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CONVICTION FOR DISORDERLY CONDUCT

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Final Report

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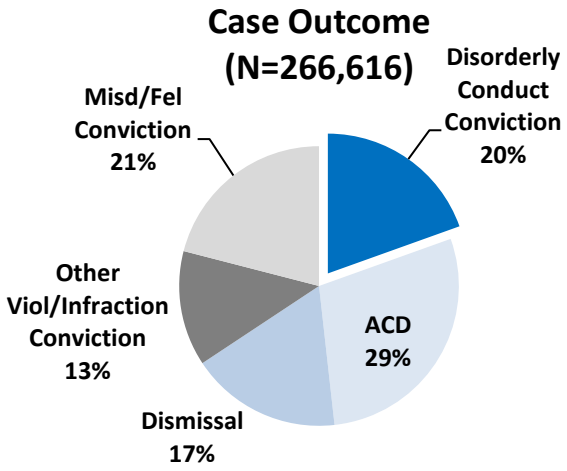
EXECUTIVE SUMMARY

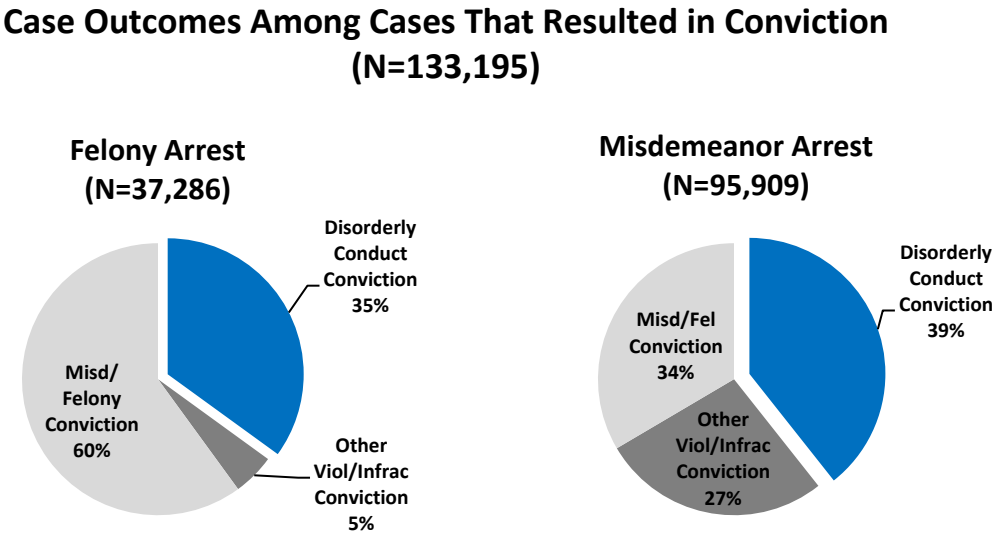
Disorderly conduct is a violation-level offense defined under **New York State Penal Law § 240.20** to include a wide range of conduct.

In 2015, there were only **1,520** arrests in which the most severe **charge** was disorderly conduct.

Yet during the same period more than **50,000** arrests resulted in **conviction** for disorderly conduct, accounting for **20%** of all case outcomes for the year.



The percentages were even higher among arrests that end in conviction, accounting for **39%** of such misdemeanor arrests and **35%** of such felony arrests.



Why do so many cases processed in New York City result in a conviction for disorderly conduct?

Prior research suggests:

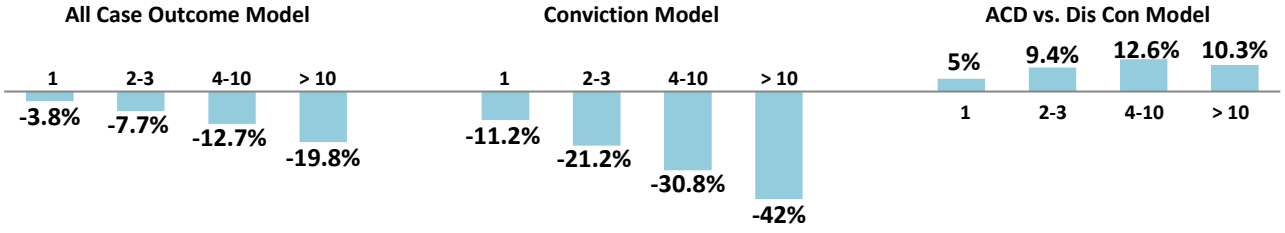
- A graduated system of sanctions has developed for low-level cases in which case outcomes are driven not by the facts in the case but by the defendant's prior interactions with the criminal justice system
- Within this system, a defendant's **prior history of misdemeanor convictions** plays an important role in evaluating a defendant's governability
- A disorderly conduct conviction is used as a **catch-all**, intermediate-level sanction for low-level cases in which the defendant has a criminal history

We conducted multivariate analyses across three research groups: all docketed custodial arrests, custodial arrests that resulted in conviction, and custodial arrests that resulted in either ACD or conviction for disorderly conduct:

We find that:

- A variety of **charge types** were associated with a higher probability of a conviction for disorderly conduct
- A defendant's **prior history of misdemeanor convictions** was associated with the likelihood of a disorderly conduct conviction: among all arrests and all cases that end in conviction, the probability of a disorderly conduct conviction (a favorable outcome in this context) was **lower** for defendants with more misdemeanor convictions. Among cases that end in either an ACD or a disorderly conduct conviction, the probability of a disorderly conduct conviction (an unfavorable outcome in this context) was **higher** for defendants with more misdemeanor convictions.

Effect Of Prior Misdemeanor Convictions On Probability Of A Disorderly Conduct Conviction



- **Borough of arraignment** was associated with the likelihood of disorderly conduct conviction, suggesting variation in prosecutorial policies.

As a consequence of arrests resulting in a disorderly conduct conviction: more than **4,000 defendants were held on bail or remanded** at the initial appearance; more than **1,000 defendants were subject to fines**; and more than **2,000 defendants were sentenced to a term of imprisonment.**

A multivariate analysis showed that the most serious of these outcomes, imprisonment, was associated with both **prior misdemeanor convictions** and the **severity of the arraignment charge**.

ACKNOWLEDGEMENTS

This research could not have been completed without my colleagues at CJA, who, as always, have been generous with their time and helpful with their substantive insights and editorial assistance.

A special debt of gratitude is owed to Mary Phillips, former Deputy Director of Research at CJA, whose review of an early draft of the report guided our approach to the presentation of the findings. Freda Solomon offered valuable insights that helped frame the analysis. As the project matured, Stephen Koppel stepped in to provide subject matter and statistical expertise. This report also benefited enormously from the careful review and thoughtful comments of Richard Peterson, Director of Research, of both the initial draft and final version of this report. Finally, I am grateful to the Mayor's Office of Criminal Justice for supporting this project.

While credit is due to many, especially Stephen Koppel, any errors, are my responsibility.

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CONVICTION FOR DISORDERLY CONDUCT

I. INTRODUCTION

Though much has been written about the effects of misdemeanor convictions, especially in the context of mass incarceration and the movement to close New York City's Rikers Island, little attention has been directed towards convictions for lesser, non-criminal offenses. This report focuses on convictions for one such offense, disorderly conduct, the most common violation-level conviction charge in New York City (NYC). We explore the scope of convictions for disorderly conduct, the factors associated with these convictions as well as the penalties imposed. The findings show that disorderly conduct is used as a catch-all disposition for cases arraigned on a wide variety of offense charge types and charge severities; that a defendant's prior contact with the criminal justice system is strongly predictive of a disorderly conduct conviction; and that such convictions can lead to serious direct and collateral consequences for defendants.

A. Definition Of Disorderly Conduct In New York State (NYS): Penal Law §240.20

According to the New York State Statutes and Rules (the Gray Book), disorderly conduct is defined as an offense against "public order" that includes a wide array of conduct:

> "A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof:
>
> a. He engages in fighting or in violent, tumultuous or threatening behavior; or
> b. He makes unreasonable noise; or
> c. In a public place, he uses abusive or obscene language, or makes an obscene gesture, or
> d. Without lawful authority, he disturbs any lawful assembly or meeting of persons; or
> e. He obstructs vehicular or pedestrian traffic; or
> f. He congregates with other persons in a public place and refuses to comply with a lawful order of the police to disperse; or
> g. He creates a hazardous or physically offensive condition by any act which serves no legitimate purpose."

B. The Prevalence Of Convictions For Disorderly Conduct in NYC

In 2015, there were only 1,520 arrests in which the most severe charge was disorderly conduct and few of these arrests resulted in conviction for that offense.[1] Yet during the same time more than 50,000 were convicted for disorderly conduct, accounting for one of every five prosecuted arrests and more than one of every three convictions.[2]

Convictions for disorderly conduct were common across a variety of types of arrests. A conviction for disorderly conduct was about as likely in Desk Appearance Ticket arrests (DATs) as in custodial arrests (19% and 20%, respectively). Felony arrests were about as likely to result in conviction for disorderly conduct (22%) as were misdemeanor-level arrests (21%),[3] although these convictions were rare among arrests for violations or infractions (4%).

C. Penalties For Convictions For Disorderly Conduct

Disorderly conduct is a violation-level offense. New York State Penal Law does not classify violations as a crime so a conviction for one does not result in a criminal record. Violation convictions are usually sealed and removed from the defendant's rap sheet one year after the conviction date if the defendant has not been re-arrested during the year, although it is not uncommon for the conviction to remain on the rap sheet longer than a year. While a conviction for disorderly conduct is not a criminal conviction, it may result in a sentence up to 15 days in jail and/or a fine and may involve pretrial detention before the disposition of the case. The research described in this report indicates that 2,000 defendants convicted of disorderly conduct were sentenced to a term of imprisonment longer than "time served" and 4,302 were held on bail or remanded at the initial arraignment appearance. Surcharges and other associated court fees are mandatory for these convictions. In addition, violation

[1] This does not include arrests for disorderly conduct in which the arrestee is given a summons. It includes custodial and DAT arrests in which the first final disposition was a conviction for PL §240.20. See Appendix for NYS State definition of disorderly conduct.

[2] Conviction for disorderly conduct is not unique to 2015. See Appendix A. Disorderly Conduct Convictions By Year Of Arrest: 2009 - 2017

[3] Even after the district attorneys reviewed the arrest charges, convictions for disorderly conduct were nearly as common among cases with felony arraignment charges (15%) as among those with misdemeanor charges at arraignment (22%).

convictions can have other collateral consequences for defendants; for example, when the court issues an order of protection since defendants who violate the order can face new charges.

D. Graduated Sanctions In Low-Level Cases

Generally speaking, there are three likely outcomes for low-level cases in which the prosecution does not pursue a felony or misdemeanor conviction: dismissal, adjournment in contemplation of dismissal (ACD), or conviction for a violation-level offense such as disorderly conduct. From the defendant's perspective, the most favorable of these outcomes is a dismissal, since it is not reported on a rap sheet. However, such dismissals are generally not issued in a systematic way but instead result from the unique set of facts and circumstances of a case (e.g., infirmities in the accusatory instrument; speedy trial issues). The next best outcome is an ACD. ACDs impose conditions on a defendant, such as avoiding re-arrest for a six month period, which, if satisfied, seal the record of arrest. A conviction for disorderly conduct is the worst of these three outcomes, because not only can it result in an incarcerative sentence, but also because it remains on a criminal record for up to one year.

