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Richard R. Peterson, Ph.D.

Research Brief Editor & Deputy  
Director, Research Dept.,  
Mary T. Phillips, Ph.D.

Graphics & Production,  
Raymond P. Caligiure

Administrative Associate,  
Annie Su

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

## **Pretrial Outcomes**

### **For Domestic Violence Defendants**

By Richard R. Peterson, Ph.D.

How often are domestic violence defendants released while their cases are pending?

How many fail to appear in court or are re-arrested for a new domestic violence offense during the pretrial period?

When defendants in criminal cases are released while their cases are pending, there is a risk that they will fail to make scheduled court appearances and/or be re-arrested for new offenses. In domestic violence (DV) cases, defendants may be at higher risk of committing new DV offenses during the pretrial period. A DV defendant who is released prior to the disposition of a criminal case may retaliate against the victim for having the defendant arrested or to discourage the victim from participating in the prosecution of the case.

Because of concerns that some DV defendants may commit new DV offenses during the pretrial period, many in the criminal justice system are particularly interested in pretrial outcomes

in DV cases. How often are DV defendants released? How often do they fail to appear for their scheduled court appearances? How often are they re-arrested, especially for a new DV offense, while awaiting a disposition on their original case? Finally, are the risks greater for DV defendants than for Non-DV defendants?

This report examines pretrial release outcomes for misdemeanor domestic violence cases in New York City and compares them to the outcomes for Non-DV cases. It focuses on three types of pretrial misconduct: failure to appear for a scheduled court appearance, pretrial re-arrest for any new offense, and pretrial re-arrest for a new DV offense.

This *Research Brief* is adapted from *Pretrial Failure To Appear And Pretrial Re-Arrest Among Domestic Violence Defendants In New York City* by Research Department Director Richard R. Peterson, Ph.D.

The full report is available on the CJA web site:

[www.nycja.org/research/research.htm](http://www.nycja.org/research/research.htm)

Address comments to the author at [rpeterson@nycja.org](mailto:rpeterson@nycja.org)

Research Assistance: Justin P. Bernstein, Raymond P. Caligiure, Annie Su  
Systems Programming: Barbara Geller Diaz, Wayne Nehwadowich

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## The Dataset

This research analyzed data drawn from the New York City Criminal Justice Agency database in the first quarter of 2001 and the third quarter of 2002 (see inset box).

## Identifying DV And Non-DV Cases

To examine differences in release outcomes, we compared cases identified by the courts as DV cases to those that were not identified as DV cases. The courts' definition of domestic violence is based on the nature of the relationship between the offender and the victim.

When the relationship meets the statutory definition of a family (cases where the victim and offender are married, formerly married, related by blood or marriage, or have a child in common) or the courts' definition of an intimate relationship (cases where the victim and defendant are cohabiting or previously lived together, including "common-law" marriages and same-sex relationships) the courts classify the case as a DV case.

We defined comparable Non-DV cases as those where the charges involved interpersonal violence, but the relationship between the offender and the victim was not a family or intimate relationship as defined by the courts.

### The Combined First Quarter 2001 And Third Quarter 2002 Dataset

The dataset includes information about arrests, the court processing of prosecuted arrests, court outcomes, and re-arrests of the offenders. To obtain a large sample of DV cases, we combined data on DV cases in New York City from the first quarter of 2001 and the third quarter of 2002. For comparisons to Non-DV cases, we used a sample of Non-DV cases drawn only from the First Quarter 2001 Dataset. The sample size of Non-DV cases in the First Quarter 2001 dataset is sufficiently large to allow us to make reliable statistical comparisons with DV cases.

The analyses were limited to cases that were disposed in the lower court (Criminal Court) and excluded felony cases that were disposed in the upper court (Supreme Court). Since few DV cases were disposed in Supreme Court, the analyses provided information about 98% of the DV cases that resulted in criminal prosecution. The analyses of both DV and Non-DV cases were further restricted to those with the types of charges that typically occur in cases involving interpersonal violence: assault, criminal contempt (for violating an order of protection), harassment, crimes against children, burglary, larceny, and weapons charges.

