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Research Brief

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CJA is a not-for-profit corporation that provides a variety of criminal justice services under a contract with the City of New York.

CJA staff interview defendants arrested in New York City, make recommendations for pretrial release, and notify released defendants of upcoming court dates. CJA also operates two supervised release programs for nonviolent felony clients in Queens and Manhattan.

Within the Agency, the Research Department conducts studies addressing a broad array of criminal justice policy concerns. The Research Brief series summarizes the results of some of these studies.

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DESK APPEARANCE TICKETS: *Their Past, Present, & Possible Future*

By Mary T. Phillips, Ph.D.

Desk Appearance Tickets (DATs) have been used in lieu of custodial arrest for some low-level offenses in New York City since 1964. In a DAT arrest, the suspect is taken to the station house to determine eligibility, then released with printed instructions to appear in criminal court on a specified date for arraignment.

DATs have historically served a dual purpose: as a management tool to reduce pressure on police and corrections resources, and as a means of relieving defendants of the hardships of unnecessary incarceration. The priority given to these goals is influenced by many factors, including changes in non-felony arrest volume, the size of the jail population, the size of the police force, and budgetary constraints. As a result, DAT volume has fluctuated widely over the years.

An important consideration in the use of DATs is whether offenders who are released at arrest will come to court on their own to be arraigned. Low failure-to-appear (FTA) rates early in the history of DATs encouraged their quick adoption. Higher FTA rates in later decades prompted the introduction of restrictions that for a time greatly reduced their use.

The current research was initiated at the peak of a seven-year stretch of almost continuously rising DAT volume. This *Brief* presents the highlights of that research, tracing historical trends in DAT volume, case characteristics, and FTA rates.

The report concludes with a discussion of the possible future of DATs — a future that will be shaped in part by emerging policies that are changing the way the City deals with marijuana offenses.

This *Research Brief* is adapted from
*The Past, Present, and Possible Future of
Desk Appearance Tickets in New York City* (2014)
by Mary T. Phillips, Ph.D., Deputy Director, Research Department

The full report is available on CJA's web site:
www.nycja.org/library.php

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DAT Eligibility

Defendants arrested for non-felony offenses and most Class E felony offenses are eligible for a DAT under New York Criminal Procedure Law. The NYPD uses additional criteria to determine eligibility.

Disqualifying Factors Under New York Criminal Procedure Law (CPL §150.20)

New York Criminal Procedure Law excludes all felony charges more severe than Class E from consideration for a DAT.

Class E felony charges are generally eligible, except for PL 130.25 (rape-3), PL 130.40 (sod-

omy-3), PL 205.10 (escape-2), and PL 215.56 (bail jumping-2). (Two additional Class E felony charges that are ineligible by law expired in September 2013.)

The law **mandates** the issuance of a DAT when the only

charge is noncriminal marijuana possession (PL 121.05), as long as the defendant presents adequate ID and address information.

For all other charges, the police exercise discretion in deciding whether to issue a DAT.

Additional Disqualifying Factors Under NYPD Policy

NYPD *Patrol Guide*, January 2013

Additional Disqualifying Charges

Class E felony charges

PL 195.07 (no DAT even if the defendant is hospitalized)

All other Class E felonies: DAT may be issued only if defendant is hospitalized

Non-felony

“photographable” charges

(DAT may be issued only if defendant is hospitalized)

Weapons

PL 265.01 (no DAT only if the weapon is a firearm)

PL 265.10

PL 265.35 [1] & [3]

Prostitution

PL 230.20

PL 240.37 [3]

PL 230.00, PL 230.04, PL 230.03

**Graffiti*

PL 145.60, PL 145.65

Other

PL 165.25

PL 165.30 (a DAT may be issued if arrest is for operating a “Three Card Monte” game)

PL 165.71

PL 130.60

PL 190.25 [3]

PL 150.01

**Graffiti charges were removed from the list of disqualifying factors in May 2013, after the end of the research period.*

