



*Jail Population Reduction Working Group Meeting #2*

*November 29, 2017*

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Justice Implementation Task Force

## *Agenda*

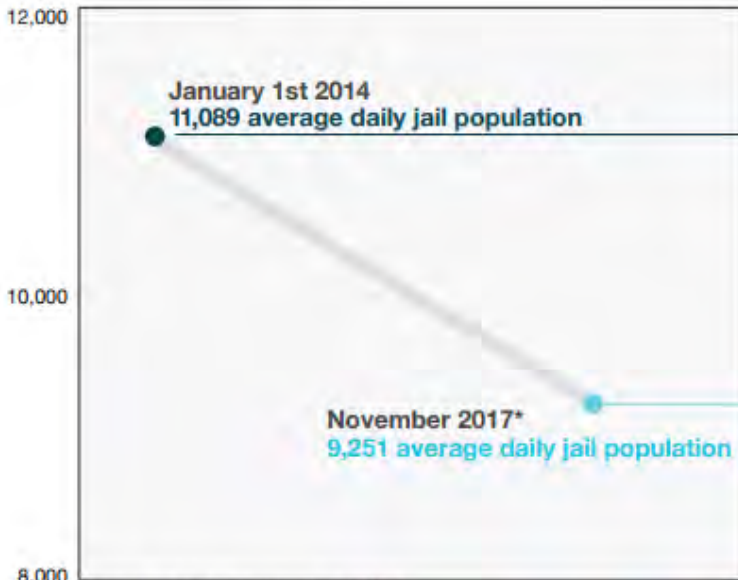
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1. **Introduction: progress update and goals of the meeting (5 minutes)**
2. Strategy briefing: risk assessment (40 minutes)
3. Group discussion and brainstorm (40 minutes)
4. Closing and next steps (5 minutes)

Progress update

Who is in jail?

**PROGRESS SNAPSHOT**



\*Based on data from November 6th, 2017

**Highlights:** The jail population has dropped by ~18% since January 2014 and New York City maintains one of the lowest incarceration rates of any big city in the country

**JANUARY 1st 2014**

**Average daily jail population 11,089**

|                        |       |
|------------------------|-------|
| Misdemeanor            | 995   |
| Violent felony         | 3,969 |
| Nonviolent felony      | 3,343 |
| City sentenced         | 1,600 |
| State parole violators | 521   |
| Other                  | 661   |

**CURRENT**

**Average daily jail population 9,251**

|                        |       |        |
|------------------------|-------|--------|
| Misdemeanor            | 610   | -39% ↑ |
| Violent felony         | 3,462 | -13% ↓ |
| Nonviolent felony      | 2,745 | -18% ↓ |
| City sentenced         | 1,219 | -24% ↓ |
| State parole violators | 700   | +34% ↑ |
| Other                  | 515   | -22% ↓ |

**KEY TRENDS**  
(2015-July 2017)

**-7%**

overall reduction in population with mental health diagnosis

**-23%**

women in jail

**-36%**

% population detained on bail of \$2,000 or less

*Goals for the meeting*

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1. Develop a shared understanding of the current FTA tool and the strategy for updating it;
2. Consider the unique ways this group can contribute to successful implementation of the tool; and
3. Identify what other information would be helpful to know as we develop new jail population reduction strategies in the coming months.

## *Agenda*

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1. Introduction: progress update and goals of the meeting (5 minutes)
2. **Strategy briefing: risk assessment (40 minutes)**
  - a) **Overview of the current risk assessment tool, relevant data, and plans to update the tool**
  - b) **Pretrial risk assessment in New York City: opportunities and considerations**
3. Group discussion and brainstorm (40 minutes)
4. Closing and next steps (5 minutes)

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*Developing New York City's New FTA Risk Assessment Instrument*

Aubrey Fox  
New York City Criminal Justice Agency, Inc.

