

**ADAPTING TO ORDER MAINTENANCE POLICING
IN NEW YORK CITY: Examining Defendant Characteristics
and Post-Arrest Outcomes**

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INTRODUCTION

New York City entered into a new era of criminal justice in the mid-1990s. The size of the New York City Police Department (NYPD) was expanded,¹ further augmented in 1995 by the incorporation of the previously separate Transit and Housing Police authorities into the NYPD, creating a unified force of almost 40,000. New technologies were introduced which made possible, among other things, faster pre-arraignment processing of defendants permitting more defendants to be held for Criminal Court arraignment within the court-mandated twenty-four hour arrest-to-arraignment period. In turn this led to more restrictive policies on the issuance of Desk Appearance Tickets (DATs), and a corresponding substantial reduction in the percentage of non-felony arrests issued DATs.²

It also importantly created the means for tracking crime, led to new practices such as Compstat for disseminating this information, and in combination led to the creation and rapid deployment of strategies and tactics to respond to identified crime hotspots. Compstat also became a mechanism for reviewing and holding accountable

¹ The administration of Mayor David Dinkins provided the authorization and funding for this expansion under *Safe Streets, Safe City: An Omnibus Criminal Justice Program for the City of New York*, (New York City, Office of the Mayor, 1990).

² A Desk Appearance Ticket (DAT) is a written notice issued by the police or other law-enforcement authority for the defendant to appear in the Criminal Court for arraignment at a future date. Under the New York State Criminal Procedure Law (CPL 150.20) a DAT may be issued for any non-felony and some non-violent E-felony severity arrest charges. The NYPD may impose additional restrictions, for example denying DATs to defendants found to have outstanding warrants.

precinct commanders, who were being given increasing authority for responding to, and reducing, neighborhood crime.³

But this large force, with a changing organizational structure, and better tools for fighting crime, also was undergoing another critical transformation. Rudolph Giuliani, inaugurated as Mayor in January 1994, had made crime a key issue in his election campaign, targeting especially panhandlers, the infamous “squeegee men,” and other behaviors that negatively impacted on the city’s quality of life. His (first) Police Commissioner, William Bratton, entirely embraced Mayor Giuliani’s goals of addressing low-level offenders and offenses in public spaces. Crime control through order maintenance was consistent with Bratton’s belief in the relationship among disorder, public safety fears, and serious crime. The philosophical underpinning of this belief was drawn from the oft-cited Wilson and Kelling “Broken Windows” article.⁴ Bratton had been further influenced by George Kelling’s continued research and teaching around this theme, and his own previous experiences in developing policing strategies and tactics around order maintenance goals in Boston, and in New York in the early 1990s as head of the City’s Transit Authority (TA) Police.⁵

Along with the new policing strategies, programs and policies introduced in the mid 1990s also came dramatic reductions in the City’s reporting of serious crime. Public officials quickly claimed causality between the new policing and serious crime reduction.

³ Eli B. Silverman, *NYPD Battles Crime: Innovative Strategies in Policing*, (Boston: Northeastern University Press, 1999). For a brief overview of Department changes during the Bratton administration in the mid-1990s, see William J. Bratton and William Andrews, “What We’ve Learned About Policing,” *City Journal*, Spring 1999, Vol. 9, No. 2, available online at <http://www.city-journal.org>.

⁴ James Q. Wilson and George L. Kelling, “Broken Windows: The Police and Neighborhood Safety” which originally appeared in *The Atlantic Monthly*, 249 (March, 1982) pp. 29-38. Reprinted in *Community Policing: Classical Readings*, edited by Willard M. Olivier, (Upper Saddle River, N.J.: Prentice Hall, 2000).

⁵ William Bratton, with Peter Knobler, *Turnaround: How America’s Top Cop Reversed the Crime Epidemic*, (New York: Random House, 1998).

The research community greeted these claims with some skepticism in the absence of methodologically sound evaluations of direct correlations between the enormous increase in the citywide volume of non-felony arrests and the citywide reduction in felony crime. In the ensuing years a research agenda has emerged to test and debate this relationship.

Much of this research has concluded that there was a crime-reduction effect from the City's aggressive enforcement of quality-of-life crimes. However, there is a continuing debate about how much of the reduction can be directly credited to the City's policing programs, on what types of crimes it has been most effective, and to what extent there are neighborhood variations in its impact.⁶ Other questions include how much order maintenance enforcement is really necessary to achieve these results. For example, why does some research show that other cities also achieved impressive reductions in serious crime using policing programs and policies that did not require enormous increases in arrest volume for non-felony offenses? In addition, there remain questions of how the City's style of policing has affected police-community relations especially in neighborhoods or ethnic communities which have experienced some of the most intensive order maintenance policing.

However, what has not galvanized the research community to the same extent is investigation into the volume and composition of non-felony arrests over time, nor the impact of these changes on the criminal justice system post arrest. For example, did

⁶ See for example, Richard Rosenfeld, Robert Fornango and Andres F. Rengifo, "The Impact of Order-Maintenance Policing on New York City Homicide and Robbery Rates: 1988-2001," *CRIMINOLOGY*, Volume 45, No. 2 (2007) pp. 355-383. In addition to providing a methodologically sophisticated examination of the correlation between order maintenance policing and homicide and robbery rates, this article provides a primer on the debate through both a text summary of key research and an excellent bibliography.

these police strategies merely increase non-felony volume or did they also lead to changes in charge and defendant composition? How did the City's Criminal Courts adapt to the influx of such high-volume non-felony caseloads? How consistent have changes been over time? What have been the consequences for the courts and defendants? This paper is designed to explore these and related issues.

This paper will draw on reports published by the New York City Criminal Justice Agency (CJA), and present new analyses using existing datasets from different years created for other research purposes, focusing primarily on the prosecution of non-felony arrests.⁷ Additional information about arrest volume will be drawn from NYPD reports. From these sources the paper will describe and discuss the volume and composition of prosecuted non-felony arrests over time; the characteristics of defendants in these cases; case processing and court outcomes; and, sentencing in convicted cases. The paper also will explore some of the consequences to the courts and defendants stemming from changes introduced in the mid-1990s.

CREATING A FRAMEWORK FOR ORDER MAINTENANCE POLICING

One of the essential premises that guided New York City policing throughout the eight years of the Giuliani administration, was that disorder and the disorderly in public spaces instill fear of crime, and citizen behavior in response is to abandon streets and public spaces, creating opportunities for more and more serious crime. Developing and implementing strategies that would restore public confidence and order, and bring down

⁷ The New York City Criminal Justice Agency, Inc. (CJA) is a not-for-profit organization that provides a variety of criminal justice services under a contract with the City of New York. The primary mission of the Agency is to provide an array of pretrial services in the City's adult criminal court system. To accomplish these activities CJA maintains a computerized information system that also is used for research purposes. However, the CJA information system is not an official source of criminal justice information, and because of the timing, and uses and forms of data collection there always will be some variation with information in official sources such as those of the NYPD, OCA and DCJS.

the City's crime rate, became the linchpins of the transformation in the NYPD's approach to crime. As sketched out by Bratton's deputy Jack Maple, the essence of a successful crime control strategy involved: map crime to provide "accurate and timely intelligence" as to where and when crimes occur; "rapid deployment of personnel and resources" in response to crime locations; develop "effective tactics" that are comprehensive and adaptable to evolving crime trends; and "relentless follow-up and assessment" to ensure that tactics are accomplishing the strategic goals.⁸

In keeping with this management model, after a department-wide review ten strategy papers were issued. The first five, all of which were promulgated between March and July of 1994, addressed issues of guns, youth violence in schools, drugs, domestic violence, and reclaiming public spaces from quality-of-life disorder. Each of these strategy papers described the nature of the problem, specific types of behaviors to be targeted, and the strategies and tactics that were to be pursued by law enforcement in the issue area. To achieve the goals of each, greater autonomy was given to local police commanders to implement the policies. Among other items, this involved loosening centralized control of a number of enforcement programs, especially in the areas of drugs and prostitution that in previous years had been taken away from local control because of the fear of corruption. The impact of the latter three strategy documents became very much apparent in the subsequent composition of non-felony arrests.

For example, Police Strategy No. 4: Breaking the Cycle of Domestic Violence (April 26, 1994) makes clear that police officers are to pursue a vigorous policy of arrest

⁸ Bratton and Knobler, *Turnaround*, (op. cit.), p. 224

for acts of domestic violence (DV) or violations of orders of protection. New accountability procedures were created including tracking of all domestic violence calls for service, special forms to be completed by officers after responding to each DV incident, and the maintenance of a specialized computer database for program development and reporting. Additional statutory and police policy changes after the release of Strategy No. 4 would further broaden arrest policies in domestic violence cases.⁹

Strategy Paper No. 5: Reclaiming Public Spaces (July 18, 1994) most broadly encompasses disorder offenses including aggressive panhandlers, street peddling and prostitution to name just a few. It also is illustrative of how the strategy papers laid out types of tactics for full implementation of crime control strategies for targeted offenses, and for expanding the responsibility and accountability of precinct commanders. For example, the approach toward addressing street-level prostitution included the use of decoy and car forfeiture operations against patrons of prostitutes as tactics encouraged to be employed under the directives of this strategy document. In addition, the role of the public morals squads was redefined to a largely training and supervisory role, so that local commanders became able to initiate these strategies without having to request that these special detail units conduct such operations within a precinct. This permitted more rapid response to street-level prostitution hotspots and more such initiatives being conducted citywide at any given time prior to the implementation of these new strategies, even though by the time of this strategy paper's release

⁹ See for example, Richard R. Peterson, Ph.D., *Cross Borough Differences in the Prosecution of Domestic Violence Cases*, (New York City Criminal Justice Agency, 2002). This and related reports are available on the CJA web site, www.nycja.org.

prostitution-related arrests already were on the decline citywide, driven by a decline in Manhattan where the largest number of such arrests historically had been made.¹⁰

As in the example of the array of tactics to target prostitution, the guidelines found in the strategy papers combined make clear that local commanders were expected to use all available laws to disrupt disorder in public spaces, and to use low-level offenses as a means to “pedigree” individuals (i.e., check identification and criminal records) as a deterrent to both minor and more serious crimes. This policy also was complementary with the new restrictions detailed in Strategy Paper No. 5 on the issuance of Desk Appearance Tickets, including more intensive screening of criminal records for warrants and prior convictions for low-level offenses that would preclude eligibility for a DAT.

Although not specifically mentioned in this strategy paper, intensive scrutiny of fare-beating offenders was a key initiative from Commissioner Bratton’s experience with the formerly independent Transit Authority (TA) Police. Early in his tenure with the TA he came to believe that there was a clear link between fare evasion, disorder and crime in the subway system.¹¹ As Police Commissioner, leading a Department that now incorporated the TA police, it would be of little surprise that fare-beating (theft-of-service) arrests would rise and become an enduring part of the composition of non-felony arrests.

One of the most controversial components of the quality-of-life strategy was the ability to restrict panhandling and other types of unpleasant interactions between seemingly disorderly or derelict populations and other citizens in public spaces.

¹⁰ Robert R. Weidner, *I Won’t Do Manhattan: Causes and Consequences of a Decline in Street Prostitution*, (New York City: LFB Scholarly Publishing LLC, 2001).

¹¹ Bratton and Knobler, *Turnaround*, (op. cit.), pp. 158-168.

Statutes attempting to control these interactions were subject to constitutional challenge because of fears of arbitrary or discriminatory enforcement by police.¹² This debate about the degree of acceptable police discretion, and individual rights versus controlling behaviors that might seem disorderly to some, was echoed during the City Council's ultimately successful passage of legislation to restrict squeegee men, beggars in a variety of public locations, and aggressive panhandling.¹³

Another hurdle to full implementation of some of the quality-of-life strategies, that relied on City ordinances rather than State penal laws and which were less severe than misdemeanor crimes, was the forum in which they would be answerable. Faced with an enormous influx of such arrests and resource limitations, the state court leadership, in concert with the state legislature, sought to have ordinance offenses less severe than misdemeanor-equivalent crimes heard in city administrative hearings rather than in the state-funded criminal courts. By being able only to issue summonses for such petty offenses, police authority to detain and question, and check identification and criminal backgrounds, of some low-level offenders would have been curtailed. In opposition, the City Council began to upgrade some ordinance violations to misdemeanor-equivalent offenses to undercut the state statute. The City successfully challenged the state statute, and these cases remained within the jurisdiction of the Criminal Court.¹⁴

Drug enforcement was the subject of the third strategy document prepared in 1994. The primary goal of the strategy for addressing drug crime, originally developed

¹² An extensive discussion of the constitutional challenge to such statutes, and the interplay of the needs of the "broken windows" thesis with constitutionally protected rights, can be found in the article by Debra Livingston, "Police Discretion and the Quality of Life in Public Places: Courts, Communities, and the New Policing," 97 COLUMBIA LAW REVIEW 551.

¹³ Clifford H. Levy, "Council Approves Restrictions on Beggars," *New York Times*, Sept. 12, 1996, p. B3.

¹⁴ Daniel Wise, "Criminal Court Retains Violation Jurisdiction," *New York Law Journal*, Dec. 12, 1995, p. 1.

early in 1994 and revised with additional initiatives over the next few years, was aimed at buyers and sellers. While some of the strategies enumerated in this policy document involved using civil law and penalties, criminal law enforcement strategies and tactics were much in evidence. And, as with the other strategy plans, the drug plan reiterated that all personnel were to act against narcotics activity, that local precinct and borough commanders were being given greater authority and flexibility to engage in drug enforcement activities, and that drug laws were part of the means for controlling and deterring crime in public places. At the same time there was evidence of resurgence in the appeal of marijuana among young people.¹⁵ This created the potential for increasing marijuana arrests among this cohort, most of which are of non-felony severity, as opposed to just increasing arrests for other drugs such as crack or heroin, and at a higher severity level.

Reviewing the strategy documents from the mid-1990s makes clear that all available state laws and city ordinances were to be used to control disorder in public places. In addition, they lay out the expectations from police management that local commanders were expected to apply these strategies and tactics as applicable to particular conditions of disorder in local communities.

More police, with better technology, new deployment strategies, and a focus on a broad spectrum of behaviors regulated by State laws and City ordinances of non-felony severities, were not without consequences for the larger criminal justice system in New York City. For example, in 1989 the NYPD reported a total of 308,164 arrests of which 163,385 or 53.0% were of felony severity. In comparison, in 1998 the NYPD reported

¹⁵ Andrew Golub and Bruce D. Johnson, "The Rise of Marijuana as the Drug of Choice Among Youthful Adult Arrestees," *National Institute of Justice: Research in Brief*, June 2001.

an arrest volume of 376,316 arrests of which 129,359 or 34.4% were of felony severity.¹⁶ Put another way, *in 1998 there were 34,026 fewer felony-severity arrests and 102,178 more non-felony arrests in comparison to 1989.*

During the successor and current Bloomberg administration, under the direction of Police Commissioner Ray Kelly, there has been a continuation of many of the policing practices begun in the mid-1990s, albeit with the addition of new technologies and tactics. Concurrently, the City has continued to report reductions in serious crime. This has occurred even with the need to redirect police resources to address issues of security in the aftermath of the events of 9/11, and with decreasing personnel as the City faces budgetary restrictions. As a result, the issue of the role of these policies and practices on crime reduction remains relevant, as do the related questions of better understanding what works and why. As New York like other cities confronts serious financial constraints the answers to these questions become even more pressing.