The overwhelming majority of low-level cases are resolved through plea bargaining. While the contents of such negotiations are not directly observable, the data suggest that they revolve around a binary choice: an ACD or a conviction for disorderly conduct. To better understand the decision-making process in low-level cases, the current research will explore the factors associated with a disorderly conduct conviction. Moreover, in cases where the decision frame has narrowed to a choice between an ACD and disorderly conduct, it will seek to answer the question of why some defendants are subject to the more serious of the two outcomes.

E. Review Of Literature

Although much has been written about misdemeanor convictions and their potential for serious direct and collateral consequences,[4] [5] little attention has been directed toward

[4] Howell, Babe K. *Broken Lives from Broken Windows: The Hidden Costs of Aggressive Order-Maintenance Policing*. NYU Rev. L. & Soc. Change, 33, 271 (2009).
[5] Natapoff, Alexandra. *Misdemeanors*. Southern California Law Revue, 85, 1313 (2011).

convictions for violations such as disorderly conduct. According to the conventional view of the criminal justice process, criminal cases are adjudicated through a careful process of weighing the evidence in a case to determine whether a defendant has committed a particular crime. However, as several criminal justice scholars have noted, this adjudicative ideal is often at odds with the reality of what occurs in criminal courts, especially for low-level crimes. The tiny number of cases resolved by conviction at a formal trial (205 among cases in this research) provides support for the contention that there is a gap between perception and reality about how cases reach disposition. That such a high proportion of cases are resolved at arraignment (48% in this research), the first court appearance after arrest, also supports the view that case outcomes are not determined based on a thorough examination of the facts.

Several alternative views have been put forward to more accurately characterize the workings of lower criminal courts. Some have argued that low-level cases receive assembly-line justice: plea bargains are hastily struck in order to clear backlogs and move cases out of the criminal justice system.[6] Others, including Feeley,[7] maintain that the criminal justice process itself is the penalty—one that is so onerous that many defendants prefer the formal sanction associated with a quick disposition over protracted case processing in hope of a favorable outcome.

More recently, research by Kohler-Haussman[8] suggests that such cases receive 'managerial justice,' in which low-level case processing is focused less on ascertaining the facts in a case than on the marking, testing, and surveillance of a defendant with the aim of evaluating his or her governability. In this way, although a misdemeanor charge may be no more serious than, for instance, theft of services—commonly used for turnstile jumping in the NYC subway—a defendant charged with such an offense may be required to attend multiple court hearings, fulfill various obligations, and is marked and classified accordingly. Under this approach, the criminal history of a defendant figures prominently in decisions about how to dispose of a case.

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[6] Nutter, Ralph H. *The Quality of Justice in Misdeameanor Arraignment Courts.* 53 Journal of Criminal Law, Criminology, and Police Science. (1962).

[7] Feeley, Malcolm M. The Process is the Punishment: Handling Cases in a Lower Criminal Court. New York: Russell Sage Foundation (1979).

[8] Kohler-Hausmann, Issa. *Managerial Justice and Mass Misdemeanors.* Stanford Law Review, Vol. 66:61 (March 2014).

For example, Kohler-Haussman finds that the mark of a misdemeanor conviction is associated with a higher probability of conviction for a subsequent misdemeanor arrest (14% for a defendant with no prior misdemeanor convictions compared to 78% for a defendant with ten or more).[9]

From a managerial perspective, a defendant's prior encounters with the criminal justice system serve as the basis for a graduated system of sanctions. As one prosecutor Kohler-Haussman interviewed observed:

> *"Our offers are progressive; first the ACD, then the violation, then the misdemeanor, etc. etc etc."*[10]

Thus, a first arrest, if the charge is low enough, may result in an ACD whereas not until the second or more serious offense will the case result in a non-criminal disorderly conduct conviction. Consistent with this approach, Solomon has found a positive relationship between a defendant's age, a proxy for criminal history, and the likelihood of an ACD.[11]

Once a defendant has a longer criminal history or faces serious charges, criminal convictions become more likely. Another prosecutor described her thought process this way:

> *"You are not making an offer just on a charge, you are making an offer on the person, on the record that person has."*[12]

Within this hierarchy, convictions for disorderly conduct play an important role:

> *"That's the catchall….[It] really isn't made out by the facts, but it's kind of a legal fiction, you just do it to dispose of it. The theory is: a violation is a violation. The 240.20 is the catch-all."*[13]

As Kohler-Hausmann explains:

> *"'Dis con is what they offer innocent people with records' – meaning that even on a very weak case, an offer of disorderly conduct is often the best that a defendant with a prior conviction can expect."*[14]

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[9] Kohler-Hausmann, Issa. *Managerial Justice and Mass Misdemeanors.* Stanford Law Review, Vol. 66:61 (March 2014).
[10] Kohler-Hausmann, Issa. Misdemeanorland. (2018), p. 84.
[11] Solomon, Freda. *Adapting to Order Maintenance Policing in New York City: Examining Defendant Characteristics and Post-Arrest Outcomes.* New York Criminal Justice Agency (2011).
[12] Kohler-Hausmann, Issa. Misdemeanorland. (2018), p. 84.
[13] Barrett, Carla J. *Adjudicating "Broken Windows": A Qualitative Inquiry of Misdemeanor Case Processing in New York City's Lower Criminal Courts.* Criminology, Criminal Justice, Law & Society, 18, 62 (2017).
[14] Kohler-Hausmann, Issa. Misdemeanorland. (2018), p. 166.

In sum, previous research suggests that low-level cases such as those that result in convictions for disorderly conduct are not adjudicated solely on the basis of the facts of the case. Rather, the defendant's history of encounters with the criminal justice systems seems to drive the outcome of these cases.

F. The Research Data Set

The data for this study were drawn from the CJA database which contains information about the arrest, case processing, and case outcomes of most New York City arrestees. CJA receives arrest data through automated electronic transmissions from the New York City Police Department (NYPD), case-processing data from the Office of Court Administration (OCA), and bail-making data from the New York City Department of Correction (DOC). CJA staff interview defendants prior to arraignment in custodial arrests in order to collect information that is used to make a release recommendation to the arraigning judge. Data from the interview, including defendants' criminal history, demographic, and community ties information, are entered in the CJA database. There is no opportunity to interview defendants who are released after receiving a DAT, so criminal history and community ties data are not available for these defendants.

The report is based on analyses of the 2015 Annual Dataset. Annual datasets are compiled from the CJA database by Research Department staff with the assistance of the Information Technology Department. The datasets initially track case processing for six months beyond the last arrest of the previous calendar year and are updated the following year to extend tracking for a total of 18 months following the latest arrest.

The research described in this report is based on all arrests between January 1, 2015, and December 31, 2015, that were docketed in the criminal courts in NYC. Because the research is focused on case outcomes, we excluded the 25,317 (7%) docketed arrests that had not reached final disposition as of June 30, 2016, either because the case was still pending or because the defendant failed to appear as scheduled and a warrant was issued. We also excluded the small number of arrests (2,766, 1%) that reached other dispositions, primarily arrests that were consolidated with another case or those in which the defendant was extradited to another jurisdiction. When defendants were arrested multiple times during 2015, each arrest was

included in the study and treated as a distinct event. Overall, 266,616 docketed arrests were included in the data set used in this analysis.

G. The Research Plan

This report starts with an overview of convictions for disorderly conduct in the context of all docketed arrests and then among arrests that resulted in any conviction by the type of arrest (custodial or DAT), by the severity of the charge at arrest, and by the severity of the charge entering arraignment and criminal history. Case outcomes by release status at arraignment and length of pretrial detention for each outcome are also included, followed by data on the number of court appearances to reach conviction for disorderly conduct.

Section III presents a series of multivariate analyses of convictions for disorderly conduct. First, we attempt to identify factors associated with convictions among all docketed arrests. Since criminal history data are not available for DAT arrests, the model is restricted solely to custodial arrests. Second, we use the same factors to examine convictions for disorderly conduct among cases that resulted in any conviction. Third, we examine the factors that distinguish convictions for disorderly conduct from ACDs. Finally, Section IV examines the sanctions imposed for a disorderly conduct conviction and includes a multivariate analysis of the factors associated with the most serious of these, an incarcerative sentence.

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II. OVERVIEW OF CONVICTIONS FOR DISORDERLY CONDUCT

A. Case Outcomes

Nearly one of every five docketed arrests resulted in conviction for disorderly conduct (Table 1). An additional 13 percent resulted in conviction for another violation or for an infraction and 21 percent resulted in conviction for misdemeanors or infractions. More than half of the docketed arrests resulted in conviction for any offense. Nearly three of every ten arrests were adjourned in contemplation of dismissal (ACD) and 17 percent were dismissed.

Among cases that resulted in any conviction, 36 percent were convicted of disorderly conduct, one quarter was convicted of another violation or an infraction, and nearly four of every ten were convicted of a misdemeanor or felony-level offense.

Table 1. Case Outcomes

CASE OUTCOMES	Number of Cases	Percent of All Outcomes	Percent of Convictions
CONVICTIONS			
Disorderly Conduct	**52,064**	**19.5**	**36.3**
Other Violations Or Infractions	35,528	13.3	24.7
Misdemeanors And Felonies	55,934	21.0	38.0
SUBTOTAL CONVICTIONS	**143,526**	**53.8**	**100.0**
ACD	76,514	28.7	
Dismissals	46,576	17.5	
ALL OUTCOMES	**266,616**	**100.0**	

B. Case Outcomes For Custodial And DAT Arrests

Table 2 shows the distribution of outcomes separately for defendants in custodial arrests and those who were issued DATs at arrest. Defendants who were given DATs were no more likely to be convicted of disorderly conduct than were their counterparts in custodial arrests (both 19%). However, DAT defendants were more likely to be convicted of other violations or infractions (19%, compared to 11% of custodial arrests), less likely to be convicted of more serious offenses (7% compared to 26% for custodial arrests) and far less likely to have their charges dismissed (10% compared to 20% for custodial arrests). Docketed DAT cases were half as likely as docketed custodial cases to be dismissed (10% compared to 20%) but the DAT cases were far more likely to result in ACDs (45% compared to 24%).

As expected, among convicted cases, custodial arrests were less likely to result in conviction for disorderly conduct than were DAT cases (35% compared to 42%) and far less likely to result in conviction for other violations or infractions (20% compared to 42%), but they were far more likely to result in a misdemeanor- or felony-level conviction (45% compared to 16%).

