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**COMPARING THE PROCESSING
OF DOMESTIC VIOLENCE CASES
TO NON-DOMESTIC VIOLENCE CASES
IN NEW YORK CITY CRIMINAL COURTS**

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and
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COMPARING THE PROCESSING OF DOMESTIC VIOLENCE CASES TO NON-DOMESTIC VIOLENCE CASES IN NEW YORK CITY CRIMINAL COURTS

I. INTRODUCTION

The criminal justice response to domestic violence has changed dramatically over the last 10 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, has encouraged new efforts to combat domestic violence. Under this Act, the Department of Justice has provided funding and technical assistance to state and local law enforcement agencies.

The national trends are reflected in recent changes in New York State and New York City. Recent state legislation includes mandatory arrest requirements for certain family offenses, enhanced penalties for violating an order of protection, a “primary physical aggressor” statute, and anti-stalking legislation. In conjunction with the new legislation, New York City has promoted changes in the criminal justice response to domestic violence. Specialized police units, prosecution bureaus, and court parts have been created to focus more attention on domestic violence cases, and to develop a consistent approach to handling these cases. New York City is now in the forefront of efforts to combat domestic violence.

These changes in New York City’s approach to domestic violence raise significant research questions. How are domestic violence cases processed in the courts? Are there borough differences in court processing? How often are defendants re-arrested on domestic violence charges? To address these questions, CJA has developed a research agenda on domestic violence.

A. CJA’s Research Agenda on Domestic Violence

The current report is the first of a series of CJA reports on domestic violence. In this report, we examine data on case outcomes in domestic violence cases in New York City courts. We consider whether domestic violence cases are treated more leniently than comparable cases that do not involve domestic violence. We also attempt to explain differences in case outcomes between domestic violence and non-domestic violence cases.

In our second report, we will examine borough differences in case processing of domestic violence cases. We will determine whether borough differences in the outcomes of domestic violence cases are influenced by the use of specialized domestic violence court parts and case screening strategies that rely on victim cooperation.

Our third report will be a study of the rates of re-arrest for defendants in domestic violence cases. We will examine whether conviction, incarceration, and long jail sentences have a deterrent effect on recidivism. Surprisingly, previous research has found that case outcomes have virtually no effect on recidivism rates (e.g., Davis et al. 1998). However, little research has been done in jurisdictions like New York City, where criminal justice innovations in policing, prosecution, and court processing of domestic violence cases are in place.

B. Review of Prior Research

The current study compares the processing of domestic violence (DV) cases to similar non-domestic violence (Non-DV) cases in New York City. We define DV offenses to include acts that cause physical, psychological or financial harm to a victim who is an intimate partner or family member of the offender. Non-DV offenses are defined as comparable acts against a victim who is not an intimate partner or family member of the offender, including acts against strangers, neighbors, friends, co-workers, etc. This section of the report discusses recent efforts to change the criminal justice response to domestic violence both nationally and in New York City. It also develops several research questions to be addressed in the study.

Historically, police, prosecutors and judges in the U.S. have treated incidents of domestic violence more leniently than other offenses (Pleck 1987, Worden 2000). Beginning in the 1970's, advocates for battered women and others drew attention to the lenient treatment of DV offenders by the criminal justice system. They argued that many police, prosecutors and judges shared with the general public a belief that domestic violence is a private matter and is not as serious as other types of violence (Edleson 1991). As concern grew about domestic violence and the lenient response to it, 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 (Frisch 1992). To understand how current practices in New York City have developed, it is important to review the history of these nationwide changes in the criminal justice system's response to domestic violence.

Initial efforts to respond equally to DV and Non-DV cases focused on the police. Until the late 1980s, it was common for police departments to take a "mediation" approach to domestic violence (Zorza 1992). Police attempted to resolve domestic incidents by separating the parties, giving those involved some time to "cool off." Arrests were uncommon since they were viewed either as too severe a response, or as causing escalation of the conflict. Under the mediation approach, the police often ignored or minimized the injuries to battered women. Furthermore, batterers often assaulted women repeatedly over months or years, while receiving little or no punishment.

During the 1980's, several factors influenced the police to shift from a "mediation" strategy to an "arrest" strategy in responding to domestic violence. First, battered women in several cities won settlements in lawsuits charging that police had

failed to protect them from domestic abuse (Zorza 1992).¹ Second, the battered women's movement successfully argued that the police should treat DV offenses the same way they treat similar offenses against strangers (Edleson 1991). Third, the widely publicized "Minneapolis Arrest Study" (Sherman and Berk 1984) reported that arresting perpetrators of domestic violence reduced recidivism. Finally, there was a growing sense among the police and other law enforcement agencies that "mediation" strategies were ineffective (Belknap and Graham 2000). These factors all contributed to dramatic changes in policing domestic violence over the next decade. Police departments began to take a pro-arrest policy in domestic incidents, and many state legislatures passed mandatory arrest statutes. These reforms of police practices sought to increase the likelihood of arrest for DV offenders.

Interestingly, while there was significant pressure to pursue pro-arrest policies, little attention was initially focused on how domestic violence cases were prosecuted. Prosecutors traditionally have viewed DV cases as difficult to win. Charges in DV cases are frequently dropped—studies have reported dismissal rates from 50% to 80% (Elliott 1989). DV cases are less likely than similar Non-DV cases to be charged as felonies (Belknap and Graham 2000, Corsilles 1994, Lerman 1986). Some have argued that prosecutors view domestic violence incidents as private matters, or as less serious than crimes against strangers (Buzawa and Buzawa 1996, Cahn and Lerman 1991, Lerman 1986, Miethe 1987). Even with a willing prosecutor, however, DV cases entail a great deal of effort to prepare and often fail to lead to conviction. Many prosecutors believe that domestic violence victims are reluctant to cooperate with criminal prosecutions (Belknap and Graham 2000, Cahn and Lerman 1991, Elliott 1989, Schmidt and Steury 1989). Victims often refuse 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 will stop (Lerman 1986). Victims who cooperate in the initial phases of prosecution often change their minds later. Even when victims are willing to cooperate fully throughout the prosecution, it is often difficult to establish strong evidence in DV cases. Many domestic incidents occur in the home where the only witnesses may be the parties to the incident. In the absence of severe injuries that lead to medical treatment, it may be difficult to establish what happened to the victim. In short, prosecutors view DV cases as having many inherent weaknesses.

To address these problems, policy makers sought to encourage more vigorous prosecution of DV cases (Worden 2000). New policies sought to insure that prosecutors file charges in DV cases, sign the complaint themselves (rather than require the victim to sign the complaint), and avoid dropping charges if the victim becomes uncooperative—just as they would in similar Non-DV cases (Cahn and Lerman 1991, Cahn 1992). Some prosecutor's 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,

¹ Among the significant cases were *Bruno v. Codd* 396 NY 2d 974 (1977), *Thurman v. City of Torrington* 595 F. Supp. 1521 (1984), and *Sorichetti v. City of New York* 65 NY 2d 461 (1985).

police testimony, medical reports and physical evidence to build a case without the cooperation of the victim.

These changes in police and prosecutorial practices were designed to overcome the lenient response to DV offenders by emphasizing the need “to treat domestic violence like any other serious crime” (Harvard Law Review 1993, p. 1503). However, there was also a recognition that equal protection for battered women required an “enhanced” response to address the unique nature of DV cases (Tsai 2000). For example, because victims are often reluctant to testify in DV cases, 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 (Cahn and Lerman 1991). 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 (Cahn 1992). District Attorneys created specialized prosecution bureaus to insure that prosecutors developed expertise on the unique difficulties of domestic violence cases.

These additional practices in DV cases share the common assumption that an equal response to DV and Non-DV cases may not be sufficient to redress the problem of leniency. An “enhanced” response to DV cases uses specialized practices to overcome unique problems such as victim reluctance to cooperate. Whether the specific reforms required an “equal” or an “enhanced” response, they all sought to eliminate leniency by increasing the likelihood that a DV offender would be arrested, prosecuted and convicted (Cahn 1992, Edleson 1991).

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 (Buzawa and Buzawa 1990). For example, one study found that among felony cases involving crimes against persons and property, defendants in DV cases in Alaska were less likely to be convicted or sentenced to jail than defendants in Non-DV cases (Miethe 1987). Another study of felony offenders in Ohio found that convicted defendants who were sentenced to prison received shorter terms in DV cases than in Non-DV cases (Erez and Tontodonato 1990).²

To address concerns about leniency in court processing of DV cases, some jurisdictions restructured the courts and developed new approaches. Specialized court

² Miethe (1987) and Erez and Tontodonato (1990) actually compare cases where the victim and defendant were previously “known” to each other to those where the victim and offender were “strangers.” Since many of the “known” cases are likely to be DV cases and all the “stranger” cases are Non-DV cases, we use the categories “DV” and “Non-DV” to describe their results.

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 jail sentences in DV cases. Historically, defendants in Non-DV cases have been more likely than defendants in DV cases to receive punitive sentences that include jail time (Miethe 1987, Vera Institute of Justice 1977).³ However even as courts sought to eliminate disparate treatment of similar DV and Non-DV cases, many adopted a rehabilitative approach rather than a punitive approach to sentencing (Crowell and Burgess 1996). Under the rehabilitative approach, courts require offenders to successfully complete a batterer intervention program and/or a drug or alcohol treatment program (Goldkamp et al. 1998, Lerman 1986). This approach usually uses post-conviction diversion to a program as an alternative to incarceration, although some jurisdictions use pre-trial diversion. Courts impose jail sentences only on repeat offenders and on defendants who fail to successfully complete the program.

Several factors have contributed to the prevalence of the rehabilitative approach in the sentencing of defendants in DV cases. First, the emphasis on rehabilitation frequently reflects victims' preferences. Victims often tell prosecutors and judges that they want the defendant to receive treatment rather than a jail sentence (Davis and Smith 1981, Cahn and Lerman 1991, Ferraro and Boychuk 1992). Second, many believe that this approach is the most effective way to prevent future violence by the DV offender. "...[T]his [rehabilitative] approach appears to offer perpetrators clear and immediate sanctions through arrest (deterrence) as well as motivation to enter treatment to avoid serving a jail sentence (rehabilitation)" (Edleson 1991, p. 205). Third, the rehabilitative approach is also consistent with the recent trend toward "therapeutic jurisprudence." Initially developed to promote therapeutic outcomes for defendants with mental health and substance abuse problems, the court system has now extended this approach to defendants in DV cases. Specialized DV courts have been established to apply the therapeutic approach, which usually includes a requirement that defendants complete a batterer intervention program (Tsai 2000, Winick 2000). Finally, the use of the rehabilitative approach may also reflect the beliefs of prosecutors, judges and others that defendants in DV cases should not be treated as severely as defendants in Non-DV cases (Davis and Smith 1981). Pleck (1987, p. 202) argues that these beliefs encourage the use of rehabilitative approaches because they resolve the "conflict between protecting the victim and preserving the family."

³ However, see Ferraro and Boychuk 1992 who found that both Non-DV and DV cases were treated leniently at sentencing in Maricopa County Arizona.

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 punitive jail sentences for DV offenders. Instead, the courts commonly use rehabilitative approaches, requiring offenders to complete a treatment program.

The national reforms in policing, prosecuting and adjudicating domestic violence cases have been reflected in changes in New York State and 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 (Giuliani and Bratton 1994). 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 (Frisch et al. 1998). Prosecutors in New York City established specialized prosecution bureaus and victim advocacy programs, developed "no drop" prosecution policies and introduced "evidence-based" prosecution of DV cases. The court system established specialized court parts in New York City, where DV cases are scheduled for frequent appearances to monitor defendant behavior (Knipps and Berman 2000). Judges receive 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. The use of treatment programs in New York City emphasizes accountability rather than rehabilitation as the goal (Baar and Solomon 2000, Tsai 2000). Defendants are monitored and held accountable through post-sentence appearances in DV Compliance Parts. As a result of these changes by police, prosecutors and the courts, New York City is at the forefront of national efforts to improve the criminal justice response to domestic violence.

C. 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. These efforts seek to increase the likelihood of arrest, prosecution, and conviction and to impose sentences requiring completion of treatment programs. Although New York City instituted many changes over the past decade to achieve these goals, very little research has been done to evaluate their impact. Some studies have examined the effect of New York State's mandatory arrest laws (Frisch et al. 1998, Frisch et al. 2001, Haviland et al. 2001). However, at the time this report was written, we were not aware of any published studies examining recent data comparing the processing of DV and Non-DV cases in New York City. Information about court processing is needed to understand the impact of recent changes on the outcomes of DV cases. The current report is a first step toward meeting that need.

This report examines data on the prosecution, conviction and sentencing of defendants in the New York City criminal courts in the third quarter of 1998. The report

addresses three questions about the processing of DV cases. *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? Were jail sentences shorter for defendants in DV cases? *Second, how did defendant and case characteristics in DV cases differ from those in comparable Non-DV cases?* For example, did defendants in DV cases face less serious charges, or have less serious criminal records? *Finally, can the differences in case outcomes between DV and Non-DV cases be accounted for by differences in defendant and case characteristics?* For example, were defendants convicted in DV cases less likely to be sentenced to jail because they had less serious criminal records?

Based on our review of the literature, we do not expect the outcomes of DV and Non-DV cases to be the same. We use the outcomes in comparable Non-DV cases as a standard for understanding the outcomes in DV cases. For example, while many changes were implemented to increase the conviction rate in DV cases, we do not expect to find equal conviction rates in DV and Non-DV cases. Because DV cases can be more difficult to prosecute, we expect that defendants in these cases were less likely to be convicted than defendants in Non-DV cases. We use the conviction rate in Non-DV cases as a standard for understanding the impact of the difficulties in prosecuting DV cases. Furthermore, with respect to sentencing, policy changes were explicitly designed to use treatment programs, rather than the jail sentences more commonly used in comparable Non-DV cases. As a result, we expect to find that convicted defendants in DV cases were less likely to be sentenced to jail or to receive long jail sentences than defendants in comparable Non-DV cases. In short, although reforms were designed to address the problem of lenient treatment of DV cases, they were not designed to achieve identical outcomes in DV and Non-DV cases. The goal of this study is to determine how large the differences were between the outcomes of DV and Non-DV cases in New York City in the third quarter of 1998 and to explain those differences. The results will provide information about the impact of recent changes in the prosecution and adjudication of DV cases in New York City.

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II. METHODOLOGY

A. Overview of the CJA Database and the Third Quarter 1998 Dataset

The data for this study are drawn primarily from the CJA database. This database contains information about arrest, case processing and court outcomes of most New York City arrestees. The CJA Database includes data from three sources: CJA's pre-arraignment interview⁴, the New York City Police Department's Online Booking System (OLBS) Database, and the New York State Office of Court Administration (OCA). Information concerning demographic characteristics and the community ties of the offenders is taken from the CJA pre-arraignment interview. Information about the arrests is based on the OLBS data. Detailed Criminal Court and Supreme Court processing and outcome data on each of the arrests are drawn from the OCA data.

This report is based on analyses of the Third Quarter 1998 Dataset, which consists of data collected on a three-month cohort of arrests made from July 1, 1998 through September 30, 1998 (Eckert and Curbelo 2000). The dataset includes information on 89,524 arrests where the district attorney elected to bring charges and where a docket number was assigned.⁵

In addition to information in the CJA database, the Third Quarter 1998 dataset also includes information provided by the New York State Division of Criminal Justice Services (DCJS).⁶ DCJS data were used to supplement and check the reliability of criminal history information that was routinely collected by CJA interviewers.⁷

⁴ CJA conducts pre-arraignment interviews to measure the defendant's community ties and to serve as the basis for making a recommendation as to whether or not the defendant should be released on recognizance at his or her first court appearance. Defendants who are arrested on a bench warrant, given a Desk Appearance Ticket (DAT), or who are held for arraignment on prostitution charges in the downtown Manhattan Criminal Court, are not interviewed by CJA. CJA collects police arrest and Criminal Court information for all arrestees, and they are included in the Third Quarter 1998 Dataset whether or not they were interviewed.

⁵ For a more detailed discussion of how the sample was drawn, see Eckert and Curbelo 2000, Appendix A. The sample includes both Summary Arrests and DAT's. Arrests that had no docket number were retained in the sample if they appeared to be either "A" docket cases in Manhattan (the designation used in Manhattan for a court case that has a docket number with the suffix "A" to distinguish it from a court case that has the same docket number without the suffix "A") or direct indictments. Arrest information for these two types of cases was supplemented with defendant information and court processing information when available.

⁶ DCJS, OCA, and NYPD are not responsible for the methods or conclusions of this report.

⁷ CJA provided fingerprint identification numbers (known as New York State Identification, or "NYSID," numbers) to DCJS for all printable offenses in the third quarter of 1998—approximately 81,000 of 89,524 arrests. NYSID numbers for the remainder of the arrests were not available in CJA's database, since the arrests were for nonprintable offenses. DCJS returned information on the defendant's criminal history for 46,000 of the 81,000 cases. In the remaining cases, the defendant had no prior criminal convictions on his/her record, or the court had sealed the current case.

For cases that had multiple dockets, case-processing information in this study is based on the docket that had the most severe arraignment charge (based on Penal Law severity) in Criminal Court.⁸ When the most severe arraignment charges on 2 or more dockets are of equal Penal Law severity, the top charge is determined according to guidelines developed by OCA. These guidelines provide a consistent set of rules for determining which of two arraignment charges of equal severity will be identified as the top arraignment charge.

In New York State's two-tiered court system for handling criminal cases, the Criminal Courts only have trial jurisdiction over cases having a most serious charge of misdemeanor or lesser severity. Most defendants charged with felonies are first arraigned in Criminal Court. Cases sustained at the felony level must be brought for prosecution in Supreme Court. In felony cases where the District Attorney decides not to prosecute the case in Supreme Court or the Grand Jury fails to return an indictment, the case may be disposed in Criminal Court by dismissal, by a plea to a reduced charge less severe than a felony, or by a transfer to another court's jurisdiction (e.g., Family Court).

The Third Quarter 1998 Dataset includes case processing information in Criminal Court through final disposition (and sentencing, if there was a conviction), or until August 6, 1999, if the case was not yet disposed. For cases sent to Supreme Court, information on case processing is drawn from the first sequential Supreme Court indictment. Data were collected until first final disposition (and sentencing, if there was a conviction), or through September 22, 1999, if the case was not yet disposed. Information about the final dispositions in Criminal Court or Supreme Court beyond those cutoff dates was not included in the dataset.

To inform our discussion of the statistical results, we also conducted some interviews and field research in New York City criminal courts. We focused most of our attention on Brooklyn, where the first specialized DV parts were established. We observed the operation of a specialized DV Criminal Court part to develop an understanding of the problems posed by domestic violence cases and the strategies used by DA's and judges to overcome these problems. We also observed the operation of Brooklyn's two specialized DV Supreme Court parts. We consulted with judges as well as other key court personnel, including Assistant District Attorneys, Defense Attorneys, Domestic Violence Resource Coordinators, and Probation Officers. Our field research in Brooklyn and elsewhere in the city provided valuable information about the special features and problems of domestic violence cases and about the operation of specialized domestic violence court parts.

⁸ New York State Penal Law categorizes most offenses according to their severity. The most serious crimes are A felonies, followed by felonies classified as being of severity B through E. Misdemeanors are less severe than felonies, and are classified as A or B misdemeanors (A misdemeanors are more severe). Violations are less severe than misdemeanors, and are not considered crimes, although they can result in jail sentences. No distinctions of severity are made within the category of violations.

B. Identifying Domestic Violence Cases

There is a great deal of variation in definitions of “domestic violence” in terms of both the types of relationships and the criminal offenses included in the definition. Early research usually defined domestic violence as violence between spouses, and used the term interchangeably with terms like “spouse abuse” or “wife-beating” (e.g., Lerman 1986). More recently, domestic violence has been defined to include “family violence” where a crime is committed against family members—that is, against siblings, parents and children, relatives related by blood or marriage, grandparents, grandchildren or cousins (Elliott 1989, Crowell and Burgess 1996). Others have broadened the term even further to include crimes committed against unmarried partners such as boyfriends or girlfriends and within same-sex relationships (Byrne 1999, Ferraro and Boychuk 1992).

The definition of what acts constitute “domestic violence” has also been expanded. Some early research defined domestic violence narrowly, limiting it to criminal acts that are intended to cause physical harm (Weis 1989). Others also included criminal acts that cause financial harm to the victim, such as destruction or theft of personal property. Recent research has expanded the definition to include acts that inflict psychological harm. While acts of psychological abuse (e.g., false accusations of infidelity, restricting a victim’s contact with friends and family) are not generally criminal acts, they are often part of a pattern of behavior that includes physical violence (Crowell and Burgess 1996).

In New York State the statutory definition of domestic violence approximates what has come to be known in the social scientific literature as “family violence.” Under New York State’s Criminal Procedure Law (CPL) §530.11 (as amended by the 1994 Family Protection and Domestic Violence Intervention Act), family offenses are defined as offenses committed against a member of the same family or household, where “family or household” are defined as: (1) Persons related by consanguinity or affinity; (2) Persons legally married to each other; (3) Persons who were formerly married, and; (4) Persons who have a child in common, whether or not they have ever been married or lived together.

New York State’s statutory definition of “domestic violence” excludes unmarried partners, unless they have a child in common. However, the New York City Police Department (NYPD) operates with an expanded definition of domestic violence that includes individuals who are not married, but who are cohabiting or have previously lived together. This NYPD definition of “family” expands on New York State law by including “common-law” marriages, same-sex couples, and registered New York City domestic partners (NYPD 2000). By citywide agreement, the DA’s offices and the Criminal Courts in all five boroughs also use this expanded definition to identify DV cases, whether or not the relationship between the victim and defendant meets the New York State statutory requirements contained in CPL §530.11.

To identify domestic violence cases, Assistant District Attorneys (ADA's) use information collected by the police about the relationship between the victim and the defendant, if any. ADA's also often ask victims about their relationship with the defendant. If the relationship qualifies under the expanded definition, the case is identified as a DV case. Information about the type of offense is *not* used to determine whether a case is a DV case. As long as the relationship between the victim and defendant meets the definition, any criminal act can be considered domestic violence. DV case files in all 5 boroughs are given a beige "back" (a special color-coded back sheet) to distinguish them from other case files. At Criminal Court arraignment, Court Clerks assign an arraignment hearing type of "DV" to domestic violence cases, and this designation is entered in OCA's computerized court records.