The dataset analyzed in this study is a *defendant-based data file* that includes information on *the first DV arrest* of each defendant. If the defendant had no DV arrests, we selected the defendant's first arrest for inclusion in the dataset. This procedure enabled us to identify all the defendants who had at least one DV arrest.

## RELEASE OUTCOMES

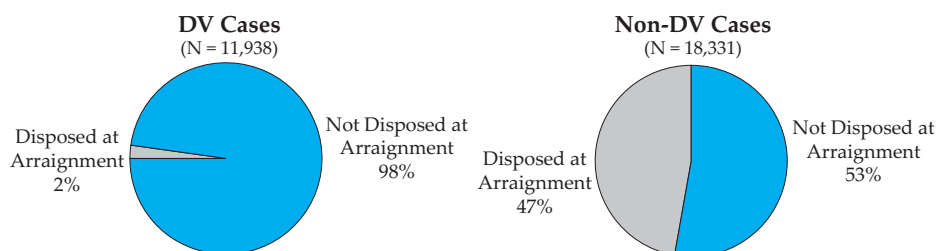
### A. Arraignment Release Decisions

Many criminal cases in New York City are disposed at arraignment, and the question of whether the defendant will be released during the pendency of the case never arises. However, domestic violence cases are generally not disposed at arraignment, which allows the courts time to learn more about the details of these often complex cases and to transfer many of these cases to the

specialized DV court parts.

As shown in Figure 1, only about 2% of DV cases disposed in Criminal Court are disposed at arraignment, compared to 47% of comparable Non-DV cases. An arraignment release decision is made in almost all DV cases, but in only about half of Non-DV cases.

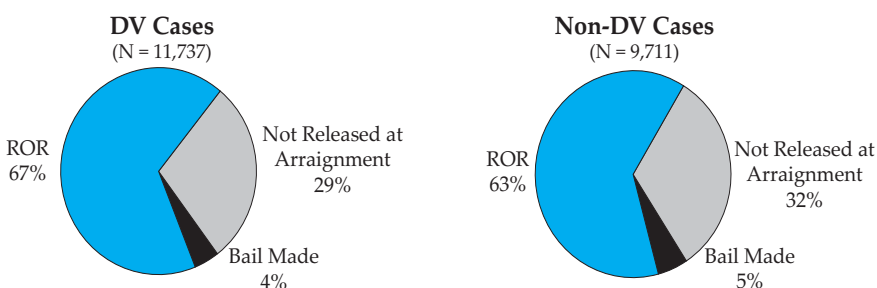
**Figure 1**  
**Cases Disposed At Arraignment**



In New York State, judges have several options when considering the release of a defendant at Criminal Court arraignment. In most cases, the judge can release the defendant on recognizance (ROR), or can set bail in any amount and decide on the type of bond or whether a lower cash alternative to posting bond would be accepted. In a small number of felony cases, the judge also has the option of remanding the defendant without bail.

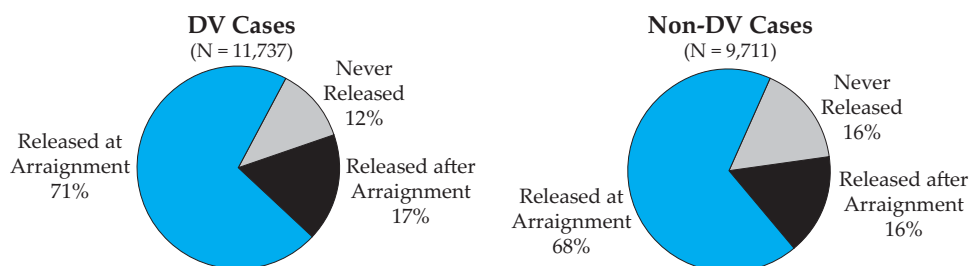
Among cases that were not disposed at arraignment, over two thirds of defendants were released on recognizance — 67% of DV defendants and 63% of Non-DV defendants (see Figure 2). A small proportion was released on bail (4% of DV defendants and 5% of Non-DV defendants), and the remainder were not released.

