

# **Re-arrest Study: Defendants Released vs Defendants Detained**

## **FINAL REPORT**



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## Introduction

The purpose of this study is to examine the re-arrest rates for new criminal offenses of a cohort of defendants who were released on bail versus those that were held for at least some period of time prior to the disposition of their criminal case. Arrests for violations of Conditions of Release, 13 V.S.A. 7559(e), were not included in the calculation.

The cohort for this study is defendants who were arraigned in 2014 for any felony, or the misdemeanor crimes of Domestic Assault or Simple Assault. Data on these offenses were taken from the Court Adjudication Database maintained by Crime Research Group, Inc. The criminal history “rap sheets” for the defendants were obtained from the Vermont Crime Information Center and were used to determine past criminal history and re-arrest rates.

The cohort includes people who may have been detained for a brief period of time prior to the disposition of their case. An attempt was made to match the offenses from the Court Adjudication Database into historical data on custodial status from the Department of Corrections. The data from the Department of Corrections does not contain case information (e.g. incident number or docket number) that could be tied to a particular custodial status. The lack of case data was compounded by the way some defendants re-offend. For example, it was impossible to determine from the merged data if a detention status was due to the inability to afford bail, for a new offense that violated conditions of a prior release, or for a case unrelated to the study. In this report, the cohort is divided into two categories: those released on bail or their own recognizance (released) and those detained/incarcerated for lack of bail or held by the Court for other reasons (held).

## Demographics of Cohort

There were 3,218 defendants in the final cohort. Eighty-nine percent (2,883) of the cohort were White, of which eight persons were identified as Latino, and eight percent (246) were Black. Seventy-seven percent (2,482) of the cohort were male and twenty-three percent (734) were female. The race and detention status of the defendants is shown in Table 1.

**Table 1**

### Race and Detention Status of Cohort

	Asian	Black	Native American	Not Reported	Unkown	White	Grand Total
Held	5	91	3	5	8	548	660
Released	16	155	9	25	18	2,335	2,558
Grand Total	21	246	12	30	26	2,883	3,218

Just under 80% of all defendants were released at arraignment. However, 36% of Blacks were held at some point prior to disposition while 19% of Whites were detained. In light of the interest in Vermont regarding race and the criminal justice system this issue bears further examination. It is beyond the scope of this study to review the reasons for this disparity.

Seventy-seven percent (2,482) of the cohort were male. Twenty-three percent of males were held, while only 10% of females were held. Examining the reasons for this disparity is beyond the scope of this report. The breakdown of gender is shown in Table 2:

**Table 2**

### Gender and Detention Status of Cohort

	Not Recorded	Female	Male	Grand Total
Held		74	586	660
Released	2	660	1,896	2,558
Grand Total	2	734	2,482	3,218

### Most Serious Base Offenses

At the request of the Office of the Defender General, we calculated the release status for two of the more common misdemeanors: Domestic Assault and Simple Assault. Table 3 shows the release status for defendants who committed these crimes:

**Table 3**

### Release Status of Misdemeanor Defendants

	Misdemeanor		Grand Total
	Held	Released	
Assault	4	65	69
Domestic	36	428	464
Grand Total	40	493	533

Ninety-two percent of the defendants who committed misdemeanor Simple Assault and misdemeanor Domestic Assault were released at arraignment. Misdemeanor Domestic Assault defendants were held at a slightly higher rate (7%) than misdemeanor Simple Assault defendants (6%).

The release status of defendants who committed felonies is below in Table 4<sup>1</sup>:

**Table 4**

## Release Status of Felony Defendants

		Held	Release	Grand T..
Felony	Public Order	114	357	471
	Motor Vehicle	12	71	83
	Drugs	90	245	335
	Fraud	22	124	146
	Theft	69	277	346
	GNO		14	14
	DUI	29	194	223
	Arson	2	12	14
	Assaults	95	467	562
	VAPO	10	31	41
	Robbery	6	9	15
	Domestic	130	179	309
	Sex Offenses	36	82	118
	Murder	5	1	6
<b>Grand Total</b>		<b>620</b>	<b>2,063</b>	<b>2,683</b>

Forty-two percent (130) of defendants committing felony Domestic Assault were held, this was the highest percentage of defendants held for any crime except Murder. Twenty-seven percent (90) of defendants committing drug felonies were held, followed by 24% (10) of defendants committing a felony Violation of Protection Order. No defendants charged with felony Gross Negligent Operation as the most serious charge were held.

### Criminal History and Release Status

The criminal histories for all defendants were obtained and a rough criminal history score was calculated using the following formula: the number of felony convictions plus the number of misdemeanor convictions multiplied by .5. Thus, a defendant who had one felony conviction and one misdemeanor conviction would have a score of 1.5.

Defendants were then classified into categories or levels of criminal histories: no Vermont criminal history; low criminal history (no more than a score of 2); medium criminal history (no more than a score of 4); and high criminal history (score of 4 or higher).

<sup>1</sup> The charge type for two defendants was unavailable.

The release status using the criminal history categories is depicted in Table 5:

**Table 5**

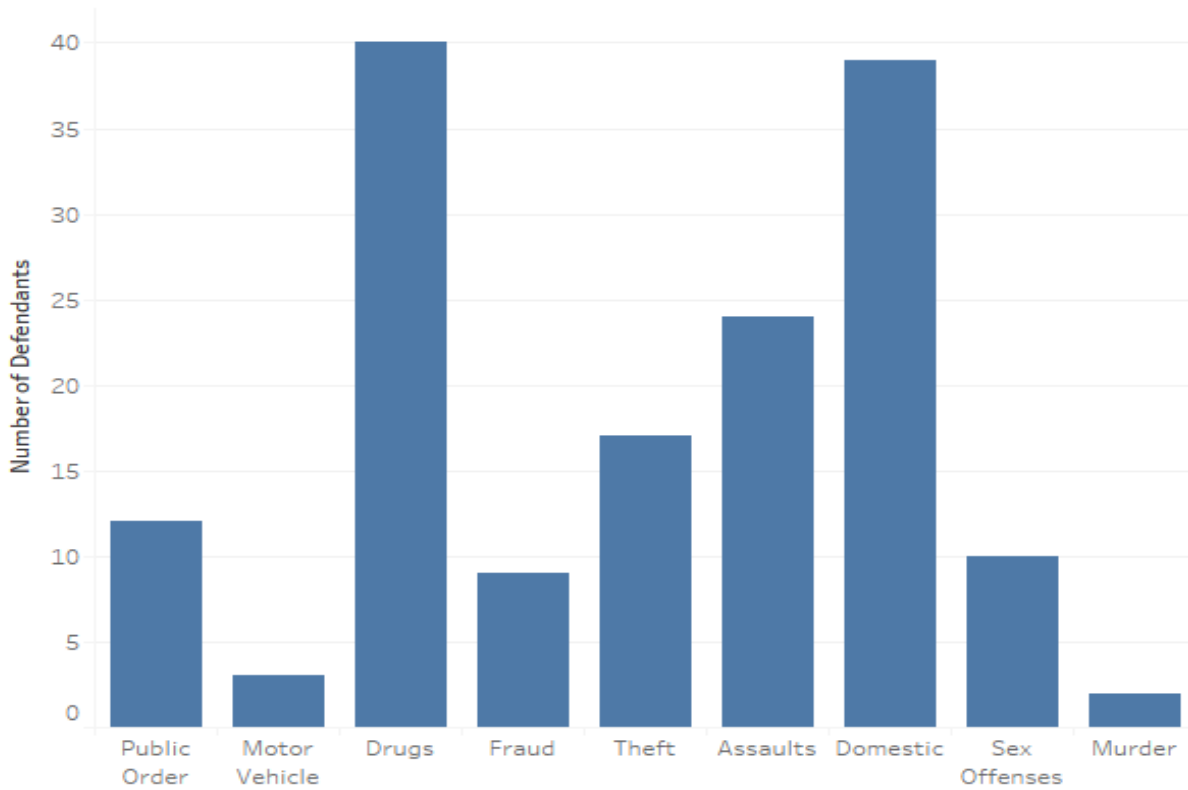
### Release Status by Criminal History Category

	Held	Released	Grand Total
No Criminal History	156	934	1,090
Low Criminal History	144	749	893
Medium Criminal History	95	364	459
High Criminal History	265	511	776
Grand Total	660	2,558	3,218

Thirty-four percent (265) of those with a high criminal history were held as detainees. Fourteen percent (156) of defendants with no Vermont criminal history were held. The 156 defendants with no prior criminal history in Vermont were held for the following crimes:

**Chart 1**

### Distribution of Crimes First Time Defendants Were Held For



The defendants with no Vermont criminal history may have out-of-state convictions, for example, those with a felony DUI may have earned earlier DUI convictions in another state. Studying first time offenders held without bail or unable to make bail would shed some light on the both the characteristics of this population and the possible reasons behind the detention.