Table 2. Case Outcomes For Custodial And DAT Arrests

	CUSTODIAL			DAT		
CASE OUTCOMES	Number Of Cases	Percent Of All Outcomes	Percent Of Convictions	Number Of Cases	Percent Of All Outcomes	Percent Of Convictions
CONVICTIONS						
Disorderly Conduct	**39,492**	**19.7**	**34.7**	**12,572**	**19.1**	**42.1**
Other Violations Or Infractions	22,991	11.4	20.2	12,537	19.1	42.0
Misdemeanors And Felonies	51,217	25.5	45.1	4,717	7.2	15.8
SUBTOTAL CONVICTIONS	**113,700**	**56.6**	**100.0**	**29,836**	**45.4**	**100.0**
ACD	47,103	23.5		29,411	44.7	
Dismissals	40,052	19.9		6,524	9.9	
ALL OUTCOMES	**200,855**	**100.0**		**65,761**	**100.0**	

C. Case Outcomes By Borough Of Arrest

Borough differences in case outcomes were wide (Table 3). More than a quarter of docketed arrests in Queens and Staten Island resulted in convictions for disorderly conduct compared to nearly one in every five in the Bronx and Brooklyn but only 15 percent in Manhattan. The proportion convicted of other violations and infractions ranged from only nine percent in Queens to 18 percent in the Bronx. Convictions for misdemeanors or infractions were nearly twice as high in Staten Island (30%) and Manhattan (29%) as in Brooklyn (16%) or Queens (15%). The proportion of cases resulting in ACDs ranged from only nine percent of cases docketed in Queens to 21 percent and 25 percent of cases in the Bronx and Manhattan, respectively, and to 32 percent in Brooklyn and 37 percent in Queens. The rate of dismissal was lower in Queens and Manhattan (12% and 14%, respectively) than in the other boroughs where dismissals accounted for 21 to 24 percent of docketed cases.

Table 3. Case Outcomes By Borough Of Arrest

	Borough					
CASE OUTCOMES	BROOKLYN	MANHATTAN	QUEENS	STATEN ISLAND	BRONX	ALL CASES
CONVICTIONS						
Disorderly Conduct	**18.8**	**14.9**	**26.1**	**25.3**	**19.5**	**19.5**
Other Violations or Infractions	10.2	16.6	9.4	12.4	17.7	13.3
Misdemeanors and Felonies	15.9	29.3	14.9	29.9	21.0	21.0
SUBTOTAL CONVICTIONS	**45.0**	**60.8**	**50.4**	**67.6**	**58.2**	**53.8**
ACD	32.7	25.4	37.4	9.0	20.9	28.7
Dismissals	22.3	13.8	12.2	23.5	20.9	17.5
ALL OUTCOMES	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**
Number of Cases	76,767	78,297	56,066	8,406	47,080	266,616

D. <u>Case Outcomes By Severity Of Arrest Charge And Charge Entering Arraignment</u>

The proportion of felony arrests resulting in conviction for disorderly conduct (22%) was nearly the same as the proportion of misdemeanor arrests resulting in that outcome (21%), although the proportion of arrests at the lowest severity level that resulted in convictions for disorderly conduct was much lower (4%, Table 4). At the same time, felony arrests were more likely to result in any conviction (62%) than were arrests for misdemeanor (53%) or lesser charges (41%). Few felony arrests and only one in seven misdemeanor arrests resulted in convictions for other violations or infractions compared to three of every ten arrests initially charged with violations or infractions. Felony arrests were nearly twice as likely as misdemeanor arrests to result in dismissal (28% compared to 16%) and dismissals were rare among arrests with violation- or infraction-level arrest charges. Cases with violation or infraction charges at arrest were most likely to result in ACD (55%) compared to only three of every ten cases with misdemeanor charges at arrest and only one in every ten with felony-level arrest charges.

Among cases that resulted in any conviction, misdemeanor arrests were slightly more likely to result in conviction for disorderly conduct than were felony arrests (39% compared to 35%), but felony arrests were far more likely to result in a misdemeanor or felony conviction (60%

compared to only 34%). Arrests for a violation or an infraction were most likely to be convicted of an offense of a similar severity (77%). More than a quarter of misdemeanors arrests were convicted of a violation other than disorderly conduct or of an infraction compared to only five percent of felony arrests.

Table 4. Case Outcomes By Severity Of Arrest Charge*

CASE OUTCOMES	Severity Of Arrest Charge								
	FELONY			MISDEMEANOR			VIOLATION OR INFRACTION		
	N of Cases	% All	% Conv.	N of Cases	% All	% Conv.	N of Cases	% All	% Conv.
CONVICTIONS									
Disorderly Conduct	**13,047**	**21.8**	**35.0**	**37,734**	**21.0**	**39.3**	**942**	**4.4**	**10.7**
Other Violations Or Infractions	1,859	3.1	5.0	26,067	14.5	27.2	6,805	31.8	76.9
Misdemeanors And Felonies	22,380	37.4	60.0	32,108	17.9	33.5	1,099	5.1	12.4
SUBTOTAL CONVICTIONS	**37,286**	**62.3**	**100.0**	**95,909**	**53.4**	**100.0**	**8,846**	**41.3**	**100.0**
ACD	5,868	9.8		54,726	30.5		11,789	55.1	
Dismissals	16,693	27.9		28,849	16.1		756	3.5	
ALL OUTCOMES	**59,847**	**100.0**		**179,484**	**100.0**		**21,391**	**100.0**	

* Severity of arrest charge was unavailable for 5,894 arrests. Most of these were offenses in the Administrative Code or other offenses outside the NYS Penal Law.

The arrest charge was reduced by the district attorney's offices prior to arraignment in 17 percent of the cases. Table 5 displays case outcomes by the charge entering arraignment. Still, 15 percent of the felony-level cases eventually resulted in convictions for disorderly conduct, compared to 22 percent of the cases with misdemeanor charges and ten percent of those with lesser charges. ACDs were rare among cases with felony-level charges entering arraignment: Only four percent of these cases were ACD compared to nearly three of every ten with misdemeanor charges and more than half of those with lesser charges. Among cases that resulted in any conviction, 22 percent of those entering arraignment with felony charges resulted in conviction for disorderly conduct compared to four of every ten that entered with misdemeanor charges, but barely a quarter of those with violation- or infraction-level charges.

Table 5. Case Outcomes By Severity Of Charge Entering Arraignment

CASE OUTCOMES	Severity Of Charge Entering Arraignment								
	FELONY			MISDEMEANOR			VIOLATION OR INFRACTION		
	N of Cases	% All	% Conv.	N of Cases	% All	% Conv.	N of Cases	% All	% Conv.
CONVICTIONS									
Disorderly Conduct	**5,658**	**15.0**	**21.9**	**43,632**	**21.9**	**41.1**	**2,433**	**10.1**	**24.4**
Other Violations Or Infractions	868	2.3	3.4	26,382	13.3	24.8	7,481	31.0	75.0
Misdemeanors And Felonies	19,261	51.1	74.7	36,259	18.2	34.1	67	0.3	0.7
SUBTOTAL CONVICTIONS	**25,787**	**68.4**	**100.0**	**106,273**	**53.4**	**100.0**	**9,981**	**41.3**	**100.0**
ACD	1,599	4.2		57,511	28.9		13,273	55.0	
Dismissals	10,336	27.4		35,075	17.6		887	3.7	
ALL OUTCOMES	**37,722**	**100.0**		**198,859**	**100.0**		**24,141**	**100.0**	

Disorderly conduct was the top charge at arrest for less than one percent of the docketed cases and was among the top four charges at arrest for only three percent (data not shown). However, the proportion of cases convicted of disorderly conduct is far higher among those with disorderly conduct among the charges at arrest: 35 percent of cases that included disorderly conduct among the charges at arrest resulted in conviction for that charge compared to only 19 percent for other cases.

Similarly, disorderly conduct was the top charge entering arraignment for just over one percent of the docketed cases. The rate of conviction for disorderly conduct was far higher among cases charged with disorderly conduct (49%) than among those with other charges entering arraignment (20%). Although the CJA database includes the top four arrest charges, only one charge entering arraignment is recorded (data not shown).

E. Number Of Appearances

It took a median (midpoint) of two hearings for the docketed arrests in this research to reach case outcome—the arraignment hearing and one adjournment (data not shown). The median was two appearances for cases that resulted in convictions for disorderly conduct and for cases that resulted in convictions for more serious offenses. However, it took an average of

only one hearing, the arraignment hearing, for the cases to be convicted of other violations or infractions or to result in ACD, but it took an average of three appearances for cases to be dismissed.

Detailed data on the number of appearances is not available for this research due to a discrepancy in the programming with respect to the number of warrants ordered for missed appearances prior to disposition. However, among defendants convicted of disorderly conduct and excluding those who missed a scheduled appearance, the number of appearances ranged from one (cases disposed at arraignment) to 25. Twenty percent were required to attend three or more appearances, 12 percent attended four or more, seven percent had five or more and four percent had six or more court appearances.

F. <u>Case Outcomes By Release Status</u>

Release statuses were set at arraignment[15] for defendants whose cases were continued to a later date for adjudication. More than seven of every ten defendants whose cases were continued were released on their own recognizance (ROR'd) as were more than eight of every ten whose cases resulted in conviction for disorderly conduct (data not shown). Bail was set in more than 5,000 cases that resulted in conviction for disorderly conduct and 15 percent (4,322) of the defendants in these cases were held on bail at arraignment.

The rate of conviction for disorderly conduct was 24% when the defendant was ROR'd, 18% for those released on bail, 13 percent when the defendant was held on bail, and only four percent for the small group of cases in which the defendant was remanded (Table 6). Cases in which the defendant was ROR'd were far less likely to result in misdemeanor or felony convictions (13% compared to 36% to 58% for other cases). ACDs were far more frequent among cases in which the defendant was ROR'd (18% compared to 5% or less for other cases). Dismissals were equally frequent when the defendant was ROR'd or released on bail (about a third of cases); however, dismissals were much less frequent when the defendant was held on

[15] The arraignment outcomes in this study pertain to the hearing at which the defendant was arraigned, not the first scheduled arraignment. This distinction is particularly pertinent to defendants who were issued DATs because the scheduled arraignment may result in a warrant for failure to appear.

bail (a little more than a fifth) and much more frequent when the defendant was remanded (nearly half).

Table 6. Case Outcomes By Release Status At Arraignment (Adjourned Cases Only)

	Release Status at Arraignment				
CASE OUTCOMES:	**ROR**	**BAIL POSTED**	**HELD ON BAIL**	**REMAND (no bail set)**	**TOTAL Adjourned**
CONVICTIONS					
Disorderly Conduct	**24.2**	**18.0**	**12.9**	**4.4**	**21.1**
Other Violations Or Infractions	10.9	7.8	3.7	0.6	8.9
Misdemeanors Or Felonies	13.3	35.8	58.2	41.2	25.1
SUBTOTAL CONVICTIONS	**48.4**	**61.7**	**74.8**	**46.2**	**55.1**
ACD	18.2	5.3	2.9	1.3	14.0
Dismissals	33.4	33.0	22.3	52.5	30.8
ALL OUTCOMES	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**
Number Of Cases	**99,815**	**4,497**	**33,618**	**1,079**	**139,009**

The median bail amount[16] set at arraignment was $1,500 (Table 7). The amount of bail was lower in cases in which the bail was posted at arraignment ($1,000) than in cases in which the bail was not posted that early in case processing. The median bail amount set in cases that resulted in conviction for disorderly conduct was $1,000 and did not differ by release status at arraignment. The median bail amount was lowest for cases that resulted in ACD, followed by cases that resulted in conviction for disorderly conduct or other violations or infractions ($1,000) and those that resulted in dismissals and was highest for cases that resulted in misdemeanor or felony-level convictions.

