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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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CJA's New Release-Recommendation System

By Qudsia Siddiqi, Ph.D.

Looking beyond community ties to assess risk of flight

A new system for recommending adult defendants for release on recognizance (ROR) at arraignment was introduced in New York City lower courts (Criminal Court) in 2003. This report describes the previous system, the research done to identify possible improvements, and the new recommendation system that was developed as a result.

The old recommendation system was based on research that was validated in 1974. This validation was based solely on Brooklyn data and looked at risk of flight only in Criminal Court. In the years since this research, CJA's data continued to show that those defendants recommended for ROR and actually released at arraignment were less likely to fail to appear (FTA) in Criminal Court than those not

recommended. This was true city-wide, even though the validation study had been limited to Brooklyn. However, we did not know if the system was valid for determining flight risk for upper court (Supreme Court) defendants. Also, given the length of time that had elapsed since the last validation, we wanted to re-evaluate its accuracy.

Furthermore, in considering only the defendant's community ties, prior research had not examined the relationship between other factors and FTA. In spite of a long tradition of relying on community ties to assess risk of flight, evidence has been mounting that other factors might also be important. Our research supported that conclusion, leading to the introduction of other criteria into the recommendation system for the first time.

This Research Brief is adapted from:

Prediction of Pretrial Failure to Appear and an Alternative Pretrial Release Risk-Classification Scheme in New York City: A Reassessment Study (June 2002) and An Examination of the Existing and New Pretrial Release Recommendation Schemes in New York City: A Pre-Implementation Analysis (December 2003) by Senior Research Analyst Qudsia Siddiqi, Ph.D. The earlier report is available on the CJA web site:

www.nycja.org/research/research.htm

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The Old Recommendation System

CJA makes pretrial ROR recommendations for defendants arrested in New York City and held for arraignment in Criminal Court. The recommendation is submitted to the arraigning judge who makes the first release decision, as well as to the prosecutor and defense attorney. Section 510.30 of the New York State Criminal Procedure Law permits judges to consider many factors including a defendant's community ties, prior criminal record, the seriousness of the offense, previous record of flight, and the weight of the evidence against the defendant. However, prior to June 30, 2003, CJA's release recommendation system was based solely upon a defendant's ties to the community, leaving to the arraignment judge consideration of all other factors from other sources.

The old system for assigning a CJA release recommendation for adults (16 years of age or older) was based upon the criteria listed in Figure 1.

With the exception of expecting someone at arraignment, there were five possible outcomes for each question: "yes" (Y), "yes verified" (YV), "no" (N), "no verified" (NV), or "unresolved conflict" (UC). The "YV" and "NV" outcomes were used when the information provided by the de-

fendant had been verified through a third-party contact. The "Y" and "N" outcomes indicated that the defendant's response had not been verified. "UC" meant that the information provided by the defendant in the interview did not match the information given by the verifier and attempts to resolve the conflict were unsuccessful. Expecting someone at arraignment had only "Y" and "N" responses, since CJA did not attempt to verify if someone actually came.

Using that information, CJA determined a defendant's risk for flight and assigned a recommendation category as shown in Figure 2.

The first three categories summarized the strength of the defendant's community ties. The fourth category excluded from the ROR recommendation those defendants who had an active bench warrant at the time of the interview and those for whom the absence of a rap sheet precluded ascertaining that information. Defendants were also excluded if arrested on a bail-jumping offense. An ROR recommendation on a new arrest was not precluded by a previous failure to appear if the defendant had returned to court and the warrant had been vacated.

Figure 1
OLD RECOMMENDATION CRITERIA

1. Is there a working telephone in the defendant's residence?
2. Has the defendant resided at his or her current address for 18 months or longer?
3. Does the defendant expect someone (other than the complainant or defense attorney) at Criminal Court arraignment?
4. Does the defendant live with a parent (or parents), spouse, common-law spouse, grandparent, or legal guardian?
5. Is the defendant employed, in school, or in a job-training program full time?
6. Is the defendant's address in the NYC area (the five boroughs of the City, and Nassau, Suffolk, and Westchester counties)?

