

Executive Summary

A Viable Alternative?

Alternatives to Incarceration across Seven Federal Districts

Kevin T. Wolff

Laura M. Baber

Christine Dozier

Roberto Cordeiro

April 15, 2019



ACKNOWLEDGMENTS

The authors gratefully acknowledge the dedication and support of the participating districts, without whose cooperation and hard work this study would not have been possible. In addition to the principals from the cooperating districts named below, many staff members worked tirelessly and across district lines to ensure this study was a success. Authors would also like to thank the research staff at the Administrative Office of the US Courts for their comments.

Principals

Mark Reichert and *Susan Hendrickson* of the U.S. Pretrial Services Office of the Eastern District of Missouri (Sentencing Alternatives Improving Lives (SAIL))

Roy Saenz (retired) and *Silvio Lugo* of the U.S. Pretrial Services Office of the Northern District of California (Conviction Alternatives Program (CAP))

George Walker (retired) and *Calvin Thomas* of the U.S. Pretrial Services Office of the Central District of California (Conviction and Sentencing Alternatives (CASA))

Douglas Heuermann (retired) and *Darrell Hite* of the U.S. Probation and Pretrial Services Office of the Central District of Illinois (Alternatives to Detention Initiative (PADI))

Scott Koval and *Robert Trail* of the U.S. Pretrial Services Office of the Southern District of New York (Young Adult Opportunity Program (YAOP))

Study Team Members

Megan Augustine	Central District of California	Thalia Carrera	Eastern District of New York
Shirley Hyatt	Central District of California	Taia Givens-Childress	Eastern District of New York
Angela Savage	Central District of Illinois	Katrina Chu	Northern District of California
Kenneth Arthur	District of New Jersey	Timothy Elder	Northern District of California
Mitchell Duran	District of New Jersey	Betty Kim	Northern District of California
Daniela Guido	District of New Jersey	Kalisi Kupu	Northern District of California
Jon Muller	District of New Jersey	Allen Lew	Northern District of California
Arlene Raynor	District of New Jersey	Richard Sarlatte	Northern District of California
Lauren M. Blackford	Southern District of New York	Marisol Cardona	Southern District of New York
Joseph DiGiacomo	Eastern District of New York	Madalyn Toledo	Southern District of New York
Rena Bolin	Southern District of New York		

EXECUTIVE SUMMARY

Background

Though alternatives to incarceration courts have existed in the state system for nearly thirty years, such courts are a relatively new phenomena in the federal system. Alternatives to incarceration (ATI) courts or “front-end” courts as they are sometimes known, are generally based on the “drug court” model first utilized in the state court in Miami-Dade County in 1989 (Scott-Hayward, 2017). While alternatives to incarceration court programs proliferated in the state courts in the 1990s and 2000s, they were nearly nonexistent in the federal system. A confluence of factors has contributed to the recent emergence of ATI courts in the federal system.

- popularity of “problem solving” courts in state systems led to experimentation in the federal system, especially for re-entry courts, which focus on defendants who have returned to the community following incarceration;
- a growing body of empirical evidence that the “drug court” model -- practiced with fidelity in other jurisdictions -- is effective at reducing recidivism and provides financial return on investment by reducing recidivism.
- a change in the legal environment that resulted from the 2005 Supreme Court decision *Booker v. United States* that rendered advisory the federal sentencing guidelines, and subsequently the Supreme Court’s decisions in *Gall v. United States* and *Pepper v. United States*, which generally approved downward variances based on defendants’ successful efforts at rehabilitation— allowed courts additional flexibility in sentencing.
- the crisis of over-incarceration, which led to widespread recognition among criminal justice professionals and policy-makers that the policies and practices that have led to mass incarceration are not only extremely costly but ineffective at promoting public safety. Several publications by government entities called for swift action at the federal level and encouraged stakeholders to strongly consider alternatives to incarceration.
- increasing awareness of empirically-demonstrated evidence of the importance of defendants’ success on pretrial services supervision as a harbinger of improved outcomes in subsequent stages of the criminal justice system, including more favorable sentences and reduced failures during post-conviction supervision.

