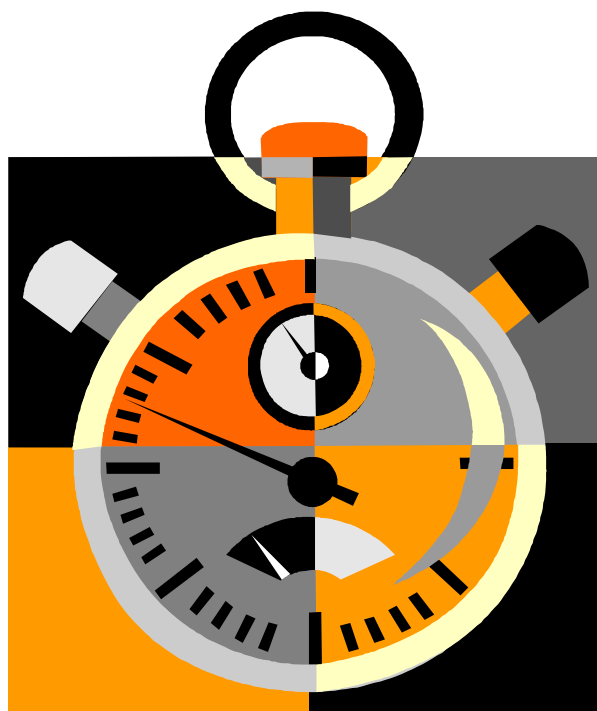
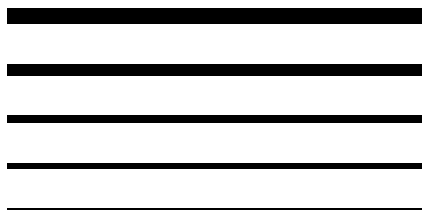




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# Topics in Community Corrections

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**Annual  
Issue  
2008**

**Applying Evidence-Based Practices  
in Pretrial Services**

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## **National Institute of Corrections**

Morris L. Thigpen  
Director

George Keiser  
Chief  
Community Corrections Division

U.S. Department of Justice  
National Institute of Corrections  
Community Corrections Division  
320 First Street, N.W.  
Washington, DC 20534  
(800) 995-6423  
(202) 307-3106

NIC Information Center  
791 North Chambers Rd.  
Aurora, CO 80011  
(800) 877-1461  
(303) 365-4450  
*asknicic@nicic.org*

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***<http://www.nicic.org>***

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# Topics in Community Corrections

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## 2008 FOCUS: Applying Evidence-Based Practices in Pretrial Services

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## Foreword

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**T**he emergence of evidence-based practices in the field of community corrections has sparked much debate and discussion among pretrial practitioners and other system stakeholders about its application in decision-making prior to trial and in developing pretrial supervision strategies. Compared to probation, pretrial services and programming for defendants are relatively young. Their development is rooted in the bail reform movement in the 1960s.

Though there are many similarities between probation and pretrial populations in terms of risk and need, there also are important distinctions. Defendants, unlike probationers, are considered innocent until proven guilty and have constitutional and legal protections that can limit the supervision strategies a pretrial service agency can impose. This makes it problematic to implement some principles of evidence-based practices as developed for the community corrections population. Outcome measures also are different. The role of most pretrial services agencies is to increase the appearance rate of defendants released pending trial, while decreasing pretrial misconduct. Probation and other community corrections services measure recidivism. What cannot be disputed is that the pretrial services field needs to develop strategies that lead to evidence-based decision-making and to develop supervision methods that are supported by research and the law.

This issue of *Topics in Community Corrections* has been written by practitioners who are in the process of developing programming, designing supervision strategies, and conducting research that will lead to a better understanding of current efforts in the pretrial services field. They were invited to contribute to this document because they have been or currently are developing risk assessment instruments and supervision strategies or expanding the field of research. The National Institute of Corrections (NIC) hopes that these efforts spark additional attention to this subject, resulting in additional research.

On behalf of NIC, I want to thank all the writers that contributed their time, under extremely short deadlines. Their dedication to the field of pretrial services is recognized and appreciated. As readers navigate through the evidence-based process, we hope these observations will be helpful.

*Kenneth Rose  
Correctional Program Specialist  
U.S. Department of Justice  
National Institute of Corrections  
Washington, D.C.*

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# A Framework for Implementing Evidence-Based Practices in Pretrial Services

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Over the past 40 years, most states and the federal government have re-written statutes pertaining to the pretrial release decision with the purpose of introducing four major changes.

- ◆ The first change was to define all the factors that the judicial officer is to consider in making the pretrial release decision.
- ◆ The second was to define the range of options for pretrial release that are available to the decision-maker, including several non-financial release conditions.
- ◆ The third was to create a presumption of release on the least restrictive conditions.
- ◆ The fourth was to include danger to the community as a second consideration in the bail decision, to go along with appearance in court.

Many jurisdictions throughout the country established pretrial services programs to help the courts implement these changes. These programs interview and investigate defendants shortly after arrest, gathering the information that statutes require the court to consider, such as prior criminal history, family ties, length of residence in the community, and home and employment status.

Based on that information, pretrial services officers assess the risks of danger to the community and failure to appear, and they make recommendations to the court regarding the least restrictive release conditions reasonably calculated to assure the safety of the community and appearance in court. Most programs also supervise compliance with release conditions set by the court. Pretrial programs, like other publicly-funded efforts, are under increasing pressure to show that they are using evidence-based practices in performing these functions.

## Limited Pretrial Research Exists to Support Evidence-Based Practices

While pretrial services programs have been around for decades, research to identify evidence-based practices of these programs is “significantly limited.”<sup>1</sup>

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1. Marie VanNostrand, *Legal and Evidence-Based Practices: Application of Legal Principles, Laws, and Research to the Field of Pretrial Services* (Washington, D.C.: National Institute of Corrections, 2007), 9, <http://nicic.org/Library/022398>.

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by  
John Clark,  
Director of Technical  
Assistance,  
Pretrial Justice Institute,  
Washington, D.C.

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Moreover, pretrial services as a field is lagging behind other entities in the criminal justice system in developing such practices.<sup>2</sup>

A number of fundamental questions exist for pretrial services as it works to identify evidence-based practices that are specific to this work.

- ◆ Of the factors that the court is required to take into consideration, which ones are the most important for attaining which goals?
- ◆ What weights should be given to each factor?
- ◆ Are predictors of risk consistent across jurisdictions?
- ◆ To what extent does prediction of risk depend upon demographic variables, i.e., male versus female; white versus black versus Hispanic?
- ◆ How can agencies use assessments of risks to best manage risks?
- ◆ What options are most appropriate for what populations?
- ◆ What non-financial conditions work best for what populations?
- ◆ What supervision techniques or treatment interventions work, and for whom?
- ◆ What are the least restrictive conditions necessary to assure the defendant's good conduct on pretrial release?

This article presents a possible framework for developing research geared toward identifying evidence-based practices in pretrial services.

### **Start with the Goals**

In thinking about research on evidence-based practices in pretrial services, it is helpful to start with the goals of those services. While many different goals can be set forth, most can be synthesized into the following:

*To maximize rates of pretrial release while minimizing pretrial misconduct through the use of least restrictive conditions.*<sup>3</sup>

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2. For example, the community corrections field has accumulated sufficient research to develop a model for implementing evidence-based practices. That model may someday be found to apply, at least in part, to the pretrial field, but the field needs significantly more research before such determinations can be made. For a discussion of the Community Corrections model, see: Elyse Clawson, Brad Bogue and Lore Joplin, *Implementing Evidence-Based Practices in Community Corrections*, Crime and Justice Institute, 2004. (Online at <http://nicic.org/Library/020174>.)

3. Variations of this definition of the goals of pretrial services have been used before. Here are two examples: "Effective release may be most simply defined as decision practices that foster the release of as many defendants as possible who do not fail to appear in court at required proceedings or

This statement implies a balance between the interests and rights of the defendant and those of society.<sup>4</sup> Both sides of the balance must be considered. For example, pretrial programs that focus only on the goal of minimizing failure at the expense of maximizing release by working only with low-risk defendants will not contribute much to the research on evidence-based practices. By staying away from higher-risk defendants, pretrial programs will never learn what interventions may work with those defendants that would bring their risks to manageable levels.

### **Use of the Standards as Objectives**

Standard 10-1.10 of the Pretrial Release Standards of the American Bar Association<sup>5</sup> lays out the tasks that pretrial services programs should conduct. This standard can be viewed as the objectives for pretrial programs for achieving the goals of maximizing release while minimizing misconduct.

Below are several of those tasks, or objectives, accompanied by issues that should be addressed in research to identify evidence-based practices.

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***Present accurate information to the judicial officer relating to the risks defendants may pose of failing to appear in court or in threatening the safety of the community or any other person and, consistent with court policy, develop release recommendations responding to risk.***

This standard speaks to the need for pretrial programs to validate their risk assessment instruments. Recognizing the importance of this, in recent years many jurisdictions have evaluated the risk assessment procedures of their pretrial programs, and this has resulted in a growing body of valuable research.<sup>6</sup> But many programs have never subjected their risk assessment procedures to rigorous study. A 2001 survey of pretrial programs nationwide found that half had never validated

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commit crimes during the pretrial release period,” John Goldkamp, “Judicial Responsibility for Pretrial Release Decisionmaking and the Information Role of Pretrial Services,” *Federal Probation* 57(1), March 1993, 31; “Pretrial release policy in the American criminal justice system has two goals: (1) to allow pretrial release whenever possible and thus avoid jailing a defendant during the period between his arrest and court disposition, and (2) to control the risk of failure to appear and of new crimes by released defendants,” Stevens H. Clarke, “Pretrial Release: Concepts, Issues, and Strategies for Improvement,” *Research in Corrections* 1(3), National Institute of Corrections, 1988, 2.

4. For a thorough discussion of those interests and rights, see VanNostrand, *supra* note 1.

5. *ABA Standards for Criminal Justice: Pretrial Release*, Third Edition (Washington, D.C.: American Bar Association, 2007).

6. See, for example, Marcy Podkopacz, *Fourth Judicial District Pretrial Evaluation: Scale Validation Study* (St. Paul: Minnesota Judicial Branch, Fourth Judicial District, 2006); Marie VanNostrand, *Assessing Risk Among Pretrial Defendants in Virginia: The Virginia Pretrial Risk Assessment Instrument* (Richmond: Virginia Department of Criminal Justice Services, 2003); Qudsia Siddiqi, *Prediction of Pretrial Failure to Appear and an Alternative Pretrial Release Risk-Classification Scheme in New York City: A Reassessment Study* (New York: New York City Criminal Justice Agency, 2002).

their risk assessment tools.<sup>7</sup> Without validation of the risk assessment, pretrial programs do not know whether they are being more restrictive than necessary with some populations and less restrictive with others. In other words, they cannot assess their progress in reaching the goals of maximizing release while minimizing misconduct.

