies of the effects of some other variable—usually sex or race—on case outcomes (Chiricos and Bales 1991; Crew 1991; Guevara *et al.* 2004; Holmes and Daudistel 1984; Humphrey and Fogarty 1987; Kruttschnitt and Green 1984; Lizotte 1978; Nagel *et al.* 1982; Spohn and Holleran 2000; Unnever 1982). These studies generally found that pretrial detention had a significant effect on case outcomes; sometimes it fully accounted for the effect of sex or race; and sometimes it interacted with demographic factors to affect outcomes differently for males compared to females, or for blacks compared to whites. A recent study of youth processed in Arizona's juvenile courts found that race and ethnicity affected likelihood of detention, and detention was a significant predictor of negative outcomes (Rodriguez 2010).

The biennial BJS reports discussed in the review of the FTA literature are also routinely — but inappropriately — cited to support claims that pretrial detention leads to increased likelihood of conviction or incarceration. Data for 2002 showed that convic-

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provided support, including the research by Eric W. Single of Columbia University's Bureau of Applied Social Research that is summarized in the text. The suit charged that the conditions of pretrial detention and inadequacy of legal representation resulted in a lack of due process and equal protection because of the economic status of defendants who could not post bail. The synopsis of this suit on CCR's website (www.ccr-ny.org/v2/about/history/04.asp) states that the initial decision was in favor of the plaintiffs but this decision was later overturned by the appellate court. In the view of CCR, the lawsuit was nonetheless successful because "many of the changes the inmates were fighting to achieve were implemented despite the appellate court's unwillingness to provide relief." In addition, the lawsuit led to the publication of a prisoners' rights manual for pretrial detainees. The ALAA also considered the outcome to be a favorable one, in spite of the appellate setback, because it ultimately strengthened the fledgeling union and led to better working conditions for Legal Aid attorneys (www.alaa.org/pages/History.pdf).

tion was more likely for detained defendants, and that this was especially pronounced when the arrest charge was a violent felony offense (Cohen and Reaves 2006[12]). Likewise, a special report focusing on pretrial release using 1992 data showed that incarceration was a more likely outcome for detained defendants than for released defendants, especially for public-order offenses (Reaves and Perez 1994). While these findings are consistent with the hypothesis of a causal relationship, they should not be cited as evidence for this conclusion because statistical controls are lacking. BJS's Data Advisory stating that data from their reports "are insufficient to explain causal associations" has already been cited (BJS 2010).

Since the beginning of CJA's bail project, three studies have been published that used multivariate analyses to address directly the question of whether pretrial detention affects case outcomes (Kellough and Wortley 2002; Leiber and Fox 2005; Williams 2003). All found a relationship between detention and case outcomes, controlling for a wide range of legal and defendant characteristics. The most sophisticated of these methodologically was a large-scale study of juveniles in Iowa, using data over a 21-year period and a sample of over 5,000 cases (Leiber and Fox 2005). Regression analyses were used to model seven different decision points, controlling for a large number of factors, including a statistical correction for sample selection bias for outcomes at the later stages of processing. Interactions between race and detention were also tested in the models. The authors concluded that both detention and race influenced outcomes directly, indirectly, and in interaction with each other. This study provides convincing evidence of a causal relationship between detention and various outcomes for juveniles, but it is not clear how well these findings translate to adult courts, with different decision-making procedures affecting detention and a very different range of case outcomes.

Another study, using a sample of 1,800 Canadian cases from 1993-1994, found that pretrial detention was the strongest predictor of guilty pleas, controlling for more than a dozen case and defendant characteristics (Kellough and Wortley 2002). A strength of this research was that it included, in addition to multivariate statistical analysis, interviews with detained defendants shortly after their bail hearings. Evidence from this qualitative aspect of the study strongly indicated that many defendants planned to plead guilty quickly to get out of jail, or to be moved from a detention cell to a more comfortable correctional facility. Although such motives are also likely to be found among New York City detainees, the Canadian situation was a little different in that, according to the study's authors, pretrial detention time is not automatically deducted from Canadian jail or prison sentences (ibid., p. 199). In New York, a defendant facing a long jail term knows that the time spent in pretrial detention will count towards that sentence, and so may feel less pressure to plead guilty quickly to avoid doing "dead time." Incar-

[12] Two later BJS reports, for 2004 and 2006, did not include comparable tables.

ceration and sentence length were not modeled, so this study provided no evidence regarding the effect of detention on sentencing outcomes.

The third example of recent research that found a causal relationship between pretrial detention and case outcomes was a study using a small sample (N=412) of felony cases in Florida (Williams 2003). Incarceration and sentence length were modeled, controlling for offense seriousness, prior record, attorney type, time to disposition, age, and an interaction variable for sex and race.[13] Williams found that for convicted defendants, pretrial detention was the strongest predictor of incarceration and was a significant predictor (but not the strongest) of sentence length. However, conviction was not modeled, with the result that this study shed no light on how detention affected case outcomes for most defendants. The analysis also failed to account for the possibility that restricting the samples to convicted (and, for the sentence length model, incarcerated) defendants resulted in exaggerating the effect of detention on the later outcomes — effects that could have been partly due to the influence of detention on conviction (and, for the sentence length model, on incarceration).

Adding to the questions raised by these studies, some other research projects have found only inconsistent or weak evidence that detention affects case outcomes. Referring to the Vera and Legal Aid Society studies, authors of one large-scale study wrote: "We did not find the same strong relationships between bail status and final disposition that much previous research led us to expect" (Eisenstein and Jacob 1977, p. 200). Their research, using data from 1972 for felony cases, encompassed three cities — Chicago, Detroit, and Baltimore — with very inconsistent results. In Chicago and Detroit, detained defendants were no more likely to be convicted than released defendants, whereas in Baltimore detention was the most important predictor of conviction. Once convicted, detained defendants were more likely to be incarcerated in Detroit but not in Chicago. In none of the cities was detention status related to the length of the sentence (ibid., p. 284). This research was methodologically elaborate for its time (multiple regression and multiple discriminant function analysis were the statistical techniques employed to control for a wide range of variables) but detention status was combined with other defendant characteristics together in one variable, making it difficult to interpret the results.

The best known and most influential research to raise serious doubts about the link between detention and conviction was part of the bail guidelines work of John Goldkamp and his colleagues, reviewed above. Recognizing that the bail guidelines research raised important issues about the possible effects of bail and release decisions for case outcomes, Goldkamp addressed those implications using data from Philadelphia (Goldkamp 1979; 1980). The study was designed to improve upon prior research

[13] An interaction variable accounts for the combined effects of two variables. An interaction variable for sex and race, for example, could be coded: black female; black male; white female; white male.

by using a more representative sample (i.e., defendants released on ROR and bail were included, and the sample was not restricted to Legal Aid clients); by instituting more elaborate statistical controls to rule out spurious relationships; by examining a wider range of case outcomes than simply conviction and incarceration; and by testing two measures of detention (released within 24 hours [no/yes] and detained to disposition [no/yes]).

The results were mixed. No bivariate relationship was found between detention and dismissal of the case, so multivariate models were not estimated for the dismissal outcome. Detention was found to have very little impact on likelihood of diversion,[14] or on likelihood of conviction, once charge and criminal history variables were controlled for in multivariate analyses. These relationships were declared to be "spurious" and "inconsequential" (Goldkamp 1980, p. 243-245). On the other hand, pretrial detention had a powerful effect on likelihood of an incarcerative sentence. Goldkamp drew the cautious conclusion that "*this analysis has been unable to 'write off' the entire relationship as wholly an artifact of spuriousness.* The contention that pretrial detention 'causes' a greater likelihood of incarceration as a sentencing outcome, though unproven here, cannot in fairness be wholly rejected." (ibid., p. 250; emphasis in original). Finally, detention was found to have a weak, but still consequential, impact on sentence length.

Goldkamp's finding that there was no causal relationship between detention and disposition has been cited often (e.g., Wheeler and Wheeler 1981; Williams 2003), and it is clearly in accord with Goldkamp's own conclusions, but it may be worth noting that the regression models presented to support these conclusions actually show that detention had a statistically significant effect on both diversion and conviction (Goldkamp 1980, Table 3, p. 242; Table 5, p. 244). However, the additional proportion of variance in the outcome explained by detention, after the effects of all the control variables were accounted for, was only 1% in each model. This suggested such a small impact that Goldkamp was justified in dismissing it altogether. In very large samples, as these were, an effect can be statistically but not substantively significant. Statistical significance means that the effect is not likely to have occurred by chance, but the magnitude of the effect may still be too small to make any real difference in the outcome.

Other research has failed to bring consensus to the subject. No relationship between pretrial detention and conviction was found in a study of felony cases in Houston, controlling for offense type, but detained defendants who were convicted had significantly higher imprisonment rates than released defendants (Wheeler and Wheeler 1981). The opposite was found in a study of juveniles undertaken around the same time: detention had a weak effect on disposition (the effect varied depending on age, sex, and race) and no effect on sentence (Frazier and Bishop 1985).

[14] The diversion disposition in Philadelphia was not a conviction, although it was similar to probation (Goldkamp 1980).

Although the preponderance of evidence indicates that some outcomes, at least, are adversely affected by detention, it would be difficult to argue from this review of the empirical research that a causal connection between pretrial detention and any case outcome had been definitively established prior to the CJA bail project. Many of the studies are old, methodologically crude, or of limited applicability. Even the more statistically sophisticated studies often did not control for the selection bias that could result from restricting the sample to convicted defendants (when the outcome to be assessed was incarceration), or to defendants sentenced to incarceration (when the outcome was sentence length). Very few studies included nonfelony cases, which are the majority of arrests, and not one study was found that modeled nonfelony cases separately.

Finally, the definition of "detained" was often not explicit in the studies examined; when defined, it frequently meant detention to disposition, but sometimes it was merely a measure of detention status at arraignment. Some differences in findings might be attributable to differing definitions of detention.

The CJA bail research was designed to remedy shortcomings and gaps in the prior research on all four major topics encompassed by the project. The results represent the most comprehensive, current information available on release and bail in New York City.

III. COMPARING NEW YORK TO THE REST OF THE COUNTRY

A. State Bail Laws

Release and bail practices in New York City differ substantially from other large urban jurisdictions around the country, as does the legal framework within which City courts operate. We begin with a brief review of some crucial differences in the state laws governing pretrial release decisions, summarized in the chart on the following page. The chart is based on a review of state statutes compiled in April 2010 by the Pretrial Justice Institute (PJI 2010).

In the wake of the Federal Bail Reform Act of 1966 (described in the literature review for Chapter VII), many states passed laws that authorized release on recognizance and established risk of failure to appear as the only consideration in pretrial release decisions. The 1966 Act did not address danger, except for defendants charged with capital offenses, who could be detained to protect the community. The Bail Reform Act of 1984 amended the 1966 Act to authorize federal courts to consider danger to the community in non-capital cases, in addition to risk of failure to appear, and to allow preventive detention without bail for dangerous defendants. After the Supreme Court upheld the Act's preventive detention language in *United States v Salerno (*481 U.S. 739, 107 S. Ct. 2095, 95 L. Ed. 2d 697), states began revising their laws accordingly. (See Schnacke et al. 2010 for a good discussion of the federal acts and their consequences.)

By 2010, all but four states — New York, Connecticut, Mississippi, and Missouri — allowed the courts to consider public safety in making release decisions. In Kentucky public safety is not specifically authorized but the courts may consider the "defendant's behavior." In three other states (Alabama, Pennsylvania, and West Virginia) public safety may be considered only in domestic violence cases. Legislation was recently passed in New York that will have a similar effect, even though public safety is still not authorized explicitly. The revision to New York's Criminal Procedure Law (CPL §510.30) passed in June 2012 requires judges to consider a violation of an order of protection or the prior use or possession of a weapon, but only in domestic violence cases.

Preventive detention was also widely adopted as a result of the 1984 Act, but many states that authorize a consideration of public safety do not allow the courts to use preventive detention to address that concern. Currently, 27 states allow preventive detention, although in five of them the authorized circumstances are extremely limited. New Jersey — which already allows a consideration of public safety — will become the 28th with preventive detention if a constitutional amendment passes in November 2012.

New York, along with Pennsylvania, occupies in-between territory: denial of bail is allowed in non-capital felony cases if no bail amount would be sufficient to ensure court attendance, but bail cannot be denied for reasons of public safety. Mississippi presents yet another twist: public safety is not an authorized consideration, yet denial of bail is allowed for defendants with specified, serious criminal histories.

COMPARING NEW YORK WITH OTHER STATES ON KEY STATUTORY PROVISIONS GOVERNING RELEASE DECISIONS

Are the courts required to consider community safety when imposing bail?	
NEW YORK	OTHER 49 STATES
NO Legislation passed by the NY legislature in June 2012 would require judges to consider — in domestic violence (DV) cases only — a violation of an order of protection or the prior use or possession of a weapon. However, community safety is not specifically authorized as a consideration even in these cases.	NO ⟶ 3 (CT, MS, MO) *in addition to NY* NOT EXACTLY ⟶ 1 (KY) allows courts to consider defendant's "likely behavior" YES, BUT ⟶ 3 (AL, PA, WV) DV cases only YES ⟶ 42 (all other states)
May courts detain defendants for charges other than capital offenses?	
NEW YORK	OTHER 49 STATES
NOT EXACTLY Bail or ROR must be ordered in misdemeanor or lesser severity cases, but in felony cases the courts may deny bail at their discretion (CPL §530.20.2). Since the courts are not authorized to consider danger to the community in making this decision, the only allowable reason for denying bail is that no amount of bail would ensure the defendant's return to court. The legislative history of CPL §510.30, which specifies the criteria governing bail determinations, notes that the preventive detention provision was deliberately removed because it overburdened the courts. So, while NY does allow denial of bail in non-capital cases, it does not allow preventive detention (denial of bail for reasons of public safety). This is similar to the law in Pennsylvania.	NO ⟶ 21 (AK & TN do not allow detention even in capital cases; also AL, AR, CA, CT, DE, ID, IN, KS, KY, MN, MO, MT, *NJ, ND, SC, SD, WA, WV, WY) NOT EXACTLY ⟶ 1 (PA) *in addition to NY* YES, BUT ⟶ 5 (IA, ME, NC, RI, TX) only in very restricted circumstances YES ⟶ 22 (AZ, CO, FL, GA, HI, IL, LA, MD, MA, MI, MS, NE, NV, NH, NM, OH, OK, OR, UT, VT, VA, WI) *NJ voters are expected to approve an amendment to the state constitution in November 2012 that would authorize denial of bail to defendants who pose a danger to the community. NJ already requires the consideration of community safety in release decisions, but without preventive detention, the only way in which courts can address safety is to put conditions on release.

Source: Review of state statutes by the Pretrial Justice Institute (PJI 2010).

Release rates and bail amounts in New York City also diverge substantially from the rest of the country, but not in ways directly attributable to the atypical legal environment. For example, the rate of release on recognizance (ROR) is dramatically higher in New York City than in many other large cities, and bail — when it is set — is likely to be a fraction of what it would be elsewhere. One might try to make a connection by guessing that ROR rates are high because the courts cannot detain dangerous criminals, but this is implausible. New York City judges do not ignore safety; they address it by setting high bail to detain individuals who pose a threat to the community. If bail amounts in New York were higher than elsewhere in the country, we would be tempted to explain *that* as a result of the state's bail law. However, data presented in the following section show that low bail as well as high ROR rates characterize New York City — apparently in spite of, rather than because of, the statutes governing release decisions.

In the discussion at the end of this report we call for the consideration of the recommendations of the National Symposium On Pretrial Justice, all of which are also endorsed by the American Bar Association (ABA). One of the recommendations is to allow detention without bail for defendants who pose a risk to public safety. If the New York bail law were amended in this way, the effect on ROR rates would probably be minimal. Some (unknown) number of defendants who currently have bail set would be remanded without bail, and — since these would most likely come from among high-bail cases — average bail amounts for the remaining cases could drop. However, the most important consequence would be in guaranteeing equity and transparency through procedural safeguards such as those described in the ABA standard endorsing preventive detention. In relying on high bail to detain dangerous criminals, the courts do so without due process, and with the risk that the defendant will be able to buy his freedom.

Preventive detention could potentially have an additional consequence for New York City. The number of defendants in pretrial detention could actually be reduced if the availability of this option encouraged the courts to comply with another long-held ABA standard: that bail should not be set so high that it results in the pretrial detention of a defendant solely due to the inability to pay. Compliance with this standard is not feasible as long as the courts feel constrained to use high bail to address public safety. Removing this constraint would not necessarily mean that judges would begin setting bail at reachable levels, but it could open the way for the first time to serious consideration of this standard in New York City.[15]

[15] ABA Standard 10-1.4 (e) states that "The judicial officer should not impose a financial condition of release that results in the pretrial detention of a defendant solely due to the defendant's inability to pay." Standard 10-5.8 endorses preventive detention when "no condition or combination of conditions of release will reasonably ensure the defendant's appearance in court or protect the safety of the community or any person," and Standards 10-5.9 through 10-5.16 specify the procedural safeguards that should be in place before a defendant is detained (ABA 2007).

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B. New York City Compared To Other Large Urban Counties

In the previous section we mentioned that New York has much higher ROR rates and much lower bail than the rest of the country. Commercial bail bonds are also relatively scarce in New York City, not only because so many defendants are released on recognizance, but also because when bail is set, it is more often posted in cash than by a commercial bond. In spite of all this, defendants on pretrial release in New York are no more likely to fail to appear for a scheduled court appearance than those in many other parts of the country — they are less likely to miss court dates, in fact, than defendants in some jurisdictions with more restrictive release practices.

We arrived at these conclusions by comparing data from New York City with national data published by the Bureau of Justice Statistics as part of its State Court Processing Statistics (SCPS) program. The SCPS program collects data periodically on a sample of felony cases processed in state courts. The latest published SCPS report includes data collected from felony cases with a first court appearance on selected days in May 2006 in 39 of the 75 largest urban counties (Cohen and Kyckelhahn 2010).[16]

Three of New York City's five boroughs were included among the 39 SCPS counties sampled in 2006: the Bronx (Bronx County), Brooklyn (Kings County), and Manhattan (New York County). CJA Senior Analyst Marian Gewirtz supervised the preparation of the dataset sent to SCPS for the New York City counties, and she generously provided that dataset for use in the analyses presented in this section. With her assistance, we were able to reproduce the specifications used by SCPS to generate comparable data for all five boroughs of New York City in 2006, as well as for 2009.[17] These comparisons show some astonishing dissimilarities between New York and the rest of the country.

The comparisons examined in this section are restricted to felonies. It is likely that the dissimilarities between New York and other large cities extend to nonfelony cases as well, but SCPS does not currently collect data on misdemeanors, and no source of comparable national data for misdemeanor cases was available.

Because the SCPS sample is designed to be representative of cases filed during the month of May 2006, citywide data for New York City are likewise presented for a sample of May 2006 arrests. However, to rule out the possibility that May was an atypical month, we also present annual results for New York. In addition, both May and annual data are presented for 2009, to examine any changes that might have occurred

[16] The sample selection design called for collecting data from 40 counties, but Clark County (NV) was dropped because of poor data quality. The next scheduled SCPS report, using a sample of cases filed in May 2009, is forthcoming.

[17] These specifications entailed one significant departure from analyses in the remainder of this report. For comparability with SCPS data, pretrial release and misconduct were tracked to sentencing for convicted defendants in the analyses presented in this section. In the remainder of this report, case processing was tracked only to conviction. There was no difference in the tracking period for cases that did not end in conviction (all were tracked to dismissal, acquittal, or acquittal in contemplation of dismissal).

over time. Because of the length of time it takes felony cases to reach disposition, 2009 is the latest year for which data were available (tracked to June 30, 2011).

Release And Detention

Table 1 shows that 58% of defendants nationally were released prior to case disposition,[18] compared to approximately three quarters of New York City defendants. The highlighted columns draw attention to the SCPS sample of 75 large urban counties and the New York City sample that is most directly comparable to it (May 2006). The other New York City results show that May was not atypical: 77% of New York City defendants were released among the May 2006 sample, with a similar percentage (74%) for the entire year. For 2009, there was no difference between May and the entire year (74% released). In addition, there was little change in release and detention rates from 2006 to 2009; full-year rates were the same in both years.

The *type* of release shown in Table 1 presents even more of a contrast than the overall release rates. Release without financial conditions was much more common in New York than elsewhere: 56% of defendants in the May 2006 New York sample were released without financial conditions, compared to only 25% nationally. The highest non-financial release rate was found in May 2006, but the rate was nearly as high for the other three New York samples (49% to 51%). Figure 1 presents these results graphically, comparing the May 2006 New York sample with the national data.

The detention rate to disposition in New York City was correspondingly lower: 23% detained in New York compared to 42% nationally. A few defendants were held without bail in both samples (4% in New York, 5% nationally), but most of the detention was due to the inability to make bail. As a proportion of all felony cases continued at arraignment, only 19% of defendants were held on bail in New York City, compared to 37% nationwide. Release on bail was also less common: 22% of felony defendants in New York, compared to 33% nationally.

[18] As explained in the previous footnote, disposition of the case was defined by SCPS as sentencing for convicted defendants. SCPS refers to the unit of analysis as the defendant, and we conform to that practice for ease of discussion, although strictly speaking the unit is the arrest, or case. A defendant may be represented more than once in the dataset if he or she was arrested again within the sample period.

Table 1
Release And Detention
Comparing New York City With Other Large Cities
Felony Defendants

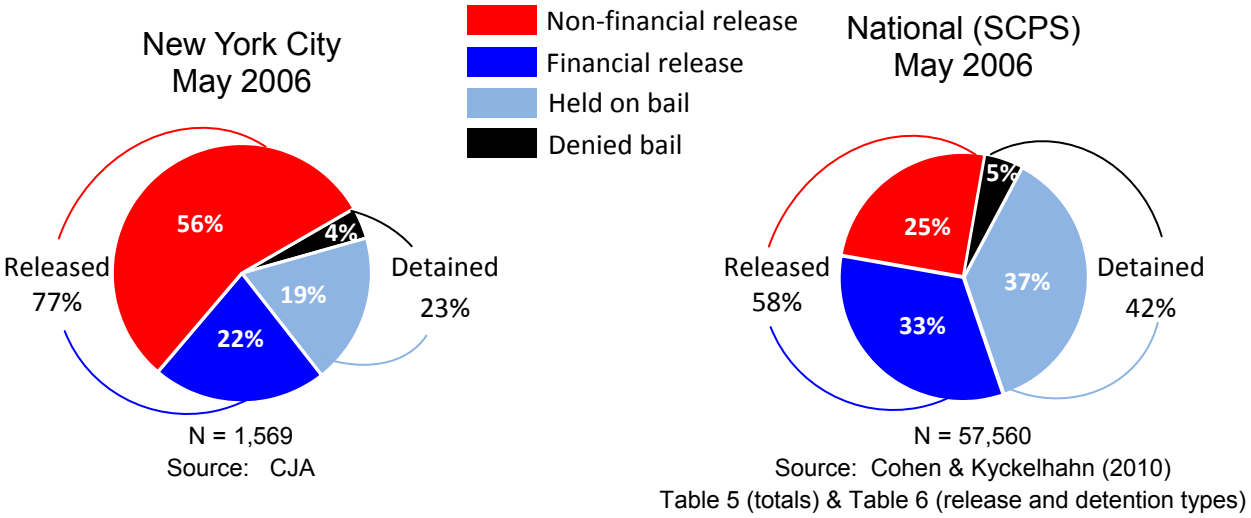
Release and detention prior to case disposition	New York City (2006)		New York City (2009)		75 Largest Urban Counties**
	Entire year N = 59,260	10 days in May* N = 1,569	Entire year N = 55,319	10 days in May* N = 1,512	Selected days in May 2006 N = 57,560
Total released	74%	77%	74%	74%	58%
Financial release	24%	22%	23%	25%	33%
Non-financial release	50%	56%	51%	49%	25%
Total detained	26%	23%	26%	26%	42%
Held on bail	22%	19%	22%	21%	37%
Denied bail	4%	4%	4%	5%	5%

Detail may not sum to total because of rounding.

*Dates selected for sampling were specified by SCPS for each county included in the program. In 2006, 10 days were specified for each New York county. The same dates were specified for the Bronx and Manhattan; in Brooklyn one date differed from the other two counties. The programming for the citywide replications of the May data used the dates for the Bronx and Manhattan for 2006, and comparable dates in 2009 (Tuesday and Thursday of the first and third weeks; Monday, Wednesday, and Friday of the second and fourth weeks).

**Source: 2006 State Court Processing Statistics (SCPS); see Cohen & Kyckelhahn (2010), Table 5 (totals) and Table 6 (type of release or detention).

Figure 1
Release And Detention
Comparing New York City With Other Large Cities
Felony Defendants



N = 1,569
Source: CJA

N = 57,560
Source: Cohen & Kyckelhahn (2010)
Table 5 (totals) & Table 6 (release and detention types)

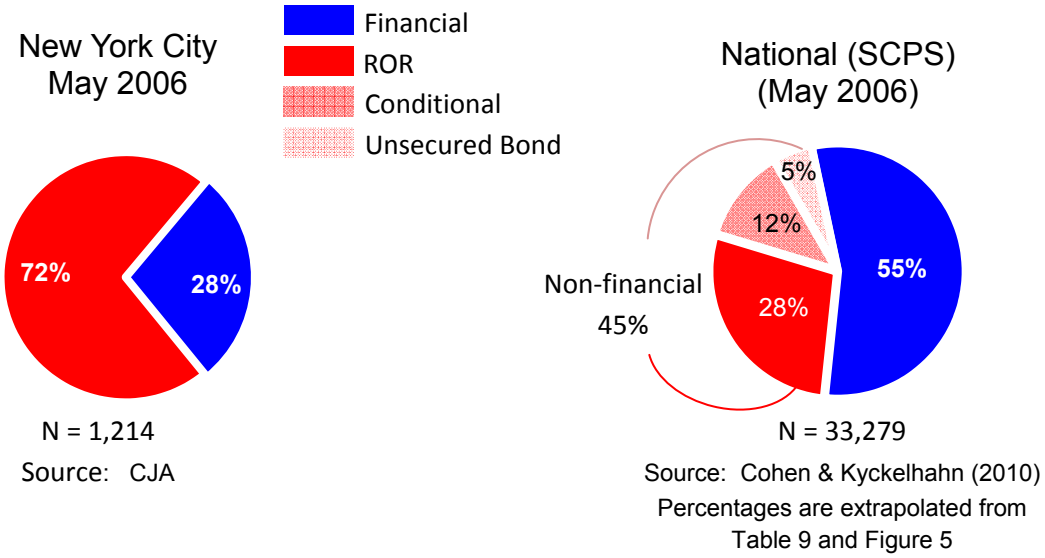
Detail may not sum to total because of rounding.

Non-financial release includes both supervised (conditional) release and unsecured bonds, in addition to release on recognizance (ROR). Outside New York City, these other forms of non-financial release are frequently used, but nearly all non-financial release in New York City is in the form of ROR. There were no pre-disposition supervised release programs in New York City in 2006,[19] and unsecured bonds, although authorized in New York, are almost never used.

Figure 2 shows release type as a percentage of all releases, comparing the May 2006 New York sample to the national SCPS sample. In New York City, 72% of pre-disposition releases were in the form of ROR, compared to only 28% nationally. Even when other non-financial forms of release were included with ROR, those with no financial conditions constituted less than half of the national sample (45%).

Another way of looking at the same data: When defendants in the national sample were released, they were more likely to be released on bail (55%) than through a non-financial release type. The opposite is true in New York City, where only 28% of defendants who obtained release did so by posting bail.

Figure 2
Type Of Release
Comparing New York City With Other Large Cities
Felony Defendants Released Pre-Disposition



N = 1,214
Source: CJA

N = 33,279
Source: Cohen & Kyckelhahn (2010)
Percentages are extrapolated from
Table 9 and Figure 5

[19] In August 2009, CJA implemented a small supervised release program in the borough of Queens, and it is possible that a few defendants in the 2009 annual sample categorized as released on recognizance could have been released to that program. The Queens Supervised Release program is restricted to felony defendants who are charged with a nonviolent offense, do not present a high risk of failure to appear, are likely to have bail set, and meet other criteria as well. The program is described further in the following chapter.

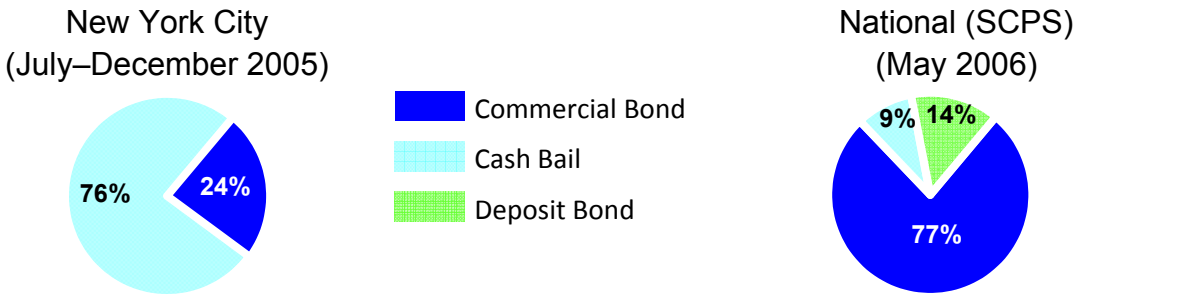
Although these data show that the country as a whole relies on bail to a greater extent than does New York, there are exceptions. The District of Columbia stands out in this regard. Very few defendants are held on bail in D.C. because bail, if set, must be in an amount the defendant is able to meet. A large variety of conditional release and treatment programs are used instead of bail to ensure appearance for scheduled court hearings and to minimize the risk of further criminal behavior (Kim and Denver 2011). D.C. is not included among the SCPS counties because it is within the federal system, rather than the state court system. D.C. clearly represents a sharp departure from the bail practices that are the norm throughout the rest of the country, relying even less on bail and providing many more supervised released options than does New York City.

Form And Amount Of Bail

The form in which bail is posted is another area in which New York differs from national trends. Bail may be posted in a variety of ways, including the purchase of a bond from a commercial bail bondsman or cash posted directly with the court. When cash is posted, it may be required in the full amount, or the defendant may be allowed to post a percentage (typically 10%), which is often referred to as a deposit bond. SCPS reports the form in which bail was made for defendants on financial release, but this information is not captured in the CJA database, so it was not available for the New York counties, and it is lacking from the 2006 and 2009 comparison samples.

To overcome this lack, bail making data were collected manually for a small sample of cases in the second half of 2005, as part of the bail project. Data from that study are presented in Figure 3, along with national data for comparison. In New York, cash bail comprised 76% of the felony bail releases, compared to 9% nationally. Commercial bonds were the dominant form nationally (77%), whereas in New York only 24% of felony defendants who made bail did so with a commercial bond. Deposit bonds were totally absent from the New York sample, but comprised 14% of bail releases nationally.

Figure 3
Form Of Bail
Comparing New York City With Other Large Cities
Felony Defendants Released On Bail



N = 4,552
Source: CJA

N = 18,437
Source: Cohen & Kyckelhahn (2010)
Percentages extrapolated from Table 9, Figure 5

Next we compared bail amounts set for felony cases nationally, compared to New York City. The results are shown in Table 2. Again we highlighted the May 2006 New York sample and the SCPS national sample to draw attention to the best comparison. Results based on these two samples are illustrated in Figure 4.

The average (mean) bail set in the nationwide sample was $55,500 — more than *quadruple* the average for New York City during the same time period ($12,071). The difference between New York (May 2006) and other large cities was not quite so pronounced among those who were released on bail, but national averages were still double New York's: $8,049 in New York City compared to $17,100 in other large cities. Among those who were held on bail, however, the national average of $89,900 was more than five times the mean for New York City ($16,759). The same ratio was found for the median bail amount among detained defendants in New York City ($5,000) compared to the national median ($25,000). (We will see in the following chapter that Queens, with the highest bail in the City, approaches the national figures in terms of the median, if not the mean amount set in felony cases.)

Table 2
Mean And Median Bail Amounts
Comparing New York City With Other Large Cities
Felony Defendants With Bail Set

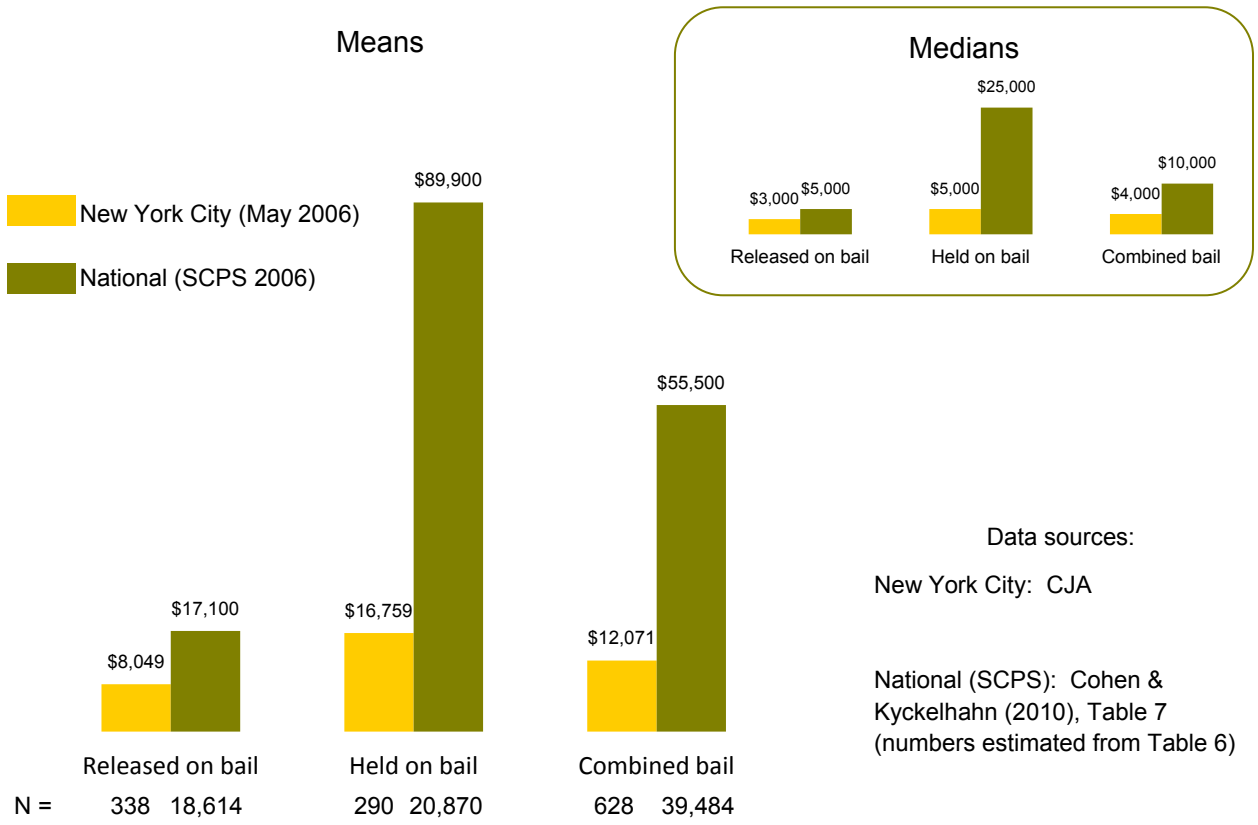
Release status prior to case disposition	New York City (2006)		New York City (2009)		75 Largest Urban Counties**
	Entire year	10 days in May*	Entire year	10 days in May*	Selected days in May 2006
Released on bail	N = 14,149	N = 338	N = 12,508	N = 369	N = 18,614
Mean	$8,406	$8,049	$9,896	$13,090	$17,100
Median	$3,000	$3,000	$3,500	$3,500	$5,000
Held on bail	N = 13,152	N = 290	N = 12,023	N = 313	N = 20,870
Mean	$19,420	$16,759	$20,383	$23,526	$89,900
Median	$5,000	$5,000	$5,000	$7,500	$25,000
All Cases	N = 27,301	N = 628	N = 24,531	N = 682	N = 39,484
Mean	$13,712	$12,071	$15,036	$17,879	$55,500
Median	$5,000	$4,000	$5,000	$5,000	$10,000

*Dates selected for sampling were specified by SCPS for each county included in the program. In 2006, 10 days were specified for each New York county. The same dates were specified for the Bronx and Manhattan; in Brooklyn one date differed from the other two counties. The programming for the citywide replications of the May data used the dates for the Bronx and Manhattan for 2006, and comparable dates in 2009 (Tuesday and Thursday of the first and third weeks; Monday, Wednesday, and Friday of the second and fourth weeks).

**Source: 2006 State Court Processing Statistics (SCPS); see Cohen & Kyckelhahn (2010), Table 7. The number of cases is not given so N's were estimated using the percentages of the total number of defendants (N=57,558) given in Table 6, minus 2% that were reportedly missing bail amounts.

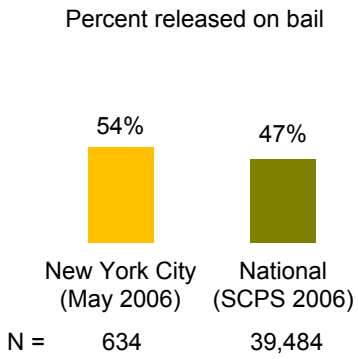
There were small differences between the New York City May samples and the annual data for both years, but in opposite directions: in 2006, amounts in May were a bit lower, and in 2009 a bit higher, than for the year as a whole (Table 2). Changes from 2006 to 2009, on the other hand, were in a consistent direction — higher — especially for the May samples. The biggest difference between the 2006 and 2009 May samples was among defendants held on bail, whose mean bail rose from $16,759 to $23,526 in that three-year time span, an increase of almost $7,000. The median for this group rose from $5,000 in 2006 to $7,500 in 2009. It is likely that amounts rose from 2006 to 2009 in other large cities across the country as well.

Figure 4
Mean And Median Bail Amount
Comparing New York City With Other Large Cities
Felony Defendants With Bail Set



We have seen that ROR is responsible for most release in New York (Table 1 and Figure 1), but lower bail amounts also play a role. New York City defendants are more likely to make bail than defendants who have bail set in other large cities, as shown in Figure 5: 54% of defendants with bail set in New York City were released pre-disposition, compared to 47% nationwide. This difference is smaller than one might expect, given the enormous disparity in bail amounts. Nearly half of New York City defendants with bail are detained to disposition in spite of the relatively small amounts of money that would be required for release.

Figure 5
Release On Bail
Comparing New York City With Other Large Cities
Felony Defendants With Bail Set



Sources: New York City: CJA
National (SCPS): Cohen & Kyckelhahn (2010), Table 6 (extrapolated).

Pretrial Misconduct

Finally, we compared rates of pretrial misconduct — failure to appear (FTA) and re-arrest — for defendants who were released pre-disposition. For these comparisons, we relied on published SCPS data for both national and New York City statistics because the datasets used in the previous tables to report New York outcomes did not include re-arrest data. Fortunately, in presenting misconduct data, SCPS reported both the aggregate results for the national sample and individual county results. Thus we were able to compare the three participating New York City counties — though not citywide totals — to other individual counties and to the national averages.

The results are presented in Table 3, which shows that 18% of defendants who were released pretrial nationwide failed to appear at least once prior to disposition of the case. Very few, only 4% of the total, remained a fugitive a year later. The FTA rates in the New York City counties were similar: 19% in Manhattan and 20% in the Bronx and Brooklyn. Fugitive rates were nearly identical to the national average at 4% in Brooklyn and 5% in the other two boroughs.

On the other hand, pretrial re-arrest rates in the three New York City counties were considerably higher than the national average. The national re-arrest rate was 18%, with 11% re-arrested on a felony charge. By comparison, re-arrest rates in the three New York counties ranged from 28% (Brooklyn) to 33% (the Bronx). The difference was mostly accounted for by re-arrests for misdemeanor and lower level offenses, as felony re-arrest rates in New York (11% to 15%) did not differ much from the 11% national rate.

Table 3
Pretrial Misconduct
Comparing Three New York City Counties With Other Large Cities
Felony Defendants Released Pre-Disposition, May 2006

	New York City*			75 Largest Urban Counties**
	Bronx (Bronx County) N = 284	Brooklyn (Kings County) N = 390	Manhattan (New York County) N = 306	N = 33,279
Failed to appear	20%	20%	19%	18%
Remained a fugitive***	5%	4%	5%	4%
Re-arrested	33%	28%	29%	18%
Re-arrest for a felony	13%	15%	11%	11%

*Source: 2006 State Court Processing Statistics (SCPS); see Cohen & Kyckelhahn (2010), Appendix Table 20. The number of released defendants in each borough is not given in Appendix Table 20; these numbers were taken from CJA's copy of the data file that was sent to SCPS.

**Source: 2006 State Court Processing Statistics (SCPS); see Cohen & Kyckelhahn (2010), Table 9. The three New York City counties are included among the 75 SCPS counties.

***All defendants who failed to return to court within one year were counted as fugitives.

What should we make of these differences in release and misconduct rates? More generous release practices in New York do not seem to be associated with substantially higher FTA rates, but what about re-arrest? If there is a connection between high release rates and likelihood of re-arrest or FTA, then we would expect to find that the SCPS counties with the highest release rates are also the ones with the highest rates of both types of misconduct.

In order to investigate this possibility, we examined FTA and re-arrest rates among the four counties outside New York with release rates over 70% (Table 4) and compared them to the five counties with release rates below 50% (Table 5).

The results show that all seven of the high-release counties (including the three New York counties shown in Table 3) had FTA rates *near or below* the national average of 18%, as did one of the low-release counties — Harris (TX), at 7%. In fact, the lowest FTA rate in the national sample (1%) was reported for a county with a 71% release rate (Hartford, CT). Moreover, three of the five low-release counties had *higher* than average FTA rates. For example, Orange County (CA) had one of the lowest release rates (32%) along with the highest FTA rate in the country (39%).

The same point can be made about re-arrest. It turned out that the New York counties were the only ones among the high-release counties with re-arrest rates above the national average. The other high-release counties had some of the lowest re-arrest rates in the nation: Saint Louis (MO), 4%; Hartford (CT), 6%; and Broward (FL), 11%. The highest re-arrest rate, 37%, was found for Dallas (TX), where only 45% of defendants were released pretrial. Together, these data constitute convincing evidence that there is no relationship between the release rate in a jurisdiction and the likelihood of either type of pretrial misconduct.

