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SPECIAL ISSUE: Assessing Pretrial Risk in the Federal Courts

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The articles and reviews that appear in *Federal Probation* express the points of view of the persons who wrote them and not necessarily the points of view of the agencies and organizations with which these persons are affiliated. Moreover, *Federal Probation's* publication of the articles and reviews is not to be taken as an endorsement of the material by the editors, the Administrative Office of the U.S. Courts, or the Federal Probation and Pretrial Services System.

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Introduction to Special Issue on Assessing Pretrial Risk in the Federal Courts

*Timothy P. Cadigan, Guest Editor
Chief, Data Analysis Branch
Office of Probation and Pretrial Services
The Administrative Office of the U.S. Courts*

THIS SEPTEMBER'S ISSUE of *Federal Probation* is part of an ongoing attempt to improve the federal pretrial services system, while also documenting the process of improvement played out in our system's history. Executive Editor Emeritus Michael J. Keenan championed the importance of documenting major events in the federal probation and pretrial services system in *Federal Probation*, and this is a tradition I gladly continue in his honor. In September 2007, at a gathering in Cleveland and also in *Federal Probation*, the federal pretrial services system celebrated the 25th anniversary of the passage of the Pretrial Services Act. In an effort to capitalize on the momentum of those 2007 anniversary events, Office of Probation and Pretrial Services staff and pretrial services and probation chiefs held a meeting in January 2008. The goal of the meeting was to learn what we could from the past, incorporate the technologies and methodologies of modern-day criminal justice, and begin to prepare the federal pretrial services system for the challenges of the next 25 years.

The Cleveland conference and the January 2008 meeting prompted a move to incorporate several concepts being incorporated into the federal system. The concepts include: 1) Evidence-Based Practices and Pretrial Services; 2) Performance and Outcome Measures and Pretrial Services; 3) Risk Assessment (Investigation); 4) Reentry and Pretrial Services; and 5) Defendant Workforce Development. As this issue demonstrates, significant progress is being made on many of these fronts.

This issue of *Federal Probation* has three major purposes. First, it exposes our audience to "Pretrial Risk Assessment in the Federal Court—For the Purpose of Expanding the Use of Alternatives to Detention," a report on the pretrial services function in federal court from an evidence-based perspective. The research for this study was sponsored by the U.S. Department of Justice's Office of the Federal Detention Trustee (OFDT), with support from the Administrative Office of the U.S. Courts and performed by Dr. Marie VanNostrand. The study employed data provided by the Administrative Office of the U.S. Courts, Office of Probation and Pretrial Services (OPPS) that included all persons charged with criminal offenses in the federal courts between October 1, 2001 and September 30, 2007.

The second purpose is to formally publish information about the newly developed Federal Pretrial Risk Assessment (PTRA). The PTRA was developed by Dr. Christopher Lowenkamp using data collected through the OFDT study. The PTRA is an objective, quantifiable instrument that provides a consistent and valid method of predicting risk of failure-to-appear (FTA), new criminal arrest (NCA), and technical violations (TV) while on pretrial release. The instrument comprises 10 scored and 5 unscored items that are divided into two domains or categories:

criminal history and other. Finally, we publish several articles that present and discuss other ongoing efforts to improve the federal pretrial services system. While much has been accomplished, there is a tremendous amount of work ahead.

Having served 22 years in the federal pretrial services system, I have developed an appreciation for the history of our system, including the importance of the roles staff have played in developing that history. The formal publication of our federal pretrial services risk assessment tool is an excellent occasion to recognize the importance of the great volume of work done in this area by Dr. Barbara Meierhoefer. Dr. Meierhoefer developed the first risk tool in the federal system nearly 20 years ago and continued to advocate for a pretrial services tool throughout her federal career. I firmly believe that we would not have achieved this milestone without her great work and support. On behalf of the federal pretrial services system, thank you, Dr. Meierhoefer.

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Gena Keebler

Luminosity, Inc.

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Executive Summary

THE MISSION OF the Office of the Federal Detention Trustee (OFDT) is to manage and regulate the federal detention programs and the Justice Prisoner and Alien Transportation System (JPATS) by establishing a secure and effective operating environment that drives efficient and fair expenditure of appropriated funds. One of the primary responsibilities of OFDT is to review existing detention practices and develop alternatives to improve mission efficiency and cost effectiveness. OFDT and the entire justice system recognize that in some cases the most operationally-efficient and cost effective utilization of funds involves the use of alternatives to secured detention for certain defendants awaiting trial.

The Department of Justice (acting through the U.S. Marshals Service and OFDT) provides the Federal Judiciary with supplemental funding to support alternatives to pretrial detention. Alternatives to pretrial detention include, but are not limited to, third-party custodian, substance abuse testing, substance abuse treatment, location monitoring, halfway house, community housing or shelter, mental health treatment, sex offender treatment, and computer monitoring. Pretrial services agencies can recommend any of these alternatives to detention as conditions of pretrial release and the judicial officer can set one or more of the alternatives to detention as conditions of bail in lieu of secured detention.

Consistent with the mission of OFDT, the current study was sponsored by OFDT with support from the Administrative Office of the U.S. Courts. The purpose of this research effort was twofold:

- identify statistically significant and policy relevant predictors of pretrial outcome to identify federal criminal defendants who are most suited for pretrial release without jeopardizing the integrity of the judicial process or the safety of the community, in particular release predicated on participation in an alternatives to detention program; and
- develop recommendations for the use of OFDT funding that supports the Federal Judiciary's alternatives to detention program.

The study employed data provided by the Administrative Office of the U.S. Courts, Office of Probation and Pretrial Services (OPPS) that described all persons charged with criminal offenses in the federal courts between October 1, 2001 and September 30, 2007 who were processed by the federal pretrial services system (N=565,178). All federal districts with the exception of the District of Columbia were represented in the study.²

The research included six primary research objectives.

1. Identify statistically significant and policy relevant predictors of pretrial risk of federal criminal defendants. Develop a classification scheme to scale the risk persons arrested for federal criminal offenses pose if released pending trial. The risk classification scheme should allow for the future development of an instrument that could be used by federal pretrial services officers to assess the risk of individual criminal defendants.
2. Examine persons charged with federal criminal offenses over the past seven (7) years and assess how the average pretrial risk level of federal criminal defendants has changed. Assess whether the change in the average risk level has resulted in changes in the pretrial release/detention rate and pretrial failure rate.
3. Examine defendants released pending trial with the condition of participation in an alternative to detention. Identify the level of pretrial risk these defendants pose and,

controlling for risk level, assess whether participation in an alternative to detention mitigated the risk of pretrial failure.

4. Assess the efficacy of the alternatives to detention program at reducing federal criminal justice costs, particularly costs associated with pretrial secured detention. Identify a population most suited—both programmatically and economically—for pretrial release with conditions of alternatives to detention.
5. Examine how federal pretrial services currently assesses pretrial risk federal criminal defendants pose and the effectiveness of those practices in reducing unwarranted detention and preventing failures to appear and danger to the community while pending trial.
6. Identify “best practices” relating to the determination of pretrial risk and recommendations to release or detain a defendant pending trial, particularly as they relate to the assessment of pretrial risk and the administration of the alternatives to detention program.

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Background

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. The bail decision—to release or detain a defendant pending trial and the setting of terms and conditions of bail—is a critical part of the pretrial stage of the criminal justice system.

For the majority of our history the sole consideration when deciding bail was the risk of failure to appear in court. Until the 1960s, the Courts relied almost exclusively on the traditional surety bail system. The basic principle of the surety bail system is that a defendant can secure his/her release if he or she can arrange to have bail posted in the amount set by the judicial officer.³ This system allows a person accused of a crime to remain free pending trial by posting security—property or money—to ensure that he will stand trial and submit to a sentence if found guilty. The release of defendants pending trial is consistent with the presumption of innocence and the Eighth Amendment right against excessive bail, it permits the defendant to more fully assist in the preparation of his defense, and it reduces the possibility that the defendant might be detained for a longer period than would otherwise be appropriate if convicted of the accused offense.

The first major federal bail reform since the Judiciary Act of 1789 occurred in the form of the Bail Reform Act of 1966. The Act 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. The de-emphasis on the use of surety bail as a pretrial release requirement, consistent with the Eighth Amendment, prohibits the imposition of excessive bail that would, by default, result in the defendant’s detention.⁴ Based on this standard of presumptive release, federal criminal defendants were generally released on their personal recognizance or an unsecured bond pending trial.

By the late 1970s, however, a noticeable shift in the perceived functions of bail had emerged. There was growing concern over the need to protect the community from the potential danger posed by the defendant awaiting trial in the community. Accordingly, the Bail Reform Act of 1984 granted the federal courts the authority to detain criminal defendants for preventative purposes.⁵ Whereas the 1966 Act generally required the defendant’s release, the 1984 Act permits pretrial detention for the purposes of protecting the community from any danger that the defendant may pose. Specifically, the Bail Reform Act of 1984 permits the federal courts to base pretrial release decisions on (1) the risk of pretrial flight the defendant poses, and (2) the potential threat the defendant poses to the community or to specific individuals including the

likelihood that the defendant would commit new crimes while on release. For defendants charged with certain offenses, the 1984 Act presumes that pretrial detention would be required; whereas the government must normally demonstrate why pretrial detention is required, these defendants must demonstrate why pretrial release is justified.⁶

Additionally, the Bail Reform Act of 1984 identified several factors that the federal courts should consider when making pretrial release/detention decisions. The factors specified by the Act are: (1) the nature and circumstances of the offense charged, (2) the weight of the evidence, (3) the financial resources of the defendant, (4) the character and physical and mental condition of the defendant, (5) family ties, (6) employment status, (7) community ties and length of residency in the community, (8) record of appearances at court proceedings, (9) prior convictions, (10) whether, at the time of the current offense, the defendant was under criminal justice supervision, and (11) the nature and seriousness of the danger to the community or any person that the defendant's release would pose.⁷

At the time the Bail Reform Act of 1984 was enacted, the U.S. Attorneys were primarily focused on prosecuting fraud, regulatory, and other offenses that occurred within the original jurisdiction of the federal government. For example, during 1985, nearly a third of suspects considered for prosecution by U.S. Attorneys were involved with a fraud offense, 11 percent a regulatory-type offense, and 8 percent an immigration offense.⁸ Less than 20 percent were involved with drugs and 7 percent with a violent offense. Accordingly, the impact of the increased flexibility to detain criminal defendants that the 1984 Act provided the judiciary was limited. During 1984, the average daily detention population was approximately 5,400. However, with the advent of the "War on Drugs" during the late 1980s and the increased enforcement of immigration laws during the 1990s, the number of persons prosecuted for drug, weapon, and immigration offenses substantially increased. During 2007, the number of suspects referred to U.S. Attorneys for drug offenses doubled to approximately 36,000; the number of felony immigration offenses increased more than five-fold to approximately 38,000; and the number of weapons offenses increased more than three-fold to approximately 12,000.⁹ As a result of the change in enforcement priorities, between 1985 and 2007 the average daily detention population had increased ten-fold to more than 56,000.¹⁰

Since the implementation of the Bail Reform Act of 1984, increased emphasis has been placed on developing and implementing alternatives to secured detention that would mitigate the risk of flight and danger to the community and provide some relief for pretrial detention. For example, various forms of home confinement have increasingly gained acceptance within the criminal justice community—at both the State and Federal levels—as credible alternatives to pretrial detention.¹¹ With the advent of technologies to monitor the defendant's location, electronic monitoring has also gained acceptance as a tool for monitoring the defendant's compliance with the home confinement alternative. Other alternatives currently approved by the federal judiciary include:

- ***third-party custody***, whereby the defendant is designated to the custody of a person who agrees to assume responsibility for supervision and report violations to the court;
- ***halfway house placement***, whereby the defendant is designated to a community-based residential facility and may leave the facility for approved purposes (such as employment, education, medical treatment, and religious practices);
- ***intermittent custody***, whereby the defendant is released from detention for limited time periods (such as employment and education);
- ***substance abuse treatment***, whereby the defendant is required to participate in a drug or alcohol dependency program and/or to submit to a period of drug testing; and
- ***mental health treatment***, whereby the defendant is required to undergo psychological or psychiatric treatment to reduce the risk of nonappearance and/or danger to the community associated with his emotional or mental health.¹²

Findings

The study focused on persons charged with a federal criminal offense and processed by federal pretrial services between 2001 and 2007. During this time the pretrial detention rate increased from 53 percent of persons charged with a federal offense to 64 percent; similarly, the detention population increased from an average daily population of approximately 37,000 to 56,000.¹³ Approximately 60 percent of the increase in the detention rate is directly attributable to the greater number of defendants identified as higher risk of failing if released pending trial. During the study period, the cohorts of defendants prosecuted have increasingly become higher risk, thereby necessitating a higher rate of pretrial detention. Most notably, during 2001 (the first observation year), 16 percent of defendants prosecuted were classified at the highest risk level. By contrast, during 2007 the proportion of defendants classified at the highest risk level increased to 23 percent.

One of the objectives of the study was to develop a risk classification scheme to scale the risk persons arrested for federal criminal offenses pose if released pending trial. The classification scheme developed as part of the study is based on nine factors, consistent with those factors identified in the Bail Reform Act of 1984, that have been demonstrated in this and other studies to be statistically significant predictors of pretrial risk for both federal and state criminal defendants. The nine predictors are: (1) whether there were other charges pending against the defendant at the time of arrest, (2) the number of prior misdemeanor arrests, (3) the number of prior felony arrests, (4) the number of prior failures to appear, (5) whether the defendant was employed at the time of the arrest, (6) the defendant's residency status, (7) whether the defendant suffered from substance abuse problems, (8) the nature of the primary charge, and (9) whether the primary charge was a misdemeanor or a felony.

Using the data the Administrative Office of the U.S. Courts-OPPS provided, statistical models were created and used to develop a classification scheme and assign "weights" to the nine factors included in the model. Defendants classified at the low end of the scale were deemed to pose the least risk for pretrial failure whereas defendants at the high end posed the greatest risk (on a scale of 1 to 5). When applied to the population of defendants released between 2001 and 2007, the data indicate the risk classification scheme mimics judicial practice: as risk increased, the likelihood of pretrial detention increased from 13 percent of defendants classified as level 1 (the lowest risk) to 72 percent of those classified as level 5 (the highest risk). Similarly, when defendants were released, the likelihood of pretrial failure increased as the level of pretrial risk increased. For example, two percent of defendants classified in the lowest risk category failed their pretrial release whereas more than 10 percent of those classified in the higher risk categories failed: 12 percent of defendants classified as a level 4 risk and 16 percent of those classified as level 5. Further, while the likelihood of failing to appear for court appearances varied by risk level (1.4 percent to 5.7 percent), defendants classified at the higher risk levels were substantially more likely to pose a danger to the community by committing new crimes (0.9 percent to 9.8 percent).

Given the increased risk of pretrial failure that federal criminal defendants pose, it is critical to identify the steps that could be taken by the federal courts to further the goals of (1) ensuring the least restrictive conditions necessary are imposed pretrial to ensure the defendant's appearance at trial and the safety of the community, and (2) reducing the burden of pretrial detention by detaining only those defendants for which pretrial detention is unequivocally required. Since implementation of the Bail Reform Act of 1984, efforts have been dedicated to developing and implementing alternatives to secured detention that would mitigate pretrial risk and permit defendants—who might otherwise be detained—to be released into the community pending trial. While approximately 60 percent of defendants prosecuted during the study period were ordered detained pending trial, of those released, conditions that included at least one alternative to detention were required for nearly three-quarters. Most of those participating in the alternatives to detention program were required to submit to drug testing (60 percent) or a

substance abuse treatment program (35 percent). Additionally, 17 percent participated in the location monitoring program and 10 percent had a third-party custodian.

Participation in the alternatives to detention program was most often required of those defendants who posed the greatest pretrial risk: 84 percent of risk level 3, 92 percent of risk level 4 and 96 percent of risk level 5 defendants who were released pending trial participated in the alternatives to detention program. These moderate-to-high-risk defendants who were released to the alternatives to detention program were less likely to experience pretrial failure when compared to defendants released without a condition that included an alternative to detention. Paradoxically, when required of lower-risk defendants, i.e., risk levels 1 and 2, release conditions that included alternatives to detention were more likely to result in pretrial failure.

These defendants were, in effect, over-supervised given their risk level.¹⁴

Assessing the efficacy of the alternatives to detention program included considerations of cost while attempting to strike the proper balance between the rights of the defendant with the need to assure court appearance and safety of the community pending trial. When considering cost alone, the average savings per defendant released pending trial to the ATD program in lieu of detention is substantial. The average cost of pretrial detention is approximately \$19,000 per defendant. By contrast, the average cost of pretrial release that includes alternatives to detention is between \$3,100 and \$4,600, depending upon the defendant's risk level.¹⁵

Accordingly, throughout the duration of the Department of Justice-Administrative Office of the U.S. Courts alternative to detention reimbursement program, the program has resulted in financial efficiencies for the secured detention program. For example, during 2007, the federal judiciary utilized approximately \$2.4 million of funding provided by the Department of Justice (acting through the Office of the Federal Detention Trustee) to supplement their funding for alternatives to detention. This funding was used to fund alternatives to detention for 3,226 defendants released pending trial. Had these defendants been ordered detained, the Department of Justice would have incurred additional costs for detention housing of approximately \$38 million. Additionally, considering the scarcity of secured detention resources, an additional 1,500 additional detention beds would have been occupied throughout the year.

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Recommendations

The results of this study should be utilized to develop a standardized empirically-based risk assessment instrument to be used by federal pretrial services. The use of a standardized instrument will assist in reducing the disparity in risk assessment practices and provide a foundation for evidence-based practices relating to release and detention recommendations and the administration of the alternatives to detention program. Further, it will allow for the development of policy that provides guidance to pretrial services agencies regarding release and detention recommendations including the use of the alternatives to detention program. Any policy developed should reflect the following principles.

- Lower-risk defendants are the most likely to succeed if released pending trial. Release conditions that include alternatives to detention—with the exception of mental health treatment, when appropriate—generally decrease the likelihood of success for lower risk-defendants and should be required sparingly.
- The alternatives-to-detention program is most appropriate for moderate- and higher-risk defendants as it allows for pretrial release while generally increasing pretrial success. Alternatives to detention should be recommended for this population when a defendant presents a specific risk of pretrial failure that can be addressed by a specific alternative.
- Defendants in risk levels 3 and 4 are the most suited for pretrial release—both programmatically and economically—with conditions of alternatives to detention. The pretrial release of these defendants can be maximized by minimizing the likelihood of

pretrial failure through participation in an alternatives-to-detention program.

- Pretrial release with conditions that include alternatives to detention is consistent with the purpose and intent of the federal bail reform legislation; and it strikes an appropriate balance between the legal and constitutional rights of defendants with the need to protect the community and assure court appearance pending trial.

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Introduction

Background

The bail decision, to release or detain a defendant pending trial and the setting of terms and conditions of bail, is a monumental task which carries enormous consequences not only for the pretrial defendant but also for the safety of the community, the integrity of the judicial process, and the utilization of our often overtaxed criminal justice resources. The bail decision is made by a judicial officer. Bail, as it stands today 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. There remains a legal presumption of release on the least restrictive terms and conditions,¹⁶ with an emphasis on non-financial terms, unless the Court determines that no condition or combination of conditions will reasonably assure the appearance of the person in court and the safety of any other person and the community.¹⁷

Pretrial services agencies perform critical functions related to the bail decision. They provide information via investigations and reports to judicial officers to assist them in making the most appropriate bail decision. The information provided to judicial officers includes, but is not limited to, the areas specified in the statute as follows: (1) the history and characteristics of the person, including the person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, record concerning appearance at court proceedings; and (2) whether, at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under federal, state, or local law.¹⁸

Pretrial services agencies also provide supervision of defendants released with conditions pending trial. Conditions of supervision can relate to the following: employment; education; restrictions on travel, residence, and associations; refrain from use of alcohol or other drugs; undergo medical, psychological, or psychiatric treatment; and other conditions deemed appropriate by a judicial officer.¹⁹

The Pretrial Services Act of 1982 authorized the implementation of pretrial services nationwide with a primary purpose of reducing unnecessary pretrial detention. The Administrative Office of the United States Courts—Office of Probation and Pretrial Services (OPPS) support the probation and pretrial services system, including developing system policies, supporting system programs, and reviewing the work of probation and pretrial services offices.

The mission of the Office of the Federal Detention Trustee (OFDT) is to manage and regulate the federal detention programs and the Justice Prisoner and Alien Transportation System (JPATS) by establishing a secure and effective operating environment that drives efficient and fair expenditure of appropriated funds. One of the primary responsibilities of OFDT is to review existing detention practices and develop alternatives to improve mission efficiency and cost effectiveness. OFDT and the entire justice system recognize that in some cases the most operationally-efficient and cost-effective utilization of funds involves the use of alternatives to secured detention for certain defendants awaiting trial.

Consistent with the concept of pretrial justice²⁰ and U.S. Code Title 18, Part II, Chapter 207, § 3142 Release or Detention of a Defendant Pending Trial, the Department of Justice (acting through the U.S. Marshals Service and OFDT) provides the federal judiciary with supplemental funding to support alternatives to pretrial detention. Alternatives to pretrial detention include, but are not limited to, third-party custodian, substance abuse testing, substance abuse treatment, location monitoring, halfway house, community housing or shelter, mental health treatment, sex offender treatment, and computer monitoring. Pretrial services agencies can recommend any of these alternatives to detention as conditions of pretrial release and judicial officers can set one or more of the alternatives to detention as conditions of bail in lieu of secured detention.

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Purpose

The purpose of this research effort is twofold:

- identify statistically significant and policy relevant predictors of pretrial outcome to identify federal criminal defendants who are most suited for pretrial release without jeopardizing the integrity of the judicial process or the safety of the community, in particular release predicated on participation in an alternatives-to-detention program; and
- develop recommendations for the use of OFDT funding that supports the federal judiciary's alternatives-to-detention program.

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Research Objectives

The report is organized by the six primary research objectives.

1. Research Objective One—Pretrial Risk Classification: Identify statistically significant and policy relevant predictors of pretrial risk of federal criminal defendants. Develop a classification scheme to scale the risk persons arrested for federal criminal offenses pose if released pending trial. The risk classification scheme should allow for the future development of an instrument that could be used by federal pretrial services officers to assess the risk of individual criminal defendants.
2. Research Objective Two—Risk Levels, Release and Detention Rates, and Pretrial Failure Rates: Examine persons charged with federal criminal offenses over the past seven (7) years and assess how the average pretrial risk level of federal criminal defendants has changed. Assess whether the change in the average risk level has resulted in changes in the pretrial release/detention rate and pretrial failure rate.
3. Research Objective Three—Alternatives to Detention, Risk Levels, and Pretrial Failure: Examine defendants released pending trial with the condition of participation in an alternative to detention. Identify the level of pretrial risk these defendants pose and, controlling for risk level, assess whether participation in an alternative to detention mitigated the risk of pretrial failure.
4. Research Objective Four—Efficacy of the Alternatives to Detention Program: Assess the efficacy of the alternatives to detention program at reducing federal criminal justice costs, particularly costs associated with pretrial secured detention. Identify a population most suited—both programmatically and economically—for pretrial release with conditions of alternatives to detention.
5. Research Objective Five—Current Risk Assessment Practices: Examine how federal pretrial services currently assesses pretrial risk federal criminal defendants pose and the effectiveness of those practices in reducing unwarranted detention and preventing failures to appear and danger to the community while pending trial.
6. Research Objective Six—Best Practices for Pretrial Risk Assessment and

Recommendations: Identify “best practices” relating to the determination of pretrial risk and recommendations to release or detain a defendant pending trial, particularly as they relate to the assessment of pretrial risk and the administration of the alternatives to detention program.

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Dataset

The dataset used to conduct this study was provided by the Administrative Office of the United States Courts—Office of Probation and Pretrial Services (OPPS). The dataset was extracted from the Probation and Pretrial Services Automation and Case Tracking System (PACTS) in June 2008 and consists of all persons charged with criminal offenses in the federal courts between October 1, 2001 and September 30, 2007 (FY2001–FY 2007) who were processed by the federal pretrial services system. The dataset includes defendants who entered the pretrial services system via a complaint, indictment, information, or superseding indictment/information (all others, such as material witness and writs, were excluded). There are 94 federal judicial districts, including at least one district in each state, the District of Columbia and Puerto Rico. Three territories of the United States—the Virgin Islands, Guam, and the Northern Mariana Islands—also have district courts that hear federal cases. The data represents all of the federal districts with the exception of the District of Columbia (93 of 94) and includes 565,178 defendant records.

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Population Description

Demographics

Age

The average age of defendants processed by pretrial services was 34 years old while the most common age was 26 years old. Twenty-six percent of all defendants were 25 years old and younger, 27 percent were between 26 and 32 years old, 23 percent were between 33 and 40 years old, and 24 percent were 41 years old or older. Nearly all (99.7 percent) of defendants were adults, while less than 1 percent were juveniles.

Gender

Men made up on average 85 percent of all defendants processed by pretrial services; conversely, women made up 15 percent of the population.

Race/Ethnicity

Forty-four percent of all defendants’ race/ethnicity was White Hispanic ([figure 1](#)). The race/ethnicity of the remaining defendants was as follows: White non-Hispanic 27 percent, Black non-Hispanic 23 percent and Asian, Native American, and Black-Hispanic approximately 2 percent respectively.

Citizenship Status

The citizenship status of defendants was as follows: 62 percent U.S. Citizens, 31 percent Illegal Alien, and 7 percent Legal Alien. As can be seen in [figure 2](#), the citizenship status of defendants varied between 2001 and 2007. While the percent of Legal Aliens remained relatively constant, the percent of defendants whose citizenship status was U.S. Citizen decreased by 7 percent from 66 percent in 2001 to 59 percent in 2007.

Education Level

The education levels for the defendants can be found in [figure 3](#).

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Community Stability

Residence Status

Thirty-seven percent of defendants were renting a residence, 20 percent owned or were buying their home (had a mortgage on their home), 24 percent had a place to live but made no financial contribution toward the residence, and 17 percent had an “other” residence status. Nearly 2 percent of all defendants were essentially homeless with no place to live at the time of their initial appearance.

Length of Residence in Area

At the time of their initial appearance, 43 percent of all defendants lived in the area for less than one year, 18 percent for between 1 to 5 years, 6 percent between 6 to 10 years, and approximately one-third (33 percent) had lived in the area for 11 or more years.

Employment Status

The employment status of defendants varied across years and ranged from 56 percent to 49 percent employed at the time of the initial appearance, with an average of 52 percent of defendants employed between FY 2001 and FY 2007. The [corresponding figure](#) demonstrates the fluctuation in employment rates.

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Health

Psychiatric Treatment

Approximately 9 percent of all defendants had received psychiatric treatment at some time during the two years prior to the initial appearance. The rate gradually increased from 8 percent in 2001 to 11 percent in 2007.

Substance Abuse Problem

On average, 51 percent of all defendants were determined to have a substance abuse problem at the time of the initial appearance ([figure 5](#)). The most frequently abused drugs were Cannabis (40 percent), followed by Alcohol (25 percent), Narcotics (23 percent), Stimulants (9 percent) and another drug (3 percent).

Charge Information

Defendants’ primary charge was a felony 92 percent of the time, a misdemeanor 7 percent, and an infraction 1 percent. There were few fluctuations in the percent of charge offense level across the years.

The most common primary charges for defendants were drug-related offenses (36 percent). Approximately 26 percent of all defendants were charged with immigration law violations, followed by theft and fraud-related offenses 17 percent, firearm offenses 9 percent, violent offenses 5.5 percent, and other offenses 7.5 percent. The primary charge percentages varied across the years. Notably, immigration law violations increased from 20 percent in 2001 to 29 percent in 2007 while drug-related offenses decreased from 40 percent in 2001 to 33 percent in 2007 (see [figure 6](#)).

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Criminal History

Prior Arrests and Convictions

Forty-four percent of defendants had not previously been arrested for a felony and 57 percent had not previously been convicted of a felony ([see figure 7](#)).

Forty-two percent of defendants had not previously been arrested for a misdemeanor and 55 percent had not previously been convicted of a misdemeanor ([see figure 8](#)).

More detailed information about prior drug and violent misdemeanor and felony convictions can be found in Appendix Tables [A1](#) & [A2](#).

Pending Charges

Eighteen percent of all defendants had a misdemeanor or felony pending in court at the time of their arrest. The percentages of defendants who had misdemeanor and felony charges pending in court at the time of their arrest are provided in [figure 9](#).

Prior Failure to Appear, Absconding and Escape

Eighty-four percent of all defendants had never failed to appear in court, 7 percent had one prior failure to appear and 9 percent had two or more failures to appear in court. Three percent of the defendants had previously absconded from some form of criminal justice supervision while 2 percent had previously escaped from custody.

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Pretrial Status

Pretrial Services Recommendations

Pretrial services recommended detention for defendants an average of 61 percent of the time between 2001 and 2007. The recommendations for detention by pretrial services increased from 56 percent of all defendants in 2001 to 64 percent in 2007.

Court Decisions

Similar to the trend identified in pretrial services recommendations, detention rates have increased steadily over the years while release rates have simultaneously decreased. As can be seen in [figure 10](#), detention increased from 53 percent of all defendants in 2001 to 64 percent in 2007.

Pretrial Outcome

Pretrial outcome is the success or failure of a defendant released pending trial. The purpose of bail is to assure court appearance and the safety of the community during the pretrial stage. Failure to appear was measured by a defendant's failure to appear for a scheduled court appearance or absconding from pretrial supervision while pending trial. Danger to the community was measured by a bail revocation due to a new arrest for a crime that was allegedly committed while the defendant was released pending trial.

There are two common definitions of pretrial failure.

1. **Excluding technical violations**—Defendants who were deemed to have failed to appear and/or to have been a danger to the community pending trial are classified “failure” and those defendants who experienced neither and remained in the community during the entire time pending trial are classified “successful.” Note that in this definition defendants who had their bail revoked for violating technical conditions (reasons other than failing to appear or danger to community) or other reasons do not meet either of these categories

and are excluded.