Figure 2
OLD RECOMMENDATION CATEGORIES

1. **Recommended:** Verified Community Ties (Verified NYC area address, and item 2, 4, or 5 "YV" or "NV", and at least two "Y" or "YV" items)
2. **Qualified:** Unverified Community Ties (unverified NYC area address and 3 other "Y" or "YV" items)
3. **No Recommendation** due to:
 - A. Insufficient community ties (less than 3 items were answered in the affirmative)
 - B. Residence outside NYC area
 - C. Conflicting residence information
 - D. Incomplete interview
4. **No Recommendation** due to:
 - A. Open bench warrant attached to the New York State criminal history sheet
 - B. Criminal history not available
 - C. Bail-jumping charge
 - D. For Information Only: murder charge

Developing a New Point Scale

To address concerns about the continued validity of the old recommendation system, CJA began a research project with three major objectives: 1) to assess the predictive ability of the old recommendation system used to assess risk of flight; 2) to identify other predictors of FTA; and 3) to formulate alternative risk-classification schemes based on potentially new predictors.

The study used a random sample of arrests made in 1989 in the five boroughs of New York City. The research found that the old system, which was based on a defendant's ties to the community, did differentiate defendants on risk of flight, but there was room for improvement. Therefore, several statistical models were developed, adding and deleting items depending upon their contribution to predicting pre-trial FTA. The best model from that analysis was used to develop a point scale by assigning points to all of the significant items, which included a defendant's criminal history, as well as community ties.

The new point scale was then validated twice using more recent samples of defendants (1998 and 2001), and adjustments were made to reflect changes in research findings and to address practical and policy issues.

The final scale was comprised of six items, shown in Figure 3. Questions 1 through 4 were also part of the previous recommendation system. Questions 5 and 6, dealing with criminal history, are new additions.

Questions 1 through 3 have five response options, which are the same as for the old recommendation system: Y (yes), YV (yes verified), N (no), NV (no verified), and UC (unresolved conflict). Questions 4 through 6 have only "yes" and "no" options.

Figure 3 also shows the points associated with each item under the new scale. The prior bench warrant variable (#5) contributes the most to the total score; defendants with a prior bench warrant have five points subtracted from their total score, whereas defendants with no history of failure to appear have five points added.

Living at a New York City area address (#2) is also a strong contributor to a defendant's total

Figure 3
NEW POINT SCALE

	Y	YV	N	NV	UC
1 Does the defendant have a working telephone in his or her residence or a cellular phone?	1	1	-2	-2	0
2 Does the defendant report a NYC area address?	0	3	-2	-2	0
3 Is the defendant employed, or in school, or in a training program, full time?	1	1	-1	-1	-2
4 Does the defendant expect someone at arraignment?	1		-1		
5 Does the prior bench warrant count equal zero?	5		-5		
6 Does the open case count equal zero?	1		-1		
Column Totals					
Subtotals: A=(Y+YV), B=(N+NV+UC)	A		B		
Total Score =	A		minus B		

score on the point scale. Defendants categorized as "yes verified" have three points added to their scores, and those with a negative response ("no" or "no verified") lose two points.

Expecting someone at Criminal Court arraignment (#4) and having an open case (#6) contribute least to the total score. Defendants who expect someone at arraignment or have no open cases earn only one point for each item, whereas not expecting anyone at arraignment or having an open case each cause the loss of one point.

With respect to the remaining items in the scale, having a telephone or cell phone (#1) adds one point to the score; not having either type of phone subtracts two points. No points are assigned to defendants who are categorized as "unresolved conflict" on the telephone variable.

Finally, being engaged in a full-time activity (#3) adds one point, whereas a negative response to this question subtracts one point. Defendants categorized as "unresolved conflict" lose two points.

