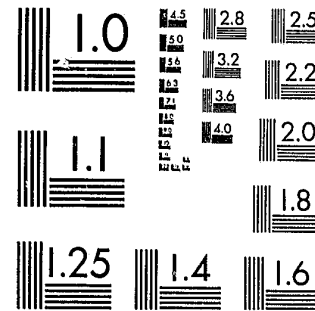


National Criminal Justice Reference Service

ncjrs

This microfiche was produced from documents received for inclusion in the NCJRS data base. Since NCJRS cannot exercise control over the physical condition of the documents submitted, the individual frame quality will vary. The resolution chart on this frame may be used to evaluate the document quality.



MICROCOPY RESOLUTION TEST CHART
NATIONAL BUREAU OF STANDARDS-1963-A

Microfilming procedures used to create this fiche comply with the standards set forth in 41CFR 101-11.504.

Points of view or opinions stated in this document are those of the author(s) and do not represent the official position or policies of the U. S. Department of Justice.

National Institute of Justice
United States Department of Justice
Washington, D. C. 20531

4/11/83

**PRETRIAL RELEASE: SELECTED FINDINGS
AND ISSUES FROM A NATIONAL EVALUATION**

by

Mary A. Toborg;
Martin D. Sorin

U.S. Department of Justice
National Institute of Justice

This document has been reproduced exactly as received from the person or organization originating it. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the National Institute of Justice.

Permission to reproduce this copyrighted material has been granted by

Public Domain/LEAA
U.S. Dept. of Justice

to the National Criminal Justice Reference Service (NCJRS).

Further reproduction outside of the NCJRS system requires permission of the copyright owner.

Prepared for Delivery at 1980 Annual Meeting of the American Society of
Criminology, San Francisco, California, November 7, 1980

79-NI-AX-0038

82814

PRETRIAL RELEASE: SELECTED FINDINGS AND ISSUES
FROM A NATIONAL EVALUATION

Background

Major changes in pretrial release practices have occurred since 1960, when the Manhattan Bail Project demonstrated that more defendants could be safely released without posting money bond. The success of this project in releasing defendants on their own recognizance, or OR, who later appeared for court led to widespread adoption of OR as a mode of release. Today, most large jurisdictions not only use OR and other types of release that do not involve money but also often have a pretrial release program as well. Typically, such programs interview defendants, assess their community ties and criminal history, make recommendations for release and may notify released defendants of coming court dates.

Despite these changes, collectively referred to as "bail reform," many features of the pretrial release system seem quite similar to those of the "pre-reform" era, before 1960:

- Most jurisdictions continue to use money bail. The adoption and greater use of other types of release, such as OR, were superimposed on the money bail system; they did not replace it.
- The assessment of community ties, which forms much of the basis for programs' release recommendations, usually considers the defendant's employment status and related factors. This may perpetuate the unfair treatment of the poorest defendants that caused major criticism of the money bond system.
- Jails in large cities are often overcrowded and filled with many defendants awaiting trial.

Thus, there has been both change and the lack of change over the past two decades. To assess the current state of pretrial release practices and their outcomes, the National Institute of Justice funded a national evaluation, now nearing completion. The study considered four broad topics:

-2-

- (1) Release: How many defendants are released pending trial, or alternatively, how many are detained? What are the most common types of release? What defendant or case characteristics seem to affect the release decision?
- (2) Failure To Appear for Court: To what extent do released defendants fail to appear for court? How well can failure to appear be predicted?
- (3) Pretrial Criminality: To what extent are released defendants rearrested during the pretrial period and to what extent are they convicted for those rearrests? What are the types of charges for which defendants are rearrested pretrial? How well can pretrial rearrest be predicted?
- (4) Impact of Pretrial Release Programs: To what extent do pretrial release programs affect release decisions? How do the programs affect defendant behavior during the release period, if at all; for example, do notification or similar followup activities result in lower rates of failure to appear for court?

