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Evaluation of Brooklyn's Video Statement Program for DV Cases

By Richard R. Peterson, Ph.D.

Do defendants' video statements increase convictions in domestic violence cases?

In November 2007, the Domestic Violence Bureau of the Kings County District Attorney's office (KCDA) established a video statement program for defendants in cases involving intimate partner violence and elder abuse. Under this program, an Assistant District Attorney (ADA) asks selected defendants to make a statement about the incident that led to the arrest. The District Attorney's (DA's) office records the defendants on video, and retains the recorded statements for use as evidence in their Criminal Court cases.

The goal of the video statement program is to improve the evidence available in the cases handled by the Domestic Violence Bureau.

This report is the second of two Research Briefs describing the results of a study of the video statement program. The first Brief (no. 28) described how the DA's Office implemented the program and how it operates. This Brief assesses the impact of the video statement program on convictions in criminal cases of intimate partner violence and elder abuse in Brooklyn, New York.

This *Research Brief* is adapted from
*The Kings County District Attorney's Video Statement Program for Domestic
Violence Cases (2012)*

by Richard R. Peterson, Ph.D., Director, Research Department

The full report is available on CJA's web site:

www.nycja.org/research/research.htm

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Conviction Rates in Video and Non-Video Cases

Defendants’ video statements may provide additional evidence that supports the prosecution’s case. Because victims often do not participate in the prosecution of cases of intimate partner violence and elder abuse, the video statement may be used to pursue an evidence-based prosecution, which does not rely on victim testimony. As discussed in *Research Brief* no. 28, we found that the conviction rate was higher for video cases (those where the defendant was asked to make a statement) than among non-video cases (those where the defendant was not sent for a video statement). After excluding cross-complaints, the conviction rate was 40% in video cases and 36% in non-video cases (see Figure 1). This suggests that the video statements may have strengthened the evidence and increased the conviction rate.

Figure 1 pools data from several courts that have widely different conviction rates. To examine properly the influence of video statements on conviction rates, we must consider whether the impact varies in different courts. DV Bureau cases in Brooklyn are generally sent to one of three types of courts: the Criminal Court specialized DV parts (DV1 and DV2), the Integrated Domestic Violence Court parts (IDV and IDV2) and the Supreme Court specialized DV parts (DV and 4). The Criminal Court parts handle nonfelony cases. The IDV parts handle criminal cases of defendants who also have Family Court custody, visitation or family offense petitions pending, and/or a concurrent Supreme Court matrimonial case. The Supreme Court parts handle cases of defendants indicted on felony charges.

As shown in Figure 2, almost one third of all Criminal Court DV cases ended in conviction, compared to about half of all IDV Court cases and 95% of Supreme Court cases. (Note that the data presented here exclude cross-complaints and cases that did not have an appearance in any specialized DV court.) The conviction rate is higher for video cases than for non-video cases in two of the three courts: about 5.6 percentage points higher in Criminal Court and 9 percentage points higher in the IDV Court.

Figure 1
Conviction Rates in Video and Non-Video Cases
Excluding Cross-Complaints

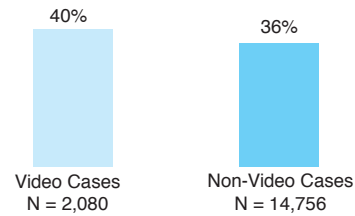
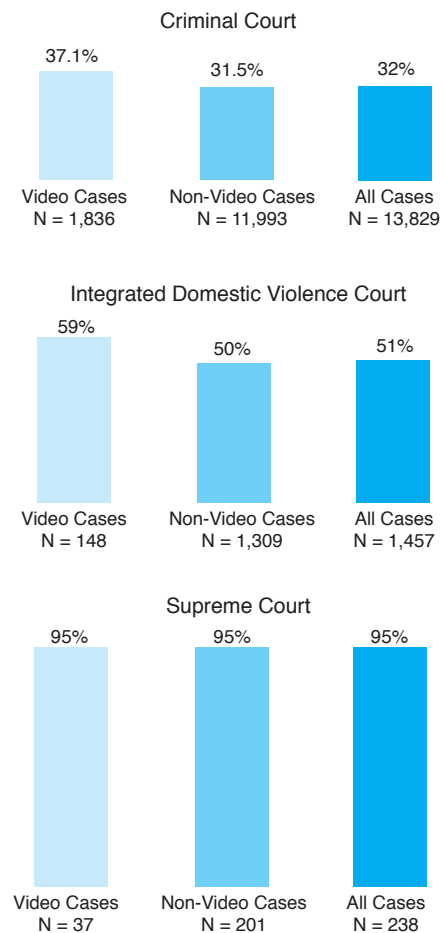


Figure 2
Conviction Rate
in DV Bureau Cases
by Video Status and Court Type
Excluding Cross-Complaints



Could Other Factors Explain the Higher Conviction Rate in Video Cases?

