

# Pretrial Work in a COVID-19 Environment

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**IN 2020, THE UNITED STATES** Probation and Pretrial Services system faced unprecedented circumstances associated with the outbreak of the COVID-19 coronavirus. As the front door to the criminal justice system, Pretrial Services was immediately impacted by numerous challenges during a very rapidly changing situation. Across the country, officers were warned of the danger of COVID exposure due to close contact with others, resulting in changes to nearly every aspect of pretrial work, from arrest through imposition of sentence. Probation and pretrial staff were left to modify their approaches to basic pretrial duties associated with both investigations and supervision using new and innovative approaches. While these new approaches enabled officers to carry out the mission of pretrial services, they often generated an unfamiliar and previously unimagined work environment. As we pass the one-year anniversary of the emergence of the COVID-19 pandemic in our country, the Probation and Pretrial Services Office (PPSO) is gathering data on the impacts of the pandemic and how lessons learned during this time may contribute to the future of pretrial services.

## Trends During COVID-19

The duties of pretrial services officers are captured in 18 U.S.C. § 3154; they begin with the investigative duties to “Collect, verify, and report to the judicial officer, prior to the

release hearing, information pertaining to the pretrial release of each individual *charged with an offense* [our emphasis].” Therefore, though probation and pretrial services officers may have no control over the cases that are brought into the criminal justice system, the workload of officers is directly tied to the activations of new cases. Figure 1 (next page) captures trends in case activations from fiscal years 2018 through 2020 and reflects how activations declined during the pandemic’s initial stages and then somewhat recovered. Prior to the pandemic, overall, case activations had been steadily increasing; however, with the start of the COVID-19 outbreak in 2020, pretrial activations declined from 9,758 activations per month in February 2020 to 2,226 activations per month in April 2020, a decrease of 77 percent. Since the pandemic’s initial onset, the number of monthly pretrial activations has somewhat rebounded. By September 2020, a total of 7,674 pretrial activations had been filed, representing an increase of about 245 percent from the April 2020 low point. The monthly pretrial activation number, however, is still below the peak of nearly 11,000 activations filed in October 2019. Additionally, at the pandemic’s initial onset (February through April 2020), activations involving illegal aliens witnessed a steeper decline (90 percent decrease) than activations involving U.S. citizens (66 percent decrease).

In addition to changes in the number of cases charged, there were also changes to the types of cases that entered the federal criminal justice system during the COVID-19 pandemic. (See Figure 2, next page.) Prior to the pandemic, immigration offenses had been the primary offenses charged in federal courts, followed by drug offenses. There was a decline in all case types during the pandemic’s initial stages (February through April 2020). Immigration cases, however, saw the largest declines; their monthly case activation numbers declined by 90 percent at the pandemic’s outset. Conversely, all the other major case types (e.g., drugs, financial, sex, violence, and weapons) saw their monthly case activation numbers decrease by 60 to 70 percent from February through April 2020. While all charge types later increased, drug cases accounted for the most common case type, followed by immigration for the first time in several years.

One of the more interesting changes within the first six months of the COVID-19 era is related to the release and detention decision (Figure 3, page 26). After experiencing a steady increase in the national detention rate for nearly 30 years, PPSO has dedicated a significant portion of resources for several years toward initiatives geared at reducing unnecessary detention. Only recently had the probation and pretrial services system seen a turnaround in the national release and

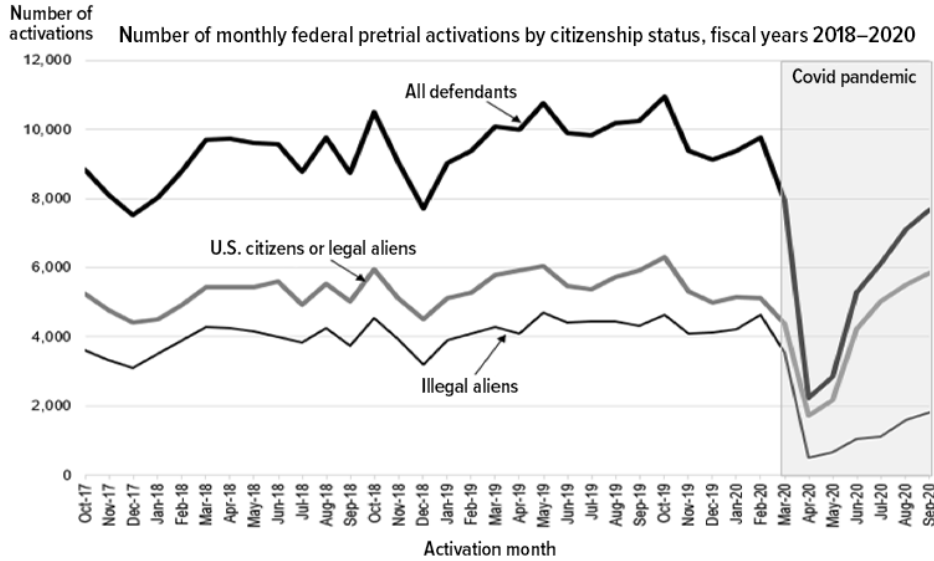
detention rates. For example, between fiscal year 2018 and fiscal year 2019, the country experienced the first increase in pretrial release of approximately 2 percent. A recent review of release rates for the 12-month period ending in March of 2021 revealed an increase in the national release rate to 46 percent, up from 42 percent in 2019 (Source: DSS 1294). Figure 3 (next page) outlines the

