Jail in New York City

Evidence-Based Opportunities for Reform

By Michael Rempel, Ashmini Kerodal, Joseph Spadafore, and Chris Mai

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Executive Summary

To inform the development of strategies designed to reduce the use of jail in New York City without jeopardizing public safety, the current project documents and assesses decision-making at key stages of criminal case processing. The project was conceived by the Mayor's Office of Criminal Justice (MOCJ), which coordinates criminal justice policy in New York City. With funding from the Annie E. Casey Foundation, researchers at the Center for Court Innovation and the Vera Institute of Justice collaborated on the analysis.

Research Goals and Methods

In fiscal year 2015 (ending June 30, 2015), there were 67,672 jail admissions in New York City, and on any given day, the average jail population included 10,240 individuals. The jail population has dropped significantly since its peak in the 1990s, when the daily headcount exceeded 20,000. Recent 2016 data indicates that the population has now dipped under 10,000. In examining where further jail reductions may be possible, researchers drew upon data from the New York State Unified Court System, New York State Division of Criminal Justice Services, and New York City Criminal Justice Agency. The analysis looked at three key decision-making moments:

1. **Pre-Arraignment:** Use of a custodial arrest as opposed to a Desk Appearance Ticket (DAT), the latter of which involves releasing the defendant and assigning a court date to appear for arraignment; and prevalence of decline to prosecute decisions.

2. **Pretrial:** Use of release on recognizance (ROR), bail, or remand at arraignment; implications of bail and remand decisions for pretrial detention; and case processing speed from initial arraignment to final disposition.

3. **Disposition and Sentencing:** Conviction rates and use of jail and prison sentences among cases ending in a guilty plea/conviction.

Our analysis focused on the extent to which decision-making is *risk-informed*—reserving the use of jail or prison for those statistically shown to pose a high risk of re-offending in the future. For each stage of case processing, researchers also isolated outcomes for youth ages 16 to 24 who are processed in the adult system; and examined whether and to what extent the criminal justice system contributes to racial/ethnic disproportionalities. Finally, researchers

quantified the public costs of incarceration and modeled the potential cost savings that could result from several jail reduction scenarios.

The Defendant Population

More than 300,000 criminal defendants are arraigned each year in New York City. In 2013, 314,166 defendants were arraigned on misdemeanor (84%), nonviolent felony (10%), or violent felony (6%) charges. Additional case and defendant characteristics were as follows:

- **Defendant Background:** The defendant population was predominantly male (82%); nonwhite (48% black, 35% Hispanic/Latino, 3% Asian, and 13% non-Hispanic white); and skewed towards younger ages (36% ages 16 to 24). More than one-third of cases involved defendants with a prior arrest (38%), and just under one-fifth (19%) had a prior misdemeanor or felony conviction.

- **Two-Year Re-Arrest Rates:** Over a two-year tracking period, 41% of individual defendants arrested in 2012 were re-arrested on any charge, 19% were re-arrested on a felony, and 7% were re-arrest on a violent felony offense.

- **Predictors of Re-Arrest:** Based on a multivariable analysis, the most powerful risk factors for re-arrest were: *prior criminal history* (including prior convictions, prior incarceration, open case at the time of the current arrest, and current probation status); *prior noncompliance history* (including failure to appear in court during prior cases and prior probation or parole revocation); *male sex* and *younger age*. The current charge (misdemeanor, nonviolent felony, or violent felony; and specific charge type) also predicted re-arrest, yet its impact was weaker than each of the previous factors.

Risk Profile

- **Public Safety Risk:** We created statistical algorithms and tested them for validity to divide defendants by general risk of any re-arrest and risk of a future violent felony arrest. Among all defendants citywide, 12% were classified as minimal risk for any re-arrest, 26% as low, 28% as moderate, 17% as moderate-high, and 17% as high risk. Concerning risk of a future violent felony, 36% posed a minimal violent felony risk, 31% were low, 20% moderate, 9% moderate-high, and 5% high.

- **Risk of Failure to Appear:** Our analysis found that measuring risk of failure to appear (FTA) on a scheduled court date is a poor proxy for "riskiness" in general. Specifically, the FTA risk tool that is currently in use in New York City classifies half of all defendants as posing a high risk for failure to appear (though the actual failure to appear rate among individuals classified as "high risk" is only 20%). Further, the

correlation between risk of failure to appear and risk to public safety is weak. Of those in the high risk category for failure to appear, two-thirds (66%) posed only a minimal-to-moderate general risk of re-arrest; and 92% posed a minimal-to-moderate risk of a future violent felony. These results combine to suggest that the prism of FTA risk leads the label "high risk" to be ascribed to many more defendants than would be accorded this label were risk defined according to public safety criteria (i.e., risk of re-arrest or risk of violence).

Pre-Arraignment

In cases involving relatively minor misdemeanor offenses, and especially when the defendant lacks a prior criminal record, law enforcement officers have discretion on whether to take the defendant into custody until the Criminal Court arraignment or to issue a Desk Appearance Ticket (DAT), which assigns a date in the future for the defendant to appear in court.

- **Prevalence of Desk Appearance Tickets:** In 2013, 28% of misdemeanor arrests resulted in a Desk Appearance Ticket in lieu of custodial arrest. When isolating misdemeanor cases involving common DAT charges (marijuana, motor vehicle license-related, petit larceny, theft of services, and drug possession), 41% received a Desk Appearance Ticket, a percentage that increased to 55% among those without a prior conviction and 60% among those without a prior arrest.

- **Risk:** Overall, results suggest that law enforcement is issuing DATs to an appropriate, low-risk population. Only 1% of DAT defendants posed a high general risk of re-arrest, and only 16% were in the next moderate-high risk category. Further, only 1% were in *either* the high or moderate-high risk categories for a violent felony re-arrest—signaling that those who currently receive DATs do not generally pose a danger to the public. Even among defendants issued a DAT and later detained in jail, only 14% of those detained were high risk, and only 7% of those detained were in either of the highest two risk categories, suggesting that from a public safety standpoint, pretrial detention may be overused in DAT cases.

- **Racial/Ethnic Disproportionalities:** Net of other factors and compared to similar non-Hispanic white defendants, black/African American defendants were seven percentage points *less* likely to receive a DAT; Hispanic/Latino defendants were six percentage points *less* likely to receive a DAT, and Asian defendants were nine percentage points *more* likely to receive a DAT.

- **Court Processing:** DAT arraignment dates were scheduled an average of two months (61 days) after the arrest date citywide and an average of 96 days later in the Bronx. The failure to appear rates of 22% citywide and 29% in the Bronx partly reflect the

long period from arrest to DAT arraignment date. (A longer date increases the likelihood that the defendant will simply forget.)

- **Implications of Failure to Appear for Pretrial Detention:** Close to one-third (29%) of DAT defendants who failed to appear on their scheduled arraignment date were detained in jail if their case was unresolved at arraignment. Only 2% of defendants who appeared on the scheduled date were detained. Improving appearance rates would likely reduce pretrial detention rates.

- **Prosecutorial Decision-Making:** For arrests that law enforcement refers to the prosecutor prior to arraignment (not including DATs), prosecutors decline to prosecute 12% in the Bronx compared to 5-6% across the four other boroughs.

- **Potential Candidates for Early Diversion:** When isolating misdemeanor cases, multivariable analysis found that first-time female defendants arrested in Brooklyn or Queens and within the ages of 16 to 24 were particularly likely to have their court cases resolved with adjournment in contemplation of dismissal (ACD). In New York, an ACD virtually always leads to dismissal six or 12 months later depending on the charge. Indeed, of cases whose only characteristics are a nonviolent misdemeanor charge (in any borough), no prior arrest, and an age of 16-24 years, four in five (exactly 80%) received either a straight dismissal or ACD. These cases might be suitable candidates for early police-led diversion before the court process begins—helping the defendants to avoid court involvement and helping the system to save court, prosecution, and defense resources.

Release Decisions and Pretrial Detention

For cases not resolved at the arraignment court appearance—comprising half of misdemeanors and 98% of felonies—the arraignment judge makes a release decision that, by law, is intended to secure the presence of the defendant for future court dates. In recent years, among cases released pretrial, 14% of misdemeanors and 11% of felonies missed at least one court date. Prolonged failures to appear (not returning to court for more than 30 days) occurred in 7% of misdemeanor and 3% of felony cases (CJA 2014).

Release Decisions

- **Misdemeanors:** Among misdemeanor cases that were not disposed at arraignment, 79% were released with no conditions (release on recognizance). The remaining 21% faced possible pretrial detention. Three percent successfully posted bail at arraignment and thereby avoided detention, 25% were detained on bail, and 1% were remanded without bail. Some cases detained at arraignment made bail subsequently. Thus, only 10% of misdemeanors were detained throughout case processing.

- **Felony Cases:** Among felonies continued at arraignment, 46% were released with no conditions and 54% faced possible detention. Six percent posted bail and avoided detention, 46% were detained on bail, and 2% were remanded. Ultimately, 23% of both nonviolent and violent felonies were detained throughout the case. Pretrial detention in felony cases was significantly higher in Manhattan than other boroughs.

- **Predictors of Bail-Setting:** Multivariable analysis identified the following factors as the most important predictors of a judge setting bail or remanding the defendant (as opposed to release on recognizance): *charge severity* (misdemeanor v. nonviolent felony v. violent felony); *criminal history* (especially those with a current open case or a failure to appear on a case in the past); *male gender*; and *borough* (with judges in Manhattan most likely and those in the Bronx least likely to set bail). In addition, age was significant: Defendants ages 16-24 were especially *unlikely* to face bail, when controlling for other factors. Overall, charge severity stood apart from other factors as the most powerful driver of current bail decisions.

- **Impact of Race/Ethnicity:** Overall, black/African American and Hispanic/Latino defendants were more likely than others to face bail, but the effect sizes were small in magnitude. Qualitative analysis indicated that the effect of Hispanic/Latino ethnicity largely reflected the role of immigration holds on a select subsample of those in the larger Hispanic/Latino category. Accordingly, results do not provide strong evidence for racial/ethnic disproportionalities in current pretrial decision-making.

- **Bail Amounts:** Charge severity was a powerful driver of the bail amount: In misdemeanors, 87% of bail amounts were $2,000 or less and 1% were $5,000 or more; in felonies, 24% of bail amounts were $2,000 or less and 40% were $5,000 or more.

Risk-Informed Decision-Making

Additional analysis assessed the extent to which pretrial detention is currently reserved for the defendants who pose the most credible and immediate threat to public safety. We focus on risk of any re-arrest and risk of a violent felony re-arrest in light of the aforementioned finding that risk of failure to appear on a scheduled court date, at times used as an indicator of riskiness generally, is in fact a poor proxy for public safety risk.

- **Incarceration of Minimal-to-Moderate Risk Defendants:** The majority of defendants now in pretrial detention pose a minimal-to-moderate general risk of re-arrest and either a minimal or low risk of a future violent felony.

    - Misdemeanors: Of misdemeanor defendants detained at arraignment in 2012, 64% posed a minimal-to-moderate general risk and 76% posed a minimal or low risk of a future violent felony.

- Felonies: Of felony defendants detained at arraignment in 2012, almost six in ten (59%) posed a minimal-to-moderate general risk and 52% posed a minimal or low risk of a future violent felony. Yet, focusing on nonviolent felony defendants, 28% of minimal risk, 35% of low risk, and 42% of moderate risk had to make bail or were remanded.

- **Implications:** If risk to public safety were taken into account at the pretrial stages, our study suggests that a great many more defendants could be appropriate candidates for pretrial release (or for alternative pretrial supervision programming).

Payment of Bail

In cases where the defendant had to make bail in 2013, only 11% successfully made bail at arraignment, 43% made bail later in case processing, and 46% were detained throughout the pretrial period. Most defendants facing bail make it at some point, but few do so immediately. Even in cases of low bail, few defendants can make bail at arraignment (only 13% of those with bail of $500 or less made bail at arraignment). A companion publication reveals multiple shortcomings in the bail payment system in New York City and makes reform recommendations (White et al. 2015), many of which have already been adopted by the Mayor's Office of Criminal Justice (see http://bail-lab.nyc/improving-bail-payment-1).

Case Processing

Of cases resolved in 2014, misdemeanors averaged 62 days to disposition (125 days if continued at arraignment), unindicted felonies averaged 135 days to disposition, and indicted felonies averaged 325 days to disposition. Focusing on indicted felonies, their case processing time included an average of 293 days in post-indictment adjudication in the Supreme Court—a figure that rose to 400 days in the Bronx, the borough with the longest processing times. A companion publication details additional case processing trends, documents the major drivers of delays in felony case processing, and articulates action steps to improve policy and practice (Rempel et al. 2016).

Disposition and Sentencing Decisions

Of cases disposed in 2014, more than half (56%) ended in a guilty plea/conviction, with 30% receiving a criminal conviction at the felony or misdemeanor level. (The remaining guilty pleas/convictions were at the violation level or involved youthful offender findings for defendants ages 16 to 18, which do not create a permanent criminal record.) The findings summarized below focus on the use of jail or prison among convicted cases.

- **Jail Sentences in Misdemeanor Cases:** Of misdemeanor cases reaching a guilty plea/conviction in 2014, 16% were sentenced to jail (including 21% in Manhattan and a range of 10-15% in the other four boroughs). Jail sentences were overwhelmingly brief, with a median length of 15 days, 81% running 30 days or less, and 93% running six months or less. Due to automatic good time release, defendants typically serve two-thirds of any jail sentence, meaning that a 15-day sentence involves 10 days served. If some of that time is spent in pretrial detention, time served after sentencing is proportionately reduced. Thus, analysis shows that the most common misdemeanor jail sentences of 1-15 days involve an average of three days served *after* sentencing; sentences of 16-30 days involve nine days served after sentencing; sentences of 31-60 days involve 18 days served after sentencing; and even seemingly sizable sentences of 61-181 days average under two months served (53 days) after sentencing. These results point to the limited incapacitation benefit that the public gains from sentencing misdemeanants to jail—contrasted to the longer-term *negative* effects, noted below.

- **Jail and Prison Sentences in Felony Cases:** Of felony cases reaching a guilty plea/conviction in 2014, 17% were sentenced to prison (including 24% in Manhattan and a range of 12-17% in the other four boroughs) and 28% were sentenced to jail (including 35% in Staten Island, 34% in Manhattan, and 21-28% in the three other boroughs). The median jail sentence in felony cases was 122 days, which translates to 83 days actually served, of which more than half is served pretrial, prior to sentence imposition.

- **Borough Differences:** Overall, Manhattan engages in far greater incarceration at the sentencing stage than the four other boroughs. Manhattan accounts for 40% of the city's jail sentences in misdemeanor cases; 40% of the city's prison sentences in felony cases; and 34% of the city's jail sentences in felony cases.

- **Risk-Informed Decision-Making:** Citywide, sentencing decisions were generally risk-responsive, with prison and jail sentences growing more common as the defendant's risk level increased. In felony cases, for instance, 13% of minimal risk defendants were sentenced to prison. These percentages increased as risk increased; for instance, 18% of moderate and 30% of high risk defendants were sentenced to prison. (The numbers were similar for jail.)

- **Criminogenic Effect of Jail:** Net of other factors, jail sentences resulted in a seven percentage-point *increase* in the two-year re-arrest rate among otherwise similar defendants. Criminogenic effects were greatest at lower risk levels, with jail increasing the re-arrest rate by nine percentage points among minimal risk defendants, but by only four percentage points among those in the high risk category. Considering that jail sentences in even felony cases are brief, incapacitation benefits are relatively marginal as compared against the adverse effect of increasing recidivism post-release.

- **Pretrial Detention Status at Disposition and Sentencing:** Pretrial detention at disposition increased the likelihood of a criminal conviction by 10 percentage points in misdemeanor and 27 percentage points in felony cases, net of other factors. Among cases ending in a guilty plea/conviction, pretrial detention at disposition increased the likelihood of a jail sentence by 40 percentage points in misdemeanor and 5 points in felony cases and increased the likelihood of a prison sentence by 34 percentage points in felony cases.

- **Young Adults:** Although defendants aged 16 to 24 averaged a *higher* general risk than older defendants, net of other factors, they were significantly *less* likely to receive a criminal conviction at the end of their case. Among those convicted, a 16-to-24-year-old age did not affect the likelihood of jail or prison in either direction.

- **Race/Ethnicity:** There were no differences by race/ethnicity in the likelihood of a criminal conviction or, among those convicted, of a prison sentence. In felony cases only, net of other factors and compared to non-Hispanic whites, black/African American and Hispanic/Latino defendants were modestly more likely (and Asian defendants less likely) to receive a jail as opposed to a non-custodial sentence. Given the modest magnitude detected, it cannot be credibly ruled out that unobserved factors explained the findings.

- **Diversion Opportunities at Sentencing:** A total of 11,699 defendants convicted of a misdemeanor were discharged from jail in 2015 after serving at least some time—typically less than 15 days—following the imposition of a jail sentence. These defendants would be logical candidates for brief alternatives to incarceration that could avoid the deleterious criminogenic effects of jail. A total of 2,642 defendants convicted of a nonviolent felony were similarly discharged in 2015—except that the nonviolent felony population averaged longer stays in jail after sentencing of 46 days in 30% and 109 days in 40% of cases. For these defendants, legal proportionality would be sufficient to order participation in longer-term risk- and need-responsive programs designed to treat the criminogenic needs that fuel their criminal behavior.

Cost of Incarceration in New York City

The cost estimates in this section use 2013 as the index year for estimating the size of the jail population, annual costs, and projected savings under various reform scenarios.

- **Overall Jail Expenditures:** Using 2013 as the index year, New York City spends almost $1.4 billion annually for jail expenses related to one year of arrests, 69% of which paid for the incarceration of pretrial detainees.

- **Cost by Charge Severity:** Although misdemeanors were 84% of arrests in 2013, their share of jail expenditures was only 22%, compared to 48% for nonviolent felonies and 30% for violent felonies.

- **Cost by Borough:** Cases resulting from arrest in Manhattan accounted for 29% of citywide arrests but a significantly higher 36% of jail expenditures, reflecting the higher pretrial detention rate, longer average pretrial length of stay, higher conviction rate, and higher rate of jail sentences among convicted cases than other boroughs.

- **Cost by Risk Level:** Defendants posing a minimal-to-moderate general risk of re-arrest accounted for 23% of jail expenditures or $316 million annually. Defendants posing a minimal or low risk of a future violent felony offense accounted for an overlapping 30% of jail expenditures or $416 million annually. Cases arraigned on nonviolent misdemeanor charges accounted for $210 million.

- **Baseline Prison Expenditures:** Prison sentences originating from 2013 arrests in New York City imposed a total cost to the state of $1.9 billion.

- **Cost Savings of Potential Reform Scenarios:** Reducing the jail population does not produce savings on a one-to-one basis, because many costs, including staff salaries, benefits, and facilities, are relatively fixed, or in other words difficult to lessen absent truly large reductions in the number of jail beds and facilities occupied. Thus, the average annual cost of the New York City jail is $208,513 per inmate per year (Henrichson et al. 2015), but the marginal cost that can be reduced commensurate with each jail day reduction is $27,010 per inmate per year (Parsons et al. 2015). Given a marginal cost methodology, diverting away from jail all minimal-to-moderate general risk defendants would produce savings of $45 million. Diverting all minimal or low violent felony risk defendants would produce savings of $59 million.

Chapter 1

Introduction: Assessing Prospects for Jail Reduction in New York City

To inform the development of strategies designed to reduce the use of jail in New York City without jeopardizing public safety, the current project documents and critically assesses decision-making at key stages of criminal case processing. The project was conceived by the Mayor's Office of Criminal Justice (MOCJ), which coordinates criminal justice policy in New York City, in collaboration with other city agencies and public and private partners, including the judiciary, prosecutors, and the defense bar. Over the past two years, the Mayor's Office of Criminal Justice has launched an array of initiatives designed to reduce the jail population, including a pretrial supervised release program; expanded diversion options for mentally ill defendants; and a case processing initiative led jointly with the state court system to reduce processing time for defendants held in pretrial detention.

Recent initiatives have emerged against the backdrop of a jail population that has been nearly cut in half over the past two decades, declining from an average daily population (ADP) of 18,437 in fiscal year 1995 to 10,240 in fiscal year 2015 (Institute for State and Local Governance 2016).[1] A recent one-day snapshot on May 2, 2016 placed the jail population below the 10,000 mark at 9,821. The current trend stems primarily from citywide declines in felony crime and arrests since the 1990s (Austin and Jacobson 2013). Evidence also points to a modest role played by the rise of alternative to incarceration programs throughout the 2000s, especially for misdemeanants and felony drug offenders (Berman and Wolf 2014; Waller et al. 2013).

It is unclear, however, whether recent declines in the jail population will persist. Data collected by the New York State Division of Criminal Justice Services indicates that annual

[1] For information on New York City jail and prison incarceration trends from 1970 to 2014, see the Vera Institute's Incarceration Trends tool: http://trends.vera.org/#/profile?fips=36061.

felony arrest numbers in the city have somewhat leveled off since 2012,[2] suggesting that further reductions in the jail population may depend on implementing deliberate reforms involving those individuals who are arrested and reach the criminal courts in the first place.

As shown in Table 1.1, 314,166 cases were arraigned in court on a misdemeanor (262,790), nonviolent felony (32,839), or violent felony (18,537) in 2013. These cases involved 215,170 individual defendants (some defendants accounted for multiple cases).

Table 1.1. Criminal Arraignments in 2013

	Bronx	Brooklyn	Manhat-tan	Queens	Staten Island	New York City
Misdemeanor & Felony Arraignments	**68,850**	**84,634**	**90,510**	**59,928**	**10,244**	**314,166**
Percent of Citywide Total	**22%**	**27%**	**29%**	**19%**	**3%**	**100%**
MISDEMEANORS AND FELONIES						
Misdemeanor arraignments	56,907 83%	70,653 83%	76,453 84%	50,578 84%	8,199 80%	262,790 84%
Felony arraignments	11,943 17%	13,981 17%	14,057 16%	9,350 16%	2,045 20%	51,376 16%
Nonviolent felonies	7,378 11%	7,548 9%	10,524 12%	6,064 10%	1,325 13%	32,839 10%
Violent felonies	4,565 7%	6,433 8%	3,533 4%	3,286 5%	720 7%	18,537 6%
VIOLATION OFFENSES ARRAIGNED IN CRIMINAL COURT						
Number of violation arraignments	1,083	9,647	10,332	4,877	188	26,127
TOTAL CRIMINAL ARRAIGNMENTS (Violations, Misdemeanors, and Felonies)	**69,933**	**94,281**	**100,842**	**64,805**	**10,432**	**340,293**

Note: Cases included all criminal cases filed in court in 2013, as provided by the Unified Court System.

[2] Ten-year arrest trends are available on the Division of Criminal Justice Services (DCJS) website at http://www.criminaljustice.ny.gov/crimnet/ojsa/arrests/nyc.pdf.

Even following recent declines, jail continues to touch a large number of New Yorkers each year. In fiscal year 2015, there were 67,672 jail admissions, and according to city statistics, the average length of stay was 56 days. Individuals admitted to jail were 93% male; 26% youth ages 16-24 (although only 2% were legal minors ages 16 or 17)[3]; 56% black, 33% Hispanic/Latino, 7% white/non-Hispanic, and 4% Asian or from an additional racial/ethnic group. Estimates from 2012 indicated that of those in jail on any given day, 41% were flagged for a potential mental health problem or need for treatment (known as an "M" designation), with 41% of those defendants (or about 18% of the total) found to have a serious mental illness (Council of State Governments 2012).

Three-quarters of those in jail on any day in fiscal year 2015 were detained pretrial, meaning that they were not yet convicted of a crime. An additional 15% were sentenced to jail and 10% were in jail for other reasons, including a parole violation, awaiting sentencing on a conviction, or awaiting transfer to an upstate correctional facility on a prison sentence.[4]

Research Goals and Questions

By producing systematic information about current decision-making and critically assessing whether alternative decisions are possible that might safely reduce the use of jail, this project aims to aid future strategic planning in New York City as well as to contribute to the national dialogue about incarceration. Commissioned by the Mayor's Office of Criminal Justice, the project was funded by the Annie E. Casey Foundation and implemented by the Center for Court Innovation in collaboration with the Vera Institute of Justice. The principal research questions were as follows:

1. **Descriptive Analysis:** What is the distribution of defendant and case characteristics and outcomes at each of the following stages of case processing?
    a. Arrest: To what extent does law enforcement take defendants into custody until the Criminal Court arraignment (generally held within 24 hours) or issue a Desk Appearance Ticket (DAT), with an assigned arraignment court date?

[3] In New York State, the age of criminal responsibility is 16 years, meaning that 16- and 17-year-olds are prosecuted in the adult criminal justice system and potentially subject to adult sanctions.

[4] Except where otherwise specified, statistics in this and the preceding paragraph derive from a combination of sources and publications issued by the New York City Department of Correction and the U.S. Bureau of Justice Statistics.

b. Decision to Prosecute: To what extent do prosecutors decline to prosecute cases?
c. Pretrial Release or Detention: To what extent do judges: (1) release defendants on their own recognizance (ROR), (2) set bail, or (3) remand to jail? When bail is set, how often do defendants make bail at arraignment, make bail later in case processing, or not make bail at all?
d. Case Processing: How much time and how many court appearances are required to reach a case disposition?
e. Disposition and Sentencing: What is the distribution of case dispositions and sentences and, in particular, how often do sentences involve jail or prison?

Additionally, a recurrent secondary interest is in the extent to which outcomes vary by borough, charge severity, and charge type.

2. **Risk-Informed Decision-Making:** To what extent is current decision-making *risk-informed*, meaning that pretrial detention or use of jail or prison at the sentencing stage are reserved for those statistically shown to pose a greater threat of re-offending in the future?

3. **Young Adults:** What is the distribution of outcomes for youth ages 16-24, to what extent do these outcomes vary from older adults, and to what extent are youth outcomes risk-informed?

4. **Racial or Ethnic Disproportionalities:** To what extent does decision-making vary based on race or ethnicity?

5. **Cost Implications:** What is the current cost to taxpayers associated with the use of jail in New York City, and what would be the cost savings produced by select strategies for reducing the jail population?

The thematic overview that follows provides a summary, based on national research, of the rationales for (1) reducing the use of jail; (2) employing a risk-based framework; and (3) affording special attention to youth ages 16-24. A final section reviews a number of other complementary research initiatives in New York City.

The Project of Jail Reduction

As of June 30, 2014, there were 744,600 inmates in local jails nationwide, reflecting a more than fourfold increase since 1980, when the national jail population was 184,000 (Minton 2015). The jail population in 2014 was more than one-third (34.2%) black/African American, representing close to three times the percentage black/African-American (12.4%) in the

general population (Carson 2015; Minton 2015). According to one estimate, 14% of men and 31% of women in jail nationwide have a serious mental disorder (Steadman et al. 2009)

Housing individuals in jail costs an average of $47,057 per inmate per year (or $129 per day) across a sample of 35 jurisdictions surveyed by the Vera Institute of Justice in 2015 (Henrichson, Rinaldi, and Delaney 2015).[5] The cost of jail in New York City—$208,514—was more than four times this average in 2014.[6]

The documented benefits of jail are limited. Studies have found that incarceration, especially for brief periods of time, does not necessarily produce public safety benefits, with some research indicating that incarceration can stigmatize those who are confined, spawn anti-social attitudes, or increase recidivism after release (Cullen, Johnson, and Nagin 2011; Listwan et al. 2013; Loeffler 2013; Spohn 2007). One study finds that as little as 48 hours in jail increases post-release recidivism (Lowenkamp, VanNostrand, and Holsinger 2013a). Research suggests that the harms of incarceration are felt especially among those individuals who pose a relatively low risk of re-offending. Exposed to confinement, many of these individuals see their risk increased by the time they are released (see, e.g., Lowenkamp et al. 2013a). Moreover, whereas state or federal prison sentences protect the public during what is often a lengthy period of confinement, the average length of stay in a local jail nationwide is 23 days (Minton 2015), a relatively brief period of incapacitation.

More than six in ten (62%) jail inmates nationwide (Minton and Golinelli 2014), and three-quarters in New York City, have not been convicted of a crime. Many of those in pretrial detention are eligible for release in theory but cannot afford money bail—with the inability to pay bail often falling disproportionately on members of minority groups (see, e.g., Baradaran 2011; Demuth and Steffensmeier 2004; Neal 2012; Schnacke, Jones, and Brooker 2010). Additional evidence links pretrial detention, net of other factors, to an increased likelihood of both a conviction at the end of the case and a jail or prison sentence (Lowenkamp,

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[5] By comparison, the average cost of jail is estimated to be 35 percent *higher* than the average cost of prison, estimated at $31,286 in 2010 (or $33,996 in 2014 dollars; see Henrichson and Delaney 2012).

[6] The particularly high cost of jail in New York City is largely a result of above average salaries and benefits and a high employee-to-inmate ratio due to a steep decline in the jail population that has not been mirrored by a commensurate decline in the number of jail employees.

VanNostrand, and Holsinger 2013b; Williams 2003) —with these patterns detected specifically in New York City (Phillips 2012; Hahn 2016). Pretrial detention has the effect of creating additional leverage for prosecutors, increasing the incentive for defendants to reach potentially unfavorable plea agreements in order to end their incarceration.

Jail stays have also been linked to collateral consequences after defendants are released, including adverse effects on employment, earnings, housing, families, and communities where incarcerated populations are concentrated (see literature review in Subramanian et al. 2015).

Finally, jails are often cited for overcrowding, inhumane conditions, and violence. Concerning the Rikers Island jail complex in New York City, which houses from 75% to 80% of the city's jail inmates on any day, a recent report by the U.S. Attorney for the Southern District of New York (2014) found a systematic pattern of excessive use of force by corrections officers against adolescent inmates. A report by the city's Department of Health and Mental Hygiene uncovered 129 cases over an 11-month period in 2013 where inmates of all ages—but primarily those with mental illnesses—were seriously injured by corrections officers (see Winerip and Schwirtz 2014). A report by the New York City Comptroller (2014) echoed these findings, drawing attention to rising rates of violent incidents of inmates on inmates, inmates on corrections officers, and corrections officers on inmates in the years leading up to 2014. Since that time, a recent report by the U.S. Attorney's Office (as reported in Schwirtz 2016) cited significant *declines* in violent incidents over the past year, linked to reforms instituted by the city's Department of Correction.

Risk-Informed Decision-Making

Three decades of research indicate that public safety is maximized when applying the Risk-Need-Responsivity (RNR) model of offender intervention, whose foundational principle is to focus intensive interventions on higher-risk individuals, while avoiding policies and practices, including jail, that can deepen the system involvement and potentially increase the likelihood of recidivism among lower-risk individuals (Andrews and Bonta 2010; Andrews et al. 1990; Lipsey 1992).

What is Risk?

General risk is defined as an individual's likelihood of future offending, regardless of the charge. By contrast, *risk of violence* concerns an individual's specific future risk of a serious and violent crime against another person. *Risk of failure to appear* (FTA) concerns an individual's likelihood of attending scheduled court appearances. In many jurisdictions, risk of FTA plays an explicit role in decisions regarding whether to release a defendant, set bail, or remand a defendant while a case is pending. New York State law allows release decisions to be informed by risk of FTA but does *not* allow explicit considerations of public safety risk, meaning that neither general risk nor risk of violence can be considered.[7] It is notable that risk of FTA, which concerns the likelihood that an individual will remember and show up for a scheduled court appearance, can be more difficult to predict in advance than risk to public safety. The RNR model focuses on public safety risk, not FTA risk.

The Risk-Need-Responsivity Model

The Risk-Need-Responsivity (RNR) model is grounded in the field of behavioral psychology and supported by three decades of meta-analytic research regarding "what works" in offender management, supervision, and treatment (see, especially, Andrews and Bonta 2010; and Bonta and Andrews 2007). The three core principles are briefly summarized below.

- **The Risk Principle:** Intensive supervision or treatment should focus on defendants who pose a relatively high risk of re-offense. Conversely, intensive interventions may have unintended negative effects on low-risk defendants by, for instance, interfering with their school or work obligations or placing them in group sessions next to high-risk individuals, who may then exert negative, antisocial influences (Andrews et al. 1990; Andrews and Dowden 1996, Lowenkamp, Latessa, and Holsinger 2006). Ordering low-risk defendants to community supervision or intensive treatment interventions can have negative effects. Even *worse* effects can result from placing low-risk defendants in jail or prison settings (see, especially. Lowenkamp et al. 2013a; Loeffler 2013).

- **The Need Principle:** This principle recommends assessing and treating *criminogenic needs*, defined as personal issues that contribute to risk of re-offense. In identifying which needs are truly criminogenic, research has coalesced around the "Central

[7] See the New York State Criminal Procedure Law, Article 510 (available at http://ypdcrime.com/cpl/article510.htm).

Eight" factors (see, especially Bonta and Andrews 2007). The first factor, (1) criminal history, is *static*, meaning that it cannot be changed (e.g., a prior conviction is a fact about an individual, not a problem that can be treated). The other seven are *dynamic* and thus can be treated. These factors are: (2) criminal thinking (antisocial beliefs and attitudes that are used to justify criminal behavior); (3) pro-criminal networks (gang or antisocial peer involvement); (4) antisocial temperament (i.e., impulsive decision-making); (5) family or marital problems; (6) school or work problems; (7) problematic leisure activities; and (8) substance abuse. In the United States, growing adoption of the "Central Eight" framework has helped improve awareness that potential drivers of crime are complicating and overlapping.

