CJA **NEW YORK CITY CRIMINAL JUSTICE AGENCY**

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COMBATING DOMESTIC VIOLENCE IN NEW YORK CITY: A STUDY OF DV CASES IN THE CRIMINAL COURTS

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Domestic violence cases pose special challenges for the criminal justice system. Many victims of domestic violence are reluctant to cooperate in the prosecution of the offender. Also, many domestic violence offenders repeatedly assault their victims over a period of months or years. Does the criminal justice system treat domestic violence as seriously as any other violent crime? How should prosecutors proceed when victims are reluctant to cooperate? What kinds of criminal sanctions can deter domestic violence offenders from committing future acts of violence? Over the last two decades, criminal justice practitioners have developed new answers to these questions, yet little is known about the impact of these new approaches.

In this report, we examine the strategies developed by prosecutors and the criminal courts in New York City to address domestic violence. We provide data about the impact of these strategies on conviction rates and on criminal sanctions in domestic violence cases. We also examine data on re-arrests of domestic violence offenders to assess the deterrent effect of criminal sanctions. Finally, we discuss the implications of our research findings for policy and practice.

Research Sources

The research findings presented in this report are based on a series of studies conducted by the New York City Criminal Justice Agency. The first study compared the case processing of domestic violence and non-domestic violence cases in New York City's Criminal Courts (Peterson 2001). The second study examined borough differences in the processing of domestic violence cases (Peterson 2002). The third study examined the impact of case processing on re-arrest rates among domestic violence offenders (Peterson 2003). These studies are available at the following internet address:

http://www.nycja.org/research/research.htm

I. DOMESTIC VIOLENCE CASES IN THE CRIMINAL JUSTICE SYSTEM

The criminal justice response to domestic violence has changed dramatically over the last 20 years in many jurisdictions throughout the U.S. Domestic violence incidents are now being taken more seriously as a result of more frequent arrests, vigorous prosecution and harsher sentencing laws. Federal legislation, notably the Violence Against Women Act (VAWA) of 1994, encouraged new efforts to combat domestic violence.

The National Trends

To understand how current practices in New York City have developed, it is important to review the nationwide changes in the criminal justice system's response to

domestic violence. Historically, police, prosecutors and judges in the U.S. have treated incidents of domestic violence more leniently than other offenses. Beginning in the 1970's reformers sought to have the criminal justice system respond to domestic violence offenders the same way it responded to offenders who committed comparable crimes against strangers.

Initial efforts to respond equally to DV and Non-DV cases focused on the police. During the 1980's, police departments began to shift from a mediation strategy (talking to, but rarely arresting, the offender) to a pro-arrest policy in domestic incidents. Many state legislatures passed mandatory arrest statutes, removing police discretion and requiring arrest of DV offenders. These changes in police practices sought to increase the likelihood of arrest for DV offenders.

Interestingly, at the time that pro-arrest policies were initially implemented, many domestic violence cases were not prosecuted; most domestic violence cases that were prosecuted ended with a dismissal. Prosecutors viewed DV cases as difficult to win because many victims were unwilling to cooperate. Victims often refused to press charges or to testify against the batterer because of fear of retaliation, a desire to continue the relationship, concerns about losing the economic support provided by the batterer, or the hope that the battering would stop.

After pro-arrest policies were introduced, some prosecutor's offices implemented "no-drop" prosecution policies and routinely used subpoenas to obtain a victim's testimony. These strategies sought to encourage victim cooperation and increase victim safety by making it clear that the prosecutor, not the victim, is responsible for pressing charges. Similarly, many prosecutors established victim advocacy programs to provide counseling and support services to the victims of domestic violence. The programs were designed to provide victims with information about how the criminal justice system works and to encourage them to cooperate with the prosecution. District Attorneys created specialized prosecution bureaus to insure that prosecutors developed expertise on the unique difficulties of domestic violence cases. Some prosecutors' offices introduced "evidence-based prosecution" of DV cases to avoid the need for testimony from the victim. This practice uses "excited utterances" on 911 tapes, police testimony, medical reports and physical evidence to build a case without the testimony of the victim.

As new arrest and prosecution policies were implemented, the courts were presented for the first time with large numbers of DV offenders. Historically, the criminal courts have played a weak role in combating domestic violence. Judges often sought to have DV cases dismissed, and imposed lenient sentences on convicted DV offenders, rarely including jail time. To address concerns about leniency in court processing of DV cases, some jurisdictions restructured the courts and developed new approaches. Specialized court parts were established to increase scrutiny of domestic violence cases. Judicial training programs were instituted to raise awareness of special issues arising in DV cases, such as battered women's syndrome and victims' reluctance to testify against their abusers. Courts were provided with information about the

defendant's history of domestic violence. These changes in the courts were designed to insure that DV offenses would be taken as seriously as Non-DV offenses during pre-trial hearings and to increase conviction rates in DV cases.

In most cases, the new court practices did *not* seek to increase the imposition of traditional sanctions in DV cases. Historically, defendants in Non-DV cases have been more likely than defendants in DV cases to receive incarcerative sentences. However even as courts sought to eliminate disparate treatment of similar DV and Non-DV cases, many adopted a "control" approach rather than a traditional approach to sentencing. Under the control approach, courts monitor offenders by requiring them to successfully complete a batterer intervention program and/or a drug or alcohol treatment program. This approach usually uses post-conviction diversion to a program, although some jurisdictions use pre-trial diversion. Courts impose jail sentences primarily on repeat offenders and on defendants who fail to successfully complete the program.

In summary, recent national trends in the criminal justice response to domestic violence have included changes by the police, prosecutors and the courts. Specifically, new policies and practices have sought to increase the likelihood of arrest, prosecution and conviction in DV cases. However most jurisdictions have not sought to increase the likelihood of traditional sanctions for DV offenders. Instead, the courts commonly use a control approach, requiring offenders to complete a batterer intervention program and/or a drug or alcohol treatment program.

New York City's Response to Domestic Violence

Treating Domestic Violence as a Serious Crime

The national reforms in policing, prosecuting and adjudicating domestic violence cases have been reflected in changes in New York City over the past decade. The New York City Police Department (NYPD) established a Domestic Violence Unit in each precinct and provided enhanced training to all police officers. New York State's 1994 Family Protection and Domestic Violence Intervention Act instituted mandatory and presumptive arrest policies and the use of a Domestic Incident Report (DIR) form by the police. District Attorneys in New York City established specialized prosecution bureaus and victim advocacy programs. The court system established specialized court parts in New York City, where DV cases are scheduled for frequent appearances to monitor defendant behavior. Judges received specialized training on the unique problems of adjudicating DV cases. Convicted defendants are usually assigned to complete a batterer intervention program or drug or alcohol treatment program as a condition of their sentence. This allows the court to monitor defendants' behavior through reports from the program, and to respond in the event of renewed violence.

These changes in the criminal justice response to domestic violence were implemented to address concerns about lenient treatment of DV offenders. However, the changes were not designed to achieve identical outcomes in DV and Non-DV cases. For example, because victims in DV cases are less likely to cooperate with the

prosecution, the changes were not expected to equalize the conviction rates in DV and similar Non-DV cases. Furthermore, with respect to sentencing, policy changes were explicitly designed to have defendants complete batterer intervention programs (or drug or alcohol treatment programs), rather than the traditional sentences (jail, fines, probation) more commonly used in comparable Non-DV cases. Nevertheless, the policy changes were designed to take domestic violence seriously, and to deter DV offenders.

Case Screening

Interestingly, the District Attorneys' offices in New York City have taken different approaches to addressing victims' reluctance to cooperate in DV cases. In Brooklyn, Manhattan, Queens and Staten Island, the DA's offices have what is generally described as a **no-drop prosecution policy** in DV cases. In these boroughs, virtually all DV cases are prosecuted, even if the victim does not want the defendant prosecuted. Charges are not dropped at the victim's request except in rare cases. In the Bronx, the DA's office relies primarily on a **first-party complaint policy**, i.e., cases are prosecuted only when the victim signs the complaint, indicating a willingness to go forward with the case. The DA's office usually declines to prosecute cases where the victim refuses to sign the complaint.

