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Introduction to Special Issue on the 25th Anniversary of Pretrial Services in the Federal System

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Chief, Data and Analysis Branch
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THIS SEPTEMBER'S ISSUE *of Federal Probation* is a celebration of the 25th Anniversary of passage of the Pretrial Services Act of 1982. It is a subject I feel passionately about and I knew instantly that I needed to be Guest Editor. The Act began the process of installing pretrial services in all 94 federal districts. As a direct result of its passage, a pretrial services office was opened in the District of New Jersey in 1987; I was one of the first five officers hired in January 1988. For those who were not in the system "back in the day," pretrial services was not welcomed in many districts. Even the Federal Probation Officers Association testified before Congress against the implementation of pretrial services as a separate entity in the federal system. In the District of New Jersey, we were known derisively as the "Rapid Response Team." Essentially, staff from the established entities (Probation, Marshals, etc.) openly challenged the five of us to prove our worth in the federal system. As I look at where Chiefs Dozier and Henry have taken that New Jersey pretrial services office, I feel great pride in having been even a small part of that history and the humble beginnings from which pretrial services sprang.

The goals of this issue are many, but they coalesce around three major themes. First, we want to look at and learn from the rich history of pretrial services in the federal system. We enjoy many benefits in the federal system, including a highly educated and motivated staff, some of the most complete and thorough training programs ever provided to pretrial services professionals, and a level of funding for treatment, staffing, and other program needs that is the envy of many organizations. This anniversary presents an opportunity to reflect on where we are and how we have gotten here. Second, what are the current pressing issues? William Henry's article on consolidation confronts directly what is arguably the most contentious issue of the day: consolidation of pretrial services into probation. Finally (and most important), where are we going in the federal pretrial services system? Where will we, the staff and leaders of today, take federal pretrial services?

We are fortunate to have a number of authors who have been a part of the system since the beginning to provide insight into the early days and the ramifications of that history for the officers of today. Retired Chief Pretrial Services Officer Thomas Henry and Chief Pretrial Services Officer Donna Makowiecki, and Retired Senior Pretrial Services Supervisor Thomas Wolf provide two excellent articles with perspectives on those early days and how we got to where we are.

As the "data" guy in the federal system, I sought in my article to use "the numbers" or trends to see if we had achieved the various missions Congress had hoped would be achieved when it

enacted the Pretrial Services Act of 1982. After researching the legislative history of the Act and examining the num- bers, I conclude that we have accomplished much of what Congress hoped we would 25 years ago. However, the remaining unfulfilled promise of the Act, reduction of unnecessary pretrial detention, still challenges us.

Chief Pretrial Services Officer William Henry provides a unique perspective from the District of Maryland, since Maryland was one of the original separate pretrial services offices in the country and went on to consolidate probation and pretrial services early in this decade. It's an excellent piece that somewhat demystifies the dreaded "consolidation" and demonstrates that quality pretrial services work can continue after consolidation. Chief Pretrial Services Officer George Walker provides an "outsider's view" of the federal pretrial services system. George Walker entered the federal system as Chief after working many years in state and local pretrial services systems and his article reflects those experiences.

The cornerstone of our look at the future is "Our Journey toward Pretrial Justice" by Marie VanNostrand and Geena Keebler, which begins reviewing where we came from, then proceeds to where we are, and ultimately presents the authors' ideas of how best we can move forward in the federal pretrial services system. It is an excellent and thought-provoking piece that should motivate all of us to move further along in our journey toward "pretrial justice" in the federal system.

Baber, Mowry, and Cadigan present a look at the future from inside the system in "Pretrial Services Outcome Measurement Plan in the Federal System: Step One, Improve Data Quality." The federal probation and pretrial services system is developing a results-based management framework that will, in the future, allow it to better assess performance—and make programming and resourcing decisions—based on what the program accomplishes rather than solely on what it does. The article discusses the steps involved in developing the new framework, and highlights where we are in the process.

Byrne and Stowell, of University of Massachusetts, Lowell, look specifically at pretrial services supervision and its evolution from demonstration project in ten districts to nationwide implementation. In doing so they have identified considerable inter-district variation in use of detention, restrictive conditions, and treatment funding. They conclude that recent technological innovations provide an opportunity for more defendants to be released on supervision with little or no corresponding increase in negative outcomes (failure-to-appear or rearrest).

After reading this special issue I hope you will agree that we have assembled a valuable contribution that should enable readers to better understand the federal pretrial services system and provide its practitioners and managers with some food for thought on how we might continue to improve what Congress started 25 years ago. In addition to being Guest Editor of this special issue, I serve as Executive Editor of the publication year round and must take this opportunity to thank our Editor Ellen Fielding for the endless hours she exerts to make *Federal Probation* something we are very proud of. While those that have published here understand Ellen's many contributions to the periodical, I fear our readers can't fully grasp how much work Ellen puts in. Therefore, this issue is dedicated to Ellen Fielding as a small way of saying thanks for those many contributions to this publication.

back to top

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Reflections on the 25th Anniversary of the Pretrial Services Act

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Retired Chief of Pretrial Services, District of New Jersey

AS THE SYSTEM CELEBRATES the 25th year of the Pretrial Services Act of 1982, [1] it is important to reflect on the changes that have taken place since the inception of pretrial services in the federal system. The enactment of a law as a tool to implement public policy usually reflects the will or consensus of the people that there is a right and/or just course to follow. The usual pattern is that constituents cry out for legislators to do something to create change and to use the coercive authority of the law to accomplish that end. In many ways, however, the enactment of pretrial services throughout the federal system (and moreover within the state systems) is not a reflection of popular citizen consensus but an example of lawmakers, bureaucrats, and civil servants recognizing the essential ideal of justice and doing something about it. The initial motivation of lawmakers may have combined idealistic and monetary consequences, but never reflected the will or desires of the people. The vast majority of citizens, although recognizing the right to bail (especially if they are the arrestees), resent the fact that those arrested for crime are free on the streets and back in their neighborhoods. Safety is the concern, voiced most frequently by law enforcement frustrated that “criminals” (not defendants) are back on the street before they finish their paperwork.

The history and enactment of this legislation is well known to practitioners within both the federal and state systems. Have there been changes? In the system? In the legal environment? Within new legislation? Of course there have—perhaps more so in the last 25 years than in the previous 200 years. The impetus of lawmakers for reform 25 years ago was not only to create a federal agency to implement the Bail Reform Act but also to serve as a model for state and municipal systems. Yet today, as then, the word “bail” is still synonymous with money, and this interpretation, especially on local levels, remains unchanged. Policy can be enacted into law, but law does not always change perceptions, attitudes or practices. (After all, emotional debates persist on national policies such as abortion, civil rights, and anti-poverty programs.)

Given this enduring environment in American culture, what are some of the changes that have taken place in pretrial services? A recent study of pretrial services [2] by Marie VanNostrand reflects some of these changes. VanNostrand provides a detailed analysis of Legal and Evidence Based Practices, examining practices supported by evidentiary research. The paper details the legal foundations of pretrial services and then proceeds to distinguish pretrial services from community corrections through defined differences in practices. On the other hand, others seem to include pretrial services in community corrections or interpret it as a gateway component to community corrections. Cadigan and Pelissier recognize the continuity pattern that addresses and identifies drug addiction of defendants who enter the correctional system, whether with the Bureau of Prisons or while on release as defendants. [3] Clear and Pratt address the policy issue and identify community safety as the ideal for community justice. [4]

Whether viewed as integral or as a gateway, pretrial services is an essential component of the community correctional system, since it is mandated to address not only the risk of flight posed by defendants but also the danger these defendants may pose for the community. VanNostrand, [5] although appearing not to view pretrial services as an integral part of community corrections, presents the principles for Evidenced Based Practices in community corrections and describes their applicability to pretrial services (emphasizing the need to modify them based on her six identified principles of law that underpin the operation of pretrial services). Relying on the models of community corrections practices, she outlines how pretrial services may also look to Evidence Based Practices to measure outcomes.

One example here would be the rewards theory. In community corrections, rewards for increased adherence to regulations and guidelines imposed are essential and intrinsic to the motivational process of rehabilitation, but perhaps this is not quite so true for pretrial services functions. A few years ago, some administrative guidelines were issued suggesting that a “good time” concept should be applied to defendants on house arrest with electronic monitoring. In other words, defendants who had been on electronic monitoring for long periods of time without incident or infractions should be rewarded with time off for good behavior or compliance. As they got closer in time to the trial, court appearance or surrender that was the ultimate rationale of the electronic monitoring condition, as long as they had complied with the conditions, they should be rewarded. But this application of motivational reward for compliance flew right in the face of the limited research of electronic monitoring defendants. The research showed that flight occurred more frequently on the eve of trial, sentence, or surrender than at other times while on bail. In other words, what worked for other components of community corrections is the direct opposite of what the differing circumstances of pretrial services indicated would work for defendants. In fact, supervision practices should have increased rather than lessened as the surrender or court appearance date approached.

Twenty-five years ago, when the Pretrial Services Act was introduced, those of us who were there in its infancy possessed little or no experience in the field. (In fact, most of us had come from probation backgrounds.) At that time if someone asked us where we were employed, explaining the role and function of pretrial services was a challenge that demanded definitions of the right to bail and presumption of innocence. Students in college, criminal justice textbooks and professors had limited knowledge of the role of pretrial services in the system, usually confusing it with pretrial diversion. Criminal Justice texts usually covered its function in less than a paragraph. Today, students know pretrial services and actually seek employment in the field. Today, undergraduate courses in the Rights of the Defendant and Criminal Procedure address the legal and functional aspects that underscore the principles of pretrial services.

The introduction of preventive detention, based on risks of flight and danger, into the federal system as a result of the Bail Reform Act of 1984 [6] and the subsequent upholding by the U.S. Supreme Court [7] in the Salerno case made it clear that danger to the community must be addressed by pretrial services and that back-door detention of defendants via exorbitant cash amounts would not be permissible. Salerno not only established the usage of preventive detention but also emphasized its intended rarity. Again, two decades later, public perceptions and attitudes have perhaps given way to the over use of preventive detention rather than its use as a rare provision of the law. The events of 9/11 and Guantanamo Bay have inured us to the warnings of Chief Justice Rehnquist that preventive detention should be a rare occurrence.

In 1979 a national research project [8] was conducted to study the role of the pretrial services officer in the federal system (based on the two models then in place). There were major incongruities and inconsistencies in the perceptions of judges, assistant U.S. Attorneys and officers themselves between what was expected of the fledgling agency and what was actually occurring. This was not that surprising for an agency in its infancy with no strong underpinnings, a limited constituency, no popular support and opposition internally (no one spoke of stakeholders and customer satisfaction in the late 70s and early 80s). [9] The only model for pretrial investigations and the techniques for investigations was the presentence report, and the only model for supervision practices was the probation/parole model. Some tweaking was done

to accommodate the role of innocence and warnings were given not to discuss the charges, but essentially the model was the same, with limited substantiated research done by the Vera Institute. The development of unique functions and practices was still down the line a few years. Some of the findings of the 1979 study [10] (and subsequent research) was that much would be clarified when additional training was provided for officers, when major players of resistance both externally and internally retired or transitioned out, and when the agency became institutionalized (rather than viewed as a home for junior probation officers or probation officers in training). The Pretrial Services Act of 1982, de facto, institutionalized the concept. The strong opposition of FPOA (Federal Probation Officers Association) in the early years has changed, as reflected in its new name, the Federal Probation and Pretrial Officers Association. [11] Internally within the federal judiciary, this same transition took place for the U.S. Bankruptcy Court when enough time had elapsed to secure its role and function as distinct within the court system.

Of necessity (and as a combined result of the Sentencing Reform Act of 1984, crime patterns, prosecutorial emphasis on drug cases and pedophilia, and advances in technology), pretrial services has had to address the issue of safety within the community, establishing the Agency as the initial assessor of danger and the monitor of the defendant's activities that reveal that danger. The gateway concept took hold. The probation officer, when determining the supervision techniques to address danger with any given offender, has as resources the offender's pretrial services report and supervision records, the trial records, a well-developed presentence report, and reports and evaluations of the Bureau of Prisons. Using these resources, he/she bases his/her strategies to address danger. The pretrial services officer has limited knowledge of the defendant, based on agent and prosecutor information (which is usually limited to the criminal activity of the charge and not the danger that the defendant poses). The pretrial services officer is expected to provide for the safety of the community and develop strategies for addressing those issues or behaviors in the defendant's life that constitute danger for the community while assuming a stance that acknowledges the defendant's presumed innocence. This is an inherently contradictory task at best, and a unique challenge. It is a task that over the past 25 years has met with much success and some failure. Crime patterns have changed, as have types of crime. Models of supervision have emerged unique to pretrial services. These practices have been successful for individuals awaiting trial, sentence or surrender and have incorporated the least restrictive conditions with best practices to ensure the safety of the community. At times, since the inception of preventive detention, such detention has been used when effective strategies have not been developed or when the reluctance to risk the consequences of a bad decision actually drove the decision itself. Some defendants remain incarcerated because no one has yet developed the strategies to address the danger to the community that they pose.

Twenty-five years ago, training of officers consisted of a four-day stint at the Federal Judicial Center after almost a year of on-the-job training. Today officers attend a national training academy with comprehensive instruction in all areas of their role and function. Twenty-five years ago, personal safety consisted of the warning to be careful, go in pairs, and use common sense. There was no training in safety techniques, and officers relied on their own wits and good sense. Today, officers receive extensive training in awareness, typologies, and environment and are given the tools to ensure their safety. Twenty-five years ago, pretrial services reports were hand written (like notes to the judge), with no copies for the prosecutor or defense counsel, and with recommendations based largely on intuition and (at best) some experience. Today these investigations are increasingly solidly based on available technological resources and proven data with recommendations that rely on evidence-based information.

The goal of pretrial services remains the same as it was 25 years ago—to provide judicial officers with a mechanism to support their release/detention decisions and to ensure that these decisions do not place anyone in the community in danger. The tools have greatly improved over time. The policy issues remain the same. One suspects that 25 years from now, at the 50th anniversary of the Pretrial Services Act of 1982, twice as much will have changed but the fundamental goal will have survived.

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Enter...Stage Left...U.S. Pretrial Services

Donna Makowiecki, Chief U.S. Pretrial Services Officer, Eastern Pennsylvania
Thomas J. Wolf, Retired Senior Supervisor, Eastern Pennsylvania,
Pretrial Services Pioneers

SHAKESPEAR HAD IT in *As You Like It*: "All the world's a stage and all the men and women merely players. They have their exits and their entrances...." By 1976 approximately 100 individuals entered the stage of the Federal Criminal Justice system with a new role as U.S. pretrial services officers. This experimental position was created by virtue of the passage of the Speedy Trial Act of 1974, which identified ten demonstration districts—five as independent agencies and the rest under the auspices of federal probation. This was a new, rather exciting role, and was prompted by the successful execution of both the Manhattan Bail Project in the early 1960s by the VERA Foundation and the D.C. Bail Agency. The Manhattan Bail Project identified relevant personal factors and provided a point scale by which to identify promising risks for release on Own Recognizance bonds. The intent of the newly created agency was to assist the federal court in the implementation of the Bail Reform Act of 1966. Since judges were then given a recipe whereby informed decisions regarding pretrial release could be made, a need was created for an agency that would provide factual information to support those decisions.

back to top

History of Pretrial Release

The passage of the Bail Reform Act of 1966 was indeed significant, because it was the first piece of legislation that proved to be instructive to those deciding who merited release without posting large money or property bonds. An early piece of legislation, the Federal Judiciary Act of 1789, addressed the issue of bail in these terms: "And upon all arrests in criminal cases, bail shall be admitted, except where the punishment may be death, in which cases it shall not be admitted, but by a justice of the supreme or circuit court..., who shall exercise their discretion therein, regarding the nature and circumstances of the offence, and of the evidence, and the usage of law." (Section 33) However, the lengthy list of crimes then punishable by death made the pool of bailable crimes indeed small. As had been the custom in England, judicial officers continued to set high cash money that resulted in significant levels of pretrial detention, filling the nation's holding cells with indigent inmates. Although the Eighth Amendment touted that "excessive bail shall not be required," and the Fifth Amendment promised due process, the system nonetheless lacked guidelines as to how to determine what constituted "excessive" bail and what criteria—other than bondable assets—should be used to determine who should be held

and who should be free pending trial.

Perhaps a 1951 U.S. Supreme Court decision helped pave the way for the philosophical changes that eventually brought the 1966 Act into existence. In Stack v. Boyle the Court defined bail as excessive "when it is set at a figure higher than an amount reasonably calculated to ensure the asserted governmental interest" (342 US 1, 4-6). And that interest consisted in assuring the defendant's availability for prosecution and possible sentencing. Thus, the first Bail Reform Act was written with the intent of having risk of flight and future non-appearance examined. Relevant factors to be considered included family and community ties, employment, character and mental condition, financial means, prior convictions, and record of appearance in previous cases. The need to assemble this identified information comprised the first tier of pretrial services duties. The Act also provided for the imposition of conditions in those cases in which a personal recognizance bond was considered insufficient to reasonably insure court appearances. Those conditions included use of third-party custodians; restrictions on travel, residence, and association; maintenance of prescribed contact; the posting of a bond or cash; and any other stipulation deemed reasonably necessary to insure appearance. With this, the second tier of pretrial services duties was thereby generated: to insure compliance with the prescribed conditions of pretrial release. Foremost to embrace, however, was the pre- sumption of innocence and the use of least restrictive conditions. Pretrial services was created to facilitate the promise of the Bail Reform Act of 1966.

back to top

Pioneers

The first 100 or so individuals entrusted with pretrial services functions between 1975 and 1976 came to be known as "The Pioneers." The title was apt as those officers had to navigate unchartered territory in the federal system, performing a service to court and defendant that had never been offered in the history of the system. (Although one might argue that John Augustus, rather than having served as the country's first informal probation officer, was actually operating as a pretrial services officer, as he "bailed" individuals, worked with them, and returned them to court in better circumstances than he found them.) One might imagine that these early days were full of glamour, romance, and adventure. Although adventure was there aplenty, glamour and enchantment were in short supply. Pioneering meant taking something away from the system as much as providing something new. Few welcome mats rolled out when pretrial services came to town. Not only did the Pioneers have to learn to provide a new and distinct function, they had to convince other parts of the system of its necessity and benefit. Some veterans wondered, often aloud, why an agency was created to perform a task that had been accomplished without it for 200 years. "Congress said so" was hardly a winning response. The existence of this agency disrupted, at least in the assessment of other system components, the smooth processing of defendants. After all, pretrial services officers needed time and space to conduct interviews, thereby imposing on law enforcement agencies and at times, the Court. So the battle ensued—to prove competence and capability, make a mark, and persuade an established system that this new agency could and would make a difference.

back to top

Battle Won

But the battle was won by pretrial services. In 1982 Congress passed and President Ronald Reagan signed into law a bill transforming the pretrial services agencies from an experimental project to a permanent part of the federal criminal justice system. While waiting for a final decision on the future of pretrial services, some officers sought the security of a position with U.S. probation or elsewhere. After the passage of the law, the remaining officers sighed with relief, knowing those monthly mortgage and car payments would continue to be made. However, most significantly, the law affirmed the importance of pretrial services work and the need for a

neutral agency to provide the court with relevant background information and supervision services.

The Bail Reform Act of 1966 was augmented by its successor, the Act of 1984. While the earlier act strove to eliminate inappropriate pretrial detention of the financially impaired, the later Act focused on protection of society from dangerous defendants. The 1984 rendition improved on its 1966 predecessor in the following ways: by focusing consideration on community safety; expanding the number of potential release conditions; allowing preventive detention when clear and convincing evidence of danger existed; providing standards for post conviction release; permitting temporary detention on conditional release cases; articulating procedures for revocation; and de-emphasizing the use of cash-oriented bonds.

Rather than focus solely on defendant appearance as a criteria for release, the 1984 Act allowed judicial officers to consider danger to the community prior to conviction and to use preventive detention when "no condition or set of conditions" was available to reasonably assure community safety. This new dimension enhanced the role of pretrial services officers in making recommendations, as officers were required to assess danger and, where danger was determined to exist, fashion conditions to reasonably address it.