To study these issues, we conducted several types of analyses. Only two will be discussed today. One involved an analysis of release practices and outcomes in eight jurisdictions, located throughout the country. In each area we selected a random sample of defendants arrested over roughly a one-year period and tracked them from arrest to final case disposition and sentencing. We used existing records to collect extensive data on each defendant's background characteristics, criminal history, the release decision, the role of the pretrial release program, the characteristics of the present case, the disposition and sentence, whether the defendant appeared for court, whether the defendant was

rearrested during the pretrial period and, if so, the disposition and sentence for that case. These data from the "eight-site" study were used to analyze release, failure to appear and pretrial criminality in those areas.

Another part of the study focused on the impact that pretrial release programs have on release practices and on the failure to appear and pretrial rearrest rates of released defendants. This part of the study involved four cities and used an experimental design, in which defendants were randomly assigned to two groups: one group was processed by the pretrial release program, and the other group was not. The experiences of both groups in securing release, appearing for court and so on were compared to assess the difference that program intervention may have made on defendant outcomes.

Selected findings from both the eight-site study and the experimental analyses are presented below. This is followed by a brief consideration of a few of the unresolved issues concerning pretrial release policies and practices.

Selected Study Findings

In the eight-site analysis, 85% of the 3,500 defendants in the sample secured release prior to trial. Conversely, 15% of the defendants were detained the entire pretrial period. These data indicate a continuation of a trend documented by Wayne Thomas in Bail Reform in America. In that study, Thomas found that detention rates had decreased over the 1962-71 period. Our analysis suggests that detention rates have continued to decline. In 1971 about half the 20 jurisdictions in the Thomas study had detention rates of more than 30%. None of the eight sites we studied in the late 1970's had detention rates that high. Indeed, most sites had rates less than half that high.

The decline in detention rates does not indicate that detention is no longer a cause for concern, however. Many of the defendants detained until trial were jailed for relatively long time periods: one-third of them for more than 30 days, and 20% for more than 90 days. Additionally, even defendants who were released prior to trial sometimes secured their release only after spending a substantial time in jail: approximately 3% of the defendants who were released prior to trial obtained release only after spending at least 30 days in jail. Since these defendants were eventually considered "safe" release risks, one may question the need for such long periods of detention before their releases were effectuated.

Of the released defendants, about 70% were released without any conditions that involved money. The remaining 30% of the defendants were released after posting full, deposit or unsecured bond. When failure to appear rates and pretrial rearrest rates were compared across sites for defendants released on nonfinancial versus financial conditions, no systematic differences were found: in some jurisdictions, defendants released on nonfinancial conditions performed better, while in other sites, the reverse occurred.

The failure to appear rate for the eight-site sample was 13% and ranged from 6% to 21% in the individual jurisdictions studied. A comparison with Wayne Thomas' data for the 1960's suggests that failure to appear rates may have increased slightly since that time.

Failure to appear rates do not reflect the extent to which defendants evade justice, because most defendants eventually return to court, often of their own volition. Only 2% of the defendants in the eight-site sample were fugitives at the time of our data collection.

Pretrial rearrest rates averaged 16% and ranged from 8% to 22% in individual sites. Perhaps more interesting than the total pretrial rearrest

rate is the extent to which certain defendants were repeatedly rearrested during the pretrial period: about 30% of the rearrested defendants were rearrested more than once.

Because speedy trial requirements are often proposed as a way of reducing pretrial rearrest rates, we analyzed the time to rearrest. Most rearrests occurred fairly early in the release period: 16% of the rearrests occurred within one week of the original arrest, 45% within four weeks, and 67% within eight weeks. Thus, feasible "speedy trial" provisions would seem unlikely to reduce pretrial rearrest levels significantly (though there are, of course, many other reasons to favor speedy trials).

An important question regarding failure to appear and pretrial rearrest is the extent to which either of them can be accurately predicted. We conducted multivariate analyses to identify the variables that were most closely associated with failure to appear and pretrial criminality as well as to determine the accuracy of those variables for prediction purposes. Variables included:

- defendant characteristics (e.g., community ties, prior record, age);
- case characteristics (e.g., charge, weight of the evidence); and
- "system" characteristics (e.g., program involvement in the release process).

Results of the analyses were very similar to those of other studies seeking accurate predictors of failure to appear or pretrial criminality: such predictors could not be found. Although violators of release conditions cannot be identified at the time of release, defendants who will comply with release conditions can be identified with reasonable accuracy. Because most defendants do comply with release conditions (i.e., they do not fail to appear and are not rearrested pending trial), a prediction

that all released defendants will comply will be accurate for a large proportion of the cases. At the same time, because violation of release conditions is a relatively rare event, efforts to predict it accurately are likely to be unsuccessful.