Other non-felony charges

Stalking

PL 240.25, PL 120.14 [2]

(also under “assault”)

Marijuana sale

PL 221.40, PL 221.35

Assault/harassment (disqualifying only when committed against a city or state enforcement agent performing official duty)

PL 120.00 (and attempted)

PL 120.14, PL 120.15, PL 120.20

PL 240.25, PL 240.30

**Graffiti*

PL 145.00 (no DAT only if associated with graffiti)

Fireworks

PL 270.00 [2] [a] [ii] & [b] [ii]

Other Penal Law

PL 155.30 (attempted)

PL 140.10 (no DAT only if in connection with a commercial building)

PL 205.30

PL 195.05 (a DAT may be issued if the offense is “uncooperative actions,” e.g., going limp at arrest)

Vehicle & Traffic Law

VTL 1192 [1] through [4] (a DAT may be issued if defendant is hospitalized over 24 hours, provided no serious injury caused)

VTL 511 [2] [a]

Administrative Code

AC 26-521

AC 10-162

Other Disqualifying Factors

The defendant

- cannot produce satisfactory identification or proof of address;
- is on probation or parole;
- has an active or prior warrant;
- is a designated robbery or misdemeanor recidivist, firearm violator, armed career criminal, or target narcotics violator, or is wanted by the NYPD for questioning;
- has a prior license suspension or conviction for driving without a license;
- has a prior conviction that would raise the current charge to a felony;
- is under the influence of drugs or alcohol to the degree that someone may be endangered;
- has violated an order of protection, or the victim requests an order of protection; or
- owes DNA.

The complainant/victim

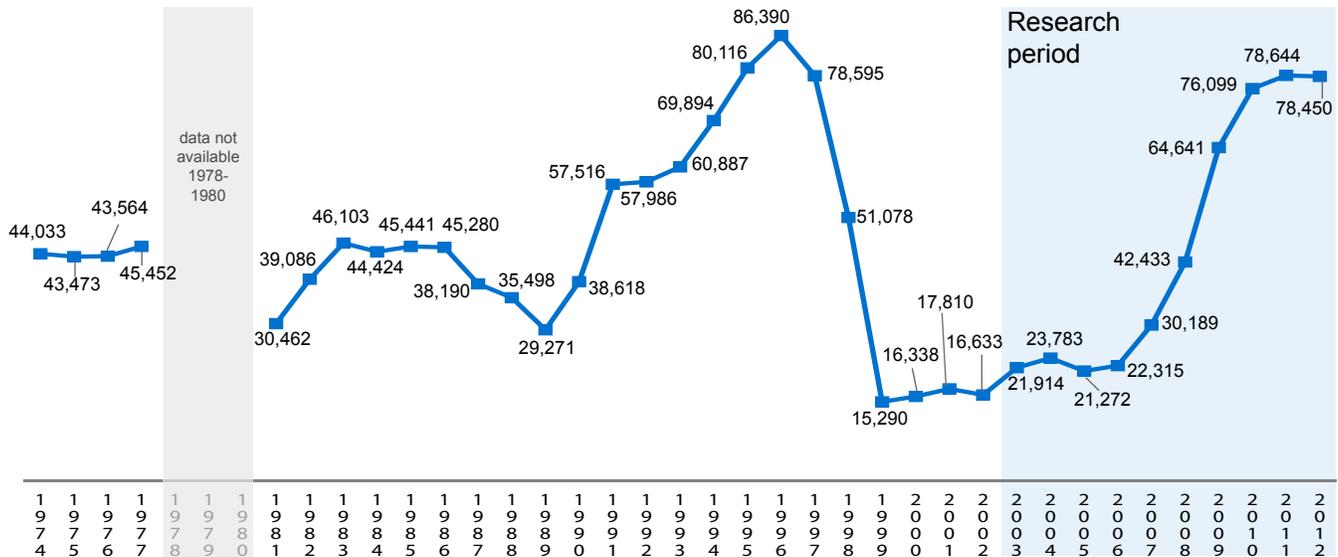
- and offender are members of the same household.

