Operation Drug TEST Evaluation

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March 16, 2001

FINAL REPORT Archive

Approved By: L. Thomas

Date: 5/14/01

188269

Acknowledgements

We are grateful for the advice and cooperation of Ronald Dyson, Barbara Meierhoefer, and Michael Patterson in the Administrative Office of the U.S. Courts (AOUSC); Patrick Tarr in the U.S. Department of Justice (DOJ); and project monitors Jack Riley and Bruce Taylor at the National Institute of Justice (NIJ). Findings and recommendations herein do not represent the official position of the AOUSC, DOJ, or NIJ. For their cooperation we thank Chief Pretrial Services Officers and staff at judicial districts participating in Operation Drug TEST.

Operation Drug TEST Evaluation: Final Report

Executive Summary

Program Description

Objectives of Operation Drug TEST (ODT) are: universal Testing to identify drug-involved defendants before their first court appearance; Effective Sanctions when defendants on release are found to be using drugs; and referral of drug-using defendants to Treatment as needed. ODT is funded by the U.S. Department of Justice (DOJ) and directed by the Administrative Office of the U.S. Courts (AOUSC).

Twenty-four federal judicial districts joined ODT between December 1996 and July 1997. With ODT funds, these districts acquired or expanded capabilities for drug testing with on-site labs and/or hand-held devices. ODT also reimbursed districts for drug abuse treatment and other supervision costs in excess of those costs before ODT.

ODT's most distinctive feature is the *initial test*, which is to occur before the defendant's first court appearance. (Some districts decided to conduct the initial test as soon as possible thereafter.) Pretrial staff collects a urine specimen if the defendant will voluntarily provide it, perform an immediate drug test, and report the test result to the court. As objective verification of defendants' drug use status, the initial test is intended to assist the court in its decision regarding conditions to impose upon defendants who are released.

ODT also supports *surveillance tests* of defendants released with a requirement to submit to further drug testing while under pretrial supervision. Surveillance tests are typically required for defendants whose initial test was positive or for whom drug

involvement was already known or suspected on the basis of other information available—the current charge was drug-related, prior drug charges were on record, the defendant self-reported drug use, drug use symptoms were observable in the pretrial interview, or the pretrial investigation turned up some other sign of drug involvement. Before ODT, districts were already conducting surveillance tests of released defendants whose drug involvement was known or suspected on the basis of other information available.

Evaluation Method

To describe ODT's implementation and possible impacts on sanctioning and treatment, we relied on two primary sources. The first was fiscal 1998 and fiscal 1999 data reported by all 24 participating districts to the AOUSC. The second was interviews with Chief Pretrial Services Officers and staff at all districts.

Districts reported program data to the AOUSC in ODT's start-up year, fiscal 1997, as well as fiscal 1998 and fiscal 1999. But fiscal 1997 has a high rate of missing data, and the data available are not comparable across districts. Thus we did not use the fiscal 1997 in this evaluation. Data reporting improved markedly in fiscal 1998 and continued to improve in fiscal 1999. We believe the fiscal 1998 and fiscal 1999 data are accurate enough to use in describing ODT implementation and assessing its possible impacts.

Because program start-up was slow in many districts, impacts on sanctioning or treatment may be detectable by comparing the earlier implementation year with acceptable data (fiscal 1998) to the later one (fiscal 1999). We compared sanctioning and

treatment across these two fiscal years for all 24 districts and for subsets of districts where impacts were judged to be most likely. However, because of differences in data quality, change across the two years must be interpreted carefully and cannot be regarded as definitive. In addition, because main analyses were based on the entire population of ODT defendants in each fiscal year, we did not conduct tests of statistical significance. The issue is not whether findings are generalizable but what they mean. We believe the most reasonable interpretation of change across years is in broad qualitative terms, not in precise quantitative terms.

Because implementation continued to mature in fiscal 1999 and data quality improved in that year, the most reliable single-year picture of ODT's implementation and possible impacts is probably fiscal 1999 for most findings.

While the ODT database and interviews with pretrial agency representatives comprised our primary data sources, we also examined pretrial sanctioning patterns recorded in H Tables of the *Judicial Business of the United States Courts* for two ODT years (1998 and 1999) and five pre-ODT years (1992 to 1996), and we analyzed AOUSC testing and treatment reimbursement data for 1997 to 1999. Finally, for insight into the initiation and development of ODT, we conducted interviews with officials in the AOUSC and DOJ.

Findings

Objective 1: Testing. ODT's first objective was to test all defendants for drug use before their first court appearance. During the early phase of implementation, program planners at DOJ and AOUSC decided to allow districts to participate in ODT

under either of two "models." Model I was congruent with the ODT objective of universal testing of defendants before their first court appearance; Model II departed from this objective in allowing districts to conduct the initial test as soon as possible after the defendant's court appearance. Most districts (18 in fiscal 1998, 19 in fiscal 1999) followed Model I. In Model I districts, a urine specimen was collected, and the result reported to the court in time for the defendant's court appearance, for about half of the defendant population (48% in fiscal 1998 and 54% in fiscal 1999). If all 24 districts are held to the ODT objective of pre-appearance testing, only about two in every five defendants had an initial test reported to the court in time (38% in fiscal 1998 and 45% in fiscal 1999).

Reasons for no pre-appearance test include: defendants refused, defendants agreed to the test but stalled (i.e., claimed they could not urinate), and pretrial staff had no opportunity to test. The test battery included marijuana, cocaine, opiates, amphetamine, and phencyclidine. On the initial test, 27% of defendants were positive for one or more of these drugs in fiscal 1998. The figure again was 27% in fiscal 1999. Marijuana was the drug most commonly detected.

Roughly 13% of defendants who tested positive on the initial test were "hidden users." They represent 4% of all defendants tested. Because hidden users were not identifiable on the basis of any other information available, the initial test was, for them, the sole indicator of a possible need to require drug testing as a condition of pretrial release. Without the initial test, these defendants might not have been placed on a test condition and monitored for possible drug use while on release.

In fiscal 1998, 42% of defendants released with a test condition had no surveillance test on record, whereas 30% had one to five tests, and 28% had at least six. In fiscal 1999, only 7% had no surveillance test on record, 52% had one to five, and 41% had at least six. Surveillance testing may have been more substantial in fiscal 1998 than these data indicate. The cross-year comparison suggests considerably more surveillance testing in fiscal 1999. But because data entry was more reliable in fiscal 1999, fiscal 1998 data and the cross-year comparison are not conclusive. Under the assumptions that surveillance test data were more accurate in fiscal 1999 and that data for defendants under surveillance for a six-month period were more representative of the extent of pretrial supervision, it appears that about half of all defendants were tested at least once per month on average, and very few were not tested at least once, in districts participating in ODT.

Objective 2: Effective sanctions. ODT's second objective was to support application of effective sanctions when defendants on release were found to be using drugs. In fiscal 1998, 12% of defendants who tested positive at least once while on release had a sanction on record (were required to submit urine specimens more frequently, were placed on home confinement or temporary restraint, or were detained upon revocation of bail). In fiscal 1999, 21% had a sanction on record. These figures suggest that districts may have been more likely to impose sanctions for drug use in fiscal 1999 than in fiscal 1998. However, we believe the change is probably due to record keeping. Only five districts reported a possible change in their overall sanctioning decisions in connection with ODT, and only one district reported a possible change in bail revocations specifically. Moreover, when we compared sanctioning patterns in

various subsets of likely-impact districts to the sanctioning patterns for all 24 districts, we saw no consistent evidence indicating greater use of sanctioning in the likely-impact districts. The H Tables showed no evidence of an ODT impact on sanctioning when pre-ODT years were compared to ODT years or when the earlier ODT year was compared to the later one. Most importantly, rates at which defendants got sanctioned, no matter how often they tested positive, were low. In any case, because the fiscal 1999 data are more complete, they probably offer the most accurate picture of sanctioning patterns in ODT.

Objective 3: Treatment. ODT's third objective was to support placement of drug-using defendants in treatment. In fiscal 1998, 9.4% of defendants who tested positive at least once on release were placed in treatment or, if already in treatment, transferred to a more intensive modality. In fiscal 1999, 22.6% were placed/transferred. Similarly, treatment reimbursement data showed that districts spent more on treatment in fiscal 1999 than in fiscal 1998. The record keeping problems described above pertain to treatment placements as well. Thus it is impossible to quantify the increase across years. But we conclude that, while districts did not use the treatment option very often, they were more likely to use it in fiscal 1999.

ODT implementation was incremental. Districts used ODT funding, and the new capabilities that came with it, mostly in the service of policies and protocols already in place. Districts launched no major or broad-based initiatives in sanctioning or treatment. ODT's potential as a spur to innovation in pretrial supervision may be limited by the mission of pretrial services and the short duration of time during which defendants are under supervision. However, research on pretrial drug test programs other than ODT has shown that drug testing, *when closely linked with sanctions and treatment* in response to

ongoing drug use, can reduce drug use among defendants on pretrial release. Test capabilities put in place by ODT and its impact on districts' use of treatment indicate that additional districts may benefit from ODT participation and that sanctioning and treatment innovations are possible if districts place more emphasis on those domains.

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Chapter 1: Operation Drug TEST

Though not necessarily responsible for initiating criminal careers, use of illegal drugs is a crime "multiplier" (Lurigio and Swartz, 1999; Murray, 1992; Speckart and Anglin, 1986). It tends to "freeze users into patterns of criminality that are more acute, dynamic, unremitting, and enduring than those of other offenders" (Inciardi, Lockwood, & Quinlan, 1993). Accordingly, a disproportionate amount of crime in this country is committed by drug users, especially heavy users (Chaiken and Chaiken, 1982; Collins, Hubbard, & Rachal, 1985; Johnson et al., 1985; Lipton, 1996; Lurigio and Swartz, 1999; Speckart and Anglin, 1986). Cognizant of the close link between drug use and crime, criminal justice agencies place high priority on interventions designed to combat drug use among offenders under their supervision. Such interventions are often a "carrot and stick" blend of monitoring via drug testing, sanctions for drug use, and mandated treatment if necessary.

Drug testing—alone or in combination with treatment—may serve several important purposes related to supervision of offenders in the community (i.e., those on pretrial release, probation, or parole). First, drug testing enables criminal justice to monitor a behavior known to be linked to the risk of re-offending. Second, drug test results can, under some circumstances, be used in court as evidence. Third, drug test results can serve as part of needs assessment and service planning for offenders referred to treatment by criminal justice. Finally, compared to the alternative of relying on other information by which to detect drug use (e.g., offender self-reports, observation of

symptoms, or informant reports), drug testing reduces ambiguity in supervising and sanctioning offenders who deny drug use.

Pretrial drug testing is intended to detect drug use by defendants during the time between arrest and case disposition (guilty, not guilty, dismissed, and other special disposition). In contrast, pre-sentence drug testing occurs between case disposition and sentencing (most often between a guilty plea and imposition of a sentence). This distinction is significant. Pretrial testing begins before a defendant has pled or been found guilty and sometimes begins even before a formal charge has been filed. Test results cannot be introduced as evidence against the defendant or considered at case disposition unless the defendant has agreed to enter a pre-plea diversion program in which prosecution is deferred pending successful completion of drug treatment or other intervention. Pre-sentencing testing, used in most drug court and diversion programs, occurs only after a guilty plea or finding and requires that defendants agree to submit to drug testing and to waive some rights in exchange for potential benefits. The benefits may be substantial, e.g., dismissal of the charge or probation rather than incarceration upon successful completion of either treatment or a specified period of drug abstinence. The waiver enables courts to impose the original sentence if the defendant does not succeed.

Drug testing at arrest has, in some programs, been a useful predictor of either re-arrest or failure to appear but has rarely been found to predict both forms of misconduct in the same defendant population (Henry and Clark, 1999; Rhode, Hyatt, & Scheiman, 1996; Visher, 1992). Results from programs monitoring drug use by defendants on pretrial release are similarly mixed. However, there is evidence to support the view that *drug testing, when*

closely linked with sanctions and treatment placements in response to ongoing drug use, can reduce drug use among defendants on pretrial release.

Operation Drug TEST (ODT), the program evaluated here, is a pretrial intervention featuring drug testing; sanctions for drug use; and treatment, as needed, for defendants under pretrial supervision. ODT's overall goal is to deter drug use and its adverse consequences among defendants on pretrial release. Implementation of ODT began in fiscal 1997 in 25 of the 94 federal judicial districts in the United States. ODT districts are shown in Figure 1.1. In this report, we employ the term most commonly used, "defendants," to refer to cases at the pretrial stage, even though some are not later charged with an offense.

Origins of Operation Drug TEST

In December 1995, President Clinton issued a memorandum directing Attorney General Reno to develop a plan for "a universal policy providing for drug testing of federal arrestees before decisions are made on whether to release them into the community pending trial" (December 18, 1995 Memorandum to the Attorney General). The rationale for this directive was explicitly the drugs-crime relationship. Criminal offenders "cycle through the court, corrections, and probation systems still hooked on drugs and still committing crimes to support their habit." The logic of pretrial drug testing as a response to the problem was based on three assumptions: first, that drug testing can reliably and inexpensively identify drug-using defendants; second, that test results will be useful in guiding decisions on sanctions and treatment for defendants on pretrial release; and third, that sanctions and treatment can deter drug use and reduce its adverse consequences among defendants on

pretrial release. To carry out this initiative, the U.S. Department of Justice (DOJ) launched Operation Drug TEST.

For several years, federal judicial districts routinely conducted drug testing of defendants released under pretrial supervision if drug use was known or suspected. The primary ODT innovation was to begin pretrial drug testing before the defendant's first court appearance, i.e., before the release decision, and to cover all defendants, not just those for whom there were reasons to suspect drug involvement. In the ODT "program model," testing was to cover all *felony* defendants who were arrested, appearing on a summons, or surrendering voluntarily, as well as all *non-felony* defendants appearing on an arrest warrant.

The Executive Committee of the Judicial Conference, after a review of the ODT program model by the Committee on Criminal Law, approved ODT in June 1996. (A second model also emerged; see Program Elements, below.) Seeing no statutory authority to require districts to participate in ODT, the Committee on Criminal Law stipulated that district participation must be voluntary and that ODT must be fully funded by DOJ. This latter stipulation was meant to ensure that costs incurred in connection with ODT participation would be paid by DOJ with no additional funding from the judicial branch. Because of "serious legal and practical problems" they foresaw, the Committee did not "endorse" ODT (June 11, 1996 Memorandum to the Executive Committee of the Judicial Conference). The Committee wrote that it was not opposed to ODT where a district "determines that universal pretrial drug testing could be of some assistance... and that its potential benefits outweigh its potential problems and costs in that particular district." Finally, the Committee, noting the constitutional issues regarding unreasonable search and seizure, emphasized that the pre-appearance test had to be voluntary. Defendants for whom

there was no reason to suspect drug involvement could not be ordered to submit to this test.

The Administrative Office of the U.S. Courts (AOUSC), as the agency responsible for coordinating pretrial services in federal judicial districts, took responsibility for implementing ODT. (AOUSC does not have administrative responsibility for pretrial services in the District of Columbia, one of the districts participating in ODT.) Pretrial staff were already familiar with procedures for collecting urine specimens; maintaining chain of custody (handling, storing, and transporting specimens and recording test results); use of various drug-test technologies and procedures; and treatment referral. In addition, pretrial staff are an arm of the court and, because the initial test was to be voluntary, independence and credibility of the test taker were important (March 31, 1996 Memorandum to the President).

Objectives

In keeping with the President's directive, ODT planners in the DOJ and AOUSC adopted three objectives pertaining to testing, sanctioning, and treatment. The "TEST" part of the program title is both a reference to testing and an acronym representing all three objectives. The first objective was universal Testing to identify drug-involved defendants before their first court appearance. The second objective was application of Effective Sanctions when defendants on release were found to be using drugs. The third objective was referral of drug-using defendants to Treatment as needed.

Elements

Participating districts acquired resources for drug testing and funds to cover some of the cost of providing treatment and other supervision. There was also an important record-keeping requirement.

Testing. With ODT funds, districts acquired or expanded capabilities for drug testing with on-site test labs and/or disposable hand-held devices. Test labs use an enhanced multiplied immunoassay technique (EMIT) to screen for one drug or a set of drugs. They are simple enough to be used by laypersons with minimal training (Henry and Clark, 1999) and produce results in less than an hour. Hand-held devices also use immunoassay technology. Different devices screen for different drugs. They are particularly useful in the field because they give results in two to ten minutes. Because the cost per test varies with the number of tests conducted, EMIT is cost-effective in large districts with a high test volume. Hand-held devices are more cost-effective in smaller districts. Districts also used ODT funds to pay "build out" costs associated with drug testing, e.g., private restrooms for collecting urine specimens and rooms in which to house test equipment and supplies.

ODT's most distinctive feature is the *initial* test. Pretrial staff are to collect a urine specimen from each defendant who voluntarily provides it, perform an on-site drug test, and report results to the court. As objective verification of the defendants' drug use status, the initial test is intended to assist the court in its decision regarding conditions to impose upon defendants who are released.

During the early phase of implementation, program planners at DOJ and AOUSC decided to allow districts to participate in ODT under either of two "models." Model I

was congruent with the ODT objective of universal testing of defendants before the first court appearance; Model II departed form this objective in allowing districts to conduct the initial test as soon as possible *after* the defendant's court appearance. Most districts (18 in fiscal 1998, 19 in fiscal 1999) followed Model I.

ODT also supports *surveillance tests* of defendants who are released with a test condition. Surveillance tests are typically required for defendants whose initial test is positive or for whom drug involvement was already known or suspected on the basis of other information available—the current charge was drug-related, prior drug charges were on record, the defendant self-reported drug use, symptoms of drug use were observable in the pretrial interview, or the pretrial investigation turned up some other sign of drug involvement.

Treatment. ODT reimburses districts for drug abuse treatment and other supervision costs in excess of what they were spending on those costs before ODT.

Record keeping. ODT supports the purchase of computers and hiring of data entry clerks to maintain drug test records. These records are to be reported to and compiled by the AOUSC for overall monitoring of the program. Important data fields include:

- was the defendant asked to submit a urine specimen for the initial or pre-appearance test;
- did the defendant do so;
- if the defendant did not submit a specimen, why not;
- for which drugs, if any, did the defendant test positive;

- what other evidence was available on the defendant's current or past drug involvement;
- was the initial test result reported to the court before the release decision;
- was the defendant released;
- if the defendant was released, did the conditions of release include drug testing and/or treatment;
- how many surveillance tests were conducted while the defendant was on release;
- what were the date and result of each test;
- what action, if any, was taken (e.g., increased testing frequency, bail revocation, or placement in drug abuse treatment).

Chapter 2: Pretrial Drug Testing

Drug testing in the criminal justice system stems from the widespread recognition that reductions in drug use lead to reductions in crime. The relationship between drug use and crime has been well documented (Chaiken and Chaiken, 1982; Johnson et al., 1985; Lipton, 1996; Lurigio and Swartz, 1999). Drug-involved offenders have high rates of criminal activity, and the frequency of this activity rises and falls with the offenders' level of drug use (Anglin, Longshore, & Turner, 1999; Chaiken and Chaiken, 1982; Speckert and Anglin, 1986).

Drug testing—alone or in combination with treatment—may serve several important purposes related to supervision of offenders in the community (i.e., those on pretrial release, probation, or parole). First, drug testing enables criminal justice to monitor a behavior known to be linked to the risk of re-offending. Second, drug test results can, under some circumstances, be used in court as evidence. Third, drug test results can serve as part of needs assessment and service planning for offenders referred to treatment by criminal justice. Finally, compared to the alternative of relying on other information by which to detect drug use (e.g., offender self-reports, observation of symptoms, or informant reports), drug testing reduces ambiguity in supervising and sanctioning offenders who deny drug use.

Each of these purposes is evident in the assumptions underlying drug testing of pretrial defendants in Operation Drug TEST (ODT). As indicated in Chapter 1, these assumptions are: first, that drug testing can reliably and inexpensively identify drug-using defendants; second, that test results will be useful in guiding decisions on sanctions and treatment for defendants on pretrial release; and third, that sanctions and treatment

can deter further drug use and reduce its adverse consequences among defendants on pretrial release. In this chapter, we discuss the purposes of drug testing at the pretrial stage and review evidence on the effects of drug testing when conducted on a standalone basis or in conjunction with sanctions and treatment.

Purposes

Pretrial drug testing is intended to detect drug use by defendants during the time between arrest and case disposition (guilty, not guilty, dismissed, and other special disposition). In contrast, pre-sentence drug testing occurs between case disposition and sentencing (most often between a guilty plea and imposition of a sentence). This distinction is significant. Pretrial testing begins before a defendant has pled or been found guilty and sometimes begins even before a formal charge has been filed. Test results cannot be introduced as evidence against the defendant or considered at case disposition unless the defendant has agreed to enter a pre-plea diversion program in which prosecution is deferred pending successful completion of drug treatment or other intervention. Pre-sentencing testing, used in most drug court and diversion programs, occurs only after a guilty plea or finding and requires that defendants agree to submit to drug testing and to waive some rights in exchange for potential benefits. The benefits may be substantial, e.g., dismissal of the charge or probation rather than incarceration upon successful completion of either treatment or a specified period of drug abstinence. The waiver enables courts to impose the original sentence if the defendant does not succeed.

Evaluations of Drug Testing Programs

Because conditions of release prior to case disposition must be demonstrated to reduce the risk that defendants will fail to appear for a hearing and/or reduce the risk to public safety, early research on pretrial drug testing programs focused on whether a drug test taken at the time of arrest is valuable in predicting subsequent misconduct of offenders on pretrial release.

The District of Columbia was the first federal jurisdiction to conduct pretrial drug testing. Its demonstration program began in 1984. Evaluation of the program indicated that defendants testing positive at arrest and later placed on pretrial release were more likely than drug-negative defendants to be rearrested and to miss scheduled court appearances. After other background factors (e.g., employment status and prior convictions) were taken into account, test results showing continued drug use during pretrial release, especially polydrug use, added to the ability to predict rearrest and failure to appear (Toborg, Bellassai, Yezer, & Trost, 1989; Wish, Toborg, & Bellassai, 1988).

Replications of the District of Columbia program and evaluations of pretrial testing programs in city and county criminal justice systems have not produced consistent findings (see Belenko, Mara-Drita, & McElroy, 1992; Carver, 1986; Goldkamp, Gottfreddson, & Weiland, 1990; Jones and Goldkamp, 1991; Smith , Wish, & Jarjora, 1989; Yezer et al., 1988). In studies of pretrial testing in Miami, Phoenix, and New York City, positive test results at arrest predicted subsequent rearrest but not failure to appear. Positive tests, especially for cocaine and polydrug use, predicted misconduct among pretrial defendants in Milwaukee and Prince George's County (Maryland) before, but not after, background factors were controlled. Similarly, in a recent analysis of data from several pretrial

programs (Rhodes, Hyatt, & Scheiman, 1996), a positive test for any illicit drug was not a useful predictor of misconduct after background factors such as criminal history and community ties were controlled. However, a positive test for heroin emerged as a consistent predictor of rearrest, and a positive test for cocaine was a consistent predictor of failure to appear.

Evidence is also mixed with respect to ongoing drug testing/sanctioning of pretrial defendants in the community. In an evaluation of two testing/sanctioning programs, Jones and Goldkamp (1992) found no deterrent effect on pretrial misconduct. They attributed this finding to poor implementation of sanctions. In Portland, Oregon, BOTEC (1995) found no effect of ongoing drug testing on rearrest rates among defendants on pretrial release. In this study too, evaluators noted a lack of sanctioning for positive drug tests (see also Toborg et al., 1989; Visher, 1992). More recently, the District of Columbia conducted an experimental evaluation of pretrial testing procedures by randomly assigning defendants to a "treatment" docket, a "graduated sanctions" docket (jury box on the first positive test to seven jail days on the fourth positive test), or "standard" docket. Defendants in all dockets were tested for drug use twice per week. Those participating in the "treatment" or "graduated sanctions" docket were more likely to be drug-free in the month before sentencing than defendants in the "standard" docket (Harrell, Cavanaugh, & Roman, 2000). This finding suggests that pretrial drug testing, when conducted frequently and when reliably linked with treatment and/or a specific sanctioning schedule, may have favorable effects on drug use by pretrial defendants.

The District of Columbia program has much in common with other programs targeting drug-involved offenders. Such programs include TASC programs, drug

diversion, and drug courts. For over 25 years, judges and correctional agencies have referred drug-involved offenders to so-called TASC programs. (The TASC acronym once stood for "Treatment Alternatives to Street Crime" and now has different meanings in different communities.) TASC programs conduct needs assessments, refer offenders to appropriate treatment, and monitor their progress. Those sent to TASC may include offenders on probation or parole as well as defendants on pretrial release. TASC and their affiliated treatment agencies use drug testing to assist clients in confronting their drug problems and to provide information on continued drug use for treatment guidance. A recent evaluation of six TASC programs found favorable effects on drug use but no effect on re-arrests or technical violations (Anglin et al., 1999). However, many offenders referred to TASC programs do not actually report to them or to the treatment agency to which TASC refers them. Noncompliance is most likely when justice agencies do not monitor compliance with referrals or do not act on the results of positive drug tests (Falkin, 1993).

The mixed evidence on pretrial drug test programs may be due in part to differences in the studies (e.g., period of data collection, drug test procedures, choice of outcome measures, sampling frame, control variables included, and analytic techniques) or to differences in program models. However, looming large as a factor limiting program effectiveness at any stage (pretrial or later) is poor implementation (see Britt, Gottfreddson, & Goldkamp, 1992; Jones & Goldkamp, 1991; Kleiman, 1996; Visher, 1992). Any testing at the time of arrest must be voluntary. Many defendants may simply refuse to be tested (Cadigan, 1992), while others may fall through the cracks for various procedural reasons. In addition, pretrial testing programs may not be timely in

conducting the test or relaying test results to the court. Finally, even when drug use is monitored via frequent testing, it may be difficult to apply sanctions or place drug-using defendants in treatment when detention space is tight, local treatment options are limited, and the defendant will not be under pretrial supervision long enough to complete treatment.

Another reason for mixed outcomes of pretrial drug test programs is the fact that most defendants who test positive are already known or suspected to be users on the basis of other information, e.g., self-report, current drug-related charge, or prior drug-related conviction. A positive test result may not add new information likely to affect pretrial decision-making. Moreover, information other than the positive test result may be more important than the drug test result in predicting misconduct (Rhodes et al., 1996).

A third problem is that routine drug testing by itself does not distinguish heavy from casual use. Intensity of drug use may be more meaningful that a test result, for it is the chronic dependent user who is most likely to commit new crimes or fail to appear in court (DeJong and Wish, 2000).

Conclusion

Drug testing at arrest has, in some programs, been a useful predictor of either re-arrest or failure to appear but has rarely been found to predict both forms of misconduct in the same defendant population (Henry & Clark, 1999; Rhodes et al., 1996; Visher, 1992). Results from programs monitoring drug use by defendants on pretrial release are similarly mixed. However, there is evidence to support the view that *drug testing, when closely*

linked with sanctions and treatment placements in response to ongoing drug use, can reduce drug use among defendants on pretrial release.

In this evaluation, we were able to assess implementation of ODT and its impact on sanctioning and treatment patterns in participating districts. We were unable to assess ODT's possible impact on drug use, failure to appear, re-arrest, or other misconduct among pretrial defendants. However, it is important to acknowledge the potential effects of pretrial drug testing on these defendant behaviors, as seen in the District of Columbia experiment (Harrell et al., 2000).

It is also important to acknowledge possible limitations arising from the "logic model" of pretrial drug testing and evident in much of the existing research. The implementation problems described above may to some degree be unavoidable at the pretrial stage. If a drug test is to occur before defendants appear in court for their bail hearings, it has to be voluntary. Many defendants refuse to be tested. In addition, there may be a lag of only a few hours between arrest and the first court appearance. Thus, the initial test must be performed quickly, and, in the press of time, many defendants may be missed. These problems do not pertain to ongoing testing of defendants on pretrial release because such testing can be mandatory and the pretrial release period typically extends for several weeks or months. However, it may be difficult to apply sanctions or place defendants in treatment when detention space is tight or local treatment options are limited. Most important, it may not be possible or advisable to place defendants in treatment if they will not be under pretrial supervision long enough to complete treatment.

One further problem may limit the impact of both pre-bail testing and monitoring of defendants on release. Most defendants who test positive may already be known or suspected to be users on the basis of other information available to the court and pretrial officers. The test result may not add new information likely to affect pretrial decision-making. Moreover, routine drug testing cannot distinguish heavy users from casual users, and intensity of drug use may be more meaningful information on which to base or revise release conditions.

Each of these issues is pertinent to the ODT evaluation. We return to them in Chapter 7.

Chapter 3: Evaluation Design

The purposes of the evaluation were to describe the process of program implementation and to document ODT's impacts on sanctioning and treatment. In primary analyses of implementation and impacts, we used data for all 24 districts. For a closer look at possible impacts, we focused on a subset of districts where, in our judgment, an overall or global impact was most likely to have occurred and on additional subsets of districts at which, in the judgment of pretrial staff, it was plausible to expect specific impacts on either sanctioning or treatment.

Implementation

The process evaluation was twofold. First, we reviewed initiation of ODT and its subsequent evolution. Second, we documented implementation in the each district. This aspect of the process evaluation focused on the first "T" in TEST, i.e., drug testing. How many defendants got the initial test before their release, how many "hidden" users were detected on the initial test (i.e., defendants for whom there was no other indication of drug involvement), and how much surveillance testing was done with defendants on release?

Impacts

The impact evaluation examined changes in sanctioning and treatment patterns. These are the "ES" and the second "T" in TEST. The sanctions issue is whether ODT affected districts' responses to defendants who tested positive on release? Is there

evidence of change in the likelihood of sanctioning or the types of sanctions applied? The treatment issue is how ODT affected the districts' use of treatment placements for defendants who tested positive on release.

Data Sources

This evaluation was based on data collected during site visits to all ODT districts, the ODT database maintained by AOUSC, and other secondary sources. We did not attempt an outcome evaluation comparing ODT defendants to non-ODT defendants because, in our judgment, none of the possible research designs was rigorous enough to lead to meaningful conclusions.

Site contacts. Between August 1997 and August 1998, we completed an initial site visit personally to pretrial services at each of the 24 districts. The site visit team included at least one of the senior evaluators (Longshore, Taxman, Turner, Harrell, and Byrne) and often one or two officials from the Administrative Office of the U.S. Courts (AOUSC). Pretrial representatives typically included the Chief Pretrial Services Officer, ODT program director, drug specialist, database manager, and other staff.

The primary purposes of these initial visits were to:

- describe the annual case flow at each district (e.g., the number of defendants processed, number with and without the initial test, number released under various conditions);
- describe program operations;
- identify possible barriers to implementation;

- identify strategies adopted or recommended by pretrial services as a means of overcoming any such barriers.

Also, because the context for and aims of ODT programs varied across districts, we asked pretrial staff to:

- explain how their policies and practices changed as a result of ODT participation or were expected to change;
- what system impacts they were seeing or expected to see as a result of ODT.

Roughly two years later, we contacted each district again in person or by phone. Our purposes were to update information on the progress of implementation in each district and ask pretrial staff to review our preliminary analyses of the ODT database. These analyses described:

- the percent of defendants with an initial test;
- the percent who refused to take the initial test;
- the number of defendants released;
- the number of surveillance tests on record for those defendants;
- actions taken in response to positive drug tests (e.g., increased testing frequency, bail revocation, or placement in treatment).

In some cases, pretrial staff believed that information in the ODT database was not complete enough to provide an accurate picture of program implementation or impact in all respects. They sometimes were able to provide additional data to address the problem.

ODT database. From the outset of the program in 1997, the AOUSC required participating districts to maintain records for all defendants processed. Defendant records were to be reported to and compiled by the AOUSC for overall monitoring of the

program. Until January 1998, there was no automated data entry capability. Districts were reporting their data to the AOUSC on hand-written forms. According to the AOUSC, these were not always legible. Moreover, they did not contain information on why defendants were not asked to test or "other indications" of the defendant's drug involvement. Finally, information on reporting test results to the court and the release conditions imposed was limited. Although "continuation" forms were available to report tests subsequent to the initial test, very few of these forms were received by AOUSC from most districts.

The AOUSC made an automated data entry program available to the districts in December 1997. The resulting database contains the elements listed below. A few districts went back and recorded the new elements for defendants who entered ODT in the first quarter of fiscal 1998, but most did not. We did not use the fiscal 1997 data in this evaluation. We believe the fiscal 1998 and fiscal 1999 data are accurate enough to use in describing ODT implementation and assessing its possible impacts. Elements in the ODT database for those years are:

- was the defendant asked to submit a urine specimen for the initial or pre-appearance test;
- did the defendant do so;
- if the defendant did not submit a specimen, why not;
- for which drugs, if any, did the defendant test positive;
- what "other indications" (e.g., self-report or prior drug charge) were available on the defendant's drug involvement;
- was the initial test result reported to the court before the release decision;

- was the defendant released;
- if the defendant was released, did the conditions of release include drug testing and/or treatment;
- how many surveillance tests were conducted while the defendant was on release;
- what were the date and result of each test;
- what action, if any, was taken (e.g., increased testing frequency, detention, or placement in drug abuse treatment).

Because program start-up was slow in many districts, impacts on sanctioning or treatment may be detectable by comparing the earlier implementation year with acceptable data (fiscal 1998) to the later one (fiscal 1999). We compared sanctioning and treatment across these two fiscal years for all 24 districts and for subsets of districts where impacts were judged to be most likely. However, change across the two years must be interpreted carefully and cannot be regarded as definitive. In addition, because main analyses were based on the entire population of ODT defendants in each fiscal year, we did not conduct tests of statistical significance. The issue is not whether findings are generalizable but what they mean. We therefore believe the most reasonable interpretation of change across years is in broad qualitative terms, not in precise quantitative terms.

Implementation continued to mature in fiscal 1999, and data quality improved. Thus the most reliable single-year picture of ODT's implementation and possible impact is probably fiscal 1999 for most findings. The sole exception is the finding on hidden users. For reasons explained in Chapter 4, fiscal 1998 may provide a more reliable estimate of the hidden user rate.

By relying on data for fiscal 1998 and 1999, we may have missed any impacts that occurred in fiscal 1997. Moreover, restricting the analysis to fiscal 1998 and fiscal 1999 does not entirely overcome the data problems. In those years, districts continued to enter data in different ways. For example, "yes" on treatment meant, in some districts, that the defendant was actually sent to treatment. In other districts, it meant only that the court had authorized a treatment placement if pretrial staff later found it necessary to send the defendant to treatment. Also, some data entry errors and omissions persisted in fiscal 1998 and 1999. Apart the initial test result, other information regarding the defendant's drug use history (e.g., prior drug-related charges) was sometimes not recorded, even though it was known to pretrial staff and included in the pretrial report to the court. It is especially problematic that the database is incomplete on the crucial issue of surveillance testing—how many tests were done for each defendant and what actions were taken in response to positive test results. Most important, data errors and omissions appear to have been more extensive in fiscal 1998 than in fiscal 1999. This confounds the evaluation because our main strategy for assessing impact is the cross-year comparison, 1998 to 1999. Accordingly, we supplemented the impact analysis with data from other sources and refocused some of the impact analyses on subsets of districts, selected for reasons described below.

We were able to address some of the database problems directly. As indicated in our description of site visits, we asked pretrial staff to review our preliminary findings. They sometimes concluded that the information we were using was not complete enough to provide an accurate picture. In these cases, we asked pretrial staff to provide an estimate

that they considered accurate on the basis of their judgment or a review of case files or other records not part of the data they reported to the AOUSC.

