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Bail, Detention, & Felony Case Outcomes

By Mary T. Phillips, Ph.D.

Does pretrial detention have a negative impact on case outcomes?

Results from new research on *FELONY* cases

An earlier *Brief* summarized the results of a study that examined the relationship between detention and case outcomes in nonfelony cases (*Research Brief* #14). This report extends the analyses to felony cases.

The research examines the question of whether pretrial detention influences case disposition and sentencing. Many studies have shown that detention is associated with a greater likelihood of conviction and incarceration, but it is plausible that this is simply because judges have a good sense of which defendants will be convicted and sentenced to jail, and they set bail accordingly. If that fully explains why detained defendants fare worse than released defendants, then detention is not responsible for the outcome. Rather, one would con-

clude that the same facts about the case led to both the detention and the negative outcomes.

However, we found that outcomes in nonfelony cases were *not* fully explained by other factors, and that pretrial detention *in itself* had a small but statistically significant effect, especially on the likelihood of conviction.

Felony cases differ in many respects from the cases examined in the earlier study. Bail is higher; detention is more frequently imposed; when imposed, detention tends to be of longer duration; and conviction and incarceration are more likely. The goal of this research was to investigate how these differences in case characteristics might affect our earlier conclusions regarding the impact of detention on case outcomes.

This *Research Brief* is adapted from
Pretrial Detention And Case Outcomes, Part 2: Felony Cases
by Mary T. Phillips, Ph.D., Deputy Director, Research Department

The full report is available on the CJA web site:

www.nycja.org/research/research.htm

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Research Questions

Before considering the possible effects of detention on case outcomes, we first addressed the question of how bail affects detention:

- How does the amount of bail set at arraignment affect the length of time spent in pretrial detention?

The remainder of the research focused on examining how pretrial detention affects three separate case outcomes:

- Does pretrial detention affect likelihood of conviction?
- Does pretrial detention affect likelihood of incarceration, for convicted defendants?
- Does pretrial detention affect sentence length, for incarcerated defendants?

The measures of detention used in this research are described in the box on the following page.

Borough differences were examined in the full report (released June 2008), but only the citywide results are presented here.

Data Used In The Study

The dataset used for this research includes all arrests in New York City from October 1, 2003, through January 31, 2004. The research sample used in the analyses was restricted to docketed cases with a felony top charge entering Criminal Court (lower court) arraignment. The sample was further restricted to cases that were continued past arraignment and disposed in Criminal Court by mid-September 2004 or in Supreme Court (upper court) by March 2007. Sentences for cases disposed in Criminal Court were tracked until March 2007. Most cases (94%) in the original dataset that fit the criteria for the research sample had reached disposition by the cutoff dates. Of the cases in the sample with a conviction, 95% had been sentenced by the cutoff dates.

Cases with a top charge of felony severity that was later amended to a nonfelony charge were retained in the research, and dispositions for those cases occurring in either Criminal Court or Supreme Court were included.

After excluding cases missing release data or with a defendant who was remanded without bail at arraignment, the total number of cases in the research sample was 15,707.

Extent and Length of Pretrial Detention

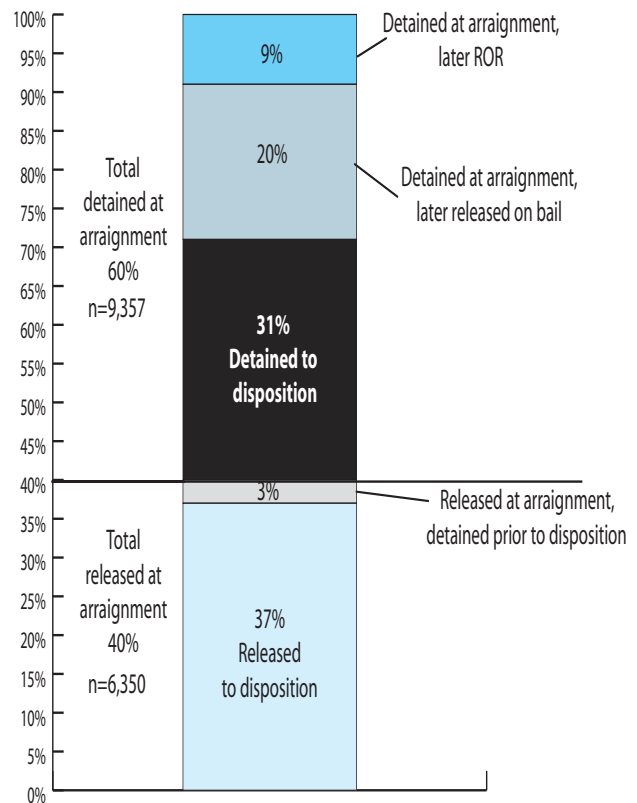
Figure 1 shows that the defendant was released at arraignment in 40% of felony cases that were continued past arraignment. Most of those who were released at arraignment remained at liberty for the duration of the case, but in 3% of cases the defendant was later held in detention. This left 37% of felony cases with a defendant who was released continuously from arraignment to disposition.

