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THE PRE-TRIAL RELEASE PERFORMANCE  
OF ADDICT DEFENDANTS

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ABSTRACT

*The federal government has devoted an increasingly large allocation of fiscal resources to the funding of programs aimed at diverting criminal addicts from the criminal justice system. The largest such project is the TASC (Treatment Alternatives to Street Crime) program which is now operative in over twenty cities.*

*The addict diversion programs interface the resources of the criminal justice and drug treatment systems. Addicts are identified in jail lock-ups and offered the opportunity to participate in court supervised drug treatment as a condition of personal recognizance pre-trial release. Failure to "succeed" in treatment generally results in revocation of the pre-trial release agreement and return to jail. Although considered a voluntary program, the diversion mechanism has the subtle effect of coercing indigent addict arrestees to select the pre-trial release option.*

*Civil libertarians have attacked the treatment participation condition of pre-trial release on constitutional grounds. The defenders of the diversion programs have responded with the argument that the added condition is justified on the basis of the well-known propensity of addict defendants to "jump bail" unless closely supervised. Therefore, the humane societal wish to release addicts on personal recognizance*

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agreements is conditioned on the insurance that the addict is engaged in a supervised drug abuse treatment program which will guarantee his appearance at trial.

The belief that addict defendants are generally poor bond risks absent a court supervised program of drug treatment is not, however, supported by empirical studies. To determine whether unsupervised, untreated addicts are poor pre-trial release risks and whether court supervised drug abuse treatment does in fact improve the court appearance performance of addicts, the authors undertook a comparison of three groups released on bond. Group I (non-TASC addicts) consists of addicts not involved in a court supervised drug abuse treatment program during the pre-trial release period. Group II (TASC clients) consists of addicts participating in the Denver TASC program during the pre-trial release period, and Group III (felons) consists of non-addict felony defendants released on bond but not in a supervised pre-trial release program. Results of the groups' court appearance performance are analyzed to determine the relative risk factor of bonding addicts with or without treatment conditions, compared to the general non-addict felony defendant population.

If the Federal or State court assumes that addicts are less likely to appear at trial than non-addicts, it is only logical to condition release upon successful participation in TASC. However, upon challenge, this assumption may be difficult to support in the absence of empirical data showing addicts are less likely to appear at trial.

("TASC Legal Analysis," Special Action Office for Drug Abuse Prevention, 1973, I, iii)

## INTRODUCTION

The federal government has devoted an increasingly large allocation of fiscal resources to the funding of programs aimed at diverting opiate addicts from the criminal justice system into medical treatment regimens. The largest such project is the TASC (Treatment Alternatives to Street Crime) program which is now operative in over

twenty major cities.

The addict diversion programs interface the resources of the criminal justice and drug abuse treatment systems. Addicts are identified in jail lock-ups and offered the opportunity to participate in drug treatment as a condition of personal recognizance pre-trial release. Failure to exhibit adequate "progress" within the treatment regimen generally results in revocation of the pre-trial release opportunity and return to jail. Although labeled a voluntary program, the omnipresent diversion mechanism has the subtle effect of coercing indigent addict arrestees into selecting the pre-trial release option. Normally, indigent addict arrestees are precluded from pre-trial release unless they are able to secure a traditional cash or property bond.

Civil libertarians have voiced objections to addict diversion programs on the basis of the alleged potential for abuse of the addicts' constitutional rights. The criticism has largely focused upon the constitutionality of ordering treatment participation as a condition of pre-trial release and then using the results of treatment "progress" for assessing the propriety of both continuing the pre-trial release and choosing a sentencing alternative at disposition of the case. The critics have cited the addict diversion programs as impermissibly interfering with the following constitutionally guaranteed rights: freedom from unreasonable searches and seizures (Fourth Amendment); freedom from compulsion not to incriminate oneself (Fifth Amendment); freedom from the setting of excessive bail (Eighth Amendment); and freedom from the invasion of one's privacy (Fourth and Fourteenth Amendments).

