



Pretrial Release and Diversion

Section Highlights

- Pretrial Supervision
- Diversion
- Specialized Court-Based Programs
- Conclusion

Learning Objectives

1. Understand the definition, purpose, and effectiveness of pretrial supervision.
2. Understand the definition, purpose, and effectiveness of **diversion**.
3. Be able to identify the **five essential elements of specialized courts**.
4. Identify the purpose and objectives of drug courts.
5. Identify the role of mental health courts in addressing the needs of this specific population.
6. Understand the purpose and objectives of **reentry courts**.

As you saw in Section I of the text, community-based corrections is administered in many different forms ranging from probation through residential confinement. The use of these sanctions, however, is not strictly limited to responses by the court system via formal sanctions. Rather, one way to decrease recidivism and formal involvement in the system is through the use of pretrial release, diversionary programs, and specialized courts. Research indicates that pretrial detention of the accused may decrease the likelihood of obtaining adequate defense and increasing the severity of the sentence (Demuth & Steffensmeier, 2004). Likewise, there is evidence to suggest that pretrial release based upon the ability to pay may restrict opportunities for offenders who are poor and minority. The use of these programs including diversionary alternatives rely very heavily on the ability of law enforcement officials and prosecutors to screen out or divert those individuals who may be in need of more services rather than punishment. This section of the text will review three types of programs aimed at diverting individuals from the formal criminal justice system and toward community-based alternatives: (1) pretrial supervision, (2) diversion, and (3) specialized court-based programs.

Pretrial Supervision

The need for an alternative to detaining individuals arrested and charged with minor or first-time offenses came to the forefront of attention during the 1960s. It was during this time period that those working in release programs noticed that many offenders who had been arrested, charged, and not initially released continued to recycle through the process. It was the belief that if programs could be developed that specifically addressed the causes of the arrest, then recidivism could be reduced (*Pretrial Diversion Abstract*, 1998). Likewise, it was the belief that the creation of an alternative program could assist with reducing the stigmatization given to those coming to the attention of the court system. Legally those who have been arrested have the right to appear in front of a judge within a 24-hour time period (72 hours maximum including weekends). Failure to appear during that specified range may result in the case being removed from the system. Although this time period may seem short, given the number of cases officially processed through the system and resulting in conviction it becomes apparent that many of those awaiting their first appearance do not need to be detained. This coupled with the destigmatization movement of the mid-20th century led policy makers to seek alternatives to address these areas. One such response was the creation of pretrial release and supervision.

What Is Pretrial Supervision?

The first pretrial release program began in 1961 with the Manhattan Bail Project. This project was designed to assist judges in identifying defendants who were eligible to be released on their own recognizance (ROR). Modeled after the recognizance programs in Europe discussed in the previous section, this program became so successful that over the next 2 decades more than 200 cities had some version of pretrial release in place (Pretrial Justice Institute, 2009). This program and similar programs today continue to be designed as prosecutor-centered approaches. By 1982, federal legislation had been passed with the enactment of the Pretrial Services Act of 1982 (18 U.S.C. 3152) calling for the creation of a separate federal agency designed to oversee the prerelease and detention of the accused as well as other pretrial services (Lowenkamp & Whetzel, 2009). These services were so successful that they were further extended to include a community component with the Federal Bail Reform Act of 1984 (Alarid, Del Carmen, & Cromwell, 2007; Lowenkamp

& Whetzel, 2009). This act called for community safety to be considered when releasing an offender under pretrial supervision. Despite these efforts for community safety consideration, the Bail Reform Act did not specify any risk criteria to be used in making these determinations. Therefore, federal pretrial service officers relied on subjective measures such as previous experience, criminal histories, and other criminogenic factors that might contribute to additional criminal offending (Lowenkamp & Whetzel, 2009). States utilizing the pretrial release process have expanded the use of the measures to include quantitative measures such as actuarial risk assessment tools (Alarid et al., 2007; Lowenkamp & Whetzel, 2009).

Purpose of Pretrial Supervision

Today, the National Association of Pretrial Services Agencies (NAPSA) (2008) defines the purpose of pretrial diversion/intervention as being a “voluntary option which provides alternative criminal case processing for a defendant charged with a crime that ideally, upon successful completion of an individualized program plan results in a dismissal of the charge(s)” (p. vi). Additionally, the standards set forth by NAPSA call for these programs to address the root causes of crime through the use of programs with prosecutorial merit. Over the past 20 years, pretrial diversion services have witnessed the evolution and expansion of these ideas into court-centered approaches such as the creation and expanded use of drug and specialized courts, which will be discussed later in this section (NAPSA, 2008).

Effectiveness of Pretrial Supervision

Studies assessing the effectiveness of these programs have been limited. The majority of studies assessing the effectiveness have focused on localized assessments or the ability to predict success or failure while on pretrial. In a study conducted by Lowenkamp and Whetzel (2009), the authors examined whether one could identify risk factors predicting success or failure using an actuarial instrument for those individuals entering the federal system. A study of 565,178 defendants (all those entering the system between FY2001 to FY2007) revealed that there were specific static and dynamic factors that predicted success while on pretrial. Static factors included those intuitive measures utilized previously by federal pretrial service workers such as criminal history and current offense. They also found dynamic factors such as substance use, home ownership, educational attainment, and employment status did predict accurately whether an individual would succeed or fail on these sanctions (p. 34). Additionally, Demuth and Steffensmeier (2004), in your first reading for this section, sought to answer whether sex and **race** made a difference in determining success while released prior to trial. A review of the nation’s 75 most populous counties between 1990 and 1996 revealed that white females were the most likely to be released, and Hispanic males were the least likely (p. 222).

Efforts to further examine the implementation of pretrial services programs are limited. In fact, the most recent national review completed in August 2009 is only the fourth national study to be conducted. Administered by the National Pretrial Service Institute of 171 jurisdictions, results indicated that the programs are more likely to serve multiple counties in a single jurisdiction serving populations of 100,001 to 500,000. Almost half of all programs (49%) served a mixture of rural and urban communities. Although this is a consistent finding from previous studies, an interesting revelation was that newer programs are being created in rural areas as opposed to more urban approaches. These programs have an average staff size of 22 with about half of all programs having less than 5 staff. Further, this report suggests there are continued efforts to continue the use of these programs on smaller budgets (Pretrial Justice Institute, 2009). For

those working in the system, this occurrence is not surprising. Most agency personnel are being asked to do more with less. While pretrial supervision continues to be at the forefront of addressing issues such as jail overcrowding and reducing the number of offenders coming to the attention of the courts multiple times, research in this is lacking. Other programs, such as diversion that seeks to keep offenders out of the system, continue to be used and expanded with both juvenile and adult offenders.

Diversion

Following the use of pretrial supervision, those individuals who have been convicted or adjudicated may qualify for a diversionary program. These diversionary alternatives by their very nature are controversial. Specifically designed for juvenile offenders but used for adults as well, these programs offer assistance at four different points in the system: (1) diversion from arrest, (2) **diversion from prosecution**, (3) diversion from jail, and (4) diversion from imprisonment. Each of these different diversionary processes will be discussed next. One thing to keep in mind as we consider diversion as a viable alternative to further exposure to the system is the intent of its existence: Is it to shield youth/adults from the stigmatizing effects of the system? Or is diversion used as a mechanism for widening the net to include more individuals under the broad scope of the criminal justice system?

What Is Diversion?

The term *diversion* has several different meanings. Broadly defined, diversion is a process whereby someone—either an adult or child—is referred to a program (usually external to the official system) for counseling or care of some form in lieu of referral to the official court (Houston & Barton, 2005, p. 170). The nature of the act or the offense may determine where, if at all, in the system the individual may be diverted.

Typically diversion is used with juvenile first-time offenders charged with status or misdemeanor offenses or those in treatment (Houston & Barton, 2005; Sarri & Vinter, 1975). Diversion from the system occurs at various times within the process ranging from police contact to first appearance in front of the judge. The idea behind this form of community alternative is to minimize penetration into the system. By diverting offenders to community-based treatment facilities, or in some cases allowing the offender to be informally supervised, participation in these alternatives may be the very element necessary to reduce future criminal offending. There are programs specifically designed for adult offenders; however, the majority of diversionary program alternatives for adults, particularly for those programs dealing with the mentally ill, are found in larger communities with populations over 100,000 (Steadman, Cocozza, & Veysey, 1999). Restorative justice and mediation options also exist as a diversionary tactic for both juvenile and adult offenders. These responses to the system will be discussed in more detail in Section III.

Types of Diversion Programs

Clear and Dammer (2000) summarize the four different types of diversionary programs. The types of programs are as follows: (1) diversion from arrest, (2) diversion from prosecution, (3) diversion from jail, and (4) diversion from imprisonment. Diversion from arrest is oftentimes used with juvenile offenders but may be used with adults as well. In these instances, law enforcement officers are typically called to the scene of an event where all evidence suggests that a crime has occurred and asked to respond accordingly. In these circumstances, officers have wide latitude to decide what to do and how best to respond. Additionally,

diversion from arrest also may occur in domestic violence calls for service. In those jurisdictions with preferred arrest policies, officers may electively choose to separate the parties involved rather than making a formal arrest. This discretion toward diversion is eliminated in domestic violence cases in states and/or jurisdictions with mandatory arrest policies.

Diversion from prosecution may also fall under the category of pretrial release. In these cases, offenders are formally charged and diverted to programs outside of the court system. Individuals successfully completing their programs would have their charges dropped, and depending upon the state and the offense, they could potentially have their records expunged.

Diversion from jail is also a pretrial mechanism to keep offenders out of the system. As reviewed in the previous discussion, offenders who have been summoned to court can await their trial date at home. This provides them with an opportunity to maintain gainful employment—if they have a job—and bonds to their community, which are especially important if children are present.

Finally, diversion from imprisonment includes a variety of different sanctions, which will be discussed in later sections and next. These alternatives can include suspending the sentence of offenders in lieu of probation, release on parole, early release, or other intermediate sanctions. Other options include diversionary or specialized courts such as drug courts, whereby individuals charged with drug- or alcohol-related offenses can have their cases heard and processed in a drug court that allows for treatment as opposed to punishment.

Effectiveness of Diversion Programs

The majority of studies assessing the effectiveness of diversionary programs specifically focus on their usefulness in the juvenile justice system. One exception may be found in the study by Steadman et al. (1999). In this study, the authors assessed the efficacy of using one such program for diverting offenders with mental illnesses out of the formal system or process. Results from this study indicate that there were no significant differences in the recidivism rates of those offenders who were processed through the diversion court versus those who were detained. One important finding, however, was that those who were not processed in the diversion tended to never get released from custody versus those who were processed. This finding could point to the need for further enhancement of programs to not only address the mental health issues of those coming to the attention of both institutional and community-based corrections but also reduce the costs of confinement since those individuals appear to



▲ **Photo 2.1** The Monroe office for state probation and parole coordinates supervision efforts with various treatment facilities in the area such as Rays of Sunshine as well as the local courthouse of Ouachita Parish.

never get out of the system. Overall, the results of studies assessing the effectiveness of diversionary alternatives reveal that it is possible to divert offenders out of the system. However, agency officials must be mindful to not widen the net in attempting to resolve issues of crime and delinquency within their communities.

Specialized Court-Based Programs

There are numerous types of treatment programs that exist for a wide variety of offenders. From a community corrections standpoint, it is first the courthouse that sets the tone as to the particular programs that operate within a given jurisdiction. It is also the courthouse where many community supervision officers (CSOs) will have initial interface with the offender's sentence, including treatment-related aspects of that sentence. Because of this, this section first reviews two of the more common court-based treatment programs that exist throughout the United States. These are the drug courts and the mental health courts that typically involved community supervision of offenders processed within their jurisdictions.