*Developing New York City's New FTA Risk Assessment Instrument*

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*Overview*

1. CJA's current practices and release recommendation system
2. Data on current release recommendation system
3. Plans for developing a new release recommendation system

## *Giving Away the Ending*

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### *What changes do we intend to make?*

- Reducing the proportion of defendants who are “not recommended for release” (current rate is 48 percent)
- Introducing time-limited measures of criminal history
- Making improved predictions about FTA using more recent data (1.8 million records from 2009-2015)



## *Giving Away the Ending*

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### *Why do these improvements matter?*

- The “not recommend” category strongly influences pretrial release outcomes (CJA as a brake and an accelerator)
- CJA has been justly criticized for not using time-limited measures for open warrants
- With more recent data and improved statistical techniques, CJA should be able to recommend more people for release while keeping very low FTA rates (14 percent) constant

Bottom line: Fewer “not recommends” = fewer people in pretrial detention

*Background & History of Pretrial Recommendation System in NYC*

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**1961:** Vera Institute - Manhattan Bail Project.

**1973:** Pretrial Services Agency begins citywide risk assessment based on community ties.

**1977:** New York City Criminal Justice Agency incorporated as an independent agency.

**1990s:** Research to revise FTA risk assessment and pretrial release recommendations.

**2003:** First major revision to the recommendation system, which is still in use, incorporates criminal history and community ties.



### *Constraints for NYC Pretrial Risk Assessment*

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- Short and targeted interview (24 hour arrest to arraignment & before meeting defense attorney).
- NYC Court processing specifics (*e.g.*, disposed at arraignment, risk of FTA only).
- Easy to use and understand in an arraignment setting by Court actors.
- Transparent and easy to evaluate.
- Provide the Court with detailed information about the defendant's social and demographic characteristics and criminal history in the Interview Report.
- Provide information needed for other pretrial functions and services, *e.g.*, notification, bail-expediting, and supervised release.

*Current Recommendation System*

**CJA Recommendation Point System**

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

**RECOMMENDATION CATEGORIES**

- Recommended for ROR (low risk) +7 to +12 pts
- Moderate Risk for ROR +3 to +6 pts
- Not Recommended for ROR (high risk) -13 to +2 pts

Or a policy exclusion applies:

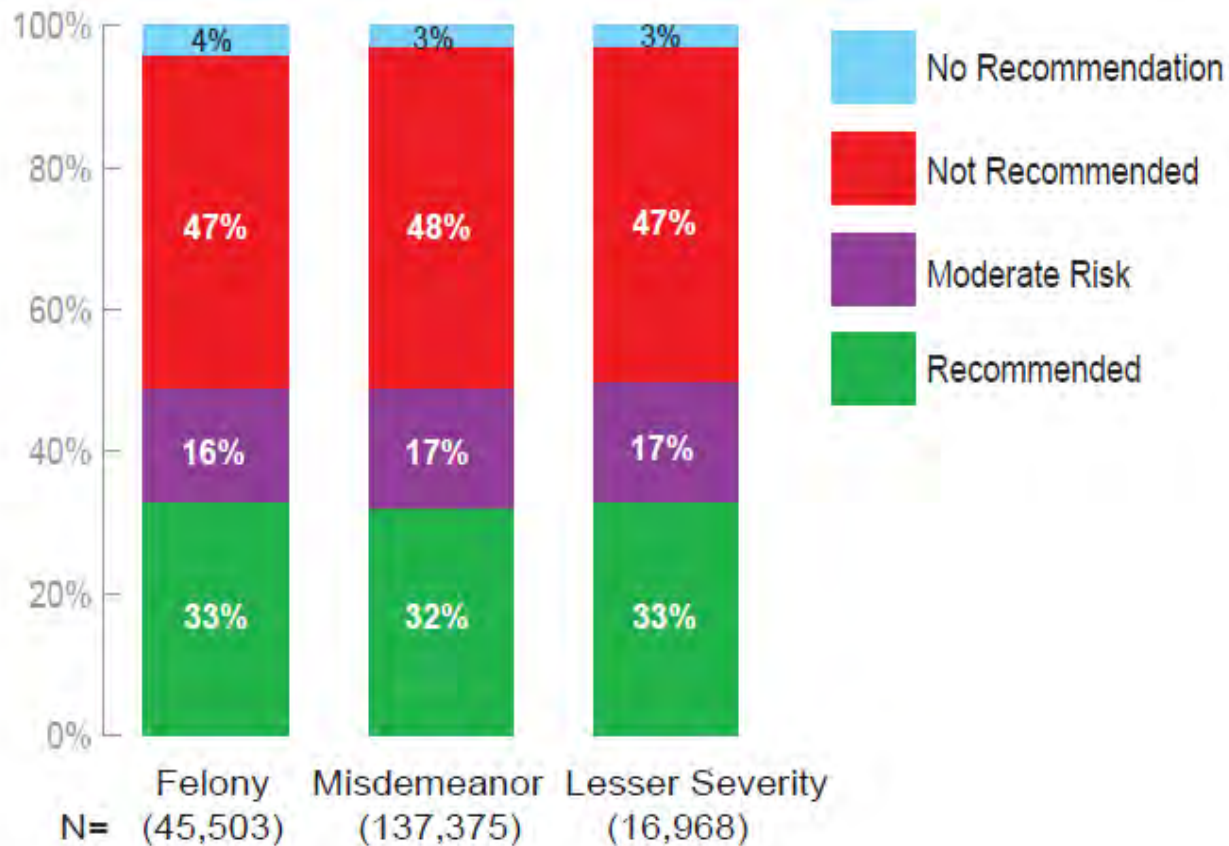
- Bench warrant attached to rap sheet;
- Defendant is charged with bail jumping; or,
- Conflicting residence information.

