NEW YORK CITY
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MISDEMEANOR MARIJUANA ARRESTS
NEW YORK CITY 2012 – 2014

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Final Report

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The methodology, findings, and conclusions, as well as any errors, are the sole responsibility of the author.

I. INTRODUCTION

Changes in the handling of arrests for possession of small amounts of marijuana have taken place at a rapid pace in New York City during the past several years. This report examines some of those changes and their impact on volume and outcomes in misdemeanor marijuana possession arrests. The research also addresses the impact of these changes on ethnic disparities in marijuana arrests and outcomes.

The study focuses on arrests for criminal possession of marijuana in the fifth degree, which is a class B misdemeanor under Penal Law §221.10. Persons found in possession of any amount of marijuana, either "open to public view" or "burning" (i.e., being smoked), can be charged under subsection 1 of this law. Possession of more than 25 grams[1] of marijuana is a crime under subsection 2 of the law, which does not require the marijuana to be in public view or burning. In 2014, over 98% of misdemeanor arrests for marijuana possession in New York City were made under PL 221.10.[2]

For years this has been the single most frequent criminal offense in the City, with steadily rising arrest volume during much of the past decade. In 2010 and 2011, well over 40,000 cases with a top arrest charge of PL 221.10 were prosecuted each year (Phillips 2014, Table 1). A series of policy shifts beginning in late 2011 reversed this trend, reducing the volume of arrests for misdemeanor marijuana possession and according more lenient treatment to the arrests that were made.

In September 2011, in the wake of public criticism of the NYPD's stop-and-frisk practices, Police Commissioner Raymond W. Kelly issued a directive instructing officers not to make arrests for small amounts of marijuana unless it is in public view "by the suspect's own volition" (Harris 2011). This was aimed at allegations that police officers were ordering suspects to empty their pockets during stop-and-frisk operations, and then arresting them if any marijuana was displayed as a result. Although it was framed as a reminder of existing policy rather than a new policy, the directive was followed by a steep decline in the volume of marijuana possession arrests in every borough (Phillips 2014, Tables 1 & 2).

In May 2013, the final year of the Bloomberg administration, a new policy directed the police to issue a Desk Appearance Ticket (DAT) in all arrests with a top charge of PL 221.10, as long as the defendant produced adequate identification and had no outstanding warrants. The marijuana DAT policy initiative was aimed at reducing the proportion of low-level marijuana arrests in which the defendant was taken into custody, rather than reducing arrest volume.

Since the 1960s the NYPD has routinely issued DATs for a limited number of misdemeanor offenses, historically including large numbers of suspects charged with PL 221.10. A suspect who qualifies for a DAT on the basis of the charge and other criteria is taken to the precinct house for an eligibility check and, if additional eligibility criteria are met, the person is released with a ticket instructing him or her to appear in court for arraignment on a future

[1] One ounce is equal to 28.35 grams.

[2] Criminal possession of marijuana in the fourth degree (PL 221.15), the only other misdemeanor marijuana possession charge, is the class A misdemeanor offense of possessing an amount over two ounces. There are also three felony marijuana possession offenses for varying amounts over 8 ounces (PL 221.20, 221.25, and 221.30). PL 221.10 accounted for 89% of *all* marijuana possession charges in 2014, including the felonies, which were rare.

date, several weeks to several months later. (See Phillips 2014 for a detailed description of charge and other eligibility criteria for DATs.)

The proportion of 221.10 prosecuted arrests in which a DAT was issued had been rising prior to 2013 — from 13% in 2003 to 50% in 2012 (*ibid.*, Figure 7) — and the prospect of further extending DATs to virtually *all* arrests for this offense led to predictions of skyrocketing DAT volume. Those predictions turned out to be inaccurate, for reasons that will be explored in this report.

A year and a half after implementation of the DAT policy, a new administration announced yet another policy change. In November 2014 the new mayor, Bill de Blasio, and his new police commissioner, William J. Bratton, announced that suspects found in possession of 25 grams or less of marijuana "in a public place and open to public view" would no longer be arrested, as long as the person was not charged with additional fingerprintable offenses.[3] Instead, these suspects would be issued a Criminal Court summons ("C-summons," also known as a "pink slip") and charged with a non-criminal violation, PL 221.05. Burning is still subject to arrest for 221.10 under the new policy, as is the possession of a small amount "in a manner that is inconsistent with personal use" (NYPD 2014). Persons found with more than 25 grams (and less than 2 ounces) of marijuana are also still subject to arrest under subsection 2 of PL 221.10.

The marijuana summons policy was hailed by *The New York Times* as "the most significant criminal justice policy initiative by Mr. de Blasio since he was sworn in as mayor" (Baker 2014). Many people hoped that it would alleviate widely acknowledged ethnic disparities in low-level marijuana arrests, which disproportionately fall on black and Latino men.[4] One columnist called the new policy a "sledgehammer" that the administration is now swinging at entrenched racism in the system (Dwyer 2014).

The summons policy was not greeted with universal acclaim, however, even by some advocates of more lenient treatment for marijuana offenders. Brooklyn District Attorney Kenneth P. Thompson, whose office had been refusing to prosecute many marijuana possession arrests for months (Clifford & Goldstein 2014), objected that by issuing a summons instead of making an arrest, the police were undercutting his prosecutorial discretion (Baker 2014; Goldstein 2014; Mora 2014). This argument pointed to an unintended consequence of the initiative: cases that would have been dismissed by prosecutors under the old policy now go directly to summons court with no prosecutorial review.[5] Other concerns included a lack of due process in summons court and the inability to monitor ethnic disparity because ethnicity is not

[3] Criminal Procedure Law §160.10 specifies when the police must take fingerprints. In general, fingerprintable offenses include felonies and misdemeanors defined in the penal law. Nonfingerprintable offenses include violations and infractions, as well as misdemeanors defined in local laws, the Vehicle and Traffic Law, or other non-penal laws.

[4] There is a large research literature documenting ethnic disparity in misdemeanor marijuana arrests in New York. For example, see Golub et al. (2007) for the period from 1980 to 2003. More recently, Kutateladze et al. (2014) and Kutateladze and Andolino (2014) presented data for cases disposed in Manhattan in 2010 and 2011. The persistence of ethnic disparity in New York City's handling of low-level marijuana cases as recently as 2013 and 2014 has been documented by Levine and Siegel (2014).

[5] However, summonses do undergo judicial review for legal insufficiency, with only a few exceptions (Chauhan et. al., 2015).

collected on the summons form.[6] These and other reservations about the summons policy were summarized in a press release from the Drug Policy Alliance, an advocacy organization for drug law reform, which nonetheless remained "cautiously optimistic" (Drug Policy Alliance 2015). A *New York Times* editorial declared that getting a summons is "better than being arrested" but expressed skepticism about the overall merits of the reform because it "does not reach the fundamental problem of discriminatory policing." The editorial also expressed concern about exposing people to arrest for missing court dates, and lack of transparency in the summons court system (*New York Times,* 2014).

How has the court system been affected by these policy changes? Although many aspects of the policies' impact lie beyond the scope of this study,[7] we can provide a preliminary assessment of two major parameters: arrest volume and DAT issuance for 221.10 offenses. In the months following November 2014, we anticipated a downturn in marijuana arrest volume but — because the marijuana summons policy does not extend to burning or to arrests under subsection 2 — it was difficult to guess how low the volume would go. (Neither the subsection nor the factual allegations for an arrest are collected in the CJA database, making it impossible to distinguish open view from burning, or from possession of over 25 grams.)

We also anticipated a slump in the DAT issuance rate after November 2014 because summonses would go primarily to those who previously would have received a DAT. Some factors that would disqualify a person from receiving a summons — an active warrant or lack of adequate identification, for example — are also disqualifying factors for a DAT. This suggests that if a summons is not issued in a marijuana possession arrest, a DAT will not be issued, either, unless the summons was denied because burning was involved, the amount was over 25 grams, or the suspect was charged with another fingerprintable offense. Any of these three factors would disqualify a person from a summons, but a DAT could be issued.

Finally, any analysis of recent marijuana arrest volume needs to take into account an anomalous period of about three weeks from late December 2014 to mid-January 2015. The killing of two police officers on December 20, 2014 — and the Mayor's perceived lack of support for the NYPD in the aftermath of those killings — triggered a work slowdown by the police that decreased the number of all arrests to a fraction of normal volume in the weeks that followed. The slowdown did not target marijuana offenses specifically, but our analysis shows that 221.10 arrests dropped by over 80% during this period (see Figure 21).

[6] A working group of representatives from the NYPD, the New York State Office of Court Administration (OCA), the Mayor's Office of Criminal Justice (MOCJ), and a firm of behavioral consultants was convened in late 2014 to revise the summons form. The redesigned summons form was released April 14, 2015, with a press release issued jointly by Chief Judge Lippman and Mayor de Blasio announcing reforms to reduce pretrial detention and improve the summons process (MOCJ 2015). A space to record ethnicity was added along with other changes to the form, which is scheduled to be operational by the end of 2015. The revised summons form is available online in Pearson (2015).

[7] For example, we cannot assess the impact on summons courts and outcomes for suspects who are issued summonses because the CJA database contains data only for arrests and case outcomes in the criminal courts. Early indications are that the summons courts did not see an increase in marijuana cases after November 2014; instead, the number actually decreased from November 19, 2014, through March 15, 2015, compared to the same period a year earlier (O'Brien and Shallwani, 2015). For a comprehensive description of the summons system and analyses of trends through 2013, see Chauhan et al. (2015).

The research period for this study was 2012 through 2014, with the first two months of 2015 included in some analyses. This period encompasses both of the major marijuana policy initiatives, the May 2013 DAT policy and the November 2014 summons policy. The study examines trends in the volume and characteristics of misdemeanor marijuana possession cases and defendants during the research period, with particular attention to the effects of these two policies in addressing ethnic disparity.

A *Research Brief* will be published in May 2016 to summarize and highlight the major findings of this research. By that time, data for the entire year of 2015 will be available, and the additional data will be used to update some of the analyses presented in this report.

II. METHODOLOGY

Data Used in the Analyses

CJA Annual Datasets

CJA maintains a database that includes background and court-processing information on virtually every adult arrest in New York City. The Agency receives arrest data through automated electronic transmissions from the New York City Police Department (NYPD) and case-processing data from the Office of Court Administration (OCA). CJA staff interview defendants prior to arraignment in custodial arrests in order to collect information that is used to make a release recommendation to the arraigning judge. Data from the interview, including defendants' criminal history, demographic, and community ties information, are entered in the CJA database. There is no opportunity to interview defendants who are released after receiving a DAT, so criminal history and community ties data are not available for defendants in DAT arrests. Defendant ethnicity in DAT arrests is provided by the NYPD.

Annual datasets are compiled from the CJA database by Research Department staff with the assistance of the Information Systems Department. The datasets initially track case processing for six months beyond the last arrest of the previous calendar year, and are updated the following year to extend tracking for a total of 18 months following the latest arrest.

For the current project, annual datasets were used to analyze data for the years 2012 and 2013. Arrests in the 2012 and 2013 annual datasets were tracked until June 30, 2014 (a minimum of 18 months for 2012 arrests and 6 months for 2013 arrests).

An Interim 2014-15 dataset was compiled in March 2015 in order to add arrests with the most recent possible data. The Interim dataset includes all arrests during 2014, along with the first two months of 2015. No tracking was possible beyond the date of the latest arrests (through February 2015), and as a result a larger than usual proportion of cases had not yet reached disposition at the time the file was compiled. A final disposition had been reached by the cutoff date for all but 2.8% of misdemeanor marijuana possession arrests in 2012, 7.0% in 2013, and 10.6% in 2014.

Some defendants were arrested multiple times during the research period, and they are represented more than once in the arrest-based data. Each arrest for the same defendant during the study period is treated as a separate event.

Subsamples to Compare Periods Pre/Post Major Policy Changes

In order to isolate the impact of the two major policy changes that occurred during the research period, subsamples were selected to allow for comparisons during comparable periods before and after the implementation of each policy. The eight months following the DAT policy of May 2013 were compared to the same eight months the previous year, and the four months following the summons policy of November 2014 were compared to the same four months the previous year. The periods covered by the *pre* and *post* subsamples for each policy are summarized in the following chart.

Policy Change	Implementation Date	*Pre* Period	*Post* Period
Marijuana DAT Policy A DAT must be issued replacing custodial arrest for all eligible suspects arrested on a charge of 221.10.	May 2013	*Pre-DAT* May–December 2012	*Post-DAT* May–December 2013
Marijuana Summons Policy Eligible suspects found in possession of 25 or fewer grams of marijuana who formerly would have been arrested and charged with 221.10 must instead be issued a C-summons for the non-criminal offense of 221.05.	November 2014	*Pre-Summons* November 2013–February 2014	*Post-Summons* November 2014–February 2015

There was a small amount of overlap between the *post-DAT* and *pre-Summons* periods. Arrests in November and December of 2013 fell into both subsamples. This does not compromise any of the pre/post comparisons because the entire pre-summons period followed implementation of the DAT policy and the entire post-DAT period preceded implementation of the summons policy.

Implementation dates fell mid-month in May 2013 and November 2014, but the entire month is included in the post-implementation samples. For this reason, the impact of each policy would be somewhat diluted in the first month of each *post* period.

Plan of Analysis

The analyses addressed three research questions:

- How did annual arrest volume and case outcomes for suspects arrested for low-level marijuana possession change over the three years of the study period?
- What was the impact of the two major marijuana policies enacted during the study period?
- What was the extent of ethnic disparity in the handling of marijuana arrests, and how was it affected by the policy changes?

To address the first question, annual data for 2012, 2013, and 2014 were used to track changes in annual volume and outcomes for defendants arrested on a 221.10 charge. Arrest and court outcomes are reported separately for DAT and custodial arrests, along with DAT issuance rates (the proportion of 221.10 arrests in which a DAT was issued), failure to appear at arraignment in DAT cases, and length of time from a DAT arrest to arraignment. In addition, defendant demographics, prosecution rates, arraignment outcomes, and legal outcomes are compared for the three years of the study period.

To address the second question, selected data were compared for the pre/post periods relating to each of the two policy changes. The focus was on arrest volume, DAT issuance rates,

and ethnic disparity. To assess the impact of each policy on ethnic disparity, two points in case processing were examined: arrest (volume and DAT issuance) and conviction.

The third question focused exclusively on ethnic disparity. To address it, we used logistic regression to analyze the impact of each policy on ethnic disparity in DAT issuance and in the likelihood of conviction, controlling for a wide range of other factors that also affect these two outcomes. Six logistic regression models were developed, each for a different time period during the research period. In addition to the four pre/post policy periods described above, models were also developed for the intervening time periods: the four months between the pre-DAT policy period and the beginning of the post-DAT policy period; and the eight months between the pre- and post-summons policy periods. This provided a continuous assessment of ethnic disparity the year before, just before, and following each policy change.

For a more detailed discussion of the statistical procedures and measures used in the logistic regression models, see Appendix A.

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III. ANNUAL TRENDS 2012–2014

Arrest Volume

Citywide

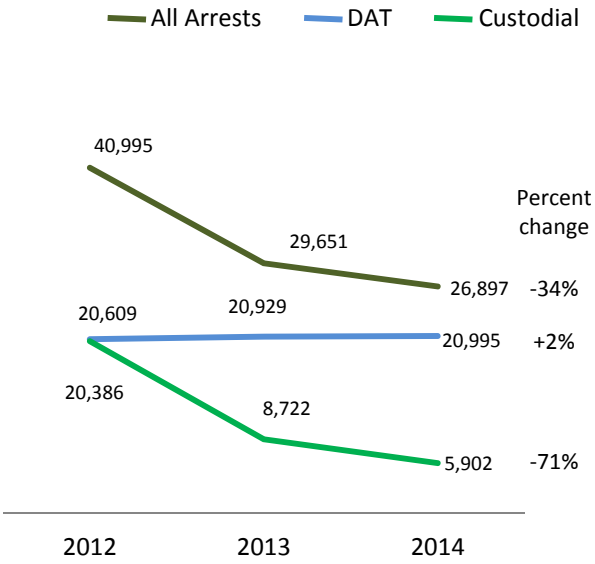
The number of arrests for low-level marijuana offenses (PL 221.10) declined sharply from 2012 to 2013, from 40,995 to 29,651. Volume declined somewhat further in 2014 to 26,897. From 2012 to 2014 there was a 34% drop in volume (Figure 1).

Despite the overall decline, the number of DATs rose slightly from 2012 to 2013 (from 20,609 to 20,929) and remained about the same in 2014 (20,995).

On the other hand, the number of custodial arrests declined an astonishing 71%, from 20,386 in 2012 to 5,902 in 2014.

At the beginning of the study period, sample arrests were about equally divided between DAT and custodial arrest types; by 2014, DATs outnumbered custodial arrests by more than 3 to 1.

Figure 1
Arrest Volume for PL 221.10
2012 – 2014



By Borough

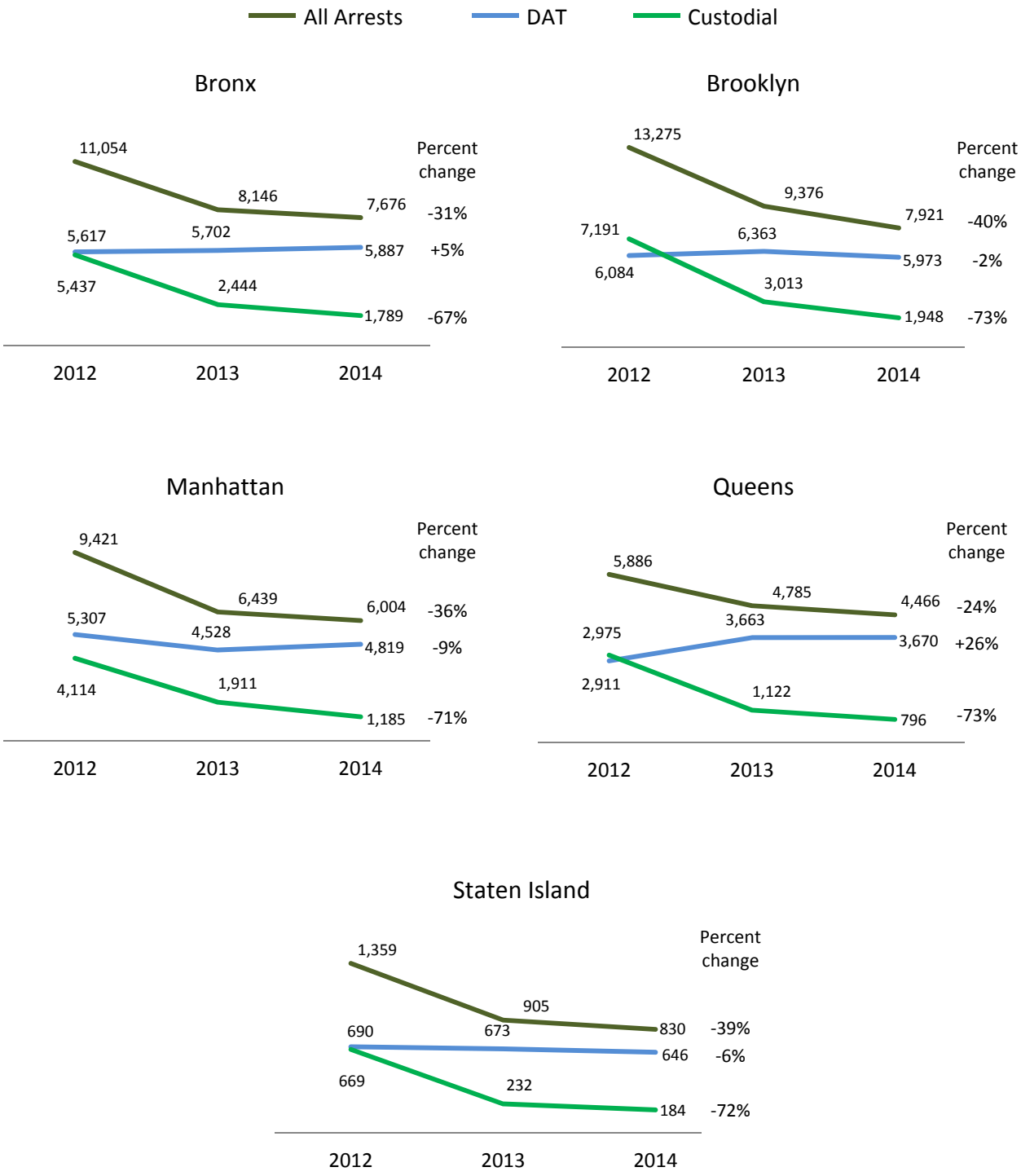
The Citywide drop in low-level marijuana arrests was reflected in every borough, albeit unevenly (Figure 2). The decline in Brooklyn was greatest, where volume was highest in each year of the study period despite a decline of 40% from 2012 to 2014.