In discussing court-based programs, the term **therapeutic jurisprudence** is often used to describe these programs and their orientation toward case processing. Therapeutic jurisprudence is the study of the role of the law as a therapeutic agent. Essentially, therapeutic jurisprudence focuses on the law's impact on emotional life and on psychological well-being (Wexler & Winick, 2008). In this regard, therapeutic jurisprudence focuses on the human, emotional, and psychological side of law and the legal process. Specific examples would include mental health courts and/or drug courts. This is important because it demonstrates a treatment-minded approach to jurisprudence and this provides additional justification for a reintegrative approach to offender supervision. Miller (2007) provided an analysis of therapeutic jurisprudence and noted that there are two distinct means of viewing this type of court operation. First, there is the managerial mode, where a court will seek to "identify the range of problems facing its target clientele and ameliorate those problems by matching clients with the available social resources" (Miller, 2007, p. 127). This perspective is very similar to the case management model to be described in Section VI. This is a point worth noting because this demonstrates that most all aspects of community supervision tend to follow a case management method of operation, regardless of whether this consists of courthouse programs or the supervision agency (which is typically corollary to the court). Second, Miller (2007) described an interventionist mode of therapeutic jurisprudence whereby "the court seeks to intervene to change the way in which ex-offenders perceive themselves as responsible agents, as a means to preclude socially disfavored conduct" (p. 127).

For the most part, court programs engaged in therapeutic jurisprudence have borrowed and adapted their ideas from the drug court model. According to Miller (2007), "drug court judges often point to intervention in the offender's antisocial lifestyle as its core therapeutic feature" (p. 128). As an example, in drug court, the judge may be the informal leader of a team of professionals who are committed to the rehabilitation of the drug-addicted offender. In this respect, the judge utilizes a dynamic, personal relationship with each offender, which holds the offender accountable, on the one hand, yet ensures that the offender is placed in treatment whenever this is a feasible option. In essence, the judge plays the role of a high-powered treatment team leader or perhaps an authoritative case manager of a sort. The main point is that this follows the same theme and concepts that have been presented throughout this text in regard to offender reintegration.

Much of the therapeutic jurisprudence movement has occurred in response to specialized types of offenders since they are in need of detailed treatment resources. Neubauer (2002) spoke to this, noting that courts have created numerous specialized courts that deal with specialized type of offenses and/or offenders. Common examples of specialized courts include the widely touted drug court but also included innovations such as domestic violence courts, drunk driving courts, elder courts, and so on. These specialized

courts are often tailored with a therapeutic justice orientation in mind. Neubauer (2002) identified five essential elements of specialized courts. They are as follows:

1. Immediate intervention
2. Non-adversarial adjudication
3. Hands-on judicial involvement
4. Treatment programs with clear rules and structured goals
5. A team approach that brings together the judge, prosecutors, defense counsel, treatment provider, and correctional staff

Some court applications are better known than others. This section will provide brief discussions on drug courts and mental health courts. As noted previously, drug courts are one of the best-known applications of therapeutic justice. Drug courts vary widely in structure, target populations, and treatment programs. The least distinctive way of creating a drug court is to establish one section of court that processes all minor drug cases; the primary goal is to speed up case dispositions of drug cases and at the same time free other judges to expedite their own dockets. Another type of drug court concentrates on drug defendants accused of serious crimes who also have major prior criminal records. These cases are carefully monitored by court administrators to ensure that all other charges are consolidated before a single judge and no unexpected developments interfere with the scheduled trial date. Still, other drug courts emphasize treatment. The assumption is that treatment will reduce the likelihood that convicted drug abusers will be rearrested. These courts will often mandate extensive treatment plans that are supervised by the probation officer. The sentencing judge, however, as opposed to the probation officer, monitors the offender's behavior. All in all, drug courts are thought to be a relatively successful method of combining both aspects of the punitive and rehabilitative components of the criminal justice system.

Drug Courts

Established as a result of court and prison overcrowding, special drug courts have proven popular. In 1989, a special drug court was established by judicial order in Miami. This high-volume court expanded on traditional drug-defendant diversion programs by offering a year or more of court-run treatment; defendants who complete this option have their criminal cases dismissed. Between 1991 and 1993, Miami influenced officials in more than 20 other jurisdictions to establish drug courts (Abadinsky, 2003). Within a decade, drug courts moved from the experimental stage to being recognized as well-established programs. The government now lists over 325 drug courts across 43 states (Neubauer, 2002).

Although they vary widely, common features of drug courts include a non-adversarial approach to integrating substance abuse treatment with criminal justice case processing. The focus is on early identification of eligible substance abusers and prompt placement in treatment, combined with frequent drug testing.

In discussing the objectives of drug courts, McNeece, Springer, and Arnold (2002) illuminated eight key objectives:

1. Drug courts integrate alcohol and other drug treatment services with justice system case processing.
2. Using a non-adversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights.



▲ **Photo 2.2** The Ouachita Parish Courthouse runs a large drug court program. Local facilities such as Southern Oaks Addiction Recovery and Rays of Sunshine routinely coordinate with this courthouse.

3. Eligible participants are identified early and promptly placed in the drug court program.
4. Drug courts provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services.
5. Abstinence is monitored by frequent alcohol and other drug testing.
6. A coordinated strategy governs drug court responses to participants' compliance.
7. Ongoing judicial interaction with each drug court participant is essential.
8. Monitoring and evaluation measure the achievement of program goals and gauge effectiveness.

These features are among those that are thought to constitute an “ideal” model of drug court, though few meet these requirements (McNeece et al., 2002). In general, an offender is placed in a drug court program for 9 to 12 months. On successfully completing that program, the offender will be continued on probation for another year. In some jurisdictions, the offender’s criminal record may be expunged if all of the court’s conditions for treatment are satisfied (McNeece et al., 2002).

The role of the judge is crucial in a drug court. Judges are free to openly chastise or praise clients for their behavior during the courtroom proceedings. Beyond that, judges may issue court orders requiring that a client attend treatment, submit to urinalysis, seek employment, meet with a probation officer, avoid associations with

drug-abusing friends, etc. (McNeece et al., 2002). Failure to comply with these judicial determinations may place the offender in contempt of court or in jail, or they may be transferred to a regular criminal court. Judges are provided with continuous feedback on the offender's performance by the other drug court participants. Because of this, there is little room for the offender to evade accountability within the program.

Research assessing the effectiveness of drug courts reveals an encouraging finding. Overall, as an innovative tool to deal with drug-involved offenders, drug courts seemingly do reduce recidivism of participants, increase treatment retention, and are a cost-effective alternative to incarceration (Nored & Carlan, 2008). Although these factors are true, there still exists a high failure rate among participants (Hepburn & Harvey, 2007). One explanation for this occurrence could be the types of offenders being placed in those programs. For example, Saum and Hiller (2008) found in their study of 452 offenders assigned to a post-plea drug court that those with violent charges are most likely to recidivate. However, one caveat to this finding is that when controlling for previous offense, time at risk, number of lifetime charges, sociodemographics, and drug court discharge status that there were no significant differences (Saum & Hiller, p. 303). This finding suggests that although violent offenders should not automatically be eliminated from participation in these programs that the methods for selection should be considered. It further suggests that those offenders who may be at lowest risk of offending in the first place are the ones who are most likely to succeed anyway. Efforts to administer these programs may also affect their success or failure. For example, as your third reading by Heck and Roussell (2007) illustrates, the most important factor in administering any drug court program is the input and involvement from all state-level **stakeholders**.

Mental Health Courts

Mental health courts, on the other hand, are designed to ensure that nonviolent mentally ill offenders are not warehoused in prisons; however, at the same time, the goal of these courts is to ensure that these offenders are not being a nuisance for the community. Often these offenders commit petty crimes and are homeless. Because of this, and because the vast majority of mentally ill offenders are not violent, informal interventions such as mental health courts are considered a much more effective method of intervention. These courts provide the offender with treatment and also provide the police and other community responders a venue to utilize when processing these offenders. Mental health courts are adept at working with local agencies both to address the needs of the offender and to protect the public's safety. Intervention and treatment specialists work with the judge to ensure that services are effectively delivered to the offender. This, like other previous examples, is reflective of an integrative casework model of intervention.

Reentry Courts

While drug court and mental health courts are created for specific offender issues (i.e., substance abuse and mental health concerns), there are other types of courts that have been implemented to specifically address the offender population that faces release from prison. These courts are called reentry courts. Reentry courts are courts that provide comprehensive services to offenders who return from prison to the community by utilizing comprehensive services provided by a network of agencies in the surrounding area. The focus of reentry courts recognizes that offenders need to be held strictly accountable but yet are in serious need of assistance as they return to communities. Importantly, the concept of the reentry court does not envision any change in the timing of decisions regarding a prisoner's release. In other words, reentry courts are not used as leverage tools to obtain offender compliance. They are instead tools to ensure public safety,

at one extreme, and that offenders receive the necessary case management services, at the opposite extreme. These courts address the conflict between public safety and offender reintegration, acting as the moderator between the two competing interests. Further, the use of reentry courts acknowledge that most offenders eventually return to the community. These courts focus on the work of prisons in preparing offenders for release and presume that a reentry court will actively involve the state corrections agency and others, as outlined next. The core elements of a reentry court are the following (see National Criminal Justice Resources and Statistics, 1999):

1. *Assessment and Planning.* It is envisioned that correctional administrators, ideally with a reentry judge, would meet with inmates prior to release to explain the reentry process. The state corrections agency, and, where available, the parole agency, working in consultation with the reentry court, would identify those inmates to be released under the auspices of the reentry court to assess the inmates' needs upon release and begin building linkages to a constellation of social services, family counseling, health and mental health services, housing, job training, and work opportunities that would support successful reintegration.
2. *Active Oversight.* The reentry court would see prisoners released into the community with a high degree of frequency—probably once a month—beginning right after release and continuing until the end of parole (or other form of supervision). It is critical that the judge see offenders who are making progress as well as those who have failed to perform. The judge would also actively engage the parole officer or other supervising authority and the **community policing** officer responsible for the parolee's neighborhood in assessing progress. In the drug court experience, acknowledgment of the successful achievement of milestones by participants provides encouragement to others who observe them.
3. *Management of Supportive Services.* The reentry court must have at its disposal a broad array of supportive resources, including substance abuse treatment services, job training programs, private employers, faith institutions, family members, housing services, and community organizations. These support systems would be marshaled by the court, drawing upon existing community resources where possible. At the core, the court would again actively engage the parole officer or other supervising authority, as well as the community policing officer responsible for the parolee's neighborhood. In the drug court experience, judges and others have become very effective service brokers and advocates on behalf of participants. An important lesson from the drug court experience is that this brokerage function requires the development of a case management function accountable to the court. To be successful, a reentry court would have to develop a similar case management capacity.
4. *Accountability to Community.* A jurisdiction might consider creating a citizen advisory board to work with the reentry court to develop both community service and support opportunities as well as accountability mechanisms for successful reentry of released inmates. Accountability mechanisms might include ongoing restitution orders and participation in victim impact panels. It may also be appropriate to involve the crime victims and victims' organizations as part of the reentry process. The advisory board should broadly represent the community. Other mechanisms for drawing upon diverse community perspectives should also be considered.