Although these results provide us with a more detailed look at the effect of the video statement program on convictions, additional questions remain. Is the video statement program responsible for increasing the conviction rate? Are there any differences between video and non-video cases that could explain the higher conviction rates for video cases in Criminal Court and IDV Court? For example, we saw in *Research Brief* no. 28 that expeditors were more likely to send cases with injuries to the ECAB Annex for a video statement. If video cases were more likely to have injuries than non-video cases, and if cases with injuries were more likely to result in conviction, then a higher prevalence of injuries might, at least partially, explain why the conviction rate was higher in video cases than in non-video cases. Once we consider injuries, the difference in conviction rates between video and non-video cases might become smaller, or disappear.

It is also possible that taking differences between video and non-video cases into account will increase the gap in the conviction rate between video and non-video cases. For example, we saw in *Research Brief* no. 28 that expeditors were more likely to send cases in which the defendant was charged with an assault to the ECAB Annex for a video statement. If cases in which the defendant was charged with assault were less likely to result in conviction (e.g., because these victims were more reluctant to testify than other victims were), then a higher prevalence of assault cases might reduce the conviction rate in video cases. Once we consider the effect of assault charges on the likelihood of conviction, the difference in conviction rates between video and non-video cases might become larger.

To assess the independent effect of video cases on convictions, we must consider not only injuries and assault charges, but also a variety of other factors that might affect conviction rates. Many factors may affect the likelihood that a DV Bureau case will end in a conviction, including the defendant's criminal record, the type and severity of the charge, the nature of the relationship between the defendant and the victim, the availability of medical records, and other types of evidence.

To simultaneously consider the effect of numerous predictors of the likelihood of conviction, we

Sources of Data

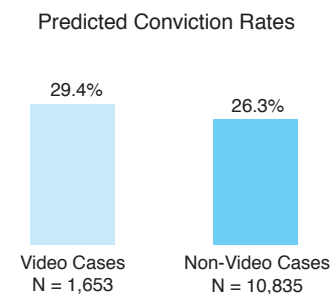
This study used data collected by the Kings County District Attorney's office, the New York Police Department, and the New York City Criminal Justice Agency (CJA). We analyzed information about the cases of defendants arrested in Brooklyn between November 27, 2007, and December 31, 2009. Data from this time period allow us to examine all DV Bureau arrests from the date the video statement program began operation until the end of 2009. The study uses information from four datasets. The *CJA Brooklyn Dataset*, *DV Bureau Dataset*, and the *ECAB Annex Dataset* were described in *Research Brief* no. 28. The *DV Bureau Case File Sample* contains information for a sample of DV Bureau cases from two sources: 1) the District Attorney's case files for cases disposed in the DV Bureau and 2) data coded from the recorded video statements for the ECAB Annex cases. The dataset includes a sample of 1,596 of the 20,845 arrests assigned to the DV Bureau, including 469 of the 2,601 cases in the video statement program and 1,127 of the 18,244 DV Bureau cases not sent to the video statement program.

developed several predictive models. These models allow us to determine the independent effect of the video statement program on conviction, even after we consider the effect of other factors. We developed separate predictive models for Criminal Court and for the Integrated Domestic Violence Court. (We did not develop a model for Supreme Court cases because the number of cases was too small for reliable analysis.) We classified cases that were dismissed or adjourned in contemplation of dismissal as "not convicted," and cases in which the defendant pled guilty or was found guilty after trial as "convicted."

Our initial analysis of Criminal Court cases found that defendants who were never released had such a high conviction rate compared to defendants who were released (84% vs. 27%, not shown) that very few additional factors were likely to influence convictions in their cases. These cases constituted only about 10% of the cases disposed in Criminal Court (data not shown). Because release status was such a strong predictor of conviction, we decided to analyze the likelihood of conviction only for released defendants.