Many in the legal profession wondered if the preventive detention provision of the 1984 law would pass constitutional muster. Would such a practice be construed as allowing punishment prior to conviction of a crime? In 1986, the Second Circuit of Appeals in *U.S. vs. Salerno* issued such a ruling. However, the following year, the U.S. Supreme Court (481 U.S. 739) reversed the decision, finding the preventive detention statute constitutional. Not envisioning the practice as punishment, the Court recognized the need to utilize preventive detention as a means to regulate those defendant behaviors that placed a society at risk and in lieu of any feasible alternative that permitted release under restrictive conditions. The determination to hold an individual "without bail" is to occur after an adversarial hearing at which defendant procedural rights are preserved, standards are utilized, and findings are articulated.

Despite the emphasis on community safety and use of preventive detention where so indicated, the new law did not diminish the presumption of innocence or negate the use of least restrictive conditions—thereby providing a continuity in the role of pretrial services officers. So too officers continued to assess risk of non-appearance and fashion conditions to address this variable, as had been their task from the inception of the agency.

back to top

An Evolution

Although we celebrate the 25th anniversary of pretrial services on the national level, the agency has existed for 32 years, counting those early, critical experimental years. The mission, although more enhanced and better formulated, is the same as that conceived by Congress, indeed as conceived by VERA, over three decades ago. And yet the day's work feels different from those early days in the mid-1970s. Officers continue to performed the tasks prescribed in 18 U.S.C. section 3154B, conducting assessments, providing supervision, reporting violations. What are the differences?

To start, we seem to live in more complicated times. Technological advances, philosophical changes, societal and political expectations, greater insistence on accountability and documented outcomes place more responsibility on pretrial services to identify effective methods to accomplish system goals. In those early days, at least in Philadelphia, we had to walk a few blocks to have record checks conducted and otherwise depend on the defendant or contacts to relay information regarding drug usage. A few taps at a desktop terminal now accomplish the record checks, while various drug-testing devices provide nearly instant information on recent usage. (Imagine a life without having to collect urine samples daily...) Although some tasks have certainly gotten easier, the needs of the defendant have changed and with that change, the challenge to become more creative, inventive, and innovative has grown more demanding. The

federal system no longer wears the stereotype of the white collar prosecutorial agency; rather, many accused are drug addicted, psychiatrically impaired, unemployed, medically compromised, and homeless. Add a prior sexual assault conviction that results in a Megan's Law registration requirement and it may well become impossible to formulate a viable pretrial release plan—even for those charged with more minor offenses. The struggle has required officers to become Neo-Pioneers—with a new attitude toward finding model resources and proven strategies to address a significant portion of this more impaired population. Otherwise, we are remiss in our duties and are not serving the system with the flair it has come to expect.

Today's managers, officers, and support staff must focus not only on function, but on the infrastructure of the agency. New mobile and office-bound technological advances must be evaluated for relevant impact. Software programs and remote devices must be explored. Using proven drug detection equipment and mastering new methods of location monitoring are not optional practices. Strong, defined policies and practices are required to address a host of issues, and insurance must be generated so that the office can continue to function even if the physical site is compromised or eliminated. And today, as always, one has to develop excellent relationships with community-based vendors—to secure needed drug/alcohol, mental health, sexual offender treatment, and vocational training services, keeping an eye on those that can provide the outcome-driven programs that are desired. With all these challenges, managers must develop strategies to help all staff become all they can be, exercise practices that address safety, and come together as a team to generate the best product possible: addressing court and defendant needs in an effective, competent, and fiscally responsible fashion.

back to top

Final Assessment

Few of the original Pioneers remain in the system, most having become eligible for the final reward of retirement. Those who are left undoubtedly continue to accept the challenges, both old and new, that pretrial services work presents. The work has been rewarding beyond description. Those who were part of this release experiment have had the satisfaction of being on the cutting edge of a new practice and making a difference—in the lives of the defendants, in services to the Court, on future generations, and on communities that shelter accused individuals. No regrets are possible. But the job is never over, and responsible, committed individuals are needed to continue the work. Without that level of "commitment to and passion for our mission," as cited in our *Charter for Excellence*, pretrial services might well find its exit, stage right. And society and the system would suffer for it.

back to top

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Pretrial Services in the Federal System: Impact of the Pretrial Services Act of 1982

By Timothy P. Cadigan
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THE PRETRIAL SERVICES ACT of 1982 (Act) began a process of inserting pretrial services into the fabric of the federal criminal justice system. That act followed the humble beginnings of the Speedy Trial Act of 1974. Title II of the 1974 Act authorized the Director of the Administrative Office of the U.S. Courts to establish in 10 judicial districts "demonstration" pretrial services agencies to help reduce crime by persons released to the community pending trial and to reduce unnecessary pretrial detention. Five of the Agencies were to be administered by the Probation Division (now the Office of Probation and Pretrial Services) and five by boards of trustees appointed by the chief judges of the district courts. Title II also instructed the Director to compile a report on the effectiveness of pretrial services in these demonstration districts.

The fourth and final report on the *Implementation of Title II of the Speedy Trial Act of 1974* was published on June 29, 1979. Essentially that report concluded that pretrial services was a good thing and should be expanded throughout the federal system. That report is quoted often in Committee and Subcommittee hearings and publications on passage of the Pretrial Services Act of 1982. For those of you with long memories, there were many questions and impassioned feelings on the subject of institutionalizing pretrial services. Therefore, I wanted to research what other work was done on the topic, independent of this agency. Although the studies I found were done later, they do confirm the conclusion that was presented to Congress, that expansion of pretrial services would enhance the federal system. That research revealed some excellent studies funded by NIJ and concluded:

> The conclusion of this research suggests that the experimental pretrial programs did help judges change their decision making patterns, and the observed increase in the use of non-financial release conditions and the number of defendants released provide evidence of this change. Furthermore an increased rate of pretrial misconduct did not accompany this change. Moreover, a greater number of factors appear to have influenced the pretrial decision after the intervention than before. Finally, judicial decisions showed a higher level of consistency after program intervention with more factors influencing the decision...Our results suggest that combining

> legislation to create agencies to help carry out the law in the Bail Reform Act proved an effective method for reforming pretrial release decisions. [1]

The purpose of this article is to look at the impact of the ACT on this its 25th anniversary. In preparation I went back and read testimony and committee reports to determine what it was Congress hoped to accomplish, and it was in fact very clear what they hoped to accomplish with passage of the ACT. Specifically, they sought to: ensure pretrial services investigations and reports for all defendants; reduce unnecessary detention; reduce crime on bail and the number of defendants who do not appear for subsequent proceedings; and reduce the federal system's reliance on surety bonds. [2]

Unfortunately, data from the earliest days of pretrial services is not available. The first year of available data is 1983 and the various pieces of the process—for example, pretrial services supervision counts—have been added slowly, beginning in 1984. Therefore, the full 25 years of data are not available to track various trends and some elements will have fewer years of data than other elements, depending on the evolution of that variable over time. Even given those limitations, the following trends should be illuminating to readers.

back to top

I. Investigations/Criminal Charges

In the legislative history and various committee reports prepared on the ACT, it is apparent that the sponsors of this legislation felt that the most important first step in implementing pretrial services was to get pretrial services reports into the hands of judges at the time of the pretrial release decision. In fact, in the infancy of the federal pretrial services system, pretrial services "activations" were compared regularly to criminal filings as a measure of our success in implementing pretrial services in the federal system. (Activations reflect for the most part pretrial services investigations and reports.) As the program matured we have gotten away from that comparison.

Under Title 18 U.S.C. Section 3154 pretrial services investigations "should" be performed on all felony and class A misdemeanor defendants, with the stipulation that a particular district can decide to eliminate class A misdemeanor cases as well. Under 18 U.S.C. 3559 (a) class A misdemeanor cases involve a potential penalty of 6 months to one year in custody. Given that all class A misdemeanors and felonies are to be reported through the criminal filings system, comparing those filings to the pretrial services activations in the Pretrial Services Act Information System (PSAIS) should provide useful feedback on the issues raised. To make the comparisons useful we must exclude diversion cases from the PSAIS numbers, because diversion cases are not included in criminal filings.

As Table 1 demonstrates, although it took a significant number of years, beginning in 1998, the pretrial services system achieved the ability to complete an investigation and report in virtually all cases. Thus, the pretrial services system was able to meet the first of several goals for the Act, set by the legislators who passed the legislation, specifically "to get accurate information about defendants into the hands of judges at the release hearing." To this day the system continues to place written reports into the hands of judicial officers charged with making pretrial released decisions in the vast majority of cases.

back to top

II . Reduce Unnecessary Detention

A large majority of the text in committee and subcommittee reports and testimony concerns the reduction of unnecessary detention. In fact, several senators and representatives influential in ultimately passing the ACT, including Biden, Kennedy, and Hughes, cited the reduction of

unnecessary detention as their primary motivation in voting for the ACT and subsequently passed legislation, including the Bail Reform Act of 1984.

The ACT and subsequent actions by the Administrative Office of the U.S. Courts led, whether directly or indirectly, to the creation of pretrial services in the District of New Jersey, which in turn led to my hiring as a pretrial services officer many years ago. Therefore, I have always felt directly indebted to the ACT for my federal career. As a young officer that feeling manifested itself by my reading virtually everything I could get my hands on about what Congress wanted pretrial services officers to do. If you go back and read all the reports and testimony, to borrow a line from James Carville, you realize that "It's the unnecessary detention, stupid." Yet when I travel to pretrial services offices today, I hear over and over again that "It's not like it's my job to reduce detention." In fact, my all-time favorite comment came from an officer at least ten years ago: "It took me all day but I finally got that guy detained." I don't fault those officers, because this is part of a larger problem that the system needs to address, but as a system we have lost focus on the primary mission Congress meant us to address, the reduction of unnecessary pretrial detention.

Many factors have caused the detention rate to rise so dramatically and I explore and detail those in subsequent sections. In fact, a significant percentage of the pretrial services population cannot and probably should not be released. However, there is another group, located in the middle of our population in terms of risk of FTA/rearrest if released, that could and should be released. We as a system need to begin to identify those individuals and develop the necessary tools and programs so that judicial officers are comfortable in releasing those defendants. Doing that in the next 25 years would leave a legacy to be proud of.

Pretrial detention rates are clearly rising again, particularly in the last two years (see Table 2). In fact, in FY 2004 we achieved the unprecedented rate of 60 percent of all cases closed having been held in detention throughout the pendency of the case. Prior to the recent surge, rates had been stable at about 52 percent. Those rates are rising for a variety of factors: 1) illegal immigrants comprise a larger percentage of the federal defendant population than ever before and those defendants are more likely to be detained than categories of legal immigrants or even unknown categories; and 2) immigration and drug offenses continue to rise, both of which have high detention rates.

A. The Changing Federal Defendant

The defendants appearing in federal court have changed dramatically over the 25-year history of pretrial services in the federal system. A number of significant factors in the pretrial release/detention decision seem particularly pertinent, but let's begin by looking more generally at the changing demographics of those defendants. The Administrative Office of the U.S. Courts publishes annual profiles of the defendants that appear in federal court. The first year for which data is available is 1987, so we employ that as the benchmark of where the system started. That year 76 percent of defendants were U.S. citizens; 24 percent had a substance abuse problem, with 6.7 percent unknown; 57 percent were employed; and 65 percent lived in the area of their arrest for more than 60 months. In 2007 57 percent were U.S. citizens; 26 percent had a substance abuse problem, with 31 percent unknown; 36.3 percent were employed, and 32.3 percent lived in their area more than 60 months. All of these categories, which are relevant to the release decision, have changed in arguably a negative direction, with citizenship down 19 percent; substance abuse problems seemingly steady except for the unknown factor, which is up significantly; employment down 21 percent; and residence stability down 33 percent.

B. Effects of the Bail Reform Act of 1984

The Bail Reform Act of 1984, which permits judicial officers to consider the danger to the community posed by a particular defendant in setting pretrial release conditions, also created rebuttable presumptions in favor of detention. Thus, it expanded the ability of judicial officers to hold defendants in preventive detention. Three studies of relevance have been conducted that reveal the impact of the Bail Reform Act on the federal criminal justice system.

In October, 1987 the General Accounting Office issued a study on the effect of the Bail Reform

Act of 1984 in selected district courts. Criminal Bail: How Bail Reform is Working in Selected District Courts examined the effect of the Bail Reform Act of 1984 on various aspects of the pretrial release system in four federal districts.

The study reached several relevant conclusions: 1) the rate of pretrial detention rose overall in the four districts from 26 percent under prior law to 31 percent under the current statute, 2) the "rebuttable presumption" provision of the Bail Reform Act of 1984 was invoked 39 percent of the time that the GAO thought it was applicable, and 3) the failure to appear rates and rearrest rates in all four districts were very low under both the former and current bail laws.

In February, 1988 the Bureau of Justice Statistics published a report titled *Pretrial Release and Detention: The Bail Reform Act of 1984*. That study employed the Administrative Office pretrial services database to compare the percentage of defendants detained whose pretrial services investigations began between August 1 and December 31, 1983, with those whose investigations commenced in the same time frame in 1985. Since the Bail Reform Act of 1984 was passed in November of 1984, the first group in the study was processed under the Bail Reform Act of 1966 and the second group was subject to the 1984 Act. The study concluded that, "The percent of federal defendants held for the entire time period prior to trial, either on pretrial detention or for failure to make bail, increased from 24% before the Act to 29% after the Act."

In November, 1989 the General Accounting Office published another report entitled, *Criminal Justice: Impact of Bail Reform in Selected District Courts*. This report looked at the same four districts as the GAO report of 1987, but it focused on different issues. As in the 1987 study, the 1989 report found a five percent increase in the rate of detention under the Bail Reform Act of 1984.

In addition to the above studies, the Office of Probation and Pretrial Services has compiled data from the pretrial services database to further assess the effect of the Bail Reform Act of 1984 on pretrial detention rates.

The three studies discussed above all show that the Bail Reform Act of 1984 likely had a significant impact on increasing the rates of pretrial detention in the federal system. This, coupled with the increasing federal caseload, has resulted in substantially higher numbers of actual defendants currently being held in pretrial detention.

C. Effects of the Expanded Federal Role in Drug Prosecutions

The increasing federal role in drug prosecutions is significant to the discussion of pretrial detention for several reasons. First, as the federal courts became more involved in narcotics prosecutions, the rates of pretrial detention were likely to increase due to the "rebuttable presumption" provisions of the Bail Reform Act for certain drug charges. Second, as drug prosecutions increased in the federal system (see Table 3), given the substantial penalties that most drug offenses carry, the Bureau of Prisons took custody of ever increasing numbers of convicted drug offenders for substantial periods of time. About 60 percent of federal drug defendants adjudicated were detained between arrest and adjudication during 1999.

The presumption in favor of detention that exists in drug offenses, which carry a term of imprisonment of 10 years or more, in conjunction with the increase in drug prosecutions makes it reasonable to conclude that the federal criminal justice system will continue to experience significant increases in pretrial detention in the future, absent more direct programming to deal with the special needs of drug defendants.

D. Effects of Sentencing Measures on Prison Population

Sentencing legislation, including the Sentencing Reform Act of 1984 which led to the development of the sentencing guidelines, and the ever increasing use of mandatory minimum penalties, have helped to magnify the problems resulting from the increase in detention rates. The promulgation of the sentencing guidelines and the expanded use of mandatory minimum penalties have both had a substantial effect in increasing the federal prison population. Those increases impact pretrial services release/detention in a variety of ways. Both the likelihood of

incarceration following conviction in such cases and the potential length of incarceration following conviction exert an impact on the defendant and the judicial officer making the detention decision.

The greatly increased likelihood of going to prison if convicted in federal court has an immeasurable but immense impact on pretrial detention. Before the passage of the Pretrial Services Act of 1982, only four in ten federal offenders went to prison; by 1997 that number had climbed to 7.4 in 10 and by 2006 it had climbed to 9.5 in ten. [3] In other words, currently virtually every defendant will receive a prison sentence. That certainty likely impacts a defendant while on pretrial services release and accordingly could impact the judicial officer deciding whether that defendant should be released or detained while awaiting trial.

Table 4 displays the most recent prison population information from the Bureau of Prisons for the fiscal years 1978 through 2007. The current population of 198,656 indicates that the prison population continues to increase substantially.

Determining the root cause of the substantial increase in the federal prison population is more problematic. The U.S. Sentencing Commission estimates that implementation of the sentencing guidelines resulted in a net increase in the federal prison population of between 6 and 12 percent. The Commission states that the increase in federal prison population beyond 12 percent is attributable to the increased use of mandatory minimum penalties and not to the sentencing guidelines. For purposes of this discussion it is sufficient to note that the federal prison population is expanding at a substantial rate and is likely to continue to do so. This expansion, coupled with the increasing number of pretrial detainees and the decreasing number of facilities outside of the Bureau of Prisons willing to house federal pretrial detainees, exacerbates an already serious detention housing problem.

back to top

III . Reduce Crime on Bail and Failure To Appear

The federal pretrial services system has since its inception maintained some of the lowest failure rates (rearrest and failure-to-appear) in the history of pretrial services in the United States. The rates are so low that I have often heard accusations in the larger pretrial services community that we do various unsavory things with the data to maintain those rates. In fact, they are so low that I and others have often wondered if we do something unbeknownst to us to keep them so low. At least as far as I can tell, we do not and thus these rates are clearly one of the highlights of the federal pretrial services program.

In tracking those rates back to the beginning of the federal program in 1982, it is difficult to consistently establish the appropriate divisor, released cases closed. That number was not calculated or counted until 1989. Therefore, to have continuity in those rates from the beginning we employed the larger divisor of cases closed. As Table 5 shows, the rates are relatively small through the life of the program. While they do not go down, as Congress had originally hoped, maintaining such low rates given the many factors in today's criminal justice system that could escalate such rates enables us to conclude that the spirit of Congress's goal—to minimize failure-to-appear and re-arrest while on pretrial release—has in fact been met. Table 5 above provides the actual rates, which show that after an initial rise the rates have been steadily declining.

back to top

IV. Reduce Reliance on SuretyBonds

One of the primary motivations of Congress in adding dangerousness to the judicial officers' pretrial release detention considerations in the Bail Reform Act of 1984 was the elimination of what was known as "sub rosa detention." Sub rosa detention occurs when a decision maker, who is legally unable to take into consideration a defendant's dangerousness, nonetheless concludes

that the defendant presents some serious risk of danger to the community and thus sets a financial bond that is higher than the defendant's ability to pay, ensuring that the defendant will be held in detention on that high bond. Therefore, Congress inserted language into the legislation that specifically spoke to reducing all financial bonds as a way to move the system toward ensuring that "sub rosa detention" was eliminated.

As Table 6 demonstrates, the use of bail bondsmen, corporate sureties, or insurance companies posting bail bonds in federal court has declined significantly over the 25-year history of the ACT and has for the most part been eliminated in federal court.

back to top

V. Conclusion andRecommendations

The four trends we looked at that were identified by the Senators and Congressmen as important to the passage of the ACT demonstrate that for the most part the ACT has successfully achieved its major goals. Specifically, it has vastly increased the number of pretrial services reports provided to judicial officers; maintained the low rates of failure-to-appear and re-arrest that have existed in the federal system for many years; and reduced the federal system's reliance on financial surety bonds. The one issue that the ACT did not successfully address is unnecessary pretrial detention. However, it was not charged per se with reducing detention; it was charged with reducing unnecessary detention and therefore its actual impact in that area is open to interpretation. Clearly during the first 25 years of the ACT pretrial detention in the federal system has increased greatly. There are significant reasons, separate from the ACT, as to why that may have occurred. Those reasons include significant changes in the defendants that are charged with offenses in federal court; significant changes in the bail laws themselves, including the institution of preventive detention; expansion of the federal role in drug prosecutions; and changes in the sentencing laws that are likely to negatively impact release rates. Even given those factors, the degree of significant escalation of pretrial detention in the federal system over the past 25 years seems to warrant a focused analysis from the pretrial services system itself. The following recommendations could address the various problems presented by the increase of pretrial detention in the federal judicial system:

1. Support the establishment of a Pretrial Detention Task Force to further assess the problems presented by pretrial detention and develop a long-term plan to assist the federal judiciary in addressing those issues. The Task Force should assess and question all aspects of pretrial services from its focus on interviewing all defendants through the usefulness of its current supervision policies. The Pretrial Detention Task Force should also be staffed with a recognized pretrial services academic expert who is charged, through appropriate contract vehicles, with supporting the work of the Task Force with research and analysis services. The primary focus of their assessment should be the current needs of the judiciary and how pretrial services could best meet them, with an intense focus on pretrial detention issues.
2. Support the Office of Probation and Pretrial Services in focusing on the effectiveness of district compliance with the Pretrial Services Act of 1982, as measured by the development and employment of outcome measurement methodology focused on assessing the use of alternatives aimed at reducing the rate of unnecessary pretrial detention.
3. Implement a Best Practices program that focuses on districts that—despite confounding factors (i.e., high drug caseload, border districts, urban populations and problems)—continue to maintain effective release rates. An example is the Eastern District of Michigan.
4. Continue and enhance the Office of Probation and Pretrial Services' cooperative program with the Office of Federal Detention Trustee, which focuses on the sharing of costs and personnel in the development and testing of legitimate alternatives to detention.

