

Jerome E. McElroy  
Executive Director

**THE KINGS COUNTY DISTRICT ATTORNEY'S  
VIDEO STATEMENT PROGRAM  
FOR DOMESTIC VIOLENCE CASES**

**Richard R. Peterson, Ph.D.**  
*Project Director*  
*and*  
*Director, Research Department*

**FINAL REPORT**

January 2012

**THE KINGS COUNTY DISTRICT ATTORNEY'S  
VIDEO STATEMENT PROGRAM  
FOR DOMESTIC VIOLENCE CASES**

**Richard R. Peterson, Ph.D.**  
*Project Director  
and  
Director, Research Department*

**Data Management and Research Planning:**

**David James Hauser**  
*Data Analyst*

**Steve Mardenfeld**  
*Senior Data Analyst*

**Research Assistance:**

**Jonathan F. Carmona**  
*Research Assistant*

**Miles H. Riemer-Peltz**  
*Research Assistant*

**Raymond P. Caligiure**  
*Graphics and Production Specialist*

**Administrative Support:**

**Annie Su**  
*Administrative Associate*

**Information Systems Programming:**

**Wayne Nehwadowich**  
*Senior Programmer/Analyst*

*Please cite this report as follows, adapted to your citation style:*  
Peterson, Richard R. The Kings County District Attorney's Video Statement Program  
for Domestic Violence Cases. New York: New York City Criminal Justice Agency.

January 2012

## **ACKNOWLEDGMENTS**

The author completed this study with substantial support and assistance from the Kings County District Attorney's office, the New York City Family Justice Center in Brooklyn, colleagues at the New York City Criminal Justice Agency, and others.

The author thanks the Kings County District Attorney's office for supporting this project and providing resources essential for the study. The author extends special thanks to Deirdre Bialo-Padin, Chief of the Domestic Violence Bureau, who implemented the video statement program for defendants in intimate partner violence and elder abuse cases. She proposed the current study, and provided valuable information, assistance, and advice to ensure its completion. Wanda Lucibello, Chief of the Special Victims Division also helped to develop and implement the study and offered her support and advice. The author also extends special thanks to Kings County District Attorney Charles J. Hynes and to Amy Feinstein, Chief Assistant District Attorney, for their support.

The author is also grateful to the Assistant District Attorneys (ADAs) in the Domestic Violence Bureau who provided advice about how cases are prosecuted, the value of different types of evidence, and legal issues: Deborah Cohen, Bureau Chief, Nancy Greenberg, Executive ADA, Terrence Heller, Criminal Court ADA, Leslie Kahn, Bureau Chief for the Integrated Domestic Violence Court, Michelle L. Kaminsky, Deputy Bureau Chief, Arlene M. Markarian, Bureau Chief of the Elder Abuse Unit, Elisa R. Paisner, Bureau Chief for Major Misdemeanors, Predators, and Fatalities, Edward J. Purce, Counsel, Leah Ross, Senior Felony ADA, Nicole Tartak, Felony and Grand Jury ADA, and others. The author also thanks Andrea McIntosh, Administrative Manager of the Domestic Violence Bureau, who explained the case filing system and arranged for access to the files. The author extends special thanks to Israel Aponte, Clerk of the Domestic Violence Bureau, Garvin A. Gerald, Supervisor of Records Management, and Thomas J. McDonald, Manager of Records Management, who retrieved hundreds of archived case files for this project.

Several ADAs in the Early Case Assessment Bureau (ECAB), including Eric Sonnenschein, Executive ADA, and Bureau Chiefs Kerry J. Puckhaber and James E. Lamb provided information about ECAB operations. John O'Mara, Deputy District Attorney, Investigations Bureau, provided background information about research on defendant statements. The author thanks Anh Banh and Yakov Lerman of the District Attorney's Information Technology Department, who provided the electronic data for the Domestic Violence Bureau Dataset described in chapter 2. Thanks also to Marie Robinson, Help Desk Representative of the Information Technology Department, who arranged for CJA researchers to view the video recordings of defendants' statements.

The author thanks Jennifer DeCarli, Executive Director of the New York City Family Justice Center in Brooklyn, who provided information about the operations of the Center, and Anne Patterson, Director of the Early Victim Engagement (EVE) Project at the Family Justice Center, for information about the operation of EVE. Thanks also to Edward Hill, Fatalities Review Coordinator at the Mayor's Office to Combat Domestic Violence, for data on the operation of the Family Justice Center in Brooklyn. Special thanks to Yolanda Jimenez, Commissioner of the Mayor's Office to Combat Domestic Violence, for her support.

## ***ACKNOWLEDGMENTS, Continued***

Many colleagues at the New York City Criminal Justice Agency also contributed to this project. The author appreciates the work of David J. Hauser at CJA, who prepared data for analysis, managed numerous data files, merged and updated datasets, coded data from the case files in the Kings County District Attorney's office, created variables, analyzed the data and edited the report. David's hard work, programming ability, knowledge of the data, and discussions of the results were essential to completing this project. Steve Mardenfeld contributed to data preparation and analysis at the beginning of the project. Jonathan F. Carmona and Miles H. Riemer-Peltz coded information about the content of the videos and provided research assistance. Miles H. Riemer-Peltz also edited the final manuscript. The author also thanks Marian Gewirtz, Senior Research Analyst at CJA, who graciously offered to prepare the CJA Brooklyn dataset used in this study. Dr. Freda F. Solomon, Senior Research Fellow at CJA, and Dr. Mary Phillips, Deputy Research Director, provided valuable advice on the presentation and interpretation of results. Thanks also to Annie Su who formatted and checked the report and prepared the figures, and to Raymond P. Caligiure who assisted with data cleaning and editing the report. The author extends special thanks to Wayne Nehwadowich who programmed the case processing data. The author also acknowledges other colleagues at CJA who provided advice, information, and editorial suggestions: Jerome E. McElroy, Executive Director of CJA, Mari Curbelo, Esq., Barbara Geller Diaz, Geraldine Ferrara, Esq., Peter Kiers, Frank Sergi, Qudsia Siddiqi, Ph.D., and Jie Xu, Ph.D.

The author would also like to thank Liberty Aldrich, Esq., Director, Domestic Violence and Family Court Programs at the Center for Court Innovation, Amy P. Barasch, Esq., Executive Director, New York State Office for the Prevention of Domestic Violence, Sheriece M. Campbell, MPS, Domestic Violence Resource Coordinator, Criminal Court, Hon. Matthew J. D'Emic, Prof. Jo Dixon, Sociology Department, New York University, Hon. Patricia E. Henry, Karen Kleinberg, Esq., Melissa Labriola, Associate Director of Research at the Center for Court Innovation, Jennifer G. Long, Esq., Director, AEquitas, Hon. Esther M. Morgenstern, and Chris S. O'Sullivan, Ph.D., for their assistance in providing background information for this research project.

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

## TABLE OF CONTENTS

<b>I. Introduction</b>	1
A. The Early Case Assessment Bureau	1
B. The Video Statement Program	2
C. The Domestic Violence Bureau	7
D. Review of the Literature	11
E. Research Plan	14
<b>II. Methodology</b>	17
A. Description of Datasets	17
B. Merging the Datasets and Selecting Cases for Analysis	23
C. Identifying Intimate Partner Violence, Elder Abuse, and “Other” Domestic Violence Cases	25
<b>III. Defendant and Case Characteristics</b>	29
A. A Comparison of Characteristics of Video and Non-Video Cases	32
B. A Comparison of Characteristics of Cases in which the Defendant Made a Video Statement to Those in which the Defendant Refused to Make a Statement	37
C. Summary and Discussion of Findings	40
<b>IV. Case Outcomes</b>	45
A. Comparing Case Outcomes in Video and Non-Video Cases	45
B. Comparing Case Outcomes for Defendants Who Made a Substantive Statement to Case Outcomes for Defendants Who Refused to Make a Statement	53
C. Summary and Discussion of Findings	58
<b>V. The Impact of Video Statements on Convictions in DV Bureau Cases</b>	61
A. Conviction Rates by Court of Disposition	61
B. Models Predicting the Likelihood of Conviction	66
C. Models Predicting the Likelihood of Criminal Conviction	76
D. The Impact of the Content of Video Statements on the Likelihood of Conviction	78
E. Summary and Discussion of Findings	81

*Table of Contents Continues on Next Page*

## TABLE OF CONTENTS, *CONTINUED*

<b>VI. Video Statements, Victim Participation and Convictions .....</b>	<b>85</b>
A. Overview of the DV Bureau Case File Sample .....	85
B. Models Predicting the Likelihood of Conviction.....	86
C. The Impact of the Content of Video Statements on the Likelihood of Conviction.....	91
D. Summary and Discussion of Findings.....	92
<b>VII. Conclusion.....</b>	<b>95</b>
A. Major Findings .....	95
B. Discussion .....	96
C. Best Practices for Prosecuting Intimate Partner Violence and Elder Abuse Cases ..	101
<b>VIII. References .....</b>	<b>105</b>
<b>Appendix A: Family Justice Center Brochure.....</b>	<b>107</b>
<b>Appendix B: Determining the Top Charge .....</b>	<b>109</b>
<b>Appendix C: Logistic Regression Analysis.....</b>	<b>111</b>
<b>Appendix D: Expanding the Video Statement Program .....</b>	<b>115</b>

## LIST OF TABLES

Table 1-1	Video Status of Cases in DV Bureau by Arrest Shift .....	4
Table 1-2	Video Status of Cases in DV Bureau by Time Period .....	5
Table 2-1	Summary of Information Available in Each Dataset .....	19
Table 2-2	DAT Cases Excluded from Each Dataset.....	24
Table 3-1	Cases Excluded from Analysis, by Reason for Exclusion and Video Status .....	30
Table 3-2	Cross-Complaints Excluded from Analysis, by Reason for Exclusion and Video Status .....	31
Table 5-1	Logistic Regression Model Predicting Likelihood of Conviction in Criminal Court Domestic Violence Cases, Excluding Cross-Complaints.....	70
Table 5-2	Logistic Regression Model Predicting Likelihood of Conviction for Released Defendants in Criminal Court Domestic Violence Cases, Excluding Cross-Complaints .....	73
Table 5-3	Logistic Regression Model Predicting Likelihood of Conviction for Released Defendants in Integrated Domestic Violence Court Cases, Excluding Cross-Complaints .....	75
Table 6-1	Logistic Regression Model Predicting Likelihood of Conviction for Released Defendants in Criminal Court Domestic Violence Cases in DV Bureau Case File Sample, Excluding Cross-Complaints .....	88
Table D-1	Estimating the Conviction Rate in Criminal Court if the Video Statement Program is Expanded to Include All DV Bureau Cases, Excluding Cross-Complaints .....	118
Table D-2	Estimating the Conviction Rate in IDV Court if the Video Statement Program is Expanded to Include All DV Bureau Cases, Excluding Cross-Complaints .....	120

## LIST OF FIGURES

FIGURE 2-1	Overview of Brooklyn Arrests and Datasets .....	18
FIGURE 3-1	Defendants Brought to ECAB Annex by Injuries.....	33
FIGURE 3-2	Defendants Brought to ECAB Annex by Whether Complaining Witness(es) Received Medical Treatment for Injuries .....	34
FIGURE 3-3	Defendants Brought to ECAB Annex by Whether Photos Were Taken of Complaining Witness(es)' Injuries .....	34
FIGURE 3-4	Defendants Brought to ECAB Annex by Penal Law Article of Most Severe Arrest Charge.....	34
FIGURE 3-5	Defendants Brought to ECAB Annex by Cross-Complaint Status .....	35
FIGURE 3-6	Defendants Brought to ECAB Annex by Location of Arrest .....	35
FIGURE 3-7	Defendants Brought to ECAB Annex by Delay in Arrest.....	36
FIGURE 3-8	Defendants Brought to ECAB Annex by Cohabitation Status .....	36
FIGURE 3-9	Defendants Brought to ECAB Annex by Type of DV Case .....	36
FIGURE 3-10	Defendants Brought to ECAB Annex by Incident-Reporting Method .....	37
FIGURE 3-11	Defendants Making a Substantive Video Statement by Injuries .....	38
FIGURE 3-12	Defendants Making a Substantive Video Statement by Penal Law Article of Most Severe Arrest Charge .....	38
FIGURE 3-13	Defendants Making a Substantive Video Statement by Cross-Complaint Status .....	39
FIGURE 3-14	Defendants Making a Substantive Video Statement by Delay in Arrest .....	39
FIGURE 3-15	Defendants Making a Substantive Video Statement by Severity of Most Severe Arrest Charge .....	39
FIGURE 3-16	Defendants Making a Substantive Video Statement by Number of Arrest Charges .....	40

***List of Figures Continues on Next Page***



## **LIST OF FIGURES, *CONTINUED***

FIGURE 3-17	Defendants Making a Substantive Video Statement by Incident-Reporting Method.....	40
FIGURE 4-1	Defendants Charged with a Felony at Arraignment in Video and Non-Video Cases .....	45
FIGURE 4-2	Penal Law Article of Most Severe Arraignment Charge in Video and Non-Video Cases .....	46
FIGURE 4-3	Defendants in Continued Cases with Bail Set at Arraignment in Video and Non-Video Cases .....	46
FIGURE 4-4	Release Status for Defendants in Continued Cases in Video and Non-Video Cases .....	46
FIGURE 4-5	Released Defendants Who Were Released on Recognizance in Video and Non-Video Cases .....	47
FIGURE 4-6	Released Defendants Who Failed to Appear for at Least One Scheduled Court Appearance in Video and Non-Video Cases .....	47
FIGURE 4-7	Released Defendants Who Were Arrested for a New DV Offense Prior to Case Disposition in Video and Non-Video Cases .....	47
FIGURE 4-8A	Case Dispositions in Video and Non-Video Cases .....	48
FIGURE 4-8B	Case Dispositions in “Other” DV Cases and Non-DV Cases .....	49
FIGURE 4-9	Conviction Charge Severity in Video and Non-Video Cases .....	49
FIGURE 4-10	Conviction Charge Severity Lower than Arraignment Charge Severity in Video and Non-Video Cases.....	50
FIGURE 4-11	Convicted Defendants Sentenced to Jail or Prison in Video and Non-Video Cases .....	50
FIGURE 4-12	Conviction Rates by Cross-Complaint Status in Video and Non-Video Cases .....	51

***List of Figures Continues on Next Page***

## **LIST OF FIGURES, *CONTINUED***

FIGURE 4-13	Conviction Rates by EVE Time Period in Video and Non-Video Cases, Excluding Cross-Complaints.....	52
FIGURE 4-14	Defendants in Continued Cases with Bail Set at Arraignment by Whether Defendant Made a Substantive Statement, Excluding Cross-Complaints .....	53
FIGURE 4-15	Release Status for Defendants in Continued Cases by Whether Defendant Made a Substantive Statement, Excluding Cross-Complaints.....	53
FIGURE 4-16	Released Defendants Who Were Released on Recognizance by Whether Defendant Made a Substantive Statement, Excluding Cross-Complaints .....	54
FIGURE 4-17	Released Defendants Who Failed to Appear for at Least One Scheduled Court Appearance by Whether Defendant Made a Substantive Statement, Excluding Cross-Complaints.....	54
FIGURE 4-18	Released Defendants Who Were Arrested for a New DV Offense Prior to Case Disposition by Whether Defendant Made a Substantive Statement, Excluding Cross-Complaints.....	55
FIGURE 4-19	Case Dispositions by Whether Defendant Made a Substantive Statement, Excluding Cross-Complaints.....	55
FIGURE 4-20	Conviction Charge Severity by Whether Defendant Made a Substantive Statement, Excluding Cross-Complaints .....	56
FIGURE 4-21	Conviction Charge Severity Lower than Arraignment Charge Severity by Whether Defendant Made a Substantive Statement, Excluding Cross-Complaints.....	56
FIGURE 4-22	Penal Law Article of Most Severe Conviction Charge by Whether Defendant Made a Substantive Statement, Excluding Cross-Complaints.....	57
FIGURE 4-23	Convicted Defendants Sentenced to Jail or Prison by Whether Defendant Made a Substantive Statement, Excluding Cross-Complaints.....	57
FIGURE 4-24	Conviction Rates by EVE Time Period by Whether Defendant Made a Substantive Statement, Excluding Cross-Complaints.....	58

***List of Figures Continues on Next Page***

## LIST OF FIGURES, *CONTINUED*

FIGURE 5-1	Conviction Rate in DV Bureau Cases by Video Status and Court Type, Excluding Cross-Complaints.....	65
FIGURE 5-2	Effect of Video Statement Program on Convictions for Released Defendants in Criminal Court Domestic Violence Cases, Excluding Cross-Complaints .....	74
FIGURE 5-3	Effect of Video Statement Program on Convictions for Released Defendants in Integrated Domestic Violence Court Cases, Excluding Cross-Complaints .....	76
FIGURE 5-4	Criminal Conviction Rate for Released Defendants in DV Bureau Cases by Video Status and Court Type, Excluding Cross-Complaints.....	77
FIGURE 5-5	Conviction Rate for Released Defendants in Video Cases Disposed in Criminal Court by Whether Defendant Made a Substantive Statement, Excluding Cross-Complaints.....	78
FIGURE 5-6	Content of Video Statement in Cases Disposed in Criminal Court for Released Defendants Who Made a Substantive Video Statement, Excluding Cross-Complaints.....	79
FIGURE 5-7	Conviction Rate in Cases Disposed in Criminal Court for Released Defendants Who Made a Substantive Video Statement by Content of Statement, Excluding Cross-Complaints.....	80
FIGURE 6-1	Effect of Video Statement Program on Convictions for Released Defendants in Criminal Court Domestic Violence Cases in DV Bureau Case File Sample, Excluding Cross-Complaints.....	88
FIGURE 6-2	Effect of Video Statement Program on Convictions for Released Defendants in Criminal Court Domestic Violence Cases When the Victim is Not Participating in the Prosecution, Excluding Cross-Complaints.....	90
FIGURE D-1	Projected Effect on the Conviction Rate in Criminal Court if the Video Statement Program is Expanded to Include All DV Bureau Cases, Excluding Cross-Complaints.....	118
FIGURE D-2	Projected Effect on the Conviction Rate in Integrated Domestic Violence Court if the Video Statement Program is Expanded to Include All DV Bureau Cases, Excluding Cross-Complaints.....	119

[This page intentionally left blank]

## EXECUTIVE SUMMARY

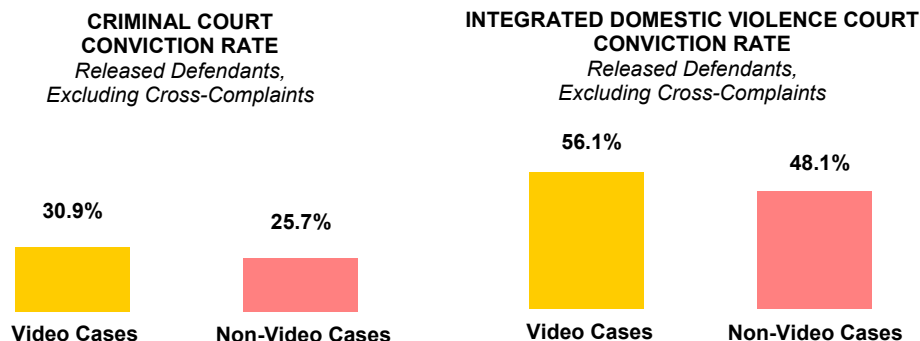
### THE KINGS COUNTY DISTRICT ATTORNEY'S OFFICE VIDEO STATEMENT PROGRAM FOR DOMESTIC VIOLENCE CASES

Richard R. Peterson, Ph.D.

In November 2007, the Domestic Violence (DV) Bureau of the Kings County District Attorney's Office established a video statement program for defendants in cases involving intimate partner violence and elder abuse. Under this program, an Assistant District Attorney asks selected defendants to make a statement about the incident that led to the arrest. The District Attorney's office records the defendants on video, and retains the recorded statements for use as evidence in their Criminal Court cases. The goal of the video statement program is to strengthen the evidence available, and to increase the conviction rate, in DV Bureau cases. In 2009, the program interviewed about 14% of defendants in DV cases.

With the assistance of the District Attorney's Office, the New York City Criminal Justice Agency has conducted a study assessing the impact of the video statement program on convictions in criminal cases of intimate partner violence and elder abuse in Brooklyn, New York.

#### THE VIDEO STATEMENT PROGRAM INCREASED CONVICTIONS IN DV BUREAU CASES



- In Criminal Court, video statements increased the conviction rate in intimate partner violence and elder abuse cases by 5.2 percentage points, from 25.7% to 30.9%.
- Video statements increased the conviction rate in Criminal Court primarily when the victim was *not* participating in the prosecution. Prosecuting cases without victim participation is common, and the video statement program is especially valuable in obtaining convictions in these difficult cases.
- In the Integrated Domestic Violence Court, video statements increased the conviction rate by 8 percentage points, from 48.1% to 56.1%.
- These results exclude cross-complaints, which have a very low conviction rate (4.5%), and cases in which the defendant was held in custody from arrest to disposition, which have a very high conviction rate (84%). Video statements did not increase the conviction rate for cross-complaints or for the cases of defendants held in custody.

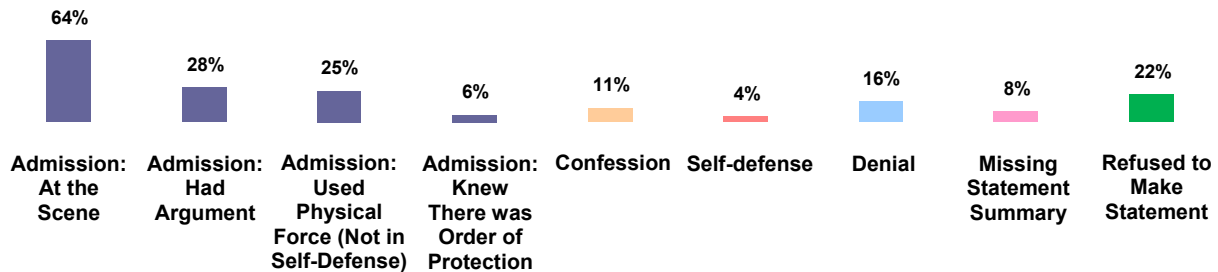
## EXECUTIVE SUMMARY, *CONTINUED*

### MOST DEFENDANTS ANSWERED QUESTIONS AND MADE ADMISSIONS

#### Content of Defendants' Video Statements in DV Bureau Cases

*Released Defendants, Excluding Cross-Complaints*

(N = 1,864; Statements may be classified in more than one category)



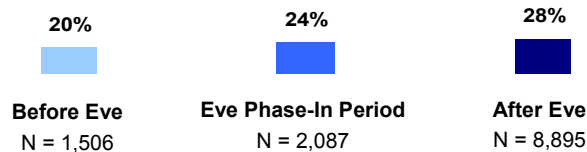
- Most defendants' statements included admissions; about 11% were confessions.
- About 4% of defendants claimed self-defense, and 16% denied the charges.
- Only 22% of defendants requested an attorney or refused to answer questions.

### THE EARLY VICTIM ENGAGEMENT PROJECT

In March 2008, the Mayor's Office to Combat Domestic Violence and the DA's Office established the Early Victim Engagement (EVE) Project with funding from the U.S. Department of Justice Office on Violence Against Women. The EVE staff contacts victims immediately after arraignment to provide them with information about the case, advise them about services and safety planning, and encourage their participation in the prosecution of the case. Conviction rates increased after the EVE Project was established.

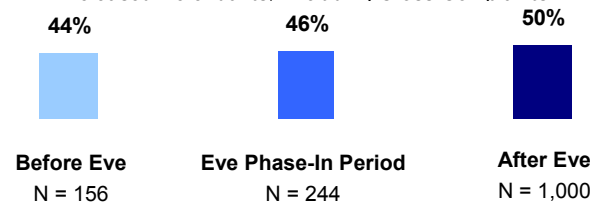
#### CRIMINAL COURT CONVICTION RATE

*Released Defendants, Excluding Cross-Complaints*



#### INTEGRATED DOMESTIC VIOLENCE COURT CONVICTION RATE

*Released Defendants, Excluding Cross-Complaints*



- Before the EVE project was established, the Criminal Court conviction rate was 20%. During the 4-month EVE phase-in period, the conviction rate increased to 24%. Once EVE became fully operational, the conviction rate increased to 28%.
- Before EVE was established, the Integrated Domestic Violence Court conviction rate was 44%. During the EVE phase-in period, the conviction rate was 46%. Once EVE became fully operational, the conviction rate increased to 50%.

## **I. INTRODUCTION**

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

The goal of the video statement program is to improve the evidence available in the intimate partner violence and elder abuse cases handled by the Domestic Violence Bureau. These cases are generally difficult to prosecute. Victims are often reluctant to participate in the prosecution, and other types of evidence (such as eyewitness testimony, photographs, or medical reports) are often insufficient or unavailable. Having a video statement from the defendant may enable the District Attorney's office to prosecute the case without the participation of the victim. Even when the victim is participating, a video statement from the defendant may strengthen the case and increase the likelihood of obtaining a conviction.

This report describes the results of a study assessing the impact of the video statement program on dispositions in criminal cases of intimate partner violence and elder abuse in Brooklyn, New York. The study examines whether the conviction rate is higher for cases in the video statement program than for those that are not, even after taking into account the influence on the conviction rate of other types of evidence, such as an audio recording of a 911 emergency call, evidence of victim injuries, and the victim's participation in the prosecution.

### **A. The Early Case Assessment Bureau**

The video statement program is integrated into the case screening process in the District Attorney's Early Case Assessment Bureau (ECAB). This section of the report describes how ECAB (also known as the complaint room) screens the cases of most defendants arrested in Brooklyn. The next section of the report will explain how ECAB conducts an enhanced screening for some defendants in intimate partner violence and elder abuse cases selected for the video statement program.

When a police officer or detective makes an arrest in Brooklyn and holds the defendant for arraignment, the arresting officer completes an arrest report, which provides information about the incident, the charges, the defendant, the circumstances of the arrest, etc. The officer faxes this report, along with other required paperwork from the police precinct to New York Police Department (NYPD) officers in ECAB. ECAB is located in the District Attorney's office and is open from 7 a.m. until midnight or 1 a.m. seven days a week, including holidays.

The NYPD officers in ECAB receive the paperwork for every arrest in Brooklyn. These officers assemble the papers for each arrest, verify that the paperwork is complete, and give the paperwork to an ECAB expeditor. The expeditor then assigns the arrest to a screener who reviews the case and considers whether the DA's office will prepare a complaint. Many of the screeners are paralegals or Assistant District Attorneys, but there are also legal interns and pro bono attorneys who work as case screeners. The screener interviews the arresting officer by telephone, as well as any complaining witnesses and eyewitnesses who can be reached by telephone. If the evidence is not legally sufficient to go forward, a supervising Assistant District Attorney (ADA) in ECAB declines prosecution. If the evidence is sufficient to proceed with prosecution, the screener prepares a complaint. The screener enters information about each prosecuted case, including a narrative description of the incident, into an electronic database and prints an ECAB summary sheet. The screener also assigns each case to an appropriate prosecution bureau. When the screener's work on a case is complete, an ECAB supervisor reviews and approves the complaint. After the supervising ADA approves it, the complaint is sent to the Criminal Court at 120 Schermerhorn Street, along with the ECAB summary sheet and the arrest paperwork. The papers are prepared for arraignment and the Criminal Court Clerk assigns a docket number to the court case.

While ECAB screening is taking place, NYPD transports the defendant from the precinct to Central Booking, which was located in the Criminal Court building at 120 Schermerhorn Street during the period covered by this study.<sup>1</sup> At Central Booking, an NYPD officer searches and photographs the defendant, and members of the Fire Department's Emergency Medical Services check the defendant's physical health. An interviewer from the New York City Criminal Justice Agency (CJA) interviews the defendant regarding his or her community ties and prepares a release recommendation for the court. When the case is ready for arraignment, an NYPD officer brings the defendant to the Criminal Court arraignment part. Except in unusual circumstances (e.g., defendants hospitalized after arrest), the court arraigns the defendant within 24 hours of the arrest.

## B. The Video Statement Program

In 2007, the District Attorney's office decided to begin taking video statements from some defendants in intimate partner violence and elder abuse cases handled by the Domestic Violence (DV) Bureau. The New York State Division of Criminal Justice Services (DCJS) provided grant funds for the purchase of equipment. On November 27, 2007, the office opened an ECAB Annex in the Criminal Court Building at 120 Schermerhorn Street. The Annex conducts an enhanced screening process that includes taking video statements from defendants in selected DV Bureau cases (see discussion below explaining how ECAB expeditors decide which DV Bureau cases to

---

<sup>1</sup> In January 2010 Central Booking was temporarily re-located across the street in the Brooklyn House of Detention while the Office of Court Administration completes renovations in the Criminal Court building. This report describes the screening process as it worked during the period of this study, when Central Booking was located at 120 Schermerhorn Street.



send to the Annex). The Annex houses offices staffed by one or two ECAB ADAs who work as screeners. Each office is equipped with a video camera to record the defendant interviews. When the ECAB expeditor in the District Attorney's office determines that a case meets the eligibility criteria, he or she faxes the arrest paperwork to the ECAB Annex. An ECAB ADA in the Annex then completes the screening process.

The screening process for DV Bureau cases in the Annex is similar to the process used for DV Bureau cases in ECAB, with three notable exceptions. First, the arresting officer comes to the Annex and the screener interviews him or her about the case in person, rather than by telephone. This may enable the screener to obtain detailed information from the arresting officer and may improve the preparation and development of the case. Second, after discussing the incident with the arresting officer in person and, if possible, speaking to the victim by telephone, the screener asks the defendant to make a statement about the incident, and records the defendant's statement on video. Third, the Annex operates only on weekdays, excluding holidays, from 8:30 a.m. to 5 p.m. and has limited capacity. The Annex screeners cannot handle all eligible DV Bureau cases that are available. The maximum number of cases that the two ADAs in the ECAB Annex can screen in one day is about 12.

When an Annex screener is ready to take a statement, the arresting officer accompanies the defendant from the holding cell in Central Booking to the screener's office on another floor. Because the arresting officer does not carry a gun in Central Booking, the officer brings the defendant from Central Booking to the screener's office in leg shackles and handcuffs. Depending on the preference of the screener, the officer may remove the defendant's handcuffs during the interview, but does not remove the leg shackles. The arresting officer remains with the defendant throughout the interview. Defendants who need an interpreter are provided with one, depending on availability. During the time period covered by this study, the ECAB Annex was often able to use court interpreters; employees of the District Attorney's office were also sometimes used as interpreters. To begin the interview, the video camera starts recording and the screener Mirandizes the defendant. If the defendant asks for an attorney and/or refuses to make a statement, the interview is concluded and the camera stops recording. If the defendant agrees to make a statement, recording continues and the screener asks the defendant to describe the incident that led to the arrest. The screener asks occasional questions to clarify or follow up on parts of the statement, often using information obtained from the arresting officer and the victim. The questions are designed to obtain details of the defendant's version of the events.

To determine whether to send a case to the ECAB Annex for screening, the expeditor examines the information on the arrest report. When the relationship between the defendant and the victim qualifies it as a case that will be assigned to the DV Bureau, the expeditor may send the case to the ECAB Annex. The eligible cases include those involving crimes against intimate partners (relationships between those who are currently or formerly married, cohabiting or dating, including same-sex

partners) and elder abuse cases (crimes against persons 60 or older committed by an intimate partner or other family member).

Because the ECAB Annex is only open on weekdays from 8:30 a.m. to 5 p.m., and because it has limited capacity, expeditors send only some of the eligible DV Bureau arrests to the Annex. Although processing times may vary, arresting officers typically need several hours to write up an arrest, and NYPD needs additional time to transfer the defendant to Central Booking. Only rarely is an arrest made by officers on a weekday shift (Monday through Friday, 8 a.m. to 4 p.m.) processed quickly enough to reach the Annex before it closes at 5 p.m. It is also extremely rare for a weekend arrest (4 p.m. Friday to 4 p.m. Sunday) to be processed so slowly that the defendant is still available to be sent to the ECAB Annex on Monday morning. Therefore, the arrests sent to the Annex on a given weekday are almost exclusively those made the night before on the 4 p.m. to midnight shift or on the midnight to 8 a.m. shift. However, expeditors do not send all eligible overnight arrests to the ECAB Annex. When the volume of eligible overnight arrests is high, the ECAB Annex may not have sufficient staff to handle all of them—screeners can process only two cases at a time. Moreover, some overnight arrests arrive in Central Booking too late for processing in the ECAB Annex.

The percentage and number of DV Bureau arrests that expeditors sent to the ECAB Annex vary considerably, depending on the shift during which the defendant was arrested (see Table 1-1). Expeditors sent almost 30% of the overnight arrests to the ECAB Annex, compared to only 2% of weekday arrests. Expeditors sent only 12 weekend arrests to the ECAB Annex (all 12 arrests were made during a Sunday day shift, data not shown). Overall, expeditors sent about 1 out of 8 DV Bureau arrests (12.6%) to the ECAB Annex. These data cover the time period that will be the focus of this study: from the opening of the ECAB Annex on November 27, 2007 to December 31, 2009.

**TABLE 1-1: VIDEO STATUS OF CASES IN DV BUREAU BY ARREST SHIFT**  
November 27, 2007 to December 31, 2009

<b>VIDEO STATUS OF CASES IN DV BUREAU</b>	<b><u>OVERNIGHT ARREST</u> 4P-MIDNIGHT SU-TH OR MIDNIGHT-8A MO-FRI</b>	<b><u>WEEKDAY ARREST</u> 8A-4P MO-FRI</b>	<b><u>WEEKEND ARREST</u> 4P FRI TO 4P SUN</b>	<b><u>ALL ARRESTS</u></b>
Video Case, sent to ECAB Annex	29.2% (N = 2,468)	1.8% (N = 121)	0.2% (N = 12)	12.6% (N = 2,601)
Non-Video Case, not sent to ECAB Annex	70.8% (N = 5,988)	98.2% (N = 6,510)	99.8% (N = 5,572)	87.4% (N = 18,070)
Total, All DV Bureau Cases	100.0% (N = 8,456)	100.0% (N = 6,631)	100.0% (N = 5,584)	100.0% (N = 20,671)

The percentages shown in Table 1-1 represent averages across the first 25 months of the operation of the ECAB Annex. Semi-annual data for all arrest shifts (see Table 1-2) show that the percentage of eligible cases sent to the ECAB Annex was lower in the initial period of operation, and rose over time. In November and December 2007, when the Annex was beginning operations, expeditors sent only about 5% of DV Bureau cases to the Annex. During the first half of 2008, the percentage increased slightly, to about 8.5%. Beginning in the second half of 2008, the percentage increased significantly—expeditors sent over 15% of DV Bureau cases to the ECAB Annex. A portion of this increase may be attributable to the decision to send detective arrests to the ECAB Annex beginning on July 10, 2008. Until that date, expeditors sent only arrests by patrol officers to the ECAB Annex. In 2009, the percentage slipped a bit, but remained around 14%. These data show that once the ECAB Annex routinized its operations, it received a relatively steady flow of cases.

**TABLE 1-2: VIDEO STATUS OF CASES IN DV BUREAU BY TIME PERIOD**  
November 27, 2007 to December 31, 2009

<b>VIDEO STATUS OF CASES IN DV BUREAU</b>	<u>2007</u> (NOV- DEC)	<u>2008</u> 1 <sup>ST</sup> HALF	<u>2008</u> 2 <sup>ND</sup> HALF	<u>2009</u> 1 <sup>ST</sup> HALF	<u>2009</u> 2 <sup>ND</sup> HALF
Video Case	4.9% (N = 36)	8.5% (N = 427)	15.5% (N = 732)	14.2% (N = 722)	13.5% (N = 684)
Non-Video Case	95.1% (N = 697)	98.2% (N = 4,611)	84.5% (N = 4,004)	85.8% (N = 4,364)	86.5% (N = 4,394)
Total, All DV Bureau Cases	100.0% (N = 733)	100.0% (N = 5,038)	100.0% (N = 4,736)	100.0% (N = 5,086)	100.0% (N = 5,078)

Although the DA's office would probably prefer to have *all* defendants in DV Bureau cases brought to the Annex, the constraints of time and resources have thus far prevented this. However, the limited scope of the video statement program has created an ideal opportunity for a research evaluation. Because some DV Bureau cases are sent to the Annex and others are not, we can compare the outcomes of the two types of cases. If the video statements strengthened the evidence for the prosecution and made a conviction more likely, we should see a higher conviction rate in cases sent to the ECAB Annex for a video statement than in other DV Bureau cases.

To enable us to draw valid conclusions about the impact of the video statement program, we must address several important issues. One is whether there were differences between the types of cases sent to the ECAB Annex and other DV Bureau cases. An obvious factor that we will have to account for is arrest day and time, since almost all arrests sent to the Annex were overnight arrests. We will have to determine if overnight arrests were different from other arrests in any ways that affected case dispositions. Moreover, as is shown in Table 1-1, even during the hours the ECAB Annex was open, expeditors sent only about 30% of DV Bureau cases there for

screening. How did expeditors select these cases? First, ECAB expeditors sent defendants to the Annex for an interview only if they spoke English or a language for which an interpreter was available. Interpreters were generally available for languages commonly spoken in Brooklyn, such as Spanish, Russian, and Chinese. During the period of this study, when the Annex was located in the courthouse, court interpreters for many additional languages were often available. Although we do not have data on the use of interpreters, it seems unlikely that difficulty finding interpreters prevented a significant number of defendants from being questioned on video.

Once it was determined that a defendant spoke English or that an appropriate interpreter was available, ECAB expeditors generally sent DV Bureau cases to the Annex on a “first-come” basis, filling up all available time in the Annex when there was sufficient case volume. When it became clear that the ECAB Annex could not handle additional cases that day, expeditors assigned the remaining DV Bureau cases to the standard ECAB screening process. On occasion, the ECAB expeditor had multiple DV Bureau cases that she or he could send to the Annex, but the Annex did not have the capacity to process them all simultaneously. Under these circumstances, the expeditors gave priority to cases involving victim injury and/or assault, and to cross-complaints.<sup>2</sup> In chapter 3, we will present data showing that expeditors were more likely to send these types of cases to the ECAB Annex.