The arrest

- is on a warrant;
- is for an offense that would constitute child abuse or neglect;
- is for threatening, harassing, or menacing a uniformed member of the service, an elected official, or any other city, state, or federal employee.

Historical Trends in DAT Volume

Figure 1
DAT Arraignment Volume: 1974-2012



DATs were virtually nonexistent in New York City before 1964, when the Manhattan Summons Project was launched by the Vera Institute with the NYPD. This project demonstrated that carefully screened defendants could be released at arrest in lieu of keeping them in custody until arraignment.

Figure 1 presents the number of DAT arraignments in the City from 1974 through 2012, showing that by 1974 DATs were being issued in over 40,000 prosecuted arrests annually. (Data were not available earlier than 1974, or from 1978 to 1980.)

In the late 1980s DATs were derided as “disappearance tickets” because of the large numbers of defendants who never showed up for their arraignments. Out-of-control FTA rates (over 40% from 1987 to 1992) triggered a short-lived decline in DAT volume, which dropped to about 29,000 in 1989.

In the summer of 1990, the NYPD instituted a policy to expand the use of DATs as a management measure, and as a result they were quickly being issued at rates that far exceeded previous levels. DAT volume almost tripled to reach an all-time high in 1996 of more than 86,000.

This trend abruptly reversed when the Giuliani administration discouraged the issuance of DATs as part of a crackdown on quality-of-life offenses. In addition, the enlargement of the police force and technological innovations that allowed faster pre-ar-

raignment processing together alleviated the pressure on the police to issue DATs. By 1999 the number of DATs had been reduced to little more than 15,000. In spite of a rise in non-felony case volume, DAT volume remained low for the next eight years.

The recent resurgence in the use of DATs dates from about 2008, when volume exceeded 40,000 for the first time since 1998. In the latest four years of available data, volume has nearly doubled again — to well over 78,000 in 2011 and 2012.

In this study, we took a closer look at the years from 2003 to 2012 (the research period highlighted in Figure 1). We examined issuance rates (the proportion of arrests in which a DAT was issued), the charge composition of DAT arrests, elapsed time from arrest to arraignment, and the relationship of FTA rates to these and other factors.

Future trends will be affected by an NYPD policy that went into effect in May 2013 making a DAT mandatory in arrests for possession of small amounts of marijuana, as long as the suspect has ID and no outstanding warrant. However, the huge increase in DAT volume expected as a result of this policy may be offset if the police make fewer marijuana arrests in response to concerns about stop-and-frisk operations. Another factor influencing further expansion or contraction of DATs will be FTA rates, which will be closely watched.

Issuance Rates and Failure to Appear

Figure 2 shows the volume of arraignments from 2003 to 2012 with a defendant who:

- was arrested on a non-felony charge (gray line);
- was issued a DAT (blue line);
- failed to appear for a DAT arraignment (black line).

The volume of non-felony cases during this period grew from 218,058 to 270,842, an increase of about 24%. The height of non-felony arrest volume was in 2009, with a slight decline since then.

During these years, DAT volume more than tripled, from 21,914 to 78,450. If the proportion of non-felony arraignments originating with a DAT had remained at the 10% rate found in 2003, only about 27,000 DATs would have been expected in 2012. Instead, DATs grew to comprise 29% of non-felony cases by the end of the study period.

