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Mary T. Phillips, Ph.D.

Graphics & Production,
Raymond P. Caligiure

Communications Associate,
Lauren A. Wilson

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. CJA also operates a supervised release program for nonviolent felony clients in Queens.

The Research Department conducts studies addressing a broad array of criminal justice policy concerns. The Research Brief series summarizes the results of some of these studies.

New York City
Criminal Justice Agency, Inc.
52 Duane Street
New York, NY 10007
PHONE: 646 213-2500
FAX: 646 213-2650
WEB: www.nycja.org

REDUCING UNNECESSARY PRETRIAL DETENTION: CJA'S MANHATTAN SUPERVISED RELEASE PROGRAM

By Freda F. Solomon, Ph.D.
and Russell F. Ferri, Ph.D.

In August 2009, CJA introduced its first Supervised Release (SR) program in the Queens County Criminal Court. Based on the success of that program, the City contracted with CJA to develop a similar three-year demonstration project in the New York County (Manhattan) Criminal Court, which was implemented in April 2013 and ended in March 2016. The Manhattan Supervised Release (MSR) program offered judges a pre-trial community-based supervision program as an alternative to setting bail at the Criminal Court arraignment in cases arraigned on selected non-violent felony offenses.

Did Manhattan Supervised Release affect court outcomes?
Did the program displace jail time?

CJA conducted a study to assess whether the MSR program had an effect on court outcomes, imprisonment sentences being imposed if convicted, and pretrial misconduct—failure to appear (FTA) and pretrial arrests—for released defendants. It compared the clients to similar defendants not in the program. The research also examined the potential jail displacement effect of community supervision as an alternative to money bail and pretrial detention.

This *Research Brief* is adapted from *Community Supervision as a Money Bail Alternative* (2016) by Freda F. Solomon, Ph.D., and Russell F. Ferri, Ph.D.
The full report is available on CJA's web site: www.nycja.org/library.php
Systems Programming: Wayne Nehwadowich
Address comments to the authors at fsolomon@nycja.org or rferri@nycja.org
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MANHATTAN SUPERVISED RELEASE PROGRAM CHARACTERISTICS

Only designated non-violent felony charges, of B- or lesser-felony severity, were eligible. Most cases involved felony possession or sale of drugs, the property crime of grand larceny, and fraud charges such as possession of forged instruments. Some charge-eligible cases were excluded for policy reasons, e.g. if there was a domestic violence issue. In addition to charge criteria, defendants could have no more than six prior misdemeanor convictions and no more than one felony conviction, which could not have been for a Violent Felony Offense (VFO) within the past ten years.

Program court staff collected and verified community ties information necessary to maintain contact with defendants if released to the program. This was an essential program component for ensuring that clients released under supervision in lieu of bail and pretrial detention would appear at all

regularly scheduled court dates and comply with program requirements.

In addition, the program sought to actively pursue eligible cases most likely to have bail set. Defense attorneys played an important gate keeping role in this regard, and their consent had to be obtained before the program could interview prospective clients. To further avoid net widening, the program did not proactively screen defendants with no prior arrests and classified by CJA as Recommended for Release on Recognizance (ROR), a group that overwhelmingly receives ROR.

MSR clients in this study were admitted from the beginning of the program on April 8, 2013, through December 31, 2014. Additionally, these clients must have exited the program, and their cases must have had an adjudicated outcome, on or before June 30, 2015.

COMPARISON GROUPS USED IN THIS RESEARCH

To put client cases into context we developed a comparison group of similar cases not in the program. In the first step we selected cases of defendants who appeared to be eligible, based on program criteria, but were not screened by the program during the study period. This occurred because the case was arraigned during a shift not covered by MSR staff, or staff were unable to screen the case for some other reason.

The non-screened cases represent the pool from which the program would have identified eligible clients. Some of these cases likely would have been excluded by defense attorneys based on an expectation of ROR, or rejected by judges.

All comparison group cases were arraigned between the program's beginning on April 8, 2013, through the end of calendar year 2014, were continued after the Criminal Court arraignment, and had an adjudicated outcome on or before June 30, 2015.

Client and non-screened group characteristics were compared, and differences measured with tests of statistical significance using a .05 criterion. There were several statistically significant differences between the two groups. This could affect study results: if differences in court outcomes and pretrial misconduct are found between the client and comparison groups, they may be a result of the defendant and case differences rather than a result of the program.

To address these differences and better isolate the impact of the program we used propensity score matching (PSM). PSM is a statistical method used to assign a score to each case in both the treatment (MSR program) and non-treatment (non-screened) groups. The score measures the likelihood that the case would have been in the treatment group, based on the known characteristics of that group. Individual cases in the client group are then matched to a case in the comparison group with a similar propensity score (i.e., a similar probability of being enrolled in the program).

To create propensity scores it is necessary to identify variables that are significant predictors of both inclusion in the treatment group and the outcome variables. The five variables shown below were used to create a comparison group that matched the client group in terms of key case and defendant characteristics.

Variables Used in Propensity Score Matching

- Sex
- Age Group
- Ethnicity
- Criminal Conviction History
- Crime Category of Arraignment Charge

DEFENDANT AND CASE CHARACTERISTICS IN THE MATCHED CLIENT AND COMPARISON GROUPS

The client and comparison groups each contain 560 cases, matched based on the variables shown below. After propensity score matching, differences between the two groups are not statistically significant for any of these variables.

The MSR clients and defendants in the matched comparison group were predominantly male (Figure 1), and under the age of 30 (Figure 2).

Approximately three-fifths of matched clients and comparison group defendants had no prior criminal convictions (Figure 4).

Figure 1
Sex

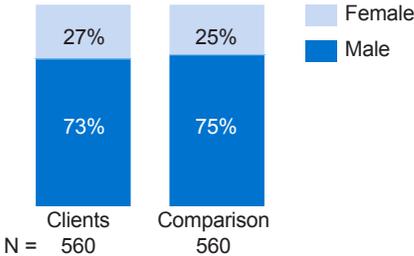


Figure 4
Criminal Conviction History

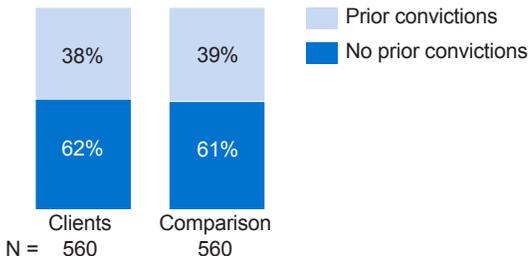
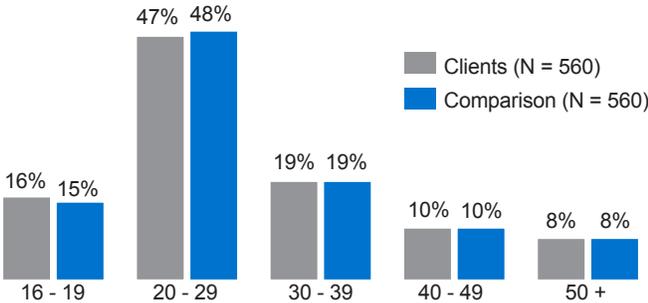
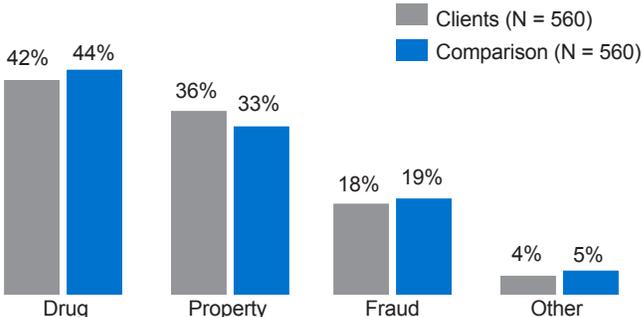


Figure 2
Age Group



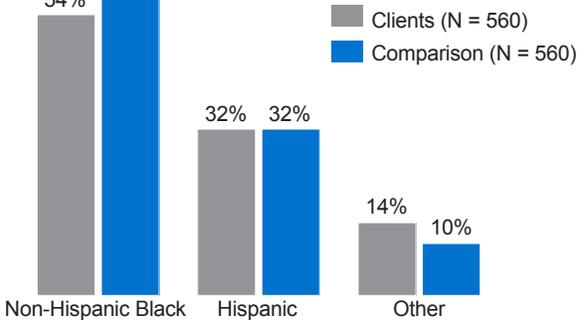
Defendants in over three-fourths of the matched client and comparison group cases were arraigned on a drug or property crime charge (Figure 5).

Figure 5
Crime Category of Arraignment Charge



Defendants in more than half of both client and comparison groups were non-Hispanic black, and nearly a third of each group was Hispanic (Figure 3).

Figure 3
Ethnicity



The severity of the top arraignment charge was not used as a matching variable, but we examined the distribution of charge severity to make sure the comparison cases were not significantly different from the client group in this regard. There are no significant differences between the two groups. A plurality of charges among both client and comparison group cases were of D-felony severity, followed by B, E and lastly C-felony severity charges. There was virtually no difference in the severity composition within crime categories between the client and comparison group cases (data not shown).

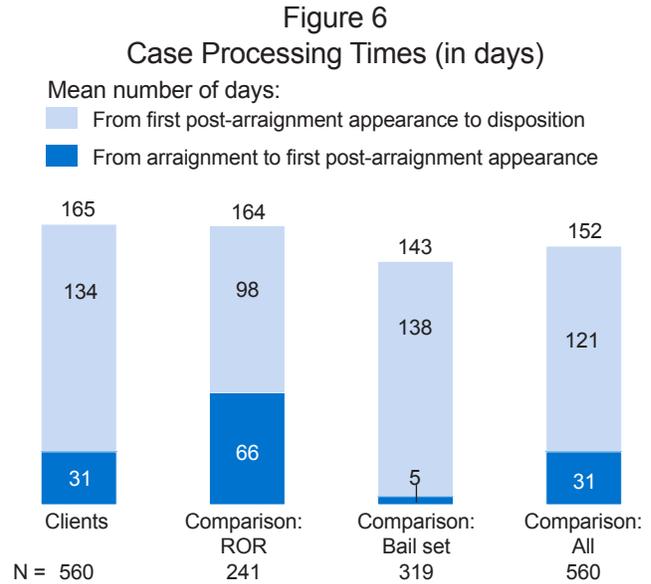
CASE PROCESSING TIMES

Most bail set cases are scheduled for the first post-arraignment appearance within five days. This is due to New York State’s Criminal Procedure Law § 180.80, which governs allowable time for the prosecution to move forward on the initial felony complaint for defendants held at Criminal Court arraignment. By contrast, the program planning research found that time from arraignment to the first post-arraignment appearance was highly variable for ROR defendants.

The program worked with the stakeholders to more regularly schedule the first post-arraignment appearance. This interval was designed to be long enough to allow the program sufficient time to assess client needs, but short enough to enhance the likelihood that clients would return to court.

MSR clients had their first post-arraignment appearance scheduled sooner than the defendants in the matched comparison group with ROR at arraignment, a difference significant at the $p < .001$ level.

The mean (mathematical average) number of days to the first post-arraignment appearance was 31 days, with a median (midpoint) of 40 days, in comparison with a mean of 66 days and a median of 74 days, for the matched comparison group cases with ROR at Criminal Court arraignment (Figure 6, medians not shown).



There was little difference in the overall time to an adjudicated outcome for MSR client cases and matched cases with ROR defendants.

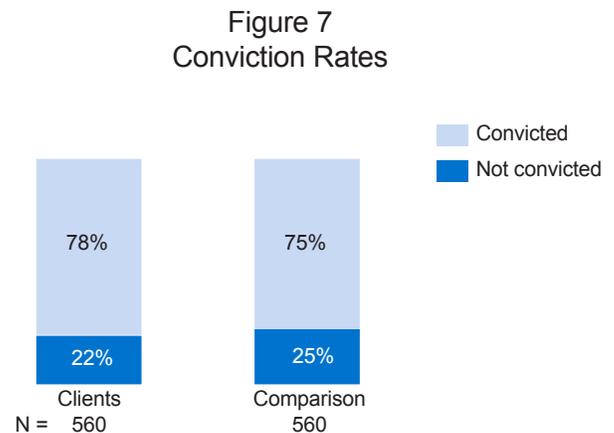
Client cases took a slightly longer time to reach an adjudication compared to the cases of defendants in the ROR group (the means were 165 and 164 days, respectively), but this difference is not statistically significant. Both the matched MSR client and comparison group defendant cases had longer times to disposition compared with those in the comparison group with bail set at arraignment (143 days).

COURT OUTCOMES

MSR participation did not lead to a more favorable court outcome, nor did it have an influence on the likelihood of convictions.

MSR clients were slightly less likely to receive a favorable disposition—defined as a dismissal, acquittal, adjournment in contemplation of dismissal (ACD), or a conviction to a charge of lesser severity than the top arraignment charge—in comparison to the matched group (data not shown).

Over three-fourths of the cases in both groups ended with a conviction, and virtually all were by pleas. MSR clients were slightly more likely to be convicted (78% for MSR clients, compared to 75% for comparison cases, Figure 7). However, these differences in court outcomes are small and are not statistically significant.



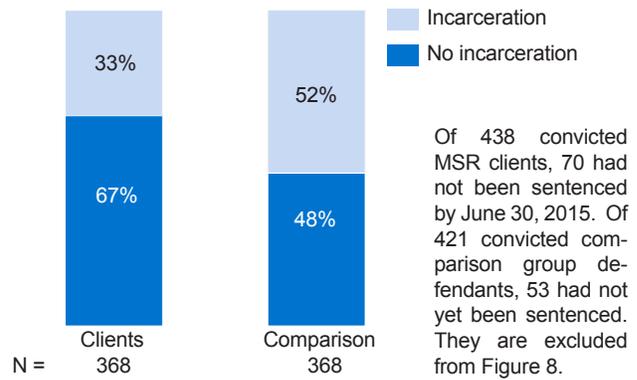
SENTENCING

MSR program participation substantially lowered the likelihood that a defendant would have any incarceration sentence imposed when convicted.

Over half of the convicted defendants sentenced by June 30, 2015, had an incarceration sentence imposed. Among convicted clients sentenced by June 30, 2015, one-third had sentences with incarceration time imposed (Figure 8).

The relationship between status as an MSR client and an imprisonment sentence being imposed is highly significant ($p < .001$). To control for other potentially relevant variables we also conducted a logistic regression analysis. The results confirm that status as an MSR client was a significant predictor of sentence type, even after controlling for variables related to demographics, charge, and criminal history (data not shown).

Figure 8
Incarcerative Sentences
(Convicted and sentenced cases only)



PRETRIAL MISCONDUCT

In general, there were few differences in pre-trial misconduct when FTA and re-arrest rates for program clients were compared with ever released defendants in the matched comparison group.

Overall FTA rates for released defendants in this study were low and even lower for MSR clients in comparison with defendants released at or post arraignment in the matched comparison group, 4% versus 7% (Figure 9).

The adjusted FTA rate does not count an FTA if the defendant returns to court within 30 days of the date of the appearance for which he or she failed to appear. There was no statistically significant difference in adjusted FTA rates when MSR clients were compared with released defendants in the comparison group cases: both 2%.

The overall re-arrest rate for MSR clients, 26%, was somewhat higher than for the defendants in the comparison group, 23%, and the difference is statistically significant ($p < .05$). However, there was only a slight difference between the clients and comparison group defendants for felony re-arrests, 10% versus 9%, and this is not statistically significant.

Furthermore, there was virtually no difference between the two groups in the frequency of re-arrests with a top charge among the crimes classified by CJA as involving interpersonal violence (data not shown).