SUMMARY OF PREVIOUS CJA RESEARCH ON QUALITY-OF-LIFE POLICING

Several years after the implementation of the new policing strategies introduced by the Giuliani administration, CJA began to research the impact of these changes on non-felony arrest volume, the composition of charges and defendants in these cases, and how the City's Criminal Courts responded to this caseload. This research used a sample of prosecuted arrests from 1989 as a pre-program data set and used a data set of cases from the 3rd quarter of calendar year 1998 for comparison.¹⁷ For research purposes the study cases included only non-felony arrests prosecuted with

¹⁶ Police Department of the City of New York, "Statistical Report: Complaints and Arrests," Office of Management Analysis and Planning, Crime Analysis Unit. (This report series was discontinued in 2001.)

¹⁷ See for example, Freda F. Solomon, Ph.D., "The Impact of Quality-of-Life Policing," *CJA Research Brief* series No. 3 (New York City Criminal Justice Agency, August 2003). This and the longer study reports on which it is based are available on the CJA web site, www.nycja.org

misdemeanor or lesser-severity charges, and only cases of defendants held for Criminal Court arraignment, referred to as summary arrest cases. In addition to the exclusion of DAT arrests, no Vehicle and Traffic Law (VTL) arrests were included in the analysis. The study cases from each time period were weighted to approximate annual volume for the respective years. Changes in case composition were examined with a CJA-created crime typology, and also by charges within these crime categories. Appendix A provides an overview of these CJA crime categories. These studies also examined differences in defendant characteristics, and in court processing and case outcomes.

The key findings of these studies were that:

- ◆ Non-felony summary arrest volume was more than twice as large in 1998 as in 1989.
- ◆ There were changes in the composition of the types of crimes, and even a different mix of charges within some crime categories.
 - › In both time periods the single largest number and percentage of the non-felony summary arrest cases involved a drug charge, but in 1989 over four-fifths involved non-marijuana charges. In 1998 over half of the drug arrests involved marijuana, and these charges were disproportionately of lesser severity than the 1989 charges.
 - › In 1989 the second largest volume of non-felony summary arrests were found in CJA's property crime category, in which a principle charge is petit larceny. In 1998 this crime category had only the fifth largest percentage of cases, again with petit larceny as the principle charge.
 - › One of the greatest shifts occurred in the CJA fraud category which includes the A-misdemeanor theft-of-services crime used for fare-evasion. In the 1989 study only a very small percentage of cases fell into this crime category; in 1998 this category had the second largest volume of cases, and almost 90% of these arrests were for theft-of-service.

- › Prostitution arrest volume was far smaller in 1998 in comparison with 1989. However, almost a quarter of the 1998 cases were for patronizing a prostitute.
- › The CJA misconduct category, which contains a variety of public order offenses including criminal trespass and disorderly conduct, had more than twice as many cases in 1998 in comparison with 1989.
- › The other category that experienced a two-fold increase was the CJA harm-to-persons category, in which in both time periods the majority of arrests were for misdemeanor assault.
 - ◆ There also were noticeable differences in defendant characteristics.
- › Fewer than half of the defendants in the 1989 study cases had an adult court criminal record at the time of arrest, in comparison to over half of defendants in the 1998 cases.
- › Among the cases of defendants with adult court criminal convictions, defendants in 1989 were more likely to have been previously convicted only of misdemeanor severity crimes. In the 1998 cases, defendants with criminal convictions were more likely to have had convictions to crimes of both misdemeanor and felony severity.
- › Defendants in the 1998 cases were most likely to be either in the youngest 16-20 age group or in the oldest (41 or older) age bracket. In the 1989 cases the greatest numbers of defendants were found to be between the ages of 26 and 35.
 - ◆ The court appearance at which cases were completed and the types of dispositions differed between the two time periods.
- › Although over half of all non-felony study cases had a determinative outcome at the first, Criminal Court arraignment appearance, the arraignment disposition rate was higher among the 1998 cases.
- › The overall conviction rate was lower among the 1998 (59%) cases in comparison with the 1989 non-felony cases (72%).

› The most substantial change in case dispositions was in the use of Adjudgment in Contemplation of Dismissal (ACD).¹⁸ In the 1998 cases 30% were disposed by an ACD, over 80% of which occurred at the Criminal Court arraignment. In 1989 only 11% of the study cases had an ACD outcome, slightly more than half of which occurred at arraignment.

› Although there was a lower conviction rate in 1998, the higher ACD rate and a lower outright dismissal rate meant that defendants in a substantially larger percentage of the 1998 cases remained subject to some sort of criminal justice supervision after the initial disposition of their cases.

◆ In both time periods defendants without prior convictions were least likely to be convicted and most likely to have an ACD outcome, but the patterns differed dramatically between the two years.

› In 1998, conviction rates among the cases of defendants without prior adult court criminal convictions was about 20 percentage points lower in comparison with the comparable 1989 cases. However, because of the much larger volume and percentage of cases of defendants without prior convictions in 1998, the lower conviction rate still resulted in a 50% increase in the actual number of cases in which defendants without priors were convicted.

› The percentage of cases of defendants without adult criminal convictions with an ACD outcome was more than double in 1998 in comparison to 1989. This resulted in almost six times more cases of defendants without priors having an ACD outcome in 1998 compared to 1989.

◆ In 1998 jail sentences were imposed proportionately less often than in 1989 and, when imposed, were shorter.

Clearly there were many consequences not only to arrest volume for non-felony offenses, but also in the case and defendant characteristics and court outcomes after the implementation of the policing tactics laid out in the strategy papers.

¹⁸ An ACD is a form of deferred prosecution. It uses a procedure in which the defendant's case can be dismissed after a statutorily set period of time—either 6 months or 1 year depending on the charge—providing the defendant satisfies agreed upon conditions.

ANALYSIS OF MORE RECENT TIME PERIODS

To assess continuity or change since this earlier research, snapshots of arrest and defendant characteristics, and prosecuted case processing and court outcomes in more recent years were examined for this paper. The calendar years chosen for this analysis were 2004, 2006 and 2008, using data sets created for other CJA research purposes.¹⁹

Unlike the data sets used in the earlier research, these recent data sets are more comprehensive including DAT as well as summary arrests, and information about the volume of both prosecuted (docketed) and non-docketed arrests eligible for adult court prosecution.²⁰ This permits at least a brief overview of arrest volume in the three snapshot years, for both felony and non-felonies, although the main focus is on the prosecution of the latter category of cases. Also included in these data are arrests in the VTL crime category which was excluded from the earlier research. While these more recent data sets therefore are not identical to those used in the earlier research, general patterns can be compared.

Arrest Volume and Charge Characteristics: Citywide and by Borough of Arrest

In 1998 the NYPD reported approximately 376,000 arrests, in 1999 approximately 351,000, and in 2000 approximately 371,000 arrests. In each of these years approximately 30% of arrests were for felony-severity crimes. In 2001, the NYPD's

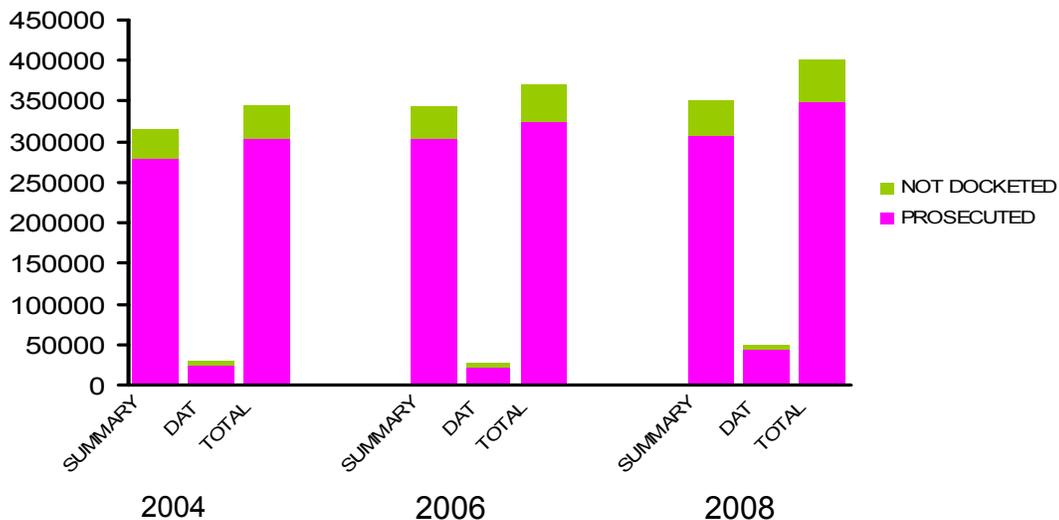
¹⁹ These data sets were programmed by Wayne Nehwadowich, Senior Programmer in CJA's Information Technology Department, at the direction of Mary T. Phillips, Ph.D., Deputy Research Director. My thanks to Research Assistant Jonathan Carmona for his help in programming some of the variables for the analyses, and for preparing some of the illustrations presented in this paper.

²⁰ CJA receives a data feed from the NYPD to initialize arrest information. Tracking of court processing begins when CJA receives information about the Criminal Court docket number assigned to the arrest, or notification that the arrest is not being pursued. However, among the not docketed arrests are some instances in which CJA received neither Criminal Court nor non-prosecution status information about the arrest.

reported arrest volume was approximately 330,000, a decline affected by the events of September 11th from which arrest volume began to rebound in the latter portion of 2002.

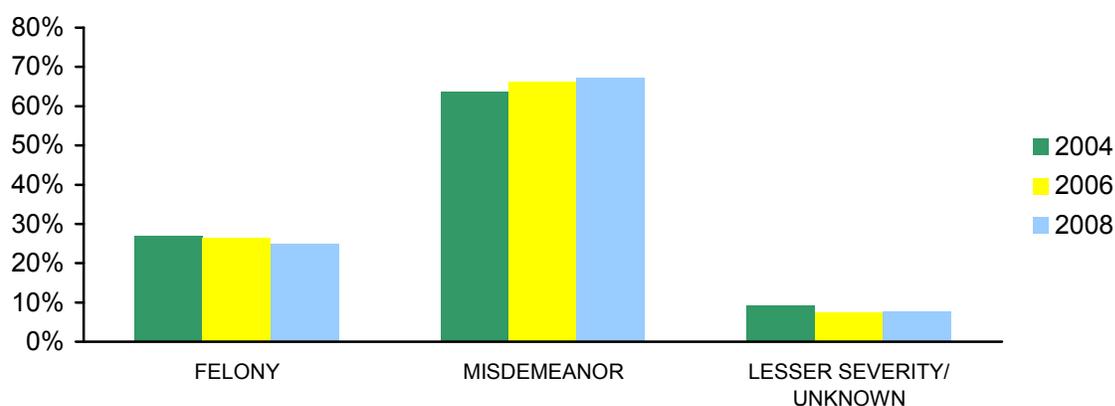
The resurgence in arrest volume is much in evidence based on the numbers of arrests eligible for adult court prosecution reported to CJA for the three years under study in this paper. As shown in the illustration that follows, there has been an increase in overall arrest volume in each successive study year, reaching to over 400,000 in the 2008 data. Both summary and DAT arrest volume also show an increase in these data, but most notable is the increase in DAT arrest volume in 2008, almost all of which are issued for non-felony arrests. In 2004 and 2006 approximately 8% of all arrests had defendants issued DATs; in 2008, DATs were approximately 13% of arrest volume.

ARREST AND PROSECUTED VOLUME BY CASE TYPE



There also are increases in the numbers, but not in all the relative proportions, of court cases among arrests in every severity classification—felony, misdemeanor, and lesser/unknown severity classifications. Approximately a quarter of prosecuted arrests in each of the three years have a felony-severity charge top arrest charge. The percentage of felony arrests is lowest in 2008, at least in part reflecting the contribution of DAT arrests to the overall increase in non-felony arrests.

TOP ARREST CHARGE SEVERITY, PROSECUTED ARRESTS ONLY



In examining prosecuted arrests by borough of arrest, the next table shows that Brooklyn's contribution to arrest volume has been on the increase, challenging the historical predominance of Manhattan, a trend that has been in evidence in recent years. Because arrest composition differs among boroughs, this can lead to some citywide changes in charge composition. And because of different policies among each borough's independently elected District Attorney's Office, variations in court practices often influenced by DA offices, as well as borough differences in available alternative sentencing options, differences in borough representation may have effects on citywide case outcomes. However, investigating the impact of borough differences is well beyond the scope of the current research. In addition, because the changes reflected in

the table are relatively small, they most likely will have only a relatively minor impact on the citywide findings across the three study years.