Research Objectives

Though federal ATI programs have proliferated at the grass roots level, and now number 38 as of January 2019¹, to date there have been no empirical studies of the effectiveness of these programs in the federal system. Several districts that have been at the forefront of implementing ATI programs sought to contribute to the knowledge base concerning these programs. As a result, the pretrial offices of the districts of New Jersey (NJ), Southern District of New York (NY-S), Eastern District of New York (NY-E), Central District of California (CA-C), Northern District of California CA-N), Eastern District of Missouri (MO-E), and the probation and pretrial services office of Illinois Central (IL-C) collaborated on a research effort that quantifies the association of ATI program participation with short-term outcomes. These districts contracted with a researcher from the John Jay College of Criminal Justice of the City University of New York to perform the research and publish an article with its results. Specifically, the study sought to quantify the pretrial services' measures of new criminal arrests, failures-to-appear (FTAs), and other violations of court-ordered conditions of release, i.e., technical violations. In addition, the study sought to quantify defendants' improvements in two supervision domains that are well-known correlates with criminal behavior: illicit drug use and employment. Finally, among the defendants whose cases have been disposed by the court, the study examined the sentences imposed by the court.

Data

The study team assembled data from probation and pretrial services national case management system, Probation and Pretrial Services Case Tracking System (PACTS). The sample consisted of 13,924 defendants with an average time under supervision of 14.7 months. Of the full sample of defendants drawn from the seven districts, 534 participated in an ATI program during their time under supervision. Of these defendants, 268 participated in a program designed for defendants with substance abuse disorders, while 75 participated in programs designed for youthful defendants. The remainder participated in programs that did not target a specific population. Seventy-two percent of the ATI participants in the study cohort successfully completed their ATI program.

Importantly, the study did not intend to establish the effectiveness of any one program. The relative newness of ATI programs and the small number of defendants who participate in ATI

¹ The Federal Judicial Center (FJC) maintains a list of judge-involved programs. A list of ATI programs is on file with the FJC.

programs within a single district, precluded analyses on *individual* programs. Instead, the study assesses the impact of ATI programs taken together (across all programs for the study districts).

Methodology

The study employs propensity score matching (PSM) techniques to estimate “treatment” effects of ATI participation on the elements described above. This quasi-experimental approach estimates average treatment effects on the treated with the intervention of interest, in this case, ATI program participation (see Guo & Fraser, 2010). This technique is useful for simulating independent assignment of a designated treatment and estimating more directly the treatment’s effects. For purposes of this study, “treated” defendants are those who participated in an ATI program. We utilized PSM techniques to match the ATI group to a group of defendants who had not participated in an ATI program, yet were comparable in terms of their other characteristics. Based on this approach, two defendants with similar estimated treatment likelihood scores (probability that they would participate in an ATI program) would be comparable. Using this method, differences between those individuals on a given outcome can be more confidently attributed to participation in an ATI program.

Comparing the results against their matched counterparts who did not participate in an ATI program, the study team analyzed the outcome measures described above and sentences imposed for:

- All defendants who *participated* in an ATI program; and separately for those who *completed* a program.
- All defendants who *participated* in an ATI program for substance abusing defendants; and separately for those who *completed* this type of program.
- All defendants who *participated* in an ATI program for youthful defendants; and separately for those who *completed* this type of program.²
- Additionally, to better understand the impact of ATI programs on reduced sentences or case dismissals, the study team: (1) analyzed the sentences imposed on matched defendants who did not participate in an ATI program with those who received a dismissal as a result of their participation in a program.

² Because the programs that do not target a specific population had insufficient numbers of participants and comprise a heterogeneous population, those programs were not analyzed separately. Instead only programs that targeted substance abusing and youthful defendants were analyzed separately.

The following programs were included in the study:

- **Sentencing Alternatives Improving Lives (SAIL) operated by the U.S. Pretrial Services Office of the Eastern District of Missouri.** This 12- to 24-month program, which began in March 2015, targets defendants who have contributors to their criminality that, if addressed, can help defendants lead a law-abiding lifestyle. Data for defendants in SAIL were tabulated in the statistics for all program types combined.
- **Conviction Alternatives Program (CAP) operated by the U.S. Pretrial Services Office of the Northern District of California** (with venues in San Francisco, Oakland, and San Jose.) Each separate venue began between November 2015 and July 2016. CAP targets certain individuals who have been charged with one or more federal crimes and who voluntarily agree to participate in the program. It focuses on individuals whose criminal conduct appears motivated by substance abuse issues or other underlying causes that may be amenable to treatment through available programs. Program length is 12 months but can be extended to 18 months. Data for the CAP program was included in the statistics in the Substance Abuse program category.
- **Conviction and Sentencing Alternatives (CASA) operated by the U.S. Pretrial Services Office of the Central District of California.** The program duration is 12 to 24 months. While there are no set criteria for selecting participants, the intent is the defendants fit into one of two distinct “tracks”. The track most suitable for the defendant is dependent upon the defendant’s criminal history, seriousness and nature of pending charges, and defendant’s criminogenic risk and needs. Participants in either track of CASA were included in the statistics for other programs.
- **Alternatives to Detention Initiative (PADI) operated by U.S. Probation Office of the Central District of Illinois.** One of the earliest federal ATI programs, PADI began operation in 2002. The selection criteria for this 12-month program include minimal participation in the offense charged, limited criminal history with no serious violent offenses, and evidence of a current substance dependence or addiction. In 2016, PADI paused its operations. Data for defendants in PADI were tabulated in the Substance Abuse program category.

- **Young Adult Opportunity Program (YAOP) operated by the U.S. Pretrial Services Office of the Southern District of New York.** In 2015, YAOP began as a pilot program for non-violent young adults and became permanent in January 2017. The program, the duration of which is at least 12 months, is intended to benefit young adults between the ages of 18 to 25, with consideration given to defendants over 25 years of age on a case-by-case basis. Data for defendants in this program were tabulated in the Youthful Defendant category.
- **Pretrial Opportunity Program (POP) operated by the U.S. Pretrial Services Office of the Eastern District of New York.** POP, established in January 2012, targets defendants with substance abuse disorders that are the major drivers of their criminal behavior. Its program length is 15 months.³ Data for defendants in POP were tabulated in the Substance Abuse program category.
- **Special Options Services (SOS) operated by the U.S. Pretrial Services Office of the Eastern District of New York.** SOS began operations in 2013 and targets high-risk defendants ages 18 to 25 who may benefit from the structure of intensive supervision.⁴ Data for defendants in this program were tabulated in the Youthful Defendant category.
- **Pretrial Opportunity Program (POP) operated by the U.S. Pretrial Services Office of the District of New Jersey.** POP, which began in May 2015 targets defendants who have documented histories of severe substance abuse disorders which have contributed to their involvement in the criminal justice system. The program length is a minimum 15 months.⁵ Data for defendants in POP were tabulated in the Substance Abuse program category.

Results

Though this study focused on short-term outcomes only, the results are encouraging. Results suggest that defendants who successfully complete an ATI program are significantly less likely to be arrested during the period of pretrial supervision. Additionally, participants, regardless of whether they successfully completed the program, were employed a greater percentage of the days they were under supervision when compared to a group of statistically matched defendants.

³ Program requires a minimum of 12 months of continuous sobriety. Many defendants require more time in the program to achieve the sobriety goal.

⁴ SOS has no established program length. Program duration is individualized to participants' needs.

⁵ NJ-POP requires a minimum of 12 months of continuous sobriety. Many defendants require more time in the program to achieve the sobriety goal.

ATI participants also tested positive for illicit substances less frequently than the comparison group. This was true for both the ATI participants in the aggregate and for defendants that participated in a program designed for substance abusers. It was also true for youthful defendants who successfully completed the program. Study results suggest that that participation in an ATI program, successfully completed or not, does not impact the likelihood of the defendant failing to appear in court or violating conditions of pretrial release. Importantly, only defendants who successfully completed the ATI program were significantly less likely to be rearrested while under pretrial supervision than their matched counterparts. Though defendants who participated in a program (without regard to program completion) demonstrated improved outcomes compared to matched defendants who did not participate in a program, defendants who *completed* a program demonstrated outcomes superior to those who *participated but did not successfully complete*. Taken together, the results suggest that ATI program participation is associated with improved outcomes, such as increases in employment and fewer positive drug tests, and among successful participants, a lower probability of rearrest. This suggests that completion of an ATI program has – albeit relatively short-term – a protective effect on participants.