Of the cases with a defendant who was held on bail at arraignment, almost half were released before the case was disposed. Twenty percent (of the total number of cases) were later released on bail, and 9% were released on recognizance (ROR). ROR is mandatory if an indictment has not been filed within five days after arrest (6 days if a weekend or holiday intervenes).

In the remaining cases, 31% of the total, the defendant was held in pretrial detention for the duration of the case.

(Cases with a defendant who was remanded without bail were excluded.)

Figure 1
Pretrial Detention Outcomes
(Felony Cases Continued At Arraignment)



Detention at arraignment and subsequent detention status prior to disposition (detention outcome), both illustrated in Figure 1, were two of the measures of detention used in the analyses. A third measure was the length of detention in days. (See box at right.)

The length of detention is illustrated in Figure 2 by showing the proportion of detained defendants who were still in jail at various points in time following the arraignment. (However, the end of pretrial detention does not necessarily mean release, as some defendants immediately begin serving a jail or prison sentence.)

Starting with all defendants who were held at arraignment, 89% were still in detention after one day; 83% after two days; 76% after three days. It took a week for half of the detained defendants to reach the end of their pretrial detention (the median was 7 days).

The average (mean) detention length was 51 days, at which point 25% were still in jail. The mean was larger than the median because of a small number of cases with extremely long detention times. The longest period of pretrial detention was over 3 years (1,114 days). After 1,114 days, no defendant was still in pretrial detention.

Detention Measures

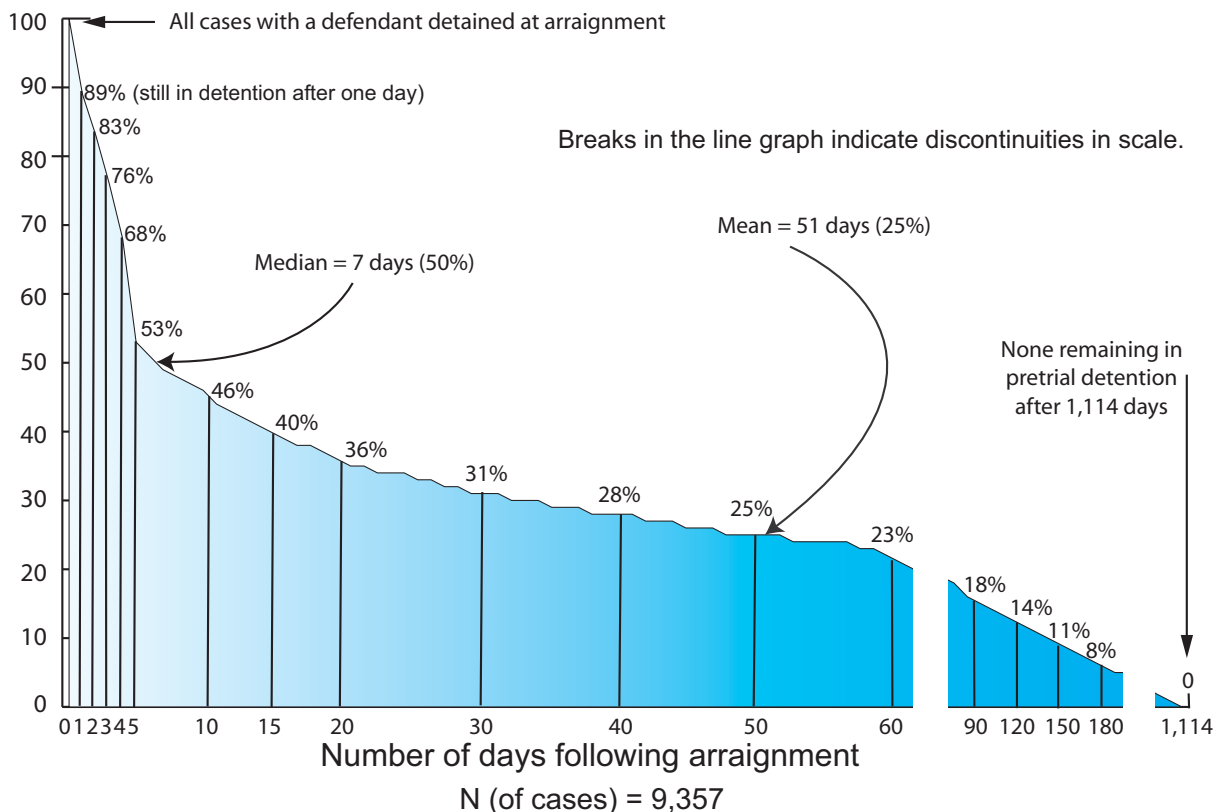
Three detention measures were tested. The analyses were repeated using a different measure in each test in order to identify the aspect of detention with the greatest impact on case outcomes.