**No Recommendation**

- Rap sheet unavailable;
- Defendant charged with murder (or attempted), escape or absconding, or incarcerated at time of arrest; or,
- Declined or Incomplete interview.

## CJA Recommendation by Charge Severity at Criminal Court Arraignment

*Arrests January – September 2016*

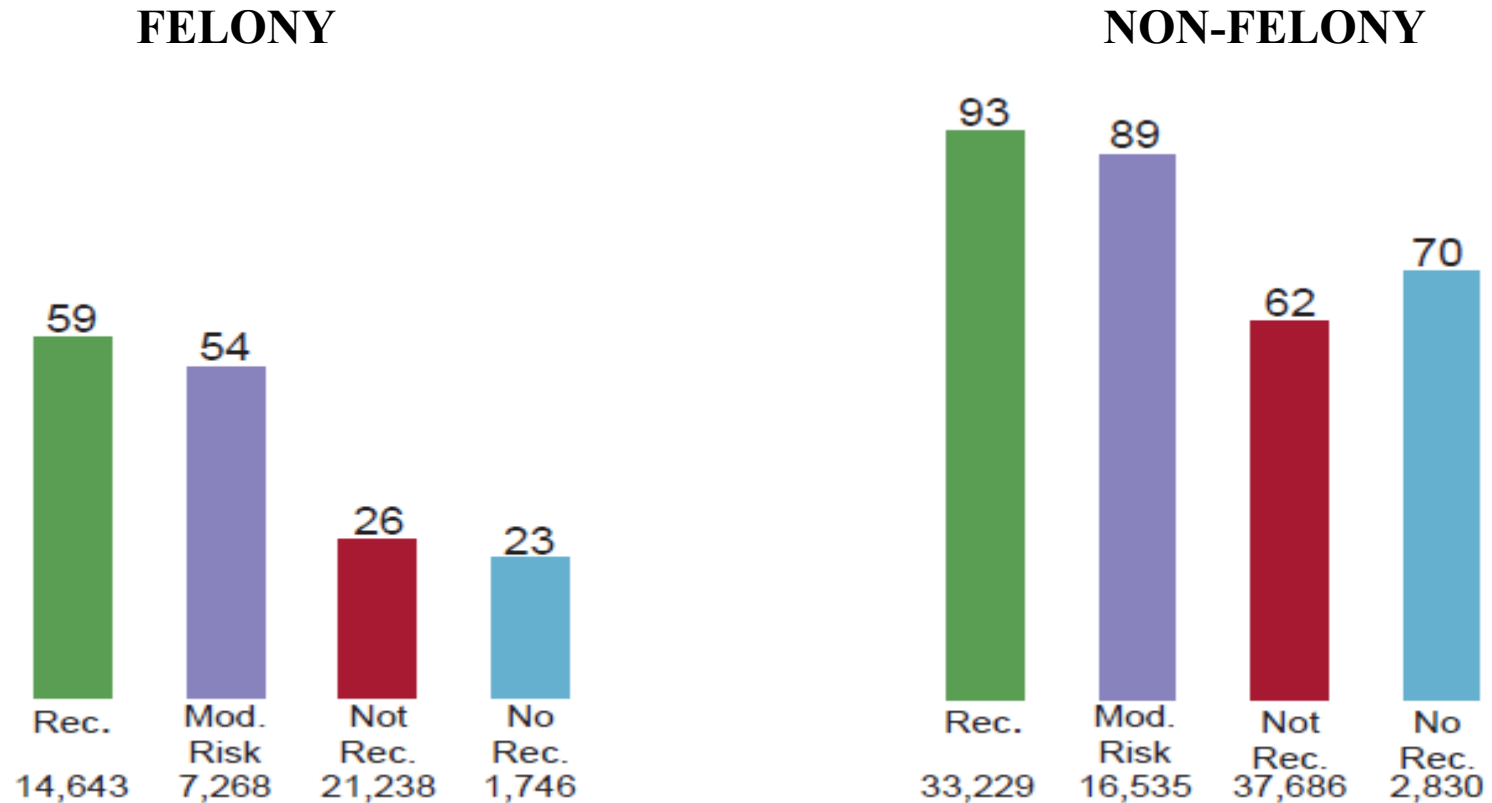