2. **Including technical violations**—Defendants who were deemed to have failed to appear, been a danger to the community, or had their bail revoked for technical violations pending trial are classified “failure” and those defendants who experienced none of these and remained in the community during the entire time pending trial are classified “successful.”

There is a utility for both of these definitions which will be discussed in more detail in the next section. For this reason, the outcomes are provided here for each definition.

Outcome Excluding Technical Violations

Defendants released pending trial had a 93 percent success rate (failure to appear 3.5 percent and danger to community 3.5 percent). These rates remained relatively constant across the years.

Outcome Including Technical Violations

Defendants released pending trial had an 87.4 percent success rate (failure to appear 3.4 percent, danger to community 3.2 percent, and technical violations 6 percent). These rates remained relatively constant across the years.

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Research Objective One—Pretrial Risk Classification

Identify statistically significant and policy relevant predictors of pretrial risk of federal criminal defendants. Develop a classification scheme to scale the risk persons arrested for federal criminal offenses pose if released pending trial. The risk classification scheme should allow for the future development of an instrument that could be used by federal pretrial services officers to assess the risk of individual criminal defendants. ([figure 11](#))

Methods and Analysis Results

Statistically Significant and Policy Relevant Predictors of Pretrial Risk

The first step to answering this research objective was to identify the statistically significant and policy relevant predictors of pretrial risk of federal criminal defendants. Pretrial risk is the likelihood that a defendant will succeed or fail if released pending trial. For the purposes of this research and consistent with the intent of bail, pretrial failure is defined as failing to appear for court and/or being a danger to the community pending trial. Failure to appear was measured by a defendant’s failure to appear for a scheduled court appearance or absconding from pretrial supervision while pending trial. Danger to the community was measured by the presence of a bail revocation due to a new arrest for a crime that was allegedly committed while the defendant was released pending trial. Defendants who were deemed to have failed to appear and/or to have been a danger to the community pending trial were classified “failure” and those defendants who experienced neither and remained in the community during the entire time pending trial were classified “successful.” It should be noted that defendants who had their bail revoked for violating technical conditions or other reasons were omitted from this analysis.

The analysis consisted of univariate, bivariate, and multivariate analysis. The univariate analysis including descriptive statistics of the dependent variable (pretrial outcome: success or failure pending trial) and each independent variable (risk factor). The bivariate analysis included an examination of the relationship between each risk factor and pretrial outcome. The risk factors found to be statistically significantly related to pretrial outcome were identified and used to conduct the multivariate analysis.

Logistic regression was the multivariate analysis technique used to identify the statistically significant and policy relevant predictors of pretrial risk of federal criminal defendants. A logistic regression model was built using cross validation to confirm the replicability and generalizability of the results. Because some risk factors are considered more policy relevant based on bail considerations as outlined in statute, the model was built using a hierarchical approach by entering the statistically significant risk factors within a block of variables in order of policy relevance. The order included the risk factors that measure criminal history, community stability, health, and charge information. See [Appendix Table A3](#) for the logistic regression model to predict pretrial outcome.

The analysis identified nine (9) statistically significant and policy relevant predictors of pretrial outcome—success or failure pending trial.

1. **Pending Charges**—Defendants who had one or more misdemeanor or felony charges pending at the time of arrest were 20 percent more likely to fail pending trial when compared to defendants who did not have a pending charge.
2. **Prior Misdemeanor Arrests**—Defendants with prior misdemeanor arrests were more likely to fail pending trial when compared to defendants who did not have prior misdemeanor arrests: one prior misdemeanor arrest (13 percent more likely); two prior misdemeanor arrests (32 percent more likely); three prior misdemeanor arrests (45 percent more likely); four misdemeanor arrests (59 percent more likely); and five or more prior misdemeanor arrests (69 percent more likely).
3. **Prior Felony Arrests**—Defendants with prior felony arrests were more likely to fail pending trial when compared to defendants who did not have prior felony arrests: one prior felony arrest (22 percent more likely) and two or more prior felony arrests (38 percent more likely).
4. **Prior Failures to Appear**—Defendants with prior failures to appear in court were more likely to fail pending trial when compared to defendants who did not have a prior failure to appear in court: one prior failure to appear (22 percent more likely) and two or more prior failures to appear (35 percent more likely).
5. **Employment Status**—Defendants who were unemployed at the time of their arrest were 21 percent more likely to fail pending trial when compared to defendants who were employed.
6. **Residence Status**—Defendants who did not own or were not buying their residence were more likely to fail pending trial when compared to defendants who did own or were buying their residence (had a mortgage on their home): renting (65 percent more likely); making no financial contribution to residence (74 percent more likely); no residence/place to live (2.1 times or 110 percent more likely); and another type of residence (48 percent more likely).
7. **Substance Abuse Type**—Defendants who abused alcohol (21 percent), cannabis (23 percent), and narcotics (40 percent) were more likely to fail pending trial when compared to defendants who did not abuse any substances.
8. **Primary Charge Category**—Defendants charged with a felony were 61 percent more likely to fail pending trial when compared to defendants who were charged with a misdemeanor or infraction.
9. **Primary Charge Type**—When compared to defendants charged with a theft or fraud-related offense, defendants charged with a firearm offense (51 percent), a drug offense (78 percent), and an immigration law violation (78 percent) were more likely to fail pending trial. There was no statistically significant difference between defendants charged with a violent offense or another offense when compared to defendants charged with a theft or fraud offense.

Risk Classification Scheme

The next step to answering this research objective was to develop a classification scheme to scale the risk persons arrested for federal criminal offenses pose if released pending trial. The results of the logistic regression model, including the nine statistically significant and policy relevant predictors of pretrial failure and related output, were used to create a pretrial risk classification scheme to scale the risk persons arrested for federal criminal offenses pose if released pending trial.

A formula was created which uses the logistic regression results to generate a predicted probability for each defendant (see [Appendix Table A4](#)). Predicted probabilities range from 0 to 1 and can be interpreted as the percent chance of pretrial failure if released pending trial. The predicted probabilities were used to create five (5) risk levels by identifying the 20th percentiles (see [Appendix Table A5](#)). Each defendant was then classified into one of five levels of risk based on the assigned predicted probability. The following figure shows the pretrial outcome for all defendants when considering the risk levels.

The average pretrial failure rate for all released defendants was 7 percent. As shown in the figure above, the average pretrial failure rate for defendants released pending trial ranged by risk level from 2.3 percent to 15.5 percent as follows: level 1 (2.3 percent), level 2 (6 percent), level 3 (9.2 percent), level 4 (11.8 percent), and level 5 (15.5 percent).

It is also important to disaggregate the failure by type—failure to appear in court and danger to the community. Additional analysis was completed to identify the rates of both failure to appear in court (measured by a defendant’s failure to appear for a scheduled court appearance or absconding from pretrial supervision while pending trial) and danger to the community (measured by the presence of bail violation due to a new arrest for a crime that was allegedly committed while the defendant was released pending trial). As can be seen in [figure 12](#) below, the higher the risk level the higher the average pretrial failure rates for both danger to the community and failure to appear.

As noted previously, for the purposes of data analysis to develop a risk classification scheme, defendants who were deemed to have failed to appear and/or to have been a danger to the community pending trial were classified “failure” and those defendants who experienced neither and remained in the community during the entire time pending trial were classified “successful.” It was further noted that defendants who had their bail revoked for violating technical conditions or other reasons were omitted from the analysis. Although the purpose of a pretrial risk assessment is to predict the risk of failure to appear and danger to the community pending trial, additional analysis was conducted to determine if the risk classification scheme also appropriately classified risk of technical violations. As can be seen in [Appendix Tables A6–8](#), the risk classification scheme also accurately classified defendants in five levels of risk based on the likelihood of pretrial failure due to technical violations.

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Summary of Findings and Recommendations

Research was conducted which identified nine statistically significant and policy relevant predictors of pretrial risk of federal criminal defendants. The nine predictors include pending charges, prior misdemeanor arrests, prior felony arrests, prior failures to appear, employment status, residence status, substance abuse type, primary charge category, and primary charge type. The predictors of pretrial risk were utilized to develop a risk classification scheme that classifies defendants into five levels of risk of pretrial failure (failure to appear and danger to the community). Separate data analysis revealed the risk classification scheme to also be a good predictor of the risk of technical violations. The research conducted and the corresponding risk classification scheme provide the necessary information for the future development of a risk assessment instrument that could be used by federal pretrial services officers to assess the risk of individual criminal defendants.

Research Objective Two—Risk Levels, Release and Detention Rates, and Pretrial Failure Rates

Examine persons charged with federal criminal offenses over the past seven (7) years and assess how the average pretrial risk level of federal criminal defendants has changed. Assess whether the change in the average risk level has resulted in changes in the pretrial release/detention rate and pretrial failure rate.

Methods and Analysis Results

Average Pretrial Risk Levels 2001–2007

The first step in answering this research objective was to determine the average risk levels for defendants for the past seven (7) years to identify any changes in risk level over time. [Figure 13](#) shows the average risk level for each year while [figure 14](#) shows the percentage of defendants classified in each risk level between 2001 and 2007.

The average risk level for persons charged with federal criminal offenses has gradually increased from 2.85 to 3.1. [Figure 14](#) demonstrates the change in the percentage of defendants classified in each of the five risk levels. Most notably, in 2001 16.2 percent of the defendants were classified in the highest risk level (5) and by 2007, 23.1 percent of the defendants were classified in the highest risk level—an increase of 6.9 percent. In 2001, 43.9 percent of all defendants were classified in the two lowest risk levels (1 & 2) while only 37.5 percent of all defendants were classified in these levels in 2007. Similarly, in 2001, 35.1 percent of all defendants were classified in the two highest risk levels (4 & 5) while 43.8 percent of all defendants were classified in these levels in 2007.

Pretrial Release/Detention Rates and Risk Levels 2001–2007

The next step in answering this research objective was to determine the pretrial release/detention rates for the past seven (7) years and examine the release/detention rates by risk level. [Figure 15](#) demonstrates the change in release/detention rates over time. The average detention rates increased 11 percent between 2001 and 2007.

The release rates varied substantially across risk levels as can be seen in [figure 16](#) below. The Court released 87 percent of all defendants classified as risk level 1, 62 percent classified as risk level 2, 49 percent classified as risk level 3, 40 percent classified as risk level 4 and 28 percent classified as risk level 5. The higher the risk level the less likely defendants were to be released pending trial.

The average risk levels have increased gradually over the past seven years while the detention rates have also increased. An examination of risk levels and detention rates by year was completed to assist in determining whether or not the increase in average risk level may have affected the increase in detention rates. Although there have been fluctuations in detention rates by risk level across the years, on average a higher percentage of people were detained pending trial in each risk level.

There are a greater percentage of people classified in the higher risk levels in 2007 compared to 2001, yet the detention rates within risk levels have also increased. A closer examination of the data reveals that approximately 60 percent of the increase in the detention rate change can be attributed to a greater number of defendants classified in the higher risk levels (Category 4 and 5) while 40 percent of the increase is due to other reasons that were not identified.

Pretrial Failure Rates and Risk Levels 2001–2007

The final step in answering this research objective was to determine the pretrial failure rates for the past seven (7) years and examine the failure rates by risk levels. [Figure 17](#) demonstrates the pretrial failure rates by risk level over time.

There was little variance in the average pretrial failure rates across the 7 years. The failure rates were as follows: 7.3 percent in 2001; 6.9 percent in 2002, 2003, and 2004; 6.8 percent in 2005; 7 percent in 2006; and 7.4 percent in 2007. It should be noted that the data were extracted in June 2008. At that time 2.6 percent of all released defendants in 2006 and 8.6 percent released in 2007 were still pending trial and their cases had not been closed. For this reason, it can be expected that the pretrial failure rates may change for these years and will likely decrease slightly.

The average pretrial failure rates for risk level 1 showed little change across the seven years (2.2 percent in 2001 to 2.4 percent in 2007). The average pretrial failure rates for risk level 2 decreased by 1.7 percent between 2001 and 2007 (7.2 percent to 5.5 percent). The average pretrial failure rates for risk level 3 decreased by nearly 1 percent between 2001 and 2007 (10.2 percent to 9.3 percent). The average pretrial failure rates for risk level four remained relatively unchanged (12.6 percent in 2001 to 12.7 percent in 2007). Most notably, the average pretrial failure rates for risk level 5 increased from 14.6 percent to 17 percent between 2001 and 2007.

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Summary of Findings and Recommendations

An examination of persons charged with federal criminal offenses over the past seven (7) years revealed that the average pretrial risk level of federal criminal defendants has increased from 2.85 to 3.1 based on the 5 risk level scale. In addition, there are a greater percentage of people (8.7 percent) classified in the higher risk levels in 2007 compared to 2001 yet the detention rates within risk levels have also increased. A closer examination of the data reveals that approximately 60 percent of the increase in the detention rate change can be attributed to a greater number of defendants classified in the higher risk levels (4 and 5), while 40 percent of the increase is due to other reasons that were not identified.

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Research Objective Three—Alternatives to Detention, Risk Levels, and Pretrial Failure

Examine defendants released pending trial with the condition of participation in an alternative to detention. Identify the level of pretrial risk these defendants pose and, controlling for risk level, assess whether participation in an alternative to detention mitigated the risk of pretrial failure.

Methods and Analysis Results

Defendant Participation in an Alternative to Detention

The first step in answering this research objective was to examine the defendants released pending trial with the condition of participation in an alternative to detention (ATD). There are nine alternatives to detention including the following: third-party custodian, substance abuse testing, substance abuse treatment, location monitoring, halfway house, community housing or shelter, mental health treatment, sex offender treatment, and computer monitoring. The data used for analysis did not distinguish between halfway house and community housing or shelter; therefore, the two ATDs are combined into one category—housing and shelter.

Seventy-two percent of the defendants with a known risk level were released via the alternatives to detention program (released with one or more alternatives to detention). The percent of defendants released via the alternatives to detention program varied by risk level as seen in [figure 18](#).

The defendants required to participate in each of the alternatives to detention as a condition of release include the following: third-party custodian (10.4 percent), substance abuse testing (60.1 percent), substance abuse treatment (35.1 percent), location monitoring (17.6 percent), housing and shelter (4.1 percent), mental health treatment (9.3 percent), sex offender treatment (0.4 percent), and computer monitoring (1.5 percent).

Alternatives to Detention Participation by Risk Level

The next step in answering this research objective was to examine the defendants released pending trial with the condition of participation in an alternative to detention by type of alternative based on risk level ([see figure 19](#)).

Five alternatives to detention were required as conditions of release at increasing frequencies based on risk level including third-party custodian, substance abuse testing, substance abuse treatment, location monitoring, and housing and shelter. The ATD of mental health treatment, however, was required more consistently across risk levels and the condition was required slightly less frequently as the risk level increased. The ATD of sex offender treatment and computer monitoring were required as conditions of release very infrequently—1.5 percent of the defendants were released with a condition of computer monitoring and sex offender treatment was a required condition in only 0.4 percent of all cases.

Alternatives to Detention and Pretrial Failure

The final step in answering this research objective was to assess whether participation in the alternatives to detention program mitigated the risk of pretrial failure when controlling for risk. [Figure 20](#) demonstrates the pretrial success rates for defendants who did and did not participate in the alternatives to detention program by risk level.

On average, defendants released to the alternatives to detention program who were lower risk, risk levels 1 and 2, were less likely to be successful pending trial while defendants in the moderate- to higher-risk levels (risk levels 3, 4, & 5) were more likely to be successful if released to the alternatives to detention program.

More detailed analysis was conducted to determine the impact of each ATD on pretrial outcome. The analysis was conducted by completing logistic regression models for each alternative to detention while controlling for risk level ([see Appendix Table A9](#)).

Third-Party Custodian

Defendants in the highest risk level (5) who were released with a condition of third-party custodian were 20 percent less likely to fail pending trial when compared to defendants in the same risk level who did not have the condition. There was no statistically significant difference in pretrial failure rates for those defendants in risk levels 3 and 4 who did and did not have a third-party custodian. Defendants with a condition of third-party custodian in the lowest risk levels were more likely to fail (risk level 1—56 percent more likely and risk level 2—30 percent more likely) when compared to defendants in those risk levels who did not have the condition.

Substance Abuse Testing And Treatment

There was no statistically significant difference in pretrial failure rates for defendants in the higher risk levels (4 & 5) who had the condition of substance abuse testing when compared to those that did not have the condition. Defendants in risk levels 1, 2, and 3 were more likely to fail (risk level 1—41 percent, risk level 2—27 percent, and risk level 3—16 percent) if they were released with a condition of drug testing when compared to those who did not have the

condition.

The results for the condition of substance abuse testing and substance abuse treatment were similar. There was no statistically significant difference in pretrial failure rates for defendants in the higher risk levels (4 & 5) who had the condition of substance abuse treatment when compared to those that did not have the condition. Defendants in risk levels 1, 2, and 3 were more likely to fail (risk level 1–33 percent, risk level 2–11 percent, and risk level 3–12 percent) if they were released with a condition of drug treatment when compared to those who did not have the condition.

Location Monitoring

There was no statistically significant difference in pretrial failure rates for defendants in the moderate and higher risk levels (3, 4 & 5) between those that had the condition of location monitoring and those that did not have the condition. Defendants in the lower risk levels were more likely to fail (risk level 1–2.12 times or 112 percent and risk level 2–46 percent) if they were released with a condition of location monitoring when compared to those who did not have the condition.

Housing & Shelter

There was no statistically significant difference in pretrial failure rates for defendants in the higher risk levels (4 & 5) who had the condition of housing & shelter when compared to those that did not have the condition. Less than 5 percent of defendants in each of the remaining three risk levels (1, 2, and 3) were released with this condition. The low number and percent of defendants receiving this condition prevented meaningful analysis of this condition for these risk levels.

Mental Health Treatment

Defendants who received mental health treatment as a condition were on average 17 percent less likely to fail when compared to defendants who did not have this condition. The decrease in failure rates varied across levels and ranged from 29 percent less likely to no statistically significant difference. There was no risk level in which defendants were more likely to fail pending trial if they were released with a mental health treatment condition.

Sex Offender Treatment and Computer Monitoring

Less than 0.5 percent of all defendants released pending trial had a condition of sex offender treatment while less than 1.5 percent of all defendants released had a condition of computer monitoring. The low number and percent of defendants receiving this condition prevented meaningful analysis of these conditions.

Summary of Findings and Recommendations

On average, lower risk defendants released to the ATD program (risk levels 1 & 2) were more likely to experience pretrial failure when compared to defendants released without the program. Moderate and higher risk defendants released to the ATD program (risk levels 3, 4 & 5) were less likely to experience pretrial failure when compared to defendants released without the program. This finding is consistent with the Evidence-Based Principle for Effective Intervention 3(a) Target Interventions: Risk Principle—prioritizes supervision and treatment resources for higher risk offenders.²¹ When examining individual alternatives to detention, this pattern was similar for the following alternatives: third-party custodian, substance abuse testing, substance abuse treatment, location monitoring, and housing and shelter. The ATD of mental health treatment, however, either had a neutral effect or decreased failure pending trial regardless of risk level. Sex offender treatment and computer monitoring were used so infrequently that meaningful analysis of the alternatives could not be conducted.

Research Objective Four—Efficacy of the Alternatives to Detention Program

Assess the efficacy of the alternatives to detention program at reducing federal criminal justice costs, particularly costs associated with pretrial secured detention. Identify a population most suited—both programmatically and economically—for pretrial release with conditions of alternatives to detention.

Methods and Analysis Results

Federal Criminal Justice Costs

The first step to answering this research question was to quantify the costs associated with pretrial detention and release to the ATD program by risk level. The average cost of detention by risk level is provided in [figure 21](#) and the average cost of release to the ATD program is provided in [figure 22](#).

It must be acknowledged that there are costs that were not included primarily because they are difficult to quantify. Examples of such costs include, but are not limited to, the costs associated with new crimes committed by defendants on release pending trial, the cost incurred by the courts and the rest of the justice system when a defendant fails to appear for a scheduled court appearance, and the cost of unnecessary detention to the defendant and his/her family.

Efficacy of the Alternatives to Detention Program

The average cost of detaining a defendant pending trial is \$19,253 while the average cost of releasing a defendant pending trial to the alternatives to detention program (including cost of supervision, the alternatives to detention, and fugitive recovery) is \$3,860. A simple comparison of the average cost of detention and the average cost of release to the alternatives to detention program reveals the alternatives to detention program is substantially less costly than detention. The average savings per defendant released pending trial to the ATD program in lieu of detention is \$15,393.

There are, however, significant considerations other than simply cost. The decision to release or detain a defendant pending trial requires the consideration of 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. In addition to cost, assessing the efficacy of the alternatives to detention program must include attempting to strike the proper balance between the rights of the defendant with the need to assure court appearance and safety of the community pending trial.

[Figure 23](#) provides the release rates and corresponding success rates by risk level.

As discussed in the previous section (Research Objective Three), lower-risk defendants released to the ATD program (risk levels 1 & 2) were more likely to experience pretrial failure when compared to lower-risk defendants released without the program. Moderate- and higher-risk defendants released to the ATD program (risk levels 3, 4 & 5) were less likely to experience pretrial failure when compared to defendants released without the program. This finding is consistent with the Evidence-Based Principle for Effective Intervention 3(a) Target Interventions: Risk Principle. When examining individual alternatives to detention, this pattern was similar for the following alternatives: third-party custodian, substance abuse testing, substance abuse treatment, location monitoring, and housing and shelter. The ATD of mental health treatment, however, either had a neutral effect or decreased failure pending trial regardless of risk level. Sex offender treatment and computer monitoring were used so

infrequently that meaningful analysis of the alternatives could not be conducted.

Population Most Suited For Pretrial Release with Alternative to Detention Conditions

Most of the defendants (87 percent) in the lowest risk level, risk level 1, were released pending trial. Of those released, less than half (43 percent) were released with an alternative to detention condition. Defendants in risk level one had a 97.7 percent success rate and release with an ATD did not increase success. Defendants classified as risk level 1 are the best candidates for release, yet the use of the ATD program for these defendants generally does not increase success and in some cases increases the risk of pretrial failure.

Sixty-two percent of all defendants classified in level 2 were released pending trial and of those released, the average success rate was 94 percent. Over two-thirds of risk level 2 defendants were released with one or more ATD conditions. Defendants classified as level 2 are good candidates for release, yet, similar to risk level 1, the use of the ATD program for these defendants generally does not increase success and in some cases increases the risk of pretrial failure.

Defendants classified in risk level 3 had an average success rate of 90.8 percent, yet just less than half of the defendants were released pending trial. Eighty-four percent of all the risk level 3 defendants released pending trial were released with one or more alternatives to detention. Defendants who participated in the alternatives to detention program were slightly more likely to be successful pending trial. In addition, it is plausible that many of these defendants may have been detained if not for the ATD program.

Defendants classified in risk level 4 had a 2.6 percent lower success rate when compared to risk level 3 defendants, 88.2 percent vs. 90.8 percent respectively. Forty percent of the risk level 4 defendants were released pending trial and nearly 92 percent of those were released to the ATD program. In these cases it is likely that many of these defendants may have been detained if not for the ATD program.

Approximately 30 percent of the highest risk defendants, risk level 5, were released pending trial and nearly all (95.7 percent) were released to the ATD program. The highest risk defendants had an average success rate of 84.5 percent.

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Summary of Findings and Recommendations

Assessing the efficacy of the alternatives to detention program included considerations of cost while attempting to strike the proper balance between the rights of the defendant with the need to assure court appearance and safety of the community pending trial. When considering cost alone, the average savings per defendant released pending trial to the ATD program in lieu of detention is \$15,393.

Accordingly, throughout the duration of the Department of Justice-Administrative Office of the U.S. Courts' alternative to detention reimbursement program, the program has resulted in financial efficiencies for the secured detention program. For example, during 2007, the federal judiciary utilized approximately \$2.4 million of funding provided by the Department of Justice (acting through the Office of the Federal Detention Trustee) to supplement their funding for alternatives to detention. This funding was used to fund alternatives to detention for 3,226 defendants released pending trial. Had these defendants been ordered detained, the Department of Justice would have incurred additional costs for detention housing of approximately \$38 million. Additionally, considering the scarcity of secured detention resources, 1,500 additional detention beds would have been occupied throughout the year.

When considering the percent of defendants released pending trial, success rates, ATD participation rates and the impact of participation in the ATD program by risk level, the populations most suited for pretrial release—both programmatically and economically—with

conditions of alternatives to detention are defendants in risk levels 3 and 4. Defendants in risk levels 1 and 2 have the lowest risk with the highest success rates and, consistent with the EBP risk principle, these defendants generally do better if released without ATD conditions. Defendants determined by the Court to be appropriate for release in risk level 5 should be provided ATD conditions as deemed necessary.

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Research Objective Five—Current Risk Assessment Practices

Examine how federal pretrial services currently assesses the pretrial risk federal criminal defendants pose and the effectiveness of those practices in reducing unwarranted detention and preventing failures to appear and danger to the community while pending trial.

Methods and Analysis Results

Statistically Significant and Policy Relevant Predictors of Pretrial Recommendations

Pretrial services officers make recommendations to the Court regarding whether defendants should be released or detained pending trial. The first step to answering this research objective was to identify the statistically significant and policy relevant predictors of pretrial recommendations for release or detention. See [Appendix Table A10](#) for the logistic regression model predicting pretrial recommendation.

The analysis identified eight (8) statistically significant and policy relevant predictors of pretrial recommendation—release or detention pending trial.

1. **Pending Felony Charges**—Pretrial services officers were 63 percent more likely to recommend detention for defendants with one pending felony and nearly two and a half times more likely (150 percent) for defendants with two or more pending felonies when compared to defendants who did not have a pending felony charge at the time of the arrest for the current charge.
2. **Prior Felony Convictions**—Pretrial services officers were 81 percent more likely to recommend detention for defendants with one prior felony conviction and nearly three and a half times more likely for defendants with two or more prior felony convictions when compared to defendants who did not have a prior felony conviction.
3. **Prior Felony Violent Convictions**—Pretrial services officers were 20 percent more likely to recommend detention for defendants with one prior violent felony conviction and 86 percent more likely for defendants with two or more prior violent felony convictions when compared to defendants who did not have a prior violent felony conviction.
4. **Prior Failures to Appear**—Defendants with prior failures to appear in court were more likely to be recommended for detention pending trial when compared to defendants who did not have a prior failure to appear in court: one prior failure to appear (21 percent more likely) and two or more prior failures to appear (67 percent more likely).
5. **Employment Status**—Defendants who were unemployed at the time of their arrest were 47 percent more likely to be recommended for detention when compared to defendants who were employed.
6. **Residence Status**—Defendants who did not own or were not buying their residence were more likely to be recommended for detention pending trial when compared to defendants who did own or were buying their residence: renting (68 percent more likely); making no financial contribution to residence (90 percent more likely); no residence/place to live (7.8 times more likely); and another type of residence (2.6 times more likely).

7. ***Primary Charge Category***—Defendants charged with a felony were 3.8 times more likely to be recommended for detention pending trial when compared to defendants who were charged with a misdemeanor or infraction.
8. ***Primary Charge Type***—When compared to defendants charged with a theft or fraud-related offense, defendants charged with an immigration law violation (14.4 times), a violent offense (4.6 times), a drug offense (4.6 times), a firearm offense (2.6 times), or another offense (1.6 times) were more likely to be recommended for detention pending trial when compared to defendants charged with a theft or fraud offense.

Effectiveness of Current Risk Assessment Practices

The final step in answering this research question was to assess the current risk assessment practices in reducing unwarranted detention and preventing failures to appear and danger to the community while awaiting trial. Pretrial services considered many of the same factors that were identified to be the best predictors of pretrial outcome, including prior failures to appear, employment status, residence status, primary charge category, and primary charge type. In addition, pretrial services considered measures of pending charges and prior criminal history that were similar to the risk factors identified as predictors of pretrial outcome. [Figure 24](#) shows the recommendations made by pretrial services for release and detention pending trial by risk level for defendants with a known risk level.

On average, pretrial services recommended release 85 percent of the time for the lowest risk defendant—risk level 1. The recommendations for release continuously decreased as the risk level increased.

[Figure 25](#) compares the recommendations for release made by pretrial services with the court’s decisions regarding release and the pretrial success rates for those released pending trial. Pretrial services officers make recommendations for release less frequently in all risk levels when compared with the Court’s decision to release defendants pending trial.

An examination of recommendations for release rates by District was completed. In nearly all Districts the recommendation for release decreased as the risk level increased. In addition, the recommendation release rates within risk levels varied greatly across the 93 Districts.

[Figure 26](#) represents a box and whiskers plot of the recommendation for release rates for the 93 Districts by risk level. The upper and lower bounds of the larger box represent the 75th and 25th percentile, respectively, while the center horizontal line represents the 50th (median). The inner box represents the mean and the vertical lines extend to the 10th and 90th percentile. Using risk level 3 as an example, the rate of recommending release averaged 46 percent, while the median was 51 percent. A closer examination reveals release recommendation rates for Districts ranged from 43 percent at the 25th percentile to 63 percent at the 75th percentile. This represents a 20 percent variation in release recommendation rates when considering the 25th and 75th percentiles; at the extremes, the rates for recommending release for risk level 3 defendants ranged from 21 percent to 82 percent.

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Summary of Findings and Recommendations

Pretrial services considered many of the same factors that were identified to be the best predictors of pretrial outcome including prior failures to appear, employment status, residence status, primary charge category and primary charge type. In addition, pretrial services considered measures of pending charges and prior criminal history that were similar to the risk factors identified as predictors of pretrial outcome.

The examination of current pretrial risk assessment and release/detention recommendations made by pretrial services revealed that generally pretrial services agencies consider many of the best predictors of pretrial outcome when making release/detention recommendations to the court. In

nearly all Districts the recommendations for release decreased as the risk level increased. There were three other significant findings detailed below.