Table 7 presents data from the ten original pretrial services demonstration districts that were established under the Speedy Trial Act of 1974. The data is for the twelvemonth periods ending

September 30, 1984 and September 30, 2005. The 1984 data was collected prior to the implementation of the Bail Reform Act of 1984 and the 2005 data is obviously from cases processed subsequent to its passage. In addition the data is culled only from the demonstration districts, so that pretrial services was clearly established in these districts and had been operating for many years prior to the passage of the Bail Reform Act of 1984.

As Table 7 clearly demonstrates, the pretrial release rate at the defendant's initial appearance in the 10 demonstration districts decreased from 62.7 percent in 1984 to 33.2 percent in 2005. While this data indicates that a greater percentage of defendants were held in pretrial detention after their initial appearance, it does not address the issue of whether or not the rate of detention pending disposition of cases has increased. Table 8 looks at the rates of detention for those defendants who were never released pending the disposition of their cases. The table reflects the 12-month period immediately preceding the effective date of the Bail Reform Act (October 1, 1983 to September 30, 1984) and the 12-month period ending June 30, 2007. The table utilizes data from eight of the ten demonstration districts. [4] The rate at which defendants were detained from arrest through disposition of the case increased from 22 percent to 49 percent.

While overall the charts reflect the same trends obvious in the national data, showing that detention is increasing significantly, closer examination reveals that some districts, for example Michigan Eastern and to a lesser extent Maryland, while also showing increases, seem to be handling the factors previously identified better than other districts. Therefore, it appears likely that there are practices in those and possibly other districts that could be identified and replicated nationally and have an impact in potentially reducing detention nationally.

back to top

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Table 1: Reports Provided

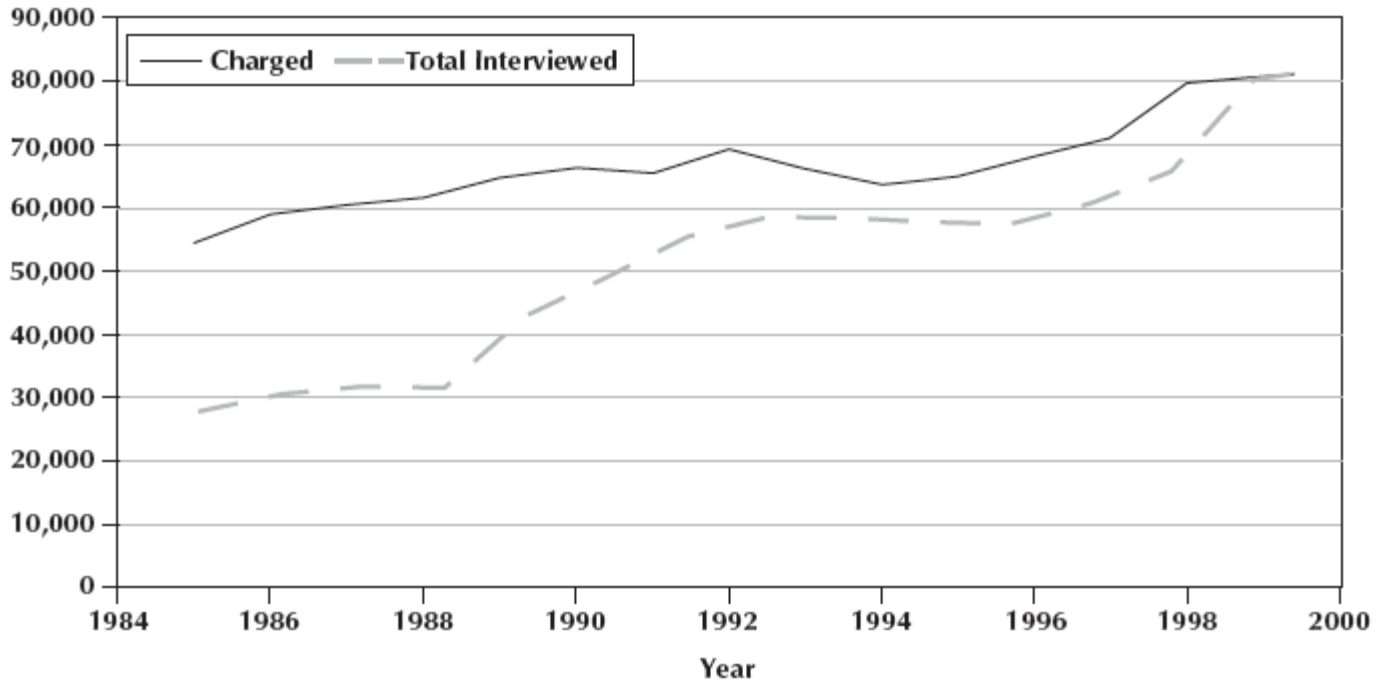

Table 2: U.S. District Courts Pretrial Release & Detention Rates FY 1992–2006

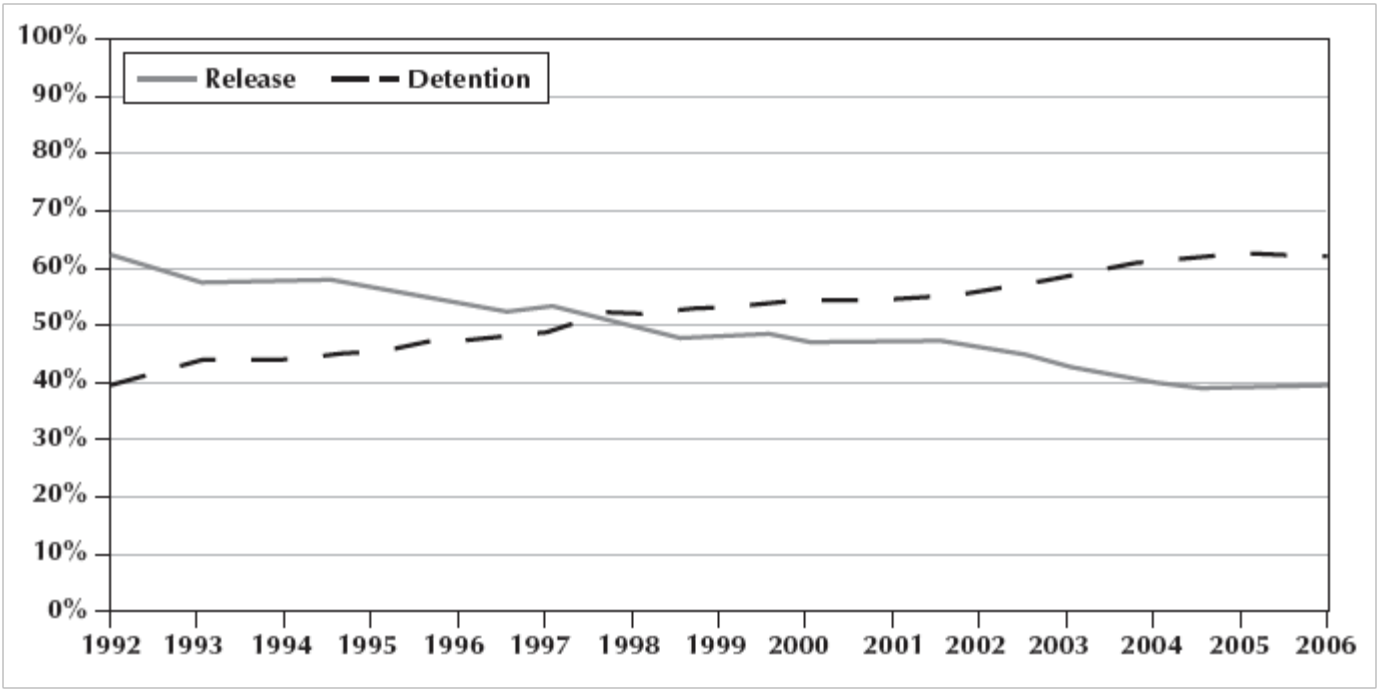

Table 3: Drug Prosecutions			
Year	Defendants Charged	Defendants Charged	Percentage of Cases
1984	35,911	5,611	15.6
1988	59,977	19,466	32.5
1992	47,472	12,833	27.0
1996	47,146	12,092	25.7
2000	62,152	17,505	28.2
2004	70,397	18,440	26.2
2006	87,699	30,567	34.9

Table 4: Bureau of Prison Annual Population Figures	
Year	Total Population
1978	27,674
1979	24,810
1980	24,252
1981	26,195
1982	28,133
1983	30,214
1984	32,317
1985	36,042
1986	39,551
1987	43,682
1988	43,399
1989	56,637
1990	63,928
1991	71,111
1992	79,095
1993	88,336
1994	94,445
1995	100,199
1996	104,953
1997	111,832
1998	121,834
1999	133,124
2000	144,750
2001	156,011
2002	162,893
2003	171,981
2004	179,412
2005	186,912

2006	191,876
2007	198,656

Table 5: FTA and Rearrest Rates, 1985–2006

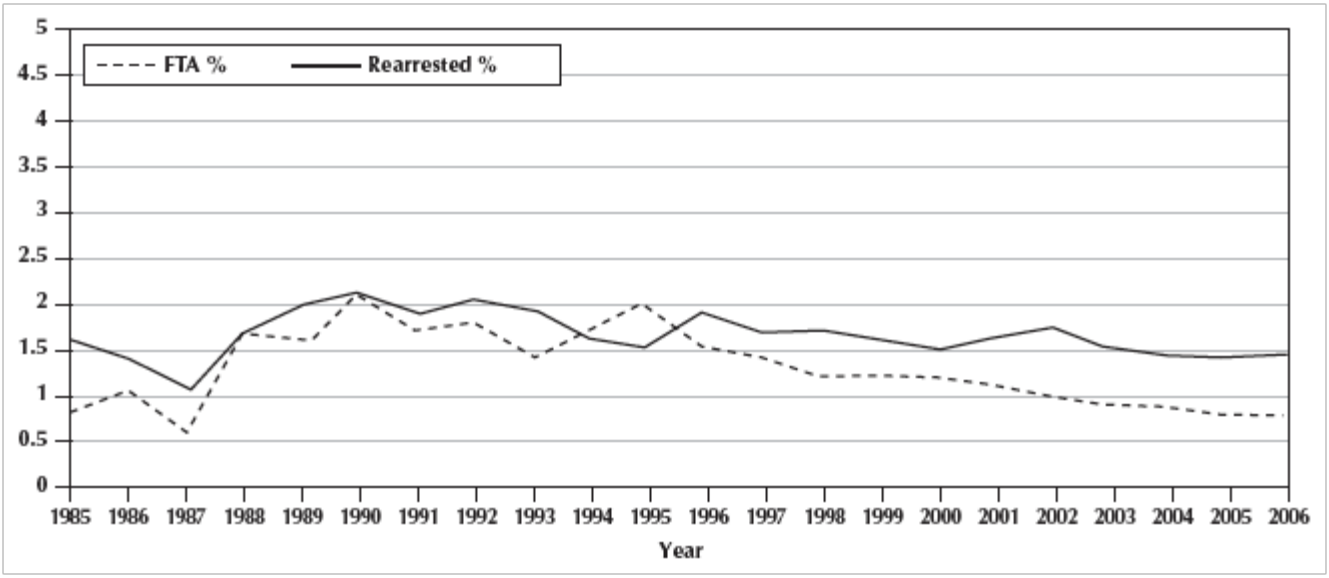

Table 6: Surety Bonds Imposed			
Year	Defendants Appearing	Surety Bonds	Percentage of Cases
1984	26,866	6,766	25.2
1988	38,461	3,482	9.1
1992	50,173	2,506	5.0
1996	63,467	2,725	4.3
2000	85,617	1,448	1.7
2004	98,152	1,377	1.4
2007	94,080	736	0.8

Table 7: Pretrial Release at Initial Appearance

	1984			2005		
	Release			Release		
District	Opened	Cases at Initial Appearance	%	Opened	Cases at Initial Appearance	%
NY/S	1,673	1,000	59.8	2,379	820	34.5
NY/E	1,093	657	60.1	1,591	474	29.8
PA/E	615	463	75.3	1,110	360	32.5
MD	1,051	788	75.0	792	284	35.9
GA/N	380	211	55.5	988	322	32.6
MI/E	1,044	844	80.8	1,191	644	54.1
IL/N	863	668	77.4	1,515	631	41.7
TX/N	607	316	52.1	1,562	329	21.1
MO/W	356	226	63.5	1,182	493	417
CA/C	1,850	808	43.7	2,864	686	24.0
TOTALS	9,532	5,981	62.7	15,174	5,043	33.2

Table 8: “Never Released” Rates In Eight Pretrial Services Districts

	1984			2005		
	Closed	Never		Closed	Never	
District	Cases	Released	%	Cases	Released	%
PA/E	246	34	14	894	41	246
MD	608	133	22	702	28	340
GA/N	237	53	22	682	36	153
MI/E	770	73	9	1,062	26	225
IL/N	603	90	15	1,022	47	647
TX/N	383	92	24	1,141	78	369
MO/W	264	47	18	930	49	553
CA/C	972	393	40	1,581	87	655
TOTALS	4,083	915	22	8,014	3,948	49

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The Pretrial Services Act: 25 Years Later

William Henry
Chief U.S. Probation Officer, District of Maryland

THE 25th ANNIVERSARY of the Pretrial Services Act of 1982 has special significance for the District of Maryland because this District was one of the 10 original "demonstration" pretrial services agencies in our federal system. The officers during the early years of pretrial services were true pioneers. They helped to develop policies, standards, regulations and protocols about how pretrial services would be performed in our federal courts. Their pioneering efforts helped demonstrate that by providing verified information to the court and providing necessary services to defendants released pending trial: 1) crime committed by persons released on bail could be reduced; 2) the volume and cost of unnecessary detention could be reduced; and 3) the nonfinancial release provisions that had been outlined in the 1966 Bail Reform Act could be more effectively utilized.

One of the former Chief Judges in the District of Maryland was a key witness during testimony before a Senate Judiciary Subcommittee that was considering expanding pretrial services to all federal judicial districts. The supportive testimony of Chief Judge Edward S. Northrop more than 25 years ago seems to still apply today:

> *The Judicial Offices of the Court have benefitted greatly from having timely information provided for bail hearings, and needless to say, the availability of detailed information has inured to the benefit of defendants appearing before the Court.*
>
> *The benefit of having accused persons maintain the jobs, family and social relationships are immeasurable. Of corresponding significance is the dollar savings in jail costs. We are now having a period of economic flux and uncertainty in this country. Strenuous efforts are being made to reduce spending levels in all branches of government. I submit that the pretrial agencies, whose continued existence depends on the favorable action of your committee, have saved literally thousands of tax dollars which would otherwise have been spent on costs of incarceration.*

As we know, the Pretrial Services Act of 1982 authorized the Director of the Administrative Office of the U.S. Courts to provide for the establishment of pretrial services in each U.S. judicial district other than the District of Columbia. Although discussions continued in Washington and around the country as to whether pretrial services were best performed by separate or combined offices, the District of Maryland continued to function as a "separate" office for nearly 20 more years, until retirement of the chief probation officer prompted consideration of a consolidated office. The Court interviewed staff of both offices as well as

members of the U.S. Attorney's Office, the Public Defender's Office and members of the bar. In 2001 the Court decided to consolidate the offices, concluding that consolidation under one chief would not negatively affect the scope or caliber of service or negatively impact the personnel of either office.

As the former chief of a separate pretrial services office, I believe I understand the differences and similarities between pretrial and probation work. One of the core similarities lies in our overall mission, which is to serve the court and the community by promoting public safety and supporting the fair and equitable administration of justice. All officers also share the vision for promoting lasting positive change and accountability in each defendant and offender. However, it is important to recognize that there are some significant distinctions between pretrial and probation work that are related to a defendant's "presumption of innocence." The presumption of innocence is of extreme importance, as it is considered a fundamental principle of American jurisprudence. I believe it is critical to teach officers the history of the bail reform movement and some of the key reasons why we perform this important work. Providing these history lessons can help to develop a keener understanding of the value of the "presumption of innocence"and hone critical thinking so that officers can provide well-reasoned recommendations relating to release and detention. The release or detention decision is critical because it carries enormous consequences that impact the defendant, the community, our criminal justice resources, and the integrity of our judicial process. Let's be honest: it's easy to recommend detention, especially given the fact that 90 percent of defendants in the federal courts are convicted. However, one of our primary areas of expertise and one of our statutory obligations is to develop and evaluate background information on the defendant so that the court can make a well-informed decision. Officers are also challenged to supervise defendants while remaining mindful that they are "presumed innocent." Performing these functions requires tremendous skill and insight. It also requires management's understanding of the unique challenges of pretrial services work and a great deal of leadership.

I believe leaders in our field must begin to look more closely at our intended outcomes of reasonably assuring a defendant's future appearance in court and the safety of the community. What do we know about defendants who fail to appear? What do we know about those who commit new offenses while on release? Before developing policies and implementing new practices, our decisions should be informed ones based on research—in the current terminology, "evidenced-based" information. Perhaps we should look at the kinds of tools and protocols we have in place to guard against individual biases or tendencies to become complacent or categorically consider certain cases for detention. Whether we are dealing with an alleged terrorist, a sex offender or a murderer, the key word is "alleged"and all defendants should be viewed as possible release candidates. So after 25 years it seems that "how" the pretrial services function is locally administered is perhaps less important than whether statutory mandates are being met and districts are addressing unnecessary detention and recidivism issues.

Many things have changed over the last 25 years. Our defendants seem to have more extensive and more egregious criminal histories. Thankfully, we no longer have to telephone the FBI for a verbal criminal record check that is recorded by hand. Imagine in those very early years, officers worked without computers or fax machines. Today we obtain criminal histories through automated inquiries of national and state databases. We also use many forms of technology to perform our investigative and supervision functions, such as electronic monitoring of defendants and computer monitoring software. But some aspects of pretrial services work have remained constant, such as the fast-paced environment, requiring immediate interviews with defendants arrested and preparing written reports for initial appearances before the Court.

It's often said that in life things come full circle. I hope that is not the case for pretrial services, but rather that the Pretrial Services Act of 1982 continues to be celebrated as the authority for establishing pretrial services in every federal court. My hope is that whether separate or combined, the pretrial services function may be recognized and continue to be performed with energy and enthusiasm in all judicial districts throughout the country. Pretrial services work is one of the ways we underscore the value of the "presumption of innocence," the rights of all

citizens under the 8th Amendment, while providing some measure of protection to the community against crime committed by defendants released pending trial.

back to top

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A View from the Outside In

George M. Walker
Chief U.S. Pretrial Services Officer, Central District of California

I AM TRULY ONE of the lucky ones—no, I have to say I have been blessed. Ten years ago, I was the chief probation officer for the largest county and city in the state of Indiana. Seven years ago, I became the chief U.S. pretrial services officer for the largest federal judicial district in our nation. There is no comparison. As those of us who have ever worked in a county or state justice system know, budgets are extremely tight, politics abound, and everyone is overworked and underpaid, resulting in low morale and questionable commitment. More than that, the percentage of defendant and offender supervision revocations is just plain horrible.