[16] Bail is the lower of the bond and cash alternative, if any, set at arraignment.

Table 7. Median Bail Amounts Set At Arraignment By Case Outcomes

	BAIL POSTED		HELD ON BAIL		TOTAL BAIL SET AT ARRAIGNMENT	
CASE OUTCOMES:	**Median Bail**	Number of Cases	**Median Bail**	Number of Cases	**Median Bail**	Number of Cases
CONVICTIONS						
Disorderly Conduct	**$1,000**	**810**	$1,000	**4,327**	$1,000	**5,137**
Other Violations Or Infractions	$750	351	$1,000	1,240	$1,000	1,591
Misdemeanors Or Felonies	$1,500	1,612	$2,500	19,576	$2,500	21,188
SUBTOTAL CONVICTIONS	$1000	2,773	$2,000	25,143	$1,000	27,916
ACD	$775	238	$750	982	$750	1,220
Dismissals	$1,000	1,486	$2,000	7,493	$1,500	8,979
ALL OUTCOMES	**$1,000**	**4,497**	**$2,000**	**33,618**	**$1,500**	**38,115**

G. <u>Pretrial Detention By Case Outcomes</u>

Defendants who were held on bail or remanded with no bail set spent from one day to over a year in pretrial detention. Only 12 percent of detained defendants were held more than three months (Table 8). The proportion of cases held more than three months was slightly higher among cases resulting in a disorderly conduct conviction (3.9%) than ACDs (3.7), but lower than for other violations or infractions (4.5%), dismissed cases (9%), and convictions for a misdemeanor or felony (16%). A quarter of all detainees were held more than one month. Nearly a third of the defendants whose cases resulted in conviction for a misdemeanor or felony were detained more than a month compared to less than one in every six with other case outcomes.

Most of the defendants who were detained at arraignment were held less than a week. Among the 4,370 detained defendants who were convicted of disorderly conduct, about a third were released within three days and two thirds were released within a week. Conversely, about a third of the detained defendants convicted of disorderly conduct spent more than a week in detention, more than a fifth spent more than 15 days in detention, and 14 percent spent more than a month in detention. For the 1,403 defendants convicted of disorderly conduct who were detained one to three days, the 1,518 defendants held four to seven days,

the 489 detained eight to 15 days and the 615 who spent more than a month in pretrial detention prior to their conviction for disorderly conduct, this has tangible meaning.

The median length of detention was seven days, although the median was longer for the defendants who were remanded (30 days). The median length of detention was seven days for each case outcome category except arrests resulting in convictions for misdemeanors or felonies for which the median length of detention was 15 days.

Table 8. Length Of Detention By Case Outcomes

	CASE OUTCOMES					
	Conviction Charge Category					
Days Of Pretrial Detention	Disorderly Conduct	Other Violations Or Infractions	Felony Or Misdemeanor	ACD	Dismissal	TOTAL Detained
HELD ON BAIL OR REMANDED AT ARRAIGNMENT*	**%**	**%**	**%**	**%**	**%**	**%**
1-3	**32.1**	34.4	15.5	39.4	31.1	**22.6**
4-7	**34.7**	29.6	27.8	33.5	38.4	**31.4**
8-15	**11.2**	12.6	13.1	7.5	7.5	**11.4**
16-30	**7.9**	8.4	11.6	7.2	6.1	**9.6**
31-90	**10.2**	10.4	15.8	8.6	8.3	**13.0**
91 or more	**3.9**	4.5	16.1	3.7	8.6	**12.1**
TOTAL Detained	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**
Mean	**37.8**	41.2	109.3	34.7	60.4	**84.4**
Median	**7.0**	7.0	15.0	7.0	7.0	**7.0**
Number Of Cases*	**4,370**	**1,245**	**20,001**	**995**	**8,053**	**34,664**

*Length of detention was not available for 33 cases.

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III. MULTIVARIATE ANALYSES OF CONVICTION FOR DISORDERLY CONDUCT

Logistic regression models were built to identify the predictors of conviction for disorderly conduct. Each of the models is restricted to custodial arrests and excludes DAT cases because criminal history data is not available for DAT arrests. The first, the All Case Outcomes model, predicts convictions for disorderly conduct across cases that resulted in dismissal, ACD or any conviction. The second, the Conviction model, predicts convictions for disorderly conduct among cases that resulted in any conviction. The third, the ACD versus Disorderly Conduct model, focuses solely on factors that distinguish those two outcomes. Note that a fourth logistic regression model predicting any jail time after conviction for disorderly conduct was also developed and is presented in Section IV of this report.

The models examine a wide variety of predictors, including:

- the severity and type of charge entering arraignment,
- whether the arrest charge had been reduced by the district attorney prior to arraignment,
- whether disorderly conduct was among the top four arrest charges,
- the borough of arrest,
- defendant criminal history,
- the defendant's gender,
- ethnicity, and
- age.

For each model, two separate summaries of the results are presented. The first, in the left-hand column, provides the predicted probabilities for each predictor, i.e., the likelihood of conviction for disorderly conduct in a case with that characteristic. The right-hand column displays the percentage-point change in predicted probability, i.e., the marginal change in probability for a particular category of a variable compared to the reference category for that variable. These values represent the size of a predictor's effect. Dark grey bars denote effects that are statistically significant and red bars denote effects that are not statistically significant at $p < .05$.[17] There is no bar if the percentage point change rounds to less than one point.

[17] Findings from tests of significance in this study should be interpreted cautiously for several reasons. First, because the analyses include populations, tests of significance are not necessary to rule out sampling error. Second, due to the large number of cases, very small effects are detectable that may be statistically significant but

A. The All Case Outcomes Model

One in five arraigned custodial arrests (with criminal history available) resulted in a conviction for disorderly conduct. The results of the All Case Outcome model are presented in Figure 1. Overall, the model accounts for 16 percent of the variation in disorderly conduct convictions (Nagelkerke=.16). All of the charge severity categories decreased the probability of conviction for disorderly conduct compared to A misdemeanor charges, after adjusting for the effects of other predictors. The predicted probability of conviction for disorderly conduct was less than nine percent among cases with the most severe felony charges entering arraignment,[18] compared to 19 percent among those with D or E felony charges, 25 percent for those with A misdemeanor charges, 19 percent for those with lesser misdemeanor charges and only ten percent among cases with violation or infraction charges entering arraignment.

The type of charge entering arraignment was also found to impact the likelihood of conviction for disorderly conduct, but the effects varied considerably by charge type. The strongest effects were for cases entering arraignment charged with a controlled substance offense (excluding marijuana charges which are in a separate offense category) or a weapon[19] offense for which the predicted probability of conviction for disorderly conduct was 35 percent. In contrast, the lowest predicted probability of conviction for disorderly conduct was for cases entering arraignment with a Vehicle and Traffic Law (VTL) charge for which the predicted probability was only seven percent, followed by cases with assault charges (14%). The predicted probabilities were between 20 and 24 percent for the burglary, larceny or theft, robbery, marijuana and other charge categories.

The probability of conviction for disorderly conduct was 16 percentage points higher when the charge of disorderly conduct was included among the four most severe arrest charges and it

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not meaningful. Finally, the large number of predictors tested increases the likelihood of false positives simply due to chance alone.

[18] There were 472 cases with an A felony charge at arraignment in Model 1. Four percent resulted in conviction for disorderly conduct.

[19] The weapon offense arrests that resulted in conviction for disorderly conduct were primarily PL §265.01, possession of weapon in the fourth degree, an E felony. The data does not include details concerning the nature of the weapon.

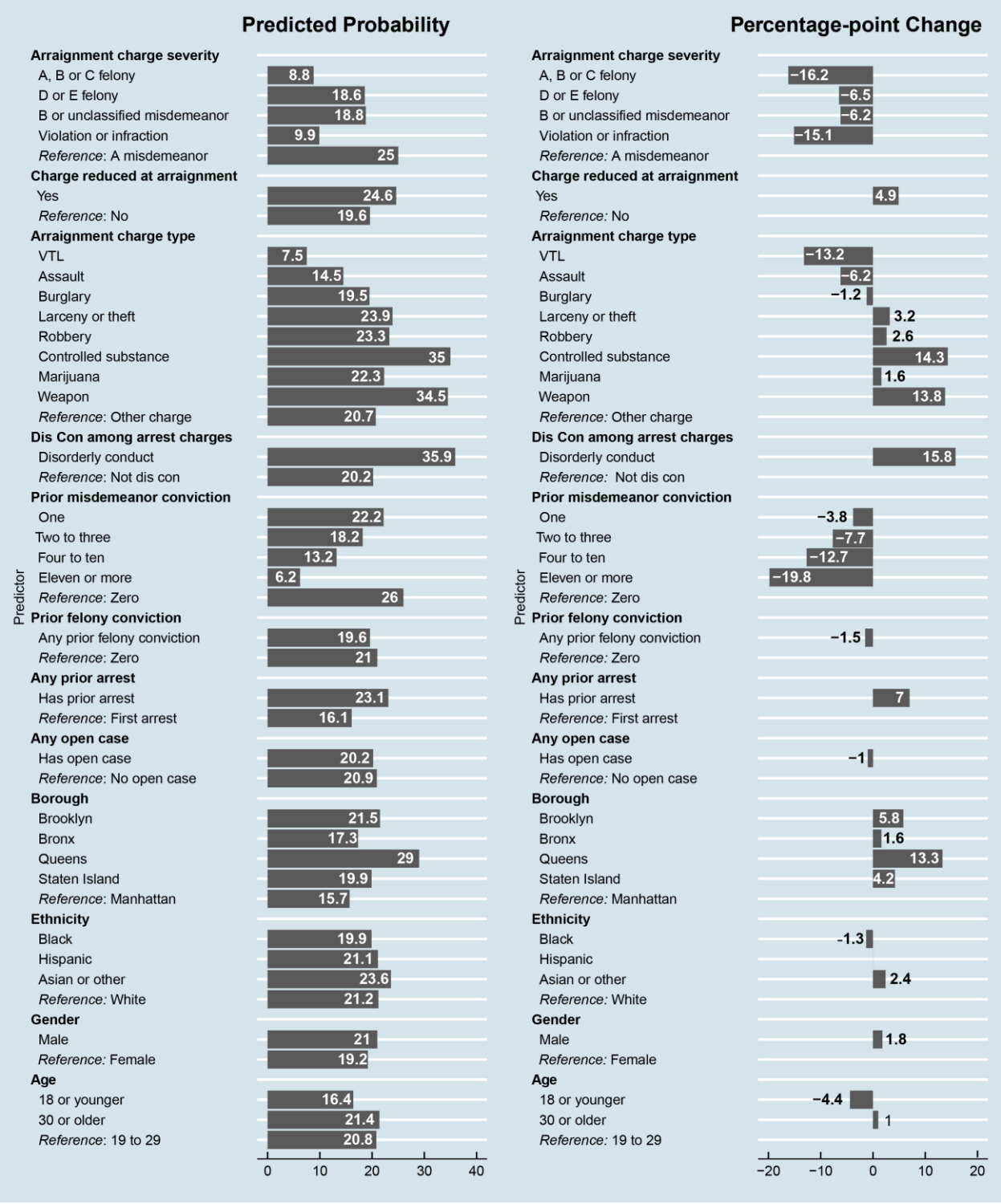
was five percentage points higher when the arrest charge was reduced to a less severe charge entering arraignment.