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Table 4
Pretrial Release And Misconduct
Four SCPS Counties Outside New York City With Release Rate Above 70%
Felony Defendants Released Pre-Disposition, May 2006

	Hartford (CT)	Broward (FL)	Baltimore (MD)	Saint Louis (MO)
Released	71%	76%	72%	73%
Non-financial	34%	12%	26%	19%
Financial	37%	64%	46%	55%
Failed to appear	1%	19%	15%	18%
Remained a fugitive***	–	3%	3%	6%
Re-arrested	6%	11%	15%	4%
Re-arrest for a felony	2%	8%	7%	4%

*Source: 2006 State Court Processing Statistics (SCPS); see Cohen & Kyckelhahn (2010), Appendix Table 19 (release) and Appendix Table 20 (misconduct).

Table 5
Pretrial Release And Misconduct
Five SCPS Counties With Release Rate Under 50%
Felony Defendants Released Pre-Disposition, May 2006

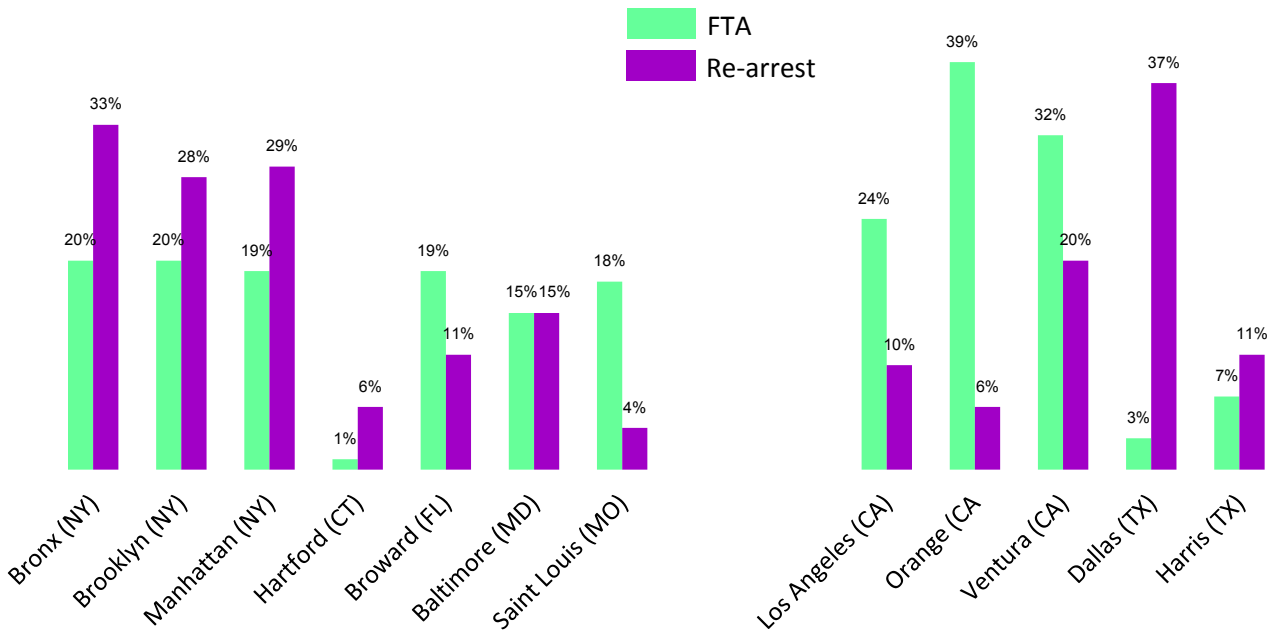
	Los Angeles (CA)	Orange (CA)	Ventura (CA)	Dallas (TX)	Harris (TX)
Released	31%	32%	41%	45%	37%
Non-financial	11%	11%	10%	14%	–
Financial	19%	20%	31%	31%	36%
Failed to appear	24%	39%	32%	3%	7%
Remained a fugitive***	7%	4%	1%	1%	1%
Re-arrested	10%	6%	20%	37%	11%
Re-arrest for a felony	6%	5%	10%	29%	6%

*Source: 2006 State Court Processing Statistics (SCPS); see Cohen & Kyckelhahn (2010), Appendix Table 19 (release) and Appendix Table 20 (misconduct).

Data from Tables 3, 4, and 5 are combined in Figure 6 to illustrate visually the conclusion that New York City's high release rate cannot be held responsible for higher than average re-arrest rates — and that release rates are not associated with pretrial misconduct in general.

Re-arrest rates were higher in New York counties than on average nationally, but this was not true of other counties with the highest release rates, as shown in Figure 6. Re-arrest rates followed no consistent pattern in relation to release rates. However, it is interesting to note that the lowest FTA and re-arrest rates (1% FTA and 4% re-arrest) were in counties with the highest release rates, whereas the highest rates of both kinds of misconduct (39% FTA and 37% re-arrest) were in counties with the lowest release rates.

Figure 6
Pretrial FTA And Re-Arrest
Separately For SCPS Counties With Highest And Lowest Release Rates
Felony Defendants Released Pre-Disposition, May 2006



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IV. DESCRIPTION OF NEW YORK CITY'S BAIL SYSTEM

A. Overview

Most arrests in New York City are followed by detention, first at the station house in the precinct where the arrest took place, then in a holding cell near the court room in which the defendant will be arraigned within a day or two of the arrest. The exception to this routine occurs when the defendant is issued a Desk Appearance Ticket (DAT), which is a written notice to appear in the Criminal Court for arraignment at a later date. DATs may be issued for any nonfelony and some nonviolent class E felony arrest charges, with some additional restrictions imposed by the New York City Police Department. Defendants who are issued a DAT are released awaiting arraignment, which is scheduled for a date weeks or months in advance.

Regardless of the type of arrest, the arraignment in Criminal Court is the defendant's first appearance before a judge. At that time the defendant is informed of the charges and — unless the charges are dismissed or the defendant enters a guilty plea[20] — he or she is released on recognizance, denied bail, or bail is set. Bail may not be denied for a misdemeanor or lesser offense and, as explained in the previous chapter, bail may not be denied for public safety reasons in any case. Otherwise the judge has complete discretion in making the pretrial release decision (CPL §530.20). The factors that enter into this important decision constitute one of the research topics addressed later in this report.

In one borough — Queens — CJA operates a supervised release program for nonviolent felony defendants who do not present a high risk of FTA and are likely to have bail set (see previous chapter, footnote 19). Participation in Queens Supervised Release (QSR) is dependent on the agreement of the defendant and defense attorney, and entails an assessment to identify alcohol, drug, and mental health needs. If appropriate, participants are referred to a service agency or provided with in-house services. All participants are required to meet with a case manager twice a week and to call in once a week. A status letter is submitted to the court at each appearance, and if a defendant misses a scheduled date, the program tries to bring about a quick return to court and submits an explanation to the judge at the next appearance.

With no pretrial supervised release options available in most of the city, however, the arraignment decision is generally limited to straight ROR (with no supervision) or bail. In setting bail, New York judges may specify not only the amount of bail, but also the form in which it may be posted. Nine distinct forms of bail are authorized by the bail statute (CPL §520.10.1) but only the first two — cash and insurance company bail bond — are normally used. The other authorized forms are a secured surety bond, a secured

[20] A guilty plea may be entered at the Criminal Court arraignment for charges of misdemeanor or lesser severity. Cases prosecuted on a felony charge must be transferred to Supreme Court for adjudication.

appearance bond, a partially secured surety bond, a partially secured appearance bond, an unsecured surety bond, an unsecured appearance bond, and a credit card.[21] (The difference between a surety bond and an appearance bond is the person who executes it, or the obligor. The defendant is the obligor for an appearance bond, and someone other than the defendant is the obligor for a surety bond.)

The courts must designate two or more forms of bail, and may designate different amounts for the different forms (CPL §520.10.2 (b)).[22] A usual practice is to set a single bond amount, such as $1,000. In this example, the defendant may post a $1,000 bond or cash in the whole amount; the cash amount need not be specified if it is the same as the bond (CPL §520.15.1). Alternatively, the judge may set a lower cash amount (a cash alternative), along with the bond amount — for example, $1,000 bond and $500 cash. The defendant or his family could then post bail in the form of a $1,000 bond or $500 in cash. Whether to set a cash alternative and its amount are at the discretion of the court (CPL §520.10.2). Unless otherwise stated, analyses presented in this report use the amount of cash required for release — the cash alternative, when one was set, and the bond amount when a cash alternative was not set — in tables and figures.

B. Data Used For Descriptive Statistics

An annual dataset of 2010 arrests compiled from the CJA database was used for this chapter. CJA's database contains background and court-processing information on virtually every adult arrested in New York City. Arrest data are received from the New York City Police Department (NYPD), case-processing data from the Office of Court Administration (OCA), and out-of-court bail making data from the New York City Department of Correction (DOC). Criminal history, demographic, and community-ties data are collected by CJA interviewers.

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[21] Although payment by credit card has been authorized since 1986, there was no mechanism to allow for the use of a credit card to post bail in the court houses until March 2012, when the Office of Court Administration (OCA) inaugurated a six-month pilot program in the downtown Manhattan court to permit judges to order a credit card payment option for bail up to $2,500. Prior to this time credit cards could be used for small bail amounts in Department of Correction facilities, but only by an indirect, slow process that took at least 24 hours before the defendant was released. Since the inauguration of the pilot program, some Manhattan judges have begun specifying a credit card amount as a third bail form, along with bond and cash. When the credit card option is specified, the defendant may be released immediately upon payment to the court cashier by credit card. As of mid-July it appeared that the credit card option was being used sparingly, and the majority of credit card bails set during the four-month period were by one judge. In most instances, the amount of credit card bail was equal to the cash bail amount; it was higher or lower than the cash amount in a few cases.

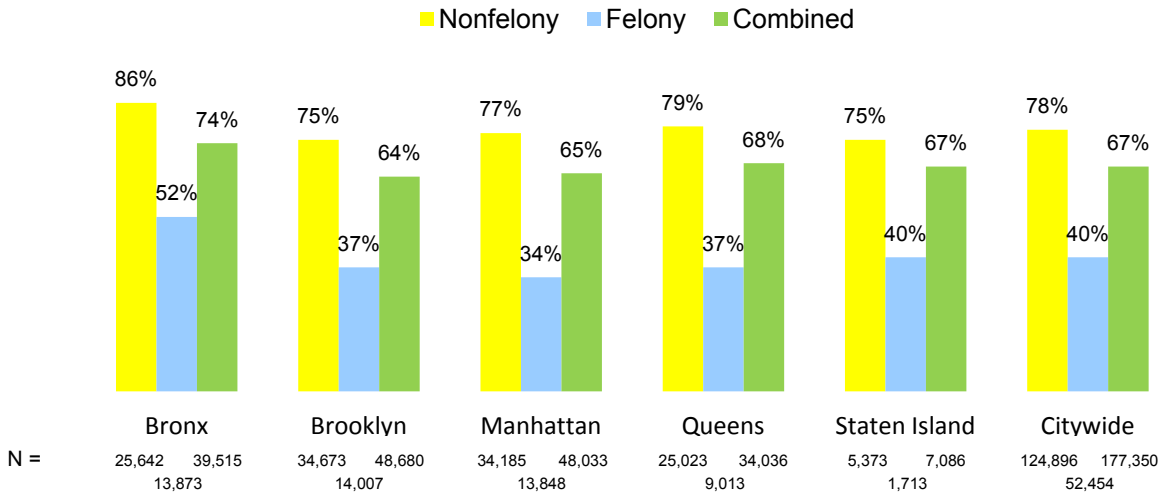
[22] The court may also designate the amount of bail without specifying any form, in which case bail may be posted as an unsecured bond (CPL §520.10.2.(a)), but in practice this is rarely if ever done.

C. Release On Recognizance (ROR)

We have already seen that in felony cases, pretrial ROR rates are far higher in New York than in many other large urban areas (Table 1, Figures 1 and 2). Now we focus on the arraignment release decision in New York, presenting data for nonfelony as well as felony cases, and separately for each of the five boroughs (counties) that comprise the City. In the data presented earlier, release at any point prior to disposition of the case was counted in calculating the release rate. In the data to follow, we are considering only the release decision at arraignment.

Figure 7 shows that within each borough and overall, ROR rates for nonfelony cases (78% overall) were consistently much higher than for felony cases (40% overall). Borough differences were not as striking as the differences by charge severity, but there was some variation by borough. The Bronx had the highest ROR rates for nonfelonies (86%), felonies (52%), and overall (74%). Brooklyn had the lowest ROR rate overall (64%), but the very lowest likelihood of ROR was found among felony cases in Manhattan (34%).

Figure 7
Percent ROR At Criminal Court Arraignment
By Borough And Charge Severity
Cases Continued At Criminal Court Arraignment
2010 Arrests



This information is presented in more detail in Table 6, including the numbers comprising each percentage. Denial of bail was rare, but when it did happen it was almost always in a felony case (4% denied bail). A defendant charged with a nonfelony offense was denied bail in only a handful of cases (fewer than 1%), usually because a psychiatric examination was ordered.

Table 6
The Arraignment ROR/Bail Decision By Borough And Charge Severity
Cases Continued At Criminal Court Arraignment
2010 Arrests*

(A) Combined Offense Severities

Arraignment Release/Bail Decision	Bronx	Brooklyn	Manhattan	Queens	Staten Island	Citywide
ROR	29,127 74%	31,115 64%	31,029 65%	23,079 68%	4,738 67%	119,088 67%
Bail Set	9,911 25%	17,139 35%	16,157 34%	10,335 30%	2,252 32%	55,794 31%
Denied Bail	477 1%	426 1%	847 2%	622 2%	96 1%	2,468 1%
Totals	39,515 100%	48,680 100%	48,033 100%	34,036 100%	7,086 100%	177,350 100%

(B) Misdemeanor And Lesser Offenses

Arraignment Release/Bail Decision	Bronx	Brooklyn	Manhattan	Queens	Staten Island	Citywide
ROR	21,971 86%	25,871 75%	26,295 77%	19,736 79%	4,050 75%	97,923 78%
Bail Set	3,648 14%	8,724 25%	7,779 23%	5,239 21%	1,316 24%	26,706 21%
Denied Bail	23 <1%	78 <1%	111 <1%	48 <1%	7 <1%	267 <1%
Totals	25,642 100%	34,673 100%	34,185 100%	25,023 100%	5,373 100%	124,896 100%

(C) Felony Offenses

Arraignment Release/Bail Decision	Bronx	Brooklyn	Manhattan	Queens	Staten Island	Citywide
ROR	7,156 52%	5,244 37%	4,734 34%	3,343 37%	688 40%	21,165 40%
Bail Set	6,263 45%	8,415 60%	8,378 61%	5,096 57%	936 55%	29,088 55%
Denied Bail	454 3%	348 2%	736 5%	574 6%	89 5%	2,201 4%
Totals	13,873 100%	14,007 100%	13,848 100%	9,013 100%	1,713 100%	52,454 100%

Cell percentages may not total 100% because of rounding.

*Results differ slightly from Exhibit 6 in the 2010 Annual Report for two reasons: (1) cases with unknown charge severity at arraignment are excluded here, but were included in the Annual Report's Exhibit 6; and (2) cases with a warrant ordered at arraignment (for defendants issued a Desk Appearance Ticket at arrest) were excluded from the Annual Report's Exhibit 6, but are included here, taking the release decision from the appearance when the defendant returned to court and was finally arraigned.

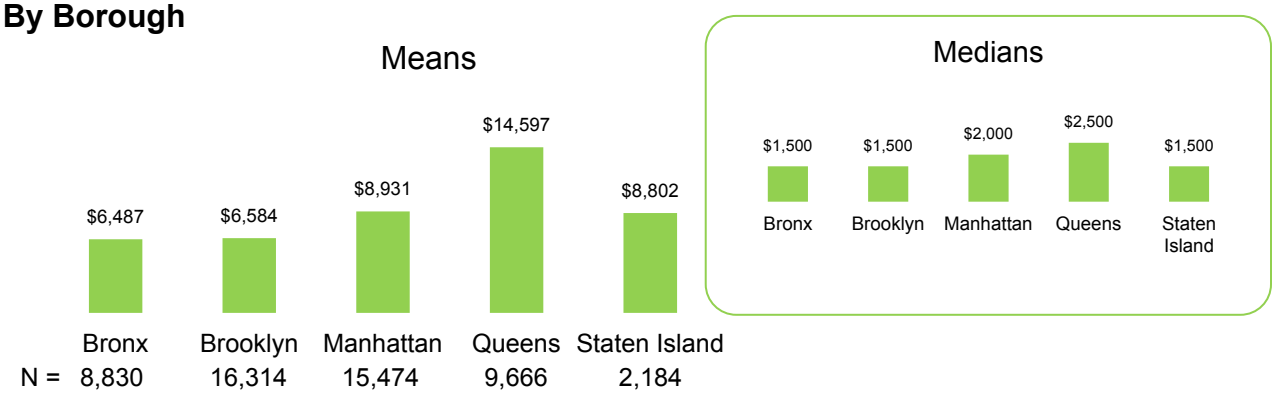
D. Bail Amounts

The borough of prosecution also affected the bail amount, as shown in Figure 8. Queens had by far the highest average (mean) bail amount for combined severities ($14,597), more than double the averages in the Bronx and Brooklyn (under $7,000 in each). Means may be skewed by only a few extremely high amounts, so a better measure is often the median (the amount above and below which there is an equal number of cases). On this measure, too, Queens had the highest bail: median $2,500, compared to $1,500 in the Bronx, Brooklyn, and Staten Island.

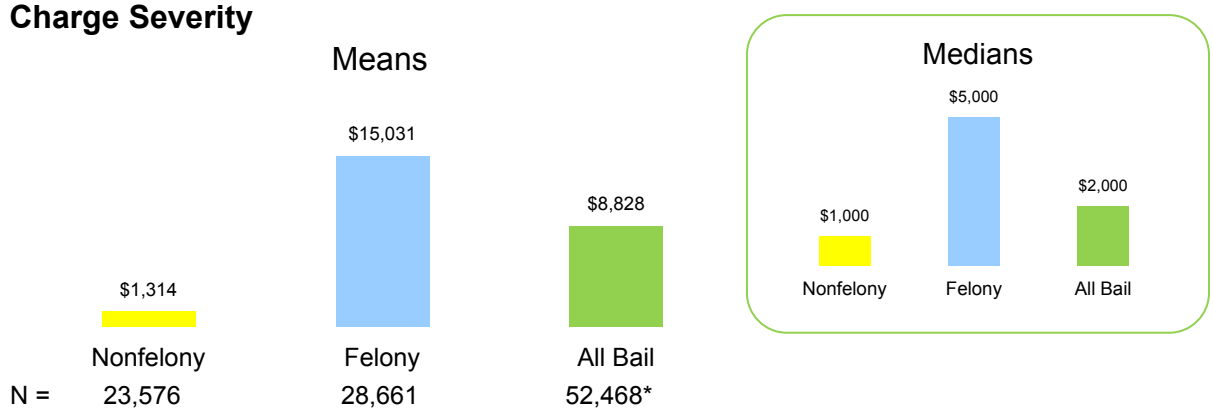
The severity level of the arraignment charge made even more of a difference than did the borough. Mean bail amounts were over 10 times higher for felony cases ($15,031) than for misdemeanor and lesser severity offenses ($1,314). Moreover, the median for felony cases ($5,000) was five times the median for nonfelony cases ($1,000).

Figure 8
Mean And Median Bail Amounts
By Borough And Charge Severity
Cases Continued At Criminal Court Arraignment With Bail Set
2010 Arrests (excluding $1 bail)

By Borough



By Charge Severity



*includes cases with unknown severity

The distribution of bail amounts is shown in Figure 9, separately for nonfelony and felony cases, and for all bail cases combined. The number of bail cases included in Figure 9 (55,213) is larger than the number included in Figure 8 (52,468) because of the addition of 2,745 cases with bail set at $1. One dollar bail usually indicates that larger bail was set — or remand without bail was ordered — on another case. Because the defendant is not able to obtain release by posting $1 (at least until disposition of the other matter), it is not included in averages and medians. However, $1 bail is reported in the distributions in Figure 9 in order to show its prevalence. Bail was set at $1 in 5% of all bail cases, much more often in nonfelony (9%) than in felony (1%) cases.

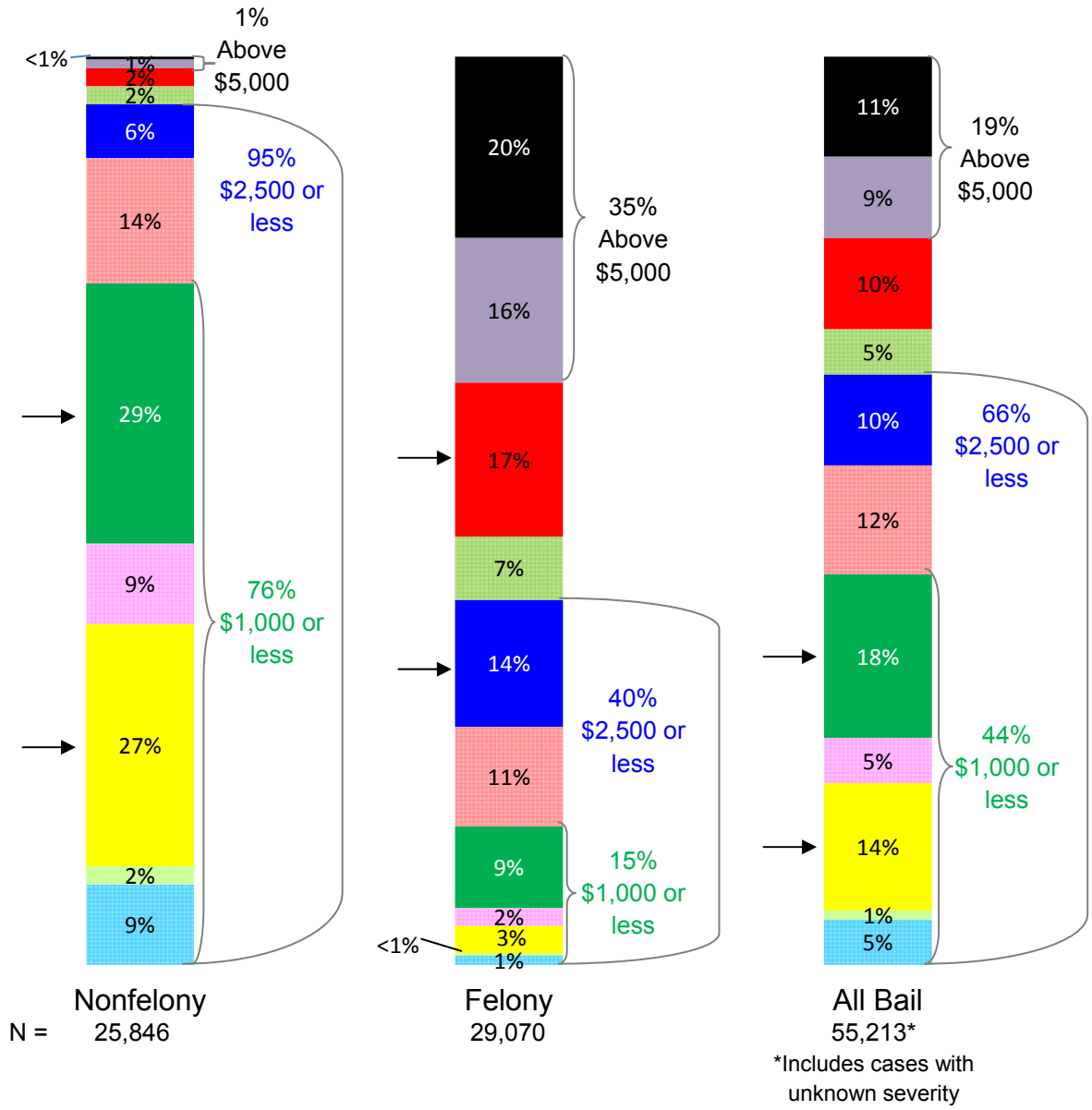
Of all bail cases, 44% had bail set at $1,000 or less, and two thirds had bail of $2,500 or less. Bail was rarely set over $10,000 — in only 11% of all bail cases.

Arrows are used in Figure 9 to point to the most frequently set amounts. For all cases, $1,000 was set most often (18%), followed by $500 (14%). It may come as a surprise that nearly a third of all bail set in New York City was in one of those two amounts.

Nonfelony and felony cases showed a stark contrast in the distribution of bail amounts. Among nonfelony cases, 76% of bail amounts were $1,000 or less, compared to 15% among felony cases. At the high end of the scale, bail above $5,000 was found for 35% of felony cases, compared to 1% of nonfelony cases. The amounts most commonly set for all bail cases, $500 and $1,000, accounted for over half of nonfelony bail amounts (27% at $500 and 29% at $1,000) but very few felony bail amounts (3% and 9%). Felony bail was most typically $5,000 (17%), followed by $2,500 (14%).

More detailed bail data are provided in Appendix B. The table in this appendix presents distributions of 13 bail amount categories by borough controlling for charge severity, and includes other statistics as well (means, medians, minimums, and maximums). Borough differences among nonfelony cases were similar to the overall pattern of borough differences, but not as pronounced. Among felony cases, Queens stood out with a very high mean ($26,692) and median ($10,000), as well as an unusually large proportion of cases with bail over $10,000 (38%, nearly twice the citywide proportion of 20% for felony cases). Queens felony bail is so high, in fact, that it approaches the levels reported by SCPS for large urban counties nationwide (Table 2 and Figure 4, previous chapter). The median felony bail amount for Queens was the same as the 2006 national median of $10,000 (although the national mean of $55,500 was double that of felony bail in Queens). Of course, bail amounts in other large urban counties may have risen since 2006 to a median amount above $10,000, so even in Queens, bail probably remains lower than elsewhere in the country.

Figure 9
Distribution Of Bail Amounts
By Charge Severity
Cases Continued At Criminal Court Arraignment With Bail Set
2010 Arrests (excluding $1 bail)

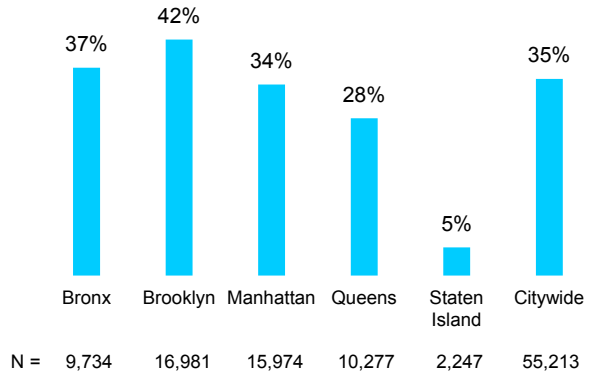


Categories may not total 100% and bracketed percentages may not equal the sum of included categories because of rounding.

E. Cash Alternatives

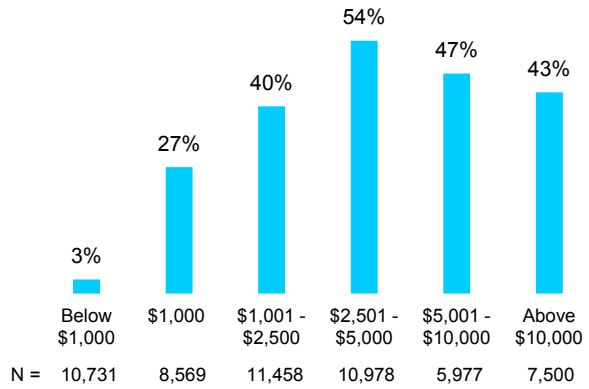
Bail amounts reported in the preceding pages reflect the amount of the cash alternative, when one was set — but cash alternatives are not the norm. In 2010, judges set a cash alternative in only about a third of all bail cases (Figure 10). A cash alternative was most likely to be set in Brooklyn (42%), and least likely in Staten Island (5%).

Figure 10
Percent With Cash Alternative
By Borough
Cases With Bail Set
2010 Arrests



The amount of bail is a major factor in whether a cash alternative is set, as shown in Figure 11. Judges do not usually specify a cash alternative for bail under $1,000. In 2010, only 3% of cases with bail this low had a cash alternative. At higher bail amounts, cash alternatives were more prevalent. Just over half of bail amounts in the range between $2,500 and $5,000 had a cash alternative, but the proportion did not rise with further increases in bail, and in fact declined somewhat in the highest bail ranges.

Figure 11
Percent With Cash Alternative
By Bond Amount
Cases With Bail Set
2010 Arrests



When a cash discount is set, it can be any proportion of the bond amount. The most common practice is to set cash alternatives at half of the bond amount, but the discounts in 2010 reduced the amount of the bond by anywhere between 10% and 90%. Citywide, a discount of exactly 50% was specified for 64% of the cash alternatives (Figure 12). A discount of less than 50% was specified in almost a quarter (22%), and a discount larger than 50% was specified in a very small proportion (14%) of the cash alternatives.

In a later chapter, we consider the implications of the size of the discount for matching the cash outlay that would be needed up front to post a bond. As will be seen, even a 50% discount is rarely large enough to compete effectively with bondsmen.

The size of cash discounts in Manhattan followed a markedly different pattern from other boroughs. Fifty percent discounts were the rule elsewhere, but in Manhattan, only a third of cash alternatives had a 50% discount, and far more had a smaller discount (49%). Discounts larger than 50% were found most often in the Bronx (22%) and least often in Brooklyn (8%).

Thirty years ago, cash alternatives were used more often and discounts were larger. Figure 13 shows that in 1980, a cash alternative was set in 45% of bail cases, and over half of the discounts were large (over 50%). By 2005, a cash alternative was specified in only 23% of bail cases, and fewer than a third of them represented large discounts. In 2009 and 2010, the use of cash alternatives had bounced back to over a third of bail cases, but discounts were far less likely to be over 50%.

Figure 12
Size Of Cash Discount By Borough
Cases With Cash Alternatives
2010 Arrests

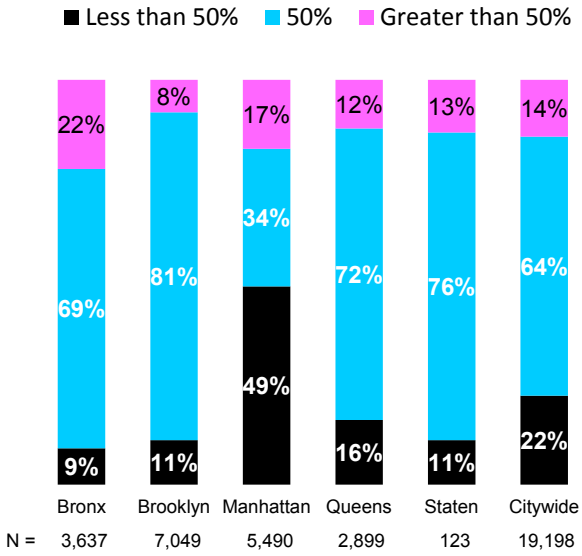
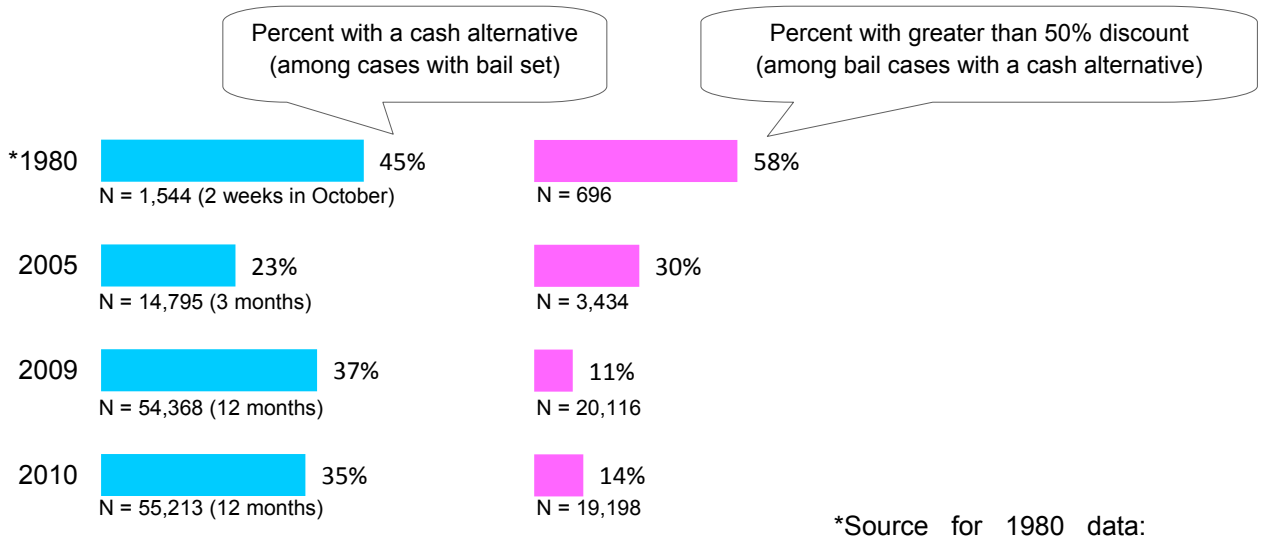


Figure 13
Cash Discounts Over Time: Comparing 1980*, 2005, 2009, 2010



*Source for 1980 data: Sviridoff 1986.

F. Bail Making At Arraignment

Very few defendants make bail at arraignment in New York City. For years, the percent with a defendant able to make bail at arraignment has remained persistently in the range of 10% to 12%. Figure 14 shows that the defendant made bail at arraignment in 12% of cases with bail set in 2010. Only in Staten Island was the rate substantially higher (24%).

The line graph shows that even at the lowest bail amounts, the defendant was usually unable to make bail at arraignment. In four of the five boroughs, fewer than 30% of cases had a defendant who made bail at arraignment, and the proportion dropped as bail amounts rose. Among cases with bail above $10,000, 4% made bail at arraignment citywide (Table 7, next page).

Again the exception was Staten Island, which had a bail-making rate of 70% for bail under $500. However, this percentage was based on too few cases (10) for stable results; a change in only one or two of them would have produced a large percentage change. (Table 7 provides the numbers and percentages represented in the graph.)

Figure 14
Percent Made Bail At Arraignment By Bail Amount And Borough
Cases Continued At Criminal Court Arraignment With Bail Set
2010 Arrests (excluding $1 bail)

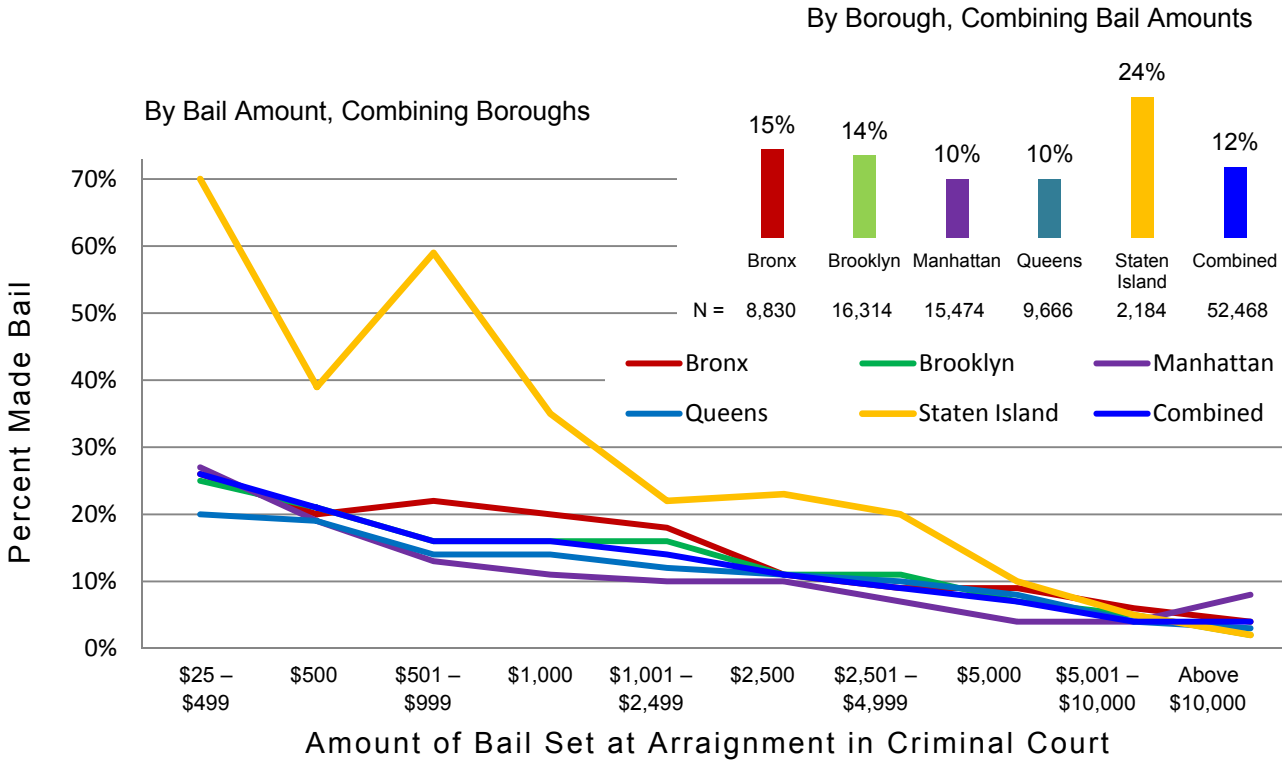


Table 7

Number And Percent Made Bail At Arraignment By Bail Amount And Borough

Cases Continued At Criminal Court Arraignment With Bail Set

2010 Arrests (excluding $1 bail)

Bail Amount	Bronx	Brooklyn	Manhattan	Queens	Staten Island	Combined Boroughs
$25 – $499	49 (26%) N = 188	57 (25%) N = 229	55 (27%) N = 201	22 (20%) N = 110	7 (70%) N = 10	190 (26%) N=738
$500	208 (20%) N =1,049	695 (21%) N =3,240	408 (19%) N = 2,133	206 (19%) N = 1,058	111 (39%) N = 282	1,628 (21%) N = 7,762
$501 – $999	163 (22%) N = 750	83 (16%) N = 533	155 13% N = 1,217	46 (14%) N = 320	10 (59%) N = 17	457 (16%) N = 2,837
$1,000	236 (20%) N =1,205	644 (16%) N =3,964	265 (11%) N = 2,416	240 (14%) N = 1,683	244 (35%) N = 706	1,629 (16%) N = 9,974
$1,001 – $2,499	301 (18%) N = 1,649	221 (16%) N = 1,421	230 (10%) N = 2,385	143 (12%) N = 1,190	54 (22%) N = 245	949 (14%) N = 6,890
$2,500	125 (11%) N = 1,108	251 (11%) N = 2,212	91 (10%) N = 953	94 (11%) N = 892	57 (23%) N = 250	618 (11%) N = 5,415
$2,501 – $4,999	53 (9%) N = 613	52 (11%) N = 486	83 (7%) N = 1,150	46 (10%) N = 456	16 (20%) N = 81	250 (9%) N = 2,786
$5,000	83 (9%) N = 910	132 (7%) N = 1,823	58 (4%) N = 1,569	81 (8%) N = 1,003	17 (10%) N = 177	371 (7%) N = 5,482
$5,001 – $10,000	43 (6%) N = 696	51 (5%) N = 1,101	68 (4%) N = 1,744	37 (4%) N = 997	8 (5%) N = 172	207 (4%) N = 4,710
Above $10,000	29 (4%) N = 662	28 (2%) N = 1,305	132* (8%) N = 1,706	49 (3%) N = 1,957	4 (2%) N = 244	242 (4%) N = 5,874
Combined Amounts	1,290 (15%) N = 8,830	2,214 (14%) N = 16,314	1,545 (10%) N = 15,474	964 (10%) N = 9,666	528 (24%) N = 2,184	6,541 (12%) N = 52,468**

*****Bail making data are unreliable in Manhattan for large bail amounts. Although it appears that a larger proportion made bail above $10,000 than for lower amounts, this is probably accounted for by a non-standard code transmitted to CJA by OCA that caused some cases to be categorized as having a defendant who made bail when in fact he or she was held on bail. The non-standard code has been found only for a small number of cases in Manhattan with very high bail amounts.

******The total number of cases with bail set over $1 included in the analysis (N=52,468) differs by two cases from the number reported in Exhibit 14 of the 2010 Annual Report (N=52,470) because of updates to the data.

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V. RELEASE AND BAIL DECISIONS

A. Overview

In the previous chapter we noted that the courts have a great deal of leeway in making release and bail decisions. New York Criminal Procedure Law provides scant guidance, although the bail statute does list a number of factors that should be taken into account — without, however, offering any practical guidelines as to the weight that should be given to the various items, the amount of bail appropriate in specific circumstances, or how to tailor the form of bail to the situation. Judges have almost total discretion in making these decisions.

It is obvious from data already presented that charge severity must be an important element. The courts ordered ROR almost twice as often for nonfelony as for felony cases in the most recent year for which data were available (Figure 7). When bail was set, the median amount was five times higher for felonies than for lesser offenses (Figure 8). The law states that risk of flight, not the severity of the charge, should be the basis for release and bail decisions — but it leaves room for the courts to use charge severity in assessing flight risk. We will return to this point shortly.

In the words of the bail law, "the court must consider the kind and degree of control or restriction that is necessary to secure [the defendant's] court attendance, when required" (CPL §510.30 2. [a]). The comparison with other states in the previous chapter showed that New York is nearly alone in the conspicuous absence of public safety from this description of the authorized objectives of restrictions on pretrial liberty.

The law proceeds with a list of factors that "the court must, on the basis of available information, consider and take into account" in order to secure court attendance:

(i) The defendant's character, reputation, habits and mental condition;

(ii) His employment and financial resources;

(iii) His family ties and the length of residence if any in the community;

(iv) His criminal record if any;

(v) His record of previous adjudication as a juvenile delinquent;

(vi) His previous record in responding to court appearances when required or with respect to flight to avoid criminal prosecution;

(vii) The weight of the evidence against him in the pending criminal action and any other factor indicating probability or improbability of conviction;

(viii) The sentence that may be imposed upon conviction.

In June 2012 the New York legislature passed a bill inserting into this list additional factors that the court must take into account, applicable to domestic violence cases only. The bill renumbers subparagraphs (vii) and (viii) to become (viii) and (ix) and a new subparagraph (vii) is inserted stating that in domestic violence cases (a) any prior or current violation of an order of protection and (b) the defendant's use or possession of a firearm should also be considered. These additional considerations are included with the others as factors that should enter into the court's assessment of "the kind and degree of control or restriction that is necessary to secure [the defendant's] court attendance when required;" the bill does not explicitly extend the authorized considerations to include public safety. The new law was to take effect shortly after publication of this report.