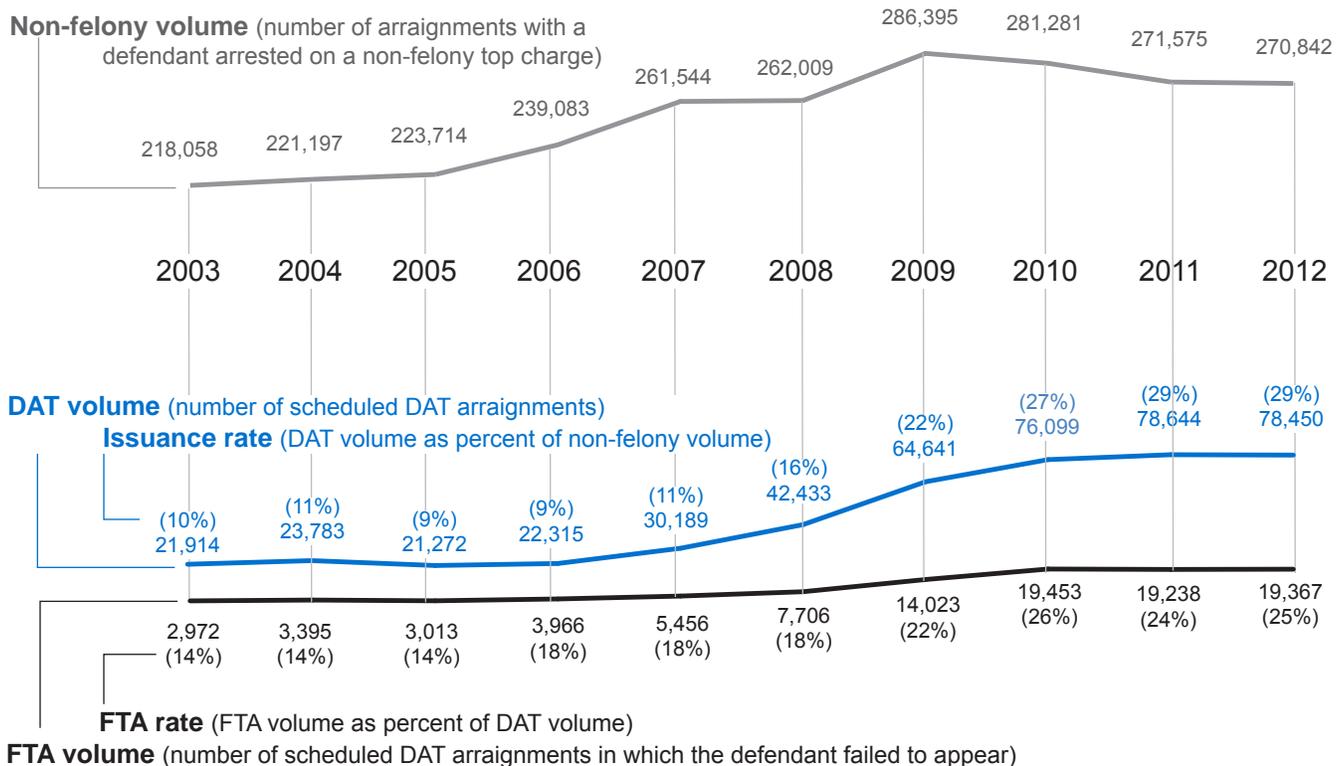
(The percentage of non-felony prosecuted arrests in which a DAT was issued — the issuance rate — is given in parentheses. Note, however, that the blue line represents volume, not issuance rates.)

The data show that rising non-felony case volume and rising issuance rates together accounted for the large increase in DAT volume through 2009. The fact that DAT volume continued to rise after 2009, while non-felony arraignment volume fell, indicates that higher issuance rates alone were the driving force from 2010 onwards.

Growth in the number of DATs perhaps inevitably leads to an increase in the number of defendants who fail to appear, but FTA volume rose disproportionately during the study period. FTA volume was six times higher in 2012 (19,367) than it had been in 2003 (2,972). Had the FTA rate remained steady at 14% — the level early in the study period — only 11,000 defendants would have missed their arraignments in 2012. The much higher actual number reflects higher FTA rates. In the three years since 2010, about a quarter of DAT defendants each year failed to appear for their arraignment court dates.