1. The Court released a higher percentage of defendants in each risk level than was recommended by pretrial services.
2. Release and detention recommendations varied greatly across Districts within risk levels. This variation represents disparity in recommendation practices across Districts. Release recommendations varied as much as 20 percent within the same risk level (when considering the 25th and 75th percentiles).
3. Pretrial services recommended detention for 15 percent of the lowest risk defendants—risk level 1 (97.7 percent success rate), 40 percent of the lower risk defendants—risk level 2 (94 percent success rate), and more than half of the more moderate risk defendants—risk level 3 (90.8 percent success rate).

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Research Objective Six—Best Practices for Pretrial Risk Assessment and Recommendations

Identify “best practices” relating to the determination of pretrial risk and recommendations to release or detain a defendant pending trial, particularly as they relate to the assessment of pretrial risk and the administration of the alternatives to detention program.

The research identified nine (9) statistically significant and policy relevant predictors of pretrial outcome—success or failure pending trial. The predictors were used to develop a classification scheme to scale the risk persons arrested for federal criminal offenses posed if released pending trial. The risk classification scheme identifies defendants’ risk levels from 1 to 5 with pretrial success rates ranging from 97.7 percent to 84.5 percent. The classification scheme correctly classifies defendants by their risk of failure to appear and danger to the community, and although not the intent of a pretrial risk assessment, it also correctly classifies defendants based on their risk of technical violations.

The results of this study should be utilized to develop a standardized empirically-based risk assessment to be used by all federal pretrial services agencies. The use of a standardized empirically-based assessment will assist in reducing the disparity in risk assessment practices and provide a foundation for evidence-based practices relating to release and detention recommendations and the administration of the alternatives to detention program.

The implementation of a standardized risk assessment will allow for the development of a policy that provides guidance to pretrial services agencies regarding release and detention recommendations, including the use of the alternatives to detention program. Such a policy should represent several of the research findings presented here.

First, the lower-risk defendants, risk levels 1 and 2, are the most likely to succeed if released pending trial and in most cases release should be recommended. An alternative to detention, with the exception of mental health treatment when appropriate, generally decreases the likelihood of success for this population and should be recommended sparingly.

Second, the alternatives to detention program is most appropriate for the more moderate and higher-risk defendants as it allows for pretrial release while generally increasing pretrial success. Alternatives to detention should be recommended for this population when a defendant presents a specific risk of pretrial failure that can be addressed by an ATD. For example, a person with a substance abuse problem may be appropriate for drug testing, assessment, or treatment based on their specific situation. Defendants who do not present with a substance abuse problem should

not be recommended for a substance abuse-related ATD.

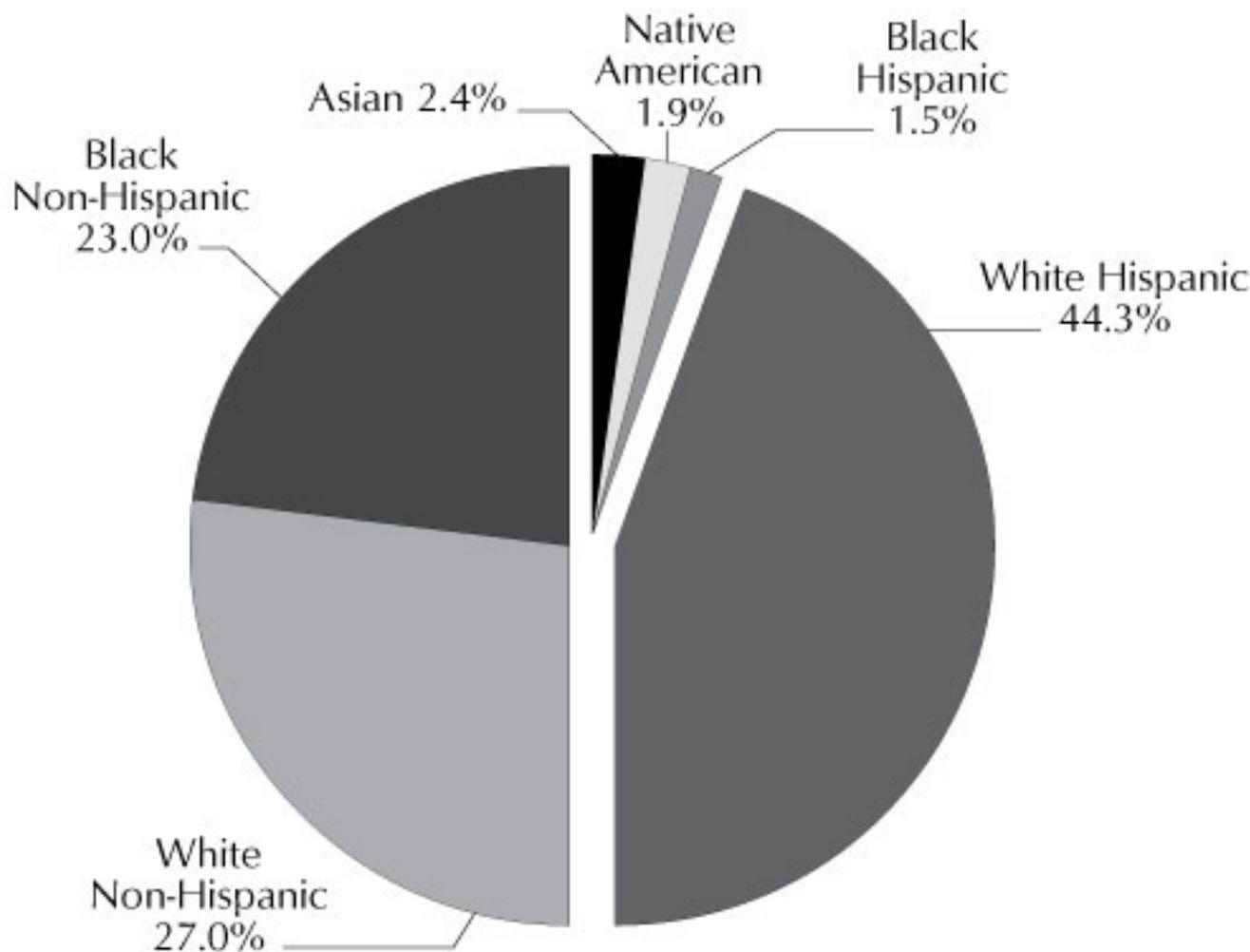
Finally, the populations most suited for pretrial release—both programmatically and economically—with conditions of alternatives to detention are defendants in risk levels 3 and 4. Attempts should be made to maximize the release of the defendants in these risk categories while minimizing the risk of pretrial failure through the ATD program. This practice is consistent with the purpose and intent of bail and striking the balance between the legal and constitutional rights of defendants with the need to protect the community and assure court appearance pending trial.

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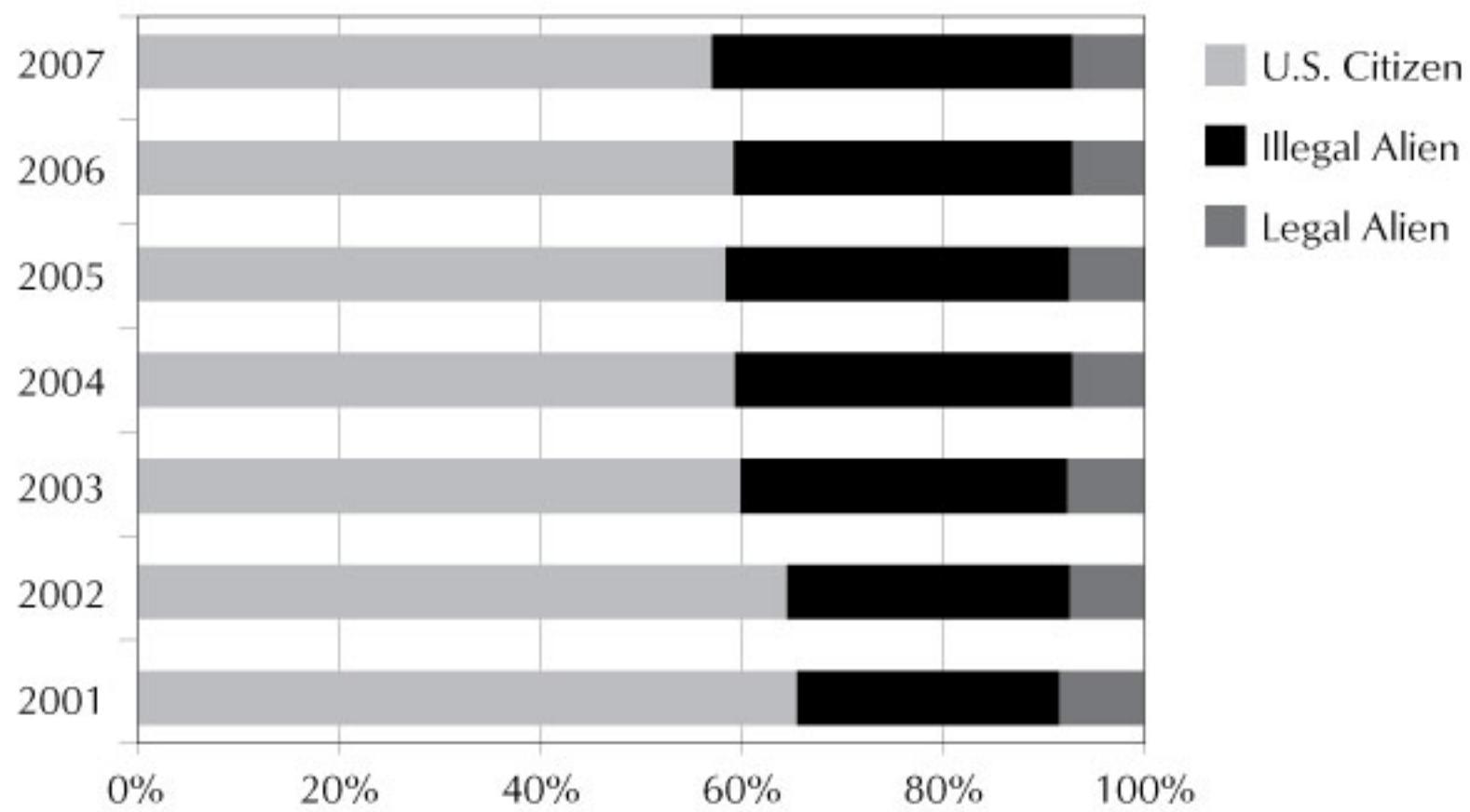
Figure 1.
Race/Ethnicity of all Defendants Processed by Pretrial Services



Data Source: Administrative Office of the U.S. Courts, Office of Probation and Pretrial Services, PACTS (Probation and Pretrial Services Automated Case Tracking System). All criminal defendants processed by Pretrial Services October 1, 2001–September 30, 2007.

Source: Luminosity. Pretrial Risk Assessment for the Federal Court—A Report Prepared for the Office of The Federal Detention Trustee, March 2009.

Figure 2.
Citizenship Status of Defendants 2001–2007



Data Source: Administrative Office of the U.S. Courts, Office of Probation and Pretrial Services, PACTS (Probation and Pretrial Services Automated Case Tracking System). All criminal defendants processed by Pretrial Services October 1, 2001–September 30, 2007.

Source: Luminosity. Pretrial Risk Assessment for the Federal Court—A Report Prepared for the Office of The Federal Detention Trustee, March 2009.

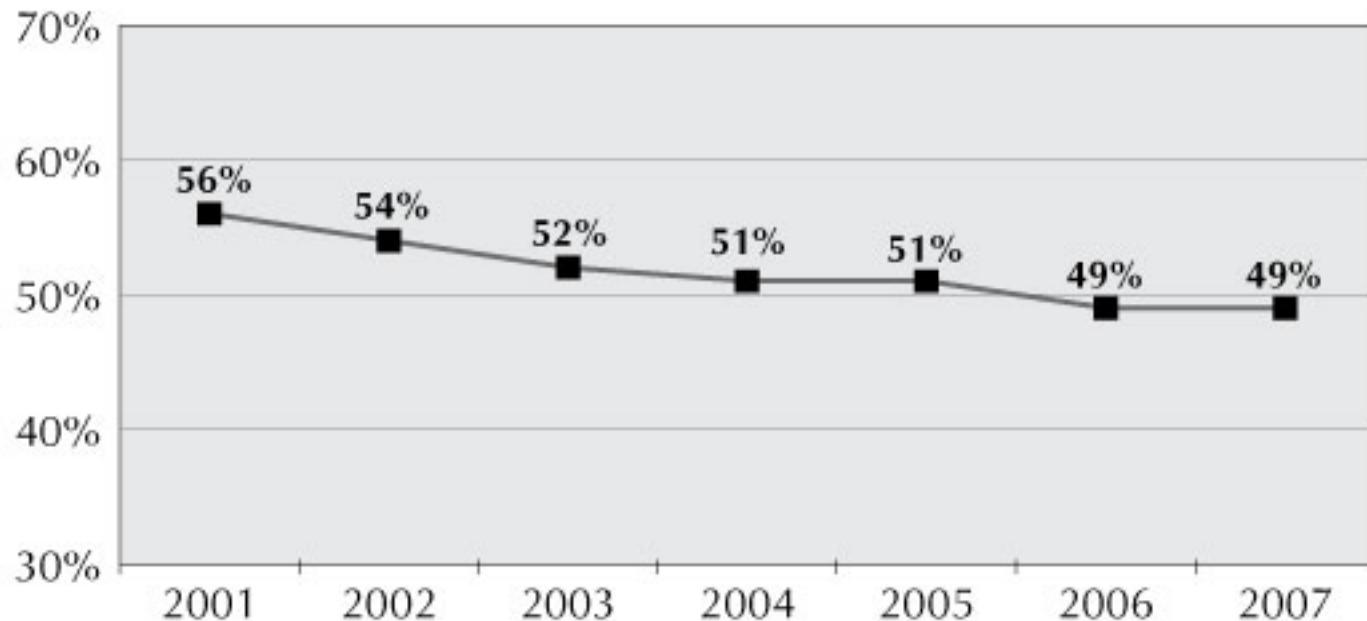
Figure 3. Defendant Education Levels

Education Level	Percent
College degree or higher	7.8
Some College	17.6
High school/GED/trade school	33.2
Some high school	27.8
None to eighth grade	13.6

Data Source: Administrative Office of the U.S. Courts, Office of Probation and Pretrial Services, PACTS (Probation and Pretrial Services Automated Case Tracking System). All criminal defendants processed by Pretrial Services October 1, 2001–September 30, 2007.

Source: Luminosity. Pretrial Risk Assessment for the Federal Court—A Report Prepared for the Office of The Federal Detention Trustee, March 2009.

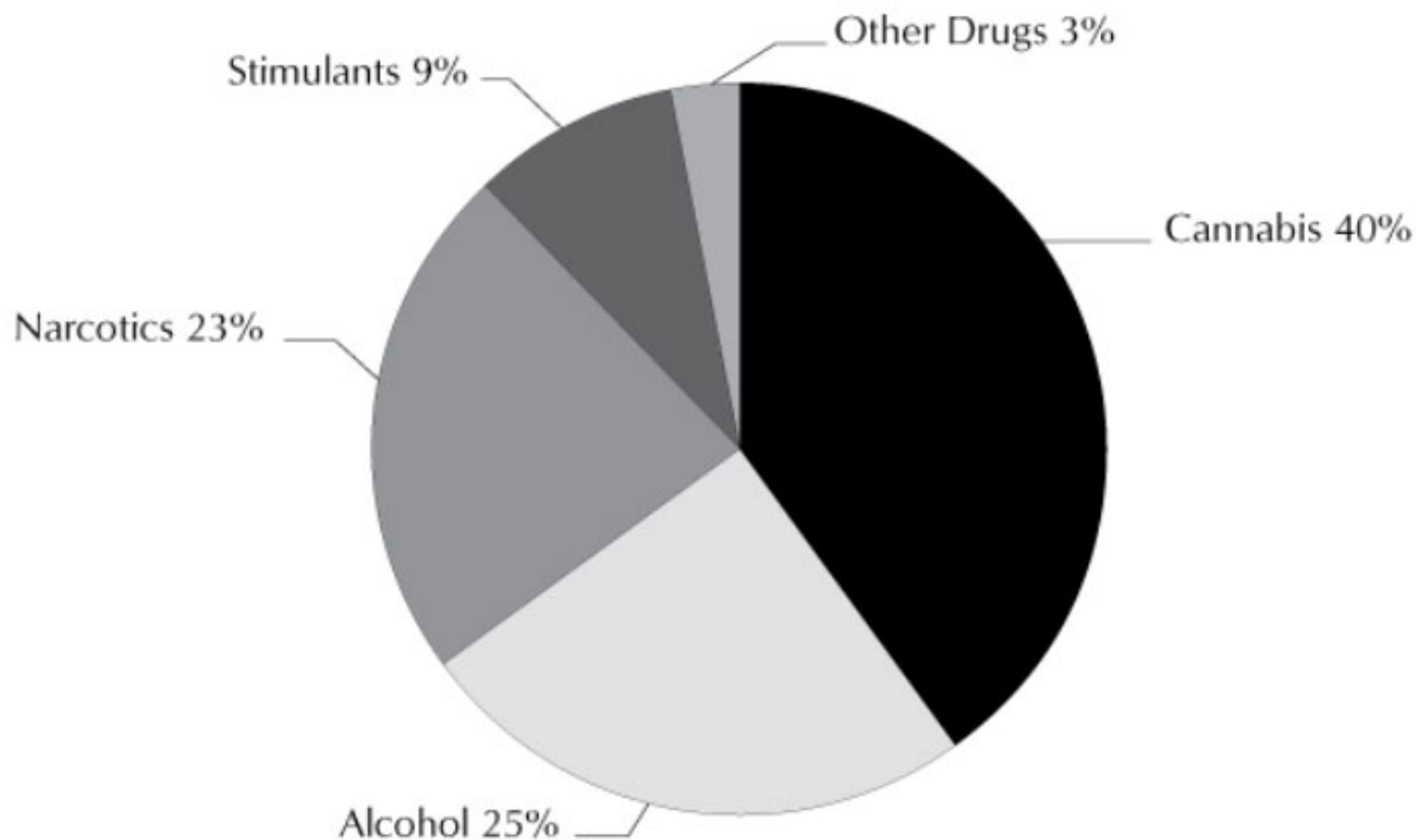
Figure 4.
Defendants Employed at Initial Appearance 2001–2007



Data Source: Administrative Office of the U.S. Courts, Office of Probation and Pretrial Services, PACTS (Probation and Pretrial Services Automated Case Tracking System). All criminal defendants processed by Pretrial Services October 1, 2001–September 30, 2007.

Source: Luminosity. Pretrial Risk Assessment for the Federal Court—A Report Prepared for the Office of The Federal Detention Trustee, March 2009.

Figure 5. Substance Abuse Problem Type

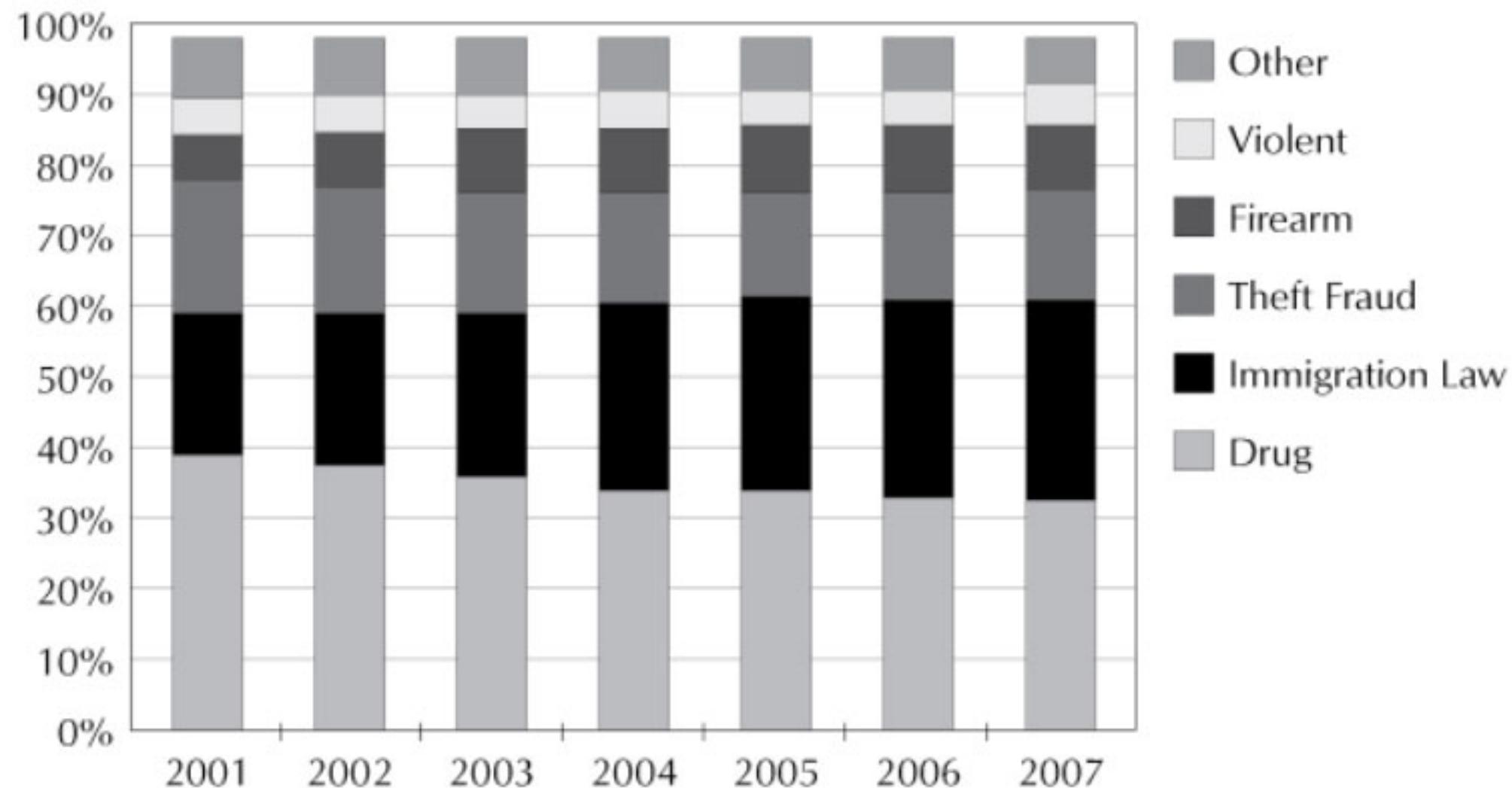


Data Source: Administrative Office of the U.S. Courts, Office of Probation and Pretrial Services, PACTS (Probation and Pretrial Services Automated Case Tracking System). All criminal defendants processed by Pretrial Services October 1, 2001–September 30, 2007.

Source: Luminosity. Pretrial Risk Assessment for the Federal Court—A Report Prepared for the Office of The Federal Detention Trustee, March 2009.

The substance abuse type categories are based on the Substance Abuse and Mental Health Services Administrations National Clearinghouse for Alcohol and Drug Information report 926 which can be found at <http://ncadi.samhsa.gov/govpubs/rpo926/>

Figure 6. Primary Charge Type



Data Source: Administrative Office of the U.S. Courts, Office of Probation and Pretrial Services, PACTS (Probation and Pretrial Services Automated Case Tracking System). All criminal defendants processed by Pretrial Services October 1, 2001–September 30, 2007.

Source: Luminosity. Pretrial Risk Assessment for the Federal Court—A Report Prepared for the Office of The Federal Detention Trustee, March 2009.

Figure 7. Prior Felony Arrests and Convictions

	Felony Arrests	Felony Convictions
None	44.4%	57.4%
One	16.5%	17.6%
Two or more	39.1%	25.0%
Total	100%	100%

Data Source: Administrative Office of the U.S. Courts, Office of Probation and Pretrial Services, PACTS (Probation and Pretrial Services Automated Case Tracking System). All criminal defendants processed by Pretrial Services October 1, 2001–September 30, 2007.

Source: Luminosity. Pretrial Risk Assessment for the Federal Court—A Report Prepared for the Office of The Federal Detention Trustee, March 2009.

Figure 8.
Prior Misdemeanor Arrests and Convictions

	Misdemeanor Arrests	Misdemeanor Convictions
None	41.8%	55.4%
One	14.9%	16.2%
Two	9.8%	9.1%
Three	7.0%	5.6%
Four	5.2%	3.6%
Five or more	21.3%	100%
Total	100%	100%

Data Source: Administrative Office of the U.S. Courts, Office of Probation and Pretrial Services, PACTS (Probation and Pretrial Services Automated Case Tracking System). All criminal defendants processed by Pretrial Services October 1, 2001–September 30, 2007.

Source: Luminosity. Pretrial Risk Assessment for the Federal Court—A Report Prepared for the Office of The Federal Detention Trustee, March 2009.

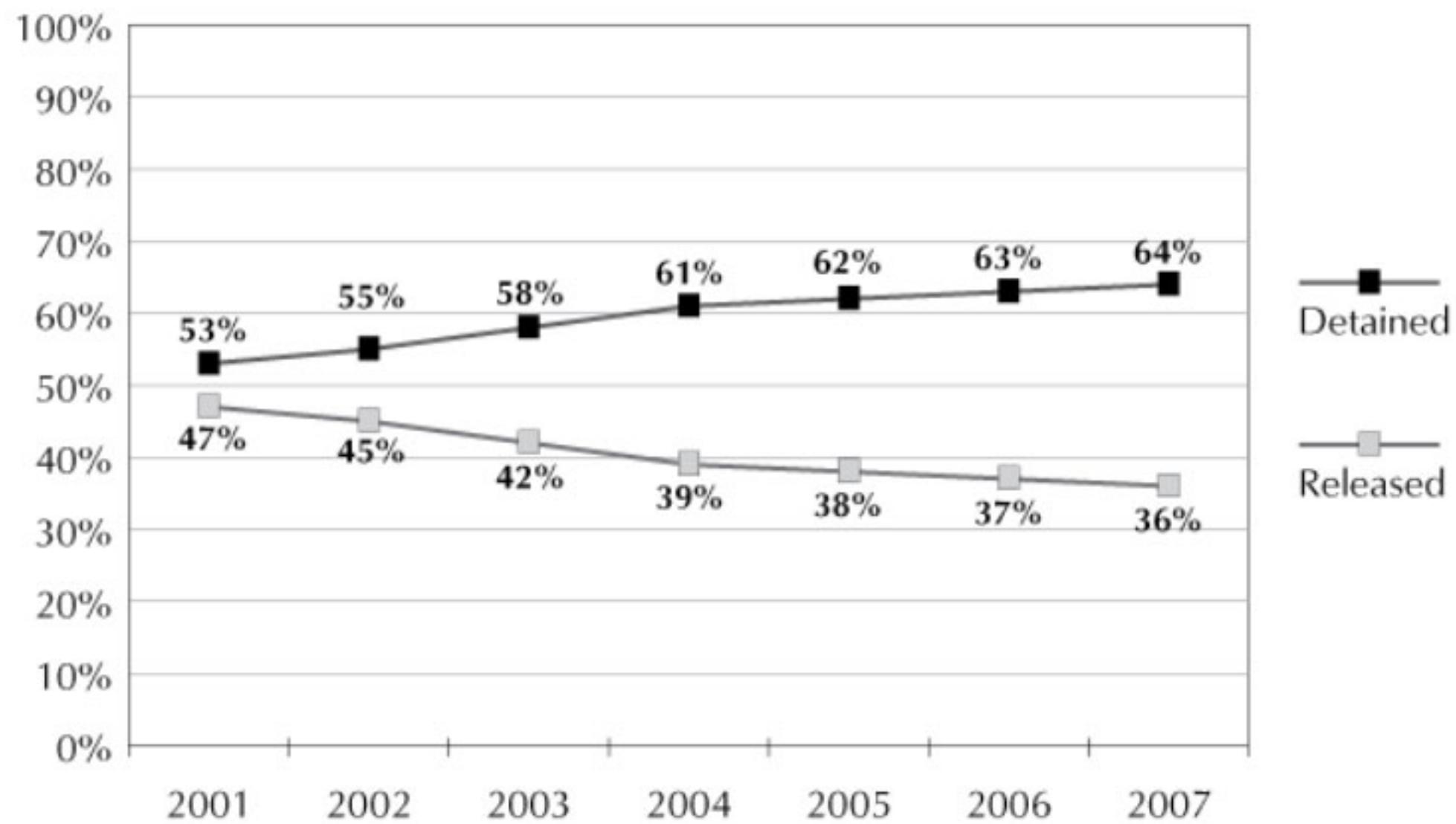
Figure 9. Misdemeanor and Felony Pending Charges

	Pending Misdemeanor	Pending Felony
None	91.9%	87.1%
One	5.5%	9.2%
Two or more	2.6%	3.8%
Total	100%	100%

Data Source: Administrative Office of the U.S. Courts, Office of Probation and Pretrial Services, PACTS (Probation and Pretrial Services Automated Case Tracking System). All criminal defendants processed by Pretrial Services October 1, 2001–September 30, 2007.

Source: Luminosity. Pretrial Risk Assessment for the Federal Court—A Report Prepared for the Office of The Federal Detention Trustee, March 2009.

Figure 10.
Pretrial Release and Detention Rates 2001–1007



Data Source: Administrative Office of the U.S. Courts, Office of Probation and Pretrial Services, PACTS (Probation and Pretrial Services Automated Case Tracking System). All criminal defendants processed by Pretrial Services October 1, 2001–September 30, 2007.

Source: Luminosity. Pretrial Risk Assessment for the Federal Court—A Report Prepared for the Office of The Federal Detention Trustee, March 2009.

Figure 11.
Pretrial Outcome Based on Risk Level

		Pretrial Outcome		
		Successful	Failure	Total
Risk level 1	Count	58059	1337	59396
	Percent	97.7%	2.3%	100.0%
Risk level 2	Count	38750	2463	41213
	Percent	94.0%	6.0%	100.0%
Risk level 3	Count	28580	2909	31489
	Percent	90.8%	9.2%	100.0%
Risk level 4	Count	21483	2864	24347
	Percent	88.2%	11.8%	100.0%
Risk level 5	Count	13584	2486	16070
	Percent	84.5%	15.5%	100.0%
Total	Count	160456	12059	172515
	Percent	93.0%	7.0%	100.0%

Data Source: Administrative Office of the U.S. Courts, Office of Probation and Pretrial Services, PACTS (Probation and Pretrial Services Automated Case Tracking System). All criminal defendants processed by Pretrial Services October 1, 2001–September 30, 2007.