overall trends in the number and percent of defendants released on a monthly basis between fiscal year 2018 and fiscal year 2020. During the pandemic, the pretrial release rate for all defendants experienced one of the largest increases, increasing by 14 percentage points from 22 percent in February 2020 to 36 percent in September 2020.

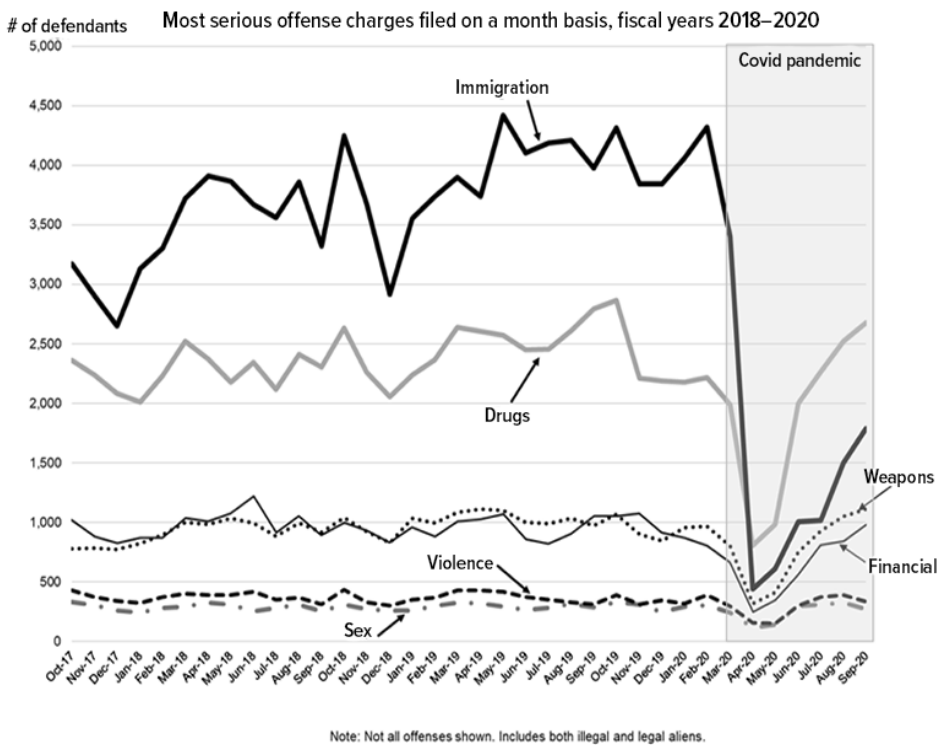
Therefore, while the number of defendants

released declined because there were fewer case activations, the percentage on pretrial release increased. There may be several explanations for this increase, including that there were fewer immigration-related case filings, which tend to have very low release rates. Additionally, concerns related to COVID-19 outbreaks within local jail and detention facilities influenced release decisions. Courts throughout the system were confronted with an urgent need to balance pretrial detention decisions with health and safety concerns. However, we note that officer recommendations for release also increased during the same time period, as outlined in Figure 4 (next page). In fact, during the pandemic, officer recommendations for release increased by 16 percentage points, from 24 percent in March 2020 to 40 percent in June 2020. Both the increase in release and the increase in officer recommendations for release are especially noteworthy given the rise in defendants charged with drug offenses.

**FIGURE 1**  
Federal preactivations by citizenship status



**FIGURE 2**  
Most serious offense charges



**Pretrial Investigations**

Any analysis of the impacts of COVID-19 to the federal pretrial system is meaningless without reviewing specific examples of how the pandemic affected probation and pretrial staff in their completion of the work. While across the nation we saw case activations decline, charge types shift, and release rates continue to rise during the pandemic, probation and pretrial services staff met various challenges head on, being creative within national policy and procedures to ensure that the mission associated with pretrial services was fulfilled. Probation and pretrial services staff shifted their mindset and daily routines and employed new methods to approach the job. For example, districts adopted new means of technology to conduct interviews, found different workspaces that allowed for acceptable social distance between officers, offenders, attorneys, and other court staff, and converted pretrial interviews to virtual platforms when approved by the court. During the initial transition, many staff members found themselves in situations where traditional in-person interviews were not possible. In accordance with national policy and procedures that provide guidance on situations that preclude an interview, officers were still able to ensure that bail reports were completed. As a result, the rates of completion of bail reports were unaffected between fiscal year 2019 (95.3 percent) and fiscal year 2020 (95.6 percent) (Source: Table H-2). Despite the direct impact of COVID-19