(Note that the black line represents the number of failures to appear, not the FTA rate.)

Figure 2
Non-Felony Arraignment Volume, DAT Issuance Rates, and FTA: 2003 – 2012



Arrest Charge Composition and Failure to Appear

A small number of charges account for most DAT arrests. The four offenses shown in Figure 3 accounted for over 50% of DAT arraignments every year since 2006.

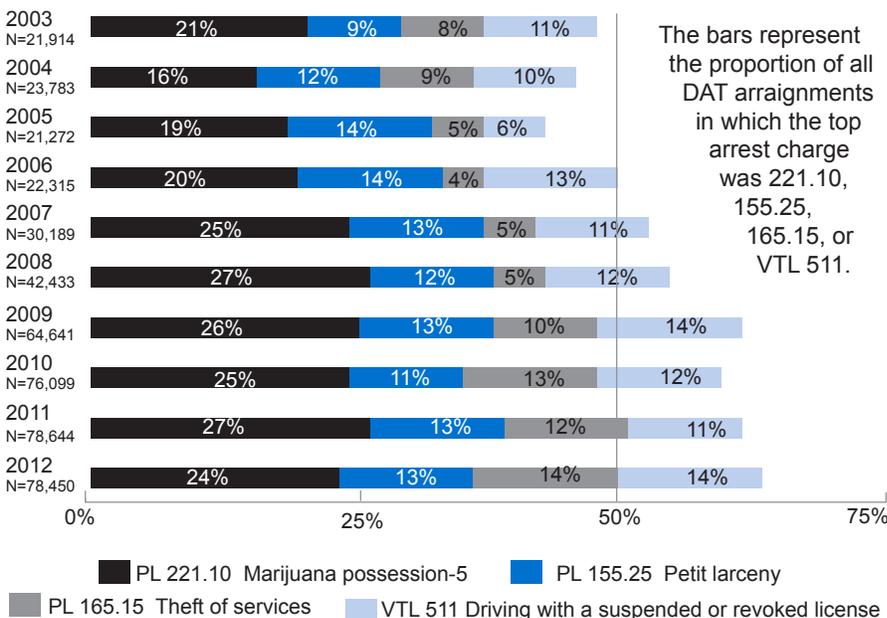
The most frequent DAT charge is marijuana possession in the fifth degree, a class B misdemeanor. Since 2007, this has consistently been the top arrest charge in about a quarter of DAT arraignments.

The other most frequent DAT charges are petit larceny, theft of services, and driving with a suspended or revoked license.

Most defendants in the remaining DAT cases were arrested for seventh-degree drug possession (PL 220.03), third-degree assault (PL 120.00), or a local offense not included in the Penal Law or the Vehicle and Traffic Law (not shown).

Issuance rates for the top four charges rose steeply after 2008 (Figure 4). In 2012, a DAT was issued in half of all prosecuted arrests for marijuana possession