## ROR Rates at Criminal Court Arraignment

### *By CJA Recommendation, Separately for Felony and Non-Felony Cases*

(ROR rate at arraignment is 69 percent: 81 percent of misdemeanors and 40 percent of felonies)

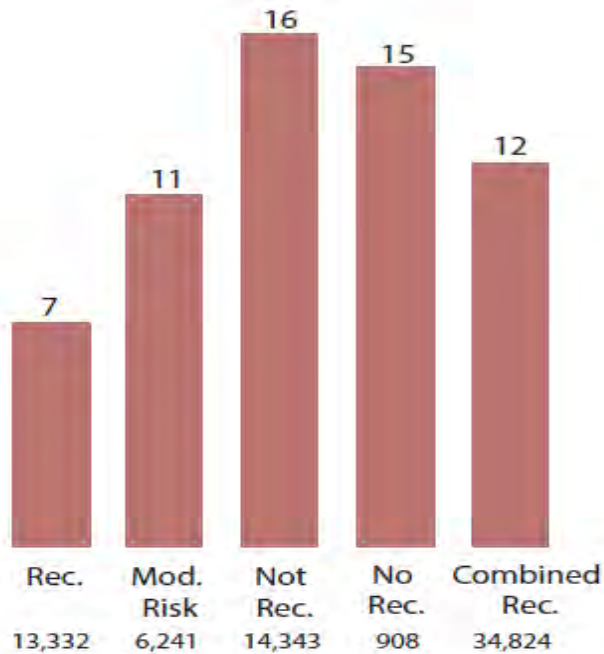
Arrests January - December 2016



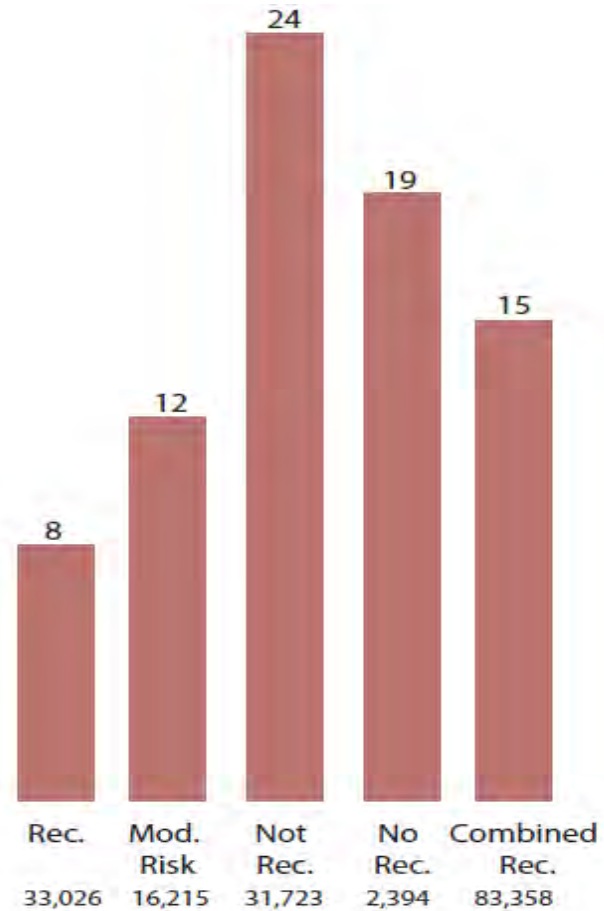
*Failure to Appear (FTA) Rates by CJA Recommendation for Defendants Released Pretrial (Overall FTA rate is 14 percent)*