5. *Graduated and Parsimonious Sanctions.* The reentry court would establish and articulate a predetermined range of sanctions for violations of the conditions of release. These would not automatically require return to prison; in fact, this would be reserved for new crimes or egregious violations. As with drug courts, it would be important for the reentry court to arrange for an array of relatively low-level sanctions that could be swiftly, predictably, and universally applied. Jurisdictions interested in piloting a reentry court must clearly outline how graduated sanctions would be imposed and the array of sanctions that would be used.
6. *Rewards for Success.* The reentry court also would need to incorporate positive judicial reinforcement—rewarding success, perhaps by negotiating early release from parole after established goals are achieved or by conducting graduation ceremonies akin to those seen in drug courts. The successful completion of parole should be seen as an important life event for an offender, and the court can help acknowledge that accomplishment. Courts provide powerful public forums for encouraging positive behavior and for acknowledging the individual effort in achieving reentry goals. Jurisdictions are required to outline milestones in the reentry process that would trigger recognition and an appropriate reward.

Importantly, these courts address the needs of all returning offenders, not just those who have drug abuse or mental health issues. Also, these types of programs are very important because they address those offenders who are perhaps in the most profound need, going through a transition from prison to release that is often much more difficult to navigate than is the adjustment for offenders placed on probation.

Though these court-based treatment models are comprehensive and provide a unique blend between criminal justice and therapeutic responses, it should be obvious that there are several approaches other than a court model that can provide a vehicle to serve the reentry management role. The structure of such a program is limited only by one's imagination. Further, partnerships between different agencies and/or components of the criminal justice system can and should work in tandem to optimize potential outcomes. For example, the Office of Justice Programs (OJP) has tested the use of law enforcement, corrections, and community partnerships to manage reentry. Such partnerships have proven central to the reentry court as well. The use of partnerships will be discussed in additional detail in a later section. However, it is important to note here that the issue of partnerships is one that continues to be a recurring theme throughout this text, recognizing their usefulness to the supervision and treatment of offenders.

Students should note that again, in the current section, the need for both agency and community partnerships is integral to the success of specialized programs such as drug courts, mental health courts, and reentry courts. Beyond this point, communities that wish to establish reentry courts will find that collaborative work on the part of agencies and concerned community members can lead to creative methods of drawing upon existing resources and may even lead to additional funding sources. Likewise, collaborative efforts aid in providing a range of essential reentry support services for offenders and mechanisms for ensuring easy access to them. As has been noted earlier in this section, volunteers and other collaborators can effectively fill in the gaps by assisting with transportation and other informal services that ensure that services are realistically reachable for offenders that may have limited resources. This is a particularly relevant concern for offenders returning from periods of incarceration.

Applied Theory Section 2.1

Social Disorganization, Collective Efficacy, and Community Supervision

The work of Robert Sampson, Stephen Raudenbush, and Felton Earls (1997) shows that crime and recidivism is much lower in communities that have their fair share of **collective efficacy**. Collective efficacy refers to a concept where communities that experience disorderly conduct or criminal behavior possess citizens who have the cohesiveness to act in an “effective” means to solve the crime problem in their area. This then means that collective efficacy is a resource possessed by the community wherein the community acts as a “self-starter,” so to speak. Rather than waiting on a formal means of thwarting criminal behavior, the community itself is actively involved in the process of fighting crime.

This concept of collective efficacy is important since it reflects a healthy community and since this describes the specific characteristics that community supervision agencies seek within communities where partnerships are formed. Communities with high levels of collective efficacy are ideal for aiding agencies in providing additional human supervision of offenders. Further, offenders who might otherwise reoffend are less likely to do so due to the high level of collective efficacy in a neighborhood, the result being that the offender is watched much more carefully by members of that community.

Communities with strong collective efficacy have well-developed forms of informal social control. In other words, non-law enforcement controls from churches, schools, civic groups, and other such informal social institutions will be in place. Further, these communities will tend to have a high degree of social cohesion and trust, both among each other and (ideally) with their community supervision agency. What this means for community supervision agencies is that in addition to educating citizens on the effectiveness of treatment programs, agencies must engage their communities so that the citizens are involved in the reintegration process. Doing so will enhance the collective efficacy that exists. In cases where communities do not exhibit strong collective efficacy, it should be the first order of business among criminal justice agencies to instill this in communities through various public outreach campaigns and initiatives. Doing so will produce benefits and rewards that will positively impact the agency and the community alike, while also reducing likely recidivism rates in the future.

Conclusion

At the outset of this section, we intended to provide the reader with an overview of pretrial, diversionary, and court-based programs designed to keep offenders or the accused in the communities. Overall, the programs reviewed suggest that offenders—even those convicted of violent felony offenses and offenders with mental health problems—can remain in the community while under supervision. The key to success lies in early detection and intervention. Incorporating the use of actuarial instruments may provide those working in the system with an opportunity to identify such offenders and respond accordingly. Maintaining ties and assisting offenders to find gainful employment may provide the most meaningful alternative yet.

Section Summary

- Community-based corrections include more than just the formal sanctions. Pretrial supervision, diversionary alternatives, and specialized courts offer creative sanctioning/handling options for either the accused or those convicted.
- Pretrial supervision serves as a voluntary option for offenders awaiting a court appearance. Ideally, those charged would complete some form of individualized treatment program before being released.
- Studies assessing the effectiveness of pretrial supervision reveal no difference in demographic characteristics of offenders who are given the opportunity for pretrial release. However, white females are most likely to be released with Hispanic males being the least likely.
- Diversion programs are typically used for juvenile offenders but are being expanded into greater use with adult offenders. Diversion can occur at four different points in the system: (1) diversion from arrest, (2) diversion from prosecution, (3) diversion from jail, and (4) diversion from imprisonment.
- Diversionary programs have been extended to courts dealing with the mentally ill. In these instances, research suggests that diversion to a community-based program does not increase the likelihood of success.
- Specialized court-based programs include therapeutic jurisprudence, drug courts, mental health courts, and reentry courts.
- Therapeutic jurisprudence is the study of the role of the law as a therapeutic agent.
- Drug courts have been used since the late 1980s into the early 1990s. These courts vary in the purpose ranging from non-adversarial to including court processing.
- Research assessing the effectiveness of drug courts reveals they may reduce recidivism of participants, increase treatment retention, and offer a cost-effective alternative.
- Mental health courts are a more recent innovation to deal with the mentally ill.
- Reentry courts are designed to provide comprehensive treatment to those leaving prison while ensuring public safety.

KEY TERMS

Diversion	Drug courts	Pretrial supervision
Diversion from arrest	Graduated sanctions	Reentry courts
Diversion from imprisonment	Mental health courts	Specialized courts
Diversion from jail	Parsimonious	Therapeutic
Diversion from prosecution	sanctions	jurisprudence

DISCUSSION QUESTIONS

1. Based on what we know about pretrial services, do they serve as a successful alternative to detention? Explain your response.
2. Should diversionary programs be utilized in lieu of harsher penalties? What are the pros and cons of extended use of such programs?

3. What type of special issues do those diagnosed with mental health problems present to those working in both a confined and community-based setting?
4. What is the value in evaluating diversionary programs for adults as opposed to simply offering descriptions of the programs?
5. What are the strengths and weaknesses of having centralized drug court management versus decentralized management?
6. What role does politics play in funding drug court programs?
7. Given the current economic and politic climates, create a policy using one of the alternative models discussed in this section.

WEB RESOURCES

American Bar Association Pretrial Release:

http://www.abanet.org/crimjust/standards/pretrialrelease_toc.html

Brevard County Florida Pretrial Release Program:

http://www.brevardcounty.us/criminal_justice/cjs_pretrial_rel.cfm

Center for Court Innovation:

<http://www.communityjustice.org/>

Pretrial Justice Institute (covers all types of pretrial services including diversion):

<http://www.pretrial.org/Pages/Default.aspx>

Pretrial Diversion Program:

http://www.justice.gov/usao/eousa/foia_reading_room/usam/title9/22mcrm.htm

Diversion Programs and Overview:

<http://www.ncjrs.gov/html/ojdp/9909-3/div.html>

Juvenile Diversion Programs in Phoenix, Arizona:

<http://phoenix.gov/PRL/arythjv.html>

Northern Star Council: Boy Scouts of America Juvenile Diversion Program

<http://www.northernstarbsa.org/YouthPrograms/JuvenileDiversion/>

Office of National Drug Control Policy:

<http://www.whitehousedrugpolicy.gov/enforce/drugcourt.html>

National Institute of Justice Statewide Drug Courts:

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

National Drug Court Institute:

<http://www.ndci.org/ndci-home/>

Bureau of Justice Programs Mental Health Courts:

<http://www.ojp.usdoj.gov/BJA/grant/mentalhealth.html>

PBS Frontline New Asylums:

<http://www.pbs.org/wgbh/pages/frontline/shows/asylums/special/courts.html>

National Center for State Courts: Mental Health Resource Guide:

<http://www.ncsconline.org/wc/CourTopics/ResourceGuide.asp?topic=MenHea>

<http://www.ncsconline.org/wc/courttopics/statelinks.asp?id=60&topic=menhea>

U.S. Department of Justice Reentry Courts:

<http://www.reentry.gov/publications/courts.html>

http://www.reentrypolicy.org/announcements/reentry_courts_emerging_trend

Indiana Reentry Courts:

<http://www.in.gov/judiciary/pscourts/reentry.html>

Center for Court Innovation Reentry Courts:

<http://www.courtinnovation.org/index.cfm?fuseaction=Page.ViewPage&PageID=595¤tTopTier2=true>

Please refer to the student study site for web resources and additional resources.

READING

In this study, Demuth and Steffensmeier explored the impact of race, **ethnicity**, and gender on the decision to release eligible offenders pretrial and the actual outcome of that decision (i.e., actually being released). Recognizing a significant gap in the literature, the authors employed a dual focus by examining both the pretrial release process and outcome data to assess whether receiving the opportunity for pretrial equated to actual release. Felony defendant records from a large data set from the 75 most populous counties in the United States were reviewed. These data accounted for pretrial records collected over a 6-year span (1990–1996) at 2-year intervals. A total of 6,120 individuals were included in the analysis. These findings suggest there are no differences by race, ethnicity, or gender in who is most likely to receive the opportunity for pretrial release. Rather, results did indicate that being white and female increased the defendants' likelihood for being released prior to trial while those who were male and Hispanic were least likely to be released. Policy makers and those working in the system cannot ignore the fact that receiving a particular sentence or opportunity for release does not always mean they are released. The findings of this study are particularly relevant for those making decisions on who and how to release defendants. These results could potentially point to the disparities in the system based on economic eligibility and opportunity more so than sex, race, and ethnicity.

The Impact of Gender and Race-Ethnicity in the Pretrial Release Process

Stephen Demuth and Darrell Steffensmeier

An assessment of the research on gender disparities in the case processing of criminal defendants highlights two major shortcomings. First, in addition to the relative paucity of studies examining the treatment of women in the courts, there is in particular a lack of research on decision making at earlier stages of the criminal case process (e.g., pretrial release). Indeed, most of what we know about the treatment of women in the criminal courts is based on the impact of gender at the sentencing stage. This narrow research focus on sentencing is not limited to studies involving gender, but rather is also a notable limitation of prior studies examining race and ethnicity in the courts. Data are more readily available for examinations of sentencing, in part because sentencing is (1) more proximate to jail and prison and is viewed as where the “real” punishments are meted out and (2) more visible and more highly regulated than other stages.