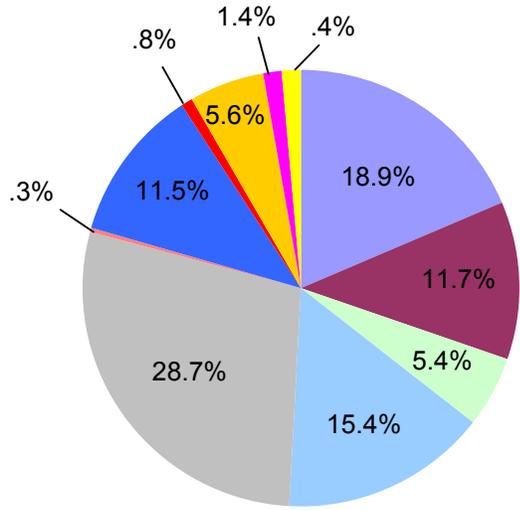
TOP ARREST CHARGE SEVERITY, PROSECUTED ARRESTS ONLY, WITHIN BOROUGH OF ARREST								
2004	FELONY		MISDEMEANOR		LESSER/UNKNOWN		TOTAL	
	N	Row %	N	Row %	N	Row %	N	Column %
Brooklyn	21771	28.9%	47541	63.1%	6048	8.0%	75360	24.9%
Manhattan	24528	24.5%	61987	62.0%	13428	13.4%	99943	33.0%
Queens	15099	27.1%	34501	61.9%	6157	11.0%	55757	18.4%
Staten Island	2182	25.0%	6313	72.3%	242	2.8%	8737	2.9%
Bronx	18015	28.7%	42630	67.9%	2126	3.4%	62771	20.7%
Total	81595	27.0%	192972	63.8%	28001	9.3%	302568	100.0%
2006	FELONY		MISDEMEANOR		LESSER/UNKNOWN		TOTAL	
	N	Row %	N	Row %	N	Row %	N	Column %
Brooklyn	25658	28.4%	57705	63.8%	7133	7.9%	90496	27.9%
Manhattan	23227	24.8%	62386	66.5%	8135	8.7%	93748	28.9%
Queens	16321	25.2%	41287	63.9%	7049	10.9%	64657	19.9%
Staten Island	2966	28.7%	7116	68.8%	255	2.5%	10337	3.2%
Bronx	17844	27.3%	46293	70.7%	1340	2.0%	65477	20.2%
Total	86016	26.5%	214787	66.1%	23912	7.4%	324715	100.0%
2008	FELONY		MISDEMEANOR		LESSER/UNKNOWN		TOTAL	
	N	Row %	N	Row %	N	Row %	N	Column %
Brooklyn	26485	27.4%	61695	63.8%	8470	8.8%	96650	27.7%
Manhattan	22259	22.4%	67377	67.7%	9824	9.9%	99460	28.5%
Queens	15728	23.7%	43004	64.8%	7650	11.5%	66382	19.0%
Staten Island	3279	26.1%	9088	72.2%	214	1.7%	12581	3.6%
Bronx	19620	26.5%	53341	72.0%	1129	1.5%	74090	21.2%
Total	87371	25.0%	234505	67.2%	27287	7.8%	349163	100.0%

The illustration on the next page compares the distribution of ***prosecuted arrests with a felony-severity top arrest charge*** among CJA crime categories in each of the three study years. Although there are some percentage fluctuations among the different CJA crime categories across years, there are a number of consistent patterns.²¹ The drug category has the greatest percentage of felony charges among prosecuted arrests in each year. The harm-to-persons, harm-to-persons-and-property and the property crime categories consistently have the next top three greatest number and percentages

²¹ As previously noted, a description of CJA crime categories can be found in APPENDIX A at the end of this paper.

**CRIME CATEGORY OF FELONY TOP ARREST CHARGES
FOR PROSECUTED ARRESTS**

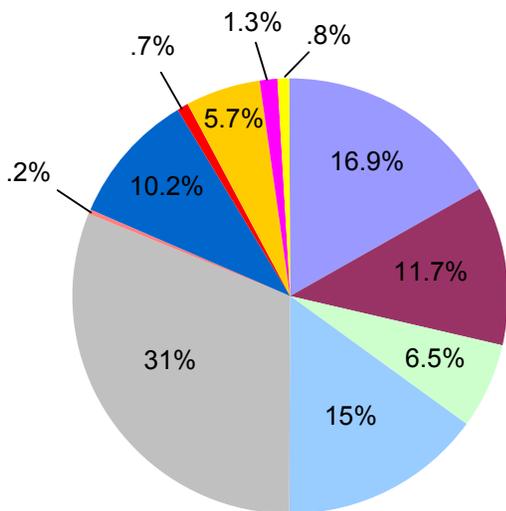
2004



N=81,595

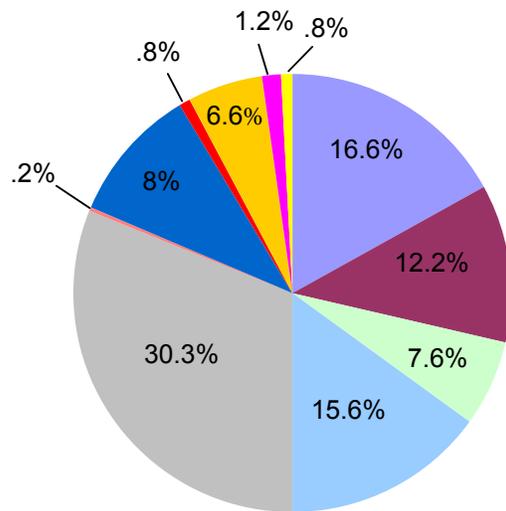
- HARM TO PERSONS
- HARM TO PERSONS AND PROPERTY
- WEAPON
- PROPERTY
- DRUG
- PROSTITUTION RELATED
- THEFT/FRAUD
- MISCONDUCT
- OBSTRUCT JUSTICE
- VTL
- UNKNOWN (NON-PL, NON-VTL)

2006



N=86,016

2008



N=87,371

of felony arrest charges. Finally, there is a progressively greater number and percentage of felony arrests on weapon charges across the three years, consistent with the Bloomberg administration's focus on guns.

Prosecuted Non-Felony Case and Defendant Characteristics

The next sections of this report focus ***only on the prosecuted cases with a non-felony charge as the most severe charge at both arrest and at Criminal Court arraignment***. This permits a closer examination of non-felony arrests, the focus of order-maintenance policing, and is more consistent with the case selection criteria in the earlier research. However this does undercount the true volume of cases brought into the City's criminal courts for arraignment on a non-felony charge.

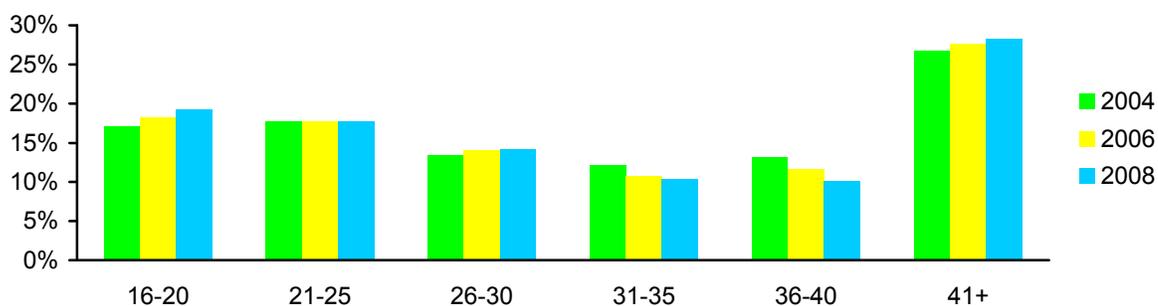
After arrest prosecutors review the police arrest report to determine the charge(s) warranted by the police description of the incident. This may lead to a decision to prosecute the case for different charges, or charges of different and most often of lesser severity classification, or both. For example, in 2004, 2006 and 2008 approximately one third of all cases with a top arrest charge of felony severity were prosecuted at Criminal Court arraignment with a non-felony severity charge. In comparison, over 90% of all misdemeanor arrests were arraigned on a misdemeanor-severity charge in each of these years.

Demographic Characteristics

Defendant demographics in the non-felony cases vary only slightly, if at all, in each of the three snapshot years. Among the cases with a non-felony top arrest and Criminal Court arraignment charge, the greatest numbers and percentages of each year's cases have defendants ages 41 or older, with defendants in the youngest (20 or younger) age

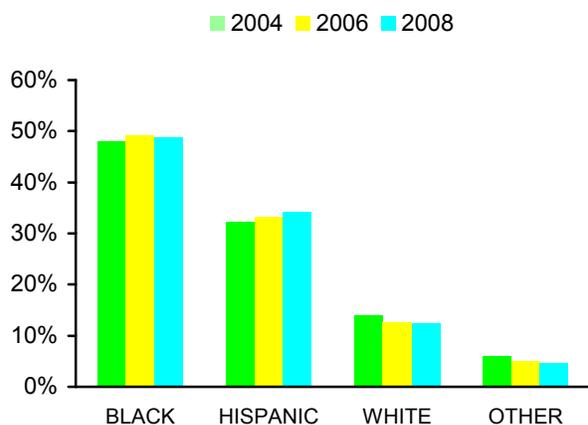
group having the second largest number and percentage of cases. The third largest age-group category contains arrests of defendants between the ages of 21 and 25. In addition, the mean (mathematical average) age in each year is approximately 32.6 years among the cases with a non-felony top arrest and arraignment charge. The median (midpoint) age is 30 in the 2004 cases, and 31 in the 2006 and 2008 cases. The modal (most common) age of 19 is identical in each of the study years' data.

AGE OF DEFENDANTS IN NON-FELONY CASES

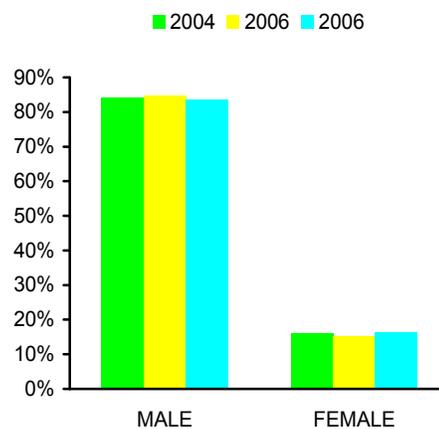


The ethnicity and sex distributions of defendants also are very similar in each year's non-felony cases. Non-white defendants are found in approximately 80% of each

ETHNICITY OF DEFENDANTS IN NON-FELONY CASES



SEX OF DEFENDANTS IN NON-FELONY CASES



year's cases: Somewhat less than half of the cases have Black defendants and more than a third of the cases have defendants of Hispanic origin. Overwhelmingly defendants in the non-felony cases are male, with female defendants found in approximately 16% of the cases.

CJA staff conducts a pre-arraignment interview with almost all defendants held for Criminal Court arraignment for the purposes of making a pretrial release recommendation to the Court if the case is continued leaving the arraignment. As part of its pre-arraignment interview process summary criminal history information is collected. This includes whether or not the instant arrest is the first item on the criminal history report (i.e. rap sheet) associated with the fingerprint identification number on the arrest; whether there are any cases still pending an outcome in the adult court system; and how many times the defendant has been convicted in adult court cases in which the most severe conviction charge was of misdemeanor severity and/or cases of convictions for felony-severity crimes, if any. Because CJA does not interview defendants issued DATs, the CJA information system does not contain criminal history information for defendants in these arrests. In addition, there are a small number of situations in which CJA staff does not interview defendants in summary arrest cases either as a matter of policy or circumstances.

Defendants in over half of the interviewed cases, in which criminal record data were collected, were found to have no prior adult court criminal convictions on the rap sheet associated with the interviewed arrest. And, in about a third of the cases the study arrest was the first item on the rap sheet associated with the arrest, although this does not necessarily mean that it was the defendant's first contact with the criminal

justice system.²² The data also show a small increase in successive years in the percentages of cases of defendants with something other than a criminal conviction or open case on the criminal history report at the time of the study arrest. In these instances it is possible that the defendant had an earlier case that ended without a conviction to a criminal charge but with some conditions attached to the case outcome which remained to be completed before that case could be sealed and removed from the defendant's criminal history in the state's criminal history database.

ADULT COURT CRIMINAL RECORDS AMONG DEFENDANTS IN NON-FELONY CASES BY YEAR OF ARREST						
ADULT COURT CRIMINAL HISTORY	2004		2006		2008	
	N	%	N	%	N	%
1 st Item on Rap (NYSID) Sheet	57994	33.7	65552	34.1	61402	31.1
Not 1 st Item but No Adult Court Convictions or Open Cases	20329	11.8	25868	13.5	26572	13.5
No Adult Court Convictions but Open Cases	12992	7.6	15309	8.0	19273	9.8
SUBTOTAL NO CONVICTIONS	91315	53.1%	106729	55.6%	107247	54.3%
Adult Court Misdemeanor Convictions Only	29821	17.4	31396	16.3	33330	16.9
Felony Convictions Only	9570	5.6	9553	5.0	9209	4.7
Both Misdemeanor & Felony Adult Court Convictions	41171	24.0	44355	23.1	47686	24.1
Total Known	171877	100.0	192033	100.0	197472	100.0
Not Available	23517	-	21421	-	18090	-
DAT	23192	-	21378	-	42245	-
Total Cases	218586	-	234832	-	257807	-

The data on the table also show a small increase in the percentages of cases in which defendants without convictions had a still pending, open case on the rap sheet, from 7.6% in 2004 and 8.0% in 2006 to 9.8% in 2008. As the number of DAT arrests

²² The same person may have more than one fingerprint identification number assigned over the course of a criminal career. As a result, the first item on a criminal history report is not necessarily the person's true first arrest. For example, New York State uses a different algorithm in assigning fingerprint identification numbers to those younger than sixteen, and those sixteen and older, the age of adult criminal responsibility.

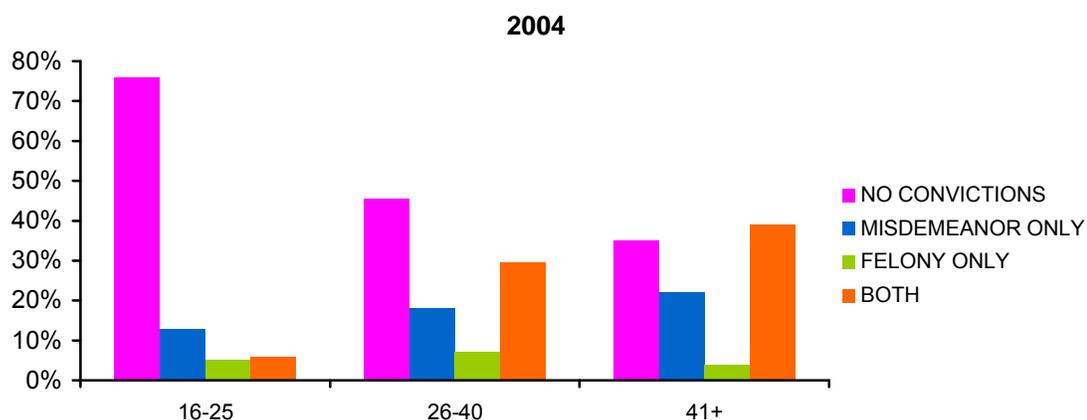
increase this leads to the possibility of an increase in warrants and open cases in criminal histories. Another factor that could affect open cases is an increase in court processing time so that cases remain open longer than in the past.

Examining the cases of defendants with adult court criminal conviction records, one finds that defendants were more likely to have had convictions for crimes of both misdemeanor and felony severity, as opposed to convictions exclusively for either misdemeanor or for felony crimes.