on the ability of probation and pretrial staff to interact in person with defendants, overall interview rates were also unaffected: The interview rate (excluding illegal aliens) was 83 percent in 2019 and 2020. (There was a slight dip in interview rates in April 2020 to 78 percent, but then it rebounded to 83 percent for the remainder of 2020.)

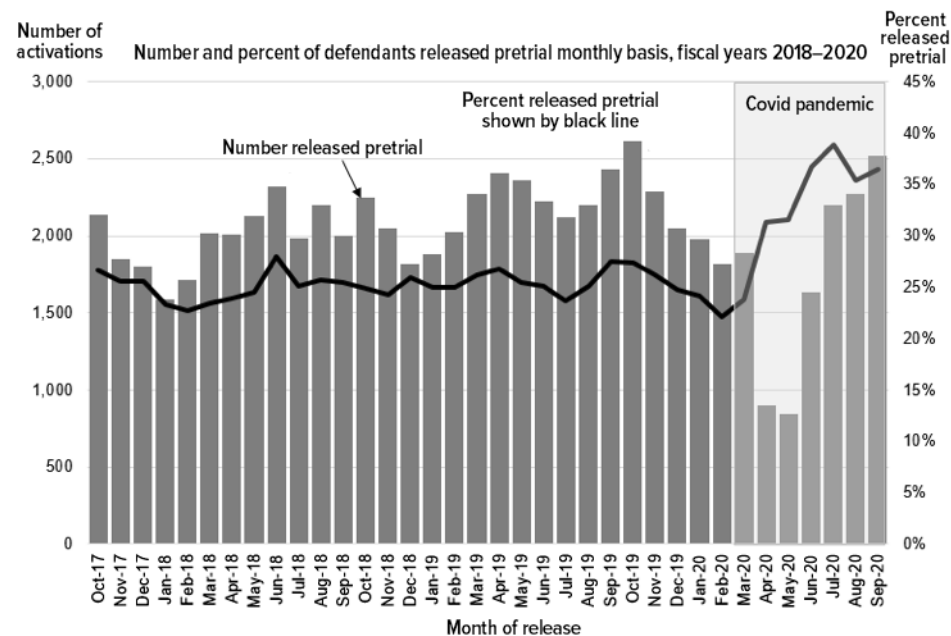
The pretrial risk assessment tool (PTRA)<sup>1</sup> is an objective, quantifiable instrument that provides a consistent and valid method of predicting risk of failure to appear; new criminal arrests; and technical violations of conditions imposed leading to revocation. Much of the information required to complete the PTRA is usually obtained during the pretrial interview. In those districts where, due to the COVID-19 pandemic, interviews with defendants were limited, PTRA completion became a challenging task. When officers contacted PPSO about this concern, they were reminded that the PTRA still produces a valid score with up to four missing items and most of the information can be obtained through other means. In those cases where a PTRA is completed with the four missing items and the defendant is released, the PTRA can be reassessed after the defendant is released and able to provide the missing information for case planning purposes if needed. Figure 5 (next page) shows trends in the number of PTRAs completed between fiscal years 2018 through 2020. Overall, the PTRA completion numbers show that officers continued to conduct PTRA assessments, as the pattern of assessments mirrored the overall monthly activation trends for U.S. citizens or legal aliens. PTRA assessments are infrequently conducted on illegal aliens. During the pandemic's initial stages (February through April 2020), the number of monthly PTRA assessments declined by 54 percent. From April through September 2020, however, the number of PTRAs completed by officers rose from 2,510 assessments to 6,237 assessments, an increase of 148 percent. Essentially, the number of completed PTRAs has rebounded to its pre-COVID numbers and demonstrates that officers continue to use this assessment instrument despite the barriers to interviewing and meeting with defendants presented by the pandemic.

<sup>1</sup> See Lowenkamp & Whetzel (2009); Cadigan, Johnson, & Lowenkamp (2012); Cadigan & Lowenkamp (2011); and Cohen, Lowenkamp, & Hicks (2018); and VanNostrand & Keebler (2009) for information about the construction, validation, and implementation of the PTRA in the federal pretrial system.

