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EFFECT OF RELEASE TYPE ON FAILURE TO APPEAR

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EFFECT OF RELEASE TYPE ON FAILURE TO APPEAR

LIST OF TABLES ii

LIST OF FIGURES iii

ACKNOWLEDGEMENTS iv

I. INTRODUCTION 1
- A. Overview 1
- B. Types Of Pretrial Release In New York City 3
- C. Research Questions 4

II. LITERATURE REVIEW 7

III. METHODOLOGY 13
- A. The Data File 13
- B. Analytic Procedures 14

IV. DISTRIBUTIONS OF DEPENDENT, INDEPENDENT, AND CONTROL VARIABLES 15
- A. Dependent Variables 15
- B. Independent Variables 16
- C. Control Variables 18

V. BIVARIATE RELATIONSHIPS 25
- A. Relationship Of FTA With Independent Variables 25
- B. Relationship Of FTA With Control Variables 26

VI. THREE-WAY RELATIONSHIPS 31
- A. Controlling For CJA Recommendation 31
- B. Controlling For Criminal History 35
- C. Controlling For Bail Amount 38

VII. MULTIVARIATE ANALYSES 41
- A. All-Cases Models 41
- B. Bail Models 46

VIII. PROFILES OF DEFENDANTS RELEASED ON ROR, CASH BAIL, AND COMMERCIAL BOND 51

IX. CONCLUSIONS 55
- A. Summary Of Findings 55
- B. Implications And Discussion 59

REFERENCES 63

TECHNICAL APPENDIX 67

LIST OF TABLES

Table 1 FTA And Adjusted FTA Rates By Borough 15
Table 2 Release Type And Form Of Bail By Borough 17
Table 3 CJA Recommendation Category By Borough 19
Table 4 Defendant's Criminal History By Borough 20
Table 5 Bail Amount By Borough 21
Table 6 Timing Of First Release By Borough 22
Table 7 Charge Type By Borough 23
Table 8 Charge Severity By Borough 23
Table 9 FTA And Adjusted FTA Rates By Release Type And Form Of Bail 25
Table 10 FTA And Adjusted FTA Rates By CJA Recommendation Category 26
Table 11 FTA And Adjusted FTA Rates By Defendant's Criminal History 27
Table 12 FTA And Adjusted FTA Rates By Amount Of Bail Posted For Release 28
Table 13 FTA And Adjusted FTA Rates By Timing Of First Release 29
Table 14 FTA And Adjusted FTA Rates By Charge Type 29
Table 15 FTA And Adjusted FTA Rates By Charge Severity 30
Table 16 FTA And Adjusted FTA Rates By Release Type And Form Of Bail, Controlling For CJA Recommendation 32
Table 17 FTA And Adjusted FTA Rates By Release Type And Form Of Bail, Controlling For Defendant's Criminal History 36
Table 18 FTA And Adjusted FTA Rates By Form Of Bail, Controlling For Bail Amount 38
Table 19 Logistic Regression Models Of Failure To Appear And Adjusted Failure To Appear (All Cases) 42
Table 20 Logistic Regression Models Of Failure To Appear And Adjusted Failure To Appear (Cases With Release On $1,000 Or Higher Cash Bail Or Bond) 47
Table 21 Selected Characteristics By Release Type And Form Of Bail 51

LIST OF FIGURES

Figure 1 FTA And Adjusted FTA Rates By Borough 15

Figure 2 Release Type And Form Of Bail By Borough 17

Figure 3 FTA And Adjusted FTA Rates By Release Type And Form Of Bail, Controlling For CJA Recommendation 33

Figure 4 FTA And Adjusted FTA Rates By Release Type And Form Of Bail, Controlling For Defendant's Criminal History 37

Figure 5 FTA And Adjusted FTA Rates By Form Of Bail, Controlling For Bail Amount 39

Figure 6 Predicted Probability Of FTA, All-Cases Model 1 45

Figure 7 Predicted Probability Of FTA, Bail Model 3 49

Figure 8 Selected Characteristics By Release Type And Form Of Bail 51

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I. INTRODUCTION

A. Overview

Prior research on bail making by the New York City Criminal Justice Agency (CJA) has documented the prevalence of commercial bonds in the City, described the costs and benefits of posting a commercial bond as opposed to cash bail, and identified case and defendant characteristics associated with each form of bail making (Phillips 2010a, 2010b, 2011a, 2011b). In the decades prior to this research New York City had nearly eliminated bail bonds from city jails, but the industry's huge nationwide growth since the early 1990s suggested that it was time to take another look.

We found that bonds constituted a small but substantial proportion of pretrial releases in 2005, using a dataset to which form of bail data had been added manually from court documents. As a proportion of all releases, commercial bonds still play a much smaller role in New York City than they do elsewhere in the country: 7% of released felony defendants posted a bond in New York City in 2005 (Phillips 2011a), compared to 42% in a sample of the largest counties in the country (Cohen and Kyckelhahn 2010). In fact, release on any type of bail is less common in New York City than elsewhere because of the greater use of release on recognizance (ROR).[1] Even so, tens of thousands of defendants are released on bail in New York City annually. Of these, about 15% — more than 3,000 by our estimate — post a commercial bail bond.[2]

This research comes in the midst of an aggressive national campaign mounted by the bail bond industry, aimed at influencing public opinion and legislators around the country. At stake in many states is legislation that would protect the bail bond industry at the expense of pretrial agencies, which are viewed as competitors. Bondsmen argue that they are more successful than pretrial services agencies in assuring court attendance and in preventing pretrial recidivism (see, for example, AIA 2010). This study addresses a part of that claim by comparing failure to appear (FTA) rates for defendants released on commercial bonds versus other types of release. This is the only contemporary research on the topic using New York City arrests, and the only study that controls for key factors that also affect FTA. (A decades-old study that used New York City arrests is discussed in the Literature Review.)

The context for this research also includes a renewed national interest in the problems associated with the system of money bail as a whole. A National Symposium On Pretrial Justice was convened by Attorney General Eric Holder in Washington, D.C. on May 31 – June 1, 2011, to examine pretrial detention, bail, and release decisions. The symposium came 47 years after the first national meeting on bail and pretrial release reform, convened in 1964 by Attorney General Robert F. Kennedy, and culminating in the

[1] Among felony cases in a dataset of New York City arrests from 2005, ROR constituted 65% of the pretrial releases compared to 28% in a national sample from 2006 (Phillips 2011a).

[2] This estimate is extrapolated from Table 1 in Phillips (2011a), which showed that 788 bonds were posted in cases with an arrest during a three-month period in 2005 (x4=3,152). The data presented in Table 2 of the present report would yield a lower estimate (1,242 bonds for 6 months of arrests x2=2,484) but this could be misleading because the additional data included a much higher proportion of cases with missing form of bail information. In addition, release type was recategorized for the current analyses if it changed prior to a failure to appear (see Methodology).

Federal Bail Reform Act of 1966. Criminal justice professionals attending this year's meeting were greeted with the words used by Kennedy in his challenge to conference participants nearly half a century ago:

> *"What has been demonstrated here is that usually only one factor determines whether a defendant stays out of jail before he comes to trial. That factor is not guilt or innocence. It is not the nature of the crime. It is not the character of the defendant. That factor is, simply, money."* (Robert F. Kennedy, quoted in PJI 2011; and in Schnacke, Jones, et al. 2010)

The role of bail bondsmen in pretrial release is but one facet of the larger issue of the use of money bail in any form, which — as the prominence given to Kennedy's words suggests — was a central topic at the 2011 National Symposium. Relevant to that discussion is the more general question of the effectiveness of money bail compared to nonmonetary release in persuading defendants to return to court. This is not the only issue in the debate about money bail, but it is clearly relevant. However, the discussion about the effect of type of release on defendant behavior has been clouded by a lack of empirical data produced with appropriate methodological controls.

This study addresses the two aspects of the bail question raised above: the effect on FTA rates of setting bail as opposed to releasing defendants on recognizance; and — for the money bail cases — the effect on FTA rates of posting bail through a commercial bondsman as compared to depositing cash bail directly with the court.

Outside New York, criminal justice stakeholders may well be interested in re-arrest rates in addition to FTA in assessing the "effectiveness" of various types of release. Our study examines FTA alone because New York law specifically recognizes only flight risk as a consideration in setting bail or ordering release on recognizance. New York Criminal Procedure Law § 510.30-2.(a) states that "With respect to any principal, the court must consider the kind and degree of control or restriction that is necessary to secure his court attendance when required." Public safety, which has been a legally mandated consideration in most states since the mid-1980s, has not been added to the New York statute in spite of sporadic attempts to do so over the years.[3] Given this statutory

[3] In the first 6 months of the 2011 sessions of the NY Assembly and NY Senate, several bills have been proposed offering amendments to the New York Criminal Procedure Law that aim to expand courts' ability to deny orders of recognizance or bail when a defendant poses a risk to public safety. Some of these amendments are based on specific provisions, while others more broadly advocate curtailing pretrial release in the interest of public safety. The most general of these bills in the Assembly, Bill no. A06705, would permit courts to invoke preventive detention and deny bail to any defendant posing a risk to the safety of the community. Bill no. A04559 proposed denying bail to defendants who are charged with violent crimes and have prior felony convictions, as well as defendants charged with a violent crime while out on bail or recognizance for another felony. Two additional bills would allow courts to deny bail or orders of recognizance to defendants in more specific circumstances. Bill no. A00251A targeted cases of domestic violence and called for defendants to be held if it was believed they might intimidate or injure the victim once released. Bill no. A02904 supported holding offenders who caused the death or serious injury of another person while driving while intoxicated. Each of these bills has a counterpart in the NY Senate. Note that if any of these bills were to become law, remand without bail would be allowed under the conditions specified in the law, but the prohibition against the *use of bail* to achieve preventive detention would remain unchanged. [Thanks to Jonathan Carmona for researching the bills, and to Miles Riemer-Peltz for contributing this footnote.]

framework, risk of failure to appear is the only suitable criterion for assessing the effectiveness of pretrial release in New York.

Of course, effectiveness — by this or any other definition — is not the only consideration in judging the relative merits of various types of release. For example, the reasons given by the American Bar Association for its opposition to commercial bonds are based on commonly held ideas about justice and fairness rather than empirical outcomes (ABA 2007). These additional considerations, which are enumerated briefly at the end of this report, have been fully discussed by others and lie outside the scope of this study.

A summary of the present research, highlighting the most important findings and recommendations, is available in the CJA *Research Brief* series (Phillips 2011c).

B. Types Of Pretrial Release In New York City

The three release types examined and compared in this research are release on recognizance (ROR), cash bail, and commercial bond. All pretrial release in the study sample consisted of one of these three types.

- ROR — release on recognizance, with no money bail. No supervision of any kind was provided for defendants released on recognizance. Defendants on ROR receive a telephone call or, if no telephone number was provided, a letter notifying them of approaching court dates, as do all released defendants, including those out on cash bail or a bond.
- Cash bail — bail posted in cash directly with the court cashier. If two bail amounts are set by the court, the lower amount is the "cash alternative," sufficient for gaining release only if posted in cash. If no cash alternative is set, the defendant may post the entire bond amount in cash. Cash bail is refunded in full at the conclusion of the case if there is no failure to appear and no conviction; a 3% fee is retained by the court in the event of a conviction (and the full amount is forfeited in the event of a failure to appear). Defendants released on cash bail also received no supervision.
- Commercial bond — a bond purchased from a commercial surety (bail bondsman), who then posts it with the court to gain the defendant's release. If two bail amounts are set, the higher is the amount of the bond. Bondsmen charge nonrefundable fees based on the amount of the bond, and they also require a collateral deposit, which is refunded if the defendant appears for all scheduled court dates (possibly minus additional miscellaneous fees). If the defendant fails to appear, the bond company or its insurance underwriter is responsible for paying the court the full amount of the bond. No reliable information was available regarding the kind and extent of supervision exercised by bondsmen, but some bondsmen in the research sample indicated on their bail affidavits that they required clients to check in weekly by telephone or in person; some agents may have used additional forms of supervision for all or selected clients. (See Phillips 2011a for details regarding fees, collateral, and other aspects of commercial bonds.)

CJA has operated a supervised release project since 2009 for defendants who meet specified criteria in Queens, but nothing comparable existed for the defendants in the research sample of 2005 arrests (see Methodology for further details regarding the dataset).

Other types of release used routinely in many parts of the country were not encountered in the research sample. These included deposit bonds, unsecured bonds, and conditional release. Deposit bonds are bonds for which the defendant deposits a percentage, usually 10%, of the full amount. Unsecured bonds are those for which the defendant pays no money to the court but is liable for the full amount upon failure to appear. Both options have been available to New York City judges since 1970, but they are rarely used (Fellner 2010).

A factor that muddles most comparisons of FTA (and re-arrest) rates by release type is that in many parts of the country, pretrial service agencies perform supervisory functions for defendants out on bail, including defendants released on cash bail as well as those released through a commercial surety. Almost half of the pretrial agencies that responded to a 2009 survey by the Pretrial Justice Institute reported that they were responsible for defendants who were released on a commercial bond (NAPSA 2009).[4] As a result, low FTA rates sometimes credited to commercial bail bonds may in fact be attributable to supervision that the bondsmen had no hand in. This was not the case in New York City, as CJA does not supervise any defendants released on bail. Nor did CJA supervise any defendants released on recognizance during the study period. Accordingly, the comparisons by release type made in the present analyses are uncontaminated by the effects of mixed supervisory responsibility.

Notification of upcoming court dates reduces the likelihood of FTA, but this did not affect the results of the study. CJA attempts to notify all released defendants of scheduled court dates, regardless of release type.

C. Research Questions

Four research questions were formulated to address the issues described above:

- Is ***monetary bail*** associated with a lower ***FTA rate*** than ***ROR***, once the effects of other relevant factors have been accounted for?
- Is ***monetary bail*** associated with a lower rate of failure to appear *with no return within 30 days (**Adjusted FTA rate**)*, compared to ***ROR***, once the effects of other relevant factors have been accounted for?
- Is release on a ***commercial bond*** associated with a lower ***FTA rate*** than release on ***cash bail***, once the effects of other relevant factors have been accounted for?

[4] This is no longer the situation for at least one of the pretrial agencies included in the survey. In Harris County, Texas, bail cases comprised the majority of the supervisory caseload until very recently. For more than 15 years Harris County Pretrial Services had been responsible for monitoring defendants on cash bail or bond who were required to abide by certain conditions of release. This practice was reversed in mid-2010, leaving only defendants released without financial conditions under the supervision of Pretrial Services (PJI 2011, Harris County Pretrial Services 2011).

- Is release on a ***commercial bond*** associated with a lower ***Adjusted FTA rate*** than release on ***cash bail,*** once the effects of other relevant factors have been accounted for?

An additional question was formulated to test two (mutually contradictory) assertions sometimes made by critics of the bond industry: (1) that bond agents' putative success in achieving low FTA rates comes by way of their selection of clients who represent the "cream of the crop" because of their low risk; or (2) that bond agents release dangerous, high-risk defendants because they tend to have high bail, which is more profitable than low bail.

- Do defendants released on a ***commercial bond*** differ from defendants released on ***cash bail*** or ***ROR*** in ways that would suggest that they have a higher risk of FTA or that they are more dangerous?

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II. LITERATURE REVIEW

General

The best recent summary of the issues addressed in this report 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 by discrediting the work of pretrial services agencies (Schnacke, Jones, et al. 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, et al. 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 Manhattan Bail Project of the Vera Foundation (now the Vera Institute of Justice), 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 the Vera Foundation. Their common mission was to identify defendants at low risk of failure to appear who could be recommended for release on recognizance. A brief history of the origins of the New York City Criminal Justice Agency in the Manhattan Bail Project can be found in the Introduction to each CJA *Annual Report* (see, for example, CJA 2010).

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 set bail in non-capital cases only to ensure court attendance. A public debate arose concerning the use of bail for the 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 bail setting. Most states followed suit, but New York did not. As stated in the Introduction to this report, the only consideration in setting bail allowed by the applicable New York statute is securing the defendant's court attendance.

Empirical research has informed the debate in many ways, but we limit the discussion here to studies investigating the associations between FTA and various forms of release. We concentrate particularly on recent research that has figured in the compet-

[5] The term "preventative detention" is used by Schnacke, Jones, et al. (2010) but the shorter and more euphonious "preventive detention" is more widely used in the criminal justice literature. Preventive detention usually refers to the jailing of defendants without bail, which is allowed in New York for only a small number of defendants under extremely restrictive conditions (such as defendants charged with murder). There is a large and growing literature on preventive detention, which lies beyond the scope of this review. See fn. 3 for a summary of recent legislative attempts to allow preventive detention in New York.

ing 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 controlling 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 — an important omission.