Finally, because sanctioning and treatment patterns varied across districts, we considered disaggregating the data in order to focus on individual districts. However, the relevant subset of the defendant population (e.g., defendants who were released with a drug-testing requirement and who tested positive one time) was usually too low when calculated for each district separately; findings would not be reliable. We therefore decided on a twofold strategy of assessing the aggregate impact of ODT in all 24 districts combined and its impact on subsets of districts where, in our judgment or in the judgment of pretrial staff, particular impacts on sanctioning or treatment were most likely.

Defendants tested. For additional data on surveillance testing, we referred to estimates of the number of defendants who were drug-tested in fiscal 1996, the year before ODT implementation began. These estimates were supplied to the AOUSC by most participating districts. We also used the AOUSC's analysis of the number of defendants drug-tested in fiscal 1999 under ODT.

Sanctioning patterns. We extracted additional data on pretrial sanctioning from the H Tables of the *Judicial Business of the United States Courts* for two ODT years (1998 and 1999) and five pre-ODT years (1992 to 1996).

Treatment. We analyzed reimbursements for treatment and other supervision costs for fiscal 1997 through fiscal 1999. These data were supplied by the AOUSC.

Subsets of Impact Districts

As indicated above, we asked pretrial staff to indicate what impacts had occurred, or might plausibly be expected to occur, on either sanctioning or treatment patterns in their districts. We analyzed the impact data available to us within subsets of districts where each impact was considered plausible by pretrial staff. Below we refer to these as Sanction Impact districts and Treatment Impact districts. The number and location of districts varied, depending on whether the focus was sanctioning or treatment. They are listed in Chapters 5 and 6.

In addition, the evaluation team selected a set of seven districts at which global or overall impacts on sanctioning and treatment appeared most likely to be detectable. We analyzed both impacts in this standard set of districts. They were: Alabama-M, Arkansas-E, Iowa-N, Mississippi-S, New Hampshire, Ohio-N, and Tennessee-E. (Letters refer to regions within states. "E" means East, "M" means Middle, "N" means North, and "S" means South.)

We chose these districts on the basis of eight criteria. The first criterion was that the district must be conducting the initial test before defendants appear in court (some districts tested defendants after the court appearance; see Chapter 4). We adopted this criterion because ODT's original objective was to test defendants before their first court appearance, so the test result would be known when the release decision is made and the terms of release are set. Most districts (initially 18, later 19, of the 24) conducted the initial test before defendants appeared in court. Three additional criteria pertained to the quality of implementation, as indicated in fiscal 1998 data. They were: at least 70% of defendants had an initial test; results were reported to the court before a release decision

was made for at least 70% of defendants tested; and at least 20% of defendants who initially tested positive got tested six or more times while on release. These three criteria reflect no preconceived standard of implementation quality, and districts did not have to meet all three. Instead, we used the implementation criteria to identify districts that were average or above average on each criterion and thus to prioritize selection of districts for the impact subset. Another three criteria were intended to ensure a defendant pool large enough to support reliable findings. These criteria were: the district's case flow was at least 400 defendants in fiscal 1998, at least 50% were placed on pretrial release, and at least 25% were drug-positive on their initial test. With a pool of 400 defendants, we could expect at least 200 of them (50%) to have been released and therefore require supervision, and at least 50 of them (25% of the 200) to be at risk for continued drug use inasmuch as they were already known to be users. A final criterion, no more than 20% of defendants with missing data, was to ensure that the data would be interpretable.

Chapter 4: Program Processes

We begin this chapter with an account of the initiation and development of Operation Drug TEST (ODT) within the Department of Justice (DOJ) and the Administrative Office of the U.S. Courts (AOUSC). We then describe program implementation in the 24 districts. Implementation topics include: the evolution of two "program models" and reasons why districts opted for one or the other; size of the defendant population in each district; rates of initial testing/reporting, drugs detected on the initial test, and the percent of "hidden users" detected on the initial test; defendants released and the conditions of release; and patterns in surveillance testing.

Initiation

DOJ had lead responsibility for launching Operation Drug TEST. The first task was to convert the concept of pre-appearance drug testing into operational terms such as where and how urine specimens would be collected and how to coordinate the activities and responsibilities of pretrial staff, U.S. marshals, defense attorneys, and others interacting with the defendant at the pre-appearance stage. The AOUSC was to oversee program implementation in participating districts and to provide training and technical assistance in areas such as selection of the drug test technology, record keeping, and reporting.

DOJ sent letters inviting participation in ODT to all 94 federal judicial districts. About one-third of them expressed interest, and the Judicial Conference and DOJ selected 25 (one dropped out later). These were: Alabama-M, Arizona, Arkansas-E, Connecticut, District of Columbia, Georgia-N, Illinois-N, Indiana-N, Iowa-N, Louisiana-

E, Michigan-W, Mississippi-S, Missouri-W, Nebraska, New Hampshire, New Jersey, New Mexico, North Carolina-M, Ohio-N, Pennsylvania-E, Puerto Rico, Tennessee-E, Virginia-W, Utah, and Wisconsin-E. (Letters following the state names refer to Northern, Southern, Eastern, Western, or Middle.) Connecticut later exited the program. Implementation did not occur at the same time or at the same pace in all districts. They came on board between December 1996 and July 1997. (In 1999, 13 new districts were selected to join ODT, but those were put on hold because of uncertainty over funding and program status. The 13 districts were: Arkansas-W, Florida-S, Guam, Hawaii, Iowa-S, Kansas, Minnesota, New York-W, Ohio-S, South Carolina, Texas-N, Vermont, and Wisconsin-W.)

One aspect of the recruitment process had important implications for the potential impact of ODT on sanctioning and treatment. In several cases, representatives of interested districts were reluctant to participate if it meant having to take on additional work or make difficult changes in existing procedure or policy. This issue was particularly salient in districts where there was no clear consensus among pretrial staff, judges, marshals, prosecutors, and defense attorneys on the value and appropriateness of pre-appearance drug testing. AOUSC officials assured district representatives that ODT participation would *not* require them to take on more work or make any major change. ODT was touted as program compatible with, and readily incorporated into, pretrial procedure and policies already in place. As one AOUSC source put it, the recruitment strategy was driven by "the art of the possible." Districts consequently tended to fold ODT funding and the new capabilities that came with it into their "business as usual." In particular, districts already emphasizing treatment as an option for drug-using defendants

used ODT funding to support, among other things, additional treatment placements. Districts emphasizing drug testing and other aspects of supervision, but not treatment, tended to use ODT funding to support more frequent drug testing and/or to purchase new test equipment.

Development

After the recruitment phase, the process of program development was iterative between the DOJ and AOUSC, and it took time. According to both DOJ and AOUSC sources, the issues addressed first pertained to legal process, e.g., how to ensure a proper chain of custody for urine specimens and how to ensure that test results would be used in ways consistent with defendants' rights. Later the two agencies turned to additional issues, both programmatic (e.g., guidance or requirements regarding sanctioning and treatment) and financial (e.g., what expenses were to be reimbursable).

As districts came on board, they sought direction regarding these issues. Answers were sometime slow in coming because DOJ and AOUSC officials had not yet worked through all of the issues and made firm decisions. As decisions evolved, new districts came on board and got different answers to the same questions. A key example, with both programmatic and financial relevance, is the issue of treatment. Some districts were told at first *not* to change the types of treatment to which they sent defendants or the number of defendants sent to treatment. The logic behind this instruction was that the planned evaluation of ODT needed to be able to gauge the effect of ODT's drug test policy in the districts without any co-occurring change in the districts' treatment policy. Districts were later told that ODT was in fact supporting innovation in treatment policy

and willing to reimburse districts for any treatment costs in excess of pre-ODT treatment costs. In an environment where program policy was still evolving and in some respects unclear, some districts were reluctant to begin implementation, or even to finalize their implementation plans, until they got definitive direction. It was summer 1997—late in fiscal 1997—before the AOUSC had a fulltime program director in place. It was winter 1997—well into fiscal 1998—before the AOUSC brought staff from all participating districts to an initial meeting at which ODT's programmatic focus and reporting requirements were explained comprehensively. (Basic financial questions, such as whether treatment costs were reimbursable, had been resolved by then.) It is important to emphasize that these problems do not, in our view, reflect inattention to the program by DOJ or AOUSC. Problems arose from the fact that implementation was underway before there had been enough time to resolve some major issues regarding program direction and policy.

While program development was limited in this respect, ironically it created an opportunity to examine ODT impacts by comparing fiscal 1998 to fiscal 1999, i.e., the year in which implementation was slow and cautious in several districts to the year in which it was more mature in all districts. See Chapter 3.

Another problem in program development was the lack of multiyear funding. There was no assurance that districts funded in fiscal 1997 would receive additional funding to continue their programs in fiscal 1998 or beyond. For this reason, districts were reluctant to field their programs in a way that might require spending political capital, restructuring or adding to the workload of pretrial officers, or hiring new staff—costs likely to pay off only if the programs turned out to be long-term.

As indicated above, the priority placed on drug abuse treatment was eventually clarified, and districts became more confident that treatment costs exceeding the amount of money spent on treatment before ODT would be reimbursed. The cost of treatment during ODT participation might exceed pre-ODT costs if the additional funds enabled districts to place more defendants in treatment, to use modalities more expensive than before, or develop relationships with new and varied treatment providers.

The sanctioning side of ODT was slower to evolve. This is not to say no sanctions innovation occurred. One district began sending a few defendants to boot camp as a sanction for pretrial misconduct. Other districts piloted a new substance abuse assessment tool, use of the sweat patch to enable drug use detection for as long as two weeks (urine testing covers only the past few days of use except in the case of marijuana), and new technologies for randomizing the schedule of testing on release. None of these innovations has become standard procedure at any district, and all districts continue to operate essentially as they did before.

In summary, as district representatives and DOJ and AOUSC officials have attested, implementation caused no "big splash." Without sufficient clarity on programmatic focus at first and sometimes constrained by a lack of local consensus on pre-appearance testing, districts were not willing to take bold steps (e.g., to place more emphasis on treatment or develop new sanctioning options or procedures), especially as it was not certain which costs would be reimbursable. With no assurance of stable funding, districts were reluctant to hire new staff or commit to the major political and organizing work needed for anything new. Districts folded ODT resources and activities into "business as usual." Where change occurred, it tended to be minor and occurred slowly.

Implementation

Program model. As originally conceived and approved by the Judicial Conference in June 1996, ODT's operational concept or "program model" was to be the same in all districts. The initial drug test was to occur at the pre-bail stage, i.e., before the defendant's first court appearance. Thereafter, defendants on release were to undergo further drug testing.

At some districts, circumstances precluded drug testing before the defendant's first court appearance (those circumstances are described below). In September 1996, the DOJ and AOUSC determined that districts could choose to implement the program under either of two models. Model I followed the original concept, namely, initial testing at the pre-bail stage. In Model II, the initial test was to occur as soon as possible *after* the defendant's first court appearance, if he/she was being released, but before release into the community. Even though the test result would not be available at the defendant's first court appearance, it was still regarded as useful because it enabled pretrial staff to address a defendant's drug involvement "on the spot" and to decide on an appropriate schedule for testing/monitoring the defendant upon release.

Drug testing of defendants under pretrial supervision was routine before ODT. However, there was normally a lag of several days between the defendant's release and his/her first drug test. Thus, in both program models, the initial test—coming before or immediately after the defendant's first court appearance—was new.

Among the 24 districts participating in ODT, 18 adopted Model I at the outset. These districts were: Alabama-M, Arkansas-E, Arizona, District of Columbia, Georgia-N, Iowa-N, Illinois-N, Louisiana-E, Michigan-W, Mississippi-S, Nebraska, New

Hampshire, Ohio-N, Pennsylvania-E, Puerto Rico, Tennessee-E, Virginia-W, and Wisconsin-E.

The other six districts adopted the alternative, Model II. These districts were: Indiana-N, Missouri-W, North Carolina-M, New Jersey, New Mexico, and Utah.

Indiana-N, originally a Model II district, changed to Model I in fiscal 1999. Thus there are currently 19 Model I districts and five Model II districts. The switch from Model II to Model I in Indiana-N reflected the preference of the new Pretrial Services Chief in that district. We report findings for Indiana-N as a Model II district in fiscal 1998 and as a Model I district in fiscal 1999. However, the switch to Model I occurred in December 1998, i.e., three months into the fiscal year. Additional time, after December 1998, may have elapsed before the switch was implemented fully. Accordingly, when reporting findings for all Model I districts combined in fiscal 1999, we provide two figures—one that includes Indiana-N and another that does not. We take this step in the interest of accuracy, but it had no effect on overall conclusions we derive from the fiscal 1999 data.

Decisions regarding which model to adopt appear to have been governed by three factors. First, despite the constitutionality of pre-appearance drug testing (Rosen and Goldkamp 1989), private defense attorneys, public defenders, and/or judges in several districts viewed Model I as a potential violation of defendants' rights. In some cases, the concern was that judges might be less likely to grant release, or might set more restrictive release conditions, if the initial test indicated drug use. In other cases, the concern was that a positive test result, even if it did not adversely affect a defendant at the release stage, might trigger more frequent subsequent testing, thus raising the likelihood that further drug use

would be detected and that the judge, in view of the defendant's further use, would be more strict at the time of case disposition. A second factor in selection of Model I versus Model II was the viewpoint of judges and/or the pretrial staff. At several districts, the judge and/or pretrial staff strongly advocated universal drug testing and saw Model I as more in keeping with this policy. A third consideration was the proportion of summons or voluntary-surrender defendants in a district's overall caseload. Unlike arrestees, summons or voluntary-surrender defendants know the date of their first court appearance in advance and are informed by the pretrial staff and/or their own attorneys that they will be asked to provide a urine specimen either before or immediately after their court appearance. Under these circumstances, a negative test result is impossible to read. The defendant might in fact have no drug involvement but might instead have avoided drug use only in anticipation of being tested. In districts where the proportion of summons or voluntary-surrender defendants was high, there seemed to be no reason to push for Model I.

Defendant population. Figure 4.1 and 4.2 show the number of incoming ODT-eligible defendants in each district in fiscal 1998 and fiscal 1999. Model I districts appear in Figure 4.1; Model II districts, in Figure 4.2. Differences in the number of incoming defendants are not the result of any differences in eligibility criteria. They reflect actual variation in the size of the defendant population across districts.

The total number of ODT defendants in Model I districts was 8,227 in fiscal 1998, and the average per district was approximately 457. The defendant population ranged from a low of 126 in Arkansas-E to a maximum of 961 in Arizona. In fiscal 1999, the total number of ODT defendants in Model I districts was 8,996, and the average per district was approximately 473. The figures change only slightly—a total population of 8,809 and a per-

district average of 489—if Indiana-N is excluded. The defendant population ranged from a minimum of 118 in Arkansas-E to a maximum of 1,058 in Illinois-N.

The total number of ODT defendants in Model II districts was 2,032 in fiscal 1998, and the average per district was 338. North Carolina-M, with 139, had the smallest defendant population. New Jersey, with 899 had the largest. The ODT defendant population was 1,738 in fiscal 1999, and the average per district was 348. North Carolina-M, with 195, was again the district with the smallest population, and New Jersey, with 634, was again the largest.

Initial test. Before ODT, most districts sent urine specimens to an outside laboratory for analysis. Even with prompt turnaround, staff did not have objective information regarding a defendant's current drug use (e.g., type and number of drugs used) until days or weeks after his/her release and often had no opportunity to review this information with the defendant until several more days or weeks had elapsed. With ODT support, districts were able to purchase on-site test equipment. Thus they could obtain objective evidence of drug use much sooner—either before the defendant's court appearance (Model I) or immediately upon his/her release (Model II).

Timing is crucial in Model I districts. There are often no more than two hours between the defendant's arrest (or appearance in response to a summons) and his/her first court appearance. If urine test results are to be available at the defendant's release hearing, the initial test must occur, and the test result conveyed to the court, within that time window.

Overall, 67% of defendants at Model I districts had an initial test on record in fiscal 1998. Figure 4.3 shows the number of defendants with an initial test on record as a

percent of the defendant population in each Model I district. In Mississippi-S, over 90% of defendants had an initial test. In three additional districts, coverage was at least 80%. On the other hand, the percent of defendants with an initial test was under 60% in six districts in fiscal 1998. The lowest percentage was 39% in Georgia-N.

As in the previous fiscal year, 67% of defendants had an initial test on record in fiscal 1999. Figure 4.3 shows initial test rates per district. In Mississippi-S and Arkansas-E, about 88% of defendants had an initial tested on record in that fiscal year. Indiana-N was higher (91%), but Indiana-N began that year as one of the Model II districts, where initial tests are not time-constrained and test rates are accordingly higher. In six districts (seven if Indiana-N is counted), coverage was at least 80%. The percent of defendants with an initial test was under 60% in seven districts in fiscal 1999. The lowest percent was 48% in Louisiana-E.

Figure 4.4 shows for each Model I district the percent of defendants whose initial test was reported to the court at or before their initial court appearance. It is important to note that the denominator in these analyses is the number of defendants with an initial test on record, not the total defendant population. In other words, given completion of an initial test, for how many defendants was a test result reported to the court in a timely fashion? In eight districts, at least 80% of tests were reported on time in fiscal 1998. Alabama-M had the highest rate, at 96%. On the other hand, in four districts, the initial test was reported on time for fewer than 60% of defendants. Illinois-N, at 38%, had the lowest rate. In all Model I districts combined, the ODT data indicate that the test result was reported on time, i.e., at or before the first court appearance, for 71% of defendants with an initial test in fiscal 1998. Pretrial staff in Louisiana-E reported that the on-time rates indicated in the ODT database

for that district were misleadingly low in fiscal 1998 as well as fiscal 1999. After a review of district records, the Pretrial Services Chief in Louisiana-E supplied an on-time estimate of 85% in both fiscal years. If the higher percent for Louisiana-E is applied, the overall on-time rate for all Model I districts combined was 72%. Figure 4.4 shows unadjusted data for Louisiana-E and the adjusted finding of 72% for all districts overall.

In fiscal 1999, also reported in Figure 4.4, nine districts had an on-time reporting rate of 80% or higher. Puerto Rico was highest at 99%. In four districts, data indicate that the initial test was reported on time for fewer than 60% of defendants. However, we believe the data may be misleading for Arkansas-E, which showed only 1% of defendants with an on-time test report in fiscal 1999. The comparable rate for Arkansas-E in fiscal 1998 was 52%. In analyses of other quantitative data and interviews with pretrial staff in that district, we saw no evidence that program operations degraded in fiscal 1999, and we therefore view the 1% rate for that year as a data error. (We sought a more reliable estimate of the on-time reporting rate from pretrial staff in Arkansas-E but were unable to obtain one.) For a different reason, the on-time reporting rate may be misleading in Indiana-N as well. That district began fiscal 1999 as one of the Model II districts, where defendants were not tested until after their court appearance. Its on-time reporting rate, based on all defendants, may therefore be lower than the rate for defendants processed in Indiana-N under Model I. In all Model I districts combined, the test result was reported on time for 77% of defendants with an initial test on record in fiscal 1999. The figure increases slightly, to 78%, if Arkansas-E is not counted and if we use the higher on-time rate calculated by Louisiana-E instead of the lower rate shown in the AOUSC database. It increases slightly more, to 81%, if we exclude Indiana-N as well as Arkansas-E and use the higher on-time rate for Louisiana-E. As for

fiscal 1998, Figure 4.4 shows unadjusted district percents and the adjusted finding of 81% in all districts combined for fiscal 1999.

Success in implementing the pre-appearance (Model I) test protocol depends on two rates in combination. That is, how many defendants were tested before they appeared in court, and for how many defendants was the test result timely enough to enable the court to consider it in setting release conditions? In fiscal 1998, the initial test rate was 67% and the on-time reporting rate was 72%. Thus, the underlying logic of pre-appearance testing was met for 48% of defendants in Model I districts in fiscal 1998. If Model II districts are counted, the underlying logic of pre-appearance testing was met for 38% of ODT defendants in fiscal 1998. See Figure 4.5. In fiscal 1999, the initial test rate was again 67%, and the on-time reporting rate was between 77% and 81%. These figures mean that the logic of pre-appearance testing was realized for as many as 54% of Model I defendants, and 45% of all ODT defendants, in fiscal 1999. See Figure 4.5. (Findings did not change for either year when we omitted "supervision only" cases, i.e., defendants accepted onto the caseload for pretrial supervision after the time at which the initial test would have occurred. Also, apart from whether the initial test result was reported to the court on time, judges may find it useful to know if the defendant has no initial test result because he/she refused to submit a urine specimen. We were unable to analyze the data on this point because districts did not consistently enter reporting data for defendants who refused to test.)

There are three major reasons for between-district differences in testing rates in each fiscal year. First, test logistics were often difficult in Model I districts, where the lag between arrest and initial court appearance might, as indicated above, be no more than two hours. Second, some districts lacked private jail space in which to conduct pretrial

interviews and obtain urine specimens for all defendants.

The third reason for differences in test rates is defendant refusals, which require detailed explanation. Defendants or their legal counsel were sometimes concerned that a positive test result might lead adversely affect the case. In some districts, by explicit agreement, defense attorneys were afforded an opportunity to see defendants before pretrial staff were allowed to conduct an interview and to request the urine specimen. Some defense attorneys advised defendants to refuse the test. Also, defendants could refuse to be tested whether advised to do so by defense counsel or not. Refusal rates in each district appear in Figure 4.6. Over 30% of defendants refused the initial test in Georgia-N, Louisiana-E, and Michigan-W in fiscal 1998. These are three of the six districts where the initial test rate was under 60% in that year. At the other three (District of Columbia, Ohio-N, and Wisconsin-E), refusal rates were not high enough to explain the low initial test rates. In the ODT database, the overall refusal rate across Model I districts was 15.4% in fiscal 1998. However, Arizona reported a refusal rate of about 7% in fiscal 1998, or roughly half the rate indicated in the ODT database. If a refusal rate of 7% is applied to Arizona's defendant population in fiscal 1998, the overall refusal rate across all Model I districts was 14.6% instead of 15.4%. Thus, either figure for the district of Arizona leads to the same conclusion—a refusal rate of approximately 15% overall.

Fiscal 1999 refusal rates also appear in Figure 4.6. Georgia-N, Louisiana-E, and Michigan-W continued to show relatively high rates of refusal, although only in Louisiana-E was the rate still over 30%. These are three of the seven districts where the initial test rate was under 60% in fiscal 1999. Refusal rates were not high enough to account for the bulk of defendants with no initial test at the other four districts where

initial test rates were low (District of Columbia, Nebraska, Ohio-N, and Wisconsin-E). The refusal rate appeared to rise in Arizona in fiscal 1999, and this accounted for the great majority (77%) of defendants with no initial test in that district in that fiscal year. The overall refusal rate across Model I districts was 14% in fiscal 1999. Arizona did not supply an alternative estimate of refusals in fiscal 1999. If that district is excluded, the overall refusal rate in fiscal 1999 was 12%. Thus, regardless of whether refusals recorded for Arizona in the ODT database are taken to be reliable, the overall refusal rate was about the same in both fiscal 1998 (15%) and fiscal 1999 (12-14%). Because the initial test is voluntary, refusals are inevitable. But, according to information in the ODT database, they do not account for the bulk of defendants with no initial test on record in most districts.

Model II districts did not face the pre-appearance time constraint within which the initial test had to be conducted in Model I districts, and the issue of on-time reporting does not apply in Model II districts. That is why the above analyses of initial testing focused only on Model I districts. For the record, we note that 87% of defendants in Model II districts had an initial test on record in fiscal 1998. The minimum was 79% in New Jersey; the maximum, 99% in North Carolina-M. In fiscal 1999, 91% of defendants in Model II districts had an initial test on record. The minimum was 88% in New Mexico; the maximum, 100% in North Carolina-M.

Drugs detected on the initial test. The ODT test battery included marijuana, cocaine, opiates, amphetamine, and phencyclidine. In fiscal 1998, 29% of defendants who had an initial test were positive for one or more of these drugs in Model I districts. The figure was 19% in Model II districts and 27% for Model I and Model II districts

combined. (The denominator for this analysis is defendants with an initial test, not all defendants. Thus, these percents do not necessarily reflect drug use rates in each district's total defendant population.)

Figures 4.7 and 4.8 show, respectively, the distribution of percent positive for Model I and Model II districts in fiscal 1998. At four Model I districts (and no Model II districts), at least 40% of defendants tested positive. The District of Columbia, at 47%, was highest. The percent testing positive was under 20% in four Model I districts and three Model II districts. New Jersey, at 11%, had the lowest rate.

For what drugs were defendants testing positive? We sorted defendants who tested positive for marijuana only, cocaine only (powder or crack), opiates only, speed only (amphetamine or methamphetamine), and polydrug use (two or more of these drugs). Across all districts in fiscal 1998, 14% of defendants tested positive for marijuana only, 5% for cocaine only, 1% for opiates only, and 1% for speed only. About 6% tested positive for two or more of the above. See Figure 4.9 for all districts and Figures 4.10 and 4.11 for each district in fiscal 1998.

In fiscal 1999, 29% of Model I defendants and 21% of Model II defendants (27% overall) tested positive on the initial test. Figures 4.7 and 4.8 show the findings. At three Model I districts (and no Model II districts), at least 40% of defendants tested positive. As in fiscal 1998, the percent positive was highest (46%) in the District of Columbia. At three Model I districts and three Model II districts, fewer than 20% of defendants tested positive. North Carolina-M, at 15%, had the lowest rate.

Across all districts in fiscal 1999, 15% of defendants tested positive for marijuana only, 6% for cocaine only, 1% for opiates only, and 1% for speed only. About 7% tested

positive for two or more of the above. Figures 4.12 to 4.14 show the drugs for which defendants tested positive in all districts combined and each district separately.

The pattern of drug use detected on the initial test was quite similar in both fiscal years. Overall drug-positive rates and types of drugs used were virtually the same. Use of marijuana only was the prevailing pattern at all districts in both years. At 13 districts, marijuana-only defendants outnumbered all other drug-involved defendants combined. Model II districts were not among those with the highest rates, perhaps because defendants with serious drug involvement were less likely to be released and some were therefore not in the pool of defendants with an initial test at Model II districts. Regional variation in drug use patterns and prosecutorial priorities may also account for lower drug use rates at Model II districts.

Hidden users. DOJ sources indicated that identification of "hidden users" was a high priority for them and one key reason for their enthusiasm for ODT. How many defendants who tested positive on the initial test were not identifiable as drug-involved on the basis of other indications routinely recorded by pretrial staff before defendants first appeared in court? These indications include: current charge involving drugs, previous charge involving drugs, documented history of drug use, visible signs of recent use, and direct admission of use before being tested. The question is important because, without the initial test (Model I or Model II), hidden users might not be placed on a test condition and any drug use while they are on release would go undetected.

According to the AOUSC, districts were not systematically recording "other indications" (e.g., previous drug charges) in the ODT database until fiscal 1998 was already underway. The AOUSC sought to improve the completeness of fiscal 1998 ODT

database by importing "other indications" data from another source. However, data for the District of Columbia were not kept in that source; thus the actual percent of hidden users in the District of Columbia may be lower than shown in the ODT database for fiscal 1998. In our analyses of hidden users in fiscal 1998, we excluded the District of Columbia (we do report hidden user data for the District in figures, however).

In Models I and II districts combined (all except the District of Columbia) in fiscal 1998, 13% of defendants who screened positive on the initial test were hidden users, i.e., there was no other reason to know or suspect they were drug-involved. The figure was 11% in Model I districts and 20% in Model II districts. (Because of the longer lag between arrest and the initial test for defendants in Model II districts, the number of hidden users known to pretrial staff in those districts may be an underestimate of the actual number.) As show in Figures 4.15 and 4.16, hidden users were under 10% in 13 districts; in six districts, under 5%. On the other hand, in three districts, at least 20% of defendants who tested positive were not identifiable as drug users on the basis of other information in their records.

In fiscal 1999, the overall figure for hidden users was 23%, or 24% and 18% in Model I districts and Model II districts respectively. (Again, the rate found in Model II districts may be an underestimate.) As show in Figures 4.15 and 4.16, hidden users were under 10% in five districts. In eleven districts, at least 20% of defendants who tested positive were not identifiable as drug users on the basis of other information in their records. Ohio-N, at 47%, had the highest percentage of such defendants.

There was considerable variation at the district level across years, and the fiscal 1999 figure was much higher than the fiscal 1998 figure in several districts. Georgia-N,

for example, showed 6% in 1998 and 44% in 1999. Similar jumps were recorded in Indiana-N, Michigan-W, Mississippi-S, Ohio-N, Virginia-W, and Wisconsin-E (see Figure 4.15), as well as New Mexico (see Figure 4.16). The comparison access years may be distorted by incomplete data entry. If information indicating drug involvement actually was available to pretrial staff for some defendants but was not entered into the ODT database, then the actual percent of hidden users (i.e., defendants with a positive initial test and no other indication of drug involvement) is lower than the data suggest.

As described above, the AOUSC sought to address this problem in fiscal 1998 by importing "other indications" data from another source into the ODT database. Because this effort was labor-intensive and because data entry was reportedly more reliable in fiscal 1999, the AOUSC did not import "other indications" data into the 1999 ODT database. The apparent increase in hidden users in fiscal 1999, especially in the eight districts cited above, may be an artifact of incomplete "other indications" data for fiscal 1999. We therefore believe that the hidden user rate of 13% in fiscal 1998 may be a more accurate estimate of actual hidden users than the higher percent for fiscal 1999.

Defendants released. For all Model I districts combined, about 51% of ODT defendants were released in fiscal 1998. See Figure 4.17. Release rates ranged from 37% in the District of Columbia to 83% in Arkansas-E. The picture in fiscal 1999 looked very much the same. Across all districts, the release rate 1999 was 50% and ranged from 24% in the District of Columbia to 92% in Arkansas-E. (We do not report release rates in Model II districts because all ODT defendants in those districts are, by definition, released.)

Release conditions. Among released defendants whose initial drug test was positive, how many were required to submit to further drug testing a condition of release? "Test only" in the analyses below means that the defendant was released with a test condition but not a treatment condition. "Test and treatment" means the defendant was released with both conditions. A "test and treatment" condition does not necessarily mean actual placement in treatment. It means that pretrial staff have the discretion to mandate treatment if they later determine that treatment is indicated. "Test only" defendants might also be placed in treatment if the court later determines that treatment is indicated.

For all Model I districts combined, 42% of drug-positive defendants were released with a "test only" condition and 49% were released with a "test and treatment" condition in fiscal 1998. See Figure 4.18. None had a "test only" condition in Ohio-N, whereas 94% had a "test only" condition in Alabama-M. On the other hand, no drug-positive defendants had a "test and treatment" condition in Mississippi-S. The maximum "test and treatment" rate was 95% in Ohio-N.

For all Model II districts combined, 45% of defendants were released with a "test only" condition and 50% with a "test and treatment" condition in fiscal 1998. See Figure 4.19. A low of 9% had a "test only" condition in New Jersey, whereas 69% were released with a "test only" condition in New Mexico. Turning to the "test and treatment" condition, we found a low of 27% in Utah and a high of 80% in New Jersey.

In fiscal 1999, 48% of drug-positive defendants were released with a "test only" condition and 31% with a "test and treatment" condition across all Model I districts combined. See Figure 4.20. The lowest "test only" rate was 6% in New Hampshire; the

highest, 85% in Alabama-M. About 2% of defendants had a "test and treatment" condition in Mississippi-S, whereas 83% of defendants in Louisiana-E had a "test and treatment" condition.

For Model II districts combined, 40% of defendants were released with a "test only" condition and 50% with a "test and treatment" condition in fiscal 1999. See Figure 4.21. A low of 1% had a "test only" condition in New Jersey, whereas 66% were released with a "test only" condition in North Carolina-M. The "test and treatment" condition applied to a low of 24% in Utah and a high of 85% in New Jersey.

In many districts and in both fiscal years, conditions of release were very consistently either "test only" or "test and treatment." It is evident that local policy strongly favored one or the other. That is, the court consistently either did or did not allow pretrial staff to exercise its own discretion regarding whether and when defendants needed treatment. It is also evident that almost all defendants whose initial drug test was positive were required to submit to further testing after their release. Over 90% had a "test only" or "test and treatment" condition in Model I districts in each fiscal year. About 80% were released with one of these conditions in Model II districts in each year. Model I and Model II districts differ somewhat, probably because defendants in Model II districts did not complete their initial drug test until after the court appearance at which their release conditions were set and/or their actual conditions of release were not entered into the database.

Surveillance testing. For all districts (Models I and II) combined, 42% of defendants who were released with a test condition in fiscal 1998 had no surveillance tests on record (i.e., tests conducted after the initial test), whereas 30% had one to five

tests, and 28% had at least six. Figure 4.22 shows these data ("all cases") for fiscal 1998. Figures 4.23 and 4.24 show the number of surveillance tests for Model I districts and Model II districts respectively. New Mexico was the only district with no surveillance test on record for fewer than 20% of defendants. In five districts, there was no surveillance test on record for at least 60% of defendants. In Mississippi-S there was no such test on record for 94% of defendants. At the other end of the distribution, there were eight districts in which at least 40% of defendants had six or more surveillance tests on record. New Mexico, at 60%, had the highest proportion of defendants with six or more tests.

One problem in interpreting these data arises from the fact that some defendants "entered the database" late in the fiscal year. Hence their test records may be truncated; at the close of the fiscal year, they had not been under supervision very long. We were able to address this problem by analyzing surveillance tests for the subset of defendants under pretrial supervision for exactly six months in the fiscal year. This strategy shows how many surveillance tests are on record for defendants who "entered the database" in the first half of the fiscal year and for whom pretrial staff had an extended opportunity to conduct testing. Also, by restricting coverage to a six-month period even if they were under supervision for more time than that, we controlled for variation in the length of supervision period beyond six months. Across all districts combined, a total of 1,497 defendants were under pretrial supervision for six months of fiscal 1998. 36% had no surveillance test on record, whereas 27% had one to five tests and 37% had six or more. See Figure 4.22. Compared to figures for all defendants, these figures show somewhat fewer defendants with no surveillance testing and more defendants with a substantial number of tests (six or more). Nevertheless,

over one in every three defendants released with a test condition and under pretrial supervision for six months had no surveillance test on record. (We have not reported these data for each district because the number of defendants per district is generally low and findings at the district level were therefore not reliable.)

Another problem with fiscal 1998 surveillance test records is missing data. The AOUSC has indicated that fiscal 1998 surveillance test data may be seriously flawed because of incomplete data entry. We confirmed this during district site visits, where we reviewed the data with pretrial staff. Several districts reported having tested defendants on release much more extensively than is indicated in the fiscal 1998 data. We can address this problem partially by relying more on fiscal 1999 data for a picture of the actual degree of surveillance testing.

A third problem is that a few defendants with a release decision *on record* may not actually have been released. Those defendants would not have been surveillance tested. Thus, the percent of defendants actually released and having no surveillance tests may be slightly lower than the percent reported here.

Turning to fiscal 1999, we see a very different surveillance test picture. Across all districts, only 7% of defendants released with a test condition had no surveillance test on record, 52% had one to five, and 41% had at least six. See "all cases" for fiscal 1999 in Figure 4.25. Figures 4.26 and 4.27 show the number of surveillance tests for Model I districts and Model II districts respectively. The District of Columbia and Iowa-N were the only districts with no surveillance test on record for more than 20% of defendants. At the other end of the distribution, there were 12 districts in which at least 40% of defendants had six or more surveillance tests on record. Nebraska, at 65%, had the highest proportion of

defendants with six or more tests. Arizona (60%), Ohio-N (56%), and New Mexico (59%) were close behind.

Again we analyzed the surveillance test data for the subset of defendants under pretrial supervision for exactly six months. See Figure 4.25. Across all districts combined, a total of 1,416 defendants were under pretrial supervision for six months of fiscal 1999. Only 3% had no surveillance test on record, whereas 45% had one to five tests and 52% had six or more. Compared to figures for all defendants, these figures show an even lower percent of defendants with no surveillance testing and more defendants with a substantial number of tests (six or more).