Figure 3
DAT Charge Composition: 2003 – 2012

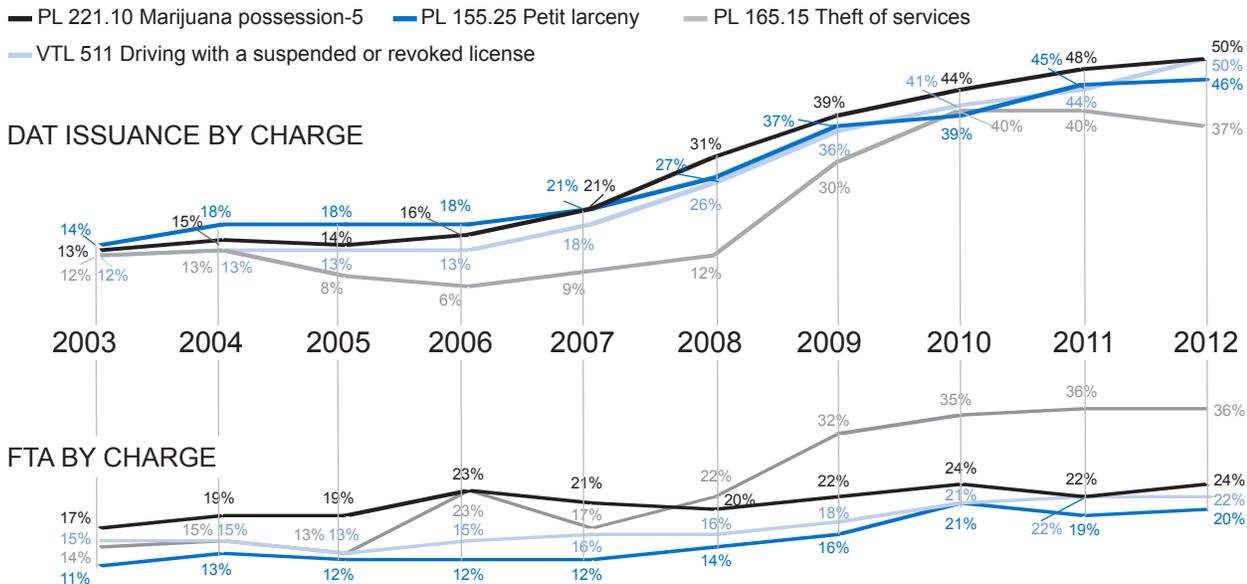


The bars represent the proportion of all DAT arraignments in which the top arrest charge was 221.10, 155.25, 165.15, or VTL 511.

and for driving with a suspended or revoked license, and in nearly half (46%) of prosecuted arrests for petit larceny. People arrested on these charges were three to four times more likely to be issued a DAT in 2012 than in 2003, when issuance rates were less than 15%.

FTA rates varied by charge, as shown in the bottom panel of Figure 4. In 2012, petit larceny was associated with relatively low FTA (20%) while the rate among defendants arrested for theft of services was much higher (36%). FTA rates rose during the study period for all charges, but most for theft of services.

Figure 4
DAT Issuance Rates and FTA Rates by Arrest Charge: 2003 – 2012



Elapsed Time from Arrest to Arraignment and Failure to Appear

The median number of days between DAT arrests and the scheduled arraignment fluctuated between 35 and 45 days during the course of the study period, as shown in Figure 5 (to the right of each bar).

