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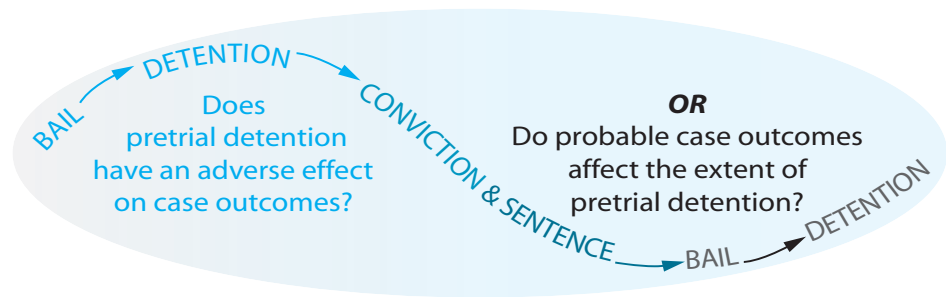
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Bail, Detention, & Nonfelony Case Outcomes



By Mary T. Phillips, Ph.D.

A connection between pretrial detention and the severity of case outcomes has long been reported in the research literature. However, the nature of the relationship is not a simple thing to determine. Some researchers have concluded that detention itself leads to a higher likelihood of conviction or to harsher sentences, or both. Other studies suggest the opposite causal direction: that judges adjust their release and bail-setting decisions according to the probable outcome.

Either interpretation is plausible. Defendants who are not likely to be sentenced to jail even if convicted may plead guilty in order to gain release. Further, jailed defendants are at a disadvantage in participating in their defense. Both of these circumstances

could lead to more severe outcomes because of the detention. On the other hand, the longstanding correlation between bail amount and charge severity is also consistent with the argument that judges set high bail with the intention of keeping those defendants in custody who are facing a jail or prison sentence. In that situation, detention could be attributed, at least in part, to the likelihood of a severe outcome.

This report presents highlights from an ongoing CJA study that is examining relationships among the amount of bail, the duration of detention, and case outcomes. The first part of the research, summarized here, was restricted to nonfelony cases. The second part, focusing on felony cases, will be completed later this year.

This Research Brief is adapted from
Pretrial Detention And Case Outcomes (Part 1): Nonfelony Cases
by Research Department Deputy Director Mary T. Phillips, Ph.D.

The full report will be available soon on the CJA web site:

www.nycja.org/research/research.htm

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Introduction

The judge’s decision to release on recognizance (ROR) or to set bail at arraignment has an immediate effect on a defendant’s liberty while awaiting the outcome of the case. Bail set in any amount usually results in at least some pretrial detention, but it is far from obvious how differences in bail amounts correspond to differences in the duration of detention.

Detention, in turn, may affect the case outcome. Over four decades ago, researchers of the Manhattan Bail Project of the Vera Institute of Justice (then the Vera Foundation) concluded that pretrial detention had an unfavorable influence on the severity of case dispositions. However, it may not be possible to generalize from that research because it focused on a small subset of defendants charged with felony crimes. In addition, few of the statistical controls necessary to rule out alternative interpretations of the results were yet available, and other researchers using more sophisticated methods have since reached conflicting conclusions.

The current research is the first in over 30 years to examine the effects of pretrial detention on case outcomes in New York City. The outcomes included in the analysis were likelihood of conviction, likelihood of incarceration, and sentence length.

Research Questions

- How does the amount of bail set at arraignment affect the length of time spent in pretrial detention?
- Does pretrial detention affect likelihood of conviction?
- Does pretrial detention affect likelihood of incarceration, for convicted defendants?
- Does pretrial detention affect sentence length, for incarcerated defendants?

Extent Of Pretrial Detention

Figure 1 shows that the defendant was released at arraignment in three quarters of nonfelony cases that were continued past arraignment. Release at arraignment usually meant that the defendant would remain at liberty for the duration of the case. In only 3% of all cases was the defendant detained after an initial release, and in 72% of cases the defendant was released throughout case processing to disposition.

Many defendants held on bail at arraignment later gained release by posting bail (7% of all cases) or were released on recognizance (4%). In 14% of cases, the defendant was detained to disposition.