The two different policies for screening cases reflect different philosophies for prosecuting DV cases. Under a no-drop policy, the DA's office keeps more cases active. During this time, ADA's encourage the victim to cooperate and provide services to the victim (counseling, housing assistance, safety planning, etc.) that may improve victim safety even if the case is subsequently dismissed. The DA's office also tries to develop other evidence in order to prosecute the case without the victim's cooperation. Sometimes, for example, the victim's signed statement on a Domestic Incident Report is sufficient corroborating evidence to sustain the charges. Other cases are pursued through "evidence-based" prosecution without the victim's cooperation, using "hearsay exceptions" (e.g., statements made by victims or defendants and recorded on 911 tapes), photographs, police testimony, medical evidence, etc. However, in many DV cases evidence-based prosecution is not possible and the victim never cooperates with the prosecution. These cases are kept active as long as possible in order to allow the court and the DA's office to monitor the defendants. An order of protection remains in effect; a violation of that order may lead to a new arrest that can be prosecuted through evidence-based prosecution. Nevertheless, most of these cases end in dismissal of the charges. In the four boroughs that use a no-drop policy, the DA's office emphasizes monitoring the behavior of as many defendants as possible for as long as possible, even when conviction is unlikely.

Under a first-party complaint policy, the DA's office in the Bronx emphasizes the importance of speaking to the victim to learn the history of the relationship and details about the facts of the case that are not included in police reports. Because defendants in New York must generally be arraigned within 24 hours of arrest, DV victims in the Bronx usually have less than 24 hours to sign the complaint. If the victim refuses to

speak to the DA's office or to sign the complaint, the case would be difficult to prosecute. Without victim cooperation, the DV Bureau almost always declines to prosecute DV cases. (Exceptions are made if there is severe physical injury, an extensive history of abuse, or the victim is hospitalized.) Focusing on first-party complaints enables the Bronx DA's office to focus its efforts on viable cases where the victim agrees to file a complaint. This policy may increase the chances of winning a conviction, since the victim indicated an initial willingness to cooperate with the prosecution. Victims are primarily responsible for deciding whether a prosecutable case will be pursued in the Bronx, while victims rarely have an influence over the prosecutor's decision to file a complaint in the other four boroughs.

Criminal Sanctions

Specialized domestic violence court parts are now used throughout New York City's Criminal Courts. The specialized DV court parts rely heavily on the use of programs rather than traditional sanctions in DV cases. Most convicted domestic violence offenders are required to complete a batterer intervention program and/or a drug or alcohol treatment program. Victims often prefer that the defendant receive treatment rather than a jail sentence. It is generally easier to obtain cooperation from the victim if the sentence does not include jail time. It is also easier to reach a plea agreement with the defendant if the sentence does not include jail time.

The New York City criminal courts use programs as part of a control approach to sanctioning DV offenders. The control approach emphasizes *offender accountability* rather than rehabilitation as the goal. Some studies of batterer intervention programs have found them to be ineffective at deterring future acts of domestic violence (Chalk and King 1998, Harvard Law Review 1993, Pirro 1997, Watson 2000a), although others have concluded that the programs do reduce recidivism (Davis and Taylor, 1999). Many of the court actors we interviewed in New York City expressed skepticism that the programs produced any lasting changes in defendants' behavior. Instead, the courts use batterer intervention programs primarily as a tool to monitor defendants and to hold them accountable for their behavior (Tsai 2000). While participating in the programs, defendants appear regularly in DV Compliance Parts. The compliance parts check on the defendant's program attendance and address any violations of program conditions.

Research Questions

New York City's efforts to combat domestic violence, like the nationwide efforts described above, respond to concerns about lenient treatment of DV cases, victim reluctance to cooperate with the prosecution of DV offenders, and appropriate criminal sanctions for deterring DV offenders. To summarize the impact of these efforts in New York City we analyzed data from the CJA database on offenders arrested during the third quarter of 1998. (See inset box for details about the Third Quarter 1998 Dataset.) We addressed three questions. ***First, how did the case outcomes for DV cases differ from those of comparable Non-DV cases?*** Were defendants in DV cases less likely to be convicted or sentenced to jail? ***Second, what were the effects of***

prosecutorial policies on DV case outcomes? Were DV offenders more likely to be convicted under a first-party complaint policy than under a no-drop policy? ***Finally, what were the effects of case outcomes and criminal sanctions on recidivism among DV offenders?*** Were DV offenders more likely to be re-arrested if they were sent to a program rather than sentenced to jail?

The Third Quarter 1998 Dataset

The dataset includes detailed information about arrests in New York City in the third quarter of 1998, the court processing of prosecuted arrests, court outcomes and re-arrests of the offenders. The analyses of prosecuted arrests were limited to cases that were disposed in the lower court (Criminal Court) and excluded felony cases that were disposed in the upper court (Supreme Court). Since few DV cases were disposed in Supreme Court, our analyses provided information about 98% of the DV cases that resulted in criminal prosecution. The analyses were further restricted to cases with the types of charges that typically occur in cases involving interpersonal violence: assault, attempted assault, criminal contempt (for violating an order of protection), harassment, crimes against children, burglary, larceny and weapons charges. Data on re-arrests for new DV offenses were collected for an 18-month period following the disposition of the original arrest in the third quarter of 1998.

II. COMPARING CASE OUTCOMES IN DV AND NON-DV CASES

To examine differences in case outcomes, we compared cases identified by the courts as DV cases to those that were not identified as DV cases. The courts' definition of domestic violence is based on the nature of the relationship between the offender and the victim. When the relationship meets the statutory definition of a family (cases where the victim and offender are married, formerly married, related by blood or marriage, or have a child in common) or the courts' definition of an intimate relationship (cases where the victim and defendant are cohabiting or previously lived together, including "common-law" marriages and same-sex relationships) the courts classify the case as a DV case. We defined comparable Non-DV cases as those where the charges involved interpersonal violence, but the relationship between the offender and the victim did not meet the definition of a family or intimate relationship.

Based on our review of the changes in the criminal justice response to domestic violence, we did not expect the outcomes of DV and Non-DV cases to be the same. For example, while many changes were implemented to increase the conviction rate in DV cases, we did not expect to find equal conviction rates in DV and Non-DV cases. We used the conviction rate in Non-DV cases as a standard for understanding the impact of the difficulties in prosecuting DV cases. Furthermore, because the courts primarily used a control approach, we expected to find that convicted defendants in DV cases were

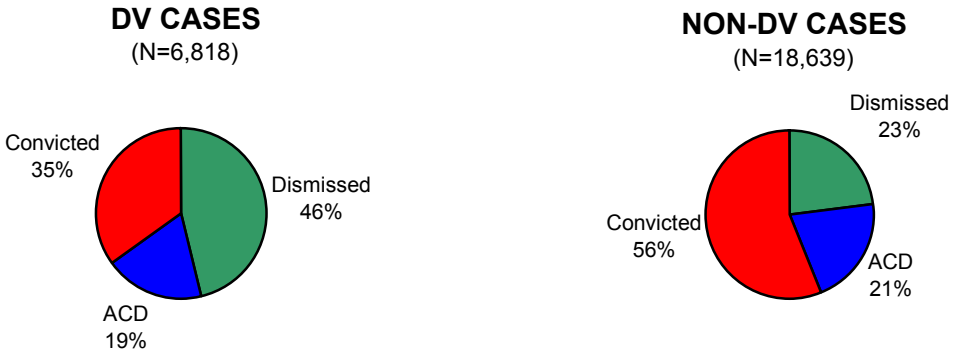
less likely to be sentenced to jail than defendants in comparable Non-DV cases. The goal of our comparison of DV and Non-DV cases was to determine how large the differences were between the two types of cases in New York City in the third quarter of 1998 and to explain those differences.

Findings

Case Outcomes

As shown in Figure 1, there were sharp differences in case outcomes between DV and Non-DV cases. (See inset box for a discussion of case outcomes in criminal court.) **Only about one third of DV cases resulted in a conviction, compared with over half of the Non-DV cases.** Furthermore, DV cases were twice as likely as Non-DV cases to be dismissed. Nearly half of DV cases were dismissed, while less than one quarter of Non-DV cases were dismissed. DV and Non-DV cases were about equally likely to have a final disposition of ACD.

