CJA

Research Brief

No. 27

NEW YORK CITY CRIMINAL JUSTICE AGENCY, Inc.

September 2011

A series of reports summarizing current research from CJA

CJA is a not-for-profit corporation that provides a variety of criminal justice services under a contract with the City of New York. CJA staff interview defendants arrested in New York City, make recommendations for pretrial release, and notify released defendants of upcoming court dates. Within the Agency, the Research Department conducts studies covering a broad array of criminal justice policy concerns. The Research Brief series summarizes the results of some of these studies.

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How Release Type Affects Failure To Appear

By Mary T. Phillips, Ph.D.

If released pretrial, most defendants return to court voluntarily to face the charges against them. This general premise has been confirmed repeatedly in New York City.

However, not all pretrial release is the same. Defendants may be released with or without bail. Bail may be posted with or without the services of a bail bondsman. Any of these differences in the type of release could affect future court appearance. The research summarized in this *Brief* examines the effects of variations in release type on failure to appear (FTA).

What is the role of money bail in assuring court attendance? Does it make any difference whether the bail was posted as a bond or in cash?

This research comes at a time of renewed national interest in the money bail system, which is the prevailing form of pretrial release in the U.S. (but not in New York, where more defendants are released on recognizance than on bail). In May 2011 Attorney General Eric Holder convened a National Symposium On Pretrial Justice — nearly 50 years after Robert F. Kennedy convened the first national meeting on bail reform. Participants were asked to consider the justice in the fact that for many defendants, the only difference between the ones who are held in jail awaiting trial and the ones who are released is — still — the amount of money in their pockets.

This is also a time of increasingly aggressive campaigns by bail bondsmen to influence legislators around the country to support their industry. Their primary argument is that bonds assure court attendance more effectively than any other type of release. CJA examined that claim by comparing FTA rates for various release types.

This *Research Brief* is adapted from
*Effect Of Release Type On Failure To Appear (*2011)
by Mary T. Phillips, Ph.D., Project Director

The full report is available on CJA's web site:
www.nycja.org/research/research.htm

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Please cite as follows, adapted to your citation style:
Phillips, Mary T. 2011. "How Release Type Affects Failure To Appear" *Research Brief* series, no. 27. New York: New York City Criminal Justice Agency, Inc.

Types of Pretrial Release

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

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.

Other types of release used routinely in many parts of the country were not encountered in the research sample. These included deposit bonds (the defendant deposits a percentage, usually 10%, of the full amount) and unsecured bonds (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.

A factor that muddles most comparisons of FTA rates by release type is that in many parts of the country, pretrial services agencies supervise defendants released on bail (cash and bond). As a result, low FTA rates sometimes credited to commercial bail bonds may in fact be attributable to supervision by pretrial services agencies. This was not the case in New York City, as CJA does not supervise defendants released on bail (or defendants released on recognizance during the study period). Consequently, the comparisons by release type made in this research are uncontaminated by the effects of mixed supervisory responsibility.

Notification of upcoming court dates reduces 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.

• **ROR** — release on recognizance (no money bail). Defendants released on recognizance were not supervised.

• **Cash bail** — bail posted in cash directly with the court cashier. The court may set a bond amount along with a lower "cash alternative," which is sufficient to gain 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 were not supervised.

• **Commercial bond** — a bond purchased from a commercial bail bondsman, who then posts it with the court to gain the defendant's release. Bondsmen charge a nonrefundable fee 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 (but additional miscellaneous fees may be withheld). 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 form and extent of supervision exercised by bondsmen, but many bail bond affidavits examined in this research specified that the defendant was required to check in weekly by telephone or in person. Some bond agents may have used additional forms of supervision.

The Dataset

A dataset of New York City arrests during the second half of 2005 was used for this research. The study excludes Staten Island, the community courts in Brooklyn and Manhattan, and all cases in which the defendant was issued a Desk Appearance Ticket.