A second issue we must address is whether there have been any significant changes in the operation of the video statement program since its inception. According to the Chief of the Domestic Violence Bureau, the operation of the Annex, the process for selecting cases, and the process for conducting the interviews have remained substantially the same since the start of the program.<sup>3</sup> Even the temporary relocation of Central Booking and the Annex in January 2010 has not changed the operation of the video statement program, with one exception: the program now occasionally relies on police officers as interpreters, because court staff is no longer available. As a result, expeditors are much less likely to send defendants who speak languages other than English to the ECAB Annex, and the variety of languages for which police officers are able to serve as interpreters is much more limited. (Note that the relocation, and the difficulty in obtaining interpreters, occurred *after* the time period covered by this study—November 27, 2007 to December 31, 2009).

A third issue we will address is whether there have been any significant changes in the operation of the DV Bureau that would affect how it handled both ECAB Annex cases and other cases. We turn now to a description of the DV Bureau, discussing both its general approach to handling cases and recent changes in its practices.

---

<sup>2</sup> In cross-complaints, the police arrest two (or more) parties to an incident, and charge each party with a crime against the other.

<sup>3</sup> However, as noted above, expeditors did not begin to send detective arrests to the ECAB Annex until July 10, 2008. Furthermore, the Chief of the DV Bureau reports that in 2010 and 2011, after the period covered by this study, the volume of detective arrests in the ECAB Annex declined significantly.

### C. The Domestic Violence Bureau

The DV Bureau processes its cases using mandatory case filing and mandatory prosecution. (See Peterson and Dixon 2005 for a more complete discussion of these practices and of how they differ from practices used in other jurisdictions). Combining mandatory case filing with mandatory prosecution ensures that almost all intimate partner violence and elder abuse arrestees are subject to court oversight.

Under the mandatory case filing policy, ADAs in ECAB file charges for almost all arrests assigned to the DV Bureau, whether or not the victim wants charges filed, as long as the evidence in the case meets the legal threshold for filing. After ECAB files charges, the court docket the case and arraigns the defendant. Domestic violence cases, including intimate partner violence and elder abuse cases, are rarely disposed at arraignment and are therefore almost always scheduled for subsequent court appearances.<sup>4</sup> After arraignment, the DA's office assigns each intimate partner violence and elder abuse case to an ADA in the DV Bureau, who is responsible for prosecution of the case. The assigned ADA reviews the evidence in the case, attempts to interview the complaining witness(es), and gathers additional information and evidence, such as photos of injuries, medical reports, 911 recordings, etc.

In cases with felony complaint charges, the ADA consults with a Bureau supervisor and decides whether to go to the grand jury for an indictment, or whether to reduce the charges and proceed in Criminal Court. If the defendant is being held in custody, and an indictment is not obtained within 5 days of the arrest, the Criminal Procedure Law (CPL §180.80) requires that the defendant be released. The grand jury may decide to take no action, to dismiss the case, to return it to Criminal Court, or to hand down an indictment. If the grand jury hands down an indictment, the case is transferred to Supreme Court and is processed in a specialized DV part. There are two specialized DV parts for indicted cases in Supreme Court (Part 4 and Part DV), although the same judge presides over both parts.

Most DV Bureau cases are not charged as felonies and do not go to the grand jury. After arraignment, the court generally transfers non-felony DV Bureau cases to a specialized DV part in Criminal Court. There are two specialized DV parts in Criminal Court (Parts DV1 and DV2), each with its own presiding judge. The court also transfers a small proportion of DV Bureau cases to one of two Integrated Domestic Violence (IDV) parts in Supreme Court (IDV and IDV2), each with its own presiding judge. The IDV Court parts handle cases of defendants who have Family Court custody, visitation, or family offense petitions pending, and/or a concurrent Supreme Court matrimonial case. All of a defendant's related cases are scheduled for appearances on the same day, and the IDV judge makes decisions in all the cases. In IDV Court cases, the complaining witness, although not a party in the criminal case, is typically present in the courtroom for the Family Court petition and/or matrimonial case, and is represented by a lawyer.

---

<sup>4</sup> We will discuss the rare exceptions in chapter 5.

The DV Bureau uses mandatory prosecution to prosecute its cases, i.e., if the Bureau files charges, an ADA will keep the case active and attempt to prosecute it to a disposition, even if the victim requests that the case be dropped.<sup>5</sup> Combining mandatory case filing with mandatory prosecution allows the court and the DA's office to monitor defendants and protect victims. The court routinely issues an order of protection for the duration of the case. While the case is pending, ADAs encourage victims to participate in the prosecution and refer them to on-site services (counseling, housing assistance, safety planning, etc.) that increase victim safety even if the court subsequently dismisses the case.

If the victim does not participate in the prosecution, ADAs attempt to proceed with an evidence-based prosecution, using other types of evidence to obtain a conviction. ADAs may rely on photographs, police testimony, eyewitness testimony, medical reports, or physical evidence in combination with "hearsay exceptions" (such as "excited utterances" on 911 recordings, calls from jail, and defendants' spontaneous statements to police officers). However, in many cases, victims do not participate and other evidence is unavailable. When it becomes clear that further work will not produce sufficient evidence for a conviction, the ADA sets the case file aside but keeps the case active in court as long as legally permissible.<sup>6</sup> While the case is active, the victim has an order of protection against the defendant, the court monitors the defendant through regular court appearances, and the victim has an opportunity to consider whether to participate in the prosecution. Unless the defendant re-offends, the victim decides to participate, or new evidence becomes available, the court ultimately dismisses these cases.

The DV Bureau attempts to contact victims to ask them to come into the office for an intake appointment with the Assistant District Attorney assigned to the case. During the intake appointment, the ADA gathers background information about the victim, the defendant, the incident, and the history of domestic violence in the relationship. The ADA also provides information about criminal justice case processing, orders of protection issued at arraignment, victim testimony before a grand jury or at trial, and services available to the victim (see later discussion of the Victim Services Unit and the Family Justice Center). Victims may sign a corroborating affidavit, supporting the facts of the case as described in the complaint and indicating their willingness to proceed with the case. If victims do not want to participate in the prosecution, they may sign a waiver stating that they do not wish to proceed with the case. The waiver is not a legal document. It is a statement of the victim's intent and does not bind the victim or the District Attorney's office, nor does it preclude a victim from later deciding to participate with the prosecution. Occasionally, victims sign a waiver for safety reasons, i.e., to

---

<sup>5</sup> Under rare circumstances (e.g., a subsequent finding that the complaining witness filed a false report), the District Attorney's office may ask the court to dismiss the case.

<sup>6</sup> Generally, the District Attorney's office can keep cases active up to 90 days if the top charge is an A misdemeanor, 60 days if the top charge is a B misdemeanor, and 30 days if it is a violation.

convince the defendant that they are not responsible for the prosecution of the case, and that the defendant has no reason to retaliate against the victim.

Victims who have signed a corroborating affidavit sometimes decide later not to participate and some return to the office to sign a waiver. Similarly, some who have signed a waiver later decide to participate and return to the office to sign a corroborating affidavit. Some victims choose not to sign either a corroborating affidavit or a waiver. Because of the Bureau's mandatory prosecution of intimate partner violence and elder abuse cases, however, ADAs keep all filed cases on the court docket whether or not the victim signs a corroborating affidavit or a waiver.

To provide a coordinated community response, the DV Bureau is part of Brooklyn's Family Justice Center, which provides services to victims of intimate partner violence and elder abuse. KCDA and the Mayor's Office to Combat Domestic Violence jointly support and manage the Family Justice Center, which was established with a grant from the U.S. Department of Justice Office of Violence Against Women. Through its affiliations with nearly 40 nonprofit service providers, the Center offers on-site assistance with visitation and custody issues, public assistance, job training, education, housing, immigration, legal issues, individual and group counseling and other services. (See Appendix A for a copy of the Family Justice Center's brochure, including a list of all affiliated service providers.)

The Family Justice Center provides services to many victims in criminal cases. The Center houses the DV Bureau and the nonprofit service providers on the same floor in the DA's Office to provide victims with easy access to services. The Center provides childcare, a children's playroom, interpreters, and specialized services for the handicapped for victims who need these services while they receive assistance. Domestic violence victims who are not involved in criminal cases are also eligible for services at the Family Justice Center. Counselors refer some of them to NYPD officers at the Family Justice Center to file charges when appropriate. In addition, the District Attorney's Victim Services Unit provides support and counseling services to all crime victims, including victims of domestic violence, whether or not they are participating with the prosecution. These counselors sometimes accompany and support victims who testify in court.

The DV Bureau's practices and the victim services described above, as well as other practices and policies of the DV Bureau, were in place prior to the establishment of the video statement program, and did not change during the time period covered by this study (November 27, 2007 through December 31, 2009). There was, however, one significant change in the operation of the DV Bureau that occurred after the establishment of the video statement program: the Early Victim Engagement Project.

### The Early Victim Engagement Project

The Early Victim Engagement (EVE) Project is a program to contact victims of intimate partner violence and elder abuse by telephone immediately after the

defendant's arraignment. The EVE Project is based at the Family Justice Center and supported by a grant from the U.S. Department of Justice Office on Violence Against Women to the Mayor's Office to Combat Domestic Violence and KCDA. The project began operating on a limited basis in March 2008, and was phased in over several months, becoming fully operational by July 1, 2008. The EVE Project is designed to provide victims with accurate criminal justice information, including real-time information about the order of protection issued at arraignment, to address safety concerns, to offer advocacy and services, and to encourage victim participation in the prosecution. EVE is staffed by the EVE Project Director who is employed by the Mayor's Office to Combat Domestic Violence, several victim liaisons employed by the DA's office, and case managers employed by Safe Horizon (a victim services agency affiliated with the Family Justice Center).

After a defendant is arraigned, an EVE staff member calls to inform the victim about the provisions of the order of protection, whether the defendant was released, the docket number of the case, the telephone number of the Domestic Violence Bureau, and what the next steps are in the criminal justice process. EVE staff members also provide victims with a copy of the order of protection and advise them about safety planning, services available at the Family Justice Center, and counseling available at Safe Horizon. Most importantly, the EVE staff schedules victims for an intake appointment with an ADA in the DV Bureau. Although the EVE staff does not reach all victims, and not all the victims they reach agree to come to an intake appointment, many victims do meet with an ADA. EVE staff members make a follow-up call to re-schedule appointments for victims who miss their scheduled intake appointments.

Before the EVE Project was established, many victims received only limited information about the case when the ECAB screener contacted them prior to the arraignment. ADAs in the DV Bureau did not generally receive the case file until several days after the arraignment and were not able to contact the victim until they received the file. In the interim, the victim may have been unaware of the defendant's release status, the existence of an order of protection, services that might be available, etc. If the victim moved or changed phone numbers soon after the defendant's arrest, the DV Bureau might not be able to make contact. The EVE Project bridges the gap between the initial victim contact by the ECAB screener soon after the arrest and later victim contact by an ADA in the DV Bureau. It provides the victim with critical information immediately after arraignment.

EVE calls have increased subsequent victim contact with both the Family Justice Center and the DV Bureau. The EVE Project Director reports that EVE staff successfully contacted about 400 to 425 victims per month in 2009, and about 100 victims per month visited the Family Justice Center as a direct result of EVE contact. According to the Chief of the Domestic Violence Bureau, the number of victims coming in to the DV Bureau for an intake appointment has increased dramatically because of the EVE Project. Coinciding with this increase, there has been an increase in the conviction rate, from less than 20% a few years ago, to over 30% in 2009, according to statistics provided by the DV Bureau Chief. It is important to note that no one has



compared intake interviews and convictions for EVE and “non-EVE” cases, so it is not possible to attribute these increases definitively to the EVE Project. Nevertheless, the increases coincide with the introduction of the EVE Project and we know of no other factor that could account for them.

Because it seems likely that the EVE Project significantly affected the conviction rate for cases in the DV Bureau, our analysis will estimate the independent effect of the video statement program on convictions after taking into account EVE’s effect on convictions. In subsequent chapters, we will describe how the EVE program affected the conviction rate, how it affected the video statement program, and how we can estimate the effect of the video statement program separately from the effect of EVE.

#### D. Review of the Literature

The author is unaware of any other study that has examined the impact of video recordings of defendant statements on the likelihood of conviction in domestic violence cases. However, one recent study of over 3,300 DV cases in 16 jurisdictions across the U.S. did have information about whether the defendant made any statement. Smith and Farole (2009) found that whether there was a defendant statement available in the case was the strongest predictor of conviction. (Information about the type of defendant statement, e.g., a statement made in an interview with a police officer or district attorney, an “excited utterance,” or a call made from jail, is not available in this study.) Other important predictors of conviction were whether there was a third-party witness to the incident, whether there was a history of abuse, whether physical evidence was obtained, and whether the victim was injured in the incident. Many other factors examined in the study had little or no effect on the likelihood of conviction: whether the defendant was using drugs or alcohol at the time of the incident, whether there was a statement from the victim, whether a child was present at the time of the incident, whether a weapon was used in the incident, whether the defendant was charged with a misdemeanor or felony, and the defendant’s race and gender.

Although Smith and Farole (2009) is the only study to test the impact of defendant statements, a few other studies have examined the influence of other measures of strength of evidence on convictions in domestic violence cases (Belknap and Graham 2000, Cramer 1999, Henning and Feder 2005, Newmark et al. 2001).

Belknap and Graham (2000) examined over 2,600 domestic violence cases in Cincinnati in 1997. The number of times the victim and prosecutor met was the strongest predictor, increasing the likelihood of conviction. When the victim and offender cohabited and when the victim made a statement or testified, conviction was more likely. Cases handled by prosecutors with higher caseloads, and cases in which victims “changed their stories” were less likely to end in conviction. The availability of 911 recordings, photos of injuries, medical records, and police testimony had no effect on the likelihood of conviction. Similarly, whether the defendant had a history of domestic violence or other violent crime, the defendant’s actions during the incident (kicking, hitting, stabbing, cutting, strangling, using a gun), whether the victim was

subpoenaed to testify, and the defendant's sex, race and age, did not affect the likelihood of conviction.

Cramer (1999) examined 140 DV cases prosecuted in Chesterfield County, Virginia in 1997 and found that having photos of victim injuries increased the likelihood of conviction. She also found that defendants with a prior criminal history, defendants who lived with, or were married, to the victim, white defendants, and male defendants were more likely to be convicted. The defendant's age, type of crime, whether the victim or the police initiated the report, which judge heard the case, and time to disposition did not influence the likelihood of conviction.

Henning and Feder (2005) analyzed data on nearly 2,000 DV cases in Shelby County, Tennessee in 2000-2001. They found that male defendants, unemployed defendants, those with a prior arrest for DV, those who were using substances, and those involved in cross-complaints were all more likely to be convicted. The finding about cross-complaints is somewhat surprising because these cases are usually difficult to prosecute, however it is important to note that most cross-complaints in Shelby County were declined for prosecution. The District Attorney prosecuted only a relatively small proportion of cross-complaints, presumably selecting only the strongest cases. Whether a weapon was used, whether the victim was injured, the type of charge, the type of victim-offender relationship, whether the defendant had prior arrests for non-family violence or for non-violent offenses, and the defendant's age, race and income had no effect on the likelihood of conviction.

Newmark et al., (2001) examined 198 felony DV cases in Brooklyn, New York from 1995 to 1997 and found three factors that influenced convictions. Cases in which the victim sustained physical injuries and cases in which the defendant had a prior conviction for violating an order of protection were more likely to end in conviction. Cases in which the victim expressed a desire to drop the charges were less likely to end in conviction. Whether the defendant had any prior convictions, whether there was a prior order of protection between the victim and defendant, whether the defendant used a weapon, and whether the case was disposed in a specialized DV court did not affect the likelihood of conviction.

Taken together, these studies do not provide consistent findings about the effect of strength and type of evidence on convictions in DV cases. There are only a few types of evidence that were examined in more than one study, and the findings were generally mixed. For example, two studies found that injuries to the victim increased the likelihood of conviction (Newmark et al. 2001, Smith and Farole 2009), while one found that injuries had no effect (Henning and Feder 2005). Belknap and Graham (2000) found that a victim statement increased the likelihood of conviction, while Smith and Farole (2009) found no effect. Cramer (1999) found that photos of victim injuries were useful in obtaining convictions, while Belknap and Graham (2000) found that they were not. Only the finding on the impact of weapons was consistent—it had no effect on the likelihood of conviction (Belknap and Graham 2000, Henning and Feder 2005, Newmark et al. 2001).

Why are the findings on the impact of particular types of evidence on conviction so inconsistent? One possibility is that some of the studies base their findings on very small samples. Cramer's (1999) analysis is based on 140 cases, and Newmark et al.'s (2001) is based on 198. Using such small samples makes it difficult to detect an effect even when there is one, since the sensitivity of statistical tests depends on sample size. However, even the studies based on larger samples (Belknap and Graham 2000, N = 2,670; Smith and Farole 2009, N = 3,341; Henning and Feder 2005, N = 1,975) reported contradictory findings. This suggests that the factors influencing conviction may vary considerably across jurisdictions. Each jurisdiction may have its own standards regarding which factors matter for conviction, and the types of cases, police practices, prosecutorial policies and court procedures may differ in significant ways. From this perspective, the findings of the Smith and Farole (2009) study are the most interesting. On the one hand, by pooling data across 16 jurisdictions, the study ignores local variations. Some types of evidence that did not affect conviction across all jurisdictions may affect conviction in certain jurisdictions but not others. On the other hand, the study's findings about types of evidence that do affect convictions are valuable because these findings are valid across multiple jurisdictions. The four types of evidence found to influence convictions in their study (defendant statement, third-party witness, victim injuries, and physical evidence) are likely to be important in most jurisdictions.

In addition to the studies noted above, several examined predictors of convictions in domestic violence cases, but did not have data available on the strength of evidence in the case (Peterson 2002, Peterson 2004, Peterson and Dixon 2005, Ventura and Davis 2005, Wooldredge and Thistlethwaite 2004). These studies typically examined the effect of defendant's criminal history and demographic characteristics, types of charges, and case processing variables. Because the studies could not control for the influence of the strength of evidence, their findings are not comparable to the studies reviewed above. We will not review these studies in detail here. Overall, they show that the types of charges, case processing variables (whether the defendant was released, time to disposition) and some aspects of the defendant's criminal history influenced the likelihood of conviction. The effects of demographic variables were generally weak.

One additional study of domestic violence cases is worth mentioning. In Toronto, police routinely make video recordings of victim statements in domestic violence cases (Dawson and Dinovitzer 2004). As soon as possible after the incident, police ask victims to come to the police station to make a video statement. In the Ontario Provincial Court, unlike courts in the U.S., prosecutors can use this video statement in lieu of victim testimony at trial. In 1997-98, video recordings of victim statements were available in 26% of the domestic violence cases in Toronto. The study found that prosecutors were more likely to file charges against the defendant when a video recording of a victim statement was available, which suggests that the statements strengthened the case. Once a case was prosecuted, victims who had made video statements were more likely to participate in the prosecution than those who had not made statements. Unfortunately, the study did not provide data showing the impact of the video statements on the likelihood of conviction in domestic violence cases.

Nevertheless, the study appears to confirm the value of video recordings of victim statements, provided they are admissible as evidence.

#### E. Research Plan

We planned the analyses in the current study in part by reviewing previous research that examined the influence of strength of evidence on convictions in domestic violence cases. Smith and Farole's (2009) finding that having a defendant statement was the strongest predictor of conviction suggests that a video recording of the defendant's statement is likely to be a powerful piece of evidence in domestic violence cases. Furthermore, the current study evaluates the impact of Brooklyn's video statement program in the context of other available evidence. The Kings County District Attorney's office provided data on a variety of types of evidence, including many that were considered in previous research. The current study expands on the limited research that has been done to date by considering the impact of many types of evidence on conviction in domestic violence cases in an urban jurisdiction using a large sample of cases. It is the only study to assess the impact of video recordings of defendant statements on convictions in domestic violence cases.

We also planned the analyses in the current study based on the interests and concerns of the Kings County District Attorney's office. The District Attorney has a tradition of developing innovative approaches to prosecuting intimate partner violence and elder abuse cases and is interested in using evidence-based practices, i.e., those that have been demonstrated to make a difference in case outcomes. The Chief of the Domestic Violence Bureau, who established the video statement program and wanted to gather further information about its operation and effectiveness, first proposed the current study. The Project Director developed the study methods and design in consultation with the Chiefs of both the DV Bureau and the Special Victims Division. The study is designed to provide information about the operation and effectiveness of the video statement program as well as the impact of other types of evidence on convictions.

Based on discussions with the District Attorney's office, the findings of previous research, and the interests of the Project Director, the current study addresses four research questions:

- 1) Do defendant and case characteristics affect which DV Bureau cases are sent for a video statement?
- 2) Does the video statement program affect case outcomes, particularly the likelihood of conviction, in DV Bureau cases?
- 3) Does the content of video statements affect case outcomes, particularly the likelihood of conviction, in DV Bureau cases?

4) Does the video statement program have a stronger effect on convictions if other evidence in the case is weak?

We will address these questions by analyzing data on defendants arrested in Brooklyn, New York between November 27, 2007 and December 31, 2009. As described in chapter 2, the study relies on data extracted from the CJA database as well as datasets obtained from the Kings County District Attorney's office. Chapter 3 addresses the first research question by comparing the characteristics of ECAB Annex cases to those not sent to the Annex. Chapter 4 begins to address the second research question by comparing outcomes in cases sent to the ECAB Annex and those that were not. It also begins to address the third research question by comparing outcomes in cases in which the defendant made a statement to those in which the defendant refused to make a statement. Chapters 5 and 6 expand on the answers developed in chapter 4. Chapter 5 evaluates the impact of the video statement program and the content of video statements on conviction after taking into account the influence of other factors (excluding victim participation) that affect the likelihood of conviction. Chapter 6 examines whether video statements affect the likelihood of conviction after taking into account victim participation in the prosecution. Chapter 6 also addresses the fourth research question by examining the effect of video statements on convictions in weak cases, i.e., those in which the victim is not participating in the prosecution. The report concludes with a summary of findings and a discussion of their implications for the video statement program and for prosecuting defendants in intimate partner violence and elder abuse cases.

[This page intentionally left blank]

## II. METHODOLOGY

This study used data collected by the Kings County District Attorney's office, the New York Police Department, and the New York City Criminal Justice Agency to examine how defendants' video statements affect the likelihood of conviction in intimate partner violence and elder abuse cases in Brooklyn. This chapter describes the various datasets we used for the study, how we combined the datasets, and how we selected cases for analysis. It also describes how we identified DV cases, which DV cases are assigned to the DV Bureau, and how the courts process DV Bureau cases.

### A. Description of Datasets

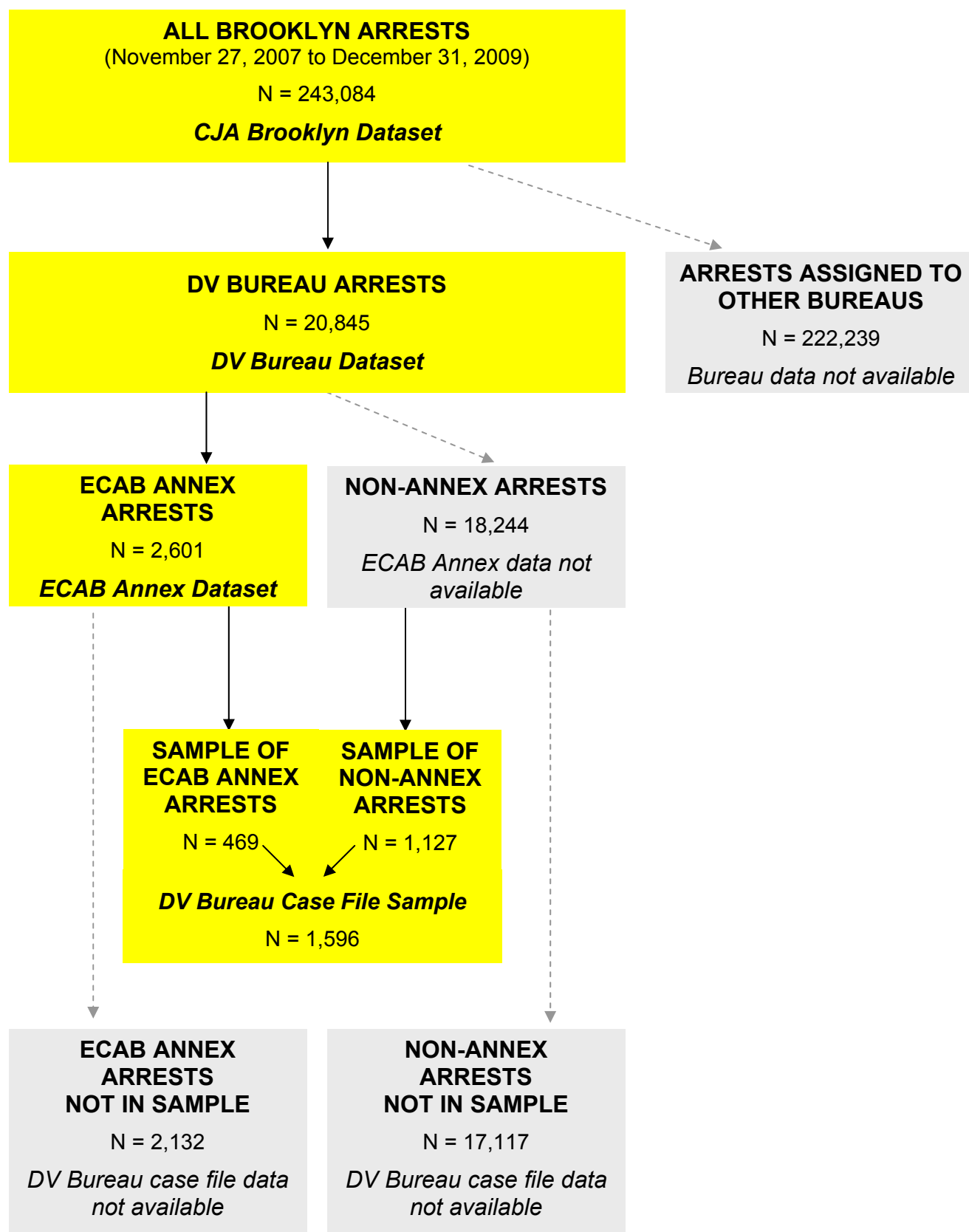
To evaluate the effect of the video statement program, we created four datasets, each containing information about the cases of defendants arrested in Brooklyn between November 27, 2007 and December 31, 2009. Selecting data from this time period allows us to examine all DV Bureau arrests from the date the ECAB Annex began operation until the end of 2009. The first dataset contains information obtained from the CJA database on the processing of all criminal court cases in Brooklyn during that time period, as well as additional data about the arrest and the defendant. The second dataset contains information about all DV Bureau arrests, using information provided by the Kings County District Attorney's office. The third dataset contains information about DV Bureau cases screened in the ECAB Annex, using data from the DV Bureau and from the ECAB screeners' narrative summaries of the video statements. The fourth dataset contains information about a sample of DV Bureau cases, using information coded from the case files, and for ECAB Annex cases in the sample, from viewing the video statements. Figure 2-1 provides an overview of Brooklyn arrests and the data available for them (next page). Table 2-1 (on page 19) summarizes the information available in each dataset. We provide detailed descriptions of the datasets below.

CJA Brooklyn Dataset. The CJA Brooklyn Dataset includes data collected on all 243,084 arrests made in Brooklyn from November 27, 2007 to December 31, 2009, including arrests that were declined for prosecution (DP'd). This dataset includes information about the 20,845 arrests assigned to the DV Bureau (see discussion of DV Bureau Dataset below) as well as 222,239 arrests assigned to other Bureaus. We extracted this dataset from the CJA database, which contains information about the arrest, case processing, and case outcomes of most New York City arrestees. It includes data from three sources: 1) CJA's pre-arraignment interview,<sup>7</sup> 2) NYPD's Omniform data, and 3) the New York State Office of Court Administration's (OCA) case processing data. We used the CJA interview to obtain information concerning

---

<sup>7</sup> CJA conducts pre-arraignment interviews to measure the defendant's community ties. The interviews serve as the basis for making a recommendation as to whether or not the court should release the defendant on recognizance at his or her first court appearance. CJA does not interview defendants arrested on a bench warrant or those given a Desk Appearance Ticket (DAT). However, CJA collects arrest and Criminal Court information for all arrestees, and we included arrestees in the CJA Brooklyn Dataset whether or not CJA interviewed them.

FIGURE 2-1: OVERVIEW OF BROOKLYN ARRESTS AND DATASETS





**TABLE 2-1: SUMMARY OF INFORMATION AVAILABLE IN EACH DATASET**

<b>DATASET</b>	<b>INFORMATION AVAILABLE</b>
<b>CJA Brooklyn Dataset</b> (N = 243,084)	<u>CJA Interview</u> <ul style="list-style-type: none"> <li>• Demographic characteristics (sex, age, race, etc.)</li> <li>• Community ties (employment, NYC address, etc.)</li> <li>• Criminal record (misdemeanor and felony convictions, open cases)</li> </ul> <u>NYPD Online Booking System</u> <ul style="list-style-type: none"> <li>• Arrest information (charges, date of arrest, etc.)</li> </ul> <u>Office of Court Administration</u> <ul style="list-style-type: none"> <li>• Case processing (arraignment date, release status, type of release, etc.)</li> <li>• Case disposition and sentencing (conviction, conviction charge, jail sentence, etc.)</li> </ul>
<b>DV Bureau Dataset</b> (N = 20,845)	<u>NYPD Omniform</u> <ul style="list-style-type: none"> <li>• Incident information (date, time, location, etc.)</li> <li>• Arrest information (identity of defendant, arresting officer, and victim(s), weapons used, defendant's oral statements, etc.)</li> </ul> <u>ECAB Form</u> <ul style="list-style-type: none"> <li>• Incident information (injuries, 911 calls, photos, alleged defendant actions, narrative description, etc.)</li> <li>• Complaint information (charges, evidence available, narrative summary of defendant statement(s), history of domestic violence, etc.)</li> </ul> <u>Witness Contact Sheet</u> <ul style="list-style-type: none"> <li>• Witness information (names, type of witness, relationship to defendant and victim, etc.)</li> </ul>
<b>ECAB Annex Dataset</b> (N = 2,601)	<u>Bureau Chief's Records</u> <ul style="list-style-type: none"> <li>• Statement information (statement made/refused, duration of statement, charges admitted or denied, etc.)</li> </ul> <u>ECAB Form</u> <ul style="list-style-type: none"> <li>• Narrative description of video statement (items coded include confession, denial, self-defense claim, types of admissions, etc.)</li> </ul>
<b>DV Bureau Case File Sample</b> (N = 1,596)	<u>Case Files</u> (N = 1,596) <ul style="list-style-type: none"> <li>• Evidence available (911 recordings, photos, medical records, victim participation with the prosecution, etc.)</li> </ul> <u>Video Statements</u> (N = 469) <ul style="list-style-type: none"> <li>• Defendant's statements on video (items coded include confession, denial, self-defense claim, types of admissions, etc.)</li> </ul>

defendants' demographic characteristics and community ties. We used the NYPD Omniform data to obtain information about the arrests, including arrest charges, precinct, and date and time of arrest.<sup>8</sup> We used the OCA data to obtain detailed Criminal Court and Supreme Court case processing, disposition, and sentencing data on each of the arrests.

Brooklyn has a two-tiered court system for handling criminal cases. The Criminal Courts only have trial jurisdiction over cases having a most serious charge of misdemeanor or lesser severity. The DA's office must bring cases sustained at the felony level to Supreme Court for prosecution. However, the court arraigns most defendants charged with felonies in Criminal Court first, and then transfers indicted cases to Supreme Court for subsequent appearances. If the Grand Jury fails to return an indictment or the ADA decides not to prosecute the case as a felony, the ADA can reduce the charges or take no action. The case may then be disposed in Criminal Court by dismissal, or by a plea to a reduced charge less severe than a felony, or by a transfer to another court's jurisdiction (e.g., Family Court).<sup>9</sup>

For cases that had multiple dockets, we obtained case-processing information for the **docket that had the most severe arraignment charge** (based on Penal Law severity<sup>10</sup>) in Criminal Court. When the most severe arraignment charges on two or more dockets are of equal Penal Law severity, OCA determines the top charge according to procedures developed by the New York State Division of Criminal Justice Services (see Appendix B). These guidelines provide a consistent set of rules for determining which of two arraignment charges of equal severity is the top arraignment charge. For purposes of examining case dispositions, we examined the **docket that had the most severe disposition**. Disposition severities were ranked from conviction (most severe) to adjournment in contemplation of dismissal (ACD) to dismissal (least severe).

The CJA Brooklyn Dataset includes case processing information through final disposition (and sentencing, if there was a conviction), or until December 5, 2010, when

---

<sup>8</sup> CJA retains only selected information from NYPD's Omniform, however, as noted below, KCDA provided extensive information from the Omniform for all arrests assigned to the DV Bureau.

<sup>9</sup> The Family Courts have concurrent jurisdiction over certain domestic violence cases (Aldrich and Domonkos 2000). Some DV cases are heard only in Criminal Court, some are heard in both Criminal Court and Family Court, and others are heard only in Family Court. CJA does not have access to data on DV cases that are heard in Family Court, and this report draws no conclusions about these cases.

<sup>10</sup> New York State Penal Law categorizes most offenses according to their severity. The most serious crimes are A felonies, followed by felonies classified as being of severity B through E. Misdemeanors are less severe than felonies, and are classified as A or B misdemeanors or "Unclassified" misdemeanors. (A misdemeanors are more severe than B misdemeanors, and "Unclassified" misdemeanors are less severe than B misdemeanors.) Violations are less severe than misdemeanors. The Penal Law does not classify violations as crimes, although conviction for a violation can result in a jail sentence. The Penal Law makes no distinctions of severity within the category of violations.

we extracted the data from the CJA database. This cutoff date allowed sufficient time for most (but not all) cases to reach a disposition and sentence. Information about any final dispositions or sentences in Criminal Court or Supreme Court beyond this cutoff date was not included in the dataset.

DV Bureau Dataset. The DV Bureau Dataset contains information about 20,845 arrests. These arrests include all those ever deemed eligible for assignment to the DV Bureau, including cases that ECAB declined to prosecute, cases that were prosecuted and initially assigned to the DV Bureau, and cases that were transferred into or out of the DV Bureau after their initial assignment in ECAB. The dataset includes information about 2,601 DV Bureau arrests that expeditors sent to the ECAB Annex for a video statement, and 18,244 DV Bureau arrests that expeditors did not send to the ECAB Annex.

The DV Bureau Dataset includes extensive information from three sources: 1) the NYPD Omniform, 2) the ECAB form, and 3) the Witness Contact Sheet. The Omniform contains NYPD's information about the arrest and complaint, such as the date, time, location, and circumstances of the incident and of the arrest, names and identifying information for the defendant and the victim, and information about weapons used. The ECAB form contains information about the case based on the screener's interviews with the arresting officer and witnesses prior to arraignment, including information about the arrest and complaint charges, injuries, photos of injuries and the crime scene, 911 calls, witnesses, statements, any history of domestic violence by the defendant, and a narrative description of the incident. NYPD's Witness Contact Sheet contains identifying information about the witnesses in each case, including victims and other eyewitnesses.

ECAB Annex Dataset. The ECAB Annex Dataset contains supplemental information about the arrests of the 2,601 defendants sent to the ECAB Annex for a video statement. This information comes from two sources: 1) a data file maintained by the Chief of the DV Bureau, and 2) data coded from narrative descriptions of the video statements on the ECAB form.

The data file maintained by the Chief of the DV Bureau includes identifiers for each ECAB Annex case<sup>11</sup> (arrest and docket numbers), the defendant (name and sex),

---

<sup>11</sup> The data file maintained by the DV Bureau Chief also contains information about an additional 148 arrests for which the arresting officer was directed to bring the defendant to the ECAB Annex but the defendant either was not brought to the ECAB Annex, or was brought there but was not asked to make a statement on camera. This can occur for a variety of reasons: a large volume of defendants at the ECAB Annex on a particular day, difficulties in transporting the defendant from the precinct to the ECAB Annex, problems with the video equipment, etc. We counted these 148 arrests among the 18,244 arrests sent to the DV Bureau but not among the 2,601 arrests sent to the ECAB Annex. Also *not* included among the 2,601 defendants sent to the ECAB Annex were an additional 53 arrests of defendants who were interviewed in the Annex, but whose cases were not assigned to the DV Bureau. We did not classify these 53 arrests as ECAB Annex cases or as DV Bureau arrests in this study.

the arresting officer (name, precinct and shield number), the ADA initially assigned to the case (name), and information about the defendant's statement (whether the defendant made a statement or refused to make a statement, the duration of the statement, and a brief description of any charges the defendant admitted or denied). The Chief of the DV Bureau maintains the dataset, and updates it regularly with information about the disposition of each case.

The ECAB Annex dataset also includes information about the content of the video statements.<sup>12</sup> We coded information about video statement content using narrative descriptions of the video statements. The screeners in the ECAB Annex prepared these narrative descriptions, which summarized what the defendant said in the video statement. Although the summaries do not incorporate everything said in the video, they include what the screeners thought were the important elements of the statement for purposes of evaluating the strength of the evidence. The summaries include both information that could strengthen the case against the defendant (e.g., admissions of harming the victim, violating an order of protection) and information that could be exculpatory (e.g., claims of self-defense, claims that the defendant was not present at the scene). We developed a standardized coding form based on an initial review of 100 narrative summaries and 25 video statements (see discussion of video statement review in the description of the DV Bureau Case File Sample below). The coded information includes items indicating whether the defendant confessed, denied the charges, claimed self-defense, or made admissions. We also coded information about who the defendant said was present at the scene, the defendant's claims about the nature of the incident, the defendant's awareness of the existence of an order of protection, and the defendant's descriptions of actions taken by both the defendant and the victim.