To highlight change across the fiscal years in the percent of defendants with no surveillance test on record, Figures 4.28 and 4.29 show the data for both years at once. In all districts, the no-test percent dropped. In 15 districts, the decrease was fivefold or better.

We had no access to any information by which to distinguish real change, if any, in the distribution of surveillance tests across years from the artifactual change arising from improved data entry. It does seem reasonable to conclude that data on surveillance testing are probably more accurate for fiscal 1999 than for fiscal 1998 and that data for defendants under supervision for a six-month period are more representative than the data for the overall defendant population.

Number of defendants tested. To obtain a pre-ODT baseline from which to calculate change in the number of defendants tested, the AOUSC in 1997 asked pretrial staff in participating districts to report (using actual records or an estimate) the number of defendants tested in fiscal 1996, i.e., the year before ODT implementation began (February 8, 2000 memo, Enclosure 2A, from Ronald Dyson). Most districts were able

to provide their figures. For those unable to do so, the AOUSC used as a pre-ODT baseline the number released with a test condition in fiscal 1996, as shown in Table H-8 of *Judicial Business of the United States Courts*. (The AOUSC had no figures for the District of Columbia.) Overall, a total of 3,979 defendants were reportedly tested in fiscal 1996. By fiscal 1999, the total had increased to 10,142. This was a 155% increase in the number of defendants tested. After an adjustment for change in the number of new defendants on the caseload, the increase was still sizable (149%).

The number released with a test condition, taken from Table H-8, can include defendants not actually tested and excludes defendants whose surveillance testing carried over from the prior fiscal year. Moreover, the number of defendants tested in fiscal 1999 included those tested while on release, as in fiscal 1996, as well as those who had an initial test before or at their release but no further testing on release. Few defendants were tested before or at the time of their release in fiscal 1996. For these reasons, the comparison of the fiscal 1996 and fiscal 1999 is not straightforward, and the quantitative result may be inaccurate. However, it seems reasonable to conclude that the number of defendants tested while on release did notably increase and that the increase arose at least in part from ODT participation.

Conclusion

The ODT defendant population exceeded 10,000 in fiscal 1998 and again in fiscal 1999. The average number of ODT defendants per district was about 450 in Model I districts and 350 in Model II districts. Across the two fiscal years, the percent of defendants with an initial test reported on time was 48-54% in Model I districts. At

Model II districts, no defendants were tested before their release, and there were no test results to report to the court. If Model I and Model II districts are combined, 38-45% of the overall defendant population in ODT had an initial test reported to the court in time.

Because "hidden users" were not identifiable on the basis of any other information available, the initial test was, for them, the sole indicator of a possible need to require drug testing as a condition of pretrial release. While fiscal 1999 data appear to be more reliable for most findings, we believe the fiscal 1998 finding on hidden users—13% of all drug-positive defendants, or 4% of all defendants tested—is the more reliable indication of hidden user rates in the ODT districts.

Surveillance testing may have been more substantial in fiscal 1998 than these data indicate. Moreover, the cross-year comparison suggests considerably more surveillance testing in fiscal 1999. Because data entry was more reliable in fiscal 1999, fiscal 1998 data and the cross-year comparison are not conclusive. But under the assumptions that surveillance test data are more accurate in fiscal 1999 and that data for defendants under surveillance for a six-month period are more representative of the extent of pretrial supervision, it appears that about half of all defendants were tested at least once per month on average, and very few were not tested at least once, in districts participating in ODT.

Chapter 5: Impact on Sanctioning

In the years prior to Operation Drug TEST (ODT), a defendant might have submitted two or three positive urine specimens before the test result for any of them was known, i.e., reported by testing lab to which specimens were sent. During ODT, testing has become more frequent (see Chapter 4), and test results can be known within the hour. Districts may therefore be better able to intervene before defendants relapse to steady drug use, have time to accumulate enough positive urine specimens to trigger revocation, or get involved in additional illegal conduct related to drug use and constituting further justification to revoke bail. If so, bail revocation rates may decline. An alternative hypothesis is that revocation rates might increase if more frequent testing detects drug use at levels that courts will not tolerate.

In addition, there could be changes in pretrial sanctioning protocols, i.e., the recommended or mandated response to the first positive urine, the second, and so on, or in sanctioning decisions by pretrial staff. Possible sanctions recorded in the ODT database are: increased frequency of drug testing, home confinement, temporary restraint, and bail revocation.

Our analysis of sanctioning occurred in three steps. First, we looked at the degree to which each possible sanction was applied in response to drug use in all ODT districts as a set. We did not look at each district separately because the relevant defendant populations were usually too small to show reliable patterns. Second, we repeated the examination of sanctioning patterns in the subset of seven districts where overall impact was, in our judgment, most likely to be detectable. The criteria we used to make this judgment were described in Chapter 3. Finally, we examined sanctioning patterns in

districts where pretrial staff indicated that ODT affected their sanctioning protocols or decisions. The purpose of analyses in these subsets was to see if impacts emerged more clearly when we focused on districts where they were most likely—either in our judgment or in the judgment of pretrial staff.

The main data sources for our analysis of sanctioning are interviews with pretrial staff in each district and the ODT database for fiscal 1998 and fiscal 1999. Analysis of change across the two fiscal years provided a comparison of early to late implementation. A secondary data source is the H Tables in the annual *Judicial Business of the United States Courts* for fiscal 1992 to 1999. Relevant H Table data were limited but have the advantage of covering several pre-ODT years. This will give us a comparison of a pre-ODT period (i.e., before 1997) to early implementation (1998) and late implementation (1999).

As explained in Chapter 3, the ODT database was incomplete in fiscal 1998 and fiscal 1999, especially fiscal 1998. If there appear to be differences in sanctioning patterns across years, they may reflect actual change in sanctioning, better record keeping, or a mix of both. The sanctions data are, in any case, probably more accurate for fiscal 1999.

All analyses are based on the subset of defendants who were released with a test condition (test only or testing plus treatment) and who tested positive for illegal drug use at least once while on release. In some analyses we looked at sanctioning patterns in relation to the number of positive tests for each defendant. For this purpose we counted defendants who tested positive once, twice, three times, four times, five times, and six or more times while on release in each fiscal year. If sanctioning was "tight," the percent of

defendants who got sanctioned and/or the severity of sanctions applied should have increased as the number of positive tests increased. However, if sanctioning patterns differed widely across districts, it might be difficult to see a "tight" link between sanctioning and the number of positive tests. We therefore conducted additional analyses to determine how many defendants whose surveillance tests indicated drug use got sanctioned, regardless of which positive test the sanction was in response to. These analyses eliminate the interpretive problem with respect to "tight" sanctioning..

Two positive tests in close proximity might not indicate two separate instances of drug use; they might be picking up the same instance twice. This probably represents a very minor source of error in our analyses of sanctioning in relation to the number of positive tests. It is irrelevant to our analyses of sanctioning for any positive test and cannot have led to any substantial bias in our conclusions.

All Districts

In all districts (Model I and II) combined, 291 defendants tested positive once while on release in fiscal 1998; 145 tested positive twice; 77, three times; 45, four times; 50, five times, and 98, six times or more. See Table 5.1.

As shown in Figure 5.1, the percent of defendants sanctioned increased in fiscal 1998 as the number of positive tests rose from one to four. 6.5% of defendants with one positive test got sanctioned. 6.9% with two positive tests got sanctioned in response to the second positive test. 11.7% of defendants with three positive tests got sanctioned in response to the third positive test. 13.3% of defendants with four positive tests got sanctioned in response to the fourth. The sanctions rate declined thereafter slightly but

remained higher for five or more positive tests than for one or two. 10% of defendants with five positive tests got sanctioned for the fifth positive, and 10.2% with six or more positive tests got sanctioned for their last positive test.

Turning to sanction severity, we see evidence that use of bail revocation was related to the number of positives in fiscal 1998. See Table 5.1. The percent of defendants whose bail was revoked increased from 4.5% of defendants with one positive test to 11.1% of those with four positive tests. The revocation rate declined slightly thereafter. None of the other three sanctioning options—increased testing, home confinement, or temporary restraint—showed an increasing pattern.

Our other analyses of sanctioning shows how many defendants whose surveillance tests indicated any drug use were sanctioned, regardless of which positive test the sanction was in response to. As shown in Figure 5.2, revocation was the sanction most often applied in fiscal 1998. The other sanctions were used rarely. Overall, 12% of defendants who tested positive one or more times while on release were sanctioned in one way or another, on one test or another, in fiscal 1998. See "all districts" in Figure 5.3. (Because some defendants were sanctioned more than once, findings in Figure 5.2 and 5.3 do not match.)

In summary, with all 24 districts pooled, tolerance for continued drug use on release topped out at four positive tests, and the response, if any, was usually bail revocation. On the other hand, most defendants were not sanctioned in fiscal 1998, regardless of how many times they tested positive.

In all districts (Model I and II) combined, 156 defendants tested positive once while on release in fiscal 1999; 70 tested positive twice; 35, three times; 30, four times; 27, five times, and 46, six times or more. See Table 5.2.

Figure 5.1 shows sanctioning patterns in fiscal 1999. 10.9% of defendants with one positive test were sanctioned. 15.7% with two positive tests were sanctioned in response to the second positive test. 5.7% of defendants with three positive tests were sanctioned in response to the third positive test. 6.7% of defendants with four positive tests were sanctioned in response to the fourth. 18.5% of defendants with five positive tests were sanctioned for the fifth positive. 10.9% with six or more positive tests were sanctioned for their last positive test.

Turning to sanction severity, we found no evidence that bail revocation was linked to the number of positive drug tests in fiscal 1999. See Table 5.2. The percent of defendants whose bail was revoked was highest, at 12.9%, for defendants with two positive tests. For defendants who tested positive either once or at least four times, the percent detained ranged narrowly from 7% to 9%. None of the other three sanctioning options—increased testing, home confinement, or temporary restraint—was linked to number of positive tests.

A second way to look at sanctioning is to see how many defendants whose surveillance tests indicated drug use got sanctioned, regardless of which positive test the sanction was in response to. As shown in Figure 5.2, bail revocation and increased testing were the sanctions most often applied in fiscal 1999. The other two sanctions were used rarely. Overall, 21% of defendants who tested positive one or more times while on release got sanctioned in one way or another, on one test or another, in fiscal

1999. See "all districts" in Figure 5.3. (As was true for fiscal 1998, findings in Figure 5.2 and 5.3 do not match because some defendants were sanctioned more than once.)

A cross-year comparison of the available data indicates, first, that the percent of sanctioned defendants may have increased from fiscal 1998 to fiscal 1999. However, in each fiscal year, most defendants did not have a sanction on record, no matter how many times drug use was detected. Second, the probability of getting sanctioned and the severity of sanction were not consistently linked to the number of positive tests. In fiscal 1998, the probability of sanction and the probability of bail revocation increased in relation to the number of positive tests on record, but neither pattern was apparent in fiscal 1999. Third, when districts did apply a sanction, they relied mainly on detention in fiscal 1998 but became equally reliant on either detention or increased testing in fiscal 1999.

If ODT helped districts detect drug use, then drug violation and/or bail revocation rates might have increased from the pre-ODT years to ODT years. To look at these possibilities, we used the H Tables published annually in *Judicial Business of the United States Courts* for 1992 through 1999.

As shown in Figure 5.4, drug violations as a percent of total violations steadily increased in pre-ODT years from 39% in 1992 to 54.9% in 1996. In 1997, the first ODT year, drug violations were 55.6%, higher than in any previous year but in keeping with the long-term trend. For 1998 and 1999, drug violation rates were lower than in previous years. Moreover, there is little difference between the earlier year of ODT implementation (1998) and the later one (1999).

As shown in Figure 5.5, drug violations as a percent of defendants released steadily increased in pre-ODT years from 9.5% in 1992 to 20.2% in 1996. In 1997, the first ODT year, drug violations were 24.9%. This figure was higher than in previous years, but there was no discontinuity with the pre-existing trend. Moreover, for 1998 and 1999, data indicated much lower drug violation rates than in previous years and no change from 1998 to 1999.

As shown in Figure 5.6, bail revocation rates were quite low, between 3% and 6%, in all pre-ODT years. They remained low in the two ODT years (5 to 6%) and did not change from 1998 to 1999.

These trends may be real or an artifact of H Table reporting formats, which differed across years. Moreover, the comparisons are crude, especially with regard to bail revocations (H Table data do not indicate whether the revocation was due to drug use). Thus we do not read the H Table data as negative evidence, i.e., as a direct indication that ODT had no impact on sanctioning. We believe that the appropriate conclusion is that H Table data simply provide no positive evidence in support of any ODT impact on sanctioning. There was no sign of an increase in drug violations or a change in bail revocations when pre-ODT years were compared to ODT years and no sign of an ODT impact when the early implementation year was compared to the late implementation year.

Overall Impact Districts

Impacts on sanctioning might emerge if we focus on the seven districts where we judged overall impact to be most likely. The number of defendants with one or more

positive tests on release was too low in these seven districts to support reliable per-district estimates of the percent of defendants sanctioned in relation to the number of positive tests. We therefore report the overall percent of defendants who tested positive at least once and got any sanction for any positive test, or whose bail was revoked after any positive test, in the seven impact districts combined.

As shown in Figure 5.3, the sanctioning figures were 11.3% in fiscal 1998 and 21.4% in fiscal 1999 for these seven districts. Both figures are essentially the same as those for all 24 districts overall (12.2% and 20.9% respectively). As shown in Figure 5.7, the revocation rates were 10.8% in fiscal 1998 and 17.9% in fiscal 1999 in these seven districts. These rates are higher than rates for all 24 districts combined (8.5% and 12.6% respectively), more so in 1999 than in 1998.

Sanctions Impact Districts

Pretrial staff at five districts reported possible changes in their sanctioning protocol or decision-making (e.g., stricter or more standardized responses to drug use) because of participation in ODT. These districts were: Georgia-N, Nebraska, New Hampshire, Virginia-W, and North Carolina-M. One of the 24 districts, New Mexico, reported a possible effect on use of detention in response to drug use. Again the number of defendants with one or more positive tests on release was too low in these districts to support reliable per-district estimates of sanctions in relation to the number of positive tests. We therefore report the percent of defendants who tested positive at least once and got any sanction for any positive test in the five districts combined. We also report the percent of defendants who tested positive at least once and whose bail was revoked in both the five districts

reporting a possible impact on sanctioning (potentially including bail revocation) and the one district, New Mexico, specifically reporting a possible impact on bail revocation.

As shown in Figure 5.3, 19.1% of drug-positive dependants in fiscal 1998 and 11.6% in fiscal 1999 got sanctioned. The 1998 figure is higher than for all districts combined, but the 1999 figure is lower.

As shown in Figure 5.7, revocation rates were 18.0% in fiscal 1998 and 11.6% in fiscal 1999 in the five districts. The 1998 rate is higher than for all 24 districts combined (8.5%) but not the 1999 rate (12.6% for all 24 districts).

As shown in Figure 5.7, bail was revoked for 16.7% of New Mexico defendants with at least one positive test in fiscal 1998. The fiscal 1999 figure was 8.8%. The 1998 figure is higher for New Mexico than for all districts combined (8.5%) but not the 1999 figure (12.6% in all districts combined). Moreover, the findings for New Mexico are based on small numbers and may be unreliable as evidence of an overall pattern. The number of defendants who tested positive at least once while on release was only 42 in fiscal 1998 and 80 in fiscal 1999 in New Mexico.

Conclusion

As noted, the ODT database was incomplete in both fiscal years, but its quality improved in fiscal 1999. Thus the apparent change in sanctions from fiscal 1998 to fiscal 1999 may reflect actual change in sanctioning, better record keeping, or a mix of both. We believe the change is probably due to record keeping. Only five districts reported a possible change in their overall sanctioning decisions in connection with ODT, and only one district reported a possible change in bail revocation specifically. Moreover, when

we compared sanctioning patterns in various subsets of likely-impact districts to the sanctioning patterns totals for all 24 districts, we saw no consistent evidence indicating greater use of sanctioning in the likely-impact districts. The H Tables showed no evidence of an ODT impact on sanctioning when pre-ODT years were compared to ODT years or when the earlier ODT year was compared to the later one. Most importantly, rates at which defendants got sanctioned, no matter how often they tested positive, were low. Only 12% of defendants had a sanction on record for drug use in fiscal 1998; in fiscal 1999 it was 21%. Findings for fiscal 1999 are probably a more accurate representation of sanctioning in ODT than the findings for fiscal 1998.

Chapter 6: Impact on Treatment

Apart from sanctions, the other category of response to drug use by defendants on release is drug abuse treatment: initial placement in a treatment program and, if drug use persists, transfer from less intensive to more intensive treatment. ODT may have improved districts' access to treatment resources—if ODT added to, rather than supplanted, non-ODT treatment resources. This in turn may have enabled districts to spend their overall treatment dollars throughout the fiscal year without being so concerned about a shortfall before year's end.

Like our analysis of sanctioning, our analysis of treatment as a response to continued drug use occurred in three steps. First, we looked at the degree to which treatment was applied in response to continued drug use in all ODT districts as a set. We did not look at each district separately because the relevant defendant populations were too small to show reliable patterns. Second, we repeated the examination of treatment in the subset of seven districts where overall impact was, in our judgment, most likely to be detectable. The criteria we used to make this judgment were described in Chapter 3. Finally, we examined treatment patterns in districts where pretrial staff indicated that ODT enabled them to use treatment more. The purpose of analyses in these subsets was to see if impacts emerged more clearly when we focused on districts where they were most likely—either in our judgment or in the judgment of pretrial staff.

The main data sources are interviews with pretrial staff in each district and the ODT database for fiscal 1998 and fiscal 1999. Analysis of change across the two fiscal years provided a comparison of early to late implementation. An additional data source

is the AOUSC's reimbursable expenses data showing dollars paid to each district in fiscal 1997, 1998, and 1999 as reimbursement for treatment/supervision costs.

As noted in Chapter 3, ODT data were incomplete in both fiscal years, especially 1998. If there are treatment differences between 1998 and 1999, these may reflect actual change in use of treatment, better record keeping, or a mix of both. The treatment expenditures data provide an alternative window on the emphasis placed in treatment in fiscal 1998 and fiscal 1999 as well as 1997.

All analyses are based on the subset of defendants who were released with a test condition (test only or testing plus treatment) and who tested positive for illegal drug use at least once while on release. In some analyses we looked at treatment in relation to the number of positive tests. For this purpose we counted defendants who tested positive once, twice, three times, four times, five times, and six or more times while on release in each fiscal year. We expected to see an increase in the percent of defendants who were sent to treatment or bumped to more intensive treatment as the number of positive tests on their records increased. However, as noted in Chapter 5 on sanctioning, it might be difficult to see any overall pattern of treatment in relation to the number of positive drug tests if districts varied widely in the promptness with which they sent defendants to treatment. We therefore ran additional analyses to determine how many defendants whose surveillance tests indicated any drug use were sent to treatment, regardless of which positive test the treatment placement was a response to. These analyses eliminate the interpretive problem inherent in examining treatment in relation to the number of positive drug tests for all districts combined.

Two positive tests in close proximity might not indicate two separate instances of drug use; they might be picking up the same instance twice. This probably represents a very minor source of error in our analyses of treatment in relation to the number of positive tests. It is irrelevant to our analyses of treatment on any positive test and cannot have led to any substantial bias in our conclusions.

All Districts

In all districts (Model I and II) combined, 291 defendants tested positive once while on release in fiscal 1998; 145 tested positive twice; 77, three times; 45, four times; 50, five times, and 98, six times or more. (These figures were reported in Table 5.1.)

As shown in Figure 6.1, the percent of defendants sent to treatment or transferred to more intensive treatment in fiscal 1998 was unrelated to the number of positive tests. 3.5% of defendants with one positive test got one or the other response. 4.1% with two positive tests were placed in treatment (none got transferred) in response to the second positive test. 6.5% of defendants with three positive tests were treated in response to the third positive test. 2.2% of defendants with four positive tests were treated in response to the fourth. 6.0% of defendants with five positive tests were treated on the fifth positive, and 4.3% with six or more positive tests were treated on their last positive test.

How many defendants whose surveillance tests indicated ongoing drug use were treated, regardless of which positive test was associated with the treatment placement? As shown in Figure 6.2, 9.4% of defendants who tested positive one or more times while on release were sent to treatment (6.7% got placed, 2.7% got transferred) in fiscal 1998.

In fiscal 1999, with all districts (Model I and II) combined, 156 defendants tested positive once while on release; 70 tested positive twice; 35, three times; 30, four times; 27, five times, and 46, six times or more. See Table 5.2.

As shown in Figure 6.3, the percent of defendants sent to treatment or transferred to more intensive treatment in fiscal 1999 was unrelated to the number of positive tests. 5.1% of defendants with one positive test got one or the other response. 4.3% with two positive tests were sent to treatment in response to the second positive test. 5.8% of defendants with three positive tests were treated in response to the third positive test. 6.7% of defendants with four positive tests were treated in response to the fourth. 14.8% of defendants with five positive tests got treated on the fifth positive, and 2.2% with six or more positive tests were treated on their last positive test.

A second way to look at treatment is to see how many defendants whose surveillance tests indicated any drug use were treated, regardless of which positive test was associated with the treatment placement. As shown in Figure 6.2, 22.6% of defendants who tested positive one or more times while on release were sent to treatment (13.5% got placed, 9.1% got transferred) in fiscal 1999.

The ODT data for each fiscal year suggest that districts seldom used treatment and that treatment placements were not more likely among defendants with a greater number of positive tests. In fiscal 1998, the treatment response was most likely at the third and fifth positive tests (6.5% in each case). In fiscal 1999, the treatment response "spiked" (14.8%) at five positive tests. However, the percent of defendants sent to treatment in relation to each number of positive tests was generally (though not always) higher in fiscal 1999 than in fiscal 1998. Overall, the percent of defendants for whom

treatment as a response to one or more positive tests was on record was over twice as high in fiscal 1999 as in fiscal 1998.

Overall Impact Districts

Impact on treatment might be more apparent if we focus on districts where impacts were judged more likely. The number of defendants with one or more positive tests on release was too low in these districts to support reliable per-district estimates of the percent of defendants sent to treatment in relation to the number of positive tests. We therefore report the percent of defendants who tested positive at least once and got treatment added or increased in the seven impact districts combined. As shown in Figure 6.4, this percent was 7.9% in fiscal 1998 and 14.3% in fiscal 1999 for these seven districts. Both figures are lower than for all districts overall (9.4% and 22.6% respectively).

Treatment Impact Districts

Pretrial staff at 15 districts reported possible changes in their treatment rates because of participation in ODT. These districts were: Arkansas-E, Arizona, District of Columbia, Georgia-N, Iowa-N, Louisiana-E, Michigan-W, Nebraska, New Hampshire, Ohio-N, Pennsylvania-E, Puerto Rico, Tennessee-E, Virginia-W, and North Carolina-M. Again the number of defendants with one or more positive tests on release is too low in these districts to support reliable estimates of treatment in relation to the number of positive tests. We report the percent of defendants who tested positive at least once and got treatment after any positive test in the 16 districts combined.

As shown in Figure 6.4, these figures were 8.3% in fiscal 1998 and 24.1% in fiscal

1999. Both figures are about the same as those for all 24 districts (9.4% and 22.6% respectively).

Treatment/Supervision Reimbursement

While there was some initial uncertainty about whether and how ODT funds could be used to pay for drug abuse treatment, as this uncertainty abated the proportion of ODT funds spent on treatment increased. Figure 6.5 shows fiscal year reimbursements for treatment/supervision, which included drug abuse treatment, mental health treatment, and electronic monitoring. (The bulk of spending was probably on drug abuse treatment, but we were not able to determine how much got spent specifically on drug abuse treatment.) The percent of total reimbursements for treatment/supervision rose from 45.1% in fiscal 1997 to 59.9% in fiscal 1998 to 71.3% in fiscal 1999.

Conclusion

The reimbursement figures suggest that districts increased their use of treatment from fiscal years 1997 to 1999. Similarly, the ODT data on treatment placements for fiscal years 1998 and 1999 showed a doubling in the use of treatment. The data entry problems described above make it impossible to be certain about the cross-year comparison of treatment placements. We believe it reflects real change, but we cannot be sure of the degree of change. First, data entry improved in fiscal 1999. Thus the apparent change from fiscal 1998 to fiscal 1999 may overestimate actual change. Second, when we looked at districts where an impact on treatment placements was regarded as most likely, we did not see treatment placement rates higher than those in all

24 districts combined. Third, pretrial staff in the districts and AOUSC and DOJ officials have described implementation as incremental. Districts already placing more defendants in treatment before ODT raised their treatment placements with ODT's additional funds. Districts placing relatively few defendants in treatment before ODT may have placed more in treatment because of ODT but not many more.

Chapter 7: Conclusions and Recommendations

Objectives of Operation Drug TEST (ODT) are: universal Testing to identify drug-involved defendants before their first court appearance; Effective Sanctions when defendants on release are found to be using drugs; and referral of drug-using defendants to Treatment as needed. ODT is funded by the U.S. Department of Justice (DOJ) and directed by the Administrative Office of the U.S. Courts (AOUSC).

Testing

As in previous pretrial drug testing programs, implementation was problematic in ODT. Regarding the first objective—to test all defendants for drug use before their first court appearance—ODT fell short. In an alternative testing strategy approved by the AOUSC and DOJ, some ODT districts tested defendants as soon as possible after, but not before, their first court appearance. In districts that did conduct pre-appearance testing, a urine specimen was collected, and the result reported to the court in time, for only about half of the defendant population (48% in fiscal 1998 and 54% in fiscal 1999). Reasons for no pre-appearance test include: defendant refused, defendant agreed to the test but stalled, and pretrial staff had no opportunity to test. If ODT districts that conducted no pre-appearance testing are combined with the others, only about two in every five ODT defendants had an initial test reported to the court in time (38% in fiscal 1998 and 45% in fiscal 1999). Other pretrial drug testing programs have experienced the same twofold implementation problem: many defendants do not get the initial test; and, for those who do, results are often not available to the court in time (Visher, 1992).

The test battery included marijuana, cocaine, opiates, amphetamine, and phencyclidine. On the initial test, 27% of defendants were positive for one or more of these drugs in fiscal 1998. The figure again was 27% in fiscal 1999. Marijuana was the drug most commonly detected.

Roughly 13% of defendants testing positive in the initial test were "hidden users." Thus, about 4% of all defendants who had an initial drug test on record were hidden users. Because hidden users were not identifiable on the basis of any other information available, the initial test was, for them, the sole indicator of a possible need to require drug testing as a condition of pretrial release. Without the initial test, these defendants might not have been placed on a test condition and monitored for possible drug use while on release.

In fiscal 1998, 42% of defendants released with a test condition had no surveillance test on record, whereas 30% had one to five tests, and 28% had at least six. In fiscal 1999, only 7% had no surveillance test on record, 52% had one to five, and 41% had at least six. Surveillance testing may have been more substantial in fiscal 1998 than these data indicate. The cross-year comparison suggests considerably more surveillance testing in fiscal 1999. But because data entry was more reliable in fiscal 1999, fiscal 1998 data and the cross-year comparison are not conclusive. Under the assumptions that surveillance test data were more accurate in fiscal 1999 and that data for defendants under surveillance for a six-month period were more representative of the extent of pretrial supervision, it appears that about half of all defendants were tested at least once per month on average, and very few were not tested at least once, in districts participating in ODT.

Effective Sanctions

We were unable to arrive at a definitive conclusion regarding ODT's second objective—to support application of effective sanctions when defendants on release were found to be using drugs. However, we do not believe ODT had any substantial impact on sanctioning. In fiscal 1998, 12% of defendants who tested positive at least once while on release had a sanction on record (were required to submit urine specimens more frequently, were placed on home confinement or temporary restraint, or were detained upon revocation of bail). In fiscal 1999, 21% had a sanction on record. These figures suggest that districts may have been more likely to impose sanctions for drug use in fiscal 1999 than in fiscal 1998. However, only five districts reported a possible change in their overall sanctioning decisions in connection with ODT, and only one district reported a possible change in bail revocation specifically. Moreover, when we compared sanctioning patterns in various subsets of likely-impact districts to the sanctioning patterns for all 24 districts, we saw no consistent evidence indicating greater use of sanctioning in the likely-impact districts. The H Tables showed no evidence of an ODT impact on sanctioning when pre-ODT years were compared to ODT years or when the earlier ODT year was compared to the later one. Most importantly, rates at which defendants got sanctioned, no matter how often they tested positive, were low. In any case, while differences in data quality probably account for the cross-year change in percent of defendants sanctioned, the fiscal 1999 data are more complete and probably offer the most accurate picture of sanctioning patterns in ODT.

How can we account for the lack of any clear impact on sanctioning? First, ODT was touted to districts as a program that did *not* require any major change in pretrial

operations. Second, multiyear funding for the program was not assured. Many districts believed it would be unwise to invest time and political capital in launching new initiatives or building new capabilities that might not be sustainable.

Third, pretrial supervision differs from probation and parole in that supervisees are defendants, not convicted offenders. The mission of pretrial services is to assess risk and, under the least restrictive conditions, to monitor defendants on release in order to prevent misconduct and ensure their appearance in court. Moreover, the period of pretrial supervision is typically on the order of six months, not one or two years. It may therefore be unrealistic to expect to see a "tight" sanctioning pattern, i.e., a prompt and steady progression in the likelihood and severity of sanctioning in response to drug use by defendants under pretrial supervision.

Treatment

ODT's third objective was to support placement of drug-using defendants in treatment. In fiscal 1998, 9.4% of defendants who tested positive at least once on release were placed in treatment or, if already in treatment, transferred to a more intensive modality. In fiscal 1999, 22.6% were placed/transferred. Similarly, treatment reimbursement data showed that districts spent more on treatment in fiscal 1999 than in fiscal 1998. The record keeping problems described above pertain to treatment placements as well. Thus it is impossible to quantify the increase across years. But we conclude that, while districts did not use the treatment option very often, they were more likely to use it in fiscal 1999.

There may be an inherent tension between treatment as a rehabilitation strategy and the "least restrictive conditions" aspect of pretrial's mission. Rehabilitation typically requires lengthy treatment—at least three months and perhaps a year or more (Anglin and Hser, 1990). Many defendants will not be under pretrial supervision long enough to complete a full course of treatment or even to remain in treatment for a minimally effective period (Belenko et al,. 1992). Moreover, mandating defendants to treatment is arguably beyond pretrial's mission if "least restrictive" is construed narrowly—except perhaps for defendants clearly at high risk of committing additional crimes because of severe or addictive drug use. On the other hand, if pretrial agencies view treatment not primarily as a rehabilitation strategy but as a means to prevent misconduct and to ensure the defendant's appearance in court, there may be nothing uniquely worthwhile in treatment. Other methods such as home confinement and detention are available.

Database Quality

The incompleteness of the ODT database is, in one sense, a substantive finding as well as a procedural problem for evaluators. ODT supported the hiring of data entry clerks in order to ensure that data recorded by districts and submitted to AOUSC would be high-quality. But data entry formats and protocols did not stabilize until well into fiscal 1998. Thus, perhaps unavoidably, data entry errors and omissions occurred, and the meaning of certain data fields was not, from the outset, the same across districts.

Summary

The initial test was far from universal in ODT. However, the initial test served to identify some "hidden users" who might otherwise not have been released with a test condition. Also, districts conducted more drug testing during ODT than prior to it. While we found no clear evidence of an ODT impact on sanctions, a *capability* for better sanctioning now exists at many districts. On-site test equipment makes it possible to get test results quickly and thus to tighten up sanctioning protocols and decision-making. Some districts have begun to experiment with new supervision and sanction practices. Finally, ODT probably had an impact, unquantifiable but real, on districts' use of treatment for defendants found to be using drugs while on release.

ODT's potential as a spur to innovation in pretrial supervision may be limited by the mission of pretrial services and the short duration of time during which defendants are under supervision. However, results of the pretrial testing/sanctioning experiment in the District of Columbia (Harrell et al., 2000) show that drug testing, *when closely linked with sanctions and treatment* in response to ongoing drug use, can reduce drug use among defendants on pretrial release. Test capabilities put in place by ODT and its impact on districts' use of treatment indicate that additional districts may benefit from ODT participation and that sanctioning and treatment innovations are possible if districts place more emphasis on those domains.

Recommendations

Testing. Voluntary pre-appearance drug testing has not been challenged on constitutional grounds (Henry and Clark, 1999). However, private defense attorneys and

federal public defenders may view pre-appearance drug testing as a potential violation of defendants' rights because a positive test might lead the judge to deny release or to impose release conditions more restrictive than otherwise would have been likely or because an initial positive test might trigger more frequent testing, thus raising the likelihood that continued drug use will be detected and that the judge, in view of the defendant's continued use, will set more stringent terms at case disposition. One solution to this problem in ODT was Model II, under which defendants were tested only after the release decision has been made. Thus their chance of release and the terms of release could not be affected by the initial test result. Many districts interested in ODT may be unable to adopt Model I because of political or logistical constraints. Districts should be made aware that Model II is a viable alternative with at least some of the advantages also offered in Model I.

However, prospective ODT districts should also be apprised of strategies by which political constraints might be overcome. First, it should be made clear to all parties—defense attorneys in particular but also judges and prosecutors—that the initial test in Model I is voluntary. It should also be made clear and *assured* that defendants will incur no adverse consequences from a positive test. In districts currently part of ODT, Pretrial Chiefs brought other parties on board by, for example, asking representatives of the local defense bar to review and edit the ODT consent materials. These review the purpose of testing, its voluntary nature, and defendants' rights. Another strategy used in some districts for overcoming opposition to Model I was to establish an explicit agreement by which defense attorneys must have an opportunity to meet with defendants before the pretrial officer does and may advise the defendant not to submit urine.

In short, the recommended testing strategy is either to adopt Model II or to take all available steps by which to minimize refusals under Model I. These steps include: provide clear and written assurance to defendants and their attorneys that the initial test is "free" i.e., there will be no consequences if the test is positive; identify key players, note their concerns, document the resolution of those concerns in contracts or memos of understanding, and update these documents as needed (Henry and Clark, 1999). At the same time, it is important to recognize that a goal of "universal" testing, whatever rhetorical value it may have, is not a realistic criterion by which to gauge the success of a pretrial drug testing program that includes a voluntary pre-appearance test, as in Model I. It is unlikely that initial test rates will ever approach "universal."

Finally, as noted in Chapter 2, the value of pretrial drug testing has been limited thus far because urine-based testing detects only the occurrence of very recent use, not the longer duration or intensity of use. Also, it does not distinguish heavy from casual users. An alternative useful for monitoring defendants on release is drug testing of hair specimens, which can be analyzed to detect ongoing drug use over a period of several weeks. Hair testing is expensive and time-consuming but may be worthwhile for selected purposes, especially as cost and technical difficulty decline.

Achieving the full potential of testing as a drug control strategy depends on linking it with other aspects of criminal justice programming (Travis, 1996), i.e., sanctioning and treatment. We now turn to recommendations for sanctioning and treatment.

Sanctions. Sanctioning rates were low in ODT. Capabilities for sanctioning defendants at the pretrial stage may be enhanced if districts have access to a wider range

of sanction options, some of which are applied even when the there is little time remaining in the pretrial supervision period or when highly restrictive sanctions, such as bail revocation and home confinement, are not clearly warranted. Sanction options might include requiring defendants to observe court proceedings from the jury box for varying periods of time and holding defendants for short-term periods of detention without revoking bail.

AOUSC has increasingly promoted experimentation with sanctions in the current set of ODT districts. It may be important for AOUSC to compile brief reports of the evidence regarding sanctioning alternatives including, but not limited to, time in the jury box and short-term "shock" detention. Providing these reports to current and prospective ODT districts may serve to encourage innovation.