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**FELONY CASES (2015)**



**NON-FELONY CASES (2016)**





## *Revising the FTA Instrument*

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- Data (CJA, NYPD, OCA, DOC, DCJS)
- Work by Luminosity, Crime Lab New York, ideas42
- Issues that will be addressed:
  - o Consider other interview items (*e.g.*, residential stability, living arrangements)
  - o Time-limited criminal history items (*e.g.*, warrants within past 5 years, felony convictions in past 2 years)
  - o Input from stakeholders
  - o Address racial/ethnic/gender/socioeconomic bias

## *Implementation*

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- User-friendly CJA report
- Training for all users
- Expectations:
  - o Instrument is race and gender neutral
  - o More defendants recommended for ROR
  - o More defendants granted ROR
  - o Reduction in pretrial detention at Rikers Island
  - o FTA rate remains the same or lower

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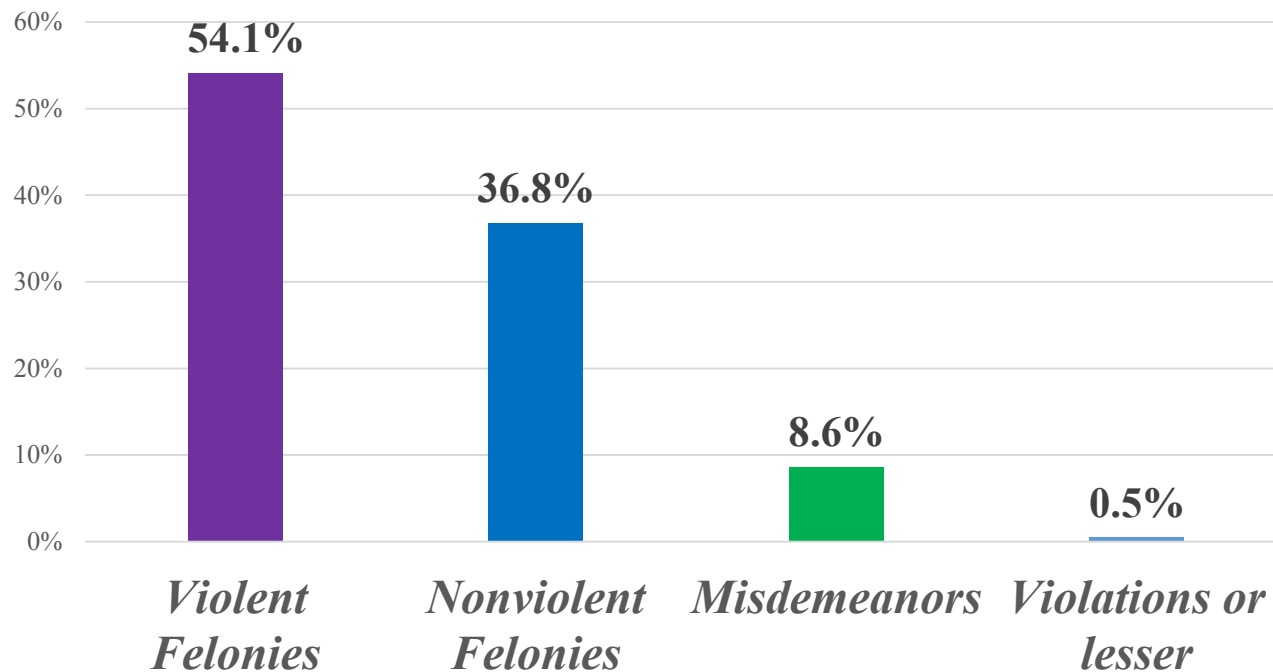
*Pretrial Risk Assessment in New York City: Opportunities and Considerations*

Michael Rempel  
Center for Court Innovation

*Pretrial Detention Population (Three-Quarters of the Total Jail Population)*

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**Pretrial Detention Population  
(as of September 29, 2016, N = 7,356)**



Source: Independent Commission on New York City Criminal Justice and Incarceration Reform (2017).