The research file was restricted to cases with a release by December 31, 2005, for arrests occurring during the third quarter (July – September 2005) and to cases with a release by March 31, 2006, for arrests occurring during the fourth quarter (October – December 2005). Case processing was tracked for all cases to June 30, 2007. Return to court following a warrant was tracked for an additional 30 days.

The CJA database provided arrest and case processing information and data from the CJA pre-arraignment interview. Additional release data were provided by the Department of Correction. Form of bail (cash or bond) was collected manually from court documents and from the Office of Court Administration's database.

Dependent Variable

This research focused on failure to appear (FTA) because New York Criminal Procedure Law recognizes only flight risk as a consideration in setting bail. Likelihood of re-arrest while on pretrial release would also be of interest, especially in states that authorize including danger to the community as a consideration in release decisions. However, re-arrest is not relevant in assessing the effectiveness of various types of release within New York's statutory framework.

FTA was measured as one or more instances of a failure to appear for a scheduled court appearance prior to disposition of the case (not counting missed appearances for which the warrant was stayed). The FTA rate was calculated by dividing the number of cases with FTA by the total number of cases with a defendant who was released.

Figure 1
FTA and Adjusted FTA by Borough
(All cases with a defendant who was released pretrial)

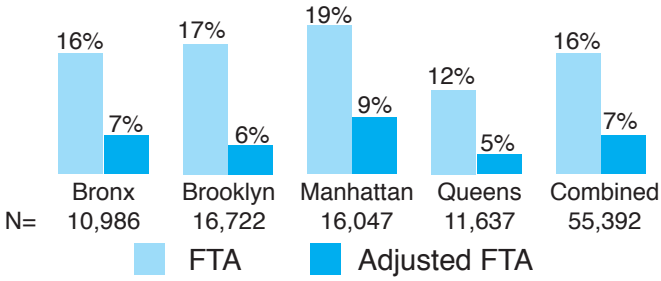


Figure 1 shows that the FTA rate for the combined boroughs was 16% — a little higher in Manhattan (19%) and a little lower in Queens (12%).

The figure also presents rates for cases with a defendant who failed to appear and did not return within 30 days — the *Adjusted FTA* rate. The adjusted FTA rate was less than half the full FTA rate in every borough. This means that the majority of defendants who missed a court appearance returned within 30 days. The effects of release type on Adjusted FTA rates were analyzed in the study but are not reported here.

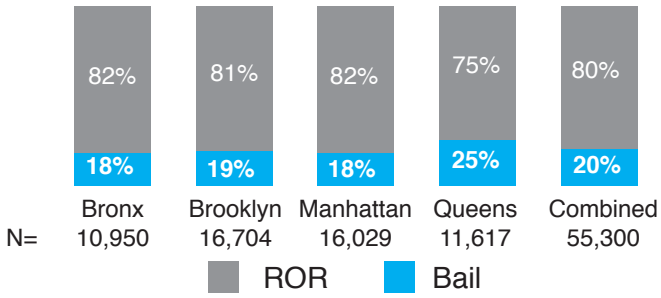
Independent Variables

In the following analyses, "release type" is used to refer to the distinction between ROR and release on bail, combining cash and bonds. "Form of bail" refers to the distinction between cash bail and bonds. Depending on the context, "release type" is also used in a more general sense to refer to all three types of release.

Release Type (ROR vs. Bail)

Figure 2 shows that 80% of the cases in the combined boroughs had a defendant who was released on recognizance and 20% on bail. ROR rates were highest in the Bronx and Manhattan (82%) and lowest in Queens (75%).

