

Alternatives to Pretrial Detention: Southern District of Iowa

A Case Study



Submitted June 30, 2010

Marie VanNostrand, Ph.D.

Luminosity, Inc.

www.Luminosity-Solutions.com

Table of Contents

INTRODUCTION	1
BACKGROUND	3
FINDINGS	5
POPULATION DESCRIPTION	5
DEFENDANTS PROCESSED ANNUALLY	5
AGE, GENDER, RACE/ETHNICITY, CITIZENSHIP	6
EDUCATION AND EMPLOYMENT	7
PRIMARY CHARGE	7
PERFORMANCE AND OUTCOME MEASURES	8
PRETRIAL SERVICES REPORTS COMPLETED	8
RECOMMENDATION FOR RELEASE RATE	8
PRETRIAL RELEASE RATE	8
PRETRIAL SERVICES SUPERVISION ACTIVITY INCLUDING UTILIZATION OF ALTERNATIVES TO DETENTION	9
SUPERVISION OUTCOMES	9
COST AVOIDANCE AND SAVINGS	10
SUMMARY	11

Alternatives to Pretrial Detention: Southern District of Iowa

A Case Study

Introduction

The pretrial detention rates for the Southern District of Iowa reached their highest levels between July 2006 and June 2007 with detention rates of 69.5% including immigration cases and 67.3% excluding immigration cases. The detention rates at that time were significantly above the national average of 61.7% and were the highest in the 8th Circuit which averaged 57.2% during the same period. It was the awareness of the increasing detention rates that led U.S. Pretrial Services in the Southern District of Iowa to commence a project with the goal of increasing the utilization of alternatives to detention when appropriate to increase pretrial release rates while assuring court appearance and community safety. Consistent with the concept of pretrial justice and the U.S. Probation and Pretrial Services Charter for Excellence, the District utilized four primary strategies to responsibly increase pretrial release rates:

- ◆ Allocate Human and Financial Resources
 - Assign full-time supervisor and staff
 - Provide additional pretrial services resources
 - Increase utilization of alternatives to detention funding with an emphasis on mental health and substance abuse as release conditions and responses to violations
- ◆ Utilize a Customer Service Approach
 - Pledge to Magistrate Judges to improve pretrial services
 - Conduct progress survey of Magistrate Judges
 - Provide quarterly reports to Magistrate Judges
 - Initiate and maintain dialogue with Magistrate Judges, U.S. Attorney’s Office, Federal Public Defender’s Office/private defense bar, and other justice system stakeholders
 - Build positive relationships with defendants consistent with Evidence-Based Practices (EBP)
- ◆ Provide Training and Increase Consistency of Services
 - Provide pretrial services specific training within and outside the District
 - Engage one staff to review all pretrial services reports
 - Create a pretrial services process improvement committee
 - Utilize Guide to Judiciary Policies and Procedures Volume 8: Part A: Pretrial Services Investigation and Report and Part C: Supervision of Federal Defendants and 112 to guide practices
 - Develop a pretrial services report “how to” guide and example report

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

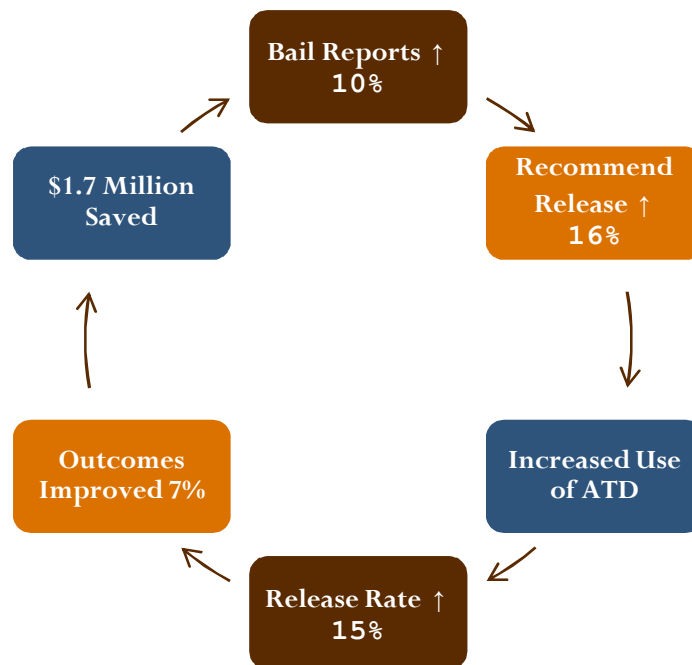
◆ Develop an Identity for Pretrial Services

- Emphasize pretrial services and District mission
- Convene weekly meetings for pretrial services staff
- Train all newly hired staff in pretrial services

In addition to the four primary strategies employed to increase pretrial release rates while assuring court appearance and community safety, the District engaged in peer reviews by the Eastern District of Missouri and District of Nebraska, participated in a Federal Judiciary Center Team Seminar, and created a leadership council in the Southern District of Iowa. It was the combination of the four primary project strategies, the support and resources from outside the District, the vision and commitment by the management team, and dedicated pretrial services staff that led to an extraordinarily successful project outcome.

The District partnered with Luminosity, Inc. to conduct an objective and research-based assessment of the project progress two years following implementation. This report contains (1) background information related to pretrial release and detention, pretrial services, the Alternatives to Detention (ATD) program, and the concept of the EBP risk principle and (2) detailed findings of the assessment.

The assessment revealed that the Southern District of Iowa was able to substantially increase the utilization of alternatives to detention resulting in a pretrial release rate increase of 15% while assuring court appearance and community safety. In fact, the increased pretrial release rate was accompanied by an increase in court appearance rate by 2.6% and decreases in both new alleged criminal activity rate (1.7% decrease) and revocations due to technical violations (2.8% decrease) for defendants released pending trial. The primary project accomplishments are displayed in the graphic below.¹



¹ Performance and outcome measure improvements identified using data extracted from the Probation and Pretrial Services Automated Case Tracking System (PACTS) database as detailed in the Findings section of this report.

Background

The pretrial release decision, to release or detain a defendant pending trial and the setting of terms and conditions of release, 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 pretrial release decision is made by a judicial officer. Pretrial release and detention, 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,² 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.³

Pretrial services agencies perform critical functions related to the pretrial release decision. They provide information via investigations and reports to judicial officers to assist them in making the most appropriate pretrial release 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.⁴

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.⁵

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 supports the probation and pretrial services system, including developing system policies, supporting system programs including the ATD program, and reviewing the work of probation and pretrial services offices. Consistent with the concept of pretrial justice⁶ 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 the Office of the Federal Detention Trustee) provides the Federal Judiciary with supplemental funding to support alternatives to

² Title 18, United States Code, Section 3142(c)(1)(B).

³ 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.

⁴ Title 18, United States Code, Section 3142(g).

⁵ 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).

⁶ VanNostrand, Marie and Gena Keebler. "Our Journey Toward Pretrial Justice" in *Federal Probation*, Volume 71, Number 2, (September 2007) pp. 20-25.

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 release in lieu of secured detention.

Utilization of alternatives to detention as conditions of release should be consistent with the evidence-based practice “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, agencies can devote limited treatment and supervision resources where they will provide the most benefit to public safety.⁷

Recent research conducted specifically for pretrial defendants supports the applicability of this principle to the pretrial services field. The pretrial risk assessment study for the federal court⁸ examined the use of alternatives to pretrial detention while considering risk and the most significant findings are provided below.

- ◆ Release conditions that include alternatives to pretrial detention generally decrease the likelihood of success pending trial for lower risk defendants and should be required sparingly (excluding mental health treatment which, when appropriate, is beneficial regardless of risk).
- ◆ Alternatives to pretrial detention are most appropriate for moderate and higher risk defendants as it allows for pretrial release while generally increasing pretrial success. Alternatives to pretrial detention should be imposed for this population when a defendant presents a specific risk of pretrial failure that can be addressed by a specific alternative.
- ◆ Defendants identified as moderate and higher risk are the most suited for pretrial release – both programmatically and economically – with conditions of alternatives to pretrial detention. The pretrial release of these defendants can be maximized by minimizing the likelihood of pretrial failure through participation in alternatives to detention.

Utilizing alternatives to detention for the appropriate defendant population can reduce unnecessary detention while assuring court appearance and community safety. Increasing the utilization of the ATD program consistent with the EBP risk principle was central to the District’s strategy to responsibly increase pretrial release rates.

⁷ *Putting Public Safety First: 13 Strategies for Successful Supervision and Reentry* (The Pew Center on the States, 2008).

⁸ VanNostrand, Marie and Gena Keebler. *Pretrial Risk Assessment in the Federal Court: For the Purpose of Expanding the Use of Alternatives to Detention* (Department of Justice, Office of Federal Detention Trustee, 2009).

Findings

The first step to completing the assessment was to identify performance and outcome measures to be used to gauge project progress and success. In consideration of the project goal and primary strategies, the following performance and outcome measures were identified: (1) pretrial services reports completed; (2) recommendation for release rate; (3) pretrial release rate; (4) pretrial services supervision activity including utilization of alternatives to detention; (5) supervision outcomes; and (6) cost avoidance and savings.

The next step was to identify the data and related sources that would be necessary to analyze the performance and outcome measures. The primary data used for analysis was provided by the Office of Probation and Pretrial Services and extracted from the Probation and Pretrial Services Automated Case Tracking System (PACTS). PACTS data was extracted in March 2010 and consisted of all persons charged with criminal offenses in the Southern District of Iowa Federal Court between October 1, 2001 and September 30, 2009 (FY2002 – FY 2009) who were processed by the federal pretrial services system. The dataset included 3,521 defendants who entered the pretrial services system via a complaint, indictment, information, or superceding indictment/information (all others, such as material witness and writs, were excluded). The dataset was supplemented with release and detention rate data from the H-Tables contained in the Judicial Business of the United States Courts reports as well as incarceration rates and related costs provided by the Office of Federal Detention Trustee.

Population Description

The number of defendants processed by pretrial services annually was examined along with basic demographic descriptors. When available, the population for the Southern District of Iowa was compared to national data obtained from the *Pretrial Risk Assessment in the Federal Court* study referenced above.

Defendants Processed Annually

There were a total of 3,521 defendants processed during fiscal years 2002 and 2009 which ranged from 389 to 483 defendants annually. The percent of defendants released to pretrial services supervision varied from a low of 29% in both FY 03 and 05 to a high of 42% in FY 09. The number of defendants and percent of cases released to pretrial services supervision can be found in figure 1.

Figure 1. Defendants Processed by Pretrial Services (FY 2002 to 2009)

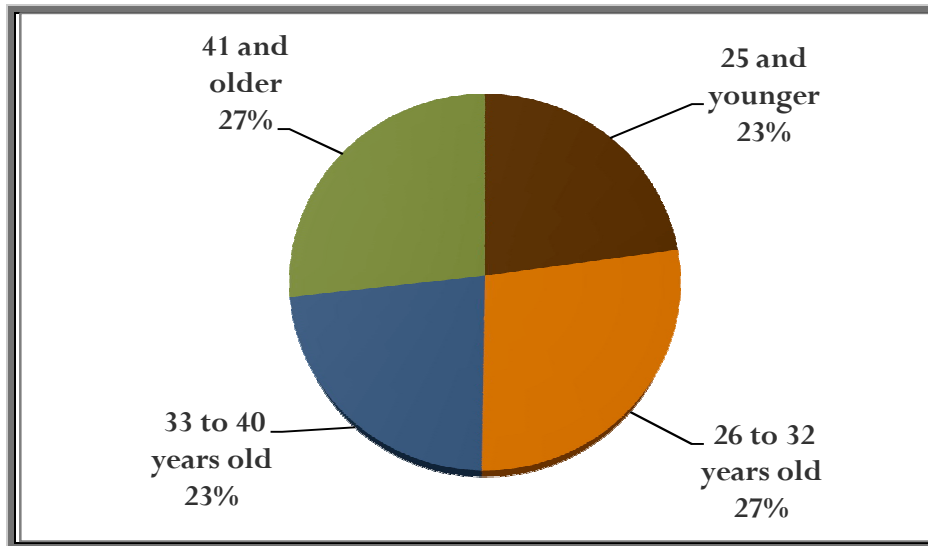
Supervision/Year		02	03	04	05	06	07	08	09	Total
No	Count	284	275	283	341	276	365	279	264	2367
	Percent	69%	71%	68%	71%	68%	69%	64%	58%	67%
Yes	Count	125	114	136	142	129	162	156	190	1154
	Percent	31%	29%	33%	29%	32%	31%	36%	42%	33%
Total	Count	409	389	419	483	405	527	435	454	3521

Data Source: Administrative Office of the U.S. Courts, Office of Probation and Pretrial Services, PACTS. All criminal defendants processed by Pretrial Services in Southern District of Iowa 10/1/2001 – 9/30/2009.

Age, Gender, Race/Ethnicity, Citizenship

The average age of the defendants processed during this time for the District was 34 years old – the same as the national average. The age distribution can be found in figure 2 below.

Figure 2. Defendant Age at Time of Arrest (FY 2002 to 2009)



Data Source: Administrative Office of the U.S. Courts, Office of Probation and Pretrial Services, PACTS. All criminal defendants processed by Pretrial Services in Southern District of Iowa 10/1/2001 – 9/30/2009.

Eighty-six percent of all defendants processed in the District were male compared to 85% nationally. Figure 3 contains the distribution of defendants by race/ethnicity in the Southern District of Iowa compared to the national population.

Figure 3. Race/Ethnicity of Defendants Processed by Pretrial Services (FY 2002 to 2009)

Race/Ethnicity	S. Iowa	National
White Non-Hispanic	50.4%	27.0%
White Hispanic	31.0%	44.3%
Black Non-Hispanic	16.8%	23.0%
Asian	1.3%	2.4%
Another Race	0.5%	3.3%

Data Source: Administrative Office of the U.S. Courts, Office of Probation and Pretrial Services, PACTS. All criminal defendants processed by Pretrial Services in Southern District of Iowa 10/1/2001 – 9/30/2009.

Seventy-two percent of the defendants in the Southern District of Iowa were United States Citizens compared to 62% of the defendants nationally.

Education and Employment

The education levels for defendants in the District compared to the population nationally are contained in figure 4 below.

Figure 4. Education Levels of Defendants Processed by Pretrial Services (FY 2002 to 2009)

Education	S. Iowa	National
Less than high school	26%	41%
High school/GED	65%	51%
College degree or higher	9%	8%

Data Source: Administrative Office of the U.S. Courts, Office of Probation and Pretrial Services, PACTS. All criminal defendants processed by Pretrial Services in Southern District of Iowa 10/1/2001 – 9/30/2009.

The majority of defendants in the District were employed at the time of the initial appearance (56%) compared with 52% of the population nationally.

Primary Charge

Nearly half (48%) of all defendants in the District had a primary charge (the most serious determined by charge classification and potential penalty) that was categorized as a drug related offense. When examining primary charge alone, research has shown that defendants with a drug related primary charge have the highest risk of failure if released pending trial compared to other primary charge categories (*Pretrial Risk Assessment in the Federal Court*, 2009). Most notably, the District received more drug related cases and fewer immigration law violation related cases when compared to the national population. The primary charge distribution can be found in figure 5 below.

Figure 5. Primary Charge of Defendants Processed by Pretrial Services (FY 2002 to 2009)

Primary Charge	S. Iowa	National
Drug	48%	36%
Immigration Law	15%	26%
Theft/Fraud	13%	17%
Firearm	15%	9%
Violent	6%	5.5%
Other	4%	6.5%

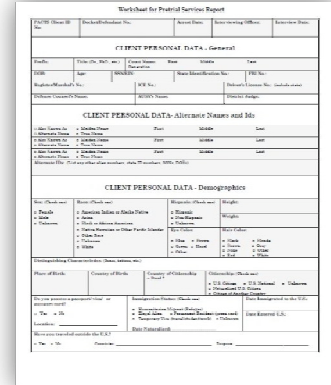
Data Source: Administrative Office of the U.S. Courts, Office of Probation and Pretrial Services, PACTS. All criminal defendants processed by Pretrial Services in Southern District of Iowa 10/1/2001 – 9/30/2009.

Performance and Outcome Measures

In consideration of the project goal and primary implementation strategies, six primary performance and outcome measures were identified: (1) pretrial services reports completed; (2) recommendation for release rate; (3) pretrial release rate; (4) pretrial services supervision activity including utilization of alternatives to detention; (5) supervision outcomes; and (6) cost avoidance and savings.

Pretrial Services Reports Completed

One implementation strategy was to increase the number of defendants who were interviewed by pretrial services for the purpose of completing a pretrial services report. During fiscal year 2007, 58.3% of all defendants were interviewed by pretrial services which increased to 68.2% by fiscal year 2009. The increase in interviews allowed for a 10% increase in pretrial services reports completed.



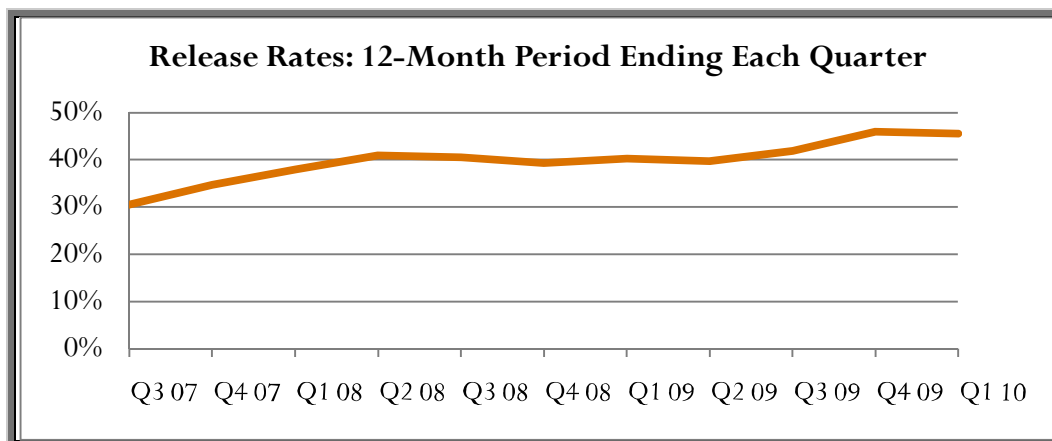
Recommendation for Release Rate

Assigning additional human resources and providing pretrial services specific training allowed not only for the additional pretrial services reports to be completed, but also for a substantial increase in the identification of defendants appropriate for release with alternatives to detention. In FY 2009, pretrial services recommended release for 42.6% of all defendants interviewed representing a 16% increase when compared to the FY 2007 rate of only 26.9%. The provision of more pretrial services reports and an increase in recommendations for release by pretrial services is believed to have contributed to the increase in recommendations for release by the U.S. Attorney's Office of over 13% (24.4% in 2007 vs. 37.7% in 2009).

Pretrial Release Rate

When comparing the 12 months ending the third quarter of FY 2007 and the first quarter of FY 2010, the Court released 15% more defendants pretrial. The increase in pretrial release rate by the Court is consistent with the increase in recommendations for release by Pretrial Services and U.S. Attorney's Office.

Figure 6. Pretrial Release Rates 12-Month Period Ending Each Quarter (Q3 - 07 to Q1 - 10)



Data Source: Administrative Office of the U.S. Courts, Office of Probation and Pretrial Services

Pretrial Services Supervision Activity Including Utilization of Alternatives to Detention

As a result of the higher release rates, the number of defendants on pretrial services supervision increased from 130 to 164 between FY2006 to FY2009. The utilization of alternatives to detention as conditions of release also increased. Substance abuse testing and treatment as a condition of release increased by 92% while the use of location monitoring more than doubled. The Southern District of Iowa identified a significant population in need of mental health services. As a result, ATD funds were used to complete mental health assessments and any resulting recommended treatment. Use of other ATD conditions increased by an average of 21%. Alternatives to detention were utilized as conditions of release for defendants who previously would have been detained. Matching risk to interventions and services, consistent with the EBP risk principle, was a priority to ensure the higher release rate was accompanied by similar or improved outcomes. ATD program expenditures can be found in figure 7.

Figure 7. Alternative to Detention Program Expenditures (FY 2007 – FY 2010 estimate)

ATD Expenditures	S. Iowa
FY 2007	\$171,248
FY 2008	\$344,626
FY 2009	\$475,954
FY 2010 estimate*	\$483,980

*Based on Q1 2010 expenditure \$120,995

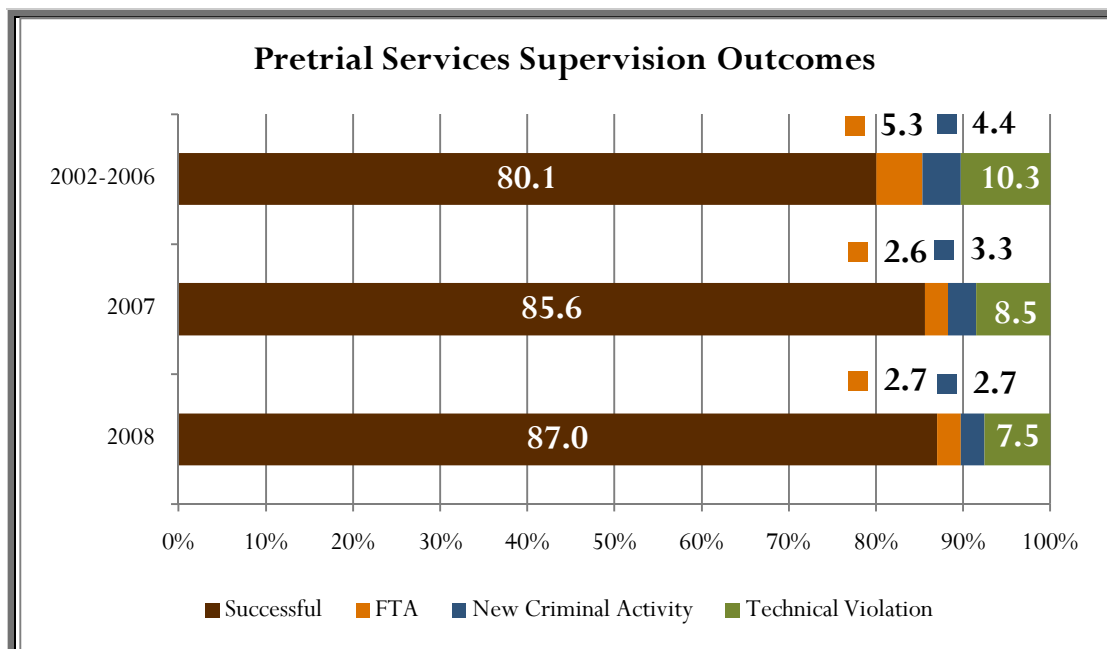
Data Source: Administrative Office of the U.S. Courts, Office of Probation and Pretrial Services

Supervision Outcomes

Pretrial services supervision outcome is the success or failure of a defendant released pending trial. The purpose of pretrial release is to assure court appearance and the safety of the community during the pretrial stage. The primary measures of pretrial failure are failure to appear and danger to the community. For the purposes of this assessment, failure to appear was measured by a defendant's failure to appear for a scheduled court appearance or absconding from pretrial services supervision while pending trial. Danger to the community was measured by a pretrial release revocation due to a new arrest for a crime that was allegedly committed while the defendant was released pending trial. In addition to failure to appear and danger to the community, pretrial failure also included technical violations. Failure due to technical violations was measured by defendants who had their pretrial release revoked for violating technical conditions (reasons other than failing to appear or danger to community). As a result, pretrial failure included any defendant who: (1) failed to appear for a scheduled court appearance or absconded from pretrial services supervision; (2) had their pretrial release revoked due to a new arrest for a crime that was allegedly committed while the defendant was released pending trial; or (3) had their pretrial release revoked for violating technical conditions (reasons other than failing to appear or danger to community). Defendants who experienced none of these and remained in the community during the entire time pending trial were deemed successful.