Borough differences were also statistically significant. Cases arraigned in Manhattan were least likely to result in conviction for disorderly conduct (16%), followed by the Bronx (17%), compared to those arraigned in Staten Island (20%), Brooklyn (22%) and Queens (29%).

Although gender and ethnicity were statistically significant predictors of conviction for disorderly conduct, the differences were very small, all less than four percentage points. Defendants aged 18 or younger were four percentage points less likely to be convicted of disorderly conduct and those aged 30 or older were one percentage point more likely than were defendants aged 19 to 29.

The criminal history factors had varying effects. The weakest of these, any open cases, decreased the likelihood of a disorderly conduct conviction by less than one percentage point and the next weakest variable, any felony convictions, decreased the likelihood by less than two percentage points. If the instant arrest was the defendant's first, the probability of conviction for disorderly conduct was 16 percent compared to 23 percent if the defendant was previously arrested, a difference of seven percentage points. Prior misdemeanor convictions had the strongest effect. As the number of misdemeanor convictions increased, the probability of conviction for disorderly conduct decreased steadily: 26 percent of defendants who had no misdemeanor convictions were convicted of disorderly conduct compared to 22 percent if there was one misdemeanor conviction, 18 percent if there were two or three, 13 percent if there were four to ten, and only six percent if there were 11 or more misdemeanor convictions. Thus, there was a 20 percentage-point difference between defendants with no prior misdemeanor convictions and those with 11 or more.

Figure 1: All Case Outcomes (N=187,098)



Nagelkerke= .16, AUC=.72

Not statistically significant Statistically significant (Percentage point change less than 1 not graphed)

B. <u>The Conviction Model</u>

The results from the Conviction model are presented in Figure 2. More than a third of the docketed custodial arrests that resulted in conviction (with prior criminal history available) were convictions for disorderly conduct. Overall, the Conviction model accounts for nearly half of the variation in disorderly conduct convictions (Nagelkerke=.46), far more than was achieved by the All Outcomes models (Nagelkerke=.16).

As in the All Outcomes models, the charge severity categories decreased the probability of conviction for disorderly conduct compared to A misdemeanor charges. Forty-four percent of cases with A misdemeanor charges entering arraignment resulted in conviction for disorderly conduct compared to 39 percent with lesser misdemeanor charges, 32 percent with violation or infraction charges, 20 percent with D or E felony charges, and only 14 percent with A[20], B, or C felony charges. The likelihood of conviction for disorderly conduct was higher among cases with weapons or controlled substances charges (48% and 46%, respectively), lower for cases with burglary, assault or robbery charges (35% to 38%), and lowest for cases with VTL charges (6%).

The likelihood of conviction for disorderly conduct was close to three percentage points higher if the arrest charge was reduced by the district attorney. In the All Outcomes model, the difference was only a little larger, close to five percentage points.

The likelihood of conviction for disorderly conduct among all cases that resulted in any conviction was 23 percentage points higher when disorderly conduct was one of the top four charges at arrest (58% vs. 35%). The difference was also large (16%) in the All Outcomes model.

Borough of arrest is a much stronger predictor of the likelihood of conviction for disorderly conduct in the Conviction model than in the All Outcomes model. Compared to Manhattan, the probability of conviction for disorderly conduct is greater for each of the other boroughs after controlling for other factors, and the effect is especially large for Queens, followed by Brooklyn. The probability of conviction for disorderly conduct was only 24 percent in Manhattan but 30 percent in the Bronx, 33 percent in Staten Island, 45 percent in Brooklyn and 48 percent in Queens. This finding was especially noteworthy since it held even after

[20] There were 372 cases with an A felony charge at arraignment in Model 2. Five percent resulted in conviction for disorderly conduct.

controlling for factors known to vary considerably by borough, such as charge severity, charge type and charge reduction entering arraignment.

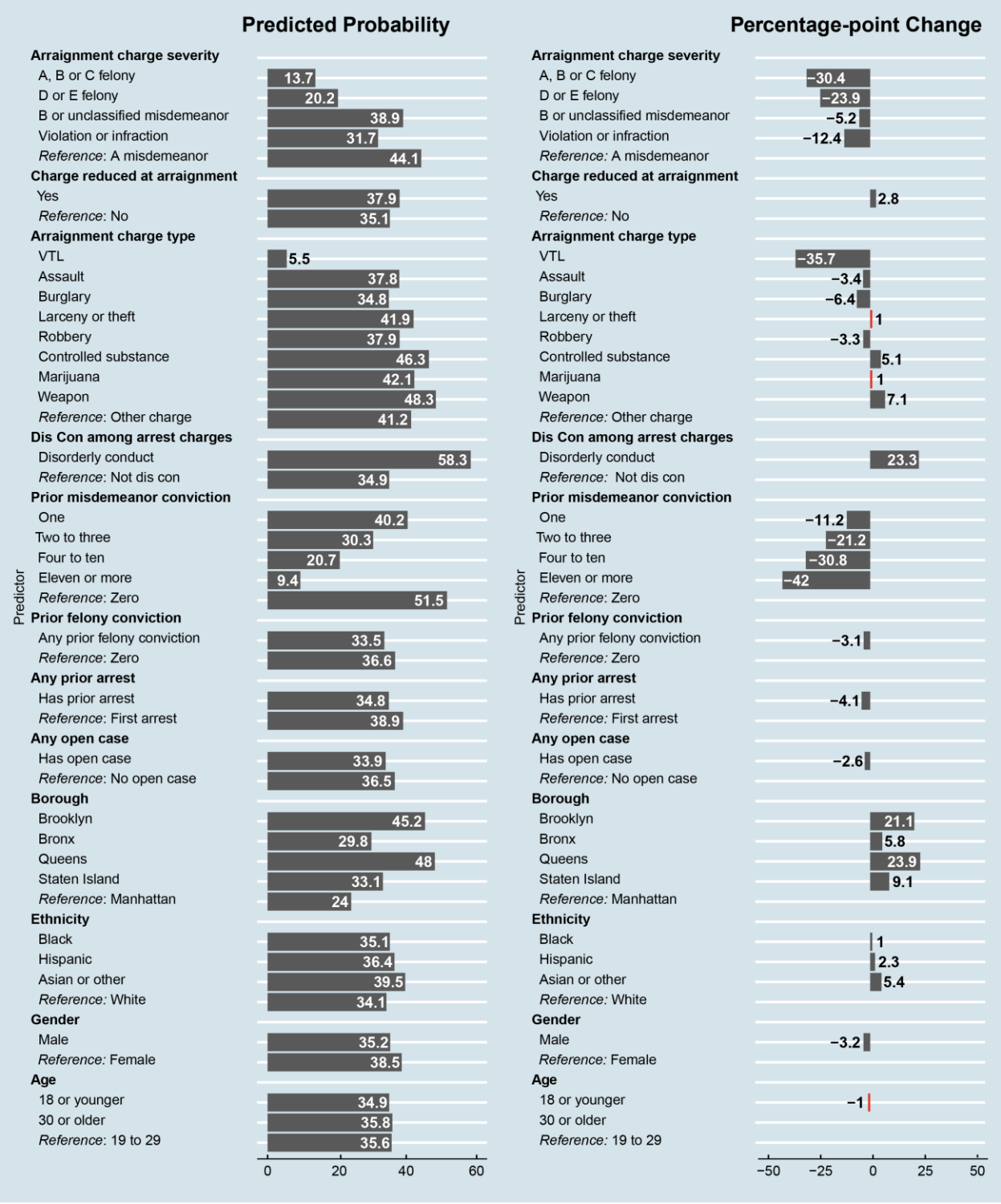
Gender, ethnicity and age category are also significant predictors of conviction for disorderly conduct, although the probabilities of such a conviction differed from the reference category by only a few percentage points. Female defendants were found to be significantly less likely to be convicted of disorderly conduct across all outcomes (a 2 percentage-point change), but they were significantly more likely to be convicted of that charge among those who were convicted (a three percentage point change). Ethnicity is statistically significant, with a range of nearly four percentage points in the All Outcomes model and a range of five percentage points across ethnicity categories in the Conviction model. The probability of conviction for disorderly conduct by age category ranged from five percentage points in the All Outcomes model to only one percentage point among cases that resulted in conviction.

All measures of criminal history were statistically significant. In general, defendants with more prior contacts with the criminal justice system were less likely to be convicted for disorderly conduct. However, the probability of conviction for disorderly conduct was only four percentage points lower if there was at least one prior arrest (i.e., the current arrest was not the only arrest on the rap sheet); nearly three percentage points lower if there was at least one open case, and three percentage points lower if there was any prior felony conviction. Prior misdemeanor convictions, on the other hand, are strongly related to the probability of conviction for disorderly conduct. The probability was 11 percentage points lower if there was one prior misdemeanor conviction, 21 percentage points lower if there were two or three prior misdemeanor convictions, 31 percentage points lower if there were four to ten, and by 42 percentage points lower if there were more than ten prior misdemeanors. The predicted probability of conviction for disorderly conduct among cases that resulted in conviction was less than ten percent if there were more than ten prior misdemeanor convictions and more than 50 percent if there were no prior misdemeanor convictions.

Among all case outcomes, a conviction for disorderly conduct is an intermediate outcome—less serious than a misdemeanor or felony conviction, but more serious than an ACD or dismissal. Among all convictions, a conviction for disorderly conduct is near the bottom of

the outcome spectrum, but among the subset of cases with just outcomes of ACD or conviction for disorderly conduct, disorderly conduct is the more serious of the two. In the next model, we attempt to identify the factors that predict a disorderly conduct conviction relative to an ACD.

Figure 2: Conviction (N=108,568)



Nagelkerke= .46, AUC =.86

Not statistically significant Statistically significant (Percentage point change less than 1 not graphed)

C. The ACD Versus Disorderly Conduct Model

Half of the docketed custodial arrests that resulted in ACD or conviction for disorderly conduct (with prior criminal history available) resulted in conviction for disorderly conduct. The ACD versus Disorderly Conduct model, shown in Figure 3, is somewhat different from the previous models in that conviction for disorderly conduct is the less desirable of the outcomes.

Overall, the ACD versus Disorderly Conduct model accounts for 31 percent of the variation in disorderly conduct convictions, which is higher than for the All Case Outcomes model but lower than for the Conviction model. The strongest predictor in this model is the severity of the charge entering arraignment: Among on-line cases that result in ACD or conviction for disorderly conduct, those with the most severe charges were more likely to result in conviction. By contrast, those with B or unclassified misdemeanor charges, especially those with violation- or infraction-level charges, were more likely to result in an ACD. The predicted probability of conviction for disorderly conduct rather than ACD was 80 percent for felony cases,[21] 55 percent for A misdemeanor cases but only 38 percent for lesser misdemeanor cases, and only 12 percent for cases that entered arraignment with violation- or infraction-level charges.