Among released defendants, even after controlling for other predictors, the conviction rate for video cases was about 3.1 percentage points higher than for non-video cases (see Figure 3). The predicted conviction rate was 29.4% for released defendants in video cases, and 26.3% in non-video cases.

Figure 3
Effect of Video Statement Program on Convictions for Released Defendants in Criminal Court Domestic Violence Cases Excluding Cross-Complaints



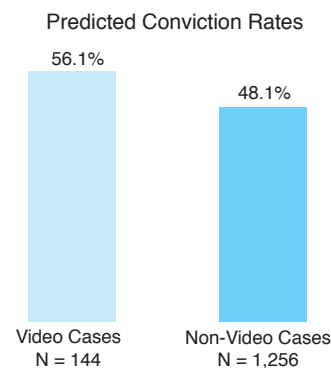
The strongest predictors of conviction among released defendants in Criminal Court were whether the defendant was injured (lower likelihood of conviction), whether the defendant ever failed to appear (higher likelihood of conviction), and whether the defendant was charged with crimes against children (higher likelihood of conviction).

We next developed a model predicting convictions for cases disposed in the IDV Court parts (model not shown). This model had fewer predictors, possibly because the number of IDV Court cases is considerably smaller than the number of Criminal Court DV cases. In the IDV Court parts, as in the Criminal Court DV parts, video cases were more likely to end in conviction, even after considering the effects of all the other factors that affect conviction. The difference was 8 percentage points. The predicted conviction rate was 56.1% for released defendants in video cases, and 48.1% in non-video cases (see Figure 4).

The strongest predictors increasing the likelihood of conviction in IDV Court were whether the defendant ever failed to appear for a scheduled court appearance, whether there were photos available of victim injuries, whether the defendant was charged with a felony at arraignment, and whether the defendant was arrested for a new DV offense prior to case disposition. Female defendants were considerably less likely to be convicted than were male defendants.

Why is the effect of the video statement program stronger in the IDV Court than in the Criminal Court? Unique features of IDV Courts and the cases heard in them may play a crucial role in enhancing the value of video statements. Victims are routinely present for hearings in IDV Court, are represented by an attorney, and generally are participating with the prosecution of the criminal case. Caseloads for judges and ADAs are lower in IDV Court than in Criminal Court. Defendants in IDV Court may be more willing to accept a plea in a criminal case as a way to negotiate more favorable outcomes in concurrent custody, visitation, or divorce cases. Video statements appear to be more valuable in obtaining convictions under the more favorable conditions for the prosecution in IDV Court.

Figure 4
Effect of Video Statement Program on Convictions for Released Defendants in Integrated Domestic Violence Court Cases Excluding Cross-Complaints



Does the Content of Defendant Statements Affect Convictions?

Thus far, we have not considered whether, or how, the content of video statements influences the likelihood of conviction. The analyses presented above classify as a “video case” any case in which an ECAB Annex screener placed the defendant in front of the video camera and made a recording, whether or not the defendant made a substantive statement. As noted in *Research Brief no. 28*, about one out of five defendants in video cases made no substantive statement — they asked for an attorney and/or refused to answer any questions.

Overall, the conviction rate in video cases that were not cross-complaints was slightly higher when defendants made a substantive statement than when they did not. Among released defendants in cases disposed in Criminal Court the conviction rate was 33% when the defendant made a substantive statement, compared to 28% when the defendant refused to make a statement (see Figure 5). Making a substantive statement increased the likelihood of conviction among released defendants in Criminal Court cases of intimate partner violence and elder abuse.

How did the content of the video statement affect the conviction rate? As shown in Figure 6, the conviction rate was lowest in cases in which the defendant denied the charges (23%) and highest when the defendant admitted violating an order of protection, or knowing that an order of protection was in effect (46%). The conviction rate was also high when the defendant confessed to most of the charges (41%) and/or admitted using physical force against the victim (38%). The conviction rate was relatively low when the defendant claimed self-defense (27%).

After controlling for other predictors of conviction, we found three categories of statement content that had an effect on the likelihood of conviction (model not shown). Those who confessed and those who admitted using physical force against the victim were more likely to be convicted. Those who denied the charges were less likely to be convicted.