Second, there is a scarcity of research examining possible interactive effects between gender and race, and even more so, interactive effects between gender and ethnicity—i.e., the inclusion of Hispanic defendants. Despite a rapidly growing Hispanic imputation in the United States, research on case processing has been slow to examine the treatment of this ethnic minority group. Prior sentencing research (Steffensmeier, Ulmer, and Kramer 1998) demonstrates the importance of considering the joint effects of social statuses such as race and gender. Not only may the joint effects of race and gender be considerably larger than either single main effect, but an examination of interactive effects may also reveal extra-legal disparities that are otherwise masked when examining additive models. At issue, in particular,

is the question of whether gender differences in case processing outcomes for criminal defendants are similar/different across different racial and ethnic groups.

The present study addresses these gaps in the literature by using felony defendant data collected in large urban courts by the State Court Processing Statistics (SCPS) program of the Bureau of Justice Statistics for the years 1990–1996 to examine the intersection of gender and race-ethnicity on decision making at the pretrial release stage. Importantly, the present study includes white, black, and Hispanic defendants in its sampling framework and also clarifies various dimensions of the pretrial release process, notably a dual focus on both pretrial release decisions (e.g., option for bail, bail amount) and pretrial release outcomes (e.g., pretrial detention or release). We pursue this dual focus because an examination limited to legal outcomes ignores the important underlying process of decision making by which these outcomes are achieved. As our findings reveal, similar/different decisions made throughout the pretrial release process often produce different/similar outcomes across defendant subgroups. The central empirical issue is whether early criminal case processing is influenced by ascribed statuses like gender and race-ethnicity once other legally allowable factors have been taken into account.

Prior Research

Pretrial release practices receive less research and public attention than sentencing practices. This lack of attention is unfortunate for several reasons. First, pretrial detention is punishment before conviction. Even

temporary incarceration is potentially disruptive to family, employment, and community ties and negatively stigmatizes the defendant (Irwin 1985; LaFree 1985). In addition, there is evidence that pretrial detention may interfere with the defendant's ability to prepare an adequate defense (Foote 1954) and may lead to more severe sanctions upon conviction (Goldkamp 1979).

Second, judicial and prosecutorial discretion that involves financial considerations also could produce disparities in pretrial release outcomes. If poor and minority defendants are less able to pay bail, then this disparate impact may amount to a form of *de facto* racial and ethnic discrimination.

Third, discretion and therefore disparity are more likely at early stages of criminal case processing than at final sentencing (Hagan 1974; Steffensmeier 1980). Decisions made at pretrial stages are less visible than decisions to convict or incarcerate, the criteria used for making pretrial release decisions are less restrictive than the criteria considered legally relevant for making sentencing decisions, and currently-invoked legislative mandates and determinate or guidelines sentencing militate against discretionary adjustments to sentencing outcomes once defendants are convicted. These restrictions on sentencing decisions also may encourage making greater use of discretionary options early in the process. Thus, it is anticipated that the greater informality, the lesser visibility, and the fewer legal constraints surrounding pretrial decision making may facilitate undue disparity at the pretrial stage, including that based on gender and race-ethnicity.

Conceptual Framework

Legal decision making is complex, repetitive, and frequently constrained by time and resources in ways that may produce considerable ambiguity or uncertainty for arriving at a "satisfactory" decision (Albonetti 1991; Farrell and Holmes 1991). The complexity and uncertainty stem partly from the difficulty inherent in predicting the risk of recidivism or failure to reappear at subsequent court hearings. At the pretrial release stage in particular, there oftentimes is very little definitive information on the background and character of the

defendant that might aid in calibrating those risks. As an adaptation to these constraints, a "perceptual shorthand" (see Steffensmeier et al. 1998) for decision making emerges among judges and other court actors that utilizes attributions about case and defendant characteristics to manage the uncertainty and the case flow. Then, once in place and continuously reinforced, such patterned ways of thinking and acting are resistant to change. Indeed, prior studies examining the decisions of "courtroom workgroups" provide evidence that an inability to internalize crime attributions threatens the effectiveness of an overloaded court system (Eisenstein and Jacob 1977; Nardulli, Eisenstein, and Flemming 1988). As a result, although legal agents may rely mainly on the defendant's current offense and criminal history, their decision making may also be influenced by attributions linked to the defendant's race/ethnicity or gender (Albonetti 1991; Steffensmeier 1980; Steffensmeier et al. 1993). On the basis of these attributions, judges may project behavioral expectations about such things as the offenders' risk of recidivism or danger to the community or risk of flight that, in turn, result in racial/ethnic or gender biases in criminal case processing in general and in pretrial release decision making in particular.

Steffensmeier and associates (1980, 1998, 2000, 2001) suggest that judges are guided by three focal concerns in reaching sentencing decisions: blameworthiness, protection of the community, and practical constraints and consequences. Blameworthiness is associated with defendant culpability. Protection of the community draws on similar concerns but emphasizes incapacitating dangerous offenders or reducing the risk of recidivism. Practical constraints and consequences include concerns about the organizational costs incurred by the criminal justice system and the disruption of ties to children or other family members. Importantly, they report that all of these focal concerns may be influenced by legally irrelevant extra-legal factors, such as race-ethnicity and gender (see Steffensmeier et al. 1998).

Regarding gender, more lenient pretrial release decisions may be imposed on women because judges and other court actors view females as less dangerous and less of a public safety risk than males, and tend to see

women's crimes as an outgrowth of their own victimization (e.g., by coercive men or drugs); they may also result from judges' beliefs that the social costs of detaining women are higher since they are more likely than males to have child care responsibilities and mental or health problems that could not be treated in a jail setting (Steffensmeier et al. 1993). Also, women are perceived to maintain community ties more so than males (e.g., with children, parents) and are more closely bonded to conventional institutions that serve to reduce both the likelihood of "flight" as well as future involvement with the criminal justice system (see also Daly 1994).

Concerning race-ethnicity, less lenient pretrial release decisions are likely to be imposed on black and Hispanic defendants than white defendants because of court actors' beliefs that blacks and Hispanics are more dangerous, more likely to recidivate, and less likely to be deterred. Research on labeling and stereotyping of black and Hispanic offenders reveals that court officials (and society-at-large) often view them as violent-prone, threatening, disrespectful of authority, and more criminal in their lifestyles (Bridges and Steen 1998; Hagan and Palloni 1999; Spohn and Beichner 2000; Swigert and Farrell 1976). Also, legal agents may fear that the risk of flight is higher among Hispanic and black male defendants—who may tend to have fewer community ties and may also be illegal immigrants.

Additionally, John Hagan and Alberto Palloni (1999) provide evidence that the government and public perceive immigrants as more criminally involved than citizens. They also show that this perception of a strong link between immigration and crime (which turns out to be a misperception) appears to lead to higher levels of detention among Hispanic immigrants at the pretrial release stage. Their findings suggest the possibility that Hispanics may suffer an especially increased burden at the pretrial release stage, both as Hispanic and as immigrant. In the present study, it is likely that many of the Hispanic defendants are also immigrants. Therefore, any differences in the decisions or outcomes surrounding Hispanics at the pretrial release stage may be partially a function of their citizenship status rather than just their ethnicity. Unfortunately, we have no way of disentangling the effects of ethnicity and citizenship status in the

present study. Future research (discussed below) needs to explore the individual and combined effects of ethnicity and citizenship status on decisions and outcomes in the criminal justice system.

These considerations, along with our review of prior studies of gender and race-ethnicity effects at the sentencing stage of the criminal justice process, highlight the importance of testing for intersections among gender and race/ethnicity on criminal case-processing outcomes, and to do so across earlier as well as later stages of the criminal justice system. The failure to consider such interaction may result in misleading conclusions about the effect of these variables.

Hypotheses

Three key hypotheses guide our analysis of pretrial decision making in felony cases:

1. Female defendants will receive more favorable pretrial treatment than male defendants, net of controls for legal, extralegal, and contextual factors. That is, female defendants will be more likely to receive pretrial decisions that encourage pretrial release (e.g., nonfinancial release options, lower bail amounts) than male defendants. It is important to note that if female defendants are more likely to be impoverished than male defendants, then getting lower bail amounts than males may not make a difference for the ability to post bail. However, female defendants may have more access to financial resources through their access to family or social networks willing to post bail or greater success with bail bondsmen for purposes of making bail. Overall, female defendants will be more likely to gain pretrial release than male defendants.
2. Black and especially Hispanic defendants will receive less favorable treatment than white defendants, net of controls for legal, extralegal, and contextual factors. That is, black and Hispanic defendants will be more likely to

receive pretrial decisions that discourage pretrial release (e.g., financial release options, higher bail amounts) than white defendants. As a result, black and Hispanic defendants will be less likely to gain pretrial release than white defendants.

3. The gender effect on pretrial decision making will persist, and do so in a generally uniform way, across the racial-ethnic comparison groups.

Hypothesis 3 anticipating a small or negligible interaction effect between gender and race-ethnicity is at odds with the view of some writers that white women, but not necessarily black or Hispanic women, are advantaged and will receive preferential treatment in the criminal justice system because they benefit from chivalrous attitudes and because they tend to be more deferential to legal functionaries than black or Hispanic women (Belknap 1996; Farnworth and Teske 1995; Klein and Kress 1976). As Joanne Belknap (1996) writes, “women of color may not receive the chivalry according white women” [because women of color] “may not appear and behave in ways perceived by men as deserving of protection” (p. 70). Drawing instead on the focal concerns perspective, along with several recent studies showing a persistent gender effect in sentencing outcomes across subgroup comparisons (Daly 1994; Spohn and Beichner 2000; Steffensmeier et al. 1998), we expect all female defendants to benefit from beliefs viewing them as less culpable, as less likely to recidivate or to flee (partly because of stronger ties to kin/family including children), and as more essential for providing child care.

Data and Procedures

In the present study, we use individual-level data compiled by the State Court Processing Statistics (SCPS) program of the Bureau of Justice Statistics on the processing of a sample of formally charged felony defendants in the state courts of the nation’s 75 most populous counties in 1990, 1992, 1994, and 1996. The

SCPS data are well-suited for the proposed analysis because they (1) offer extensive information on the processing of defendants, including detailed information about pretrial release decisions and outcomes; (2) provide important demographic, case, and contextual information such as gender, ethnicity, age, criminal history, arrest and conviction offense, and jurisdiction that might affect decisions at various stages of the process; (3) furnish adequate numbers of cases across all gender and racial/ethnic groups of interest at the pretrial stage of case processing; and (4) permit considerable generalizability of findings since the counties sampled represent courts that handle a substantial proportion of felony cases in the United States.

We restrict the original data sample to include only white, black, and Hispanic defendants. Defendants belonging to the “other” race-ethnicity category represent a small number of cases (i.e., comprise less than 1 percent of the total sample) and are not distributed evenly across counties, thus making data analysis and interpretation of findings difficult. Depending on the county, defendants categorized as “other” may be Asian, Native American, or some other non-white, -black, or -Hispanic racial or ethnic identity. The analytic sample contains 39,435 defendants.

Independent and Control Variables

Gender is measured using a single dummy variable. Race and ethnicity are measured using three dummy variable categories: non-Hispanic white, non-Hispanic black, and Hispanic of any race. Age is measured using a continuous variable. An age-squared component (that is centered and orthogonal to the linear component) is also included. The results of past sentencing studies suggest that age has a nonlinear relationship with incarceration and term length outcomes (see Steffensmeier, Kramer, and Ulmer 1995). It is possible that a similar relationship exists at the pretrial release stage.

Measures of legal variables like offense severity and criminal history are critical for any analysis of criminal

case process decision making since these two variables are the best predictors of court decisions in the processing of criminal defendants. For this analysis, offense severity is measured using a set of 10 dummy variables representing the specific offense type of the most serious felony arrest charge (e.g., murder, assault, drug trafficking).

Criminal history is measured in several different ways. The first set of measures are used to indicate prior contact with the criminal justice system. Dummy variable (yes/no) measures are used to address each of the following questions: Has the defendant ever been arrested for a felony?, Has the defendant ever been convicted of a felony?, Has the defendant ever been in jail?, Has the defendant ever been in prison? The second measure of criminal history is a dummy variable indicating whether the defendant has ever failed to appear (FTA) in court pending disposition in the past. The third measure of criminal history is a dummy variable indicating the criminal justice status of the defendant at the time of the most recent arrest (i.e., the arrest recorded in the current data set). Defendants who are on release pending another case, on probation, on parole, or in custody when arrested have active criminal justice statuses.

Because there is significant variation in case processing outcomes across counties, dummy variables for each of the counties in the sample are included in regression models to control for contextual effects such as variation in criminal justice practices across the jurisdictions represented in the SCPS program. Inclusion of these variables controls for mean differences in outcomes across counties. Dummy variables representing the filing year are also included in the regression models.

Dependent Variables

In this study of pretrial release, we examine five different dependent variables. The most general pretrial release variable is a dummy variable indicating whether the defendant is detained or released pending case disposition. However, whether the defendant is ultimately detained or released also depends on the outcomes of a series of decisions made both by agents of

the court (e.g., judge, pretrial release officer) and by the defendant (see Goldkamp 1979). These intermediate decisions constitute the remaining four dependent variables.

At the first stage, the judge determines whether the defendant is eligible for pretrial release or should be preventively detained for public safety or flight-risk reasons. The dependent variable representing this decision is a dummy variable indicating whether the defendant was denied bail or given some other release option.

At the second stage, if the defendant is eligible for release, the judge decides whether a financial or nonfinancial release option is most appropriate. To simplify the analysis, specific release options (e.g., ROR, full cash bond) have been combined into two general categories: nonfinancial release and financial release. The dependent variable representing this decision is a dummy variable indicating whether the defendant is given a financial or nonfinancial release option.

At the third stage, for defendants given a financial release option, the amount of bail is set. The dependent variable representing this decision is a continuous variable indicating the number of dollars set for bail. Because the distribution of bail amount is skewed, the natural log of bail amount is used in regression analyses.

At the fourth stage, the defendant who is offered bail either posts bail and is released or does not post bail and remains in jail. Although the ability to pay bail is not technically a criminal justice decision (i.e., made by a legal agent), it is a direct consequence of wise process decision making. In this sense, a financial release option may amount to preventive detention for many defendants and indirectly create gender or racial-ethnic disparities in pretrial release outcomes. The dependent variable representing this outcome is a dummy variable indicating whether the defendant is held on bail or released on bail.

Results

We present here the results of analyses examining the effects of gender and race-ethnicity on pretrial release.

First, we examine descriptive statistics at the pretrial release stage, focusing on differences between male and female white, black, and Hispanic defendant groups. Next, we present the results of multiple regression analyses examining the main effects of gender and race-ethnicity and other extralegal and legal factors on pretrial release decision and outcomes.

Descriptive Statistics

Female and white defendants are less likely to be detained than male, black, and Hispanic defendants. There also are noticeable differences in the arrest charges and criminal history profiles of the defendant groups. T-tests of statistical difference ($p < .001$) show that male defendants have more serious criminal records than female defendants for all measures of criminal history used in the present study. T-tests indicate that murder, rape, robbery, other violence, and burglary make up a greater percentage of criminal charges for males than females. Theft, other property, and other drug offenses make up a greater percentage of criminal charges for females than males ($p < .001$). There are no gender differences for assault and drug trafficking.

Looking at racial and ethnic differences, black and Hispanic defendants have more serious criminal histories than white defendants for all measures of criminal history (t -test, $p < .001$). Also, Hispanics especially are more likely than blacks and whites to be charged with drug offenses. Black defendants are the group most likely to be charged with violent offenses, while white defendants are the group most likely to be charged with property offenses ($p < .001$).

Main Effects of Gender and Race/Ethnicity

This section provides the results of multivariate regression analyses that examine whether differences in pretrial release decisions and outcomes among male and female white, black, and Hispanic defendants persist net of statistical controls for legal, extralegal, and contextual factors.

Similar to the findings of prior studies of pretrial release, an examination of standardized coefficients

(available from the authors upon request) reveals that legal factors are the strongest determinants of whether a defendant is released or detained. Defendants charged with more serious crimes and defendants with more extensive criminal backgrounds are more likely to be detained than other defendants.

Also, our findings concerning the age of the defendant are consistent with the results of past sentencing studies that find that age has a nonlinear relationship with incarceration and term length outcomes (see Steffensmeier and Demuth 2000). That is, age has an inverted-U relationship with the likelihood of pretrial detention. Younger and older defendants are less likely to be detained than are “peak age” defendants. These “peak age” defendants are the most likely to be required to pay bail and the least likely to be able to post bail. Interpreted within a focal concerns framework, these “peak age” defendants may be viewed by judges as less worthy of release because they are perceived as more culpable, more of a safety risk, or less likely to return to court for adjudication.

Turning to the main effects of gender, female defendants are significantly less likely to be detained than male defendants controlling for important extralegal, legal, and contextual factors. The odds of pretrial detention are about 37 percent less for female defendants than male defendants.

Regarding the main effects of race/ethnicity, black (odds = 1.553) and especially Hispanic (odds = 1.821) defendants are more likely to be detained than white defendants at the pretrial release stage. For black defendants, the increased likelihood of detention appears to be primarily a result of a decreased ability to pay bail. The odds of being held on bail are almost 2 times greater for black defendants than for white defendants. There are no statistical differences between black and white defendants concerning denial of bail, financial release, or bail amount. For Hispanic defendants, the increased likelihood of detention is not only a function of their increased inability to pay bail (odds = 1.948), but also because Hispanics are more likely to have to pay bail for release (odds = 1.366) and also receive bail amounts that are about 7 percent higher than whites.

There is no difference in preventive detention between Hispanic and white defendants.

So far, our findings are consistent with expectations. Female defendants receive more favorable pretrial treatment than male defendants. Indeed, at all decision points in the pretrial release process, female defendants are more likely than male defendants to receive pretrial decisions that encourage pretrial release. As a result, female defendants are considerably more likely to gain pretrial release than male defendants. Black and especially Hispanic defendants receive less favorable pretrial treatment than white defendants. Higher levels of detention among black defendants *vis-à-vis* white defendants is a result of black defendants' relative inability to post bail. There are no other statistically significant black-white differences in the pretrial release process. However, Hispanics are disadvantaged at many points in the pretrial release process resulting in the highest levels of overall pretrial detention among the three racial-ethnic defendant groups. Hispanics are the group most likely to receive financial release options and the group receiving the highest bail amounts. Also, similar to black defendants, Hispanic defendants are more likely to be held on bail than white defendants.

Summary

Our main goal in this analysis was to examine the intersection of defendants' gender and race-ethnicity on both pretrial release *decisions* and pretrial release *outcomes*. Drawing from the focal concerns perspective on decisions and practices of court officials, we expected that female defendants would receive more favorable pretrial treatment than male defendants, that white defendants would receive more favorable treatment than black or Hispanic defendants, and that this main effect would persist fairly uniformly across gender and racial-ethnic subgroup comparisons. In addition to the strong effects of prior record and offense seriousness on pretrial release decisions and outcomes (also

predicted by the focal concerns framework), our findings were generally supportive of these hypotheses. However, we also discovered some small but important gender-race/ethnicity interactions in both pretrial release decisions and outcomes. The observed influence of varied gender and race-ethnicity comparisons here can be viewed in alternative ways, depending on which group or subgroup combination one wants to emphasize.

The following findings represent important contributions to the literature on pretrial release outcomes and the decisions leading to those outcomes. Net of controls:

1. Each variable—gender and race-ethnicity—has a significant direct effect on pretrial release outcomes. Female defendants received more favorable pretrial treatment than male defendants. Females were more likely to receive pretrial decisions that encouraged pretrial release (e.g., nonfinancial release options, lower bail amounts) than male defendants and they were more likely to gain pretrial release than male defendants. Black and especially Hispanic defendants received less favorable treatment than white defendants. Black and Hispanic defendants were more likely to receive pretrial decisions that discourage pretrial release (e.g., financial release options, higher bail amounts) than white defendants and they were less likely to gain pretrial release than white defendants.
2. The gender effect on pretrial release outcomes is generally uniform across the racial ethnic comparison groups, but a small interactive effect exists. The gender difference is smallest among whites and largest among Hispanics with blacks placing in the middle.
3. The race-ethnicity effect on pretrial release outcomes is fairly consistent across gender but the effect is slightly greater among males than females.

4. White female defendants receive the most favorable pretrial release decisions in general (although there are a couple of small exceptions) and they are the defendant group most likely to be released prior to trial.
 5. Hispanic male defendants, followed by black male defendants, receive the least favorable pretrial release decisions and they are least likely to be released prior to trial.
 6. Very substantial differences in pretrial release outcomes exist when comparisons are made between the most dissimilar gender-race/ethnicity comparisons (e.g., Hispanic males are considerably more likely to be detained [prob = +23 percent] than white females); these differences are concealed when the analysis considers only main effects.
2. Black and especially Hispanic male defendants are disadvantaged at all points in the pretrial process—they (and, again, Hispanic males in particular) are more likely to be preventively detained, to receive a financial release option, to post a higher bail, and to be unable to post bail to secure their release. They therefore are more likely to be detained prior to trial than the other gender-racial/ethnic subgroups.
 3. White male defendants are somewhat of an anomaly. Although they receive less favorable pretrial decisions than female defendants, they are only slightly more disadvantaged in these decisions than black male defendants (e.g., essentially no white-black difference in receiving the financial release option). Yet, white defendants are substantially less likely to be detained prior to trial than black male defendants (about 10 percent difference) as well as Hispanic male defendants (about 14 percent difference). The apparent reason is the greater ability of white male defendants to post bail.

An important contribution of our study for research and theory on the pretrial phase of the criminal justice system involves the significance of (1) distinguishing the pretrial decision making process relative to the pretrial release outcome and in (2) analyzing the pretrial decisions as precursors for understanding how the eventual release outcomes might vary by gender and race-ethnicity. The following findings are key examples:

1. Even though Hispanic females and especially black females receive pretrial decisions that compare fairly favorably with those for white females (e.g., relative to whether the defendant is preventively detained, released on ROR, or bail amount), they (Hispanic and especially black females) are more likely to be detained prior to trial. The apparent reason is that they are less able to post bail (regardless of the amount). Stated differently, white female defendants are advantaged relative to non-white females primarily because they are better able to post bail, rather than because they are less likely to be preventively
- detained or are required to post higher bail amounts.

Thus, an important finding to emerge from our analysis derives from differentiating between pretrial decisions and pretrial outcomes—namely, both female and male white defendants are advantaged at the pretrial stage in large part because of their greater ability to make bail. Relative to similarly-situated gender and race-ethnic subgroups, white defendants of both sexes apparently have greater financial capital or resources either in terms of their personal bankroll/resources, their access to family or social networks willing to post bail, or their greater access to bail bondsmen for purposes of making bail. In contrast, “being held on bail because one can’t post it” is a main disadvantage facing Hispanic male defendants, black male defendants, black female defendants, and to a lesser extent Hispanic female defendants. In addition, male defendants who

are black or Hispanic are also more likely to be preventively detained and less likely to be released on recognizance if not preventively detained.

