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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.

New York City
Criminal Justice Agency, Inc.
52 Duane Street
New York, NY 10007
PHONE: 646 213-2500
FAX: 646 213-2650
WEB: www.nycja.org

Pretrial Re-Arrest Among New York City Defendants

By Qudsia Siddiqi, Ph.D.

Currently, almost all of the states and the federal system allow the consideration of public safety in pretrial release decisions, as well as preventive detention for defendants considered a threat to an individual or the community.

New York is one of the few states where the statute does not permit the explicit consideration of public safety in the setting of pretrial release conditions. In New York, securing the defendant's attendance is the sole objective to be considered in choosing between release on recognizance (ROR) or bail. To assist judges in assessing defendants' risk of flight,

CJA makes a pretrial release recommendation, using an objective point scale. The recommendation system was developed through extensive research on the predictors of failure to appear (FTA).

Although New York State statutes do not permit consideration of public safety in pretrial release decisions, CJA has conducted research on this issue by examining patterns of pretrial re-arrest among defendants in New York City. One of the objectives of this research was to ascertain if the predictors of FTA—already identified through prior CJA research—are also useful in predicting re-arrest.

How
can we predict
which defendants
will be re-arrested
while out on bail
or ROR?

This Research Brief is adapted from: *Predicting the Likelihood of Pretrial Re-Arrest Among New York City Defendants: An Analysis of the 2001 Dataset* (June 2003); and *Predicting the Likelihood of Pretrial Re-Arrest: An Examination of New York City Defendants* (March 2003), both by Qudsia Siddiqi, Ph.D.

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

www.nycja.org/research/research.htm

Address comments to the author at qsiddiqi@nycja.org

Research project staff: Taehyon Kim, Elyse J. Revere, Elizabeth Walton.
Systems programming: Barbara Geller Diaz, Wayne Nehwadowich.

The Study Sample

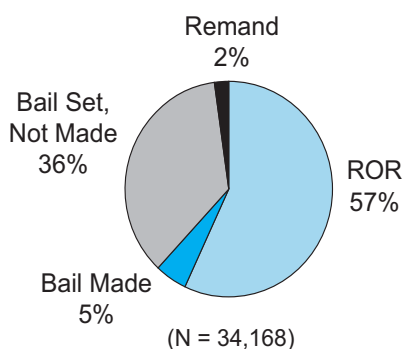
This report presents findings from a sample of defendants arrested in New York City during the first quarter of 2001. Earlier studies had used arrests during two other time periods: 1989 and the third quarter of 1998. For some findings, comparisons between the most recent sample and the earlier ones are presented.

Data for the 2001 analyses were drawn from a three-month cohort of arrests made from January through March, 2001. Our study focused on 67,699 adult defendants whose cases were prosecuted and who were held for arraignment in lower court (Criminal Court). Arraignment outcomes for these cases were as follows: 16% dismissed, 33% convicted on a guilty plea, fewer than 1% otherwise disposed (e.g., transfer), and 51% not disposed.

The analysis was limited to defendants who were at risk for pretrial re-arrest: that is, defendants whose cases were not disposed at Criminal Court arraignment and who were released on ROR or made bail prior to the disposition of their case in Criminal or Supreme Court (upper court).

Figure 1 shows the release status at arraignment of defendants whose cases were continued (not disposed). Sixty-two percent were released at arraignment: 57% were ROR'd and 5% made bail. The rest were not released at arraignment, but an additional 16% were released post arraignment, prior to the disposition of their cases in Criminal or Supreme Court (not shown). A total of 27,630 defendants were released at some point prior to disposition of the case and were at risk for pretrial re-arrest.

Figure 1
Release Status at Arraignment
(Non-Disposed Cases, 2001 Sample)



Sample Characteristics

Demographics: The majority of the defendants in the 2001 at-risk sample were male. Slightly less than half of the defendants were black, one-third were Hispanic, and the remainder were white or of other ethnicity. The median age was 30 years. Brooklyn and Manhattan had the highest proportions of sample arrests (about 30% in each). One fifth of the defendants were arrested in the Bronx and 16% in Queens. Staten Island had the lowest number of arrests (4%).