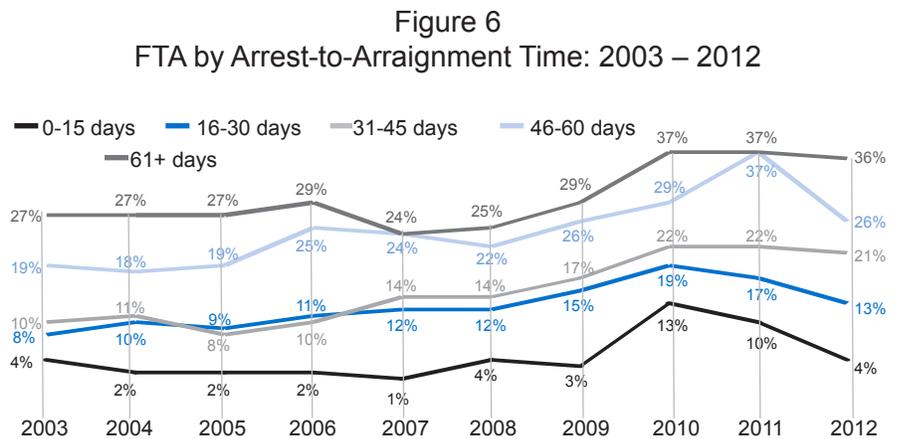
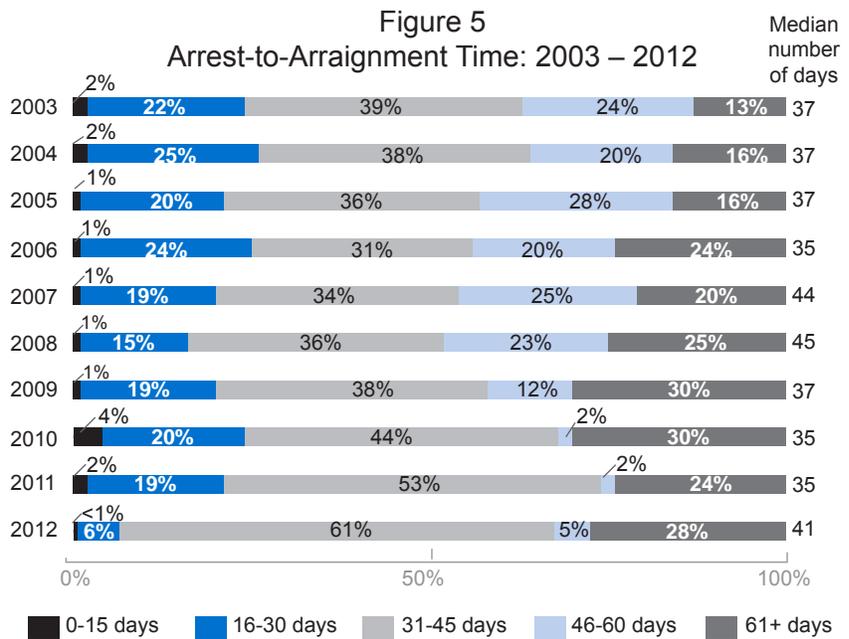
In 2012, however, a major shift occurred. Throughout most of the study period, between a fifth and a quarter of DAT arraignments were consistently scheduled within 30 days. This ended in 2012, when for the first time almost all (94%) exceeded 30 days.

At the other end of the range, the proportion of cases with more than 60 days between arrest and arraignment grew to about 30% in three of the last four years. This is double the proportion found in the longest elapsed-time category in the early years of the study period.

The importance of the time between arrest and arraignment lies in its effect on failure to appear. The more time passes, the easier it is to forget a court date, and the more likely it is that other life events will intervene.

Figure 6 shows the relationship between arrest-to-arraignment time and FTA. Among arraignments within two weeks, FTA rates were negligible (4% in 2012); among arraignments scheduled more than 60 days after arrest, FTA rates were nine times higher (36% in 2012). Mid-range elapsed times were associated with FTA rates that were also in the middle range.

In each year, cases with the shortest arrest-to-arraignment times had the lowest FTA rates and cases with the longest times had the highest FTA rates.



Other Factors Affecting Likelihood of FTA

Multivariate analyses were done to examine the effect of arrest-to-arraignment time and the arrest charge on likelihood of FTA in combination with a large variety of other factors, using 2011 data (not shown). Both elapsed time and charge exerted a strong and statistically significant effect on FTA, with a higher predicted probability of FTA for defendants with longer elapsed times to arraignment and for defendants arrested on charges of theft of services, driving with a suspended license, and local law or Administrative Code offenses.

Fifth-degree marijuana possession and third degree assault were associated with relatively low predicted probabilities of FTA.

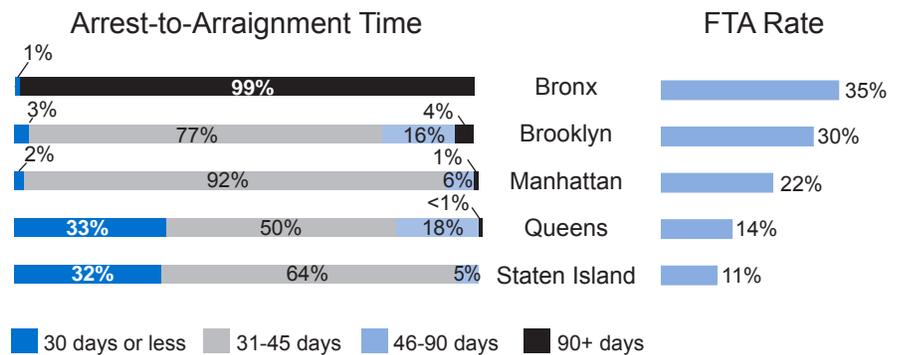
CJA's ability to notify DAT defendants of upcoming arraignment dates also strongly affected FTA. When the NYPD was able to obtain the defendant's telephone number and provide it to CJA for a reminder call, the likelihood of FTA was significantly reduced regardless of elapsed time, charge, and other factors.