**Figure 2**  
**Release Status At Arraignment**  
(Defendants With Cases Continued Beyond Arraignment)



Defendants who were not released at arraignment were sometimes released later. Figure 3 shows that about one sixth of defendants were released after arraignment — 17% of defendants in DV cases and 16% of defendants in Non-DV cases. (A few of these defendants made bail on the arraignment day, but after the arraignment [data not shown]. These defendants were first held by the Department of Correction, and then released from custody.) In Non-DV cases, one sixth of defendants were never released (16%), while only 12% of defendants in DV cases were never released.

**Figure 3**  
**Stage Of First Release**  
(Defendants With Cases Continued Beyond Arraignment)



### Calculating Bail Amounts

To calculate the amount of bail set at arraignment (see Figure 4), we used the amount of the bond required or the cash alternative, if it was lower than the bond amount. In cases with multiple dockets, we summed the amounts set on each docket. We excluded cases with \$1 bond (which indicates that the defendant was already being held on another pending case).

The median bail set at arraignment was \$1,000 for both DV and Non-DV defendants (see Figure 4). (The median is the amount with an equal number of cases above and below.) However, because high bail amounts were more common for Non-DV defendants, the means (averages) differed considerably. The mean bail set for DV defendants at arraignment was \$2,060, compared to \$3,700 for Non-DV defendants.

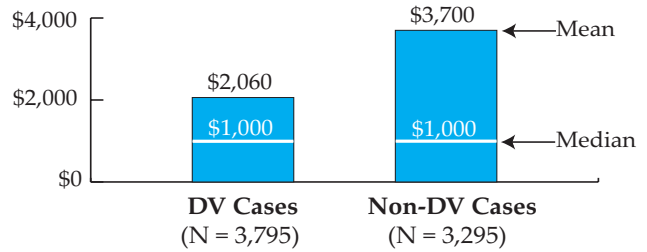
**B. Pretrial Misconduct**

Figure 5 presents data on rates of pretrial failure to appear, specifically whether defendants who were released ever failed to appear in court during the pendency of the case. (Note that these rates are “defendant-based”—defendants who missed multiple appearances were counted only once in calculating the FTA rate.) About 12% of Non-DV defendants failed to appear, compared to 10% of DV defendants. Although DV defendants, as shown earlier, were slightly more likely to be released than Non-DV defendants, this does not appear to have increased the risk of failure to appear.

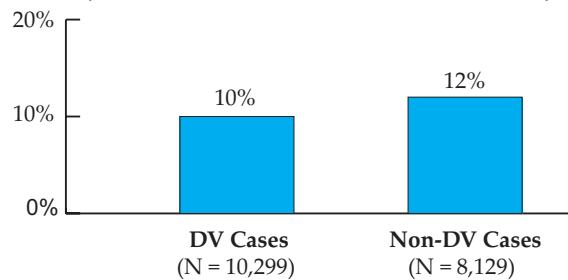
DV and Non-DV defendants who were released were equally likely to be re-arrested during the pretrial period. About 15% of released defendants were re-arrested for at least one new offense prior to the disposition of their case (see Figure 6A).

There were, however, significant differences in the types of crimes for which DV and Non-DV defendants were re-arrested. About 9% of DV defendants were re-arrested for at least one new DV offense during the pretrial period, compared to only 1% of Non-DV defendants (see Figure 6B). About 7% of released DV defendants were re-arrested for at least one new Non-DV offense during the pretrial period, compared to 14% of Non-DV defendants. (Note that some defendants were re-arrested for both DV and Non-DV offenses.)