In addition to modifications of interviews, completion of reports without an interview, and completion of the PTRA with missing items, pretrial services staff made other adjustments related to pretrial investigations. In the COVID-19 pandemic, even when interviews could be accomplished by leveraging technology, obtaining signatures from defendants remained a daunting task. Given this challenge, officers were reminded to

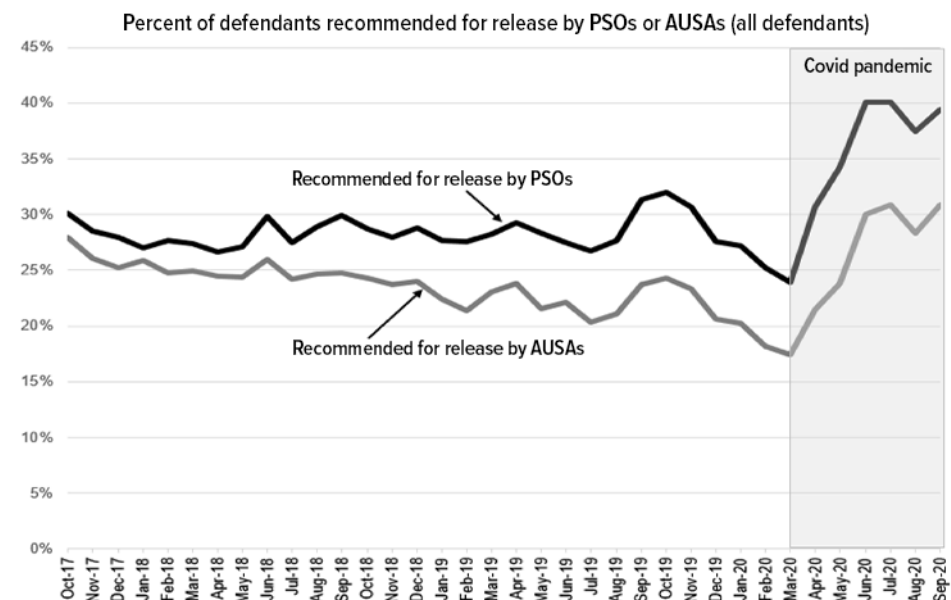
consult national policy, which outlines how to approach forms when signatures are not available. Additionally, where most pretrial training had been provided in person in the past, officers seeking training were directed to online resources. Online training resources included Blackboard courses on the PTRA and evidence-based decision making in pretrial; in addition, national trainings such as the Detention Reduction Outreach Program

**FIGURE 3**  
**Defendants released pretrial**



Note. Table includes U.S. citizens, legal aliens, and illegal aliens. It excludes transfers, material witnesses, etc

**FIGURE 4**  
**Defendants recommended for release by PSOs or AUSAs**



(DROP) were successfully converted to a virtual platform during 2020.

### Pretrial Supervision

The impacts of COVID-19 to pretrial supervision duties were especially significant. As outlined in national policy, officers determine the frequency with which defendants are to report to pretrial services and the types of contact (e.g., personal, telephone). Unless specified

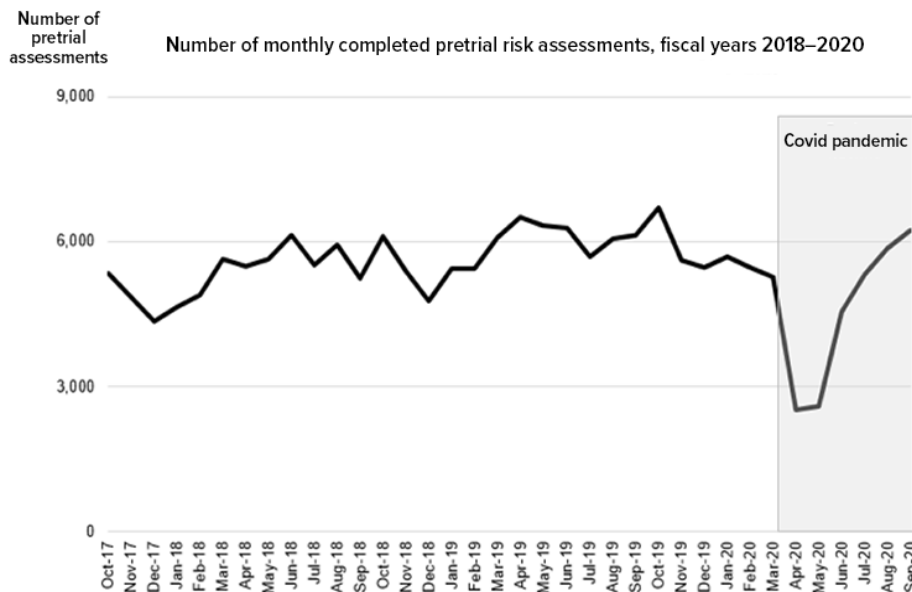
by the court, the frequency and method of reporting are to be based on the conditions imposed by the court and the defendant's assessed risk. Further, one of the most valuable activities available to the officer in pretrial supervision is the home contact. However, with close contact between people being identified as the primary method of spreading the virus,<sup>2</sup> establishing personal contact with

<sup>2</sup> Centers for Disease Control and Prevention.