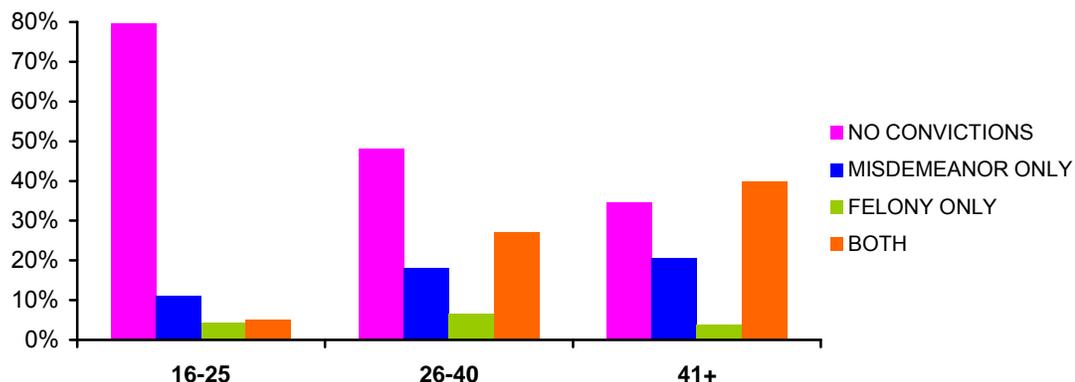
Age is strongly related to adult court criminal history, with the youngest defendants least likely to have acquired an established criminal history in comparison with older defendants. This is much in evidence in the illustration that follows which shows the proportional distribution among criminal history categories for the cases in which defendant criminal history was known, within age group categories (excluding cases missing defendant age) for each of the three years. For display purposes age groups have been consolidated into three categories: 25 or younger; 26-40; and 41 and older.

In each year's data approximately four-fifths of the defendants in the youngest age category (25 and younger) have no adult criminal court conviction at the time of the

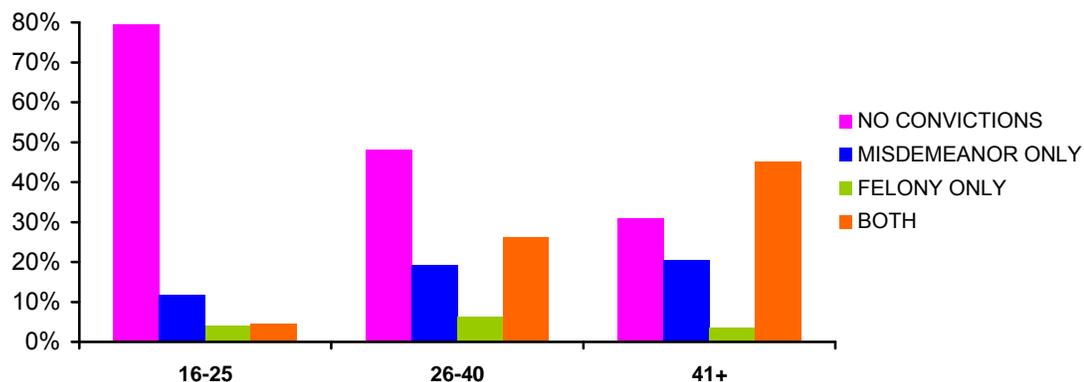
ADULT COURT CRIMINAL HISTORIES AMONG DEFENDANTS IN NON-FELONY CASES WITHIN AGE GROUP CATEGORIES BY YEAR OF ARREST



**CRIMINAL HISTORY BY AGE GROUP, Continued
2006**



2008



study arrest. In contrast, in each year's data, cases of defendants in the 41 & older category have the largest percentages of defendants with convictions for both misdemeanor and felony severity crimes and the smallest percentages of cases of defendants without any prior criminal convictions.

In examining the distribution of non-felony cases among CJA crime categories in each year, based on the top charge at Criminal Court arraignment, one finds mostly small variations in the overall distributions among the crime categories and within the three consolidated age-group categories. As can be seen in the next table, in each year the greatest number and percentage of cases with non-felony arrest and

arraignment charges, are arraigned for a drug crime, comprising somewhat over a quarter of the cases. And, as shown in the highlighted sections for drug cases, for the youngest age group this overwhelmingly involves a marijuana offense while non-marijuana charges predominate among the drug cases of defendants in the oldest age-group category. Marijuana and non-marijuana charges among the drug cases of defendants between ages 26 and 40, the middle age group category, have an almost even split in 2004, tilting more toward marijuana in 2006, before substantially shifting toward marijuana in the 2008 data.

The CJA misconduct category, which contains a wide assortment of public disorder offenses, vies with the VTL category for the next largest percentage of cases. Closely following the misconduct category are cases in the CJA harm-to-persons category (mostly assault charges), which at approximately 12% makes up the fourth largest category in each of the three years. Between nine and ten percent of the non-felony cases fall into the unknown crime category, a composite of charges outside of the Penal or Vehicle and Traffic Laws. The majority of these cases are prosecuted under local ordinances ranging from charges such as unlicensed vending or open container law violations. In more recent years this category also includes prosecutions for the sale of untaxed cigarettes under the New York State Tax laws.

The percentages of cases in the CJA property crime category in which a majority of the cases were arraigned on a petit larceny charge, show increases in each successive snapshot year, rising from 8.5% of the non-felony cases in 2004 to 10.2% in 2008. In addition, the number and percentage of cases in the property crime category

exceeds those in the theft/fraud category, which contains the fare-evasion theft-of-services charges, in both the 2006 and 2008 data, but not in the 2004 data.

CJA CRIME CATEGORY OF CRIMINAL COURT ARRAIGNMENT CHARGES IN NON-FELONY ARREST AND ARRAIGNED CASES								
CRIME CATEGORY OF ARRAIGNMENT CHARGES 2004	25 OR YOUNGER		26-40		41+		Total	
	N	%	N	%	N	%	N	%
HARM TO PERSONS	9095	12.0%	11040	13.1%	6081	10.4%	26216	12.0%
HARM TO PERSONS & PROPERTY	6	.0%	2	.0%	1	.0%	9	.0%
WEAPON	1825	2.4%	991	1.2%	615	1.1%	3431	1.6%
PROPERTY	6476	8.5%	7030	8.3%	5085	8.7%	18591	8.5%
DRUGS	21045	27.7%	19967	23.7%	15257	26.2%	56269	25.7%
Subtotal DRUG-MARIJUANA	18206	24.0%	10065	11.9%	3212	5.5%	31483	14.4%
Subtotal DRUG NON-MARIJUANA	2839	3.7%	9902	11.8%	12045	20.7%	24786	11.3%
PROSTITUTION-RELATED	2406	3.2%	2729	3.2%	1235	2.1%	6370	2.9%
THEFT/FRAUD	9303	12.2%	6481	7.7%	4538	7.8%	20322	9.3%
MISCONDUCT	9826	12.9%	9848	11.7%	7135	12.2%	26809	12.3%
OBSTRUCT JUSTICE	3184	4.2%	2770	3.3%	1433	2.5%	7387	3.4%
VTL	8386	11.0%	14883	17.7%	7546	13.0%	30815	14.1%
UNKNOWN (NON-PL NON-VTL)	4464	5.9%	8525	10.1%	9324	16.0%	22313	10.2%
Total	76016	100.0%	84266	100.0%	58250	100.0%	218532	100.0%
CRIME CATEGORY OF ARRAIGNMENT CHARGES 2006	25 OR YOUNGER		26-40		41+		Total	
	N	%	N	%	N	%	N	%
HARM TO PERSONS	10240	12.1%	11199	13.1%	6829	10.6%	28268	12.0%
HARM TO PERSONS & PROPERTY	7	.0%	3	.0%	0		10	.0%
WEAPON	2967	3.5%	1499	1.8%	760	1.2%	5226	2.2%
PROPERTY	8162	9.6%	7424	8.7%	6711	10.4%	22297	9.5%
DRUG	23554	27.8%	20127	23.6%	17431	26.9%	61112	26.0%
Subtotal DRUG-MARIJUANA	20492	24.2%	10777	12.6%	3970	6.1%	35239	15.0%
Subtotal DRUG NON-MARIJUANA	3062	3.6%	9350	11.0%	13461	20.8%	25873	11.0%
PROSTITUTION-RELATED	1879	2.2%	2088	2.4%	1090	1.7%	5057	2.2%
THEFT/FRAUD	7931	9.4%	4981	5.8%	4320	6.7%	17232	7.3%
MISCONDUCT	11174	13.2%	10381	12.2%	8692	13.4%	30247	12.9%
OBSTRUCT JUSTICE	3945	4.7%	2990	3.5%	1696	2.6%	8631	3.7%
VTL	9548	11.3%	17184	20.1%	8810	13.6%	35542	15.1%
UNKNOWN (NON-PL NON-VTL)	5192	6.1%	7504	8.8%	8386	13.0%	21082	9.0%
Total	84599	100.0%	85380	100.0%	64725	100.0%	234704	100.0%

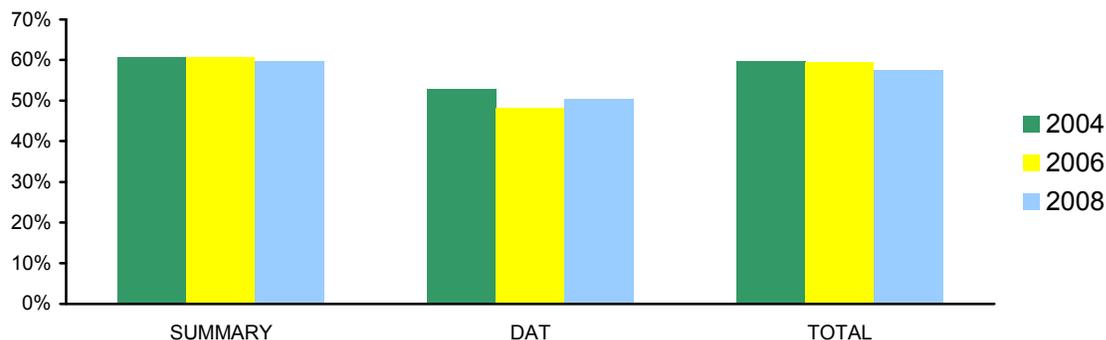
CJA CRIME CATEGORY OF CRIMINAL COURT ARRAIGNMENT CHARGES IN NON-FELONY ARREST AND ARRAIGNED CASES								
CRIME CATEGORY OF ARRAIGNMENT CHARGES 2008	25 OR YOUNGER		26-40		41+		Total	
	N	%	N	%	N	%	N	%
HARM TO PERSONS	10973	11.5%	12027	13.5%	7333	10.1%	30333	11.8%
HARM TO PERSONS & PROPERTY	28	.0%	0		0		28	.0%
WEAPON	3042	3.2%	1537	1.7%	893	1.2%	5472	2.1%
PROPERTY	10698	11.2%	7662	8.6%	7838	10.8%	26198	10.2%
DRUG	27288	28.6%	22480	25.2%	20703	28.4%	70471	27.4%
Subtotal DRUG-MARIJUANA	24263	25.4%	13737	15.4%	5291	7.3%	43291	16.8%
Subtotal DRUG NON-MARIJUANA	3025	3.2%	8743	9.8%	15412	21.2%	27180	10.5%
PROSTITUTION-RELATED	1549	1.6%	1796	2.0%	1080	1.5%	4425	1.7%
THEFT/FRAUD	10004	10.5%	5452	6.1%	4967	6.8%	20423	7.9%
MISCONDUCT	12380	12.9%	11062	12.4%	10821	14.9%	34263	13.3%
OBSTRUCT JUSTICE	4164	4.4%	3045	3.4%	1722	2.4%	8931	3.5%
VTL	8322	8.7%	15661	17.5%	8505	11.7%	32488	12.6%
UNKNOWN (NON-PL NON-VTL)	7152	7.5%	8557	9.6%	8918	12.3%	24627	9.6%
Total	95600	100.0%	89279	100.0%	72780	100.0%	257659	100.0%

Case Processing and Court Outcomes for Non-Felony Cases

In this section, court outcomes for cases with non-felony arrest and arraignment charges—dispositions or last appearance status at the time each year's data set was created—are examined at and post arraignment.

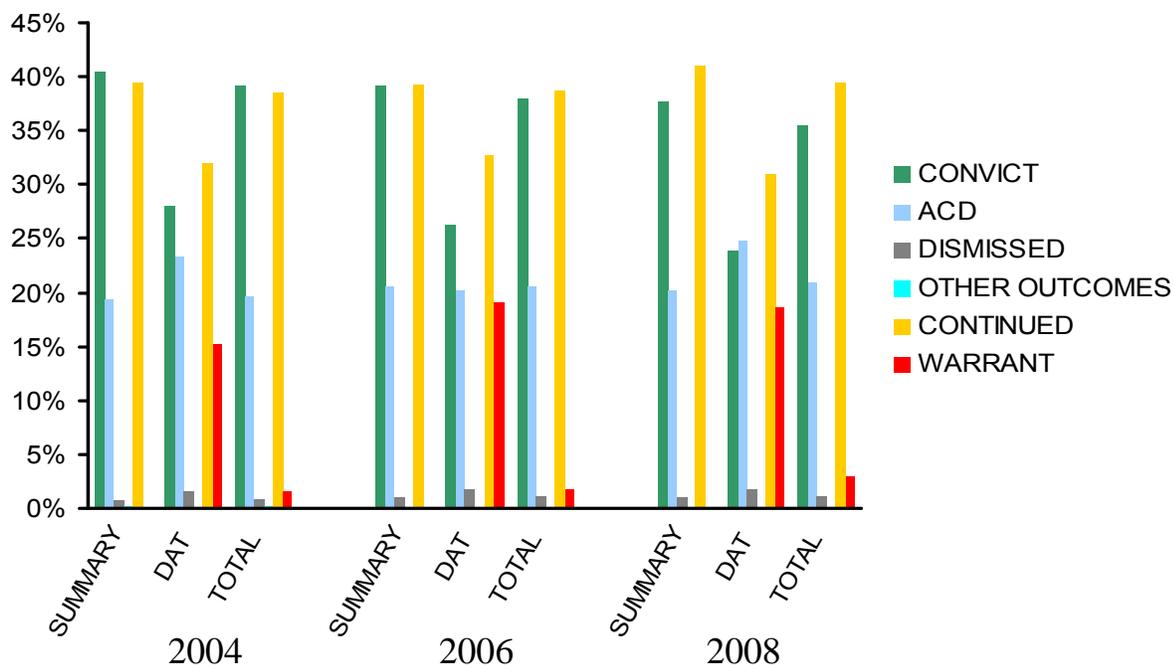
Across all years a majority of all non-felony cases reach a determinative outcome at Criminal Court arraignment, as shown on the illustration below. This is true separately for the summary and DAT cases in the study years with one exception, found among the DATs in 2006 in which the arraignment disposition rate dipped below fifty percent. As also can be seen, the arraignment disposition rate is higher among summary arrest cases in comparison to DATs.

PERCENTAGES OF CASES DISPOSED AT ARRAIGNMENT BY TYPE OF ARREST



In each of the years somewhat under two-fifths of all cases have an arraignment disposition of a conviction by guilty plea entered at arraignment. Approximately a fifth of all cases have an ACD arraignment outcome, as shown in the illustration below.

OUTCOMES AT CRIMINAL COURT ARRAIGNMENT FOR NON-FELONY CASES



However, the proportion of summary arrest cases being continued at arraignment was greater in 2008 than in the previous years. In addition, the lower DAT arraignment

disposition rates, discussed previously, are due in large part to the possibility of a failure to appear (FTA) and a warrant being issued.