Volume declined the least in Queens, where low-level marijuana arrest volume dropped by 24% during the study period. Queens was also the only borough to see a large increase in DAT volume, which rose by 26% from 2012 to 2014. This is in contrast to an increase in DAT volume of only 5% in the Bronx and a small decline in each of the other three boroughs.

The volume of custodial arrests for marijuana possession declined by around 70% in every borough from 2012 to 2014, from 67% in the Bronx to 73% in Brooklyn and Queens.

At the beginning of the study period, arrests were nearly equally divided between DAT and custodial arrests in each borough, with only Manhattan having substantially more DATs (5,307 DATs and 4,114 custodial arrests). And in every borough, a large shift had taken place by the end of the study period, by which time DATs outnumbered custodial arrests by a large margin. The shift was greatest in Queens, where there were a few more custodial than DAT arrests in 2012 (2,975 custodial; 2,911 DAT) but by 2014 there were almost 5 DATs for every custodial arrest (3,670 DAT and 796 custodial).

Figure 2
Arrest Volume for PL 221.10 by Borough
2012 – 2014

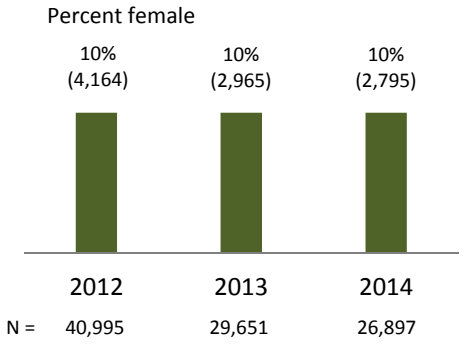


Defendant Demographics

Gender

Females comprise a smaller percent of arrestees for low-level marijuana possession than among the general arrest population. In each year of the study period, females accounted for 10% of sample arrests (Figure 3). Among all combined charges, females comprised 17% of the total in each year of the study period (not shown).

Figure 3
Gender of Defendants Arrested for PL 221.10
2012 – 2014

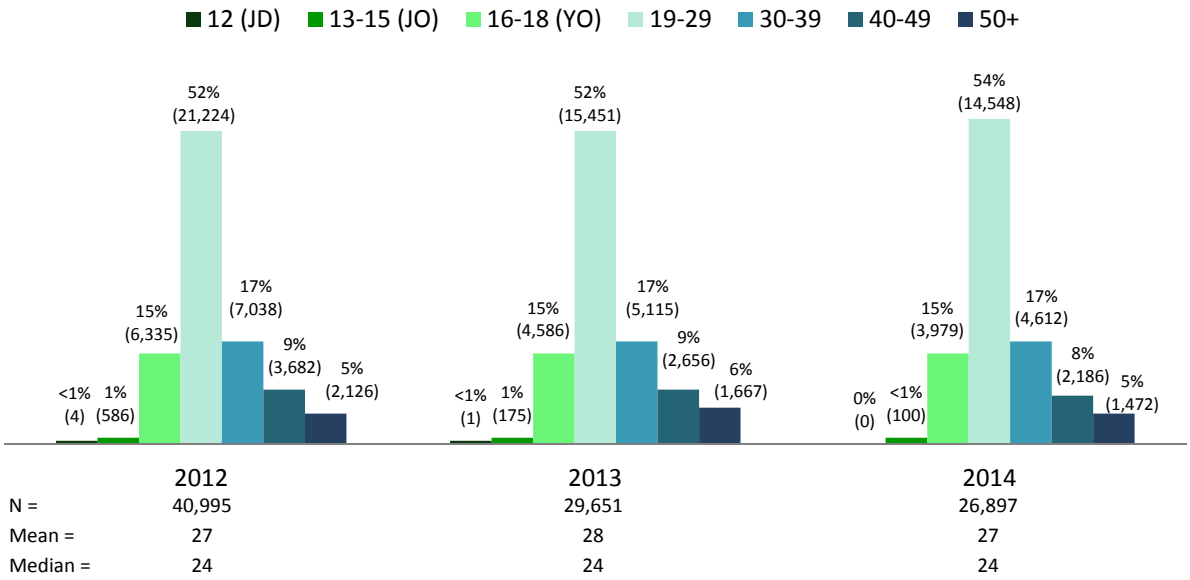


Age

The sample arrestees were a little younger than the arrest population as a whole. In the study sample, over two thirds of arrestees every year were under the age of 30, and the majority were between 19 and 29 years of age (Figure 4). The median age was 24 during all three study years.

By comparison, median ages were a few years higher among all combined charges: 29 in 2012 and 2013, and 30 years of age in 2014 (not shown).

Figure 4
Age of Defendants Arrested for PL 221.10
2012 – 2014



Ethnicity

Ethnicity is recorded by CJA staff during the Agency's interview of defendants held for arraignment. In cases of defendants who were not held for arraignment (DATs) or who were not interviewed for some other reason, the source of ethnicity data is the NYPD arrest report.

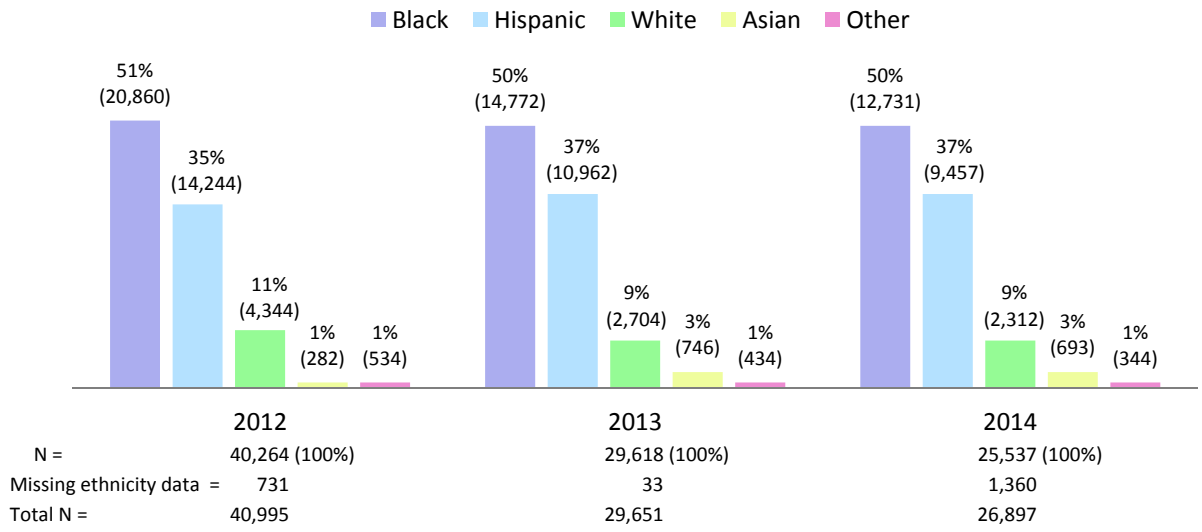
In each year of the study period, around half of those arrested on a charge of 221.10 were black, over a third were Hispanic, and about a tenth were white (Figure 5). This means that over 85% of the sample was black or Hispanic in each year.

The other two ethnicity categories were Asian (3% or less each year) and "other," which combines American Indian with non-Hispanic "other" (1% each year). In 2012, a glitch in the NYPD data caused many Asians to be coded as missing, which inflated the number of missing and erroneously lowered the number of Asians reported for 2012.

Cases for which no ethnicity was recorded are not included in the basis for percentaging. The number of cases missing ethnicity data was particularly large in 2014 because the dataset was compiled before ethnicity data from the NYPD were added for cases with no CJA interview.[8]

The ethnic distribution of the marijuana sample reflected very closely the composition of the population arrested on other charges, except that the proportion of whites was slightly larger among the non-sample cases (12% in each year, not shown).

Figure 5
Ethnicity of Defendants Arrested for PL 221.10
2012 – 2014



[8] Only three cases from 2014 were still missing ethnicity data in August after the NYPD ethnicity data were received. Percentages in each ethnic category remained the same, indicating that the distribution of missing data was random, and subsequent analyses were not affected.

DAT Issuance

Among all arrests in which the top arrest charge was 221.10, a DAT was issued half the time in 2012. The DAT issuance rate rose to 71% in 2013 and to 78% in 2014. (Figure 6)

Prosecution Rates

Changes in arrest volume and in the frequency with which DATs were issued had little if any effect on prosecution rates. Nearly all 221.10 arrests were prosecuted (Figure 7).

Among custodial arrests, the prosecution rate remained steady over the study period at 89% to 90%.

Among DATs, the prosecution rate rose slightly in 2013 (from 90% to 94%), but then dropped in 2014 (to 86%). The drop in 2014 may be an artifact of the short tracking time (combined with long arrest-to-arraignment times for DATs), which allowed only two months for late-year arrests to be docketed. The earlier data sets were tracked for 6 months (2013 dataset) to 18 months (2012 dataset).

Figure 6
DAT Issuance Rate for PL 221.10 Arrests
2012 – 2014

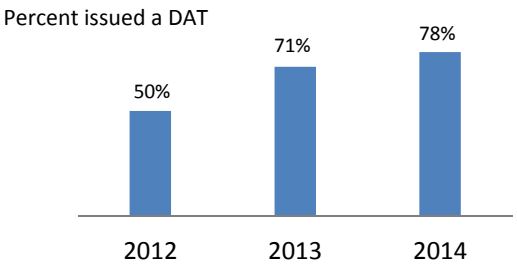
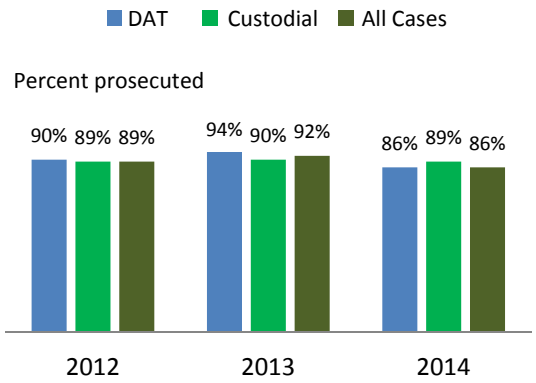


Figure 7
Prosecution Rate for PL 221.10 Arrests
2012 – 2014



Flow charts provide the number of cases represented by each bar, the base numbers, and a more detailed breakdown of some analyses. Chart A following Figure 12 provides data for Figures 6 – 12. Each year's arrests are tracked in a separate chart: A-1 (2012), A-2 (2013), and A-3 (2014).

ARRAIGNMENT OUTCOMES

Failure to Appear (FTA)

About a quarter of the prosecuted DAT defendants with a 221.10 top arrest charge failed to appear for their scheduled arraignments, and this percentage rose slightly over the research period (Figure 8). In 2012, 24% failed to appear, compared to 26% in 2013 and 27% in 2014.

Arrest to DAT Arraignment Time

Prior research has shown that longer arrest-to-arraignment times are associated with higher rates of failure to appear for a DAT arraignment (Phillips 2014, Figure 18). The median number of days from arrest to arraignment for DATs during the current research period rose from 40 days in 2012 to 65 days in 2014 (Figure 9).

Disposed at Arraignment

The case was disposed at arraignment if the defendant pled guilty or if a non-conviction outcome was obtained by a dismissal or an adjournment in contemplation of dismissal (ACD). Other outcomes — for example, consolidation with another case or transfer to another jurisdiction — were categorized as "not disposed" for the purposes of this study, along with cases continued in Criminal Court or transferred to Supreme Court.

Over two thirds of prosecuted arrests in the sample were disposed at arraignment (Figure 10). Disposition was less likely among DATs because so many DAT defendants failed to appear at the scheduled arraignment. Excluding cases with FTA at arraignment, 86% of DAT cases in each year of the study period were disposed at arraignment (not shown).

The disposition rate at arraignment fell a little over time (from 72% to 68%) solely because the proportion of DAT cases (and their FTA rates) rose. Among custodial cases, disposition rates rose slightly from 79% to 82%.

Figure 8
FTA at DAT Arraignment for PL 221.10 Arrests, 2012 – 2014
(Prosecuted DAT Cases)

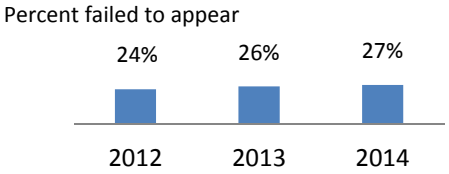


Figure 9
Length of Time from Arrest to DAT Arraignment for PL 221.10 Arrests, 2012 – 2014
(Prosecuted DAT Arrests)

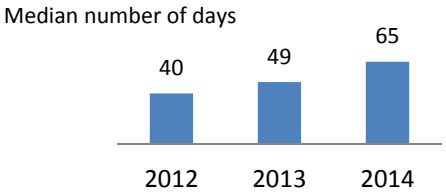
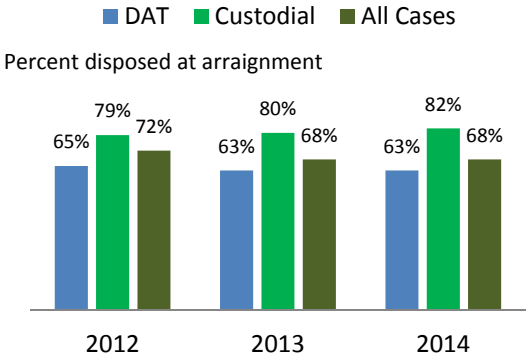


Figure 10
Disposition Rate at Arraignment for PL 221.10 Arrests, 2012 – 2014
(All Prosecuted Arrests)

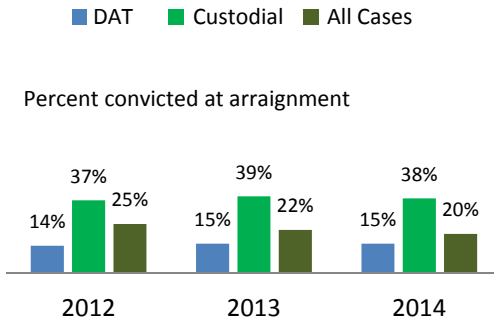


Conviction Rate at Arraignment

Among defendants arrested on a 221.10 charge, conviction rates at arraignment dropped from 25% in 2012 to 20% in 2014 (Figure 11). Conviction at arraignment remained level within each arrest type (around 15% for DATs and around 38% for custodial arrests), but overall rates dropped as DATs began to account for a greater proportion of all arrests. (Over 40% of all arraignment outcomes were ACDs; see Chart A.)

The DAT arrestees who failed to appear for their arraignments were included in the base for calculating conviction rates at arraignment. If they had been excluded from the base, the calculations would have produced higher DAT conviction rates — 18% in 2012 and 20% in 2013 and 2014 (not shown) — but these rates are still well below the rates for custodial arrests.

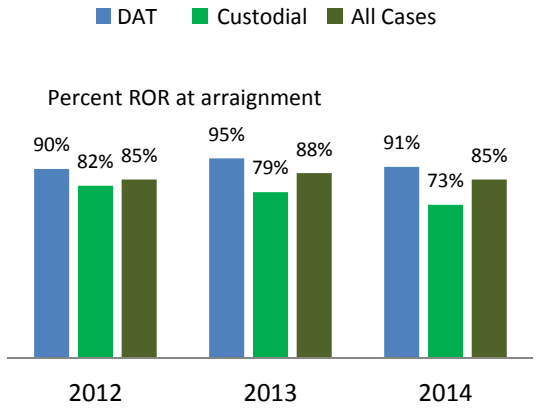
Figure 11
Conviction Rate at Arraignment for PL 221.10 Arrests, 2012 – 2014
(All Prosecuted Arrests)



ROR at Arraignment

Most defendants arrested for low-level marijuana possession whose cases were continued at arraignment were released on their own recognizance. Overall percentages were 85% in 2012 and 2014, and a few percentage points higher in 2013 (Figure 12). (Defendants whose cases were disposed at arraignment and DAT defendants who failed to appear at arraignment were excluded from the analysis of release status.)

Figure 12
Release Rate at Arraignment for PL 221.10 Arrests, 2012 – 2014
(Cases Continued at Arraignment)



ROR at arraignment was more likely when the defendant had been issued a DAT at arrest, and the difference grew over the study period. In 2012, only 8 percentage points separated the ROR rate for DATs (90%) from the rate for custodial arrests (82%). In 2013 the difference was 16 percentage points (95% compared to 79%) and in 2014 it was 18 percentage points (91% compared to 73%). The increasing disparity arose from the fact that ROR rates for DAT cases remained fairly level, while the rate for custodial arrests dropped from 82% in 2012 to 73% in 2014.