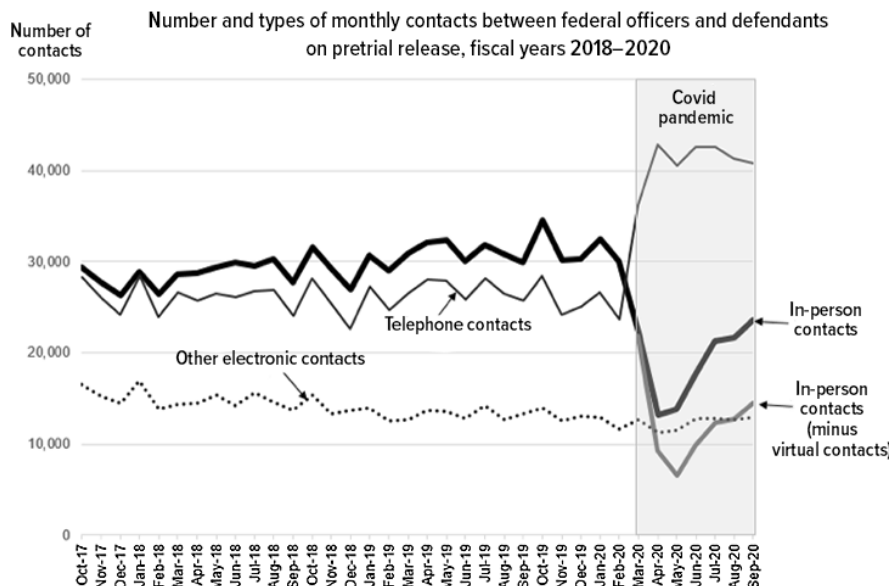
defendants became especially challenging. As a result, both the frequency of contacts and the types of contacts were impacted nationally (See Figure 6). During national calls, chiefs reported struggles to secure adequate personal protective equipment (PPE) for officers to use during in-person contacts with defendants. As a result, one strategy many districts turned to was to increase virtual contacts with defendants, using a variety of digital platforms. In response to this change, a new virtual contact field was added to the PACTS<sup>3</sup> database in April of 2020, allowing for the tracking of contacts between officers and defendants in a virtual environment for the first time. Figure 6 shows how the ways officers interact with defendants has changed during the pandemic. Specifically, officers are seeing defendants less in person but have increased their electronic (particularly their telephone) contacts with released defendants. For example, at the time of the pandemic's initial onset (February through April 2020), the total number of in-person contacts (e.g., contacts in which the officer contacted the defendants in the office, their home, place of employment, or community) fell by 56 percent; conversely, the number of telephone contacts between officers and defendants rose by 81 percent within this time frame. These patterns exemplify how pretrial officers ensured that, even when physical contact wasn't possible, they did not lose touch with the defendants they supervise. Further, research has shown telephone contacts with defendants can have a positive impact on outcomes such as rates of failure to appear.

In addition to changes to the frequency of contacts, the locations of meetings with defendants also shifted. Prior to the pandemic, in-person community and home contacts were a valuable tool for supervision, but officers also recognized the value of meeting with defendants in the office and in the community depending on the circumstances of the case. Before the pandemic, nearly three-fifths of contacts took place in an officer's workplace, while a third occurred in a defendant's home (see Figure 7). As COVID-19 emerged, meetings at the probation and pretrial services

**FIGURE 5**  
Monthly completed Pretrial Risk Assessments



**FIGURE 6**  
Number and types of monthly contacts



(2020). Social Distancing: Keep a Safe Distance to Slow the Spread. <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html>

<sup>3</sup> The Probation and Pretrial Services Automated Case Management Tracking System (PACTS) is the case management system used by probation and pretrial services offices to manage the supervision and investigation of defendants and offenders.

offices declined to the point where they were the locus of about quarter of contacts; conversely, contacts occurring in the defendant's home constituted over half of all contacts. These home contacts, however, were mostly digital. About half the home contacts involved a virtual interaction between officers and defendants, whereas 16 percent of office visits involved a digital interaction.