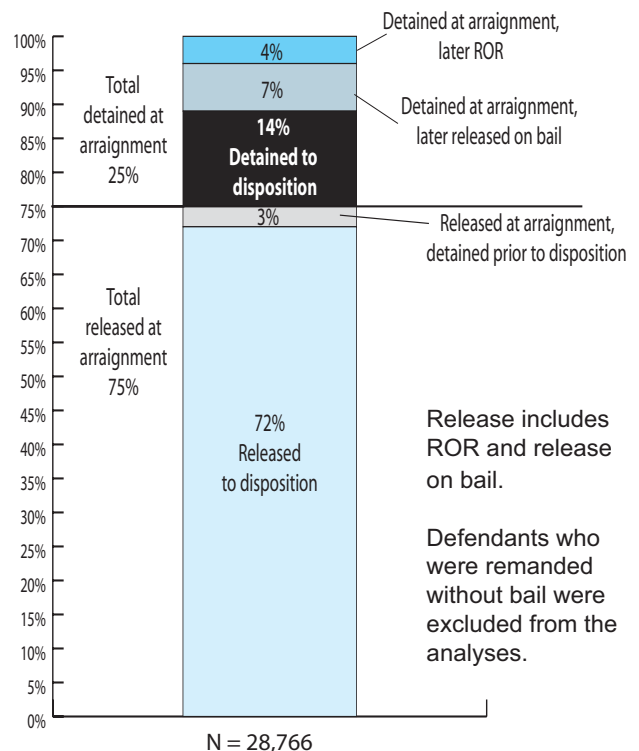
Data Used In The Study

The dataset used for this research includes all arrests in New York City from October 1, 2003, through January 31, 2004. The analyses were restricted to docketed cases with a nonfelony top charge entering Criminal Court (lower court) arraignment. The sample was further restricted to cases that were continued past arraignment and had reached a final disposition by mid-September 2004 for cases disposed in Criminal Court and by December 2004 for cases disposed in Supreme Court (upper court). By that time, 98% of cases in the sample that ended with a conviction had also been sentenced.

After excluding cases with missing data, the total number of cases in the sample was 28,766.

Although most nonfelony cases are disposed in the Criminal Courts in New York City, a few cases in the research sample were disposed in Supreme Court because the charge was upgraded to a felony or an indictment was filed on a misdemeanor charge. Additional sample cases still open in late 2004 in the Bronx were also disposed in Supreme Court after court restructuring in that borough resulted in the routine transfer of most nonfelony cases to Supreme Court for disposition.

**Figure 1
Pretrial Detention Outcomes
For Nonfelony Cases**



Another way to consider the extent of pretrial detention is to examine the proportion of detained defendants who were still in jail at various points of time following arraignment. (The end of pretrial detention does not necessarily mean release, however, as some defendants go straight from pretrial detention to serving a sentence.)

Starting with all defendants who were detained at arraignment, Figure 2 shows that after one day 85% were still in detention. After two days 78% remained in detention; after three days, 72%. Nearly two thirds (64%) remained jailed after the fourth day. By the fifth day over half of the defendants had been released (or their cases were disposed), leaving 43% still in detention at the end of day 5.

The median length of detention was 5 days. This means that detention was equal to 5 days or less for half of the cases (and 5 days or more for the other half).

The mean (average) detention length was 18 days, but the detainee was held as long as this in only a quarter of the cases. The mean was longer than the median because of a small proportion of cases with very lengthy detention.

