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CJA is a not-for-profit corporation that provides a variety of criminal justice services under a contract with the City of New York. CJA staff interview defendants arrested in New York City, make recommendations for pretrial release, and notify released defendants of upcoming court dates. Within the Agency, the Research Department conducts studies covering a broad array of criminal justice policy concerns. The Research Brief series summarizes the results of some of these studies.

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Pretrial Misconduct Among Domestic Violence Defendants

By Richard R. Peterson, Ph.D.

The processing of domestic violence (DV) cases often presents special problems for the criminal justice system. A DV defendant released prior to the disposition of a criminal case may harm or threaten the victim while the case is pending. While defendants in Non-DV cases may also retaliate against or threaten their victims, victims in DV cases are often in greater danger of facing renewed threats or violence. Released DV defendants, like Non-DV defendants, may also fail to appear for scheduled court appearances.

Because of concerns about pretrial re-arrest and failure to appear, many in the criminal justice system are interested in knowing more about these types of pretrial misconduct in DV cases. How often do released DV defendants fail to appear? How often are they re-arrested for new DV offenses or for new Non-DV offenses? How often do DV defendants engage in multiple types of pretrial misconduct?

What influences likelihood of re-arrest, failure to appear, or both, among domestic violence defendants?

A previous report (Research Brief #12) compared release outcomes and pretrial misconduct of DV and Non-DV defendants in New York City. This report examines pretrial misconduct among DV defendants in more detail. It also identifies factors that predict different types of pretrial misconduct.

This *Research Brief* is adapted from
Predicting Pretrial Misconduct Among Domestic Violence Defendants In New York City (2008)
by Richard R. Peterson, Ph.D., Director, Research Department

The full report is available on the CJA web site:
www.nycja.org/research/research.htm

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The Dataset

This research analyzed data drawn from the New York City Criminal Justice Agency database in the first quarter of 2001 and the third quarter of 2002 (see inset box).

Identifying DV cases

This study of pretrial misconduct examines cases identified by the courts as DV cases. The courts' definition of domestic violence is based on the nature of the relationship between the offender and the victim. When the relationship meets the statutory definition of a family (cases where the victim and offender are married, formerly married, related by blood or marriage, or have a child in common) or the courts' definition of an intimate relationship (cases where the victim and defendant are cohabiting or previously lived together, including "common-law" marriages and same-sex relationships) the courts classify the case as a DV case.

The Combined First Quarter 2001 And Third Quarter 2002 Dataset

The dataset includes information about arrests, the court processing of prosecuted arrests, court outcomes, and re-arrests of the offenders. To obtain a large sample of DV cases, we combined data on DV cases in New York City from the first quarter of 2001 and the third quarter of 2002. The dataset analyzed in this study is a *defendant based data file* that includes information on the *first DV arrest* of each defendant.

The analyses were limited to cases that were disposed in the lower court (Criminal Court) and excluded felony cases that were disposed in the upper court (Supreme Court). Since few DV cases were disposed in Supreme Court, the analyses provided information about 98% of the DV cases that resulted in criminal prosecution. The analyses were further restricted to those with the types of charges that typically occur in cases involving interpersonal violence: assault, criminal contempt (for violating an order of protection), harassment, crimes against children, burglary, larceny, and weapons charges.

Pretrial Misconduct

Figure 1 presents data on rates of pretrial misconduct, specifically whether defendants who were released ever failed to appear in court during the pendency of the case and whether they were re-arrested. (Note that these rates are "defendant-based"—defendants who missed multiple appearances or who were re-arrested multiple times were counted only once in calculating the rate.) About 10% of DV defendants failed to appear, and about 15% were re-arrested during the pretrial period.

Of particular interest for DV defendants is whether they were re-arrested for new DV offenses. **Figure 2** shows separately the re-arrest rates for new DV offenses and for new Non-DV offenses. About 9% of DV defendants were re-arrested for at least one new DV offense during the pretrial period, and 7% were re-arrested for at least one new Non-DV offense during the pretrial period. (Note that 1% of defendants were re-arrested for both DV and Non-DV offenses.)