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, meaning that any bail was associated with an increased 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

[6] Myers gives no data in his paper regarding the number of cases in the sample with each type of release. In a previous report (Phillips 2010a), CJA traced the rise and fall of the bond industry in New York City from a time in the early 1960s when almost all pretrial release was through commercial bondsmen, through a period starting in the late 1960s when ROR became widely used, to 1980 when release on bail nearly always meant cash (although the use of ROR also continued to grow). Judging from this sketchy history, 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.

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 included in the second pretrial release report, with the finding that the difference between surety bonds and ROR persisted but was not nearly as large after case processing and defendant characteristics were controlled for statistically: predicted probabilities of FTA were then 20% for surety bonds and 24% for ROR. Further, there was no difference between the predicted probabilities of FTA for surety bonds 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 (Kennedy and Henry 1996). The authors pointed out that no statistical controls were used in the first BJS report to account for the effects of other factors that affect FTA. In addition, they argued that aggregated national data cannot be used to infer any relationship between FTA and release type in a specific jurisdiction, and that NPRP data cannot 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 it: "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 differ-

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

ence in FTA between cash bail and surety bonds in the multivariate analyses presented in the later of the two BJS pretrial release reports, 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 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 selec-

[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, et al. (2010).

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

On a loosely parallel track, a PJI staff member 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, including violations, offenses, misdemeanors, and felonies.

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 (Schnacke, Jones, et al. 2010; Cohen and Reaves 2007).

Summary

A body of empirical research published 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 entirely.

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. 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 returning to court. 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 was confirmed for New York City by 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.

III. METHODOLOGY

A. The Data File

A dataset of New York City arrests during the second half of 2005 (July 1 through December 31) compiled from the CJA database was used for this research. The study excludes Staten Island and the community courts in Brooklyn and Manhattan. Cases in which the defendant was issued a Desk Appearance Ticket (DAT)[11] were also excluded.

The dataset was compiled in two parts: A file consisting of arrests from July 1 through September 30, 2005 (third quarter arrests), used in prior research, had already been compiled at the inception of the current study. In August 2010 this data file was enlarged by adding arrests from October through December 2005 (fourth quarter arrests). Cutoff dates and procedures for collecting form-of-bail data differed from one quarter to the other. All cases in the dataset had a defendant who was released prior to disposition of the case and was thereby at risk for failure to appear.

Third quarter arrests: Defendants who were released on or prior to December 31, 2005, were identified using data in the CJA database, including bail making dates electronically downloaded into the CJA database from the City's Department of Correction (DOC). This cutoff date tracked release for a minimum of three months following arrest. Only cases with a release before the cutoff date were included in the dataset. Case processing, including failure to appear, was tracked until June 30, 2007. The date of return following a failure to appear was tracked for an additional 30 days, to July 30.

The form in which bail was made is not among the data elements routinely collected in the CJA database, so it was collected manually. For the third quarter arrests, paper files were examined in the court houses in all four boroughs included in the study as well as in all three Department of Correction facilities in operation at the time of the study (Riker's Island, the Manhattan Detention Complex, and the Vernon C. Bain Center). These documents included cash bail receipts, records maintained by CJA's Bail Expediting Program in the Bronx and Queens, and bail affidavits from defendants' case files. Information collected from paper documents was added by hand to the computerized research file.

Fourth quarter arrests: Case processing was tracked until June 30, 2007, for failure to appear and to July 30, 2007, for the return to court following a failure to appear. This was the same tracking period as for the third quarter arrests, but the cutoff date for release was different: March 31, 2006 (three months following the latest arrest).

Form-of-bail data were added manually from the database maintained by the Office of Court Administration (OCA). Sealed cases were not available to CJA staff, leaving a larger number of bail cases without this information in the fourth quarter, compared to the third quarter arrests. Cases without form-of-bail data were excluded from

[11] After arrest, most defendants are held in detention awaiting arraignment. However, for some low level crimes the defendant may be released upon being issued a Desk Appearance Ticket (DAT), which is an order to appear in court for arraignment at a later date. DAT arrests were deleted from the dataset because of the long period of time between arrest and arraignment, often several months, which reduced the likelihood that they would be released before the cutoff date.

the analyses comparing cash bail to commercial bonds, but were included in the analyses comparing ROR to all money bail.

The arrest quarters were combined and discrepant information was resolved prior to beginning the analyses. The final dataset was an arrest-based (rather than defendant-based) file, so the same defendant may be represented more than once if he or she was re-arrested during the study period. All cases in the working dataset were of defendants who were at risk for FTA because they had been released prior to disposition.

B. Analytic Procedures

Two dependent variables and two independent variables were used in the analyses. The independent variables were **release type**, defined as ROR versus money bail, and **form of bail**, defined as cash bail versus commercial bond. Depending on the context, "release type" is also used in a more general sense to refer to all three types of release.

The dependent variables were **FTA** and **Adjusted FTA** (FTA with no return within 30 days). While the total FTA rate is useful in assessing the extent to which missed appearances constitute a problem for the courts, the "Adjusted FTA" rate is helpful in distinguishing those that constitute a willful attempt to evade justice. Many defendants who miss appearances do so for other reasons (illness, lack of child care or transportation, forgetfulness, etc.), leading them to return to court voluntarily within a few days or weeks. Although a return within 30 days does not directly measure the defendant's state of mind, it suggests that the defendant was not intentionally fleeing. In New York a defendant can be charged with bail-jumping only after not appearing in court within 30 days of the missed court date.[12]

The research questions were investigated using bivariate, three-way, and multivariate analyses. First the relationships among the dependent and independent variables were examined using bivariate tables. Bivariate relationships between the dependent variables and several control variables were also examined.

The control variables with the strongest relationships with the dependent variables were examined in three-way tables. This revealed how the selected control variables affected the relationship between the independent and dependent variables.

Four logistic regression models were estimated to examine the relationship between each independent variable and each dependent variable, controlling for many other variables simultaneously. In addition to the control variables already considered, other demographic and case processing variables were added to the analyses. The results enabled us to draw conclusions regarding the size and statistical significance of the effects of release type and the form of bail on failure to appear. For a more detailed description of logistic regression, see the Technical Appendix.

Finally, characteristics of cases in each release-type category were compared to determine if the bond cases had a higher proportion of either low-risk defendants or, alternatively, high-risk or violent defendants, compared to other release types.

[12] The bail-jumping statutes in New York Penal Law (215.55, 215.56, and 215.57) apply to release on recognizance as well as to release on money bail.

IV. DISTRIBUTIONS OF DEPENDENT, INDEPENDENT, AND CONTROL VARIABLES

A. Dependent Variables

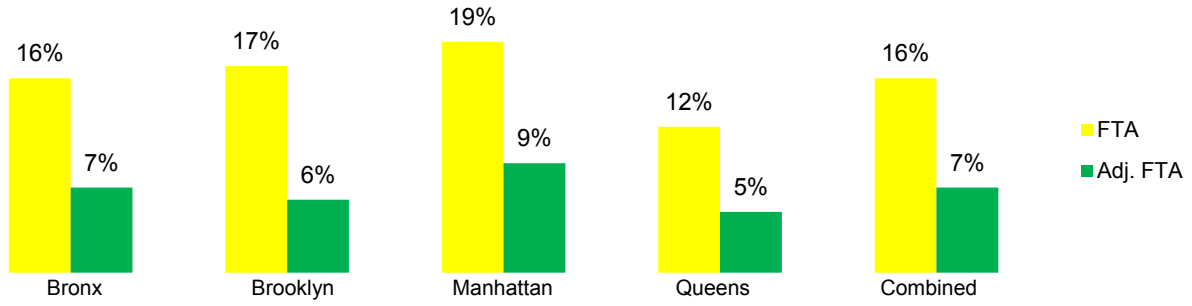
Two dependent variables were used in the analyses: *failure to appear (FTA)*, defined as one or more instances of a failure to appear for a scheduled court appearance prior to disposition of the case; and *Adjusted FTA*, defined as one or more instances of a failure to appear that was not followed by a return to court within 30 days. Non-appearance in which the warrant was stayed was not counted as a failure to appear. FTA rates were calculated by dividing the number of cases with a defendant who failed to appear one or more times by the total number of cases.

The distribution of FTA rates by borough is presented in Table 1 and Figure 1. Overall, the FTA rate was 16% for the combined boroughs, but lower in Queens (12%) and higher in Brooklyn (17%) and Manhattan (19%).

Adjusted FTA rates were less than half of the overall FTA rate in each borough. The Adjusted FTA rate for the combined boroughs was 7%; it was slightly lower in Queens (5%) and slightly higher in Manhattan (9%). This means that over half of the failures to appear were followed by a return within 30 days in every borough.

TABLE 1 and FIGURE 1
FTA And Adjusted FTA Rates By Borough
At-risk cases with an arrest July–December 2005

	Bronx	Brooklyn	Manhattan	Queens	Combined Boroughs
FTA	16% 1,713	17% 2,888	19% 3,022	12% 1,384	16% 9,007
No FTA	84% 9,273	83% 13,834	81% 13,025	88% 10,253	84% 46,385
Total	100% 10,986	100% 16,722	100% 16,047	100% 11,637	100% 55,392
Adjusted FTA	7% 785	6% 1,074	9% 1,483	5% 566	7% 3,908
No Adjusted FTA	93% 10,201	94% 15,648	91% 14,564	95% 11,071	93% 51,484
Total	100% 10,986	100% 16,722	100% 16,047	100% 11,637	100% 55,392



B. Independent Variables

Two independent variables were used in the analyses. *Release type* differentiates between release on recognizance (ROR) and release on money bail. *Form of bail* differentiates between cash bail and bonds, for defendants released on money bail. Cash bail is posted directly with the court, whereas bonds are posted through the services of a commercial bondsman.

For a small proportion of cases, the type of release changed one or more times during the pendency of the case. Our coding captured the type of the *earliest* release, if there was more than one, with an important exception: for cases with a failure to appear, the release type corresponds to the release immediately prior to the FTA. For example, in the case of a defendant who made bail at arraignment and appeared for all court dates until he was eventually released on recognizance, followed by a failure to appear, the release type would be coded ROR (because the FTA occurred while on ROR). Had there been no FTA in this case, the release type would have been categorized as a bail release because that came first.

Release Type

Table 2 and Figure 2 show that 80% of the cases in the combined boroughs had a defendant who was released on recognizance and 20% on bail. Queens had a somewhat smaller proportion of ROR releases (75%), and a larger proportion of bail releases (25%), compared to the rest of the City. In a very small number of cases (92) the release type could not be coded with certainty because of conflicting information.

Form of Bail

Among bail cases for which the form of bail could be identified as either cash or bond, the defendant posted cash bail in 86% of cases, and a commercial bond in 14% of cases (lower half of Table 2 and Figure 2). These proportions varied somewhat by borough, with larger proportions of bonds found in the Bronx and Brooklyn (17% and 18%, respectively) than in Manhattan and Queens (11%).[13]

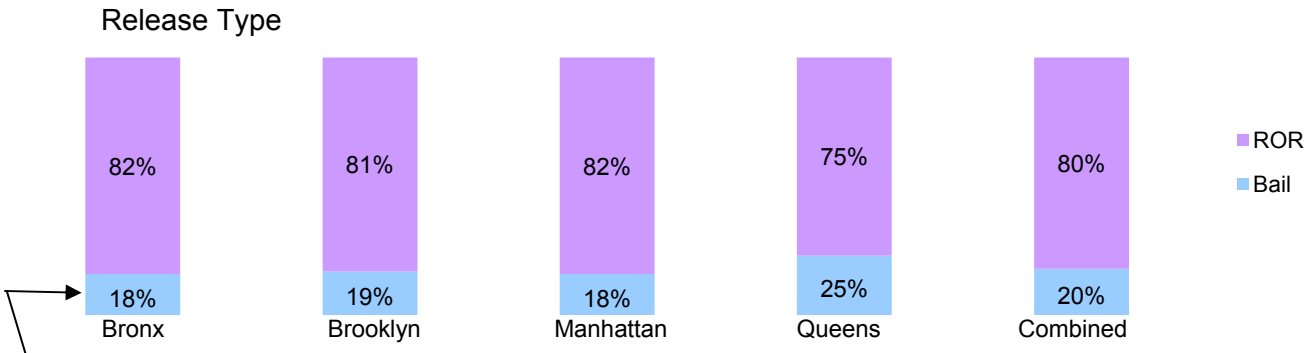
We could not identify the form of bail for 2,096 cases (or 19% of the 10,956 bail cases). The CJA database provided the information regarding release on ROR or bail, but form-of-bail data are not available in the Agency's database, so this information had to be collected manually from cash receipts and case files in the courts and from the database of the Office of Court Administration (OCA). Most of the cases missing form-of-bail data were sealed cases, which were not accessible to CJA staff from the OCA database. A small number of cases coded "unknown form of bail" were $1 amounts coded in OCA as a bond (n=18, almost all in the Bronx). We could find no information regarding a larger bail amount posted at the same time by the same defendant, and no confirmatory evidence in OCA (such as the name of the bond company) that the $1 "bonds" were really bonds, so they were included in the "unknown" category.

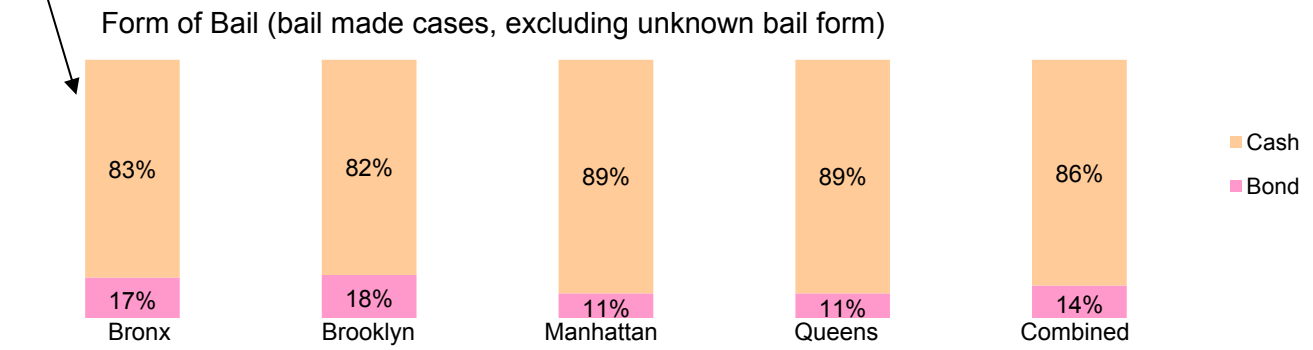
[13] These proportions are not identical to those previously reported (Phillips 2011a, Table 1) because a larger sample was used in the present research and the form of bail was reset if it changed immediately prior to a failure to appear. Brooklyn had the greatest number and proportion of bonds in both studies.

TABLE 2 and FIGURE 2
Release Type And Form Of Bail By Borough
At-risk cases with an arrest July–December 2005

Release Type	Bronx	Brooklyn	Manhattan	Queens	Combined Boroughs
ROR	82% 9,022	81% 13,454	82% 13,140	75% 8,728	80% 44,344
Bail	18% 1,928	19% 3,250	18% 2,889	25% 2,889	20% 10,956
Total ROR/Bail	100% 10,950	100% 16,704	100% 16,029	100% 11,617	100% 55,300
Conflicting data	36	18	18	20	92
Total sample	10,986	16,722	16,047	11,637	55,392

Form of Bail (all bail made cases)	Bronx	Brooklyn	Manhattan	Queens	Combined Boroughs
Cash	83% 1,189	82% 2,104	89% 2,182	89% 2,143	86% 7,618
Bond	17% 245	18% 472	11% 264	11% 261	14% 1,242
Total Cash/Bond	100% 1,434	100% 2,576	100% 2,466	100% 2,404	100% 8,860
Bail form unknown	494	674	443	485	2,096
Total Bail	1,928	3,250	2,889	2,889	10,956





C. Control Variables

Data for six control variables are included in the sections presenting distributions and relationships with FTA. These control variables are the CJA recommendation, defendant's criminal history, bail amount, timing of the first release, charge type, and charge severity. These six were selected because they were known or thought to be associated with failure to appear. Additional control variables were added in the multivariate statistical models presented later in this report.

CJA Recommendation

CJA personnel interview defendants who, after arrest, are held for arraignment in the lower court (Criminal Court) in New York City. The purpose of the interview is to provide judges, prosecutors, and defense counsel with background information in order to assess the likelihood that the individual defendants, if released, will return for scheduled court dates.