- **The Responsivity Principle:** This principle holds that therapeutic responses should use cognitive-behavioral approaches adapted to the needs, attributes, and learning style of the individual. This principle also implies that treatment should be sensitive to the challenges of specific subgroups, such as youth, women with children, and individuals with mental health problems, such as trauma and major depression. Although trauma and mental illness are not criminogenic—they do not significantly contribute to risk—they therefore remain important to address in treatment (see, e.g., Lipsey and Landenberger, and Wilson 2007; Wilson, Bouffard, and Mackenzie 2005).

Implications for Decision-Making

Given the principles of the Risk-Need-Responsivity model, risk-informed decision-making implies the following:

1. **Low-risk defendants should receive minimal interventions either pretrial or post-disposition—**presented with minimal supervision or treatment conditions or other obligations as is legally feasible given the charges against them and applicable sentencing laws.

2. **Moderate- and high-risk defendants are suitable candidates for supervision or treatment,** with the specific dosage and intensity of supervision or treatment increasing depending on the risk level. Further, where treatment is ordered in addition to supervision, moderate- and high-risk individuals should be treated in conjunction with the Need and Responsivity principles, involving an assessment of the "Central Eight" factors and use of cognitive-behavioral approaches adjusted to the age, gender, mental health, and other attributes of the individual.

3. **Defendants who pose a high risk of violence are the most appropriate candidates for jail**, including pretrial detention and lengthy custodial sentences at the dispositional stage; in addition to social scientific criteria, incarceration must be used in accordance with relevant principles of due process and legal proportionality.

Risk-informed decision-making is not a strategy to eliminate jail; rather, it is a strategy for limiting jail to those whose incarceration is most justified on public safety grounds.[8]

Risk-informed decision-making also implies that a defendant's risk will be assessed utilizing tools that have been empirically validated. Research has documented that the professional judgements of decision-makers empirically yields less accurate classifications of risk than scientifically validated assessment tools (see, e.g., Andrews, Bonta, and Wormith 2006; Bonta and Andrews 2007; Reich, Fritsche, Rempel, and Farley 2016). The use of validated risk assessments does not imply withdrawing professional judgment from the process altogether. Rather, formal risk assessment is intended to aid and inform judgment by providing risk-based information that, probabilistically, can be deemed reliable (see Adler, Fritsche, Rempel, and Tallon 2016). Decision-makers are still responsible for interpreting risk-based information by crafting appropriate supervision, treatment, or other responses. Further, those who create risk assessment instruments in the first place are responsible not only for validating them for entire defendant populations but also for examining *equity*, defined as determining that they indeed validly predict risk for different racial/ethnic subgroups and for women as well as men (see discussion in Baird et al. 2013).

A final element of risk-informed decision-making involves the recognition that certain types of crimes may be driven by distinct underlying precipitants. For example, some assessment tools are specifically validated to predict risk of domestic violence or risk of sexual violence, two types of re-offending that can involve unique correlates.

For the purposes of the current research project, separate risk algorithms were constructed and empirically validated to predict general risk (any re-arrest) and risk of violence (violent felony re-arrest) specifically with a New York City defendant population. Tools validated locally tend to produce superior predictive accuracy than tools imported from other jurisdictions without adaptation (see, e.g., Byrne and Patavina 2006; Flores, Lowenkamp, Smith, and Latessa 2006). Indeed, the construction of a unique, empirically tested set of New York City-based tools was deemed essential to the credibility of the current research.

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[8] This research report assesses the use of jail with a risk-informed decision-making perspective. In practice, other criteria must also be considered. Two examples include the nature and severity of the underlying offense and consequent legal basis for meeting out punishment; and concerns related to fairness or due process, particularly in the context of pretrial detention.

Youth Justice Focus

This research project first arose in a meeting of experts across New York City on *Young Adults and the Justice System*, hosted by the Mayor's Office of Criminal Justice on April 29, 2014. Meeting participants noted that more than one-third of all citywide arrests processed in the adult criminal justice system, and an even higher percentage of arrests for violent felonies, are committed by youth ages 16 to 24. Participants also noted that these youth have higher recidivism rates than older defendants, making them a particular public safety concern. Whereas this research project ultimately focused on the entire defendant population processed in the adult criminal justice system, key players at the Mayor's Office of Criminal Justice retained an interest in isolating youth outcomes.

Previous research completed by the Center for Court Innovation examined disposition and sentencing outcomes throughout New York State for a smaller subgroup, consisting of criminal defendants ages 16 and 17 who, in other contexts, would be defined as legal minors (Reich, Farley, Rempel, and Lambson 2014).

In recent years, some criminal justice policymakers have adopted a more expansive definition of youth that extends to age 24. This shift in thinking reflects a recognition that the prefrontal cortex of the brain continues to develop through the early- to mid-20s, leading individuals of these ages, like younger adolescents, to be more prone than older adults to engage in risky behaviors and impulsive decision-making (e.g., see Monahan, Steinberg, Cauffman, and Mulvey 2009; Steinberg 2014). In addition, individuals in their late teens and early 20s often have not completed the transition to the adult world of work, which means their daily routines and needs may have more in common teenagers than older adults. Indeed, the United Nations has, for years, defined "youth" to encompass individuals ages 15 to 24.[9]

The characteristics of young people—including a tendency to engage in impulsive decision-making, deficits in consequential thinking, and antisocial behavior—leads them to be higher risk, on average, than older individuals. Research suggests that a developmentally-informed,

[9] See the United Nations' *Definition of Youth* (downloaded June 16, 2016) at http://www.un.org/esa/socdev/documents/youth/fact-sheets/youth-definition.pdf.

rehabilitative response will yield better outcomes for young adults in the long-term than a punitive approach (National Research Council 2013).

Related Research in New York City

This report represents the third in a series of Center for Court Innovation publications focused on different components of the criminal justice system that contribute to the use of jail in New York City. The first report examined flaws in the city's bail payment system leading to delays in the ability of defendants to make bail as well as to confusion and inconvenience for the family members or friends who seek to pay bail on a defendant's behalf (White et al. 2015). The second report examined felony case processing in New York City, pointing to factors that contribute to longer felony case processing times and longer jail stays (Rempel et al. 2016). The current report extends the scope of the analysis to additional points on the case processing continuum.

This report also follows the publication of two reviews of national literature regarding the potential harms of jail. The first of these reviews considered the national scope of jail utilization and potential harms to defendants, their families, and communities (Subramanian et al. 2015). The second examined the fiscal costs of jail, both in general terms and through original research in 35 local jurisdictions, including New York City (Henrichson et al. 2015).

Beginning in the spring of 2015, the John D. and Catherine T. MacArthur Foundation launched the *Safety + Justice Challenge*, an initiative to encourage jurisdictions across the country to plan and implement jail reform strategies. New York City was included among the selected jurisdictions. The final analytic plan for the current project was in part shaped by knowledge of the specific stages of criminal case processing that emerged as focal points in New York City's strategic planning process.

Study Limitations

As will become clear from the following chapter on data and methodology, the current research has several limitations, of which four fundamental ones are outlined here.

Limited Capacity to Project Specific Jail Population Reductions

The first major limitation is that most of the empirical findings in this report are not based on *length of stay* data that would indicate the exact number of days in jail resulting from each jail episode. Without length of stay data, it is not possible to quantify potential reductions in the jail population that new policies would produce. Thus, whereas this report's findings suggest that sizable sub-populations that are currently jailed might be safely diverted, this report cannot draw precise estimates regarding the number of "jail-bed days" per year that would be saved through newly implemented diversion policies and practices. For example, if the kinds of defendants who would be easiest to divert away from jail are also those that average the shortest length of stay in the preexisting status quo, the actual jail population reductions resulting from a new set of policies could be less than expected.

Legal Obstacles to Incorporating Risk into Pretrial Decisions

The risk-informed decision-making framework that this report adopts derives from national research demonstrating that adherence to the Risk Principle can yield recidivism reductions. However, despite this social scientific rationale, there are potentially critical legal obstacles to putting such a framework into practice. Specifically, New York State law does not allow considerations related to risk of re-offense to be factored into pretrial release decisions by the arraignment judge (or the judge in any future court appearances). The only type of actuarial risk that judges may explicitly consider is risk of failure to appear in court. Thus, reducing pretrial detention among individuals who pose a minimal-to-moderate risk of re-offense, as a practical matter, would require creative protocols that carefully introduce risk information into the process while remaining compliant with state law. Along these lines, one strategy that New York City is currently piloting is to administer a pretrial risk assessment tool but, then, to use the results only to inform the judge of whether a defendant is "eligible" for an alternative to detention, without also informing the judge of the defendant's specific risk level (e.g., low, moderate, or high risk). It is unclear whether this pilot strategy can yield large-scale reductions in the jail population in the absence of changes to New York State laws that would allow each defendant's specific risk of re-offense to be explicitly considered and discussed in open court while arriving at a release decision.

Significant Unknowns Regarding Future Budgetary Changes

The projections of specific cost savings that could result from new policy scenarios, as provided towards the end of this report (Chapter 7), could prove to be inaccurate based on unforeseen practical, political, and policy actions taken by local officials. As in any cost savings analysis, the one provided here is based on assumptions—empirically-based assumptions, but assumptions nonetheless—regarding the real cost implications that would flow from each per-bed saving in the jail population. Yet, for any saving to be realized in practice requires policymakers to adjust agency budgets, though budgets necessarily evolve, at least in part, based on a political process that cannot be modeled in advance through statistical methods. Hence, the cost savings projections contained in this report are best understood as a logical projection of potential fiscal ramifications, not a precise statement as what would factually change in city or state budgets.

System Changes in 2015 and 2016

This report primarily draws on case-level data obtained for criminal cases originating in 2012, 2013, or, in some analyses, 2014. However, the policy landscape in New York City has undergone meaningful changes in the two years that followed, 2015 and 2016, largely due to reforms implemented by the Mayor's Office of Criminal Justice (MOCJ). Whereas what follows is not an exhaustive list, reforms that may already have altered, or may soon alter, the use of jail in New York City include:

Supervised Release: In March 2016, the Mayor's Office of Criminal Justice launched a citywide supervised release initiative intended each year to divert an estimated 3,000 individuals from pretrial detention to community supervision. Eligibility extends to all misdemeanors and nonviolent felonies, excluding domestic violence, A felonies, and defendants who are classified by a formal risk assessment tool as posing a high risk of felony re-arrest. Consistent with state law, the judge may be informed of whether or not a given defendant is eligible for the supervised release program but is not provided information about the defendant's specific risk level.

Case Processing Reform: In April 2015, the Mayor's Office of Criminal Justice and the New York State Unified Court System launched a case processing reform initiative designed to examine and address the drivers of delay in the processing of felony cases, with a special focus on felonies that are indicted and handled in the Supreme Court. The initiative was

driven by an explicit interest in reducing the time that defendants are held in pretrial detention while awaiting the outcome of their case.

Bail Lab: In 2015, the Mayor's Office of Criminal Justice established The Bail Lab, an effort to rethink the use of traditional money bail and to facilitate the payment of bail where traditional bail is required. In turn, over the past year, the Bail Lab put into place a series of research-based strategies to ease obstacles to bail payment, including: (1) an online bail payment system; (2) an online guide to the bail system to ensure that defendants, family members, and friends understand the process; (3) installation of ATM machines in all courthouses; (4) reduction of permanent fees associated with bail payment; and (5) ensuring that whenever a bail amount of $1 is set for administrative reasons, and this $1 fee is all that is holding a defendant in jail, defense attorneys and the court are promptly notified. (For further details on these reform efforts, see http://bail-lab.nyc/improving-bail-payment-1.)

New Failure to Appear Risk Tool: As discussed in this report, the current failure to appear (FTA) risk tool in New York City classifies 50% of defendants as posing a high risk of FTA, leading them to be "not recommended for ROR." The New York City Criminal Justice Agency (CJA), which designed the tool that is currently in use, is presently developing and validating a new tool that is expected to yield improved predictive accuracy and will be intentionally crafted to place significantly fewer defendants in the high risk category. While the new tool has yet to be released, it is anticipated that its implementation will have the practical effect of moving prosecutors to recommend bail and judges to set bail on fewer cases.

Organization of the Report

Chapter 2 reviews the available data and methodology. Chapter 3 presents the background characteristics and risk distribution—including both general risk and risk of violence—of the New York City defendant population. Chapters 4 through 6 report research findings that apply to different stages of case processing: pre-arraignment (Chapter 4); post-arraignment but prior to a case disposition (Chapter 5); and at disposition and sentencing stage (Chapter 6). Chapter 7 presents the costs to taxpayers of current jail policies as well as the marginal cost savings that could be gained by implementing a number of discrete jail reform scenarios. A brief set of conclusions and recommendations are in Chapter 8.

Chapter 2
Data and Methodology

Research findings were based on data collected on New York City criminal cases that were arrested or arraigned in 2011 through 2014. This chapter summarizes the data sources and key measures in the analysis and introduces the project's analytic plan.

Data Sources

Case-level data was compiled and, where possible, merged from four sources:

- **New York State Unified Court System:** The Division of Technology of the New York State Unified Court System (UCS) provided data for all cases either arraigned in court or disposed from January 1, 2011 through November 7, 2014. A separate dataset was obtained on all cases with a final disposition date on any day in 2014. Although most analyses were limited to cases arraigned on felony or misdemeanor charges, the UCS dataset included violations, local offenses, and other non-finger-printable offenses.

- **New York State Division of Criminal Justice Services:** The state Division of Criminal Justice Services (DCJS) provided overlapping data for all cases arrested or disposed from January 1, 2011 through December 31, 2014. DCJS also supplied criminal history and recidivism data for all defendants with at least one arrest within the 2011-2014 instant case period. Notably, the DCJS data was limited to arrests on misdemeanor or felony charges—omitting violations or lesser offenses—and was limited to finger-printable offenses, which excludes most vehicle offenses (except Driving While Intoxicated, which is included) and other select misdemeanors.[10]

- **New York City Criminal Justice Agency:** Data from the Criminal Justice Agency (CJA), a nonprofit agency that interviews criminal defendants prior to appearing in court, was obtained for cases arrested in 2011 or 2012. The CJA dataset was the only one to include measures of defendant community ties (employment or school status)

[10] For a list of non-fingerprintable offenses put together by the Division of Criminal Justice Services, see http://www.criminaljustice.ny.gov/crimnet/ccman/non_fp_codedlawmanual.pdf.

as well as the bail recommendation that is made available to judges and attorneys at arraignment (recommended for ROR, moderate risk, or not recommended for ROR).

- **New York City Department of Correction:** A fourth data source, provided by the New York City Department of Correction, was used to calculate pretrial lengths of stay for purposes of the cost analysis. The average length of pretrial stay in New York City was 42 days among all 2014 admissions, but the median was five days, indicating that more than half of jail stays lasted less than one week.[11]

Efforts were undertaken to create a comprehensive merged dataset, but this task proved only partially feasible.[12] Ultimately, it was necessary to create two merged datasets, one whose denominator equaled the totals in the DCJS data and another whose denominator equaled the totals in the UCS data. For both datasets, merging across sources was successfully achieved for more than three-quarters of the total: that is, both datasets integrated measures from all data sources (except DOC) in most cases. Having established two merged datasets, each with

[11] Estimates of lengths of stay are calculated using information for the cohort of individuals entering the jail in 2014. Data disaggregated by borough and charge severity were unavailable for 2013. At the end of the data collection period (November 2015), 1,284 individuals of 72,764 admissions were still incarcerated. They were given an end date of November 30, 2015 in order to calculate bed days, so their actual days are underestimated.

[12] The DOC dataset was not merged with other data sources but was instead analyzed exclusively for costing purposes (see results in Chapter 7). Regarding the three other sources, for the 2011 and 2012 index years provided by both data sources, nearly all UCS and CJA data could be successfully merged, with only a small fraction of cases available in one but not the other data source. However, problems were encountered when seeking to merge the resulting UCS/CJA dataset with DCJS data (for the 2011 through 2014 years that both UCS and DCJS sources covered). In addition to select merging problems based on inconsistent or missing necessary identifiers in one dataset or the other, the DCJS data yielded lower annual totals than the UCS/CJA data, as a result of the DCJS dataset omitting non-finger-printable arrests. Essentially, analyses relying on DCJS data under-counted total numbers of misdemeanors as a result of the DCJS data omitting misdemeanors that were not fingerprinted. On the other hand, because the UCS data only included cases that actually made it to court, the UCS data omitted cases that, conversely, were present in the DCJS data, which were arrested but which the prosecutor declined to file in court. In addition, due to the timing of when data was obtained, the UCS dataset based on arraignment date omitted cases arraigned after November 7, 2014.

a slightly different denominator, analyses were conducted using the dataset with the most complete information for each stage of case processing.[13]

Data Elements

Available data yielded the following types of measures, among others:

- **Arrest, Arraignment, and Disposition Charges:** Data included the top charge, respectively at arrest, arraignment, and disposition (if the case ended in a plea or conviction). Charges were generally distinguished by whether they were at the felony or misdemeanor levels and, if a felony, by nonviolent or violent felony offense status. Specific penal law charges were also obtained and grouped into smaller numbers of summary categories for some analytic purposes. Available data also enabled creating a semi-reliable, though imperfect, flag for whether each case involved domestic violence.

- **Demographics, Community Ties, and Neighborhood:** Available data included defendant gender, age, race/ethnicity, and place of birth, and, for the 2011-2012 years when CJA data was available, employment/school status and living situation. Defendant ages were generally 16 years and older, although because serious charges among juveniles, ages 15 and younger, are sometimes prosecuted in the adult criminal court, a tiny fraction of the defendant population (0.3%) was younger than age 16. Data also enabled coding the borough (of the city's five boroughs) and police precinct

[13] The dataset with complete UCS-based information was used at the arrest decision-point, since only the UCS data had a flag for whether law enforcement took the defendant into custody or issued a DAT. Similarly, only the UCS dataset (as well as merged CJA data) included release status and reliable case processing fields, making UCS the primary source in examining release decisions and case processing from arraignment to disposition. Additionally, because the most significant omission that reduced the totals in either data source was the exclusion of non-finger-printable arrests in the DCJS data, whenever seeking arrest or arraignment topline totals, overall or by charge, the UCS-Based dataset was used. On the other hand, the dataset with complete DCJS data was used to analyze decline to prosecute decisions, since only the DCJS data included cases not filed with the court. Also, DCJS disposition and sentencing data fields were deemed more comprehensive than those in the UCS data. Finally, since only DCJS provided complete criminal history and recidivism data, all analyses using this data at any decision-point, including analyses distinguishing defendants by risk level, had to utilize the DCJS data as the primary source, while incorporating merged UCS/CJA data where possible.

of the arrest, from which a dichotomous "high arrest" precinct variable was created that grouped together precincts with, overall, the most arrests across the city.[14]

- **Desk Appearance Ticket (DAT) Status:** A flag was available for whether the defendant was taken into custody by law enforcement from arrest to arraignment or released with a DAT, which gives a scheduled date when the defendant should report to court.

- **Release Status:** Data enabled coding the release status as of arraignment and disposition into four categories: (1) remanded, (2) did not make bail, (3) made bail, and (4) release on recognizance (ROR). For some purposes, these four-category measures were dichotomized into a summary *release decision* measure that grouped together remand and both bail categories as opposed to ROR; and a summary *detention status* measure that grouped remand and not make bail into detained and made bail and ROR into released.

- **Case Processing:** Data enabled creating measures for days (sometimes recoded to months) from arraignment to disposition as well as between key interim milestones, including time in Criminal Court; time in Supreme Court (if applicable); and time from indictment to Supreme Court arraignment. Warrant time and time involved in fitness-to-stand-trial proceedings were subtracted from total case processing time (utilizing pre-set UCS time measures that engage in this subtraction). Data also included numbers of court appearances and, where a felony case was indicted, included the indictment date.

- **Disposition:** Summary measures were created for the case outcome, for most purposes coded into five categories: (1) criminal conviction (felony or misdemeanor levels); (2) youthful offender finding;[15] (3) violation conviction (a violation is

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[14] Designated "high arrest" precincts were: Mott Haven/Melrose (40th), Soundview (43rd), Morris Heights (44th), University Heights (46th), and Bedford Park (52nd) in the Bronx; East Flatbush (67th), Ocean Hill/Brownsville (73rd and 81st), East New York (75th), Crown Heights (77th), Bedford-Stuyvesant (79th), and Bushwick in Brooklyn; East Harlem (25th), Central Harlem (28th), Harlem (30th and 32nd), Washington Heights/Inwood (33rd and 34th) in Manhattan; Jamaica (18th and 19th) and Jackson Heights in Queens; and St. George (120th) in Staten Island.

[15] In New York State, defendants ages 16-18 who would otherwise receive a criminal conviction may have their cases resolved with a youthful offender (YO) finding instead, which involves sealing the case and thereby preventing it from becoming part of a public criminal record. As specified in Article 720 of the New York Criminal Procedure Law, youth facing a conviction are generally eligible for YO status if ages 16-18, with some limitations based on the nature and

technically not a crime in New York State), (4) adjournment in contemplation of dismissal (ACD);[16] and (5) straight dismissal. Where applicable, the disposition field was also coded as decline to prosecute, although decline to prosecute decisions were analyzed separately, with declined cases then omitted from later analyses of case dispositions and sentences.

- **Sentencing:** Data enabled classifying the sentence as prison, jail, jail/probation split, straight probation, fine, conditional discharge, and other sentence (with available sentencing categories recoded into fewer for most purposes). Data was also available on the sentence length for prison, jail, and probation sentences.

- **Criminal History:** For both prior arrests and convictions, continuous and dichotomous measures were created for any priors as well as for priors of distinct charge types, including prior misdemeanors, felonies, violent felonies, drug cases, child victim cases, weapons or firearm cases, and DWI cases.

- **Noncompliance History:** DCJS data enabled computing measures for prior cases in which a warrant was issued for failure to appear (FTA), distinguishing pre-arraignment warrants (in DAT cases) from post-arraignment warrants. Measures were also created for prior probation and parole revocations.

- **Current Criminal Justice Status:** Measures were created for whether the defendant had an existing open case and whether the defendant was on probation at the time of the current arrest.

- **Recidivism:** A series of continuous (number of re-arrests) and dichotomous (at least one re-arrest) measures were created for any re-arrest, misdemeanor re-arrest, felony re-arrest, and violent felony offense re-arrest. For each charge category, measures were created at the six-month, one-year, and two-year marks and for tracking periods that respectively began on the instant case arrest date and the instant case disposition date and that did and did not adjust for time at risk (i.e., time when the defendant was not held in jail or prison). Additionally, survival time measures were created for the number of days to first re-arrest. Ultimately, reported recidivism analyses utilized a

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severity of the top charge (for instance, A level felonies are ineligible) and based on whether the defendant was previously convicted of a felony or granted YO status on a prior felony.

[16] In New York State, an adjournment in contemplation of dismissal, or ACD, represents an agreement to dismiss the case automatically after six months or one year depending on the charges, unless the prosecutor moves to reopen the case due to noncompliance with conditions, such as community service, that are sometimes imposed in conjunction with an ACD.

small number of dichotomous re-arrest measures at six months and two years for any re-arrest, felony re-arrest, and violent felony re-arrest.

- **Length of Stay:** Department of Correction data was used to calculate length of stay in jail for admissions in 2014.

Analytic Plan

The analytic plan included five components: (1) analysis of decision-making at multiple stages of the criminal case processing continuum; (2) multivariable modeling; (3) testing for racial and ethnic disproportionalities; (4) risk analysis; and (5) cost analysis. Analyses were for the entire adult criminal justice population as well as for youthful defendants ages 16-24, with the exception of the cost analysis, which only studied the total population.

Decision-Making at Multiple Stages

The case processing continuum was divided into five stages.

- **Arrest:** All individuals in the analysis were arrested. Some were taken into custody during the period from arrest to Criminal Court arraignment, which involves booking at the police precinct followed by detention, usually spanning one night, in a holding cell. Other individuals, based on their charge and other discretionary criteria, were issued a Desk Appearance Ticket (DAT), which involves initial processing at the police precinct, followed by release, with a requirement to appear in court on a specifically designated later arraignment date.

- **Decision to Prosecute:** Individuals issued a DAT are all prosecuted in court—they must at least appear on their scheduled arraignment date (although some defendants may have their cases dismissed at arraignment). Those taken into custody at arrest may be prosecuted or the prosecutor may decline to file charges (e.g., based on the evidence).

- **Pretrial Release and Detention:** For cases not resolved at arraignment, prosecutors may request remand without bail (which only happens in 1% of cases), bail, or ROR status. Judges then make a release decision and, where bail is involved, set the amount and type of bail (see White et al. 2015). In turn, defendants may make bail at arraignment, meaning that a friend or family member pays the bail within a several-hour window prior to transport from the courthouse to jail; defendants may make bail at a later time (after some period of pretrial detention); or defendants may be detained throughout case processing period. For most analytic purposes, since the focus was on

decision-making by criminal justice actors, defendants were divided into those for whom the judge set bail (or remanded) versus those given ROR status at arraignment.

- **Case Processing:** This stage involves case processing time and numbers of court appearances from arraignment to disposition. This report briefly draws attention to major, overarching themes and patterns, since case processing in New York City was the focus of a separate recent publication (Rempel et al. 2016).

- **Disposition and Sentencing:** Analyses at this stage concern the case disposition and, if convicted, the sentence, with a particular focus on the use and length of jail sentences among different defendant populations.

Multivariable Modeling

In determining which defendant characteristics were associated with decision outcomes, a multivariable framework was employed to isolate the effect of different defendant characteristics (e.g., demographics, criminal history, charges, etc.) while simultaneously controlling for other characteristics. For the most part, a standard set of predictor variables was utilized. They included: (1) *borough*; (2) *demographics:* sex, age (often with a separate covariate for the 16-17-year-old or 16-24-year-old age ranges), race/ethnicity (black, Hispanic/Latino, white, Asian, and additional race/ethnicity, with Asian and additional categories typically combined), and high arrest neighborhood (as defined above); (3) *prior criminal history:* prior conviction, prior felony conviction in past 3 years, prior misdemeanor convictions in past 3 years (coded 0, 1, 2, or 3 or more), ten or more prior misdemeanor convictions in past 3 years, prior violent felony conviction, prior jail or prison sentence, current open case, and currently on probation; (4) *prior noncompliance history:* FTA on prior case; number of prior cases with FTA in past 3 years (coded 0, 1, 2, or 3 or more), prior probation revocation, and prior parole revocation; (5) *charge severity* (misdemeanor, nonviolent felony, or violent felony); and (6) *charge type:* domestic violence, property, misdemeanor drug possession, felony drug possession, felony drug sales, marijuana, petit larceny or assault. In predicting different outcomes, slight deviations from this list were employed at times, based on exploratory analysis.[17]

[17] For example, some final models included whether defendant was born in the United States; and in predicting the use of jail or prison at sentencing, pretrial detention status was added as an independent variable.

Racial and Ethnic Disproportionalities

As part of the project, we were also interested in understanding whether and to what extent racial/ethnic disproportionalities were present in the use of jail. Prior research indicates that the percentage of the jail population that is black/African-American is almost three times higher than the equivalent percentage in the general population, both nationally (43% of the jail population v. 12% in the U.S. general population) and in New York City (57% v. 22%) (e.g., see Minton et al. 2015; and see data from the U.S. Census and New York City Department of Correction). By utilizing the aforementioned multivariable framework, analyses sought to isolate the role of race/ethnicity in decision-making, net of other observable factors (allowing that it is impossible to rule out a mitigating role of unobserved factors for which data could not be collected).

Risk Analysis

Key criminal justice decisions—specifically, decisions related to issuing a DAT, setting bail, and sentencing a defendant to jail—were assessed for adherence to risk-informed decision-making principles, as described in Chapter 1.

To conduct a valid risk analysis, it was first necessary to create a valid risk classification system. Accordingly, two risk assessment tools were created—one to classify defendants based on their general risk (likelihood of re-arrest) and the other to classify defendants based on their violence risk (operationalized as likelihood of re-arrest for a violent felony offense). The tools were created using a complete sample of New York City defendants arrested on felony or misdemeanor charges in 2012. The tools were then validated with a complete 2011 sample and a partial sample of defendants arrested in the first two months of 2013, for whom at least two years of follow-up tracking time for re-arrest was available in the project dataset. Since the unit of analysis was defendant (one case was randomly selected for defendants with multiple arrests in the same year), all risk-based analyses in this report are defendant-based.

Final Risk Algorithms: Separate algorithms were created and empirically validated to predict *general risk* (any re-arrest) and *violent felony risk* (any violent felony re-arrest).[18] For each of these two types of risk, separate algorithms were also created for defendants arrested on misdemeanor and felony charges.[19] These algorithms all drew from the following factors:

- **Prior Convictions and Incarceration:** Prior conviction (yes/no); prior felony conviction in past 3 years (yes/no); prior violent felony offense conviction (only included in algorithms predicting violent felony re-arrest, yes/no); prior misdemeanor convictions in past 3 years (0, 1, 2, or 3 or more); ten or more prior misdemeanor convictions in past 3 years (yes/no); and prior jail or prison sentence (yes/no).

- **Prior Failure to Appear (FTA):** Prior case with FTA for scheduled court appearance (yes/no); and number of prior cases with FTA in past 3 years (0, 1, 2, or 3 or more)

- **Prior Supervision Revocations:** Prior probation revocation (yes/no); and prior parole revocation (yes/no).

- **Current Criminal Justice Status:** Current open case (pending at time of current arrest, yes/no); and currently on probation (yes/no)

- **Current top charge:** Varying charge types included in respective algorithms for misdemeanor and felony defendants and for general risk and violent felony risk.

- **Demographic Risk Factors:** age (younger classified higher risk); and sex (male classified higher risk.

Each algorithm weighted each individual risk factor based on the respective strength of its effect on the outcome in question (re-arrest or violent felony re-arrest). Technically, final weights were based upon multivariable models, with unstandardized regression coefficients divided by a constant of 0.2 and then rounded to the nearest whole number. Consequently, the resulting raw risk scores were also whole numbers. For example, risk scores for general

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[18] An additional risk algorithm was created to predict general risk and risk of domestic violence re-arrest specifically where the instant case involves domestic violence. Results utilizing this algorithm will be included in a separate forthcoming research brief.

[19] Separate algorithms were created for misdemeanor and felony defendants, given findings obtained from exploratory analyses that there were small but non-negligible variations in the relative effects of different risk factors for each of these two charge severity categories.

risk ranged from zero to 48 if the defendant's current charge was a misdemeanor and ranged from zero to 39 if the defendant's current charge was a felony. Appendix A provides the final list of risk factors and the resulting weighting schemes for each algorithm, and Appendix B provides descriptive characteristics for each risk factor in the 2012 tool development sample.[20]

Risk Categories: Having obtained raw risk scores, cut points were established that divided the continuous scores into five categories: minimal, low, moderate, moderate-high, and high risk. In effect, cut points had to be established four times: for general risk for misdemeanor defendants; general risk for felony defendants; violent felony risk for misdemeanor defendants; and violent felony risk for felony defendants. Although created through separate mathematical processes, the final classification schemes were designed so that for each type of risk (general and violent felony), each risk category had the same substantive meaning for misdemeanor and felony defendants. For example, a misdemeanor defendant classified as high risk had a comparable average re-arrest rate as a felony defendant classified as high risk; and a misdemeanor defendant classified as high risk for a violent felony had a comparable average violent felony re-arrest rate as a felony defendant classified as high risk for a violent felony.

Performance: Performance statistics indicate that the risk assessment tools have good-to-very good predictive accuracy. Table 2.1 presents actual six-month and two-year re-arrest rates for those placed in each risk category. The results demonstrate that re-arrest rates vary substantially from the minimal to high categories for re-arrest, felony re-arrest, and violent felony re-arrest—where the general risk tool was used to predict both re-arrest and felony re-arrest and the violent felony risk tool was used to classify violent felony re-arrest. In short, from inspecting the raw re-arrest rates in Table 2.1, it is clear that the tools effectively

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[20] Before finalizing the risk algorithms used to classify the population, analyses were performed with four outcome variables that, respectively: (1) began the tracking period on the arrest date for the index arrest; (2) began the tracking period on the arrest date or, if the defendant was sent to pretrial detention, on the date of release from detention; (3) began the tracking period on the disposition date; or (4) began the tracking period on the disposition date or, if the defendant was sentenced to jail or prison, on the estimated release date based on sentence length. There were barely any differences in the resulting predictor variables and, ultimately, the first of the above mentioned tracking periods was utilized, with separate analyses conducting over six months (a brief span approximating a period of pretrial detention) and two years.

differentiate the real re-arrest rates found among five progressively higher risk categories of defendants.

Furthermore, Table 2.1 also provides Area under the Curve (AUC) statistics for the original 2012 defendant sample used to create the risk classification system and for the 2011 and 2013 validation samples. The AUC is a widely accepted statistic that indicates the capacity of a risk assessment tool to accurately differentiate individuals who are and are not, in fact, re-arrested. An AUC in the range of 0.600 to .700 is considered acceptable; .700 to .800 is good to very good; and .800 or higher is excellent (but rarely seen in practice). At the two-year mark, the AUC with the 2013 validation sample, for example, was .741 for predicting any re-arrest and .763 for predicting violent felony re-arrest, thus falling in the middle of the good-to-very good range—and, in general, comparing favorably to the AUC statistics produced by most studies of nationally disseminated risk assessment tools. Notably, the AUC statistics barely changed from year to year, suggesting that the dynamics underlying risk among New York City defendants is not particularly susceptible to rapid changes over time.