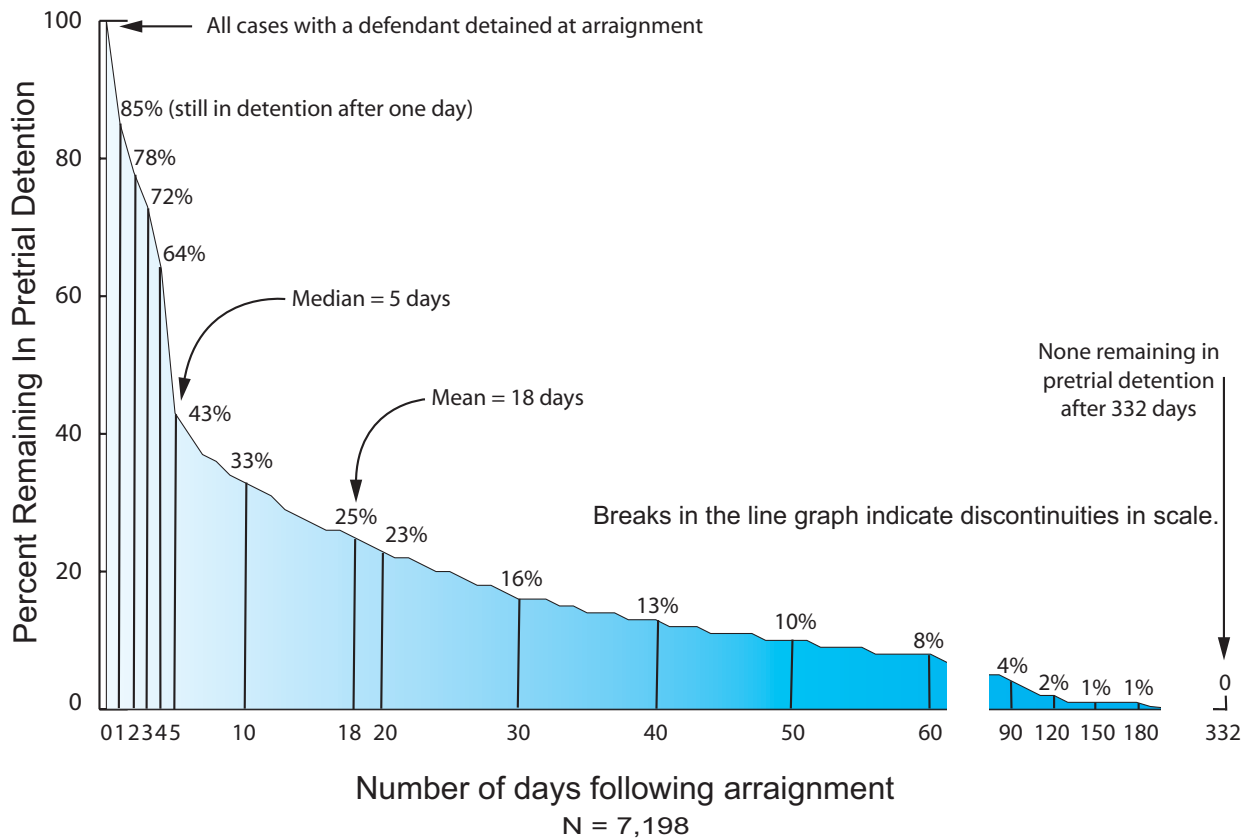
After a month, the defendant in 16% of cases was still in detention, and after two months, 8%. After five months (150 days) only 1% remained in jail, but many more months would pass before pretrial detention ended in all cases. The longest period of detention was 332 days.

Detention Measures

Detention outcome (Fig. 1) refers to whether the defendant was at liberty to disposition of the case (never detained); detained to disposition of the case (never released); detained at arraignment and subsequently released prior to disposition; or released at arraignment and subsequently detained prior to disposition.

Length of detention (Fig. 2) was measured by the number of days from arraignment to the first release, either on bail or on recognizance (ROR); or, if no release, to disposition of the case. Additional periods of detention after the first release were not included in length of detention.

Figure 2
Length of Pretrial Detention:
Percent Remaining In Detention Over Time
(Nonfelony Cases With A Defendant Detained At Arraignment)



How does the amount of bail affect the length of pretrial detention?

In only 10% of cases with bail set did the defendant gain release at arraignment, as shown in Figure 3, and the median bail amount for this group of cases was \$500. In another 27% of cases the defendant made bail after first spending some time in pretrial detention; bail amounts were higher for these cases (median \$750). In nearly half of the cases with bail set the defendant was not released pretrial (48%); bail was highest among these cases (median \$1,000). It seems obvious that the amount of bail had an effect on the timing of release.