Conclusion

So far as we know, this study is the first analysis of the pretrial release process that allows for a consideration of main and interactive effects of gender and race-ethnicity (white, black, Hispanic) on both pretrial release decisions and pretrial release outcomes. Our findings suggest at least four important implications for research on criminal case processing both in terms of the pretrial release stage and more generally at other decision points. First, the findings demonstrate the importance of including gender in studies of case processing and of testing not only for main effects but also for possible interactive effects of gender with other defendant statuses like race-ethnicity. For example, we found that gender differences are not necessarily the same for all racial-ethnic groups. In a similar vein, the results also demonstrate the necessity of considering not only defendants' race (i.e., black-white differences) in criminal case processing but the need to also include ethnicity (i.e., Hispanic-white and Hispanic-black differences). In general, Hispanic defendants are treated as or more harshly than black defendants and considerably more harshly than white defendants. Clearly, future studies in this area must distinguish among Hispanic, black, and white defendants as each group has unique experiences in the criminal justice system.

Second, research on gender and racial-ethnic disparities cannot neglect earlier stages of the criminal justice system. In the present study, gender and racial-ethnic differences are considerable at the pretrial release stage, suggesting that restricting our focus to later stages (e.g., sentencing) yields a misrepresentation of the roles of gender and race-ethnicity in the criminal case process. Unchecked prosecutorial and judicial discretion at earlier stages of the process create the potential for such factors as defendants' gender

and race-ethnicity as well as other extralegal characteristics to influence legal decision making and outcomes. Furthermore, it is likely that the outcomes of early decision making in the criminal case process affect later decisions made by judges and prosecutors.

Third, research needs to examine not only the pretrial decisions made by judges and court actors, but also the outcomes of such decisions. As shown in the present study, just because defendants are given the opportunity for pretrial release does not necessarily mean that they are actually released. Indeed, the apparent decision to grant release is frequently at odds with the actual outcome. For instance, we find that black and Hispanic defendants are considerably less able to pay bail to gain release from jail before adjudication. Future research on pretrial release needs to more closely consider the underlying socioeconomic reasons for this racial-ethnic discrepancy. Furthermore, researchers need to revisit the question of whether financial release options are truly necessary to ensure appearance in court and to maintain public safety (see Ares, Rankin, and Sturz 1963; Beeley 1927; Gottfredson and Gottfredson 1990). Given that minority defendants are less able to pay bail than white defendants, financial release options for these defendants may amount to de facto preventive detention decisions.

Fourth, research is needed that goes beyond the sort of statistical analysis reflected in this study to probe in depth how court officials arrive at pretrial decisions. Our findings lend credence to the focal concerns perspective that (1) judges and other court actors develop "patterned responses" that express both gender and race-ethnicity assessments relative to blameworthiness, dangerousness, risk of recidivism or flight and that (2) the defendant's gender and ethnicity may intertwine with the defendant's economic and social resources in ways that shape pretrial outcomes. But, field research and interviewing of court and bail officials are needed to better assess the focal concerns perspective and to better understand the overall harsher treatment of Hispanic male defendants at the pretrial stage. They not only are the group least likely to receive favorable (i.e., nonfinancial) release decisions, but Hispanic males are

also the group least able to afford bail in order to gain release.

The observations and interviews should address whether, for example, the harsher treatment of Hispanic males is because (1) they lack the resources or power to resist imposition of harsh legal sanctions; (2) they are perceived as more dissimilar and threatening than white and even black defendants and hence most deserving of punishment; (3) they represent a greater risk of flight to a safe haven or “home country,” especially since some Hispanic offenders will be illegal immigrants; and/or (4) some Hispanic defendants (especially recently immigrated Hispanic defendants) are disadvantaged by their difficulty with the English language, general ignorance about or distrust of the criminal justice system, and unwillingness to cooperate with authorities out of fear of deportation of family and friends. In light of their apparently harsher treatment at other case-processing stages (see, e.g., Steffensmeier and Demuth 2001), there is a pressing need for field research and interviewing that examines the unique factors and situations (e.g., language, color, citizenship differences) affecting the treatment of Hispanic defendants in the pretrial release process as well as in the larger criminal justice system.

We highlight one final and very important matter that is suggested from our findings, the importance of social and economic resources in shaping the effects of race-ethnicity on pretrial outcomes and (by extension) the playing out of the focal concerns—i.e., the defendant’s ability to pay. Our analysis reveals that white defendants, whether female or male, are advantaged relative to non-white counterparts at the pretrial stage primarily because they are better able to post bail, rather than because they are less likely to be preventively detained or are required to post higher bail amounts. This finding in effect suggests that, even if there were no apparent gender or racial/ethnic disparities in pretrial release decisions, disparities in pretrial release outcomes might still emerge.

This possibility is troubling because these differences in early pretrial release outcomes may translate into unwarranted differences in decisions or outcomes at later stages (e.g., sentencing), as some writers suggest.

At issue is the often overlooked influence that poverty and social class have on sentencing and case-process decision making. As Andrew von Hirsch (1976) notes, “As long as a substantial segment of the population is denied adequate opportunities for a livelihood, any scheme for punishing must be morally flawed” (p. 149). Von Hirsch’s concern about achieving “just deserts in an unjust society” (p. 142) seems particularly noteworthy as regards pretrial release decisions and outcomes since, as much more so than elsewhere in the case process, it is at the pretrial stage that one’s freedom is so often intertwined with one’s money.

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DISCUSSION QUESTIONS

1. In the conclusion of this study, the authors offer four explanations for these results. As a pretrial release officer, how might these results influence your recommendations to the judge?
2. In the conclusion of this study, the authors offer four explanations for these results. As a judge, how might these results influence your recommendations to the judge?
3. Given the findings of this study, where else might disparities be occurring in the system that would account for no difference in the likelihood of opportunity for pretrial release? Why might this factor be important for policy?



READING

In this study, the authors examined the three models of drug court administration, funding, and legitimacy in states. As noted, when drug courts were originally created, many of them were done so with the assistance of federal funding and dollars. As this money dissipates, local communities become more reliant on states to continue to fund their existence. Given this trend, three drug court management models have emerged: "the executive branch model, the judicial branch model, and the collaborative model" (p. 421). To better understand the strengths and weaknesses of this process, the authors conducted semistructured interviews with 11 state drug court administrators. These interviews gave the researchers an opportunity to better understand the status of the state budget at the time of the interview and how the decision-making process for funding the programs occurred. Results from these studies supported the existence of the three models. Likewise they found that states embracing a collaborative model of drug court administration were most likely to have stability in funding and treatment options available. Based upon the results of their study, the researchers offered three recommendations for funding initiatives. First, they needed to have "enacting legislation supported by authoritative programmatic controls" (pp. 431–432). Second, there should be a joint oversight committee that allows for the inclusion of both judicial and executive branches of government. Finally, drug

court advocates must collaborate with the legislature to ensure funding stability. This study has several policy implications based upon their findings and recommendations if states want to continue the movement toward using drug courts to specifically deal with substance abuse cases coming to the attention of the courts.

State Administration of Drug Courts

Exploring Issues of Authority, Funding, and Legitimacy

Cary Heck and Aaron Roussell

One of the largest problems for the U.S. criminal justice system in the past 30 years has been criminal offenders who frequently recidivate and seem unaffected by justice system sanctions. Repeat offenders represent a constant source of difficulty for law enforcement, the courts, and correctional institutions (Walker, 2001). Since 1989, drug courts have emerged as a means for dealing with this difficult population (Huddleston, Freeman-Wilson, & Boone, 2004; Marlowe, 2004). Judges and other criminal justice professionals originally designed drug courts to deal with low- to mid-level repeat offenders with co-occurring substance abuse disorders. Insofar as these offenders' recidivism stems directly from their substance abuse problems, successful drug and alcohol treatment could prevent future offenses (National Association of Drug Court Professionals, 1997). Conceptually, the drug court model is simple: Use appropriate tools to diagnose addiction severity, link offenders to appropriate treatment services, hold offenders accountable, and manage their behavior both within and outside the treatment setting through the systematic use of sanctions and incentives enforced by regular judicial status hearings.

The drug court model was originally formulated at the local court level, and it is there that it is best defined. Through national outreach, research, and

training organizations, local programs have a great deal of technical and programmatic information available on which to rely in times of change or crisis. As drug courts become institutionalized, however, significant concerns remain about how best to administer drug courts at the state level. The executive branch can lay claim to drug court administration through treatment, law enforcement, and probation/parole. On the other hand, the judicial branch has more obvious jurisdiction over drug court through the judicial adjudicative and administrative process. As federal grants supporting local court programs expire and issues of funding and administration are increasingly being absorbed by states, this problem becomes ever more salient. And as governmental branches at the state level become more contentious over the issue, it is possible that local intervention will suffer.

To conceptualize the emerging problem of state drug court administration, this article will explore the modalities commonly used for managing drug court programs and attempt to answer several related questions. What are the mechanisms that states use to ensure effective delivery of public services (e.g., treatment) to clients? What are the strengths and weaknesses of each of these bureaucratic mechanisms? What factors influence funding stability? Finally, what recommendations can be drawn to accommodate diverse interests across states? This is not

meant to be an exhaustive list of possible complications arising from interagency collaboration. Indeed, some issues raised herein may prove intractable even to the best intentioned, while other authors may wish to engage some issues for full philosophical satisfaction. Drug courts, however, are a practical response to a real problem—an article addressing their implementation must reflect the same. Our purpose here is to provide an outline of those pitfalls that are endemic to those wishing to establish or shift comprehensive statewide management of drug courts and some of the ways that they can be avoided, confronted, or defeated.

To accomplish these tasks, we reviewed relevant literature and operational examples and conducted interviews with a sample of state-level drug court program directors. Guided by these sources, we discovered that the issues relevant to a discussion of state drug court administration include sustainability, accountability, and program legitimacy. Further, legal and political challenges to drug courts at a state level often emanate from the lack of judicial authority, executive branch oversight of court-funded treatment, and inadequate evaluation and measurement of drug court activities. It is through these lenses that we will explore state drug court administration, funding, and legitimacy.

Defining the Models: Research and Methods

Fox and Wolfe (2004) developed three distinct categorical models of statewide drug court management: the executive branch model, the judicial branch model, and the collaborative model. Executive models are those that fund and manage their courts solely or largely through executive branch offices (generally the single state agency responsible for handling substance abuse and addiction problems). On the other hand, judicial models funnel authority through the state Administrative Offices of the Courts, also to varying degrees. These two models represent opposite ends of a continuum, with more collaborative approaches composing the middle. Where a state falls in

the spectrum depends on the agreed-on balance between judicial and executive branches over the administration of drug courts. Whereas “hard” executive or judicial models are easy to identify, collaborative models are “softer” and appear in a wide array of incarnations.

To better understand these models, we employed semistructured interviews with a number of state drug court administrators. There were some limitations in choosing interviewees. Not every state has a centralized management structure, nor did every state have a single person in charge and available to speak on these matters. Furthermore, whereas a majority of eligible states fell into the category of the judicial model, it was important to have all three models represented. A stratified sample was drawn from those available for inclusion, including, by design, states representative of each of the three drug court administrative modalities. These interviews were conducted by telephone with 11 state drug court program directors selected for their deep knowledge of their respective programs. These program directors are responsible for coordinating the disparate agencies that are involved in the drug court process, as well as interfacing between the local programs and state-level authorities. This puts them in the unique position of straddling the responsibilities between branches, as well as all levels of government, making them invaluable resources for this sort of inquiry.

The interviews comprised six open-ended questions regarding the modalities employed by states for administering drug court funding and programs. Also included were two Likert-type scaled questions regarding perceptions of the stability of state drug court funding specifically, as well as the stability of the overall state budget. Of the states that were surveyed, three used an executive model, six used a judicial model, and two used a collaborative approach. As is appropriate in a stratified sampling approach, this roughly reflects the national divide in drug court administrative structure. It is important to remember that the presence of a centralized management structure indicates a firm state commitment to drug court, which may indicate a difference between the interviewees and other states.