Figure 1
Pretrial Misconduct Rates
For DV Defendants Who Were Ever Released

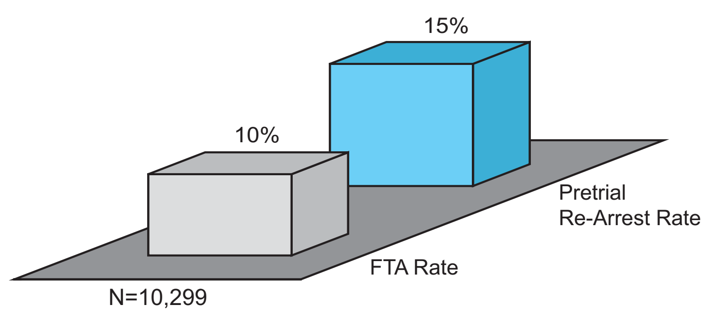
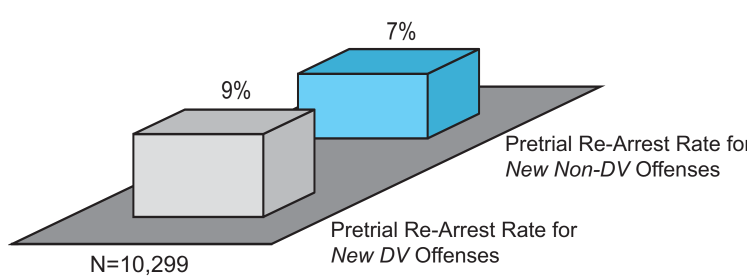


Figure 2
Pretrial Re-Arrest Rates For New DV And Non-DV Offenses
For DV Defendants Who Were Ever Released



Combined Rates Of Misconduct

To examine overall rates of pretrial misconduct, we combined the information about pretrial failure to appear and pretrial re-arrest. First, we examined the combined rate of FTA and pretrial re-arrest for ***any new*** offense. As shown in **Figure 3**, about 21% of DV defendants engaged in one or both of these types of pretrial misconduct.

Second, we examined the combined rate of FTA and pretrial re-arrest for a ***new DV*** offense. About 17% of DV defendants failed to appear and/or were re-arrested for a new DV offense during the pretrial period (see Figure 3).

Combined Rates Of Misconduct By Type Of Misconduct

To provide further details about the patterns of misconduct, **Figure 4** breaks down the combined rates of misconduct. It shows how many defendants only failed to appear, how many were only re-arrested, and how many engaged in both types of misconduct (FTA and re-arrest).

Among the 17% of defendants who either failed to appear or were re-arrested for any *new DV* offense during the pretrial period, 8% failed to appear but were not re-arrested for a new DV offense, 7% were re-arrested for a new DV offense but did not fail to appear, and 2% engaged in both types of misconduct.

Among the 21% of defendants who either failed to appear or were re-arrested for *any new* offense during the pretrial period, 6% failed to appear but were not re-arrested for any new offense, 11% were re-arrested for a new offense but did not fail to appear, and 4% engaged in both types of misconduct.

These findings indicate that the combined risk of FTA or pretrial re-arrest for *any new* offense is weighted more heavily toward those who were re-arrested. In contrast, the combined risk of FTA or pretrial re-arrest for a *new DV* offense is more evenly divided between those who were re-arrested for a new DV offense and those who failed to appear.