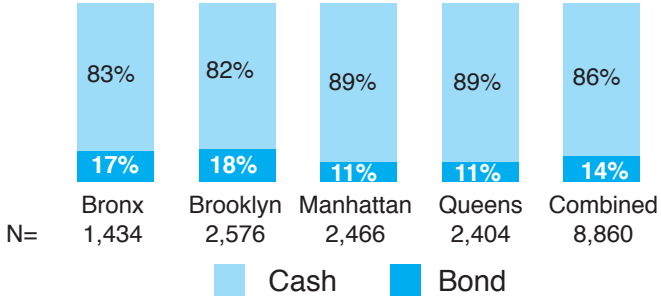
Figure 2
Release Type (ROR vs. Bail) by Borough
(Excluding cases with unknown release type)



Form of Bail (Cash vs. Bond)

Figure 3 shows that among bail cases, cash was posted in 86% of cases in the combined boroughs and a bond in the remaining 14%. The form of bail was more likely to be a bond in the Bronx (17%) and Brooklyn (18%) than in Manhattan or Queens (11% in each).

Figure 3
Form of Bail (Cash vs. Bond) by Borough
(Cases with a defendant who posted bail
excluding cases with unknown form of bail)



ROR vs. Bail: Multivariate Analyses of the Effect of Release Type on FTA

Logistic regression models were developed to examine the effect of release type and form of bail on FTA, controlling for a wide range of defendant and case-processing factors.

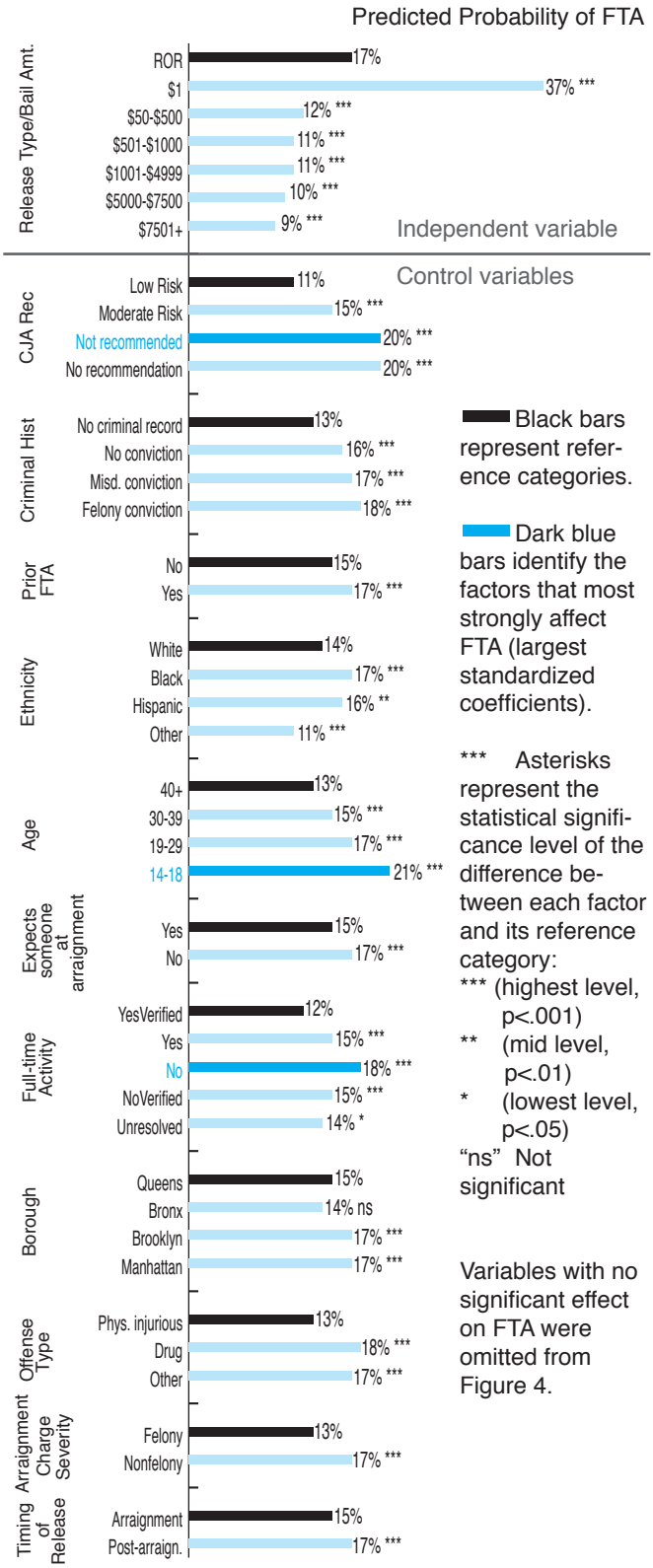
Figure 4 presents the results of the multivariate analysis of the effect of release type on FTA. The independent variable was release type, defined as ROR vs. bail in various amounts. The bars represent predicted probabilities of FTA, simultaneously controlling for all other variables in the model.