Equity: Shown at the bottom of Table 2.1, there was little variation in predictive accuracy for defendants from different racial or ethnic groups. This result is important, for other risk assessment tools have faced criticism for demonstrating weaker validity with black or Hispanic/Latino defendants, resulting in an over-classification of those defendants into higher risk categories (see Angwin, Larson, Mattu, and Kirschner 2016). Results suggest that such a bias did not materialize in the current project.

Risk of Failure to Appear: In addition to the aforementioned risk assessment tools created especially for this research, for cases arrested in 2011 or 2012, a risk of failure to appear (FTA) measure created by the New York City Criminal Justice Agency (CJA) was already available. The risk of FTA tool divided the population into three classes: low, moderate, and high risk—technically labeled as recommended for ROR, moderate risk, and not recommended for ROR.

Analysis conducted for this project made clear that performance statistics for classifying defendants on risk of failure to appear are substantially inferior to performance statistics for the two public safety-based risk tools created expressly for this project. Independent risk tool creation efforts by CJA find, similarly, that risk of felony re-arrest can be predicted with higher accuracy than risk of FTA (Healy 2015), an important finding with implications for pretrial decision-making (addressed in Chapter 5).

Table 2.1. Performance of the New York City Risk Classification System: 2012 Defendants (Except Where Otherwise Specified)

Risk Levels and Performance of the Classification Scheme	Type of Outcome		
	Any Re-Arrest	Felony Re-Arrest	Violent Felony Re-Arrest
SIX-MONTH FOLLOW-UP PERIOD			
Re-Arrest Rates by Risk Level			
Minimal risk	6%	1%	0.5%
Low risk	9%	2%	1%
Moderate risk	15%	4%	3%
Moderate-high risk	25%	9%	6%
High risk	41%	15%	11%
Overall six-month re-arrest rate	***18%***	***6%***	***2%***
Area Under the Curve (AUC) for Five-Category Classification System			
Cases with Current Misdemeanor Charge	0.721	0.741	0.759
Cases with Current Felony Charge	0.686	0.695	0.747
All Cases	***0.714***	***0.727***	***0.761***
Validation with 2011 Sample: All Cases	***0.716***	***0.731***	***0.766***
Validation with 2013 Sample: All Cases	***0.718***	***0.733***	***0.762***
TWO-YEAR FOLLOW-UP PERIOD			
Re-Arrest Rates by Risk Level			
Minimal risk	14%	4%	2%
Low risk	24%	8%	5%
Moderate risk	37%	14%	9%
Moderate-high risk	59%	28%	17%
High risk	78%	46%	29%
Overall two-year re-arrest rate	***41%***	***19%***	***7%***
Area Under the Curve (AUC) for Five-Category Classification System			
Cases with Current Misdemeanor Charge	0.753	0.757	0.753
Cases with Current Felony Charge	0.722	0.718	0.739
All Cases	***0.747***	***0.747***	***0.755***
Validation with 2011 Sample: All Cases	***0.749***	***0.749***	***0.761***
Validation with 2013 Sample: All Cases	***0.741***	***0.746***	***0.763***
EQUITY TEST: AUC BY RACE/ETHNCITY			
AUC for Five-Category System: Two-Year Re-Arrest by Race/Ethnicity			
All Cases	***0.747***	***0.747***	***0.755***
Black/African-American	0.734	0.727	0.741
Hispanic/Latino	0.743	0.742	0.749
White (non-Hispanic)	0.728	0.738	0.732

Cost Analysis

To develop the cost and cost-savings analyses, researchers at the Vera Institute of Justice used DCJS and UCS data to construct a case processing model that estimates the share of cases to reach each stage of case processing for the 2013 cohort of arrestees, disaggregated by charge severity, borough, and scores that quantify the risk of any re-arrest and the risk of a violent felony arrest (whose calculations are described above).[21] Specifically, researchers calculated the percentage of misdemeanor and felony cases to reach each stage of case processing (e.g., at arraignment, 48 percent of cases were disposed; 52 percent of cases were continued).[22] These percentages were multiplied by the full universe of applicable arrests to estimate the number of cases at each case processing stage. The number of cases to receive pretrial detention, as well as prison and jail sentences, were then multiplied by the average length of stay to calculate the number of bed days for each cohort.

The resulting statistical model can be used to estimate all downstream effects from policy changes that would modify the number or proportion of a given group of cases that reach each stage of case processing.

Bed Days: Jail and prison bed days were calculated by multiplying the number of cases that spent time in custody by the average length of stay for the applicable subgroup (disaggregated by charge severity, borough, and risk score).

Unit Costs: The baseline cost analysis used the average cost of prison and jail to measure the total cost of incarceration attendant to an annual cohort of arrestees. The cost-saving

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[21] Vera also calculated the share of cases to reach each case processing stage in both 2012 and 2014 and found that the shares did not substantially vary from year to year.

[22] The datasets included some cases that were missing data for one or more stages of case processing. Missing data were excluded from all percentage calculations. The full 2013 cohort based on UCS data contained 340,320 arrestees, which included 26,127 violation arrests in addition to misdemeanor and felony arrests. The DCJS-based dataset did not include any non-fingerprintable cases, meaning that it excluded less serious cases (excluding violations and select misdemeanors). In order to make the two datasets as comparable as possible, researchers excluded violations from the OCA baseline, for a total of 314,174 arrests. (The remaining 19 cases are missing a charge severity designation).

analysis used marginal cost to measure the incarceration savings attendant to various diversion options.[23]

To implement this approach, researchers collected New York City and New York State-specific data for the per-person per-day cost of jail and prison. Average costs were calculated using all jail (or prison) spending in a given time period, including fixed costs such as administration and capital. From a previous partnership with the New York City government, Vera researchers calculated the average cost of the New York City jail to be $571.27 per person per day or $208,514 per inmate per year (Henrichson et al. 2015).[24] From a report on the *Price of Prisons*, the average cost of the New York state prison system was estimated at $164.59 per inmate per day or $60,076 per inmate per year (Henrichson and Delaney 2012).

Implementing new policies that reduce the jail population will not necessarily save costs. For the analysis in this report, it is assumed that only marginal costs are saved. *Marginal costs* are the change in the total operating costs of the jail or prison when the inmate population changes. When the population decreases, the jail can reduce expenditures on variable costs such as food and clothing. When the population drops by a certain threshold, the jail can reduce step-fixed costs such as officer salaries by closing a housing pod. Vera researchers have calculated the long-run marginal cost of the New York City jail to be $74 per inmate per day or $27,010 per inmate per year (Parsons et al. 2015). The New York State Division of Criminal Justice Services has calculated the marginal cost of the state prison system to be $51 per inmate per day or $18,615 per inmate per year (DCJS 2013). In order to achieve these marginal costs savings, the jail must be willing to reduce employment levels as the marginal cost analysis assumes would happen.

Moreover, caution is advised in the interpretation of any projection of jail or prison savings based on reduced beds. Actual changes require real adjustments to government budgets, which is not typically an automatic consequence of facts on the ground. Accordingly, actual changes may fall short of research-based *opportunities* to save marginal costs or, conversely,

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[23] See *A Guide to Calculating Justice-System Marginal Costs* (Henrichson and Galgano 2013) for more information on the distinction between average and marginal costs.

[24] This figure accounts for the full cost of the jail to the city, including expenditures from outside of the jail budget for pension contributions, employee fringe benefits, capital expenditures, inmate medical care, and other services that support the management of the jail system.

may exceed marginal costs in the event that policymakers respond by closing facilities or taking other steps that reduce "fixed" costs in significant ways.

Total Costs: Total costs were calculated by multiplying the number of bed days by the daily per-person cost of custody; and total cost savings were calculated by multiplying the number of bed days saved by the marginal per-person cost of custody.

Risk Scores: The risk classifications produced by Center for Court Innovation researchers were used to calculate case processing percentages, bed days, and total spending for cohorts by risk score. Not every defendant, however, was assigned a risk score.[25] Cases missing a risk score were excluded from all risk-level analysis. Importantly, for cost-analytic purposes, risk scores were necessarily assigned to every case, excepting for the small percentage of cases with missing data. However, in earlier portions of this report, risk is analyzed at the level of individual defendants, not cases; thus, where the same defendant had multiple cases in a given year, all analyses other than those of cost count only a single case per individual. Analyzing one case per individual has the substantive advantage of allowing the report to convey the distribution of risk across the individuals who constitute the defendant population in any given year, rather than allowing the portrait of risk in New York City to be skewed by small numbers of individuals who account for large numbers of cases. From a cost perspective, however, results would be factually inaccurate if the costs associated with each case were not separately counted and tabulated. The implication of this methodological fine point is that some reported findings in the chapter on cost may appear to differ from findings reported earlier. In fact, the findings are not contradictory but simply reflect two approaches to defining the unit of analysis, each of which seemed more relevant in different chapters.

[25] There were 33,133 cases missing a general re-arrest risk score and 33,223 cases missing a violent felony re-arrest risk score in the merged risk dataset from DCJS and UCS. These cases were primarily those charged with non-finger-printable offenses and, therefore, unavailable in the DCJS dataset.

Chapter 3

Mapping the Risk Profile of New York City Criminal Defendants

This chapter presents the background characteristics of New York City criminal defendants as well as isolating those background factors that are associated with risk of re-offense. The chapter also provides the resulting risk profile of the defendant population, indicating the percentages of criminal defendants who can be validly classified as minimal, low, moderate, moderate-high, and high risk, respectively, for general risk and violent felony risk—as well as indicating the actual re-arrest rates of those in each risk category.

Background Characteristics

Shown in Table 3.1, 314,166 criminal cases were arraigned on misdemeanor or felony charges in 2013, a figure that encompasses 215,170 unique defendants (some defendants were arrested more than once). The defendant population was predominantly male (82%); nonwhite (48% black, 35% Hispanic/Latino, 3% Asian, and 13% non-Hispanic white); and skewed towards younger ages (36% ages 16 to 24). More than one-third of cases involved defendants with a prior arrest (38%), and just under one-fifth (19%) had a prior conviction.

The vast preponderance of arraignments involved misdemeanor charges (84%), with 10% arraigned on a nonviolent felony and 6% on a violent felony. Within both the misdemeanor and felony categories, property- and drug-related charges accounted for more than half of the total. In addition, 11% of all cases involved domestic violence.[26]

[26] The charge breakdown in Table 3.1, and much of this report, relies on the arraignment charge, which represents the charge on the criminal complaint that is filed with the court. Whereas arraignment charges tend to be highly correlated with the original arrest charges, which are determined by law enforcement, prosecutors may at times change, downgrade, or, in infrequent cases, upgrade the charges between arrest and arraignment. Further, when defendants plead guilty or are convicted of a crime or lesser offense, the conviction charges may vary from those at both arrest and arraignment.

Table 3.1. Misdemeanor and Felony Arraignments in 2013: Case Characteristics

	Bronx	Brooklyn	Manhat-tan	Queens	Staten Island	New York City
Arraignment Total	**68,850**	**84,634**	**90,510**	**59,928**	**10,244**	**314,166[1]**
DEMOGRAPHICS						
Age						
Average age	31.3	31.9	33.6	31.4	31.6	32.1
Youth ages 16-24	39%	36%	31%	37%	38%	36%
Ages 16-17 years	8%	7%	5%	7%	7%	7%
Ages 18-24 years	31%	29%	26%	30%	31%	29%
Ages 25-39 years	36%	37%	37%	39%	41%	37%
Ages 40 and older	26%	27%	32%	24%	22%	27%
Sex: Percent male	83%	82%	82%	83%	81%	82%
Race/ethnicity						
Black	45%	62%	45%	40%	33%	48%
Hispanic/Latino	49%	24%	35%	34%	19%	35%
White	5%	12%	15%	15%	47%	13%
Asian	1%	2%	4%	9%	1%	3%
Other	0%	0%	0%	1%	0%	0%
CRIMINAL HISTORY						
Prior arrests						
Prior arrest	47%	38%	35%	32%	71%	38%
Prior misdemeanor arrest	41%	32%	30%	27%	61%	33%
Prior felony arrest	32%	26%	24%	20%	49%	26%
Prior violent felony arrest	19%	16%	13%	11%	31%	15%
Prior drug arrest	32%	24%	22%	17%	44%	24%
Average number of prior arrests	2.7	2.0	2.1	1.4	4.0	2.1
Prior convictions[2]						
Prior conviction	23%	18%	18%	15%	32%	19%
Prior misdemeanor conviction	19%	14%	15%	12%	27%	15%
Prior felony conviction	14%	10%	11%	7%	18%	11%
Prior violent felony conviction	5%	5%	4%	3%	6%	4%
Prior drug conviction	17%	9%	12%	7%	20%	12%
Average number of prior convs.	1.1	0.7	0.9	0.5	1.3	0.8
TOP CHARGE SEVERITY						
Misdemeanor	83%	83%	84%	84%	80%	84%
Felony	17%	17%	16%	16%	20%	16%
Nonviolent felony	11%	9%	12%	10%	13%	10%
Violent felony	7%	8%	4%	5%	7%	6%

Table 3.1. Arraignments in 2013: Case Characteristics *(Continued)*

	Bronx	Brooklyn	Manhat-tan	Queens	Staten Island	New York City
CHARGE TYPE BY SEVERITY						
Misdemeanor (select charges)						
Domestic violence (any charge)	9%	13%	7%	16%	15%	11%
Assault and related	6%	11%	6%	11%	8%	8%
Property	30%	27%	39%	23%	19%	30%
Petit larceny	6%	7%	13%	8%	10%	9%
Theft of services	16%	12%	16%	7%	1%	13%
Other property	8%	8%	10%	8%	8%	8%
Drug sales, possession, or use	29%	23%	18%	17%	29%	22%
Drug	12%	9%	8%	6%	17%	9%
Marijuana B Misdemeanor	14%	12%	8%	9%	10%	11%
Other Marijuana	3%	2%	2%	2%	2%	2%
DWI	2%	3%	3%	5%	6%	3%
Motor vehicle	11%	10%	10%	12%	12%	11%
Other	13%	14%	17%	18%	11%	15%
Total (all misdemeanors)	*100%*	*100%*	*100%*	*100%*	*100%*	*100%*
Felony (select charges)						
Homicide and related	2%	2%	1%	1%	1%	2%
Domestic violence (any charge)	9%	13%	10%	13%	4%	11%
Assault and related (non-DV)	11%	13%	8%	8%	13%	10%
Firearm and Other Weapons	5%	6%	4%	5%	4%	5%
Sex Offense	1%	2%	1%	1%	2%	1%
Property	24%	32%	31%	34%	38%	31%
Robbery and related	12%	15%	9%	13%	12%	12%
Burglary and related	4%	6%	5%	7%	8%	6%
Other property	8%	11%	17%	14%	18%	13%
Drug sales, possession, or use	34%	20%	31%	18%	21%	26%
Drug possession (or use)	13%	8%	12%	11%	11%	11%
Drug sale	21%	12%	19%	7%	10%	15%
Forgery and related	3%	2%	6%	8%	2%	5%
Other	11%	10%	10%	13%	14%	11%
Total (all felonies)	*100%*	*100%*	*100%*	*100%*	*100%*	*100%*

Note: Cases included all criminal cases filed in court, as provided by the Unified Court System. Criminal history data was obtained separately from the New York State Division of Criminal Justice Services.

[1] Total arraignments in New York City in 2013 involved 215,170 unique defendants (many of whom had multiple arrests in 2013).

[2] Prior convictions include those at the felony, misdemeanor, or violation levels. (Cases originally arrested on felony or misdemeanor charges at times result in a conviction or plea to a violation, a lesser charge that is not technically a crime.

Re-Arrest Rates

Among defendants arrested in 2012, 18% were re-arrested within six months, 29% within one year, and 41% within two years. When isolating re-arrests for a violent felony offense, 2% were re-arrested on a violent felony within six months, 4% within one year, and 7% within two years. Thus, most re-arrests do not involve violent felony charges. When considering all re-arrests at the felony level, nonviolent or violent, the two-year felony re-arrest rate was 19%.

Predictors of Re-Arrest

The multivariable results in Table 3.2 indicate which background characteristics were associated with re-arrest and violent felony re-arrest.[27]

Prior Criminal and Noncompliance History

In general, the most powerful predictors of re-offense were prior criminal history—including prior convictions, prior incarceration, an open case at the time of the current arrest, and current probation status—and prior noncompliance history, the latter of which was measured through prior failures to appear (FTA) for schedule court appearances and prior probation and parole revocations.

The association of some prior criminal and noncompliance history measures grew stronger when isolating *recent* priors—within a three-year window immediately preceding the current arrest. Thus, many of the measures shown in Table 3.2 were titrated to a prior three-year timeframe—and, as described in Chapter 2, these same three-year measures were also used in creating formal risk assessment tools for this project.

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[27] This analysis was conducted at the defendant level, with one case randomly selected for each defendant with multiple arrests in 2012. A total of 213,086 defendants qualified for the analysis, of which only 2.9% were omitted due to missing data on one or more background characteristics. Appendix B provides descriptive statistics for each background factor included in the table.

Table 3.2. Predictors of Two-Year Re-Arrest: Defendants Arraigned in 2012 (N = 206,974)

Model R2	Parameter	Any Re-Arrest (Odds Ratio for final model)	Violent Felony (VFO) Re-Arrest (Odds Ratio)
Block 1: County	Borough (Deviation coding; ref. = Staten Island)		
R2 = .012	Bronx	1.119***	1.115***
Any VFO:	Brooklyn	.993	1.117***
R2 = .009	Manhatttan	.887***	.795***
	Queens	.974*	.925**
Block 2: Demo-graphics	Demographics		
R2 = .083	Male sex	1.725***	1.934***
Block =.071	Age	.973***	.942***
Any VFO	Ages 16 or 17	1.345***	1.356***
R2 = .079	Race/ethnicity (Deviation coding; ref. = Asian or other)		
Block =.070	Black	1.378***	1.484***
	Hispanic/Latino	1.062***	1.121***
	White	.842***	.853***
	High arrest neighborhood	1.081***	1.063**
Block 3: Priors	Prior criminal history		
R2 = .283	Prior conviction (y/n)	1.308***	1.096**
Block =.200	Prior felony conviction in past 3 years (y/n)	1.213***	1.262***
Any VFO	Prior violent felony offense conviction (y/n)		1.197***
R2 = .164	Prior misdemeanor conviction in past 3 years (0, 1, 2, or 3+)	1.421***	1.148***
Block =.094	Ten or more prior misdemeanor convictions in past 3 years (y/n)	2.477***	1.375***
	Prior jail or prison sentence (yes/no)	1.280***	1.593***
	Open case at time of current arrest (yes/no)	1.569***	1.623***
	Currently on probation (yes/no)	1.106***	1.104**
	Prior noncompliance history		
	FTA on prior case (yes/no)	2.128***	1.634***
	Number of cases with FTA in past 3 years (0, 1, 2, or 3+)	1.256***	1.082***
	Prior probation revocation (yes/no)	1.044+	1.056
	Prior parole revocation (yes/no)	1.363***	1.495***
Block 4: Current Charges	Current charge severity (Deviation coding; other = misdemeanor)		
R2 = .286	Nonviolent felony	1.040**	.962*
Block =.003	Violent felony	.976+	1.306***
Any VFO	Current top charge (deviation coding; other = other charge)		
R2 = .171	Domestic violence	.783***	1.005
Block =.007	Property	1.011	1.227***
	Misdemeanor drug possession	1.325***	1.139**
	Felony drug possession	.977	.771***
	Felony drug sales	1.014	.837**
	Marijuana	1.085	.930**
	Constant	.362***	.073***

+p<.10,* p<.05, ** p<.01, ***p<.001

Note: Separate models with reduced sample size tested the impact of whether the defendant lived alone or with others (not significant), was involved in full-time school, training, or employment (significantly lower likelihood of re-arrest, OR = .817***); and how the defendant was classified on risk of failure to appear (FTA), for which there was not a significant difference between recommended for ROR and moderate risk; and while the not recommended for ROR category significantly predicted re-arrest, the relationship was weak (OR = 1.095**), partly reflecting that the multivariable model already controlled for prior FTA but also reflecting that risk of FTA and risk of re-arrest are outcomes that respond to different mechanisms.

Demographic Factors

Male sex and younger age were strongly associated with re-arrest and, especially, with VFO re-arrest. Race/ethnicity was also associated with both re-arrest measures (e.g., black/African-American defendants were more likely than others to be re-arrested), although the magnitude of this effect was weaker than sex and age. Considering that unknown combinations of structural disadvantages or law enforcement deployment practices may differentially affect those from different racial/ethnic subgroups, a credible interpretation of *why* race/ethnicity had a modest association with re-arrest cannot be established.

Current Charges

Interestingly, the charges in the current case had a statistically significant, yet relatively modest relationship with re-arrest—especially when compared with the strong effects of sex, age, criminal history, and noncompliance history. Overall, the background factors in Table 3.2 explained 28.6% of the variation in whether or not a defendant was arrested at the two-year mark; but when entering the current charge measures shown towards the bottom of the table on a separate block, they only explained an added 0.3% of the variation. Similarly, the factors in Table 3.2 explained a combined 17.1% of the variation in whether a defendant had a VFO re-arrest; yet, the charge measures explained only an additional 0.7% on their own. In short, the evidence indicates that charge severity—misdemeanor, nonviolent felony, or violent felony—and charge type (drug, property, etc.) are relatively minor predictors of re-offense.

Borough

Net of other quantifiable factors, there were small variations in re-arrest rates by borough (e.g., slightly higher in the Bronx and lower in Manhattan than elsewhere); but, overall, the effect of borough was comparatively inconsequential in relation to other factors, explaining close to 1% of the variation in whether a defendant was re-arrested on any charge or a VFO.

Risk Profile of the Defendant Population

As described in Chapter 2, scientific algorithms were created and validated in order to classify defendants based on their general risk (any re-arrest) and violent felony risk (VFO re-arrest). The final risk factors (see Appendix A) included most of those in Table 3.2, except

for borough, race/ethnicity, and neighborhood, and with fewer measures based on the current charge, including only those charge measures that significantly predicted risk within each algorithm. Also described in Chapter 2, the resulting risk classification scheme was validated both for the entire New York City defendant population and, separately, for black, Hispanic/Latino, and white defendants, ensuring that individuals of different racial/ethnic backgrounds would not be under- or over-classified in the lower or higher risk categories.

Table 3.3 provides the resulting general risk profile of the New York City defendant population, both overall and by current charge severity (misdemeanor, nonviolent felony, and violent felony). Overall, the results point to a relatively normal general risk distribution: 12% minimal, 26% low, 28% moderate, 17% moderate-high, and 17% high risk.

Since most re-arrests do not involve VFO charges (as discussed above), it follows that far fewer defendants would be expected to commit a VFO in the future; and, indeed, only 14% of defendants were in either the moderate-high (9%) or high (5%) VFO risk categories. Even these percentages, absent additional context, may create a perception of greater VFOs than was really the case; as shown in the previous chapter, those in the moderate-high VFO risk category averaged a 17% two-year VFO re-arrest rate, and those in the high category averaged a 29% two-year VFO re-arrest rate.

The charge breakdown in Table 3.3 further indicates that current charge severity matters, as those currently facing misdemeanor charges were less likely than those facing felony charges to fall into the highest risk categories; yet, as the aforementioned results regarding risk factors for re-arrest anticipated, though significantly associated with risk, charge severity was not determinative. For instance, regarding the two highest general risk categories, they held 31% of misdemeanor and 44% of felony defendants based on current charge. The two highest VFO risk categories held 11% of misdemeanor, 17% of nonviolent felony, and 35% violent felony defendants. Thus, almost two-third (65%) of defendants currently facing violent felony charges were, nonetheless, *not* in the highest risk categories for a future VFO, given the totality of their background characteristics.

Appendix C adds a risk profile of defendants respectively arraigned in each borough of New York City, and Appendix D provides separate risk profiles of female and male defendants.

Table 3.3. Distribution of NYC Defendants Across Risk Categories

Top Arraignment Charge Severity on Current Case	Misde-meanor	All Felony	Nonviolent Felony	Violent Felony	Total
Defendants in the Analysis	**169,552**	**37,175**	**22,499**	**14,676**	**206,727**
GENERAL RISK (Any Re-Arrest)					
Minimal	13%	9%	9%	9%	12%
Low	27%	22%	25%	18%	26%
Moderate	29%	25%	26%	24%	28%
Moderate-High	14%	30%	28%	33%	17%
High	17%	14%	13%	16%	17%
	100%	100%	100%	100%	100%
RISK OF VIOLENCE (Risk of Violent Felony Re-Arrest)					
Minimal	40%	20%	24%	15%	36%
Low	31%	29%	32%	23%	31%
Moderate	17%	27%	27%	28%	20%
Moderate-High	7%	15%	10%	21%	9%
High	4%	10%	7%	14%	5%
	100%	100%	100%	100%	100%

Note: Cases include all criminal cases filed in court in 2012, as provided by the Unified Court System or the Division of Criminal Justice Services (DCJS). The analysis is defendant-based.

How Risky are Low and High Risk Defendants?

Clarifying exactly how risky defendants classified within in each risk category are, Figure 3.1 displays the actual six-month and two-year re-arrest rates for those in each general risk category. The results indicate that by the two-year mark, 12% of minimal risk defendants were re-arrested, compared, at the other end of the spectrum, to 77% of high-risk defendants. Figure 3.3 presents VFO re-arrest rates for defendants in each VFO risk category. Two-year VFO re-arrest rates ranged from 2% in the minimal VFO risk category to 29% in the high VFO risk category.

Figure 3.1. Six-Month and Two-Year Re-Arrest Rates by Risk Category

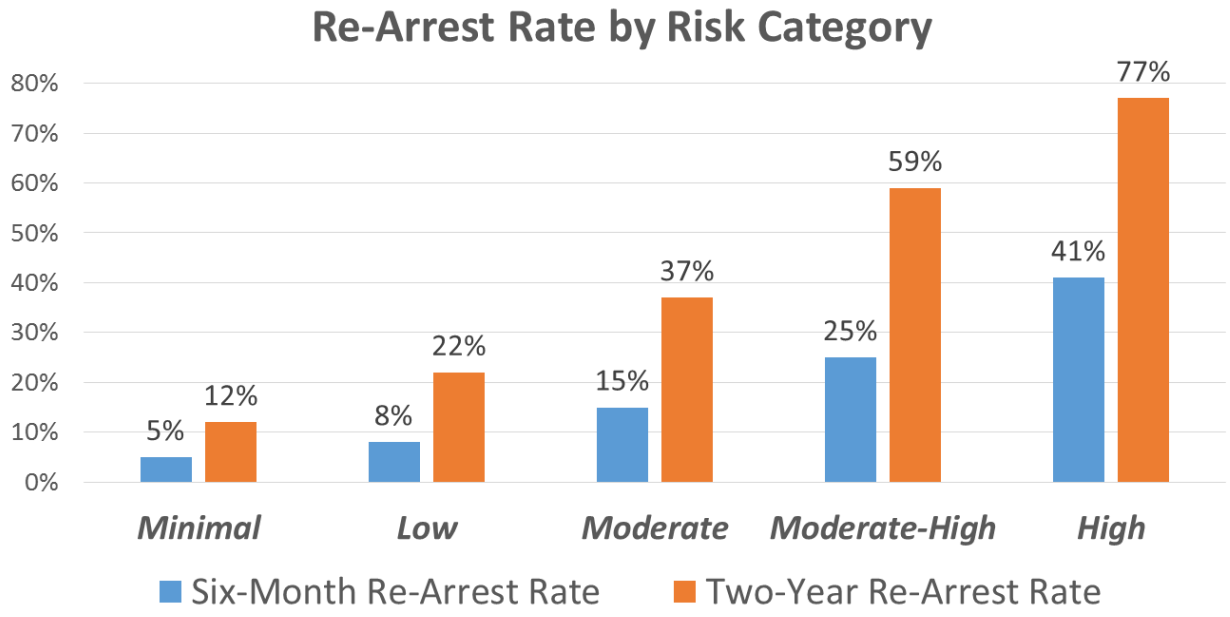

Figure 3.2. Six-Month and Two-Year Violent Felony Offense (VFO)

Re-Arrest Rates by VFO Risk Category

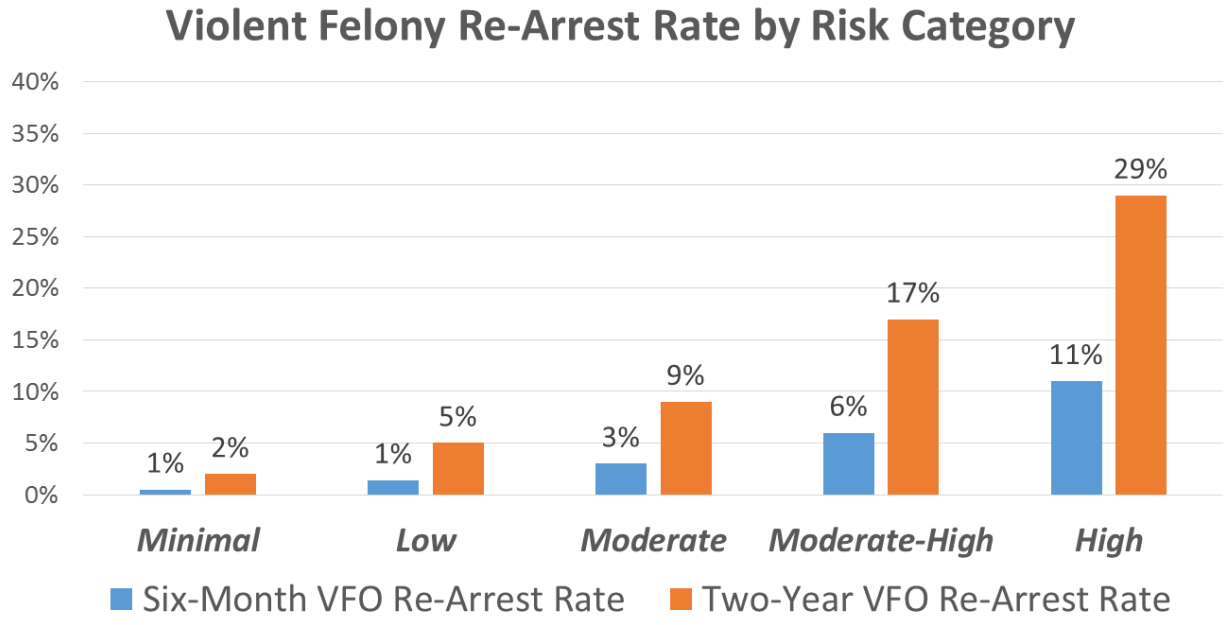

Table 3.4. Distribution of NYC Defendants by Risk of Failure to Appear (2012 Arraignments)

Top Arraignment Charge Severity on Current Case	Misde-meanor	All Felony	Nonviolent Felony	Violent Felony	Total
Defendants in the Analysis[1]	**146,117**	**30,173**	**19,007**	**11,166**	**176,290**
FTA Risk (Risk of Failure to Appear)					
Recommended for ROR (Low Risk)	31%	34%	30%	41%	32%
Moderate risk	19%	19%	19%	18%	19%
Not recommended for ROR (High Risk)	50%	48%	52%	41%	50%
	100%	100%	100%	100%	100%

Note: Cases include all criminal cases filed in court in 2012, as provided by UCS or DCJS and, in the case of FTA risk, by the Criminal Justice Agency.
[1] The analysis of FTA risk utilizes data for all CJA interviews conducted with cases arraigned in 2012, yielding slightly different sample sizes than the public safety risk analysis whose results are shown in Table 3.3.

Public Safety Risk and Risk of Failure to Appear

Only 34% of New York City defendants were in the highest two general risk categories (17% each moderate-high and high risk), and only 14% were in the highest two VFO risk categories (9% moderate-high and 5% high VFO risk). In contrast, exactly half of all defendants were classified as high risk/not recommended for ROR on the risk of failure to appear tool created by the New York City Criminal Justice Agency (see Table 3.4.). These results indicate that the prism of FTA risk leads us to ascribe the label "high risk" to a great many more defendants than would be accorded this label were risk defined strictly based on public safety criteria, rather than based on the risk of missing a scheduled court date.[28] (It is also the case that the risk of FTA tool that is currently in use in New York City arguably mislabels many defendants as posing a high risk of FTA, given that the average failure to appear rate of those in the high risk/not recommended for ROR category is only 20%.)

The results in Table 3.5 further underscore the tenuous relationship between risk to public safety and risk of not appearing for a scheduled court appearance. For each of the three FTA

[28] The New York City Criminal Justice Agency is currently revising its risk of FTA tool, but the distribution of the population under the new tool is not known as of this publication's release.

risk categories, the table provides a general and VFO risk distribution. On one hand, the results indicate that few defendants who were classified in the low or moderate FTA risk categories posed a high public safety risk (either a high general or VFO risk). On the other hand, a high risk (not recommended for ROR) classification for FTA was *not* highly predictive of a high risk classification on public safety grounds. Among those classified as high risk for FTA, only 34% were in the highest two general risk categories (20% moderate-high and 15% high risk) and only 8% were in the highest two VFO risk categories (6% moderate-high and 2% high). Conversely, among 2012 cases, four in ten of those classified as high risk for FTA posed a minimal VFO risk and 36% posed a low VFO risk. In short, risk information that is predicated on FTA risk offers the potential impression that a great many defendants are "risky" in general, when their risk *does* not signify a high risk of re-offense or, thus, an imminent danger to the public.