Community ties: An overwhelming majority (93%) of the defendants reported living at a New York City area address. Three fifths reported living with someone at the time of their arrest. Nearly three fourths reported living at their current address for 18 months or longer and having a telephone in the residence (or a cellphone). Slightly more than half were employed, in school, or in a training program full time.

Criminal history: Nearly three fifths of the defendants had been arrested previously. Slightly more than one fourth had been convicted previously on a misdemeanor charge and one fifth had at least one prior felony conviction. One fourth had a history of failure to appear (FTA) or had a case pending at the time of the sample arrest.

Charge: Half of the defendants were initially arrested on a felony charge, primarily B and D felonies. Almost one third (31%) of felony arrests were made for a violent offense. Another 30% of felony arrests were made for drug offenses.

Research Questions

- What was the pretrial re-arrest rate?
- What proportion of defendants were re-arrested for a felony offense?
- How did the severity of the re-arrest charge compare with the severity of the initial arrest charge?
- What was the type of offense at re-arrest?
- Did defendants tend to recommit the same type of offense?
- What factors predicted pretrial re-arrest?
- Did the same factors predict both types of pretrial misconduct (FTA and re-arrest)?

- **What was the pretrial re-arrest rate?**

The pretrial re-arrest rate for this study was defined as the percentage of defendants who were re-arrested at least once in New York City for a new offense prior to the disposition of their case in Criminal or Supreme Court. The pretrial re-arrest rate for the 2001 sample was 17% (Figure 2a). This was lower than in 1998 (20%) and substantially lower than in 1989 (30%).

Figure 2a
Pretrial Re-Arrest Rates
By Time Period

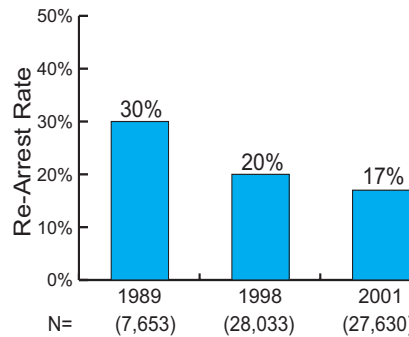


Figure 2b
Pretrial Re-Arrest Rates
By Severity & Violence
(2001 Sample)

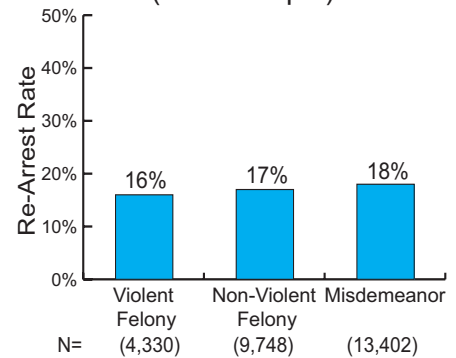
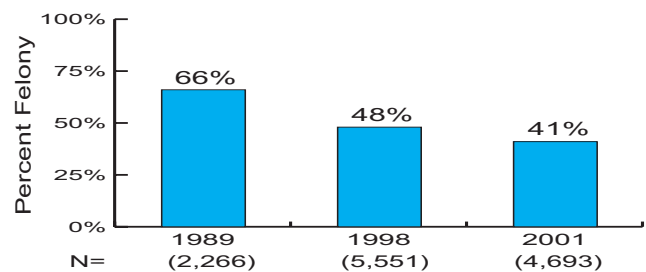


Figure 2b shows that the re-arrest rates in 2001 for sample members initially charged with a violent felony offense (16%) and with a non-violent felony offense (17%) were virtually the same. The re-arrest rate for defendants initially arrested for a misdemeanor or lesser-severity charge was also similar: 18%.

- **What proportion of re-arrested defendants were charged with a felony at re-arrest?**

Figure 3 shows that 41% of *all re-arrested* defendants in the 2001 sample were re-arrested for a felony offense. This was considerably lower than the proportion reported for the 1989 sample (66%) and also lower than in 1998 (48%).