Not so in our federal judicial system. Whether you are a pretrial services or probation officer, or both, it is hard to complain and even harder not to be very proud. Although our budgets can get sticky from year to year, we still typically end up with more funding than other systems. Our investigations and supervision workloads are typically appropriate and workable, political pressure is low (except, perhaps, for those darned in-office politics), and the pay is good, although it could always be better. Morale is typically high. And, because we have a judiciary and administrative office that make it happen with Congress, we have special funding to assist defendants and offenders that other systems can only dream of, which no doubt contributes to our notable successes.

But this is the 25th anniversary of U.S. pretrial services, and the perfect opportunity for us to reflect a bit upon where we came from and where we are going. This history part is easy, of course. Although I wasn't part of the system for the first 18 years, there has been much documented about it. Basic principles and goals were established: reduce unnecessary detention; address risk of nonappearance (formerly risk of flight) and risk of danger to the community; formulate an appropriate combination of conditions of release that would mitigate such concerns while utilizing the least restrictive measures; provide services to released defendants that assist them in completing their period of community supervision pending final court action in their case; and do all of this and more with *compassion and respect*.

In the 18 years prior to my arrival in the system, it is apparent that U.S. pretrial services was very successful in accomplishing its vision, mission, goals and objectives. With a cadre of professionals across our nation, pretrial services showed overwhelming success by ensuring that, on average, over 97 percent of the defendants successfully completed their terms of supervision. In stark contrast, county-based pretrial systems seldom reached more than an 80 percent success rate, usually worse.

Our pretrial services past is truly remarkable. Unfortunately, however, such success usually is accompanied by some unexpected loss. The most significant is the fact that many separate pretrial offices, over the years, lost their true identity after being combined into their district's

probation office. Many reasons for this have been cited: saving money, increasing efficiency, loss of viability, and other reasons that may be considered more political than practical. Once combined, the pretrial component has, more often than not, unfortunately become the proverbial stepchild; in some instances it has become little more than a training ground for prospective probation officers, or even worse, it has little identity at all.

On the other hand, some pretrial services components in combined offices are held in very high esteem, continuing to operate as valued equals to their probation brethren. In these situations, the pretrial services component is recognized as having its own philosophy and practices particular to defendants rather than offenders. The courts receive excellent service from those providing pretrial services because of their demonstrated value, professionalism, and commitment to their emphasis on the original pretrial services principles.

Of course, I'm lucky and blessed over these last 7 years. I have had the pleasure of coming to know and understand pretrial services for what is was meant to be, what it currently is, and what it can be in the future. In our (separate) pretrial services agency, we have the opportunity to show our independence and interdependence in our system, and to earn the respect of our judges and colleagues by effectively practicing the principles of pretrial services. Even more, I have come to greatly appreciate the pretrial services role in our system in contrast to that of my former experience in the field of probation. And I work with colleagues who are truly part of our system for the right reasons.

Is pretrial services better than probation or the other way around? No. I've never said that and don't see it that way. Instead, pretrial services is different from probation in its mission, its philosophy, and some of its practices, while the two also share similarities, such as the efforts to effectively monitor and supervise defendants/offenders while providing and brokering needed programs and services. And, of course, both share the similarity of providing the best possible service to the courts, the community, and the defendants/ offenders with whom we are charged. Whenever and wherever possible, pretrial and probation work cooperatively with each other, sometimes hand-in-hand. This is always the best relationship and always what we as a federal judicial system should strive to do.

We have a successful history, but where do we go from here, say in the next 25 years? U.S. pretrial services has shown itself over the years to be progressive, not stagnant. After all, anything that does not grow and evolve, often withers and fades away. Therefore, as we move forward, do we change for change's sake or do we evolve? I vote for evolving. Over the last 25 years, we have gone from an early practice of desk-sitters to a profession that understands the value and necessity of making regular and frequent community-based contacts. We have employed emerging technologies ranging from the on-site drug test cup to the sweat-patch, from electronic monitoring using satellites and cell phones to computer monitoring. But does it stop here? I believe it can't if we are to continue to evolve and be a viable and valuable asset to the courts. Therefore, we must continue to evolve.

As we evolve, we must continuously reflect on the original tenets that are the roots of our work, to also keep in the forefront our guiding principles, our legislative mandates, and our courts' expectations. Before us today are discussions of new ways in which pretrial services may evolve: the possible value of search & seizure practices, seeking legislative authorization for arrest powers and third-party custody, and considering our parity with our probation colleagues.

Evolution. It's inevitable, it's historical, it's necessary. For example, I'm sure there were discussions and debates about our "least restrictive" principle at the time electronic monitoring came along in the early 90s; perhaps some uneasiness when on-site drug testing came into play, and certainly there had to be much introspection when the sweat patch was unveiled. Least restrictive? Consider this: What may be considered least restrictive for a defendant who is charged with a non-violent crime would be wholly different from what would be considered least restrictive for a gang-banger charged with distributing meth. It's a matter of perspective, it's a matter of reality, and it's a matter of the current societal landscape and culture.

Our pretrial services landscape is changing; for example, consider the increase across the nation of defendants under supervision who have prior arrests and convictions for violent crimes, for possession of weapons, for child molestation, etc. These are our challenges, which will continue to change and continue to challenge us and our system of pretrial services as we knew it and as we know it. We must adapt, we must evolve.

What would I hope to see happen with pretrial services over the next 10 years? First of all, I would like to see a resurgence in the overall value of pretrial services in the eyes of the courts in combined districts, such that we perhaps might even see a combined office or two returned to separate agencies. Second, I would like to see pretrial services continuously strive to strengthen its value to the courts. How? By continuing to do the right thing for the right reason...by evolving with a special emphasis on effectively serving the courts while effectively serving our pretrial principles and mission. And finally, I would like to see total parity between pretrial services and probation. We all are part of a bigger system, and we all need to always work together cooperatively and collegially. We all have so much to offer.

The first 25 years? A successful story. The next 25 years? It's all up to us to shape it.

back to top

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Our Journey Toward Pretrial Justice [1]

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Pretrial Justice—The honoring of the presumption of innocence, the right to bail that is not excessive, and all other legal and constitutional rights afforded to accused persons awaiting trial while balancing these individual rights with the need to protect the community, maintain the integrity of the judicial process, and assure court appearance. [2]

IN RECOGNITION OF the 25th Anniversary of the Pretrial Services Act of 1982, it seems particularly appropriate to reflect on the progress of our journey toward pretrial justice and to identify strategies to accelerate its achievement.

In order to effectively assess our progress in achieving pretrial justice, it is critical to understand the pretrial stage of the criminal justice system, including the bail decision, the rights of accused persons awaiting trial, and the role of pretrial services. We will begin with a review of the basics. The period of time between arrest and case adjudication is known as the pretrial stage. Each time a person is arrested and accused of a crime, a decision must be made as to whether the accused person, known as the defendant, will be released back into the community or detained in jail awaiting trial. A critical part of the pretrial stage is the bail decision—the decision to release or detain a defendant pending trial and the setting of terms and conditions of bail. The bail decision is a reflection of pretrial justice; it is the primary attempt to balance the rights afforded to accused persons awaiting trial with the need to protect the community, maintain the integrity of the judicial process, and assure court appearance. Pretrial services agencies perform critical functions related to the bail decision, thereby contributing to pretrial justice. They serve as providers of the information necessary for judicial officers to make the most appropriate bail decision. They also provide monitoring and supervision of defendants released with conditions pending trial. Additional information below regarding bail, the rights of accused persons awaiting trial, and the role of pretrial services agencies is provided as a foundation for assessing our progress toward pretrial justice.

back to top

Bail in the United States

For the majority of our history the sole consideration when deciding bail was the risk of failing to appear in court. The first major federal bail reform occurred in the form of the Bail Reform

Act of 1966. The key provisions of the Act that relate directly to understanding bail today include:

1. The presumption of release on recognizance for defendants charged with non-capital crimes unless the Court determined that such release would not assure court appearance.
2. Conditional pretrial release, supervision of released defendants, with conditions imposed to address the risk of flight.
3. Restrictions on money bail, which the Court could impose only if non-financial release options were not enough to assure appearance. [3]

The Bail Reform Act of 1966 reinforced that the sole purpose of bail was to assure court appearance and that the law favors release pending trial. In addition, the Act established a presumption of release by the least restrictive conditions, with an emphasis on non-monetary terms of bail.

In the early 1970s, the District of Columbia became the first jurisdiction to experiment with detaining defendants due to their potential danger to the community if released pending trial. Under D.C. Code 1973, 23-1322, a defendant charged with a dangerous or violent crime could be held before trial without bail for up to 60 days; this practice became known as preventive detention. This detention scheme was upheld by the District of Columbia Court of Appeals in *United States v. Edwards*. [4] The change in law in the District of Columbia followed by *United States v. Edwards* paved the way for the next major bail reform.

The Bail Reform Act of 1984 was, in part, created in response to the growing concern over the potential danger to the community posed by certain defendants released pending trial. Following the lead of the District of Columbia as upheld in *United States v. Edwards*, the 1984 Act retained the presumption of release on the least restrictive conditions found in the 1966 Act, while allowing for detention of pretrial arrestees based on both court appearance and danger to the community. Preventive detention as detailed in the Act allows for pretrial detention in cases when a judicial officer finds that no conditions or combination of conditions will reasonably assure the appearance of the person in court and the safety of any other person and the community.

The preventive detention aspect of the Bail Reform Act of 1984 was challenged and upheld in the U.S. Supreme Court case *United States v. Salerno* in 1987. In *United States v. Salerno*, the Court decided that the Government's regulatory interest in community safety can, in appropriate circumstances, outweigh an individual's liberty interest. What is just as important as upholding preventive detention is the context in which the decision was made. The opinion for the Court provided by Chief Justice Rehnquist emphasized that the federal statute limits the cases in which detention may be sought to the most serious crimes; provides for a prompt detention hearing; provides for specific procedures and criteria by which a judicial officer is to evaluate the risk of "dangerousness"; and (via the provisions of the Federal Speedy Trial Act of 1974) imposes stringent time limits on the duration of the detention. [5]

The Bail Reform Acts of 1966 and 1984 only apply to the federal court system, but most states have followed suit and currently there are at least 44 states and the District of Columbia that have statutes listing both community safety and the risk of failure to appear as appropriate considerations in the bail decision. [6] Bail, as it stands today in most states and the federal court system, serves to provide assurance that the defendant will appear for court and not be a danger to the community pending trial. There remains a legal presumption of release on the least restrictive terms and conditions, with an emphasis on nonfinancial terms, unless the Court determines that no conditions or combination of conditions will reasonably assure the appearance of the person in court and the safety of any other person and the community.

back to top

Rights of Accused Persons Awaiting Trial

Accused persons enjoy certain inalienable rights during the pretrial stage. These rights can be found in the Constitution of the United States, case law, and state and federal statutes and include the following:

1. Presumption of Innocence
2. Right to Counsel
3. Right Against Self-incrimination
4. Right to Due Process of Law
5. Right to Bail that is Not Excessive
6. Right to a Fair and Speedy Trial

The six rights listed above are not fully inclusive of all of the rights afforded to a defendant during the pretrial stage. There are many other legal protections provided during this stage, including but not limited to the requirement of a probable cause hearing within 48 hours, the right to confront witnesses, and the right to equal protection under the law. It is beyond the scope of this article to discuss all of the rights afforded to pretrial defendants; however, the Presumption of Innocence, Right to Due Process of Law, and Right to Bail that is Not Excessive are at the heart of pretrial justice and deserve further discussion.

Presumption of Innocence
The presumption of innocence dictates that a formal charge against a person is not evidence of guilt; in fact, a person is presumed innocent and the government has the burden of proving the person guilty beyond a reasonable doubt. This fundamental principle can be found in case law dating back to 1895, when Justice White wrote in his opinion for the Supreme Court in *Coffin v. United States*, "The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law." [7] Although the presumption of innocence is not founded in the Bill of Rights of the United States Constitution, it is considered an undisputed and fundamental principle of American jurisprudence.

Right to Due Process of Law
The Fifth Amendment of the U.S. Constitution states that "No person shall be…deprived of life, liberty, or property, without due process of law …." while section one of the Fourteenth Amendment states that "No State shall … deprive any person of life, liberty, or property, without due process of law…" The Due Process Clause of the Fifth Amendment applies to the Federal Government and the Fourteenth Amendment applies to the States. Both amendments provide that the government shall not take a person's life, liberty, or property without due process of law.

A clear definition of due process is lacking; however, Justice Frankfurter paints a picture of due process in his 1950 dissenting opinion for the Supreme Court in *Solesbee v. Balkcom*, which states: "It is now the settled doctrine of this Court that the Due Process Clause embodies a system of rights based on moral principles so deeply embedded in the traditions and feelings of our people as to be deemed fundamental to a civilized society as conceived by our whole history. Due process is that which comports with the deepest notions of what is fair and right and just." [8]

As it relates to restricting a pretrial defendant's liberty, due process requires, at a minimum, that the defendant receive the opportunity for a fair hearing before an impartial judicial officer, that the decision to restrict liberty be supported by evidence, and that the presumption of innocence be honored.

Right to Bail that Is Not Excessive
The right to bail that is not excessive was established in the Judiciary Act of 1789 and the Eighth Amendment of the U.S. Constitution, which states: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." The scope and intent of "excessive bail" has been clarified over time with a few critical changes in law and U.S. Supreme Court case decisions, as discussed in the previous section, *Bail in the United States*.

As noted earlier, for the majority of our history the sole consideration when deciding bail was

the risk of failing to appear in court. This was reiterated in the U.S. Supreme Court case of *Stack v. Boyle*, decided in 1951, likely the most notable court case that addresses the Eighth Amendment right to bail that is not excessive. Chief Justice Vinson writes in his opinion for the Court that "From the passage of the Judiciary Act of 1789 to the present Federal Rules of Criminal Procedures, Rule 46(a) (1), federal law has unequivocally provided that a person arrested for a non-capital offense shall be admitted to bail. This traditional right to freedom before conviction permits the unhampered preparation of a defense, and serves to prevent the infliction of punishment prior to conviction.… The right to release before trial is conditioned upon the accused's giving adequate assurance that he will stand trial and submit to sentence if found guilty.... Bail set at a figure higher than an amount reasonably calculated to fulfill this purpose is 'excessive' under the Eighth Amendment." [9]

As discussed previously, the Bail Reform Acts of 1966 and 1984 were followed by a challenge to the preventive detention aspect of the Bail Reform Act of 1984 via *United States v. Salerno* in 1987. The United States Court of Appeals for the Second Circuit initially struck down the preventive detention provision of the Act as facially unconstitutional, because, in that Court's words, this type of pretrial detention violates "substantive due process." As a result, the Supreme Court granted certiorari because of a conflict among the Court of Appeals regarding the validity of the Act. The Supreme Court then reversed the Court of Appeals and held that the Act fully comported with constitutional requirements. The Court decided that the Government's regulatory interest in community safety can, in appropriate circumstances, outweigh an individual's liberty interest. It is critical to recognize, however, that the Court stated in its opinion "In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." [10]

Bail, as it stands today in most states and in the federal court system, serves to provide assurance that the defendant will appear for court and not be a danger to the community pending trial. Bail set at an amount higher, or with conditions more restrictive than necessary to serve those purposes, is considered excessive.

back to top

The Role of Pretrial Services

The field of pretrial services emerged in response to the inequities of the traditional money bail system as well as judicial officers' needs for reliable information to make bail decisions. [11] For this reason, pretrial services agencies provide information to assist judicial officers in making the most appropriate bail decisions. They also provide monitoring and supervision of defendants released with conditions pending trial. The Manhattan Bail Project, a project initiated by the Vera Institute of Justice in 1961, was one of the first and potentially best-known pretrial services agencies in the United States. Pilot pretrial services agencies were authorized in 10 federal judicial districts in 1974 as a part of the Speedy Trial Act. In 1982 the Pretrial Services Act was passed, which authorized the expansion of pretrial services from the 10 pilot districts to every federal judicial district. Since that time pretrial services agencies have been developed across the country and there are now agencies operating in more than 300 counties and all 94 districts in the federal court system. [12]

back to top

Assessing Our Progress Toward Pretrial Justice

The most significant challenge to assessing our progress toward pretrial justice is determining the most appropriate measures. There are admittedly dozens of ways to measure the many components and subtle aspects of pretrial justice. Measuring the criminal justice system's compliance with one or more of the legal rights afforded to a pretrial defendant awaiting trial or measuring court appearance and community safety rates are just a few ways this could be accomplished.

To begin the discussion of measuring our progress toward pretrial justice, we chose a

measurement that reflects many of the components of pretrial justice. We examine our progress toward pretrial justice by assessing whether or not our system operates as Chief Justice Rehnquist wrote for the majority in *United States v. Salerno* in 1987: "In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." It is important to recognize that this case was decided after the Bail Reform Acts of 1966 and 1984 and, in fact, upheld the challenge to the preventive detention aspect of the 1984 Act. For this reason, this statement provides an appropriate measure of pretrial justice today and the results will serve as a reflection of our progress toward pretrial justice. Examining pretrial release and detention rates as well as the population of our jails in this country is a reliable way of determining whether liberty is the norm and detention awaiting trial the carefully limited exception.

Release and Detention Rates in U.S. District Courts

The United States district courts are the trial courts of the federal court system. There are 94 federal judicial districts, including at least one district in each state, the District of Columbia and Puerto Rico. In addition, three territories of the United States (Virgin Islands, Guam, and the Northern Mariana Islands) have district courts that hear federal cases. The Administrative Office of the U.S. Courts publishes a Judicial Business of the United States Courts Annual Report of the Director. These reports can be found online (www.uscourts.gov/judbususc/judbus.html) and are available for fiscal years 1997 to 2006.

An examination of the 2006 annual report reveals that the U.S. district courts handled 82,508 cases (defendants) during the 12-month period ending September 30, 2006. Of those cases, 39 percent of the defendants were released at some point awaiting trial. Conversely, 61 percent of all defendants were detained during the entire pretrial stage. It should be noted that rates varied by circuit and district in the U.S., excluding U.S. territories, and ranged from a high of 74.5 percent released in Vermont to a low of 11.2 percent released in Arizona. During fiscal year 2006 the Administrative Office of the U.S. Courts reported these statistics excluding immigration cases for the first time. When excluding immigration cases the release rate for all courts increased to 47.3 percent, with release rates ranging from a high of 76.3 percent in Vermont to a low of 23.8 percent in the Southern District of California. Even after removing the immigration cases, the average detention rate in all U.S. district courts during fiscal year 2006 was over 50 percent.

Release and detention data for the U.S. district courts from fiscal years 1992 to 2006 provided by the Administrative Office of the U.S. Courts were analyzed to identify trends in these rates over the past 15 years. The combined release and detention data are presented in Figure 1.

As can be seen in Figure 1, release rates have gradually decreased over the past 15 years, while detention rates have increased. In fact, defendants released awaiting trial averaged a high of 62 percent in 1992 and decreased to a low of 39 percent by 2006. Figure 2 shows the same data from another viewpoint.

Release and Detention Rates in State Courts

Comprehensive release and detention rates, like those reported by the federal courts, are not available consistently for state courts across the country. Since 1988, however, the Bureau of Justice Statistics has sponsored a biennial data collection on the processing of felony defendants in the state courts of the Nation's 75 most populous counties. [13] In 2002 the 75 largest counties accounted for 37 percent of the U.S. population. A review of the state court processing statistics identified state court release rates of 62 percent (38 percent detention rate) in 2002. Interestingly, the rates have fluctuated only slightly between 1992 and 2002, ranging from 62 percent to 66 percent (see Figure 3).