Table 3.5. Distribution of Public Safety Risk by FTA Risk Category: Arraigned in 2012

	CJA Release Recommendation		
	Recommended for ROR	**Moderate Risk**	**Not Recommended for ROR**
PERCENT WITH EACH FTA RISK STATUS	**31% of total**	**19% of total**	**50% of total**
Risk of Re-Arrest			
Minimal risk	20%	23%	8%
Low risk	40%	42%	25%
Moderate risk	31%	28%	33%
Moderate-high risk	8%	6%	20%
High risk	1%	2%	14%
Risk of Violent Felony Re-Arrest			
Minimal risk	48%	53%	40%
Low risk	30%	30%	36%
Moderate risk	18%	13%	16%
Moderate-high risk	4%	3%	6%
High risk	0.2%	0.3%	2%

Note: Sample sizes for this table and Table 3.3 differ, reflecting the exclusion from this table of individuals who were not administered the CJA risk of failure to appear tool and whose FTA risk was therefore unavailable; and also reflecting that the public safety risk classifications were computed at the person level (for only one case per person per year). Consequently, the total sample size for this analysis was 66,795. Since the case/defendant pool differs, the percentage distribution on the general and VFO risk measures differs slightly between this table and Table 3.3. This table is best interpreted not to provide highly precise case-level estimates but to illustrate the stark general finding that, across all FTA release recommendation categories, most cases and defendants pose a minimal-to-moderate risk of re-arrest and of violent felony re-arrest.

Risk Profile of 16-24-Year-Old Defendants

Since a younger age is itself a powerful predictor of re-arrest, the risk profile of youthful defendants ages 16-24 skews significantly riskier than the risk profile of defendants ages 25 and older. Shown in Table 3.6, none of the defendants ages 16-24 were classified as minimal risk[29] and, at the other end of the spectrum, twice as many 16-24-year-olds (24%) as older defendants (12%) were classified as high risk. The effect of age was even more pronounced regarding risk of violence, with violent felony offending heavily concentrated among youth. Thus, 18% of 16-24-year-olds compared to 3% of older defendants were in the moderate-high VFO risk category; and 13% of 16-24-year-old compared to zero older defendants were in the high VFO risk category. Offering additional risk data for youth, Appendix E provides a risk profile of 16-24-year-old defendants by charge severity; and Appendix F provides a breakdown of other youth background characteristics, including gender, race/ethnicity, and a finer age breakdown within the 16-24-year-old defendant subgroup.

Table 3.6. Risk Profile of 16-24-Year-Old and Older Defendants in 2012

	16-24-Year-Old Defendants	Older Defendants (Ages 25 and Up)
Risk of Any Re-Arrest		
Minimal risk	-	19%
Low risk	6%	38%
Moderate risk	48%	16%
Moderate-high risk	22%	14%
High risk	24%	12%
	100%	100%
Risk of Violent Felony Re-Arrest		
Minimal risk	-	57%
Low risk	35%	28%
Moderate risk	34%	11%
Moderate-high risk	18%	3%
High risk	13%	0%
	100%	100%

Note: Data presented for defendants ages 16-24 arraigned on a misdemeanor or felony in 2012, as provided by the UCS and DCJS. A small number of defendants ages 13-15 (N=373) are included.

[29] By definition, because age is in the risk algorithm, an age in the 16-24-year-old range adds a sufficient number of points to the risk score to preclude a minimal risk classification.

Chapter 4

Pre-Arraignment Decision-Making: Alternatives to Custodial Arrest and Prosecution

This chapter documents and assesses criminal justice decision-making prior to the initial arraignment court appearance. The first section examines the use of Desk Appearance Tickets (DATs) by law enforcement as an alternative to custodial arrest. The second section documents the extent to which prosecutors decline to file cases with the court. For cases that *are* filed, the last section examines which case and defendant characteristics are associated with reaching an agreement to dismiss the case six months or one year after the disposition, known as an adjournment in contemplation of dismissal or ACD. In theory, knowledge of the kinds of cases that are headed for an ACD could lead to policy reforms diverting these cases earlier in the process.

Desk Appearance Tickets

Typically, in cases involving relatively minor offenses, and especially when the defendant lacks a prior criminal record, law enforcement officers have discretion on whether to take the defendant into custody until the Criminal Court arraignment, which is supposed to happen within 24 hours of arrest, or to issue a Desk Appearance Ticket (DAT). Traffic infractions, violations, class A misdemeanors, class B misdemeanors, and certain E felonies may be eligible for a DAT.[30] A prosecutor must approve any DAT decision, meaning that even where a DAT is involved, the defendant is first brought to the police precinct and must await a paperwork process and verification of prosecutorial agreement. Where approved, a DAT provides the defendant with an arraignment date—and because the defendant is released until that date, the same 24-hour window from arrest to arraignment does not apply, meaning that DAT arraignment dates can fall much later than the arrest date. If the defendant fails to

[30] See New York Criminal Procedure Law §150.30: http://codes.findlaw.com/ny/criminal-procedure-law/cpl-sect-150-30.html.

appear in court (FTA) on the scheduled arraignment date, the judge may issue a bench warrant.

Table 4.1 illustrates the trend in DAT use in New York City over four recent years (from 2011 to 2014). Use of DATs increased by 11% over this recent period, with roughly 70,000 DATs issued in 2011 (70,363), compared to more than 78,000 in 2014 (78,340). By 2014, three in ten misdemeanor arrestees were issued a DAT, compared to 25% in 2011.

Factors Associated with Receiving a DAT

Shown in Table 4.2, charge severity, charge type, age, and prior criminal record were strongly associated with receiving a DAT. Nearly all DATs in 2013 involved misdemeanor arrest charges (95%) and violations (4%). Less than 1% were charged with class E felonies. Within the misdemeanor category, marijuana charges (24%), motor vehicle-related charges (17%), petit larceny (13%), theft of services (13%) and drug possession (8%) constituted a combined three quarters of all DATs issued in 2013 (hereafter referred to as "common DAT charges"). Although 28% of all misdemeanors received a DAT in 2013, when isolating common DAT charges, 41% received a DAT, a percentage that increased to 55% among those without a prior conviction and 60% among those without a prior arrest.

Additional multivariable analysis focused on common DAT charges found that, net of other factors, the following characteristics significantly increased the likelihood of receiving a DAT (complete results in Appendix G): marijuana charge (which reflects a citywide policy to issue DATs automatically in marijuana cases); lack of a prior arrest or conviction; female sex; and older age. Interestingly, although law enforcement was generally less likely to issue a DAT to younger defendants, adolescents aged 16 or 17 were an exception: Defendants in this age group were significantly *more* likely to receive a DAT when compared to all other ages. These results point to some effort by law enforcement to spare 16-to-17-year-old defendants from custodial arrests.

Table 4.1. Trend in Use of Desk Appearance Tickets (DATs) in New York City

	Bronx	Brooklyn	Manhat-tan	Queens	Staten Island	New York City
DAT TREND, 2011-2014 **Number of DATs *(All Charges: Violation, Misdemeanor, or Felony)***						
2011	11,249	20,511	25,894	10,310	2,399	70,363
2012	15,404	18,679	25,518	10,495	2,436	72,532
2013	18,336	18,709	25,755	13,141	2,497	78,438
2014	15,341	15,894	26,880	17,038	3,187	78,340
Number of Misdemeanor DATs						
2011	10,815	18,729	23,582	9,782	2,194	65,102
2012	14,682	17,225	23,394	9,977	2,261	67,539
2013	17,745	17,351	24,270	12,611	2,348	74,325
2014	14,847	15,083	25,245	16,460	3,057	74,692
Percent of Misdemeanors with DAT						
2011	21%	25%	32%	20%	25%	25%
2012	26%	23%	31%	21%	26%	26%
2013	31%	24%	32%	25%	28%	28%
2014	29%	23%	35%	31%	34%	30%
Percent of Misdemeanors with Common DAT Charges Receiving a DAT[1]						
2011	30%	37%	42%	31%	37%	36%
2012	35%	34%	40%	35%	40%	37%
2013	42%	39%	41%	43%	46%	41%
2014	41%	37%	44%	47%	53%	42%

Note: Cases include all criminal cases filed in court, provided by the Unified Court System. The totals for 2014 are extrapolated, using a dataset that provides actual volume through November 7, 2014.

[1] For the purpose of this analysis, common misdemeanor DAT charges petit larceny, theft of services, misdemeanor drug possession, marijuana charges, and driving with a suspended or revoked license.

Table 4.2 Use of Desk Appearance Tickets (DATs) in 2013: Prevalence and Charges

	Bronx	Brooklyn	Manhat-tan	Queens	Staten Island	New York City
Number of DATs in 2013	**18,336**	**18,709**	**25,755**	**13,141**	**2,497**	**78,438**
ARRAIGNMENT CHARGES						
Charge Severity						
Violation	430	1,107	1,310	486	130	3,463
	2.3%	5.9%	5.1%	4.0%	5.2%	4%
Misdemeanor	17,745	17,351	24,270	12,611	2,348	74,325
	96.8%	92.7%	94.2%	95.7%	94.0%	94.8%
Felony	161	251	175	44	19	650
	0.9%	1.3%	0.7%	0.3%	0.8%	0.8%
	100%	100%	100%	100%	100%	100%
Charge Type						
Misdemeanor Assault	3%	6%	5%	7%	4%	5%
Trespass (violation or misdemeanor)	4%	4%	5%	4%	2%	3%
Misdemeanor criminal mischief	1%	1%	1%	2%	2%	1%
Petit larceny	8%	9%	17%	16%	17%	13%
Theft of services	18%	15%	13%	3%	2%	13%
Other misdemeanor property	1%	1%	2%	2%	1%	2%
Misdemeanor drug possession	8%	6%	7%	9%	19%	8%
Marijuana charges	29%	28%	16%	24%	26%	24%
Misdemeanor motor vehicle-related	17%	18%	15%	19%	19%	17%
All other charges	12%	12%	18%	16%	9%	15%
	100%	100%	100%	100%	100%	100%
PREVALENCE OF DATs IN 2013 MISDEMEANOR CASES						
DAT Rate: All misdemeanors	31%	24%	32%	25%	28%	28%
DAT Rate: All misdemeanors: 16-24-Year-Old Defendants Only	30%	31%	36%	26%	33%	31%
DAT Rate: Common DAT charges[1]	42%	39%	41%	43%	46%	41%
Common DAT/no prior conviction	59%	55%	57%	57%	53%	55%
Common DAT/no prior arrest	63%	58%	60%	60%	52%	60%

Note: Cases included all criminal cases filed in court in 2013, as provided by the Unified Court System.

[1] For the purpose of this analysis, common misdemeanor DAT charges petit larceny, theft of services, misdemeanor drug possession, marijuana charges, and driving with a suspended or revoked license.

Impact of Race/Ethnicity on DAT Decisions

The multivariable results shown in Appendix G also pointed to racial and ethnic disparities in DAT rates, even after controlling for other factors. Figure 4.1 provides a simple representation of the extent of these disproportionalities. The results indicate that, net of other characteristics and when compared to white/non-Hispanic defendants, the likelihood of receiving a DAT was seven percentage points lower for black defendants; six percentage points lower for Hispanic/Latino defendants; and nine percentage points higher for Asian defendants. In short, law enforcement was more likely to issue a DAT to Asian and white than to Hispanic and black defendants, after controlling for other defendant characteristics.[31]

How Risky are DAT Defendants?

In New York City, the standard risk assessment for failure to appear that is administered to most defendants while they are in holding cells, awaiting their arraignment, is not administered to those given a DAT. Accordingly, risk of failure to appear information is unavailable on the DAT population. However, analyses conducted for this report make clear that the defendant population that receives a DAT does not pose much risk to public safety. Shown in Table 4.3, only 1% of defendants issued a DAT posed a high general risk of re-arrest, and only 1% were in *either* the high or moderate-high risk categories for a future violent felony offense (VFO). Even among those defendants issued a DAT and later detained after arraignment (typically in response to failing to appear on the scheduled DAT arraignment date), only 14% posed a high risk, and only 7% posed either a high or moderate-high risk of a VFO. Thus, for the vast majority of DAT defendants, law enforcement appears to have made a properly risk-informed decision. These results suggest that law enforcement

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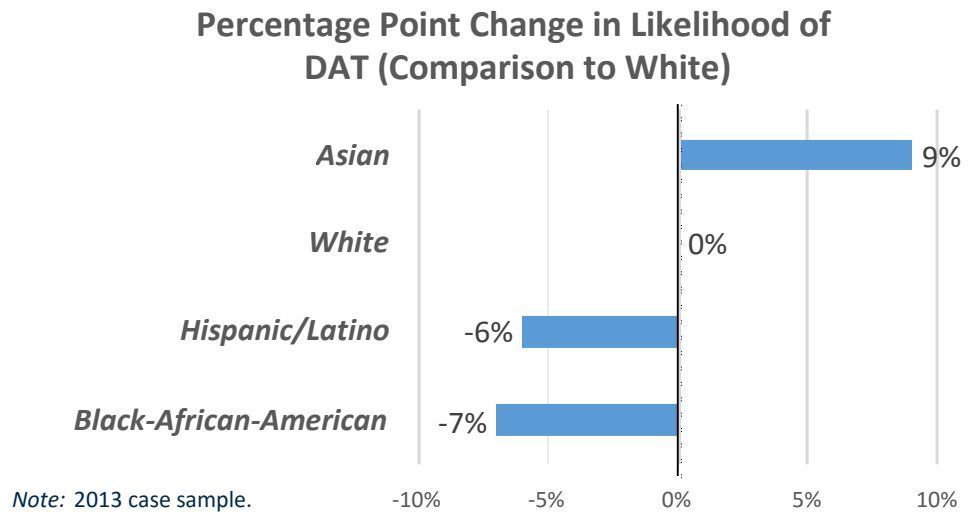
[31] As detailed in the note under Figure 4.1, other observable case and defendant characteristics include criminal history, current charges, prior warrant history, and demographic factors, including the neighborhood in which the defendant resides. However, the possibility cannot be ruled out that additional unobserved factors played a role. For instance, data was unavailable on the existence of summons warrants at the time of the current arrest. When presented with the findings in Figure 4.1, one law enforcement stakeholder suggested that black and Hispanic arrestees might be more likely than those from other racial/ethnic groups to have outstanding summons warrants, partly explaining the race/ethnicity-based differences in DAT decisions. Yet, the differences shown in Figure 4.1 are of a sufficient magnitude that it seems practically unlikely that the observed race/ethnicity effect could be explained away in its entirety by unobserved factors.

is not over-using DATs; to the contrary, law enforcement may be somewhat under-using DATs, for example with black and Hispanic/Latino defendants, as suggested by the previous results shown in Figure 4.1.

Figure 4.1. Racial/Ethnic Disproportionalities in DAT Decisions?



Note: Figure is based on cases arraigned in 2013, provided by the New York State Unified Court System. Percentage differences are provided after controlling for and setting at their mean the following variables: sex, age, born in USA or not, arrested in select high arrest neighborhood or not, borough of arrest, multiple measures of prior criminal history (prior arrest, prior felony arrest, prior conviction, prior felony conviction, prior violent felony offense conviction, and instant case charge. Analysis was solely conducted for four of the five "high DAT" charges (omitting vehicle charges, for which there was significant missing data on other measures). An alternative model with reduced sample size but that also controlled for prior failures to appear and for whether or not the defendant had an additional open case led the increased likelihood of a DAT among Asian defendants to be reduced from 9% to 7%, while not leading to any change in the race differential among white, black, and Hispanic/Latino defendants.

Table 4.3 Risk Distribution of DAT Cases

Type of Risk	Detained on DAT *(if adjourned at arraignment)*	Not Detained on DAT *(if adjourned at arraignment)*	Disposed at Arraignment	All DATs
GENERAL RISK (Risk of Any Re-Arrest)				
Minimal	14%	23%	15%	17%
Low	35%	48%	40%	42%
Moderate	25%	18%	27%	24%
Moderate-High	13%	10%	18%	16%
High	14%	1%	1%	1%
	100%	100%	100%	100%
RISK OF VIOLENCE (Risk of Violent Felony Re-Arrest)				
Minimal	47%	66%	51%	55%
Low	28%	24%	31%	29%
Moderate	19%	9%	17%	15%
Moderate-High	3%	1%	1%	1%
High	4%	0%	0%	0%
	100%	100%	100%	100%

Note: Cases included criminal cases filed in court in 2013 for which risk scores were obtained (a defendant-based analysis). DAT status was provided by the Unified Court System; and risk-based variables incorporated data from the Division of Criminal Justice Services.

Court Processing of DATs

Shown in Table 4.4, DAT arraignment dates were scheduled an average of two months (61 days) after the arrest date. More than one in five (22%) defendants neglected to appear on their scheduled arraignment date. FTA rates generally seemed higher where arraignment dates were scheduled farther out from the arrest, indicating that policies to reduce the delay from arrest to scheduled arraignment date may reduce FTA rates. For instance, the FTA rate in the Bronx was 29%, higher than in any other borough; arraignment dates in the Bronx averaged 96 days after arrest, almost 40 days longer than in the next highest borough.

Table 4.4. DAT Case Processing, Failure to Appear, and Release Status in 2013

	Bronx	Brooklyn	Manhat-tan	Queens	Staten Island	New York City
CASE PROCESSING OF DATs IN 2013 *(omits violations)*						
Days to scheduled arraignment (Mean)	95.5	48.7	49.7	56.1	42.7	61.1
Breakdown of days to arraignment						
0-29 days	1%	3%	2%	5%	14%	3%
30-59 days	23%	79%	88%	61%	76%	66%
60-89 days	36%	11%	4%	29%	1%	17%
90+ days	41%	7%	6%	5%	9%	15%
Percent failed to appear (FTA) on scheduled DAT arraignment date	29%	23%	19%	15%	13%	22%
Percent disposed at arraignment (i.e., first date defendant appears)	74%	76%	72%	78%	70%	74%
Days to disposition (mean)	198.1	126.0	149.7	113.4	82.5	147.0
Days to disposition *if continued at arraignment (mean)*	268.1	171.2	194.4	163.6	167.6	201.0
RELEASE STATUS ON DATs *(if continued; omits violations)*						
Remanded	0%	0%	0%	0%	0%	0%
Bail set not posted	7%	5%	7%	8%	4%	7%
Bail set and posted	0%	1%	1%	0%	1%	1%
Release on recognizance (ROR)	93%	94%	92%	91%	95%	93%
Detained at arraignment on a DAT	***7%***	***5%***	***7%***	***8%***	***4%***	***7%***
Detained if appeared on DAT Date	***1%***	***2%***	***2%***	***1%***	***2%***	***2%***
Detained if FTA on DAT Date	***23%***	***20%***	***36%***	***46%***	***24%***	***29%***
Total DAT cases detained in 2013	***307***	***255***	***504***	***217***	***31***	***1314***

Note: Cases included all criminal cases filed in court in 2013, as provided by the Unified Court System.

[1] For the purpose of this analysis, common misdemeanor DAT charges petit larceny, theft of services, misdemeanor drug possession, marijuana charges, and driving with a suspended or revoked license.

Overall, almost three-quarters of DAT cases (74%) were resolved at arraignment. Among cases that were continued beyond arraignment, few (7%) defendants were detained pretrial. However, pretrial detention rates were significantly higher for defendants who initially failed to appear on their scheduled arraignment date (29% detained) than for defendants who did appear (2% detained). This evidence suggests that pretrial detention may serve as punishment for FTA—as shown earlier in Table 4.3, the subgroup that receives this punishment generally skews low-risk; and in some cases, the failure to appear may simply reflect the lengthy time from arrest to scheduled arraignment, which increases defendants' exposure to the act of simple forgetting.

The results in Table 4.5 indicate that an initial FTA on the scheduled DAT arraignment date has important repercussions for the ultimate case outcome: Defendants who FTA were significantly more likely to plead guilty or be convicted at the end of the case (59% v. 44%) when compared to those who appeared on their arraignment date. Furthermore, convicted DAT defendants who FTA were significantly more likely to receive a jail sentence (41% v. 18%) compared to convicted DAT defendants who appeared at arraignment.

Table 4.5. Disposition and Sentencing Outcomes of DAT Cases by FTA Status

	Appearance Status		All DATs
	Appeared on Arraignment Date	FTA on Arraignment Date	
Total Number of Cases	**61,324**	**16,882**	**78,206**
All Cases (excludes cases dropped by the prosecutor)			
Percent pled guilty or convicted	44%	59%	47%
Percent with criminal conviction	*21%*	*28%*	*23%*
Percent youthful offender	*0%*	*0%*	*0%*
Percent with violation conviction	*23%*	*31%*	*25%*
Percent ACD or dismissal	56%	41%	53%
Percent with an ACD	*48%*	*34%*	*45%*
Percent dismissed	*8%*	*7%*	*7%*
Sentence *(if convicted)*			
Percent sentenced to jail or jail/probation split	18.4%	41.3%	23.7%
Percent sentenced to probation	0.1%	0.1%	0.1%
Percent with other sentence[1]	81.5%	58.6%	76.2%

Note: Cases included all criminal cases filed in court in 2013, as provided by the Unified Court System or the Criminal Justice Agency.
[1] Other sentence includes prison (0.2%), time served, fine, conditional discharge and unconditional discharge

Decline to Prosecute Outcomes

Shown in Table 4.6, prosecutors in New York City declined to file 7% of arrests made in 2014 due to a lack of evidence or for other discretionary reasons. Decline rates were significantly higher in the Bronx (12%) than in the four other boroughs (5% or 6% in the other boroughs). Only 21% of arrests in 2014 occurred in the Bronx, but the Bronx accounted for 40% of declines to prosecute. Although decline rates were higher in the Bronx across multiple charge categories, the difference with other boroughs was especially pronounced in cases of domestic violence (27% declined in the Bronx v. 11% declined in other boroughs).

Table 4.6 Decline to Prosecute Rates for Select Charges: Cases Arrested in 2014

	Bronx	Other Four Boroughs	New York City
Number of Arrests	**67,025**	**245,876**	**312,901**
Number of Declines to Prosecute	**8,241**	**12,455**	**20,696**
DECLINE TO PROSECUTE RATES			
All Arrests	12%	5%	7%
All arrests in Brooklyn (N = 87,761)		5%	
All arrests in Manhattan (N = 86,413)		6%	
All arrests in Queens (N = 59,786)		5%	
All arrests in Staten Island (N = 11,916)		6%	
Select Charges			
Felony Arrests	12%	7%	8%
Misdemeanor Arrests	12%	5%	6%
Domestic Violence (DV)[1]	27%	11%	14%
Marijuana Possession in 5th degree (221.10)	12%	7%	8%

Note: Cases included all arrests, as provided by the Division of Criminal Justice Services (omitting non-fingerprintables). Cases are excluded if a Desk Appearance Ticket (DAT) was issued, which effectively requires appearance at arraignment.

[1] Domestic violence cases cannot all be identified through available data sources. Thus, reported percentages for domestic violence are necessarily imprecise, although the general pattern of above-average decline rates for domestic violence is reliable.

Predictors of an ACD in Misdemeanor Cases

Table 4.7 provides the results of multivariable analyses indicating which characteristics were associated with a greater likelihood of resolving misdemeanor cases with an adjournment in contemplation of dismissal (ACD). An ACD involves an agreement to dismiss the case automatically after six months or one year depending on the charges. The prosecutor may reopen the case during this 6-to-12-month period if the defendant does not comply with any stipulated conditions, but as a practical matter, ACDs almost always end in dismissal. Insofar as defendants receiving an ACD exit their criminal justice experience with minimal sanctions or obligations imposed on them, such defendants might be logical candidates for earlier diversion at the arrest or decision to prosecute stages.[32]

Overall, the factors included in Table 4.7 explained 39% of the variation in whether or not a case ended in an ACD—suggesting that a relatively small number of background factors go a long way towards differentiating whether a case will receive an ACD. The background factors with the strongest relationship to receiving an ACD were the following:

- **Borough:** Case heard in Brooklyn (strongest borough-based relationship) or Queens;
- **Female Sex** (as opposed to male);
- **Youth:** Ages 16-24;
- **Criminal History:** No prior criminal history (no prior arrest or conviction);
- **Charge:** Misdemeanor property charge other than petit larceny (theft of services most commonly); and B or U misdemeanor as opposed to an A misdemeanor.

[32] The idea that the kinds of cases that currently end in an ACD might, instead, be targeted for early pre-court diversion emerged in discussions held in spring 2015 amongst members of New York City's steering committee for the MacArthur Foundation's *Safety + Justice Challenge*.

Table 4.7 Predictors of Adjournment in Contemplation of Dismissal (ACD) among Cases Arraigned on a Misdemeanor and Disposed in 2014

Logistic Regression Specification	Outcome = ACD v. Pled Guilty/Convicted *(Dismissals Excluded)*
Number of cases in the analysis	**113,835**
Nagelkerke R Square	**0.392**
Borough (Ref=Staten Island; deviation coding)	
Bronx	0.848***
Brooklyn	1.857***
Manhatttan	1.243***
Queens	1.415***
Demographics	
Male sex	.593***
Age	0.999
Ages 16-24	1.574***
Race/ethnicity (Ref=white; indicator coding)	
Black	0.912***
Hispanic/Latino	0.886***
Asian or additional race/ethnic group	0.815***
Prior criminal history	
Prior arrest (y/n)	0.443***
Prior conviction (y/n)	0.330***
Prior felony conviction (y/n)	0.671***
Prior violent felony conviction (y/n)	1.021
Current top charge	
A misdemeanor (y/n)	0.528***
Domestic violence (y/n)	0.539***
Drug (y/n)	1.117*
Petit larceny (y/n)	0.718***
Other property charge (y/n)	3.833***
Constant	1.836***

$^{+}$p<.10,* p<.05, ** p<.01, ***p<.001

The results in Table 4.7 suggest that first-time female defendants ages 16-24 who are arrested on low level misdemeanor charges in Brooklyn or Queens would be ideal candidates for pre-court diversion. To quantify exactly how frequently court cases currently end in an ACD for these prime diversion candidates, Table 4.8 provides the percentage of cases where the defendant has key combinations of diversion-conducive characteristics and where, in the status quo, the ultimate case disposition is *either* an ACD or straight dismissal. These results reconfirm that among misdemeanors, ACD/dismissal outcomes are significantly more common among female (61%) than male defendants (45%); among defendants ages 16-24 (61%) than older ones (41%); and among those without any priors (68%) than those with at least one prior arrest (39%) and at least one prior conviction (25%).

When combining key characteristics, the results provided towards the bottom of Table 4.8 suggest that youthful defendants (ages 16-24) facing their first arrest are ideal candidates for early diversion. Specifically, 80% of female and 75% of male first-time 16-24-year-old defendants had their misdemeanor cases resolved with an ACD or straight dismissal. When tightening the charge criteria to include nonviolent misdemeanors only (e.g., excluding misdemeanor assault, sex offense, harassment, weapons possession, and several other misdemeanors crimes against person), 81% of female and 79% of male first-time 16-24-year-old defendants had an ACD or dismissal outcome. Even when removing the 16-24-year-old criterion, more than two-thirds (69%) of nonviolent misdemeanor defendants of any age or gender received an ACD or dismissal (latter result not shown in Table 4.8). Given the infrequency of conviction when these types of cases are prosecuted in court, they would be ideal candidates for pre-charge diversion—and could potentially off-ramp from the court process more than 20,000 cases per year if limited to ages 16 to 24 or more than 40,000 if extended to all ages. The results in Table 4.8 further suggest that among the five boroughs, the empirical case for early diversion of these cases is comparable in Brooklyn, Manhattan, and Queens; slightly lower in the Bronx; and least compelling in Staten Island.

Table 4.8. Percentage of Cases Ending in ACD or Straight Dismissal for Key Case and Defendant Categories: Cases Arraigned on a Misdemeanor and Disposed in 2014

	Bronx	Brooklyn	Manhat-tan	Queens	Staten Island	New York City
Number of Cases[1]	**54,537**	**72,094**	**71,557**	**54,256**	**8,655**	**261,099**
Overall ACD+Dismissal Rate	**40%**	**54%**	**42%**	**54%**	**41%**	**48%**
DEMOGRAPHICS						
Sex						
Female	50%	66%	59%	70%	44%	61%
Male	39%	52%	39%	51%	42%	45%
Age						
Ages 16-24	54%	68%	58%	66%	51%	61%
Ages 25 and up	33%	48%	36%	48%	37%	41%
PRIOR CRIMINAL HISTORY						
Prior Arrest						
No	65%	71%	71%	68%	51%	68%
Yes	33%	48%	29%	47%	36%	39%
Prior Conviction						
No	53%	66%	59%	63%	48%	60%
Yes	23%	33%	16%	32%	28%	25%
KEY COMBINATIONS						
No Prior Arrest + Ages 16-24						
Female	75%	83%	83%	83%	59%	80%
Male	74%	77%	77%	75%	62%	75%
No Prior Arrest + Ages 16-24 + Nonviolent Misdemeanor[1]						
Female	74%	85%	86%	83%	59%	81%
Number of cases	*935*	*1187*	*2,027*	*1,110*	*178*	*5,437*
Male	78%	79%	81%	79%	66%	79%
Number of cases	*2,784*	*3,513*	*4,613*	*3,220*	*520*	*1,650*
All	77%	81%	82%	80%	64%	80%
Number of cases	*3,719*	*4,700*	*6,640*	*4,330*	*698*	*20,087*

Note: Data provided by the New York State Division of Criminal Justice Services (DCJS).

[1] There is not a formal "nonviolent misdemeanor" designation in New York State law. However, for the purpose of this analysis, all misdemeanors were excluded except the following categories: assault and related; sex offense; unlawful imprisonment or coercion; arson; judicial proceedings (e.g., witness or juror tampering or criminal contempt); select public order offenses (riot; unlawful assembly; harassment, offenses related to children), and weapons offenses.

Chapter 5

Pretrial Decision-Making: Use of Bail and Detention

This chapter documents and assesses the use of bail and pretrial detention while criminal cases are pending. The first section provides an overview of the options and outcomes related to pretrial release and detention. The second section presents the actual quantitative distribution of decisions and outcomes in the preexisting status quo. Subsequent sections critically assess current decision-making, particularly the extent to which decisions are risk-informed.

Release Decisions and Potential Outcomes

For cases not resolved at arraignment—comprising half of misdemeanors and 98% of felonies in New York City, the arraignment judge must make a release decision that is intended to secure the presence of the defendant for future court dates.[33] In recent years, among cases released for at least part of the pretrial period, at least one failure to appear (FTA) took place in 14% of misdemeanor and 11% of felony cases (CJA 2014). *Prolonged* failures to appear, defined as a defendant not returning to court for more than 30 days after an initial FTA, occurred in only 7% of misdemeanor and 3% of felony cases.[34] Indeed, even among released cases that CJA classified as posing a high risk of FTA, only 22% of misdemeanor and 16% of felony cases in fact had an FTA (and only 11% of misdemeanor and 5% of felony cases in the high risk category had an FTA with no return for more than 30

[33] Article 510 of the New York Criminal Procedure Law establishes that securing the defendant's presence for future court dates must be the legal rationale for the judge's release decision. An exception is that release decisions in New York State may independently take into account any prior violations of an order of protection by the defendant.

[34] The failure to appear results provided in this section were based on misdemeanor defendants arraigned in 2014 and felony defendants arraigned in 2013 (see CJA 2014).

days) (CJA 2014). Appendix H provides a breakdown of FTA rates among defendants with different charge and demographic characteristics.

Three Possible Release Decisions

In order to minimize the likelihood of failure to appear, arraignment judges have four basic options.

1. **Release on Recognizance (ROR):** The defendant is assigned a court date and is released without conditions.

2. **Bail:** The judge sets bail, an amount of money that must be paid or guaranteed, typically by a family member or friend, for the defendant to be released, with the potential for that sum to be forfeited if the defendant absconds. There are nine types of bail allowed in New York State, not all of which require up-front payment—several types of bail require most or all of the amount to be paid only if the defendant fails to appear. In practice, judges in New York City rely almost exclusively on full up-front payment, either directly by a family member or friend ("cash bail") or through a bail bond agency ("bond"), which usually charge 10% of the total as collateral as well as fee.

3. **Remand:** The judge sends the defendant to pretrial detention without bail, a rare outcome applied to less than 1% of cases citywide.

4. **Non-Monetary Conditions:** As an alternative to bail, judges may also set non-monetary release conditions, most commonly involving participation in a supervised release program, where the defendant is reminded of court dates and potentially monitored through phone or in-person check-ins. In practice, supervised release is an extremely recent option in New York City.[35]

Although the arraignment judge renders an initial release decision, judges may change release status at subsequent court dates, pursuant to future arguments by the attorneys or to the defendant's compliance. For example, defendants with ROR status who miss one or more court dates may subsequently have bail set. In addition, pretrial detention outcomes may change based on a defendant's ability to secure bail subsequent to arraignment. Many

[35] The Mayor's Office of Criminal Justice (MOCJ) launched a citywide supervised release program intended to handle 3,000 cases per year in the spring of 2016 (after this project's data collection period). Small-scale pilot programs previously existed in Brooklyn (Hahn 2015), Queens (Solomon 2013), and Manhattan.

defendants may initially be unable to post bail before transport to the local jail but may subsequently post bail before the case is resolved (see White et al. 2015).

Potential Areas for Reform

In order to reduce the use of pretrial detention, policymakers may take one or all of three general courses of action: (1) reduce the use of bail and remand decisions; (2) facilitate and expedite bail payment when the defendant must post bail (or require payment only after an FTA rather than up-front); or (3) reduce case processing time for pretrial detainees. The sections that follow cover these three areas in turn.

