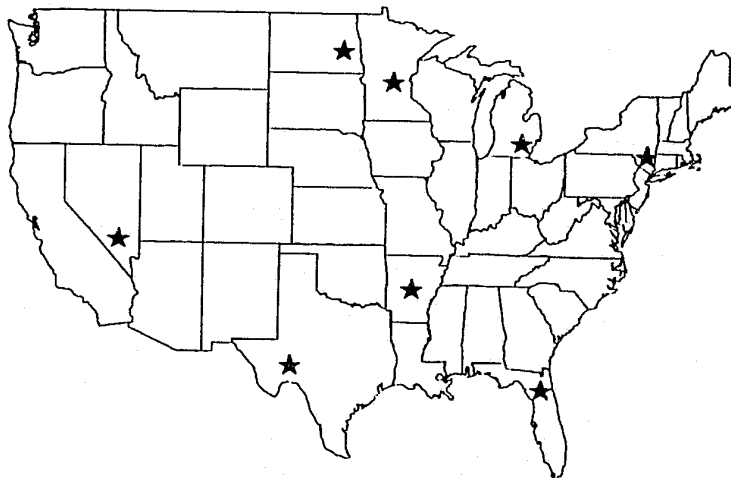


***Final Report of the Director of
The Administrative Office of the United States Courts***

on

***The Demonstration Program of Mandatory
Drug Testing of Criminal Defendants***



***Submitted to the Congress
of the United States***

March 29, 1991



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EXECUTIVE SUMMARY

Section 7304 of the Anti-Drug Abuse Act of 1988 required the Director of the Administrative Office of the United States Courts to establish a demonstration program of mandatory drug testing of criminal defendants in eight federal judicial districts. The program began January 1, 1989. To the extent feasible, pretrial testing was to be completed prior to the defendant's initial appearance before the judge or magistrate judge and the results of the test were to be included in the pretrial services report presented to that judicial officer. The legislation further provided that, for felony offenses occurring or completed in each of the judicial districts in the demonstration program on or after January 1, 1989, it was to be an additional, mandatory condition of probation or supervised release that defendants refrain from any illegal use of any controlled substances and submit to periodic drug tests for use of controlled substances at least once every 60 days. The following pilot districts were selected by the Judicial Conference: Eastern District of Arkansas, Middle District of Florida, Eastern District of Michigan, District of Minnesota, District of Nevada, Southern District of New York, District of North Dakota, and Western District of Texas.

FINDINGS

1. Initial appearance testing revealed that 31 percent of those defendants who submitted to urinalysis provided positive samples.
2. Criminal defendants overwhelmingly cooperated with court officials in providing samples; of those from whom a sample was requested only 19 percent refused to provide one.
3. Cocaine and marijuana are currently the most commonly identified drugs among criminal defendants in these districts.
4. On-site drug testing equipment has proven reliable and has permitted judicial officers to receive the results of testing prior to the initial appearance.
5. Pretrial services and probation officers have demonstrated their ability to quickly master the technical aspects of drug testing operations.
6. Of the 718 offenders in the post-conviction phase of the project, positive samples were submitted by 91 defendants (13 percent). Of the 4,979 tests which were taken, 248 tests (5 percent) were returned as positive.

CONCLUSIONS

The demonstration project has provided information about the possible consequences of establishing a nationwide system of drug testing in the federal district courts. A review of the results from the eight pilot districts leads to a number of conclusions, including the following:

- 1) Judges and magistrate judges overwhelmingly believe that pretrial drug testing is a valuable tool in implementing the provisions of the Bail Reform Act of 1984.
- 2) Pretrial services urine testing prior to the initial appearance requires on-site testing equipment.
- 3) Expansion of on-site drug testing into the entire federal district court system would necessitate constructing restrooms and testing facilities to accommodate the procedures.
- 4) Drug testing requires additional staff to implement.
- 5) Pretrial testing prior to the initial appearance identifies 31 percent of all tested defendants in the eight pilot districts as drug users. This compares with 24 percent of defendants nationally who admit to a substance abuse problem or a recent history of substance abuse during the pretrial services interview.
- 6) There is no evidence that increased post-conviction testing would increase the identification of substance abuse by those under the supervision of the federal probation system since current procedures identify the majority of drug users prior to this stage.
- 7) There have been no formal legal challenges to the constitutionality of pretrial drug testing in the federal system.

RECOMMENDATIONS

The Administrative Office of the United States Courts makes the following recommendations to Congress concerning drug testing programs in the federal district courts. The recommendations are based on the data which indicate that pretrial testing would enhance the current methods of post-conviction testing which are effectively administered in the federal courts.

- 1) Congress should authorize the expansion of pretrial services urinalysis tests for inclusion of the results in the pretrial

services report submitted to a judicial officer pursuant to 18 U.S.C. § 3154. Implementation of pretrial services drug testing would enhance the ability of judicial officers to assess the dangerousness posed by defendants who appear before them as required by 18 U.S.C. § 3142. It is estimated that implementation of this recommendation would cost \$31,240,000 the first year and \$24,800,000 in subsequent years.

- 2) Congress should not establish a system of mandatory post-conviction testing for all post-conviction felony offenders.

I. INTRODUCTION

Section 7304 of the Anti-Drug Abuse Act of 1988 required the Director of the Administrative Office of the United States Courts to establish a demonstration program of mandatory drug testing of criminal defendants in eight federal judicial districts. The program began January 1, 1989. The Director was required to report to Congress on the effectiveness of the demonstration program not later than 90 days after the first year of operation, with a final report not later than April 1, 1991, which is 90 days after the end of the program. The final report is to include recommendations as to whether mandatory drug testing of defendants should be made more general and permanent. This is the final report.

II. LEGISLATIVE PROVISIONS

On November 18, 1988, the President signed into law the Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690. Section 7304 of the Act required drug testing of defendants in criminal cases in eight pilot districts. The following pilot districts were selected by the Judicial Conference: Eastern District of Arkansas, Middle District of Florida, Eastern District of Michigan, District of Minnesota, District of Nevada, Southern District of New York, District of North Dakota, and Western District of Texas. To the extent feasible, drug testing was to

be completed prior to the defendant's initial appearance before a judge or magistrate judge and the results of the test were to be included in the pretrial services report presented to that judicial officer.

The legislation further provided that, for felony offenses occurring or completed in each of the judicial districts in the demonstration program on or after January 1, 1989, it was to be an additional, mandatory condition of probation or supervised release that defendants refrain from illegal use of any controlled substances and submit to periodic drug tests for use of controlled substances at least once every 60 days. Under the Act the requirement that drug tests be administered at least once every 60 days could be suspended upon motion of the Director of the Administrative Office or the Director's designee if, after at least 1 year of supervision, all of a defendant's drug tests proved to be negative. No action was to be taken against a person on probation or supervised release pursuant to a drug test unless the results of the test were confirmed, using gas chromatography techniques or other techniques determined by the Secretary of Health and Human Services to be of equivalent accuracy.

III. CONTEXT FOR TESTING

The initial appearance of criminal defendants in the federal district courts is secured in one of two ways; defendants are

either arrested and physically taken into court or are summoned to court by a written notice. In both cases, the United States pretrial services office (or United States probation office where there is no separate pretrial services office) is notified and arrangements are made for a pretrial services interview and investigation.

These investigations are undertaken by authority of 18 U.S.C. § 3154(1) for the purpose of providing judicial officers with verified information pertaining to the pretrial release or detention of criminal defendants. The Act provided that in the course of the investigation, a pretrial services officer would request that the defendant submit to a drug test. The results of drug testing performed prior to the initial appearance before a judicial officer were to be included in the pretrial services report to the court, provided the defendant did not refuse to take the test. If a judicial officer ordered the release of a defendant prior to trial under 18 U.S.C. § 3142(c), the judicial officer could order further periodic testing as a condition of the release.

Probation is a sentence which is currently given to about 30 percent of all convicted offenders. For certain offenses, the imposition of a prison sentence requires a person to serve a period of supervised release following confinement.

Under the Anti-Drug Abuse Act of 1988, all persons on probation or supervised release in districts in the demonstration program were to be tested at least once every 60 days. A

positive result at any time could cause an increase in the frequency of testing or a referral to a treatment agency. Persons with a special condition requiring drug treatment were referred to the drug specialist in the probation office and were subject to more frequent urinalysis.

IV. CURRENT DRUG TESTING POLICY

Quite apart from the demonstration program, the district courts, probation and pretrial services offices, and the Administrative Office of the United States Courts currently have identification and drug testing procedures in place in the federal system. An understanding of these procedures will facilitate comparison of the current system to the system in operation in the demonstration program.

A. PRETRIAL SERVICES DRUG TESTING AND SUBSTANCE ABUSE IDENTIFICATION PROCEDURES

Prior to a defendant's initial appearance a pretrial services interview and a pretrial services investigation are conducted. Drug abuse identification is an integral part of that investigation. Officers are trained to identify drug abusers. Frequently the drug abusing defendant will admit to a drug abuse problem during the interview. Current figures indicate that 24 percent all defendants who are interviewed admit to a substance abuse problem or a recent history of substance abuse.

Officers also search for evidence of substance abuse while conducting the pretrial services investigation. They accomplish this goal by speaking to friends and relatives of the defendant.

Other sources of information about substance abuse history include defendants' prior criminal records and motor vehicle records. Prior arrests or convictions for drug-related offenses indicate prior involvement with illegal substances. If the defendant has a prior conviction and the officer can locate a previous presentence report, it is likely to contain information about any known substance abuse history. Motor vehicle records are indicative of substance abuse problems if the defendant has any prior record for driving under the influence.

Currently, and aside from the demonstration project, drug testing of defendants at the pretrial stage is limited to those cases in which judicial officers order testing as a condition of release pursuant to 18 U.S.C. § 3142.

B. POST-CONVICTION DRUG TESTING AND SUBSTANCE ABUSE IDENTIFICATION PROCEDURES

Some 440,000 urinalysis tests were performed on convicted defendants in the federal criminal justice system in fiscal 1989 at a cost of \$3.1 million. In fiscal 1990, some 500,000 urinalysis tests were taken at a cost of \$4 million. In addition, there were 18,000 defendants treated for substance abuse problems in fiscal 1989 at a cost of \$14 million.

The following is a description of the procedures which were followed to identify drug abuse by these defendants.

Probation officers are trained to recognize physical and behavioral signs of drug abuse. As part of the investigation for a presentence report, each defendant is questioned by a probation officer about past and current drug abuse problems. If there is reason to believe the defendant is abusing drugs, the officer requests a urine sample for testing. Officers have access to pretrial services files which frequently contain information relative to drug abuse by particular defendants. Probation officers also interview family members and others further to assess the offender's drug abuse problems: information thus gathered may encourage the offender to admit he or she has a problem. Quite apart from the demonstration project, a number of districts require urinalysis as part of the presentence investigation.

If an offender is experiencing a drug abuse problem he or she is referred to a contract agency specializing in treatment. Mandatory urinalysis testing and drug abuse treatment are recommended by the probation officer as conditions of probation or supervised release when the presentence investigation reveals a drug abuse problem.

V. IMPLEMENTATION ISSUES

In six of the eight districts in the demonstration program, the pretrial release testing component was administered by a pretrial services office, and the post-conviction component was

administered by the probation office. In the District of North Dakota and the Eastern District of Arkansas, both components were administered by the probation office since there is no separate pretrial services office in these districts. Including branch offices within the eight districts, pretrial release testing was performed at 14 sites and post-conviction testing at 32 sites.

A. EQUIPMENT, SUPPLIES, AND SERVICES

PRETRIAL SERVICES PHASE

Section 7304(d) required that the results of testing be included in the report submitted to the judge or magistrate judge to assist in consideration of pretrial release pursuant to section 18 U.S.C. § 3154. These reports were submitted at the initial appearance of the defendant in court. Given the short timespan between arrest and initial appearance, it was determined that on-site urinalysis equipment, operated directly by pretrial services personnel, would be the only way to obtain test results in time to be of value to the judicial officer. Accordingly, on-site urinalysis equipment was purchased.

To operate the on-site testing equipment effectively, the pretrial services offices had to create testing facilities. This required the purchase of refrigerators to store chemical reagents, tables to store the testing equipment, and, in some instances, space alteration to create a secure area for the test operator. In addition, testing supplies had to be purchased--

laboratory coats, rubber gloves, reagents, surge protectors, and other related equipment.

Besides the direct costs associated with establishing the on-site urinalysis facilities, additional expenses were incurred for office and computer equipment and furniture for new personnel. Table I describes the equipment cost breakdowns for the pretrial services phase of the project.

TABLE I

**COSTS FOR EQUIPMENT, SUPPLIES, AND SERVICES
FOR PRETRIAL SERVICES PHASE**

ON-SITE TESTING UNITS	\$177,536
LABORATORY EQUIPMENT AND SUPPLIES	\$176,750
REFRIGERATORS	\$ 7,477
REAGENTS	\$362,930
LABORATORY CONFIRMATIONS	\$ 21,100
OFFICE EQUIPMENT	\$ 6,279
COMPUTERS	\$ 58,291
<u>OFFICE FURNITURE</u>	<u>\$ 35,157</u>
TOTAL COST	\$845,520

POST-CONVICTION PHASE

Section 7304(e) created an additional mandatory condition of release for probationers and supervised releasees convicted of felony offenses occurring or completed on or after January 1, 1989. It provided that such defendants were to refrain from illegal use of any controlled substance and submit to periodic

drug tests at least once every 60 days. The Administrative Office determined that there was no need for the immediate availability of test results as in the pretrial testing phase. To satisfy the requirements of section 7304(e), the Administrative Office increased the scope of its existing contract for testing urine samples at a central laboratory. Under this procedure, test results were not immediately available, but capital costs were avoided that would have been incurred by setting up on-site testing facilities in the demonstration project probation offices. The gas chromatography technology required by the statute in this phase of the project was only available at the contract laboratory. Testing at the laboratory had the additional advantage of confirming all positive test results by a methodology separate from the first, a feature not available in the district offices.

In demonstration project probation offices, the only equipment costs specifically related to the testing of defendants were for telephone answering machines and the supplies necessary for urine collection. The answering machines were necessary to set up a call-in system for surprise urinalysis tests of defendants. Table II presents the total cost of equipment, supplies, and services for the post-conviction phase of the project.

TABLE II
**COSTS OF EQUIPMENT, SUPPLIES, AND SERVICES
FOR THE POST-CONVICTION PHASE**

CONTRACTING OF SPECIMEN TESTS	\$ 39,516
SUPPLIES	\$ 4,084
OFFICE EQUIPMENT	\$ 8,639
<u>OFFICE FURNITURE</u>	<u>\$ 49,466</u>
TOTAL COSTS	\$101,705

B. TESTING METHODOLOGIES

Of the various on-site testing methodologies which were available, the Probation and Pretrial Services Division selected the immunoassay technique. This method was selected because it was the premier on-site testing methodology available; it had been widely used in similar criminal justice applications by other jurisdictions.

The quality of the testing methods employed in the demonstration project had been examined in a study prepared by the National Institute of Justice and the Bureau of Justice Assistance, A Comparison of Drug Testing Technologies. The primary objective of that study was to compare the accuracy of four routinely used analytical procedures for detecting drugs of abuse in urine, using gas chromatography/mass spectrometry (GC/MS) as the control test. The four procedures examined were three immunoassay methods (including the enzyme immunoassay method employed by the project) and thin layer chromatography.

The study analyzed both false positive and false negative accuracy problems.

False positive results occur when the screening at the local office indicates a positive result which is not later confirmed by the GC/MS technology. A false negative result occurs when the local screening process yields a negative result and the GC/MS technology identifies the presence of drugs in the urine. In the pretrial phase of the demonstration project, the incidence of false positive results was more serious than that of false negative results: false positive results could have adverse consequences for a defendant who in fact was not using illegal substances.

The three methods of immunoassay tests were found by the study to be of equal quality and all three were found to be superior to the thin layer chromatography method.

The following table shows false positive and false negative results for the equipment employed in the demonstration project for five of the six drugs for which screening was done.

The reader will note that in some instances there was a notably high rate of false negative test results. This did not translate into a high false negative test rate for individuals. Many individuals about to be tested will admit to drug abuse, but may not necessarily have a positive test result. Many individuals abuse more than one drug; thus a screen for six different drugs of abuse is likely to detect at least one abused

drug, even if one or more is missed. If there are subsequent tests, they may detect drug abuse that is missed the first time.

TABLE III

FALSE POSITIVE AND FALSE NEGATIVE RESULTS
FOR THE EQUIPMENT EMPLOYED IN THE DEMONSTRATION PROJECT

<u>ILLEGAL SUBSTANCE</u>	<u>% OF FALSE POSITIVE RESULT</u>	<u>% OF FALSE NEGATIVE RESULT</u>
OPIATES	2	17
COCAINE	2	23
MARIJUANA	2	29
PCP	2	21
AMPHETAMINES	2	2

The Probation and Pretrial Services Division maintained its own quality control program through a contract with a recognized toxicology expert. The program consisted of visits to the 14 demonstration testing locations to monitor the implementation of policies and procedures and the processing of test samples containing known quantities of drugs. Overall, the results indicated that the eight probation and pretrial services offices participating in the pretrial phase of the demonstration project were properly operating drug testing programs.

The initial screen performed was the same for pretrial services defendants at all sites. The initial screen tested for the presence of six drugs: amphetamines, benzodiazepines, cannabinoids, cocaine, opiates, and phencyclidine. In the

pretrial phase, any positive results were retested on the on-site equipment prior to the defendant's initial appearance. Any contested positive results were sent for confirmation to the contract laboratory.

In the post-conviction phase, all initial screens and confirmations were performed by the contractor. The initial screens included amphetamines, benzodiazepines, cocaine, opiates, and phencyclidine. At the request of the officer, tests were conducted for a wide variety of additional drugs, including cannabinoids.

C. PERSONNEL

The eight demonstration districts needed assistance to accommodate the responsibilities created by the drug demonstration project. The Probation and Pretrial Services Division explored the feasibility of contracting for the delivery of services. Chief pretrial services officers and chief probation officers were asked to inquire whether there were potential contractors available to provide the services required. None of the districts was able to identify contractors who were capable of meeting the requirements of the project.

For that reason, it was decided to implement the project by employing additional staff. Levels of staffing were determined by taking the request of each district and analyzing it against existing staffing levels, geographical considerations, and anticipated workload increases generated by the program. Three

categories of personnel were recommended for the project: probation and pretrial services officers, probation and pretrial services officer assistants, and clerical staff.