DV Bureau Case File Sample. The DV Bureau Case File Sample contains information for a sample of DV Bureau cases from two sources: 1) the District Attorney's case files for cases disposed in the DV Bureau and 2) data coded from the recorded video statements for the ECAB Annex cases. The dataset includes a sample of 1,596 of the 20,845 arrests assigned to the DV Bureau, including 469 of the 2,601 ECAB Annex cases and 1,127 of the 18,244 DV Bureau cases that expeditors did not send to the Annex.

For the case file review, CJA researchers coded numerous items of information from the paper records saved in each selected case file. Using a standard coding form, we recorded background information about the defendant and the victim, as well as information about the evidence in the case available to ADAs: recordings of 911 calls, injuries, photos, weapons, medical records, whether or not the victim was participating with the prosecution, any oral, written, and video statements made by the defendant, and ADA's notes about the strength of the evidence.

---

<sup>12</sup> Video statement summaries were missing in the ECAB Annex dataset for 448 (17%) of the 2,601 ECAB Annex cases.

We obtained case files of disposed DV Bureau cases in two ways. First, from September 2009 to April 2010, we obtained some case files soon after ADAs sent disposed case files to the DV Bureau's file room. These case files normally remain in the file room for a few days before the file clerk brings them to the archive (located in another building). We set these files aside and reviewed them before the DA's office archived them. Second, we requested other case files that the DA's office had already archived. We reviewed these archived case files during two periods: September 2009 to April 2010, and February 2011 to June 2011. We requested these archived files to obtain older files that had been unavailable when we began our case file review. In addition, because we were interested in the impact of the video statements, our requests for archived case files oversampled ECAB Annex cases. Although expeditors sent only about one of every eight DV Bureau cases during the study period to the ECAB Annex, we requested the case files of many more archived Annex cases than non-Annex cases so that we would end up with an oversample of Annex case files.

After combining the case files selected in the file room with those selected from the archive, our final DV Bureau arrest sample consisted of 1,596 case files. Because of the sampling strategy we used, about 29% (469) of the case files were ECAB Annex cases and 71% (1,127) were non-Annex cases. Aside from intentionally oversampling Annex cases, we selected sample cases randomly. The 469 ECAB Annex cases are a random sample of the 2,601 ECAB Annex cases, and the 1,127 non-Annex cases are a random sample of the 18,244 non-Annex cases (see Figure 2-1). Chapter 6 will provide further information about the characteristics of the sample.

For the video statement review, CJA researchers reviewed electronic copies of the defendants' video statements for the 469 ECAB Annex cases in the DV Bureau Case File Sample. The CJA research staff developed a standardized coding form based on an initial review of 25 videos as well as 100 narrative summaries (see discussion of review of narrative summaries in description of ECAB Annex dataset above). The coded information includes items indicating whether the defendant confessed, denied the charges, claimed self-defense, or made admissions. The research staff also coded information about who the defendant said was present at the scene, the defendant's claims about the nature of the incident, the defendant's awareness of the existence of an order of protection, and the defendant's descriptions of actions taken by both the defendant and the victim.

## B. Merging the Datasets and Selecting Cases for Analysis

After creating the four datasets described above, we merged them into one large data file. The arrest number NYPD assigns to each arrest is available in each of the four datasets, and we used it to match the datasets to each other. The merged dataset contains information about 243,084 arrests. All the arrest, defendant and case processing information from the CJA Brooklyn Dataset, as described above, is available for every case in the file. For the 20,845 arrests that were assigned to the DV Bureau, we have additional information from the DV Bureau Dataset, as described above, including information from the ECAB form, Omniform, and Witness Contact Sheet. For

the 2,601 DV Bureau arrests sent to the ECAB Annex, we have information about the video statement from the ECAB Annex Dataset, as described above. Finally, for the sample of 1,596 DV Bureau arrests, including 469 ECAB Annex arrests, we have extensive information about evidence available in the cases obtained from the DV Bureau Case File Sample, as described above.

The merged dataset included both summary arrests and arrests in which the police issued a Desk Appearance Ticket (DAT). Summary arrests (also known as “online” arrests), are those in which NYPD held the defendant in custody pending arraignment in Criminal Court. A DAT is a summons to appear for a scheduled arraignment at a later date, and the arrestee is not held in custody for arraignment. Police officers issue DATs only under certain circumstances depending on the arrest charge, whether the defendant has an outstanding warrant, etc. Before beginning our analysis, we excluded from the merged dataset 32,871 DAT arrests, for two reasons. First, police officers rarely issue DATs in domestic violence cases in New York City. (During the time period covered by this study, there were only 174 DATs issued in DV cases in Brooklyn.) Second, in the rare cases when police officers issued DATs to defendants in DV cases in Brooklyn, the officers could not bring the defendants to the ECAB Annex because they did not hold the defendants in custody pending arraignment. The exclusion of DATs ensures that our analyses will compare ECAB Annex arrests only to other summary arrests.

After excluding DATs, the combined dataset included information about 210,213 arrests in Brooklyn, including 20,671 DV Bureau arrests (see Table 2-2). Because the ECAB Annex only processed summary arrests, the number of Annex arrests in the combined dataset remained the same: 2,601. We selected only summary arrests for our review of the case files, so the number of cases with information from the DV Bureau Case File Sample also remained the same: 1,596.

**TABLE 2-2: DAT CASES EXCLUDED FROM EACH DATASET**  
November 27, 2007 to December 31, 2009

	<u>CJA BROOKLYN DATASET</u>	<u>DV BUREAU DATASET</u>	<u>ECAB ANNEX DATASET</u>	<u>DV BUREAU CASE FILE SAMPLE</u>
Number of Cases <i>Before</i> Exclusion of DATs	243,084	20,845	2,601	1,596
Number of DATs Excluded	32,871	174	-0-	-0-
Number of Cases <i>After</i> Exclusion of DATs	210,213	20,671	2,601	1,596

### C. Identifying Intimate Partner Violence, Elder Abuse, and “Other” Domestic Violence Cases

New York State’s statutory definition of domestic violence changed during the time period covered by this study. Prior to July 21, 2008, New York State’s Criminal Procedure Law (CPL) §530.11 defined family offenses as offenses committed against a member of the same family or household. The “family or household” included: (1) persons related by consanguinity or affinity (2) persons legally married to each other (3) persons who were formerly married and (4) persons who have a child in common, whether or not they have ever been married or ever cohabited.

Prior to July 21, 2008 New York State’s statutory definition of domestic violence excluded unmarried partners, unless they had a child in common. However, in New York City, NYPD operated with an expanded definition of domestic violence that included individuals who were not married, but who were cohabiting or had previously cohabited. This NYPD definition of “family” expanded on New York State law by including “common-law” marriages, same-sex couples, and registered New York City domestic partners (NYPD 2000). In Brooklyn, the DA’s office and the Criminal Courts used NYPD’s expanded definition, and also included couples who were dating (or had dated) and never cohabited in their definition of domestic violence cases.

New state legislation, effective July 21, 2008, expanded the definition of “family or household” in 2008. The amended statutory definition of “family or household,” CPL §530.11(1e), includes current and former intimate partners, whether or not they have ever cohabited. This statutory change incorporated all the relationships formerly included in NYPD’s expanded definition of family or household. It also included couples who are dating or have dated and have never cohabited, who were already included in Brooklyn’s definition. In Brooklyn, this legislation produced very little change in the identification or processing of domestic violence cases in the criminal courts, because the police, the District Attorney’s Office, and the courts were already using a similar definition.<sup>13</sup>

To identify domestic violence cases, ECAB expeditors use information collected by the police about the relationship between the victim and the defendant, if any. When possible, they also interview victims and ask them about their relationship with the defendant. If the victim-offender relationship is consistent with the statutory (or before July 1, 2008, the expanded) definition of domestic violence, the case is flagged as a DV case. At Criminal Court arraignment, court clerks assign an arraignment hearing type of “DV” to domestic violence cases, and OCA enters this designation in its computerized court records.

---

<sup>13</sup> To distinguish them from other case files, ECAB gives beige “backs” (special color-coded back sheets) to DV case files that meet the statutory definition of domestic violence. The number of case files receiving beige “backs” increased significantly after July 21, 2008, when the legislature enacted the expanded definition of “family or household.” However, this change did not affect the number of cases flagged as DV cases in Brooklyn, nor did it affect the type or number of cases sent to the DV Bureau.

The District Attorney's office classifies domestic violence cases in several subcategories for purposes of assignment to appropriate Bureaus. Specifically, the Office assigns cases of domestic violence that involve either intimate partner violence or elder abuse to the DV Bureau. Intimate partner violence includes violence between intimate partners and former intimate partners, whether or not they are currently married, whether or not they currently cohabit, and whether or not they are same-sex partners. Elder abuse cases are domestic violence cases in which the victim is at least 60 years old, regardless of the type of relationship between the victim and defendant (intimate partner, parent-child, grandparent-grandchild, sibling, etc.).<sup>14</sup> In this report, the term "DV Bureau cases" refers to intimate partner violence and elder abuse cases assigned to the DV Bureau. Domestic violence cases not classified as intimate partner violence or elder abuse are classified as "other" domestic violence, which includes violence between parents and children, grandparents and grandchildren, siblings, in-laws, and others related by blood or marriage (e.g., cousins, nieces, nephews, aunts, uncles). The District Attorney's office assigns "other" DV cases to the Trial Division, or if the charges are appropriate, the Crimes Against Children Bureau, Sex Crimes and Special Victims Division, or the Homicide Bureau. In this report, the term "other DV cases" refers to DV cases not involving intimate partner violence or elder abuse that were assigned to bureaus or divisions other than the DV Bureau.

In Brooklyn, the court sent intimate partner violence and elder abuse cases assigned to the DV Bureau to specialized domestic violence court parts for post-arraignment appearances. The court sent "other" DV cases to all-purpose court parts rather than to the specialized domestic violence parts. During the period examined in this study, the specialized domestic violence Criminal Court parts in Brooklyn were DV1 and DV2. The specialized domestic violence Supreme Court Parts were DV, 4, IDV and IDV2 in Brooklyn.<sup>15</sup> Occasionally the DA's office learned that cases not initially flagged as DV cases actually were DV cases. If these cases involved intimate partner violence or elder abuse, the DA's office then assigned them to the DV Bureau and the court transferred them to the specialized DV parts. Similarly, cases that the DA's office initially flagged as DV cases were sometimes subsequently determined not to be DV cases. When this occurred, the DA's office assigned these cases to the appropriate Bureau and transferred them out of the specialized DV parts.

In this study, we identified and classified domestic violence cases by relying on information from the DA's office and from the courts. The DV Bureau dataset includes all cases ever assigned to the DV Bureau, even if the DA's office initially assigned them to another Bureau, or later transferred them out of the DV Bureau. For docketed arrests, we used two types of information from the CJA Brooklyn Dataset to identify

---

<sup>14</sup> Crimes against the elderly committed by paid caregivers (e.g., home attendants, nursing home or hospital staff), friends, acquaintances, or strangers were not classified as elder abuse during the period of this study. However, beginning in 2010, the DA's office classified crimes by paid or unpaid caregivers as elder abuse, and assigned them to the Domestic Violence Bureau.

<sup>15</sup> These specialized court parts are referred to as specialized "domestic violence" court parts even though they only handle a subset of all domestic violence cases, i.e., primarily those domestic violence cases that involve intimate partner violence or elder abuse.



“other” DV cases: whether the case had a domestic violence hearing type at Criminal Court arraignment and/or had one or more appearances in a specialized domestic violence court part. For arrests that ECAB declined to prosecute, we used NYPD’s information about the nature of the victim-offender relationship to identify “other” DV cases.

Our identification of “other” DV cases has some limitations. There may be instances where we did not identify a docketed “other” DV case as a DV case. This would occur for “other” DV cases that did not receive a DV hearing type at Criminal Court arraignment and did not appear in a specialized domestic violence part. Similarly, we may not always have identified “other” DV cases declined for prosecution as DV cases. This would have occurred for “other” DV cases that did not have information indicating that the victim-offender relationship was a relationship included in the statutory or expanded definition of domestic violence. Under these circumstances, we did not identify these as “other” DV cases but instead categorized them (erroneously) as Non-DV cases. In the current study, these limitations affected our analyses in two ways. First, they reduced the number of “other” DV cases on which we report. Nevertheless, the number is adequate for our analyses, and we were able to draw valid conclusions about “other” DV cases from our dataset. Second, we slightly overestimated the number of Non-DV cases in the study. However, the number of “other” DV cases misidentified as Non-DV cases is likely to be a very small proportion of the total number of Non-DV cases. Note that we discuss “other” DV cases and Non-DV cases only once in this report (see the discussion of Figure 4-8B in chapter 4).

[This page intentionally left blank]

### III. DEFENDANT AND CASE CHARACTERISTICS

This chapter addresses two questions. First, were ECAB expeditors more likely to send certain types of defendants and cases to the ECAB Annex for screening and a video statement? Because the guidelines for ECAB expeditors indicate that they should give priority to cases involving serious injury and/or assault, and cross-complaints, we expect to find that they were more likely to send these cases to the Annex. Our analyses will show how expeditors prioritized these cases for screening at the ECAB Annex. We will also examine a variety of other defendant and case characteristics that might have affected which cases expeditors sent to the Annex. These analyses will show whether there were any other important differences between cases sent to the ECAB Annex (“video cases”) and cases not sent to the ECAB Annex (“non-video cases”) that might affect the likelihood of conviction (or other case outcomes). If there were important differences, we will address them in analyses in subsequent chapters to determine whether they explain any differences in the likelihood of conviction between video and non-video cases.

The second question addressed in this chapter is whether certain types of defendants, or defendants in certain types of cases, were more likely to make a substantive statement while being recorded on video. To answer this question, we examined only the video cases and determined whether the characteristics of defendants who made a substantive statement at the Annex were different from the characteristics of those who requested an attorney or refused to make a substantive statement. Knowing about these differences will help to determine whether they explain any differences in the likelihood of conviction between these two groups of video cases.

In the analyses presented in this chapter, we used data on all summary arrests assigned to the DV Bureau from November 27, 2007 to December 31, 2009, i.e., the cases for which data is available in the DV Bureau Dataset described in chapter 2. We obtained information about these cases from three sources: the DV Bureau Dataset, the ECAB Annex Dataset, and the CJA Brooklyn Dataset. Because this report focuses on the impact of video statements on case dispositions, the analyses in this chapter are limited to disposed cases only. We excluded cases from the analyses if they were: 1) not yet disposed on December 5, 2010, when the data were extracted from the CJA database, 2) “hanging arrests,”<sup>16</sup> 3) declined for prosecution, 4) consolidated with another case, or 5) transferred to another court (Family Court, or a Criminal Court in another county), extradited or abated. Table 3-1 (next page) shows how many cases were excluded for each of these reasons, for video and non-video cases. We excluded about 3.3% of the video cases because they were hanging arrests, compared to 5.0% of the non-video cases. Only a small proportion of cases was not yet disposed (1.9% of video cases and 1.7% of non-video cases), declined for prosecution (1.4% of video

---

<sup>16</sup> A “hanging arrest” is one of two (or more) related arrests that the DA’s office does not decline for prosecution and does not send to the court for docketing. The DA’s office usually attaches the charges on a “hanging arrest” to a docket for a related arrest for the same defendant. The related arrests were included in the study unless they fell into one of the other four excluded categories.

cases, 2.5% of non-video cases) or consolidated (1.0% of video cases, 2.0% of non-video cases), and only 16 non-video cases were transferred, abated or extradited.

Overall, we excluded more non-video cases from the study than video cases (11.3% vs. 7.7%, as shown in Table 3-1). The case exclusions reduced the number of video cases available for analysis from 2,601 to 2,402. The number of non-video cases available for analysis dropped from 18,070 to 16,027. Although we excluded more non-video cases than video cases, this had little impact on the proportion of video cases in the study. After the exclusions, about 13% of the remaining DV Bureau cases were video cases. This percentage is only slightly higher than the average for all DV Bureau cases (12.6%, as reported in Table 1-1). In the figures presented in this chapter, we focus on the 2,402 video cases and the 16,027 non-video cases that reached a disposition.

**TABLE 3-1: CASES EXCLUDED FROM ANALYSIS, BY REASON FOR EXCLUSION AND VIDEO STATUS**

	<b>Video Cases</b>	<b>Non-Video Cases</b>	<b>All DV Bureau Cases</b>
<b>Cases Before Exclusions</b>	<b>2,601 (100%)</b>	<b>18,070 (100%)</b>	<b>20,671 (100%)</b>
Excluded Cases	199 (7.7%)	2,043 (11.3%)	2,242 (10.8%)
<i>Reason for Exclusion:</i>			
<i>Not Yet Disposed (as of Dec. 5, 2010)</i>	49 (1.9%)	303 (1.7%)	352 (1.7%)
<i>Hanging Arrests</i>	86 (3.3%)	904 (5.0%)	990 (4.8%)
<i>Declined for Prosecution</i>	37 (1.4%)	453 (2.5%)	490 (2.4%)
<i>Consolidated</i>	27 (1.0%)	367 (2.0%)	394 (1.9%)
<i>Transferred, Abated, Extradited</i>	0 (0.0%)	16 (0.1%)	16 (0.1%)
<b>Cases Remaining After Exclusions</b>	<b>2,402 (92.3%)</b>	<b>16,027 (88.7%)</b>	<b>18,429 (89.2%)</b>

All of the comparisons in this chapter are case-based, not defendant-based. In other words, the analyses count all video cases and all non-video cases over the period of the study. The same defendant may be counted multiple times because he or she was arrested multiple times. Among the defendants in the 2,402 video cases, 82 were arrested two or more times (and recorded on video each time). Among the defendants in the 16,027 non-video cases, 1,882 were arrested two or more times (and were not recorded on video in any of those arrests). Finally, 493 defendants had both video and non-video cases. These defendants were arrested two or more times—at least one of their arrests was a video case and at least one of their other arrests was a non-video

case. Although the case-based results count some defendants more than once, including some who have both video and non-video arrests, this should not affect the basic findings about differences between video and non-video cases. Except for demographic characteristics, most of the items examined in this chapter vary from arrest to arrest for the same defendant.

### Cross-Complaints

The guidelines for ECAB expeditors indicate that they should give priority to cross-complaints in deciding which cases to send to the ECAB Annex. In a cross-complaint, the police arrest two (or more) parties to an incident, and charge each party with a crime against the other. When possible, District Attorneys determine whether they should proceed with a case against one of the parties and drop the case against the other. When this is not possible, cross-complaints are difficult to prosecute, and the court usually dismisses them. Expeditors often sent defendants in cross-complaints to the ECAB Annex for screening to help determine whether the DA's office should decline to prosecute one of the cross-complaints. The data on cases declined for prosecution presented above (Table 3-1) includes both cross-complaints and cases that were not cross-complaints. Because the value of video statements in sorting out cross-complaints is of particular interest to the DA's office, we examined the data for cross-complaints separately to see if the video statements were useful in identifying cases to decline for prosecution (see Table 3-2).

**TABLE 3-2: CROSS-COMPLAINTS EXCLUDED FROM ANALYSIS,  
BY REASON FOR EXCLUSION AND VIDEO STATUS**

	<b>Video Cases</b>	<b>Non-Video Cases</b>	<b>All DV Bureau Cases</b>
<b>Cross-Complaints</b>	<b>345 (100%)</b>	<b>1,327 (100%)</b>	<b>1,672 (100%)</b>
Excluded Cross-Complaints	23 (6.7%)	56 (4.2%)	79 (4.7%)
<i>Reason for Exclusion:</i>			
<i>Not Yet Disposed (as of Dec. 5, 2010)</i>	1 (0.3%)	8 (0.6%)	9 (0.5%)
<i>Hanging Arrests</i>	5 (1.5%)	15 (1.1%)	20 (1.2%)
<i>Declined for Prosecution</i>	14 (4.0%)	30 (2.3%)	44 (2.6%)
<i>Consolidated</i>	3 (0.9%)	2 (0.1%)	5 (0.3%)
<i>Transferred, Abated, Extradited</i>	0 (0.0%)	1 (0.1%)	1 (0.1%)
<b>Cross-Complaints Remaining After Exclusions</b>	<b>322 (93.3%)</b>	<b>1,271 (95.8%)</b>	<b>1,593 (95.3%)</b>

We excluded about 7% of video and 4% of non-video cross-complaints from the analysis. The most common reason was that the DA's office declined to prosecute the case. The DA's office declined to prosecute about 4% of video cross-complaints, compared to about 2% of non-video cross-complaints. This finding suggests that it was more often possible for the DA's office to determine which of the cross-complaints to prosecute when a video statement was available. However, this advantage for video cases was relatively small. If the DA's office had declined to prosecute video cases at the same rate as non-video cases, it would have declined to prosecute 8, rather than 14, video cases. This suggests that over the 25-month period of this study, the video statement program enabled the DA's office to decline prosecution for only an additional six cases.

We excluded only small proportions of cross-complaints because they were hanging arrests, not yet disposed, consolidated, or transferred, abated, or extradited. Furthermore, we found no meaningful differences between video and non-video cases in the rates at which we excluded cross-complaints for these reasons.

#### A. A Comparison of Characteristics of Video and Non-Video Cases

Using multiple sources of data, as described in chapter 2, we examined a large number of defendant, arrest, and incident characteristics to determine whether video cases differed from non-video cases. We examined several types of characteristics:

##### Incident Characteristics

- Injuries (from ECAB sheet: injuries to a complaining witness, the defendant, others; medical treatment received by a complaining witness, photos taken of a complaining witness's injuries)
- Incident-Reporting Method (from ECAB sheet: 911 call, who called 911, flag-down, precinct walk-in)
- Alleged defendant actions (from Omniform: use of force, weapon possession)

##### Arrest Characteristics

- Arrest charges (from OCA: number of charges, charge severity, Penal Law article of the most severe charge)
- Cross-complaint (from ECAB sheet)
- On-scene arrest (from Omniform)
- Delay in arrest (from Omniform)

##### Victim and Relationship Characteristics

- Elder abuse case (from ECAB sheet)
- Victim and defendant cohabit (from Omniform)

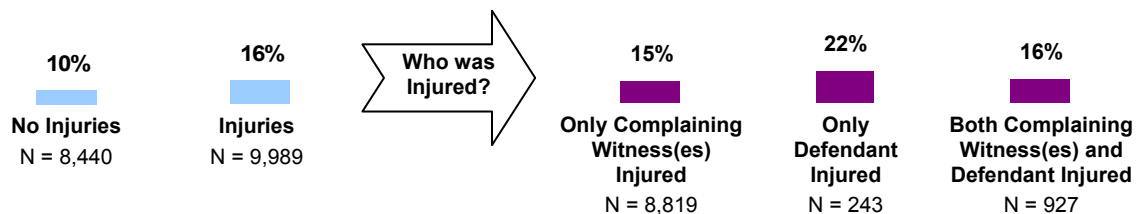
### Defendant Characteristics

- Demographic characteristics (from Omniform: sex, age, ethnicity, U.S. citizenship status)
- Criminal record (from CJA interviewer's check of the rap sheet: any criminal record, any prior misdemeanor convictions, any prior felony convictions, whether the defendant had open cases at the time of arrest)
- Domestic violence history (from ECAB sheet: any prior history, any prior arrests for domestic violence, prior and current orders of protection)
- Community ties (from CJA interview: employment, length of time at residence, has a telephone)

Overall, as noted above, expeditors sent about 13% of DV Bureau cases to the ECAB Annex. As discussed in chapter 1, expeditors followed guidelines for sending defendants to the ECAB Annex that gave priority to cases involving serious injury, assaults, and cross-complaints. We focused first on examining how these factors affected the likelihood that the expeditor would send a defendant to the ECAB Annex. We also examined the other characteristics listed above and identified additional factors associated with sending a defendant to the ECAB Annex.

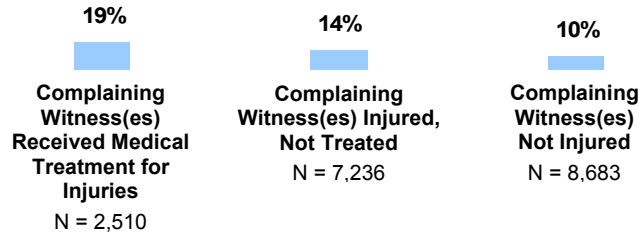
As expected, we found that ECAB expeditors gave priority to cases involving serious injury. Expeditors sent 16% of defendants in incidents in which someone was injured to the ECAB Annex, compared to only 10% of defendants in incidents in which there was no injury (see Figure 3-1). Among arrests for incidents in which someone was injured, closer examination revealed that expeditors were more likely to send a defendant to the ECAB Annex when the defendant was injured but a complaining witness was not (22%), than when only a complaining witness was injured (15%), or both the defendant and a complaining witness were injured (16%).

**Figure 3-1: Defendants Brought to ECAB Annex by Injuries**



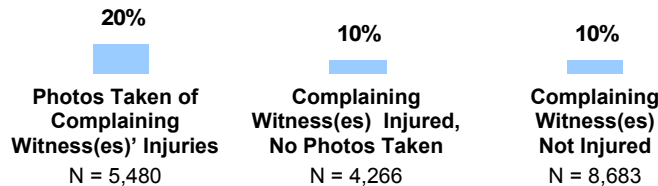
When a complaining witness received treatment for injuries, expeditors were more likely to send the defendant to the Annex (19%) than when a complaining witness was injured but did not receive treatment (14%), or when no complaining witness was injured (10%; see Figure 3-2, next page).

**Figure 3-2:** Defendants Brought to ECAB Annex  
by Whether Complaining Witness(es) Received Medical Treatment for Injuries



Similarly, when photos were taken of a complaining witness's injuries, expeditors were more likely to send the defendant to the ECAB Annex (20%) than when a complaining witness was injured but no photo was taken (10%; see Figure 3-3).

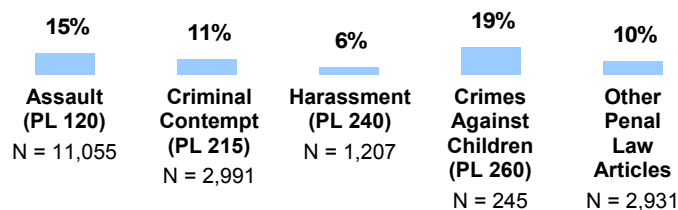
**Figure 3-3:** Defendants Brought to ECAB Annex  
by Whether Photos Were Taken of Complaining Witness(es)' Injuries



Taken together, these findings confirm that ECAB expeditors gave priority to cases involving injuries, especially those serious enough to warrant medical treatment and/or photos, when deciding which cases to send to the ECAB Annex.

Expeditors also gave priority to assault cases—they sent about 15% of defendants in assault cases (Penal Law Article 120) to the ECAB Annex (see Figure 3-4). Expeditors were also likely to send cases to the Annex when the most severe arrest charge was for crimes against children (Penal Law Article 260, 19%), although the number of these cases was small. Expeditors were less likely to send cases of criminal contempt (Penal Law Article 215, 11%) and harassment cases (Penal Law Article 240, 6%) to the Annex.

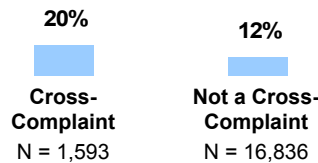
**Figure 3-4:** Defendants Brought to ECAB Annex  
by Penal Law Article of Most Severe Arrest Charge





As expected, we also found that ECAB expeditors sent more cross-complaints to the ECAB Annex. Expeditors sent about 20% of cross-complaints, compared to only 12% of arrests not classified as cross-complaints, to the Annex (see Figure 3-5). As noted earlier, expeditors often sent cross-complaints to the ECAB Annex to help determine whether the DA's office should decline one of the cross-complaints for prosecution. However, the DA's office was only slightly more likely to decline prosecution of video cases than non-video cases (4.0% vs. 2.3%, as described above; see discussion of Table 3-2), and we retained most cross-complaints in the analyses presented in this chapter.

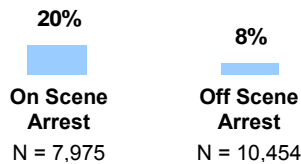
**Figure 3-5:** Defendants Brought to ECAB Annex by Cross-Complaint Status



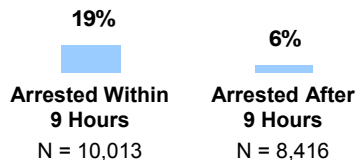
Our results thus far confirm that expeditors followed the guidelines giving priority to cases involving injuries, assaults, and cross-complaints when assigning cases to the ECAB Annex.

We also examined other factors that appear to have affected the likelihood that expeditors would send a DV Bureau case to the Annex. Expeditors probably did not explicitly consider these factors, and their effects may be coincidental. For example, we found that the location and timing of the arrest also affected the likelihood that expeditors sent a defendant to the ECAB Annex. Expeditors sent about 20% of defendants arrested at the scene of the incident to the ECAB Annex, compared to only 8% of defendants arrested elsewhere (see Figure 3-6).

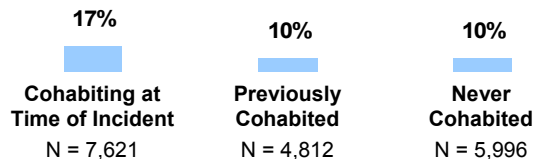
**Figure 3-6:** Defendants Brought to ECAB Annex by Location of Arrest



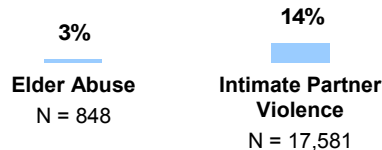
When there was a delay of 9 hours or more between the occurrence of the incident and the arrest, expeditors were much less likely to send defendants to the ECAB Annex (6%) than when the delay was under 9 hours (19%; see Figure 3-7, next page).

**Figure 3-7:** Defendants Brought to ECAB Annex by Delay in Arrest

Expeditors were more likely to send defendants who were currently cohabiting with the victim to the ECAB Annex (17%) than those who never cohabited (10%) or those who cohabited in the past (also 10%; see Figure 3-8). ECAB expeditors may have viewed cases in which the defendant and victim were currently cohabiting as more dangerous to the victim, and given them greater priority for the Annex.

**Figure 3-8:** Defendants Brought to ECAB Annex by Cohabitation Status

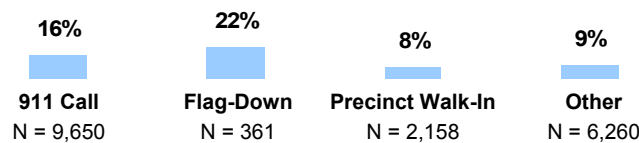
Expeditors were less likely to send defendants in elder abuse cases to the ECAB Annex (3%) than defendants in intimate partner violence cases (14%; see Figure 3-9). A closer examination of the data (not shown) reveals the reason: expeditors only sent elder abuse cases that involved intimate partner violence to the ECAB Annex; they did not send cases of elder abuse by other family members to the Annex. (In 2010, after the period covered by this study, the DV Bureau instructed expeditors to send cases of elder abuse by other family members to the Annex.)

**Figure 3-9:** Defendants Brought to ECAB Annex by Type of DV Case

Finally, how the incident was reported was associated with the likelihood that an expeditor would send a defendant to the ECAB Annex (see Figure 3-10, next page). Expeditors sent 22% of the incidents reported by flagging down a police officer to the

ECAB Annex, compared to 16% of the incidents reported in a 911 call. Expeditors sent to the Annex only about 8% of incidents reported by walking into a precinct.<sup>17</sup> According to the Chief of the DV Bureau, expeditors did not use incident-reporting method as a criterion for deciding which cases to send to the ECAB Annex. Supplemental analyses (not shown) indicate that these differences were due to delays in arrest. Incidents reported by walking into the precinct were much more likely to have a delay in arrest. As discussed earlier (see discussion of Figure 3-7), expeditors were much less likely to send defendants to the ECAB Annex when there was a delay in arrest.

**Figure 3-10:** Defendants Brought to ECAB Annex by Incident-Reporting Method



We found no other defendant, case, or incident characteristics that were strongly associated with whether ECAB expeditors would send defendants to the Annex for a video statement. Specifically, a defendant's sex, age, ethnicity, U.S. citizenship, criminal record, community ties, prior DV history, severity of top arrest charge, number of arrest charges, possession of a weapon, and use of force were not related to the likelihood that the expeditors would send a defendant for a video statement.

#### B. A Comparison of Characteristics of Cases in which the Defendant Made a Video Statement to Those in which the Defendant Refused to Make a Statement

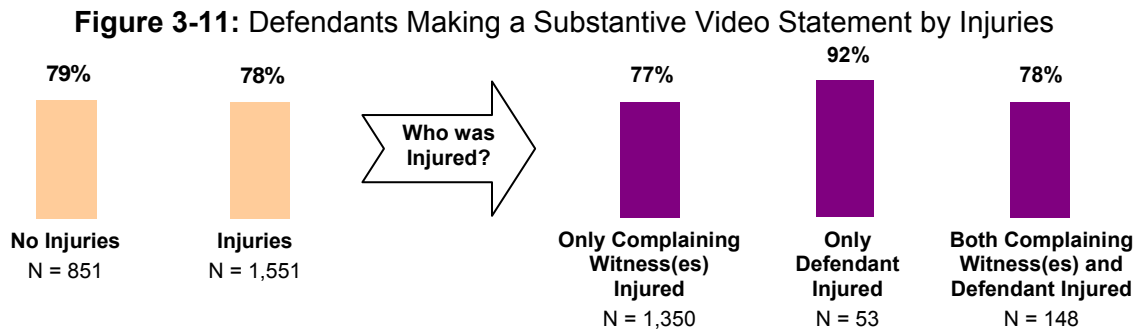
We next looked only at the 2,402 video cases sent to the ECAB Annex and examined defendant, arrest, and incident characteristics to determine whether they were associated with the likelihood that a defendant made a substantive video statement. As discussed earlier, we classified defendants as making a substantive statement if the Annex screener recorded them on video and they answered questions about the incident. We classified defendants as refusing to make a statement if the Annex screener recorded them on video and they immediately requested a lawyer or refused to answer any questions. (Some defendants who made a substantive statement may have stopped answering questions at some point and/or eventually requested a lawyer. We do not know how often this occurred, but it appears to be relatively rare.) Overall, the defendant made a substantive statement in 79% of the video cases.

<sup>17</sup> When an incident was reported by multiple methods, the means of reporting was classified in the first of the following listed methods used to report the incident: 1) 911 call, 2) flag-down 3) precinct walk-in, 4) other.

As in the previous section, all the comparisons are case-based, not defendant-based. Fourteen defendants were sent to the ECAB Annex for two or more arrests and made a statement on one occasion but refused to make a statement on another occasion. Although case-based comparisons count these defendants in both categories, the number of cases is small and should not affect our conclusions about factors associated with making a statement.

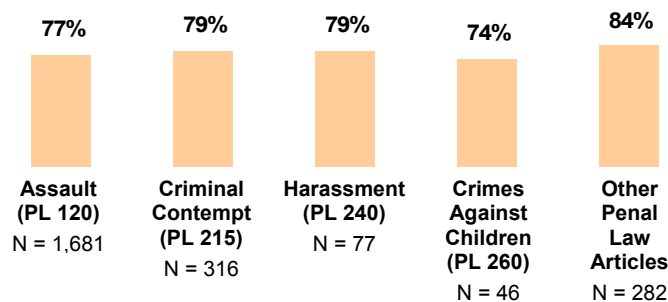
Our analysis of which defendants made a substantive statement examines the same defendant, arrest, and incident characteristics used in the previous section. As before, we focus first on those cases given priority by ECAB expeditors: injuries, assaults, and cross-complaints. We then consider whether other characteristics affect the likelihood that the defendant made a substantive statement.

Defendants in incidents involving injuries were no more or less likely to make a substantive statement than defendants in incidents in which there were no injuries (see Figure 3-11, left panel). However, defendants in incidents in which the defendant was injured but no complaining witness was injured were much more likely to make a substantive statement (92%; see Figure 3-11, right panel). (These incidents were relatively rare. There were only 53 video cases in which the defendant was injured and no complaining witness was injured.)



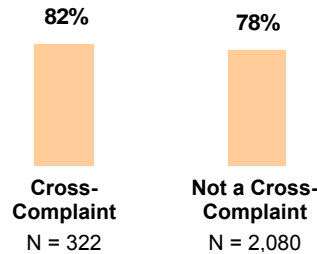
Defendants in cases in which the most severe arrest charge was for crimes against children (PL Article 260) were less likely to make a substantive statement than other defendants—only 74% of these 46 defendants made a substantive statement (see Figure 3-12). However, there was very little variation among assault, criminal contempt, and harassment cases.

**Figure 3-12: Defendants Making a Substantive Video Statement by Penal Law Article of Most Severe Arrest Charge**



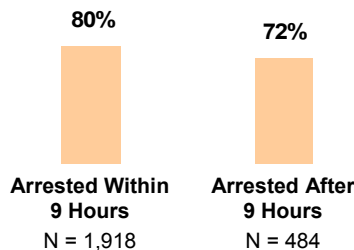
Interestingly, not only were cross-complaints more likely to be sent to the ECAB Annex, as previously noted, but defendants in these cases also were more likely to make a substantive statement than defendants in cases that were not cross-complaints (see Figure 3-13). Defendants made a substantive statement in 82% of cross-complaints, compared to 78% of other cases.

**Figure 3-13:** Defendants Making a Substantive Video Statement by Cross-Complaint Status



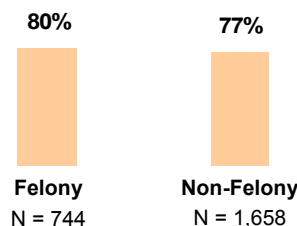
The timing of arrests had a strong impact on the likelihood that a defendant brought to the ECAB Annex would make a substantive statement. If the police made the arrest nine or more hours after the incident, only 72% of defendants made a substantive statement (see Figure 3-14). In arrests made within 9 hours of the incident, 80% of the defendants made a substantive statement.