During the interview, information is collected on the defendant's occupation, residence, and family status. Attempts are made to verify many of these items through telephone calls made to a relative or someone else named by the defendant. The defendant's history of previous convictions, bench warrants, and current open cases is also entered on the interview report. Selected items are then used to calculate an objective score that reflects the estimated risk of nonappearance and is the basis for assigning a recommendation category for each adult defendant. A separate recommendation system is used for youths under 16 years of age who are prosecuted as adults under New York State's Juvenile Offender (JO) Law (CJA 2010).

Table 3 presents the distribution of recommendation categories among defendants with cases in the sample. In the combined boroughs, 40% were recommended for ROR (low risk for failure to appear), 20% were assigned to the moderate risk category, and 34% were not recommended for release. The "not recommended" category includes those assessed to be at high risk because of their low interview scores, combined with those who were not recommended because of an open bench warrant, a current bail jumping charge, or conflicting residence information. Because the research sample includes only released defendants, the proportion of recommended defendants is higher, and the proportion of not recommended defendants is lower, than would be found in a sample that also included defendants who were never released.

The remaining cases were fairly equally divided between cases with a defendant for whom no recommendation category was assigned (3%) and cases with a defendant who was not interviewed (3%). No recommendation is assigned when the defendant's rap sheet is not available, the defendant is charged with murder, escape, or absconding, or if the defendant was incarcerated at the time of arrest, or declined or was unable to complete the interview. The last category, "Missing recommendation or not interviewed," consists of cases in which CJA staff might not have been able to conduct an interview because of a lack of time between arrest and arraignment; or the arrest was of a type in which the defendant is routinely not interviewed (an arrest on a bench warrant, while already in jail, or solely on a prostitution charge in Manhattan). Defendants issued a

Desk Appearance Ticket (DAT) at arrest also are not interviewed, but all DAT cases were excluded from the research sample.

Recommendation rates varied by borough from a high of 52% in Queens to a low of 33% in Manhattan. Queens had the lowest proportion of cases with a defendant in the "not recommended" category, 23%, and the Bronx had the highest, at 41%.

TABLE 3
CJA Recommendation Category By Borough
At-risk cases with an arrest July–December 2005

Recommendation Category	Bronx	Brooklyn	Manhattan	Queens	Combined Boroughs
Recommended (Low risk)	37% 4,043	41% 6,841	33% 5,285	52% 6,095	40% 22,264
Moderate risk	18% 2,030	19% 3,105	22% 3,506	22% 2,545	20% 11,186
*Not recommended	41% 4,471	35% 5,882	35% 5,651	23% 2,699	34% 18,699
**No recommendation	3% 351	4% 654	4% 688	1% 97	3% 1,790
Missing recommendation or not interviewed	1% 95	1% 240	6% 917	2% 201	3% 1,453
Total	100% 10,986	100% 16,722	100% 16,047	100% 11,637	100% 55,392

*The "not recommended" category includes defendants assessed by CJA to be at high risk of FTA combined with defendants who are not recommended for policy reasons: an open warrant, a bail-jumping charge, or conflicting residence information.
**No recommendation is assigned when the defendant's rap sheet is not available, the defendant is charged with murder, escape, or absconding, or the defendant did not complete the interview.

Defendant's Criminal History

Table 4 presents data pertaining to defendants' criminal records. Among cases in the research sample, 40% had a defendant with no adult criminal record and 22% had a defendant with a prior felony conviction. Queens had the highest proportion with no criminal record (50%) and the smallest proportion with a felony conviction (15%). The Bronx was at the opposite end of the spectrum: only 33% of Bronx cases had a defendant with no criminal record, and 25% had a prior felony conviction.

TABLE 4
Defendant's Criminal History By Borough
At-risk cases with an arrest July–December 2005

Criminal History	Bronx	Brooklyn	Manhattan	Queens	Combined Boroughs
No adult criminal record	33% 3,582	40% 6,587	38% 5,544	50% 5,606	40% 21,319
Prior arrest, no conviction	28% 3,039	23% 3,772	24% 3,542	22% 2,498	24% 12,851
Prior misdemeanor conviction only	14% 1,520	14% 2,280	13% 1,917	13% 1,426	13% 7,143
Prior felony conviction	25% 2,742	23% 3,777	25% 3,712	15% 1,692	22% 11,923
Total	100% 10,883	100% 16,416	100% 14,715	100% 11,222	100% 53,236
Criminal history unavailable	103	306	1,332	415	2,156
Total sample	10,986	16,722	16,047	11,637	55,392

Bail Amount

For cases with a failure to appear, bail amount was set to equal the amount that had been posted most recently prior to the FTA. For cases with a cash receipt or bond affidavit, bail amount was taken from the manually collected data (unless superseded by a different amount prior to FTA). For the minority of cases with no FTA and no manually collected data, the bail amount set at arraignment was used (the cash alternative unless the bail was known to have been posted by bond). The bail amount was available for all but six cases among the bail releases.

Table 5 presents the distribution of dollar amounts by borough. Since the research sample includes only cases of defendants who made bail (or were released on recognizance, not included in Table 4) the bail amounts are lower than would be found in a sample that also included defendants who never made bail. Variations in bail amounts reflect variations in defendants' ability to make bail, as well as variations in the amounts judges set.

Nearly a quarter of the bail releases were on amounts of $500 or less (23%), and in 258 cases (2%) the defendant was released on $1. Normally, $1 is a signal that the defendant has much higher bail or is being held without bail on another docket or case. Release on $1 bail could mean that the other matter was resolved, leaving only $1 for the defendant to post to gain release. Or, sometimes the defendant was held on high bail until the amount was reduced to $1. Data were not available to determine the reason for a bail reduction to $1 in any specific case, but some change in the defendant's circumstances or other criminal justice involvement can be assumed.

Although bail amounts ranged all the way up to $500,000, the defendant was released on less than $5,000 in three quarters of the cases. The amount was above $7,500 in only one in ten bail releases.

Bail amounts for released defendants were particularly low in Manhattan. With a median bail amount of $1,000, Manhattan was the only borough below $1,500. Almost 40% of Manhattan cases had a defendant released on less than $1,000.

The highest bail amounts were found in Queens, where 17% of the bail postings were in amounts over $7,500, compared to 7% or 8% in each of the other three boroughs. Queens also had the largest mean bail amount ($7,454, compared to the overall mean of $4,876), although the median for Queens ($1,500) was no higher than for other boroughs.

TABLE 5
Bail Amount By Borough
Cases with a release on bail
Arrests July–December 2005

Bail Amount Posted For Release	Bronx	Brooklyn	Manhattan	Queens	Combined Boroughs	Cumulative Percentage (combined boroughs)
$1	4% 69	2% 78	3% 84	1% 27	2% 258	2%
$50 to $499	2% 39	5% 149	6% 181	1% 43	4% 412	6%
$500	12% 241	19% 608	21% 600	14% 391	17% 1,840	23%
$501 to $999	4% 86	4% 137	9% 261	6% 187	6% 671	29%
$1,000	18% 340	19% 633	14% 390	16% 452	17% 1,815	46%
$1,001 to $2,499	17% 332	12% 402	12% 359	17% 496	15% 1,589	61%
$2500 to $4999	22% 421	18% 577	14% 405	14% 392	16% 1,795	77%
$5000 to 7500	13% 247	13% 424	13% 371	15% 420	13% 1,462	90%
Above $7,500	8% 153	7% 241	8% 234	17% 480	10% 1,108	100%
Total	100% 1,928	100% 3,249	100% 2,885	100% 2,888	100% 10,950	
Amount Unknown	0	1	4	1	6	
Total sample	1,928	3,250	2,889	2,889	10,956	
Minimum Maximum Mean Median	$1 $250,000 $4,494 $1,500	$1 $500,000 $3,687 $1,500	$1 $250,000 $3,888 $1,000	$1 $500,000 $7,454 $1,500	$1 $500,000 $4,876 $1,500	

Timing of Release

In about three quarters of the sample cases, the defendant was released at arraignment in Criminal Court (77%), as shown in Table 6. In the remaining cases the defendant was released at some point post-arraignment (23%). There was not much variation by borough, although release occurred at arraignment in Manhattan slightly more often (80%) than in the other boroughs (74% to 77%).

TABLE 6
Timing Of First Release By Borough
At-risk cases with an arrest July–December 2005

Timing of Release	Bronx	Brooklyn	Manhattan	Queens	Combined Boroughs
Released at arraignment	77% 8,501	74% 12,424	80% 12,879	76% 8,860	77% 42,664
Released post-arraignment	23% 2,485	26% 4,298	20% 3,168	24% 2,777	23% 12,728
Total	100% 10,986	100% 16,722	100% 16,047	100% 11,637	100% 55,392

Charge Type

The most severe offense entering arraignment was categorized as one of three charge types:

- Drug — includes all Penal Law Article 220 and 221 offenses. About 23% of these were marijuana charges (Article 221).
- Physically injurious/weapon — includes assault, robbery, criminal weapon possession, violent sex offenses, kidnapping and other crimes of physical harm. Almost two thirds of the sample cases in this category had a top charge of assault (Article 120 charges), 10% robbery (Article 160), and another 10% weapons (Article 265).
- Other — all remaining cases were grouped together in this category. Nearly a quarter (24%) were Vehicle and Traffic Law offenses, primarily VTL 511 (driving without a license) and VTL 1192 (driving under the influence of alcohol or drugs). Larceny (PL Article 155) and other offenses relating to theft (Article 165) together comprised 23% of the cases in the "other" category. Criminal contempt (along with a small number of other Article 215 charges) accounted for 9%, and forgery (Article 170) for 7%. The remainder of the cases in this category were scattered among a variety of non-drug, non-injurious charges.

The distribution of charge types in the research sample is presented in Table 7. In the combined boroughs 20% of the cases of released defendants had a drug charge as the top charge entering arraignment, 40% had a charge categorized as physically injurious/weapon, and the remaining cases (40%) were grouped together as "all other."

Drug charges were particularly prevalent in the Bronx (28%) for released defendants, and least so in Queens (14%). Physically injurious/weapon charges were most common in Brooklyn (45%) and Queens (44%), and least so in Manhattan (32%).

TABLE 7
Charge Type By Borough
At-risk cases with an arrest July–December 2005

Charge Type	Bronx	Brooklyn	Manhattan	Queens	Combined Boroughs
Drug	28% 3,086	20% 3,400	20% 3,173	14% 1,576	20% 11,235
Physically injurious/weapon	37% 4,086	45% 7,581	32% 5,096	44% 5,145	40% 21,908
All other	35% 3,814	34% 5,741	48% 7,778	42% 4,916	40% 22,249
Total	100% 10,986	100% 16,722	100% 16,047	100% 11,637	100% 55,392

Charge Severity

Charge severity measures the severity class of the top charge entering Criminal Court arraignment. "Felony" includes Class A through Class E felony charges, and "nonfelony" includes misdemeanors, violations, and infractions. Violations and infractions are non-criminal charges. Distributions of charge severity by borough are presented in Table 8.

Overall, 66% of sample cases had a top charge no more severe than a misdemeanor entering arraignment, and 34% had a top charge of felony severity. The Bronx had the largest proportion of felony cases (42%), and Queens had the smallest proportion (28%).

TABLE 8
Charge Severity By Borough
At-risk cases with an arrest July–December 2005

Charge severity	Bronx	Brooklyn	Manhattan	Queens	Combined Boroughs
Nonfelony	58% 6,234	66% 10,956	67% 10,526	72% 8,262	66% 35,978
Felony	42% 4,597	34% 5,605	33% 5,111	28% 3,148	34% 18,461
Total	100% 10,831	100% 16,561	100% 15,637	100% 11,410	100% 54,439
Charge severity unknown or non-Penal Law charge	155	161	410	227	953
All cases	10,986	16,722	16,047	11,637	55,392

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V. BIVARIATE RELATIONSHIPS

A. Relationship Of FTA With Independent Variables

Bivariate analyses — with no control variables — show a small difference between ROR and bail in a defendant's likelihood of nonappearance for a court date (Table 9). The FTA rate for ROR cases was 17%, compared to 14% for cases in which the defendant was out on bail, a difference of three percentage points.

To examine differences in FTA rates by form of bail, we excluded cases with bail under $1,000 because bondsmen did not write bonds under $1,000. Bail set less than $1,000 was posted in cash or not at all, so there was no variation in the form of bail among those cases. For cases with a defendant released on $1,000 or more, the form of bail made almost no difference in likelihood of FTA: the FTA rate was 11% among cash bail cases and 10% among bond cases. The FTA rate for all bail cases (14%) was pushed upwards by the relatively high rates found among cases with bail under $1,000 (Table 12, below).

Adjusted FTA rates were low to begin with, but bail reduced FTA a bit further (from 7% for ROR to 5% for bail) and a bond reduced it slightly more (from 5% for cash to 2% for bonds). These data suggest that any type of bail reduces both the total FTA rate and the Adjusted FTA rate by a very small amount, whereas the small effect of bonds is seen primarily in getting defendants back to court within 30 days once the failure to appear has already occurred. However, no conclusions can be drawn until the relationships have been explored further in multivariate analyses, controlling for the CJA recommendation, bail amount, criminal history, and other factors that also affect FTA.

TABLE 9
FTA And Adjusted FTA Rates By Release Type And Form Of Bail
At-risk cases with an arrest July–December 2005

Release Type	Failure To Appear			Total
	No FTA	FTA	*Adjusted FTA*	
ROR	83% 36,924	17% 7,420	*7%* *(3,299)*	100% 44,344
Bail (all amounts)	86% 9,461	14% 1,495	*5%* *(578)*	100% 10,956
Conflicting release type	0	92	*(31)*	92
Total sample	46,385	9,007	*(3,908)*	55,392

Form of Bail ($1,000 or more)	Failure To Appear			Total
	No FTA	FTA	*Adjusted FTA*	
Cash	89% 3,955	11% 501	*5%* *(203)*	100% 4,456
Bond	90% 1,112	10% 130	*2%* *(29)*	100% 1,242
Bail form unknown	88% 1,825	12% 246	*5%* *(95)*	100% 2,071
Total Bail ($1,000 or more)	89% 6,892	11% 877	*4%* *(327)*	100% 7,769

B. Relationship Of FTA With Control Variables

CJA Recommendation

The CJA recommendation was developed empirically with the specific objective of predicting failure to appear, which it does with considerable success (as shown consistently every year in CJA's *Annual Report,* Exhibit 18).

Table 10 presents FTA and Adjusted FTA rates by CJA recommendation category. Cases with a defendant recommended for ROR had an FTA rate of 9%, compared to 15% for cases with a defendant assigned to the moderate risk category, and 25% for cases with a defendant who was not recommended for release. This relationship — a difference of 16 percentage points in FTA rates between recommended and not recommended cases — is much stronger than the relationship between FTA and release type shown in Table 9.

Adjusted FTA rates were also strongly related to the CJA recommendation: cases with a recommended defendant had an Adjusted FTA rate of 3%, compared to 11% among cases with a defendant who was not recommended.

TABLE 10
FTA And Adjusted FTA Rates By CJA Recommendation Category
At-risk cases with an arrest July–December 2005

Recommendation Category	No FTA	FTA	*Adjusted FTA*	Total
Recommended (Low risk)	91% 20,291	9% 1,973	*3%* *(696)*	100% 22,264
Moderate risk	85% 9,509	15% 1,677	*7%* *(761)*	100% 11,186
Not recommended	75% 14,014	25% 4,685	*11%* *(2121)*	100% 18,699
No recommendation	79% 1,420	21% 370	*10%* *(172)*	100% 1,790
Missing recommendation or not interviewed	79% 1,151	21% 302	*11%* *(158)*	100% 1,453
Total	84% 46,385	16% 9,007	*7%* *(3908)*	100% 55,392

Criminal History

Having a prior felony conviction more than doubled the likelihood of FTA, as shown in Table 11 (without controlling for other relevant factors). Cases with a defendant with no adult criminal record had an FTA rate of 10%, compared to 23% for cases with a defendant with a prior felony conviction. The FTA rates for cases with a defendant with a prior adult arrest but no conviction (17%) and for cases with a defendant with a prior misdemeanor conviction (21%) were in the mid-range.

The same pattern was found for Adjusted FTA rates, which ranged from 5% (no criminal record) to 10% (prior felony conviction).

TABLE 11
FTA And Adjusted FTA Rates By Defendant's Criminal History
At-risk cases with an arrest July–December 2005

Criminal History	No FTA	FTA	*Adjusted FTA*	Total
No adult criminal record	90% 19,123	10% 2,196	*5%* *(1,017)*	100% 21,319
Prior arrest, no conviction	83% 10,684	17% 2,167	*7%* *(892)*	100% 12,851
Prior misdemeanor conviction only	79% 5,649	21% 1,494	*9%* *(630)*	100% 7,143
Prior felony conviction	77% 9,177	23% 2,746	*10%* *(1.160)*	100% 11,923
Criminal history unknown	81% 1,752	19% 404	*10%* *(209)*	100% 2,156
Total	84% 46,385	16% 9,007	*7%* *(3,908)*	100% 55,392

Bail Amount

For cases with a defendant released on bail, a strong relationship was found between FTA and bail amount (Table 12).

The extraordinarily high FTA rates for cases with a defendant released on $1 (53% FTA; 28% Adjusted FTA) is partly an artifact of the way bail amount was measured. When a higher bail was posted that was later reduced to $1, bail amount was coded as $1 if a failure to appear followed the bail reduction. This made sense because the defendant was released on $1, not on the larger amount, at the time of (the first) FTA. However, if the same defendant had made it to every scheduled court appearance, only the initial amount of bail posted would have been the coded for the case. While this strategy accurately reflects the amount of bail the defendant risked forfeiting at the time of failure, it exaggerates the risk of FTA associated with $1 because there were many cases in which bail was reduced from a higher amount to $1 and the defendant appeared successfully for every court date, before and after the bail reduction. We did not track changes in bail amount in the absence of FTA.

Nonetheless, $1 bail did appear to be associated with an unusually high risk of FTA, even if not as high as Table 12 would suggest. Among all cases with bail set at $1 at arraignment, the FTA rate was 32% (73 out of 231 cases, not shown). Excluding cases in which the defendant was eventually released on recognizance, the FTA rate was still 32% (48 of 151 cases with $1 bail at arraignment *and released on $1*, not shown).

Aside from the $1 bail cases, the lower the bail amount, the higher the risk of FTA. For the 2,252 cases with bail set between $50 and $500, FTA rates were similar to the rate for defendants released on recognizance (17%, Table 9): 19% among cases with less than $500 bail and 17% among cases with exactly $500 bail.

There was a slight drop in FTA rates above $500, from 17% ($500) to 14% ($501 to $1,000). Above $1,000, the rates dropped gradually and steadily down to 8% for cases with a defendant released on bail higher than $7,500.

The same pattern was found for Adjusted FTA rates, except that the decline in Adjusted FTA rates accompanying increases in bail was very slight. The Adjusted FTA rate was 7% for cases with under $500 bail and dropped to 4% for cases in the highest bail range.

TABLE 12
FTA And Adjusted FTA Rates By Amount Of Bail Posted For Release
Cases with a release on bail
Arrests July–December 2005

Bail Amount	No FTA	FTA	*Adjusted FTA*	Total
$1	47% 122	53% 136	*28%* *(73)*	100% 258
$50 to $499	81% 332	19% 80	*7%* *(28)*	100% 412
$500	83% 1,534	17% 306	*6%* *(112)*	100% 1,840
$501 to $999	86% 580	14% 91	*5%* *(36)*	100% 671
$1,000	86% 1,568	14% 247	*5%* *(84)*	100% 1,815
$1,001 to $2,499	87% 1,390	13% 199	*5%* *(77)*	100% 1,589
$2500 to $4999	89% 1,595	11% 200	*4%* *(67)*	100% 1,795
$5000 to 7500	90% 1,318	10% 144	*4%* *(54)*	100% 1,462
Above $7,500	92% 1,021	8% 87	*4%* *(45)*	100% 1,108
Combined amounts	86% 9,460	14% 1,490	*5%* *(576)*	100% 10,950
Amount unknown	1	5	*2*	6
Total bail (all amounts)	9,461	1,495	*578*	10,956

Timing of First Release

Release at arraignment was associated with a slightly lower FTA rate (15%) than post-arraignment release (19%). The comparable difference in Adjusted FTA rates — from 7% for release at arraignment to 8% for post-arraignment release — was in the same direction, but trivial in size.

TABLE 13
FTA And Adjusted FTA Rates By Timing Of First Release
At-risk cases with an arrest July–December 2005

Timing of Release	No FTA	FTA	*Adjusted FTA*	Total
Released at arraignment	85% 36,075	15% 6,589	*7%* *(2,875)*	100% 42,664
Released post-arraignment	81% 10,310	19% 2,418	*8%* *(1,033)*	100% 12,728
Total	84% 46,385	16% 9,007	*7%* *(3,908)*	100% 55,392

Charge Type

Charge type was also found to be related to failure to appear, as shown in Table 14. Drug cases had a relatively high FTA rate of 21%. The cases with a charge categorized as physically injurious/weapon had a relatively low FTA rate of 12%. The FTA rate for all other cases was in between, at 18%.

The relationship between Adjusted FTA rates and charge type followed the same pattern as for FTA, but as usual the effects were smaller: 9% Adjusted FTA for drug cases, compared to 5% Adjusted FTA for cases with a charge categorized as physically injurious/weapon.

TABLE 14
FTA And Adjusted FTA Rates By Charge Type
At-risk cases with an arrest July–December 2005

Charge Type	No FTA	FTA	*Adjusted FTA*	Total
Drug	79% 8,852	21% 2,383	*9%* *(1,024)*	100% 11,235
Physically injurious/weapon	88% 19,203	12% 2,705	*5%* *(1,070)*	100% 21,908
All other	82% 18,330	18% 3,919	*8%* *(1,814)*	100% 22,249
Total	84% 46,385	16% 9,007	*7%* *(3,908)*	100% 55,392

Charge Severity

Nonfelony charges were found to be associated with a higher FTA rate (18%) than felony charges (13%), and the same was found for Adjusted FTA rates (8% and 5%, respectively).

TABLE 15
FTA And Adjusted FTA Rates By Charge Severity
At-risk cases with an arrest July–December 2005

Severity of Charge Entering Criminal Court Arraignment	No FTA	FTA	*Adjusted FTA*	Total
Nonfelony	82% 29,560	18% 6,418	*8%* *(2,835)*	100% 35,978
Felony	87% 16,010	13% 2,451	*5%* *(992)*	100% 18,461
Charge severity unknown	86% 815	14% 138	*8%* *(81)*	100% 953
Total	84% 46,385	16% 9,007	*7%* *(3,908)*	100% 55,392

VI. THREE-WAY RELATIONSHIPS

Three control variables having strong bivariate relationships with FTA were examined in three-way analyses showing how release type and form of bail affected FTA and Adjusted FTA, controlling for the third variable. The three control variables are the CJA recommendation, the defendant's criminal history, and — for bail cases — the amount of bail.

In the tables in this section, cases with a defendant released on bail under $1,000 were *included* in the top half of each table (release type) and *excluded* from the bottom half of each table (form of bail). As noted earlier, form of bail did not vary for bail under $1,000, which was always posted in cash if at all.

A. Controlling For CJA Recommendation

Table 16-A and Figure 3 show that for cases with a defendant who was recommended for release, neither release type nor the form of bail had any meaningful effect on FTA. Among the recommended group, the difference in FTA rates between ROR compared to release on bail was only one percentage point (9% and 8% respectively). For cases with a defendant who was recommended and made bail of $1,000 or more, the risk of FTA while out on cash bail was one percentage point *lower* than for bond releases (7% and 8% respectively). This means that for a very large minority with a low risk of FTA to begin with (recommended defendants comprised 40% of the research sample, Table 3), the risk was not further reduced either by bail or by any effect resulting from posting it in the form of a bond as opposed to cash.

Release type did affect risk of FTA for defendants in the moderate risk and not recommended categories. For the not recommended group, ROR was associated with an FTA rate of 27%, which is nine percentage points higher than the rate for release on bail (18%). These results show that the small effect of release type on FTA for the sample as a whole (Table 9) is accounted for primarily by defendants who were not recommended for release.

Table 16-B duplicates the analysis shown in Table 16-A, using the Adjusted FTA rate (no return within 30 days). For recommended defendants, neither release type nor form of bail affected Adjusted FTA. For cases in the not recommended category, bail lowered the Adjusted FTA rate by six percentage points (from 13% for ROR to 7% for bail). Making bail in the form of a bond also made a small difference in Adjusted FTA, for both moderate risk and not recommended groups: the difference was greater than four percentage points for moderate risk cases (5% vs. <1%) and three percentage points for not recommended cases (6% vs. 3%).

TABLE 16
FTA And Adjusted FTA Rates By Release Type And Form Of Bail, Controlling For CJA Recommendation
At-risk cases with an arrest July–December 2005

(excluding cases with unknown release type or with no CJA recommendation)

16-A. FTA Rates

Release Type	Recommendation Category		
	Recommended	Moderate Risk	Not Recommended
ROR	9% (1,695) N = 18,795	16% (1,454) N = 9,376	27% (3,693) N = 13,438
Bail (all amounts)	8% (264) N = 3,455	12% (208) N = 1,795	18% (932) N = 5,201
Combined release types	9% (1,959) N = 22,250	15% (1,662) N = 11,171	25% (4,625) N = 18,639

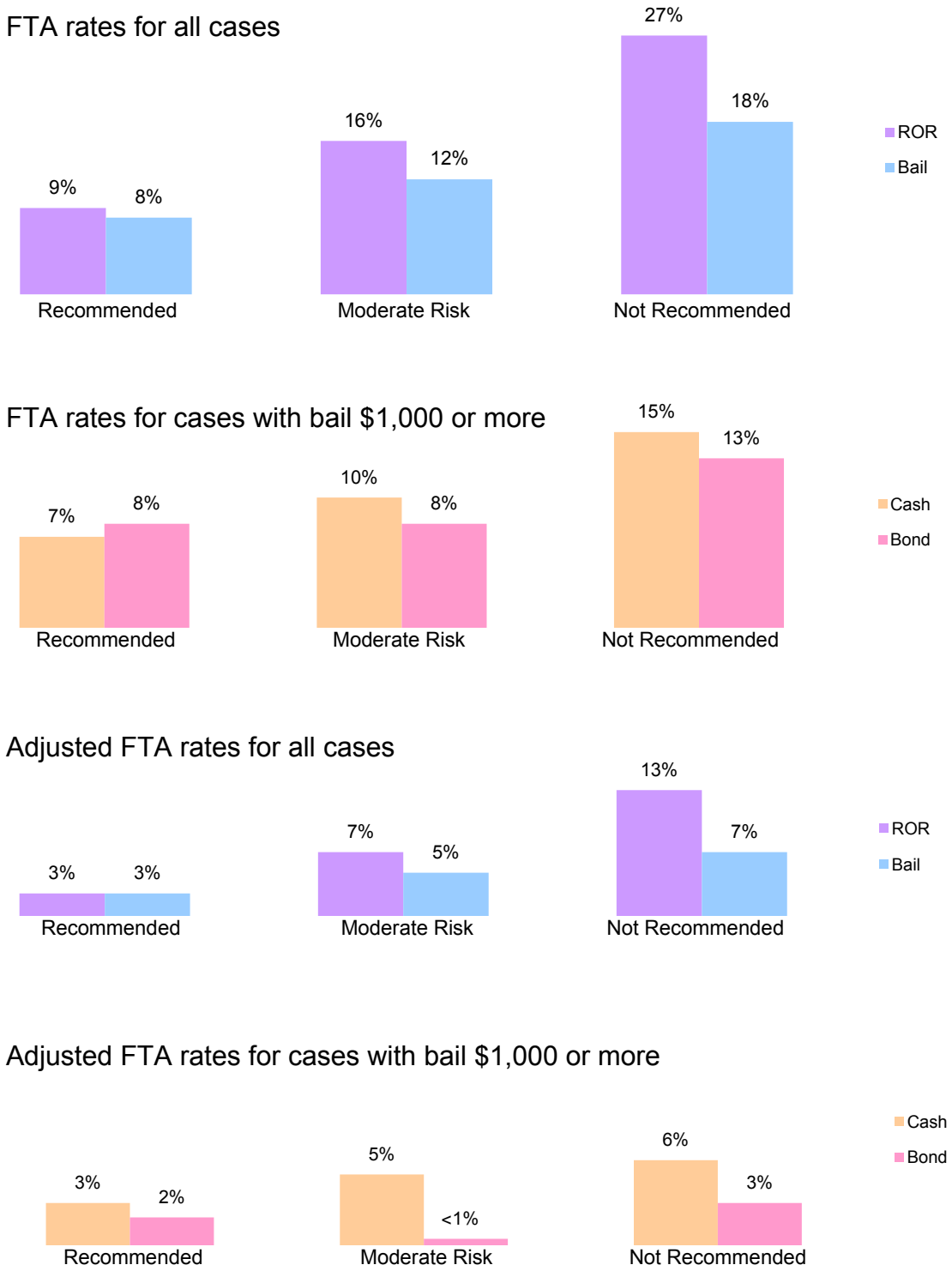
Form of Bail ($1000 or more)	Recommendation Category		
	Recommended	Moderate Risk	Not Recommended
Cash	7% (105) N = 1,514	10% (76) N = 762	15% (298) N = 1,991
Bond	8% (32) N = 420	8% (18) N = 216	13% (72) N = 556
Combined bail forms	7% (137) N = 1,934	10% (94) N = 978	15% (370) N = 2547

16-B. Adjusted FTA Rates (FTA With No Return Within 30 Days)

Release Type	Recommendation Category		
	Recommended	Moderate Risk	Not Recommended
ROR	3% (605) N = 18,795	7% (669) N = 9,376	13% (1,736) N = 13,438
Bail (all amounts)	3% (89) N = 3,455	5% (85) N = 1,795	7% (363) N = 5,201
Combined release types	3% (694) N = 22,250	7% (754) N = 11,171	11% (2,099) N = 18,639

Form of Bail ($1000 or more)	Recommendation Category		
	Recommended	Moderate Risk	Not Recommended
Cash	3% (42) N = 1,514	5% (35) N = 762	6% (116) N = 1,991
Bond	2% (7) N = 420	<1% (1) N = 216	3% (19) N = 556
Combined bail forms	3% (49) N = 1,934	4% (36) N = 978	5% (135) N = 2547

FIGURE 3
FTA And Adjusted FTA Rates
By Release Type And Form Of Bail, Controlling For CJA Recommendation



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B. Controlling For Criminal History

Table 17 and Figure 4 present FTA and Adjusted FTA rates by the defendant's criminal history.

Table 17-A shows that for defendants with no criminal record (40% of the sample, Table 4), FTA rates were low and virtually unaffected by whether the defendant was released on recognizance or on bail (10% and 9%, respectively). For defendants with any criminal record, especially a prior conviction, FTA rates were higher and the type of release did make a difference. Defendants with a prior felony conviction who were released on recognizance had an FTA rate of 26%, compared to 17% for their counterparts who were released on bail. The difference was almost as great among cases with a defendant who had a prior misdemeanor conviction only: 23% for the ROR group compared to 15% for the bail group.

Among cases with bail of $1,000 or more, the form of bail had almost no effect on FTA for defendants with no criminal record. Bonds were associated with a slightly *higher* FTA rate for cases with a defendant with a prior arrest but no conviction (the FTA rate was 9% for cash bail and 11% for bonds among this group). Among defendants with prior convictions, the FTA rate for bonds was a few percentage points lower than among their counterparts released on cash bail: 8% and 11% respectively among cases with a defendant with a prior misdemeanor conviction; 12% and 15% for the comparable groups with a prior felony conviction.

Adjusted FTA rates also were about the same for ROR and bail cases, among cases with a defendant with no criminal record (5% and 4% respectively), as shown in Table 17-B. And in a pattern that was similar to the overall FTA rates, Adjusted FTA rates were also more affected by release type among cases with defendants who had prior convictions. For defendants with a prior felony conviction, for instance, the Adjusted FTA rate was 11% for ROR cases compared to 6% for bail cases.

Among cases with bail of $1,000 or more, the form of bail had a small effect on Adjusted FTA in each criminal history group. Adjusted FTA rates for defendants released on a bond were lower than for those released on cash bail by one to three percentage points.