A related analysis compared the variables most closely associated with failure to appear and pretrial criminality with those most closely associated with judges' decisions to release defendants on financial, as opposed to nonfinancial, conditions. In general the results of the analysis showed little consistency between the variables affecting release decisions and those affecting either failure to appear or pretrial criminality. This suggests that whatever goals the release system is trying to achieve—whether only to insure appearance in court or also to try to protect the community from pretrial criminality—might be better accomplished by changing release practices to substitute considerations that are related to failure to appear or pretrial criminality for those that are not.

An interesting finding from the analysis of release decisions is the strong effect that pretrial release programs' activities had on those decisions: both programs' interviews and their recommendations had high impact on release decisions. However, program activities after release, as measured by the frequency and type of followup with defendants, had little effect on failure to appear or pretrial criminality (based on multivariate analyses that included post-release variables as well as the pre-release variables previously discussed).

To assess program impact in greater detail, with a study design better suited for such analysis, we implemented experimental procedures in four cities. In each case defendants were randomly assigned either to a group

that was processed by the pretrial release program or to a group that was not processed by the program. To avoid "denying service" to any defendant, the experiments involved the expansion of program operations to reach groups not previously processed. In this way a control group of defendants could be identified without reducing the number of defendants processed by the program.

Program impact on release decisions was assessed by comparing experimental and control group outcomes in terms of:

- the overall rate of release;
- the type of release (i.e., nonfinancial or financial);
- the time required to secure release; and
- the "equity" of release for defendants of different ethnicity and different employment status.

Statistically significant program impact on release outcomes was found in all cases except for misdemeanor-level defendants in one site. A separately implemented felony-level study in the same jurisdiction showed program impact, as did the experiments in the three remaining cities. The nature of the impact varied, however. In one case all release outcome measures were favorably affected by program processing. At the other extreme (excluding the experiment with no impact), one program affected only the "equity" of release. The most common impact was on the likelihood, or rate, of release.

In two of the sites we implemented separate experimental analyses of the impact of the program's post-release activities. In one jurisdiction we studied the effect of mail/telephone notification of court dates and in the other site we analyzed the impact of providing minimal supervision (monitoring weekly call-ins by defendants), as compared with providing more intensive supervision (including referral to needed services). The more extensive program activities did not result in lower failure to appear or pretrial rearrest rates in either case.

Thus, the findings from the experimental analyses seem reasonably consistent with those from the eight-site multivariate analyses. Program activities appear to affect release decisions but not the post-release behavior of defendants. This suggests that greater scrutiny should be given to programs' post-release activities to determine whether they are having sufficient impact to warrant their costs.

Unresolved Issues

Finally, a few of the unresolved issues concerning pretrial release should be mentioned. One such issue involves the ambiguity regarding appropriate goals for the pretrial release system. Although most of the laws in most jurisdictions require release decisions to be based solely on risk of flight, in practice considerations regarding risk of rearrest may also affect those decisions. With such ambiguity regarding goals, it is perhaps not surprising to find great disparity in release decisions.

Besides the lack of consensus on goals, there is a lack of agreement about the proper role of money bail in the release system. Despite two decades of bail reform, in which a variety of nonfinancial types of release have become more widely used, financial release conditions are still imposed on some defendants in every jurisdiction in the country. The reasons for the durability of the money bail system in a period of reform may need further consideration.

Part of the answer may lie in analysis of the role of detention, as it is used in practice. Although legally justified in most cases only as a way of insuring appearance in court, detention may in practice be a means of trying to protect the community from pretrial criminality. If so, bail may be a useful mechanism for implementing sub rosa preventive detention. Similarly, if pretrial punishment is considered desirable (in practice

though not in law), then money bail is a convenient mechanism for accomplishing this: at a minimum, a type of fine will be imposed on the defendant; and if the person cannot post bail, a jail term will result.