**Figure 3-14:** Defendants Making a Substantive Video Statement by Delay in Arrest



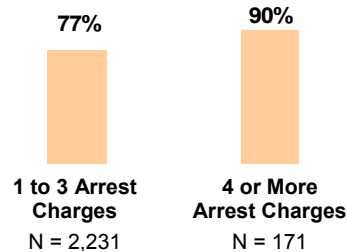
In cases in which the top arrest charge was for a felony, the defendant was slightly more likely to make a substantive statement (80%) than in cases in which the top arrest charge was for a lesser offense (77%; see Figure 3-15).

**Figure 3-15:** Defendants Making a Substantive Video Statement by Severity of Most Severe Arrest Charge



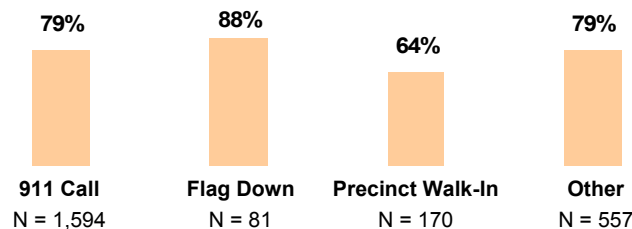
Defendants in cases with four or more arrest charges were more likely to make a substantive statement (90%) than those with fewer arrest charges (77%; see Figure 3-16).

**Figure 3-16:** Defendants Making a Substantive Video Statement by Number of Arrest Charges



How the incident was reported was also associated with the likelihood that a defendant would make a substantive statement. About 88% of the defendants made a substantive statement in arrests in which the incident was reported by flagging down a police officer, compared to only 64% in arrests in which the incident was reported by walking into a precinct (see Figure 3-17). These differences do not appear to be due to differences in the likelihood of a delay in arrest (data not shown). It is not clear whether they are coincidental, or reflect some unique characteristics associated with flag-downs and walk-ins. In any event, these two categories constitute only a very small proportion of video cases.

**Figure 3-17:** Defendants Making a Substantive Video Statement by Incident-Reporting Method



We found no other defendant, case, or incident characteristics that were strongly associated with whether the defendant made a substantive statement. Specifically, location of arrest, whether the case involved intimate partner violence or elder abuse, and a defendant's sex, age, ethnicity, U.S. citizenship, criminal record, community ties, prior DV history, possession of a weapon, and use of force were not related to the likelihood that a defendant would make a substantive statement.

### C. Summary and Discussion of Findings

This chapter has addressed two issues. First, we have examined defendant and case characteristics associated with the likelihood that an expediter sent a defendant to the ECAB Annex. Second, we have examined defendant and case characteristics associated with the likelihood that a defendant sent to the ECAB Annex made a substantive statement.

Expeditors followed guidelines for sending defendants to the ECAB Annex that gave priority to cases involving serious injury, assaults, and cross-complaints, so we were not surprised to find that expeditors were more likely to send these cases to the Annex. Expeditors sent about one of every six defendants in incidents in which someone was injured to the Annex, compared to one in ten defendants in incidents when no one was injured. Among arrests in incidents with injuries, those in which the defendant, but not a complaining witness, was injured were most likely to be sent to the Annex (22%). If a complaining witness received medical treatment for injuries, or if there were photos taken of the injuries, expeditors were also more likely to send the defendant to the Annex (19% and 20%, respectively). Taken together, these findings confirm that expeditors gave priority to cases with injuries, especially serious injuries, when deciding which defendants to send to the ECAB Annex.

Similarly, we found that expeditors were more likely to send cases to the Annex when the most severe arrest charge was assault. Expeditors sent about 15% of assault cases to the Annex, compared to 6% of harassment cases, and 11% of criminal contempt cases. Interestingly, although small in number, cases of crimes against children were the most likely to be sent to the Annex—expeditors sent about one in five to the Annex.

Expeditors sent one out of every five cross-complaints to the Annex, compared to only 12% of other arrests. Expeditors were more likely to send cross-complaints to the Annex because they hoped that video statements from the defendants would enable the screener to determine if the DA's office should drop one of the cross-complaints and prosecute the other. We found that sending cross-complaint cases to the ECAB Annex did enable the DA's office to decline prosecution of a few more cases. However, the benefit was very small—the DA's office declined to prosecute about 4% of cross-complaints sent to the ECAB Annex, compared to 2% of cross-complaints not sent to the Annex.

In addition to the factors that expeditors explicitly used to determine which cases should receive priority for the ECAB Annex, we found several other defendant and case characteristics associated with the likelihood that expeditors sent a case to the Annex. Expeditors sent one-fifth of on-scene arrests to the Annex, compared to 8% of other arrests. Similarly, expeditors sent almost one-fifth of arrests made within 9 hours of the incident to the Annex, compared to only 6% of arrests made 9 hours or more after the incident. Expeditors were more likely to send to the Annex defendants who were cohabiting with the victim at the time of the incident than defendants who were not (17% vs. 10%). Expeditors were more likely to send intimate partner violence cases to the Annex than elder abuse cases (14% vs. 3%). Finally, the method of reporting the incident was associated with sending a defendant to the Annex. Over one fifth of the arrests in incidents reported by flagging down a police officer on the street were sent to the Annex, while about one of every 6 arrests in incidents reported by a 911 call were sent there. Less than one of every 10 arrests reported by walking into a precinct were sent to the Annex.

These analyses show that a variety of characteristics were associated with the likelihood that expeditors sent a defendant to the ECAB Annex. We expected to find that injury, assault and cross-complaint status were associated with sending cases to the Annex, because these reflect the guidelines used by expeditors. The association of additional characteristics, such as timing and location of arrest, cohabitation status, and reporting method, was not based on explicit guidelines. Is the association of these additional characteristics merely a coincidence because certain types of arrests were more likely to occur at a time when they would be sent to the ECAB Annex? For example, were arrests reported by flag-down more likely to go to the ECAB Annex because flag-downs were more likely to occur during the evening arrest shifts, which provide the bulk of Annex cases?

To determine whether the patterns merely reflected differences by arrest shift, we conducted two additional analyses (data not shown). First, we examined whether arrests with certain types of characteristics were more likely to occur during the evening arrest shifts than during other arrest shifts. We found no differences large enough to explain the patterns reported in this chapter. Second, we examined only those arrests made during the evening arrest shift to see if we observed the same patterns of findings. Our analyses showed that all the same characteristics as reported above were associated with sending a defendant to the ECAB Annex when the analysis was limited to defendants arrested during the evening shift. These findings strongly suggest that the observed patterns showing which cases expeditors sent to the ECAB Annex were not related to the shift during which the arrest was made.

What then explains why defendant and case characteristics beyond those explicitly considered by expeditors were associated with the likelihood that they would send a case to the ECAB Annex?

First, it appears that arrest and reporting characteristics may have presented logistical problems that prevented expeditors from sending cases to the Annex. Expeditors were less likely to send a defendant to the Annex in cases in which the arresting officer made an off-scene arrest, arrested the defendant more than 9 hours after the incident, or arrested the defendant for an incident reported by precinct walk-in. These arrests may have taken longer to process, leaving little time for a video statement, or there may have been greater difficulties arranging for the arresting officer to accompany the defendant to the Annex.

Second, expeditors may have used cohabitation status as an additional factor to assess the seriousness of cases. Expeditors may have been more concerned about victim safety in cases in which the defendant lived with the complaining witness.

Both of these explanations are necessarily speculative. Determining their validity would require observation of ECAB expeditors' process for selecting cases for the ECAB Annex.



Our analyses also show that nearly four of every five defendants sent to the ECAB Annex made a substantive statement on camera. Only a few factors helped to predict which defendants made a substantive statement. When only the defendant was injured, she or he was more likely to make a substantive statement than when no one was injured or a complaining witness was injured. In the small number of cases in which the DA's office charged defendants with crimes against children, they were less likely to make a substantive statement. Defendants in cross-complaints were more likely to make a substantive statement. When there was a delay of 9 hours or more between the incident and the arrest, defendants were less likely to make a substantive statement. Defendants facing felony arrest charges were slightly more likely to make a substantive statement than those facing lesser charges, but the difference was not large. Defendants who had four or more arrest charges were much more likely to make a substantive statement than those facing three or fewer arrest charges. Defendants arrested in incidents reported by flagging down a police officer were more likely to make a substantive statement. However, defendants arrested in incidents reported by walking into a precinct were less likely to make a substantive statement.

It is difficult to determine why these differences occurred. Because almost all the arrests of defendants sent to the ECAB Annex occurred during the evening arrest shifts, the patterns associated with making a substantive statement could not have been due to the arrest shift during which certain types of arrests were likely to occur. It seems likely, then, that certain types of defendants were more willing to make a substantive statement. A closer look at the findings suggests three factors that may be relevant.

First, the passage of time reduced a defendant's willingness to talk about the incident. Defendants brought to the ECAB Annex within 9 hours of the incident were more willing to make a statement. After 9 hours, defendants were less willing to answer questions about the incident.

Second, defendants who believed that they were victimized, and therefore were not culpable, may have been more likely to make a substantive statement. Notably, defendants arrested in cross-complaints and defendants who were the only injured party in the incident were more likely to make substantive statements. These defendants may have made a substantive statement in an effort to convince the ADA not to prosecute the case.

Third, defendants charged with offenses that were more serious seemed to be more likely to make a substantive statement. Defendants charged with felonies and those facing three or more arrest charges were more likely to make a substantive statement than were other defendants. These defendants may have made a substantive statement in an effort to deny their culpability or to minimize or justify the consequences of their actions during the incident as a way to avoid facing serious criminal charges and penalties.

These interpretations are necessarily speculative. To determine whether they are correct, we would have to interview defendants to find out about their motivations for making a substantive statement.

Overall, the findings in this chapter confirm that the expeditors gave priority to cases involving serious injury, assaults, and cross-complaints when deciding which cases to send to the ECAB Annex for a video statement. The findings also alert us to additional differences between video and non-video cases related to the circumstances of arrest (location, delay, and reporting method) and cohabitation status. As we analyze the impact of video cases in subsequent chapters, we will consider these differences when they are relevant. This will ensure that we can isolate the effect of video cases separately from the effect of characteristics associated with whether the expeditor sent a defendant to the ECAB Annex for a video statement.

Our findings also highlight some differences between defendants who made substantive statements and those who did not. As we analyze the impact of substantive statements in subsequent chapters, we will consider these differences when they are relevant. This will ensure that we can isolate the effect of substantive statements separately from the effect of characteristics associated with whether a defendant made a substantive statement.

## IV. CASE OUTCOMES

This chapter describes the case outcomes of DV Bureau cases. We begin by comparing video and non-video cases. We then compare defendants who made a substantive statement at the Annex to those who requested an attorney or refused to make a statement. As in the previous chapter, we limited the analyses to disposed cases and the comparisons are case-based, not defendant-based.

### A. Comparing Case Outcomes in Video and Non-Video Cases

We examined several types of case outcomes to determine whether there were any differences between video and non-video cases:

#### Arraignment Charge

- severity of the most severe arraignment charge
- penal law article of the most severe arraignment charge

#### Bail, Release Status, and Failure to Appear

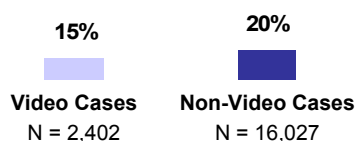
- bail set at arraignment
- release status at arraignment
- ever released between arraignment and disposition
- ever failed to appear for a scheduled court hearing

#### Case Dispositions and Sentences

- conviction
- severity of the most severe conviction charge
- penal law article of the most severe conviction charge
- sentenced to jail or prison

Defendants in video cases were less likely to be charged at arraignment with a felony than defendants in non-video cases. About 15% of defendants in video cases were charged with a felony, compared to 20% of defendants in non-video cases (see Figure 4-1).

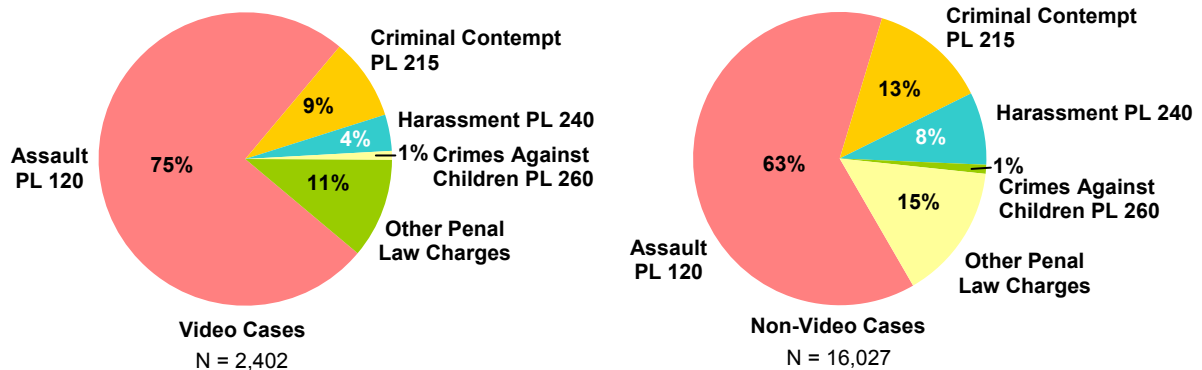
**Figure 4-1:** Defendants Charged with a Felony at Arraignment in Video and Non-Video Cases



There were even larger differences between video and non-video cases in the penal law article of the most severe arraignment charge. About 75% of defendants in video cases were charged with an assault (PL 120), compared to only 63% of defendants in non-video cases (see Figure 4-2, next page). Defendants in non-video

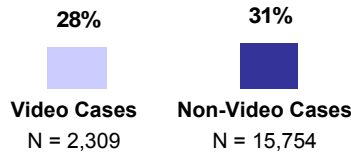
cases were more likely to be charged with criminal contempt (PL 215, 13%) or harassment (PL 240, 8%) than defendants in video cases (9% and 4%, respectively).

**Figure 4-2: Penal Law Article of Most Severe Arraignment Charge in Video and Non-Video Cases**



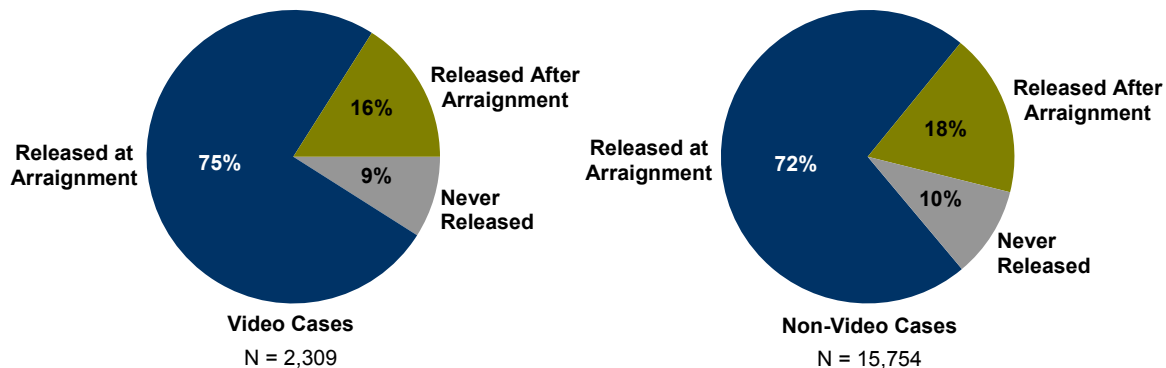
Defendants in video cases continued beyond arraignment were slightly less likely to have bail set at arraignment (28% vs. 31% for defendants in non-video cases; see Figure 4-3).

**Figure 4-3: Defendants in Continued Cases with Bail Set at Arraignment in Video and Non-Video Cases**



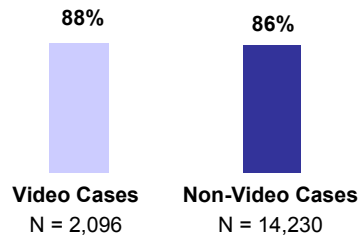
Defendants in video cases were slightly more likely to be released at arraignment (75% vs. 72%; see Figure 4-4). About 90% of defendants in both video and non-video cases were released prior to the final disposition of the case.

**Figure 4-4: Release Status for Defendants in Continued Cases in Video and Non-Video Cases**



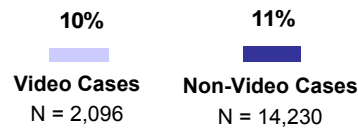
Among cases in which the court released the defendant, there was little difference between video and non-video cases in the type of release. Among released defendants, 88% were released on recognizance (ROR) in video cases compared to 86% in non-video cases (see Figure 4-5).

**Figure 4-5:** Released Defendants Who Were Released on Recognizance in Video and Non-Video Cases



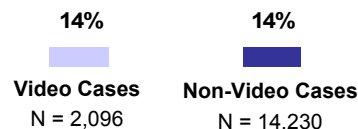
Among defendants who were ever released, there was little difference between defendants in video cases and non-video cases in the rate of failure to appear. Defendants in each group were about equally likely to miss one or more scheduled court appearances for which the court issued an unstayed warrant (10% in video cases, 11% in non-video cases; see Figure 4-6).

**Figure 4-6:** Released Defendants Who Failed to Appear for at Least One Scheduled Court Appearance in Video and Non-Video Cases



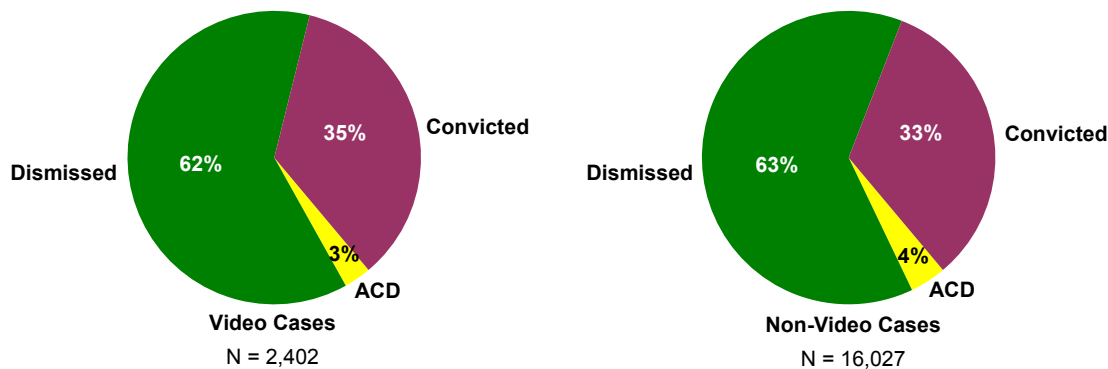
Among defendants who were ever released, there was no difference between defendants in video cases and non-video cases in the rate of re-arrest for a new DV offense during the pretrial period. About 14% of defendants in both video and non-video cases were re-arrested for a new DV offense prior to case disposition (see Figure 4-7).

**Figure 4-7:** Released Defendants Who Were Arrested for a New DV Offense Prior to Case Disposition in Video and Non-Video Cases



The outcome of central importance for evaluating the video statement program is, of course, conviction. About 35% of video cases ended in conviction, compared to 33% of non-video cases (see Figure 4-8A). This is a relatively small difference, and indicates only a small advantage for video cases. About 62% of video cases were dismissed, compared to 63% of non-video cases. The remainder of the cases were disposed with an ACD—3% of video cases and 4% of non-video cases.

**Figure 4-8A:** Case Dispositions in Video and Non-Video Cases



### CASE DISPOSITIONS

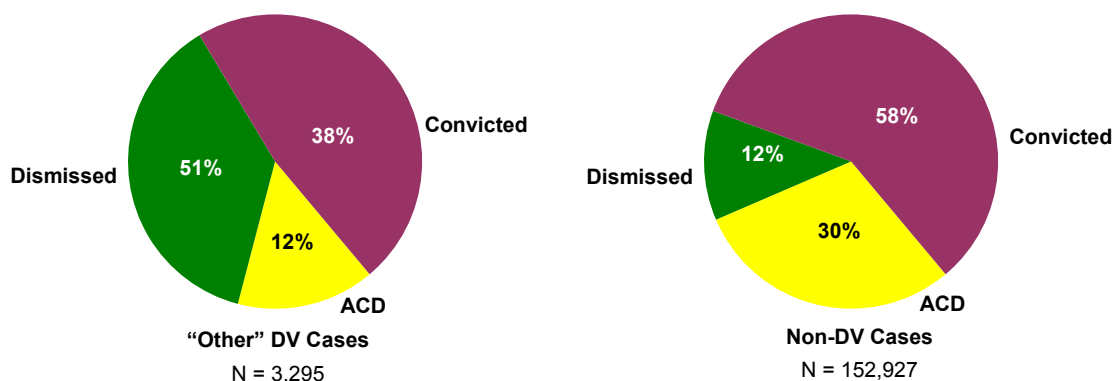
In New York State, cases disposed in the criminal courts can result in one of several final dispositions: a plea of guilty, a finding of guilty after trial, an acquittal after trial, a dismissal, or an adjournment in contemplation of dismissal (ACD). In DV cases, an ACD typically remains open for one year, during which an order of protection is in effect. If the defendant violates the order or is re-arrested for a new offense, the case may be returned to the court calendar for another, possibly more severe, disposition.

In this report, convictions are defined to include pleas of guilty and findings of guilty after trial, including pleas or findings of guilty to a violation. (Although violations are not considered crimes under New York State Penal Law, they can result in a jail sentence.) We categorized acquittals, dismissals and ACDs as non-convictions.

To put these conviction rates in perspective, we ran supplemental analyses for “other” DV cases (i.e., DV cases that did not involve intimate partner violence or elder abuse) and Non-DV cases. As discussed in chapter 2, “other” DV cases include cases of violence between parents and children, grandparents and grandchildren, siblings, and others related by blood or marriage (e.g., cousins, nieces, nephews, aunts, uncles). The DA’s office did not assign these cases to the DV Bureau; instead, it assigned them to the Trial Division, or if the charges were appropriate, the Crimes Against Children Bureau, Sex Crimes and Special Victims Division, or the Homicide Bureau. Non-DV cases include all cases prosecuted in Brooklyn in which there was no intimate partner or family relationship between the defendant and the victim (e.g., alleged crimes against an acquaintance or stranger), or in which there was no victim (e.g., possession or sale of drugs, “fare-beating” in the transit system, possession or use of a weapon, etc.).

About 38% of “other” DV cases ended in conviction, 12% were adjourned in contemplation of dismissal, and 51% were dismissed (see Figure 4-8B, left panel). The results for “other” DV cases were somewhat different from those for DV cases handled in the DV Bureau. The conviction rate was slightly higher for “other” DV cases (38%) than for video (35%) and non-video DV cases (33%). ACD’s were more common in “other” DV cases (12%) than in video (3%) or non-video (4%) DV cases, while dismissals were less common (51% vs. 62% and 63% respectively).

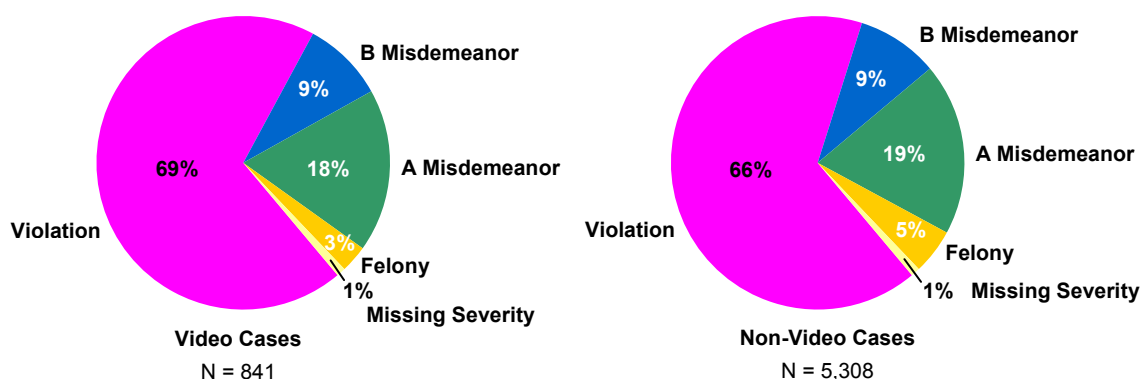
**Figure 4-8B:** Case Dispositions in “Other” DV Cases and Non-DV Cases



The dispositions of DV cases, whether assigned to the DV Bureau or other bureaus, contrast sharply with the dispositions for Non-DV cases in Brooklyn (see Figure 4-8B, right panel). About 58% of Non-DV cases ended in conviction, 30% were adjourned in contemplation of dismissal, and 12% were dismissed. Taken together, these differences confirm that convictions were much harder to obtain in domestic violence cases, whether they involved intimate partner violence, elder abuse, or other types of family violence, than in Non-DV cases. These findings indicate that the evidence available in Non-DV cases was probably stronger than in DV cases, significantly increasing the likelihood of conviction.

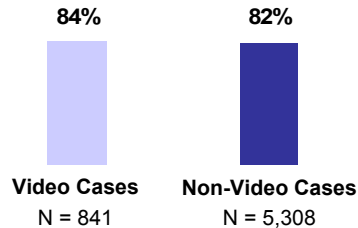
Returning to our comparison of video and non-video cases, the most severe conviction charge was slightly more likely to be a violation in video cases (69% vs. 66% for non-video) and only slightly less likely to be an A misdemeanor (18% vs. 19%) or a felony (3% vs. 5%; see Figure 4-9).

**Figure 4-9:** Conviction Charge Severity in Video and Non-Video Cases



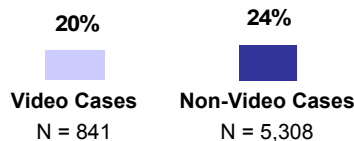
In 84% of video cases and 82% of non-video cases, the conviction charge severity was lower than the severity of the arraignment charge (see Figure 4-10).<sup>18</sup>

**Figure 4-10:** Conviction Charge Severity Lower than Arraignment Charge Severity in Video and Non-Video Cases



There were only trivial differences in the penal law article of the conviction charge between video and non-video cases (data not shown). Finally, there was a small difference in the likelihood that the court would sentence a convicted defendant to jail or prison. The court sentenced 20% of defendants in video cases and 24% of defendants in non-video cases to jail or prison (see Figure 4-11).

**Figure 4-11:** Convicted Defendants Sentenced to Jail or Prison in Video and Non-Video Cases



### Excluding Cross-Complaints

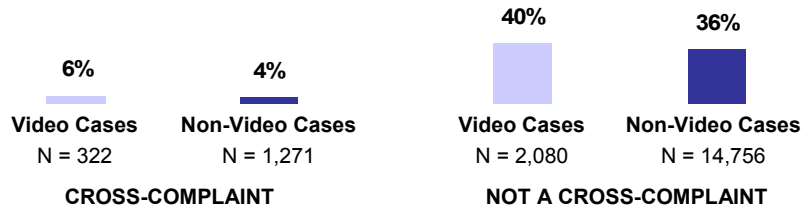
Cross-complaints are very difficult to prosecute, since the primary evidence against each of the defendants is usually the testimony of the other defendant. Unless there is independent evidence to corroborate the claims of one party and not the other, cross-complaints usually end in dismissal. Only 4.5% of cross-complaints ended in conviction, compared to 36% of other cases (data not shown). Because many more cross-complaints were sent for a video statement (20% vs. 12%, as shown in Figure 3-5), we expected this difference to affect the difference in conviction rates between video and non-video cases. To account for this, we examined conviction rates for video and non-video cases separately for cross-complaints and other cases. Only 6% of video cross-complaints ended in conviction, compared to 4% of non-video cross-complaints (see Figure 4-12, next page). However, among cases that were not cross-complaints,

<sup>18</sup> For this calculation, we coded charge severity in four categories: felony, A misdemeanor, B misdemeanor, and violation. We also tried coding charge severity in 8 categories, with felony charges coded as A, B, C, D and E felonies, and found that conviction charges were of lower severity than arraignment charges in 86% of video cases and 85% of non-video cases.



40% of video cases ended in conviction, compared to 36% of non-video cases. This four percentage point advantage for video cases is larger than the two percentage point advantage reported above (35% vs. 33%, as reported in Figure 4-8A), when cross-complaints and other cases were considered together. This finding confirms our expectation that the greater number of cross-complaints among video cases reduced the conviction rate for these cases more than for non-video cases.

**Figure 4-12:** Conviction Rates by Cross-Complaint Status in Video and Non-Video Cases



**Throughout the remainder of this report, we exclude cross-complaints from the presentation of results.** First, the conviction rate for cross-complaints is much lower than for other cases, and little can be done to improve the conviction rate in these cases. One important reason is that ADAs are not permitted to speak with either defendant to develop a case against the other without the permission of his or her defense attorney. Second, because there are more cross-complaints among the video cases, including cross-complaints would distort the discussion of the effects of the video program on convictions. The impact of video statements on convictions is clearer when we exclude cross-complaints from the analyses.

### The EVE Project

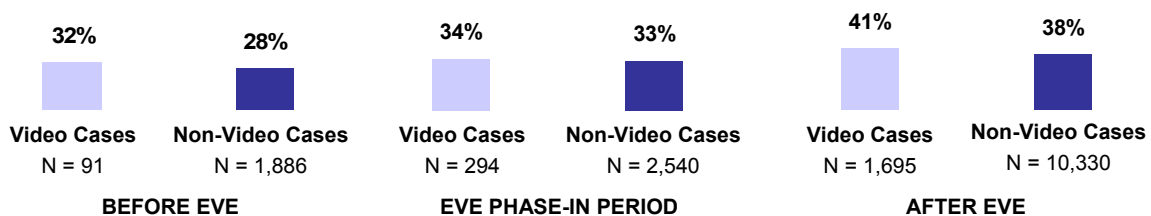
Another factor that may affect the conviction rates is whether a case was arraigned before or after the EVE project was introduced. As noted in chapter 1, this was the one major change in the operation of the DV Bureau after the Bureau established the video statement program in November 2007. Between March and June 2008, the DV Bureau phased in the EVE project, which contacts victims at the time of arraignment. The early outreach by the EVE project appears to have increased the number of victims who came in to the DV Bureau for an intake interview with an ADA. Anecdotal evidence suggests that it also increased the number of victims willing to participate in the prosecution. Since greater victim participation is likely to increase the conviction rate in DV Bureau cases, it is important to untangle the effects of the EVE project from the effects of the video statement program. We decided to conduct some analyses to determine the effect of the EVE project on the conviction rate, and to determine whether the effect of the video statement program on the conviction rate was the same before and after the DV Bureau established the EVE project.

The DV Bureau phased in the EVE project over several months, so we decided to examine the effect of EVE on conviction rates by looking at three time periods:

before EVE (November 27, 2007 through February 28, 2008), EVE phase-in period (March 1, 2008 through June 30, 2008) and post-EVE (July 1, 2008 through December 31, 2009). Because the EVE project staff did not call victims who were also defendants involved in cross-complaints,<sup>19</sup> we limited our analysis to cases that were not cross-complaints. Before EVE, the conviction rate in DV Bureau cases that were not cross-complaints was 28%. During the EVE phase-in period, the conviction rate was 33%, and after EVE was fully implemented, the conviction rate was 38% (data not shown). Without a more careful study, we cannot be sure that the increases in the conviction rate were due in whole or in part to the EVE project. To conclude that EVE was solely or primarily responsible for increasing the conviction rate would require a thorough examination of other changes occurring over the same time period. In particular, it would require an analysis of information about contacts between EVE staff and victims, and about victim intake interviews with ADAs. Such an examination is beyond the scope of the present study because we do not have the necessary data on EVE contact with victims or on intake interviews.

In order to understand the impact of the video statement program, it is essential to take into account the possible impact that the introduction of the EVE project may have had on the conviction rate. We compared the conviction rates in video and non-video cases before EVE, during the EVE phase-in period, and post-EVE. Again, our analysis was limited to cases that were not cross-complaints. As expected, the conviction rate increased for both video and non-video cases as the EVE project was implemented (see Figure 4-13). However, this analysis revealed an interesting pattern. Before EVE was implemented, the conviction rate in video cases was 32%, four percentage points higher than for non-video cases (28%). During the EVE phase-in period, both conviction rates increased, but the gap between video and non-video cases narrowed to one percentage point (34% vs. 33%). After EVE was fully implemented, beginning in July 2008, the conviction rate was 41% for video cases and 38% for non-video cases, a difference of three percentage points. These findings suggest that the video statement program had a smaller impact on conviction rates during the EVE phase-in period. However, its impact was nearly as large after EVE was fully implemented as it was before EVE.

**Figure 4-13:** Conviction Rates by EVE Time Period in Video and Non-Video Cases  
*Excluding Cross-Complaints*



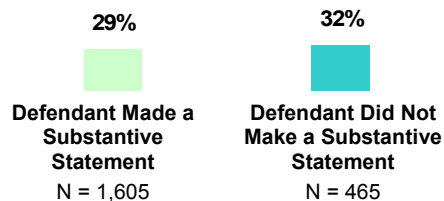
<sup>19</sup> This policy changed in 2010 (after the time period covered by this study), when the EVE Project director and case managers from Safe Horizon began a program to call some cross-complainants to identify those who need services.

These findings confirm that any analysis of factors affecting conviction must take into account the impact of the EVE project. In the next chapter, we will examine the impact of video statements on convictions more thoroughly, taking into account not only the EVE project but also a variety of predictors of conviction.

#### B. Comparing Case Outcomes for Defendants Who Made a Substantive Statement to Case Outcomes for Defendants Who Refused to Make a Statement

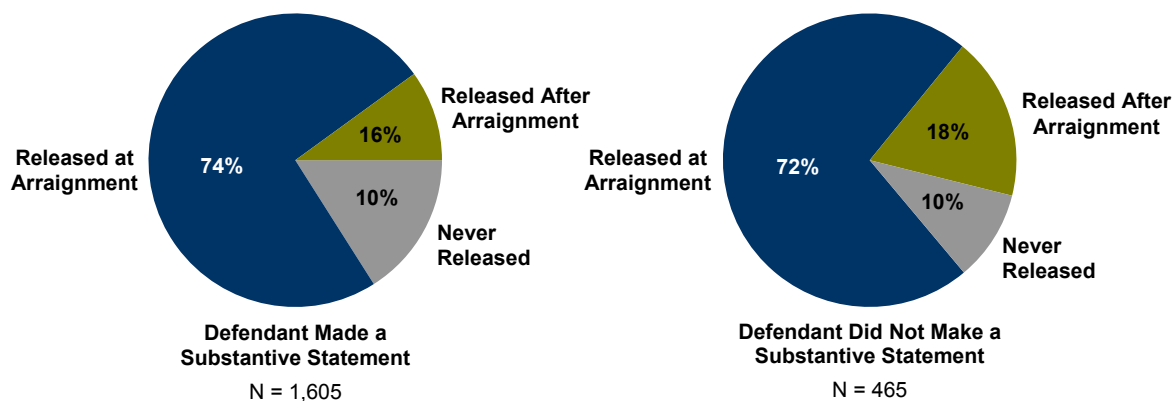
We now consider whether case outcomes were different for defendants who made a substantive statement and those who did not. Making a substantive statement had little impact on arraignment charge severity and penal law article of the most severe arraignment charge (data not shown). Defendants who made a substantive statement were slightly less likely to have bail set at arraignment (29% vs. 32% for defendants who did not make a substantive statement; see Figure 4-14).

**Figure 4-14:** Defendants in Continued Cases with Bail Set at Arraignment by Whether Defendant Made a Substantive Statement  
*Excluding Cross-Complaints*



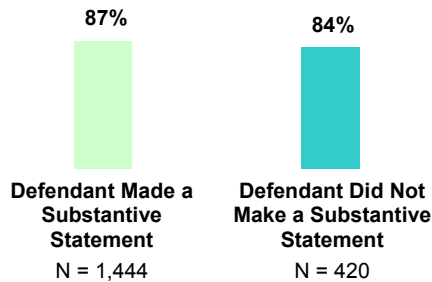
Defendants who made a substantive statement were slightly more likely to be released at arraignment (74% vs. 72%), and slightly less likely to be released after arraignment (16% vs. 18%), so in the end 90% of defendants in both groups were released prior to the final disposition of the case (see Figure 4-15).

**Figure 4-15:** Release Status for Defendants in Continued Cases by Whether Defendant Made a Substantive Statement  
*Excluding Cross-Complaints*



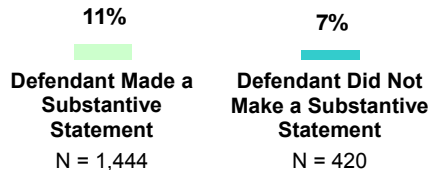
Among cases in which the defendant was released, the type of release differed between cases in which the defendant made a substantive statement and those in which the defendant refused to make a statement (see Figure 4-16). About 87% of defendants who made a substantive statement, and 84% of defendants who did not, were released on recognizance (ROR).

**Figure 4-16:** Released Defendants Who Were Released on Recognizance by Whether Defendant Made a Substantive Statement  
*Excluding Cross-Complaints*



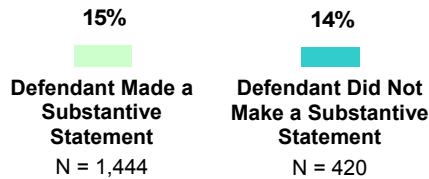
Among defendants who were ever released, there also was a difference in the rate of failure to appear between defendants who made a substantive statement and those who did not. About 11% of defendants who made a substantive statement missed one or more scheduled court appearances for which the court issued an unstayed warrant, compared to 7% of defendants who refused to make a statement (see Figure 4-17).