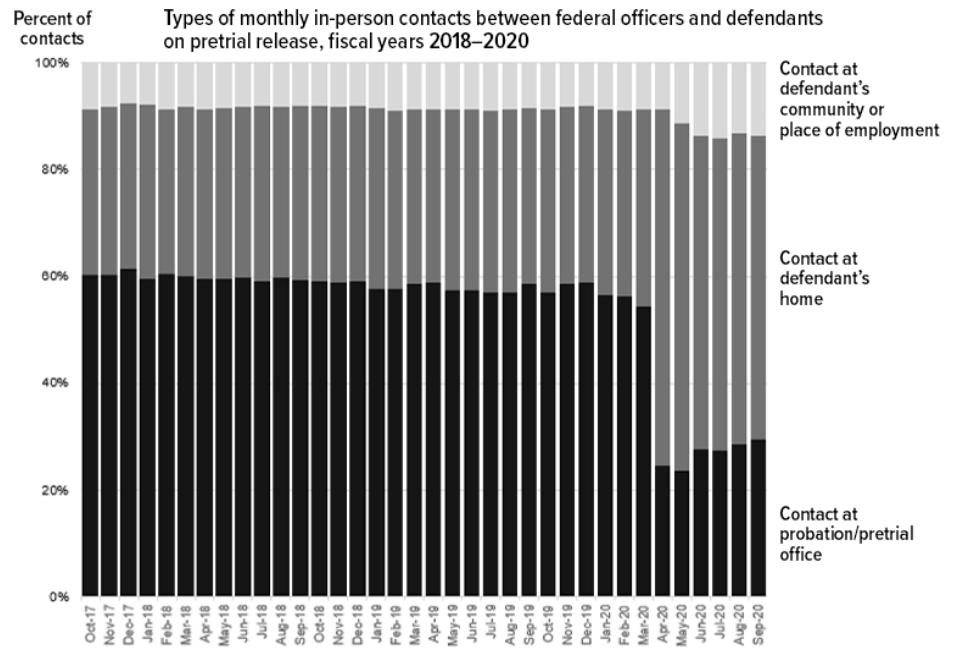
Because the conditions imposed by the court are a major driving force behind the intensity of supervision, it is important to review the number of special conditions imposed during any analysis of pretrial supervision. During the COVID-19 pandemic, the total number of special conditions imposed initially declined by nearly 50 percent from 18,628 conditions imposed in February 2020 to 9,434 conditions imposed in May 2020. The decrease in the total conditions imposed tracks the total number of defendants released pretrial during the same time frame (i.e., since fewer people were released, during the time frame there were fewer total conditions imposed) (see Figure 8). During the same time period (February through May, 2020), however, there was a slight increase in the average number of special conditions imposed, from 9.7 to 10.6 conditions per defendant. Hence, numbers suggest that while fewer defendants were released pretrial, judges imposed more conditions on those released pretrial. These numbers later returned to pre-COVID levels (Figure 8).

One alternative to detention that was initially imposed on pretrial defendants on a much more frequent basis during the COVID-19 pandemic was location monitoring (LM).<sup>4</sup> Location restrictions are movement restrictions on the location of a defendant in the community during specific hours, approved by the supervising officer. The level of restriction in the location monitoring program ranges between a curfew and 24-hour home incarceration as determined by the court on a case-by-case basis. At the onset of the COVID-19 pandemic, the federal probation and pretrial services system realized an increase of nearly 20 percentage points in the percentage of defendants released with a condition of location monitoring (Figure 9, next page). The imposition of this often labor-intensive condition quickly returned to pre-COVID imposition rates within a few months.

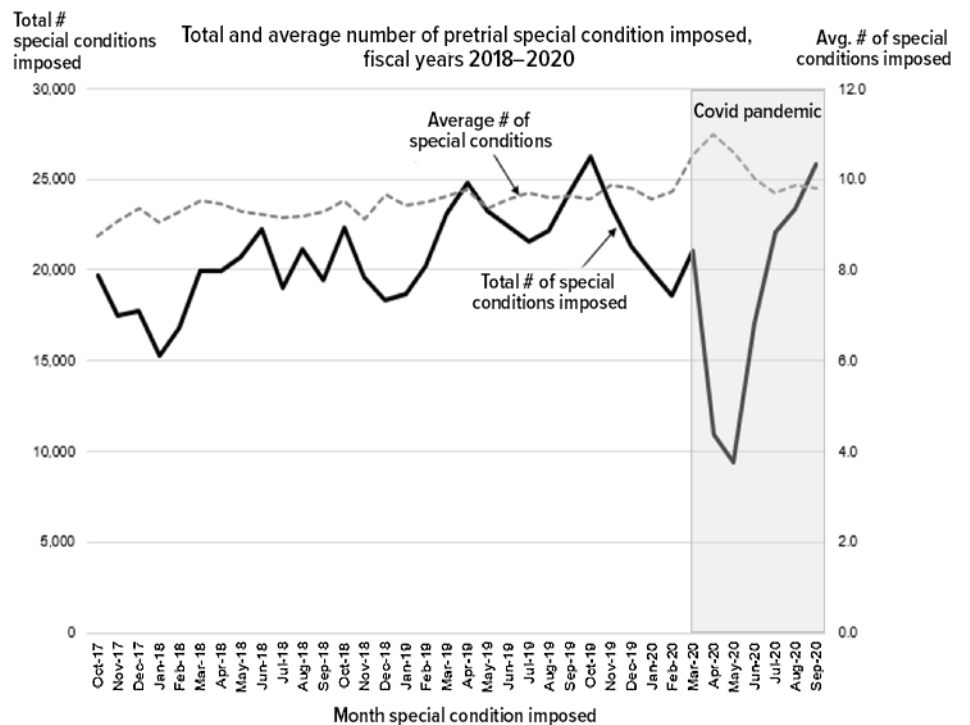
In addition to variations in contacts and conditions, probation and pretrial services offices also looked to national policies and procedures for other modified approaches to effectively supervising pretrial defendants. In accordance with the statute and national policy, districts were reminded of their duty

