



RESEARCH BRIEF:

Disorderly Conduct (§240.20) — New York City's Catchall Disposition

In New York City, about 1 in 5 prosecuted cases and 1 in 3 convicted cases end in conviction for disorderly conduct. In the last decade, this has amounted to about 50,000 cases a year.

BY Marian Gewirtz & Stephen Koppel, J.D., Ph.D.

Why Study Disorderly Conduct?

Though much has been written about the effects of misdemeanor convictions, especially in the context of mass incarceration and the movement to close Rikers Island, little attention has been paid to convictions for lesser, non-criminal offenses. This Brief summarizes research on convictions for one such offense, disorderly conduct (§240.20). In New York City, disorderly conduct has emerged as a catchall disposition in a wide variety of cases. This is likely due to the broadness of its statutory definition and its perception as a favorable outcome to both prosecutors and defendants. However, little is known about the frequency of this informal practice, the decision-making behind its use, or its consequences for defendants.

What Behavior Constitutes Disorderly Conduct?

§240.20 By Definition

▶ 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;
- B. He makes unreasonable noise;
- C. In a public place, he uses abusive or obscene language, or makes an obscene gesture;
- D. Without lawful authority, he disturbs any lawful assembly or meeting of persons;
- E. He obstructs vehicular or pedestrian traffic;
- 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."

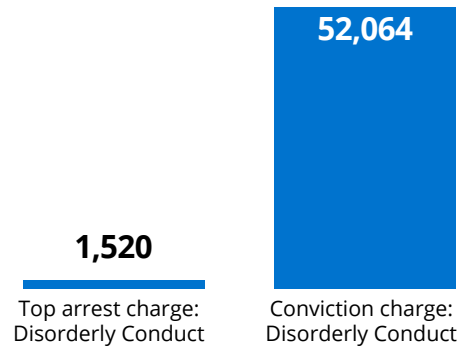
About The Data

The analysis is based primarily on arrests prosecuted in NYC criminal courts between January 1, 2015 and December 31, 2015. Data from 2015 were used to allow cases to reach a final disposition before beginning the analysis. Cases that had not reached a final disposition by June 30, 2016 were excluded (25,317, 7%), as were the small number of arrests that reached other non-final dispositions (2,766, 1%). When defendants were arrested multiple times during 2015, each arrest was included in the study and treated as a distinct event. To examine whether the findings were unique to 2015 or consistent with a broader trend, we also conducted descriptive analyses from earlier (2009-2014) as well as more recent (2016-2017) years, presented in Figure 3. These analyses included all prosecuted arrests that reached a final disposition by the midpoint of the year following the year of arrest.

Frequency of Disorderly Conduct

In 2015, while there were only 1,520 arrests in which the most severe charge was disorderly conduct, 52,064 cases were disposed of with a conviction for disorderly conduct.

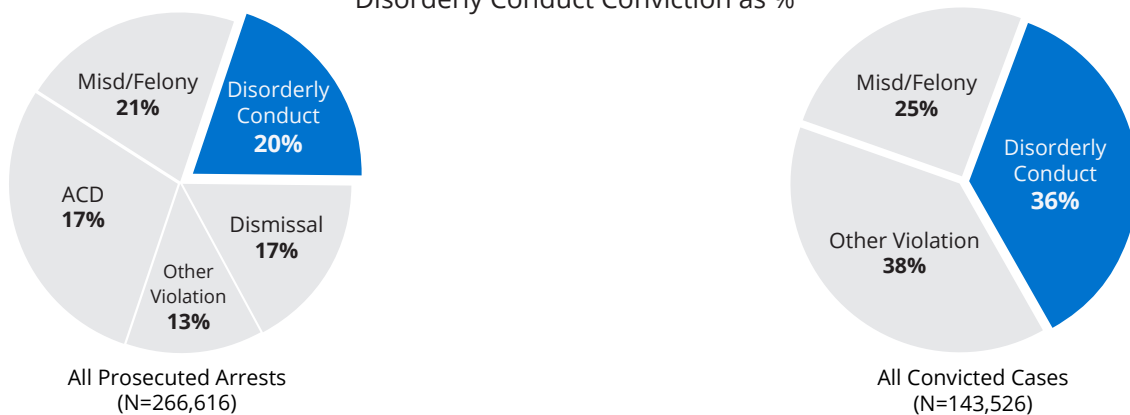
Figure 1
Frequency of Disorderly Conduct