*Current Pretrial Decision-Making***Release Decisions in 2016**

| <b>Arraignment Outcomes</b>              | <b>Misde-<br/>meanors</b> | <b>Nonviolent<br/>Felonies</b> | <b>Violent<br/>Felonies</b> | <b>All Cases</b> |
|--|---------------------------|--------------------------------|-----------------------------|------------------|
| N (Continued at Arraignment)             | 106,788                   | 27,566                         | 16,402                      | <b>150,756</b>   |
| <b>Release on Recognizance</b>           | <b>81%</b>                | <b>47%</b>                     | <b>33%</b>                  | <b>70%</b>       |
| Supervised Release                       | 0.8%                      | 5%                             | 0.0%                        | <b>1.5%</b>      |
| Bail Set                                 | 18%                       | 47%                            | 63%                         | <b>28%</b>       |
| <i>Detained at Arraignment (if bail)</i> | 87%                       | 91%                            | 91%                         | 89%              |
| Remanded                                 | 0.3%                      | 1.1%                           | 3%                          | <b>0.8%</b>      |

Source: Independent Commission on New York City Criminal Justice and Incarceration Reform (2017).

*What is Risk (in the current context)?*

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- **Risk = Public Safety Risk**

1. General Risk (*i.e.*, any re-arrest)
2. Risk of Violence (*i.e.*, violent felony re-arrest)
3. Risk of Domestic Violence (*i.e.*, among DV defendants)

OR

- **Risk = Risk of Failure to Appear (FTA)**

*What is NOT Risk?*

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- **Risk  $\neq$  Flight Risk** (virtually non-existent)
- **Risk  $\neq$  Charge** (weak predictor of re-arrest)
- **Risk  $\neq$  Professional Judgment** about riskiness (less accurate than formal risk assessments)
- **Risk  $\neq$  “New York Post Risk”**

## *What Increases Risk?*

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- **Criminal History:**
  - Prior arrests/convictions—especially recent priors
  - Current open cases
  - Diversity of priors (*i.e.*, multiple types of charges)
  - History of FTA on prior cases
  - Other noncompliance history (*e.g.*, probation revocations)
  
- **Demographics:**
  - Younger age
  - Male sex (predicts violence especially)



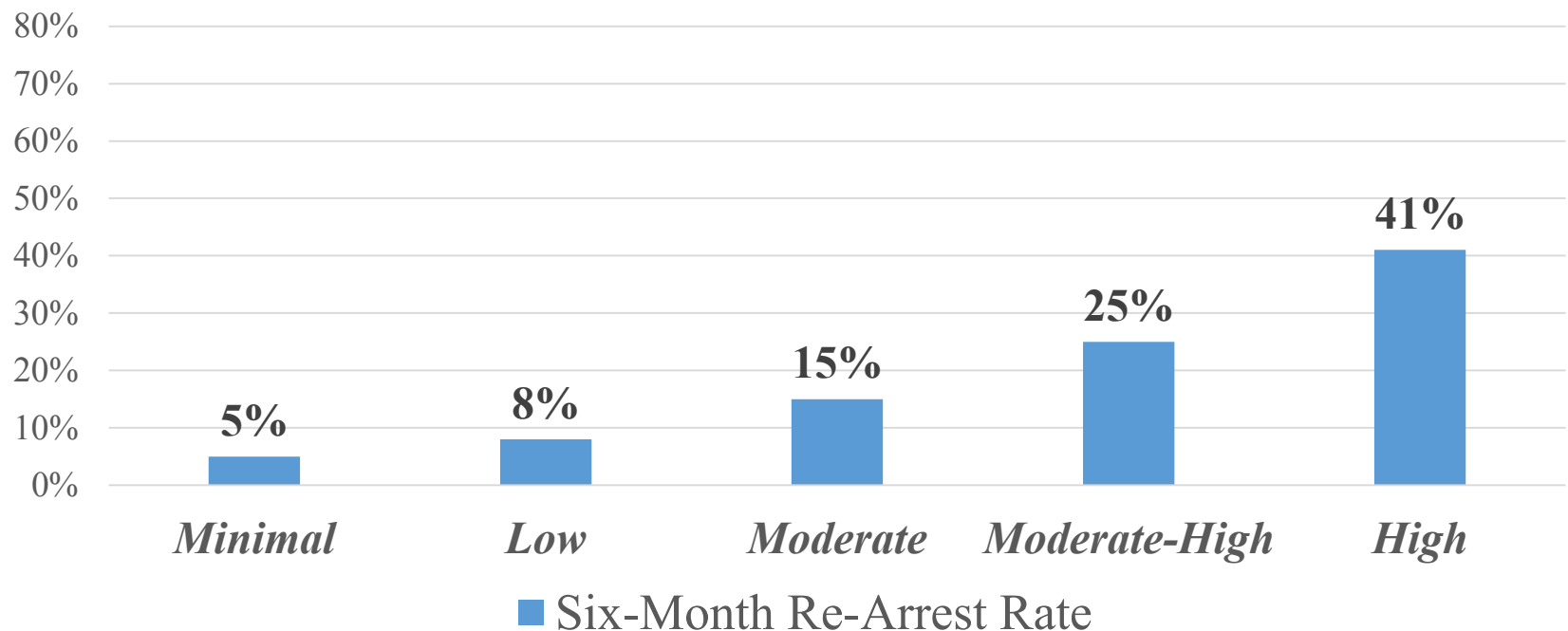
*What Else Increases Risk? The Seven Main Criminogenic Needs*