to treat supervision as a fluid process involving regular staffing of cases between officers and supervisors and the duty to consider removing supervision conditions when appropriate as defendant circumstances change. Additionally, they were reminded of their ability to adopt low-intensity supervision

**FIGURE 7**  
Types of monthly in-person contacts



**FIGURE 8**  
Pretrial special conditions imposed



<sup>4</sup> See Whetzel, Levinsohn, Cornish, & Cohen (this issue of *Federal Probation*, 85(1) June 2021).

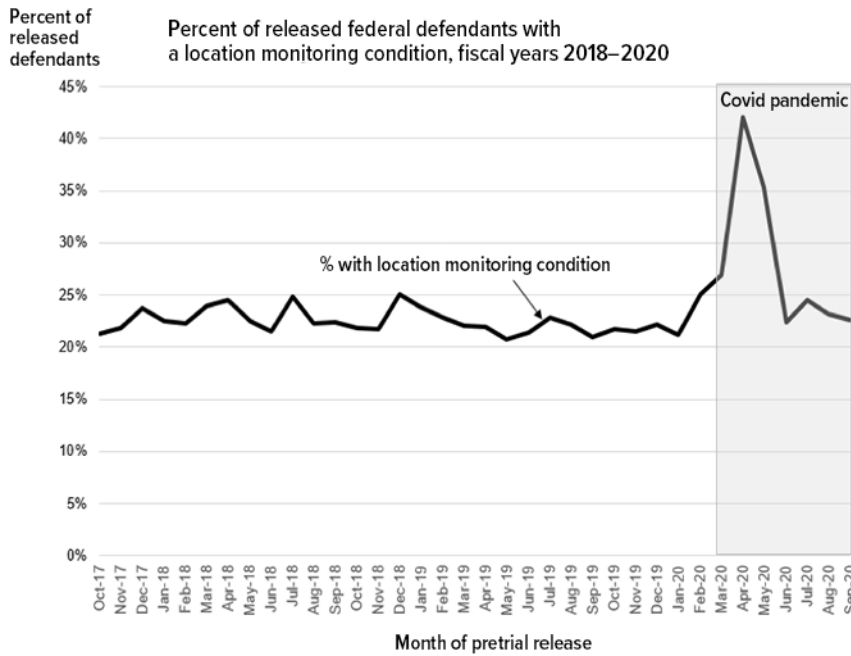
policies for those cases meeting the criteria outlined in national policy. Finally, regarding case planning, districts revisited the ability of supervisors to defer formal evaluations in stable cases where defendants remain in full compliance and meet the additional criteria outlined in the national policy.

Based on the statutory requirement that pretrial defendants in the federal system are to be released on bond with only the least

restrictive conditions to reasonably ensure their appearance in court and the safety of the community, success and failure in the area of pretrial supervision is measured by reviewing rates of failure to appear for hearings, rates of rearrests for new crimes, and rates of violations of conditions of pretrial supervision resulting in revocation of pretrial defendants. Historically, failure rates in the federal system are much lower than most people would

suspect. For example, for the 12-month period ending in March of 2021, national failure rates remained low as follows: failure to appear (1.7 percent), new criminal arrests (2.3 percent), and technical violations (4.1 percent). Figure 10 captures trends in pretrial supervision outcomes for the three-year period between fiscal years 2018 through 2020. As reflected, the number of all types of violations—including rearrests, revocations, and failures to appear—fell during the pandemic’s initial stages and then increased. For example, the number of defendants revoked from pretrial supervision or missing their court appearances fell by 56 percent between February and April 2020, and the number of defendants rearrested for new crimes declined by 44 percent during the same time span.