Model Strengths and Weaknesses

The administration and funding of drug courts takes various shapes throughout the country. Although we attempt to describe the various permutations of each model, the models themselves are ideal types. As such, specific strengths and weakness of each are reflected to varying degrees among their real-life counterparts. The interviews, as well as the authors' personal experience, were very helpful in this regard. The interviews revealed that the states' drug court administrative structures had been in place for different lengths of time and that this was reflected in their respective comfort levels with their chosen model. Several state contacts suggested that state oversight commissions, often a combination of executive, judicial, and even legislative branch partners, provided excellent oversight and credibility for the state drug court program in its entirety. Further, interviewees, regardless of model, made it clear that judges often felt more secure when supported in administrative function by the state supreme court and Administrative Offices of the Courts, whereas treatment providers felt more secure with executive branch oversight.

Executive Branch Model

A number of states that have centralized drug court management and oversight rely on executive branch agencies for drug court management. The greatest strength of this model is the oversight available for treatment and supervision programs, due to the fact that funding is channeled through legislative appropriations directly to the executive branch. Whereas judges usually manage individual drug courts, programs revolve around high levels of treatment, frequent drug and alcohol testing, and supervision received by clients. Most drug court clients receive between 6 and 10 hours a week of counseling and treatment services. Counselors and treatment providers who are licensed by executive branch agencies usually provide these services. This connection provides the executive

model drug court managers the ability to monitor the quality of treatment. Tellingly, one of the most common complaints made by local drug court judges is with regard to their ignorance of substance abuse treatment. State directors indicate that the executive branch model therefore reduces concerns about the nature of the treatment provided by drug court programs.

Still, this places executive management in the position of playing decision maker over what is ultimately a court program, thus invoking unease over separation-of-powers issues. The national Conference of State Court Administrators (COSCA) and Conference of Chief Justices, an organization on record in its support of problem-solving courts (COSCA, 2000), provides a powerful, practical perspective on this issue, suggesting that the separation-of-powers doctrine is based primarily on functional utility:

Judicial independence is not an end in itself . . . but rather the means to ensure the primacy of the rule of law by guaranteeing the ability of the courts to protect individual rights, police the exercise of governmental powers and decide individual disputes impartially. Moreover, the doctrine of separation of powers contemplates some sharing of powers among the branches; indeed, the other branches are constitutionally empowered to determine the judicial branch's structure, jurisdiction and resources. (COSCA, 2001, p. 6)

This must be interpreted cautiously, as COSCA also asserts unequivocally the territory of the judiciary, stating that policy decisions involving the actual administration of justice must be the primary bailiwick of the judicial branch. This is not only a matter of "good governance" but also a strongly constitutional issue, because administration is inherently bound up in the adjudicative role of the courts (COSCA, 2001). Suggesting that outside regulation and accountability is both inevitable and desirable, COSCA (2001, p. 1) states that "with judicial governance comes the right and

interest of the other branches of government and the public to hold the judiciary accountable for effective management of court business.” Although courts do occupy a relatively independent position in American governance, they still must be accountable to the public for their institutional actions. Indeed, the late Chief Justice William H. Rehnquist (1996) opined in his *Year-End Report on the Federal Judiciary*:

Once again this year—in my eleventh annual report on the state of the judiciary—I am struck by the paradox of judicial independence in the United States: we have as independent a judiciary as I know of in any democracy, and yet the judges are very much dependent on the legislative and executive branches for the enactment of laws to enable the judges to do a better job of administering justice. (p. 1)

The judicial branch is a separate, coequal branch of government, which has the constitutionally founded authority to make decisions about the actions of the legislative and executive branches. This authority is carefully guarded and protected against any advances made by agents of the other branches (American Bar Association, 1997). Indeed, the separation-of-powers doctrine requires that the three branches maintain distinct realms of authority largely to prevent abuse of power by any one branch. Yet, if this is ultimately a functional directive, as COSCA (2001) suggests, perhaps there is more room for overlap of authority than the separation-of-powers doctrine implies. This flexibility, however, must end at the point where the actual administration of justice begins (Rehnquist, 1996). Still, from the viewpoint of the most powerful state judicial leaders in the United States (i.e., COSCA and Conference of Chief Justices), executive control of judicial programs can be justified for the greater good under certain circumstances.

Beyond the philosophical, this problem is manifested in practical weaknesses of the executive branch model. Judges sometimes lament a lack of authority and oversight in the operation of their drug courts. Drug

courts that have executive branch management and funding are precariously balanced between subjecting themselves to executive authority and maintaining their independence. Thus, as reported by state directors, drug court judges often feel as though they are operating programs on an island without the support of those systems designed to promote appropriate action within courts. In these cases, drug court judges are beholden to executive branch authorities to answer treatment and supervision questions and solve problems that they are often ill equipped to handle.

When executive model administrators grant authority to executive branch agencies to set rules and requirements for drug court program activity, the balance of power is imperiled. Fox and Wolfe (2004, p. 21) suggest that “as states have assumed more financial responsibility for drug courts, they have also begun taking on more policymaking authority.” Thus, drug court programs that receive funding from executive agencies must also subject themselves to policies and rules established by these agencies. In essence, this acceptance of outside authority could go beyond the proscriptions set by COSCA and Rehnquist to actually determine the administration of justice. For many drug court judges, the value of the goals associated with successful treatment of addicted offenders outweighs the possible negative effects of having to follow rules established by the executive branch. Many see this as a mere technicality; others disagree. Should judges be forced to choose?

Were states to create third-party agencies comprising stakeholders from both (or all three) branches, it is possible that weaknesses relating to authority struggles and separations of power might be mitigated, while retaining the general executive model structure. Further, some states have seen the advantages of this sort of collaboration and have shifted varying amounts of their drug court authority to third-party agencies. Again, however, a full shift to a collaborative model may not be required—the improved judicial voice in executive decision making might mitigate concerns without the loss of the executive power majority and its related strengths.

Judicial Branch Model

Despite their collaborative nature, drug courts revolve around the judge and the courtroom. This links drug courts inextricably to the judicial system and is undoubtedly a major reason that the judicial model predominates across the United States. This model therefore has certain obvious strengths when it comes to drug court authority, not the least of which is legitimacy for all parties involved, including the program staff. Consistent with this are the results of a court study from Missouri (Myers, 2004) that conclude that most court administrators and staff would prefer a complete separation from the executive branch of government. In fact, more than three quarters of those surveyed wanted to report solely to the supervising judge (Myers, 2004). This suggests that judicial oversight is the most effective means of control of court employees and is an implicit argument for the efficacy of judicial management structures in general. Arguments for increased local control by executive officials therefore run counter to the orientation of the actual court employees, assuming that these findings are generalizable outside of Missouri. Consistent with Rehnquist (1996) and COSCA (2001), it was made clear by a majority of respondents that the executive branch should not involve itself in the judging of cases, and that the court structure should be separate from executive control (Myers, 2004). Taken together, this is a clear argument for a judicial approach from the ground up.

External legitimacy is also crucial. On the whole, state-level judicial budgets tend to be more consistent year to year than their executive branch counterparts, due to the legal requirements of the judiciary. These requirements usually force legislators to maintain funding stability over time. This, in turn, can create stability for court programs under judicial purview, such as drug court programs, but only when drug court funding is expressly a part of the judicial budget. Although the interviews suggest that funding stability is unrelated to choice of drug court administration model, strong ties to the more placid judicial branch may affect the perception of stability. It seems likely that the appearance of greater stability could actually lead to greater stability in the long run.

Legitimacy and the related issues of accountability and responsibility have driven changes at the state level in the past. The state of Louisiana, for example, shifted its funding for drug courts from the Office of Addictive Disorders to the state supreme court in 2001. This shift was driven by concerns about funding but also by the concerns of drug court judges, who felt isolated and abandoned in their roles without judicial support. This move was made possible due to the unified nature of Louisiana's courts and strong support from the state's supreme court justices. Further, the Louisiana Supreme Court alleviated executive branch concerns regarding this transition by contracting with the previous state director of treatment of the Office of Addictive Disorders to ensure that the quality of service would continue uninterrupted regardless of the administrative shift (Fox & Wolfe, 2004).

In 2005, the Wyoming State Substance Abuse Division conducted a series of drug court community meetings that provided the authors with information regarding the opinions of drug court judges on the subject of drug court administration. Similar to the situation in Louisiana, several judges mentioned similar concerns about their isolation. This isolation stemmed from a feeling that the drug court program is an "add-on" to traditional court functioning. This, combined with the lack of unified support and codified judicial rules for drug court, created the sense that programs were perpetually operating on an ad hoc basis and not as part of the overall judicial structure. Wyoming, like Louisiana before 2001, uses the executive model; it seems likely that this problem may have been mitigated through a similar shift to judicial branch oversight.

Still, the judicial branch model suffers from legal and philosophical challenges that are different yet as equally daunting as those with the executive branch approach. One of the major philosophical weaknesses of judicial branch administration of drug courts is the resolution of those legal claims that all legal interventions generate. Whereas state supreme courts are the highest legal authority in each state, the funding and administration of drug courts solely through the judicial branch creates an automatic conflict of interest in the adjudication of the lawsuits that inevitably arise. For example, in

Maricopa County, Arizona, the county attorney filed a case against two driving under the influence (DUI) court programs (Archibold, 2006). These programs were specifically tailored to meet the needs of Spanish-speaking and Native American offenders. The county attorney alleged that these programs violated both the U.S. Constitution and other laws “barring discrimination on the basis of race or ethnicity” (Archibold, 2006). Due to the nature of the allegations and the inherent conflict of interest, the case had to be filed in federal district court, which created an uncomfortable situation for the Arizona court system.

Accountability, though not a problem internally for a top-to-bottom judicial structure, becomes a salient interbranch issue. Drawn from a collaborative conference on the funding of state courts, *Funding the State Courts* (Tobin, 1996) deals with this theme: “The lack of clear guidelines for judges on how to deal with officials of the other branches, particularly in budgetary matters, exacerbates the[ir] isolation and lack of mutual education” (p. 4). Furthermore, attempts to extract more “accountability” from the judiciary are often met by stiff resistance, not from an inherent objection to the idea but because these attempts are often viewed as challenges to judicial power and independence. In these situations, the judiciary sometimes views accountability as a code word that contests judicial authority. Tobin (1996) suggests that a certain amount of tension with the legislature is created by this perception that the courts must be reined in. This can make it difficult for courts to obtain the resources they need to effectively perform their duties. A lack of communication between the legislature and the courts means that often courts can learn of unfavorable budgetary changes long after anything can be done about them. This strongly suggests that interbranch lines of communication should be open and continuous, rather than consisting solely of brief budgetary sessions. This is particularly true for drug courts because their funding could be seen as nonessential for the operation of state judicial structures.