Asterisks indicate the statistical significance level of the difference between each value of a variable and its reference category. For example, the predicted probability of FTA for cases in each bail amount category was compared to the predicted probability of FTA for cases with ROR. Bail in any amount over $1 resulted in a significantly lower predicted FTA rate compared to 17% for ROR. In fact, cases with bail over $7,500 had the lowest predicted probability of FTA of any group: 9%.

Standardized beta coefficients (not shown) provide a measure of the importance of each factor in the overall FTA rate, taking into account not only the change in the predicted probability of FTA, but also the distribution of cases among categories of the independent variable. Being in one category of the independent variable may result in a large change in predicted FTA, but if there are relatively few cases in that category, it will not help to explain much of the overall variation in FTA rates. For example, $1 bail was associated with a very high predicted FTA rate (37%), but there were few cases with $1 bail. The small standardized beta indicates that it had little explanatory importance. (Bail is often set at $1 when the defendant has been remanded or has higher bail on another case, eventually resulting in the defendant's release on only $1 if the other case is disposed first.)

The three factors with the largest standardized betas are indicated by dark blue bars. In order of importance, these are: being not recommended for release by CJA (20% predicted FTA, compared to 11% for low-risk cases); not having a full-time activity such as employment, school, or a training program (18% predicted FTA, compared to 12% for a "yes" answer to this question that was verified); and being age 14 to 18 (21% predicted FTA, compared to 13% for defendants age 40 and older).

Figure 4
Logistic Regression Model of FTA
Independent Variable = Release Type (ROR/Bail)
(All cases, N=50,936)



Cash vs. Bond: Multivariate Analyses of the Effect of Form of Bail on FTA

Figure 5 presents the results of the multivariate analysis of the effect of the form of bail on FTA. Cases with bail less than $1,000 were excluded from this analysis because there was no variation in the form of bail for those cases: bondsmen did not write bonds for less than $1,000, so bail set under $1,000 was posted in cash or not at all.

The results showed that, compared to cash bail, bonds lowered the predicted probability of FTA by only one percentage point, a trivial difference that was not statistically significant. The predicted probability of FTA was 11% for cash bail, compared to 10% for bonds.