The standard's call for "accurate" information stresses something that can easily be overlooked in risk assessment validation—the need to make sure that staff gather and record information and then make assessments of risk in a consistent manner, accurately following the guidelines in all cases. One researcher with extensive experience in risk assessment validation has identified inter-rater reliability as one of the most important steps in evaluating the validity of risk assessment procedures.<sup>8</sup>

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***Develop and provide appropriate and effective supervision of all persons released pending adjudication who are assigned supervision as a condition of release.***

According to this standard, supervision must be both appropriate and effective. Implicit in this standard is that supervision should be matched to the risks posed by individual defendants. It may prove effective—in terms of low failure rates—to provide intensive supervision to defendants who have been assessed as having mid-level risks, but would it be appropriate? Would it be a good use of limited resources? Thus, research on evidence-based pretrial supervision practices should focus on identifying the most appropriate level of supervision required, as well as measuring the effect of the supervision. It should also address issues such as case-load sizes, and the knowledge, skills, and abilities required of supervision staff in order for them to adequately perform their duties.

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***Develop a clear policy for operating, or contracting for the operation of, appropriate facilities for the custody, care, and supervision of persons released and manage a range of release options, including but not limited to, residential halfway houses, addict and alcoholic treatment centers, and counseling services, sufficient to respond to the risks and problems associated with released defendants in coordination with existing court, corrections and community resources.***

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7. John Clark and D. Alan Henry, *Pretrial Services Programming at the Start of the 21st Century: A Survey of Pretrial Services Programs* (Washington, D.C.: U.S. Department of Justice, Bureau of Justice Assistance, 2003).

8. James Austin, "How Much Risk Can We Take? The Misuse of Risk Assessment in Corrections," *Federal Probation* 70(2) September 2006, 59.

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Implicit in this standard is that interventions—such as drug and alcohol treatment or counseling—are effective in reducing risks of misconduct within pretrial populations. Many pretrial programs refer defendants to drug, alcohol, or mental health treatment or other types of counseling under the assumption that addressing defendants’ needs will reduce the likelihood of pretrial misconduct. This assumption should be subject to rigorous research to test its validity and to identify discrete populations for whom these interventions have the greatest chances of success.

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***Promptly inform the court of all apparent violations of pretrial release conditions or arrests of persons released pending trial, . . . and recommend appropriate modifications of release conditions according to approved court policy.***

In order for responses to violations to be evaluated for effectiveness, it is first important to ensure that staff apply those responses according to defined procedures and in a consistent fashion. A major assumption in pretrial services is that defendants who fail to comply with conditions of release are at higher risk of endangering the safety of the public or failing to appear in court. Research on responses to violations should be designed to test the validity of this assumption.

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***Supervise and coordinate the services of other agencies, individuals, or organizations that serve as custodians for released defendants, and advise the court as to their appropriateness, availability, reliability and capacity according to approved court policy relating to pretrial release conditions.***

Many pretrial programs make use of “third party custodians” to help supervise defendants on pretrial release. The programs and activities of these custodians need to be evaluated for effectiveness just as much as in-house supervision operations. The same questions apply: Are program procedures followed in a consistent manner? What type of program works with what type of defendant? What is the ideal caseload size? What knowledge, skills, and abilities are required of these custodians to achieve low failure rates among those they supervise?

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***Review the status of detained defendants on an ongoing basis for any changes in eligibility for release options and facilitate their release as soon as feasible and appropriate.***

In many jurisdictions, defendants who do not make the “first cut” at the initial bail hearing and are sent to jail often are forgotten until their cases are over—or at least until their next court appearance. With research showing which of these

defendants can be safely released, pretrial programs can come closer to meeting their goals of maximizing release while minimizing pretrial misconduct.

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***Assist persons released prior to trial in securing any necessary employment, medical, drug, mental or other health treatment, legal or other needed social services that would increase the chances of successful compliance with conditions of pretrial release.***

Many pretrial programs invest significant resources into providing treatment and other services based on the assumption that these services do increase the defendant's chances of success on pretrial release. However, one methodologically rigorous study from 1985 showed that providing such services to pretrial defendants on supervised release did not reduce failures to appear and rearrest any better than supervision alone.<sup>9</sup> More research is needed to determine if this finding—now more than 20 years old—holds up.

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***Remind persons released before trial of their court dates and assist them in attending court.***

In a 2001 survey, more than half of pretrial programs reported either calling or sending mail to defendants a few days in advance of their court appearances to remind them of when and where they are due in court.<sup>10</sup>

At least one jurisdiction has examined the impact of court date reminders. With failure to appear rates of over 25% for misdemeanor defendants who had been released by police on citation and given a date to appear in court, the Flagstaff Justice Court in Coconino County, Arizona, implemented a telephone reminder pilot project. The FTA rate for citation defendants fell to 13% when they received a reminder call.<sup>11</sup> More research on a wider population is necessary to gauge the effectiveness of different types of court date reminders.

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9. James Austin, Barry Krisberg, and Paul Litsky, "The Effectiveness of Supervised Pretrial Release," *Crime and Delinquency* 31(4), October 1985.

10. *Supra* note 7.

11. Wendy F. White, *Court Hearing Call Notification Project* (Flagstaff, Arizona: Coconino County Criminal Justice Coordinating Council, 2006).

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## Interpreting Research Findings to Assimilate Outcomes Into Practices

It has been suggested that outcomes in pretrial release decisions and practices be measured according to effectiveness, efficiency, and equitable treatment of similarly-situated defendants.<sup>12</sup>

- ◆ Measuring effectiveness is very complex in light of the balancing that is required between maximizing rates of pretrial release and minimizing pretrial misconduct.<sup>13</sup> Can it be said that practices and procedures that lead to low failure rates are effective if they are accompanied by release rates that are significantly lower than those in other jurisdictions? There is no national benchmark that defines “optimal” or even “acceptable” pretrial release and misconduct rates.
- ◆ The balance between maximizing release and minimizing failure has implications for efficiency as well. Inefficiency occurs whenever defendants who could be safely released are held and when those who are released disrupt court proceedings by failing to appear as required.<sup>14</sup>
- ◆ The equal treatment of similarly-situated defendants is suspect when the only factor that decides which defendant is released pretrial and which remains in jail is their access to money to post a bail bond.<sup>15</sup> Thus, pretrial systems that rely heavily on money bail for release determinations will have difficulty measuring the effects of changes in practice that can be used with their full defendant population, if those changes are tested only against a skewed sample of defendants who can make bail.

The role that research can play in addressing issues related to effectiveness, efficiency and equitable treatment cannot be overstated. Through research, pretrial programs can identify interventions that work for one risk group and start applying those interventions incrementally to higher-risk populations—testing for effectiveness, efficiency, and equal treatment each step of the way—thus moving closer to the goal of maximizing release. In short, science will guide the way toward defining maximum release with minimum failure.

One final thought: research may also produce results that challenge long-held beliefs about what works in pretrial services. Pretrial practitioners have to be willing to abandon practices that are shown by research not to work. ◆

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*For more information:*

*John Clark  
Director of Technical  
Assistance  
Pretrial Justice Institute  
927 15th Street, NW, 3rd Floor  
Washington, D.C. 20005-2323  
(202) 638-3080 ext. 301  
john@pretrial.org  
<http://www.pretrial.org>*

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12. John S. Goldkamp, Michael R. Gottfredson, Peter R. Jones, and Doris Weiland, *Personal Liberty and Community Safety: Pretrial Release in the Criminal Court* (New York: Plenum Press, 1995).

13. Ibid.

14. Ibid.

15. Ibid.

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# Advancing Evidence-Based Practices in the Pretrial Field

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by  
*Katie Green,*  
*Agency Administrator,*  
*Colonial Community*  
*Corrections,*  
*Pat Smith,*  
*Executive Director,*  
*OAR/Jefferson Area*  
*Community Corrections,*  
*and*  
*Kristina Bryant,*  
*Assistant Director,*  
*Chesterfield Community*  
*Corrections Services,*  
*Commonwealth of Virginia*

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**T**he Commonwealth of Virginia in 1995 passed the Comprehensive Community Corrections Act and the Pretrial Service Act, which resulting in the establishment of 37 local Community Corrections programs and 30 Pretrial Service agencies. Today, these agencies are experiencing increasing levels of offender/defendant non-compliance with supervision conditions, resulting in violations that often lead to unsuccessful termination from supervision. Local probation and pretrial professionals are committed to implementing supervision strategies that are based on scientifically proven principles associated with behavior change, in part to reduce the number of unsuccessful terminations.

Given the research on probation populations and the effectiveness of targeting behaviors in order to reduce recidivism, can this approach be transferred to the pretrial population? If on the post-trial side we are shifting away from focusing on the current offense and instead targeting our strategies on risks and needs, can we do the same for defendants without jeopardizing their legal status? Why do we think it is important to question the effectiveness of our supervision strategies on the post-trial side but not the pretrial side?

## **Background**

The statewide average length of pretrial supervision in Fiscal Year 2007 was 118 days for defendants charged with a felony and 69 days for defendants charged with a misdemeanor. This gives defendants ample time to begin to address factors that may contribute to pretrial failure. Most local community corrections agencies in Virginia offer both pretrial and post-trial services. Our current practices do not address potential defendant risk factors that contribute to pretrial failure. We are not offering interventions; we supervise defendants' compliance with bond conditions, and only when the defendant is noncompliant do we suggest interventions.

In Virginia, our pilot pretrial agencies need to decide how evidence-based practices can be applied to pretrial supervision. We have reached a fork in the road and need to decide between supervising for bond conditions with no focus on addressing risk/need for defendants, or stressing the need to change behavior and to develop tools and strategies that target risk. We believe we have an opportunity to advance the field by the latter approach.

We have recently re-validated our pretrial risk assessment tool, the Virginia Pretrial Risk Assessment Instrument (VPRAI), after 4 years of use. The tool focuses on danger to the community (risk to reoffend) and risk of flight. We are now exploring whether we can apply the same tools with pretrial defendants as

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we are currently using with post-trial clients to identify risk/need areas and levels of risk of failure.

Our focus is not on low-risk defendants who have strong ties to the community, are employed, are substance-free, and have a stable home environment, but on the medium- and high-risk defendants who typically have had previous involvement in the criminal justice system. If we have knowledge of previously assessed criminogenic needs, are we ethically obliged to determine whether the dynamic traits have changed for the better or the worse regarding the defendant's risk level? To mitigate risk of danger to the community, we need to assess what is contributing to the behavior. This means looking at the criminogenic risks and beginning to facilitate change regardless of the case outcome.