Figure 5
Conviction Rate for Released Defendants in Video Cases Disposed in Criminal Court by Whether Defendant Made a Substantive Statement Excluding Cross-Complaints

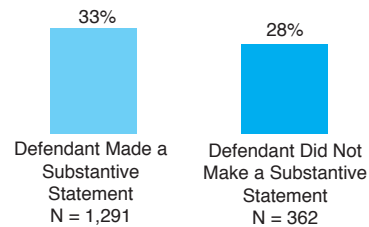
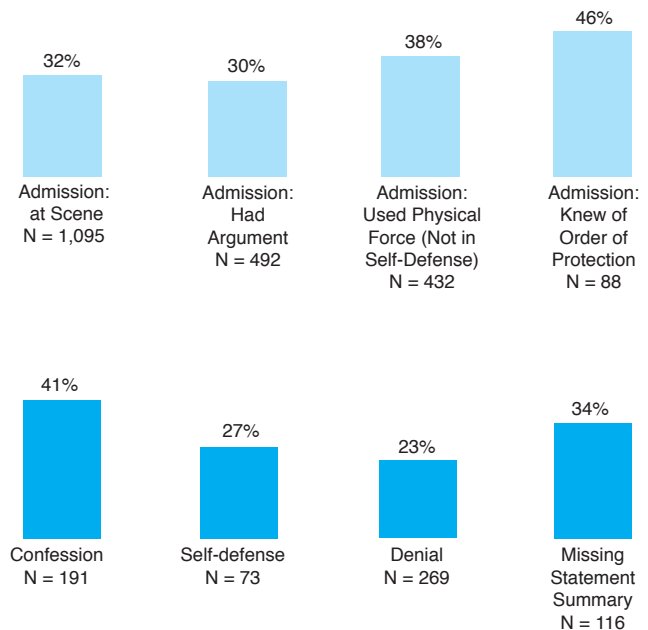


Figure 6
Conviction Rate in Cases Disposed in Criminal Court for Released Defendants Who Made a Substantive Statement by Content of Statement Excluding Cross-Complaints



Note: cases may be classified in more than one category.

Victim Participation in the Prosecution

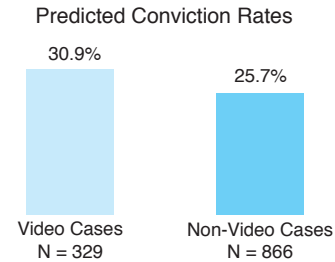
We next examined the influence of the video statement program on convictions after considering the effect of victim participation in the prosecution, as well as other factors, on the likelihood of conviction. The analyses use data from Criminal Court cases in the DV Bureau Case File Sample, which contains information coded from the DA’s case files. We did not have enough cases in the sample to examine IDV court cases. This dataset includes information about only a small proportion of all DV Bureau cases. However, it contains information about the evidence in the case, especially about victim participation in the prosecution, which is not available from other sources. It also includes information about evidence that became available after arraignment.

After controlling for victim participation and other predictors of conviction in Criminal Court, the conviction rate among released defendants was 5.2 percentage points higher in video cases than in non-video cases. The predicted conviction rate was 30.9% for released defendants in video cases and 25.7% in non-video cases (see Figure 7). This effect was larger than reported for the comparable model presented in Figure 3 (3.1 percentage points).

Why was the effect of the video statement program stronger in this model than in the comparable model in Figure 3? Additional analyses (not shown) indicate that adding victim participation to this model was responsible for increasing the effect of video cases. There are two reasons for this. First, more video cases than non-video cases involved victims who were not participating. The predicted conviction rate was substantially lower when victims were not participating (21% vs. 57%, not shown). Second, video cases increased convictions only when the victim was not participating (see discussion of results in next paragraph). Because most DV Bureau cases involved victims who were not participating, the effect of video cases on convictions was magnified. For these reasons, when we took into account the effect of victim participation on conviction, the effect of video cases on convictions was stronger than when we did not.

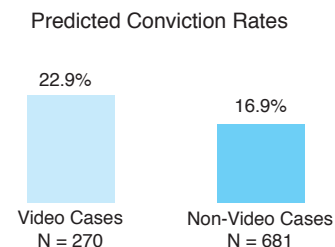
Finally, we considered whether the effect of video cases on convictions depended on whether the victim was participating with the prosecution.