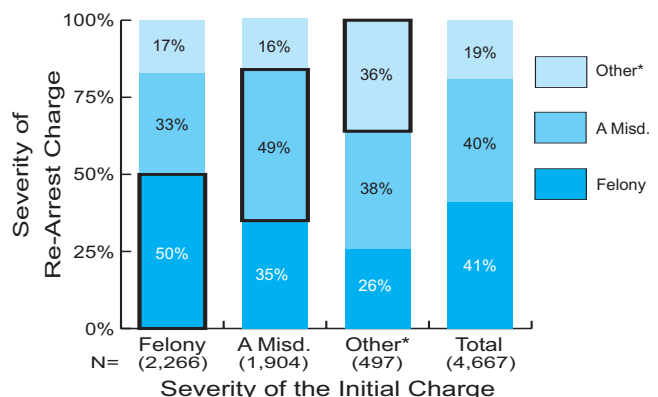
Figure 3
Proportion Re-Arrested For Felony
(Defendants Who Were Re-Arrested)



- **How did the severity of the top re-arrest charge compare with the severity of the initial arrest charge?**

Figure 4 shows that half of the re-arrested defendants who were initially arrested in 2001 for a felony were re-arrested for a felony. (Cells outlined in bold represent cases with the same severity for the top initial and re-arrest charges.) In comparison, 35% of re-arrested defendants initially charged with an A misdemeanor and 26% of those initially charged with an “other” offense* were re-arrested for a felony. About half of the re-arrested defendants initially arrested for an A misdemeanor were also re-arrested for an offense of the same severity. The least consistency was observed for the “other” category of initial arrests: only 36% of re-arrests among these defendants were of the same severity as the initial arrest.

Figure 4
Severity of the Top Re-Arrest Charge By
Severity of the Top Initial Charge
(Defendants Who Were Re-Arrested, 2001 Sample)



*Other offenses include B misdemeanors, unclassified misdemeanors, violations, infractions, and charges outside the NY State Penal Law and Vehicle and Traffic Law, such as Administrative and Public Health Code charges.

- **What was the type of offense at re-arrest?**

Figure 5 presents the type of offense defendants were charged with at the time of re-arrest in 1989, 1998, and 2001. The most common re-arrest charge for all three samples was a drug offense. In 2001, 31% of re-arrested defendants were re-arrested for a drug offense. The proportion was slightly higher in 1998 and 1989 (37% in both time periods).

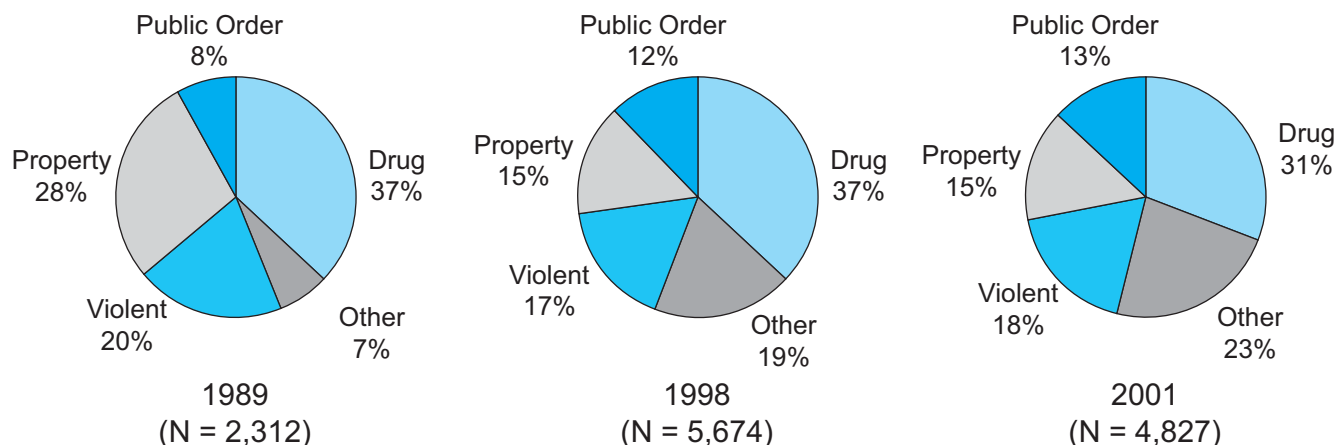
The next largest offense type in 2001 and 1998 was “other” (offenses not categorized as violent, property, drug, or public order). Of defendants who were re-arrested in 2001, 23% were re-arrested for an “other” offense. The comparable percentages for 1998 and 1989 were 19% and 7%, respectively.