At the time the defendants in the Third Quarter 1998 Dataset were arrested, cases identified at arraignment as DV cases were processed in different ways depending on the borough. In Manhattan, all cases with a DV hearing type were sent to all-purpose parts for post-arraignment appearances. (Manhattan now has specialized DV parts, but they were not yet in operation in 1998.) In all boroughs except Manhattan, most cases with a DV hearing type were sent to a specialized Criminal Court Domestic Violence part for post-arraignment appearances. However, there were exceptions. In Brooklyn and the Bronx, cases with a DV hearing type that involved physical or sexual abuse of children or other types of non-intimate partner violence (e.g., violence between siblings) were not sent to the specialized domestic violence parts. Finally, some cases that did *not* have a DV hearing type at arraignment were also sent to the specialized DV parts, presumably because information that these cases involve domestic violence became available only after arraignment.

In this study, we identify "domestic violence" cases by relying on the court's identification of these cases. We use information about both hearing type and court part, since not all DV cases are assigned a DV hearing type. **We identified cases as domestic violence cases if the Office of Court Administration reported that: (1) the case had a domestic violence hearing type at Criminal Court arraignment, *and/or*, (2) the case had one or more appearances in a specialized domestic violence part.**⁹

Using these criteria, we identified 7,591 domestic violence cases in the Third Quarter 1998 Dataset, about 8.5% of the total sample of 89,524 cases. Of the 7,591 cases identified by the courts as involving domestic violence, 4,192 cases (55% of 7,591) had both a domestic violence hearing type at arraignment and at least one appearance in a specialized domestic violence court part. An additional 2,036 cases (27%) had a domestic violence hearing type at arraignment, but no appearance in a specialized

⁹ In the Third Quarter of 1998, the specialized domestic violence Criminal Court parts were AP-12 and AP-15 in Brooklyn, AP-10, BX-DVC and TAP-2 in the Bronx, AP-4 in Queens, and AP2-DV in Staten Island. Although AP2-DV in Staten Island was identified as a separate court part in our data, it was actually a specialized DV calendar. DV cases on this calendar were heard in an all-purpose part two days a week. We identified cases as DV cases if they had one or more appearances on this calendar.

domestic violence part. These included cases in Manhattan where there was no specialized DV part (N=1,147), DV cases in other boroughs that were disposed at arraignment (N=198), as well as DV cases in the other boroughs that were sent to Non-DV parts (N=691). There were also 1,363 cases (18%) that had at least one appearance in a specialized domestic violence part, but did not have a domestic violence hearing type at Criminal Court arraignment.

Our method of identifying domestic violence cases is well suited for the purposes of this study. Because we examine differences in the processing of DV cases versus Non-DV cases, it is important to know that the judges, assistant district attorneys, defense attorneys and other key court personnel were aware whether or not a case was a DV case. Since we use the same identifiers used by the court, the cases that we identify as DV cases were clearly known to the courts as DV cases.

The measure identifying DV cases does have some limitations, however. First, there may be instances where a DV case was not identified as such in court records (i.e., it did not receive a DV hearing type at Criminal Court arraignment and did not appear in a specialized domestic violence part). Our measure did not identify these as DV cases but instead categorized them in the comparison group of Non-DV cases. If the number of cases misclassified in this way were sufficiently large, the statistical comparisons of DV and Non-DV cases would be affected. However, it is important to note that the impact of this misclassification would run in only one direction—that is, it would lead us to minimize the differences between DV and Non-DV cases. If we find differences between DV and Non-DV cases, we can conclude either that the number of DV cases misclassified as Non-DV cases was small, or that the differences between DV and Non-DV cases were large enough to overcome the effects of any misclassification. In either case, we can have considerable confidence in the results.

A second problem with our measure identifying DV cases is that it relies, in part, on identifying cases that appeared in specialized domestic violence courts. In Queens, some DV cases with felony charges were not assigned a DV hearing type and were sent to an “unindicted felony” part in Criminal Court. We were not able to identify these as DV cases. A more significant problem is that Manhattan had no specialized domestic violence parts at the time of this study. Each of the other boroughs had at least one specialized DV Criminal Court part, and Brooklyn also had two specialized DV Supreme Court parts. In our sample, we identified 1,147 DV cases in Manhattan, based solely on DV hearing type at arraignment. Since not every domestic violence case receives a DV hearing type at arraignment, we are almost certainly failing to identify some domestic violence cases in Manhattan. It is difficult to gauge the magnitude of the problem, but it is possible to generate a rough estimate. Specifically, by examining DV cases that we identified in Brooklyn, the Bronx, Queens and Staten Island, we can determine what proportion of these cases had one or more appearances in a specialized domestic violence part but did not have a DV hearing type at arraignment. We can then estimate the number of DV cases that we failed to identify in Manhattan. About 21% or 1,363 of the 6,444 domestic violence cases in Brooklyn, the Bronx, Queens and Staten Island were identified

as having an appearance in a specialized DV part, but had no DV hearing type at arraignment. Assuming that the same pattern holds for Manhattan, there were 305 cases that we identified as Non-DV cases that would have been sent to specialized parts if they had been in operation in Manhattan at the time of the study. If this estimate is reasonably accurate, the total number of DV cases in the Third Quarter 1998 Dataset should be 7,896. Our study identified 7,591 DV cases, or 96% of the estimated total. This suggests that the failure to identify some DV cases in Manhattan should have a minimal impact on the overall comparisons of DV cases and Non-DV cases citywide.

The under-identification of DV cases in Manhattan and Queens could, however, limit our ability to make borough comparisons concerning court processing of DV and Non-DV cases. This problem would be particularly acute when comparing boroughs that have specialized domestic violence parts (Brooklyn, the Bronx, Queens and Staten Island) to Manhattan, which does not. The descriptive results and the multivariate models may overestimate borough differences in case processing because borough differences include the effects of the structure of specialized DV parts. We guard against this potential bias by including borough measures in the multivariate models as control variables, and by limiting our discussion and speculation about the strength and direction of their effects on the dependent variables.

C. Victim-Defendant Relationship

To provide additional information about the DV cases, we also use data from the NYPD about the nature of the relationship between the defendant and the victim. Most of the cases identified as DV cases in the New York City courts were cases where the victim and defendant were intimate partners. Among cases where the victim-defendant relationship was known, the arresting officer described 60% as married or “common-law” spouses,¹⁰ and another 22% were described as boyfriend-girlfriend relationships. In the remaining cases (18%), the relationship is a family relationship that does not involve intimate partners (parent-child, sibling, uncle-niece, etc.). Because we do not have information about the age of the victim, we are unable to clearly identify cases of child abuse or elder abuse using the NYPD data.¹¹

Unfortunately, information about victim-defendant relationship is missing for about 24% of the DV cases included in our analysis. At the time of the arrest, the police may not have been aware that there was a relationship between the parties. As explained above, these cases were identified as DV cases after the arrest. ADA’s and the courts made inquiries about the victim-defendant relationship, and they were able to identify significant numbers of DV cases not initially identified by the police. While we know

¹⁰ New York State law does not recognize “common-law” marriages. However, domestic violence victims and defendants often use this term to describe their relationship, and the NYPD includes it on the arrest report as a category of the victim-defendant relationship.

¹¹ For example, when the defendant is identified as the parent of the victim, we do not know if the child was a minor under the age of 18, or an adult. Similarly, when the defendant is identified as the son or daughter of the victim, we do not know if the victim was elderly or not.

that there was a relationship between the victim and defendant in these additional DV cases, we do not have any information about the nature of the relationship.

The large proportion of missing data limits our ability to use information about victim-defendant relationship in our study. We considered two possible solutions to address this problem. One solution was to exclude cases with missing data from our analyses. However, this would have excluded a large number of cases and reduced the power of our statistical tests (see discussion in subsequent sections). Furthermore, it is likely that cases where data is missing differ in some ways from cases where we have information. Excluding these cases would have biased the results of our analysis. For these reasons, we decided not to exclude cases with missing victim-defendant relationship data from our analyses.

Instead, we opted for a second solution that included the cases with missing data in our analyses and identified them as a separate category. Using this approach, we classified each DV case in one of four relationship categories: 1) married or “common-law” marriage, 2) boyfriend-girlfriend, 3) other family relationship, and 4) missing. We then analyzed our data using these categories. In most analyses we found no meaningful, consistent differences among these categories. This result is not surprising. First, the missing cases category includes cases that should properly be classified in one of the other categories. The large proportion of missing cases probably diminished the explanatory power of this variable. Second, the majority of cases where the relationship is known are classified in one category: married or “common-law” marriage. Under these circumstances, the results we report for all DV cases predominantly reflect the results for the cases in this married/“common-law” category.

Throughout most of this study, we report results for DV cases without differentiating among them on the basis of the type of relationship between the victim and defendant. ***Only where we have found a meaningful, consistent pattern of differences do we report results separately for the four categories of victim-defendant relationship.*** Consequently we do not report results for the victim-defendant relationship in our models predicting the likelihood of conviction and the likelihood of incarceration. We did find meaningful differences in models predicting length of jail sentence, and we discuss these in Section VI below.

In the Non-DV cases in our study, the victim and defendant are not necessarily strangers. The Non-DV category includes two types of cases where the victim and defendant have a relationship with each other. First, some boyfriend-girlfriend cases are not considered DV cases, even under the expanded definition of domestic violence used by NYPD and the courts. Specifically, cases where a boyfriend and girlfriend do not have a child in common and have never lived together are not classified as DV cases by the courts. While these cases are usually considered DV cases based on a social scientific definition of domestic violence, they are not considered DV cases under the operating definition used in New York City’s criminal courts. Second, Non-DV cases also include cases where the victim and defendant are known to each other, but have a non-family

relationship. Neighbors, co-workers, friends, acquaintances, etc. are classified as Non-DV relationships. Our NYPD data indicate that 1% of the Non-DV cases involve cases where the victim and defendant were co-workers or had an employer-employee relationship. No data is available to identify cases where the victim and defendant were neighbors, friends, acquaintances, etc. However, other studies suggest that a significant proportion of Non-DV cases involve these kinds of relationships (Ferraro and Boychuk 1992, Vera Institute of Justice 1977).

Although we have little data about the nature of the relationship between the victim and defendant in Non-DV cases, it is clear that these cannot accurately be described as “stranger” cases. It is for this reason that we have chosen to use the more appropriate term “Non-DV” to describe these cases. How does classifying cases as “Non-DV” when the victim and defendant were known to each other affect our analysis? For cases where the relationship is neighbor, co-worker, acquaintance, etc., we do not believe this poses a serious problem. These relationships are not included in even the broadest definitions of domestic violence. Cases where boyfriend-girlfriend relationships are classified as Non-DV are somewhat more problematic, since many definitions of domestic violence would include these relationships. However, to the extent that we have classified boyfriend-girlfriend relationships in the Non-DV category, our results are likely to minimize the differences between DV and Non-DV cases. If we find differences in spite of this misclassification, we can be confident in our results since the differences would presumably be larger if these cases were classified as DV cases. Furthermore, it is important to remember that we are interested in how the courts process cases that are classified as DV cases by the court system. Our method of identifying DV cases includes only those cases that the court has identified as DV cases. This approach enables us to focus on the DV cases that the court system has earmarked for special attention.

D. Selection of Subsamples

Since our main interest in this study is the comparison of DV to Non-DV cases, we selected cases for analysis from the Third Quarter 1998 Dataset with two goals in mind. First, we wanted to include in the analyses as many cases as possible that were identified by the court system as domestic violence cases based on the relationship between the victim and defendant (as described above). Second, we wanted to include only those cases that would enable us to make valid comparisons between domestic violence cases and non-domestic violence cases. Specifically, we wanted to include as non-domestic violence cases only those cases where the charges were comparable to domestic violence cases. For example, it would not make sense to include drug offenses in our sample, since drug charges are not found in DV cases. Deciding which Non-DV cases have charges that are comparable to those found in DV cases is a challenging and important task. To draw valid conclusions about the nature and extent of differences between DV and Non-DV cases, the analysis must focus on cases that are as comparable as possible, except that the courts have identified some as DV cases and others as Non-DV cases.

To meet these goals, we drew two subsamples from the Third Quarter 1998 Dataset. Cases for these subsamples were selected on the basis of the nature of the offense charged in each case. We used the most severe arraignment charge (based on Penal Law severity) to determine the nature of the offense, since this charge determines how the case is handled in the court system. We did not use the most severe arrest charge, which reflects charging decisions made by the police.

1. Crimes against Persons and Property Subsample

The first subsample, which we call the Crimes Against Persons and Property (CAPP) Subsample, was selected so that we could compare domestic violence to non-domestic violence cases across a wide range of charges. We began by selecting cases for this subsample where there was an alleged attempt to cause injury or where an overt threat of injury was made (Weis 1989). We initially selected all cases that had a top (i.e., most severe) arraignment charge from any of the following New York State Penal Law articles: PL 120 (Assault), PL 130 (Sex Offense), PL 160 (Robbery), PL 260 (Crimes Against Children), or PL 265 (Weapons). Unfortunately, we were not able to include cases disposed in Criminal Court that had top arraignment charges from PL 125 (Homicide), PL 150 (Arson) and PL 135 (Kidnapping).¹² Cases charged with offenses in these Penal Law articles were excluded since there were less than 50 domestic violence cases with top arraignment charges in each of these Penal Law articles—too few cases for reliable multivariate analysis. Recognizing that domestic violence often includes offenses that result in financial and psychological harm, rather than just physical harm, we also selected cases if they had a top arraignment charge from one of the following Penal Law articles: PL 140 (Burglary), PL 145 (Criminal Mischief), PL 155 (Larceny), PL 205 (Escape and Resisting Arrest), PL 215 (Criminal Contempt),¹³ and PL 240 (Public Order Offenses).

Within each Penal Law article, we selected only those cases that had charges that could plausibly include elements comparable to those found in domestic violence cases. For example, cases with a top arraignment charge of Assault in the Third Degree (PL §120.00) were included in the subsample. However cases of Gang Assault in the First Degree (PL §120.07) or Gang Assault in the Second Degree (PL §120.06) were excluded, since it is unlikely that a domestic violence case would include a gang assault charge. Similarly, in PL 240, prostitution charges (PL §240.37) were excluded. These restrictions yielded a subsample of 32,299 cases, including 7,383 domestic violence cases.

We then narrowed the subsample further to identify an appropriate group of cases for the analysis. First, we limited the sample to Summary Arrests (i.e., cases in which the defendant was held in custody pending Criminal Court arraignment), excluding cases where the defendant was issued a Desk Appearance Ticket (DAT) and released by the

¹² Most, but not all, cases charged in these Penal Law articles are sustained as felonies and are disposed in Supreme Court.

¹³ Penal law article 215 includes violations of Orders of Protection.

arresting officer. DAT's are rarely issued in DV cases. We also excluded cases with juvenile defendants (under age 16), cases that did not reach a final disposition by the cutoff date, and cases that were missing data on defendant's criminal history or sex. Finally, we excluded cases that were disposed in Criminal Court on Vehicle and Traffic Law (VTL) or Administrative Code (AC) charges. After these exclusions, the Crimes Against Persons and Property Subsample included 28,110 cases, of which 6,989 (about 25%) were domestic violence cases.¹⁴

2. Assaults Subsample

We also selected a second, smaller subsample from the Crimes Against Persons and Property Subsample. This Assaults subsample includes only those cases that had an assault charge (in Penal Law article 120) as the top arraignment charge. We created the Assaults Subsample for two reasons. First, it provides information about the prototypical DV case. Assaults were by far the largest category of top arraignment charge among DV cases in the Crimes Against Persons and Property Subsample. This finding is consistent with the social science research literature, which has identified assaults as the most common offense associated with domestic violence. Second, the Assaults Subsample enables us to conduct a more focused comparison of the case processing of similar DV and Non-DV cases. The Non-DV cases we have used as the comparison group in the Crimes Against Persons and Property Subsample may include offenses that are qualitatively different from those found in DV cases. Also, as we will see later, the distribution of Non-DV offenses differs significantly from the distribution of DV offenses in the Crimes Against Persons and Property Subsample.

We selected cases for the Assaults Subsample if they had a top arraignment Penal Law charge of PL §120.00 (Assault 3), PL §120.05 (Assault 2), PL §120.10 (Assault 1), PL §120.14 (Menacing 2), PL §120.15 (Menacing 3), PL §110-120.00 (Attempted Assault 3), or PL §110-120.05 (Attempted Assault 2). We excluded cases that had top arraignment charges from PL §110-120.10 (Attempted Assault 1) and PL §120.13 (Menacing 1) since there were less than 50 domestic violence cases charged with these offenses—too few cases for reliable multivariate analysis. The Assaults Subsample includes 9,874 cases, of which 4,455 (about 45%) were domestic violence cases.

¹⁴ Following are the numbers of cases excluded by each restriction (number of DV cases shown in parentheses). Beginning with 32,299 cases (7,383), we excluded 1,861 DAT's (39), 198 juveniles (7), 1,781 cases that did not reach a disposition by the cutoff date (323), 134 cases missing data on criminal history (12), 15 cases missing data on sex (5), and 200 cases that were disposed on VTL or AC charges in Criminal Court (8). Some cases were excluded on multiple grounds (e.g., missing data on criminal history and disposed on VTL charges). These cases are counted only once in this tally.

E. Analytic Issues

1. Limiting Analysis to Criminal Court Cases

The analyses described in subsequent sections of this report are based entirely on *cases that reached a final disposition in Criminal Court*. Our research was originally designed to examine both Supreme Court and Criminal Court cases.¹⁵ However, the overwhelming majority of domestic violence cases reached a final disposition in Criminal Court. In the Crimes Against Persons and Property Subsample, 23% of DV cases and 32% of Non-DV cases were arraigned on at least one felony arraignment charge. This pattern is consistent with studies of other jurisdictions showing that DV cases are less likely to be charged as felonies than Non-DV cases (see discussion in Section I). Furthermore, many of the cases charged as felonies in New York City were not sustained as felonies in court processing. Instead, the felony charges were reduced to misdemeanors, and these cases were processed in Criminal Court without reaching Supreme Court. When we examined the appearance histories of all cases in the Crimes Against Persons and Property Subsample, we found that only 2% (N=171) of DV cases reached a final disposition in Supreme Court. In comparison, 12% (N=2,482) of the Non-DV cases reached a final disposition in Supreme Court. The Assaults Subsample revealed similar patterns. About 16% of DV assault cases and 28% of Non-DV assault cases were arraigned on felony arraignment charges, but only 1% (N=47) of the DV cases and 4% (N=226) of the Non-DV cases were disposed in Supreme Court. In summary, data from both subsamples show that DV cases are less likely than Non-DV cases to have a felony charge as the top arraignment charge, and are also less likely to reach a final disposition in Supreme Court.

Based on these findings, we decided to limit our subsamples to cases that reached a final disposition in Criminal Court. The number of DV cases available for a Supreme Court analysis during this 3-month period is quite small. There are only 171 DV Supreme Court cases in the Crimes Against Persons and Property Subsample, and only 47 in the Assaults Subsample. Furthermore, the description and analysis of Criminal Court dispositions will provide information about virtually all (98% to 99%) of the DV cases prosecuted in New York City. The Criminal Court analyses are based on 25,457 cases in the Crimes Against Persons and Property Subsample, and 9,601 cases in the Assaults Subsample (see Table 2-1).

While it is not feasible to include felony DV cases disposed in Supreme Court in our samples, it is important to acknowledge that this exclusion affects the comparisons between DV and Non-DV cases. As noted above, Non-DV cases are more likely than DV cases in the CAPP Subsample to be charged as felonies and to be disposed in Supreme Court. Our Criminal Court analyses therefore exclude more Non-DV than DV

¹⁵ The Family Courts also have concurrent jurisdiction over certain domestic violence cases. Some DV cases are heard only in Criminal Court, some are heard in both Criminal Court and Family Court, and others are heard only in Family Court. We do not have access to data on DV cases that are heard only in Family Court, and our report draws no conclusions about these cases.

TABLE 2-1
TYPE OF CASE BY SUBSAMPLE
 Third Quarter 1998 Dataset

TYPE OF CASE	SUBSAMPLE	
	Crimes Against Persons and Property Subsample	Assaults Subsample
DV Case	27%	46%
Non-DV Case	73	54
Total, all cases (N of cases)	100% (25,457)	100% (9,601)

cases, and they exclude more Non-DV cases disposed in Supreme Court than DV cases. As a result, the conviction rate, the incarceration rate and the length of jail sentence will all be lower in the Non-DV sample than they would be if the Non-DV Supreme Court cases were included. This will minimize the differences that can be observed between DV and Non-DV cases in the Criminal Court analyses. Since we are expecting to find that DV cases have lower conviction and incarceration rates and shorter jail sentences than Non-DV cases, the exclusion of Supreme Court cases works *against* our hypotheses. To the extent that we find the expected differences between DV and Non-DV cases in spite of these exclusions, we can be confident of our results. Differences between DV and Non-DV cases would be likely to be even larger if we were to examine a pooled sample of both Criminal Court and Supreme Court cases. In the Assaults Subsample, the proportion of Non-DV assault cases disposed in Supreme Court was only slightly higher than the proportion of DV assault cases (4% vs. 1%). The exclusion of assault cases disposed as felonies in Supreme Court is unlikely to affect the results for the Assaults Subsample.

2. Using a Case-based Data File

The dataset analyzed in this study is a *case-based data file* that includes information on all prosecuted arrests that were held for arraignment. Some defendants were arrested two or more times during the Third Quarter of 1998, and information about *each* of their cases is included in the file. This report uses a case-based data file in order to present a comprehensive picture of the processing of all cases that were initiated during the sample period. While the vast majority of defendants have only one case in the case-based data file,¹⁶ it is important to remember that the descriptions and analyses in this report summarize information about cases, not about defendants.

¹⁶ The Crimes Against Persons and Property Subsample includes information about 25,457 cases for 23,831 defendants. Over 94% of these defendants have only one case in the data file,

The use of a case-based file presents some minor problems for statistical analysis. First, the statistical procedures used in this report assume that the units of analysis in the data file are statistically independent of each other. This requires that the characteristics of each case in the data file should not have a fixed relationship to the characteristics of any other case in the data file. When a defendant has two or more cases in the data file, the defendant's ethnicity, sex, age, criminal history, community ties, etc. for one case do have a fixed relationship to that defendant's characteristics in the other case(s). Using a case-based data file therefore violates one of the assumptions of the statistical techniques employed in the report. However, the impact of this violation of assumptions is likely to be minimal. The number of defendants with multiple cases is relatively small, as noted in the previous footnote. Second, when defendants have multiple cases, the outcome of one case may be affected by the outcome of another. For example, a defendant may plead guilty in one case in return for having charges in another case dropped. Prior research suggests that once prior record and case characteristics are controlled for, there is no difference in case outcomes between defendants who had multiple cases and those who did not (Klein et al. 1991). Since our statistical models control for prior record and case characteristics, we expect the impact of this problem on our results to be minimal.