The defenders of the diversion programs have responded with the arguments that the added condition of supervised drug abuse treatment as a prerequisite to personal recognizance pre-trial release is justified on the basis of the well-known propensity of addict defendants to "jump bail" absent close supervision (see, e.g., "TASC Legal Analysis," Special Action Office for Drug Abuse Prevention, 1973). Therefore, a humane societal wish to release addicts on personal recognizance is properly conditioned on the insurance that the addict releasee is engaged in a supervised treatment pro-

gram designed to facilitate his appearance at trial.

### RESEARCH QUESTIONS

The belief that addict defendants are generally poor bond risks unless enrolled in a supervised program of drug abuse treatment has not been verified by empirical studies (Greene, Conference Proceedings, National TASC Conference, 1973; "TASC Legal Analysis," Special Action Office for Drug Abuse Prevention, 1973). The authors have undertaken the instant study to address the following questions concerning opiate addiction and appearance in court:

Are unsupervised, untreated addicts poor bond risks compared to non-addict defendants?

Does involvement in supervised drug abuse treatment effect the bond performance of addicts?

Are the patterns of court appearance success/failure associated with differences in age, race, sex, charge, type of bond agreement, stage at which bonded, treatment variables (if treated), and type of final court disposition?

### METHODOLOGY

In an attempt to answer these questions, the authors compared the court appearance activities of three groups of defendants released on bond. Group I consists of addicts not involved in a court supervised drug abuse treatment program during the pre-trial release period. Group II consists of addicts participating in the Denver TASC program during the pre-trial release period, and Group III consists of non-addict felony defendants not involved in any program of supervision during the pre-trial release period.

The Group I subjects (Non-TASC Addicts) were identified as current regular opiate users during TASC screening at the Denver City Jail. They were offered the opportunity to participate in TASC-monitored drug abuse evaluation and treatment, but, for various reasons, never became actively involved in the TASC process (the modal reason was client refusal). Group II (TASC Clients) is also composed of addicts screened

by TASC at Denver City Jail, but these subjects became successfully enrolled in TASC drug abuse evaluation and treatment. The subjects for these addict groups were chosen serially, i.e., the first n number of individuals meeting the criteria specified for inclusion in each respective group. Group III (Felons), however, is comprised of n number subjects randomly selected from all criminal defendants against whom felony informations were filed in the first three months of 1974. The n for each group is fifty (50) subjects.

Race, age, and sex data were collected from official records for each group. The following bond specific data were collected from the court records: nature of present charge; type of bond (personal recognizance, professional surety, 10% court administered, or personal cash/property); stage of adjudicatory process at which bonded; nature of each court appearance while under bond; appearance or non-appearance of the subject at each scheduled court proceeding; and final judicial disposition of each case. Data concerning the nature of the pre-trial treatment experience, e.g., the presence or absence of methadone, were collected for the Group II subjects (TASC Clients).

Clients were bondable either immediately after arrest (misdemeanor or felony), at rights advisement (misdemeanor or felony), county court arraignment (misdemeanor), bond reduction hearing (misdemeanor or felony), county court preliminary hearing (felony), district court arraignment (felony), preliminary motion hearing (misdemeanor or felony), or at a later more substantive proceeding of the judicial process, e.g., trial. In addition to the above listed court proceedings, dispositional hearings were also examined in the process of determining subject appearance or non-appearance performance while released on bond.

To summarize, three groups of criminal defendants released on bond were selected: Group I (Non-TASC Addicts) consists of addicts not involved in a court supervised drug abuse treatment program during the pre-trial release period; Group II (TASC Clients) consists of addicts participating in the Denver TASC program during the pre-

trial release period; and Group III (Felons) consists of non-addict felony defendants not involved in any program of supervision during the pre-trial release period. Demographic and charge data were collected for each group, and court files were examined for collection of various measures of the bond experience, particularly the appearance or non-appearance performance of each group. Treatment specific data were collected for the Group II subjects (TASC Clients). As the results section demonstrates, these data were then statistically manipulated to examine the research questions of the study.