Violent crimes accounted for 18% of re-arrests in 2001, which was very close to the percentages

for 1998 (17%) and 1989 (20%). Property crimes (burglary, larceny-theft, arson, motor vehicle theft, possession of burglar’s tools, embezzlement, fraud, forgery and counterfeiting, and stolen property) accounted for another 15% of re-arrests in 2001 and in 1998. This was substantially lower than the proportion of re-arrests in 1989 that were accounted for by property crimes (28%).

The remainder—13% in 2001—were re-arrested on a public order charge. This category includes coercion, criminal mischief, fraud, gambling, bribery, prostitution, extortion, disorderly conduct, liquor-law violation, public narcotic intoxication, sex offenses, and the use or possession of a dangerous weapon.

Figure 5
Type of Re-Arrest Offense
(Defendants Who Were Re-Arrested)

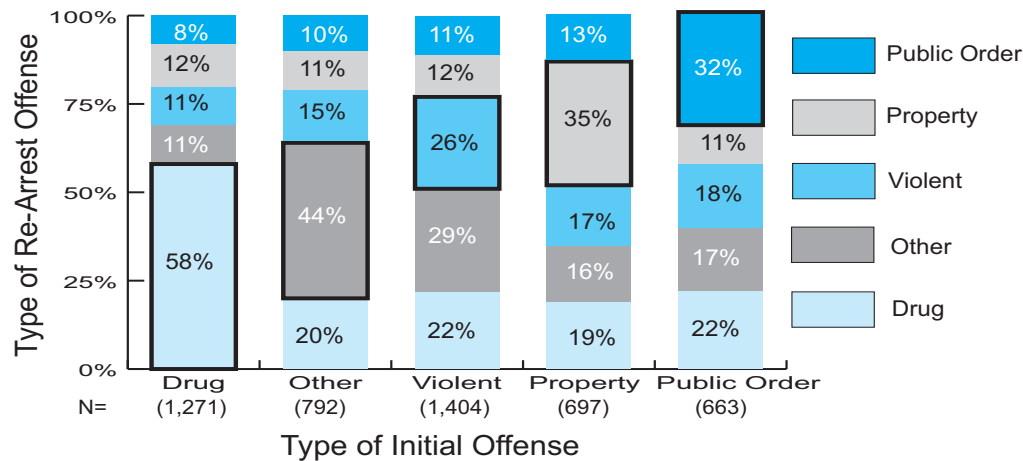


- **Did the defendants tend to re-commit the same type of offense?**

The relationship between the top initial arrest charge type and the top re-arrest charge type is displayed in Figure 6 (next page). More than half of defendants initially arrested for a drug offense and who were re-arrested pretrial were re-arrested for the same type of offense (58%). Of re-arrested defendants initially charged with “other” offenses, almost half (44%) were re-arrested for an offense of the same type. Among those who were re-arrested and initially arrested for a violent

offense, 26% were re-arrested for the same type of offense. Of those who were re-arrested and initially arrested for a property offense, 35% were re-arrested for the same type of offense. Finally, 32% of those who were re-arrested and initially arrested for a public order offense were re-arrested for the same type of offense. With the exception of defendants initially arrested on a drug charge, the majority of re-arrests were for a type of crime different from that of the initial arrest.

Figure 6
Type of the Top Re-Arrest Offense By Type of the Top Initial Offense (2001 Sample)
 (Defendants Who Were Re-Arrested)



- **What factors predicted pretrial re-arrest?**

Statistical methods were used to study the simultaneous impact of many different factors on the likelihood of pretrial re-arrest for defendants in the 2001 sample. The factors that were found to have a statistically significant effect, controlling for the effects of other factors, were as follows:

Criminal history: Criminal-history factors had the strongest effect on the likelihood of pretrial re-arrest. Defendants having a prior misdemeanor conviction, a prior felony conviction, a pending case, or a history of FTA were more likely to be re-arrested pretrial than defendants who did not have such a history.