F. Plan of Analysis

This study will begin with an overview of differences between domestic violence and non-domestic violence cases. We will compare DV and Non-DV cases in terms of **three important case outcomes: conviction, whether a jail sentence was imposed, and length of jail sentence (if any)**. We will also examine a variety of defendant and case characteristics: arraignment charges, demographic characteristics, defendant's criminal history, charge characteristics, release recommendation and case processing variables. After this overview, we will present statistical models predicting the likelihood of conviction, likelihood of an incarcerative sentence, and length of jail sentence. These models will assess the influence of defendant and case characteristics on conviction rates, incarceration rates, and average sentence length.

The examination of case outcomes focuses on the three major questions posed in the Introduction to this report:

- 1) How did the case outcomes for DV cases differ from those of comparable Non-DV cases?

about 5% had two cases initiated during the Third Quarter of 1998, and less than 1% had 3 or more cases (the maximum was 7 cases). The Assaults Subsample includes information about 9,601 cases for 9,476 defendants. Almost 99% of these defendants have only one case in the data file, about 1% had two cases initiated during the Third Quarter of 1998, less than 1/10th of 1% had 3 cases, and no defendant had more than 3 cases. In both subsamples, the prevalence of multiple cases is approximately the same for defendants who had one or more domestic violence cases and for those who had no domestic violence cases.

- 2) How did defendant and case characteristics in DV cases differ from those in comparable Non-DV cases?
- 3) Can the differences in case outcomes between DV and Non-DV cases be accounted for by differences in defendant and case characteristics?

Answers to the first and second questions will be provided in the Overview in Section III, where we will report results on case outcomes and defendant and case characteristics for DV and Non-DV cases. The third question will be addressed in Sections IV, V and VI, where we present models predicting likelihood of conviction, likelihood of incarceration and length of jail sentence, respectively. In each of these Sections, we examine a pooled sample of DV and Non-DV cases to determine whether differences between these types of cases are due to differences in defendant characteristics and/or case characteristics.

III. OVERVIEW OF DIFFERENCES BETWEEN DV AND NON-DV CASES

This section of the report provides an overview of the differences between DV and Non-DV cases disposed in New York City Criminal Courts in the third quarter of 1998. We examine these differences for two subsamples. The broadest subsample, Crimes Against Persons and Property, includes cases charged under selected sections of one of 11 Penal Law articles. The narrower Assaults Subsample includes only those cases charged under selected sections of Article 120 of the Penal Law. As noted earlier, the Crimes Against Persons and Property Subsample includes most of the DV cases we identified in the dataset, and provides a comprehensive picture of the full range of DV cases and comparable Non-DV cases. The Assaults Subsample, on the other hand, provides a more focused comparison of DV and Non-DV cases charged with assault, attempted assault or menacing.

A. Case Outcomes: Conviction, Sentence Outcome and Length Of Jail Sentence

1. Crimes Against Persons and Property Subsample

We begin with the Crimes Against Persons and Property Subsample by examining three types of case outcomes: conviction, sentence outcome for those who are convicted, and the length of jail sentence for those who are incarcerated.

In New York State, cases disposed in Criminal Court can result in one of several final dispositions:¹⁷ a plea of guilty, a finding of guilty after trial, an acquittal after trial, dismissal,¹⁸ 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 treatment program, such as a batterer intervention program). When these conditions are not fulfilled, or if the defendant is re-arrested within 6 months (12 months in the case of a family offense), the case can be re-opened and restored to the calendar for another, possibly more severe, disposition. ACD's do not result in a criminal record unless the defendant violates the conditions of the ACD and is subsequently convicted.

As shown in Table 3-1, the overall conviction rate (defined as the percentage of arraigned cases that resulted in conviction) for all cases disposed in Criminal Court in this sample was 51%. However, there was a sharp difference between DV and Non-DV cases: only 35% of the DV cases resulted in a conviction, compared with 56% of the

¹⁷ Cases whose last disposition in Criminal Court resulted in a transfer to Supreme Court or Family Court were excluded from the analyses because these cases continued in another court. A small number of cases were briefly sent to Supreme Court before being returned to Criminal Court for a final disposition. We count these cases as disposed in Criminal Court.

¹⁸ We include as dismissals cases that are disposed as "sealed" as well as cases that are "dismissed—not sealed" but are never subsequently brought back to court.

TABLE 3-1
CASE OUTCOMES IN CRIMINAL COURT BY TYPE OF CASE
CRIMES AGAINST PERSONS AND PROPERTY SUBSAMPLE

Third Quarter 1998 Dataset

CASE OUTCOMES	TYPE OF CASE		Total, All Cases
	DV cases	Non-DV cases	
CONVICTION OUTCOME			
Not convicted	65%	44%	49%
Convicted	35	56	51
Total	100%	100%	100%
(N of cases)	(6,818)	(18,639)	(25,457)
SENTENCE OUTCOME			
Not sentenced to jail	82%	55%	60%
Sentenced to jail	18	45	40
Total, all cases	100%	100%	100%
(N of cases)	(2,383)	(10,511)	(12,894)
LENGTH OF JAIL SENTENCE			
Mean number of days sentenced to jail	61	20	24
(N of cases)	(437)	(4,707)	(5,144)

Non-DV cases. This 21 percentage point difference in conviction rates is statistically significant.¹⁹

¹⁹ The test of statistical significance assesses the probability that a percentage point difference or difference in means could have occurred by chance alone. Larger differences and differences based on larger samples are more likely to be statistically significant. In this report, following standard convention, significance levels of .05 or less are treated as statistically significant. In other words, when a difference has a 5% or less probability of having occurred by chance, we conclude that the difference is statistically significant. We use the more conservative “two-tail” test (which makes no assumption about the direction of the difference) rather than the “one-tail” test (which assumes that one of the percentages or means is larger than the other, e.g., that the percentage for Non-DV cases is larger than for DV cases).

Because ACD's are sometimes used to impose conditions (such as completion of a treatment program) on a defendant, we also examined dispositions within the "not convicted" category (data not shown). Overall, about 20% of cases resulted in an ACD, while 29% were dismissed. Non-DV cases were slightly more likely than DV cases to have a final disposition of ACD (21% vs. 19%). However DV cases were more than twice as likely as Non-DV cases to be dismissed. Over 46% of DV cases were dismissed, while less than 23% of Non-DV cases were dismissed.

Next, we consider differences in sentence outcome for those cases that resulted in conviction. About 40% of those convicted in Criminal Court were sentenced to jail (Table 3-1). We define a jail sentence to include both "time served" sentences and definite sentences (i.e., sentences for a specified number of days). Again, there were sharp differences between DV and Non-DV cases. Defendants were sentenced to jail in only 18% of DV cases, compared to 45% of Non-DV cases. This 27 percentage point difference is statistically significant. Defendants classified as "not sentenced to jail" received a variety of sentences, including conditional discharge, probation and fines.²⁰ The vast majority of defendants who did not receive a jail sentence were given a conditional discharge (data not shown). Among cases that resulted in conviction, defendants received a conditional discharge in over 72% of DV cases and 47% of Non-DV cases.

The final case outcome we examine is length of jail sentence. We measured length of sentence by determining how many days the defendant actually spent in jail for his or her sentence in the case. For "time served" sentences, we used information about release status to measure the amount of time the defendant was incarcerated between arrest and final disposition. For definite sentences, we used the number of days of jail imposed by the court. We then subtracted one-third of the length of the definite sentence to account for the time allowance that most defendants receive for "good behavior," as provided by PL §70.30(4b). For example, a 30-day definite sentence was coded as 20 days in jail, after allowing for a 10-day reduction in the sentence.

The average length of jail sentence received by incarcerated defendants in Criminal Court was 24 days (Table 3-1). Interestingly, although defendants in DV cases were less likely to be convicted, and once convicted, less likely to be sentenced to jail, sentences for DV cases were, on average, *longer* than for Non-DV cases. The mean sentence length for defendants in DV cases was 61 days, compared with 20 days for Non-DV cases, a statistically significant difference of 41 days. This finding is surprising, since prior research led us to expect that jail sentences would be shorter in DV cases than Non-DV cases. One possibility is that the exclusion of many Non-DV felony cases disposed in Supreme Court has removed from our sample more serious Non-DV cases that would have received longer sentences. Another possibility is that DV cases that resulted in

²⁰ Defendants who received a sentence of "fine or incarceration" were counted among those who were not sentenced to jail, since nearly all of them presumably paid the fine to avoid jail. This sentence was rarely imposed in Non-DV cases, and virtually never imposed in DV cases.

conviction and incarceration were more likely than Non-DV cases to involve offenses that the court viewed as more serious. These possibilities will be explored further when we present our models predicting length of jail sentence (see Section VI below).

2. Assaults Subsample

The examination of case outcomes for the Assaults Subsample reveals a general pattern of findings similar to those reported above for Crimes Against Persons and Property. However, the magnitude of the differences between DV and Non-DV cases is smaller.

Starting with conviction rates, we find that overall, 35% of cases arraigned on assault charges in Criminal Court resulted in conviction (Table 3-2). This rate is considerably lower than the 51% conviction rate reported above for the CAPP Subsample. This difference in conviction rates suggests that assault cases are more difficult to prosecute than other crimes against persons and property. About 32% of DV cases resulted in conviction, compared with 38% of the Non-DV cases. This 6 percentage point difference, while it is statistically significant, is substantially smaller than the 21 percentage point difference we found for the Crimes Against Persons and Property Subsample.

Within the “not convicted” category, we find that overall, 23% of assault cases resulted in an ACD and 42% were dismissed (data not shown). DV cases were less likely than Non-DV cases to result in an ACD (19% vs. 26%), and more likely to end in dismissal (49% vs. 36%).

Overall, among those convicted in the Assaults Subsample,²¹ 21% were sentenced to jail (Table 3-2). About 14% of the defendants in DV cases and 25% of the defendants in Non-DV cases were sentenced to jail. Again, this 11 percentage point difference between DV and Non-DV cases is statistically significant, but it is smaller than the 27 percentage point difference found in the Crimes Against Persons and Property Subsample. The vast majority of defendants who did not receive a jail sentence were given a conditional discharge (data not shown). About 78% of defendants convicted in DV cases and 64% of defendants convicted in Non-DV cases received conditional discharges.

Finally, we found that among those arraigned on assault charges who were convicted and sentenced to jail, the mean sentence length was 42 days (see Table 3-2). Sentences for DV cases were longer than for Non-DV cases: 56 days versus 37

²¹ As described in Section II, the Assaults Subsample includes cases with a *top arraignment charge of Assault (PL 120)*. Due to charge reduction, plea bargaining, new evidence, etc., these cases may result in convictions on charges other than assault charges. The results we report for incarceration and sentence length reflect a wide range of conviction charges found in our study for the cases that were arraigned on assault charges.

TABLE 3-2
CASE OUTCOMES IN CRIMINAL COURT BY TYPE OF CASE
ASSAULTS SUBSAMPLE

Third Quarter 1998 Dataset

CASE OUTCOMES	TYPE OF CASE		Total, All Cases
	DV cases	Non-DV cases	
CONVICTION OUTCOME			
Not convicted	68%	62%	65%
Convicted	32	38	35
Total	100%	100%	100%
(N of cases)	(4,410)	(5,191)	(9,601)
SENTENCE OUTCOME			
Not sentenced to jail	86%	75%	79%
Sentenced to jail	14	25	21
Total, all cases	100%	100%	100%
(N of cases)	(1,394)	(1,967)	(3,365)
LENGTH OF JAIL SENTENCE			
Mean number of days sentenced to jail	56	37	42
(N of cases)	(197)	(495)	(692)

days, on average, a statistically significant difference of 19 days. This difference is considerably smaller than the 41 day difference reported above for the Crimes Against Persons and Property Subsample. Nevertheless, the direction of the difference is surprising, since we expected DV cases to receive shorter sentences. This finding is unlikely to be due to the exclusion from the Assaults Subsample of felony cases disposed in Supreme Court since the rate of exclusion was only slightly higher for Non-DV cases than for DV cases (see discussion in Section II above).

The case outcomes for the Assaults Subsample show the same pattern of results found for the larger Crimes Against Persons and Property Subsample. DV cases were less likely to result in conviction and convicted defendants in DV cases were less likely to be sentenced to jail, but more likely to receive longer jail sentences when incarcerated. However, these differences are smaller in the Assaults Subsample than in the Crimes Against Persons and Property Subsample. This finding has at least two important

implications for the study. First, it appears that examining data on assault cases provides us with a set of Non-DV cases that are more comparable to DV cases. Among cases charged as assaults, the nature of the offense is likely to be quite similar for DV and Non-DV cases.²² The Crimes Against Persons and Property Subsample includes a wide variety of offenses, some of which are much more common among Non-DV than DV cases (see discussion of control variables below). Second, it will be important in the analyses of Crimes Against Persons and Property to control for the type of offense charged. We will use the Penal Law article of the top arraignment charge as our measure of the type of offense. We expect that differences across the Penal Law articles will account for a significant portion of the differences between DV and Non-DV cases in this subsample.

Since we have found important differences in case outcomes between the Crimes Against Persons and Property Subsample and the Assaults Subsample, we present results for both subsamples throughout the remainder of this report. The Crimes Against Persons and Property Subsample enables us to focus on the full range of DV cases identified by the courts. The Assaults Subsample enables us to focus on the prototypical DV case—a case where an assault is the top arraignment charge. For all models based on the Crimes Against Persons and Property Subsample in Sections IV, V, and VI of the report, we control for Penal Law article of top arraignment charge. This will enable us to control for differences between DV and Non-DV cases that are due to differences in the type of offense charged at arraignment.

B. Defendant and Case Characteristics

We now turn to a consideration of differences between DV and Non-DV cases in terms of defendant and case characteristics. These characteristics will be used in subsequent sections of the report as predictors of case outcomes. Since we will be using these characteristics to determine if they can account for differences between DV and Non-DV cases, this section of the report will highlight areas where DV and Non-DV cases differ from each other. We will first examine results for the Crimes Against Persons and Property Subsample, followed by results for the Assaults Subsample. As noted in the discussion of case outcomes, we expect the differences between DV and Non-DV cases to be larger in the Crimes Against Persons and Property Subsample than in the Assaults Subsample.

²² Of course, the context in which the offense occurred may differ in important ways between DV and Non-DV cases. For example, DV assaults are more likely to occur in the home than Non-DV assaults, and to be repeated with the same victim. These types of differences between DV and Non-DV assaults define some of the essential differences between DV and Non-DV cases that may have an impact on case outcomes.

1. Crimes Against Persons and Property Subsample

Control Variables

We begin this overview with an examination of two variables that will be used as control variables in the statistical models to be discussed in subsequent sections: arraignment charge Penal Law article and borough. In the Crimes Against Persons and Property subsample there were important differences in the distribution of offenses for DV and Non-DV cases (Table 3-3).²³ The majority of DV cases, 65%, had an assault charge as the top arraignment charge. An additional 15% of DV cases had criminal contempt charges as the top arraignment charge. Criminal contempt charges are commonly used in DV cases when the defendant is charged with violating an order of protection. Among Non-DV cases, assault charges were more common than any other charge, but constituted less than one-third of all charges (29%). Larceny (23%) and burglary (20%) were also common charges in Non-DV cases. Differences in the distribution of offenses may be important reasons for the differences in case outcomes reported above for DV and Non-DV cases. The models predicting case outcomes will therefore include arraignment charge Penal Law article as a control variable.

The distribution of cases by borough also differed for DV and Non-DV cases. In this subsample, 43% of the DV cases were in Brooklyn, compared with only 26% of Non-DV cases. By contrast, only 14% of DV cases were in Manhattan, compared with 32% of Non-DV cases. The percentages of DV and Non-DV cases were quite similar in the other boroughs: Queens, the Bronx, and Staten Island. The lower percentage of DV cases in Manhattan probably reflects the limitations on our ability to identify DV cases in Manhattan during the study period. As described earlier, the only way we could identify these cases was to use DV hearing type at arraignment. In other boroughs, we were able to identify additional DV cases that were sent to specialized DV parts, even though these cases did not have a DV hearing type. The high percentage of DV cases in Brooklyn (over two-fifths of this subsample of DV cases) could reflect the influence of several factors: greater prevalence of domestic violence in Brooklyn than in other boroughs, greater reporting of domestic violence incidents to the police, greater likelihood of arrest in DV cases, a better system for identifying DV cases once an arrest is made, and/or higher rates of prosecution of DV cases. The most likely explanation, based on our discussions with court personnel, is that the Brooklyn DA's office is more willing to go forward with DV cases where the victim is uncooperative. These borough differences are intriguing, and will be the subject of a subsequent report. In this report, we control for borough differences in the analyses of case outcomes, but we do not discuss them at length.

²³ It is important to remember that the results reported here are based on alleged offenses that came to the attention of the police and that led to an arrest and prosecution. The distribution of offenses might be quite different if alleged offenses not reported to the police, offenses not leading to arrest, and offenses not leading to prosecution were included in the sample. A discussion of these additional offenses is beyond the scope of the current study.

TABLE 3-3
CONTROL VARIABLES BY TYPE OF CASE
CRIMES AGAINST PERSONS AND PROPERTY SUBSAMPLE

Third Quarter 1998 Dataset

CONTROL VARIABLES	TYPE OF CASE		Total, All Cases
	DV cases	Non-DV cases	
ARRAIGNMENT CHARGE			
PENAL LAW ARTICLE			
Assault (PL 120)	65%	29%	39%
Sex Offense (PL 130)	1	2	2
Burglary (PL 140)	3	20	15
Criminal Mischief (PL 145)	2	4	4
Larceny (PL 155)	2	23	18
Robbery (PL 160)	2	6	5
Escape (PL 205)	1	5	4
Criminal Contempt (PL 215)	15	2	6
Harassment (PL 240)	4	4	4
Crimes Against Children (PL 260)	3	1	1
Weapons (PL 265)	2	4	4
Total, all cases	100%	100%	100% ¹
(N of cases)	(6,818)	(18,639)	(25,457)
BOROUGH			
Brooklyn	43%	26%	31%
Bronx	18	18	18
Manhattan	14	32	28
Queens	20	20	20
Staten Island	5	3	4
Total, all cases	100%	100% ¹	100% ¹
(N of cases)	(6,818)	(18,639)	(25,457)

¹ Percentages do not sum to 100% due to rounding error.

Defendant's Demographic Characteristics

Three demographic variables are included in the analyses: gender, ethnicity and age. Women were less likely to be defendants in DV cases than in Non-DV cases (16% vs. 21%; see Table 3-4). The distribution of defendants by ethnicity was virtually identical for DV and Non-DV cases. Just over half (51%) of all defendants were Black, 30% were Hispanic, 14% were White, and 5% were classified as Other or missing.²⁴ There were, however, age differences: defendants in DV cases were older, on average, than defendants in Non-DV cases. Only 10% of defendants in DV cases, compared with 22% of defendants in Non-DV cases, were between the ages of 16 and 20. About 60% of defendants in DV cases were age 30 or over, compared with 51% of defendants in Non-DV cases.

Defendant's Criminal History

Defendants in DV cases were less likely to have a prior adult criminal record than defendants in Non-DV cases (Table 3-5). While 58% of defendants in DV cases had a prior adult arrest record at the time of their arrest in the Third Quarter of 1998, 64% of defendants in Non-DV cases had a prior arrest record. These differences in prior record were also reflected in prior criminal convictions. Defendants in DV cases averaged 1.01 prior misdemeanor convictions and 0.36 prior felony convictions, compared to 2.97 prior misdemeanor convictions and 0.47 prior felony convictions for defendants in Non-DV cases.²⁵ These criminal history differences may have important consequences for case outcomes. The models of the likelihood of conviction, likelihood of incarceration, and length of jail sentence will assess the extent to which criminal history variables account for differences in case outcomes for DV and Non-DV cases.

Arrest and Arraignment Charge Characteristics

In addition to the arraignment charge Penal Law article, we examined several additional charge characteristics. The first charge variable considered is the number of arrest charges. (CJA's database includes information on up to 4 arrest charges, whereas we only have information about the top (i.e., most severe) arraignment charge.) The average number of arrest charges was slightly lower for DV cases than for Non-DV cases (1.82 vs. 2.01) (see Table 3-6). While the implications of this difference are not entirely clear, we hypothesize that cases with more arrest charges are likely to be more serious

²⁴ Information on ethnicity was missing for 51 cases.

²⁵ Information about the number of prior misdemeanor convictions and number of prior felony convictions is based on the CJA measures of these variables, except that when CJA data were missing, information from DCJS was substituted when available (see description of dataset in Section II). CJA's measure of number of prior felony convictions indicated that some defendants had more than 7 prior felony convictions. Since this seemed implausible, we examined these cases more closely and found that CJA's count was inaccurate because of data entry errors and other problems. For these cases, we used the DCJS measure, which had a more plausible count.

TABLE 3-4
DEFENDANT'S DEMOGRAPHIC CHARACTERISTICS BY TYPE OF CASE
CRIMES AGAINST PERSONS AND PROPERTY SUBSAMPLE

Third Quarter 1998 Dataset

DEFENDANT'S DEMOGRAPHIC CHARACTERISTICS	TYPE OF CASE		Total, All Cases
	DV cases	Non-DV cases	
GENDER			
Male	84%	79%	80%
Female	16	21	20
Total, all cases (N of cases)	100% (6,818)	100% (18,639)	100% (25,457)
ETHNICITY			
Black	50%	51%	51%
White	13	14	14
Hispanic	32	30	30
Other, non-Hispanic	5	5	5
Total, all cases (N of cases)	100% (6,818)	100% (18,639)	100% (25,457)
AGE CATEGORY			
Age 16-20	10%	22%	19%
Age 21-29	30	27	28
Age 30-39	36	31	32
Age 40 and older	24	20	21
Total, all cases (N of cases)	100% (6,818)	100% (18,639)	100% (25,457)

TABLE 3-5
DEFENDANT'S CRIMINAL HISTORY BY TYPE OF CASE
CRIMES AGAINST PERSONS AND PROPERTY SUBSAMPLE

Third Quarter 1998 Dataset

DEFENDANT'S CRIMINAL HISTORY	TYPE OF CASE		Total, All Cases
	DV cases	Non-DV cases	
PRIOR ARREST HISTORY			
First arrest	42%	36%	37%
Has prior arrests	58	64	63
Total, all cases (N of cases)	100% (6,818)	100% (18,639)	100% (25,457)
NUMBER OF PRIOR CRIMINAL CONVICTIONS			
Mean number of prior misdemeanor convictions	1.01	2.97	2.45
Mean number of prior felony convictions	0.36	0.47	0.44
(N of cases)	(6,818)	(18,639)	(25,457)

cases with stronger evidence.