Large borough differences were found in the scheduling of DAT arraignments. In 2012, the Bronx scheduled virtually all DAT arraignments more than *three months* following arrest (Figure 7). In Brooklyn and Manhattan, elapsed time tended to fall in the mid-range (31-45 days). Queens and Staten Island had the largest proportions scheduled within a month, with about a third at 30 days or less.

As would be expected from these data, FTA rates were highest in the Bronx (35% in 2012) and lowest in Queens (14%) and Staten Island (11%).

Borough Differences

Figure 7
Arrest-to-Arraignment Time and FTA Rate by Borough: 2012



Higher FTA rates in the Bronx were entirely attributable to long elapsed times. The multivariate analysis showed that the predicted

probability of FTA in the Bronx was *lower* than elsewhere in the City after controlling for arrest-to-arraignment time and other factors.

Implications For the Future of DATs in New York City

These research findings suggest that the NYPD could use DATs more extensively to process non-felony arrests. Their expanded use would also bring New York City more fully into compliance with national standards calling for the presumption of release under the least restrictive conditions.

In recent years, DATs have been issued in larger numbers and for a larger proportion of non-felony arrests than at any time since the mid-1990s. Whether these trends will continue depends in part on the success of an experiment currently underway to issue a DAT in virtually every arrest for low-level marijuana possession (PL 221.10). This is the highest volume arrest charge in the City, so any increase in issuance would have a major impact.

Prior to this initiative, FTA rates associated with PL 221.10 were significantly lower than average. If low FTA rates are maintained despite higher issuance rates, the policy could become

permanent, perhaps even expanding to include other charges.

The pool of potential DAT candidates among suspects arrested on non-marijuana charges could be substantial. Fewer than a third of non-felony arrestees in 2012 were issued a DAT, leaving nearly 200,000 to be held in custody until their arraignment. The size of the pool would be reduced by disqualifying factors such as an ineligible charge, lack of identification, an active or prior warrant, domestic violence, or any of the other reasons enumerated on page 2. Nevertheless, issuance rates well below 50% for most of the eligible DAT charges suggest that there is considerable room for expansion.

The range of eligible charges could also be expanded, since our research showed that charge eligibility is not a good predictor of FTA.

Among the non-felony defendants who were taken into custody in 2011, nearly a third — over 50,000 — were recommended for

release by CJA because they had a low risk of FTA. Although CJA's recommendation assesses post-arraignment risk, it is reasonable to suppose that the factors affecting FTA at arraignment are similar. This suggests that tens of thousands of custodial arrestees could have been issued DATs without high risk of FTA.

The analyses also suggested several ways to lower FTA rates without reducing DAT issuance:

- Reduce scheduled arrest-to-arraignment time, especially in the Bronx, where elapsed time almost always exceeds three months. This would require a cooperative effort by the NYPD and the District Attorney's office.
- Improve the collection of defendants' telephone numbers to facilitate reminder calls prior to the arraignment date. Telephone notification, which is much more effective than notification by letter, is severely hampered by suspects' reluctance to give arresting officers their phone numbers.

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The New York City Criminal Justice Agency, Inc.
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TO:

No. 34 (May 2014)

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Forthcoming:

No. 35 (September 2014) *New York's Credit Card Bail Experiment*
by Mary T. Phillips, Ph.D.

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