TABLE IV

PERSONNEL AND TRAVEL COSTS FOR PRETRIAL SERVICES PHASE

1989 COSTS

Pretrial Services Officers	6
Pretrial Services Officer Assistants	6
<u>Clerical Staff</u>	<u>2.5</u>
Total Personnel Expenditures	\$332,546
<u>Total Travel Cost</u>	<u>\$ 9,000</u>
1989 Dollar Cost	\$341,546

1990 COSTS

Pretrial Services Officers	13
Pretrial Services Officer Assistants	7
<u>Clerical Staff</u>	<u>6.5</u>
Total Personnel Expenditures	\$881,157
<u>Total Travel Cost</u>	<u>\$ 9,000</u>
1990 Dollar Cost	\$890,157
Total 1989 - 1990 Dollar Cost	\$1,231,703

Table IV contains the number of positions required to implement the pretrial services phase of the project in the eight districts. Due to the fact that additional personnel were added

in the second year of the project the 1989 and 1990 personnel costs are presented separately. In addition, the table contains total personnel expenditures and travel costs. The personnel costs for both phases of the project include salary and benefit costs for each position filled.

Table V presents the personnel figures for the post-conviction phase of the project.

TABLE V

PERSONNEL COSTS FOR POST-CONVICTION PHASE

1989 COSTS

Probation Officers	9
<u>Clerical Staff</u>	<u>6</u>
Total Personnel Cost	\$349,035
<u>Total Travel Cost</u>	<u>\$ 15,000</u>
1989 Dollar Cost	\$364,035

1990 COSTS

Probation Officers	11
<u>Clerical Staff</u>	<u>6</u>
Total Personnel Cost	\$648,230
<u>Total Travel Cost</u>	<u>\$15,000</u>
1990 Dollar Cost	\$663,230

Total 1989 - 1990 Dollar Cost	\$1,027,265
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Not reflected in the above tables are costs allocable to three positions which were assigned to the Probation and Pretrial Services Division on a temporary basis to administer the program.

VI. IMPLEMENTATION DESCRIPTION¹

A. ADMINISTRATIVE AND PROCEDURAL COMPLIANCE

Section 7304(d) directed pretrial services officers in demonstration districts to complete urine testing prior to a defendant's initial appearance in court and to include the results of the testing in the pretrial services report submitted to the judicial officer. The pretrial services officers in the participating districts completed the majority of their urinalyses in sufficient time to include the results in the pretrial services report. To assess compliance with this aspect of the law, the Probation and Pretrial Services Division interviewed 34 magistrate judges in the districts that conducted on-site pretrial testing.

The judicial officers interviewed indicated that in the vast majority of cases the pretrial services officers included the results of the drug tests in the reports, provided the defendant consented to the test. (See subsection A, Section X) Several judicial officers indicated willingness to delay hearings to facilitate the inclusion of the urinalysis results in the pretrial services reports. Generally, there was a good working relationship between the courts and pretrial services offices

¹ What follows is a description of implementation of testing in the pretrial phase, where the majority of the testing took place. Procedures for post-conviction testing generally followed procedures already in place for persons on probation and parole.

which facilitated the testing of defendants prior to their initial appearance before judicial officers.

Results were not included in the pretrial services report for the following reasons:²

Arresting agents did not produce a prisoner for testing.

There was inadequate pretrial services staff to process the number of defendants brought into custody.

The pretrial services officer received insufficient notice of a defendant's arrest, which resulted in a lack of time to obtain a specimen.

Insufficient time was allowed for collection or analysis of urine specimens prior to the initial appearance before a judicial officer.

The testing equipment failed.

Defendants who agreed to be tested could not provide specimens within the necessary time frame.

B. LOGISTICAL ISSUES

Pretrial services officers and assistants quickly gained expertise in the operation of the drug testing equipment. Chain-of-custody procedures were generally followed throughout the demonstration districts. Unfortunately, some districts did not have adequate restroom facilities or proper space for the testing equipment, refrigerator, and supplies. In most offices it was necessary to use public restrooms for the collection process. Privacy would be assured by posting a "testing in progress" sign. In smaller districts or rural sites, there were often problems

² The problem of refusals is addressed later in the report.

because standards call for an officer of the same gender as the subject actually to observe collection of the specimen. This was not always possible where the size of staff was limited.

C. DEFENDANT RESPONSE PATTERN AND LEGAL ACTION

There have been no formal challenges in the demonstration districts to the legality of the pretrial services urine testing program. This may have been because defendants were permitted, during the pilot program, to refuse to be tested. Most defendants who subsequently tested positive had admitted their drug use prior to the testing procedure.

There were 17 formal challenges in district courts to the reliability or validity of the urine testing results in the pretrial phase. Those challenges attempted to discredit the methodology employed, as opposed to a challenge of the individual results in a particular case. None of the challenges has been upheld. Pretrial services staff are confident about the accuracy of the test results.

Based on a review of the legislative history and an opinion by the General Counsel of the Administrative Office, in the course of the demonstration project defendants were advised they could decline testing. Approximately 19 percent of the defendants requested to submit a urine sample refused to provide one. (See Table VII). Some defendants refused to be tested on the advice of counsel.

Most demonstration sites reported an increase in drug supervision caseloads as a result of the demonstration testing program. The use of available treatment resources also increased, apparently as a direct result of the drug testing program. Some offices are requesting more financial resources for treatment and intervention purposes as a result of rising caseloads. (See Table IX).

Defendants who tested positive for illegal drug use were often given the opportunity to enter treatment programs. There were few revocations of bail in the course of the demonstration project: violations of the conditions of release most often resulted in modification of release conditions.

VII. STATISTICAL RESULTS FROM THE PRETRIAL SERVICES PHASE OF THE DEMONSTRATION PROJECT

The first of 13 pretrial services testing sites in the eight districts became operational on March 6, 1989. All 13 sites were operational as of May 3, 1989. An additional site, Fort Myers in the Middle District of Florida, began testing on October 1, 1990. As of December 31, 1990, a total of 8,162 urine samples had been tested prior to the first appearance of the defendant in court, and a total of 2,491 (31 percent) had tested positive for the presence of at least one drug. The number of defendants tested in each district, and the number of defendants who tested positive, are shown in the following table:

TABLE VI

PRE-INITIAL APPEARANCE TESTS AND RESULTS
(As of Dec. 31, 1990)

<u>District</u>	<u>Defendants Tested Before Initial Appearance</u>	<u>Number of Defendants Positive</u>	<u>Percentage</u>
ARKANSAS E	375	148	40
FLORIDA M	1,464	403	28
MICHIGAN E	928	283	31
MINNESOTA	687	188	27
NEVADA	653	158	24
NEW YORK S	2,440	950	39
NORTH DAKOTA	271	65	24
TEXAS W	<u>1,344</u>	<u>296</u>	<u>22</u>
TOTALS	8,162	2,491	31

A. DEFENDANTS WHO REFUSED TO PARTICIPATE

One of the major concerns in establishing a system of drug testing prior to the initial court appearance of defendants in criminal cases, was whether a system of mandatory testing might implicate defendants' constitutional rights. To avoid this issue the Administrative Office of the United States Courts established a policy which permitted defendants to refuse to be tested. The following table reflects the number and percentage of defendants who declined to submit to drug testing in each district.

TABLE VII
DEFENDANTS DECLINING TO SUBMIT SPECIMEN
PRIOR TO INITIAL APPEARANCE
(As of Dec. 31, 1990)

<u>District</u>	<u>Defendants Tested</u>	<u>Defendants Declined³</u>	<u>Total</u>	<u>Percentage</u>
ARKANSAS E	375	20	395	05
FLORIDA M	1,464	244	1,708	14
MICHIGAN E	928	813	1,741	47
MINNESOTA	687	107	794	14
NEVADA	653	87	740	12
NEW YORK S	2,440	129	2,569	05
NORTH DAKOTA	271	19	290	07
TEXAS W	<u>1,344</u>	<u>441</u>	<u>1,785</u>	<u>25</u>
TOTALS	8,162	1,860	10,022	19

In all but two districts, the majority of defendants were cooperative with the process and thus refusals were limited. The largest number of refusals occurred in the Eastern District of Michigan where 813 (47 percent) of the 1,741 defendants refused to submit a urine sample. In that district the federal public defender expressed the belief that having the defendant refuse to be tested created less of a negative impression on the judicial

³ This number does not include defendants who were not tested due to their unavailability or those unable to submit samples.

officer than having the defendant test positive for use of illegal substances.

The other district with a higher-than-average rate of refusals was the Western District of Texas. In that district, 441 (25 percent) of 1,785 defendants refused to participate in the program. The Western District of Texas conducts pretrial services drug testing in two of its seven locations. The majority of refusals occurred in the El Paso office. The chief pretrial services officer advised that in his opinion the number of refusals in that office was due to the officers' belief that the testing was an imposition on the defendant. A more effective presentation of the testing program to the defendants might have decreased the rate of refusal.

There was a higher incidence of refusal in the second year of the demonstration project than in the first. During the first year the overall refusal rate was 13 percent. During the second year the refusal rate was 23 percent, for a combined rate of 19 percent. While the rate of increase varied, in seven of the eight demonstration districts the refusal rate increased in the second year of the project. The eighth district, Arkansas Eastern, maintained a 5 percent refusal rate throughout the 2 year period.

B. DRUGS IDENTIFIED AMONG PRETRIAL DEFENDANTS

The most frequently identified drugs as determined by the test results, for defendants in the initial appearance aspect of the demonstration project, were cocaine and marijuana. One of the more interesting aspects of the drug use pattern was the very high incidence of multiple drug use; some defendants tested positive for two, three, and even four different drugs when they were arrested. Overall, cocaine was used more frequently than any other substance by those tested in the demonstration project. In six of the eight districts, however, marijuana was the most frequently used illegal substance. The reason cocaine appeared to be the drug of choice for the entire program is that its use in the Southern District of New York was so substantial that it outweighed the six districts where marijuana was the predominant drug.

There was also a change in the pattern of drug use from the first year to the second year of the project. In the first year, cocaine was the primary drug in seven of the eight demonstration districts. In the second year, marijuana was the most frequently identified drug in six of the eight demonstration districts.

Many defendants tested positive for more than one drug. Table VIII shows the frequency of positive results received for the six drugs for which the demonstration project tested.

TABLE VIII

DRUGS IDENTIFIED AT THE INITIAL APPEARANCE STAGE

<u>DISTRICT</u>	<u>POSITIVES</u>	<u>A</u>	<u>B</u>	<u>CA</u>	<u>CO</u>	<u>O</u>	<u>P</u>
ARKANSAS E	148	22	21	82	69	6	3
FLORIDA M	403	44	58	205	156	28	3
MICHIGAN E	283	28	34	126	130	48	0
MINNESOTA	188	22	16	89	69	13	0
NEVADA	158	17	26	82	58	9	3
NEW YORK S	950	61	59	280	714	157	17
NORTH DAKOTA	65	11	7	45	4	5	0
TEXAS W	296	41	32	170	96	33	1
TOTALS	2,491	246	253	1,079	1,296	299	27

Legend

A - Amphetamines	CO - Cocaine
B - Benzodiazepines	O - Opiates
CA - Cannabinoids	P - Phencyclidine

As the table demonstrates, of the 2,491 persons who tested positive during the initial appearance aspect of the project, only 27 (1 percent) tested positive for phencyclidine (PCP). Evidently the use of the drug PCP in the federal defendant population, at least in these eight districts, is minimal. This might warrant substitution of another drug for PCP in the future selection of the six screens to be administered by the pretrial services office prior to the initial appearance.

C. TESTS FOR PERSONS RELEASED ON PRETRIAL SERVICES SUPERVISION

Although drug testing as a condition of pretrial release was not specifically addressed in section 7304, the availability of on-site urinalysis equipment has made that condition an obvious one to be set in appropriate cases by magistrate judges. Table IX presents the numbers and percentages of positive urinalysis results for defendants under pretrial services supervision. The numbers presented in the table are based on tests performed and not on the number of defendants under supervision. Thus the positive results reported could include several positive tests involving the same defendant.

TABLE IX

TESTS FOR PERSONS RELEASED ON PRETRIAL SERVICES SUPERVISION

DISTRICT	TESTS	POSITIVES	<u>PERCENTAGE</u>
ARKANSAS E	2,750	518	19
FLORIDA M	6,692	953	14
MICHIGAN E	967	468	49
MINNESOTA	3,277	509	16
NEVADA	2,225	324	15
NEW YORK S	3,866	1,013	26
NORTH DAKOTA	410	59	14
TEXAS W	<u>933</u>	<u>226</u>	<u>24</u>
TOTALS	21,120	4,070	19

Policies regarding reaction by pretrial services officers and by judicial officers to positive test findings varied from district to district. In general, positive test results prompted more frequent testing and increased actions by the supervising officer, including more frequent counseling and referral to a substance abuse treatment agency. Where these techniques were successful, officers did not, in general, call upon judicial officers to hold hearings. This is consistent with court policies which allow pretrial services officers to employ discretion in reporting bail violations to judicial officers.

Similarly, judges and magistrate judges have demonstrated varied responses to notification of positive test results, ranging from directions for increased screening or treatment to bail revocation. The reader will note a number of instances in which no court action was taken in response to a report of a positive test result. Judicial officers reported they were generally satisfied with the availability of treatment resources and increased officer actions to control drug abuse.

Table X presents data on the number of positive tests reported to judicial officers and data on subsequent court actions for the last year of the demonstration project. The last year was selected to eliminate the possibility that any initial procedural problems could skew the data.

TABLE X

POSITIVE TESTS AND COURT ACTION TAKEN
FOR PERSONS RELEASED AND AWAITING TRIAL
(1990 ONLY)

<u>District</u>	<u>Tests Taken</u>	<u>Number of Positives</u>	<u>* Reported To Court</u>	<u>No Court Action</u>	<u>Bail Revocation</u>	<u>Change In Conditions</u>
Arkansas E	2,141	335	* 187	140	35	12
Florida M	4,456	546	* 230	34	75	121
Michigan E	540	246	* 48	22	16	10
Minnesota	1,957	230	* 81	5	62	14
Nevada	1,281	194	* 126	49	15	62
New York S	3,044	774	* 281	160	61	60
North Dakota	301	39	* 14	6	3	5
Texas W	644	134	* 88	50	24	14
Totals	14,364	2,498	* 1,055	466	291	298

D. EFFECTS OF DRUG TESTING ON PRETRIAL RELEASE AND
DETENTION RATES

When the Probation and Pretrial Services Division first undertook the implementation of the demonstration project there was some concern that pretrial testing might have a negative effect on pretrial release and might increase detention rates. In an effort to determine whether or not there was any such effect the Division has compiled the following data on initial release and detention rates for the eight demonstration districts. The data compare the 12-month time periods ending December 31, 1987, and December 31, 1988, prior to the

implementation of the project, with the 12-month periods ending December 31, 1989, and December 31, 1990.

While there was concern that detention would increase, it was also anticipated that drug testing might reduce detention because judicial officers with definitive information about whether or not a particular defendant had a substance abuse problem could then set specific conditions to address that risk.

As Table XI demonstrates, the demonstration project had virtually no apparent effect on initial appearance release or detention rates for the eight districts involved in the demonstration project. While the rates fluctuate, the changes do not correspond to the advent of testing in early 1989. The data in the table are cumulative for all eight districts. Each district was analyzed individually, and none showed any significant change in rates of release or detention at the initial appearance.

TABLE XI

**RELEASE AND DETENTION AT THE INITIAL HEARING
IN THE EIGHT DEMONSTRATION DISTRICTS**

YEAR	ACTIVE CASES	RELEASED	UNABLE TO POST BAIL	TEMPORARY DETENTION	HELD FOR DETENTION HEARING	PLED GUILTY	BAIL NOT SET
1987	5,796	59.2	7.2	5.9	25.5	.2	2.0
1988	7,209	48.8	8.1	3.2	29.6	9.3	1.0
1989	7,778	48.9	7.6	3.4	32.3	6.6	1.2
1990	9,377	43.7	5.6	3.3	29.1	.6	17.7

VIII. DEMOGRAPHIC DATA ON DEFENDANTS PARTICIPATING IN
INITIAL APPEARANCE TESTING

The Probation and Pretrial Services Division, by employing the general pretrial services database, has compiled information on those defendants who have participated in the demonstration project. The pretrial services database contains such information as defendant demographics, release or detention status, and pretrial release violations.

The application of the pretrial services database to the demonstration project presents some problems. The most significant problem is the limited universe of cases for which data are compiled. Thus, the pretrial system does not compile data on probation violations, on unlawful flight to avoid prosecution, or on persons subject to writ who are brought before federal judicial officers.

The net effect of the limitations was that the demographic data were based on 246 fewer cases than the 8,162 for which urinalysis tests were conducted. Given the number of cases which were reported, the shortfall had little effect.

The following tables present data on demographic variables. Since the categories are not equally weighted, and the data have not been tested, statistically or otherwise, the tables are set forth without any particular suggestions as to the significance of the data contained therein.

Table XII depicts positive and negative test results by drug and non-drug offenses.

TABLE XII

OFFENSE CHARGED AND TEST RESULT

	Test Positive		Test Negative		Totals	
	<u>NUMBER</u>	<u>%</u>	<u>NUMBER</u>	<u>%</u>	<u>NUMBER</u>	<u>%</u>
Charged With Drug Offense	1,349	39	2,083	61	3,432	100
Charged With Non-Drug Offense	933	21	3,551	79	4,484	100
TOTALS	2,282		5,634		7,916	

Table XIII presents data on those individuals who admitted to a substance abuse problem or a recent history of a substance abuse problem during the pretrial services interview. As the table demonstrates, some individuals who admitted to drug abuse problems did not test positive; this may suggest a continuing need to question defendants about drug abuse.

TABLE XIII

COMPARISON OF DEFENDANTS' ADMISSIONS AND TEST RESULTS

	Test Positive		Test Negative		Totals	
	<u>NUMBER</u>	<u>%</u>	<u>NUMBER</u>	<u>%</u>	<u>NUMBER</u>	<u>%</u>
Admit to Substance Abuse	1,384	57	1,033	43	2,417	100
Deny Substance Abuse	854	16	4,475	84	5,329	100
No Comment	44	26	126	74	170	100
Totals	2,282		5,634		7,916	

Table XIV presents data on individuals with or without prior arrests and convictions records, broken down by positive and negative test results. The lines across the table indicate that new variables are being presented.

TABLE XIV

PRIOR RECORD VARIABLES

PRIOR RECORD	Test Positive		Test Negative		Totals	
	<u>NUMBER</u>	<u>%</u>	<u>NUMBER</u>	<u>%</u>	<u>NUMBER</u>	<u>%</u>
Felony						
Arrests	1,072	36	1,876	64	2,948	100
Convictions	764	36	1,343	64	2,107	100
With Violence	350	37	607	63	957	100
Drug Related	553	43	773	57	1,286	100
Misdemeanor						
Arrests	937	35	1,765	65	2,702	100
Convictions	714	35	1,338	65	2,052	100
With Violence	171	37	288	63	459	100
Drug Related	304	52	280	48	584	100
No Prior Record	824	23	2,793	77	3,617	100

More defendants who had prior records, particularly those with prior drug offenses, tested positive than defendants without prior criminal histories.

Table XV presents data on those defendants who currently had other matters pending in the criminal justice system. Included are defendants who were, at the time of arrest, on pretrial release, probation, or parole.

TABLE XV

DEFENDANTS WITH PENDING MATTERS

	Test Positive		Test Negative		Totals	
	<u>NUMBER</u>	<u>%</u>	<u>NUMBER</u>	<u>%</u>	<u>NUMBER</u>	<u>%</u>
Pretrial Release	242	40	368	60	610	100
Probation	172	35	314	65	486	100
Parole	64	33	130	67	194	100
No Prior Record	824	23	2,793	77	3,617	100

As the above table demonstrates, given the 23 percent positive rate of defendants without a prior criminal record, more defendants who at the time of arrest had pending matters in the criminal justice system tested positive prior to the initial appearance than those who did not have prior criminal records.

The following tables represent the demographic variables of education, employment, sex, and age; and present data on the percentage of positive and negative test results within each of the horizontal axis distinctions. The tables indicate that while use of illegal substances is higher in certain demographic groups, it is a problem which appears in every demographic category.

TABLE XVI**EDUCATION**

	Test Positive		Test Negative		Totals	
	<u>NUMBER</u>	<u>%</u>	<u>NUMBER</u>	<u>%</u>	<u>NUMBER</u>	<u>%</u>
Less than HS Grad/GED	983	34	1,930	66	2,913	100
HS Grad/GED	743	31	1,692	69	2,435	100
College	411	24	1,311	76	1,722	100
College Grad	98	18	449	82	547	100
Post Grad	21	12	157	88	178	100
Unknown	26	22	95	78	121	100
Totals	2,282		5,634		7,916	

TABLE XVII**Employment Status**

	Test Positive		Test Negative		Totals	
	<u>NUMBER</u>	<u>%</u>	<u>NUMBER</u>	<u>%</u>	<u>NUMBER</u>	<u>%</u>
Employed	1,266	27	3,465	73	4,731	100
Unemployed	977	32	2,069	68	3,046	100
Unknown	39	28	100	72	139	100
Totals	2,282		5,634		7,916	

TABLE XVIII

Sex

	Test Positive		Test Negative		Totals	
	<u>NUMBER</u>	<u>%</u>	<u>NUMBER</u>	<u>%</u>	<u>NUMBER</u>	<u>%</u>
Male	1,944	30	4,650	70	6,594	100
Female	338	26	984	74	1,322	100
Totals	2,282		5,634		7,916	

TABLE XIX

Age

	Test Positive		Test Negative		Totals	
	<u>NUMBER</u>	<u>%</u>	<u>NUMBER</u>	<u>%</u>	<u>NUMBER</u>	<u>%</u>
Under 22 years	201	29	503	71	704	100
22 to 24 years	248	32	536	68	784	100
25 to 29 years	524	34	1,034	66	1,558	100
30 to 34 years	494	34	950	66	1,444	100
35+ years	815	24	2,611	76	3,426	100
Totals	2,282		5,634		7,916	

IX. STATISTICAL RESULTS FROM THE POST-CONVICTION PHASE OF THE DEMONSTRATION PROJECT

Post-conviction testing was undertaken in 32 sites in the eight demonstration districts. The following table lists the

offices within those districts which conducted post-conviction tests.

TABLE XX

POST-CONVICTION DEMONSTRATION TEST SITES

<u>DISTRICT</u>	<u>POST-CONVICTION TEST SITES</u>
Florida/Middle	Jacksonville, Tampa, Orlando, Sarasota, Fort Myers, Ocala, & Cocoa
New York/Southern	New York City, White Plains, Poughkeepsie, & Middletown
Michigan/Eastern	Detroit, Ann Arbor, Bay City, & Flint
Texas/Western	San Antonio, El Paso, Austin, Del Rio, Midland, Pecos, & Waco
Nevada	Las Vegas & Reno
Minnesota	Minneapolis & St. Paul
North Dakota	Fargo, Bismarck, Devils Lake, Minot, & Belcourt
Arkansas/Eastern	Little Rock

As stated in the previous section, the Anti-Drug Abuse Act of 1988 requires the Director of the Administrative Office to submit a final report to Congress on the effectiveness of drug testing and recommendations as to whether such testing should be made more general and permanent. Despite the fact that 13,941 defendants were charged with felonies in the eight pilot districts during 1989 and 1990, only 718 individuals became subject to the post-conviction provisions of the program during the 2-year period. The reasons for this result were:

- 1 - Some defendants were not convicted.
- 2 - The legislation applied only to individuals who were convicted of felonies which occurred or were completed on or after January 1, 1989.
- 3 - Some defendants were still in prison and hence not yet subject to post prison supervision.

The following table depicts the number of defendants entering the post-conviction phase of the program and the results of their tests. The population consisted of 718 persons who were convicted of felony offenses committed or concluded after January 1, 1989.

TABLE XXI

POST-CONVICTION TEST RESULTS

DISTRICT	NUMBER OF ELIGIBLE OFFENDERS	NUMBER OF OF TESTS	NUMBER OF POSITIVES	% OF TESTS POSITIVE
1. Arkansas/ ED	40	124	11	09
2. Florida/ MD	136	1,294	23	02
3. Michigan/ ED	64	342	20	06
4. Minnesota	51	236	27	11
5. Nevada	56	373	15	04
6. New York/ SD	166	772	112	15
7. North Dakota	47	685	13	02
8. Texas/ WD	<u>158</u>	<u>1,153</u>	<u>27</u>	<u>02</u>
TOTALS	718	4,979	248	05

Of the 718 defendants in the post-conviction phase of the project, 2 died while on supervision and 9 were deported. Both deaths and the majority of the deportations occurred prior to post-conviction testing.

A. DRUGS IDENTIFIED IN THE POST-CONVICTION PHASE

Of the 718 defendants in the population, 91 submitted positive samples. Probation officers took a total of 4,979 tests and received positive results on 248 (5 percent) of those samples. Almost half of those positives, 112 (45 percent), were collected in the Southern District of New York. None of the other districts approached the Southern District of New York's rate of positives. Next were the Western District of Texas and the District of Minnesota which each had 27 positives.

Of the 248 positive tests, 24 were positive for more than one drug. As with the pretrial services phase, the most samples, 130, were positive for cocaine, again due to the high volume of cocaine positives in the Southern District of New York. The second most frequently used substances were opiates, primarily morphine and codeine, which accounted for a total of 71 positives. Of the remainder, 38 were positive for benzodiazepines, 33 were positive for marijuana, 2 for barbiturates, and one each for amphetamines and PCP.⁴

⁴ In the post-conviction phase, unless the supervising probation officer requested a marijuana test from the laboratory, it was not performed.

One of the most interesting results of the post-conviction phase of the project was the small number of positives. Of the 4,979 tests conducted, only 248 (5 percent) were returned positive. There are two possible explanations for this outcome: the pretrial phase of the project may have been successful in deterring the majority of defendants from using drugs while they were under supervision; in the post-conviction phase of the project a number of individuals may have been tested for whom testing was not necessary.

To determine the efficacy of post-conviction testing of all felony offenders under supervision would have required an experimental and control group model. This approach was not authorized by the Anti-Drug Abuse Act of 1988 and was not employed. The report will attempt to address these issues in subsection C.

B. RESPONSE TO POST-CONVICTION SUPERVISION

One of the more interesting questions which needs to be addressed is how well defendants performed under supervision and whether or not there was a relationship between use of drugs and response to supervision. However, the data available for such analysis are limited. At the end of the first year there were only 116 offenders in the post-conviction phase of the project; thus most of the 718 defendants in the post-conviction phase have been supervised for less than one year. Therefore, the failures are too infrequent for any meaningful analysis.

Of the 718 offenders in the project, 15 (2.1 percent) had their supervision revoked, and 31 (4.3 percent) had violations pending before judicial officers. Those violations included absconding, rearrest, and drug use. Forty-six offenders (6.4 percent) faced formal charges of violating their supervision.

Of the 46 with formal violations pending, 14 offenders submitted a total of 49 positives. Since the 49 positives account for 20 percent of the 248 positives, and the defendants with formal charges pending accounted for only 6.4 percent of the population of 718, the possibility exists that there is a relationship between the use of drugs and the response of supervision. However, insufficient data inhibit any reliable conclusions.

C. COMPARISON OF OFFENDERS FOR WHOM DRUG ABUSE TREATMENT WAS A CONDITION OF SUPERVISION AND THOSE FOR WHOM TREATMENT WAS NOT A CONDITION

In an effort to assess the worth of testing all offenders, the Probation and Pretrial Services Division created a quasi-experimental design based on whether the court ordered the offender to participate in drug abuse treatment as a condition of post-conviction supervision. The rationale was simple. Since the judicial officers felt that these offenders (in addition to being tested) should submit to drug abuse treatment, they would have been tested whether or not Congress passed the law mandating testing of felony offenders. Therefore, they constituted a comparison group.

Of the 718 offenders, drug abuse treatment was ordered in 248 cases (35 percent). This category of offenders with drug abuse treatment conditions did not include those offenders for whom the judge set only alcohol abuse treatment as a condition of supervision. The remaining 470 did not have drug abuse treatment as a condition of post-release supervision.

When the two groups are compared, several distinctions become evident. Offenders who did not have a drug abuse treatment condition accounted for 65 percent of the population but only 50 percent (2,490) of the tests taken. Thus they were tested less frequently than those defendants who had a drug abuse condition, following the testing guidelines previously established by the Administrative Office of the United States Courts.

The data indicate that persons with drug abuse conditions are more likely to test positive since 23 percent of those defendants tested positive while only 7 percent of those without drug abuse conditions tested positive. The data suggest that the expansion of testing to those defendants without drug abuse conditions, which in effect is what the demonstration project accomplished, identified more drug use but, given the cost, not substantially more drug use.

Of the 470 defendants without drug abuse conditions, 34 (7 percent) submitted positive samples. Of the 2,490 tests that were conducted, only 67 (3 percent) were positive. Of the 248

individuals with drug abuse conditions, 57 (23 percent) submitted at least one positive sample.

One variable which might have significance is the presence or absence of a drug abuse history. Probation and pretrial services records for the 718 defendants in the post-conviction group were examined in an effort to determine which defendants had illegal drug abuse histories. Those with any drug abuse history were divided into three groups: defendants with drug abuse histories within the year of arrest; those with drug abuse histories within 2 to 5 years of arrest and those with drug abuse histories more than 5 years prior to the arrest. Those with no known drug abuse history were placed in a fourth category. There were 13 offenders for which no definitive data were available.

Of the 718 defendants, 389 (54 percent) had no drug abuse history which was known to either probation or pretrial services. During the demonstration project, 2,155 tests were taken involving these offenders, of which 30 (1.4 percent) were returned positive. A total of 18 of these offenders submitted positives, usually only one, for an offender positive rate of 4.6 percent. Thus, if testing had been ordered in only those cases with a drug abuse history available to the judicial officer at time of sentencing, the number of tests could have been reduced by 43 percent and only 30 positive specimens would have gone undetected.

While some further analysis needs to be done, data are still being collected on those offenders who were sentenced under the

provisions of the demonstration project. The initial data suggest that a target group of likely drug abusers could be identified. If such a group can be identified it would be more cost-effective, at least for post-conviction testing, to test only those individuals with drug abuse histories.

**D. ANALYSIS OF OFFENDERS PARTICIPATING
IN BOTH PHASES OF THE DEMONSTRATION
PROJECT**

Of the 718 individuals who were part of the post-conviction phase of the demonstration project, only 409 had also been subject to the pretrial services phase. This fall-off in the pretrial phase occurred for several reasons:

1. Testing equipment was unavailable during the early days of the demonstration project where some of the defendants had their initial appearance.
2. A number of offenders who were included in the post-conviction phase of the project had their initial appearance prior to the start of the project.
3. A number of defendants appearing at testing locations did not provide samples due to factors such as the volume of cases on a particular day or breakdowns in the testing equipment.

In the pretrial phase, of the 409 offenders from whom samples were requested, 53 (13 percent) refused to be tested. Of the 356 offenders who were tested, 112 (31 percent) were positive. In comparing those who tested positive at the initial appearance with those who tested negative, it becomes apparent that the system could identify the majority of offenders who are

likely to test positive on subsequent post-conviction supervision. The 112 offenders who tested positive initially accounted for 109 (44 percent) of all the positive tests submitted in the post-conviction phase, while the 244 offenders who tested negative at the initial appearance accounted for only 35 (14 percent) of all the positive tests submitted in the post conviction phase.

While initial appearance testing alone should not be the sole determinant of whether or not an offender is to be tested during post-conviction supervision, it could serve an important role in that regard. With a national system of initial appearance testing in place, mandatory post-conviction testing for all felony offenders would not be necessary to achieve the desired goal of a substantial reduction in drug use by offenders during post-conviction supervision.

X. INTERVIEWS WITH PARTICIPATING COURT PERSONNEL

A. JUDICIAL OFFICER REACTION

During the first year of the project, Probation and Pretrial Services Division staff conducted structured interviews with 3 chief district court judges, 2 district court judges, and 21 magistrate judges in the eight demonstration districts. The judicial officers were cautious about the program, and they varied considerably in their personal philosophies on pretrial drug testing. During the second year more comprehensive

interviews were conducted with all 8 chief judges and 34 magistrate judges regarding their experiences with the demonstration project. The following summarizes the results of those second-year interviews:

CHIEF JUDGES

- (1) ARE YOU AWARE OF ANY CONSTITUTIONAL CHALLENGES TO PRETRIAL DRUG TESTING WHICH MIGHT BE RAISED IF THE PROGRAM WERE TO BE IMPLEMENTED NATIONALLY BY CONGRESS AFTER THE DEMONSTRATION PROJECT?

Seven of the chief judges indicated "no," while one indicated drug testing violated the fifth amendment.

- (2) IS THE STATUTORY AUTHORITY PROVIDED BY CONGRESS IN THE ANTI-DRUG ABUSE ACT OF 1988 SUFFICIENT TO ACCOMPLISH THE TASK WHICH CONGRESS INTENDED, NAMELY "THE DRUG TESTING OF DEFENDANTS IN CRIMINAL CASES"?

All of the chief judges indicated "yes."

- (3) WAS THE IMPLEMENTATION OF THE PRETRIAL SERVICES PHASE OF THE DRUG TESTING DEMONSTRATION PROJECT DISRUPTIVE TO YOUR COURT PROCEEDINGS?

All of the chief judges indicated that the project was not disruptive to court proceedings.

- (4) HOW SIGNIFICANT A PROBLEM DO YOU FEEL SUBSTANCE ABUSE IS IN YOUR DISTRICT? (VERY IMPORTANT PROBLEM, SOMEWHAT IMPORTANT PROBLEM, IMPORTANT PROBLEM, SOMEWHAT UNIMPORTANT PROBLEM, VERY UNIMPORTANT PROBLEM)

Seven of the chief judges indicated that substance abuse was a very important problem, while one indicated that it was a somewhat important problem.

- (5) DO YOU FEEL THAT PRETRIAL SERVICES PROVIDES YOUR COURT WITH ADEQUATE TREATMENT ALTERNATIVES WHEN YOU ORDER TREATMENT AS A CONDITION OF RELEASE? IF YOU FEEL THEY DO NOT, WHAT AREAS NEED IMPROVEMENT?

Four of the chief judges indicated that there were sufficient resources available; two indicated that there was a shortage of in-patient facilities; one indicated that there was a shortage of in-patient and out-patient facilities; and one had no comment.

(6) REVIEW THE SEVEN MODELS OF DRUG TESTING POLICY THAT HAVE BEEN PREPARED AND SELECT THE ONE WHICH YOU FEEL WOULD BE MOST APPROPRIATE BASED ON THE EXPERIENCE OF YOUR DISTRICT?

Model 1 - Pretrial testing of all defendants prior to initial appearance before a judicial officer. Post-conviction testing of all felony and misdemeanor offenders charged with drug or weapons offenses.

Two chief judges selected this model.

Model 2 - Pretrial testing of all defendants prior to their initial appearance before a judicial officer. Post-conviction testing of all felony offenders.

One chief judge selected this model.

Model 3 - Pretrial testing of all defendants prior to their initial appearance before a judicial officer. One urinalysis test during the presentence investigation and one urinalysis test at the point of supervision intake for probation or supervised release.

Three chief judges selected this model.

Model 4 - Pretrial testing of all defendants prior to their initial appearance before a judicial officer. Post-conviction testing only when ordered by a judicial officer.

Two chief judges selected this model.

Model 5 - Pretrial testing of defendants and post-conviction testing of offenders based on the application of a drug user identification profile.

No chief judge selected this model.

Model 6 - No pretrial testing of defendants prior to their initial appearance before a judicial officer. Post-conviction testing of all felony

offenders and misdemeanor offenders convicted of drug and weapons offenses.

No chief judge selected this model.

Model 7 - No pretrial testing of defendants prior to their initial appearance before a judicial officer. Post-conviction testing of offenders based on the application of drug user identification profile.

No chief judge selected this model.

MAGISTRATE JUDGES

- (1) ARE YOU AWARE OF ANY CONSTITUTIONAL CHALLENGES TO PRETRIAL DRUG TESTING WHICH MIGHT BE RAISED IF THE PROGRAM WERE TO BE IMPLEMENTED NATIONALLY BY CONGRESS AFTER THE DEMONSTRATION PROJECT?

74 percent of the magistrate judges indicated that they were not, while 26 percent indicated that pretrial drug testing might be found to violate the 4th, 5th, 6th, and 14th amendments.

- (2) IS THE STATUTORY AUTHORITY PROVIDED BY CONGRESS, IN THE ANTI-DRUG ABUSE ACT OF 1988, SUFFICIENT TO ACCOMPLISH THE TASK WHICH CONGRESS INTENDED, NAMELY "THE DRUG TESTING OF DEFENDANTS IN CRIMINAL CASES?"

79 percent of the magistrate judges indicated "yes;" 9 percent indicated that testing should be strictly mandatory; 3 percent indicated that the defendant should be afforded the presence of counsel prior to submitting to testing; and 9 percent had no comment.

- (3) WAS THE IMPLEMENTATION OF THE PRETRIAL SERVICES PHASE OF THE DRUG TESTING DEMONSTRATION PROJECT DISRUPTIVE TO YOUR COURT PROCEEDINGS? (Figure I)

94 percent of the magistrate judges indicated "no," while 6 percent indicated the project caused delays in scheduling hearings.

- (4) HOW SIGNIFICANT A PROBLEM DO YOU FEEL SUBSTANCE ABUSE IS IN YOUR DISTRICT? (VERY IMPORTANT PROBLEM, SOMEWHAT IMPORTANT PROBLEM, IMPORTANT PROBLEM, SOMEWHAT UNIMPORTANT PROBLEM, VERY UNIMPORTANT PROBLEM) (Figure II)

67 percent of the magistrate judges indicated substance abuse was a very important problem; 15 percent indicated it was an important problem; 15 percent indicated it was a somewhat important problem; and 3 percent indicated it was a very unimportant problem.

- (5) DO YOU FEEL THAT PRETRIAL SERVICES PROVIDES YOUR COURT WITH ADEQUATE TREATMENT ALTERNATIVES WHEN YOU ORDER TREATMENT AS A CONDITION OF RELEASE? IF YOU FEEL THEY DO NOT, WHAT AREAS NEED IMPROVEMENT?) (Figure III)

50 percent of the magistrate judges indicated there were sufficient resources available; 32 percent indicate there was a shortage of in-patient facilities available; 15 percent indicated there was a shortage of in-patient and out-patient facilities available; and 3 percent had no comment.

- (6) WHICH COMPONENT OF THE DEMONSTRATION PROJECT DO YOU FIND MOST USEFUL? IN OTHER WORDS, IF THERE WERE BUDGET SHORTFALLS AND ONLY ONE PART OF THE PROGRAM COULD BE IMPLEMENTED NATIONALLY WHICH PART OF THE PROGRAM WOULD YOU CHOOSE? (INITIAL APPEARANCE, PRETRIAL SUPERVISION, OR PROBATION/SUPERVISED RELEASE TESTING) (Figure IV)

26 percent of the magistrate judges selected initial appearance testing; 62 percent selected pretrial supervision testing; while 12 percent selected probation/supervised release testing.

- (7) WHAT IMPACT, IF ANY, DO YOU FEEL THE PRETRIAL SERVICES PHASE OF THE PROJECT HAS HAD ON THE FOLLOWING AREAS:

Court Workload (Figure V)

No impact	82%
Delays scheduling hearings	9%
Expedites scheduling hearings	6%
No comment	3%

Pretrial Drug Use (Figure VI)

No impact	24%
Hard to measure this variable	38%
Minimal effect	3%
Deters use	21%
Identifies abusers	9%
No comment	5%

Pretrial Crime (Figure VII)

No impact	32%
Hard to measure this variable	44%
Deters crime	21%
Minimal effect	3%

Failure To Appear Rates (Figure VIII)

No impact	65%
Hard to measure this variable	15%
Reduces rate	12%
Increases rate	5%
Minimal effect	3%

Pretrial Detention Rates (Figure IX)

No impact	59%
Hard to measure this variable	24%
Increases rates	9%
Minimal	5%
No comment	3%

Pretrial Service To Court (Figure X)

No impact	32%
Enhances services	50%
Decreases services	15%
No comment	3%

- (8) **WERE YOU CONSISTENTLY PROVIDED WITH URINALYSIS RESULTS PRIOR TO INITIAL APPEARANCE OF A DEFENDANT?**

85 percent of the magistrate judges indicated "yes," while 15 percent indicated that refusals and machine problems did not allow results in all cases.

- (9) **DO YOU CONSIDER THE INFORMATION USEFUL IN DETERMINING WHETHER OR NOT A DEFENDANT SHOULD BE RELEASED? IF YOU CONSIDER THE INFORMATION USEFUL IN DETERMINING WHETHER OR NOT A DEFENDANT SHOULD BE RELEASED WHICH OF THE FOLLOWING BEST DESCRIBES THE VALUE YOU PLACE ON THAT INFORMATION? (SIGNIFICANT FACTOR, SOMEWHAT SIGNIFICANT FACTOR, ONE OF MANY FACTORS, SOMEWHAT INSIGNIFICANT FACTOR) (Figure XI)**

9 percent of the magistrate judges indicated the results were a significant factor; 21 percent indicated the results were a somewhat significant factor; 46 percent indicated the results were one of many factors; 12 percent indicated the results were a somewhat insignificant factor; and 12 percent did not use the results.

- (10) DO YOU CONSIDER THE INFORMATION PROVIDED BY THE URINALYSIS RESULTS USEFUL IN DETERMINING CONDITIONS OF RELEASE FOR A PARTICULAR DEFENDANT? IF YOU CONSIDER THE INFORMATION USEFUL IN DETERMINING RELEASE CONDITIONS WHICH OF THE FOLLOWING BEST DESCRIBES THE VALUE YOU PLACE ON THAT INFORMATION?
(SIGNIFICANT FACTOR, SOMEWHAT SIGNIFICANT FACTOR, ONE OF MANY FACTORS, SOMEWHAT INSIGNIFICANT FACTOR)
(Figure XII)

58 percent of the magistrate judges indicated the results were a significant factor; 24 percent indicated results were a somewhat significant factor; 12 percent indicated results were one of many factors; 3 percent indicated results were an insignificant factor; and 3 percent had no comment.

- (11) WHEN YOU ORDER URINALYSIS TESTING AS A CONDITION OF PRETRIAL RELEASE DO YOU FIND THE CURRENT SYSTEM OF IMMEDIATE RESULTS BENEFICIAL TO YOU OR WAS THE TRADITIONAL SYSTEM OF WAITING FOR THE RESULTS TO BE RETURNED FROM A LAB SUFFICIENT? (Figure XIII)

94 percent of the magistrate judges selected the current system of immediate results, while 6 percent selected the traditional system.

- (12) DO YOU EMPLOY INFORMATION GAINED FROM EITHER THE INITIAL APPEARANCE URINALYSIS TEST OR SUBSEQUENT PRETRIAL SERVICES SUPERVISION TESTS, IF ORDERED, WHEN SENTENCING A DEFENDANT? (Figure XIV)

74 percent of the magistrate judges indicated the results were used to formulate treatment conditions, while 24% indicated the results were not used.

- (13) REVIEW THE SEVEN MODELS OF NATIONAL DRUG TESTING POLICY THAT HAVE BEEN PREPARED AND SELECT THE ONE WHICH YOU FEEL WOULD BE MOST APPROPRIATE BASED ON THE EXPERIENCE OF YOUR DISTRICT.

Model 1 - Pretrial testing of all defendants prior to initial appearance before a judicial officer. Post-conviction testing of all felony offenders and misdemeanor offenders charged with drug or weapons offenses.

15 percent or 5 magistrate judges selected this model.

Model 2 - Pretrial testing of all defendants prior to their initial appearance before a judicial officer. Post-conviction testing of all felony offenders.

6 percent or 2 magistrate judges selected this model.

Model 3 - Pretrial testing of all defendants prior to their initial appearance before a judicial officer. One urinalysis test during the presentence investigation and one urinalysis test at the point of supervision intake for probation or supervised release.

6 percent or 2 magistrate judges selected this model.

Model 4 - Pretrial testing of all defendants prior to initial appearance before a judicial officer. Post-conviction testing only when ordered by a judicial officer.

29 percent or 10 magistrate judges selected this model.

Model 5 - Pretrial testing of defendants and post-conviction testing of offenders based on the application of a drug user identification profile.

32 percent or 11 magistrate judges selected this model.

Model 6 - No pretrial testing of defendants prior to their initial appearance before a judicial officer. Post-conviction testing of all felony offenders and misdemeanor offenders convicted of drug and weapons offenses.

3 percent or 1 magistrate judge selected this model.

Model 7 - No pretrial testing of defendants prior to initial appearance before a judicial officer. Post-conviction testing of offenders based on the application of a drug user identification profile.

No magistrate judge selected this model.

Own Model - 6 percent or 2 magistrate judges selected their own models:

(1) all pretrial defendants charged with drug offenses and post-conviction testing of all offenders.

(2) pretrial defendants by profile and post-conviction testing only when a substance abuse problem has been discovered.

No comment, 3 percent or 1 magistrate judge.

B. PRETRIAL SERVICES STAFF RESPONSE

Pretrial services staff were enthusiastic about the demonstration program. They were largely supportive and interested in seeing it implemented at the national level, provided it was accompanied by increased staffing and treatment intervention resources to counter rising caseloads.

Officers were convinced of the efficacy of on-site testing in their supervision of persons on pretrial release. Opinions were mixed as to the program's value in providing helpful information for development of pretrial release recommendations. More specifically, there was disagreement about the role of drug use in determining whether or not a defendant should be detained or released pending disposition of the case.

A total of six chief pretrial services officers were interviewed regarding their experiences with the demonstration project. Their responses follow:

(1) HOW ARE DRUG ABUSE AND DRUG OFFENSES AFFECTING YOUR CASELOAD?

Increased	4
No impact	2

(2) DO YOU FEEL THAT PRETRIAL TESTING IS A SUFFICIENT METHOD OF IDENTIFYING DRUG USE IN THE FEDERAL CRIMINAL POPULATION OR IS POST-CONVICTION TESTING ALSO A NECESSARY COMPONENT OF A COMPREHENSIVE DRUG TESTING PROGRAM?

Pretrial and post-conviction testing	4
Pretrial testing	2
Post-conviction testing	0

(3) WHAT RESOURCES WOULD YOU REQUIRE WERE CONGRESS TO IMPLEMENT A NATIONAL DRUG TESTING POLICY SIMILAR TO THAT CURRENTLY IN OPERATION IN THE DEMONSTRATION DISTRICTS?

Laboratory/Staff	2
Laboratory	1
Staff/Treatment Funds	2
None	1

(4) REVIEW THE SEVEN MODELS OF DRUG TESTING POLICY THAT HAVE BEEN PREPARED AND SELECT THE ONE WHICH YOU FEEL WOULD BE MOST APPROPRIATE BASED ON THE EXPERIENCE OF YOUR DISTRICT.

Model 1 - Pretrial testing of all defendants prior to initial appearance before a judicial officer. Post-conviction testing of all felony offenders and misdemeanor offenders charged with drug or weapons offenses.

No chief pretrial services officer selected this model.

Model 2 - Pretrial testing of all defendants prior to their initial appearance before a judicial officer. Post-conviction testing of all felony offenders.

No chief pretrial officer selected this model.

Model 3 - Pretrial testing of all defendants prior to their initial appearance before a judicial officer. One urinalysis test during the presentence investigation and one urinalysis test at the point of supervision intake for probation or supervised release.

Two chief pretrial services officers selected this model.

Model 4 - Pretrial testing of all defendants prior to initial appearance before a judicial officer. Post-conviction testing only when ordered by a judicial officer.

Two chief pretrial services officers selected this model.

Model 5 - Pretrial testing of defendants and post-conviction testing of offenders based on the application of a drug user identification profile.

One chief pretrial services officer selected this model.

Model 6 - No pretrial testing of defendants prior to their initial appearance before a judicial officer. Post-conviction testing of all felony offenders and misdemeanor offenders convicted of drug and weapons offenses.

No chief pretrial services officer selected this model.

Model 7 - No pretrial testing of defendants prior to initial appearance before a judicial officer. Post-conviction testing of offenders based on the application of a drug user identification profile.

No chief pretrial services officer selected this model.

Own Model - One chief pretrial services officer provided his model:

Voluntary testing of all pretrial defendants prior to initial appearance before a judicial officer.

Mandatory testing following initial appearance based on a profile or by court order.

A total of 50 pretrial services officers were interviewed regarding their experiences with the demonstration project. Their responses follow:

- (1) HOW HAS THE PRETRIAL SERVICES PHASE OF THE DRUG TESTING DEMONSTRATION PROJECT ENHANCED YOUR ABILITY TO PERFORM THE FUNCTIONS OF A U.S. PRETRIAL SERVICES OFFICER? (Figure XV)

Identifies abusers	92%
Supervision tool	4%
None	2%
No comment	2%

- (2) HOW HAS THE PRETRIAL SERVICES PHASE OF THE DRUG TESTING DEMONSTRATION PROJECT NEGATIVELY IMPACTED ON YOUR ABILITY TO PERFORM THE FUNCTIONS OF A U.S. PRETRIAL OFFICER? (Figure XVI)

Labor intensive	40%
None	52%
No comment	8%

- (3) DO YOU FEEL THAT THE METHODS EMPLOYED IN THE DEMONSTRATION PROJECT ARE MORE OR LESS EFFECTIVE THAN THE OLD METHOD OF TESTING ONLY THOSE INDIVIDUALS IDENTIFIED AS HAVING SUBSTANCE ABUSE PROBLEMS?

Demonstration project method more effective	98%
No comment	2%

- (4) REVIEW THE SEVEN MODELS OF NATIONAL DRUG TESTING POLICY THAT HAVE BEEN PREPARED AND SELECT THE ONE WHICH YOU FEEL WOULD BE MOST APPROPRIATE BASED ON YOUR EXPERIENCE WITH THE DEMONSTRATION PROJECT.

Model 1 - Pretrial testing of all defendants prior to initial appearance before a judicial officer. Post-conviction testing of all felony offenders and misdemeanor offenders charged with drug or weapons offenses.

8 percent or 4 officers selected this model.

Model 2 - Pretrial testing of all defendants prior to their initial appearance before a judicial officer. Post-conviction testing of all felony offenders.

16 percent or 8 officers selected this model.

Model 3 - Pretrial testing of all defendants prior to their initial appearance before a judicial officer. One urinalysis test during the presentence investigation and one urinalysis test at the point of supervision intake for probation or supervised release.

8 percent or 4 officers selected this model.

Model 4 - Pretrial testing of all defendants prior to their initial appearance before a judicial officer. Post-conviction testing only when ordered by a judicial officer.

18 percent or 9 officers selected this model.

Model 5 - Pretrial testing of defendants and post-conviction testing of offenders based on the application of a drug user identification profile.

28 percent or 14 selected this model.

Model 6 - No pretrial testing of defendants prior to their initial appearance before a judicial officer. Post-conviction testing of all felony offenders and misdemeanor offenders convicted of drugs and weapons offenses.

2 percent or 1 officer selected this model.

Model 7 - No pretrial testing of defendants prior to their initial appearance before a judicial officer. Post-conviction testing of offenders based on the application of a drug user identification profile.

No officer selected this model.

Own Model - 20 percent or 10 officers selected their own models which consisted of variations of models 1-7.

C. PROBATION PERSONNEL RESPONSE

A total of eight chief probation officers were interviewed regarding their experiences with the demonstration project.

Their responses follow:

- (1) HOW ARE DRUG ABUSE AND DRUG OFFENSES AFFECTING YOUR CASELOAD?

Increased	7
None	1

- (2) DO YOU FEEL THAT THE PROBATION PHASE OF THE PROJECT WAS MORE USEFUL AS A METHOD OF DETECTING OR PREVENTING DRUG USE?

Detecting drug use	2
Preventing drug use	1
Both	3
Neither	2

- (3) WHAT RESOURCES WOULD YOU REQUIRE WERE CONGRESS TO IMPLEMENT A NATIONAL DRUG TESTING POLICY SIMILAR TO THAT CURRENTLY IN OPERATION IN THE DEMONSTRATION DISTRICTS?

Laboratory/Staff	2
Treatment Funds/Staff	5
Laboratory/Training	1

- (4) DO YOU FEEL THAT PRETRIAL TESTING IS A SUFFICIENT METHOD OF IDENTIFYING DRUG USE IN THE FEDERAL CRIMINAL POPULATION OR IS POST-CONVICTION TESTING ALSO A NECESSARY COMPONENT OF A COMPREHENSIVE DRUG TESTING PROGRAM?

Pretrial testing	2
Pretrial and post conviction testing	6

- (5) REVIEW THE SEVEN MODELS OF NATIONAL DRUG TESTING POLICY THAT HAVE BEEN PREPARED AND SELECT THE ONE WHICH YOU FEEL WOULD BE MOST APPROPRIATE BASED ON THE EXPERIENCE OF YOUR DISTRICT.

Model 1 - Pretrial testing of all defendants prior to initial appearance before a judicial officer. Post-conviction testing of felony offenders and misdemeanor offenders charged with drug or weapons offenses.

Two chief probation officers selected this model.

Model 2 - Pretrial testing of all defendants prior to their initial appearance before a judicial officer. Post-conviction testing of all felony offenders.

One chief probation officer selected this model.

Model 3 - Pretrial testing of all defendants prior to their initial appearance before a judicial officer. One urinalysis test during the presentence investigation and one urinalysis test at the point of supervision intake for probation or supervised release.

No chief probation officer selected this model.

Model 4 - Pretrial testing of all defendants prior to their initial appearance before a judicial officer. Post-conviction testing only when ordered by a judicial officer.

Two chief probation officers selected this model.

Model 5 - Pretrial testing of defendants and post-conviction testing of offenders based on the application of a drug user identification profile.

Three chief probation officers selected this model

Model 6 - No pretrial testing of defendants prior to their initial appearance before a judicial officer. Post-conviction testing of all felony offenders and misdemeanor offenders convicted of drugs and weapons offenses.

No chief probation officer selected this model.

Model 7 - No pretrial testing of defendants prior to their initial appearance before a judicial officer. Post-conviction testing of offenders based on the application of a drug user identification profile.

No chief probation officer selected this model.

A total of 85 probation officers were interviewed regarding their experiences with the demonstration project. Their responses follow:

- (1) HOW HAS THE POST-CONVICTION PHASE OF THE DRUG TESTING DEMONSTRATION PROJECT ENHANCED YOUR ABILITY TO PERFORM THE FUNCTIONS OF A U.S. PROBATION OFFICER? (Figure XVII)

Identifies abusers	49%
Not at all	41%
Supervision tool	6%
No comment	4%

- (2) HOW HAS THE POST-CONVICTION PHASE OF THE DRUG TESTING DEMONSTRATION PROJECT NEGATIVELY IMPACTED ON YOUR ABILITY TO PERFORM THE FUNCTIONS OF A U.S. PROBATION OFFICER? (Figure XVIII)

Labor intensive	64%
Not at all	34%
No comment	2%

- (3) IN YOUR OPINION DID THE DEMONSTRATION PROJECT HAVE A DETERRENT EFFECT ON DRUG USE BY THOSE OFFENDERS WHO PARTICIPATED IN IT?

Yes	84%
No	12%
No comment	4%

- (4) REVIEW THE SEVEN MODELS OF NATIONAL DRUG TESTING POLICY THAT HAVE BEEN PREPARED AND SELECT THE ONE WHICH YOU FEEL WOULD BE MOST APPROPRIATE BASED ON YOUR EXPERIENCE WITH THE DEMONSTRATION PROJECT?

Model 1 - Pretrial testing of all defendants prior to initial appearance before a judicial officer. Post-conviction testing of felony offenders and misdemeanor offenders charged with drug or weapons offenses.

12 percent or 10 officers selected this model.

Model 2 - Pretrial testing of all defendants prior to their initial appearance before a judicial officer. Post-conviction testing of all felony offenders.

4 percent or 3 officers selected this model.

Model 3 - Pretrial testing of all defendants prior to their initial appearance before a judicial officer. One urinalysis test during the presentence investigation and one urinalysis test at the point of supervision intake for probation or supervised release.

19 percent or 16 officers selected this model.

Model 4 - Pretrial testing of all defendants prior to their initial appearance before a judicial officer. Post-conviction testing only when ordered by a judicial officer.

22 percent or 19 officers selected this model.

Model 5 - Pretrial testing of defendants and post-conviction testing of offenders based on the application of a drug user identification profile.

34 percent or 30 officers selected this model.

Model 6 - No pretrial testing of defendants prior to their initial appearance before a judicial officer. Post-conviction testing of all felony offenders and misdemeanor offenders convicted of drug and weapons offenses.

5 percent or 4 officers selected this model.

Model 7 - No pretrial testing of defendants prior to their initial appearance before a judicial officer. Post-conviction testing of offenders based on the application of a drug user identification profile.

No officer selected this model.

Own Model - 4 percent or 3 officers selected variations of models 1-7.

XI. COST PROJECTIONS

This section examines the cost of nationwide implementation of mandatory drug testing, using three different models of testing. As part of the on-site surveys conducted at

the eight demonstration districts, all participants were asked to review seven models of national drug testing policy that were prepared by the Probation and Pretrial Services Division and select the most appropriate model based on their experience with the demonstration project (Figure XIX). The two models most frequently selected and the demonstration project model are the subject of this cost analysis. Pretrial services phase cost estimates for all models will be divided into first year operational costs (nonrecurring) and yearly operational costs (recurring).

- 1) MODEL 1 - DEMONSTRATION PROJECT - Pretrial testing of all defendants prior to their initial appearance before a judicial officer. Post-conviction testing of all felony offenders.
- 2) MODEL 4 - Pretrial testing of all defendants prior to their initial appearance before a judicial officer. Post-conviction testing only when ordered by a judicial officer.
- 3) MODEL 5 - Pretrial testing of defendants and post-conviction testing of offenders based on the application of a drug user identification profile.

For all three models the number of projected defendants participating in the pretrial services phase is 50,000, based on the total number of criminal filings for fiscal year 1990. For purposes of this cost analysis, each district office that generated 100 or more criminal filings in fiscal year 1990 constitutes one testing site. This would result in the need to create 123 additional testing sites, beyond the 14 which became operational under the demonstration project. Those sites with

less than 100 criminal filings would mail their samples to the district headquarters office for testing.

For all three models the number of participants in the post-conviction phase is 38,000 based on the number of persons received for supervision in fiscal 1990. Of those offenders we are currently testing 6,600, and thus the cost estimates will reflect the increase of testing above the current level. It should be noted that post-conviction testing costs will increase yearly due to the fact the system will receive approximately 40,000 new cases each year which would be subject to the testing requirements. These new costs would be incurred while the system would still have significant numbers of offenders on supervision from previous years.

A. MODEL 1 - DEMONSTRATION PROJECT

PRETRIAL SERVICES PHASE

(1) COLLECTION COSTS:

Collection of specimens will be performed by pretrial services officers. Therefore, additional personnel will be required. There are no separate contract costs for collection of specimens.

(2) TESTING:

Testing will be accomplished by the use of on-site urinalysis equipment costing \$12,500 per unit at each of 123 sites. Ancillary costs include computers, supplies, equipment necessary for the

operation of the program, and the cost of laboratory confirmations for those individuals who contest positive test results.

(a) Initial Screen:

Costs reflect an initial test for 50,000 defendants at \$5 per screen. Based on the results of the demonstration project it is estimated that 31 percent or 15,500 defendants will test positive at initial screen. Positive results will require a second on-site confirmatory test at a cost of \$1.50 per defendant.

(b) Post-Initial Screen:

We estimate that 23 percent or 11,500 defendants who will be detained pending disposition of their case. The remaining 38,500 defendants will be released.

It is estimated that 11,935 defendants will submit to weekly testing for approximately 16 weeks at \$5 per test. Approximately 60,000 tests will require a second test at \$1.50 per test.

(c) Laboratory Confirmation:

Positive test results which are contested will require laboratory confirmation at a

cost of \$9 per test. It is estimated that 10,000 tests will require confirmation.

(d) Treatment:

Approximately 3,250 additional defendants will be identified as needing treatment.

(e) Personnel Costs:

Drug testing will create duties regarding the operation of the drug testing equipment and additional supervision responsibilities as a result of increased identification of substance abusers. It is estimated that 123 professional positions and 123 clerical positions will be required to implement the pretrial phase of the program.

NON-RECURRING COSTS:

ON-SITE TESTING UNITS	\$1,537,500
ANCILLARY EQUIPMENT (COMPUTERS, PRINTERS)	\$ 984,000
OFFICE FURNITURE	\$ 246,000
ON-SITE LABORATORY WITH RESTROOM	<u>\$4,097,500</u>
TOTAL NON-RECURRING COSTS	\$6,865,000

RECURRING COSTS:

SERVICE CONTRACT WARRANTIES (AFTER FIRST YEAR)	\$ 474,705
PERSONNEL (PRETRIAL SERVICES OFFICERS AND SUPPORT STAFF)	\$8,823,282
INITIAL SCREEN	\$ 250,000
RE-TEST POSITIVE TESTS	\$ 23,250

POSITIVE TRACK TESTS	\$ 954,800
RE-TEST POSITIVE TESTS	\$ 90,000
RANDOM TESTING	\$ 80,000
RE-TEST POSITIVE TESTS	\$ 15,000
LABORATORY CONFIRMATION COSTS	\$ 90,000
TREATMENT COSTS	<u>\$14,000,000</u>
TOTAL RECURRING COSTS	\$24,801,037
TOTAL PRETRIAL COSTS	\$31,666,037

POST-CONVICTION PHASE

(1) COLLECTION COSTS:

All parolees, probationers, and supervised releasees will be tested upon initial contact with the Probation System. Those that test negative will be tested weekly for 3 months and randomly once per month throughout the period of supervision. Those that test positive initially will be tested weekly for 1 year and randomly once a month thereafter. It is estimated that 32,400 new offenders will be tested. The demonstration project data indicates that 12 percent or 3,900 offenders will test positive at initial screen. It is further estimated that an additional 5 percent or 1,600 offenders will be identified in subsequent tests.

Negative Track

This includes 26,900 offenders x 21 collections for a total of 564,900 tests per year.

Positive Track

This includes 5,500 offenders x 52 collections for a total of 286,000 per year.

(2) TESTING COSTS:

Based on the above figures there will be a total of 850,900 samples analyzed at a cost of \$9 per screen. Associated costs of approximately \$1,200,000 will be realized for special tests, confirmations of contested positive tests and preparation of expert testimony by laboratory personnel.

(3) TREATMENT COSTS:

Of the 5,500 offenders in the positive track, it is projected that 50 percent will require intensive treatment with an average cost per year of \$1,600 per offender. The remaining 50 percent will require intervention or urine surveillance only with an average yearly cost of \$1,000 per offender.

(4) PERSONNEL COSTS:

Mandatory testing of all offenders will require additional personnel to meet the testing and treatment requirements of the program. It is

estimated that a total of 229 positions will be required to implement the post-conviction phase of the program.

COLLECTION COSTS	\$ 4,254,500
TESTING COSTS	\$ 7,658,100
CONFIRMATION COSTS	\$ 1,200,000
TREATMENT COSTS	\$ 7,150,000
PERSONNEL COSTS	<u>\$ 9,009,008</u>
TOTAL PROBATION COSTS	\$29,271,600
TOTAL PRETRIAL AND PROBATION COSTS	\$60,937,637

B. MODEL 4

PRETRIAL TESTING PHASE

The pretrial testing phase will be identical to Model 1 (all defendants will be tested prior to initial appearance). The demonstration project's results indicate that 31% of defendants tested positive prebail for at least one controlled dangerous substance.

NON-RECURRING COSTS:

ON-SITE TESTING UNITS	\$1,537,500
ANCILLARY EQUIPMENT(COMPUTERS, PRINTERS)	\$ 984,000
OFFICE FURNITURE	\$ 246,000
ON-SITE LABORATORY WITH RESTROOM	<u>\$4,097,500</u>
TOTAL NON-RECURRING COSTS	\$6,865,000

RECURRING COSTS:

SERVICE CONTRACT WARRANTIES (AFTER FIRST YEAR)	\$ 474,705
PERSONNEL (PRETRIAL SERVICES OFFICERS AND SUPPORT STAFF)	\$ 8,823,282
INITIAL SCREEN	\$ 250,000
RE-TEST POSITIVE TESTS	\$ 23,250
POSITIVE TRACK TESTS	\$ 954,800
RE-TEST POSITIVE TESTS	\$ 90,000
RANDOM TESTING	\$ 80,000
RE-TEST POSITIVE TESTS	\$ 15,000
LABORATORY CONFIRMATION COSTS	\$ 90,000
TREATMENT COSTS	<u>\$14,000,000</u>
TOTAL RECURRING COSTS	\$24,801,037
TOTAL PRETRIAL COSTS	\$31,666,037

POST-CONVICTION TESTING PHASE

Model 4 envisions testing offenders post-conviction only when ordered by the judicial officer. Pretrial testing of all defendants should increase the percentage of offenders with substance abuse conditions requiring testing and treatment. Therefore, it is estimated that the percentage of offenders with substance conditions ordered by the judicial officer as part of the sentence will increase to 30 percent under this model or an increase of 3,040 offenders. By avoiding universal testing of probationers and supervised releasees, costs will be appreciably decreased.

COLLECTION COSTS	\$ 790,400
TESTING COSTS	\$ 1,422,720
CONFIRMATION COSTS	\$ 125,000
TREATMENT COSTS	\$ 3,952,000
PERSONNEL COSTS	<u>\$ 5,380,050</u>
TOTAL PROBATION COSTS	\$18,783,770
TOTAL PRETRIAL AND PROBATION COSTS	\$50,449,807

C. MODEL 5

PRETRIAL TESTING PHASE

The pretrial testing phase requires testing defendants prior to initial appearance based on a drug user identification profile. This approach eliminates blanket testing of all defendants and focuses on a target group of pretrial defendants that share common characteristics which collectively suggest a history of drug abuse. For purposes of this cost analysis, the application of the drug user identification profile results in a core group of pretrial defendants consisting of 50 percent of the baseline pretrial defendants or 25,000 defendants. The demonstration project's data indicate that 31 percent of pretrial defendants tested positive for at least one controlled dangerous substance.

NON-RECURRING COSTS:

ON-SITE TESTING UNITS	\$1,537,500
ANCILLARY EQUIPMENT (COMPUTERS, PRINTERS)	\$ 984,000
OFFICE FURNITURE	\$ 246,000

ON-SITE LABORATORY WITH RESTROOM	<u>\$4,097,500</u>
TOTAL NON-RECURRING COSTS	\$6,865,000

RECURRING COSTS:

SERVICE CONTRACT WARRANTIES (AFTER FIRST YEAR)	\$ 474,705
PERSONNEL (PRETRIAL SERVICES OFFICERS AND SUPPORT STAFF)	\$6,599,528
INITIAL SCREEN	\$ 250,000
RE-TEST POSITIVE TESTS	\$ 23,250
POSITIVE TRACK TESTS	\$ 954,800
RE-TEST POSITIVE TESTS	\$ 90,000
RANDOM TESTING	\$ 80,000
RE-TEST POSITIVE TESTS	\$ 15,000
LABORATORY CONFIRMATION COSTS	\$ 90,000
TREATMENT COSTS	<u>\$14,000,000</u>
TOTAL RECURRING COSTS	\$22,577,283
TOTAL PRETRIAL COSTS	\$29,442,283

POST-CONVICTION TESTING PHASE

The post-conviction testing phase requires testing offenders based on the application of a drug user identification profile. Pretrial supervision testing will serve to identify a significant number of substance abusers. Consequently, application of the drug user identification profile at the post-conviction phase will narrow the focus of offender testing. For purposes of this cost analysis, the drug user identification profile will result in a core group of offenders consisting of 40 percent of the

baseline of post-conviction offenders or 15,200 offenders. This is an increase of 8,600 offenders which would not have been tested under current practices. As with the other models this increase in testing comprises the actual cost of applying this testing policy.

COLLECTION COSTS	\$ 2,236,000
TESTING COST	\$ 4,024,800
CONFIRMATION COSTS	\$ 750,000
TREATMENT COSTS	\$ 3,952,000
PERSONNEL COSTS	<u>\$ 5,380,050</u>
TOTAL PROBATION COSTS	\$16,342,850
TOTAL PRETRIAL AND PROBATION COSTS	\$45,785,133

XII. RESULTS OF DRUG TESTING PROJECTS IN STATE AND LOCAL JURISDICTIONS

In view of the fact that the federal demonstration project was not designed to address such questions as the ability of drug testing to reduce recidivism, absconding, crime on bail, or failure to appear, the Administrative Office prepared a literature review of the various state and local programs which were designed to address these issues. This information should prove useful to Congress in determining an appropriate drug testing policy for the federal courts.

A. PRETRIAL TESTING PROGRAMS

This section provides detailed descriptions and findings from drug testing projects in Prince George's County, Maryland; Milwaukee, Wisconsin; Pima County, Arizona; and Maricopa County, Arizona carried out between 1987 and 1989 under the auspices of a grant from the Bureau of Justice Assistance, United States Department of Justice. Pretrial drug testing for these sites had two principal aims:

- (A) To provide the judicial officer presiding at the initial appearance with an objective measure of defendant drug abuse for the bail/pretrial release determination and;
- (B) To serve as a conditional release tool for preventing possible flight and/or crime by defendants during pretrial release. The theory underlying the urine monitoring conditional release option was based on three related premises. The first was that urine monitoring would serve as a deterrent to further drug use among released defendants and, thereby, discourage the crime typically associated with it. The second reasoned that if a monitored defendant failed to desist from drug abuse during release and/or failed to attend required urinalysis appointments, the pretrial services program would have an early indication of likely misconduct by the defendant thereby affording the court the opportunity to revoke release or impose more restrictive conditions to prevent further crime or flight. The third premise reasoned that through urine monitoring the court could identify and refer to treatment those defendants who had substance abuse problems thereby reducing reliance on drugs and reducing the likelihood of further crimes. The evaluation procedures utilized at all sites compared pretrial release practices with and without drug testing and divided defendants into two groups:
 - (a) Those exposed to drug monitoring (the experimental group)

(b) Those not monitored (the control group).

Participants for each group were randomly assigned to either the control or experimental group. Both groups were similar except for their exposure to drug testing. By contrasting arrest and court appearance records of both groups each site was able to determine whether drug-monitored defendants were arrested or failed to appear less than the control group.

Preceding the descriptions and findings from these drug testing projects will be a description of the findings from the District of Columbia Pretrial Services Agency's drug testing project.

WASHINGTON, DC

Beginning in March 1984, the District of Columbia Pretrial Services Agency implemented a comprehensive pretrial urine testing program under the auspices of the National Institute of Justice. The purpose for the testing program was twofold: 1) to provide a more reliable method (via urine testing in the lockup) for the bail-setting judicial officers to determine whether a defendant had recently used a controlled dangerous substance; and 2) to offer the court a reasonable and reliable new condition of pretrial release--periodic urine testing, monitored by the Pretrial Services Agency--which would reduce the risk of failure to appear and the risk of pretrial rearrest, while providing a signaling mechanism for pretrial release risk. An evaluation of the program was conducted focusing on the 8-month period from

June 1984 to January 1985. The salient findings from the evaluation are summarized under the following categories: (1) Analysis of Drug Use Among Arrestees and (2) Periodic Urine Testing as a Signaling Device for Pretrial Release Risk.

(1) Analysis of Drug Use Among Arrestees:

A total of 5,913 arrestees were tested pre-initial appearance and 54% tested positive for at least one controlled dangerous substance. 44% of the drug users identified by urine tests reported to pretrial interviewers that they were abusing drugs. Drug use by offense data indicated that a substantial percentage of defendants in all offense categories tested positive for substance abuse. Comprehensive identification of drug using arrestees seemed to require urine testing of all arrestees regardless of the underlying offense.

(2) Periodic Urine Testing as a Signaling Device for Pretrial Release Risk:

Use of urine test results improved risk classification of arrestees regarding pretrial rearrest, failure to appear and overall pretrial misconduct. Periodic urine testing of defendants released before trial also served as an effective "signaling" mechanism of post-release risk. Successful participants in the program had rates of pretrial rearrest and failure to appear that were one half the rates for non-participants (that is, those who did not show up for urine testing or who dropped out right away). By continuing to appear for urine testing, defendants signaled that they posed low risks of pretrial misconduct. The following table reflects the pretrial rearrest and failure to appear rates for defendants by urine testing status.

URINE TESTING STATUS	FTA RATE	REARREST RATE
Participated in testing	16.4%	16.9%
Dropped out of testing	33.1%	33.4%

The results of the analysis of the pretrial urine testing program for released defendants suggested that the program operated as an effective signaling mechanism. Those defendants who complied with the urine testing requirements had sharply lower rates of failure to appear and rearrest.

PRINCE GEORGE'S COUNTY, MARYLAND

The target group consisted of 506 defendants divided into a control and an experimental group. The data from this project revealed that 69 percent of the experimental group tested positive pre-initial appearance for at least one controlled dangerous substance. Failure to appear and rearrest rates varied minimally between both groups.

	Experimental Group	Control Group
FTA	17.5%	28.6%
REARREST	14.6%	14.3%

MILWAUKEE, WISCONSIN

The target group consisted of 1,022 defendants divided into an experimental and a control group. The statistics from this project revealed that 51 percent of the defendants exposed to experimental drug testing resulted in positives at the pre-initial appearance for at least one controlled dangerous substance. Failure to appear and rearrest rates varied very little in both groups.

	Experimental Group	Control Group
FTA	20.5%	17.2%
REARREST	14.1%	11.7%

PIMA COUNTY, ARIZONA

The target group consisted of 523 defendants divided into an experimental and a control group. The data from this project revealed that 60 percent of the experimental group tested positive pre-initial appearance for at least one controlled dangerous substance. Failure to appear and rearrest rates varied insignificantly between both groups.

	Experimental Group	Control Group
FTA	9.0%	9.4%
REARREST	6.8%	4.2%

MARICOPA COUNTY, ARIZONA

The target group consisted of 1,024 defendants divided into an experimental and a control group. The data from this project revealed that 42 percent of the experimental group tested positive for at least one controlled dangerous substance. Failure to appear and rearrest rates varied insignificantly between both groups.

	Experimental Group ⁵	Control Group
FTA	33.9%	29.3%
REARREST	40.7%	34.4

While the results from these state operated demonstration projects reveal little correlation between drug testing and failure to appear and rearrest rates, the data do suggest that testing and supervision:

- (1) Increase the effectiveness of traditional pretrial screening methods of identifying substance abusers;
- (2) Enhance the ability of the judicial officers to make more informed pretrial decisions;
- (3) Provide for more intensive supervision of the arrestee if released during the pretrial stage;
- (4) Contribute to more effective use of detention facilities; and
- (5) Serve as a viable alternative to detention through a court supervised program focused on the arrestee's drug abuse patterns.

⁵ These figures reflect a data collection problem that occurred at the inception of the project. Failure to report for monitoring resulted in defendants who were never part of the project being counted as participants of both groups (control and experimental). Consequently, the FTA and rearrest rates were not representative of the actual project participants.

XIII. CONCLUSIONS

The demonstration project has provided information about the possible consequences of establishing a nationwide system of drug testing in the federal district courts. A review of the results from the eight pilot districts leads to a number of conclusions, including the following:

- 1) Judges and magistrate judges overwhelmingly believe that pretrial drug testing is a valuable tool in implementing the provisions of the Bail Reform Act of 1984.
- 2) Pretrial services urine testing prior to the initial appearance requires on-site testing equipment.
- 3) Expansion of on-site drug testing into the entire federal district court system would necessitate constructing restrooms and testing facilities to accommodate the procedures.
- 4) Drug testing requires additional staff to implement.
- 5) Pretrial testing prior to the initial appearance identifies 31 percent of all tested defendants in the eight pilot districts as drug users. This compares with 24 percent of defendants nationally who admit to a substance abuse problem or a recent history of substance abuse during the pretrial services interview.
- 6) There is no evidence that increased post-conviction testing would increase the identification of substance abuse by those under the supervision of the federal probation system since current procedures identify the majority of drug users prior to this stage.
- 7) There have been no formal legal challenges to the constitutionality of pretrial drug testing in the federal system.

XIV. RECOMMENDATIONS

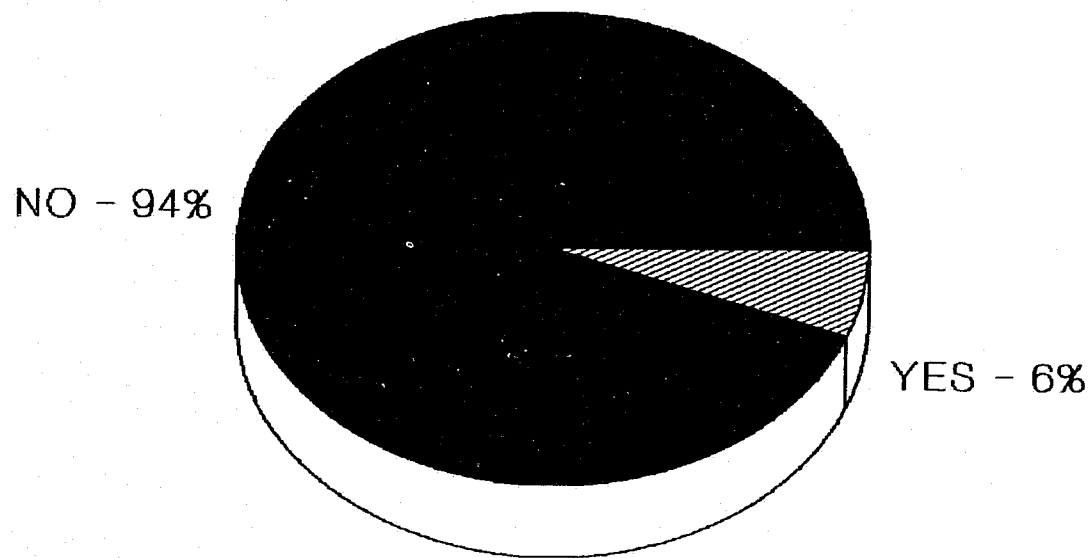
The Administrative Office of the United States Courts makes the following recommendations to Congress concerning drug testing programs in the federal district courts. The recommendations are based on the data which indicate that pretrial testing would enhance the current methods of post-conviction testing which are effectively administered in the federal courts.

- 1) Congress should authorize the expansion of pretrial services urinalysis tests for inclusion of the results in the pretrial services report submitted to a judicial officer pursuant to 18 U.S.C. § 3154. Implementation of pretrial services drug testing would enhance the ability of judicial officers to assess the dangerousness posed by defendants who appear before them as required by 18 U.S.C. § 3142. It is estimated that implementation of this recommendation would cost \$31,240,000 the first year and \$24,800,000 in subsequent years.
- 2) Congress should not establish a system of mandatory post-conviction testing for all post-conviction felony offenders.

APPENDIX

INTERVIEW RESULTS

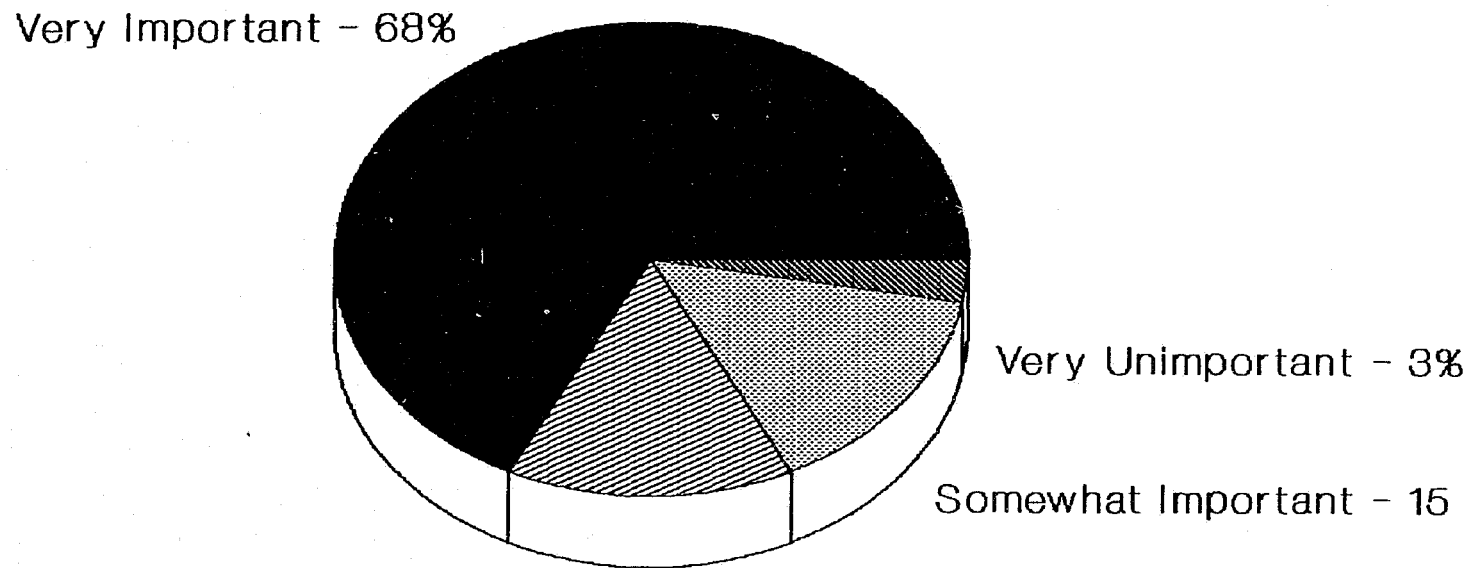
Was Implementation of Drug Testing Project Disruptive to Court Proceedings?



Magistrate Judges
n = 34

Figure 1

Significance of Substance Abuse Problem in Your District



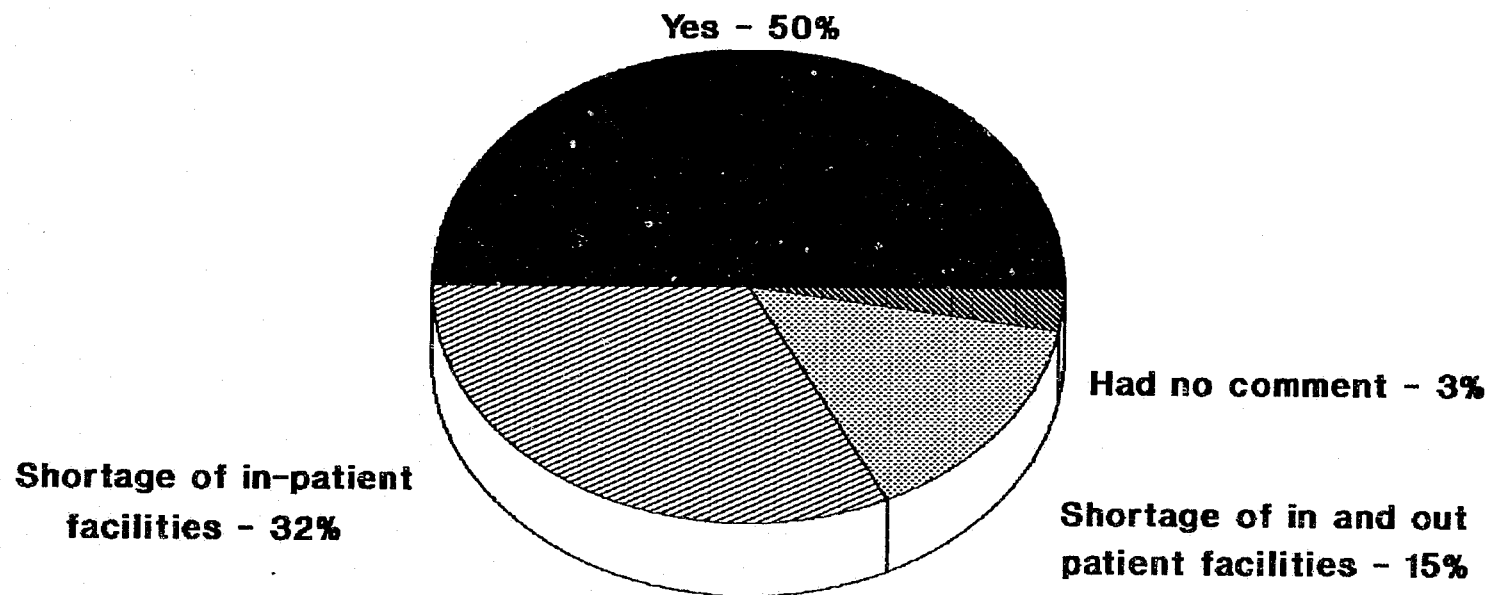
Important - 15%

Magistrate Judges

n = 34

Figure II

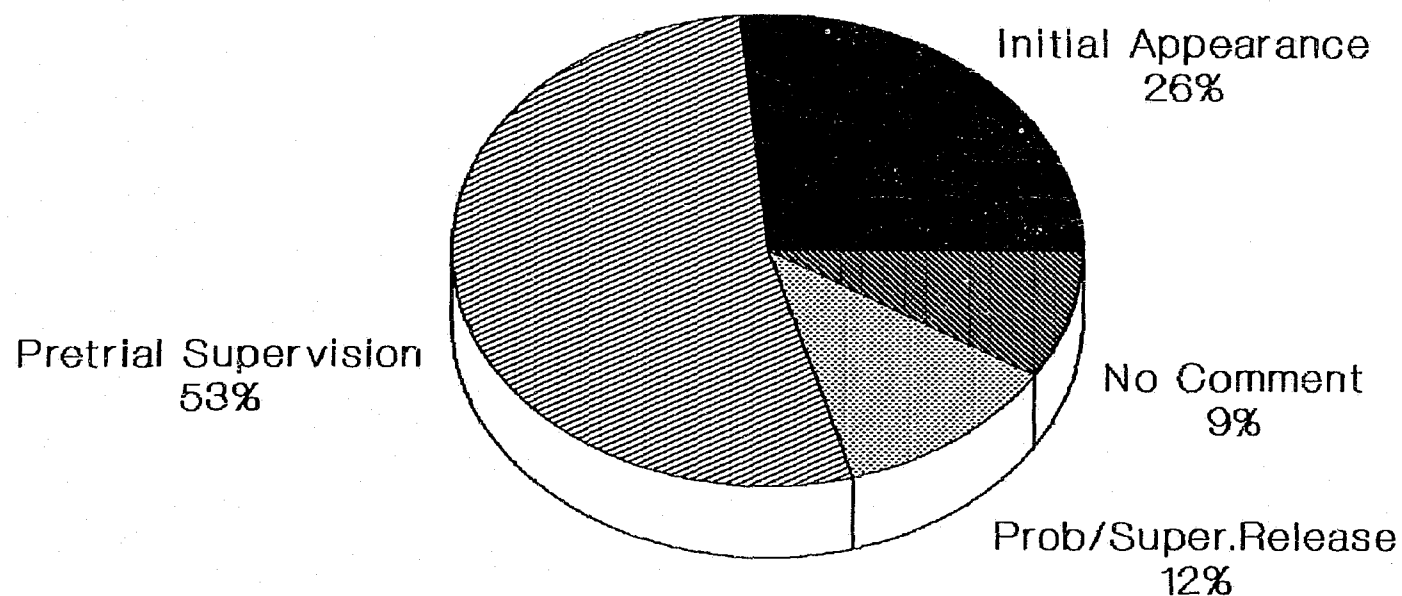
Are Pretrial Services Treatment Alternatives Adequate in Your District?



Magistrate Judges
n = 34

Figure III

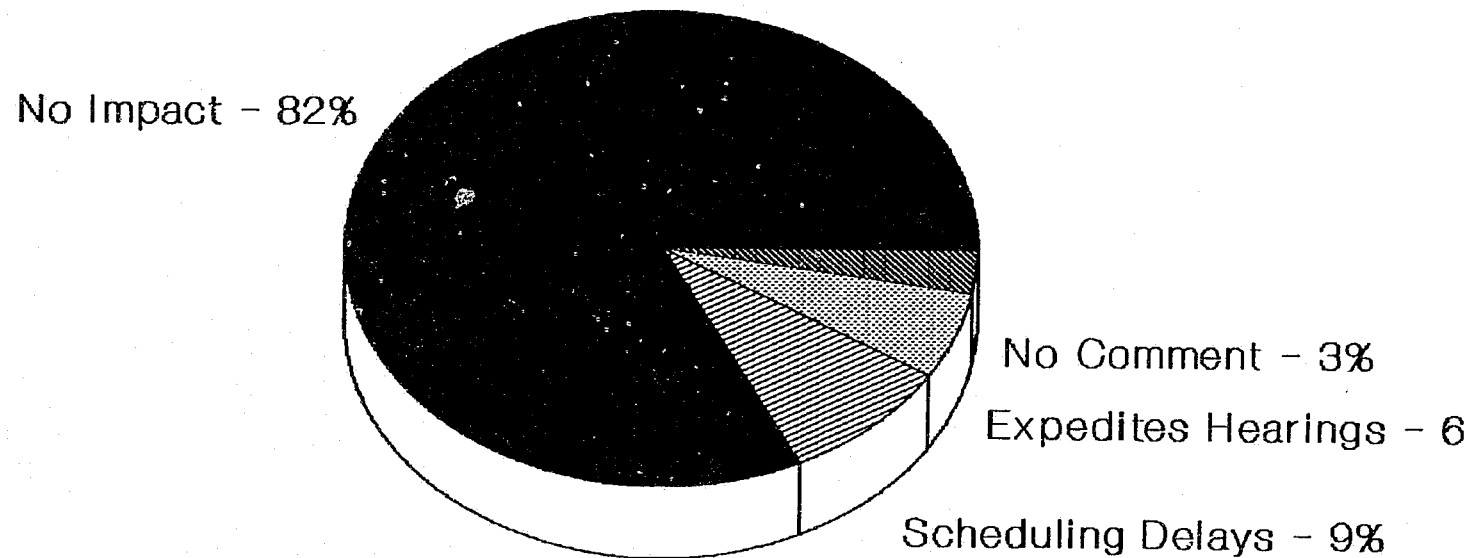
Most Useful Component of Drug Testing Demonstration Project



Magistrate Judges
n = 34

Figure IV

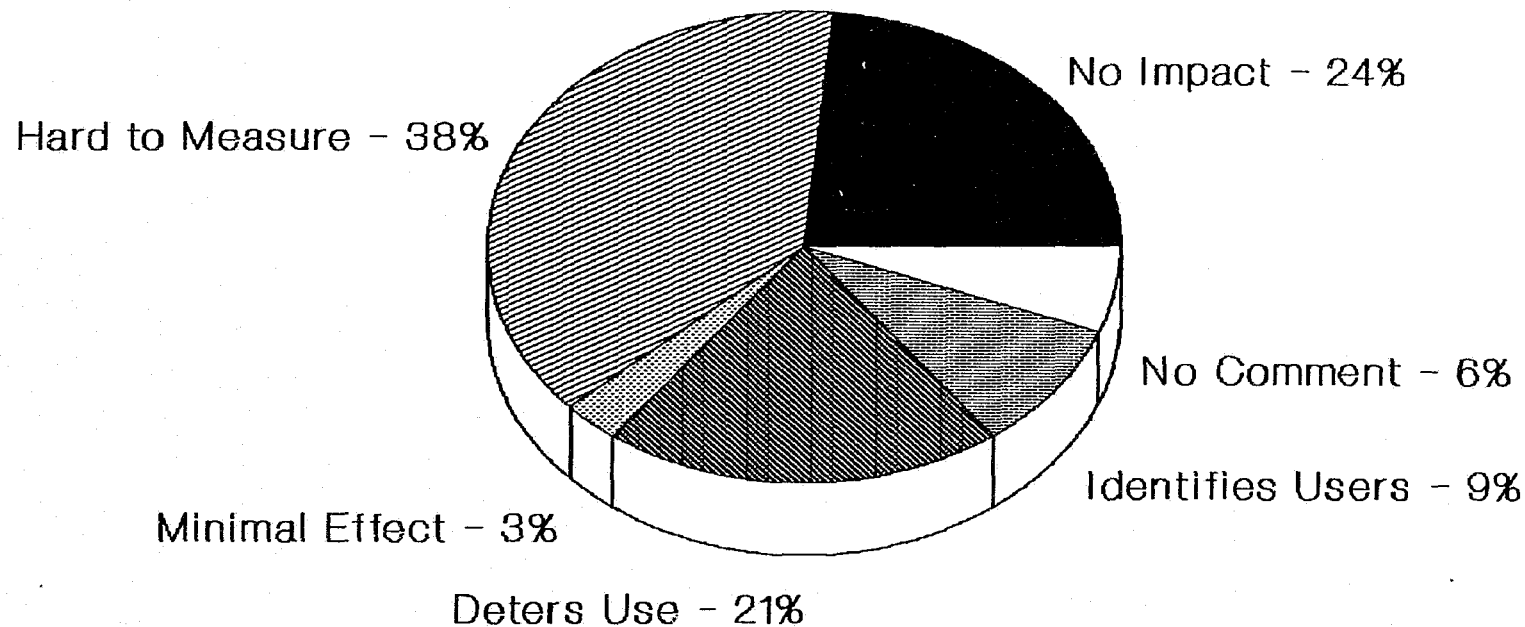
Impact of Pretrial Phase of Demonstration Project Magistrate Judges



Court Workload
n = 34

Figure V

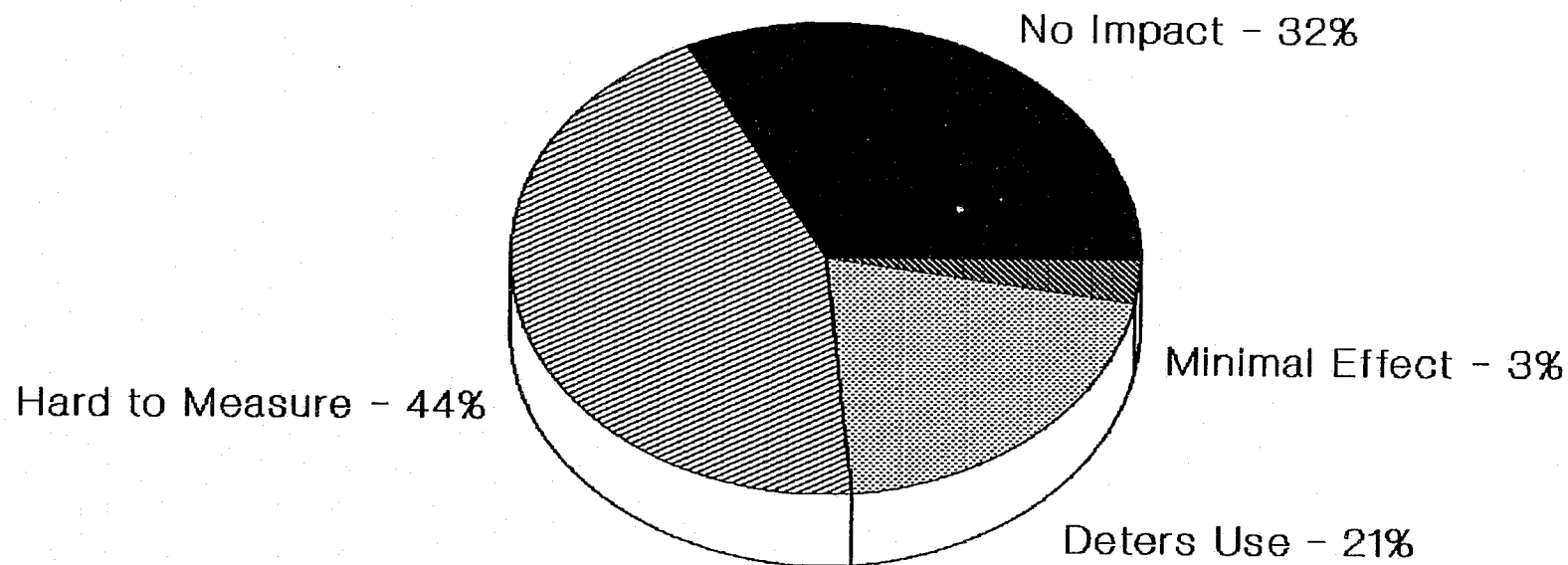
Impact of Pretrial Phase of Demonstration Project Magistrate Judges



Pretrial Drug Use
n = 34

Figure VI

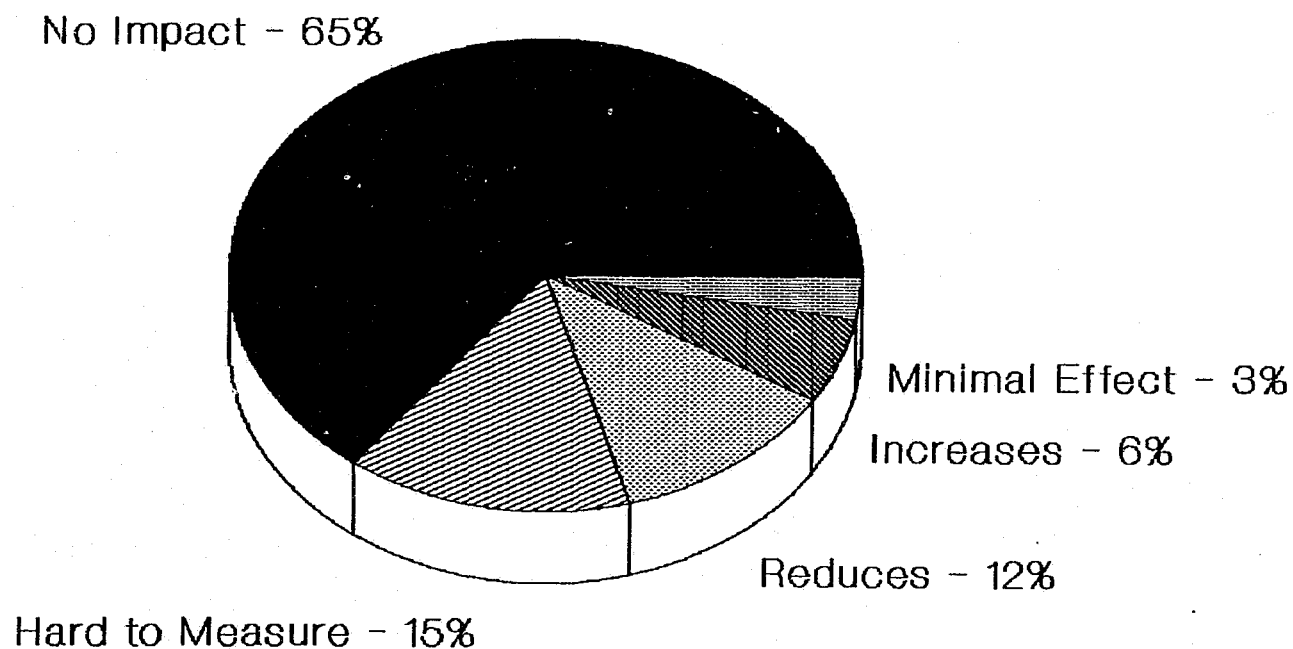
Impact of Pretrial Phase of Demonstration Project Magistrate Judges



Pretrial Crime
n = 34

Figure VII

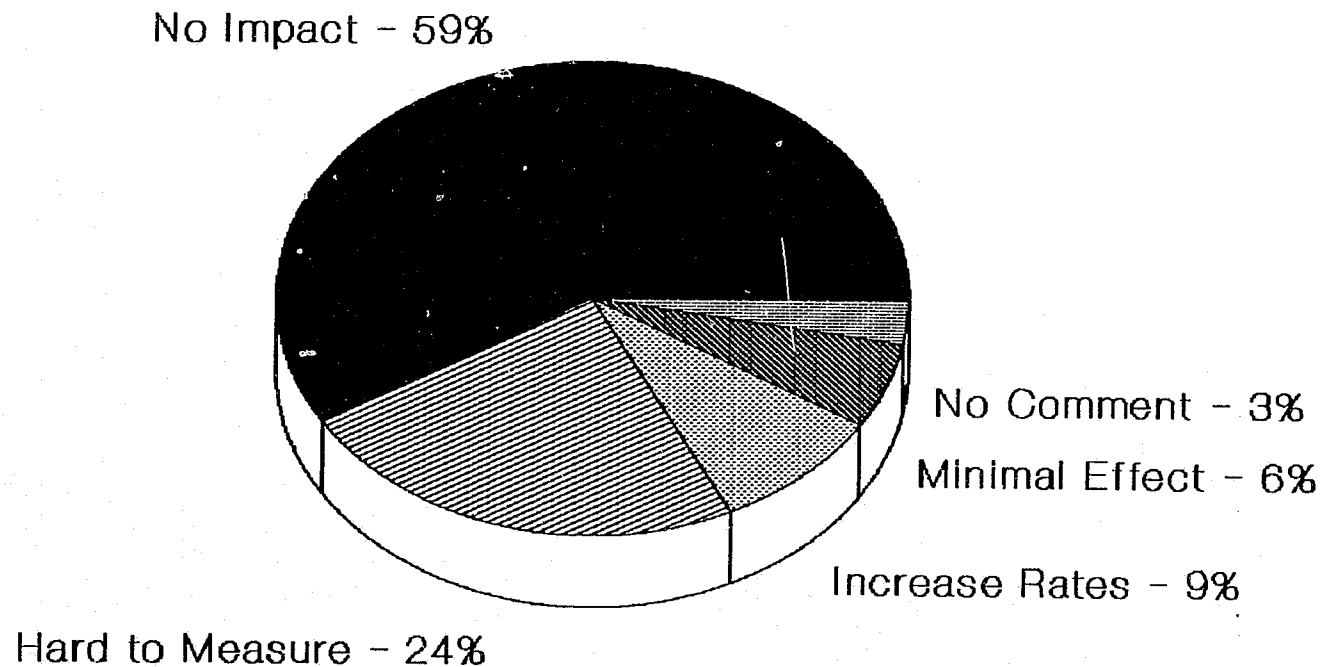
Impact of Pretrial Phase of Demonstration Project Magistrate Judges



Failure To Appear Rates
n = 34

Figure VIII

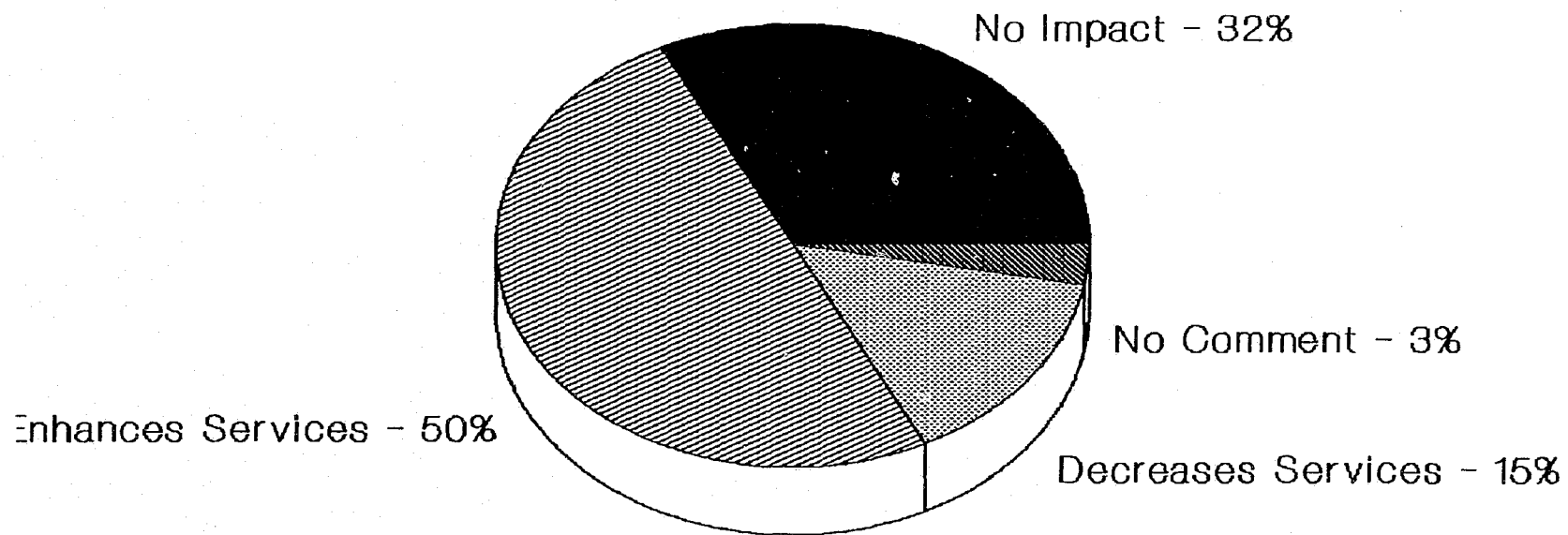
Impact of Pretrial Phase of Demonstration Project Magistrate Judges



Pretrial Detention Rates
n = 34

Figure IX

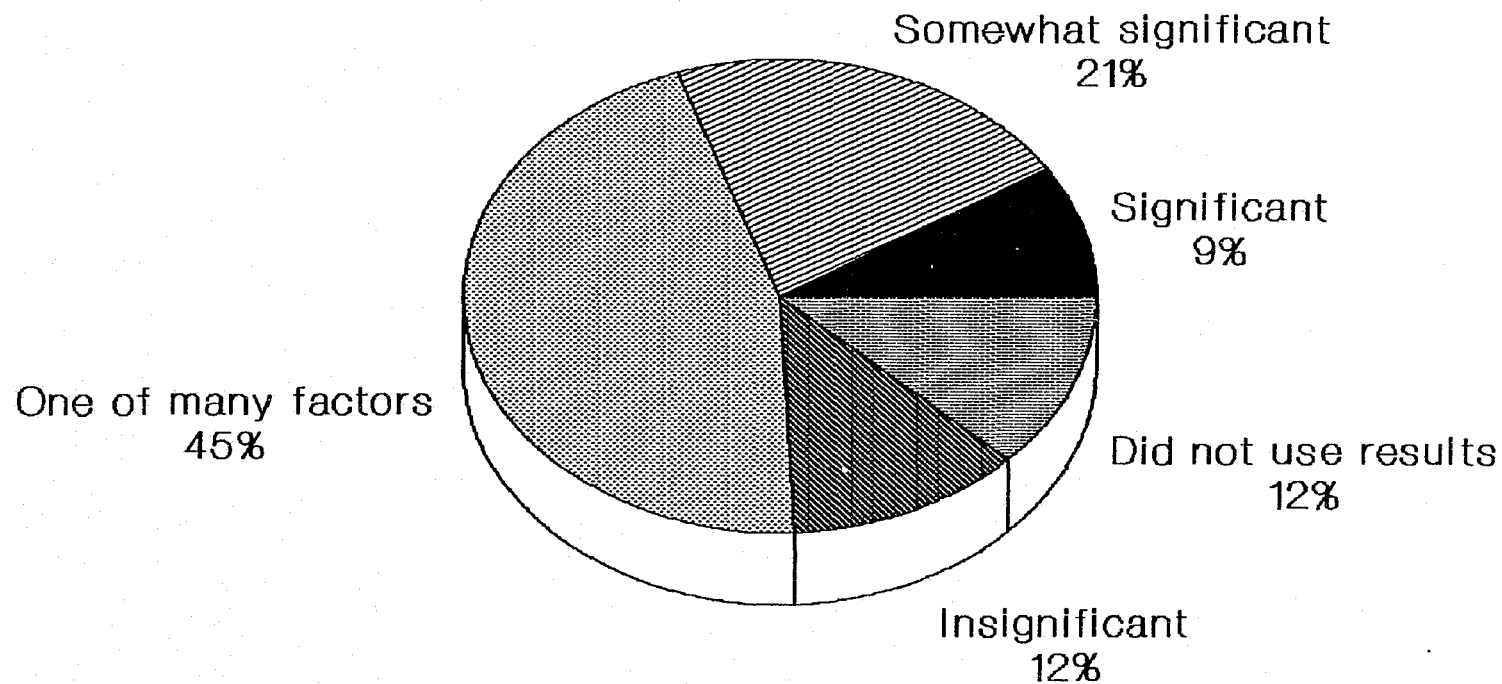
Impact of Pretrial Phase of Demonstration Project Magistrate Judges