Detention status at arraignment measures whether the defendant was detained at arraignment (yes/no). (See Figure 1)

Detention outcome refers to whether the defendant was at liberty to disposition of the case (never detained); detained to disposition of the case (never released); detained at arraignment and subsequently released prior to disposition; or released at arraignment and subsequently detained prior to disposition. (See Figure 1)

Length of detention was measured by the number of days from arraignment to the first release, either on bail or on recognizance (ROR); or, if no release, to disposition of the case. Additional periods of detention after the first release were not included in length of detention. (See Figure 2)

Figure 2
Length of Pretrial Detention:
Percent Remaining In Detention Over Time
 (Felony Cases With A Defendant Detained At Arraignment)



How does the amount of bail affect pretrial detention?

Figure 3 shows that bail amounts were lowest for cases in which bail was made at arraignment (median \$2,000/mean \$4,537); higher for cases in which bail was made later (\$3,500/\$8,462); and highest for cases in which the defendant was held to disposition (\$5,000/\$19,029). The amount of bail clearly affected the timing of release.

In 13% of cases with bail set, the defendant was released on recognizance after arraignment, often in response to mandatory release requirements.

Measuring Bail Amount
 Bail amount equals the lesser of the bond amount or the cash alternative, if one was set, on the sample docket. Cases with \$1 bail were excluded from the calculations of means and medians because \$1 is an indication that a higher bail was set, or the defendant was remanded without bail, on another case.

In spite of the fact that pretrial detention was often cut short by mandatory release or a quick guilty plea, the bail amount was still one of the strongest predictors of detention length in multivariate analyses.

Figure 4 shows that the percent held in detention for a short time (0 to 2 days) was greatest when bail was low, and dropped steadily as bail amounts increased (blue bars).

The opposite pattern was found for lengthy detention (60 days or more): the percent held in detention for a long time was very small when bail was low, and rose steadily as bail amounts increased (gray bars).

The median detention length also rose along with bail amount, from 3 days for bail of \$500 or less to 87 days for bail set over \$25,000.

Figure 3
Bail Outcomes
 (Felony Cases With Bail Set At Arraignment)