CHART A-1
ARREST TO ARRAIGNMENT
PL 221.10 Arrests 2012

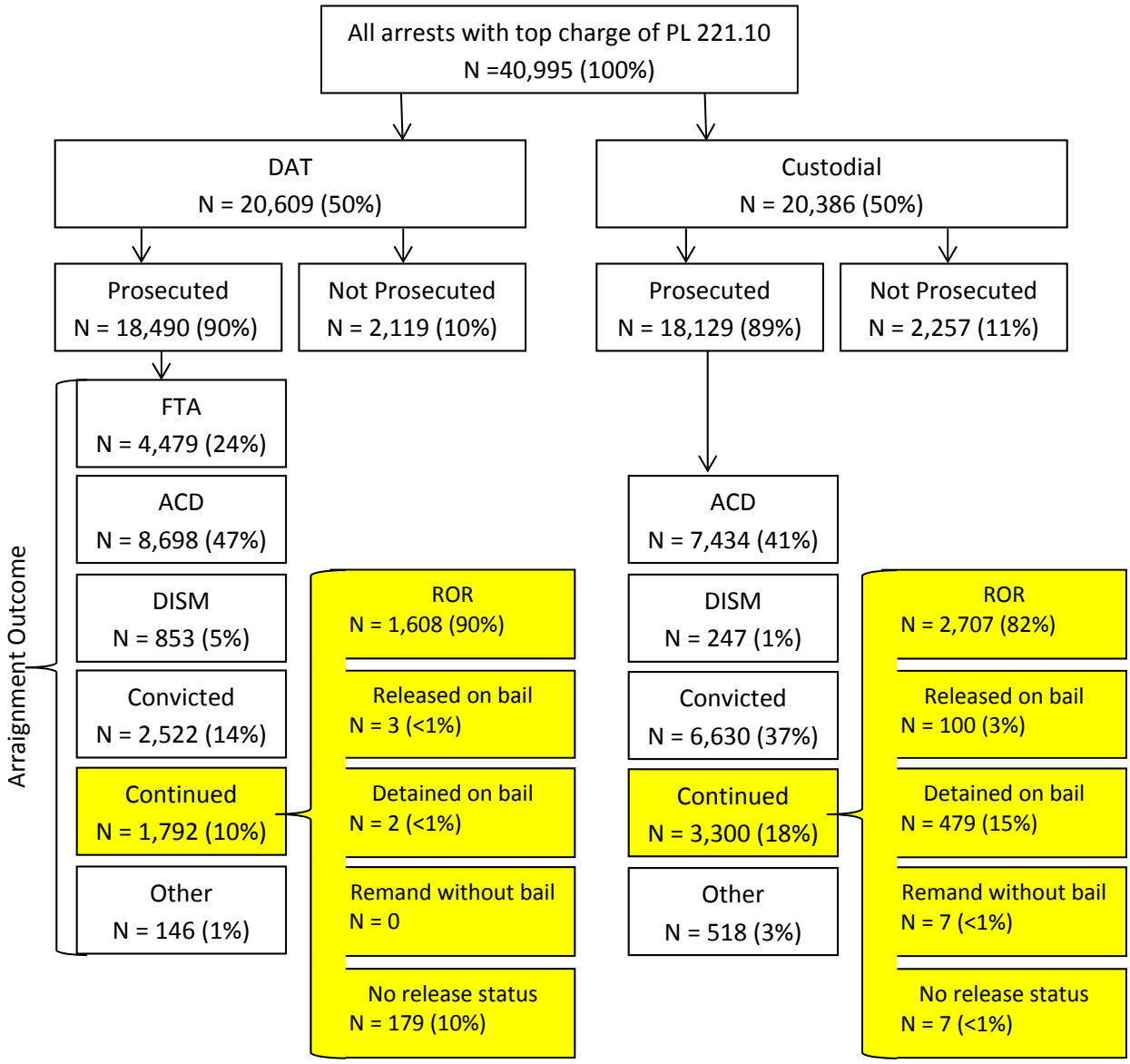


CHART A-2
ARREST TO ARRAIGNMENT
PL 221.10 Arrests 2013

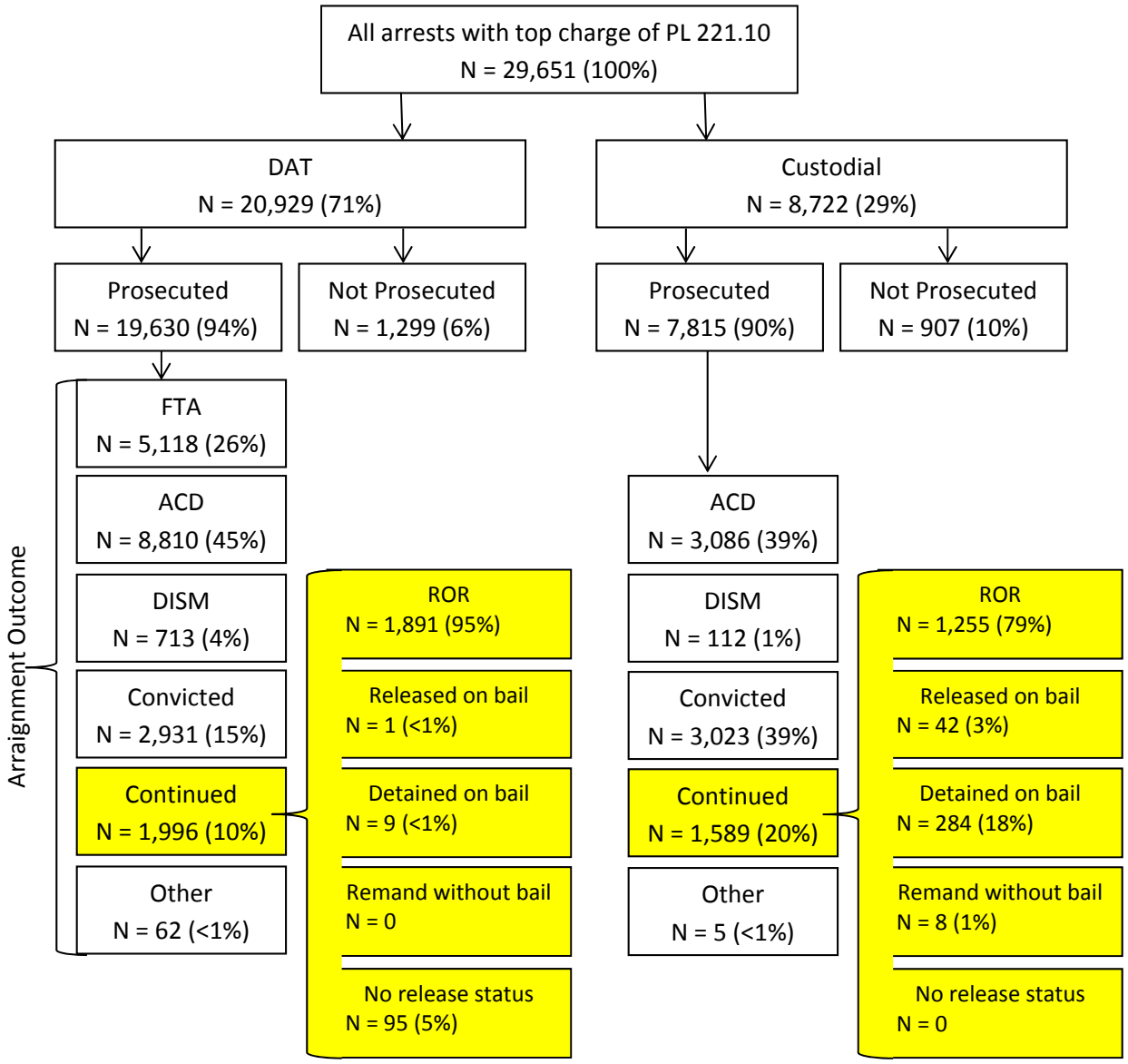
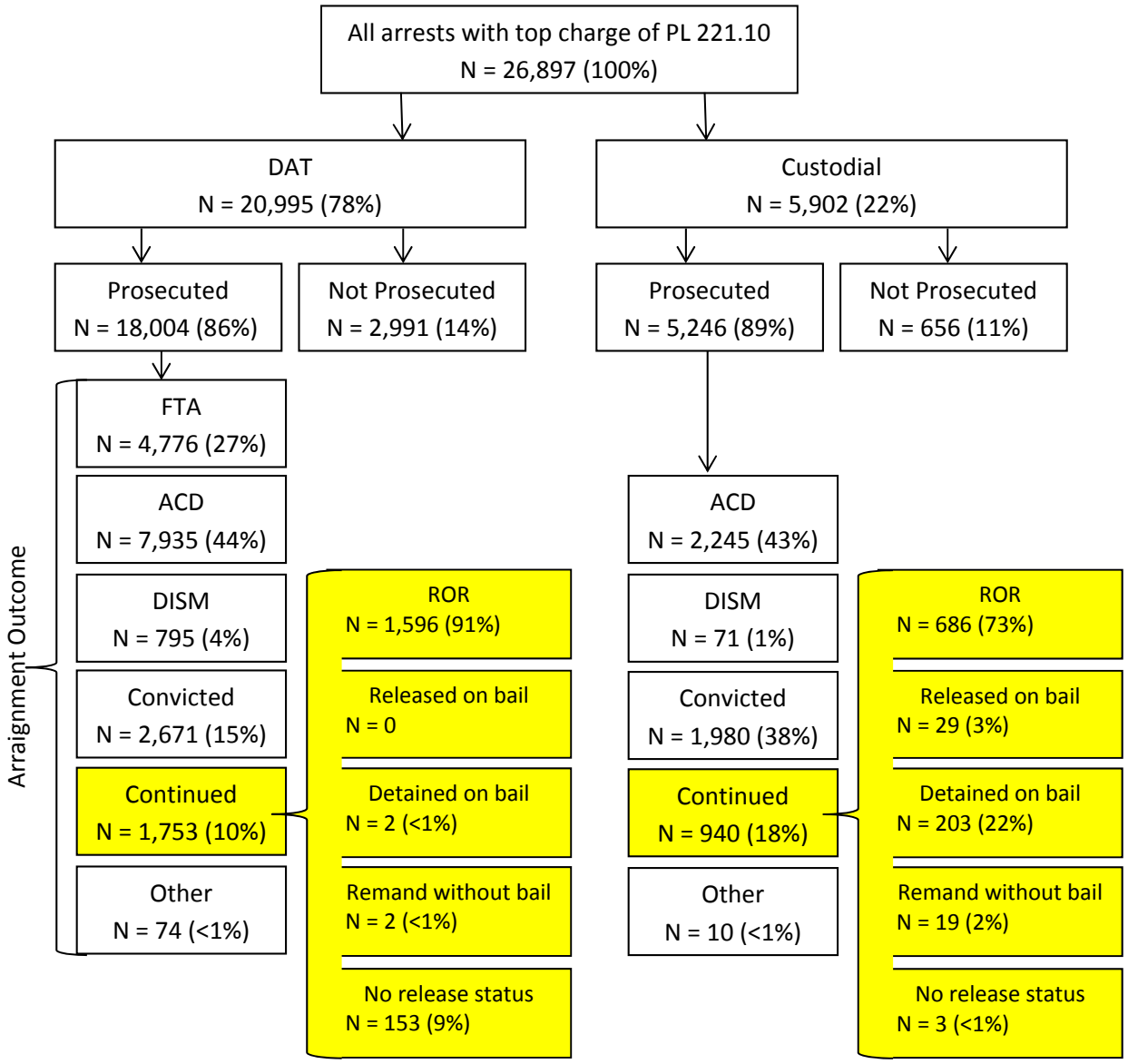


CHART A-3
ARREST TO ARRAIGNMENT
PL 221.10 Arrests 2014



LEGAL OUTCOMES

Case Disposition

The large difference in conviction rates at arraignment between DAT and custodial 221.10 arrests (shown in Figure 11) persisted when case outcomes were compared. A conviction was obtained in less than 30% of DAT cases in each year of the study period, compared to 47% or more of custodial arrest cases (Figure 13, next page).

Overall conviction rates declined from 2012 to 2014 (from 38% to 30%), again primarily a reflection of the increasingly greater proportion of DATs among the total number of sample arrests in each year. There was no decline within each arrest type separately from 2012 to 2013, and only a small decline from 2013 to 2014.

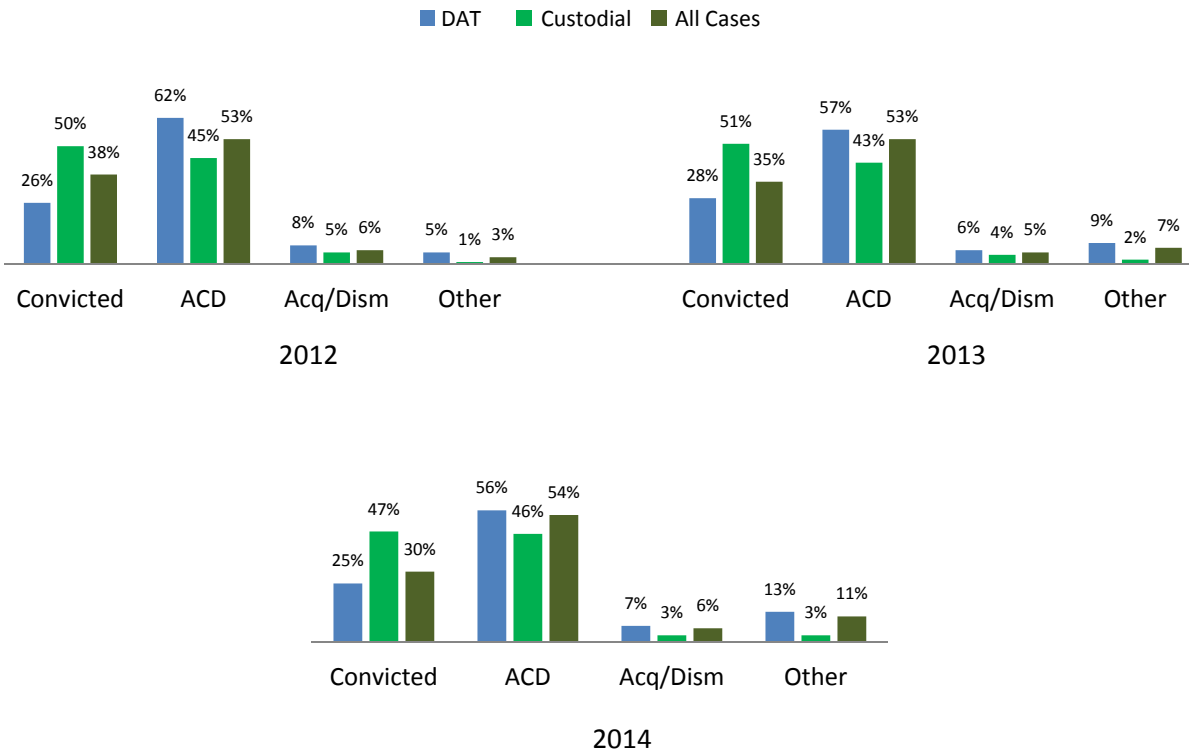
The most frequent case outcome among DATs was an adjournment in contemplation of dismissal (ACD). Under CPL §170.56 (cases involving marijuana), the court may adjourn the case for a year, after which the charge is dismissed if the defendant has stayed out of trouble. ACDs comprised 62% of the DAT case outcomes in 2012, 57% in 2013, and 56% in 2014. ACDs were ordered less often in custodial arrests: 45%, 43%, and 46% in each of the three years in the study period.

Acquittals and dismissals comprised only a tiny fraction of case outcomes for both arrest types, comprising only about 6% of outcomes in each year. An acquittal or dismissal was slightly more likely among DATs than among custodial arrests, especially in 2014 when 7% of DATs and 3% of custodial arrests ended in an acquittal or dismissal.

The "other" outcome consists predominantly of cases in which the defendant failed to appear prior to a final disposition and had not returned to court by the cutoff date (June 30, 2014 for the 2012 and 2013 datasets; March 11, 2015, for the 2014 dataset). This was a much more frequent occurrence among DAT cases than among the custodial arrests. Also included with the "other" outcomes were a few cases that were still open awaiting disposition; or the case ended by being consolidated with another case, transferred to another jurisdiction, or the defendant was extradited. The relatively large proportion of "other" outcomes in 2014 (11%) is a result of the short tracking time for these cases: a minimum of two months, compared to 6 months for 2013 arrests and 18 months for 2012 cases. Longer tracking periods allow more time for cases to be disposed and for defendants to return to court after failing to appear.

Chart B following Figure 15 provides the data used for Figures 13 – 15, with each year's arrests tracked in a separate chart: B-1 (2012), B-2 (2013), B-3 (2014).

Figure 13
Case Outcomes for PL 221.10 Arrests, 2012 – 2014
(All Prosecuted Arrests)

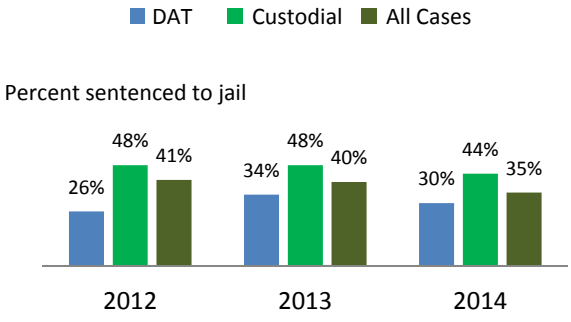


Sentencing

Of the convicted defendants, fewer than half were sentenced to jail in any research year, and in 2014 the proportion was barely over a third (Figure 14).

Incarceration was much less likely in DAT cases than in cases with a custodial arrest, although the difference was greater in 2012 (26% compared to 48%) than it was in 2014 (30% compared to 44%). The incarceration rate rose slightly (from 26% to 30%) for DAT cases and declined by the same amount (from 48% to 44%) for custodial arrests during the study period.

Figure 14
Incarceration Rate for PL 221.10 Arrests, 2012 – 2014
(Convicted Cases)

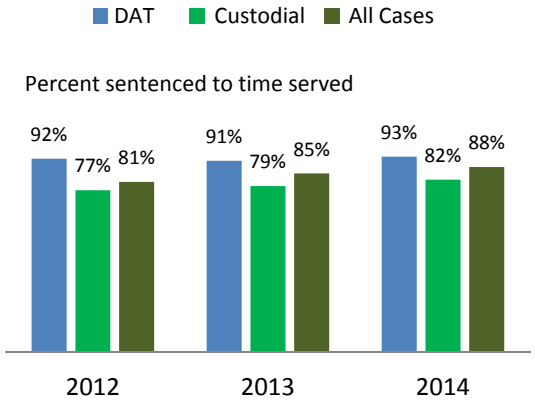


When a jail term was imposed on a convicted DAT defendant in the research sample, the sentence was almost always time served (over 90% of the DAT jail sentences each year were sentences of time served; Figure 15). Other jail sentences occurred a little more often for custodial arrestees, but time served was the most common jail sentence for both arrest types. Among custodial arrests, the proportion of jail sentences that were time served rose from 77% in 2012 to 82% in 2014.

Incarceration, including time served, could be considered a more severe sentence than any of the alternatives, such as probation, a fine, or conditional discharge. Defendants in custodial arrests who are sentenced to time served have spent anywhere from a few hours to a couple of days in jail waiting to be arraigned, and this jail time counts toward any incarcerative sentence, even in the absence of further detention.

For DATs, however, time served is a somewhat curious sentence. DAT defendants arrive for their arraignments having spent only a few hours in police custody at the station house, with no time in jail. Over half of the convictions obtained for DAT defendants in this sample occurred at arraignment, and among the others virtually all were released throughout their case processing. For them, time served was equivalent to a non-incarcerative sentence, without a fine or conditions.

Figure 15
Sentence of Time Served
for PL 221.10 Arrests, 2012 – 2014
(Convicted Cases with Jail Sentence)



Other sentences for sample cases were most often a fine or conditional discharge. Fines were levied on 40% of convicted DAT defendants in 2014, but much less frequently among cases with a custodial arrest (28% in 2014). Conditional discharges were imposed in about a quarter of convictions regardless of the arrest type (Chart B).