This effect is somewhat diluted by New York’s mandatory release law (Criminal Procedure Law §170.70), which requires the release after 5 days (6 days if over a Sunday) of defendants who are in custody on a misdemeanor complaint, if by that time the prosecutor has not replaced the complaint with formal charges. (A similar statute applies to felony charges.) Post-arraignment ROR for defendants who had been held on bail at arraignment occurred in 15% of cases, also illustrated in Figure 3. The majority of these releases (9% of the total) were probably made to comply with mandatory release requirements. This estimate is based on the number of RORs on the 5th or 6th day, as the reason for release is not available in our data.

Although pretrial detention for many cases with high bail was shortened by mandatory release or a quick guilty plea, the bail amount was still the strongest significant predictor of detention length in multivariate analyses. Higher bail tended to result in longer detention, even when controlling for a large number of case and defendant characteristics.

Measuring Bail Amount

Bail amount equals the lesser of the bond amount or the cash alternative, if one was set, on the sample docket. Cases with bail set at \$1 were excluded from the bail analyses because \$1 is an indication that a higher bail was set, or the defendant was remanded without bail, on another case.

The relationship between high bail and longer detention is shown in Figure 4. Overall, the defendant was held no longer than a day in 24% of cases and for a week or more in 34% of cases. However, *short* detention—defined as release within one day, including release at arraignment—was found for an increasingly smaller proportion of cases at higher and higher bail amounts. The defendant was detained a short time in 33% of cases with bail less than \$500, compared to 8% of cases with bail above \$5,000.

Moreover, the proportion of cases with a *long* detention period—7 days or more—increased along with the

Figure 3
Bail Outcomes
(Nonfelony Cases With Bail Set At Arraignment)

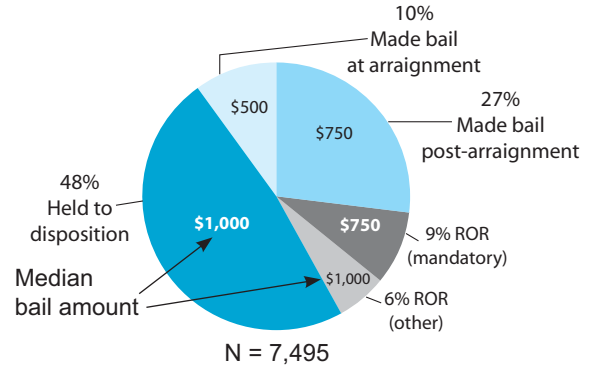
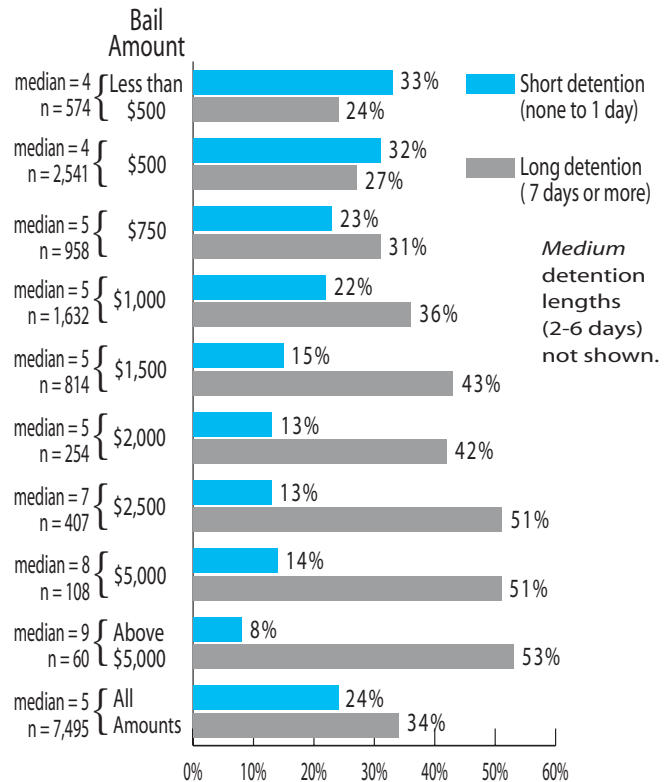


Figure 4
Proportion of Cases with Short vs. Long Detention By Selected Bail Amounts
(Nonfelony Cases With Bail Set At Selected Amounts)



amount of bail. At bail amounts of \$750 or less, fewer than a third of the cases had a defendant detained for 7 days or more, compared to over half of the cases with bail set at \$2,500 or higher.