Community ties: Two community-ties items were significant predictors of re-arrest. Defendants were more likely to be re-arrested pretrial if they did not have a telephone (either in the residence or a cellphone), or if they reported having no full-time activity (employment, school, or a training program). Relative to the criminal-history factors, the community-ties factors had a low to moderate effect on the likelihood of FTA.

Type of top initial arrest charge: The type of the top initial arrest charge was a statistically significant predictor of pretrial re-arrest. However, its effect was quite weak. The likelihood of pretrial re-arrest

was higher for defendants who were initially arrested for drug offenses. In addition, defendants charged with an A misdemeanor drug offense had a higher re-arrest rate (29%) than defendants charged with a B felony drug offense (17%) (data not shown). On the other hand, the probability of re-arrest was lower among defendants who were arrested for violent and property offenses.

Demographics: The odds of pretrial re-arrest were higher for male, black, and Hispanic defendants. The likelihood of pretrial re-arrest decreased with age.

- **Did the same factors predict both types of pretrial misconduct (FTA and re-arrest)?**

The same multivariate statistical methods used to study the predictors of pretrial re-arrest were also used to study the predictors of pretrial FTA for defendants in the 2001 sample. In addition to all of the factors that were found to predict re-arrest, two additional community-ties items were added to the analysis because previous CJA research found them to be significantly related to pretrial FTA. These two items were (1) whether the defendant expected someone to come to the arraignment; and (2) whether the defendant's reported residence was in the New York City area. Figure 7 (next page) compares the significant predictors of pretrial re-arrest with the significant predictors of FTA.

Figure 7 shows that the significant predictors of the two types of pretrial misconduct (re-arrest and FTA) were similar in some respects, but also differed in some respects.

First, having a prior misdemeanor conviction, a prior felony conviction, an open case, or a prior FTA significantly increased the chances that a defendant would be re-arrested pretrial. Only two of those factors also predicted the likelihood of pretrial FTA: defendants with a prior FTA or an open case were also more likely to fail to appear for scheduled court appearances in the instant (sample) case.

Second, more community-ties factors predicted FTA than re-arrest. Four community-ties items were significantly related to pretrial FTA: not having a telephone; not residing in the New York City area; not expecting someone at arraignment; and not being engaged in a full-time activity (employment, school, or training program). Only two of these factors were also statistically significant predictors of re-arrest: not having a telephone; and not being engaged in a full-time activity.

Third, the type of top initial arrest charge significantly predicted both outcomes, but not consistently for some specific charge types. For example, defendants arrested on a drug charge had higher

FTA rates *and* higher re-arrest rates. Also, defendants initially arrested for a violent offense had lower FTA rates *and* lower re-arrest rates. On the other hand, defendants arrested for public order offenses were more likely than others to FTA, but no more likely to be re-arrested. Finally, defendants arrested for property offenses were less likely to be re-arrested but no less likely to FTA.

Fourth, demographic attributes (with the exception of gender) had similar effects on re-arrest and FTA. The chances that a defendant would either FTA or be re-arrested prior to case disposition were higher when the defendant was younger (compared to older), black, or Hispanic (each ethnic group was compared to the sample as a whole). White defendants had a lower probability of FTA and re-arrest, compared to the sample as a whole. Gender was a significant predictor of pretrial re-arrest—males were more likely to be re-arrested than females—but gender did not affect likelihood of FTA.

To summarize: although several factors predicted both FTA and re-arrest, other factors predicted one, but not the other, type of pretrial misconduct. A further complication is that charge type overall was a significant predictor of both outcomes, but some specific charge types were predictors of one outcome, but not the other.

