

Substance Use Testing and Pretrial Failure Research Findings

Substance use testing is often ordered as a condition for a defendant to be released on a Personal Recognizance Bond. A growing body of research is focusing on the relationship between substance use testing during the pretrial process and studies across the US over decades of research have found no clear association between drug testing and improved pretrial outcomes such as increased court appearance rates or reduced recidivism.

Much of the extant research on can be reviewed through the [Advancing Pretrial Policy and Research \(APPR\) \(2020\) Pretrial Drug Testing Research Summary](#). The vast majority of this research regarding pretrial drug testing was spurred by the drug testing program started in the District of Columbia and later replicated and evaluated through funding provided by the Bureau of Justice Assistance. The primary body of research for pretrial drug testing comes as a result of the implementation and program evaluations completed in Washington, D.C.; Milwaukee, Wisconsin; Prince George's County, Maryland; Multnomah, Oregon; and Pima and Maricopa Counties, Arizona, over a 10 year period from the mid-1980s through the early 1990s. The research conducted used experimental designs to test the effectiveness of drug test monitoring as a tool to deter or reduce pretrial failure. In some of the studies drug testing in combination with the use of sanctions was also evaluated. None of the studies reviewed found empirical evidence that could be used to demonstrate that when drug testing is applied to defendants as a condition of pretrial release it is effective at deterring or reducing pretrial failure, even when a system of sanctions is imposed.

There is concern that resources may be wasted when assuming drug testing should be a condition of release based on charges alone, without any evidence of drug use history. If the individual does not actually have a chronic drug use concern, that level of supervision and testing may be unnecessary. If the individual does have a chronic drug use concern, ordering testing without treatment support poses a high risk of failure, bond revocation, and rearrests. These outcomes can drain valuable resources (e.g. supplies, judicial staff, law enforcement, third-party drug screening analyses, etc.) and are difficult to justify financially when reductions in misconduct are limited.

The most recent research on the topic includes Bechtel and colleagues (2016) review on the effect of various interventions utilized during pretrial supervision on FTA rates and found that drug-testing produced null effects. VanNostrand and Keebler (2009) have shown that the requiring substance testing can actually lead to higher rates of pretrial program failure for low-risk defendants, and that treatment, when court mandated rather than being voluntary, has limited effects on reducing drug use and can also lead to higher rates of pretrial failure. Drug testing as a pretrial intervention has not been supported by empirical research to prevent failure to appear or other pretrial failure, a conclusion that has been consistent since pretrial drug testing programs began as a non-evidence-based practice in the 1980s.

However, therapeutic community interventions and engagement in incarceration aftercare services have been found to provide benefit in reducing subsequent rearrests and reincarceration. Perry et al. (2016) conducted a meta-analytical review of the effectiveness of non-pharmacological interventions (community supervision, drug and mental health courts, drug testing, and psychological and behavioral therapies) in reducing drug use and criminality of sentenced offenders, and found these interventions to have limited effect in reducing drug use and rearrests, but did reduce reincarceration. Voluntary therapeutic community programs and jail aftercare show the most benefit. Reductions in reincarceration may reflect how these types of interventions result in individuals committing fewer crimes of a serious nature, but instead

may be rearrested for lesser charges. Research rarely supports the use of any single intervention, so it is important to consider the use of each of these interventions, including testing, in conjunction and collaboration with other evidence-based treatment options to promote success and wellbeing.

It is recommended to provide defendants with information and resources regarding community-based substance abuse treatment programs. Encouragement to participate can be more effective in reducing risk for pretrial failure than mandated conditions of drug testing and treatment. Jail diversion programs designed to redirect offenders into community treatment have been found to promote significant cost savings by averting re-arrest, screening, and monitoring costs. Cowell et al. (2015) conducted a cost analysis for implementing a jail diversion program for people with mental illness, noting that many individuals with mental illness who become involved in the criminal justice system have co-occurring substance use disorders, and need holistic treatment. Aftercare services can help develop case management strategies specific to defendants struggling with substance abuse issues to promote healthy and sustainable lifestyle changes.