CHART B-1
CASE OUTCOMES
PL 221.10 Arrests 2012

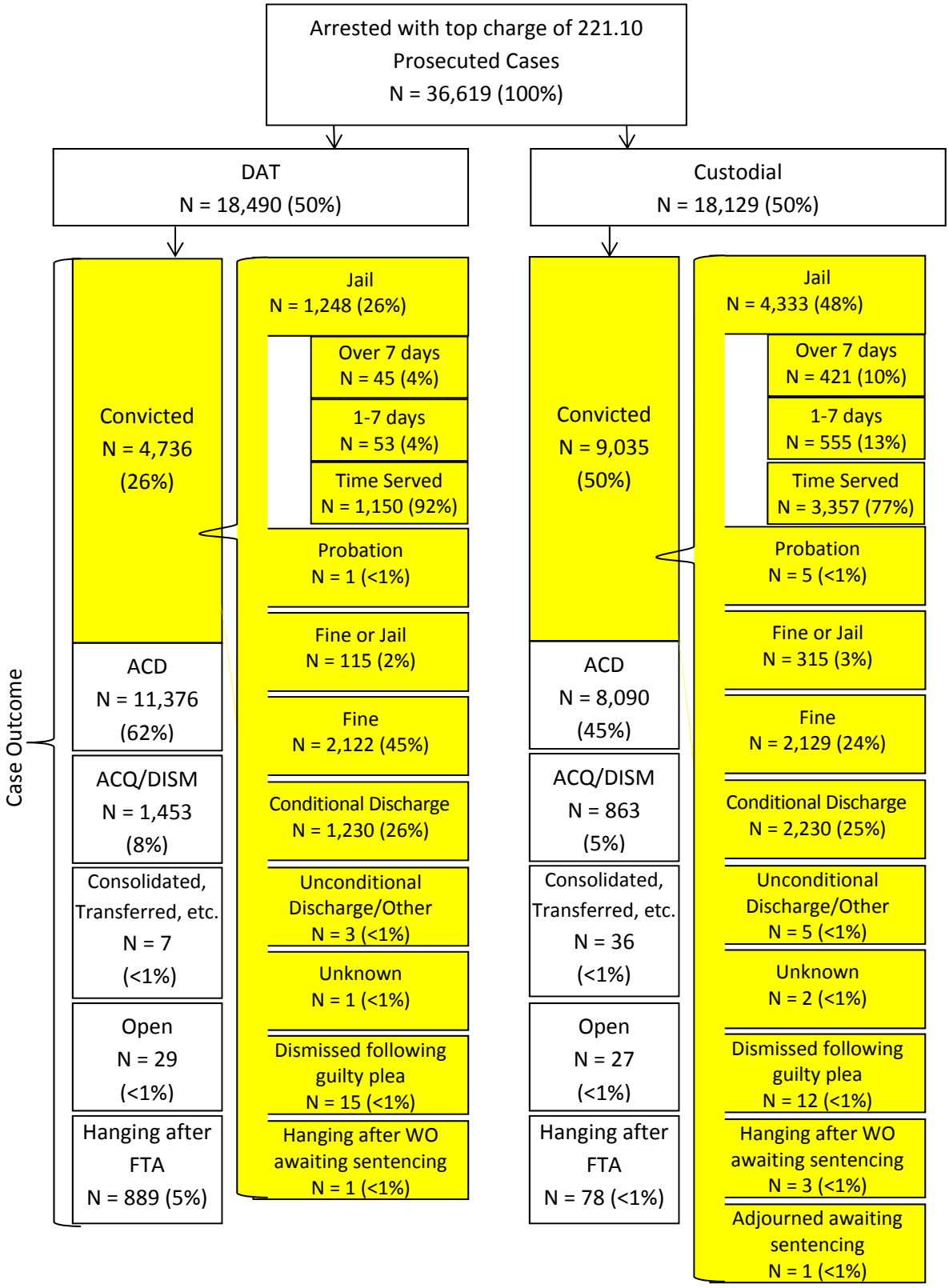


CHART B-2
CASE OUTCOMES
PL 221.10 Arrests 2013

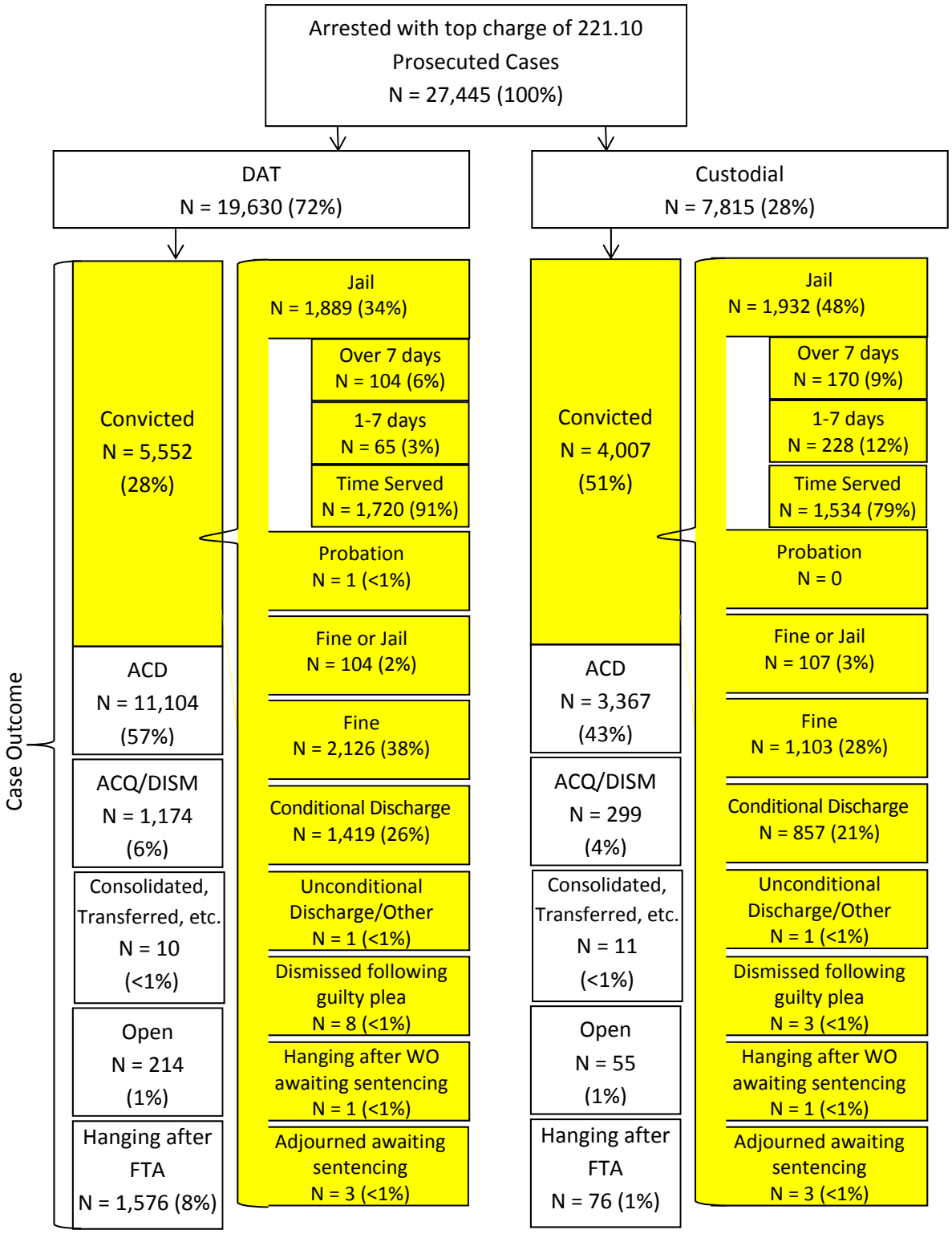
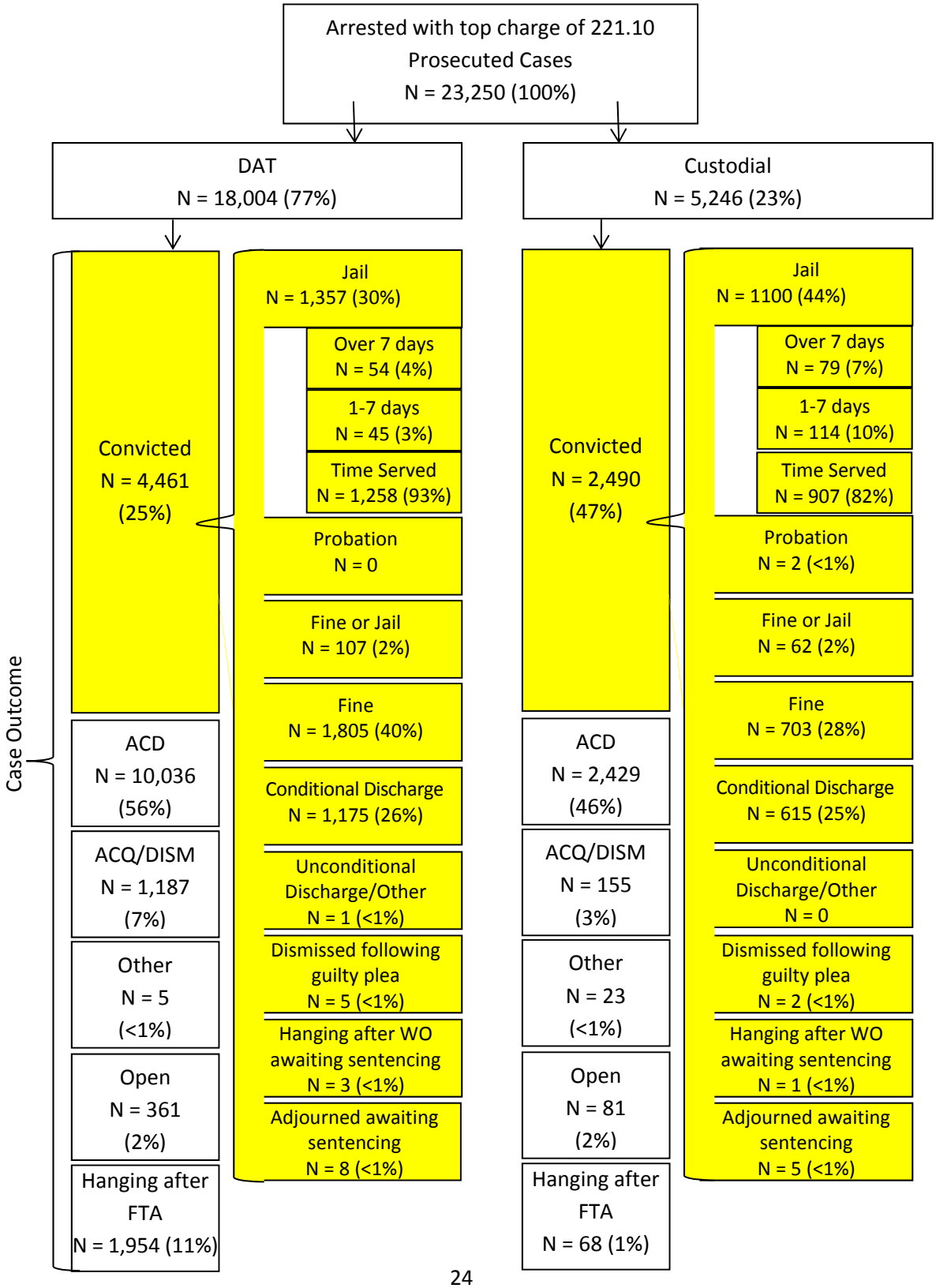


CHART B-3
CASE OUTCOMES
PL 221.10 Arrests 2014

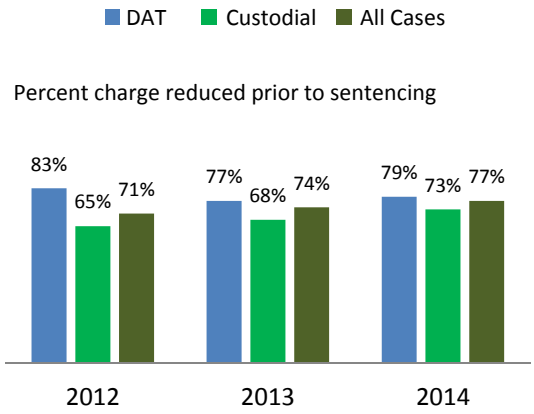


Charge Reduction

Each case in the study began with a top arrest charge of 221.10, which is a class B misdemeanor, but few were convicted of that charge. The charge was reduced in over 70% of all convicted cases in each year of the study (Figure 16). In 2014, the charge was reduced in more than three quarters of all convictions among sample cases.

DAT arrests were associated with a greater likelihood of charge reduction than cases that began with a custodial arrest. Between 83% (in 2012) and 77% (in 2013) of DAT convictions were to a lesser charge, compared to 65% (2012) to 73% (2014) for custodial arrests.

Figure 16
Charge Reduction
for PL 221.10 Arrests, 2012 – 2014
(Convicted Cases)



The analysis indicates that as DATs became more prevalent over the study period, they became more like custodial arrests in this respect (as well as others, discussed previously). The difference in rates of charge reduction between the two arrest types was 18 percentage points in 2012 (83% for DATs compared to 65% for custodial arrests); in 2014 the difference was only 6 percentage points (79% compared to 73%).

When defendants in the research sample were convicted, they were usually convicted of disorderly conduct (PL 240.20) or unlawful possession of marijuana (PL 221.05), both of which are non-criminal violations (Chart C). In 2012, DAT convictions with reduced charges were nearly evenly divided between noncriminal marijuana and disorderly conduct; in the following two years disorderly conduct comprised slightly over half. Disorderly conduct was the predominant conviction charge for custodial arrests in all three years.

When the charge was reduced, the reduction occurred prior to arraignment in some cases, but usually at conviction (Chart C). In a few cases the defendant first pled guilty to 221.10; later the plea was withdrawn (presumably upon successful completion of a drug treatment program) and the defendant re-pled and was sentenced to the reduced charge (not shown).

Chart C on the following page provides the data used for Figure 16, with each year's arrests tracked in a separate chart: C-1 (2012), C-2 (2013), C-3 (2014).