Pretrial Service to Court
n = 34

Figure X

Value of Test Results Regarding Release of Defendants



Magistrate Judges
n = 34

Figure XI

Value of Test Results Regarding Imposition of Release Conditions

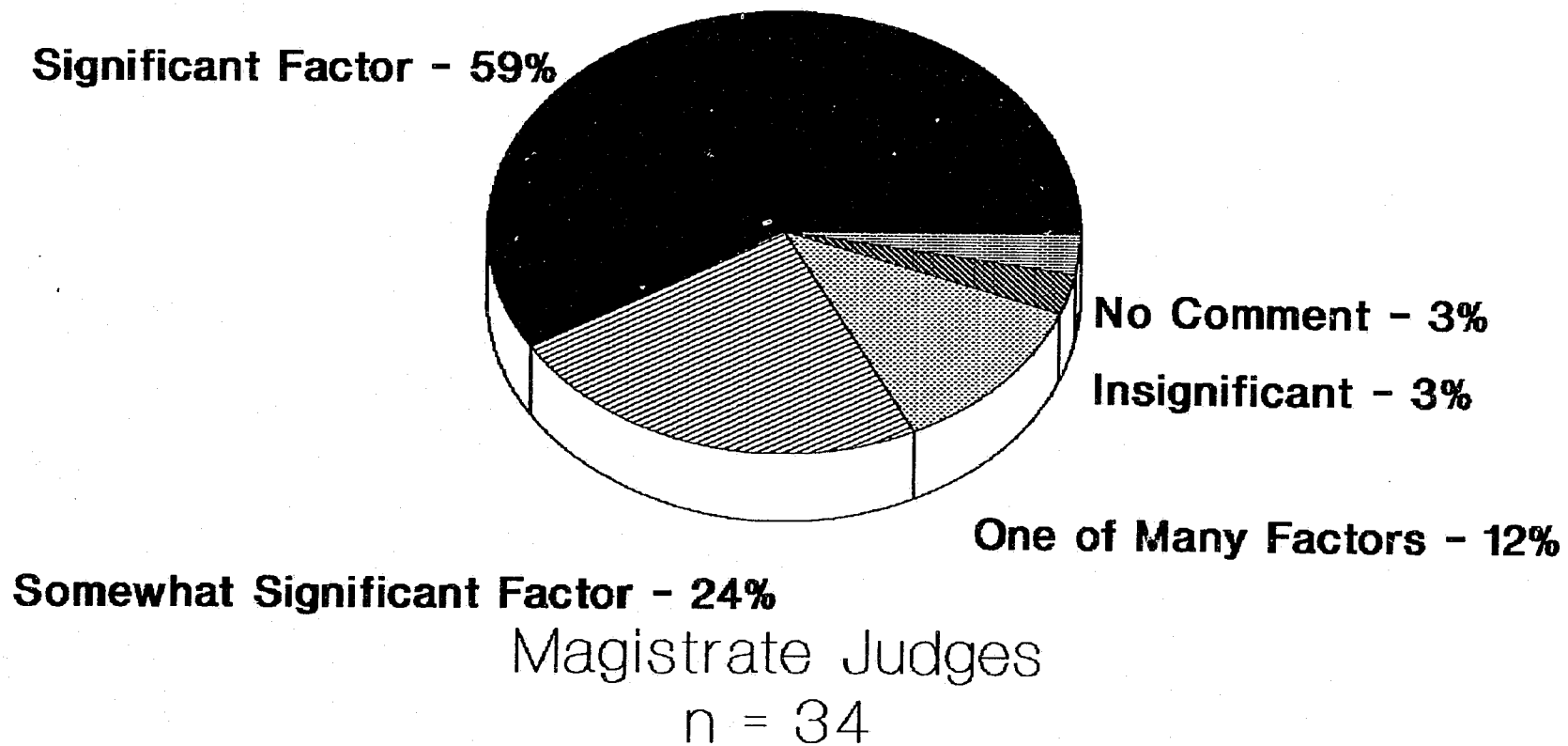
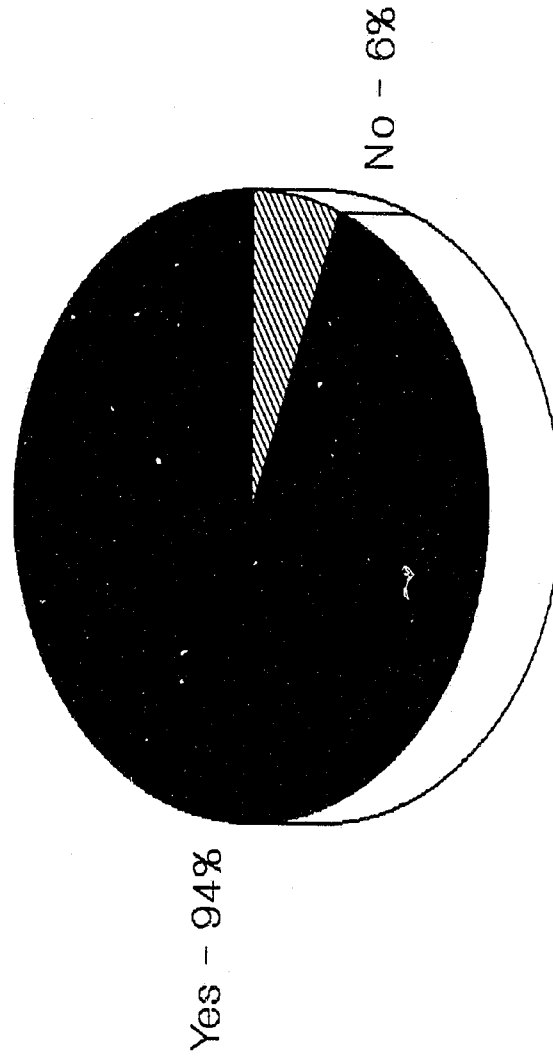


Figure XII

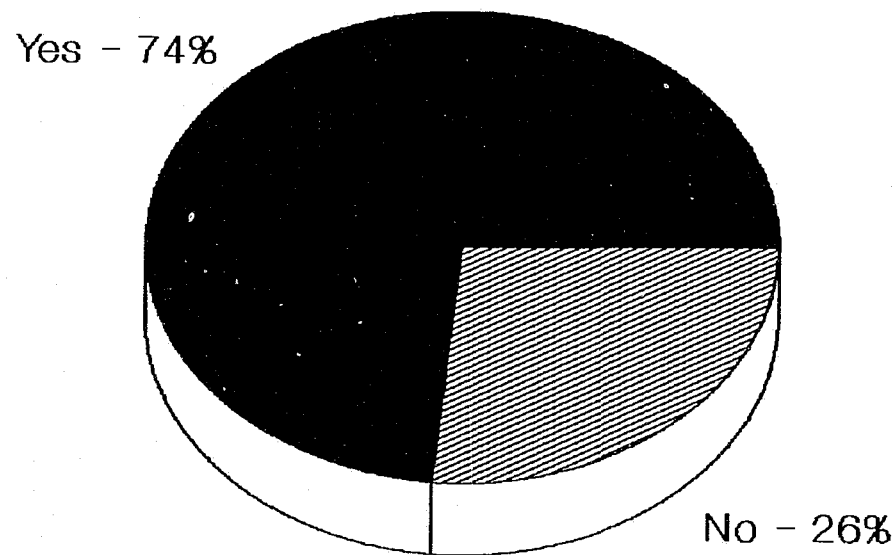
Are Immediate Test Results Beneficial?



Magistrate Judges
 $n = 34$

Figure XIII

Are Results Gained From Test Utilized for Sentencing Purposes

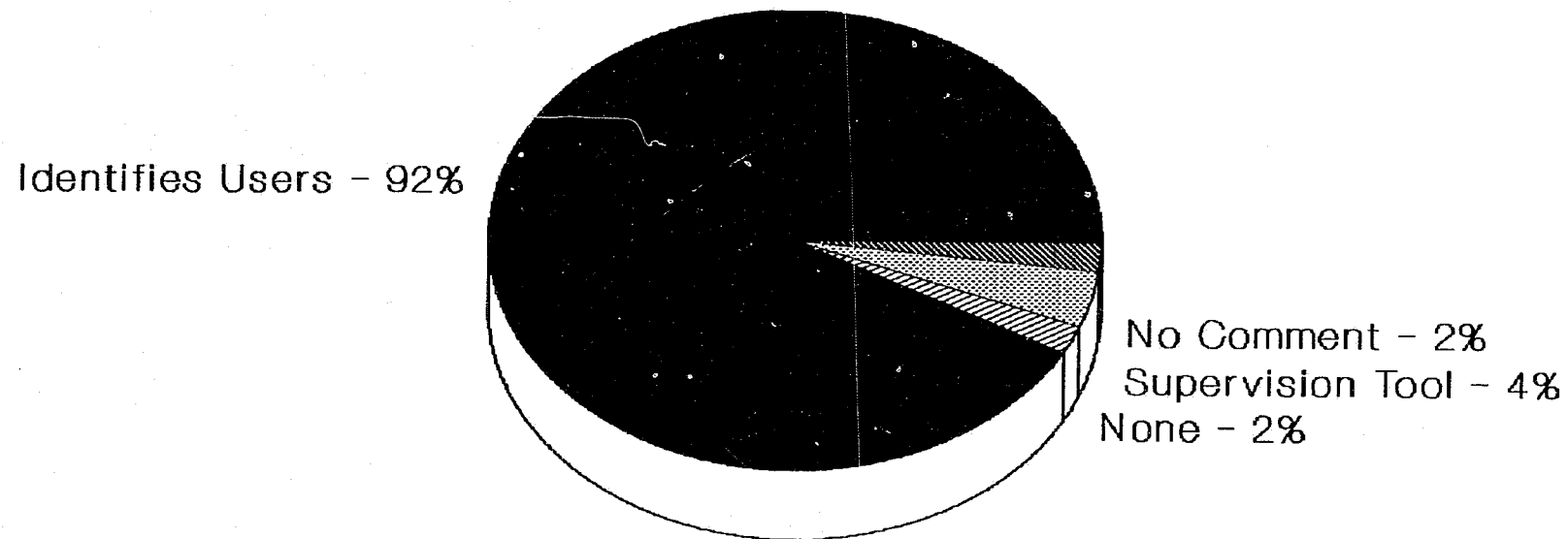


Magistrate Judges
(Treatment Conditions)

n = 34

Figure XIV

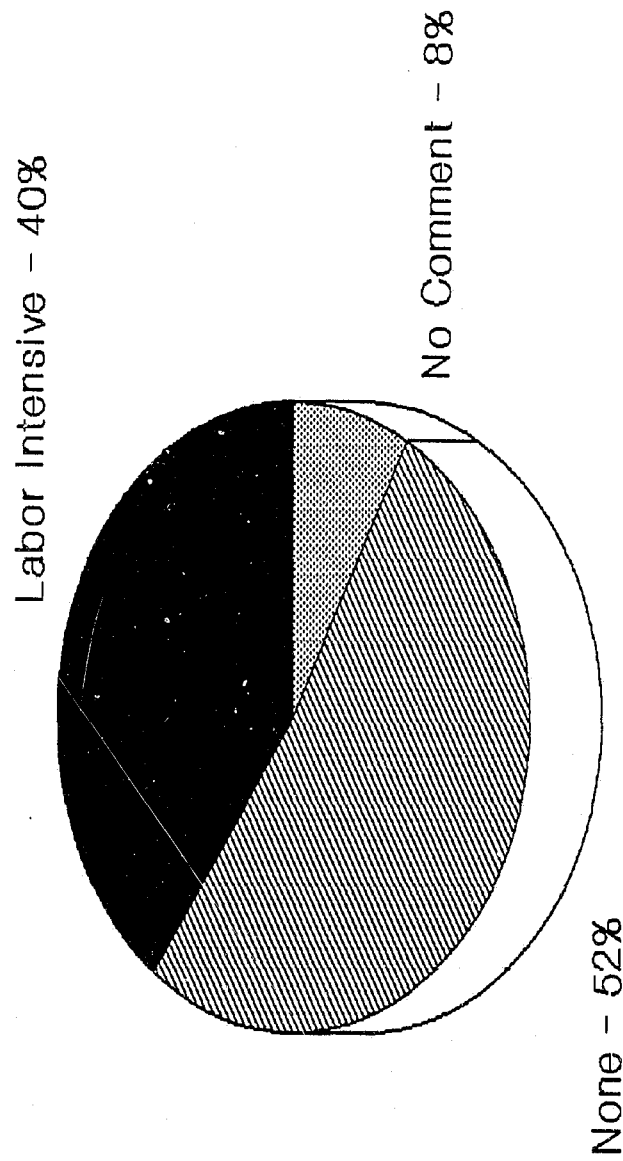
How Pretrial Phase of Project Enhances Officer Functions



Pretrial Services Officers
n = 50

Figure XV

How Pretrial Phase of Impedes Officer Functions



Pretrial Services Officers
 $n = 50$

Figure XVI

How Post Conviction Phase of Project Enhances Officer Function

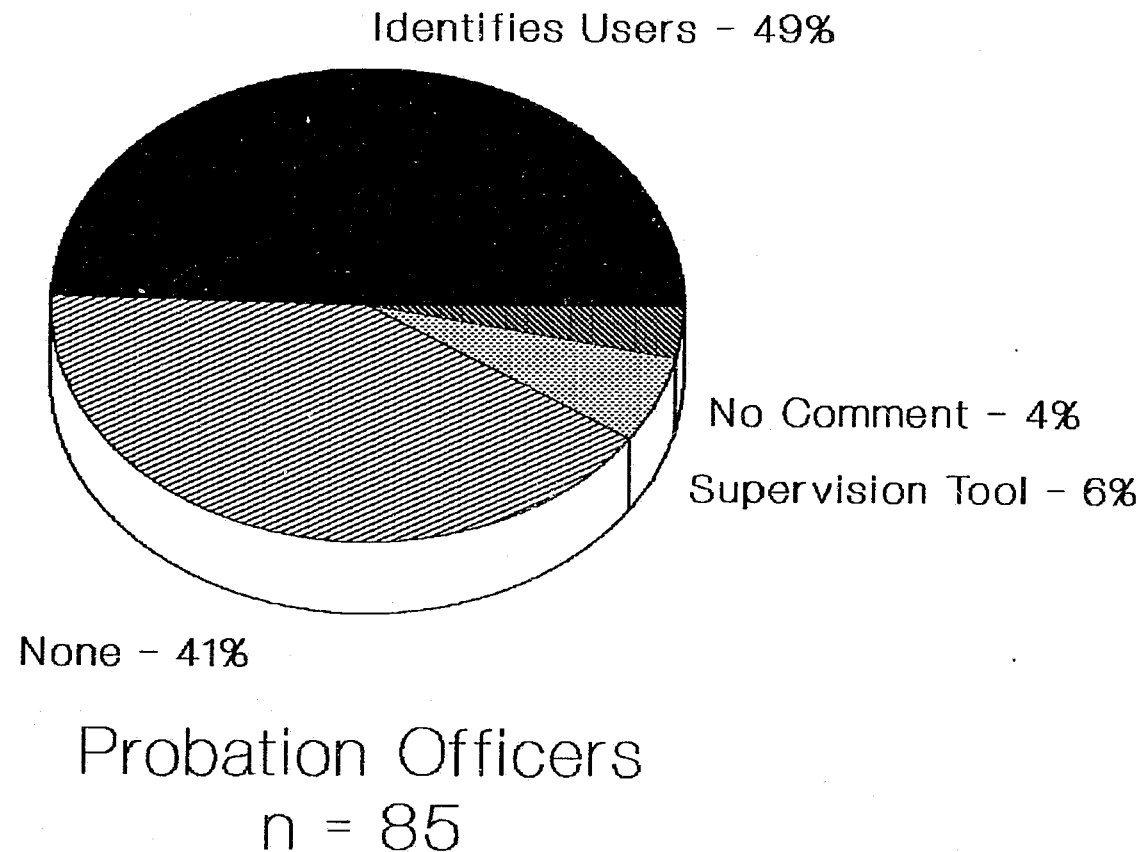
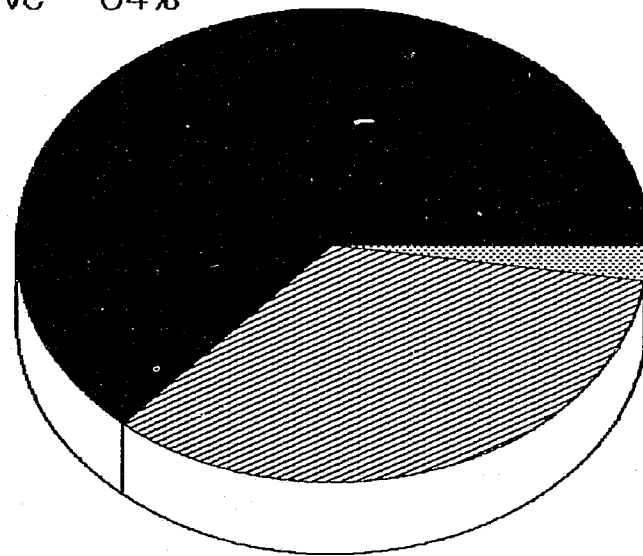


Figure XVII

How Post Conviction Phase Impedes Officer Functions

Labor Intensive - 64%



No Comment - 2%

None - 34%

Probation Officers
n = 85

Figure XVIII

Demonstration Program of *Mandatory Drug Testing of Criminal Defendants*

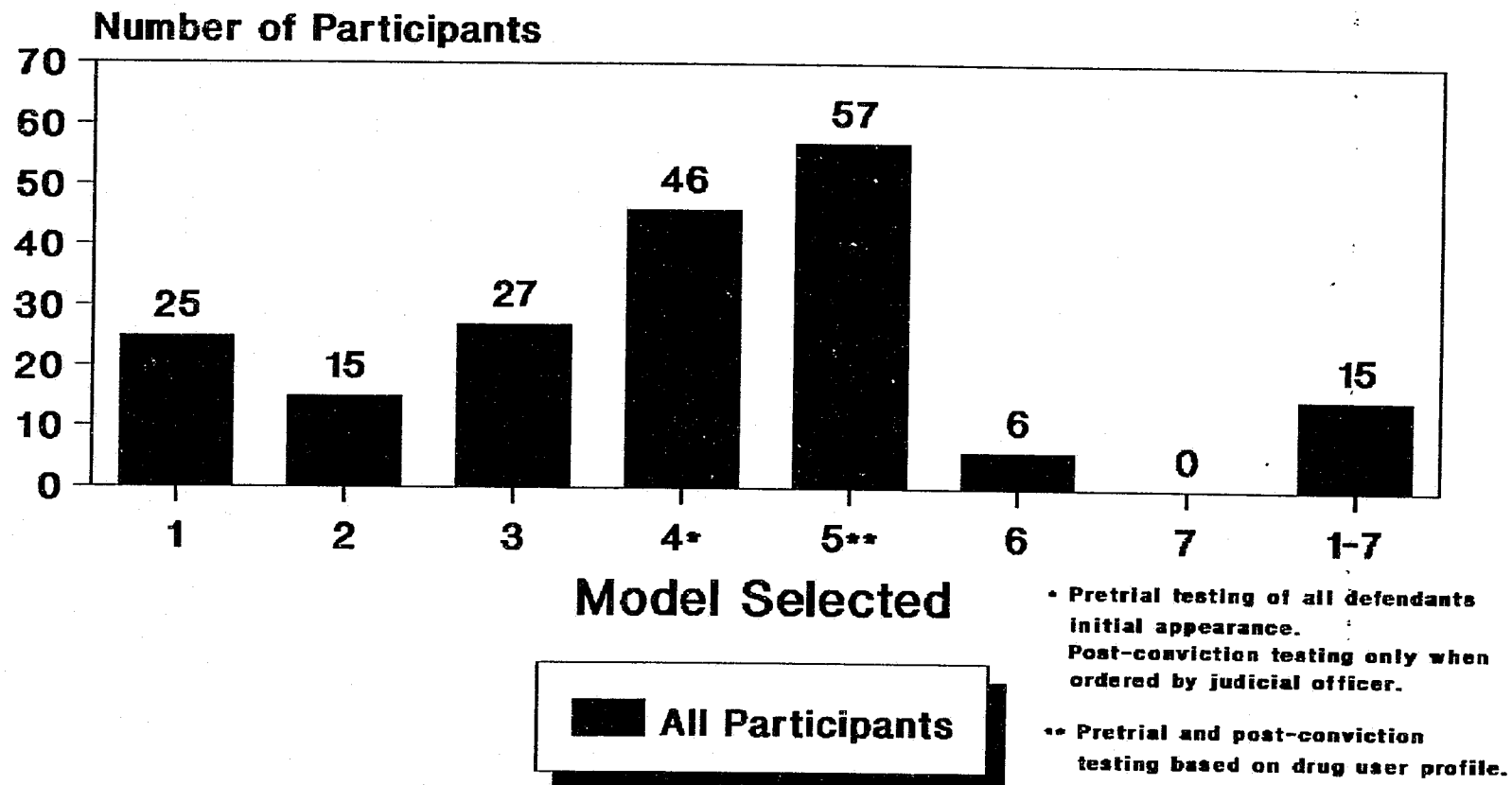


Figure XIX

n = 191