The predicted probability of conviction for disorderly conduct rather than ACD also varied significantly by the type of charge entering arraignment. The probability is highest for cases that entered arraignment charged with a VTL (72%), followed by those with controlled substance charges (64%) and those charged with weapon offenses (63%). On the other hand, cases that entered arraignment charged with marijuana offenses or with larceny or theft had lower probabilities of conviction for disorderly conduct (only 42% and 43%, respectively). The likelihood of conviction for disorderly conduct was nearly 14 percentage points higher when that charge was among the top four charges at arrest, and also nearly 14 percentage points higher if the charge entering arraignment was less severe than the arrest charge.

The effect of borough is also different here than in the previous models. In both the All Outcomes and the Conviction models, the highest probability of conviction for disorderly conduct was for Queens followed by Brooklyn. However, in the ACD versus Disorderly Conduct

[21] There were 7,091 cases in Model 3 with felony charges at arraignment that resulted in an ACD or conviction for disorderly conduct including 27 with A felony charges, 1,296 with B felony charges, 865 with C felony charges, 2,953 with D felony charges and 1,950 with E felony charges.

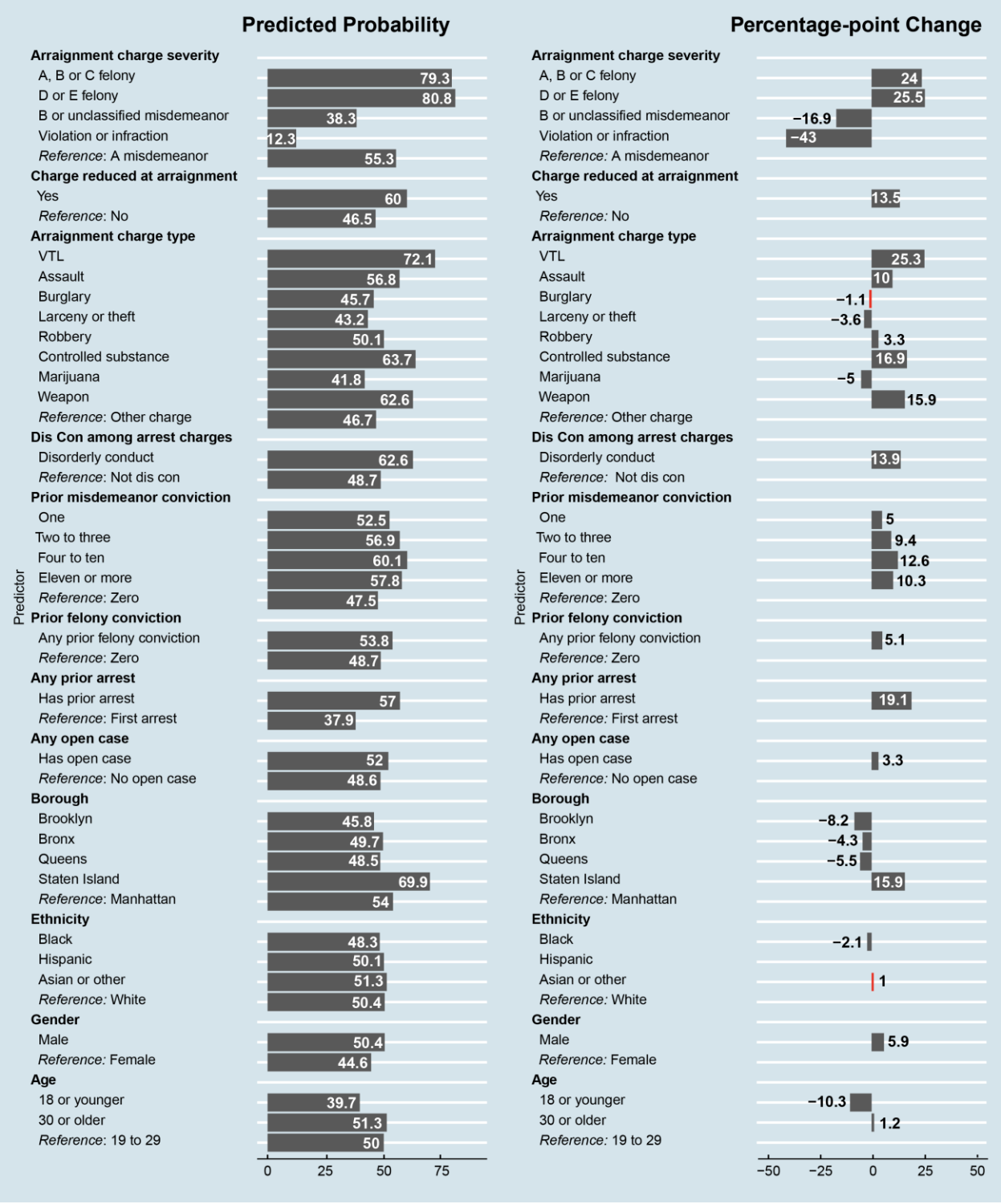
model, the predicted probability of that conviction is highest for Staten Island (70%), followed by Manhattan (54%), and ranged from 46 to 50 percent for the remaining boroughs.

The probability of conviction for disorderly conduct rather than ACD was about six percentage points higher for male defendants than for their female counterparts. The youngest defendants (age 18 or younger) were about ten percentage points less likely to be convicted of disorderly conduct and the difference between 19 to 29 year olds and those ages 30 or older was very small.

The likelihood of conviction for disorderly conduct rather than ACD varied little by ethnicity. The predicted probabilities ranged from 48 percent for cases with black defendants to 50 percent for cases with white or Hispanic defendants, and 51 percent for those with defendants of Asian or other ethnicities. The effect for black defendants, albeit small, was statistically significant.

Each of the criminal history factors are significant predictors of conviction for disorderly conduct rather than ACD, but the particular variables with the largest effects differ from the earlier models. In this model, the strongest criminal history factor is whether this arrest is the first arrest on the rap sheet or if there are any prior arrests. Cases for defendants with any prior arrest are 19 percentage points more likely to result in conviction rather than ACD. Having any open case increased the probability by only three percentage points and having one or more felony convictions increased the probability by five percentage points. The effect of prior misdemeanor convictions was much weaker than in the previous models. The categories of prior misdemeanor conviction increased the probability by four to 11 percentage points: The predicted probability of conviction for disorderly conduct was 48 percent when there were no misdemeanor convictions, 52 percent when there was one, 57 percent when there were two or three and 60 and 58 percent, respectively, when there were four to ten or 11 or more misdemeanor convictions. In the All Case Outcomes model, prior misdemeanor convictions decreased the probability of conviction for disorderly conduct by as much as 20 percentage points, and in the Conviction model the probability of conviction for disorderly conduct was 42 percentage points higher for cases with more than ten misdemeanor convictions compared to cases with no prior misdemeanors.

Figure 3: ACD vs Disorderly Conduct (N=78,323)



Nagelkerke= .31, AUC =.78

Not statistically significant Statistically significant (Percentage point change less than 1 not graphed)

D. Summary of Multivariate Findings

The All Outcomes model is comparatively weak, accounting for only 16 percent of the variation in disorderly conduct convictions among custodial cases despite a multitude of variables that were statistically significant. This suggests that there are unmeasured factors that impact the odds of conviction for disorderly conduct, factors outside the charges, the criminal history, and demographic factors that were included in the model.

In contrast, the model predicting conviction for disorderly conduct rather than conviction for other offenses was the strongest of the models in this research, accounting for 46 percent of the variance. Even so, there are factors that are likely to be associated with case outcome that are not reflected in the model, such as the weight of the evidence and the extent of any injury to a victim. Perhaps the strength of the conviction model over the all case outcomes model is its ability to distinguish disorderly conduct convictions from misdemeanor and even felony convictions while the challenge is to distinguish conviction for disorderly conduct from other non-criminal convictions.

The ACD versus conviction for disorderly conduct model is intermediate, accounting for 31 percent of the variation.

The severity and type of charge entering arraignment are strong predictors of the likelihood of conviction for disorderly conduct in each of the models. The predicted probability of that conviction is even substantial for felony cases. In the All Case Outcomes model, the predicted probability of conviction for disorderly conduct is nine percent for A, B or C felony-level cases and 19 percent for D or E felony cases. In the Conviction model, the probabilities are 14 percent and 20 percent. In the ACD versus Disorderly Conduct model the predicted probability of the conviction is 80 percent for felony cases, leaving 20 percent of felony cases likely to result in the ACD rather than the conviction.

In none of the models were the demographic variables among the strongest predictors. The effects of gender and age were strongest in the ACD versus Disorderly Conduct model where the predicted probability of conviction for disorderly conduct was six percentage points higher for males than for females and ten percentage points lower for those 18 or younger compared to those aged 19 to 29.

Borough differences are significant in each of the models. Even after adjusting for the effects of the other variables in the models, Queens cases had the highest predicted probability of conviction for disorderly conduct in the All Case Outcomes model and the Conviction model and the highest predicted probability of jail time if convicted of disorderly conduct. In the ACD versus Disorderly Conduct model, the predicted probability of the conviction was 16 percentage points higher in Staten Island than in Manhattan and was four to eight percentage points lower than in Manhattan in the remaining boroughs. These findings point to the role of prosecutorial policy which varies widely by borough of prosecution.

Finally, prior criminal history was found to be strongly predictive in each model. In the All Case Outcomes model and especially in the Conviction model, the role of the number of prior misdemeanor convictions is dramatic. The likelihood of conviction for disorderly conduct decreases sharply as the number of prior misdemeanors increases across categories. In the All Case Outcomes model, the predicted probabilities range from a high of 26 percent for cases with no prior misdemeanor convictions to a low of only six percent if there were more than ten, while in the Conviction model the range was from a high of 52 percent for no prior misdemeanor convictions to a low of only nine percent. Convictions play a smaller role in the ACD versus Disorderly Conduct model where, instead, cases that have any prior on the RAP sheet compared to those with no prior arrests have a 19 percentage-point increase in the likelihood of conviction for disorderly conduct rather than ACD. This finding is consistent with the "managerial" model of criminal justice process, as it shows that 'marks' of prior criminal conduct are a key determinant of outcomes in low-level cases.

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IV. SENTENCES

More than 95 percent of the defendants in custodial or DAT arrests who were arraigned in 2015 and whose cases resulted in conviction were sentenced by the end of June, 2016. Only four percent of cases were still pending sentencing and nearly all of the cases pending sentencing were convictions at the misdemeanor or felony level, not convictions for disorderly conduct or other violations or infractions. The remaining convictions that did not result in sentences predominantly resulted in dismissals or ACDs after conviction. Twelve cases were abated by the death of the defendant.

A. Sentences for Disorderly Conduct

Cases that resulted in conviction for disorderly conduct were most likely to be sentenced to conditional or unconditional discharges (62%, Table 9). However, nearly one of every ten was a sentence for fine payment or a choice of fine or imprisonment. Although more than a quarter of sentences included imprisonment, most of them were sentences of time served and many of the sentences to time served took place at the initial arraignment appearance,[22] so the only time served was between arrest and arraignment. When the sentence to time served was meted post-arraignment, there still was no actual time served for most of the cases. Only 939 of the 5,546 cases with sentences to time served later than arraignment were detained at arraignment (data not shown).