## Re-arrest

Re-Arrest is measured as a new arrest for a substantive crime, not a violation of conditions of release.<sup>2</sup> A new arrest is defined as an arrest with an arrest date later than the arraignment date of the base offense. Because some defendants were held after arraignment, but later may have made bail, they were eligible to recidivate. However, the exact number of those defendants who were later released is not known, therefore, recidivism rates for that portion of the cohort are estimates.

## Re-arrest prior to Disposition of Base Charges

Table 6 shows the number of defendants who were re-arrested prior to disposition of the base offense for those who were held and those who were released. Seventy-eight percent of defendants (1,996) released at arraignment were not arrested for a new charge prior to the disposition of their case. The recidivism rate for those held for some time after arraignment was 20% (130) compared to 22% (562) for those released immediately. It could not be determined from the data which defendants spent all pre-disposition time in detention and which defendants were released after being held temporarily while awaiting bail. Because the overall number of people held temporarily and released on bail before disposition cannot be accurately counted, the actual percentage that was re-arrested may be higher.

**Table 6**

### Number of Defendants Re-arrested Prior to Disposition of Base Offense

	No	Yes	Grand Total
Held	530	130	660
Released	1,996	562	2,558
Grand Total	2,526	692	3,218

<sup>2</sup> Only those defendants eligible to recidivate are included in the cohort. If a defendant was still serving time on a sentence as of March 17<sup>th</sup>, 2017, that defendant is not included in the cohort.

## Pre-disposition Arrest Patterns

In recent years, Vermont started using risk assessment to predict the likelihood a defendant will commit a new offense while on pretrial release. These risk tools are not systematically used across the state. When they are used, the results do not appear in official administrative records and were not available for this study. The calculated criminal history category is based on Vermont criminal history only. This section of the report looks at re-arrest rates prior to disposition, for those defendants who were released at the time of arraignment. Arrests for violations of Conditions of Release, 13 V.S.A. 7559(e), are not included.

**Table 7**

### Number of Defendants Re-Arrested Before Disposition of the Base Offense

	Not Re-Arrested	Re-Arrested	Grand Total
No Criminal History	916	174	1,090
Low Criminal History	713	180	893
Medium Criminal History	332	127	459
High Criminal History	565	211	776
Grand Total	2,526	692	3,218

Twenty-seven percent (211) of defendants with a high criminal history were re-arrested for a new substantive offense before disposition. The category with the lowest recidivism rate was the group with no criminal history, with a 16% (174) re-arrest rate.

## Re-arrest Rate by Base Category

Of the crime categories that had over 100 defendants, those that were charged with a theft offense and released were most likely to earn a new arrest, with a 30% (104) re-arrest rate. Twenty-eight percent (42) of fraud defendants were re-arrested. Twenty-two percent of sex offenders (including felony failure to register) were re-arrested. About 20% of all assault defendants and all domestic assault defendants were re-arrested for a new substantive offense. The overall re-arrest rate for all crimes is 22%. Below in Table 8, the distribution of the most serious charges committed by the 692 released defendants is represented.

**Table 8**

## Most Serious Charge of Released Defendants and Re-Arrest Prior to Disposition

	No	Yes	Grand Total
Public Order	379	94	473
Motor Vehicle	64	19	83
Drugs	268	67	335
Fraud	104	42	146
Theft	242	104	346
GNO	13	1	14
DUI	178	45	223
Arson	13	1	14
Assault	509	122	631
VAPO	26	15	41
Domestic	625	148	773
Robbery	8	7	15
Sex Offenses	92	26	118
Murder	5	1	6
Grand Total	2,526	692	3,218

## Findings

This study illustrates some useful information and further areas of inquiry for policy makers:

1. Blacks are detained at a higher rate than Whites. Just under 80% of all defendants were released at arraignment. However, 36% of Blacks were held at some period of time prior to disposition while 19% of Whites were detained for some period of time.
2. Women were less likely to be detained. Twenty-three percent of males were held, while 10% of females were held.
3. Ninety-two percent of the defendants who committed misdemeanor Simple Assault and misdemeanor Domestic Assault were released at arraignment.
4. Forty-two percent (130) of defendants committing felony Domestic Assault were held, this was the highest percentage of defendants held for any crime except Murder.



5. Thirty-four percent (265) of those with a high criminal history were held as detainees. Fourteen percent (156) of defendants with no Vermont criminal history were held.
6. The recidivism rate for those held for some period of time after arraignment was 20% (130) compared to 22% (562) for those released immediately.
7. There were 934 defendants in 2014 who were held as detainees and had no Vermont criminal history. Further study of this cohort would shed some light on the both the characteristics of this population and the possible reasons behind the detention.