Overall approximately three-fifths of all non-felony arraigned cases end with a conviction, almost all by a guilty plea, and roughly another quarter have an ACD disposition at the conclusion of case processing in each of the three years. Dismissals and acquittals, the latter only a tiny number, consistently are around 12% of case outcomes, and consistently occur most often at a post-arraignment court appearance.

NON-FELONY CASE OUTCOMES BY DECISION POINT						
CASE OUTCOME 2004	AT ARRAIGNMENT		POST ARRAIGNMENT		TOTAL DISPOSED	
	N	%	N	%	N	%
CONVICT	85390	65.3%	46955	56.1%	132345	61.7%
ACD	43106	33.0%	12454	14.9%	55560	25.9%
DISMISS/ACQUITTAL	1944	1.5%	23238	27.8%	25182	11.7%
OTHER OUTCOMES*	245	.2%	1026	1.2%	1271	.6%
TOTAL Disposed Cases	130685	100.0%	83673	100.0%	214358	100.0%
Percent at & post arraignment	(61.0%)		(39.0%)		(100.0%)	
*Includes 52 cases continued at Criminal Court arraignment with no further information. Not shown are 4,228 cases (1.9% of all 2004 non-felony cases) without a court outcome at the time the data set was created.						
CASE OUTCOME 2006	AT ARRAIGNMENT		POST ARRAIGNMENT		TOTAL DISPOSED	
	N	%	N	%	N	%
CONVICT	89166	63.7%	53980	59.0%	143146	61.9%
ACD	48030	34.3%	10757	11.8%	58787	25.4%
DISMISS/ACQUITTAL	2585	1.8%	26285	28.7%	28870	12.5%
OTHER OUTCOMES*	133	.1%	460	.5%	593	.3%
TOTAL Disposed Cases	139914	100.0%	91482	100.0%	231396	100.0%
Percent at & post arraignment	(60.5%)		(39.5%)		(100.0%)	
*Includes 47 cases continued at Criminal Court arraignment with no further information. Not shown are 3,436 cases (1.5% of all 2006 non-felony cases) without a court outcome at the time the data set was created.						
CASE OUTCOME 2008	AT ARRAIGNMENT		POST ARRAIGNMENT		TOTAL DISPOSED	
	N	%	N	%	N	%
CONVICT	91246	61.4%	60699	57.8%	151945	59.9%
ACD	54190	36.5%	15213	14.5%	69403	27.4%
DISMISS/ACQUITTAL	2943	2.0%	28414	27.1%	31357	12.4%
OTHER OUTCOMES*	210	.1%	688	.7%	898	.4%
TOTAL Disposed Cases	148589	100.0%	105014	100.0%	253603	100.0%
Percent at & post arraignment	(58.6%)		(41.4%)		(100.0%)	
*Includes 127 cases continued at Criminal Court arraignment with no further information. Not shown are 4,204 cases (1.6% of all 2008 non-felony cases) without a court outcome at the time the data was created.						

The patterns of types of dispositions among crime categories vary little across the three study years. In all years only small percentages of cases among the dominant order-maintenance crime categories end with an outright dismissal, with the largest percentages of cases split between a conviction and an ACD outcome. However, the relative proportions between these two types of dispositions differ among the crime categories. This can be seen in the next set of tables which compare the relative types of disposition, for cases with a determinative outcome, within the crime categories of the arraignment charge.

One particular point of contrast is the relative proportions of convictions versus ACD between non-felony cases prosecuted for marijuana and for non-marijuana drug charges: Approximately half of the former have an ACD outcome in comparison with single digit percentages among ACD outcomes for non-marijuana drug charges. In addition, over 85% of all non-marijuana drug cases end with a conviction in each year. Another point of contrast is the increasing use of the ACD among the cases with an unspecified crime type. The majority of these cases are prosecuted under local ordinances. As noted earlier, in more recent years this category also includes prosecutions for the sale of untaxed cigarettes under the State's tax laws.

Only cases in the harm-to-persons category, involving mostly misdemeanor assault charges, have any meaningful numbers and percentages of cases with a dismissal/acquittal outcome. This is not surprising because cases involving interpersonal violence are among the most difficult to prosecute, most often requiring testimonial evidence on the part of those involved directly in the altercation. In almost all of the other crime categories the evidentiary basis for prosecution is police testimony.

TYPE OF DISPOSITION WITHIN CRIME CATEGORY OF ARRAIGNMENT CHARGE, 2004										
CJA ARRAIGNMENT CRIME CATEGORY	CONVICT		ACD		DISM/ACQ		OTHER OUTCOMES		TOTAL	
	N	%	N	%	N	%	N	%	N	%
HARM TO PERSONS	9286	36.5%	4865	19.1%	11178	44.0%	92	.4%	25421	100.0%
HARM PERSONS & PROPERTY	6	66.7%	0		3	33.3%	0		9	100.0%
WEAPON	2493	74.2%	448	13.3%	410	12.2%	9	.3%	3360	100.0%
PROPERTY	12246	67.4%	4267	23.5%	1643	9.0%	23	.1%	18179	100.0%
DRUG-MARIJUANA	13431	43.1%	15723	50.5%	1985	6.4%	20	.1%	31159	100.0%
DRUG NON-MARIJUANA	21233	86.8%	2047	8.4%	1168	4.8%	23	.1%	24471	100.0%
PROSTITUTION-RELATED	4685	76.4%	1099	17.9%	349	5.7%	2	.0%	6135	100.0%
THEFT/FRAUD	11308	56.3%	8089	40.3%	690	3.4%	9	.0%	20096	100.0%
MISCONDUCT	15889	60.3%	7248	27.5%	3182	12.1%	35	.1%	26354	100.0%
OBSTRUCT JUSTICE	3898	54.1%	1628	22.6%	1541	21.4%	144	2.0%	7211	100.0%
VTL	25804	86.1%	2085	7.0%	1882	6.3%	207	.7%	29978	100.0%
UNKNOWN (NON-PL NON-VTL)	12066	54.9%	8061	36.7%	1151	5.2%	707	3.2%	21985	100.0%
Total	132345	61.7%	55560	25.9%	25182	11.7%	1271	.6%	214358	100.0%
TYPE OF DISPOSITION WITHIN CRIME CATEGORY OF ARRAIGNMENT CHARGE, 2006										
CJA ARRAIGNMENT CRIME CATEGORY	CONVICT		ACD		DISM/ACQ		OTHER OUTCOMES		TOTAL	
	N	%	N	%	N	%	N	%	N	%
HARM TO PERSONS	10640	38.4%	3394	12.2%	13586	49.0%	100	.4%	27720	100.0%
HARM PERSONS & PROPERTY	3	30.0%	7	70.0%	0		0		10	100.0%
WEAPON	3895	75.3%	742	14.3%	529	10.2%	7	.1%	5173	100.0%
PROPERTY	14780	67.3%	5256	23.9%	1894	8.6%	27	.1%	21957	100.0%
DRUG-MARIJUANA	14530	41.6%	18374	52.6%	2028	5.8%	32	.1%	34964	100.0%
DRUG NON-MARIJUANA	22118	86.2%	2000	7.8%	1500	5.8%	28	.1%	25646	100.0%
PROSTITUTION-RELATED	3465	71.1%	971	19.9%	432	8.9%	3	.1%	4871	100.0%
THEFT/FRAUD	11097	65.0%	5274	30.9%	697	4.1%	4	.0%	17072	100.0%
MISCONDUCT	19270	64.4%	7098	23.7%	3496	11.7%	57	.2%	29921	100.0%
OBSTRUCT JUSTICE	4893	57.5%	1893	22.2%	1569	18.4%	161	1.9%	8516	100.0%
VTL	30626	88.4%	2016	5.8%	1925	5.6%	71	.2%	34638	100.0%
UNKNOWN (NON-PL NON-VTL)	7829	37.4%	11762	56.3%	1214	5.8%	103	.5%	20908	100.0%
Total	143146	61.9%	58787	25.4%	28870	12.5%	593	.3%	231396	100.0%

TYPE OF DISPOSITION WITHIN CRIME CATEGORY OF ARRAIGNMENT CHARGE, 2008										
CJA ARRAIGNMENT CRIME CATEGORY	CONVICT		ACD		DISM/ACQ		OTHER OUTCOMES		TOTAL	
	N	%	N	%	N	%	N	%	N	%
HARM TO PERSONS	11367	38.2%	4031	13.6%	14204	47.7%	147	.5%	29749	100.0%
HARM PERSONS & PROPERTY	8	32.0%	7	28.0%	10	40.0%	0		25	100.0%
WEAPON	4052	75.3%	824	15.3%	490	9.1%	12	.2%	5378	100.0%
PROPERTY	16700	64.9%	6617	25.7%	2364	9.2%	68	.3%	25749	100.0%
DRUG-MARIJUANA	18712	43.7%	21527	50.3%	2543	5.9%	57	.1%	42839	100.0%
DRUG NON-MARIJUANA	23287	86.7%	1925	7.2%	1579	5.9%	57	.2%	26848	100.0%
PROSTITUTION-RELATED	3275	76.5%	679	15.9%	315	7.4%	10	.2%	4279	100.0%
THEFT/FRAUD	11874	58.9%	7512	37.2%	762	3.8%	21	.1%	20169	100.0%
MISCONDUCT	22051	65.2%	7650	22.6%	3995	11.8%	118	.3%	33814	100.0%
OBSTRUCT JUSTICE	5080	57.6%	2000	22.7%	1561	17.7%	172	2.0%	8813	100.0%
VTL	27744	88.1%	1553	4.9%	2070	6.6%	114	.4%	31481	100.0%
UNKNOWN (NON-PL NON-VTL)	7795	31.9%	15078	61.6%	1464	6.0%	122	.5%	24459	100.0%
Total	151945	59.9%	69403	27.4%	31357	12.4%	898	.4%	253603	100.0%

The type of case dispositions also differ by defendant ages as can be seen on the next set of tables. In each year's cases the percentage of convictions increases as the age category increases. Conversely, ACD dispositions decrease as defendant age increases. Because age and criminal conviction history are very closely related, one can infer from these results that cases of defendants, disproportionately younger and more likely to have no adult criminal conviction record, were most likely to receive an ACD whereas cases involving older defendants with established criminal records were more likely to be convicted.

TYPE OF DISPOSITION BY AGE GROUP OF DEFENDANTS BY YEAR								
CASE DISPOSITIONS BY AGEGROUP 2004	25 OR YOUNGER		26-40		41+		TOTAL*	
	N	%	N	%	N	%	N	%
CONVICT	37714	50.7%	54222	65.6%	40381	70.5%	132317	61.7%
ACD	27836	37.4%	17167	20.8%	10539	18.4%	55542	25.9%
DISMISS/ACQUITTAL	8492	11.4%	10670	12.9%	6014	10.5%	25176	11.7%
OTHER OUTCOMES	346	.5%	556	.7%	369	.6%	1271	.6%
TOTAL DISPOSED	74388	100.0%	82615	100.0%	57303	100.0%	214306	100.0%
*Total excludes 52 disposed cases in which the defendant ages were not known.								
CASE DISPOSITIONS BY AGEGROUP 2006	25 OR YOUNGER		26-40		41+		TOTAL*	
	N	%	N	%	N	%	N	%
CONVICT	42641	51.2%	55260	65.8%	45185	70.7%	143086	61.9%
ACD	30144	36.2%	17098	20.3%	11494	18.0%	58736	25.4%
DISMISS/ACQUITTAL	10342	12.4%	11439	13.6%	7074	11.1%	28855	12.5%
OTHER OUTCOMES	156	.2%	236	.3%	201	.3%	593	.3%
TOTAL DISPOSED	83283	100.0%	84033	100.0%	63954	100.0%	231270	100.0%
*Total excludes 126 disposed cases in which the defendant ages were not known.								
CASE DISPOSITIONS BY AGEGROUP 2008	25 OR YOUNGER		26-40		41+		TOTAL	
	N	%	N	%	N	%	N	%
CONVICT	44747	47.7%	55557	63.4%	51558	71.7%	151862	59.9%
ACD	37127	39.5%	19652	22.4%	12573	17.5%	69352	27.4%
DISMISS/ACQUITTAL	11702	12.5%	12146	13.9%	7500	10.4%	31348	12.4%
OTHER OUTCOMES	319	.3%	339	.4%	240	.3%	898	.4%
TOTAL DISPOSED	93895	100.0%	87694	100.0%	71871	100.0%	253460	100.0%
*Total excludes 143 disposed cases in which the defendant ages were not known.								

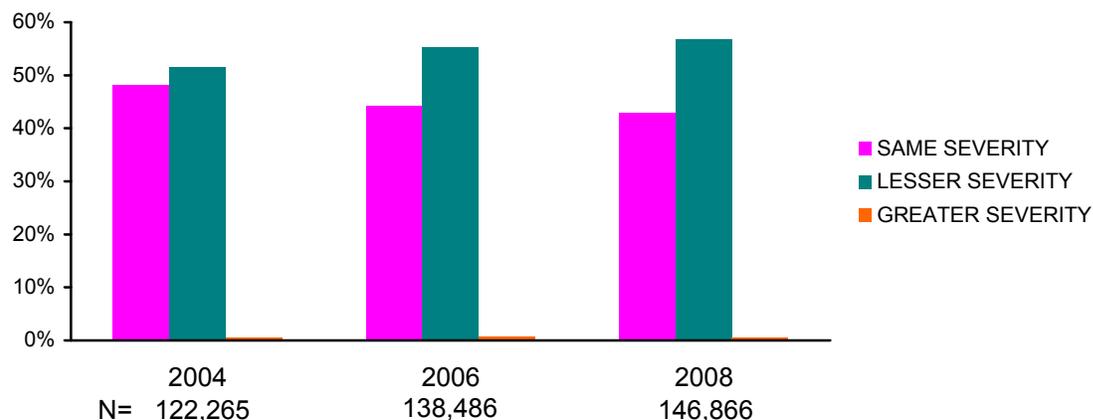
Severity Classification Change between Arraignment and Conviction Charges

In this section charge severity change for convicted cases is examined. This analysis is limited to severity comparisons between the arraignment and conviction charge only when the charges were of misdemeanor or lesser (violation or infraction) severity: it is not possible to make a similar comparison for the cases in which the arrest or the arraignment charge was of unknown severity.

In each year over half of the convictions in the cases in which both the arraignment and conviction charge severities were known were to a lesser severity

charge, as shown in the illustration below, and the likelihood of charge reduction was progressively larger over the course of the three years.