Figure 3
Combined Rates Of Pretrial Misconduct
For DV Defendants Who Were Ever Released

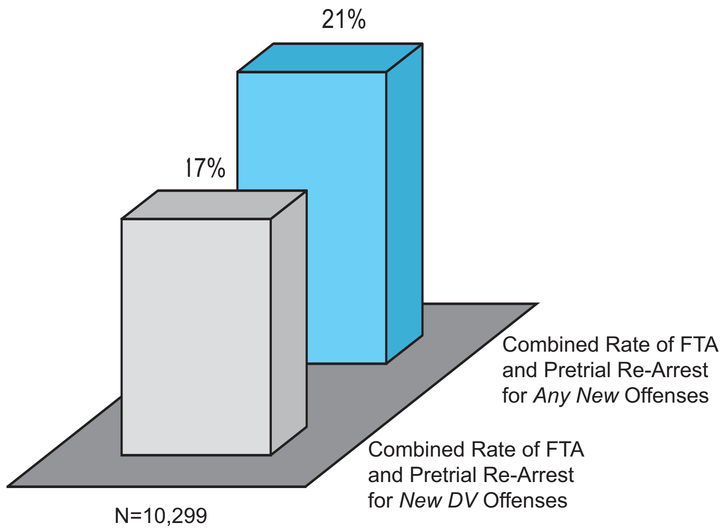
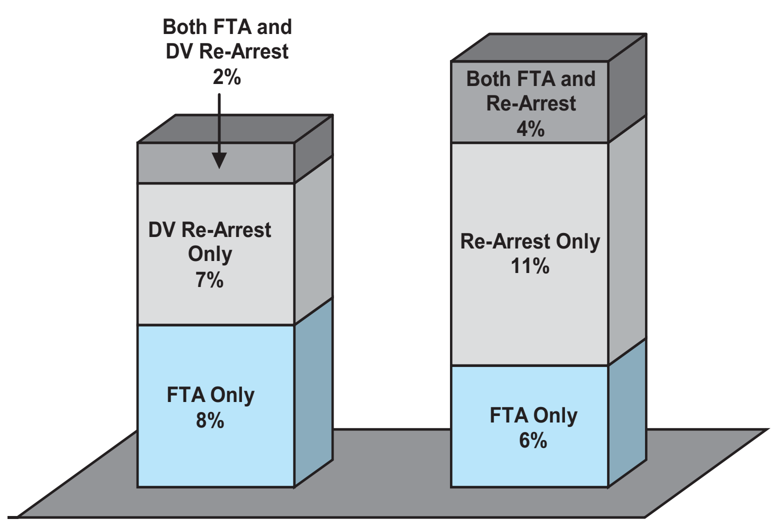


Figure 4
Combined Rates Of Pretrial Misconduct
By Type Of Misconduct
For DV Defendants Who Were Ever Released



FACTORS ASSOCIATED WITH PRETRIAL MISCONDUCT FOR DV DEFENDANTS

We developed two statistical models to examine which factors increased or decreased pretrial misconduct among released DV defendants. One model examined the likelihood of a pretrial re-arrest for any new offense (DV or Non-DV) and the other examined the combined risk of failure to appear and/or pretrial re-arrest for a new DV offense. (A previous study, described in Research Brief #12, developed models to examine the likelihood of pretrial failure to appear (FTA) and the likelihood of pretrial re-arrest for a new DV offense separately). A variety of factors that previous research suggests may affect pretrial misconduct were considered for inclusion in the models.

Since defendants whose cases take longer to reach a disposition have more opportunities to be re-arrested during the pretrial period, the models adjust for the amount of time each defendant was at risk. To calculate time at risk, we counted the number of days between the defendant's release and the disposition of the case.

Figure 5 shows the factors that were influential in each model. Results for the model of **pretrial re-arrest for any new offense** are shown in column 1, and results for the **combined risk of failure to appear and/or pretrial re-arrest for a new DV offense** are shown in column 2.

(For comparison purposes, results of the models previously presented in Research Brief #12 are shown here in columns 3 and 4 and will be discussed later.)

Model Predicting Pretrial Re-Arrest For Any New Offense

After controlling for time at risk, the strongest predictor of pretrial re-arrest among DV defendants was the defendant's age (shown in column 1 in Figure 5). (Strength of predictors was assessed using statistical measures [not shown] that indicate how well the predictors distinguish between defendants who engaged in pretrial misconduct and those who did not.) Older defendants were much less likely than younger defendants to be re-arrested during the pretrial period. The next strongest predictors were whether the defendant had any prior arrests and the number of prior misdemeanor convictions. DV defendants who had any prior arrests were more likely to be re-arrested than those with no prior arrests. DV defendants with more prior misdemeanor convictions were more likely to be re-arrested than those with fewer prior misdemeanor convictions.