CHART C-1
CHARGE REDUCTION
PL 221.10 Arrests 2012

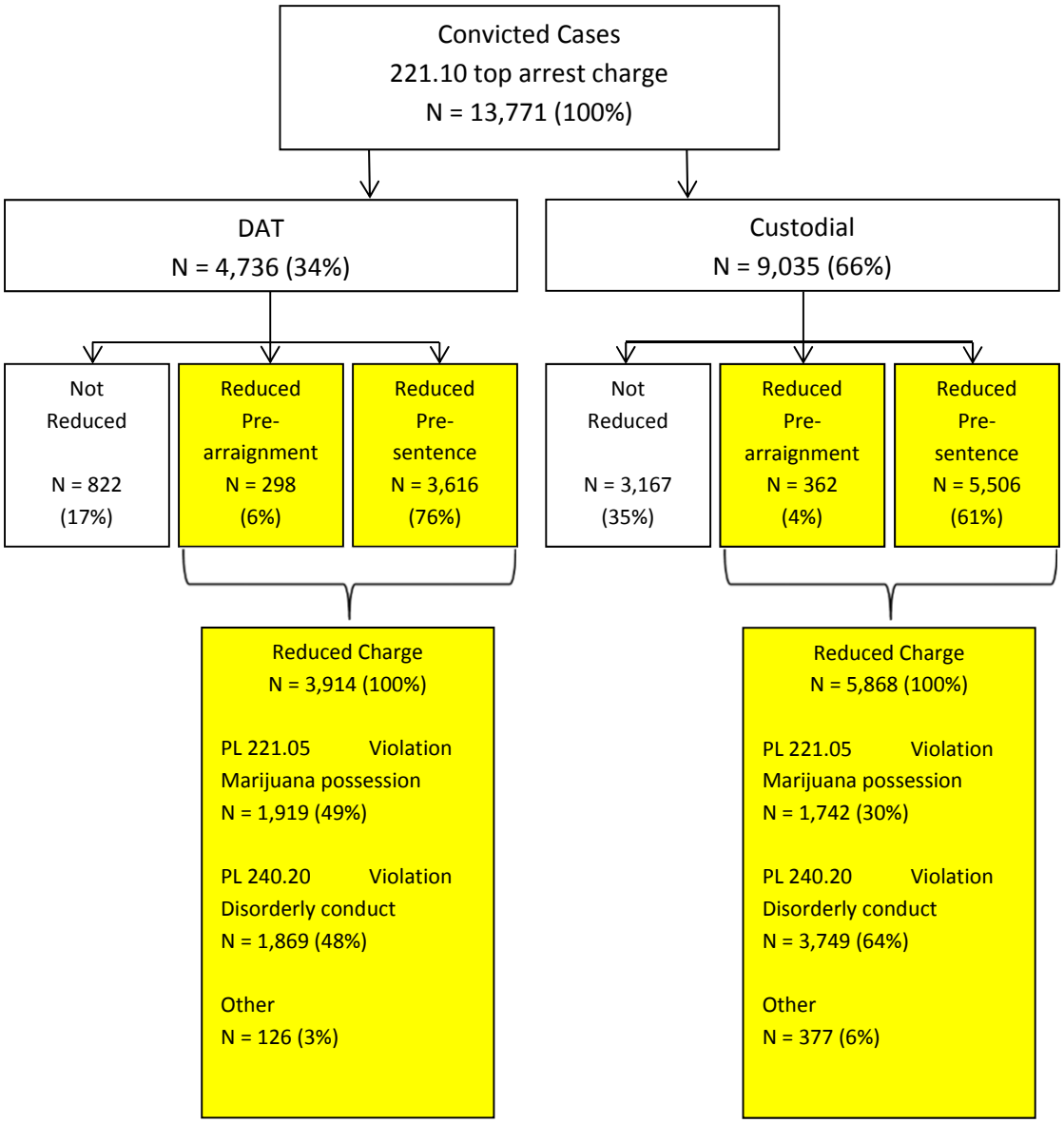


CHART C-2
CHARGE REDUCTION
PL 221.10 Arrests 2013

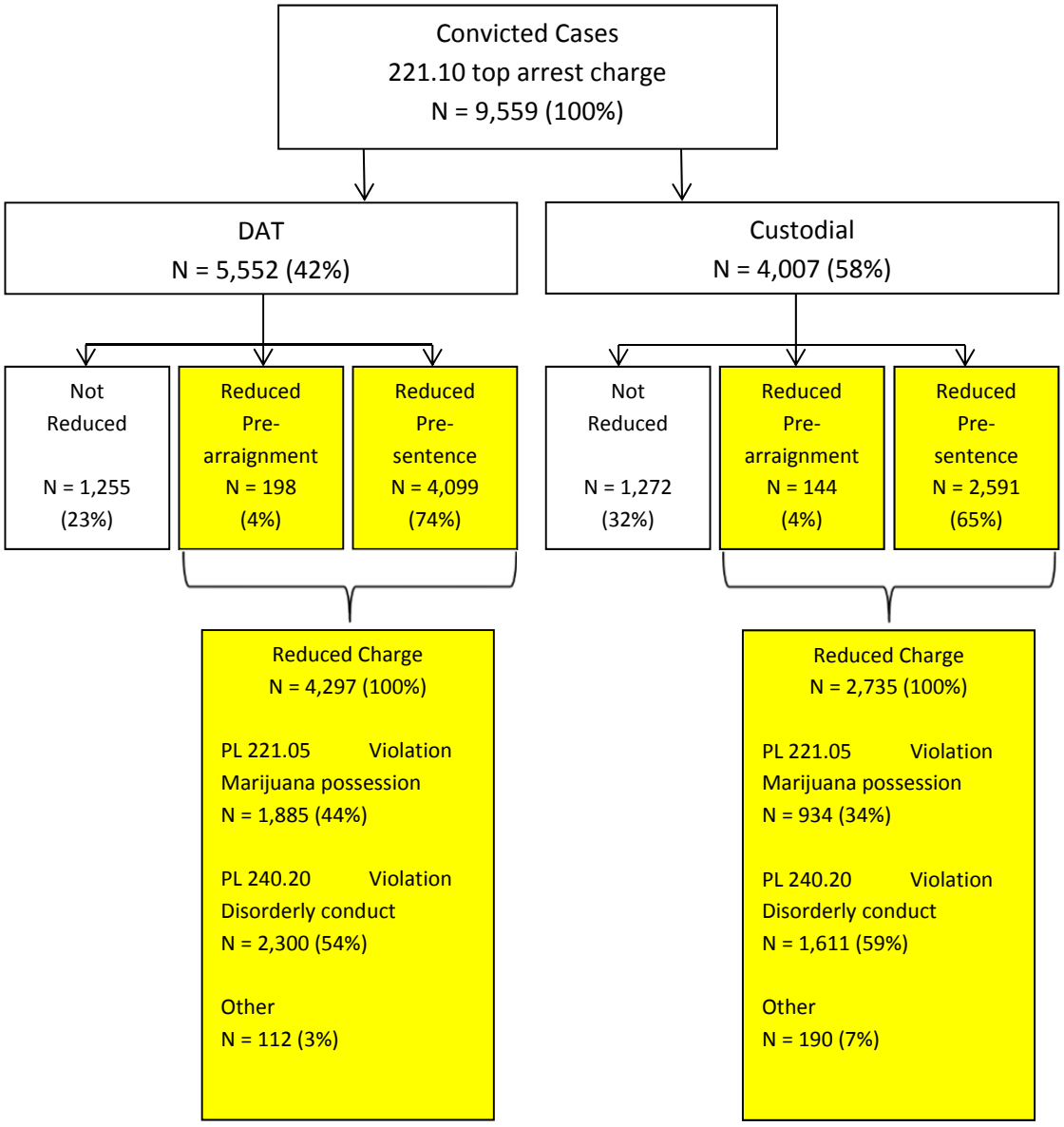
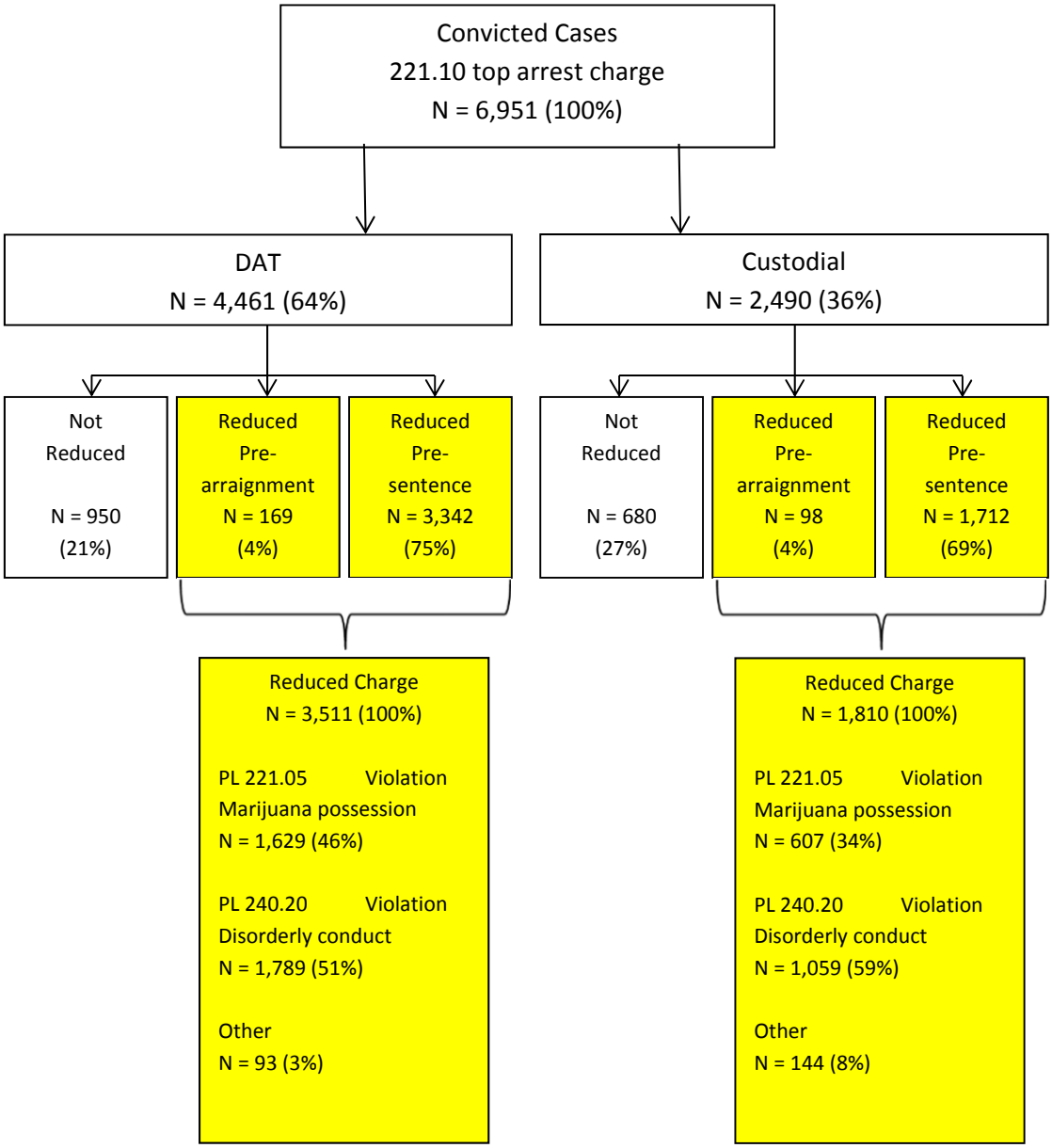


CHART C-3
CHARGE REDUCTION
PL 221.10 Arrests 2014



Summary of Annual Trends 2012–2014

Annual arrest volume for fifth-degree marijuana possession (PL 221.10) has declined by 34% in the three years from 2012 to 2014, from over 40,000 to fewer than 27,000. The number of DATs issued for this charge remained fairly level, while the number of custodial arrests plummeted by about 70%.

The Citywide drop in volume was reflected in every borough, but in different degrees. The largest decline in volume over the three-year study period was found in Brooklyn (-40%), which also had the largest number of 221.10 arrests. The smallest decline was in Queens, where volume dropped by only 24%. Queens was the only borough where DAT volume rose by a large amount (26%) despite the overall drop in arrest volume.

These changes were not accompanied by demographic changes among those arrested for marijuana possession. Throughout the study period, 10% were female, their median age was 24, and their ethnic composition remained about half black, slightly over a third Hispanic, and between 9% and 11% white. The ethnic composition of the marijuana sample was very similar to the composition of defendants arrested on other charges.

The reason that DAT volume remained level in the face of rapidly declining arrest volume was that a larger proportion of the arrestees were given a DAT. At the beginning of the study period, half were issued a DAT; that proportion rose to 78% in 2014.

Prosecution rates were unaffected by these changes. In each year of the study period, and for each arrest type, nearly all arrests were prosecuted. In 2014 the prosecution rate in fifth-degree marijuana possession arrests was 86%, slightly higher for custodial arrests (89%) than for DATs (86%). This small difference was reversed in the previous year (94% for DATs and 90% for custodial arrests), and in 2012 there was virtually no difference between arrest types (90% and 89% respectively). These small fluctuations did not appear to constitute a meaningful pattern.

As the proportion of DATs rose among 221.10 arrests, so did the FTA rate, but not by much: 24% of DAT defendants in the sample failed to appear at arraignment in 2012, a rate that rose to 26% in 2013 and 27% in 2014.

At the same time, the length of time between arrest and the scheduled DAT arraignment increased substantially. The median number of days from arrest to arraignment was 40 days in 2012, 49 days in 2013, and 65 days in 2014 — an increase of 63% from 2012 to 2014.

The majority of sample cases were disposed at arraignment in each year and within each arrest type. Disposition at arraignment was much more likely among custodial cases (82% in 2014) than among DATs (63% in 2014) because so many of the DAT defendants failed to appear, thereby missing the opportunity for their cases to be disposed. When these cases were excluded from the base, DATs had the higher disposition rate at arraignment (86% each year). Because more of the sample cases were DAT arrests in 2013 and 2014, the overall arraignment disposition rate in those years was lower than in 2012 when all cases were included in the analysis. Excluding cases with FTA at arraignment, the overall disposition rate at arraignment rose from 82% to 85% over the study period because of the slight increase in the rate of disposition among custodial cases.

DAT defendants in the sample were less likely to plead guilty at arraignment (even when the cases with FTA at arraignment were excluded) and more likely to be released than their counterparts with a custodial arrest. Conviction at arraignment among all sample cases declined over this period (from 25% to 20%) because the proportion of DATs rose. Within each arrest type, rates of conviction at arraignment did not change much, but what little change did occur was in the direction of more, rather than fewer convictions. Among DATs the conviction rate at arraignment was 14% in 2012 and 15% in each of the next two years (18% and 20% excluding cases with FTA at arraignment); among custodial arrests, the rates were 37%, 39%, and 38% from 2012 to 2014.

For release at arraignment, the dynamic was different: ROR rates declined from 2012 to 2014 for custodial arrests but not for DATs, resulting in virtually no change in the rates for combined arrest types because of the larger proportion of DATs in 2013 and 2014. The vast majority of all defendants in the study sample were released at arraignment, 85% in 2012 and 2014 (slightly higher in 2013). A larger proportion of DAT defendants were released, but the difference between DAT and custodial arrests was relatively small in 2012 and widened over the three-year period. Among DAT arrestees, 90% or more were released at arraignment each year, whereas only 82% of custodial arrestees were released in 2012, a percentage that dropped to 73% in 2014. (The DAT cases with a defendant who failed to appear at arraignment were excluded from this analysis.)

DAT cases received more lenient case outcomes by every measure. DAT defendants were much less likely than defendants in custodial arrests to be convicted (25% among DATs compared to 47% among custodial arrests in 2014) and more likely to receive a sentence of adjourned in contemplation of dismissal (56% among DATs compared to 46% among custodial arrests in 2014). When convicted, DAT defendants were less likely to receive a jail sentence (30% of DATs compared to 44% of custodial arrests in 2014). When sentenced to jail, almost all defendants in the sample were sentenced to time served, but time served was more likely for DAT defendants (93% in 2014) than for defendants in custodial arrests (82% in 2014). Finally, convicted defendants in both arrest type groups were very likely to have the charge reduced to a noncriminal violation, but DAT defendants had their charges reduced more often (in 79% of convictions in 2014) than defendants in custodial arrests (73% in 2014).

Among the sample cases as a whole, convictions and jail sentences became less frequent from 2012 to 2014, while sentences of time served and charge reduction became more frequent, but this was entirely a reflection of the increasing proportion of DAT cases from year to year. Among DAT cases separately, outcomes hardly changed from 2012 to 2014, or — in terms of jail sentences and charge reduction — became a little more severe.

IV. IMPACT OF RECENT POLICY CHANGES

May 2013 Marijuana DAT Policy

We have seen that DAT issuance increased from 50% in 2012 to 71% in 2013, and that it increased again in 2014, to 78% (Figure 6). Despite the higher issuance rates, however, the number of DAT arrests for 221.10 offenses remained level throughout the three-year period because the total 221.10 arrest volume fell by about a third (Figure 1).

The DAT policy implemented in May 2013 is the obvious reason for this increase in DAT issuance, but annual trends cannot adequately show the effect of the policy because implementation occurred mid-year. In order to compare DAT volume and issuance rates during comparable periods *before* and *after* implementation of this policy, we created a "Pre-DAT Policy" subsample of cases with an arrest from May through December 2012 and a "Post-DAT Policy" subsample of cases with an arrest from May through December 2013.

Impact of DAT Policy on Arrest Volume

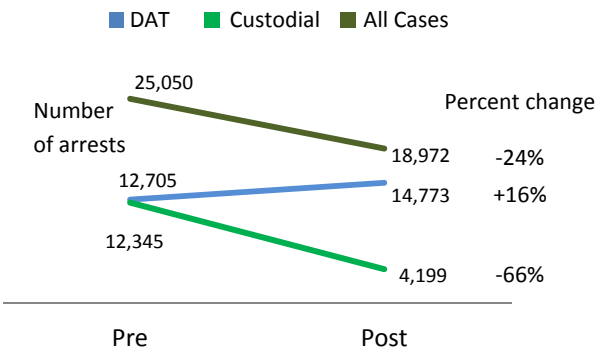
Figure 17 shows that during the same eight-month periods in 2012 (pre) and 2013 (post), arrest volume for 221.10 dropped from 25,050 to 18,972, a decline of 24%. At the same time, DAT volume increased 16% while custodial arrest volume fell 66%.

Impact of DAT Policy on DAT Issuance

Figure 18 shows that the DAT issuance rate rose from 51% pre-policy to 78% post-policy, accounting for the rise in DAT volume despite the decline in arrest volume.

This analysis indicates that the May 2013 marijuana DAT policy had a stronger effect on DAT volume and issuance rate than would be suggested by the annual comparisons, which showed only a 2% increase in DAT volume from 2012 to 2013 (extrapolated from Figure 1) and a DAT issuance rate of only 71% in 2013 (Figure 6).

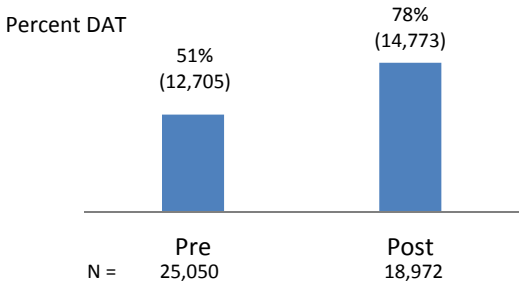
Figure 17
Arrest Volume for PL 221.10
Pre/Post-DAT Policy



Pre-DAT Policy: Arrest between May 1 and December 31, 2012

Post-DAT Policy: Arrest between May 1 and December 31, 2013

Figure 18
DAT Issuance Rate for PL 221.10 Arrests
Pre/Post-DAT Policy



Impact of DAT Policy on Ethnic Disparity

Ethnic Disparity in Arrest Volume

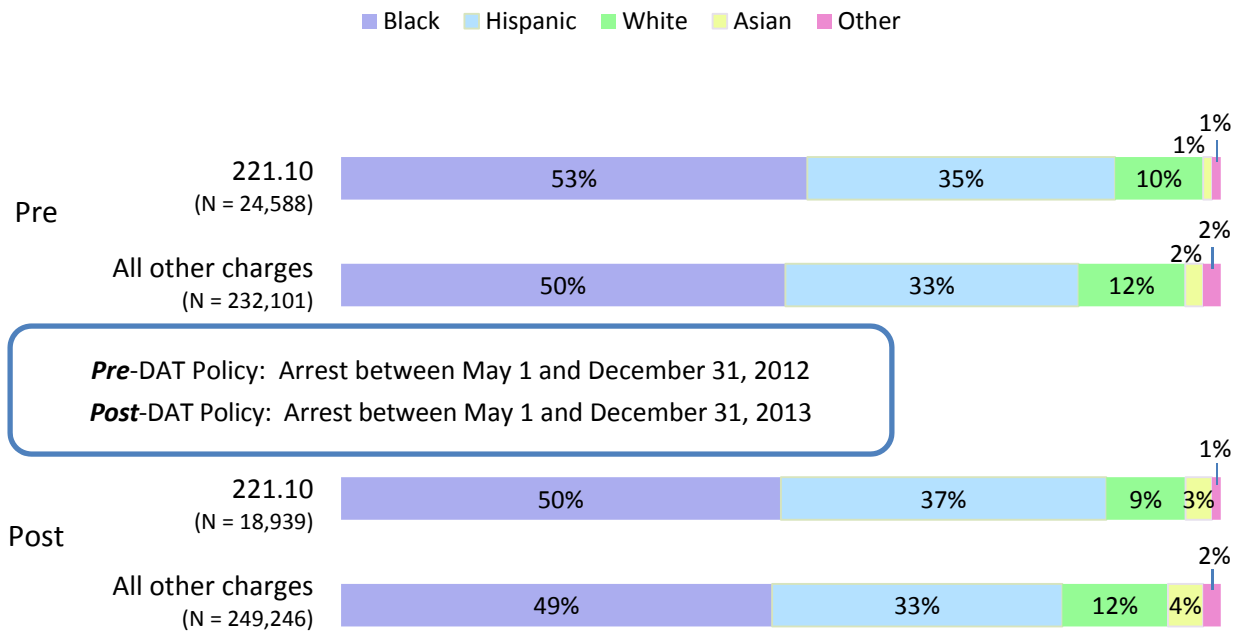
The annual data presented in Figure 5 showed that only 9% of individuals arrested in 2014 for low-level marijuana possession were white, down a couple of percentage points from 2012, when 11% were white. Over 85% were black or Hispanic in each year of the study period.

There was no expectation that the marijuana DAT policy would change the ethnic composition of persons arrested for marijuana possession, and it did not. In fact, whites comprised a slightly smaller percentage of marijuana possession arrests during the eight months following the DAT policy (9%) than during the same eight months the previous year (10%, Figure 19).

In both time periods ethnic disparity was slightly greater among the sample arrests than among all other arrests, although the ethnic composition was similar. The defendant was black or Hispanic in over 80% of all arrests, but the proportion was higher among marijuana arrests (88% pre-policy, 87% post-policy) than among arrests on other charges (83% and 82%). This suggests that the over-representation of blacks and Hispanics among the sample arrests is largely a reflection of the ethnic composition of all arrests, but the disparity is slightly magnified in the sample of arrests for possession of marijuana. The DAT policy did not reduce the disparity for either group.

.

Figure 19
Ethnicity of Defendants Arrested for PL 221.10 Compared to All Other Charges
Pre/Post-DAT Policy



Ethnic Disparity in DAT Issuance

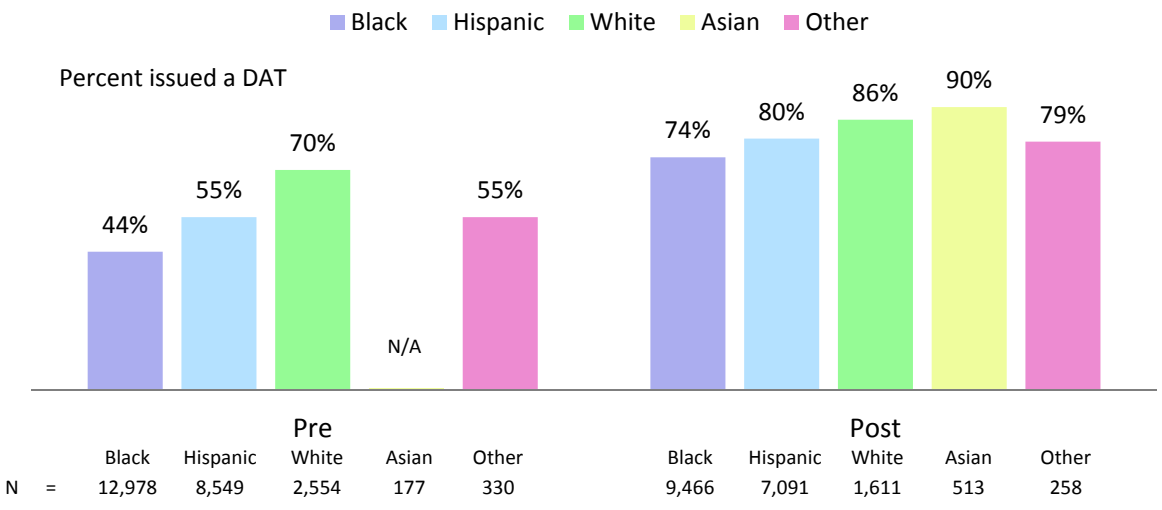
The policy did benefit blacks and Hispanics in raising their DAT issuance rate to a level closer to that of whites, as shown in Figure 20. Pre-policy, 70% of whites arrested for marijuana possession were issued a DAT, compared to 44% of blacks and 55% of Hispanics. The issuance rate rose for all ethnic groups after the DAT policy was in place, but it rose more for non-whites than for whites.

The difference between blacks and whites pre-policy was 26 percentage points (44% compared to 70%); that difference shrank to 12 percentage points (74% compared to 86%) in the post-policy period.

The disparity between Hispanics and whites was also cut by more than half as a result of the DAT policy. The pre-policy difference in DAT issuance rates between Hispanics and whites was 15 percentage points (55% compared to 70%); that difference shrank to 6 percentage points post-policy (80% compared to 86%).

The rate and number of cases with a defendant coded as Asian are not reliable for the pre-policy period because of a coding error in data received from the NYPD in 2012, which caused most Asians who were issued a DAT to be coded as "missing." The error was corrected in 2013, showing that nine out of ten Asians arrested for marijuana possession were issued a DAT, the highest issuance rate of any ethnic group.