FIGURE 1
CASE OUTCOMES IN CRIMINAL COURT
Prosecuted Cases in New York City, Third Quarter 1998



Case Outcomes in Criminal Court

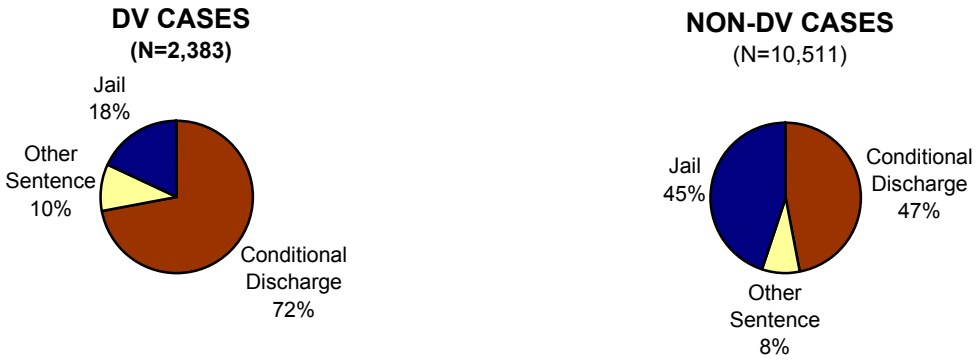
In New York State, cases disposed in Criminal Court can result in one of several final dispositions: a plea of guilty, a finding of guilty after trial, an acquittal after trial, dismissal, or an adjournment in contemplation of dismissal (ACD). Pleas of guilty and findings of guilty after trial are convictions, while acquittals, dismissals and ACD's are not convictions. Although ACD's are not convictions, they sometimes have conditions attached (e.g., that the defendant successfully complete a program, such as a batterer intervention program and/or a drug or alcohol treatment program).

Why was the conviction rate lower in DV cases? We tried to account for the lower conviction rate by examining differences between DV and Non-DV cases. We found that a portion of the difference in conviction rates between DV and Non-DV cases could be explained by differences in defendants' criminal histories. Defendants in DV cases had less serious criminal histories than defendants in Non-DV cases and defendants with less serious criminal histories were less likely to be convicted. However, most of the difference in conviction rates was apparently due to differences in strength of evidence between the two types of cases. Evidence is generally weaker in DV cases than in Non-DV cases, primarily because victims in DV cases are often reluctant to testify or cooperate.

Sentence Outcomes

Next, we considered differences in sentence outcomes for those cases that resulted in conviction. Again, there were sharp differences between DV and Non-DV cases (see Figure 2). **Defendants were sentenced to jail in less than one fifth of DV cases, compared to nearly half of Non-DV cases.** Defendants received a conditional discharge in nearly three quarters of DV cases and less than half of Non-DV cases. Other sentences (probation, fines, restitution) were given in 10% of DV cases and 8% of Non-DV cases.

FIGURE 2
SENTENCE OUTCOMES IN CRIMINAL COURT
Convicted Defendants in New York City, Third Quarter 1998



Sentence Outcomes in Criminal Court

In New York State, defendants who are convicted can receive one or more types of sentences, including jail, a conditional discharge, probation, fines and restitution. A jail sentence may be either a "time served" sentence or a definite sentence (i.e., a sentence for a specified number of days). Conditional discharges and probation sentences may include a requirement that the defendant complete a batterer intervention program and/or a drug or alcohol treatment program.

Why were defendants in DV cases much less likely to get jail sentences? Criminal history and charge severity explained a small portion of the difference. Convicted Non-DV offenders had more serious criminal histories, and were more likely to be charged with a felony, than convicted DV offenders. However, the most important reason for the difference is the control approach used by the courts in DV cases. Under this approach, DV offenders are monitored until they complete an appropriate program.

Conclusions

Have recent changes in New York City reduced or eliminated lenient treatment of DV offenders? This question is difficult to answer. On the one hand, we found that DV cases were less likely than Non-DV cases to result in conviction or a jail sentence, even after controlling for differences in defendant and case characteristics. This appears to support the argument that DV cases continue to be treated more leniently than Non-DV cases. On the other hand, recent legislative and policy changes demonstrate that the criminal justice system is investing significant resources in the prosecution and adjudication of DV cases. This appears to support the argument that the system is taking DV cases seriously. How can these apparently contradictory findings be reconciled?

As noted earlier, we did ***not*** expect to find that the outcomes of DV and Non-DV cases would be the same. Because of inherent difficulties in prosecuting DV cases, we expected that the conviction rate for DV cases would be lower than for Non-DV cases. Because courts generally use programs to hold DV offenders accountable, we expected that defendants convicted in DV cases would be less likely than defendants convicted in Non-DV cases to be sentenced to jail. Our expectations were confirmed by our analyses of the data. Even after taking into account differences in defendant and case characteristics, DV cases were less likely than Non-DV cases to end in conviction and a jail sentence. Since DV cases and Non-DV cases are inherently different, it is inappropriate to interpret these findings as evidence of leniency.

Nevertheless, the conviction rate in DV cases remains substantially lower than in Non-DV cases in spite of recent efforts to devote more time and resources to DV cases. This indicates that weak evidence continued to be a major problem in DV cases in New York City in the third quarter of 1998. Research in other jurisdictions has also found that weak evidence is one of the most important factors inhibiting the successful prosecution of DV cases (Belknap and Graham 2000).

Why was evidence weaker in DV cases than in Non-DV cases?

First, lack of victim cooperation continued to be a major problem. Urban prosecutors in New York State estimate that 80-90% of victims in DV cases refuse to cooperate (Frisch et al. 2001). Our observations in a specialized Criminal Court DV part support this conclusion. We found that many victims did not provide a corroborating affidavit in DV cases. As a result, the prosecution relied primarily on physical evidence, medical reports, “excited utterances,” and testimony from police officers. In Criminal

Court, this evidence was often unavailable or not strong enough to obtain a conviction. Defendants were aware of this and were often unwilling to plead guilty in DV cases. If the victim was not cooperating, many defendants turned down an ACD, which is not a conviction, and held out for a dismissal.

Second, NYPD policies and New York State's mandatory arrest laws for certain family offenses resulted in arrests in incidents where police would otherwise use their discretion and make no arrest. DV arrests doubled in New York City after passage of the mandatory arrest legislation in 1994 (Haviland et al. 2001). This increase, of course, reflected the intent of the legislation. However, the mandatory arrest policy may lead to arrests in incidents where the evidence is weak and no arrest would be made if the victim and defendant did not have an intimate or family relationship. When police officers use their discretion in deciding whether to make an arrest in a comparable Non-DV case, they may screen out weak cases. These different arrest policies may produce weaker evidence more often in DV cases than in Non-DV cases.

Finally, some prosecutors may have been more willing to pursue weak DV cases than weak Non-DV cases. If prosecutors initially pursued DV cases without the cooperation of the victim, then these cases may have been more likely to end in dismissal. Our discussions with ADA's and court personnel indicated that the goal in pursuing many of these cases was to gain control over the defendant's behavior for a period of time. This may increase victim safety during the pendency of the case, even if the case is later dismissed. Prosecuting the case, issuing an order of protection, and requiring the defendant to return to court several times lets defendants know that their behavior is being monitored. Photos and fingerprints of the defendant are available in the event that evidence of additional crimes becomes available while the case is pending. Furthermore, most defendants spend at least a night in jail before being released. For some, this may be a deterrent to future acts of domestic violence (Frisch et al. 2001).

III. THE IMPACT OF SCREENING AND SANCTIONING POLICIES ON DV CASE OUTCOMES

To examine the impact of *prosecutorial case screening policies*, we compared cases that were processed in the Bronx, which had a first-party complaint policy, to cases in Brooklyn and Manhattan, where a no-drop policy was in effect. (There were too few cases in Staten Island for inclusion in the borough comparisons, and the borough of Queens was excluded because of problems identifying and tracking certain DV cases.) The no-drop policies in Brooklyn and Manhattan, and the first-party complaint policy in the Bronx, were not formal, written policies, and exceptions were made in each borough. Nevertheless, the vast majority of cases in the third quarter of 1998 were screened using these policies. Furthermore, the basic case screening policies remain the same in 2003, although changes in each borough since 1998 have increased the number of exceptions to the dominant policy.

We expected that prosecutorial case screening policies would affect both the decision to prosecute DV cases and the conviction rate. Specifically, we expected to find that more cases were declined for prosecution under the first-party complaint policy used in the Bronx than under the no-drop prosecution policy used in other boroughs. We also expected to find that the conviction rate in prosecuted cases was higher in the Bronx, since many cases with reluctant victims were never prosecuted. The conviction rate in boroughs with a no-drop prosecution policy was expected to be lower than in the Bronx, since the DA's offices did not screen out some of the weak cases prior to arraignment. Many of these weak cases were likely to end in a dismissal rather than a conviction.

To examine the impact of *criminal sanctioning policies* on sentencing we compared cases that were processed in Manhattan to cases that were processed in Brooklyn and the Bronx. Manhattan, where DV cases were heard in mixed dockets, used traditional criminal justice sanctions. The specialized DV parts in Brooklyn and the Bronx used the control approach. (Manhattan now has a specialized DV part, but it was not yet in operation in 1998.)

We expected criminal sanctioning policies to affect the use of jail sentences. Specifically, we expected to find that convicted DV offenders were less likely to be sentenced to jail in Brooklyn and the Bronx, which used specialized DV court parts, than in Manhattan, where there was no specialized DV court part in 1998. Specialized DV court parts used the control approach, usually requiring convicted DV offenders to complete a program. When DV cases are heard in mixed dockets, traditional sanctions such as jail are more likely to be used. Furthermore, in court parts with mixed dockets, it may be more difficult for the court to identify appropriate programs and to enroll defendants in them.

Findings

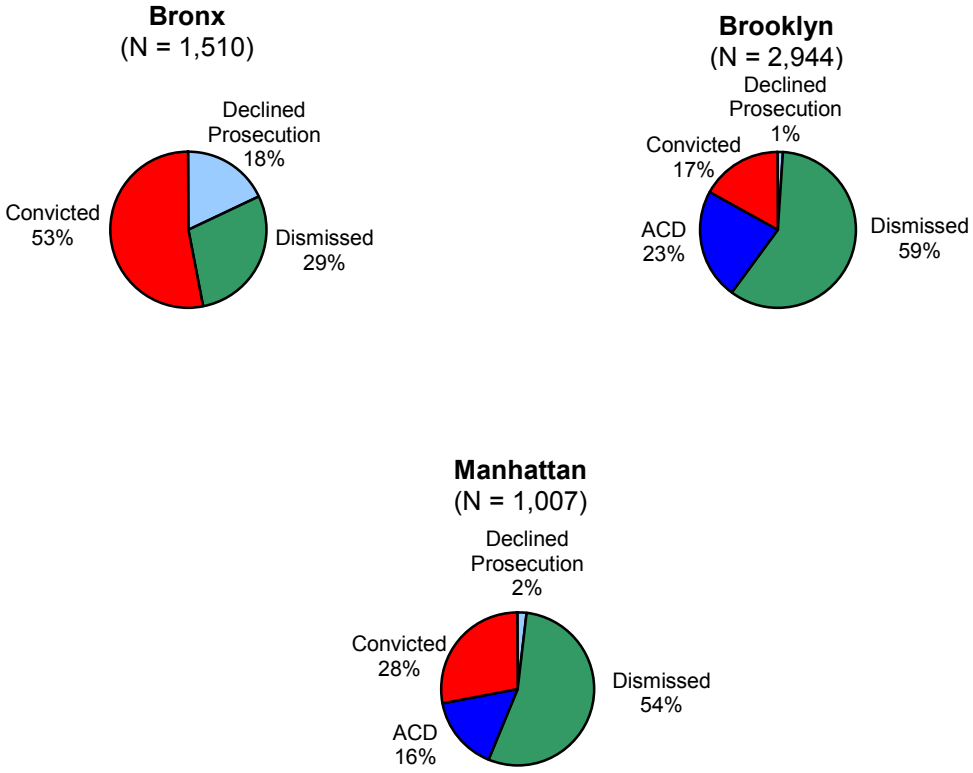
Prosecutorial Case Screening Policies

To evaluate the impact of prosecutorial case screening policies, we expanded our analysis to include not only prosecuted cases, but also cases that were declined for prosecution. We limited our analysis to three boroughs: Brooklyn and Manhattan, which have no-drop policies, and the Bronx, which has a first-party complaint policy.

There was wide variation in case outcomes among these three boroughs (see Figure 3). As we expected, cases in the Bronx were much more likely to be declined for prosecution than cases in Brooklyn or Manhattan. **Nearly one fifth of DV cases were declined for prosecution in the Bronx compared to only 1% in Brooklyn and 2% in Manhattan.** These findings were consistent with the case screening policies employed in each borough. In the Bronx, DV cases generally were declined for prosecution when the victim refused to sign the complaint. In Brooklyn and Manhattan, cases were rarely declined for prosecution and the DA's routinely prosecuted cases without victim cooperation.

One consequence of the first-party complaint policy in the Bronx was to significantly reduce the dismissal rate in DV cases. Less than one third of DV cases were dismissed in the Bronx, compared to half in Manhattan and three fifths in Brooklyn. If the Bronx had prosecuted cases at the same rate as Brooklyn and Manhattan, most of the cases that were classified as declined for prosecution would probably have been dismissed. If we combine the declined and dismissed categories, the differences among the boroughs were narrower, although the Bronx still stands out. About three fifths of DV cases in Brooklyn and Manhattan were declined or dismissed, compared to less than half in the Bronx**. Furthermore, the Bronx was able to obtain convictions in over half of DV cases. In Brooklyn, less than one fifth of DV cases ended in conviction, and in Manhattan, over one quarter did.** The Bronx did not offer ACD's in DV cases, whereas almost one quarter of Brooklyn DV cases and 16% of Manhattan DV cases were disposed with an ACD. Taken together, these findings suggest that even though the Bronx declined to prosecute significant numbers of DV cases, the DA's office was much more successful in obtaining convictions in prosecuted cases than the DA's offices in Brooklyn or Manhattan.

FIGURE 3
CASE OUTCOMES IN CRIMINAL COURT BY BOROUGH
DV Cases, Third Quarter 1998



Why was the conviction rate in DV cases higher in the Bronx than in Brooklyn or Manhattan? We tried to account for the higher conviction rate in the Bronx by considering differences in case and defendant characteristics among the boroughs. We examined defendant's demographic characteristics, defendant's criminal history, charge characteristics and case processing characteristics. None of these factors accounted for borough differences in conviction rates. The key to explaining borough differences in conviction rates is the use of case screening and other prosecution strategies in each borough. Under its first-party complaint policy, the Bronx screened out almost one fifth of the DV cases. This allowed the DA's office to devote more time and attention to the remaining cases, increasing the likelihood of conviction. Furthermore, unlike Brooklyn and Manhattan, the Bronx DA's office did not offer ACD's to first-time DV offenders. Instead, first-time DV offenders were offered plea bargains that required them to plead guilty. In Manhattan, and especially in Brooklyn, many cases were disposed with ACD's. Since ACD's are not convictions, the conviction rate in these two boroughs was much lower than in the Bronx.

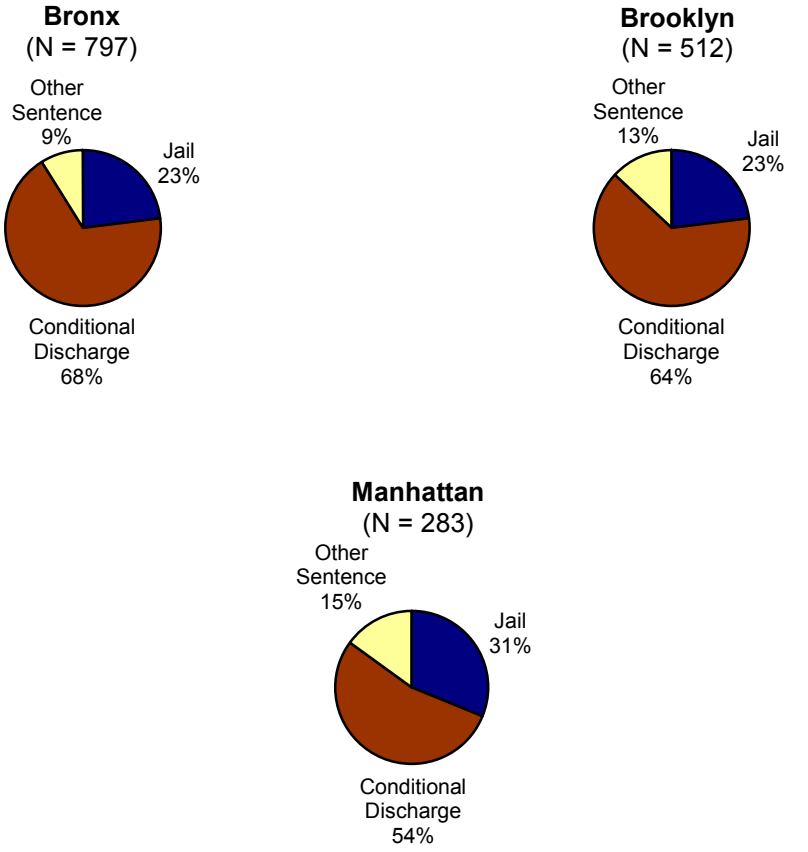
These results suggest that prosecution policies had a strong impact on conviction rates. Focusing primarily on first-party complaints and refusing to accept ACD's, as the Bronx did, resulted in a relatively high conviction rate. Prosecuting all DV cases under a no-drop policy and offering ACD's, as Brooklyn and Manhattan did, produced relatively low conviction rates.