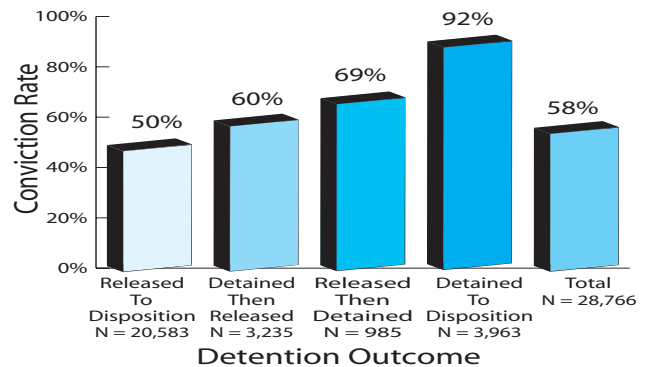
The median number of days in detention also increased with the bail amount, from 4 days for cases with bail of \$500 or less to 9 days for cases with bail above \$5,000.

Does pretrial detention affect likelihood of conviction?

Figure 5 shows that the overall conviction rate was 58% for cases in the study sample, but detention outcome made a big difference. Cases with a defendant who was released to disposition had a conviction rate of 50%, compared to 92% for cases with a defendant detained to disposition. Cases with a change in release status had intermediate conviction rates: detention at arraignment followed by release was associated with a lower conviction rate (60%) than release at arraignment followed by detention (69%). Detention following an initial release may occur because of failure to appear or re-arrest, either of which could increase the likelihood of conviction on the original case.

Multivariate analyses were done to find out if other factors, and not detention itself, were responsible for the bivariate relationship between detention and conviction. The measure of detention used in many prior studies was simply whether the defendant was detained at arraignment, so we examined that measure along with two alternative measures: detention outcome and length of detention (see the box on page 3). In separate multivariate analyses, all three measures of pretrial detention had a significant effect on likelihood of conviction, but *detention outcome* was strongest.

Figure 5
Conviction Rate By Detention Outcome
(Cases With Nonfelony Arraignment Charge
And Continued At Arraignment)



Controlling statistically for the number and severity of arrest charges, the offense type of the arraignment charge, the defendant's criminal history, demographic characteristics, borough, and length of case processing, we found that detention outcome alone had a small additional effect on conviction, over and above the effects of all other factors. The control factors explained 30% of the variation in conviction, and detention explained an additional 6%.

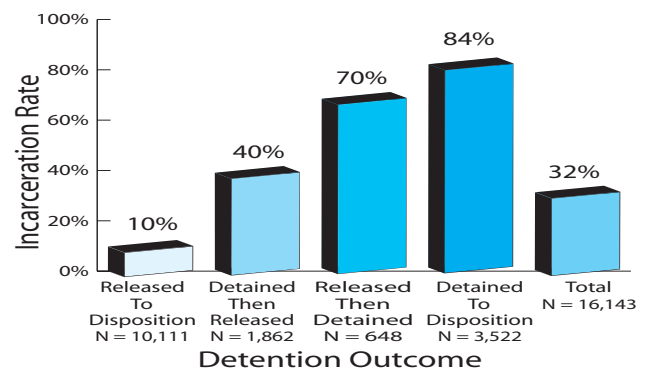
Does pretrial detention affect likelihood of incarceration?

The next analysis examined the effect of pretrial detention on the likelihood of a convicted defendant's receiving an incarcerative sentence. Figure 6 shows that 32% of the convicted defendants in the research were sentenced to jail or prison (including sentences of time served). Cases of defendants who were never detained prior to disposition had a much lower incarceration rate (10%) than cases of defendants who were detained at arraignment, then released (40%) or cases of defendants who were released at arraignment, then detained (70%). The highest incarceration rate was found for cases with a defendant who had been detained throughout case processing to disposition (84%).