**FIGURE 9**  
Percent of released federal defendants with LM condition

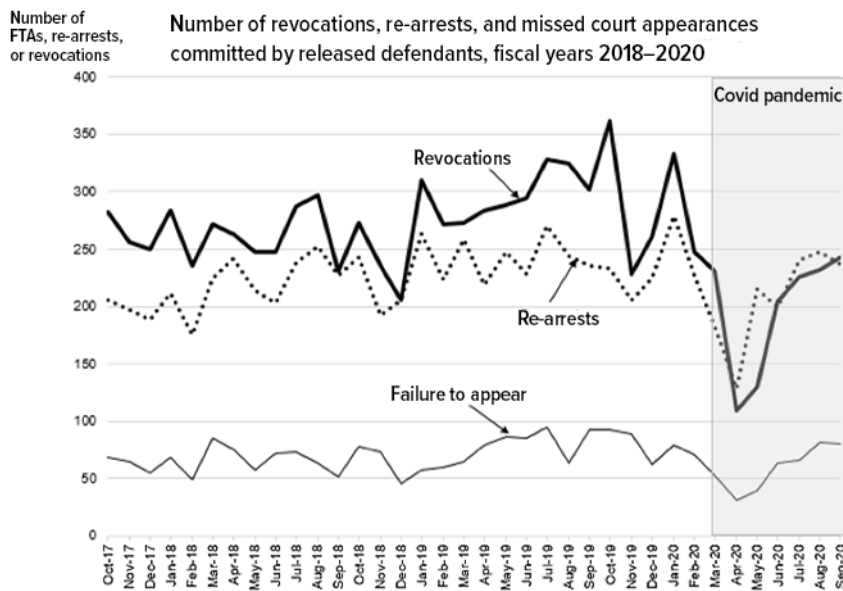


**Summary of the COVID-19 Impact**

A year after the emergence of the COVID-19 coronavirus, the federal probation and pretrial system has an opportunity to explore lessons of the past year and better understand the effects of the pandemic on pretrial services. In several instances, probation and pretrial services staff have created new approaches to accomplishing core duties. These changes warrant continued research and discussions on their impacts related to pretrial outcomes. For now, there are three important takeaways that cannot be overlooked:

First, as identified throughout this article, changes were made to federal probation and pretrial offices’ methods of achieving the duties and objectives of pretrial services. While these approaches were entirely new to many districts within the system, it is important to note that many of the alternatives employed were consistent with current national policy and procedures. Though districts may have had to familiarize themselves with new practices, many of them are consistent with the guidance outlined in the *Guide to Judiciary Policy* and the *Pretrial Services Procedures Manual*. Therefore, as districts begin working toward reconstitution efforts, they can consider those practices and procedures that have worked well during the COVID-19 pandemic and recognize it may be possible to continue them moving forward or to develop other creative approaches to completing pretrial work. Districts can use the lessons learned from the pandemic experience to continue to evaluate their local policies and procedures, compare them with current national policies and evidence-based practices, and implement

**FIGURE 10**  
Released defendants’ revocations, arrests, and FTAs



the most effective means to achieving the mission of pretrial services for the future.

In pretrial services, the federal risk principle provides three guiding principles: risk assessment tools are necessary; low-risk defendants are more likely to fail when released with alternatives to detention compared to those released without; and alternatives to detention are most effective for moderate- and high- risk category defendants. In fact, defendants with no risk factors can be released with no pretrial supervision. Prior to the pandemic, research had shown that districts were using standard conditions and releasing moderate- and high-risk defendants with the same number of conditions of release regardless of the high rates of success research had shown for each PTRAs category. During the COVID-19 outbreak, it became essential for districts to prioritize resources and reserve the most labor-intensive tasks for the highest risk cases. Therefore, the pandemic actually helped to show many districts the true value of the application of evidence-based practices in prioritizing resources and workload.

Finally, during the COVID-19 pandemic the country continued to experience an increase in pretrial release rates without adverse effects on pretrial supervision

outcomes. Over the past several years there have been multiple initiatives developed across the country in an effort to reduce unnecessary pretrial detention. Yet, hesitation has continued to exist, most often due to the perceived potential for adverse events related to the release of pretrial defendants. The COVID-19 pandemic has provided the federal probation and pretrial services system with a glimpse of what can be achieved in a short period. In fiscal year 2020 alone, 1,454 pretrial defendants experienced dismissal or acquittal of their case after having been detained throughout the entire pendency of the case. Pretrial services must consider the outcomes of the COVID-19 pandemic and advance initiatives aimed at reducing unnecessary detention.

### Conclusion

The COVID-19 experience has given the federal probation and pretrial services system the opportunity to evaluate how the operational changes to pretrial investigations and supervision have impacted outcomes in pretrial services. As outlined here, an initial analysis has shown that districts have the ability to be creative within national policy; the risk principle is valid and should be used to guide our resources; and by integrating national

policy and procedures and evidence-based practices, districts could see a prolonged reduction in unnecessary detention with no negative impacts on outcomes even beyond COVID-19.

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