Figure 20
DAT Issuance by Ethnicity
for PL 221.10 Arrests
Pre/Post-DAT Policy



Pre-DAT Policy: Arrest between May 1 and December 31, 2012
Post-DAT Policy: Arrest between May 1 and December 31, 2013

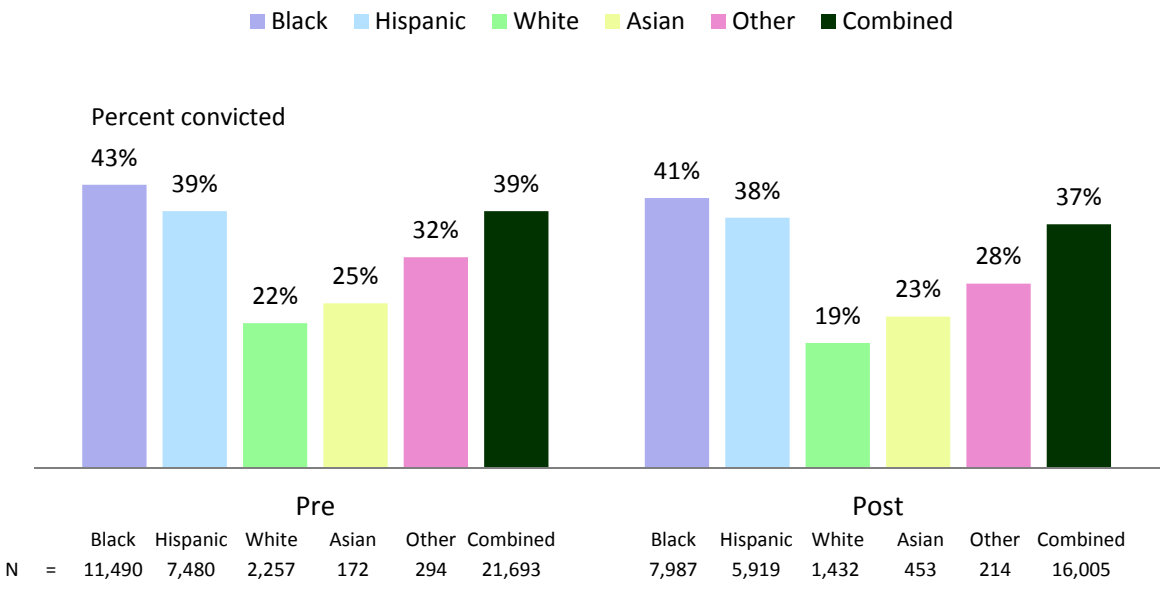
Ethnic Disparity in Conviction

Because DATs are associated with lower conviction rates than custodial arrests, it might be expected that raising the issuance rate for non-whites would also lower their conviction rates. This did happen, but only by a very small amount: from 43% pre-policy to 41% post-policy for blacks, and from 39% to 38% for Hispanics (Figure 21). The conviction rate for whites also dropped by a few percentage points (from 22% to 19%), thereby maintaining the gap between whites and both non-white groups. (Asians are omitted from the discussion because of their small numbers, and the unreliability of this category in 2012.)

Conviction rates for the combined ethnic groups fell by two percentage points, from 39% pre-policy to 37% post-policy.

This analysis suggests that non-whites benefitted from the DAT policy in that thousands who previously would have spent a day or two in jail from arrest to arraignment were instead given a DAT and released, and fewer were convicted. However, blacks and Hispanics were still twice as likely as whites to be convicted during the post-DAT policy study period.

Figure 21
Conviction Rate by Ethnicity
for PL 221.10 Arrests
Pre/Post-DAT Policy
(Prosecuted cases with a final disposition)



Pre-DAT Policy: Arrest between May 1 and December 31, 2012
Post-DAT Policy: Arrest between May 1 and December 31, 2013

November 2014 Marijuana Summons Policy

The marijuana summons policy implemented in November 2014 directed police officers to stop making arrests for possession of small amounts of marijuana in public view. Instead, suspects found with 25 grams or less of marijuana were to be issued a Criminal Court summons and charged with a non-criminal violation, PL 221.05. The summons policy does not apply to marijuana being smoked in public, or to amounts greater than 25 grams, for which arrests continue to be made.

Impact of Summons Policy on Arrest Volume

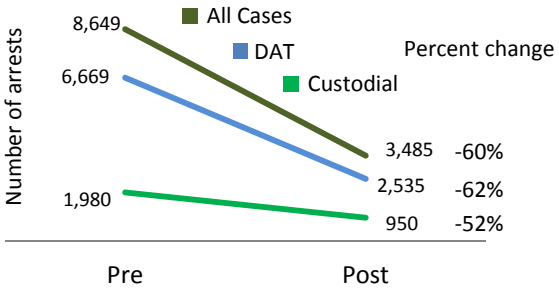
As noted previously, arrest volume had already fallen by about 28% from 2012 to 2013, and the November 2014 summons policy led to expectations of a large further decrease. A small annual decrease from 2013 to 2014 was shown in Figure 1 (from 29,651 to 26,897, a drop of about 9%) but during most of 2014 the new policy was not yet in effect.

To examine the impact of the summons policy, we created a "Post-summons policy" subsample of cases with an arrest from the start of the policy in November 2014 through February 2015. For comparison, we created a "Pre-summons policy" subsample of cases with an arrest during the same four months a year earlier.

Figure 22 shows that the volume of 221.10 arrests fell from 8,649 in the four-month "pre" period to 3,485 during the "post" period — a drop of 60%, in line with expectations for a decline far beyond the previous year's.

Also as expected, the summons policy affected DAT arrests more strongly than custodial arrests. DAT volume fell from 6,669 to 2,535, a decline of 62%, compared to the 52% decline in custodial arrests (from 1,980 to 950).

Figure 22
Arrest Volume for PL 221.10 Arrests
Pre/Post-Summons Policy



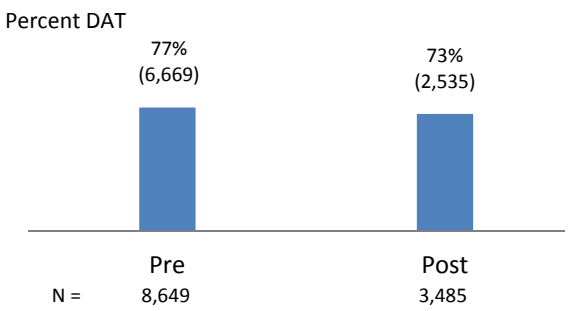
Pre-Summons Policy: Arrest between November 1, 2013, and February 28, 2014

Post-Summons Policy: Arrest between November 1, 2014, and February 28, 2015

Impact of Summons Policy on DAT Issuance

Accordingly, the DAT issuance rate declined from 77% pre-policy to 73% post-policy (Figure 23). This was because many of the same factors that make a person ineligible for a summons (lack of ID or an outstanding warrant) also make him or her ineligible for a DAT. Presumably, the post-summons policy DAT arrests are restricted to cases with a defendant caught smoking marijuana in public view, or in possession of more than 25 grams.

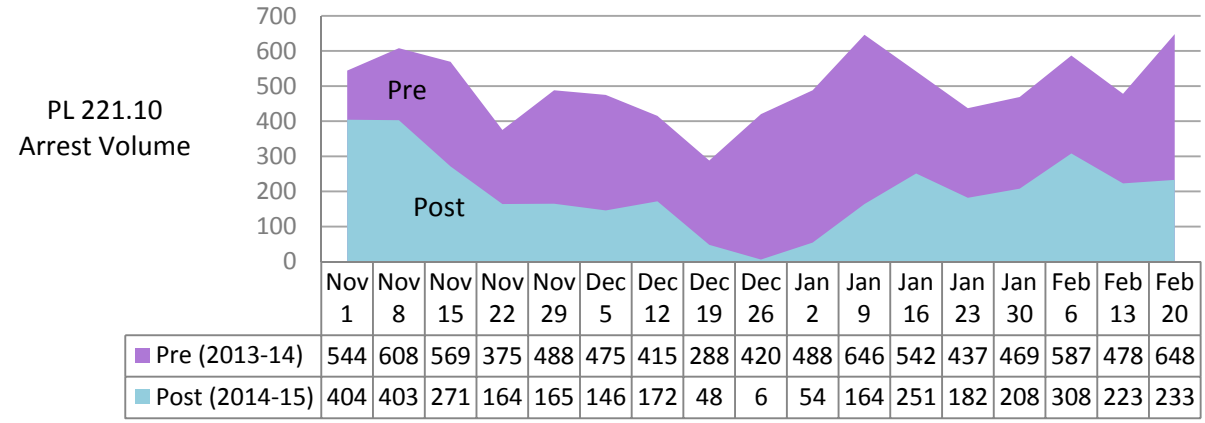
Figure 23
DAT Issuance Rate for PL 221.10 Arrests
Pre/Post-Summons Policy



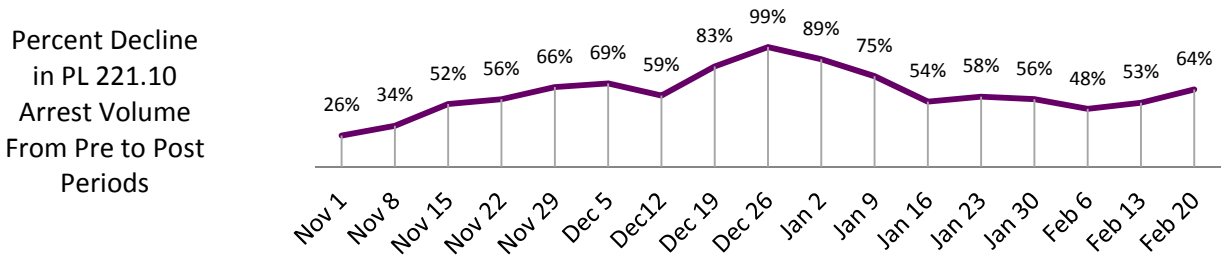
The NYPD work slowdown that followed the killing of two police officers on December 20, 2014, affected arrest volume for all offenses. To assess whether the slowdown rather than the summons policy was responsible for the decline in 221.10 arrests shown in Figure 19, we examined weekly volume for the 17 weeks during the pre and post periods. The results are presented in Figure 24.

The work slowdown stands out sharply during the post period, when volume dropped to only six arrests during the week of December 26 and around 50 for each week on either side of that date, a decline of over 80% for all three weeks from the previous year. However, it is also clear from this graph that for *every* week — and not just during the slowdown — volume during the post period was much lower than in the corresponding week a year earlier. Before and after the slowdown period, the decline from the corresponding week during the previous year was generally between 50% and 70% (shown in the lower part of Figure 24). The decline was much smaller during the first two weeks of November because the policy did not take effect until the middle of that month. However, arrest volume was already declining even before impact of the marijuana summons policy was felt.

Figure 24
Weekly Arrest Volume for 221.10 Arrests
Pre/Post-Summons Policy
(November – February)



	Nov 1	Nov 8	Nov 15	Nov 22	Nov 29	Dec 5	Dec 12	Dec 19	Dec 26	Jan 2	Jan 9	Jan 16	Jan 23	Jan 30	Feb 6	Feb 13	Feb 20
Pre (2013-14)	544	608	569	375	488	475	415	288	420	488	646	542	437	469	587	478	648
Post (2014-15)	404	403	271	164	165	146	172	48	6	54	164	251	182	208	308	223	233



Impact of Summons Policy on Ethnic Disparity

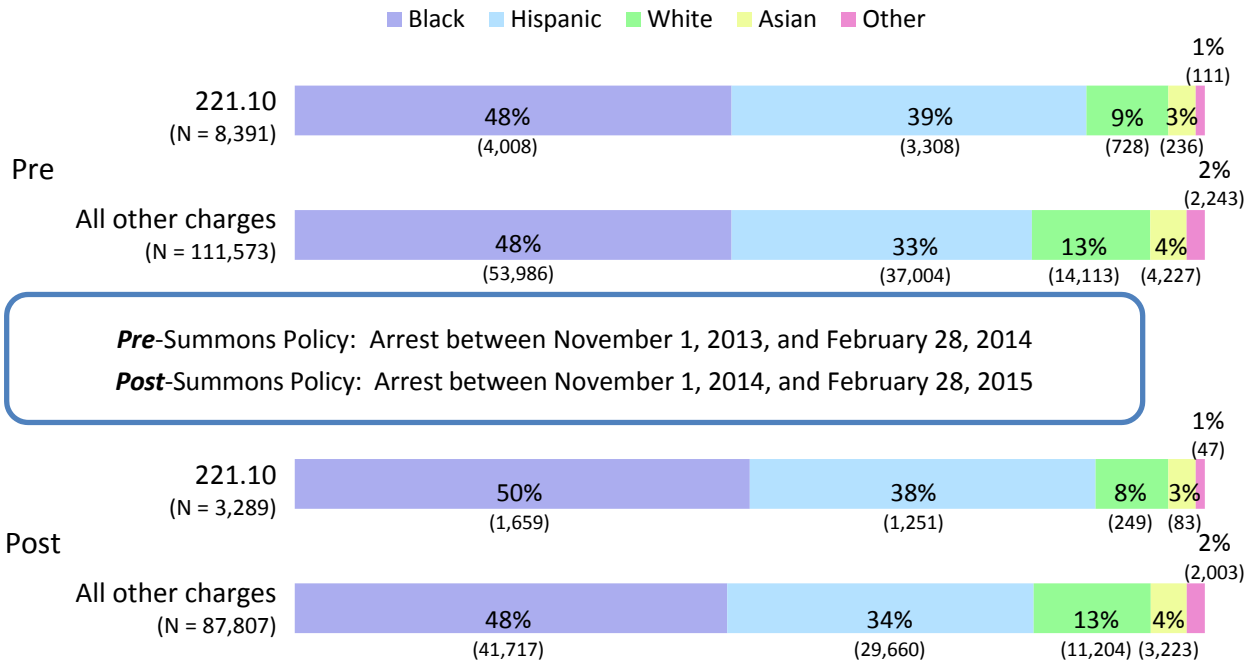
Ethnic Disparity in Arrest

The marijuana summons policy was hailed as a step in the direction of removing the disproportionate burden of marijuana arrests from communities of color. It has been successful so far in greatly reducing the number of blacks and Hispanics arrested: for blacks, the number of marijuana arrests declined from 4,008 to 1,659 — a decline of 59% — during the four months pre- and post-policy; for Hispanics, the decline was from 3,308 to 1,251, a decline of 62% (Figure 25).

However, the disparity between whites and non-whites remained as great as ever, despite the lower numbers in every group. Arrests of whites for marijuana possession declined even more than for blacks or Hispanics — white arrests declined by 66%, from 728 to 249 during the four-month period — with the result that whites accounted for a slightly smaller percentage of arrests post-policy (8%) than pre-policy (9%). Blacks accounted for 48% of arrests pre-policy; that proportion rose to 50% post-policy.

Whites comprised a small proportion of all arrests, but an even smaller proportion of marijuana arrests: during both time periods, 13% of defendants in non-sample cases were white, compared to 8% or 9% of marijuana (sample) defendants. This indicates that ethnic disparity is particularly acute among marijuana arrests and this has not changed with the summons policy.

Figure 25
Ethnicity of Defendants Arrested for PL 221.10 Compared to All Other Charges
Pre/Post-Summons Policy



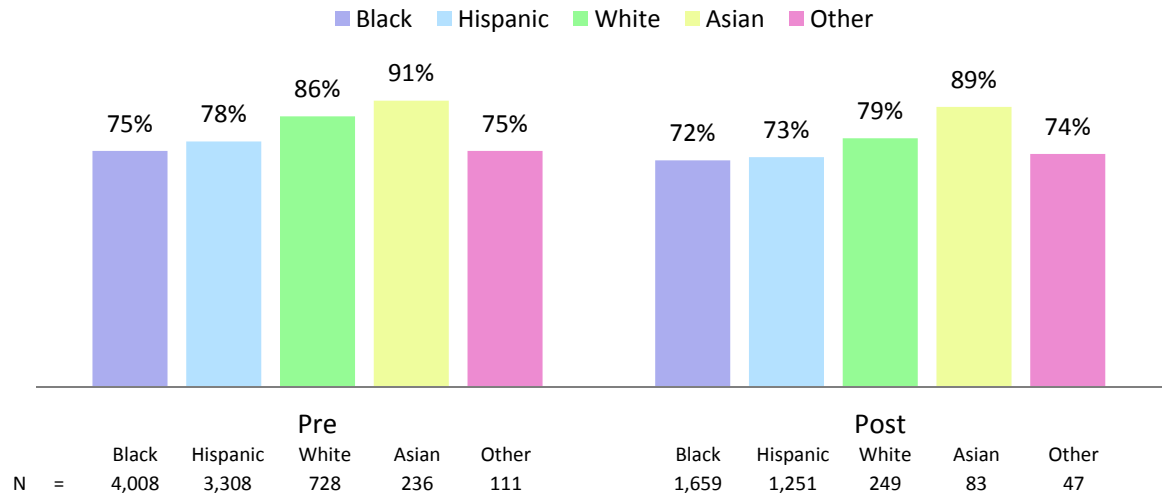
Cases with missing ethnicity data are excluded.

Ethnic Disparity in DAT Issuance

We saw that the May 2013 DAT policy had the effect of reducing the difference between whites and other ethnic groups in the proportion of marijuana arrests in which a DAT was issued (Figure 20). After the DAT policy went into effect, a white suspect arrested for possession of marijuana was still more likely to be offered a DAT than a black or Hispanic suspect, but the gap had narrowed substantially. This happened because the increase in issuance of DATs affected non-whites more than whites.

Figure 26 shows that the post-summons-policy decline in DAT issuance also affected ethnic groups differently, but in this instance the policy affected whites more than non-whites, thereby closing the gap between them even further. Prior to the summons policy, 75% of blacks compared to 86% of whites who were arrested for marijuana possession were offered a DAT, a difference of 11 percentage points. Following the summons policy, that difference was reduced to 7 percentage points (72% compared to 79%). For Hispanic arrestees, the disparity with whites was reduced from 8 percentage points pre-policy (78% compared to 86%) to 6 percentage points post-policy (73% compared to 79%). We conclude that ethnic disparity in DAT issuance, reduced by the May 2013 DAT policy, was further reduced by the November 2014 summons policy.

Figure 26
DAT Issuance by Ethnicity for PL 221.10 Arrests
Pre/Post-Summary Policy



Pre-Summons Policy: Arrest between November 1, 2013, and February 28, 2014
Post-Summons Policy: Arrest between November 1, 2014, and February 28, 2015

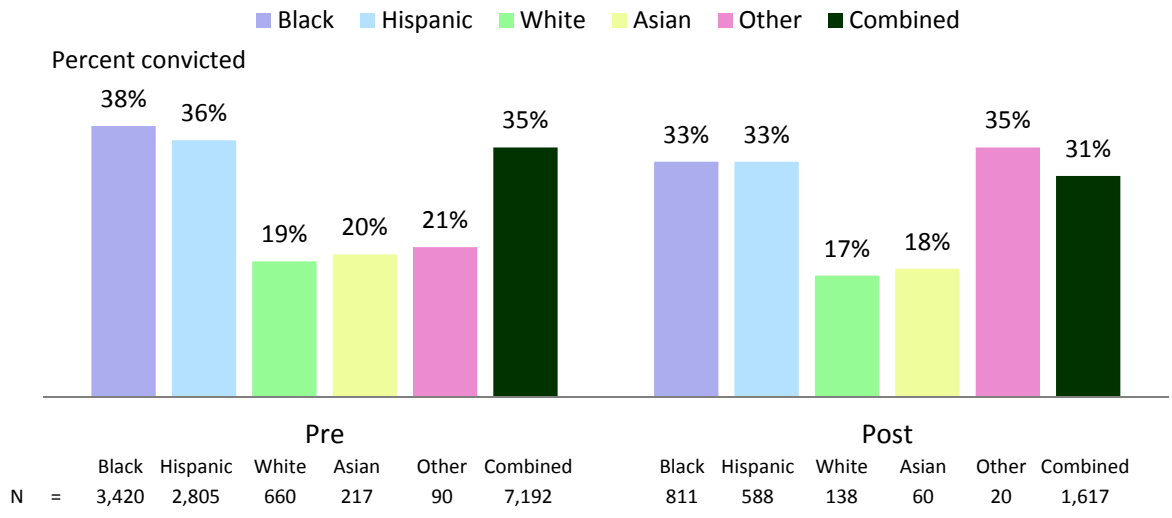
Ethnic Disparity in Conviction

Following the November 2014 summons policy, conviction rates for low-level marijuana possession cases fell again, as shown in Figure 27. Among the combined ethnic groups, 35% of the pre-policy sample cases ended in conviction, compared to 31% post-policy. This small drop in conviction was found within every ethnic group, with the exception of the "other" category, which had too few cases to be reliable.