To measure the seriousness of the charges against the defendant, we categorized each case by severity of the top arraignment charge: whether the case was charged as a violation, misdemeanor or felony.²⁶ Differences in charge severity between DV and Non-DV cases were relatively small, with DV cases slightly more likely than Non-DV cases to be charged as misdemeanors (78% vs. 74%) than as either violations or felonies (Table 3-6). Although the differences reported here are small, it is important to remember that we are examining only those cases disposed in Criminal Court. Recall that Non-DV cases were much more likely to have felony arraignment charges, and were much more likely to be sustained as felonies and to reach a final disposition in Supreme Court (and therefore to be excluded from our analysis). Differences between DV and Non-DV cases in

²⁶ Recall that while many cases in this subsample were *charged* as felonies, none of the cases in this subsample were *disposed* as felonies.

TABLE 3-6
ARREST AND ARRAIGNMENT CHARGE CHARACTERISTICS
BY TYPE OF CASE
CRIMES AGAINST PERSONS AND PROPERTY SUBSAMPLE

Third Quarter 1998 Dataset

ARREST AND ARRAIGNMENT CHARGE CHARACTERISTICS	TYPE OF CASE		Total, All Cases
	DV cases	Non-DV cases	
MEAN NUMBER OF ARREST CHARGES	1.82	2.01	1.96
(N of cases)	(6,818)	(18,639)	(25,457)
SEVERITY OF ARRAIGNMENT CHARGE			
Violation	1%	3%	2%
Misdemeanor	78	74	75
Felony	22	24	23
Total, all cases	100% ¹	100% ¹	100%
(N of cases)	(6,818)	(18,639)	(25,457)
CHANGE IN CHARGE SEVERITY FROM ARREST TO ARRAIGNMENT			
Charge severity reduced	24%	25%	24%
No change in severity	71	71	71
Charge severity increased	5	4	4
Total, all cases	100%	100%	100% ¹
(N of cases)	(6,818)	(18,639)	(25,457)

¹ Percentages do not sum to 100% due to rounding error.

arraignment charge severity would be more apparent in a combined analysis of Criminal Court and Supreme Court cases. We would not expect such differences to be as strong in this analysis, which is restricted to cases disposed in Criminal Court.

To predict case outcomes, particularly the likelihood of conviction, it is important to know the strength of the evidence in the case. Unfortunately, such data are rarely available in analyses of case processing. We were, however, able to identify some indirect proxy measures of the strength of evidence. To evaluate the strength of the

evidence presented by the police to the DA, we examine a measure of the change in charge severity between the top arrest charge and the top Criminal Court arraignment charge. Charge severity was measured on a scale ranging from 1 (violation) to 7 (B felony). If the severity of the top arraignment charge was lower than the severity of the top arrest charge (e.g., a D felony charge at arraignment vs. a C felony charge at arrest, a B misdemeanor charge at arraignment vs. an A misdemeanor charge at arraignment, etc.), then we characterized the case as having had a reduction in charge severity. When charge severity is reduced between arrest and arraignment, this is a sign that the evidence in the case may be weak. If, on the other hand, the severity of the top arraignment charge was higher than the severity of the top arrest charge (e.g., an E felony charge at arraignment vs. an A misdemeanor charge at arrest, a B felony charge at arraignment vs. a C felony charge at arrest, etc.), we characterized the case as having had an increase in charge severity. Approximately 24% of all cases had a charge reduction between arrest and arraignment, while about 4% had a charge increase (see Table 3-6). These results were nearly identical for DV and Non-DV cases, suggesting that prosecutorial changes in charge severity between arrest and arraignment were not affected by whether the case was a DV case. When prosecutors evaluated the arrest charges and made decisions about whether to reduce the severity of charges, they did not treat DV cases more leniently than Non-DV cases.

Case Processing Characteristics

Next, we consider several case processing variables. We begin by examining the CJA release recommendation. CJA interviews about 96% of the defendants held for arraignment in New York City. Using information from the interviews, CJA assesses the strength of the defendant's New York area community ties and provides a release recommendation to the court at the time of arraignment. Since defendants with strong community ties may be likely to gain a more favorable case disposition, we include CJA's release recommendation in the analyses. The release recommendation variable was coded in 4 categories: 1) recommended or qualified recommendation, 2) not recommended due to weak New York City area community ties, 3) bench warrant attached to NYSID²⁷ and 4) other or missing. The "other" category includes defendants who were charged with bail jumping, whose NYSID's were unavailable, whose interviews were incomplete or conducted for information only (i.e., charged with homicide or attempted homicide), or who were charged as juvenile offenders. The "missing" category includes defendants who were not interviewed by CJA. For further information about these categories, the CJA interview and CJA's release recommendation, see NYC Criminal Justice Agency (2000).

Of particular interest is whether there were differences between defendants in DV and Non-DV cases in the type of release recommendation they received. As shown in Table 3-7, 62% of defendants in DV cases received a "recommended or qualified

²⁷ As noted earlier, a NYSID number is a New York State Identification number assigned to a defendant's fingerprints.

TABLE 3-7
CASE PROCESSING CHARACTERISTICS BY TYPE OF CASE
CRIMES AGAINST PERSONS AND PROPERTY SUBSAMPLE

Third Quarter 1998 Dataset

CASE PROCESSING CHARACTERISTICS	TYPE OF CASE		Total, All Cases
	DV cases	Non-DV cases	
RELEASE RECOMMENDATION			
Recommended or qualified Recommendation	62%	48%	52%
No recommendation: Weak NYC Area Ties	26	33	31
Bench Warrant attached to NYSID	7	12	10
Other or missing	5	7	6
Total, all cases	100%	100%	100% ¹
(N of cases)	(6,818)	(18,639)	(25,457)
CASE DISPOSED AT ARRAIGNMENT			
Case not disposed at arraignment	97%	59%	70%
Case disposed at arraignment	3	41	30
Total, all cases	100%	100%	100%
(N of cases)	(6,818)	(18,639)	(25,457)
DEFENDANT EVER RELEASED²			
Never released	13%	18%	16%
Released	87	82	84
Total, all cases	100%	100%	100%
(N of cases)	(6,594)	(11,057)	(17,651)
CHARGE SEVERITY REDUCED BETWEEN ARRAIGNMENT AND CONVICTION³			
Charge severity not reduced	17%	36%	33%
Charge severity reduced	83	64	67
Total, all cases	100%	100%	100%
(N of cases)	(2,383)	(10,511)	(12,894)

Table Continues on Next Page

TABLE 3-7, CONTINUED
CASE PROCESSING CHARACTERISTICS BY TYPE OF CASE
CRIMES AGAINST PERSONS AND PROPERTY SUBSAMPLE

Third Quarter 1998 Dataset

CASE PROCESSING CHARACTERISTICS	TYPE OF CASE		Total, All Cases
	DV cases	Non-DV cases	
SEVERITY OF CONVICTION CHARGE³			
A misdemeanor	28%	42%	39%
B misdemeanor	13	8	9
Violation	59	50	52
Total, all cases	100%	100%	100%
(N of cases)	(2,383)	(10,511)	(12,894)
MEAN NUMBER OF WEEKS FROM ARRAIGNMENT TO DISPOSITION			
(N of cases)	12 (6,818)	8 (18,639)	9 (25,457)

¹ Percentages do not sum to 100% due to rounding error.

² Data presented only for cases that were not disposed at arraignment.

³ Data presented only for cases that resulted in conviction.

recommendation,” compared with 48% of defendants in Non-DV cases. Defendants in DV cases were less likely to have a release recommendation of “not recommended: weak NYC area ties” (26%) or “bench warrant attached to NYSID” (7%) compared with defendants in Non-DV cases (33% and 12% respectively).

DV cases were much less likely to be disposed at arraignment (3%) than Non-DV cases (41%) (Table 3-7). This is a striking difference, and reflects the different policies applied to these two types of cases. Our discussions with court personnel indicate that ADA’s are generally not permitted to agree to dispositions at arraignment in DV cases. The policy is to gather more information on these cases and to keep them active as a means of preventing the defendant from committing further acts of domestic violence. On the other hand, ADA’s are actively encouraged to dispose of Non-DV cases at arraignment when it seems appropriate to do so. We believe these policies were prevalent citywide during the third quarter of 1998, with one major exception. ADA’s in Queens were permitted to agree to dispositions at arraignment in DV cases where the victim was

not an intimate partner of the defendant. About 11% of DV cases in Queens were disposed at arraignment (data not shown).

Among cases not disposed at arraignment, DV cases were only slightly more likely to lead to release of the defendant than Non-DV cases (87% vs. 82%, as reported in Table 3-7).

For the models predicting likelihood of incarceration and length of jail sentence, we will examine the effect of additional case processing variables related to the conviction. As reported in Table 3-7, DV cases were much more likely to have the severity of charges reduced between arraignment and conviction (83% vs. 64%). The severity of the conviction charge was also lower for DV cases than for Non-DV cases. Defendants in DV cases were more likely to be convicted of a violation (59% vs. 50%) and less likely to be convicted of an A misdemeanor (28% vs. 42%) than defendants in Non-DV cases. The findings on charge reduction and severity of conviction charge are especially striking, since as we noted earlier, Non-DV cases were slightly more likely than DV cases to be charged as felonies at arraignment. Now we find that charge reduction is more common, and conviction charges are less severe, in DV cases than in Non-DV cases. These findings suggest that greater plea bargaining concessions were needed to obtain a conviction and they provide support for the argument that DV cases are generally perceived as weaker than Non-DV cases.

The models also include a measure of case processing time. DV cases reached a final disposition 4 weeks later, on average, than Non-DV cases (12 weeks for DV cases vs. 8 weeks for Non-DV cases, as reported in Table 3-7). This difference is due to the greater likelihood that Non-DV cases were disposed at arraignment (see discussion above). When the analysis is limited to cases that were not disposed at arraignment, case-processing time was 12 weeks for both DV and Non-DV cases (data not shown).

2. Assaults Subsample

We next consider the differences between DV and Non-DV cases in the Assaults Subsample. We review the same variables discussed above for the Crimes Against Persons and Property Subsample. Since the variables have been discussed at length above, we focus here on highlighting the differences.

Control Variables

We begin this overview by examining the distribution of specific charges within Article 120 of the Penal Law (Table 3-8). DV assault cases were much more likely to be charged as Assault in the 3rd Degree than Non-DV assault cases (65% vs. 50%). The next most common arraignment charges for both DV and Non-DV cases were Assault in the 2nd Degree and Menacing in the 2nd Degree.

TABLE 3-8
CONTROL VARIABLES BY TYPE OF CASE
ASSAULTS SUBSAMPLE

Third Quarter 1998 Dataset

CONTROL VARIABLES	TYPE OF CASE		Total, All Cases
	DV cases	Non-DV cases	
ARRAIGNMENT CHARGE PENAL LAW ARTICLE			
Assault 3	65%	50%	57%
Assault 2	14	22	18
Assault 1	0	2	2
Menacing 3	3	2	2
Menacing 2	14	21	18
Attempted Assault 3	3	2	2
Attempted Assault 2	1	1	1
Attempted Assault 1	0	0	0
Total, all cases) (N of cases)	100% (4,410)	100% (5,191)	100% (9,601)
BOROUGH			
Brooklyn	45%	33%	38%
Bronx	15	14	15
Manhattan	15	25	20
Queens	21	25	23
Staten Island	4	3	4
Total, all cases (N of cases)	100% (4,410)	100% (5,191)	100% (9,601)

Reflecting the pattern of results for the Crimes Against Persons and Property Subsample, the distribution of cases by borough differed for DV and Non-DV cases (Table 3-8). In the Assaults Subsample, 45% of DV cases resulted from arrests in Brooklyn compared with only 33% of Non-DV cases. Non-DV assault cases were more likely to originate in Manhattan (25% vs. 15%), probably reflecting weakness in our ability to identify DV cases in Manhattan, as discussed above. DV assault cases were slightly less likely to originate in Queens than Non-DV assault cases.

Defendant's Demographic Characteristics

The distribution of assault cases by sex, ethnicity and age was virtually identical to the distribution of cases in the Crimes Against Persons and Property Subsample (compare Tables 3-9 and 3-4). Interestingly, the percentage of women charged with assault was virtually the same as the percentage of women charged with all Crimes Against Persons and Property, and this pattern was reflected in the distribution of both DV and Non-DV cases. There were virtually no differences between DV and Non-DV cases in the distribution of ethnicity. As we found in the Crimes Against Persons and Property Subsample, defendants in DV assault cases tended to be older than those in Non-DV assault cases.

Defendant's Criminal History

The differences in criminal history between defendants in DV and Non-DV cases were smaller for the Assaults Subsample than for the Crimes Against Persons and Property Subsample (compare Tables 3-10 and 3-5). There were no meaningful differences between DV and Non-DV cases in the percentage of cases for whom this was a first arrest or in the mean number of prior felony convictions. Defendants in DV cases had a slightly lower number of prior misdemeanor convictions, on average, than defendants in Non-DV cases.

Arrest and Arraignment Charge Characteristics

In the Assaults Subsample, the mean number of arrest charges was higher for Non-DV cases than DV cases (2.11 vs. 1.83) (see Table 3-11). Interestingly, only 15% of DV assaults were charged as felonies (Assault 1, Assault 2, Attempted Assault 1, and Attempted Assault 2), compared to 25% of Non-DV assaults. As discussed in Section II of this report, Non-DV assaults were slightly more likely (4% vs. 1% for DV assaults) to be sustained as felonies and to reach a final disposition in Supreme Court. If Supreme Court cases were added to our sample, the gap between DV and Non-DV cases in the proportion charged as felonies would be even larger. This finding provides additional confirmation that DV cases were less likely to be charged as felonies than Non-DV cases. Whether this reflects differences in the nature of the assaults alleged to have been committed, or a bias toward treating DV cases more leniently than comparable Non-DV assaults cannot be determined from the data. Charge reduction between arrest and arraignment was more likely for Non-DV assault cases than for DV assault cases (39% vs. 24%). In spite of this difference, Non-DV cases were much more likely than DV cases to have felony arraignment charges, suggesting that much of the charge reduction between arrest and arraignment was from a more severe to a less severe felony charge.

TABLE 3-9
DEFENDANT'S DEMOGRAPHIC CHARACTERISTICS BY TYPE OF CASE
ASSAULTS SUBSAMPLE

Third Quarter 1998 Dataset

DEFENDANT'S DEMOGRAPHIC CHARACTERISTICS	TYPE OF CASE		Total, All Cases
	DV cases	Non-DV cases	
GENDER			
Male	83%	78%	80%
Female	17	22	20
Total, all cases (N of cases)	100% (4,410)	100% (5,191)	100% (9,601)
ETHNICITY			
Black	50%	51%	51%
White	12	13	12
Hispanic	32	29	30
Other, non-Hispanic	6	7	7
Total, all cases (N of cases)	100% (4,410)	100% (5,191)	100% (9,601)
AGE CATEGORY			
Age 16-20	10%	21%	16%
Age 21-29	30	31	31
Age 30-39	35	28	31
Age 40 and older	24	20	22
Total, all cases (N of cases)	100% ¹ (4,410)	100% (5,191)	100% (9,601)

¹ Percentages do not sum to 100% due to rounding error.

TABLE 3-10
DEFENDANT'S CRIMINAL HISTORY BY TYPE OF CASE
ASSAULTS SUBSAMPLE

Third Quarter 1998 Dataset

DEFENDANT'S CRIMINAL HISTORY	TYPE OF CASE		Total, All Cases
	DV cases	Non-DV cases	
PRIOR ARREST HISTORY			
First arrest	47%	46%	46%
Has prior arrests	53	54	54
Total, all cases (N of cases)	100% (4,410)	100% (5,191)	100% (9,601)
NUMBER OF PRIOR CRIMINAL CONVICTIONS			
Mean number of prior misdemeanor convictions	.84	1.37	1.12
Mean number of prior felony convictions	.34	.35	.34
(N of cases)	(4,410)	(5,191)	(9,601)

TABLE 3-11
ARREST AND ARRAIGNMENT CHARGE CHARACTERISTICS
BY TYPE OF CASE
ASSAULTS SUBSAMPLE

Third Quarter 1998 Dataset

ARREST AND ARRAIGNMENT CHARGE CHARACTERISTICS	TYPE OF CASE		
	DV cases	Non-DV cases	Total, All Cases
MEAN NUMBER OF ARREST CHARGES	1.83	2.11	1.98
(N of cases)	(4,410)	(5,191)	(9,601)
SEVERITY OF ARRAIGNMENT CHARGE			
Misdemeanor	85	75	80
Felony	15	25	20
Total, all cases	100%	100%	100%
(N of cases)	(4,410)	(5,191)	(9,601)
CHANGE IN CHARGE SEVERITY FROM ARREST TO ARRAIGNMENT			
Charge severity reduced	24%	39%	32%
No change in severity	74	58	66
Charge severity increased	2	3	2
Total, all cases	100%	100%	100%
(N of cases)	(4,410)	(5,191)	(9,601)

Case Processing Characteristics

Defendants in DV assault cases were more likely to be recommended for release than defendants in Non-DV assault cases (65% vs. 58%) (see Table 3-12). Very few assault cases were disposed at arraignment (7%), but DV assault cases were slightly less likely than Non-DV assault cases to be disposed at that time (4% vs. 9%). Release rates for defendants in cases not disposed at arraignment were virtually the same for DV and Non-DV cases (89% and 88%, respectively). Defendants in DV and Non-DV cases were equally likely to have the severity of the charges reduced between arraignment and conviction (85% and 84%, respectively). However, Non-DV assaults were more likely to be charged as felonies than DV assaults (25% vs. 15%). As a result, similar rates of charge reduction were not reflected in similarities in the severity of conviction charge. About 28% of defendants in Non-DV assaults were convicted of A misdemeanors, compared with only 20% of defendants in DV assaults. Although the findings are not as strong as they were for the Crimes Against Persons and Property Subsample, these findings for the Assaults Subsample again suggest that DV cases, on average, are perceived as weaker than Non-DV cases. Finally, DV assault cases reached a final disposition in 12 weeks, on average, the same as Non-DV assault cases.

C. Summary and Discussion of Findings

Our review of case outcomes and defendant and case characteristics has revealed a number of differences between DV and Non-DV cases. The most important differences we found were differences in the three case outcomes that are the focus of this study. Two of these differences were in the direction we expected, while one of the differences was unexpected.

DV cases were, as expected, less likely to result in conviction than Non-DV cases, and more likely to result in dismissal of the charges. While we do not assume that everyone who is arrested is guilty of the crime with which he or she is charged, we have no reason to believe that defendants in DV cases are less likely to be guilty than defendants in Non-DV cases. Feeney et al. (1983) in their study *Arrests Without Convictions* found that the strength of evidence in the case was the most important determinant of conviction. The primary reason some arrests do not lead to conviction is that the evidence is weaker in those cases than in cases that do lead to conviction. This suggests that conviction rates are lower in DV cases than in Non-DV cases because the evidence is weaker in DV cases. As described in Section I above, DV cases commonly have inherent weaknesses that make them difficult to prosecute. We believe weak evidence is the most important factor accounting for the lower conviction rate in DV cases. We use the conviction rate in Non-DV cases as a standard for judging how much more difficult it is to prosecute DV cases than similar Non-DV cases. Our models in the next section of this report will assess how much of the difference in conviction rates can be explained by defendant and case characteristics. The remaining unexplained difference is primarily attributable to weaker evidence.

TABLE 3-12
CASE PROCESSING CHARACTERISTICS BY TYPE OF CASE
ASSAULTS SUBSAMPLE

Third Quarter 1998 Dataset

CASE PROCESSING CHARACTERISTICS	TYPE OF CASE		Total, All Cases
	DV cases	Non-DV cases	
RELEASE RECOMMENDATION			
Recommended or Qualified Recommendation	65%	58%	61%
No recommendation: Weak NYC Area Ties	24	26	26
Bench Warrant Attached to NYSID	6	8	7
Other or missing	5	8	6
Total, all cases (N of cases)	100% (4,410)	100% (5,191)	100% (9,601)
CASE DISPOSED AT ARRAIGNMENT			
Case not disposed at arraignment	96%	91%	93%
Case disposed at arraignment	4	9	7
Total, all cases (N of cases)	100% (4,410)	100% (5,191)	100% (9,601)
DEFENDANT EVER RELEASED¹			
Never released	11%	12%	12%
Released	89	88	88
Total, all cases (N of cases)	100% (4,255)	100% (4,709)	100% (8,964)
CHARGE SEVERITY REDUCED BETWEEN ARRAIGNMENT AND CONVICTION²			
Charge severity not reduced	15%	16%	16%
Charge severity reduced	85	84	84
Total, all cases (N of cases)	100% (1,394)	100% (1,967)	100% (3,365)

Table Continues on Next Page

TABLE 3-12, CONTINUED
CASE PROCESSING CHARACTERISTICS BY TYPE OF CASE
ASSAULTS SUBSAMPLE

Third Quarter 1998 Dataset

CASE PROCESSING CHARACTERISTICS	TYPE OF CASE		
	DV cases	Non-DV cases	Total, All Cases
SEVERITY OF CONVICTION CHARGE²			
A misdemeanor	20%	28%	25%
B misdemeanor	13	8	10
Violation	67	64	65
Total, all cases	100%	100%	100%
(N of cases)	(1,394)	(1,967)	(3,365)
MEAN NUMBER OF WEEKS FROM ARRAIGNMENT TO DISPOSITION	12	12	12
(N of cases)	(4,410)	(5,191)	(9,601)

¹ Data presented only for cases that were not disposed at arraignment.

² Data presented only for cases that resulted in conviction.

As expected, defendants convicted in DV cases were less likely than those convicted in Non-DV cases to be sentenced to jail. As we learned in our field research, this finding reflects a preference for sentencing convicted DV defendants to complete a treatment program. The programs are used to monitor defendants and to hold them accountable for any further acts of domestic violence. For most convicted defendants in DV cases, this accountability approach is preferred to a punitive approach involving a jail sentence.

Our comparison of the length of jail sentences for defendants in DV and Non-DV cases led to an unexpected finding. Defendants in DV cases received *longer* jail sentences, on average, than defendants in Non-DV cases. Since previous research has found the opposite pattern—longer sentences for Non-DV cases—the direction of this difference may seem difficult to explain. However, considered in the context of our discussion of the prevalence of the accountability approach, the longer sentences in DV

cases are not so surprising. Defendants in DV cases are much less likely to be convicted, and if convicted, much less likely to be sentenced to jail than defendants in Non-DV cases. This suggests that the few DV defendants who are sentenced to jail are likely to be those for whom the accountability approach is viewed as insufficient or inappropriate. DV defendants sentenced to jail may be those whose offenses were viewed by the court as serious acts of violence.