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1. Antisocial temperament (impulsivity)
2. Criminal thinking (*e.g.*, pro-crime, pro-violence attitudes)
3. Antisocial peers/associates
4. Family or marital problems
5. School or work problems
6. Problematic leisure activities
7. Substance abuse

*What Can Risk Assessment Do in NYC? Take General Risk Assessment...*

## Six-Month Re-Arrest Rates by Predicted Risk of Any Re-Arrest (n = 206,727)



Source: Rempel, Kerodal, Spadafore, and Mai (2017).

*How Might the New Risk of FTA Tool Help?*

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- **Current CJA Tool:** Classifies almost half of defendants as high risk of FTA—although those in the high risk category average only about a 20% FTA rate.
- **New CJA Tool:** Will significantly shrink the high FTA risk category—encouraging more ROR decisions.

*How Might the New FTA Tool PLUS Public Safety Risk Assessment Help?*

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**In theory (if legislation and/or practice allowed):**

1. Low Risk on All Tools: “Do no harm” ► ROR
2. Moderate or High-Risk for FTA or General Re-Arrest:  
Control the risk ► Supervised release or unsecured bond.
  - *Use specific risk level—low, moderate, or high—to determine nature and frequency of pretrial supervision.*
3. High-Risk of Violence (“Dangerousness”): Err conservative ► Consider cash bail and/or detention.

*How Might Risk of Violence (“Dangerousness”) Assessment Help?*

*Empirically, releases should go up. Take felonies.*

**Risk of Violence for Felony Arraignments (2012)**

| Risk of Violence (Future Violent Felony) | Bail or Remand | ROR  |
|--|----------------|------|
| Minimal                                  | 21%            | 32%  |
| Low                                      | 31%            | 29%  |
| Moderate                                 | 27%            | 25%  |
| Moderate-High                            | 13%            | 12%  |
| High                                     | 9%             | 2%   |
|  | 100%           | 100% |

*Annotations: 21% + 31% = 52%; 12% + 2% = 14%*

Source: Rempel, Kerodal, Spadafore, and Mai (2017).

## *Risks and considerations*

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1. **Decision-makers will err towards detention.** High risk status will be used to detain those now released, but low risk status will not be used to release those now detained.
  - Mere mention of “risk” will overwhelm the risk-averse.
2. **Risk will be overused in misdemeanor & nonviolent felony cases.** Short jail stays—17 days for misdemeanors and 54 for nonviolent felonies—and criminogenic effects of jail suggest that few should be detained, regardless of risk.
3. **Tools will be biased.** To date, risk assessments have tended to produce more false positives among black/African-American defendants than other racial and ethnic groups.

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## *Discussion questions*

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- How can we ensure successful implementation of the new citywide risk assessment tool, and adoption by necessary court actors?
- How is this group uniquely positioned to support and advance jail population reductions with the new risk tool?
  - o What legislative or policy changes might we pursue?
  - o What are the implications for alternatives to detention?
- What else do we need to know about FTA and public safety risk?
- What information would be helpful for future conversations about new strategies to reduce the jail population from 7,000 to 5,000?



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