The lack of "tight" sanctioning patterns in ODT suggests a need to consider policy-driven sanctioning practices (Burke, 1996; Taxman, Soule, & Gelb, 1999), based on deterrence principles that emphasize swift, certain, and increasingly restrictive sanctions in response to ongoing drug use. Taxman et al. (1999) have shown that "tight" sanctioning can increase its deterrence potential. However, its applicability in the pretrial context may be limited by the "least restrictive conditions" aspect of pretrial's mission.

Treatment. Placing defendants in treatment may reduce or eliminate their drug use during their remaining time on release. This effect may in turn reduce the risk of misconduct (commission of new crime or failure to appear in court) while defendants remain on release. Thus, even if pretrial defendants do not complete a full course of treatment, placing them in treatment may have favorable effects that are essential to the

mission of pretrial services. However, incomplete treatment stays may not have lasting effects beyond the release period.

We recommend that treatment options requiring a length of stay of three months or more be reserved for defendants whose drug problem meets clinical criteria for abuse or dependence and that formal screening and diagnostic tools such as the Substance Abuse Subtle Screening Inventory or the Substance Abuse module of the Composite International Diagnostic Interview (CIDI) be employed to identify such defendants *before* they are ordered to any treatment requiring an extended length of stay. See Peters et al. (2000) for a review of tools for identifying drug use problems in criminal justice populations.

While extended treatment may be well-advised for pretrial defendants who meet abuse/dependence criteria, it is important for pretrial agencies also to be able to access treatment alternatives that can be completed *in the short term.* Drug education courses, typically four to ten weeks in duration, may be appropriate for defendants whose drug problems are not severe enough to require formal treatment. Placement in 12-step programs may also be helpful for defendants who do not need formal treatment. Districts should work to develop greater access to drug education and 12-step programs where current access does not meet the potential demand.

We also recommend that AOUSC and districts monitor the ongoing research on interventions of shorter duration than traditional treatment programs. For example, randomized trials of outpatient treatment programs as brief as 30 days are currently underway, and recent research on so-called "brief" and motivational nontreatment interventions is showing that favorable effects can be achieved in the context of one to

six sessions with counselors trained in the relevant techniques. As these short-term treatment protocols and brief interventions prove their worth, DOJ, AOUSC, and individual districts may be able to enhance the range of intervention options available for pretrial defendants by accessing or developing short-term interventions locally.

Finally, regardless of whether there is time for defendants to complete a course of treatment or not, but especially when there is not, it is essential that pretrial services work with other agencies in the federal criminal justice system to ensure continuity of care for defendants sentenced to terms in federal prison or released on federal probation. Continuity of care will help to ensure that gains made in treatment during the period of pretrial supervision are not lost when that period ends.

ODT database. The automated database that served as a primary source for this evaluation was of limited value because of data entry errors and omissions not fully rectified as of fiscal 1999. AOUSC has sought to improve data quality. We recommend continued efforts, such as in-service training and hands-on quality control, to improve data quality. These efforts will serve two purposes. First, an improved database will render future evaluations more definitive. Second, an improved database can be used to document the extent of drug use among pretrial defendants, the types of drugs used, and the number of "hidden users." Such information may help to build the case for investing in drug abuse treatment for pretrial defendants, for expanding the range of sanctioning and treatment options available, and providing staff and other resources to ensure continuity of care. The value of the ODT database for such purposes can only be enhanced as data entry becomes more reliable, complete, and standard across districts.

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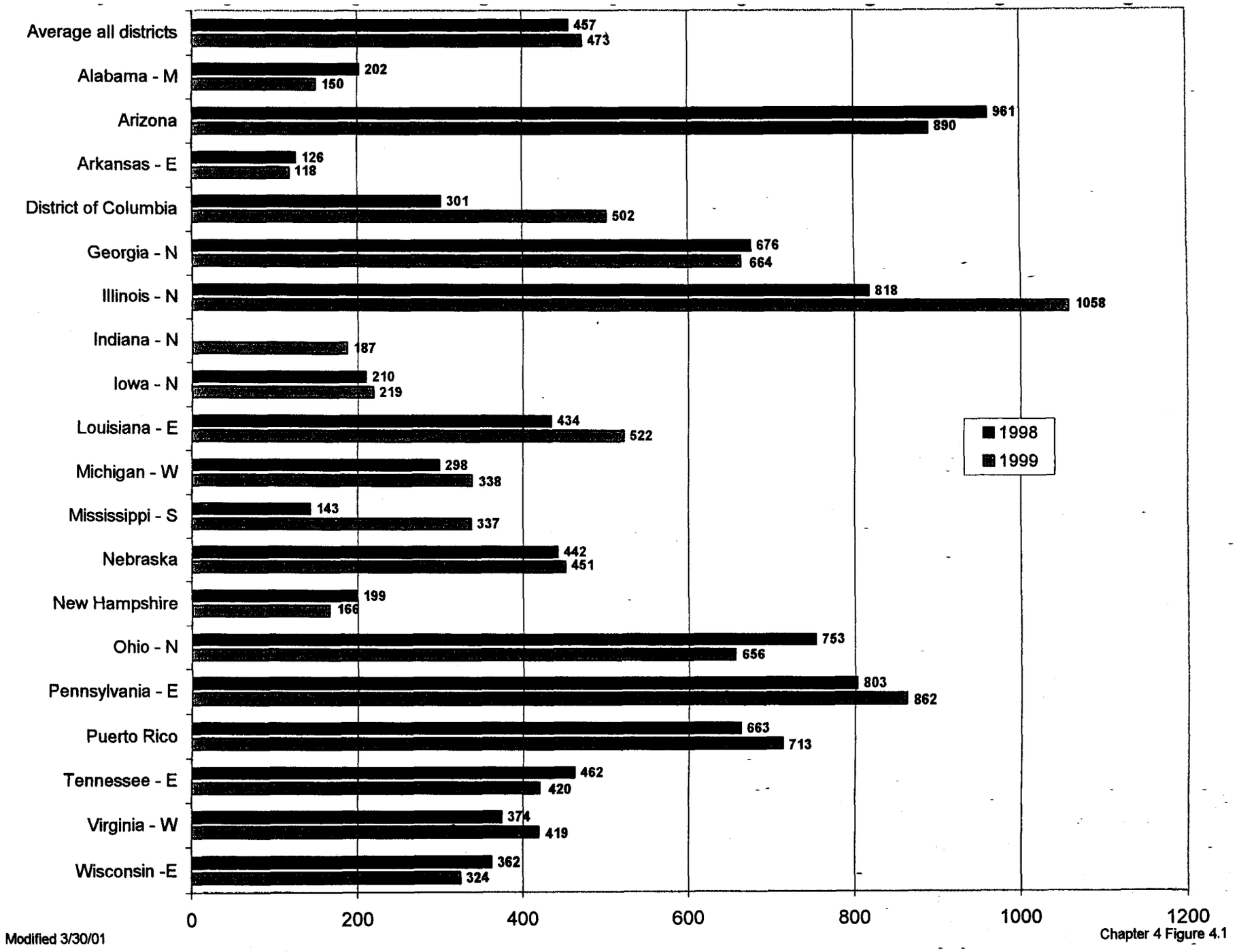
Figures and Tables



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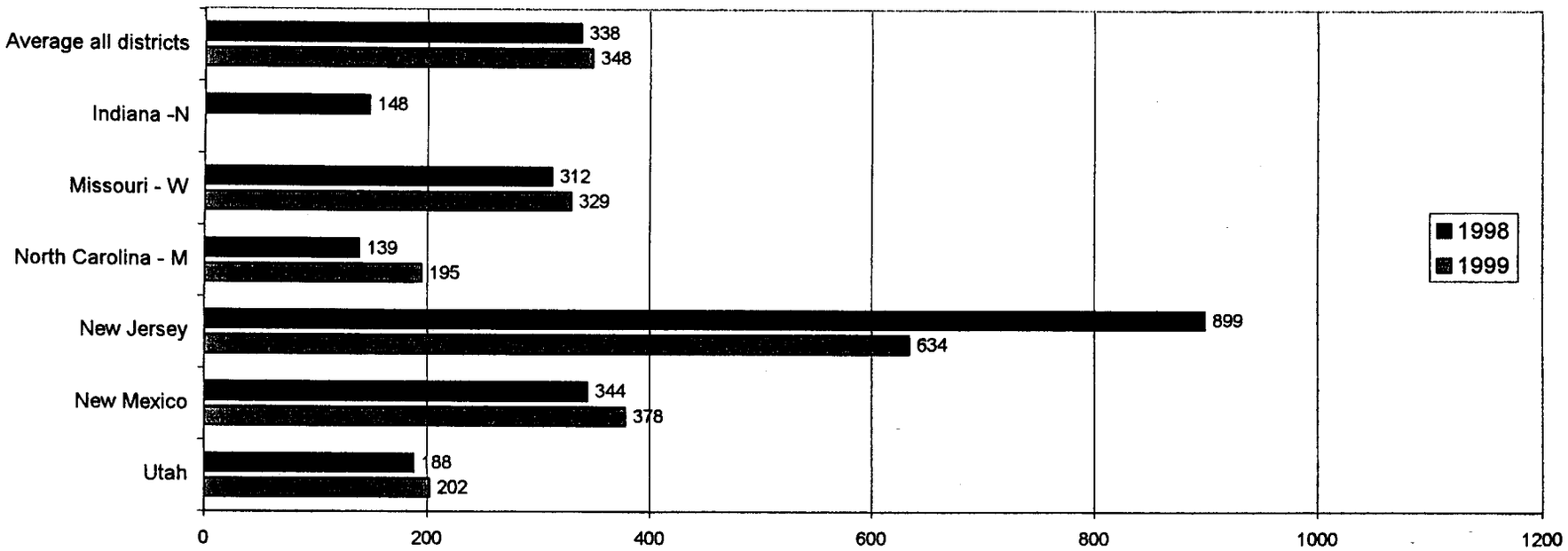
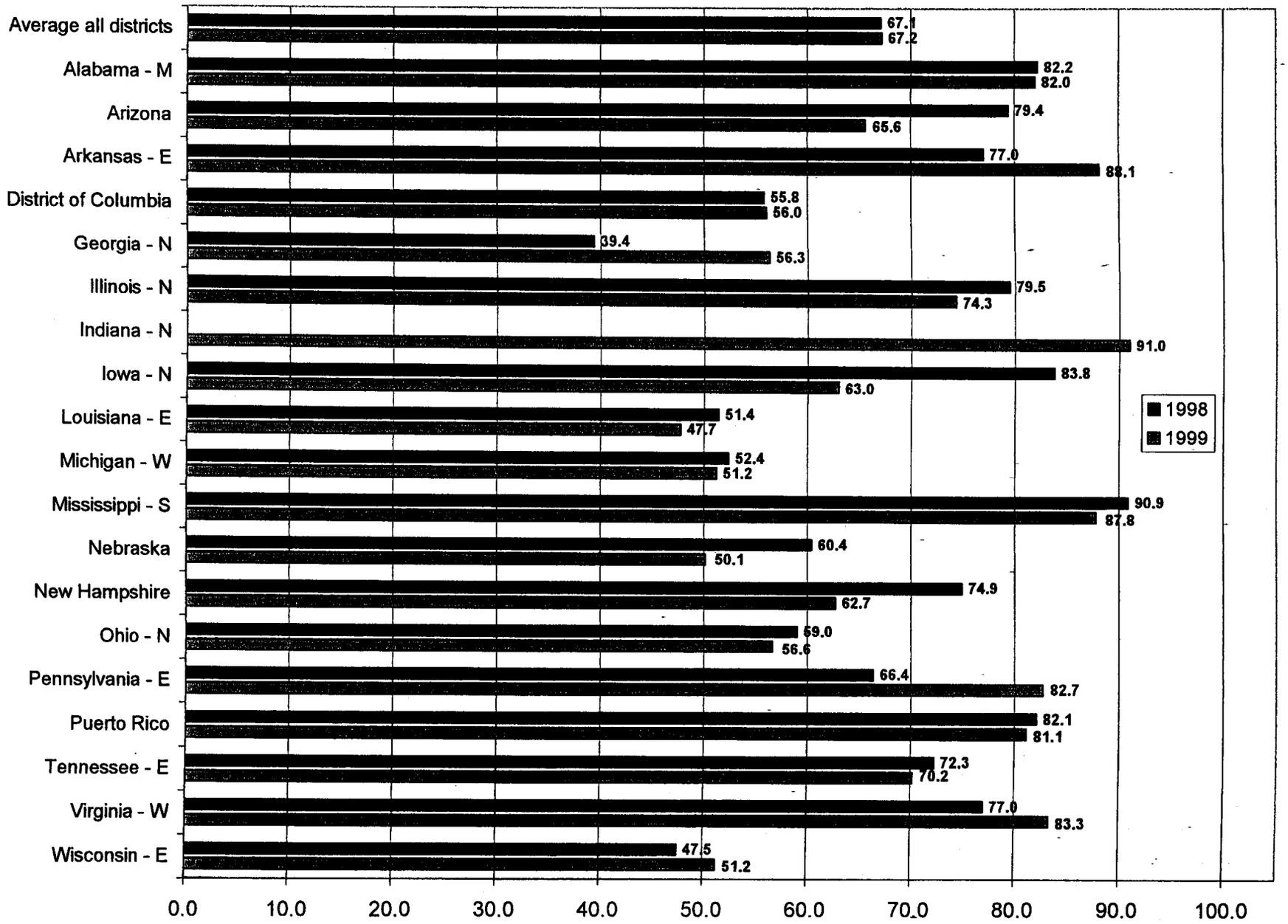
Chapter 4 Figure 4.1





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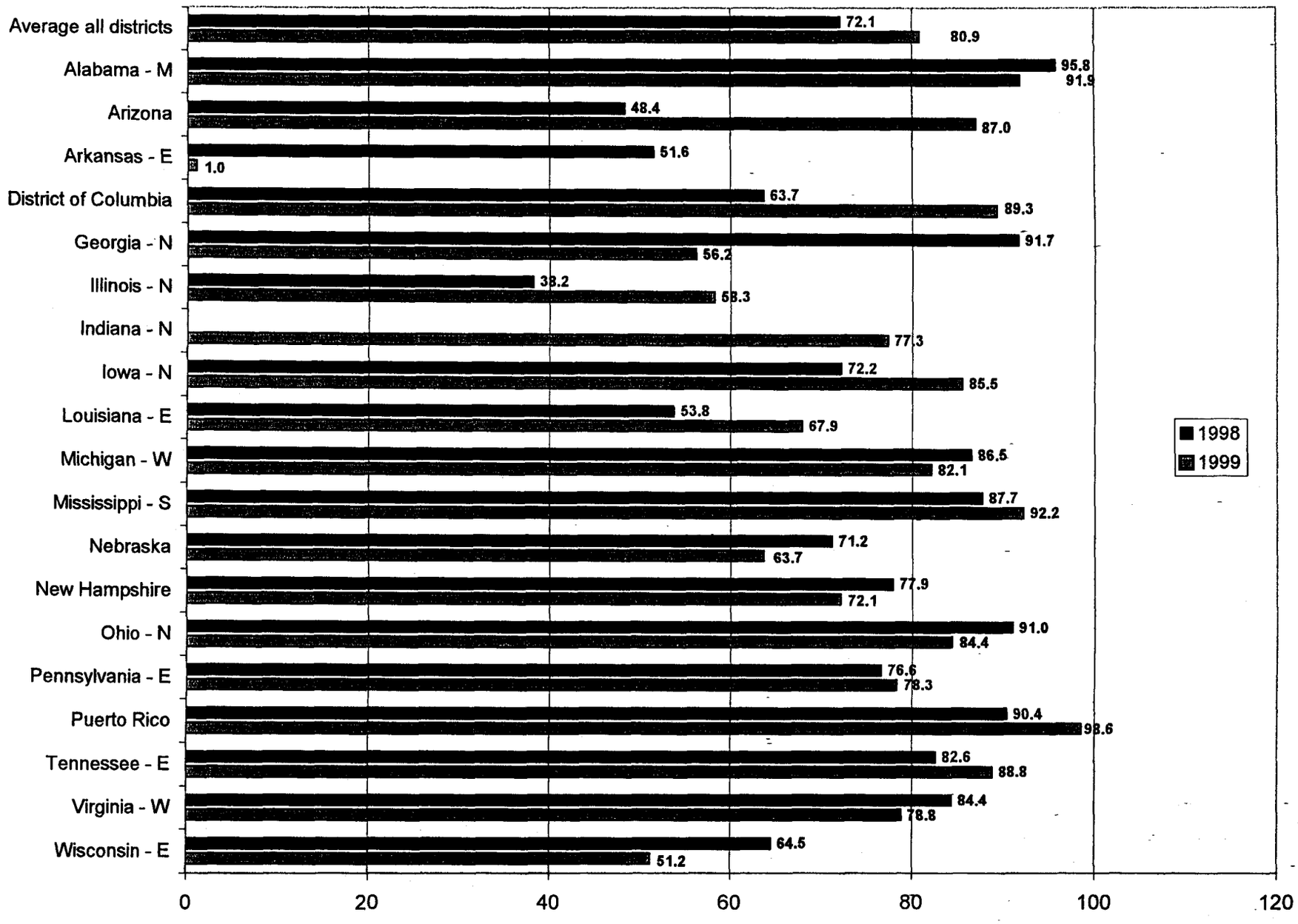
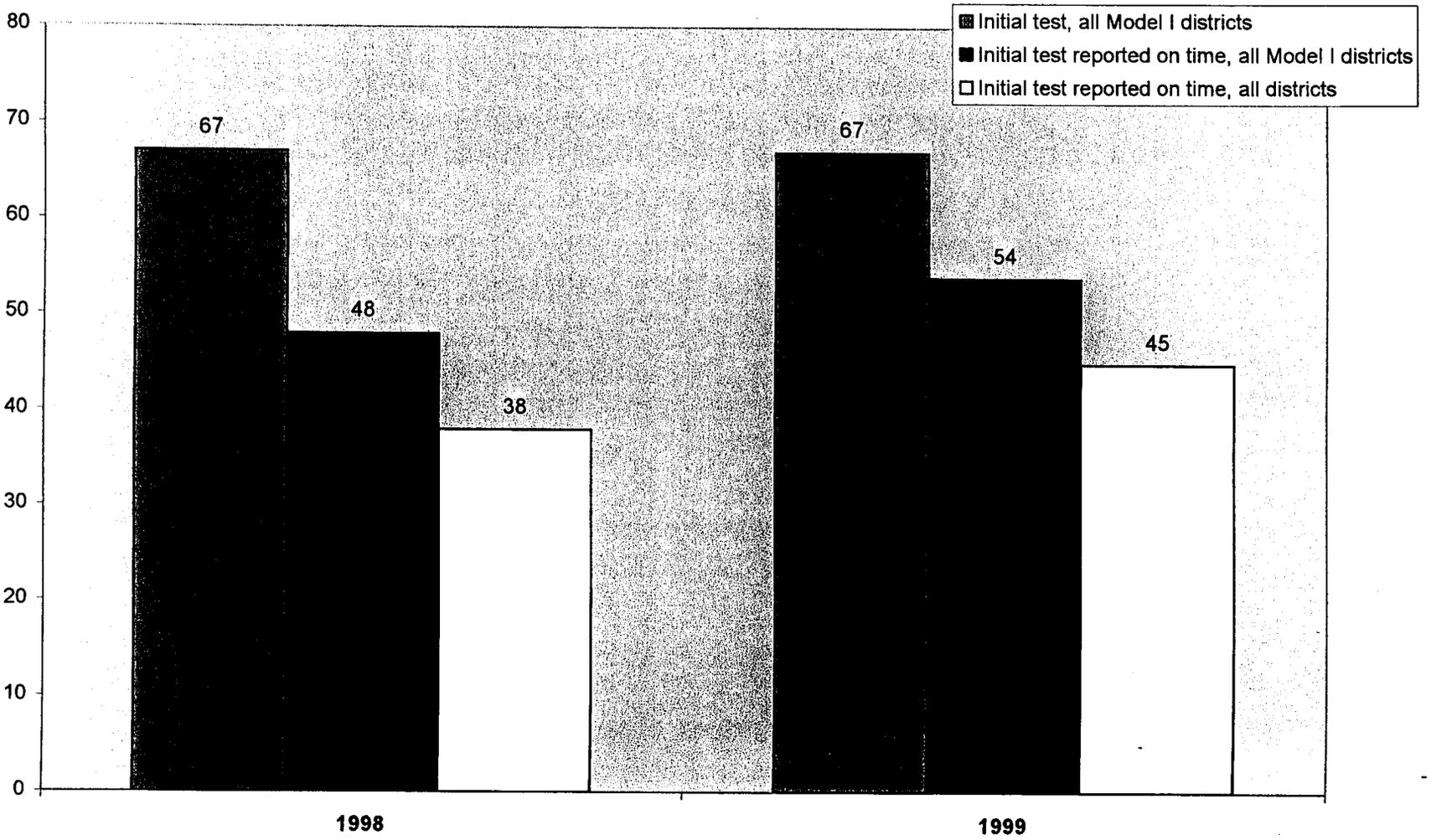
Chapter 4 Figure 4.3



Modified 3/30/01

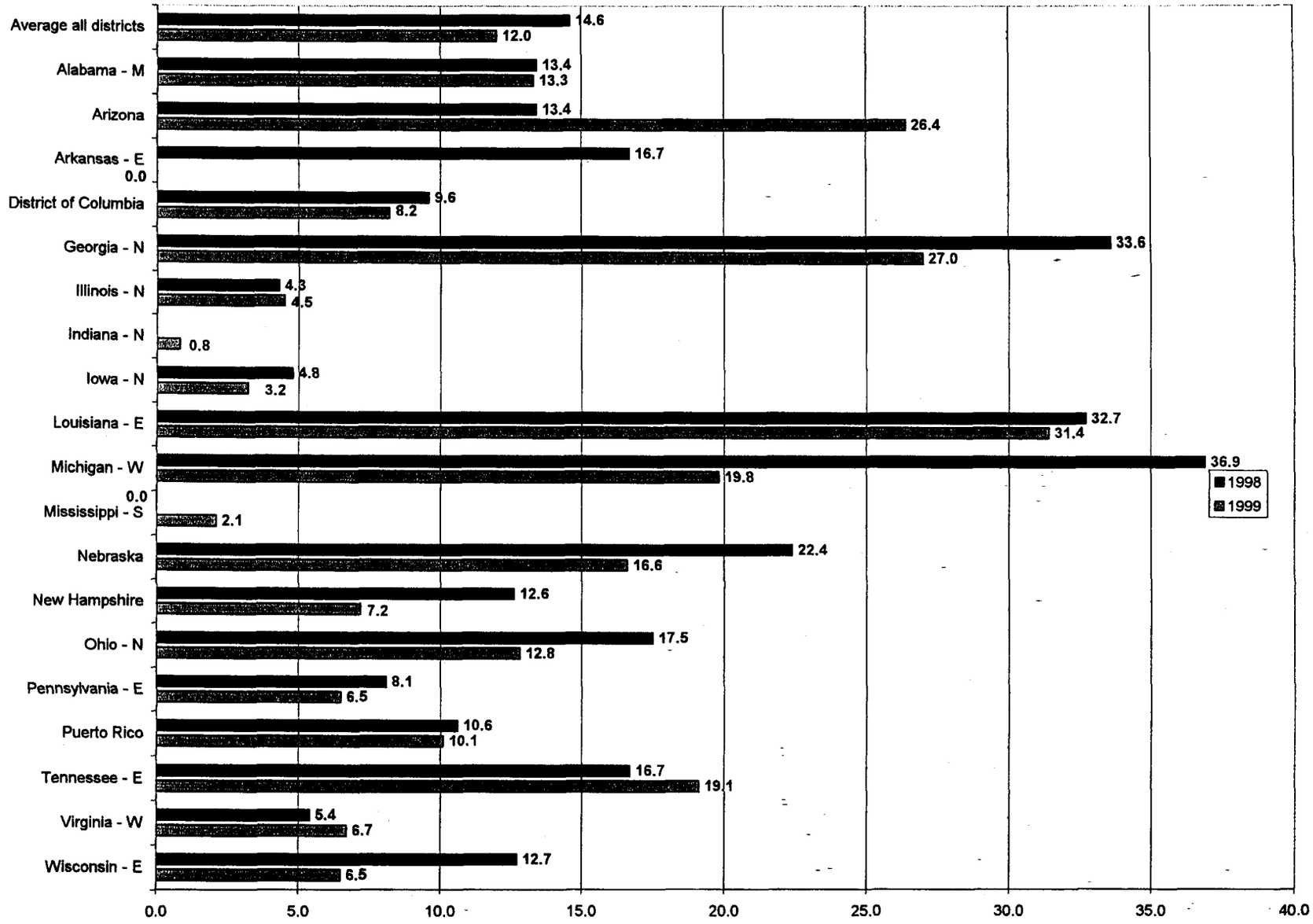
Chapter 4 Fig 4.4



3/30/01

New Chapter 4 Part2 Fig 4.5

Figure 4.6: Percent of ODT Defendants Refusing the Initial Test, Model I Districts, 1998 and 1999



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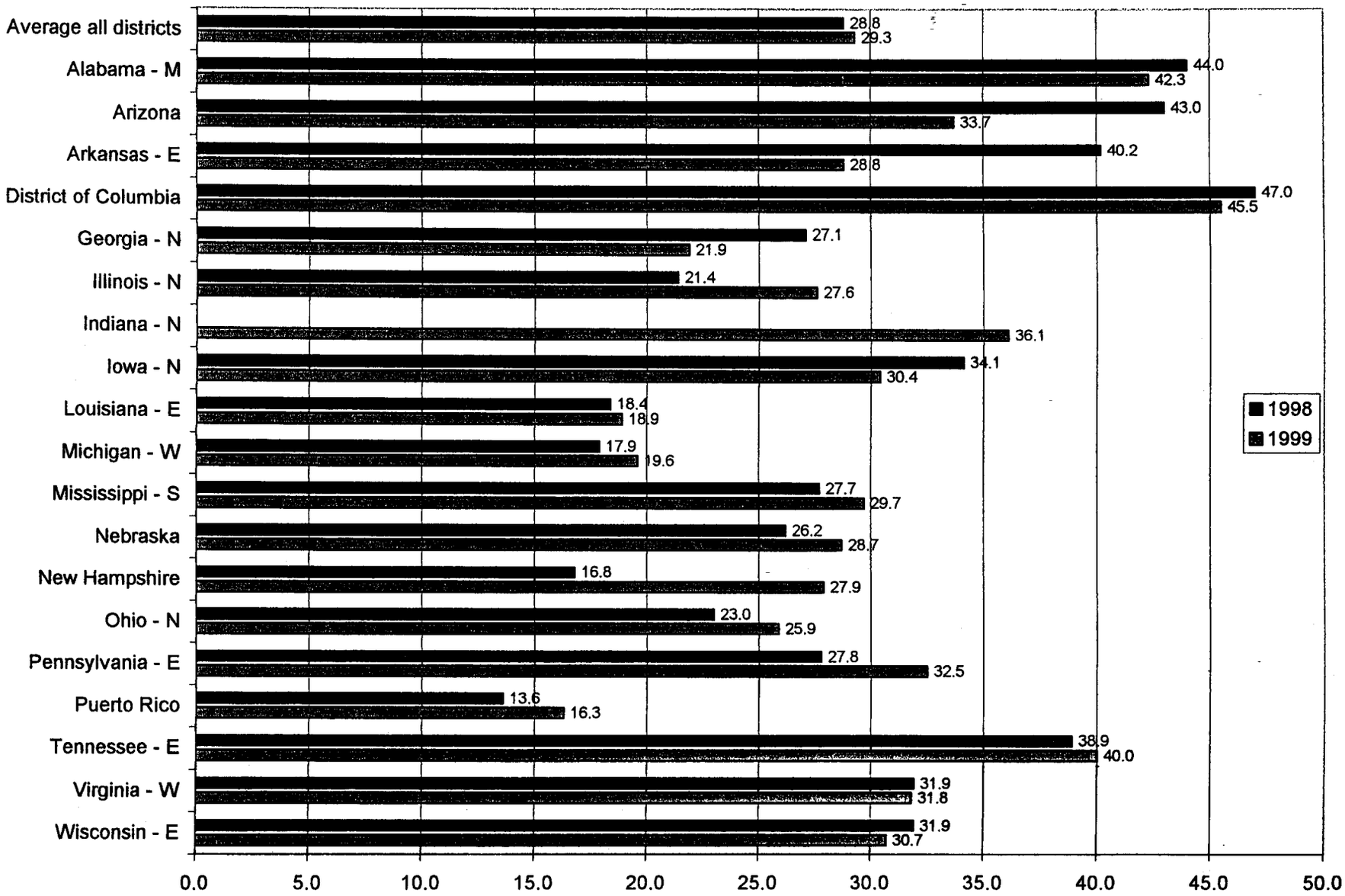
Chapter 4 Fig 4.6



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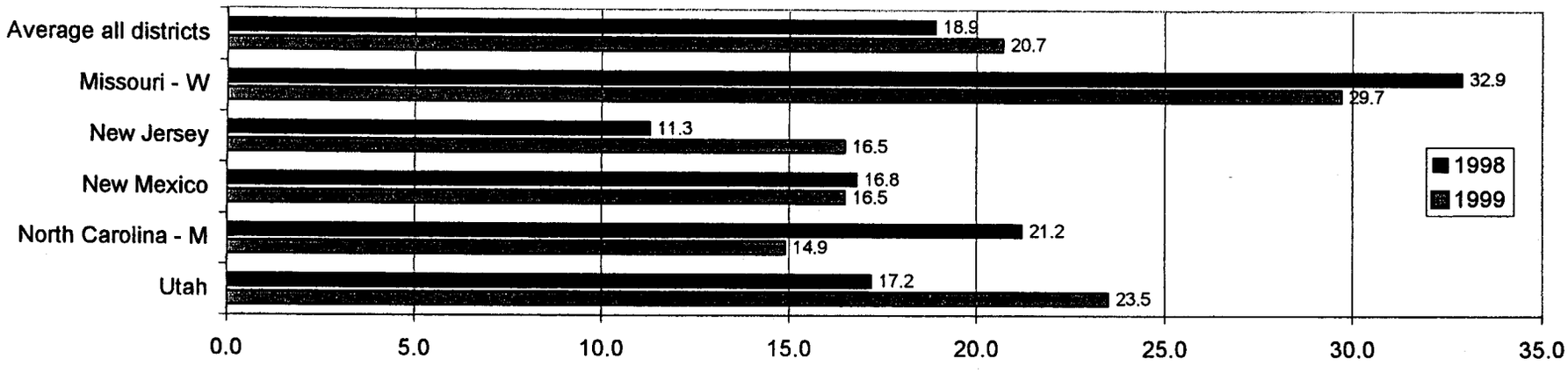
Chapter 4 Fig 4.7



