

# Federal Pretrial Release and the Detention Reduction Outreach Program (DROP)

Sara J. Valdez Hoffer

U.S. Probation Office, District of Kansas

**IN 2015, THE** Detention Reduction Outreach Program (DROP) was developed by the Probation and Pretrial Services Office (PPSO) of the Administrative Office of the U.S. Courts (AO) in response to the rising national detention rate. Specifically, Probation Administrator William E. Hicks, Jr. evolved DROP from an idea he had while working as an officer in his home district. Mr. Hicks' dream was to create a program that encouraged more interaction between the Administrative Office and the field. He calls that vision "boots on the ground."

DROP is an evidence-based program designed to reduce unnecessary pretrial detention through collaboration with stakeholders and through education regarding better use of the Pretrial Risk Assessment (PTRA). DROP, which is designed to last two days, includes one day of meetings and education with probation and pretrial services staff only. On the second day, PPSO staff and probation and pretrial services staff from the district (usually upper management team members) meet with district stakeholders, including judges, representatives from the federal public defender's office, and representatives from the U.S. Attorney's Office. Both days include discussion about the history and framework of pretrial services and the development and use of the Pretrial Risk Assessment Tool; a review of national release trends and supervision trends, and a review of release and supervision trends specific to the district hosting the program. This education and trend review allows everyone involved to analyze their district outcomes compared to national outcomes and to identify areas for improvement. By accurately

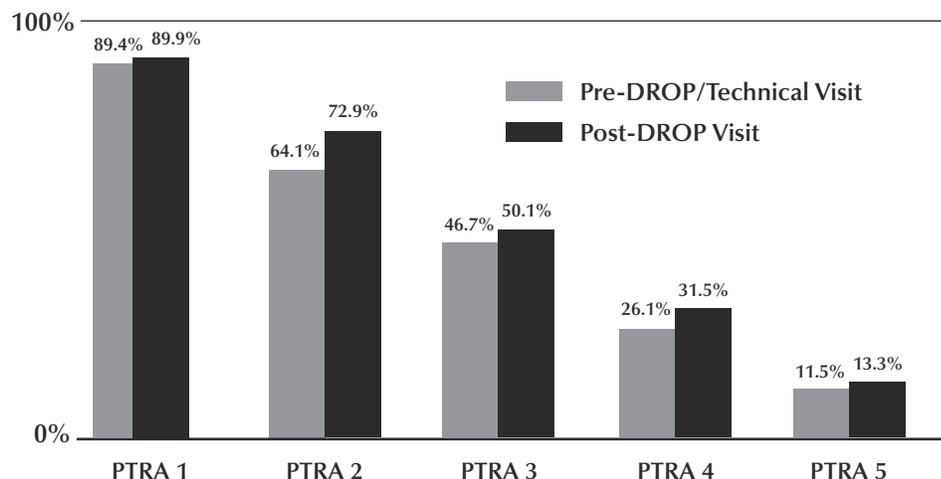
understanding the goals and statutory duties of pretrial services, each agency is better able to recognize where changes in process and/or culture may need to occur.

The training with probation and pretrial services staff concludes with a breakout group session. During this session, officers separate into small groups and answer questions concerning what their district is doing well to reduce unnecessary detention, what barriers they are facing to effectively complete their job duties, and what the district's focus should be moving forward. Through these breakout groups, officers work to develop an action plan concerning the future of the district. Often, this is the most exciting and meaningful portion of the visit. PPSO staff record the outcomes of the breakout

sessions and, following the visit, the information is summarized into a report with a recommendation on how the district should proceed in its efforts to reduce unnecessary detention. The report is provided to the chief probation and pretrial services officer, usually one month following the visit.

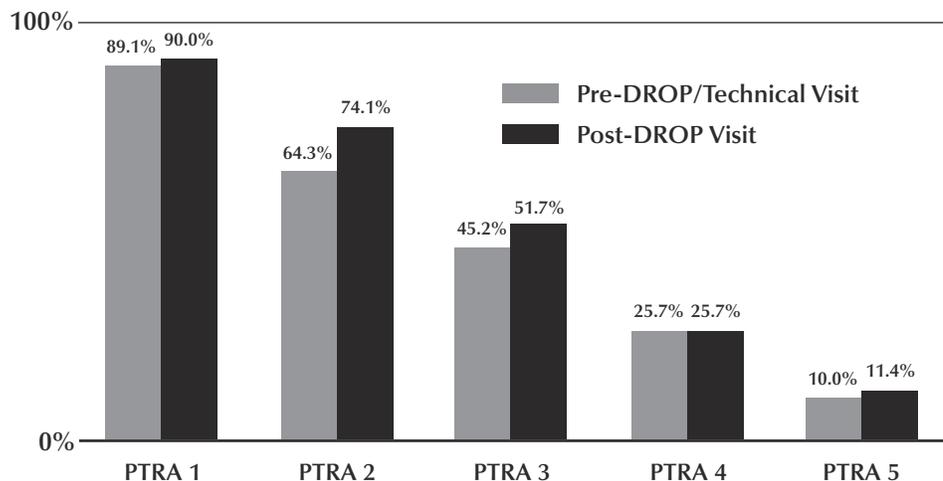
Since its development, DROP has been presented in 15 districts across the nation. Three additional districts have received a modified form of the program known as "DROP-like technical assists" by PPSO staff. Those districts that have hosted the program have experienced a wide range of impacts. First, all districts visited before fiscal year 2018 have shown an increase in PTRA implementation rates. In one district, timely PTRA completion rates have increased by almost 70

**FIGURE 1**  
DROP Visit Outcomes: Release Rates Before and After DROP



Two Districts were excluded from the sample. One was less than 6 months Post-DROP and the other was an outlier.

**FIGURE 2**  
**DROP Visit Outcomes: PTS Release Recommendations Before and After DROP**



Two Districts were excluded from the sample. One was less than 6 months Post-DROP and the other was an outlier.

percent. Eight participating districts have seen increases in their release rates, ranging from 1 to 12 percent. Further, when those release rates are reviewed by individual risk categories, increases have been experienced by as much as 20 percent in target risk categories. Officer recommendations have also been positively impacted through the DROP program. Overall, officer recommendations for release have increased—and continual reviews have shown that these increased officer recommendations and actual release rates have not resulted in any statistically significant change to rates of nonappearance or rearrest.

In addition to statistical changes, districts have experienced several other internal changes following DROP visits. Several districts have formed work groups to review outcomes and address areas of improvement. In some districts, these work groups are made up solely of probation and pretrial staff, while in others, stakeholders are also involved in the work groups. Further, even in those districts where a work group has not been developed, districts have employed a variety of methods to maintain collaboration with their stakeholders, including brown bag luncheons and regular educational meetings. Finally, several local policies have been amended and new local policies have been developed based on the discussion and education generated through DROP.

**One DROP Example: The District of Kansas**

In May of 2015, the District of Kansas became the second district in the nation to host DROP, following the Eastern District of Louisiana.

Like most districts that have hosted the program, the District of Kansas has experienced several positive changes from the DROP visit. To begin, immediately following the DROP visit, the district experienced an increase in release rates. (See Table 1.)

In addition to an increase in the release rate, the district implemented a number of other changes following the DROP program. First, a work group was formed with the mission of advancing the district-wide goals identified at the time of the visit. In the District of Kansas, these goals included regular review of district outcomes (including officer recommendations compared to actual release rates); regular review of the number and appropriateness of conditions of pretrial release recommended by officers; and regular monitoring of district-wide supervision outcomes such as failures to appear and rearrest rates. The work group continues to meet on a quarterly basis and, in addition to reviewing the goals listed above, the group regularly discusses difficult PTRAs calculation scenarios and other challenges that arise in the area of pretrial services. Another Kansas goal created at the time of the DROP

visit was to educate all stakeholders regarding the PTRAs. With the approval of the court and following a district-wide education initiative, the district began including the PTRAs in the bail report in March of 2016. Finally, the district adopted an aggressive approach to recommendations based on risk and instituted a requirement of supervisor approval for any detention recommendations on low- or moderate-risk defendants.

At the start of fiscal year 2018, almost three years after the initial DROP visit, the District of Kansas held an in-district follow-up meeting. At the meeting, district trends and outcomes were reviewed, goals were re-evaluated, and officers were provided with updated education that has been added to the DROP curriculum as it has evolved over the past several years. It was clear at the meeting that the district has retained its initial excitement and passion for the initiative. The statistical data reviewed also demonstrated this continued enthusiasm. The review of trends showed the district has continued to progress in the years following DROP. Specifically, while the characteristics of the defendant population have remained similar, the district’s release rates were higher than the national average in fiscal year 2016 and fiscal year 2017, when they previously had been consistently below the national average; the district yielded an overall increase in release recommendations by officers of 7 percent; and the district remained among the top districts achieving PTRAs timeliness. Additionally, data showed that the district previously averaged 12 conditions of release per defendant. However, as of the beginning of 2018, the district averaged closer to 10 conditions per defendant according to PACTS data and possibly as low as seven to eight conditions according to other federal data sources. Importantly, despite the increases in release recommendations and release outcomes, the district’s rearrest and technical violation rates remain unaffected.

**TABLE 1**  
**District of Kansas increase in Release Rates Following DROP**

	10/01/2014 – 09/30/2015	10/01/2015 – 05/03/2016
Overall	44.1%	57.2%
Category 1	88.9%	91.1%
Category 2	66.7%	81.5%
Category 3	43.0%	63.5%
Category 4	19.6%	24.5%
Category 5	10.4%	11.4%

To better understand the true impact of DROP, Kansas officers were polled on what portion of DROP had the greatest impact from the officers' perspectives. Officers identified five influencing factors. First, officers noted that understanding the actual consequences to the defendant had a large impact. These consequences to defendants of pretrial detention include impacts on defendants from the time of sentencing to the term of post-conviction supervision. Next, officers found that understanding the proper use of the PTRAs was extremely helpful in moving in the right direction. Officers noted that reviewing the appropriate use of alternatives to detention and recommendations for conditions of release was an important component of the program. Extremely empowering for officers was the meeting with the judges, where they expressed their perspective and expectations regarding officer recommendations. Specifically, in the District of Kansas, the judges clarified that they are interested in receiving the officer's recommendation based on the officer's experience regardless of what the officer may believe the outcome of the court will be. Finally, the commitment by every level of staff in the district, from line officers to the chief, motivated officers to get on board with the initiative. The support and encouragement of the entire management team was especially important in reassuring officers and advancing the project. Overall, officers were challenged and inspired, two very common outcomes of the DROP program.

## **DROP Common Findings**

Throughout the course of the DROP program several common themes have become apparent. First, it has become clear that officers struggle with risk-based recommendations and appropriate recommendations for alternatives to detention. In other words, officers struggle with making recommendations that are consistent with the statutory obligation of "least restrictive conditions" and the federal risk principle. Officers must always begin at release on personal recognizance. They then can work to identify specific risks of non-appearance and risks of danger. In order to minimize those risks, officers should recommend the least restrictive conditions necessary to address the identified risk. If there are no risk factors identified, defendants should be released on a personal recognizance bond. And finally, detention should only be recommended if there are no conditions or

combination of conditions that can reasonably assure the defendant's appearance or safety to the community. Based on the discussions occurring through DROP, it appears that officers are often recommending a "standard" set of conditions, usually based on their experience in court and their knowledge of what they believe the judge will most likely impose. Through DROP, officers review the important duty of conducting an individual assessment of each case and then making the appropriate recommendation independent of what the officer believes the court may decide. Officers are reminded of two important points: First, there are several factors the court is considering in its decision that the pretrial services officer is prohibited from considering and, therefore, pretrial services should be recommending release at a higher rate than the actual court outcomes; second, alternatives to detention are most appropriate for moderate- to high-risk defendants.

The second common finding through DROP is that PTRAs are frequently misunderstood. The PTRAs are an evidence-based tool developed to assist officers in making appropriate recommendations regarding release or detention. PTRAs are not a stand-alone tool, and it should always be used in combination with a thorough pretrial investigation and the officer's professional judgment. Therefore, the appropriate use of the PTRAs is to complete the assessment prior to the judicial decision. This means that, in preparation for the court to make a decision regarding release or detention at the initial appearance, the tool should be completed before the defendant's appearance in court. If the government or defense attorney is requesting a continuance of the hearing for a period (i.e., three or five days), then the tool can be completed by the time of that hearing. Completing the PTRAs before the judicial decision allows officers to have the score and risk classification available to them before making any recommendation to the court concerning release and detention or appropriate conditions of release.