Our current assessment tool measures static factors and helps pretrial staff identify risks for failure to appear and danger to the community. Unfortunately, we do not have supervision recommendation guidelines in place to address the high-risk areas. This allows the courts to focus solely on the high-risk VPRAI results from our risk assessment report and address the circumstances with secure bond and supervision, without also addressing the risk areas themselves.

From 2004 to 2007, the number of pretrial placements on secure bond for misdemeanor charges has increased from 23.9% to 34.8%. Pretrial placements for felony charges have increased from 36.2% to 49.9% in the same period. We do not support this, but we cannot combat it without greater emphasis on interventions during supervision to address judicial concerns.

### **Making a Difference**

In Virginia we are on the threshold of implementing differential supervision and case classification guidelines. Since we are identifying risk, we also need to mitigate it by addressing needs that lead to high-risk behavior. We are asking what the goals of supervision should be—simply compliance with bond conditions, or encouraging positive change by addressing the areas of high risk?

The correctional field in general is moving away from telling an offender what to do and is recognizing the value of offender involvement in changing behavior, drawing on the client's motivation. Supervising staff are recognizing that they should not be imparting their values, opinions, and insight to offenders. Rather, they should elicit thoughts and values from their clients and help them focus on positive aspects. Taking this approach is more likely to increase their motivation to make positive changes in their lives.

When the defendant enters into the system, pretrial services is typically the first point of contact where there is significant interaction between the defendant and a criminal justice professional, usually the pretrial officer. We believe this may be the optimum time to begin to influence subsequent behavior.

Among the eight defined principles of effective interventions, those most directly applicable in the pretrial field are:

- ◆ **Risk**—directing programs and service toward high-risk defendants;
- ◆ **Need**—Targeting factors that predict future criminal behavior and that can be affected; and
- ◆ **Responsivity**—Being responsive to each client's learning style and level of motivation.

If we truly focus on the risks and needs of clients and not only on the instant offense, using cognitive behavior treatment approaches will not encroach upon the defendant's rights regarding presumption of innocence and self-incrimination. The cognitive approach helps defendants develop skills to function constructively in the community and to engage in behaviors that contribute to positive outcomes. By developing defendants' problem-solving and coping skills while identifying cognitive deficits and distortions, we can help defendants engage in behavior change. Positive reinforcements can easily be incorporated to promote sustained change, and coupling them with appropriate sanctions/consequences to address non-compliance will encourage clients' progress in a positive direction.

Engaging clients in positive social environments can increase clients' pro-social values, which can in turn increase empathy and concern for others. Clients who engage in high-risk behavior typically disassociate from the larger community and take on the characteristics of individuals they consider important. Expanding the client's world by exposing them to other segments of the community can provide positive reinforcement and pro-social interaction and can help defendants develop a long-term support network. Providing measurable feedback to defendants about their progress helps them understand the process of change and provides them with the motivation and purpose to keep moving forward.

**A**s criminal justice professionals, our goal is to reduce risk and recidivism. Guided by the research, we need to work collectively to promote systemic change that focuses on fostering positive behavioral change among defendants, and ultimately making a safer and more just society. ◆

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For more information:

Katie Green  
Administrator  
Colonial Community  
Corrections  
4093 Ironbound Road,  
Suite B  
Williamsburg, Virginia 23188  
(757) 564-2312  
[katieg@james-city.va.us](mailto:katieg@james-city.va.us)

Patricia Smith  
Executive Director  
OAR/Jefferson Area  
Community Corrections  
750 Harris Street,  
Suite 207  
Charlottesville, Virginia 22903  
(434) 296-2441, ext. 106  
[psmith@oar-jacc.org](mailto:psmith@oar-jacc.org)

Kristina Bryant  
Assistant Director  
Chesterfield Community  
Corrections Services  
P.O. Box 40  
Chesterfield, Virginia 23832  
(804) 706-1271  
[BryantK@chesterfield.gov](mailto:BryantK@chesterfield.gov)

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# Improving Pretrial Assessment and Supervision in Colorado

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**T**his article describes an innovative pretrial initiative known as the Colorado Improving Supervised Pretrial Release (CISPR) Project, now in progress in Colorado. The CISPR project has the potential not only to modernize and improve pretrial services in our state, but also to contribute to the knowledge base on effective pretrial practices nationwide. A particular focus is on how pretrial supervision agencies can match defendants' individualized risk profiles—as measured by a validated risk assessment instrument—to specific interventions, to minimize defendants' new arrests and failures to appear while they are out on bond.

The pretrial release decision and the supervision of defendants in Colorado are similar to processes in many other states. Denver-metro area counties and other large counties employ pretrial staff who use home-grown pretrial risk assessment instruments that were modeled after the Manhattan Bail Project in the 1960s and then modified over time. These instruments score defendants on factors such as their history of failure to appear (FTA), criminal history, employment and residential stability, and their substance abuse history. Judicial officers consider the information and recommendations supplied by the pretrial agency, along with any recommendations on bond made by the prosecuting attorney, to make a decision about defendants' conditions of bond. These conditions often require that defendants post a monetary bond, many times through a commercial surety, and receive supervision by the county's pretrial agency. In some counties, judicial officers have expressed their dissatisfaction with the current pretrial bonding and release process and have asked their pretrial staff to propose improvements. The CISPR project helps fulfill this request.

The pretrial services agencies in Colorado are typically very well regarded by law enforcement, prosecution, and the courts in the jurisdictions they serve. The agencies operate on tight budgets, and most are achieving documented FTA rates of 5% or less and new arrest rates of 1% or less. Though the numbers look good, local pretrial agency policies and procedures have not yet been optimized—including those related to the use of pretrial assessment and supervision. Many inefficient and ineffective practices still exist in the local justice system.

For example, defendants who could be supervised effectively in the community often remain in jail unnecessarily because they are unable to post bond. At the same time, higher-risk defendants who can post a monetary bond are often returned to the community unsupervised. In addition, many defendants who do not need pretrial supervision are ordered to it as a condition of release. These prac-

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by  
*Michael R. Jones,*  
*Manager,*  
*Criminal Justice Planning*

and

*Sue Ferrere,*  
*Planner/Analyst,*  
*Criminal Justice Planning,*  
*Jefferson County*  
*Government,*  
*Golden,*  
*Colorado*

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tices result in system resources being spent, unwisely, on the incarceration and supervision of lower-risk defendants rather than on the higher-risk defendants who pose a greater threat to public safety and the integrity of the legal process.

### **Aims of the CISPR Project**

In late 2005, representatives from pretrial agencies in 10 Colorado counties began the CISPR project to improve the efficiency of the pretrial release procedure and the effectiveness of pretrial supervision.

The project has two main components:

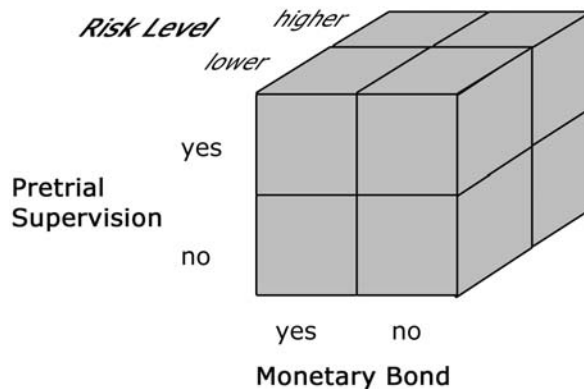
- 1) The development of a validated pretrial risk assessment instrument, to be known as the Colorado Bond Conditions Assessment (COBCA), that will replace the various, more subjectively derived risk assessment instruments currently used in each county; and
- 2) The development of research-based pretrial release supervision protocols that match individual elements of a defendant's risk profile to specific pretrial release supervisory techniques.

Upon completion of this project, pretrial agencies will be able to make research-based recommendations about conditions of bond to the judges and magistrates who set these conditions. The CISPR project is effectively statewide in scope, as 80% of the state's population resides in the 10 participating counties, which comprise urban, suburban, and rural or mountainous areas, most of which are in Colorado's populous "front range" region. Participating counties include Adams, Arapahoe, Boulder, Denver City & County, Douglas, El Paso, Jefferson, Larimer, Mesa, and Weld. The project is partially funded by an Edward Byrne Memorial Justice Assistance Grant from the U.S. Department of Justice.

The CISPR project is part of a broader movement in Colorado and nationwide toward evidence-based human and criminal justice services. Services that are based on researched outcomes use resources more cost-effectively, better reduce government liability, and provide more effective services to citizens than do services that have not been evaluated. It is likely that, at the conclusion of the CISPR project, many changes will ensue within the pretrial assessment, release, and supervision component of the legal process in Colorado. The result will be the delivery of better services to the defendants, the victims, and the justice system agencies affected by proceedings at the pretrial stage of the legal process.

The CISPR study should help to answer several long-standing questions in the pretrial field, such as, "Are pretrial outcomes for defendants who are required to post a monetary bond and undergo supervision by a pretrial agency better than the outcomes for defendants who receive either option alone, and does this differ for defendants of different risk levels?" To help answer this question, CISPR project staff will analyze FTA and new arrest outcomes for defendants in each of the eight conditions depicted in Figure 1, page 15.

**Figure 1. Matrix of Risk, Bond, and Pretrial Supervision Conditions for CISPR Analysis**



Other long-standing questions that will be answered are, for example, “Does the amount of the monetary bond affect defendants’ pretrial outcomes?” and “Does the type of surety (e.g., commercial or family/friend) that posts the monetary bond affect defendants’ pretrial outcomes?” The data-supported answers to these and other questions may lead to changes in local policies, or perhaps even statutes, that govern the pretrial bonding and release practices in Colorado, and they may also influence policy in other states.

**The Phases of CISPR**

The CISPR project will progress through several phases. The first phase is projected to last throughout 2008. The second and subsequent phases are projected to continue throughout 2009.

**PHASE 1—Develop instrument.** The first phase will consist of the development of a uniform, statistically validated pretrial release risk assessment instrument, the COBCA, for use in Colorado. This phase will validate several risk factors already in use by pretrial agencies, as well as reveal new risk factors.

The research methods to develop the COBCA are similar to those developed for and used by other jurisdictions, such as New York City, Virginia, and Arizona. In particular, researchers from several of these jurisdictions have provided information, advice, or consultation that has improved the CISPR project. Ongoing technical assistance is being provided by Dr. Marie VanNostrand, who developed the Virginia Pretrial Risk Assessment Instrument. Many factors expected to predict FTA and new arrest are being included in the data collection, such as residential stability, substance abuse history, and criminal history. These items were gathered from previous studies in other jurisdictions as well as from items that are currently in use in various Colorado counties.

In addition, data collection will include some factors for which the predictive value has not yet been adequately tested. For example, to determine whether time incarcerated is predictive of FTA and new arrest during pretrial release (as it often is for recidivism after prison), defendants will be asked about the number of times and length of time they have spent in jail, residential community corrections, and/or prison. Moreover, to determine whether defendants' abilities to plan and problem-solve are predictive, defendants will be asked several open-ended questions about their specific plan for appearing in court and overcoming potential obstacles, such as conflicts with work or child care and transportation issues. While creating a validated instrument for Colorado, CISPR researchers hope to discover new factors that may have value in predicting FTA and new arrests in other jurisdictions.

**PHASE 2—Match risks and interventions.** The second phase of the project will consist of attempts to empirically match the specific risk factors of defendants to specific interventions that reduce or contain those risk factors. The intention here is to replace the more conventional protocol in which defendants who achieve a given numerical risk score receive a given level of pretrial supervision, such as low, medium, or high. These levels of supervision often include a pre-packaged set of conditions of bond (e.g., report weekly, possess no weapons in the home), and they may or may not also include a few individualized conditions (e.g., a restraining order, electronic monitoring).

If this phase of the project is successful, then the courts will know specifically how to bundle different conditions of bond to minimize risk for each defendant, rather than using a one-size-fits-all approach. This bundling would greatly improve the efficiency of how pretrial agency resources are allocated, such that the over- or under-supervision of defendants would rarely occur.

**PHASE 3—Educate system stakeholders.** The third phase of the project will consist of educating judicial officers, prosecutors, defense attorneys, jail commanders, and pretrial staff on the study—its rationale, methods, and findings, and about the resulting products—the COBCA and the new research-based supervisory practices. Because we will be working with some counties in which full-time staff already facilitate systemwide collaborative policy planning and provide their local justice system policy-makers with information and analyses on system functioning, the roll-out of the CISPR products will be expedited.

**PHASE 4—Prepare documentation.** In the fourth phase of the project, we will finalize user manuals for the COBCA and supervisory practices. The content of these manuals will be informed by the results of the research study and feedback from the system stakeholders. These manuals will be shared with all 22 Colorado judicial districts.

**PHASE 5—Assist with local implementation.** The fifth phase of the project will consist of developing and implementing training materials and protocols for existing and new pretrial staff. We anticipate this will include varied formats, such

as slide shows and case vignettes with exercises. Materials will cover the COBCA and its direct implications for research-based supervision practices. CISPR research staff will be available to help interested Colorado jurisdictions convert from their current pretrial release practices to a validated assessment and research-based supervision protocol.

**PHASE 6—Solidifying progress.** The sixth and final phase of the project will consist of two parts:

- ◆ Within Colorado, we plan to monitor the adherence to the new protocol and make ongoing necessary adjustments to the COBCA, as well as revising pretrial agency policies and procedures. Pretrial staff in Colorado meet at least once per year to share information and ideas, so a forum already exists for the ongoing discussion of issues that may develop out of the CISPR project.
- ◆ On a national scale, CISPR research staff and project partners will be available for information-sharing about what was learned from the CISPR project so that other jurisdictions can build upon our experiences to further advance their own practices and the pretrial field as a whole.

**T**he CISPR project in Colorado presents an unprecedented and ambitious challenge to current pretrial and bond practices, with important theoretical and practical implications. At the local level, the participating pretrial agencies are likely to assume a more integral and valued role in front-end case processing, and to provide a model for implementing research-based and cost-effective practices within the justice system. At the national level, research findings and the resulting products should help the pretrial field's quest to become evidence-based. Long-held assumptions surrounding optimal conditions of bond will be empirically tested.

In the end, of course, the direct benefactors of the CISPR project will be the citizens of Colorado. Their local justice systems will be better positioned to improve public safety, the integrity of the legal process, and the due process rights of the accused—at costs that are lower and more sustainable than those of current incarceration and supervision practices. ◆

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*For more information:*

*Michael R. Jones  
Criminal Justice Planning  
Manager  
Jefferson County Government  
3500 Illinois Street,  
Suite 2800  
Golden, Colorado 80401  
(303) 271-4669  
mjones@jeffco.us  
<http://www.jeffco.us/cjp/>*

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# Pretrial Defendants: Are They Getting Too Much of a Good Thing?

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by  
Barbara M. Hankey,  
Manager,  
Oakland County  
Community Corrections,  
Waterford,  
Michigan

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**R**esearch shows that the eight principles of evidence-based practices (EBP), when applied correctly, produce reductions in recidivism with offender populations. Community corrections and probation agencies across the country are instituting EBP into their supervision of offenders with promising results. Oakland County Community Corrections in Michigan is no exception, and in some cases we are extending these EBPs to pretrial defendants. We are on the path toward mapping ways to maximize EBP in a pretrial context.

The Oakland County Community Corrections Division (OCCCD) is not affiliated with the Michigan Department of Corrections, as is the case in many states, but rather it is a locally operated program. As our mission statement indicates, it is our goal to:

*...minimize jail and/or prison lengths of stay by providing a continuum of supervision, sanctions, and services that promote behavioral change through the individualized assessment of defendants/offenders in order to reduce criminal conduct while mitigating risks to public safety.*

As such, the OCCCD offers a variety of programs for clients within all stages of the criminal justice system. Step Forward is one of these programs. Initially it was designed for sentenced offenders, but with the advent of the drug court movement, Step Forward has been accepting pretrial defendants as well. In order to receive state funding in Michigan, a drug court must function in a post-adjudication manner. Some courts have referred pretrial defendants to the program in an attempt to intervene with services at the earliest possible time.

## **Programmatic Approach**

The Step Forward program has a one-stop-shop concept, and it offers an array of services under one roof. Before the program was developed, the lack of public transportation within Oakland County's 911 square miles made it difficult for clients to access services. Forging partnerships with the many outstanding agencies and providers in the community was the key to bringing them all together at one location for the sake of the client. However, simply having more services available doesn't mean that those services will be effective for the client. Therefore all components of the Step Forward program have been engineered or re-engineered to meet the principles of EBP.

**Intake assessments.** Every client referred to the Step Forward program, both pretrial and sentenced, goes through an initial intake. At the intake an actuarial risk/needs assessment is performed using the COMPAS instrument, an automated

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tool developed by Northpointe, Inc. A personal interview is also part of the intake process so that areas of concern can be fully explored with the client.

One factor in adopting the COMPAS is its use statewide in Michigan’s reentry work—using the same tool will allow us to share information if that becomes a priority at some point in the future. The COMPAS instrument scores the client on four major risk scales: risk of violence, risk of non-compliance with community supervision (technical violation), risk of recidivism, and risk of failure to appear. These scores appear as decile rankings from 1 to 10, with a score of 1 representing the lowest amount of risk (the lowest 10%), and 10 being the highest risk (the top 10%—meaning their risk is higher than 90% of the offender population for violence, recidivism, noncompliance, or failure to appear). These scales are derived using both static and dynamic risk factors. In keeping with the EBP that services should be reserved for higher-risk offenders, eligibility for Step Forward is limited to clients who score 4 or higher on both the risk of violence and the risk of recidivism scales. The other two risk scales, of community non-compliance and failure to appear, determine the level of supervision for each client.

The COMPAS contains other scales that relate to client criminogenic needs. These scores also are shown as decile rankings from 1 to 10. For purposes of case planning, some of these scales are compressed together and displayed in categories that correspond with eight known criminogenic factors: substance abuse, social isolation, cognitive/behavioral issues, criminal associates/peers, employment/vocational status, financial status, residence instability, and unstructured idle time (boredom). The assessment results show each of these criminogenic factors with scores of highly probable, probable, or unlikely to result in crime or failure on supervision. Areas in which the client scores a “highly probable” become the focus of targeted interventions and/or the overall supervision and treatment plan.

**Case planning.** Clients are assigned to a case manager after their risks and needs have been assessed. The case manager develops a case plan with the client that centers on the client’s assessed needs. All Step Forward staff have been trained in the techniques of motivational interviewing. Using these techniques during the development of the case plan, the case manager can increase the client’s motivation and commitment to the plan through involvement and accountability. For each of the criminogenic factors on which a client has scored “high,” a set of goals and tasks becomes part of the case plan.

**Services and interventions.** The majority of the services clients need to complete their assigned tasks and achieve their goals are offered at Step Forward. All of the group programs offered through Step Forward have been structured using cognitive behavioral treatment (CBT) methods. Groups are no longer didactic or strictly lecture-oriented. Instead, role playing, homework, and interaction are used to deliver treatment. Successful completion of groups is not dependent on a client just sitting through a set number of weeks of attendance. Successful completion is performance-based and is dependent on the client’s grasp and integration of skills taught in the groups.

Though different providers are used to deliver treatment, each group has a standardized curriculum that all facilitators follow to ensure the treatment is delivered completely and in the manner it was intended. It is important to note that pretrial defendants involved in the Step Forward program are not required to admit guilt or assume responsibility in any of the groups.

Groups currently offered in the Step Forward program include:

- ◆ Stages of Change I & II, based on Prochaska's stages of change: pre-contemplation, contemplation, preparation, and action/maintenance;
- ◆ Cognitive Restructuring Fundamentals and Cognitive Applications, a series beginning with concepts and expanding into real-life application of the cognitive skills learned;
- ◆ Anger Management;
- ◆ Domestic Violence (HEAL) for Men;
- ◆ Domestic Violence (WEAVE) for Women;
- ◆ Experiential Learning Group;
- ◆ Women's Issues;
- ◆ 12-Step Program; and
- ◆ Dual Diagnosis.

A random drug and alcohol testing program is also available on the premises.

In order to meet a wide range of client schedules, the Step Forward program operates from 7:00 a.m. through 7:30 p.m., Monday through Thursday, and until 5:00 p.m. on Fridays. Group utilization fluctuates over time, but on average, Step Forward has 35 groups running at various time slots throughout the week. Based on the client's needs, he or she may be placed in one or several of the groups. Clients may also be referred to outside sources for job counseling or placement if necessary.

**Case management.** Case managers play an important role in keeping the clients focused on achieving tasks and goals without being seen as the "enforcer." They meet with each of their clients monthly for a one-on-one session that usually lasts about an hour. These special sessions are in addition to other required contacts throughout the month based on the client's supervision level. During the one-on-one sessions, the client is given time to discuss progress or issues and has the opportunity to adjust or update his or her treatment plan.

The client's participation in the case plan is essential in increasing their motivation to change and their chances of success within the Step Forward program. Case managers often see their clients informally on a weekly or even daily basis,

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because the case managers also facilitate groups. The case management offices are located in the same area as the classrooms, which further promotes interaction between case managers and clients.

**Sanctions and incentives.** Clients are held accountable for their actions—both positive and negative—through a series of sanctions and incentives. Clients can earn reward points for accomplishments such as 90 days of sobriety or attendance at 12 consecutive on-site groups. Reward points can be used to maintain the client’s status in the event of a missed treatment obligation or relapse. Other rewards can also be earned, such as certificates for group completion and reductions in drug testing frequency.

Sanctions are given for missed groups, appointments, or drug tests. Specific forms of sanctions include a verbal warning, an increase in frequency of testing, an increased level of treatment, or additional writing assignments. Sanctions are graduated and can culminate in an unsuccessful discharge from the program.

### **Burning Questions**

Oakland County has struggled to justify exposing pretrial defendants to this level of programming. Largely the reason behind this struggle is that defendants placed under the supervision of pretrial services should have conditions of bail only that are tied to risk of pretrial failure—defined as non-appearance at court and/or danger to the community pending trial. According to the standards of the National Association of Pretrial Services Agencies (NAPSA), conditions which address clinical and social needs of clients that are not linked to pretrial failure go beyond the purpose of bail and may be considered excessive.

Perhaps the most difficult task we face is in determining what condition or combination of conditions addresses pretrial failure without crossing that fine line into addressing clinical and social needs. What makes this even more difficult is that recent research suggests there are common risk factors for pretrial failure.<sup>1</sup> Factors that seem to be predictors of pretrial failure center around criminal history, length of time at one residence, employment, and substance abuse. These pretrial risk factors and the criminogenic needs we can identify share some commonalities. Given these similarities, the real question becomes: how do we address an issue such as substance abuse, for example, in a way that mitigates pretrial failure without addressing it as a clinical and social need?

### **Success Rates Compared**

The Step Forward program enrolled 386 clients between June 1 and December 31, 2007, of whom 42 were pretrial defendants. Outcomes for the pretrial defendants showed a 93% success rate in returning defendants to court and mitigating pretrial misconduct. Of the pretrial defendants, 32 returned for all court dates as sched-

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1. Marie VanNostrand, *Assessing Risk Among Pretrial Defendants in Virginia. The Virginia Pretrial Risk Assessment Instrument* (Richmond: Virginia Department of Criminal Justice Services, 2003), <http://www.nicic.org/library/019500>.

uled, three (3) had their cases dismissed (but appeared as directed), two (2) were arrested for new felony charges, one (1) failed to appear for a court appearance (but appeared 40 days later and the case was adjudicated), and four (4) are still awaiting sentencing but have appeared as directed.

Successful defendants were involved in 2.2 treatment groups on average and had an average length of stay in the Step Forward program of 50 days. The three defendants who experienced pretrial failure were involved on average in only one (1.0) treatment group, and they had an average length of stay of 43 days. (Length of stay is measured from enrollment until the date of a new arrest.)

Successful defendants averaged a rating of “highly probable” or “probable” on 3.5 of the eight needs scales. Unsuccessful defendants averaged a rating of “highly probable” or “probable” on 4.3 of the needs scales. This could suggest that, had the unsuccessful defendants been in more groups to address identified needs, their pretrial misconduct could have been mitigated. It is difficult to determine why these defendants received fewer services. They simply may have refused to attend additional groups, for example, or their failure may have occurred before additional services could be offered.

During the same time frame, pretrial defendants placed on standard supervision achieved a 94% success rate. Standard supervision requires the defendant to check in weekly and may have other conditions such as drug testing. Defendants on standard supervision are not subject to the COMPAS assessment, and therefore data on their risks and needs are not available. However, the similarity in success rates does raise questions.

- ◆ Is it possible that the pretrial defendants involved in Step Forward could have been just as successful under the less restrictive conditions of standard supervision?
- ◆ For the three defendants whose cases were dismissed, was their exposure to this level of programming premature and excessive given the outcome of their case?

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*For more information:*

*Barbara M. Hankey  
Manager  
Oakland County Community  
Corrections  
2300 Dixie Highway  
Suite 200  
Waterford, Michigan 48328  
(248) 451-2306  
hankeyb@oakgov.com*

These are the types of questions our agency struggles with daily in incorporating EBP into treatment/supervision plans for pretrial defendants, as we seek to effectively balance the rights of the accused and still mitigate pretrial risk.

### **Next Steps**

Currently our agency is looking at how to best answer these questions. We are collecting data on performance and outcomes in the hopes that a more in-depth analysis can be done in the near future. We hope that further analysis will begin to help us answer some of the questions posed throughout this article so that we may continue to move forward with delivering EBP in the pretrial field while preserving the legal rights of the pretrial defendant. ◆

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# Charge Specialty and Revictimization by Defendants Charged with Domestic Violence Offenses

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*While research on the prevalence and frequency of intimate partner violence and victimization has evolved considerably over the past two decades, little progress has been made in understanding other features of the criminal careers of domestic violence offenders such as the mix of offenses in which they are involved and the progression of offense seriousness against the people they victimize. Limited research indicates that partner abusers do not specialize but engage in violence against non-partners as well as a variety of nonviolent crimes, and that careers in marital and stranger violence tend to converge as violence in either domain becomes more frequent and serious.<sup>1</sup>*

Coinciding with the current push for evidence based practices (EBP) in community corrections is a resurgence of research on domestic violence.<sup>2</sup> Over the past 20 years, new literature has examined aspects such as the pervasiveness of domestic violence nationally and within select populations, the socio-cultural contributors to this behavior, and effective treatment for perpetrators and services for victims.<sup>3</sup>

Much of this research has looked at issues linked to two EBP areas:

- ◆ Risk/need actuarial assessment—such as tools to identify the potential for future assaults,<sup>4</sup> and
- ◆ Targeted interventions—including strategies to reduce future victimization and effective services for victims of domestic abuse.<sup>5</sup>

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1. A. R. Piquero, R. Brame, J. Fagan, and T. E. Moffitt, *Assessing the Offending Activity of Criminal Domestic Violence Suspects: Offense Specialization, Escalation, and De-Escalation Evidence from the Spouse Assault Replication Program* (Washington, D.C.: U.S. Department of Justice, National Institute of Justice, 2005).

2. The term “domestic violence” describes physical, sexual, or psychological harm by a current or former intimate partner or spouse (U.S. Department of Justice, National Institute of Justice, <http://www.ojp.usdoj.gov/nij/topics/crime/intimate-partner-violence>). In the District of Columbia, domestic violence charges are defined as any criminal act committed by a person against a relative, domestic partner, or co-habitant (even if no familial or romantic relationship exists); or a former spouse, romantic partner, or co-habitant; or an individual who has a current restraining order against or is or was stalked by the alleged perpetrator (District of Columbia Official Code, 2000 Edition, Title 16, Section 1001).

3. Leora N. Rosen and Jocelyn Fontaine, et al., *Violence and Victimization Research Division’s Compendium of Research on Violence Against Women 1993-2007* (Washington, D.C.: National Institute of Justice, June 2007), [http://www.ojp.usdoj.gov/nij/topics/crime/violence-against-women/vaw\\_portfolio.pdf](http://www.ojp.usdoj.gov/nij/topics/crime/violence-against-women/vaw_portfolio.pdf).

4. J. Roehl, C. O’Sullivan, D. Webster, and J. Campbell, *Intimate Partner Violence Risk Assessment Validation Study* (U.S. Department of Justice, Office of Justice Programs, May 2005).

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by  
Spurgeon Kennedy,  
Director,  
Office of Research,  
Analysis and Development,  
District of Columbia  
Pretrial Service Agency,  
Washington, D.C.

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Of particular interest to some researchers is the idea that persons who commit domestic violence (DV) offenses “specialize” in this behavior and are therefore different from other criminally charged defendants.<sup>6</sup> However, developing research suggests that DV-charged defendants are essentially similar to other criminally charged individuals and frequently engage in other criminal behaviors, particularly stranger-to-stranger assaults.<sup>7</sup> Intimate partner and stranger-on-stranger violence may reinforce one another, creating a tendency toward more frequent and increasingly violent behaviors.<sup>8</sup>

To advance evidence-based risk assessments and interventions for DV-charged defendants, it is of critical importance that we investigate the validity of domestic violence “specialization” and the connection between intimate partner and stranger-to-stranger violence. Specialization would justify distinct assessment and supervision strategies for these defendants. However, if this group poses an equal risk to the community as other criminally charged defendants, then strategies targeted at reducing future domestic violence alone may be ineffective in protecting overall public safety. Determining the best strategies for assessing and managing DV-charged defendants requires a careful comparison of this group to other criminally charged persons to identify their similarities and differences in risk factors and behavior while on pretrial supervision.

The District of Columbia Pretrial Service Agency (DCPSA) conducted investigations to test the “non-specialization” assertion and the possible connection between domestic violence and other assaultive and criminal behaviors.

The central questions addressed are:

- 1) How do DV-charged defendants compare to other criminally charged defendants by known risk factors?** Does this comparison suggest that persons who commit domestic violence offenses are a specialized group?
- 2) What differences can be identified between DV-charged defendants who are rearrested during pretrial supervision and those who remain arrest-free?** How often are DV-charged defendants rearrested on other intimate violence-related charges? (In other words, how often does “rearrest”

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5. A. Jennings, *The Damaging Consequences of Violence and Trauma: Facts, Discussion Points, Recommendations for the Behavioral Health System*. (Alexandria, Virginia: National Association of State Mental Health Program Directors, 2004).

6. R. J. Gelles and M. A. Strauss, “Determinants of violence in the family: toward a theoretical integration,” in *Contemporary Theories About the Family*, ed. W. Burr, R. Hill, F. I. Nye, and I. L. Triss (New York Free Press, 1979).

7. J. Fagan and A. Browne, “Violence between spouses and intimates: physical aggression between women and men in intimate relationships,” in *Understanding and Preventing Violence. Volume 3: Social Influences*, ed. A. J. Reiss, Jr., and J. A. Roth (Washington, D.C.: National Academy Press, 1994); M. Gottfredson and T. Hirschi, *A General Theory of Crime* (Stanford, California: Stanford University Press, 1990).

8. Piquero, 2005; J. Fagan, and S. Wexler, “Crime in the home and crime in the streets: The relation between family violence and stranger crime,” *Violence and Victims* 2 (1987):5-21.

equal “revictimization” of the domestic partner?) Can we identify risk factors that distinguish between those who are more likely to revictimize their partners and those who likely will not?

Data available for our comparison come from two sources.

- ◆ The first is a set of 11,809 criminal cases processed by the District of Columbia Superior Court during the first half of Fiscal Year (FY) 2006 (October 2005 to March 2006). All cases in this data set have reached final disposition. Our study used this data set to measure differences in pretrial failure rates between DV-charged defendants and other criminal defendants.
- ◆ The second data set contains 27,740 criminal cases filed in calendar year 2007, and it includes as a separate variable each factor under the DCPSA’s risk assessment scheme.<sup>9</sup> This allows comparisons of the two populations by individual risk factors.<sup>10</sup>

### **Profile of Domestic Violence Arrestees**

We began by examining the offenses with which domestic violence defendants were being charged at arrest, using data from the 6-month, FY 2006 sample.

- ◆ Nearly 70% of identified domestic violence case filings (N=1,212 of 1,744) involved person crimes, such as assault, threats, and cruelty to children.
- ◆ About 12% of cases (N=207) involved property crimes.
- ◆ About 18% (N=325) involved public order offenses—mostly weapons charges, violations of civil protection orders (CPO) and temporary protection orders (TPO), and failures to appear in previous domestic violence cases.

Six charge types accounted for more than 80% of all domestic violence case filings:

- ◆ Simple assault (610 cases, or 34.4%);
- ◆ Assault (347 cases, or 19.9%);
- ◆ Attempted threats (180 cases, or 10.3%);
- ◆ Destruction of property (152 cases, or 8.7%);
- ◆ Violations of CPOs or TPOs (79 cases, or 4.5%); and
- ◆ Attempted weapons possession (55 cases, or 3.1%).

9. A second data set was necessary since information on separate risk assessment elements has only been available since 2007.

10. These databases do not necessarily include all defendants charged with domestic violence and other offenses during these time periods, only those identified as such in DCPSA’s information system.

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## Risk Factors and DV Specialization

Our study then examined differences in the assessed risk factors of DV-charged defendants and other criminal defendants. We compared these groups based on age, final risk score on the DCPSA risk assessment's safety matrix, and selected factors from that risk assessment.

- ◆ On average, DV-charged defendants were slightly older than other defendants (35.3 years, compared to 34.5 years).
- ◆ DV-charged defendants scored less than a point higher than other defendants on the safety risk matrix (17.23 points, compared to 16.38).
- ◆ A comparison of assessed risk factors for the two groups is presented in Table 1, page 34. Through the data show mostly similarities between the two defendant groups, there are some notable differences.
  - Defendants charged with other criminal offenses were more likely to have a current relationship with the criminal justice system (e.g., a current pending charge) and a prior history of missed court appearances.
  - DV-charged defendants were less likely to be charged with dangerous or violent felonies.
  - DV-charged defendants had a higher average number of prior misdemeanor convictions than did defendants charged with other criminal offenses.
  - DV-charged defendants had a higher level of reported mental health and substance abuse issues.<sup>11</sup>

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11. This finding is consistent with research showing a strong correlation between domestic violence and substance abuse and mental health issues among perpetrators and victims. See, for example, P. A. Fazzino, *Making the Link: Domestic Violence and Alcohol and Other Drugs* (Washington, D.C.: U.S. Department of Health and Human Services, 1997); *Violence Between Intimates: Domestic Violence* (U.S. Department of Justice, Bureau of Justice Statistics, 1994); V. A. Hiday, et al., "Criminal Victimization of Persons with Severe Mental Illness," *Psychiatric Services* 50 (1990):1.

**Table 1: Comparison of Assessed Risk Factors for Domestic Violence and Non-Domestic Violence Defendants**

Risk Factor	DV Charge	N	Percent	Significance
Suspected mental health problem	Yes	164	4.6	.030
	No	734	3.0	
Suspected drug abuser	Yes	1,417	40.1	.027
	No	8,759	36.2	
Previous misdemeanor conviction	Yes	1,115	31.6	.023
	No	6,880	28.4	
Previous felony conviction	Yes	843	23.9	.008
	No	6,039	24.9	
Pretrial condition violator	Yes	475	13.4	.006
	No	3,396	14.0	
Unsatisfactory probation/parole	Yes	191	5.4	.004
	No	1,375	5.7	
Current probation/parole status	Yes	621	17.6	.012
	No	4,583	18.9	
Previous dangerous or violent felony conviction	Yes	602	17.0	.022
	No	4,745	19.6	
Pending criminal charge	Yes	1,055	29.9	.036
	No	8,488	35.1	
Current failure to appear	Yes	451	12.8	.036
	No	4,055	16.8	
Pending dangerous/violent felony charge	Yes	135	3.8	.047
	No	1,798	7.4	
Previous failure to appear history	Yes	48	1.4	.032
	No	708	2.9	
Current dangerous felony charge	Yes	245	6.9	.154
	No	6,488	26.8	

N<sup>1</sup> = 3,532 defendants with domestic violence charges

N<sup>2</sup> = 24,207 defendants with non-domestic violence charges

### Comparative Failure Rates

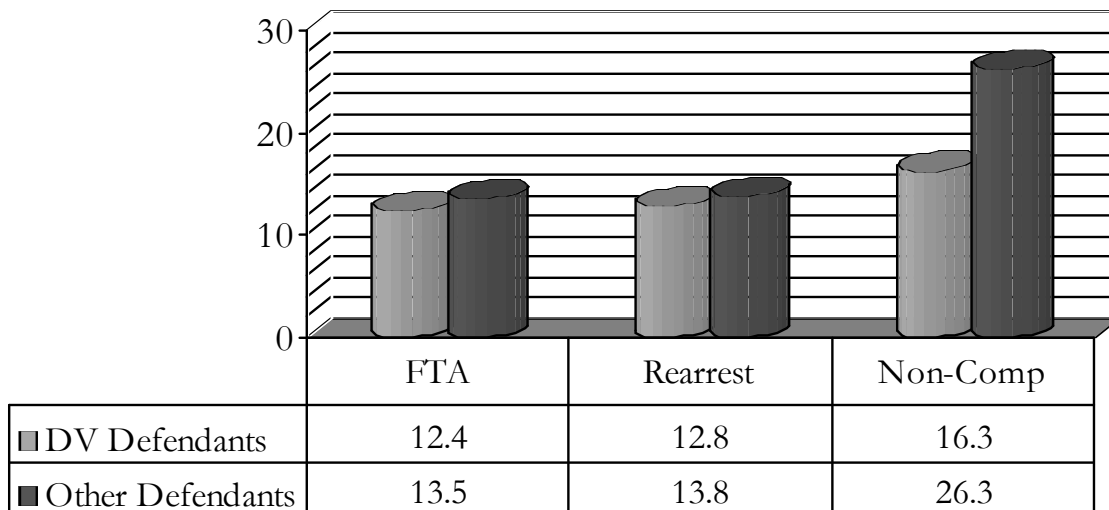
“Pretrial failure” is defined as failing to appear for scheduled court dates, having new charges filed while under pretrial supervision, and/or failing to abide by conditions of pretrial supervision. Data from the FY 2006 sample suggest that DV-charged defendants have comparable FTA and rearrest rates as other defendants, but that DV defendants are more likely to comply with conditions of supervision. (See Figure 1.)

Study data also indicate, however, that DV defendants are almost twice as likely to be rearrested for contempt of court as other defendants. (See Table 2, page 37.) This typically reflects the defendant’s violation of court-ordered release conditions or violations of CPOs or TPOs.

Differences in failure rates may be partially explained by the smaller window of opportunity DV-charged defendants have to fail. According to the FY 2006 data, the D.C. Superior Court processes domestic violence cases within 95.7 days (with an average of 4.54 court dates per case), as compared to 114.8 days for other criminal offenses (with an average of 6.34 court dates).

Despite the shorter case processing times, however, DV-charged defendants tend to be rearrested sooner than other defendants—70.38 days compared to 80.84 days.

**Figure 1. Pretrial Failure Rates: Percentage of Failure-to-Appear, Rearrest, and Noncompliance Failures Among Domestic Violence Defendants and Other Defendants**



**Pretrial rearrest and revictimization.** The FY 2006 data set is summarized in Table 2, opposite. The data showed this breakdown of assaultive or DV-related behaviors in rearrests of defendants in the DV sample:

- ◆ Assault charges not involving domestic partners made up 23.3% of total new filings (based on 32 simple assaults and 20 felony assaults).<sup>12</sup>
- ◆ Just one-tenth of rearrests among DV-charged defendants (20 of 223 cases, or 8.9%) involved a new domestic violence charge. Among these rearrests, 63% (N=13) involved violations of CPO and TPOs, and the remainder (N=7) were new domestic assault charges.
- ◆ In all, new domestic violence charges and new non-partner assaultive behaviors accounted for 32.3% (72 of 223) of rearrests.

Rearrests of DV defendants without an assaultive or protective order element broke down as follows:

- ◆ Failure to appear (46 cases, or 20.6% of rearrests) was the most common new charge.
- ◆ Thirty-one (31) rearrest cases (13.9%) involved a contempt citation. Contempt charges usually involve a violation of supervision requirements. However, DCPSA does not have information on the facts of specific charges.
- ◆ Twenty (20) rearrest cases (9%) involved drug charges, including nine (9) drug distribution charges.
- ◆ Thirteen (13) other cases (5.8 %) involved escapes from institutions and fugitive charges from other jurisdictions.

Overall, failure to appear, simple assault, and contempt were the most common rearrest charges for defendants in the DV sample. The same charges are also common in rearrests of other criminally charged defendants:

- ◆ Failure to appear (281 of 1,379 new filings, or 20.4%);
- ◆ Contempt (98 new filings, or 7.1%); and
- ◆ Simple assault (73 new filings, or 5.3%).

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12. Only one felony charge was designated as a domestic violence charge. DCPSA does not collect victim identifications, so we cannot determine if other assaults involved the same complainant as the original domestic violence charge.

**Table 2. Comparison of Rearrest Charge Types for Domestic Violence-Charged Defendants and Others**

<b>Charge Type</b>	<b>DV-Charged Defendants</b>	<b>Other Defendants</b>
Failure to appear	46 (20.6%)	281 (20.4%)
Simple assault	32 (14.4%)	73 (5.3%)
Contempt	31 (13.9%)	98 (7.1%)
Felony assault	20 (9.0%)	63 (4.6%)
Drug offense	20 (9.0%)	365 (26.5%)
Violation of CPO or TPO	13 (5.8%)	4 (0.3%)
Domestic assault	7 (3.1%)	5 (0.3%)
Escape or fugitive	13 (5.8%)	48 (3.5%)
Traffic or other local ordinance	10 (4.5%)	76 (5.5%)
Property offense	10 (4.5%)	175 (12.7%)
Other misdemeanor	3 (1.3%)	70 (5.0%)
Other felony	N/A	45 (3.3%)

Other defendants were different from DV rearrestees in three ways:

- ◆ They were more likely than DV-charged defendants to be rearrested on a drug offense (365 or 26.5% of rearrests, as compared with 20 or 9% for DV).
- ◆ They were less likely to have new assault charges filed (141 or 10.2%, compared with 59 or 26.5% for DV).
- ◆ They were more likely to be rearrested on a property charges (175 or 12.7%, compared with 10 or 4.5% for DV).

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**Potential risk factors to identify domestic violence failures.** The calendar year 2007 data set did not include enough disposed cases to correlate specific risk factors with pretrial failure. Data from the FY 2006 sample show that DV-charged defendants who are rearrested are slightly older (35.5 years to 34.3 years) and received higher risk assessment scores (19.2 points to 16.8 points) than defendants in this category who were rearrest-free.<sup>13</sup>

However, rearrested DV-charged defendants tended to have been supervised longer (123.8 days compared to 90.7 days) and had had more court appearances filed (6.2 to 4.25). (Differences in risk scores, supervision time, and number of court appearances were significant at the .05 level). This greater exposure to potential risk also may contribute to the differences in failure rates.

## Conclusions

More information is needed about DV-charged defendants to answer the “specialization” question more definitively. For example, though we know that less than one-third of this population had prior misdemeanors (the filing type for most domestic violence offenses), a breakdown of prior offenses by specific misdemeanor charge has not yet become available for this study. Also, because DCPSA data do not include information on the identity of the victim, we could not examine to what extent victim-related rearrest charges involved the original DV complainant.

The data, though limited, suggest some differences between DV-charged defendants and other criminal defendants, but not enough to label the former as a “specialized” group.

- ◆ Other criminal defendants were more likely to have current pending charges, current probation or parole supervision status, and histories of failure to appear. DV-charged defendants had histories of more misdemeanor convictions and a higher probability of drug use and reported mental health problems. Both groups were similar in most other risk assessment factors as well as age and overall risk scores. However, based on rearrest data from the FY 2006 sample, DV-charged defendants appeared to pose a substantially greater risk for assaultive behavior than non DV-defendants (26.5% compared with 10.2%)
- ◆ DV-charged defendants who were rearrested while under supervision were more similar to other criminal defendants than were DV-charged defendants who remained free from rearrest. They were particularly similar to other criminal defendants in age (35.5 years compared with 34.5 years), safety-related risk assessment score (19.2 points compared with 17.2 points), length of pretrial supervision, and number of court appearances. This suggests that

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13. On these points, domestic violence-charged defendants who were not rearrested while under pretrial supervision are closer in appearance to the general pretrial defendant population.

DV-charged defendants—who warrant the most attention while supervised—require similar levels and degrees of supervision as other criminal defendants, with the caveat that DV-charged defendants appear to have a higher potential for assaultive behavior.

- ◆ Less than 10% of rearrests among DV-charged defendants involved a new domestic violence offense—and only 37% of new domestic violence rearrests involved assaultive behavior. The relatively small percentage of new domestic violence charges supports the theory of a non-specialized population.

However, these data also highlight the enhanced potential for assaultive behavior by rearrested DV-charged defendants. For example, other non-domestic assault charges made up nearly 25% of rearrests for this group, compared to only 9.9% of rearrests for other criminally charged defendants. This appears to validate the idea that intimate partner and stranger-to-stranger violence have a reinforcing relationship.

Further, the high number of DV-charged defendants identified by PSA’s risk assessment as drug users and the number of drug-related rearrests for DV-charged defendants reinforce previous literature showing strong substance use and abuse by persons who commit intimate partner violence.

Rearrests by domestic violence-charged defendants occurred significantly sooner—by 10 days—than rearrests for other criminal defendants. Most rearrests happened during the first half of the pretrial supervision period, suggesting the need for enhanced monitoring of this group at the beginning of supervision.

**D**omestic violence continues to be a critical issue within American communities, and persons who commit these offenses are a potentially sensitive defendant population for pretrial practitioners. Developing a better sense of who these defendants are—and who within this population is most likely to fail while under pretrial supervision—is the first step to identifying effective, research-based responses.

It is hoped that the renewed interest in domestic violence research will give practitioners a better profile of DV-charged defendants. This will help us develop responses that are sensitive to each defendant’s right to reasonable pretrial release but also appropriate for victim and community safety. ◆

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*For more information:*

*Spurgeon Kennedy  
Director of Research,  
Analysis and Development  
District of Columbia  
Pretrial Services Agency  
633 Indiana Avenue, N.W.,  
Room 1144  
Washington, D.C. 20004  
(202) 220-5654  
Spurgeon.Kennedy@psa.gov*

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# Pretrial Rearrests Among Domestic Violence Defendants in New York City

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**T**he processing of domestic violence (DV) cases often presents special problems for the criminal justice system. One concern is that a DV defendant released prior to the disposition of a criminal case may harm or threaten the victim while the case is pending. The DV defendant's motivation may be to retaliate against the victim for having the defendant arrested and/or to discourage the victim from participating in the prosecution of the case. While defendants in non-DV cases may also retaliate against or threaten their victims, victims in DV cases are often at greater risk of facing renewed violence. DV defendants have easier access to the victim, since they usually know where the victim lives and works. Because of their emotional ties to the victim, DV defendants may have greater motivation to threaten or retaliate. Emotional and economic ties also may provide defendants with greater leverage against victims in DV cases than in non-DV cases. Furthermore, domestic violence—more so than other types of violence—often occurs in a private location and is therefore difficult to detect and prevent.

Another issue of interest for public safety purposes is whether DV offenders tend to be “specialists,” committing only domestic violence offenses, or “generalists,” committing a variety of types of offenses. If DV defendants are generalists, they pose a risk not only to the victim, but also to the community at large. They may commit both DV and non-DV offenses during the pretrial period. Their DV offenses may be part of a more general pattern of offending, and they may have a long criminal history. Such DV offenders do not “specialize” in DV offenses. Rather, they are “generalists,” high-rate offenders who commit many types of crime, including victimization of intimate partners and family members.

Because of these concerns, many in the criminal justice system are interested in knowing more about pretrial re-arrests in DV cases.

- ◆ **Do DV defendants pose a high risk to their victims during the pretrial period?** Specifically, how often are they rearrested for new DV offenses during the pretrial period?
- ◆ **Are DV defendants typically high-rate offenders involved in a period of frequent criminal activity?** Are they more likely than non-DV defendants to be rearrested during the pretrial period?

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by  
*Richard R. Peterson, Ph.D.,*  
*Research Director,*  
*New York City*  
*Criminal Justice Agency,*  
*New York, New York*

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Unfortunately, there is very little research available to answer these questions. Only a handful of studies have been done, and most were based on small samples. This article addresses questions about pretrial re-arrest among DV defendants using data from a large sample of offenders in New York City. This research analyzed data drawn from the New York City Criminal Justice Agency database in the first quarter of 2001 and the third quarter of 2002. (See inset box for a description of the data set; further details are available in Peterson 2006).

### **Identifying DV and Non-DV cases**

To examine differences in release outcomes for DV and non-DV defendants, we compared cases identified by the courts as DV cases to those that were not identified as DV cases. The courts' definition of domestic violence is based on the nature of the relationship between the offender and the victim. For the offense to be classified as a domestic violence case, the offender and victim must be members of the same family or in an intimate relationship.

Per statute, a family relationship is present when the victim and offender are married, formerly married, related by blood or marriage, or have a child in common.

An intimate relationship is considered to be present when the victim and defendant are cohabiting or previously lived together, including common-law marriages and same-sex relationships. This informal definition is used based on an agreement among the New York City Police Department, the district attorneys' offices in each borough, and the Office of Court Administration.

We defined comparable non-DV cases as those where the charges involved interpersonal violence, but the relationship between the offender and the victim was not a family or intimate relationship as defined by the courts.

### **Offense Patterns of DV and Non-DV Defendants**

We began the analysis by examining DV rearrests during the pretrial period. About 9% of DV defendants were re-arrested for at least one new DV offense during the pretrial period, compared to only 1% of non-DV defendants (see Figure 1, page 35). DV defendants therefore pose a much higher risk than non-DV defendants of being re-arrested for a new DV offense during the pretrial period. Since the data include only re-arrests, and data are not available for new DV offenses that did not lead to a re-arrest, the rate of new DV offenses during the pretrial period is presumably even higher than 9%.

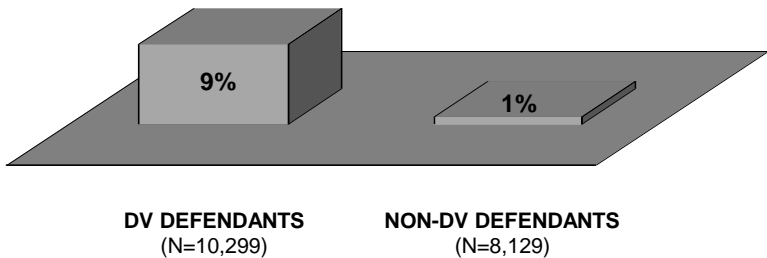
#### **The Combined First Quarter 2001 and Third Quarter 2002 Data Set**

The data set includes information about arrests, the court processing of prosecuted arrests, court outcomes, and re-arrests of the offenders. To obtain a large sample of DV cases, we combined data on DV cases in New York City from the first quarter of 2001 and the third quarter of 2002. For comparisons to non-DV cases, we used a sample of non-DV cases drawn only from the first quarter 2001 data set. The sample size of non-DV cases in the first quarter 2001 data set is sufficiently large to allow us to make reliable statistical comparisons with DV cases.

The analyses were limited to cases that were disposed in the lower court (Criminal Court) and excluded felony cases that were disposed in the upper court (Supreme Court). Because few DV cases were disposed in Supreme Court, the analyses provided information on 98% of the DV cases that resulted in criminal prosecution. The analyses of both DV and non-DV cases were further restricted to those with the types of charges that typically occur in cases involving interpersonal violence: assault, criminal contempt (for violating an order of protection), harassment, crimes against children, burglary, larceny, and weapons charges.

The data set analyzed in this study is a defendant-based data file that includes information on the first DV arrest of each defendant. For defendants with no DV arrests, we selected the defendant's first arrest for inclusion in the data set. This procedure enabled us to identify all the defendants who had at least one DV arrest and a comparison group.