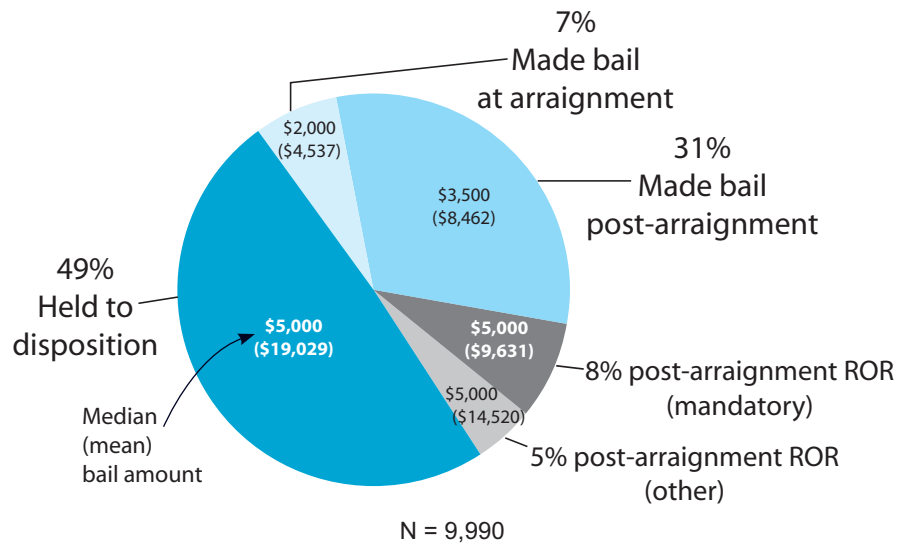
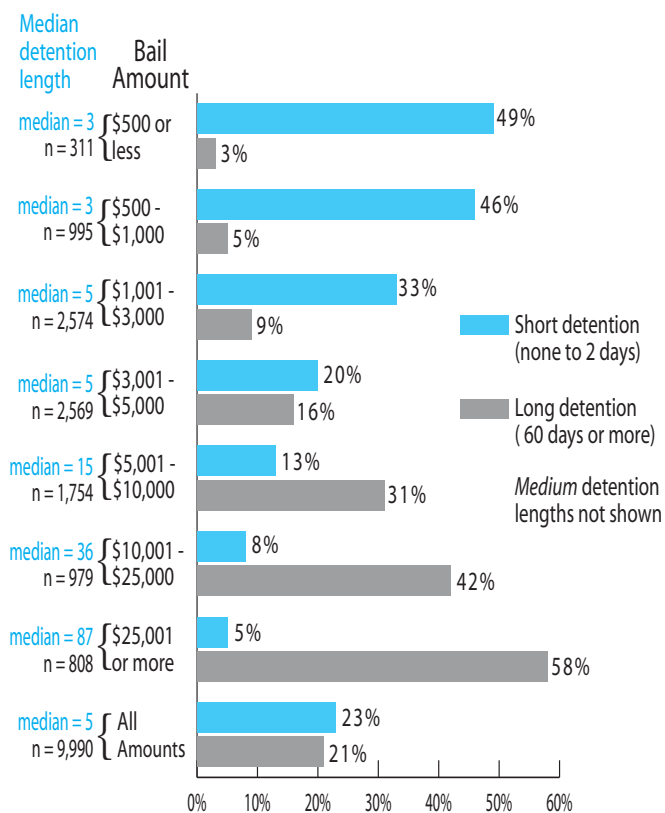


Figure 4
Detention Length By Bail Amount
 (Felony Cases With Bail Set At Arraignment)



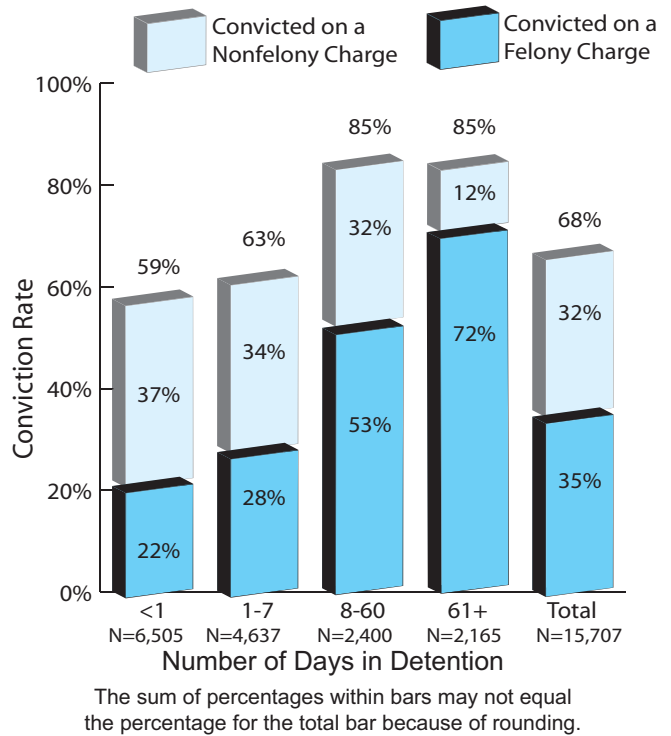
Does pretrial detention affect likelihood of conviction?