**Figure 4-17:** Released Defendants Who Failed to Appear for at Least One Scheduled Court Appearance by Whether Defendant Made a Substantive Statement  
*Excluding Cross-Complaints*



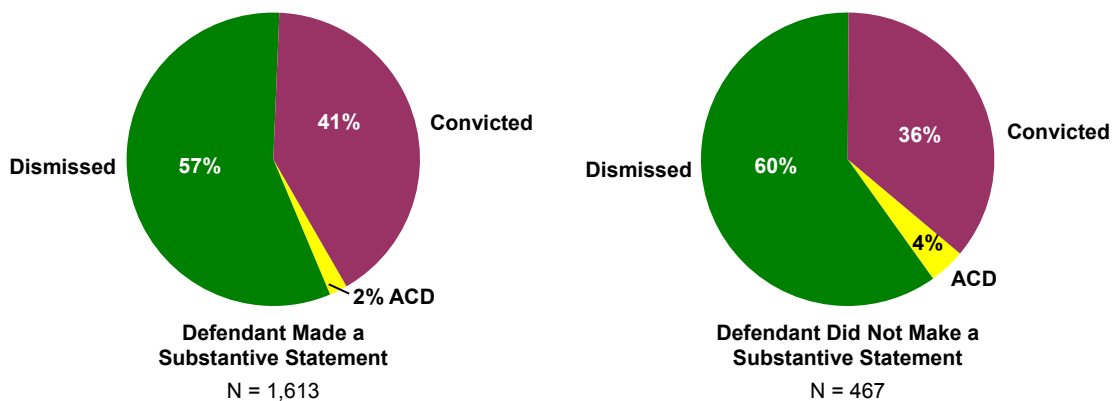
Among defendants who were ever released, there was little difference in the rate of pretrial re-arrest for a new DV offense between defendants who made a substantive statement and those who did not. About 15% of those who made a substantive statement were re-arrested for a new DV offense prior to case disposition, compared to 14% of those who did not make a substantive statement (see Figure 4-18, next page).

**Figure 4-18:** Released Defendants Who Were Arrested for a New DV Offense Prior to Case Disposition by Whether Defendant Made a Substantive Statement  
*Excluding Cross-Complaints*



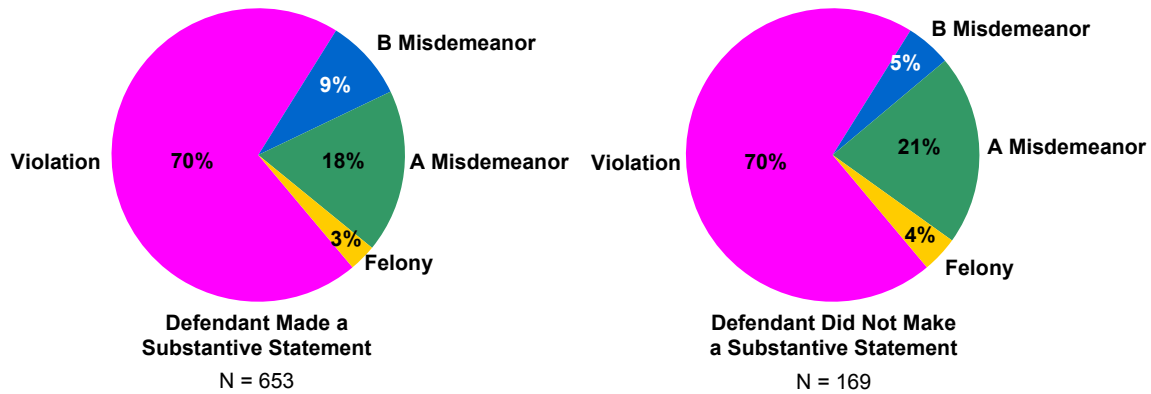
Of particular interest in this study is the impact of substantive statements on the conviction rate. About 41% of cases in which the defendant made a substantive statement ended in conviction, compared to 36% of cases in which the defendant did not make a statement (see Figure 4-19). This difference suggests that it was easier to obtain convictions when defendants made a substantive statement. About 57% of cases in which the defendant made a substantive statement were dismissed, compared to 60% of cases in which no statement was made. The remaining cases were disposed with an ACD—2% when a substantive statement was made and 4% when no statement was made.

**Figure 4-19:** Case Dispositions by Whether Defendant Made a Substantive Statement  
*Excluding Cross-Complaints*



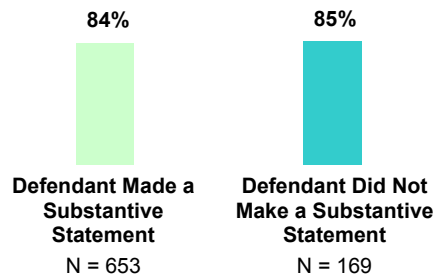
The most severe conviction charge was slightly less likely to be an A misdemeanor when the defendant made a substantive statement (18%, vs. 21% when the defendant did not make a substantive statement) and slightly more likely to be a B misdemeanor (9% vs. 5%; see figure 4-20, next page). The percentages of felony and violation convictions were similar for both groups.

**Figure 4-20:** Conviction Charge Severity by Whether Defendant Made a Substantive Statement  
*Excluding Cross-Complaints*



In 84% of cases when the defendant made a substantive statement and 85% of cases when the defendant did not make a substantive statement, the conviction charge severity was lower than the severity of the arraignment charge (see Figure 4-21).<sup>20</sup>

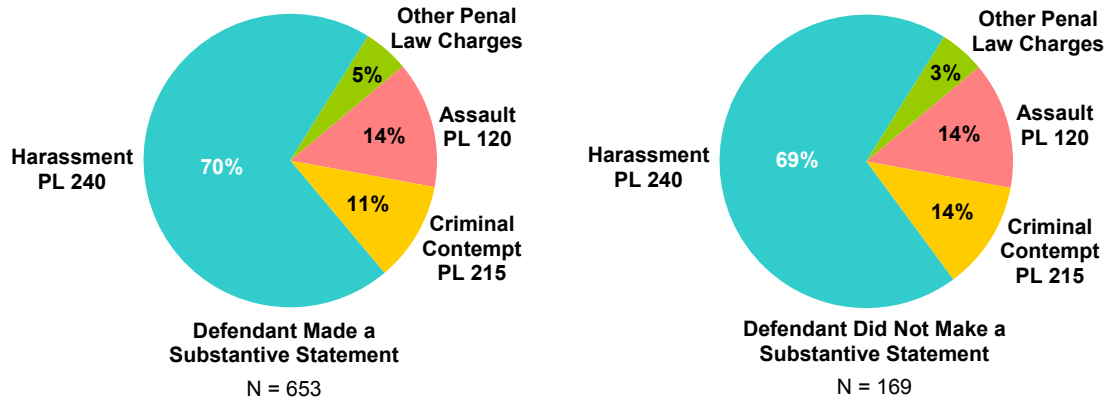
**Figure 4-21:** Conviction Charge Severity Lower than Arraignment Charge Severity  
by Whether Defendant Made a Substantive Statement  
*Excluding Cross-Complaints*



There were only small differences in the penal law article of the conviction charge—defendants who refused to make a statement were slightly more likely to be convicted of criminal contempt than those who made a substantive statement (14% vs. 11%) (see Figure 4-22, next page).

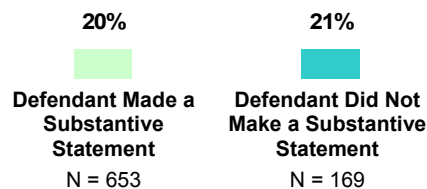
<sup>20</sup> For this calculation, we coded charge severity in four categories: felony, A misdemeanor, B misdemeanor, and violation. We also tried coding charge severity in 8 categories, with felony charges coded as A, B, C, D and E felonies, and found that conviction charges were of lower severity than arraignment charges in 85% of cases when a statement was made and 86% of cases when no statement was made.

**Figure 4-22:** Penal Law Article of Most Severe Conviction Charge  
by Whether Defendant Made a Substantive Statement  
*Excluding Cross-Complaints*



Finally, there was little difference in the likelihood that the court would sentence a convicted defendant to jail or prison. The court sentenced 20% of defendants who made a substantive statement to jail or prison compared to 21% of defendants who did not make a substantive statement (see Figure 4-23).

**Figure 4-23:** Convicted Defendants Sentenced to Jail or Prison  
by Whether Defendant Made a Substantive Statement  
*Excluding Cross-Complaints*

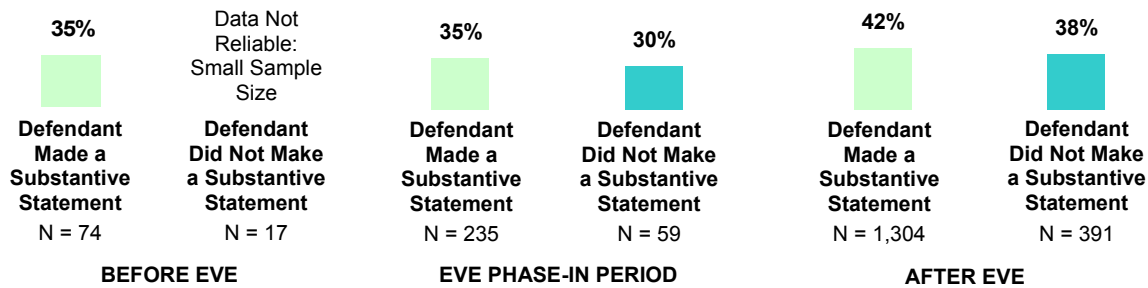


### The EVE Project

To determine whether the EVE project is responsible for the higher conviction rate in cases in which the defendant made a substantive statement, we compared the conviction rates in cases with and without substantive statements before EVE, during the EVE phase-in period, and post-EVE. As before, our analysis was limited to cases that were not cross-complaints. When the defendant made a substantive statement, 35% of cases ended in conviction both before EVE was started and during the phase-in period (see Figure 4-24, next page). This rate increased to 42% after EVE was fully implemented. We could not estimate a reliable conviction rate for the few cases in

which the defendant did not make a statement before EVE was implemented. During the phase-in period, the conviction rate for cases without a statement was 30%, and after full implementation, it increased to 38%. These findings indicate that the conviction rate was 5 percentage points higher for cases in which the defendant made a substantive statement during the EVE phase-in period and 4 percentage points higher after full implementation of EVE. Without reliable data before EVE was implemented, it is difficult to draw general conclusions about how cases with and without substantive statements were affected by EVE. However, it appears that even after EVE was fully implemented, cases in which defendants made a substantive statement continued to have higher conviction rates than cases in which defendants did not make a statement.

**Figure 4-24: Conviction Rates by EVE Time Period**  
by Whether Defendant Made a Substantive Statement  
*Excluding Cross-Complaints*



### C. Summary and Discussion of Findings

This chapter has presented information about differences between cases sent to the ECAB Annex (video cases) and those not sent to the ECAB Annex (non-video cases) on a variety of case outcomes, as well as differences between cases in which the defendant made a substantive statement and those in which the defendant refused to make a statement.

The most notable difference in case outcomes between video and non-video cases was the difference in conviction rates. Although the overall conviction rate for video cases was only two percentage points higher than the rate for non-video cases, the advantage for video cases was four percentage points when we excluded cross-complaints. An advantage for video cases remained even after taking into account the impact of the EVE project, which significantly increased conviction rates for both video and non-video cases.

To place the findings on conviction rates in perspective, we compared the conviction rates for intimate partner violence and elder abuse cases handled by the DV Bureau to the conviction rate for “other” DV cases (e.g., parent-child violence, sibling violence, etc.) handled in other bureaus and divisions. The conviction rate for “other”



DV cases was slightly higher than the conviction rate in the DV Bureau. By comparison, Non-DV cases (i.e., those not handled by the DV Bureau or classified as “other” DV cases) had a much higher conviction rate. These findings suggest that all DV cases are difficult to prosecute, regardless of the type of victim-offender relationship. Victims who have a domestic relationship with the offender are often reluctant to participate in the prosecution, and convictions are difficult to obtain in these cases. Although the remainder of this study focuses solely on the intimate partner violence and elder abuse cases prosecuted in the DV Bureau, “other” DV cases, which are prosecuted in other Bureaus, pose similar problems for obtaining convictions.

There were some small differences between video and non-video cases on only a few other case outcomes. Defendants in video cases were less likely to have a felony arraignment charge than were defendants in non-video cases. The penal law article of the top arraignment charge was also different for video and non-video cases. Defendants in video cases were more likely to be charged with assault, and less likely to be charged with criminal contempt or harassment than defendants in non-video cases. This finding reflects the pattern we observed for arrest charges in chapter 3. Expeditors gave greater priority to assault cases than to criminal contempt or harassment cases when deciding which DV Bureau cases to send to the ECAB Annex (see Figure 3-4).

Video and non-video cases differed only slightly, if at all, on a variety of other case outcomes. Defendants in video cases were slightly less likely to have bail set at arraignment, and slightly more likely to be released on recognizance, than defendants in non-video cases. Defendants in video and non-video cases were about equally likely to be released during the pretrial period. FTA (failure-to-appear) rates were about the same for video and non-video cases, as were rates of re-arrest for a new DV offense prior to case disposition, the severity of the conviction charge, and the likelihood of charge reduction between arraignment and conviction. Defendants in video cases were slightly more likely to be convicted of a violation and slightly less likely to receive a jail or prison sentence.

The most notable difference in case outcomes between defendants who made a substantive statement and those who did not was the difference in conviction rates. With cross-complaints excluded, the conviction rate for defendants who made a substantive statement was five percentage points higher than the rate for defendants who refused to make a statement. The conviction rate for defendants who made a substantive statement was 41%, whereas the conviction rate for those who refused to make a statement was 36% (the same as for defendants in non-video cases). This indicates that the value of the video statement program in obtaining convictions is due to the program’s success in obtaining substantive statements. The conviction rate for defendants who made a substantive statement remained higher even after taking into account the impact of the EVE project, which significantly increased conviction rates both for defendants who made a substantive statement and for those who refused to make a statement.

We found only a few small differences in other case outcomes between defendants sent to the ECAB Annex who made a substantive statement and those who refused to make a statement. Defendants who made a substantive statement were slightly less likely to have bail set at arraignment, and slightly more likely to be released on recognizance, than were those who refused to make a statement. Conviction charge severity was lower for those who made a substantive statement. Defendants who made a substantive statement were more likely to be convicted of a B misdemeanor, and less likely to be convicted of an A misdemeanor, than were those who refused to make a statement. Among released defendants, those who made a substantive statement were more likely to fail to appear for at least one scheduled court appearance than were those who refused to make a statement.

Defendants who made a substantive statement and those who refused to make a statement differed only slightly, if at all, on a variety of other case outcomes. There were no differences in the percentage with a felony arraignment charge, nor were there any differences in the penal law article of the arraignment charge. Defendants who made a substantive statement were slightly more likely to be released at arraignment, but those who refused to make a statement were slightly more likely to be released after arraignment, so these groups had equal percentages of defendants released prior to case disposition. The likelihood of charge reduction between arraignment and conviction and the penal law article of the conviction charge were about the same for defendants who made a substantive statement and those who refused to make a statement. Among convicted defendants, those who made a substantive statement were almost as likely to be sentenced to jail or prison as those who did not.

Overall, after examining a variety of case outcomes, the most notable finding in this chapter is that there is a higher conviction rate for video cases than for non-video cases. Differences in other outcomes were generally very small, or reflected initial differences between the types of cases sent to the ECAB Annex and those that were not. We also found that defendants who made a substantive statement were more likely to be convicted than those who refused to make a statement.

In the next two chapters, we will look more closely at the impact of the video statement program on conviction rates. We will begin by comparing video to non-video cases. By taking into account a variety of other factors that affect the likelihood of conviction, we will be able to move beyond asserting that video cases were associated with a higher conviction rate and will be able to make stronger statements about whether, and to what degree, the video statement program independently increased the conviction rate. We will also consider whether, and to what extent, making a substantive video statement increased the likelihood of conviction after taking into account the effect of other predictors of conviction.

## V. THE IMPACT OF VIDEO STATEMENTS ON CONVICTIONS IN DV BUREAU CASES

In this chapter, we examine the influence of the video statement program on convictions in DV Bureau cases after taking into account a variety of other factors that may also affect the conviction rate. First, we provide an overview of conviction rates for video and non-video cases by court of disposition. Then we develop statistical models that examine the impact of video cases on the likelihood of conviction in different courts. We also examine the impact of the content of video statements on the likelihood of conviction.

### A. Conviction Rates by Court of Disposition

As reported in the previous chapter, conviction rates were higher for video than for non-video cases. After excluding cross-complaints, the conviction rate was 40% in video cases and 36% in non-video cases (see chapter 4, Figure 4-12). Although this finding is useful for understanding the possible impact of the video statement program, it is not sufficient to determine whether the program has increased the conviction rate. To reach that conclusion, we need to determine whether video cases have a higher conviction rate even after accounting for other factors that affect conviction. ***For example, if video cases were more likely to have a complaining witness who was injured, as suggested by the findings in chapter 3, the higher conviction rate in video cases may be due to the presence of the injury and not to the video statement.*** We address that issue in this chapter by examining not only the effect of injury to a complaining witness, but also the effects of a variety of other characteristics of the incident, the case, and the defendant on the likelihood of conviction. Once we have determined which of these characteristics affect conviction, we can then determine whether video statements increase the conviction rate after taking into account the effects of the other characteristics.

Before we discuss the statistical models predicting conviction, we must consider the context of the specialized DV courts that handle different types of DV Bureau cases. Up to this point, we have presented results that pooled data from several courts with widely different conviction rates. To examine properly the influence of video statements on conviction rates, we must consider whether the impact varies in different courts. DV Bureau cases in Brooklyn are generally sent to one of three types of courts: the Criminal Court specialized DV parts (DV1 and DV2), the Integrated Domestic Violence Court parts (IDV and IDV2) and the Supreme Court specialized DV parts (DV and 4). According to the DV Bureau Chief, the conviction rate is lowest in Criminal Court, higher in the IDV Court, and highest in Supreme Court.

We begin this chapter by considering how victim participation and other factors that affect conviction vary across different types of courts. We then examine conviction rates for video and non-video cases separately by court of disposition.

Difficulties in obtaining victim participation with the prosecution are a problem in most DV Bureau cases and have the potential to reduce conviction rates in all three types of courts. Victims in all courts often have many reasons not to participate in the prosecution. Some victims may fear intimidation or retaliation from the defendant. Some may need financial support from the defendant. Others may mistrust or fear law enforcement, particularly if their immigration status may be questioned. Some victims may view the incident as minor, or as an aberration, and do not wish to take further action. Some victims may wish to continue the relationship with the defendant, and view the court case as an obstacle. Some may not participate with the prosecution because they are concerned that the court will sentence the defendant to jail. Others may not participate because they doubt that the court will sentence the defendant to jail and they fear that the defendant will return to commit further violence if he or she is not sent to jail.

To address concerns about victim participation, each of the specialized DV court parts provides victims with access to a resource coordinator, who can refer them to agencies providing victim services (e.g., counseling, housing, and social services). The two Criminal Court DV parts share one resource coordinator. Each IDV Court part employs a resource coordinator who is available in the courtroom to provide referrals to victim services and to organizations providing free legal representation for victims. The Supreme Court DV parts also have their own resource coordinator who can provide referrals to victim services. In all three courts, resource coordinators who are approached by victims for referrals to services generally send them to Safe Horizon (a victim services agency) or to the Family Justice Center. Services, referrals, and counseling are also available from the District Attorney's office.

Although victims' motivation to participate in the prosecution is likely to be low in many DV Bureau cases, there are significant differences in victim participation across the three types of DV courts. In Criminal Court, victims may feel they have done their part by calling the police, and may see little incentive to participate with a prosecution that may last several months. Victims are rarely present at Criminal Court hearings. In contrast, victims are routinely present at IDV Court hearings and are represented by a lawyer. Victims who have actively sought a Family Court order of protection, a divorce, custody of children, and/or a visitation order initiate the cases in IDV Court. Because they may benefit from decisions in these concurrent cases, they may be more willing to participate in the prosecution of the criminal case. Easier access to victim services and to free legal counsel in IDV Court also may encourage greater victim participation in the criminal case. Conviction rates are highest in Supreme Court cases, where the victim may be more willing to participate because the defendant faces charges that are more serious and is more likely to have seriously injured the victim.

Factors other than victims' motivation to participate in the prosecution may also account for different conviction rates in different DV courts. For example, the Criminal Court DV parts have significantly higher caseloads than other DV court parts, which reduce the time spent on each case by judges and ADAs. In IDV Court and Supreme Court, the caseloads are lower and judges and ADAs can spend more time on each

case. In IDV Court, the defendant has a greater stake in the concurrent cases, and may be more willing to negotiate a plea in the criminal case. In Supreme Court, many defendants face serious penalties, and they may be more willing to plea bargain to avoid long prison sentences. Charges also differ across courts. Most defendants in Criminal Court face assault charges, which are more difficult to prosecute. Defendants in IDV Court and in Supreme Court are more likely to be charged with criminal contempt (usually for violating an order of protection), which is easier to prosecute. In Supreme Court cases of intimate partner violence and elder abuse, there is also often strong evidence (e.g., medical testimony, physical evidence, audio recordings of 911 calls) in addition to victim testimony.

Because the conviction rates for DV Bureau cases vary significantly in the three types of courts, we examined the conviction rates for video and non-video cases separately by the court part of disposition. We excluded 1,593 cross-complaints from our analysis. Because each complainant in a cross-complaint is also a defendant, ADAs are usually unable to speak to either of the cross-complainants to develop a case, and the conviction rate for cross-complaints is extremely low (see discussion of cross-complaints in chapters 3 and 4).

To examine convictions by type of court, we must decide where to classify certain DV Bureau cases that were disposed in courts other than the three types of specialized DV courts. First, DV Bureau cases were occasionally disposed at arraignment. While many of these were cross-complaints and we had already excluded them from our analysis, we found an additional 143 DV Bureau cases disposed at arraignment that were not cross-complaints. Given the standard procedure requiring DV Bureau cases to be continued for additional appearances beyond arraignment, these cases either were not DV Bureau cases (i.e., they were incorrectly flagged as DV Bureau cases) or they were unusual DV Bureau cases. Whatever their reason for being disposed at arraignment, we decided to exclude them from our analysis.

Second, in both Criminal Court and Supreme Court, the specialized DV parts sometimes sent cases to other court parts for a bench trial or a jury trial. We therefore classified cases as disposed in a Criminal Court specialized DV part if they were sent from part DV1 or DV2 to another Criminal Court part for a trial (about 1% of all cases in the Criminal Court were sent to trial parts<sup>21</sup>). We also classified cases as disposed in an IDV Court part if they were sent from part IDV or part IDV2 to another Supreme Court part for a trial (there were only 3 such IDV Court cases, sent to part MD1). Lastly, we classified cases as disposed in a Supreme Court specialized DV part if they were sent from part DV or part 4 to another Supreme Court part for a trial (about 8% of all cases in Supreme Court were sent to another part for trial<sup>22</sup>).

Third, there were additional DV cases disposed in the Red Hook Community Court and in parts AP1F and FD in Criminal Court that appeared to be similar to cases

---

<sup>21</sup> These Criminal Court parts were: Jury1, TP10, TP2, TP3, TP4, TP5 and TP6.

<sup>22</sup> These Supreme Court parts were: MD1 and MD2.

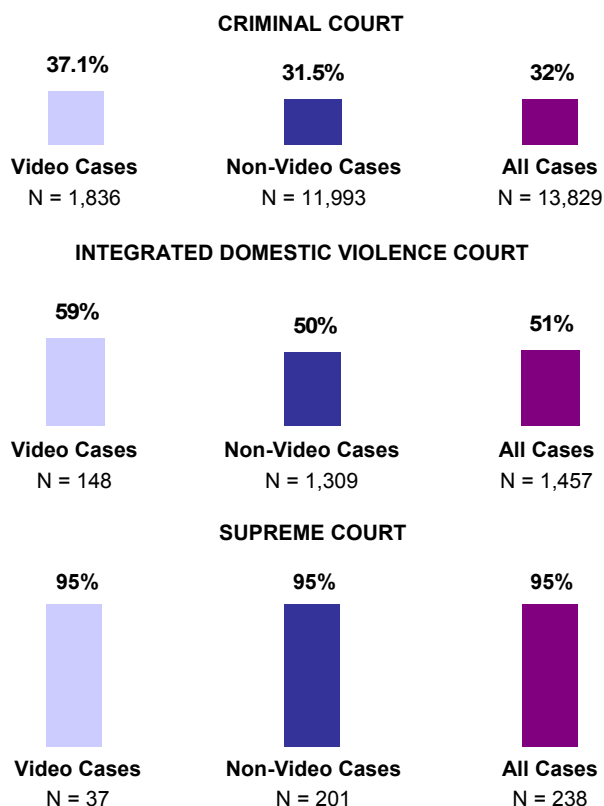
disposed in the specialized Criminal Court DV parts. For the analyses presented in this chapter, we have pooled these cases with the Criminal Court cases disposed in parts DV1 and DV2. Cases disposed in all three parts are essentially comparable to Criminal Court DV cases. The Red Hook cases, although not handled by ADAs in the DV Bureau, are eligible for the video statement program. Therefore, a complete assessment of the program should include these cases. The AP1F/FD cases are cases that were arraigned on felony charges, but these cases either were not brought to the Grand Jury for an indictment or the Grand Jury declined to hand down an indictment. The cases remained in Criminal Court in these two parts pending further action. Although some cases were transferred from AP1F/FD to the specialized DV parts (DV1 and DV2), others remained in AP1F/FD until disposition (those in part FD were usually dismissed). These cases are comparable to DV Bureau cases disposed in the specialized Criminal Court DV parts, and are therefore pooled with them for purposes of our analysis.

Finally, ECAB initially assigned some DV cases to the DV Bureau but these cases were not disposed in any specialized DV part in either Criminal Court or Supreme Court. Most of these appear to be cases that did not involve crimes against an intimate partner or elderly person (e.g., cases of crimes against children, siblings, in-laws, friends, etc.) and that ECAB had mistakenly assigned to the DV Bureau. It appears that after a closer review of these cases, the DV Bureau transferred them to another Bureau and other court parts. We excluded 990 Criminal Court cases (including 46 video cases) and 179 Supreme Court cases (including 3 video cases) that never appeared in any specialized DV part.

After re-classifying cases disposed in Red Hook, in parts AP1F/FD, and in trial parts, and excluding cross-complaints, cases disposed at arraignment, and cases that never appeared in specialized DV parts, we created three categories of cases based on the court part of disposition: 1) Criminal Court DV cases, 2) IDV Court cases, and 3) Supreme Court DV cases. Using these three categories, we now look more closely at conviction rates, and especially at the difference in conviction rates between video and non-video cases.

As shown in Figure 5-1 (next page), almost one third of all Criminal Court DV cases ended in conviction. However, consistent with our findings in chapter 4, the conviction rate was higher for video cases (37.1%) than non-video cases (31.5%). About half of all IDV Court cases ended in conviction, but again there was a difference between video and non-video cases. Almost three fifths of IDV Court video cases ended in conviction (59%) compared to half of the non-video cases (50%). Finally, the conviction rate was the same (about 95%) for both video cases and non-video cases in Supreme Court. The conviction rate is higher for video cases than for non-video cases in two of the three courts: about 5.6 percentage points higher in Criminal Court and 9 percentage points higher in the IDV Court.

**Figure 5-1:** Conviction Rate in DV Bureau Cases by Video Status and Court Type  
*Excluding Cross-Complaints*



Although these results provide us with a more detailed look at the effect of the video statement program on convictions, additional questions remain. Are there any differences between video and non-video cases that could explain the higher conviction rate for video cases? For example, we saw in chapter 3 that expeditors were more likely to send cases with injuries to the ECAB Annex for a video statement. If video cases were more likely to have injuries than non-video cases, and if cases with injuries were more likely to result in conviction, then a higher prevalence of injuries might, at least partially, explain why the conviction rate was higher in video cases than in non-video cases. Once we consider injuries, the difference in conviction rates between video and non-video cases might become smaller, or disappear.

It is also possible that taking differences between video and non-video cases into account will **increase** the gap in the conviction rate between video and non-video cases. For example, we saw in chapter 3 that expeditors were more likely to send defendants charged with an assault to the ECAB Annex for a video statement. If video cases were more likely to involve defendants charged with assault, and if cases in which the defendant was charged with an assault were less likely to result in conviction (e.g., because these victims were more reluctant to testify than other victims were), then a higher prevalence of assault cases might reduce the conviction rate in video cases.

Once we consider the effect of assault charges on the likelihood of conviction, the difference in conviction rates between video and non-video cases might become larger.

To assess the independent effect of video cases on convictions, we must take into account not only injuries and assault charges, but also a variety of other factors that might affect conviction rates. Thus far, we have taken multiple predictors of conviction into account by reporting conviction rates for different subgroups of defendants. For example, in Figure 4-13, we examined six subgroups to determine how conviction rates varied for video and non-video cases in each of 3 phases of the EVE Project. We could present similar results for each of the likely predictors of conviction (e.g., conviction rates for video and non-video cases by whether there were photos of victim injuries, whether there was a delay in arrest, whether the defendant was male or female, etc.). While such results might be interesting, they would present two problems. First, they would require a large number of separate analyses, and it would be hard to draw general conclusions about the results. Second, the results would take into account the effect of only two predictors at a time—video status and one other predictor. Expanding the results to look at three, four, or more predictors simultaneously would quickly generate so many comparisons that the results would be difficult to interpret. Fortunately, it is possible to develop predictive models that simultaneously take into account the effect of numerous predictors of the likelihood of conviction, allowing us to isolate the independent effect of the video statement program. We present and discuss these models in the remainder of this chapter.

## B. Models Predicting the Likelihood of Conviction

Many factors may affect the likelihood that a DV Bureau case will end in a conviction, including the defendant's criminal record, the type and severity of the charge, the nature of the relationship between the defendant and the victim, the availability of medical records, and other types of evidence. To determine whether video statements increase the likelihood of conviction even after we consider these factors, we developed two predictive models: one for Criminal Court and one for the Integrated Domestic Violence Court. (We did not develop a model for Supreme Court cases because the number of cases was too small for reliable analysis.) We classified cases that were dismissed or disposed with an ACD as "not convicted," and cases in which the defendant pled guilty or was found guilty after trial as "convicted." The predictive models we developed are logistic regression models (see discussion in text box, next page and in Appendix C). Logistic regression is the appropriate statistical technique for predicting the likelihood of an outcome like conviction, which has two categories: convicted and not convicted.



## LOGISTIC REGRESSION MODELS

All the predictive models presented in this report are logistic regression models. The models identify which of the tested predictors affect the likelihood of conviction. The effect of each predictor is evaluated as a net effect, i.e., after the effects of all the other predictors in the model are taken into account. To determine whether a predictor is associated with the likelihood of conviction, we use **tests of statistical significance**. Statistically significant predictors are predictors that help to explain which cases end in conviction and which do not (see detailed discussion of statistical significance in text box below). We measure the *size of a predictor's effect* on the likelihood of conviction by the **change in conviction rate**. The change in conviction rate tells us the difference in the conviction rate between two types of cases (e.g., cases in which the defendant used a weapon vs. cases in which no weapon was used). For example, a change in the conviction rate of 15% for weapon cases would indicate that the conviction rate is 15 percentage points higher if a weapon was used than if a weapon was not used (this example is hypothetical, and does not reflect the findings in any of the models in this report). We measure the *power of each predictor* to account for variation in the likelihood of conviction by a **standardized beta**. Standardized betas vary from -1.00 to +1.00. A standardized beta closer to 0.00 indicates that a predictor is not strongly related to the likelihood of conviction. Appendix C provides a detailed explanation of logistic regression models, as well as further information about how to interpret the findings.

For each predictive model, we considered a variety of factors that might affect the likelihood of conviction. A complete list of the factors we considered follows:

### DV Bureau Operations

- Video Case
- EVE Case

### Incident Characteristics

- Method of Reporting the incident (911 call, who called 911, flag-down, precinct walk-in)
- Witnesses (any witness in addition to the main complaining witness)
- Statements (did defendant make a substantive video statement?, did the defendant make an oral statement?<sup>23</sup>)
- Injuries (injuries to a complaining witness, the defendant, others; medical treatment received by a complaining witness, photos taken of a complaining witness's injuries)
- Alleged defendant actions (use of force, possession of a weapon)

---

<sup>23</sup> Almost all of these oral statements were spontaneous statements made by the defendant to the arresting officer.

### Arraignment Charge

- Severity of the most severe arraignment charge
- Penal law article of the most severe arraignment charge
- Any charge involving violation of an order of protection

### Bail, Release Status, and Pretrial Misconduct

- Bail set at arraignment
- Release status at arraignment
- Ever released between arraignment and disposition
- Ever failed to appear for a scheduled court hearing
- Whether the defendant was re-arrested during the pretrial period
- Whether the defendant was re-arrested for a DV offense during the pretrial period

### Defendant Characteristics

- Criminal record (any criminal record, any prior misdemeanor convictions, any prior felony convictions, whether the defendant had open cases at the time of arrest)
- Whether the defendant had one or more open DV cases at the time of arrest
- Domestic violence history (any prior history, any prior arrests for domestic violence, prior and current orders of protection)
- Demographic characteristics (sex, age, ethnicity, U.S. citizenship status)

### Victim and Relationship Characteristics

- Elder abuse case
- Victim and defendant cohabit

### Arrest Characteristics

- On-scene arrest
- Arrest shift (overnight arrest, weekday arrest, weekend arrest)
- Delay in arrest (more than 9 hours after the incident vs. less than 9 hours)

Although we considered all of these factors as possible predictors of conviction, we included in our models only those factors that had a statistically significant effect. (See the text box below, and Appendix C, for an explanation of tests of statistical significance.) If a factor did not have a statistically significant effect on conviction, we excluded it from the model, even if we previously found that it was associated with whether expeditors sent a defendant to the ECAB Annex for a video statement. For example, the incident-reporting method (911 call, flag-down, walk-in) did not affect the likelihood of conviction. Although we know from chapter 3 that 22% of flag-downs were sent to the ECAB Annex, vs. 8% of precinct walk-ins, our models do not include incident-reporting method because it does not affect the likelihood of conviction and could not account for any difference in the conviction rate between video and non-video cases. Similarly, we know from chapter 1 that the shift during which an arrest was made largely determined whether a defendant would be brought to the ECAB Annex for a video statement (see discussion of Table 1-1). ADAs in the ECAB Annex took most

video statements from overnight arrests, not weekday or weekend arrests. If overnight arrests were different in some way that made them more or less likely to end in conviction than other arrests, we do not want that difference to distort our estimate of the impact of the video statement program. For that reason, we tested whether arrest shift affected the likelihood of conviction. It had no impact on conviction in any of the predictive models discussed in this report, so we did not include it in any of the results shown here.

### TESTS OF STATISTICAL SIGNIFICANCE

In the predictive models of conviction, we use statistical significance tests to determine which predictors to retain in the models. A statistical significance test assesses the probability that the effect of a predictor on the likelihood of conviction that we observed in this sample of cases could have occurred by chance alone. The tests take into account the magnitude of the effect and the size of the sample. Larger effects and effects based on larger samples are more likely to be statistically significant. In this report, following standard convention, we considered significance levels less than .05 to be statistically significant. This means that the statistically significant effects found in this study had less than a 5% probability of being due to chance alone, supporting the hypothesis that the predictor produced the effect. See Appendix C for more information about tests of statistical significance.

The predictive model for convictions in Criminal Court DV cases shows numerous factors that have a statistically significant effect on the likelihood of conviction (see Table 5-1, next page).

What was the impact of video cases on convictions in Criminal Court DV cases? Notably, even after the model took into account the effects of all the other factors, convictions were more likely in video cases than in non-video cases. The difference in conviction rates between video and non-video cases was about 2.9 percentage points after accounting for all other factors affecting conviction (see result under “change in conviction rate” in Table 5-1). As we saw earlier in this chapter, there was a 5.6 percentage point advantage in the conviction rate for video cases when we did not take other predictors of conviction into consideration. Our findings in this model show that the independent effect of the video statement program on convictions is an increase of 2.9 percentage points in the conviction rate. This indicates that the effect of other predictors in the model accounts for the remaining 2.7 percentage points of the 5.6 percentage point advantage reported in Table 5-1.

**TABLE 5-1**  
**LOGISTIC REGRESSION MODEL PREDICTING LIKELIHOOD OF CONVICTION**  
**IN CRIMINAL COURT DOMESTIC VIOLENCE CASES**  
*Excluding Cross-Complaints*

INDEPENDENT VARIABLES	Standardized $\beta$	Change in Conviction Rate
<b>VIDEO CASE</b>	0.05 **	2.9%
<b>EVE CASE</b>	0.16 ***	6.5%
<b>INJURIES</b>		
WHO WAS INJURED?		
<i>Reference Category: No Injuries</i>		
Only Complaining Witness(es) Injured	-0.02	-1.1%
Defendant, or Defendant and Complaining Witness(es), Injured	-0.09 **	-16.5%
ANY PHOTOS TAKEN OF COMPLAINING WITNESS(ES)' INJURIES?	0.11 ***	4.5%
DID COMPLAINING WITNESS(ES) RECEIVE TREATMENT FOR INJURIES?	0.06 **	3.5%
<b>DELAY IN ARREST</b>	-0.14 ***	-5.3%
<b>DEFENDANT MADE AN ORAL STATEMENT</b>	0.05 *	1.9%
<b>ARRAIGNMENT CHARGE</b>		
ARRAIGNMENT CHARGE PENAL LAW ARTICLE:		
<i>Reference Category: Assault (PL 120)</i>		
Criminal Contempt (PL 215)	0.09 **	5.6%
Harassment (PL 240)	0.07 **	5.1%
Crimes Against Children (PL 260)	0.04 *	11.5%
Other	0.02	1.1%
MOST SEVERE ARRAIGNMENT CHARGE WAS A FELONY	-0.07 **	-3.5%
<b>CASE PROCESSING CHARACTERISTICS</b>		
EVER RELEASED	-0.82 ***	-56.8%
EVER FAILED TO APPEAR FOR A SCHEDULED COURT DATE	0.19 ***	12.5%
ANY ARRESTS FOR A NEW DV OFFENSE PRIOR TO CASE DISPOSITION	0.16 ***	9.4%
<b>DEFENDANT-VICTIM RELATIONSHIP CHARACTERISTICS</b>		
ANY PRIOR ORDERS OF PROTECTION	0.10 ***	5.8%
COHABITATION HISTORY		
<i>Reference Category: Never Cohabited</i>		
Cohabiting at Time of Arrest	-0.18 ***	-6.7%
Cohabited Prior to Time of Arrest	-0.08 ***	-3.5%
ELDER ABUSE CASE	0.04 *	5.1%
<b>DEFENDANT'S DEMOGRAPHIC CHARACTERISTICS</b>		
SEX (Female)	-0.13 ***	-7.0%
ETHNICITY:		
<i>Reference Category: Non-Hispanic Black</i>		
Non-Hispanic White	0.09 ***	5.6%
Hispanic	0.04 ***	3.0%
Other, Non-Hispanic	0.06 *	3.8%
AGE:		
<i>Reference Category: Age 21-29</i>		
Age 16-20	0.06 **	4.7%
Age 30-39	-0.00	-0.4%
Age 40 and over	0.08 ***	3.6%

Nagelkerke  $R^2$ 

0.22 \*\*\*

(N of cases)

(13,829)

\* Statistically significant at  $p < .05$ \*\* Statistically significant at  $p < .01$ \*\*\* Statistically significant at  $p < .001$

Additional analyses (not shown) indicate that three predictors were responsible for reducing the video case advantage from 5.6 percentage points to 2.9 percentage points: EVE, whether the defendant made an oral statement, and whether there was a delay in arrest. Expeditors sent more DV Bureau cases to the ECAB Annex after EVE was established than before, so a portion of the 5.6 percentage point advantage in video cases was due to the effect of EVE. In addition, more defendants made an oral statement in video cases than in non-video cases, and defendants who made oral statements were more likely to be convicted. Finally, video cases were less likely to have a delay in arrest than non-video cases, and cases without a delay in arrest were more likely to end in conviction. These factors explain why the effect of the video statement program on the conviction rate is 2.9 percentage points, as reported in the model, and not 5.6 percentage points, as reported in Table 5-1. Nevertheless, even after considering the effects of these predictors, the conviction rate was higher in video than in non-video cases. The 2.9 percentage point advantage for video cases cannot be explained by other factors and it is statistically significant, i.e., not likely to be due to chance alone.

The model also provides information about a second predictor of interest in this study: the effect of the EVE project on convictions. Arrests occurring after the EVE project was fully established were more likely to end in conviction. After taking into account all the other factors that affect convictions, the EVE project was associated with an increase in the conviction rate of about 6.5 percentage points, on average (see result under “change in conviction rate” in Table 5-1). As noted in previous chapters, our analysis is not adequate to make a strong claim that this increase is due entirely to EVE. We have not considered other unmeasured factors that might account for the increase. Nor have we determined whether victims were actually more likely to meet with an ADA or to participate in the prosecution after the EVE project was established. Nevertheless, the effect is large, and the finding suggests that implementation of the EVE project may have had a strong impact on the conviction rate.

By far, the strongest factor affecting the likelihood of conviction is whether the defendant was ever released prior to the disposition of the case. The predicted conviction rate was about 57 percentage points lower in cases in which the defendant was ever released than in cases in which the defendant was never released (see result under “change in conviction rate” in Table 5-1). Other strong predictors were whether the defendant was injured in the incident (lower likelihood of conviction), whether the defendant ever failed to appear for a scheduled court date (greater likelihood of conviction), whether the defendant was charged with crimes against children (greater likelihood of conviction), and whether the defendant was arrested for a new DV offense prior to case disposition (greater likelihood of conviction). Defendants who cohabited with the victim, especially those who cohabited at the time of arrest, were less likely to be convicted, as were female defendants. Cases in which the victim had a prior order of protection against the defendant, cases in which the most severe arraignment charge was for a violation of an order of protection (charged as criminal contempt), and cases in which the defendant was charged with elder abuse were more likely to end in conviction.

The findings of our model predicting convictions in Criminal Court DV cases suggest that the video program produced a statistically significant increase in the conviction rate. However, one key factor affecting convictions was not available for all cases in the DV Bureau Dataset and therefore we could not include it in the model: whether or not the victim was participating with the prosecution. If we had been able to include a measure of victim participation, the effect of the video statement program on convictions might have been reduced, strengthened, or eliminated. A second potential problem with the conviction model in this chapter is that it relied primarily on measures of the evidence that were available at the beginning of the case. Information about evidence that became available later on was not in the model because it was not included in the DV Bureau Dataset. We will address these issues in the next chapter, using data for a subset of cases from our DV Bureau Case File Sample, which includes measures of victim participation as well as measures of evidence that became available after the beginning of the case.

### Released Defendants in Criminal Court

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

We developed a second model predicting the likelihood of conviction in Criminal Court only for cases in which the defendant was ever released (see Table 5-2, next page). This model, like the previous one, excluded cross-complaints. In this model, the conviction rate for video cases was about 3.1 percentage points higher than for non-video cases, slightly higher than the effect we found in the previous model (2.9 percentage points; see Table 5-1). The predicted conviction rate was 29.4% for released defendants in video cases, and 26.3% in non-video cases (see Figure 5-2, left panel, on page 74).<sup>24</sup> Because the conviction rate was higher in video cases, there were 12% more convictions in video cases than in non-video cases (see Figure 5-2, right panel). Based on this model, we estimate that the video statement program has been responsible for an additional 51 convictions in Criminal Court DV cases during the time period covered by this study.

---

<sup>24</sup> Note that the predicted conviction rates in Figure 5-2 are lower than the actual conviction rates reported in Figure 5-1 because the data in Figure 5-2 do not include defendants who were never released, who have a higher conviction rate.

**TABLE 5-2**  
**LOGISTIC REGRESSION MODEL PREDICTING LIKELIHOOD OF CONVICTION**  
**FOR RELEASED DEFENDANTS IN CRIMINAL COURT DOMESTIC VIOLENCE CASES**  
*Excluding Cross-Complaints*

INDEPENDENT VARIABLES	Standardized $\beta$	Change in Conviction Rate
<b>VIDEO CASE</b>	0.03 **	3.1%
<b>EVE CASE</b>	0.09 ***	6.4%
<b>INJURIES</b>		
WHO WAS INJURED?		
<i>Reference Category: No Injuries</i>		
Only Complaining Witness(es) Injured	-0.02	-1.4%
Defendant, or Defendant and Complaining Witness(es), Injured	-0.06 **	-16.7%
ANY PHOTOS TAKEN OF COMPLAINING WITNESS(ES)' INJURIES?	0.07 ***	4.7%
DID COMPLAINING WITNESS(ES) RECEIVE TREATMENT FOR INJURIES?	0.04 **	4.2%
<b>DELAY IN ARREST</b>	-0.08 ***	-5.0%
<b>DEFENDANT MADE AN ORAL STATEMENT</b>	0.02 *	1.7%
<b>ARRAIGNMENT CHARGE</b>		
ARRAIGNMENT CHARGE PENAL LAW ARTICLE:		
<i>Reference Category: Assault (PL 120)</i>		
Criminal Contempt (PL 215)	0.05 **	6.1%
Harassment (PL 240)	0.03 *	4.4%
Crimes Against Children (PL 260)	0.02 *	11.3%
Other	0.01	1.2%
MOST SEVERE ARRAIGNMENT CHARGE WAS A FELONY	-0.04 **	-3.6%
<b>CASE PROCESSING CHARACTERISTICS</b>		
EVER FAILED TO APPEAR FOR A SCHEDULED COURT DATE	0.12 ***	13.0%
ANY ARRESTS FOR A NEW DV OFFENSE PRIOR TO CASE DISPOSITION	0.10 ***	10.2%
<b>DEFENDANT-VICTIM RELATIONSHIP CHARACTERISTICS</b>		
ANY PRIOR ORDERS OF PROTECTION	0.05 **	5.3%
COHABITATION HISTORY		
<i>Reference Category: Never Cohabited</i>		
Cohabiting at Time of Arrest	-0.11 **	-6.8%
Cohabited Prior to Time of Arrest	-0.04 ***	-3.6%
ELDER ABUSE CASE	0.02 *	4.5%
<b>DEFENDANT'S DEMOGRAPHIC CHARACTERISTICS</b>		
SEX (Female)	-0.08 ***	-7.5%
ETHNICITY:		
<i>Reference Category: Non-Hispanic Black</i>		
Non-Hispanic White	0.06 ***	7.0%
Hispanic	0.05 ***	3.9%
Other, Non-Hispanic	0.03 *	4.6%
AGE:		
<i>Reference Category: Age 21-29</i>		
Age 16-20	0.04 **	4.6%
Age 30-39	-0.01	-0.9%
Age 40 and over	0.04 **	2.9%

Nagelkerke R<sup>2</sup>

0.07 \*\*\*

(N of cases)

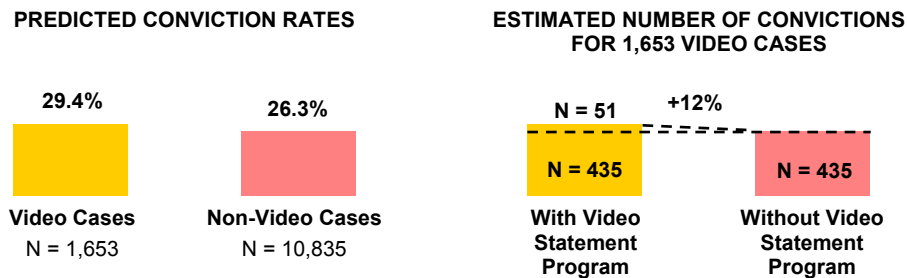
(12,488)

\* Statistically significant at p &lt; .05

\*\* Statistically significant at p &lt; .01

\*\*\* Statistically significant at p &lt; .001

**Figure 5-2: Effect of Video Statement Program on Convictions for Released Defendants in Criminal Court Domestic Violence Cases  
Excluding Cross-Complaints**



The strongest predictors of conviction in this model were whether the defendant was injured (lower likelihood of conviction), whether the defendant ever failed to appear (higher likelihood of conviction), and whether the defendant was charged with crimes against children (higher likelihood of conviction). The conviction rate was also 6.4 percentage points higher for EVE cases than for cases prosecuted prior to EVE, about the same effect we found in the previous model. Overall, this model explained only 7% of the variation in the conviction rate for released defendants in Criminal Court (see Nagelkerke  $R^2$  in Table 5-2). This is considerably less than the 22% explained in the model for all defendants in Criminal Court (Table 5-1), where release status was a strong predictor accounting for most of the explanatory power of the model.

We also developed a model (not shown) predicting the likelihood of conviction in Criminal Court only for cases in which the defendant was *never* released. As we expected, this model showed that video cases had no statistically significant effect on the likelihood of conviction for defendants who were never released. The conviction rate for defendants held in custody until disposition is so high that additional evidence, such as a video statement, is unlikely to increase it further.

***Because the video statement program does not have a statistically significant impact on convictions among defendants who were never released, all subsequent models of conviction presented in this report are limited to cases in which the defendant was released prior to case disposition.*** Examining only the cases of released defendants enables us to get a clearer picture of the impact of the video statement program, as well as other factors, on the likelihood of conviction, while still including about 90% of defendants in DV Bureau cases.

#### Released Defendants in Integrated Domestic Violence Court

We next developed a model predicting convictions for cases disposed in the IDV Court parts (see Table 5-3, next page). This model had fewer statistically significant predictors, possibly because the number of IDV Court cases is considerably smaller than the number of Criminal Court DV cases. In the IDV Court parts, as in the Criminal



**TABLE 5-3**  
**LOGISTIC REGRESSION MODEL PREDICTING LIKELIHOOD OF CONVICTION**  
**FOR RELEASED DEFENDANTS IN INTEGRATED DOMESTIC VIOLENCE COURT CASES**  
*Excluding Cross-Complaints*

INDEPENDENT VARIABLES	Standardized $\beta$	Change in Conviction Rate
<b>VIDEO CASE</b>	0.08 *	8.0%
<b>EVE CASE</b>	0.10 **	7.1%
<b>INJURIES</b>		
ANY PHOTOS TAKEN OF COMPLAINING WITNESS(ES)' INJURIES?	0.19 ***	15.3%
<b>DELAY IN ARREST</b> (4 days or more) <sup>1</sup>	-0.08 *	-5.0%
<b>ARRAIGNMENT CHARGE</b>		
MOST SEVERE ARRAIGNMENT CHARGE WAS A FELONY	0.19 ***	14.7%
<b>DEFENDANT'S CRIMINAL HISTORY</b>		
ANY PRIOR CRIMINAL CONVICTIONS OR OPEN CASES	0.10 **	6.4%
<b>CASE PROCESSING CHARACTERISTICS</b>		
EVER FAILED TO APPEAR FOR A SCHEDULED COURT DATE	0.14 ***	17.3%
ANY ARRESTS FOR A NEW DV OFFENSE PRIOR TO CASE DISPOSITION	0.12 **	9.8%
<b>DEFENDANT'S DEMOGRAPHIC CHARACTERISTICS</b>		
SEX (Female)	-0.32 ***	-25.5%
ETHNICITY:		
Reference Category: Non-Hispanic Black		
Non-Hispanic White	-0.09 *	-8.4%
Hispanic	0.09 *	6.6%
Other, Non-Hispanic	0.07 *	9.2%

Nagelkerke R<sup>2</sup>

0.14 \*\*\*

(N of cases)

(1,400)

\* Statistically significant at  $p < .05$

\*\* Statistically significant at  $p < .01$

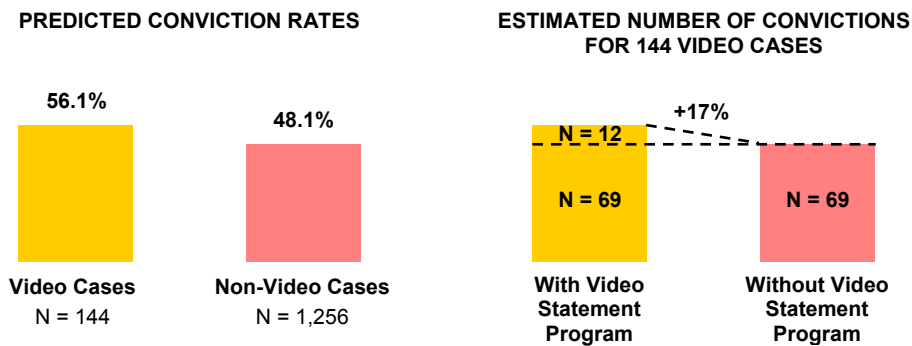
\*\*\* Statistically significant at  $p < .001$

<sup>1</sup> Because the delay in arrest was typically much longer in IDV court than in Criminal Court, delay in arrest is measured here as a delay of 4 days or more, rather than of 9 hours or more, as in the tables of Criminal Court results.

Court DV parts, video cases were more likely to end in conviction, even after accounting for all the other factors that affect conviction. The predicted conviction rate was 56.1% for released defendants in video cases, and 48.1% in non-video cases (see Figure 5-3, left panel, next page).<sup>25</sup> The difference was 8.0 percentage points, which is only slightly lower than the 9 percentage-point advantage that we found for video cases when we examined conviction rates *without* taking any other predictors into account (see Figure 5-1). Including other predictors in the model reduced the advantage for video cases in the IDV Court parts by only one percentage point. The results of this model show that the video statement program increased convictions by 17% in the Integrated Domestic Violence Court (see Figure 5-3, right panel, next page).

<sup>25</sup> Note that the predicted conviction rates in Figure 5-3 are somewhat lower than the actual conviction rates reported in Figure 5-1 because the data in Figure 5-3 do not include defendants who were never released, who have a higher conviction rate.

**Figure 5-3:** Effect of Video Statement Program on Convictions for Released Defendants in Integrated Domestic Violence Court Cases  
*Excluding Cross-Complaints*



The EVE project had a slightly larger impact in IDV Court than in the Criminal Court DV parts. In IDV Court, EVE increased the conviction rate by 7.1 percentage points, compared to 6.4 percentage points in Criminal Court (compare Tables 5-3 and 5-2). This finding is somewhat surprising, because in IDV Court cases, whether they were processed before or after the EVE project, the victim usually participated with the prosecution. The EVE project, which was designed to increase victim participation, would not be expected to have as strong an impact in IDV Court as in Criminal Court. To the extent that it increased the conviction rate in IDV Court, it may be because EVE reached victims, and got them more involved in the case, somewhat earlier than they would have otherwise been involved.

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

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

### C. Models Predicting the Likelihood of Criminal Conviction

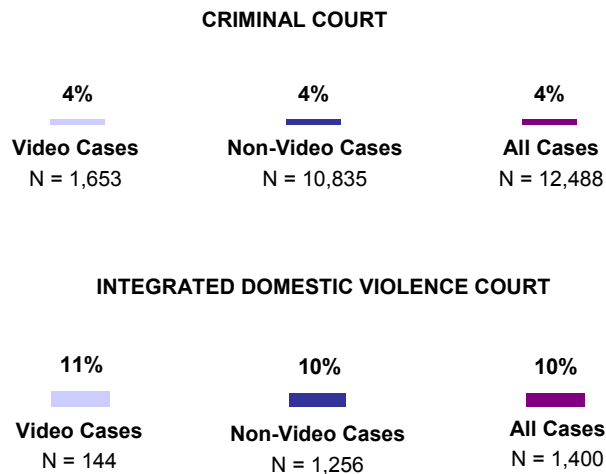
Many of the convictions in DV Bureau cases in Brooklyn, as is common in most jurisdictions, are convictions for low-level charges. In New York State, convictions in

domestic violence cases for charges classified as “violations” are generally removed from the defendant’s criminal record after one year, assuming the defendant is not re-arrested during that time. Only convictions on misdemeanor and felony charges are considered criminal convictions that remain permanently on a defendant’s rap sheet. In this section, we consider the impact of video statements on criminal convictions.

As previously noted, about one third of DV Bureau cases disposed in Criminal Court, and half of those disposed in IDV Court, ended in conviction (see Figure 5-1). However, most of these were convictions on violation-level charges. Among defendants who were ever released, only 4% of DV Bureau cases disposed in Criminal Court, and only 10% of DV Bureau cases disposed in the IDV Court, ended in conviction on misdemeanor (or in rare cases in IDV Court, felony<sup>26</sup>) charges (see Figure 5-4). There was no advantage for video cases over non-video cases in the misdemeanor conviction rate in Criminal Court and only a one percentage point advantage in IDV Court.

We also developed a statistical model to predict the likelihood of a criminal conviction in Criminal Court for released defendants (model not shown). In that model, as would be expected based on the results in Figure 5-4, there was no difference in conviction rates between video and non-video cases. A similar model for the IDV Court (model not shown) also found no difference between video and non-video cases in the likelihood of criminal conviction after controlling for other predictors of conviction. These findings demonstrate that the video statement program had little impact on the likelihood of obtaining a criminal conviction.

**Figure 5-4: Criminal Conviction Rate for Released Defendants in DV Bureau Cases by Video Status and Court Type Excluding Cross-Complaints**



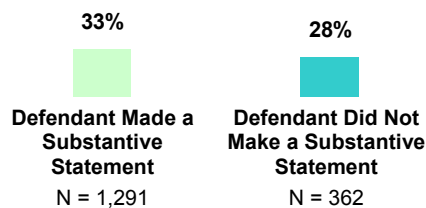
<sup>26</sup> Because most cases in IDV Court are misdemeanor cases, only 8 of the 138 convictions in IDV Court were felony convictions.

#### D. The Impact of the Content of Video Statements on the Likelihood of Conviction

Thus far in this chapter, we have not considered whether, or how, the content of video statements influences the likelihood of conviction. The analyses presented above classify as a “video case” any case in which an ECAB Annex screener placed the defendant in front of the video camera and made a recording, whether or not the defendant made a substantive statement. As noted in chapter 3, about one out of five defendants in video cases made no substantive statement—they asked for an attorney and/or refused to answer any questions.

Overall, the conviction rate in video cases that were not cross-complaints was slightly higher when defendants made a substantive statement than when they did not (41% vs. 36% as reported in Figure 4-19). The conviction rates were lower, but the gap remains the same, if we look only at released defendants in cases disposed in Criminal Court (see Figure 5-5). Among these video cases, the conviction rate was 33% when the defendant made a substantive statement, compared to 28% when the defendant refused to make a statement. This 5% difference was statistically significant. Making a substantive statement increased the likelihood of conviction among released defendants in Criminal Court cases of intimate partner violence and elder abuse.

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

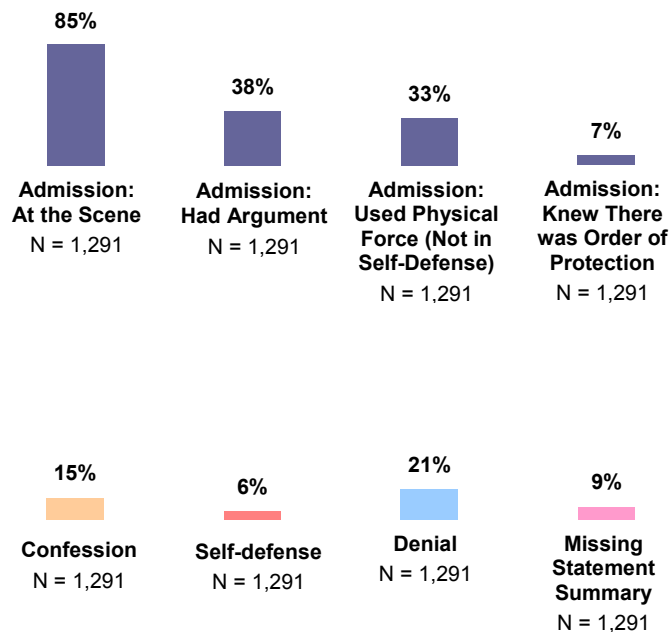


To explore the effect of substantive statements further, we developed a model predicting conviction among released defendants in video cases disposed in Criminal Court (model not shown). (The number of video cases in IDV Court and in Supreme Court was too small to permit similar analyses.) After considering the effect of other predictors of conviction, we found no statistically significant difference in the likelihood of conviction for those who made a substantive statement and those who did not. A close examination of the model (not shown) reveals that it is failure to appear for a scheduled court date that accounts for the difference in conviction rates between those who made a substantive statement and those who did not. Defendants who made a substantive statement were more likely to miss a court date than those who refused to make a statement (11% vs. 6%, not shown). Furthermore, defendants who missed a court date, whether or not they made a substantive statement, were more likely to be convicted (perhaps because some of them were held in custody after their missed court appearance).

Among those who made a substantive statement, we have additional information about the content of the statement. As explained in chapter 2, we coded information from ECAB screeners' narrative summaries of the video statements. Among the 73 items of information coded was information about who was present at the scene, admissions of the defendant's actions, statements about the victim's actions, confessions, self-defense claims, and denials of the charges.

To characterize the nature of the video statements, we classified each of the statements into one of several categories. Because there was considerable overlap among individual items involving admissions, we could not classify each statement in only one category. Instead, we classified statements in several broad categories, and (except for the "missing" category) allowed for overlap among some of the categories. The categories were: 1) admitted being at the scene, 2) admitted that the defendant and victim had an argument, 3) admitted using physical force against the victim (not in self-defense), 4) admitted knowing there was an order of protection, or violating an order of protection, 5) confession to most of the charges, 6) self-defense, 7) denied the charges (does not include self-defense claims), and 8) statement summary missing. As shown in Figure 5-6, about 85% admitted being at the scene, 38% admitted having an argument with the victim, 33% admitted using physical force against the victim, and 7% admitted knowing about or violating an order of protection. About 15% of defendants confessed to most of the charges against them, while 6% claimed self-defense and 21% denied the charges. These findings indicate that most defendants made admissions that supported one or more elements of the prosecution's case.

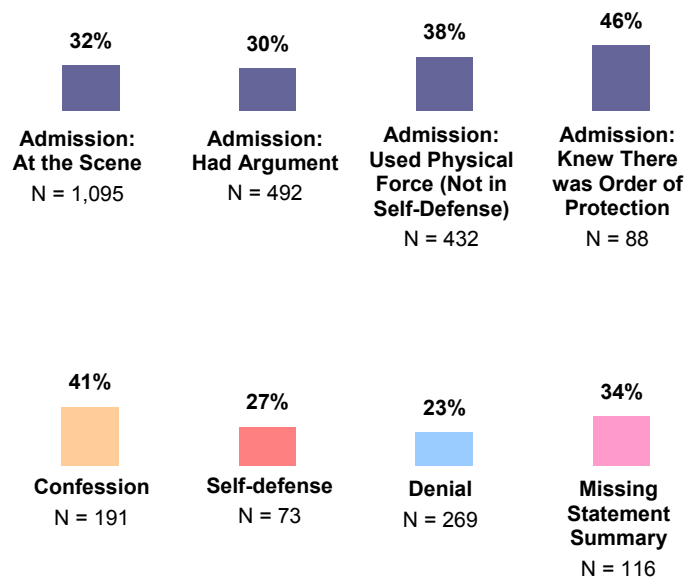
**Figure 5-6:** Content of Video Statement in Cases Disposed in Criminal Court for Released Defendants Who Made a Substantive Video Statement  
*Excluding Cross-Complaints*



How did the content of the video statement affect the conviction rate? As shown in Figure 5-7, the conviction rate was lowest in cases in which the defendant denied the charges (23%) and highest when the defendant admitted violating an order of protection, or knowing that an order of protection was in effect (46%). The conviction rate was also high when the defendant confessed to most of the charges (41%) and /or admitted using physical force against the victim (38%). The conviction rate was relatively low when the defendant claimed self-defense (27%).

We developed a statistical model examining the effect of statement content on the likelihood of conviction in Criminal Court (model not shown). After controlling for the other predictors of conviction (see predictors included in the model in Table 5-2), we found three categories of statement content that had a statistically significant effect on the likelihood of conviction. Those who confessed and those who admitted using physical force against the victim were more likely to be convicted. Those who denied the charges were less likely to be convicted. The other categories of statement content had no statistically significant impact on the likelihood of conviction after these three items were included in the model. We are not prepared to conclude that other categories of statement content did not have an impact, because the number of video cases might not be large enough to detect an effect. Nevertheless, the number was large enough to detect the impact of these three categories of statement content.

**Figure 5-7:** Conviction Rate in Cases Disposed in Criminal Court for Released Defendants Who Made a Substantive Video Statement by Content of Statement  
*Excluding Cross-Complaints*



These findings about the effect of statement content help us to understand why the video statement program has increased the conviction rate. The conviction rate was higher in video cases because some defendants who made a video statement confessed to the charges or admitted to using physical force against the victim. Without

the video statement program, the DA's office would not have been able to obtain a conviction in some of these cases.

## E. Summary and Discussion of Findings

We began this chapter by taking a closer look at the difference in conviction rates between video and non-video cases. We found that the conviction rate in Brooklyn Criminal Court DV cases that were not cross-complaints was 5.6 percentage points higher in video cases than in non-video cases. There was an even larger difference in the Integrated Domestic Violence Courts—the conviction rate was nearly 9 percentage points higher in video than in non-video cases. However, there was no difference in the conviction rates for video and non-video cases in Supreme Court.

We conducted several analyses to examine why the conviction rate was higher in video cases than in non-video cases in Criminal Court and IDV Court. To determine how much of the higher conviction rate in video cases was due to different characteristics of video and non-video cases, and how much was due to the video statements themselves, we developed statistical models predicting the likelihood of conviction. In these models, we assessed the effect of the video cases on conviction after taking into account a variety of other factors that affected the conviction rate. ***After taking other predictors of conviction into account, we found that the video statement program increased the conviction rate by 3.1 percentage points in Criminal Court DV cases and by 8.0 percentage points in Integrated Domestic Violence Court cases.*** Among released defendants in Criminal Court, we estimate that the video program produced 51 more convictions during the study period. Among released defendants in IDV Court cases, we estimate that the video program produced 12 more convictions during the study period.

These findings assume, of course, that we have included all the relevant predictors of conviction in our statistical models. Notably absent from our Criminal Court model was a measure of victim participation with the prosecution. In IDV Court, all victims were presumably participating, so our findings would not be as likely to change if we had included a measure of it. Nevertheless, in both Criminal Court and IDV Court, it is possible that including victim participation or other predictors would decrease or increase our estimate of the effect of the video statement program on the likelihood of conviction. While it is important to recognize this limitation, we have tested a large number of possible predictors of conviction, including many of those believed by many experts in the field to be the most influential. As a result, we have considerable confidence that after taking into account the many important predictors of conviction we considered, the conviction rate is higher in video cases than in non-video cases. To increase our confidence in this finding, in the next chapter we will analyze a subset of cases for which data on victim participation in the prosecution are available.

We conducted several additional analyses to determine the scope and nature of the impact of the video statements on convictions.

We found that video statements did not have an impact on convictions for criminal offenses, that is, those of misdemeanor (or in rare cases in IDV Court, felony) severity. Because our models examining all convictions have shown an advantage for video cases, it seems clear that the main impact of the video statement program is on the likelihood of obtaining a conviction on violation-level charges. This was true for both Criminal Court and IDV Court cases.

We also found that the conviction rate in Criminal Court was about 5 percentage points higher in video cases when the defendant made a substantive statement than when the defendant refused to answer questions. When we accounted for the effects of other predictors of conviction, we found that this difference disappeared due to the inclusion of one particular predictor: whether the defendant failed to appear for a scheduled court date. Defendants who made a substantive statement were more likely to miss a court date, and therefore more likely to be convicted. One possible interpretation of this finding is that defendants who make a substantive statement are less knowledgeable about navigating the criminal justice system. They may not realize that making a substantive statement and missing a court appearance increases their risk of conviction. Another possible interpretation is that defendants who make a substantive statement are not as concerned about the criminal justice consequences of their arrest. They may be unconcerned about missing a court date, and may not be concerned about the consequences of pleading guilty, particularly to a violation, which will not remain permanently on their criminal record. Our data do not include any information that would enable us to evaluate the credibility of these explanations.

Finally, we examined the content of the substantive statements. After controlling for other predictors of conviction, we found that defendants whose statements included a confession, as well as those whose statements included an admission of using physical force against the victim, were significantly more likely to be convicted than other defendants were. Those who denied the charges were less likely to be convicted. These findings show that video statements increased the conviction rate when the defendant confessed to most of the charges and/or admitted using physical force against the victim.

What accounts for the higher conviction rate in video cases? The findings in this chapter show that the video statement program has increased the conviction rate by 3.1 percentage points in Criminal Court and by 8.0 percentage points in the Integrated Domestic Violence Court. The impact has been almost entirely on convictions to violation-level charges, rather than misdemeanor-level charges. Defendants who made a substantive statement were more likely to be convicted than those who refused to make a statement, possibly because they were less knowledgeable or less concerned about the criminal justice consequences of their actions. Our analysis of the content of substantive statements shows that videotaped confessions and admissions to the use of physical force against the victim increase the likelihood of conviction. These results help us to understand which video statements are responsible for increasing the conviction rate in DV Bureau cases, but they do not explain the mechanisms by which



the video statements produce this effect. As we conclude this chapter, we speculate about some possible explanations.

First, information provided by the defendant in the video statement may change how ADAs, defense attorneys, judges, and potential jurors perceive the case. Defendants in video cases, and their attorneys, may view their legal options differently than defendants and defense attorneys in non-video cases. Even when the defendant's statement was not a confession, admitting using physical force against the victim, for example, precludes certain lines of argument and defense. The defendant's statement can corroborate other evidence, such as photos, police officer testimony, medical records, etc. In cases in which the victim is participating with the prosecution, the defendant's statement can corroborate all or part of the victim's account of the incident. Without a defendant's video statement, the judge or jury can evaluate only the victim's credibility. A defendant's video statement provides an opportunity to evaluate the defendant's credibility in light of what the victim has claimed. On the rare occasions when DV Bureau cases go to trial, the video statement may create a more immediate and realistic perception in the courtroom of the incident, of what happened to the victim, and of the defendant's actions, demeanor, and appearance in the immediate aftermath of the arrest. After hearing both the victim's and defendant's versions of events, a judge or jury may be more comfortable reaching a disposition than they would if they heard only the victim's version of the incident. Of course, most DV Bureau cases do not go to trial, but plea-bargaining in criminal cases takes place "in the shadow" of what would happen if a case went to trial. When an ADA gives notice of a video statement at arraignment, subsequent plea negotiations may be affected. The constraints imposed on the defendant's legal options by the content of his or her statement may strengthen the ADA's hand in insisting on a guilty plea, and may increase the defendant's willingness to accept a plea bargain.

Second, video cases may receive greater attention from arresting officers, ECAB expeditors, screeners, ADAs, investigators and others who work on the case. The process of bringing a DV Bureau case to the Annex for screening and video recording may bring more attention and resources (aside from the video recording itself) to the case, in ways that we did not measure in our analysis. In ECAB Annex cases, the screener speaks to the arresting officer in person, rather than on the phone. This may give the screener a better sense of the police officer's view of the defendant's demeanor, actions, and attitudes, and may provide the screener with more details about the case. Moreover, if the defendant makes a substantive video statement, the screener is better able to evaluate the case. When the expeditor does not send a DV Bureau case to the ECAB Annex, the screener does not speak to the defendant. The specialized early attention devoted to a video case may improve the quality of early evidence collection and development of the case.

Third, placing defendants on camera and asking them to make a statement (even if they refused to speak) may change their view of the case. Defendants in video cases may view their cases as being more serious than the cases of other DV defendants, or of defendants in other non-DV cases. They may believe that the DA's office selected

their cases for special attention, either because the case involved domestic violence, or because it was a particular type of domestic violence case. This argument assumes that defendants in video cases were aware that they were in a sub-group of defendants who were selected for the video statement program. Except in the case of repeat defendants, or first-time defendants who somehow learn that other defendants were not brought to the ECAB Annex, this assumption, and therefore this explanation, may not be valid.

Finally, defendants in video cases may be more willing to plead guilty because they perceive that they were treated fairly by being given a chance to give “their side” of the story. Studies have found that “procedural justice,” i.e., the use of fair procedures, affects defendants’ views of the legitimacy of authority, as well as their future behavior. Paternoster et al. (1997) found that defendants in DV cases who felt that the police had taken time to listen to their story had lower rates of recidivism for new DV offenses than those who did not. The reduction in recidivism was the same for those who were arrested and for those who were not. Among those who were arrested, this effect persisted regardless of the length of detention. These findings suggest that defendants in DV cases were more willing to accept the criminal justice consequences of their actions, and to change their behavior, if they perceived that they were treated fairly. We might be observing a similar effect with the video statement program. Defendants in video cases may be more willing to plead guilty (particularly to a low-level violation offense) because they feel that they have had a chance to tell their side of the story.

## VI. VIDEO STATEMENTS, VICTIM PARTICIPATION AND CONVICTIONS

In this chapter, we examine the influence of the video statement program on convictions after taking into account victim participation in the prosecution, as well as other factors, that affect the likelihood of conviction. The analyses use data from the DV Bureau Case File Sample, which contains information coded from the DA's case files. As explained in chapter 2, this dataset includes information about only a small proportion of all DV Bureau cases. However, it contains information about the evidence in the case, especially about victim participation in the prosecution, which is not available from other sources. It also includes information about evidence that became available after arraignment. The analyses in this chapter will enable us to determine whether the video statement program affects the conviction rate even after taking into account the effect of victim participation. The analyses also will examine whether the effect of the video statement program on conviction is stronger when the victim is not participating in the prosecution.

### A. Overview of the DV Bureau Case File Sample

We selected both video and non-video case files for inclusion in the DV Bureau Case File Sample. However, as noted in chapter 2, we oversampled ECAB Annex cases—469 (about 29%) of the 1,596 cases in the sample were video cases. Having a larger number of video cases in the sample enables us to compare video and non-video cases more reliably. Specifically, in the predictive models presented in this chapter, having an oversample of video cases produces a more accurate estimate of their effect on conviction in this smaller dataset.

To make the analyses of this dataset comparable to the analyses of the DV Bureau dataset in the previous chapter, we followed a similar procedure and excluded certain cases from the DV Bureau Case File Sample. We excluded cases from the analysis if they were 1) “hanging arrests” (N = 23, including five video cases) 2) consolidated cases (N = 16, including four video cases), 3) not disposed in specialized DV parts (N = 25, including 10 video cases), or 4) cross-complaints (N = 47, including 28 video cases). After these exclusions, the sample contained 1,485 cases (including 422 video cases) that were disposed in the specialized DV parts. Our Criminal Court sample contains 1,349 disposed cases, including 387 video cases and 962 non-video cases. Our samples of IDV Court cases (N = 123, including 30 video cases) and Supreme Court cases (N = 13, including five video cases) were too small for analysis.

We compared the data from the Criminal Court cases in the DV Bureau Case File Sample (N = 1,349) to the data from the Criminal Court cases in the DV Bureau Dataset described in the previous chapter (N = 13,829). Specifically, we wanted to verify that the distribution of the variables in video and non-video cases in the DV Bureau Case File Sample was similar to the distribution of variables in video and non-video cases in the full DV Bureau Dataset. A careful analysis of a wide variety of variables showed that there were very few differences between the two datasets, and that any differences were relatively small (data not shown). In particular, dispositions of

cases in the two datasets were substantially similar. About 36.4% of the video cases in the DV Bureau Case File Sample ended in conviction, compared to 37.1% in the DV Bureau Dataset. About 31.2% of the non-video cases in the DV Bureau Case File Sample ended in conviction, compared to 31.5% in the DV Bureau Dataset.

## B. Models Predicting the Likelihood of Conviction

The model predicting convictions in the DV Bureau Case File Sample considered all the same predictors that we used in the models based on the DV Bureau Dataset in chapter 5. However, we supplemented the predictors with additional measures available in the DV Bureau Case File Sample, and in some cases, we replaced them with more accurate measures available in the case file sample. A list of the supplemental and replacement measures follows:

### Incident Characteristics

- Method of Reporting the incident (was there a 911 call?, was there a 911 recording in the case file?)
- Witnesses (were there potential adult witnesses to the incident?)
- Victim participation (last known participation status: declined to participate with the prosecution of the case, participating with the prosecution of the case, participation status unknown or victim never contacted; was complaining witness ever cooperative?; was complaining witness ever uncooperative?; did complaining witness sign a corroborating affidavit?; did complaining witness sign a waiver (indicating that the complaining witness did not want to participate in the prosecution)?; was there a victim statement on the Domestic Incident Report<sup>27</sup> (DIR)?; was there a complainant intake form in the file?; was there a DIR in the file?; was there a Counseling Services Unit form in the file?)
- Injuries (any injuries to complaining witness, any photos of injuries to complaining witness, quality of injury photos, victim treated at hospital, any medical records of victim injuries, any medical records received by the DA's office)
- Damage (photos of damaged property, photos of damage at the scene)
- Alleged defendant actions (was a weapon used in the incident?; was a weapon recovered?; was the defendant intoxicated?; did the defendant have a psychiatric history?; were jail telephone records available?) (We obtained information about these items from the DIR, the complainant intake form, and the prosecutor's case notes.)