Criminal Sanctioning Policies

Next, we considered the impact of criminal sanctioning policies on sentences in DV cases that ended in a conviction. As indicated in Figure 4, **the incarceration rate in DV cases was higher in Manhattan (31%) than in Brooklyn and the Bronx (23% each).** About two thirds of the convicted DV offenders in Brooklyn and the Bronx were sentenced to a conditional discharge, compared to about half in Manhattan. Conditional discharges in DV cases in Brooklyn and the Bronx almost always included a requirement that the defendant complete a batterer intervention program or, in some cases, an alcohol or drug treatment program. In Manhattan, conditional discharges were less likely to include a program requirement than in Brooklyn or the Bronx.

Why were jail sentences for convicted DV offenders more common in Manhattan than in Brooklyn or the Bronx? ADA's in Manhattan were more likely to hold out for a plea bargain that included jail time. In Brooklyn and the Bronx, ADA's were more likely to offer to reduce the charges and less likely to insist on a jail sentence as part of a plea agreement. In these two boroughs with specialized DV parts, ADA's placed more emphasis on monitoring defendants through batterer intervention programs and drug or alcohol treatment programs. While we do not have data on the use of programs, our observations in the Criminal Courts and conversations with DA's and judges support this explanation. In many DV cases in the specialized parts, DA's and/or the court viewed such programs as more appropriate than traditional sanctions, such as jail, fines or probation.

FIGURE 4
SENTENCE OUTCOMES IN CRIMINAL COURT BY BOROUGH
Convicted DV Defendants, Third Quarter 1998



Conclusions

Which of the three boroughs pursued the best approach to prosecuting and adjudicating DV cases? The answer to this question depends in part on how one believes the criminal justice system should address the challenge of prosecuting DV cases when the victim is uncooperative. Those who favor a first-party complaint policy believe that the criminal justice system should allow victims to decide whether the case will be prosecuted. Those who favor a no-drop prosecution approach believe that the criminal justice system should prosecute virtually all DV cases. Since the state and not the victim is responsible for deciding to prosecute the case, no-drop prosecution may prevent victims from being subjected to intimidation or retaliation by the defendant.

Deciding which approach is best also depends in part on what one believes the criminal justice system's goal should be in responding to domestic violence offenders. Those who favor a control approach believe that the goal is to bring as many DV

offenders as possible under the scrutiny of the courts. The specialized DV parts emphasize the use of batterer intervention programs as a means of monitoring convicted defendants. DV offenders can be closely watched for renewed or escalated violence. Court monitoring is presumed to decrease the frequency and severity of future acts of domestic violence. Those who favor more traditional sanctions believe that the goal is to treat DV offenders like comparable Non-DV offenders. Under this approach, prosecutors are more likely to seek jail sentences for DV offenders. Traditional sanctions are presumed to deter future violence.

In New York City's Criminal Courts in 1998, the no-drop prosecution and control approaches were most closely followed in Brooklyn, where there was a no-drop policy and DV cases were processed in specialized court parts. ADA's prosecuted virtually all cases, whether or not the victim was cooperating. The primary goal in the specialized DV parts was to monitor defendants by requiring them to complete a batterer intervention program when possible. When the victim was not cooperating and an evidence-based prosecution was not possible, the offender was monitored by holding the case open as long as possible before dismissing it. Manhattan also used a no-drop prosecution policy, and pursued cases without victim cooperation. However, Manhattan was the borough most likely to use traditional sanctions, including jail. DV cases were processed in mixed dockets rather than in specialized DV parts. Manhattan relied on jail sentences, particularly long jail sentences, more than the other boroughs. The Bronx used a first-party complaint policy: most of the prosecuted cases were cases where the victim signed the complaint. The victim generally had to sign the complaint within 24 hours of the arrest, since defendants in New York must generally be arraigned within that time. Once the complaint was signed, however, victims did not have the discretion to have the charges dropped at their request. The Bronx used the control approach to respond to DV offenders, and monitored defendants in specialized DV parts using strategies similar to those used in Brooklyn. The policies used in each borough in 1998 are summarized in the inset box below.

Borough Responses to Domestic Violence, 1998

		Policy for Responding to DV Victims	
		First-Party Complaint Policy	*No-Drop Policy*
Policy for Responding to DV Offenders	*Control*	Bronx[1]	Brooklyn
	Traditional Sanctions	—	Manhattan[2]

[1] The Bronx usually gave the victim responsibility for deciding whether or not to sign a complaint in prosecutable cases.

[2] Manhattan's use of traditional sanctions did not rely primarily on jail sentences, but jail sentences were imposed more often than in the other boroughs.

IV. THE IMPACT OF CASE PROCESSING ON RE-ARRESTS AMONG DV OFFENDERS

To determine the impact of case outcomes and criminal sanctions on recidivism, we examined the re-arrest rates for DV offenses over an 18-month period following case disposition (see discussion of measuring recidivism in the inset box below). Specifically, we compared re-arrest rates for defendants whose cases were dismissed, ACD'd, disposed with a conviction without a jail sentence, and disposed with a conviction with a jail sentence. To determine the impact of case screening policies on recidivism, we compared re-arrest rates in the Bronx for cases that were declined for prosecution with re-arrest rates for cases that were dismissed.

Measuring Recidivism

We measured recidivism in this study by examining re-arrests for DV offenses over the 18-month period following the disposition of the defendant's case. Unfortunately, re-arrest rates are likely to underestimate recidivism. New DV offenses may not lead to re-arrest, since many victims do not call the police when a new offense occurs, and police may not make an arrest even when they are called. We compensated for this problem in part by using a long 18-month at-risk period. Since recidivists are likely to re-offend multiple times, using a long at-risk period increases the chances that at least one of the new offenses will lead to re-arrest during the term of our study.

To overcome the limitations of re-arrest, some studies measure recidivism using interviews with the victim. Interviewers can learn about incidents that did not result in calls to the police and re-arrest of the defendant. Rates of recidivism based on victim interviews are generally higher than rates based on re-arrest. Victim interviews also have weaknesses, however. It is often very difficult to reach victims and to complete interviews with them. Furthermore, victim interviews ignore the possibility that the defendant has re-offended with a new victim.

Because both types of data have strengths and weaknesses, we would have preferred to measure recidivism using both victim interviews and re-arrest data. *We used re-arrest data for practical reasons—it was the only measure available to us.* Although re-arrest may underestimate recidivism, it has two advantages over victim interviews. Data are potentially available for all defendants, not just those for whom victim interviews were completed. Also, it measures recidivism against new victims as well as against the same victim.