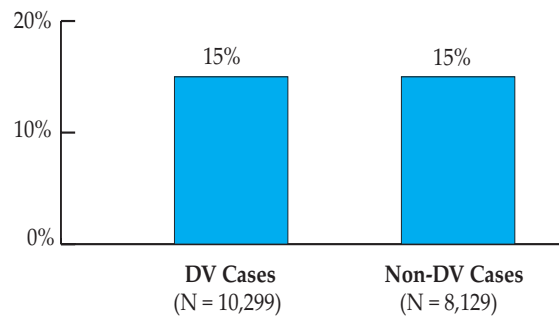
**Figure 4**  
**Amount Of Bail Set At Arraignment**  
(Defendants For Whom Bail Was Set At Arraignment)



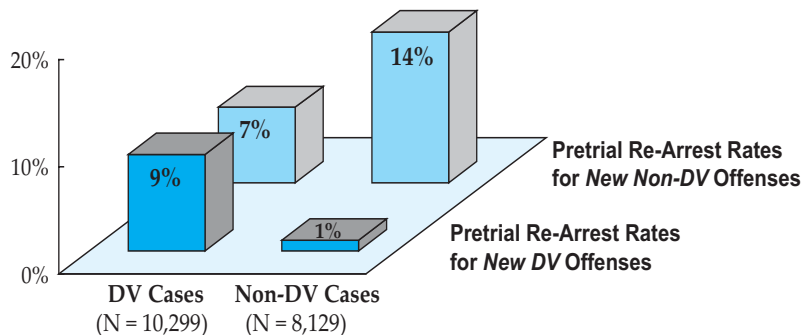
**Figure 5**  
**Failure-To-Appear Rates**  
(Defendants Who Were Ever Released)



**Figure 6A**  
**Pretrial Re-Arrest Rates For Any New Offenses**  
(Defendants Who Were Ever Released)



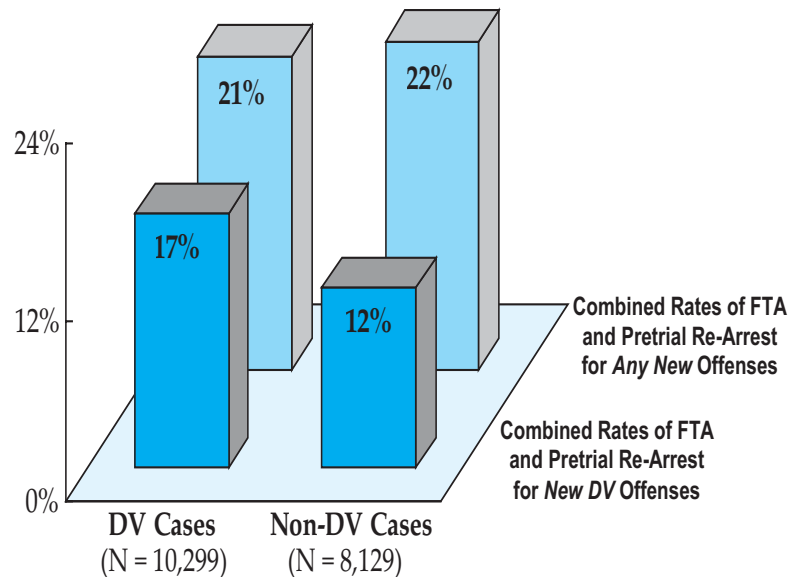
**Figure 6B**  
**Pretrial Re-Arrest Rates For New DV And Non-DV Offenses**  
(Defendants Who Were Ever Released)



To examine overall rates of pretrial misconduct, we combined the information about pretrial failure to appear and pretrial re-arrest. First, we examined the combined rate of FTA and pretrial re-arrest for *any new* offense. As shown in Figure 7, about 21% of DV defendants and 22% of Non-DV defendants engaged in one or both of these types of pretrial misconduct.

Second, we examined the combined rate of FTA and pretrial re-arrest for a *new DV* offense. About 17% of DV defendants failed to appear and/or were re-arrested for a new DV offense during the pretrial period, compared to only about 12% of Non-DV defendants (see Figure 7).

**Figure 7**  
**Combined Rates Of FTA And Pretrial Re-Arrest**  
(Defendants Who Were Ever Released)



## FACTORS ASSOCIATED WITH PRETRIAL MISCONDUCT FOR DV DEFENDANTS

We developed two statistical models to examine which factors increased or decreased pretrial misconduct among DV defendants. One model examined the likelihood of pretrial failure to appear (FTA) and the other examined the likelihood of pretrial re-arrest for a new DV offense. A variety of factors that previous research suggests may affect pretrial misconduct were considered for inclusion in the models. The models examined the effect of each factor after taking time at risk into account.