Calculating the Score Using the New Point Scale

The total score is calculated by adding positive points and negative points separately, then subtracting the negative total from the positive total (Figure 3, bottom rows).

A defendant's total score can range from -12 to +12 points. The lowest score would be assigned to a defendant who did not have a telephone or cell phone (-2 points), did not expect anyone at Criminal Court arraignment (-1), was not employed, in school, or in a job training program full time (-1), did not live in the New York City area (-2), had prior bench warrants (-5) and had at least one open case (-1).

The highest possible score would be assigned to a defendant who had a phone (+1 point), expected someone at arraignment (+1), was employed, in school, or in a job training program full time (+1), was verified as living at a New York City area address (+3), did not have prior bench warrants (+5),

and had no open cases (+1).

Figure 4 displays the distribution of these scores in the sample of defendants who were arrested in the first quarter of 2001 and who were released pre-trial and therefore were at risk for FTA. Figure 5 shows the corresponding FTA rates. Scores of -9 and lower are combined, as are scores of +11 and higher, because of the small number of defendants in these groups. Only 2% had a score of -9 or less, and only 5% scored +11 or higher.

In general, defendants scoring lower points had higher FTA rates. The average FTA rate for defendants with scores of -8 or lower was greater than 30%. On the other hand, FTA rates for defendants with scores of +10 or higher averaged under 10%.

A defendant's total score on the point scale is used to determine CJA's release recommendation under the new system.

Figure 4

Distribution of Defendants by Point Scale Score

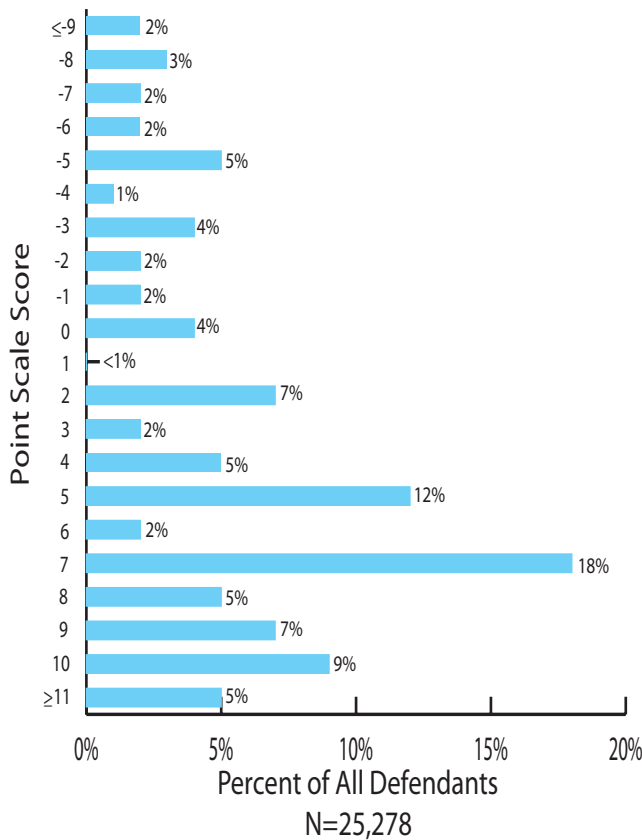
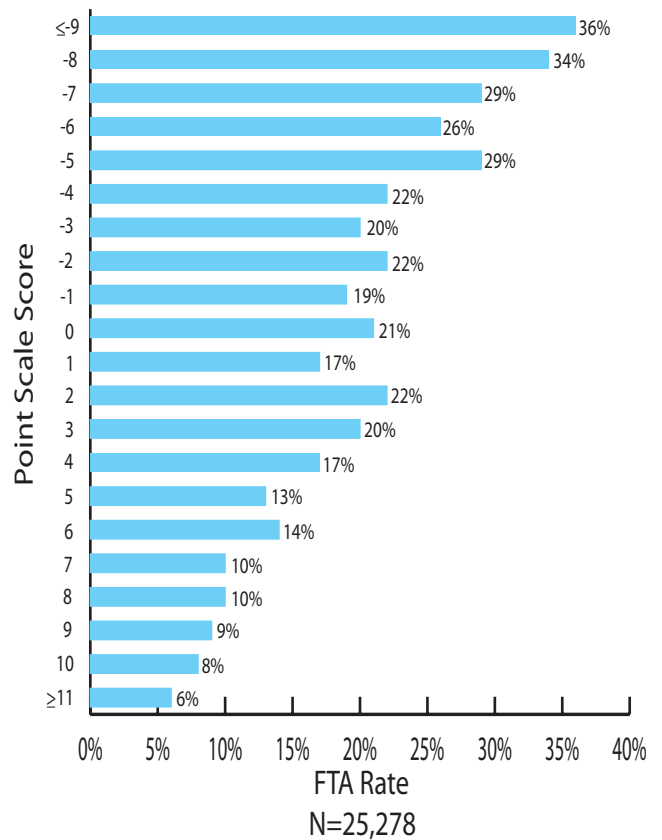