We expected to find that defendants in DV cases with more severe case outcomes and more severe criminal sanctions had lower rates of re-arrest for DV offenses. Dismissal is considered to be the least severe case outcome, followed, in order of increasing severity, by ACD, conviction without a jail sentence, and conviction with a jail sentence. We also expected to find that case screening affected the re-arrest rate. Specifically, we expected that DV offenders whose cases were declined for

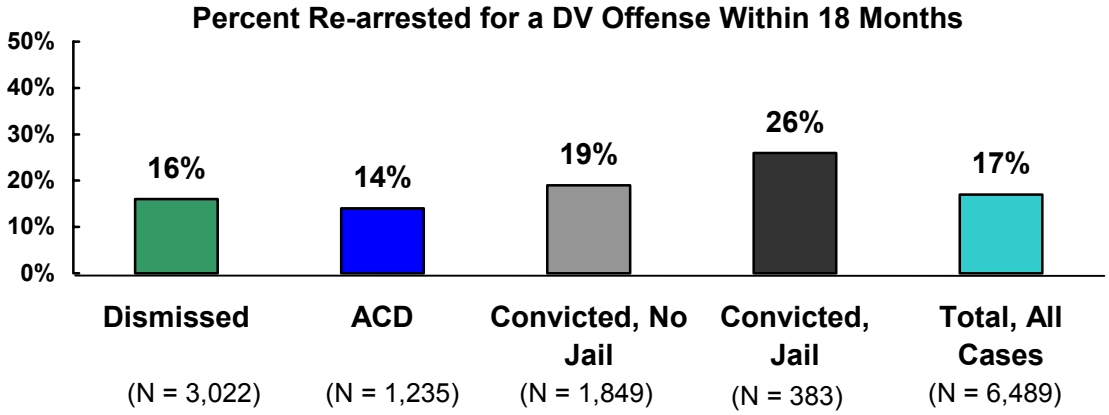
prosecution in the Bronx would have a higher re-arrest rate than DV offenders whose cases were dismissed. In a case that is prosecuted and later dismissed, a temporary order of protection is usually issued at arraignment and remains in effect until the case is dismissed. This order forbids or restricts the defendant's contact with the victim. Cases that result in dismissal also keep the defendant under the jurisdiction of the court for a period of time (at least 30 to 90 days, depending on the severity of the charge) pending disposition. These differences suggest that there are more opportunities to monitor defendants in dismissed cases than in cases that are declined for prosecution. If this monitoring deters recidivism, we would expect to find higher rates of re-arrest in cases declined for prosecution than in dismissed cases.

Findings

Case and Sentence Outcomes

Figure 5 presents the re-arrest rates for each of the categories of case outcome. The re-arrest rate for DV offenses indicates the percentage of defendants who were re-arrested at least once for a DV offense within 18 months of case disposition. The case outcomes identified in Figure 5 represent the case outcome on each defendant's *first* DV arrest during the third quarter of 1998. (The data in Figures 1 through 4 included *all* DV arrests for each defendant during the third quarter of 1998.)

FIGURE 5
RE-ARREST RATES BY CASE AND SENTENCE OUTCOMES
DV Offenders in New York City, Third Quarter 1998



As shown in Figure 5, about 17% of DV offenders were re-arrested for a DV offense within 18 months of the disposition of the third quarter 1998 case (the original case). The re-arrest rate varied depending on the outcome of the original case. About 16% of DV offenders whose original case was dismissed were re-arrested for a DV offense within 18 months of the dismissal. The re-arrest rate for DV offenders who received an ACD was slightly lower, about 14%. However, **re-arrest rates were higher for DV offenders who were convicted. About 19% of convicted DV offenders who were not sentenced to jail were re-arrested, and 26% of those who were convicted**

and sentenced to jail were re-arrested. These differences in re-arrest rates by case outcomes were statistically significant (see inset box for a discussion of tests of statistical significance).

Tests of Statistical Significance

Statistical significance tests assess the likelihood that the percentage differences that were observed in the sample could have occurred by chance alone. The tests take into account the size of the sample and the magnitude of the differences observed. Larger percentage differences and percentage differences based on larger samples are more likely to be statistically significant. In this report, following standard convention, significance levels less than .05 were considered statistically significant. This means that the statistically significant differences found in this study had less than a 5% chance of being due to chance alone.

We had expected to find that defendants who received more severe dispositions would have *lower* re-arrest rates. The results in Figure 5 show that the defendants who received the most severe dispositions had the *highest* re-arrest rates. Defendants who were convicted and sentenced to jail had higher re-arrest rates than defendants who were convicted and not sentenced to jail. In turn, defendants who were convicted and not sentenced to jail had a higher re-arrest rate than those who received an ACD or had their cases dismissed.

While these results contradict our expectations, it is important to remember that they do not take into account differences among the defendants. In particular, the results presented in Figure 5 do not take into account differences in the prior criminal history of defendants who received various dispositions. ACD's are generally given to first-time offenders, while jail sentences are more likely to be imposed on defendants who have multiple prior convictions. If the case outcomes of chronic offenders are more severe, variation in re-arrest rates by case outcomes may reflect differences in the type of offender.

Why were defendants who were convicted, particularly those who were sentenced to jail, more likely to be re-arrested? Chronic offenders were more likely than first-time offenders to be convicted and sentenced to jail on their original case in the third quarter of 1998. Chronic offenders also were more likely to be re-arrested, regardless of the outcome of their original case. Taken together, these findings indicate that convictions and jail sentences did not increase re-arrest rates. Instead, convictions and jail sentences were imposed on defendants who were already chronic offenders. Of course, the findings also suggest that convictions and jail sentences did not deter these chronic offenders.

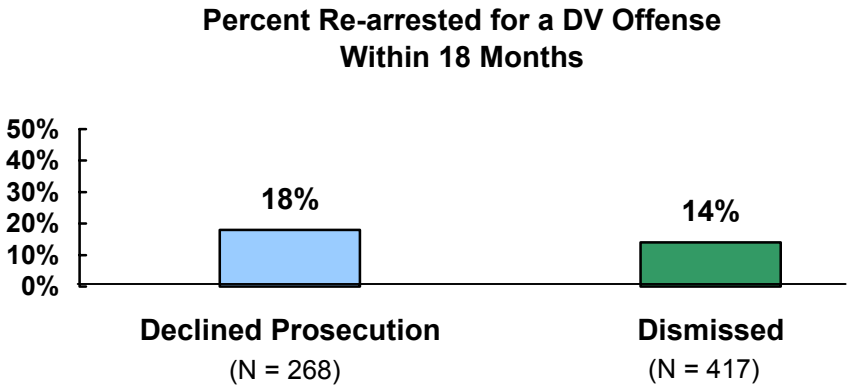
What other factors affected the re-arrest rates of DV offenders? We also found that defendants with weak community ties had higher rates of re-arrest. Defendants who were unemployed, who did not expect someone to be at their arraignment, who did not report having a telephone, and who lived at their current address one year or less

were all more likely to be re-arrested for a DV offense. These findings suggest that defendants who lacked strong community ties were more likely to be re-arrested for DV offenses.

Prosecutorial Case Screening Policies

To assess the impact of prosecutorial case screening policies on re-arrest rates, we next conducted analyses limited to the Bronx, comparing re-arrest rates for cases that were declined for prosecution (DP'd) to cases that were dismissed. (The number of DP'd cases in the other boroughs is too small for reliable statistical comparisons to dismissed cases.) Dismissal would have been the most likely outcome if cases that were DP'd had been prosecuted, since all victims in DP'd cases were initially uncooperative. **The re-arrest rate for cases that were declined for prosecution in the Bronx was 18%, compared to 14% for cases that were dismissed** (see Figure 6). This difference in re-arrest rates was in the direction we expected, and suggests the possibility that victims in cases that were declined for prosecution were in greater danger than victims in cases that were dismissed. Although the results appear to support our expectation, these data are not sufficient to support this conclusion. While the re-arrest rate for cases that were DP'd is higher than for cases that were dismissed, the difference between these two percentages was *not* statistically significant. This means that the higher re-arrest rate for DP'd cases may have been due to chance alone, and not to any real difference in re-arrest rates.

FIGURE 6
RE-ARREST RATES FOR DECLINED AND DISMISSED CASES IN THE BRONX
DV Offenders, Third Quarter 1998



Conclusions

Do case outcomes and criminal sanctions affect the re-arrest rate for DV offenders? No. More severe case outcomes and criminal sanctions did not reduce recidivism. There was no evidence that conviction and jail deterred future acts of domestic violence. After taking criminal history into account, we did not find lower re-arrest rates for those who were convicted, with or without a jail sentence.