Disorderly Conduct as a Percentage of Arrests and Convictions

Disorderly conduct convictions accounted for 20 percent of all prosecuted arrests and 36 percent of all convicted cases.

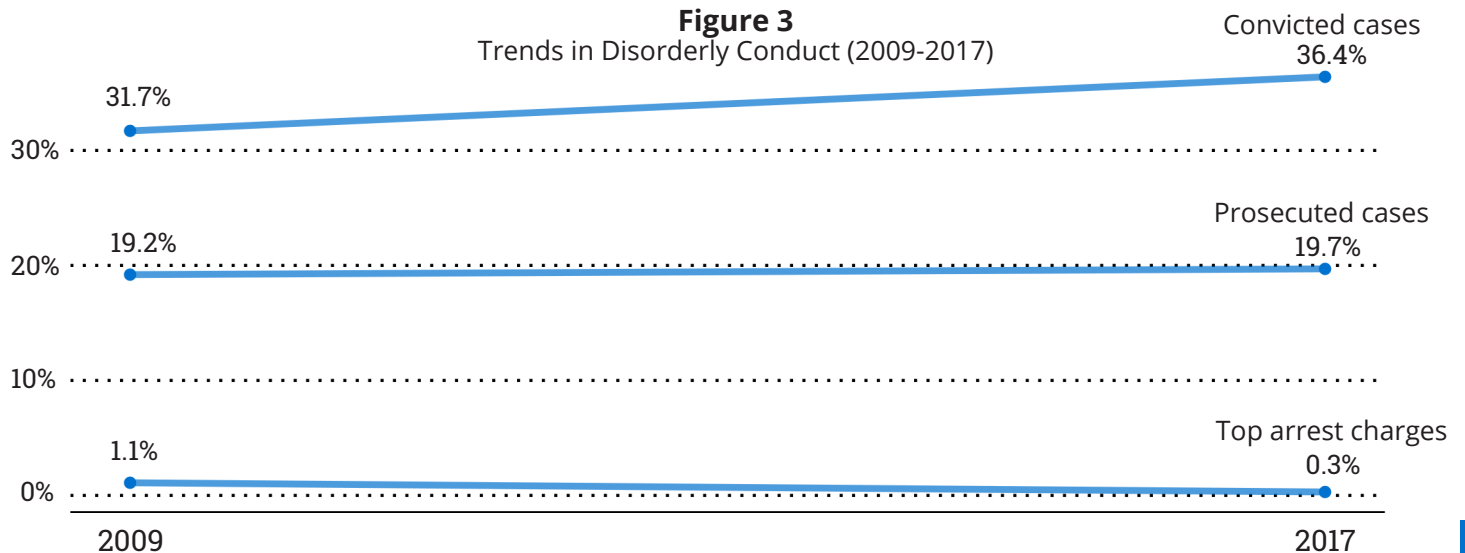
Figure 2
Disorderly Conduct Conviction as %



Disorderly Conduct Over the Decade

Over the last decade the total number of defendants convicted for disorderly conduct has gradually declined, from 65,548 in 2009 to 43,121 in 2017. Yet such convictions have increased as a percentage of all convicted cases while remaining roughly the same as a percentage of prosecuted cases and top arrest charges.