Figure 5

FTA Rate by Point Scale Score



The New Recommendation System

The new release recommendation system classifies defendants into four categories, as shown in Figure 6. The first two categories (A and B) and subcategory C-4 are based on a defendant's total score on the point scale. The last two categories (C and D) reflect policy exclusions (with the exception of C-4).

The first criterion in setting the cutting scores for categories A, B, and C-4 was that subgroups of defendants have different average FTA rates, thus representing different risk levels. The cutting score for the moderate-risk category was selected to include defendants with an average FTA rate considerably higher than the FTA rate of the low-risk category; and the cutting score for the high-risk category was selected to include defendants with the highest FTA rate.

The second criterion was that the proportion of defendants in the low-risk category of the new system be higher than that under the previous system, without increasing the FTA rate for that category. The FTA rates under the previous system were used as a guide to classify defendants as low risk. It was decided that the FTA rate for defendants attaining each individual score comprising the low-risk group should not exceed the average FTA rate for the recommended category of the previous system.

Figure 6 also displays the points required to receive one of the new recommendations. A defendant needs seven or more points to be categorized as "Recommended for ROR." This is CJA's high-

est positive rating for ROR recommendation.

Defendants with scores ranging from three to six points receive the second highest recommendation, "Moderate Risk for ROR." Defendants scoring two points or less are considered high risk and are "Not Recommended for ROR."

The exclusions under categories C and D were also applied under the old system. The "Not Recommended for ROR" category (C) includes defendants who have a bench warrant attached to their rap sheets (C-1), defendants charged with bail jumping (C-2), defendants with conflicting residence information (C-3), and defendants considered at high risk for FTA due to their point scale scores (C-4). Defendants in category D do not receive a recommendation because their rap sheets were not available (D-1), they were charged with murder (D-2), or they did not complete the CJA interview (D-3).

As under the old system, CJA places a stamp on the interview form to report its recommendation to the court. Previously, the stamps were referred to by numbers with letter subcategories (1, 2, 3A, 4B, etc.). This is reversed under the new system, so that each recommendation category is designated by a letter with numbered subcategories.

The order of priority used to assign a stamp is D (1,2,3) followed by C (1,2,3,4), followed by B and then A. Thus a defendant who has an open bench warrant, or any other policy exclusion listed in C or D, is not recommended for ROR even if the point scale score is well above seven.

Figure 6

NEW RECOMMENDATION CATEGORIES FOR ADULT DEFENDANTS

A. RECOMMENDED FOR ROR	+7 Points to +12 Points
B. MODERATE RISK FOR ROR	+3 Points to +6 Points
C. NOT RECOMMENDED FOR ROR	
1. Bench Warrant Attached to NYSID	
2. Bail-Jumping Charge	
3. Conflicting Residence Information	
4. High Risk for FTA	-12 Points to +2 Points
D. NO RECOMMENDATION	
1. No NYSID Available	
2. For Information Only	
3. Interview Incomplete	

Comparing the Old With the New System

To assess its performance, the new recommendation system was applied to the most recent validation sample (arrests in 2001). Comparisons were made with the prior system with respect to the distribution of defendants in various risk categories and their corresponding FTA rates. Figure 7 presents the distributions using the old and the new systems, and Figure 8 displays FTA rates. To ease interpretation, the “Not Recommended for ROR” and “No Recommendation” categories for both systems are collapsed.