Does a first-party complaint policy affect the re-arrest rate for DV offenders? No. Our analyses of the first-party case screening policy in the Bronx did not provide conclusive evidence that declining to prosecute DV cases when the victim refuses to sign the complaint increases the risk of re-arrest. Although re-arrest rates were higher for cases that were declined for prosecution than for cases that were dismissed, the difference was relatively small and not statistically significant. While further research on this issue would be useful, our study is consistent with prior research suggesting that declining to prosecute DV cases is not associated with higher rates of recidivism.

Although we did not find that more severe case outcomes reduced recidivism, our findings on re-arrest rates for DV offenses suggest several additional conclusions.

First, we did not find any indication that there were "escalation" effects. Prosecuting, convicting, and jailing DV offenders did not increase the risk of re-arrest, as some have speculated (Fagan 1996). Our initial finding that DV offenders who were convicted, particularly those sentenced to jail, were more likely to be re-arrested raised the possibility of an escalation effect. However, further analyses demonstrated that the higher re-arrest rate was due to the criminal history of the offender. Once criminal history was taken into account, there was no evidence of an escalation effect of conviction with or without jail.

Second, the use of judicial monitoring and programs rather than jail does not appear to increase the risk of re-arrest. We compared convicted defendants who received a non-jail sentence (primarily a conditional discharge with a requirement for completing a drug, alcohol or batterer intervention program) to convicted defendants who were sentenced to jail. After taking differences in their criminal histories into account, the re-arrest rate was the same for those who received a non-jail sentence and those who received a jail sentence. This suggests that the use of programs is appropriately targeted and does not increase the risk of re-arrest. The judicial monitoring that routinely accompanies these programs is as effective as jail in preventing future DV offenses.

Third, weak community ties increased the risk of re-arrest for DV offenses. This finding suggests a fruitful area for further research. Using several measures of community ties, it might be possible to develop a profile of high-risk and low-risk offenders. Such a profile might be useful to district attorneys in deciding on which cases to concentrate their efforts, or to the court in deciding on conditions of release while the case is pending, levels of judicial monitoring, and appropriate sentences for DV offenders.

V. POLICY IMPLICATIONS

It is beyond the scope of this report to determine the "best" approach to prosecuting and adjudicating DV cases. Nor is it likely that any one approach would be "best" in all jurisdictions. Our analyses do, however, permit us to offer some recommendations about issues that could be addressed through changes in policy and practice.

Responding to Domestic Violence Victims

First-party Complaints vs. No-Drop Prosecution

Each of the case screening policies used in New York City had both benefits and costs in addressing issues related to victim cooperation.

In the Bronx, reliance on first-party complaints had at least two benefits. First, it concentrated prosecutorial resources on the most viable cases—those where the victim indicated a willingness to go forward by signing the complaint. Second, this case screening policy enabled victims to decide whether or not to go forward with the case by signing the complaint.

However, the first-party complaint policy also had risks. First, the victim's power to drop the case disappeared once she or he signed the complaint. Mills (1999) recommends that victims be allowed to drop the case at any time before a final disposition. This might provide victims with greater control over the behavior of offenders and reduce recidivism (Ford and Regoli 1993). Second, reliance on first-party complaints may also pose a risk for victims who do sign the complaint. DV offenders may intimidate or re-assault victims because the offenders realize that the victim, not the prosecutor, is responsible for the prosecution. Victims may be reluctant to call the police again, since a new arrest will repeat the cycle of intimidation as the victim is faced again with a decision about whether to sign the complaint. When the victims do not sign the complaint, DA's and the courts have no way to monitor or control the defendant through court appearances.

The no-drop policy is designed to minimize some of the risks of the first-party complaint policy. First, the no-drop policy presumably reduced the likelihood that the offender would intimidate the victim, since the prosecutor and not the victim decided whether to prosecute the case. Second, the no-drop policy enabled the DA's office to monitor a large number of DV offenders, because defendants were prosecuted in virtually all cases where an arrest was made. Even if many cases do not result in conviction, the goal of a no-drop policy is to monitor as many DV offenders as possible. From this perspective, a low conviction rate is not necessarily a problem. Conviction may be desirable, but is not necessary to provide monitoring while a case is pending.

However, the no-drop policy also had disadvantages. First, prosecutorial resources were devoted to a large number of cases that were unlikely to result in

conviction (Kirsch 2001). Concentrating these resources on cases where the victim was initially cooperative might have produced a higher conviction rate in those cases. Second, there may be disadvantages associated with a low conviction rate. Defendants whose cases were dismissed were more difficult to monitor. An ACD or a conviction enables the court to monitor defendants more closely, and for a longer period of time. A conviction also may establish a criminal record that can be introduced in court if the defendant is arrested again for a DV offense. Furthermore, a dismissal may send a message to the offender that there is no real penalty for domestic violence (Belknap and Graham 2000). In summary, even if the primary goal in DV cases is to monitor offenders, there are additional advantages to be gained from obtaining a conviction.

Increasing the Conviction Rate

Our findings suggest that weakness of evidence is an important reason for the lower conviction rate in DV cases. Several policies to address this problem could be considered.

One way to increase the conviction rate is to ***reduce caseloads to allow prosecutors to spend more time working with victims***. Even with specialized prosecution bureaus for DV cases, ADA's in Criminal Court often struggle to keep up with their caseload. This makes it difficult for them to maintain contact with victims. The volume of DV cases is particularly high in New York City's Criminal Courts. Furthermore, the no-drop policies in Brooklyn and Manhattan created larger caseloads for each ADA than a first-party complaint policy would have created. Since 1998, the District Attorney's offices in New York City have taken steps to reduce the caseloads of prosecutors assigned to DV cases (see inset box next page).

A second way to increase the conviction rate is to ***expand the use of counseling and advocacy services for victims to encourage their cooperation in Criminal Court cases***. Victim advocates working with the DA's office can provide support services and counseling to reassure victims and to encourage their cooperation (Cahn and Lerman 1991, Kirsch 2001, Miller 1999). Brooklyn has recently increased its efforts to encourage victim cooperation through early intervention. More victim advocates are now available in the complaint room, and paralegals reach out to victims at arraignment to discuss orders of protection. Victim advocates are working to obtain supporting depositions from victims in one police precinct. In eight precincts, the DA's office now sends detectives to contact victims within 24 hours of arrest to gather information, answer questions and provide information about counseling. The detectives have been very successful at obtaining supporting depositions from victims. Extending these programs throughout the borough would require additional funding.

A third way to increase the conviction rate is to ***use evidence-based prosecution, which relies on "hearsay exceptions," photographs, and other physical and medical evidence to build the case against a DV offender***. This approach avoids the need for victim cooperation. Our field research indicated that evidence-based prosecution was already in use in Brooklyn and Manhattan in 1998 and

REDUCING PROSECUTORS' CASELOADS
Review of Changes in Four Boroughs

Brooklyn has recently taken two steps to reduce ADA's caseloads in the DV Bureau without increasing the number of ADA's. First, the DA's office developed a new policy to decline to prosecute certain DV cases. Under this policy, victims who did not wish to proceed were asked to sign a declination in cases where there was no injury to the victim, where the defendant had no history of domestic violence and no serious criminal record, and where a statement from the victim would be necessary to prosecute the case. As a result of this policy, more cases are declined for prosecution now than in 1998. Second, the least serious DV cases are now transferred to the regular trial divisions of the Brooklyn DA's office. These two changes have reduced the overall caseload, and enabled the office to assign more experienced attorneys to handle misdemeanor trials.

The Bronx has also reduced ADA caseloads since 1998. The number of ADA's assigned to work on misdemeanor DV cases has increased from 12-15 in 1998 to 20 in 2003. This increase has more than compensated for the increase in DV arrests over that time period. The average caseload for ADA's handling misdemeanor DV cases in the Bronx has been reduced by about 25% since 1998.

In Manhattan, all misdemeanor DV cases have been handled by ADA's who also handle other types of cases. The ADA's in Manhattan have not specialized exclusively in handling DV cases as they have in Brooklyn and the Bronx. As a result, ADA caseloads in Manhattan are influenced primarily by the overall volume of misdemeanor cases. Efforts to reduce the caseloads of the ADA's handling misdemeanor DV cases in Manhattan would probably require the assignment of ADA's to handle DV cases exclusively.