Source: Luminosity. Pretrial Risk Assessment for the Federal Court—A Report Prepared for the Office of The Federal Detention Trustee, March 2009.

Note: Excludes defendants who had their bail revoked for violating technical conditions of release. These defendants represent approximately 6 percent of the total pretrial release population during the study period.

Figure 12.
Pretrial Outcome by Type Based on Risk Level

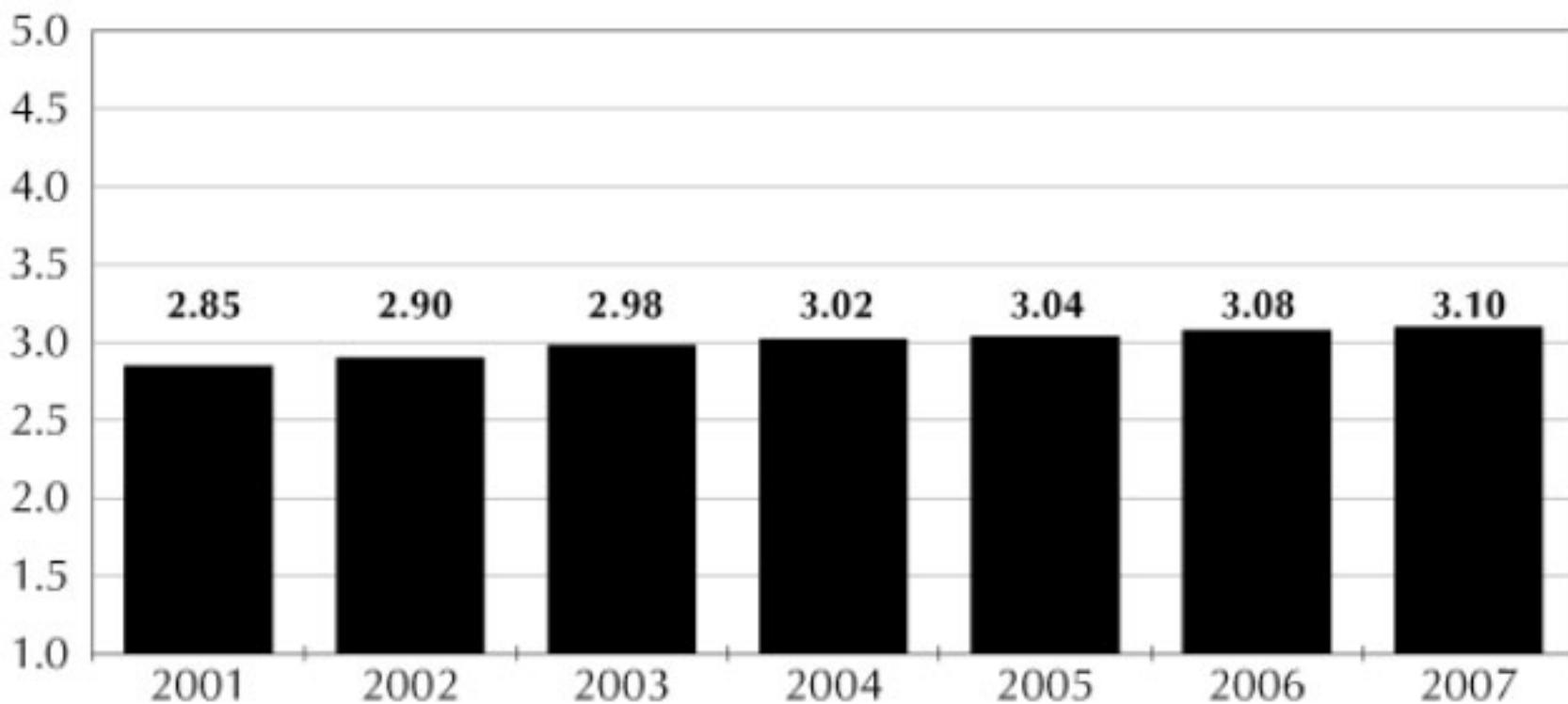
		Pretrial Outcome			
		Successful	Danger to Community	Failure to Appear	Total
Risk level 1	Count	58059	516	821	59396
	Percent	97.7%	.9%	1.4%	100.0%
Risk level 2	Count	38750	1106	1357	41213
	Percent	94.0%	2.7%	3.3%	100.0%
Risk level 3	Count	28580	1419	1490	31489
	Percent	90.8%	4.5%	4.7%	100.0%
Risk level 4	Count	21483	1663	1201	24347
	Percent	88.2%	6.8%	4.9%	100.0%
Risk level 5	Count	13584	1576	910	16070
	Percent	84.5%	9.8%	5.7%	100.0%
Total	Count	160456	6280	5779	172515
	Percent	93.0%	3.6%	3.3%	100.0%

Data Source: Administrative Office of the U.S. Courts, Office of Probation and Pretrial Services, PACTS (Probation and Pretrial Services Automated Case Tracking System). All criminal defendants processed by Pretrial Services October 1, 2001–September 30, 2007.

Source: Luminosity. Pretrial Risk Assessment for the Federal Court—A Report Prepared for the Office of The Federal Detention Trustee, March 2009.

Note: Excludes defendants who had their bail revoked for violating technical conditions of release. These defendants represent approximately 6 percent of the total pretrial release population during the study period.

Figure 13.
Average Risk Level 2001 to 2007



Data Source: Administrative Office of the U.S. Courts, Office of Probation and Pretrial Services, PACTS (Probation and Pretrial Services Automated Case Tracking System). All criminal defendants processed by Pretrial Services October 1, 2001–September 30, 2007.

Source: Luminosity. Pretrial Risk Assessment for the Federal Court—A Report Prepared for the Office of The Federal Detention Trustee, March 2009.

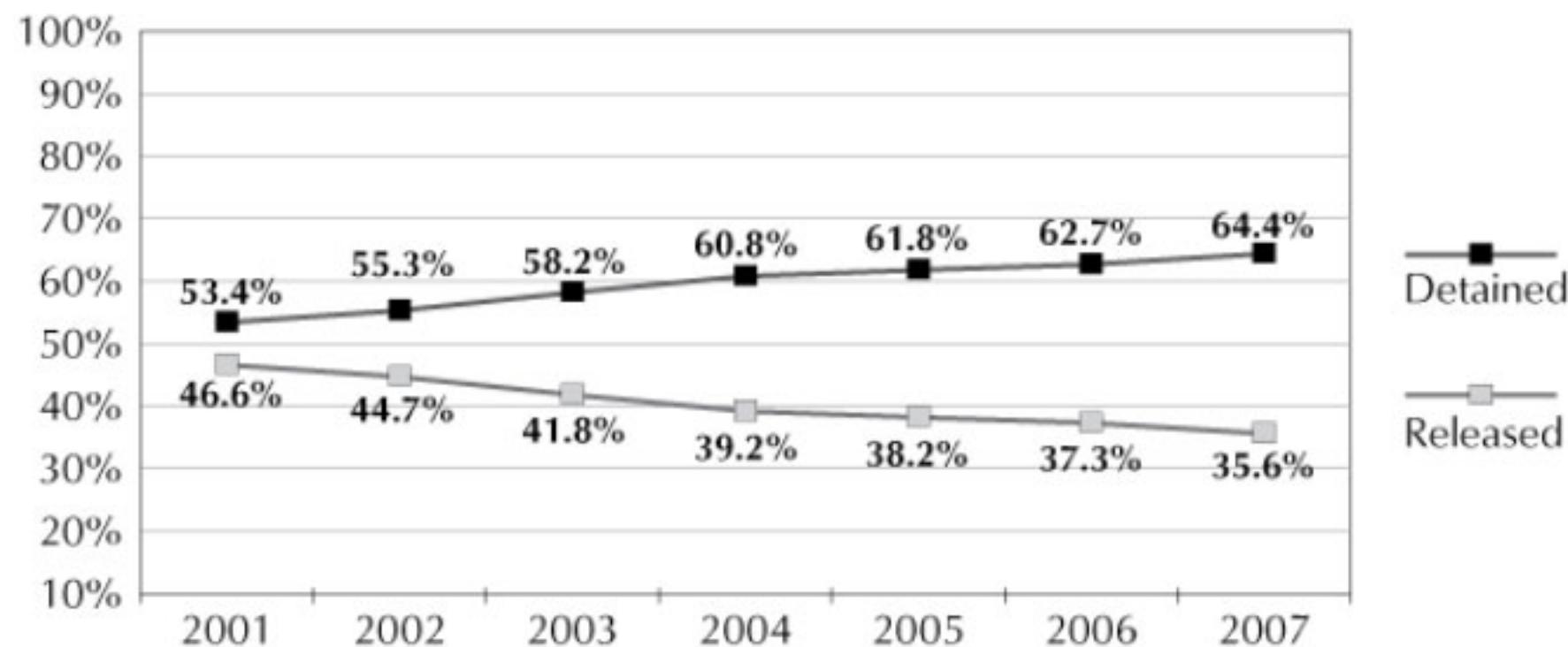
Figure 14.
Risk Level Classification 2001 to 2007

	2001	2002	2003	2004	2005	2006	2007	% Change 01-07
Risk Level 1	22.3%	21.6%	19.8%	19.6%	18.6%	19.5%	19.1%	-3.2%
Risk Level 2	21.6%	21.0%	20.8%	19.7%	20.1%	18.6%	18.4%	-3.2%
Risk Level 3	21.0%	20.5%	20.2%	20.5%	20.5%	18.7%	18.6%	-2.4%
Risk Level 4	18.9%	19.4%	20.1%	19.8%	20.2%	20.9%	20.7%	+1.8%
Risk Level 5	16.2%	17.5%	19.1%	20.4%	20.8%	22.4%	23.1%	+6.9%

Data Source: Administrative Office of the U.S. Courts, Office of Probation and Pretrial Services, PACTS (Probation and Pretrial Services Automated Case Tracking System). All criminal defendants processed by Pretrial Services October 1, 2001–September 30, 2007.

Source: Luminosity. Pretrial Risk Assessment for the Federal Court—A Report Prepared for the Office of The Federal Detention Trustee, March 2009.

Figure 15.
Release and Detention Rates 2001 to 2007



Data Source: Administrative Office of the U.S. Courts, Office of Probation and Pretrial Services, PACTS (Probation and Pretrial Services Automated Case Tracking System). All criminal defendants processed by Pretrial Services October 1, 2001–September 30, 2007.

Source: Luminosity. Pretrial Risk Assessment for the Federal Court—A Report Prepared for the Office of The Federal Detention Trustee, March 2009.

Figure 16.
Detention Rates by Risk Level 2001–2007

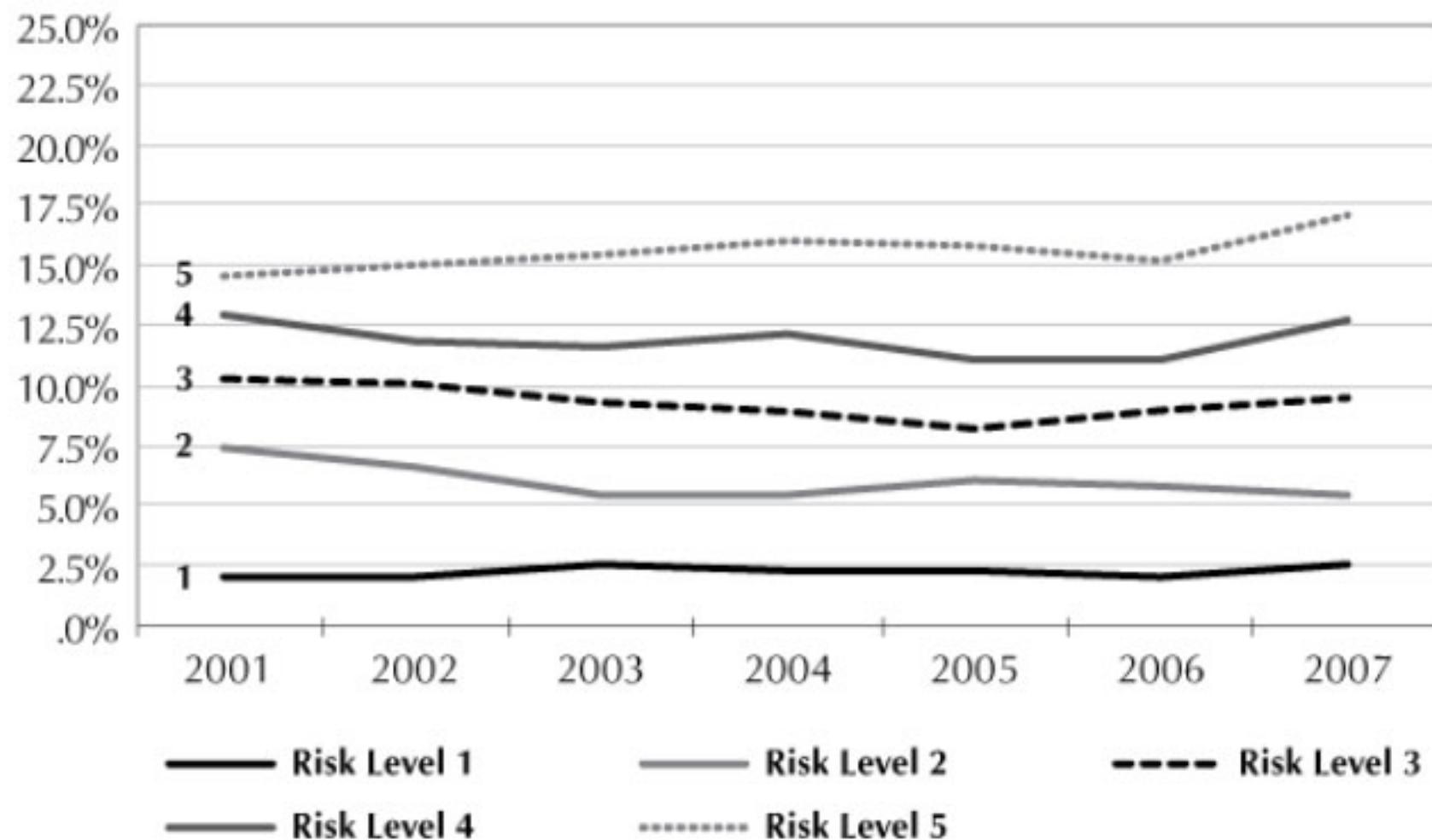
	2001	2002	2003	2004	2005	2006	2007	Average	% Change 01-07
Risk Level 1	10.0%	11.8%	12.1%	14.2%	15.3%	13.3%	13.4%	12.9%	2.9%
Risk Level 2	33.6%	36.2%	37.4%	41.1%	42.8%	35.1%	37.0%	37.7%	4.1%
Risk Level 3	45.7%	47.6%	50.7%	53.6%	53.4%	50.4%	51.8%	50.6%	4.9%
Risk Level 4	55.4%	56.6%	58.8%	61.2%	62.3%	61.4%	62.9%	60.0%	4.6%
Risk Level 5	68.6%	68.7%	71.5%	73.1%	71.9%	73.7%	75.3%	72.1%	3.5%

Data Source: Administrative Office of the U.S. Courts, Office of Probation and Pretrial Services, PACTS (Probation and Pretrial Services Automated Case Tracking System). All criminal defendants processed by Pretrial Services October 1, 2001–September 30, 2007.

Source: Luminosity. Pretrial Risk Assessment for the Federal Court—A Report Prepared for the Office of The Federal Detention Trustee, March 2009.

Figure 17.

Pretrial Failure Rates by Risk Level 2001 to 2007



Data Source: Administrative Office of the U.S. Courts, Office of Probation and Pretrial Services, PACTS (Probation and Pretrial Services Automated Case Tracking System). All criminal defendants processed by Pretrial Services October 1, 2001–September 30, 2007.

Source: Luminosity. Pretrial Risk Assessment for the Federal Court—A Report Prepared for the Office of The Federal Detention Trustee, March 2009.

Figure 18.
Defendants Released on the Alternatives to Detention Program

	Released without ATD	Released with ATD
Risk Level 1	56.6%	43.4%
Risk Level 2	30.4%	69.6%
Risk Level 3	16.1%	83.9%
Risk Level 4	8.2%	91.8%
Risk Level 5	4.3%	95.7%
Total	27.7%	72.3%

Data Source: Administrative Office of the U.S. Courts, Office of Probation and Pretrial Services, PACTS (Probation and Pretrial Services Automated Case Tracking System). All criminal defendants processed by Pretrial Services October 1, 2001–September 30, 2007.

Source: Luminosity. Pretrial Risk Assessment for the Federal Court—A Report Prepared for the Office of The Federal Detention Trustee, March 2009.

Figure 19.
Alternatives to Detention by Risk Level

		3rd Party Custodian	Sub. Abuse Testing	Sub. Abuse Treatment	Location Monitor	Housing & Shelter	Mental Health Treatment	Sex Offender Treatment	Computer Monitor
Risk Level 1	Count	2079	12423	6157	4048	320	4604	359	1420
	Percent	4.6%	27.2%	13.5%	8.9%	.7%	10.1%	.8%	3.1%
Risk Level 2	Count	3784	22780	12472	5948	1150	4213	227	865
	Percent	9.3%	55.9%	30.6%	14.6%	2.8%	10.3%	.6%	2.1%
Risk Level 3	Count	4372	25475	14257	6647	1601	3026	63	196
	Percent	12.6%	73.5%	41.1%	19.2%	4.6%	8.7%	.2%	.6%
Risk Level 4	Count	4082	23775	14813	6899	1985	2471	28	87
	Percent	14.3%	83.4%	51.9%	24.2%	7.0%	8.7%	.1%	.3%
Risk Level 5	Count	3287	17494	11742	6378	1838	1525	15	14
	Percent	16.5%	88.0%	59.1%	32.1%	9.2%	7.7%	.1%	.1%
Total	Count	17604	101947	59441	29920	6894	15839	692	2582
	Percent	10.4%	60.1%	35.1%	17.6%	4.1%	9.3%	.4%	1.5%

Data Source: Administrative Office of the U.S. Courts, Office of Probation and Pretrial Services, PACTS (Probation and Pretrial Services Automated Case Tracking System). All criminal defendants processed by Pretrial Services October 1, 2001–September 30, 2007.

Source: Luminosity. Pretrial Risk Assessment for the Federal Court—A Report Prepared for the Office of The Federal Detention Trustee, March 2009.

Figure 20.
Defendant Pretrial Success Rates With and Without Release to ATD Program

	Released without ATD	Released with ATD
Risk Level 1	97.6%	96.4%
Risk Level 2	94.8%	92.8%
Risk Level 3	90.7%	91.3%
Risk Level 4	87.7%	88.1%
Risk Level 5	83.8%	84.3%

Data Source: Administrative Office of the U.S. Courts, Office of Probation and Pretrial Services, PACTS (Probation and Pretrial Services Automated Case Tracking System). All criminal defendants processed by Pretrial Services October 1, 2001–September 30, 2007.

Source: Luminosity. Pretrial Risk Assessment for the Federal Court—A Report Prepared for the Office of The Federal Detention Trustee, March 2009.

Figure 21.
Average Cost of Pretrial Detention by Risk Level

	Avg. Pretrial Detention Days	Avg. Daily Detention Per Diem Rate	Avg. Cost of Pretrial Detention
Risk Level 1	289	\$67.27 day	\$19,441
Risk Level 2	279	\$67.27 day	\$18,768
Risk Level 3	281	\$67.27 day	\$18,903
Risk Level 4	286	\$67.27 day	\$19,239
Risk Level 5	296	\$67.27 day	\$19,912

Data Source for Average Pretrial Detention Days: Administrative Office of the U.S. Courts, Office of Probation and Pretrial Services, PACTS (Probation and Pretrial Services Automated Case Tracking System). All criminal defendants processed by Pretrial Services October 1, 2001–September 30, 2007.

Data Source for Average Cost of Detention: U.S. Marshal Service, Prisoner Tracking System, September 30, 2008

Note: The average pretrial detention days was determined by examining the average length of detention for defendants who remained detained the entire time pending trial. The average cost of pretrial detention was calculated by multiplying the average pretrial detention days by the average daily detention per diem rate.

Source: Luminosity. Pretrial Risk Assessment for the Federal Court—A Report Prepared for the Office of The Federal Detention Trustee, March 2009.

Figure 22.
Average Cost of Release on Alternatives to Detention Program

	Average Cost of Supervision	Avg. Cost of ATD	Avg. Cost of Fugitive Recovery	Avg. Cost of Release on ATD Program
Risk Level 1	\$1,599	\$1,431	\$75	\$3,105
Risk Level 2	\$1,667	\$1,718	\$178	\$3,563
Risk Level 3	\$1,752	\$1,848	\$253	\$3,853
Risk Level 4	\$1,785	\$2,145	\$264	\$4,194
Risk Level 5	\$1,870	\$2,410	\$307	\$4,587

Data Source Average Cost of Supervision: The average length of supervision per risk level was determined by examining the average length of supervision days for all defendants released at some point pending trial. [The Administrative Office of the U.S. Courts, Office of Probation and Pretrial Services, PACTS (Probation and Pretrial Services Automated Case Tracking System). All criminal defendants processed by Pretrial Services October 1, 2001–September 30, 2007.] The Administrative Office of the U.S. Courts—OPPS reported the average daily cost of supervision in 2007 was \$5.65. The average cost of supervision was calculated by multiplying the average length of supervision days per risk level by the daily cost of supervision.

Data Source Average Cost of ATD: The average cost of each alternative to detention was provided by the Administrative Office of the U.S. Courts—OPPS as follows: third-party custodian (\$0), substance abuse testing (\$196), substance abuse treatment (\$2,060), location monitoring (\$756), housing and shelter (\$6,047), mental health treatment (\$1,477), sex offender treatment (2,159), and computer monitoring (\$503). The total cost of alternatives to detention for all defendants released with one or more ATD was calculated using the PACTS data referenced above. The average cost of ATD per risk level was calculated by multiplying the total cost of alternatives to detention for all defendants released with one or more ATD by the percent of defendants in each risk level released to the ATD program.

Data Source Average Cost of Fugitive Recovery: The average cost of \$5,382 to recover a fugitive was provided by OFDT and based on FY2008 performance measures from the U.S. Marshal Service. The average cost of fugitive recovery per risk level was calculated by multiplying the average cost to recover a fugitive by the percent of defendants who failed to appear in each risk level.

Note: The average cost of release on the ATD program was calculated for each risk level by adding the average cost of supervision, average cost of release to the ATD program, and average cost of fugitive recovery.

Source: Luminosity. Pretrial Risk Assessment for the Federal Court—A Report Prepared for the Office of The Federal Detention Trustee, March 2009.

Figure 23.
Pretrial Release and Success Rates by Risk Level

	Released Pending Trial	Pretrial Outcome-Successful
Risk Level 1	87.1%	97.7%
Risk Level 2	62.3%	94.0%
Risk Level 3	49.4%	90.8%
Risk Level 4	40.0%	88.2%
Risk Level 5	27.9%	84.5%

Data Source: Administrative Office of the U.S. Courts, Office of Probation and Pretrial Services, PACTS (Probation and Pretrial Services Automated Case Tracking System). All criminal defendants processed by Pretrial Services October 1, 2001–September 30, 2007.

Source: Luminosity. Pretrial Risk Assessment for the Federal Court—A Report Prepared for the Office of The Federal Detention Trustee, March 2009.

		Pretrial Services Recommendation		
		Detention	Release	Total
Risk level 1	Count	10171	56578	66749
	Percent	15.2%	84.8%	100.0%
Risk level 2	Count	28169	40826	68995
	Percent	40.8%	59.2%	100.0%
Risk level 3	Count	37674	32103	69777
	Percent	54.0%	46.0%	100.0%
Risk level 4	Count	44824	24947	69771
	Percent	64.2%	35.8%	100.0%
Risk level 5	Count	54517	15438	69955
	Percent	77.9%	22.1%	100.0%
Total	Count	175355	169892	345247
	Percent	50.8%	49.2%	100.0%

Data Source: Administrative Office of the U.S. Courts, Office of Probation and Pretrial Services, PACTS (Probation and Pretrial Services Automated Case Tracking System). All criminal defendants processed by Pretrial Services October 1, 2001–September 30, 2007.

Source: Luminosity. Pretrial Risk Assessment for the Federal Court—A Report Prepared for the Office of The Federal Detention Trustee, March 2009.

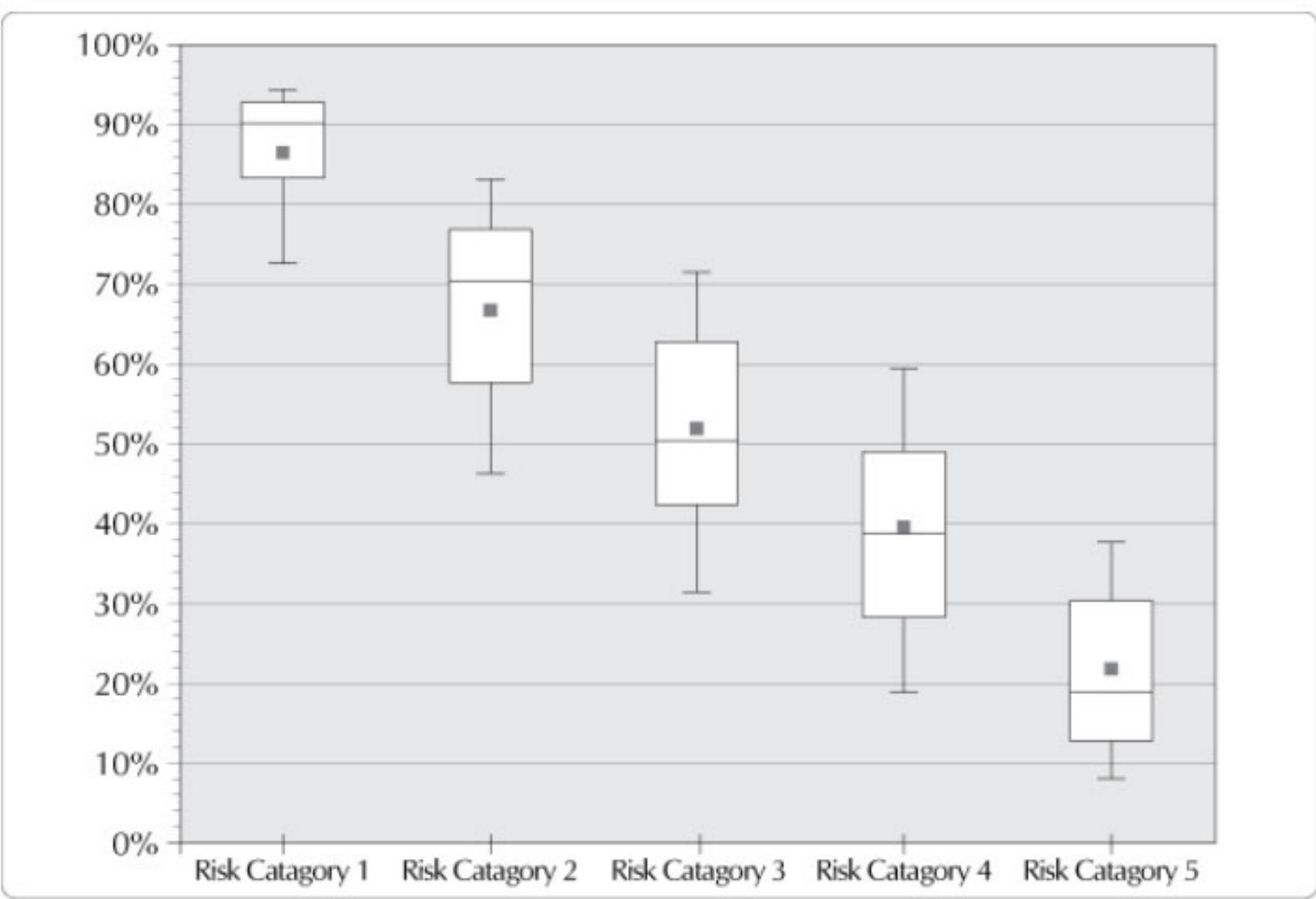
Figure 25.
Pretrial Recommendations/Court Decisions for Release & Success Rates by Risk Level

	Pretrial Services Recommendations for Release	Court Decisions for Release	Pretrial Outcome- Successful
Risk Level 1	84.8%	87.1%	97.7%
Risk Level 2	59.2%	62.3%	94.0%
Risk Level 3	46.0%	49.4%	90.8%
Risk Level 4	35.8%	40.0%	88.2%
Risk Level 5	22.1%	27.9%	84.5%

Data Source: Administrative Office of the U.S. Courts, Office of Probation and Pretrial Services, PACTS (Probation and Pretrial Services Automated Case Tracking System). All criminal defendants processed by Pretrial Services October 1, 2001–September 30, 2007.

Source: Luminosity. Pretrial Risk Assessment for the Federal Court—A Report Prepared for the Office of The Federal Detention Trustee, March 2009.

Figure 26.
Variations in Pretrial Services Recommendations for Release Rates for 93 Districts



Data Source: Administrative Office of the U.S. Courts, Office of Probation and Pretrial Services, PACTS (Probation and Pretrial Services Automated Case Tracking System). All criminal defendants processed by Pretrial Services October 1, 2001–September 30, 2007.

Source: Luminosity. Pretrial Risk Assessment for the Federal Court—A Report Prepared for the Office of The Federal Detention Trustee, March 2009.