## RESULTS

With respect to demographic factors, the data show that the groups are generally comparable (Table I). The addict groups, Group I (Non-TASC Addicts) and Group II (TASC Clients), have approximately 1/4 females, compared to only 16.0% females within Group III (Felons). Group II (TASC Clients) has the least number of Whites (16.0%), and Group III (Felons) has the largest concentration of Whites (40.0%) and the smallest concentration of Chicanos (24.0%). The racial composition of Group I (Non-TASC Addicts) shows a relative balance between the three racial groupings.

Although the mean ages of the groups are similar (approximately 27.0 years), the age distributions vary somewhat. Groups I and II (Non-TASC Addicts and TASC Clients) are comparably distributed, with the majority of the subjects concentrated among the 21 - 26 year old age groupings. Group III (Felons) shows a more evenly distributed profile, with 1/3 of the subjects under 21, 1/3 between 21 - 26, and the remaining 1/3 over 26.

(See Table I - next page)

TABLE 1

DEMOGRAPHIC DATA

<u>SEX</u>	<u>GROUP I NON-TASC ADDICTS</u>		<u>GROUP II TASC CLIENTS</u>		<u>GROUP III FELONS</u>	
	N	%	N	%	N	%
MALE	37	74.0	38	76.0	42	84.0
FEMALE	13	26.0	12	24.0	8	16.0
TOTAL	50	100.0	50	100.0	50	100.0
<u>RACE</u>						
WHITE	15	30.0	8	16.0	20	40.0
BLACK	15	30.0	20	40.0	18	36.0
CHICANO	20	40.0	22	44.0	12	24.0
TOTAL	50	100.0	50	100.0	50	100.0
<u>AGE</u>						
UNDER 21	4	8.0	3	6.0	16	32.0
21 - 23	13	26.0	12	24.0	6	12.0
24 - 26	16	32.0	14	28.0	11	22.0
27 - 29	6	12.0	6	12.0	3	6.0
OVER 30	11	22.0	15	30.0	14	28.0
TOTAL	50	100.0	50	100.0	50	100.0

A similar pattern is found with regard to the subjects' current charges\* [Table Deleted]. Among the Group I subjects (Non-TASC Addicts), 66% are charged with drug offenses, and only 10% are charged with Impact Crimes (burglary, robbery, rape, and assault). Group II (TASC Clients) shows a similar distribution, with 63% charged with drug offenses and 6% charged with Impact Crimes. The Group III subjects (Felons),

\* Only drug offense and Impact Crime charges are discussed in this preliminary report. A later report will discuss the charging patterns in more detail.

however, are charged with no drug offenses and 48% are charged with Impact Crimes.

The type of bond received and the stage at which bonded show similar distributions among the three groups (Table 2). The most frequently occurring pattern is that of an individual receiving either a personal recognizance or professional surety bond immediately upon arrest or at the time of the rights advisement. One noticeable difference is the number of Group II (TASC Clients) subjects receiving personal recognizance bonds; approximately twice as many Group II subjects received personal recognizance bonds as Group I and Group III subjects.

TABLE 2

TYPE AND STAGE OF BOND

<u>TYPE OF BOND</u>	<u>GROUP I NON-TASC ADDICTS</u>		<u>GROUP II TASC CLIENTS</u>		<u>GROUP III FELONS</u>	
	N	%	N	%	N	%
NONE REQUIRED	5	10.0	1	2.0	-	-
PERSONAL RECOGNIZANCE	10	20.0	20	40.0	11	22.0
PROFESSIONAL SURETY	30	60.0	25	50.0	34	68.0
PERSONAL CASH/PROPERTY	4	8.0	3	6.0	3	6.0
10% COURT ADMINISTERED	1	2.0	1	2.0	2	4.0
<u>TOTAL</u>	<u>50</u>	<u>100.0</u>	<u>50</u>	<u>100.0</u>	<u>50</u>	<u>100.0</u>
<u>STAGE BONDED</u>						
IMMEDIATELY AFTER ARREST	36	72.0	30	60.0	29	58.0
RIGHTS ADVISEMENT	12	24.0	13	26.0	15	30.0
COUNTY COURT PRELIMINARY HEARING	--	---	---	---	---	---
COUNTY COURT ARRAIGNMENT	1	2.0	4	8.0	---	---
DISTRICT COURT ARRAIGNMENT	--	---	2	4.0	1	2.0
TRIAL	--	---	---	---	1	2.0
OTHER	1	2.0	1	2.0	3	6.0
<u>TOTAL</u>	<u>50</u>	<u>100.0</u>	<u>50</u>	<u>50.0</u>	<u>50</u>	<u>100.0</u>