Pre-policy, 38% of black and 36% of Hispanic defendants were convicted, compared to 19% of white and 20% of Asian defendants. Prior to the summons policy, the conviction rate for blacks was double the rate for whites.

Following implementation of the summons policy, conviction rates dropped to 33% for blacks and Hispanics, compared to 17% for whites and 18% for Asians. Despite the lower post-policy rates for all, conviction among blacks and Hispanics was still nearly twice as likely as among whites.

Figure 27
Conviction Rate by Ethnicity for PL 221.10 Arrests
Pre/Post-Summons Policy
(Prosecuted cases with a final disposition)



Pre-Summons Policy: Arrest between November 1, 2013, and February 28, 2014
Post-Summons Policy: Arrest between November 1, 2014, and February 28, 2015

Summary of the Impact of Recent Policy Changes

Both of the recent policies affecting low-level marijuana arrests were followed by a decline in arrest volume. The 34% decline from 2012 to 2014 in annual volume of PL 221.10 arrests masked a much steeper decline of 60% when the post-summons policy period (the last four months of the study period) was compared with the same four months a year earlier.

Furthermore, annual DAT issuance rates — which rose in 2013 and again in 2014 — masked the *opposite* effects of the two policies in regard to DAT issuance. The DAT policy drove issuance rates far above previous levels (from 51% to 78%), while the summons policy had the effect of bringing the rate down again (to 73% — still far above the 2012 level).

The effect of these changes on ethnic disparity in marijuana arrests was mixed. The annual figures showed that the proportion of arrests with a defendant who was black, Hispanic, or white varied by no more than two percentage points from year to year, with blacks and Hispanics comprising a little over 85% of defendants every year. Neither policy effected any substantial change in these proportions.

However, the policies did appear to play a role in reducing the gap between whites and non-whites in the proportion receiving a DAT. The surge in DAT issuance following the May 2013 DAT policy raised issuance rates for blacks and Hispanics more than for whites, and the decline in DAT issuance following the November 2014 summons policy reduced issuance rates for whites more than for non-whites. As a result, the huge ethnic disparity in DAT issuance found in 2012 had largely disappeared by the last four months of the study period.

DAT arrests are much less likely to end in conviction than custodial arrests (shown in multivariate models to follow), so one might expect that more evenly distributed DAT issuance would translate into more evenly distributed conviction rates. That did not happen. Blacks and Hispanics were much more likely than whites to be convicted in all three years, and neither policy had much impact on this disparity. However, the larger proportion of DAT arrests among all ethnic groups was associated with a small reduction in conviction rates across the board.

V. MULTIVARIATE ANALYSES OF ETHNIC DISPARITY

To extend the analysis of ethnic disparities in marijuana arrests, we used logistic regression to examine the impact of ethnicity in influencing outcomes while controlling for the simultaneous effects of multiple other factors. The two outcomes examined were the decision to offer a DAT at arrest and the likelihood of conviction among the cases that were prosecuted.

Models were developed to predict outcomes separately for arrests during the months before and after each of the two major marijuana policies implemented during the study period. Three time periods were selected for modeling each outcome. A period of months immediately following the policy change (post-policy) and the same months during the previous year (pre-policy) were selected to compare outcomes. A third model was developed for the intervening time period between pre and post-policy periods. This third period — before the policy change but following the seasonally adjusted pre-policy period — was useful in assessing pre/post changes. If the change had already started to occur in the months immediately prior to implementation, forces beyond the policy itself may have been contributing factors.

Predicting DAT Issuance

Impact of DAT Policy on Ethnic Disparity in DAT Issuance

The three models presented in Table 1 predict the likelihood of a DAT being issued in lieu of a custodial arrest during the 8 months following implementation of the marijuana DAT policy (Time 3), during the same 8 months the previous year (Time 1), and during the 4-month interval between the two periods (Time 2). The independent variable is ethnicity. The control variables include other demographic characteristics of the defendant (sex and age), the borough of prosecution, and the number of arrest charges — all of which significantly affected whether a DAT was issued in a marijuana arrest.

Each model shows that after controlling for the effects of sex, age, borough, and the number of arrest charges, the conclusions reached through bivariate analyses were confirmed: blacks and Hispanics were significantly less likely than whites to be offered a DAT both before and after implementation of the policy, but the differences were greatly reduced in the post-policy period. The predicted probabilities of DAT issuance reported for Time 1 were 71% for whites, compared to 44% for blacks and 53% for Hispanics. These percentages are nearly identical to the actual percentages reported in Figure 20 for the pre-policy period.

In the multivariate analyses, Asians were included in the “other” category because of their small numbers. The predicted probability of a DAT among those categorized as “other” was 41% in Time 1.

The Time 2 model presents predicted probabilities for the four-month period immediately prior to the implementation of the DAT policy (January through April 2013). During this period, DAT issuance rates had already begun to climb and the gap between whites and non-whites had already begun to narrow. However, the shifts from Time 1 to Time 2 (both pre-policy) are small; much larger shifts occurred from Time 2 (pre-policy) to Time 3 (post-policy). For example, the difference between the predicted probability of DAT issuance for whites and blacks was 27 percentage points pre-policy (71% compared to 44%); 22 points in the period between the pre and post samples (74% compared to 52%); and 11 points post-policy (86% compared to 75%). This suggests that the DAT policy gave a strong push to a trend that was already underway.

Criminal history information collected by CJA during the pre-arraignment interview is not available for defendants who are not interviewed, which includes the defendant in most DAT arrests. For this reason criminal history data were not available for the majority of cases included in the current research. In addition to the control variables in our models, the defendant's criminal history also affects whether a DAT is issued because NYPD guidelines disqualify anyone with an open or prior warrant, a violation of an order of protection, or a previous conviction that would raise the current charge to a felony. It is possible that the persistence of a gap between whites and non-whites in their prospects of being offered a DAT during a marijuana arrest may be the result of differences in prior criminal justice involvement. Other disqualifying factors that might be distributed differently among ethnic groups — and for which we had no data — include lack of identification, no proof of address, a prior license suspension, or a previous conviction for driving without a license. Ethnic disparities in DAT issuance may be an unintended consequence of the unequal distribution of these disqualifying factors.

TABLE 1
MODELS PREDICTING DAT ISSUANCE
PRE/POST-DAT POLICY
(prosecuted and non-prosecuted arrests)

	DAT ISSUANCE TIME 1 **PRE-DAT POLICY** May-December 2012 N = 24,588		DAT ISSUANCE TIME 2 **Between Times 1 & 3** January-April 2013 N = 10,679		DAT ISSUANCE TIME 3 **POST-DAT POLICY** May-December 2013 N = 18,939	
	Odds ratio & significance	Predicted probability of DAT issuance	Odds ratio & significance	Predicted probability of DAT issuance	Odds ratio & significance	Predicted probability of DAT issuance
Independent Variable						
ETHNICITY	***		***		***	
White	(reference)	71%	(reference)	74%	(reference)	86%
Black	.318***	44%	.383***	52%	.476***	75%
Hispanic	.456***	53%	.510***	59%	.627***	80%
Other	.277***	41%	.909	72%	.931	85%
Control Variables						
BOROUGH	***		***		***	
Manhattan	(reference)	53%	(reference)	57%	(reference)	78%
Bronx	.986	53%	1.039	58%	.926	77%
Brooklyn	.783***	48%	.928	55%	.935	77%
Queens	.782***	47%	1.364***	64%	1.346***	82%
Staten Island	.634***	43%	1.015	57%	1.149	80%
SEX	***		***		***	
Male	(reference)	49%	(reference)	56%	(reference)	77%
Female	1.867***	63%	1.904***	71%	1.764***	85%
AGE	***		***		***	
20 or older	(reference)	48%	(reference)	56%	(reference)	77%
Under 20	1.419***	57%	1.428***	64%	1.338***	81%
NUMBER OF ARREST CHARGES	***		***		***	
One	(reference)	51%	(reference)	59%	(reference)	79%
Two	.967	50%	.915	57%	.844***	77%
Three	.543***	37%	.533***	44%	.403***	61%
Four or more	.368***	29%	.293***	31%	.220***	47%
Nagelkerke R^2	.065		.061		.042	

Impact of Summons Policy on Ethnic Disparity in DAT Issuance

The bivariate analyses showed that DAT issuance rates dropped following implementation of the summons policy — an expected development because summonses replaced many DATs. The multivariate models presented in Table 2 confirm this. The predicted probability of a DAT was lower in Time 6 (post-policy) for virtually every group, compared to Times 4 and 5 (both pre-policy). Predicted probabilities presented for Times 4 and 6 are nearly identical to the DAT issuance rates presented in the bivariate analysis shown in Figure 26. This means that none of the control factors — no shift in demographics, borough, or number of arrest charges — accounted for the change in DAT issuance rates following the summons policy.

The Time 5 model shows that during the time between the period immediately following the summons policy and the comparison period a year earlier, DAT issuance was still on the rise and the difference between whites and non-whites was still significant.

Following the switch to summonses in Time 6, the difference between Hispanics and whites in likelihood of receiving a DAT in a marijuana arrest was no longer statistically significant (79% probability for whites compared to 73% for Hispanics). The probability for blacks was 72%, which was just enough lower than whites to be statistically significant. The small number of marijuana arrests after implementation of the summons policy (only 3,289 in the Time 6 model) makes it more difficult for any effect to achieve statistical significance; after more time has passed for the collection of additional months of data, a repeat analysis would probably obtain significant results for the Hispanic/white disparity as well as the black/white disparity. In any event, both disparities were demonstrably reduced, if not eliminated, following the summons policy.

The difference in DAT issuance among boroughs evened out as well, with predicted probabilities between 70% and 75% in every borough, and no statistically significant differences.

Of the factors available for this research, the one that influences DAT issuance the most — for arrests that continue to be made despite the summons policy — is the number of charges on the arrest form. Arrestees who have multiple lesser charges in addition to marijuana possession are much less likely to be given a DAT than those charged only with marijuana possession. Factors associated with higher likelihood of a DAT are being young (78% probability for those under 20) and female (81% probability).

TABLE 2
MODELS PREDICTING DAT ISSUANCE
PRE/POST-SUMMONS POLICY
(Prosecuted and non-prosecuted arrests)

	DAT ISSUANCE TIME 4 **PRE-SUMMONS POLICY** November 2013 – February 2014 N = 8,391		DAT ISSUANCE TIME 5 **Between Times 4 & 6** March 2014 – October 2014 N = 19,566		DAT ISSUANCE TIME 6 **POST-SUMMONS POLICY** November 2014 – February 2015 N = 3,289	
	Odds ratio & significance	Predicted probability of DAT issuance	Odds ratio & significance	Predicted probability of DAT issuance	Odds ratio & significance	Predicted probability of DAT issuance
Independent Variable						
ETHNICITY	***		***		**	
White	(reference)	85%	(reference)	88%	(reference)	79%
Black	.515***	75%	.434***	76%	.697*	72%
Hispanic	.607***	78%	.592***	81%	.738	73%
Other	.925	84%	.624***	82%	1.418	84%
Control Variables						
BOROUGH	***		***		***	
Manhattan	(reference)	77%	(reference)	79%	(reference)	71%
Bronx	.914	76%	.999	79%	1.109	73%
Brooklyn	1.010	78%	.925	78%	1.168	74%
Queens	1.368***	82%	1.344***	84%	1.227	75%
Staten Island	.937	76%	.925	78%	.935	70%
SEX	***		***		***	
Male	(reference)	77%	(reference)	79%	(reference)	73%
Female	1.903***	86%	1.615***	86%	1.618***	81%
AGE	***		***		***	
20 or older	(reference)	76%	(reference)	78%	(reference)	72%
Under 20	1.516***	83%	1.528***	84%	1.354**	78%
NUMBER OF ARREST CHARGES	***		***		***	
One	(reference)	79%	(reference)	81%	(reference)	75%
Two	.880*	77%	.848***	78%	.913	73%
Three	.481***	65%	.434***	65%	.470***	59%
Four or more	.193***	44%	.231***	50%	.267***	45%
Nagelkerke R^2	.045		.044		.032	

Predicting Likelihood of Conviction

Impact of DAT Policy on Ethnic Disparity in Conviction

The three models presented in Table 3 predict the likelihood of conviction among misdemeanor marijuana possession arrests during the eight months following implementation of the DAT policy (Time 3), during the same eight months the previous year (Time 1), and during the four-month interval between the two periods (Time 2). The time periods for the three models are the same as in Table 1, but the predicted outcome is conviction rather than DAT issuance.

In addition to the control variables entered in the previous models — borough, sex, age, and the number of arrest charges — two additional controls were entered in the models predicting conviction. One was whether a DAT was issued at arrest. DAT arrests are much less likely to end in conviction than custodial arrests, so by controlling for arrest type we could ensure that any ethnic differences in the likelihood of conviction could not be accounted for by the fact that blacks and Hispanics were less likely to receive a DAT.

The other added control was the defendant's release status. Released defendants and those whose cases were disposed at arraignment were less likely to be convicted than those who were detained throughout the pretrial period. Blacks and Hispanics were more likely to be detained (data not shown), so we had to consider the possibility that detention accounted for ethnic differences in conviction rates. Controlling for release status ensured that any ethnic differences in the likelihood of conviction could not be explained by differences in detention and release.

Each model shows that after controlling for the effects of sex, age, borough, the number of arrest charges, arrest type, and release status the conclusions reached through bivariate analyses were confirmed: blacks and Hispanics were significantly more likely to be convicted than whites both before and after implementation of the policy. Predicted probabilities of conviction were slightly lower across the board in the post-policy period — down a few percentage points for each group — but the differences between blacks and whites, and between Hispanics and whites, were not reduced in the post-policy period. Conviction rates dropped less than might be expected because while DAT issuance rates were rising, the probability of conviction among DAT arrests was also rising (from 29% in Time 1 to 34% in Time 3).

The predicted probability of conviction reported in Time 1 (pre-policy) for blacks was 42%, compared to 26% for whites and 38% for Hispanics. The difference between blacks and whites was 16 percentage points; between Hispanics and whites, 12 percentage points. The comparable probabilities for Time 3 (post-policy) were: 40% (blacks), 23% (whites), and 36% (Hispanics). The post-policy difference between blacks and whites was 17 percentage points; between Hispanics and whites, 13 percentage points.

This analysis supports the conclusion that issuing more DATs for low level marijuana possession lowered conviction rates slightly across the board, but did nothing to reduce ethnic disparities in the likelihood of conviction.

In addition to ethnicity, other significant predictors of conviction were borough (conviction was most likely in Manhattan); sex (males were twice as likely as females to be convicted); age (defendants 20 or older were twice as likely as younger defendants to be convicted); number of arrest charges (the more charges, the higher the probability of conviction); arrest type (conviction was more likely in custodial than in DAT arrests); and release status (conviction was most likely for defendants who were not released pretrial).

TABLE 3
MODELS PREDICTING CONVICTION
PRE/POST-DAT POLICY
(Prosecuted arrests with a final disposition)

	CONVICTION TIME 1 **PRE-DAT POLICY** May-December 2012 N = 21,693		CONVICTION TIME 2 **Between Times 1 & 3** January-April 2013 N = 9,495		CONVICTION TIME 3 **POST-DAT POLICY** May-December 2013 N = 16,003	
	Odds ratio & significance	Predicted probability of conviction	Odds ratio & significance	Predicted probability of conviction	Odds ratio & significance	Predicted probability of conviction
Independent Variable						
ETHNICITY	***		***		***	
White	(reference)	26%	(reference)	26%	(reference)	23%
Black	2.338***	42%	2.125***	41%	2.680***	40%
Hispanic	1.951***	38%	1.999***	39%	2.158***	36%
Other	1.296*	31%	.979	26%	1.700***	32%
Control Variables						
BOROUGH	***		***		***	
Manhattan	(reference)	49%	(reference)	48%	(reference)	49%
Bronx	.762***	43%	.787***	43%	.809***	44%
Brooklyn	.423***	32%	.429***	31%	.344***	28%
Queens	.415***	31%	.389***	30%	.333***	27%
Staten Island	.583***	38%	.584***	37%	.511***	35%
SEX	***		***		***	
Male	(reference)	41%	(reference)	40%	(reference)	39%
Female	.384***	23%	.353***	21%	.305***	19%
AGE	***		***		***	
20 or older	(reference)	43%	(reference)	42%	(reference)	41%
Under 20	.377***	24%	.357***	23%	.317***	21%
NUMBER OF ARREST CHARGES	***		***		***	
One	(reference)	38%	(reference)	37%	(reference)	36%
Two	1.131***	40%	1.066	39%	1.136**	38%
Three	1.428***	45%	1.568***	46%	1.321*	41%
Four or more	5.471***	72%	5.162***	70%	5.204***	68%
DAT	***		***		***	
No	(reference)	48%	(reference)	48%	(reference)	47%
Yes	.402***	29%	.429***	31%	.515***	34%
RELEASE STATUS	***		***		***	
Disposed at arraignment	(reference)	36%	(reference)	35%	(reference)	34%
Not released pretrial	4.564***	68%	4.127***	64%	3.999***	62%
Released pretrial	2.106***	52%	2.413***	53%	2.715***	54%
Nagelkerke R^2	.215		.230		.238	

Impact of Summons Policy on Ethnic Disparity in Conviction

Conviction rates dropped further following implementation of the summons policy (Figure 26), and the multivariate models presented in Table 4 confirmed this finding after controlling for other factors that also affect conviction. The predicted probability of conviction was lower in Time 6 (post-policy) for virtually every group, compared to Times 4 and 5 (both pre-policy). It is difficult to say how the summons policy might have contributed to this decline in convictions; there is no reason to suppose that summonses were disproportionately issued in cases most likely to end in conviction. Moreover, the Time 5 model shows that the predicted probability of conviction had already begun to decline by mid-2014 — the months immediately prior to the summons policy — although the decline accelerated slightly following implementation. For example, the predicted probability of conviction among custodial arrests dropped from 46% (Time 4) to 45% (Time 5) to 40% (Time 6). The comparable probabilities among DATs were 31% (Time 4), 29% (Time 5), and 24% (Time 6).

The difference between blacks and whites in predicted probability of conviction was 16 percentage points in Time 4 (39% and 23% respectively), 14 percentage points in Time 5 (36% and 22%), and 15 percentage points in Time 6 (33% and 18%). This suggests that even if the gap had started to narrow a bit between Time 4 and Time 5, the summons policy did nothing to accelerate or even maintain this trend.

Results were similar for Hispanics: the gap between Hispanics and whites was 11 percentage points in both Time 4 and Time 5, then rose to 13 percentage points in Time 6 (31% compared to 18%). The disparity between Hispanics and whites was not as great as between blacks and whites to begin with, but that gap widened by a small amount in the months following the summons policy.