A related issue is the conflict between laws that create a presumption of release and practices that embody a presumption of detention. In most jurisdictions the majority of arrested defendants are detained until a program and/or judge screens them to determine which individuals should be released and on what conditions. Alternative approaches would be to release all defendants unless there was reason to consider someone a poor release risk or to screen arrestees to identify the poor risks, rather than the good ones.

Finally, the equity of the release process is an issue deserving further study. Although the declining use of money bond by itself would suggest that poor defendants are being treated more fairly, the fact that employment is included as one of the community ties that affects programs' release recommendations may lead to inequitable treatment of unemployed defendants. Results of our experimental analyses suggest that such inequity may in fact exist, although the findings also suggest that program operations in some cases reduce the inequitable treatment of unemployed defendants that would otherwise occur.

Concluding Remarks

In conclusion what can be said about present pretrial release practices, after two decades of bail reform? As indicated earlier, there has been both change and the absence of change:

- More defendants are now securing release pending trial. But available evidence suggests that many defendants are detained until trial who could be "safe" release risks.

- More defendants are now being released on nonfinancial conditions. But money bail is still very much in use throughout the country.
- Both national and State laws have been passed, mandating release conditions based solely on the likelihood of flight. But in practice release conditions may be imposed because of concerns about rearrest.
- Laws have been passed that create a presumption of release. But release practices embody a presumption of detention.
- The declining use of bond has reduced the inherent unfairness to poor persons of a release system based on money bail. But the use of employment as a measure of community ties may cause release inequity for unemployed defendants.

Thus, while reforms have occurred, and their impact should not be discounted, many features of the pre-reform era remain. Whether these features will become targets for further reform is an open question at this time.

Supplementary Information
from the
National Evaluation of
Pretrial Release

STUDY SITES

● EIGHT-SITE ANALYSIS

- BALTIMORE CITY, MARYLAND
- BALTIMORE COUNTY, MARYLAND
- WASHINGTON, D.C.
- LOUISVILLE, KENTUCKY
- DADE COUNTY (MIAMI), FLORIDA
- PIMA COUNTY (TUCSON), ARIZONA
- SANTA CRUZ COUNTY, CALIFORNIA
- SANTA CLARA COUNTY (SAN JOSE), CALIFORNIA

● EXPERIMENTAL ANALYSIS

- BALTIMORE CITY, MARYLAND
- PIMA COUNTY (TUCSON), ARIZONA
- LINCOLN, NEBRASKA
- JEFFERSON COUNTY (BEAUMONT), TEXAS

SAMPLE SIZE BY SITE
(EIGHT-SITE ANALYSIS)

JURISDICTION	SAMPLE SIZE
BALTIMORE CITY, MARYLAND	556
BALTIMORE COUNTY, MARYLAND	419
WASHINGTON, D.C.	442
DADE COUNTY (MIAMI), FLORIDA*	427
LOUISVILLE, KENTUCKY	435
PIMA COUNTY (TUCSON), ARIZONA	409
SANTA CRUZ COUNTY, CALIFORNIA	430
SANTA CLARA COUNTY, CALIFORNIA**	365
TOTAL	3,483

*FELONIES ONLY; 6-MONTH PERIOD.

**EXCLUDES FIELD CITATIONS; 6-MONTH PERIOD

RATES OF NONFINANCIAL AND FINANCIAL RELEASE BY SITE

SITE	RELEASED ON NONFINANCIAL CONDITIONS	RELEASED ON FINANCIAL CONDITIONS	TOTAL RELEASED
TOTAL, 8 SITES	61.4%	23.9%	85.3%
BALTIMORE CITY, MARYLAND	69.3%	17.4%	86.7%
BALTIMORE COUNTY, MARYLAND	70.6%	21.5%	92.1%
WASHINGTON, D.C.	74.2%	13.6%	87.8%
DADE COUNTY, FLORIDA	38.3%	45.8%	84.1%
LOUISVILLE, KENTUCKY	35.2%	44.9%	80.1%
PIMA COUNTY, ARIZONA	53.3%	19.3%	72.6%
SANTA CRUZ COUNTY, CALIFORNIA	76.0%	14.0%	90.0%
SANTA CLARA COUNTY, CALIFORNIA	52.8%	32.6%	85.4%

LENGTH OF DETENTION

NUMBER OF DAYS	DEFENDANTS NOT RELEASED		DEFENDANTS RELEASED	
	NUMBER	PERCENT	NUMBER	PERCENT
ONE OR LESS	172	33%	2,666	89.6%
2 - 7	53	10%	122	4.1%
8 - 29	116	23%	108	3.6%
30 - 90	74	14%	47	1.6%
MORE THAN 90	97	20%	34	1.1%
TOTAL	512	100%	2,977	100.0%

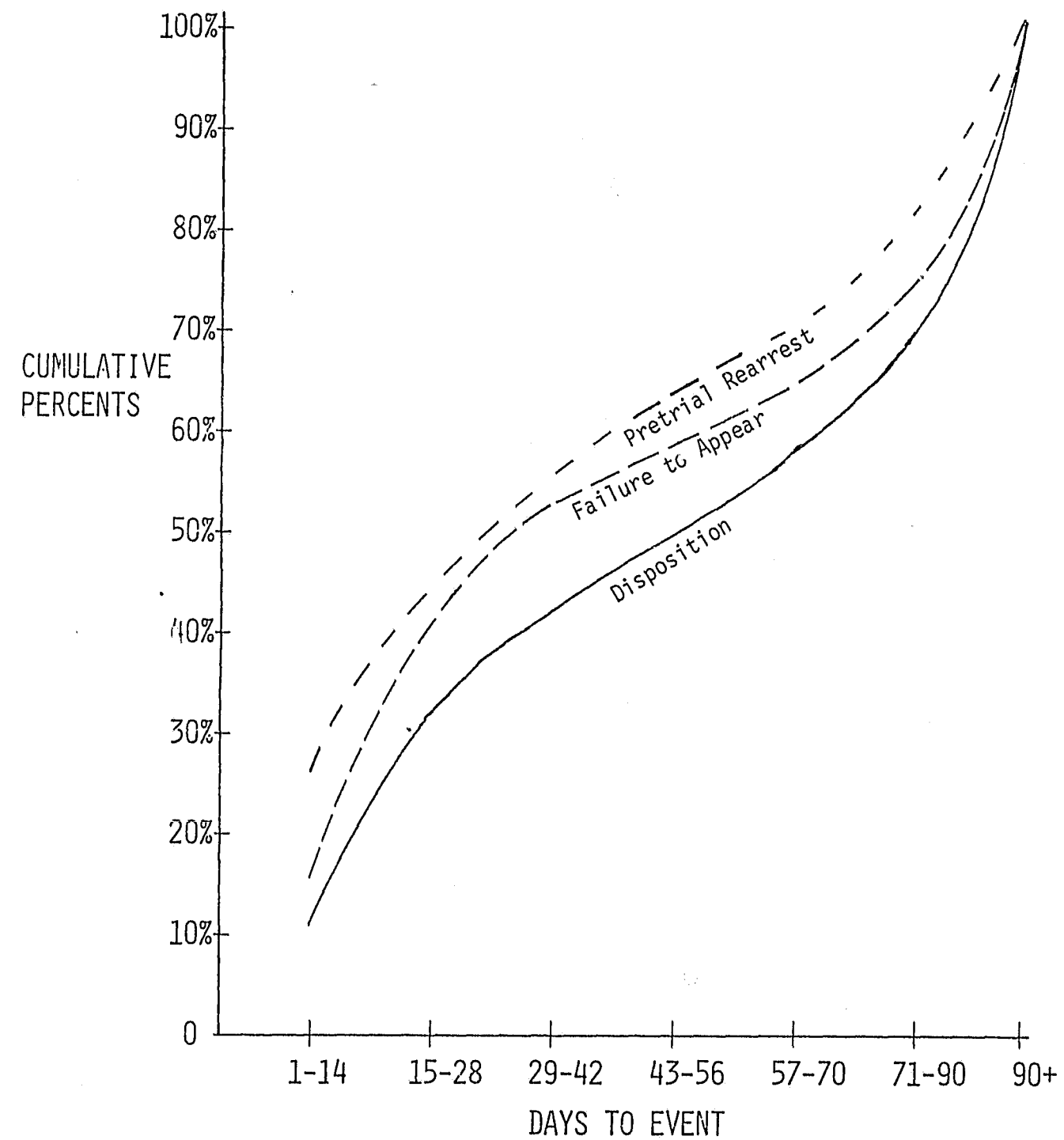
FAILURE TO APPEAR (FTA) RATES BY SITE AND BY RELEASE CONDITIONS

SITE	TOTAL	FOR DEFENDANTS RELEASED ON NONFINANCIAL CONDITIONS	FOR DEFENDANTS RELEASED ON FINANCIAL CONDITIONS
TOTAL	12.6%	12.2%	13.6%
BALTIMORE CITY, MARYLAND	5.7%	5.0%	8.3%
BALTIMORE COUNTY, MARYLAND	9.6%	10.7%	6.0%
WASHINGTON, D.C.	13.7%	14.9%	6.7%
DADE COUNTY, FLORIDA	18.4%	22.1%	15.4%
LOUISVILLE, KENTUCKY	17.1%	13.2%	20.1%
PIMA COUNTY, ARIZONA	13.6%	14.8%	10.3%
SANTA CRUZ COUNTY CALIFORNIA	20.5%	21.9%	13.1%
SANTA CLARA COUNTY, CALIFORNIA	16.1%	14.1%	20.0%