The groups differed substantially with regard to the various appearance variables. The Group II subjects (TASC Clients) have the greatest number of appearances required\*, with an average number of 5.08 appearances required per individual [Table Deleted]. The Group I subjects (Non-TASC Addicts) average 4.18 appearances required, and the Group III subjects (Felons) average only 3.70 appearances required. The number of appearances required statistic merely reflects the total court involvement of the various cases and has no discernible intrinsic criminal justice significance.\*\*

The critical factor under study is the relative success of the groups with regard to actual attendance at required court appearances. Three different methods can be used to measure appearance performance. First, the number of failures, i.e., subjects in each group who fail to appear at least once in their respective case histories, can be determined. Second, the distribution of frequency of failure to appear within each group can be compared. The third technique is the computation of a success rate for each group, dividing the number of successful appearances by the number of appearances required. The authors have utilized all three methods, and the results appear in Tables 3 and 4.

(See Table 3 and 4 - next page)

\* This phrase refers to a scheduled court appearance at which the subject's attendance is mandatory.

\*\* No correlation was discovered between the number of appearances required variable and the outcome variables under study, i.e., court appearance success and final disposition.

TABLE 3

APPEARANCE PERFORMANCE VARIABLES

<u>FREQUENCY DISTRIBUTION</u>	<u>GROUP I NON-TASC ADDICTS</u>		<u>GROUP II TASC CLIENTS</u>		<u>GROUP III FELONS</u>	
	N	%	N	%	N	%
<u># OF FAILURES</u>						
NONE	27	54.0	36	72.0	38	76.0
1	12	24.0	9	18.0	10	20.0
2	8	16.0	3	6.0	2	4.0
3	2	4.0	2	4.0	-	---
4	1	2.0	-	---	-	---
TOTAL	50	100.0	50	100.0	50	100.0
<u>RATES</u>						
TOTAL # OF APPEARANCES	209		253		185	
TOTAL # OF FAILURES	38		21		14	
SUCCESS RATE	$\bar{x} = .82$ S.D.=.26		$\bar{x} = .92$ S.D.=.18		$\bar{x} = .92$ S.D.=.22	

(see Table 4 - next page)

TABLE 4

DIFFERENCES AMONG GROUP SUCCESS MEASURESFREQUENCY COMPARISON

	<u>GROUP I NON-TASC ADDICTS</u>	<u>GROUP II TASC CLIENTS</u>	<u>GROUP III FELONS</u>
NO FAILURES	27	36	38
ONE OR MORE FAILURES	23	14	12

$$N = 150 \quad df = 2 \quad \chi^2 = 6.24 \quad P < .05$$

RATE COMPARISONS

	GROUP I NON-TASC ADDICTS ( $\bar{x} = .82$ S.D.=.26)	
GROUP III FELONS ( $\bar{x} = .92$ S.D.=.22)	t = 2.37 P < .02	df = 98
GROUP II TASC CLIENTS ( $\bar{x} = .92$ S.D.=.18)	t = 2.35 P < .02	df = 98

The Table 3 data reveal that the non-TASC unsupervised addicts (Group I) performed poorly in comparison to the non-addict felons (Group III). Twenty-three (46.0%) of the Group I subjects recorded at least one failure to appear, compared to only twelve (24.0%) of the Group III subjects. Involvement in supervised drug abuse treatment substantially improves the addicts performance, as only fourteen (28.0%) of the Group II (TASC Clients) subjects registered at least one failure to appear. The differences between the three groups regarding the incidence of at least one failure to appear achieves a level of statistical significance (Table 4).