Per §PL 70.15, "A sentence of imprisonment for a violation shall be a definite sentence. When such a sentence is imposed the term shall be fixed by the court, and shall not exceed fifteen days." Nevertheless, a few (29) defendants were sentenced to more than 15 days after conviction for disorderly conduct. Although it is not clear in every instance why the jail term exceeded 15 days, most of these defendants failed to appear at a post-plea pre-sentence hearing and/or were re-convicted and sentenced for a more serious offense. Two hundred twenty one defendants were sentenced to time served after pretrial detention longer than 15 days.

[22] The arraignment outcomes in this study pertain to the hearing at which the defendant was arraigned, not the first scheduled arraignment. This distinction is particularly pertinent to defendants who were issued DATs because the scheduled arraignment may result in a warrant for failure to appear.

Table 9. Sentences For Disorderly Conduct

SENTENCES	N	Percent
IMPRISONMENT		
Longer Than Time Served		
1-5 days	661	1.3
6-14 days	442	0.9
15 days	890	1.7
16 days or more	29	0.1
Subtotal Longer Than Time Served	2,022	4.0
Time Served Post-Arraignment*		
Any Pretrial Detention	939	1.8
No Pretrial Detention	4,607	9.0
Subtotal Time Served Post-Arraignment	5,546	10.8
Time Served At Arraignment*	6,955	13.6
TOTAL Imprisonment	**14,523**	**28.3**
NO IMPRISONMENT		
Probation	0	0.0
Fine Or Imprisonment	1,257	2.5
Fine	3,661	7.1
CD, UD, Other	31,808	62.1
TOTAL SENTENCED	**51,249**	**100.0**
Pending Sentence	262	
Dismissed Or ACD After Conviction	553	
TOTAL CONVICTIONS	**52,064**	

* The arraignment outcomes in this study pertain to the hearing at which the defendant was arraigned, not the first scheduled arraignment. This distinction is particularly pertinent to defendants who were issued DATs because the scheduled arraignment may result in a warrant for failure to appear.

The fine amounts for defendants sentenced to pay fines and for defendants offered a choice between fine payment and imprisonment were very similar (data not shown). The median fine was $150 for both categories. Few fines exceeded $250.

B. Multivariate Model Predicting Jail Time For Conviction For Disorderly Conduct

The dependent variable in the Any Jail Time model was defined as whether a defendant served any time. For time-served sentences, we used information about release status to measure the amount of time the defendant was incarcerated between arraignment and final disposition. Time-served sentences at arraignment or for defendants who were not detained between arraignment and disposition are considered non-incarcerative. Like the previous

models, this analysis is restricted solely to defendants in custodial arrests with criminal history data available. Seven percent of defendants in custodial arrests who were convicted of disorderly conduct were sentenced to jail time or were sentenced to time served and had some pretrial detention.

All of the factors that were included in the previous models are included in the Any Jail Time model, although not all of those factors are statistically significant predictors. None of the variables were as strongly predictive of an incarcerative sentence as they were predictive of conviction for disorderly conduct. The severity of the charge entering arraignment and prior criminal history were the strongest factors.

The probability of jail time was highest for cases with the most severe charges. Among defendants who were convicted of disorderly conduct, the predicted probability of an incarcerative sentence ranged from only three percent of those charged with a violation or infraction at arraignment, seven percent of those charged with a misdemeanor, nine percent of those charged with a D or E felony and 12 percent for defendants charged with an A, B, or C[23] felony offense at arraignment. Some of the categories of the type of charge entering arraignment were statistically significant, but none of the charge categories were strong predictors. Whether or not the arrest charge had been reduced entering arraignment was not statistically significant nor was whether or not disorderly conduct was among the four top charges at arrest.

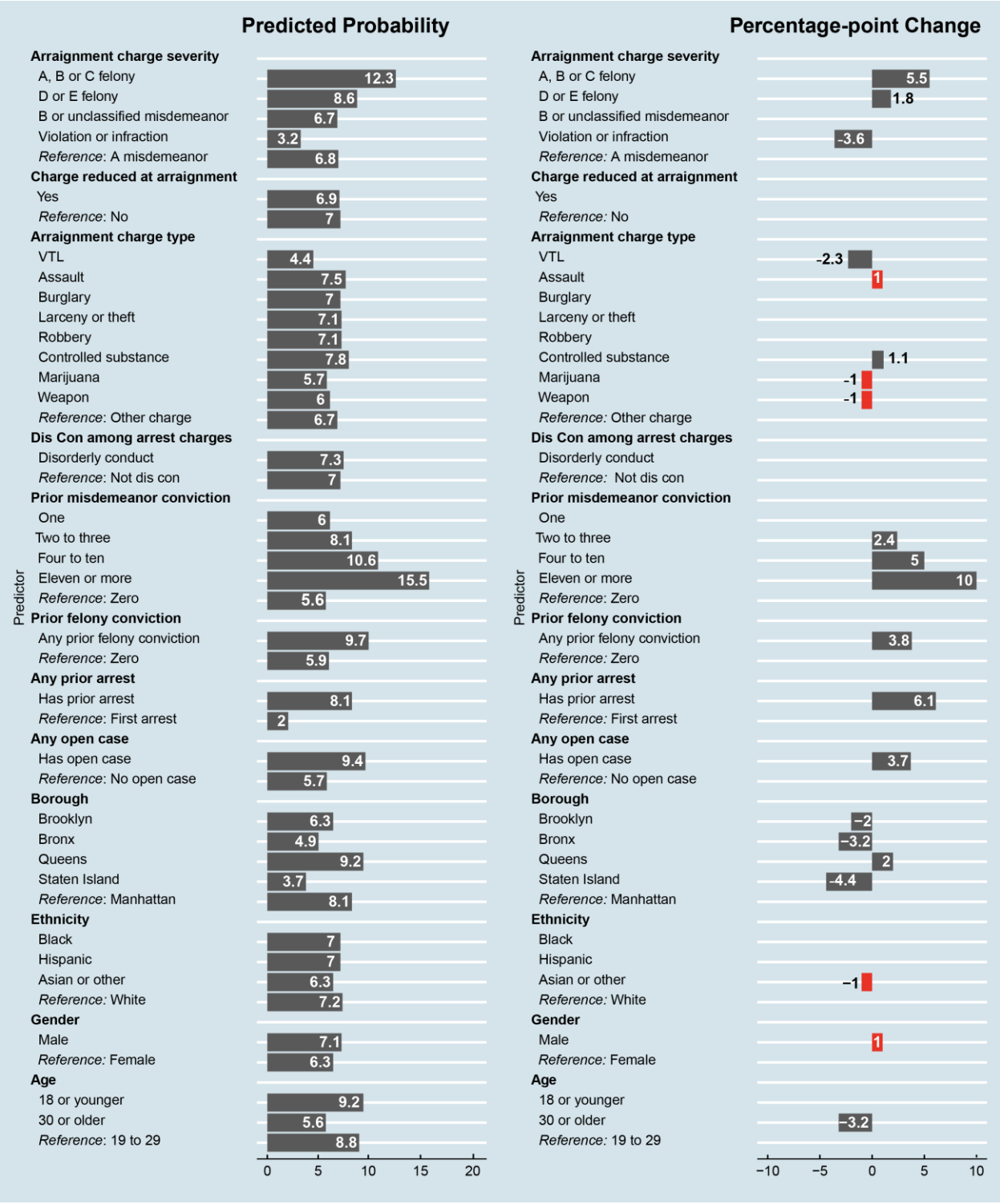
The likelihood of jail time for convictions for disorderly conduct was significantly lower in Staten Island (4%), followed by the Bronx (5%) and Brooklyn (6%) compared to Manhattan (8%) and significantly higher in Queens (9%), but the differences are small. Ethnicity and gender were not significantly related to a sentence that included incarceration.

The probability of an incarcerative sentence was lower for defendants age 30 or more compared to defendants age 20 to 29 (less than six percent compared to nine percent). Defendants under the age of 19 did not differ significantly from the 19- to 29-year olds in the likelihood of jail time for conviction for disorderly conduct.

[23] 22 percent of the 18 cases that entered arraignment with A felony charges that resulted in conviction for disorderly conduct received a sentence that included jail time compared to 13 percent of the 1,083 with B felony charges and 9 percent of the 668 with C felony charges.

As we have seen in the previous models, criminal history factors are important predictors of sentences that include jail time. Incarcerative sentences were more likely if the current arrest was not the only arrest on the rap sheet, if there was an open case, if there were any felony convictions, and the likelihood increased with the number of prior misdemeanor convictions. The predicted probability of a sentence that included jail time was only two percent if the defendant had no prior arrests compared to eight percent if there were any priors on the rap sheet. An open case made a nearly four percentage point difference in the predicted probability of jail time, from less than six percent to more than nine. Any prior felony conviction also increased the probability of jail time by nearly four percentage points, from six to 10 percent. While those with one prior misdemeanor conviction were no more likely to be sentenced to serve time than those with no prior misdemeanor convictions, the probability was two percentage points higher if there were two or three prior misdemeanors, by five percentage points if there were four to ten, and by ten percentage points if there were more than ten prior misdemeanor convictions.

Figure 4: Any Jail Time (N=38,080)



Nagelkerke= .13, AUC =.75

Not statistically significant Statistically significant (Percentage point change less than 1 not graphed)

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V. DISCUSSION

The goal of this research was to draw attention to the practice of disposing of cases through conviction for disorderly conduct and the effect such a violation-level conviction can have on defendants. The proportion of cases disposed in this way is staggering: in 2015, one of every five prosecuted arrests and 36 percent of all convicted cases ended in conviction for disorderly conduct.

In Sections II and III, we focused on identifying the factors associated with a disorderly conduct conviction. Past research suggested that one way to understand low-level case processing is as a form of management aimed at testing the governability of a defendant. According to this view, rather than a determination of guilt or innocence, case outcomes reflect an assessment of a defendant's performance throughout his or her engagement with the criminal justice system. Moreover, prior qualitative research revealed that a conviction for disorderly conduct is commonly used as a catch-all, intermediate sanction in low-level cases where the defendant has a criminal history. While better than a felony or misdemeanor conviction, it is a worse outcome than a dismissal or ACD for defendants.

In general, the findings were consistent with a managerial approach to low-level case processing. First, the data supported the idea that disorderly conduct is used as a catch-all disposition in cases in which a conviction for a misdemeanor or felony cannot be secured, as evidenced by the wide variety of arrest charge types that result in a conviction for this violation. Notably, cases with a top charge of 'controlled substance' and 'weapons,' after adjusting for other factors, had a particularly strong likelihood of a disorderly conduct conviction—roughly as strong as cases with disorderly conduct among the top arrest charges. Second, the data showed that the likelihood of a disorderly conduct conviction was the highest in cases with A misdemeanor charges, with both more serious felony charges and less serious violations significantly less likely to result in the same. It is these mid-level severity cases that one would expect to be disposed as a less serious violation-level conviction such as disorderly conduct. Although less likely than in A misdemeanor arrests, the probability of a felony arrest resulting in a disorderly conduct conviction was surprisingly high. This suggests that a managerial approach may not be applicable in just low-level cases, but also in more serious felony arrests, perhaps

where the prosecution concludes that conviction for a criminal charge is unlikely. Third, the findings show that the probability of conviction for disorderly conduct varied considerably by borough, suggesting that variation in prosecutorial policy is yet another factor influencing case outcomes. Finally, prior misdemeanor convictions were found to be a reliably strong predictor of a disorderly conduct conviction. The more of these low-level convictions, the less likely a case was to result in a relatively favorable disorderly conduct conviction. On the other hand, when considering only cases with an outcome of disorderly conduct conviction or the even more favorable ACD, the relationship ran in the opposite direction: the more misdemeanor convictions, the greater the likelihood of a disorderly conduct conviction.