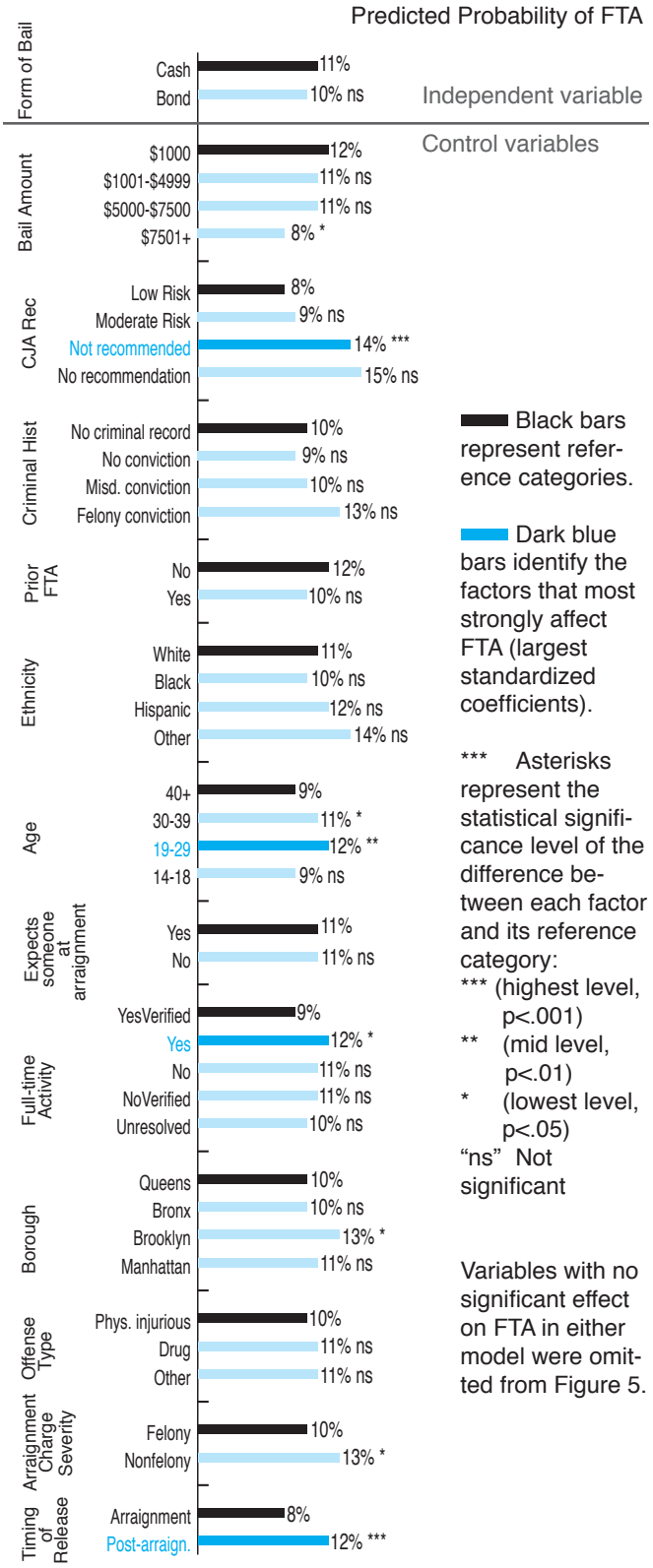
Bail amount was used as a control variable in this analysis. The predicted probability of FTA for cases with $1,000 bail was compared to cases in higher bail amount categories. Up to $7,500, higher bail did not result in significantly lower predicted probability of FTA. Only when bail exceeded $7,500 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 of this variable had the largest standardized beta coefficient in the model (see previous page). We can thus conclude that being not recommended (with a 14% predicted probability of FTA in this subsample, compared to 8% for recommended cases) had the greatest effect on the overall FTA rate of any factor included in the analysis.

Other strong predictors of FTA in this subsample included being 19 to 29 years old (12% predicted FTA, compared to 9% for age 40 and older); lacking verification for a full-time activity (12% predicted FTA, compared to 9% for defendants with a verified activity); and not making bail at arraignment (12% predicted FTA, compared to 8% for cases with a defendant who made bail at arraignment).

Many variables that were significant in predicting FTA for all cases were not significant when the sample was restricted to bail releases. 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.

Figure 5
Logistic Regression Model of FTA
Independent Variable = Form of Bail (Cash/Bond)
(Cases with $1,000 or higher bail, N=5,482)



Black bars represent reference categories.

Dark blue bars identify the factors that most strongly affect FTA (largest standardized coefficients).

*** Asterisks represent the statistical significance level of the difference between each factor and its reference category:
*** (highest level, p<.001)
** (mid level, p<.01)
* (lowest level, p<.05)
"ns" Not significant

Variables with no significant effect on FTA in either model were omitted from Figure 5.

Does Release Type Affect Some Cases More Than Others?

ROR/Bail: Overall, money bail lowered the probability of FTA significantly below the probability for ROR cases. However, this effect was not uniform among all groups of defendants.

Figure 6 shows that for recommended (low risk) defendants, release on bail made little difference. For cases with a defendant who was recommended, the FTA rate was similar for ROR (9%) compared to release on bail (8%). The difference was more pronounced among cases in the "moderate risk" category (ROR, 16%; bail, 12%), and strongest among cases in the "not recommended" category (ROR, 27%; bail, 18%). *Conclusion: The effectiveness of bail in reducing FTA rates was confined primarily to defendants who did not receive a positive release recommendation. For the 40% who were recommended for release, bail was ineffective in substantially reducing FTA.*

Cash/Bond: Overall, bonds were no more effective than cash in reducing the likelihood of FTA. Was this *lack* of an effect confined primarily to defendants with a low risk of FTA?

Figure 7 shows that among cases of recommended defendants the FTA rate for bonds was actually a little higher (8%) than for cash bail (7%). In the other two recommendation categories, bonds were associated with slightly lower FTA rates, but the difference was only two percentage points. *Conclusion: Bonds were ineffective in reducing FTA among defendants in all risk categories.*

Case Profiles

Figure 8 compares selected case and defendant characteristics within each release type category. ROR cases had relatively low proportions of defendants who were not recommended (31%) or had a prior FTA (23%) or a prior felony conviction (19%). Bail cases had proportionately more defendants with all of these high-risk characteristics.

Being charged with a violent felony offense (VFO) had no effect on FTA, but it further differentiated bail from ROR, and in addition it differentiated cash from bonds: 7% of ROR cases had a VFO charge, compared to 16% of cash and 25% of bond cases.

Another big difference between cash and bond cases was found in bail amounts (not shown). Average bail was much higher for bond cases ($12,783) than for cash bail ($3,583).

Figure 6
FTA By Release Type (ROR/Bail),
Controlling for CJA Recommendation
(Excluding cases with no CJA recommendation)

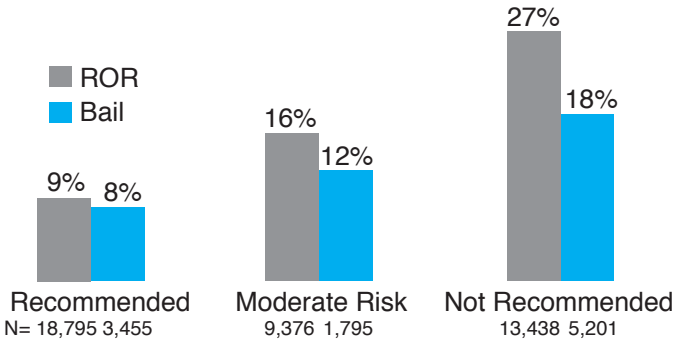


Figure 7
FTA By Form of Bail (Cash/Bond),
Controlling for CJA Recommendation
(Cases with bail $1,000 or higher)

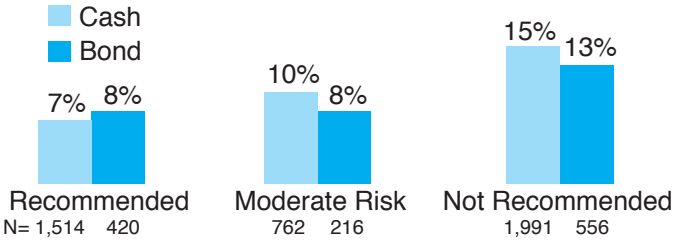
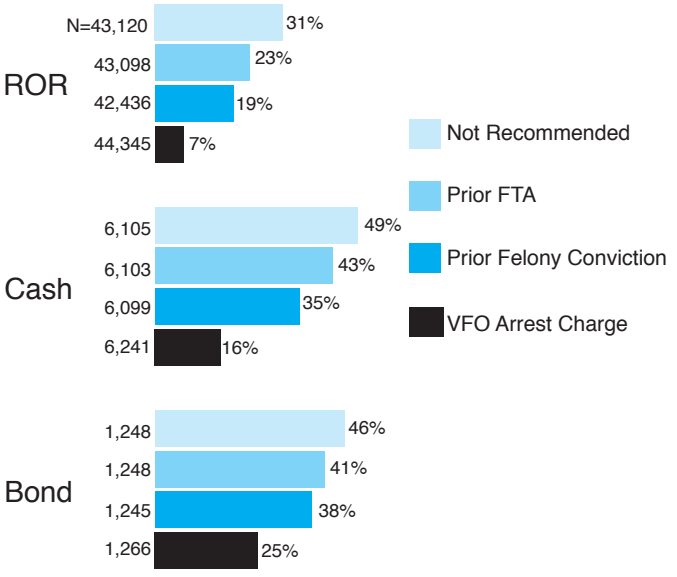