Multivariate analyses were done as described above, with some additional control variables. One of these was a variable to control statistically for possible sample bias introduced by restricting the analysis to convicted cases; the other was the severity class of the top charge at conviction.

Again *detention outcome* was most important of the three detention variables, but it had a smaller im-

Figure 6
Incarceration Rate By Detention Outcome
(Convicted Cases With Nonfelony Arraignment Charge
And Continued At Arraignment)



act on incarceration than on conviction. Most of the bivariate effect shown in Figure 6 was accounted for by other factors. The control factors explained 60% of the variation in incarceration, and detention explained an additional 3%.

Does pretrial detention affect sentence length?

The final research question asked if pretrial detention—which has been shown to affect the likelihood of conviction and, to a lesser extent, incarceration—also affects sentence length for defendants sentenced to jail or prison.

Figure 7 shows that the mean and the median sentence varied greatly depending on the number of days the defendant had spent in detention prior to conviction. The mean sentence length for cases with less than a day of detention was 27 days, compared to 41 days for cases with a defendant in detention for 1 to 7 days; 66 days for cases with a defendant in detention between 8 and 60 days; and 125 days for cases with a defendant in detention over two months. The corresponding median sentence lengths were 5 days, 15 days, 44 days, and 90 days.

The results of the multivariate analyses showed that factors other than detention were responsible for most of these differences. The severity of the conviction charge was the most powerful predictor of sentence length, primarily because of a handful of cases in which the defendant was convicted of a felony charge. Cases with a felony charge entering arraignment were excluded from the sample, but in these cases the charge was later upgraded. Sentences for the felony convictions were much longer than for the remainder of the cases: their average (mean) sentence length was 572 days (not shown), compared to 49 days for the sample as a whole (Figure

7). This outweighed any other factor affecting sentence length, including pretrial detention.

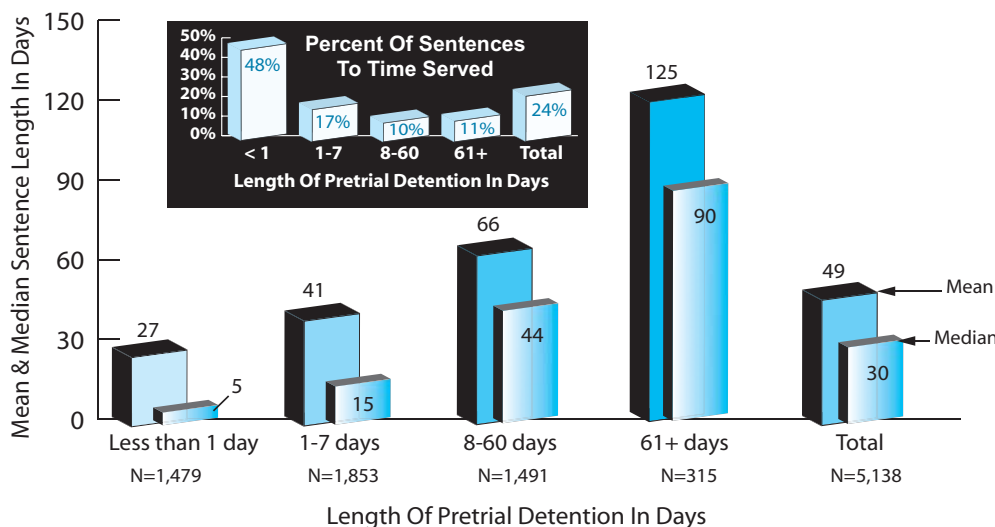
In spite of this, we found that *detention length in days* did have a statistically significant additional effect on sentence length, but it was so small as to be trivial. The control factors explained 45% of the variation in sentence length, and detention explained only an additional 1%. Detention up to a week (1–7 days) did not significantly increase sentence length, compared to sentences for cases with less than a day (or no) detention. Only longer periods of detention were associated with significantly longer sentences, and the overall independent effect on sentence length was minimal. Neither of the other measures of detention was a significant predictor of sentence length.