Analysis showed that successful completion of an ATI program is associated with more favorable case dispositions and less severe sentences. Consider that:

- Nearly half (49%) of successful completers ultimately had their cases dismissed.
- Twenty-six percent were sentenced to prison time with a median sentence of half a month (4.5 months average).
- Twenty-two percent were placed on probation, with an average term of 40 months.

Successful completers are:

- significantly less likely to receive a prison term than their matched counterparts (23.0 percent vs. 81 percent).
- were slightly more likely than their matched counterparts to receive a non-custodial sentence of probation (24.0 percent vs. 19 %).
- received an average prison sentence of 4.97 months (ranging of one day to five years), while their matched counterparts were sentenced to an average of 42 months (ranging from one day to 20 years).

Unsuccessful participants were no more-or-less likely to receive a prison or probation sentence than the defendants in the comparison group. Further, although the prison sentences received by the

unsuccessful participants were shorter on average (22.6 months vs 33.7 months) this difference was not statistically significant. This was also true of the terms of probation and supervised release.

Going Forward

Because to date the Judicial Conference has taken no formal position on re-entry courts or ATI courts in the federal system (Vance 2018), the federal system has no common definition of or standards for Alternatives to Incarceration courts. As noted in a report by the United States Sentencing Commission titled *Federal Alternative-to-Incarceration Court Programs*, these programs have developed at the grass roots and independently of both the Sentencing Commission and the Judicial Conference policy. Evaluation of the programs are hindered by the lack of standardization due to their decentralized and individualistic nature (In fact, though each program included in this study shares important commonalities, each program has some unique operating protocols). Recognizing its importance, in its Five-Year Strategic Plan, (developed 2016), the Probation and Pretrial Services Office of the Administrative Office of the U.S. Courts (AOUSC), encourages research and evaluation of such programs.⁶ Though this study did not evaluate individual programs, its aggregated results represent an advancement in the knowledge base about federal ATIs.

Related to the lack of a national model of ATIs, there is no standardized way to track ATI program participation in the case management system PACTS. For purposes of this study, the districts agreed upon procedures to record ATI program entry and exit, program outcome, and session attendance. This required that the study districts adjust data entries to comport with the study standards, a burden that would have been avoided if standards were already in existence. Districts not participating in the study, or who have yet to begin an ATI could benefit from standardized data entry procedures, which would greatly facilitate future studies and help ensure accurate data collection. Going forward, we hope that the knowledge gained from studies on ATIs informs practices throughout the federal system and will be used to develop models for various program types. In the meantime, we lean heavily on National Association of Drug Court Professionals' (NADCP) best practices as they relate to drug courts but recognize the need to confirm the efficacy of those practices in the federal system, and for target populations other than those suitable for drug courts (NADCP, 2013).

⁶ On file at the Administrative Office of the U.S. Courts.

More research is needed on the impact of ATI programs and its longer-term effect on recidivism, especially recidivism by those whose cases were dismissed or who served a term of incarceration, with or without supervised release. More elusive, but important to understand are the more qualitative indications of long-term positive changes in defendants' lives, such as relationships, employment, education, access to healthcare, and financial independence. Finally, more research is needed to understand what factors influence the likelihood that an individual will complete an ATI program successfully, thus providing the greatest cost-benefit.

Another area of study in the context of ATIs is the impact of procedural justice on outcomes, and a more thorough understanding of how that translates to specific practices in federal courts. Procedural justice has four core components: voice, neutrality, respectful treatment and trustworthy authorities (MacKenzie, 2016). Extant research on state and local drug courts indicates that procedural fairness is the driver of the judge's influence upon drug court participants. This finding holds true regardless of a participant's gender, race, age, or economic status (MacKenzie, 2016). Given that judicial time is a valuable yet expensive commodity, how specifically can the role of the judge in federal ATIs be leveraged for maximum efficacy? How can others on the ATI team demonstrate procedural justice for maximum effectiveness and what is the influence of outcomes?