### Defendant Characteristics

- Domestic violence history (any prior DIRs?; any prior DV history noted on the current DIR?; any prior history noted on the complainant intake form?)

---

<sup>27</sup> A Domestic Incident Report (DIR) is a form completed by NYPD officers for every domestic incident they respond to, whether or not an arrest is made. The DIR includes a page for the victim to write a statement explaining what happened during the incident. NYPD officers are required to offer the victim the opportunity to write a statement, but victims may refuse to do so.

As in chapter 5, we considered a large number of factors as possible predictors of conviction. However, we included in our model only those factors that had a statistically significant effect. We expected the results of this model to differ from the results of the similar model in chapter 5 for two reasons: 1) this model included additional predictors of conviction that were only available by examining the case files, and 2) this model was estimated on a smaller sample of selected cases. Because the model considered additional predictors, and especially because these predictors included valuable information about victim participation, photos, medical records, etc., this model provided a more complete assessment of the effect of various types of evidence on the likelihood of conviction. However, because the sample size was smaller, it was more difficult to find statistically significant predictors of conviction. The larger dataset in chapter 5 had more power to detect predictors of conviction, but had fewer, less precise, predictors available. The model examined in this chapter made a different trade-off, emphasizing the variety and quality of predictors available at the expense of reduced power to detect statistically significant effects.

Because, as we found in chapter 5, release status is a very powerful predictor of the likelihood of conviction, we excluded from our analysis all cases in which the defendant was never released. This reduced the sample size in the DV Bureau Case File Sample from 1,349 to 1,195 Criminal Court cases (including 329 video cases). Using only released defendants for our analysis allows us to focus on predictors of conviction other than release status.

The predictive model for convictions in Criminal Court DV cases shows a variety of factors that affected the likelihood of conviction among released defendants (see Table 6-1, next page). Of course, the result of most interest is the effect of video cases on convictions. The magnitude of the effect was about 5.2 percentage points. The predicted conviction rate was 30.9% for released defendants in video cases, and 25.7% in non-video cases (see Figure 6-1, left panel, next page). Because the conviction rate was higher in video cases, there were 20% more convictions in video cases than in non-video cases (see Figure 6-1, right panel, next page). These effects were larger than those we reported for the comparable model presented in chapter 5 (3.1 percentage points as shown in Table 5-2 and a 12% increase in convictions as shown in Figure 5-2). Based on this model, we estimate that the video statement program has been responsible for an additional 86 convictions in Criminal Court during the time period covered by this study. Because this estimate is based on a model that considers the effect of victim participation, we believe it is the most accurate estimate of the number of additional convictions attributable to the video statement program.

Why was the effect of the video statement program stronger in this model than in the comparable model in chapter 5? Additional analyses (not shown) indicate that adding victim participation to this model was responsible for increasing the effect of video cases. There are two reasons that including victim participation produced this increase. First, more video cases than non-video cases involved victims who were not participating. The predicted conviction rate was substantially lower when victims were

**TABLE 6-1**  
**LOGISTIC REGRESSION MODEL PREDICTING LIKELIHOOD OF CONVICTION**  
**FOR RELEASED DEFENDANTS IN CRIMINAL COURT DOMESTIC VIOLENCE CASES**  
**IN DV BUREAU CASE FILE SAMPLE**  
*Excluding Cross-Complaints*

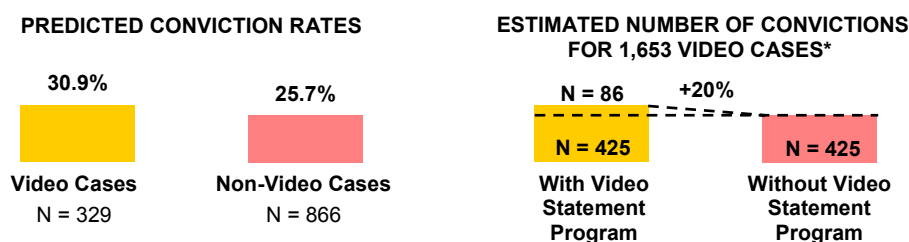
INDEPENDENT VARIABLES	Standardized $\beta$	Change in Conviction Rate
<b>VIDEO CASE</b>	0.18 *	5.2%
<b>EVE CASE</b>	0.43 ***	12.2%
<b>LAST KNOWN STATUS OF VICTIM PARTICIPATION</b>		
<i>Reference Category: Victim Declined to Participate with Prosecution of the Case</i>		
VICTIM PARTICIPATING WITH PROSECUTION OF CASE	0.89 ***	36.5%
NO CONTACT WITH VICTIM, OR PARTICIPATION UNKNOWN	-0.17 *	-4.5%
<b>INJURIES</b>		
ANY PHOTOS OF COMPLAINING WITNESS(ES)' INJURIES IN CASE FILE?	0.28 **	8.5%
ANY MEDICAL RECORDS OF COMPLAINING WITNESS(ES)' INJURIES?	0.22 **	12.2%
<b>911 RECORDING AVAILABLE IN CASE FILE</b>	0.35 ***	11.7%
<b>VICTIM STATEMENT ON THE DOMESTIC INCIDENT REPORT (DIR)</b>	0.25 **	6.7%
<b>ARRAIGNMENT CHARGE</b>		
ANY COMPLAINT CHARGES FOR VIOLATING AN ORDER OF PROTECTION?	0.37 ***	16.6%
MOST SEVERE ARRAIGNMENT CHARGE WAS A FELONY	-0.25 **	-7.7%
<b>CRIMINAL HISTORY</b>		
DEFENDANT HAD OPEN CASES AT TIME OF ARREST	0.17 *	5.2%
<b>DEFENDANT-VICTIM RELATIONSHIP CHARACTERISTICS</b>		
<b>COHABITATION HISTORY</b>		
<i>Reference Category: Never Cohabited</i>		
Cohabiting at Time of Arrest	-0.30 *	-9.3%
Cohabited Prior to Time of Arrest	-0.22 **	-6.0%
<b>DEFENDANT'S DEMOGRAPHIC CHARACTERISTICS</b>		
SEX (Female)	-0.17 *	-6.0%

Nagelkerke  $R^2$   
(N of cases)

0.29 \*\*\*  
(1,195)

- \* Statistically significant at  $p < .05$
- \*\* Statistically significant at  $p < .01$
- \*\*\* Statistically significant at  $p < .001$

**Figure 6-1: Effect of Video Statement Program on Convictions for Released Defendants in Criminal Court Domestic Violence Cases in DV Bureau Case File Sample**  
*Excluding Cross-Complaints*



\* We estimated these numbers for the 1,653 video cases in the full DV Bureau Dataset, not for the smaller DV Bureau Case File Sample.

not participating (21% vs. 57%, not shown). Second, the effect of video cases on convictions was much larger when the victim was not participating (see later discussion). Because most DV Bureau cases involved victims who were not participating, the effect of video cases on convictions was magnified. For these reasons, when we took into account the effect of victim participation on conviction, the effect of video cases on convictions was stronger than when we did not.

In this model, EVE increased the conviction rate by 12.2 percentage points. The effect of EVE was nearly twice as strong in this model as it was in the comparable model in chapter 5 (12.2 percentage points in Table 6-1, compared to 6.4 percentage points in Table 5-2). Additional analyses (not shown) indicate that adding victim participation to this model was responsible for increasing the effect of EVE, as it was for video cases. At first glance, this is surprising because victim participation increased after EVE was established, from 17% to 21% (data not shown). Considering the effect of victim participation should reduce the effect of EVE on the conviction rate. However, the conviction rate when victims were participating increased from 44% to 63% after EVE was established (data not shown). This suggests that after EVE was established, the value of victim participation in obtaining convictions increased substantially.

As expected, there were both similarities and differences between this model and the comparable model presented in chapter 5 (see Table 5-2). Predictors common to both models were cohabitation history, whether the arraignment charge was a felony, and defendant's sex. However, in this model, unlike the previous model, having an open case at the time of arrest and having complaint charges for violating an order of protection increased the likelihood of conviction. On the other hand, prior orders of protection, failure to appear, and pretrial re-arrest for a new DV offense had no effect on conviction in this model, whereas these variables increased the likelihood of conviction in the previous model. This difference may be due to the smaller sample size in this model.

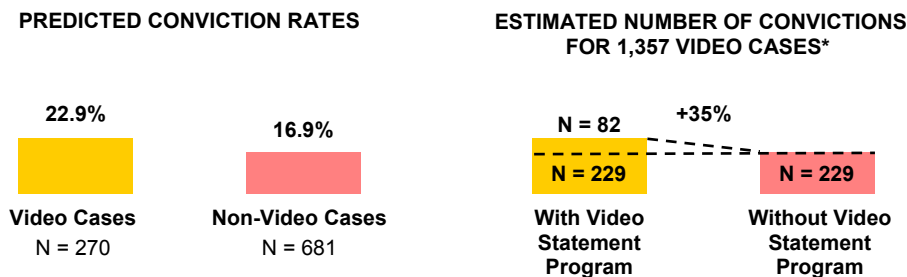
Other differences reflect the availability of new or better measures of strength of evidence in this model. Victim participation had a strong effect on conviction. When the last known status of the victim indicated that she or he was participating with the prosecution, convictions were significantly more likely. This variable was the strongest predictor in the model. All other things equal, the likelihood of conviction was 36.5 percentage points higher when the victim was participating with the prosecution than when the victim declined to participate in the prosecution of the case (see "change in conviction rate" in Table 6-1). We also found that cases in which the DA's office had a copy of the 911 recording were more likely to end in conviction, as were cases in which medical records were obtained, cases in which there were photos of injuries in the case file, and cases in which there was a victim statement on the DIR form in the file.

What conclusions can we draw from the findings in the current model? In particular, what can we say about the association between victim participation and the impact of video cases on convictions? First, the conviction rate was higher in video cases than in non-video cases. The consistency of this finding with the results in

chapter 5 makes us more confident that the video statement program increased the conviction rate. Second, adding the victim participation measure to the current model did not reduce the impact of video cases on convictions. This finding answers a question lingering from the previous chapter: *differences in victim participation between video and non-video cases did not account for the impact of video cases on the conviction rate*. In fact, accounting for differences in victim participation **increased** the impact of video cases on the conviction rate.

Did the effect of video cases on convictions depend on whether the victim was participating with the prosecution? To address this question, we used the DV Bureau Case File Sample to conduct additional analyses. We divided the data into two groups: 1) cases in which the victim was participating with the prosecution and 2) cases in which the victim was not participating, or was not contacted, or the participation status was unknown. We then re-estimated the predictive model for each group (models not shown). When the victim was participating with the prosecution, the conviction rate was similar in video and non-video cases. However, when the victim was not participating, not contacted, or the participation status was unknown, the conviction rate was about 6.0 percentage points higher in video cases than in non-video cases (see Figure 6-2, left panel). The predicted conviction rate was 22.9% for released defendants in video cases, and 16.9% for non-video cases. We estimate that the video statement program increased convictions by about 35% in Criminal Court in cases when the victim was not participating in the prosecution (see Figure 6-2, right panel). Based on this model, we estimate that the video statement program has been responsible for an additional 82 convictions in Criminal Court during the time period covered by this study when the victim was not participating with the prosecution. This estimate is quite similar to the estimate of 86 additional convictions reported for all video cases (see results for Figure 6-1, above). The similarity of the estimates confirms our conclusion that the video statements increased convictions only in cases in which the victim was not participating in the prosecution.

**Figure 6-2:** Effect of Video Statement Program on Convictions for Released Defendants in Criminal Court Domestic Violence Cases When the Victim is Not Participating in the Prosecution  
*Excluding Cross-Complaints*



\* We estimated these numbers for the full DV Bureau Dataset, not for the smaller DV Bureau Case File Sample. Because we found that victims were not participating in 82.1% of video cases in the DV Bureau Case File Dataset (data not shown), we assumed that victims were not participating in the prosecution of 82.1% (1,357) of the 1,653 video cases in the DV Bureau Dataset.



### C. The Impact of the Content of Video Statements on the Likelihood of Conviction

We did not find a statistically significant difference between the conviction rates for defendants in video cases who made a substantive statement and those who did not (data not shown). This finding is probably the result of the small size of the sample of video cases (387 released defendants in video cases in the DV Bureau Case File Sample). Because the number of cases was considerably larger in chapter 5 (1,653 released defendants in video cases in the DV Bureau Dataset), we believe those results are more accurate. In chapter 5, we concluded that making a substantive video statement increased the likelihood of conviction.

We next consider the effect of the content of the defendants' statements on the likelihood of conviction, as we did in chapter 5. However, in this chapter we coded the content based on our viewing of the videos as well as the narrative summaries, whereas in chapter 5 we based the coding solely on the narrative summaries of the video statements prepared in the ECAB Annex. By viewing the videos for cases in the DV Bureau Case File Sample, we obtained a more complete assessment of what the defendants said in their statements. The items coded from the videos were the same 73 items we coded from the ECAB screeners' narrative summaries. As before, we used these items to classify each statement into one of several categories. We classified statements into several broad categories, and (except for the "missing" category) allowed for overlap in some of the categories. The categories were the same ones used in chapter 5: 1) admitted being at the scene, 2) admitted that the defendant and victim had an argument, 3) admitted using physical force against the victim (not in self-defense), 4) admitted knowing there was an order of protection, or violating an order of protection, 5) confession to most of the charges, 6) self-defense, 7) denied the charges (does not include self-defense claims), and 8) video statement was missing.

We do not report the percentage of cases, or the conviction rates, in each of these categories because the smaller sample in this chapter is less reliable for estimating the prevalence of different types of statements or the conviction rates for different types of statements. Moreover, the pattern of findings was generally similar to the findings reported in Figures 5-6 and 5-7 (data not shown).

We developed a statistical model examining the effect of statement content on the likelihood of conviction in Criminal Court (model not shown), similar to the model discussed in chapter 5, section D. After controlling for other predictors of conviction, we found two categories of statement content that had a statistically significant effect on the likelihood of conviction. Defendants who admitted knowing there was an order of protection and those who admitted using physical force against the victim were more likely to be convicted. The other categories of statement content had no statistically significant impact on the likelihood of conviction after these two items were included in the model. We are not prepared to conclude that other categories of statement content did not have an impact, because this sample of cases is relatively small. Nevertheless, it was large enough to detect the effect of two categories of statement content.

Both the results reported here and those reported in chapter 5 for the full dataset of released defendants in video cases indicate that a defendant's admission of using physical force against the victim increased the likelihood of conviction. However, the results in this chapter failed to confirm that denials reduced the likelihood of conviction and confessions increased the likelihood of conviction, as we found in chapter 5. This is probably due to the smaller sample size, which generally makes it more difficult to find statistically significant effects. In addition, we found in this chapter, but not in chapter 5, that defendants who admitted knowing there was an order of protection were more likely to be convicted. This difference appears to be due to differences between the coding of statements solely from narrative summaries (as in chapter 5) vs. coding of statements from both the videos and the narrative summaries (as in chapter 6).

#### D. Summary and Discussion of Findings

This chapter has addressed two key questions about the association between video statements and victim participation and has provided new information about the effect of the content of video statements on the likelihood of conviction.

First, we considered whether differences in victim participation between video and non-video cases accounted for the impact of video statements on convictions. Victim participation was a strong predictor of conviction. When the victim was participating with the prosecution, the likelihood of conviction was nearly 37 percentage points higher than when she or he declined to participate. Because victim testimony is among the strongest potential pieces of evidence in intimate partner violence and elder abuse cases, even a small difference in the rate of victim participation between video and non-video cases could have significantly affected the estimate of the effect of video statements on convictions. For example, if victims happened to participate with the prosecution more often in video cases than non-video cases, victim participation, and not the video statement, might be responsible for the higher conviction rate in video cases. Similarly, if victims happened to participate less often in video than in non-video cases, the effect of video cases on convictions might actually be stronger than it appears. In our analyses in chapter 5, we did not have a measure of victim participation available, and could not rule out victim participation as a reason for the higher conviction rate in video cases. In this chapter, using a smaller sample of cases that included data on victim participation, we were able to address this issue.

Comparing results from chapters 5 and 6, the impact of video statements was stronger in Criminal Court DV cases when our model included a measure of victim participation. In chapter 5, our model did not include victim participation, and video statements increased the conviction rate by 3.1 percentage points (see Table 5-2). In this chapter, our predictive model included victim participation and video statements increased the conviction rate by 5.2 percentage points (see Table 6-1). The model presented in this chapter enhanced our confidence that the conviction rate is higher in video cases. It also suggests that the effect of video cases on conviction is stronger than previously estimated.

Second, we considered whether video statements have a greater effect on convictions when the victim is not participating in the prosecution. Because victim participation is such a strong predictor of the likelihood of conviction, we hypothesized that the video statements would be more useful in cases in which the victim was not participating. The findings in this chapter support that hypothesis. **Among cases in which the victim was not participating, not contacted, or the participation status was unknown, the predicted conviction rate was 6.0 percentage points higher for video cases than for non-video cases (22.9% vs. 16.9%).** As a result, there were 35% more convictions for video cases than for non-video cases when the victim was not participating. **Among cases in which the victim was participating, the conviction rate was similar for video and non-video cases.** These results indicate that video statements constitute valuable evidence when victims are not participating in the prosecution.

The finding that defendants' video statements increased the conviction rate when the defendant was released and the victim was not participating in the prosecution is a key finding of this study. Video statements increased the likelihood of conviction in the cases that are the most difficult to prosecute. As noted throughout this report, victims do not participate in the prosecution of most intimate partner violence and elder abuse cases, not only in Brooklyn, but also in jurisdictions across the U.S. Although prosecutors often pursue evidence-based prosecutions in these cases, using medical reports, photos, 911 recordings, etc., such evidence is often not available, or is insufficient to obtain a conviction. The findings in the current study indicate that defendants' video statements are a valuable additional piece of evidence for evidence-based prosecution of intimate partner violence and elder abuse cases.

The finding that video statements increased the conviction rate when victims were not participating also sheds new light on, and raises new questions about, the findings regarding the effect of video cases in the IDV Court vs. in Criminal Court. In chapter 5, we found that video cases had a stronger effect on the conviction rate in IDV Court (8.0 percentage points) than in Criminal Court (3.1 percentage points). We speculated that the context of the IDV Court enhanced the value of video statements. Because there are a variety of differences between IDV Court and Criminal Court, we could not be sure which differences mattered. In this chapter, after taking into account the effect of victim participation on convictions, we found that video statements increased the conviction rate by 5.2 percentage points in Criminal Court. This is closer to the 8.0 percentage point increase we found for IDV Court and at first glance suggests that video statements may have increased convictions for similar reasons in both courts. However, a closer look at the Criminal Court results showed that when victims were participating in Criminal Court, video cases had no impact on convictions. This finding raises even more questions about the impact of video cases in IDV Court. If video statements had no impact on convictions when victims were participating in Criminal Court, it is surprising that video statements increased convictions in IDV Court, where almost all victims were participating in the prosecution. We will address this issue in the concluding chapter.

The findings in this chapter also enrich our understanding of the reasons the video statement program increased the conviction rate. Using information coded directly from the video statements, we confirmed our previous finding that defendants who admitted using physical force against the victim were more likely to be convicted. We also learned that those who admitted knowing there was an order of protection were more likely to be convicted.

## VII. CONCLUSION

This report has described a program to collect video statements from defendants in intimate partner violence and elder abuse cases in Brooklyn, New York and assessed the program's impact on convictions. The Domestic Violence Bureau of the Kings County District Attorney's office designed the video statement program to strengthen the evidence available and to increase the conviction rate in intimate partner violence and elder abuse cases. Under this program, an Assistant District Attorney interviews selected defendants prior to their arraignment and obtains statements from those who waive their Miranda rights. From the start of the program on November 27, 2007 through December 31, 2009, the DA's office sent about one of every eight defendants in intimate partner violence and elder abuse cases for a video statement. Nearly four of every five defendants selected for the program waived their Miranda rights and made a substantive statement.

### A. Major Findings

This study addressed four questions:

- 1) Do defendant and case characteristics affect which DV Bureau cases are sent for a video statement?
- 2) Does the video statement program affect case outcomes, particularly the likelihood of conviction, in DV Bureau cases?
- 3) Does the content of video statements affect case outcomes, particularly the likelihood of conviction, in DV Bureau cases?
- 4) Does the video statement program have a stronger effect on convictions if other evidence in the case is weak?

We can summarize the answers to these questions as follows.

First, we found that the DA's office, following program guidelines, was more likely to send defendants in cases involving injuries, defendants charged with assault, and defendants involved in cross-complaints for a video statement. Defendants who were cohabiting with the victim were also more likely to be sent for a video statement. We also examined which of the defendants in the video statement program were more likely to make a substantive statement (vs. refuse to speak). Defendants in incidents in which they (but not a complaining witness) were injured, defendants in cross-complaints, and defendants who had four or more arrest charges were more likely to make substantive statements. Defendants whose arrest occurred 9 hours or more after the incident were less likely to make a substantive statement.

Second, the video statement program increased the conviction rate in intimate partner violence and elder abuse cases. After taking into account other defendant and

case characteristics that affect convictions, our analysis found that the conviction rate was 3.1 percentage points higher in video cases than in non-video cases among released defendants in DV Bureau cases disposed in Criminal Court. In our smaller DV Bureau Case File sample, where we could control for the effect of victim participation, we found that video statements increased the conviction rate by 5.2 percentage points. We believe that this is the best estimate of the effect of the video statements on convictions in Criminal Court. In the IDV Court, the conviction rate was 8.0 percentage points higher for released defendants in video cases than in non-video cases. In both courts, the effect of video cases on the conviction rate was almost entirely due to an increase in convictions for violation-level charges, rather than misdemeanor-level charges.

Third, making a substantive statement increased the likelihood that a defendant would be convicted. Defendants who made a substantive statement on video were either less knowledgeable about, or less concerned about, the increased risk of conviction. Defendants in video cases who admitted using physical force against the victim, who confessed to most of the charges, or who admitted knowing there was an order of protection were more likely to be convicted. Defendants who denied the charges were less likely to be convicted.

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

## B. Discussion

This study has evaluated the impact of the video statement program on the conviction rate in intimate partner violence and elder abuse cases. Although we began by examining simple *differences* between video and non-video cases, we assessed the *impact* of the video program using predictive models that accounted for a wide variety of factors that affect convictions. Using these models, we were able to determine the direct impact of the video statement program on convictions. We found that the video statement program increased the conviction rate by about 5.2 percentage points in Criminal Court and by about 8.0 percentage points in the Integrated Domestic Violence Court. To interpret these findings and to develop implications for practice and policy, it is important to consider why the video statement program increased convictions.

Our study has ruled out certain explanations for the impact of the video statement program on convictions. The program did not increase the likelihood that the court would detain a defendant throughout the pretrial period. Defendants in video

cases were no more likely than defendants in non-video cases to fail to appear for a scheduled court appearance or to be re-arrested for a new DV offense during the pretrial period.

We found that video statements increased convictions because defendants who made a substantive statement made significant admissions. Defendants who admitted using physical force against the victim, defendants who admitted knowing there was an order of protection, and defendants who confessed to most of the charges were all more likely to be convicted. Although these results tell us which video statements were responsible for increasing the conviction rate in DV Bureau cases, they do not explain the mechanism by which the statements produced this effect. We identified four possible explanations.

First, video statements may constrain the type and strength of arguments that a defense attorney can raise. The constraints imposed on the defendant's legal options by the content of his or her statement may strengthen the ADA's ability to obtain a guilty plea, and may increase the defendant's willingness to accept a plea bargain. Second, video cases may receive greater attention than non-video cases, particularly in the early period between arrest and arraignment when ECAB screeners evaluate the case. Screeners in the ECAB Annex, unlike other screeners, interview the defendant and they discuss the case with the arresting officer in person, rather than by phone. This additional attention may significantly improve the screener's ability to evaluate the case and the quality of the evidence. It may also open up avenues of investigation for the ADA who subsequently handles the case. Third, defendants recorded on video, even those who refused to make a substantive statement, may view their cases as being more serious than the cases of other defendants. The process of taking a video statement may suggest to the defendant that the District Attorney's office selected his or her case for special attention. Fourth, some research suggests that defendants in DV cases who are given a chance to tell "their side" about what happened during the incident may be more likely than other defendants to feel that they have been treated fairly. This may increase their perception of the legitimacy of authority.

The first two explanations suggest that video cases have a higher conviction rate because video statements strengthened the evidence for the prosecution. According to the first explanation, the video statement itself constrains the defense and strengthens the prosecution's case. According to the second explanation, the police and the District Attorney's office devote more attention and resources to video cases. It may be this extra attention, either on its own or in combination with the statement, which increases the strength of evidence and the conviction rate. Either way, these explanations assume that the video statement, directly or indirectly, strengthens the evidence for the prosecution or weakens the evidence for the defense, thus increasing the likelihood of conviction.

The third and fourth explanations suggest that the video statement program affects the defendant's perception of the case, making him or her more willing to accept a plea bargain. According to the third explanation, taking a video statement impresses

on the defendant the seriousness of the case and the extra attention devoted to it. According to the fourth explanation, the defendant views the video statement as an opportunity to state his or her side of the story, and is more likely than a defendant in a non-video case to feel that he or she was treated fairly. The defendant's perception of being treated fairly may make him or her more likely to accept the criminal justice consequences, and therefore more likely to accept a plea bargain.

We were able to test two of these explanations. Regarding the first explanation, we found that defendants who admitted using physical force, who admitted knowing about an order of protection, or who confessed, were more likely to be convicted. It seems very likely that these admissions affected the plea bargaining process by strengthening the prosecution's case and weakening the defendant's case. Regarding the second explanation, we conducted some supplemental analyses (data not shown) of the DV Bureau Case File Sample and found that certain types of evidence were more likely to be available in the files of video cases than in non-video cases. The Domestic Incident Report (DIR) was available in the files of 92% of video cases, but only 78% of non-video cases. When an incident was reported through 911, a transcript or copy of the 911 recording was available in the files of 35% of the video cases and 31% of non-video cases. These findings suggest that ADAs may have made more effort to obtain copies of available evidence in video cases than in non-video cases, perhaps because the ECAB Annex screener's conversations with the defendant and arresting officer clarified the strongest elements of the case. However, other types of evidence were equally available in the case files of video and non-video cases, so the support for this explanation is not strong. For the third explanation, we did not have any measures indicating whether defendants in video cases viewed their cases more seriously than defendants in non-video cases did. One problem with this explanation is that many defendants may not be aware that only some defendants were asked to make a video statement. Finally, for the fourth explanation, we do not have any data indicating whether making a video statement increased a defendant's perception of the fairness of the process.

Overall, our findings provide the strongest support for the first explanation. Specifically, the content of the video statements strengthened the evidence for the prosecution and increased the likelihood that the defendant would plead guilty. It also appears that ADAs may have obtained certain types of evidence for the case file more often in video than in non-video cases. These findings show that the video statements strengthened the evidence in DV Bureau cases. Testing the explanations about video statements' effect on defendants' perceptions of their cases would require additional research, and might provide additional insight into the reasons for the effectiveness of the video statement program. However, with or without tests of these other explanations, the basic finding of this report remains the same: **defendants' video statements strengthened the evidence for the prosecution and increased convictions.**

A second important issue addressed in this study is the association between the video statement program and victim participation in the prosecution of the case. Video



cases increased the conviction rate by 6.0 percentage points when victims were not participating in the prosecution. Given that victims in most DV Bureau cases are not participating, this suggests that the video statement program is a key component of the DV Bureau's evidence-based prosecution strategy. When victims are not participating, ADAs try to use other types of evidence such as photos, medical records, 911 recordings, etc. in combination with admissible spontaneous statements by victims, defendants, and/or other eyewitnesses. The video statement program has now added defendants' video statements to the body of evidence available to obtain a conviction in these cases.

Finally, we also identified some of the limitations of the video statement program. Although the video statement program increased the likelihood of conviction on violation-level charges in DV Bureau cases, it did not increase the likelihood of conviction for misdemeanor-level charges. The maximum criminal penalties for violation convictions are much less severe than the penalties for misdemeanor convictions (15 days in jail for a violation, 6 months for a B misdemeanor and 1 year for an A misdemeanor).<sup>28</sup> Moreover, violations, unlike misdemeanors, are not considered crimes, and violation convictions usually are removed from a defendant's rap sheet one year after the conviction date if the defendant has not been re-arrested during the year. As a result, many of the additional convictions attributable to the video statement program are eventually sealed.<sup>29</sup> The difficulty of obtaining criminal convictions is typical of all DV cases in New York City, and not limited to video cases in Kings County. We mention it primarily to point out that although the video statement program has increased convictions in DV Bureau cases, it has not been able to strengthen the cases enough to increase the number of criminal convictions. The predominance of violation convictions in intimate partner violence and elder abuse cases in New York City is a limitation that remains to be addressed by other means.

Similarly, the video statement program has not improved the screening of cross-complaint arrests. ECAB expeditors give priority to cross-complaints when determining which cases to send to the ECAB Annex for a video statement. The ECAB screeners then review the videos to determine if the statements provide enough evidence to file charges in one of the cross-complaint cases while declining to prosecute the other. If the DA's office files charges in both cases, ADAs cannot speak to either defendant/cross-complainant without the permission of his or her attorney (and

---

<sup>28</sup> Although jail sentences are relatively rare, violation convictions have other consequences for defendants in cases of intimate partner violence and elder abuse. The court issues an order of protection when a defendant is convicted of a violation, and defendants who violate the order can be re-arrested on new charges.

<sup>29</sup> Effective October 16, 2009, new legislation (Criminal Procedure Law §170.10(8-a(a)) permitted ADAs to file notice within 15 days after arraignment in most DV Bureau cases that if the defendant is convicted of a violation under Penal Law §240.26 (harassment in the 2<sup>nd</sup> degree) the conviction will not be sealed. Harassment in the 2<sup>nd</sup> degree is a common conviction charge in DV Bureau cases, and ADAs now routinely file this notice. This unsealing provision affected very few cases in the current study because the legislation only became effective near the end of the time period covered by this study.

permission is rarely granted). Filing charges in only one of the cases substantially improves the chances of obtaining a conviction in that case, because the DA's office is able to talk to the victim. One of the goals of the video statement program is to screen cross-complaints so that when appropriate, the DA's office can file charges against one of the defendants and not the other. As shown in chapter 3 (see Table 3-2), only 4.0% of video cross-complaint cases were declined for prosecution, compared to 2.3% of non-video cross-complaint cases. Because this difference is negligible, the conviction rate for video cross-complaint cases is only slightly higher than for non-video cross-complaints. These results suggest that video recordings of cross-complainants did not improve the screening process for these cases. The DV Bureau should probably modify the video statement program to handle cross-complaints differently.

In addition to addressing the impact of the video statement program on convictions, this study has provided valuable information about three other issues concerning the prosecution of intimate partner violence and elder abuse cases.

First, the predictive models in this study have provided information about factors other than the video statements that affect the likelihood of conviction. Of most interest to ADAs are the findings about the value of certain types of evidence. Across different models of conviction, we consistently found that evidence related to injuries, including photos of complaining witness(es)' injuries and evidence that a complaining witness received medical treatment, increased the chances of obtaining a conviction. Victim statements on the DIR and copies of 911 recordings were also valuable pieces of evidence. We also found that in addition to video statements, oral statements made by a defendant (almost all of which were "spontaneous utterances") increased the likelihood of conviction.

This study also provided information about which types of evidence did *not* increase convictions. We checked different models of conviction, and focused especially on the model (not shown) in chapter 6 examining cases in which the victim was not participating with the prosecution. In all the models, after taking into account the effects of the types of evidence listed above, the following types of evidence did not significantly affect the likelihood of conviction: whether third-party witnesses were available, whether an injured victim was treated at a hospital (vs. only by EMS), photos of damaged property or damage at the scene, defendant weapon use, and defendant drug/alcohol use. These findings do not suggest that such evidence is never useful in a particular case. The predictive models can only indicate what types of evidence are generally useful across *all* DV Bureau cases. Moreover, we tested some of these effects only on a smaller subsample of cases; tests on a larger sample might be able to detect effects of some of these types of evidence. Finally, information about important pieces of evidence may sometimes be missing from the case files.

Second, the study has provided important findings about the EVE project, suggesting that it has increased conviction rates in DV Bureau cases. In Criminal Court, the EVE project increased the conviction rate by approximately 6 percentage points. (In our smaller DV Bureau Case File sample, where we could control for the

effect of victim participation, EVE increased the conviction rate by about 12 percentage points.) EVE increased the conviction rate by about 7 percentage points in the IDV Court.

Although our findings strongly suggest that EVE has increased the conviction rate, some caution is warranted in evaluating the magnitude of this effect. Our study was not designed as an evaluation of EVE, and our measure of whether a case was an EVE case or not is based entirely on the date of arrest, i.e., whether the arrest was made before or after EVE was implemented. We did not explicitly examine whether EVE staff reached the victim in each case, nor have we been able to establish how often contact from EVE was associated with a victim participating in a case. We have examined some data that might enable us to establish some of these links, and found that after EVE was established, victims were more likely to come into the DA's office for an intake interview. We plan to obtain more data on the EVE staff's contact with victims to pursue this question with additional data.

Third, we found that the video statement program increased convictions in IDV Court even though victims were participating in the prosecution of most of these cases. Victim participation did not enhance the value of video statements in Criminal Court. In fact, our analyses of Criminal Court cases showed that video statements increased the likelihood of conviction only when victims were **not** participating in the prosecution. When victims were participating, video statements had no effect on the likelihood of conviction in Criminal Court. We expected that because most victims were participating in the prosecution in IDV Court, video statements would have little or no impact on convictions. Yet we found that the conviction rate was 8.0 percentage points higher for video cases than for non-video cases in IDV Court. Why do video statements increase convictions in IDV Court? It may be that the quality of victim participation is stronger there than in Criminal Court. Victims in IDV Court have their own legal counsel representing their interests. Another possible explanation is that the lower caseload in IDV Court may permit a more careful evaluation of the evidence available in each case, including the video statement. Both the victim and the defendant are typically present at each hearing in IDV Court, and because there are concurrent non-criminal cases, the judge and the attorneys have the opportunity to hear from each side multiple times. This familiarity with the case and with the parties may increase the value of video statements when they are available in IDV Court cases, perhaps because the video enables judges and attorneys to evaluate the accuracy of other statements by the defendant and the victim. Finally, in IDV Court the defendant's interest in reaching a settlement of concurrent custody and visitation cases may increase his or her willingness to plead guilty to a violation in the criminal case.

### C. Best Practices for Prosecuting Intimate Partner Violence and Elder Abuse Cases

This study has produced valuable information about the DV Bureau's strategies for prosecuting cases. In this concluding section of the report, we summarize what we have learned about best practices for the prosecution of intimate partner violence and elder abuse cases.

First, a video statement program can significantly increase convictions in intimate partner violence and elder abuse cases. In Brooklyn, where expeditors sent one of every eight DV Bureau cases to the ECAB Annex for a video statement, the video statement program increased the conviction rate by about 5 percentage points in Criminal Court and 8 percentage points in IDV Court. These changes in the conviction rate increased the number of convictions among released defendants in video cases by 20% in Criminal Court and by 17% in IDV Court. Like Kings County, many jurisdictions use an evidence-based prosecution strategy when the victim is not participating in the prosecution. These jurisdictions should consider implementing a video statement program. Our study has demonstrated that implementing a video statement program can increase convictions significantly and immediately. Jurisdictions that already have a video statement program should consider expanding it. We estimate that expanding the video statement program in Brooklyn to include all DV Bureau cases would increase the conviction rate by 3.3 percentage points in Criminal Court and by 6.7 percentage points in IDV Court. (See discussion in Appendix D, explaining how we made these projections).

Second, our study establishes the value of questioning defendants in domestic violence cases, even if the statements are not recorded on video. Most defendants will make a substantive statement, particularly those arrested and questioned within a few hours of the incident. In Brooklyn, about 80% of defendants made a substantive statement. Defendants who were injured and those who were facing charges that were more serious were especially likely to make a substantive statement. The questioning strategy used by the Annex screeners was persistent, low-key, and probing, and often produced valuable admissions. Although some defendants made only a short statement, many spoke at length, and without much prodding from the screener. Among those who made a substantive statement, most defendants made admissions, and many admitted to using physical force against the victim. About 15% of defendants who made a substantive statement confessed to most of the charges. Moreover, defendants who made substantive statements were more likely to be convicted, and certain elements of their statements were particularly useful.

These findings suggest that both ADA screeners and arresting officers can potentially obtain valuable statements after Mirandizing defendants in intimate partner violence and elder abuse cases. Mirandized defendants will often make statements, particularly if the arrest and questioning take place soon after the incident. Training screeners and officers to take statements is likely to be worthwhile, even if video cameras are not available to record the statements. In Brooklyn, a new program requires arresting officers to take post-Miranda oral statements from all defendants arrested for intimate partner violence or elder abuse.

Third, our study has provided information about the value of different types of evidence, in addition to video statements, for obtaining convictions in intimate partner violence and elder abuse cases. Evidence relating to injuries, including both photos and medical reports, increases the likelihood of conviction. Victim statements on the Domestic Incident Report and copies of the 911 recording are also valuable. Oral

statements by the defendant, almost all of which were “spontaneous utterances” and therefore admissible in court, increased the likelihood of conviction. This finding emphasizes the value of admissible defendant statements. Taken together, our findings on the effect of defendants’ video and oral statements are consistent with the findings of Smith and Farole’s (2009) study, which reported that having a defendant statement strongly increased the likelihood of conviction. Our findings are also consistent with other research showing that evidence of victim injuries increased convictions.