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Pretrial Risk Assessment in the Federal Court

Appendix

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Table A1.
Prior Misdemeanor and Felony Drug Convictions

	Misdemeanor Drug Convictions	Felony Drug Convictions
None	79.5%	68.9%
One	11.0%	15.0%
Two or more	9.5%	16.1%
Total	100%	100%

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Table A2.
Prior Misdemeanor and Felony Violent Convictions

	Misdemeanor Violent Convictions	Felony Violent Convictions
None	80.3%	78.3%
One	10.8%	11.9%
Two or more	8.9%	9.8%
Total	100%	100%

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Table A3.
Logistic Regression Model: Pretrial Risk Factors to
Predict Pretrial Outcome

	B	S.E.	Wald	Sig.	Exp(B) Odds ratio	95.0% C.I. for EXP(B)	
						Lower	Upper
Pending charge	.182	.035	26.684	.000	1.200	1.120	1.285
No prior misdemeanor arrest (reference)			168.018	.000			
One prior misdemeanor arrest	.124	.042	8.600	.003	1.132	1.042	1.230
Two prior misdemeanor arrests	.276	.049	32.053	.000	1.318	1.198	1.451
Three prior misdemeanor arrests	.370	.055	44.664	.000	1.447	1.299	1.613
Four prior misdemeanor arrests	.462	.062	55.129	.000	1.588	1.405	1.794
Five or more prior misdemeanor arrests	.527	.044	145.150	.000	1.694	1.555	1.846
No prior felony arrest (reference)			79.687	.000			
One prior felony arrest	.198	.039	25.994	.000	1.219	1.130	1.315
Two or more prior felony arrest	.322	.036	77.866	.000	1.380	1.284	1.482
No failure to appear (reference)			45.686	.000			
One failure to appear	.200	.050	15.725	.000	1.221	1.106	1.348
Two or more failures to appear	.299	.048	38.143	.000	1.349	1.227	1.483
Unemployed	.192	.028	45.953	.000	1.212	1.146	1.281
Own or buying residence (reference)			202.268	.000			
Renting residence	.499	.039	165.776	.000	1.648	1.527	1.778
Making no contribution to residence	.552	.044	160.525	.000	1.737	1.595	1.892
Other residence	.391	.052	57.635	.000	1.479	1.337	1.636
No residence/place to live	.759	.160	22.401	.000	2.135	1.560	2.923
No substance abuse problem (reference)			64.963	.000			
Abuses alcohol	.187	.045	17.576	.000	1.206	1.105	1.316
Abuses stimulants	.117	.062	3.519	.061	1.124	.995	1.271
Abuses narcotics	.335	.047	51.584	.000	1.398	1.276	1.532
Abuses cannabis	.209	.037	32.193	.000	1.232	1.146	1.324

Current charge a felony	.479	.058	67.766	.000	1.615	1.441	1.810
Current charge theft or fraud (reference)			374.545	.000			
Current charge drug offense	.576	.036	255.272	.000	1.779	1.658	1.909
Current charge firearm offense	.413	.050	67.958	.000	1.512	1.370	1.668
Current charge violent offense	.073	.072	1.023	.312	1.076	.934	1.240
Current charge immigration law viol.	.575	.066	74.746	.000	1.777	1.560	2.024
Current charge other offense	-.193	.062	9.669	.002	.825	.730	.931
Constant	-4.29	.071	3687.340	.000	.014		

The set of independent variables significantly predict the outcome, $\chi^2(26) = 2705.8$, $p < .001$; Nagelkerke $R^2 = .078$

Classification Table: cutpoint=.073; predicted successful = 64.2%; predicted failure = 64.3%; Overall predicted correctly training sample = 64.2% and holdback sample = 64.3%

Area Under Receiver Operating Characteristics (ROC) Curve = .694

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Table A4.
Logistic Regression Model: Predicted Probability Formula

Predicted Probability	$=1/(1 + e(-1 * (-4.295927 - 0.192627 * X1 + 0.574686 * X2 + 0.073198 * X3 + 0.413158 * X4 + 0.576092 * X5 + 0.479341 * X6 + 0.049754 * X7 + 0.208549 * X8 + 0.334963 * X9 + 0.117116 * X10 + 0.187130 * X11 + 0.758612 * X12 + 0.391476 * X13 + 0.552084 * X14 + 0.499456 * X15 + 0.192049 * X16 + 0.199966 * X17 + 0.299147 * X18 + 0.321848 * X19 + 0.197955 * X20 + 0.527241 * X21 + 0.462293 * X22 + 0.369623 * X23 + 0.276433 * X24 + 0.123880 * X25 + 0.182050 * X26)))$		
Where,	X10 = abuses stimulants	X19= two or more prior felony arrests	
X1 = current charge other offense	X11 = abuses alcohol	X20 = one prior felony arrest	
X2 = current charge immigration law violation	X12 = no residence/place to live	X21 = five or more prior misdemeanor arrests	
X3 = current charge violent offense	X13 = other residence	X22 = four prior misdemeanor arrests	
X4 = current charge firearm offense	X14 = making no contribution to residence	X23 = three prior misdemeanor arrests	
X5 = current charge drug offense	X15 = renting residence	X24 = two prior misdemeanor arrests	
X6 = current charge a felony	X16 = unemployed	X25 = one prior misdemeanor arrests	
X7 = abuses another drug	X17 = one failure to appear	X26 = pending charge	
X8 = abuses cannabis	X18 = two or more failures to appear		
X9 = abuses narcotics			

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Table A5.
Five Risk Levels Using Predicted Probabilities

Step 1—Identified the 20th percentiles.

Predicted Probability		
N	Valid	364992
	Missing	200186
Minimum		.01111
Maximum		.34874
Percentiles	20	.0418634
	40	.0672659
	60	.0964634
	80	.1409890

Step 2—Created a variable “five risk levels” using the 20th percentiles as follows: RECODE PPmodel1 (0 thru .0418633=1) (.0418634 thru .0672658=2) (.0672659 thru .0964633=3) (.0964634 thru .1409889=4) (.1409890 thru 1=5) INTO model1_5risklevels. VARIABLE LABELS model1_5risklevels ‘five risk levels’.

Five Risk Levels					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Risk Level 1	72972	12.9	20.0	20.0
	Risk Level 2	73020	12.9	20.0	40.0
	Risk Level 3	72944	12.9	20.0	60.0
	Risk Level 4	73037	12.9	20.0	80.0
	Risk Level 5	72997	12.9	20.0	100.0
	Total	364970	64.6	100.0	
Missing	System	200208	35.4		
Total		565178	100.0		

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Table A6.
Logistic Regression Model: Pretrial Risk Factors to Predict Pretrial Outcome Including Technical Violations

	B	S.E.	Wald	Sig.	Exp(B) Odds ratio	95.0% C.I. for EXP(B)

						Lower	Upper
Pending charge	.157	.026	35.299	.000	1.170	1.111	1.232
No prior misdemeanor arrest (reference)			415.615	.000			
One prior misdemeanor arrest	.202	.032	39.980	.000	1.224	1.150	1.304
Two prior misdemeanor arrests	.374	.037	104.600	.000	1.454	1.353	1.562
Three prior misdemeanor arrests	.468	.041	128.573	.000	1.597	1.473	1.732
Four prior misdemeanor arrests	.563	.047	145.661	.000	1.756	1.603	1.924
Five or more prior misdemeanor arrests	.623	.033	359.012	.000	1.865	1.748	1.989
No prior felony arrest (reference)			95.144	.000			
One prior felony arrest	.144	.029	24.179	.000	1.155	1.091	1.224
Two or more prior felony arrest	.265	.027	94.583	.000	1.304	1.236	1.375
No failure to appear (reference)			81.479	.000			
One failure to appear	.222	.037	35.184	.000	1.249	1.161	1.344
Two or more failures to appear	.287	.037	61.821	.000	1.332	1.240	1.431
Unemployed	.283	.021	175.460	.000	1.327	1.273	1.384
Own or buying residence (reference)			384.281	.000			
Renting residence	.443	.030	220.052	.000	1.557	1.468	1.650
Making no contribution to residence	.605	.033	343.768	.000	1.832	1.718	1.953
Other residence	.460	.038	143.783	.000	1.583	1.469	1.707
No residence/place to live	.986	.109	82.067	.000	2.681	2.166	3.318
No substance abuse problem (reference)			889.040	.000			
Abuses alcohol	.464	.034	182.860	.000	1.590	1.487	1.701
Abuses stimulants	.907	.042	476.326	.000	2.477	2.283	2.687
Abuses narcotics	.876	.034	658.986	.000	2.402	2.247	2.568
Abuses cannabis	.548	.029	368.488	.000	1.730	1.636	1.829
Abuses another drug	.628	.068	86.087	.000	1.873	1.641	2.139
Current charge a felony	.739	.048	237.069	.000	2.094	1.906	2.300
Current charge theft or fraud (reference)			555.499	.000			
Current charge drug offense	.527	.028	363.841	.000	1.693	1.604	1.788

Current charge firearm offense	.501	.037	181.804	.000	1.651	1.535	1.775
Current charge violent offense	.434	.049	78.243	.000	1.543	1.401	1.698
Current charge immigration law viol.	.570	.052	118.715	.000	1.768	1.596	1.959
Current charge other offense	-.202	.049	16.870	.000	.817	.742	.900
Constant	— 4.230	.058	5340.321	.000	.015		

The set of independent variables significantly predict the outcome $\chi^2(26) = 7542.8$, $p < .001$; Nagelkerke $R^2 = .147$

Classification Table: cutpoint=.135; predicted successful = 67.5%; predicted failure = 67.6%; Overall predicted correctly training sample = 67.5% and holdback sample = 67.8%

Area under Receiver Operating Characteristics (ROC) Curve = .737

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Table A7.
Pretrial Outcome Including Technical Violations in Failure Based on Risk Level

		Pretrial Outcome		
		Successful	Failure	Total
Risk level 1	Count	58059	1904	59963
	Percent	96.8%	3.2%	100.0%
Risk level 2	Count	38750	4168	42918
	Percent	90.3%	9.7%	100.0%
Risk level 3	Count	28580	5539	34119
	Percent	83.8%	16.2%	100.0%
Risk level 4	Count	21483	6231	27714
	Percent	77.5%	22.5%	100.0%
Risk level 5	Count	13584	5673	19257
	Percent	70.5%	29.5%	100.0%
Total	Count	160456	23515	183971
	Percent	87.2%	12.8%	100.0%

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Table A8.

Pretrial Outcome by Type Including Technical Violations Based on Risk Level

			Pretrial Outcome				
			Successful	Technical Violation	Danger to Community	Failure to Appear	Total
Risk level 1	Count		58059	567	516	821	59963
	Percent		96.8%	.9%	.9%	1.4%	100.0%
Risk level 2	Count		38750	1705	1106	1357	42918
	Percent		90.3%	4.0%	2.6%	3.2%	100.0%
Risk level 3	Count		28580	2630	1419	1490	34119
	Percent		83.8%	7.7%	4.2%	4.4%	100.0%
Risk level 4	Count		21483	3367	1663	1201	27714
	Percent		77.5%	12.1%	6.0%	4.3%	100.0%
Risk level 5	Count		13584	3187	1576	910	19257
	Percent		70.5%	16.5%	8.2%	4.7%	100.0%
Total	Count		160456	11456	6280	5779	183971
	Percent		87.2%	6.2%	3.4%	3.1%	100.0%

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Table A9.
Pretrial Failure Rates for Alternatives to Detention by Risk Level

	3rd Party Custodian			Sub. Abuse Testing			Sub. Abuse Treatment			Location Monitoring		
	Odds Ratio	Sign.	Count	Odds Ratio	Sign.	Count	Odds Ratio	Sign.	Count	Odds Ratio	Sign.	Count
Risk Level 1	1.556	0.000	2079	1.411	0.000	12423	1.33	0.000	6157	2.118	0.000	4048
Risk Level 2	1.298	0.000	3784	1.274	0.000	22780	1.108	0.025	12472	1.465	0.000	5948
Risk Level 3	1.081	0.184	4372	1.159	0.001	25475	1.125	0.003	14257	1.088	0.090	6647

Risk Level 4	0.939	0.285	4082	1.039	0.478	23775	1.048	0.241	14813	1.064	0.182	6899
Risk Level 5	0.831	0.003	3287	1.014	0.830	17494	1.054	0.239	11742	0.975	0.590	6378
Total	1.306	0.000	17604	1.949	0.000	101947	1.569	0.000	59441	1.52	0.000	29920
	Housing & Shelter			Mental Health Treatment			Sex Offender Treatment*			Computer Monitor*		
	Odds Ratio	Sign.	Count	Odds Ratio	Sign.	Count	Odds Ratio	Sign.	Count	Odds Ratio	Sign.	Count
Risk Level 1	2.977	0.000	320	0.928	0.454	4604	0.765	0.486	359	0.778	0.202	1420
Risk Level 2	1.42	0.004	1150	0.773	0.001	4213	0.455	0.058	227	0.863	0.376	865
Risk Level 3	1.268	0.011	1601	0.84	0.021	3026	0.454	0.276	63	0.543	0.099	196
Risk Level 4	1.193	0.025	1985	0.922	0.277	2471	0.775	0.732	28	1.052	0.893	87
Risk Level 5	1.094	0.252	1838	1.187	0.034	1525	0.669	0.705	15	2.008	0.303	14
Total	1.762	0.000	6894	0.854	0.000	15839	0.371	0.000	692	0.491	0.000	2582

* Less than 5% participated in this alternative to detention

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Table A10.
Logistic Regression Model: Pretrial Risk Factors to Predict Pretrial Recommendation

	B	S.E.	Wald	Sig.	Exp(B)	95.0% C.I. for EXP(B)		
							Lower	Upper
No prior felony conviction (reference)				5609.551	.000			
One prior felony conviction	.596	.016	1469.397	.000	1.815	1.761	1.871	
Two or more prior felony convictions	1.227	.017	5356.999	.000	3.411	3.301	3.525	
No pending felonies (reference)			1364.104	.000				

One pending felony	.491	.019	665.424	.000	1.633	1.574	1.695
Two or more pending felony	.902	.031	826.282	.000	2.465	2.318	2.622
No prior violent felony arrest (reference)			691.492	.000			
One prior violent felony arrest	.187	.019	100.538	.000	1.205	1.162	1.250
Two or more prior violent felony arrest	.618	.024	671.730	.000	1.856	1.771	1.945
Unemployed	.388	.011	1139.647	.000	1.474	1.441	1.508
Own or buying residence (reference)			3202.577	.000			
Renting residence	.522	.015	1136.842	.000	1.685	1.635	1.737
Making no contribution to residence	.641	.017	1397.180	.000	1.899	1.836	1.964
Other residence	.957	.019	2477.869	.000	2.604	2.508	2.704
No residence/place to live	1.912	.060	1028.250	.000	6.770	6.023	7.609
Current charge a felony	1.332	.029	2048.138	.000	3.789	3.577	4.014
Current charge theft or fraud (reference)			18447.688	.000			
Current charge drug offense	1.535	.016	9267.792	.000	4.640	4.497	4.787
Current charge firearm offense	.948	.022	1833.525	.000	2.581	2.472	2.696
Current charge violent offense	1.528	.025	3750.917	.000	4.610	4.390	4.841
Current charge immigration law viol.	2.672	.022	15296.871	.000	14.463	13.863	15.088
Current charge other offense	.455	.026	301.151	.000	1.577	1.498	1.660
No failure to appear (reference)			629.615	.000			
One failure to appear	.190	.022	76.813	.000	1.210	1.159	1.262
Two or more failures to appear	.516	.021	597.762	.000	1.675	1.607	1.745
Constant	-3.731	.034	11807.654	.000	.024		

The set of independent variables significantly predict the outcome, $\chi^2(19) = 61535.5$, $p < .001$; Nagelkerke $R^2 = .375$

Classification Table: cutpoint=.523; predicted release =70.9 %; predicted detention =73.2%; Overall predicted correctly training sample = 72.2% and holdback sample = 72.3%

Area Under Receiver Operating Characteristics (ROC) Curve = .812

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Implementing Evidence-Based Practices in Federal Pretrial Services

Timothy P. Cadigan

*Chief, Data Analysis Branch
Office of Probation and Pretrial Services
Administrative Office of the U.S. Courts*

WHAT A DIFFERENCE a year makes! One year ago I wrote the following paragraph on this topic and imagined we might be years from answering some of these questions with thorough research.

The application of evidence-based practices (EBPs) could potentially revolutionize the field of pretrial services. Pretrial services programs across the country are looking to apply these practices in hopes of seeing tangible results in the form of increased release rates, while maintaining or improving appearance and safety rates. Yet the revolution seems stalled as pretrial services agencies ponder questions about the applicability of post-conviction EBPs to achieving their outcomes: ensuring a defendant's appearance in court and protecting the community from crime. There are significant issues to consider: Do post-conviction evidence-based practices that were developed to reduce long-term recidivism rates impact these unique pretrial outcomes? And does the application of post-conviction supervision EBPs infringe on the constitutional rights of individuals not convicted of a crime?¹

Thanks to the research commissioned by the Office of Federal Detention Trustee (OFDT) and conducted by Luminosity Incorporated, the federal pretrial services system is now positioned to remake itself into an evidence-based system.

The study employed data from the Administrative Office of the United States Courts, Office of Probation and Pretrial Services (OPPS).

[The dataset] consists of all persons charged with a criminal offense in the federal courts between October 1, 2001 and September 30, 2007 (FY 2001–FY 2007) who were processed by the federal pretrial services system. The dataset includes defendants who entered the pretrial services system via a complaint, indictment, information, or superseding indictment/information (all others, such as material witness and writs were excluded,...The data represents all of the federal districts with the exception of the District of Columbia (93 of 94) and includes 565,178.²

Let's begin in the macro sense. One of the cornerstones of post-conviction supervision research for me has always been "First, do no harm." Post-conviction evidence-based practices research has borne out the wisdom of that mantra repeatedly: Implementing treatment, changes, or fixes

on offenders who pose little to no risk is fraught with failure. Therefore, I have long wondered if the same mantra would hold true for pretrial services supervision: What impact does over-supervising or treating low-risk federal defendants have on their outcomes? For the most part we have operated under the “well, it can’t hurt” theory when deciding which conditions to put in place. However, the research now shows that it can and does hurt when unnecessary alternatives to detention are placed on low-risk federal defendants.

First, the lower risk defendants, risk levels 1 and 2, are the most likely to succeed if released pending trial and in most cases release should be recommended. An alternative to detention, with the exception of mental health treatment when appropriate, generally decreases the likelihood of success for this population and should be recommended sparingly.³

In some areas, for example electronic (location) monitoring, level 1 defendants (the best risks) were 112 percent more likely to fail if they were placed on location monitoring as a condition of release. The quick refrain is that those are technical violations; however, they are not. They represent failure-to-appear and rearrest cases only. In addition, this finding is not limited to location monitoring: substance abuse testing and treatment defendants are 41 percent more likely to fail.

On average, defendants released to the alternatives to detention program who were lower risk, risk levels 1 and 2, were less likely to be successful pending trial while defendants in the moderate to higher risk levels (risk levels 3, 4, & 5) were more likely to be successful if released to the alternatives to detention program.⁴

This study establishes, apparently for the first time with hard national pretrial services data, the risk principle, which states “that the intensity of the program should be modified to match the risk level of the defendant.”⁵

Given the evidence we now have, the first step in implementing evidence-based practices in federal pretrial services is to stop doing that which we now know is harmful. It is now abundantly apparent that, with limited exceptions, this applies to placing alternatives to detention on low-risk defendants. However, reversing this practice will be a very difficult task, as the conditions in federal pretrial services are set by magistrate judges, generally after receiving the report and recommendation of a federal pretrial services officer. While the judge makes the ultimate decision, we can and must control our recommendations, no longer recommending alternative-to-detention conditions for low-risk defendants. In addition, OPPS, working through the Magistrate Judges Division, Magistrate Judges Advisory Group, and any other appropriate body, must help develop magistrate judge training on these findings to further facilitate their effective implementation into everyday practice.

The other tool the officer has available is to petition the magistrate judge to remove, after the defendant’s release, these conditions on low-risk defendants. Traditionally, this approach has not been fully utilized in federal court for a variety of reasons. With appropriate encouragement, the new evidence will, we hope, make the practice more routine. This will insure that even when ineffective conditions are placed on defendants, they are removed prior to long-term negative impacts on those defendants.

The more difficult, yet essential, component is developing a pretrial services equivalent to the vast academic research on post-conviction supervision practices. In addition, we need to determine what elements of that existing literature on post-conviction evidence-based practices pretrial services can utilize successfully. Finally, the finding that mental health programming helps defendants with mental health conditions to succeed regardless of their risk level could potentially be mined for practices that could also be applied elsewhere—in substance abuse treatment, for example. Why is this important? Because pretrial services professionals are generally a skeptical group, even when confronted with seven years of data. Citing just one example eerily reminiscent of “Doubting Thomas,” a chief pretrial services officer refused to accept the accuracy of the Risk Prediction Index despite seven years of data that supported it,

unless allowed to stick his/her hands in the proverbial “holes” in the data.

Given the positive effect of the “Money Ball” comparisons in post-conviction supervision, let’s now revisit those arguments in the pretrial services context, with all due respect and apologies to Cullen, Myer and Latessa, on whose tremendous article, “Eight Lessons from Moneyball: The High Cost of Ignoring Evidence-Based Corrections,” this inferior imitation is based.

1. Pretrial services treatment programs are the Oakland A’s of the federal criminal justice system.

This point perfectly represents pretrial services as the Oakland A’s to our post-conviction counterparts, the New York Yankees. For example, the workload measurement allocation methodology used in the federal criminal justice system awards post-conviction supervision cases nearly twice the work credit per officer as pretrial services supervision cases. Essentially, post-conviction receives nearly twice the credit given to pretrial services supervision. Even specialty supervision components like location monitoring are allocated significantly more resources than location monitoring in pretrial services. The data suggest that those under location monitoring in pretrial services represent the riskiest pretrial services defendants, while those same defendants are not offered location monitoring post-conviction, because they receive substantial sentences of incarceration. Finally, treatment services funding provided for pretrial services cases is insignificant compared to the treatment funding provided for post-conviction supervision.

The argument is certainly not that post-conviction is overfunded or undeserving of the money it receives. Rather, since post-conviction is itself underfunded and pretrial services is funded at fractional levels of post-conviction, it follows that pretrial services is drastically underfunded, not only in comparison to our corrections counterparts, but also in comparison to our community corrections counterparts. We must begin to make more successful arguments for the support and funding our programs need to be successful, or we will be left further behind by our related criminal justice disciplines, who are successfully implementing these methodologies.

2. Pretrial services is currently based on “common sense,” custom, and imitation—rather than on scientific evidence.

In pretrial services there is virtually no research to support evidence-based pretrial services investigation and supervision practices. While our counterparts in post-conviction may lament that “too few offender treatment programs have been based on empirically supported intervention strategies” (Cullen et al.), they at least have a solid body of research to base their programs on when they become so inclined. Pretrial services must now begin to develop that base of empirically supported practices, and this will require significant funding that the criminal justice system has yet to allot to pretrial services. Therefore, we must spend every research dollar wisely and with a laser focus toward the needs of the field of pretrial services if we are to become truly evidence-based.

3. In pretrial services “looks” are more important than effectiveness.

Like Billy Beane studying his contemporaries, chiefs (whether in districts that combine probation and pretrial services into one office or in districts that maintain a separate pretrial services office) desiring to employ scientific evidence in developing their pretrial services programs would have to develop the science themselves. The system as it operates is very much based on looks, raw numbers, or counts and not on outcomes, risk, or any appropriate scientific methodology. In administering the program nationally, we are essentially trying to build the foundation by developing a system-wide empirically-based risk assessment tool, commissioning research, and developing a data infrastructure that will facilitate or empower the Billy Beanes of federal pretrial services to lead the system into this new age. Unfortunately, we have a significant distance yet to travel, and many in the system continue to question the limited science that has been introduced in favor of what we think “looks” or “feels” good to us.

4. In pretrial services the wrong theory can lead to stupid decisions.

This point brings us to the crux of the issues we confront today in trying to move forward with evidence-based practices: How do we advance a base without incurring an out? Like our baseball counterpart Billy Beane, we must embrace walks and reject sacrifice flies and bunts, which reduce our resources by a third (out) while only gaining us a 25 percent improvement (one base) toward our goal (scoring a run).

5. In pretrial services actuarial data lead to more accurate decisions than personal experience and “gut level” decisions.

Pretrial services investigation and supervision practices, just like practices in post-conviction (and baseball and the insurance industry before it) will make more accurate decisions using actuarial data than relying on personal experience or gut-level decisions. The VanNostrand study brought that point home by establishing, for the first time, the risk principle in pretrial services. With this baseline confirmed we need to continue to move toward actuarial decision-making in federal pretrial services.

6. In pretrial services, knowledge destruction techniques will be used to reject evidence-based practices.

The best example of this occurring in federal pretrial services is the Risk Prediction Index (RPI), a tool that was admittedly developed for post-conviction supervision and merely applied, poorly in fact, to federal pretrial services subsequent to its development. However, despite the fact that it was developed for a different purpose, implemented poorly, and enjoyed no face validity with staff, the RPI is a very effective tool for predicting success on pretrial services supervision. We have the data and research to support that contention (VanNostrand), yet the tool continues to be dismissed by staff. The system must break out of that mindset and truly rely on the evidence; not on past judgments, feelings, or intuitions, in moving forward toward making the system evidence- and outcome-based.

7. In pretrial services there is a high cost for ignoring the scientific evidence.

As the Oakland A's of community corrections, we cannot ignore the scientific evidence available, because the costs to our program, its effectiveness, and probably its future funding are at stake. We can, as Grady Little did, do nothing to change our practices and continue to “win or lose with our gut feelings,” but if we do so, we will surely fail and become past managers of our programs, as Brady was relieved in Boston. Instead, we need to be good stewards of the public resources we receive by employing the scientific data we have, seeking to expand that knowledge with new research, and no longer insisting on going with our “gut.”

8. In pretrial services evidence-based practices will eventually be difficult to ignore.

For all of the reasons already stated, pretrial services is at the point where evidence-based practices are difficult to ignore. First, given our limited resources, we have no choice but to insure that every dollar is spent wisely. Common sense, customs, looks, and feelings are simply passe; we can no longer afford the luxury of executives who manage our resources using such ineffective methodologies. Finally, the components of the management structure of the federal judiciary (The Administrative Office of the U.S. Courts, Judicial Conference, and its Committees) are recognizing the need for and demanding outcome measures and evidence-based science in managing crucial federal criminal justice programs like the federal pretrial services system.

In conclusion, while we must not blindly bind ourselves to science, as one of our colleagues did in recommending the “Son of Sam killer” for ROR release (a decision which ultimately cost him his position), we must embrace the overarching scientific concepts and lead our staffs to improved risk management, better treatment options, and more consistent and effective outcomes for our programs. Our job is to lead pretrial services into the world of science while insisting as a minimum standard for our programs that we do more good than harm.

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The Development of an Actuarial Risk Assessment Instrument for U.S. Pretrial Services

Christopher T. Lowenkamp

Jay Whetzel

Office of Probation and Pretrial Services

The Administrative Office of the U.S. Courts

[Method](#)

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[Discussion](#)

THE ENACTMENT OF the Pretrial Services Act of 1982 (18 U.S.C. §3152) represented the high-water mark of a major reform movement in the United States. Inspired by the research efforts of Arthur Beeley ([1927](#)) and Caleb Foote ([1954](#)) and affirmed by the work of the Vera Institute (1961), the legislation ensured that the federal courts would have their own personnel exclusively committed to assisting with pretrial release and detention decisions. The new personnel were to “collect, verify, and report to the judicial officer, prior to the pretrial release hearing, information pertaining to the pretrial release of each individual charged with an offense...” The mandate further directed officers to “where appropriate, include a recommendation as to whether such an individual should be released or detained and, if release is recommended, recommend appropriate conditions...” (§3154). As federal courts implemented the legislation, judicial officers began receiving objective, verified information—information that they soon began to rely upon. Officers performing the pretrial services function became deeply involved in a challenging calculus, i.e., determining if citizens, presumed innocent, would lose their liberty while the government sought to prove its allegations of criminal conduct.

Subsequent legislation broadened the scope of the court’s concern to include not only a defendant’s future court appearance but also the safety of the community (see the Bail Reform Act of 1984). Both are to be “reasonably assured” by conditions that mitigate any risks posed by the defendant. Among the factors to be considered by the court, pretrial services’ area of expertise quickly became the “history and characteristics of the person,” including the defendant’s “character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings” (§3142 (g)(3)(A)). Officers learned to interview defendants, verify information, run record checks, explore release options and type a full report for submission to the court in a matter of hours, not days. There was no calculation for pretrial services officers akin to the sentencing guidelines that had debuted during the same period; officers began to identify the specific factors that, either by statute or by their own experience, indicated risk. Once risks were identified, officers recommended conditions to mitigate those risks to a degree that would “reasonably assure” future appearance and community safety. As prosecutors and defense counsel made their respective arguments, pretrial services officers emerged as true professionals

and remained an impartial body assisting the court's decision-making.

During the last five to ten years, the rate of pretrial release detention has steadily increased ([VanNostrand and Keebler, 2009](#)). As of March, 2009, 53 percent of pretrial defendants were ordered held in pretrial detention, *excluding* those in the United States illegally (TABLE h-14a> Caseload Tables FY 2009—Second Quarter). A variety of factors contributed to this growth, although, according to the results of recent analyses, 60 percent can be attributed to a steadily increasing risk of the defendants being charged in federal court ([VanNostrand & Keebler, 2009](#)). Today, pretrial detention is more the norm than the exception for citizens charged in federal court. This reality has not only deprived thousands of liberty, but has produced massive expenditures and logistical nightmares for those responsible for pretrial detention (see [VanNostrand and Keebler 2009](#) and also OFDT summary statistics at <http://www.usdoj.gov/ofdt/summary.htm>). While this may not yet represent a crisis in the federal criminal justice system, it does stand on its head the presumption of innocence and, frankly, the vision of the founding fathers (see the Eighth Amendment of the U.S. Constitution, which protects against excessive bail).

This is the context in which we should consider the adoption of a risk prediction tool. With such an actuarial tool, we can now more effectively assess defendant risk and we can improve the recommendations we make to the court. There is a well-documented history of professionals rejecting actuarial tools as an affront to their clinical or otherwise experienced judgment. Time and time again, however, actuarial tools have shown greater predictive power than clinical judgment. “The predictive criterion validity of actuarial assessments of major risk and/or need factors greatly exceeds the validity of unstructured clinical judgment” ([Andrews et al., 2006:21](#); see [Grove and Meehl, 1996](#) and [Grove, Zald, Lebow, Snitz, & Nelson, 2000](#) for a thorough review of this topic). While we do not minimize the commitment and value that officers add, the current pretrial assessment process is indeed “unstructured clinical judgment.” For those steeped in the research, practitioners’ frequent resistance to actuarial tools is unconscionable; some have lamented that “Failure to conduct actuarial risk assessments or consider its results is irrational, unscientific, and unprofessional” ([Zinger 2004: 607](#)).

The term “actuarial” can sound quite foreign to the field of criminal justice. According to the *Encyclopedia Britannica*, actuaries “compute the probability of the occurrence of various contingencies of human life such as birth, marriage, sickness, unemployment, accidents, retirement and death. *They also evaluate the hazards of property damage or loss and the legal liability for the safety and well-being of others*” (emphasis added). Is that not, in effect, what we as officers do as we assess risk and make release or detention recommendations? Actuarial tools are increasingly being adopted to improve other professions where individual practitioners are asked to make difficult decisions about potentially risky situations and/or individuals. (See for instance [Douceck, English, DePanfilis, and Moote 1993](#) for an example of risk assessment in the area of child welfare. See also [Hilton, Harris, and Rice 2009](#) for an application of risk assessment to police decision-making in domestic violence situations.) It is now apparent that the use of an actuarial assessment aid can improve our ability to make release and detention recommendations. Below we present the findings on the development of such an instrument for federal pretrial services.

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Method

In this section we review some brief information regarding the sample used in this study and the method employed to develop and validate the risk assessment instrument. Detailed descriptions of the sample and some of the multivariate analyses are presented in [VanNostrand and Keebler \(2009\)](#).

Participants

The current study began with all defendants (n = 565,178) entering the federal system between

FY2001 and FY2007. Given that the current study focused on predicting pretrial success or failure while on bond, those cases that were detained during pretrial were deleted from the sample. This process reduced the sample by 335,248 (59 percent of the cases). Due to missing data, the final sample size for analyses relating to the development of the pretrial risk instrument varies between 185,827 and 215,338. The sample size used in any particular analysis is dependent on the variables used in the analyses and the rate of missing data associated with those variables (see [VanNostrand and Keebler, 2009](#) for specific details on missing data).

Measures

There were numerous measures (over 70) in the larger dataset; however, variables of interest for the construction and validation of the pretrial risk instrument included several predictor or independent variables and two dependent variables. Independent measures included defendant demographics, offense details, criminal history, substance use information, mental health information, and residential, educational, and employment status. The specific measures used in the development and validation of the risk assessment instrument were: number of prior felony convictions, number of prior failure-to-appear, pending charges, current offense type, current offense level, age at interview, highest educational level, employment status, home ownership, and substance use. These variables were identified as policy-relevant and empirically related to pretrial outcomes through multivariate analyses conducted by VanNostrand and Keebler ([2009](#)) and additional multivariate models run for this study.

Two dependent measures (outcomes) were included in this study. The first measure, FTA/NCA, was considered to be present and an indicator of failure if the defendant either failed-to-appear in court or was charged with a new criminal arrest while on pretrial release. The second dependent measure, FTA/NCA/TV, was considered to be present and also an indicator of failure if the defendant either failed-to-appear, was arrested for a new criminal charge while on pretrial release, or had his/her bond revoked due to technical violations.

Analysis

Our analysis was fairly straightforward and consistent with prior research on the development of risk instruments ([Gottfredson and Snyder, 2005](#)). More specifically, we used a split sample process for construction and validation. We identified potential risk factors based on the results of VanNostrand and Keebler ([2009](#)) as well as on the results of supplementary logistic regression analyses using a split sample process and bootstrapping. Once a set of risk factors was identified, we assigned points to those risk factors and calculated a risk score. The relationship between this score and the outcomes of interest was evaluated. We then applied the risk calculation to the remaining 50 percent of the sample to determine if the risk instrument held across the two halves of the larger sample. The results of these analyses are presented in the next section.

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Results

After running a series of bivariate analyses and multivariate logistic regression models, we identified a number of factors relevant to predicting pretrial outcomes and scoring schemes for each of those factors. As indicated in [Table 1](#), most factors relate to criminal history and the specifics of the current offense. However, four measures are dynamic and measure substance abuse, home ownership (community ties), educational attainment, and employment status. The factors identified are very similar to those identified in previous research on the prediction of pretrial risk. Note that there are varying point values for some items; however, most items are scored in a 0 and 1 format. Even those items with multiple point values still use a simple weighting process (0, 1, or 2 points).

[Table 1](#) reports the failure rates based on the two outcome measures for all defendants (column labeled A), the construction sample (column labeled C) and the validation sample (column

labeled V). The total number of cases in the entire sample ranges from 185,827 to 215,338, depending on the variables used in the bivariate analysis. The total number of cases in the construction and validation samples ranges between 90,655 and 107,893, depending on the variable used in the bivariate analysis. As noted in [Table 1](#), there is very little variation in the relationships across the construction and validation samples. All relationships are statistically significant at the $p < .001$ level.

[Table 2](#) presents the average risk scores, standard deviations, and values for the area under the curve (AUC) for the receiver-operating-characteristic (ROC). As indicated in [Table 2](#), the average score for the two samples is 6.8 and the standard deviation is 2.5. The AUC values produced when predicting failure as measured by the FTA/NCA measure are .694 for the construction sample and .690 for the validation sample. As indicated by the upper and lower confidence intervals, these two values do not differ significantly. The AUC values when using the total risk score to predict the FTA/NCA/TV measure for the two samples are .726 and .725. Again, as indicated by the confidence intervals, these two values do not differ significantly from one another.

The next table, [Table 3](#), displays the number of offenders in each risk category and the failure rates for each outcome measure. This information is presented for the overall sample as there were no significant differences in failure rates between the construction and validation samples. Five categories were identified and were labeled category I through V. [Table 3](#) presents the number of defendants within each category, the failure rates for the outcome measures of interest, the odds of success, and PSO release recommendations for the entire sample.

As indicated in [Table 3](#), a full 30 percent of the defendants fall into the lowest risk category (Category I). Almost similar percentages fall into categories II and III (29 and 26 percent respectively). Much smaller percentages of defendants were placed into categories IV and V. Note that with both measures of failure the rates increase from one category to the next. The failure rates for category V are 10 times the failure rates for category I defendants when considering FTA/NCA. A similar trend is also noted when considering the FTA/NCA/TV measure.

In addition to the failure rates for each category, there are odds-of-success for each outcome measure and the percentage of defendants where the PSO recommended release. The odds of success are interpreted as the odds of a success occurring to the odds of success not occurring. Note that the odds of success during pretrial release do drop quickly when moving from one category to the next; however, even with the highest-risk category, the odds of success occurring is either 4:1 or 2:1 depending on how success is defined. Similarly, the rate at which PSOs recommend release also drops quickly across categories (from 86 percent for category I to 13 percent for category V). It should be noted that the instrument was not developed nor in use when these release recommendations were made.

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Discussion

The purpose of this article was to provide an argument in favor of risk assessment in the federal pretrial system and a brief description of the process used to develop a proposed pretrial risk instrument. Given that the role of the pretrial services officer is similar to that of an actuary, it appears that an actuarial assessment would enhance a pretrial services officer's ability to fulfill this role. The instrument presented in this article provides a quick and accurate way for pretrial services officers to begin to develop an empirical understanding of the risk posed by pretrial defendants. The next step in the process of implementing a pretrial risk assessment in the federal pretrial services system will be full use of the information provided by the instrument in structuring recommendations about release and conditions of release.

The legislative history of pretrial services is one of a reform movement that sought to protect the rights of citizens and to make sure that there are not two systems of justice, one for the

affluent and another for the less fortunate. Examining the probabilities of failure and odds of success in [Table 3](#) prompts the question: What did Congress intend in §3142(c) when it directed judicial officers to “reasonably assure” a defendant’s future appearance or the safety of the community? Is “reasonably assure” a 49-to-1 wager? Or a 4-to-1 wager? When what hangs in the balance is the liberty of someone who has been charged, but not convicted, of a crime, braver bets are called for. The risk prediction instrument offers, we believe, an opportunity to use science to reinvigorate the pretrial services mission.

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Tables

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Table 1.
Risk factors and failure rates by sample

Variable	FTA/NCA			FTA/NCA/TV		
	A	C	V	A	C	V
Number of felony convictions						
0-None	6	6	6	10	10	10
1-One to four	11	12	11	19	19	19
2-Five or more	16	15	16	26	26	26
Prior FTAs						
0-None	6	6	6	11	11	11
1-One to four	12	12	11	22	22	21
2-Five or more	15	15	14	26	26	26
Pending cases						
0-No	6	6	6	11	11	11
1-Yes	12	12	12	22	22	22
Current offense type						
0-Theft/fraud, violent, other	4	5	4	8	8	8
1-Drug, firearms, immigration	10	10	10	18	18	18

Offense class						
0-Misdemeanor	4	4	5	6	6	6
1-Felony	8	8	7	14	14	14
Age at interview						
0-47 and older	4	3	4	6	6	6
1-27 to 46	7	7	7	13	13	13
2-26 or younger	9	9	9	17	17	16
Highest education						
0-College degree	3	3	3	5	5	5
1-High school degree, vocational, some college	6	6	6	11	11	11
2-Less than high school or GED	10	10	10	19	19	19
Employment status						
0-Employed	6	6	6	10	10	10
1-Unemployed	9	9	9	17	17	17
Residence						
0-Own/purchasing	4	4	4	7	7	7
1-Rent, other, no place to live	8	8	8	15	15	15
Current drug problems						
0-No	5	5	5	7	7	7
1-Yes	10	10	10	19	19	19

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Table 2.
Average Scores, Standard Deviations, and AUC values by sample

Sample	FTA/NCA			FTA/NCA/TV			Average	Stan Dev
	Lower	AUC	Upper	Lower	AUC	Upper		
All	.687	.692	.696	.722	.726	.729	6.83	2.49
Construction	.687	.644	.700	.722	.726	.729	6.83	2.49
Validation	.683	.690	.696	.720	.725	.730	6.82	2.49

Lower=Lower Bound 95% CI for AUC; Upper = Upper Bound 95% CI for AUC.

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Table 3.
Failure Rates, Odds of Failure, and PSO Release Recommendations.

Risk Category	N	%	FTA/ NCA*	Odds of Success	FTA/NCA/TV*	Odds of Success	PSO Release Recommendation
Category I (0-4)	55,243	30	2%	49:1	3%	32:1	86%
Category II (5-6)	53,193	29	6%	16:1	10%	9:1	60%
Category III (7-8)	47,915	26	10%	9:1	19%	4:1	41%
Category IV (9-10)	20,833	11	15%	6:1	29%	2:1	28%
Category V (11+)	4,555	3	20%	4:1	35%	2:1	13%

* P < .001

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Pretrial Services in the District of Nebraska After the Office of Federal Detention Trustee Study

Troy Greve

Timothy Connor

U.S. Pretrial Services, District of Nebraska

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THE DISTRICT OF Nebraska began the pursuit of evidence-based practices in August of 2007, when Dr. Marie VanNostrand of Luminosity, Inc. visited our district and completed an organization assessment. At the conclusion of the assessment Dr. VanNostrand recommended that our district work to determine the outcomes for defendants released to pretrial supervision and develop a system to collect outcome and performance measures. She also recommended that we examine policies and procedures for bail recommendation and responses to technical violations of conditions of release.

As a result of these recommendations, our district formulated an evidence-based practices committee. The committee determined that it was critical to learn the district's current baseline pretrial supervision-related performance and outcome-related measures to provide the critical information needed to identify and pursue EBP-related policies and practices. The committee decided to identify the outcome of all supervision cases closed in fiscal year 2007 by documenting and analyzing 11 variables with each case. A supervision case was considered a failure if bond was revoked for the following: failing to appear/absconding, an arrest for new criminal activity, or a technical violation. In the event of a bond revocation for a technical violation, the reason for the violation was included. A supervision case was considered a success when the pretrial release ended for any reason other than the three types of failure listed above.

The evidence-based practices committee also needed to identify a system for both inputting and analyzing data collected. With Dr. VanNostrand's assistance, we decided to purchase software called SPSS (Statistical Program for the Social Sciences) and began inputting the variables for all pretrial defendants whose period of supervision ended in 2005, 2006, and 2007.

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Outcomes

Once all the case information was entered for fiscal years 2005 through 2007, the data was analyzed. Understanding that we were somewhat new to research techniques, we did not want to misinterpret any results we found. As a result, our district received technical assistance from Dr. VanNostrand during this stage of the process. The results indicated that each of the years was consistent in the failure to appear/abscond, new arrest, and technical violation rates, and we had finally established a baseline for success and failure for pretrial supervision in our district.

The average failure to appear/abscond and new arrest rates were fairly low, at 3 percent and 6 percent respectively, during the three-year period. However, the technical violation rate vacillated from 17 to 20 percent during this same time frame. Due to the variables we had selected early in the process, we were able to separate out the types of technical violations that resulted in revocation. We discovered that almost 60 percent of the revocations were precipitated by a failure in drug treatment, a positive drug test, or drug use while on release.

We now knew how effective we were with our defendants, but this information led to a number of other questions: Was our technical violation rate high compared to other districts? Or is this technical rate of failure appropriate given the type of cases under supervision? Can this rate be improved upon and if so, what practices will positively impact the rate of failure? Answers to these questions would take additional data analysis that would need to include many more variables than the 11 we had decided to use with our 2005 through 2007 data set.

As a result, we expanded our analysis to include factors contributing to the release or detention decision. When the draft of the Office of Federal Detention Trustee study (OFDT study) led by Dr. Marie VanNostrand became available to us in early 2009, we added many of the variables included in the study to our pretrial cases closed in 2008. This meant that we incorporated data for all the cases, even those detained. These variables included:

- offense charged
- defendant criminal history
- pending offenses
- prior absconding and escapes
- residential status
- employment status
- whether the defendant was on a conditional release at the time of the initial appearance
- interview status
- bail report type
- pretrial services officer recommendation
- AUSA recommendation
- pretrial status

We were able to input all of the data for the 2008 cases into SPSS and provide a report to our officers and judges in May of 2009. The outcomes provided a backdrop to our district's release and detention rates. We believe that our judges also benefited by seeing the results. For example, 54 percent of the defendants charged with a drug offense and 47 percent of the defendants charged with a firearm offense in our district in 2008 were released to pretrial supervision. This is important, as 68 percent of the defendants who appeared in our district during this time frame were charged with a drug or firearm offense. In addition, 70 percent of our supervision caseloads in 2008 consisted of defendants charged with a drug or firearm offense. According to the OFDT study, these two populations of defendants have the highest risk of pretrial failure.

The OFDT study also illustrated that 51 percent of the pretrial defendants released in the federal system from 2001 to 2007 were determined to have a substance abuse problem. The data for the District of Nebraska's pretrial defendants from 2005 through 2008 showed our rate to be significantly higher—approximately 67 percent. In addition, the OFDT study revealed that defendants who abused narcotics/stimulants were 40 percent more likely to experience pretrial failure. The percentage of defendants from 2001 through 2007 in the national system with reported abuse of narcotics/stimulants was 32 percent, while the percentage of defendants in the district of Nebraska with the same type of substance abuse was once again much higher—47 percent from 2005 through 2008.

At this point we are also able to examine further and determine if there are additional factors contributing to detention rates and pretrial supervision failure. We can separate out officers to see the types of recommendations made and we can look at success rates for defendants released on different caseloads. However, these capabilities have been handled cautiously, while we wait for the risk assessment tool to become available. Once this tool is implemented, each defendant will be given a risk level at the start of the pretrial process, allowing us to track the release or detention decision as well as the pretrial supervision outcome as it correlates to the level of risk. We can then put officer recommendations as well as supervision success rates into context and identify possible training issues for officers as well as stakeholders.

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The Risk Principle

There is an evidence-based practice known as the risk principle. As it relates to the post-conviction field, research has demonstrated that evidence-based interventions directed towards offenders with a moderate to high risk of committing new crimes will result in better outcomes for both offenders and the community. Conversely, treatment resources targeted to low-risk offenders produce little, if any, positive effect. In fact, despite the appealing logic of involving low-risk individuals in intensive programming to prevent them from graduating to more serious behavior, numerous studies show that certain programs may actually worsen their outcomes. By limiting supervision and services for low-risk offenders and focusing on those who present greater risk, probation and parole agencies can devote limited treatment and supervision resources where they will provide the most benefit to public safety.¹

The OFDT study included research specifically on pretrial defendants and confirmed the applicability of this principle to the pretrial services field. The study examined the use of alternatives to pretrial detention including, but not limited, to the following:

- third-party custodian
- substance abuse testing
- substance abuse treatment
- location monitoring
- halfway house
- community housing or shelter
- mental health treatment
- sex offender treatment
- computer monitoring

The research examined the effectiveness of the alternatives to pretrial detention while considering risk and found similar results. Release conditions that included alternatives to pretrial detention—with the exception of mental health treatment, when appropriate—generally decreased the likelihood of success pending trial for lower-risk defendants. Similarly, defendants

identified as moderate and higher risk were found to be the most suited—both programmatically and economically—to pretrial release with conditions of alternatives to pretrial detention. With this information we set out to identify areas where the risk principle could be applied in our district.

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Utilizing The Testing Condition in a Least Restrictive Manner

Due to our technical violation rate and the number of defendants with a substance abuse problem in our district, we now have an area to target. As a result, our district began reviewing recommendations for release to ensure we were not recommending drug testing if the defendant did not present a risk of substance abuse. In addition, we looked at Initial Case Plans to ensure that defendants with a drug-testing condition were being tested at a rate reflecting their reported substance abuse problem. For instance, defendants reporting casual use of marijuana were initially placed in a lower phase compared to frequent users of methamphetamine or defendants who were participating in substance abuse treatment. The results so far in this area indicate that the officers are doing a good job of assessing risk in the area of substance abuse and placing defendants in phase-testing levels that reflect the reported risk.

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Lowering Phase Levels as an Incentive for Compliance

The next area we began monitoring was moving defendants down in their phase-testing level if they had been on release for 90 to 120 days without experiencing a positive test. We monitored this at the six-month case review. Once again, officers did a very good job of providing an incentive to the defendant and lowering the frequency of tests required if the defendant had not provided a positive drug test or experienced substance abuse noncompliance.

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Using Substance Abuse Treatment in a Least Restrictive Manner

We then began looking at substance abuse treatment and whether defendants were required to participate in a substance abuse treatment program that was least restrictive when compared to the reported addiction. Again, officers were doing a good job of implementing levels of substance abuse treatment that were least restrictive. For instance, only defendants who had a severe methamphetamine or cocaine addiction were placed in residential treatment. In addition, officers were taking risks on defendants with reported methamphetamine, cocaine, or marijuana use and releasing them without implementing the treatment condition. In these types of cases, the treatment condition was not implemented unless a positive test occurred or the defendant reported use while on release. The officers were appropriately using substance abuse treatment as a graduated sanction.

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Differential Supervision Strategies and Targeting Resources

Throughout the process of reviewing initial case supervision plans and performing the six-month case reviews, it became apparent that officers were dedicating too much time to low-risk defendants and we were running the risk of over-supervising them. As a result, we developed a differential supervision strategy based on the level of risk presented by the defendant. We began to use RPI scores as a method to determine reporting requirements. We started with low-level defendants, those with an RPI score of 0 or 1, and required them to report via the web (or using e-reporting, as we call it). The e-reporting method was initially developed by the U.S. Probation Office in Nebraska. Through collaboration, our pretrial services officers devised a reporting form for pretrial defendants using the same web-based technique. Once the defendant completes

the form on line, this generates a chronological entry and notifies the officer. If certain areas in the report require officer contact, like a change in address, the officer supervising the case will follow up with the defendant. We began piloting this program with three officers in March of 2009 and it worked so well that we recently made it available to the entire staff.

We will begin developing additional differential supervision strategies based on risk once the risk assessment tool developed by Dr. Christopher Lowenkamp becomes available to the field. We recognize the need to be resourceful in dedicating our time and skills to those defendants needing them the most. One possibility in this area is using a kiosk system, so that those defendants whose level of risk still requires them to report in person to the office can complete their check-in process in this manner. We want our officers to get away from doing so many supervision notes or chronological entries and allow them to use their skill sets to facilitate defendant compliance. We are hopeful that this will have a positive impact on our technical violation rate and also serve as a time saver for the officers, allowing them more opportunities for field contacts, treatment visits, and case planning.

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Conclusion

The upcoming pretrial risk assessment tool for federal pretrial services will be welcomed in our district. We feel that we have taken the necessary steps to develop a system to collect outcomes and performance measures. The assessment tool will serve as the final piece to this equation. We understand that implementation of such a tool will require education of the pretrial employees as well as the primary stakeholders in our court system. However, we believe we began the education process for this risk assessment when Dr. VanNostrand visited our district in August 2007.

We also believe it is important to continue inputting data from our Probation/Pretrial Services Automated Case Tracking System (PACTS) into SPSS, but due to the time it takes for manual entry of this information, the future of this data entry is uncertain. Our pretrial services office is not a participant in the OPPS-funded Research to Results Program, so the progress we have made in this area was done using our district's existing financial resources and staff. To continue to make this a successful venture, we recommend having a report written in PACTS that would allow the transfer of the data to the SPSS software. By this means other districts can begin taking the necessary steps to collect outcomes and performance measures and at the same time ready themselves for the upcoming risk assessment tool.

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New Defendants, New Responsibilities: Preventing Suicide among Alleged Sex Offenders in the Federal Pretrial System

James M. Byrne

University of Massachusetts, Lowell

Arthur J. Lurigio

Loyola University, Chicago

Roger Pimentel

U.S. Pretrial Services, Central District of California

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SUICIDE IS A MAJOR public health problem worldwide. Each year in the United States, more than 30,000 people commit suicide and at least 2 to 3 times that many attempt suicide. Suicide is the second leading cause of death among people aged 25 to 34 and leaves surviving family members, friends, and coworkers confused, guilty, angry, and depressed ([Centers for Disease Control and Prevention, 2005](#)). The causes of suicide are manifold. However, most individuals who commit or attempt suicide suffer from a psychiatric or substance use disorder, or both, or have experienced a devastating or unexpected loss (material or status) or feelings of hopelessness, isolation, or despair. Others commit suicide because of overwhelming shame or remorse. Men are four times as likely as women to complete suicide; women are three times as likely as men to attempt suicide ([Centers for Disease Control and Prevention, 2008](#)).

This article focuses on a group that appears to be at significantly higher risk of suicide than members of the general population: sex defendants on pretrial supervision at the federal level. We say “appears” for a reason. Although considerable research has been conducted on the nature and extent of suicide in prisons and jails ([World Health Organization, 2007](#), [Liebling, 2006](#)), suicide among offenders and alleged offenders under various forms of community supervision—pretrial, probation, parole—has been largely ignored. Indeed, no national data sources have been compiled on the number of suicide attempts or completions among pretrial defendants or any other groups of people under community correctional supervision. In this paper, we direct attention to the need to collect more data and to reformulate policies and practices that create more effective interventions for defendants at risk for suicide in the

community.

The article is divided into four sections. The first examines the prevalence and causes of jail suicide, highlighting the need to monitor suicide among defendants both within custody and on community supervision. The second discusses the growing number of federal defendants charged with sexual exploitation crimes. The third describes new paradigms for assessing and monitoring pretrial detainees being charged with sexual exploitation as well as an innovative and successful pretrial program in the federal system that is designed to lower the risk of suicide among such defendants. The fourth explores directions for future research in this uncharted domain of federal correctional practice.

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Overview of Suicide at the Pretrial Level

We begin our discussion of suicide during the federal pretrial process by examining the research on suicide in federal, state, and local pretrial detention facilities. Out of necessity, we will use these research findings to explore the problem—largely ignored by researchers to this point—of suicide while under community supervision.

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Suicide in Jails

Detention administrators have a legal, moral, and ethical responsibility to protect detainees from self-harm. Suicide in custody is rare, but until recently it was the leading cause of death in county jails and municipal police lockups ([World Health Organization, 2007](#)). Most jail suicides are perpetrated by hanging (self-asphyxiation) ([Rosazza, 1994](#)). The creation of a definitive profile of the pretrial detainee at greatest risk for suicide is problematic, because a large percentage of detainees have characteristics that heighten the risk for suicide and the base rates for suicide in this population are low ([Rosazza, 1994](#)). In such circumstances, accurate prediction is difficult and fraught with a high rate of false positives ([Lurigio, 1986](#)). Nonetheless, jail detainees are significantly more likely to commit suicide than their counterparts in the general population ([Jenkins et al., 2005](#)).

The elevated risk of suicide among detainees is significantly higher than the risk in the general population. Heightened risk stems from a variety of dispositional and situational factors. With respect to the former, jail detainees have disproportionately high rates of psychiatric, substance use, and personality disorders as well as unemployment, weak social ties, and homelessness—all of which increase the risk for suicide. In addition, the majority of detainees are men, who are significantly more likely to commit suicide than women. These dispositional risk factors are difficult to modify in the short-term but must be addressed in any efforts to identify and monitor at-risk detainees ([World Health Organization, 2007](#)).

With respect to situational factors, the jail environment and the experience of being in custody can be extremely stressful. Detainees are uncertain about their futures, lose their freedom, and could face substantial changes in their personal and professional lives. They are separated from their families, support networks, and jobs and forced to fend for themselves in a chaotic, loud, threatening and disorienting setting. Jails provide few immediate resources to assist detainees in coping with the overwhelming psychological stressors of pretrial status ([World Health Organization, 2007](#)).

Since 1983, the suicide rate in jails has dropped from 129 to 47 per 100,000 detainees. Nevertheless, suicide is the second leading cause of death in jails and responsible for 33 percent of detainees' deaths in custody. The suicide rate in jails is three times higher than the rate in prisons. The suicide rate in the 50 largest jail systems is substantially lower than the rate in all

the other smaller-sized jails in the United States. In 2005, detainees with the highest risk of suicide were male, white, and members of the youngest (younger than 18) and oldest (55 or older) age groups of detainees and were charged with violent crimes ([Mumola, 2005](#)).

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Suicide under Pretrial Supervision

Most of our knowledge about suicide at the pretrial level is based on studies of detainees in custody. The prevalence and prevention of jail suicide has received considerable attention from researchers and practitioners ([Hayes, 2006](#)). However, the majority of people at the pretrial level in the state court system are not confined to jail. For example, 60 percent of felony defendants in the nation's 75 largest counties are released prior to adjudication ([Kyckelhahn & Cohen, 2008](#)). Hence, the majority of defendants in the state court system are not in custody before their cases are tried; estimates of the incidence of suicide among this state-level pretrial release population are not available, however, because the necessary research has not been done.

The federal court system relies on pretrial detention much more heavily than their state court counterparts ([Byrne and Stowell, 2007](#)). Between 2001 and 2007, the federal pretrial detention rate increased from 53 percent to 64 percent of all federally charged offenders. As a group, defendants charged with sexual exploitation charges are typically released at the pretrial stage at a higher rate than defendants with other types of pending charges. In 2006, for example, 53 percent of sex crime defendants were released prior to trial, primarily because they are assessed and classified—correctly, it turns out—to be at low risk for absconding or committing a new offense while on pretrial release. According to a recent review by Motivans ([2007:3](#)) “Of sex exploitation defendants terminating pretrial release in 2006, 11% received a violation and 7% had their pretrial release revoked. Sex exploitation defendants had lower rates of violation and revocation than violent, drug, weapons, and immigration defendants.”

While these defendants are certainly at low risk for new offenses or absconding prior to trial, pretrial release may actually increase their risk of suicide. However, we should emphasize that this is simply speculation at this point, because the necessary incidence/prevalence studies have yet to be completed. We should also point out that we are not suggesting that suicide among this group of sex crime defendants would be reduced by simply detaining them pretrial; whether such defendants have a lower or higher risk of suicide than those in custody is currently unknown. On the one hand, their risk of suicide might be lower than that of people in confinement. They might have less serious criminal histories and greater levels of financial resources and family support than those in custody. On the other hand, their risk of suicide might be higher than that of those in confinement. They might be less likely to be assessed for suicide risk and to receive services to lower the risk of suicide. Further, pretrial defendants in the community have more access to the means to commit suicide and cannot be watched to prevent or respond to attempts. As noted above, alleged child exploitation offenders are one such group of federal defendants.

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Suicide and Alleged Child Exploitation Offenders

Defendants charged with child exploitation offenses, such as child pornography, sex transportation, and sex abuse, are a small but fast-growing segment of the federal criminal caseload in this country. According to a Bureau of Justice Statistics Study, more than 2,000 suspects were prosecuted for federal sex offenses in 2006, constituting nearly 3 percent of the 83,000 suspects prosecuted in federal courts ([Motivans, 2007](#)). Therefore, only a small proportion of all defendants have been charged with a federal sex crime. Nevertheless, recent changes in sex offender laws and a renewed emphasis on the enforcement of federal sex crimes has resulted in an increasing proportion of federal defendants being charged as child exploitation offenders. From 1994 to 2006, the number of suspects arrested and booked for a federal sex offense increased from 431 to 2,191—a 15 percent annual average increase—“making sex

offenses among the fastest growing crimes handled by the federal justice system" ([Motivans, 2007, p. 1](#)).

Not only has the number of federal sex defendants grown, but the types of crimes for which they are charged has also changed, suggesting that sex crime defendants today are different from those previously charged. In 1994, sex abuse defendants referred to U.S. Attorneys for possible prosecution constituted 74 percent of all sex exploitation cases (568/774); by 2006, they constituted only 16 percent (601/3,661). During this same period, the number of federal child pornography referrals increased from 22 percent (169/774) to 69 percent (2,539/3,661) of all referrals for sex crimes. Similarly, the percentage of sex transportation referrals increased from 5 percent (37/774) to 14 percent (521/3,661) of all referrals for sex exploitation offenses ([Motivans, 2007](#)).

Today's child sex exploitation defendant population, which consists mostly of child pornography cases, might be characterized by a much different—and potentially higher—suicide risk profile than that of an earlier generation of such defendants, which consisted mostly of sex abuse defendants who (while incarcerated) were generally at lower risk for suicide. However, the research on suicide risk by specific conviction types is prison-based, not community-based; as we emphasize throughout this article, the lack of basic data on the extent of the suicide problem among the community supervision population limits what we can say—and do—in this area ([World Health Organization, 2007](#)). Motivans ([2007:5](#)) offers the following profiles of the three types of federal sex crime defendants that offer some useful detail on how the profile of the child pornography defendant varies from the profiles of the other two categories of sex crime defendants. While all three groups are generally low risk, some noticeable differences emerge that may affect suicide risk:

- (1) *Child pornography* defendants are overwhelmingly white (89%), middle-aged (md=42) males (99%), U.S. citizens (96.3%), many with college backgrounds (42% had attended), and no prior felony convictions (79.9%),
- (2) *Sex abuse* defendants tended to be American Indian/Alaskan native (70.7%), younger (md=29), U.S. citizens (96.3%), with less education (almost half did not graduate high school), and with no prior felony convictions (78.6%).
- (3) *Sex transportation* defendants were typically white (70.2%), in their mid-30s (md=36) males (91.2%), U.S. citizens (88.5%), with no prior felony convictions (74.0%).

In addition, the stressors associated with the gamut of criminal justice processes of arrest, pretrial release, prosecution, conviction, incarceration, and supervision upon release are greater today than they were in the past, because today's child exploitation defendants are significantly more likely to be arrested, prosecuted, detained, convicted, and sentenced to incarceration than their 1994 counterparts ([Motivans, 2007](#)). Given the suicide risk profile of these defendants and the situational stressors associated with adverse federal case processing decisions, suicide prevention is likely to become a new responsibility of the federal court system.

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Challenges to the Risk Principle

A new group of federal sex crime defendants—mostly charged with pornography offenses—are entering the system with problems and needs that are usually ignored in pretrial release and supervision decisions. According to the recently released review of the federal pretrial release system conducted by VanNostrand and Keebler ([2009](#)), these defendants are at low risk for re-offending or failure to appear. Notwithstanding, these defendants could be at higher risk for self-injury than their earlier counterparts. If so, the federal pretrial system must re-examine its definition of risk and redefine “best practices” for risk classification and reduction for this group

of defendants.

On the preceding point, consider the following “best practices” recommendation included in the study by VanNostrand and Keebler (2009, p. 37): “*Defendants in risk levels 1 and 2 have the lowest risk of pretrial failure and, consistent with the EBP risk principle, on average these defendants are more successful if released without ATD conditions.*” The problem with this recommendation is that the majority of defendants charged with sex crimes are low-risk, category 1 and 2 defendants. Applying this evidence-based recommendation, judges would order few, if any, release conditions for low-risk sex crime defendants.

Two alternatives to detention (ATD) release conditions that are primarily used for sex crime defendants released before trial are sex offender treatment and computer monitoring. Between 2001 and 2007, 692 defendants were released with an ADT condition of sex offender treatment; 586 (85 percent) of these defendants were classified as category 1 or 2 defendants. Similarly, a computer monitoring condition was ordered for 2,582 defendants; 2,285 (88 percent) of these defendants were classified as category 1 or 2 ([VanNostrand & Keebler, 2009](#)). Although this EBP recommendation makes sense in terms of traditional definitions of risk, it is problematic when an expanded definition of risk that includes suicide risk becomes the basis for release decisions.

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Suicide Prevention and Sex Crime Defendants

According to the Office of Probation and Pretrial Services, a total of 3,039 cases were activated in 2008—a 172 percent increase since 2001. As noted earlier, the sex crime defendant population is one of the fastest-growing criminal populations handled in the federal courts (along with immigration law violators). A number of recent reports have focused on the reduction of attempted and completed suicides in prison and jail settings ([Liebling, 2006](#), [Metzner, 2006](#); [World Health Organization, 2007](#)). However, no empirical research has been conducted to date on the nature and extent of the suicide problem among the pretrial release population in general and sex crime defendants in particular. The challenge for federal districts is to identify the most effective strategies to best manage this population at the pretrial level. Given the increased likelihood that these defendants will be prosecuted, convicted, and incarcerated for sex crimes, federal pretrial officers must incorporate supervisory strategies to prevent sex crime defendants from committing suicide before their cases are disposed.

At arraignment, defendants with charges for sexual offenses are often released with a mental health or treatment condition. At first blush, it seems logical that such a defendant would be referred to sex offender treatment. However, the unique dynamics of traditional sex offender treatment can impinge on a pretrial defendant’s rights against self-incrimination under the Fifth and Sixth Amendments. Sex offender treatment, which often includes polygraph testing and full disclosure of sexual and deviant behavior, puts the pretrial defendant in a precarious legal position. Crisis management is an equally challenging issue in designing effective mental health programming for the pretrial defendant. Defendants charged with sexual exploitation crimes often exhibit symptoms of anxiety, depression, and suicidal ideation that stem from feelings of shame, isolation, fear of the unknown, and the prospect of a probable prison sentence.

Although no nationwide estimates of suicide attempts or completions among federal pretrial sex crime defendants have been generated, the problem gained attention after several well-publicized suicides occurred in two California federal districts. From 2003 to 2005, the Central District of California experienced four separate suicides of defendants charged with possession of child pornography. In an eight-month span in 2008, the Northern District of California experienced seven suicides of defendants being investigated or charged with sexual exploitation (mostly possession of child pornography). The majority of these defendants had no criminal or mental health history. Based on their low probability of committing a crime or failing to appear in court, they would be classified as low-risk using traditional definitions of risk, which ignored their very high risk for self-injury.

The Central District of California's Suicide Prevention Strategy

In response to these tragic cases, the U.S. Pretrial Services Office in the Central District of California created a program to protect defendants against self incrimination while managing symptoms of anxiety, depression, and suicidality. The program was developed in collaboration with a mental health provider, the federal defender's office, and the court. The program model/curriculum consists of five modules:

- Crisis Intervention
- Support (group sessions)
- Healthy Coping Skills
- Cognitive Behavioral Therapy
- Keys to Successful Incarceration (prison preparation)

Crisis Intervention: Upon release from court, the defendant is immediately referred for psychological assessment. The defendant is evaluated for depression, anxiety, and suicidal ideation. The need for any additional services, such as psychiatric medication or individual counseling, is also identified at this time.

Support Group Sessions: If found suitable, the defendant participates in weekly group sessions with other pretrial defendants charged with a sex offense. Information related to the offense or other deviant behavior is prohibited from discussion. The groups focus on dealing with the impact of arrest on defendants' daily lives. Group sessions provide social contact for isolated defendants and support from others who are experiencing similar feelings.

Healthy Coping Skills: Defendants learn how to manage the stress of the federal judicial process in healthy ways.

Cognitive Behavioral Therapy: Defendants are taught how to eliminate their catastrophic thinking patterns (I will never find a job when released from prison; I will get killed in prison; etc.).

Keys to Successful Incarceration (Prison Preparation): Participants are educated about the Bureau of Prisons System. They learn about designation, facilities, communication with court and detention officers, self-surrender procedures, etc.

Since 2005, U.S. Pretrial Services in the Central District of California has referred more than 100 defendants to the program. Defendants and mental health providers report positive outcomes. Specifically, participants appear better equipped to manage the pretrial process and the prospect of being incarcerated in a federal prison. To date, all of the group participants have self-surrendered to federal marshals. The program has also been useful in identifying individuals in crisis and providing them with services. The most critical outcome is the fact that no program participants have committed suicide. However, the base rate for suicide among pretrial defendants (overall) is very low; thus, the measurement of a district-level suicide risk reduction effect among a specific subgroup of defendants in a single court is quite difficult to achieve. The most valid study of the impact of the program must involve pre/post comparisons of participants (vs. non-participants) in the suicide prevention program, which is being administered by *Sharper Future*, the vendor in this jurisdiction. An independent evaluation of the program is currently in progress.

Evaluating New Strategies Designed to Prevent Suicide among Federal Sex Crime Defendants: Issues to Consider

Each day in federal district courts across the country, judges render difficult pretrial release decisions for individuals who are charged with federal sex crimes (e.g. child pornography, sex abuse, sex transportation). When making these decisions, judges primarily consider whether the alleged sex offender is a potential flight risk, as well as the likelihood of criminal activity if the defendant is released before trial. Judges might also want to consider the risk of suicide in these decisions. Hence, sex crime defendants pose a unique challenge for the federal pretrial services system, because they expand the purview of pretrial risk assessment and confront several of the key recommendations on how to apply evidence-based practice (EBP) in pretrial settings ([VanNostrand & Keebler, 2009](#)). If the federal system does expand its definition of risk—and we think they should—then a number of basic evaluation research questions must be answered:

- (1) Do sex crime defendants pose unique problems, not only in terms of primary considerations (failure to appear, pretrial crime), but also in terms of secondary considerations (need for treatment, suicide risk)?
- (2) Can suicides by individuals charged with violating federal sex crime statutes be prevented?
- (3) How can and should the federal pretrial system respond to the mental health needs of pretrial defendants charged with sex crimes?
- (4) Can national estimates of the extent of the suicide problem, failure to appear, and pretrial crime among defendants in federal sex crime cases be calculated? If so, how does the Central District of California compare to other federal districts on each of these outcomes?
- (5) Do these rates (if available) for defendants in sex crime cases vary by charge type, release/detention practices, location, or demographic characteristics?
- (6) If available, can the rates of suicide, failure to appear, and pretrial crime be compared to the risk (for suicide, appearance, and crime) posed by other categories of pretrial defendants?
- (7) Do defendants charged with violating federal sex crime statutes pose lower flight risk and/or pretrial crime risk—but higher suicide risk—than other categories of federal pretrial defendants?

Answers to these questions are needed before the federal pretrial services system can design and implement an evidence-based suicide prevention strategy.

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Concluding Comments

While this article has focused on defendants charged with federal sex crimes who may be at risk for suicide, it is certainly possible that other groups of federal detainees have similar problems during the pretrial stages. Much has changed since the passage of the Sentencing Reform Act of 1984, due to changes in *laws* (such as mandatory minimums for drug offenders, weapons law violators, and other categories of offenders; new laws to address internet sex crimes and techno-crime), changes in *technology* (the internet has spawned new opportunities for a variety of old crimes—fraud, gambling, sex crimes—and created new categories of offenders and victims) and changes in *immigration* (in particular, the recent surge in illegal immigration from Mexico). As a result, the federal offender population today looks quite different from the federal offender population in 1984. Examination of the most recent figures available from the U.S. Sentencing

Commission (October 1, 2008 through March 31, 2009) reveals that there are currently four major categories of federal offenders:

- (1) Immigration violators (32.2 percent)
- (2) Drug Law violators (30.6 percent), with the following three major drug types: powder cocaine, crack cocaine, and marijuana
- (3) Fraud, larceny, and other white collar offenders (14.8 percent)
- (4) Weapons law violators (10.4 percent)

It would seem reasonable to propose that we examine suicide risk among the entire federal pretrial population, and consider the implementation and evaluation of a new generation of risk reduction strategies that incorporate suicide risk in assessment systems currently focused on the narrower issues of appearance and new criminal behavior.

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Implementing Pretrial Services Risk Assessment with a Sex Offense Defendant Population

Jon Muller

Senior Pretrial Services Officer

U.S. Pretrial Services, District of New Jersey

IN DECEMBER OF 2008, *Federal Probation* published an article outlining the need for a risk assessment tool designed specifically for pretrial services agencies ([Lowencamp, et al. 2008](#)).

This tool would then be able to assist pretrial services officers in completing the very important and sometimes difficult task of risk assessment and determining whether or not to recommend taking away a defendant's liberty pending trial. In April 2009, Luminosity, an independent research firm, finalized a study that was tasked with analyzing this specific area to determine whether there were in fact statistically significant and policy relevant factors one could use to assess whether a defendant would likely have a successful outcome on pretrial services supervision. This study, co-sponsored by the Office of Federal Detention Trustee with the support of the Administrative Office of the United States Courts, specifically outlined nine factors that had proven statistically significant in predicting pretrial services outcomes. These included: pending charges, prior misdemeanor arrests, prior felony arrests, prior failures to appear, employment status, residence status, substance abuse type, primary charge category, and primary charge type.

A second finding of this study was that lower-risk defendants are the most likely to succeed on pretrial services supervision ([VanNostrand 2009](#)). However, if release conditions include alternatives to detention such as location monitoring and substance abuse testing, the likelihood of success is decreased; the author therefore stresses that alternatives to detention "should be imposed sparingly." The only exception to this finding occurred in mental health treatment, which, when recommended appropriately, did not increase a defendant's likelihood of failure. Additionally, the study found that alternatives to detention are most appropriate for higher-risk defendants and generally increase success for those in these risk categories. These two findings were clearly demonstrated in the research findings; however, as an officer who deals with the ever-growing population of defendants charged with sex offenses on a daily basis, I view with caution the practical application of these findings to this special population of defendant.

Currently, officers utilize the Risk Prediction Index (RPI), which was approved for use by pretrial services in October 2001 ([Hughes 2001](#)). The RPI includes factors such as age, number of prior arrests, employment status, education, drug or alcohol history, whether or not a weapon was used in the instant offense, whether or not the defendant was residing with a spouse or children and if the defendant had previously absconded from supervision. Over the course of the past several years, many officers have realized that defendants charged with sex offenses score relatively low on the RPI. The new risk prediction assessment tool expected to be developed out of Luminosity's study also scores defendants charged with sex offenses very low. Based on Ms. VanNostrand's research on a pretrial risk assessment tool in the federal courts,

which captured those factors directly related to our mission of assuring defendant's appearance at court and safety of the community, I wonder if again this special population of defendants will be missed. The authors of the study acknowledge that the current population of defendants charged with sex offenses and released on bail with alternatives to detention such as computer monitoring and sex offender treatment is too small to draw any conclusive findings at this time.

Based on the 274 defendants charged with sex offenses as defined by federal statute in New Jersey between 2001–2007, the average score of a defendant released on bail supervision was RPI=1.34. The overall violation rate for this population (combined technical, re-arrest and failure to appear) during this period was 20 percent. Many of these violations were technical (82 percent). The violation rate using an AO-defined failure (re-arrest or failure to appear only) was 18 percent. The violation rate found in a similar group of defendants in Ms. VanNostrand's research was 2.3 percent (level 1) and 6.0 percent (level 2). Furthermore, only three defendants of the 56 violation cases had an RPI over 3, so one could assume that these defendants would all fall in a level 1 or level 2 classification. The violation rates when combining technical and AO-defined failures, as illustrated in Appendix Table A5 of the study, were 3.2 percent (Level 1); 9.7 percent (Level 2); 16.2 percent (Level 3); 22.5 percent (Level 4) and 29.5 percent (Level 5). The cases from the District of New Jersey, at an overall violation rate of 20 percent, parallel Level 4 numbers. However, based on the suggested risk tool, these individuals score very low, as seen by the average RPI score.

It is important to note that many of these "technical" violations were in fact continued criminal activity that was not charged, but disposed of by alternative means such as renegotiating the plea agreement with the new criminal activity being included as relevant conduct for guideline purposes or justification for an upward departure in the guidelines. For instance, in 2006 a defendant pending sentencing for possession of child pornography was found by our agency to be in possession of more than 600 images of child pornography. This defendant initially scored a 1 on the RPI, was professionally employed, and educated. He was in mental health treatment and his therapist described him as compliant and making progress. The defendant was deemed not repetitive, compulsive, or dangerous. However, our agency found chat logs confirming he had attempted to make contact with children online during his supervision term. The United States Attorney's Office, in lieu of filing a new charge, subsequently reallocated the defendant's plea and he was sentenced to 240 months imprisonment. Many involved in this case believed that the defendant's expected term of imprisonment would have been three and one half years due to his significant "post conviction rehabilitation."

This individual was only charged with Possession of Child Pornography, although the underlying facts of the case were that he created a MySpace account pretending to be a 15-year-old boy and contacted his stepdaughter, who was living in the same residence, groomed her into taking nude photos of herself and then proceeded to drug her so he could take additional nude photos and send them out on the internet to a friend. Without the added alternatives to detention of home confinement and computer monitoring and searches, we would never have known about his continued activity. Based on the findings of the current study at hand, this defendant should have been released without any alternatives to detention.

More recently, the District of New Jersey had a defendant who, while also aware that his computer activity was being monitored, proceeded to engage in a chat with an individual who identified himself as a 55-year-old convicted sex offender. They exchanged stories of fantasy rape of children and subsequently exchanged images of child pornography. The person the defendant was chatting with proceeded to discuss the details of his grooming of a neighbor's child, and indicated he was getting ready to act on his urges. Our agency responded immediately, made contact with authorities in Oregon where the second individual was located, and at once conducted a home visit to our defendant's residence. This visit turned up numerous images of child pornography and agents were able to make contact with the families of four children who were involved and potential victims. Our defendant scored a 0 on the RPI, as he was educated, employed, and had no prior criminal history. Instead of charging our defendant with the new criminal activity, at sentencing the government sought, and the court imposed, the highest end of the applicable guideline range.

As discussed in the Center for Sex Offender Management's June 2002 report, most studies looking at sex offender recidivism rates attempt to measure recidivism by equating it to re-arrest or re-conviction. As seen in these two case illustrations, both defendants were "successful" using most sex offender recidivism research as well as the AO standard of a successful outcome. Neither defendant was rearrested or recharged, and both appeared in court as ordered, albeit by way of a warrant. In reality, however, both defendants posed a serious risk of danger to the community by continuing to trade and view child pornography. Furthermore, both instances involved "real" children who were being victimized.

Most research on sexual offending shows that recidivism rates for sexual offenders are high. The FCC Butner study, although some may argue that it is flawed in its processes, brings to light the concern regarding prior sexual contacts with "possession" offenders. According to an article in the *Journal of Abnormal Psychology* ([Seto 2006](#)), research has found that child pornography offenses are valid indicators of pedophilia. In fact, child pornography offending may actually be a stronger indicator of pedophilia than physically sexually offending a child. The researchers point out that people are "likely to choose the kind of pornography that corresponds to their sexual interests, so relatively few nonpedophilic men would choose illegal child pornography given the abundance of legal pornography that depicts adults." Although the researchers admit some of the study's limitations, the study raises further concerns about the possible under-representation of the danger that these defendants may pose. Much research shows that recidivism rates drop when treatment is introduced, but treatment may be an alternative to detention that would not be applied if the risk assessment scores were the basis for this decision.

In light of this information, and in conjunction with the findings within the OFDT study, it seems prudent for agencies to use the new Risk Prediction Assessment as a guide for recommending conditions to the court and instituting supervision strategies. However, a multi-disciplinary approach, incorporating mental health treatment and alternatives to detention such as computer monitoring and restrictions, is the key to managing this special population. In 2001, the District of New Jersey Pretrial Services Agency developed and implemented a computer monitoring program to help deal with the ever-increasing numbers of defendants charged with sex offenses. Over the years, the program has slowly developed into a comprehensive program that includes remote computer monitoring and the ability to conduct manual field inspections and full forensic searches of defendant's computers. Additionally, the program urges the collaboration among the line officer, supervisor, cyber specialist, and the district's mental health specialists and treatment providers. The district has always stressed the importance of communication while developing this program by conducting outreach and education programs with the United States Attorney's Office and the Defense Bar throughout the years, as well as several training programs for officers.

In January 2009, the agency invited all of the magistrate judges to a working luncheon where the cyber program was introduced to them. The judges were provided information on the current trends in child pornography cases and the computer-monitoring services that the agency can provide to the court; they also received a hands-on look at the remote-monitoring software that the agency currently uses. Additionally, the judges were introduced to the virtual world of SecondLife and presented with the growing role gaming stations play in the online luring and grooming of child victims. The feedback from the judges was excellent, with many noting a better understanding of what pretrial services does and the service it provides to the court. Additionally, many of the judges felt more comfortable about releasing defendants charged with a sexual offense on bail, realizing the myriad of supervision tools and strategies that pretrial services would employ to reasonably assure the safety of the community.

All of this work appears to be paying off. Recently, 2008 national data revealed that the District of New Jersey had an 85.1 percent release rate for the 67 defendants charged with a sex offense this past year. Comparatively, the national average for this same population was 53.9 percent. The District of New Jersey was tenth in the nation for total number of sex offense activations and one of only two districts with a release rate over 80 percent (minimum number of ten cases activated for the year). We believe these numbers illustrate the importance of educating the

court about the everyday strategies and alternatives to detention that are available to judges when deciding to release or detain a defendant pending trial. As with all cases, an individualized approach to each defendant can meet these unique challenges. Additionally, agencies may wish to investigate and possibly implement a secondary risk assessment tool to assist in the evaluation process, since defendants charged with sex offenses have important criminogenic needs not shared by other defendants ([Hanson 2008](#)). Additional specialized scales, to be used in conjunction with the excellent tool developed from the Luminosity OFDT study, may be needed for a thorough risk assessment to be completed on defendants charged with sex offenses.

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Pretrial Risk Assessment and Immigration Status: A Precarious Intersection

*Allyson Theophile
Director's Leadership Resident
Office of Probation and Pretrial Services
The Administrative Office of the U.S. Courts*

IN APRIL 2009, Luminosity, an independent research agency, completed a study sponsored by the Office of the Federal Detention Trustee (OFDT) with the support of the Administrative Office of the U.S. Courts and issued a report entitled *Pretrial Risk Assessment in the Federal Court*. The purpose of the research was to identify statistically significant and policy relevant predictors of pretrial outcome to identify defendants who are most suited for pretrial release without jeopardizing the integrity of the judicial process or the safety of the community ([VanNostrand, 2009](#)). Based on the study's predictors, the Office of Probation and Pretrial Services of the Administrative Office of the U.S. Courts has developed a risk assessment tool designed specifically for federal pretrial defendants. This type of assessment tool provides pretrial services officers and, through them, the courts with valuable information for determining whether or not an individual should be incarcerated until the trial or released, and if the latter, whether the defendant should be required to post bond or be subject to an alternative to detention (ATD).

Although the newly developed Risk Prediction Index (RPI) for federal pretrial services incorporates information such as criminal history, demographics, drug use, and residency, it intentionally does not give significant consideration to immigration status. This is because the defendant's likelihood of committing a new offense or failing to appear is statistically unaffected by the individual factor of his or her immigration status. Therefore, while the public at large may share concerns over the number of crimes committed by illegal aliens in the United States, formulators of this risk prediction tool have determined that it is not necessary for this tool to address a defendant's immigration status. In addition, districts should continue to use the PSA tool when interviewing defendants who are known illegal aliens.

According to Lowenkamp, Lemke, and Latessa ([2008](#)), offender assessment tools are necessary in part because of limited resources to house an increasing jail population. Locked jails are currently at 96 percent capacity, with no decline in growth in the jail population over the last decade. From 2000 to 2008, the number of jail inmates per 100,000 U.S. residents rose from 226 to 258. Additionally, in 2008, jails reported adding 14,911 beds during the previous 12 months, bringing the total rated capacity to 828,413, according to the U.S. Department of Justice Bureau of Justice Statistics.

Risk assessment tools provide several important benefits to both the defendant and the individuals charged with deciding the defendant's fate as he or she awaits trial. These benefits include minimizing personal bias in decision-making, improving placement of individuals for

treatment and safety purposes, protecting against legal scrutiny, and improving allocation of resources.

However, in spite of these benefits, successful use of a PSA risk assessment depends upon its being first validated in the jurisdiction using the tool, to demonstrate that it can successfully predict outcomes for the population served. To accomplish these goals, the assessment should contain items based upon relevant theory, multiple measures of the constructs tested, and test domains that are empirically related to the behavior being predicted ([Lowenkamp, Lemke, & Latessa, 2008](#)).

It is the last of these three requirements—domains empirically related to the outcomes assessed—that is most relevant to the issue of immigration status. Research indicates that factors related to citizenship are not among those most correlated with failure to appear at trial and new arrest while under pretrial supervision. The relevant factors that statistically correlate with both types of failure are age of defendant at first arrest, the number of previous failures-to-appear, three or more prior jail incarcerations, any history of drug use, severity of problems arising from drug use, and employment status at time of arrest ([Lowenkamp, Lemke, & Latessa, 2008](#)).

Other research supports the irrelevance of citizenship status to failure to appear or arrest during the pretrial period. VanNostrand and Keebler ([2009](#)) reported on predictors of pretrial outcome relevant in identifying defendants most suited for pretrial release without jeopardizing the safety of the surrounding community. Of the defendants included in this study from 2001-2007, 31 percent were illegal aliens (p.16). A variety of statistical analyses were performed to determine relevant predictors of pretrial risk, including a univariate analysis of the dependent (pretrial outcome success or failure) and independent variables (risk factors), a bivariate analysis to gain insight into the relationships between pretrial outcome and each risk factor, and a multivariate analysis to identify statistically significant predictors of pretrial risk (p.20). These analyses indicated nine statistically significant predictors of pretrial outcome: pending charges, prior misdemeanor arrests, prior felony arrests, prior failures to appear, employment status, residence status, substance abuse type, primary charge category, and primary charge type. It should be noted that residence status does not specifically address citizenship status, but rather refers to whether the defendant owned or rented a home or had no residence (p. 21).

Approaching this topic from a slightly different angle, and drawing on statistics concerning new arrest and failure-to-appear rates for pretrial cases during the years 2001 to 2008, we find that, overall, illegal aliens do not pose a serious problem in this regard. The percentage of illegal aliens who have new arrest violations after release ranges from 0.0 percent to 3.2 percent during that time period. For comparison, the percentages of United States citizens with new arrest violations during the pretrial period range from 1.9 percent to 4.5 percent.

In spite of the evidence that supports excluding citizenship status from the pretrial risk prediction tool, a number of issues do exist that are associated with illegal immigration and the failure to consider it within the context of the assessment tool. In recent years, the media has drawn attention to illegal immigrants as a source of crime in the United States, perhaps resulting in concern among citizens and other legal residents. These concerns may not be entirely unfounded; according to Clark and Anderson ([2000](#)), federal data indicate that the number of illegal aliens within the criminal justice system has increased dramatically. This may be due in part to improved border enforcement, more effective identification of illegal aliens, or increases in the resident illegal alien population. It is important that we consider the validity of the PSA risk assessment instrument with this growing population of defendants.

Other issues related to excluding immigration status from the PSA tool center on obtaining accurate information for the individual so that the tool is effective in determining pretrial risks. Law enforcement professionals face a number of problems involving illegal immigrants, including identifying individuals who may have multiple aliases, dealing with language barriers, setting probation conditions that can actually be met by illegal immigrants, finding rehabilitation services for illegal immigrants, tracking individuals who fail to appear for trial due to immigration holds, and obtaining testimony of witnesses who are reluctant to step forward out

of fear of deportation ([Weller & Martin, 2009](#)). The first of these issues, identifying individuals who have multiple aliases, may be particularly problematic when trying to ascertain the existence of prior misdemeanor or felony arrests, both of which are significant predictors of failure to appear and new arrests during the pretrial period.

While these issues are significant and must be addressed, the PSA tool is not the proper forum in which to do so. The questions on the assessment tool must be based upon empirical evidence that demonstrates a statistically significant correlation between the construct assessed by the question and the outcome variable. Research indicates that citizenship is not a significant predictor of either failure to appear or new arrest during the pretrial period. Therefore, in spite of the increases in the number of illegal immigrants within the criminal justice system and the issues surrounding illegal immigration, particularly the ability to correctly identify the individual, the tool should not currently or in any future version incorporate illegal immigration. Districts should continue to use the tool to interview individuals of any status, including those whose citizenship status is unknown or in question. Problems arising from illegal immigrants must be addressed through means other than the risk assessment tool, as these individuals do not present any significant obstacles in effectively determining pretrial risk. In the future a number of pretrial services districts will be collecting data for testing purposes to determine if ties to foreign countries predict failure to appear. Currently there is no data that supports this claim.

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An Assessment of District Reviews: Implications for Pretrial Services Policy Development and Practice

*Joseph M. Zlatic
U.S. Pretrial Services Officer
Eastern District of Missouri*

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THE PRETRIAL SERVICES ACT OF 1982 ([18 U.S.C. § 3152 thru 18 U.S.C. § 3156](#))

codified the existence and function of U.S. Pretrial Services within each of the 94 judicial districts that comprise the federal district court system. *The Bail Reform Act of 1984* ([18 U.S.C. § 3141 through 18 U.S.C. § 3151](#)) expanded a judicial officer's authority to include the factor of preventative detention when considering a defendant's suitability for pretrial release, significantly impacting the pretrial services function in the federal system. Together, these statutes and the legal principles upon which they are based constitute the foundation of the pretrial services system ([VanNostrand 2007](#)). The Administrative Office of the U.S. Courts has established the Office of Probation and Pretrial Services (OPPS), that office that performs the national administrative oversight of the agencies charged with the pretrial services functions of investigation and supervision of federal defendants. Additionally, federal court policy employs local administrative oversight of these offices by the judicial officers of those districts in order to meet the individual needs of each district.

In keeping with 18 U.S.C. § 3672, OPPS, sometimes at the request of a district's chief pretrial services/probation officer or judicial officers and sometimes as part of the regular cycle of district reviews, regularly appoints ad hoc review groups. These groups consist of administrative personnel, officers, specialist officers (such as mental health, drug and alcohol abuse, location monitoring, contracting), supervisors, and deputy chief officers from other districts throughout the judiciary. These groups are charged with the tasks of monitoring compliance with policy and legal mandates and identifying superior practices by individual district offices. Generally, each officer selected represents a different district and is considered an expert in his or her assigned area of review. Additionally, reviewers must have at least five years experience in the area they

are chosen to review and must obtain approval from the chief pretrial services/probation officer in their own district.