Modified 3/30/01

Chapter 4 Fig 4.8

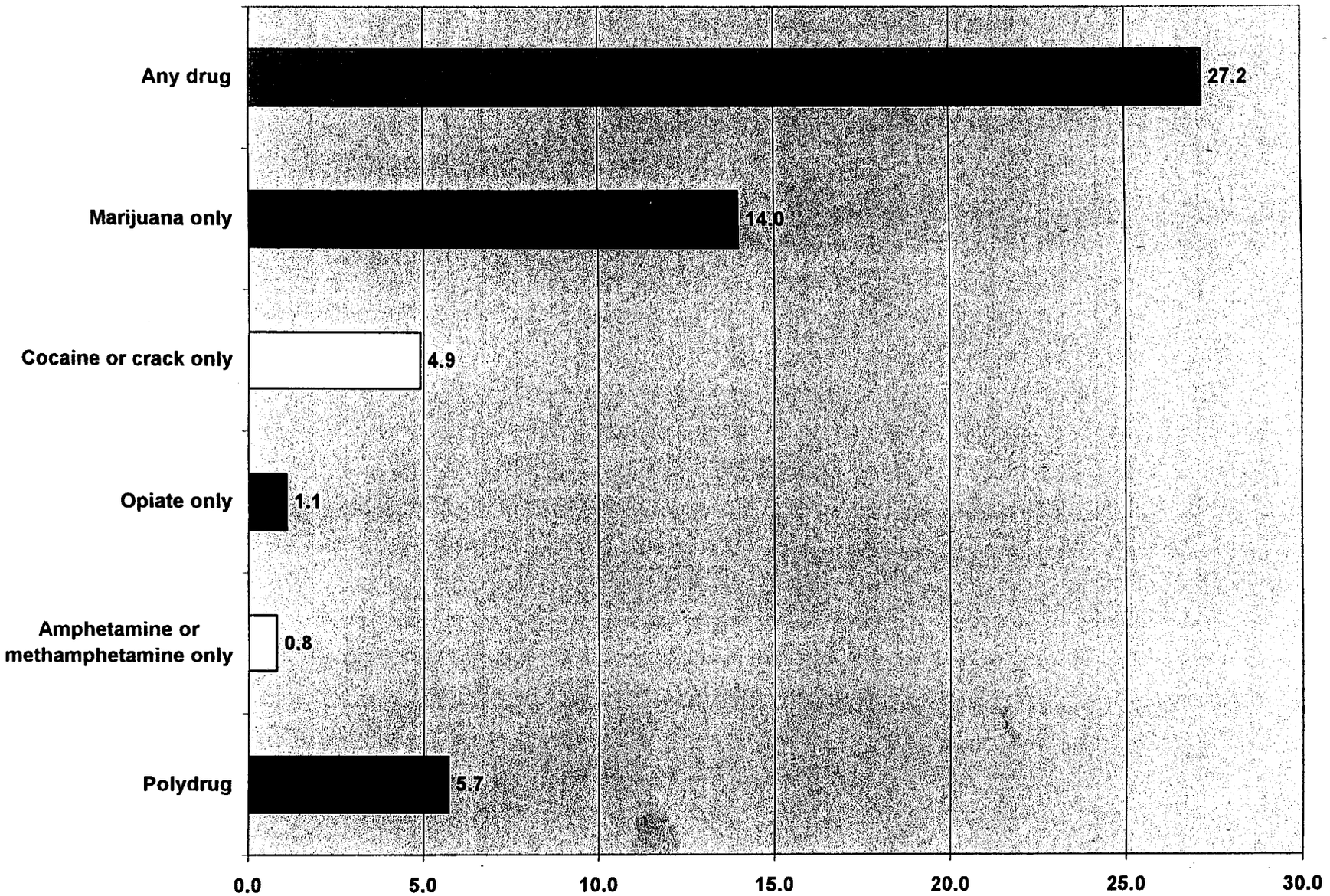
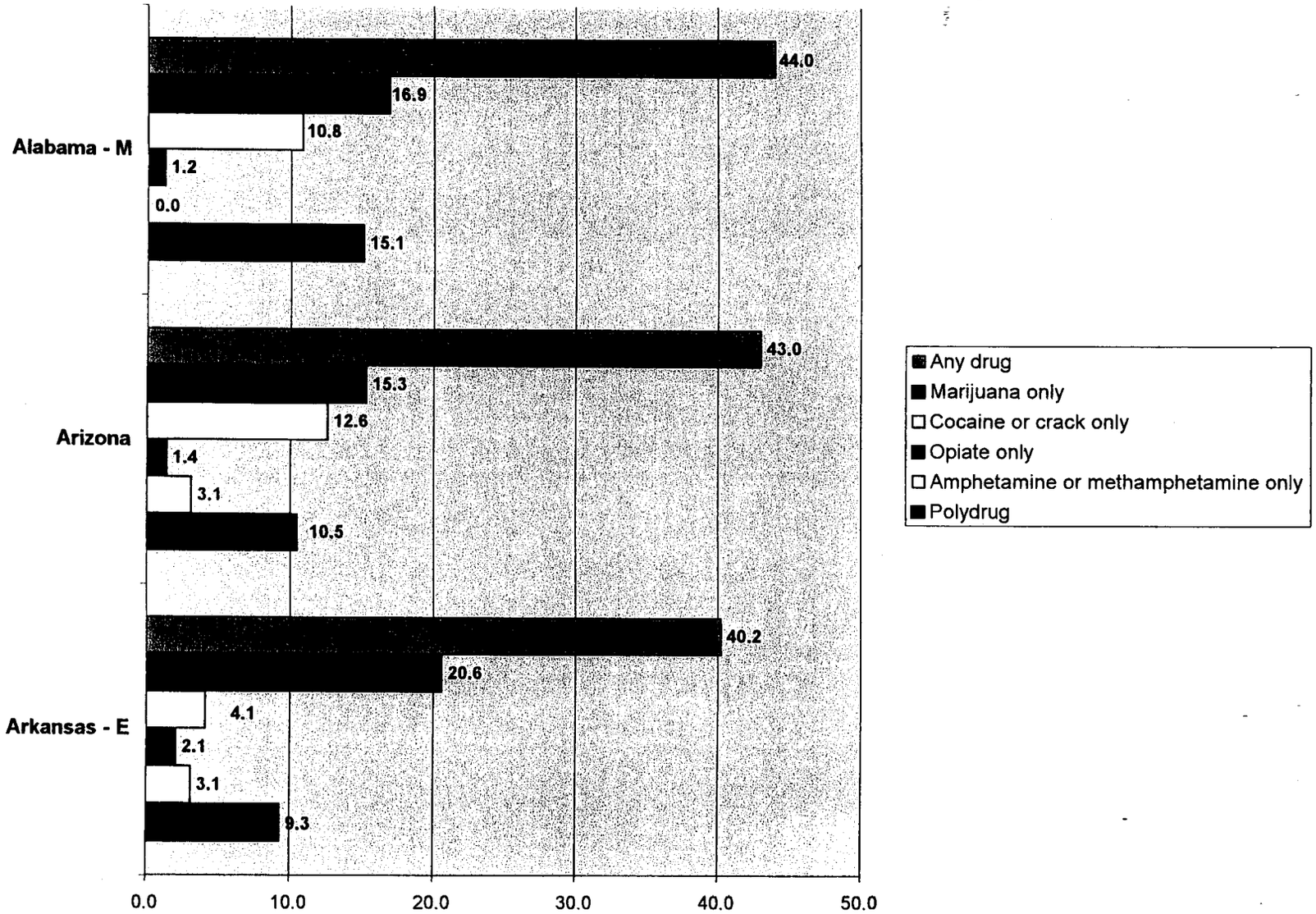
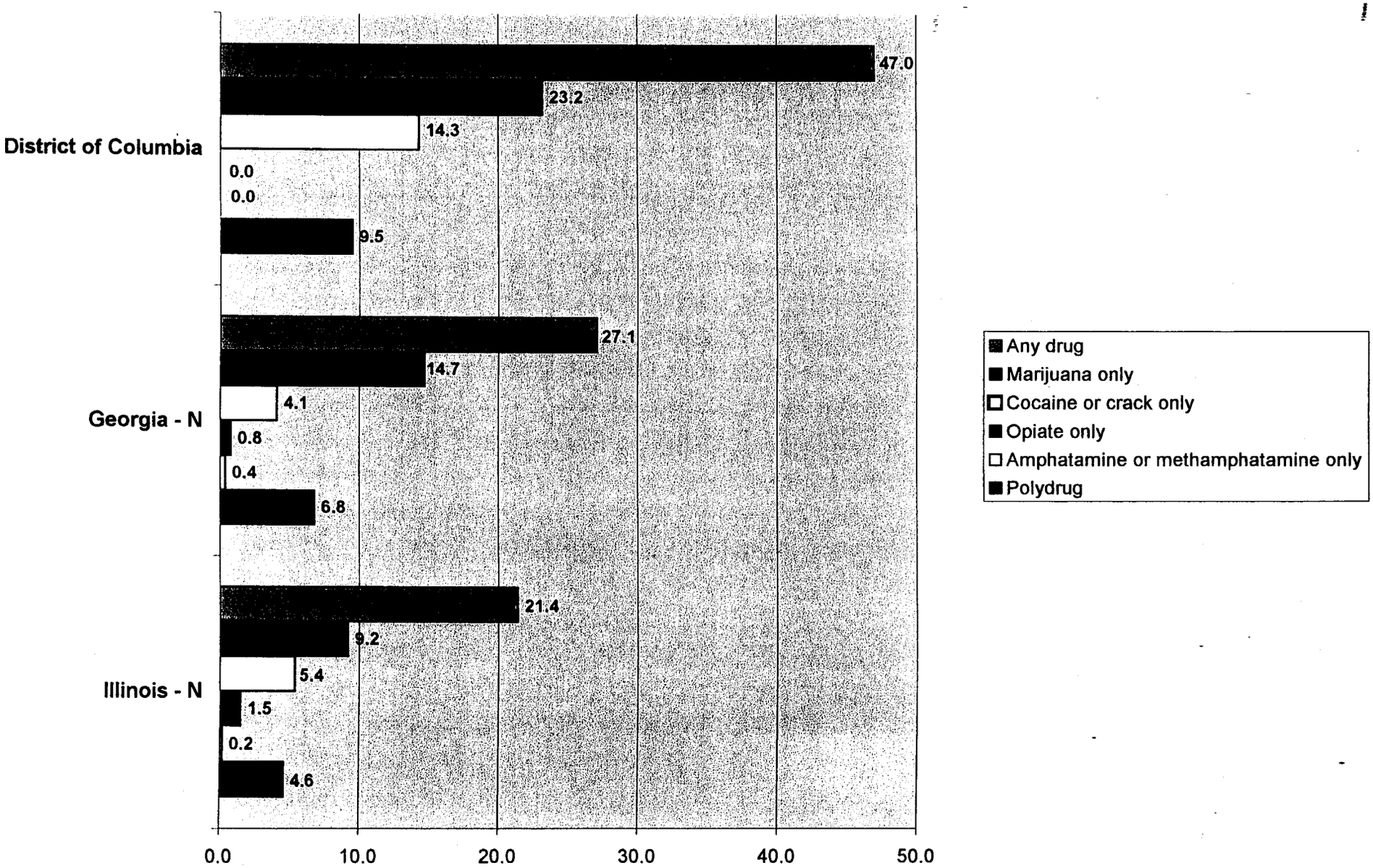


Figure 4.10: Defendants Testing Positive as a Percent of All DUI Defendants With an Initial Test, Model I Districts, 1998



Modified: 4/6/01

Chapter 4 Fig 4.10a(2)



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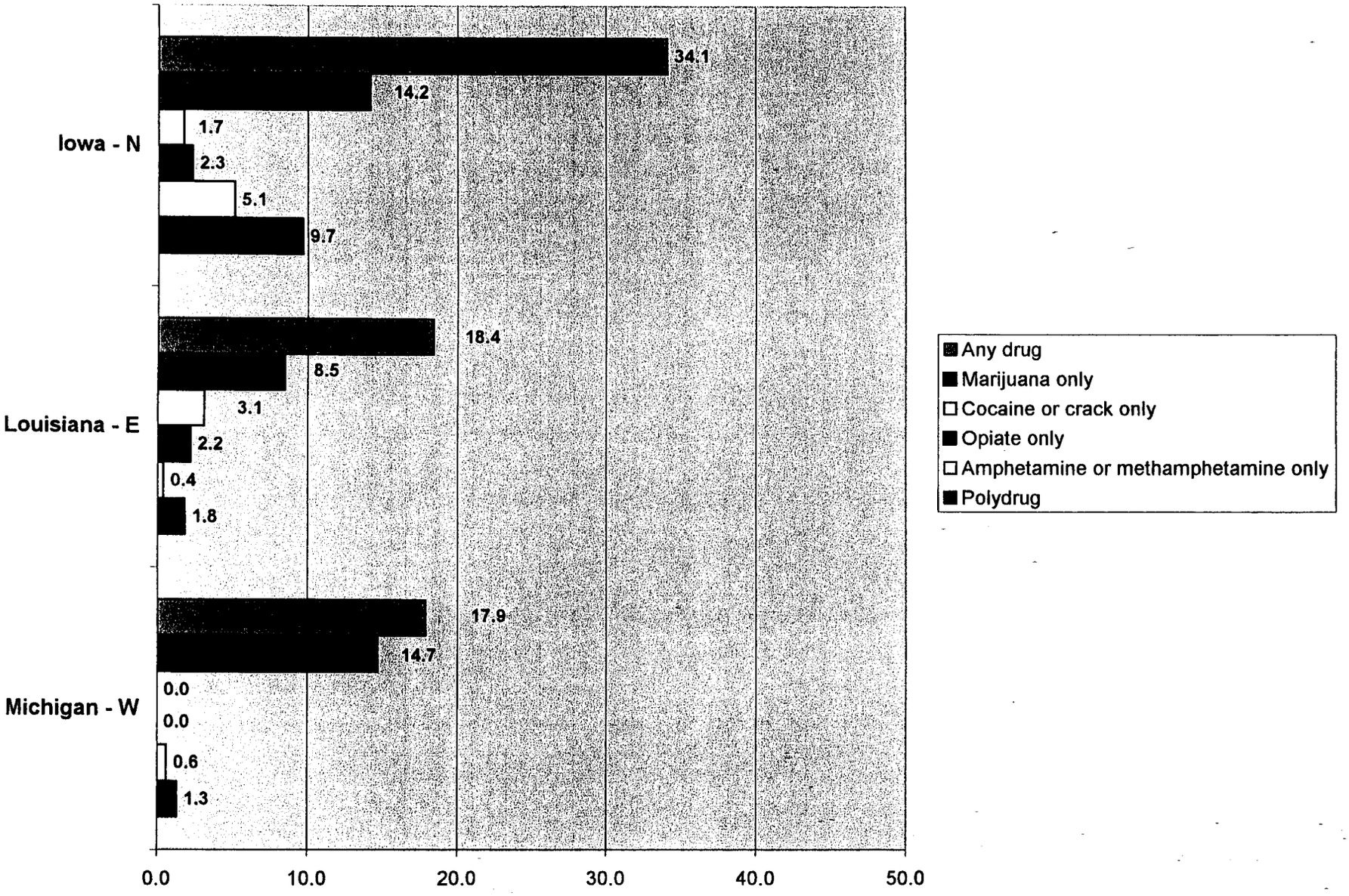
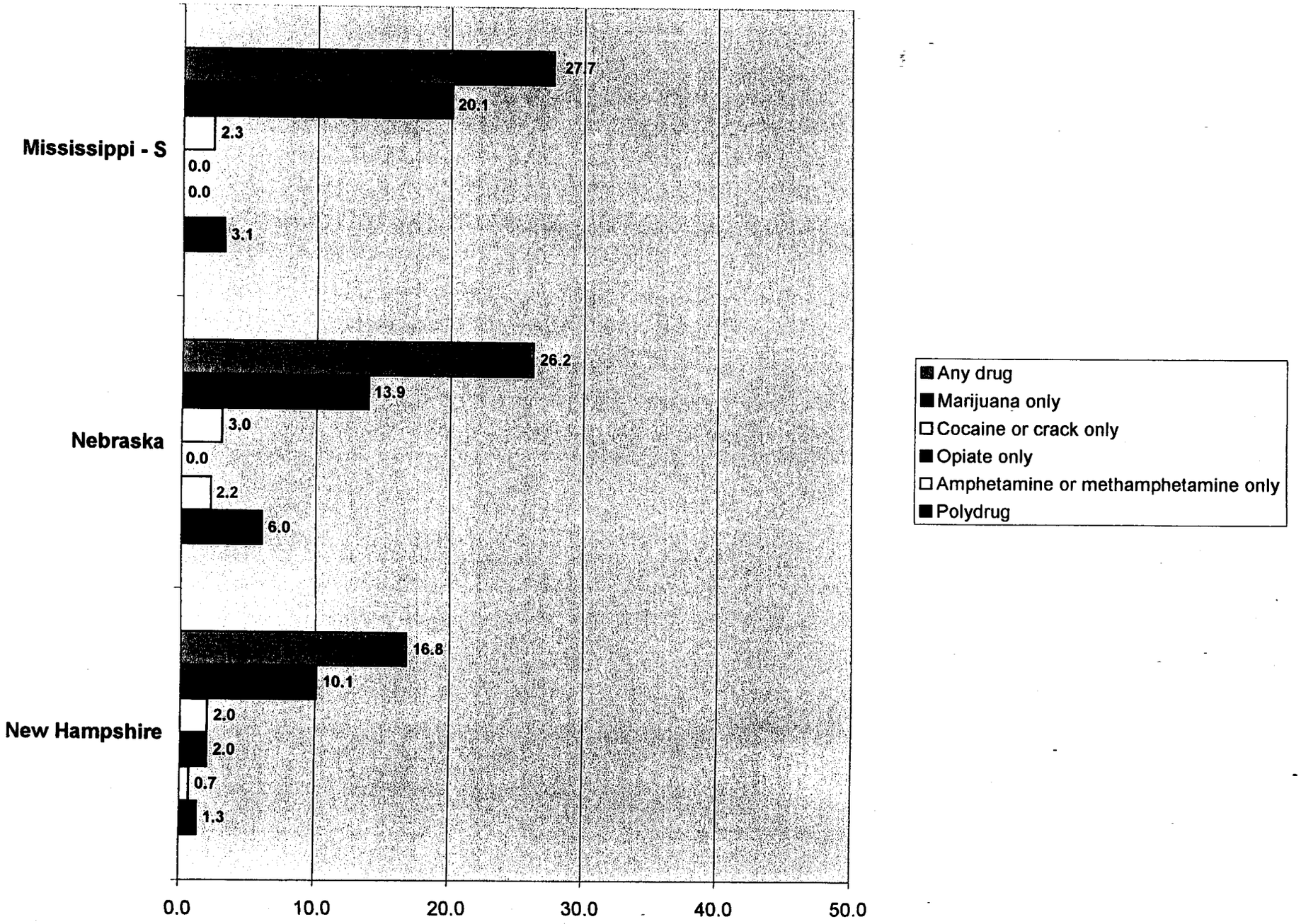
Chapter 4 Fig 4.10a



Modified 3/30/01

Chapter 4 Fig 4.10b



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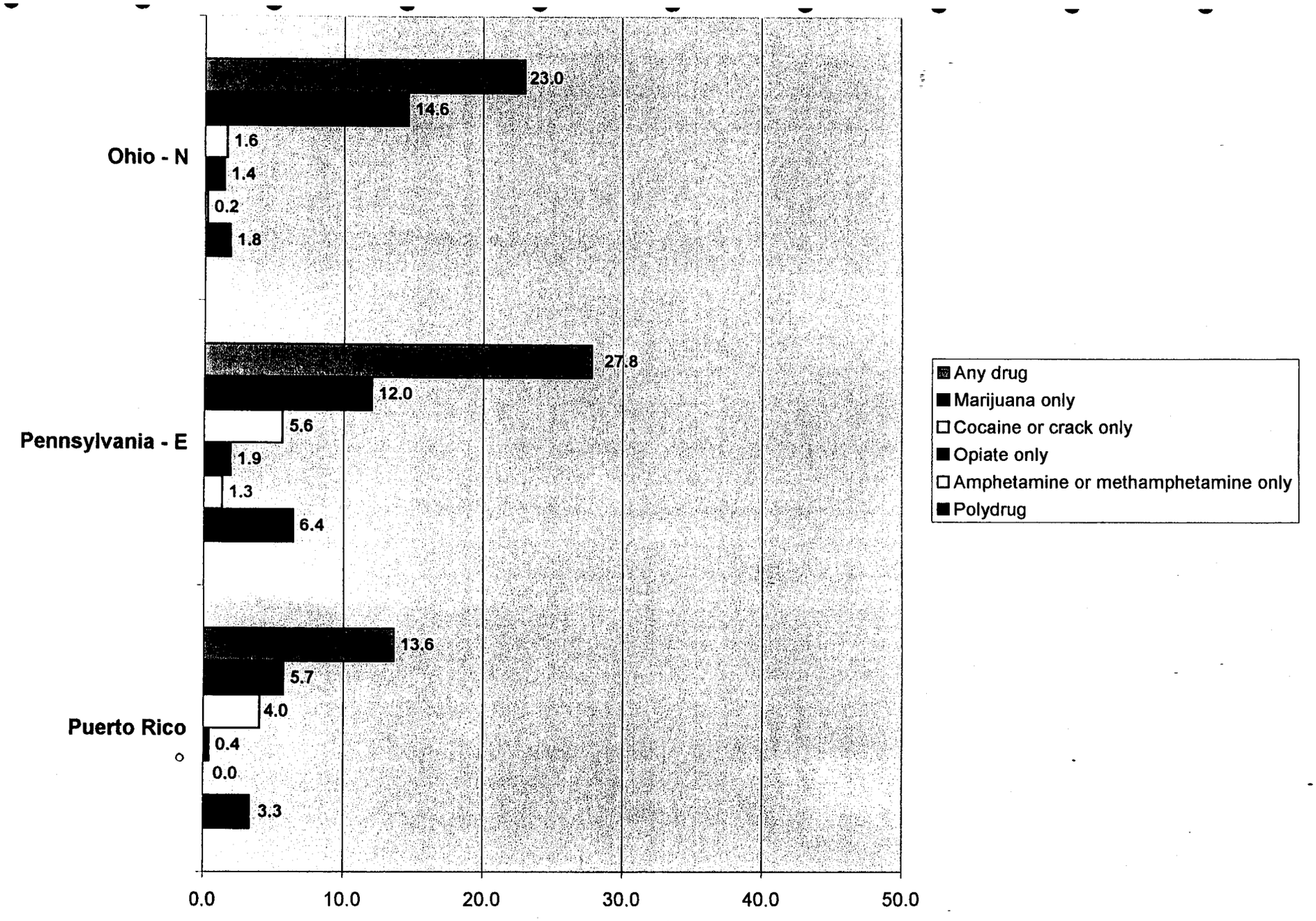
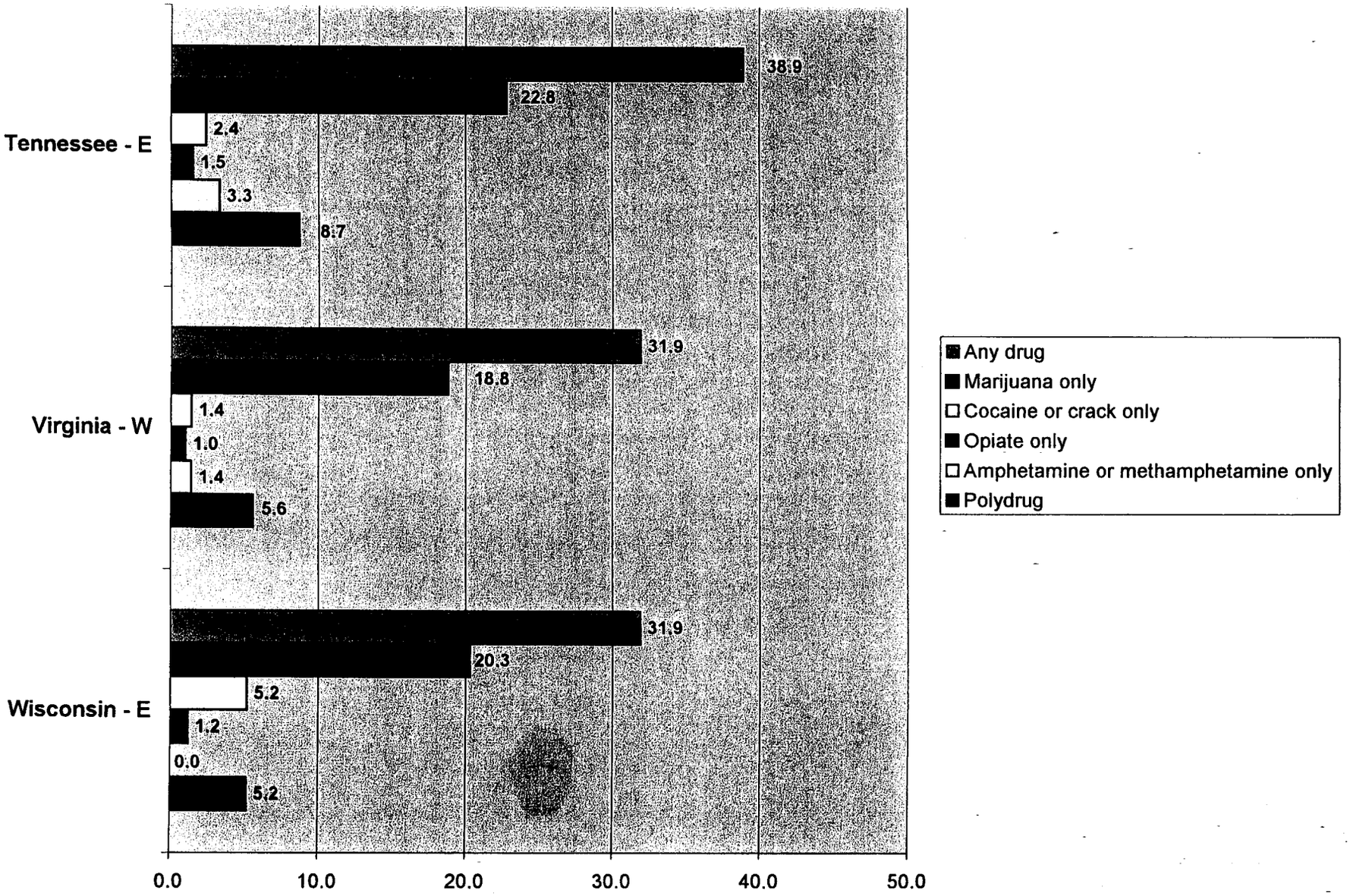
Chapter 4 Fig 4.10c



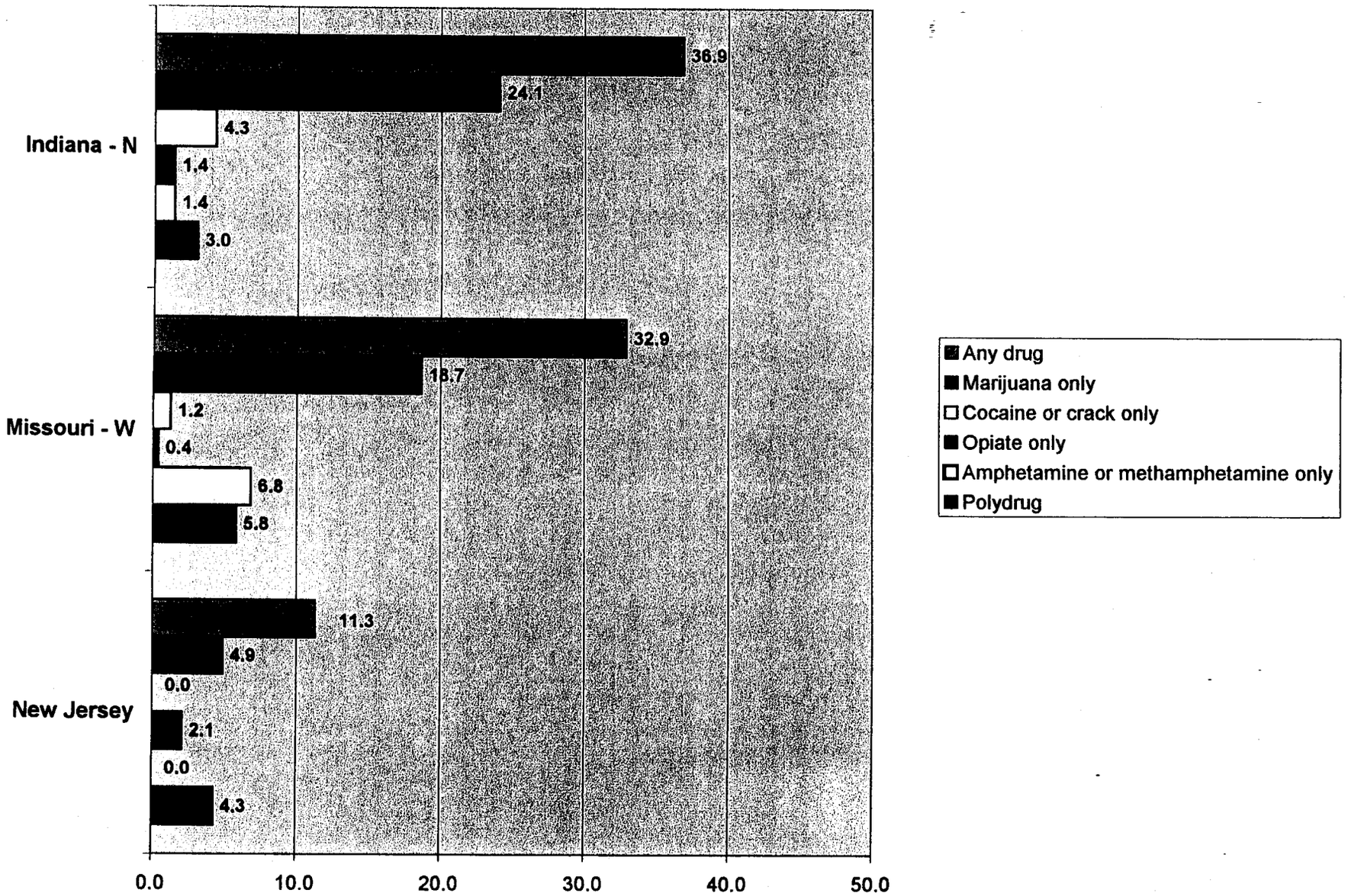
Modified 3/30/01

Chapter 4 Fig 4.10d



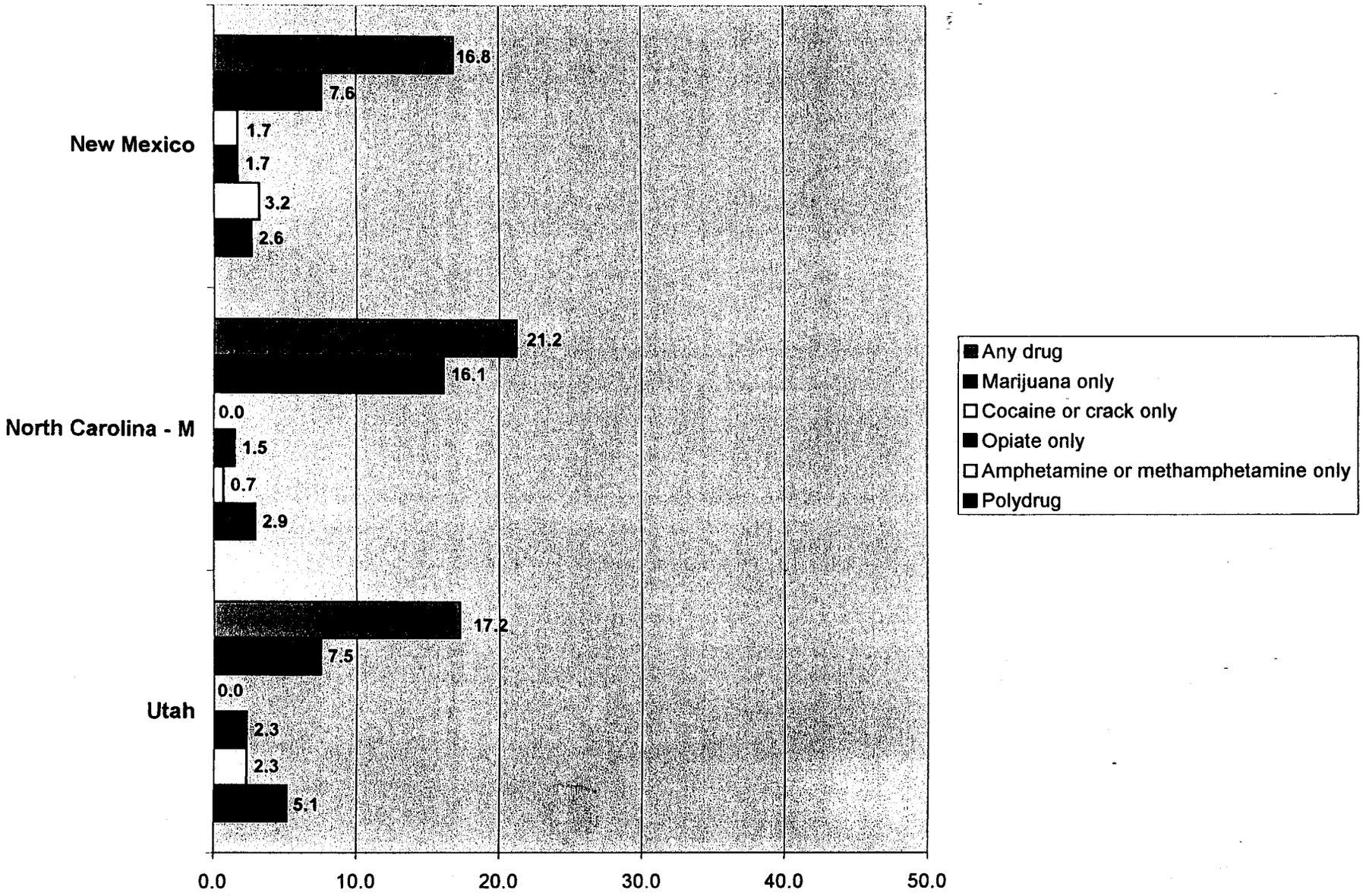
Modified 3/30/01

Chapter 4 Fig 4.10e



Modified 3/30/01

Chapter 4 Fig 4.11a



Modified 3/30/01

Chapter 4 Fig 4.11b

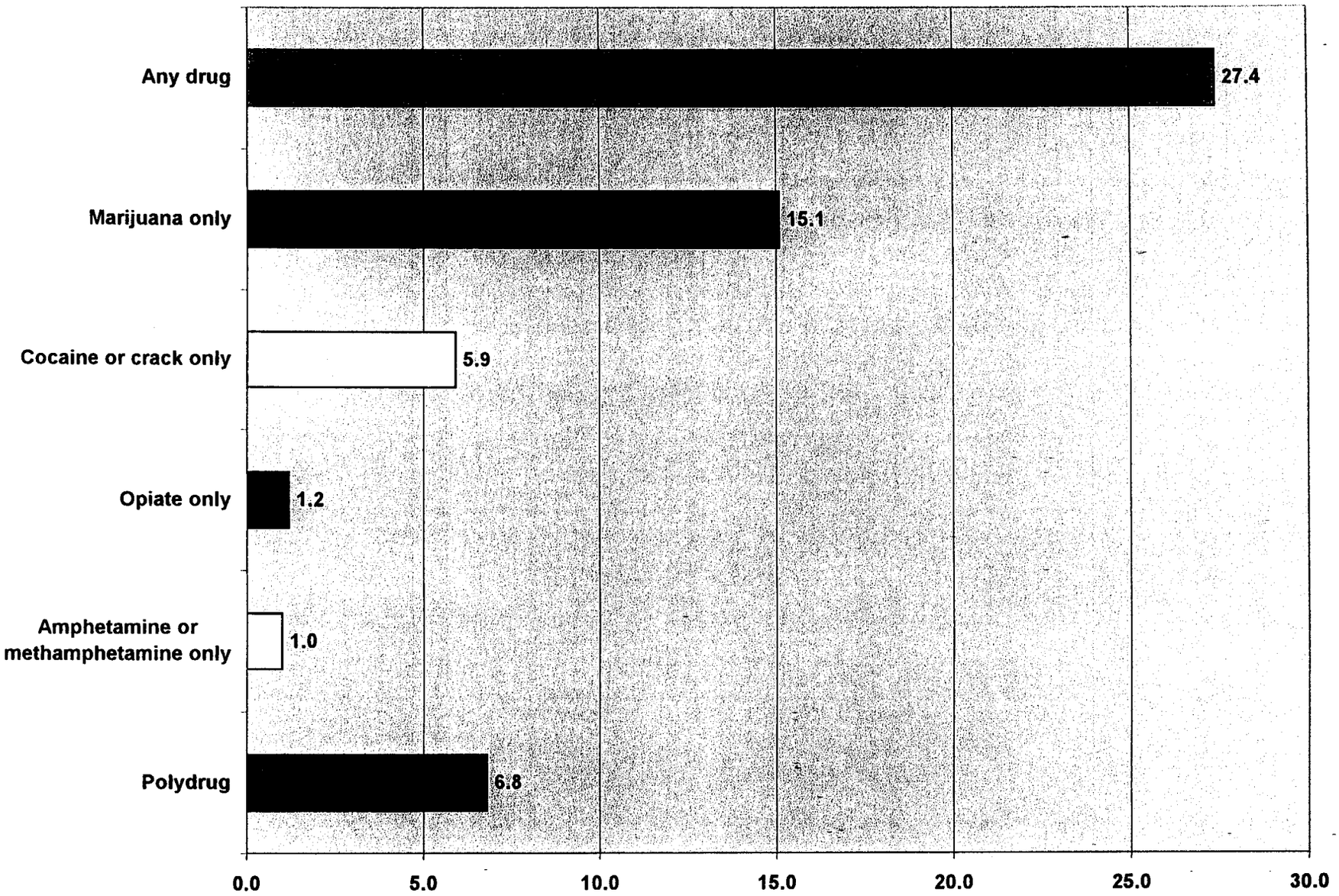
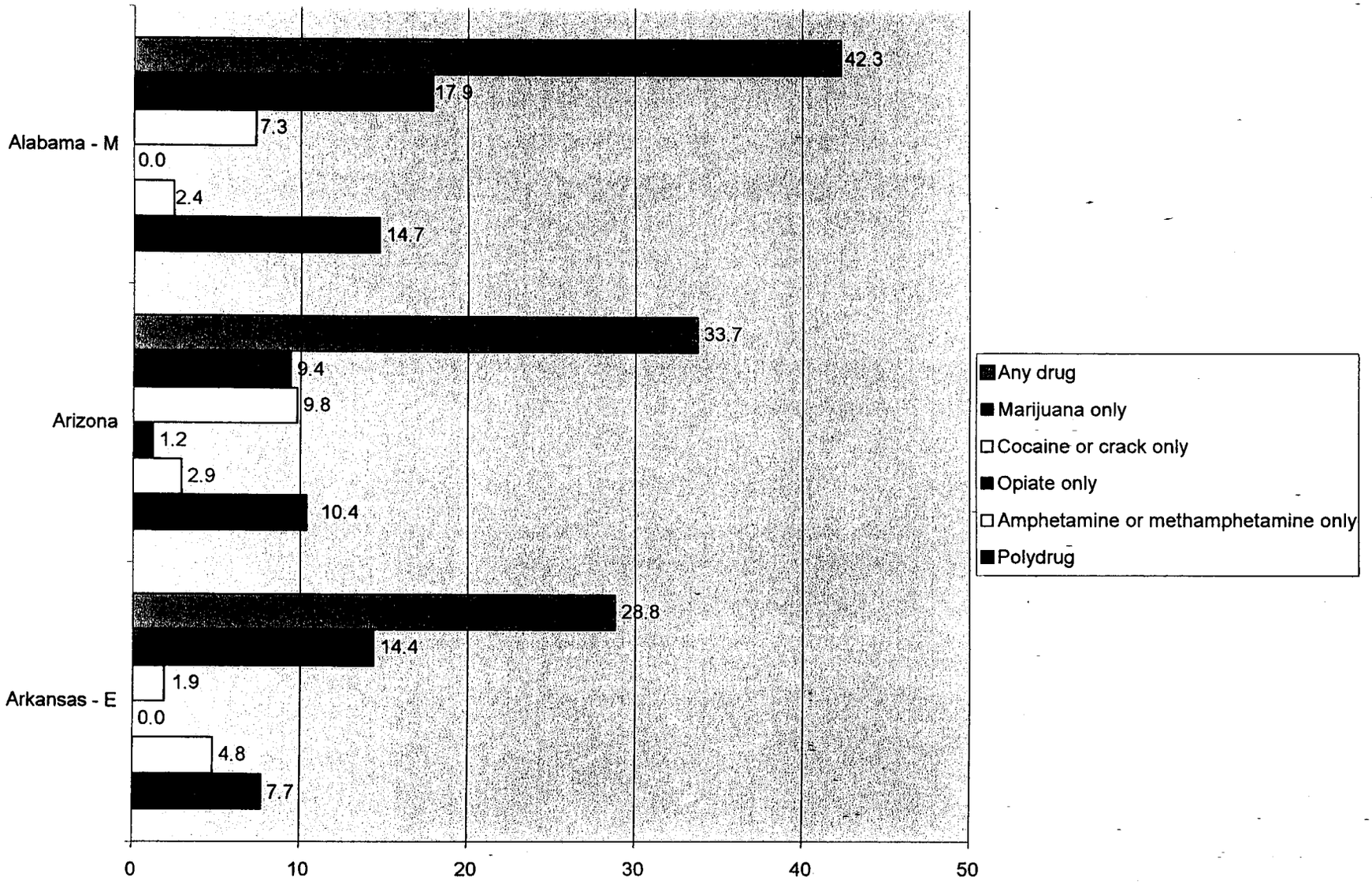
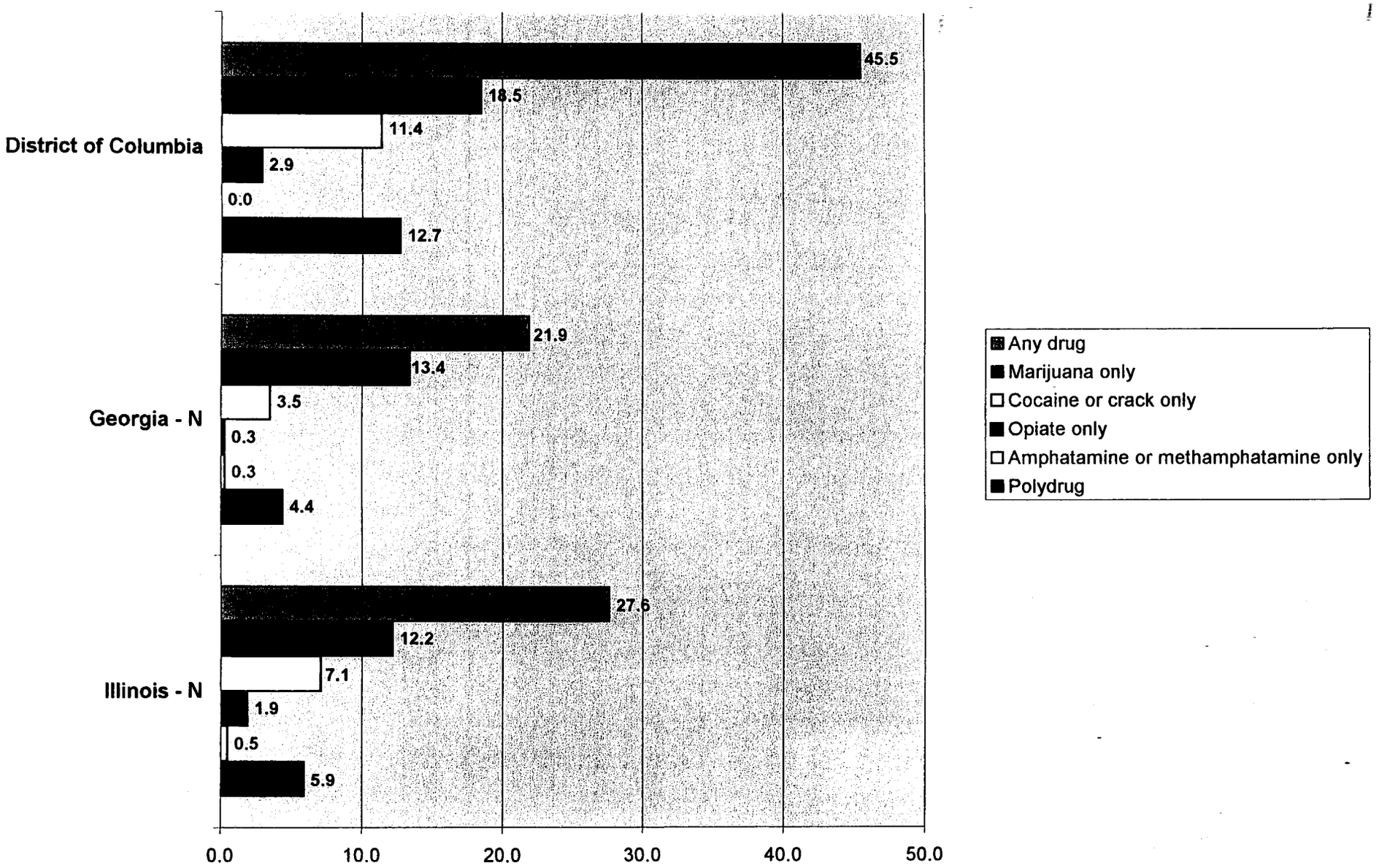