Equally important to study is the selection criteria for ATI participation in the federal system. A substantial body of research now indicates which drug-involved offenders are most in need of the full array of services embodied in the "10 Key Components" of drug courts (NADCP, 1997). These are the offenders who are (1) substance dependent and (2) at risk of failing in less intensive rehabilitation programs. Drug courts that focus their efforts on these individuals—referred to as high-risk/ high-need offenders—reduce crime approximately twice as much as those serving less serious offenders (Lowenkamp et al., 2005; Fielding et al., 2002). What criteria are most appropriate for non-drug ATI programs, such as those for youthful defendants and veterans? Finally, should defendants with violent offenses in the background be automatically excluded from these programs?

Lastly, but perhaps the most important avenue for future study, is to quantify the short- and long-term financial implications of federal ATI programs. These programs are resource intensive. Intensive supervision and treatment modalities for participants -- coupled with considerable staff involvement from pretrial services staff, judges, defense attorneys, and prosecutors -- are costly. What is the financial payoff of avoiding prison versus the costs of these programs? Further, what

are the savings attributable to reduced recidivism and improved lives by successful participants? Importantly, future cost-benefit analyses must include in the *cost* side of the equation the costs of failed program participation, and on the benefit side, the *marginal* cost of prison (versus the *average* cost) (United States Sentencing Commission, 2017). An analysis of drug court cost-effectiveness conducted by The Urban Institute found that drug courts provided \$2.21 in benefits to the criminal justice system for every \$1 invested. When expanding the program to all at-risk arrestees, the average return on investment increased even more, resulting in a benefit of \$3.36 for every \$1 spent. Can the federal system expect similar return-on-investment for its ATI programs? Can federal ATI programs scale to maximum capacity, yet retain effectiveness?

Conclusion

The financial implications of avoiding or minimizing custody -- both at the pretrial and post-conviction stages -- are clear. And the human implications cannot be overstated. Practitioners have long observed offenders struggling upon reentry to the community. After long prison sentences, the majority are estranged from family, prosocial support systems, and are generally ill-equipped to resume law-abiding lives. Further, those defendants who struggled with substance abuse and mental health disorders upon arrest are likely to confront re-entry with little improvements in those problems.

This “wake-up call” in the criminal justice system at large have led leaders in the pretrial profession to understand the unique opportunity they have to improve our criminal justice system, so that public safety is ultimately enhanced; that is, pretrial professionals see an opportunity to be part of the solution as opposed to part of the problem. Pretrial services is uniquely situated to assess defendants, advocate for suitable alternatives to detention pending disposition for all but the highest-risk defendants and use the pretrial period to begin rehabilitation. Alternative to incarceration programs are one way that federal pretrial services can make a meaningful difference in stemming the tide of mass incarceration, while making a positive difference in defendants’ lives, which ultimately leads to safer communities and healthier future generations.

In the words of Jeremy Travis, Executive Vice President of Criminal Justice at the Laura and John Arnold Foundation:

We are emerging from a ‘tough on crime’ era with the sobering realization that our resources have been misspent. Over decades, we built a response to crime that relied blindly on incarceration and punishment, and provided too little safety, justice, or healing. Now is the time for a new vision - the time to dig deep, challenge our imaginations, and build a new response to crime that comes closer to justice (LJAF, 2018).

We in the federal system can rise to this challenge. The timing is right. In December 2018, the First Step Act was enacted. This legislation, which among other provisions included additional “safety valves” for certain mandatory minimum sentences and provided for “good time” incentives for inmates to participate in recidivism-reducing programs, is primarily aimed at the Bureau of Prisons. Though far from whole-sale sweeping reform, the legislation represents a bi-partisan effort that recognizes the value of rehabilitative measures and takes concrete steps to stem the tide of mass incarceration and its harmful effects.

Though more research on federal ATI programs is clearly needed, the results of this study are encouraging. These results indicate that participants are more likely to avoid new arrests for criminal behavior, remain employed, and refrain from illegal drug use while their case is pending in court. As noted by Judge Carr (2017), this alone allows a defendant to “show a court, often for the first time in his or her life, that he or she can be law-abiding offers the court the best of all possible records and reasons to consider leniency allows defendants a better foot forward”. Success on pretrial supervision begets success at life beyond criminal justice involvement.

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