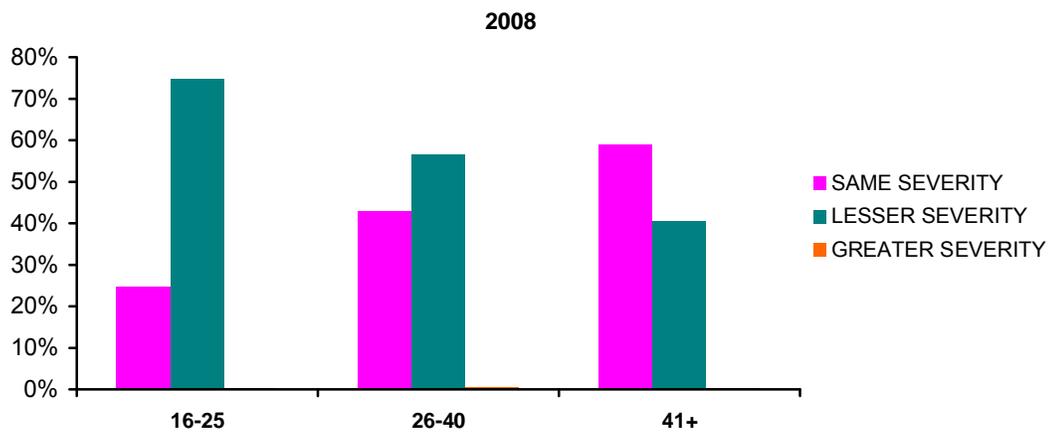
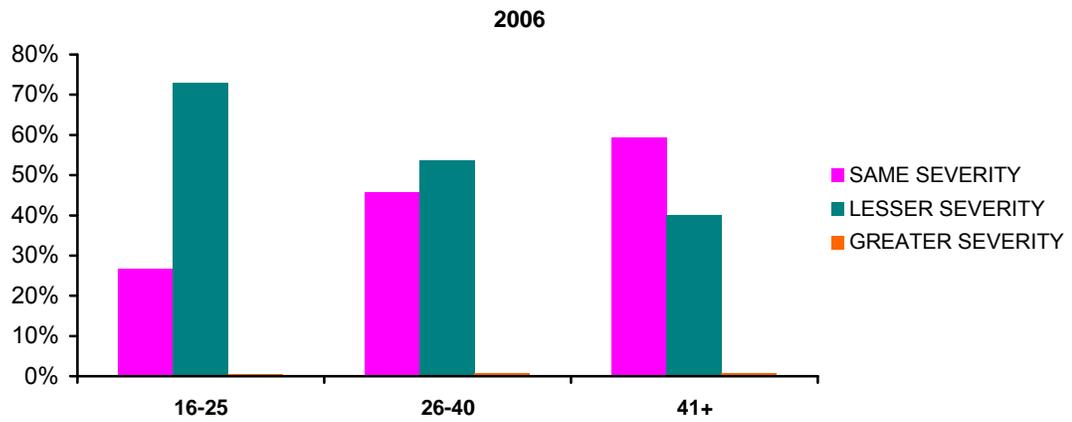
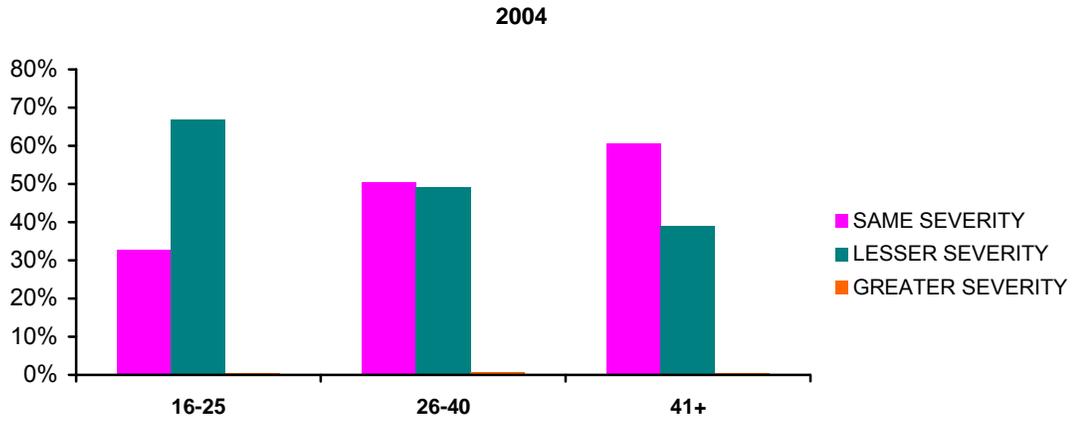
SEVERITY OF CONVICTION CHARGE WHEN ARRAIGNMENT CHARGE WAS OF MISDEMEANOR OR LESSER SEVERITY CLASSIFICATION BY YEAR



The likelihood of a charge reduction is greatest among the cases of the youngest defendants and progressively decreases as age-group category increases. In addition, the likelihood of charge severity reduction among the convicted cases of the youngest defendants increases over the three snapshot years, from 66.9% in 2004 to 74.8% among the convicted cases with defendants 25 or younger in 2008. One also can see, on the illustrations that follow which examine charge severity change among convicted cases by age group of defendants, an increase in charge severity reduction among the cases in the 26-40 age group, from 49.1% in 2004 to 56.6% in 2008,.

In comparison, there is almost no change—less than a two percentage point increase—in charge reduction among the convicted cases of the oldest group of defendants. In the 2004 cases with an arraignment and conviction charge of known severity, 60.5% of defendants in the 41 and older age-group category were arraigned

SEVERITY OF CONVICTION CHARGE WHEN ARRAIGNMENT CHARGE WAS OF MISDEMEANOR OR LESSER SEVERITY CLASSIFICATION BY AGE GROUP OF DEFENDANTS BY YEAR



and convicted of a charge of the same severity. In the 2008 data for this age group, 59.0% of the defendants were arraigned and convicted of a charge of the same severity.

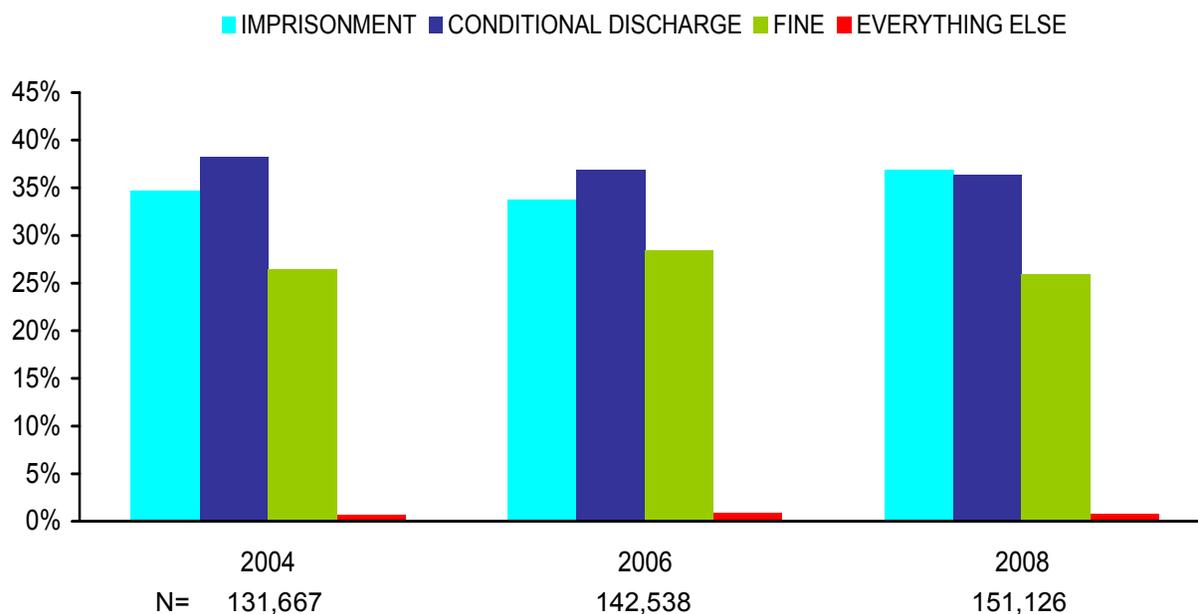
Sentences for Convictions

The CJA information system contains information about the types of sentences imposed for a conviction. When more than one penalty is imposed, there is an algorithm from which one can program a most severe sentence type. For example, in a VTL case the sentence might be a fine plus a license suspension. When this occurs, the fine becomes the most severe sentence type. In addition, fines sometimes may be imposed with a jail alternative. In these cases it again is the fine (not the jail alternative) that is considered the most severe sentence. The CJA information system also includes the length of any imprisonment sentence *imposed* at the sentencing appearance. However, the data do not include how much post-conviction time defendants may actually serve, if any, after taking into account pretrial detention and good-time credit.

As can be seen in the illustration that follows there are only small differences in the distributions among most severe sentence types across the years, with imprisonment or conditional discharge (CD) sentences being the most common form of sanctions. In the 2004 and 2006 data, slightly larger percentages of convicted and sentenced cases received a CD in comparison with imprisonment, with an almost equal division in 2008 between these two sentence types. In all three periods fines constitute somewhat over a quarter of each year's penalties in convicted and sentenced cases. However, the use of fines as the most severe type of sentence overwhelmingly occurs

in VTL cases, although they sometimes are imposed as the penalty for violation severity convictions for marijuana possession or disorderly conduct charges.

MOST SEVERE SENTENCE TYPE FOR CONVICTION IN NON-FELONY CASES



Imprisonment sentences were imposed in less than two-fifths of the convicted cases. When convicted cases did have an imprisonment sentence imposed, defendants were most likely to receive a time-served sentence, as shown in the next table. In addition, although the percentage of convicted cases with an imprisonment sentence imposed was somewhat greater in 2008, over half of the cases received a time-served sentence, an even greater percentage than is found in the earlier years.

LENGTH OF SENTENCE IMPOSED FOR CONVICTED CASES WITH AN IMPRISONMENT SENTENCE						
LENGTH OF IMPRISONMENT TIME IMPOSED AT SENTENCING, IN DAYS	2004		2006		2008	
	N**	%	N**	%	N**	%
Time Served	20669	45.3	23017	47.8	28949	51.9
1-5 Days	5965	13.1	4809	10.0	7046	12.6
6-10	5021	11.0	5414	11.2	5963	10.7
11-15	2980	6.5	2914	6.1	3072	5.5

16-30	4912	10.8	5525	11.5	5313	9.6
31-60	2863	6.3	2913	6.0	2526	4.5
61-90	1548	3.4	1651	3.4	1356	2.4
91-365	1680	3.7	1863	3.9	1499	2.7
Greater Than 365 Days*	39	.1	51	.1	35	.1
Total	45677	100.0	48157	100.0	55759	100.0
<p>* Cases in which the charge was upgraded post-arraignment resulting in a conviction to a felony-severity crime.</p> <p>**The 2004 total excludes 4 imprisonment-sentenced cases with an unknown sentence length, the 2006 total excludes 8 such cases, and the 2008 total excludes 3 imprisonment-sentenced cases with an unknown sentence length.</p>						

In those cases in which there was an imprisonment sentence imposed of between 1 and 365 days, the maximum time for the highest misdemeanor severity classification in New York State, the sentence lengths imposed tended to be brief. In 2004 the mean (mathematical average) time imposed was 36.6 days with a median (midpoint) of 15 days and a mode (most frequent) of 30 days. The time imposed in 2006 was very similar, with a median time of 36.3 days, a median of 15 and a mode of 30 days. Imprisonment times imposed in 2008 were even more brief with a mean time of 30.5 days, an identical median time of 15 days, and a modal time of only 5 days. To some extent this may reflect the increasing percentage of DAT cases in 2008. Any actual post-conviction time to be served would be even shorter after one considers that all defendants held for arraignment immediately would have sentences reduced by the custodial time from arrest to arraignment and good-time credit of one day for every three sentenced days.

In all years the imposition of an imprisonment sentence is most likely to have been imposed for convictions to crimes of A-misdemeanor severity. In addition, the overwhelming majority of conditional discharge sentences are assessed for convictions of lesser severity charge classification, as can be seen in the table that follows. Fines are almost exclusively imposed for convictions to charges of either Unclassified-

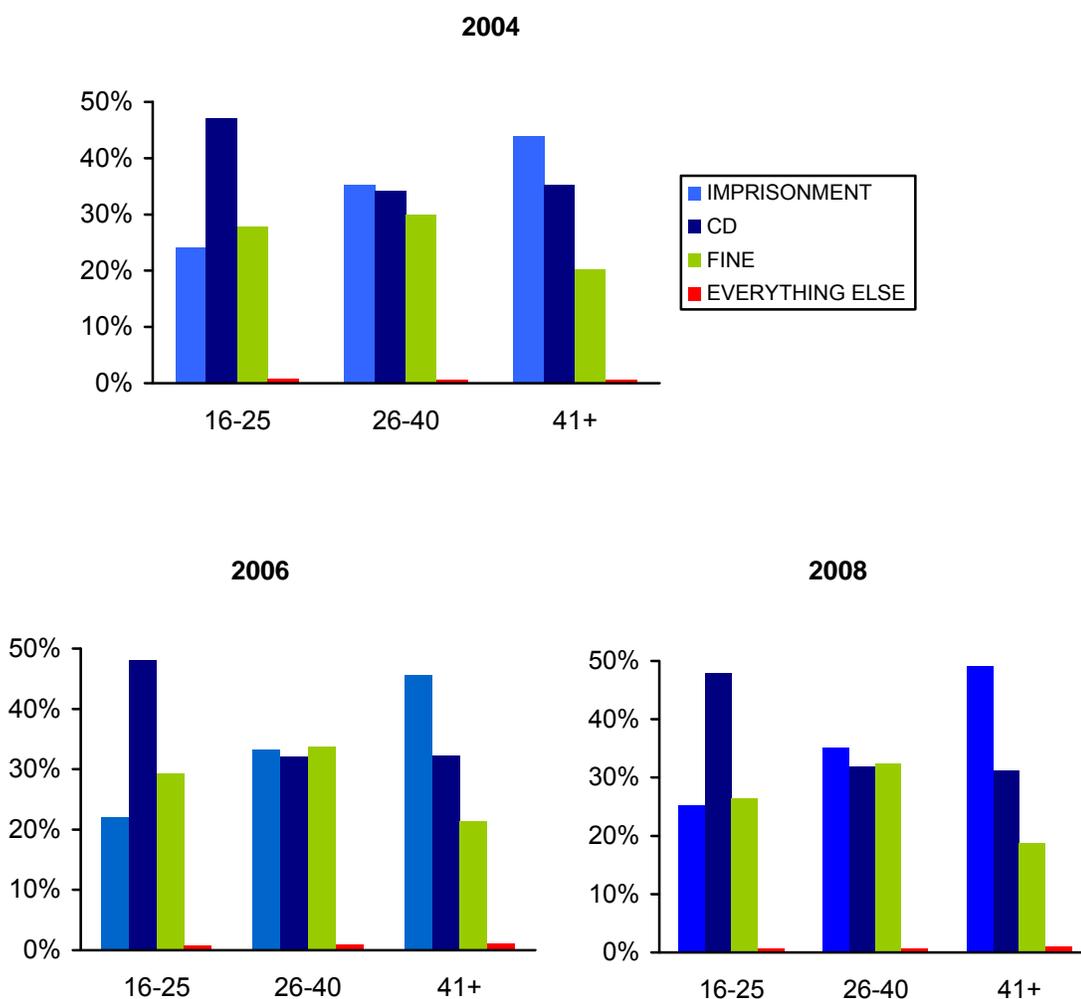
misdeemeanor severity almost all of which are VTL charges, or charges of lesser severity which also includes many infraction VTL charges.