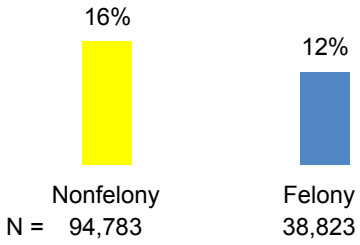
The arraignment judge does not routinely have all of this information immediately available, although some of it is collected by CJA in the pre-arraignment interview and supplied to the court (as well as to the defense and prosecution) at arraignment. The CJA interview includes information about the defendant's employment status, family ties, length of residence in the community, and selected criminal history items. Its primary value, however, lies in the recommendation itself: an objective assessment of a defendant's risk of flight (high, moderate, or low), based on a statistical analysis of community-ties and criminal-history factors. The empirical research used to develop the CJA recommendation system provides what is missing from the New York bail law: a weighting of the various factors in a way that produces the best estimate of the likelihood of failure to appear. (For a description of the CJA recommendation system, see Appendix A; for the research used in developing it, see Siddiqi 2004a, 2004b, 2005).

Despite the value of the CJA recommendation as a tool for synthesizing many factors into an overall risk assessment, some of the items that must be considered by law are unavailable to CJA and could not be taken into account by the recommendation system. These include information about the defendant's character and mental health and the likelihood of conviction. Moreover, the CJA recommendation is only one among many things — including arguments from prosecutors and defense attorneys — that are considered by arraignment judges in making release and bail decisions. As a result, judges often make decisions that go against the recommendation. Data will be presented in the next chapter showing the extent of disagreement between judges and the CJA recommendation; here we wish merely to make the point that while the recommendation may influence the release decision, other factors influence it as well. Furthermore, no recommendation is made regarding the amount of bail to set for defendants who are not released on recognizance.

Charge severity is not mentioned in the statute, either directly as a basis for release or indirectly as a factor to be considered in assessing flight risk — yet as we have seen, it seems to play an important role. Judges may regard charge severity as an indicator of the probable sentence, which *is* a statutory consideration. The rationale is that

defendants facing long prison sentences have a motivation to flee. However, this notion is not borne out by the data. The FTA rate for felony defendants (12%) was actually *lower* than for defendants charged with a misdemeanor or lesser severity offense (16%) among 2009 arrests (Figure 15).[23] The courts may be able to find statutory justification for the use of charge severity as an indicator of flight risk, but the data show that there is no empirical basis for the underlying assumption that felony defendants pose a greater flight risk.

Figure 15
FTA Rate By Charge Severity
Cases Of At-Risk Defendants
2009 Arrests



An alternate explanation for the powerful influence of charge severity in release decisions is that judges are reluctant to release felony defendants because of the danger they may present to the public. Although bail is not intended to address public safety concerns in New York, there is widespread acknowledgement that judges do in fact consider danger to the community in deciding when to set bail rather than release a defendant. No judge wants to be responsible for releasing a violent criminal who then commits further atrocities while on pretrial release. When faced with a defendant who appears too dangerous to release while awaiting trial, New York judges have little recourse but to set high bail in the expectation that it will be unmet. Thus it would not be surprising to find that bail decisions are not always based on the factors outlined in CPL §510.30 or on risk of flight as assessed by CJA.

New York judges are not required to explain their release and bail decisions, so there is no public record of the reasons for high bail, or for bail rather than ROR, in any specific case. Long ago, John Goldkamp and Michael Gottfredson advocated for more transparency regarding these decisions. In the absence of explicit and visible criteria, they wrote, "it is impossible not only to make sense of decisions in individual cases, but it is equally impossible knowledgeably to conduct the critical policy debates that should surround such crucial decision points in criminal justice" (Goldkamp and Gottfredson 1979, p. 235). The issue is as pressing today as it was when those words were written.

The most direct route to finding out why judges do what they do might seem obvious: just *ask* them. In fact, we did hope to include systematic interviews with judges along with other more objective measures for this research. However, the interviews had to be abandoned because of the sensitivity surrounding the possible use of bail for

[23] Corresponding FTA rates for 2010 arrests were nearly identical: 16% for nonfelony and 11% for felony cases. Both datasets were tracked to June 30, 2011. The 2009 data are presented in Figure 9 because the cases were tracked for a year longer than the 2010 cases, allowing more cases to reach disposition (felony cases often take more than a year). Research using multivariate statistical analysis has also found an inverse relationship between charge severity and pretrial misconduct (FTA or re-arrest), controlling for a wide range of other factors (Siddiqi 2009b).

purposes not authorized by the statute. In early 2002 we met with a group of New York City administrative judges and provided them with strong assurances of confidentiality, but they declined to lend their support to the project. Although it would have been illuminating to hear judges explain their reasoning in specific decisions, and to discuss how they approach release and bail decisions in general, having this information would probably not have changed our most important conclusions, which are based on objective factors and statistical analyses.

B. Data Used In The Research

A sample of arrests between September 2002 and March 2003 was compiled using data collected from courtroom observations of arraignments, which were then merged with case and defendant data from the CJA database.

In the first phase of this research, a pilot study was initiated in 2001 to assess the feasibility of collecting observation data (Phillips 2002). Project staff observed 875 arraignments of cases that were continued at arraignment in Manhattan between August 2001 and March 2002. The observers recorded statements made by the defense attorney, prosecutor, and judge, along with other information not available in the CJA database. Results from the pilot study were used to develop a coding sheet that was used for arraignment observations in the full study that commenced later in 2002. The pilot project also demonstrated the difficulty of hearing well enough to make accurate observations from the audience section of the courtroom, leading us to request a seat at the bench when we began collecting data for the full study.

The data used in the full study were collected through observations of 999 arraignments in Brooklyn and 1,000 in Manhattan between September 2002 and March 2003 (Phillips and Revere, 2004a, 2004b; Phillips 2004a, 2004b). Our request to sit at the bench was usually granted (more often in Brooklyn than in Manhattan), or the observer was allowed to sit in the well of the courtroom where hearing was nearly as good. The observer coded the prosecutor's bail request (consent to ROR, bail in a specific amount, or remand without bail) and checked off any arguments made to justify it. The defense attorney's response — usually a request for ROR or lower bail, or for a favorable disposition such as dismissal — was also entered on the coding sheet along with any supporting arguments. All together, 33 distinct arguments made by prosecutors and 44 by defense attorneys were coded. The identity of the judge, the presence of an interpreter, the defendant's demeanor, and statements made by the judge or court officer (such as mentioning a defendant's prior warrant) were also recorded.

Because of missing data, the number of cases available for analyses was somewhat smaller than the total of 1,999 cases; it varied depending on the variables used in any particular analysis.

C. Factors Influencing Judicial Decision Making

Conclusions were restricted to Brooklyn and Manhattan, because observation data were collected only from those two boroughs.

Considerations affecting the ROR decision were found to differ in some respects from the considerations that entered into setting a bail amount. Criminal history and community ties (including the CJA recommendation) were important for ROR but — once the decision to set bail was made — they had no impact on the amount.

On the other hand, the prosecutor's bail request dominated both aspects of the arraignment decision, especially the amount of bail set. There was a powerful statistical association between prosecutors' bail requests and judges' decisions, even after controlling for the effects of all the other variables associated with either aspect of the decision. The prosecutor's bail request was the most important of many predictors of ROR, and was nearly the only predictor of bail amount. Defense attorneys had very little impact on either decision.

The research also confirmed the importance of charge severity for release and bail decisions, primarily by demonstrating a strong indirect effect through prosecutors' bail requests. The amount of bail requested by prosecutors was heavily determined by charge severity, and this was also a crucial factor in their consent to ROR. The overlap between charge severity and the prosecutor's bail request was so great that charge severity by itself was no longer a significant predictor in most models of ROR or bail amount, once the prosecutor's bail request was taken into account. However, the two were not synonymous: the prosecutor's bail request was a far better predictor of both ROR and bail amount than was charge severity.

The CJA recommendation was expected to have some influence on whether a defendant was released or not, and it did in both boroughs. Prosecutors' bail requests were unrelated to the CJA recommendation, so the effect of the recommendation remained statistically significant and moderately strong whether or not the prosecutor's request was also taken into account. The recommendation had no effect on bail amount, which was to be expected because CJA does not recommend an amount.

Another important finding was that it made a difference who the judge was. Some judges were far more likely than others to reject ROR or to set high bail, regardless of the particulars of the case or the prosecutor's bail request. There were a few judges in each borough whose decisions diverged sharply from the average for similar cases. However, an effort to categorize judges as "lenient" or "strict" overall was largely unsuccessful because they exhibited different tendencies depending on the severity level of the charge, or depending on which aspect of the decision was at stake. In spite of this, one Brooklyn judge stood out for being consistently lenient in granting ROR and

in setting low bail in both nonfelony and felony cases, and two Manhattan judges were almost as consistently strict (on three out of the four dimensions).

The data upon which we based these findings are presented in Figures 16 through 20 and Tables 8 and 9.

- ***Relationships between the prosecutor's bail request and release decisions***

Figure 16 shows that when the prosecutor consented to ROR, the judge nearly always granted it (97% of the time in Brooklyn and 100% in Manhattan) — and Figure 17 shows that in the four Brooklyn cases in which bail was set instead, the amount was very low (median $500). With each increase in the amount of bail requested by the prosecutor, the ROR rate declined and the median bail amount rose. These bivariate figures indicate that judges did not often set bail as high as the prosecutor would have liked (especially when the request was high), and fairly frequently ordered ROR instead (especially when the request was low). However, the relationship between the two was strong: the higher the prosecutor's bail request, the higher the bail amount set, and the less likely was ROR.

Results were similar for the two boroughs in the study. A small difference was that ROR was a little more likely in Manhattan than in Brooklyn at each level of the prosecutor's bail request under $10,000.

Figure 16
ROR Rate By Prosecutor's Bail Request
Cases Observed In Brooklyn And Manhattan
September 2002 – March 2003

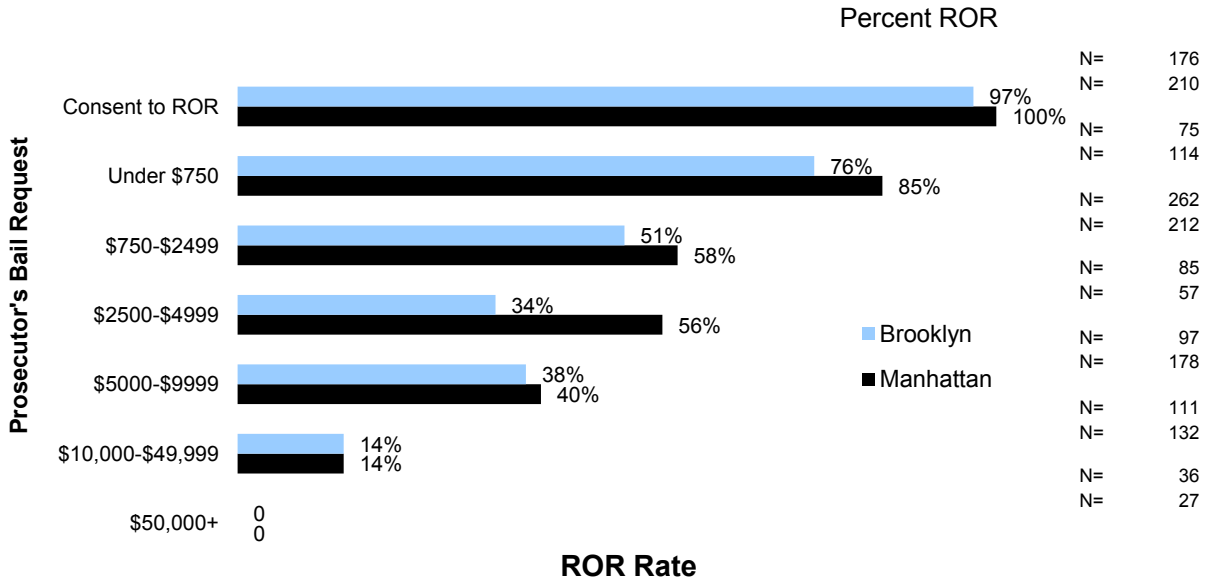
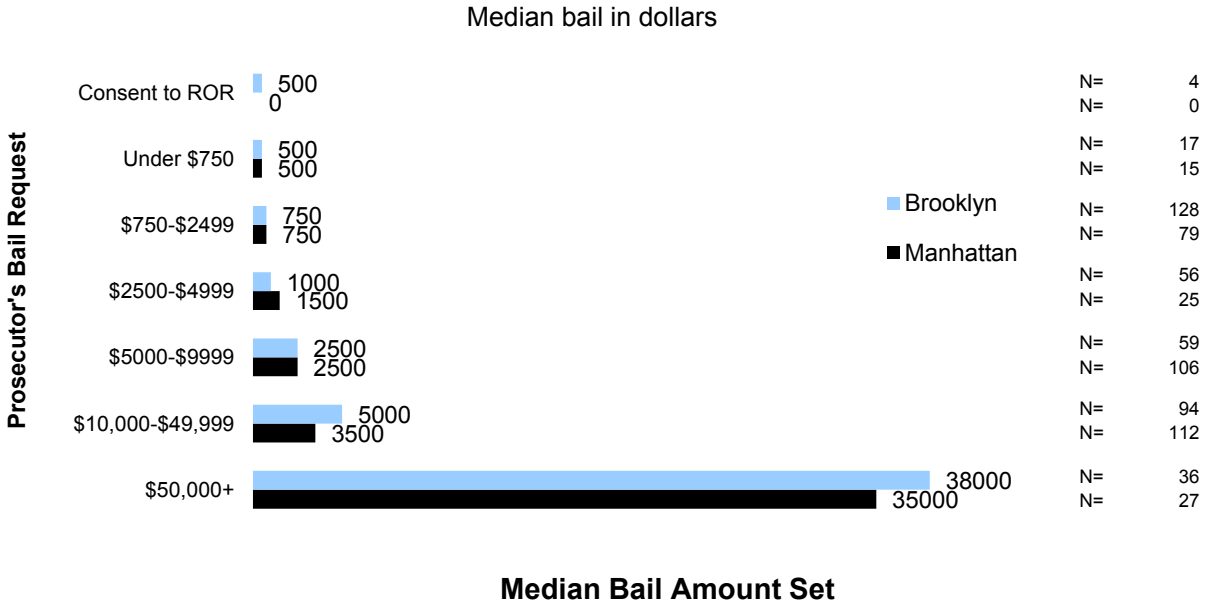


Figure 17
Median Bail Amount By Prosecutor's Bail Request
Cases Observed In Brooklyn And Manhattan
September 2002 – March 2003



- ***Judicial variability in release decisions***

ROR rates and bail amounts were examined separately for each of the 15 Brooklyn judges and the 17 Manhattan judges represented in the sample. The results were further broken down by severity level. This three-way crosstabulation resulted in very few cases in some cells, for which results are likely to be unreliable; percentages based on fewer than 10 cases should be treated with caution. A judge who had only one case in the sample was omitted from the analyses altogether (B13). Despite that caveat, we can conclude from the data in Figure 18 that there was a wide variation in ROR rates within each severity level among judges.

Figure 19 (next page) shows that there was also wide variation in bail amounts set by individual judges, especially among felony cases.

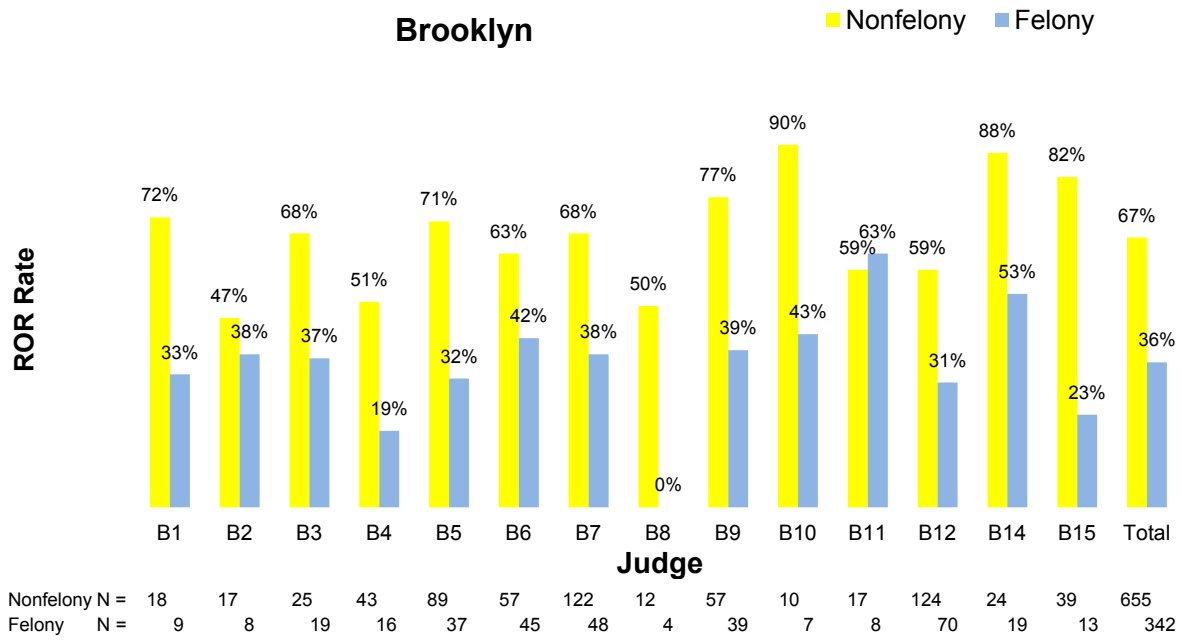
ROR, Nonfelony: In Brooklyn, the average ROR rate for all 655 nonfelony cases was 67%. In comparison, Judge B10 ordered ROR 90% of the time in nonfelony cases, whereas Judge B2 released only 47%. In Manhattan, the average ROR rate for all 511 nonfelony cases was 77%, with judges' individual rates ranging from 100% (M1) down to 61% (M13). Two Manhattan judges had even lower ROR rates for nonfelony cases, but they were based on fewer than 10 cases.

ROR, Felony: For felony cases, the average ROR rate was 36% in Brooklyn, with a range from 53% (B14) down to 19% (B4). The comparable ROR rates for felony cases in Manhattan were 42% overall, ranging from 54% (M12) to 21% (M11). Again, percentages based on fewer than 10 cases were ignored.

Bail Amount, Nonfelony: It was more difficult to draw conclusions about variability in bail amounts because there were fewer bail cases upon which to base the comparisons (Figure 19). In Brooklyn, the median bail amount set in 209 nonfelony cases was $1,000. The range (among judges with 10 cases or more) was from $1,500 (B6) to $750 (B4, B9). In Manhattan there was even less variability, with only three judges setting bail in as many as 10 nonfelony cases. The Manhattan median for all cases was $500; one judge exceeded that amount somewhat, with a median of $750 (M2).

Bail Amount, Felony: Median bail for all 216 felony cases in Brooklyn was $5,000. Two judges had medians of $10,000 (B6, B7). More than a third of the Brooklyn judges set bail lower than that, but only one — B3, at $3,500 — had the minimum 10 cases. In Manhattan the felony median was $3,500 overall, with a range from $10,000 (M11) to $2,000 (M8). The median bail set by Judge M15 was an extraordinary $25,000, but that figure was based on only 9 cases.

Figure 18
ROR Rate By Judge Separately For Nonfelony And Felony Cases
Cases Observed In Brooklyn And Manhattan
September 2002 – March 2003



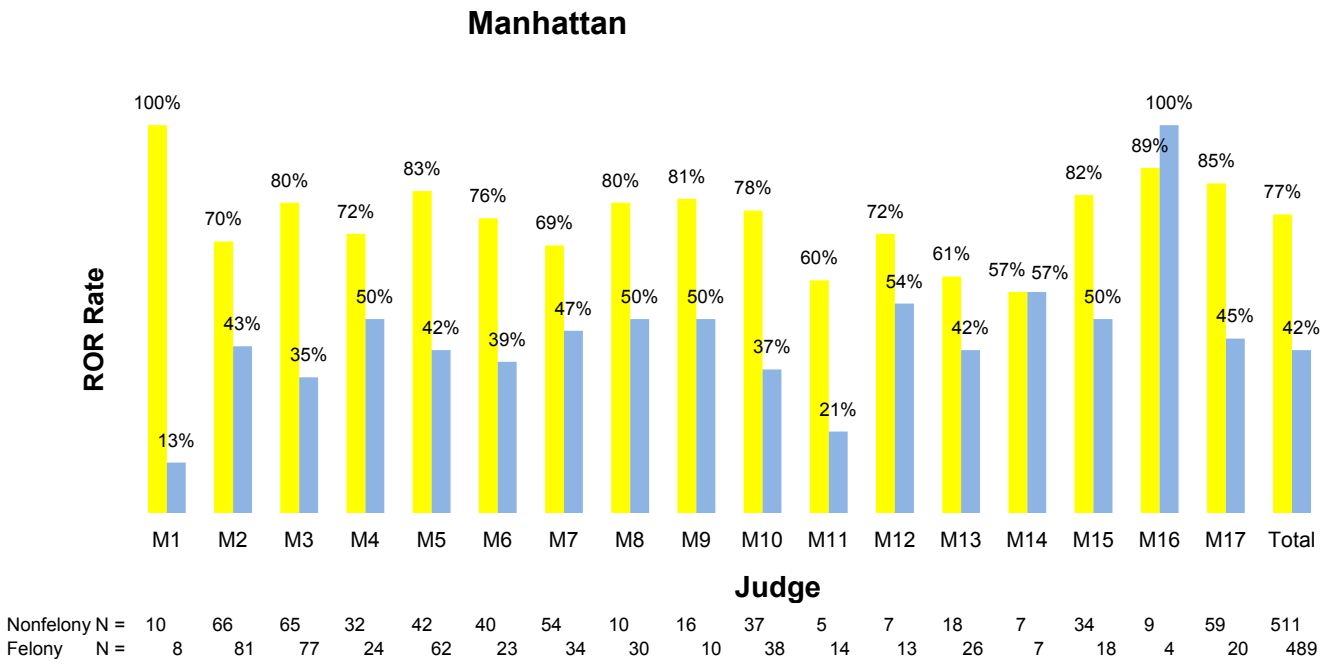
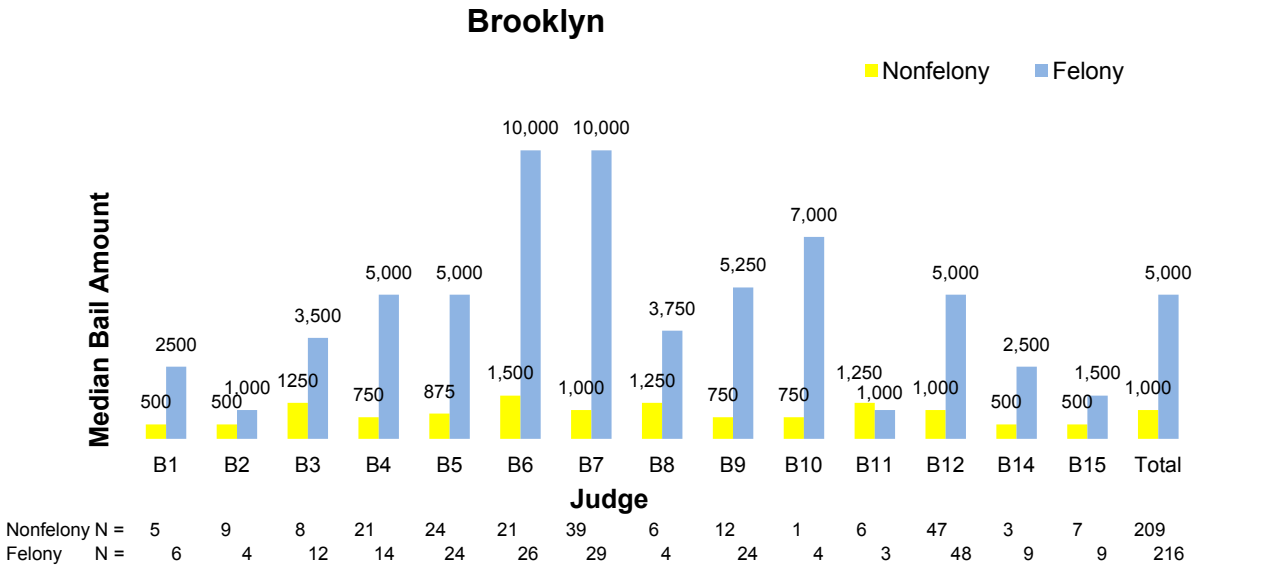


Figure 19
Median Bail Amount By Judge Separately For Nonfelony And Felony Cases
Cases Observed In Brooklyn And Manhattan
September 2002 – March 2003



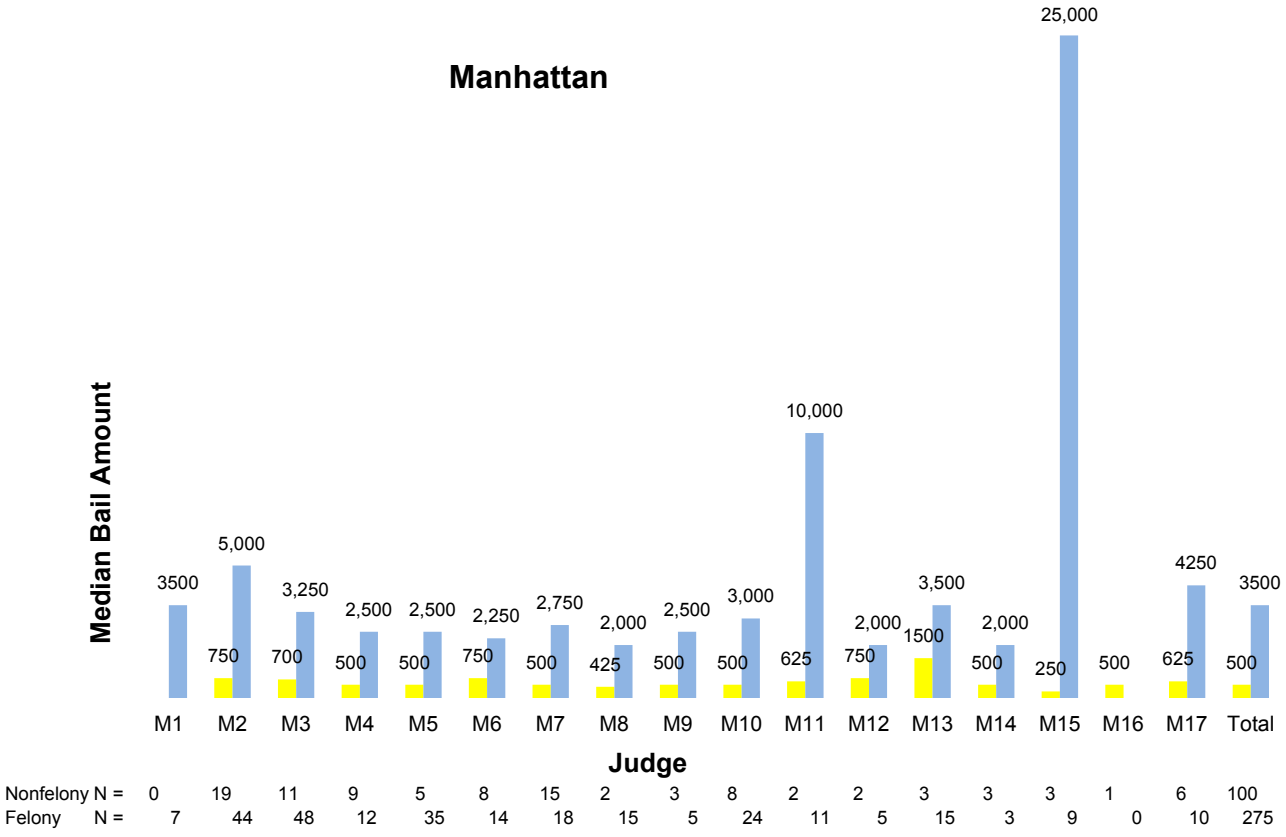
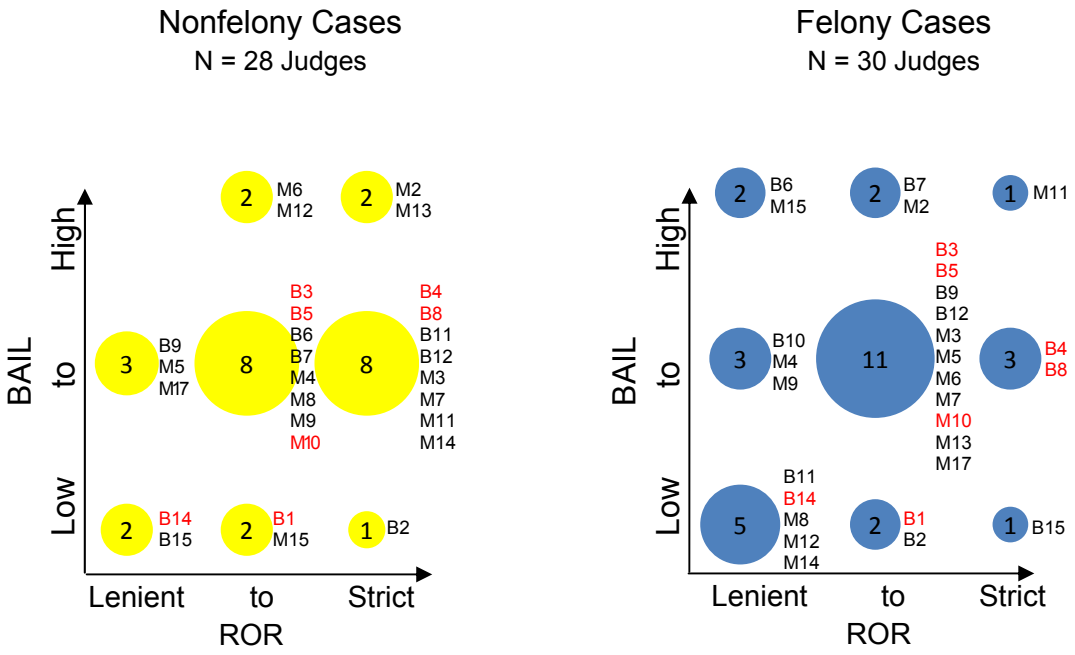


Figure 20 pulls together the information about judicial variability to show each judge's tendencies on the two dimensions of ROR and bail. "Lenient" was defined as an ROR rate more than 5 percentage points above the borough average for cases of the same severity level; "strict" was defined as more than 5 percentage points lower than average (for same borough and severity level). On the bail axis, "low" was defined as a median at least 40% lower, and "high" was defined as at least 40% higher, than the total median for the same borough/severity combination.

Two judges in nonfelony cases (five in felony cases) were lenient in ordering ROR and also set low amounts when they did set bail — but only one of them (B14) behaved the same for felony as for nonfelony cases. Consistency in taking a stern approach was equally rare: two judges in nonfelony cases (M2, M13) and one in felony cases (M11) were strict in ordering ROR *and* set high bail amounts — yet none of them behaved similarly for cases of the other severity level.

Because of the small number of cases, this figure is only suggestive, but the results are not very reassuring. Some of these judicial differences were statistically significant in multivariate analyses, controlling for a wide range of other case and defendant characteristics. This suggests that defendants in similar cases and with similar criminal records could not always expect the same treatment from different judges.

Figure 20
Judicial Variation In ROR And Bail Setting
Cases Observed In Brooklyn And Manhattan
September 2002 – March 2003



Red type indicates a judge in the same position on the grid for both nonfelony and felony cases.

- ***Multivariate models predicting likelihood of ROR***

Table 8 presents models for Brooklyn and Manhattan predicting likelihood of ROR. In both of the borough models, the prosecutor's bail request was by far the strongest predictor, as indicated by the large standardized beta (β) statistics for each borough (-.62 and -.69). The odds of ROR grew worse with each incremental rise in the prosecutor's bail request, coded from 0 (consented to ROR) to 6 (requested $50,000 or higher bail) or 7 (requested remand without bail). Odds ratios smaller than .5 in each borough (.41 and .34) indicate that the odds of ROR were reduced by more than half with each higher category of the bail request. Charge severity was not significant in these models, but only because the prosecutor's bail request was largely based on severity, as will be seen. (See Appendix C for further explanation of the statistics presented in the models.)

Criminal history factors had an additional strong impact in both boroughs, beyond whatever was subsumed in the prosecutor's bail request. Having a prior warrant, another open case, or being on parole hurt the defendant's chances of ROR (the parole variable was not significant in Brooklyn, probably because of too few defendants on parole.) Various characteristics of the instant offense also influenced the ROR decision. The only one that was significant in both boroughs was whether the case was flagged for Operation Spotlight. The Spotlight initiative targets repeat misdemeanor offenders with the goal of halting their cycle of re-offending through the use of tougher sanctions, so it was no surprise to find that a Spotlight flag significantly lowered the likelihood of ROR. Finally, one other factor — the CJA recommendation — was significant in both boroughs. The odds of ROR for recommended defendants were approximately double the odds for defendants who were not recommended.[24]

It is difficult to summarize the role played by individual judges based on a model that combines nonfelony with felony cases because a tendency to be strict or lenient was usually confined to a single severity level. In separate models developed for nonfelony and felony cases (not shown), knowing the identity of the judge significantly improved predictive power. However, the judges who were important predictors of ROR for nonfelony cases were not always the same ones who were important predictors for felony cases. In spite of this, the group of five Brooklyn judges with a tendency to be strict for nonfelony cases had a significant impact even in the combined severities model (two of them, B4 and B8, were also strict in regard to felony cases, as shown in Figure 20). Odds of ROR were halved for similarly situated defendants whose cases came before one of these judges.

[24] The research was carried out just prior to implementation of the current recommendation system on July 1, 2003. The system in effect at the time of the study relied entirely on community ties items; the new system also takes into account the defendant's history of failure to appear in prior cases and the existence of an open case at the time of arrest. The current recommendation system may have a stronger influence on the ROR decision than the old system had because the model presented in Table 7 shows that judges considered prior warrants and open cases to be important.

Table 8
Logistic Regression Models Of ROR
Cases Observed In Brooklyn And Manhattan (September 2002 – March 2003)

Independent Variables	Brooklyn N = 702		Manhattan N = 805	
	Odds Ratio	Standardized β	Odds Ratio	Standardized β
Prosecutor				
Prosecutor's bail request 0=consent to ROR; 1=under $750; 2=$750 to $2,499; 3=$2,500 to $4,999; 4=$5,000 to $9,999; 5=$10,000 to $49,999; 6=$50,000+; 7=remand	.41	–.62***	.34	–.69***
Criminal History				
Prior warrant 0=no, 1=yes	.21	–.27***	.17	–.28***
Number of open cases 0, 1, 2, 3+	.54	–.14	.65	–.13***
On parole 0=no, 1=yes	—	—	.22	–.12***
Instant Offense				
Operation Spotlight case* 0=no, 1=yes	.13	–.15**	.13	–.10*
Offense type = theft intangible** 0=no, 1=yes	—	—	3.59	.12*
Gun (prosecutor mentioned defendant's possession/use of a gun) 0=no. 1=yes	.33	–.08*	—	—
Victim was known to defendant 0=no, 1=yes	2.44	.16***	—	—
Recommendation/Interview Items				
CJA recommendation 0=no (not recommended or no recommendation) 1=yes (verified or qualified recommendation)	1.68	.08*	2.20	.14***
New York City address 0=no (verified or unverified) 1=yes (verified or unverified)	5.79	.12*	—	—
Demographics				
Female 0=no, 1=yes	2.55	.11*	—	—
White 0=no, 1=yes	—	—	4.46	.16***
Other				
Judge (B2, B4, B8, B11, B12) 0=no (not one of these judges) 1=yes (one of these judges)	.50	–.12**	—	—
Defendant was disrespectful 0=no, 1=yes	<.01	–.28	.12	–.10*
	Nagelkerke R^2 = .62		Nagelkerke R^2 = .66	

***p≤.001, **p≤.01, *p≤.05

*New York City's Operation Spotlight initiative, which targets repeat misdemeanor defendants for tougher treatment in specialized court parts, became fully operational on October 1, 2002, shortly after the start of data collection. See Solomon (2007) for program criteria and a report on the first four years of operation.

**The most common charge in this category for cases in this sample was theft of services (turnstile jumping). Other charges that are classified as "theft intangible" include offenses relating to forgery, fraud, and bribery.

See Appendix C for an explanation of the statistics presented in this table.

- ***Multivariate models predicting bail amount***

Table 9 presents models predicting the amount of bail set at arraignment, separately for Brooklyn and Manhattan. In Brooklyn, nearly three quarters of the variance in bail amounts was accounted for by the model (adjusted R^2 = .74), most of it by the prosecutor's bail request. Only one other factor had any additional impact: when Judge B6 set bail, the amount was over $16,000 higher on average than the amounts set by other judges, given similar bail requests from the prosecutor.

In Manhattan, the bail request was important, but not to the exclusion of everything else, and the model as a whole did not explain as much of the variance (adjusted R^2 = .52). More severe charges and having a VFO arrest charge were associated with higher bail (the more VFO arrest charges, the higher the bail), as was the prosecutor's mention of a gun in connection with the instant offense. In addition, with Judge M2 presiding, the average bail amount was over $6,000 higher than the average for other judges, holding constant the prosecutor's bail request and other variables in the model.

On the other hand, it appears that a defendant would be lucky to have Judge M15 at the bench, because he or she set bail lower than average by over $11,000, all else being equal. We saw in Figure 20 that Judge M15 was indeed in the low bail position on the grid for nonfelony cases, but for felony cases this judge set high bail — extraordinarily high, in fact, as shown in Figure 19 (median $25,000). The negative coefficient in the model presented in Table 9 is the result of controlling for the prosecutor's bail request. Prosecutors requested very high bail for these cases, and within each level of bail requests, the average bail set by this judge was actually *lower* than the average for similar bail requests. Knowing the prosecutors' assessment forces us to revise our interpretation of this judge's leanings: far from being a high-bail judge in felony cases, he or she actually set bail relatively low compared to other cases regarded similarly by prosecutors.

As was the case with ROR models, charge severity played a much smaller role when the prosecutor's bail request was taken into account. Charge severity was the most important predictor of bail amount in models developed without the inclusion of the prosecutor's bail request (not shown), but severity was less important for bail amount than for ROR. The models using charge severity as a predictor were not able to explain as much of the variance in the outcome as the models using the prosecutor's bail request, which indicates that prosecutors based their requests on additional factors as well.

In Brooklyn, charge severity was no longer a significant predictor of bail amount after accounting for the effect of the prosecutor's bail request. In Manhattan, charge severity in itself had an additional influence on bail amount even when the prosecutor's bail request was entered into the model.

Table 9
Ordinary Least Squares Regression Models Of Bail Amount
Cases Observed In Brooklyn And Manhattan With Bail Set At Arraignment
September 2002 – March 2003

Independent Variables	Brooklyn N = 395		Manhattan N = 369	
	Unstandardized β	Standardized β	Unstandardized β	Standardized β
Prosecutor				
Prosecutor's bail request ($1,000 increments) 0=consent to ROR	390	.86***	136	.62***
Instant Offense				
Severity of the arraignment charge 1=infraction to 10=Class A felony	—	—	1,932	.16***
Number of VFO arrest charges 0, 1, 2, 3, 4+	—	—	2,719	.09*
Gun (prosecutor mentioned defendant's possession/ use of a gun) 0=no, 1= yes	—	—	20,949	.17***
Other				
Judge B6 0=no, 1=yes	16,186	.09***	—	—
Judge M2 0=no, 1=yes	—	—	6,111	.10**
Judge M15 0=no, 1=yes	—	—	–11,678	–.09*
	Adjusted R^2 = .74		Adjusted R^2 = .52	

***p≤.001, **p≤.01, *p≤.05

The models presented in Table 9 were developed using Ordinary Least Squares regression, a procedure suitable for a continuous dependent variable, such as bail amount. The models presented in Table 8 were developed using a different procedure (logistic regression), because the dependent variable in those models was dichotomous (whether or not ROR was ordered). The two regression methods produce different statistics but with similar interpretations.

See Appendix C for an explanation of the statistics presented in this table.

D. Role Of The Prosecutor

A follow-up study, using the same dataset described in the previous section, was undertaken to answer some questions raised by our findings about the factors influencing release and bail decisions (Phillips 2005a, 2005b). As stated, the dataset consisted of 1,999 cases from Brooklyn and Manhattan with an arrest between September 2002 and March 2003, for which data from observations of arraignments were added to defendant and case-processing data from the CJA database.

The overwhelming importance of the prosecutor's bail request in influencing the judge's release decision led us to wonder what prosecutors consider in crafting their requests. From the research presented in the previous chapter, we concluded that charge severity must be an important element — but not the only one.

Multivariate models predicting prosecutors' bail requests confirmed the primacy of charge severity, along with other offense characteristics and the defendant's criminal history, in determining both consent to ROR and the amount of bail requested. Neither the CJA recommendation nor any of its community-ties components influenced the prosecutor. However, two criminal history items that have a strong association with FTA — a prior FTA and the number of open cases — were among the most important predictors of whether the prosecutor consented to ROR.

In the previous section (footnote 22) we pointed out that the current recommendation system was implemented after data collection for this research had been completed. The two criminal history items that strongly influenced prosecutors' consent to ROR were not components of the recommendation system that was in effect for cases in the study sample. They are, however, components of the current recommendation system because of their importance in predicting FTA. If the study were to be repeated today, it is likely that some association would be found between the current recommendation and the prosecutor's likelihood of consenting to ROR, because they both rely to some extent on these same two criminal history factors.

The data suggest that prosecutors in Brooklyn also adjusted their bail requests in accordance with what they thought a particular judge would agree to. Nothing comparable was found in Manhattan, where the structure of the prosecutor's office made it less likely that the same prosecutors and judges would face each other on a regular basis.

Although CJA's assessment of flight risk was ignored by prosecutors, some concern with FTA might be implied by their reliance on aspects of criminal history that predict FTA. Moreover, prosecutors have information about the strength of the case and other circumstances — not available to our statistical research — that could affect a defendant's motivation to flee. This led us to consider the possibility that the prosecutor's bail request really does provide the court with a useful assessment of flight risk (in spite of appearances to the contrary). We explored this hypothesis by testing the effective-

ness of the prosecutor's bail request in predicting the likelihood of FTA, and comparing it with the CJA recommendation. We found that the prosecutor's bail request was totally unrelated to FTA, whereas the CJA recommendation predicted FTA very well.