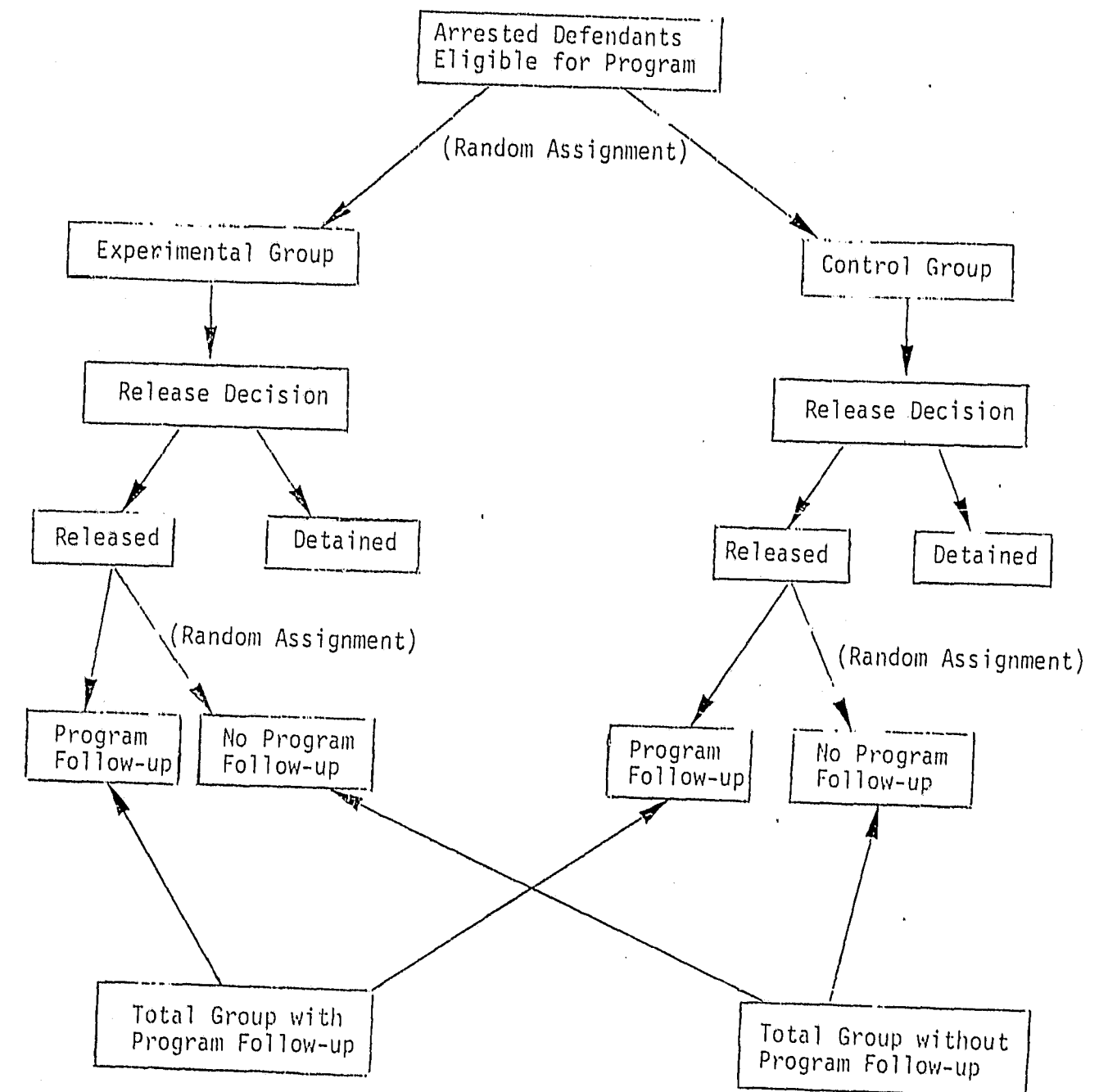
PRETRIAL REARREST RATES BY SITE AND BY RELEASE CONDITIONS

SITE	TOTAL	FOR DEFENDANTS RELEASED ON NONFINANCIAL CONDITIONS	FOR DEFENDANTS RELEASED ON FINANCIAL CONDITIONS
TOTAL	16.0%	15.3%	18.1%
BALTIMORE CITY, MARYLAND	7.5%	6.8%	10.4%
BALTIMORE COUNTY, MARYLAND	17.1%	15.1%	24.4%
WASHINGTON, D.C.	22.2%	22.9%	18.3%
DADE COUNTY, FLORIDA	17.5%	23.8%	12.3%
LOUISVILLE, KENTUCKY	21.4%	21.1%	21.6%
PIMA COUNTY, ARIZONA	22.1%	22.2%	19.2%
SANTA CRUZ COUNTY CALIFORNIA	9.6%	9.3%	11.5%
SANTA CLARA COUNTY, CALIFORNIA	14.6%	11.8%	22.0%

ELAPSED TIME TO RELEASE OUTCOMES



RESEARCH DESIGN FOR PRETRIAL RELEASE EXPERIMENTS



SUMMARY OF IMPLEMENTATION OF EXPERIMENTS

ITEM	BEAUMONT- PORT ARTHUR, TEXAS	TUCSON, ARIZONA MISDEMEANORS	TUCSON, ARIZONA FELONIES	LINCOLN, NEBRASKA	BALTIMORE CITY, MARYLAND
STARTING DATE OF EXPERIMENT	SEPT. 1978	NOV. 1978	NOV. 1978	DEC. 1978	MAY 1979
DATE RANDOM ASSIGNMENT ENDED	MARCH 1979	JAN. 1979	MARCH 1979	AUG. 1979	AUG. 1979