Among the criminal history measures, defendants with two or more open cases were more likely to be re-arrested. With one exception, the findings regarding community ties confirmed, as expected, that defendants with weak community ties were more likely to be re-arrested. Specifically, defendants who were unemployed, who lived at their current address one year or less, and who had no telephone were more likely to be re-arrested. (Defendants who lived with someone were more likely to be re-arrested.) Defendants charged with criminal contempt were more likely to be re-arrested.

Defendants released after arraignment (as opposed to those released at arraignment) were more likely to be re-arrested, while those released on bail were less likely to be re-arrested than those released on recognizance (ROR). The lower pretrial re-arrest rate for defendants released after arraignment and those released on bail cannot be attributed to community ties, criminal history, age, or any of the other factors included in the model. This may indicate that releasing defendants at arraignment and releasing defendants on bail reduced their likelihood of pretrial re-arrest. Alternatively, there may be other relevant differences not included in our model (e.g., the defendant's financial resources) that might account for these effects.

Women were less likely to be re-arrested than men. The effect of borough was somewhat surprising—it is not clear why pretrial re-arrest rates were higher in Brooklyn and Staten Island than in the other boroughs.

Model Predicting Combined FTA And Pretrial Re-Arrest For A New DV Offense

Next, we developed a model to predict the combined risk of FTA and pretrial re-arrest for a new DV offense (see column 2 in Figure 5). After controlling for time at risk, the strongest predictor of the likelihood of this type of pretrial misconduct was age. Defendants age 21 or older were significantly less likely to engage in pretrial misconduct than defendants age 16-20, and this effect was stronger for the older age categories.

The next strongest predictors of pretrial misconduct were whether the defendant had any prior arrests and whether the defendant was unemployed. Defendants who had any prior arrests were more likely to fail to appear and/or to be re-arrested for a new pretrial DV offense than those with no prior arrests. Defendants who were unemployed were more likely than those who were employed to engage in pretrial misconduct.

(continued on page 6)

Figure 5
A COMPARISON OF PREDICTORS OF PRETRIAL MISCONDUCT

			TYPE OF PRETRIAL MISCONDUCT			
			Re-Arrest for any new offense	FTA and/or re-arrest for a new DV offense	FTA	Re-Arrest for a new DV offense
Time At Risk	Days At Risk		Yes (+)	Yes (+)	Yes (+)	Yes (+)
Criminal History	Any Prior Arrests		Yes (+)	Yes (+)	Yes (+)	Yes (+)
	2+ Misdemeanor Jail Sentences		No	No	Yes (+)	No
	2+ Prior Bench Warrants		No	Yes (+)	Yes (+)	No
	Open Bench Warrant		No	No	Yes (+)	No
	2+ Open Cases		Yes (+)	Yes (+)	No	Yes (+)
	Number of Prior Misdemeanor Convictions		Yes (+)	No	No	No
Community Ties	Unemployed		Yes (+)	Yes (+)	Yes (+)	Yes (+)
	Expects No One at Arraignment		No	Yes (+)	Yes (+)	No
	No Telephone or Cellphone		Yes (+)	Yes (+)	Yes (+)	Yes (+)
	Lived at Current Address 1 year or less		Yes (+)	Yes (+)	No	Yes (+)
	Lives With Someone		Yes (+)	No	No	Yes (+)
Arraignment Charge	Criminal Contempt (vs. Assault)		Yes (+)	Yes (+)	No	Yes (+)
	"Other" (vs. Assault)		No	No	Yes (+)	No
Release Characteristics	Defendant Released After Arraignment (vs. Released at Arraignment)		Yes (+)	Yes (+)	Yes (+)	No
	Defendant Released On Bail (vs. ROR)		Yes (–)	Yes (–)	Yes (–)	No
Demographic Characteristics	Age	Age 21–29 (vs. Age 16–20)	Yes (–)	Yes (–)	Yes (–)	No
		Age 30–39 (vs. Age 16–20)	Yes (–)	Yes (–)	Yes (–)	No
		Age 40+ (vs. Age 16–20)	Yes (–)	Yes (–)	Yes (–)	Yes (–)
	Sex	Female	Yes (–)	Yes (–)	No	Yes (–)
	Ethnicity	Non-Hispanic White (vs. Non-Hispanic Black)	No	No	No	Yes (+)
		Hispanic (vs. Non-Hispanic Black)	No	No	No	Yes (–)
		Other (vs. Non-Hispanic Black)	No	No	No	No
	Defendant-Victim Relation-ship	Boyfriend-Girlfriend (vs. Married)	No	No	No	No
		Common Law (vs. Married)	No	No	No	No
		Other (vs. Married)	No	No	No	Yes (–)
	Borough	Manhattan (vs. Bklyn)	Yes (–)	Yes (–)	No	No
		Queens (vs. Bklyn)	Yes (–)	No	No	No
		Staten Island (vs. Bklyn)	No	Yes (+)	Yes (+)	No
		Bronx (vs. Bklyn)	Yes (–)	No	No	No