Figure 3
Trends in Disorderly Conduct (2009-2017)

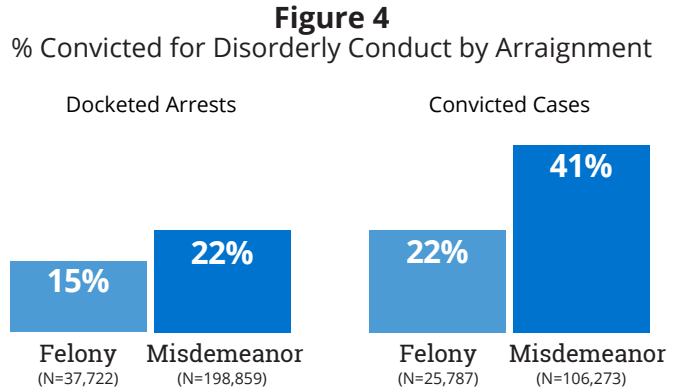


Variation in Disorderly Conduct Convictions

Disorderly conduct is the most frequent conviction charge throughout New York City, though there are notable differences in how it is applied.

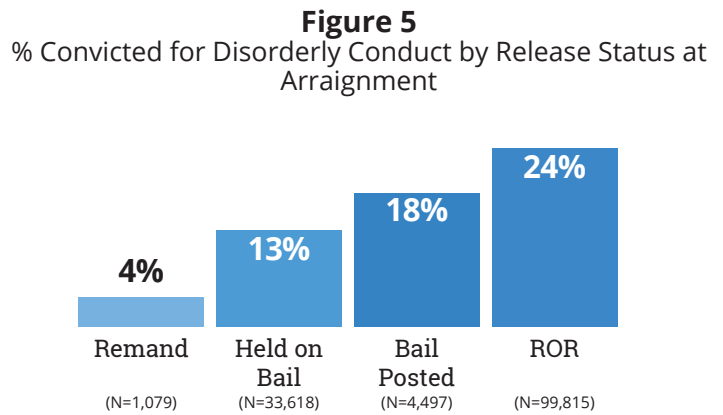
By Charge Severity

Convictions for disorderly conduct were more common among cases with a misdemeanor arraignment charge. In cases that ended in conviction, it was nearly twice as common for a misdemeanor to be disposed of as a disorderly conduct than a felony.



By Release Status

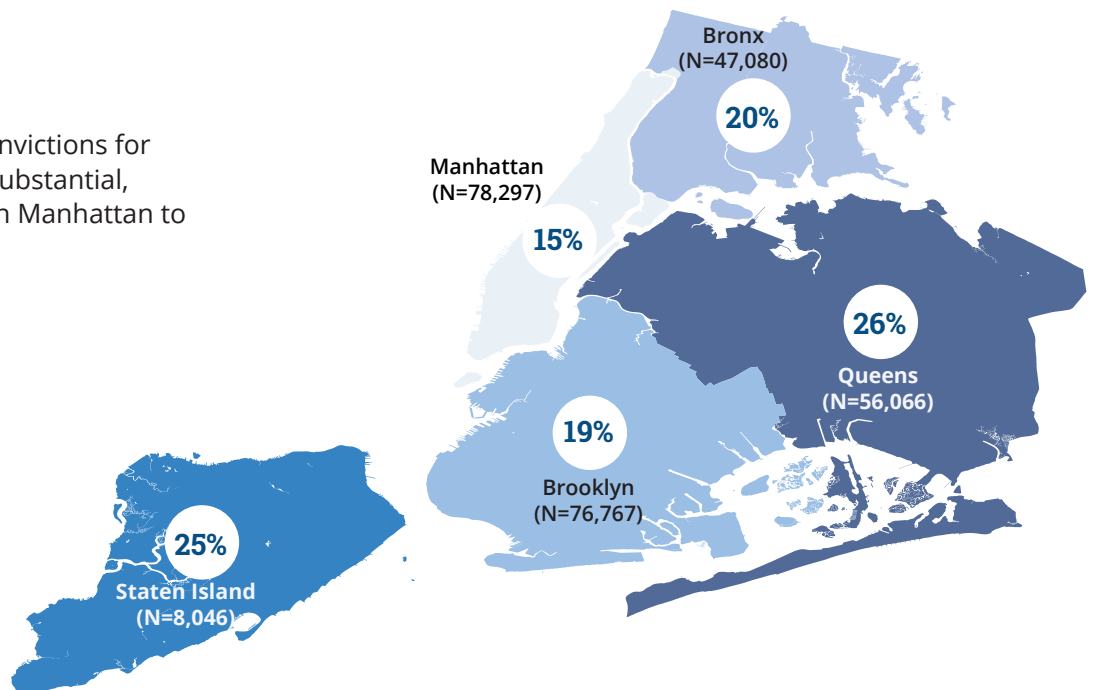
Nearly 1 in 4 defendants ROR'd at arraignment were convicted of disorderly conduct, as were many defendants held on bail or remanded.