The DROP program has also proven there is tremendous value in meetings between U.S. Probation and Pretrial Services personnel and our stakeholders. As previously mentioned, several districts have amended local policies or procedures or implemented new policies or procedures as the result of the DROP visit. Many of these changes concern issues that were previously unaddressed and had lingered for a significant amount of time, resulting in

barriers to the officers' ability to complete their work, limiting the efficiency of the initial judicial process, and depriving the court from having all available information to make an informed decision. By bringing everyone together, DROP "gets the conversation going" and aids in all stakeholders understanding how each of their actions impact the pretrial phase of the judicial process. This has been shown to be extremely effective not only in achieving local policy/procedural change but in generating the educational piece necessary for everyone to implement an evidence-based approach to pretrial services.

The DROP program has shown that data quality continues to be an important concern in the federal system. Prior to the DROP presentation, a copy of the data that will be presented is forwarded to the district for review. It is not uncommon for the district to respond and note that the data being captured by an internal system called the Decision Support System (DSS) is incorrect and to recognize that certain outcomes need to be more accurately captured in the system. DROP has shown that the reduction in the number of data quality analysts employed in the districts, a reduction mostly driven by budgetary issues, has had a serious impact on the accuracy of what is recorded in the PACTS system. In the current era, when PACTS data can have so many implications for a district, this is an important issue that districts often remain unaware of until they are presented with the DROP presentation summary.

During the educational portion of the program, districts are informed of important DSS reports that can be used to monitor district outcomes and help identify areas of improvement. These reports include: DSS 1288, Officer Release Recommendations; DSS 1277, PTRAs Timeliness; DSS 1273, Personal Contacts by Risk; DSS 1248, Total Release Population by Risk; DSS 1156, Latest Release Rates by PTRAs; and DSS 1244, Pretrial Services Supervision Outcome Report.

Finally, the greatest area for improvement that has become clear through DROP is the need to strengthen a pretrial culture rooted in reducing unnecessary detention and being least restrictive with conditions of release. A portion of the program reviews the top ten districts with the highest release rates in the nation and the bottom ten districts with the lowest release rates in the nation. This section of the program is especially important for many DROP participants. Officers and stakeholders are shown that represented in both the

top ten districts and the bottom ten districts are districts from across the nation, including districts located within the same state; districts with similar defendant populations, including risk levels and offenses charged; and districts that are combined (that is, with both the pretrial and probation functions located in the same office) as well as districts that are bifurcated (with separate pretrial and probation offices). In order to ensure a strong pretrial culture, there are practices all districts should employ. The part of the AO's *Guide to Judiciary Policy* that focuses on pretrial services provides a list of specific practices districts must employ to ensure a strong pretrial culture. These practices include presuming release; remaining objective during the investigation; reporting in a neutral language; advocating for the least restrictive conditions; focusing on addressing risk; and developing consistent recommendations through the use of the PTR. On the pretrial supervision side, officers must neither under-supervise nor

over-supervise, and they must use strategies directly related to the identified risk factors. And, of course, officers must always maintain pretrial client confidentiality. Strengthening a pretrial culture has been shown to be the most important discussion piece that comes from the DROP program.

### **The Future of DROP**

Shortly following the Bail Reform Act of 1984, the nation faced a detention crisis. Since that time, several initiatives have been created to combat the issue, yet the national detention rate has continued to rise despite these many efforts. Only recently has the federal system shown the first signs of a shift in direction. The DROP program is clearly one effort that can be attributed to this progress. Although the program has only been presented in a limited number of districts, numerous other districts have been made aware of the program and have initiated local-level efforts based on the same theory. These districts are unable

to host a formal DROP visit for a variety of reasons, but they are still inspired by the movement and want to experience similar outcomes. In the meantime, the DROP program continues to evolve based on the lessons learned through DROP and other platforms of discussion. What began primarily as a review and discussion of statistical data and national trends has now grown into a full two-day educational curriculum that covers a tremendous amount of information not previously coordinated for officers and stakeholders. During fiscal year 2019, it is anticipated that six additional DROP visits will be conducted and an equal number is expected to be presented the following year. With each district being visited, the message continues to reach more officers and become clearer to all. Our federal system must get focused on the mission to reduce unnecessary detention. That is our job!

Any district interested in hosting a DROP visit should contact Probation Administrator William Hicks for further information.