Figure 4.13: Defendants Testing Positive as a Percent of All ODT Defendants with an Initial Test, Model I Districts, 1999

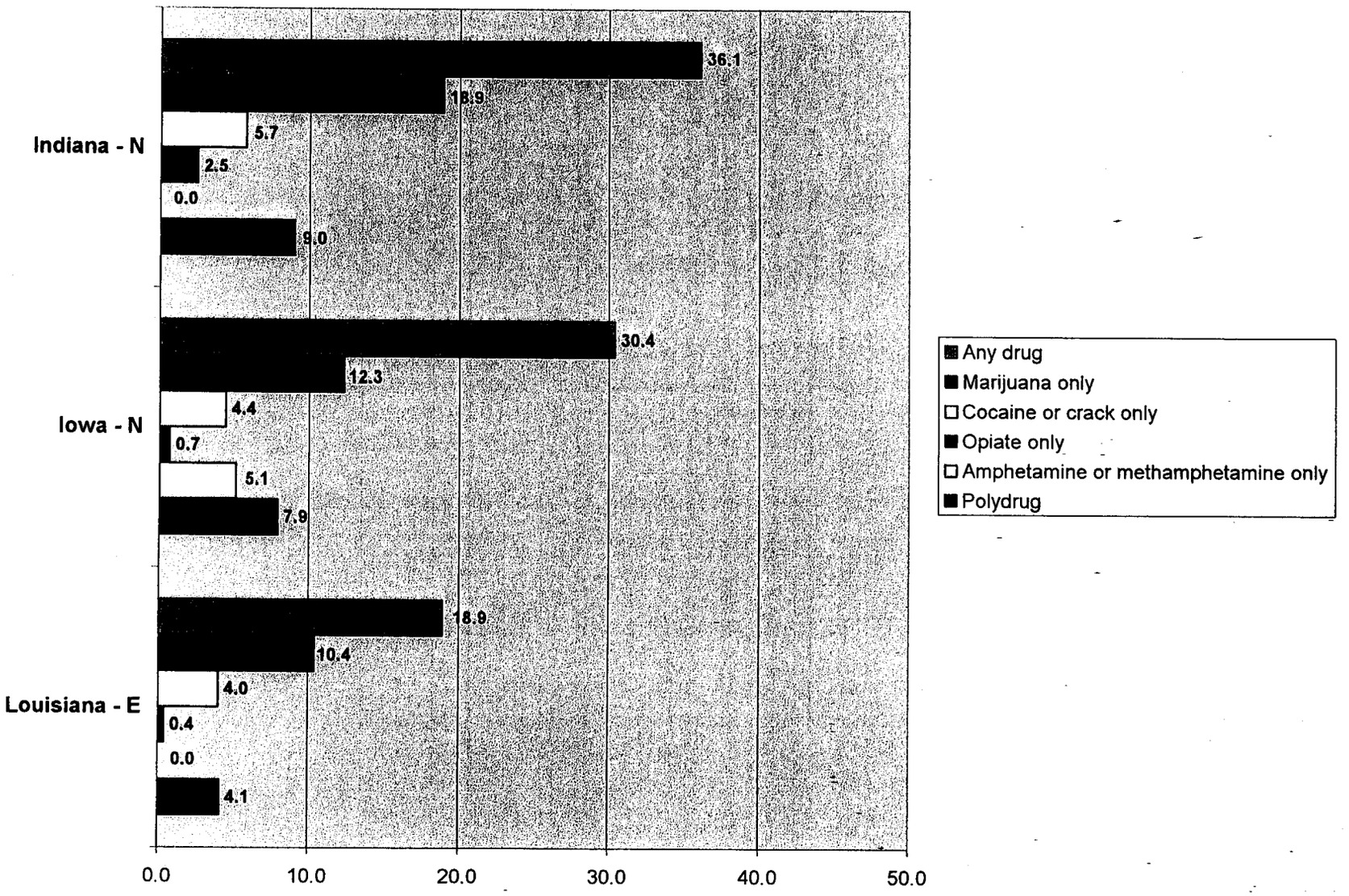




Modified 3/30/01

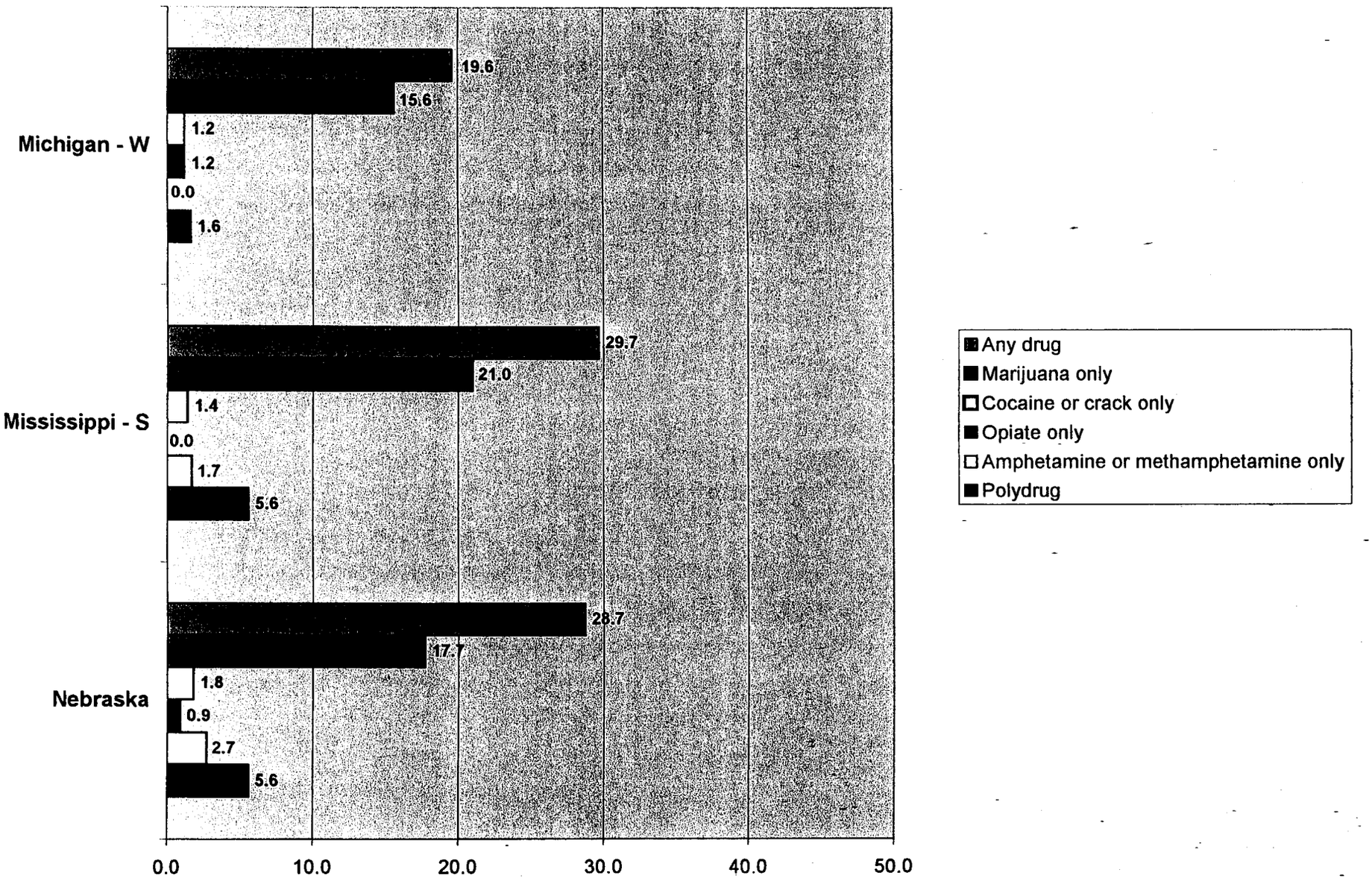
Chapter 4 Fig 4.13a2

Figure 4.13: Defendants Testing Positive as a Percent of All ODT Defendants with an Initial Test, Model I Districts, 1999 (cont'd)



Modified 4/6/01

Chapter 4 Fig 4.13b



Modified 3/30/01

Chapter 4 Fig 4.13c

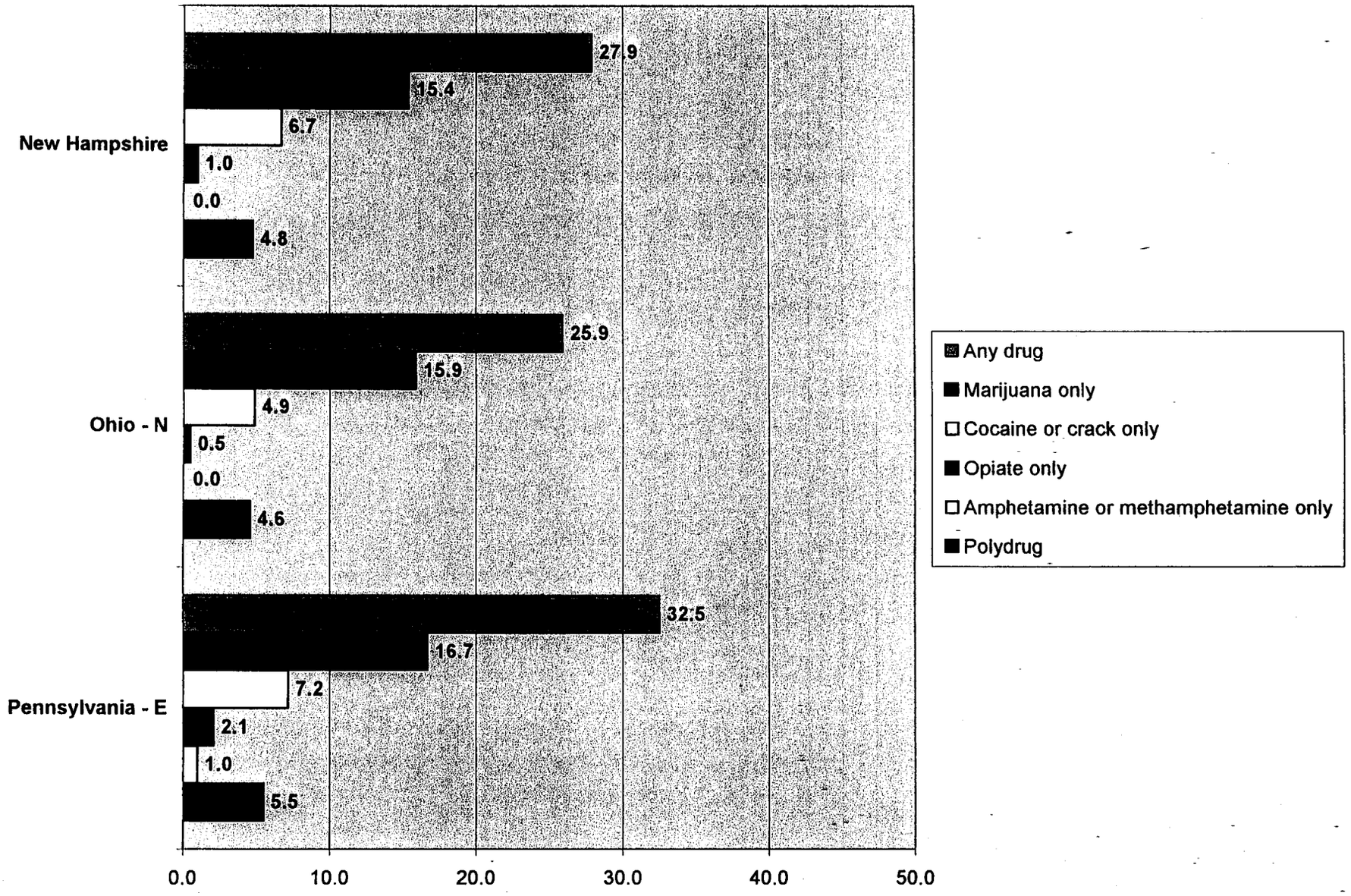
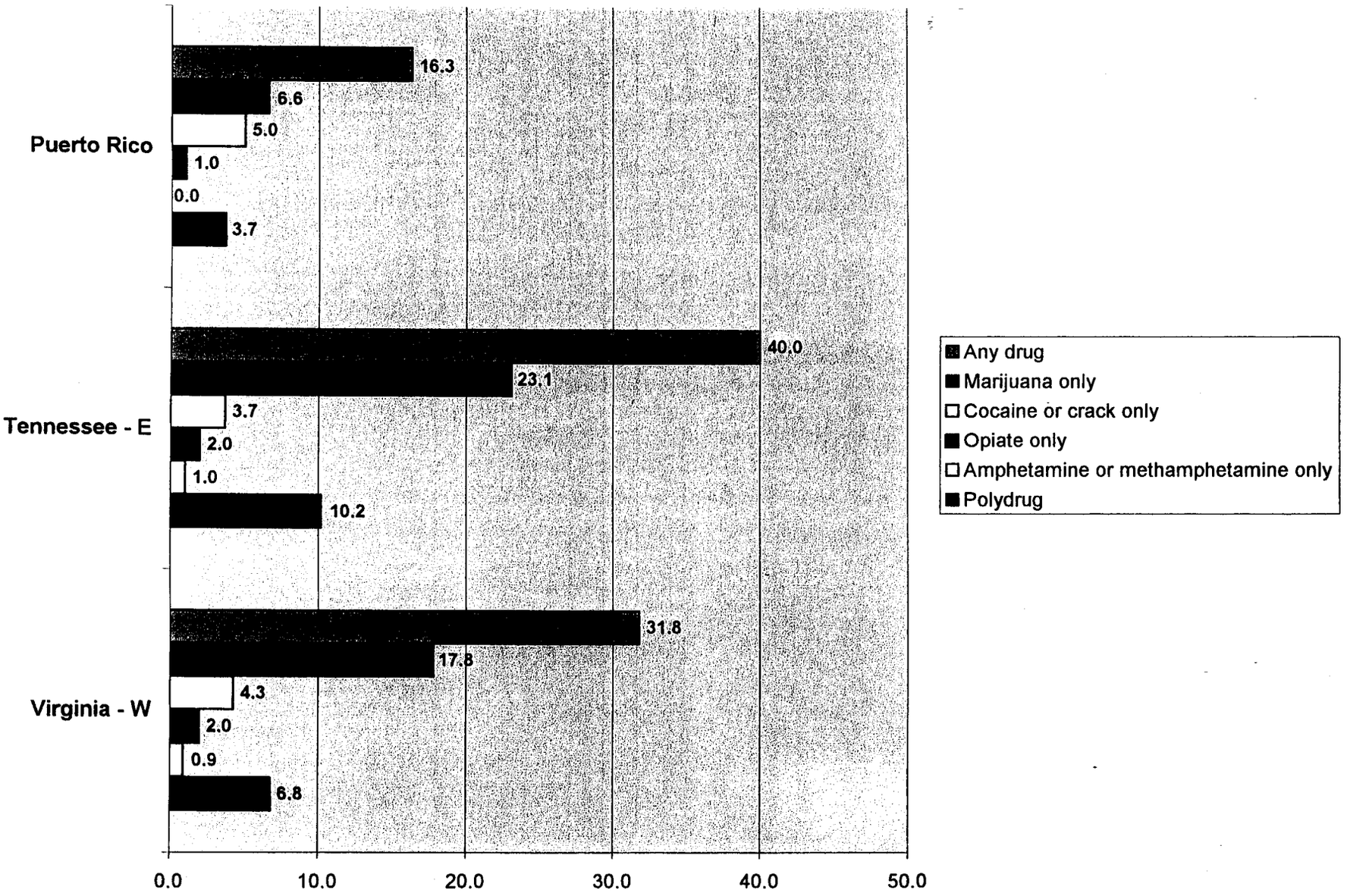
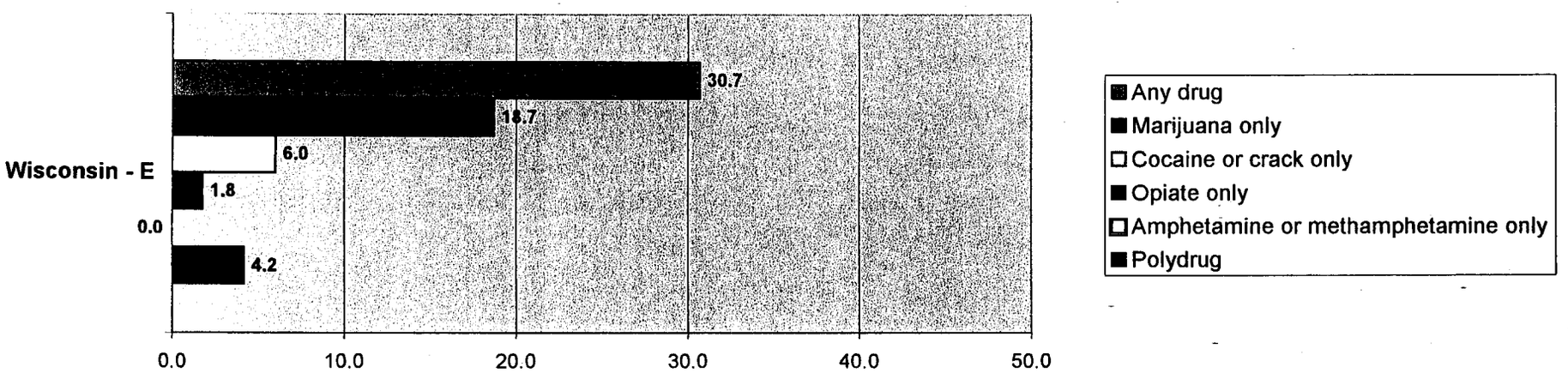


Fig 4.13d



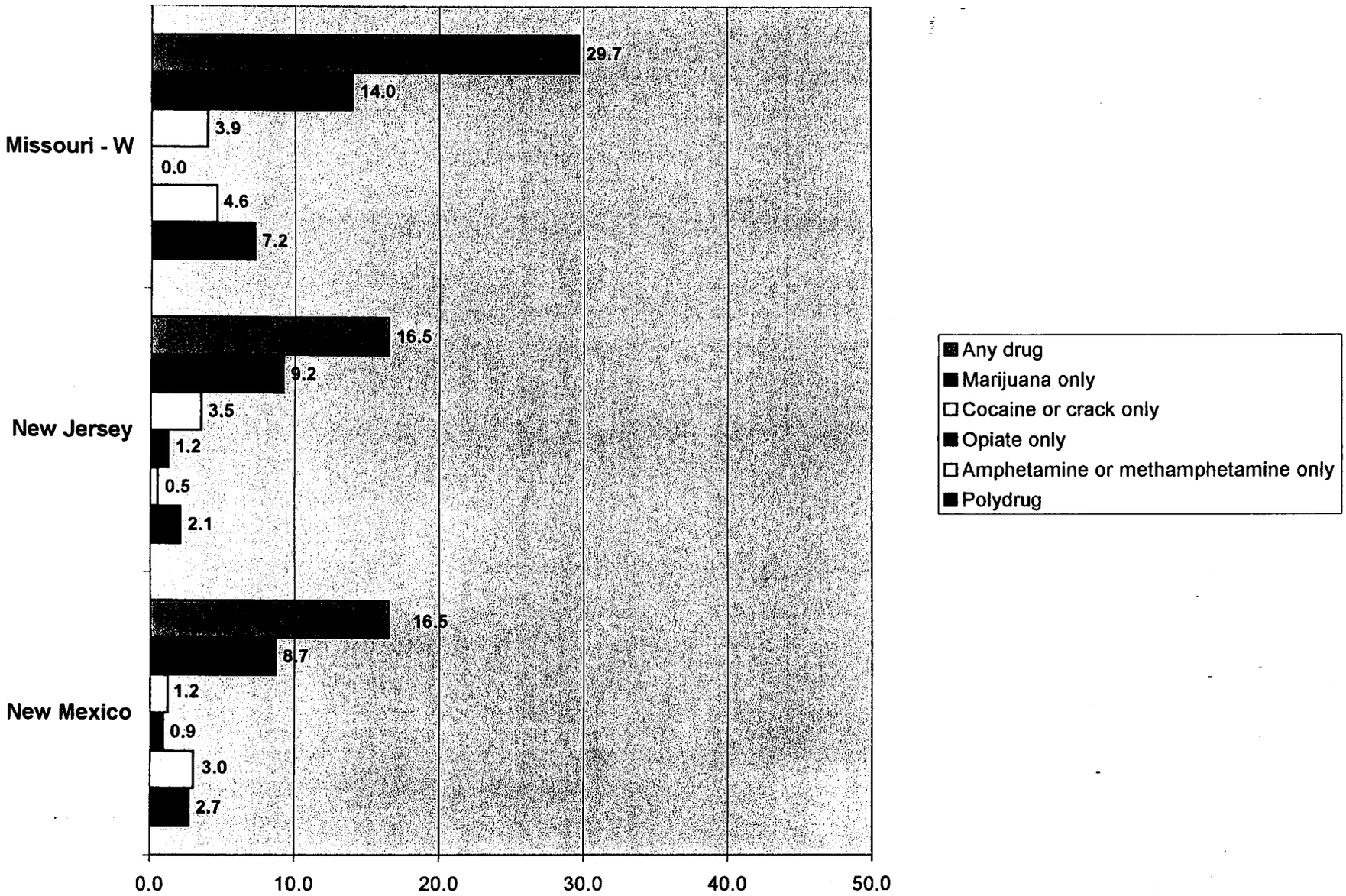
Modified 3/30/01

Chapter 4 Fig 4.13e



Modified 3/30/01

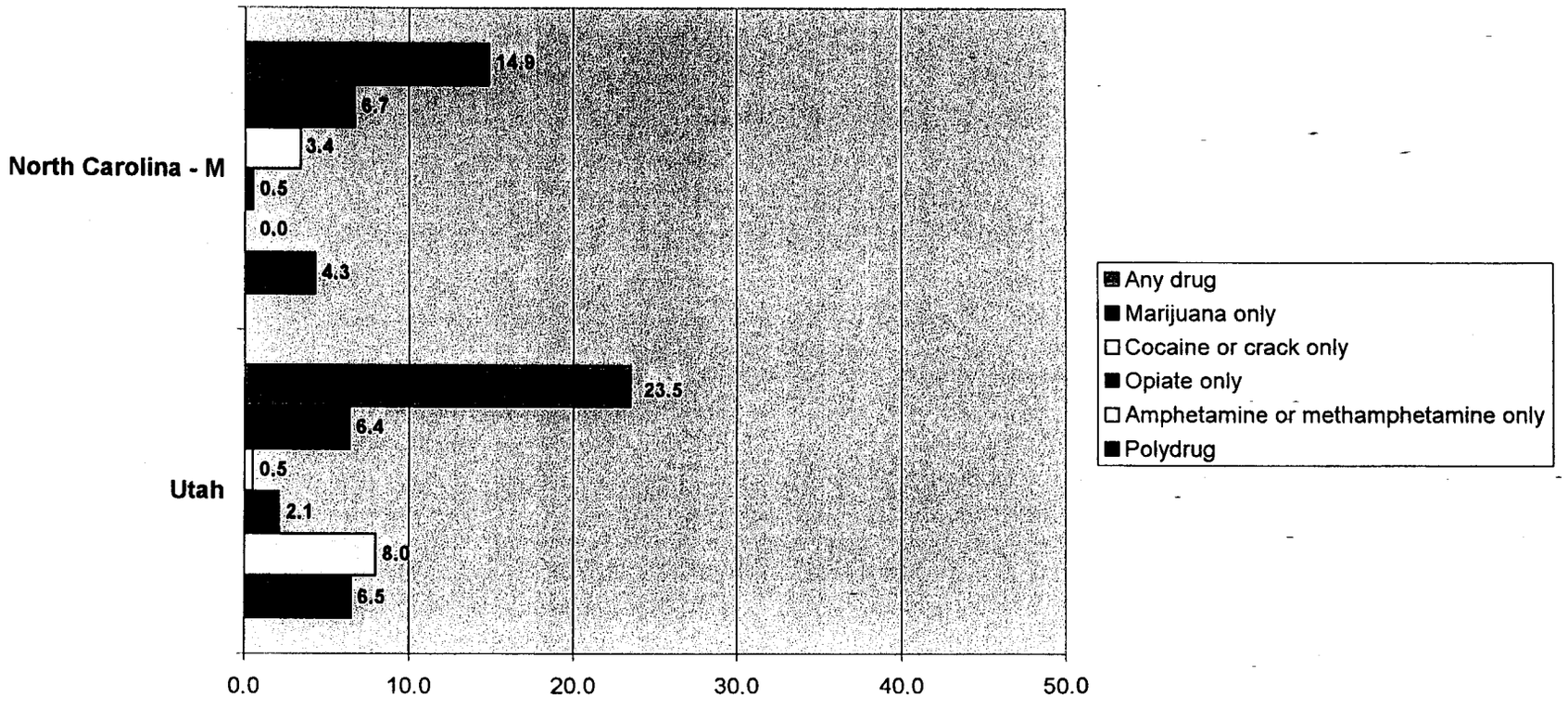
Chapter 4 Fig 4.13e2

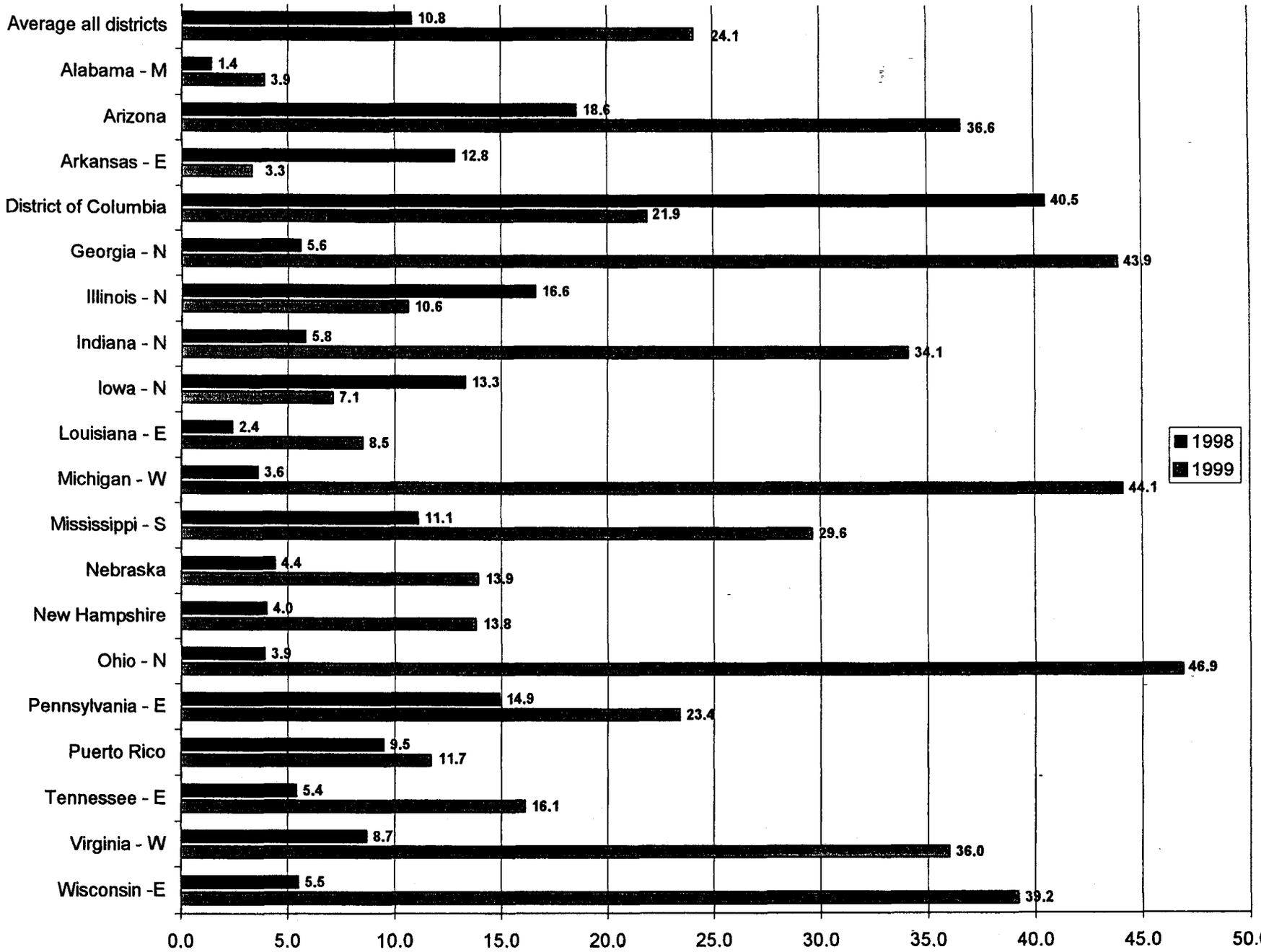


Modified 3/30/01

Chapter 4 Fig 4.14a

Figure 4.14: Defendants Testing Positive as a Percent of All ODT Defendants with an Initial Test, Model II Districts, 1999 (cont'd)