A plus sign (+) indicates that the factor was a statistically significant predictor of *higher* FTA and/or re-arrest rates.
A negative sign (–) indicates that the factor was a statistically significant predictor of *lower* FTA and/or re-arrest rates.
"No" indicates that the factor was not a statistically significant predictor.

(Model Predicting Combined FTA And Pretrial Re-Arrest For A New DV Offense, *continued from page 4*)

Other predictors in the model were whether the defendant expected anyone at arraignment, whether the defendant had two or more prior bench warrants, and whether the defendant was charged with criminal contempt at arraignment. Criminal contempt charges in DV cases are generally brought when the defendant has violated an order of protection. This finding suggests that defendants who have been charged with violating orders of protection were more likely to fail to appear and/or to be re-arrested for committing new DV offenses during the pretrial period.

Release characteristics also affected pretrial misconduct. Defendants released on bail were less likely to fail to appear and/or to be re-arrested for a new DV offense during the pretrial period. Defendants released after arraignment were more likely to engage in pretrial misconduct.

Other variables in the model that had statistically significant effects included having two or more open cases at the time of arrest, borough, and sex. Defendants who had two or more open cases at the time of arrest were more likely to fail to appear and/or to be re-arrested for a new DV offense during the pretrial period. This indicates that these defendants were in a period of frequent criminal activity, perhaps leading to failure to appear and/or multiple re-arrests in a relatively short time. Female defendants were less likely to engage in pretrial misconduct.

Comparison of Four Models of Pretrial Misconduct

We now consider what we have learned about pretrial misconduct based not only on the models reported in this Research Brief, but also on the models reported in Research Brief #12. Those models predicted the likelihood of pretrial FTA (see column 3 in Figure 5) and the likelihood of re-arrest for a new DV offense (column 4).

Taken together, our findings from the four models provide several valuable lessons for those interested in identifying the factors that are associated with a greater risk of pretrial misconduct among domestic violence offenders.

- **Some factors are associated with all types of pretrial misconduct.** Younger offenders, those with prior arrests, those who are unemployed, and those who have no telephone are more likely to engage in each type of pretrial misconduct we examined. Among these factors, age was the strongest predictor.

- **A history of misconduct is a good predictor of future misconduct.** Defendants with prior or current bench warrants for failing to appear are more likely to fail to appear on their current arrest. Defendants who have previously been arrested, who have open cases, or whose current arrest is for violating an order of protection are more likely to be re-arrested for both DV and Non-DV offenses. A history of violating the law, including orders of protection, increases the risk of re-arrest.