Under the old system (black bars), one quarter of the defendants were recommended for ROR, with an FTA rate of 10%. More than one third received a “qualified” recommendation, and their FTA rate was 12%. The remaining 40% were “Not Recommended for ROR,” with an FTA rate of 22%.

In comparison, the new system (blue bars), when applied to the same defendants, would have classified 42% as “Recommended for ROR,” 19% as “Moderate Risk for ROR” and the remaining 39% as “Not Recommended for ROR” or “No Recommendation.” Their FTA rates would be 9%, 14% and 24%, respectively.

These figures show that the proportion of defendants recommended for ROR would increase by 17 percentage points under the new system, compared to the old (to 42% from 25%). Furthermore, the FTA rate for these defendants would remain nearly the same (9% and 10%, respectively).

The new system would decrease the proportion of moderate-risk defendants by 17 percentage points and slightly increase their FTA rate (by two percentage points). The two systems would differ hardly at all with respect to the distribution of defendants classified as high risk (40% under the old system, 39% under the new). Their FTA rates would differ slightly, 22% for the previous system and 24% for the new.

In sum, when compared with the previous CJA recommendation system, the new system would (1) classify a higher proportion of defendants as low risks, while keeping the FTA rate at the same level; (2) decrease the proportion of defendants in the moderate-risk category with a slight increase in FTA; and (3) categorize the same proportion as high risk, again with a slight increase in the FTA rate.

Figure 7
Distribution of Defendants
by Old and New Recommendation System

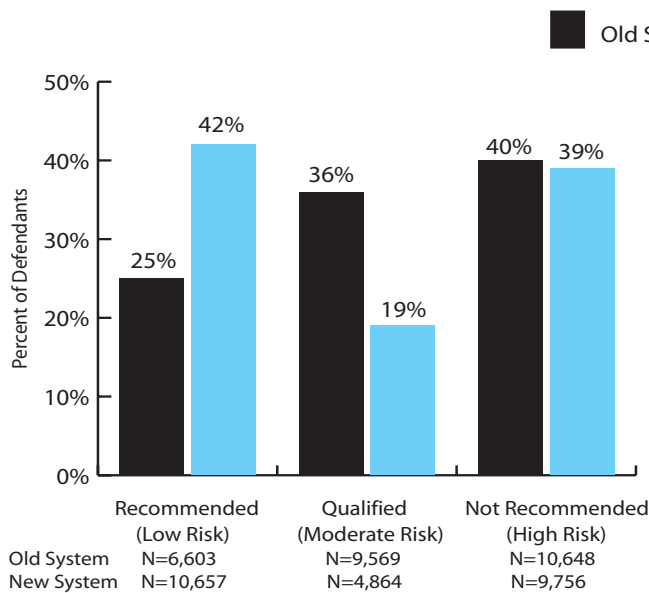
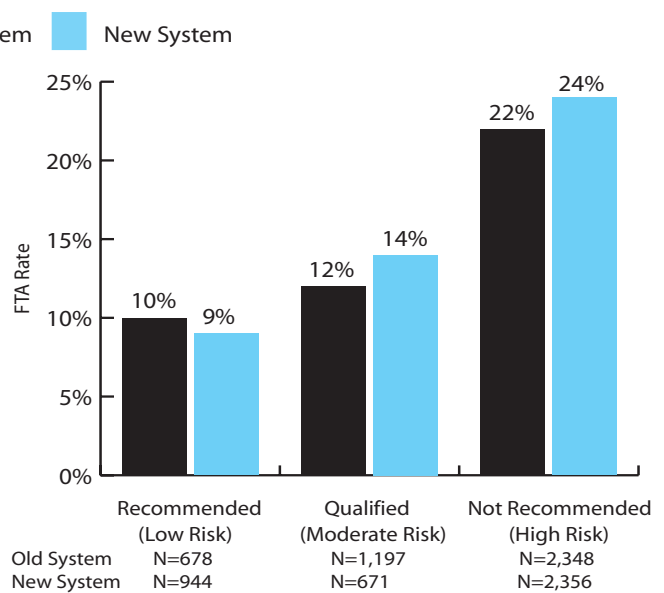