TABLE 4
MODELS PREDICTING CONVICTION
PRE/POST-SUMMONS POLICY
(Prosecuted arrests with a final disposition)

	CONVICTION TIME 4 **PRE-SUMMONS POLICY** November 2013 – February 2014 N = 7,188		CONVICTION TIME 5 **Between Times 4 & 6** March 2014 – October 2014 N = 15,081		CONVICTION TIME 6 **POST-SUMMONS POLICY** November 2014 – February 2015 N = 1,617	
	Odds ratio & significance	Predicted probability of conviction	Odds ratio & significance	Predicted probability of conviction	Odds ratio & significance	Predicted probability of conviction
Independent Variable						
ETHNICITY	***		***		**	
White	(reference)	23%	(reference)	22%	(reference)	18%
Black	2.512***	39%	2.281***	36%	2.571***	33%
Hispanic	1.927***	34%	1.920***	33%	2.335***	31%
Other	1.269	26%	1.111	24%	1.846	27%
Control Variables						
BOROUGH	***		***		***	
Manhattan	(reference)	48%	(reference)	46%	(reference)	46%
Bronx	.839*	44%	.708***	39%	.461***	30%
Brooklyn	.231***	21%	.272***	22%	.295***	22%
Queens	.363***	28%	.304***	23%	.390***	27%
Staten Island	.604***	37%	.561***	34%	.588	35%
SEX	***		***		***	
Male	(reference)	37%	(reference)	35%	(reference)	33%
Female	.328***	19%	.294***	16%	.322***	15%
AGE	***		***		***	
20 or older	(reference)	39%	(reference)	37%	(reference)	34%
Under 20	.325***	20%	.350***	19%	.349***	17%
NUMBER OF ARREST CHARGES	***		***		NS	
One	(reference)	34%	(reference)	32%	(reference)	30%
Two	1.096	35%	1.075	34%	1.039	31%
Three	1.674***	43%	1.694***	43%	1.429	37%
Four or more	4.489***	63%	2.775***	53%	2.955*	52%
DAT	***		***		***	
No	(reference)	46%	(reference)	45%	(reference)	40%
Yes	.474***	31%	.436***	29%	.436***	24%
RELEASE STATUS	***		***		*	
Disposed/hanging at arraignment	(reference)	32%	(reference)	31%	(reference)	30%
Not released pretrial	4.435***	62%	3.329***	56%	2.957	52%
Released pretrial	2.765***	52%	2.235***	47%	1.696*	40%
Nagelkerke R^2	.258		.218		.196	

Summary of the Multivariate Analyses

Four sets of multivariate models were developed: two sets predicted likelihood of DAT issuance for all arrests with a top charge of PL 221.10; the other two sets predicted likelihood of conviction among all prosecuted cases in the sample. For each outcome, one set of models presented results pre/post the marijuana DAT policy implemented in May 2013 and the other set of models presented results pre/post the marijuana summons policy implemented in November 2014.

Each set included an intermediate time period comprising the months after the pre-policy period and before the post-policy period. For example, the post-DAT policy research period (Time 3) was May – December 2013. For comparison, the same months a year earlier comprised the pre-DAT policy research period (Time 1). The intervening months, January through April 2013, comprised Time 2. When changes from Time 1 to Time 3 suggested that the DAT policy had an impact, results for Time 2 could assist the interpretation by identifying changes that had already begun pre-policy.

Times 4, 5, and 6 served the same purpose in regard to the summons policy. Time 6 (November 2014 through February 2015) comprised the four months following implementation, Time 4 comprised the corresponding four months the previous year, and Time 5 comprised the intervening period (March through October 2014).

The primary purpose of the multivariate analyses was to investigate ethnic disparity in two important outcomes for low-level marijuana cases, controlling for other factors that also influence these outcomes. One outcome, whether a DAT is issued at arrest, is chronologically the earliest post-arrest point at which ethnic disparity can enter case processing. (The decision to make an arrest occurs earlier, but CJA lacks data on possible suspects who were not arrested, which would be a prerequisite for an investigation of that question.) The second outcome we focused on occurs at the other end of the process, when the case is disposed through conviction or some other final disposition. The analysis was repeated for each time period separately —Time 1 through Time 6 — to track changes in ethnic disparity in these outcomes throughout the research period, before and after each of the two major marijuana policies implemented during this time.

Ethnic disparity in DAT issuance: At Time 1, blacks and Hispanics were significantly less likely than whites to be given a DAT at arrest for misdemeanor marijuana possession, and the size of the disparity was large (a 27-percentage-point difference was found between blacks and whites in their predicted probabilities of receiving a DAT). At each subsequent time period, the differences were smaller (except for a slight uptick in Time 5). The disparity remained statistically significant through Time 5, immediately prior to the summons policy. In Time 6, following the summons policy, the difference between Hispanics and whites was reduced to 6 percentage points and was no longer statistically significant. Seven percentage points divided blacks and whites in Time 6, and this disparity was still statistically significant although the size of the disparity was a fraction of what had been found for Time 1. Predicted probabilities for DAT issuance rose for all ethnic categories from Time 1 to Time 6, but more for blacks and Hispanics than for whites, thereby narrowing the gap between them.

Ethnic disparity in conviction: Throughout the research period blacks and Hispanics were significantly more likely than whites to be convicted. This disparity did not change

substantially from Time 1 to Time 6, despite lower overall conviction rates at the end of the study period. DAT cases were significantly less likely to end in conviction than custodial arrests, which explains lower conviction rates at the end of the study period when a higher proportion of arrests were DATs. However, that did not lessen the ethnic disparity in conviction. Blacks and Hispanics continued to be convicted at a higher rate than whites, regardless of their arrest type, and the size of the disparity did not change.

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VI. SUMMARY, DISCUSSION, AND POLICY IMPLICATIONS

This research has focused on PL 221.10, the charge in nearly all arrests for marijuana possession in New York City. Until very recently, the huge number of arrests for possession of marijuana put 221.10 at the very top of the list of all arrest charges in volume.

After years of rising volume, the number of 221.10 arrests began to decline in 2012. Since then, arrest volume for this charge has fallen by 34%, from approximately 41,000 in 2012 to less than 27,000 in 2014 (Figure 1). Projections for 2015 suggest that volume will drop again, possibly as low as 13,000.[9] The ranking of this charge by volume fell from first place in 2012 to fifth place in 2014. It dropped to seventh place during the first two months of 2015.

Predictions that the summons policy would make marijuana arrests virtually disappear did not materialize. Persons found with marijuana in their possession can still be arrested and charged with PL 221.10 if they are smoking marijuana in public or if the amount is over 25 grams, as these offenses are not eligible for a summons. Other disqualifiers include an outstanding warrant or being charged with another fingerprintable offense in addition to possession of marijuana. Among the 221.10 arrests that continued to be made following implementation of the summons policy in late 2014, about 7% of the defendants had an outstanding warrant, and in another 5% of arrests there was a second fingerprintable charge. Together these disqualifiers accounted for about 12% of 221.10 arrests in the first two months of 2015. This indicates that smoking and amounts over 25 grams are the primary triggers for the arrests that continue to be made, although our data could not distinguish between them.

Despite many fewer arrests, the number of marijuana DATs remained stable from 2012 to 2014, hovering around 21,000. The proportion of marijuana arrests in which a DAT was issued rose dramatically during this time, from half to more than three quarters of 221.10 arrests. Even after summonses began to replace arrests for many DAT-eligible individuals, DATs continued to be issued in well over 70% of arrests. Custodial arrests are a little less likely than DATs to be replaced by a summons because anyone with an outstanding warrant or inadequate identification is ineligible for both a summons and a DAT. As a result, the proportion of DATs among all 221.10 arrests fell from its high of 78% in 2014 to 73% in the four months following implementation of the summons policy[10] — still a long way above 2012, when it was 50%.

The fear that expansion of DATs on this scale would have an adverse effect on FTA rates was realized only marginally, as the rate of failure to appear at arraignment among DAT defendants rose from 24% in 2012 to 27% in 2014. A large increase in the number of days from arrest to arraignment — from 40 to 65 — could be a more important factor in rising FTA rates than the expanded defendant pool, but we did not have the data to assess the role that other factors, such as criminal history and community ties, might play.

Declining arrest volume from 2012 to 2014 did not affect defendant demographics. Among individuals arrested for marijuana possession during this period, about 10% were

[9] Arrest volume for PL 221.10 in 2011 was 53,287 (not shown in data), which dropped to 40,995 in 2012. The 23% decline from 2011 to 2012 was the first substantial decline after years of rising volume. Projections for 2015 are based on preliminary figures for the first four months of the year (not shown).

[10] The 73% figure is for the period from November 2014 through February 2015 (Figure 23, Time 6), which includes several weeks in November before the policy was implemented. During the first two months of 2015, the DAT issuance rate was 71% (not shown).

female, and the median age was 24. About half were black, slightly over a third were Hispanic, and about a tenth were white. These characteristics fluctuated hardly at all from year to year.

The growing proportion of DATs among marijuana arrests did affect overall case outcomes because of the consistently more favorable outcomes in DAT cases. For example, conviction and incarceration rates fell from 2012 to 2014. Additionally, in convicted cases the charge was more likely to be reduced in 2014 than in 2012, and sentences of time served — already the sentence in the vast majority of sample cases with a jail sentence — became even more frequent. These changes were all accounted for by the larger proportion of DATs in the 2014 sample.

Outcomes would have been affected even more had the differences between DAT and custodial arrests remained at the same level throughout the study period, but the expansion of DATs was accompanied by a lessening of these differences. Incarceration rates, for example, rose for DAT cases from 2012 to 2014, while declining among custodial arrests. As a result, the 22-point spread between DAT and custodial cases in 2012 (of convicted defendants, 26% in DAT arrests and 48% in custodial arrests were incarcerated) was reduced to a 14-point spread in 2014 (30% and 44%, respectively). Consequently, the overall incarceration rate fell only moderately (from 41% to 35%) as a result of the influx of DAT cases (see Figure 14).

We paid particular attention to the impact of these changes on ethnic disparity. Because non-whites comprise the overwhelming majority of defendants arrested for marijuana possession, they were the primary beneficiaries of both the huge reduction in the number of arrests and the increased likelihood that a DAT would be issued. The number of blacks arrested for marijuana possession fell from about 21,000 in 2012 to about 13,000 in 2014 (Figure 5). For Hispanics, the comparable numbers were about 14,000 in 2012 and 9,000 in 2014. In 2015, the number for each ethnic group will likely be about half the total for 2014, according to estimates based on the first four months of the year (not shown).

And because the DAT issuance rate was rising simultaneously with the drop in volume, the number of non-whites subjected to custodial arrest fell even more dramatically. Over 18,000 blacks and Hispanics arrested for marijuana possession were held in custody awaiting arraignment in 2012, compared to fewer than 5,000 in 2014 (not shown). This number is likely to drop below 3,000 in 2015.

In addition, the disparity between non-whites and whites in their likelihood of receiving a DAT when arrested for marijuana possession narrowed substantially. This disparity was glaring at the beginning of the research period, when 44% of blacks and 55% of Hispanics were issued a DAT, compared to 70% of whites (Figure 20). By the end of the research period, those percentages had risen to 72% for blacks, 73% for Hispanics, and 79% for whites (Figure 26). Multivariate analyses showed that the difference between blacks and whites in their likelihood of receiving a DAT was still statistically significant, though small, following implementation of the summons policy; on the other hand, the difference between Hispanics and whites was no longer statistically significant (Table 2).

In other respects, however, ethnic disparity remains as much an issue as ever for the handling of marijuana offenses. The number of non-whites arrested for possession of marijuana may be a fraction of what it once was, but blacks and Hispanics still comprise well over 80% of the total. In large measure this reflects the ethnic composition of all arrestees in New York City, albeit slightly magnified in the marijuana sample. The proportion of whites in

the general arrest population varied from 12% to 13% during the study period, compared to 8% to 10% among the marijuana arrestees (Figures 19 & 25).

Furthermore, the lessening of ethnic disparity in DAT issuance did not translate into less disparity in the likelihood of conviction. DATs were associated with lower conviction rates than custodial arrests, and this association did result in lower conviction rates for all ethnic groups as DATs became the norm for everyone. However, the multivariate analyses showed that ethnicity had an independent effect on likelihood of conviction. In other words, blacks and Hispanics were more likely than whites to be convicted regardless of arrest type. The impact of ethnicity on a defendant's likelihood of conviction was statistically significant throughout the study period. The size of this effect did not change much, either: the odds of conviction for blacks and Hispanics were about double the odds of conviction for whites in every time period, controlling for arrest type and other factors (Tables 3 & 4).

Ideally, the multivariate analyses would have included criminal history and community ties items from the CJA pre-arraignment interview, but these items are not available for defendants who are not interviewed. There is no opportunity to interview defendants who are released with a DAT, so we did not have that information for most defendants in the marijuana sample. It is possible that differences between whites and non-whites in terms of their criminal records or community ties account for the persistence of some ethnic disparities, particularly the police officer's decision to issue a DAT.

Policy Implications

- The marijuana DAT policy implemented in May 2013 demonstrated that it is possible to expand DAT issuance to the large majority of arrests with only a small increase in the FTA rate for DAT arraignments; and that doing so can alleviate ethnic disparity in this early, important decision point in case processing.
- The research suggests that FTA rates for DAT arraignments could be reduced by scheduling arraignments more quickly following arrest. The length of time from arrest to arraignment increased by 25 days from 2012 to 2014, although the number of DAT arraignments remained steady. Scheduling DAT arraignments more quickly following arrest should be feasible in 2015 given the projected drop in the number of arraignments.
- It is impossible to assess the impact of the marijuana summons policy fully without data from the summons courts. The policy has been hugely successful in reducing arrest volume, despite the many disqualifying factors for a summons, but more research is needed to determine if the number of summonses rose concomitantly, and to examine outcomes in those cases.
- Ethnic disparity in marijuana arrests remains a cause for concern, primarily at the point of arrest but also throughout case processing. Although disparities in likelihood of receiving a DAT at arrest diminished as DAT issuance rose, other disparities — such as likelihood of conviction — did not diminish.

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APPENDIX
Statistical Procedures

The multivariate statistical procedure used in this report is logistic regression. Logistic regression is appropriate when the dependent variable is dichotomous, as it was in the analyses of the likelihood of DAT issuance (Tables 1 and 2) and conviction (Tables 2 and 3). Twelve logistic regression models were estimated in this research.

The regression models were computed using SPSS[1] to produce all of the statistics discussed below, with the exception of predicted probabilities, which are not included in the SPSS logistic regression output. Predicted probabilities were computed using Stata.[2]

The models showing the results of the multiple regression analyses present statistics that together estimate the relative importance of all the factors (independent and control variables) that influence an outcome (dependent variable), and the degree to which the outcome can be predicted from a knowledge of those factors. Statistics for the independent variable indicate its net effect on the dependent variable, after the effects of all other (control) variables have been taken into account.

Statistics Presented in Multiple Regression Models

The statistics provided in this report for the logistic regression models of DAT issuance and conviction are the *odds ratio, predicted probability,* and *Nagelkerke* R^2. These statistics are described following an explanation of statistical significance.

Statistical Significance

Statistical significance is a measure of the likelihood that the relationship between the variable and the dependent variable could have occurred merely by chance. The level of statistical significance of each item included in the model is indicated by asterisks, from one — the least stringent level of statistical significance ($p \leq .05$) — to three — the most stringent level ($p \leq .001$). Factors that did not have a statistically significant relationship with the dependent variable are indicated by "(NS)" for "not significant," with no asterisks. It is standard practice to consider a relationship to be statistically significant if the likelihood that the result is merely a chance occurrence is equal to or less than 5% ($p \leq .05$). An even smaller likelihood — for example, equal to or less than 1% ($p \leq .01$) — is better. At the most stringent level of significance, $p \leq .001$, the likelihood of the result occurring by chance is equal to or less than 1 in 1,000. Results that are not statistically significant have an unacceptably high probability (greater than 5%) of being merely the result of sampling error, which means that they may not be representative of the larger population.

Both the magnitude of the effect and the size of the sample contribute to the level of statistical significance. The majority of the samples used in the multivariate regression analyses in this research contained over 10,000 cases, which is large enough to detect even very weak effects. The smallest sample had only 1,617 cases, which is adequate for statistical analysis but would require a strong effect to attain statistical significance. For example, Hispanics were less likely than whites to receive a DAT when arrested and charged with fifth degree marijuana

[1] IBM SPSS® Statistics Version 22.0.
[2] StataCorp Stata® Release 13.1

possession (PL 221.10). In Time 3 the difference between these two ethnic groups in their predicted probability of receiving a DAT was six percentage points (80% for Hispanics, compared to 86% for whites), and this was statistically significant. In Time 6 the difference was still six percentage points (73% for Hispanics, compared to 79% for whites), but with a much smaller sample size, the difference was no longer statistically significant.

Substantive significance should not be confused with statistical significance, which means only that the effect is real, not that it is important. The importance of a weak — albeit statistically significant — effect may be trivial.

Odds Ratio

The odds ratio measures the change in odds of an event occurring when the value of the independent variable changes, controlling for all other variables in the model. An odds ratio greater than 1 indicates an *increase* in the odds of the predicted event occurring when the value of the independent variable is other than the reference value; less than 1 indicates a *decrease* in the odds of the predicted event occurring when the value of the independent variable is other than the reference value.

To illustrate from the DAT issuance model for Time 1 (Table 1): the odds ratio for females was 1.867, with male as the reference value. This means that the odds of being given a DAT at arrest rather than being taken into custody were almost double for females, compared to males.

Odds ratios less than 1 indicate reduced odds. For example, the same model shows that the odds ratio for blacks was .318, with white as the reference value. This means that the odds of a black defendant getting a DAT were less than a third of what the odds would be for a white defendant.

Predicted Probability

The predicted probability presents essentially the same information as the odds ratio, but in a more easily understood way. The predicted probability is the likelihood of the event's occurring, after the effects of all other variables in the model have been accounted for. A predicted probability is presented for each value of the variable.

Again we take an example from the Time 1, Table 1 model predicting DAT issuance. The predicted probability of receiving a DAT at arrest for black defendants was 44%, compared to 71% for whites. These are almost but not exactly the same percentages as were presented in the bivariate analysis (Figure 20), which reported the actual DAT issuance rates for the two groups (44% and 70% respectively). The close similarity between the predicted and actual probabilities indicates that the differences between the actual issuance rates for blacks and whites cannot be accounted for by differences in age or sex or other factors that were entered as control variables in the models.

The software used to calculate predicted probabilities was Stata. The MARGIN command used in this analysis produces the average probability of the outcome if everyone in the data were treated as if they had the same value on the variable for which the margin is estimated, based on a logistic regression model. In the example above, the 44% predicted probability of release for blacks represents the average predicted probability if everyone were treated as if they were black and had the average value on all other characteristics.

Nagelkerke R^2

The Nagelkerke R^2 is interpreted as roughly the proportion of variance in the outcome that is explained jointly by all of the independent variables in the model, ranging from 0 (no variance is explained by the variables) to 1 (100% of the variance is explained).

The Nagelkerke R^2 statistic for the DAT issuance model for Time 1 (Table 1) was .065, indicating that approximately 6.5% of the variance in DAT issuance could be predicted from the variables in the model. Such a small R^2 indicates weak predictive power, and the other DAT issuance models were even weaker. The models were better at predicting likelihood of conviction, with R^2 values as high as .258. The goal of this research was to examine the impact of ethnicity on DAT issuance and conviction, rather than to provide the best possible model predicting each outcome, so the low R^2 statistics were not a concern. However, they do indicate that much more information would be needed to make accurate outcome predictions.