Current Release Decisions

As shown in Table 5.1, among cases not resolved at arraignment in 2013, 71% received ROR status, 3% had bail set and posted bail at arraignment, 25% had bail set and did not post bail at arraignment, and just under 1% were remanded without bail. Those in the not posted and remanded categories, or 26% of the total, were sent to pretrial detention.

Subsequent to arraignment, some defendants who were initially sent to pretrial detention were able to post bail; thus, as indicated in the table, whereas the defendants in only 3% of cases were able to post bail at arraignment, 13% posted bail subsequently, meaning that 13% were detained *throughout* case processing (where the latter figure includes a tiny number of cases remanded directly to jail without chance of bail).

The results in Table 5.1 show that charge severity heavily influenced release decisions. Whereas the judge in only 21% of misdemeanor cases set bail or remanded the defendant, the judge did so in 54% of felony cases. As a result, 18% of misdemeanor compared to 48% of felony defendants were detained after arraignment; and 10% of misdemeanor compared to 23% of felony defendants were detained throughout case processing.

Judges in Manhattan were especially likely to set bail (or remand), doing so in 34% of cases, compared to 27-30% in the four other boroughs. The disparities by borough were especially pronounced among felony cases, with judges in Manhattan setting bail (or remanding the defendants) in 62% of felonies, compared to 48-55% in the other boroughs.

Table 5.1. Release Decisions at Arraignment in 2013 *(Cases Continued at Arraignment)*

	Bronx	Brooklyn	Manhat-tan	Queens	Staten Island	New York City
Number of Arraignments (Continued)	**36,555**	**51,632**	**45,897**	**31,459**	**7,246**	**172,789**
Percent of Citywide Total	**21%**	**30%**	**27%**	**18%**	**4%**	**100%**
RELEASE STATUS: ALL CASES						
Release on recognizance (ROR)	72%	73%	66%	73%	70%	71%
Bail set/posted at arraignment	3%	3%	3%	3%	7%	3%
Bail set/not posted on arraignment date	25%	24%	30%	22%	23%	25%
Remanded	0.4%	0.4%	1%	1%	0.6%	0.7%
Bail Set (or Remanded)	*28%*	*27%*	*34%*	*27%*	*30%*	*29%*
Detained following arraignment	*25%*	*25%*	*31%*	*24%*	*23%*	*26%*
Detained throughout case	*14%*	*12%*	*18%*	*11%*	*10%*	*13%*
RELEASE: MISDEMEANORS	**24,369**	**37,248**	**32,061**	**22,733**	**5,524**	**121,935**
All Misdemeanors						
Release on recognizance (ROR)	80%	81%	77%	81%	78%	79%
Bail set/posted at arraignment	2%	2%	2%	2%	5%	2%
Bail set/not posted on arraignment date	18%	17%	21%	17%	17%	18%
Remanded	-	-	-	-	-	-
Bail Set (or Remanded)	*20%*	*19%*	*23%*	*19%*	*22%*	*21%*
Detained following arraignment	*18%*	*17%*	*21%*	*17%*	*17%*	*18%*
Detained throughout case	*11%*	*9%*	*13%*	*8%*	*8%*	*10%*
Domestic Violence Misdemeanors	**4,029**	**8,035**	**4,982**	**7,082**	**1,059**	**25,187**
Release on recognizance (ROR)	72%	80%	71%	82%	80%	77%
Bail set/posted at arraignment	3%	2%	3%	2%	4%	3%
Bail set/not posted on arraignment date	25%	18%	26%	15%	16%	20%
Remanded	-	-	-	-	-	-
Bail Set (or Remanded)	*28%*	*20%*	*29%*	*18%*	*20%*	*23%*
Detained following arraignment	*25%*	*18%*	*26%*	*15%*	*16%*	*20%*
Detained throughout case	*14%*	*12%*	*18%*	*11%*	*10%*	*13%*

Table 5.1. Release Decisions at Arraignment in 2013 *(Cases Continued at Arraignment)*

	Bronx	Brooklyn	Manhat-tan	Queens	Staten Island	New York City
RELEASE: FELONIES	**11,894**	**13,800**	**12,908**	**8,455**	**1,670**	**48,727**
All Felonies						
Release on recognizance (ROR)	52%	49%	38%	48%	45%	46%
Bail set/posted at arraignment	4%	5%	6%	7%	12%	6%
Bail set/not posted on arraignment date	43%	46%	54%	41%	40%	46%
Remanded	1%	1%	3%	4%	2%	2%
Bail Set (or Remanded)	*48%*	*51%*	*62%*	*52%*	*55%*	*54%*
Detained following arraignment	*44%*	*47%*	*56%*	*45%*	*43%*	*48%*
Detained throughout case	*20%*	*20%*	*31%*	*21%*	*18%*	*23%*
Nonviolent Felonies						
Release on recognizance (ROR)	57%	54%	41%	54%	49%	50%
Bail set/posted at arraignment	5%	5%	5%	6%	13%	5%
Bail set/not posted on arraignment date	38%	41%	52%	37%	36%	43%
Remanded	1%	1%	3%	4%	3%	2%
Bail Set (or Remanded)	*43%*	*46%*	*59%*	*46%*	*51%*	*50%*
Detained following arraignment	*39%*	*41%*	*54%*	*40%*	*39%*	*45%*
Detained throughout case	*20%*	*19%*	*32%*	*19%*	*17%*	*23%*
Violent Felonies						
Release on recognizance (ROR)	44%	42%	31%	37%	39%	39%
Bail set/posted at arraignment	4%	5%	7%	9%	12%	6%
Bail set/not posted on arraignment date	51%	51%	59%	50%	48%	53%
Remanded	2%	1%	3%	4%	2%	2%
Bail Set (or Remanded)	*57%*	*58%*	*69%*	*63%*	*61%*	*61%*
Detained following arraignment	*52%*	*53%*	*62%*	*54%*	*50%*	*55%*
Detained throughout case	*21%*	*21%*	*28%*	*23%*	*20%*	*23%*

Note: Cases included all criminal cases filed in court and not disposed at arraignment in 2012, as provided by the Unified Court System or the Criminal Justice Agency (2012 is the latest year for which Criminal Justice Agency data is available in the project dataset).

To summarize, the data in Table 5.1 conveys the following findings:

1. Most cases in New York City, more than two-thirds, are released at arraignment with no conditions (release on recognizance).

2. Release decisions are often based on charge severity, with felony cases more likely to have bail set. Some borough-based differences were also evident, with judges in Manhattan especially likely to set bail.

3. Few defendants post bail right away at arraignment and avoid pretrial detention entirely.

4. Many defendants (13% of the total or 43% of those who must make bail) cannot make bail at arraignment but do make it subsequently, meaning that by the time of disposition, just over half of those who had to make bail were ultimately able to do so.

Why Do Judges Set Bail?

The multivariable results shown in Table 5.2 provide additional clarity regarding which defendant characteristics are associated with the judges' release decisions.

- **Charge Severity:** After controlling for multiple factors, charge severity was the single strongest predictor of release decisions (odds ratio = 6.274 if the case was a nonviolent felony as opposed to a misdemeanor and 14.809 if the case was a violent felony as opposed to a misdemeanor).

- **Criminal and Noncompliance History:** After charge severity, criminal and noncompliance history were also significant—especially whether the defendant had failed to appear in court on a prior case and whether the defendant had another open (pending) case at the time of the current arrest. Insofar as these measures are strongly associated with risk of re-offense (see Chapter 3), these results indicate that, intentionally or not, risk is already incorporated into release decisions to some degree.

- **Sex:** Net of other factors, male defendants were significantly more likely than female defendants to have bail set (or to be remanded). Thus, the system already appears to act to some extent to avoid incarcerating women.

Table 5.2. Predictors of Remand or Bail Set in 2013 *(Cases Not Disposed at Arraignment)*

R^2 at Each Step in Model 1	Logistic Regression Models	Model 1 Baseline Factors	Model 2 Charge Severity	Model 3 FTA Risk	Model 4 General Risk	Model 5 VFO Risk
	Number of cases in the analysis	60,037	60,878	39,557	60,764	60,744
	Nagelkerke R Squared	0.422	0.233	0.130	0.141	0.102
		Parameter Estimates (Odds Ratios)				
Step 1:	Borough (Ref=Staten Island; deviation coding)					
R^2 = .018	Bronx	.488***				
Step = .018	Brooklyn	.731***				
	Manhatttan	1.138**				
	Queens	.799***				
Step 2:	Arraignment judge (Ref=other; deviation)					
R^2 = .027	Judge 1	1.303***				
Step = .009	Judge 2	1.214**				
	Judge 3	.920				
	Judge 4	.703***				
	Judge 5	.714***				
	Judge 6	.977				
	Judge 7	.986				
Step 3:	Demographics					
R^2 = .093	Male sex	2.321***				
Step = .067	Age	.989***				
	Ages 16-24	.800***				
	Race/ethnicity (Ref=white; indicator coding)					
	Black	1.172***				
	Hispanic/Latino	1.353***				
	Asian or additional race/ethnic group	1.010				
Step 4:	Prior criminal history					
R^2 = .251	Prior arrest	1.404***				
Step = .158	Prior conviction	1.657***				
	Prior felony conviction	1.776***				
	Prior violent felony conviction	1.290***				
	Prior case with warrant for FTA	2.104***				
	Current open case	2.115***				
Step 5:	Charge severity (Ref = misdemeanor)					
R^2 = .418	Nonviolent felony	6.274***	6.513***			
Step = .167	Violent felony	14.809***	10.503***			
	Current top charge (Ref = other charges)					
Step 6:	Domestic violence	1.320***				
R^2 = .422	Drug	.796***				
Step = .004	Property	1.075+				
	Weapons	1.473***				
	CJA recommendation (Ref = ROR)					
	Moderate FTA risk			1.492***		
	Not recommended for ROR			9.575***		
	Risk of general (Model 4) or VFO re-arrest (Model 5) (Ref=minimal; indicator coding)					
	Low risk				1.668***	2.353***
	Moderate risk				2.478***	1.357***
	Moderate-high risk				8.437***	5.085**
	High risk				12.731***	18.055***

+p<.10,* p<.05, ** p<.01, ***p<.001

Note: Cases include all criminal cases filed in court and not disposed at arraignment in 2012, as provided by the Unified Court System or the Criminal Justice Agency (CJA). Risk of FTA data is merged from CJA; and public safety risk was created after merging with DCJS data. Constant not shown.

- **Age:** Although younger defendants (ages 16-24) pose a substantially higher risk of re-offending than older ones, they were particularly *unlikely* to face bail, net of other factors. Additional analysis points to a strong interaction between age and charge: Whereas felony defendants ages 16-24 had to make bail (or were remanded) slightly more often than felony defendants of all ages (60% v. 54%), misdemeanor defendants ages 16-24 had to make bail far *less* often than those of all ages (7% v. 21%). Release decisions for the 16-24-year-old subgroup are provided in Appendix I.

- **Race/ethnicity:** Black/African American and Hispanic/Latino defendants were more likely than others to have to make bail, although these effects were comparatively weak in magnitude. Supplemental qualitative analysis suggested that the effect of Hispanic/Latino ethnicity in large part reflects the role of immigration holds on a select sub-sample of those in the larger Hispanic/Latino category.

- **Borough:** The results indicate that, net of other factors, judges in the Bronx were the least likely and judges in Manhattan were the most likely to set bail. Within boroughs, modest but statistically significant differences were attributable to the identity of the arraignment judge, with four specific arraignment judges (de-identified in the table) showing significant deviations from the average within their boroughs.

Are Release Decisions Risk-Informed?

The multivariable results in Table 5.2 suggest that judges' release decisions may over-consider charge severity—given that charge severity has a relatively modest relationship both to public safety risk and risk of failure to appear. The results also indicate that release decisions reflect defendants' age in the "wrong" direction, since older defendants were disproportionately likely to face bail, despite posing a lower risk than younger defendants. The resulting implication is that older defendants are adversely affected by over-incarceration at the pretrial stage.

Clarifying the Impact of Charge Severity and Risk

Some of the results in Table 5.2 (see columns labeled Model 2 through Model 5) offer a head-to-head comparison of the relative weight of four common predictors of whether a judge sets bail or remands a defendant: (1) charge severity; (2) risk of failure to appear (FTA); (3) general risk; and (4) VFO risk. Of these factors, charge severity explained the most variation (R^2 = .233). FTA risk (R^2 = .130) and general risk (R^2 = .141) were also significantly associated with judges' decisions, although not as strongly; and VFO risk (R^2 = .102) explained the least variation by itself of the four general correlates under examination.

The data in Figure 5.1 and Figure 5.2 further illustrates the respective impact of charge severity and risk on release decisions. The results in Figure 5.1 are based on classifying defendants according to their general risk (of any re-arrest), and the results in Figure 5.2 are based on classifying defendants according to their risk of committing a violent felony (VFO). For three charge severity categories, misdemeanor, nonviolent felony, and violent felony, Figure 5.1 separately shows the percent in each general risk category for whom the arraignment judge set bail. For instance, the judge set bail in 6% of cases involving minimal risk misdemeanor defendants, compared to 28% involving minimal risk nonviolent felony defendants and 37% involving minimal risk violent felony defendants. The sloping relationship between risk category and percent with bail set demonstrates some relationship of risk to release decision; but taken as groups, the higher across the board percentages in the two felony categories than in the misdemeanor category demonstrates the large impact of charge severity, independent of risk. For instance, an almost identical 38% of *high risk* misdemeanor defendants, 35% of *low risk* nonviolent felony defendants, and 37% of *minimal risk* VFO defendants had bail set. Overall, those who pose a relatively low risk to public safety are increasingly likely to have to post bail as their charge severity moves from the misdemeanor to nonviolent felony to violent felony levels.

Deviations from purely risk-informed decision-making become more pronounced when inspecting the results in Figure 5.2 for the violent felony risk categories. Applying the Risk Principle, individuals who pose a high risk of a violent felony—can be credibly described as posing an immediate and present danger to public safety—are ideal candidates for pretrial detention;[36] yet, only 29% of high violent felony risk misdemeanor defendants had to make bail. On the other end of the spectrum, individuals who do *not* pose a high risk to public safety are appropriate candidates for release, especially given the criminogenic effects that jail can have on such individuals. Yet, among nonviolent felony defendants, from 36% to 46% of those in the minimal, low, and moderate violent felony risk categories, respectively, had to make bail; and among violent felony defendants, from 42% to 58% in the same bottom three violent felony risk categories had to make bail. Since most defendants were in the lower risk categories, under-incarcerating high violent felony risk misdemeanors affects far fewer defendants than over-incarcerating minimal or low violent felony risk felonies.

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[36] Caution, however, is advised in interpreting the extent to which the danger posed by those at high risk of a violent felony is truly immediate and certain, as only 29% of those in the high violent felony risk category in fact commit a VFO over a two-year tracking period.

Figure 5.1. Impact of Charge Severity and Risk on Bail-Setting

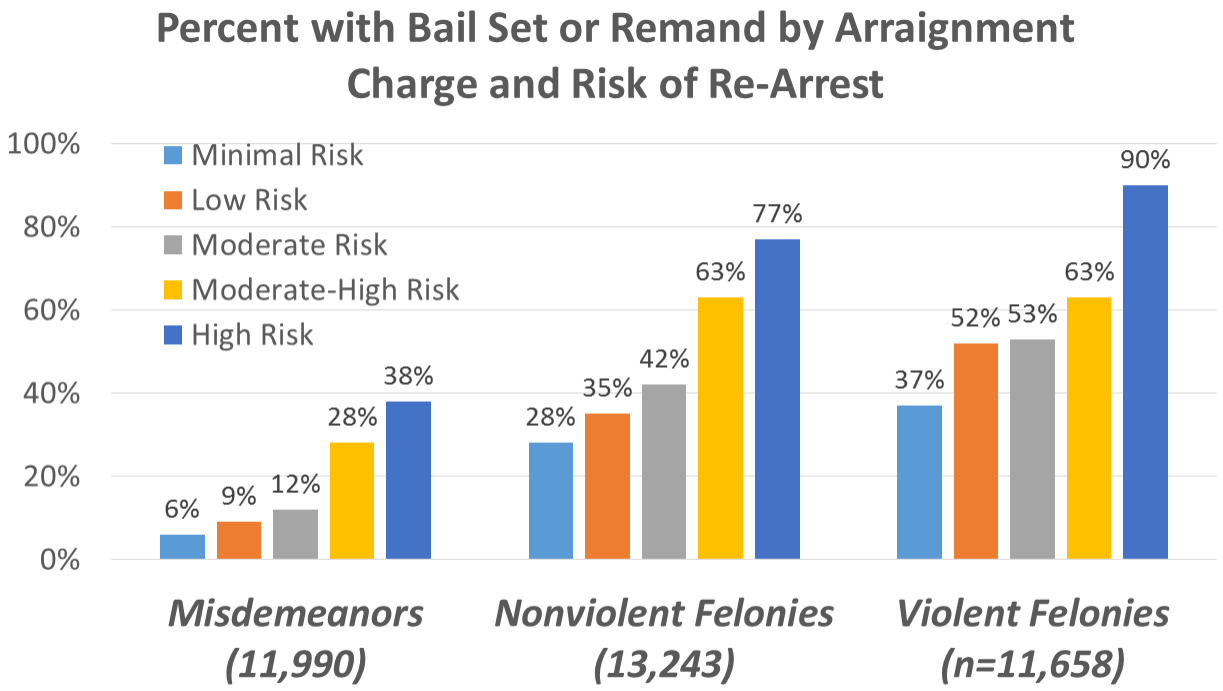
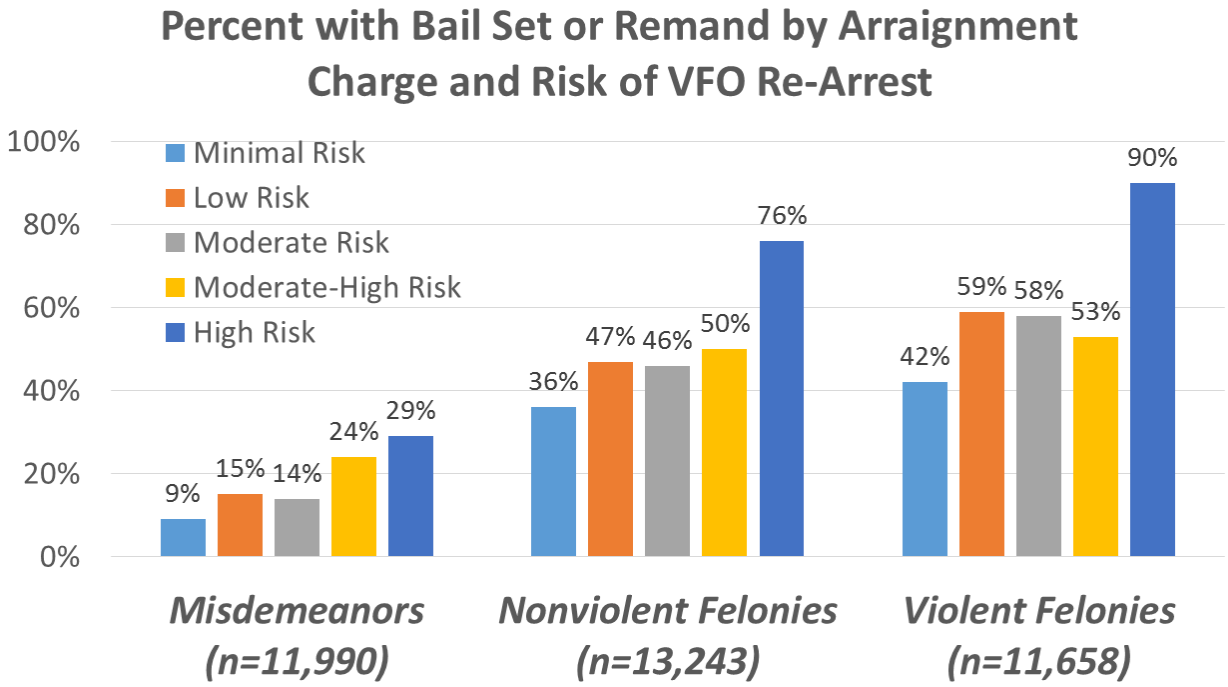


Figure 5.2. Impact of Charge Severity and VFO Risk on Bail-Setting



The Resulting Risk Profile of Defendants in Pretrial Detention

The ramifications of current decision-making are made clear in Table 5.3. The results indicate that of those sent to pretrial detention following arraignment, only four in ten were in the two highest risk categories: high (13%) or moderate-high risk (27%). The results also indicate that only a small fraction of those sent to pretrial detention posed a high risk of committing a future violent felony; only 7% of those detained were in the high VFO risk category, and 11% were in the moderate-high VFO risk category; conversely, six in ten detained defendants either posed a minimal (27%) or low (33%) VFO risk.

Defendants Ages 16-24: Among youthful defendants ages 16-24, just as their overall risk profile skewed riskier than older defendants, the subgroup of 16-24-year-olds that experienced pretrial detention also tended to be riskier, on average. Specifically, 71% of detained 16-24-year-olds were in the highest two general risk categories, and 62% were in the highest two VFO risk categories. Interestingly, whereas a strict youth development framework would draw attention to the long-term harms of over-incarcerating youth, a pure public safety/risk-based framework yields the conclusion that although there may be some over-incarceration of defendants of all ages, over-incarceration is most pronounced among *older* defendants, who empirically pose less future risk to public safety.[37]

Risk Profile of ROR Defendants: Whereas the general risk profile of detained defendants (across all ages) points to significant over-incarceration, the risk profile of defendants who receive ROR status does *not* point to significant under-incarceration among those who currently avoid pretrial detention. Of those receiving ROR status, only 4% posed a high general risk (with 11% in the moderate-high category), and only 1% posed a high VFO risk (with 6% in the moderate-high VFO risk category). These results suggest that under a risk-based approach to pretrial decision-making, the number of defendants moved from released to detained would be many fewer than the number switching from detained to released.

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[37] Consistent with the thrust of a developmentally appropriate youth justice framework, caution is advised before concluding, therefore, that youth should be incarcerated more often; the principal implication of this section points to especially pronounced over-incarceration among older defendants.

Table 5.3. Risk Distribution of Defendants with 2012 Cases Detained at Arraignment

Charge Severity	Misdemeanor	Nonviolent Felony	Violent Felony	All Felony	All Cases
GENERAL RISK (Any Re-Arrest)					
Minimal	10%	8%	9%	9%	9%
Low	27%	26%	21%	24%	25%
Moderate	27%	27%	25%	26%	27%
Moderate-High	19%	30%	32%	31%	27%
High	17%	9%	12%	10%	13%
	100%	100%	100%	100%	100%
Highest Two Risk Categories	***36%***	***39%***	***44%***	***41%***	***40%***
RISK OF VIOLENCE (Risk of Violent Felony Re-Arrest)					
Minimal	39%	25%	15%	21%	27%
Low	37%	36%	25%	31%	33%
Moderate	15%	25%	28%	27%	22%
Moderate-High	7%	8%	18%	13%	11%
High	3%	5%	13%	9%	7%
	100%	100%	100%	100%	100%
Highest Two Risk Categories	***10%***	***13%***	***31%***	***22%***	***18%***

Payment of Bail

Besides changing the distribution of release decisions, policymakers could also reduce the use of pretrial detention by facilitating and expediting bail payment. When isolating 2013 cases where the arraignment judge set bail, 63% made bail at some point during case processing, but only 13% made bail at arraignment, avoiding pretrial detention entirely, with 12% making bail by the next court appearance and 38% making bail later in the case.

To improve the bail payment process, White et al. (2015) identify 17 distinct findings and associated policy recommendations. One finding that points, in particular, to the significant barriers faced by impoverished defendants (and families) is the relative non-use of alternative types of bail in lieu of full up-front payment via cash or bond. Specifically, under a partially secured bond, either the defendant or a friend or family member has to pay only 10% of the

total bail amount up-front, while agreeing to pay the difference only in the event of FTA. Under an unsecured bond, no up-front payment is required, and money is only paid in the event of FTA and subject to further judicial order (details in White et al. 2015).

Current practice nearly always requires full up-front payment. Table 5.4 provides a distribution of bail amounts among cases disposed in 2014. The results indicate that bail was $2,000 or less in 54% of cases where the arraignment judge set bail, and that charge severity heavily influenced the bail amount (87% of misdemeanor but only 24% of felony cases faced bail of $2,000 or less).

Subsequent analysis found that even in cases of low bail, many defendants were still unable to pay; for instance, only 13% of defendants with bail of $500 or less made bail at arraignment, with 41% making bail subsequently and 46% detained throughout case processing. Additional multivariable analysis (see Appendix K) found that defendants who were represented by private counsel as well as those who were employed, in school, or living with others were especially likely to post bail, either at arraignment or subsequently.

Table 5.4. Bail Amounts by Charge Severity

Top Arraignment Charge Severity	Misde-meanor	Felony	Nonviolent Felony	Violent Felony	Total
Cases in the Analysis	**22,917**	**25,428**	**15,157**	**10,271**	**48,345**
BAIL AMOUNT					
$1 through $500	41%	5%	6%	3%	22%
$501 through $1,000	34%	9%	11%	7%	21%
$1,001 through $2,000	13%	10%	11%	7%	11%
$2,001 through $5,000	12%	37%	40%	33%	25%
$5,001 through $10,000	1%	18%	17%	19%	10%
More than $10,000	0.4%	22%	15%	31%	12%
$2,000 or less	87%	24%	28%	17%	54%
Average Bail Amount	$2,030	$24,680	$23,159	$26,924	$13,943
Median Bail Amount	$1,000	$5,000	$3,500	$6,000	$1,500

Note: Cases include all criminal cases with bail of $1.00 or more that were disposed in 2014, as provided by UCS.

Case Processing Time

Another strategy for reducing pretrial detention would involve reducing case processing time, especially among pretrial detainees and among those cases that currently average the longest processing times—especially indicted felonies that are transferred to Supreme Court (see Table 5.5).

The results in Table 5.5 show that, for of cases resolved in 2014, misdemeanors averaged 62 days to disposition (125 days if the case was continued at arraignment), unindicted felonies averaged 135 days to disposition,[38] and indicted felonies averaged 325 days to disposition—including 293 days adjudicated post-indictment in the Supreme Court and 400 days post-indictment if the case was heard in the Bronx, the borough with the slowest processing times.

A companion publication to this one details case processing trends and patterns in New York City, highlighting the drivers of delays and action steps for improving practice (Rempel et al. 2016). Among the most important of these steps is to reduce adjournment length—currently, there is an average wait time of 37 days in misdemeanor and 35 days in indicted felony cases until the next court appearance (results in Table 5.5). Although only a small percentage of cases are decided by trial verdict, those cases average a particularly long time to disposition (414 days to trial verdict in misdemeanor and 530 days to verdict in felony cases), suggesting that efforts to identify trial-bound cases earlier in the process and to establish earlier trial dates could yield significant net impacts.

[38] Among cases that were resolved in 2014 and had been initially arraigned on felony charges, 32% were indicted (Rempel et al. 2016). Following their indictment, these cases were transferred from the New York City Criminal Court, where they were first arraigned, to the Supreme Court for continued adjudication. Cases initially arraigned on felony charges but not indicted were resolved through a case dismissal, plea agreement to a misdemeanor or lesser charge, or a felony plea agreement reached through a Superior Court Information (SCI), the latter of which involves an agreement to a felony plea in which the defendant waives the grand jury process.

Table 5.5. Case Processing in New York City: Cases Disposed in 2014

	Bronx	Brooklyn	Manhat-tan	Queens	Staten Island	New York City
Number of Misdemeanor Arraignments	**51,115**	**70,016**	**73,841**	**53,655**	**8,569**	**257,196**
Percent of Citywide Total	**20%**	**27%**	**29%**	**21%**	**3%**	**100%**
Number of Felony Arraignments	**11,923**	**13,790**	**14,445**	**9,437**	**1,996**	**51,591**
Percent of Citywide Total	**23%**	**27%**	**28%**	**18%**	**4%**	**100%**
MISDEMEANOR CASE PROCESSING						
Disposed at Arraignment	53%	45%	57%	48%	36%	50%
Days to Disposition (Mean)						
All cases	70	65	58	52	96	62
Cases continued at arraignment	147	118	136	100	150	125
Number of Court Appearances (Mean)						
All cases	2.6	2.6	2.3	2.3	3.1	2.5
Cases continued at arraignment	4.4	4.0	4.0	3.5	4.3	4.0
Adjournment Length (Mean days)	36	35	39	36	42	37
Trials						
Percent of cases disposed at trial	0.1%	0.1%	0.3%	0.1%	0.2%	0.2%
Percent of found guilty verdicts	48%	46%	61%	63%	64%	56%
Mean days to disposition for trial cases	379	436	367	526	729	414
FELONY CASE PROCESSING						
Days to Disposition (Mean: All Cases)	253	176	186	188	167	199
Indictment Rate	39%	29%	41%	20%	19%	32%
Days to Disposition by Indictment Status						
Days to disposition for unindicted felonies[1]	142	123	138	138	154	135
Days to disposition for indicted felonies	425	302	251	385	222	325
Days in Supreme Court (indicted felonies)	400	275	229	296	186	293
Disposed within 6 months in Supreme Court	29%	43%	51%	43%	60%	42%
Disposed within 1 year in Supreme Court	56%	72%	83%	69%	88%	71%
Supreme Court Appearances (indicted felonies)	10.1	9.3	8.7	12.1	9.7	9.7
Supreme Court Adjournment Length (indicted fels.)	45	32	32	28	22	35
Trials						
Percent of cases disposed at trial	3.2%	5.4%	5.5%	12.7%	2.4%	5.6%
Percent of found guilty verdicts	46%	76%	77%	73%	89%	71%
Mean days to disposition (cases reaching verdict)	732	575	400	547	446	530

[1] Unindicted felonies include both cases resolved through a dismissal or plea to a non-felony charge and cases resolved through a Superior Court Information, which involves a felony plea agreement without an indictment.

Chapter 6

Disposition and Sentencing Decisions

This chapter presents information on the final outcomes of criminal cases in New York City. Results include the prevalence of jail and prison use at sentencing; the extent to which jail is reserved for higher risk individuals; other factors such as charge, borough, and defendant age that are associated with more severe criminal penalties; and whether there are racial/ethnic disproportionalities in sentencing. All results are based on cases resolved in 2014.

Case Dispositions

As shown in Table 6.1, of cases initially arraigned on misdemeanor or felony charges, 315,865 were resolved in 2014.[39] More than half (56%) ended in a guilty plea/conviction, with 30% receiving a criminal conviction (i.e., a misdemeanor or felony conviction that creates a permanent criminal record), 25% pleading to a violation or lesser charge, and 1% disposed with a youthful offender (YO) finding, a status available to 16-to-18-year-old defendants that does not create a permanent record. In addition, 27% of cases ended in an adjournment in contemplation of dismissal (ACD), and 17% received a straight dismissal. In general, guilty/plea conviction outcomes were more prevalent among felony (72%) than misdemeanor (52%) cases; and ACDs were primarily seen among misdemeanors (32%).

Case dispositions varied significantly by borough. The Bronx, Manhattan, and Staten Island all resolved close to six in ten misdemeanors with a guilty plea/conviction, whereas Brooklyn and Queens convicted 46% and, instead, made greater use of ACDs. Among felonies, the highest conviction rate was in Queens (82%) and the lowest in the Bronx (63%), with the other boroughs ranging from 71-75%. When isolating criminal convictions (i.e., not including violation convictions or YO findings), Manhattan had the highest criminal

[39] Due to relying on data from the New York State Division of Criminal Justice Services, non-fingerprintable offenses, consisting of select low-level misdemeanors, were excluded from the analysis in this chapter.

conviction rate among both cases initially arraigned on a misdemeanor (36%) and a felony (66%).

Sentencing

Use of Jail in Misdemeanor Cases

Citywide, 8% of all cases initially arraigned on misdemeanor charges were sentenced to jail (see Table 6.1). When isolating cases that ended in a guilty plea/conviction, 16% were sentenced to jail, close to zero to probation, and the remaining 84% to fines, conditional discharges, community service, or other non-custodial sentences. Manhattan sentenced 21% of pled guilty/convicted cases to jail, compared to a range of 10-15% in the other boroughs. Overall, Manhattan accounted for just over 40% of all jail sentences imposed on cases initially arraigned on misdemeanor charges.

Jail sentences in misdemeanor cases were overwhelmingly brief, with 81% of jail sentences running 30 days or less (median length = 15 days). Since most defendants are released automatically after serving two-thirds of their formal sentence, a 30-day sentence typically involves 20 days served in jail and could involve even less time after the imposition of the sentence for defendants who already served some of the time while in pretrial detention. Thus, jail sentences in misdemeanor cases produce minimal incapacitation of the offender, while risking criminogenic effects that can increase recidivism after release.

Use of Jail and Prison in Felony Cases

Citywide, 14% of cases initially arraigned on felony charges were sentenced to prison (at least one year) and 17% were sentenced to jail (also in Table 6.1). When isolating cases that ended in a guilty plea/conviction, 17% were sentenced to prison, 28% to jail (including a small number of jail/probation splits), 10% to probation, and 45% to other non-custodial sentences. As with misdemeanors, Manhattan was the heaviest user of prison sentences among pled guilty/convicted cases (24% v. 12-17% in the other boroughs) and one of the two heaviest users of jail sentences (34% in Manhattan, 35% in Staten Island, and a range of 21-28% in the three other boroughs). Overall, Manhattan accounted for 40% of prison sentences and just over one-third (34%) of jail sentences imposed on cases initially arraigned on felony charges.

Jail sentences were significantly longer, on average, in felony than misdemeanor cases. On one end of the spectrum, 28% of jail sentences in felony cases were 30 days or less, but on the other end, 25% were the maximum of one year. The citywide median was 122 days, which translates into 83 days served, representing just under three months of incapacitation (some of which may have been served during the pretrial period).

Shown in Table 6.1, convicted cases that were initially arraigned on a violent felony were significantly more likely to receive prison (27%) than those arraigned on a nonviolent felony (12%). The use of jail, by comparison, did not vary significantly based on type of felony.

Sentencing in Drug Felony Cases

Despite the availability of felony drug courts and judicial diversion options in every borough, among cases arraigned on drug felony charges and subsequently pleading guilty,[40] almost half were sentenced to incarceration: 25% to prison and 24% to jail. In Staten Island and Manhattan, sentencing on drug cases was substantially more severe than the citywide average; prison or jail were respectively imposed on almost four in five convicted drug felony cases in Staten Island (52% prison and 37% jail) and almost two-thirds in Manhattan (38% prison and 28% jail), inclusive of drug felony cases handled by the city's Special Narcotics Prosecutor.[41]

Defendants Ages 16-24

In general, defendants ages 16 to 24 were significantly less likely than older defendants to receive a criminal conviction. Among those convicted, sentencing did not significantly differ between 16-to-24-year-old defendants and older defendants, when controlling for other factors. Disposition and sentencing outcomes for 16-to-24-year-olds are provided in Appendix K.

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[40] Felony drug courts in New York City usually dismiss the charges of program graduates, but prior to program entry, an initial guilty plea is required.

[41] Appointed by the five elected district attorneys, the Special Narcotics Prosecutor (SNP) handles narcotics cases from all five boroughs, but all of its cases are prosecuted in Manhattan. Throughout this report, all statistics presented for Manhattan include cases handled by both the Special Narcotics Prosecutor and the District Attorney of New York (DANY).

Table 6.1 Case Dispositions and Sentences: Cases Disposed in 2014

	Bronx	Brooklyn	Manhat-tan	Queens	Staten Island	New York City
Number of Dispositions	**67,341**	**86,730**	**86,352**	**64,419**	**11,023**	**315,865**
Percent of Citywide Total	**21%**	**27%**	**27%**	**20%**	**3%**	**100%**
CASE OUTCOMES (ALL CASES)						
Pled guilty/convicted	60%	50%	61%	52%	62%	56%
Criminal conviction	29%	26%	41%	22%	37%	30%
Youthful offender finding	1%	1%	1%	1%	1%	1%
Violation or lesser conviction	30%	24%	19%	28%	24%	25%
ACD	20%	29%	24%	37%	15%	27%
Straight dismissal	20%	20%	15%	12%	23%	17%
Sentenced to Corrections: Includes all Cases						
Prison sentence	2%	1%	3%	2%	2%	2%
Jail or jail/probation split sentence	9%	8%	13%	6%	11%	9%
Straight probation sentence	1%	1%	1%	1%	2%	1%
Sentencing: Convicted Cases Only						
Prison sentence	3%	3%	5%	4%	4%	4%
Distribution of prison sentences:						
One year	13%	12%	8%	13%	20%	11%
More than one year to three years	57%	49%	60%	46%	46%	54%
More than three years	29%	39%	32%	41%	34%	35%
Average prison sentence length (months)	*46*	*81*	*55*	*55*	*48*	*58*
Jail or jail/probation split sentence	15%	17%	23%	13%	20%	18%
Split sentence	0.5%	0.4%	0.7%	0.7%	1.1%	0.6%
Distribution of jail sentences:						
30 days or fewer	72%	60%	68%	55%	56%	64%
31-90 days	11%	18%	13%	16%	23%	15%
91-182 days	5%	9%	9%	14%	10%	9%
183-364 days	2%	4%	4%	5%	2%	4%
One year (365 days)	10%	10%	7%	10%	9%	9%
Average jail sentence length (days)	*66.2*	*82.0*	*66.6*	*92.3*	*78.7*	*74.1*
Median jail sentence length (days)	*15*	*30*	*15*	*30*	*30*	*20*
Most common (modal) jail sentence (days)	*15*	*15*	*10*	*15*	*30*	*15*
Straight probation sentence	2%	2%	3%	3%	4%	2%
Other sentence	80%	78%	69%	80%	72%	76%
Percent detained, convicted no jail/prison	1.0%	1.1%	1.3%	1.6%	1.7%	1.2%

Table 6.1. Case Dispositions and Sentences: Cases Disposed in 2014 *(Continued)*

	Bronx	Brooklyn	Manhat-tan	Queens	Staten Island	New York City
MISDEMEANOR ARRAIGNMENT	**54,537**	**72,094**	**71,557**	**54,256**	**8,655**	**261,099**
Pled guilty/convicted (any charge)	60%	46%	58%	46%	59%	52%
Criminal conviction	25%	22%	36%	16%	30%	26%
Youthful offender finding	0%	0%	0%	0%	1%	0%
Violation or lesser conviction	35%	24%	22%	30%	28%	27%
ACD	24%	35%	29%	42%	18%	32%
Straight dismissal	16%	19%	13%	12%	23%	16%
Sentenced to Corrections: Includes all Cases						
Jail sentence	8%	7%	12%	4%	9%	8%
Probation sentence	0%	0%	0%	0%	1%	0%
Sentencing: Convicted Cases Only						
Jail or jail/probation split sentence	13%	13%	21%	10%	15%	16%
Split sentence	0.1%	0.1%	0.1%	0.1%	0.4%	0.1%
Distribution of jail sentences:						
30 days or fewer	89%	74%	84%	75%	70%	81%
31-90 days	9%	17%	11%	15%	24%	13%
91-365 days	3%	9%	5%	10%	6%	6%
Average jail sentence length (days)	22.0	38.0	26.7	38.3	38.9	30.0
Median jail sentence length (days)	10	15	10	15	22	15
Straight probation sentence	1%	0%	0%	0%	1%	0%
Other sentence	86%	87%	79%	90%	84%	84%
FELONY ARRAIGNMENT CHARGE	**12,804**	**14,636**	**14,795**	**10,163**	**2,368**	**54,766**
Pled guilty/convicted (any charge)	63%	71%	75%	82%	75%	72%
Criminal conviction	47%	46%	66%	56%	62%	54%
Youthful offender finding	3%	3%	2%	4%	4%	3%
Violation or lesser conviction	12%	23%	7%	23%	10%	16%
ACD	3%	4%	2%	8%	2%	4%
Straight dismissal	35%	25%	23%	9%	23%	24%
Sentenced to Corrections: Includes all Cases						
Prison sentence	9%	8%	18%	14%	12%	14%
Jail sentence	15%	19%	25%	17%	26%	17%
Probation sentence	6%	4%	9%	8%	9%	7%

Table 6.1. Case Dispositions and Sentences: Cases Disposed in 2014 *(Continued)*

	Bronx	Brooklyn	Manhat-tan	Queens	Staten Island	New York City
FELONY ARRAIGNMENT CHARGE *(Cnt.)*						
Sentencing: Convicted Cases Only						
Prison sentence	16%	12%	24%	17%	16%	17%
Average prison sentence length (months)	*47*	*82*	*55*	*55*	*78*	*55*
Jail or jail/probation split sentence	26%	28%	34%	21%	35%	28%
Split sentence	2%	2%	3%	3%	4%	2%
Distribution of jail sentences:						
30 days or fewer	30%	35%	22%	25%	34%	28%
31-90 days	17%	19%	18%	16%	21%	18%
91-182 days	22%	21%	36%	33%	24%	29%
183-365 days	31%	25%	24%	25%	21%	25%
Average jail sentence length (days)	*174.6*	*155.3*	*174.2*	*177.2*	*141,1*	*168.0*
Median jail sentence length (days)	*122*	*90*	*183*	*183*	*90*	*122*
Straight probation sentence	11%	6%	12%	10%	12%	10%
Other sentence	47%	54%	30%	52%	37%	45%
NONVIOLENT FELONY ARRAIGNMENT	**7,755**	**7,992**	**11,023**	**6,184**	**1,517**	**34,471**
Pled guilty/convicted (any charge)	69%	78%	79%	85%	81%	77%
Criminal conviction	52%	50%	70%	58%	69%	59%
Youthful offender finding	1%	1%	1%	2%	2%	1%
Violation or lesser conviction	15%	27%	7%	25%	10%	17%
ACD	3%	4%	2%	9%	2%	4%
Straight dismissal	29%	18%	19%	6%	17%	19%
Sentenced to Corrections: Includes all Cases						
Prison sentence	7%	4%	16%	8%	10%	9%
Jail sentence	16%	22%	28%	18%	31%	22%
Probation sentence	5%	4%	10%	7%	9%	8%
Sentencing: Convicted Cases Only						
Prison sentence	10%	6%	21%	10%	12%	12%
Jail or jail/probation split sentence	24%	28%	35%	23%	38%	29%
Split sentence	1%	1%	3%	2%	3%	2%
Straight probation sentence	8%	6%	13%	9%	11%	10%
Other sentence	58%	60%	31%	58%	39%	49%

Table 6.1. Case Dispositions and Sentences: Cases Disposed in 2014 *(Continued)*

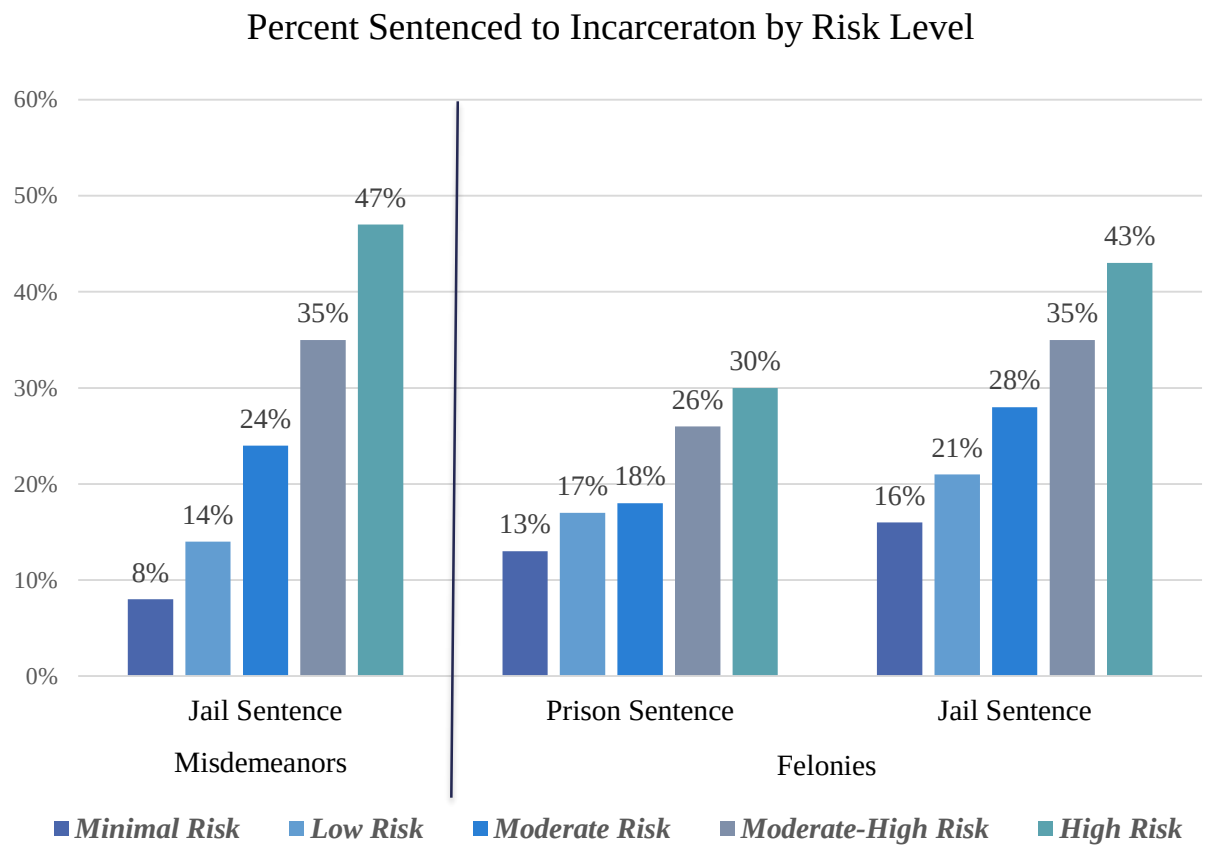
	Bronx	Brooklyn	Manhat-tan	Queens	Staten Island	New York City
VIOLENT FELONY ARRAIGNMENT	**5,049**	**6,644**	**3,772**	**3,979**	**851**	**20,295**
Pled guilty/convicted (any charge)	53%	64%	61%	79%	65%	64%
Criminal conviction	39%	40%	51%	52%	48%	45%
Youthful offender finding	6%	5%	3%	8%	7%	6%
Violation or lesser conviction	8%	19%	7%	19%	9%	14%
ACD	2%	3%	3%	7%	2%	4%
Straight dismissal	44%	33%	36%	14%	33%	33%
Sentenced to Corrections: Includes all Cases						
Prison sentence	15%	13%	24%	22%	16%	17%
Jail sentence	15%	18%	17%	15%	18%	17%
Probation sentence	8%	5%	5%	9%	9%	6%
Sentencing: Convicted Cases Only						
Prison sentence	29%	20%	39%	27%	25%	27%
Jail or jail/probation split sentence	28%	28%	28%	19%	29%	26%
Straight probation sentence	15%	7%	7%	11%	12%	10%
Split sentence	3%	3%	4%	3%	4%	3%
Other sentence	28%	45%	26%	43%	34%	37%
DRUG FELONY ARRAIGNMENT	**1,895**	**1,093**	**2,369**	**487**	**145**	**5,989**
Pled guilty/convicted (any charge)	70%	85%	82%	71%	95%	78%
Criminal conviction	57%	57%	78%	44%	93%	65%
Youthful offender finding	1%	1%	1%	2%	1%	1%
Violation or lesser conviction	11%	28%	3%	25%	1%	12%
ACD	1%	3%	1%	21%	0%	3%
Straight dismissal	29%	11%	16%	8%	5%	18%
Sentenced to Corrections: Includes all Cases						
Prison sentence	10%	8%	32%	10%	49%	20%
Jail sentence	13%	20%	23%	11%	26%	19%
Probation sentence	5%	7%	14%	4%	8%	9%
Sentencing: Convicted Cases Only						
Prison sentence	14%	10%	38%	14%	52%	25%
Jail or jail/probation split sentence	18%	23%	28%	16%	27%	24%
Split sentence	0%	1%	2%	0%	2%	1%
Straight probation sentence	8%	9%	17%	5%	9%	12%
Other sentence	60%	58%	17%	65%	12%	39%

Note: Cases include all criminal cases filed in court, as provided by the Division of Criminal Justice Services and Unified Court System. Percentage totals do not always add up to 100% or the applicable sub-total due to rounding. For days sentenced, on prison sentences with a range, the minimum is assumed.

The Relationship Between Risk and Sentencing

Shown in Figure 6.1, sentencing decisions are clearly responsive to defendant risk in the desired direction. As displayed in the figure, among both convicted cases that were initially arraigned on misdemeanor and felony charges, prison and jail sentences became significantly more common as defendant risk level increased. For instance, in felony cases, only 13% of minimal compared to 18% of moderate and 30% of high risk defendants were sentenced to prison; and 16% of minimal compared to 28% of moderate and 43% of high risk defendants were sentenced to jail. Of course, while nominally responsive to risk, results do not actually point to a true evidence-based approach that, according to the Risk Principle, would involve substituting most incarceration sentences (e.g., involving jail or brief prison stays) for high-risk individuals with risk reduction strategies that target criminogenic needs for treatment (see, e.g., Lowenkamp et al. 2006).

Figure 6.1. Risk-Informed Use of Jail and Prison at Sentencing



Note: Risk-based results were based on cases disposed in 2012.

Table 6.2 isolates the 24,838 cases that were convicted in 2014 of a felony or misdemeanor crime and sentenced to jail. Of those convicted of a misdemeanor (though the original arraignment charge could have been a felony), less than one in five posed only a minimal or low risk of re-offense. Conversely, misdemeanor jail sentences were largely used with moderate-to-high risk individuals who, if they were instead to receive an alternative to incarceration, would be appropriate for a relatively intensive evidence-based intervention. By comparison, of those convicted of a felony and sentenced to jail, a greater proportion (averaging about a third across all of the jail categories in Table 6.2) were in the lowest two risk categories; for this low-risk subgroup, either jail or overly intensive treatment might do more harm than good, making it important to craft legally proportionate alternatives that minimize potential counter-productive effects (e.g., by not requiring low-risk individuals to attend the same group sessions as moderate-to-high-risk individuals and by not interfering with work or school schedules).

Profile of the Post-Sentence Jail Population

Many defendants who are sentenced to jail—and especially many of those who are convicted at the felony level—already served the *full duration* of their jail sentence while in pretrial detention. In other words, what might appear to be, for example, a six-month jail sentence is often a plea agreement allowing a defendant who already spent all of the negotiated sentence time in jail prior to sentence imposition. (The relationship of pretrial detention to sentencing is further discussed below.) When contemplating the feasibility of alternatives to incarceration at sentencing, such alternatives are obviously viable only for defendants who have time remaining on their sentence that might therefore be translated into an alternative treatment mandate *in lieu of post-sentence jail time*.

To define the population of cases that truly serves additional time in jail *after* sentencing—and that therefore could have their sentence replaced by a legally proportionate alternative, Table 6.3 only includes cases discharged from jail in 2015 that actually served time *after sentence imposition*. Further, for each of five jail sentence lengths—dubbed “meaningless” (1-15 days), “Short” (16-30 days), “Short-to-Mid” (31-60 days), “Mid-Length” (61-180 days), and “Significant” (181-365 days)—the table distinguishes average days served in pretrial detention and average days served post-sentence. It is the latter quantity of time that could be substituted through use of a legally proportionate, evidence-based alternative.

Table 6.2. Jail Sentences in 2014 by Conviction Charge Severity, General Risk, and Borough

	Bronx	Brooklyn	Manhat-tan	Queens	Staten Island	New York City
TOTAL JAIL SENTENCES ON CRIMINAL CONVICTIONS (2014)	**4,610**	**5,693**	**9,989**	**3,174**	**1,372**	**24,838**
JAIL SENTENCES ON MISDEMEANOR CONVICTION CHARGES (2014)	**4,060**	**5,003**	**8,964**	**2,637**	**1,214**	**21,878**
"Meaningless" Jail Sentences (1-15 days)	***1,960***	***1,659***	***4,618***	***618***	***323***	***9,178***
Percent of all jail sentences	48%	33%	52%	23%	27%	42%
Estimated Risk Distribution:						
Low Risk (minimal-to-low)	12%	16%	16%	25%	31%	17%
Moderate/High Risk (moderate-to-high)	88%	84%	84%	75%	69%	83%
"Short" to "Mid-Length" Jail Sentences (16-180 days)	***1625***	***2555***	***3527***	***1422***	***625***	***9,754***
Percent of all jail sentences	40%	51%	39%	54%	51%	45%
Estimated Risk Distribution:						
Low Risk (minimal-to-low)	17%	16%	16%	26%	32%	17%
Moderate/High Risk (moderate-to-high)	83%	84%	84%	74%	68%	83%
"Significant" Jail Sentences (181-365 days)						
Number	***475***	***789***	***819***	***597***	***266***	***2946***
Percent of all jail sentences	12%	16%	9%	23%	22%	13%
Estimated Risk Distribution:						
Low Risk (minimal-to-low)	15%	18%	23%	27%		22%
Moderate/High Risk (moderate-to-high)	85%	82%	77%	73%		78%
JAIL SENTENCES ON NONVIOLENT FELONY CONVICTION CHARGES (2014)	**392**	**497**	**870**	**439**	**119**	**2,317**
"Meaningless" Jail Sentences (1-15 days)				***60***		***85***
Percent of all jail sentences				14%		4%
Estimated Risk Distribution:						
Low Risk (minimal-to-low)				25%		26%
Moderate/High Risk (moderate-to-high)				75%		74%
"Short" to "Mid-Length" Jail Sentences (16-180 days)	***55***	***84***	***161***	***64***		***396***
Percent of all jail sentences	14%	17%	19%	15%		17%
Estimated Risk Distribution:						
Low Risk (minimal-to-low)	40%	36%	44%	42%	37%	42%
Moderate/High Risk (moderate-to-high)	60%	64%	56%	58%	63%	58%
"Significant" Jail Sentences (181-365 days)						
Number	***335***	***398***	***706***	***315***	***82***	***1836***
Percent of all jail sentences	85%	80%	81%	72%	69%	79%
Estimated Risk Distribution:						
Low Risk (minimal-to-low)	22%	28%	32%	40%	44%	31%
Moderate/High Risk (moderate-to-high)	78%	72%	68%	60%	56%	69%

Table 6.2. Jail Sentences in 2014 *(Continued)*

	Bronx	Brooklyn	Manhat-tan	Queens	Staten Island	New York City
JAIL SENTENCES ON VIOLENT FELONY OFFENSE (VFO) CONVICTION CHARGES (2014)	**158**	**193**	**155**	**98**	**39**	**643**
"Meaningless" Jail Sentences (1-15 days)						***28***
Percent of all jail sentences						4%
Estimated Risk Distribution:						
Low Risk (minimal-to-low)						58%
Moderate/High Risk (moderate-to-high)						42%
"Short" to "Mid-Length" Jail Sentences (16-180 days)						***68***
Percent of all jail sentences						11%
Estimated Risk Distribution:						
Low Risk (minimal-to-low)						52%
Moderate/High Risk (moderate-to-high)						48%
"Significant" Jail Sentences (181-365 days)						
Number	***142***	***161***	***136***	***76***		***547***
Percent of all jail sentences	90%	83%	88%	78%		85%
Estimated Risk Distribution:						
Low Risk (minimal-to-low)		41%	19%			34%
Moderate/High Risk (moderate-to-high)		59%	81%			66%

Note: Top-line numbers (misdemeanor, nonviolent felony, and violent felony convictions ending in a jail sentence) were for cases disposed in 2014. Risk distributions were based on the general risk tool created for this report (combining minimal and low risk into one uber-category and moderate, moderate-high, and high risk into a second category). Low sample sizes precluded estimating a risk distribution for the shaded cells of the table.

As shown in Table 6.3, among the 11,699 individuals sentenced on a misdemeanor conviction and serving at least some post-sentence time in jail, 48% received "meaningless" jail and averaged three days post-sentence—meaning that any legally proportionate alternative would have to include no more than several days of community service or an extremely brief social service or treatment intervention. Average time served then rose within each jail sentence category, thereby providing opportunities to replace jail with increasingly intensive alternatives risk-reduction strategies (e.g., such as a 30-day drug rehabilitation program or 26-week criminal thinking intervention).

Among the 2,642 individuals sentenced on a nonviolent felony conviction, 30% received a "Mid-Length" and 40% received a "Significant" jail sentence, with an average post-sentence time served of 109 days for this last group. Among the 777 individuals sentenced on a violent felony conviction, jail sentences were similarly skewed towards the longer end of the spectrum. Accordingly, in thinking about alternatives to jail on cases pleading to a felony, unlike misdemeanors, legal proportionality is sufficient to contemplate participation in specialized drug or mental health courts or other robust, long-term programs involving several months of treatment and, potentially, ongoing judicial monitoring.

Prepared in consultation with researchers at the Mayor's Office of Criminal Justice,[42] the information in Tables 6.2 and 6.3 sets the stage for devising suitable risk- and need-responsive alternatives for different defendant subgroups that would otherwise spend varying lengths of time at post-sentence time at Rikers Island if alternatives were not present.

[42] We are deeply indebted to MOCJ researchers for their gracious assistance with data collection and analysis in this portion of the report.

Table 6.3. Diversion Opportunities: Discharges in 2015 of Sentenced Individuals by Sentence Length, Actual Days in Jail After Sentence Imposition, Conviction Charge Severity, and Borough

	Bronx	Brooklyn	Manhat-tan	Queens	Staten Island	New York City
TOTAL INDIVIDUALS DETAINED AFTER SENTENCING (2015)	**2,546**	**2,924**	**5,733**	**2,079**	**884**	**15,118**
INDIVIDUALS DETAINED ON MISDEMEANOR CHARGES (2015)	**2,071**	**2,386**	**4,395**	**1,534**	**626**	**11,699**
"Meaningless" Jail (sentenced to 1-15 days)	***1,083***	***1,055***	***2,365***	***610***	***290***	***5,669***
Percent of all discharges	52%	44%	54%	40%	46%	48%
Average days served in pretrial detention	2	3	2	3	2	2
Average days served post-sentence	3	3	3	4	2	3
"Short" Jail (sentenced to 16-30 days)	***419***	***565***	***915***	***356***	***172***	***2,590***
Percent of all discharges	20%	24%	21%	23%	27%	22%
Average days served in pretrial detention	9	8	7	8	6	8
Average days served post-sentence	8	8	10	10	9	9
"Short-to-Mid" Jail (sentenced to 31-60 days)	***255***	***248***	***384***	***197***	***89***	***1,263***
Percent of all discharges	12%	10%	9%	13%	14%	11%
Average days served in pretrial detention	20	16	13	17	14	16
Average days served post-sentence	12	18	21	19	18	18
"Mid-Length" Jail (sentenced to 61-180 days)	***187***	***310***	***475***	***215***	***58***	***1,342***
Percent of all discharges	9%	13%	11%	14%	9%	11%
Average days served in pretrial detention	28	25	21	39	23	26
Average days served post-sentence	46	52	61	48	42	53
"Significant" Jail (sentenced to 181-365 days)	***127***	***208***	***256***	***156***		***835***
Percent of all discharges	6%	9%	6%	10%		7%
Average days served in pretrial detention	91	85	39	73		65
Average days served post-sentence	112	139	160	141		139

Table 6.3. Diversion Opportunities *(Continued)*

	Bronx	Brooklyn	Manhat-tan	Queens	Staten Island	New York City
INDIVIDUALS DETAINED ON NONVIOLENT FELONY CHARGES (2015)	**310**	**391**	**1,098**	**426**	**213**	**2,642**
"Meaningless" Jail (sentenced to 1-15 days)		***60***	***122***	***74***	***90***	***419***
Percent of all discharges		15%	11%	17%	42%	16%
Average days served in pretrial detention		8	7	9	1	6
Average days served post-sentence		2	1	7	1	4
"Short" Jail (sentenced to 16-30 days)			***92***			***206***
Percent of all discharges			8%			8%
Average days served in pretrial detention			17			18
Average days served post-sentence			6			7
"Short-to-Mid" Jail (sentenced to 31-60 days)			***80***			***179***
Percent of all discharges			7%			7%
Average days served in pretrial detention			24			25
Average days served post-sentence			12			13
"Mid-Length" Jail (sentenced to 61-180 days)	***83***	***98***	***356***	***149***	***51***	***782***
Percent of all discharges	27%	25%	32%	35%	24%	30%
Average days served in pretrial detention	54	28	42	43	39	43
Average days served post-sentence	38	53	46	48	38	46
"Significant" Jail (sentenced to 181-365 days)	***127***	***174***	***448***	***149***		***1,056***
Percent of all discharges	41%	45%	41%	35%		40%
Average days served in pretrial detention	94	71	107	92		93
Average days served post-sentence	112	129	105	119		109

Table 6.3. Diversion Opportunities *(Continued)*

	Bronx	Brooklyn	Manhat-tan	Queens	Staten Island	New York City
INDIVIDUALS DETAINED ON VIOLENT FELONY (VFO) CHARGES (2015)	**165**	**147**	**240**	**119**	**45**	**777**
"Meaningless" Jail (sentenced to 1-15 days)						***92***
Percent of all discharges						12%
Average days served in pretrial detention						12
Average days served post-sentence						6
"Short" Jail (sentenced to 16-30 days)						***36***
Percent of all discharges						5%
Average days served in pretrial detention						23
Average days served post-sentence						3
"Short-to-Mid" Jail (sentenced to 31-60 days)						***46***
Percent of all discharges						6%
Average days served in pretrial detention						29
Average days served post-sentence						10
"Mid-Length" Jail (sentenced to 61-180 days)	***50***		***71***			***217***
Percent of all discharges	30%		30%			28%
Average days served in pretrial detention	55		53			52
Average days served post-sentence	32		34			38
"Significant" Jail (sentenced to 181-365 days)	***90***	***70***	***100***	***61***		***386***
Percent of all discharges	55%	48%	42%	51%		50%
Average days served in pretrial detention	147	74	131	132		121
Average days served post-sentence	116	163	85	124		113

Note: Research staff at the Mayor's Office of Criminal Justice used New York City Department of Correction data to estimate average time served pretrial and post sentence in each sentence length category. Estimates above only include those for whom sentence date and length were available. Individuals sentenced to zero days (time served) were excluded from the above estimates. Violent felonies were defined by the New York State Penal Law.

Testing the Criminogenic Effects of Jail

Sentencing those in higher risk categories to state prison can create real incapacitation benefits, since prison removes such individuals from the community for meaningful periods of time, lasting at least one year and sometimes many years. By contrast, the incapacitation benefits of jail are minimal. Further, prior research indicates that jail can be criminogenic (see, e.g., this report, Chapter 1, and Lowenkamp et al. 2013a).

The results in Table 6.4 document the criminogenic effects of jail in New York City. The findings indicate that defendants sentenced to jail had a seven percentage-point higher re-arrest rate than similar defendants who were not sentenced to jail over a two-year tracking period following sentencing (or release from custody). Comparability between defendants was based on controlling for multiple criminal history, noncompliance history, demographic, and charge-based factors (see Table 6.4, footnote 1). Confirming prior research by Lowenkamp et al. (2013a), criminogenic effects were greatest at the lower risk levels, with jail increasing the re-arrest rate by nine percentage points among minimal risk defendants, but by only four points among those in the high risk category. However, also shown in Table 6.2, this pattern of seeing lesser criminogenic effects at lower risk levels was not found among felony level defendants, for whom jail led to a 10 percentage-point increase in the re-arrest rate at both the minimal and high risk ends of the spectrum.

Additional analysis (not shown in the table) detected less pronounced criminogenic effects on violent felony re-arrest among otherwise comparable defendants. No such effect appeared at the three lowest risk levels, presumably because few defendants at lower risk levels are inclined to commit a VFO under any circumstances. At the moderate-high and high risk levels, jail increased the VFO re-arrest rate by three percentage points, pointing to a statistically significant but modest criminogenic effect of jail on propensity for future violence.

Role of Pretrial Detention in the Use of Jail

Regarding how cases wind up with a jail or prison sentence, analysis suggests that pretrial detention plays an influential role—especially when lengthier jail sentences are involved. Shown in Figure 6.2, of cases continued at arraignment, only 2% of those with a jail sentence of 30 days or less were detained pretrial at the time of disposition, whereas 70% of those

with a one-year jail sentence and 75% of those with a prison sentence were detained at disposition. These results suggest that pretrial detention may operate to incentivize defendants to accept pleas with long incarceration sentences that they would not otherwise have accepted were they not held in jail during plea negotiations. Alternatively, a counter-hypothesis is that more serious criminal behavior leads both to pretrial detention and incarceration at sentencing; hence, a causal relationship cannot be established decisively through the results in Figure 6.2 alone. The next section reexamines the issue through multivariable models controlling for multiple defendant and case characteristics.

Table 6.4. Impact of Jail Sentence on Two-Year Post-Disposition Re-Arrest: Defendants Arraigned in 2012 on Misdemeanor or Felony Charges

Arraignment Charge Severity	Misdemeanor	Felony	All Cases
Number of cases in the analysis: Jail sentence	**100,567**	**9,843**	**110,410**
Effect of Jail Sentence (absolute percentage-point increase in two-year re-arrest rate when sentencing to jail)[1,2]			
Minimal risk only	8%	10%	9%
Low risk only	6%	7%	6%
Moderate risk only	8%	3%	6%
Moderate-high risk only	8%	7%	8%
High risk only	4%	10%	4%
Entire sample	***8%***	***9%***	***7%***

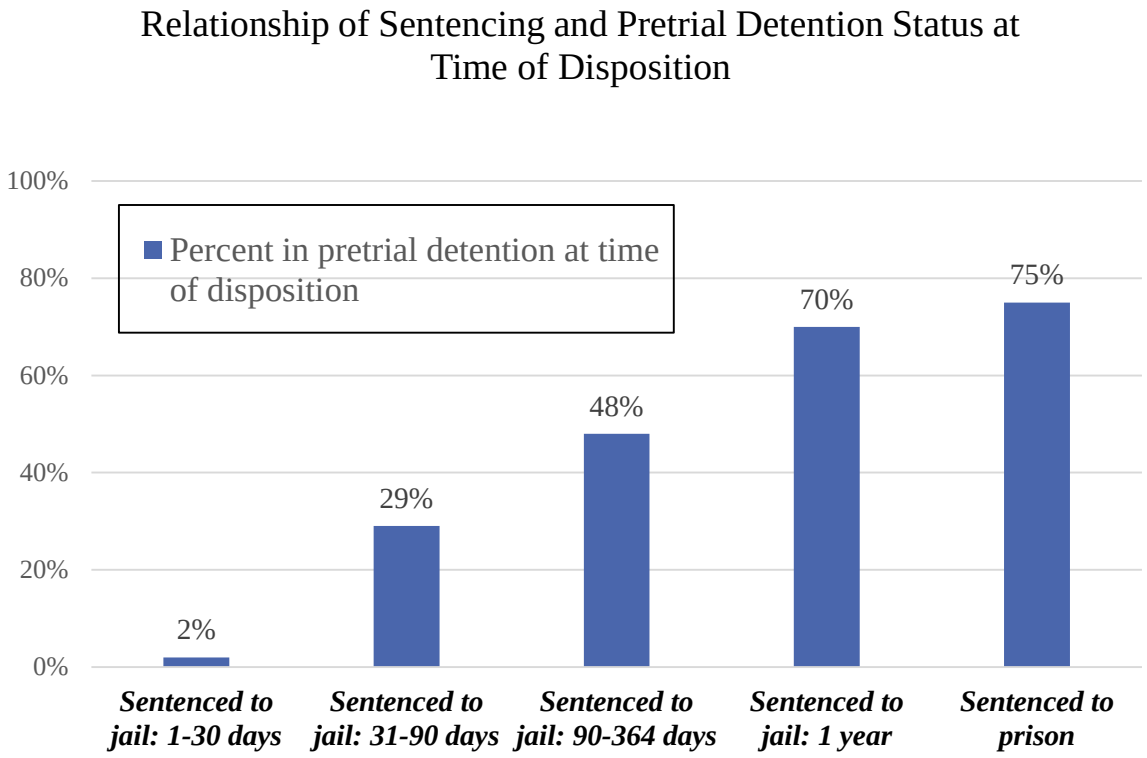
+p<.10,* p<.05, ** p<.01, ***p<.001

Note: Cases included all criminal defendants arrested in 2012 (where same defendant had multiple arrests one arrest was randomly selected), as provided by the Division of Criminal Justice Services. The tracking period began either on the disposition date or release date from jail.

[1] All reported effect sizes were computed from multivariable models that controlled for and then set at their mean value the following background characteristics: county/borough, age (continuous), ages 16-24 (yes/no), sex, defendant arrested in high arrest neighborhood, arrest charge severity (misdemeanor, nonviolent felony, violent felony), failure to appear on current case (yes/no), failure to appear on prior case (yes/no), number of prior cases with failure to appear in past three years (0, 1, 2, or 3 or more), prior arrest (yes/no), prior felony arrest (yes/no), prior conviction (yes/no), prior felony conviction (yes/no), prior violent felony conviction (yes/no), prior felony conviction in past three years (yes/no), prior misdemeanor convictions in past three years (0, 1, 2, or 3 or more), 10 or more prior convictions in past three years (yes/no), prior probation revocation (yes/no), prior parole revocation, prior case with sentence to jail or prison, current open case at time of arrest on current case, currently on probation at time of current case, and current charge (property, drug possession, drug sales, marijuana, or weapon).

[2] Separate models tested the impact of the length of the jail sentence, but sentence length was not significantly associated with re-arrest over and above whether or not a jail sentence of some length was imposed.

Figure 6.2. Likelihood of Pretrial Detention among Cases with Lengthy Jail Sentences or a Prison Sentence



Factors Associated with Criminal Convictions and Jail and Prison Sentences

The multivariable results in Table 6.5 indicate which defendant and case characteristics were associated with more severe criminal penalties, defined as: (1) a criminal conviction at the misdemeanor or felony level; (2) a jail sentence if convicted (as opposed to no incarceration); and (3) a prison sentence if convicted (as opposed to no incarceration).[43] The factors included in the analysis explained 50.8% of the variation in whether a defendant received a criminal conviction and 49.5% of the variation in whether a convicted defendant received a prison, jail, or non-custodial sentence, both remarkably high R^2 figures—suggesting that available data included nearly all of the important measures for explaining case outcomes.

Predictors of a Criminal Conviction

Controlling for other factors, the strongest predictors of a case ending in a criminal conviction were (in rough order of importance): *charge severity* (primarily whether the case was arraigned on a felony or misdemeanor); *charge other than domestic violence* (the latter of which is often difficult to prosecute due to reliance on victim cooperation); *risk* (with those in the high risk category especially likely to receive a criminal conviction); *prior conviction*; *detained pretrial* (especially at time of disposition); *borough* (especially Manhattan); and *older age* (with those ages 16-24 significantly *less* likely than others to be convicted, net of other factors).

Predictors of a Jail Sentence

Controlling for other factors, the strongest predictors of a jail sentence, as opposed to no incarceration, in convicted cases were (in rough order of importance): *risk* (with those in the high risk category especially likely to receive jail time); *detained pretrial* (especially at time of disposition); *borough* (especially Manhattan and Staten Island); and *charge severity* (especially at the violent felony level). Notably, whereas older defendants were significantly more likely than others to receive a criminal conviction, age had a weaker effect on

[43] A single multinomial logistic regression was utilized to predict whether the sentence was prison, jail, or no incarceration.

sentencing, and there was no effect of 16-24-year-old status on the likelihood of a jail sentence.

Predictors of a Prison Sentence

The factors that increased the likelihood of a prison sentence largely mirrored those associated with jail. The most notable differences were that the impact of charge severity and pretrial detention status grew substantially in magnitude; drug felonies were especially likely to be sentenced to prison after controlling for other factors; and male were significantly more likely than female defendants to be sentenced to prison, whereas gender had no effect on the use of jail.

Impact of Pretrial Detention

The results in Table 6.5 make clear that even after controlling for multiple case and defendant characteristics, criminal penalties were significantly more severe on average when a defendant was detained at the time of disposition—a status that presumably disadvantaged the defendant in plea bargaining negotiations. With other background characteristics set at their mean, the impact of pretrial detention at the time of disposition was as follows:

- **Criminal Conviction:** Pretrial detention increased the likelihood of a criminal conviction by ten percentage points in misdemeanor and 27 percentage points in felony cases.

- **Jail Sentence:** In cases ending in a criminal conviction, pretrial detention increased the likelihood of a jail sentence by 40 percentage points in misdemeanor and five percentage points in felony cases.

- **Prison Sentence:** In cases ending in a criminal conviction, pretrial detention increased the likelihood of a prison sentence by 34 percentage points in felony cases.[44]

Unobserved characteristics, including the strength of the evidence and nuanced information about the defendant that is not captured in official data, such as whether the defendant is

[44] By statute, cases arraigned on a misdemeanor cannot end in a prison sentence unless the final conviction charge is raised to the felony level, which is rare.

gang-involved, could well have led the aforementioned results to overstate the effect size that is attributable to pretrial detention status alone. Yet, given the large number of observed variables that could be and were controlled for in the analysis, and the large size of the reported effects, detention at disposition would appear to have a causal effect of at least some substantial magnitude in the direction of increasing the severity of criminal penalties.

Racial/Ethnic Disproportionalities

As shown in Table 6.5, there were no differences by race/ethnicity in the likelihood of a criminal conviction or, among those convicted, of a prison sentence. Although the magnitude of the effect was more modest than for other factors discussed above, racial/ethnic disproportionalities *were* detected in the use of jail, with white defendants less likely than those from other racial/ethnic groups to receive a jail sentence. Further analysis determined that these disproportionalities did not apply to misdemeanors. In felony cases, when setting other background characteristics at their mean, black/African American defendants were five percentage points more likely, Hispanic/Latino defendants four points more likely,[45] and Asian defendants seven points less likely than white defendants to receive a jail as compared to a non-custodial sentence.[46] Due to the relatively modest magnitude of these effects, the role of unobserved characteristics in explaining the findings cannot credibly be ruled out.

[45] The presence of immigration holds in the cases of some Hispanic/Latino defendants could not be controlled.

[46] Prison sentences were excluded from this analysis.

Table 6.5. Predictors of Criminal Conviction and Sentence to Jail or Prison

Regression Models	Logistic Regression	Multinomial Logistic Regression *(If Criminal Conviction)*	
	Outcome = Criminal Conviction[1]	Jail v. No Incarceration	Prison v. No Incarceration
Number of cases in the analysis	**127,363**	**16,705**	
Nagelkerke R Squared	**0.508**	**0.495**	
	Parameter Estimates (Odds Ratios)		
Borough (Ref=Staten Island; deviation coding)			
Bronx	.638***	.324***	.403***
Brooklyn	.670***	0.606***	.427***
Manhattan	2.017***	0.900	1.351
Queens	.659***	.637**	.353***
Demographics			
Male sex	.818***	.921	1.746***
Age	1.054***	1.021***	.983*
Ages 16-24	.428***	.923	.897
Race/ethnicity (Ref=white; indicator coding)			
Black	1.040	1.754***	1.462+
Hispanic/Latino	1.071	1.678***	1.226
Asian or additional race/ethnic group	1.243***	1.610***	1.274
Prior criminal history			
Prior arrest	.977	1.179+	1.165
Prior conviction	3.874***	1.390***	.911
Prior felony conviction	1.021	1.105*	3.711*
Prior violent felony conviction	.782**	1.019	1.219+
Prior case with warrant for FTA	.848***	.945	.775*
Current open case	.874***	.989	1.346*
Charge severity (Ref = misdemeanor)			
Nonviolent felony	10.258***	1.383***	57.317***
Violent felony	7.712***	2.648***	361.802***
Current top charge (Ref = other charges)			
Domestic violence	.268***	1.094	.790
Drug	.639***	.849**	1.634***
Property	.556***	.696***	.954
Weapons	.731***	1.146	1.466**
Risk of general (Model 4) or VFO re-arrest (Model 5) (Ref=minimal; indicator coding)			
Low risk	2.318***	1.678***	.766
Moderate risk	5.277***	2.459***	.708
Moderate-high risk	9.488***	4.729***	1.553+
High risk	35.334***	9.580***	2.515**
Detained pretrial at arraignment	1.909***	2.349***	2.387***
Detained throughout pretrial period	2.438***	9.360***	20.508***

+p<.10,* p<.05, ** p<.01, ***p<.001

Note: Constant is not shown.

[1] Cases are only coded as criminal conviction if the conviction was at the felony or misdemeanor levels.

Chapter 7

Potential Cost Savings from Reducing the Use of Jail

In fiscal year 2015 (ending June 30, 2015), there were 67,672 admissions to New York City's jails. Reducing the number booked into the jail as well as reducing the average length of stay for those booked would reduce costs to taxpayers. It would also translate to avoided costs for those no longer incarcerated, separated from family and employment, and exposed to other potential harms.

This chapter assesses the cost of operating the jails and estimates potential cost savings associated with a number of jail population reduction scenarios. We present (1) the total "baseline" incarceration costs for an annual cohort of arrestees on misdemeanor and felony charges in New York City; and (2) the cost savings attendant to diverting various groups of low-to-moderate risk defendants. The results are disaggregated by charge severity (misdemeanor, non-violent felony, and violent felony), borough, and risk classification. Appendix M provides a diagram of the case processing pathways modeled in this analysis, including the number and proportion of cases to reach each successive stage in the criminal case processing continuum.

The specific data and methods for the analysis were described in Chapter 2. As previously discussed, 2013 was used as the index year. The distribution of risk classifications for 2013 is provided below in Table 7.1. The results indicate that more than a third (37.8%) of defendants had a minimal or low risk of re-arrest for any offense (general risk), and nearly two-thirds (63.9%) had a minimal or low risk of re-arrest for a violent felony offense (VFO).

Baseline Cost of Jail Incarceration

This section provides findings on the cost of the baseline cohort, and cohorts disaggregated by charge severity, borough, and risk category.

Table 7.1. Distribution of Risk Classifications in 2013

General Risk of Re-Arrest			Risk of Violent Felony Re-Arrest		
Risk Category	**N**	**Percent of Total**	**VFO Risk Category**	**N**	**Percent of Total**
Minimal risk	25,403	9.0%	Minimal risk	100,310	35.7%
Low risk	81,021	28.8%	Low risk	79,362	28.2%
Moderate risk	54,051	19.2%	Moderate risk	54,642	19.4%
Moderate-high risk	49,561	17.6%	Moderate-high risk	28,612	10.2%
High risk	71,005	25.3%	High risk	18,025	6.4%

Baseline Jail Expenditures

The model estimates that the city spends approximately $1.4 billion annually for jail expenses related to one year of arrests, 69% of which paid for the incarceration of pretrial detainees (Table 7.2).[47] The balance of this sum paid for the cost of jail sentences. Each year of arrests resulted in 2.5 million bed-days—more than 6,700 bed-years—in jail in 2013.

Table 7.2. Jail Expenditures and Bed-Years for the Baseline Cohort, 2013

	Jail Bed Years	Annual Jail Expenditure
Pretrial Jail	4,635	$958,189,901
Jail Sentences	2,108	$435,876,037
TOTAL	**6,744**	**$1,394,065,938**

Cost Findings by Charge Severity: The vast majority of arrests—84%—were classified as misdemeanors at arraignment. Yet the city spent only 22% of its annual corrections expenditures in 2013 incarcerating misdemeanor cases (Table 7.3) because half of all misdemeanor cases were resolved at the initial arraignment court appearance; and misdemeanors that were continued generally spent only short stays in jail. The bulk of

[47] Total jail expenses in New York City were $2.4 billion (Henrichson and Rinaldi, 2015) in fiscal year 2014. The difference between $2.4 billion and $1.4 billion is the expense for holding individual arrests in prior years and for holding those held on warrants.

detention costs—more than three-quarters—resulted from felony defendants. Nonviolent felonies made up 10% percent of cases and 48% of total costs, whereas violent felonies made up 6% of cases and 30% of total costs.[48]

Table 7.3. Arrests, Jail Expenditures, and Bed-Years by Charge Severity, 2013

	Arrests (Violations Excluded)	Share of NYC Arrests	Annual Jail Expenditure	Jail Bed Years	Share of NYC Expenditures
Misdemeanors	262,794	84%	$307,529,946	1,488	22%
Nonviolent Felonies	32,843	10%	$674,921,345	3,265	48%
Violent Felonies	18,537	6%	$430,342,649	2,082	30%

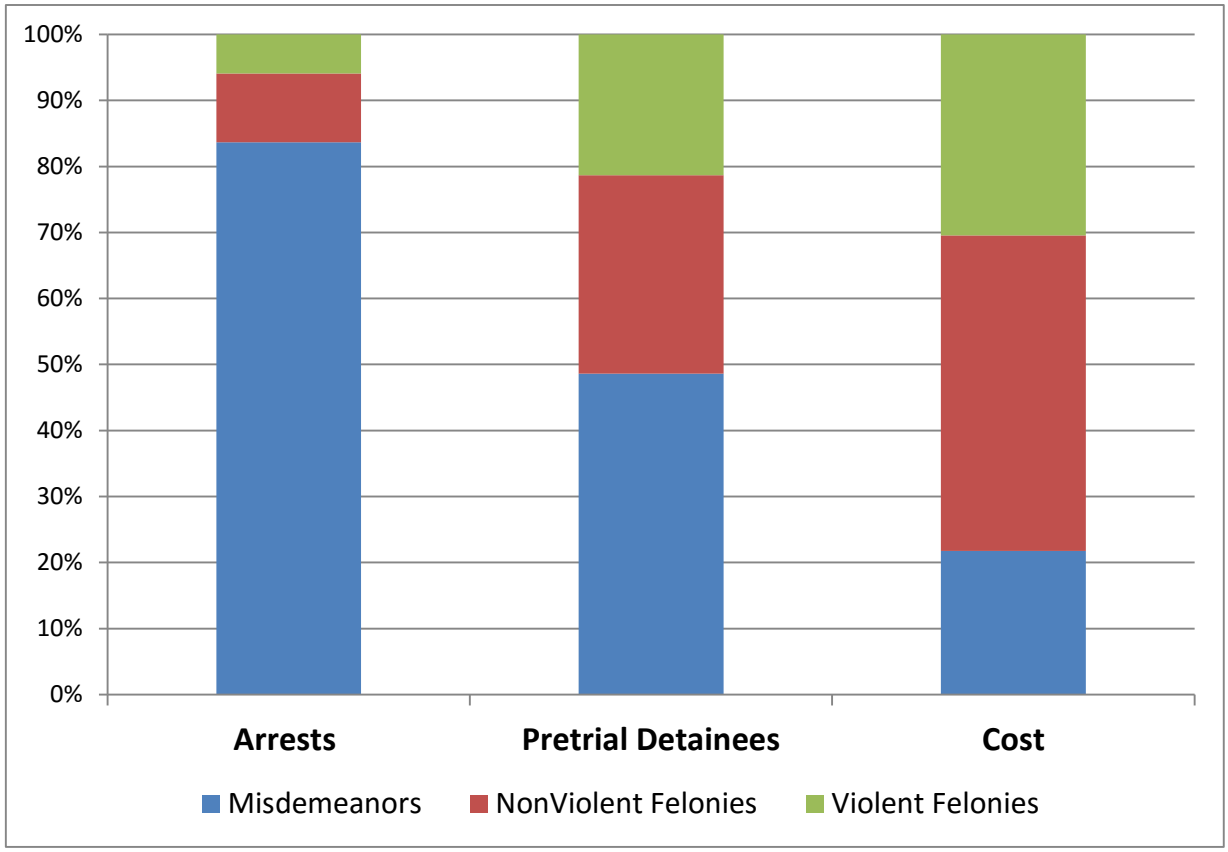
Several differences in case processing for misdemeanors relative to felonies resulted in significantly lower costs. Half of misdemeanors were disposed at arraignment, whereas only 2% percent of nonviolent felonies and 1% of violent felonies were disposed at arraignment.

Of the cases that were continued after arraignment, defendants facing nonviolent felony charges were 2.7 times more likely to be detained pretrial than those facing misdemeanor charges; and those facing violent felony charges were 3.4 times more likely to be detained pretrial than those facing misdemeanor charges. Jail sentences (and prison sentences) were also much more common for defendants in felony than misdemeanor cases. While felony cases made up only 16% of arrests, they accounted for 51% of pretrial detainees and 78 of total jail expenditures (Figure 7.1).

It should not be ignored, however, that the human cost of pretrial detention for misdemeanor defendants is still quite large. The average length of pretrial stay for a misdemeanor defendant is 15 days. A total of 20,620 defendants facing misdemeanor charges and 21,719 with misdemeanor sentences collectively spent 542,987 bed-days (or 1,488 bed-years) in jail annually. More than half of these bed-days were the result of pretrial detention.

[48] Some people facing felony charges will have their charge decreased at some point after arraignment; this analysis only examines the charge severity at arraignment.

Figure 7.1. Arrest, Pretrial Detention and Costs by Charge Severity
(Cases Continued at Arraignment)



Cost Findings by Borough: Cases resulting from arrest in Manhattan accounted for one-third of the city's total expenditures, the largest of all five boroughs (Table 7.4). Relative to their share of the city's population, the Bronx and Manhattan accounted for a larger proportion of the city's jail expenditures, while Brooklyn, Queens and Staten Island accounted for disproportionally less relative to their share of the city's population.[49] Manhattan holds 19 percent of the city's population, but accounts for 29 percent of its arrests and 36 percent of its jail expenditures.

[49] Population data from NYC Department of City Planning, available at http://www1.nyc.gov/site/planning/data-maps/nyc-population/current-future-populations.page

Table 7.4. Jail Expenditures and Bed-Years by Borough, 2013

	Annual Jail Expenditure	Jail Bed Years	Share of NYC Expenditures
Bronx	$300,326,799	1,453	19%
Brooklyn	$410,021,928	1,983	25%
Manhattan	$579,876,384	2,805	36%
Queens	$276,472,461	1,337	17%
Staten Island	$48,679,991	235	3%

It may be that more arrests occur in Manhattan relative to its share of the population because more arrests involved individuals who live outside of the borough compared to other parts of the city. However, the share of cases in Manhattan facing felony charges is the same or smaller than in the other boroughs. Further, independent of its caseload, defendants in Manhattan are more likely than in any other borough to be incarcerated, both pretrial and at the sentencing stage (see Chapters 5 and 6). Besides having the highest rate of pretrial detention of all five boroughs, as well as the longest average length of pretrial jail stays, it is also the case that Manhattan had the highest rate of conviction (59% percent of accepted 2013 cases compared to a low of 48 percent in Brooklyn).

Cost Findings by Risk Score: Although the city spends $1.4 billion on jail, only a small share of these costs are for defendants with minimal, low, and moderate risk classifications, which accounted for 57% of all cases, and minimal and low risk of re-arrest for a violent felony, which accounted for 64% of all cases. For example, the city spends $36 million on

defendants with a general risk score of minimal and $151 million on defendants with a violent felony risk score of minimal (see Table 7.5 for jail expenses for lower risk levels).[50]

Case Study: A Comparison of Manhattan and Brooklyn

Manhattan and Brooklyn offer an interesting case study in the ways that seemingly modest differences in case processing decisions can have a substantial impact on total corrections spending. Although Brooklyn's population is one million larger than Manhattan, the two boroughs had roughly the same number of misdemeanor and felony arrests in 2013: 84,634 in Brooklyn, or 27% percent of the city total, and 90,510 in Manhattan, or 29 percent of the city total. Although there were slightly fewer arrests in Brooklyn, slightly more cases reached the stage of pretrial determination than in Manhattan. Brooklyn also had nearly double the number of violent felony arrests as Manhattan. With a larger number of serious offenders and more cases reaching pretrial determination one could reasonably assume that the cost of detention resulting from Brooklyn cases was equal to or exceeded the cost from Manhattan cases.

Yet, the two boroughs differed in their case processing flows in important ways and thus diverged substantially on total corrections spending. In 2013, Manhattan had a higher rate of pretrial detention (32% percent of all cases continued at arraignment v. 26% in Brooklyn) and a higher rate of jail sentences (23% of all sentences, v. 18% in Brooklyn). The average length of pretrial stay of Manhattan defendants was 57 days, one third longer than the average length of stay of 42 days of Brooklyn defendants . The combination of these differences resulted in Manhattan cases costing the city 41% more than cases in Brooklyn, a total difference of around $170 million.

[50] Pretrial length of stay is available only for misdemeanor and felonies, and by borough. In order to calculate length of stay for the risk scores, we created a weighted average based on the number of misdemeanor and felony cases within each risk category.

Table 7.5. Costs and Bed-Years for Lower Risk Levels, 2013

	Annual Jail Expenditure	Jail Bed Years
General Risk=Minimal	$36,224,887	175
General Risk=Low	$147,121,763	712
General Risk=Moderate	$132,523,202	641
Violent Felony Risk=Minimal	$151,339,727	732
Violent Felony Risk= Low	$264,380,044	1,279
Nonviolent Misdemeanors (Independent of Risk Level)	$210,107,512	1,016

Analysis of Selected Lower-Risk Populations: Researchers modeled the total corrections spending for six subgroups:

1. Cases with a general risk score of minimal or low.
2. Cases with a general risk score of minimal, low, or moderate.
3. Cases with a violent felony offense risk score of minimal.
4. Cases with a violent felony offense risk score of minimal or low.
5. A hybrid subgroup including the cases with a violent felony offense risk score of minimal or low at the pretrial stage and all misdemeanors regardless of risk score at sentencing.
6. Cases classified as "nonviolent misdemeanors."[51]

[51] Unlike felonies, misdemeanors are not usually further sub-divided into violent and non-violent. For this analysis, we created violent and non-violent misdemeanor categories. Violent misdemeanor charges were classified as cases with a crime against person charge: assault and related offenses (New York Criminal Procedure Law § 120), homicide, abortion, and related offenses (New York Criminal Procedure Law § 125), sex offenses (New York Criminal Procedure Law § 130), kidnapping, coercion and related offenses (New York Criminal Procedure Law § 135), arson (New York Criminal Procedure Law § 150), bribing, tampering or intimidating a witness (New York Criminal Procedure Law § 215), rioting and harassment (New York Criminal Procedure Law § 240), and offenses against children (New York Criminal Procedure Law § 260). All other misdemeanors were classified as non-violent. Given this definition, more than three-fourths of all misdemeanors and 64% of the city's total arrests can be categorized as nonviolent misdemeanors at arraignment.

The analysis found that the city spends $316 million annually on jail incarceration for defendants with a general risk score of minimal, low, or moderate (Figure 7.5).[52] The results for violent felony re-arrest classifications were even starker. Defendants with a violent felony risk classification of minimal or low utilized 2,011 jail bed-years and cost the city more than $416 million in detention costs. Jail detention for this subgroup accounted for around a third of the city's jail expenditures.

The subgroup consisting of nonviolent misdemeanors made up 64% of the city's arrests, but accounted for only 15% of total jail costs, a total of $210 million. These cases represent the "low-hanging fruit" of justice reform and potential cost savings. By eliminating the use of jail for this cohort, the city could reduce the average jail population by 1,000 when combining potential jail bed savings both from eliminating pretrial detention and jail at the sentencing stages. While there is opportunity for the city to achieve meaningful savings by reducing the use of jail incarceration for low-risk or misdemeanant defendants, New York City's case-level data demonstrate that the city already spends most of its resources incarcerating those who are accused of more serious crimes (who account for more than 8,500 individuals in the average jail population).

The Role of Bail and Pretrial Detention: Pretrial detention stemming from a defendant's inability to make bail plays a critical role in driving the costs described above. Of cases that were continued at arraignment in 2013, 26% were detained—a total of more than 38,000 individuals. More than 20,000 individuals with a misdemeanor charge experienced some amount of pretrial detention. The risk-based analysis provided in Chapter 5 as well as in the present chapter demonstrates that many of these individuals could have safely remained in their communities while awaiting a case disposition. Altogether, the city spends $169 million (12% of total jail expenditures) each year detaining defendants in misdemeanor cases who cannot afford bail.[53] Similarly, the city spends $193 million

[52] The total of $316 million is the sum for the general risk groups: minimal ($36.2 million), low ($147.1 million), and moderate ($132.5 million).
[53] In addition to those who cannot afford bail, around 2,000 cases in the 2013 cohort, or 1% of the cases that were continued at arraignment, were remanded, or detained pretrial without the possibility of bail. The city spends $47 million on pretrial detention for these defendants.

incarcerating those with a minimal, low, or moderate risk of any re-arrest for the inability to pay bail.

Prison Expenditures

According to the model, prison sentences originating from the 2013 arrest cohort in New York City imposed a total cost to the state of $1.9 billion. The bulk of this spending was for felony cases, with only 4% of prison spending resulting from sentences for misdemeanor cases. The city defendants who received prison sentences served a total of 28,972 prison bed-years. The city also handed down prison sentences equivalent to 3,971 prison bed years for defendants with a minimal or low risk of violent felony re-arrest in 2013. The average prison sentence was five years for all cases and seven years for violent felony offenses.

Cost Savings of Potential Reform Scenarios

This section models the marginal cost savings produced by several policy scenarios to reduce the use of jail incarceration. These scenarios were selected to demonstrate the cost savings that can result from diversion of lower risk defendants from pretrial detention. This section also provides findings on differences in case processing outcomes between subgroups.

Table 7.6. Jail and Prison Average Daily Population (ADP) and Costs for Risk Classification Subgroups, 2013

	General Risk Classification is Minimal or Low	General Risk Classification is Minimal, Low or Moderate	Violent Felony Risk Classification is Minimal	Violent Felony Risk Classification is Minimal or Low	Violent Felony Risk Classification is Minimal or Low + No misdemeanors receive jail or prison sentences	Nonviolent Misdemeanors
CORRECTIONS ADP						
Jail	887	1,528	732	2,011	1,850	1,016
Prison	2,372	4,064	1,319	3,971	750	502
TOTAL CORRECTIONS COSTS						
Jail	$183,346,650	$315,869,852	$151,339,727	$415,719,771	$382,514,464	$210,107,512
Prison	$153,813,443	$263,553,218	$85,531,116	$257,495,434	$48,616,218	$32,550,652
MARGINAL JAIL COST	$26,009,775	$44,809,674	$21,469,234	$58,974,503	$54,263,959	$29,806,103

Cost-Savings Analysis

If New York City decided to off-ramp one of the aforementioned six subgroups and subsequently reduced correctional employment, how much could it reasonably expect to save in correctional costs? The analysis used the New York City and state average daily costs to estimate the total corrections spending for different cohorts. Repeating the previous analysis but with marginal per-person per-day costs for prison and jail models, the analysis then models the possible savings from a reduction in the jail population. The model estimates that diverting the entire cohort of cases with a general risk score of minimal, low, or moderate away from jail incarceration would save $45 million. The model estimates savings of $59 million for diverting the entire cohort of cases with a violent felony risk score of minimal or low away from jail incarceration.[54]

[54] This analysis uses the marginal cost of jail derived from a reduction in variable costs such as food and clothing and a reduction in staffing levels associated with the closing of a housing pod. Were the city to eliminate detention for a large share of the cases that are currently jailed, the city could also begin to reduce spending on previously fixed costs such overhead. The possible savings from such a large reduction in the population are not accounted for here.

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Appendices

Appendix A. Risk Factors and Weighting Scheme for General Risk and Violent Felony Offense (VFO) Risk Tools

Outcome Measure	Any Re-Arrest		Any Violent Felony Re-Arrest	
Current Charge Type	**Current Case is Misdemeanor**	**Current Case is Felony**	**Current Case is Misdemeanor**	**Current Case is Felony**
Validation Timeframe	**Weights Validated for Six-Month, One-Year, & Two-Year Follow-Up**			
RISK FACTORS				
Prior conviction (0 or 1)	1	1	1	n/a
Prior felony conviction in past 3 years (0 or 1)	1	n/a	2	1
Prior violent felony offense conviction (0 or 1)	n/a	n/a	1	1
Prior misdemeanor conviction in past 3 years (0 to 3+)	2 (Max = 6)	1 (Max = 3)	1 (Max = 3)	1 (Max = 3)
Ten (10) or more prior misd. convs. in past 3 years (0 or 1)	6	3	2	2
Prior case with an FTA (0 or 1)	4	4	3	2
Number of cases with prior FTA in past 3 years (0 to 3+)	1 (Max = 3)	1 (Max = 3)	1 (Max = 3)	1 (Max = 3)
Prior probation revocation (0 or 1)	1	n/a	1	n/a
Prior parole revocation (0 or 1)	2	1	2	2
Prior jail or prison sentence (0 or 1)	2	1	3	2
Current open case (0 or 1)	3	2	3	2
Currently on probation (0 or 1)	1	1	1	1
Age (up to 19=6; 20-24=5; 25-29=4; 30-39=3; 40-49=2; 50-59=1; 60+=0)	2 (Max = 12)	2 (Max = 12)	4 (Max = 48)	4 (Max = 48)
Younger than age 25 specifically (0 or 1)	2	2	2	2
Male sex (male = 1; female = 0)	2	2	3	3
Current charge: Petit larceny (0 or 1)	1	n/a	-1	n/a
Current charge: Other property (not petit larceny) (0 or 1)	1	n/a	-1	n/a
Current charge: Any property (0 or 1)	n/a	1	n/a	1
Current charge: Felony drug possession (0 or 1)	n/a	1	n/a	-2
Current charge: Felony drug sales (0 or 1)	n/a	1	n/a	-1
Current charge: Felony weapons possession (0 or 1)	n/a	1	n/a	1

Note: Two separate risk prediction algorithms, risk scores, and cut-offs for the five-category classification scheme were created for cases whose charge is respectively a misdemeanor and felony. These schemes were applied to predict any re-arrest; but the resulting weights were validated with a felony re-arrest dependent variable as well. Then, an additional set of two schemes for those whose current charge is respectively a misdemeanor and felony were created and applied to predict any violent felony re-arrest. The final weights were based on the logistic regression equations with the four case type/dependent variable specifications shown. The original regression equations were based on a two-year tracking timeframe with a 2012 case sample, but minor adjustments to the weights were made based on results at the six-month and one-year tracking periods (e.g., to ensure the weights are valid over shorter tracking periods that more closely approximately the pretrial period of time). Then, all algorithms were validated against a 2011 case sample as well as a 2013 case sample.

Appendix B. Background Characteristics of Defendants Arrested in 2012 (N = 216,012)

Parameter	Percent of Total or Mean
RISK FACTORS INCLUDED IN RISK ASSESSMENT TOOLS	
Demographics	
Sex	
Female	20%
Male	80%
Age	31.7 (12.3)
Ages 16-24	37%
Prior criminal history	
Prior conviction	32%
Prior felony conviction in past 3 years	4%
Prior violent felony offense conviction	8%
Prior misdememeanor convictions in past 3 years	
Zero (0)	84%
One (1)	8%
Two (2)	3%
Three (3) or more	6%
Ten or more prior misdemeanor convictions in past 3 years	1%
Prior jail or prison sentence	27%
Open case at time of current arrest	22%
Currently on probation	18%
Prior noncompliance history	
FTA on prior case	38%
Number of cases with FTA in past 3 years	
Zero (0)	80%
One (1)	12%
Two (2)	5%
Three (3) or more	3%
Prior probation revocation	9%
Prior parole revocation	8%
Current charge severity	
Misdemeanor	74%
Nonviolent felony	18%
Violent felony	8%

Appendix B. Background Characteristics of Defendants Arrested in 2012 *(Continued)*

Parameter	Percent of Total or Mean
RISK FACTORS INCLUDED *(Continued)*	
Current top charge	
Domestic violence[1]	11%
Assault (non-domestic violence)[1]	11%
Petit larceny	7%
Other misdemeanor property	16%
Felony property	7%
Misdemeanor drug possession[1]	7%
Felony drug possession	3%
Felony drug sales	3%
Marijuana[1]	15%
Driving While Intoxicated[1]	4%
Weapons or Firearms	5%
Other	11%
OTHER BACKGROUND FACTORS NOT INCLUDED IN EITHER RISK TOOL	
Borough	
Bronx	21%
Brooklyn	29%
Manhatttan	28%
Queens	19%
Staten Island	4%
Demographics	
Race/ethnicity	
Black	47%
Hispanic/Latino	34%
White	15%
Asian	5%
Additional race/ethnic group	0.3%
Born in the United States	82%

Note: The number of missing cases ranges from zero (0) to 5,237 (2.4%) among all parameters except place of birth (born in the United States), for which there are 56,462 missing cases.