U.S. Jail Populations

In addition to release and detention rates in the federal and state court systems, it is interesting to consider the make-up of jails in this country when assessing our progress toward pretrial justice. Jails are locally operated correctional facilities that confine persons before or after case adjudication. Accused persons awaiting trial and offenders sentenced to usually one year or less

are incarcerated in jails. According to the Bureau of Justice Statistics, as of midyear 2005 there were nearly 750,000 persons incarcerated in local jails on an average day in this country, and of those, 62 percent are defendants being detained pending trial. [14] An analysis of the jail populations for the 10 years between 1996 and 2005 reveals an increase in the percent of the population awaiting trial from 51 percent in 1996 to 62 percent in 2005 (see Figure 4).

Pretrial Justice: Are We on the Right Path?
"In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception" (Rehnquist, 1987).

Liberty pending trial equates to pretrial release. In the federal court system in FY2006 the pretrial release rate was 39 percent including immigration cases and 47 percent when excluding them. The pretrial release rate in the federal court system is at an all-time low—down from 62 percent in 1992. The most recent state court statistics from 2002 show a 62 percent release rate for felony defendants in the 75 most populous counties in the U.S., while nearly two-thirds of our local jails on an average day in this country are filled with accused persons awaiting trial—over 450,000.

In the federal court system liberty is not the norm; in fact, detention is the norm for accused persons awaiting trial (61 percent detained). In the state court system detention prior to trial or without trial is not the carefully limited exception (38 percent detained, with nearly two-thirds of our local jails consisting of accused persons awaiting trial). After considering federal and state court system data from the past 10 to 15 years we must conclude that in our society liberty is not the norm and detention prior to trial or without trial is not the carefully limited exception. It must also be acknowledged that we have veered further and further away from the achievement of pretrial justice as measured by the statement provided by Chief Justice Rehnquist. It is disheartening yet fair to say that we, as a society and a criminal justice system, have lost our way along the path toward pretrial justice. It is at this time, the time when we are the furthest from pretrial justice that we have been in decades, that we must refocus our efforts and invest our human and financial resources to put us back on the right track. Achieving pretrial justice will require a long and difficult journey—it is time to set off on our journey again and not stop until we reach our destination.

back to top

Strategies to Advance Us in Our Journey Toward Pretrial Justice

One critical strategy to advance our journey toward pretrial justice is education. We must educate our criminal justice professionals as well as our citizens on pretrial justice. The citizens of our country need to be knowledgeable about the rights of accused persons pending trial and the true purpose of bail. They must understand that our pursuit of pretrial justice—finding the proper balance between the rights of accused persons and the need to protect the community, maintain the integrity of the judicial process, and assure court appearance—will require courage, diligence, and perseverance. Education, and in some cases re-education, of our citizens and criminal justice professionals is the first crucial step toward pretrial justice.

There are undoubtedly numerous other strategies that could be used to advance us in our journey toward pretrial justice. In recognition of the Pretrial Services Act of 1982 we will focus on the strategies that can be used by pretrial services agencies. Pretrial services agencies, on behalf of the Court, strive to identify those defendants who can safely be released into the community pending trial with the least restrictive conditions necessary to assure court appearance and the safety of the community. They simultaneously work to identify the "carefully limited exception"— defendants who must be detained pending trial for the safety of individuals and our community and to assure court appearance.

Pretrial Services Legal and Evidence Based Practices (LEBP) is a developing and emerging field intended to provide guidance for policies and practices in pursuit of pretrial justice and to achieve liberty as the norm, with detention prior to trial or without trial as the carefully limited

exception. LEBP is defined as interventions and practices that are consistent with the legal and constitutional rights afforded to accused persons awaiting trial and methods that research has proven to be effective in decreasing failures to appear in court and danger to the community during the pretrial stage. Pretrial services-related research has identified a number of legal and evidence-based practices related to the pretrial investigation.

The pretrial investigation is the mechanism for relaying the necessary information to a judicial officer so that he or she can make the most appropriate pretrial release/detention decision. Recommended components of a pretrial investigation include an interview with the defendant; verification of specified information; a local, state and national criminal history record; an objective assessment of risk of failure to appear and danger to the community; and a recommendation for terms and conditions of bail.

Research has identified the use of an objective and research-based risk assessment instrument as a critical strategy for achieving pretrial justice. Pretrial risk assessment instruments should be proven through research to predict risk of failure to appear and danger to the community pending trial as well as equitably classify defendants regardless of their race, ethnicity, gender, or financial status. The results of the risk assessment instrument should be used to formulate a bail recommendation. The bail recommendation should include the *least restrictive* terms and conditions of bail that will reasonably assure that a defendant will appear for court and not present a danger to the community during the pretrial stage. Research has also identified bail recommendations that meet certain criteria as another critical practice for pretrial justice. Bail recommendations should be based on an explicit, objective, and consistent policy for identifying appropriate release conditions; be the least restrictive reasonably calculated to assure court appearance and community safety; and include financial terms of bail only when no other term will reasonably assure court appearance. Implementation of a research-based pretrial risk assessment instrument combined with an objective policy for bail recommendations is a pretrial services agency's most significant step toward pretrial justice.

Minimal research exists that identifies practices and interventions during the pretrial stage that honor the legal rights of the accused and have been proven to effectively reduce the risk of pretrial failure (failure to appear and danger to the community pending trial). Significant research is available that is applicable during the post-conviction stage of the criminal justice system. We must recognize the significant distinctions between the pretrial and post-conviction stages, including the purpose of bail, the intended outcomes of the different risk assessments, and the legal rights afforded to defendants during the pretrial stage.

For these reasons we must invest significant human and financial resources to conduct vital research in the following areas:

- refine existing pretrial specific legal and evidence-based practices,
- identify new pretrial investigation and supervision practices and interventions that are consistent with the rights afforded to pretrial defendants and have proven effective in identifying and reducing the risk of pretrial failure, and
- assess viability and conduct research when appropriate to determine the effectiveness of certain post-conviction evidence-based practices when applied to pretrial services.

Identifying and implementing legal and evidence-based practices that honor the legal and constitutional rights afforded to accused persons awaiting trial while protecting the community, maintaining the integrity of the judicial process, and assuring court appearance is the next pivotal step toward achieving pretrial justice.

back to top

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Figure 1: U.S. District Courts Pretrial Release & Detention Rates FY 1992-2006

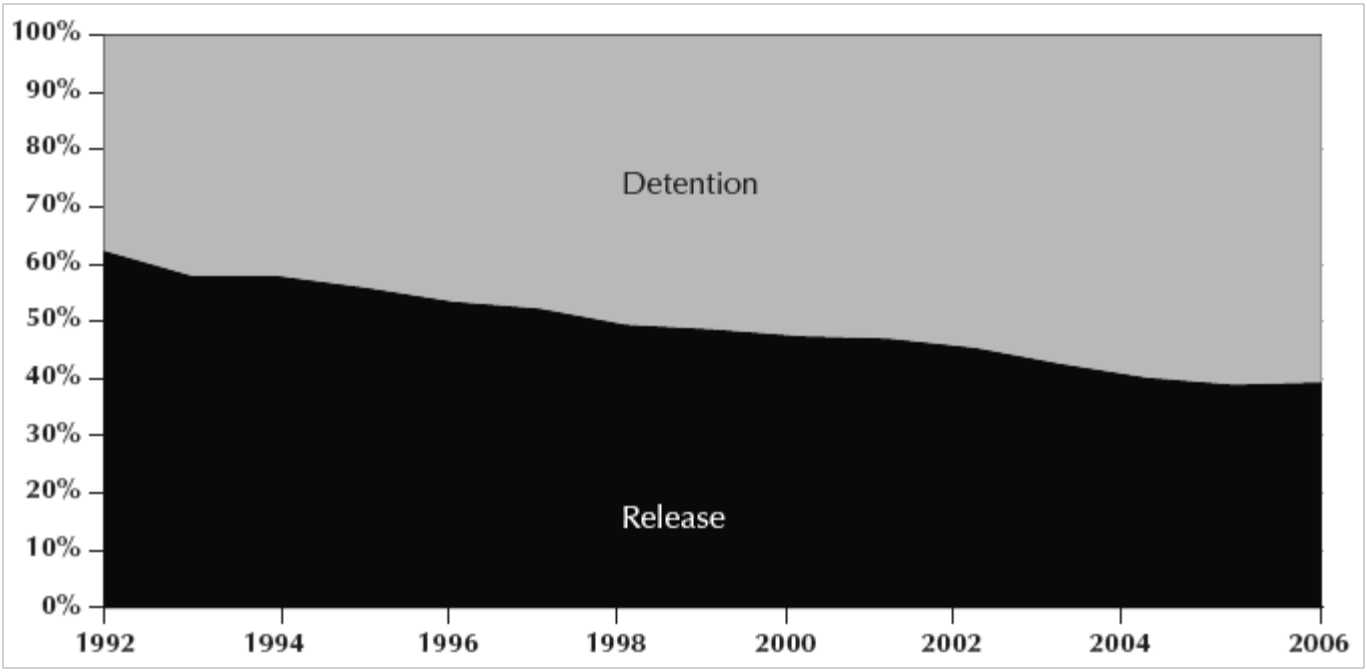


Figure 2: U.S. District Courts Pretrial Release & Detention Rates FY 1992–2006

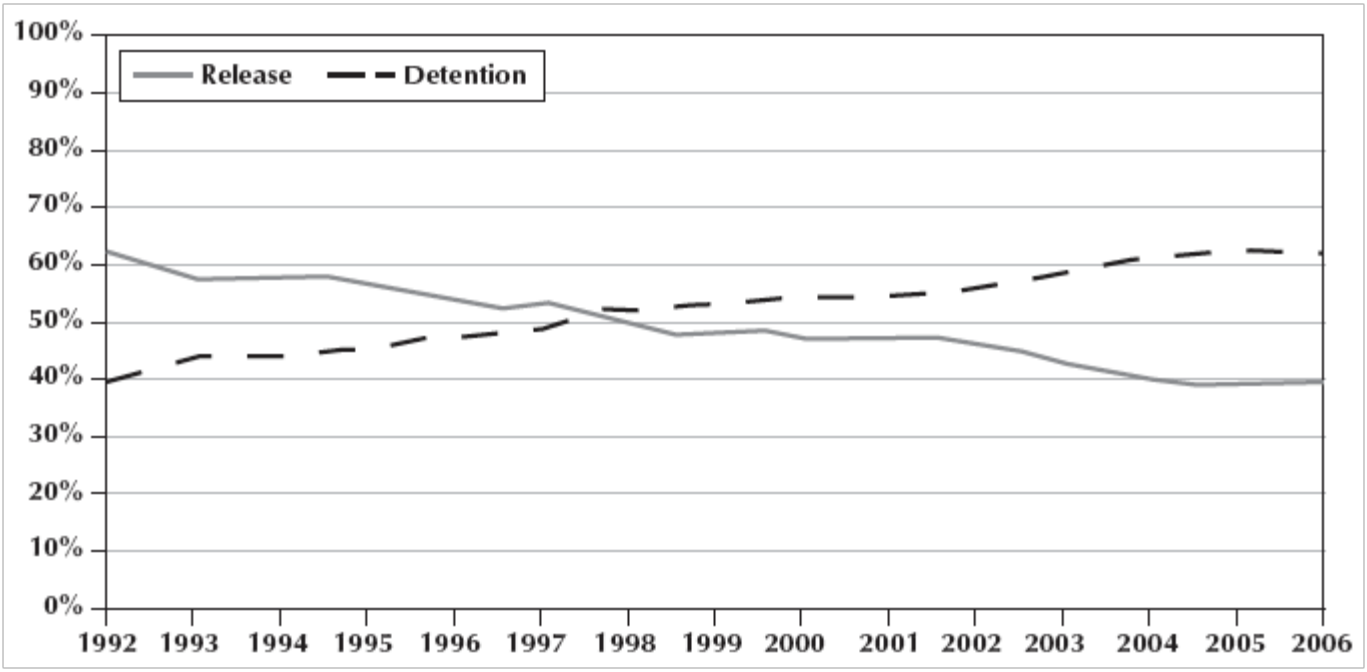


Figure 3: Felony Defendants in Large Urban Counties Release Rates 1992-2002

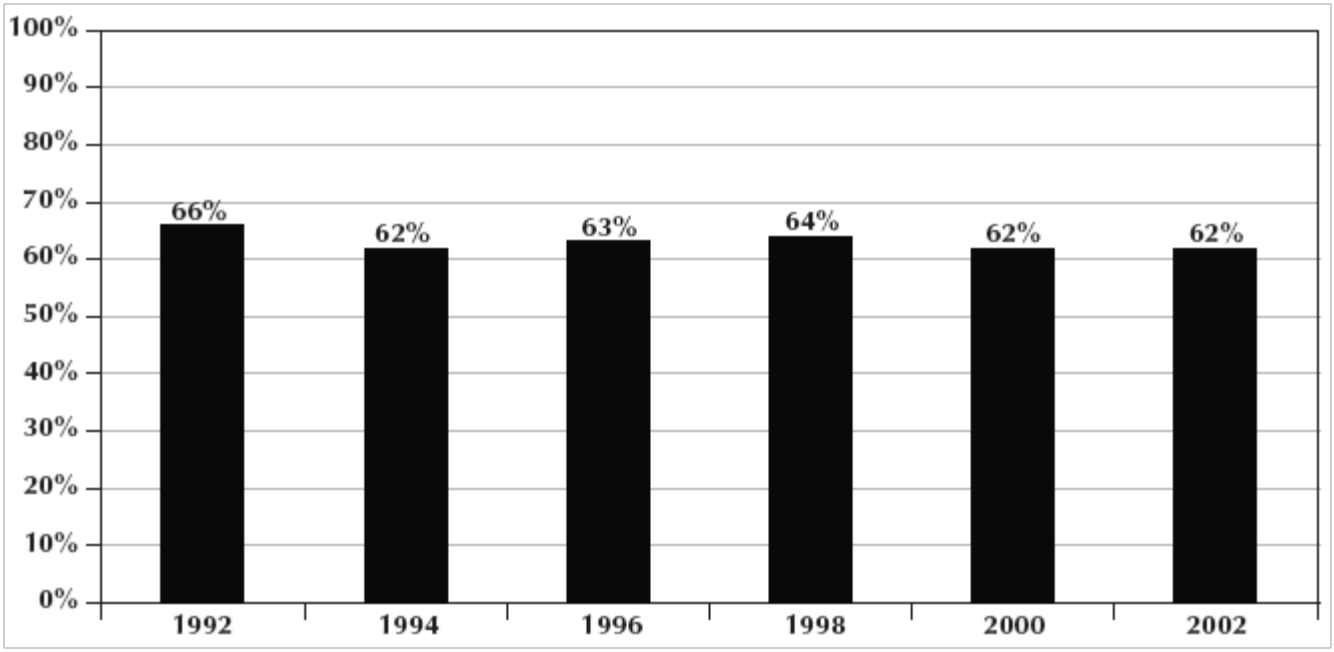
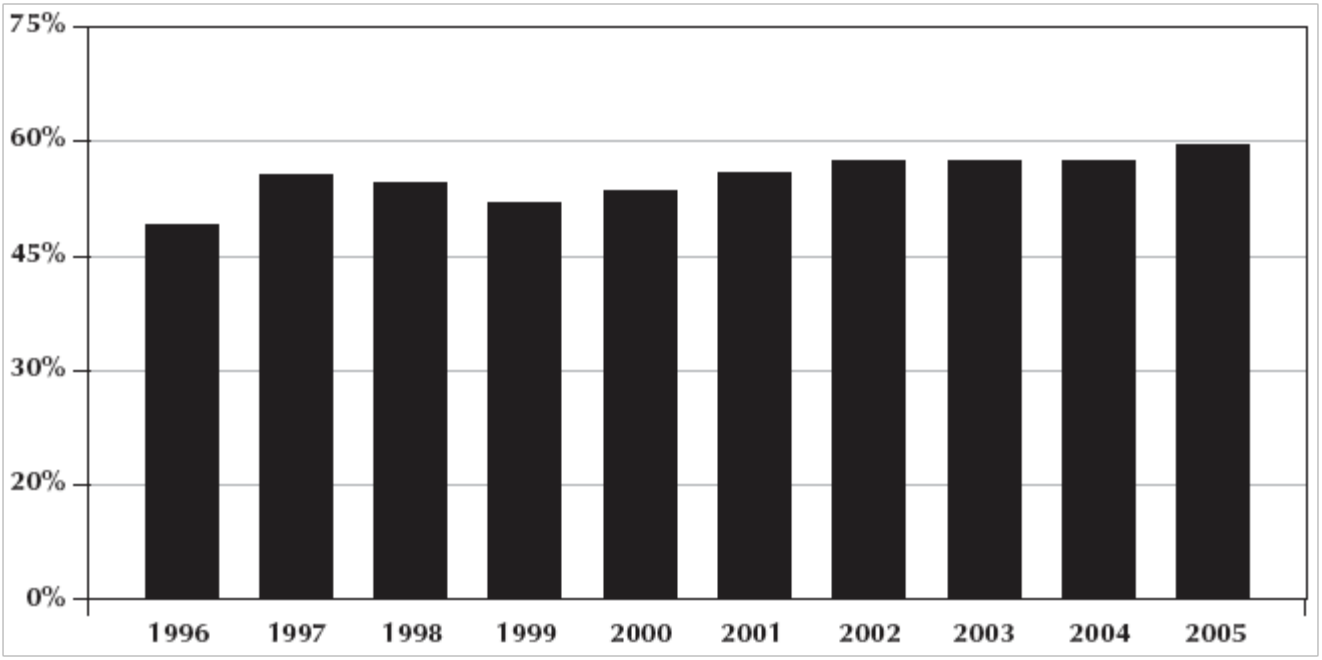


Figure 4: U.S. Jail Inmate Pretrial Population Midyear 1996-2005



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Pretrial Services Outcome Measurement Plan in the Federal System: Step One, Improve Data Quality*

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THE PRETRIAL SERVICES ACT of 1982 instituted pretrial services in the federal criminal justice system, but current management and organizational thinking holds that instituting an outcome measurement system is key to seeing pretrial services mature and fully develop in its second 25 years. The federal pretrial services system has recently begun the process of instituting such a system. This article is a discussion of that plan and the first task it is undertaking: the improvement of data quality. This article is not a policy statement or procedure determination for the federal pretrial services system. Rather, it merely attempts to apply outcome measurement principles and concepts to the federal pretrial services system in an effort to enhance the discussion within that system.

back to top

I. Outcome Measurement

The federal probation and pretrial services system is developing a results-based management framework that will, in the future, allow it to better assess performance—and make programming and resourcing decisions— based on what it accomplishes rather than solely on what it does. The flow chart shows the steps involved in developing the framework, and highlights where we are in the process.

1. Project Background
This focus on results, and the work done to date to define the system's mission, goals and desired outcomes, stems from a number of complementary influences and projects.

- In 1999, the Administrative Office of the U.S. Courts entered into a contract with a team of independent consultants, led by IBM, to conduct a strategic assessment of the federal probation and pretrial services system. The overarching recommendation from that assessment—presented first to the Administrative Office in 2003—was that the federal probation and pretrial services system become a results-driven organization with a comprehensive performance measurement system.
- In 2000, the AO Director appointed an Ad Hoc Supervision Work Group comprised of supervisors, deputies, and chiefs from seven districts and a representative of the Federal

Judicial Center to update the supervision policy monographs. As part of its work, the group reviewed relevant statutes and mission statements to identify the desired outcomes and goals to be served by the pretrial services and postconviction supervision functions. These outcomes and goals were incorporated into revised supervision policy documents approved by the Judicial Conference of the United States in 2003.

- Strategic planning sessions were conducted at the 2000 and 2002 Federal Judicial Center's National Chiefs Conferences. The 2000 conference produced a "Desired Futures" roadmap, the first element of which was: "Desired Outcomes are clear, measured and results are communicated." The 2002 conference resulted in a "Charter for Excellence" that sets forth broad system goals and values.
- In September 2003, one of the IBM strategic assessment consultants facilitated a strategic planning session at a meeting of the Chiefs Advisory Group to translate the broad "Charter for Excellence" statements into more specific "Operational Goals."
- The operational goals developed by the Chiefs Advisory Group were combined with the desired outcomes set forth in the revised supervision monographs to form the basic structure of the results-based management framework. This concluded the initial goal-setting stage of the framework development process. [1]

The current stage of the process is technical: The development of operational definitions and associated measures for each "desired outcome;" and of statistical approaches to analyze the information that will assure "apples-to-apples" comparisons and allow benchmarking with other programs. The product from this technical phase will be a set of recommendations, to be circulated for broad system comment, that address:

- How to measure a variety of outcomes— including defendant compliance, positive change, and crime reduction;
- What data are needed to construct the recommended measures; and
- What analytical methodologies can be used to assess how these results are affected by supervision interventions as well as by a variety of case, defendant and community factors?