Figure 8 shows the factors that were influential in each model. There were several important similarities between the models predicting re-arrest and FTA. Age was the most important predictor in both models. Older defendants were less likely to

FTA and less likely to be re-arrested for a new DV offense than younger defendants. Criminal history and community ties were important in both models. Although some criminal history items were important in only one of the models, a record of prior arrests was an important predictor in both models. Weak community ties, particularly being unemployed and not having a telephone, were important predictors of pretrial misconduct in both models.

However, there were several notable differences between the models predicting re-arrest and FTA. Most importantly, release characteristics were important predictors of FTA, but had no effect on the likelihood of re-arrest. After controlling for the effects of the other variables in the model, defendants released on

bail were much less likely to fail to appear than defendants released on recognizance. However, there was no difference in the likelihood of re-arrest between defendants released on bail and those released on recognizance. Similarly, defendants released after arraignment were more likely to FTA than those released at arraignment, but this variable had no impact on re-arrest.

While charge type was important in both models, defendants arraigned on “other” charges were more likely to FTA, whereas defendants arraigned on “criminal contempt” charges (primarily violating an order of protection) were more likely to be re-arrested for a new DV offense. Ethnicity, gender and defendant-victim relationship had an influence only on re-arrest, not FTA.

**Figure 8**  
**A Comparison Of Predictors Of FTA With Predictors Of Re-Arrest For A New DV Offense**

		Was the Factor a Statistically Significant Predictor of:		
		FTA?	Re-Arrest?	
<b>Time At Risk</b>	Days At Risk	yes (+)	yes (+)	
<b>Criminal History</b>	Any Prior Arrests	yes (+)	yes (+)	
	2+ Misdemeanor Jail Sentences	yes (+)	no	
	2+ Prior Bench Warrants	yes (+)	no	
	Open Bench Warrant	yes (+)	no	
	2+ Open Cases	no	yes (+)	
<b>Community Ties</b>	Unemployed	yes (+)	yes (+)	
	Expects No One at Arraignment	yes (+)	no	
	No Telephone or Cellphone	yes (+)	yes (+)	
	Lived at Current Address 1 Year Or Less	no	yes (+)	
	Lives With Someone	no	yes (+)	
<b>Charge Characteristics</b>	Arraignment charge (vs. Assault):			
	Criminal Contempt	no	yes (+)	
	"Other"	yes (+)	no	
<b>Release Characteristics</b>	Defendant Released After Arraignment	yes (+)	no	
	Defendant Released On Bail (vs. ROR)	yes (-)	no	
<b>Demographic / Geographic Characteristics</b>	Age: 40 and Older	yes (-)	yes (-)	
	Sex: Female	no	yes (-)	
	Ethnicity (vs. Non-Hispanic Black):	Non-Hispanic White	no	yes (+)
		Hispanic	no	yes (-)
		Other	no	no
	Defendant-Victim Relationship (vs. Married):	Boyfriend-Girlfriend	no	no
		Common-Law Marriage	no	no
		Other	no	yes (-)
		Borough (vs. Brooklyn):	Manhattan	no
	Queens		no	no
Staten Island	yes (+)		no	
Bronx	no		no	

A plus sign (+) indicates that the factor was a statistically significant predictor of higher FTA or re-arrest rates; a negative sign (-) indicates that the factor was a statistically significant predictor of lower FTA or re-arrest rates.

**SUMMARY**

Our findings on pretrial release decisions show that there is one major difference between DV and Non-DV cases. Almost all DV cases (98%) are continued beyond arraignment, while only 53% of comparable Non-DV cases are continued beyond arraignment. We found very few differences in pretrial release decisions for DV and Non-DV defendants whose cases were not disposed at arraignment.