Figure 8
FTA Rates
by Old and New Recommendation System



Policy Issues

As we developed the new recommendation system, we addressed several policy issues in response to feedback from judges and attorneys.

In the early stages of research, the charge type was found to be a statistically significant predictor of pretrial FTA. Defendants arrested for property, drug, criminal mischief, and VTL (Vehicle and Traffic Laws) offenses were more likely to FTA. In contrast, defendants arrested for gambling or driving while under the influence of alcohol or drugs (DWI) were less likely to FTA. Initially we assigned negative points for the first group of offenses. We were concerned about the implications of assigning positive points for gambling and DWI, so we decided to assign zero points for these charges. In the end, at the suggestion of Criminal Court judges, charge type was omitted altogether in the calculations of points for the final scale.

The new point scale also does not include the defendant's length of time at the current address and with whom he or she resides. These items were not found to be strong predictors of pretrial FTA. Nevertheless, several judges and attorneys told us that they wanted to retain this information, so CJA continues to collect and report answers to these ques-

tions. However, no points are assigned to them in the calculation of the final score.

The weighting of the open case variable also changed in response to feedback from courtroom participants. Initially, two points were assigned to this variable. CJA interviewers use the rap sheet to record the number of open cases on the interview form. Many judges and defense attorneys expressed the belief that this information on the rap sheet is sometimes not current, as many of the open cases are no longer open at the time of the CJA interview. Defendants whose rap sheets showed open cases would then lose two points due to possibly inaccurate information. After further analysis, the value for the open case variable was reduced from two points to one point.

In the new system, the prior bench warrant variable indicates whether there had been a failure to appear prior to the sample arrest. Some defense attorneys suggested limiting that information to 10 years prior to the sample arrest. However, our analysis of the 10-year cutoff point suggested similar effects on the likelihood of pretrial FTA. Recording a failure at any time is easier and faster, so the original variable was retained.

Conclusions and Implications

The new recommendation system, implemented citywide on June 30, 2003, has several advantages over the old system.

First, it takes into consideration a defendant's criminal history, as well as community ties. The previous system had assessed a defendant's risk of flight based solely on ties to the community.

Second, the new system is based on research that was conducted on a citywide sample of defendants. The old system was based on research that was conducted on a sample of Brooklyn defendants only.

Third, the new system predicts risk of flight for both Criminal Court and Supreme Court. The previous CJA recommendation predicted risk of flight only for Criminal Court appearances.

Fourth, the new system classifies defendants by their relative risk of flight, with defendants classified

as good risks having a much lower FTA rate than moderate-risk defendants, who in turn have a much lower FTA rate than high-risk defendants. The previous recommendation system barely distinguished between low- and moderate-risk defendants in the validation samples.

Fifth, the new system would improve upon the previous one by considerably increasing the number of defendants classified as low risk, without any increase in FTA rate. If followed by judges at arraignment, the new recommendation system thus has the potential of reducing the pretrial jail population.

Finally, by identifying defendants' level of risk for FTA, the new recommendation system would allow for the consideration of a variety of release options aimed at reducing defendants' risk of FTA. One example would be supervised release, which is currently not an option in New York City.



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#5 (April 2004): CJA's New Release-Recommendation System

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