By Borough

Borough differences in convictions for disorderly conduct were substantial, ranging from 15 percent in Manhattan to 26 percent in Queens.

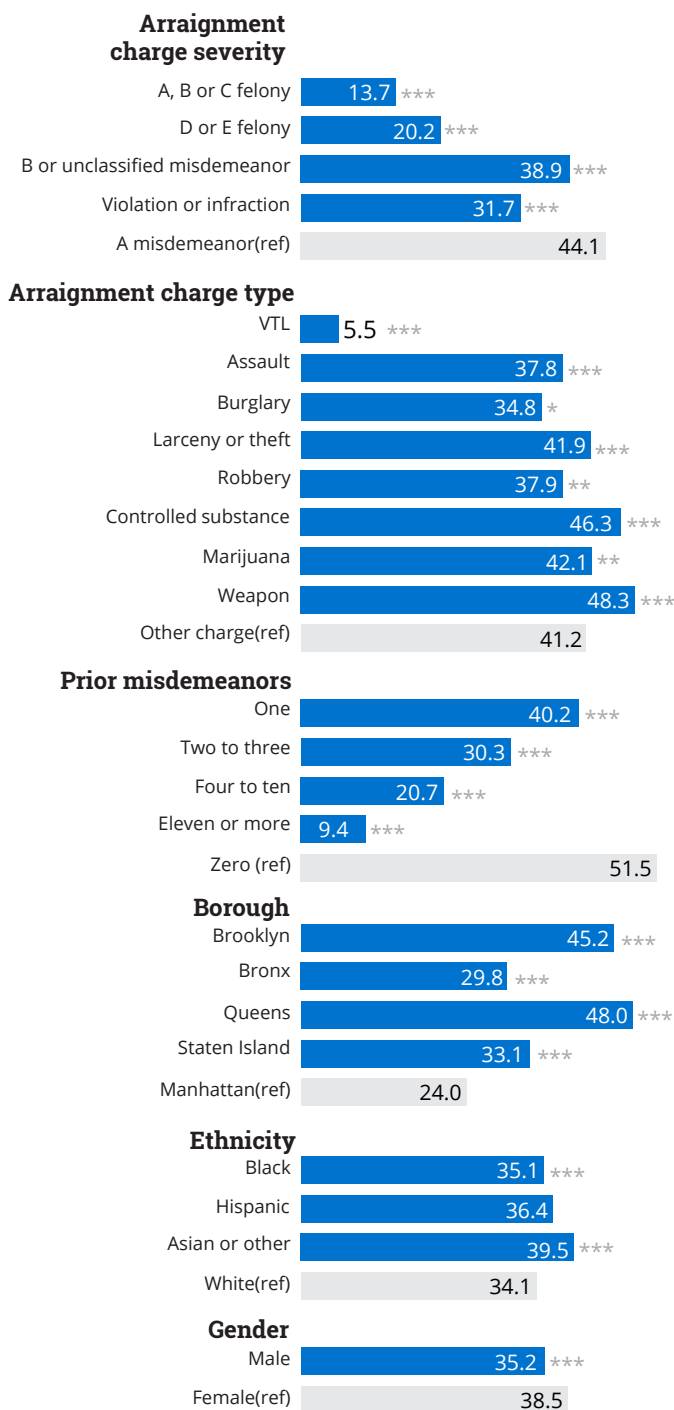
Figure 6
% Convicted for Disorderly Conduct by Borough