Figure 8
Case Profiles by Release Type:
ROR / Cash Bail / Bond



The "N" varies slightly within each release type group because there are different cases with missing values for each profile characteristic.

Summary & Conclusions

The research provides 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. If bond agents' supervision over their clients were an important factor in ensuring return to court, then this difference between bonds and cash bail should have been reflected in lower FTA rates among bond cases. Instead, rates were similar for both forms of release on bail.

Critics of bonds point not only to their ineffectiveness in reducing FTA, but also to concerns about the defendants released by bondsmen. We found a much higher proportion of violent felony charges among bond clients than among those who posted cash bail. Bail was also considerably higher in the bond cases, suggesting that the court considered at least some of these defendants dangerous enough to warrant detention.

Although the form in which bail was posted made little difference in likelihood of FTA, money bail itself did effectively lower FTA significantly below the rate of defendants who were released on recognizance.

It is not clear precisely what aspect of money bail encourages return to court. Obviously, the threat of the loss of a substantial sum provides an incentive, but the money rarely belongs to the defendant. Most bail is posted by family members, and this is as true for bonds as it is for cash bail. It could be that the involvement of family is as important as the money itself — or more so.

The effect of bail in reducing FTA was restricted to defendants who were at relatively high risk of FTA, a finding that is consistent with the "family involvement" thesis. Recommended defendants had a low probability of FTA that was not further reduced by setting bail. It could be that recommended defendants already have family support, whereas family involvement for those in other recommendation categories is triggered by participating in the bail posting process.

Curiously, moderate increases in the bail amount were not effective in reducing the predicted probability of FTA, controlling for all the other predictive factors in the multivariate analysis. The probability of FTA was about the same for bail amounts up to $7,500. There are several plausible explanations for this finding: the involvement of family may be more important than the amount, as previously suggested; or perhaps for defendants mired in poverty, forfeiting any bail money at all is equally disastrous.

There was a tipping point, however, above which the amount of bail did make a difference. An increase in bail above $7,500 resulted in a significant and substantial reduction in the probability of FTA. Cases with bail this high tended to have serious charges and high-risk defendants, and they constituted a small proportion of the sample (10% of the bail sample, not shown).

Policy Implications

- 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 — without the use of bail. Moderate- and high-risk defendants would benefit most.
- Release on recognizance is just as effective as bail for defendants who are recommended for release. Setting bail for recommended defendants does not reduce FTA rates.
- Up to $7,500, bail at the lower end of this range is just as effective as higher amounts in assuring return to court.
- The New York State bail law should be amended to authorize preventive detention for dangerous defendants, subject to the due process provisions recommended by the American Bar Association. At present, New York judges have no recourse but to set high bail when they think preventive detention is warranted. This is not only a subversion of the purpose of bail, it also brings uneven results as a bond can be purchased for a fraction of the bail amount.
- The bail law should also be amended to omit insurance company bail bonds from the authorized forms of bail. Cash bail produces equivalent results in terms of assuring court appearance, it costs defendants less, and it is less subject to abuse. Eliminating commercial bonds would also bring an end to release based on profit.

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