Instead of predicting FTA, the prosecutor's consent to ROR or request for low bail was a fair predictor (for felony cases) of likelihood that the defendant would not be convicted, or if convicted, would not be sentenced to incarceration. Requests for high bail were strongly associated with lengthy sentences, for both nonfelony and felony defendants alike. These findings are consistent with a couple of interpretations: (1) prosecutors consent to ROR or ask for low bail when they have a weak case, and they ask for higher bail when the evidence leads them to expect a conviction; or (2) prosecutors ask for (high) bail in order to detain defendants and exert pressure on them to plead guilty, resulting in an association between high bail and conviction that is independent of the strength of the case. Both interpretations are plausible, and both may play a role.

Given the different objectives of the CJA recommendation and the prosecutor's bail request, it is not surprising that they were often in disagreement. The prosecutor consented to ROR in about one fifth of cases in the study sample, compared to more than half recommended for ROR by CJA. Judges granted ROR at a rate similar to the proportion recommended by CJA, but not necessarily for the same defendants. When there was disagreement between the prosecutor and CJA, judges tended to side with the prosecutor — almost totally when CJA did not recommend ROR (and the prosecutor did), but less so when CJA recommended ROR (and the prosecutor wanted bail, by far the more common scenario). Perhaps most surprising was the finding that judges released more than a third of the defendants who were not recommended for release by either the prosecutor or CJA.

The data upon which we based these findings are presented in Tables 10 and 11 and Figures 21 through 23.

- ***Multivariate models predicting prosecutor's consent to ROR***

Table 10 shows that considerations related to the charge and the defendant's criminal history dominated prosecutors' consent to ROR in both boroughs.

Charge severity and a prior warrant were the most important considerations for prosecutors in determining whether they would consent to ROR, but the relative importance of these two factors was reversed in Brooklyn (where prior warrant was most important) compared to Manhattan (charge severity was most important). Prosecutors in both boroughs also were less likely to consent to ROR if the defendant had any open cases pending at the time of arrest.

Additionally, an offense that was violent in nature reduced the likelihood of consent to ROR. In Brooklyn, the measure was a violent felony offense (VFO) arrest charge; in Manhattan, it was the prosecutor's mention of a weapon in justification of the bail request.

Non-legal factors influencing the prosecutor's request included the presence of a particular judge (in Brooklyn) and the defendant's gender (in Manhattan). Brooklyn prosecutors were significantly more likely to consent to ROR with Judge B9 on the bench, and Manhattan prosecutors were more likely to consent to ROR when the defendant was female, given similar charge and criminal history characteristics.

Table 10
Logistic Regression Models Of Prosecutor's Consent To ROR
Cases Observed In Brooklyn And Manhattan
September 2002 – March 2003

Independent Variables	Brooklyn N = 790		Manhattan N = 857	
	Odds Ratio	Standardized β	Odds Ratio	Standardized β
Instant Offense				
Severity of the top arraignment charge 1=infraction (least severe) to 10=Class A felony (most severe)	.63	–.46***	.45	–.66***
Violent felony offense (VFO) arrest charge 0=no, 1=yes	.30	–.29***	—	—
Weapon mentioned in court 0=no, 1=yes	—	—	.06	–.29**
Criminal History				
Prior warrant 0=no, 1=yes	.13	–.62***	.19	–.35***
Number of open cases 0, 1, 2, 3+	.67	–.15*	.61	–.19**
Other				
Female 0=no, 1=yes	—	—	2.37	.14***
Judge B9 0=no, 1=yes	3.50	.21***	—	—
	Nagelkerke R^2 = .32		Nagelkerke R^2 = .40	

***p≤.001, **p≤.01, *p≤.05

See Appendix C for an explanation of the statistics presented in this table.

- ***Multivariate models predicting the amount of bail requested by the prosecutor***

Charge severity dominated prosecutors' thinking much more strongly in determining the amount of bail to request than in deciding whether to request bail at all. There were many other significant factors in the bail amount models for both boroughs, but no other single factor came close to charge severity in importance.

The dependent variable in the models presented in Table 11 divides the amount of bail requested into six categories, from 1 (under $750) to 6 ($50,000 or more). For each step up in charge severity in Brooklyn, the prosecutor's bail request rose by about half a step on the scale (.54). In Manhattan, the bail request rose by a little more than half a step (.60) for each step up in charge severity. The standardized *betas*, which are many times larger for charge severity than for any other variable in either model (.67 in Brooklyn and .71 in Manhattan), show the singular importance of this factor most clearly.

Other than charge severity, there were no variables in common in the Brooklyn and Manhattan models. However, in both boroughs the other factors that had a significant impact on how much bail prosecutors requested were mostly related to the offense, and to a lesser extent, to criminal history. An indication that prosecutors in both boroughs were tougher on defendants perceived as violent was found in the significance of a gun mentioned in court in Brooklyn and violent felony offense charges in Brooklyn and Manhattan; both were associated with requests for higher bail amounts.

Only in Brooklyn were there significant factors that were unrelated to either offense or criminal history. Two judges had a significant impact, which again suggests that prosecutors in that borough sometimes adjusted their bail requests in accordance with expectations regarding what a particular judge would accept. Controlling for all other significant case- and defendant-related factors, prosecutors asked Judge B15 for lower bail amounts and Judge B5 for higher bail amounts than when other judges were on the bench.

Female defendants had a slight advantage in terms of likelihood of ROR and lower bail, either because prosecutors treated females more leniently in their requests or — if the prosecutor did not do so — the judge did. For example, Brooklyn prosecutors did not favor females in their consent to ROR (Table 10), but the courts did (Table 8). In Manhattan, it was the other way around: prosecutors were more likely to consent to ROR when the defendant was female (Table 10), but the courts treated males and females even-handedly, given the same request from the prosecutor (Table 8). Females did not fare any better than males in either borough in terms of the amount of bail set, given the prosecutor's request (Table 10), but bail requests were lower in Brooklyn for females (Table 11).

Table 11

Ordinary Least Squares Regression Models Of Bail Amount Requested By Prosecutor

Cases Observed In Brooklyn And Manhattan

September 2002 – March 2003

Independent Variables	Brooklyn N = 632		Manhattan N = 682	
	Unstandardized β	Standardized β	Unstandardized β	Standardized β
Instant Offense				
Severity of the top arraignment charge 1=infraction to 10=Class A felony	.54	.67***	.60	.71***
Number of VFO arraignment charges 0, 1, 2+	—	—	.47	.17***
Gun mentioned in court 0=no, 1=yes	.62	.11***	—	—
Violent felony offense (VFO) arrest charge 0=no, 1=yes	.28	.09**	—	—
Number of arrest charges 1, 2, 3, 4+	—	—	.17	.11***
Misconduct (offense type of top arraignment charge) 0=no, 1=yes	—	—	–.30	–.05*
Obstructing justice (offense type of top arraignment charge) 0=no, 1=yes	—	—	.31	.05*
Criminal History				
Prior Youthful Offender adjudication 0=no, 1=yes	.26	.06*	—	—
First arrest 0=no, 1=yes	—	—	–.31	–.09**
Number of prior felony convictions	—	—	.01	.08**
Other				
Female 0=no, 1=yes	–.40	–.08**	—	—
Judge B15 0=no, 1=yes	–.75	–.11***	—	—
Judge B5 0=no, 1=yes	.27	.06*	—	—
	Adjusted R^2 = .58		Adjusted R^2 = .66	

***p≤.001, **p≤.01, *p≤.05

Dependent variable: Bail amount requested by prosecutor, 1 = $150 − $749; 2 = $750 − $2,499; 3 = $2,500 − 4,999; 4 = $5,000 − $9,999; 5 = $10,000 − $49,999; 6 = $50,000+.

See Appendix C for an explanation of the statistics presented in this table.

- ***Does the prosecutor's bail request predict FTA (as well as the CJA recommendation does)?***

A multivariate model was developed to predict FTA, testing the CJA recommendation and the prosecutor's bail request as predictors, while controlling for charge severity and the defendant's criminal history (not shown). The results demonstrated that the CJA recommendation was a strong and statistically significant predictor of FTA, whereas the prosecutor's bail request was not related to FTA at all.

Figure 21 shows that the FTA rate for the sample as a whole was 16%. The left-hand side of the figure shows that in cases with a defendant who received the most favorable CJA recommendation, the FTA rate was only 11%. It was nearly as low, 12%, among cases with a defendant who received a qualified recommendation. FTA rates were twice as high among cases with a defendant who received an unfavorable recommendation — 24% for cases with a defendant who was not recommended because of insufficient community ties.

The right-hand side of the figure shows no such pattern for the prosecutor's bail request. The FTA rate was no different for cases in which the prosecutor consented to ROR than for cases in which over $5,000 bail was requested (both 15%). Furthermore, the highest FTA rates were found among cases for which prosecutors had requested low bail, and the lowest FTA rates were found among cases for which prosecutors had requested bail in the mid-range. This strongly suggests that prosecutors did not attempt to match their bail requests with a defendant's likelihood of FTA.

However, Figure 22 presents evidence that prosecutors *did* match their bail requests to expected case outcomes. These results, too, were confirmed by multivariate analyses predicting conviction, incarceration, and sentence length, controlling for the defendant's criminal history and the severity of the arraignment charge (not shown). When the prosecutor consented to ROR, case outcomes were much more likely to be favorable than when the prosecutor asked for bail: the defendant was less likely to be convicted, and if convicted was less likely to be incarcerated, and if incarcerated was likely to receive a shorter sentence. For example, consent to ROR was associated with a 47% conviction rate and a 16% incarceration rate (for convicted defendants). By contrast, when the prosecutor asked for more than $10,000 bail, the comparable figures were 71% convicted and 86% incarcerated. Median sentence length rose from 5 to 974 days from the lowest to highest bail request category.

Prosecutors tailored their bail requests to case outcomes much more successfully for felony cases than for nonfelonies. There was no significant relationship between the bail request and conviction or incarceration among nonfelony cases alone (not shown). However, the relationship with sentence length was strong for nonfelony as well as felony cases.

Figure 21
FTA Rate By CJA Recommendation And Prosecutor's Bail Request
Cases Observed In Brooklyn And Manhattan With An At-Risk Defendant
September 2002 – March 2003

By CJA Recommendation*

Number of cases	Recommendation	FTA rate
523	Recommended	11%
472	Qualified	12%
127	Other Unfavorable	22%
70	Outstanding Warrant	23%
365	Insufficient Ties	24%
1,557	Combined	16%

By Prosecutor's Bail Request

Number of cases	Bail Request	FTA rate
384	Consent to ROR	15%
179	$500 or less	20%
233	$501 - $5,000	21%
387	$1,001-$5,000	13%
259	Over $5,000	15%
1,442	Combined	16%

**The CJA recommendation system in use during the study period was replaced on July1, 2003, with a revised system. Recommended, Qualified, and Insufficient Ties categories shown above correspond to the current categories of Recommended (Low Risk), Moderate Risk, and High Risk, although the criteria for each category were revised.*

Figure 22
Case Outcomes By Prosecutor's Bail Request
Cases Observed In Brooklyn And Manhattan
September 2002 – March 2003

CONVICTION

Number of cases	Bail Request	Percent Convicted
379	Consent to ROR	47%
184	$500 or less	48%
292	$501 - $1,000	54%
471	$1,001 - $5,000	51%
205	$5,001 - $10,000	62%
220	Over $10,000	71%
1,751	Combined	54%

INCARCERATION

Number of cases	Bail Request	Of Convicted Cases, Percent Incarcerated
177	Consent to ROR	16%
88	$500 or less	35%
156	$501 - $1,000	55%
231	$1,001 - $5,000	52%
115	$5,001 - $10,000	70%
148	Over $10,000	86%
915	Combined	52%

SENTENCE LENGTH

Number of cases	Bail Request	For convicted defendants sentenced to incarceration, Sentence length in median number of days
60	Consent to ROR - to $500	5
206	$501 - $5,000	40
80	$5,001 - $10,000	243
127	Over $10,000	974
473	Combined	100

- ***Three-way agreement among CJA, prosecutor, and judge***

  The prosecutor is referred to as the Assistant District Attorney (ADA) for ease of labeling in Figure 23.

Figure 23 shows that CJA and the ADA agreed in their recommendation to the court nearly half the time (48%, combined boroughs). Both recommended ROR in 14% of cases — and this proportion was about the same in Brooklyn and Manhattan. For those cases, the judge nearly always released the defendant (99% of the time in the combined boroughs, when CJA and the ADA agreed on ROR).

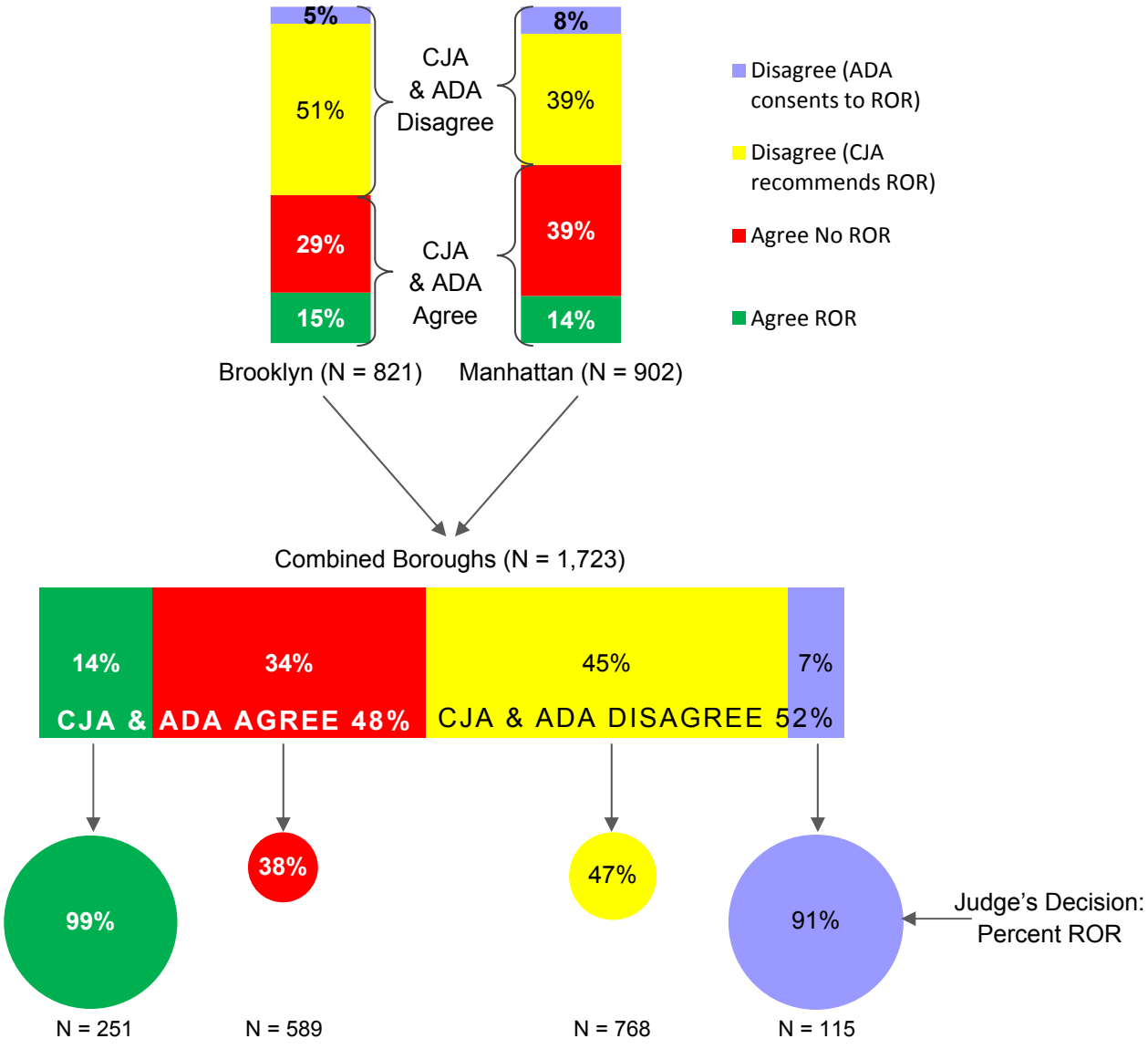
In a larger number of cases, the ADA and CJA agreed that the defendant was not a good candidate for ROR: 34% of combined cases, fewer in Brooklyn (29%) than in Manhattan (39%). Judges were much less likely to order ROR in these cases, but did so, nevertheless, in 38% of them.

In the remainder of cases (52% in the combined boroughs), CJA and the ADA were not in agreement on the advisability of ROR for the defendant. The more frequent pattern of disagreement consisted of a positive CJA recommendation when the ADA did not consent to ROR, requesting bail instead (45% of cases overall). This happened more frequently in Brooklyn (51%) than in Manhattan (39%). The judge ordered ROR in 47% of such cases, siding with the ADA in setting bail slightly over half the time.

In a very small proportion of cases (7%, combined boroughs), the disagreement between CJA and the ADA was in the opposite direction: CJA assessed the defendant to represent a high risk of flight and did not recommend him or her for ROR, but the ADA consented to ROR. The judge nearly always ordered ROR when the ADA consented, even when CJA recommended otherwise. The judge released the defendant in 91% of the cases in this last group — despite the fact that defendants who were not recommended for ROR but were released anyway were relatively poor risks.

The CJA recommendation was revised shortly after the end of the study period, a fact that has been mentioned several times. Analyses were done to calculate any difference in results if the new recommendation system had been in effect for cases in the research sample, and we found that it would have slightly increased the agreement between prosecutor and CJA. The weight given to a prior FTA in the revised recommendation system was primarily responsible for this difference, as some defendants who were recommended for ROR under the old system would not have been recommended under the revised system. However, the difference was small. Under the current system, CJA still recommends many defendants for whom the ADA requests bail. How to weigh conflicting recommendations remains an issue for the courts.

Figure 23
Three-Way Agreement Among CJA, Prosecutor (ADA), And Judge
Cases Observed In Brooklyn And Manhattan
September 2002 – March 2003



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VI. FORMS OF BAIL

A. Comparing Costs: Cash Bail And Commercial Bonds

Bonds posted in New York City are almost always commercial surety bonds, secured through the services of a bail bondsman, who acts as an agent of the insurance company that underwrites the bond. In New York, regulation of the insurance industry, including bond agents, is under the jurisdiction of the New York State Insurance Department. New York has a tiered rate system for bonds, starting with a flat fee of $10 for a bond of $200 or less. For amounts over $200, the fee is additive: 10% for the first $3,000; 8% on the amount over $3,000 up to $10,000; and 6% on any additional amount over $10,000 (NY Insurance Law §6804). This fee, or premium, paid to the bond agent is not refunded regardless of the outcome of the case. Bond agents usually also require that the defendant put up collateral, which is refunded at the termination of the case as long as there has been no forfeiture.

Posting bail in cash is less costly in the long run, but usually requires more money up front than a bond because cash bail must be deposited in the full amount. If the defendant appears for all scheduled court appearances, cash bail is returned at the end of the case — in its entirety if the defendant is not convicted, or minus a 3% fee upon conviction. If the defendant fails to appear for a court date, the bail may be forfeited and the entire amount kept by the court (NYS 2002).

Figure 24 illustrates why defendants would be expected to post bail by cash whenever possible, but also why it is so often not possible, even when a cash alternative was set. Figure 24 compares the final costs and the initial outlays for cash bail versus a bond at three different levels of bail. For bail set at $1,000 with no cash alternative, the cost of cash bail will be $30 at most (in the event of a conviction), compared to $100 for a bond. The final bond cost is merely an estimate, and assumes that the bond agent charged the legal fee and also that all collateral was refunded. This may be an underestimate because, as we learned in the course of the research, illegally high fees were sometimes charged (fees were occasionally lower than the legal limit as well). In addition, part or all of the collateral may be retained by the bondsman to cover miscellaneous extra fees.[25]

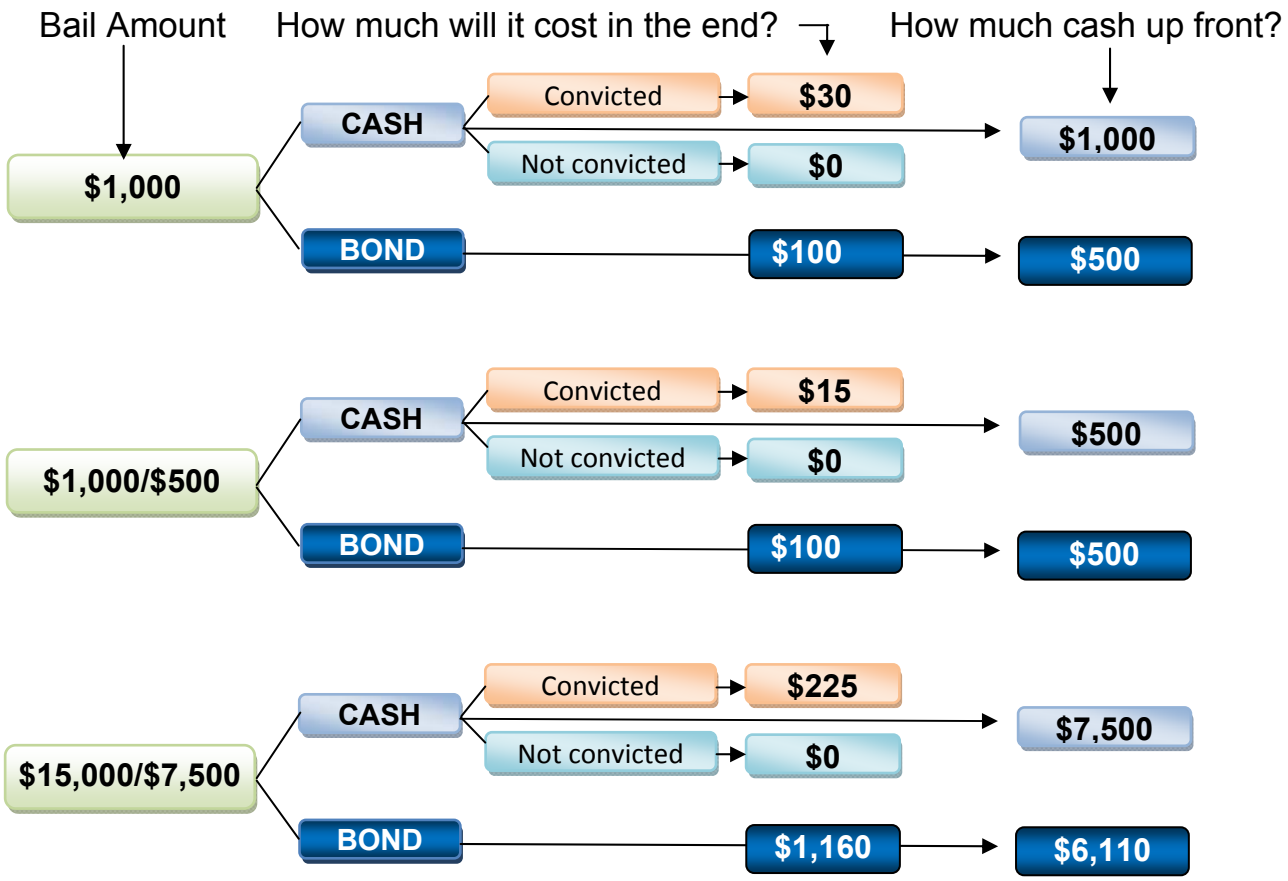
The second example presented in Figure 24 shows the difference that a $500 cash alternative would make. While the bond cost remains the same, the final cost of

[25] Investigative reporter John Eligon, in a recent *New York Times* article, described numerous extra fees charged by bondsmen that are taken out of the cash collateral and withheld from the refund. Fees can be tacked on for such things as missing a weekly check-in or "bail consulting and research." In what appears to be an obvious conflict of interest, bondsman also sometimes charge a fee for revoking bail and returning the defendant to jail — with no obligation to justify the revocation to the court. Such fees are apparently not illegal because the law allows bondsmen to enter into private contracts with their clients (Eligon 2011a). Data on these extra fees were not available because they are not recorded on the bond forms in case files.

posting cash is reduced to $15 at most, and the initial outlay is now the same as would be needed for a bond ($500). Both of the $1,000 bond examples assume that 40% was required by the bond agent as cash collateral, based on this research.

The last example illustrated in Figure 24 considers the comparison at a much higher level of bail. With bail set at $15,000 and a $7,500 cash alternative, the final cost for posting cash would be $225 at most, compared to $1,160 for a bond. For bail this high, however, a cash alternative set at half the bond amount ($7,500) is no longer sufficiently low to match the cash outlay that might be needed for a bond: $6,110. This is because at higher bail amounts, both the bond fee and the collateral rates are lower.

Figure 24
Comparative Costs: Cash Bail And Commercial Bonds



Bond costs are estimated on the assumption that the bond agent charged only the legal fee and collected 40% of the bond amount as cash collateral for bonds less than $10,000 and 33% for larger bonds. The cash outlay needed for any specific bond may differ from this estimate because many agents require less or more collateral. In addition, the final cost of a bond may be underestimated because of added-on fees and overcharging.

B. Data Used In The Research

A dataset of New York City arrests during the third quarter of 2005 (July 1 through September 30) was used for this research. The dataset excludes Staten Island and the community courts in Brooklyn and Manhattan and is further restricted to cases that were continued at arraignment in Criminal Court. The same defendant may be represented more than once because of re-arrest during the study period.

Cases of defendants who made bail on or prior to December 31, 2005, were identified from data in the CJA database, allowing a minimum of three months post-arraignment for bail to be made. To supplement the data in the CJA database, the form of bail was identified using the database maintained by the Office of Court Administration (OCA), and additional bail-making information was collected manually from paper records in court houses in each borough and from all three Department of Correction (DOC) facilities in operation at the time of the study (Riker's Island, the Manhattan Detention Complex, and the Vernon C. Bain Center). Cash bail receipts from the courts and DOC facilities were the source for cash bail data, and bail affidavits and other forms retained in defendants' court files were the source of information about bonds (see Phillips 2010a, Appendix A, for samples of source documents). The final research file contains 5,292 cases of defendants who made bail during the study period, and for whom the form of bail was identified. Of these, 656 bond cases and 3,893 cash bail cases have supplementary data.

C. Factors Associated With Form Of Bail

This phase of the research focused on identifying the correlates of cash bail compared to commercial bonds. Results were released in a series of reports, the first of which examined the differences between cash and bond releases and modeled the predictors of bail form (Phillips 2010a, 2010b). A second report focused on the costs of posting a bond (Phillips 2011a, 2011b).

Major findings presented in the first report were that bonds were most common in Brooklyn, and were concentrated among cases with high bail amounts. There were no bonds written for less than $1,000, and the majority of bail releases in amounts over $10,000 were by bond. Apart from the amount, the offer of a cash discount, especially a large one, greatly lessened the reliance on bondsmen. Cash discounts that reduced the bail amount by more than 50% nearly eliminated bonds, no matter how high the bail.

The data upon which we based these findings are presented in Figures 25 and 26.

- ***Correlates of commercial bonds***

Figure 25 presents data showing the proportion of bail releases by bond among cases in the 2005 research sample, and how that proportion was affected by borough, bail amount, and whether a cash alternative was set.

The top row of the figure shows that in the four largest boroughs combined, 15% of bail releases were in the form of a commercial bond, and the rest were by cash. The total number of bonds for arrests that occurred during the three-month study period was 743, which would result in an annualized estimate of roughly 3,000 bonds for the City.[26] The highest concentration was found in Brooklyn, which had both the greatest number — 293 — and the highest proportion — 20% — of bonds.

The middle row of the figure shows that the amount of bail had a huge influence on whether bail was made by cash or bond. No bonds were written for less than $1,000, presumably because the profit margin is so low that bondsmen refuse to write them.[27] As bail amounts rose, the proportion of bonds also rose: from 13% for bail between $1,000 and $3,500 to over half (52%) when the bail amount was above $10,000. Although there were proportionately fewer bonds in the bail category between $1,000 and $3,500, this range contained the greatest *number* of bonds (323).

As one would expect, the ability of defendants to post cash instead of buying a bond was affected by whether or not a cash alternative was set, as well as the size of the discount. The bottom row shows that the proportion of bonds among cases with no cash alternative was 25%. Most bond cases fell into this group: 635 (or 85%) of the 743 bonds were in cases with a defendant who was not offered a cash alternative. A cash alternative of any size lowered the likelihood that the bail would be made by a bond, and the larger the discount the lower the proportion of bonds. Among cases with a defendant who was released on bail and in which a large cash discount was offered (more than 50% off the bond amount), only 4% posted a bond.

Although cash alternatives reduced the proportion of bonds among bail releases, there were defendants who could afford a bond but could not afford cash, even when a cash alternative was offered. Of 1,382 bail releases with a cash alternative, the defendant still posted a bond in 108 of them (8%, extrapolated from Figure 25, bottom row).

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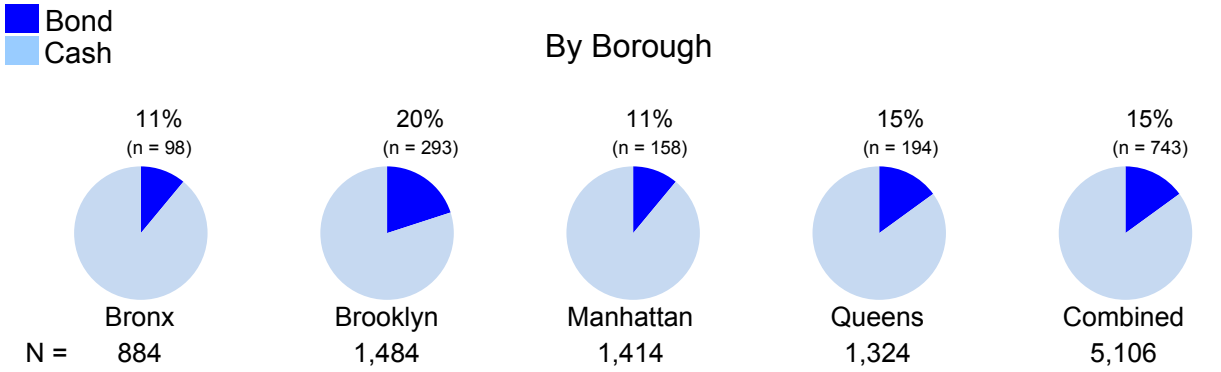
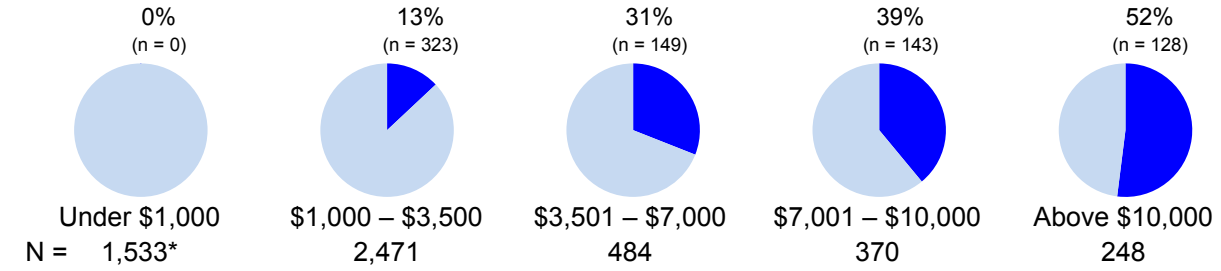
[26] This estimate is low. Sample cases were tracked for only three to six months, so bonds posted outside this time frame were missed. In addition, the research did not count bonds posted for arrests during the previous year. Finally, Staten Island was not included in the data upon which this estimate is based.

[27] We have no direct evidence that bondsmen refused to write bonds for less than $1,000, but there were none in the study sample, and there was no shortage of defendants with bail under $1,000 who could not post cash. In 2010, 80% of cases with bail under $1,000 had a defendant who was detained at arraignment, meaning that over 9,000 defendants were held on less than $1,000 (extrapolated from Table 7).

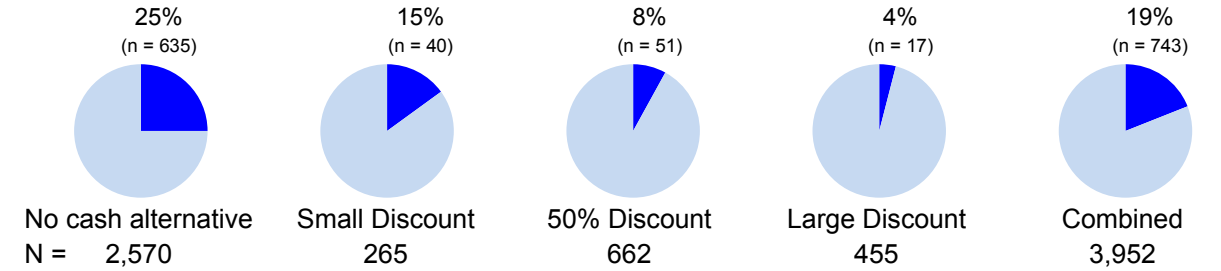
Figure 25
Percent Released By Bond
Cases With Bail Set At Arraignment And Bail Release Prior To December 31, 2005
Arrests July – September 2005 (excluding Staten Island)





*includes 379 cases with a cash alternative under $1,000 but a bond amount equal to or greater than $1,000.

By Size of Cash Discount
Cases with bond set at $1,000 or more*



*Excluding 1,154 cases with bail less than $1,000; *not excluded* were 379 cases with a cash alternative under $1,000 but a bond amount equal to or greater than $1,000.

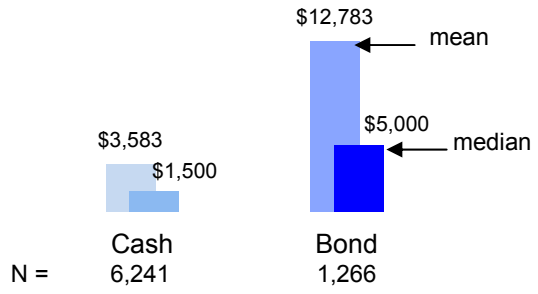
This figure is based on data presented in Phillips 2010a (Table 3, Table 20, and Figure 18). The data in the top row differ from some other published reports for two reasons. First, data presented here do not include 150 cases with bail initially set post-arraignment, which were included in Figure 1 of Research Brief #23 (Phillips 2010b). Second, form of bail was identified for 36 additional cases, which were included (along with the 150 with bail set post-arraignment) in Phillips 2011a (Table 1 and Figure 2). Breakdowns by bail amount and by cash discount were not repeated in the later report, so we took all data presented in this figure from Phillips 2010a to maintain consistency in the sample size. The revised data did not result in any changes in the percentages presented in the top row, with one exception: the proportion of bail releases by bond in the Bronx increased from 11% to 13%.

The data presented in the bottom row of Figure 25 exclude 1,154 cases with a bond amount lower than $1,000. Low bail increased the chance that the defendant could post cash, but it also reduced the likelihood that a cash alternative would be offered, thereby obscuring the positive association between cash alternatives and cash release. When cases with bond set below $1,000 were included in the analysis, the proportion of bonds among cases with no cash alternative dropped from 25% to 17% (not shown). Excluding bond amounts under $1,000 also had the effect of raising the proportion of bonds among the combined cases to 19% — four percentage points higher than the 15% proportion shown in the top row for all bail amounts.

A multivariate model was developed to examine the effects of borough, bail amount, and cash alternative on the form of bail release (not shown). The model simultaneously controlled for all three of these factors as well as charge severity and type, CJA recommendation,[28] several community ties factors, ethnicity, age, gender, and criminal history. As Figure 25 suggests, the most important predictor was bail amount, followed by the size of the cash discount (cases with no cash discount were coded zero on this variable). Brooklyn bail cases were also significantly more likely to have a bail bondsman involved than cases in other boroughs, controlling for bail amount and all other variables in the model. These results showed that the bivariate relationships between form of bail making and bail amount, cash discount, and borough could not be explained away by control variables that might have affected both the likelihood of a bond and any of these factors.

Bail amounts set at arraignment were compared in cases of defendants who posted a bond versus cash, using a dataset that was expanded to include an additional three months of arrests (see next chapter). Figure 26 shows that bail amounts in bond cases were more than triple the amounts for cash bail cases. The median amount set in cash bail cases was $1,500, compared to $5,000 in bond cases; means were $12,783 and $3,583, respectively (Phillips 2011c).

Figure 26
Bail Amount Set At Arraignment
By Form Of Bail
Cases With Bail Release
Arrests July – December 2005
(excluding Staten Island)



D. Indemnitor-Defendant Relationship

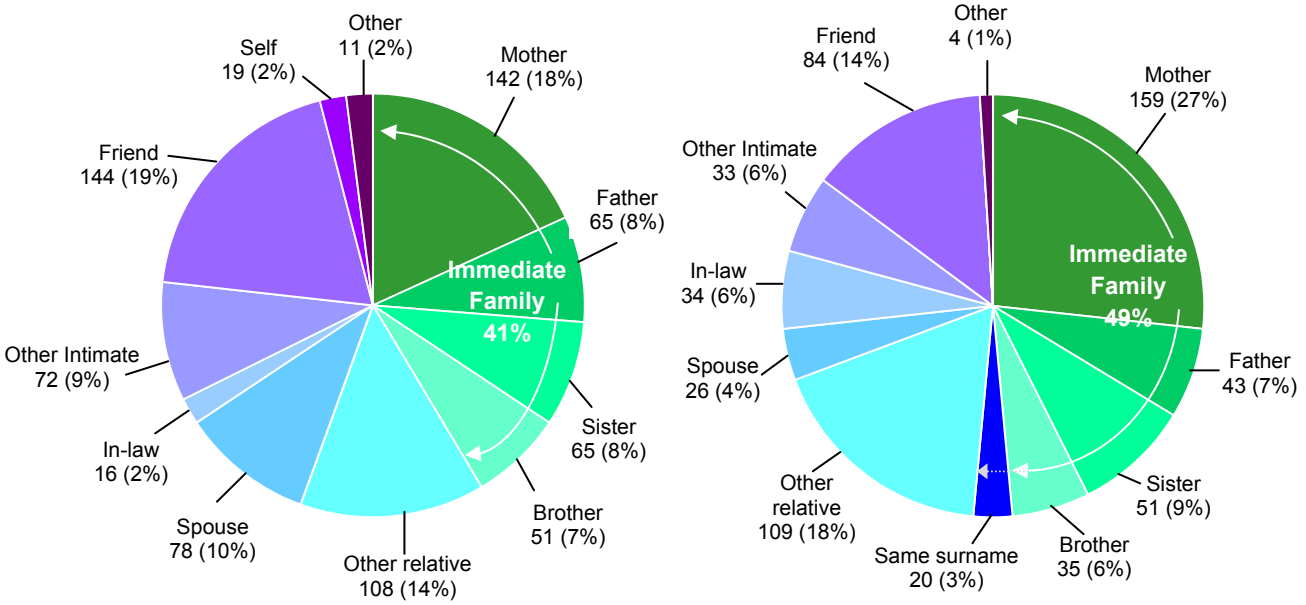
The relationship of the defendant to the person posting bail (the indemnitor) was examined separately for cash bail and bond cases, using the three-month sample with supplementary data. Relationship information was missing for 145 bonds, leaving 598 in the analysis. For cash bail, we had relationship information only for 771 defendants detained on Riker's Island.

[28] The current CJA recommendation system went into effect prior to data collection for this research.

Figure 27 shows that mothers played a major role in posting both cash and bonds, particularly bonds: 27% of bonds were posted by the mother of the defendant, and 18% of cash bails. Nearly half of bonds (49%) and 41% of cash bails were posted by an immediate family member (mother, father, brother, or sister). The percentage of bonds posted by a family member may actually be a little higher, as another 3% of bonds were missing relationship information but the surname matched the defendant's.

Friends were slightly more prominent among those who posted cash bail (19%, compared to 14% for bonds), and the defendant himself or herself was also more likely to post cash. The defendant posted his or her own cash bail in 19 cases (2%) — but no bonds. Both of these differences can probably be explained by the lower bail amounts associated with cash bail releases.

Figure 27
Indemnitor-Defendant Relationship Separately For Cash Bail And Bond
Cases With Bail Release
Arrests July – December 2005
(excluding Staten Island)



CASH BAIL
N = 771 (Riker's Island Only)

BOND
N = 598

Defendants sent to Riker's Island do not constitute a random sample of cash bail cases because they include only those who did not make bail at arraignment. In addition, Bronx and Manhattan cases are under-represented because detainees in those two boroughs were usually sent to the Vernon C. Bain Detention Center (Bronx cases) or the Manhattan Detention Complex. However, there is no reason to believe that the Riker's Island subsample would differ materially from the rest of the sample in terms of indemnitor-defendant relationships.

E. Bond Fees And Collateral

Fees and collateral required by bond agents were examined in another phase of the bail research (Phillips 2011a). The same dataset of third quarter 2005 arrests described earlier in this chapter was used for this part of the study, but the analyses were restricted to 656 bond cases with supplementary data collected from case files.

The smallest bonds were written in the Bronx and the largest in Queens. Fees were generally set at the maximum amount allowed by law, but bondsmen sometimes overcharged, especially in Brooklyn. Cash collateral was required for most bonds. As a proportion of the bond amount, the cash collateral was on average 40% of bonds of $10,000 or less, and 33% of larger bonds, with some borough variations.

Bondsmen also accepted deeds to property, especially for very large bonds, either instead of or in addition to cash collateral. Because the largest bonds were concentrated in Queens (and because Queens defendants or their families were most likely to own property), property collateral was found most often in Queens cases.

The data upon which we based these findings are presented in Figures 28 through 33.

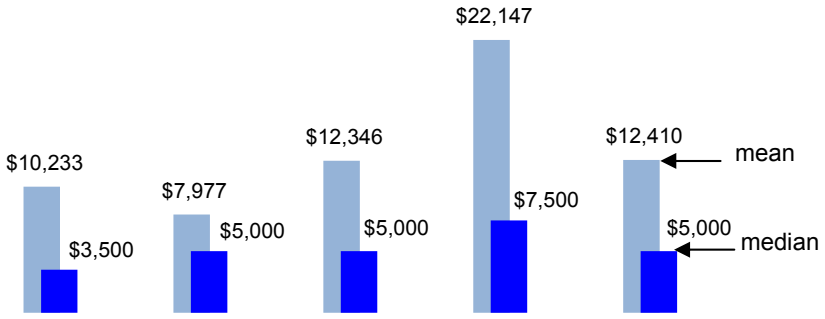
- ***Face amount of bonds in the sample***

The face amount of the bond can differ from amount of bail set at arraignment because the cash alternative — if one was set — was taken as the arraignment bail amount. Or, the court may have ordered a change in bail amount prior to the time the bond was posted. The two amounts were identical in most, but not all, cases.

Mean and median bond amounts by borough for the bond sample are shown in Figure 28. The combined median was $5,000 — higher in Queens (median $7,500) and lower in the Bronx ($3,500). The largest bonds were written in Queens, where two bonds were written in the amount of $500,000.

In the combined boroughs, 53 bonds were written for $1,000, most (37) of them in Brooklyn. Nearly a third of all bonds (206) were written for $10,000 or more.

Figure 28
Face Amount Of Bond By Borough
Cases With Bond Release
Arrests July-September 2005
(excluding Staten Island)



	Bronx	Brooklyn	Manhattan	Queens	Combined
N =	101	278	127	150	656
Maximum =	$200,000	$250,000	$150,000	$500,000	$500,000
n @ $1,000 =	7	37	4	5	53
n @ $10,000+ =	21	65	46	74	206

- ***Bond fees***

Bond fees were examined for their correspondence to the amount set by the New York State Insurance Department as described in section "A" of this chapter. In Brooklyn the practice among some agents was to divide the fee into a "premium" and a "service charge" that together usually totaled the legally mandated fee. In the other three boroughs, only a single fee was collected with no additional service charge. The fees reported here combine the premium and the service charge for Brooklyn bonds.

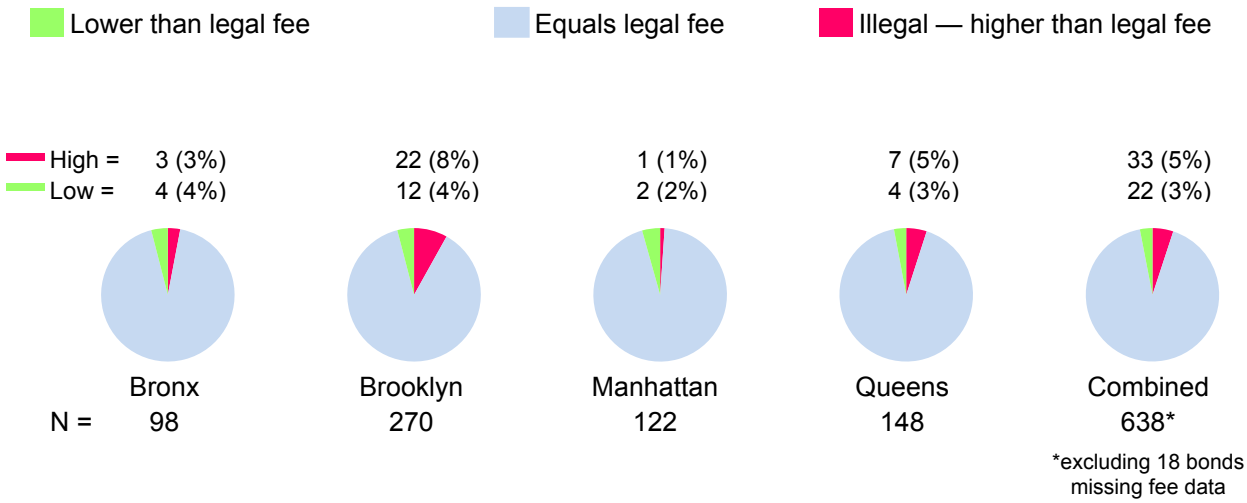
Among the 638 bonds for which fee data were available, more than 90% of fees in the combined boroughs were set at exactly the amount mandated by law (Figure 29). Fees were higher for 33 bonds (5% of all bonds) and lower for 22 bonds (3%). The majority of the discrepant fees were charged in Brooklyn cases, which comprised two thirds (22 of 33) of the illegally high fees and over half (12 of 22) of all the low fees.

Discrepant fees (both high and low) were largely the work of the same few bond agents. Among the 25 agents represented in the study, eight were responsible for all of the illegally high fees, and five of the same agents were also responsible for three quarters of the low fees (not shown). This, together with the small size of discrepancies, suggests sloppy arithmetic rather than systematic fraud. Many of the overcharges resulted from taking 10% of the entire amount of the bond, rather than smaller percentages on the portions above $3,000 as mandated by law. The most common examples were a fee of

$500 charged for a $5,000 bond — an overcharge of $40, found for eight bonds — and $350 for a $3,500 bond — an overcharge of $10, found for nine bonds. Another pattern was rounding up to the next hundred, as when the fee on a $75,000 bond, legally no more than $4,760, was rounded up to $4,800 (two bonds). Occasionally the overcharges involved hundreds of dollars, but most were much smaller.

Undercharges generally involved small amounts as well, although the fee on one of the $500,000 bonds was $25,000, which is thousands of dollars less than the legal fee of $30,260. However, errors in arithmetic seemed to explain most undercharging. The fee for a $50,000 bond seemed particularly difficult for bond agents to calculate correctly: of the 16 bonds in this amount, the correct fee of $3,260 was charged in only half of them. The fee was omitted from the bail affidavit in three others, and the five remaining bonds had fees of $3,240 (four bonds) or $3,110 (one bond).

Figure 29
Correspondence Of Bond Fees To Legally Mandated Amounts By Borough
Cases With Bond Release
Arrests July-September 2005
(excluding Staten Island)



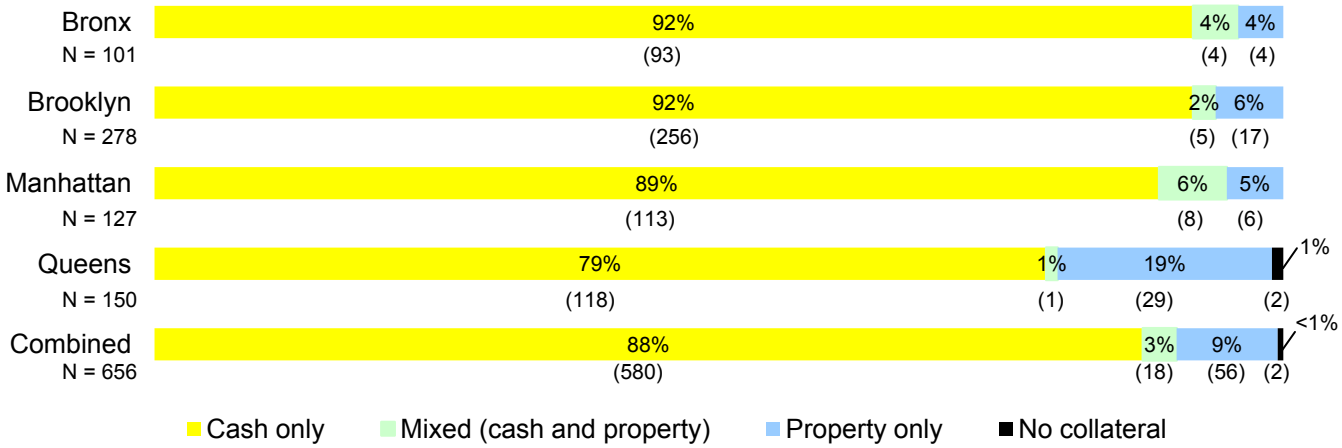
- ***Collateral***

Types of collateral

A deposit of cash collateral was required for 598 of the bonds in the research sample, and some form of property was deposited as collateral in 74 bonds (Figure 30). These are overlapping categories, as there were 18 bonds with mixed (cash and property) collateral.

Cash was the only type of collateral in 88% of bonds overall, property was the only type of collateral in 9% of bonds, and 3% had both cash and property collateral. Bonds in two Queens cases apparently had no collateral, although this information could have been omitted from the bail affidavit forms by mistake.

Figure 30
Type Of Collateral By Borough
Cases With Bond Release
Arrests July-September 2005
(excluding Staten Island)



Bar totals may not equal 100% because of rounding.

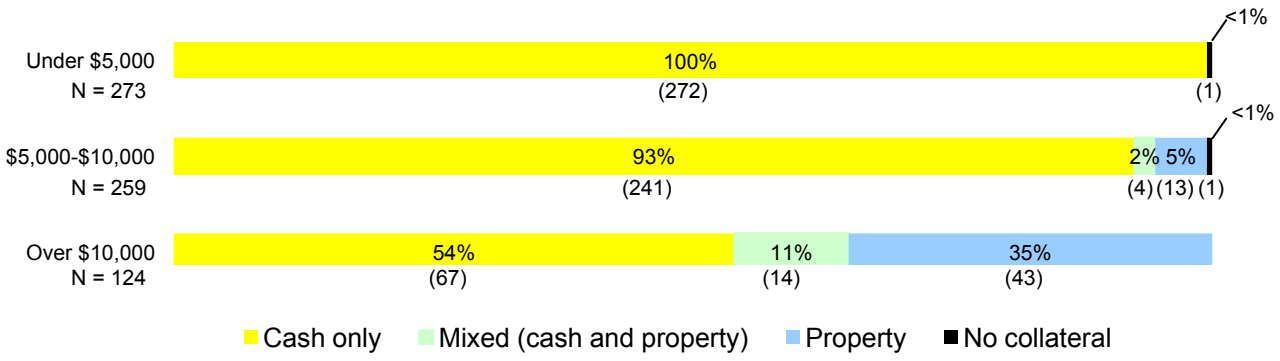
Property played a larger role as collateral in Queens than elsewhere in the City, and property was less likely to be combined with cash in Queens. Property collateral was deposited in 20% of Queens bonds, compared to 11% in Manhattan and only 8% in the Bronx and Brooklyn. Accordingly, cash-only collateral was less common in Queens than elsewhere, although it was still the predominant type: 79% of Queens bonds were secured by cash alone, compared to 89% of Manhattan bonds and 92% of bonds in the Bronx and Brooklyn. The prominence of property collateral in Queens can be partly attributed to the high home ownership rate in that borough, compared to the rest of New

York City.[29] In addition, Queens had the highest bonds in the City (Figure 28), which — as seen below — also made property collateral more likely.

Association of collateral type with bond amount

Property collateral was associated primarily with the highest bond amounts, as shown by Figure 31. No bond less than $5,000 had property collateral associated with it, compared to almost half of bonds over $10,000. Among bonds over $10,000, 11% had both cash and property collateral and 35% had property collateral alone, bringing the total either fully or partially secured with property to 46%. Among midrange bonds ($5,000 to $10,000), property collateral was unusual but not unheard of: 7% of the total in this group were secured by property, either with or without cash.

Figure 31
Type Of Collateral By Bond Amount
Cases With Bond Release
Arrests July-September 2005
(excluding Staten Island)

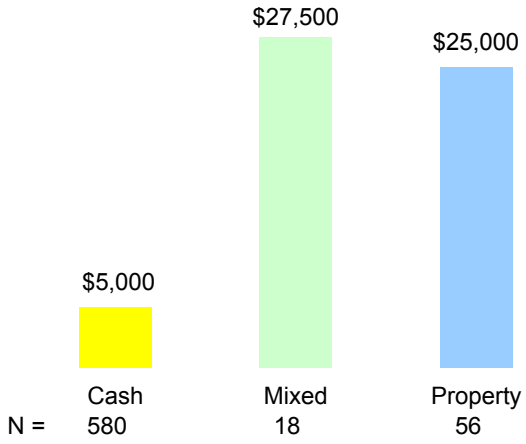


Bar totals may not equal 100% because of rounding.

[29] According to Census data for 2000, owner-occupied home ownership rates were 43% for Queens, compared to 20% for the Bronx and Manhattan, and 27% for Brooklyn (US Census Bureau: State and County QuickFacts).

The median bond amount for bonds with cash collateral alone was $5,000, compared to $25,000 for bonds with property collateral alone, and $27,500 for bonds with mixed collateral types (Figure 32).

Figure 32
Median Bond Amount
By Type Of Collateral
Cases With Bond Release
Arrests July–September 2005
(excluding Staten Island)



Property collateral nearly always consisted of real estate, often the home of the person co-signing the bond. Of the 74 bonds with property collateral, only three specified that the property was something other than real estate: One was in a Queens case, where a $7,500 bond was secured with a car valued at $3,000 and no additional cash. The other two were in Brooklyn, where (1) a $7,500 bond was secured with $720 in cash plus a 1999 Cadillac valued at $10,000; and (2) a $5,000 bond was secured with "an assessment of insurance settlement" in an unspecified amount.

In one additional case (also in Brooklyn) a $35,000 bond was secured with $25,000 in cash along with the defendant's passport. Although the passport was entered on the form as "property" we classified the collateral in this case as "cash only" because a passport cannot be sold to cover the bond if the defendant fails to appear, as can real estate or a car.

Ratio of cash collateral to bond amount

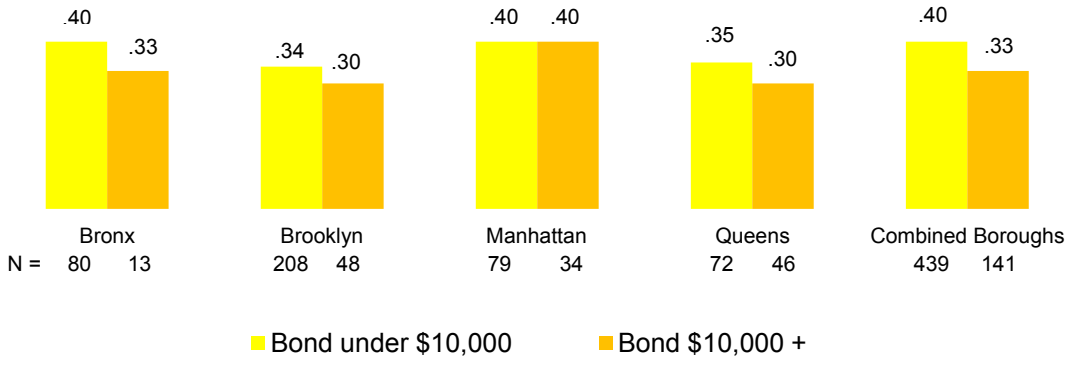
Unlike fees, the amount of cash collateral required to secure an insurance company bail bond is not regulated by law.[30] Bondsmen are free to set collateral as they see fit, although no judge will sign the bail affidavit without being satisfied that the amount is sufficient to ensure the defendant's return. Because this is based on individual judgements rather than a standardized scale, amounts of cash required to secure bonds in the research sample varied widely.

[30] CPL §500.10.16, which defines an insurance company bail bond, does not specify any required amount of cash or property collateral. CPL §500.10.17 defines a "secured bail bond" as a bond secured by (a) personal property at least equal to the bond amount; or (b) real property valued at twice the bond amount. A secured bail bond posted directly with the court must meet the requirements of CPL §500.10.17, but insurance company bail bonds are not covered by this statute.

The ratio of cash collateral to the face amount of the bond varied from less than 10% to 100% of the bond amount.[31] The borough and the size of the bond both affected the cash collateral/bond ratio, as shown in Figure 33. (The 18 cases with mixed property and cash collateral are excluded from the analysis because property greatly reduced the requirement for cash.) In the combined boroughs, the median collateral/bond ratio for bonds under $10,000 was .40, and for bonds of $10,000 or more, the median ratio was .33. In Brooklyn and Queens, a smaller proportion of the face amount was required as cash collateral for bonds under $10,000 (.34 and .35 respectively) than in the Bronx and Manhattan (.40). The only borough in which the size of the bond apparently made no difference was Manhattan, with a median ratio of .40 for both levels.

Statistical tests[32] showed that the effects of borough and bond size on the collateral/bond ratio were statistically significant, both individually and when tested together.

Figure 33
Median Collateral/Bond Ratio By Bond Size And Borough
Cases With Bond Release And Cash-Only Collateral
Arrests July-September 2005 (excluding Staten Island)



[31] There were eight cases for which 100% of the face amount of the bond was required in cash collateral (five of them in Brooklyn, and one in each of the other boroughs). This is puzzling because cash bail could have been posted for the same amount. Elsewhere, we examined these and five other cases in which the bondsman was apparently paid more than cash bail would have cost (Phillips 2011a). Subsequent news reports about arrests of two bondsmen in the sample suggest that in some cases, the collateral may not have been collected and a false affidavit was submitted to the court (Italiano 2009, Meyerowitz 2010, *North Country Gazette* 2009, Thompson 2010).

[32] Chi-square tests found a statistically significant relationship between borough and collateral/bond ratio and between bond size and collateral/bond ratio. A multiple regression analysis found that these two factors both had a statistically significant effect on the collateral/bond ratio, controlling for each other (not shown).

F. Effective Cash Discounts

Many years ago, Vera Institute researchers suggested that an "alternative bail" equal to the amount of the commercial bond premium could enable more defendants to gain pretrial release (Ares et al. 1963). Cash alternatives have never lived up to this ideal; the data presented in Figure 12 showed that even when a cash alternative is set, it is almost always in an amount much higher than the bond premium would be. However, defendants generally are required to put up cash collateral as well as the premium, so cash alternatives can be considerably higher than the premium amount and still provide an effective alternative to a bond.

The findings regarding the bond fees and cash collateral enabled us to calculate the size of the discount that would be necessary for the courts to match bonds effectively in setting cash alternatives. A cash alternative set at the typical ratio of 50% of the bond would require the same cash outlay as a bond ***if*** the bondsman charged a 10% fee and 40% in cash collateral. With bail set at $3,000/$1500, for example, a defendant who could afford to pay a $300 fee plus $1,200 in cash collateral could also afford to post cash bail of $1,500 — thereby avoiding the commercial fee, as well as the possibility of being returned to jail if the bondsman decided to revoke his bond. In this example, a 50% discount would be effective in enabling a defendant who could afford a bond to post cash instead.

However, fees are lower than 10% for bonds over $3,000 and collateral is often less than 40% of the bond, so for many cases a cash discount of 50% would <u>not</u> be effective, by this definition. For example, in a Brooklyn case with bail set at $5,000/$2,500, the defendant's father paid $2,260 for a bond ($460 fee plus $1,800 collateral) — $240 less than the cash alternative. The 50% cash discount was not enough in this case to compete effectively with the bondsman's offer, even though the difference was only a few hundred dollars. In the end, it cost the father $460 to get his son out of jail, compared to $75 if he had been able to post cash (the defendant was convicted).

For three hypothetical levels of cash discounts — 50%, 60%, and 70% — we examined how effective each would have been when measured against the actual cash outlays made for the bonds in the research sample. Figure 34 shows that a 50% discount usually would not have been enough to eliminate the bond's financial advantage. Citywide, a 50% discount would have resulted in a cash alternative equal to or less than the cash outlay for the bond in less than a third (31%) of the bonds that were posted. A 60% discount would have been effective in 81% of bonds, and a 70% discount would have been effective in 99% of bonds. It would appear, then, that the typical 50% discount should be replaced by a minimum of 60%, if the aim is to provide an effective alternative to bonds in the majority of cases.

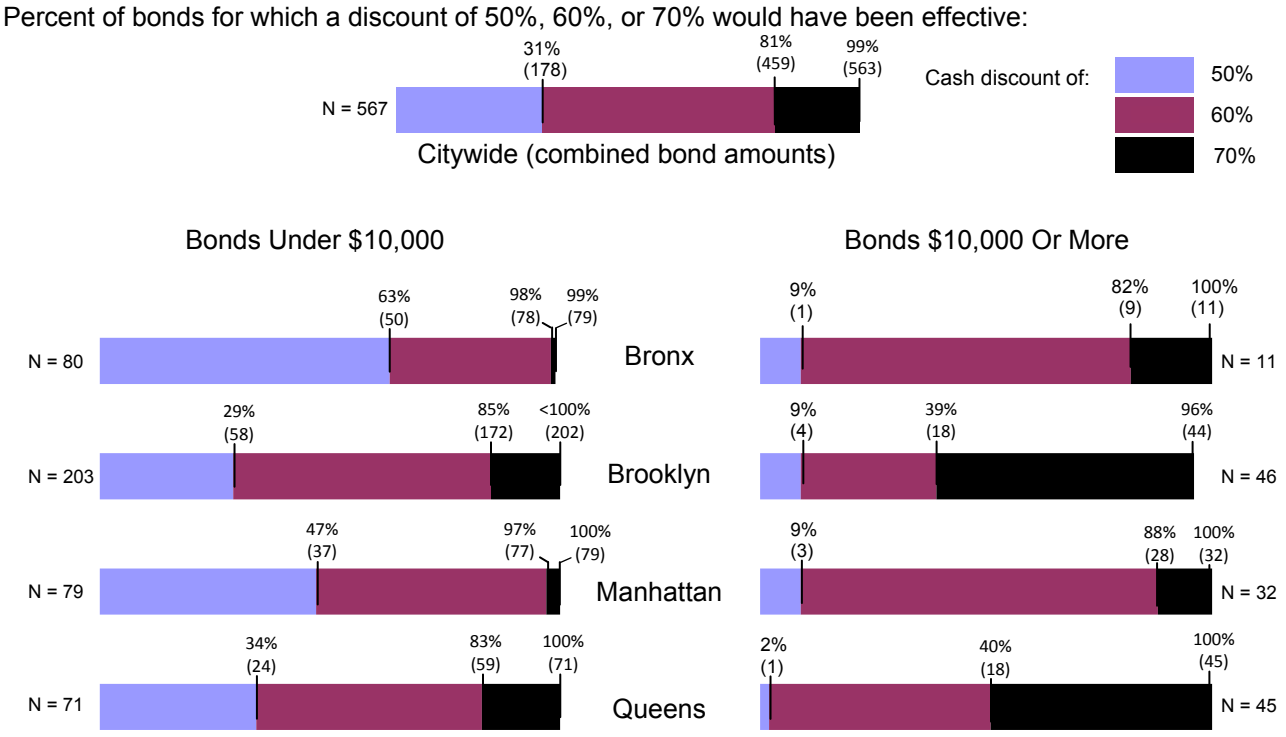
In order to fine tune this calculation, both the size of the bond and the borough should be taken into account. For bonds of $10,000 or more, a 50% cash discount would have been effective less than 10% of the time in each of the four boroughs in the

study. In Brooklyn and Queens, even a 60% cash discount would have been ineffective for more than half of the large bonds. However, raising the cash discount just a little more, to 70%, would have a dramatic effect. A cash alternative of this size would have lowered the cash bail to competitive levels for all of the 45 bonds of $10,000 or more in Queens, and for nearly all (44 out of 46) in Brooklyn.

Even at lower bail levels a 50% discount would not have lowered the cash bail enough to match the bond outlay in the majority of cases in three boroughs. Only in the Bronx, and only for bonds under $10,000, would a 50% discount have been sufficient over half of the time (in 63% of bonds). On the other hand, a 60% discount would have provided an effective alternative most of the time in every borough for bonds under $10,000.

Figure 34
Effectiveness Of Cash Discounts Of 50%, 60%, And 70%

Cases With Bond Release
Arrests July-September 2005 (excluding Staten Island)



These findings suggest that many defendants pay commercial bondsmen for their release when a judiciously set cash alternative could have made it possible for them to post cash bail instead. Although a cash alternative of almost any size increases the likelihood that a defendant will be able to post cash, we found that the discount must be about 60% in order to match the amount needed for a bond in the majority of cases, and about 70% for very large bonds in Brooklyn and Queens.

VII. FAILURE TO APPEAR

To further inform public policy discussions of the bail system, a research project was undertaken to evaluate the association of failure to appear (FTA) with various types of release (Phillips 2011c, 2011d). The three release types examined and compared in this research were release on recognizance (ROR), cash bail, and commercial bond. All pretrial release for defendants in the study sample consisted of one of these three types. As noted in previous chapters, other types of release are authorized in New York but are rarely used.

The two primary questions addressed in the research were whether money bail is more effective than ROR in ensuring defendants' return to court for scheduled appearances, and whether — among defendants released on money bail — commercial bonds have any advantage over cash bail in this respect. By distinguishing the effects of bonds from cash bail, the analysis addresses claims made by the bail bond industry that commercial bonds are the most effective form of pretrial release.

A. Data Used In The Research

A dataset of New York City arrests during the second half of 2005 (July – December) was used for this research. The third quarter 2005 dataset described in Chapter VI was expanded to cover another three months of arrests, through the end of December. The larger sample was necessary to have enough defendants with a failure to appear while released on a commercial bond to compare with cash bail and ROR. The research file was restricted to cases with a release by December 31, 2005, for arrests occurring during the third quarter (July – September) and by March 31, 2006, for arrests occurring during the fourth quarter (October – December). Case processing was tracked until June 30, 2007, for all cases to identify those with a defendant who failed to appear by that date or prior to final disposition of the case, whichever was earlier.

The dataset included the four largest boroughs of New York City, excluding cases in the community courts in Brooklyn and Manhattan and excluding cases in which a Desk Appearance Ticket (DAT) was issued. The same defendant may be represented more than once because of a re-arrest during the study period.

The CJA database provided arrest and case processing data, information about the defendant's criminal history, and data from the CJA interview (using the current recommendation system). Bail-making dates that occurred between court appearances were provided by the Department of Correction. Form of bail making had been collected manually with supplementary data from paper cash receipts or bail affidavits for the cases with third-quarter arrests. For the additional three months of arrests, form of bail was collected from OCA's computerized database. CJA did not have access to sealed cases in OCA, so a large number of bail cases in the fourth quarter were missing this information. Cases without form-of-bail data were excluded from the analyses comparing cash to commercial bonds, but were included in the analyses comparing ROR to money bail.

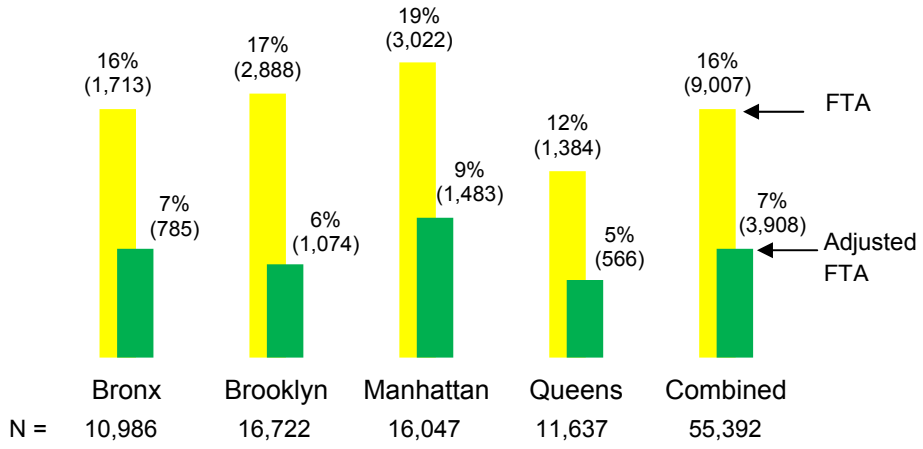
B. FTA And Adjusted FTA Rates

FTA was measured as one or more instances of a failure to appear for a scheduled court appearance prior to disposition of the case (not counting missed appearances in which the bench warrant was stayed). The FTA rate was calculated by dividing the number of cases with at least one failure to appear by the total number of cases with a released defendant. The FTA rate for the sample as a whole was 16%, as shown in Figure 35. (FTA rates for felony cases are somewhat lower than for nonfelony cases, as was shown in Figure 14 for arrests in 2009.)

Adjusted FTA is defined as a failure to appear without returning within 30 days. The majority of defendants who missed a scheduled court appearance did return within 30 days, so the Adjusted FTA rate of 7% for the combined boroughs was less than half the size of the overall FTA rate. The Adjusted FTA rate is a better measure of what is sometimes called "willful FTA" because many defendants who miss a court date do so merely because of forgetfulness, illness, inability to find child care or transportation, or some other reason related to a disordered life rather than a willful attempt to evade justice. These defendants often return to court within a few days of their scheduled court date.

Borough variations were not large, with the lowest rates in Queens (12% FTA and 5% Adjusted FTA) and the highest in Manhattan (19% and 9%).

Figure 35
FTA And Adjusted FTA Rates By Borough
Cases Of At-Risk Defendants
Arrests July – December 2005 (excluding Staten Island)



C. Effects Of Release Type On Failure To Appear

Money bail did significantly lower the likelihood of FTA, when compared to ROR, but only for some subgroups in the sample. The size of the bail was not an important factor for most cases, as low bail had the same deterrent effect as much higher bail (although the very highest bail did have a further deterrent effect). Nor was the form of bail release (cash or bond) a significant factor. Defendants were equally likely to make all their court appearances regardless of whether they had posted cash bail or a commercial bond. Once a court date was missed, however, bond agents had a slight edge over cash bail in getting the defendant back to court within 30 days.

For defendants who were assessed by CJA to represent a low risk of FTA (and who were thereby recommended for release), the release type made *no* difference in likelihood of FTA. The effectiveness of bail in reducing FTA rates was confined primarily to defendants who were at high risk of FTA (*not* recommended). The already low FTA rate for recommended defendants was not reduced any further by setting a bail condition on their release.

In considering why money bail would have the effect of lowering FTA rates only for the high-risk population, we suggested that perhaps the involvement of family members in posting bail might be a crucial component — as important as the money itself. Recommended defendants are likely to have more family support to begin with (the recommendation system awards a point for expecting a family member at arraignment), so it is plausible that for them, posting bail does not confer any further advantage. For defendants who are assigned to a "not recommended" category, however, we can speculate that posting bail either actively triggers family involvement where there was little or none before, or — to reverse the causal direction — maybe posting bail is the response of a family that is already supportive in some way that is not captured by the CJA recommendation. Increases in the amount of bail from $50 up to $7,500 did not further reduce FTA, a finding that is consistent with the thesis that it is not so much the money (or the amount of money) as it is the active involvement of the family that gets defendants back to court.

The data upon which we based these conclusions are presented in Figures 36 through 38.

- ***Relationship between FTA and release type***

The top row of Figure 36 shows that for recommended defendants, FTA rates were nearly the same regardless of whether the defendant had been granted ROR (9% FTA) or was released on bail (8% FTA). For defendants categorized by CJA as representing a moderate risk of FTA, there was a 4-percentage-point difference between the FTA rate for ROR (16%) and bail (12%). A larger difference between ROR and bail was found among cases with a defendant who was not recommended: among this high-risk group, the FTA rate for ROR was 27%, compared to 18% for bail.

Adjusted FTA rates are represented by the shorter, darker bars, showing the same pattern at a reduced level. Among cases with a recommended defendant, only 3% failed to appear and did not return within 30 days regardless of whether release was on recognizance or on bail. Among moderate risk cases, release type made a very small difference (7% Adjusted FTA for ROR, compared to 5% for bail). Among cases with a defendant who was not recommended, bail reduced the Adjusted FTA rate to 7%, nearly half of the 13% rate for cases with ROR.

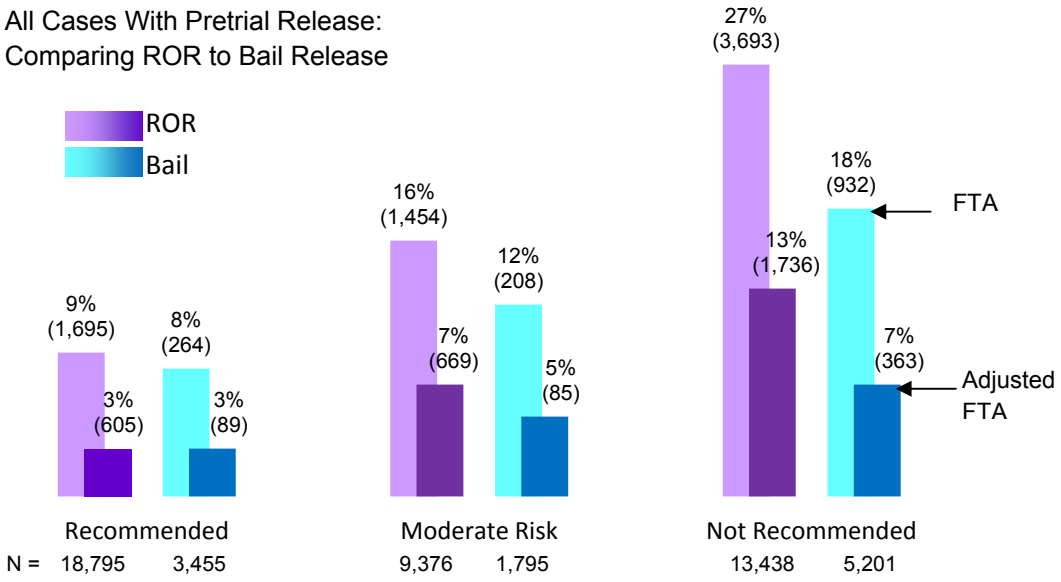
The bottom row of Figure 36 compares FTA rates for defendants released on cash or a bond, including only cases with bail set at $1,000 or more because all bail releases at lesser amounts were cash bail. For recommended defendants, FTA rates were actually one percentage point higher for cases with a defendant on bail (8% FTA), compared to ROR (7%). For the moderate- and high-risk defendants, the FTA rate for bail was 2 percentage points lower than for ROR, a trivial difference that was not statistically significant in multivariate models.

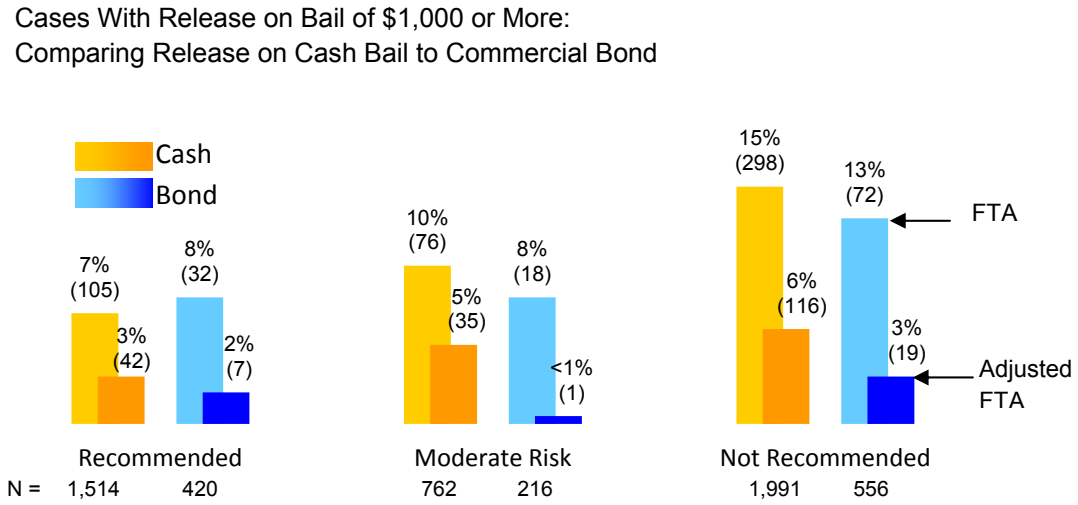
Adjusted FTA rates were affected a little more by whether the defendant was out on cash bail or a bond. For recommended defendants, the difference was only one percentage point (3% cash, compared to 2% bond) but the difference was slightly greater for other recommendation categories. Among cases with a defendant who was not recommended, the Adjusted FTA rate for bond cases (3%) was half the rate for cash bail cases (6%), an effect that was statistically significant even though the difference was only 3 percentage points. This suggests that defendants who put up cash bail were about as likely to make all their court appearances as those who posted a bond, but — if they ever did miss a court date — they were a little less likely to return within 30 days.

Figure 36

FTA And Adjusted FTA Rates By Release Type
Controlling For CJA Recommendation

Cases Of At-Risk Defendants
Arrests July – December 2005 (excluding Staten Island)





- ***Multivariate model predicting FTA (testing the effect of ROR vs. bail)***

Figure 37 presents a statistical model showing the predicted probabilities of FTA, comparing cases of defendants released on recognizance with cases of defendants released on bail in various amounts (the independent variable). Control variables include the CJA recommendation, as well as criminal history, demographic, and case-processing variables. All of the control variables displayed in the figure were statistically significant. Additional variables that were tested in the model but not included in the figure (because they were not statistically significant) were gender and whether the arrest charge was a violent felony offense; they are included in the full model presented in the original report (Phillips 2011c, Table 19).

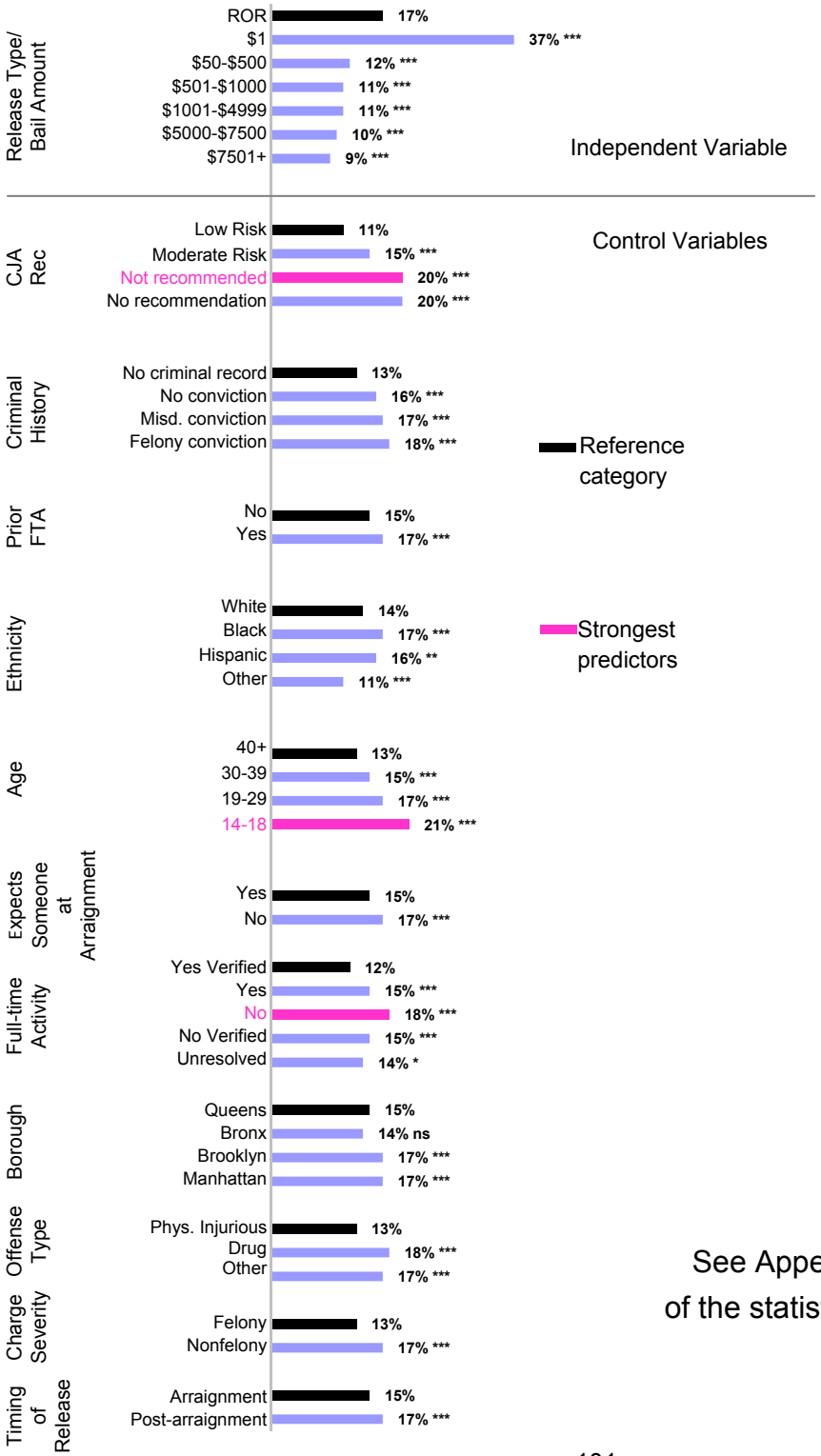
The model shows that the predicted probability of FTA for cases with a defendant released on recognizance was 17%. With the anomalous exception of $1 bail,[33] each bail level category had a lower predicted FTA rate than ROR — from 12% for bail in the $50-$500 range to 9% at amounts higher than $7,500. The predicted probabilities did not vary much by bail amount, but all were significantly lower than the probability of FTA for a defendant released on recognizance.

Some of the control variables were much stronger predictors of FTA than was release type. The strongest predictors are shown as red bars in Figure 37.[34] The CJA recommendation was by far the most powerful predictor, followed by the defendant's age and whether the defendant reported having a full-time activity (employment, school, or training program). The predicted probabilities tell the story: defendants who were not recommended by CJA had a 20% predicted probability of FTA, compared to 11% for low risk (recommended) defendants; the youngest defendants (age 14 to 18) had a 21% predicted probability of FTA, compared to 13% for the 40-and-older group; and defendants who had no full-time activity had an 18% predicted probability of FTA, compared to 12% for those who said they did have one (and CJA was able to verify that information in a phone call to a person named by the defendant).

[33] Bail is often set at $1 when the defendant has been remanded or larger bail has been set on another case. If the other matter is resolved first without a jail or prison sentence, the defendant may be released on the remaining $1 bail. Although FTA was extraordinarily high for the $1 bail releases, this was relatively unimportant as an explanatory factor in FTA because it affected very few cases.

[34] Predictor strength was assessed by comparing standardized beta coefficients, not presented in this figure. For the full models that correspond to Figures 37 and 38, including standardized beta coefficients, odds ratios, and predicted probabilities, see Phillips 2011c, Tables 19 and 20.

Figure 37
Predicted Probability Of FTA (Logistic Regression Model)
All Cases Of At-Risk Defendants
Arrests July – December 2005 (excluding Staten Island)
(N = 50,936)



Significance Levels
*** ≤ .001
** ≤ .01
* ≤ .05
ns = not significant

Variables with no significant effect on FTA are omitted from Figure 37. (See Phillips 2011c for full model.)

See Appendix C for an explanation of the statistics presented in this figure.

- ***Multivariate model predicting FTA among bail cases (testing the effect of cash vs. bond)***

Figure 38 presents a statistical model showing the predicted probabilities of FTA among bail cases (excluding bail less than $1,000), testing the effect of the form of bail. The same control variables were entered in this model as in Figure 37, with the addition of bail amount (which was a dimension of the independent variable in the previous model).

The model shows that the predicted probability of FTA for cash bail cases was 11%, compared to 10% for bond cases — a difference that was so small it was statistically insignificant. It made no difference whether bail was posted as a bond or in cash.

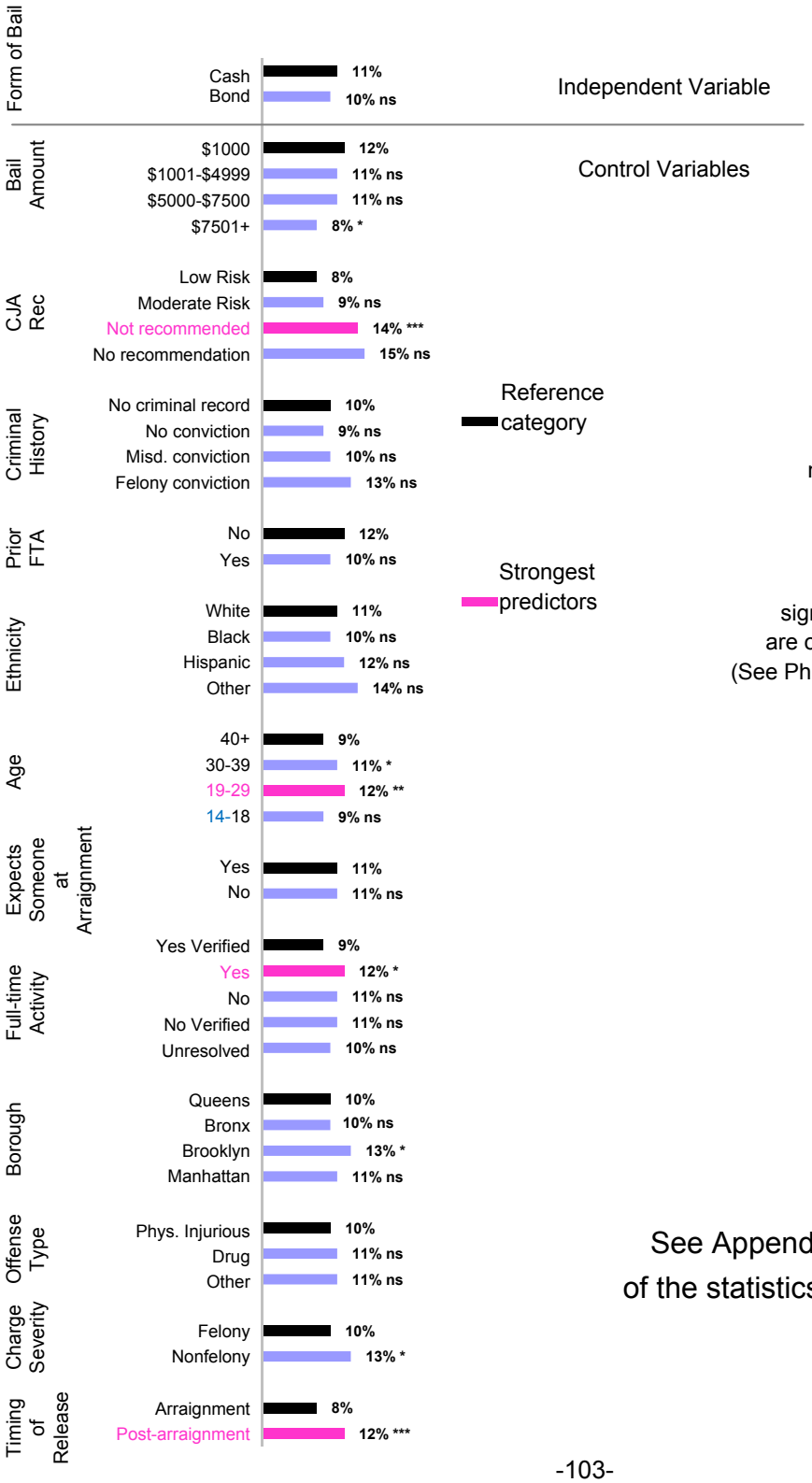
The predicted probability of FTA for cases with bail set at $1,000 was 12%, and this probability was not reduced significantly for cases in the next two higher ranges, up to $7,500. Above $7,500, the predicted probability of FTA was 8%, a significantly lower rate. This indicates that increasing the bail amount from $1,000 to any higher amount up to $7,500 made no difference in the likelihood of failure to appear.

The strongest predictor by far was again the CJA recommendation: the predicted probability for recommended (low-risk) defendants was 8%, compared to 14% for cases with a defendant who was not recommended. Age and having a full-time activity were also important variables in predicting FTA among bail cases, just as they were for the sample of released defendants as a whole. However, the exclusion of the ROR and low-bail cases led to differences in the distribution of categories that affected their importance in the model. For example, there were few defendants under age 19 with bail high enough to be included in this sample, so it was the next higher age group (19 to 29) that had the strongest impact on FTA. Their predicted FTA was 12%, compared to 9% for defendants age 40 or older.

A “Yes Verified” response to the full-time activity question again was associated with low predicted FTA (9%) but this time the significant contrast was with a “Yes (unverified)” response (12%). Lack of verification may have been the key, since verification of a positive *or* negative response indicates that CJA staff were able to reach a contact person, which may be indicative of family support.

Although posting a bond had no impact on total FTA, bonds did significantly lower the Adjusted FTA rate. The predicted probability of Adjusted FTA for cash bail was 4%, compared to 2% for a commercial bond (not shown). This suggests that defendants were equally (un)likely to fail to appear regardless of the form in which they posted bail, but bondsmen were a little more successful in getting the few who missed court to return within 30 days. The difference was only two percentage points in the predicted probability, but even a very small difference can be statistically significant in a large sample such as this one.

Figure 38
Predicted Probability Of FTA (Logistic Regression Model)
Cases With Release On Bail Of $1,000 Or Higher
Arrests July – December 2005 (excluding Staten Island)
(N = 5,482)



Significance
Levels
*** ≤ .001
** ≤ .01
* ≤ .05
ns = not significant

Variables with no significant effect on FTA are omitted from Figure 37. (See Phillips 2011c for full model.)

See Appendix C for an explanation of the statistics presented in this figure.

D. Profiles Of Defendants By Release Type

We constructed snapshots of the characteristics of the defendants and cases that comprise each release group. The results are presented in Figure 39 and Table 12.

Clearly, defendants released without bail constitute the lowest-risk, least violent group. Of the three release types, ROR cases had the lowest proportion of defendants who were not recommended for release (31%), who had a prior FTA (23%) or a prior felony conviction (19%), or who were charged with a drug offense (19%). All of these factors were associated with elevated FTA rates. The ROR group also had the fewest cases with a violent felony offense (VFO) as the top arrest charge (7%) — not a factor associated with high risk of FTA, but possibly associated with a threat to public safety.

Defendants released on bail were characterized by higher risk factors and more violent charges than the ROR group. Nearly half were not recommended (49% of the cash releases and 46% of the bonds); over 40% in both bail groups had a prior FTA (43% and 41% respectively); more than a third had a prior felony conviction (35% and 38%); and drug charges were more prevalent (26% and (36%). Moreover, the proportion with a VFO arrest charge among cash bail cases (16%) was more than double, and among bond cases (25%) more than triple, the 7% percentage for ROR cases. The high proportion of VFO arrest charges among bond cases also differentiated them from cash cases, with a 9-percentage-point difference in FTA rates between the two forms of bail (25% for bonds compared to 16% for cash bail).

This evidence contradicts one hypothesis that has been put forward, that bond agents "cherry pick" their clients, selecting only low-risk defendants. However, the data do offer some support for a competing hypothesis, that bond agents — in seeking clients with high bail — sometimes release defendants who pose a danger to the community. With no preventive detention available to the courts in New York, high bail is the only tool judges have to prevent a dangerous offender's release. Although more defendants with a VFO charge were released on recognizance (3,013) and on cash bail (1,020) than on a bond (314), the fact that ROR was ordered or low bail was set suggests that the judge was not particularly concerned about public safety in those cases. The defendants for whom high bail was set by judges out of a concern for public safety — in the expectation that bail would not be met — probably are over-represented among commercial bond releases. The combination of high bail and a high proportion of VFO cases suggests this, in spite of the fact that we have no access to judges' reasoning in setting high bail in any particular case.

It may seem strange that bail is associated with lower FTA rates *and* lower recommendation rates, compared to ROR. We know that the CJA recommendation is associated with lower FTA, so why would the group with more recommended defendants have the higher FTA rate? The answer lies in the power of money bail to lower FTA rates substantially for defendants who were *not* recommended, as shown above. The FTA rate

was very low among recommended defendants out on either type of release, but the overall FTA rate among ROR cases was driven up by extremely high FTA among the third of ROR defendants who were not recommended (Figure 36). Among bail releases, the overall FTA rate was also propelled upwards by the not-recommended subgroup — but not as much, despite the larger proportion who were not recommended.

Figure 39
Selected Case And Defendant Characteristics By Release Type
Cases Of At-Risk Defendants
Arrests July – December 2005
(excluding Staten Island)

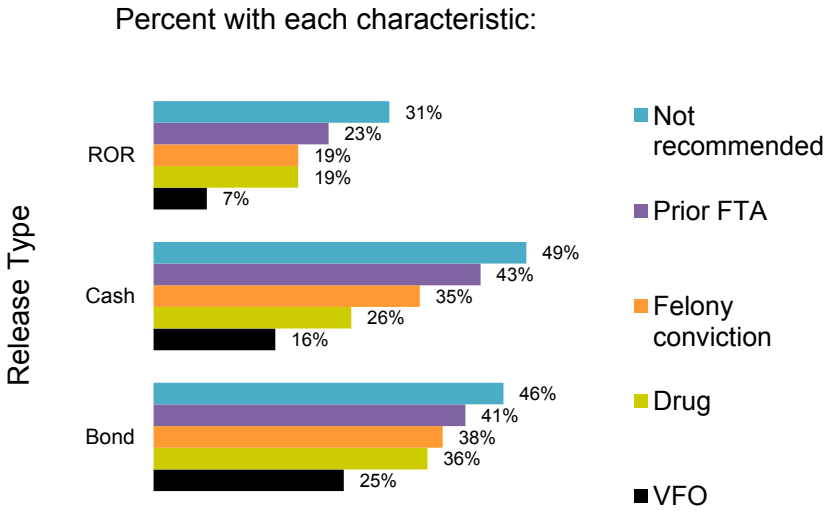


Table 12
Selected Case And Defendant Characteristics By Release Type
Cases Of At-Risk Defendants
Arrests July – December 2005
(excluding Staten Island)

	Not recommended	Prior FTA	Prior felony conviction	Drug charge at arraignment	VFO arrest charge
ROR	31% (13,439) (N=43,120	23% (10,098) (N=43,098)	19% (8,187) (N=42,436	19% (8,299) (N=44,345)	7% (3,013) (N=44,345)
CASH BAIL	49% (2,974) (N=6,105)	43% (2,624) (N=6,103)	35% (2,106) (N=6,099)	26% (1,645) (N=6,241)	16% (1,020) (N=6,241)
BOND	46% (575) (N=1,248)	41% (512) (N=1,248)	38% (468) (N=1,245)	36% (450) (N=1,266)	25% (314) (N=1,266)

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VIII. PRETRIAL DETENTION

To round out the research on bail and release, we also examined the extent and consequences of pretrial detention. The findings were published separately for nonfelony (Phillips 2007a, 2007b) and felony cases (Phillips 2008a, 2008b).

A. Data Used In The Research

The dataset used for this research included arrests in New York City from October 1, 2003, through January 31, 2004. All five boroughs of the City were included, as well as the community courts in Manhattan and Brooklyn. The analyses were restricted to docketed cases that were continued at the arraignment in Criminal Court and had reached a final disposition by mid-September 2004 for nonfelony cases disposed in Criminal Court, by December 2004 for nonfelony cases disposed in Supreme Court, and by March 2007 for felony cases disposed in Supreme Court.

All data for this part of the study were drawn from the CJA database. The database contains arrest data received from the New York City Police Department (NYPD), case-processing data from the Office of Court Administration (OCA), release dates from the Department of Correction (DOC), and criminal-history, demographic, and community-ties data obtained during the CJA pre-arraignment interview.

B. Pretrial Detention And Bail

Only a quarter of nonfelony cases that were continued at arraignment had a defendant who was detained, but there are still tens of thousands of defendants annually who are held on bail at arraignment on a misdemeanor or lesser charge. The number of felony detainees is even greater, in spite of the fact that in recent years felonies have become a small proportion of the caseload at arraignment — 16% of arraigned cases in 2010 (CJA 2011, Exhibit 5). However, over half of the cases with a defendant arraigned on a felony charge begin with detention at arraignment. All told, nearly 50,000 cases annually in New York City have a defendant who was detained at arraignment (Figure 14/Table 7; see also CJA 2011, Exhibit 14). Nearly half of these defendants stay in detention until disposition of the case.

As would be expected, the amount of bail is an important factor in whether and how soon release is obtained, but even very low bail did not guarantee a quick release. At high bail amounts, pretrial detention was likely to last for months.

The data upon which we based these findings are presented in Figures 40 through 42.

- ***Distribution of pretrial detention outcomes***

Figure 40 shows that 25% of nonfelony cases and 60% of felony cases had a defendant who was detained at arraignment, and of those over half each severity level remained in jail throughout the processing of the case. As a proportion of all cases, 14% of nonfelony and 31% of felony cases had a defendant who was detained from arraignment to disposition without ever being released.

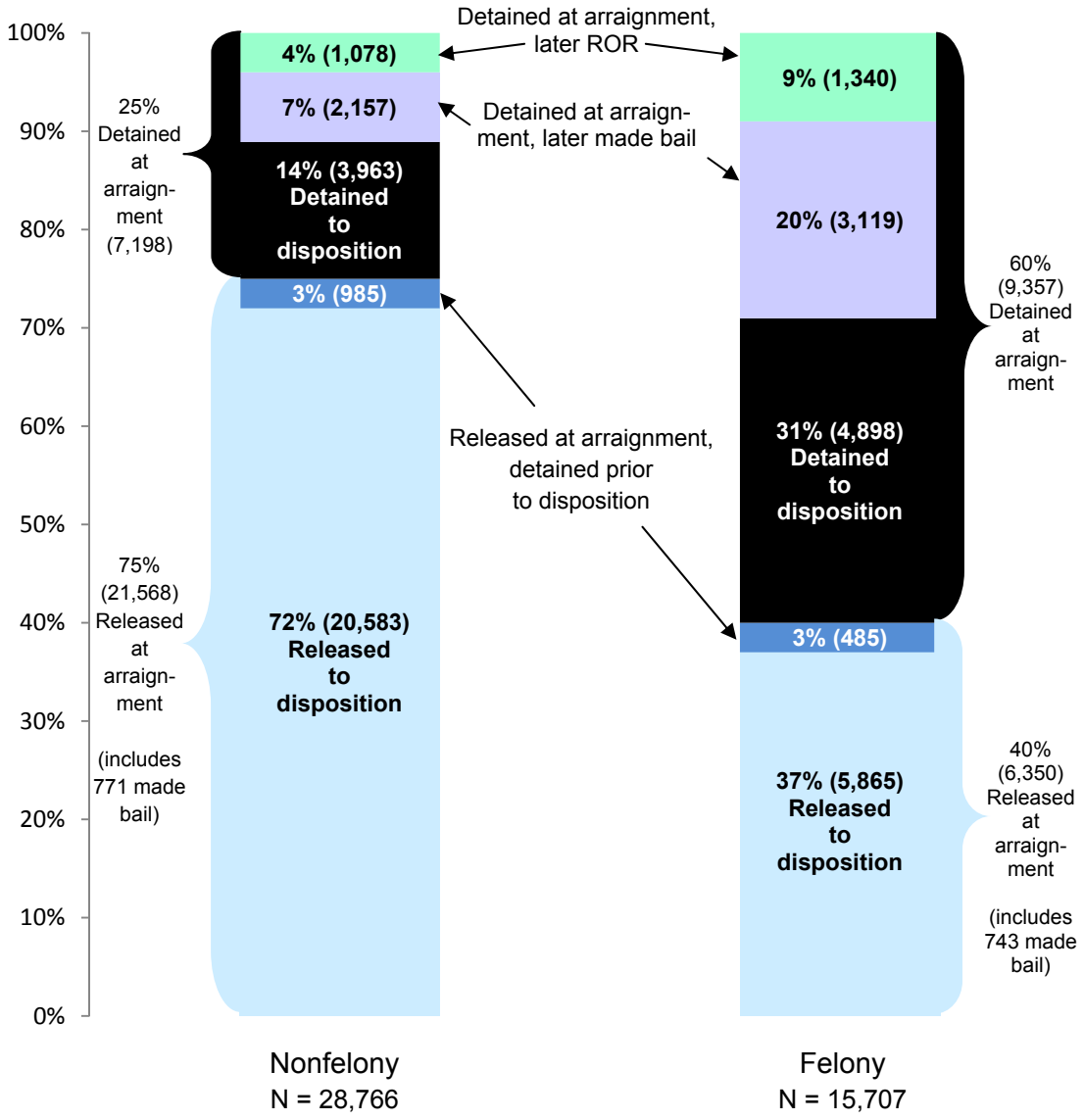
Many other defendants were in and out of detention while awaiting disposition of their cases. In a tiny percentage of cases, a defendant who had been released at arraignment was later detained (3% among both nonfelony and felony cases). This usually followed a missed court appearance or a re-arrest.

In other cases, a defendant who was detained at arraignment was later released prior to disposition. Bail was eventually posted in the majority of these cases, but sometimes the court ordered ROR in accordance with mandatory release requirements[35] or because the judge no longer thought bail necessary to ensure the defendant's return. Among nonfelony cases, 7% were held on bail at arraignment and made bail post-arraignment; the comparable figure for felony cases was 20%. Cases with a defendant who was held on bail at arraignment and later released on recognizance constituted 4% of nonfelony cases and 9% of felonies.

The average length of time spent in detention, for defendants held at arraignment, was 18 days in nonfelony cases and 51 days in felony cases. A few very long detention times skewed these averages for both groups, so we also present medians as a better measure (the number above and below which fall an equal number of cases). The median detention lengths were 5 days for nonfelony cases and 7 days for felony cases.

[35] CPL §170.70 and §180.80 require the release of a defendant after five days (six days when a Saturday, Sunday, or legal holiday occurs during custody) if the complaint has not been substantiated by the filing of an information or an indictment, unless the defendant has waived his right thereto.

Figure 40
Pretrial Detention Outcomes Separately For Nonfelony And Felony Cases
Cases Continued At Criminal Court Arraignment
Arrests October 2003 – January 2004



Length of detention for defendants detained at arraignment:

Median	5 days	7 days
Mean	18 days	51 days
	(N = 7,198)	(N = 9,357)

- ***Relationship of bail amount to detention***

Pretrial detention is closely related to bail amount, but it does not take much to keep defendants in detention until disposition of the case. The defendant was detained throughout the pretrial period in 48% of nonfelony cases in which bail was set, and in 49% of felony cases (Figure 41). The median amount of bail in these cases was $1,000 among the nonfelony cases and $5,000 among the felony cases. Mean bail amounts were $1,226 and $19,029 respectively, for defendants detained to disposition.

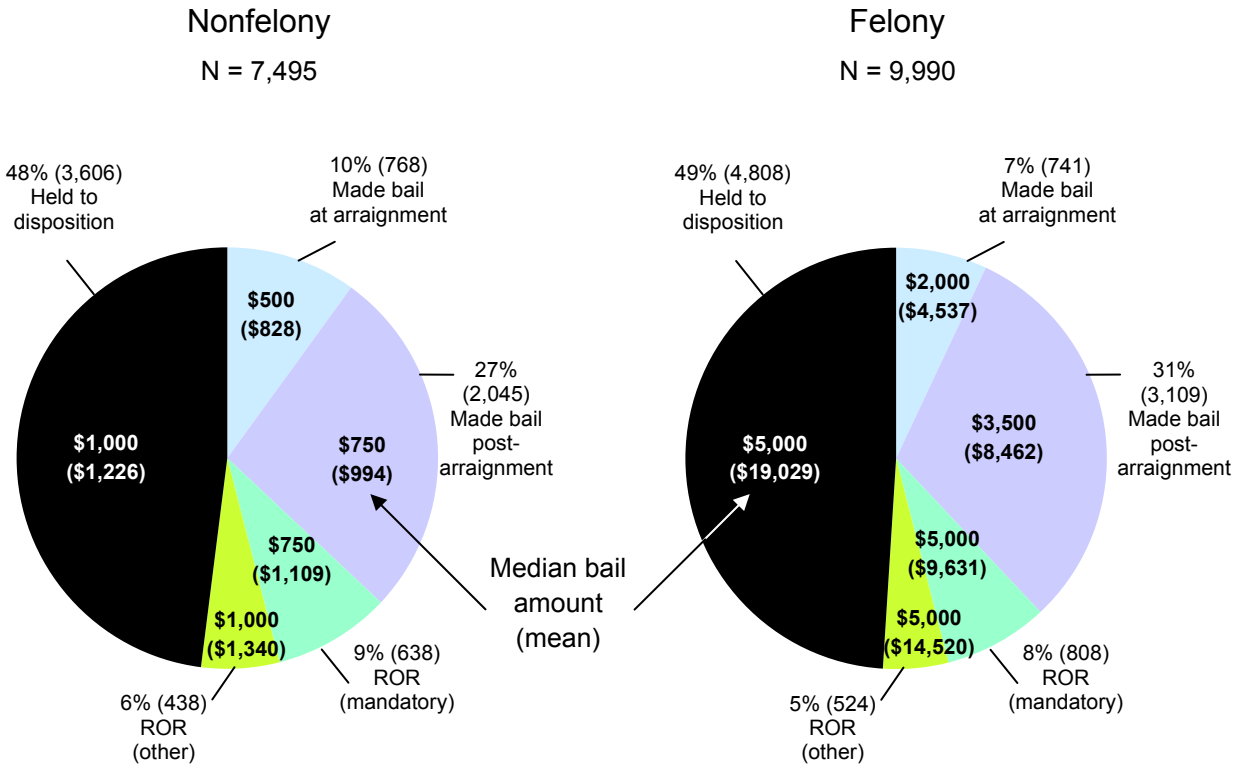
Bail was much lower in the small proportion of cases with a defendant who was able to post it at arraignment (10% of nonfelony cases and 7% of felony cases).[36] The median bail made at arraignment was $500 in nonfelony and $2,000 in felony cases, about half the median amounts for the detained cases.

More than a quarter of cases among both severity levels had a defendant who made bail post-arraignment, prior to disposition of the case: 27% among nonfelony cases and 31% among felony cases. Median bail amounts in these cases were midway between bail that was made at arraignment and bail that was never made: $750 for nonfelony and $3,500 for felony cases with post-arraignment bail making.

In the remainder of cases, bail set at arraignment was not posted but the defendant was released anyway, without bail. Our data do not include information on the judge's reason for ordering ROR after initially setting bail, but the timing indicates that most were because of statutory requirements for release after 5 or 6 days if the charges have not been substantiated by that time (see footnote 33). ROR after 5 or 6 days — labeled "ROR (mandatory)" in Figure 41 — accounted for 9% of nonfelony and 8% of felony cases with bail set at arraignment. In an additional small proportion of bail cases — labeled "ROR (other)" — the defendant was released on recognizance outside that time frame: 6% of nonfelony and 5% of felony bail cases. Some of the ROR (other) releases might also be attributable to the mandatory release law, or to some other reason such as a breakdown of the evidence that convinced the judge that the defendant would not be convicted. Bail amounts in post-arraignment ROR cases tended towards the high end of the ranges within each severity level: the median was $5,000 for both types of ROR among felony cases. For nonfelony cases, the median was $750 for ROR (mandatory) and $1,000 for ROR (other).

[36] Data presented in Figure 23 (and Table 11) above showed that for 2010 arrests, 12% of cases with bail set (combined severity levels) had a defendant who made bail at arraignment.

Figure 41
Bail Outcomes And Amounts Separately For Nonfelony And Felony Cases
Cases With Bail Set At Arraignment
Arrests October 2003 – January 2004 (excluding $1 bail)



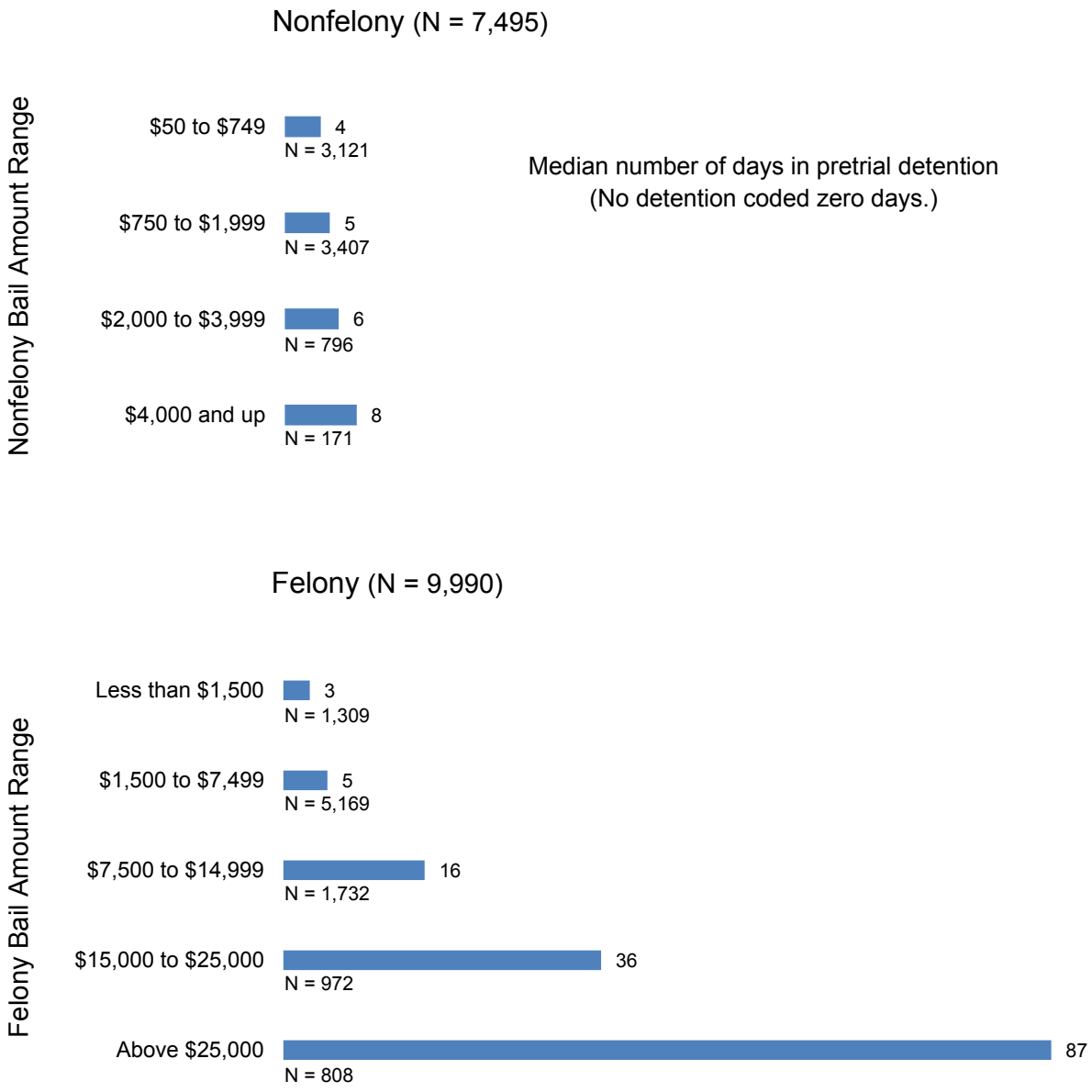
Higher bail tended to result in longer detention, even though this relationship was diluted somewhat by mandatory release. In addition, high bail encourages quick guilty pleas, thereby shortening detention time and further diluting the relationship. Even so, bail amount was among the strongest predictors of the number of days in pretrial detention in multivariate analyses (not shown). The effect of bail amount on detention time was statistically significant even after controlling for other factors that also have a major impact on detention time, such as a prior felony conviction.

Figure 42 shows that for nonfelony cases, the median number of days spent in pretrial detention rose from 4 days for cases with bail below $750 (excluding $1) to 8 days for cases with bail at $4,000 or higher. However, there were very few nonfelony cases in the highest bail range: only 171, or 2% of the total.

By contrast, felony bail was much higher, and so were detention times. For felony defendants, this constitutes a double whammy — not only do bail amounts rise to greater heights, but it also takes felony cases longer to reach disposition, resulting in longer periods of detention for those who cannot make bail. Detention times for felony defendants presented in Figure 42 ranged from a median of 3 days for bail below $1,500 to 87 days for bail above $25,000. This highest bail range group constituted 8% of the felony bail cases (808 of 9,990).

Overall medians for nonfelony (5 days) and felony (7 days) cases were presented in Figure 40.

Figure 42
Median Detention Length In Days By Bail Amount
Separately For Nonfelony And Felony Cases
Cases With Bail Set At Arraignment
Arrests October 2003 – January 2004 (excluding $1 bail)



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C. Effects Of Detention On Case Outcomes

Pretrial detention had an adverse effect on every case outcome that was examined. Defendants who were detained pretrial were more likely to be convicted, less likely to have their charges reduced, and more likely to be sentenced to jail or prison than their counterparts who were at liberty during the pretrial period. Among felony cases in particular, sentences were also likely to be longer if the defendant had been detained pretrial. Our multivariate analyses showed that other factors — offense type, charge severity, the defendant's criminal history, and borough of prosecution, among others — accounted for much of the relationship between pretrial detention and case outcomes. However, detention had an *additional* effect on case outcomes, even after taking into account the effects of these other variables. The negative influence of pretrial detention was especially strong in pushing cases towards a conviction, among both nonfelony and felony cases.

The research findings suggest a causal loop: case-related factors affect outcomes, judges adjust bail in response to those same (and other) factors, and the resulting detention has an additional small effect on the outcomes, particularly the likelihood of conviction. The data strongly suggest that something about detention itself leads to harsher outcomes than would be expected if the defendant had been released while awaiting disposition.

The pressure on a jailed defendant to plead guilty seems a particularly compelling explanation for how detention could lead to a greater likelihood of conviction. A defendant who is facing a non-custodial sentence can be released immediately by pleading guilty, whereas holding out for acquittal may mean spending many more days, weeks, or months behind bars. Moreover, prosecutors may be less willing to offer post-arraignment plea bargains when they already have the leverage of detention to encourage a guilty plea — resulting in conviction to more severe charges merely because the defendant could not make bail. More severe conviction charges translate into more severe sentences, and sentencing may be further affected if the defendant has not had the opportunity to demonstrate good behavior while on release in the community.

The data upon which we based these findings are presented in Figures 43 through 45.

- ***Effect of pretrial detention on conviction***

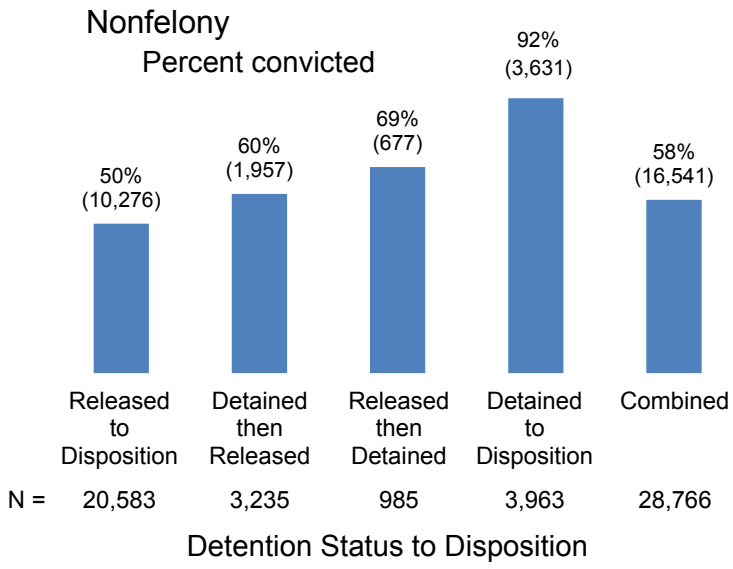
Multivariate models showed that pretrial detention increased the likelihood of conviction for both nonfelony and felony defendants, and the effect was statistically significant even after controlling for a wide range of case and defendant characteristics (models not shown). Pretrial detention alone had a strong effect on conviction, beyond what was explained by all the control variables in both nonfelony and felony models.

Overall conviction rates were 58% in nonfelony cases and 68% in felony cases (Figure 43). Conviction rates were significantly lower among cases with little or no pretrial detention, and higher among cases with more detention, but different specific measures of detention were used for nonfelony versus felony cases. For nonfelony cases, detention status to disposition was most important. For felony cases, the strongest measure was the number of days spent in pretrial detention.

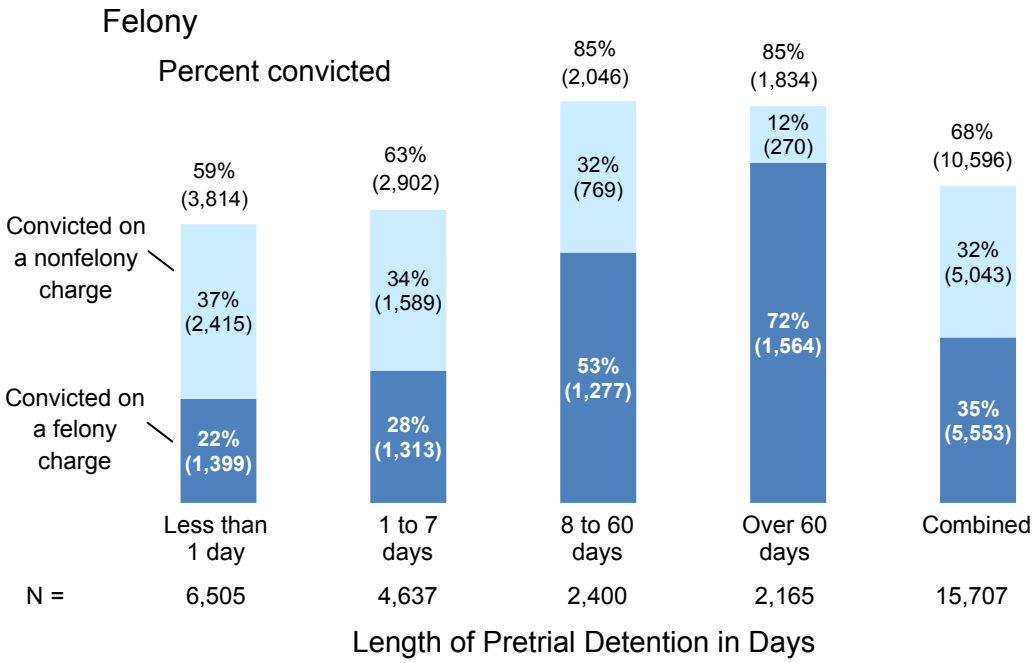
Among nonfelony cases with no pretrial detention, half ended in conviction, compared to 92% among cases with a defendant who was detained throughout. Conviction rates among defendants who spent part, but not all, of the pretrial period in detention fell into a middle range: 60% convicted among those who were held at arraignment and later released (usually when they posted bail), and 69% for those who were released at arraignment and later detained (usually after a missed court appearance or re-arrest).

Among felony cases, spending a longer time in detention not only raised the likelihood of conviction, but also lessened the chance that the charge would be reduced. Overall conviction rates rose from 59% for cases with a defendant who spent less than a day in detention to 85% when the detention period stretched to more than a week. After a week, the likelihood of conviction remained at 85% — but the felony charge was reduced to a misdemeanor less often. Conviction on a felony charge rose from 22% among cases of defendants who were released without spending any (post-arraignment) nights in jail, to 72% among those who spent more than two months in pretrial detention. This can be understood in terms of the prosecutor's leverage over detained defendants: prosecutors are more likely to offer a reduced charge to someone who is out of jail. The data suggest that detention itself creates enough pressure to increase guilty pleas without the need for the extra inducement of a reduced charge. This suggestion was supported by additional multivariate analyses, which showed that detention lasting longer than a day significantly *reduced* the chance of conviction on a nonfelony charge (not shown).

Figure 43
Conviction Rates By Pretrial Detention Separately For Nonfelony And Felony Cases
Arrests October 2003 – January 2004



The choice of detention measures presented in this figure was based on the results of the multivariate models. Several measures were statistically significant, but detention status to disposition was the most powerful predictor for nonfelony cases, whereas the number of days spent in detention was the most powerful predictor for felony cases.



The sum of percentages within bars may not equal the total percentage for the bar because of rounding.

- ***Effect of pretrial detention on incarceration***

Figure 44 shows that in cases ending in conviction, 32% of nonfelony and 57% of felony cases received an incarcerative sentence. (Note that the severity groups are based on the arraignment charge, not the charge on which the defendant was convicted. As shown in the previous figure, many defendants facing a felony charge at arraignment were convicted on a misdemeanor or lesser severity charge.)

Pretrial detention significantly increased the likelihood of a jail or prison sentence, in addition to raising the likelihood of being convicted in the first place. Multivariate models developed separately for nonfelony and felony cases controlled for all the same factors that were included in the analyses of conviction, with the addition of a statistical control for possible sample selection bias introduced by restricting the sample to convicted cases (not shown). The severity class of the disposition charge was also added to the incarceration analyses. The type and severity class of the offense and the defendant's criminal history had the most effect on whether the sentence included any jail or prison time, but even after accounting for these effects, pretrial detention had a small additional impact.

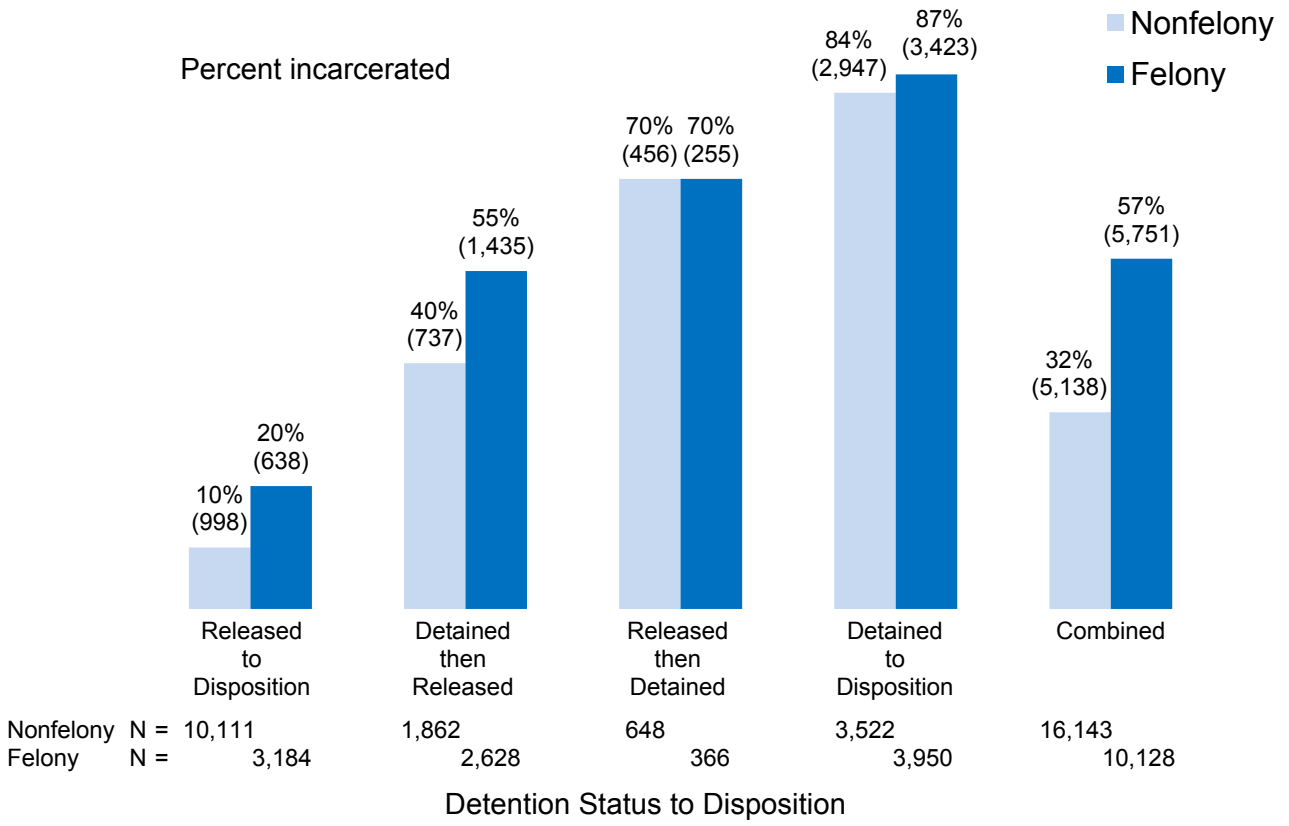
The detention measure most strongly associated with likelihood of incarceration among both nonfelony and felony cases was detention status to disposition, so this is the measure presented in Figure 44. Among cases with a convicted defendant who was released throughout the pretrial period, 10% of the nonfelony and 20% of the felony sentences included incarceration. These proportions rose for defendants who spent time in and out of detention, reaching more than 80% for defendants who spent the entire pretrial period in jail: 84% and 87% for nonfelony and felony cases respectively.

Among cases of both severity levels, the control variables together accounted for much more of the variance in incarceration than did detention. However, detention to disposition was the strongest *single* factor influencing a convicted defendant's likelihood of being sentenced to jail or prison for nonfelony and felony cases alike.

To explain the association between pretrial detention and severe sentences, a conference speaker a few years ago suggested that it is not so much that detention results in harsh sentences, but that pretrial *release* results in *less* harsh sentences. Release gives the defendant a chance to prove that he or she can behave responsibly. A released defendant can get a job, support his family, stay out of trouble, and demonstrate that he is turning his life around. This gives the defense attorney some positive things to tell the judge prior to sentencing, and could convince the court to impose a conditional discharge or perhaps a fine rather than sending someone to jail.[37]

[37] Remarks made by Alan Rosenthal of the Center For Community Alternatives in Syracuse, NY, in an address to the Subcommittee on Supervision in the Community of the New York State Commission on Sentencing Reform, August 9, 2007, in New York City.

Figure 44
Incarceration Rates By Pretrial Detention Separately For Nonfelony And Felony Cases
Cases Ending In Conviction
Arrests October 2003 – January 2004



Cases ending in conviction in which the defendant had not yet been sentenced at the time of data collection, or for which the sentence was missing, were excluded from Figure 44 (398 nonfelony and 468 felony cases were excluded for this reason).

Of several detention measures tested in multivariate models, detention status to disposition was the strongest predictor of incarceration for both nonfelony and felony cases.

- ***Effect of pretrial detention on sentence length***

Overall, sentences averaged 49 days for cases entering arraignment with a nonfelony top charge (median 30 days) and 580 days (median 365 days) for cases with a felony charge at arraignment[38] (Figure 45). However, these numbers varied greatly depending on how long the defendant had spent in pretrial detention prior to conviction.

For cases of both severity levels, sentence lengths for defendants with little or no pretrial detention were a fraction of sentences meted out to defendants who had spent over two months in jail prior to conviction. Among nonfelony cases, defendants who had spent less than a day in jail were sentenced to a median term of 5 days, compared to 90 days for those who had been detained for more than two months. Among felony cases, the comparable sentences were 120 days (the median for cases with less than a day in pretrial detention) and 730 days (over two months detention). Intermediate detention lengths were associated with sentences that were also intermediate in length.

Multivariate analyses showed that factors other than detention were responsible for most of these differences (not shown). For example, more severe charges usually take longer to reach disposition, which leads to both longer pretrial detention and longer sentences. In spite of this, the number of days spent in pretrial detention had a statistically significant effect on sentence length, even after controlling for charge severity and type, as well as numerous other factors (including the portion of the effect of detention responsible for higher likelihood of conviction and incarceration). The effect of detention alone on sentence length among nonfelony cases — although statistically significant — was small. The effect was much stronger among felony cases, possibly because felony sentences and detention times both cover a wider range.

Sentences of time served were not a factor in the relationship between detention and sentence lengths, even though a time served sentence by definition equals detention length. Time served constituted 24% of nonfelony and 13% of felony sentences, highly concentrated among the cases with less than one day of detention.[39] Almost half (48%) of nonfelony cases and 31% of felony cases with less than one day of detention had a time served sentence. Cases with the longest detention times had very few time served sentences among them (11% among the nonfelony and 2% among the felony groups), so the length of their sentences could not be attributed to time served. To confirm this, the multivariate analyses were repeated excluding all time served cases, with the same results as before.

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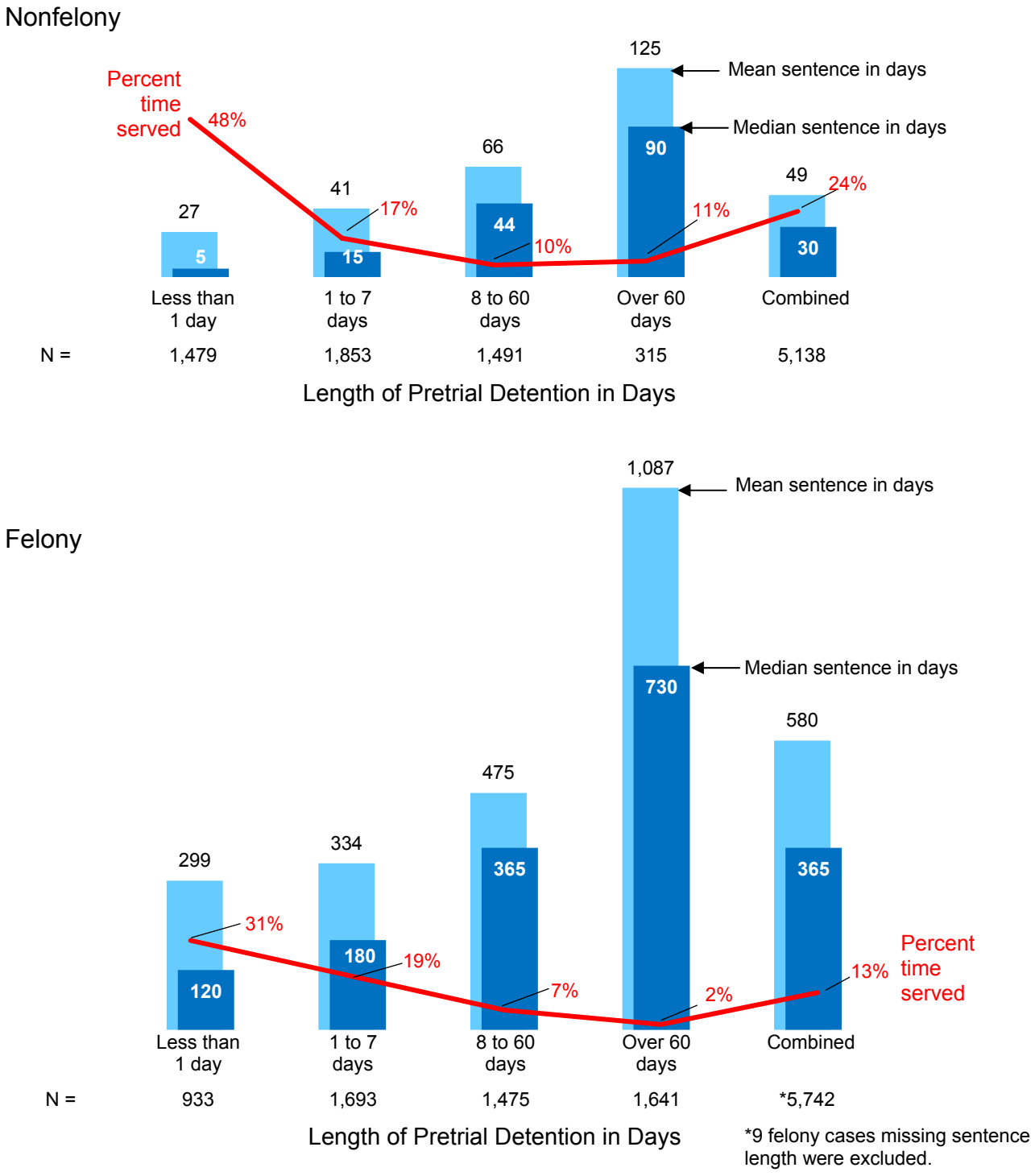
[38] For defendants sentenced on a felony charge to an indeterminate prison term (with a minimum and a maximum), the minimum term was used as the measure. Sentences of time served were set to equal the number of days spent in pretrial detention. Because of early release for good behavior, not all defendants actually served the full sentence imposed.

[39] A defendant released at arraignment can receive a time served sentence because credit is given for the time in jail from arrest to arraignment.

Figure 45
Sentence Length And Percent Time Served By Pretrial Detention
Separately For Nonfelony And Felony Cases
Cases Ending In Conviction And An Incarcerative Sentence
Arrests October 2003 – January 2004



*9 felony cases missing sentence length were excluded.

D. Detention And Positive Case Outcomes

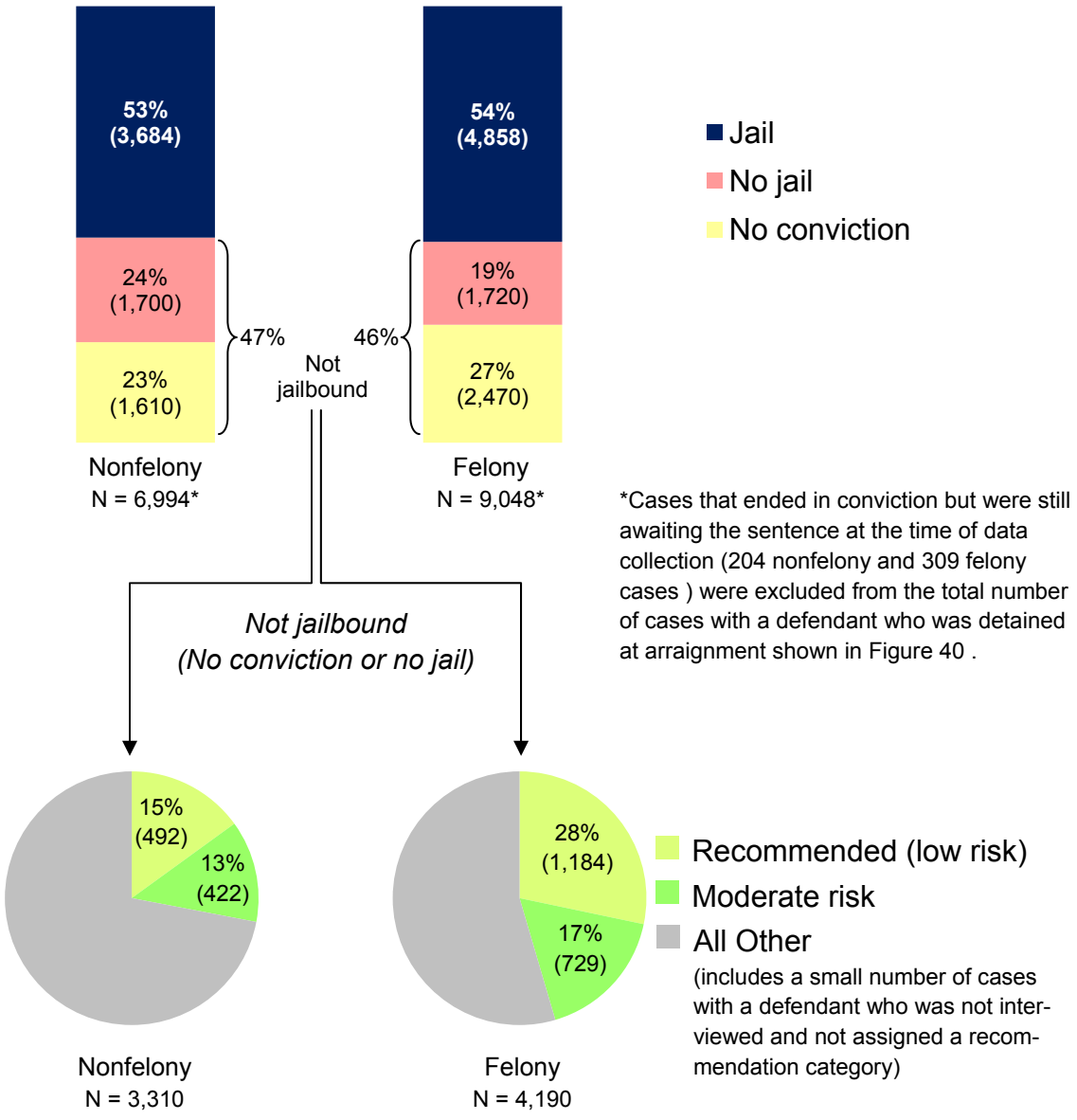
In spite of the increased likelihood of conviction and a jail sentence for defendants who were detained pretrial, it is still true that not *all* detained defendants are convicted and even fewer are sentenced to jail. For defendants with a positive outcome despite their detention, spending time in New York City's jail system is a miserable experience with all the adverse side effects likely to be experienced by anyone who is locked up for long — loss of employment, disruption in family relationships, damage to health and well being — without even the compensation of receiving a credit against an eventual sentence. Nearly half of the defendants in the detained sample were either not convicted or received a noncustodial sentence. Moreover, many of them were not at high risk of failure to appear, especially among felony defendants.

Figure 46 shows that among cases with a defendant who was detained at arraignment, 47% of nonfelony cases and 46% of felony cases ended favorably for the defendant — meaning that no jail time was imposed (not even time served). Among nonfelony cases, the favorable dispositions were about equally divided between dismissals or acquittals (23%) and convictions with a sentence of conditional discharge or some other non-custodial sentence (24%). Among felony cases, the favorable dispositions were more likely to be a dismissal or acquittal (27% of detained cases) with a smaller proportion of non-custodial sentences (19%). In this four-month sample, some 7,500 defendants in New York City cases who were not headed for jail were nonetheless held in detention at arraignment.

The lower part of Figure 46 shows that among these 7,500 detained, non-jailbound defendants, many had been recommended for release by CJA. The low-risk group represented 15% of the nonfelony cases and 28% of the felony cases. Another 13% of the nonfelony and 17% of the felony cases had a defendant who represented a moderate risk of failure to appear. Together, the defendants who were at low or moderate risk constituted over a quarter of the nonfelony and nearly half of the felony cases of detained defendants who were not jailbound.

A positive CJA recommendation indicating a low or moderate risk of flight, in conjunction with the likelihood of no jail time, would appear to constitute an ideal scenario for release on recognizance. The fact that bail was set instead indicates that the judge saw something about the offense or the defendant's criminal history that suggested otherwise. That this scenario was concentrated among felony cases suggests that charge severity was often the deciding factor — a suggestion supported by the earlier findings about the primacy of charge severity and the prosecutor's bail request in the arraignment release decision.

Figure 46
Positive Outcomes And Recommendations Among Detained Defendants
Separately For Nonfelony And Felony Cases
Cases With A Defendant Who Was Detained At Arraignment
Arrests October 2003 – January 2004



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IX. SUMMARY, DISCUSSION, AND POLICY IMPLICATIONS

A. Summary Of Findings

- ***National comparisons:*** New York operates in a statutory environment unlike most other states, and release and bail setting in New York City follow very different patterns from most other large cities. On the state level, New York is one of only four states that do not allow the courts to consider public safety in making the release decision, and it is one of only two states in which bail may be denied in felony cases to ensure court attendance but not public safety. On the local level, more defendants in New York City are released pretrial, more are released without financial conditions, and bail amounts are much lower than in other large cities nationwide. Nonfinancial forms of release nationally are more varied than in New York City, where ROR is virtually the only nonfinancial release type. Commercial bonds constitute the most frequent form of pretrial release nationwide but only a minority of pretrial releases in New York City. Finally, despite greater reliance on ROR and relatively few commercial bonds, New York does not have higher FTA rates than reported in other large cities. Pretrial re-arrest rates are higher in New York City than the national average, but there is no consistent relationship between the release rate in a jurisdiction and the likelihood of either type of misconduct.
- ***Authorized forms of release:*** New York City courts nearly always order ROR or set bail for defendants whose cases are continued at the criminal court arraignment, except for a tiny percentage remanded without bail. Although a small supervised release program provides an alternative for defendants in Queens who meet strict criteria (soon to be expanded to Manhattan), there are no supervised release options in most of the City. Bail is usually set in one amount, which can be met in the form of a commercial bond or by posting the full amount in cash — unless a cash *alternative* is specified in a lower amount, in which case the lower amount is sufficient to post cash bail. Credit card bail was introduced as third bail form on a trial basis in Manhattan in March 2012, giving judges the option of setting a different amount for credit cards. At this writing it was still too early to assess whether or how the courts will make use of this option, or if the program will be extended to other boroughs. Many other forms of financial and nonfinancial release — such as secured, partially secured, and unsecured bonds — are authorized but rarely used in New York City.
- ***Resurgence of commercial bonds:*** Commercial bonds, which had all but disappeared from New York City in the 1980s, have returned. Bondsmen are especially active in Brooklyn, where one in five bail releases in a sample of 2005 cases was posted by a commercial bondsman. Other correlates of release by bond are high bail and no cash alternative (or a cash alternative with a small discount).

In the 1980s, cash alternatives were much more common than today, and the discounts were larger, which suggests that fluctuations in the presence of commercial bondsmen may be related to changes in the setting of cash alternatives.

- ***Factors influencing the release decision:*** The factors that are most influential in determining the release decision at arraignment are *not* the factors most predictive of pretrial failure to appear — despite the fact that failure to appear is the only consideration authorized by law in New York. The prosecutor's bail request, which is a very poor predictor of FTA, was the most important factor influencing the ROR decision and bail amount. The prosecutor's request was based largely on charge severity and criminal history, and was not influenced by the defendant's risk category assigned by the CJA recommendation. The research indicates that prosecutors have other priorities, such as obtaining convictions, which are reflected in their bail requests more prominently than any consideration of risk of failure to appear.
- ***Judicial variability:*** A degree of uniformity in decisions was found among the majority of judges, but there were a few judges in each borough whose decisions fell outside the norms set by their colleagues. Idiosyncrasies of individual judges had a statistically significant impact on release and bail decisions, after controlling for other relevant factors. It was difficult to summarize this impact in any global way because some judges were lenient on one dimension and not the other (ROR or bail amount), and some made decisions differently depending on the severity level of the charge. One judge, for example, ordered ROR far less than others in the same borough (strict on ROR), but he set bail relatively low (lenient on bail amount). Another judge set unusually high misdemeanor bail amounts and unusually low felony bail amounts. Although these nuances preclude blanket statements about the effect of any particular judge, strong evidence was found that the identity of the judge had an important effect on the release outcome.
- ***Effective cash discounts:*** Cash alternatives could be set in such a way that they match the initial cash outlay needed to post a bond (including the nonrefundable fee as well as money deposited as cash collateral). An *effective* cash discount, as defined here, is one that lowers cash bail to a level no higher than the cash that would be needed for a bond. At present, cash alternatives almost never meet this goal — most judges probably do not even think of this as a goal. However, if cash alternatives were set effectively in this sense, then any defendant who could afford to post a bond could post cash instead. The initial cash outlay needed for a bond in the research sample varied according to the size of the bond and the borough. By our calculation, an effective cash alternative could be achieved most of the time with a cash discount of at least 60%. For large bonds

in Brooklyn and Queens ($10,000 or more), a 70% discount would be required. Current discounts — when they are set — are inadequate because they rarely exceed 50%. Ironically, Brooklyn and Queens are the very boroughs in which discounts are *least* likely to exceed 50%.

- ***Release type and FTA:*** Release type was not an important factor in likelihood of FTA. Other factors — primarily the CJA recommendation — predicted likelihood of FTA much better than did release type. For one subgroup, though, money bail did have a deterrent effect on FTA, compared to ROR. Among high-risk defendants (those who were not recommended by CJA), release on bail was associated with an FTA rate that was 9 percentage points lower than among cases of defendants who were released on recognizance. For low-risk defendants (recommended by CJA), however, bail made almost no difference. Further, the amount of bail was not a factor until it rose above $7,500, at which point the high amount had an additional small deterrent effect on FTA. Finally, a comparison between cash bail and bonds showed that the form of bail had no significant effect on FTA for any group. Whatever deterrent effect bonds had, compared to ROR, was entirely attributable to money bail and not to the efforts of bail bondsmen. Bail bondsmen were a little more successful (than cash bail) in getting defendants back to court within 30 days, however, once they had missed a court date.

- ***Detention and case outcomes:*** Pretrial detention has an adverse effect on case outcomes. The strength of this finding derives from the many different analyses that all led to the same conclusion, regardless of the measure of detention that was used, the particular case outcome that was examined, or the severity level of the cases in the analysis. Defendants who are detained pretrial are more likely to be convicted, if convicted they are more likely to be sentenced to incarceration, and if incarcerated, their sentences are likely to be longer. Among felony defendants, defendants who are detained pretrial are also less likely to have their charges reduced to a misdemeanor. Other factors played larger roles than detention in determining case outcomes, but the multivariate techniques used in this research provided an estimate of the additional effect of detention itself, and it was significant for both misdemeanor and felony cases. Pretrial detention had an especially strong effect in raising the likelihood of conviction. For detained defendants who are *not* convicted or sentenced to jail — nearly half of the detainees — the outcome is still negative, since they served jail time without ever having been sentenced to jail.

B. Discussion And Policy Implications

The bail project research identified a number of issues that need to be addressed to bring equity, visibility, and rationality to New York's bail system.[40] While it is widely acknowledged that New York is a leader in encouraging the use of ROR and in implementing scientifically validated risk assessment for each defendant, the research has pointed to several areas of concern.

These concerns are focused, first, on the large number of defendants held in jail while awaiting disposition of their cases, in spite of high ROR rates. More than 50,000 defendants are detained annually in New York City only because they lack the money to make bail. Many of them are recommended for release by CJA because of a low risk of failure to appear, and many are not facing jail terms. In an equitable system (and in a system in compliance with the standards of the American Bar Association), poverty should not be the reason for anyone's detention.

Another area of concern involves defendants who gain release after posting bail, and the role of commercial interests in this process. In New York, the only way a judge can remove potentially dangerous defendants from the community prior to disposition of the case is to set high bail — but even the most violent criminal need only find an affordable bondsman to circumvent the intentions of the court. Cash is posted in some high-bail cases, but bonds predominate at the highest levels. Some of these individuals probably should not be released.

The intrusion of commercial interests into the criminal justice system presents other problems as well. Bond agents charge high fees for their services, yet they attract clients who cannot afford cash bail because the bond agent requires less money up front. In the end, all bond clients pay more for release than their counterparts who are able to post the same bail in cash. The inequity of money bail in general is thereby compounded for those who turn to bondsmen. Further, the bond agent has control over who will be released and who will stay in jail, guided by commercial motives rather than an empirical assessment of risk.

Equity would require that the poor have the same chance for pretrial release (which is related to their chance for a positive case outcome) as the rich; that cannot happen as long as money bail is used to determine who is released and who is not. *Visibility* in the decisionmaking process would require the courts to state the reasons for setting bail; without it, we have no way of knowing how often high bail is set because of a risk to public safety, or for any other reason. And *rationality* would require that release decisions be based solely on risk related to the purpose of bail; yet unrelated considerations exert a major influence.

[40] Goldkamp and Gottfredson (1979) first framed the discussion of the bail system in these terms, and we owe much of our thinking to their insights.

Each report in the bail project series has concluded with a list of policy recommendations aimed at reducing unnecessary detention, which would go a long way towards making the system more equitable and rational, if not more transparent. We have emphasized three avenues in particular:

- Increasing the use of ROR for defendants who present a low risk of FTA, which would mean less reliance on prosecutors in making the decision. Although ROR rates are already high, bail is set for many recommended defendants.
- Replacing money bail with expanded options for supervised release. With only one supervised release program currently operating in one borough of New York City, there is much room for expansion. Preliminary results from the Queens Supervised Release program since its inception in 2009 show that such a program can replace bail while keeping FTA and re-arrest rates low for selected defendants. The planned expansion of the program into Manhattan represents a step in this direction, but a supervised release option will still be available only to a select few.
- Encouraging judges, when they do set bail, to use the options already available to them to enable defendants to post cash bail instead of a bond, and to enable a greater number to make bail. These options include greater and more effective use of cash alternatives, and more use of secured, partially secured, and unsecured bonds in place of commercial bonds.

Resistance to replacing bail with ROR or supervised release may arise from the perception — based in reality — that bail lowers FTA rates. However, the discovery that bail has this effect only for high-risk defendants indicates that no legitimate purpose is served in setting bail for a defendant who is already at low risk of FTA. Bail does not lower FTA rates any further for defendants who were recommended by CJA. For the others, participation in a supervised release program could have the same deterrent effect as bail for defendants who do not qualify for a CJA recommendation. Whether the key is family involvement or the care and concern of program staff, experience suggests that supervised release can be a successful substitute for reliance on bail in many cases.

Finally, serious consideration should be given to efforts to amend the New York State bail law to authorize detention without bail for dangerous defendants, as long as adequate provisions are made for due process. The American Bar Association has long endorsed preventive detention in its Standards (ABA 2007), and the 2011 National Symposium On Pretrial Justice also endorsed it (PJI 2011b). As part of the due process provisions outlined in the ABA Standards, a hearing would be held in which the reasons for denying bail are made explicit — bringing visibility to what is now an opaque decision. Using bail to address public safety concerns is a subversion of the purpose of

bail, with unpredictable results for detention, but it will continue by necessity in the absence of a preventive detention option.

The availability of preventive detention might also encourage judges to restrict bail, when it is set, to an amount the defendant can make. This could eliminate detention solely due to the inability to pay, while retaining the structure of the bail system.

It may not be widely appreciated that preventive detention entails two separate elements, not always in combination: one is the denial of bail, and the other is the consideration of public safety in making release decisions. We have pointed out that New York is almost alone in authorizing the first without authorizing the second. Our suggestion that preventive detention be considered for New York entails adding public safety to the existing statute that allows detention without bail to ensure court attendance. If public safety could also be considered, an empirically validated risk assessment instrument could be developed to assist the courts in targeting individuals who are too dangerous to be released into the community. Although most judges already attempt to reduce the risk of re-arrest of dangerous defendants by setting high bail, currently they have no guidance in making this assessment. A legislative change allowing preventive detention, along with an objective assessment of each defendant's risk of re-arrest, might together reduce New York City's high pretrial re-arrest rates.

The policy recommendations arising from this research are all in accord with the "Recommendations of Symposium Participants" published at the conclusion of the National Symposium (NS). The NS recommendations are reproduced in their entirety on the following pages,[41] along with commentary on the change that would (or would not) be entailed by bringing New York into compliance (PJI 2011b).

[41] Separate recommendations, not included here, were made for the Office of Justice Programs (OJP), legislators, stakeholder groups, and the philanthropic and academic communities.

C. Recommendations Of The National Symposium On Pretrial Justice

May 31 – June 1, 2011
Washington, DC

There was a consensus among the participants at the Symposium that the pretrial justice systems in place in jurisdictions across the country should have all of the following features. In italics following each recommendation we comment on the compliance status of New York.

- Use of citation releases by law enforcement in lieu of custodial arrests for nonviolent offenses when the individual's identity is confirmed and no reasonable cause exists to suggest the individual may be a risk to the community or any other individual, or to be a risk to fail to appear in court.

Comment: New York City can probably be considered in compliance with this recommendation. A Desk Appearance Ticket (DAT) is issued by the New York City Police Department (NYPD) in nonfelony arrests that meet certain criteria. When a DAT is issued, the defendant remains at liberty until a scheduled arraignment weeks or months later. The volume of DAT arrests has risen about fivefold since 1999, comprising over 20% of all docketed arrests in 2010. However, many nonviolent offenses are excluded from eligibility for a DAT, even when there is no reason to believe the individual represents a high risk of failure to appear. A future CJA research project will examine DAT arrests more closely.

- Eliminating the use of automatic, predetermined money bail set with regard only to the arrest charge, and requiring all arrestees to be assessed for risk of re-arrest and flight, prior to any pretrial release.

Comment: New York City is in compliance with part, but not all, of this recommendation. New York City courts do not use predetermined bail schedules, and virtually all defendants are assessed for risk of flight prior to pretrial release. However, the risk assessment does not include risk of re-arrest because public safety is not a consideration that is authorized by the law in New York. The NS recommendation recognizes that public safety is *an authorized consideration in most other jurisdictions in the country. CJA is currently engaged in research that might include risk of re-arrest along with flight risk in its recommendation system, in the event that the New York legislature authorizes it in the future. Such action on the part of the legislature would be necessary to bring New York fully into compliance with this recommendation.*

- Screening of criminal cases by the prosecutor's office before the initial appearance to make sure that the charge before the court at that first appearance is the charge on which that [sic] the prosecutor is moving forward.

Comment: New York is in compliance with this recommendation. The prosecutor's office screens each case before arraignment in New York City.

- Presence of a defense counsel at the initial appearance who is prepared to make representations on the defendant's behalf for the court's pretrial release decision.

Comment: New York is in compliance with this recommendation. Every defendant has legal representation at arraignment, provided free for indigent defendants.

- Presence of a judicial officer at the initial appearance who has received thorough training on pretrial release decisionmaking, including on the laws that govern how the decisions are to be made and the research showing evidence-based decisionmaking practices.

Comment: Although a judge who is well versed in the law presides at the initial appearance, New York is not fully in compliance with the recommendation for training. Pretrial release decisions are touched upon in training for new judges, but there is considerable room for improvement, especially in regard to familiarizing judges with the results of research. In the course of collecting data for this project, we heard judges express dissatisfaction with the amount of training they had received in setting bail amounts, and several acknowledged having little idea of the length of detention that would likely result from setting bail at any given level. Nor are judges likely to realize how low cash alternatives need to be to constitute an effective alternative to commercial bonds.

Most of all, judges apparently need more training in setting forms of bail other than cash and commercial surety bonds. It is widely acknowledged that habit and lack of familiarity are the main obstacles to greater use of unsecured, secured, and partially secured bonds (all of which bypass commercial bondsmen, thus saving defendants money and keeping release decisions in the control of the court). Secured bonds would be especially appropriate to consider in Queens, where property ownership is high and bail bondsmen often accept real estate as collateral. Partially secured bonds, in which the defendant is typically allowed to post 10% of the bond amount, are routinely used elsewhere in the country and are worth trying here. A partially secured bond would be affordable for anyone who could afford a commercial bond, and for many others who would otherwise remain in jail.

Training might also increase consistency among judges, thereby reducing the judicial variability that was found in this research. Equity in the criminal justice system demands that similarly situated defendants receive similar treatment regardless of who the judge happens to be.

- Existence of a pretrial services program or similar entity that:
  - Interviews all defendants who are in custody before the initial appearance;
  - Compiles the information that the court is required by law to take into consideration in making a pretrial release decision;
  - Assesses each defendant's level of risk to be a danger to the community and to fail to appear in court using scientifically validated risk criteria;
  - Recommends to the court viable, least restrictive release options to address identified risks; and,
  - Provides crime victims and others with mechanisms for reporting apparent violations of pretrial release conditions.

Comment: New York City is partially in compliance. CJA fulfills the first three of these functions, except that (1) CJA does not have access to some of the information that the court is required by law to take into consideration, such as the defendant's character and the weight of the evidence; and (2) the risk assessment is restricted to failure to appear.

The last two functions that pretrial services programs should perform, according to the NS recommendations, are not currently applicable to New York City because they presuppose a range of conditional release options that are not available here. Compliance would require greatly expanding the availability of programs featuring release under supervisory conditions.

- Availability and use of detention without bail for defendants who pose unmanageable risks to public safety.

Comment: New York is not in compliance. Adopting this recommendation would require action by the New York State legislature.

Reducing the number of defendants who are detained pretrial and decreasing the amount of time they spend in detention, without an increase in FTA, is an integral part of CJA's mission. Bringing New York into compliance with national standards would go a long way towards accomplishing this. The New York legislature has shown no inclination to authorize the denial of bail for dangerous offenders, but some of our other recommen-

dations can be implemented without legislative action, easily and at no cost. The most complicated, difficult, and costly recommendation — but also potentially the most effective — is the development of an array of supervised release programs in all five boroughs of the City. The start that has already been made in Queens suggests that this is an avenue worth pursuing further.

BIBLIOGRAPHY

This bibliography includes, in addition to works cited in the text, some additional relevant material.

Works are listed separately for
(a) CJA bail project reports
(b) General (including other CJA reports cited)
(c) State Court Processing Statistics (SCPS) reports from the Bureau of Justice Statistics (BJS)
(d) Public media (newspaper, magazine, and radio)
(e) Pretrial standards
(f) Commercial bond industry publications and responses from pretrial organizations

(a) CJA Bail Project

A list of all CJA reports in the bail project series can be found on the CJA website at **http://www.cjareports.org/index5.htm**.

Phillips, Mary T. 2002. "Judicial Release/Bail Decisions At Criminal Court Arraignment: Results From A Pilot Project In Manhattan." CJA unpublished report.

_____ 2004a. "Factors Influencing Release And Bail Decisions In New York City. Part 3. Cross-Borough Analysis." New York: New York City Criminal Justice Agency, Inc. Online at http://www.cjareports.org/reports/bail3.pdf.

_____ 2004b. "Release And Bail Decisions In New York City." *Research Brief* series, no. 6. New York: New York Criminal Justice Agency, Inc. Online at http://www.cjareports.org/reports/brief6.pdf.

_____ 2005a. "Prosecutors' Bail Requests At Criminal Court Arraignment: Comparisons With The CJA Recommendation In Predicting FTA and Case Outcomes In Two New York City Boroughs." CJA unpublished report (see *Research Brief* no. 9).

_____ 2005b. "Prosecutor' Bail Requests And The CJA Release Recommendation: What Do They Tell The Judge?" *Research Brief* series, no. 9. New York: New York Criminal Justice Agency, Inc. Online at http://www.cjareports.org/reports/brief9.pdf.

_____ 2007a. "Pretrial Detention And Case Outcomes, Part 1: Nonfelony Cases." New York: New York City Criminal Justice Agency, Inc. Online at http://www.cjareports.org/reports/detention.pdf.

_____ 2007b. "Bail, Detention, & Nonfelony Case Outcomes" *Research Brief* series, no. 14. New York: New York Criminal Justice Agency, Inc. Online at http://www.cjareports.org/reports/brief14.pdf.

_____ 2008a. "Pretrial Detention And Case Outcomes, Part 2: Felony Cases." New York: New York City Criminal Justice Agency, Inc. Online at http://www.cjareports.org/reports/felonydetention.pdf.

_____ 2008b. "Bail, Detention, & Felony Case Outcomes" *Research Brief* series, no. 18. New York: New York Criminal Justice Agency, Inc. Online at http://www.cjareports.org/reports/brief18.pdf.

_____ 2010a. "Making Bail In New York City: Commercial Bonds And Cash Bail." New York: New York City Criminal Justice Agency, Inc. Online at http://www.cjareports.org/reports/bailmaking2010.pdf.

_____ 2010b. "Making Bail In New York City." *Research Brief* series, no. 23. New York: New York City Criminal Justice Agency, Inc. Online at http://www.cjareports.org/reports/brief23.pdf.

_____ 2011a. "Commercial Bail Bonds In New York City: Characteristics And Implications." New York: New York City Criminal Justice Agency, Inc. Online at http://www.cjareports.org/reports/bonds2010final.pdf.

_____ 2011b. "Commercial Bail Bonds In New York City." *Research Brief* series, no. 26. New York: New York City Criminal Justice Agency, Inc. Online at http://www.cjareports.org/reports/brief26.pdf.

_____ 2011c. "Effect Of Release Type On Failure To Appear." New York: New York City Criminal Justice Agency, Inc. Online at http://www.cjareports.org/reports/releasetype&fta.pdf.

_____ 2011d. "How Release Type Affects Failure To Appear." *Research Brief* series, no. 27. New York: New York City Criminal Justice Agency, Inc. Online at http://www.cjareports.org/reports/brief27.pdf.

Phillips, Mary T., and Elyse J. Revere. 2004a. "Factors Influencing Release And Bail Decisions In New York City. Part 1. Manhattan." New York: New York City Criminal Justice Agency, Inc. Online at http://www.cjareports.org/reports/bail1.pdf.

Phillips, Mary T., and Elyse J. Revere. 2004b. "Factors Influencing Release And Bail Decisions In New York City. Part 2. Brooklyn." New York: New York City Criminal Justice Agency, Inc. Online at http://www.cjareports.org/reports/bail2.pdf.

(b) General

Albonetti, Celesta A. 1989. "Bail and Judicial Discretion in the District of Columbia." *SSR* (Oct.) 74(1):40-47.

Albonetti, C.A., R. M. Hauser, J. Hagan, and I. H. Nagel. 1989. "Criminal Justice Decision Making As a Stratification Process: The Role of Race and Stratification Resources in Pretrial Release." *Journal of Quantitative Criminology,* 5(1):57-82.

Ares, Charles E., and Herbert Sturz. 1962. "Bail and the Indigent Accused." *Crime and Delinquency* (Jan.):12-20.

Ares, Charles E., Anne Rankin, and Herbert Sturz. 1963. "The Manhattan Bail Project: An Interim Report On The Use Of Pre-Trial Parole." *New York University Law Review* 38:67-95.

Austin, James, Roger Ocker, and Avi Bhati. 2010. "Kentucky Pretrial Risk Assessment Instrument Validation." The JFA Institute. Online at www.pretrial.org/Docs/Documents/2010%20KY%20Risk%20Assessment%20Study.pdf. Retrieved 6/02/2011.

Barnes, Carole W., Kingsnorth, Rodney, and Hodgins, Tina. 1989. "The 1984 Bail Reform Act: Organizational and Mandated Factors in the Decision to Detain." *Criminal Justice Policy Review* 3(3):257-278.

Bibas, Stephanos. 2004. "Plea Bargaining Outside the Shadow of Trial." *Harvard Law Review* 117(8):2463-2547.

Bock, E. Wilbur, and Charles E. Frazier. 1977. "Official Standards Versus Actual Criteria in Bond Dispositions." *Journal of Criminal Justice* 5:321-328.

_____ 1984. "The Combined Effects of Offense and Demeanor on Bond Decisions: Basis of Official Typifications." *The Journal of Social Psychology* 123:231-244.

Bornstein, Brian H., Alan J. Tomkins, and Elizabeth M. Neeley. 2011. "Reducing Courts' Failure To Appear Rate: A Procedural Approach." Research report submitted to the U.S. Department of Justice (unpublished). Online at http://www.ncjrs.gov/pdffiles1/nij/grants/234370.pdf. Retrieved 5/27/2011.

Executive Summary also available online at: http://www.ncjrs.gov/pdffiles1/nij/grants/234371.pdf.

Brockett, William. 1973. "Presumed Guilty: The Pretrial Detainee." *Yale Review of Law and Social Action* 1:10.

Bynum, Tim S. 1982. "Release on Recognizance: Substantive or Superficial Reform?" *Criminology* (May) 20 (1):67-82.

Chiricos, Theodore G., and William D. Bales. 1991. "Unemployment and Punishment: An Empirical Assessment." *Criminology* 29(4):701-724.

CJA (see New York City Criminal Justice Agency)

Clark, John. 2010. "The Imact of Money Bail on Jail Bed Usage." *AMERICAN**Jails*** (July/August):47-54. Online at http://www.pretrial.org/Reports/PJI%20Reports/AJA%20Money%20Bail%20Impact%202010.pdf. Retrieved on 6/8/2012.

Clark, John, and D. Alan Henry. 1997. "The Pretrial Release Decision: Judges Need Better Guidance In Deciding What To Do With Arrestees Pending Trial." *Judicature* (Sept.-Oct.) 81(2):76-81.

Clarke, Steven H., Jean K. Freeman, and Gary B. Koch. 1976. "Bail Risk: Multivariate Analysis." *Journal of Legal Studies*, 5: 341.

Clarke, Steven H., and Gary G. Koch. 1976. "The Influence of Income and Other Factors On Whether Criminal Defendants Go To Prison." *Law & Society Review* 11(1):57-92.

Cohen, Jacob, and Patricia Cohen. 1975. *Applied Multiple Regression/Correlation Analysis for the Behavioral Sciences*. Hillsdale, NJ: Lawrence Erlbaum Associates, Publishers.

Cohen, Thomas H. 2008. "Commercial Surety Bail And The Problem Of Missed Court Appearances And Pretrial Detention" (June 2, 2008). 3rd Annual Conference On Empirical Legal Studies Papers. Online at http://ssrn.com/abstract=1130964. Retrieved 2/25/2010.

Crew, B. Keith. 1991. "Race Differences in Felony Charging and Sentencing: Toward An Integration of Decision-Making and Negotiation Models." *Journal of Crime & Justice* XIV(1):99-122.

Daly, Kathleen. 1989. "Neither Conflict Nor Labeling Nor Paternalism Will Suffice: Intersections Of Race, Ethnicity, Gender, and Family In Criminal Court Decisions." *Crime and Delinquency,* 35:136-168.

Demuth, Stephen. 2003. "Racial and Ethnic Differences in Pretrial Release Decisions and Outcomes: A Comparison of Hispanic, Black, and White Felony Arrestees." *Criminology* 41, 3 (Aug.):873-907.

Devine, F. E. 1991. *Commercial Bail Bonding: A Comparison of Common Law Alternatives.* New York: Praeger.

Dhami, Mandeep K. 2002. "Do Bail Information Schemes Really Affect Bail Decisions?" *The Howard Journal* 41(3):245-262.

Ebbsen, E. B., and V. J. Konecni. 1975. "Decision making and information integration in the courts: The setting of bail." *Journal of Personality and Social Psychology* 32:805-821.

Eisenstein, James, and Herbert Jacob. 1977. *Felony Justice. An Organizational Analysis of Criminal Courts.* Boston: Little, Brown and Company.

Eskridge, C. W. 1983. *Pretrial Release Programming: Issues and Trends.* New York: Clark Boardman Company, Ltd.

Fellner, Jamie. 2010. *The Price Of Freedom. Bail And Pretrial Detention Of Low Income Nonfelony Defendants In New York City*. New York: Human Rights Watch.

Fleming, Roy B., C. W. Kohfeld, and Thomas M. Uhlman. 1980. "The Limits of Bail Reform: A Quasi-Experimental Analysis." *Law & Society Review* 14(4):947-976.

Frazier, Charles E., and Donna M. Bishop. 1985. "The Pretrial Detention of Juveniles and Its Impact On Case Dispositions." *The Journal of Criminal Law & Criminology* 76(4):1132-1152.

Frazier, C.E., E.W. Bock, and J.C. Henretta. 1980. "Pretrial Release and Bail Decisions: The Effects of Legal, Community, and Personal Variables." *Criminology* 18:162-181.

Free, Marvin D., Jr. 2005. "Prosecutorial Decision Making and Minority Group-Threat Theory." *Criminal Justice Studies* 18(1):7-28.

Gewirtz, Marian. 1980. "Making Bail: A Survey Of Sureties Posting Bail At New York City Department Of Correction Facilities." New York: New York City Criminal Justice Agency, Inc. (not available online)

Goldkamp, John S. 1979. *Two Classes of Accused: A Study of Bail and Detention in American Justice.* Cambridge: Ballinger Publishing Company.

_____ 1980. "The Effects of Detention on Judicial Decisions: A Closer Look." *Justice System Journal* 5:234-257.

_____ 1984. *The Development and Implementation of Bail Guidelines: Highlights and Issues.* (Oct.) US Department of Justice, National Institute of Justice.

_____ 1985. "Danger and Detention: A Second Generation of Bail Reform." *Journal of Criminal Law and Criminology* (Northwestern University) 76,1:1-74.

_____ 1987. "Prediction in Criminal Justice Policy Development." pp. 103-150 in Don M. Gottfredson and Michael Tonry, eds., *Prediction and Classification: Criminal Justice Decision Making*. Vol. 9 of *Crime and Justice: A Review of Research*, edited by Michael Tonry and Norval Morris. Chicago: The University of Chicago Press.

_____ 1993. "Judicial Responsibility for Pretrial Release Decisionmaking and the Information Role of Pretrial Services." *Federal Probation* 57(1):28-35.

Goldkamp, John S., and Michael R. Gottfredson. 1979. "Bail Decision Making and Pretrial Detention: Surfacing Judicial Policy." *Law and Human Behavior* 3(4):227-249.

_____ 1985. *Policy Guidelines for Bail: An Experiment in Court Reform.* Philadelphia: Temple University Press.

Goldkamp, John S., Michael R. Gottfredson, Peter R. Jones, and Doris Weiland. 1995. *Personal Liberty and Community Safety: Pretrial Release in the Criminal Court.* Plenum Series in Crime and Justice. New York and London: Plenum Publishing Corp.

Gottfredson, Don M. 1999. *Exploring Criminal Justice: An Introduction*. Los Angeles, California: Roxbury Publishing Company.

Gottfredson, Michael R. 1974. "An Empirical Analysis of Pre-trial Release Decisions." *Journal of Criminal Justice*, 2:287-303.

Gottfredson, Michael R., and Don M. Gottfredson. 1988. *Decision Making in Criminal Justice: Toward the Rational Exercise of Discretion*, 2nd ed. New York: Plenum Press.

Guevara, Lori, Cassia Spohn, and Denise Herz. 2004. "Race, Legal Representation, and Juvenile Justice: Issues and Concerns." *Crime & Delinquency* 50(3):344-371.

Harris County Pretrial Services. 2011. "2010 Annual Report." Pretrial Services, Harris Country, Texas. Link on the PJI website at www.pretrial.org. Retrieved 5/20/2011.

Holmes, M., and H. Daudistel. 1984. "Ethnicity and Justice in the Southwest: The Sentencing of Anglo, Black, and Mexican Origin Defendants." *Social Science Quarterly* 65:265-277.

Humphrey, J., and T. Fogarty. 1987. "Race and Plea Bargained Outcomes: A Research Note." *Social Forces* 66:176-182.

Jones, Peter R., and John S. Goldkamp. 1991. "Judicial Guidelines for Pretrial Release: Research and Policy Developments in the United States." *Howard Journal of Criminal Justice* (May) 30(2):140-60.

Kellough, Gail, and Scot Wortley. 2002. "Remand For Plea: Bail Decisions and Plea Bargaining as Commensurate Decisions." *British Journal of Criminology* 42:186-210.

Kennedy, Spurgeon, and D. Alan Henry. 1996. *Commercial Surety Bail: Assessing Its Role In the Pretrial Release and Detention Decision*. Washington, DC: Pretrial Services Resource Center. Online at www.pretrial.org/Docs/Documents/archived%20research/commsuretybail.pdf. Retrieved 6/08/2012.

Kim, KiDeuk, and Megan Denver. 2011. "A Case Study On The Practice Of Pretrial Services And Risk Assessment In Three Cities." District of Columbia Crime Policy Institute (DCPI), Urban Institute: Washington, DC. Online at www.dccrimepolicy.org/images/Pretrial-Comparative-final-Report_1.pdf. Retrieved 2/14/2012.

Koza, Pamela, and Anthony N. Doob. 1975. "The Relationship of Pre-Trial Custody to the Outcome of a Trial." *Criminal Law Quarterly* 17:391-400.

Kruttschnitt, Candace. 1984. "Sex and Criminal Court Dispositions: The Unresolved Controversy." *Research in Crime and Delinquency* 21(3):213-232.

Kruttschnitt, Candace, and Donald E. Green. 1984. "The Sex-Sanctioning Issue: Is It History?" *American Sociological Review* 49:541-551.

Landes, William M. 1974. "Legality and Reality: Some Evidence On Criminal Procedure." *Journal of Legal Studies* 3:287-337.

Lazarsfeld, Paul F. 1974. "An Evaluation of the Pre-Trial Service Agency of the Vera Institute of Justice, Final Report." New York: Vera Institute of Justice.

Lee, Leona. 1995. *Factors Associated With Arraignment Outcomes in New York City Criminal Courts, 1989*. New York, NY: CJA. (not available online)

Legal Aid Society of the City of New York. 1972. "The Unconstitutional Administration of Bail: Bellamy v. The Judges of New York City." *Criminal Law Bulletin* 8:459-506.

Leiber, Michael J., and Kristan C. Fox. 2005. "Race and the Impact of Detention on Juvenile Justice Decision Making." *Crime & Delinquency* 51(4):470-497.

Levin, David. 2007. "Examining The Efficacy Of Pretrial Release Conditions, Sanctions And Screening With The State Court Processing Statistics Dataseries." Paper prepared for the Annual Meeting of the American Society of Criminology, Atlanta, GA, November 14-16, 2007. Online at www.pretrial.org/DocsDocuments/ASC07.pdf. Retrieved 2/25/2010.

Lizotte, Alan. 1978. "Extra-Legal Factors In Chicago's Criminal Courts: Testing The Conflict Model Of Criminal Justice." *Social Problems* 25:564-580.

Maxwell, Sheila Royo. 1999. "Examining the Congruence Between Predictors of ROR and Failures to Appear." *Journal of Criminal Justice* 27 (2):127-141.

Maxwell, Sheila Royo, and Jessica S. Davis. 1999. "The Salience of Race and Gender in Pretrial Release Decisions: A Comparison Across Multiple Jurisdictions." *Criminal Justice Policy Review* 10(4):491-501.

Myers, Samuel L. 1981. "The Economics of Bail Jumping." *The Journal of Legal Studies,* Vol. 10, 2 (June 1981):381-396. Online at http://links.jstor.org/sici?sici=0047-2530%28198106%2910%3A2%3C81%3ATEOBJ%3E2.0.CO%3B2-8.

Nagel, Ilene H. 1983. "The Legal/Extra-Legal Controversy: Judicial Decisions in Pretrial Release." *Law and Society Review* 17(3):481-515.

Nagel, I., J. Cardascia, and C. Ross. 1982. "Sex Differences in the Processing of Criminal Defendants," in D. K. Weisberg (Ed.), *Women and the Law: A Social Historical Perspective* (vol. 1), pp. 259-282. Cambridge, MA: Schenkman.

New York City Criminal Justice Agency (CJA). 2011. *Annual Report 2010.* New York: New York City Criminal Justice Agency, Inc. Online at http:/www.cjareports.org/reports/annual10.pdf.

New York State. 2002. "State of New York Unified Court System Financial Planning & Control Manual." www.nycourts.gov/admin/financialops/FPCM-PDFs/V2_acctg/Rev3110.pdf. Retrieved on 6/20/2007.

New York State Insurance Department "Bailbonds Active Agent Listing," www.ins.state.ny.us/iablicn.htm (click on Bailbond Listing); retrieved on 2/16/2007 and 2/24/2010.

New York State Insurance Department, "Annual Report of the Superintendent of Insurance to the New York Legislature," Calendar Years 1999 through 2008. www.ins.state.ny.us. Retrieved on various dates.

Nichols, Russell. 2010. "States Struggle To Regulate the Bond Industry." Online at http;//www.governing.com/States-Struggle-to-Regulate-the-Bond-Industry.html.

Nie, Norman H., C. Hadlai Hull, Jean G. Jenkins, Karin Steinbrener, and Dale H. Bent. 1975. *Statistical Package for the Social Sciences*, 2nd ed. New York: McGraw-Hill Book Company.

Peterson, Richard R. 2004. *The Impact of Manhattan's Specialized Domestic Violence Court.* New York: New York City Criminal Justice Agency, Inc. Online at http://www.cjareports.org/reports/manhat46.pdf.

Phillips, Mary T. 2000. *Release-On-Recognizance Recommendation System for Juvenile Offenders Arraigned in New York City Adult Courts. Part II.* New York: New York City Criminal Justice Agency, Inc.

Pretrial Justice Institute (PJI). 2008. "Fact Sheet: Understanding the Findings from the Bureau of Justice Statistics Report, 'Pretrial Release of Felony Defendants in State Court.'" Online at http://www.pretrial.org/docs/documents/factsheetresponse08bjs.doc. Retrieved 3/03/2010.

Pretrial Justice Institute (PJI). 2010. Unpublished Working Document provided by John Clark.

Pretrial Justice Institute (PJI). 2011a. "Renewing The Promise Of Pretrial Justice For All." Home page of the National Symposium On Pretrial Justice on the PJI website, sponsor of the event. Online at http://www.pretrial.org/symposium.htm/. Retrieved 6/01/2011.

Pretrial Justice Institute (PJI). 2011b. National Symposium On Pretrial Justice: Summary Report of Proceedings. Online at http://www.pretrial.org/NSPJ%20Report%202011.pdf. Retrieved 5/16/2012.

Pretrial Justice Institute (PJI). 2012. "Rational And Transparent Bail Decision Making: Moving From a Cash-Based to a Risk-Based Process." The Pretrial Justice Institute (March). Online at http://www.pretrial.org/Featured%20Resources%20Documents/Rational%20and%20Transparent%20Bail%20Decision%20Making.pdf. Retrieved 5/07/2012.

Rankin, Anne. 1964. "The Effect of Pretrial Detention." *New York University Law Review* 39:641-655.

Rodriguez, Nancy. 2010. "The Cumulative Effect of Race and Ethnicity in Juvenile Court Outcomes and Why Preadjudication Detention Matters." *Journal of Research in Crime and Delinquency.* 47(3):391-413.

Roth, Jeffrey, and Paul Wice. 1978. "Pretrial Release and Misconduct in the District of Columbia." PROMIS Research Project Publication 16, Washington, DC: Institute for Law and Social Research.

Schaffer, Andrew S. 1970. "Bail And Parole Jumping In Manhattan In 1967." Vera Institute of Justice: New York.

Schnacke, Timothy R., Claire M. B. Brooker, and Michael R. Jones. 2010. "The Third Generation Of Bail Reform." *DULR Online* (the online supplement to the Denver University Law Review). Posted March 14, 2011 at http://www.denverlawreview.org/practitioners-pieces/2011/3/14/the-third-generation-of-bail-reform.html. Retrieved 4/05/2011.

Schnacke, Timothy R., Michael R. Jones, and Claire M. B. Brooker. 2010 (updated September 24). "The History Of Bail And Pretrial Release." Pretrial Justice Institute. Online at http://www.pretrial.org/HistoryBailDocuments/History%20of%20Bail%20(2010).pdf. Retrieved 6/01/2011.

Siddiqi, Qudsia. 2004a. *CJA's New Release-Recommendation System. Research Brief* No. 5. New York, NY: CJA. Online at http://www.cjareports.org/reports/brief5.pdf.

_____ 2004b. *An Evaluation of the New Pretrial Release-Recommendation System in New York City: Phase I of the Post-Implementation Research.* New York, NY: CJA. Online at http://www.cjareports.org/reports/june04.pdf.

_____ 2005. *An Evaluation of the New Pretrial Release-Recommendation System in New York City: Phase II of the Post-Implementation Research.* New York, NY: CJA. Online at http://www.cjareports.org/reports/june05.pdf.

_____ 2009a. *Pretrial Failure Among New York City Defendants. Research Brief* series, no. 19. New York: New York City Criminal Justice Agency, Inc. Online at http://www.cjareports.org/reports/brief19.pdf.

_____ 2009b. *Predicting the Likelihood of Pretrial Failure to Appear and/or Re-Arrest for a Violent Offense Among New York City Defendants: An Analysis of the 2001 Dataset.* New York, NY: CJA. Online at http://www.cjareports.org/reports/fta09.pdf.

Solomon, Freda F. 2007. *Operation Spotlight: Year Four Program Report.* New York, NY: CJA. Online at http://www.cjareports.org/reports/spotlight4.pdf.

Spohn, Cassia C. 2000. "Thirty Years of Sentencing Reform: The Quest for a Racially Neutral Sentencing Process." Pp. 427-501 in *Criminal Justice 2000*, v. 3, *Policies, Processes, and Decisions of the Criminal Justice System*, Julie Horney, ed. NCJ182410 Washington, DC: National Institute of Justice.

Spohn, Cassia C., and D. Holleran. 2000. "The Imprisonment Penalty Paid By Young, Unemployed Black and Hispanic Male Offenders." *Criminology* 38:281-306.

Steury, Ellen Hochstedler, and Nancy Frank. 1990. "Gender Bias and Pretrial Release: More Pieces of the Puzzle." *Journal of Criminal Justice* 18:417-432.

Stryker, R., I. H. Nagel, and J. Hagan. 1983. "Methodological Issues in Court Research: Pretrial Release Decisions for Federal Defendants." *Sociological Methods and Research* 11:469-500.

Suffet, Frederic. 1966. "Bail Setting: A Study of Courtroom Interaction." *Crime and Delinquency* 12 (4):318-331.

Sviridoff, Michele. 1986. "Bail Bonds and Cash Alternatives: The Influence Of 'Discounts' On Bail-Making In New York City." *The Justice System Journal* 11 (2):131-147.

Unnever, J. 1982. "Direct and Organizational Discrimination in the Sentencing of Drug Offenders." *Social Problems* 30:212-225.

U.S. Census Bureau: State and County QuickFacts. Online at http://quickfacts.census.gov/qfd/states/36/36005.html; retrieved on 6/03/2010.

Varma, Kimberly N. 2002. "Exploring 'Youth' in Court: An Analysis of Decision-Making in Youth Court Bail Hearings." *Canadian Journal of Criminology* (Apr.) 143-164.

Warnken, Byron L. 2002. "Warnken Report on Pretrial Release." Maryland Bail Bond Association. Online at www.lexingtonnational.com/Documents/Warnkenreport.pdf. Retrieved 3/02/2010.

Wheeler, Gerald R., and Carol L. Wheeler. 1981. "Two Faces of Bail Reform: An Analysis of the Impact of Pretrial Status on Disposition, Pretrial Flight and Crime in Houston." *Review of Policy Research* 1(1):168-182.

Williams, Marian R. 2003. "The Effect of Pretrial Detention on Imprisonment Decisions." *Criminal Justice Review* 28(2):299-316.

(c) SCPS Reports from the Bureau of Justice Statistics

A full list of State Court Processing Statistics (SCPS) reports can be accessed online at http://bjs.ojp.usdoj.gov/index.cfm?ty=dcdetail&iid=282.

Bureau of Justice Statistics (BJS). 2010. "Data Advisory: State Court Processing Statistics Data Limitations." Issued March 2010. Online at http//bjs.ojp.usdoj.gov/content/pub/pdf/scpsdl_dat.pdf.

Cohen, Thomas H. and Tracey Kyckelhahn. 2010. "State Court Processing Statistics, 2006. Felony Defendants in Large Urban Counties, 2006." Bureau of Justice Statistics, U.S. Department of Justice, Office of Justice Programs. Online at http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=2193 Retrieved 2/08/2011.

Cohen, Thomas H., and Brian A. Reaves. 2006. "Felony Defendants In Large Urban Counties, 2002." NCJ210818, Washington, DC: United States Department of Justice, Bureau of Justice Statistics.

_____ 2007. "Pretrial Release Of Felony Defendants In State Courts." Bureau of Justice Statistics Special Report (November 2007). Online at http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=834.

Kyckelhahn, Tracey, and Thomas H. Cohen. 2008. "Felony Defendants in Large Urban Counties, 2004." NCJ221152, Washington, DC: United States Department of Justice, Bureau of Justice Statistics.

Reaves, Brian A., and Jacob Perez. 1994. "Pretrial Release of Felony Defendants, 1992." NCJ148818 Bureau of Justice Statistics Bulletin (November 1994). National Pretrial Reporting Program. Online at http://bjs.ojp.usdoj.gov/content/pub/pdf/NPRP92.pdf.

(d) Public Media

Eligon, John. 2011a. "For Poor, Bail System Can Be An Obstacle To Freedom." *New York Times.* January 10, p. A15.

Eligon, John. 2011b. "New York City Is Owed More Than $2 Million In Delinquent Forfeitures." *New York Times.* January 10, p. A18.

Italiano, Laura. 2009. "Bondsman Admits Cash Con." *New York Post*, online edition, March 17, 2009.

Liptak, Adam. 2008. "World Spurns Bail For Profit, But It's A Pillar of U.S. Justice." *New York Times.* January 29, 2008, p. A1.

Meyerowitz, Steven. 2010. "Bail Bondsmen Charged With Lying Under Oath To Defraud Clients." *Financial Fraud Law*. Online at http://www.financialfraudlaw.com/lawblog/bail-bondsmen-charged-lying-under-oath-defraud-clients/1480. Retrieved on 3/02/2011.

Murphy, Jarrett. 2007. "Awaiting Justice: The Punishing Price of NYC's Bail System." *City Limits* 31:2 (Fall 2007).

National Public Radio (NPR) series (see Sullivan).

North Country Gazette. 2009. "DA: Bail Bondsman Submitted False Docs To Court." *North Country Gazette*, www.northcountrygazette.org, posted March 16, 2009.

Pinto, Nick. 2012. "Bail Is Busted: How Jail Really Works." *Village Voice,* April 25, p. 1. Available online at http://www.villagevoice.com/2012-04-25/news/bail-is-busted-new-york-jail/. Retrieved on 4/27/2012.

Sullivan, Laura. 2010. Three-part series: "Bail Burden Keeps U.S. Jails Stuffed With Inmates" (broadcast 1/21/10); "Inmates Who Can't Make Bail Face Stark Options (broadcast 1/22/10); "Bondsman Lobby Targets Pretrial Release Programs (broadcast 1/22/10). Transcript and audio online at http://www.npr.org/templates/story/story.php?storyID=122725771 (Part one); ID=122725819 (Part two); ID=122725849 (Part three). Retrieved 2/24/2010.

Thompson, Ryan. 2010. "Court Street Bail Bondsmen Finally Make Bail." *Brooklyn Daily Eagle. O*nline 9/20/2010 at http:// /www.brooklyndailyeagle.com/ /categories/category.php?id=38185. Retrieved 3/02/2011.

(e) Pretrial Standards

American Bar Association (ABA). 2007. *ABA Standards for Criminal Justice. Pretrial Release.* Third Edition. Washington, DC: American Bar Association.

National Association of Pretrial Services Agencies (NAPSA). 2004. *Standards On Pretrial Release*. Third Edition. Online at www.napsa.org/publications/2004napsastandards.pdf. Retrieved 3/03/2010.

National District Attorneys Association (NDAA). 1991. *National Prosecution Standards.* Second Edition. Alexandria, VA: National District Attorneys Association. www.ndaa.org/pdf/ndaa_natl_prosecution_standards_2.pdf, Retrieved on 2/26/2010.

_____ 2010. *National Prosecution Standards.* Third Edition. Alexandria, VA: National District Attorneys Association. Online on the Pretrial Justice Institute website: http://www.pretrial.org/Resources/NationalStandards/Pages. Retrieved 6/03/2010.

(f) Bail Bond Industry Publications and Responses

AIA. 2010. "Taxpayer Funded Pretrial Release: A Failed System." Pamphlet written by bail bond industry spokesmen and distributed to attendees at the National Symposium On Pretrial Justice, May 31- June 1, 2011. Online at www.pretrial.org/Perspectives/AIA%20Taxpayer%20Funded%20Pretrial%20Release%20-%20A%20Failed%20System%20(2010).pdf.

Anonymous, "A Response to the American Bail Coalition's Pamphlet: Pretrial Release — A Criminal Justice Pandemic". No date. (drafted by a network of pretrial services program executives). Online at http://www.pretrial.org/docs/documents/A Response to the American Bail Coalition.pdf. Retrieved 3/03/2010.

Block, Michael K. 2005. "The Effectiveness And Cost Of Secured And Unsecured Pretrial Release In California's Large Urban Counties: 1990-2000." Online publication of the Professional Bail Agents of the United States at www.pbus.com. Retrieved 2/25/2010.

Helland, Eric, and Alexander Tabarrok. 2004. "The Fugitive: Evidence On Public Versus Private Law Enforcement From Bail Jumping." *Journal of Law and Economics,* XLVII (April 2004):93-122. Online at www.lexingtonnational.com/Agent_Resources/Bail_Bond_Studies.shtml and at http://mason.gmu.edu/~atabarro/PublicvsPrivate.pdf. Retrieved 3/02/2010.

National Association of Pretrial Services Agencies (NAPSA). 2009. "Facts & Positions: The Truth About Commercial Bail Bonding in America." NAPSA *Advocacy Brief* 1:1 (August 2009). Online at www.napsa.org/publications/napsafandp1.pdf. Retrieved 3/03/2010.

APPENDIX A

The CJA Recommendation System

(reprinted from the *2010 Annual Report*, p. 13)

The current system for recommending adult defendants for release on recognizance (ROR) at arraignment was introduced in New York City lower courts (Criminal Court) in June 2003. Formerly, only measures of community ties were used to assess risk of flight. The current system incorporates two criminal-history items as well. All of the items upon which the recommendation is based have a strong empirical relationship with the likelihood that defendants will appear for scheduled court dates. The new system recommends a larger proportion of defendants for ROR, compared to the old system, without increasing the risk of flight.

CJA Recommendation Point System

	Y	YV	N	NV	UC
1. Does the defendant have a working telephone or cellphone?	1	1	–2	–2	0
2. Does the defendant report a NYC area address?	0	3	–2	–2	0
3. Is the defendant employed / in school / in training program full time?	1	1	–1	–1	–2
4. Does the defendant expect someone at arraignment?	1		–1		
5. Does the prior bench warrant count equal zero?	5		–5		
6. Does the open case count equal zero?	1		–1		
Column totals					
Subtotals A = Y+YV B = N+NV+UC	**A**		**B**		
Total Score	**A** minus **B**				

RECOMMENDATION CATEGORIES

Recommended for ROR (low risk) +7 to +12 pts

Moderate Risk for ROR +3 to +6 pts

Not Recommended for ROR (high risk) –12 to +2 pts

Or a policy exclusion applies:
- Bench warrant attached to rap sheet;
- Defendant is charged with bail jumping; or,
- Conflicting residence information.

No Recommendation
- Rap sheet unavailable;
- Defendant charged with murder; or,
- Incomplete interview.

An objective score is calculated for each adult defendant using the items shown in the box at right. CJA staff attempt to verify the first three items by calling a contact person named by the defendant. Positive points are awarded for Y (yes) or YV (yes verified) responses, and the defendant is penalized with negative points for N (no) or NV (no verified) responses. For the question about employment, negative points are given if the defendant and the contact person give discrepant responses (UC, or unresolved conflict).

The score is then calculated by tallying the negative and positive points. Based on this score, each defendant's risk of failure to appear is assessed as low (Recommended for ROR), moderate (Moderate Risk for ROR), or high (Not Recommended). Also not recommended are those to whom a policy exclusion applies, such as an outstanding warrant, a bail-jumping charge, or conflicting residence information. The No Recommendation category is assigned when the rap sheet is unavailable, the defendant is charged with murder, or the interview is incomplete.

Because the recommendation does not take into account all factors listed in the New York bail statute (CPL §510.30), it is not an unconditional recommendation. Rather, it is an indication of the defendant's likelihood of returning to court, if released.

A separate recommendation system is used for juvenile offenders (youths between the ages of 13 and 15 prosecuted in adult court for certain serious offenses). The requirement for a juvenile offender (JO) recommendation is *either* verified school attendance, *or* expecting someone at arraignment. Verified nonattendance at school automatically assigns a JO to the Not Recommended category. JOs with an outstanding warrant were also counted as Not Recommended in the analyses presented in this report. The No Recommendation category is assigned in JO cases with an unavailable rap sheet, a murder charge, or an incomplete interview.

APPENDIX B

Bail Amount By Borough And Charge Severity

Cases Continued At Criminal Court Arraignment With Bail Set (2010 Arrests)

(A) Combined Charge Severities

Bail Amount Set at Criminal Court Arraignment	Bronx	Brooklyn	Manhattan	Queens	Staten Island	Combined Boroughs	Cumulative Percentage (combined boroughs)
$1	904 9%	667 4%	500 3%	611 6%	63 3%	2,745 5%	5%
$25 to $499	188 2%	229 1%	201 1%	110 1%	10 <1%	738 1%	6%
$500	1,049 11%	3,240 19%	2,133 13%	1,058 10%	282 13%	7,762 14%	20%
$501 to $999	750 8%	533 3%	1,217 8%	320 3%	17 1%	2,837 5%	26%
$1,000	1,205 12%	3,964 23%	2,416 15%	1,683 16%	706 31%	9,974 18%	44%
$1,001 to $2,499	1,649 17%	1,421 8%	2,385 15%	1,190 12%	245 11%	6,890 12%	56%
$2,500	1,108 11%	2,212 13%	953 6%	892 9%	250 11%	5,415 10%	66%
$2501 to $4,999	613 6%	486 3%	1,150 7%	456 4%	81 4%	2,786 5%	71%
$5,000	910 9%	1,823 11%	1,569 10%	1,003 10%	177 8%	5,482 10%	81%
$5001 to $9,999	331 3%	298 2%	738 5%	356 3%	32 1%	1,755 3%	84%
$10,000	365 4%	803 5%	1,006 6%	641 6%	140 6%	2,955 5%	89%
$10,001 to $25,000	352 4%	688 4%	998 6%	968 9%	122 5%	3,128 6%	95%
Above $25,000	310 3%	617 4%	708 4%	989 10%	122 5%	2,746 5%	100%
Total	9,734 100%	16,981 100%	15,975 100%	10,277 100%	2,247 100%	55,213 100%	
Bail of $1 was excluded from calculation of these statistics							
N =	8,830	16,314	15,474	9,666	2,184	52,468	
Minimum	$25	$50	$50	$100	$100	$25	
Maximum	$750,000	$500,000	$750,000	$750,000	$500,000	$750,000	
Mean	$6,487	$6,584	$8,931	$14,597	$8,802	$8,828	
Median	$1,500	$1,500	$2,000	$2,500	$1,500	$2,000	

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(B) Misdemeanor And Lesser Offenses

Bail Amount Set at Criminal Court Arraignment	Bronx	Brooklyn	Manhattan	Queens	Staten Island	Combined Boroughs	Cumulative Percentage (combined boroughs)
$1	719 21%	564 7%	422 6%	505 10%	60 5%	2,270 9%	9%
$25 to $499	132 4%	209 2%	180 2%	104 2%	8 1%	633 2%	11%
$500	792 23%	2,881 34%	1,934 26%	1,015 20%	249 19%	6,871 27%	38%
$501 to $999	443 13%	482 6%	1,100 15%	312 6%	15 1%	2,352 9%	47%
$1,000	598 17%	2,861 34%	1,918 26%	1,469 29%	566 43%	7,412 29%	76%
$1,001 to $2,499	525 15%	747 9%	1,189 16%	919 18%	176 13%	3,556 14%	89%
$2,500	136 4%	508 6%	263 4%	384 7%	135 10%	1,426 6%	95%
$2501 to $4999	60 2%	71 1%	234 3%	235 5%	34 3%	634 2%	97%
$5,000	31 1%	123 1%	103 1%	144 3%	45 3%	446 2%	99%
$5001 to $9,999	4 <1%	6 <1%	32 <1%	17 <1%	4 <1%	63 <1%	99%
$10,000	6 <1%	44 1%	28 <1%	25 <1%	11 1%	114 <1%	100%
$10,001 to $25,000	2 <1%	14 <1%	15 <1%	15 <1%	3 <1%	49 <1%	100%
Above $25,000	2 <1%	6 <1%	4 <1%	7 <1%	1 <1%	20 <1%	100%
Total	3,450 100%	8,516 100%	7,422 100%	5,151 100%	1,307 100%	25,846 100%	
Bail of $1 was excluded from calculation of these statistics							
N =	2,731	7,952	7,000	4,646	1,247	23,576	
Minimum	$25	$50	$50	$100	$100	$25	
Maximum	$100,000	$75,000	$500,000	$250,000	$100,000	$500,000	
Mean	$1,164	$1,147	$1,310	$1,621	1,579	$1,314	
Median	$751	$1,000	$1,000	$1,000	$1,000	$1,000	

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(C) Felony Offenses

Bail Amount Set at Criminal Court Arraignment	Bronx	Brooklyn	Manhattan	Queens	Staten Island	Combined Boroughs	Cumulative Percentage (combined boroughs)
$1	181 3%	95 1%	39 <1%	92 2%	2 <1%	409 1%	1%
$25 to $499	55 1%	18 <1%	15 <1%	3 <1%	2 <1%	93 <1%	2%
$500	249 4%	350 4%	166 2%	37 1%	31 3%	833 3%	5%
$501 to $999	306 5%	50 1%	98 1%	8 <1%	2 <1%	464 2%	6%
$1,000	604 10%	1,094 13%	466 6%	212 4%	139 15%	2,515 9%	15%
$1,001 to $2,499	1,122 18%	673 8%	1,184 14%	269 5%	69 7%	3,317 11%	26%
$2,500	971 16%	1,688 20%	688 8%	506 10%	115 12%	3,968 14%	40%
$2501 to $4999	552 9%	415 5%	913 11%	221 4%	47 5%	2,148 7%	47%
$5,000	878 14%	1,698 20%	1,457 17%	857 17%	131 14%	5,021 17%	65%
$5001 to $9,999	326 5%	292 3%	700 8%	339 7%	28 3%	1,685 6%	70%
$10,000	359 6%	756 9%	967 12%	616 12%	128 14%	2,826 10%	80%
$10,001 to $25,000	350 6%	674 8%	973 12%	952 19%	119 13%	3,068 11%	91%
Above $25,000	308 5%	610 7%	702 8%	982 19%	121 13%	2,723 9%	100%
Total	6,261 100%	8,413 100%	8,368 100%	5,094 100%	934 100%	29,070 100%	
Bail of $1 was excluded from calculation of these statistics							
N =	6,080	8,318	8,329	5,002	932	28,661	
Minimum	$25	$200	$50	$250	$250	$25	
Maximum	$750,000	$500,000	$750,000	$750,000	$500,000	$750,000	
Mean	$8,893	$11,745	$15,402	$26,692	$18,496	$15,031	
Median	$2,500	$3,500	$5,000	$10,000	$5,000	$5,000	

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APPENDIX C

Statistical Procedures

The multivariate statistical procedures used in this report are logistic regression and ordinary least squares (OLS) regression. Logistic regression is appropriate when the dependent variable is dichotomous, as it was in the analyses of release on recognizance (ROR, Table 8), the prosecutor's consent to ROR (Table 10), and failure to appear (FTA, Figures 37 and 38). OLS regression is appropriate when the dependent variable is continuous, as it was in the analyses of bail amount (Table 9). For analyses of the bail amount requested by the prosecutor (Table 11), dollar amounts were categorized in ranges and treated as though they were continuous, also using OLS regression.

The regression models were computed using SPSS[1] to produce all of the statistics discussed below, with the exception of predicted probabilities, which are not included in the SPSS logistic regression output. Predicted probabilities were computed using Stata.[2]

The results of a regression analysis, taken as a whole, are referred to as a model. The model is interpreted as a numerical description of the relative importance of all the factors (independent and control variables) that influence an outcome (dependent variable), and it includes a statistic that estimates the degree to which the outcome can be predicted from a knowledge of those factors. Statistics for each independent variable indicate its net effect on the dependent variable, after the effects of all other variables have been taken into account.

Statistics Presented in Models

The statistics provided in this report for the logistic regression models presented in Tables 8 and 10 are the *odds ratio, standardized beta*, and *Nagelkerke* R^2*.* For the logistic regression models presented in Figures 37 and 38, only the *predicted probability* is presented. Predicted probabilities are not presented for the ROR models because those analyses were completed prior to CJA's acquisition of the computer software required to compute them. *Only* predicted probabilities are presented for the FTA models because, once we had the ability to compute this statistic, the others seemed superfluous in a report meant for a non-technical audience. The full models for these analyses, including the additional statistics (odds ratio, standardized beta, and Nagelkerke R^2), are presented in the original report (Phillips 2011c).

[1] IBM SPSS® Statistics Version 19.0.
[2] StataCorp Stata® Release 12.

The statistics presented for the OLS models are the *standardized beta*, *unstandardized beta*, and *adjusted* R^2. All statistics used to present the multivariate models are described following an explanation of statistical significance.

Statistical Significance

Statistical significance is a measure of the likelihood that the relationship between the variable and the dependent variable could have occurred merely by chance. The level of statistical significance of each item included in the model is indicated by asterisks, from one — the least stringent level of statistical significance ($p \leq .05$) — to three — the most stringent level ($p \leq .001$). No asterisks indicates that the factor did not have a statistically significant relationship with the dependent variable. It is standard practice to consider a relationship to be statistically significant if the likelihood is equal to or less than 5% ($p \leq .05$) that the result occurred by chance. An even smaller likelihood — for example, equal to or less than 1% ($p \leq .01$) — is better. At the most stringent level of significance, $p \leq .001$, the likelihood of the result occurring by chance is equal to or less than 1 in 1,000. Results that are not statistically significant have an unacceptably high probability (greater than 5%) of being the result of sampling error, and may not be representative of the larger population.

Both the magnitude of the effect and the size of the sample contribute to the level of statistical significance. The sample used for the FTA model presented in Figure 37 was quite large (over 50,000), whereas small samples (less than 400) were used in both analyses of bail amount presented in Table 9. The advantage of large samples is that a weak, but real, effect is unlikely to be missed simply because the number of cases was too small for it to be detected by the statistical analysis. For this reason, many more significant variables were found in the models using large samples, and a similar relationship could attain a higher level of significance in a large sample than in a small one. For example, a weak relationship was found between borough and FTA in both Figure 37 and Figure 38: Brooklyn had a predicted probability of FTA that was two percentage points higher than Queens in both models. This difference was statistically significant at the highest level ($p \leq .001$) for all cases (Figure 37, N = 50,936), whereas it had a much lower level of significance ($p \leq .05$) for the small fraction of those cases with a bail release (Figure 38, N = 5,482). In a sample of only a few hundred cases, the same two-percentage-point-difference in FTA might be found to have no statistical significance, which would indicate that the sample size was not large enough to rule out sampling error. Substantive significance should not be confused with statistical significance, which means only that the effect is real, not that it is important. The importance of a weak — albeit statistically significant — effect may be trivial.

Standardized Beta (logistic and OLS regression)

The standardized beta coefficient is a measure of the strength of the effect of the independent variable on the dependent variable, controlling for all other variables in the model. Although some inferences can be drawn about the strength of a variable's effect from the odds ratio in logistic regression or the unstandardized beta coefficient in OLS regression, the standardized beta is a better measure of strength in both types of regression precisely because it is standardized to take into account the number of categories in the independent variable and the distribution of cases among categories. Standardized betas can be directly compared to assess the relative strength of variables, which is not true of odds ratios or unstandardized coefficients. The value of the standardized beta ranges from 0 (no effect) to 1 (maximum effect), and the sign indicates the direction of the relationship: a positive sign indicates that as the value of the independent variable increases, the value of the dependent variable also increases; a negative sign indicates that as the value of the independent variable increases, the value of the dependent variable decreases. Dummy variables with only two values (yes or no) are usually coded so that "yes" is given the higher numeric value (0=no, 1=yes), with the result that a positive standardized beta indicates a greater likelihood of the outcome for those with the characteristic encoded by the variable.

To illustrate from Table 8 (logistic regression model of likelihood of ROR): the largest standardized betas in this table were –.62 and –.69 (prosecutor's bail request in Brooklyn and Manhattan respectively). This indicates that the prosecutor's bail request was the most powerful predictor of ROR in both boroughs. The negative coefficient indicates that a low value on this variable (consent to ROR was coded zero, with higher values corresponding to increases in the amount of bail requested) was associated with greater likelihood of ROR. The next largest standardized beta that was significant in both models was for the prior warrant variable (–.27 and –.28). We can conclude that (a) the existence of a prior warrant for the defendant was the second most important influence on the ROR decision; (b) having a prior warrant was negatively associated with ROR; and (c) the prosecutor's bail request was more than twice as important as prior warrant in determining the ROR outcome.

Unstandardized Beta (OLS regression only)

The unstandardized beta indicates the average change in the dependent variable for each unit of change in the independent variable, measured in the same units as the dependent variable. The sign (negative or positive) indicates the direction of change. In the Brooklyn model of bail amount (Table 9), for example, the unstandardized beta for the prosecutor's bail request was 390. The bail request was coded in $1,000 increments, so the interpretation is that for every increase of $1,000 in the amount of bail *requested*, the average amount of bail *set* rose by $390 (after accounting for the effects of all other independent and control variables).

Odds Ratio (logistic regression)

The odds ratio measures the change in odds of an event occurring when the value of the independent variable changes, controlling for all other variables in the model. An odds ratio greater than 1 indicates an *increase* in the odds of the predicted event occurring when the value of the independent variable is higher; less than 1 indicates a *decrease* in the odds of the predicted event occurring when the value of the independent variable is higher. To illustrate from Table 8: the odds ratio for having a New York City address was 5.79. This means that the odds of ROR were almost six times greater for defendants who had a New York City address, compared to defendants who did not.

Odds ratios less than 1 indicate reduced odds. For example, the odds ratio for the prosecutor's bail request in Table 8 (Brooklyn model) was .41, meaning that the odds of ROR were reduced by more than half with each incremental rise in the prosecutor's bail request.

Predicted Probability (logistic regression)

The predicted probability presents essentially the same information as the odds ratio, but in a more easily understood way. The predicted probability is the likelihood of the event's occurring, after the effects of all other variables in the model have been accounted for. A predicted probability is presented for each value of the variable.

Predicted probabilities of FTA are presented in Figures 37 and 38. For categorical variables with more than two categories, one value is selected as the reference category. Likelihood of FTA for each value of the variable is compared to the likelihood of FTA among cases in the reference category for the computation of statistical significance. For example, the predicted probability of FTA associated with release on recognizance (the reference category for the release type variable) was .17, or 17%. This was higher than the predicted probability of FTA associated with release on bail in any amount over $1, which ranged from 12% ($50 to $500) down to 9% (over $7,500). Thus release on bail over $7,500 reduced the predicted probability of FTA by 8 percentage points, compared to ROR. The difference between the predicted probability of FTA for each bail amount category and the predicted probability of FTA for ROR (reference category) was statistically significant.

The software used to calculate predicted probabilities was Stata. The MARGIN command used in this analysis produces the average probability of the outcome if everyone in the data were treated as if they had the same value on the variable for which the margin is estimated, based on a logistic regression model. In the example above, the 17% predicted probability of FTA for ROR cases represents the average predicted probability if everyone were treated as if they were released on recognizance and had the average value on all other characteristics.

R^2 (Nagelkerke R^2, adjusted R^2)

The model R^2 is interpreted as roughly the proportion of variance in the outcome that is explained jointly by all of the independent variables in the model, ranging from 0 (no variance is explained by the variables) to 1 (100% of the variance is explained). Although the specific version of the R^2 statistic for the logistic regression models (Nagelkerke R^2) is different from that reported for the OLS regression models (adjusted R^2), the interpretation is the same.

The Nagelkerke R^2 statistics for the models in Table 8 were .62 for the Brooklyn model and .66 for the Manhattan model, indicating that roughly two thirds of the variance in ROR was explained by the variables in each model. Such high R^2 statistics are considered very strong in criminal justice research. The adjusted R^2 for the Brooklyn model in Table 9 was .74, indicating that the model's ability to predict bail amount was even more powerful.

In the research investigating the connection between detention and case outcomes, a two-step procedure was used to develop multivariate regression models. In the first step all of the control variables were entered together in a block; in the second step detention was entered by itself. An R^2 value was calculated for all the control variables at the end of the first step, which measured how much of the variation in the outcome was accounted for by the control variables alone. The model R^2 was calculated after the detention variable was added to the model. The difference between the two represented the contribution to the model R^2 made by detention alone, after the effects of all the control variables were already taken into account. These models are not presented in this synthesis of the research, but our conclusions rely on them.

Selection Bias[3]

We had to consider the possibility that selection bias may have been introduced into some of the models by virtue of the fact that only certain cases could have been included. For example, the models predicting incarceration included only cases in which the defendant was convicted. Selection bias could occur if the variables that influenced conviction also influenced likelihood of incarceration. The same issue arises for the models of sentence length, because they included only cases in which the defendant was convicted and, further, sentenced to a jail or prison term. Without a correction for selection bias, the estimates of the effects of the independent variables could be overstated or understated. Although the case outcome models are not presented in this report, they are referred to in the text, and conclusions based on these models are presented in Chapter VIII.

[3] This section and the statistical procedures used in the analyses to control for sample selection bias benefited greatly from the assistance of Richard R. Peterson, and borrowed heavily from the Technical Appendix in Peterson (2004).

Detention was a significant predictor of conviction, so in order to assess accurately the importance of detention for incarceration, it was necessary to remove that part of the effect that resulted simply from the fact that all the defendants in the sample had been convicted. To this end, a control variable was included in the incarceration and sentence length models that estimated the predicted probability of conviction. The control variable was created by using the model of conviction to save the predicted probability of conviction (automatically generated by the logistic regression program) as a new variable.

The same procedure was followed for the models of sentence length. From the model of incarceration, the probability of incarceration was saved as a new variable, which was then used as a second selection bias control (along with probability of conviction) in each sentence length model.

Controlling for sample selection bias was more important for the incarceration models than it was for the sentence length models. Factoring out the role of detention in raising the likelihood of conviction reduced the apparent effect of detention on incarceration when selection bias was not accounted for. For felony cases, for example, detention alone contributed 10 percentage points to the proportion of variance in incarceration explained by the model when the selection bias variable was omitted, compared to 6 percentage points after accounting for the effect of selection bias. For sentence length, however, adding the two selection bias control variables did not materially affect the outcome.

Multicollinearity

Multicollinearity occurs when two or more independent variables in a multivariate analysis are highly correlated with each other. It is a problem because two independent variables that are highly correlated with each other are to some extent measuring the same thing, making it difficult to separate out the unique effect of each on the outcome. The greater the correlations, the less reliable are the coefficients for highly correlated variables, and the more difficult it is to weigh their relative importance (Nie *et al.* 1975).

All multivariable models were tested for multicollinearity, using a correlation of .4 or higher as the criterion. When two variables were correlated at that level, the variable with the higher correlation with the dependent variable was selected for the model, and the other was rejected. Multicollinearity was an issue in this research primarily in the analyses of the factors influencing the release/bail decision, because of the close relationship between the prosecutor's bail request and charge severity. In some models, charge severity was omitted from the model because the prosecutor's bail request had the stronger effect on the decision. In other models (using different samples), the correlation between the prosecutor's bail request and charge severity dropped below the .4 level, and both were included in the model.

High correlations were also found between the correction variables for sample selection bias and some of the independent variables in the incarceration and sentence length models. Taking the same approach as before was not a good solution because the purpose of the bias controls would have been lost by omitting them. Fortunately, including them along with highly correlated variables does not compromise our conclusions about the independent impact of detention because multicollinearity does not affect R-squares. Entering variables hierarchically can therefore produce a reliable assessment of the impact of each additional variable through an examination of additional variance explained at each step, even in the presence of multicollinearity. That was the procedure used to assess the independent effect of detention on the outcomes. It is only when variables are entered simultaneously, and interpretation depends on a comparison of coefficients, that the importance of highly interrelated independent variables may be distorted because of multicollinearity (Cohen and Cohen 1975).

A fuller exposition of the collinearity diagnostics that were used in the development of models for this research, as well as a discussion of possible remedies for multicollinearity, can be found in Phillips 2007a and 2008a (Appendix A).