Supervision outcomes improved during the course of the project. Court appearance rates increased by 2.6%. When using FY 2002 – 2006 as a baseline, the court appearance rate increased from 94.7% to 97.3% in FY 2008. The no new alleged criminal activity, the measure of community safety, also increased from 95.6% to 97.3% during the same period. Finally, the rate of not having a revocation due to technical violations also increased from 89.7% to 92.5%. It is important to note that FY 2009 data was not used to measure the change in outcomes because too many cases referred during this time remained open and the outcomes have yet to be determined. All three measures of pretrial failure showed improvement, resulting in an overall increase in success rate on pretrial services supervision of nearly 7%. Figure 8 illustrates the pretrial services supervision outcomes discussed above.

Figure 8. Pretrial Services Supervision Outcomes by Type (FY 2002 – FY 2008)



Data Source: Administrative Office of the U.S. Courts, Office of Probation and Pretrial Services, PACTS. All criminal defendants processed by Pretrial Services in Southern District of Iowa 10/1/2001 – 9/30/2009.

It is interesting to note that the 2008 success rate of 87% for the Southern District of Iowa was comparable to the national average of 87.4%. The District had slightly lower FTA and New Criminal Activity rates and a slightly higher Technical Violation rate.

Cost Avoidance and Savings

The use of alternatives to detention for the appropriate population has been found to not only improve outcomes but also result in cost avoidance and true cost savings. 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 \$15,393.⁹

The detention costs avoided as a result of pretrial services supervision with ATD in lieu of detention during FY 2008 and 2009 totaled \$5.33 million dollars. Recognizing that 30.5% of defendants were already being released pending trial prior to the current project, true cost savings can be determined by calculating the difference in the number of defendants released prior to the project and during the project. The increase in release rate of 15% included 110 defendants who previously would not have been released. The increase in the release rate during 2008 and 2009 resulted in an actual cost savings of \$1.7 million dollars (110 additional defendants released x \$15,393).

Summary

The project goal of increasing the utilization of alternatives to detention when appropriate to increase pretrial release rates while assuring court appearance and community safety was achieved as evidenced by every outcome and performance measure used to gauge the success of the project.

The District was successful in increasing pretrial services interviews which allowed for an increase of 10% in pretrial services reports completed. Assigning additional human resources and providing pretrial services specific training allowed not only for the additional pretrial services reports to be completed, but also for a 16% increase in the identification of defendants appropriate for release with alternatives to detention. The provision of more pretrial services reports and an increase in recommendations for release by pretrial services is also believed to have contributed to the over 13% increase in recommendations for release by the U.S. Attorney's Office.

The pretrial release rate increased by 15% during the project period. Releasing an additional 15% of all defendants pretrial with the applicable alternatives to detention resulted in improved outcomes. Defendants released to the Southern District of Iowa for pretrial services supervision experienced a reduction in failure to appear, danger to the community, and technical violations. All three measures of pretrial failure showed improvement, resulting in an overall increase in success rate on pretrial services supervision of nearly 7%. Finally, the increase in release rate of 15% included 110 defendants who previously would not have been released. The increase in release rates in 2008 and 2009 resulted in an actual cost savings of \$1.7 million dollars.

⁹ VanNostrand, Marie and Gena Keebler. *Pretrial Risk Assessment in the Federal Court: For the Purpose of Expanding the Use of Alternatives to Detention* (Department of Justice, Office of Federal Detention Trustee, 2009) see page 36.