Rates of pretrial misconduct for DV defendants were generally similar to those for Non-DV defendants. The failure-to-appear rate was 10% for DV defendants and 12% for Non-DV defendants, and the pretrial re-arrest rate was 15% for both groups. However, DV defendants were much more likely than Non-DV defendants to be re-arrested for a new DV offense during the pretrial

period (9% vs. 1%). Since new offenses may go unreported or may not lead to re-arrest, rates of pretrial misconduct may be even higher. This suggests that pretrial re-arrest for a new DV offense is a problem that deserves special attention when DV defendants are prosecuted.

What factors affect failure to appear and pretrial re-arrest for a new DV offense among DV offenders? Some factors, such as age, prior arrests, and community ties, have similar effects on both FTA and re-arrest. Other factors affect only FTA or only re-arrest for a new DV offense. Taken together, these patterns suggest that the underlying factors influencing FTA and re-arrest share some basic similarities, but also that there are significant differences in the underlying processes.

## POLICY IMPLICATIONS

How can the findings of this study be used to reduce the risk of pretrial misconduct among DV defendants?

### Reducing Failure to Appear

New York State law directs judges to make release decisions based on the restrictions that are necessary to insure that the defendant returns for future court appearances (New York State Criminal Procedure Law §510.30). Factors that must be considered include the defendant's character, employment, financial resources, family and community ties, criminal record, the strength of the evidence, and other factors indicating probability of conviction and the likely sentence.

Our findings on the factors that affect FTA suggest that the courts should pay special attention to defendants who have more serious criminal histories, weaker community ties, or are charged with criminal contempt. However, in practice, it would be difficult for the court to detain more of these defendants. Judges are unlikely to set bail more often, or to set higher bail, for defendants in misdemeanor DV cases, because these cases are unlikely to end in conviction or jail sentences (see *Research Brief #4*). Furthermore, many DV defendants released after arraignment have made bail or must be released on recognizance because the DA has not corroborated the complaint within statutory time limits.

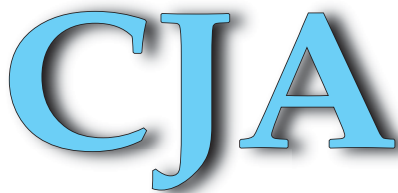
Although we found that demographic factors, especially age, affect the likelihood of FTA, bail statutes in New York State do not permit the criminal courts to consider demographic characteristics in determining the type or conditions of release.

### Reducing Re-Arrests for New DV Offenses

Preventive detention during the pretrial period, aimed at preventing new offenses, is not permitted in New York State. However, the law does allow the court to address concerns about safety through the conditions of release. In almost all DV cases, the courts issue a Temporary Order of Protection (TOP), prohibiting or restricting contact between the defendant and the victim. TOPs are an important tool, and may be effective in many cases. Of course our study also has shown that a significant minority of defendants are re-arrested for new DV offenses in spite of the issuance of a TOP.

What other conditions of release could be imposed? One possibility would be to require some DV defendants to enroll in a supervised release program. These programs are widely used in the U.S. to monitor defendants' compliance with the conditions of their release. They usually require the defendant to report by telephone or in person. Some defendants are referred to substance abuse or mental health treatment, and are tested for drug and alcohol use. Special procedures to supervise DV defendants sometimes include referral to counseling, electronic monitoring, or other enhanced supervision. Some DV programs also contact the victim to monitor compliance with TOPs, and some use special risk assessment instruments for DV defendants. These instruments can be used to identify which defendants should be assigned to supervised release and/or to determine the nature of the supervision.

- Pretrial misconduct by DV defendants is a significant problem, but it is difficult to prevent. It is unlikely that the courts could detain more defendants in DV cases by setting bail more often, or setting higher bail.
- Although age is an important predictor of pretrial misconduct, statutes do not permit the courts to consider it in making release decisions.
- Temporary Orders of Protection, restricting contact between the defendant and the victim, are issued in almost all DV cases, and remain important for controlling pretrial misconduct.
- Requiring supervised release for some DV defendants might be an effective way to address concerns about both FTA and pretrial re-arrest for new DV offenses.



Research Brief from

**No. 12 (September 2006)**

**Pretrial Outcomes For Domestic Violence Defendants**

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The New York City Criminal Justice Agency, Inc.

52 Duane Street

New York, NY 10007

TO: