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Test Design

Supervised Pre-Trial Release

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Program Test Designs are developed by design groups composed of representatives of the National Institute of Justice and LEAA. The documents are prepared with contractual assistance, and are reviewed by a panel of experts conversant with the critical research and operational issues in the topic area.

The design group for the Supervised Release Program Test Design consisted of the following individuals:

National Institute of Justice

Anthony Pasciuto, *Chairman*
Frederick Becker
Carol Dorsey
George Silberman
Frank Vaccarella
Deborah Viets

Law Enforcement Assistance Administration

Dennis Murphy

Advisory Committee members were:

Madeleine Crohn, Director, Pretrial Services Resource Center, Washington, D.C.
Forrest Dill, Department of Sociology, University of California, Davis, California
H. Lynn Edwards, Director, American Bar Association Standing Committee on Association Standards for Criminal Justice, Washington, D.C.
Dewaine Gedney, Director, Pretrial Services Division, Philadelphia, Pennsylvania
Norman Lefstein, School of Law, University of North Carolina, Chapel Hill, North Carolina

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The Design document was prepared by: Bonnie Lewin, Abt Associates Inc., Cambridge, Massachusetts.

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Henry S. Dogin
Acting Director
National Institute of Justice

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PREFACE

As part of its research and development mandate, the National Institute of Justice designs and field tests programs based on research findings. The knowledge and action goals of the Field Test Program are:

- To add to the knowledge base in the field of law enforcement and criminal justice.
- To develop information on the effectiveness of specific criminal justice practices.
- To contribute to improved policy-making through the verification of "what works."
- To identify those criminal justice practices in need of further development.
- To generate hypotheses for further research.

Each individual field test is an experiment, conducted in a limited number of sites, to determine the effectiveness of a concept or program strategy under controlled or quasi-controlled conditions, and to assess the transferability of the concept and its suitability for further demonstration.

The goal of this particular test is to identify and assess approaches for supervising defendants released from pretrial custody on conditions designed to assure their appearance at court. The design consists of program elements that will be uniformly implemented and evaluated in three sites by the National Institute. The test has three primary purposes:

1. To assess the impact of the supervised release program on the criminal justice system.
2. To assess the impact of different types of supervised release activities on the failure to appear rates of program participants.
3. To assess the impact of different types of supervised release activities on the rates of pretrial crime of program participants.

Each site selected to develop and implement the field test will be required to adhere to the administrative guidelines and program strategies detailed in this document. Both processes of development and implementation as well

as their outcomes will be evaluated by the Institute in accordance with the specifications contained in this document. Sites will be chosen on the basis of the selection criteria presented in the final section of this document.

I. INTRODUCTION

A. The Bail Reform Movement

Over the last two decades, the bail reform movement has sought to reduce the criminal justice system's traditional reliance on money bail and pretrial detention as means for assuring defendants' appearance at court. The Manhattan Bail Project, which began in the early 1960s, was the first major effort to test the validity of nonfinancial means of pretrial release. After three years of study, this project demonstrated that a majority of defendants with ties in the community could be released on their own recognizance without posting money bail, and would still appear in court. The findings of the Manhattan Bail Project generated national interest in bail reform. Many jurisdictions implemented similar approaches; the Federal Bail Reform Act was passed in 1966 which created a presumption in favor of releasing defendants on their personal recognizance and introduced the concept of conditional release as a means to expand the number of persons eligible for nonfinancial release; model pretrial release codes were developed; and state bail laws were revised. In addition to the widespread use of release on recognizance, other release mechanisms have also been implemented, although on a smaller scale. Citation release, conditional release, supervised release, and deposit bail are among the mechanisms intended to minimize the use of full money bail or detention.

At the heart of these bail reform efforts are two notions. First, that defendants should be released on the least restrictive conditions deemed reasonably necessary to assure court appearance. And second, that community ties, including such factors as length of residence in the community, family membership, and employment history, should be considered in assessing defendants' risk of flight in addition to such criteria as nature of the charge and defendants' prior criminal record. These latter factors have traditionally served as the major basis for determining a defendant's risk of flight and the amount of bail necessary to offset this risk.

¹ The 1979/1980 Directory of Pretrial Services (Pretrial Resource Center: Washington, D.C.) lists 108 formal release on recognizance programs.

² Bail Reform Act of 1966, 18 U.S.C. 3146.

³ Studies of the characteristics of defendants who fail to appear in court present contradictory findings on the influence of socioeconomic factors and community ties. A majority of the studies suggest that failures to appear are influenced by criminal justice factors, especially prior criminal record and prior appearance behavior.

Interest in the expanded use of nonfinancial forms of pretrial release stems from the growing recognition of the inequities and ineffectiveness of the traditional money bail system and the resulting problems associated with the pretrial detention of defendants who could not post financial bail. Reliance on money bail clearly discriminates against the poor since only defendants who can afford to post bond may secure release. Further, money bail has often been used for purposes other than assuring defendants' appearance at court. Studies of bail setting practices indicate that often, bail is set at unaffordable levels to guard against the release of defendants who are considered dangerous to the community.⁴ Also, the effectiveness of money bail for assuring defendants' appearance at court has been questioned. In theory, money bail is founded on the assumption that financial incentives are necessary to ensure court appearance. Yet, in practice, the use of commercial sureties reduces the financial incentive for defendants to appear in court since the fee posted with bondsmen to secure release is never returned regardless of whether the defendants appear in court. Moreover, the pretrial detention of defendants who cannot post bail is contrary to the criminal law principle that individuals should not be punished until guilt has been established.⁵ It not only imposes severe hardships on defendants, including separation from families, deprivation of employment opportunities, and interference with preparation of adequate defenses, but it also may influence the defendants' court case outcomes. Several studies have suggested that jailed defendants are more likely to be convicted, and if convicted, to receive more severe sentences than are released defendants.⁶

⁴It has long been held that the only constitutionally permissible purpose of money bail is to assure defendants' appearance. Denial of bail has traditionally been restricted to capital cases where the defendant's risk of flight may be great. However, the Bail Reform Act of 1966 does authorize consideration of defendants' dangerousness in setting release conditions for defendants held on capital cases and appeals. The Preventive Detention Code of the District of Columbia (1970) extended the concern for dangerousness beyond capital cases and cases on appeal. Defendants charged with non-capital cases could be preventively detained, following due process hearings, if they met certain criteria specified in the code. (D.C. Code 23-1321 to 1331).

⁵Although in *Bell v. Wolfish*, 441 U.S. 520 (1979), the Court held that the conditions of pretrial detention under consideration did not amount to punishment of the detainee, it did acknowledge that certain conditions or restrictions of pretrial detention might amount to punishment if the condition or restriction is arbitrary or purposeless.

⁶These studies include: William Landes, "Legality and Reality: Some Evidence on Criminal Proceedings" 3 *Journal of Legal Studies*, 1974; Anne Rankin, "The Effect of Pretrial Detention" 39 *New York University Law Review*, 1964; and Eric W. Single, "The Consequences of Pretrial

The reforms implemented during the 1960s resulted in the release of many defendants who would have been detained during the pretrial period without greatly increasing failure to appear rates. Thomas' study of 20 jurisdictions indicates that as a result of the expanded use of non-financial releases between 1962 and 1971, the percentage of felony defendants detained dropped by one-third and the percentage of misdemeanor defendants detained dropped by nearly one-fourth. Studies of many release on recognizance programs have repeatedly shown that failure to appear rates among these defendants are low and are not significantly different from the rates for defendants released on surety bond.

While the bail reform movement made significant strides during its first decade, the current direction of the bail reform movement reflects conflicting pressures. On the one hand, the strong presumption favoring pretrial release, coupled with current jail conditions and the costs of maintaining defendants in jail, have led many to argue for a further expansion of the range of options for assuring court appearance without resorting to detention. Jail populations remain quite high and many facilities are overcrowded; jail conditions have deteriorated, and many indigent defendants are still detained before trial. The LEAA 1978 National Jail Census indicates a 12 percent increase from 1972 in the total number of persons in jail and a similar increase in the number of defendants in jail awaiting trial. Forty-two percent of the persons in jail in 1978 were pending trial. At the same time, many jurisdictions are currently under court order to reduce their jail populations.

On the other hand, there is continuing concern over failure to appear among defendants on pretrial release and increasing concern over pretrial crime committed by defendants on pretrial release. These concerns

Detention," paper presented at annual meetings of American Sociological Association, New Orleans, August 1972. However, Landes' study suggests that this relationship is spurious since the factors involved in the bail decisions also serve as the basis for disposition and sentencing decisions. Goldkamp's recent study indicates a significant relationship between pretrial custody and type of sentence imposed upon convicted defendants but a nonsignificant relationship between custody and the probability of conviction. John S. Goldkamp, Two Classes of Accused (Cambridge, Massachusetts: Ballinger Publishing Co., 1979).

⁷ Wayne Thomas, Bail Reform in America (Los Angeles: California Press, 1976), pp. 37 and 65.

⁸ Ibid., p. 98.

⁹ U.S. Department of Justice, Census of Jails and Survey of Jail Inmates, 1978, Preliminary Report (Washington, D.C., 1979).

have led many to argue for the imposition of restrictive forms of release and the use of pretrial detention for certain defendants. The current standards developed by the American Bar Association (ABA) and the National Association of Pretrial Services Agencies (NAPSA) reflect these concerns. Each set of standards goes beyond previous standard setting efforts in its authorization of the use of nonfinancial conditions of release to protect the community in addition to assuring the defendant's appearance at court. Further, each set of standards allows for the use of pretrial detention for certain defendants under certain circumstances.¹⁰

B. The Emergence of Supervised Release

The use of supervised release, whereby an agency or individual assumes the responsibility for assuring the defendant's appearance at court, has been suggested as one option which is responsive to the current concerns of the bail reform movement. Defendants placed on supervised release agree to comply with court-ordered conditions, which are closely monitored and go beyond those usually associated with release on recognizance. While conditional release does not necessarily entail supervision, usually supervision includes some type of condition. Supervised release has been used to secure the release of defendants who do not meet the eligibility criteria for release on recognizance and who cannot post financial bond or can only post it after spending some time in jail.

¹⁰ While the ABA and NAPSA standards are similar in their authorization of pretrial detention for defendants whose risk of flight cannot be offset by available conditions of release and for defendants who pose a threat to the integrity of the judicial process, they differ significantly in the circumstances under which pretrial detention is permitted in order to protect the community. The NAPSA standards, following the language contained in the D.C. Preventive Detention Code, consider the nature of the present charge and the likelihood of future dangerousness. In contrast, the ABA standards regarding dangerous are keyed to specific conduct of the accused while on pretrial release. The judge must find either that the defendant has committed a new crime while on release or that the defendant has violated a condition of release designed to protect the community and no additional condition of release would provide such protection. Both standards specify rigorous due process requirements before pretrial detention can be permitted. American Bar Association Standards Relating to the Administration of Criminal Justice: Pretrial Release (2nd Ed., approved 1979). National Association of Pretrial Services Agencies, Performance Standards and Goals for Pretrial Release and Diversion: Pretrial Release (Washington, D.C., 1978).

The use of supervised release, as a form of conditional release, was originally authorized by the Federal Bail Reform Act of 1966. The Act specifies that if the presumption favoring release on recognizance cannot be met because this form of release "will not reasonably assure the appearance of the person as required," then other conditions may be set.¹¹ The current ABA and NAPSA standards reiterate this authorization by specifying that nonmonetary conditions, including supervision,¹² must be exhausted before monetary conditions are imposed.

Two key assumptions underlie the use of supervised release. First, in exchange for the benefit of release from custody, defendants will comply with court-ordered conditions of release designed to assure their appearance at court. And second, adequately supervised conditions of release will increase the likelihood that defendants will adhere to the conditions and will curtail defendants' opportunity to flee. As suggested by the ABA in its discussion of the purposes of nonmonetary conditions, adequately monitored conditions may provide an early warning system of flight. If the conditions are tailored to the problems of individual defendants, it is likely that a high percentage of defendants who fail to appear in court may violate one or more conditions before doing so. Since the defendant's release is based on his agreement to comply with the conditions, the failure to appear may be prevented if his release is reassessed for his noncompliance with the conditions of release.¹³

Two types of conditions are usually associated with supervised release for the purpose of increasing the defendant's likelihood of appearing in court: contact conditions, in which defendants are required to report to the program, either in person or by telephone, at frequent intervals; and problem oriented conditions, in which defendants are provided services, either directly by the program or through referral to other agencies. Contact conditions may contribute to low failure to appear rates for several reasons. They assure that the defendant is aware of his court date; they increase the likelihood that the defendant will remain in the community during the pretrial period; and they provide a mechanism for adjusting court dates if the defendant cannot make his court appearance. Several studies have suggested that failure to appear can be partially explained by involuntary factors, such as confusion over court dates,

¹¹ Bail Reform Act of 1966, 18 U.S.C. 3146.

¹² Both sets of standards go beyond the Federal Bail Reform Act in their authorization of the imposition of nonmonetary conditions of release for protection of the community.

¹³ American Bar Association Standards Relating to the Administration of Criminal Justice: Pretrial Release, p. 32.

fear of the criminal justice system and illness.¹⁴ To the extent that these factors are applicable to defendants released under supervision, the use of contact conditions may decrease these nonwillful causes of failure to appear.

The provision of services as a condition of supervised release assumes that some defendants have specific problems which affect their likelihood of court appearance. Studies of the characteristics of defendants who fail to appear at court have indicated, for example, that defendants who are drug users and who are unemployed tend to have high nonappearance rates.¹⁵ The provision of drug treatment may increase the defendant's reliability while the provision of employment services may strengthen the defendant's ties to the community.

¹⁴ A 1977 study undertaken by the New York Criminal Justice Agency interviewed defendants returned to court on warrants. Based on the reasons reported by the defendants, the study indicated that 50 percent of the warrants were caused by defendant ignorance. These reasons included not knowing the correct place (8 percent), the correct date (20 percent), the correct hours (8 percent), did not hear name called in court (6 percent), and thought case was disposed of or forgot about it (17 percent). The remainder of the warrant population in this study did not appear because of "unpreventable" factors, such as family reasons, financial reasons, employment obligations or detained by hospital or corrections. Two other key findings were that 22 percent indicated they did not know they were to return for another appearance, and 21 percent of the defendants actually came to the court building but missed their appearance. However, since this study only interviewed defendants who were returned on warrants, the explanations provided by these defendants may not be applicable to defendants who were not returned on warrants. Further, the reliability of the defendants' explanations may be open to question. Study findings summarized by Michael Kirby, "Failure to Appear: What Does It Mean? How Can It Be Measured?", Washington, D.C.: Pretrial Services Resource Center, 1979.

¹⁵ A study by Roth and Wice indicates that of all defendant characteristics examined, including history of prior arrests and prior failures to appear, only the factors of unemployment and drug use appeared related to failure to appear in the current case. Jeffrey A. Roth and Paul B. Wice, Pretrial Release and Misconduct in the District of Columbia, Final Draft, (Washington, D.C.: Institute for Law and Social Research, 1978) p. x. The correlation between employment status and court appearances has been found in other studies. These include, Lazar Institute, "Preliminary Findings from the Phase II National Evaluation of Pretrial Release," mimeographed summary (Washington, D.C.: 1979); and Robert A. Wilson, "A Practical Procedure for Developing and Updating Release on Recognizance Criteria" (Newark, Delaware: University of Delaware, Division of Urban Affairs, 1975).

While the primary purpose of supervised release is to assure the defendant's appearance at court through provision of support and contact in the community during the pretrial release period, supervised release programs may have two additional side benefits: to reduce the likelihood that defendants will commit crimes while on release and to develop information on defendants' pretrial conduct which may help the court in sentencing defendants who are convicted.

Although the majority of state statutes limit the use of conditions to those which are directly related to assuring the defendant's appearance in court, contacts and supportive services undertaken to curtail the defendant's opportunity to flee may have the additional benefit of minimizing the defendant's involvement in pretrial crime.¹⁶ First, as stated by the ABA: "adequately supervised conditions of release may deter criminal activity by reducing the temptation to commit crimes and increasing the chance of being apprehended."¹⁷ Second, provision of services might affect criminal behavior since these activities address personal difficulties that might have led to initial criminal involvement.

The provision of information to the court on the pretrial performance of defendants released under supervision may assist the court in determining the appropriate sentence for convicted defendants. The defendant's record of adhering to conditions during the pretrial release period provides indicators to the court of his likely behavior if sentenced to probation.

C. Experience with Supervised Release

While most release on recognizance programs provide some form of supervision to defendants on release and some of these programs provide a portion of the defendants with more intensive supervision, to date,

¹⁶ Toborg's study indicates a relationship between pretrial crime and failure to appear. Twenty-six percent of those rearrested during the pretrial period also failed to appear at least once in the trials for their original arrests as compared to a failure to appear rate of 13 percent for released defendants who were not rearrested. Mary A. Toborg, Martin Sorin, and David A. Pyne, Pretrial Release: Preliminary Findings on Criminality from the Phase II National Evaluation Study (Washington, D.C.: The Lazar Institute, 1978), p. 18.

¹⁷ American Bar Association Standards Relating to the Administration of Criminal Justice: Pretrial Release, p. 32.

supervised release programs which focus exclusively on defendants ineligible for release on recognizance have been implemented only on a limited basis across the country. Eleven jurisdictions have been identified as having undertaken formal supervised release programs.¹⁸ A number of other jurisdictions are currently planning supervised release programs primarily through LEAA's Jail Overcrowding and Pretrial Detainee Program.

Existing supervised release programs vary with respect to program elements such as eligibility criteria, screening procedures, services provided, level of supervision, and procedures for responding to noncompliance. Some programs provide both contact supervision and services, while others are limited to one or the other. Further, in some programs, only contact conditions are court-ordered, while participation in services is voluntary. In other programs, both contact and service conditions are court-ordered. Finally, some programs provide only direct services while others offer a mix of direct and referral services. Although these variations exist across programs, there are certain elements which are generally common to all such programs. These elements include:

- a focus on defendants who are ineligible for release on recognizance due to perceived risk of nonappearance as a result of insufficient community ties or criminal justice involvement;
- a capacity to monitor the defendant's compliance with court-ordered conditions of release; and
- the presentation of information on the defendant's progress on supervised release to be used at the sentencing stage.

Empirical documentation of the impact of supervised release programs is limited primarily to evaluations undertaken on supervised release programs in Philadelphia, Washington, D.C., and Des Moines. However, only in Washington, D.C. was an evaluation conducted using results from an experimental design involving random assignment. Evaluation findings from Des Moines and Philadelphia are subject to the problem of nonequivalent control groups.

The Des Moines supervised release program which provides both supportive services and contact supervision was evaluated by the National Council on

¹⁸ Seven of these programs are currently operational. These programs are located in Des Moines, Iowa; Salt Lake City, Utah; Santa Clara County, California; Tucson, Arizona; Baltimore, Maryland; Washington, D.C.; and Philadelphia, Pennsylvania.

Crime and Delinquency for a three year period from 1970-1972.¹⁹ Evaluation findings indicated that defendants on supervised release were no more likely to fail to appear or to be rearrested than defendants released on bail. Further, defendants on supervised release were more likely than bail releasees to be given either suspended sentences or probation following conviction.

Findings from the evaluation of the Philadelphia Conditional Release Program, undertaken by Georgetown University's Institute for Criminal Law and Procedure, parallel those found in the Des Moines evaluation.²⁰ Defendants released on the condition that they participate in services provided by outside referral agencies had lower failure to appear rates than defendants released on their own recognizance and defendants who made cash bail, and were no more likely than these two groups to be arrested while on release.

The D.C. Pretrial Services Agency examined the impact of various levels of supervision on failure to appear rates, rates of rearrest during the pretrial period, and compliance with court-ordered conditions of release among defendants charged with felonies by randomly assigning 300 of these defendants to one of three supervision levels.²¹ Study findings indicated that level of supervision had a positive impact on failure to appear rates and on compliance with release conditions. For both measures, as the level of supervision increased, the failure to appear rates and noncompliance rates decreased. However, the study found that level of supervision had no effect on pretrial crime.

Although these studies provide various levels of support for the view that higher risk defendants can be released under supervision without jeopardizing community safety or increasing nonappearance, they also raise numerous questions for further research. First, as pointed out in the National Science Foundation review of the Des Moines program and

¹⁹ Peter Venezia, Pretrial Release with Supportive Services for "High Risk" Defendants, Evaluation Report #3 (Davis, California: National Council on Crime and Delinquency, 1973).

²⁰ Herbert Miller, William McDonald, Henry Rossman, Evaluation of Conditional Release Program, Final Report (Washington, D.C.: Institute for Criminal Law and Procedure, Georgetown University Law Center, 1976).

²¹ D.C. Bail Agency, How Does Pretrial Supervision Affect Pretrial Performance? (Washington, D.C., 1978).

other pretrial intervention programs,²² since the point scale for determining eligibility for release on recognizance was not validated, it is not possible to distinguish between the effects of release on recognizance selection criteria on the one hand and true supportive services on the other. Second, while the low failure to appear rates of supervised release defendants provide some support for the validity of the supervised release screening procedures, it is still not clear whether defendants who remain in detention because they fail to qualify for release on recognizance or supervised release would not also show acceptable appearance rates. Third, it has yet to be determined what types of supervised release activities are most effective for reducing rates of failure to appear and rates of pretrial crime. The programs in Des Moines, Philadelphia and Washington, D.C., emphasized different types of supervised release activities. In Des Moines, supervised release focused on a combination of contact and service conditions; in Philadelphia, supervised release primarily emphasized service activities; and in Washington, D.C., particular types of contact supervision were addressed. Finally, evaluations of supervised release programs have given minimal attention to the impact of these programs on the operations of criminal justice systems.

In light of the current interest in supervised release programs and the need for further empirical documentation on the impact of these programs on both defendants and the criminal justice system, the National Institute of Justice is supporting an experimental test of a comprehensive supervised release program for defendants who are unable to secure pretrial release in several selected jurisdictions.

The goals of the program to be tested are:

- To increase the rate of nonfinancial forms of pretrial release;
- To reduce the pretrial detention rate of defendants held in jails;
- To assist defendants in ameliorating problems which bear on their likelihood of appearance in court; and
- To assist defendants in ameliorating problems which bear on their likelihood of committing crimes while on release.

²² Joan Mullen, Pre-Trial Services: An Evaluation of Policy-Related Research (Cambridge, Massachusetts: Abt Associates Inc., 1974).

To assure that the selected test sites provide comprehensive programs consistent with the test design, each selected program will be required to implement certain programmatic elements. Specifically, each supervised release program must institute the administrative and service elements that are delineated in the following section.

II. PROGRAM COMPONENTS TO BE TESTED

The program components specified in this section are drawn from practitioner interviews, reviews of program evaluations, and current pretrial release standards.

The supervised release program design is comprised of five principal interrelated components: 1) basic program structure; 2) targeted program participants; 3) admission to the program; 4) types of supervised release activities; and 5) procedures for monitoring defendants' compliance with conditions of supervised release.

A. Basic Program Structure

The elements of this component define the setting and delivery mechanisms for the test program.

1. Release of Defendants for Particular Types of Supervised Release Activities

All defendants released to the program will be required by court-order to adhere to contact conditions. A portion of the defendants will also be required by court-order to participate in services necessary to ensure their appearance at court. These services will be provided by outside referral agencies. The program will also ensure that defendants are notified of their court dates. This structure will make it possible to examine whether contact supervision combined with referrals to services is more effective than contact supervision without accompanying services as measured by rates of failure to appear and rates of pretrial crime.

2. Operation by an Established Pretrial Release Agency

The supervised release program will be operated by the jurisdiction's agency which is currently responsible for screening defendants and presenting information to the court to determine defendants' eligibility for release on recognizance. In most jurisdictions, the location of the supervised release program will likely be either in a pretrial services agency or probation department, since these two agencies usually perform the intake and screening functions for release on recognizance. Jurisdictions which currently do not have formal programs for presenting information to the court for release on recognizance will not be eligible for this test program.

3. Administration of the Supervised Release Program

While the supervised release program will be operated by the jurisdiction's existing agency responsible for pretrial release, the supervised release functions will be administered by a separate unit within the pretrial release agency which will only interact with defendants who are in jail following the initial court appearance because they fail to qualify for release on recognizance and cannot post bail. This separation of functions will limit the population of potential supervised releasees to those who cannot secure pretrial release through existing release options and will reduce the likelihood that conditions are placed on defendants who ordinarily would not require them.

4. Existing Network of Social Service Agencies

The limited amount of resources available for the supervised release program precludes either funding direct services or purchasing services from outside agencies. The jurisdictions must have a range of social service agencies which will accept, at no cost to the supervised release program, that portion of the defendants who will be required to participate in services. The funding constraints in this program are not unlike those faced by the majority of pretrial programs. Implementation of a costly supervised release program, involving either direct services or the purchase of services, might limit future replication efforts.

B. Target Group

Admission to the supervised release program is limited to defendants charged with bailable felony offenses, who are held in jail following the initial court appearance and who in the absence of the supervised release program would either remain in jail until their case reached disposition or would only post bail after spending a considerable amount of time in detention. Felony defendants who are likely to secure release shortly after admission to jail are not to be considered for the supervised release program. The rationale for the program's focus on felony defendants who are likely to remain in jail for the duration of the pretrial period or who would only post bail after spending a considerable amount of time in detention is set forth below:

- A majority of the defendants detained during the pretrial period are charged with serious offenses. Goldkamp's analysis of LEAA's 1972 Survey of Inmates of Local Jails indicates that over half of the detained population (56 percent) were charged with rather serious offenses. These include burglary (16 percent); robbery (15 percent); combined drugs (13 percent);

and murder and kidnapping (12 percent). Smaller numbers of persons were charged with crimes of lesser seriousness such as traffic violations (4 percent); drunkenness/vagrancy (5 percent) and other offenses (10 percent).²³

- Felony defendants are less likely to secure release from custody than are defendants charged with less serious offenses since felony defendants tend to have higher bails set and the amount of bail set is related to the probability of release.²⁴ Further, when felony defendants obtain release, it is likely to take longer, as a result of the amount of bail,²⁵ than for defendants charged with less serious offenses.
- Defendants charged with felonies spend more time in jail on pretrial status since their cases take longer to reach disposition than less serious cases. A focus on felony cases would alleviate, in part, the problems of jail overcrowding.
- Some felony defendants show a high risk of nonappearance which could possibly be offset by the supervised release program. While the majority of studies on the relationship between charge severity and failure to appear probability indicate that defendants charged with felonies have failure to appear rates that are no higher than the rates of defendants charged with misdemeanors, there is some evidence to suggest that failure to appear rates are high for particular types of felonies.²⁶

²³ John S. Goldkamp, "Bail Decision-Making and the Role of Pretrial Detention in American Justice," Ph.D. Dissertation, School of Criminal Justice, State University of New York at Albany, 1977.

²⁴ The relationship between charge seriousness and bail amount has been found in various studies. These include Landes (1974) and Goldkamp (1977). Analysis of pretrial commitments by the Department of Corrections in Washington, D.C., for the period of January-March 1979, indicates that felony defendants are twice as likely to be unable to post bail as are misdemeanor defendants. Data obtained from telephone conversation with Phil Ojalva, Research Analyst, D.C. Department of Corrections, December 4, 1979.

²⁵ New York City Department of Corrections and New York City Criminal Justice Agency, Expediting Bail Making in the Bronx: A Report on a Pilot Program (New York, 1979).

²⁶ Lazar Institute's preliminary findings from three sites on factors associated with failure to appear indicates that defendants charged with robbery had a high failure to appear rate (19 percent).

- Some felony defendants show high rates of pretrial crime which might be offset by supervised release. Roth and Wice's study indicates that releasees charged with felonies, especially burglary, larceny, robbery, arson and property destruction were more likely to be rearrested during the pretrial release period than other defendants. The New York One Day Detention study found that 40 percent of the felony defendants who secured release were rearrested.²⁷

While the target group for supervised release will be drawn from the population of defendants with bailable felony offenses, it is likely that the test sites might wish to exclude some defendants who meet this criterion. The type of felony cases which will be excluded will be negotiated between NIJ and test site representatives and will be uniform across the sites.

C. Admission to the Program

The elements of this component define the steps involved in securing the release of the defendant.

1. Screening Procedures

a. Point of screening

Screening for supervised release will take place following the initial court appearance after the pretrial status of arrestees has been determined. This second stage screening will limit the population of eligible defendants to those who are in jail because they failed to qualify for release on recognizance and are unable to post bail.

Lazar Institute, "Preliminary Findings from the Phase II National Evaluation of Pretrial Release." Findings from New York indicate that felony defendants who were released following an initial period of detention in the Brooklyn facility had high rates of nonappearance. Thirty-eight percent failed to appear at one or more court appearances. Daniel Freed, David Lax, Paula Smith, "One Day Detention Study," Preliminary findings, unpublished draft.

²⁷ Roth and Wice, Pretrial Release and Misconduct in the District of Columbia (Final Draft) Washington, D.C.: Institute for Law and Social Research, 1978, and Freed et al., ibid.

b. Determining defendant eligibility for supervised release

In order to ensure consistency in the screening procedures to determine defendant eligibility for supervised release, specialized staff must be assigned to conduct the initial screening of defendants in jail. The staff will be required to perform the following functions:

- First, determine whether the felony defendants in jail fall within the program's offense criteria. As indicated above, certain felony charges might be excluded from consideration through negotiations between NIJ and the test sites.
- Second, ascertain among the felony defendants who meet the charge criteria whether defendants are likely to post bail within the next few days. Since the focus of the program is to secure the release of felony defendants who would not ordinarily post bail or only do so after spending a considerable amount of time in jail, defendants who indicate that they are likely to secure release on their own should not be screened further at this point. (If these defendants do not secure release on their own they would become eligible for further screening.)
- Third, conduct interviews with felony defendants who meet the charge criteria and who indicate that they are unlikely to post bail. In conducting interviews with these defendants, the supervised release program should, to the extent possible, rely on information provided by the defendants during the initial pretrial screening interview. Additional items of information should be limited to those which were not included in the initial interviews. Also, supplementary verification, if necessary, should occur at this point. This might include contacting probation and parole officers regarding defendants currently under their supervision and defendants' families.
- Fourth, assess whether defendants are eligible for services or for contact supervision, and among the defendants eligible for services, assess the particular type of required services. (As discussed in the evaluation issues section, defendants eligible for services will be randomly assigned after release to either contact supervision and notification or contact supervision, referrals to services and notification. Defendants identified as eligible for contact supervision, who secure release, will not be part of the experimental program at this point. However, the program will monitor the performance of these defendants and the evaluation will collect outcome measures on these defendants.) In assessing whether

defendants fall within the service group or the contact group, objective, measurable criteria should be applied in order to enhance the generalizability of the findings. Moreover, the staff should understand that identification of service needs is to be restricted to those which are likely to bear upon the defendant's appearance at court. It would not be appropriate to identify services which may have a rehabilitative effect but are unrelated to assuring the defendant's court appearance. For example, if a defendant is employed, he should not be identified as requiring counseling (even though he might derive some benefit from it) if it is not essential for assuring his appearance at court. Contact supervision might be sufficient for this defendant. Further, defendants identified as eligible for services should be provided with the service which is the least onerous for assuring his appearance at court. For example, if a defendant has a drug problem which could be handled by participation in an out-patient program, he should not be identified as requiring in-patient treatment. Here, again, additional services unrelated to his court appearance should not be required.

The program should provide training to the screening staff to assure that they can adequately perform these responsibilities. The program should also document the reasons why apparently eligible cases are not recommended for supervised release by the screening staff. It should also be noted that while not all defendants identified as eligible for services will in fact receive them after release, staff will be required to determine the particular type of services which may be required for all defendants eligible for services. This will expedite the placement process following release.

c. Defendant agreement to be considered for supervised release

During the screening interview, the program may wish to obtain the defendant's written agreement to be considered for supervised release. This agreement should include language which indicates that the defendant understands that:

- he voluntarily agrees to be considered for supervised release;
- if the court approves his release, his release is conditioned on his compliance with court-ordered contact conditions;
- he may be required to participate in certain services as a condition of release; and

- if he fails to comply with the court-ordered conditions, he may be brought back to court for a hearing on the alleged violations.

d. Presenting program recommendations to court for supervised release

The selected sites will be required to wait a minimum number of days which will be uniform across the programs before presenting recommendations to the court. The minimum uniform number of days, to be negotiated between NIJ and test site representatives, will increase the likelihood that the proportion of defendants who can make bail shortly following admission to jail will be uniform across sites.

2. Approval of Program Recommendation for Release on Supervision

It will be necessary to obtain judicial approval for the release of defendants on supervision. Since in most jurisdictions motions for bail reviews are heard by the higher-level court, the program will most likely be interacting with the higher court judges assigned to bail reviews. The program should ensure that a number of judges are assigned over time to hear supervised release cases and that the defense attorney and prosecutor have the opportunity to review cases under consideration. Also, the participating courts will need to develop procedures to accommodate the supervised release hearings. Special hearings on a regular basis is a preferred method for ensuring that the supervised release hearings are accommodated.

The program should also ensure that participating judges understand the purposes of the supervised release program and the experimental nature of the test. As indicated on page 16 and in the evaluation issues section, the program will identify two groups of defendants during the screening process--those who are eligible for services and those who only require contact supervision. The program will recommend judicial approval of release for both groups of defendants on the condition that they participate in court-ordered contact conditions. Judges should also understand that a portion of the defendants identified as eligible for services will receive services to be provided by outside referral agencies. This decision will be made on a random basis by the program following the release of defendants.

At the release hearing, the program should obtain the defendant's written agreement to the conditions of release. This agreement should include language which indicates that the defendant is required to:

- maintain the required level of contact supervision;
- participate in services defined as necessary by the supervised release program;
- notify the program of changes in address;
- telephone the program upon receipt of letters indicating his court date; and
- attend court appearances and refrain from criminal law violations;

and that the defendant's failure to comply with the court-ordered conditions may result in a court hearing to reassess his release status.

3. Procedures Following Release Hearing

Defendants who were identified as eligible for services during the screening interview and who were granted release will be randomly assigned after the release hearing to either the full program activities of contact supervision, referrals to services, and notification, or to the partial program activities of contact supervision and notification. Procedures for implementing the random assignment process will be developed at each site through negotiations with NIJ, site representatives and the evaluation team. Following the random assignment procedures, the supervised release program will provide written notice to the judge who authorized release indicating which defendants were assigned to services and the nature of the services to be offered. The supervised release activities for defendants in the two experimental conditions and for defendants identified during the screening interview as eligible for contact supervision and released on contact supervision are described below.

D. Supervised Release Activities

The elements of this component define the requirements for the implementation of contact supervision, referrals to services, and notification activities of the program.

1. Contact Supervision

All defendants will be required by court-order to maintain direct contact with the supervised release program. The defendant's compliance with contact conditions is presumed to increase his likelihood of appearing

in court since it assures that he will remain in the community during the pretrial release period; enables him to be notified of his court date; and provides him with the opportunity to notify the program if he cannot make his court appearances.

The level of contact supervision should be frequent enough to provide the program with timely indicators of flight. Although supervised release programs often tailor the frequency of contact supervision to the individual defendant (for example, taking into account the defendant's progress and length of time on pretrial release), a uniform schedule of contacts will be implemented across all sites for all defendants on supervision for a set period of time.²⁸

It is suggested that during the first month of release, defendants identified as eligible for services and who were subsequently assigned to the partial program activities of contact supervision and notification, and defendants who were identified as eligible for contact supervision, should be required to report to the program in person once a week and maintain telephone contact with the program once a week.²⁹ After the first month, the program can vary the frequency of contact for these groups of defendants according to the specific circumstances of each case. In some cases, this may involve maintaining the same level of contact undertaken in the first month, increasing the required level of contact, or decreasing it. However, in no case should the frequency of contact be less than one telephone contact per week after the first month. Possible factors to be considered in adjusting the frequency of contact supervision after the first month could include the defendant's compliance with the contact conditions during the first month and the length of time until trial.³⁰

²⁸ A minimum of one telephone contact per week will be required for all defendants on supervised release. It is preferable to have the supervised release program initiate the telephone contact in order to verify that defendants are still residing in the community.

²⁹ This schedule may be modified in negotiations between NIJ and the test sites.

³⁰ Several studies indicate that as time on release increases, the probability of failure to appear increases among released defendants. Stevens Clarke, The Effectiveness of Bail Systems: An Analysis of Failure To Appear in Court and Rearrest While on Bail (Chapel Hill, North Carolina: Institute of Government, University of North Carolina, 1976); Marian Gewirtz, The Pattern of Failure to Appear (New York: Pretrial Services Agency, 1977). Clarke's study found this factor to be more important than community ties, prior record, or nature of the charge in

Defendants identified as eligible for services and who were subsequently assigned to the full program activities of contact supervision, referrals to services and notification will be required to maintain telephone contact with the supervised release program once a week throughout the pretrial release period. The reduced level of contact supervision for this group of defendants has been selected to minimize the reporting requirements of defendants who are participating in continuous services. While it is anticipated that defendants will participate in services for the duration of the pretrial period, in the event that defendants complete their service requirements before the end of the pretrial period, the supervised release program may wish to consider increasing the level of contact supervision for these defendants for the remainder of the pretrial period. The key factor to be considered in determining the level of contact supervision for defendants who complete their service requirements before the end of the pretrial period is that it should be frequent enough to provide timely indicators of flight.

explaining missed court appearances among pretrial defendants. While Gewirtz's study found that failure to appear rates peaked during the fourth through eighth weeks after arraignment, the failure to appear rates were high for defendants who had court appearances at six months following arraignment. This latter finding, coupled with the correlation between number of hearings and failures to appear, suggests that court delay contributes to the defendant's proclivity to miss scheduled court appearances. Roth and Wice (1978) suggest, however, that length of time on release may not be as important as the type of court appearance (trial). Schaffer's study provides some support for this claim. While most of the failures to appear occurred early in the court process and involved relatively less serious offenses, after the early failures to appear were removed, the likelihood of flight appeared to be related to the imminence of disposition in serious cases. A. Andrew Schaffer, Bail and Parole Jumping in Manhattan in 1967 (New York: Vera Institute of Justice, 1970). Thomas (1976) found that length of time on release was correlated with failures to appear among felony defendants but not among misdemeanor defendants; however, Galvin's reanalysis of four studies, after controlling for exposure time, showed no differences in failures to appear among felony and misdemeanor defendants. John Galvin, Instead of Jail: Alternatives to Pretrial Detention, Volume 2 (Washington, D.C.: Government Printing Office, 1977).

Clarke's study and Lazar Institute's study (1979) also show that exposure time is related to rearrest probability while on release. However, the Lazar study also indicates that many rearrests occur early in the pretrial release period: 16 percent of the rearrests occurred within one week of initial arrest; 45 percent of the rearrests occurred within four weeks; and 67 percent of the rearrests occurred within eight weeks. This latter finding would thus suggest the need for a high level of contact supervision in the early pretrial release period.

The supervised release program may wish to consider conducting periodic field visits to each defendant's residence during the release period; having defendants report to the program a half hour before each scheduled court appearance; and having program staff accompany defendants to their scheduled court appearances. Also, program staff should be available at night and on weekends in order to facilitate defendant reporting requirements.

2. Service Provision

The program will be required to use outside agencies to provide services to a portion of the defendants who are required as part of the court-order to participate in services. The type of services and frequency of participation will depend upon the particular problems of defendants which might bear on the likelihood of court appearance. However, based on prior supervised release programs, the range of services would include drug and alcohol treatment, employment, mental health, and housing. It is suggested that outside referral agencies be required to see defendants at least once a week. Less frequent contact might hamper the referral agency's opportunity to assist defendants in ameliorating problems which affect their likelihood of court appearance and to remind defendants of their court dates. This suggested minimum frequency of contact does not supplant the defendant's periodic contact with the supervised release program. As indicated above, defendants who are required to participate in services are also required to maintain weekly telephone contact with the supervised release program.

The supervised release program will be required to develop effective working relationships with the outside agencies in order to permit the timely and appropriate placement of defendants following release. As such, staff of the supervised release will need to be thoroughly familiar with the eligibility criteria of the referral agencies and the capacity of the referral agency at any one time. In order to prevent lengthening court processing time, outside referral agencies which require defendants to participate in services for a period of time which exceeds the usual pretrial release period should not be used. Also, the supervised release program should make sure that outside referral agencies only provide services which are related to assuring defendants' appearance in court. Supplemental services unrelated to assuring the defendant's court appearance should not be provided unless requested by the defendant.

Further, the supervised release program staff will be required to maintain contact with the referral agencies to ensure that defendants are complying with their service requirements. It is recommended that the supervised release program staff conduct periodic visits to the referral agencies. The program staff will also need to ensure that the outside agencies understand their reporting requirements (see p. 24). The supervised

release program may find it necessary to provide training to the external agencies to familiarize them with court procedures, the importance of court appearance, and the consequences of nonappearance.

Since some defendants identified as eligible for services who were subsequently assigned to receive contact supervision only may request social service referrals, the supervised release program will be required to provide all defendants assigned to receive only contact supervision with a list of outside agencies from which these defendants can request assistance. However, unlike the group of defendants required by court-order to participate in services, referrals to services for defendants assigned only to contact supervision will be voluntary. The supervised release program will not initiate the referral or monitor the referral for these defendants.

3. Notification

The supervised release program will be required to ensure that all defendants released under supervision receive notification of their court dates. While the notification procedures may vary in the jurisdictions selected to implement the test (in some jurisdictions the court may send letters to defendants, while in other jurisdictions the pretrial services agency may assume this responsibility), the defendants should be required to call the supervised release program upon receipt of the letter of notification. (This requirement should be included in the release agreement.) The supervised release program will be required to provide referral agencies with court date information for those defendants participating in services as a condition of release.

E. Procedures for Monitoring Defendants' Compliance with Conditions of Supervised Release and for Responding to Violations of Conditions

The elements of this component define the procedures for supervising released defendants and for responding to instances of noncompliance.

1. Supervision of Defendants on Release

A key assumption of supervised release is that adequately monitored conditions will reduce defendants' opportunity to flee. Adequate supervision of conditions is essential for two reasons: first, it enables the program to fulfill its reporting obligations to the court regarding the defendants' compliance; and second, it increases the deterrent value of conditions. If defendants see that conditions imposed upon them are not

monitored, they are more likely to presume that they can safely violate them without adverse consequences.

Several requirements are necessary to ensure adequate supervision of the defendants' release conditions:

- The supervised release program must keep written records on defendants' compliance with the conditions. This information is not only necessary for reporting instances of non-compliance, but will also serve as the basis for the program's report to the court at the disposition stage.
- The supervised release program should notify the court and seek a continuance of the defendant's court date when the defendant is unable to appear in court.
- The outside referral agency must maintain written records on each defendant's progress in adhering to the conditions of release; must submit periodic reports to the supervised release program indicating whether the defendant is complying with the service requirements (this reporting requirement should not place any burden on the outside referral agencies; checklists indicating whether the defendant is still in service will suffice); must notify the supervised release program of any instances of noncompliance; and must prepare a final summary of the defendant's progress which can be included in the supervised release program's report to the court at the disposition stage.

2. Procedures for Responding to Instances of Noncompliance

The supervised release programs will be required to develop administrative procedures for responding to instances of noncompliance. In developing these procedures the program must strike a balance between flooding the court with reports of noncompliance which may be trivial and failing to take appropriate action when the defendant's noncompliance might have serious consequences (for example, if the defendant fails to appear in court). Also, the program should involve the judiciary at the outset in developing these procedures in order to assure a clear understanding of the circumstances necessitating reports to the court of noncompliance.

The current NAPSA standards suggest that release agencies should have some discretion in determining what circumstances warrant reporting noncompliance to the court. Factors that should be considered include the nature of the condition, the reason for noncompliance, and the degree

of violation. For example, if a defendant who has made the first five required contacts misses the sixth because he was out of town, but offers an explanation to the program upon his return, the situation would not warrant any formal action beyond perhaps warning the defendant that he should have notified the program in advance that he would be away. On the other hand, if he fails to make the initial contact upon release, the situation would call for a warning. His repeated failure to check in with the program would constitute grounds for taking legal action. If a defendant fails to appear for a court hearing, the program may want to attempt to reach him prior to the issuance of a bench warrant in the event his absence was involuntary. However, this leeway might only be appropriate if the defendant has been complying with his conditions to date.

3. Violation Procedures

The program will be required to develop written rules and administrative processes regulating allegations of violations and revocation that provide due process procedural safeguards. The NAPSA standards suggest that when a violation is alleged, the administrative procedures should include:

- submission of a written report by the monitoring agency to the court;
- distribution of a written notice of the allegation to the defendant, his attorney and the prosecutor; and
- authority for the court to order a hearing with written notice of the hearing date and the alleged violations distributed to the defendant, his attorney and the prosecutor. (A warrant may be issued for the defendant's arrest and, if executed, a hearing should be held within 72 hours of the arrest.)

4. Sanctions for Noncompliance with Conditions

Sanctions imposed by the court for violations of supervised release conditions should be limited to:

- Establishing new release conditions which are similar to the original conditions imposed. Similar release conditions are required to preserve the experimental design of the program. For example, defendants originally assigned to the full program activities of referrals to services, contact supervision and notification might be assigned to another referral service while defendants originally assigned to the partial program activities of contact supervision and notification

might be required to adhere to more frequent contact supervision; or

- Imposing the original bail set at the first court appearance. This requirement will assure that defendants are not given a more restrictive release option than was originally available.

5. Procedures for Locating Defendants Who Fail to Comply with Conditions

The program will be required to develop a working relationship with the unit of the criminal justice system which is responsible for arresting defendants for whom warrants have been issued either because of nonappearance or noncompliance with other conditions. The program should assure that the unit responsible for serving warrants will give appropriate attention to locating supervised release defendants. Further, in order to protect the confidentiality of the information provided by defendants on supervised release, the program should exercise judgment in determining the types of information which should be disclosed to the unit of the criminal justice system responsible for serving warrants.

III. EVALUATION ISSUES

The purposes of this section are to identify the objectives of the research to be conducted during the course of the field test and to provide a general discussion of the test design issues. A more definitive description of the evaluation effort will be set forth in the NIJ solicitation for the evaluation of the test programs.

A comprehensive report of the results of the field test will be prepared for the Institute. The report will be distributed nationally for the purpose of sharing the knowledge gained with as many practitioners and policymakers as possible.

A. Evaluation Objectives

The evaluation will document the attainment of the following goals which are:

1. To increase the rate of nonfinancial forms of pretrial release;
2. To reduce the pretrial detention rate of defendants held in jails;
3. To assist defendants in ameliorating problems which bear on their likelihood of appearing in court; and
4. To assist defendants in ameliorating problems which bear on their likelihood of committing crimes while on release.

The specific objectives of the evaluation are:

1. To Assess the Impact of the Supervised Release Program on the Criminal Justice System.

This objective will receive major attention in the evaluation. While it is anticipated that the sites selected to implement the field test are those best suited to achieve the goals of the program (based upon the current needs of their criminal justice system and their demonstrated willingness to undertake the program requirements), past experience has shown that new programs may often have unanticipated consequences which affect the program's achievements as well as those of other components of the criminal justice system. Often, these consequences are not fully explored in

evaluation efforts, resulting in a lack of information on the necessary conditions and possible implications of implementing similar programs in other jurisdictions.

The types of questions to be addressed in examining this objective include, but are not limited to:

- Does the program result in an increase in the rate of non-financial release?
- Does the program reduce the rate of pretrial detention?
- Is there a change in the average length of stay for defendants initially held in jail but granted some form of pretrial release?
- Is there a change in the average length of stay for defendants held in jail on pretrial status for the duration of the pretrial period?
- Are there changes in the type of defendants (offense type and criminal justice system status) held in jail?
- Are there changes in the use of bail and the amount of bail set?
- Is there a change in prosecutor charging process?
- Are there changes in court case processing patterns? For example, is there an increase in the time to reach case dispositions? Is there a change in the frequency of continuances? Is there a change in the frequency of plea bargaining?
- What type of sentences are imposed on program participants who are convicted?
- What type of sentences are imposed on non-program participants who are convicted?

2. To Assess the Impact of Different Types of Supervised Released Activities on the Failure to Appear Rates of Program Participants

The rationale for providing supervised release is based on the assumption that provision of adequately monitored contact supervision and supportive services will reduce the defendants' likelihood of failing to appear for court appearances. At the core of the evaluation is the question of whether contact supervision combined with referrals to services is more

effective than contact supervision without accompanying referrals to services in assuring court appearances. The types of questions to be addressed in examining this objective include:

- Is there a difference in the failure to appear rates among defendants identified as eligible for services who receive contact supervision in comparison to defendants identified as eligible for services who receive contact supervision and referrals to services?
- Is there a difference in the failure to appear rates by the type of service received by defendants required to participate in contact supervision and referrals to services?
- Is there a difference in the failure to appear rates among defendants identified as eligible for services in comparison to defendants identified as eligible for contact supervision?
- Is there a relationship between the defendants' compliance with court-ordered conditions and failure to appear rates? Does this relationship differ by types of court-ordered conditions?
- Is there a difference in failure to appear rates among defendants who vary in terms of nature of present charge and prior criminal justice involvement?
- Recognizing that group characteristics will differ, is there a difference in failure to appear rates among defendants in the supervised release program in comparison to defendants released on their own recognizance and defendants who post bail?

3. To Assess the Impact of Different Types of Supervised Release Activities on the Pretrial Crime Rates of Program Participants

While the primary purpose of supervised release is to assure defendants' appearance at court through provision of support and contact in the community during the pretrial release period, these activities might have an additional benefit of reducing defendants' involvement in pretrial crime. The evaluation will examine whether contact supervision combined with referrals to services is more effective than contact supervision without accompanying referrals to services in reducing pretrial crime. The types of questions to be addressed in examining this objective include:

- Is there a difference in the pretrial crime rates among defendants identified as eligible for services who receive

contact supervision in comparison to defendants identified as eligible for services who receive contact supervision and referrals to services?

- Is there a difference in the pretrial crime rates by the type of service received by defendants required to participate in contact supervision and referrals to services?
- Is there a difference in the pretrial crime rates among defendants identified as eligible for services in comparison to defendants identified as eligible for contact supervision?
- Is there a relationship between the defendants' compliance with court-ordered conditions and pretrial crime rates? Does this relationship differ by types of court-ordered conditions?
- Is there a difference in pretrial crime rates among defendants who vary in terms of nature of present charge and prior criminal justice involvement?
- Recognizing that group characteristics will differ, is there a difference in pretrial crime rates among defendants in the supervised release program in comparison to defendants released on their own recognizance and defendants who post bail?

In order to effectively address these evaluation objectives, the evaluation will develop process information on program operations as well as information on program impacts on participants and the criminal justice system.³¹

B. Analytic Framework and Evaluation Design Issues

The analytic framework of the evaluation will need to address two levels of program effects:

³¹ While supervised release activities may also affect defendants' social functioning and post program involvement in crime, these outcomes will not be examined by the evaluation because of the time and cost constraints involved in determining these long range impacts and the difficulties in obtaining valid measures of the quality of services provided by the outside social service referral agencies. However, the evaluation might wish to examine whether program participants sentenced to probation continue to participate in the social services provided during the pretrial release period.

- the effects of the program on the criminal justice system;
and
- the effects of the program on the defendants released under supervision.

In order to address the two levels of program effects, the evaluation will require the use of two types of designs.

1. Design for Assessing the Effects of the Program on the Criminal Justice System

A quasi-experimental design will be required in which time series data will be collected to assess changes in the criminal justice operations as a result of the introduction of the supervised release program. Time series data will be collected by the evaluator for a period prior to the implementation of supervised release and for a period following program implementation. Evaluating the supervised release program's effect on pre-program practices will require controlling for historical changes unrelated to the program. That is, comparisons of pre-existing criminal justice system practices with practices following program implementation will need to be free of influences from changes in such factors as:

- new criminal codes or new rules of criminal procedures affecting release decision-making and sentencing;
- police arrest policies;
- release on recognizance and bail policies;
- prosecutor charging policy;
- criminal justice system staffing levels; and
- social, demographic or prior criminal history characteristics of defendants.

While it is difficult to achieve much precision in controlling for historical changes, this task is essential to the evaluation. Otherwise, it may not be possible to determine the extent to which the supervised release program is responsible for observed changes in the practices of the criminal justice system. The activities involved in carrying out this task would include:

- setting forth the hypothesized linkages between the changes extraneous to the supervised release program which occurred in

the jurisdiction and the effects of these changes on the supervised release program;

- collecting time series data on the hypothesized linkages; and
- if the data suggest that changes which occurred in the jurisdiction had an effect on the program's operation, developing an estimate of the size of the effect.

2. Design for Assessing the Effects of the Program on Defendants Released Under Supervision

In order to assess the effects of different types of court-ordered supervised release activities on failure to appear rates and rates of pretrial crime, an experimental design will be implemented in which defendants who have been identified as being eligible for services and who have been granted supervised release will be randomly assigned to one of two groups. One group will receive full program activities of contact supervision, notification, and referral to services, and the second group will receive partial program activities of contact supervision and notification. The use of this experimental design involving random assignment is required for two reasons. First, random assignment is the only method for ensuring that the evaluation yields definite conclusions about the program effects. It minimizes the chance that significant pre-treatment differences will exist in the two groups, and it assures that these groups will be exposed to the same environment and environmental changes except for the treatment conditions. Therefore, it reduces the possibility that non-program factors, such as changes in police arrest practices or pretrial release decision-making will be interpreted as program effects.

Second, the program will not have sufficient funds to make referrals to outside agencies and to monitor these referrals for all defendants identified as eligible for services. The use of random assignment process will give every eligible defendant an equal probability of receiving this special assistance.

Since some defendants assigned to receive partial program activities of contact supervision and notification may request social service referrals, the supervised release programs will be required to provide all defendants assigned to contact supervision and notification with a list of outside agencies to which these defendants can request assistance. However, for these defendants, referrals to services will be voluntary and the supervised release programs will not initiate the referral or monitor the referral.

Comparisons will be made between the two groups in terms of failure to appear rates and rates of pretrial crime. These comparisons will address the question of whether court-ordered contact supervision and notification and referrals to services is more effective than court-ordered contact supervision and notification without formal referrals to services.

The design will require that in each site full program services be provided to 250-300 supervised releasees. These sample sizes will provide an adequate level of statistical power for the analyses to be conducted. However, the selection process will require that the pool of cases eligible for consideration for supervised release from which the two groups are selected must be larger than the final size of the sample. The total number of eligible cases for supervised release may need to be as high as 800 to 1,000 during the intake period in order to arrive at 250-300 in each test group. The larger number of cases is required since it is likely that not all cases eligible for supervised release will be granted supervised release. Some eligible defendants may post bail during the screening process while others may not be approved for supervised release by the judge.

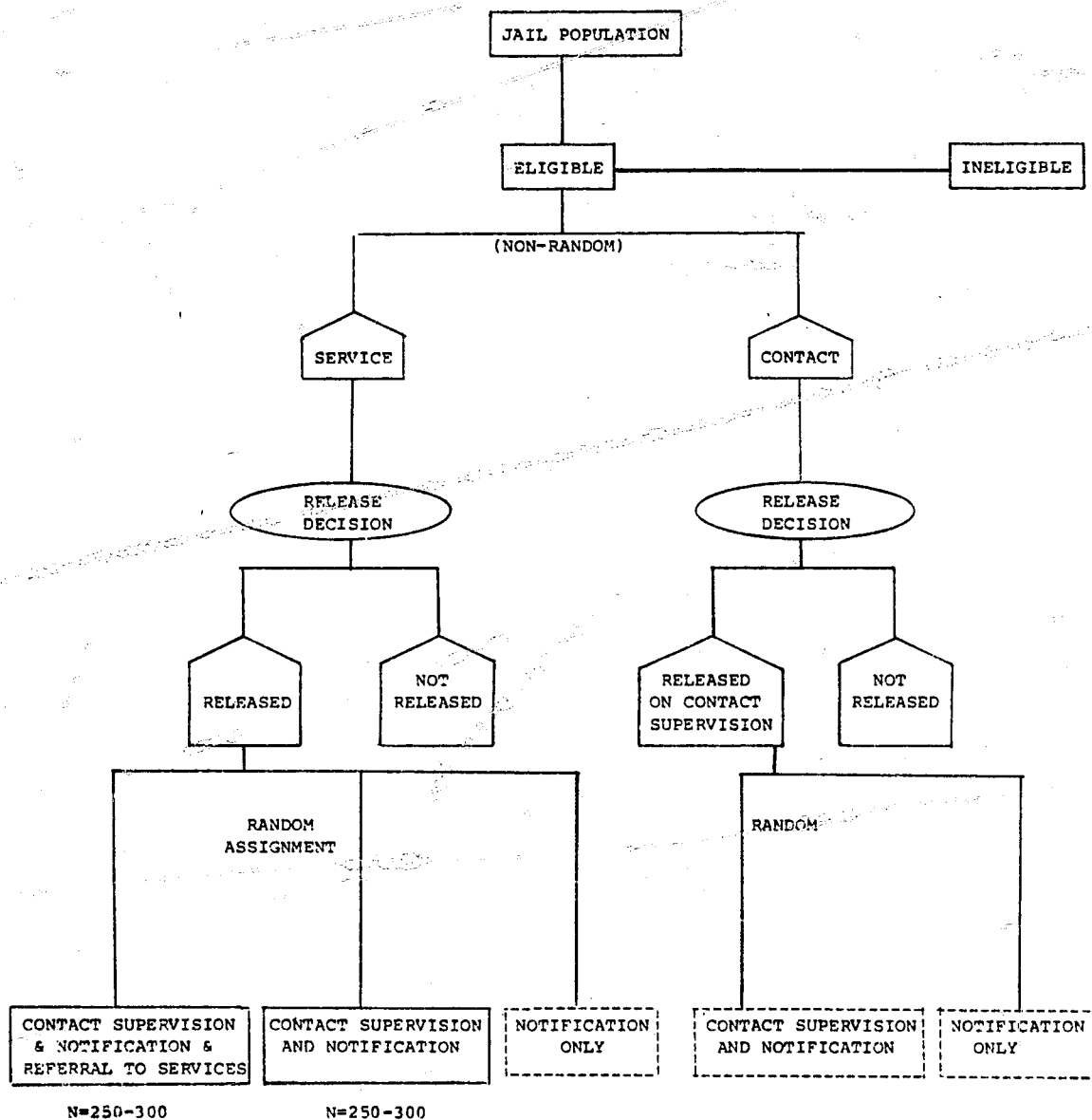
The selection process will involve the following steps:

1. Defendants held in jail following the initial court hearing where bail has been set will be identified by the program.
2. Defendants will be screened by the program to determine whether they fall into the target group eligible for supervised release.
3. Of the defendants eligible for consideration for supervised release, the program will determine which defendants have a service need and the type of services required. This screening will result in dividing defendants on a non-random basis into two groups--a service group and a contact group.
4. The program will present its recommendation for supervised release for the defendants in these two groups to the judge.
5. For cases for which the judge authorizes release, defendants will be required by court order to maintain contact supervision with the program and to participate in such services as the program determines are necessary.
6. Following release, defendants identified as eligible for services will be randomly assigned by the program to receive either the full program activities (contact supervision, notification, and referral to services) or partial program

activities (contact supervision and notification). Defendants identified as not eligible for services and who are released on contact supervision will be monitored by the program, but at this point will not be randomly assigned to any test conditions.

7. The program will provide written notice to the judge who authorized release indicating which defendants were assigned to services and the nature of the services to be offered.

In summary, the design for the test may be characterized as follows:



The test program anticipates examining two possible variations of this design at some point before the end of the program if either of two conditions are found. First, if the failure to appear rates and rates of pretrial crime among the two test groups defined as eligible for services are not significantly different, this would suggest that services do not materially affect outcomes. This finding would allow for the implementation of a third test condition in which some defendants will be randomly assigned to receive only notification. This variation would be available to new cohorts of defendants. Defendants already on supervised release would not be affected by this modification. Second, if there is a sufficient number of defendants released on contact supervision and if the failure to appear rates and rates of pretrial crime of this group are not significantly different from those of defendants released on their own recognizance, new cohorts of defendants eligible for contact supervision will be randomly assigned to either contact supervision and notification or notification only. These design variations will provide an additional measure of the criminal justice system's response to the introduction of supervised release. The design modifications are indicated in the above chart by: ☐

C. Measures

Three categories of measures will be required to address the two levels of program effects.

1. Measures of Impact on the Criminal Justice System

The range of criminal justice system impact measures to be used to examine the impact of supervised release programs include but are not limited to:

- rates of pretrial detention;
- types of cases held in jail (type of offense, criminal justice status);
- length of stay of defendants initially held in jail but granted some form of pretrial release;
- length of stay of defendants held in jail on pretrial status for duration of pretrial period;
- rates and forms of pretrial release (ROR, supervised release, bail);

- bail amounts;
- prosecutor charging practices;
- case processing patterns (length of time for cases to reach disposition, frequency of continuances, frequency of plea bargaining);
- sentencing patterns for program participants; and
- sentencing patterns for non-program participants.

2. Measures of Impact on the Program Participants

In order to test the impact of the two different types of supervised release, it is necessary to measure the in-program performances for both groups. The range of outcome measures to be used include:

- rates of compliance with program conditions;
- rates of revocation for noncompliance with program conditions;
- rates of failures to appear (both willful and non-willful);
- number of bench warrants issued;
- fugitive rates;
- number, severity and rates of new arrests during pretrial release period;
- number, severity, and rates of new convictions for arrests occurring during pretrial period; and
- sentencing patterns (number sentenced to probation and incarceration).

Post program performance rates will be limited to possibly examining whether defendants sentenced to probation continue to participate in the social services provided during the pretrial release period.³² Post program recidivism rates will not be collected.

³² The feasibility of this task will be determined by NIJ and the selected evaluator.

3. Program Process Measures

In order to develop a data base useful for interpreting the results of the test and identifying the conditions for further replication, a system for monitoring the attainment of program process goals will be incorporated in the evaluation design. The individual program will be responsible for developing, staffing and running the management information system appropriate for monitoring and controlling normal operational needs. The independent program evaluation effort will use such data and available information sources to the extent possible, and will not have responsibility for project operational support services. The content and timing of feedback from the evaluation efforts will not be intended to satisfy short term operational management needs. At a minimum, the following three types of data will need to be maintained by the supervised release programs in order to contribute to the program process evaluation and to the impact assessments discussed above.

a. Client and offense characteristics

The supervised release program will be required to collect and periodically aggregate demographic and socioeconomic data and criminal history information on defendants screened for supervised release including:

- educational history;
- employment history;
- family ties;
- prior offenses; and
- length of confinement.

This data will provide information on a number of important indicators of program progress. For example, periodic examination of characteristics and offense history of defendants screened for supervised release will enable the program to determine the correspondence between program eligibility criteria and actual participant characteristics, and the correspondence between participants' service needs and the available services.

b. Nature of supervised release activities

In order to monitor the defendant's compliance with the court-ordered supervised release activities and to have sufficient information on the progress of each defendant which can be used at the sentencing stage, it is important that the program maintain thorough documentation on the nature of the supervised release mandated for each defendant. The information requirements necessary for these purposes will include:

- the type and frequency of contact supervision provided directly by the program;
- the number and kinds of services to which defendants are referred;
- the levels of each service, as appropriate (frequency and duration); and
- the defendant's participation in the supervised release activities (drop out, attendance, and completion rates).

c. Defendant's compliance with program requirements

The use of supervised release is based on two key assumptions. First, in return for the benefit of release from custody, the defendant will comply with court-ordered conditions of release designed to assure his appearance at court. The defendant's failure to comply with the conditions set provides a basis for the possible revocation of his release. Second, adequate supervision by the program of the defendant's court-ordered conditions will increase the likelihood that the defendant will adhere to the conditions and will return to court.