We also found some differences between DV and Non-DV cases in terms of their defendant and case characteristics. Defendants in DV cases had less serious criminal records than defendants in Non-DV cases. In the Assaults Subsample (but not in the Crimes Against Persons and Property Subsample), defendants in DV cases were less likely to be arraigned on felony charges. However, in the Crimes Against Persons and Property Subsample (but not in the Assaults Subsample), defendants in DV cases were more likely to have the severity of charges reduced between arraignment and conviction. The net result for both subsamples was that defendants in DV cases were convicted of less severe offenses than defendants in Non-DV cases. Defendants in DV cases were slightly more likely than defendants in Non-DV cases to be male, and were also somewhat older, on average. Reflecting citywide policy, DV cases were rarely disposed at arraignment; Non-DV cases were more likely to be disposed at arraignment. Defendants in DV cases were recommended for pre-trial release more often than defendants in Non-DV cases. This indicates that defendants in DV cases had stronger community ties than those in Non-DV cases. In the Crimes Against Persons and Property Subsample (but not in the Assaults Subsample) defendants in DV cases were more likely to be released than defendants in Non-DV cases. Overall, these findings suggest that the average DV offender had a different background than the average Non-DV offender. The DV offender was somewhat older, and had a less serious criminal record. The findings also suggest that DV cases were processed differently than Non-DV cases.

The differences we found in defendant and case characteristics may account for some or all of the differences in case outcomes between DV and Non-DV cases. The pattern of results reported here certainly suggests this possibility. For example, the more serious criminal records of defendants in Non-DV cases may explain why they are more likely than defendants in DV cases to be sentenced to jail. However, while the results reported thus far are suggestive, they are not sufficient to substantiate the hypothesis that differences in defendant and case characteristics can account for differences in case outcomes between DV and Non-DV cases. In the next three sections of this report, we develop statistical models that directly test this hypothesis.

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IV. MODELS PREDICTING LIKELIHOOD OF CONVICTION

As discussed in the previous section, there were significant differences in case outcomes between DV and Non-DV cases. We now begin to address the third major question posed in this study: Can the differences in case outcomes between DV and Non-DV cases be accounted for by differences in defendant and case characteristics? In this section of the report, we develop statistical models to examine differences between DV and Non-DV cases in the likelihood of conviction. The models predicting the likelihood of conviction are designed to evaluate whether DV cases remain less likely to lead to conviction than Non-DV cases after taking into account differences between DV and Non-DV cases in defendant and case characteristics.

To develop models predicting the likelihood of conviction, we reviewed prior research for guidance about what factors to include in our models. The Feeney et al. (1983) study cited earlier suggests that strength of evidence is the most important determinant of conviction. Cases with strong evidence result in conviction, while weak cases generally do not. Unfortunately, direct measures of strength of evidence are not available in our dataset. However, we were able to use some indirect measures (number of arrest charges and whether charges were reduced between arrest and arraignment) to assess whether the evidence was weaker in DV cases than in Non-DV cases. The second factor Feeney et al. (1983) considered to explain the likelihood of conviction was characteristics of the defendant and the case, unrelated to guilt or innocence or strength of evidence. For example, case characteristics such as seriousness of the crime, or demographic characteristics of the defendant such as race, may influence conviction rates. Although Feeney et al. did not find these factors to be influential, we do have these measures available in our dataset and we included them in our models. Finally, Feeney et al. (1983) identified police and prosecutorial practices as factors that influence the likelihood of conviction. For example, some policing and prosecutorial practices may be more effective than others in securing convictions. While we do not examine these directly in the current report, we will address prosecutorial practices in our next report on borough differences in the processing of DV cases.

A. Logistic Regression Analysis

The statistical technique used to predict likelihood of conviction is logistic regression, a technique that is used when the outcome to be explained (i.e., the *dependent variable*) has two categories. In this analysis, all cases were coded on the dependent variable in one of two categories: not convicted (coded 0) and convicted (coded 1). The models we present are structured to predict the likelihood that cases are disposed as convictions. These predictions are made on the basis of information we have about a variety of defendant and case characteristics (i.e., the *independent variables*). Logistic regression techniques provide several ways of evaluating the effect of these independent variables on the likelihood of conviction.

This report examines three statistical measures to evaluate the effect of the independent variables. First, we report the *statistical significance* of each independent variable. Statistical significance takes into account the size of the sample as well as the magnitude of the effect of the independent variable. Based on this information, statistical significance assesses the probability that the effect observed in the sample could have occurred by chance alone. In this report, following standard convention, significance levels of .05 or less are treated as statistically significant. In other words, when an effect has a 5% or less probability of having occurred by chance, we conclude that the independent variable is a statistically significant predictor of the likelihood of conviction. We use the more conservative “two-tail” test of statistical significance (which makes no assumption about the direction of the effect of the independent variables) rather than the “one-tail” test (which assumes that the effect of the independent variable is in one direction only, either positive or negative).

One weakness of using statistical significance to measure the effect of an independent variable is that when sample sizes are large (e.g., more than several thousand cases), many independent variables will have statistically significant effects even when the magnitude of the effects is small. For example, in a very large sample, we may be able to say that having a prior arrest has a statistically significant effect on the likelihood of conviction, even though it increases the likelihood of conviction only from 49% to 51%. In this situation, we can say that this difference in conviction rates is unlikely to be due to chance. However, it is also clear in this hypothetical example that knowing whether or not a defendant had a prior arrest does not explain much of the variation in likelihood of conviction.

The second statistical measure used to evaluate the effect of the independent variables is the *odds ratio*. The odds ratio supplements information about statistical significance by evaluating the magnitude of the effect of the independent variable. Specifically, it tells us how much the odds of an outcome (e.g., conviction) change, for each one unit increase in the independent variable. If an independent variable is coded in two categories (e.g., 0 and 1), then the odds ratio tells us how the odds of the outcome change when cases are coded 1 on the independent variable (vs. cases coded 0). An odds ratio greater than one indicates an increase in the likelihood of the outcome occurring, while an odds ratio less than one indicates a decrease in the likelihood of the outcome occurring. An odds ratio of 1 indicates that the odds of an outcome occurring are not affected by the independent variable.

To return to our previous example, if the odds ratio for the effect of having a prior arrest on the likelihood of conviction was 1.12, this would mean that in cases where the defendant had a prior arrest the odds of conviction are 1.12 times greater than in cases where the defendant did not have a prior arrest. In contrast, if we examined the impact of whether the defendant was ever released from custody while the case was pending, we might find an odds ratio less than 1. For example, if the odds ratio was .83, this would mean that in cases where the defendant was released from custody the odds of conviction are only .83 times as large as the odds when the defendant was not released from custody.

To simplify interpretation of odds ratios less than 1, it is common to examine the inverse of the odds ratio (1 divided by the odds ratio). When this is done, the interpretation of the effect of the independent variable is reversed. For example, if the odds ratio for being released from custody is .83, we can take the inverse of the odds ratio, 1.20 (1 divided by .83), and say that in cases where the defendant was not released from custody, the odds of conviction were 1.20 times greater than in cases where the defendant was released. Finally, if the odds ratio were 1.00, this would mean that whether or not the defendant was released from custody had no impact on the odds of conviction. (These examples are hypothetical and do not necessarily reflect our expectations about the findings).

In the analyses presented in this report, results are presented for independent variables coded in three different ways—categorical variables that have two categories, categorical variables that have more than two categories, and continuous variables that measure the quantity of a defendant or case characteristic (e.g., the number of prior felony convictions for the defendant). When a categorical independent variable has two categories, the odds ratio measures the change in the odds when cases are in one category vs. another (e.g., defendant had a prior arrest vs. did not have a prior arrest). When a categorical independent variable has more than two categories, one of the categories is chosen as a **reference category**, and the odds ratios measure the effect of being in each of the other categories vs. being in the reference category (e.g., cases in Manhattan, Queens, Brooklyn and Staten Island are compared to cases in the Bronx). Finally, when the independent variable is continuous, the odds ratio measures the change in the odds associated with an increase of one unit on the scale of the independent variable (e.g., for number of prior felony convictions, the odds ratio measures the effect of having one additional felony conviction).

The third statistical measure used to assess the effect of the independent variables is the standardized *beta* coefficient (Menard, 1995). Standardized *betas* take into account not only the change in the likelihood of the outcome associated with a change in the independent variable, but also the distribution of the cases among the categories of the independent variable. Being in one category of an independent variable may have a large effect on the likelihood of an outcome (and therefore have a large odds ratio), but if there are relatively few cases in that category, the variable will not help to explain much of the variation in the likelihood of the outcome. For example, a case where the charge severity increased from arrest to arraignment might have a high probability of conviction, and hence a high odds ratio. However, if charge severity increased in only a small number of cases, this variable will not be able to explain much of the variation in likelihood of conviction. Standardized *betas* measure this overall effect of the independent variable on the dependent variable. Standardized *betas* vary from -1 to +1; values closer to zero indicate that the effect of the independent variable is relatively small, while values closer to +1 or -1 indicate that the effect of the independent variable is relatively strong. There are no commonly accepted absolute standards to decide whether a standardized *beta* is strong or weak. Consequently, we will discuss the relative strength of variables, describing some as stronger or weaker than others.

In this report, we discuss results for all three of the measures described above. We use the statistical significance level to distinguish those independent variables that have a detectable²⁸ effect on the dependent variable from those that do not. We use the odds ratio to evaluate the size of the effect of the independent variable, and we use the standardized *beta* to evaluate the ability of the independent variable to account for variation in the dependent variable.

The models we discuss include a large number of predictors of the dependent variable. In these models, the measures of the effect of each independent variable (statistical significance, odds ratio, and standardized *beta*) evaluate the effect of that independent variable *after controlling for the effects of all the other independent variables in the model*. These effects represent the *net effect* of a given independent variable after the effect of all the other independent variables have been taken into account. This net effect differs from the *total effect* of the independent variable, which is the effect of the independent variable when it is used as the only predictor of the dependent variable. In Section III of this report, we discussed the total effect of type of case (DV vs. Non-DV) on conviction, incarceration and sentence length. The logistic regression models presented in this Section and in Sections V and VI below discuss the net effect of type of case, i.e., the effect of being a DV case (vs. a Non-DV case) on these outcomes after taking into account a wide variety of defendant and case characteristics. We examine models for both the Crimes Against Persons and Property Subsample and the Assaults Subsample.

To evaluate the overall ability of *all* the independent variables in the logistic regression model to predict the dependent variable, we use a statistical measure called Nagelkerke R^2 (SPSS, Inc., 1999). This measure varies from 0 to +1. It can be roughly interpreted as indicating what proportion of the variation in the dependent variable is explained by all the independent variables in the model (see Menard 1995 for a full discussion of the R^2 statistic in logistic regression models). Low values of R^2 (closer to 0) indicate that the model as a whole is relatively weak in accounting for variation in the dependent variable. High values (closer to 1) indicate that the model as a whole is very successful in accounting for variation in the dependent variable.

B. Crimes Against Persons and Property Subsample

As noted earlier, there was a substantial difference in the conviction rate for DV and Non-DV cases in the Crimes Against Persons and Property Subsample (35% vs. 56%). In this section of the report, we attempt to account for that difference by identifying differences between DV and Non-DV cases. Specifically, we use logistic regression models to control for defendant and case characteristics that we believe might affect the likelihood of conviction. The discussion of the models focuses on accounting

²⁸ Due to sampling error and the limitations of logistic regression techniques, it is possible that some independent variables that do affect the dependent variable are found to be statistically insignificant in our particular sample of cases. See Mohr (1990) for a further discussion of these issues.

for differences between DV and Non-DV cases, but we also briefly discuss how defendant and case characteristics affect the likelihood of conviction. We use a model that pools DV and Non-DV cases and evaluates whether the lower conviction rate for DV cases can be explained by differences in defendant and case characteristics.

The logistic regression model predicting likelihood of conviction shows that even after controlling for a variety of defendant and case characteristics, DV cases were less likely to end in conviction than Non-DV cases (see Table 4-1). While this difference was statistically significant, statistically significant effects are more likely in a large sample, such as the one we are using here (N=25,457). To evaluate the substantive significance (i.e., the meaning and impact) of this difference we also examine the odds ratio and the standardized *beta*. The odds ratio for DV cases was .78 (see last column of Table 4-1). The odds that a DV case resulted in conviction were .78 times as large as the odds for a Non-DV case. Stated another way, the odds that a Non-DV case ended in conviction were 1.28 times ($1.00 / .78$) larger than the odds for a DV case. The standardized *beta* for DV Case was -.08 (recall that standardized *betas* vary from -1 to +1). This indicates that type of case had a relatively small overall impact in explaining variation in likelihood of conviction.

An examination of the other independent variables in the model indicates that among the statistically significant predictors, the strongest predictors (as measured by standardized *beta*) were whether the case was disposed at arraignment, whether the defendant was ever released (if the case was not disposed at arraignment), whether the case was docketed in Brooklyn (all of which reduced the likelihood of conviction) and whether the defendant was charged with Larceny (PL 155) and whether the defendant had any prior arrests (which increased the likelihood of conviction). By comparison, type of case was relatively weak in its ability to explain variation in the likelihood of conviction. Overall, the model explained 36% of the variation in likelihood of conviction (see Nagelkerke R^2 in Table 4-1).

It is interesting to compare the results for the model in Table 4-1 to the results for a model that includes type of case as the only predictor of likelihood of conviction (model not shown). These results contrast the *net effect* of type of case (i.e., after controlling for all the other variables in the model), and the *total effect* of type of case (i.e., using type of case as the only predictor). When type of case was the only predictor in the model, its odds ratio was .41, indicating that the odds of conviction for a DV case were only .41 times as large as the odds in a Non-DV case. (Alternatively, we can say that the odds of conviction in a Non-DV case were 2.44 ($1 / .41$) times larger than in a DV case). This total effect can be contrasted with the net effect reported in Table 4-1, where the odds ratio for DV case was .78 (or 1.28 ($1/.78$) for Non-DV case). In other words, the total effect of type of case is cut nearly in half when we control for defendant and case characteristics. (Recall that an odds ratio closer to 1.00 indicates that the effect of the independent variable is *smaller*.) Which variables in Table 4-1 were primarily responsible for partially closing this gap? An examination of results (not shown) indicates that arraignment charge Penal Law article, whether the case was disposed at

TABLE 4-1
LOGISTIC REGRESSION MODEL PREDICTING LIKELIHOOD OF CONVICTION
CRIMES AGAINST PERSONS AND PROPERTY SUBSAMPLE¹
 Third Quarter 1998 Dataset

INDEPENDENT VARIABLES ²	Standardized β	Odds Ratio
TYPE OF CASE		
DOMESTIC VIOLENCE CASE	-0.08 ***	0.78
CONTROL VARIABLES		
ARRAIGNMENT CHARGE PENAL LAW ARTICLE: <i>Reference Category: Assault (PL 120)</i>		
Sex Offense (PL 130)	0.00	0.99
Burglary (PL 140)	0.17 ***	1.94
Criminal Mischief (PL 145)	0.09 ***	1.99
Larceny (PL 155)	0.30 ***	3.07
Robbery (PL 160)	-0.01	0.96
Escape (PL 205)	0.00	0.98
Criminal Contempt (PL 215)	0.02	1.11
Harassment (PL 240)	0.04 **	1.32
Crimes Against Children (PL 260)	0.03 *	1.40
Weapons (PL 265)	-0.01	0.91
BOROUGH: <i>Reference Category: Bronx</i>		
Brooklyn	-0.54 ***	0.19
Manhattan	-0.21 ***	0.51
Queens	-0.23 ***	0.45
Staten Island	-0.13 ***	0.38
DEFENDANT'S DEMOGRAPHIC CHARACTERISTICS		
SEX (Female)	-0.06 ***	0.82
ETHNICITY: <i>Reference Category: Black</i>		
White	0.01	1.05
Hispanic	0.02	1.06
Other	0.00	1.00
AGE: <i>Reference Category: Age 16-20</i>		
Age 21-29	0.01	1.04
Age 30-39	0.05 **	1.15
Age 40 and over	0.01	1.03
DEFENDANT'S CRIMINAL HISTORY		
ANY PRIOR ARRESTS	0.25 ***	2.06
NUMBER OF PRIOR MISDEMEANOR CONVICTIONS	0.18 ***	1.04
NUMBER OF PRIOR FELONY CONVICTIONS	-0.02 *	0.96

Table Continues on Next Page

TABLE 4-1
(continued)

INDEPENDENT VARIABLES ²	Standardized β	Odds Ratio
ARREST AND ARRAIGNMENT CHARGE CHARACTERISTICS		
NUMBER OF ARREST CHARGES	0.12 ***	1.20
ARRAIGNMENT CHARGE SEVERITY: <i>Reference Category: Arraignment Charge was an A Misdemeanor</i>		
Arraignment Charge was a Violation	-0.15 ***	0.24
Arraignment Charge was a Felony	-0.14 ***	0.63
CHANGE IN CHARGE SEVERITY FROM ARREST TO ARRAIGNMENT: <i>Reference Category: No Change</i>		
Charge Severity Reduced from Arrest to Arraignment	-0.03 **	0.89
Charge Severity Increased from Arrest to Arraignment	0.03 **	1.25
CASE PROCESSING CHARACTERISTICS		
RELEASE RECOMMENDATION: <i>Reference Category: No Recommendation (Weak NYC Ties)</i>		
Recommended or Qualified Recommendation	-0.07 ***	0.83
Open Bench Warrant At Time of Arrest	0.04 ***	1.22
Other or Missing	-0.02	0.89
CASE DISPOSED AT ARRAIGNMENT	-0.25 ***	0.46
DEFENDANT EVER RELEASED	-0.45 ***	0.27
NUMBER OF WEEKS FROM ARRAIGNMENT TO DISPOSITION	-0.14 ***	0.98

Nagelkerke R²
(N of cases)

.36 ***
(25,457)

NOTES

¹ See text for a description of the dataset and the subsample.

² See Appendix A for information about the measurement and coding of the variables

- * Statistically significant at $p < .05$
- ** Statistically significant at $p < .01$
- *** Statistically significant at $p < .001$

arraignment, and criminal history were the strongest variables that reduced the gap between DV and Non-DV cases. DV cases were more likely than Non-DV cases to have a top arraignment charge for a Penal Law article that has a lower conviction rate (primarily Assault, PL 120) and were less likely to be disposed at arraignment (when the conviction rate is higher). Defendants in DV cases also had less serious criminal histories than defendants in Non-DV cases. A smaller portion of the gap is accounted for by borough. DV cases were more likely to be prosecuted in a borough with a lower conviction rate (primarily Brooklyn).

C. Assaults Subsample

We next examine the model predicting the likelihood of conviction for the Assaults Subsample. This subsample provides a more focused comparison of DV and Non-DV cases that were charged with assault, attempted assault, or menacing. As discussed earlier, the conviction rate in DV assaults (32%) was only slightly lower than in Non-DV assaults (38%). In our models predicting the likelihood of conviction, we examine whether we can account for this smaller difference in conviction rates between DV and Non-DV cases in the Assaults Subsample.

The model predicting the likelihood of conviction for the Assaults Subsample indicates that the effect of DV case remained statistically significant, even after controlling for defendant and case characteristics (Table 4-2). The odds ratio was .82, indicating that the odds of conviction in a DV case were lower than (only .82 times as large as) the odds of conviction in a Non-DV case. (Alternatively, we can say that the odds of conviction in a Non-DV case were 1.22 ($1.00 / .82$) times larger than in a DV case). The standardized *beta* for DV case was -.09, indicating that this variable had a weak but statistically significant effect on the likelihood of conviction. Variables with the strongest effects in the model were release status, disposition at arraignment and being prosecuted in Brooklyn or Manhattan (all of which reduced the likelihood of conviction). Taken together, all the independent variables in the model explain only 25% of the variation in the likelihood of conviction in assault cases.

We next compare the results of the model showing net effects (Table 4-2) to a model including only the total effect of type of case (data not shown). The total effect of type of case, as measured by the odds ratio, was .76. The net effect of type of case, after controlling for all the variables in the model, was .82. In other words, the total effect of type of case was reduced only slightly when we controlled for defendant and case characteristics. An examination of the variables that explain the difference between the total effect and the net effect indicates that borough and defendant's criminal history were the most important variables closing the gap.

TABLE 4-2
LOGISTIC REGRESSION MODEL PREDICTING LIKELIHOOD OF CONVICTION
ASSAULTS SUBSAMPLE¹
 Third Quarter 1998 Dataset

INDEPENDENT VARIABLES ²	Standardized β	Odds Ratio
TYPE OF CASE		
DOMESTIC VIOLENCE CASE	-0.09 ***	0.83
CONTROL VARIABLES		
ARRAIGNMENT CHARGE PENAL LAW ARTICLE: <i>Reference Category: Assault 3 (PL 120.00)</i>		
Assault 2 (PL 120.05)	-0.08 **	0.81
Assault 1 (PL 120.10)	-0.05 *	0.62
Menacing 2 (PL 120.14)	0.06 *	1.18
Menacing 3 (PL 120.15)	-0.04	0.75
Attempted Assault 3 (PL 110-120.00)	-0.05	0.70
Attempted Assault 2 (PL 110-120.05)	-0.03	0.66
Attempted Assault 1 (PL 110-120.10)	-0.04	0.42
BOROUGH: <i>Reference Category: Bronx</i>		
Brooklyn	-0.83 ***	0.16
Manhattan	-0.41 ***	0.33
Queens	-0.18 ***	0.64
Staten Island	-0.21 ***	0.30
DEFENDANT'S DEMOGRAPHIC CHARACTERISTICS		
SEX (Female)	-0.18 ***	0.61
ETHNICITY: <i>Reference Category: Black</i>		
White	0.02	1.06
Hispanic	0.03	1.07
Other	-0.01	0.96
AGE: <i>Reference Category: Age 16-20</i>		
Age 21-29	-0.06 *	0.86
Age 30-39	-0.03	0.94
Age 40 and over	-0.08 *	0.82
DEFENDANT'S CRIMINAL HISTORY		
ANY PRIOR ARRESTS	0.17 ***	1.44
NUMBER OF PRIOR MISDEMEANOR CONVICTIONS	0.13 ***	1.04
NUMBER OF PRIOR FELONY CONVICTIONS	-0.07 **	0.92

Table Continues on Next Page

TABLE 4-2
(continued)

INDEPENDENT VARIABLES ²	Standardized β	Odds Ratio
ARREST AND ARRAIGNMENT CHARGE CHARACTERISTICS		
NUMBER OF ARREST CHARGES	0.12 ***	1.14
CHANGE IN CHARGE SEVERITY FROM ARREST TO ARRAIGNMENT: <i>Reference Category: No Change</i>		
Charge Severity Reduced from Arrest to Arraignment	0.03	1.06
Charge Severity Increased from Arrest to Arraignment	0.04	1.34
CASE PROCESSING CHARACTERISTICS		
RELEASE RECOMMENDATION: <i>Reference Category: No Recommendation (Weak NYC Ties)</i>		
Recommended or Qualified Recommendation	-0.11 ***	0.78
Open Bench Warrant At Time of Arrest	0.00	1.00
Other or Missing	-0.09 ***	0.66
CASE DISPOSED AT ARRAIGNMENT	-0.48 ***	0.12
DEFENDANT EVER RELEASED	-0.57 ***	0.20
NUMBER OF WEEKS FROM ARRAIGNMENT TO DISPOSITION	-0.08 **	0.99

Nagelkerke R²
(N of cases)

.25 ***
(9,601)

NOTES

¹ See text for a description of the dataset and the subsample.