Figure 9
FTA Rates
(Released defendants only)

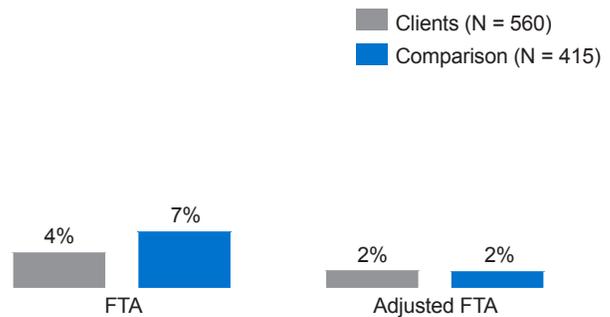
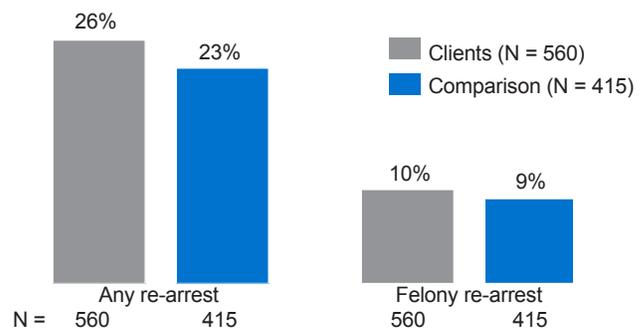


Figure 10
Re-arrest rates
(Released defendants only)



REDUCING PRETRIAL DETENTION THROUGH SUPERVISED RELEASE

An important goal of MSR is jail displacement. It is not possible with available data to calculate the numbers of pretrial detention jail day savings the MSR program accomplished. However, we can estimate some pretrial detention times for defendants in the comparison group. Although not precise measurements, they do provide some insights into the amounts of pretrial detention time utilized by potentially eligible defendants who were unable to be considered for the program.

Pretrial detention time

Almost all MSR clients were admitted at Criminal Court arraignment and remained released under supervision until an adjudicated outcome or a need to terminate participation earlier. This most closely resembles the trajectory for defendants with ROR at arraignment, the majority of whom are likely to remain at liberty for the duration of their court cases.

Among comparison group cases with bail set at arraignment, some defendants remain in pretrial detention until case disposition. In other cases, defendants may be released pretrial immediately by posting bail with the Court, or at some subsequent point prior to case adjudication either by making bail or a change of release status to ROR.

Comparing MSR clients and matched comparison group cases

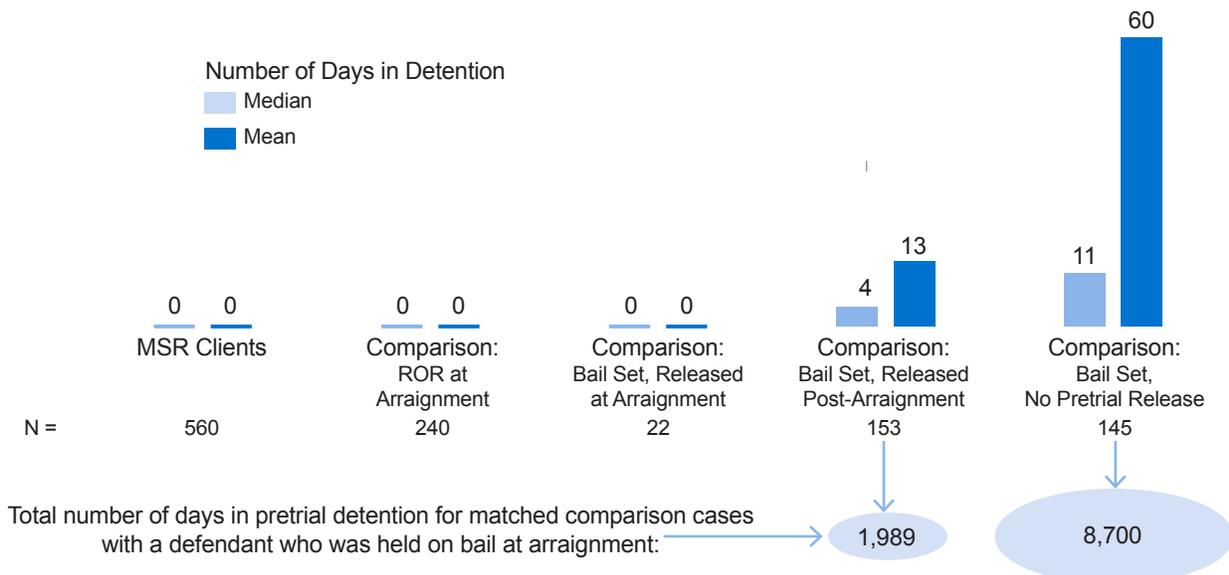
There were 145 matched comparison group cases with bail set at Criminal Court arraignment in which the defendants had no pretrial release. For defendants in these cases the average pretrial detention time was 60 days, with a median of 11 days. From this we would estimate that defendants in these cases utilized about 8,700 pretrial jail days (Figure 11).