The recommendations are to represent "state of the art" measurement and analytical approaches that are being used by other performance-based systems, program evaluations and/or academic research in criminal justice and related areas such as substance abuse. These recommendations will be circulated to system staff and stakeholders for review and comment to prepare the "Framework Design" document that will guide further refinement of the database and the analyses to be performed.

The next section of this paper will use pretrial services supervision outcomes to illustrate the technical concepts to be incorporated in the framework design. It should be noted that this section is an illustration and does not reflect any policies for pretrial services outcomes. It is provided merely to assist the reader in envisioning the future.

2. Pretrial Services Supervision Logic Model

Building on the results of the goal-setting stage of this project, the next step was to develop a logic model for pretrial services supervision that depicts the underlying assumptions about how "what the system *does*" affects what it is trying to *accomplish*; and what other factors—e.g., characteristics of the defendants to be supervised, the requirements and restrictions of their bail conditions, and the system resources devoted to carrying out the supervision mission—are expected to influence this relationship.

This logic model has been refined twice since its development following the goal setting stage. It will continue to be a work in progress that evolves to incorporate feedback from system staff and stakeholders, and results from empirical testing of the posited relationships.

back to top

Components of the Logic Model

The pretrial services supervision logic model has six components: inputs, process (activities), process outcomes, intermediate outcomes, ultimate outcomes, and mission. Each component is described below.

Inputs
Inputs are characteristics of the defendant population and the working environment that are hypothesized to affect expected outcomes *regardless* of system interventions. For example, prior research indicates that defendants with a lengthy prior record are more likely to become re-involved in criminal activity than those with no or a minimal prior record. This leads to a working assumption that, regardless of supervision interventions, districts that have a high percentage of first defendants will have a lower recidivism rate than those with a low percentage of first defendants.

Pretrial Logic Model
Inputs are used in the analytical model as "control" variables to account for the effects of factors that explain differences in outcomes across offices, districts and time that are not related to system interventions. They may also be used as stratification categories to display outcomes based on key groupings, e.g., by offense charge.

The current model includes as inputs those factors identified in the research and program evaluation literature as related to criminal justice goals. These include:

- Defendant characteristics (e.g., prior record, employment, family/community connections, demographics);
- Characteristics of the instant offense (e.g., class and category);
- Release parameters (e.g., supervision imposed, conditions imposed);
- Office/community characteristics (e.g., location, size, socio-economic indicators);
- Officer characteristics (e.g., experience, demographics, education);
- Supervision resources (e.g., supervision staffing, contract budgets, technological support).

The inputs categories will be further defined and the categories and their specific elements assessed for adequacy by system staff and stakeholders as part of the review of the technical framework document.

Process
Process refers to activities undertaken by the *system*—practices, programs and interventions—that implement the supervision function. As an example: An officer conducts an initial assessment investigation, identifies lack of stable employment as a risk, recommends an employment condition to the judicial officer, and refers the defendant for job counseling or to a job referral agency. In the analytical model, the process variables define "what we do" for purposes of assessing the basic relationship of how "what we do" relates to what we are trying to accomplish.

The current logic model includes only the most general process categories, e.g., investigation, assessment, monitoring, referral, and assistance. Detailed input on the specific processes that should be included in the model will be sought from system staff and stakeholders—the experts in identifying and defining salient system activities—as part of the outcome development process.

Process outcomes describe *defendant* actions that occur as a result of system activities. For example, in response to an employment referral, the defendant registers with an employment service or completes "x" hours of employment counseling. Process outcomes enter the analytical model as both an outcome of the service delivery process and as an input (control) for assessing ultimate outcomes. For example, "number of hours of employment counseling" is a measure of how successful an officer's employment referrals are in engaging defendants in employment services.

Ultimate Outcomes and Mission

The ultimate outcomes are set forth in *The Supervision of Federal Defendants, Monograph 111,* which establishes Judicial Conference policies related to pretrial services supervision. These outcomes are: To address the defendant's risks of nonappearance and/or dangerousness. As the Monograph states: "The desired outcome in all cases is for the defendant to successfully complete the supervision period by obeying the law, complying with any other conditions of release, and making required court appearances throughout the period of supervision." [2]

3. Relationships among Components
The arrows in the logic model indicate the specific expected relationships between components that the analytical model will be designed to test. Statistical techniques will be applied to test the relationships depicted. The analysis will test a complete thread of the model, starting from left to right. Basic and advanced techniques will be used to test both direct and indirect and unidirectional and bidirectional relationships, while controlling for inputs that are primarily static and outside the control of the officer. The results will move the system beyond a description of the defendant population and individual outcomes to a more complex assessment of the "theory of change" and the interconnectedness of process and outcomes for pretrial services supervision.

back to top

Operationalizing Pretrial Services Supervision Outcomes

This section further defines the process and outcomes in measurable terms. In order to empirically test the hypothesized relationships between pretrial services processes (activities) and outcomes of the defendant population, it is necessary to first identify appropriate measures for each outcome.

A process outcome represents the immediate outcome for the defendant as a result of system activities. An ultimate outcome is the long-term result of the system activities for the defendant. The ultimate outcomes also reflect achievement of the mission of the federal pretrial services system. The three ultimate outcomes that best reflect the mission include: minimize criminal activity during the period of supervision, minimize technical violations, and maximize appearance in court and self-surrender. The analysis of data on these ultimate outcomes will help protect the public and assist system staff and stakeholders to better assess if the missions of the fair administration of justice are being achieved. Each ultimate outcome is discussed below.

- *Minimize criminal activity during the period of supervision*—The primary measure of criminal activity during the period of supervision is whether a defendant was arrested for a new offense. Technical violations are not counted as a new offense. The analysis could also examine the time to arrest (length of time before the arrest for a new offense). Finally, the results could be presented overall and by offense type (e.g., violent, property, drug, public order, weapon, immigration) and offense level (felony, misdemeanor, petty).
- *Minimize technical violations*—The primary measures of technical violations during the period of supervision are judicial determinations that a defendant violated one or more conditions of release. The analysis could also examine the length of time before a technical violation.
- *Maximize appearance in court and self-surrender*— The primary measures of appearance in court and self surrender are judicial determination that the defendant failed to appear for a required court hearing or the Bureau of Prisons determines that the defendant failed to surrender. Technical violations, such as failing to report to a pretrial services officer, might not be counted as failures to appear. The analysis could also examine the time to failures to appear.

Ultimate outcome data enable system staff and stakeholders to test whether the system activities (processes) are leading to the longterm outcomes that the federal probation and pretrial services system is tasked with achieving. Furthermore, these data will allow system staff and stakeholders to assess how well they are doing at meeting their mission to protect the public and fairly administer justice.

back to top

II . Data Quality Improvement

From outcome measurement systems through data warehouses and a host of other big budget projects in government and business, the landscape is strewn with processes and systems that were undone by poor data quality. By beginning this undertaking for the federal pretrial services system with a focus on improving our data quality, the federal system hopes to avoid this quandary. The goal of a data quality program is not data perfection— that would be impossible and is frankly unnecessary. The goal should be consistently achieving acceptable levels of data errors. Experts in the field of data quality generally consider acceptable error to be no more than one or two percent of the total. This is a realistically achievable goal. This article closes by looking at the process developed and implemented to improve data quality in the federal pretrial services system.

1. Data Quality Improvement Working Group
In 2005, the Office of Probation and Pretrial Services formed a committee of chiefs, supervisors, officers, technical personnel and data quality analysts from probation and pretrial services offices in various districts. The mission of this committee was to provide advice and guidance to the Administrative Office of the U.S. Courts on issues related to the development of a formal data quality program.

The data quality working group has been put into place to help establish how data quality should be defined and how to communicate this information to the districts. The working group established a data quality website that has been used to provide standard data quality reports to the districts for correcting data that is necessary to move the Office of Probation and Pretrial Services to a national standard. Additionally, the working group understands that in order to receive long-term data quality improvement, we must provide the districts with standards and policies for everyday processes.

The working group realizes there is a need to provide information to the district chiefs and deputies along with the data quality analysts who are working with the data on a day-to-day basis. To date, the working group has made two presentations to the data quality analysts and one presentation to chiefs and deputies. The working group has provided the data quality analysts with the basic needs and information to equip them for the necessary data quality clean-up process.

2. Data Quality Improvement Program
The Office of Probation and Pretrial Services suggests that each district create their own data quality improvement program. The federal courts are a uniquely decentralized system, with each chief pretrial services officer/ chief probation officer reporting to a chief judge in one of 94 judicial districts. Given that structure, the data quality working group felt that in addition to a national data quality program, each district needed to have its own district data quality program. Therefore, one of the first products to emerge from the data quality working group was the “District Data Quality Program Development Guide.”

The Guide provides a step-by-step process districts can follow to develop a data quality program. The first step in launching a data quality program is strong leadership, direction and support of quality improvement activities by the chief of the district; these are key to performance improvement. The involvement of organizational leadership assures that quality improvement initiatives are consistent with the mission of the data quality working group.

The Guide recommended that each district establish this program and include one of each of the following representatives to create the team:

- Data Quality Manager (appointed by the chief)
- DQA / Lead DQA
- IT Worker

SUSPSO / Line Officer
- Treatment Specialist / Administrator
- Supervision Point of Contact Representative
- Data Entry Clerk

Once the team has been established, the district should develop a project plan and conduct an audit of the data, policies and procedures that need to be established. This will provide an understanding of the type of program to be developed, provide training to the entire staff, monitor the data, and improve daily processes. The Guide suggests that each district create a guide that will assist the district in this mission.

3. Data Quality Improvement Training
There are two primary issues in the training area for data quality: 1) How to develop training that adequately prepares data entry staff to enter data accurately and 2) How to develop training that adequately prepares data quality staff to identify data entered inaccurately. To accomplish these it is imperative that the districts create and implement training programs for all staff members. Data entry training should be provided following the established procedures for PACTS training established by the PACTS project team. For assistance, districts should work with the San Antonio Training Center. Creating true data quality training is more complex. The Office of Probation and Pretrial Services (OPPS), in coordination with the Data Quality Improvement Working Group and the Chiefs Advisory Group, developed the Regional Data Quality Improvement Conferences, held over the past year to begin to address this need. We hope that this is the first year of regional conferences on data quality improvement to be held. Even with that piece in place, however, more needs to be done to further enhance training opportunities for data quality analysts.

One of the most effective ways staff members can gain an appreciation for the tasks, issues, and problems data quality analysts and data entry staff encounter in the district is to spend time with the persons performing those functions. Staff can learn how they obtain the data they enter or verify in PACTS and what they do to verify the accuracy of the data once entered. Proceeding step-bystep through the process provides a wealth of knowledge about that process and often identifies problems in the process that can be rectified. For example, there is the issue of whether or not forms should be employed in the data entry process. Originally forms were encouraged and in fact shared and promoted by OPPS. However, the Probation and Pretrial Services Data Quality Improvement Group ultimately discovered that forms for the most part only add to the opportunity for data entry error. As a result OPPS now suggests that data entry be performed directly from source documents. Performing that type of process analysis locally can enhance your data entry procedures.

4. Data Quality Improvement Review System
Given the outcome measurement direction of the Office of Probation and Pretrial Services (OPPS), at the behest of the Criminal Law Committee of the Judicial Conference and with the cooperation of the Chiefs Advisory Group, failure to improve the data quality will result in erroneous decisions based on erroneous data. Any system designed to improve the effectiveness and efficiency of the federal pretrial services system by analyzing and reviewing data on existing procedures and outcomes can only succeed if the decisions are based on accurate, detailed, and reliable data. As with financial accounting and other disciplines, one important tool in improving data accuracy and establishing benchmarks for data accuracy are audits or reviews of the work.

The Office of Probation and Pretrial Services attempts to conduct 20 program reviews per year. Program reviews are designed to assist districts in identifying and addressing problems in existing processes and procedures. The reviews primarily focus on probation and pretrial services program and operational issues. Beginning in FY 2008 OPPS hopes to add data quality program reviews to the areas addressed during the program review of the office. To perform the review a variety of processes will be employed, including staff interviews, data analysis and comparison, and process analysis. It will conclude with a section in the program review report on findings and recommendations specifically focused on data entry and data quality.

Each district has specific areas and needs for improving data quality. The Data Quality Working Group was put into place to provide the field with assistance and guidance to develop a program that works for everyone. A self-assessment for pretrial services data quality improvement has been developed and is a step-by-step guide available to help districts to assess their practices and determine what areas need improving. The self-assessment will also prepare the office to meet national standards in the event of a program review. This self-assessment can be used by all districts regardless of staff or caseload size. This manual explains how to complete the assessment, provides forms for recording and tabulating the findings, and offers ideas for follow-up.

The Office of Probation and Pretrial Services recommends that each district work towards developing and implementing a program that maintains a national standard. The self-assessment will help districts achieve this goal and continue their focus on data quality.

back to top

** Parts of this article were adapted from a contract report previously submitted to the Administrative Office of the U.S. Courts by Caliber Associates.*

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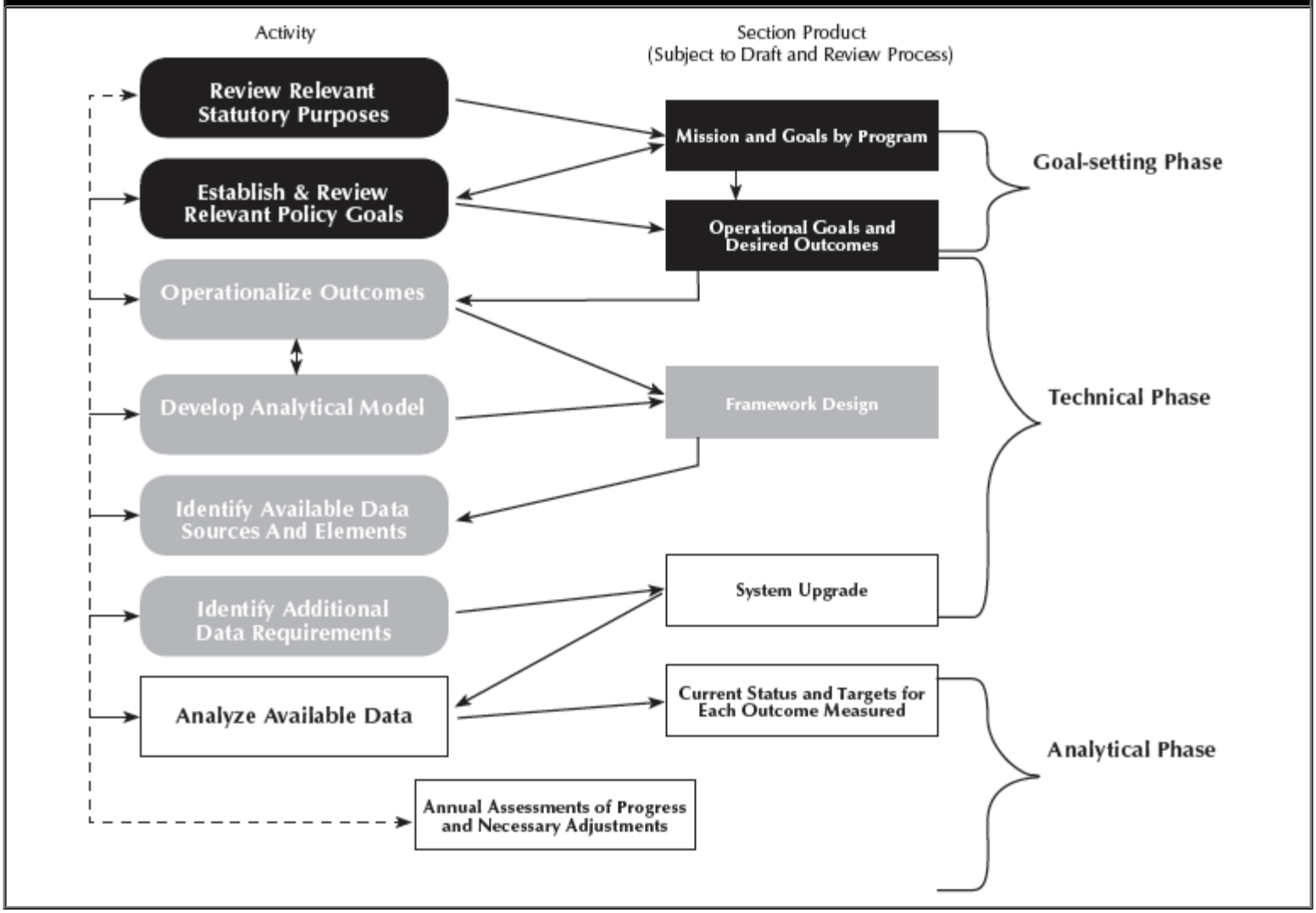
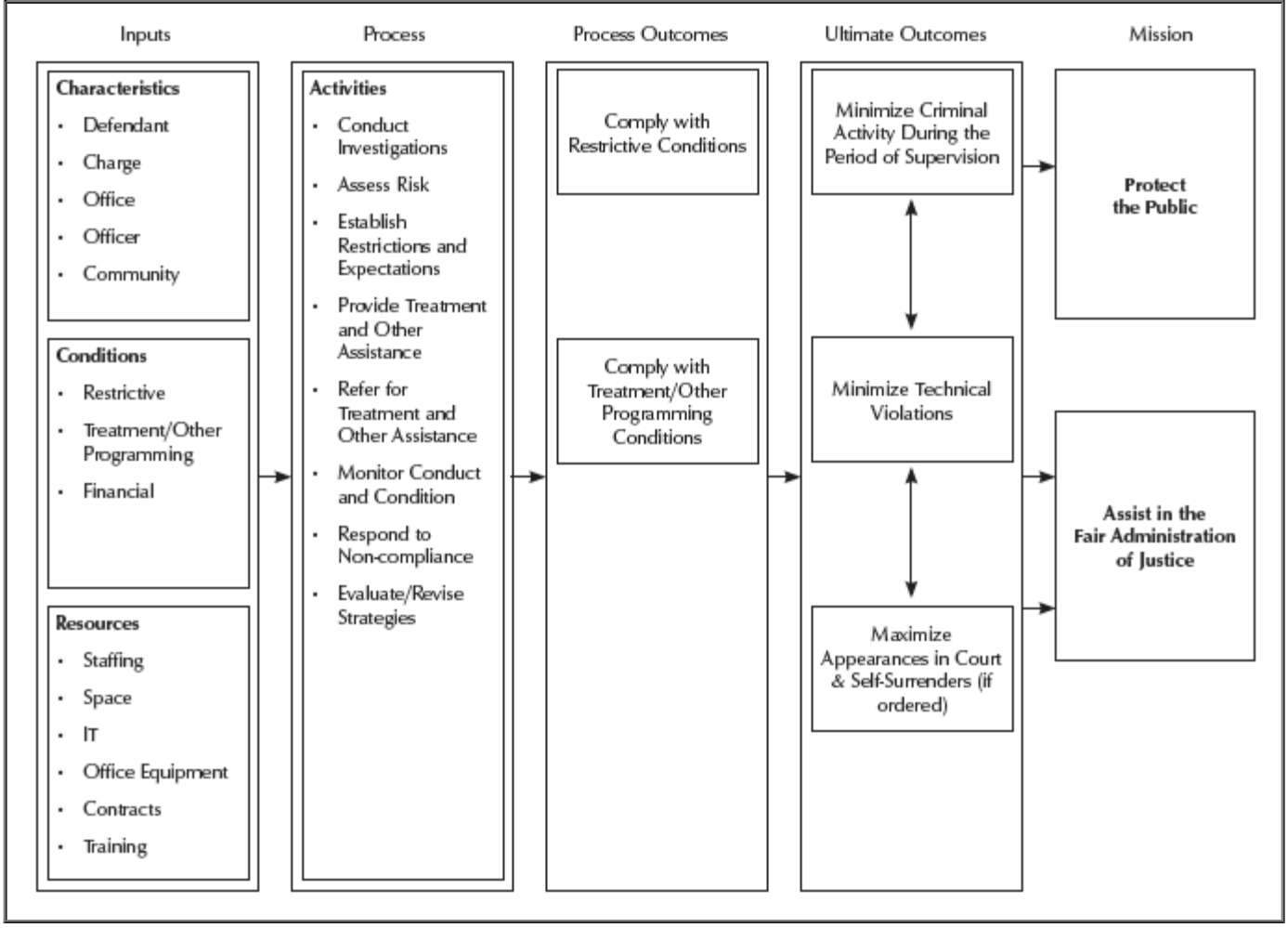
Status of Processing for Establishing Outcome Indicators for Supervision Functions

(Black=Completed; Gray=In Progress; White=Future Task)



Pretrial Services Supervision Logic Model



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The Impact of the Federal Pretrial Services Act of 1982 on the Release, Supervision, and Detention of Pretrial Defendants

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FOR MANY READERS of *Federal Probation*, it is common knowledge that the pretrial supervision of federal court defendants was authorized by President Ronald Reagan in 1982, with the signing of the federal Pretrial Services Act. However, most of us only know the date of the authorization; we are less familiar with the fact that pretrial supervision had its origins in an experimental program begun almost a decade earlier when Congress passed the Speedy Trial Act (1974). One part of this legislation allowed the Director of the Administrative Office of the U.S. Courts "to establish demonstration pretrial services agencies in 10 (of 94) judicial districts" (http://www.uscourts.gov/ fedprob/history/beginnings.html). The demonstration sites were not given a specific pretrial supervision model to develop, which allowed each judicial district to develop its own unique policies and procedures to determine what shape the demonstration program would take at each site. Because of its roots in diversity, it is not surprising that when the Pretrial Services Act of 1982 was passed, each federal judicial district was given the power to develop its own system of pretrial release and supervision: "Consequently, each court chose the form of pretrial services organization that best met its needs, considering such factors as criminal caseload and court locations" (http://www.uscourts.gov/fedprob/history/beginnings.html).

The Pretrial Services Act offers an excellent case study of the problems and advantages of moving from a multi-site demonstration program (10 sites) to fully operational, systemwide federal initiative (94 sites). One of the most interesting—and potentially controversial— features of this initiative is the degree of local autonomy given to federal district courts in the design and implementation of pretrial services. As a result of this decision, it is likely that the pretrial detention, release and supervision process varies considerably (both within and across the 11 circuits) from one federal court to the next, which may have consequences not only for the utilization of pretrial detention, but also for the nature and extent of pretrial supervision. When discretion in model development is allowed, there will inevitably be discussion of potential disparity (by gender, race, class, and/or other offense/offender characteristics) in pretrial release decision making (Taxman, Byrne, and Pattavina, 2005).

In this article, we will explore these issues while examining changes in the pretrial detention, release, and supervision of federal defendants for the period 1982 to 2007, utilizing data supplied by the Office of Probation and Pretrial Services of the Administrative Office of the U.S. Courts., as well as available data from the U.S. Courts Annual Reports, and the Bureau of Justice Statistics, including special reports on federal pretrial detention, release, and supervision practices. *[Note: Because the base years covered in these data sources vary, we tend to jump around somewhat in our analyses, but unfortunately, more complete data for the entire 25-year review period were not available at the time of our review.]* We begin our review with an examination of the changing patterns of federal pretrial release, detention, and supervision since the passage of the Federal Pretrial Services Act in 1982. We then provide an examination of changes in the profile of federal defendants and federal offenses prosecuted during our review period. We conclude our review with an examination of the emerging role of technology—and to a lesser extent, treatment—in the pretrial detention, release and supervision process.

back to top

1. The Changing Patterns of Federal Pretrial Release, Detention, and Supervision

The first observation we can offer about the pretrial supervision of federal offenders is that—by design—there are considerably more offenders under pretrial supervision today (more than 30,000) than in 1982 (less than 10,000). The growth in the pretrial supervision population is not surprising; in fact, it mirrors the growth rate of the entire federal pretrial system during this period (see Figure 1). For example, in 1982, there were approximately 40,000 defendants in criminal cases terminated in federal district court, but by year end 2001, the number of defendants in criminal cases increased to 80,000 (Bureau of Justice Statistics, 2005; see Figure 2, p. 11).

While it might be assumed that those federal offenders placed under pretrial supervision were *diverted* from federal pretrial detention facilities, it appears that the offender group targeted for pretrial supervision was much more likely to include offenders who would have been released anyway. As a result of the Federal Pretrial Services Act, we have essentially widened the net of social control, by authorizing the government to monitor and supervise individuals charged with federal offenses prior to trial/case disposition. Since the vast majority of released offenders—including both supervised and unsupervised offenders—appear in court on the scheduled date and do not commit new crimes during their release period, an argument can certainly be made that pretrial supervision of offenders already targeted for release is a waste of valuable federal corrections resources. However, it is also possible to argue that pretrial supervision strategies that focus on offender assessment and treatment prior to trial/disposition will pay dividends down the road, because the first step toward offender change is treatment provision—the sooner and longer the better.

Our second observation about the impact of the federal pretrial services act is that it has not reduced the rate of pretrial detention since its inception in 1982. In fact, beginning in the early 1990s, we have steadily increased the rate of federal pretrial detention in this country. Figure 2 highlights the recent changes in the federal pretrial detention rate for the period 1992-2004. In 1992, only 38 percent of all individuals charged with a crime were detained prior to trial; by 2004, 60 percent of all individuals charged with a federal crime were detained. Did alleged federal offenders change during this period in ways that increased their flight risk or dangerousness? We explore this issue in the next section, but it appears that what has changed during our 25-year review is not only the *offender* (there are more low-level drug users and more immigration violators than 25 years ago) but also the detention decisionmaking process itself.

This leads us to our third observation about pretrial release, supervision, and detention during our 25-year review period: Not only are offenders much more likely to be detained prior to trial today than they were 10, 15, and 25 years ago, but for those offenders who are released today, supervision is much more likely to be a condition of pretrial release. Figure 3 highlights changes in the use of supervised and unsupervised release during the period from 1992 to 2004. In 1992, a smaller proportion of offenders were released with supervision conditions (75 percent) than in

2004 (90 percent), despite the fact that offenders were much less likely to be detained in that year. This is somewhat surprising, because it would certainly appear that with a greater proportion of all pretrial defendants released, the need for supervision would be greater then than now. What appears to have happened is that pretrial supervision has become a standard feature of pretrial release. What was once the exception is now the rule.

To reinforce the control component of community supervision at the pretrial stage, a variety of other conditions of release are now "standard practice" in federal courts across the country, including drug/alcohol testing, mandatory substance abuse treatment, mandatory mental health treatment, the use of electronic monitoring to monitor compliance with home confinement/curfew conditions, and restrictions on computer use by sex offenders (U.S. Probation and Pretrial Services, 2005). Not surprisingly, more release conditions translate into more technical violations during the pretrial release process. According to a recent review by Motivans (2006: 14, table 9), the percentage of technical violations by defendants on supervised pretrial release increased significantly between 1994 and 2003. In 1994, 10.9 percent of the 27,607 defendants released prior to trial had a technical violation, but in 2003, 18.2 percent of the 31,613 defendants on pretrial release were identified as technical violators. Importantly, there were no changes in either the percentage of defendants charged with new crimes (3.2 percent vs. 3.4 percent) or the percentage of defendants who failed to appear in court (2.3 percent vs. 2.2 percent) during this review period. This certainly suggests that setting multiple release conditions and identifying technical violators of these release conditions does not improve community safety and the appearance of defendants at subsequent court dates.

We need to emphasize that detection of a technical violation of the conditions of supervised release does not automatically result in the pretrial detention of the defendant; how a district court will respond to technical violators is a policy decision that changes over time and varies from court to court (Bureau of Justice Statistics, 2005). For example, in 2002, 12 percent of all pretrial releasees were revoked and sent to pretrial detention due to a technical condition violation, while in 2004 the technical revocation rate dropped to 8 percent. This recent drop in revocations could be due to a variety of factors, including increased compliance, decreased detection of noncompliance, and/or changes in revocation policies and practices (for example, in 2004, twenty percent of all released defendants violated at least one condition of their release, but only 8 percent were terminated, which translates to revocation in 40 percent of all detection cases). However, since only 2 percent of all defendants who are released failed to appear for trial/case disposition in 2004 and only 4 percent of all released defendants were charged with committing new crimes while on pretrial release, it appears that the current system works quite well. The question is whether similar results could be obtained without 1) detaining 75 percent of all defendants (*Note: this figure includes those defendants initially detained plus those defendants released to community supervision but subsequently detained for a technical violation; see Motivans, 2006 table 8, p. 12*), and/or 2) using direct supervision and other release conditions for 80 percent of the pretrial release population.

One final observation about changes in the pretrial detention and release policies during the past 25 years is that there is considerable variation in the pretrial detention, release, and supervision process across the federal district court system. This variation is not unexpected, and it can be linked to the decision—by the architects of the Federal Pretrial Services Act—to allow local district courts the discretion to design a pretrial services system that best suited the unique needs of each jurisdiction, given such factors as defendant profile, case volume, workload/ staffing levels, and availability of resources for both offender control and treatment (in detention or in the community). As we noted at the outset of this review, there is considerable evidence that in the criminal justice decision-making arena, discretion leads to disparity (Taxman, Byrne, and Pattavina, 2005; Byrne and Rebovich, 2007).

Examination of the most recent data on federal pretrial detention decisions (Duff, 2006, Table H-14) reveals considerable variation in pretrial detention rates, both within and across each of the 11 federal court circuits in 2006, with pretrial detention rates ranging from a low of 43. 6 percent in the 6th circuit to a high of 73.8 percent in the 10th circuit. Focusing on individual federal district court variation, we found that overall 60.6 percent of all defendants were detained and

never released, but that individual court detention rates ranged from a low of 25.5 percent (VT), to a high of 88.8 percent (CA, N). Looking back a decade to 1996 (see Scalia, 1999, Table A-1, p. 12), we find a much lower overall detention rate (only 34 percent in 1996), but similar district court level disparity in the percentage of defendants ordered detained by the court prior to trial, with a low of 3.1 percent (Northern Alabama) and a high of 74.9 percent (Virgin Islands). A comparison of changes in the rate of detention across the comparison years for which data on pretrial detention rates in federal district courts are available (1996–2006) reveals that there were significant changes (mostly increases) in detention rates in several district courts over time (Table not shown). We suspect that these changes are likely the result of policy shifts at each of these courts, rather than simply a function of changes in the types of defendants entering these courts. We explore this issue further in the following section.

back to top

2. The Changing Profile of the Federal Offender

One explanation for changes in detention and pretrial supervision policies and practices is that today's pretrial defendants are "different" from their early eighties predecessors in terms of both their flight risk and their threat to the community (i.e., recidivism risk). Two groups of defendants come immediately to mind: immigration violators (who comprised 24 percent of all defendants in 2004), and drug law violators (who comprise 44 percent of all federal pretrial defendants). In 1982, a much smaller proportion of the federal pretrial defendant population came from these two groups of defendants. Even during the early 1990s only a fraction of all federal criminal defendants were facing immigration charges (less than 5 percent of the 44,667 cases filed in U.S. District Courts in 1994), while sharp increases in drug cases were recorded during this period (about 25 percent of all cases in 1994).

Tables 1 and 2 highlight changes in the offense profile of federal defendants for the period 1993-2001. Clearly, there have been a number of specific changes in the offense profiles of federal defendants during our review period, with major reductions in various categories of white collar crime and major increases in defendants charged with violations of immigration laws (235 percent) and sex crimes (122 percent), along with a moderate increase (11 percent) in the number of drug–related defendants. It is apparent that the priorities of federal law enforcement and federal prosecutors changed during this period.

It should come as no surprise that pretrial release decisions vary by the *nature of the alleged offense*. According to a recent report from the Administrative Office of the U.S. Courts (2005:1), "Defendants charged with property offenses or public order offenses were more likely to be released prior to trial (70 percent and 63 percent respectively) than were defendants charged with weapon (32 percent), drug (29 percent), or immigration (5 percent) offenses." There is no evidence that these offense-specific variations in detention decisions can be explained by such factors as prior offense history or even demonstrated flight risk. Since certain offense types are directly related to the age, race, and ethnicity of federal defendants, it can be argued that offensedriven pretrial detention policies (e.g. detaining almost every individual charged with an immigration violation) result in racial disparity in pretrial detention decision-making.

Table 3 highlights the impact of offense-driven detention policies on the defendants we detain prior to trial, by comparing characteristic specific detention decisions in 1992 versus 2004. A number of changes are worth noting, but the one that is most troubling is the pretrial detention rate for Hispanic origin defendants, which increased from 82 percent to 94 percent during our review period. This is likely due to our current presumption of detention for defendants charged with immigration violations. Even defendants charged with violent crimes, and defendants with extensive prior convictions, are more likely to be released than Hispanic defendants. The assumption is that defendants charged with immigration law violations pose a greater *flight risk* than other groups of defendants, which is true: the failure to appear rate (4.3 percent in 2003), although it is quite low, is higher for this group of defendants than for other defendant groups (3.1 percent for defendants in drug cases, 2.8 percent for defendants charged with violent crimes in 2003). However, it is not true that defendants in immigration cases pose a greater *danger to*

public safety than other groups of defendants; in fact, the opposite is true. In 2003, for example, 2.3 percent of all immigration defendants were charged with a new crime during pretrial release, as compared to 6.9 percent of all defendants charged with weapons offenses, and 4.9 percent of drug defendants released prior to trial (Motivans, 2006, table 9, p. 14).

Because the Federal Pretrial Services Act of 1982 allowed federal district courts broad discretion on how to establish and maintain the pretrial system in each jurisdiction, we suspect that rooting out possible disparity will be a more difficult task than if a single, centralized pretrial services system had been created at the outset. Nonetheless, it appears that the changing profile of the federal offender is at least partially responsible for the steady increase in the pretrial detention population we documented earlier in this review and for the increased use of supervision and other release conditions for those defendants who are released during the pretrial stage of the federal court process. In particular, one group that stands apart from other federal court defendants is the street level drug user who has ended up in federal court as the result of federal prosecutors' use of "drug sweep" initiatives as part of our nation's War on Drugs. These offenders are more likely to have prior convictions than other federal defendants, which is why they have such a high detention rate (71 percent); and why—when (or if) they are released pretrial—they will likely have mandatory supervision, drug testing, and drug treatment as conditions of pretrial release. Unfortunately, this group of offenders will likely violate these release conditions, resulting in much additional workload on the part of pretrial probation supervision officers in both detection and revocation. Given the strain placed on pretrial resources by drug defendants who are users and/or low-level drug dealers, it appears that diverting these offenders out of federal court and into state courts/drug courts would be a more judicious use of federal court resources.

back to top

3. The Emerging Role of Technology (and Treatment) in Federal Pretrial Release, Supervision, and Detention Decisions

The Pretrial Services Act of 1982 expanded the role of federal probation officers to include the *pretrial* community supervision of selected defendants who would either have been detained prior to trial or released prior to trial with no direct community supervision. While it would be logical to assume that creating an *alternative* to detention would decrease the federal pretrial detention rate [note, although we use the term "rate," we refer specifically to the percentage of all defendants initially detained in federal court], it is well documented that the pretrial detention rate has actually increased significantly over the past 25 years. As we noted earlier, the pretrial detention rate was only 38 percent in 1992; today, close to 70 percent of all federal defendants will be placed in pretrial detention facilities. One possible explanation for this increase can be linked to the changing profile of federal defendants—there are simply more defendants today who need to be detained, either because they are flight risks (e.g. immigration law violators) or because these defendants pose a substantial threat to the community if released (e.g. weapons violators and drug offenders). Adherents to this view would argue that pretrial detention and release decision-making has actually not changed significantly during this period; but that the offense/offender profile of federal defendants did change, because federal law enforcement set new priority areas for arrest and prosecution of certain categories of federal crimes. This argument is initially supported by the fact that offense/offender profiles have changed considerably during this period, due primarily to our preoccupation with drugs, weapons, and immigration law violations (the new "trifecta" of federal law enforcement). However, examination of Tables 1 through 3 revealed something else: there have been significant changes in detention decision-making vis-à-vis specific offense and offender characteristics during our review period, which certainly suggests that a more control-oriented pretrial detention system is in place today than in 1982.

To understand why and how this change has occurred, it is necessary to consider the emerging role of both hard and soft technology in pretrial release decision-making and in the pretrial supervision of offenders. According to a recent review by Byrne and Rebovich (2007:3), hard technology innovations include new materials, devices and equipment, while soft technology

innovations include new software programs, classification systems, and data sharing/system integration techniques. Examples of soft technology innovations can be found in probation and pretrial services offices across the country, including the implementation of PACTS^{ecm} (Probation and Pretrial Services Automated Case Tracking System-Electronic Case Management), access to integrated criminal record and warrant data from federal, state and local law enforcement record systems, and the use of computer software to monitor the computer activities of defendants charged with various forms of internet-related sex crimes. Hard technology innovations include the use of portable, laptop computers by almost 5000 officers in 94 districts (U.S. Courts Long Range Plan for Information Technology, 2007), expansion of pretrial drug testing for all federal defendants as a result of "Operation Drug Test" (See, e.g. Longshore, Taxman, Harrell, Fayne, Byrne, and Taylor, 2003), and the expanded use of electronic monitoring devices (to monitor compliance with curfew and/or home confinement release conditions) during supervised pretrial release.

In 2006, 4,726 federal defendants were released with a home confinement condition, while over 17,000 federal defendants were released with drug testing conditions, either alone (7,957) or in conjunction with a mandatory treatment condition (9,629) according to the most recent report from the U. S. Courts (2007, Table h-8, p. 328). With better access to complete criminal record and warrant data, along with improvements in case management systems, we suspect that defendants who would have fallen through the cracks and been released in previous years will now be detained. In addition, improved monitoring of release conditions (via drug testing and electronic monitoring) has increased the technical violation rate, resulting in pretrial detention for a significant proportion—about 40 percent—of these technical violators.

Although improvements in both hard and soft technology appear to increase the utilization of pretrial detention for federal defendants, it is certainly possible to describe a variety of ways that technological innovations can be used to reduce our reliance on costly pretrial detention strategies without significant increases in either the failure to appear rate (which is currently about 2 percent) or the percentage of offenders arrested during pretrial release for new criminal offenses (which is currently about 4 percent). Our point is simple: technology is an instrument of policy, a means to an end. It can certainly be used—in conjunction with policies and practices that result in *high* rates of pretrial detention—to effectively control offenders between arraignment and conviction/ case disposition. However, if you are concerned with either the cost or fairness of current pretrial detention policies and practices, then it probably makes sense to consider the role of technology in the development of alternatives to detention.