² See Appendix A for information about the measurement and coding of the variables.

- * Statistically significant at $p < .05$
- ** Statistically significant at $p < .01$
- *** Statistically significant at $p < .001$

D. Summary and Discussion of Findings

Even after controlling for defendant and case characteristics, DV cases were slightly less likely to result in conviction than Non-DV cases. In both the Crimes Against Persons and Property Subsample and the Assaults Subsample, the effect of DV case was statistically significant. This finding indicates that the defendant and case characteristics we included in our model cannot fully account for differences in the conviction rate between DV and Non-DV cases. We believe the remaining difference in likelihood of conviction is attributable to weaker evidence in DV cases. We do not have the measures of strength of evidence necessary to demonstrate this with our data. However, the results of prior research and our interviews with court personnel suggest that this is the most likely explanation.

Although the likelihood of conviction was lower for DV cases than for Non-DV cases in our models, controlling for defendant and case characteristics did partially account for some of the initial difference in conviction rates. In the Crimes Against Persons and Property Subsample, our model accounted for almost half of the initial difference. The variables that were most responsible for this were the arraignment charge Penal Law article, whether the case was disposed at arraignment, defendant's criminal history and borough. In the Assaults Subsample, the initial difference in conviction rates between DV and Non-DV cases was relatively small. We anticipated that the model would be able to explain away this difference (i.e., that its effect would become statistically insignificant). However controlling for defendant and case characteristics (primarily defendant's criminal history and borough) explained only a small portion of the initial difference. At first glance, this finding may seem surprising, since the difference in conviction rates was much smaller than it was in the Crimes Against Persons and Property Subsample and therefore should be easier to explain. However, in the Assaults Subsample there were also fewer differences between DV and Non-DV cases on the *independent* variables. It is therefore not surprising that these independent variables were only able to account for a small portion of the initial difference in conviction rates between DV and Non-DV cases.

Finally, although the effect of DV case on the likelihood of conviction remained statistically significant after controlling for defendant and case characteristics, its effect was relatively weak. Other variables, including borough, whether the defendant was ever released and whether the case was disposed at arraignment, were stronger predictors of the likelihood of conviction.

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V. MODELS PREDICTING LIKELIHOOD OF INCARCERATION

We next turn our attention to models predicting the likelihood of incarceration for convicted defendants. As discussed in the overview of case outcomes, among cases that lead to a conviction, DV cases were less likely than Non-DV cases to result in a sentence of incarceration. Our analytic strategy parallels the one we used to examine the likelihood of conviction in the previous section. We address whether differences in the likelihood of incarceration between DV and Non-DV cases can be accounted for by differences in defendant and case characteristics. Since the dependent variable is measured in two categories (sentenced to jail vs. not sentenced to jail), we used logistic regression models. As before, we report results for both the Crimes Against Persons and Property Subsample and the Assaults Subsample.

Since the analyses are based only on those cases that ended in a conviction, we are able to use two additional case processing variables as predictors in the models. First, we include a measure of whether the charge severity was reduced between the arraignment charge and the conviction charge. We expected that charge reduction would be associated with a lower likelihood of incarceration. Charge reduction is more likely in cases where the evidence is weaker, and defendants may be induced to plead guilty in return for a promise of a non-incarcerative sentence. Second, we also include the severity of the conviction charge in the model—we expect cases disposed as violations or as B misdemeanors to be less likely to result in a jail sentence than cases disposed as A misdemeanors.

A. Correcting for Selection Bias

The models predicting likelihood of incarceration include an additional control variable: a correction for selection bias. Selection bias is a problem that arises in statistical analysis when the group of cases that could have ended up in the sample is restricted to a selected set of respondents (Berk 1983). When selection bias occurs, the statistical estimates of the effects of the independent variables may be biased. These estimates may overstate, or understate, the influence of an independent variable. If problems of selection bias are not addressed, the interpretation of the results may be misleading. In our analysis, the models predicting likelihood of incarceration include only cases that resulted in conviction. The variables that influence whether a case results in conviction also may influence whether the case results in incarceration. For example, number of prior misdemeanor convictions may affect both the likelihood of conviction and the likelihood of incarceration. If a model predicting the likelihood of incarceration among those convicted does not control for selection bias, the estimate of the effect of number of prior misdemeanor convictions will be overstated. Part of its effect on likelihood of incarceration will actually be due to its influence on the likelihood of conviction, i.e., on the likelihood that the case ended up in the sample of convicted cases. The remainder of its effect, if any, will be due to its influence on the likelihood of incarceration.

To control for this kind of selection bias, we included in the models a control variable that measures the predicted probability of conviction. This predicted probability of conviction was created using a model similar to that presented in Table 4-1 (data not shown). To avoid statistical problems²⁹ the predicted probability of conviction used as a correction for selection bias was created using a somewhat different set of independent variables than the model presented in Table 4-1. The predicted probability of conviction can theoretically vary from a low of 0.00 to a high of 1.00. Of course, the model predicting likelihood of incarceration included only those cases where the defendant was actually convicted. The predicted probability of conviction for convicted cases was skewed toward the higher end of the scale (the mean predicted probability was .64). Nevertheless, even among cases that resulted in conviction, there was significant variation: the predicted probability of conviction ranged from .05 to .98. It is this variation that enables the predicted probability of conviction to correct for selection bias. Among convicted cases, those with a low predicted probability of conviction are more similar to those who were not convicted, while those with a high predicted probability of conviction are more representative of those actually in the sample. The influence of the predicted probability of conviction on the likelihood of incarceration measures, and therefore controls for, the influence of variables that affect both outcomes. When the predicted probability of conviction is included as a control variable in models predicting the likelihood of incarceration, the estimates of the effects of the other independent variables in the model are more accurate.³⁰

To return to the example discussed above, the number of prior misdemeanor convictions may influence both the likelihood of conviction and the likelihood of incarceration. In the models predicting the likelihood of incarceration, the estimate of the effect of number of prior misdemeanor convictions is more accurate³¹ because the models control for the influence of number of prior misdemeanor convictions on the likelihood of conviction. As a result, we have greater confidence in the estimates of the effects of this and other independent variables, as well as in our interpretation of the results of the models. Although we included the predicted probability of conviction as a control variable in all the models presented in this section, we do not discuss the impact of this

²⁹ When the predicted probability of conviction is included in a model predicting the likelihood of incarceration, it is important that the predicted probability of conviction not be highly correlated with other variables in the model. This problem, known as multicollinearity, is particularly likely if the same set of independent variables is used in both the conviction and incarceration models. For this reason, the model creating the predicted probability of conviction uses some different independent variables than those used in the analyses presented in this report.

³⁰ See Heckman (1979) and Peterson (1989) for more detailed discussions of selection bias and corrections for it.

³¹ The extent to which the estimates are more accurate depends on the ability of the model predicting the probability of conviction to explain a significant proportion of the variation in likelihood of conviction. The model correcting for selection bias accounted for approximately 35% of the variation in likelihood of conviction. This is a sufficiently large proportion of the variation for the purpose of controlling for selection bias.

variable since its primary purpose is to enable us to accurately estimate and interpret the effects of the other variables.

B. Crimes Against Persons and Property Subsample

As noted earlier, only 18% of the convicted defendants in DV cases in the Crimes Against Persons and Property Subsample were sentenced to jail in Criminal Court, compared with 45% of convicted defendants in Non-DV cases. The logistic regression model predicting likelihood of incarceration controls for a large number of defendant and case characteristics to attempt to account for most or all of this gap. Even after controlling for all the other variables in the model, DV Case had a statistically significant, negative effect on the likelihood of incarceration (Table 5-1). The odds ratio for DV case was .40, indicating that the odds that a convicted defendant in a DV case was sentenced to jail were only .40 times as large as the odds for a convicted defendant in a Non-DV case. Alternatively, we can say that the odds that a convicted defendant in a Non-DV case was sentenced to jail were 2.50 (1 / .40) times larger than the odds of incarceration for a convicted defendant in a DV case. The standardized *beta* for DV Case was -.19, indicating that this variable had a moderate impact in explaining variation in likelihood of incarceration.

The strongest predictors of incarceration in the model (as measured by standardized *beta*) were whether the defendant was ever released, whether the conviction charge was a violation, type of case, whether the conviction occurred at arraignment (all of which reduced the likelihood of incarceration), and number of prior misdemeanors and whether the case had a top arraignment charge of Burglary (PL 140) (which increased the likelihood of incarceration). Interestingly, type of case was among the four strongest predictors of incarceration. Overall, the model explained 48% of the variation in the likelihood of incarceration (see Nagelkerke R^2 in Table 5-1). This indicates that the model was relatively successful in identifying factors that affect the likelihood of an incarcerative sentence for convicted defendants.

To determine the extent to which controlling for other variables has explained away the initial difference in incarceration rates between DV and Non-DV cases, we examined a model where type of case was the only independent variable in the model (data not shown). When type of case is the only predictor in the model, the odds that a convicted defendant in a DV case was given a jail sentence were .28 times as large as for a convicted defendant in a Non-DV case (or, stated another way, the odds that a defendant in a Non-DV case was sentenced to jail were 3.57 times larger than for a defendant in a DV case). This total effect (see explanation of this term in the discussion of conviction models in Section IV) was reduced to a net effect of .40 (or 2.50) after controlling for defendant and case characteristics (Table 5-1). This comparison suggests that the model is capable of accounting for only a relatively small portion (25-30%) of the gap in incarceration rates between DV and Non-DV cases. The main variable that reduces the gap is the correction for selection bias. This indicates that the factors that reduce the likelihood of conviction indirectly reduce the likelihood of incarceration as

TABLE 5-1

**LOGISTIC REGRESSION MODEL PREDICTING LIKELIHOOD
OF INCARCERATION FOR CONVICTED DEFENDANTS
CRIMES AGAINST PERSONS AND PROPERTY SUBSAMPLE¹
Third Quarter 1998 Dataset**

INDEPENDENT VARIABLES ²	Standardized β	Odds Ratio
TYPE OF CASE		
DOMESTIC VIOLENCE CASE	-0.19 ***	0.40
CONTROL VARIABLES		
SELECTION BIAS CORRECTION: LIKELIHOOD OF CONVICTION	0.14 **	2.93
ARRAIGNMENT CHARGE PENAL LAW ARTICLE:		
<i>Reference Category: Assault (PL 120)</i>		
Sex Offense (PL 130)	0.03 *	1.65
Burglary (PL 140)	0.24 ***	3.01
Criminal Mischief (PL 145)	0.02	1.18
Larceny (PL 155)	0.00	1.01
Robbery (PL 160)	0.05 ***	1.62
Escape (PL 205)	0.08 ***	2.18
Criminal Contempt (PL 215)	0.02	1.15
Harassment (PL 240)	0.00	1.01
Crimes Against Children (PL 260)	-0.02	0.63
Weapons (PL 265)	0.02	1.28
BOROUGH:		
<i>Reference Category: Bronx</i>		
Brooklyn	0.08 **	1.44
Manhattan	0.07 ***	1.34
Queens	-0.03	0.85
Staten Island	-0.01	0.92
DEFENDANT'S DEMOGRAPHIC CHARACTERISTICS		
SEX (Female)	-0.04 **	0.81
ETHNICITY:		
<i>Reference Category: Black</i>		
White	-0.02	0.91
Hispanic	0.00	1.00
Other	-0.04 *	0.71
AGE:		
<i>Reference Category: Age 16-20</i>		
Age 21-29	0.04 *	1.21
Age 30-39	0.03	1.14
Age 40 and over	0.05 **	1.24
DEFENDANT'S CRIMINAL HISTORY		
ANY PRIOR ARRESTS	0.07 ***	1.38
NUMBER OF PRIOR MISDEMEANOR CONVICTIONS	0.14 ***	1.03
NUMBER OF PRIOR FELONY CONVICTIONS	0.08 ***	1.16

Table Continues on Next Page

TABLE 5-1
(continued)

INDEPENDENT VARIABLES ²	Standardized β	Odds Ratio
ARREST AND ARRAIGNMENT CHARGE CHARACTERISTICS		
NUMBER OF ARREST CHARGES	-0.04 **	0.92
ARRAIGNMENT CHARGE SEVERITY: <i>Reference Category: Arraignment Charge was an A Misdemeanor</i>		
Arraignment Charge was a Violation	0.12 ***	7.04
Arraignment Charge was a Felony	-0.02	0.92
CHANGE IN CHARGE SEVERITY FROM ARREST TO ARRAIGNMENT: <i>Reference Category: No Change</i>		
Charge Severity Reduced from Arrest to Arraignment	0.03 *	1.16
Charge Severity Increased from Arrest to Arraignment	-0.01	0.90
CASE PROCESSING CHARACTERISTICS		
RELEASE RECOMMENDATION: <i>Reference Category: No Recommendation (Weak NYC Ties)</i>		
Recommended or Qualified Recommendation	-0.08 ***	0.74
Open Bench Warrant At Time of Arrest	0.05 ***	1.33
Other or Missing	0.02	1.19
DEFENDANT CONVICTED AT ARRAIGNMENT	-0.18 ***	0.51
DEFENDANT EVER RELEASED	-0.44 ***	0.18
CHARGE SEVERITY REDUCED BETWEEN ARRAIGNMENT AND CONVICTION	-0.05	0.83
SEVERITY OF CONVICTION CHARGE: <i>Reference Category: Conviction Charge was an A Misdemeanor</i>		
Conviction Charge was a Violation	-0.34 ***	0.28
Conviction Charge was a B Misdemeanor	-0.03	0.83
NUMBER OF WEEKS FROM ARRAIGNMENT TO CONVICTION	0.10 ***	1.02

Nagelkerke R²
(N of cases)

.48 ***
(N=12,894)

NOTES

¹ See text for a description of the dataset and the subsample.

² See Appendix A for information about the measurement and coding of the variables

- * Statistically significant at $p < .05$
- ** Statistically significant at $p < .01$
- *** Statistically significant at $p < .001$

well. The defendant's criminal history and arraignment charge severity also accounted for some of the gap in incarceration rates. Defendants in DV cases had less serious criminal histories and were less likely to be charged with a felony.

C. Assaults Subsample

We next examine the model predicting the likelihood of incarceration for the Assaults Subsample. As we have emphasized above, this subsample provides a more focused comparison of DV and Non-DV cases charged under the assaults article of New York State Penal Law (PL 120). The model (presented in Table 5-2) indicates that even after controlling for the effects of defendant and case characteristics, the effect of DV Case is statistically significant. The odds ratio indicates that the odds that a convicted defendant in a DV case was sentenced to jail were only .42 times as large as for a convicted defendant in a Non-DV case (or that the odds for a convicted defendant in a Non-DV case were 2.38 times larger than in a DV case). The standardized *beta* was -.18, which indicates that DV case has a moderate effect on the likelihood of incarceration. The effect of DV case on likelihood of incarceration, as measured by both the odds ratio and the standardized *beta*, was almost as strong in the Assaults Subsample as it was in the Crimes Against Persons and Property Subsample (where the odds ratio was .40 and the standardized *beta* was -.19).

Other variables with the strongest effects in the model (as measured by standardized *beta*) were: whether the conviction charge was a violation, whether the defendant was ever released, type of case (all of which reduced the likelihood of incarceration) and whether the defendant had any prior arrests (which increased the likelihood of incarceration). As we found in the Crimes Against Persons and Property Subsample, type of case was among the four strongest predictors of likelihood of incarceration. Overall, the model explained 56% of the variation in the likelihood of incarceration (see Nagelkerke R^2 in Table 5-2).

To determine the extent to which controlling for defendant and case characteristics has explained away the initial difference in incarceration rates between DV and Non-DV cases, we examined a model where type of case was the only independent variable in the model (data not shown). When type of case was the only predictor in the model, the odds that a convicted defendant in a DV case was sentenced to jail were only .49 times as large as for a convicted defendant in a Non-DV case (and the odds for a convicted defendant in a Non-DV case were 2.04 times larger than in a DV case). The net effect reported in Table 5-2, an odds ratio of .42 (or 2.38), is actually stronger than the total effect. For the Assaults Subsample, then, we not only were unable to explain away the effect of type of case, but we also found that the effect increased slightly after taking into account defendant and case characteristics. The widening of the gap is surprising, since we expected to be able to account for at least some of the difference between DV and Non-DV cases in this Subsample.

TABLE 5-2
LOGISTIC REGRESSION MODEL PREDICTING LIKELIHOOD
OF INCARCERATION FOR CONVICTED DEFENDANTS
ASSAULTS SUBSAMPLE¹
 Third Quarter 1998 Dataset

INDEPENDENT VARIABLES ²	Standardized β	Odds Ratio
TYPE OF CASE		
DOMESTIC VIOLENCE CASE	-0.18 ***	0.42
CONTROL VARIABLES		
SELECTION BIAS CORRECTION: LIKELIHOOD OF CONVICTION	0.06	1.77
ARRAIGNMENT CHARGE PENAL LAW ARTICLE:		
<i>Reference Category: Assault 3 (PL 120.00)</i>		
Assault 2 (PL 120.05)	-0.09	0.59
Assault 1 (PL 120.10)	-0.07 *	0.30
Menacing 2 (PL 120.14)	-0.01	0.92
Menacing 3 (PL 120.15)	0.01	1.16
Attempted Assault 3 (PL 110-120.00)	0.03	1.71
Attempted Assault 2 (PL 110-120.05)	-0.02	0.52
Attempted Assault 1 (PL 110-120.10)	-0.02	0.32
BOROUGH:		
<i>Reference Category: Bronx</i>		
Brooklyn	0.09	1.65
Manhattan	0.16 ***	2.58
Queens	-0.10	0.61
Staten Island	0.02	1.36
DEFENDANT'S DEMOGRAPHIC CHARACTERISTICS		
SEX (Female)	-0.03	0.83
ETHNICITY:		
<i>Reference Category: Black</i>		
White	-0.03	0.83
Hispanic	0.03	1.15
Other	-0.08	0.50
AGE:		
<i>Reference Category: Age 16-20</i>		
Age 21-29	0.02	1.12
Age 30-39	-0.01	0.96
Age 40 and over	0.02	1.10
DEFENDANT'S CRIMINAL HISTORY		
ANY PRIOR ARRESTS	0.18 **	2.33
NUMBER OF PRIOR MISDEMEANOR CONVICTIONS	0.08 **	1.04
NUMBER OF PRIOR FELONY CONVICTIONS	0.06 **	1.17

Table Continues on Next Page

TABLE 5-2
(continued)

INDEPENDENT VARIABLES ²	Standardized β	Odds Ratio
ARREST AND ARRAIGNMENT CHARGE CHARACTERISTICS		
NUMBER OF ARREST CHARGES	0.07 *	1.18
CHANGE IN CHARGE SEVERITY FROM ARREST TO ARRAIGNMENT: <i>Reference Category: No Change</i>		
Charge Severity Reduced from Arrest to Arraignment	0.06 *	1.32
Charge Severity Increased from Arrest to Arraignment	0.05 *	2.06
CASE PROCESSING CHARACTERISTICS		
RELEASE RECOMMENDATION: <i>Reference Category: No Recommendation (Weak NYC Ties)</i>		
Recommended or Qualified Recommendation	-0.11 ***	0.59
Open Bench Warrant At Time of Arrest	-0.02	0.84
Other or Missing	0.04	1.43
CASE DISPOSED AT ARRAIGNMENT	-0.08 **	0.46
DEFENDANT EVER RELEASED	-0.35 ***	0.17
CHARGE SEVERITY REDUCED BETWEEN ARRAIGNMENT AND CONVICTION	0.03	1.21
SEVERITY OF CONVICTION CHARGE: <i>Reference Category: Conviction Charge was an A Misdemeanor</i>		
Conviction Charge was a Violation	-0.44 ***	0.12
Conviction Charge was a B Misdemeanor	-0.07	0.60
NUMBER OF WEEKS FROM ARRAIGNMENT TO CONVICTION	0.06	1.01

Nagelkerke R²
(N of cases)

.56 ***
(3,365)

NOTES

¹ See text for a description of the dataset and the subsample.

² See Appendix A for information about the measurement and coding of the variables

- * Statistically significant at $p < .05$
- ** Statistically significant at $p < .01$
- *** Statistically significant at $p < .001$

D. Summary and Discussion of Findings

Even after controlling for defendant and case characteristics, defendants in DV cases were less likely to receive incarcerative sentences than defendants in Non-DV cases. In both the Crimes Against Persons and Property Subsample and the Assaults Subsample, the effect of DV case was moderately strong and statistically significant. The defendant and case characteristics we included in our model were not able to fully account for the difference in incarceration rates between DV and Non-DV cases. We believe the remaining difference in likelihood of incarceration reflects the strong preference for sentences requiring completion of a treatment program. This conclusion is supported by our observation of court cases and interviews with court personnel, indicating that most convicted DV defendants are assigned to batterer intervention programs and/or treatment programs for drug or alcohol abusers.

Our models were relatively unsuccessful in accounting for the initial difference in incarceration rates between DV and Non-DV cases. In the Crimes Against Persons and Property Subsample, our model accounted for less than one-third of the initial difference in incarceration rates. The variables most responsible for this were the correction for selection bias, criminal history variables and arraignment charge severity. In the Assaults Subsample, we were unable to explain away any of the initial difference in incarceration rates between DV and Non-DV cases. This result was surprising, since we expected that differences in defendant and case characteristics would account for at least a small portion of the difference in incarceration rates.

Overall, our findings show that type of case had a moderate, statistically significant, impact in explaining variation in the likelihood of incarceration. In both subsamples, type of case was among the strongest predictors of the likelihood of incarceration. This supports our conclusion that defendants convicted of DV offenses are generally given non-incarcerative sentences.

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VI. MODELS PREDICTING LENGTH OF JAIL SENTENCE

The final case outcome we examine in this study is the length of jail sentence. Here, the analyses are restricted to those cases where the defendant was convicted and sentenced to jail (including both “time served” and definite sentences). As reported in Section III, we found that defendants in DV cases received longer jail sentences, on average, than Non-DV defendants. In this section of the report, we develop statistical models predicting the length of the jail sentence. We continue to follow the analytic strategy used in the analyses of conviction and incarceration. First, we determine whether differences in length of jail sentence between DV and Non-DV cases can be accounted for by differences in defendant and case characteristics. Then we test whether the predictors of sentence length were different for DV and Non-DV cases. We report results for both the Crimes Against Persons and Property Subsample and the Assaults Subsample.

The models we present included an additional correction for selection bias that was not used previously. The analyses of length of sentence included only cases that resulted in incarceration. The variables that influence whether a case resulted in incarceration also may influence the length of the sentence. For example, number of prior misdemeanor convictions may affect both the likelihood of incarceration and the length of the sentence. As noted earlier in the discussion of selection bias, the estimate of the effect of number of prior misdemeanor convictions will be overstated if it influences both the likelihood of being in the sample and the outcome being analyzed. In this circumstance, part of its effect on length of sentence will be due to its influence on the likelihood of incarceration, i.e., on the likelihood that the case ended up in the sample of cases sentenced to jail. The remainder of its effect, if any, will be due to its influence on the length of jail sentence.

To correct for this kind of selection bias, we included an additional control variable in the models: the predicted probability of incarceration. This predicted probability of incarceration was created using a model similar to that presented in Table 5-1 (data not shown).³² The predicted probability of incarceration can theoretically vary from a low of 0.00 to a high of 1.00. Since the model predicting length of sentence included only those cases where the defendant was actually sentenced to jail, the predicted probability of incarceration for these cases was skewed toward the higher end of the scale (the mean predicted probability was .63). Nevertheless, even among cases that resulted in incarceration, there was significant variation: the predicted probability of incarceration varied from .01 to .96. When the predicted probability of incarceration is included as a control variable in models predicting the length of sentence, the estimates of the effects of the other independent variables in the model are more accurate.³³

³² As before, to avoid statistical problems the predicted probability of incarceration used as a correction for selection bias was created using a somewhat different set of independent variables than the model presented in Table 5-1.

³³ The extent to which the estimates are more accurate depends on the ability of the model predicting the probability of incarceration to explain a significant portion of the variation in

Our models predicting length of jail sentence also controlled for the severity of the conviction charge. This is important because severity of conviction charge places statutory limits on the length of the jail sentence that may be imposed (New York State Penal Law §70.15). A defendant can be sentenced to a maximum term of 15 days for a violation, 90 days for a B misdemeanor and 365 days for an A misdemeanor.

A. Linear Regression Analysis

The dependent variable in these analyses, length of jail sentence, is measured in days.³⁴ We use a statistical technique known as linear regression, which is appropriate when the dependent variable measures a quantity, such as the number of days.³⁵ Length of jail sentence varies from 1 to 350 days, however most sentences (over 93%) are 90 days or less.

Like logistic regression, linear regression results evaluate the effect of each independent variable after controlling for the effects of all the other independent variables in the model. These effects represent the *net effect* of the independent variable, in contrast to the *total effect* (i.e., when the independent variable is used as the only predictor). Also, the linear regression results report the statistical significance of each independent variable, just as the logistic regression results did. The interpretation of statistical significance is the same for both types of regression models. However, there are some differences between linear regression and logistic regression. The linear regression results include both a *beta* and a standardized *beta* for each predictor (independent variable) in the model. The *beta* measures the magnitude of the effect of the independent variable. Its purpose is similar to that of the odds ratio in logistic regression, but its interpretation is slightly different. In the linear regressions, the *beta* can be interpreted as the change in the number of days sentenced to jail associated with a one-unit change in the independent variable. The interpretation of the standardized *beta* in linear regression is similar to that in logistic regression. It measures the influence of the independent variable in explaining variation in the number of days sentenced to jail, after taking into account the effects of all the other independent variables in the model. Standardized *betas* vary from -1 to +1; a value close to zero indicates that the effect of the independent variable is relatively small, while a value closer to +1 or -1 indicates that the effect of the independent variable is relatively strong.

To evaluate the overall ability of *all* of the independent variables in the linear regression model to predict the dependent variable, we use the coefficient of determination, also referred to as R^2 . R^2 varies from 0 to +1. It indicates what proportion

likelihood of incarceration. The model correcting for selection bias accounted for approximately 47% of the variation in likelihood of incarceration. This is a sufficiently large proportion of the variation for the purpose of controlling for selection bias.

³⁴ See discussion in Section III of this report explaining how length of jail sentence is measured.

³⁵ In our previous analyses, the dependent variable was dichotomous (i.e., had only two categories) and we used logistic regression techniques.

of variation in the dependent variable is explained by all the independent variables in the model (see Lewis-Beck 1980 for a full discussion of R^2 in linear regression models). Low values of R^2 indicate that the model explains only a small proportion of the variation in the dependent variable, while high values indicate that the model explains a large proportion of the variation in the dependent variable.

B. Crimes Against Persons and Property Subsample

The mean jail sentence for DV cases in the Crimes Against Persons and Property Subsample was 61 days, compared with 20 days for Non-DV cases (see Table 3-1). The linear regression model predicting length of jail sentence controlled for a large number of defendant and case characteristics to attempt to explain away this difference (Table 6-1). Even after controlling for all the variables in the model, DV case had a statistically significant, positive effect on the length of the jail sentence. The *beta* was 14.37, indicating that defendants in DV cases, on average, received jail sentences that were about 14 days longer than those received by defendants in Non-DV cases. The standardized *beta* for DV case was .09, indicating that this variable had a weak overall impact in explaining variation in the length of jail sentence. The standardized *beta* was much weaker than the *beta* because it takes into account the distribution of cases by type of case—there are only 437 DV cases in which the defendant was sentenced to jail, compared with 4,707 Non-DV cases. Under these circumstances, it would be unusual to find a strong standardized *beta*.

As expected, the statutory limits associated with the severity of the conviction charge were strong predictors of the length of jail sentence. Defendants convicted of violations or B misdemeanors received shorter sentences than those convicted of A misdemeanors. Other strong predictors of length of jail sentence, as measured by the standardized *beta*, were whether the conviction occurred at arraignment and whether the defendant was ever released (which reduced the length of the sentence) and whether the arraignment charge was a felony and number of weeks from arraignment to conviction (which increased the length of the sentence). Overall, the model explained 38% of the variation in length of the jail sentence (see R^2 statistic in Table 6-1).

To determine the extent to which controlling for other variables explained away the initial difference in sentence length between DV and Non-DV cases, we examined a model where type of case was the only independent variable in the model (data not shown). When type of case was the only variable in the model, DV cases received sentences that were 41 days longer than defendants in Non-DV cases. This total effect was reduced to a net effect of about 14 days after controlling for defendant and case characteristics. Thus, although the net effect remained large, the model explained away over 65% of the initial difference between DV and Non-DV cases. The independent variables that were most influential in explaining away this difference were arraignment charge Penal Law article (a control variable), severity of arraignment charge, and whether the conviction occurred at arraignment. DV cases were more likely than Non-DV cases to have had a top arraignment charge for Penal Law articles that resulted in longer jail

TABLE 6-1
LINEAR REGRESSION MODEL PREDICTING LENGTH OF SENTENCE
FOR CONVICTED DEFENDANTS SENTENCED TO JAIL
CRIMES AGAINST PERSONS AND PROPERTY SUBSAMPLE¹
 Third Quarter 1998 Dataset

INDEPENDENT VARIABLES ²	Standardized β	β
TYPE OF CASE		
DOMESTIC VIOLENCE CASE	0.09 ***	14.37
CONTROL VARIABLES		
SELECTION BIAS CORRECTION: LIKELIHOOD OF CONVICTION	0.14 ***	35.93
SELECTION BIAS CORRECTION: LIKELIHOOD OF INCARCERATION	-0.11 **	-20.60
ARRAIGNMENT CHARGE PENAL LAW ARTICLE:		
<i>Reference Category: Assault (PL 120)</i>		
Sex Offense (PL 130)	0.09 ***	37.29
Burglary (PL 140)	-0.04 *	-4.06
Criminal Mischief (PL 145)	-0.02	-3.75
Larceny (PL 155)	-0.06 **	-5.72
Robbery (PL 160)	-0.02	-3.81
Escape (PL 205)	-0.02	-4.18
Criminal Contempt (PL 215)	0.04 **	9.19
Harassment (PL 240)	-0.01	-2.63
Crimes Against Children (PL 260)	0.00	2.90
Weapons (PL 265)	0.05 ***	14.29
BOROUGH:		
<i>Reference Category: Bronx</i>		
Brooklyn	0.04	4.39
Manhattan	0.07 ***	6.07
Queens	0.03	3.37
Staten Island	0.09 ***	24.60
DEFENDANT'S DEMOGRAPHIC CHARACTERISTICS		
SEX (Female)	-0.03 *	-3.05
ETHNICITY:		
<i>Reference Category: Black</i>		
White	0.04 **	5.29
Hispanic	0.00	-0.12
Other	0.01	2.75
AGE:		
<i>Reference Category: Age 16-20</i>		
Age 21-29	0.01	1.50
Age 30-39	0.02	1.62
Age 40 and over	-0.02	-1.94
DEFENDANT'S CRIMINAL HISTORY		
ANY PRIOR ARRESTS	-0.01	-1.41
NUMBER OF PRIOR MISDEMEANOR CONVICTIONS	0.11 ***	0.42
NUMBER OF PRIOR FELONY CONVICTIONS	0.05 ***	1.81

Table Continues on Next Page

**TABLE 6-1
(continued)**

INDEPENDENT VARIABLES ²	Standardized β	β
ARREST AND ARRAIGNMENT CHARGE CHARACTERISTICS		
NUMBER OF ARREST CHARGES	0.00	-0.19
ARRAIGNMENT CHARGE SEVERITY: <i>Reference Category: Arraignment Charge was an A Misdemeanor</i>		
Arraignment Charge was a Violation	0.09 ***	26.62
Arraignment Charge was a Felony	0.20 ***	24.12
CHANGE IN CHARGE SEVERITY FROM ARREST TO ARRAIGNMENT: <i>Reference Category: No Change</i>		
Charge Severity Reduced from Arrest to Arraignment	0.01	1.28
Charge Severity Increased from Arrest to Arraignment	-0.02	-4.69
CASE PROCESSING CHARACTERISTICS		
RELEASE RECOMMENDATION: <i>Reference Category: No Recommendation (Weak NYC Ties)</i>		
Recommended or Qualified Recommendation	0.00	0.10
Open Bench Warrant At Time of Arrest	0.02	1.67
Other or Missing	0.03 *	4.44
DEFENDANT CONVICTED AT ARRAIGNMENT	-0.19 ***	-16.99
DEFENDANT EVER RELEASED	-0.21 ***	-26.36
CHARGE SEVERITY REDUCED BETWEEN ARRAIGNMENT AND CONVICTION	0.15 ***	13.61
SEVERITY OF CONVICTION CHARGE: <i>Reference Category: Conviction Charge was an A Misdemeanor</i>		
Conviction Charge was a Violation	-0.29 ***	-28.68
Conviction Charge was a B Misdemeanor	-0.16 ***	-22.21
NUMBER OF WEEKS FROM ARRAIGNMENT TO CONVICTION	0.20 ***	1.19

R² .38 ***
(N of cases) (5,144)

NOTES

¹ See text for a description of the dataset and the subsample.

² See Appendix A for information about the measurement and coding of the variables

- * Statistically significant at p < .05
- ** Statistically significant at p < .01
- *** Statistically significant at p < .001

sentences (primarily Assault, PL 120, and Criminal Contempt, PL 215). Defendants in DV cases who were convicted and sentenced to jail were also more likely to have been charged with a felony at arraignment, a factor that was associated with longer sentences.³⁶ Finally, as noted earlier, DV cases were much less likely to be disposed at arraignment than Non-DV cases, and defendants who were convicted and sentenced to jail at arraignment received shorter sentences than those sentenced to jail in subsequent appearances. As a result, this case processing difference explains a significant portion of the initial difference in length of jail sentence between DV cases and Non-DV cases.

We next consider whether the type of relationship influenced the length of the jail sentence. As mentioned in Section III above, we did not find any consistent pattern in the effects of type of relationship on the likelihood of conviction or of incarceration. Our results for those models (data not shown) showed that the likelihood of conviction or incarceration is generally similar for all DV cases, regardless of the type of relationship between the victim and defendant. However, when we examined our models predicting length of jail sentence, we found that sentences varied depending on the type of relationship (data not shown). Specifically, defendants who were married to, or in a “common-law” relationship with, the victim received jail sentences similar in length to those of Non-DV defendants. Defendants who were in a boyfriend-girlfriend relationship received sentences that were approximately 24 days longer than those in Non-DV cases. Defendants in “other” relationships (primarily parent-child and sibling relationships) received sentences that were an average of 21 days longer than those in Non-DV cases. Finally, when the type of relationship was missing for a DV case, the sentence was 18 days longer, on average, than for a Non-DV case. These findings suggest that the longer sentences found in DV cases (as reported in Table 6-1) are primarily due to the longer sentences given to defendants in boyfriend-girlfriend relationships, “other” relationships, and those for whom relationship information is missing. By contrast, defendants in close intimate relationships with their partners (marriage or “common-law” relationships) received shorter sentences, similar to those in Non-DV cases.

C. Assaults Subsample

The model predicting sentence length for the Crimes Against Persons and Property Subsample produced interesting results, and we now consider whether similar results are found in the Assaults Subsample. The model (Table 6-2) shows that even after controlling for the influence of defendant and case characteristics, DV cases received longer sentences than Non-DV cases. The *beta* was 16.25, which was slightly larger than the *beta* reported in the Crimes Against Persons and Property Subsample (14.37). The standardized *beta* was .14, which was stronger than we found in the Crimes Against Persons and Property Subsample (.09). This indicates that for assaults, type of case

³⁶ Although defendants in DV and Non-DV cases were about equally likely to be charged with a felony at arraignment (see Table 3-6), defendants in DV cases who were convicted and sentenced to jail were *more* likely to have been charged with a felony.

TABLE 6-2
LINEAR REGRESSION MODEL PREDICTING LENGTH OF SENTENCE
FOR CONVICTED DEFENDANTS SENTENCED TO JAIL
ASSAULTS SUBSAMPLE¹
 Third Quarter 1998 Dataset

INDEPENDENT VARIABLES ²	Standardized β	β
TYPE OF CASE		
DOMESTIC VIOLENCE CASE	0.14 ***	16.25
CONTROL VARIABLES		
SELECTION BIAS CORRECTION: LIKELIHOOD OF CONVICTION	0.14	36.97
SELECTION BIAS CORRECTION: LIKELIHOOD OF INCARCERATION	-0.36 **	-74.99
ARRAIGNMENT CHARGE PENAL LAW ARTICLE:		
<i>Reference Category: Assault 3 (PL 120.00)</i>		
Assault 2 (PL 120.05)	0.15 *	18.56
Assault 1 (PL 120.10)	0.11 *	39.56
Menacing 2 (PL 120.14)	0.06	7.64
Menacing 3 (PL 120.15)	-0.01	-2.54
Attempted Assault 3 (PL 110-120.00)	0.00	-1.18
Attempted Assault 2 (PL 110-120.05)	0.06	37.43
Attempted Assault 1 (PL 110-120.10)	-0.02	-22.87
BOROUGH:		
<i>Reference Category: Bronx</i>		
Brooklyn	0.03	3.25
Manhattan	0.10	11.22
Queens	-0.04	-7.15
Staten Island	0.08	22.19
DEFENDANT'S DEMOGRAPHIC CHARACTERISTICS		
SEX (Female)	-0.09 *	-14.09
ETHNICITY:		
<i>Reference Category: Black</i>		
White	0.06	12.51
Hispanic	-0.01	-1.66
Other	-0.05	-16.48
AGE:		
<i>Reference Category: Age 16-20</i>		
Age 21-29	0.01	1.13
Age 30-39	-0.01	-0.83
Age 40 and over	-0.09	-11.75
DEFENDANT'S CRIMINAL HISTORY		
ANY PRIOR ARRESTS	0.06	12.93
NUMBER OF PRIOR MISDEMEANOR CONVICTIONS	0.08 *	0.47
NUMBER OF PRIOR FELONY CONVICTIONS	0.05	2.08

Table Continues on Next Page

TABLE 6-2
(continued)

INDEPENDENT VARIABLES ²	Standardized β	β
ARREST AND ARRAIGNMENT CHARGE CHARACTERISTICS		
NUMBER OF ARREST CHARGES	-0.05	-2.68
CHANGE IN CHARGE SEVERITY FROM ARREST TO ARRAIGNMENT: <i>Reference Category: No Change</i>		
Charge Severity Reduced Between Arrest and Arraignment	0.01	0.51
Charge Severity Increased Between Arrest and Arraignment	-0.09 *	-23.77
CASE PROCESSING CHARACTERISTICS		
RELEASE RECOMMENDATION: <i>Reference Category: No Recommendation (Weak NYC Ties)</i>		
Recommended or Qualified Recommendation	-0.05	-5.18
Open Bench Warrant At Time of Arrest	0.03	4.80
Other or Missing	0.05	8.30
CASE DISPOSED AT ARRAIGNMENT	-0.08 *	-14.92
DEFENDANT EVER RELEASED	-0.35 ***	-41.33
CHARGE SEVERITY REDUCED BETWEEN ARRAIGNMENT AND CONVICTION	0.01	0.72
SEVERITY OF CONVICTION CHARGE: <i>Reference Category: Conviction Charge was an A Misdemeanor</i>		
Conviction Charge was a Violation	-0.33 ***	-45.44
Conviction Charge was a B Misdemeanor	-0.23 ***	-31.33
NUMBER OF WEEKS FROM ARRAIGNMENT TO CONVICTION	0.27 ***	1.39

R² .28 ***
(N of cases) (692)

NOTES

¹ See text for a description of the dataset and the subsample.

² See Appendix A for information about the measurement and coding of the variables

- * Statistically significant at $p < .05$
- ** Statistically significant at $p < .01$
- *** Statistically significant at $p < .001$

explained more variation in sentence length than it did for Crimes Against Persons and Property in general.

Other variables in the model had stronger effects, however. As expected, defendants convicted of a B misdemeanor or a violation (vs. an A misdemeanor) received shorter sentences. As in the Crimes Against Persons and Property Subsample, defendants who were ever released received shorter sentences on average, and number of weeks from arraignment to conviction had a positive effect on sentence length. Overall, the model explained only 28% of the variation in length of jail sentence (see R^2 statistic in Table 6-2).

When we examined a model where type of case was the only independent variable predicting sentence length (data not shown), defendants in DV assault cases received sentences that were 19 days longer than defendants in Non-DV assault cases. The net effect was 16 days, showing that the model for the Assaults Subsample explained about 16% of the initial difference between DV and Non-DV cases. The independent variables that were most influential in explaining this difference were the severity of the conviction charge and number of weeks between arraignment and conviction. Defendants convicted of violations received shorter sentences, and DV defendants who were sentenced to jail were less likely to be convicted of violations than Non-DV defendants who were sentenced to jail. The number of weeks from arraignment to conviction was associated with longer sentences, and DV cases took longer to reach a conviction than Non-DV cases. These results suggest that case-processing differences accounted for part of the difference in sentence length between DV and Non-DV cases.

Finally, we examined data on the impact of the type of relationship between the defendant and the victim. As we found in the Crimes Against Persons and Property Subsample, defendants in married and “common-law” relationships received shorter sentences, similar to those in Non-DV assaults (data not shown). Similarly, defendants in boyfriend-girlfriend relationships, in “other” relationships and in cases where the relationship information was missing received longer sentences.

D. Summary and Discussion of Findings

Even after controlling for defendant and cases characteristics, convicted defendants in DV cases who were sentenced to jail received longer sentences, on average, than convicted defendants in Non-DV cases who were sentenced to jail. In both the Crimes Against Persons and Property Subsample and the Assaults Subsample, the effect of DV case was statistically significant. The defendant and case characteristics we included in our model were not able to fully account for the longer sentences in DV cases. One possible reason for this finding is that we excluded more Non-DV than DV felony cases disposed in Supreme Court from our subsamples. This exclusion may have removed the more serious Non-DV cases that would have ended in conviction and a long jail sentence. While this may be a plausible explanation for our findings in the Crimes Against Persons and Property Subsample, it does not seem plausible for the Assaults

Subsample. The difference in the percentage of DV and Non-DV felony assaults excluded from our Assaults Subsample was relatively small (1% vs. 4%, as reported in Section II). Instead, we believe the longer jail sentences in DV than in Non-DV cases reflect the application of a punitive approach in a small number of DV cases. As noted in Section III of this report, the longer sentences in DV cases should be interpreted in the context of our findings on conviction and incarceration. In the Crimes Against Persons and Property Subsample, only 6% of DV cases resulted in conviction and a jail sentence, compared to 25% of Non-DV cases (data not shown). While sentences requiring completion of treatment programs are used in most DV cases, a punitive approach using jail sentences is used in a small number of DV cases where defendants committed more serious acts of violence.

Our models had mixed success in accounting for the initial difference in length of sentence between DV and Non-DV cases. In the Crimes Against Persons and Property Subsample, our model explained 65% of the initial difference. The initial difference of 41 days was reduced to 14 days after controlling for defendant and case characteristics. The variables most responsible for this were the arraignment charge Penal Law article, severity of the arraignment charge and whether the conviction occurred at arraignment. In the Assaults Subsample, we were less successful. The initial difference of 19 days was reduced to 16 days after controlling for defendant and case characteristics, a 16% reduction. The severity of the conviction charge and the number of weeks from arraignment to conviction were primarily responsible for this reduction. The inability to explain most of the difference in sentence length in the Assaults Subsample is not surprising, since there were fewer differences in case and defendant characteristics between DV and Non-DV cases in this subsample.

The models predicting length of jail sentence were the only models in this report where we considered the impact of the victim-defendant relationship. This variable did not have a meaningful, consistent impact on the likelihood of conviction or the likelihood of incarceration. However, we did find meaningful differences in the models predicting sentence length for both the Crimes Against Persons and Property Subsample and the Assaults Subsample. In the small number of DV cases where jail sentences were imposed, the type of relationship between the victim and defendant influenced the length of the sentence. Defendants in close, on-going, intimate relationships with their victims received shorter sentences than those in more casual boyfriend-girlfriend relationships. This may reflect the wishes of victims, who may have been reluctant to see a long-term partner sent to jail, particularly if the victim wished to continue the relationship. It may also reflect the perceptions of judges or prosecutors who were more reluctant to disrupt a long-term relationship with a longer jail sentence. The victim, judge or prosecutor may also have been concerned about the loss of financial support for the victim during a prolonged jail sentence in situations where the defendant was the main breadwinner for the household. The longer sentences for “other” relationships may have reflected a belief that punitive sentencing is more appropriate for these defendants (primarily children abusing parents and parents abusing children). Cases where information about the nature

of the relationship was missing resulted in longer sentences, but the meaning of this finding is difficult to interpret.

Taken together, our findings suggest that type of case had a weak, though statistically significant, impact on length of jail sentence even after controlling for defendant and case characteristics. Defendants in boyfriend-girlfriend and “other” family relationships were singled out for longer sentences, on average, than defendants in Non-DV cases or those in married or “common-law” relationships. Nevertheless, other factors were stronger predictors of length of sentence. Severity of conviction charge (which imposes statutory limits on the length of sentence), whether the defendant was ever released, and number of weeks from arraignment to conviction were all important determinants of the length of jail sentence.

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VII. CONCLUSION

A. Major Findings

This study was designed to address three major questions about the processing of DV cases in New York City Criminal Courts:

- 1) How did the case outcomes for DV cases differ from those of comparable Non-DV cases?
- 2) How did defendant and case characteristics in DV cases differ from those in comparable Non-DV cases?
- 3) Can the differences in case outcomes between DV and Non-DV cases be accounted for by differences in defendant and case characteristics?

To address these questions, we used the Third Quarter 1998 Dataset, which includes CJA data on Criminal Court dispositions for a three-month cohort of arrests made from July 1, 1998 through September 30, 1998. There are four major findings from our study.

First, we found significant differences in case outcomes for DV and Non-DV cases. As we expected, DV cases were less likely to result in conviction than Non-DV cases. Also as we expected, convicted defendants in DV cases are less likely than those in Non-DV cases to be sentenced to jail. Our comparison of length of jail sentences produced an unexpected finding. Once sentenced to jail, defendants in DV cases received *longer* sentences, on average, than defendants in Non-DV cases. However, so few defendants in DV cases received jail sentences that it is inappropriate to characterize this as evidence of more severe punishment of DV than Non-DV offenders.

Second, we found that DV and Non-DV cases differed in terms of defendant and case characteristics. Defendants in DV cases tended to be older than those in Non-DV cases, and were slightly more likely to be male. Defendants in DV cases generally had less serious criminal records and stronger community ties than defendants in Non-DV cases. DV cases were rarely disposed at arraignment, which reflects citywide policy. Non-DV cases were more likely to be disposed at arraignment. Defendants in DV cases were convicted of less severe charges, on average, than defendants in Non-DV cases. Differences between DV and Non-DV cases were generally larger in the Crimes Against Persons and Property Subsample than in the Assaults Subsample. Almost two-thirds of DV cases were assaults, while less than one-third of Non-DV cases were assaults. Yet even in the Assaults Subsample, differences in defendant and case characteristics between DV and Non-DV cases persisted. Overall, these findings show that defendants in DV and Non-DV cases had different backgrounds, and that DV and Non-DV cases were processed differently in the Criminal Courts.

Third, we found that the differences in some case outcomes could be partially accounted for by defendant and case characteristics. The defendant and case characteristics in our statistical analyses included borough, defendant's demographic characteristics, defendant's criminal history, arrest and arraignment charge characteristics and case processing characteristics. Differences in conviction rates between DV and Non-DV cases could be partially explained by differences in defendants' criminal history. Defendants in DV cases were less likely to have had prior adult arrests and criminal convictions. However, the models were relatively unsuccessful in accounting for differences in incarceration rates. In the Crimes Against Persons and Property Subsample, we accounted for less than one-third of the initial difference in incarceration rates. The key variables helping to account for the difference in incarceration rates were defendant's criminal history and arraignment charge severity—defendants in DV cases were less likely to be charged with a felony. In the Assaults Subsample, we were unable to explain away the initial difference in incarceration rates. Finally, our models had mixed success in accounting for the longer jail sentences in DV cases. The models explained almost two-thirds of the initial difference in the Crimes Against Persons and Property Subsample, but only one-sixth of the initial difference in the Assaults Subsample.

Finally, even after controlling for a large number of defendant and case characteristics, all of our models showed that there was a statistically significant difference between DV and Non-DV case outcomes that could *not* be accounted for by the predictors included in the models. Based on prior research and our interviews with court personnel, we believe the unexplained difference in conviction rates reflects differences in strength of evidence between the two types of cases.³⁷ Evidence is weaker in DV than in Non-DV cases, resulting in a lower conviction rate in DV cases. The unexplained difference in incarceration rates reflects a preference for sentencing defendants in DV cases to treatment programs rather than to jail. The unexplained difference in length of jail sentence (longer sentences for DV defendants) may reflect concern about especially serious acts of violence by a small number of DV offenders. Convicted defendants in DV cases who receive a jail sentence may receive long sentences because they have committed additional acts of domestic violence during the pendency of their cases, or the court may view them as likely to commit additional acts of domestic violence in the future. Since opportunities for recidivism against the same victim are much greater in DV cases than in Non-DV cases, courts may try to deter the defendant through longer jail sentences in the most serious DV cases.

³⁷ Unfortunately, in this study, we did not have any direct measures of strength of evidence (e.g., information about the victim's willingness to cooperate with the prosecution, medical evidence, nature of injuries, etc.). Our models were therefore unable to evaluate directly whether differences in strength of evidence could account for the lower conviction rates in DV cases. The proxy measures we used (number of arrest charges and whether charge severity changed between arrest and arraignment) did not account for the lower conviction rate in DV cases.

B. Discussion and Conclusions

Significant changes in policing, prosecuting and adjudicating domestic violence cases have been introduced over the last two decades in response to the problem of lenient treatment of DV offenders. New York City and New York State, like many jurisdictions around the country, introduced legislative and policy changes designed to insure that domestic violence would be taken seriously by the criminal justice system. Mandatory arrest laws, “no-drop” prosecution policies, and specialized domestic violence court parts were all introduced to improve the criminal justice response to domestic violence.

Have these and other recent changes in New York City reduced or eliminated lenient treatment of DV offenders? This question has proven difficult to answer. On the one hand, our data show 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 show 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 in the Introduction to this report, 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 treatment 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 when we found that, even after controlling for defendant and case characteristics, DV cases were less likely than Non-DV cases to end in conviction and a jail sentence. Since the criminal justice system’s goals are somewhat different in DV cases than in Non-DV cases, it is difficult to interpret these findings as evidence of leniency. Instead it is more appropriate to formulate new questions about the findings in the context of recent legislative and policy changes: Why did the conviction rate in DV cases remain substantially lower than in Non-DV cases, in spite of recent efforts to devote more time and resources to DV cases? Is the strong preference for using treatment programs supported by evidence of their effectiveness in holding domestic violence offenders accountable? We now address these questions, drawing on both our own research and the research of others.

The lower conviction rate in DV than in Non-DV cases indicates that weak evidence continued to be a major problem in DV cases in New York City in the third quarter of 1998. This finding is consistent with previous research showing that weak evidence is one of the most important factors inhibiting the successful prosecution of DV

cases (Belknap and Graham 2000). Why is evidence weaker in DV cases than in Non-DV cases?

First, lack of victim cooperation continues to be a major problem. One study in New York State found that urban prosecutors estimate that 80-90% of victims in DV cases refuse to cooperate (Frisch et al. 2001). Our observations in court support this conclusion. We found that victims rarely come forward to provide a corroborating affidavit in DV cases. As a result, the prosecution must rely primarily on physical evidence, medical reports, "excited utterances," and testimony from police officers. In Criminal Court, this evidence is often not strong enough to obtain a conviction. Defendants are aware of this and are often unwilling to plead guilty in DV cases. If the victim is not cooperating, defendants will even turn down an ACD, which is not a conviction, and hold out for a dismissal.

Second, NYPD policies and New York State's mandatory arrest laws for certain family offenses result 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, reflects 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 Non-DV case, they may screen out weak cases. These different arrest policies may produce weaker evidence in DV cases than in Non-DV cases.

Finally, prosecutors (at least in some boroughs) may be more willing to pursue weak DV cases than weak Non-DV cases. If prosecutors initially pursue DV cases without the cooperation of the victim, then these cases may be more likely to end in dismissals. Our discussions with ADA's and court personnel indicate that the goal in pursuing many of these cases is 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).

Our data do not enable us to determine the relative importance of these explanations of the weakness of evidence in DV cases. Nevertheless, these explanations do allow us to speculate about policies to address the problem of weak evidence. First, steps could be taken to increase the conviction rate in DV cases. Efforts to enhance victim cooperation would go a long way toward strengthening DV cases in Criminal Court. Significant resources have been devoted to reducing the caseload and increasing victim cooperation in the specialized Supreme Court DV parts. However, 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. Reducing the caseload by assigning more prosecutors to DV cases would enable prosecutors to work more closely with victims (Belknap and Graham 2000, Frisch et al. 2001). The DA's offices could also expand the use of counseling and advocacy services for victims to encourage their cooperation in Criminal Court cases. This approach has proven effective in the specialized Supreme Court parts. When victims do not cooperate, efforts to improve the collection of physical and medical evidence could assist in the development of "evidence-based" prosecutions. 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. Reducing caseloads and taking steps to encourage victim cooperation are more likely to increase conviction rates.

Second, if ADA's plan to pursue weak DV cases where conviction is unlikely, more information about the consequences of this strategy may be needed. Some have argued that arrests that end in dismissals increase the danger to victims (Belknap and Graham 2000, Fagan 1989). A defendant may feel empowered to continue or escalate the violence if his or her arrest did not lead to any criminal justice sanctions. Similarly, a victim may become reluctant to call the police if she or he believes an arrest will not lead to sanctions. Preliminary research in New York State indicates that arrest, even without conviction, reduces recidivism in some jurisdictions (Frisch et al. 2001). More research is needed to determine whether recidivism is higher when arrests do not lead to conviction.

Finally, as we consider policy responses to the problem of weak evidence in DV cases, we must emphasize a point we have made throughout this report. 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.

The lower rate of incarcerative sentences in DV cases than in Non-DV cases reflects the strong preference for using treatment programs in DV cases to hold defendants accountable for their behavior. Yet previous research has produced mixed results on the effectiveness of batterer intervention programs, and there is no consistent evidence that they reduce recidivism (Chalk and King 1998, Harvard Law Review 1993, Pirro 1997, Tsai 2000, Watson 2000). Furthermore, many of the court actors we interviewed in New York City expressed skepticism that the programs produced any lasting changes in defendants' behavior. Even those who manage the batterer

intervention programs do not claim that the programs are effective at deterring future violence. While the ability of the programs to rehabilitate defendants is widely doubted, their usefulness as a tool to hold defendants accountable is generally accepted. The primary goal of the courts' heavy reliance on treatment programs in DV cases is accountability, not rehabilitation. The courts use the programs in coordination with other criminal justice sanctions to insure offender accountability and victim safety (Tsai 2000). This is accomplished through judicial monitoring of compliance with program requirements. DV compliance parts require defendants to return for court appearances after their cases reach a final disposition to check on program attendance and to address any violations of program conditions.

Our data do not enable us to evaluate the effectiveness of treatment programs, since we do not have information about program participation and compliance. Nevertheless, we can speculate about policies to address questions about the effectiveness of the programs. First, if courts continue to rely on sentencing DV offenders to treatment programs, we need to know more about how recidivism rates vary depending on the type of sentence imposed. Specifically, are recidivism rates higher for defendants sentenced to a conditional discharge with a batterer intervention program than for those sentenced to jail? Would jail sentences be more appropriate in some cases where treatment programs are now used? Jail sentences are rarely used in DV cases, and seem to be reserved for especially serious cases. There is very little research on the effectiveness of jail sentences compared to treatment programs. Research is needed to determine the recidivism rates for defendants sentenced to treatment programs vs. jail.

Second, since the court system relies heavily on treatment programs to monitor defendants' behavior, the progress of defendants in the programs needs to be evaluated on a regular basis. This is currently done through judicial monitoring in the DV compliance parts. Another approach, proposed by the New York State Office for the Prevention of Domestic Violence (OPDV), is to sentence defendants to probation, with one of the conditions being attendance at a batterer intervention program (Watson 2000). A probation officer can insure that program compliance, offender accountability and victim safety are monitored. Model programs include the "Intensive Supervision Probation" program used in the Brooklyn and Bronx Supreme Court DV parts, and the "Probation Against Violence" program used in Criminal Court and Family Court in Westchester County. In New York City, the Criminal Courts usually monitor DV offenders in the DV compliance parts without probation supervision.³⁸ Preliminary research indicates that intensive supervision probation combined with judicial monitoring has been very effective in the Brooklyn Supreme Court DV parts (Kaye and Knipps 2000). Research

³⁸ Among defendants in 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, less than 25% were placed on probation. Most convicted DV offenders (about 59%, as shown in Table 3-7) 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.

would be needed to determine whether the use of probation sentences in conjunction with judicial monitoring would significantly improve the monitoring of defendants sentenced to treatment programs in Criminal Court.

Finally, we need to acknowledge that in many DV cases, it is unrealistic to expect jail sentences to be imposed. While efforts to treat domestic violence like any other crime may suggest that jail sentences should be used more often, 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. As we noted in Section I of this report, 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.

In summary, this research study has found that conviction rates were lower for DV cases than for comparable Non-DV cases in New York City in the third quarter of 1998. We have also found that the Criminal Courts relied primarily on treatment programs rather than jail sentences for convicted DV offenders. These findings highlight the importance of addressing the problems of weak evidence in DV cases and of addressing the effectiveness of treatment programs in sentencing DV offenders. While our study did not directly assess how these problems should be addressed, we have drawn on other research to make some policy recommendations. To address problems of weak evidence, we believe that decreasing prosecutors' caseloads and increasing the use of counseling and advocacy services for victims would improve the chances of securing victim cooperation and obtaining convictions in more DV cases. To address the effectiveness of treatment programs, research is needed on recidivism rates for defendants in treatment programs vs. those who were sentenced to jail. Consideration could also be given to using probation sentences in conjunction with the use of DV compliance parts to monitor defendants. Implementing these recommendations might require more resources than are available. It is not clear whether they are feasible given the large volume of DV cases in New York City. Furthermore, the effectiveness of these approaches would need to be demonstrated, perhaps through pilot programs. Although we are not in a position to assess the feasibility or the effectiveness of our policy recommendations, we hope that our study will encourage policy makers to consider them. At the very least, our study directs attention to the problems of weak evidence and questions about the effectiveness of treatment programs in DV cases.

C. Future Research

We believe the findings and conclusions of this study provide valuable new information comparing the processing of DV cases to similar Non-DV cases in New York City Criminal Courts. Our research also provides a foundation for future studies of the

processing of DV cases. The problems of weak evidence in DV cases warrant further attention. It would be useful to know much more about the victim's willingness to cooperate with the prosecution, and whether willingness to cooperate changed during the pendency of the case. Recent efforts to pursue "evidence-based" prosecution suggest the importance of obtaining information about severity of injury, whether there was an eyewitness, whether a weapon was used, whether there was other physical evidence, whether there were admissible "excited utterances," etc. It would also be useful to have measures of prior arrests and criminal convictions for domestic violence offenses. To understand the use of the accountability approach, it would be helpful to know more about how the courts monitor defendants' participation in batterer intervention programs. While we do not have access to the data necessary to address these questions, our study provides a useful foundation for other researchers to explore these issues.

Drawing on the data and findings in the current report, we have developed plans for two additional CJA studies. First, there were interesting differences among the boroughs in the processing of DV cases. We plan to address these differences in a subsequent report. We hope to develop a methodology to compare DV cases processed in specialized parts to those processed in all-purpose parts. We expect that these results will shed some light on the effectiveness of specialized parts for handling DV cases. Second, we also plan to conduct a study of recidivism in DV cases. One reason the courts process DV cases differently is to monitor the behavior of defendants in an attempt to prevent future recurrence of domestic violence. We hope to assess the courts' success in meeting that goal. Specifically, we plan to examine whether recidivism rates are significantly higher in cases that end in dismissal. We also plan to compare recidivism rates for those sentenced to a conditional discharge vs. those sentenced to jail. These analyses will begin to address some of the questions raised in the current report.

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VARIABLES ¹	CODING SCHEME
<p>DEPENDENT VARIABLES</p> <p>LIKELIHOOD OF CONVICTION</p> <p>LIKELIHOOD OF INCARCERATION</p> <p>LENGTH OF JAIL SENTENCE</p> <p>TYPE OF CASE</p> <p>DOMESTIC VIOLENCE CASE</p> <p>CONTROL VARIABLES</p> <p>SELECTION BIAS CORRECTIONS: LIKELIHOOD OF CONVICTION LIKELIHOOD OF INCARCERATION</p> <p>ARRAIGNMENT CHARGE PENAL LAW ARTICLE:² (CRIMES AGAINST PERSONS AND PROPERTY SUBSAMPLE) <i>Reference Category: Assaults (PL 120)</i> Sex Offense (PL 130) Kidnapping (PL 135) Burglary (PL 140) Criminal Mischief (PL 145) Arson (PL 150) Larceny (PL 155) Robbery (PL 160) Escape (PL 205) Criminal Contempt (PL 215) Harassment (PL 240) Crimes Against Children (PL 260) Weapons (PL 265)</p> <p>(ASSAULTS SUBSAMPLE) <i>Reference Category: Assault 3 (PL 120.00)</i> Assault 2 (PL 120.05) Assault 1 (PL 120.10) Menacing 2 (PL 120.14) Menacing 3 (PL 120.15) Attempted Assault 3 (PL 110-120.00) Attempted Assault 2 (PL 110-120.05) Attempted Assault 1 (PL 110-120.10)</p> <p>BOROUGH OF ARREST: <i>Reference Category: Bronx</i> Brooklyn Manhattan Queens Staten Island</p> <p>DEFENDANT'S DEMOGRAPHIC CHARACTERISTICS</p> <p>SEX (Female)</p> <p>ETHNICITY: <i>Reference Category: Black</i> White Hispanic Other</p> <p>AGE: <i>Reference Category: Age 16-20</i> Age 21-29 Age 30-39 Age 40 and over</p>	<p>Convicted = 1, Not convicted = 0</p> <p>Sentenced to jail = 1, Not sentenced to jail = 0</p> <p>Number of days, ranges from 1 to 350</p> <p>DV Case = 1, Non-DV Case = 0</p> <p>Continuous, ranges from 0.00 to 1.00 Continuous, ranges from 0.00 to 1.00</p> <p><i>Assaults: Reference Category</i> Sex Offense = 1, All other categories = 0 Kidnapping = 1, All other categories = 0 Burglary = 1, All other categories = 0 Criminal Mischief = 1, All other categories = 0 Arson = 1, All other categories = 0 Larceny = 1, All other categories = 0 Robbery = 1, All other categories = 0 Escape = 1, All other categories = 0 Criminal Contempt = 1, All other categories = 0 Harassment = 1, All other categories = 0 Crimes Against Children = 1, All other categories = 0 Weapons = 1, All other categories = 0</p> <p><i>Assault 3: Reference Category</i> Assault 2 = 1, All other categories = 0 Assault 1 = 1, All other categories = 0 Menacing 2 = 1, All other categories = 0 Menacing 3 = 1, All other categories = 0 Attempted Assault 3 = 1, All other categories = 0 Attempted Assault 2 = 1, All other categories = 0 Attempted Assault 1 = 1, All other categories = 0</p> <p><i>Bronx: Reference Category</i> Brooklyn = 1, All other categories = 0 Manhattan = 1, All other categories = 0 Queens = 1, All other categories = 0 Staten Island = 1, All other categories = 0</p> <p>Female = 1, Male = 0</p> <p><i>Black: Reference Category</i> White = 1, All other categories = 0 Hispanic = 1, All other categories = 0 Other = 1, All other categories = 0</p> <p><i>Age 16-20: Reference Category</i> Age 21-29 = 1, All other categories = 0 Age 30-39 = 1, All other categories = 0 Age 40 and over = 1, All other categories = 0</p>

Table Continues on Next Page

**APPENDIX A: CODING OF VARIABLES FOR REGRESSION MODELS
(continued)**

VARIABLES ¹	CODING SCHEME
DEFENDANT'S CRIMINAL HISTORY	
ANY PRIOR ARRESTS	Any Prior Arrests = 1, All other categories = 0
NUMBER OF PRIOR MISDEMEANOR CONVICTIONS	Number of convictions, ranges from 0 to 99
NUMBER OF PRIOR FELONY CONVICTIONS	Number of convictions, ranges from 0 to 8
ARREST AND ARRAIGNMENT CHARGE CHARACTERISTICS	
NUMBER OF ARREST CHARGES	Number of charges, ranges from 1 to 4
SEVERITY OF ARRAIGNMENT CHARGE: <i>Reference Category: Arraignment Charge was an A Misdemeanor</i> Arraignment Charge was a Violation Arraignment Charge was a B Misdemeanor	<i>Charged as an A Misdemeanor: Reference Category</i> Charged as a Violation = 1, All other categories = 0 Charged as a B Misdemeanor = 1, All other categories = 0
CHANGE IN CHARGE SEVERITY FROM ARREST TO ARRAIGNMENT: <i>Reference Category: No Change in Charge Severity</i> Charge Severity Reduced from Arrest to Arraignment Charge Severity Increased from Arrest to Arraignment	<i>No change in charge severity: Reference Category</i> Charge Severity Reduced = 1, All other categories = 0 Charge Severity Increased = 1, All other categories = 0
CASE PROCESSING CHARACTERISTICS	
RELEASE RECOMMENDATION: <i>Reference Category: No Recommendation (Weak NYC Ties)</i> Recommended or Qualified Recommendation Open Bench Warrant At Time of Arrest Other or Missing	<i>No recommendation (weak NYC ties): Reference Category</i> Recommended or qualified recommendation = 1, All other categories = 0 Open bench warrant = 1, All other categories = 0 Other or missing = 1, All other categories = 0
CASE DISPOSED AT ARRAIGNMENT	Case disposed at arraignment = 1, Not disposed at arraignment = 0
DEFENDANT EVER RELEASED	Defendant ever released = 1, Defendant never released or case was disposed at arraignment = 0
CHARGE SEVERITY REDUCED BETWEEN ARRAIGNMENT AND CONVICTION	Severity reduced between arraignment and conviction = 1, Severity not reduced between arraignment and conviction = 0
SEVERITY OF CONVICTION CHARGE: <i>Reference Category: Conviction Charge was an A Misdemeanor</i> Conviction Charge was a Violation Conviction Charge was a B Misdemeanor	<i>Convicted of an A Misdemeanor: Reference Category</i> Convicted of a Violation = 1, All other categories = 0 Convicted of a B Misdemeanor = 1, All other categories = 0
NUMBER OF WEEKS FROM ARRAIGNMENT TO DISPOSITION	Number of weeks, ranges from 0 to 56

NOTES

¹ See Sections II and III for a description of the variables in the models.

² The categories of this variable are presented twice, once for the Crimes Against Persons and Property Subsample, and once for the Assaults Subsample.