An additional 153 cases had defendants released at some pre-disposition point after the Criminal Court arraignment. The defendants in these cases had an average pretrial detention time of 13 days, with a median of 4. The defendants in these cases utilized a total of about 1,989 days of pretrial detention.

Among the matched comparison group cases were 22 in which defendants made bail directly from the arraignment appearance, and 240 with ROR at arraignment. Like the MSR clients' cases, none is assigned any pretrial detention time for the purposes of this analysis.

It is evident from these data that supervised release presents an opportunity for reducing pretrial detention costs to the City.

Figure 11
Pretrial Detention Time



CONCLUSIONS

Our analysis of legal outcomes of the Manhattan Supervised Release program finds convictions overwhelmingly were the court outcomes for both client and comparison group cases, and virtually all convictions were by pleas. However, convicted MSR clients were far less likely to have an incarceration sentence imposed.

Previous CJA research on legal outcomes from CJA's original Queens Supervised Release (QSR) program found that conviction rates remained high and unchanged, and virtually all convictions in cases of both program clients and defendants in a pre-program comparison group were by pleas. What distinguished Queens program cases from their pre-program counterparts was that the rate of imposition of any imprisonment sentence for convicted QSR clients was about half that found among pre-program baseline cases (which included cases of both held and released defendants), and only slightly higher than in the pre-program cases in which defendants had ROR at arraignment. Once again our research findings demonstrate that release under supervision does not change the high likelihood of convictions among cases of program clients, but program participation does substantially reduce the likelihood of any incarceration sentence being imposed.

In Manhattan, program management worked with stakeholders to more regularly schedule the first post-arraignment court appearance, which was found to be highly variable among similar cases in which defendants were ROR'd leaving the Criminal Court arraignment. However, this did not expedite overall case processing time of clients compared to the comparison group.

A critical issue in developing a program for the SR target population was whether release under supervision in lieu of bail and pretrial detention could accomplish jail displacement without increasing FTA. What CJA's research shows is that community supervision as a bail alternative in the program's target population can not only maintain, but perhaps even slightly reduce, the City's already low FTA rates.

Although New York makes no statutory provision for consideration of potential pretrial misconduct other than FTA, it is widely recognized that decisions about bail setting often implicitly consider the nature of crimes and defendants in the context of public safety. Re-arrest rates among MSR clients were higher than for released defendants in the comparison groups, but differences in felony re-arrest rates among the groups were smaller and not statistically significant.

POLICY IMPLICATIONS

A primary goal of supervised release has been effective jail displacement by reducing unnecessary pretrial detention. As a result, among the most compelling findings from the Manhattan and Queens legal outcome studies is the jail displacement effect of community supervision as a bail alternative. Not only have the programs resulted in pretrial jail displacement, but they have also reduced the likelihood of any post-conviction time being imposed.

The jail displacement effects of CJA's supervised release programs are consistent with an ever increasing body of criminal justice research that repeatedly shows that pretrial detention has a strong relationship to the imposition of jail or prison time, and the lengths of those sentences. In addition, there is an emerging body of research showing a strong correlation between pretrial detention and

post-disposition recidivism.

In recent years there has been renewed attention to bail reform. A critical component is to address the pernicious effects of money bail, where defendants with limited or no financial resources remain in pretrial detention regardless of their relative risks of pretrial misconduct. In New York City, a key focus of criminal justice policymakers is to find alternatives to money bail.

Against this backdrop, and with the results of CJA's supervised release demonstration programs, the current City administration has embarked on a major expansion of supervised release programs. This new initiative is bringing pretrial release under supervision to all of the City's main Criminal Courts and extending the supervised release option to a wider defendant population, including those charged with misdemeanors at arraignment.

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The New York City Criminal Justice Agency, Inc.
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New York, NY 10007

TO:

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Forthcoming: Veterans in the Criminal Justice System
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