Examination of the success rate data further advances the analysis (Table 3). These data show that the Group II subjects (TASC Clients) and Group III subjects (Felons) experienced equivalent successful appearance rates (.92), and the Group I

subjects (Non-TASC Addicts) experienced a somewhat lower rate (.82). The rate technique removes the disparate effect of unequal numbers of required court appearances among the groups, and in the process alters the success rankings of the three groups. By rate analysis, the Group II and Group III subjects rank almost equally with regard to court appearance success\*. Group I subjects displayed a substantially lower group rate.

The differences in the groups' success rates are subject to statistical comparison by means of t-test analysis. Comparison of the Group I (Non-TASC Addicts) and Group III (Felons) success rates achieve a statistically significant difference ( $p < .02$ ). Further, comparison of the Group I (Non-TASC Addicts) and Group II (TASC Client) rates also indicates a statistically significant difference ( $p < .02$ ). In short, the t-test analysis reveals a statistically significant difference between the Non-TASC Addicts and the other two study groups.

I).

To test the association between success rate and other variables, appropriate correlation analyses were performed. Pearson's product-moment correlations were computed to determine the level of correlation between success rate and age and between success rate and total required appearances. Spearman's  $r_s$  correlations were computed to determine the level of correlation between success rate and sex, race, charge, bond type, stage bonded, and final disposition. Spearman's  $r_s$  correlations were additionally computed to determine the level of correlation between success rate and the applicable treatment variables present for the Group II subjects (TASC Clients). None of the correlations reached even a minimal level of statistical association.

## DISCUSSION

The data permit discussion of the research questions stated at the outset of this report. Unsupervised, untreated addicts do perform substantially poorer than

\* Although the appearances are equivalent (.92), note the difference in dispersion as shown in Table 3.

non-addict defendants with respect to attendance at required court appearances while on bond. However, involvement in supervised drug abuse treatment improves the court appearance performance of addict defendants, resulting in the achievement of parity with the performance of non-addict defendants.

Court appearance success is not correlated with any of the variables included in this study. If comparability of the Non-TASC Addicts and TASC Clients is assumed, the study results would lead to an inference that the difference in court appearance rates is attributable to the distinction of the TASC supervised experience. In short, if the performance differences between the two addict groups can not be attributed to included variables, then the inference is warranted that the difference is a function of the distinguishing factor, i.e., TASC supervision, provided by the study design.

Several methodological shortcomings limit the study conclusions and require mention. First, the size of the study groups is not particularly large (n=150), and the serial selection nature of the two addict groups is not as ideal as the classic random technique. Second, the available data concerning the Non-TASC Addicts group do not address the important dynamics of the group members failure to become involved with the TASC process. Without discerning the nature of this phenomenon, the assumption of comparability between the TASC Clients and Non-TASC Addicts is arguable. Finally, the study design lacks total "cleanness" in the selection of the two addict groups. There is no assurance that some of the Non-TASC Addicts may have been engaged in voluntary drug abuse treatment.\* Also, there is a lack of uniformity concerning the circumstances under which the TASC Clients became involved in TASC supervision during the pre-trial release period. Some were ordered to participate as a formal condition of personal recognizance bond release, but most subjects participated as a result of judicial exhortation, not ordering.

\* Although confidentiality barred the verification of subject treatment status with voluntary treatment clinics, it is the authors' opinion on the basis of other TASC research experience that few Group I subjects would be enrolled in voluntary treatment unbeknownst to TASC.

Notwithstanding these methodological difficulties, the data lend considerable empirical support to the arguments of addict diversion proponents. Unless involved in a supervised drug abuse treatment regimen, addicts do present a higher probability of non-appearance at required court hearings than non-addicts. Therefore, if society chooses to pursue the humane goal of releasing indigent addict defendants prior to trial, the objective is best achieved by adding a condition of supervised drug abuse treatment to the personal recognizance release agreement. The authors recommend the replication of the instant study design in other jurisdictions to test the generalizability of the results reported herein.

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