MOST SEVERE TYPE OF SENTENCE BY SEVERITY OF THE CONVICTION CHARGE BY YEAR										
CONVICTION CHARGE SEVERITY, 2004	IMPRISONMENT		CONDITIONAL DISCHARGE		FINE		EVERYTHING ELSE		TOTAL	
	N	%	N	%	N	%	N	%	N	%
FELONY	103	.2%	8	.0%	4	.0%	65	6.7%	180	.1%
A MISD	24717	54.1%	10257	20.4%	505	1.5%	469	48.0%	35948	27.3%
B MISD	6195	13.6%	3688	7.3%	486	1.4%	158	16.2%	10527	8.0%
U MISD	609	1.3%	65	.1%	4407	12.7%	250	25.6%	5331	4.0%
LESSER	10447	22.9%	34739	69.1%	28884	83.1%	22	2.3%	74092	56.3%
UNKNOWN	3610	7.9%	1503	3.0%	463	1.3%	13	1.3%	5589	4.2%
Total	45681	100.0%	50260	100.0%	34749	100.0%	977	100.0%	131667	100.0%
CONVICTION CHARGE SEVERITY, 2006	IMPRISONMENT		CONDITIONAL DISCHARGE		FINE		EVERYTHING ELSE		TOTAL	
	N	%	N	%	N	%	N	%	N	%
FELONY	128	.3%	10	.0%	8	.0%	57	4.6%	203	.1%
A MISD	27777	57.7%	10411	19.8%	483	1.2%	747	60.1%	39418	27.7%
B MISD	5706	11.8%	3252	6.2%	505	1.2%	168	13.5%	9631	6.8%
U MISD	658	1.4%	64	.1%	5216	12.9%	197	15.8%	6135	4.3%
LESSER	11766	24.4%	38237	72.7%	34085	84.1%	65	5.2%	84153	59.0%
UNKNOWN	2130	4.4%	607	1.2%	252	.6%	9	.7%	2998	2.1%
Total	48165	100.0%	52581	100.0%	40549	100.0%	1243	100.0%	142538	100.0%
CONVICTION CHARGE SEVERITY, 2008	IMPRISONMENT		CONDITIONAL DISCHARGE		FINE		EVERYTHING ELSE		TOTAL	
	N	%	N	%	N	%	N	%	N	%
FELONY	102	.2%	12	.0%	7	.0%	72	6.3%	193	.1%
A MISD	30485	54.7%	9908	18.0%	522	1.3%	690	60.5%	41605	27.5%
B MISD	7071	12.7%	3646	6.6%	678	1.7%	154	13.5%	11549	7.6%
U MISD	653	1.2%	74	.1%	4504	11.5%	149	13.1%	5380	3.6%
LESSER	14546	26.1%	40756	74.1%	33235	84.8%	67	5.9%	88604	58.6%
UNKNOWN	2905	5.2%	619	1.1%	262	.7%	9	.8%	3795	2.5%
Total	55762	100.0%	55015	100.0%	39208	100.0%	1141	100.0%	151126	100.0%

The type of sentence imposed in convicted cases is affected not only by the severity of the conviction charge, but also by criminal history which has a strong relationship with defendant age. It is therefore not surprising that the older defendants are more likely to have an imprisonment sentence imposed for conviction whereas conditional discharge sentences are more prevalent among the convicted cases for the

youngest age group. In each of the years just under half of the convicted cases of defendants in the 25 and younger age group received a CD sentence, and no more than a quarter received any type of imprisonment sentence. In comparison, as can be seen in the illustration below, in each of the years more than two-fifths of the cases in the 41+ age group received an imprisonment sentence, while only about a third of the convicted cases in this age group received a CD sentence.

MOST SEVERE SENTENCE TYPE FOR CONVICTED CASES BY AGE GROUP OF DEFENDANTS



CONTINUITY AND CHANGE: SUMMARY OF FINDINGS

The blueprint for order maintenance policing laid out in the mid-1990's strategy papers remains much in evidence over a decade later. There continue to be large volumes of non-felony arrests with many of the same charge and defendant characteristics, and court responses as was found in the earlier research in the post-program period.

- ◆ The defendant composition among non-felony cases continues to contain large numbers and percentages of persons over the age of 40 and persons 25 and younger.
- ◆ Large numbers of young defendants without established adult criminal conviction records are being brought into the courts on non-felony charges.
- ◆ Defendants with established criminal records, often among the oldest defendants in the non-felony caseload of the City's Criminal Courts, are more likely to have been convicted of both misdemeanor and felony crimes than prior to the implementation of the new policing strategies.
- ◆ Non-felony cases with drug charges continue to make up the greatest number and percentage of the Criminal Court's non-felony caseload, but the composition has changed.
 - › Among drug cases, defendants ages 25 and under are far more likely to be prosecuted for marijuana charges whereas the cases of the oldest cohort of defendants, 41 and older, are far more likely to be prosecuted for non-marijuana drug charges.
 - › There is a more even split between marijuana and non-marijuana charges among cases with defendants between the ages of 26 and 40. However, in the most recent 2008 data, the relative percentages of marijuana charges are increasing in this age range.

- › The shift toward arrests for marijuana changes the severity composition of drug cases because the most common non-marijuana charge is of A-misdemeanor severity; the most common marijuana charge is of B-misdemeanor severity.
 - ◆ After order maintenance policing was implemented there were other changes in the composition of cases.
- › Property crime ceased to be the second largest category after drugs. While there continue to be considerable numbers of these arrests, this category's relative position has been displaced by the increased volume of other types of crimes that have been a focus of order maintenance policing.
- › Over one of every ten cases in 2004, 2006 and 2008 was arraigned on a charge in the CJA misconduct category comprised largely of public disorder offenses such as criminal trespass and loitering, very similar to the proportions found in the 1998 data.
- › Fare evasion (theft of services) cases in the CJA fraud category, are not as prominent a contributor to non-felony volume as they had been earlier in quality-of-life police enforcement, but they continue to be a part of established policing practices.
- › Prostitution-related crimes continue to contribute only a very slight percentage of the non-felony caseload but there remains a shift toward targeting customers as well as prostitutes.
 - ◆ The Criminal Courts continue to rely on resolving over half of their volume of non-felony cases at Criminal Court arraignment.
- › The percentages of cases disposed at arraignment are not as high as they were in the 1998 cases in the earlier research. The decrease in arraignment disposition rates remains even after taking into account the differences in the data.
 - ◆ In response to the changes in the defendant and case composition after the implementation of order maintenance policing, the overall types of case outcomes changed. There has been a decrease in the percentage of convicted cases, and an increase in the use of ACD outcomes.

- › The percentages of ACD outcomes is somewhat lower among the most recent study years but still remains much greater than was found in the pre-implementation data.
- › Convictions are far more prevalent among the cases with older defendants, usually those with established criminal records. In comparison, ACDs are far more prevalent among the cases of the youngest defendants.
- › Outright dismissals make up about 12% of case outcomes, and these disproportionately occur in cases involving interpersonal violence. Excluding these cases the percentage of outright dismissals is considerably less.
 - ◆ Charge-severity reduction occurs frequently in convicted cases, and more often when the top charge is of B-misdemeanor or lower severity classification, and/or the defendant is young and/or without a criminal conviction record, a pattern found across study years.
- › Charge reduction for convicted cases with the youngest defendants was greater in the 2008 cases (74.8%) in comparison with 2006 (72.8%) and in the convicted cases in 2004 (66.9%).
- › Charge reduction for a conviction is least likely to occur among the cases of the defendants in the oldest age group in which approximately three-fifths of the cases in the recent study period were convicted of a charge of the same severity as the arraignment charge.
 - ◆ The use of jail as the most severe type of sentence decreased after the implementation of order maintenance policing as the sanction for conviction in non-felony cases. In addition, the percentages of cases with time-served sentences or very brief sentence lengths increased among cases in which imprisonment was imposed.

In only a few respects do the findings for arrests and prosecution for non-felony offenses in the more the more recent years reflect meaningful differences when compared with the findings of the earlier research, even when taking into account differences between the earlier and more recent data sets analyzed.

One item of particular note is the increase in the issuance of DATs. Prior to the mid-1990s DATs were dubbed disappearance tickets because of the high volume of arraignment FTA. The tightening of restrictions on the use of DATs in the mid-1990s initially resulted in a sharp decrease in the percentage of non-felony arrests in which DATs were issued, although not in the actual number of DATs. However, further restrictions meant that by the late 1990s the actual number of DATs declined appreciably, as did the arraignment FTA rate in the Criminal Courts. The doubling of the number of DATs in 2008 in comparison with 2006 therefore marks a sharp departure from past practices, and may reflect the need for greater reliance on DATs for maintaining high non-felony arrest volume as the size of the NYPD declines and restrictions on overtime due to budgetary constraints begin to be felt.

Another change of note is the decline in the proportions of cases with determinative dispositions at the Criminal Court arraignment appearance. To some extent this may reflect increases in non-felony arrests in the harm-to-persons category because assault crimes that involve interpersonal violence rarely are resolved at the arraignment appearance. This also is true of cases identified pre-arraignment as occurring in a domestic violence context which also have been on the rise in recent years. But this also gives rise to the speculation that the proliferation of specialty courtrooms, be it for domestic violence or drug treatment, are offering the courts new options that were not available in the years immediately after the implementation of the new police practices.

Because of differences in the data analyzed for the comparison of 1989 and 1998 cases, and the more robust data sets available for analysis in more recent years, most

comparisons across these time periods have looked for patterns represented by percentage changes. However, these percentage comparisons mask the extent of changes in real numbers and on the defendants arrested and prosecuted for non-felony crimes.

For example, in the 1998 and in the current research periods (2004, 2006 and 2008) the percentage of cases with defendants between the ages of 16 and 20 has more than doubled in comparison with the 1989 data. Because of increased volume, the result is that in 2008 the actual number of cases in this youngest age group was almost 50,000, six times greater than the number of cases in this age group in 1989. In the 1989 data approximately 10% of the cases had defendants 41 or older. In 1998 the percentage was about 20% and in 2008 reached over 28%. In terms of numbers, in the 2008 non-felony cases there were over 72,000 cases of with defendants ages 41 or older, or over eight times the number of non-felony cases with defendants 41 or older than in 1989.

Perhaps of even greater importance is that although post-implementation the relative percentage of non-felony cases disposed by a conviction declined in comparison with 1989 data, the consequence of the sheer volume increase of non-felony cases means that greater numbers of cases have convicted defendants. For example, *in the 2008 data analyzed for this paper there were convictions in 151,945 of the cases with a non-felony charge at both arrest and arraignment, more than the total number of all non-felony arrests in 1989.*

DISCUSSION AND CONCLUSION

Order maintenance policing and related strategies were introduced in New York City in the mid-1990s. These were designed to reclaim public spaces and reduce fear of crime as well as incidences of serious crime. The data presented from more recent years strongly suggest that what began as innovation has become the norm in New York City. Police continue to pursue the tactics of arrests for misdemeanor and lesser-severity offenses to accomplish the goals of order maintenance and deterrence. In the process the City's Criminal Courts have needed to respond to hundreds of thousands of non-felony cases annually. For example, in 1989 the NYPD reported approximately 145,000 non-felony arrests. According to CJA, in 2008 there were approximately 297,000 arrests of misdemeanor or lesser severity. Although these two data sources are not identical, they serve to illustrate the extent to which the non-felony caseloads of the Criminal Courts have increased. In addition, the courts have also needed to fashion responses to a changed defendant and case composition.

In the years since the mid-1990s, the non-felony population has experienced a significant increase of older defendants, often with more serious criminal histories, and young defendants without established adult criminal records. The composition of cases also changed. The greatest volume of cases consistently has been for drug offenses but there is a generational difference which has emerged since the mid-1990s in which marijuana dominates the cases of younger defendants with non-marijuana charges dominating the cases of older defendants. A related controversy is the extent to which

the surge in marijuana arrests are a by product of stop & frisk encounters with police often targeting young men of color.²³

Until the mid-1990s property crimes, most frequently involving the petit larceny charge, comprised the second largest volume of non-felony cases. Since the mid-1990s, assault, and crime categories containing public order offenses such as criminal trespass, have grown in volume surpassing cases in CJA's property crime category. The criminal trespass charge is one of the tools extensively used by police to reclaim public spaces such as parks and areas in and around public housing. In the process this has swept into the Criminal Courts large numbers of older and often homeless persons, as well as young residents of public housing.

When initially faced with a changed composition of cases and defendants the court system's options were limited. Using graduated sanctions, the ACD was most likely to be offered in the more than 50% of the cases of defendants with no or limited criminal histories, and rarely carried any meaningful consequences for defendants. Guilty pleas were most common among defendants with criminal histories, with convictions to charges reduced to lesser severity offenses, which are not considered "criminal convictions" in New York State, most frequently offered in cases with the more minor offenses or with defendants with more limited criminal records. For a conviction the choices primarily were short imprisonment sentences or conditional discharges which historically also have carried few if any consequences. (Fines have tended to be used primarily for VTL cases, or in a small percentage of the cases with a conviction to the violation severity marijuana possession or disorderly conduct offenses.)

²³ See for example, Harry G. Levine and Deborah Peterson Small, *MARIJUANA ARREST CRUSADE: Racial Bias and Police Policy in New York City, 1997-2007*, New York Civil Liberties Union, April 2008. Available on the NYCLU web site, www.NYCLU.org.

At first glance the research findings of increased use of adjournments in contemplation of dismissal or convictions to charges reduced in severity to a non-criminal offense, often with conditional discharge or only very short jail sentences imposed, would lead one to question the extent of harm done to those swept up by these police practices. Is it simply that it's the arrest through arraignment process that is the punishment, to borrow Malcolm Feeley's characterization about the workings of lower criminal courts.²⁴ I would suggest that the system today carries far greater consequences.

The post-arrest criminal justice system did not remain static after the mid-1990s. Increasingly new accountability and programmatic initiatives began to proliferate within the court system. Drug treatment courts began to expand to accommodate the growing volume of non-felony drug cases. Other specialized courtrooms and court programs, such as those for domestic violence, and more recently for the seriously mentally ill and even for cases of veterans, have been developed and expanded. As a result, cases qualifying for many specialty courts will be continued at the Criminal Court arraignment appearance, and keep defendants within the criminal justice system for longer periods of time. This likely contributes to the finding of an increase in the proportions of non-felony cases continued at arraignment in the more recent study periods.