NUMBER OF RANDOM ASSIGN- MENTS PER DEFENDANT	ONE	TWO	ONE	ONE	TWO
TOTAL NUMBER OF DEFEN- DANTS IN EXPERIMENT	193	424	295	130	528

SUMMARY OF PROGRAM IMPACT ON RELEASE OUTCOMES

Note: + indicates positive program impact on outcomes; 0 indicates no effect.

OUTCOME	TUCSON FELONIES	TUCSON MISDEMEANORS	BALTIMORE CITY	LINCOLN	BEAUMONT- PORT ARTHUR
Rate of Release	0	0	+	+	+
Speed of Release	0	0	+	0	0
Type of Release	0	0	+	0	+
Equity of Release:					
By Ethnicity	+	0	+	0	0
By Employment Status	0	0	+	+	0

SUMMARY OF PROGRAM IMPACT ON FAILURE TO APPEAR AND
PRETRIAL CRIMINALITY

Note: + indicates positive program impact on outcomes; 0 indicates no effect.

OUTCOME	PROGRAMS WITHOUT POST- RELEASE RANDOM ASSIGNMENT			PROGRAMS WITH POST- RELEASE RANDOM ASSIGNMENT	
	Tucson Felonies	Lincoln	Beaumont- Port Arthur	Tucson Misdemeanors	Baltimore City
Failure To Appear	0	0	0	0	0
Pretrial Rearrest	0	0	0	0	0
Pretrial Rearrest Conviction	0	0	+	0	0

END