In order to provide an adequate test of these assumptions, it is essential that the program monitor the defendant's compliance with the conditions and maintain data on revocation rates, reasons for program removal, and the characteristics of those who fail to comply with the conditions. To monitor this aspect of the program, information requirements will include:

- characteristics of defendants who fail to comply with conditions of release;
- number and dates of all instances of noncompliance;
- nature and disposition of violations of conditions; and
- disposition of all participants removed from the program (these data will be collected by the evaluation team).

In addition to the utility these data will have for assessing the impact of the program, this information will serve other purposes as well. First, program success rates are likely to be influenced not only by the application of stringent eligibility criteria and careful screening procedures, but also by standards applied in removing defendants from the program. Data on the characteristics of defendants who fail and the reasons for program removal may point to the need to revise supervisory policies, to add a particular service or to alter removal conditions.

Second, all defendants removed from the program for failing to comply with conditions of release will be tracked by the evaluation team in order to retain their records in the test samples. If comparisons between the two test groups only involve the subset of defendants who successfully complete the program, no valid conclusions can be drawn. While any observed differences could be due to project intervention, it would be equally possible to attribute the differences to the special nature of clients who adhere to the projects' defined standards of conduct.

IV. IMPLEMENTATION AND NIJ SUPPORT

A. Implementation

The proposed test effort has been designed for implementation within three jurisdictions. The test is designed in three stages over a twenty-four month period. (See Figure 1.) The initial stage will involve up to five months of staff recruiting, training and planning.

The second stage will involve client intake, assignment to test groups, and implementation of program activities. The second stage will extend over a maximum of eighteen months.

The final one to two months of site responsibilities will be devoted to preparation of data for the national evaluator and project close-out activities.

A separate grant will be awarded by NIJ to an independent firm to evaluate the field test. The initial phase of the evaluation will extend for twenty-four months. It is anticipated that continuation funding for up to six additional months may be provided for the evaluation for a total evaluation period of thirty months.

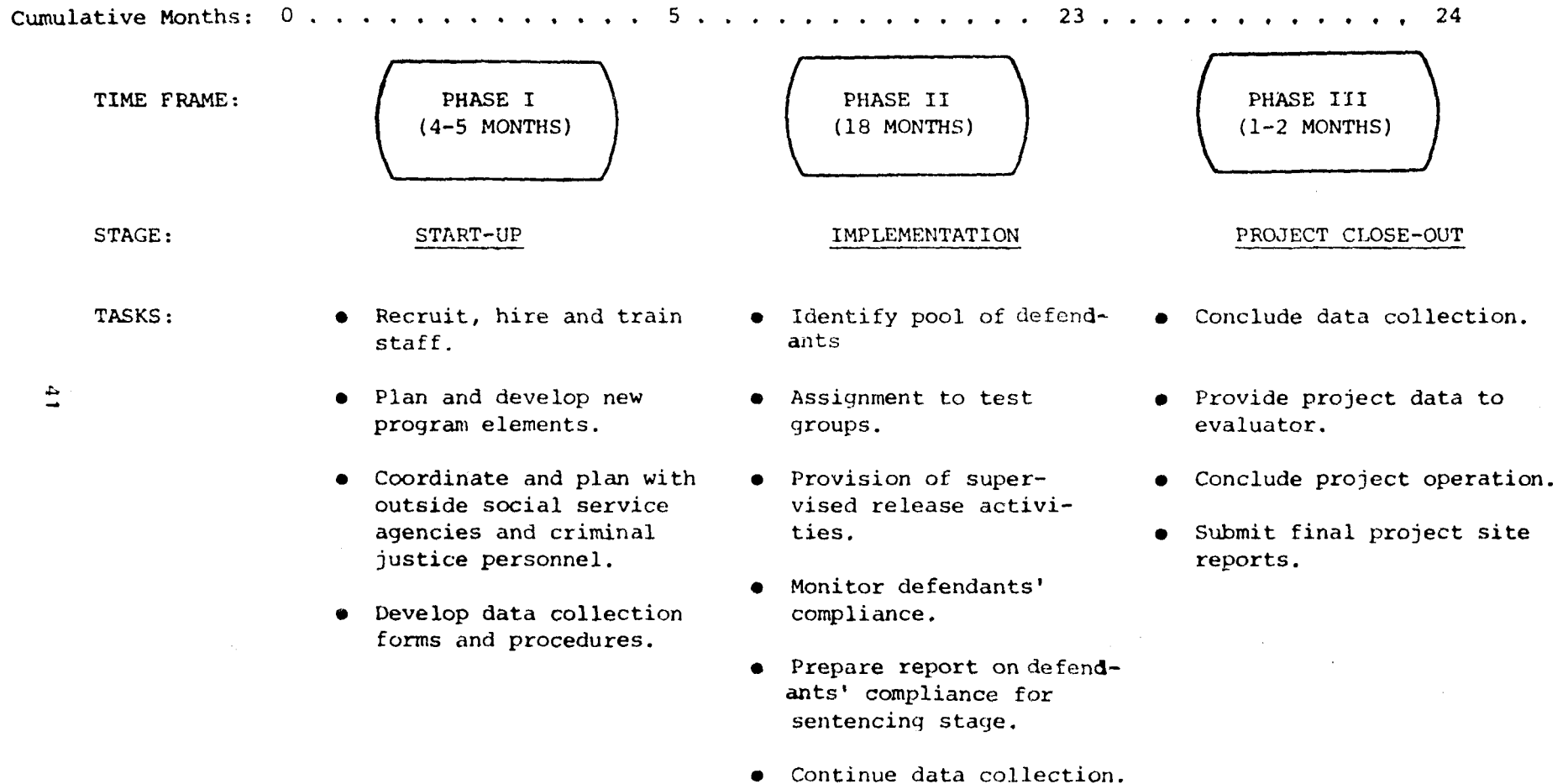
B. NIJ Support to Participating Sites

NIJ support will be provided in the form of financial assistance and training. A consulting firm will be retained by the Institute to provide implementation assistance to the participating supervised release programs. Support will include training for key program personnel, consultant services to aid programs in the planning and implementation of the program elements to be tested, and various conferences and meetings to enable key personnel from each of the participating programs to discuss problems and issues of mutual concern. Funds will also be included to support research utilization efforts such as hosting visiting criminal justice officials so they may observe program operations.

NIJ will allocate funds for program operations. Each participating program will be provided funds to cover the development of its currently operating pretrial services program into one which includes all of the elements of the program test design. The budget is designed to absorb only the additional costs of operation required by the test design. Approximately \$250,000 will be made available to each participating site for the 24 month period.

FIGURE 1

TIMETABLE AND TASKS FOR PROGRAM IMPLEMENTATION *



*The national evaluation contractor will have concurrent responsibilities during the first three phases, which will be identified in their work plan. The evaluation period may extend beyond twenty-four months, for an additional six months, up to thirty months.

V. SITE SELECTION

The site selection criteria are divided into two categories: those which are considered essential for the successful development and implementation of the supervised release test, and those which, while not essential, would materially add to the goal of effective development and implementation of the test.

A. Criteria Considered Essential to Program Development and Implementation

The following criteria are considered essential to the development and implementation of the supervised release test:

- The prospective site must have an established agency which performs intake and screening functions to determine defendants' eligibility for release on recognizance.
- The prospective site cannot have a supervised release program which began before October 1, 1979.
- There must be an indication of interest and cooperation and written commitment on the part of the judges and other affected criminal justice personnel who would participate in the test. A resolution passed by the judges to be involved is one possible method which would contribute to satisfying this criterion.
- The prospective site must have legal authority which permits the release of defendants under conditions.
- The prospective site must have a release on recognizance rate of approximately 40 percent or more, defined as the proportion of cases granted release on recognizance at the first court appearance of the total number of cases for whom some form of pretrial release was established. This definition excludes cases which were dismissed at the first court appearance and cases for which bail was not set. This minimum rate is required to ensure that defendants eligible for consideration for supervised release are those who cannot be released on their own recognizance because they represent a high risk of nonappearance.
- The prospective site must be willing to allow random assignment of supervised release cases to the two experimental conditions. They must also be willing to consider the possibility of implementing a third experimental condition (notification only) at a later point in the program.

- The prospective site must have a sufficient number of supervised release cases to meet the required sample size for the test. The site must have a minimum of 500-600 supervised release cases which will reach disposition during the eighteen month implementation period. Since it is likely that some cases screened by the program for supervised release will not be granted release (either because they make bail during the screening period or because the judge does not approve the release), the absolute number of cases screened by the program may need to be as high as 800 to 1,000 during the implementation period.
- The prospective site must have available social service agencies which will accept supervised release referrals at no cost to the program. Written agreement of cooperation must be obtained from these agencies. These agencies should specify the range of services they can provide; participant eligibility criteria; and the number of supervised release participants they can handle at any one time.
- The prospective site must provide a profile of the characteristics of defendants held in pretrial custody for the most recent one year period. This profile must include data on the number of defendants detained; the type of offenses for which the defendants were detained (misdemeanor and felony and specific charges within these two categories); the average length of detention by type of offenses; and bail amounts by type of offenses.

B. Criteria Facilitating Program Development and Implementation

The following criteria while not considered essential are looked upon as helpful in facilitating the development and implementation of the supervised release program. They should be considered as preferred criteria which will be applied if there are a number of candidates who meet the essential criteria spelled out above.

- Preference will be given to sites which have jail overcrowding problems.
- Preference will be given to sites which do not have an established supervised release program.

SOURCE MATERIAL FOR SUPERVISED RELEASE PROGRAM TEST DESIGN

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