Using the sanction models from the experience of the Midtown Manhattan Community Court, and ideas from the restorative justice movement, prosecutors' offices throughout the City increasingly began to use community service or other brief programs such as a one-day drug treatment readiness session, or in the case of Brooklyn "John schools" for those prosecuted for soliciting prostitutes, as a condition of

²⁴ Malcolm M. Feeley, *The Process is the Punishment*, (New York: Russell Sage Foundation, 1979).

both guilty pleas and offers of an ACD. Most recently, the Center for Court Innovation, which developed the City's first community court, has been attempting to bring the model to scale by offering an array of programs to the Bronx Criminal Court in most non-felony cases with either a conviction or ACD outcome at Criminal Court arraignment.

In the latter cases, the defendant must consent to any conditions that will be imposed as part of the ACD. In a conviction, defendant consent is not required to the conditions imposed as part of a conditional discharge sentence. However, this is largely a semantic difference. First, most ACDs and convictions are responses to prosecutor offers which would include the community service or other programmatic requirements. Second, and in either situation, the completion of the program or community service component becomes part of the requirements for the ultimate disposition of the case. That is, in an ACD outcome the failure to successfully meet the conditions agreed to can result in the case being restored to a court docket for continued prosecution; as part of a conditional discharge sentence failure to satisfy the conditions would result in the issuance of a warrant and additional court processing.

Because conditions associated with an ACD are not a sentence, the CJA information system does not capture the extent to which such conditions are attached to an ACD case outcome. In addition, once an ACD outcome has occurred CJA ceases to track the ultimate disposition of the case so that there is no way from this data source to determine the extent to which these cases are restored to the court's docket for failure to meet conditions agreed to with the ACD, as opposed to the dismissal and sealing of the court record at the statutory end of the adjournment period. CJA also only receives

notification from the court system when community service is part of a CD sentence, but there are no specific codes in the court system data received by CJA when other program activities are part of these sentences. The CJA information system also does not track further court processing once a sentence for a conviction has been entered. However, and without a doubt, for the bulging non-felony caseload in more recent years both ACD outcomes and CD sentences for convictions increasingly are likely to carry some type of programmatic condition.

The benefit of an ACD is that successful compliance with conditions set during the period of adjournment will result in the sealing of the case record including the arrest itself. And, unlike a conviction even to a lesser-severity charge, no financial penalties such as surcharges will be incurred. However, in accepting an ACD the defendant will remain subject to criminal justice oversight through the period of the adjournment of either six months or one year depending on charge. Among these consequences are that the arrest remains open in the State's criminal history database during the adjournment and any new arrest during this period could jeopardize the ACD as well as influence the outcome in any new case.

Beyond the sentences imposed there are a number of collateral consequences that can accrue to convicted defendants, the overwhelmingly majority of which, as shown in this research, involve persons of color. For example, public housing eligibility rules have become far more restrictive and conviction to even a low-level marijuana charge can jeopardize not only a young defendant but his/her entire family's ability to live in public housing. In addition, even a minor drug conviction can lead to exclusion from eligibility for federal education funds such as the Pell grant program. These types

of consequences to criminal justice system involvement have been recognized by Mayor Bloomberg and the current City administration as illustrated by the recently announced Young Men's Initiative, designed to address disadvantages and inequalities confronting young Black and Latino males in New York City. In the words of the report released as part of this initiative: "It is a cruel irony that the resources we know make it more likely for a person to right his or her path—access to education, to employment, to safe housing, to healthy living, to a sense of belonging in the community—are precisely the same resources that people with a criminal record have a harder time accessing because of their record."²⁵

There also are direct economic consequences to all defendants in convicted cases.²⁶ In New York, all convictions, even to a non-criminal offense of violation or infraction severity carry mandatory surcharges, on a sliding scale based on the severity of the conviction charge: \$300 for a felony severity conviction charge; \$175 for a misdemeanor; and \$95 for a violation-severity offense. All additionally require a mandatory \$25 crime victim assistance fee regardless of conviction charge severity. On top of this are sex-offender registration and DNA testing fees, as applicable, each currently at a cost of \$50. (There may be some additional mandatory surcharges imposed for a DWI conviction under the Vehicle and Traffic Law.) This means that a conviction for a violation severity offense such as disorderly conduct or possession of slight amounts of marijuana requires at a minimum a surcharge payment of \$120. In addition, in 1995 the state legislature abolished the ability of courts to waive surcharges,

²⁵ David Banks and Ana Oliveira, *YOUNG MEN'S INITIATIVE: Report to the Mayor from the Chairs*, August 2011, p. 18. Available on the New York City web site, www.nyc.gov.

²⁶ Volume 10, Issue 3 of *CRIMINOLOGY & PUBLIC POLICY* (August 2011), is a Special Issue on Mass Incarceration. It contains a section on *Monetary Sanctions as Misguided Policy*, with a lead article by Katherine Beckett and Alexis Harris, as well as a series of response essays from other contributors.

providing only for a court hearing for a *deferral* of mandatory surcharges and fees based on a showing of family hardship. Given the indigency of many in the City's defendant population, it is now routine for the courts to enter civil judgments for surcharges; prior to 1995 judges routinely would have waived the surcharges. Once this judgment is entered it accrues compound annual interest until it either is paid or until a settlement is reached, usually with the collection agencies hired by the City for this purpose. And it should be noted that these surcharges are separate and in addition to any fines that may be imposed.

Another collateral consequence relates to immigration. As the federal government attempts to focus illegal immigration policies on those in the criminal justice system, even a conviction to a misdemeanor crime, and especially a drug or assault crime, can result in deportation for illegal immigrants or jeopardize the ability of legal non-citizen permanent residents to remain in the United States. The severity of this consequence to a criminal conviction was recognized by the U.S. Supreme Court which, in 2010 in the case of *Padilla v Kentucky* (130 S. Ct. 1472), ruled that a failure by a defense attorney to advise a defendant of the immigration consequences of a criminal conviction could constitute ineffective assistance of counsel.

In addition, there is increasing access of the Immigration and Customs Enforcement (ICE) agency to state and local criminal records. In New York City, ICE personnel's access to information about pretrial detainees at the City's main jail facility on Rikers Island puts at risk for deportation even those not yet convicted of any crime.²⁷ This is particularly salient as the number and percentage of arraignment dispositions in

²⁷ See for example a recent article about this controversy by Brad Hamilton, "Rikers 'Alien' Probes on ICE," NEW YORK POST, online edition, Sunday, May 22, 2011.

the more recent time periods studied has declined opening up the possibility of individuals passing through the City's jail system as pretrial detainees.²⁸

There also have been other consequences for the City and the defendant population. One example comes from the revolving door at the Department of Correction (DOC) for short-stay sentenced offenders, often older recidivist misdemeanants with a myriad of social service needs who frequently are part of population cycling through the criminal justice system with short-stay sentences. While the overall daily population in DOC jail facilities has fallen in recent years, the intake process is the costliest part of the system, requiring medical and other assessments prior to housing placement. Even when needs are identified, brief sentences prevent effective discharge planning. Also compromised is the ability of DOC to provide programs for both misdemeanor pretrial detainees and sentenced defendants which can lead to better re-entry outcomes.

Recognizing many of these issues, early in the Bloomberg administration the Commissioners of the Departments of Corrections and Homeless Services brought together staff from a number of government agencies and not-for-profit organizations that provide services to the criminal justice population into a Discharge Planning Collaboration. For a number of years much of the Collaboration's focus was on the short-stay population, recognizing that many in this population also were drawing on City-funded community-based resources such as homeless shelters and hospitals. Out of these discussions came policies that have provided greater access to the City's

²⁸ CJA has undertaken an extensive research agenda about release and bail decisions under the direction of Mary T. Phillips, Ph.D., CJA's Deputy Research Director. See for example, "Release and Bail Decisions in New York City," *CJA Research Brief series No. 6* (August 2004) or "Bail, Detention and Non-felony Case Outcomes," *CJA Research Brief series No. 14* (May 2007).

short-stay population by community-based organizations. Another achievement was suspension rather than termination of Medicaid benefits to some sentenced offenders, a cost saving without which the City would not be reimbursed for medical services incurred by jail-released defendants who had lost their Medicaid benefits upon incarceration.

Other new program initiatives also were accomplished, such as the Day Custody (DCP) and Transitional Case Management (TCM) Programs offered by the Center for Alternative Sentencing and Employment Services (CASES) in the downtown Manhattan Criminal Court.²⁹ The former is an alternative-to-incarceration program with the latter program designed specifically for the seriously mentally ill. This also has led to a new initiative that has engaged both the Manhattan District Attorney's Office and the Legal Aid Society to create a program to intercept the mentally ill pre-arraignment in Manhattan's downtown Criminal Court. But these programs also underscore the extent to which order maintenance policing has increased the use of the criminal justice system as a way station for the disorderly and derelict street population, often with serious mental illness along with substance abuse issues.

The problems faced by the New York City jails in responding to large numbers of mentally ill offenders is illustrated in the court case of *Brad H. et al. v. City of New York et al.* 712 N.Y.S. 2d336 (2000), commonly referred to simply as "Brad H.". This case challenged the lack of discharge planning for the seriously mentally ill leaving DOC. According to the amicus brief submitted in 1999 in support of the plaintiffs in the *Brad H.*

²⁹ Freda F. Solomon, Ph.D. "THE CASES DAY CUSTODY PROGRAM: Creating an Alternative to Short Jail Sentences for Recidivist Misdemeanor Defendants," *CJA Research Brief series*, No. 20 (May 2009). See also Freda F. Solomon, Ph.D., *The Center for Alternative Sentences and Employment Services' (CASES) Day Custody and Transitional Case Management Programs*, (New York City Criminal Justice Agency, February 2010).

case "...approximately 25% of the 130,000 inmates admitted annually to City Jails are in need of mental health treatment...and approximately 15,000 of these patients suffer from serious and persistent mental disorders...".³⁰ However, low-level offenders frequently pass through the jail system too quickly for assessment and discharge planning to take place. In addition, the conditions of confinement may exacerbate the level of impairment for offenders' psychiatric disabilities.³¹

However promising these new programs may be in responding to special needs population, especially among the older recidivist misdemeanants caught up in large numbers by the City's policing practices, they currently can serve a very small number of offenders, are available only in a single Criminal Court, and have funding made ever more tenuous by the City's current financial constraints.

The extent to which order maintenance policing and its attendant strategies can be credited for the City's crime decline cannot be determined from the research presented in this paper. But what is clear is that the new policing and related changes introduced in the mid-1990s have endured with only modest changes for almost two decades and with them have come consequences for the post-arrest components of the City's criminal justice system, and for the individuals prosecuted in these cases for non-felony offenses.³²

³⁰ Amici Brief submitted in *Brad H. et al. v. City of New York et al.*, available on the web site of The Judge David L. Bazelon Center for Mental Health Law, <http://www.bazelon.org/issues/criminalization/bradh.html>.

³¹ Heather Barr, "Transinstitutionalization in the Courts: *Brad H. v. City of New York*, and the Fight for Discharge Planning for People with Psychiatric Disabilities Leaving Rikers Island," *CRIME & DELINQUENCY*, (California: Sage Publications, 2003) Vol. 49, No. 1, January 2003, pp. 97-123.

³² For an interesting discussion of different types of collateral consequences see K. Babe Howell, "Broken Lives From Broken Windows: The Hidden Costs Of Aggressive Order-Maintenance Policing," *N.Y.U. REVIEW OF LAW AND SOCIAL CHANGE*, Vol. 33, Issue 3 (2009), pp. 271-327.

Faced with a massive influx of cases in the non-felony caseload, and with a changed composition of cases and defendants, the City's Criminal Court system initially increased the numbers and proportions of cases disposed at the arraignment appearance. Overall conviction rates fell, ACD outcomes increased while outright dismissals for many types of low-level offenses decreased. Short jail sentences were commonly imposed primarily for recidivist offenders while defendants in other cases, often the younger defendants without established criminal records, were released back into the community via an ACD. Although the proportions of cases with convictions declined, actual numbers of such cases increased appreciably, as did the numbers of defendants under criminal justice supervision due to ACD case outcomes.

In response to these changed circumstances specialized courts and courtrooms developed and increased, and new sanctioning options were introduced and expanded. To accommodate some of these programmatic initiatives, and with court capacity affected by the reduction in felony cases, increasing numbers of cases in more recent years are being continued at arraignment, although over half of the non-felony caseload still reaches a court outcome at the first appearance. The extent to which these new interventions have played a role in interrupting criminal career trajectories and contributed to the City's decline in serious crime is also among the unanswered questions that need to be incorporated into further research.

APPENDIX A

CJA'S CRIME-TYPE CATEGORIES.

The categories and principal charges found in CJA's typology of offenses are as follows:

- The *harm-to-persons* category consists of some of the most serious felony crimes such as murder, manslaughter and rape, as well as various types of assault including those of misdemeanor severity.
- The *harm-to-persons-and-property* category consists almost exclusively of violent felony offenses such as robbery.
- The *weapon* category includes all charges relating to use, possession and sale of weapons found in Article 265 of the New York State Penal Law.
- The *property* crime category includes petit larceny at the misdemeanor level, and grand larceny at the felony level, and also includes related offenses such as possession of stolen property or burglar's tools. This category also includes criminal mischief charges that can be of either felony or misdemeanor severity.
- The *drug* category includes all non-marijuana charges found in Article 220, and all marijuana charges found in Article 221, of the New York State Penal Law.
- The *prostitution-related (sex-crime)* category primarily contains offenses such as promoting prostitution, soliciting for the purposes of prostitution, prostitution, or patronizing a prostitute.
- The *fraud* category principally contains the theft-of-services misdemeanor charge, the vast majority of which involve fare beating, and other types of theft-by-deception activities such as forgery, credit card and welfare fraud, or trademark infringement.
- The *misconduct* category contains a variety of public-order offenses such as criminal trespass, harassment, disorderly conduct, and loitering, and other charges such as illegal gambling.
- The *obstruction-of-justice* category includes charges such as resisting arrest and criminal contempt charges including violating protection orders.
- *VTL* refers to offenses contained in the Vehicle and Traffic Laws, the vast majority of which are considered to be of unclassified misdemeanor severity.
- The *other/unknown* crime category contains mostly charges from sources outside the Penal Law or VTL, such as the City's Administrative Code covering offenses such as unlicensed vending or open alcohol container violations, or the sale of untaxed cigarettes under the State Tax Code. This category also is used for the small percentages of cases in which the charges as transmitted to CJA do not link to the charge index used in the CJA database.