Figure 7
Effect of Video Statement Program on Convictions for Released Defendants in Criminal Court Domestic Violence Cases in DV Bureau Case File Sample Excluding Cross-Complaints



To address this issue, we used the DV Bureau Case File Sample to conduct additional analyses. We divided the data into two groups: 1) cases in which the victim was participating with the prosecution, and 2) cases in which the victim was not participating, or was not contacted, or the participation status was unknown. We then re-estimated the predictive model for each group (models not shown). When the victim was participating with the prosecution, the conviction rate was similar in video and non-video cases. However, when the victim was not participating, not contacted, or the participation status was unknown, the conviction rate was about 6.0 percentage points higher in video cases than in non-video cases (see Figure 8). The predicted conviction rate was 22.9% for released defendants in video cases, and 16.9% for non-video cases.

Figure 8
Effect of Video Statement Program on Convictions for Released Defendants in Criminal Court Domestic Violence Cases When the Victim Is Not Participating in the Prosecution Excluding Cross-Complaints



Summary of Findings

First, the video statement program increased the conviction rate in intimate partner violence and elder abuse cases. After taking into account other defendant and case characteristics that affect convictions, our analysis found that the conviction rate was 3.1 percentage points higher in video cases than in non-video cases, among released defendants in DV Bureau cases disposed in Criminal Court. In our smaller DV Bureau Case File sample, where we could control for the effect of victim participation, we found that video statements increased the conviction rate by 5.2 percentage points. We believe that this is the best estimate of the effect of the video statements on convictions in Criminal Court. In the IDV Court, the conviction rate was 8.0 percentage points higher for released defendants in video cases than in non-video cases.

Second, making a substantive statement increased the likelihood that a defendant would be convicted. Defendants who made a substantive statement on video were either less knowledgeable about,

or less concerned about, the increased risk of conviction. Defendants in video cases who admitted using physical force against the victim or who confessed to most of the charges were more likely to be convicted. Defendants who denied the charges were less likely to be convicted.

Finally, video statements increased the likelihood of conviction in Criminal Court primarily when the victim was not participating in the prosecution of the case. Defendants' video statements strengthened the prosecution's case and increased the conviction rate when the victim was not participating. After considering other defendant and case characteristics that affect convictions, ***we found that when the victim was not participating in the prosecution, the conviction rate was 6.0 percentage points higher for video cases than for non-video cases in Criminal Court.*** Prosecuting cases without victim participation is common, and the video statement program is especially valuable in obtaining convictions in these difficult cases.

Policy Implications

- A video statement program can significantly increase convictions in intimate partner violence and elder abuse cases. In Brooklyn, where expeditors sent one of every eight DV Bureau cases to the ECAB Annex for a video statement, the video statement program increased the conviction rate by about 5 percentage points in Criminal Court and 8 percentage points in IDV Court. Like Kings County, many jurisdictions use an evidence-based prosecution strategy when the victim is not participating in the prosecution. These jurisdictions should consider implementing a video statement program. Our study has demonstrated that implementing a video statement program can increase convictions significantly and immediately. Jurisdictions that already have a video statement program should consider expanding it.
- Even if defendants' statements are not recorded on video, a program to take oral statements from Mirandized defendants is likely to be valuable. Mirandized defendants will often make statements, particularly if the arrest and questioning take place soon after the incident. In Brooklyn, a new program requires arresting officers to take post-Miranda oral statements from all defendants arrested for intimate partner violence or elder abuse.
- Although we did not discuss the findings in this Brief, our study also found that efforts to increase victim participation in the prosecution may increase the conviction rate. The Family Justice Center's Early Victim Engagement (EVE) Project, which contacts victims soon after the arraignment and encourages them to come in to meet with an ADA, apparently increased both victim participation and convictions. The EVE Project also encouraged victims to come to the Family Justice Center to obtain services and counseling. We are currently conducting new research on the impact of the EVE Project and will report the results in a future Research Brief.
- We also found that the conviction rate was nearly 20 percentage points higher in IDV Court than in Criminal Court. Because cases in IDV Courts must meet eligibility criteria requiring concurrent non-criminal cases, these courts are necessarily limited to processing only a small fraction of all criminal DV cases. However, jurisdictions that do not now have an IDV Court should consider establishing one to address the complex issues that arise when a defendant has concurrent non-criminal cases. We plan to conduct additional research to determine why the conviction rate was higher in IDV Court.



Research Brief from

No. 29 (May 2012)

Evaluation of Brooklyn's Video Statement Program for DV Cases

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