Figure 7
A Comparison of Predictors of Re-Arrest With Predictors of FTA (2001 Sample)

		Was the Factor a Statistically Significant Predictor of:	
		Re-Arrest?	FTA?
Criminal History	Prior Felony Conviction	yes	no
	Prior FTA	yes	yes
	Open Case	yes	yes
	Prior Misdemeanor Conviction	yes	no
Community Ties	Telephone/Cellphone	yes	yes
	Expects Someone at Arraignment	no	yes
	Employment/School/Training	yes	yes
	NYC Area Address	no	yes
Charge Type	Type of Top Initial Arrest Charge	yes	yes
Demographics	Age	yes	yes
	Gender	yes	no
	Ethnicity	yes	yes

Summary

The present research fills a gap in empirical studies of recidivism, which have either focused on post-disposition re-arrest, or have yielded inconsistent findings about pretrial re-arrest. Yet the pretrial period is most relevant to concerns about public safety, and the ability to predict pretrial re-arrest is crucial if “dangerousness” is to be considered in the setting of pretrial release conditions.

Our research shows a decline in the pretrial re-arrest rate in New York City since 1989. The proportion of re-arrests that were for felony offenses also dropped from 1989 to 2001. Re-arrest rates were about the same for defendants initially arrested in 2001 for violent felony, non-violent felony, and misdemeanor offenses.

Among defendants in the 2001 sample who were initially arrested on a felony charge and were re-arrested pretrial, the re-arrest charge was as likely to be a non-felony as a felony. About a third of defendants initially arrested on a lesser-severity charge were re-arrested for a felony. The most common re-arrest offense type was a drug charge. Approximately three-fifths of those initially arrested on a drug charge were re-arrested for the same type of offense.

Criminal history factors had the strongest impact on the likelihood of pretrial re-arrest, consis-

tent with findings derived from prior research on recidivism. The impact of community-ties factors was unclear from prior research; in the present study some community ties factors had a low to moderate effect on the likelihood of re-arrest.

Previous research suggested that the type of offense influences the likelihood of recidivism, but the impact of specific types of offenses varied from one study to the next. Our research found that offense type at initial arrest had a weak effect on the likelihood of pretrial re-arrest. Drug offenders were more likely, whereas violent or property offenders were less likely, to be re-arrested.

Some demographic variables were found to be significant predictors of pretrial re-arrest. The likelihood of being re-arrested was higher among male, younger, and black or Hispanic defendants. The effects of gender and age are consistent with previous studies, but previous findings are inconsistent regarding the effect of ethnicity on re-arrest.

The current analysis suggests that not all the factors from the re-arrest analysis were useful in predicting pretrial FTA. More criminal history factors were observed to predict pretrial re-arrest than pretrial FTA. In contrast, more community-ties factors contributed significantly to the prediction of pretrial FTA than to the prediction of re-arrest.

POLICY IMPLICATIONS

These findings suggest that while failure to appear and re-arrest share certain similarities, they are empirically distinct types of misconduct. Knowing what predicts pretrial FTA is not an adequate basis for attempting to predict pretrial re-arrest. Thus, researchers and policymakers should be cautious when making inferences concerning who is likely to “fail” during the course of case processing. One type of failure is not the same as the other.

The findings also suggest that it may not be accurate to assume that defendants arrested for violent or felony-level crimes are more a threat to public safety than others, at least insofar as

re-arrest is the accepted measure. A felony or a violent offense as the arrest charge did not raise the risk of pretrial re-arrest in our sample, and in fact lowered that risk in the case of violent offenses.

In jurisdictions where public safety considerations are allowed in setting release conditions, these findings may provide helpful insights by identifying factors that do, and do not, predict re-arrest in New York City. Researchers and administrators interested in conducting research and/or constructing predictive instruments assessing potential pretrial “dangerousness” would be well advised to test these findings in their own jurisdictions.



Research Brief from

No. 8 (April 2005): Pretrial Re-Arrest Among New York City Defendants

Forthcoming:

No. 9 (August 2005) will present the results of research on outcomes associated with prosecutors' bail requests, by Mary T. Phillips, Ph.D.

Previously published in this series:

No. 7 (December 2004): *Manhattan's Specialized Domestic Violence Court* (Peterson)

No. 6 (August 2004): *Release and Bail Decisions in New York City* (Phillips)

No. 5 (April 2004): *CJA's New Release-Recommendation System* (Siddiqi)

No. 4 (December 2003): *Combating Domestic Violence in New York City, 2001* (Peterson)

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The New York City Criminal Justice Agency, Inc.
52 Duane Street
New York, NY 10007

TO: