



National Institute of Justice
Pretrial Research Meeting

May 22 – 23, 2007

Charlotte, NC

U.S. Department of Justice
Office of Justice Programs
810 Seventh St. N.W.
Washington, DC 20531

This and other publications and products of the National Institute of Justice can be found at:

National Institute of Justice

Strengthen Science • Advance Justice

NIJ.gov

Office of Justice Programs

Building Solutions • Supporting Communities • Advancing Justice

OJP.gov

The National Institute of Justice is the research, development, and evaluation agency of the U.S. Department of Justice. NIJ's mission is to advance scientific research, development, and evaluation to enhance the administration of justice and public safety.

The National Institute of Justice is a component of the Office of Justice Programs, which also includes the Bureau of Justice Assistance; the Bureau of Justice Statistics; the Office for Victims of Crime; the Office of Juvenile Justice and Delinquency Prevention; and the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking.

Opinions or conclusions expressed in this paper are those of the authors and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

Pretrial Research Meeting

May 22 – 23, 2007
Charlotte, NC

- Meeting Objectives
- Pretrial Research Program
- Meeting Agenda
- Participant List
- Meeting Products
- Contacts

Meeting Objectives

The meeting was sponsored by the National Institute of Justice, in conjunction with the [National Institute of Corrections](#) and its Pretrial Network.

The goal was to further develop NIJ's Pretrial Research Program. The meeting's objectives were:

1. To compile and present findings from past and contemporary research to assess what we have learned.
2. To gather researchers, practitioners, and pretrial experts to discuss the strengths and weaknesses of the body of research and its applications in the field.
3. To identify next steps, including building on current lines of research and identifying gaps where new lines can be developed.

Pretrial Research Program

NIJ's constituents for pretrial research are professionals in the field of criminal justice and the general public, including defendants, victims, and their families.

The pretrial research portfolio focuses on the research, development, and evaluation of pretrial release and detention policies and practices. Concerns include:

- Risk Assessment – What risk factors best determine eligibility for release vs. detention?
- Public Safety – What are rates and predictors of pretrial release violation, including new offenses?
- Court Appearances – What are the rates and predictors of failure to appear in court?

- Community Supervision – Under what conditions can pretrial defendants be released, and what community-based programming improves pretrial release success?
- Costs and Benefits – Under what conditions do the savings associated with pretrial release outweigh the costs of recidivism, failure to appear, and detention?
- Other important issues include disparity in case processing and special cases involving serious mental illness, juveniles, and domestic violence.

Meeting Agenda

The 2-day meeting was designed to inform and solicit feedback via presentation panels and group discussion. Building on a foundation panel that reviewed pretrial policy, practice, and research, subsequent panels addressed pretrial supervision, risk assessment, contemporary research and policy, and the perspectives of court and corrections stakeholders.

Participant List

Information about pretrial release and detention programming is of great relevance to several Federal, State, and local agencies, including law enforcement and bail/bond insurance representatives; victim/witness assistance providers; sheriffs and other jail administrators; judges, prosecutors, and defense counsel; and pretrial release and supervision officers. Most of these groups were represented at this meeting. Subsequent meetings will be scheduled with other stakeholders to solicit feedback and additional input.

Meeting Products

We have started a [working bibliography](#) to share and solicit information that will aid NIJ in furthering a pretrial research agenda. This will next be annotated to provide basic information on methods and findings for each.

Speaker Presentations

- [Applying Evidence-Based Practices to Pretrial Services \(pdf, 17 pages\)](#), Katie Green
- [Pretrial Release: Key Policy Issues and Relevant Research \(pdf, 14 pages\)](#), Barry Mahoney
- [The Role of Research and Bail Reform's Unfinished Agenda\(pdf, 8 pages\)](#), John Goldkamp
- [ABA Pretrial Release Standards \(pdf, 20 pages\)](#), Mark DeCaria
- [What We Can Learn From Parole and Probation Supervision \(pdf, 7 pages\)](#), Jim Austin
- [Strategies for Supervision Program Engagement \(pdf, 24 pages\)](#), Faye Taxman
- [Pretrial Supervision: The D.C. Pretrial Services Agency's High Intensity Supervision Program \(pdf, 16 pages\)](#), Susan Shaffer

- Fourth Judicial District Fourth Judicial District of Minnesota of Minnesota Pretrial Evaluation: Pretrial Evaluation: Scale Validation Study (pdf, 30 pages), Marcy Podkopacz
- Pretrial Outcomes for Domestic Violence Defendants in New York City (pdf, 14 pages), Richard Peterson

Contacts

Linda Truitt (linda.truitt@usdoj.gov)

Date Modified: December 6, 2010



Applying Evidence-Based Practices to Pretrial Services

The Virginia Experience

Prepared by: Katie W. Green
Co-Chair, EBP Committee
Virginia Community Criminal Justice Association



INTRODUCTION

- In 2005, Virginia began piloting EBP with state and local probation organizations.
- In 2006, the Virginia Community Criminal Justice Association (VCCJA) formed an EBP Committee to focus on EBP issues unique to local probation and more specifically to include Pretrial Services.
- There are 37 local probation programs and 30 pretrial service programs operating in VA. A majority of programs are under the same agency (all are pretrial release services.)



INTRODUCTION - Continued

- Ten pilot sites identified that represented all geographical areas, CCCA/PSA agency size and had both pretrial and post trial operations
- VCCJA in partnership with the Virginia Department of Criminal Justice Services requested technical assistance from NIC to help us identify and address unique issues of developing legal and evidence-based practices for pretrial service programs.



Technical Assistance Process

- Objective: To facilitate an action planning process to produce an action plan with concrete steps and timelines to implement legal and evidence-based practices for pretrial services.
- To develop evidence-based procedures and practices that don't conflict with the legal principles of pretrial




Why EBP?

- Can we mitigate risk without compromising the legal status?
- A large number of defendants placed on pretrial supervision with a secured bond
- A large number of high risk defendants unsuccessful due to technical violations

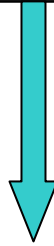
Case Closure Status

Pretrial Supervision: Closed Cases FY05

Risk level (per VPRAI)	FTA	New Arrest	Technical Violation	Successful
1	5%	1%	3%	90%
2	6%	1%	5%	88%
3	5%	3%	8%	84%
4	5%	4%	10%	80%
5	7%	8%	15%	69%



Services that address failure to appear and danger to public	The “gray middle ground”	Services that address risk reduction and risk management
--	--------------------------	--



“Risk reduction” services determined by court order

A No risk reduction services provided	B Refer to services if client initiates and volunteers Stay clear of situations requiring disclosure	C Use pre-trial as a “gateway” to criminogenic needs. Use MI techniques to increase awareness and motivation to address issues voluntarily
---	---	--



Pretrial Legal Foundation

- There are six critical principles found in the law that serve as the framework for the operation of pretrial services programs:
 1. Presumption of Innocence
 2. Right to Counsel
 3. Right Against Self-Incrimination
 4. Right to Due Process of Law



Critical Principles - Continued

5. Right to Equal Protection Under the Law
6. Right to Bail That is Not Excessive



TA Discussion Results

- Legal principles of pretrial required caution around programming referrals.
- Program referrals should be clearly voluntary and initiated by the defendant.
- Program should not require disclosure of the alleged offense or details surrounding the alleged offense lest it compromise the individual or pending case.



TA Discussion Results - Continued

- Legal and evidence-based principles for pretrial were consolidated into five areas (goals) and used for action planning purposes.



Goals for the Pretrial EBP Action Plan

- Goal 1: Apply actuarial risk tools to predict the likelihood of risk of flight and danger to the community.
- Objectives: DCJS and VCCJA to enter into contract with Luminosity to re-validate the Virginia Pretrial Risk Assessment Instrument (VPRAI). All ten pilot sites provided sample selection, developed data collection instrument and in process of collecting data. Develop and implement pretrial bail/release recommendation guidelines based on VPRAI.



Goals for the EBP Pretrial Action Plan

- Goal 2: Provide the least restrictive supervision necessary to effectively monitor compliance of bail conditions.
- Objectives: Review current mission statements statewide. Develop consensus on concepts that should be included in mission statements related to EBP. Use VPRAI for case classification/differential supervision strategies.



Goals for EBP Pretrial Action Plan

- Goal 3: Report violations of bail conditions which indicate an increased risk of pretrial failure to the court with a recommendation for modified bail conditions to mitigate risk.
- Objectives: Align local practice w/ this principle. Encourage differential response based on type of case and severity of violation.



Goals for EBP Pretrial Action Plan

- Goal 4: Use evidence-based techniques to gain compliance and increase defendant engagement and motivation through strength based and motivational interviewing techniques.
- Objectives: Review and modify motivational skill training for use in pretrial consistent w/ legal principles. Align organizational culture w/engagement, use of affirmation, and social learning techniques.



Goals for EBP Pretrial Action Plan

- Goal 5: Use fidelity measures, data, and evaluation to ensure quality and effectiveness of services and guide decision-making.
- Objectives: Develop statewide outcome and process measures. Ensure statewide adherence to EBP core practices according to validated model.



Next Steps

MATERIALS ON

***PRETRIAL RELEASE: KEY POLICY ISSUES
AND RELEVANT RESEARCH***

Presented at a Meeting Sponsored by the

National Institute of Justice
National Institute of Corrections
Pretrial Services Resource Center

Charlotte, North Carolina

May 22-23, 2007

Barry Mahoney
President Emeritus
The Justice Management Institute
1888 Sherman Street
Denver, Colorado 80203
303-831-7564
E-mail: bmahoney@jmijustice.org

CORE POLICY ISSUES

1. How does society structure a fair and cost-effective system to enable pretrial release of the maximum number of accused persons, while

(a) Ensuring attendance of the released persons at required court proceedings; and

(b) minimizing threats to public safety?

2. How does society protect against invidious discrimination on grounds of wealth, race, ethnicity, gender, or other unacceptable ground in establishing and implementing effective systems for pretrial release of accused persons?

3. Why are a significant number of defendants still held in pretrial detention in many jurisdictions even though they are charged with non-violent offenses and pose low risks of non appearance or danger to the community?

Arthur Beeley, *The Bail System in Chicago* (1927)

Key Findings:

Most persons accused of crime were taken to a police station, even if the offense was trivial. Little use was made of summons procedures.

In setting bail, the amount was determined on the basis of the offense charged.

No attention was paid to the personality, social history, or financial ability of the accused

Bail was often set at an excessive amount; perhaps equally often at too small an amount.

Alternative procedures such as cash bail and recognizance without security were rarely used

A majority of defendants (and about one-third of those held in detention) were never convicted.

Caleb Foote, Bail Studies in Philadelphia (1954) and New York City (1957)

Key Findings:

**Bail is generally set with little or no regard to either
The defendant's ability to post bond; or
Factors in the defendant's life situation relevant to
possible flight**

**The police charges and (in cases of serious crimes) the
District Attorney's recommendation are the determinative
factors in the judicial officer's bail decision**

**The higher the amount of the bond, the less likely a
defendant is to be able to post it.**

**Alternatives to surety bail (e.g., cash bail or release of
recognizance) are rarely used.**

**Many defendants remain in detention simply because of
inability to raise bail, even when the bail amount appears to
be low.**

**Dispositions in cases of defendants in detention are
consistently less favorable than dispositions of defendants
who gain release.**

Key policy (and constitutional) issue identified:

**Is it permissible to deny release to poor persons solely
because of their inability to meet a bail amount that is
set without regard to their financial ability and without
information regarding the likelihood that they will appear
for scheduled court dates?**

Manhattan Bail Project (1961-64)

The first control group experiment in an American court.

Key Research Questions:

1. Would judges release more defendants on their own recognizance if they had (a) reliable information about the defendant's roots in the community; (b) an independent assessment indicating that the defendant would be a good risk for safe release; and (c) assurance that an independent agency would notify the defendant about upcoming court dates and seek to assure the defendant's return to court?

Experimental Group: 60% granted release

Control Group: 14% granted release

2. Would defendants released under these circumstances appear for court dates as scheduled?

Experimental Group: 1% FTA rate

Daniel J. Freed and Patricia M. Wald, *Bail in the United States: 1964*

Summary critique: “In a system which grants pretrial release for money, those who can afford a bondsman go free; those who cannot stay in jail.”

Costs of the existing system:

Economic costs to the jurisdiction: per day costs x length of detention

Human Costs:

- Disruption of home and family life**
- Loss of employment**
- Humiliating treatment**
- Physical danger**
- Risk of disease**

Adverse impact on defense:

- Cannot help locate witnesses or evidence**
- Difficult to communicate with defense counsel**
- Lack of employment diminishes chance for non-incarcerative sentence**
- Likelihood of less favorable outcome**

Alternatives to the Existing Bail System

Improved fact-finding mechanisms – judicial officers should have reliable information about the defendant’s family, employment, residence, finances, character, and background

Release on Recognizance

Summons in Lieu of Arrest

Release on Conditions other than Money (Supervised Release)

Lower bail amounts:

- **“If the defendant is bailable at all, bail should be set at an amount he can raise. The alternative is hypocrisy.”**

Cash bail / deposit bail (no surety required)

Adequate sanctions for failure to appear

Consideration of detention on showing of dangerousness + speedy trial for detained defendants

- **More open, honest, and fair than setting high bail**

Paul B. Wice, *Freedom for Sale* (1974)

Study of bail and bail reform projects in 11 cities

Key Findings:

The existing money bail system is ineffective in releasing defendants prior to trial.

The bail reform projects of the 1960s are an improvement over the surety bail system, but have not succeeded in addressing the problem of unnecessary detention of indigents.

Critique of the traditional money bail system:

Unequal justice: money bail system punishes defendants who are financially incapable of raising the bond amount

Irrational: Seriousness of the crime has little relation to actual likelihood of flight.

Irresponsible: Gives bondsmen too much influence over who gets released

Expensive for the public: Unnecessary detention of good risk defendants who can't afford bail results in unnecessary financial costs to the taxpayers

Critique of the bail reform projects:

The projects utilize criteria that can be met only by middle-class defendants

- Stable residence
- Employment
- Family and community ties

Can't help the indigent, transient, and youthful defendants

Robert V. Stover and John Martin, *Policymakers' Views Regarding Issues in the Operation and Evaluation of Pretrial Release Programs (1974)*

Survey Question: *What goals should be very important for a pretrial release program? (16 possible goals listed)*

Rankings by respondents:*

1. Making sure that defendants released through the program appear in court when scheduled.
2. Lessening the inequality in treatment of rich and poor by the criminal justice system.
3. Minimizing the time that elapses between arrest and release of defendants who are eligible for release.
4. Gathering data to be used in evaluating the effectiveness of the pretrial release program.
5. Reducing the cost to the public by keeping people out of jail (and employed where possible) while awaiting disposition of their case.
6. Serving the court in a neutral fashion.
7. Gathering data to be used in assessing the effectiveness of pretrial release programs in relation to the operation of traditional bail systems.

***Respondents: Police Chiefs, Sheriffs, District Attorneys, Public Defenders, Judges, County Executives, and Pretrial Release Program Directors in 89 jurisdictions. Response rates varied by category of respondent – above 50 % except for judges and County Executives.**

Barry Mahoney et al., *An Evaluation of Policy Related Research on the Effectiveness of Pretrial Release Programs* (1975)

Key Findings from review of research literature:

There are practical alternatives to the surety bail system that have proven feasible in many communities;

- ROR
- Conditional release
- Deposit bail

Development of alternatives to the traditional surety bail system has enabled release of some persons who would not have been released under the traditional system.

The relative effectiveness of traditional surety bail and alternative forms of pretrial release rates has not yet been satisfactorily measured in terms of some key criteria: FTA rates, re-arrest rates, and economic costs.

- **BUT: The alternatives clearly operate in a more equitable fashion than the traditional surety bail system**

It is possible for a pretrial release system to operate wholly without bondsmen – e.g., Oregon, Illinois.

The swifter a program's operation – in terms of time required to interview defendants, verify information, and convey recommendations or exercise delegated authority to release – the greater the proportion of defendants released through the program.

Main factors critical to program effectiveness:

- Opportunity for program staff to interview defendants promptly after arrest.
- Enough staff to do prompt interviewing and verification.
- Prompt access to each defendant's prior record and current charge information.
- Delegated authority to release in routine cases.
- Rapid access to a judge to whom recommendations for release can be made in other cases

**Mahoney et al., An Evaluation of Policy Related Research on the Effectiveness of Pretrial Release Programs (1975)
(Continued – p. 2)**

Questions for further research:

What are comparative FTA rates for defendants on different types of pretrial release rates?

- **What factors – in defendants' backgrounds and in type of supervision (if any) - tend to produce low FTA rates?**

What are comparative re-arrest rates for defendants on different types of pretrial release rates? What factors tend to produce low re-arrest rates?

To what extent is it possible to develop criteria by which to accurately predict which defendants will flee the jurisdiction or commit pretrial crime if released?

To what extent do different types of pretrial release programs contribute to reducing inequalities based on race or economic status?

How effective are different forms of pretrial release programs in reducing the time from arrest to release for defendants who are released?

What are the comparative costs and benefits of different types of pretrial release programs?

What are the advantages and disadvantages of different types of alternative operational procedures? E.g.:

- **Possible organizational location**
- **Use of objective, subjective, or combined criteria**
- **Exclusion of specific categories of defendants**
- **What types of verification and notification procedures work best?**

To what extent does pretrial release contribute to delaying case disposition? Are there ways to minimize delays while maximizing the number of persons released prior to trial?

Wayne Thomas, Bail Reform in America (1976)

Study of bail reform efforts and impacts, 1962-1971, focusing on 20 U.S. cities

Key Findings:

Significant increase in felony release rates, nationally:

1962: 48 percent

1971: 67 percent

Proportion of felony defendants released on money bond remained constant:

1962: 44 percent

1971: 44 percent

“The increased use of non-financial releases was a major influence on the reduced custody rate.”

Wide variations in felony release rates as of 1971:

Minneapolis: 87 percent

Boston: 38 percent

Main policy recommendation: Develop a comprehensive system of pretrial release that operates like a series of filters:

Police citation release

Pre-court release on deposit bail

In-court individualized consideration of release options, with maximum use of non-financial releases

- **ROR**
- **Conditional (supervised) non-financial release for higher risk defendants**
- **Deposit bail for defendants deemed at high risk of flight**

PLUS: Monitor overall system performance – track overall release rates, proportion released at each stage, FTA and re-arrest rates

DEVELOPING A NATIONAL RESEARCH STRATEGY

KEY COMPONENTS

Starting Point: Accurate descriptions of pretrial release/detention systems in single jurisdictions

Show full range of release processes and supervision options

Show what options are followed under what circumstances

Quantitative data showing the number and proportion of cases – by case category – that follow each main path

Quantitative data that show **OUTCOMES** of release/detention decision-making

- Release rates
- FTA rates
- Re-arrest rates (by charge category)

Qualitative data (from interviews and observation) that can help illuminate the reasons for release/detention patterns

Implementation Needs:

Workable definitions of key terms (e.g., release rate, FTA rate, bench warrant) to enable cross-jurisdictional comparisons

Capacity to look at the entire release/detention systems of specific jurisdictions – NOT solely at pretrial programs

Organizational base (or set of bases) for conduct of comparative research + knowledgeable researchers

Funding support for longitudinal research

Support and cooperation from local jurisdictions

Capacity for building on research findings

ILLUSTRATIVE RESEARCH QUESTIONS

At the Single Local Jurisdiction Level:

What pretrial options are used for what categories of defendants?

Who remains in jail more than 24 hours (What categories of defendants)? Why?

What is the overall pretrial release rate?

What are the main obstacles to release?

What is the FTA rate? How does this vary for major categories of defendants, by type of release and supervision arrangements? Break by:

- Charge type
- Prior record
- Substance abuse history
- Mental health
- Other relevant categories

What is the rate of pretrial re-arrest, by similar categories?

At the National Level (Cross-jurisdictional Comparisons)

Which jurisdictions have the best combination of high release rates and low FTA and re-arrest rates?

What strategies do the high performing jurisdictions use to achieve these results?

- How do these strategies and practices differ from those of jurisdictions that (a) have low release rates and/or (b) have high FTA and/or re-arrest rates?

What are the economic costs and benefits of alternative approaches to pretrial release/detention practices?

What are the impacts on the principle of equal justice of alternative approaches?

What approaches to risk assessment appear to be most effective in providing guidance to judicial officers?

What risk assessment and supervision practices are effective in enabling safe release of defendants who have long records of low-level offenses?

The Role of Research and Bail Reform's Unfinished Agenda

John S. Goldkamp



Temple University
Department of Criminal Justice

Key Issues

- ◆ Judicial discretion in pretrial release/detention
 - ◆ Legitimate aims (flight, crime/danger and?)
 - ◆ Information/substance, relevance, how to use it
 - ◆ Options: use/availability of release conditions?
- ◆ Fairness/Equity of Pretrial Release and Detention Decisions
 - ◆ Visibility and Due Process
 - ◆ Access to Range of Options
 - ◆ Disparate Treatment of Similar Defendants
 - ◆ Discriminatory Economics of Financial Bail



Key Issues (II)

- ◆ Effectiveness of Release and Detention
 - ◆ Release with misconduct
versus
 - ◆ Detention
 - ◆ *versus*
 - ◆ Misconduct-free (safe) release of greatest number
- ◆ The jail overcrowding symptom
 - ◆ Estimates of current prevalence of jail crowding litigation under PLRA?
- ◆ “Wrongful” detention and wrongful conviction (conceptual and empirical connection)



Current Problems: a Research Agenda

- ◆ Context and method of research to inform practice
 - ◆ Necessity of judicial/research partnership
 - ◆ The main responsibility and prospects for improvements are centrally tied to the judicial role
- ◆ Need framework for overall assessment and improvement of practices
 - ◆ The example of pretrial release guidelines
 - ◆ The goal of category-specific problem-solving
 - ◆ Drugs, domestic violence, gender-specific issues, guns
 - ◆ Feedback on impact, adjustment, feedback



Current Problems (II):

- ◆ The message from several generations of overcrowded jails including the current one (PLRA aside):

Develop an effective capacity to safely manage greater numbers of higher risk defendants in the community or be prepared to live with the consequences

- ◆ Need for development of an evidence-based repertoire of release options per categories of defendants
 - ◆ **Need coherent, supported program of “clinical trials”**



Current problems (III)

- ◆ Risk is only part of the information problem
 - ◆ Judges need other informational resources as well (not only risks, but “costs” or risks/stakes)
 - ◆ Risk assessment is now more common but still very approximate (but see data mining and neural networks approaches)
 - ◆ Beware of the magic risk instrument (one-size fits all) across jurisdictions
 - ◆ Despite common themes important jurisdictional differences
 - ◆ Category-specific risk approaches
 - ◆ How should reasonable risk information be used?



Current problems (IV):

After nearly a half century of reform,
where is the science of release options?

- ◆ Classification of defendants (based on risk, problems, other concerns)
- ◆ Classification of field tested release options
- ◆ Linkage of release options to defendant types
 - ◆ Role of empirical research in developing and measuring safe and credible release options per types of defendants to improve:
 - ◆ Judicial choices
 - ◆ Release effectiveness



Current Problems (V)

- ◆ The negative role of the dollar
 - ◆ Lack of empirical basis showing general relation between manipulation of dollar amounts and defendant misconduct
 - ◆ Empirical research mainly shows that it is the main vehicle for detention (with the exception of DC, Federal jurisdictions)
 - ◆ It allows state jurisdictions to avoid addressing pretrial release decisionmaking problems and impact
 - ◆ [the connection between dollar and discretion]
See ABA, DC, Federal Bail Reform Act on this topic



ABA Pretrial Release Standards

Mark R. DeCaria

Weber County Attorney

What are they?

- A set of ideals or aphorisms designed to standardize the decision to release or detain defendants pretrial in jurisdictions across the country.

Three Major Principles

- Enunciate a policy and presumption favoring release of the accused
- Abolishment of compensated sureties for release (bail bondsmen)
- Establishment of a comprehensive pretrial release service agency

Purposes of Pretrial Release Decision (10-1.1)

- To provide due process to the accused
- To ensure defendant's appearance at all hearings before the court
- To protect victims, witnesses, and the community from threats, danger, and interference

Policy Favoring Release (10-1.1)

- The law favors release of defendants pending adjudication
- Deprivation of liberty is harsh and oppressive
- Can cause economic and psychological hardships
- Impedes ability to prepare adequate defense
- Deprives the family of support

Release Under Least Restrictive Conditions

- Sufficient to:
 - Ensure defendant's attendance
 - To protect community (victims, witnesses, etc.)
- Courts must have an arsenal of alternative release choices

Release on Own Recognizance

- Jurisdictions to adopt procedures to promote O.R. Release
- Pretrial services agency should provide the court with sufficient information to help it make an appropriate release decision

Detention is Exception to Release Policy (10-1.6)

- These standards seek to limit use of detention
- Establish criteria and procedures for detention when defendant is a danger or flight risk
- Inordinate weight should not be given to the nature of the charge

Citations in Lieu of Arrest (10-2.1)

- Mandatory for minor offenses (usually non-violent)
 - Exceptions when Defendant:
 - Fails to identify self
 - Refuses to sign promise to appear
 - Has no ties to the community
 - Has previous failures to appear
 - Is not in compliance with release conditions on other cases (probation or parole)
 - Is likely to re-offend

Use of Summons in Lieu of Arrest (10-3.1)

- Mandatory summons for minor offenses
 - Exceptions:
 - Accused fails to identify self
 - Arrest warrant necessary to locate accused
 - Arrest/Detention necessary to ensure public safety
 - Accused will likely fail to respond to summons
 - Accused has previously failed to appear
 - Accused not in compliance with release conditions on other cases (probation or parole)
 - Accused will continue to offend

Development of Comprehensive Pretrial Services (10-1.10)

- Every jurisdiction should establish pretrial services agency to:
 - Conduct first appearance inquiries
 - Present information to judge
 - Risk of failure to appear
 - Threat to anyone in community
 - Develop and provide appropriate and effective supervision

Development of Comprehensive Pretrial Services (10-1.10)

- Find appropriate facilities for care, custody and supervision of released Defendants
 - Halfway houses
 - Treatment centers
 - Counseling services
- Monitor compliance
- Inform the court of violations of release conditions
- Assist released Defendants in finding employment, medical care, or drug treatment
- Remind Defendants of court dates

Pretrial Services Investigation (10-4.2)

- Interview is voluntary
- Intended solely for the determination of release conditions or options
- Cannot be used against the Defendant except for perjury
- Does this create a privilege
- What about impeachment?

Used to determine risk of flight or danger to the community.

Information Included (10-4.2)

- Nature of the charge
- Character, mental condition, family ties, employment, ties to the community, past conduct, history of drug or alcohol abuse, criminal history, record of previous court appearances
- Probation or parole status at time of offense
- Sponsors
- Risk of willful failures to appear
- Threat to the safety of the community, victims, or witnesses

Other Restrictions If Not Released Own Recognizance

- Pretrial Services supervision
- Supervision by any other qualified agency
- Establishment of curfew, protective order, or geographical restrictions
- Electronic Monitoring
- No weapons

Other Restrictions If Not Released Own Recognizance

- No drugs or alcohol
- Drug Court, Diversion program, or Mental Health Court
- Financial Conditions
- Work Release or other part-time custody arrangement

Abolishment of Compensated Sureties (10-1.4(f))

- Consistent with the processes provided in these Standards, compensated sureties should be abolished
 - If financial bail is imposed:
 - Cash or securities of not more than 10% of the bail
 - To be returned at conclusion of case

Release on Financial Conditions (10-5.3)

- Financial conditions:
 - Discriminate against poor and middle class defendants resulting in higher rates of detention (commentary to 10-1.4(f))
 - Other than unsecured bond should be imposed only when no other less restrictive condition of release will ensure appearance
 - Financial conditions should not be set to prevent future criminal conduct
 - To punish or frighten defendant or placate public opinion

Release on Financial Conditions (cont'd)

- If financial conditions are to be used, the Court should select from one of these alternatives:
 - Execution of an Unsecured Bond
 - Execution of an Unsecured Bond accompanied by a cash deposit of 10% of total
 - Execution of a Bond secured by deposit of full amount or by the obligation of qualified, uncompensated sureties
- These Standards discourage the use of a predetermined bail schedule according to the nature of the charge.

Pretrial Detention

(10-5.8, 10-5.9)

- Burden on prosecution to demonstrate by “clear and convincing evidence” to prove no condition or combination of conditions of release will ensure:
 - Defendant’s appearance
 - Safety of community
- Judge to consider:
 - Violent nature of crime
 - Violation of prior release restrictions

NIJ Pretrial Research Meeting

What We Can Learn From Parole
and Probation Supervision

James Austin, Ph.D.

Important Differences

1. Pretrial Supervision is much shorter
 - Probation = about 1-3 years
 - Parole = 1-5 years
2. Success rates are higher for Pretrial
 - Probation = about 60%
 - Parole = about 45%
3. Public Risks (crime) are much lower for pretrial release
4. Much less variance in FTA and Pre-trial arrest rates so much less opportunity to predict correctly
5. Larger number of false positives in Pretrial supervision

Probation and Parole Success Rates—1995-2003

Outcome Measures	Probation	Parole
Successful Completions		
1995	62%	45%
2000	60%	43%
2003	59%	47%
Reason for Failures		
Re-incarcerated	16%	38%
New Conviction and Sentence	5%	11%
Revocation	7%	26%
Other	4%	1%
Absconded	4%	9%
Other	22%	6%

Source: *Probation and Parole in the United States, 2003*. US DOJ. (Washington, DC: Bureau of Justice Statistics, 2004).

Method of Release and Re-Arrest

Re-Arrest Rate	Unconditional Releases	Mandatory Releases	Discretionary Paroles
Unadjusted	62%	61%	54%
Adjusted	61%	61%	57%

What We Know

1. Recidivism and/or Success Rates for Probation and Parole Are Not Improving – even in the evidence based states/countries
2. Most of the parole and probation failures for are for multiple technical violations and/or drug and property crimes (85%).
3. Parolees with no supervision have significantly lower re-incarceration rates and similar re-arrest rates – some evidence that parole and probation are “criminogenic”.
4. No relationship between the period of supervision and recidivism – the process is the punishment
5. Sanctioned offenders criminal activity is declining -- Not Increasing
6. Two of the more intrusive forms of supervision (electronic monitoring and drug testing) have no impact on recidivism and public safety

What We Know

7. Informal (friends, family, community, religion) controls are more effective than Formal (government or state imposed) controls
8. Offense severity is inversely related to recidivism
9. Risk instruments with dynamic factors do identify high and low risk cases – but there are gender biases
10. Supervising low risk cases makes them worse – supervising/treating high risk works best
11. Greater or less use of parole or probation is not related to changes in crime rates
12. Significant reductions in parole revocations have been achieved via policy changes and financial incentives (staff and parolees).
13. Dangerousness cannot be predicted
14. Virtually no experimental studies have been done on parole and probation supervision – so we have no evidence to base our current policies.

Implications for Pretrial Supervision

1. Large numbers of pretrial detainees could be safely released without adversely impacting crime rates
2. A significant number of people who are not released will be placed directly on probation
3. Dangerous cannot be predicted due to low base rates agencies
4. Without risk assessment, you are probably supervising the wrong people at the wrong levels and have racial and gender biases.
5. Risk and needs assessment tools should be simple and not borrowed from other places
6. Pretrial agencies should be financially rewarded for lowering FTA and re-arrest rates.
7. Lack of sharing data with the jail and probation needs to be corrected
8. Experimental studies can be done quickly – short follow-up –but policy makers are unwilling to be tested

Strategies for Supervision Program Engagement

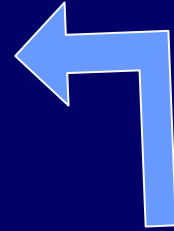
Faye S. Taxman, Ph.D.
Virginia Commonwealth University



All questions should be directed to fstaxman@vcu.edu.

Estimated Size of the Correctional Population: 8+ M Adults, 650K Juveniles

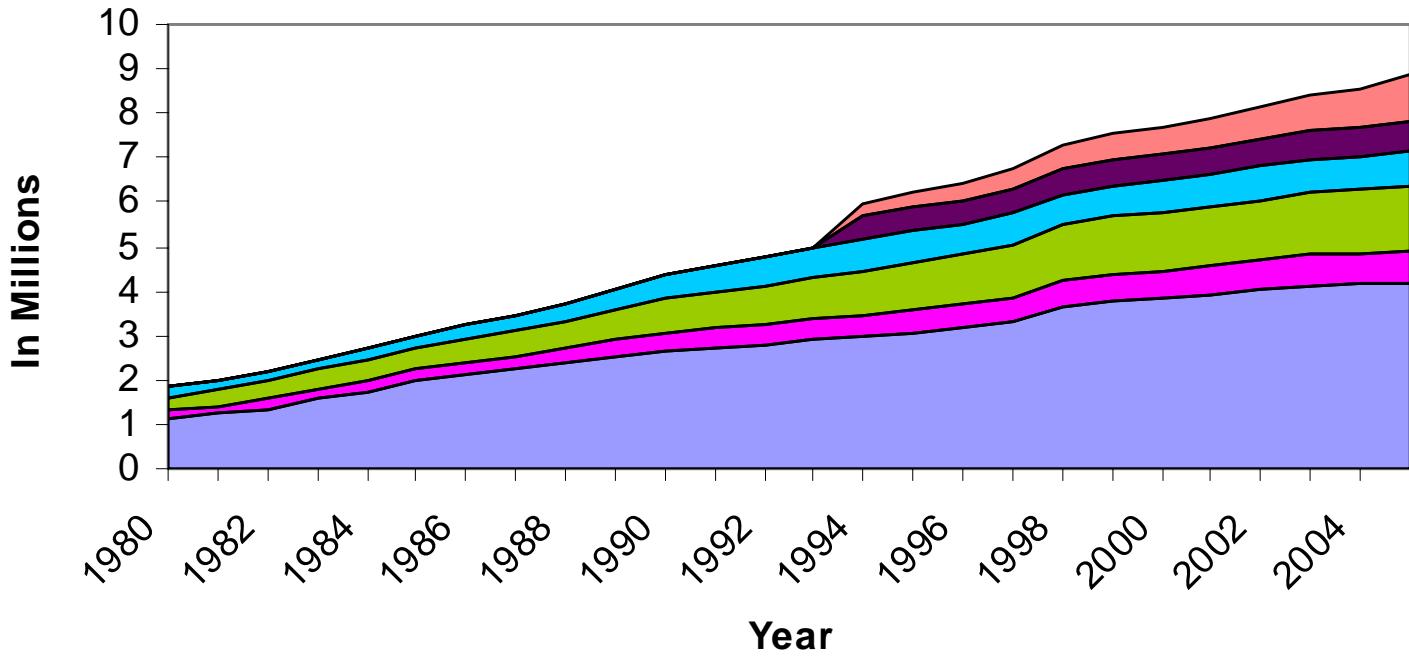
424,046 adults
receive tx (7.6%)



5,613,739
adults need TX
(4.5M males,
1.1M females)



253,034
juveniles need TX
(198,000 males,
54,000 females)



Probation
 Jail
 Prison
 Parole
 Juveniles
 Other Adult

54,496
juveniles
GET tx
(21.5%)



*Bureau of Justice Statistics, 2005 adjusted with estimates from Taxman, et al, 2007.

CJS Practice May Enhances Defiance

- Current Pretrial Release Practices that are not fair or equitable
- Lack and quality of Defense Attorneys that are available
- Reliance on Treatment or Conditions that are Not In Existence or that are Ineffective
- Inconsistent policies and practices in all arenas—arrest, pretrial release, ROR, etc.

The Quandrum We are In

- The public *perceives* release/supervision as ineffective and a “slap on the wrist”
- CJS environment is “toxic”—high expectations, low resources, inconsistent responses
- CJS has become the largest service network in a community
- **Disappearing** service structure in the community
- CJS assumes to control/impact behavior, but **tools (HOWS)** are not in place
- CJS tries to help offenders conform--offender doesn't know how! (and rules change)



Meta-Analysis Findings on Program Effectiveness*

CJ Interventions

- **Intensive Supervision**
- **Boot Camp**
- **Case Management**
- **TASC**
- **DTAP (Diversion to TX, 12 Month Residential)**
- **Tx with Sanctions (e.g. Break the Cycle, Seamless System, etc.)**
- **Drug Courts**
- **In-Prison Tx (TC) with Aftercare**

Clinical Techniques

- **Education (Psycho-Social)**
- **Non-Directive Counseling**
- **Directive Counseling**
- **Motivational Interviewing**
- **Moral Reasoning**
- **Emotional Skills**
- **12 Step with Curriculum**
- **Cognitive Processing**
- **Cognitive Behavioral (Social, Interpersonal, etc.)**
- **Therapeutic Communities**
- **Contingency Management/Token Economies**

* List of Studies Available from author

Major Theoretical Advances in the Last Decade

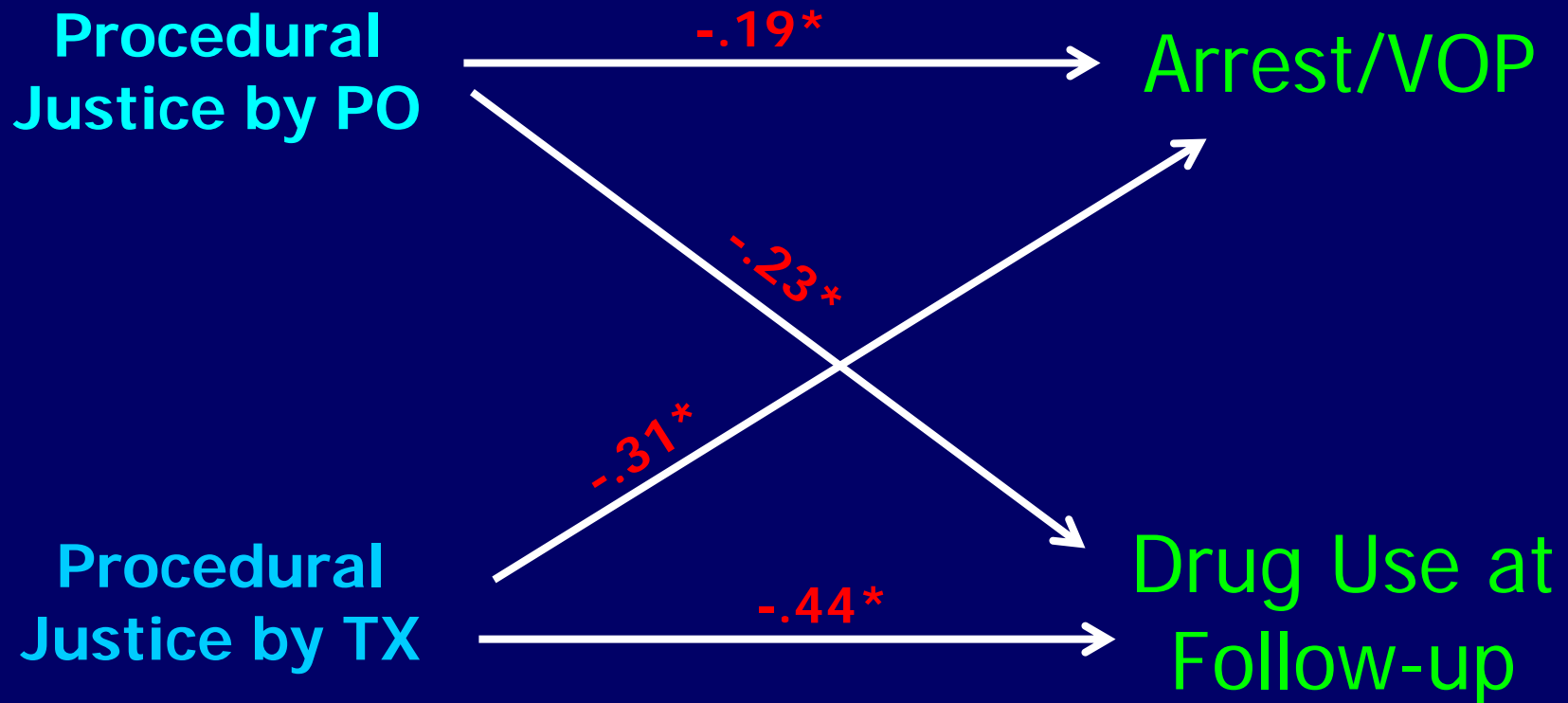
- **Informal Social Controls**—people change from pressures from those that they love
- **Procedural Justice**—importance of consistent responses
- **Cognitive Behavioral Therapy & Contingency Management**—importance of interventions that shape behaviors
- **Risk Instrumentation & Responsivity**—focus on specific offender needs
- **Treatment/Change Process**—behavioral change is a process where the parts are integrated

Fairness & Legitimacy

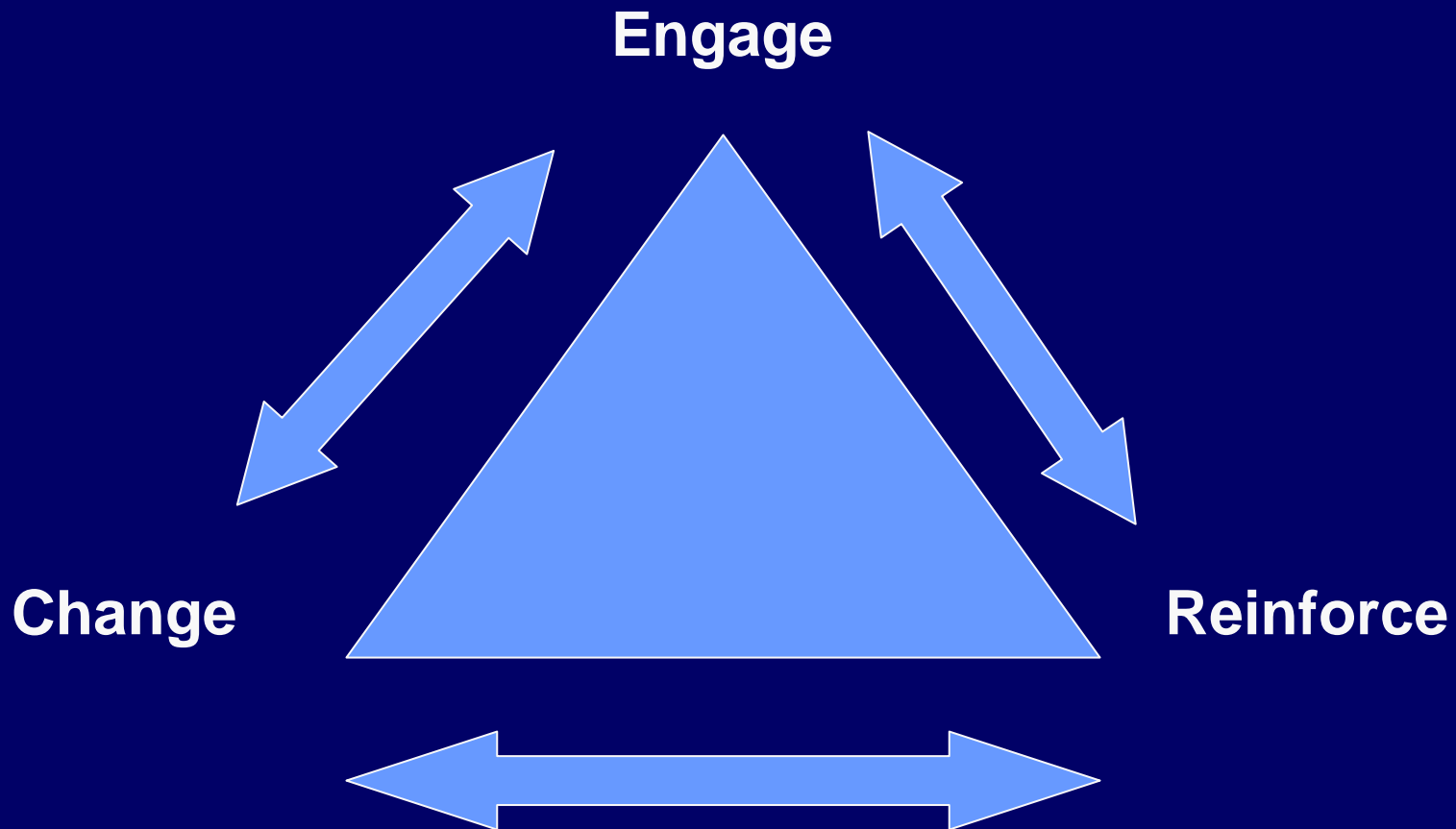
- National Research Council, 2005 on policing
 - Reduced rearrests for DV offenders when arrestees given clear instructions (Paternoster, Brame, Bachman, Sherman, 1996)
 - Police misconduct in high disadvantaged areas increases violence (Kane, 2005)
 - Police clear instructions increase compliance in communities (Tyler, et al., 2000, 2003, 2004)
- Pretrial and supervision processes have taken a mandate to be fair and equitable, but is this the perception of those going through the cjs?

Impact: Perceived Fairness on Outcomes

When Offenders Believe they have a VOICE, reductions in negative outcomes occur!



Process of Offender Change



The issue is how to work with the defendant in a manner which is just, fair, and empowering?

APA Task Force on Empirically Supported Therapy Relationships*

- **Therapeutic alliance**: works with client, not against
- **Goal consensus and collaboration**: agree on goals for client
- **Empathy**: understands client
- **Cohesion in treatment/supervision/monitoring**: common goals, purpose

Promising & Probably Effective Relationship

- **Quality of relational interpretations:** keep client on same page
- **Management of counter-transference:** professional should keep negative thoughts to self
- **Self-disclosure:** being open with client
- **Repair of alliance ruptures:** work out problems with client
- **Feedback:** keep client informed about progress
- **Congruence/genuineness:** be agreeable and honest with client
- **Positive regard:** client *can* be a good person

Can these done with pretrial setting?

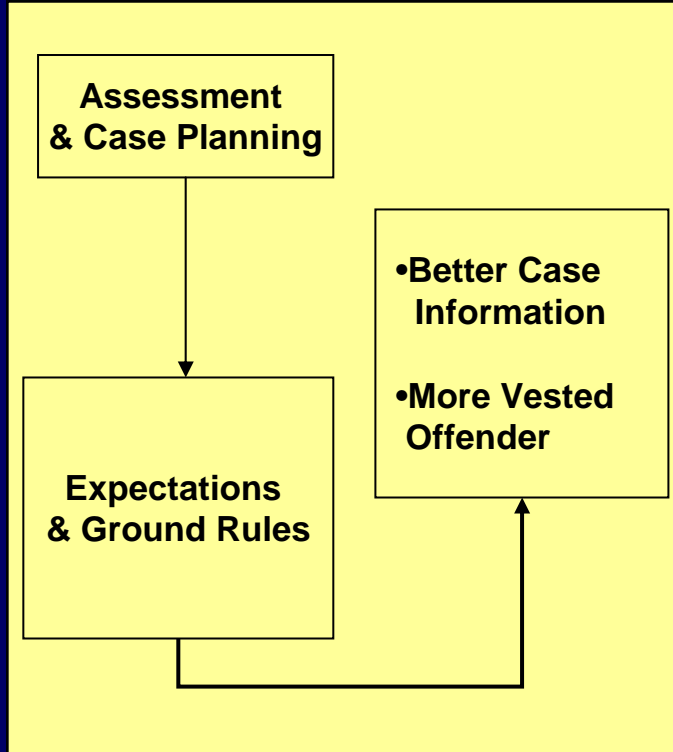
Impact of Strong Relationships*

- Retention
- Completion
- Comfort
- Remain Drug-free
- Address problems
- Reshapes uncooperative clients
- Productive and constructive

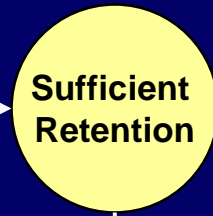
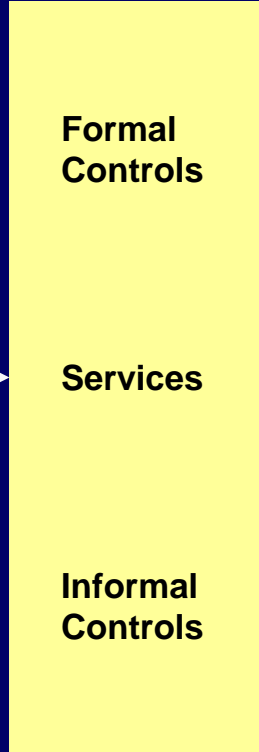


Process to Motivate Offenders to Change

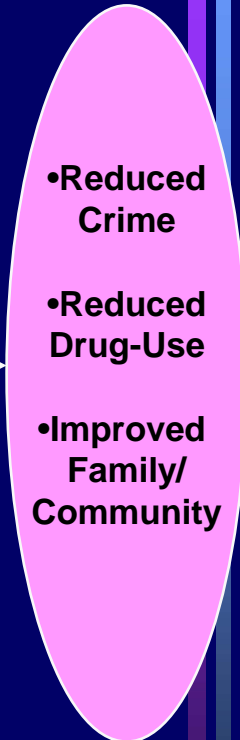
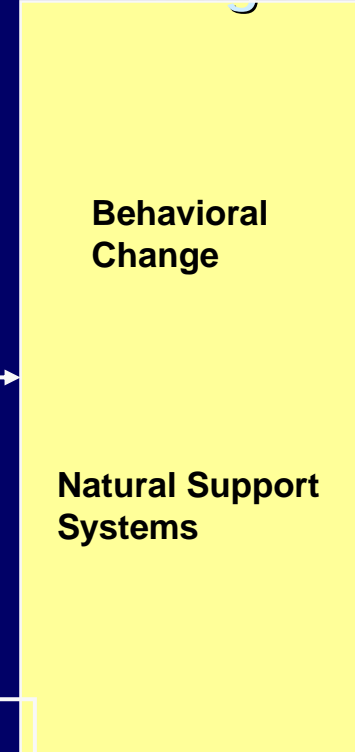
Engagement



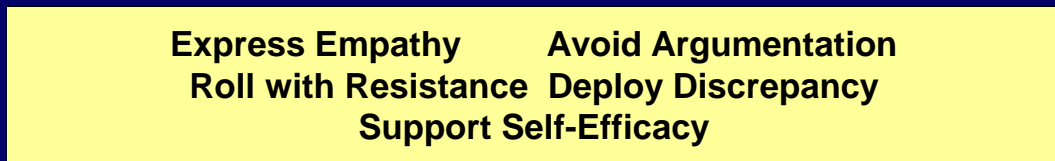
Change



Sustained Change



Department



4 Months

12 Months

18 Months

Behavioral Management Strategies

- 
- Unclear rules
 - Discretionary procedures
 - CJ Procedures
 - Outlaw *persona*

- **Department/Respect**
 - Office Decorum
 - Citizen *persona*
- **Social Learning Model**
 - Develop a Mutual Plan Tied to Needs and Risk
 - Have defendant in the process to get feedback
 - Emphasize more on informal social control
 - Positive Reinforcers
- **Clarify Expectations for Success**

Maryland PCS Project

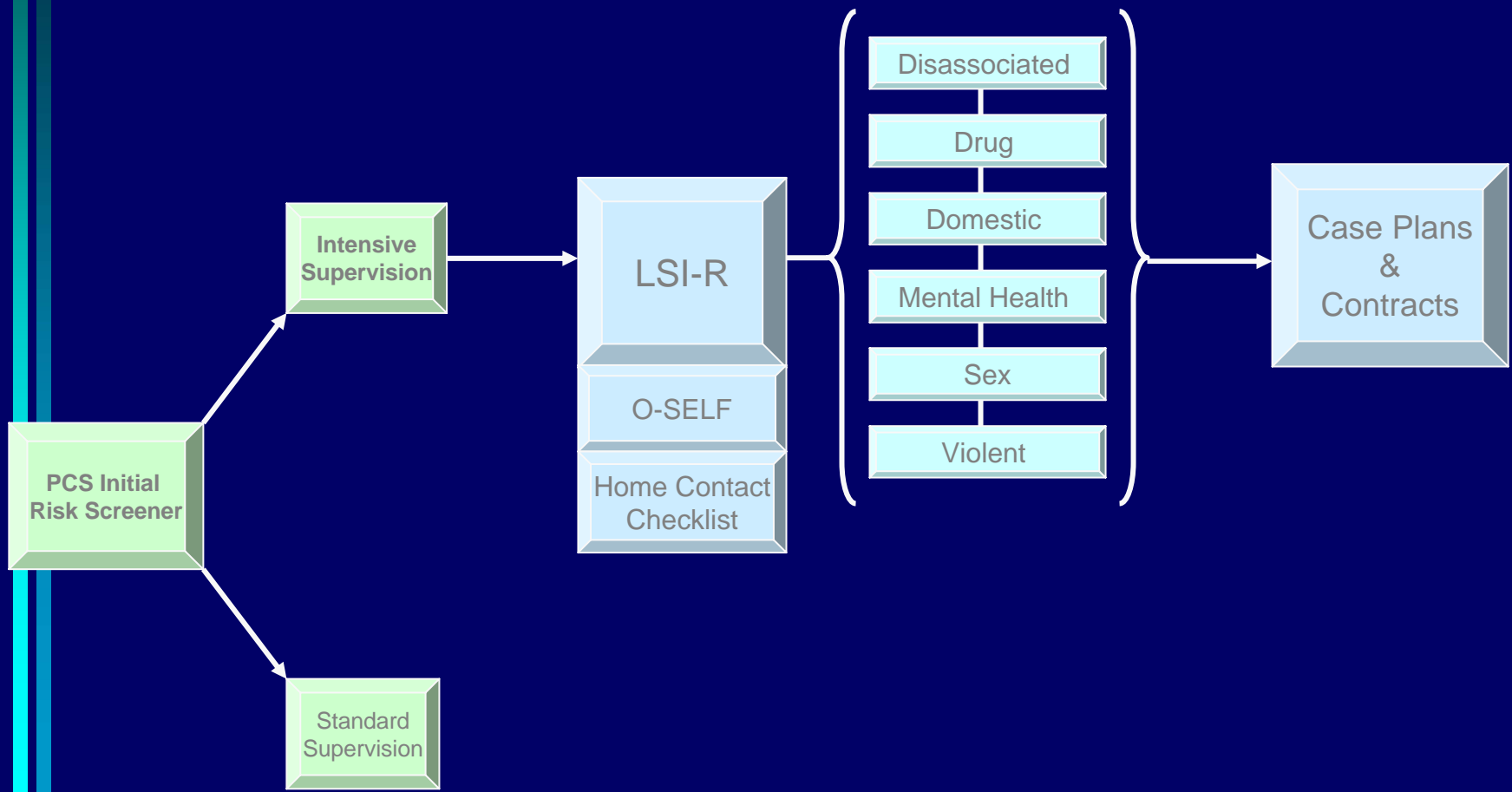
- **Key ingredients: Place-Based Implementation, LSI-R to drive case plan, Department/Rapport Building, Organizational Structure (Quality Contact Standards)**
- **4 Pilot Offices**
- **Individualized Match Study Design**
- **4 Years to Implement**

PCS Model of Supervision: Defining a Case Plan (30 days)

Classification

Assessment

Case Management



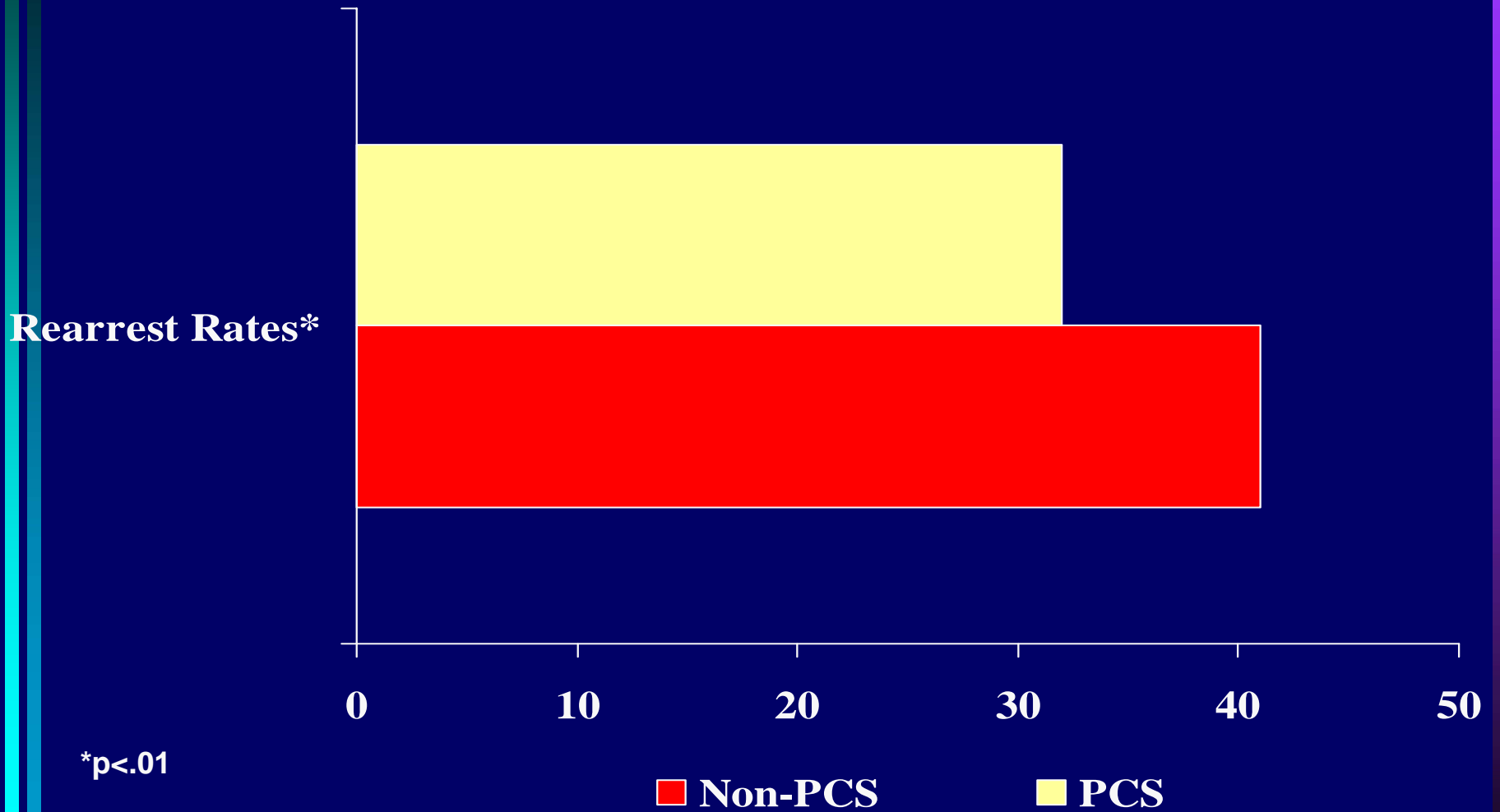
Research Design

- 4 PCS Sites
- Individual Match in Other Offices
 - ❖ Age
 - ❖ Gender
 - ❖ Ethnicity
 - ❖ Offense Type
- No statistically significant differences between groups

Demographic Characteristics of Sample

Group Characteristics	PCS N=274	Non-PCS N=274
% Male	83	83
% African American	85	85
% Unemployed	62	69
% Over 30 years old	53	54
% Single	83	86
% Probation	88	88
% Parole/MR	12	12
Mean No. Prior Arrests	7.1	6.8

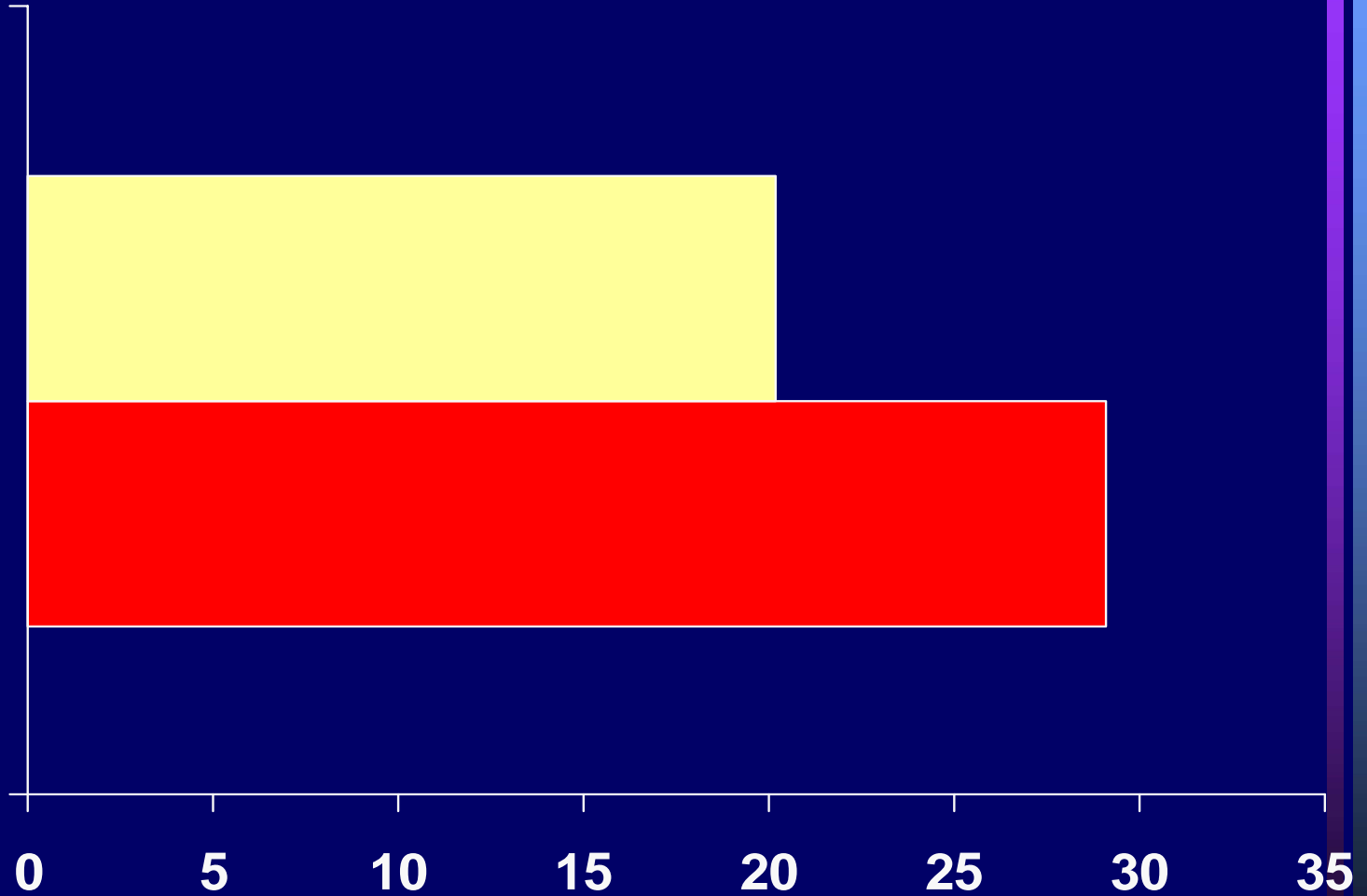
Re-Arrest Rates From PCS



•38% Reduction in Odds of Rearrest Rates

Requests for VOP Warrants

Warrant Rates*



*p<.05

■ Non-PCS ■ PCS

● **40% Reduction in Odds of VOP Warrants**

Avoiding the Pitfalls of Past Efforts

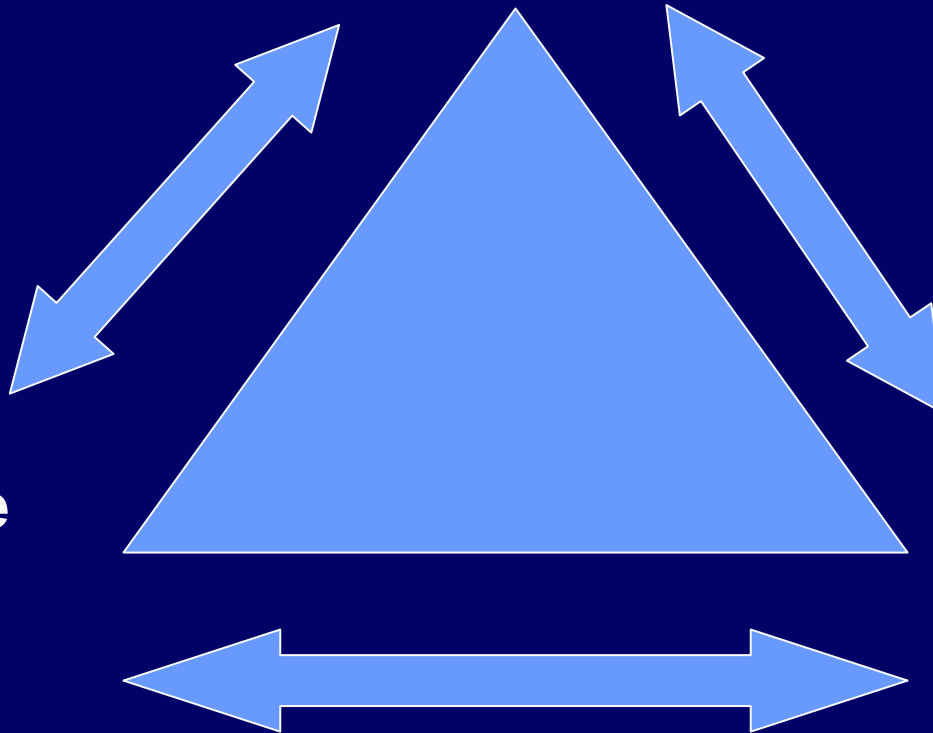
- CJS assumes authoritarian stance, which can reduce the defendants trust in the cjs
- CJS needs to be attentive to the issues of legal cynicism
- Define implementation to get greater adherence to release conditions, treatment, etc.
- Emphasis on measuring justice and equity from the system, offender, and community perspective
- Identify Organizational Strategies
 - Develop staff skills in engagement, boundary setting
 - Coaching of Staff to enhance skills
 - Redefine organizational objectives
- Identify theoretical model of supervision

Organizational Process of ~~Offender~~ Change

Engage

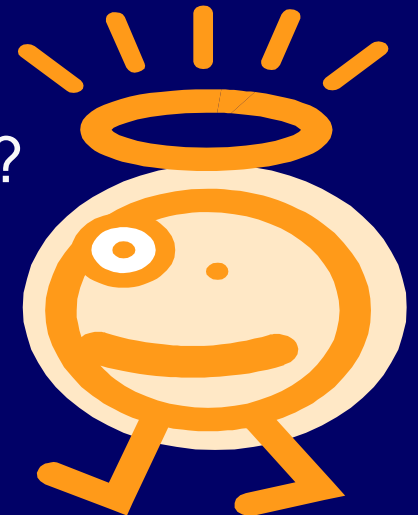
Change

Reinforce



Research Agenda to Advance Supervision Practices in Pretrial Settings

- What defendant actions led to compliance (not failure); what pretrial release factors led to compliance
- Which criminogenic needs affect pretrial outcomes—substance abuse, family, criminal thinking, etc.
- How risk can be measured in an environment where arrests are prevalent?
- What type of interaction with offender improves compliance and positive outcomes?
- What models of community partnerships are viable to keep offenders **out** of the cjs?
- What models of staff-defendant relationship are important in improve outcomes?



tools of the trade

a guide to incorporating science into practice

National Institute of Corrections
U.S. Department of Justice



Maryland Department of Public Safety
and Correctional Services





Pretrial Supervision:
The D.C. Pretrial Services Agency's
High Intensity Supervision Program

NIJ Pretrial Research Meeting

May 22, 2007

Charlotte, NC

Targeted Defendants

- Supervision-related program failures from other PSA supervision and treatment units
- Felony or violent misdemeanor-charged defendants, based on risk assessment score
- Defendants compliant with halfway house requirements for at least 30 days

Eligibility Criteria

- No outstanding extraditable warrants or detainers
- No removals from HISP within the past 30 days
- Verified address with operable landline telephone to monitor curfew
- Homeowner agreement to have EM equipment installed

Supervision and Services

- In-person contact with case manager
- Drug testing at least once a week
- Community phase – EM enforced curfew from 10:00 p.m. to 6:00 a.m.
- Home confinement phase – 24-hour curfew for the first 21 days
- Placement into drug treatment after assessment of defendants referred by the Court or who repeatedly test positive
- Referrals to social services based on results from a PSA-developed needs screener

Sanctions—Community Phase

- First infraction: curfew increased to 800:pm to 600:am for 30 days
- Second infraction: 7-day 24-hour curfew
- Third infraction: 14-day 24-hour curfew

Subsequent infractions result in a 24-hour curfew pending a Court hearing

Sanctions—Home Confinement Phase

- First infraction: Home Confinement extended an additional 7 days
- Second infraction: Home Confinement extended an additional 14 days
- Third infraction: Home Confinement extended an additional 21 days

Subsequent infractions result in full Home Confinement pending a Court hearing

Court Notification of Violations

HISP supervision includes weekly notification to Court of violations in the Community Phase and notification after each violation in Home Confinement.

EM

EM was added to HISP in 2003, following closure of a local halfway house. While a more efficient monitor of the curfew condition, EM limits the HISP population to defendants with operable land-line phones and whose homeowner is willing to part with special phone services. As a result, many high-risk defendants remain in general supervision. PSA is adding cellular EM technology and GPS capability to address these concerns.

Under the HISP release order, judges can place defendants on evening curfews or an initial 21-day home confinement period, followed by an evening curfew. The order also permits PSA case managers to change curfew hours (as a sanction for defendant conduct) and place defendants into substance abuse treatment without the need for an additional court order (see HISP release order).

Supervision Data

Average FY2007 HISP population	215
Average FY2007 case manager:defendant ratio	1:24 (9 case managers)
FY2006 responses to infractions	
Reporting Infractions	96%
Drug Testing Infractions	100%
Curfew Infractions	100%

In FY2007, HISP placements have accounted for 5% of PSA's total supervised population

Time under HISP Supervision

The average length of stay in HISP is 90 days compared to 106 days for other agency units. Time in HISP accounts for half the total average pretrial period (180 days) for HISP defendants.

Charges

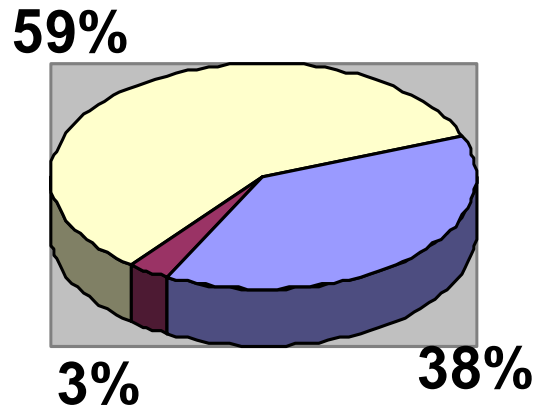
In FY2006:

Drug offenses made up half of all charges for HISP defendants, primarily drug distribution and possession with intent to distribute charges

Felonies made up 70% of HISP charges

41% of misdemeanor cases involved domestic assault, sex abuse or simple assault offenses

HISP Population Breakdown



- Program Failures from other PSA units
- HISP placements at first appearance
- Originally detained-HWOB or on financial bond

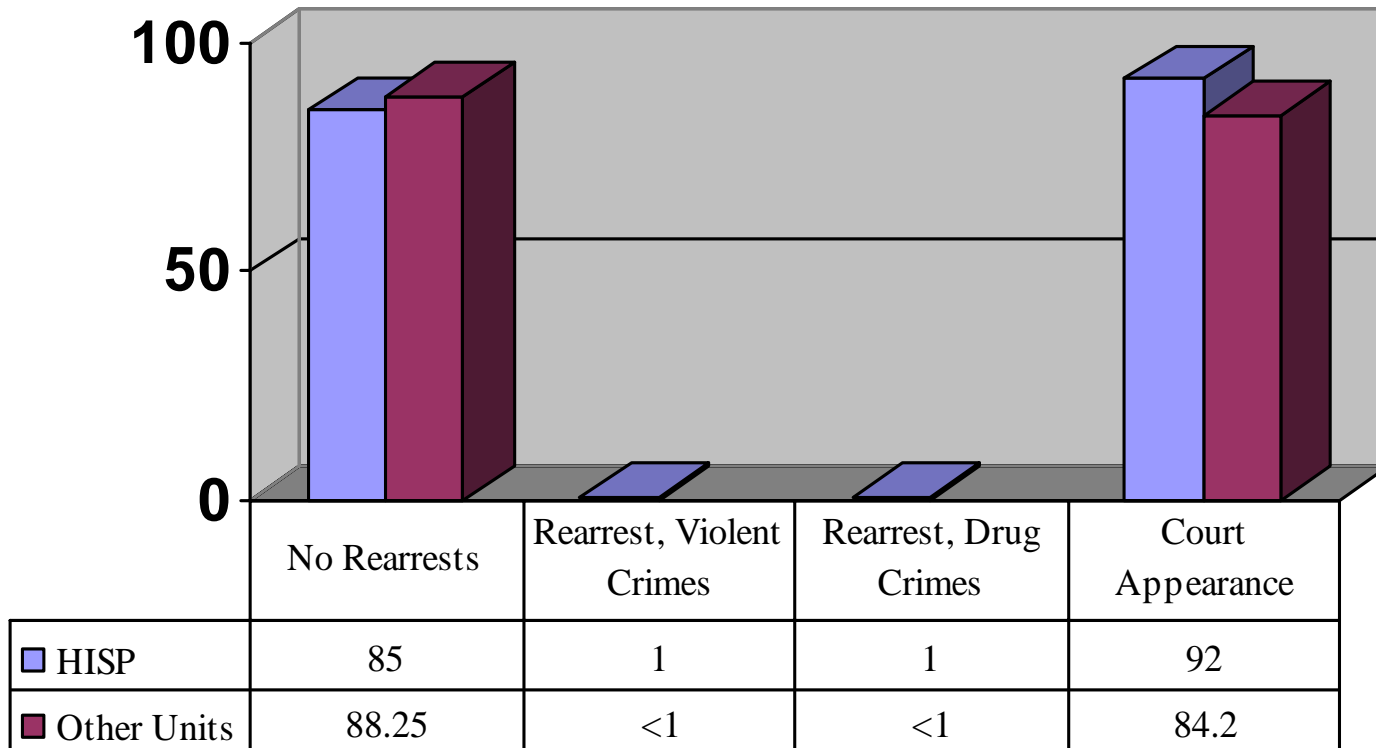
Risk Scores

Score Type	Appearance	Safety
Median	3	20
Lowest Risk Score	0	0
Highest Risk Score	16	49

The median HISP appearance risk score was a point lower than the median score of non-HISP defendants while the median safety score was nearly 7 points higher than for other defendants. 46% of HISP defendants scored in the “high risk” category at initial appearance compared to 26% of all other defendants on release.

NOTE: Program failures were not re-assessed with the risk assessment instrument before their transfer to HISP.

HISP Safety and Appearance Rates



Research Issues

- The relationship between supervision and outcomes: Is there a relationship between compliance/noncompliance and pretrial misconduct? What supervision components best reduce misconduct?
- The quality of case manager/defendant relationship and supervision outcomes/misconduct.
- Effect of caseload size on supervision outcomes/misconduct.
- The effectiveness of sanctions, incentives, and revocations on criminality and short and long-term defendant behavior.

Research Issues

- The value to short-term supervision of high-risk defendants of cognitive therapy and other behavior management techniques.
- The factors that predict supervision compliance/noncompliance.
- Introducing motivational interviewing into “mainstream” supervision to affect supervision outcomes and misconduct rates.
- Risk assessment versus risk classification: is one better for the pretrial stage? Can the two co-exist?

**Fourth Judicial District
of Minnesota
Pretrial Evaluation:
Scale Validation Study**

Background

- Fourth Judicial District synonymous with Hennepin County which is composed of Minneapolis and the surrounding suburbs.
- Accounts for over one-quarter of the state's population and between 30-70% of the state's criminal filings – depending on the type of crime.
- MN is a 'right to bail' state.
- All suspects arrested for felony, gross misdemeanor and 'targeted' misdemeanor crimes (such as domestic assault, DUI, etc.) go through a Pretrial Evaluation to determine 'risk' of failing the pretrial conditions of: making all appearances and remain law abiding.

Background

- Prior to 1992 the pretrial release scale used in Hennepin County was a modified Vera scale.
- The current scale designed in 1992 has never been validated and it used in most of MN counties now.
- The population to be evaluated changed after the 1992 scale research was complete (included misdemeanants).
- The current scale items are a culmination of indicators based on prior research and policy issues.
- Pretrial Unit is composed of probation officers given discretion by the Court to release charged defendants pretrial if the defendant is not charged with an offense on the Judicial Review list and if a defendant's total pretrial score is less than 18.

Research Questions

- Is the scale valid?
 - Does it explain as much variance as the previous scale?
 - Are all of the items significant?
- Are the items racially biased?
- Are the same proportion of people being held pretrial as when the scale was designed?
- What effect does the probation override have on the release decision?
- Does the probation override introduce bias?

Research Design

- 7,000-8,000 pretrial evaluations done annually
- Random sample of 10% for each of five years: 2000-2004
- Matched data with the Fourth Judicial District court information system and with the MN Bureau of Criminal Apprehension data
- After eliminating cases of incomplete data, the final sample was 3,378.

Demographics

- 45% of the defendants are under 30 years old.
- 42% are white, 48% are black or African, 6% are Native and the remaining 2% are Asian or Hispanic
- Males make up 83% of the sample.
- Two-thirds of defendants have never married.
- Two-thirds have one child or more -13% 4 or more children.
- 26% have not completed high school, 28% high school graduates.

Pretrial Process

- 34% of defendants are charged with felony level offenses, 26% with gross misdemeanor offenses and the remaining 40% are misdemeanor charges.
- Of the non-felony defendants, over half (52%) are charged with domestic assault and 21% are charged with DUI.
- About 80% of defendants are released at some point while on pretrial status.
- 64% are released before or at the first appearance.

Average Scale Score over Time

<i>Year</i>	<i>Mean</i>	<i>Median</i>	<i>Maximum Score</i>
<i>2000</i>	17.05	13	94
<i>2001</i>	15.97	13	99
<i>2002</i>	16.25	13	106
<i>2003</i>	17.31	13	79
<i>2004</i>	16.91	13	154

Analysis of Variance: $F=1.15$, significance level $p=.331$

No significant differences across years.

Pretrial Scale

Points and Percent

Pretrial Scale Items	Scale Score	Percent With Item
Present Offense on the Judicial Review List (mostly felony against persons)	+9	52.2%
Weapon Used (MN Statute 609.11)	+9	11.2%
Present offense was a felony NOT on Judicial Review List	+3	21.0%
Age as of the booking date of 21 years old or younger	+3	15.8%
Living Alone	+1	14.7%
Employed less than 20 hours or, unemployed, or not a student, or not receiving public assistance	+3	38.8%
Current MN residence: 3 months or less	+1	4.9%
EACH prior felony or gross misdemeanor <i>person</i> conviction	+9	20.1%
EACH prior misdemeanor <i>person</i> conviction	+6	19.8%
One or more prior felony convictions	+3	31.2%
One or more prior 'other' gross misdemeanor/misdemeanor convictions	+1	61.0%
Failure to appear within the last three years	+6	30.6%

Scale and Probation Recommendations

Scale Score Recommendations		
<i>Category</i>	<i>Frequency</i>	<i>Percent</i>
Unable to Score	116	3.4
No Bail Required Score of 0-8	837	24.8
Conditional Release Score of 9-17	1,239	36.7
Bail Required Score of 18 or above	1,186	35.1
Total	3,378	100.0

Probation Recommendations		
<i>Category</i>	<i>Frequency</i>	<i>Percent</i>
Unable to Score	40	1.2
No Bail Required	572	16.9
Conditional Release	879	26.0
Bail Required	1,887	55.9
Total	3,378	100.0

Distributions for both Scale recommendations and Probation recommendations were consistent across all five years of the study.

Agreement between Scale Score and Probation Recommendation

	<i>Override Less</i>	<i>No Override</i>	<i>Override More</i>	<i>Total</i>
<i>Frequency</i>	356	1,672	1,155	3,183
<i>Percent</i>	11.2	52.5	36.3	100.0

Override Less = Scale score would recommend Conditional Release (CR) but Probation would recommend No Bail Required (NBR) – or – Scale would recommend Bail Required and Probation would recommend CR or NBR.

Override More = Scale would recommend NBR but Probation would recommend Conditional Release or Bail Required – or – Scale would recommend CR but Probation would recommend Bail Required.

Missing data=195

This agreement was consistent across all five years of the study.

When are Overrides asked for?

- In 39% of the felony cases, 61% of the gross misdemeanor cases and 53% of the misdemeanor level cases Probation Officers are asking for overrides.
- More restrictive release options (Override More) are asked for most often for: GM DUI cases (30%), misdemeanor domestic assault cases (27%), and property felonies (11%).
- Less restrictive release options (Override Less) most often asked for were: misdemeanor domestic assault cases (39%), property felony cases (19%), non-domestic non-DUI misdemeanor cases (10%).

Do the Overrides Introduce Race Bias?

Racial Group	Override Less	No Override	Override More	Total
Non-Whites	211	1,108	500	1,819
	11.6%	60.9%	27.5%	100.0%
Whites	145	564	655	1,364
	10.6%	41.3%	48.0%	100.0%
Total	356	1,672	1,155	3,183
	11.2%	52.5%	36.3%	100.0%

Chi-square 148.02, degrees of freedom = 2, significance=.000

Probation officers didn't ask for less restrictive release options differently by racial group but they did differentiate by race when it came to asking for more restrictive release options. In about 28% of the cases that involved non-white defendants they asked for a stricter release option whereas they asked for this same level of release for 48% of the non-white defendants.

Dependent Variables

- Pretrial Failure defined as:
 - Failure to appear for a court appearance during pretrial window (from release from jail to disposition of the case). Overall 26% failure for our population.
 - Crime during pretrial window (new offense date between release from jail to disposition of the case) and the new crime is defined as convictions only. Overall 10% failure for our population.

Correlation Matrix

(N=2,689 – only those that were released prior to disposition)

<i>Independent Variables</i>	<i>Pretrial Crime</i>	<i>Failure to Appear</i>
Present offense on the Judicial Review list (mostly felony against persons) (1=yes, 0=no)	-.068**	-.247**
Present offense was a felony NOT on Judicial Review list (1=yes, 0=no)	.106**	.224**
Weapon used (MN Statute 609.11) (1=yes, 0=no)	-.009 ns	-.085**
Age as of the booking date of 21 years old or younger (1=yes, 0=no)	.010 ns	.046*
Living alone (1=yes, 0=no)	-.020 ns	-.002 ns
Employed less than 20 hours or, unemployed, or not a student or not receiving public assistance (1=yes, 0=no)	.083**	.145**
Current MN residence: 3 months or less (1=yes, 0=no)	-.001 ns	.006 ns
Failure to appear within last three years (1=yes, 0=no)	.145**	.319**
Prior criminal conviction score (interval scale)	.123**	.079**

*=significant at the .01 level; ** =significant at the .001 level; ns=not significant

No Multicollinearity between Independent Variables

Are independent variables (scale items) racially biased?

- Are the variables related to race and unrelated to the dependent variables?
 - Living alone is unrelated to either dependent variable and is related to race (more whites live alone, significant $p < .01$).
 - Weapon use is unrelated to pretrial crime and is related to race (more non-whites use weapons, significant $p < .001$).
 - 21 or younger at booking for the main offense is not related to pretrial crime but is related to race (non-whites are more often 21 or younger than white defendants, significant $p < .001$).

Testing the Hennepin County Pretrial Scale

Logistic Regression Coefficients (n=2,689)

<i>Independent Variables</i>	<i>Pretrial Crime</i>	<i>Failure to Appear</i>
Present offense on the Judicial Review list (mostly felony against persons) (1=yes, 0=no)	-.333*	-1.018***
Present offense was a felony NOT on Judicial Review list (1=yes, 0=no)	.330*	.301**
Weapon used (MN Statute 609.11) (1=yes, 0=no)	.171 ns	-.186 ns
Current MN residence: 3 months or less (1=yes, 0=no)	.281 ns	.411 ns
Does the defendant live alone? (1=yes, 0=no)	-.257 ns	-.017 ns
Employed less than 20 hours or, unemployed, or not a student or not receiving public assistance (1=yes, 0=no)	.373**	.438***
Age as of the booking date of 21 years old or younger (1=yes, 0=no)	.089 ns	.206 ns
Failure to appear within last three years (1=yes, 0=no)	.809***	1.454***
Prior criminal conviction score (interval scale)	.027***	.012**
Constant	-2.854 ***	-1.467 ***
<i>Model Characteristics</i>		
Nagelkerke R-squared (Variance Explained)	9.3%	23.8%
Model Chi-square (9 degrees of freedom)	118.84 ***	477.74 ***
Percent Correctly Classified	90.4%	77.0%

Testing the Hennepin County Pretrial Scale

Logistic Regression Coefficients

Parsimonious Models

(n=2,689)

<i>Independent Variables</i>	<i>Pretrial Crime</i>	<i>Failure to Appear</i>
Present offense on the Judicial Review list (mostly felony against persons) (1=yes, 0=no)	-.457***	-1.058***
Present offense was a felony NOT on Judicial Review list (1=yes, 0=no)	.313*	.320**
Employed less than 20 hours or, unemployed, or not a student or not receiving public assistance (1=yes, 0=no)	.428**	.473***
Failure to appear within last three years (1=yes, 0=no)	.838***	1.452***
Prior criminal conviction score (interval scale)	.027***	.010*
Constant	-2.730 ***	-1.433 ***
Model Characteristics		
Nagelkerke R-squared (Variance Explained)	8.7%	23.8%
Model Chi-square (9 degrees of freedom)	111.89 ***	471.514 ***
Percent Correctly Classified	90.4%	77.4%

Testing the Hennepin County Pretrial Scale

Logistic Regression Coefficients

Parsimonious Models with PO Override

(n=2,689)

<i>Independent Variables</i>	<i>Pretrial Crime</i>	<i>Failure to Appear</i>
Present offense on the Judicial Review list (mostly felony against persons) (1=yes, 0=no)	-.261 ns	-1.068***
Present offense was a felony NOT on Judicial Review list (1=yes, 0=no)	.356*	.298*
Employed less than 20 hours or, unemployed, or not a student or not receiving public assistance (1=yes, 0=no)	.406**	.453***
Failure to appear within last three years (1=yes, 0=no)	.823***	1.417***
Prior criminal conviction score (interval scale)	.027***	.008 ns
Probation officer agreed with the scale (1=yes, 0=no)	-.176 ns	.321***
Constant	-2.730 ***	-1.433 ***
Model Characteristics		
Nagelkerke R-squared (Variance Explained)	9.2%	24.0%
Model Chi-square (9 degrees of freedom)	117.38 ***	481.74 ***
Adding PO override Chi-square change	1.55 ns	10.23 ***
Percent Correctly Classified	90.4%	77.4%

*=significant at the .05 level; **=significant at the .01 level;*** =significant at the .001 level; ns=not significant

What is the effect of the Override?

Probation Override?	Failed to Appear		Made all Appearances	
	Non-white	White	Non-white	White
Override Less	14.9%	14.1%	10.5%	9.8%
No Override	60.6%	54.6%	61.0%	38.1%
Override More	24.4%	31.2%	28.5%	52.1%

Chi-square for pretrial failure to appear: 3.96, 2 df, sig.=.138

Chi-square for no pretrial failure to appear 151.15, 2 df, sig.=.000

Answers to Research Questions

- Is the scale valid?
 - Does it explain as much variance as the previous scale?
 - Yes and more.
 - Are all of the items significant?
 - No four of them are not (weapon used, live alone, MN resident, under 21 at offense).
- Are the items racially biased?
 - Some of them are and they are the ones that are not important in the logistic regression (weapon use, live alone, under 21 at offense).
- Are the same proportion of people being held pretrial as when the scale was designed?
 - Yes (scale average hasn't changed and the target percentage of 60% being released at or before the first court appearance has been met).
- What effect does the probation override have on the release decision?
 - It does help predict failure to appear for whites (for those who end up making their appearances).
 - It does not help predict failure to appear for non-whites.
 - It does not help predict pretrial crime.
- Does the probation override introduce bias?
 - Yes, probation officers are asking for more restrictive release options for whites compared to non-whites.

Recommendations

- Remove items on the pretrial scale that are racially biased.
- Add items that help to better explain the variation in pretrial crime and failure to appear in order to improve the predictive ability.
- Analyze reasons for probation overrides to explore what is missing from the scale that would give probation officers confidence to use the scale recommendation consistently.
 - Conduct a content analysis of written reasons given for overrides. We took a 15% random sample of override cases to explore the reasons.
 - Reviewed results with the probation officers for validity of the content analysis.
- Improve data collection elements in our computerized court system to capture the judicial release decision as we move to our new court information in July of 2007.

Content Analysis of Probation Overrides

- A content analysis of the reasons for the overrides suggests that probation officers find other indicators on the full bail evaluation (that are not on the Pretrial Scale itself) to be the driving force behind the overrides.
- For example, they cite victim safety, chemical dependency issues, mental health issues or refusal by the defendant to stay on his/her medication as reasons to request an override.
- In addition probation officers often ask for more restrictive release decisions when they do not have all of the information available to them, such as when they have not seen the police report, have not been able to contact the victim or when they are unable to determine whether a weapon was used in the commission of the crime.
- Finally, in the area of prior history the scale does not differentiate whether the defendant had one or ten prior non-person offenses and the same was true for failure to appear – six points are added to the scale score for one missed appearances or ten missed appearances. For defendants with multiple past non-person convictions or multiple failures to appear probation would ask for more restrictive overrides.

Other Critical Issues

We reviewed the Judicial Review list and found it was badly in need of updating.

Items had been added over the years but nothing had been removed

- No one was in charge of updating the repealed statutes
- We removed offense that were not explicitly person offenses
- We asked the County Attorney's office to review the Person Conviction list and update it.
- Review Conditional Release
 - What conditions are we currently using for which types of offenders?
 - What do we know about how well these conditions are working?
 - What does the national research tell us about what conditions work best for what type of offender?

Bench has made the following decisions

- Probation will no longer provide a recommendation to the bench. The pretrial tool will only be used for to gather objective information consistently across all defendants and to provide the bench with a numerical score.
- Probation will still provide comments to the bench on facts that they think might inform the pretrial decision but will not provide a recommendation.
- The vote on the new tool is occurring this morning at the Executive Committee and we expect to pass without controversy.

Conditional Release

- The bench has not finalized this part of the process yet – it is still being worked on in committee. But the final decisions should be done by the end of June.

Proposed New Scale....

<i>Type</i>	<i>Item</i>	<i>Weight</i>
<i>Charged Current Offense Information</i>	Felony level offense on Judicial Review list	12 points
	Felonies not on the Judicial Review list and non-felony person offenses	6 points
	Gross Misdemeanor DWI	3 points
<i>Personal Information on the Defendant</i>	Employed less than 20 hrs/week, not a student, not receiving public aid (if yes)	3 points
	Homeless – or – 3 or more addresses during the past 12 months (if yes)	1 point
	Current problematic chemical use (if yes)	2 points
<i>Past History Of Failure to Appear And Convictions</i>	Prior bench warrant for FTA within last 3 years (if one or two)	6 points
	Prior bench warrant for FTA within last 3 years (if three or more)	9 points
	Each Prior Felony <i>Person</i> convictions	9 points
	Each Prior Non-felony <i>Person</i> convictions	6 points
	Each Prior Felony <i>Non-person</i> conviction	2 points
	Each Prior Non-felony <i>Non-person</i> conviction (EXCLUDE non-alcohol traffic offenses)	1 point

How we assessed this without a full validation

- We took an entire week of defendants and rescored the defendant on the new scale.
- A panel of judges reviewed all the information (the full bail evaluation form, prior history (crimes and FTA), pretrial scale items and total score.
- They found that the new scale did not change the % of defendants in each of the three groups (NBR, CR, bail) – but it changed who was in each group.
- The old scale identified serious offenders quite well but the new scale identified both the serious offenders and chronic offenders.

Next Steps

- After the Pretrial Scale is finalized we will begin training staff and our bench on the new tool.
- Programming for the changes will be completed by September/October and once that is done we will implement the new Pretrial Scale.
- Validate the new Pretrial Scale and Conditional Release within the next three years.

Fourth Judicial District of Minnesota Pretrial Evaluation: Scale Validation Study

Fourth Judicial District Research Division
Marcy R. Podkopacz, Ph.D.,
Research Director
October, 2006
www.mncourts.gov/district/

PRETRIAL OUTCOMES FOR DOMESTIC VIOLENCE DEFENDANTS IN NEW YORK CITY

Richard R. Peterson, Ph.D.
Director, Research Department
New York City Criminal Justice Agency
52 Duane Street
New York, NY 10007
(646) 213-2519
rpeterson@nycja.org

May 23, 2007

[Based on reports available at www.nycja.org:](http://www.nycja.org)

Peterson, Richard R. 2006. "Pretrial Outcomes for Domestic Violence Defendants."
Research Brief series, no. 12. New York: New York City Criminal Justice Agency.

Peterson, Richard R. 2006. *Pretrial Failure to Appear and Pretrial Re-Arrest Among Domestic Violence Defendants in New York City*. New York: New York City Criminal Justice Agency.

GOALS OF THE STUDY

- Compare pretrial release practices for DV and Non-DV defendants
- Examine pretrial misconduct by DV defendants, especially the commission of new DV offenses
 - Defendants may commit new offenses to retaliate against the victim for the arrest
 - Defendants may commit new offenses to discourage the victim from participating in the prosecution of the case
- Fill a gap in the literature

THE COMBINED FIRST QUARTER 2001 AND THIRD QUARTER 2002 DATASET

SOURCE OF DATA

- NYC arrests in first quarter of 2001 and third quarter 2002
- Defendant-based data file, using only the first arrest for each defendant

TYPES OF CASES SELECTED

- DV and Non-DV cases that involve crimes against persons and property:
Assault, criminal contempt, harassment, crimes against children, larceny, burglary, robbery, criminal mischief, weapons offenses and sex offenses
- Cases disposed in the (lower) Criminal Court (misdemeanor or less)

IDENTIFYING DOMESTIC VIOLENCE CASES

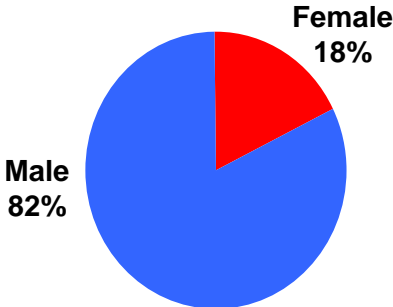
- Court “flag” for DV cases is based on the victim-defendant relationship:
1) married or formerly married, 2) related by blood or marriage,
3) have a child in common, or 4) cohabiting or previously lived together

FIGURE 1

CHARACTERISTICS OF THE SAMPLE

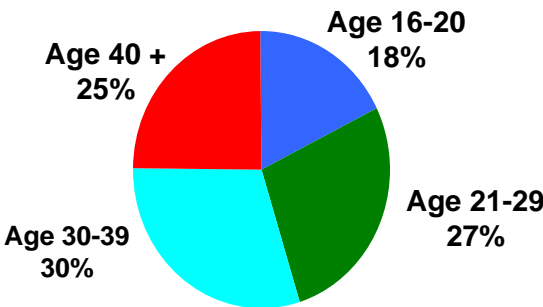
(N=30,269)

Sex

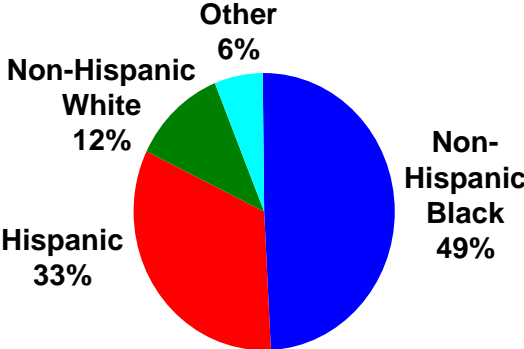


Age

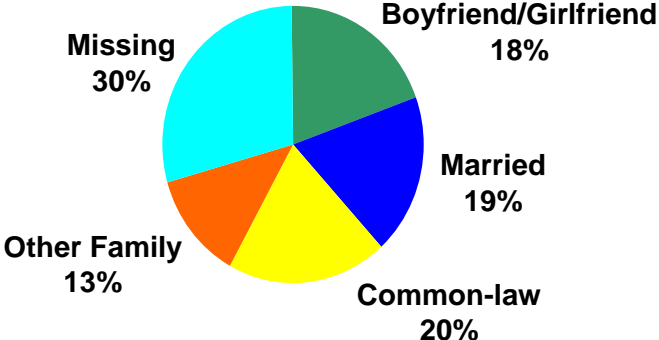
Median: 32



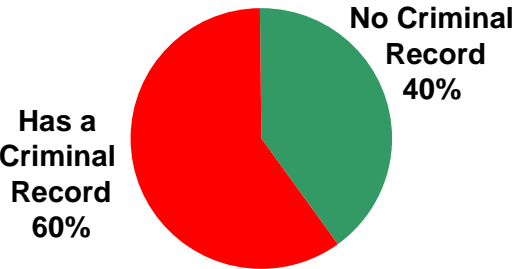
Ethnicity



Defendant-Victim Relationship (DV Only) N=11,938



Criminal History



Borough

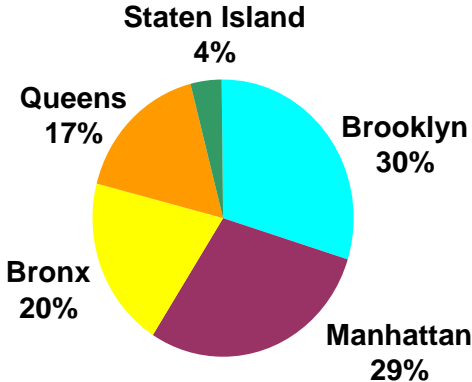
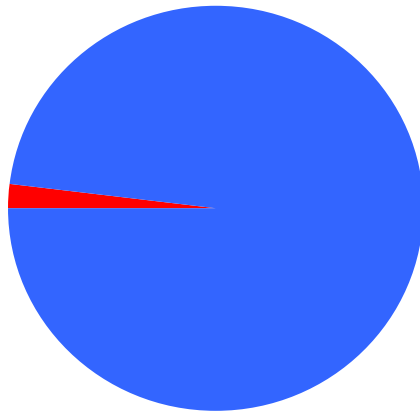


FIGURE 2

CASES DISPOSED AT ARRAIGNMENT

DV CASES

(N=11,938)

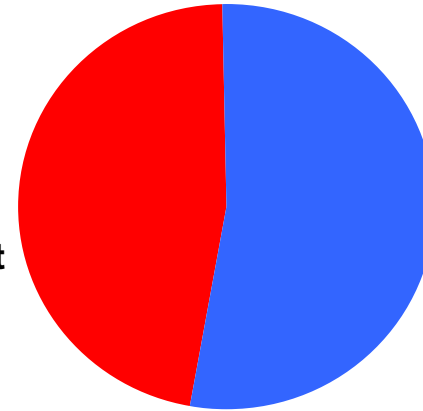


Disposed at
Arraignment
2%

Not Disposed
at Arraignment
98%

NON-DV CASES

(N=18,331)



Disposed at
Arraignment
47%

Not Disposed
at Arraignment
53%

FIGURE 3

RELEASE STATUS AT ARRAIGNMENT

(Defendants with Cases Continued Beyond Arraignment)

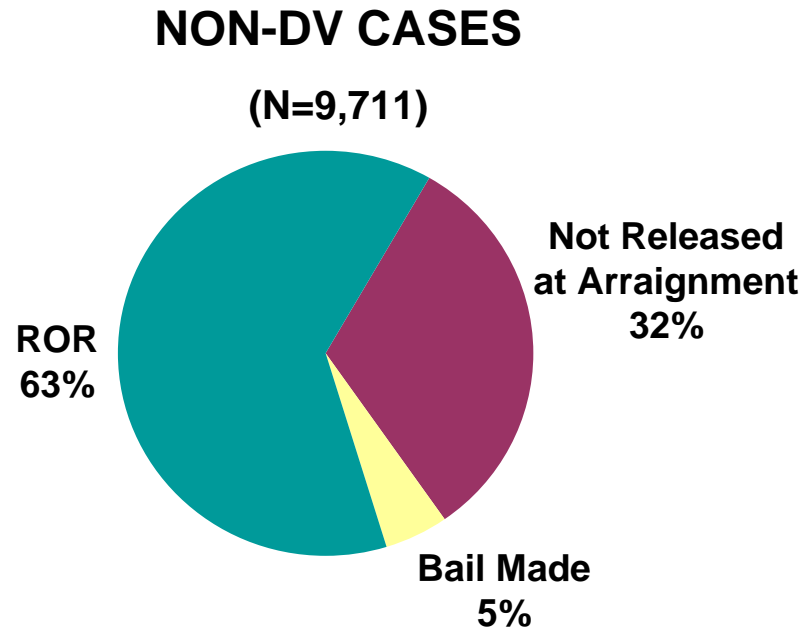
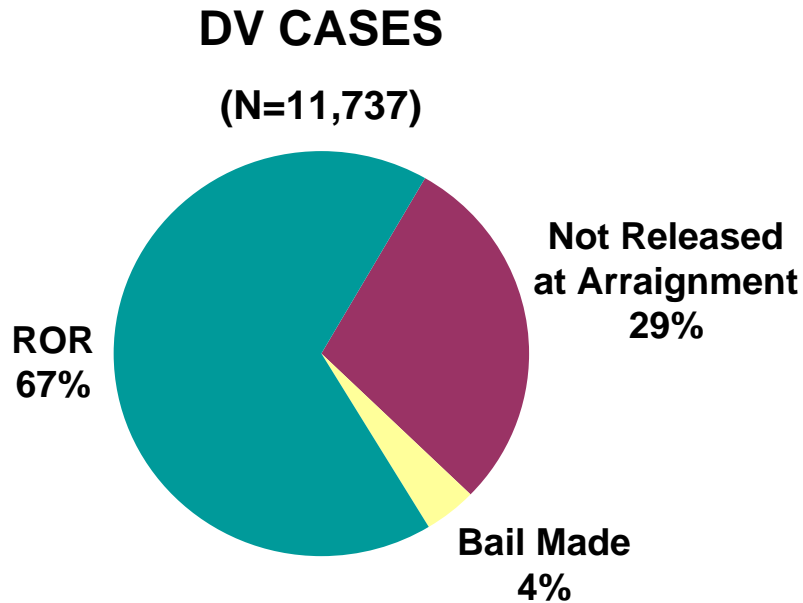
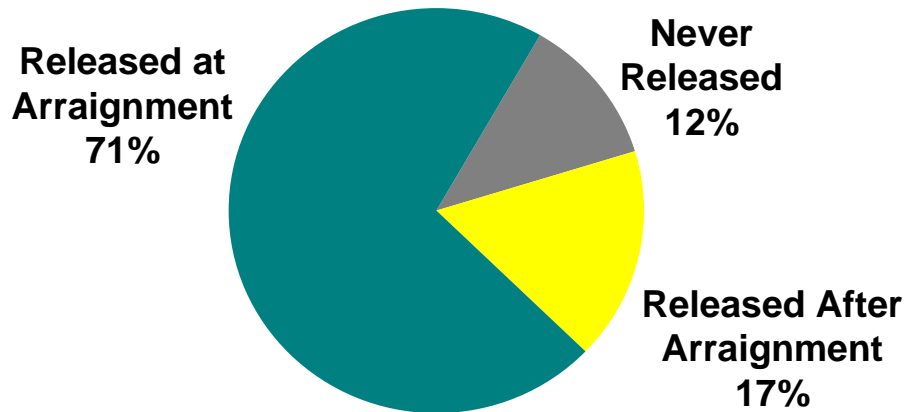


FIGURE 4 STAGE OF FIRST RELEASE

(Defendants with Cases Continued Beyond Arraignment)

DV CASES

(N=11,737)



NON-DV CASES

(N=9,711)

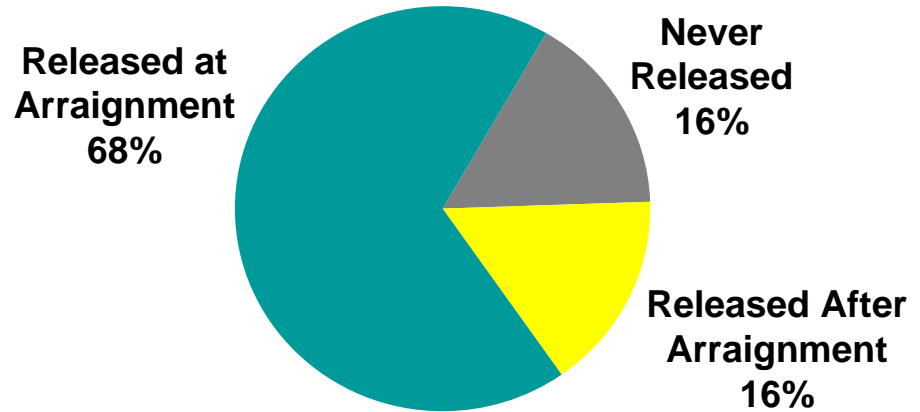


FIGURE 5
AMOUNT OF BAIL SET AT ARRAIGNMENT
(Defendants for Whom Bail Was Set at Arraignment)

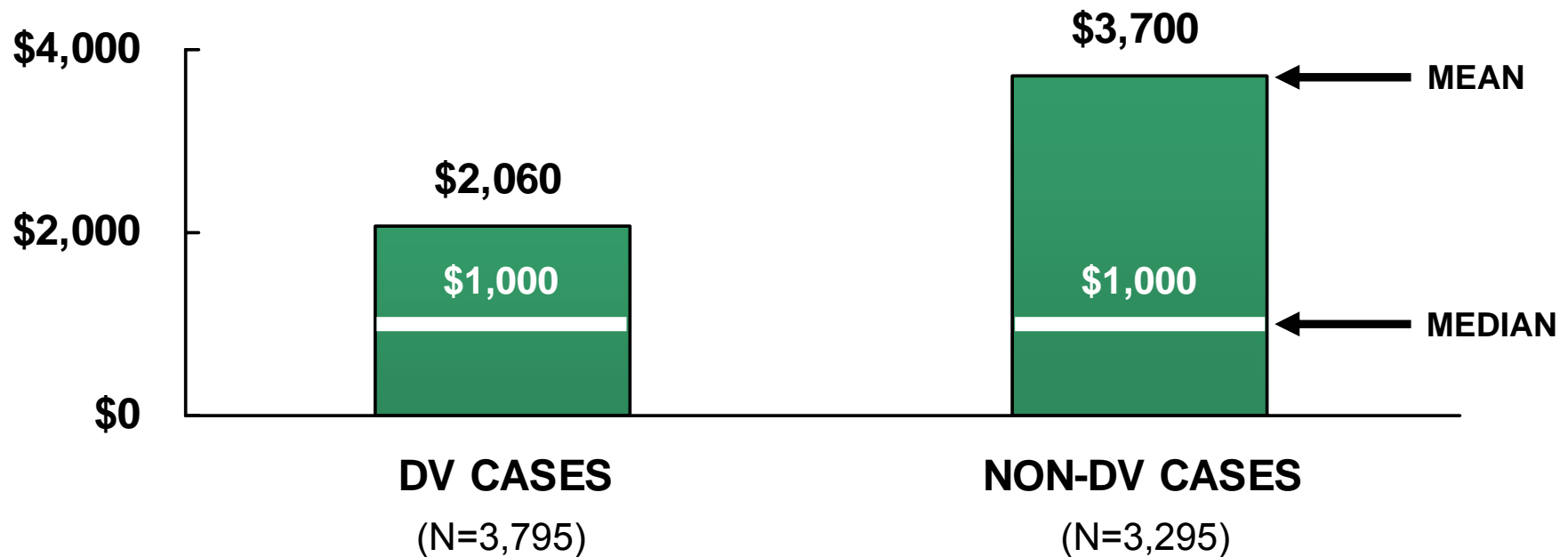


FIGURE 6
FAILURE-TO-APPEAR RATES FOR
DEFENDANTS WHO WERE EVER RELEASED

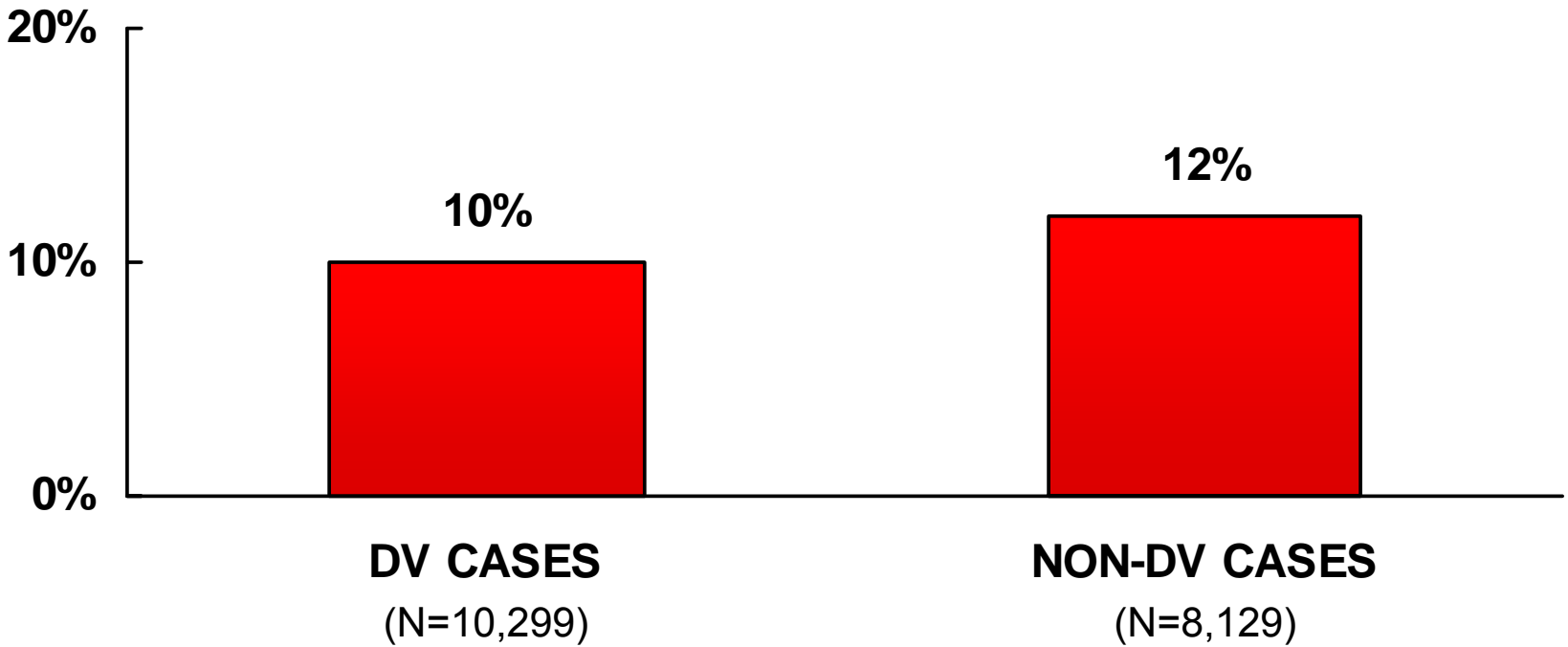


FIGURE 7

PRETRIAL RE-ARREST RATES FOR ANY NEW OFFENSES FOR DEFENDANTS WHO WERE EVER RELEASED

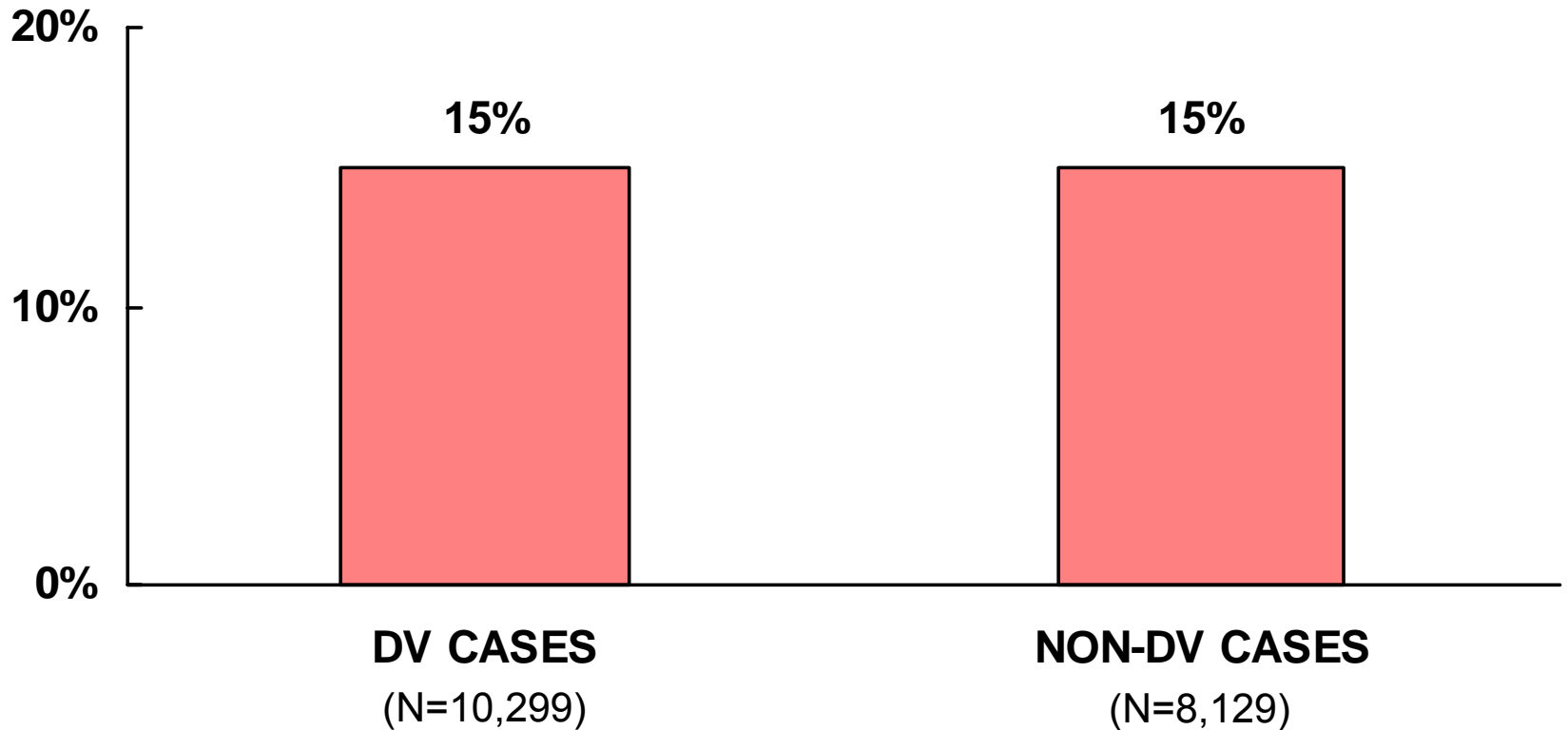
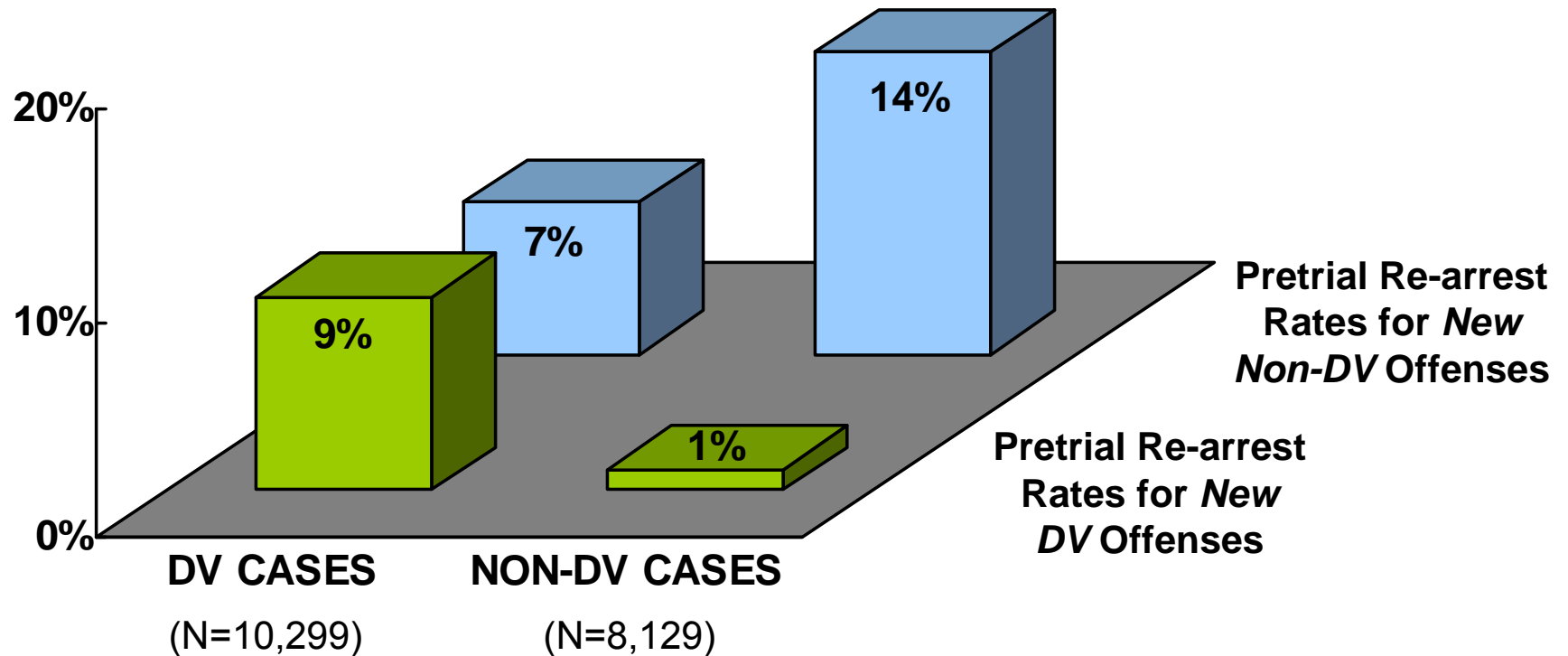


FIGURE 8 PRETRIAL RE-ARREST RATES FOR NEW DV AND NON-DV OFFENSES FOR DEFENDANTS WHO WERE EVER RELEASED



PREDICTORS OF PRETRIAL RE-ARREST FOR A NEW DV OFFENSE

- Criminal history and community ties, especially employment, were important predictors
- DV Defendants charged with criminal contempt were more likely to be re-arrested for a new DV offense
- Whether the defendant was released on recognizance or on bail had no impact on the likelihood of re-arrest for a new DV offense
- Age was the strongest predictor in the model: defendants over 40 were much less likely to be re-arrested for a new DV offense
- Women were less likely to be re-arrested for a new DV offense

CONCLUSIONS

- Pretrial release practices and overall rates of pretrial misconduct are quite similar for DV and Non-DV defendants
- Pretrial re-arrest for new DV offenses is a significant problem, but difficult to prevent
 - There is no evidence that increased use of bail would be effective
 - Pretrial orders of protection are issued in all DV cases, but re-arrests for new DV offenses continue to occur
- A supervised release program for high-risk DV defendants should be considered

FURTHER RESEARCH NEEDED

- Studies of pretrial practices for DV defendants
- Studies of pretrial misconduct in multiple jurisdictions
- Forthcoming:
Processing of Domestic Violence Cases in State Courts
conducted by Pretrial Services Resource Center, funded by BJS
- Interviews of victims for information about:
 - Victim reports of re-offending
 - Victim-defendant relationship
 - (Dis)satisfaction with the criminal justice system
- Evaluations of supervised release programs for DV defendants
- Development of instruments to assess the risk of pretrial re-arrest for new DV offenses