- **Some factors affect FTA and not re-arrests.** Defendants who do not expect anyone at arraignment are more likely to FTA than those who do, but are no more likely to be re-arrested. This suggests that defendants with weaker ties to other individuals are more likely to miss court appearances, but not more likely to commit new offenses. DV defendants with two or more prior misdemeanor jail sentences and those who are charged with "other" crimes (other than assault or criminal contempt) are also more likely to FTA, but not more likely to be re-arrested. Offenders who have a longer history of committing misdemeanor offenses and who have committed an atypical DV offense seem to be more likely to FTA.

- **Some factors affect re-arrests (both DV and Non-DV), but not FTA.** Women are less likely than men to be re-arrested, but are equally likely to FTA. Those who have lived at their current address one year or less have higher rates of re-arrest than those with longer tenure at their current address, yet their FTA rates are similar. One measure of community ties, living with someone, increases the risk of re-arrest. In most of these cases, the defendant probably lives with the victim of the current domestic violence offense. Even if a temporary order of protection (TOP) orders the defendant to stay away from the victim, the defendant probably has easier access to the victim and is therefore more likely to commit a new offense.

POLICY IMPLICATIONS

The findings from this study suggest that pretrial misconduct is a problem for a significant minority of DV defendants and they suggest which factors increase the risk of pretrial misconduct. We now consider how the findings of this study could be used to reduce the risk of pretrial misconduct among DV defendants.

Because the bail statutes in New York State require the criminal courts to take criminal history and community ties into account, we focus primarily on these factors. Our findings suggest that courts should pay special attention to those with any prior arrests, who pose a greater risk of pretrial misconduct. Two aspects of community ties also are consistent predictors of all types of pretrial misconduct: unemployment and not having a telephone.

Information about criminal history and community ties items is available to the criminal court at the time of arraignment, and could be used to assist the court in making release decisions. However, the question of how to use this information remains to be addressed. What changes in release decision-making should be made if a defendant has a more serious criminal history or weak community ties?

As discussed in a previous Research Brief (#12), it would be difficult in practice for the courts to prevent most post-arraignment releases or to set bail rather than release the defendant on recognizance. Many DV defendants released after arraignment have made bail and cannot be detained. Others must be released on recognizance because the DA has not corroborated the complaint within statutory time limits. Judges are likely to be reluctant to set bail more often, or to set higher bail, because defendants in misdemeanor DV cases are unlikely to be convicted, or if convicted, unlikely to be sentenced to jail. Changes in bail may also hurt victims financially if they are dependent on the defendant's income.

- Pretrial misconduct by DV defendants is a significant problem, but it is difficult to prevent. Over one fifth of DV defendants engage in some type of pretrial misconduct.
- DV defendants who have had a prior arrest, those who are unemployed, and those who do not have a telephone are all at greater risk for pretrial misconduct.
- It is unlikely that the courts could detain more DV defendants on bail.
- Requiring supervised release for some DV defendants would require the establishment of a supervised release program in New York City.

Concerns about pretrial re-arrest are even more difficult to address. New York State law does not allow for preventive detention of defendants based on the potential risk of re-offending. Moreover, our research did not identify any types of release decisions that reduced the likelihood of re-arrest for a new DV offense. Release conditions are likely to be less successful at reducing pretrial re-arrest for a new DV offense than other types of pretrial misconduct.

Given the legal restrictions and the limitations suggested by our research, what actions can the courts take to address concerns about risk of pretrial re-arrest in DV cases? First, to the extent that the courts consider criminal history, community ties, and arraignment charge type when making release and bail decisions about FTA, they are also coincidentally basing these decisions on factors relating to re-arrest. Second, while the courts cannot explicitly take the risk of pretrial re-arrest into account in making decisions about bail and release, they are authorized to set conditions of release. Temporary Orders of Protection are routinely ordered in most DV cases, usually requiring the defendant to stay away from the victim's home, school, or work place and/or to refrain from harassing, intimidating, threatening, or committing a family offense against the victim.

A court can also set other conditions of release. One possibility would be to require some DV defendants to enroll in a supervised release program. These programs are widely used in the U.S. to monitor defendants during the pretrial period. Defendants report to the program on a regular basis by telephone or in person. This would require development and implementation of a supervised release program, since none currently exists in New York City.

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