Factors Associated with Disorderly Conduct

To identify the predictors of disorderly conduct conviction among cases that ended in a conviction, we developed a logistic regression model that included a wide array of both case- and defendant-level characteristics. This allowed us to evaluate the effect of a predictor while holding other predictors in the model constant. Highlights from the model are presented below. Note the predicted probabilities represent the likelihood of a disorderly conduct conviction in a case with that characteristic.

Figure 7
Multivariate Analysis of Disorderly Conduct Among Convicted Cases
N=108,568



*p<.05 **p<.01 ***p<.001

Highlights

- ▶ *The probability was highest for misdemeanor arraignment charges.* Compared to A misdemeanor arraignment charges, the probability of conviction for disorderly conduct was decreased by 5.2 percentage-points for a B or unclassified misdemeanor, 12.4 for a violation or infraction, 23.9 for a D or E felony, and 30.4 for an A, B or C felony.
- ▶ *The probability varied by arraignment charge.* Compared to 'other' arraignment charges, the probability of conviction for disorderly conduct was decreased for VTL (35.7 percentage points) and burglary (6.4 percentage points) charges, whereas it was increased for weapon (7.1 percentage points) and controlled substance (5.1 percentage points) charges.
- ▶ *The probability decreased as number of misdemeanor convictions increased.* Compared to having no prior misdemeanor convictions on a criminal history, the probability of conviction for disorderly conduct was decreased by 11 percentage points for one prior misdemeanor conviction, 21 percentage points for two or three, 31 percentage points for four to ten, and 42 percentage points for more than ten.
- ▶ *The probability varied by borough.* Compared to arrests in Manhattan, the probability of conviction for disorderly conduct was increased by 23.9 percentage points for Queens, 21.1 percentage points for Brooklyn, 9.1 percentage points for Staten Island and 5.8 percentage points for the Bronx.
- ▶ *Overall the multivariate model was strong.* It accounted for nearly half of the variability in whether a defendant was convicted for disorderly conduct rather than another offense (*Nagelkerke=.46*).

Consequences for Defendants

Hierarchy of Outcomes

Disorderly conduct is a violation-level offense. It can result in pretrial detention before the disposition of the case as well as a sentence of up to 15 days in jail and/or a fine. Such convictions are usually sealed and removed from the defendant's rap sheet one year after the conviction date, provided the defendant is not re-arrested during that time. This means that a conviction for disorderly conduct is an intermediate outcome for defendants; worse than a dismissal or ACD, better than a misdemeanor or felony conviction.

Table 1
Hierarchy of Outcomes

Outcome	Incarcerative Sentence	Time On Rap Sheet
Dismissal	None	Until case closes
ACD	None	6-12 months
Disorderly Conduct	Up to 15 days	1 year
Misdemeanor	Up to 1 year	Permanently
Felony	Up to life	Permanently

Pretrial Detention

Of the 52,064 defendants who were convicted of disorderly conduct, 4,370 (8.3 percent) were detained at arraignment. About a third of these defendants spent more than a week in detention, more than a fifth spent more than 15 days in detention.