In Queens, efforts were made to reduce ADA caseloads during 1998. Miller's (1999) study found that after ADA caseloads were cut in half, the conviction rate in DV cases increased from less than 30% to just under 60%. Because other changes were made simultaneously, we cannot conclude that the reduced caseloads were the sole or primary reason for the increase in the conviction rate. Nevertheless, Miller's findings suggest that reducing ADA caseloads merits serious consideration as a means for increasing the conviction rate.

its use has increased since then. In recent years, particularly in 2000 and 2001, the number of evidence-based prosecutions in the Bronx also has increased significantly. The Bronx DA's office has intensified its efforts to provide training to the police to collect evidence in DV cases. As a result, the Bronx now pursues more cases without victim cooperation. While significant progress has been made over the last few years, each of the boroughs is planning to make further changes to increase the successful use of evidence-based prosecution. However, our field research indicates that substantial

enhancements have already been introduced to prosecute DV cases without victim cooperation and there may be little room for improvement in this area.

Finally, ***cutting case processing time might increase the conviction rate***. As Davis et al. (2001) reported, this strategy was successful in Milwaukee's specialized DV part. Cutting the time between arrest and trial (or a potential trial) reduced the opportunities for the victim to withdraw from participating in the case. Fewer court appearances by the victim were needed, and there was less time for the defendant to intimidate the victim into withdrawing support of the prosecution. The Manhattan DA's office reports that it now seeks to try DV cases as quickly as possible to avoid evidence problems that may develop if the case continues for a long time.

As we consider policy responses to the problem of weak evidence in DV cases, we must emphasize that it would be unreasonable to have as a policy goal equal conviction rates for DV and Non-DV cases in Criminal Court. Mandatory arrest laws for domestic violence may result in weaker DV cases than Non-DV cases. Even without mandatory arrest laws, the inherent weaknesses of DV cases are likely to result in a lower conviction rate. There are limits to the success that can be achieved through efforts to increase victim cooperation. Moreover, the concern for victim safety means that in some DV cases, goals other than conviction may be appropriate. Using the criminal justice system to monitor defendants' behavior and to send them the message that they are being watched may be an appropriate goal.

Sanctioning Domestic Violence Offenders

Since Manhattan established a specialized DV Criminal Court part in June 2000, Criminal Courts in all the boroughs now rely more heavily on the control approach. In 1998, Manhattan was the only borough that heard DV cases in mixed dockets; it was also the borough most likely to use traditional sanctions in DV cases. Now the specialized DV part in Manhattan, like those in the other boroughs, uses the control approach. Under this approach, the New York City criminal courts use batterer intervention programs primarily as a tool to hold defendants accountable for their behavior. To insure accountability, defendants in batterer intervention programs are required to appear regularly in a DV compliance part. In the compliance parts, a judicial hearing officer monitors defendants' adherence to the conditions of the batterer programs. Excessive absences from program sessions, lack of cooperation, evidence that the defendant has re-offended and failure to appear in the compliance part are penalized.

An alternative approach for monitoring defendants' compliance, proposed by the New York State Office for the Prevention of Domestic Violence (OPDV), is to ***place more defendants on probation*** (Watson 2000b). A probation officer can insure that program compliance, offender accountability and victim safety are monitored. When offenders violate probation, more serious penalties can be imposed. Intensive supervision probation combined with judicial monitoring has been an effective deterrent in the felony cases heard in the Brooklyn Supreme Court DV parts (Newmark et al.

2001). Preliminary research in Clinton County, New York (a predominantly rural county) suggests that probation can also be effective in misdemeanor cases (Ames and Dunham 2002). Since probation caseloads are generally higher in a large urban jurisdiction, a pilot study would be needed to determine whether greater use of probation in misdemeanor cases in New York City would be feasible and effective. Recently, efforts have been made to crack down on violations of probation and to monitor the most serious cases more closely. Among defendants in misdemeanor DV cases who were eligible for a probation sentence (i.e., those convicted of an A or B misdemeanor) in the third quarter of 1998 in New York City, less than 25% were placed on probation. Furthermore, most convicted DV offenders (about 59%) were not eligible for probation, since they were convicted of a violation. If evidence in some of these DV cases were strengthened enough to sustain a misdemeanor conviction, more DV offenders would be eligible for probation.

While efforts to treat domestic violence like any other crime may suggest that traditional sanctions should be used more often, in many DV cases it is unrealistic to expect jail sentences to be imposed. DV victims often express a strong preference that the defendant not be sentenced to jail. Some victims believe the violence they experienced was aberrant behavior, and wish to continue the relationship. Others believe jail will lead to an escalation of the violence. Victims, prosecutors and judges may be concerned about the financial hardship the victim will experience if the defendant's financial support is withdrawn. Prosecutors and judges may also believe that jail is inappropriate because it might break up a family. When jail sentences are considered, courts face a conflict between punishing the offender and preserving the family. Non-incarcerative sentences provide an option that resolves that conflict.

Reducing Recidivism

The literature on deterring domestic violence indicates that little is known about how to prevent DV offenders from re-offending. Why is domestic violence so difficult to control? Fagan (1996) suggests several reasons. Unlike other types of violent crime, domestic violence usually involves victims and offenders who are in daily contact and who have emotional ties to each other. Domestic violence frequently occurs in the privacy of the home, where it is more difficult for the police or others to intervene. The DV offender's opportunity for violence and the relationship that may trigger it are often ongoing. Furthermore, many interventions assume that the DV offender will act rationally, weighing costs and benefits. However many offenders may batter as a result of psychological dysfunction or a mental disorder. Finally, many offenders lack the community ties that provide informal social control, and many live in neighborhoods characterized by social disorganization.

Our analyses showed that prosecuting, convicting and sentencing DV offenders to jail did not deter re-arrest. Once the criminal history of DV offenders was taken into account, their re-arrest rates were essentially the same regardless of the outcomes of their cases. At first glance, this may seem disheartening, since it suggests that "getting tough" with DV offenders does not deter future violence. However, the failure of the

sanctions to reduce future violence effectively is not a failure of the courts, but instead is a reflection of the inherent difficulties of preventing domestic violence. A closer examination of the findings provides support for some of the key elements of current criminal justice interventions, suggests some promising ideas for reducing recidivism, and draws attention to the importance of goals other than deterrence. The results of our research on recidivism have four important implications for policy and practice.

First, our research indicates that ***criminal sanctions are applied in DV cases in ways that do not increase the risk of future violence***. The control approach used in the specialized DV parts, which is based on judicial monitoring and treatment programs, was as effective at deterring re-arrest as sentencing DV offenders to jail. Although monitoring and treatment may not seem as "tough" as jail, our research suggests that they are appropriate sentences for DV offenders. Furthermore, we found no evidence that violence escalates when the criminal justice system does "get tough" with certain DV offenders. Prosecuting, convicting and jailing DV offenders did not increase the likelihood of future violence.

Second, the findings in the current study suggest some ways to ***tailor different criminal justice interventions for different types of offenders***. The criminal justice response may need to be more severe for those with weak community ties, for example by requiring a greater level of monitoring by the court. A lower level of monitoring may be adequate for defendants with stronger community ties. Similarly, our research supports the current practice of predicating the severity of the criminal justice response on the defendant's criminal history. DV offenders who had more prior convictions were more likely to be sentenced to jail. First offenders were more likely to receive a conditional discharge or an ACD.

Third, the finding that case outcomes and criminal sanctions do not influence re-arrest rates does not necessarily mean that criminal justice interventions are ineffective. ***Arrest, regardless of the subsequent case outcome, may be a deterrent to domestic violence.*** The current study did not compare defendants who committed offenses but were not arrested to those who were arrested. However, previous research suggests that arrest may deter future violence (Frisch et al. 2001, Maxwell et al. 2002).

Finally, ***goals other than deterrence may be appropriate in DV cases***. Criminal sanctions and judicial monitoring may reduce the *severity* of future acts of violence, even if they do not deter the commission of violence. Furthermore, some DA's offices provide services (e.g., counseling, referrals to shelters) to victims in DV cases and offer victims additional means of staying safe (e.g., developing a safety plan, providing emergency 911 cell phones). Finally, and perhaps most importantly, prosecuting and sentencing domestic violence offenders sends a message to the batterer, the victim, and the community that the criminal justice system is prepared to intervene to stop the violence.

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