Intermittent or contentious funding, especially as a by-product of judicial feuds with state legislatures, is at odds with the idea of ensuring quality drug court service. If legislatures are serious about institutionalizing

drug courts, then the funding issue must be permanently resolved, and in a way that enables consistent decision making through administrative stability. A cooperative, ongoing dialogue may be the best way to address this. It may further serve to insulate the court system from inevitable legislative crises and conflicts of interest. COSCA (2001) suggests that ongoing communication is fundamental for transparency and solidarity in a way that is consistent with this conclusion:

By expanding and routinizing format and informal interbranch communications, state judiciaries can familiarize the other branches with the problems and needs of the courts. Productive working relationships, once established, foster an ethos of mutual understanding that reduces resistance and misunderstandings. Some examples of how this can be accomplished include: arranging informal meetings between the Chief Justice and the Governor to discuss basic concerns, or with legislative leaders . . . and scheduling meetings with groups of judges and legislators to exchange ideas and have a continuing dialogue on justice system issues. (p. 6, our emphasis)

However, despite the strained relationship between the legislature and the courts it pales beside the executive/judicial dynamic:

Officials asserted that the executive branch interfered in financial administration, particularly in inhibiting the transfer of appropriations between budget categories and in conducting audits. Court officials felt that each new gubernatorial administration changed the ground rules and budget strategy, sometimes intruding into budget matters from which the governor is constitutionally excluded. (Tobin, 1996. p. 7, our emphasis)

Often, too, the politicization of various judicial matters—that is, crime and drugs—creates mandates

from the executive branch that go unaccompanied by a commensurate increase in funding to cover the increased adjudicative activity. In terms of drug court specifically, Tobin's (1996) more general suggestion seems prudent: the formation of collaborative committees where these problems can be insulated from the governmental branches at large.

Finally, the judiciary, by definition and by choice, lacks overall program administration experience, particularly in the realm of substance abuse treatment. Although successful drug court judges usually acquire these skills through time and experience, there is no standardized accreditation process through which they can be trained. Thus, the learning curve for drug court judges is rather akin to "sink or swim." Although national trainings and programs have attempted to remedy this deficiency, there is no substitute for actual medical and clinical training. Thus, one primary function of the collaborative drug court team is to advise the judge on these matters. Perhaps this lesson can be applied also at the state administrative level, creating a model for the executive and judicial branches. Rather than the rotating cast of characters that is endemic to government at all levels, a permanent body empowered to undertake exactly those actions would provide for ongoing dialogue and an institutionalized presence for drug courts. Personal relationships, though valuable, disappear as the individuals involved matriculate or retire. An intermediary third-party agency could institutionalize the communication process. This could be an expedient way to prevent communication breakdowns between governmental branches. As with executive drug court models, judicial models must incorporate the input from their counterparts to successfully navigate the hurdles posed by their particular method of administration. Although there may be other ways to accomplish this, a third-party agency seems the most direct.

Collaborative Model

A collaborative approach can bring together the strengths of both the executive and judicial models. When the administrative structure at the top of the state hierarchy more closely reflects that of the "on the

ground" practitioners, the members of the local drug court team can feel more secure in their respective hierarchical support. Mutual involvement from multiple branches of government allows for oversight of judicial functions (i.e., judges and in-court activities) and executive functions (i.e., substance abuse treatment and probation services) as well as enabling unified presentation to the legislature. However, this collaborative approach is comparatively difficult to enact, which reflects its relative scarcity.

Of the interviewees, Idaho and California reported having collaborative funding and oversight mechanisms. The Idaho model is statutorily defined and relies on a strong interagency agreement between the judicial and executive branches, which splits the drug court funding between the two. The executive branch manages all aspects of the substance abuse treatment programs, whereas the judicial branch manages funds for the rest of the drug court program activities. A statewide coordinating committee, which includes representatives from all three branches of government, as well as other program stakeholders (i.e., prosecutors, defense council, treatment providers, etc.), is responsible for the program as a whole. Program management is overseen by the Idaho Administrative Office of the Courts, whereas funding for treatment is managed exclusively by the executive branch. Funding for judicial functions comes from a dedicated surcharge on alcohol sales to support drug and family courts.

California's collaboration is manifested in the development of two divergent funding streams and the formation of strong interbranch committees to manage them. California's split drug court funding comes with a legislative requirement that it be "coadministered" by an Executive Steering Committee cochaired by the deputy director of the Department of Alcohol and Drug Programs (executive branch) and a judge from the Judicial Council (judicial branch). Essentially, except for a \$1 million line item directly to the judiciary, the rest of California's \$21 million in drug court funding is jointly administered. In both cases, though funding comes from various sources to various agencies, the ultimate authority is a collaborative committee comprising those actors involved. Everyone has a voice.

While a strictly collaborative model appears to provide the best of both worlds, there are some potential weaknesses that arise from this approach. The first is the territoriality that automatically follows funding. Those state directors that reported a collaborative approach stated that this problem had to have been handled through strategic legislation at the inception of the programs or the model would not have been successful. Thus, this approach mandates legislative foresight and clear wording to prevent later problems. Additionally, the lack of an official final authority for these approaches is a concern. Although collaborative model states seem to have developed a good balance for handling difficult issues through their coordinating committees, these arrangements have yet to be seriously challenged. It became clear during the interviews that drug court programs bank on current goodwill between governmental branches and strong support of the drug court model by the current leaders in their respective branches. Interviewees reported no emerging reasons why this cooperation might collapse—indeed, it appears to grow stronger as time passes. However, if these elements are not preexistent in a particular state, it seems highly unlikely that the collaborative model would work effectively in times of conflict. Although potentially valuable for maximizing the strengths of appropriate agencies and avoiding structural controversy, a collaborative initiative must be approached with methodical deliberation and characterized by well-defined roles, extensive knowledge of drug courts, and clearly delineated authority.

Overall, even in states subscribing to noncollaborative models, a growing number of states are forming these legislatively required advisory committees comprising members of all three branches of government and other stakeholders. Those with collaborative models, of course, invest these committees with the bulk of the administrative decision-making and funding responsibility, but the idea is applicable across the board. The first obvious strength of this approach is that various administrative roles can still be fulfilled by the appropriate authority or agency, minimizing separation-of-powers issues. Second, through preexisting administrative mechanisms, each branch can provide accountability

and legitimacy for the components of the programs for which they are responsible. Thus, judges, probation officers, and treatment professionals are responsible to those respective agencies that have traditionally provided their funding and oversight. This alleviates concerns from both the judicial and executive models. Finally, there is the potential for disagreements to be resolved internally by the representative body to which the drug court answers, thus short-circuiting potential interbranch conflicts or destructive competition for legislative funding.

Stability of Drug Court Funding: A Legislative Issue

Important as the judicial and executive branches are in the administration and management of drug courts at the state level, funding ultimately comes from the state legislature. Clearly, the stability of funding is crucial to the smooth operation of drug court programs. Despite the importance of administrative model choice for drug courts, however, funding stability appears not to be strongly related to this variable. “Very stable” or “fairly stable” drug court funding was manifested in all three models in the interviews. The only qualification to this is that the only state directors to report nonstable drug court funding came from judicial model states. Although judicial models overall may appear to have more inherent stability, clearly this is not always the case and may depend on other variables. Both directors, for example, linked their funding instability to legislative insecurity about drug courts.

In general, however, state directors generally reported relatively stable drug court funding even when they saw the overall state budget as less predictable. Not surprisingly, those states with the greatest levels of stability suggested that this stability arose from strong legislation and well-defined, supportive leadership in all three state branches of government. In addition, court program stability appears to be partially a function of the age of each state program; as might be expected, older programs reported greater stability than did more recent ones. More important than which model a state

chooses to enact, it is these factors that influence funding stability and in turn provide for better implementation and sustainability of drug courts. Tentatively, it appears that active cooperation of all three state branches of government often through a multilateral commission of some sort, can help ensure stable funding. Neither of those states that reported unstable funding employed multilateral commissions.

Finally, drug courts do not exist in a vacuum. Drug court money would be funneled elsewhere had drug courts never been implemented. Where that money would go is different for each state, but it should ultimately be a reflection of where drug courts' benefits are felt—that is, what part of the budget benefits the most from drug courts. When asked this hypothetical question, a substantial majority of state directors hypothesized that the money would return to the executive branch to be used for correctional purposes. Philosophically, this indicates that states are embracing the fact that drug courts save money that would otherwise be spent incarcerating participants. California, for example, statutorily requires regular cost/benefit analyses to support this claim. Even more important, this finding indicates that the money not saved by the establishment of drug courts would represent a drain for the executive branch, that is, through the Department of Corrections. Overall, this finding suggests that drug courts should maintain their strong links to executive administration and not be considered “just another court program.”

Conclusions and Recommendations

Drug court is a relatively new innovation in jurisprudence that requires significant collaboration between arms of the government that are traditionally unaccustomed to working together. As such, considerable strategic consideration must be devoted to the issues of funding, management, oversight, and separation of powers. Although there is no silver bullet

in the administration of state drug court programs, each model presented here has separate strengths that may be suitable in different situations. Executive branch models provide strong support and oversight for the treatment and supervision components of drug courts while creating some philosophical and practical concerns about separation of powers. Judicial models partially resolve these issues and provide legitimacy for programs but often lack program management capability and expertise for nonjudicial components such as substance abuse treatment. The states that have been successful in maintaining satisfactory administrative control of programs over time tend to employ models that, like local programs, provide collaboration at the highest levels. If state administration of drug courts were viewed as a continuum, with fully judicial models on one side and fully executive models on the other, those in the middle tend to be the most successful. This does not necessarily mean that states must completely embrace the collaborative model, but perhaps simply a collaborative approach. For example, an administrative structure housed in the judicial branch might still use a steering committee comprising members from multiple branches of government and funding schemes that provide appropriate levels of continuity and oversight.

Three important recommendations emerge from this discussion. First, for states to have strong program stability, they must have specific enacting legislation that is supported by authoritative programmatic controls. Bluntly, the legislation must have teeth. It is not enough to simply define and provide blanket funding for drug courts. State drug court directors reported that legislation must also contain language pertaining to a second recommendation: the establishment of joint oversight committees with judicial and executive branch involvement and authority to create and enforce rules. It might also be helpful to include other relevant stakeholders, regardless of branch affiliation. This committee must have the ability to definitively answer specific legal and programmatic questions that arise

during the course of drug court operations. Further, the committee must be invested with some legal authority to provide accountability and legitimacy for the program judges. Also, the committee should work to implement a third recommendation, namely, the creation of specific judicial rules regarding drug court operations. The rules must be broad enough to include the various systems employed by drug courts but should be specific enough so that judges can refer to them as unfamiliar issues arise. Finally, overall collaboration by drug court advocates with the legislature is crucial for eventual funding stability. Even in oft-tumultuous state budgets, drug court program funding can achieve stability with full legislative buy-in to create strong and specific enabling legislation. All of these recommendations are critical, regardless of which model a state has enacted.

When designing, shifting, or revising a statewide drug court management plan, it is clear that state administrators, legislators, and judges must take a strategic approach. Program management infrastructure must be considered carefully and include issues of staffing, data collection, management, and funding. Guidelines must be incorporated to ensure adherence to the drug court model and the quality of services provided for program participants. Perhaps most important, the judicial framework must be crafted in such a way as to allow drug court judges to maintain their status as independent arbiters of the law while serving in this new role. The evidence strongly suggests that a judge's legal authority must be inviolate.

There are myriad pitfalls into which any well-intentioned branch of state government might fall in attempting to establish the administration of drug courts. Though certainly an admirable goal given diminishing federal funding, an honest appraisal of where the state should house its drug court authority is required. Whichever direction a state decides to go, it must, at all times, remember that drug court is a collaborative activity and that this must be reflected at every level of its implementation.

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DISCUSSION QUESTIONS

1. What are the strengths and weaknesses of each of the drug court management models discussed in the article?
2. Define and describe the three drug court management models. Which management model exists in your state? Why do you think this is the preferred management model?
3. What role do state oversight commissions play in the coordination, existence, and funding of drug court programs?
4. Given the findings of this study and what you have learned about drug courts, do you believe they are a good alternative to regular court processing? Explain your answer.