While in any particular case other types of evidence may also be valuable, these findings suggest that obtaining defendant statements and consistently obtaining photos and medical records of victim injuries, copies of 911 recordings, and DIR’s are worthwhile across the full range of cases in the DV Bureau. These types of evidence materially improve the chances of conviction, particularly for evidence-based prosecution in the majority of cases in which the victim is not participating with the prosecution. District Attorney’s offices that routinely obtain these types of evidence will be able to use evidence-based prosecution to obtain more convictions in intimate partner violence and elder abuse cases when the victim is not participating in the prosecution.

Fourth, while this study has focused primarily on enhancing evidence-based prosecution when victims do not participate in the prosecution, some of our findings also have implications for increasing victim participation. In particular, we found that the EVE Project, which contacts victims soon after the arraignment and encourages them to come in to meet with an ADA, apparently increased both victim participation and convictions in DV Bureau cases. The EVE Project also encouraged victims to come to the Family Justice Center to obtain services and counseling. This dual focus is especially important. Linking victims to services provides an additional way to make contact with them, and may eventually encourage them to participate in the prosecution. Even when it does not, it addresses other goals, including increasing victim safety, providing economic and housing assistance, and offering counseling. Most importantly, in the event of another incident, the victim will have already established a connection to the Family Justice Center, and possibly to the DA’s office, that can be a valuable resource in a time of crisis.

Our findings on the impact of the EVE Project demonstrate the importance of engaging victims soon after a domestic violence incident, as well as the importance of focusing on both criminal justice goals and victim services. Engaging victims, informing them about the criminal case, providing them with real-time information about the order of protection issued at arraignment, and offering services are strategies that enable the District Attorney’s office to achieve multiple goals. An exclusive focus on obtaining victim participation in the prosecution may be counterproductive. A broader approach, which addresses a variety of a victim’s concerns, may produce better victim outcomes, and encourage some victims to participate in the prosecution of the current case or a future case. This should be part of the prosecution strategy if possible, even though it may not have a direct impact on convictions, and even if the indirect effect is small.

Finally, we found that the IDV Court was a more effective venue than the Criminal Court for obtaining convictions. The conviction rate was nearly 20 percentage points higher in IDV Court than in Criminal Court. Because there are so many differences between the IDV Court setting and the Criminal Court setting, it is not possible to determine why the conviction rate is higher in IDV Court. The types of cases in IDV Court are different from those in Criminal Court. Criminal contempt charges are more common, and assault charges less common, in IDV Court than in Criminal Court. To be eligible for the IDV Court, a defendant in Criminal Court must also have a concurrent Family Court custody, visitation, or family offense petition pending, and/or a concurrent Supreme Court matrimonial case. Defendants may have a greater stake in the concurrent cases, and be more willing to negotiate a plea in the criminal case. In IDV Court, victims are present for each of the defendant's court appearances, are represented by counsel, and may be more willing to participate in the prosecution.

Because criminal cases in IDV Courts must meet eligibility criteria requiring concurrent non-criminal cases, these courts are necessarily limited to processing only a small fraction of all criminal cases handled by the DV Bureau. However, for the cases they do process, it is clear that the IDV Courts provide a more favorable venue for the prosecution. This suggests that jurisdictions that do not now have an IDV Court should consider establishing one to address the complex issues that arise when a defendant has concurrent non-criminal cases. Our findings show that these courts change the dynamics of case processing and plea negotiations.

## VIII. REFERENCES

- Aldrich, Liberty, and Julie A. Domonkos. 2000. "Navigating the NYPD: A Guide to New York City Police Department Policies and Procedures for Family Court Attorneys Handling Order of Protection Cases." Pp. 279-292 in Julie A. Domonkos and Jill Laurie Goodman, *Lawyer's Manual on Domestic Violence: Representing the Victim*. New York: Supreme Court of the State of New York, Appellate Division, First Department.
- Belknap, Joanne and Dee L. R. Graham. 2000. *Factors Related to Domestic Violence Court Dispositions in a Large Urban Area: The Role of Victim/Witness Reluctance and Other Variables*. Rockville, MD: National Institute of Justice.
- Cramer, Elizabeth P. 1999. "Variables that Predict Verdicts in Domestic Violence Cases." *Journal of Interpersonal Violence* 14:1137-1150.
- Dawson, Myrna and Ronit Dinovitzer. 2004. "Victim Cooperation and the Prosecution of Domestic Violence in a Specialized Court." Pp. 246-263 in Chris W. Eskridge (ed.), *Criminal Justice Concepts and Issues: An Anthology*. Los Angeles, CA: Roxbury Publishing Company.
- Henning, Kris and Lynette Feder. 2005. "Criminal Prosecution of Domestic Violence Offenses: An Investigation of Factors Predictive of Court Outcomes." *Criminal Justice and Behavior* 32:612-642.
- Menard, Scott. 1995. *Applied Logistic Regression Analysis*. Sage Publications: Thousand Oaks, CA.
- Mohr, Lawrence B. 1990. *Understanding Significance Testing*. Sage Publications: Thousand Oaks, CA.
- Newmark, Lisa, Mike Rempel, Kelly Diffily and Kamala Mallik Kane. 2001. *Specialized Felony Domestic Violence Courts: Lessons on Implementation and Impacts from the Kings County Experience*. Washington, DC: Urban Institute Justice Policy Center.
- NYPD. 2000. *Patrol Guide*. New York: New York Police Department.
- Paternoster, Raymond, Robert Brame, Ronet Bachman and Lawrence W. Sherman. 1997. "Do Fair Procedures Matter? The Effect of Procedural Justice on Spouse Assault." *Law and Society Review* 31:163-204.
- Peterson, Richard R. 2002. *Cross-Borough Differences in the Processing of Domestic Violence Cases in New York City Criminal Courts*. New York: NYC Criminal Justice Agency, Inc.

- Peterson, Richard R. 2004. *The Impact of Manhattan's Specialized Domestic Violence Court*. New York: NYC Criminal Justice Agency, Inc.
- Peterson, Richard R. and Jo Dixon. 2005. "Court Oversight and Conviction under Mandatory and Nonmandatory Domestic Case Filing Policies." *Criminology and Public Policy* 4:301-324.
- Smith, Erica L. and Donald J. Farole, Jr. 2009. *Profile of Intimate Partner Violence Cases in Large Urban Counties*. Washington, DC: Bureau of Justice Statistics.
- SPSS, Inc. 1999. *SPSS Regression Models 9.0*. Chicago: SPSS, Inc.
- StataCorp. 2011. *Stata Base Reference Manual, Release 12.0*. College Station, TX: Stata Press.
- Ventura, Lois A. and Gabrielle Davis. 2005. "Domestic Violence: Court Case Conviction and Recidivism." *Violence Against Women* 11:255-277.
- Wooldredge, John and Amy Thistlethwaite. 2004. "Bilevel Disparities in Court Dispositions for Intimate Assault." *Criminology* 42:393-417.



## APPENDIX A: FAMILY JUSTICE CENTER BROCHURE

**Partners:**

- Arab American Family Support Center, Inc.
- Association of Hispanic Ministers
- Barrier Free Living
- Catholic Charities
- Center Against Domestic Violence
- Christian Cultural Center
- Church Avenue Merchants Block Association
- Department for the Aging
- Department of Information Technology and Telecommunications
- Department of Probation
- Dera Farm
- Good Shepherd Services Safe Homes Project
- Health and Hospitals Corporation
- Help Roads/Help USA
- Human Resources Administration
- Jewish Association for Services for the Aged
- Jewish Board of Family and Children's Services
- Kings County District Attorney's Office Chaplaincy Program
- Long Island College Hospital
- Long Island College Hospital
- Metropolitan Council on Jewish Poverty
- New Destiny Housing Corporation
- New York Asian Women's Center
- New York Board of Rabbis
- New York City Housing Authority
- New York City Police Department
- New York Legal Assistance Group
- New York State Crime Victims Board
- New York State Division of Parole
- New York City Anti-Violence Project
- Obel Children's Home and Family Services
- Puerto Rican Family Institute
- Safe Horizon
- Sanctuary for Families
- South Brooklyn Legal Services
- STEPS to End Family Violence
- TAMKEEN - The Center for Arab American Empowerment
- Urban Justice Center
- Women Working for a Better Community/Hope Gardens

**Other Resources:**

- Child Abuse and Maltreatment Hotline (New York State Central Register)  
1-800-342-3720
- Elderly Crime Victims Resource Center (NYC Department for the Aging)  
212-442-3103
- New York Immigration Hotline  
1-800-569-7005
- NYPD Sex Crime Report Hotline  
212-267-RAPE (7273)
- Victim Notification Everyday (VINE) Program (NYC Department of Correction)  
1-866-VINE-4NY (8463-4691)
- Youthline  
(NYC Dept. of Youth and Community Development)  
1-800-269-4646

**NEW YORK CITY  
FAMILY JUSTICE CENTER**

350 JAY STREET, 16<sup>TH</sup> FLOOR  
BROOKLYN, NEW YORK 11201

**BROOKLYN**



**NYC**  
Michael R. Bloomberg  
Mayor

**Mayor's Office to Combat Domestic Violence**

Ydandis B. Jimenez  
Commissioner

Charles J. Hynes  
Clara E. Maoney  
King County District Attorney's Office

**NYC**  
Michael R. Bloomberg  
Mayor

### What is the Family Justice Center? The New

York City Family Justice Center in Brooklyn is a walk-in center for all domestic violence victims and their children. To make it easier for you to get help, many agencies are located at the Center. Services are free and available to all victims. We can help you regardless of what language you speak.

When you visit the Center, you can expect a safe and soothing environment with one-on-one services and support. On your first visit to the Center, you will meet with a client specialist who will speak with you about what services you might need. The client specialist will then link you to a case manager, who will be your guide at the Center.

The Center is located in a building with security to ensure your safety. You should go to the special Family Justice Center security desk in the lobby to check in. You will then be asked to go through a metal detector before entering the Center. Please bring picture identification.

**EVERYONE** has the right to live in a home where they feel safe. You are not alone. The New York City Family Justice Center is here to help you.

#### LOCATION & DIRECTIONS:

360 Jay Street in downtown Brooklyn

**SUBWAY:** Take the A, C, or F train to Jay Street, the 2, 3, 4, or 5 train to Borough Hall, or the M or R train to Lawrence Street.

**BUS:** The B25, B26, B35, B37, B39, B44, B47, B61, B66, B67, and B75 buses all stop near the Center.

#### HOURS OF OPERATION:

Monday through Friday 9:00 a.m. to 5:00 p.m.

The Family Justice Center is a walk-in center. If you are returning for continued services, you should schedule a follow-up appointment. (718) 250-5111.

### How can the Family Justice Center help me?

**CASE MANAGEMENT** You can meet with a case manager to discuss how to stay safe and learn about what services at the Center can help you.

**COUNSELING** Counseling is available for you and your children. Both one-on-one counseling and support groups are available at the Center.

**LEGAL INFORMATION** Lawyers and paralegals are available to speak with you about legal issues such as custody, visitation, and immigration.

**POLICE** Domestic Violence Prevention Officers from the New York City Police Department at the Center will assist you with reporting a crime or give information to you about how the police can help you to stay safe.

**PROBATION** A Probation Officer can help you if the person hurting you is currently on probation.

**PROSECUTION** The Domestic Violence Bureau of the District Attorney's Office is located in the Center and will work with you because domestic violence is a crime and can answer any questions you may have about the criminal justice system.

**CHILDREN'S ROOM, MARGARET'S PLACE** Your children, age 3 or older, can play in the Children's Room while you get help at the Center.

**ELDER ABUSE SERVICES** Social workers, lawyers, and district attorneys are here to help you if you are experiencing elder abuse.

**SELF-SUFFICIENCY SERVICES** The Self-Sufficiency Coordinator can help you with public assistance information, job training, and educational programs.

**SPIRITUAL SUPPORT** Faith leaders volunteer at the Center to provide you with support.

### Staying Safe

If you are being abused these steps may help you stay safe:

- Call 911 if you are in danger or have been hurt by your partner.
- Teach your children to use the telephone to call the police and go to a safe place during a violent incident.
- Identify a safe place to go in case of an emergency, such as your local police precinct.
- Lock all windows and doors at night and when you leave your home.
- Inform your children's school/daycare about who has permission to pick them up.
- Request to have your telephone number changed to an unlisted number.
- Keep your home address confidential and, if possible, do not tell the abuser where you live.
- Avoid going out alone.
- Change your route to and from work often.
- If possible, have someone screen your calls at work, request that your office telephone number and email address be changed, and vary your schedule.
- In case you need to leave quickly, you should gather important documents:
  - Passports/Driver cards/Work permits
  - Social Security cards/Birth certificates
  - Bank account details/House deed/Lease
  - Order of protection
  - Custody/Visitation orders
  - Marriage license
  - Children's immunization/school records
  - Address book and a calling card
- Pack a bag with money, extra keys, clothes, medicine, and important documents – leave it in a safe place or with someone you trust.

## APPENDIX B: DETERMINING THE TOP CHARGE

To determine the top charge among a list of charges, CJA uses the charge designated by the Office of Court Administration (OCA) as the top charge. OCA bases its determination, in turn, on an algorithm developed by the New York State Division of Criminal Justice Services (DCJS). The algorithm is too complex to describe completely, but it proceeds sequentially through a series of steps as it compares pairs of charges to determine which one ranks as the top charge. If there are more than two charges in a list (e.g., four arrest charges), the algorithm compares all possible pairs to rank the charges and determine their rank order.

First, the two charges being compared are ranked according to class and category, as shown in the table below:

<u>Class</u>	<u>Category</u>	<u>Rank</u>
A1	Felony	High
A2	Felony	
A3	Felony	
B	Felony	
C	Felony	
D	Felony	Low
E	Felony	
A	Misdemeanor	
B	Misdemeanor	
U	Misdemeanor (unclassified)	
	Violation	
	Infraction	
	Unspecified offenses	

Second, if the two charges are in the same class and category, the algorithm next uses type of law to assign a rank.

<u>Type of Law</u>	<u>Rank</u>
Penal Law	High
Vehicle and Traffic Law	Low
All other laws	

Third, if the two charges are in the same type of non-Penal Law, no further ranking is applied. The charges are listed in the order in which they were recorded.

Fourth, if the two charges are in the same class and category and both are Penal Law charges, DCJS uses Penal Law section and subsection to determine the ranking. The ranks are too complex to describe in detail here, but they are applied within the following categories:

Class A-1 Felonies  
 Class A-2 Felonies  
 Class A-3 Felonies  
 Penal Law 220 charges (drug charges, excluding marihuana)  
 Penal Law 221 charges (marihuana charges)  
 Penal Law 265 charges (weapons charges)

Fifth, if the two charges being compared are Penal Law charges that cannot be ranked using any of the above methods, and one of the charges is a violent felony and the other is not, the violent felony is designated as the top charge.

Sixth, if the two charges being compared are Penal Law charges that cannot be ranked using any of the above methods, and both are violent felonies, then section and subsection are used to rank them with an algorithm too complex to describe here.

Finally, if none of the above comparisons have determined which is the top charge, Penal Law article is used to rank the charges, according to the following table.

<u>Penal Law Article</u>	<u>Nature of Offense</u>	<u>Rank</u>
125	Murder	High
130	Sex Offenses	
263	Sex Performance by Child	
160	Robbery	
120	Assault	
135	Kidnapping	
105	Conspiracy	
140	Burglary	
155	Larceny	
150	Arson	
220	Drugs	
221	Marihuana	
265	Weapons	
200	Bribery	
170	Forgery	
230	Prostitution	
205	Escape	
210	Perjury	
215	Judicial Proceedings Violation	Low

If one of the charges being compared is not in the article table, the other charge is considered the top charge.

If the two charges being compared cannot be ranked after all the above steps, no further ranking is done and the charges are listed in the order in which they were recorded.

## APPENDIX C: LOGISTIC REGRESSION ANALYSIS

This report used logistic regression to develop statistical models that predict the likelihood of conviction. Statisticians use logistic regression models when the outcome to be explained (the *dependent variable*) has two categories. In the models presented in this report, the dependent variable was conviction. We coded each disposed case in one of two categories: *not convicted* (coded 0), including dismissals and ACD's, or *convicted* (coded 1), including pleas of guilty and findings of guilty after a trial.

The models predicted the likelihood of conviction using information about a variety of defendant and case characteristics (the *independent variables*). Logistic regression models produce several statistical measures to evaluate the effect of the independent variables. The current study examined three of the available statistical measures to evaluate the effect of the independent variables on the dependent variable.

Statistical Significance. First, we report the *statistical significance* of each independent variable. A statistical significance test takes into account the size of the sample as well as the magnitude of the effect of the independent variable on the outcome. Effects estimated from larger samples are more likely to be statistically significant, and larger effects are more likely to be statistically significant. By considering the size of the sample and the size of the effect, the statistical significance test assesses the probability that the effect of the independent variable observed in the sample could have occurred by chance alone. In this report, following standard convention, we considered significance levels of less than .05 as statistically significant. In other words, when the effect that we observed had less than a 5% probability of having occurred by chance alone, we concluded that the independent variable was a statistically significant predictor of the likelihood of the outcome.

One weakness of using statistical significance to measure the effect of an independent variable is that when sample sizes are large (e.g., more than several thousand cases), many independent variables have statistically significant effects even when the size of their effects is small. For example, in a very large sample, we may find that whether an arrest is made on-scene has a statistically significant positive effect on the likelihood of conviction, even though the conviction rate for on-scene arrests is only one percentage point higher than for off-scene arrests. In this hypothetical example, we can say that the positive effect of an on-scene arrest on the likelihood of conviction is unlikely to be due to chance. However, it is also clear that knowing whether an arrest was made on-scene does not explain much of the variation in likelihood of conviction.

Change in the Conviction Rate. The second statistical measure we used to evaluate the effect of the independent variables is the *change in conviction rate*. The change in conviction rate supplements information about statistical significance by evaluating the magnitude of the effect of the independent variable on the outcome. Specifically, it tells us how much the conviction rate changes for each one-unit increase in the independent variable. If an independent variable is coded in two categories (e.g., 0 and 1) then the change in conviction rate tells us how much the predicted conviction

rate differs between the two categories of the independent variable.<sup>30</sup> A change in conviction rate greater than zero indicates an increase in the likelihood of the outcome occurring, while a change in conviction rate less than zero indicates a decrease in the likelihood of the outcome occurring. A change in conviction rate of zero, or close to zero, indicates that the independent variable does not affect the conviction rate.

To return to our previous example, if the change in conviction rate for the effect of an on-scene arrest on the likelihood of conviction was 1.0%, this would mean that in cases in which the defendant was arrested on-scene, the conviction rate was 1.0% higher than in cases in which the defendant was arrested off-scene. In contrast, if we examined the impact of whether the defendant was female, we might find a change in conviction rate less than zero. For example, if the change in conviction rate was -8.5%, this would mean that in cases in which the defendant was female, the conviction rate was 8.5 percentage points lower than when the defendant was male. (These examples are hypothetical and do not necessarily reflect our expectations about the findings.)

In logistic regression analyses, results may be presented for independent variables coded in three different ways: categorical variables that have two categories, categorical variables that have more than two categories, and continuous variables that measure the quantity of a defendant or case characteristic. When a categorical independent variable has two categories, the change in conviction rate measures the change in the likelihood of conviction when cases are in one category vs. the other (e.g., the defendant was arrested on-scene vs. off-scene). When a categorical independent variable has more than two categories, one of the categories is chosen as a **reference** category, and the change in conviction rate for each category measures the effect of being in that category vs. being in the reference category. For example, defendants cohabiting at the time of arrest (category 1) and defendants who cohabited previously (category 2) are each separately compared to defendants who never cohabited (category 3), which is used as the reference category. Finally, when the independent variable is continuous, the change in conviction rate measures the change in the likelihood of conviction associated with an increase of one unit of the continuous independent variable (e.g., for number of arrest charges, the change in conviction rate measures the effect of having one additional arrest charge). Because this change in conviction rate may be different at different numbers of arrest charges, we measure the effect at the mean (average) number of arrest charges, to represent a typical case.

Standardized beta. The third statistical measure we use to assess the effect of the independent variables is the *standardized beta* coefficient (Menard 1995). The standardized beta (*B*) coefficient takes into account not only the change in the likelihood of the outcome associated with a change in the independent variable, but also the distribution of the cases among the categories of the independent variable. Being in one category of an independent variable may have a large effect on the likelihood of an outcome (and therefore the change in conviction rate for that variable may be large), but

---

<sup>30</sup> The predicted conviction rates are the average predicted probabilities for each category, calculated using StataCorp's (2011) marginals procedure.

if there are relatively few cases in that category, the variable will not help to explain much of the overall variation in the likelihood of the outcome. For example, defendants in elder abuse cases might have a higher conviction rate than defendants in intimate partner violence cases, and the change in conviction rate for this variable would be large. However, if only a small number of defendants in the sample were charged with elder abuse, this variable would not be able to explain much of the overall variation in likelihood of conviction. Standardized *betas* measure this overall effect of the independent variable on the dependent variable. Standardized *betas* vary from -1.00 to +1.00; values closer to zero indicate that the effect of the independent variable is relatively small, while values closer to +1.00 or -1.00 indicate that the effect of the independent variable is relatively strong. There are no commonly accepted absolute standards to determine whether a standardized *beta* is strong or weak. Consequently, we discuss the relative strength of variables, describing the effects of some variables as being stronger or weaker than the effects of others.

In the current study, we used all three of the measures discussed above. We used the statistical significance level to distinguish those independent variables that had a detectable<sup>31</sup> effect on the dependent variable from those that did not. We used the change in conviction rate to evaluate the size of the effect of the independent variable, and we used the standardized *beta* to evaluate the ability of the independent variable to account for variation in the dependent variable.

Net effects. The models we discuss include a large number of predictors of the dependent variable. In these models, the measures of the effect of each independent variable (statistical significance, change in conviction rate, and standardized *beta*) evaluate the effect of that independent variable *after controlling for the effects of all the other independent variables in the model*. These effects represent the *net effect* of a given independent variable after the model takes into account the effect of all the other independent variables. This net effect differs from the *total effect* of the independent variable, which is the effect of the independent variable when it is the only predictor of the dependent variable.

Explanatory power of the model. To evaluate the overall ability of *all* the independent variables in the logistic regression model to predict the dependent variable, we use a statistical measure called Nagelkerke  $R^2$  (SPSS, Inc. 1999). This measure varies from 0.00 to +1.00. We can interpret this as indicating what proportion of the variation in the dependent variable is explained by all the independent variables in the model (see Menard 1995 for a full discussion of the  $R^2$  statistic in logistic regression models). Low values of  $R^2$  (closer to 0) indicate that the model as a whole is relatively weak in accounting for variation in the dependent variable. High values (closer to +1.00) indicate that the model as a whole is very successful in accounting for variation in the dependent variable.

---

<sup>31</sup> Due to sampling error, and limitations of logistic regression techniques, it is possible that some independent variables that do affect the dependent variable are found to be statistically insignificant in our particular sample of cases. See Mohr (1990) for a further discussion of this issue.

[This page intentionally left blank]



## **APPENDIX D: EXPANDING THE VIDEO STATEMENT PROGRAM**

As noted in the first chapter of this report, the video statement program operates under two constraints that prevent it from obtaining video statements in all DV Bureau cases. First, the ECAB Annex, where ADAs screen cases and take video statements, is open only on weekdays, excluding holidays, from 8:30 a.m. to 5 p.m., so almost all video statements are taken from DV Bureau defendants arrested the night before. Second, when there are many DV Bureau arrests during the overnight period, the ADAs in the ECAB Annex are not able to screen the cases of all the available defendants. Because of these constraints, expeditors sent only about 14% of defendants in DV Bureau cases to the ECAB Annex for screening and a video statement in 2009, the second full year of the program's operation. DV Bureau cases not brought to the ECAB Annex are screened in ECAB, where no video statements are taken. As of this writing, the program continues to operate under these constraints. In addition, because the ECAB Annex was temporarily relocated in January 2010, and has not yet been moved back to the Criminal Court building, court interpreters are not available, and the number of defendants interviewed in languages other than English has declined significantly.

The current study described the impact of the video statement program on convictions in DV Bureau cases during the first 25 months of the program's operation. The findings therefore reflect the impact of the program and its effect on convictions as it operated in 2008 and 2009, taking statements from 12.6% of DV Bureau defendants. We now consider the impact on convictions of expanding the video statement program to all defendants in DV Bureau cases.

What would the conviction rate be for DV Bureau cases if the DV Bureau expanded the video statement program to include 100% of DV Bureau defendants? Answering this question requires that we make several assumptions.

First, we assume that with an appropriate expansion of staff and resources, it will be possible to take video statements from all defendants in DV Bureau cases. The annual case volume in the DV Bureau is approximately 17,000 cases. The DA's office currently sends about 2,380 of these cases to the ECAB Annex for screening and a video statement. Bringing all, or nearly all, DV Bureau defendants to the ECAB Annex would increase the volume of video cases to more than seven times the current level.

Second, we assume that the strategies and practices for taking video statements at the ECAB Annex will remain essentially the same, even as volume increases. We have already noted one recent change in the video statement program: a reduction in the number of defendants who can be interviewed in languages other than English. Because we have no data on how often screeners used interpreters in video cases, our projections assume that interpreters will be available as often as they were during the study period. Although this assumption is unrealistic, given the current operation of the ECAB Annex, we presume that court interpreters will again be available when the ECAB Annex returns to the Criminal Court building.

Third, we assume that the types of cases and defendants brought to the ECAB Annex will not change significantly. Because we found that certain types of cases and defendants were more likely to be sent to the ECAB Annex than others, this assumption is also unrealistic. If expeditors send all DV Bureau cases to the ECAB Annex, the differences we found will disappear. It is important to remember, however, that most of the differences were small, and that most did not affect the conviction rate.

Fourth, we assume that defendants brought to the ECAB Annex will continue to make substantive video statements (vs. refuse to answer questions) at about the same rate that they did in the first 25 months of program operation—about 80% of defendants made substantive statements.

Fifth, we assume that the impact of video cases on convictions, as measured in our predictive models, will remain essentially the same. If video cases increased convictions because defendants brought to the ECAB Annex thought their cases were being treated more seriously than other DV cases, this assumption is unrealistic. If video cases increased convictions for other reasons, or because defendants brought to the ECAB Annex thought their cases were being treated more seriously because they were DV cases, as opposed to Non-DV cases, then this assumption is realistic.

Sixth, we assume that other practices and programs that affect convictions in DV Bureau cases will remain essentially the same. In particular, we assume that the EVE Project, which appears to have increased conviction rates in DV Bureau cases, will continue to operate as it currently does.

Although we cannot be sure that all these assumptions are correct, we believe that most of them are reasonable and that any incorrect assumptions will not significantly affect our projections. More importantly, the assumptions are essential if we are to make any projections about the impact of expanding the video statement program. After we present our projections, we will briefly return to a discussion of the reasonableness of the underlying assumptions.

To project the conviction rate for an expanded video statement program that includes all DV Bureau cases, we used our estimates of the impact of the program based on the predictive models developed in chapters 5 and 6. Unlike the simple differences in conviction rates between video and non-video cases, our predictive models provided estimates of the effect of video cases after taking into account other factors that affect convictions. These estimates isolated the effect on convictions that we can directly attribute to the video statement program. We conducted additional analyses using the predictive models to estimate the effects of the video statement program on convictions only during the time period that the EVE Project was fully operational, i.e., after July 1, 2008 (models not shown). These estimates differ slightly from those previously presented, which included data from arrests made both prior to the establishment of EVE and during the period when EVE was phased in. We developed the new estimates to reflect the current conditions more accurately.

To make our projections, we divided DV Bureau cases into several categories based on our conclusions about the different conditions under which the video statement program affected the conviction rate. We developed two sets of categories, one for the Criminal Court, and one for the Integrated Domestic Violence Court. We also restricted our projections to cases that were not cross-complaints, because almost all of these cases were dismissed.

In Criminal Court, our research has shown that the video statement program did not affect the likelihood of conviction for defendants who were continuously held in custody from arraignment to disposition. Among released defendants, we also found that the video statement program did not affect the likelihood of conviction for defendants in cases in which the victim was participating with the prosecution. However, when victims were not participating with the prosecution, we estimate that after the EVE project was established, video cases increased convictions among released defendants by 34.0% (model not shown).<sup>32</sup> To project the Criminal Court conviction rate if defendants in all DV Bureau cases were brought to the ECAB Annex, we considered three categories of cases: 1) defendants who are never released, 2) defendants who are released in cases in which the victim is participating with the prosecution, and 3) defendants who are released in cases in which the victim is not participating with the prosecution. For defendants in categories 1 and 2, we assumed that the conviction rates would remain at the current levels in each category if the DV Bureau expanded the video statement program. For defendants in category 3, we assumed that there would be a 34.0% increase in the conviction rate for cases currently classified as non-video cases, and no increase for cases currently classified as video cases. Finally, we assumed that the proportion of cases in each of the three categories would remain the same.

**Under these assumptions, convictions in Criminal Court DV cases would increase by about 9.6% if the DA's office expanded the video statement program to include all DV Bureau cases.** The conviction rate would increase by 3.3 percentage points, from 34.5% to 37.8% and there would be an additional 495 convictions per year (see Figure D-1, next page).<sup>33</sup> (Table D-1, next page, shows how these numbers were calculated.)

Among defendants who are released in cases in which the victim is not participating with the prosecution, convictions would increase by about 22.8% (data not shown). These cases, in which the defendant is released and the victim is not participating in the prosecution, constitute over 70% of the DV Bureau cases in Criminal Court. These are the cases that are the most difficult to prosecute and the defendants

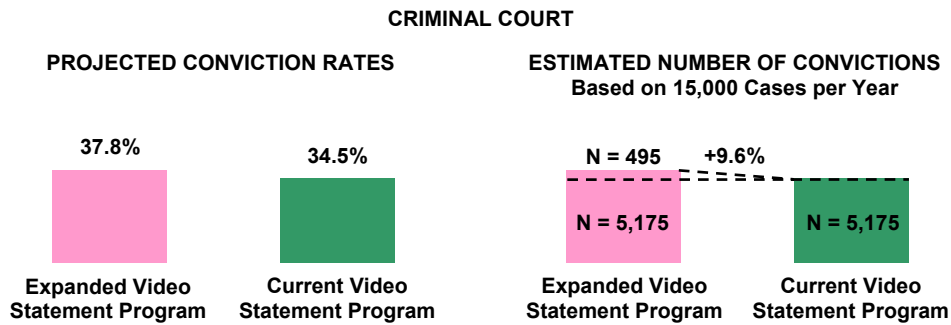
---

<sup>32</sup> Note that we estimated the effect of the video program on convictions, 34.0%, from cases that were processed after the EVE Project was fully implemented on July 1, 2008. This estimate is slightly lower than the 35% effect estimated for the entire study period as reported in Figure 6-2.

<sup>33</sup> Note that we estimated the base conviction rate, 34.5%, from cases that were processed after the EVE Project was fully implemented on July 1, 2008. This rate is higher than the 32% conviction rate for the entire study period as reported in Figure 5-1.

who are the most difficult to convict. If our projections are correct, expanding the video statement program to include all DV Bureau cases would significantly increase convictions in the Criminal Court DV cases that generally have the weakest evidence and are the most difficult to prosecute.

**Figure D-1: Projected Effect on the Conviction Rate in Criminal Court if the Video Statement Program is Expanded to Include All DV Bureau Cases Excluding Cross-Complaints**



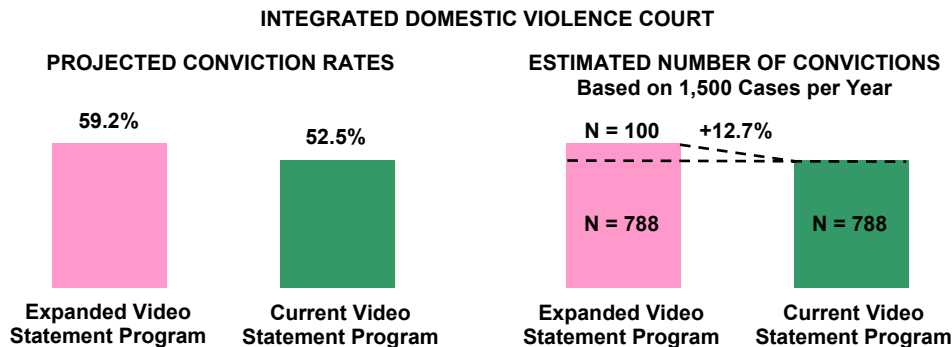
**TABLE D-1: ESTIMATING THE CONVICTION RATE IN CRIMINAL COURT IF THE VIDEO STATEMENT PROGRAM IS EXPANDED TO INCLUDE ALL DV BUREAU CASES Excluding Cross-Complaints**

Type of Case	Current Conviction Rate	Estimated Change in Conviction Rate	Projected Conviction Rate	Increase in Convictions
1) Defendant Never Released	86.1%	0%	86.1%	
2) Defendant Released, Victim Participating	59.6%	0%	59.6%	
3A) Defendant Released, Victim Not Participating: Current Video Case	23.1%	0%	23.1%	
3B) Defendant Released, Victim Not Participating: Current Non-Video Case	19.0%	34.0%	25.5%	
Average, All Cases	34.5%		37.8%	9.6%
Projected Number of Convictions Based on Annual Case Volume of 15,000 Cases	5,175		5,670	+495

In Integrated Domestic Violence Court, our research has shown that the video statement program did not affect the likelihood of conviction for defendants who were continuously held in custody from arraignment to disposition. When defendants were released, we estimate that after the EVE Project was established video cases increased convictions by 16.2% (model not shown).<sup>34</sup> To project the Integrated Domestic Violence Court conviction rate if expeditors sent defendants in all DV Bureau cases to the ECAB Annex, we considered two categories of cases: 1) defendants who are never released, and 2) defendants who are ever released.<sup>35</sup> For defendants in category 1, we assumed that the conviction rate would remain at its current level. For defendants in category 2, we assumed that there would be a 16.2% increase in the conviction rate for cases currently classified as non-video, and no increase for cases currently classified as video cases. Finally, we assumed that the proportion of cases in each of the two categories would remain the same.

**Under these assumptions, convictions in Integrated Domestic Violence Court would increase by about 12.7% if the DA's office expanded the video statement program to include all DV Bureau cases.** The conviction rate would increase by 6.7 percentage points, from 52.5% to 59.2%, and there would be an additional 100 convictions per year (see Figure D-2).<sup>36</sup> (See Table D-2, next page, for details on how these numbers were calculated.) Among defendants who are ever released, the conviction rate would increase by about 13.8%, or 7.0 percentage points, from 50.5% to 57.5% (data not shown).

**Figure D-2:** Projected Effect on the Conviction Rate in Integrated Domestic Violence Court if the Video Statement Program is Expanded to Include All DV Bureau Cases  
*Excluding Cross-Complaints*



<sup>34</sup> Note that we estimated the effect of the video program on convictions, 16.2%, from cases that were processed after the EVE Project was fully implemented on July 1, 2008. This estimate is slightly lower than the 17% effect estimated for the entire study period as reported in Figure 5-3.

<sup>35</sup> We did not consider victim participation in the IDV projections for two reasons. First, we presume most victims are participating in the prosecution of the case. Second, we did not have sufficient data on victim participation in IDV, so we could not develop a predictive model including measures of victim participation.

<sup>36</sup> Note that we estimated the base conviction rate, 52.5%, from cases that were processed after the EVE project was fully implemented on July 1, 2008. This rate is higher than the 51% conviction rate for the entire study period reported in Figure 5-1.

**TABLE D-2: ESTIMATING THE CONVICTION RATE IN IDV COURT  
IF THE VIDEO STATEMENT PROGRAM IS EXPANDED TO INCLUDE  
ALL DV BUREAU CASES  
*Excluding Cross-Complaints***

Type of Case	Current Conviction Rate	Estimated Change in Conviction Rate	Projected Conviction Rate	Increase in Convictions
1) Defendant Never Released	95.6%	0%	95.6%	
2A) Defendant Released: Current Video Case	58.3%	0%	58.3%	
2B) Defendant Released: Current Non-Video Case	49.4%	16.2%	57.4%	
Average, All Cases	52.5%		59.2%	12.7%
Projected Number of Convictions Based on Annual Case Volume of 1,500 Cases	788		888	+100

We based our projections of the impact of expanding the video statement program to include all DV Bureau cases on numerous assumptions, as outlined above. Moreover, we assumed that our predictive models accurately estimated the impact of video cases on convictions. If any of the assumptions are seriously flawed, or if our models are significantly inaccurate, the projections presented in this report would be incorrect. Nevertheless, we believe we have identified the key assumptions behind the projections, and that we developed the predictive models using the best information currently available. As a result, we believe that the projections provide the most reasonable estimates of the effect on convictions of expanding the video statement program to include all DV Bureau cases.

Of course, using our estimates as a basis for deciding whether to expand the video statement program would require the consideration of many factors beyond the scope of this report. Practical concerns, such as finding available space and ensuring that taking more video statements does not significantly increase arrest-to-arraignment time, must be taken into account. Any expansion of the program should also determine the costs of expanding the program relative to the benefits. Among the added costs would be personnel costs for police officers and for additional ADAs at the ECAB Annex, as well as costs for new equipment and supplies. Any decision regarding expansion of the video statement program should also take into account the full scope of benefits of the program beyond the conviction outcome, which has been the primary focus of the current study. These additional benefits include the value to the DV Bureau of obtaining convictions and establishing a record of a DV history for defendants who may be re-arrested for intimate partner violence or elder abuse, the contribution of the

video statement program to the evidenced-based prosecution approach, the impact of convictions on victims of intimate partner violence and elder abuse, and the message sent to the community at large regarding the criminal justice consequences of intimate partner violence and elder abuse. We leave it to the appropriate agencies to evaluate these factors together with the findings in this report as they make decisions about the video statement program.