Through peer review of managerial practices; investigation, supervision office contracting, officer safety, location monitoring and treatment programs, and court documents, the review team assesses an office's compliance with the national policy manuals, statutes, and case law to determine whether offices diverge from nationally recognized policy. Although divergence often can be classified as negative, it is sometimes the result of direct judicial mandate issued to meet the local needs of a specific court. Additionally, reviewers interview office staff and judicial officers to gain a clearer understanding of the functioning of each district. When requested, outside agencies (e.g. the U.S. attorney's office, the federal public defender's office, the U.S. marshals service) can also be interviewed.

Once the necessary information is compiled, the review team generates a comprehensive report that identifies positive and negative aspects of office functioning in light of national standards and local judicial mandates. The review team leader presents this information to the chief district judge and then to the chief pretrial services/probation officer and deputy chief officers of the office. Positive aspects of investigation and supervision are noted and recommendations are accompanied by policy manual citations.

As we embrace evidence-based practices (EBP) and call for further examination of the pretrial services system, the information contained in these review reports may provide a better understanding of the status of pretrial services functions. An analysis of this information can provide policymakers, administrators, and practitioners with baseline data to assess the quality of pretrial services offices with regard to national standards, to identify positive and negative investigation and supervision issues, and to ground future research. Thus, the goal of this article is to analyze the district review reports in order to gauge the current status of the pretrial services system in relation to the established standards of the system. The ultimate goal is to enhance the level of service that pretrial services offices provide to the judiciary, to the public, and to federal criminal defendants.

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Methodology

Data were collected from 44 district review reports generated between 2000 and 2008 ([Figure 1](#)) at the AO in Washington, D.C. (The district review process was altered during 2005 and no reports were available from that year.) Also, following 2005, district reviews no longer addressed information technology, human resources, and budgeting. These factors are now reviewed by an alternate review team further trained in these matters.

By coincidence, exactly half (22) of these reports reviewed combined probation and pretrial services offices and the remaining half reviewed individual pretrial services offices. These reports represented the total population of available district reviews that were conducted during the specified time frame ([Figure 1](#)). In all, 894 recommendations were cataloged for analysis.

These recommendations were organized by the subsections of each of the reports (management, supervision, investigation and report writing, office contracting, human resources, information technology, location monitoring, office safety, and budget). Additionally, a limited content analysis was performed on the contextual information in each report to determine if offices were diverging from national standards due to local judicial rule. The following variables were also cataloged to uncover if they contributed to the findings: year of review, satisfaction of judicial officers, the number of officers in each district, the presence of satellite offices, the length of the current chief pretrial services/probation officer's term, approved work units (AWU), style of management, and the presence of problematic interactions with outside agencies. Data validity was ensured through the use of predetermined categories.

These data were coded by frequency of occurrence and subjected to analysis involving descriptive statistics. Whether a recommendation was affirmatory or critical was determined by whether the practice was encouraged to continue or encouraged to be changed to conform with national standards (as set forth in the *Guide to Judiciary Policies and Procedures*, Pretrial Services Manual, Volume 12 (*Guide*); the *Pretrial Services Investigation and Report — Monograph 112*; the *Supervision of Federal Defendants—Monograph 111*; *The Judicial Officers Reference on Alternatives to Detention—Monograph 110*; and *The Federal Home Confinement Program—Monograph 113*; Volume 1; and Chapters 7 and 10 of the *Guide*). Also, these standards are influenced by case law and statutory law. These data were then examined for trends throughout the judicial districts reviewed.

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Findings

Findings from this study can be broken into numerous categories, based on the various sections of the district review report (management, supervision, investigation and report writing, office contracting, human resources, information technology, location monitoring, and officer safety) as well as on identified background characteristics that could impact the findings of this study.

The variety of reviewers led to significant variation throughout the data. Therefore, the data presented below have been organized by frequency of occurrence. In all categories, data that did not meet standards of statistical significance were compiled into an “other” classification.

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Office Managerial

As summarized in [Table 1](#), the managerial practice findings indicate that the area most in need of improvement in the reviewed offices is enhancing communication. The need for improved communication was evident not only among office staff, but also among outside agencies and the judicial officers for the district. Also, all levels of management and office staff reported the need for improved communication.

Additionally, the need for longitudinal office planning and evaluation can be logically concluded from the findings that indicate that reviewed offices were deficient in long-term strategic planning, developing and maintaining accurate local policy, and conducting internal reviews regularly.

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Investigation and Report Writing

In an examination of pretrial services investigations and report writing, there was evidence that the areas of pretrial service report content and pretrial diversion were most problematic for the reviewed districts. However, due to the relatively limited number of pretrial diversions that most districts conduct, the pretrial services reports seemed worthy of more attention.

The results indicate that errors in the written report (appropriate summary of the pretrial services interview, risk assessment, and recommendation) were cited in approximately 21 percent of all reviews. Errors included failing to complete required sections of the report, including extraneous information, and excluding pertinent information. However, despite this high incidence of erroneous report content, only 13.5 percent of all recommendations to the court were critical of the office’s practice. Similarly, a relatively low rate of erroneous risk assessment was uncovered when compared to the higher rate of report content issues.

Of particular note within this section is that despite the highest levels of total recommendations, a greater concentration of these recommendations was found. Thus, the “other” category is lower in this section than in any other. ([Table 2](#))

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Supervision

Compared to other recommendation groups within this category, the timely submission and review of Individual Case Supervision Plans (ICSPs) was lacking in 22.5 percent of all reports reviewed ([Table 3](#)). Given such a high incidence, there may be cause for concern over the appropriate use of this document. Although it is meant to be a guide to proactive and dynamic supervision, these data suggest that almost one-quarter of all districts reviewed are not correctly implementing this tool.

Despite this fact, reviewers reported that risk was properly addressed in over 90 percent of the districts reviewed. In fact, the relatively routine tasks comprising pretrial supervision (ensuring that record checks are performed every 90 days, conducting routine home visits, and documenting case activity in a chronological record) seem to be more problematic than implementing strategies to mitigate the risks of nonappearance and/or danger that federal defendants pose while under community supervision.

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Location Monitoring

Location monitoring was identified as having the highest level of policy non-compliance when examining routinized tasks. In many of the cases reviewed, location monitoring officers regularly failed to address all electronic location alerts and/or failed to document the course of action taken to address the risk posed. Additionally, file maintenance and conducting monthly home visits ranked equally low in policy compliance among the districts reviewed.

Location monitoring also had the highest proportion of “other” variables. Perhaps this is because these programs are often administered by relatively few individuals in each office with significant technical expertise. This limited administration may sometimes disallow managerial personnel and other officers from fully comprehending the scope and requirements of the program. Many issues, such as ensuring the appropriate use of location monitoring, policy development, and program implementation, might be resolved through a wider understanding of the nature of location monitoring supervision. ([Table 4](#))

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Officer Safety

The development and/or maintenance of local officer safety policy in accordance with national standards is the highest proportional value in any category. In the majority of districts reviewed, offices had failed to establish a formal policy or update their existing policy to fully incorporate important standards, such as the Director’s Regulations governing the use of Oleoresin Capsicum or Firearms.

As has been noted elsewhere in this article, adequate record keeping also comprises a relatively high proportion of the recommendations. Most common in the area of officer safety was the office’s failure to document the type and frequency of firearms and safety training that officers had undertaken. Another common inadequacy was the absence from the records of the exact scores for each officer during firearms training.

Many of the recommendations were related to general office safety rather than officer safety. These recommendations included the installment of duress alarms, providing limited defensive tactics training to clerical staff, and offering first aid and CPR training to all staff. ([Table 5](#))

Contract Administration

The trend of reviewer recommendations on proper documentation extends to contract administration as well. Here, recommendations mainly addressed deficiencies relating to documenting “piggy-backing” upon contracts of the U.S. probation office and appropriately completing and distributing all forms required by national standard. Additionally, reviewers in some cases focused on budgetary records to ensure that contracts were adequately fulfilled.

Although they do not constitute the highest proportion of recommendations, the related tasks of ensuring the proper management and oversight of the solicitation, contract, and service are cause for concern in this category. Together, approximately one-third of all recommendations fit within these managerial duties of the contracting officer(s).

Similar to district practice with location monitoring, contract administration is typically performed by a few highly specialized and trained individuals. Therefore, it is not surprising to see a high proportion of unconcentrated recommendations related to contracts. ([Table 6](#))

Identified Variables

Approximately 66 percent of reports indicated that the judiciary in the reviewed district was satisfied with the level of service provided by the pretrial services office. The remaining one-third of reviews did not characterize the judicial officers’ contentedness with the work performed by the offices. Nearly all recommendations cataloged were considered critical of the office’s performance. Although many districts attempted to justify their failure to meet national standards by claiming that deficiencies resulted from local judicial rule, no formal rule had been established in almost all cases. Instead, offices and judicial officers were relying on traditional practices within the district.

There was no identifiable correlation between the size of an office’s staff (or AWUs) and the number of recommendations it received from reviewers. However, combined offices and separate offices received approximately an equivalent level of scrutiny from the review teams after the discard of probation-related recommendations. Also, in 37 of the offices reviewed, the management structure was described as traditional hierarchical.

A median analysis revealed that the chief pretrial services/probation officer of the reviewed offices had been in place for 18 months. This suggests that offices are most likely to be reviewed during times of transition to a new chief pretrial services/probation officer. It is worth noting, however, that the length of the current chief pretrial services/probation officer’s term could be obtained from only 14 of the 44 reports.

The reports identified outside agencies as non-cooperative in achieving the mission of pretrial services in five of the reviewed districts. In all cases, the federal public defender’s office was identified as inhibiting access to defendants by requiring the presence of defense counsel at the initial pretrial services interview. This presence was required to ensure that the legal rights of the defendant were protected during this interview and to ensure that the defendant did not implicate himself or herself in the instant offense behavior. Although permitted by local judicial rule in all cases, this practice was identified by the review teams as limiting the defendant’s potential for admission to bond.

Implications for Practice and Future Policy Development

Overall, the findings of this study are encouraging and are generally consistent with the Strategic Assessment of Federal Probation and Pretrial Services System conducted in 2004. Results suggest that reviewers perceive that offices are performing the key functions of supervision and investigation with high proficiency in approximately 75 to 80 percent of the districts reviewed. Additionally, these data indicate that the judiciary in two-thirds of the districts examined were satisfied with the level of service provided by the pretrial services office. Thus, it can be logically concluded that national policy is being faithfully executed in these districts.

In an attempt to enhance service to the court and to accomplish the field's mission of "assisting in the fair administration of justice, protecting the community and bringing about long-term positive change" (www.uscourts.gov), the findings of this study should be incorporated into policy development and field practice. Although this incorporation could take numerous forms, the following recommendations are meant to guide administrators, managers, and officers in addressing areas most in need of attention. A synthesis of the findings of this study reveals four focal areas for enhancement: 1) managerial practice, 2) development of a systemic perspective, 3) oversight and assessment, and 4) incorporation of evidence-based practice.

Thematic evidence in these data reveal the need for enhanced managerial practice to advance the mission of the pretrial services system. Primarily, greater efforts should be made to develop local policy and to communicate this policy and other expectations to all staff and outside agencies. Coordination and inclusive management practices are necessary among all pretrial services personnel as well as all investigative and court personnel to achieve the fair administration of justice and to protect the rights of criminal defendants. A more comprehensive understanding of the tasks to be accomplished and the legal requirements (or basis) of those tasks would help to assure that the spirit of the Pretrial Services Act and the Bail Reform Act of 1984 remain intact.

A second factor that should be addressed is the strategic planning that is inherently linked to policy development and communication. Districts cannot develop and implement policy without a purposeful and widely distributed organizational plan ([Fung 2006](#)). Further, communicating with office staff and seeking input from all organizational levels is necessary for staff to invest more in the office's product and direction as well as to ensure that pertinent issues are taken into consideration during the planning stage. All levels of the organization will benefit from this planning, which should be undertaken to ensure the future stability of each locally administered office.

The second focal area is the need to develop a systemic perspective that is best defined as a method of viewing organizational behavior in which all pieces of that organization maintain interconnectedness ([Senge 1990](#)). Although the development of a systemic perspective is closely linked to policy development and strategic planning, this second focal area requires additional education and training of administrators, managers, officers, and support staff. This advanced training is required so that legislators, policy makers, and office staff have a clear understanding of the implications of their actions upon the environments and actions of others in the organization.

Without this clear understanding, disconnectedness develops among pretrial services staff, outside agencies, the judiciary, and administrators. This disconnectedness prohibits the meaningful achievement of any agency's goal, or else permits the achievement of one agency's goals at the expense of another agency. The resulting inefficiency and ineffectiveness often creates unproductive tension among agencies that further inhibits goal attainment ([Vince & Saleem 2004](#)).

Additional training at the national and local levels can help combat these destructive elements. Such training should encourage open and honest communication among multiple agencies and highlight the interconnectedness of the system. Specifically, the training should explicitly

demonstrate how each facet (e.g., investigation, supervision, location monitoring, contracting, data quality) of the pretrial services system can greatly affect outcomes and organizational function. This training should be offered to all officers and office staff on a continuous basis. Similarly, in the spirit of the development of a systemic perspective and enhancing communication, this training should incorporate numerous agencies in order to educate their personnel on the unique challenges and requirements of the pretrial services function.

Third, despite the importance of maintaining local court autonomy, our system needs to better instill national standards to ensure the fair administration of justice. However, a lack of standardization among the review reports clearly limits the ability of this study to make confident cross-district comparisons. This obfuscation significantly limits the usefulness of the district reviews as a system-wide assessment tool, as all results are localized to the district reviewed.

A more formal review policy at the national level would help address these concerns. This policy should clearly delineate the required sections of an office's functions to be reviewed and should firmly establish valid and reliable review report structure. Additionally, annual publication of the results of these reviews, with identifying characteristics removed, would enable the entire pretrial services system to benefit from the review of each district.

At the district level, offices would benefit from developing locally-appropriate assessment policies and performing regular internal audits that ensure policy compliance and the meeting of basic standards. Expanded self-assessment processes would help in all areas examined in this study.

The final area of focus, the incorporation of evidence-based practices, stems from the proposed direction of the field as well as from the intended purpose of the program reviews. Although the overwhelming majority of the recommendations reviewed for this study were critical in nature, the intended purpose of the review is to identify and affirm positive practices as well. Clearly, the review teams are in a unique position to encounter and publicize results-based, innovative programming that addresses the goals of the pretrial services system.

Once these programs are identified, they may be subjected to academic review for formal validation. Such academic study would help develop a better understanding of the causal factors that contribute to each program's success. When synthesized, these factors would form the basic programmatic foundations for the correct and thorough development, implementation, and evaluation of EBP. Such study might also enlighten our understanding of all that is yet to be examined in the field of pretrial services.

To be sure, the correct administration and evaluation of innovative programming depends upon the district's expert performance of basic functions. Thus, effective and inclusive management practices, an enhanced appreciation for the systemic perspective, and further oversight and assessment are key to instituting such programs. Therefore, the importance of the district reviews as both critical and affirmatory tools cannot be overstated. To take full advantage of these reviews, however, further study should be undertaken to better identify which process factors most impact the pretrial services phase of the criminal justice system.

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Limitations

Limitations in this study were many. First, the manner in which the reports were organized as well as the substance of these reports varied widely among review teams. Also, these review teams consisted of many different members, with no clear pattern of selection and only some overlap. Similarly, the involvement of many AO staff members caused extensive variety on the reports.

This lack of standardization obviously diminishes the credibility of cross-district comparison. Although the use of standardized instruments during the reviews enhanced the validity of data gathered, the variance created by the incorporation of numerous reviewers and team leaders should be minimized in future review and research.

Second, developments in the past decade have impacted the nature of the field of federal pretrial services. Examples of such changes include the development and implementation of the National Training Academy for federal probation and pretrial services officers, enhanced emphasis on strategic planning, multiple modifications to the uses and parameters of the PACTS database, and technological innovations. As the reviews examined spanned all of these significant alterations, the impact of each new factor could not be determined. Thus, future study should examine the relationship between these significant changes and their impact upon the field.

A final limitation can be attributed to the nature of the pretrial services system. As each court is individually administered, varying offices differ in their practices. Although this variance was controlled to some degree in this study through the use of a limited content analysis, the generalizability of the findings of this study remain somewhat suspect. As such, attributing these findings to offices that were not reviewed should be performed with caution.

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Conclusions

The findings of this study provide a current assessment of the quality of pretrial services administration based on district reviews. The results suggest that planning, local policy development, and enhanced documentation and record keeping are the areas most in need of attention. As combined and separate offices were examined, many of these findings would apply to combined probation offices as well. With regard to the core pretrial services functions of investigation and supervision of federal defendants, the field would benefit from enhancing the quality of officers' written reports' content and structuring supervision in a dynamic and proactive manner.

Undoubtedly, if the pretrial services field plans to continue embracing evidence-based practices, substantial research will be necessary to identify problematic areas, develop innovative programming, assess the quality of program implementation, and evaluate the effectiveness of these programs. Similarly, the role of organizational dynamics in pretrial services should be thoroughly assessed. This research, combined with many further studies, should allow for more comprehensive understanding and clearer direction for policy makers, practitioners, and researchers.

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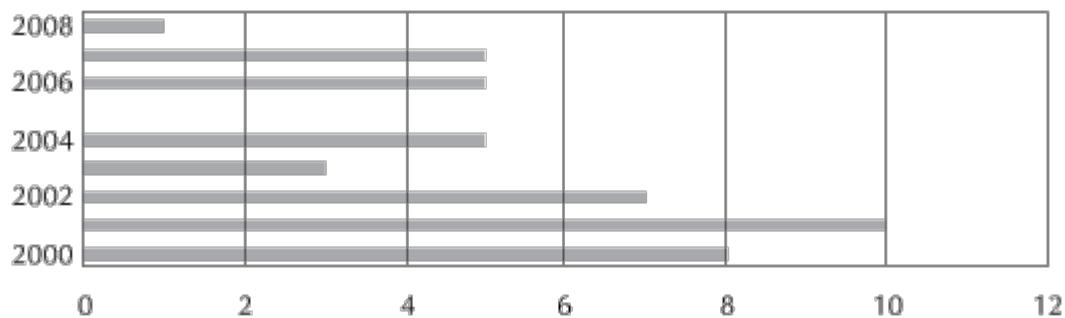
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Tables

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Table 1.

Focus of Recommendation	Total Recommendations	Percentage
	96	100.0%
Enhancing of Communication	33	34.3%
Developing and Maintenance of Local Policy	19	19.5%
Incorporating/Formalizing Strategic Planning	14	14.5%
Ensuring Training Needs are Met	7	7.3%
Performing Internal Reviews Regularly	6	6.3%
Other	17	17.7%

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Table 2.

Focus of Recommendation	Total Recommendations	Percentage
	215	100.0%
Pretrial Services Report Content	46	21.4%
Pretrial Diversion Policy and Investigation	46	21.4%
Verification of Reported Information	36	16.7%
Completion of Interview in Accordance with Standard	34	15.8%

Submission of Appropriate Recommendations	29	13.5%
Clinical and Actuarial Risk Assessment	16	7.4%
Other	8	3.7%

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Table 3.

Focus of Recommendation	Total Recommendations	Percentage
	173	100.0%
Timely and Correct Completion and Submission of Individual Case Supervision Plan	39	22.5%
Properly Conducting and Documenting the Post Release Intake Interview	23	13%
Appropriate Documentation of Case Activity	18	10.4%
Performance of Home Visits and Assessments	18	10.4%
Routine Check of Criminal History	18	10.4%
Notification of Court Personnel (judicial officer, U.S. attorney, defense counsel) of Case Activity	16	9.2%
Individualized Clinical and Actuarial Assessment	16	9.2%
Other	25	14.5%

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Table 4.

Focus of Recommendation	Total Recommendations	Percentage
	64	100.0%
Verification of All Location Alerts and Documentation of Action Taken to Ensure Defendant Compliance	17	26.6%
Ensuring a Monthly Home Visit is Conducted	13	20.3%
Maintaining All File Material According to Standard	13	20.3%
Development of a Co-Pay Policy	4	6.3%
Other	17	26.6%

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Table 5.

Focus of Recommendation	Total Recommendations	Percentage

	55	100.0%
Formulation and/or Maintenance of Local Office Safety Policy	26	47.3%
Documentation of Officer Firearm Training and Safety Training	15	27.3%
Provide Cardiopulmonary Resuscitation (CPR) and First-Aid Training Regularly	6	10.9%
Installation of Duress Alarms in the Office	5	9.1%
Other	3	5.5%

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Table 6.

Focus of Recommendation	Total Recommendations	Percentage
	97	100.0%
Ensuring Proper Documentation of Contract Requirements Per National Standards	24	24.7%
Enhancing Oversight of the Vendors	15	15.5%
Assuring Individualized Treatment Plans are Submitted to Vendors	14	14.4%
Managing the Contractual Process	13	13.4%
Developing a Co-Pay Policy	9	9.3%
Ensuring that the Chain of Custody of Maintained	5	5.2%
Other	17	17.5%

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Contributors to this Issue

[James M. Byrne](#)

[Timothy P. Cadigan](#)

[Timothy Connor](#)

[Troy Greve](#)

[Gena Keebler](#)

[Christopher T. Lowenkamp](#)

[Arthur J. Lurigio](#)

[Jon Muller](#)

[Roger Pimentel](#)

[Allyson Theophile](#)

[Marie VanNostrand](#)

[Jay Whetzel](#)

[Joseph M. Zlatic](#)

James M. Byrne

Professor, Department of Criminal Justice and Criminology, University of Massachusetts, Lowell. Ph.D., Rutgers University. Editor of *The New Technology of Crime, Law and Social Control* (Criminal Justice Press, 2007).

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Timothy P. Cadigan

Chief, Data Analysis Branch, Office of Probation and Pretrial Services, The Administrative Office of the U.S. Courts. M.A. in Criminal Justice, Rutgers University, New Jersey. Currently candidate for Ph.D. (ABD), Rutgers University. Author of "Evidence-based Practices in Federal Pretrial Services," *Federal Probation* (Sept. 2008).

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Timothy Connor

Chief U.S. Pretrial Services Officer, the District of Nebraska. M.S. in Public Administration, University of Nebraska, Omaha.

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Troy Greve

Supervising U.S. Pretrial Services Officer, the District of Nebraska. B.S. in Criminal Justice, University of Nebraska at Lincoln.

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Gena Keebler

President, Luminosity, Inc. B.S., Duke University. Coauthor of "Our Journey Toward Pretrial Justice," *Federal Probation* (Sept. 2007).

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Christopher T. Lowenkamp

Probation Administrator, Office of Probation and Pretrial Services, The Administrative Office of the U.S. Courts. Previously, Assistant Research Professor, University of Cincinnati. Ph.D. in Criminal Justice, University of Cincinnati. Author of “A quasi experimental evaluation of Thinking for a Change: A real world” (2/2009).

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Arthur J. Lurigio

Associate Dean for Faculty, College of Arts and Sciences, Loyola University, Chicago. Previously, Assistant Professor of Psychology, Northwestern University. Ph.D., Loyola University, Chicago. Coauthor of “Mental Illness in Correctional Populations: The Use of Standardized Screening Tools for Further Evaluation or Treatment” (September 2006).

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Jon Muller

Supervising U.S. Pretrial Services Officer (Sex Offender Specialist), District of New Jersey. Previously, U.S. Pretrial Services Officer, Cybercrime Specialist. M.S. in Criminal Justice, St. Joseph’s University.

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Roger Pimentel

Senior U.S. Pretrial Services Officer (Sex Offender Specialist), Central District of California. Master of Public Policy and Administration, California Lutheran University. Coauthor of “Sex Offenders: Creating a Deliberative Sentencing Process” (August 2009).

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Allyson Theophile

Director’s Leadership Resident, Office of Probation and Pretrial Services, The Administrative Office of the U.S. Courts. M.J.A., Norwich University.

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Marie VanNostrand

Justice Project Manager, Luminosity, Inc. Ph.D., Old Dominion University. Author of “Legal and Evidence-Based Practices: Application of Legal Principles, Laws, and Research to the Field of Pretrial Services” (April 2007).

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Jay Whetzel

Probation Administrator, Office of Probation and Pretrial Services, The Administrative Office of the U.S. Courts. M.A., University of Chicago.

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Joseph M. Zlatic

U.S. Pretrial Services Officer, Eastern District of Missouri. M.A. in Administration of Justice,
Saint Louis University.

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EDITORIAL STAFF

Timothy P. Cadigan, Executive Editor
Ellen Wilson Fielding, Editor

Federal Probation

*Administrative Office of the U.S. Courts
Washington, DC 20544
telephone: 202-502-1651
fax: 202-502-1677
email: Ellen_Fielding@ao.uscourts.gov*

Postmaster: Please send address changes to the editor at the address above.

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Pretrial Risk Assessment in the Federal Court

¹ This report and the study on which it was based were sponsored by the Office of the Federal Detention Trustee, U.S. Department of Justice, with support from the Administrative Office of the U.S. Courts. The research was conducted by Luminosity, Inc. and the report, dated April 2009, appears in full here, minus the table of contents and with minor formatting changes.

² The District of Columbia operates a pretrial services agency that services both Superior Court and the District Court. This agency operates independent of the federal system and no data are reported to the Administrative Office of the U.S. Courts.

³ National Institute of Justice, *Pretrial Services Programs: Responsibilities and Potential* (Washington, D.C.: U.S. Department of Justice, U.S. Government Printing Office, 2001) p. 7.

⁴ See, Pub. L. 89-465, 80 Stat. 214 (1965).

⁵ Pub. L. 94-473, 98 Stat. 1976 (1984).

⁶ Title 18, United States Code, Section 3142(e) (which presumes that for defendants charged with a drug trafficking or importation offense with a maximum statutory penalty of 10 years or more, using a weapon in conjunction with a violent crime or drug offenses, or a terrorism offense no condition or combination of conditions can reasonably ensure the defendant's appearance at trial or the safety of the community).

⁷ Title 18, United States Code, Section 3142(f).

⁸ Bureau of Justice Statistics. *Compendium of Federal Justice Statistics*, 1985 (July 1990).

⁹ During 2007 an additional 27,000 persons were booked and prosecuted for a misdemeanor

immigration offense.

¹⁰ Bureau of Justice Statistics. Federal Justice Statistics Program Website (<http://fjsrc.urban.org>). Executive Office for U.S. Attorneys, LIONS data system, Fiscal Year 2007 (as standardized by the FJSRC).

¹¹ See, e.g., Darren Gowen, *Overview of the Federal Home Confinement Program*, 64 *Federal Probation* 11 (2000). Home confinement is interpreted by the federal judiciary to include curfew (whereby the defendant is prohibited from leaving his residence during specific hours), home detention (whereby the defendant is restricted to his residence at all times except for approved leaves such as for employment, education, medical treatment, and religious practices), and home incarceration (whereby the defendant is restricted to his residence at all times except for approved absences, medical treatment, or religious practice).

¹² Administrative Office of the U.S. Courts, Office of Probation and Pretrial Services, *The Supervision of Federal Defendants*. Monograph 111 (September 2004). Other alternatives to detention include sex offender treatment and computer monitoring. However, given the types of offenses for which persons are federally prosecuted, these conditions are infrequently imposed: 0.4 percent of persons included in the study were released pending trial to a sex offender treatment program; and 1.5 percent were required to have their computer usage monitored.

¹³ Bureau of Justice Statistics. Federal Justice Statistics Program Website (<http://fjsrc.urban.org>). Executive Office for U.S. Attorneys, LIONS data system, Fiscal Year 2007 (as standardized by the FJSRC).

¹⁴ This observation is valid for all alternatives to detention with the exception of mental health treatment. Mental health treatment was equally effective at reducing pretrial failure for all risk levels.

¹⁵ The cost of pretrial release was based on the cost of supervision, the average cost of alternatives to detention, and the average cost of fugitive recovery given the probability of failure.

¹⁶ Title 18, United States Code, Section 3142(c)(1)(B)

¹⁷ Title 18, United States Code, Section 3142(e) contains three categories of criminal offenses that give rise to a rebuttable presumption that “no condition or combination of conditions” will (1) “reasonably assure” the safety of any other person and the community if the defendant is released; or (2) “reasonably assure” the appearance of the defendant as required and “reasonably assure” the safety of any other person and the community if the defendant is released.

¹⁸ Title 18, United States Code, Section 3142(g)

¹⁹ An illustrative list of conditions is set forth in Title 18, United States Code, Section 3142 (c)(1)(B)(i through xiv) which gives the judicial officer authority to impose conditions not specifically enumerated so long as the same serve the purposes set out in § 3142(c)(1)(B).

²⁰ VanNostrand, Marie and Gena Keebler. “Our Journey Toward Pretrial Justice” in *Federal Probation*, Volume 71, Number 2 (September 2007), pp. 20-25.

²¹ “Implementing Evidence-Based Practice in Community Corrections: The Principles of Effective Intervention” (National Institute of Corrections and Crime and Justice Institute (2004)).

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Implementing Evidence-Based Practices in Federal Pretrial Services

¹ Cadigan, Timothy “Evidence-based Practices in Federal Pretrial Services” *Federal Probation* (September 2008) at p. 87.

² VanNostrand, Marie “Pretrial Risk Assessment in the Federal Court” (April 2009) at 41.

³ VanNostrand at 10.

⁴ VanNostrand at 31.

⁵ Dowden and Andrews *International Journal of Offender Therapy and Comparative Criminology* “The Importance of Staff Practice in Delivering Effective Criminal Correctional Treatment: A Meta-Analytic Review of Core Correctional Practice” (2004) at 1.

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¹ *Putting Public Safety First: 13 Strategies for Successful Supervision and Reentry* (The Pew Center on the States, 2008).

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¹ 18 U.S.C. § 3672: The Director of the Administrative Office of the United States Courts, or his authorized agent, shall investigate the work of probation officers and make recommendations concerning the same to the respective judges and shall have access to the records of probation officers

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