One way in which detention can have a direct effect on sentence length is in judges’ use of the “time served” sentencing option, since a sentence of time served by definition equals the length of pretrial detention. The inset chart in Figure 7 shows that 24% of all incarcerative sentences were to time served. However, they were clustered primarily among cases with less than a day of detention (48% of these cases had a defendant sentenced to time served), and did little to explain the slight increase in sentence length among cases with longer detention. Additional multivariate analyses showed that length of detention still exerted a tiny, but statistically significant, effect on sentence length, even when sentences of time served were excluded.

Figure 7

Sentence Length By Length of Pretrial Detention

(Convicted Cases With a Nonfelony Arraignment Charge, Sentenced To Incarceration)



Measuring Sentence Length

Sentence length was measured in days with no allowance for early release or pretrial detention. Sentences of time served were set equal to the length of pretrial detention. For the small number of defendants convicted of a felony charge and sentenced to an indeterminate prison term, the minimum term was used as the measure of sentence length.

SUMMARY AND CONCLUSIONS

This research supports the hypothesis that pretrial detention has an adverse effect on case outcomes, especially the likelihood of conviction. The hypothesis is impossible to prove because some factor or factors for which data are unavailable — the strength of the evidence, for instance — could be the reason for both higher bail (resulting in detention) and for the conviction. However, we were able to control for a wide range of case and defendant characteristics. None, either singly or in combination, completely explained away the relationship between detention and likelihood of conviction in nonfelony cases.

On the other hand, detention was not the predominant factor in predicting conviction, and it was only a very small factor in predicting incarceration and sentence length. Offense type, charge severity class, the defendant's criminal history, borough of prosecution, and other factors together accounted for a much larger proportion of the variation in outcomes than did detention. The effect of detention on case outcomes was many times stronger when the effects of the control variables were *not* taken into account, which indicates that, to a large extent, the same factors predict detention as predict the outcomes.

These findings, together with results from prior CJA research, suggest a causal loop: case-related factors affect outcomes, judges adjust bail setting in response to those same (and other) factors, and the resulting detention has an additional small effect on the outcomes, particularly likelihood of conviction. (For a summary of research on the factors that influence judges' bail decisions, see *Research Brief #6*.)

Some of the mechanisms by which detention can affect outcomes have been suggested. Detention can increase the likelihood of conviction because a detained defendant is less able to build a defense, or by increasing the pressure on a defendant to plead guilty. It is also plausible that a defendant's having been jailed prior to disposition might predispose a judge to impose a jail sentence (particularly time served) as opposed to conditional discharge or a fine.

The focus on nonfelony cases in this research sets it apart from previous studies. The greater likelihood of pretrial detention in felony cases might lead to the inference that detention is a more important issue for felony than for nonfelony cases. Yet the implications of detention in *less* serious cases arguably loom larger because of the reduced likelihood of a jail sentence. Less than a third of the convicted defendants in the current research received any custodial sentence, including time served. A defendant facing a conditional discharge, a fine, or a sentence of time served — unlike a defendant facing serious jail or prison time — can gain immediate release by pleading guilty. This creates a strong incentive to do so.

It is also worth noting that many defendants serve time in jail before they are ultimately acquitted or have their cases dismissed (24% of cases with a detained defendant), or before they are convicted and receive a non-custodial sentence (another 24%). This means that nearly half of detained defendants served time in jail only because they were unable to post bail.

POLICY IMPLICATIONS

- In the majority of nonfelony cases with bail set, the amount was \$750 or less, but even bail this low did not ensure quick release. Although judges may not intend for low bail to result in lengthy detention, that was the result in over a quarter of cases with bail set at \$750 or less, for which detention lasted a week or longer. For these defendants, some alternative to detention — such as supervised release, which is not currently an option in New York — might be appropriate, if safeguards could be put in place to ensure that defendants able to post a small bail amount were not subjected to more restrictive supervision as a result of this option. Other approaches would be for judges to tie bail amounts more directly to defendants' financial resources, and to make greater use of rarely used bail options such as cash alternatives and personal recognizance bonds (a bond secured by a small cash amount or unsecured on a promise to pay).

- The small, but real, negative impact of detention on case outcomes, especially on the likelihood that the defendant will be convicted, provides a further rationale for the suggestion that judges explore alternative bail-setting options to help defendants gain their freedom more quickly, if release on recognizance is not appropriate.



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