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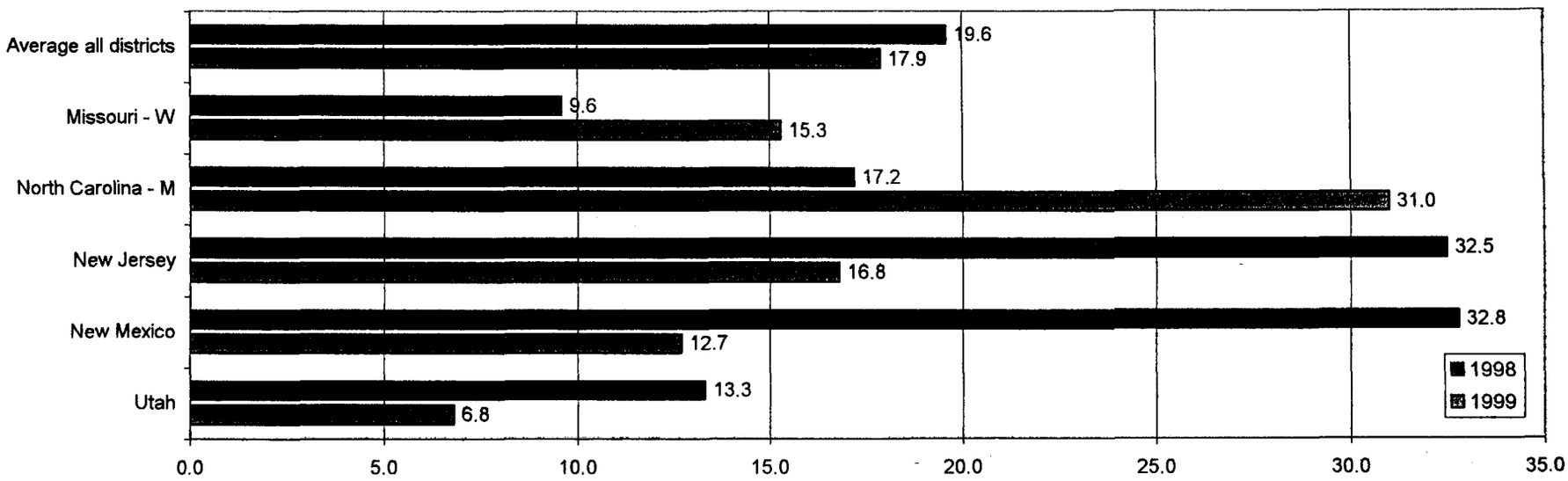
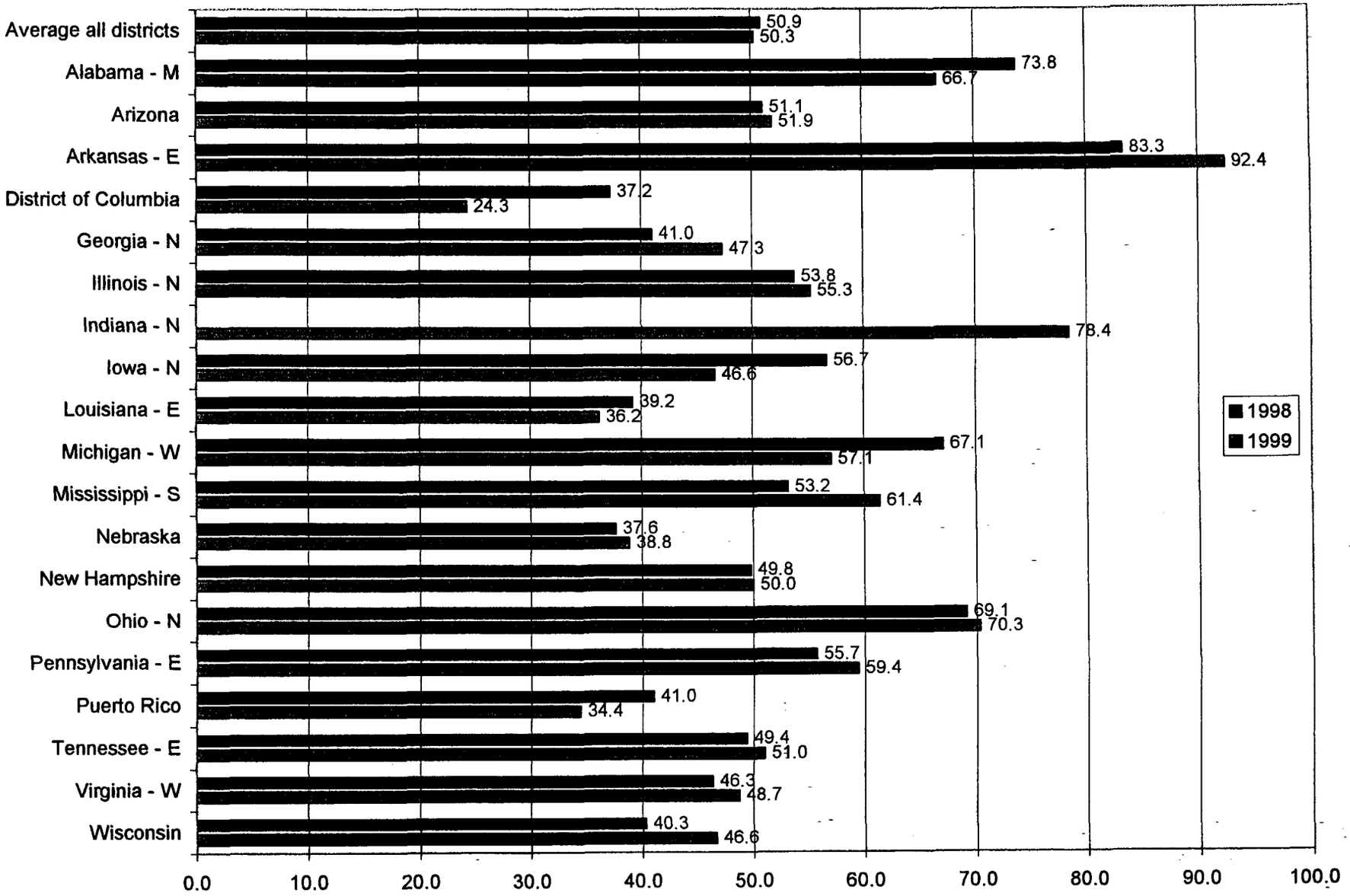
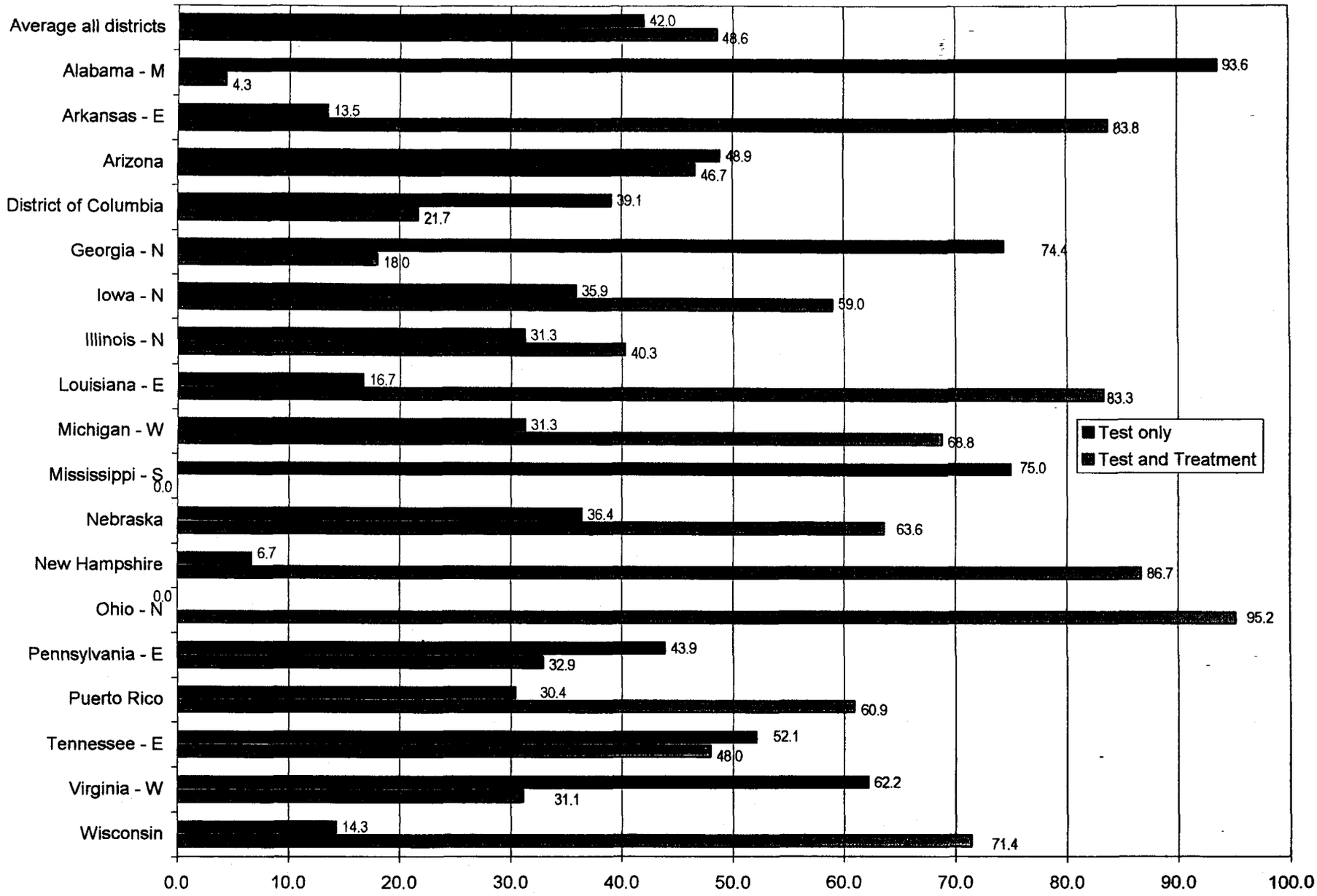
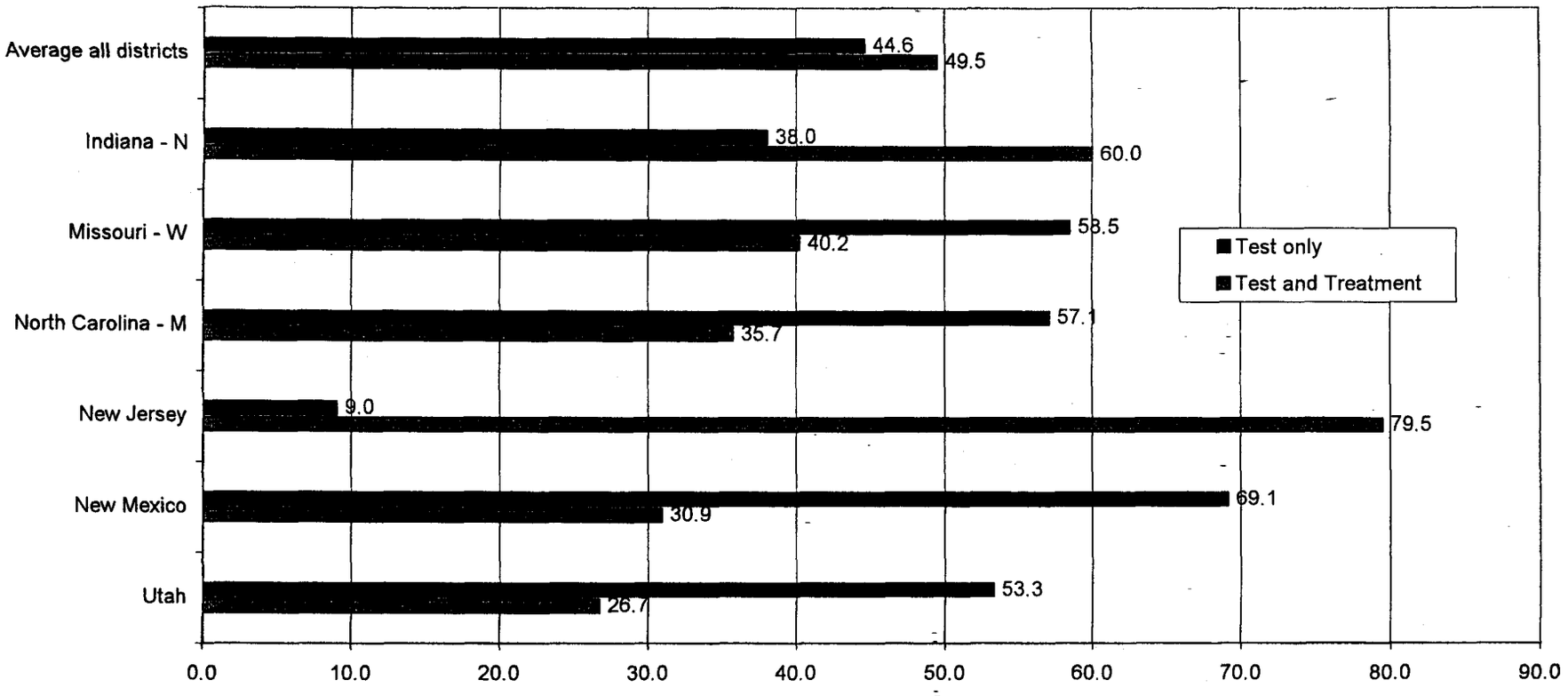
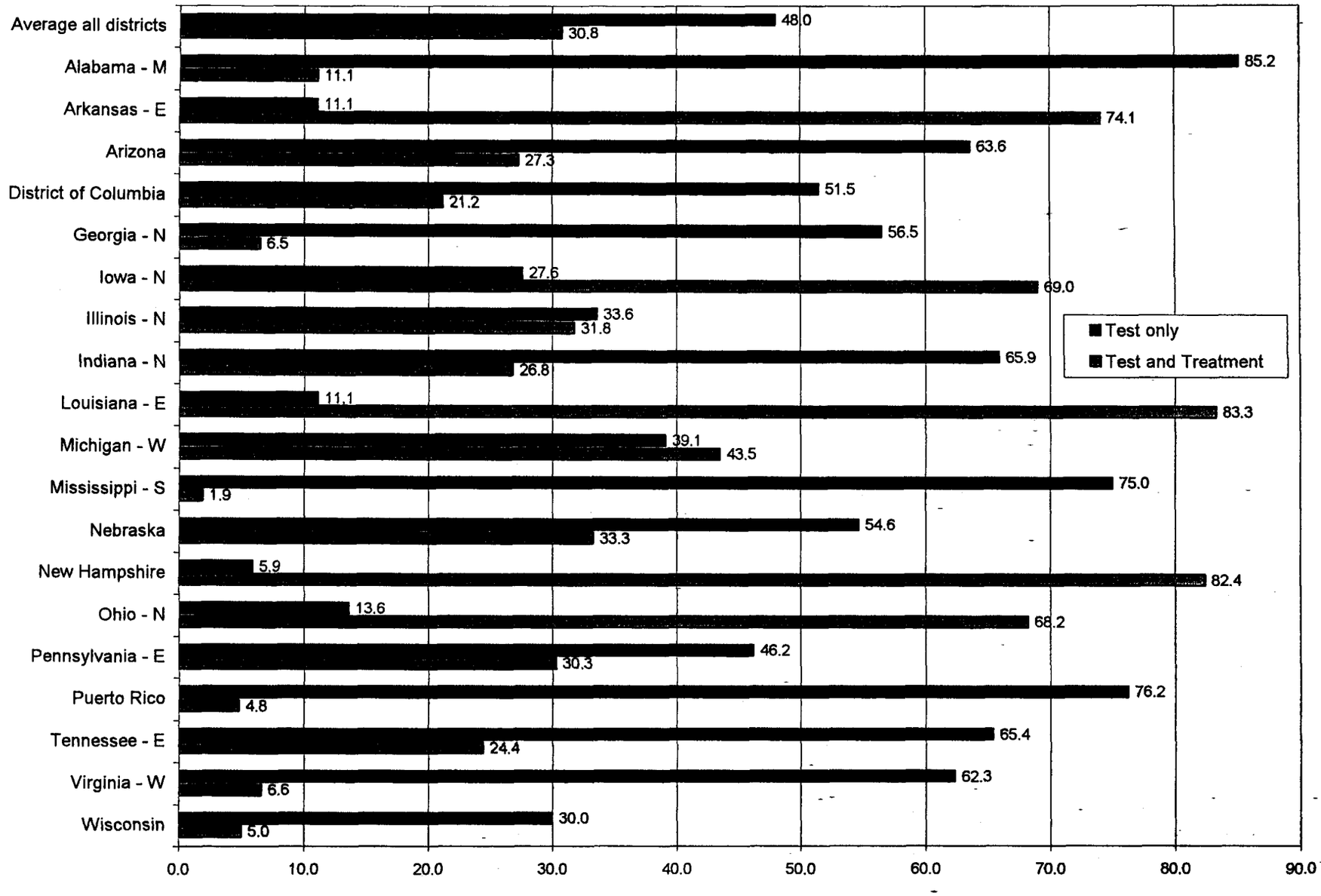
Chapter 4 Fig 4.15











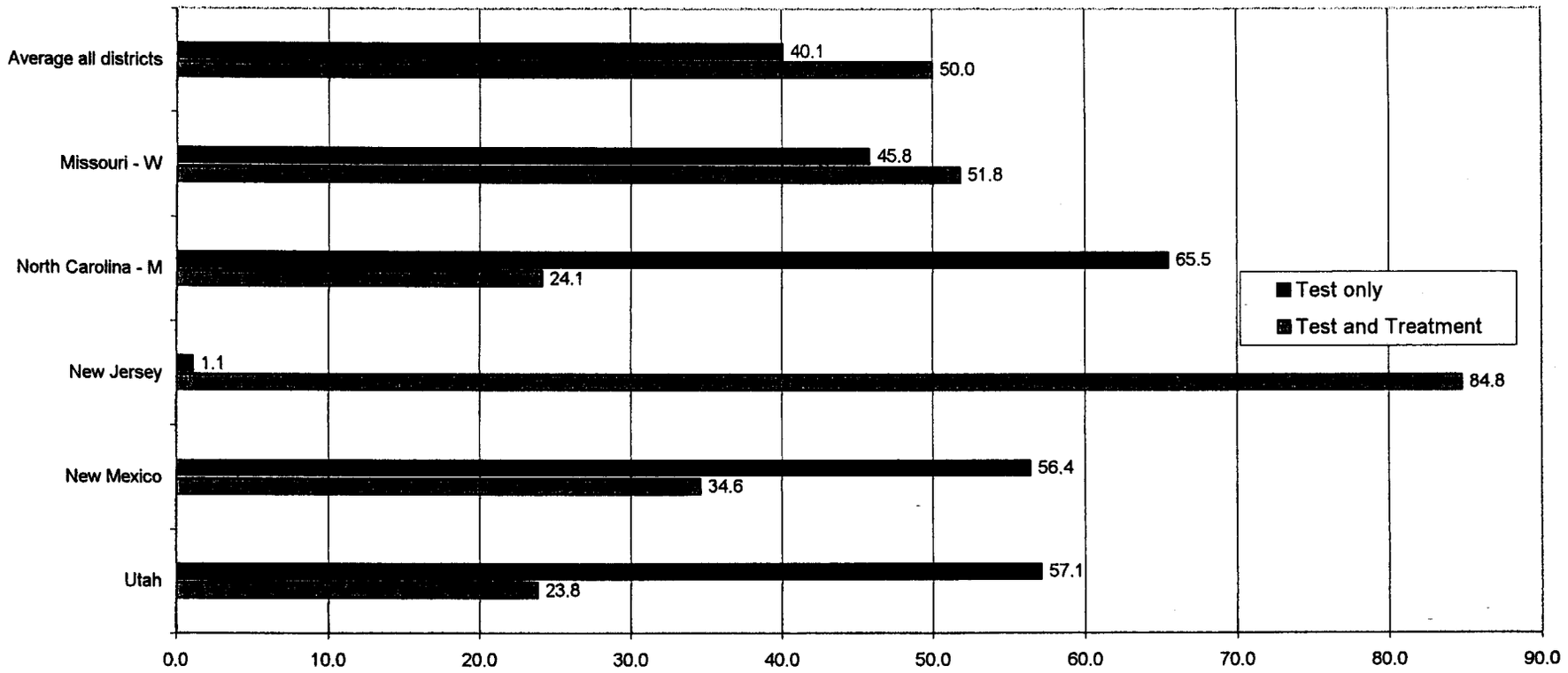
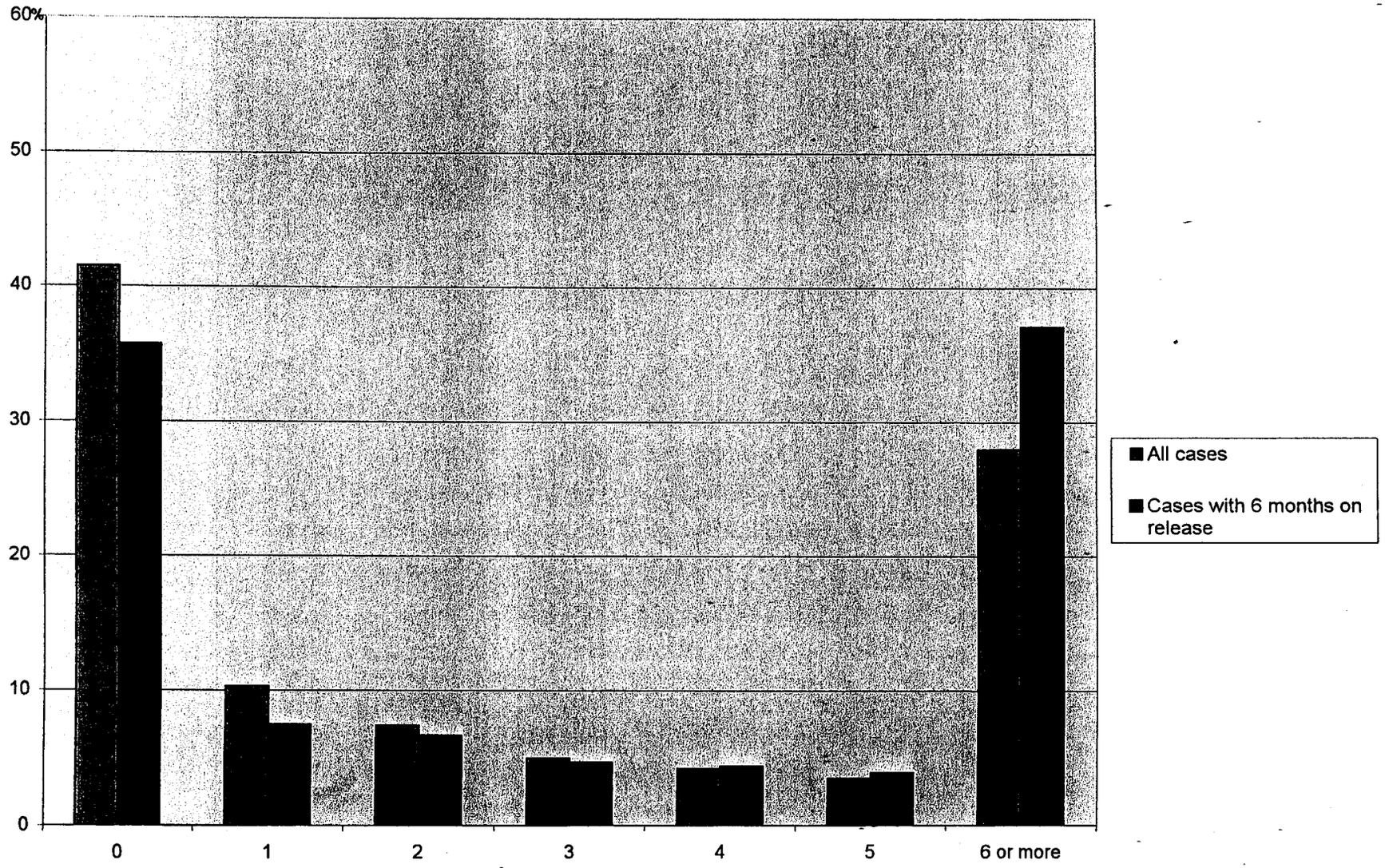
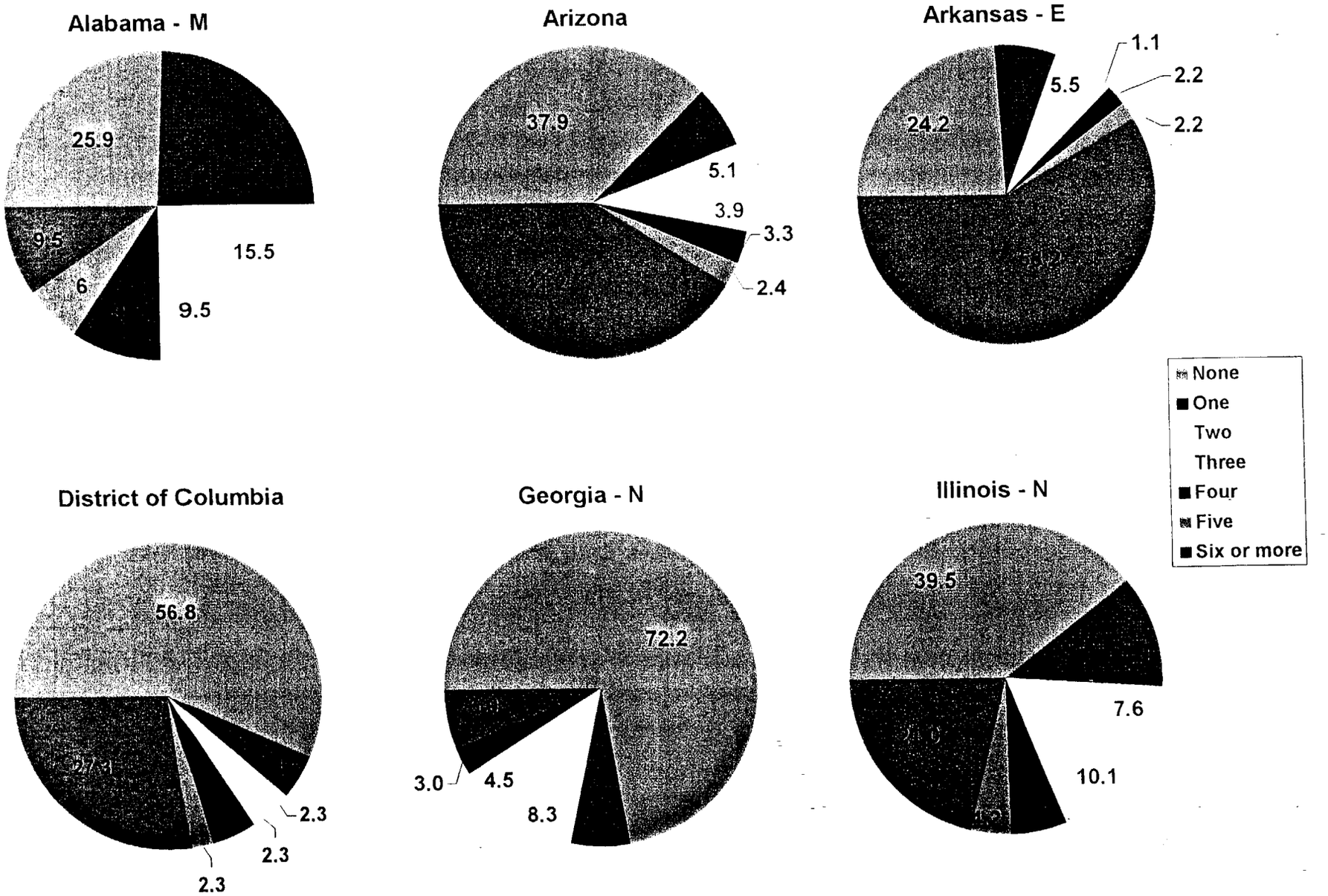


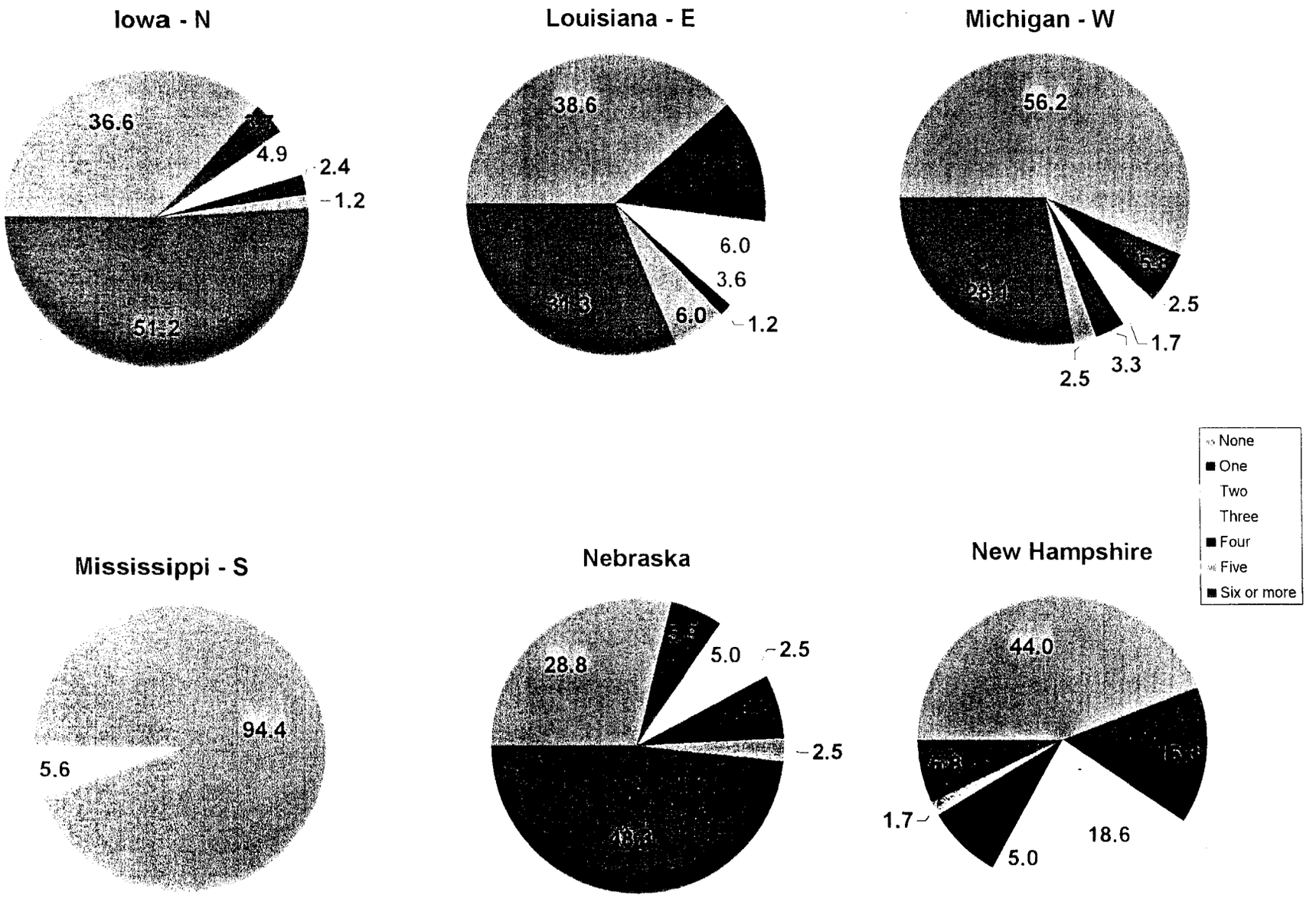
Figure 4.22: Percent of Defendants By Number of Surveillance Tests Among Defendants Released With a Test Condition, All Districts Combined, 1998