[1] This charge type parameter is not included in any risk algorithm.

Appendix C. Risk Profile of New York City Defendants by Borough

	Bronx	Brooklyn	Man-hattan	Queens	Staten Island	New York City
TOTAL CASES	**62,538**	**83,255**	**79,745**	**50,376**	**9,642**	**285,556**
RE-ARREST DISTRIBUTION						
General Re-Arrest (Risk of Any Re-Arrest)						
Minimal risk	9%	12%	13%	16%	12%	12%
Low risk	22%	25%	28%	30%	26%	26%
Moderate risk	28%	28%	28%	28%	29%	28%
Moderate-high risk	19%	18%	15%	15%	19%	17%
High risk	22%	17%	16%	11%	14%	17%
	100%	100%	100%	100%	100%	100%
Violent Felony Re-Arrest (Risk of VFO Re-Arrest)						
Minimal risk	31%	35%	38%	40%	35%	36%
Low risk	30%	30%	32%	29%	31%	31%
Moderate risk	21%	20%	18%	19%	21%	20%
Moderate-high risk	10%	9%	7%	8%	9%	9%
High risk	7%	5%	4%	4%	4%	5%
	100%	100%	100%	100%	100%	100%

+p<.10,* p<.05, ** p<.01, ***p<.001

Note: Total cases include misdemeanor and felony cases filed in court in 2012, as provided by the Unified Court System and the New York State Division of Criminal Justice Services. Cases with missing values are excluded. Percentages may not add to 100% due to rounding. The analysis of public safety risk (general risk and risk of violence) is defendant-based.

Appendix D. Risk Profile of Male and Female Defendants

	Female (20% of Total)	Male (80% of Total)	Total
RISK CATEGORY BY GENDER			
Risk of Re-Arrest Distribution			
Minimal risk	26%	9%	12%
Low risk	32%	25%	26%
Moderate risk	29%	28%	28%
Moderate-high risk	7%	20%	17%
High risk	7%	19%	17%
	100%	100%	100%
Risk of VFO Re-Arrest Distribution			
Minimal risk	48%	33%	36%
Low risk	38%	29%	31%
Moderate risk	11%	22%	20%
Moderate-high risk	3%	10%	9%
High risk	1%	6%	5%
	100%	100%	100%

Note: Re-arrest rates are given for defendants with criminal cases filed in court in 2012. Cases with missing values are excluded. Percents are based on defendant-level data.

Appendix E. Risk Profile of 16-24-Year-Old Defendants by Charge Severity: Defendants Ages 16-24 in 2012

	Misde-meanor	Felony	Nonviolent Felony	Violent Felony	Total
TOTAL DEFENDANTS	**64,312**	**13,602**	**6,365**	**7,237**	**77,914**
Risk of Any Re-Arrest					
Minimal risk	-	-	-	-	-
Low risk	7%	1%	1%	0%	6%
Moderate risk	52%	33%	37%	29%	48%
Moderate-high risk	19%	39%	34%	43%	22%
High risk	23%	27%	28%	27%	24%
	100%	100%	100%	100%	100%
Risk of Violent Felony Re-Arrest					
Minimal risk	-	-	-	-	-
Low risk	41%	4%	6%	3%	35%
Moderate risk	34%	37%	43%	32%	34%
Moderate-high risk	15%	33%	29%	37%	18%
High risk	10%	26%	23%	28%	13%
	100%	100%	100%	100%	100%

Note: Data presented for defendants ages 16-24 arraigned on a misdemeanor or felony in 2012, as provided by UCS and DCJS. A small number of defendants ages 13-15, representing juveniles prosecuted as adults (N=373), were included.

Appendix F. Background Defendant and Case Characteristics of 16-24-Year-Old Defendants

	Bronx	Brooklyn	Manhat-tan	Queens	Staten Island	New York City
Number of Cases[1]	**25,974**	**30,048**	**28,049**	**21,600**	**3,807**	**109,478**
ARRAIGNMENT SEVERITY						
Misdemeanor	82%	82%	83%	84%	80%	83%
Felony						
Nonviolent felony	8%	7%	11%	9%	11%	9%
Violent felony	10%	11%	6%	8%	9%	9%
DEMOGRAPHICS						
Age Distribution						
Defendants < age 16	1%	1%	0%	0%	1%	1%
Defendants ages 16-17	19%	19%	15%	18%	17%	18%
Defendants ages 18-21	49%	46%	46%	46%	46%	47%
Defendants ages 22-24	32%	34%	38%	36%	36%	35%
Gender distribution[2]						
Male	83%	82%	79%	84%	81%	82%
Female	17%	18%	21%	16%	19%	18%
Race/Ethnic distribution[3]						
Black	47%	65%	46%	43%	38%	50%
Hispanic	49%	24%	40%	37%	19%	36%
White (non-Hispanic)	4%	10%	12%	12%	42%	11%
Asian	0%	2%	3%	7%	0%	3%
Additional race/ethnic group	0%	0%	0%	1%	0%	0%

Note: Data presented for misdemeanor and felony cases filed in court in 2012, as provided by UCS.

[1] Borough data missing for 6 (0%) cases. These cases are excluded from the analysis.

[2] Gender data missing for 55 (0.1%) cases. These cases are excluded from the analysis.

[3] Race / ethnicity missing for 3,439 (3.1%) cases. These cases are excluded from the analysis.

Appendix G. Background Predictors of Receiving a Desk Appearance Ticket: Defendants Arraigned in 2013 on Select High DAT Misdemeanor Charges[1]

Parameter	Impact on DAT Likelihood (Odds Ratio)
Number of cases in the analysis	**33,409**
Nagelkerke R Square	**0.188**
Borough (Deviation coding; reference = Staten Island)[2]	
Bronx	1.204***
Brooklyn	0.905*
Manhattan	1.039
Queens	0.920+
Demographics	
Male sex	0.620***
Age	1.006***
Ages 16 or 17	1.487***
Race/ethnicity (Indicator coding; reference = white)	
Black	0.741***
Hispanic/Latino	0.765***
Asian	1.332***
Born in the United States	1.157***
High crime neighborhood	0.917**
Prior criminal history	
Prior arrest (y/n)	0.672***
Prior felony arrest (y/n)	0.806***
Prior felony conviction (y/n)	0.854*
Prior violent felony offense conviction (y/n)	0.752**
Prior conviction (y/n)	0.922
Current top charge	
Petit larceny (y/n)	2.115***
Misdemeanor drug possession (y/n)	0.885**
Marijuana (y/n)	4.765***
Constant	1.032

+p<.10,* p<.05, ** p<.01, ***p<.001

Note: Analysis is based on a logistic regression specification. Cases included all criminal cases filed in court in 2013, as provided by the Unified Court System. Sample is reduced from the number of 2013 DATs after moving to a defendant-based analysis (necessary for incorporating criminal history measures merged from the Division of Criminal Justice Services) and retaining only cases with non-missing data for all independent variables.

[1] For the purpose of this analysis, common misdemeanor DAT charges petit larceny, theft of services, misdemeanor drug possession, and marijuana charges.

[2] Based on a second test model, Staten Island was not significantly different than the average borough.

Appendix H. Failure to Appear (FTA) Rates by Defendant Background and Case Characteristics: 2012 Cases Continued and Released at Arraignment

	Bronx	Brooklyn	Manhat-tan	Queens	Staten Island	New York City
Cases Continued and Released	**16,063**	**32,213**	**22,993**	**20,790**	**4,462**	**96,521**
Percent of Citywide Total	**17%**	**33%**	**24%**	**22%**	**5%**	**100%**
RATE OF FAILURE TO APPEAR	**10%**	**15%**	**18%**	**12%**	**11%**	**14%**
IMPACT OF CHARGE ON FTA						
Charge Severity						
Misdemeanor	10%	16%	20%	11%	12%	15%
Felony	10%	12%	11%	11%	8%	11%
Nonviolent felony	11%	13%	12%	12%	8%	12%
Violent felony	9%	12%	10%	11%	7%	11%
Charge Type (Select Categories)						
Assault and related	8%	10%	14%	8%	8%	10%
Drug misdemeanor	7%	25%	23%	18%	15%	19%
Drug felony possession	9%	7%	8%	7%	12%	8%
Drug felony sales	11%	17%	14%	10%	6%	13%
Marijuana	8%	17%	24%	13%	17%	16%
Petit larceny	13%	28%	26%	20%	22%	24%
Theft of services	16%	29%	32%	19%	36%	27%
Other property misdemeanor	15%	22%	22%	15%	14%	19%
Property felony	14%	15%	15%	14%	8%	14%
Gun or weapons-related	7%	12%	23%	10%	13%	14%
IMPACT OF DEMOGRAPHICS						
Male	10%	15%	18%	12%	12%	14%
Female	11%	16%	16%	11%	8%	14%
Ages 16-24	11%	17%	23%	15%	15%	17%
Ages 25 and older	10%	14%	15%	10%	9%	13%
Black	11%	16%	21%	14%	14%	16%
Hispanic/Latino	10%	16%	18%	12%	12%	14%
White, Asian, or other race/ethnicity	9%	12%	13%	8%	9%	11%
IMPACT OF SOCIAL TIES	6726	25044	16706	17570	3332	69378
Full Time Activity (employed/school)	10%	11%	15%	8%	9%	11%
No Full Time Activity	14%	17%	20%	13%	11%	16%
IMPACT OF RISK OF FTA[1] (N)	**6,726**	**25,044**	**16,706**	**17,570**	**3,332**	**69,378**
Recommended for ROR	9%	10%	13%	9%	7%	10%
Moderate Risk	12%	13%	19%	12%	10%	14%
Not recommended for ROR	17%	25%	27%	19%	17%	23%

Appendix H. Failure to Appear (FTA) Rates by Defendant Background *(Continued)*

	Bronx	Brooklyn	Manhattan	Queens	Staten Island	New York City
IMPACT OF CASE PROCESSING ON FTA						
Time from Arraignment to Disposition						
Disposed within 90 days	9%	17%	18%	10%	6%	14%
Disposed from 91 to 365 days	10%	14%	18%	12%	12%	14%
Disposed after more than one year	16%	24%	25%	21%	25%	22%
Number of Court Appearances						
Disposed in 1-2 appearances	4%	3%	4%	3%	0%	3%
Disposed in 3-5 appearances	10%	12%	18%	11%	8%	13%
Disposed in 6-10 appearances	86%	68%	70%	76%	77%	74%
Disposed in > 10 appearances	20%	36%	29%	31%	36%	30%

Note: Cases include all criminal cases filed in court and continued and released at arraignment in 2012, as provided by the Unified Court System with supplemental data from the New York City Criminal Justice Agency.

[1] This section has reduced sample size related to incorporating Criminal Justice Agency (CJA) variables.

Appendix I. Release Decisions for Defendants Ages 16-24 in 2012 ***(Continued at Arraignment)***

	Bronx	Brooklyn	Manhat-tan	Queens	Staten Island	New York City
Number of Arraignments	**10,475**	**11,079**	**9,211**	**5,573**	**717**	**37,055**
Percent of Citywide Total	**20%**	**30%**	**27%**	**19%**	**4%**	**100%**
RELEASE STATUS: ALL CASES						
Release on recognizance (ROR)	73%	71%	64%	77%	61%	71%
Bail set/posted at arraignment	1%	3%	5%	3%	7%	3%
Bail set/not posted on arraignment date	24%	24%	28%	18%	29%	24%
Remanded	2%	1%	3%	2%	3%	2%
Bail Set (or Remanded)	27%	29%	36%	23%	39%	29%
Detained following arraignment	25%	26%	31%	21%	32%	26%
Detained throughout case	34%	42%	54%	51%	61%	45%
RELEASE: MISDEMEANORS						
All Misdemeanors	**6,008**	**6,222**	**4,987**	**3,482**	**392**	**21,091**
Release on recognizance (ROR)	89%	95%	93%	95%	94%	93%
Bail set/posted at arraignment	1%	2%	1%	1%	6%	1%
Bail set/not posted on arraignment date	10%	4%	6%	4%	0%	6%
Remanded	0%	0%	0%	0%	0%	0%
Bail Set (or Remanded)	11%	5%	7%	5%	6%	7%
Detained following arraignment	10%	4%	6%	4%	0%	6%
Detained throughout case	31%	35%	42%	41%	100%	36%
RELEASE: FELONIES						
All Felonies	**4,386**	**4,782**	**4,154**	**2,073**	**318**	**15,713**
Release on recognizance (ROR)	50%	40%	29%	45%	19%	40%
Bail set/posted at arraignment	2%	6%	8%	5%	8%	6%
Bail set/not posted on arraignment date	44%	51%	56%	43%	65%	50%
Remanded	4%	3%	7%	6%	7%	5%
Bail Set (or Remanded)	50%	60%	71%	55%	81%	60%
Detained following arraignment	47%	54%	63%	49%	73%	54%
Detained throughout case	35%	43%	55%	52%	61%	46%
Nonviolent Felonies	**2,025**	**1,658**	**2,694**	**843**	**116**	**7,336**
Release on recognizance (ROR)	63%	50%	32%	64%	22%	48%
Bail set/posted at arraignment	2%	6%	8%	6%	18%	6%
Bail set/not posted on arraignment date	33%	41%	54%	26%	54%	42%
Remanded	2%	4%	6%	3%	5%	4%
Bail Set (or Remanded)	37%	50%	68%	36%	78%	52%
Detained following arraignment	35%	44%	59%	30%	59%	46%
Detained throughout case	37%	40%	51%	38%	45%	45%
Violent Felonies	**2,361**	**3,124**	**1,460**	**1,230**	**202**	**8,377**
Release on recognizance (ROR)	40%	34%	23%	32%	17%	33%
Bail set/posted at arraignment	2%	6%	8%	5%	3%	5%
Bail set/not posted on arraignment date	53%	57%	60%	55%	72%	56%
Remanded	5%	3%	8%	8%	8%	5%
Bail Set (or Remanded)	60%	66%	77%	68%	83%	67%
Detained following arraignment	58%	60%	68%	63%	80%	62%
Detained throughout case	34%	44%	61%	57%	68%	47%

Appendix J. Risk Profile of Defendants Ages 16-24 Detained at Arraignment

Charge Severity	Misdemeanor	Nonviolent Felony	Violent Felony	All Felony	All Cases
GENERAL RISK (Any Re-Arrest)					
Minimal	-	-	-	-	-
Low	3%	0%	0%	0%	1%
Moderate	42%	26%	26%	26%	29%
Moderate-High	17%	34%	40%	38%	34%
High	39%	40%	34%	36%	37%
	100%	100%	100%	100%	100%
Highest Two Risk Categories	***56%***	***74%***	***74%***	***74%***	***71%***
RISK OF VIOLENCE (Risk of Violent Felony Re-Arrest)					
Minimal	-	-	-	-	-
Low	29%	5%	3%	3%	8%
Moderate	25%	34%	29%	31%	30%
Moderate-High	26%	29%	34%	32%	31%
High	20%	33%	34%	34%	31%
	100%	100%	100%	100%	100%
Highest Two Risk Categories	***46%***	***62%***	***64%***	***66%***	***62%***

Note: Data presented for defendants ages 16-24 arraigned on a misdemeanor or felony in 2012, as provided by UCS and DCJS.

Appendix K. Background Predictors of Bail-Making: Cases with Bail Set at Arraignment (2012)

Logistic Regression Specification	Outcome: Bail Posted at Arraignment (Yes/No)		Outcome: Bail Posted Any Time During Case (Yes/No)	
	Model 1 (odds ratio)	Model 2 (odds ratio)	Model 1 (odds ratio)	Model 2 (odds ratio)
Borough (reference: Bronx)				
Brooklyn	1.751***	1.638***	0.631***	0.571***
Manhattan	1.667***	1.632***	0.793***	0.772***
Queens	2.244***	1.875***	0.789***	0.632***
Staten Island	3.554***	3.426***	1.220**	1.172*
High Crime Neighborhood	0.908**	0.872***	0.918**	0.888***
Male	1.430***	1.259***	1.411***	1.273***
Age 16-24[1]	1.237***	0.949	1.300***	0.976
Race / Ethnicity (reference: White)				
Black/Non-Hispanic	0.450***	0.484***	0.607***	0.646***
Hispanic	0.620***	0.608***	0.784***	0.769***
Counsel Type (refernce: private counsel)				
Instituional public defender		0.506***		0.469***
Assigned court appointed counsel		0.419***		0.448***
Full-time activity		1.609***		1.506***
Lives with others		1.593***		1.543***
Charge Severity (reference: misdemeanor)				
Nonviolent Felony		0.930		0.882***
Violent Felony		0.722***		0.898**
CJA Release recommendation (reference: ROR)				
Moderate Risk		0.662***		0.746***
Not Recommended for ROR		0.452***		0.479***
Arraignment Charge				
Petty Larceny		0.344***		0.343***
Other Property		0.464***		0.510***
Drug Possession		0.632***		0.541***
Marijuana Related		1.448***		1.039
Assault		0.814**		0.838***
Constant	0.093	0.358***	0.480***	2.244***
N	35,447	35,447	38,273	38,273
Chi^2	987.112***	2310.138***	912.382***	3348.676***
d.f.	10	24	10	24
Nagelkerke R^2	0.053	0.122	0.034	0.121

$^{+}$p<.10,* p<.05, ** p<.01, ***p<.001

[1] Age 16-24 includes 334 persons ages 13-15. The coefficients do not change when these persons are excluded.

Appendix L. Dispositions & Sentences for Defendants Ages 16-24: Cases Disposed in 2014[1]

	Bronx	Brooklyn	Manhat-tan	Queens	Staten Island	New York City
Number of Dispositions	**23,890**	**28,359**	**26,236**	**22,607**	**3,932**	**105,024**
Percent of Citywide Total	**23%**	**27%**	**25%**	**22%**	**4%**	**100%**
ALL CASES						
Criminal conviction	11%	12%	18%	11%	22%	13%
Youthful offender finding	2%	2%	2%	2%	4%	2%
Violation or lesser conviction	34%	25%	27%	27%	26%	28%
Dismissed	18%	18%	15%	11%	20%	16%
ACD	34%	43%	39%	49%	28%	41%
Pled guilty/convicted:						
Prison sentence	4%	4%	5%	5%	3%	4%
Jail or jail/probation split sentence	12%	13%	14%	10%	13%	12%
Straight probation sentence	3%	3%	4%	4%	5%	4%
Other sentence	81%	80%	78%	80%	78%	80%
MISDEMEANORS						
Criminal conviction	6%	6%	11%	4%	15%	7%
Youthful offender finding	0%	0%	1%	0%	2%	0%
Violation or lesser conviction	39%	25%	30%	29%	30%	30%
Dismissed	14%	17%	13%	11%	19%	14%
ACD	40%	51%	46%	56%	32%	48%
Pled guilty/convicted:						
Jail or jail/probation split sentence	8%	9%	11%	7%	9%	9%
Straight probation sentence	0%	0%	0%	0%	2%	0%
Other sentence	91%	91%	88%	93%	89%	91%
FELONIES						
Criminal conviction	37%	38%	55%	48%	49%	44%
Youthful offender finding	10%	8%	6%	12%	11%	9%
Violation or lesser conviction	13%	25%	9%	21%	11%	17%
Dismissed	37%	25%	27%	10%	26%	26%
ACD	3%	4%	2%	9%	2%	4%
Pled guilty/convicted:						
Prison sentence	19%	14%	23%	18%	15%	18%
Jail or jail/probation split sentence	26%	22%	26%	18%	30%	23%
Straight probation sentence	15%	8%	17%	14%	15%	13%
Other sentence	40%	55%	35%	49%	40%	45%

Appendix L. Dispositions & Sentences for Defendants Ages 16-24 *(Continued)*

	Bronx	Brooklyn	Manhat-tan	Queens	Staten Island	New York City
NON-VIOLENT FELONY						
Criminal conviction	36%	38%	59%	47%	59%	47%
Youthful offender finding	6%	4%	6%	8%	7%	6%
Violation or lesser conviction	21%	34%	11%	27%	13%	22%
Dismissed	34%	20%	22%	6%	18%	21%
ACD	4%	4%	2%	11%	3%	5%
Pled guilty/convicted:						
Prison sentence	9%	6%	15%	6%	10%	9%
Jail or jail/probation split sentence	24%	20%	27%	19%	33%	23%
Straight probation sentence	9%	6%	19%	11%	12%	12%
Other sentence	58%	68%	39%	64%	46%	56%
VIOLENT FELONY						
Criminal conviction	38%	38%	49%	49%	39%	42%
Youthful offender finding	13%	11%	7%	16%	16%	12%
Violation or lesser conviction	7%	18%	6%	15%	9%	12%
Dismissed	40%	29%	36%	13%	34%	30%
ACD	2%	3%	2%	7%	2%	3%
Pled guilty/convicted:						
Prison sentence	28%	21%	40%	29%	21%	27%
Jail or jail/probation split sentence	28%	24%	24%	18%	26%	23%
Straight probation sentence	21%	9%	12%	18%	20%	15%
Other sentence	24%	46%	24%	36%	33%	34%

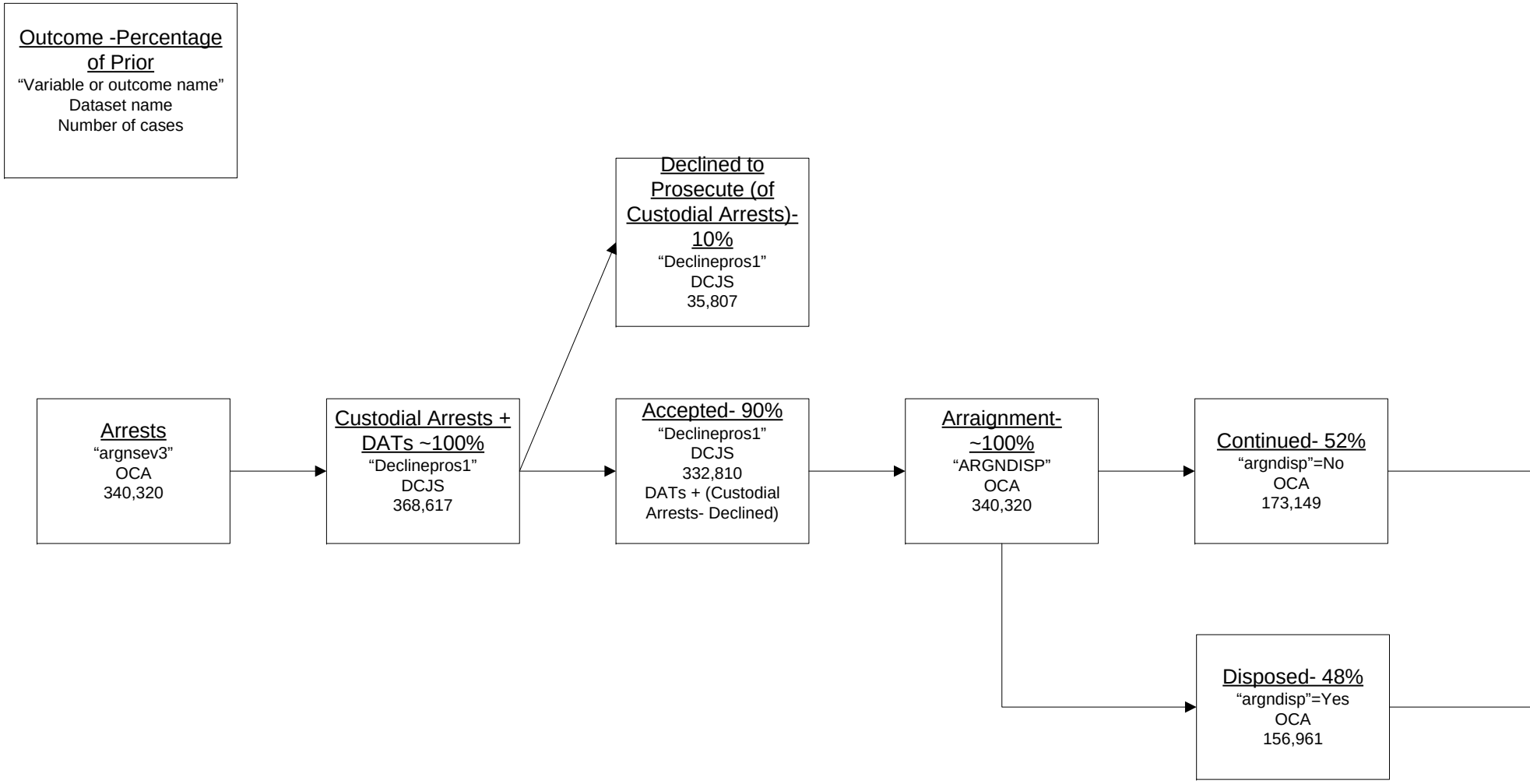
Note: Cases included all criminal cases filed in court, as provided by the Division of Criminal Justice Services and Unified Court System.

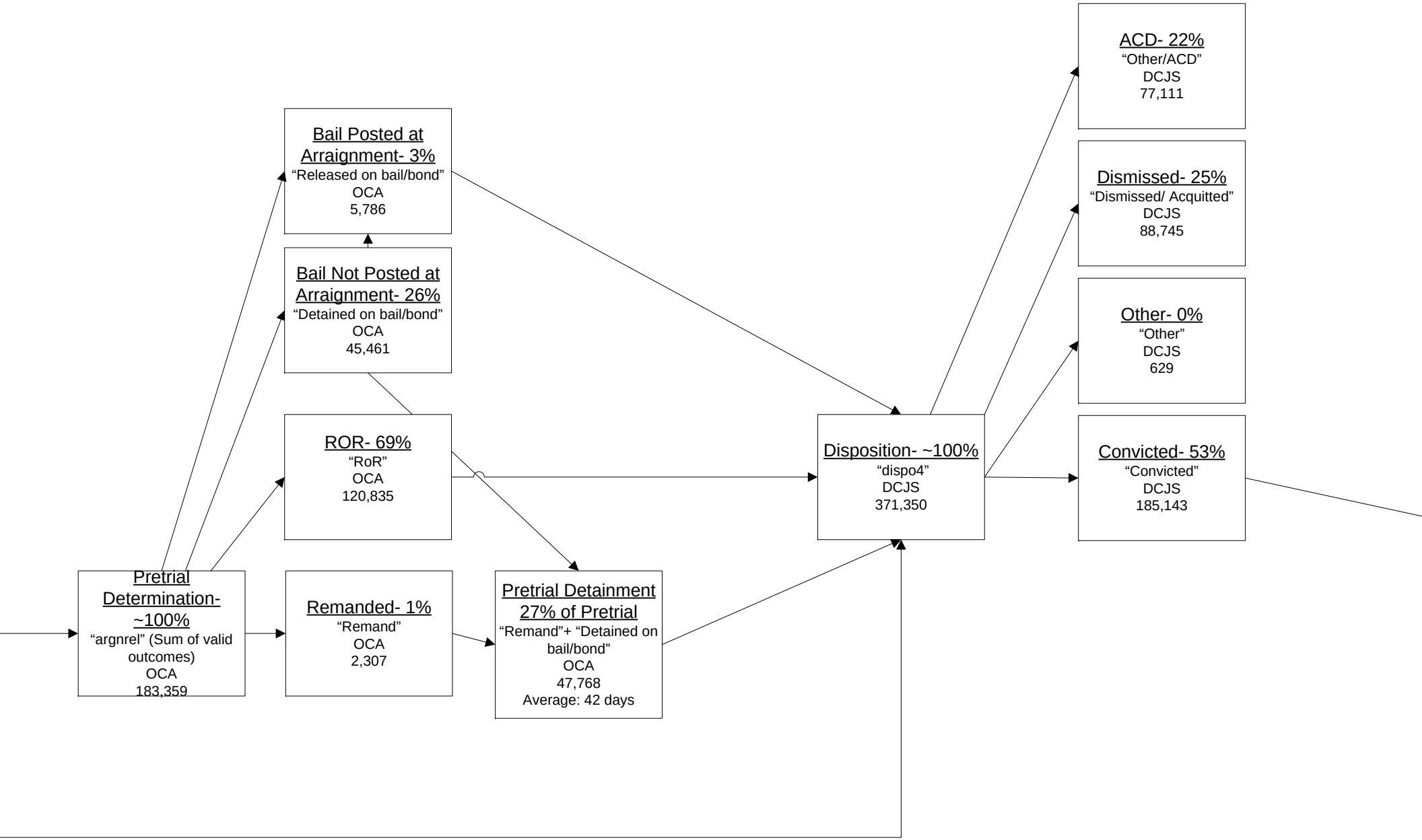
[1] The analysis includes 341 cases of defendants ages 13-15.

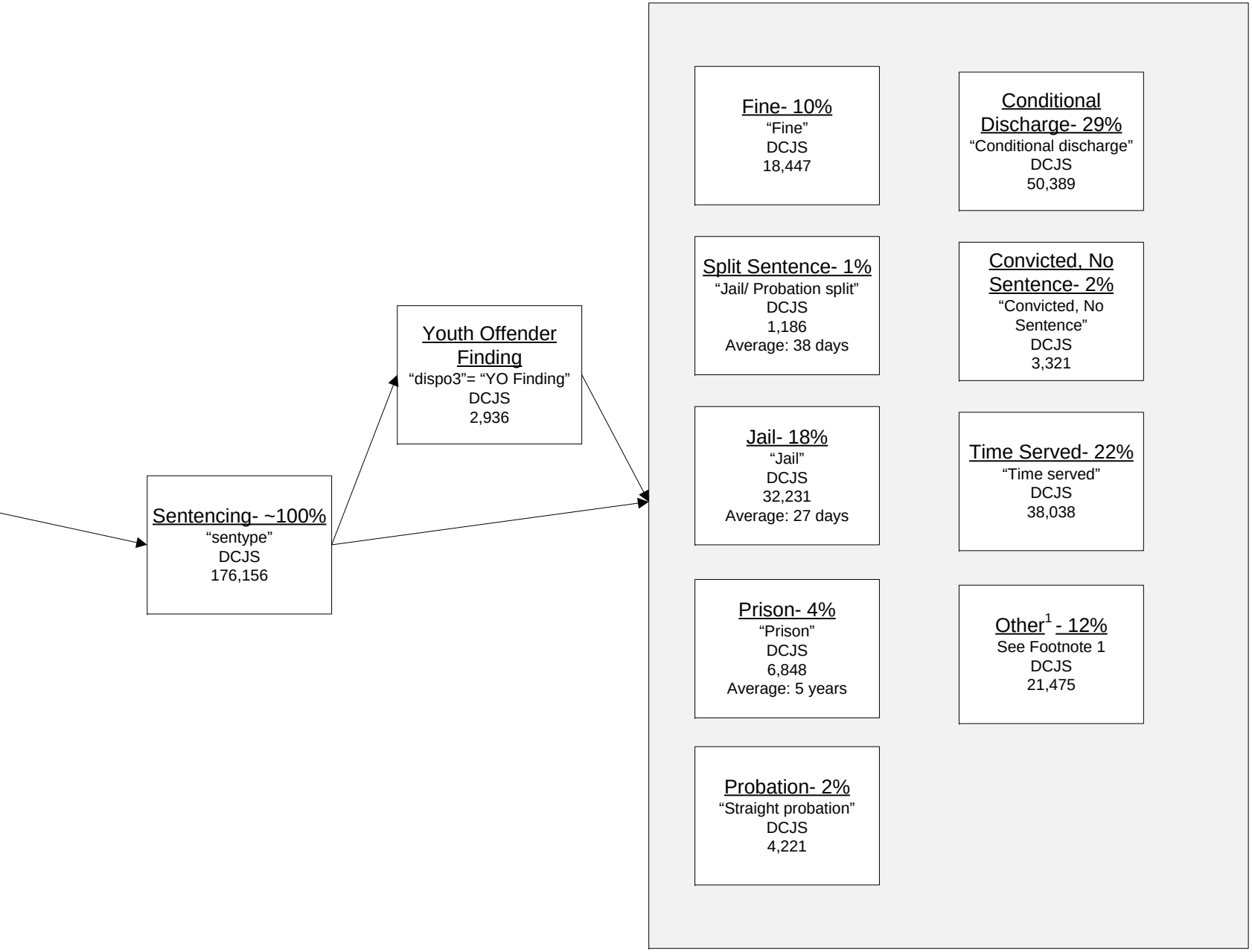
Appendix M. New York City Path Analysis Model, 2013

New York City Path Analysis Model, 2013 (Includes Violations and Infractions, Baseline for analysis=314,174)

Key




Bail Posted at Arraignment- 3%
"Released on bail/bond"
OCA
5,786
Bail Not Posted at Arraignment- 26%
"Detained on bail/bond"
OCA
45,461
ROR- 69%
"RoR"
OCA
120,835
Pretrial Determination- ~100%
"argnrel" (Sum of valid outcomes)
OCA
183,359
Remanded- 1%
"Remand"
OCA
2,307
Pretrial Detainment 27% of Pretrial
"Remand"+ "Detained on bail/bond"
OCA
47,768
Average: 42 days
Disposition- ~100%
"dispo4"
DCJS
371,350
ACD- 22%
"Other/ACD"
DCJS
77,111
Dismissed- 25%
"Dismissed/ Acquitted"
DCJS
88,745
Other- 0%
"Other"
DCJS
629
Convicted- 53%
"Convicted"
DCJS
185,143



Note:

[1] Other includes "Unconditional Discharge", "Direct to Parole", "CD with Community Service", "CD with Alcohol Treatment", and "Other No Incarceration".