We suspect that similar pretrial outcomes could be obtained using technology-driven, but treatment—rather than control—oriented policies and practices that will result in low rates of pretrial detention, perhaps driven by a return to release policies in vogue prior to implementation of the Federal Pretrial Services Act of 1982. There is some evidence that the federal pretrial system is considering "throwing back the clock" in this manner, but only for one group of defendants—low-level defendants with substance abuse problems. In 2006, 19,017 pretrial defendants were supervised in the community with substance abuse conditions; of these offenders, 5,972 received judiciary-funded substance abuse treatment, which cost the federal government a little over 8 million dollars, approximately $1,362 dollars per defendant (U.S. Courts, 2007, Table S-14, p. 70). Not surprisingly, it is more likely that pretrial defendants receive a drug testing condition than a combination drug testing and mandatory drug treatment condition. In many jurisdictions, detection of ongoing substance abuse is viewed as a primary probation/pretrial function, while treatment provision is not viewed in the same light. This assessment is supported by an examination of inter-district variation in the use of mandatory treatment conditions and the average expenditures per defendant (U.S Courts, 2007, Table S-14, p. 70). Given the proportion of all pretrial defendants that could be classified as "low level offenders with substance abuse problems" (we estimate at least a third of all defendants), a policy change that resulted in a presumption of release for these defendants would result in a significant reduction in the current pretrial detention population. However, we would anticipate that many of these defendants will find their way back into the pretrial detention system unless we develop strategies of pretrial release designed to provide both treatment and control to these defendants.

back to top

Conclusion

The Federal Pretrial Services Act of 1982 has expanded the role of the federal probation system to include the pretrial release and supervision of federal defendants. However, the pretrial "system" that we now have in place in 94 U.S. District Courts does *not* appear to be based on the notion that federal pretrial probation officers can effectively supervise defendants in the community, and relies instead on a "presumption of detention" for most categories of federal defendants. Our review of the available evidence has identified considerable inter-district variation in 1) the use of pretrial detention, 2) the use of restrictive pretrial release conditions, and 3) the use (and funding) of pretrial treatment for defendants with substance abuse (and mental health) problems. We considered two possible explanations for the high pretrial detention rates for federal defendants— changing offender profiles (in particular, the greater proportion of immigration, drug, and weapons defendants) and changing detention policies—and our preliminary review suggests that both have an influence; but it is *policies that matter most*. We concluded our review by considering the role of hard and soft technology (and treatment) in support of policies designed to result in high versus low rates of pretrial detention. It is our contention that recent technological innovations provide an opportunity to monitor and control defendants in the community, without negative consequences for either court processing (i.e., failure to appear rates) or community safety (i.e., new crimes by defendants during pretrial release). For defendants on pretrial release, it seems reasonable to develop supervision strategies that attempt not only to monitor compliance with control-oriented release conditions, but also to begin (more likely continue) attempts to change the criminal behavior of these individuals, utilizing a variety of rehabilitation strategies.

back to top

References

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Figure 1: Pretrial Supervision of Federal Offenders, 1984–2007.

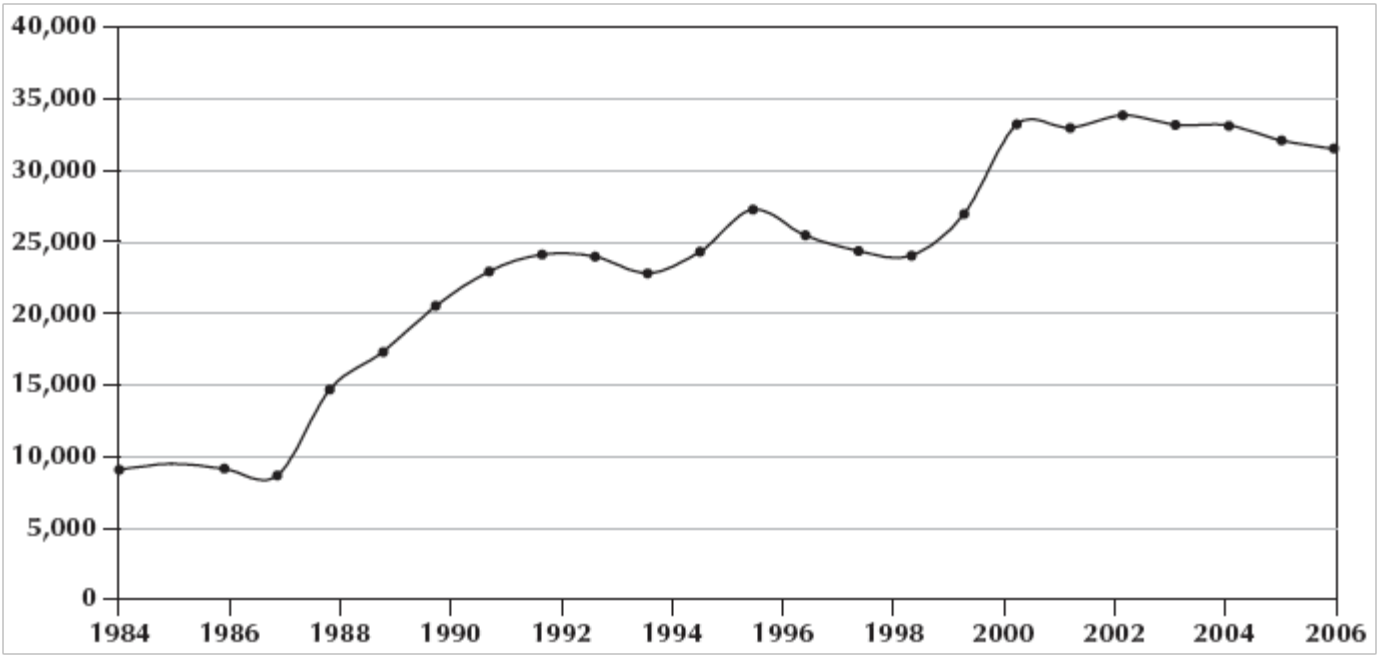

Figure 2: Percent of Federal Offenders Released or Detained Prior to Trial, 1992–2004.

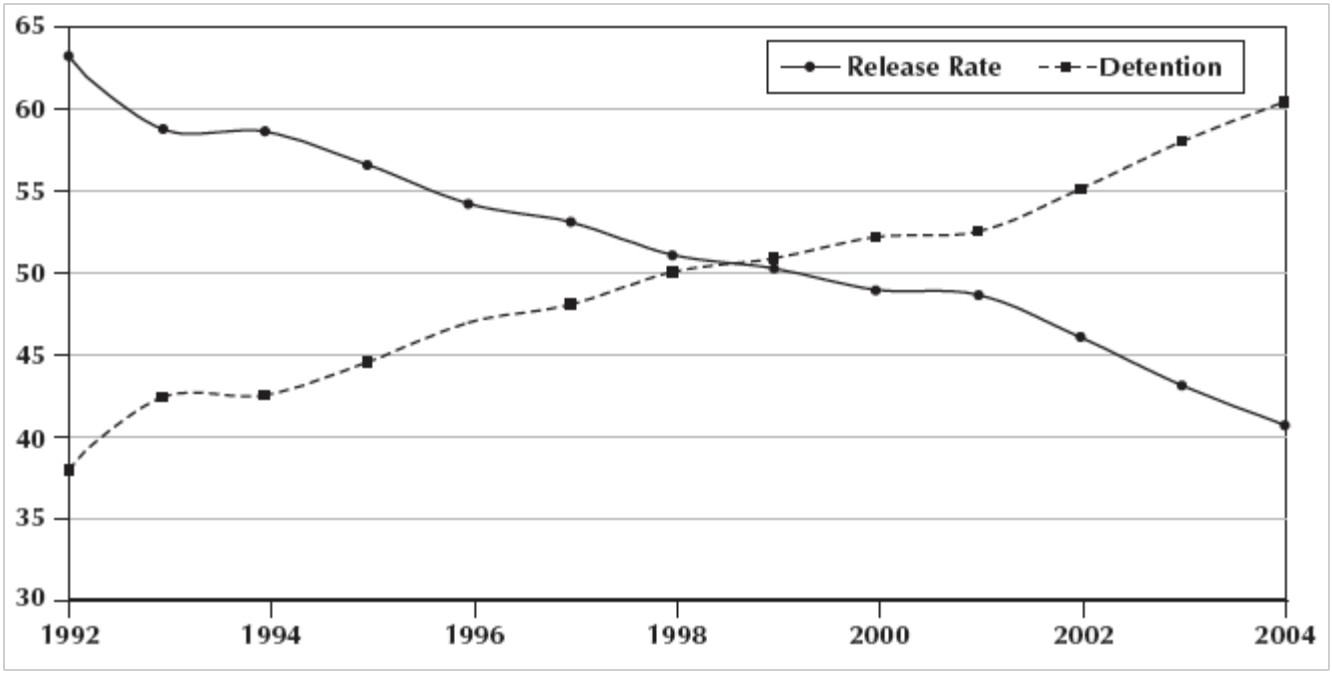

Figure 3: Percent of Federal Offenders Released or Detained Prior to Trial, 1992–2004.

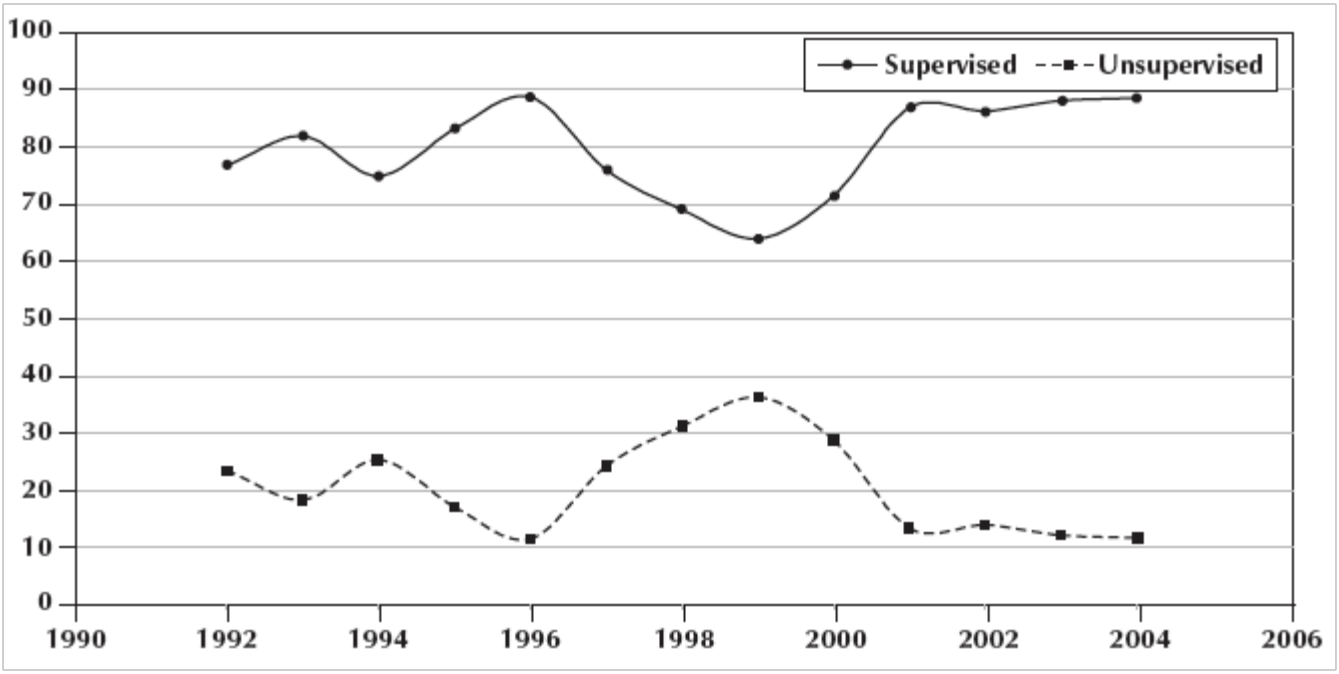

Table 1: Criminal Cases Filed in U.S. District Courts, By Offense Type, Fiscal Years 1993–2001.

Offense	1993	1994	1995	1996	1997	1998	1999	2000	2001
Total	45,902	44,678	45,053	47,146	49,655	57,023	59,251	62,152	62,134
Miscellaneous general offenses	11,838	12,414	11,114	10,462	10,386	10,856	11,747	12,544	13,190
Drunk driving and traffic	6,228	7,080	5,214	5,045	4,974	4,982	5,005	4,679	4,958
Weapons and firearms	3,637	3,112	3,621	3,162	3,184	3,641	4,367	5,387	5,845
Escape	725	739	697	723	587	564	639	635	582
Kidnapping	67	68	81	116	99	150	101	111	104
Bribery	205	283	190	152	168	174	158	145	131
Extortion, racketeering, and threats	491	509	713	557	572	617	534	557	466
Gambling and lottery	75	80	26	16	24	22	16	17	6
Perjury	11	93	85	99	87	126	91	113	137
Other	299	450	487	592	691	580	836	900	961
Fraud	7,575	7,098	7,414	7,633	7,874	8,342	7,654	7,788	7,585
Drug laws	12,238	11,369	11,520	12,092	13,656	16,281	17,483	17,505	18,425
Larceny and theft	3,322	3,337	3,432	3,674	3,299	3,590	3,514	3,414	3,242
Forgery and counterfeiting	1,059	1,093	1,001	987	1,156	1,346	1,292	1,203	1,212
Embezzlement	1,857	1,575	1,368	1,284	1,172	1,397	1,315	1,200	1,072
Immigration laws	2,487	2,595	3,960	5,526	6,677	9,339	10,641	12,150	11,277
Federal statutes	2,200	2,084	2,403	2,317	2,156	2,363	2,241	2,844	2,573
Agricultural/conservation acts	254	247	401	313	267	333	277	316	282
Migratory bird laws	27	39	27	48	22	42	18	52	56
Civil rights	62	70	73	73	59	77	81	80	76
Motor Carrier Act	20	11	12	7	8	6	16	5	3

Antitrust violations	71	43	38	31	34	25	39	43	28
Food and Drug Act	67	46	55	48	48	47	59	52	70
Contempt	56	74	69	81	77	80	78	109	158
National defense laws	144	95	85	62	73	55	68	533	462
Customs laws	69	88	97	110	97	125	96	97	79
Postal laws	212	182	202	152	165	152	119	112	135
Other	1,218	1,189	1,344	1,392	1,306	1,421	1,390	1,445	1,224
Robbery	1,789	1,520	1,240	1,365	1,453	1,448	1,295	1,258	1,355
Bank	1,714	1,468	1,168	1,291	1,384	1,392	1,250	1,219	1,325
Postal	51	35	43	36	29	32	29	25	16
Other	24	17	29	38	40	24	16	14	14
Assault	523	563	561	540	527	629	529	665	622
Motor vehicle theft	349	335	267	232	189	182	189	199	180
Burglary	141	139	63	65	70	89	72	59	52
Homicide	181	195	295	344	348	384	383	370	329
Sex offenses	337	359	412	623	690	777	893	944	1,017
Liquor, Internal Revenue	6	2	3	2	2	0	3	9	3
Source: Sourcebook of Criminal Justice Statistics; 2001 Table 5.10 (http://www.albany.edu/sourcebook)									

Table 2: Percent Change in the Cases Filed in U.S. District Courts, by Major Offense Type, 1993–2001.

	1993		2001		
	Total	%	Total	%	**Change**
Miscellaneous general offenses	11,838	25.8	1,3190	21.2	-17.7
Fraud	7,575	16.5	7,585	12.2	-26.0
Drug laws	12,238	26.7	18,425	29.7	11.2
Larceny and theft	3,322	7.2	3,242	5.2	-27.9
Forgery and counterfeiting	1,059	2.3	1,212	2.0	-15.5
Embezzlement	1,857	4.0	1,072	1.7	-57.4
Immigration laws	2,487	5.4	11,277	18.1	235.0
Federal statutes	2,200	4.8	2,573	4.1	-13.6
Robbery	1,789	3.9	1,355	2.2	-44.0
Assault	523	1.1	622	1.0	-12.1
Motor vehicle theft	349	0.8	180	0.3	-61.9
Burglary	141	0.3	52	0.1	-72.8
Homicide	181	0.4	329	0.5	34.3
Sex offenses	337	0.7	1,017	1.6	122.9
Liquor, Internal Revenue	6	0.0	3	0.0	-63.1

Source: Sourcebook of Criminal Justice Statistics; 2001 Table 5.10 (http://www.albany.edu/sourcebook)

Table 3: Federal Defendants Released or Detained Prior to Trial in U.S. District Courts

	Defendants		% Released			% Detained		
	1992	2004	1992	2004	Change	1992	2004	Change
All defendants	49,834	78,219	61.9	39.6	-36.0	57.2	77.1	34.8
Sex								
Male	41,855	66,654	58.0	34.6	-40.3	61.2	81.2	32.7
Female	7,957	11,481	82.3	68.4	-16.9	36.0	53.7	49.2
Race								
White	33,713	55,408	63.4	35.9	-43.4	55.5	79.3	42.9
Black	13,391	18,155	57.8	47.3	-18.2	61.1	71.8	17.5
Other	2,730	3,226	62.9	55.3	-12.1	58.0	73.6	26.9
Age								
16 to 18 years	906	1,267	60.8	43.8	-28.0	60.8	77.4	27.3
19 to 20 years	2,607	3,990	59.2	42.9	-27.5	62.9	77.6	23.4
21 to 30 years	18,451	30,522	56.1	34.7	-38.1	63.9	81.6	27.7
31 to 40 years	15,307	23,396	61.2	35.5	-42.0	58.5	80.4	37.4
Over 40 years	12,217	18,725	72.0	51.3	-28.8	43.8	65.7	50.0
Fraud								
Less than high school graduate	15,472	24,034	54.4	32.2	-40.8	68.2	86.2	26.4
High school graduate	14,838	18,717	69.6	55.5	-20.3	50.0	68.2	36.4
Some college	9,082	10,137	73.9	68.2	-7.7	44.9	55.9	24.5
College graduate	3,853	4,220	80.4	77.2	-4.0	34.7	44.2	27.4
Marital status								
Never married								

	15,411	23,060	58.4	44.8	-23.3	61.9	76.4	23.4
Divorced/separated	8,802	11,146	66.9	53.1	-20.6	53.6	69.5	29.7
Married	17,133	19,049	70.2	52.5	-25.2	47.6	67.2	41.2
Common law	3,254	5,668	51.2	39.1	-23.6	72.6	82.2	13.2
Other	5,234	19,296	43.1	13.0	-69.8	70.5	90.6	28.5
Employment status at arrest								
Unemployment	19,247	27,936	54.6	39.5	-27.7	65.2	80.4	23.3
Employed	25,198	30,264	72.5	58.1	-19.9	47.1	64.2	36.3
Criminal record								
No convictions	20,801	19,333	70.5	60.3	-14.5	46.5	58.2	25.2
Prior conviction								
Misdemeanor only	7,488	13,204	70.2	51.3	-26.9	53.1	71.1	33.9
Felony								
Nonviolent	8,476	18,836	50.1	25.1	-49.9	68.7	88.2	28.4
Violent	5,253	14,548	34.3	21.1	-38.5	82.6	91.8	11.1
Number of prior convictions								
1	7,772	12,815	63.4	39.9	-37.1	57.9	77.6	34.0
2 to 4	8,716	18,787	52.6	31.1	-40.9	67.9	85.0	25.2
5 or more	4,729	14,986	38.0	24.0	-36.8	78.5	89.7	14.3

Source: Sourcebook of Criminal Justice Statistics; 1994 Table 5.13, 2005 Table 5.15 (http://www.albany.edu/sourcebook)

Volume 71 Number 2

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back to top

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Volume 71 Number 2

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back to top

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Volume 71 Number 2

Federal PROBATION
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Endnotes

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Pretrial Services in the Federal System: Impact of the Pretrial Services Act of 1982

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[3] U.S. District Courts Table D-5 Defendants Sentenced (1982, 1997, 2006)

[4] New York Southern and New York Eastern have been eliminated due to the fact that they closed out very few of their activated cases in the 1984 time period and thus relevant data was not available.

Our Journey Toward Pretrial Justice

[1] Portions of this article were reprinted with permission from the monograph authored by Marie VanNostrand, Ph.D., *"Legal and Evidence Based Practices: Application of Legal Principles, Laws, and Research to the Field of Pretrial Services"* (Crime and Justice Institute, 2007).

[2] Although the term "pretrial justice" has been used for decades and can be found in print as early as 1973, a thorough literature search did not identify a definition of pretrial justice. The definition of pretrial justice provided by the authors was inspired by the United States Probation and Pretrial Services Charter for Excellence.

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[1] As shown by the framework development flow chart, the process is iterative. All references to "completion" refer to the initial development process.

[2] *The Supervision of Federal Defendants, Monograph 111*, Chapter 1, page 2 (2007).

back to top

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Volume 71 Number 2

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The Impact of the Federal Pretrial Services Act of 1982 on the Release, Supervision, and Detention of Pretrial Defendants

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back to top

Endnotes

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