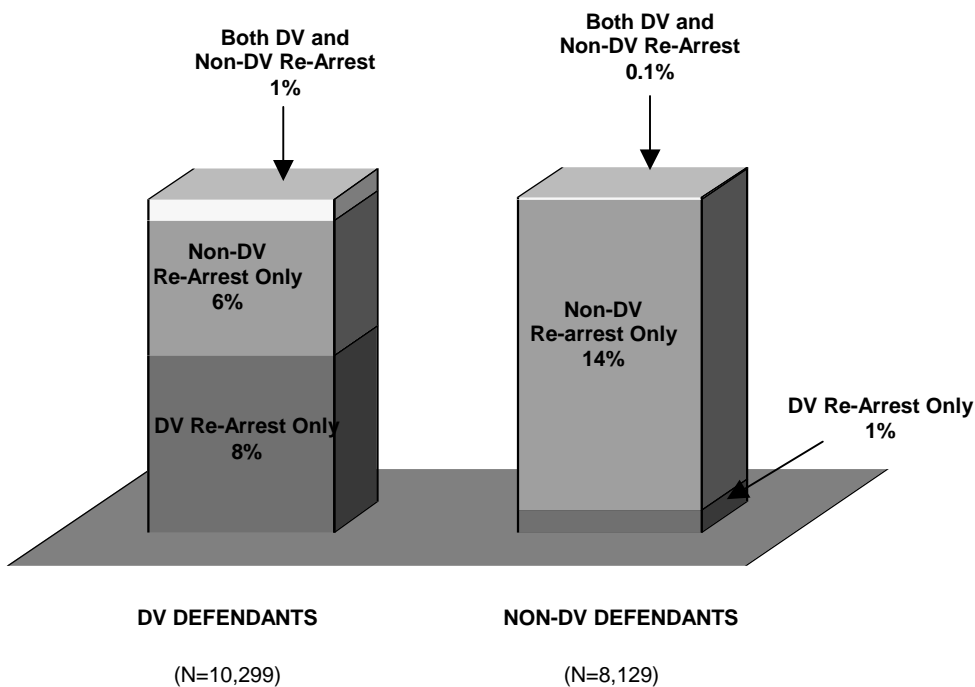
**Figure 1. Pretrial Re-Arrests on New Domestic Violence Charges: Domestic Violence and Non-Domestic Violence Defendants**



This finding suggests that victims may be at considerable risk of threats, intimidation, or retaliation after a DV offender is arrested. This conclusion is tentative, however, because the re-arrest data do not indicate whether the victim of the new DV offense during the pretrial period was the same as the victim in the original offense.

Next, we considered whether DV offenders are “generalists,” that is, high-rate offenders engaged in a general pattern of criminal behavior. Figure 2 presents data

**Figure 2. Charge Types for Pretrial Re-Arrests of Domestic Violence and Non-Domestic Violence Defendants**



on the charges brought on re-arrest of pretrial defendants, comparing new charges for those originally charged with DV offenses and non-DV offenses. It shows how many defendants were re-arrested only for DV offenses, only for non-DV offenses, or for both types of offenses during the pretrial period.

- ◆ Among the 15% of DV defendants who were re-arrested during the pretrial period, 8% were rearrested only for a new DV offense, 6% were re-arrested only for a new non-DV offense, and 1% were re-arrested for both DV and non-DV offenses.
- ◆ Among the 15% of non-DV defendants who were re-arrested during the pretrial period, 1% were rearrested only for a new DV offense, 14% were re-arrested only for new non-DV offenses, and only 0.1% were re-arrested for both DV and non-DV offenses.

These findings suggest that about half of DV defendants who were re-arrested were engaged in a general pattern of criminal behavior, including both DV and non-DV offenses. We might therefore consider this portion of the DV defendants to be generalists. The other half of DV defendants who were rearrested can be characterized as specialists, because they were known to engage only in DV offending, not in other criminal offending.

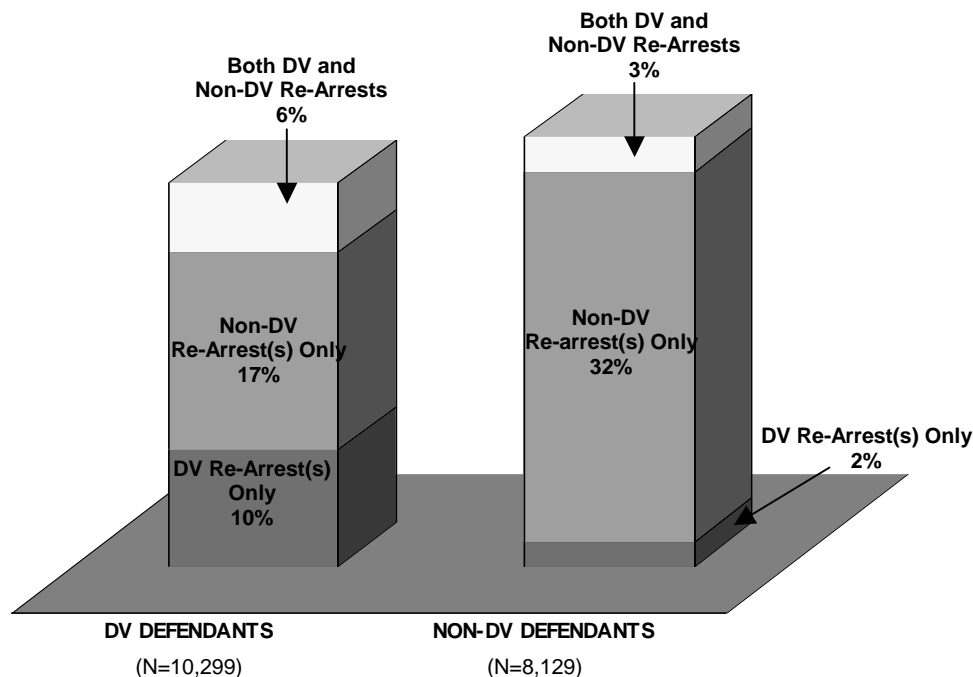
It is worth noting, however, that about 85% of both DV and non-DV defendants were not re-arrested for any new offenses during the pretrial period. Though they may have committed offenses for which they were not rearrested (and for which we therefore have no data), the evidence here suggests that most were not engaged in frequent offending. Of course, the pretrial period only conveys part of the picture of offending patterns. The average time the defendants were at risk for re-arrest (i.e., the average length of the pretrial period) was relatively short (88 days). This abbreviated time period may not be sufficient to determine whether most DV defendants are generalists or specialists.

If we extend our view to examine post-disposition re-arrests, data are available to address the question of specialization over a longer period. We examined re-arrests for each defendant for an 18-month period following disposition of the case (i.e., following the end of the pretrial period). For defendants who were sentenced to jail, the 18-month period began on the day of their release from jail.

As indicated in Figure 3, about 33% of DV defendants were re-arrested in the post-disposition period, while 37% of non-DV defendants were re-arrested. Over this longer time period, the distribution of type of offenses is different than the distribution in the pretrial period.

- ◆ In the post-disposition period, 10% of DV defendants were re-arrested only for DV offenses, 17% only for non-DV offenses, and 6% for both. This evidence indicates that only about one-third of DV defendants (10% of 33%, or 1,064 of 3,396) were “specialists,” committing only DV offenses. The remaining 23% of those rearrested appear to be involved in a general pattern of offending that includes both DV and non-DV offenses.
- ◆ Among the 37% of non-DV defendants who were re-arrested in the post-disposition period, 2% were re-arrested only for DV offenses, 32% only for non-DV offenses, and 3% for both DV and non-DV offenses. This suggests that a small proportion of initially non-DV offenders do cross over and commit DV offenses during the post-disposition period.

**Figure 3. Post-Disposition Re-Arrests for Domestic Violence and Non-Domestic Violence Defendants**



As observed in the discussion of pretrial re-arrests, most defendants were not re-arrested during the post-disposition period. About 67% of DV defendants and 63% of non-DV defendants were not re-arrested for any new offenses during the 18-month period following disposition.

## Conclusions

Two questions frame our findings:

- ◆ What risks do domestic violence defendants pose to DV victims during the pretrial period?
- ◆ Are DV defendants more likely to be specialists, committing only DV offenses, or generalists, committing a variety of types of offenses?

Data from New York City show that 9% of DV defendants were re-arrested for a new DV offense during the pretrial period. Because these defendants may also have committed other DV offenses that did not lead to re-arrest, the risk of new DV offenses is likely to be greater than 9%. The conclusion is that victims may be at considerable risk of threats, intimidation, or retaliation during the pretrial period.

Regarding the question of specialization, we found that about half of DV defendants who were re-arrested during the typical 3-month pretrial period were specialists, and half were generalists. However, looking at post-disposition re-arrests over an 18-month period, only one-third of DV defendants appeared to be specialists, and two-thirds showed a more generalist pattern. This makes clear that conclusions about the extent of specialization depend on the time period examined.

It is worth noting that data on the extent of specialization are limited to defendants who were re-arrested. Most DV defendants—about 85%—did not commit any offenses leading to re-arrest during the pretrial period, and 67% were not re-arrested during the 18-month post-disposition period. Of course, determining whether DV defendants actually committed offenses during either period that did not result in re-arrest would shed more light on the issue. Making this determination will require additional research using other data sources, such as interviews with victims. ◆

## References

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. <http://www.cja-reports.org/reports/release60.pdf>.

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*For more information:*

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

# Resources

## — Federal Agencies —

### **National Institute of Corrections, Pretrial Initiative**

<http://www.nicic.org/Pretrial>

### **National Institute of Justice, Pretrial Services Meeting**

<http://www.ojp.usdoj.gov/nij/topics/courts/pretrial/research-meeting/welcome.htm>

### **Bureau of Justice Statistics, Pretrial Release and Detention Statistics**

<http://www.ojp.usdoj.gov/bjs/pretrial.htm>

### **NCJRS, Pretrial Release and Services**

<http://www.ncjrs.gov/App/Topics/Topic.aspx?Topicid=42>

## — Organizations —

### **National Association of Pretrial Services Agencies**

<http://www.napsa.org>

### **Pretrial Justice Institute** (formerly the Pretrial Services Resource Center)

<http://www.pretrial.org>

## — Essentials —

### **Legal and Evidence Based Practices: Application of Legal Principles, Laws, and Research to the Field of Pretrial Services.**

VanNostrand, Marie. Luminosity, Inc. (St. Petersburg, FL); Crime and Justice Institute (Boston, MA); National Institute of Corrections (Washington, DC). 2007. 24 p.

<http://www.nicic.org/Library/022398>

### **Pretrial Justice: Principles and Practices.**

National Institute of Corrections Academy (Aurora, CO). 2007. 2 computer disks; DVD-ROM (118 min.) NIC accession no. 022489. Free copies available from the NIC Information Center.

### **NIC Online Library**

<http://www.nicic.org/Features/Library>

**NIC Information Center — 1-800-877-1461 or [asknicic@nicic.org](mailto:asknicic@nicic.org)**