In Section IV, we turned to the impact of a disorderly conduct conviction on defendants. The most serious direct consequence was an incarcerative sentence. More than 2,000 defendants convicted of disorderly conduct were sentenced to a term of imprisonment longer than "time served," with the most common sentence being for 15 days. Additionally, disorderly conduct convictions resulted in fines in more than 1,000 cases, not to mention other court fees as well as costs incurred due to missed work as a consequence of the arrest and any subsequent mandatory court appearances. But perhaps the most serious consequence is the effect of the mark left on a defendant's record if the defendant is re-arrested prior to the sealing of the conviction. As we have seen, prior criminal history can serve as the basis for a graduated system of sanctions. If the pattern uncovered here holds, then a person convicted of disorderly conduct would have a higher chance of an even more serious criminal conviction on his or her next arrest, regardless of the facts in the case.

APPENDIX A: DISORDERLY CONDUCT CONVICTIONS BY YEAR OF ARREST: 2009 – 2017

1. Numbers Of Cases

	YEAR OF ARREST								
CASE OUTCOMES	**2009**	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**
CONVICTIONS									
Disorderly Conduct	**65,584**	**62,848**	**61,732**	**60,232**	**62,793**	**59,881**	**52,064**	**50,311**	**43,121**
Other Violations or Infractions	52,544	48,140	41,392	43,327	48,952	47,314	35,528	29,931	26,608
Misdemeanors and Felonies	88,581	80,150	74,253	71,992	68,772	64,042	55,934	54,593	48,690
SUBTOTAL CONVICTIONS	**206,709**	**191,138**	**177,377**	**175,551**	**180,517**	**171,237**	**143,526**	**134,835**	**118,419**
ACD	87,398	91,769	93,649	91,127	90,819	89,978	76,514	63,727	54,958
Dismissals	47,633	45,858	44,500	46,371	46,313	48,551	46,576	47,040	44,194
TOTAL CASES	**347,059**	**328,765**	**315,526**	**313,049**	**317,649**	**309,766**	**266,616**	**245,602**	**218,571**
Pending (As Of June 30 Of Following Year)	24,720	28,123	28,583	29,117	27,175	26,188	25,317	23,653	22,127
Other Dispositions	2,998	3,033	2,735	2,856	2,741	2,777	2,766	3,039	2,408
TOTAL DOCKETED	**369,458**	**359,921**	**346,844**	**345,022**	**347,565**	**338,731**	**294,699**	**272,294**	**243,106**

2. Case Outcomes As Percent Of Total Cases*

	YEAR OF ARREST								
CASE OUTCOMES	**2009**	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**
CONVICTIONS									
Disorderly Conduct	**19.2**	**19.1**	**19.6**	**19.2**	**19.8**	**19.3**	**19.5**	**20.5**	**19.7**
Other Violations or Infractions	15.4	14.6	13.2	13.8	15.4	15.3	13.3	12.2	12.2
Misdemeanors and Felonies	25.9	24.4	23.5	23.0	21.7	20.7	21.0	22.2	22.3
SUBTOTAL CONVICTIONS	**59.6**	**53.1**	**56.2**	**56.1**	**56.8**	**55.3**	**53.8**	**54.9**	**54.3**
ACD	25.6	27.9	29.7	29.1	28.6	29.0	28.7	25.9	25.1
Dismissals	13.9	13.9	14.1	14.8	14.6	15.7	17.5	19.2	20.7
TOTAL	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**
Number of Cases	**347,059**	**328,765**	**315,526**	**313,049**	**317,649**	**309,766**	**266,616**	**245,602**	**218,571**

*All docketed cases excluding pending and other

3. Disorderly Conduct Convictions As Percent Of All Convictions

	YEAR OF ARREST								
CASE OUTCOMES	**2009**	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**
CONVICTIONS									
Disorderly Conduct	**31.7**	**32.9**	**34.8**	**34.3**	**34.8**	**35.0**	**36.3**	**37.3**	**36.4**
Other Violations or Infractions	25.4	25.2	23.3	24.7	27.1	27.6	24.7	22.2	22.5
Misdemeanors and Felonies	42.9	41.9	41.9	41.0	38.0	37.4	39.0	40.5	41.1
ALL CONVICTIONS	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**
Number of Cases	**206,709**	**191,138**	**177,377**	**175,551**	**180,517**	**171,237**	**143,526**	**134,835**	**118,419**

APPENDIX B: Percent And Number Of Cases For Each Model

	All Case Outcomes Model (187,098)		Convicted Cases Model (108,568)		ACD vs.Dis Con Model (78,323)		Imprisonment Model (38,080)	
	% Dis Con	N	% Dis Con	N	% Dis Con	N	% Any	N
Arraignment charge severity								
A, B or C felony	**11.4**	**15,769**	**16.7**	**10,718**	**82.0**	**2,188**	**11.8**	**1,769**
D or E felony	**18.0**	**20,817**	**26.3**	**14,265**	**76.4**	**4,903**	**6.3**	**3,661**
B or unclassified misdemeanor	**13.3**	**24,238**	**19.3**	**16,690**	**36.6**	**8,804**	**6.7**	**3,194**
Violation or infraction	**10.2**	**16,594**	**23.0**	**7,375**	**16.4**	**10,333**	**3.2**	**1,668**
Reference: A misdemeanor	**25.8**	**109,680**	**47.5**	**59,520**	**54.2**	**52,095**	**7.0**	**27,788**
Charge reduced at arraignment								
Yes	**27.1**	**37,369**	**48.3**	**20,959**	**57.7**	**17,526**	**6.0**	**9,901**
Reference: No	**19.1**	**149,729**	**32.6**	**87,609**	**47.0**	**60,797**	**7.3**	**28,179**
Arraignment charge type								
VTL	**7.0**	**14,658**	**8.0**	**12,747**	**42.3**	**2,422**	**2.1**	**1,020**
Assault	**18.5**	**35,766**	**54.4**	**12,145**	**60.1**	**10,990**	**5.5**	**6,393**
Burglary (incl. trespass)	**15.0**	**8,125**	**22.9**	**5,330**	**42.9**	**2,851**	**9.1**	**1,206**
Larceny and theft	**23.5**	**40,060**	**35.7**	**26,261**	**46.3**	**20,242**	**8.1**	**9,268**
Robbery	**13.0**	**5,376**	**21.9**	**3,189**	**70.4**	**990**	**9.0**	**681**
Controlled substance	**26.1**	**21,346**	**32.1**	**17,388**	**79.3**	**7,028**	**9.5**	**5,544**
Marijuana	**21.6**	**10,053**	**43.8**	**4,947**	**32.7**	**2,167**	**6.4**	**2,155**
Weapon	**36.9**	**5,349**	**55.9**	**3,531**	**72.8**	**2,710**	**5.2**	**1,957**
Reference: Other charges	**21.7**	**46,365**	**43.7**	**23,030**	**41.1**	**24,472**	**6.1**	**9,856**
Dis Con among arrest charges								
Disorderly conduct	**34.4**	**6,169**	**68.0**	**3,123**	**50.2**	**4,228**	**5.9**	**2,076**
Reference: Not dis con	**20.2**	**180,929**	**34.7**	**105,445**	**49.4**	**74,095**	**7.1**	**36,004**
Prior misdemeanor conviction								
One	**23.9**	**17,670**	**38.4**	**11,016**	**60.0**	**7,045**	**7.5**	**4,200**
Two to three	**19.9**	**15,076**	**29.1**	**10,310**	**65.0**	**2,998**	**10.4**	**2,979**
Four to ten	**14.7**	**20,810**	**19.1**	**15,944**	**67.6**	**4,512**	**13.9**	**3,044**
Eleven or more	**7.3**	**22,779**	**8.4**	**19,758**	**60.1**	**2,755**	**20.7**	**1,648**
Reference: Zero	**24.0**	**110,763**	**51.9**	**51,540**	**45.1**	**59,398**	**4.9**	**26,209**
Prior felony conviction								
Any prior felony conviction	**15.2**	**53,450**	**20.4**	**40,006**	**63.9**	**12,750**	**13.8**	**8,116**
Reference: No prior felony conv	**22.9**	**133,648**	**44.6**	**30,554**	**46.6**	**65,573**	**5.1**	**29,964**
Any prior arrest								
Has prior arrest	**20.8**	**132,557**	**31.6**	**87,427**	**56.9**	**27,621**	**9.2**	**27,344**
Reference: No prior arrest	**20.3**	**54,541**	**52.4**	**21,141**	**37.2**	**29,795**	**1.3**	**10,736**
Any open case								
Has open case	**20.5**	**53,299**	**30.7**	**35,630**	**59.4**	**18,377**	**12.1**	**10,772**
Reference: No open case	**20.8**	**27,777**	**38.1**	**27,777**	**46.3**	**59,946**	**5.0**	**27,308**
Borough								
Brooklyn	**20.7**	**57,281**	**43.0**	**27,598**	**44.8**	**26,513**	**7.6**	**11,442**
Bronx	**18.1**	**33,557**	**30.4**	**19,948**	**54.7**	**11,092**	**6.2**	**6,065**
Queens	**30.1**	**38,606**	**52.5**	**22,108**	**50.9**	**22,816**	**7.2**	**11,478**
Staten Island	**21.2**	**5,967**	**32.7**	**3,864**	**77.3**	**1,633**	**3.3**	**1,252**
Reference: Manhattan	**15.2**	**51,687**	**22.5**	**35,050**	**48.4**	**16,269**	**7.1**	**7,843**
Ethnicity								
Black	**19.0**	**94,764**	**33.0**	**54,622**	**47.8**	**37,700**	**7.9**	**17,711**
Hispanic	**21.3**	**60,093**	**36.6**	**35,010**	**50.6**	**25,338**	**6.7**	**12,670**
Asian or other	**27.0**	**11,795**	**49.8**	**6,391**	**48.6**	**6,545**	**4.1**	**3,123**
Reference: White	**22.8**	**20,446**	**37.2**	**12,545**	**53.4**	**8,740**	**6.2**	**4,576**
Gender								
Male	**20.8**	**158,532**	**34.5**	**95,435**	**50.4**	**65,305**	**7.3**	**32,461**
Reference: Female	**20.3**	**28,566**	**44.1**	**13,133**	**44.5**	**13,018**	**5.0**	**5,619**
Age								
18 or younger	**21.0**	**14,048**	**50.8**	**5,821**	**36.3**	**8,146**	**6.9**	**2,753**
30 or older	**18.5**	**98,157**	**28.8**	**63,150**	**53.5**	**33,952**	**6.8**	**17,990**
Reference: 19 to 29	**23.5**	**74,893**	**44.4**	**39,597**	**48.5**	**36,225**	**7.3**	**17,337**
TOTAL	**20.7**	**187,098**	**35.6**	**108,568**	**49.4**	**78,323**	**7.0**	**38,080**