All three measures of detention had a statistically significant effect on conviction, but the length of detention was the measure that best predicted this outcome in multivariate analyses. The odds of being convicted rose dramatically for defendants who were held in detention for over a week, even after accounting for the effects of charge type and severity, borough of prosecution, and other relevant factors. Control variables explained 41% of the variance in conviction, and detention length explained an additional 10%.

Figure 5 shows that the overall conviction rate was 68% for the felony cases in the research sample, but much higher for defendants who spent longer than a week in detention (85%) and lower for defendants in detention less than a day (59%).

Detention length also affected the severity of the conviction charge. Among cases released the same day as the arraignment, 22% were convicted of a felony, compared to 72% for cases with more than two months of detention. Conviction on a charge reduced to a nonfelony was *less* likely as detention length increased: 37% convicted of a nonfelony among cases in the shortest detention category, decreasing to 12% for cases with the longest detention. **Conclusion: longer detention not only increased the likelihood of conviction, but also lessened the likelihood that the charge would be reduced.**

Figure 5
Conviction Rates By Length Of Detention
(Cases With Felony Arraignment Charge
And Continued At Arraignment)

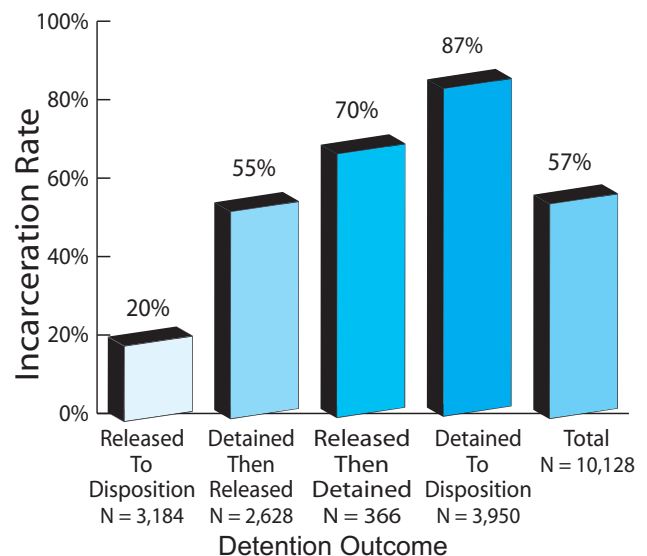


Does pretrial detention affect likelihood of incarceration?

In addition to making a conviction more likely, detention also significantly affected the likelihood of a jail or prison sentence. The multivariate analyses controlled for the same factors that were accounted for in analyzing conviction, with the addition of a statistical control for possible sample selection bias introduced by restricting the sample to convicted cases. The measure with the strongest effect on likelihood of incarceration was detention outcome. Control variables explained 48% of the variance in incarceration, and detention outcome explained an additional 6%.

The overall incarceration rate for convicted defendants was 57%, as shown in Figure 6. In cases with a convicted defendant who was released throughout the pretrial period, the incarceration rate was only 20%, compared to 87% among cases with a defendant who was detained to disposition. **Conclusion: being detained, especially to disposition, significantly increased the likelihood of a jail or prison sentence (in addition to raising the likelihood of being convicted in the first place).**

Figure 6
Incarceration Rate By Detention Outcome
(Convicted Cases With Felony Arraignment Charge
And Continued At Arraignment)



Does pretrial detention affect sentence length?

Longer detention times significantly increased the probable sentence length, even after controlling statistically for case and defendant characteristics, as well as for sample selection biases that might result from selecting only cases that were convicted and sentenced to incarceration. Control variables explained 38% of the variance, and detention length explained an additional 5%. This was a slightly weaker effect than on other case outcomes.

Figure 7 shows that the average (mean) sentence length overall was 580 days, and half of the cases had a sentence of one year or less (median, 365 days). For cases with less than a day of pretrial detention, the average sentence was less than a year (299 days) and half of the cases had a sentence of four months or less (median, 120 days). By contrast, for cases with over two months of pretrial detention, the average sentence was almost three years (1,087 days) and half of the cases had a sentence of two years or more (median, 730 days). Intermediate detention lengths were associated with sentences that also were intermediate in length.

We considered the possibility that sentences of “time served” were partly responsible for the relationship between detention and sentence lengths. This seemed unlikely because only 13% of the cases with an incarceration

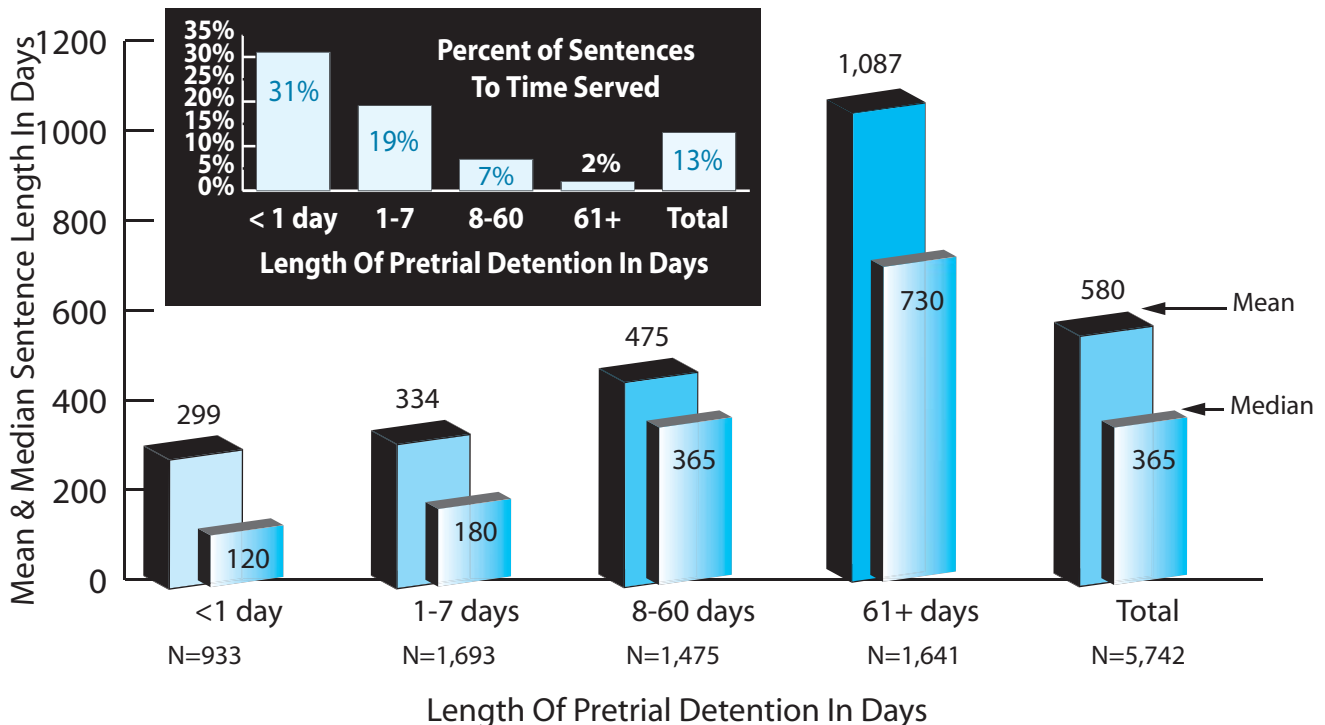
Measuring Sentence Length

Sentence length was measured in days with no allowance for early release or pretrial detention. For defendants convicted of a felony charge and sentenced to an indeterminate prison term, the minimum term was used as the measure of sentence length.