Figure 8
of Days in Pretrial Detention

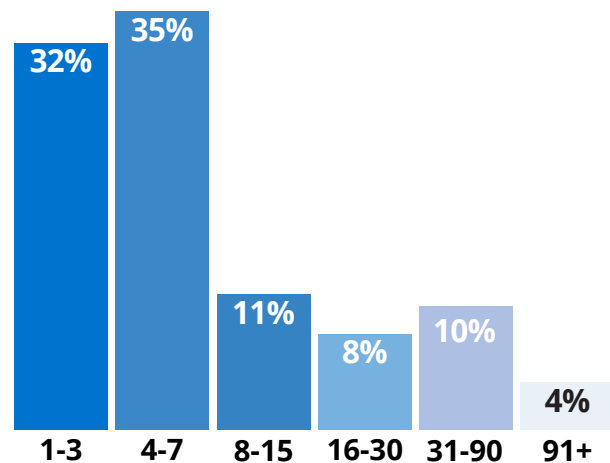
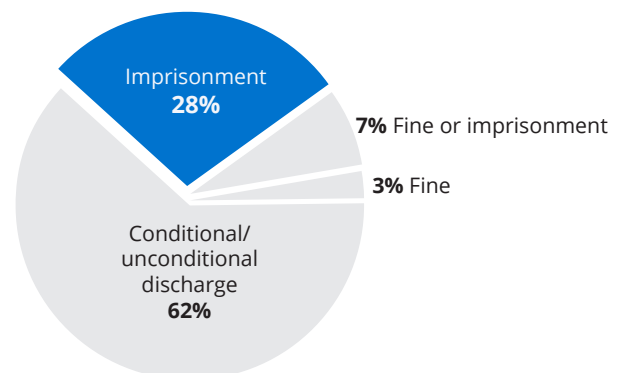


Figure 9
Sentences for Disorderly Conduct

Sentences

Of the 52,064 defendants who were convicted of disorderly conduct, more than 1 in 4 (14,523, 28 percent) resulted in imprisonment, although often these were for "time served".



Discussion And Policy Implications

The goal of this research was to draw attention to the practice of disposing cases through conviction for disorderly conduct and to the effect this violation-level conviction can have on defendants. The proportion of cases disposed this way is notable. In 2015, one in five prosecuted arrests and more than one in three convicted cases ended in conviction for disorderly conduct.

What explains the prevalence of disorderly conduct convictions? One possible reason is the broadness of its definition, which allows for the use of disorderly conduct as a catchall in cases with a wide variety of fact patterns. Another is that disorderly conduct represents a middle ground, not as lenient as a dismissal or an ACD, not as harsh as a criminal conviction. Thus it serves to encourage the parties to reach a disposition viewed as favorable to both sides: a conviction for the prosecutor and a relatively good outcome for the defense.

Beyond the ubiquity of disorderly conduct convictions, our analysis revealed considerable variation in its use. To identify the factors associated with a disorderly conduct conviction, we conducted a multivariate analysis which showed:

- ▶ The likelihood of a disorderly conduct conviction was highest in cases with misdemeanor charges, with both more serious felony charges and less serious violations significantly less likely to result in the same.
- ▶ Disorderly conduct convictions were likely in a wide variety of charge types, though particularly high in some (e.g., weapon, controlled substance, marijuana, larceny or theft).
- ▶ The likelihood of a disorderly conduct conviction varied considerably by borough.
- ▶ Prior misdemeanor convictions were inversely related to the likelihood of a disorderly conduct conviction. The more misdemeanor convictions, the less likely a case was to result in a disorderly conduct conviction.

Although viewed as a favorable outcome, disorderly conduct can have serious consequences for defendants. Of these the most serious was an incarcerative sentence. More than 2,000 defendants convicted of disorderly conduct were sentenced to a term of imprisonment longer than “time served,” most commonly for 15 days. It also resulted in fines in more than 1,000 cases, other costs such as mandatory court fees and missed work, not to mention the mark left on a defendant’s record for up to one year.



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CJA is a not-for-profit corporation that provides a variety of criminal justice services under contract with the City of New York.

CJA staff interview defendants arrested in New York City, make recommendations for pretrial release, and notify released defendants of upcoming court dates.

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

This Research Brief is adapted from Conviction for Disorderly Conduct (2018) by Marian Gewirtz & Stephen Koppel, J.D., Ph.D.

The full report is available at www.nycja.org/library.php.

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