TABLE 17
FTA And Adjusted FTA Rates By Release Type And Form Of Bail, Controlling For Defendant's Criminal History
At-risk cases with an arrest July–December 2005
(excluding cases with unknown release type or unknown criminal history)

17-A. FTA Rates

Release Type	Criminal History			
	No adult criminal record	Prior adult arrest, no prior conviction	Misdemeanor conviction only	Felony conviction
ROR	10% (1,975) N = 18,905	18% (1,803) N = 10,195	23% (1,196) N = 5,173	26% (2,088) N = 8,162
Bail (all amounts)	9% (2,406) N = 2,406	13% (331) N = 2,623	15% (285) N = 1,957	17% (621) N = 3,724
Combined release types	10% (2,188) N = 21,311	17% (2,134) N = 12,818	21% (1,481) N = 7,130	23% (2,709) N = 11,886

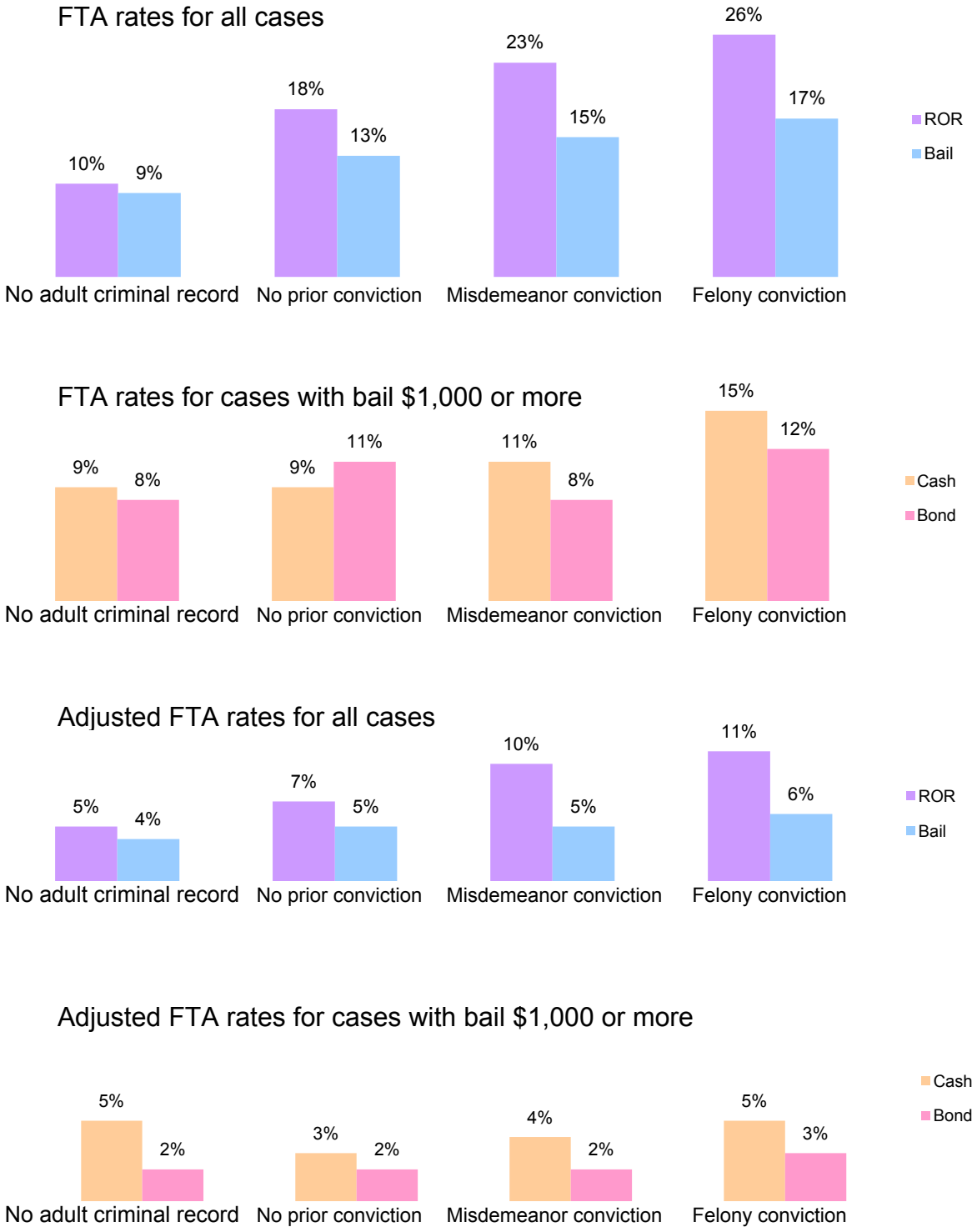
Form of Bail ($1,000 or more)	Criminal History			
	No adult criminal record	Prior adult arrest, no prior conviction	Misdemeanor conviction only	Felony conviction
Cash	9% (91) N = 1,066	9% (90) N = 1,007	11% (97) N = 848	15% (214) N = 1,445
Bond	8% (22) N = 276	11% (33) N = 299	8% (15) N = 187	12% (57) N = 460
Combined bail forms	8% (113) N = 1,342	9% (123) N = 1,306	11% (112) N = 1,035	14% (271) N = 1,905

17-B. Adjusted FTA Rates (FTA With No Return Within 30 Days)

Release Type	Criminal History			
	No adult criminal record	Prior adult arrest, no prior conviction	Misdemeanor conviction only	Felony conviction
ROR	5% (908) N = 18,905	7% (757) N = 10,195	10% (521) N = 5,173	11% (925) N = 8,162
Bail (all amounts)	4% (104) N = 2,406	5% (126) N = 2,623	5% (103) N = 1,957	6% (224) N = 3,724
Combined release types	5% (1,012) N = 21,311	7% (883) N = 12,818	9% (624) N = 7,130	10% (1,149) N = 11,886

Form of Bail ($1,000 or more)	Criminal History			
	No adult criminal record	Prior adult arrest, no prior conviction	Misdemeanor conviction only	Felony conviction
Cash	5% (51) N = 1,066	3% (35) N = 1,007	4% (38) N = 848	5% (77) N = 1,445
Bond	2% (6) N = 276	2% (5) N = 299	2% (4) N = 187	3% (12) N = 460
Combined bail forms	4% (57) N = 1,342	3% (40) N = 1,306	4% (42) N = 1,035	5% (89) N = 1,905

FIGURE 4
FTA And Adjusted FTA Rates
By Release Type And Form Of Bail, Controlling For Defendant's Criminal History



C. Controlling For Bail Amount

All cases with a bail amount are by definition bail releases, so Table 18 (and Figure 5) omits release type and includes only form of bail, controlling for the dollar amount. We already knew that the FTA rate dropped at higher bail amounts (Table 12), but Table 18 reveals something else as well: release by bond was associated with a lower FTA rate, compared to cash bail, *only for bail above $7,500* (Table 18-A). The difference is small (only three percentage points: 6% vs. 9%), and this is a small group of cases. For the much larger number of cases with a defendant released on $1,000 to $4,999, the relationship was reversed: cash bail was associated with lower FTA rates than release by bond. For the group in the mid-range ($5,000 to $7,500) FTA rates were the same (10%) for both forms of bail.

Adjusted FTA rates were from one to three percentage points lower for bond cases compared to cash at each bail level (Table 18-B). These findings suggest that for all but the highest bail levels, defendants who posted a bond were slightly more likely to fail to appear for a scheduled court date but also slightly more likely to return to court within 30 days after the missed date. As we have found throughout, the Adjusted FTA rate was so low overall that none of the control variables could further reduce it by much.

TABLE 18
FTA And Adjusted FTA Rates By Form Of Bail, Controlling For Bail Amount
Cases with a defendant released on $1,000 or higher bail

(excluding cases with unknown release type or unknown bail form)

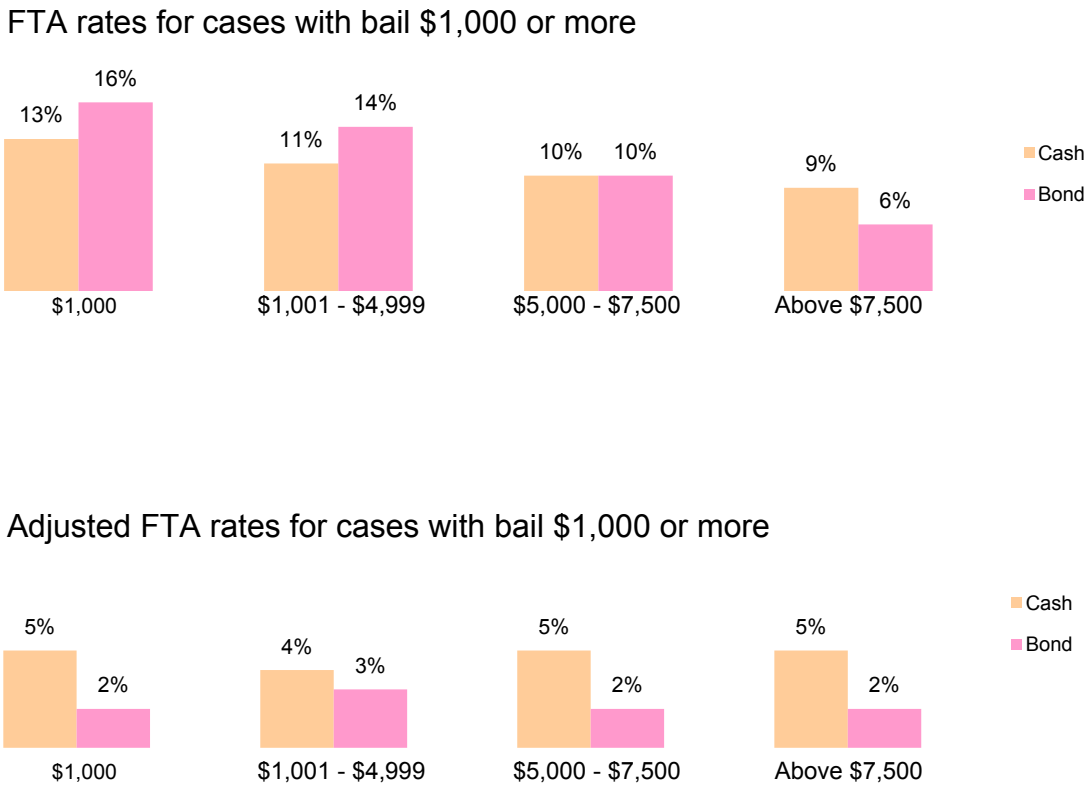
18-A. FTA Rates

Form of Bail (Cash/Bond)	Bail Amount			
	$1,000	$1,001 –$4,999	$5,000 –$7,500	Above $7,500
Cash	13% (157) N = 1,226	11% (230) N = 2,065	10% (73) N = 713	9% (41) N = 452
Bond	16% (15) N = 95	14% (56) N = 400	10% (37) N = 366	6% (22) N = 381
Combined form of bail	13% (172) N = 1,321	12% (286) N = 2,465	10% (110) N = 1,079	8% (63) N = 833

18-B. Adjusted FTA Rates (FTA With No Return Within 30 days)

Form of Bail (Cash/Bond)	Bail Amount			
	$1,000	$1,001 –$4,999	$5,000 –$7,500	Above $7,500
Cash	5% (58) N = 1,226	4% (91) N = 2,065	5% (33) N = 713	5% (21) N = 452
Bond	2% (2) N = 95	3% (13) N = 400	2% (7) N = 366	2% (7) N = 381
Combined form of bail	5% (60) N = 1,321	4% (104) N = 2,465	4% (40) N = 1,079	3% (28) N = 833

FIGURE 5
FTA And Adjusted FTA Rates
By Form Of Bail, Controlling For Bail Amount



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VII. MULTIVARIATE ANALYSES

Logistic regression models were developed to examine the effect of release type and form of bail on failure to appear, accounting for all of the control variables simultaneously. In addition to the variables examined in bivariate and three-way tables, additional demographic factors and other information collected in the CJA interview were also included as controls. The added control variables included the defendant's ethnicity, age, and gender, as well as responses to questions about employment or other full-time activity, and whether he or she expected a family member or friend to come to the arraignment hearing.

Finally, control variables were added to account for the effects of the borough of prosecution, whether a Violent Felony Offense (VFO) was the top charge at arrest, and whether the defendant had ever failed to appear in a previous case.

Separate models were developed to predict FTA and Adjusted FTA (no return within 30 days). For Models 1 and 2, the independent variable was release type, defined as ROR versus various bail ranges. For Models 3 and 4, the independent variable was form of bail (cash versus commercial bond).

Statistics presented in the models are the *standardized beta,* the *odds ratio,* and the *predicted probability* for each variable tested, and the *Nagelkerke R-square* for the model as a whole. The *significance level* of each variable is indicated by asterisks. (See box.)

Standardized beta: provides a comparative measure of the importance of each variable in predicting the outcome (here, FTA or Adjusted FTA), ranging from 0 (no effect) to 1.0 (greatest effect). A positive sign indicates that the factor increases, and a negative sign indicates that it decreases, the likelihood of FTA.

Odds ratio: measures the change in the odds of FTA that would occur with a change in the value of the independent or control variable. An odds ratio less than zero indicates a decrease, and greater than 1 indicates an increase, in the odds.

Predicted probability: measures the likelihood of FTA for cases with any given value of the independent or control variable, controlling for all other variables in the model.

Nagelkerke R-square: an estimate of the amount of variance in the outcome (FTA) that is accounted for by all of the variables in the model taken together.

Statistical significance: denoted by asterisks, from * for the least stringent level of significance (p≤.05) to *** for the most stringent level (p≤.001); "ns" indicates that a variable was not significant.

(See the Technical Appendix for further details.)

A. All-Cases Models

Models 1 and 2 (all-cases models) are presented in Table 19 on the following two pages. The models show that — compared to ROR — every bail category above $1 significantly lowered the likelihood of FTA (both the full FTA and the Adjusted FTA rate). Bail was not the strongest predictor, however. There were other factors that were more strongly associated with the likelihood of FTA than bail. The models are discussed in more detail following Table 19.

TABLE 19
Logistic Regression Models Of Failure To Appear And Adjusted Failure To Appear
All cases (N=50,936)

Independent Variable	Model 1 Dependent variable = **FTA**			Model 2 Dependent variable = **Adjusted FTA** (no return within 30 days)		
	Standardized Beta	Odds Ratio	Predicted Probability	Standardized Beta	Odds Ratio	Predicted Probability
Release Type/Bail Amount *Reference category = ROR*	***	—	ROR = .17	***	—	ROR = .08
Bail $1	.10***	3.10	.37	.07***	2.49	.16
Bail $50 to $500	–.11***	0.67	.12	–.16***	0.52	.04
Bail $501 to $1,000	–.16***	0.58	.11	–.20***	0.45	.04
Bail $1,001 to $4,999	–.19***	0.57	.11	–.20***	0.50	.04
Bail $5,000 to $7,500	–.14***	0.54	.10	–.14***	0.50	.04
Bail over $7,500	–.14***	0.48	.09	–.08**	0.64	.05
Control Variables						
CJA Recommendation *Reference category = Recommended, Low Risk*	***	—	Low Risk = .11	***	—	Low Risk = .04
Moderate risk	.19***	1.40	.15	.25***	1.66	.06
Not recommended	.48***	2.10	.20	.59***	2.79	.10
No recommendation	.09***	2.08	.20	.09***	2.24	.08
Defendant's Criminal History *Reference category = No criminal record*	***	—	No Record = .13	ns	—	No Record = .07
Prior arrest, no conviction	.13***	1.26	.16	.00 ns	0.99	.07
Misdemeanor conviction only	.15***	1.40	.17	.02 ns	1.05	.07
Felony conviction	.21***	1.44	.18	.02 ns	1.04	.07
Prior Warrant	.11***	1.20	No Warrant = .15 .17	ns	1.07	No Warrant = .07 .07
Defendant's Ethnicity *Reference category = White*	***	—	White = .14	***	—	White = .06
Black	.14***	1.23	.17	.06 ns	1.10	.07
Hispanic	.10**	1.17	.16	.07 *	1.14	.07
Other	–.09***	0.74	.11	–.12***	0.64	.04
Defendant's Age *Reference category = Age 40 or older*	***	—	Age 40+ = .13	***	—	Age 40+ = .06
Age 14 – 18	.26***	1.78	.21	.15***	1.47	.08
Age 19 – 29	.19***	1.34	.17	.13***	1.25	.07
Age 30 - 39	.07***	1.14	.15	.10***	1.22	.07

(Table continues on following page)

TABLE 19 (continued)

Control Variables (continued)	Model 1 Dependent variable = **FTA**			Model 2 Dependent variable = **Adjusted FTA** (no return within 30 days)		
	Standardized Beta	Odds Ratio	Predicted Probability	Standardized Beta	Odds Ratio	Predicted Probability
Defendant Is Female	–.01 ns	0.98	Male = .16 .16	.01 ns	1.02	Male = .07 .07
Defendant Does Not Expect Someone At Arraignment	.10***	1.16	Expects Someone = .15 .17	.12***	1.24	Expects Someone = .06 .07
Defendant Is Employed, In School, Or In Training Program Full Time *Reference category = Yes verified*	***	—	Yes Verified = .12	***		Yes Verified = .04
Yes (not verified)	.21***	1.38	.15	.28***	1.60	.07
No (not verified)	.34***	1.70	.18	.36***	1.90	.08
No verified	.10***	1.29	.15	.11**	1.36	.06
Unresolved conflict	.04*	1.26	.14	.07**	1.57	.07
Borough Of Prosecution *Reference category = Queens*	***	—	Queens = .15	***		Queens = .06
Bronx	–.01 ns	0.99	.14	.06*	1.14	.07
Brooklyn	.12***	1.20	.17	.04 ns	1.07	.06
Manhattan	.12***	1.22	.17	.18***	1.40	.08
Arrest Charge Is Violent Felony Offense	.00 ns	1.01	not VFO = .16 .16	.04 ns	1.12	VFO = .07 .07
Charge Type At Arraignment *Reference category = Physically injurious /weapon*	***	—	Physically injurious / weapon charge = .13	***		Physically injurious / weapon charge = .05
Drug	.22***	1.48	.18	.22***	1.59	.08
All Other	.21***	1.38	.17	.26***	1.56	.08
Nonfelony Arraignment Charge	.21***	1.38	Felony = .13 .17	.23***	1.49	Felony = .05 .08
Released Post-Arraignment	.08***	1.16	Released at arraignment = .15 .17	.14***	1.31	Released at arraignment = .06 .08
Nagelkerke R-square						
Model with control variables only	.095			.078		
Model with IV added	.104			.087		
Contribution of IV	.009			.009		
Interactions	Release type & CJA recommendation*** Release type & Criminal history***			Release type & CJA recommendation* Release type & Criminal history***		

*p<.05, **p<.01, ***p<.001, ns = not significant

One of the statistics presented in Table 19 — the predicted probability — is reproduced in graphic form in Figure 6 (Model 1 only). This discussion will focus on predicted probabilities rather than odds ratios, which are also presented in the tables, because the two statistics provide the same information, and of the two, predicted probabilities are more intuitively grasped. Odds ratios were retained in the tables for those who are more familiar with this statistic in reporting logistic regression results.

The predicted probabilities represented by the bars of Figure 6 (and in the third column of each model in Table 19) show how a change from one category to another of each independent and control variable affects FTA rates. For example, the predicted probability of FTA for defendants released on more than $1 bail ranged from 12% ($50 to $500) down to 9% (over $7,500). Compared to the 17% predicted probability of FTA for ROR cases, defendants released on bail above $1 were substantially less likely to fail to appear.

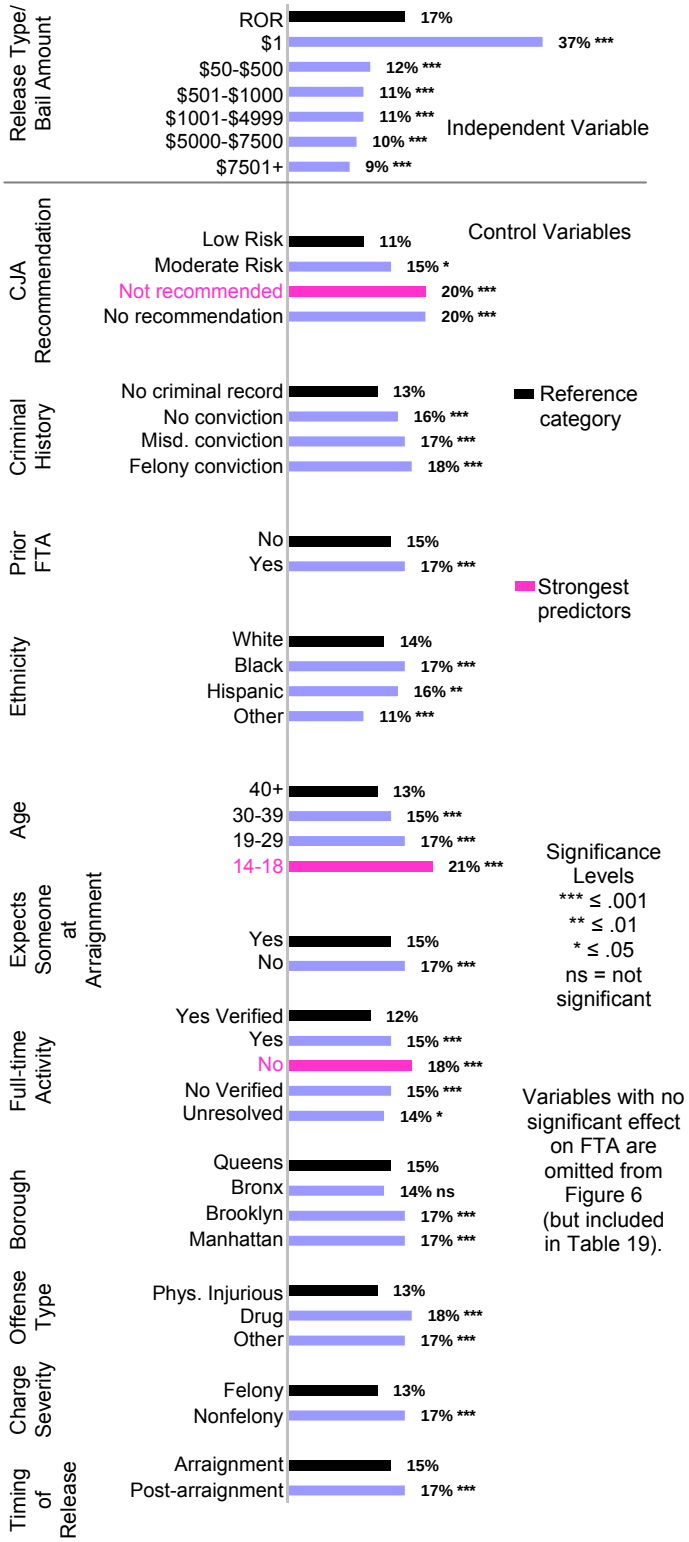
Black bars represent the reference category for each variable. Asterisks next to the other bars (next to the standardized betas in the tables) indicate the statistical significance level of the difference between that category and the reference category. The three asterisks next to each bail amount category indicate that the difference in the predicted probability of FTA between the bail category and ROR was statistically significant at the .001 (highest) level.

Figure 6 does not include the standardized beta coefficient, but the three factors with the largest coefficients (see Table 19) are represented by red bars to make them stand out. These are the most important predictors of FTA. The standardized beta takes into account not only the change in the predicted probability, but also the distribution of cases among categories of the independent or control variable. Even a large change in the predicted probability has a minimal overall effect on FTA if the category has only a few cases. For example, $1 bail was associated with a very high predicted FTA rate (37%), but there were few defendants released on only $1. The small standardized beta for this category (.10) indicates that it was relatively unimportant as an explanatory factor. (Bail is often set at $1 when the defendant has been remanded without bail or has higher bail 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.)

Using the size of the standardized beta as the measure, the model shows that several defendant characteristics had as strong or stronger an impact on FTA rates than bail.[14] The CJA recommendation was the most important of these. Being not recommended for release (standardized beta, .48) was associated with a 20% predicted FTA rate, compared to 11% for recommended (low-risk) defendants. "No recommendation" was associated with the same high predicted probability of FTA (also 20%), but the small standardized beta (.09) indicates that this was not nearly as important a factor.

[14] An alternate version of Model 1 was developed with a dichotomous independent variable: ROR versus bail. The standardized beta for bail as a whole was -.26, which was larger than for any single bail amount category because it accounted for the combined effect of all the bail amounts. Being not recommended for release (.48) and reporting no full-time activity (.35) were still stronger predictors than bail, even when the comparison was to the combined effect of all bail categories.

FIGURE 6
Predicted Probability Of FTA
All-Cases Model 1 (Release Type)
N=50,936



Another strong predictor was whether the defendant reported having a full-time activity. This variable comes from the pre-arraignment CJA interview, in which defendants are asked if they are employed, in school, or in a training program full time. Compared to a "yes" answer that was verified, any other response was associated with a higher predicted probability of FTA. "No" (not verified) was a stronger predictor of FTA than "No Verified," possibly because the ability of CJA staff to verify a response, even a negative one, was indicative of social ties — and social ties are associated with lower FTA rates. A "No" (not verified) answer to the full-time activity question was associated with an 18% predicted FTA rate, compared to 12% for those with a "Yes Verified" response (standardized beta, .34).

The defendant's age also had a strong impact on likelihood of FTA, with younger defendants having higher predicted probabilities. For the youngest defendants (age 14-18), the predicted probability was 21% (standardized beta, .26), compared to 13% for the oldest group (age 40 and older).

Many other factors also significantly increased the probability of FTA, including criminal history (especially a prior felony conviction), being black or Hispanic, not expecting someone at arraignment, prosecution in Brooklyn or Manhattan, a drug charge, and release post-arraignment rather than at arraignment. In addition, nonfelony charges were associated with a higher predicted probability of FTA (17%, compared to 13% for felony charges), even after accounting for more frequent ROR and lower bail in nonfelony cases.

Two variables that were tested in the models but had no effect on either FTA or Adjusted FTA were arrest on a Violent Felony Offense (VFO) and gender. These were omitted from the bar chart but are presented in Table 19 for Models 1 and 2.

The overall importance of release type in affecting failure to appear can be assessed by examining the R-square statistics at the bottom of Model 1 (Table 19). In spite of the large number of statistically significant predictors, even their combined effects explained little of the variance in FTA. The Nagelkerke R-square of .104 indicates that an estimated 10% of the variance was explained by the independent and control variables together, and the contribution of release type alone was .009. This suggests that it would be a mistake to over-emphasize the importance of bail in reducing FTA rates, given that less than 1% of the variance in FTA was explained by this factor alone.

The last row of Table 19 reports that significant interaction effects were found between release type and two other variables in both models: the CJA recommendation and the defendant's criminal history. This is in accord with the results of the three-way analyses presented in Tables 16 and 17. Table 16 showed that bail was most effective in reducing FTA among defendants who were not recommended by CJA, and that it had virtually no effect among recommended defendants. Similarly, Table 17 showed that bail was most effective in lowering FTA among defendants with a criminal record, and was ineffective among those with a clean record. The interaction analyses confirmed these conclusions after controlling for all the other variables included in the regression models. Thus among specific populations of defendants, bail plays a greater role in reducing FTA than it does in general.

Adjusted FTA (Model 2) was more difficult to predict because it was a much rarer event than all failure to appear. The majority of defendants who missed a court appearance did return within 30 days. The Adjusted FTA rate for the sample was only 7%, as opposed to 16% for all FTA (Table 1). The results of the logistic regression analysis were similar to the results for all FTA, except that some of the factors that were significant in predicting FTA were not significant in predicting Adjusted FTA. The conclusions, however, are the same: release on bail was associated with a statistically significant but very small reduction in Adjusted FTA (with the exception of $1 bail). Furthermore, this effect was limited primarily to defendants who were not recommended for release and to those with criminal records; these interactions were statistically significant for Model 2 as well as for Model 1.

Again the CJA recommendation stands out as the strongest predictor: defendants who were not recommended for release had a probability of 10% Adjusted FTA, compared to 4% for recommended defendants (standardized beta, .59).

B. Bail Models

Another set of models was developed for cases in which the defendant was released on bail of $1,000 or more (Table 20 and Figure 7). The independent variable was form of bail (cash or bond). The dependent variables were the same as before: FTA (Model 3) and Adjusted FTA (Model 4). The same control variables were entered as in the previous models, with the addition of bail amount ($1,000 and up) as a control rather than as the independent variable.

TABLE 20
Logistic Regression Models Of Failure To Appear And Adjusted Failure To Appear
Cases with release on bail in the amount of $1,000 or more (N=5,484)

Independent Variable	Model 3 Dependent variable = **FTA**			Model 4 Dependent variable = **Adjusted FTA** (no return within 30 days)		
	Standardized Beta	Odds Ratio	Predicted Probability	Standardized Beta	Odds Ratio	Predicted Probability
Commercial Bond	–.07 ns	0.92	Cash = .11 .10	–.37**	0.50	Cash = .04 .02
Control Variables						
Bail Amount *Reference category = $1,000*	ns		$1,000 = .12	ns		$1,000 = .04
Bail $1,001 to $4,999	–.04 ns	0.96	.11	.04 ns	1.06	.04
Bail $5,000 to $7,500	–.06 ns	0.92	.11	.07 ns	1.15	.04
Bail over $7,500	–.26*	0.66	.08	.04 ns	1.08	.04
CJA Recommendation *Reference category = Recommended, Low Risk*	**		Low Risk = .08	**		Low Risk = .02
Moderate risk	.15 ns	1.24	.09	.14 ns	1.34	.03
Not recommended	.63***	2.00	.14	.73***	3.08	.06
No recommendation	.15 ns	2.23	.15	–.02 ns	0.88	.02
Defendant's Criminal History *Reference category = No criminal record*	*		No Record = .10	ns		No Record = .05
Prior arrest, no conviction	–.08 ns	0.90	.09	–.26 *	0.62	.03
Misdemeanor conviction only	–.06 ns	0.92	.10	–.20 ns	0.67	.04
Felony conviction	.23 ns	1.31	.13	–.16 ns	0.77	.04
Prior Warrant	–.09 ns	0.88	No Warrant = .12 .10	–.30 ns	0.63	No Warrant = .05 .03
Defendant's Ethnicity *Reference category = White*	ns		White = .11	ns		White = .04
Black	–.05 ns	0.94	.10	–.12 ns	0.83	.03
Hispanic	.14 ns	1.18	.12	.13 ns	1.22	.05
Other	.11 ns	1.33	.14	–.01 ns	0.98	.04
Defendant's Age *Reference category = Age 40 or older*	**		Age 40+ = .09	*		Age 40+ = .03
Age 14 – 18	.06 ns	1.12	.09	–.20 ns	0.58	.02
Age 19 – 29	.38**	1.52	.12	.09 ns	1.16	.04
Age 30 - 39	.23*	1.34	.11	.24*	1.55	.05

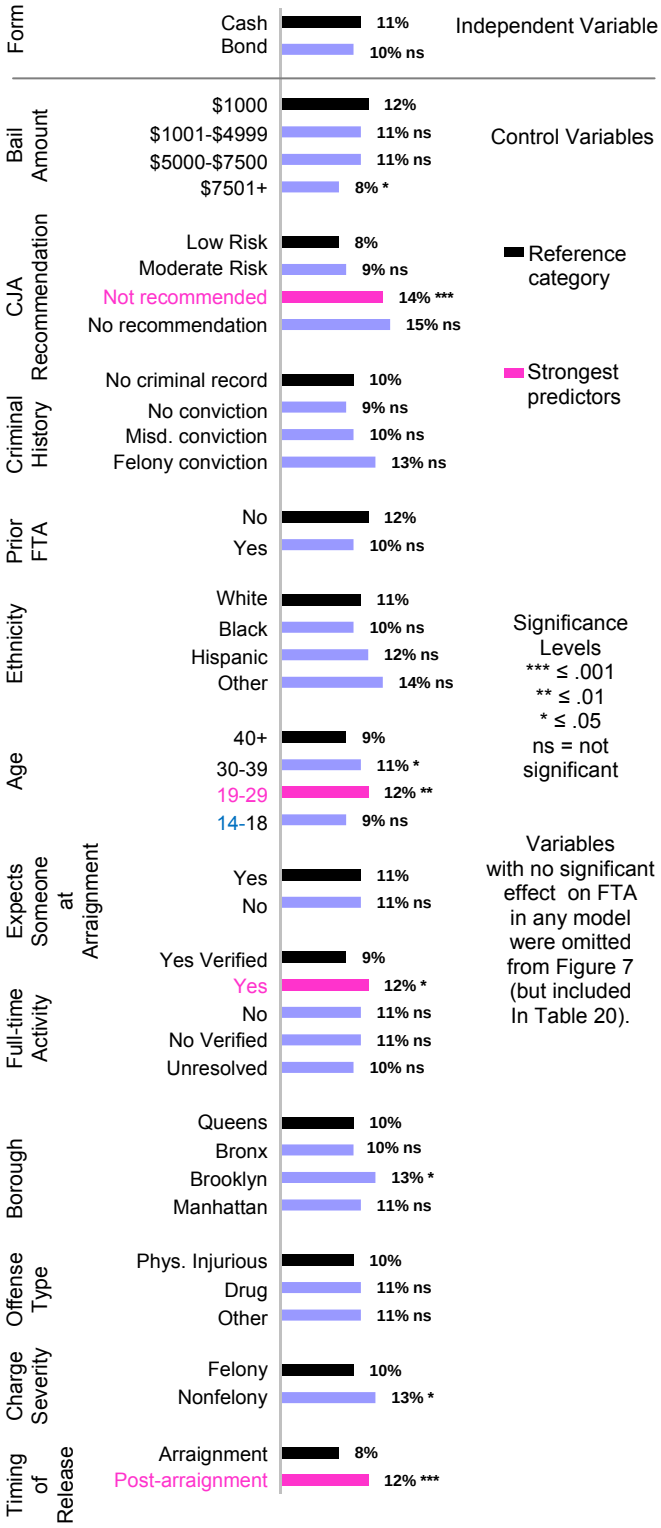
(Table continues on following page)

TABLE 20 (continued)

Independent Variable	Model 3 Dependent variable = **FTA**			Model 4 Dependent variable = **Adjusted FTA** (no return within 30 days)		
	Standardized Beta	Odds Ratio	Predicted Probability	Standardized Beta	Odds Ratio	Predicted Probability
Defendant Is Female	.07 ns	1.15	Male = .11 .12	.04 ns	1.11	Male = .04 .04
Defendant Does Not Expect Someone At Arraignment	.07 ns	1.08	Expects Someone = .11 .11	.08 ns	1.13	Expects Someone = .04 .04
Defendant Is Employed, In School, Or In A Training Program Full Time *Reference category = Yes verified*	ns		Yes Verified = .09	**		Yes Verified = .02
Yes (not verified)	.32*	1.44	.12	.52**	2.29	.05
No (not verified)	.20 ns	1.26	.11	.27 ns	1.56	.04
No verified	.12 ns	1.24	.11	.12 ns	1.36	.03
Unresolved conflict	.03 ns	1.15	.10	.16 ns	2.54	.06
Borough Of Prosecution *Reference category = Queens*	*		Queens = .10	ns		Queens = .04
Bronx	.00 ns	1.00	.10	.06 ns	1.13	.04
Brooklyn	.25*	1.35	.13	.04 ns	1.07	.04
Manhattan	.04 ns	1.06	.11	.08 ns	1.16	.04
Arrest Charge Is Violent Felony Offense	–.14 ns	0.83	not VFO = .11 .10	.06 ns	1.13	VFO = .04 .04
Charge Type At Arraignment *Reference category = Physically injurious/weapon*	ns		Physically Injurious / weapon charge = .10	ns	ns	Physically injurious / weapon charge = .03
Drug	.09 ns	1.11	.11	.10 ns	1.19	.04
All Other	.08 ns	1.11	.11	.17 ns	1.35	.05
Nonfelony Arraignment Charge	.22*	1.31	Felony = .10 .13	.12 ns	1.23	Felony = .04 .05
Released Post-Arraignment	.32***	1.50	Released at arraignment = .08 .12	.18 ns	1.38	Released at arraignment = .03 .04
Nagelkerke R-square						
Model with control variables only	.050			.050		
Model with IV added	.050			.057		
Contribution of IV	none			.007		
Interactions	None significant			None significant		

*p<.05, **p<.01, ***p<.001, ns = not significant

FIGURE 7
Predicted Probability Of FTA
Bail Model 3 (Form of Bail)
N=5,482



Unlike the significant effect on FTA exerted by bail in general, the form in which the bail was posted had no further effect. The predicted probability of FTA for cash bail (11%) was one percentage point higher than for bonds (10%), a difference that was too small to be statistically significant.

In amounts up to $7,500, increases in bail did not result in significantly lower predicted FTA, either, compared to $1,000 bail. Only when bail exceeded $7,500 was the predicted probability of FTA significantly lower (8%), compared to cases with $1,000 bail (12%).

The strongest predictor of FTA remained the CJA recommendation. The “not recommended” category was associated with significantly higher predicted FTA (14%), compared to cases with a defendant who was recommended for release (8%). The standardized beta for this factor was .63, by far the largest in the model.

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 (standardized beta, .38). Their predicted FTA was 12%, compared to 9% for defendants age 40 or older.

Having a full-time activity was also a strong predictor, but the most important category in the bail models was different from the all-cases models. Compared to a "Yes Verified" response (9% FTA), all other responses were again associated with higher FTA probabilities. However, the only category for which the difference was significant was "Yes" (12% FTA, with a standardized beta of .32). Lack of verification may have played a larger role than the actual response, as noted in the discussion of Model 1.

The last red bar in Figure 7 highlights the timing of bail making as another of the strongest predictors of FTA among bail cases. Release post-arraignment was associated with a higher predicted probability of FTA (12%, with a standardized beta of .32), compared to posting bail at arraignment (8%).

Many variables that were significant predictors of FTA in the all-cases models were not significant when the analysis was restricted to release on bail of $1,000 or more. These included criminal history, prior FTA, ethnicity, expecting someone at arraignment, and offense type. The primary reason for so many fewer significant predictors was that there was less variation in FTA — all groups had low FTA rates — making prediction more difficult.

Again we look to the R-square statistics at the bottom of the model (Table 20) in order to assess the overall impact of posting a commercial bond rather than cash bail. The bail models explained even less of the variance than the all-cases models, as measured by the Nagelkerke R-square for Model 3 of .050, and for Model 4 of .057. More to the point, posting a commercial bond added nothing to the R-square statistic for the prediction of FTA (Model 3). This result was to be expected because the variable was not statistically significant.

Although posting a bond had no impact on total FTA, bonds did significantly lower the Adjusted FTA rate,as shown in Model 4. The predicted probability of Adjusted FTA for cash bail was 4%, compared to 2% for a commercial bond. This suggests that although defendants were equally likely to fail to appear regardless of the form in which they posted bail, bondsmen had some success in getting absconders back to court within 30 days. The difference was only two percentage points (slightly less than the three percentage-point difference found for the bivariate relationship presented in Table 9). A small difference can be statistically significant in a large sample, as this was, meaning that it was unlikely to have occurred by chance. However, posting a bond added less than 1% to the amount of variance explained by the model.

VIII. PROFILES OF DEFENDANTS RELEASED ON ROR, CASH BAIL, AND COMMERCIAL BOND

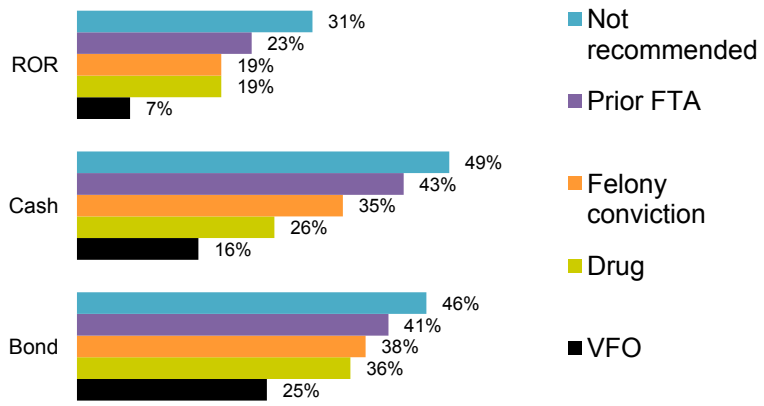
In addition to the research questions formulated to assess the relationships between FTA and various types of release, we also set out to examine two mutually exclusive hypotheses about the nature of defendants released on commercial bonds. The first hypothesis is that bond agents, because they can pick and choose their clients, tend to protect their profits by selecting only the defendants they think will pose little risk of flight. The second is that the profit motive leads bond agents to ignore risk and to maximize profits by targeting defendants with the highest bail, which tend to be the ones who are violent or at a high risk of FTA.

Does either of these profiles fit the defendants who posted commercial bonds in the research sample? To address this question, we constructed a snapshot of the defendants in each release type and form of bail category. The results are presented in Table 21 and Figure 6.

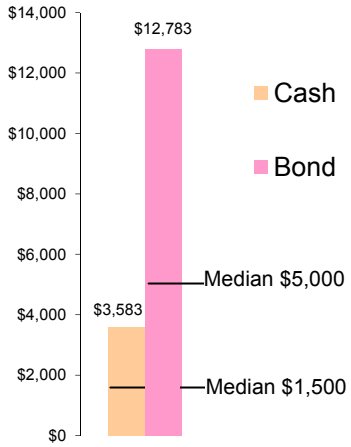
TABLE 21 and FIGURE 8
Selected Characteristics By Release Type And Form Of Bail
At-risk cases with an arrest July–December 2005

	ROR	CASH BAIL	BOND
Percent not recommended for release by CJA	31% (13,439) (N=43,120	49% (2,974) (N=6,105)	46% (575) (N=1,248)
Percent with prior FTA	23% (10,098) (N=43,098)	43% (2,624) (N=6,103)	41% (512) (N=1,248)
Percent with prior felony conviction	19% (8,187) (N=42,436)	35% (2,106) (N=6,099)	38% (468) (N=1,245)
Percent with drug charge	19% (8,299) (N=44,345)	26% (1,645) (N=6,241)	36% (450) (N=1,266)
Percent with violent felony offense (VFO) arrest charge	7% (3,013) (N=44,345)	16% (1,020) (N=6,241)	25% (314) (N=1,266)
Mean / median bail amount	0	$3,583 / $1,500	$12,783 / $5,000

Percent with each characteristic:



Mean and median bail amount:



It is clear from these selected characteristics that 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.

On the other hand, it is not clear that the defendants released through bond agents were at any higher risk of FTA than those released on cash bail. Bond cases had higher proportions with a prior felony conviction or a drug charge, but the reverse was found on a couple of other measures: not recommended for release and prior FTA. Thus there was no clearcut distinction between bond and cash cases in terms of characteristics associated with risk of FTA.

However, the high proportion of VFO arrest charges among bond cases did differentiate them from cash cases. A quarter of the bond cases began as VFO arrests, nine percentage points higher than among the cash bail cases.

High bail amounts were also a hallmark of bond cases. Both mean and median bail amounts for the bond cases ($12,783 mean / $5,000 median) were more than triple the amounts for the cash bail group ($3,583 / $1,500). Previous research has indicated that the amount of bail set is more strongly affected by the prosecutor's bail request than by any other factor (Phillips 2004). The prosecutor's bail request, in turn, is influenced by charge severity, the defendant's criminal history, and charge type (violent charges and weapon charges are associated with higher bail requests) — and not by risk of FTA (Phillips 2005). This is consistent with the current finding that there was no distinct difference between cash and bond cases in risk of FTA, in spite of the higher bail typical of bonds. It is also consistent with the finding that defendants in bond cases are more likely to be charged with a VFO than the defendants in (lower-bail) cash cases.

The evidence, then, contradicts the hypothesis that bond agents "cherry pick" their clients, selecting only low-risk defendants. This claim has been made to explain the lower FTA rates for commercial bonds reported in some research studies, but we did not find lower FTA rates for bonds compared to cash bail, so in this regard our results presented us with nothing to explain. Commercial bond cases did have lower FTA rates compared to ROR cases, but this was *in spite of* the fact that the bond cases had defendants with a much *higher* risk of FTA, as measured by the CJA recommendation and other relevant factors. Money bail, and not bonds per se, (partially) accounted for lower FTA rates.

The second hypothesis, that bond agents release defendants who should not be released, has been suggested as the logical result of agents' commercial interest in targeting clients with the highest bail. These defendants, it is argued, are the very ones who are most dangerous and most at risk for failure. As mentioned, the bond cases in the research sample did in fact have defendants who were at a greater risk of FTA than defendants in ROR cases, but not in comparison to cash bail cases. We can conclude that many high-risk defendants *are* being released on bail, cash as well as bonds, but this research showed that it was precisely the high-risk defendants for whom bail was most effective in holding down FTA rates.

Danger to the community is another issue. The best available proxy for this attribute was a VFO arrest charge. (Re-arrest is sometimes used as a measure of danger to the community, but we had no re-arrest data in our research file.) A quarter of the bond cases had a defendant charged with a violent felony at arrest — a much higher percentage than among ROR or cash bail cases — and it is plausible that some of them truly did represent a danger to the community. With no preventive detention available to the courts in New York, judges have no recourse except to set high bail when they think a defendant is too dangerous to remain at large. 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 disproportionate number of VFO charges among the high-bail bond cases could be an indication that some of those releases might indeed be problematic.

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IX. CONCLUSIONS

A. Summary Of Findings

Four separate analyses were done in this research. One analysis examined the possible effect of release type on FTA, comparing the effects of ROR versus release on bail, and measuring FTA as at least one non-stayed bench warrant issued for nonappearance prior to disposition of the case. The same analysis was repeated using Adjusted FTA as the dependent variable, measuring Adjusted FTA as any failure to appear in which the defendant did not return within 30 days. Adjusted FTA rates were less than half the overall FTA rates because the majority of defendants returned to court within 30 days after the date of the bench warrant. Base rates were 16% for FTA and 7% for Adjusted FTA.

The other two analyses also used FTA and Adjusted FTA as the dependent variables, but the independent variable was form of bail, comparing the effects of cash bail versus a commercial bond. The form-of-bail analyses were restricted to cases in which bail was posted for $1,000 or more, since there was no variation in the form of bail for amounts under $1,000 (all were cash bail).

Effect of Release Type on FTA

FTA was a little more likely among cases with a defendant released on recognizance than among cases with a defendant released on bail: the FTA rate was 17% for ROR compared to 14% for bail. The multivariate logistic regression model confirmed that for each bail amount range over $1, a reduction in the predicted probability of FTA was statistically significant, compared to the probability of FTA among defendants released on recognizance. Very low bail had nearly the same probability of FTA as higher bail: 12% among cases with bail amounts from $50 to $500, dropping below 10% only when bail rose to amounts over $7,500.

This is in spite of the bivariate finding that bail of $500 or less was associated with unusually high FTA rates, equal to or higher than the FTA rate for ROR: cases with $500 bail had an FTA rate of 17%, and for bail under $500 (excluding $1) the FTA rate was 19%. Yet the regression model shows that, controlling for all the other variables in the model, even bail between $50 and $500 lowered the likelihood of FTA compared to the 17% predicted probability of FTA for ROR cases.

The explanation for this apparent discrepancy is that cases with low bail had a disproportionate number of defendants with prior convictions and defendants not recommended by CJA, compared to all other groups — especially compared to ROR cases, but compared to higher bail amounts as well — and these factors were associated with the highest FTA rates. Controlling for these variables simultaneously in the logistic regression model means that the effects of the control variables were discounted by comparing FTA rates among subgroups with the same characteristics. For example, among cases with a defendant with a prior felony conviction who was also recommended for release, the FTA rate was lower for those released on $50 to $500 bail (10%) than for those who were released on recognizance (14%). The same relationship was found for defendants with a prior felony conviction who were ***not*** recommended for re-

lease: the FTA rate for those released on $50 to $500 bail was 21%, compared to 29% for ROR (not shown in tables).

As a predictor of FTA, release type was only one of many statistically significant variables in the model, and not the most important. That distinction belongs to the CJA recommendation: being assigned to the "not recommended" category nearly doubled the predicted probability of FTA, compared to the probability associated with being recommended (20% compared to 11%), controlling for release type and other defendant and case characteristics. The two other most important predictors of FTA were being 18 years of age or younger and being unemployed (or at least having any response other than "Yes Verified" to the CJA interview question regarding employment or other full-time activity). Some charge-related factors also increased the likelihood of FTA: nonfelony offenses and drug charges were associated with higher probabilities, compared to felony offenses and non-drug charges (especially the ones categorized as physically injurious).

Release type, although statistically significant as a predictor of FTA, by itself explained less than 1% of the variance in this outcome. This tiny overall effect actually masked differential effects among subgroups: among defendants who were not recommended for ROR and among those with prior convictions, bail was somewhat more effective in reducing the high FTA rates characteristic of these groups. Among recommended defendants and those with no criminal record, bail did little to reduce even further an FTA rate that was already low. In other words, the small effect of release type on FTA was concentrated among defendants characterized by high-risk attributes. The overall effect was diluted because this high-risk group was outnumbered by others who were less at risk to begin with and whose low likelihood of FTA was not affected by whether they were released on recognizance or bail.

Effect of Release Type on Adjusted FTA

Conclusions about the effect of release type on Adjusted FTA were very similar to the conclusions pertaining to total FTA, particularly the observation regarding differential effects for high-risk versus low-risk groups. Adjusted FTA rates were low to begin with, so any differences found between Adjusted FTA rates for ROR compared to bail were also small.

Overall, the Adjusted FTA rate for ROR cases was 7%, compared to 5% for bail. As expected, this difference increased for cases with a defendant who was not recommended for release: among these high-risk cases, the Adjusted FTA rate for ROR was 13%, compared to 7% for bail. Among recommended cases, by contrast, there was no difference in Adjusted FTA by release type: 3% regardless of whether the defendant had been released on recognizance or on bail.

The multivariate model for Adjusted FTA shows that release type was a statistically significant predictor, and that release on bail in any amount above $1 lowered the predicted probability of FTA with no return within 30 days. However, unlike the results for total FTA, the highest bail amounts did not lower the risk of Adjusted FTA any further. This suggests that while high bail lowered the risk of FTA, it did nothing to encourage return within 30 days for the small subset of defendants with a failure to appear — over

half of whom would return within 30 days anyway. The predicted probability of Adjusted FTA for cases with the lowest bail ($50 to $500) was only 4%, and bail amounts greater than $7,500 did not reduce this rate any further.

The proportion of the variance in Adjusted FTA explained by release type alone, after controlling for the effects of all the other variables in the model, was less than 1% — about the same as for total FTA. As observed previously, this small effect was accounted for by the effect of bail in reducing risk of Adjusted FTA only for high risk defendants: those not recommended for release and with serious criminal records.

Together, these findings show that Adjusted FTA rates are affected by the same factors and in the same way as overall FTA rates. This suggests that none of the factors, including bail amount, had a further effect in encouraging a quick return. In fact, a supplementary analysis showed that the highest bail amounts actually appeared to *dis*courage a quick return, once a defendant had failed to appear. Return within 30 days was significantly *less* likely among cases with a defendant who missed a court appearance while released on more than $7,500 bail, compared to defendants with a failure to appear among ROR cases (not shown).

Effect of Form of Bail on FTA

For cases with a defendant released on $1,000 or more, the overall FTA rate was 11%. This base rate was virtually unaffected by the form of bail posted: for defendants who posted cash bail, the FTA rate was 11%, compared to 10% for defendants who posted a commercial bond.

Nor did this lack of effect change very much among the high-risk groups, where the effect might be expected to be strongest. Among defendants who were *not recommended* for release, the difference in FTA between cases with a release on cash bail versus a bond was only two percentage points: 15% FTA among cash bail cases, compared to 13% among bond cases. Among *recommended* cases, the FTA rate for bonds was actually a point higher than for cash: 7% for cash bail, compared to 8% for bond cases.

Among cases in the other high-risk group examined in the three-way analyses — defendants with a prior conviction — the effect of form of bail on FTA was slightly greater: bond cases had FTA rates that were three percentage points lower than cash bail cases. Among defendants with a prior felony conviction, the FTA rate for cash bail was 15%, compared to 12% among bond cases. Among cases with a defendant who had no previous adult arrest, the difference was only one percentage point (9% for cash bail, compared to 8% for bonds). Among cases with a defendant with no prior conviction, bond cases had a *higher* FTA rate (11%) than did cash bail cases (9%).

Controlling for bail amount further revealed that FTA rates for bonds were higher than for cash bail at amounts under $5,000, and FTA occurred at the same rate for cash versus bonds among cases with bail between $5,000 and $7,500. Only among cases with a defendant released on an amount over $7,500 were bonds associated with lower FTA than cash: 9% FTA among cash cases, compared to 6% for bonds. This constituted a very small minority of bail releases. Of the 5,698 cases with bail of at least

$1,000 and for which the form of bail was identified, only 15% (833) were in the group with bail higher than $7,500.

Given these bivariate and three-way relationships, the results of the multivariate regression model were not surprising: posting a bond made no significant difference in FTA, controlling for all the other variables in the model. The predictors of FTA for the subsample of cases with release on $1,000 or higher bail were generally consistent with the predictors identified for all cases: the CJA recommendation was the strongest predictor, followed by age and employment (or other full-time activity). The timing of release, which was not a particularly strong predictor in the all-cases models, was another important predictor among bail cases. The ability to make bail at arraignment, rather than later, was associated with a significantly lower probability of FTA.

Other factors that increased the predicted probability of FTA for bail cases as well as for all cases included case processing in Brooklyn and a nonfelony arraignment charge. Finally, the results of the regression analysis confirmed what had been shown only indirectly by the all cases model — that increasing the bail amount did not lower the probability of FTA until a tipping point over $7500 was reached.

Effect of Form of Bail on Adjusted FTA

Posting a bond did significantly affect the likelihood of FTA with no return in 30 days, reducing the predicted probability from 4% for cash to 2% for bonds. Although the predicted probability for bond cases was half that for cash, the difference of only two percentage points is very small. A rate of 4% does not have much room to fall.

The model indicates that defendants who posted a bond were somewhat less likely to disappear for more than 30 days, compared to those who posted cash bail. Since posting a bond did not affect FTA in general, the inference is that bonds were associated with speedier returns than cash bail releases. A supplementary analysis confirmed this directly by finding that posting a bond significantly increased the likelihood of return within 30 days (not shown).

Unlike the other analyses, the analysis of the effect of form of bail on Adjusted FTA did not indicate that high-risk groups accounted for most of the effect of the independent variable on the outcome. Bonds had an Adjusted FTA rate that was several percentage points lower than cash bail for moderate risk as well as not recommended cases, for first arrest cases as well as those with a prior felony conviction, and across bail amounts. The overall effect was very small — accounting for less than 1% of the variance in Adjusted FTA — but it was more evenly spread over subgroups of defendants than was the effect of release type (ROR versus bail).

Profiles of Bond, Cash Bail, and ROR Cases

Profiles of bail cases differed from ROR cases in having a higher proportion of defendants who were at risk for FTA and a higher proportion charged with a violent felony offense. However, there was little overall difference between defendants released on cash bail and on commercial bonds in terms of the factors associated with risk of FTA.

What distinguished cash bail cases from bond cases was that VFO arrests constituted a much larger proportion of the bond cases (25% compared to 16% of cash bail

cases). Bail was also typically much higher in cases in which a bond was posted. Among cases with a VFO arrest charge and release on bail of $10,000 or more, for example, more than half posted a bond (55% of the 245 cases that fit these criteria, not shown).

B. Implications And Discussion

These research results provide no support for the bail bond industry's claims that bonds are the most effective form of pretrial release. The findings refuted outright the claim that FTA rates for commercial bonds are significantly lower than for release on cash bail. FTA rates were a little lower for bailed defendants than for ROR, but the difference was entirely due to the money bail, and not to the form in which it was posted.

The commercial bond industry's claim to "outperform" pretrial services agencies implies that such agencies have responsibility for monitoring or supervising released defendants. CJA does not.[15] The defendants who were released through bondsmen were the only ones in the research sample who were monitored or supervised in any way, and this supervision did not produce lower FTA rates than cash bail. The one area in which commercial bonds were found to have a small positive effect was in returning defendants to court within 30 days, once they had missed a scheduled date.

A bulleted list follows with a discussion of some of the most important findings and their implications for policy.

- Commercial bonds were no more effective than cash bail in assuring defendants' court appearance. Bonds were *less* effective than cash bail for defendants who were recommended for release by CJA, who had no prior convictions, or who were released on bail under $5,000. This suggests that if the recommendations made in prior CJA reports were implemented, thereby enabling more defendants to post cash bail rather than a bond, *these changes would not cause an increase in FTA rates*. The recommendations included legislative action to omit insurance company bail bonds from the authorized forms of bail in New York; expansion of the use of cash alternatives by the courts in setting bail; increasing the size of cash discounts to 60% for most cases and to 70% for bonds of $10,000 or higher in Brooklyn and Queens; and expanding the use of other forms of bail, such as bonds secured by property and partially secured bonds (also known as 10% deposit bonds). Both of the latter are deposited directly with the courts, not through a commercial bond agent, and are already authorized by the New York bail statutes although they are rarely used (Phillips 2011a, b).
- Once a defendant failed to appear for a scheduled court date, commercial bond agents were somewhat more successful in getting their clients back to court within 30 days compared to defendants released on cash bail. This is not surprising, given the bail bond industry's use of bounty hunters and the inability of police to

[15] The Queens Supervised Release program was not in operation during the research period, as noted earlier in this report. The program, which has been operated by CJA since 2009, is restricted to a small number of felony cases that meet strict criteria.

dispatch a warrant squad after each skipped court date. However, most New York City defendants who miss a court appearance return within 30 days anyway, with or without a bail bondsman's intervention. The Adjusted FTA rate (the rate counting only those who did not return within 30 days) was less than half the full FTA rate within each release type category, and ranged from 7% for ROR cases to 5% for cash bail to 2% for bond cases. The further decrease of a few percentage points off the 5% Adjusted FTA rate for cash bail must be weighed against the negative aspects of commercial bonds (discussed below) and the absence of any reduction in the total FTA rate.

- The lack of a pretrial preventive detention option in New York City results in the use of high bail by the courts as a means of detaining defendants who pose a threat to the community — and such defendants tend to post commercial bonds rather than cash. The elimination of commercial bonds would reduce the number of high-bail defendants who could post bail, thereby preventing the release of some dangerous defendants. Without a preventive detention option, however, high bail would continue to be used for detention, which is a subversion of the purpose of bail. For this reason we recommend amending the New York State bail law to authorize preventive detention for dangerous defendants, subject to the due process provisions recommended by the American Bar Association (2007).
- Money bail, but not anything specific to commercial bonds, did have a small effect in reducing FTA, compared to release on recognizance. However, this effect was not found among defendants who were recommended for release by CJA. This suggests that recommended defendants would do just as well on ROR, and that the deterrent effects of bail operate primarily among moderate and high risk defendants.
- It is not clear precisely what aspect of money bail encourages return to court among moderate and high-risk defendants. Obviously, the threat of the loss of a substantial sum provides an incentive, but the money rarely belongs to the defendant. Most bail — bond or cash — is posted by family members. Perhaps the involvement of family is as important as the money itself. Recommended defendants are likely to have more family support to begin with (expecting a family member at arraignment is a component of the recommendation). It could be that family involvement for those in other recommendation categories is triggered by participating in the bail posting process. Alternatively, a family's willingness to post bail may be a sign of pre-existing support that was not captured by the CJA recommendation. Whether posting bail actively encourages or is a consequence of family involvement, it is plausible that this aspect of money bail is important in assuring court attendance. This would explain why bail and ROR produced similar FTA rates among recommended defendants.
- Moderate increases in the bail amount did not reduce FTA further. The predicted probability of FTA was about the same for all bail amount ranges from $50 to $7,500, controlling for all the other variables in the multivariate analysis. This would be consistent with the idea that family involvement may be more important than the amount — within limits. Bail amounts greater than $7,500 were associat-

ed with slightly but significantly lower FTA than among cases with lesser bail. This suggests that the courts could replace moderate bail amounts with much lower amounts without increasing the likelihood of failure to appear.

- If family involvement is an important element of bail that encourages return to court, then expanding supervised release options with a strong family component could reduce FTA rates and replace bail in these cases. The expansion of pretrial supervised release programs in New York City would provide an appropriate option other than bail for the large number of defendants who are assessed by CJA to be at moderate risk of FTA.[16] Placing them in a supervised release program instead would allow more defendants to return to their families and jobs while awaiting disposition of their cases. Consideration could also be given to including in supervised release programs some defendants not recommended for release, as many thousands in this category are released on bail every year.[17]

To paraphrase the quotation from Robert F. Kennedy cited at the beginning of this report, the sole determinant of pretrial freedom should not be the amount of money in the defendant's pocket. We have focused on commercial bonds in particular because the poor are the hardest hit by bondsmen's fees. Defendants with more money are able to post cash bail instead, which is refunded at the end of the case (less a 3% fee if the defendant was convicted).

For this and other reasons, commercial bonds are illegal throughout most of the modern western world — they are used only in the United States and the Philippines (Devine 1991; see also Liptak 2008) — and several professional associations have called for their abolition in this country as well (e.g., ABA 2007, NAPSA 2004). Commercial bonds have been prohibited in Kentucky and Wisconsin; they are not authorized by any statute (although not specifically prohibited) in Illinois and Oregon; and they are very rarely used in Nebraska and in the District of Columbia (Cohen and Reaves 2007, ABA 2007).

The American Bar Association (ABA) first recommended the abolition of commercial bonds in 1964, and that position was reiterated in the latest edition of its *Standards For Pretrial Justice* (ABA 2007). In the commentary for Standard 10-1.4 (f), which calls for the abolition of compensated sureties, four "strong reasons" are laid out. The first is that the defendant's ability to pay a bondsman is unrelated to possible risks to public safety. (Although public safety is not a purpose for bail that is authorized under New York law, risk of failure to appear for scheduled court dates *is* an authorized purpose, and is equally unrelated to the ability to pay for a bond.) The second reason is that the decisions regarding which defendants will be released belong in the hands of the court, not in the hands of someone whose decision making is based on profit. Third, bondsmen's decisions are made in secret with no public record of the reasons for decisions. And fourth, "the compensated surety system discriminates against poor and middle-

[16] Over 30,000 cases that were continued at arraignment during 2009 had a defendant who was assigned to the moderate risk category; about 6,500 (21%) had bail set.

[17] Over 5,000 cases in the research half-year sample had a defendant who was not recommended for release and who made bail.

class defendants, who often cannot afford the non-refundable fees required as a condition of posting bond or who do not have assets to pledge as collateral. If they cannot afford the bondsman's fees and are unable to pledge the collateral required, these defendants remain in jail even though they may pose no risk of failure to appear in court or risk of danger to the community" (ibid., p. 45).

To these and other criticisms of the commercial surety system — fraud and other unscrupulous practices are often cited — we can add the results of this research. In New York City, commercial bonds do nothing to lower FTA rates and are responsible for the release of a disproportionate number of violent, high-bail defendants.

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TECHNICAL APPENDIX

LOGISTIC REGRESSION

The multivariate statistical procedure used in this report is logistic regression, which is appropriate when the dependent variable is dichotomous. The dependent variables in the analyses presented in this report were FTA and Adjusted FTA, both of which had only two values, yes or no. 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 an estimate of the degree to which the outcome can be predicted from a knowledge of those factors. The statistics presented in this report for the logistic regression models are the standardized beta, predicted probability, odds ratio, and Nagelkerke R^2. The statistics and their interpretations are described following an explanation of statistical significance.

Statistical Significance

The statistical significance of a factor, simultaneously controlling for all other variables in the model, is indicated by asterisks: from one asterisk to denote the least stringent level of statistical significance ($p \leq .05$) to three asterisks denoting the most stringent level ($p \leq .001$). The level of statistical significance is a measure of the likelihood that the relationship found in the sample could have occurred merely by chance. 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.

Both the magnitude of the effect and the size of the sample contribute to the level of statistical significance. The sample used for Models 1 and 2 was quite large: 50,951 cases, after excluding cases with missing data on any variable used in the multivariate analysis. The sample used for Models 3 and 4 was not as large (5,484 cases). 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. However, statistical significance should not be confused with sub-stantive significance. If the sample size is large enough, very weak effects can attain statistical significance, meaning that there is a high degree of certainty that the effect is real, although its importance may be trivial.

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

Standardized Beta

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 predicted probabilities and odds ratios, the standardized beta is a better measure of strength 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 predicted probabilities or odds ratios. 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.

For categorical variables with more than two categories, one value is selected as the reference category. Likelihood of the outcome occurring is compared to the likelihood of the same outcome occurring among cases in the reference category.

To illustrate from Table 19, which presents a logistic regression model of likelihood of FTA: the largest standardized beta was .48 (not recommended for release). This factor was the most powerful predictor of FTA. The positive coefficient indicates that defendants with this characteristic had an increased likelihood of FTA, compared to defendants who were recommended (the reference category).

Odds Ratio

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 again from Table 19: the odds ratio for "not recommended" was 2.10. This means that the odds of FTA doubled for not recommended, compared to recommended, defendants.

Odds ratios less than 1 indicate reduced odds. The odds ratio for each bail amount range was less than 1, and became smaller as bail amounts rose, indicating that the odds in favor of FTA decreased as the amount of bail increased. For cases with bail greater than $7,500, the odds ratio of .48 means that the odds of FTA were less than half the odds of FTA for defendants released on recognizance (the reference category).

Predicted Probability

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, including the reference category. 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 probability of FTA by 8 percentage points, compared to ROR.

The MARGIN command in Stata, which was 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.

Nagelkerke R^2

The Nagelkerke 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). The Nagelkerke R^2 for the Model 1 was .10, which indicates that 10% of the variance in FTA was explained by the variables in the model.