Sentences of time served were set equal to the length of pretrial detention. Time spent in custody between arrest and arraignment counts in the calculation of time served, making it possible for defendants who were released at arraignment to be sentenced to time served even though here they are categorized as not detained.

time sentence had a sentence of time served, as shown in the inset (Figure 7). Time served was even more rare for defendants who were in detention longer than 60 days (2%), so the length of their sentences could not be attributed to time served. To confirm this, the multivariate analysis was repeated, excluding all cases with a sentence of time served. The results were unchanged. **Conclusion: longer detention led to longer sentences, on top of increasing the likelihood of conviction and incarceration, and sentences of time served were not a factor in this relationship.**

Figure 7
Sentence Length By Length of Pretrial Detention
(Convicted Cases With a Felony Arraignment Charge, Sentenced To Incarceration)



SUMMARY AND DISCUSSION

Detention had a pronounced adverse effect on outcomes in felony cases. Defendants who were detained were more likely to be convicted, less likely to have their charges reduced, and more likely to be sentenced to jail or prison, than their counterparts who were not detained. Incarcerative sentences were also likely to be longer for detained defendants. These effects were stronger for felony cases than were found previously for non-felony cases.

This is not to say that pretrial detention is the only, or even the most important, determinant of case outcomes. Offense type, charge severity, the defendant's criminal history, borough of prosecution, and other factors together accounted for a much larger proportion of variation in outcomes than did detention. The multivariate techniques used in this research provided an estimate of the *additional* effect of detention alone, after accounting for the effects of these other variables.

It is possible that some unknown factor that we could not control for—case strength, for example—also influenced both detention and case outcomes, possibly even accounting for the additional effect of detention on disposition that was found in this research. Case strength is difficult to measure, but some researchers have used bail amount as a proxy. We did not, because bail amount closely overlapped with detention, making it difficult to untangle their individual effects. We did do supplementary analyses, however, to explore the effect of controlling for bail amount. The statistical models changed very little, and the conclusions changed not at all.

Although no statistical study can prove causality, the findings of

POLICY IMPLICATIONS

- Detention leads to more severe case outcomes, or in the event of a positive outcome, unfairly punishes defendants who are not jail-bound. Both of these unwanted consequences of detention could be addressed by reducing detention rates.
- Many detainees are not flight risks: 28% of nonjailbound defendants who were detained at arraignment were recommended for release and another 17% had been assigned to the moderate-risk category. More use could be made of cash alternatives and rarely used bail options such as personal recognizance bonds for these low- and medium-risk defendants, if ROR is not appropriate. Supervised release for moderate-risk defendants would also help address this issue.
- These measures are appropriate for nonfelony as well as felony cases, but the greatest impact would be among cases entering arraignment on a felony charge.

this research are fully consistent with the argument that something about detention itself leads to harsher outcomes. Even if case strength accounted for all or part of the relationship between detention and conviction, this factor is not likely to play a role in the sentence of a defendant who has already been convicted. So we need to consider what it is about detention that could produce these results.

The pressure on a jailed defendant to plead guilty seems a particularly compelling explanation

for how detention could lead to a greater likelihood of conviction. A detainee who is facing a nonjail sentence can get released immediately by pleading guilty, whereas holding out for acquittal may mean spending many more days in jail. For the defendant who does not plead guilty, detention reduces the ability to build a defense. Either way, it is plausible that simply being in detention could make conviction more likely.

Moreover, prosecutors may be less willing to offer post-arraignment plea bargains when they already have the leverage of detention to encourage a guilty plea, resulting in conviction to more severe charges. More severe conviction charges in turn help explain more severe sentences for detainees. Sentencing may be further affected by detention if it predisposes judges to impose a sentence of time served rather than a nonjail sentence such as conditional discharge. Finally, detention may contribute to a harsh sentence by depriving a defendant of the chance to prove that he or she can hold a job and stay out of trouble, achievements that might persuade a judge to be lenient.

The problem with detention that has been the subject of this research is that it unfairly tilts outcomes towards conviction and jail. However, detainees with positive case outcomes also suffer negative effects simply from being detained. Nearly half of the detained defendants in the felony sample were either not convicted (27%) or received a noncustodial sentence (19%). The unfairness of *their* detention stems, not from its influence on the outcome of the case, but rather from the punishment of doing jail time without a jail sentence or, in many cases, even a conviction.



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Bail, Detention, & Felony Case Outcomes**

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