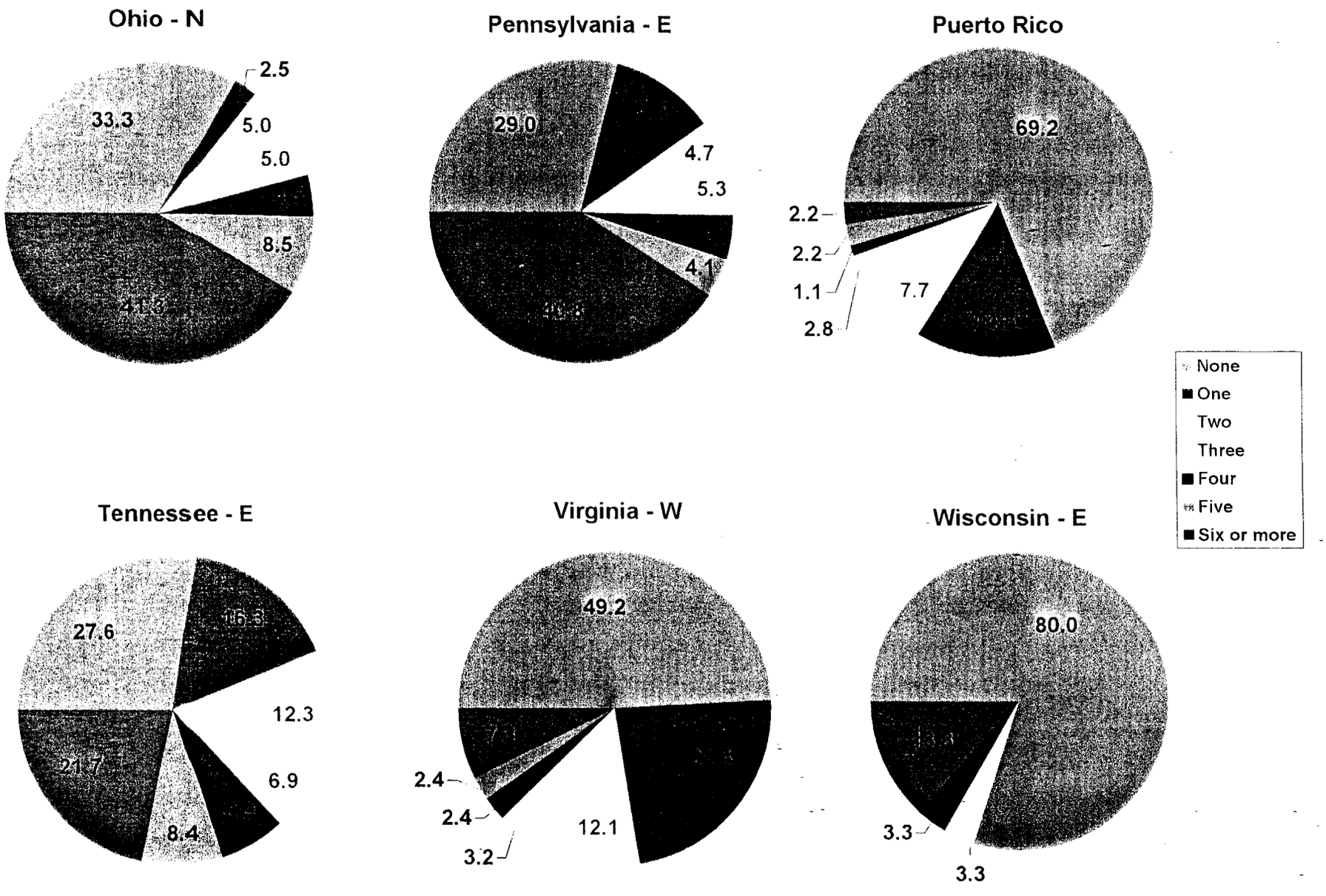
3/30/01

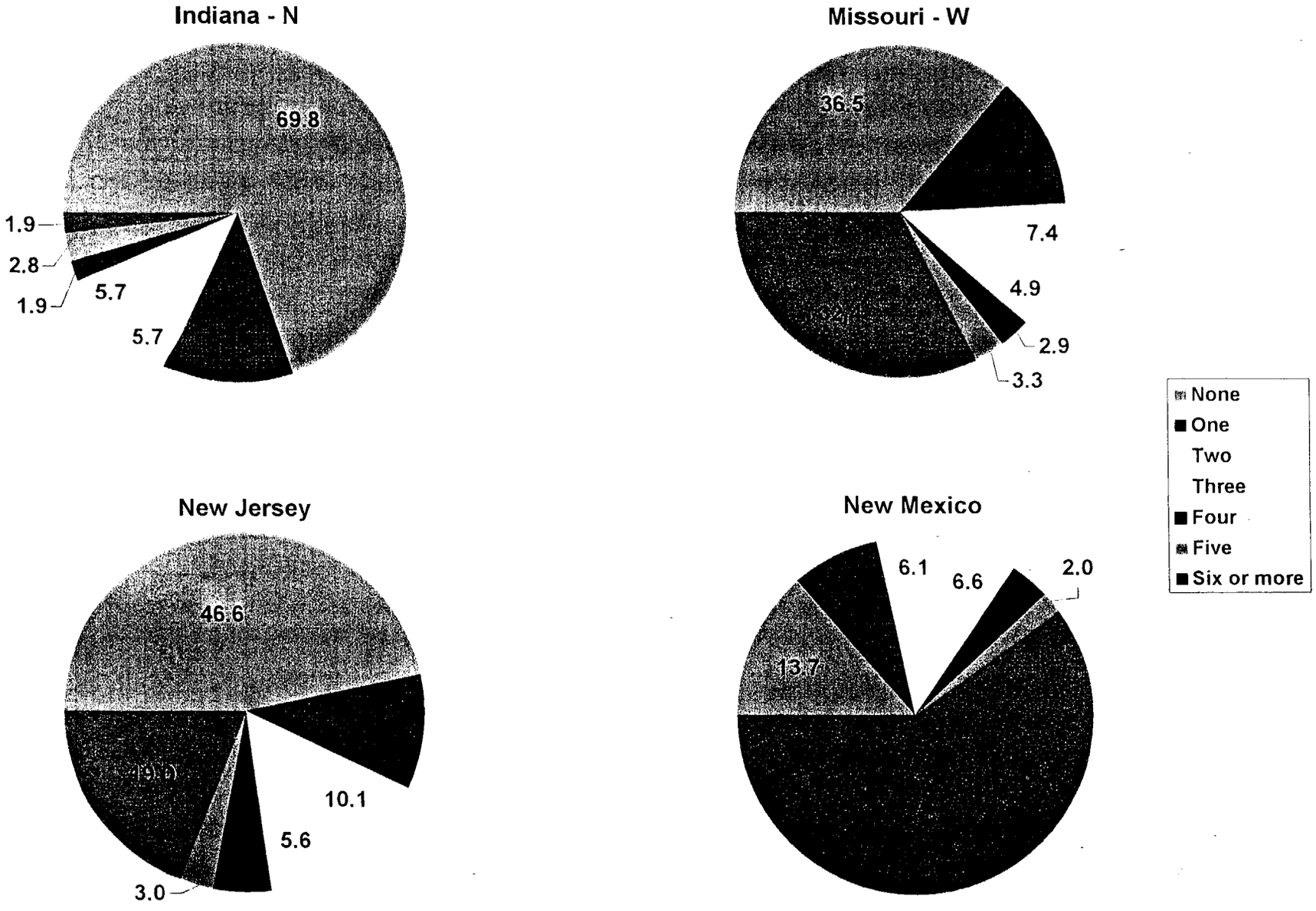
New Chapter 4 Part2 Fig 4.23Pie1



3/30/01

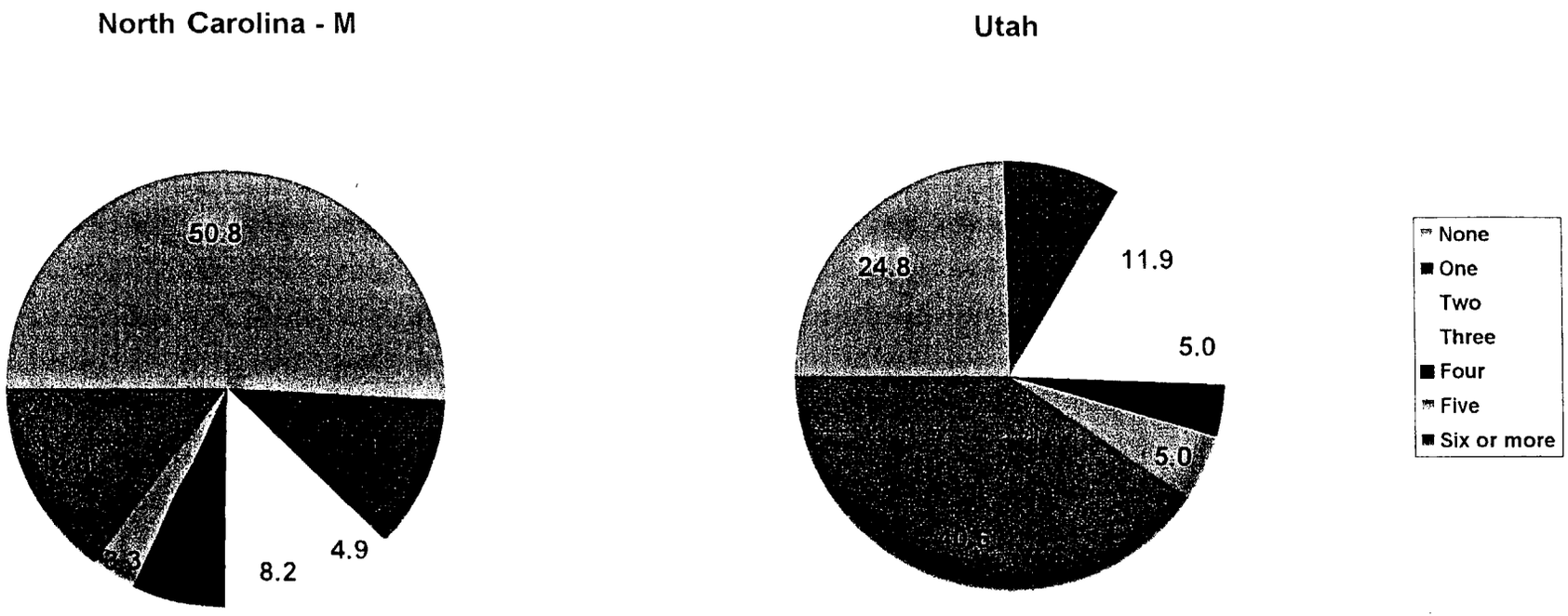
New Chapter 4 Part2 Fig 4.23Pie2





3/30/01

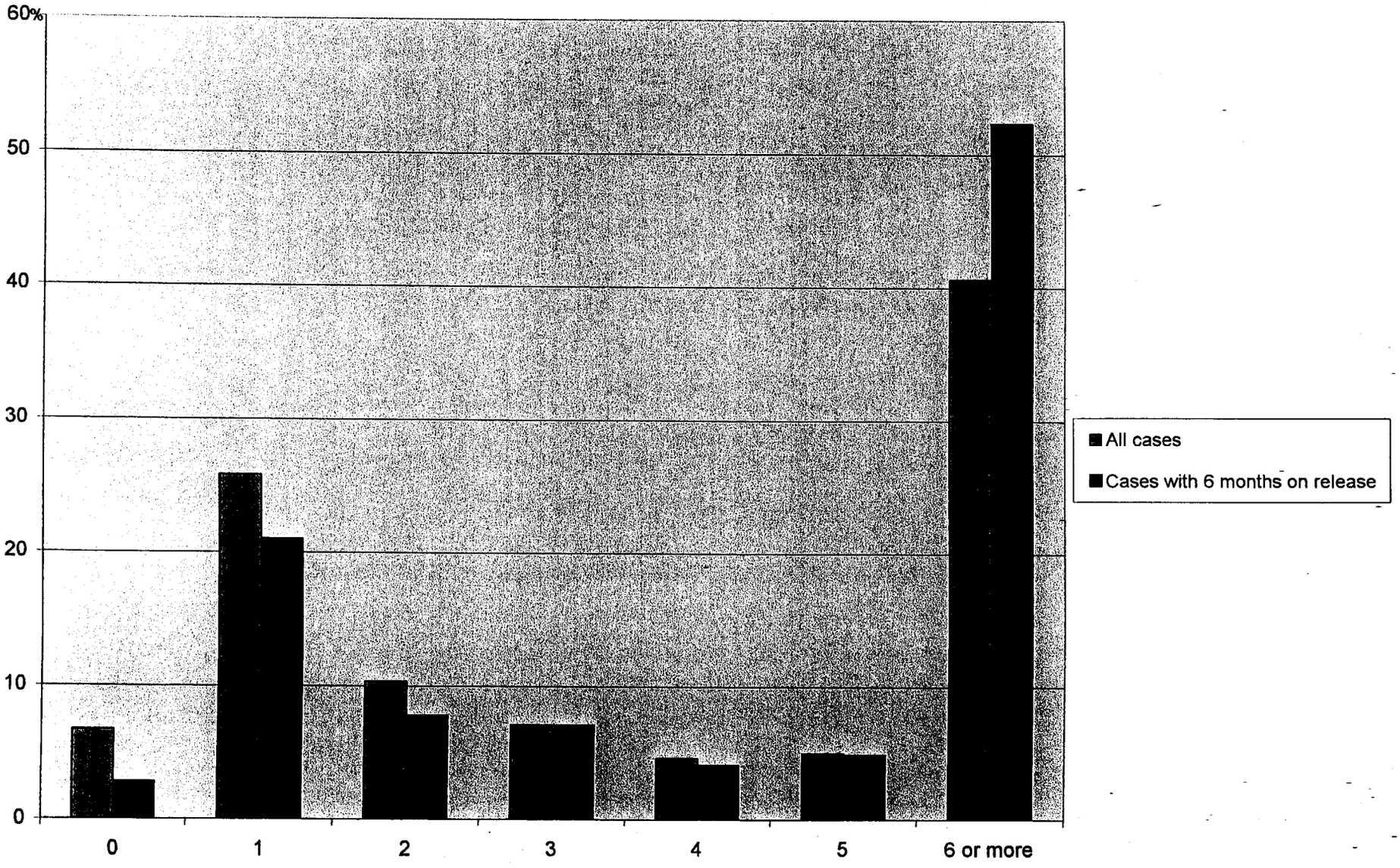
New Chapter 4 Part2 Fig 4.24Pie1

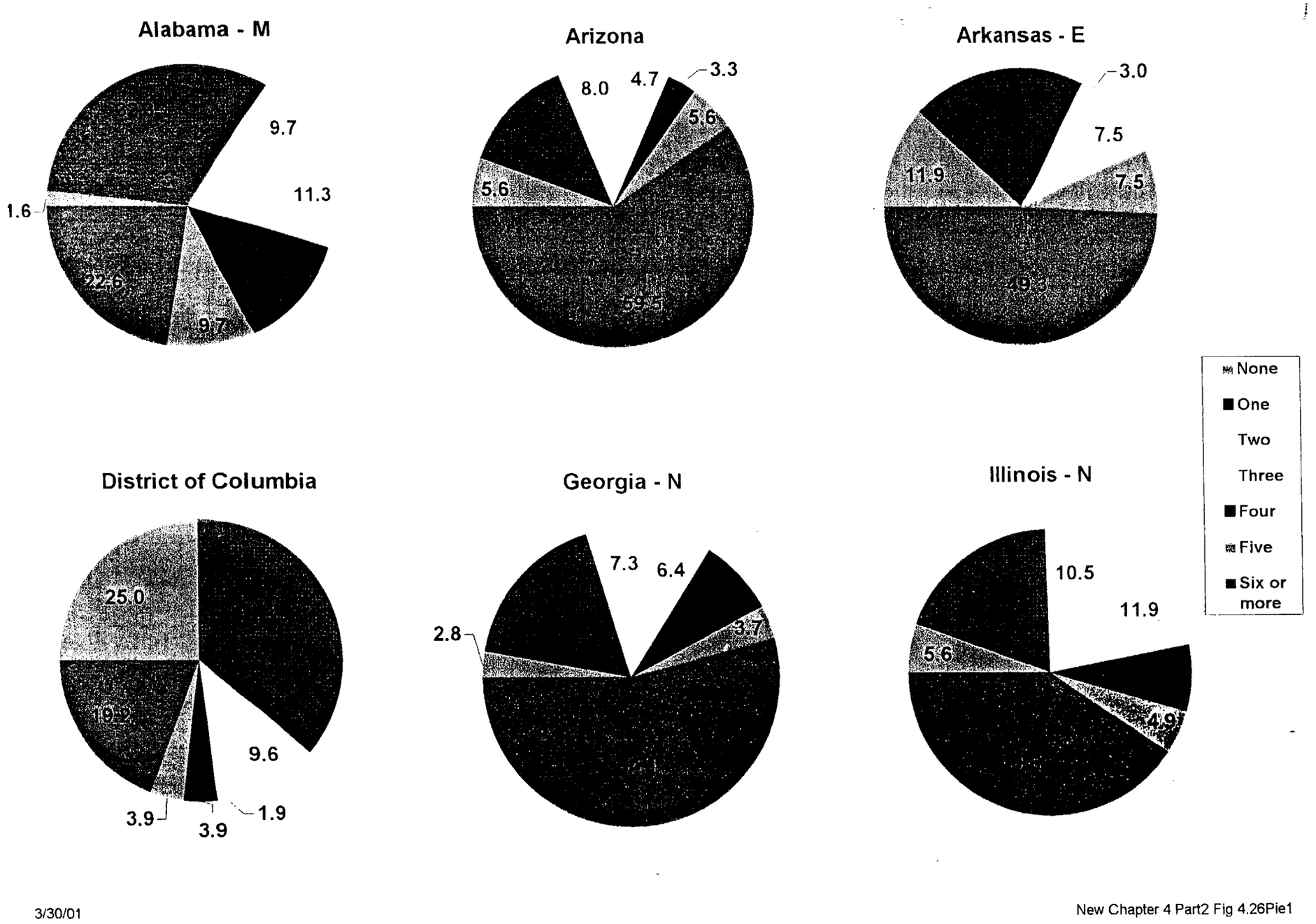


3/30/01

New Chapter 4 Part2 Fig 4.24Pie2

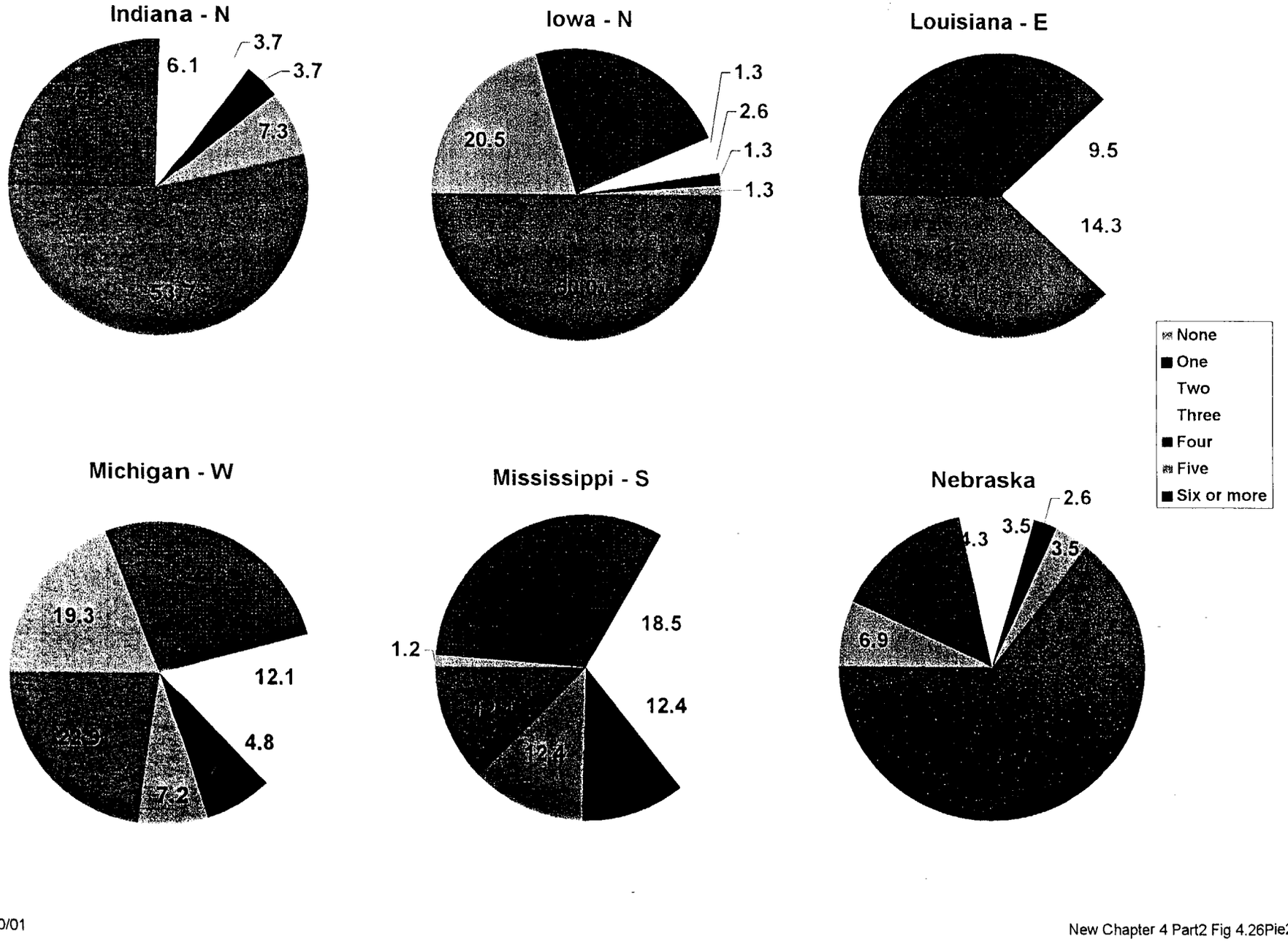
Figure 4.25: Percent of Defendants By Number of Surveillance Tests Among Defendants Released With a Test Condition, All Districts Combined, 1999





3/30/01

New Chapter 4 Part2 Fig 4.26Pie1



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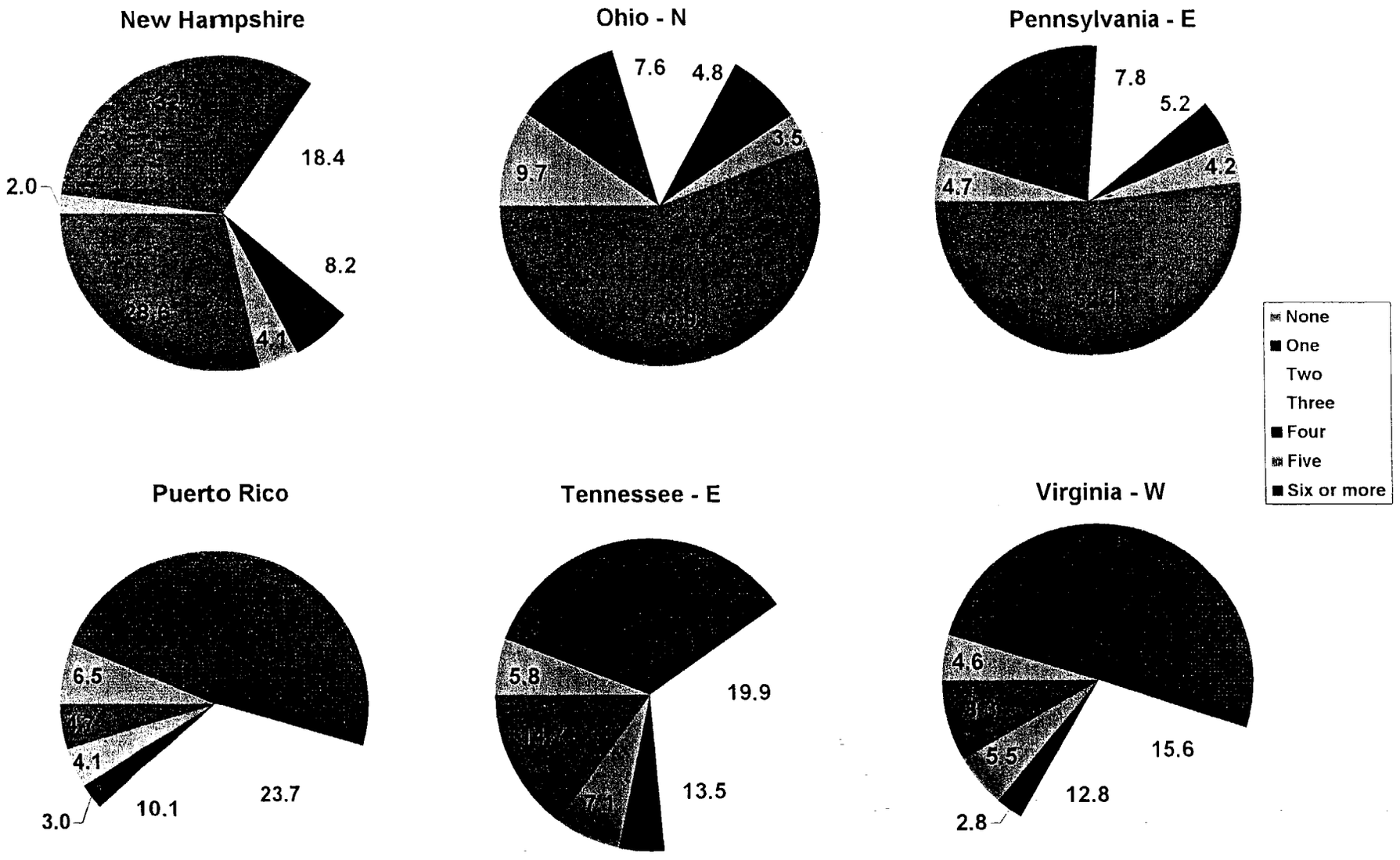
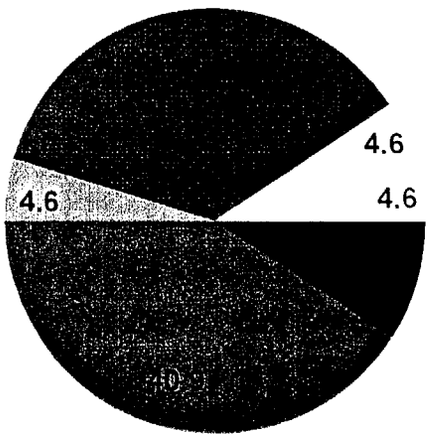
New Chapter 4 Part2 Fig 4.26Pie2



3/30/01

New Chapter 4 Part2 Fig 4.26Pie3

Wisconsin - E

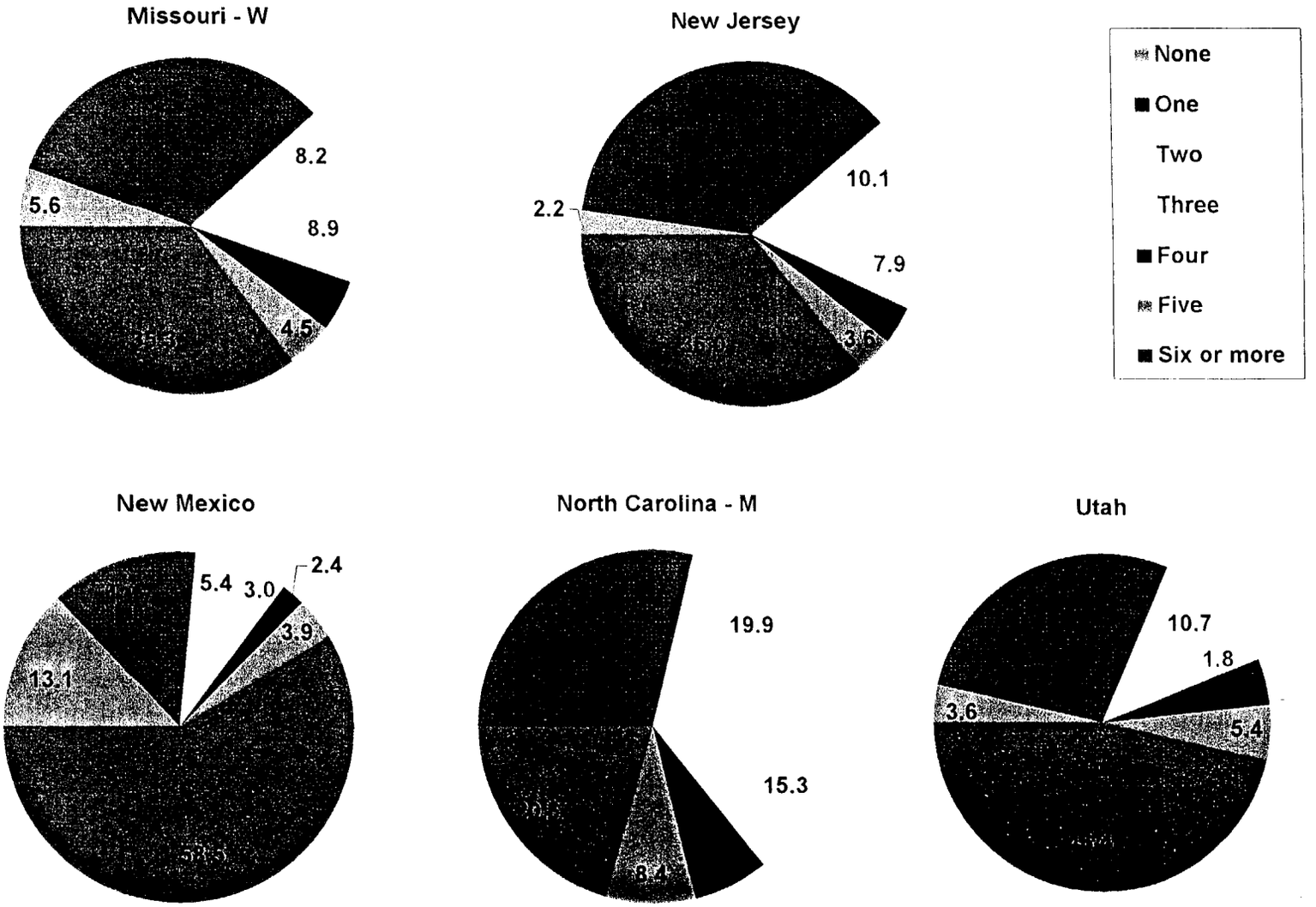


- None
- One
- Two
- Three
- Four
- Five
- Six or more

3/30/01

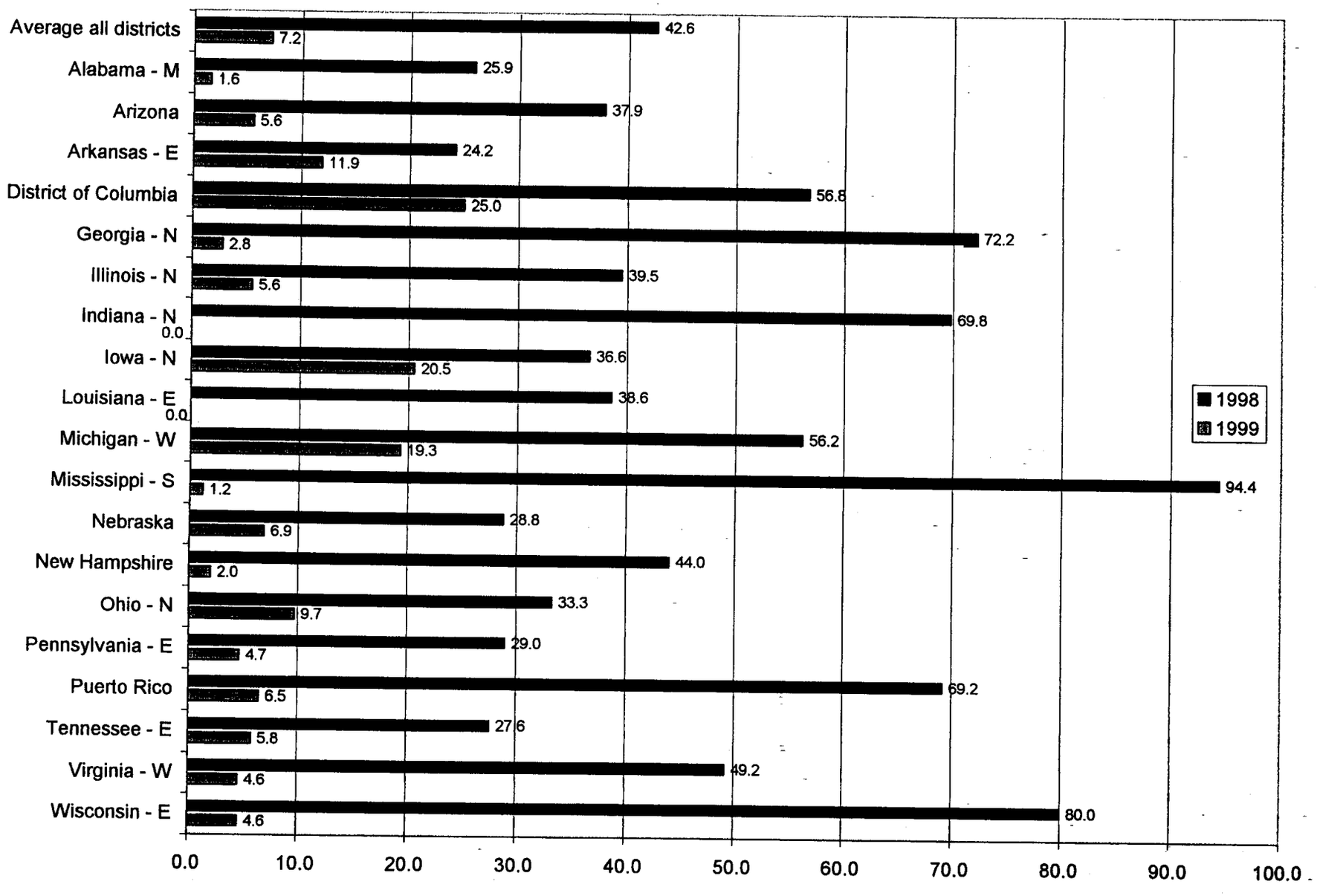
New Chapter 4 Part2 Fig 4.26Pie4

Figure 4.27: Number of Surveillance Tests Among ODT Defendants Released with a Test Condition, Model Districts, 1999



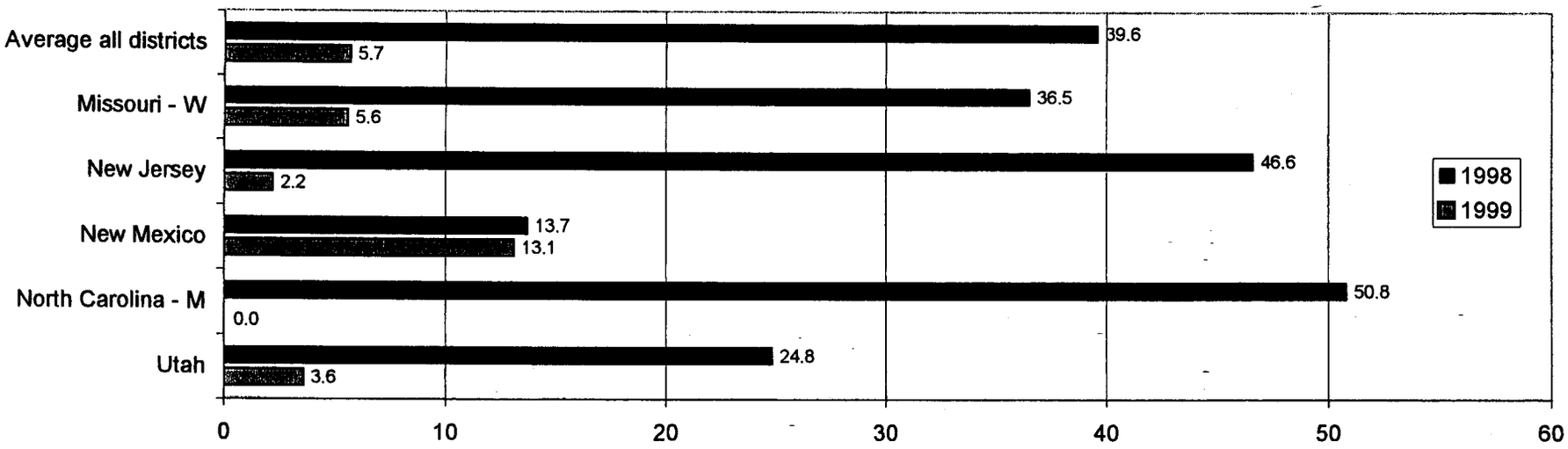
3/30/01

New Chapter 4 Part2 Fig 4.27 Pie1



Modified 3/30/01

Chapter 4 Fig 4.28



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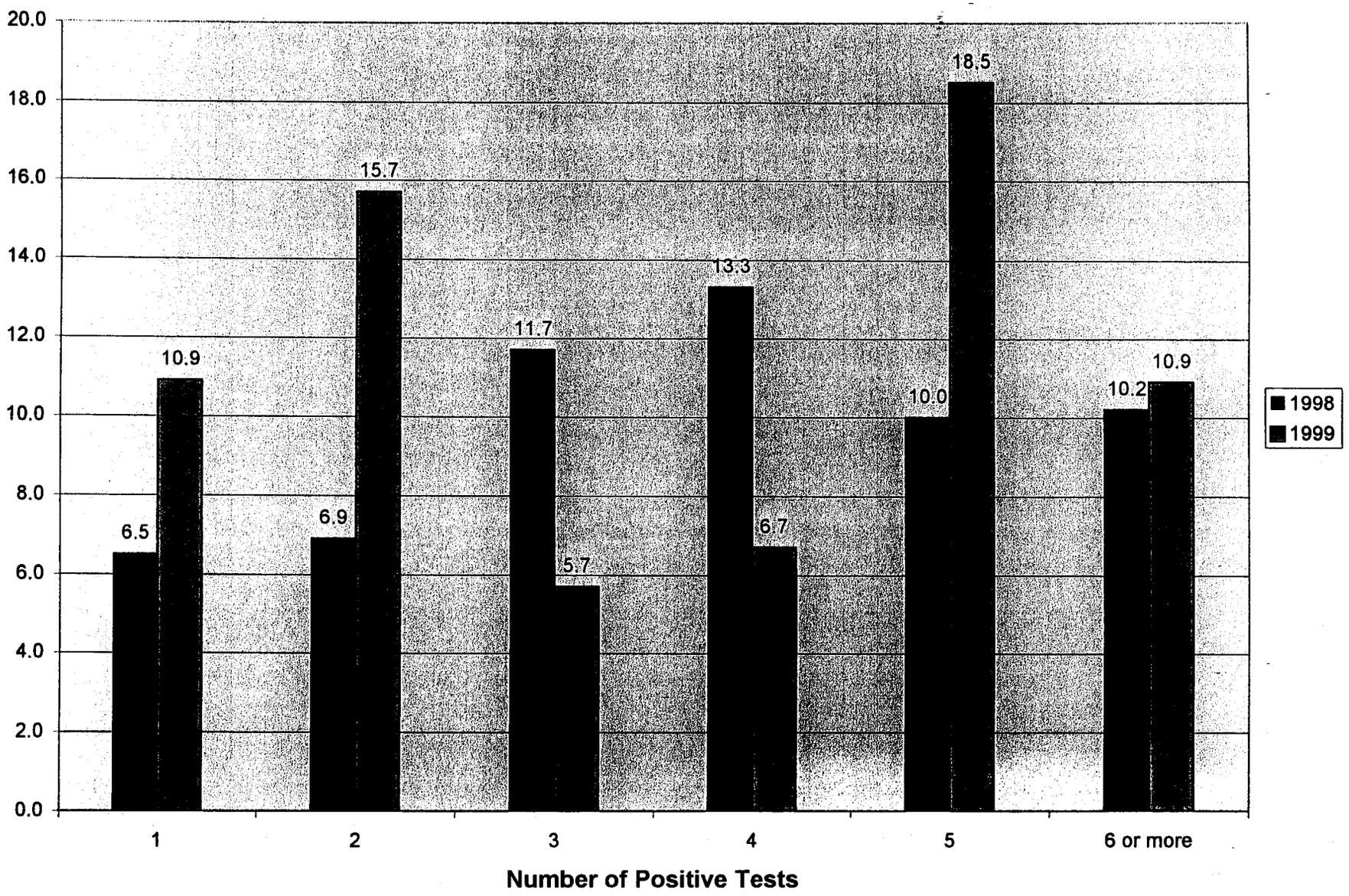
Chapter 4 Fig 4.29

Table 5.1: Percent of ODT Defendants Sanctioned for Positive Surveillance Test by Number of Positive Tests, All Districts Combined, 1998

Number of Positive Tests	Number of defendants	Increased testing (%)	Revocation (%)	Home confinement (%)	Temporary restraint (%)
1	291	2.1	4.5	0.3	0.3
2	145	0.0	6.9	0.0	0.0
3	77	0.0	7.8	0.0	1.3
4	45	2.2	11.1	0.0	2.2
5	50	0.0	8.0	0.0	0.0
6 or more	98	0.0	6.1	0.0	1.0

Table 5.2: Percent of ODT Defendants Sanctioned for Positive Surveillance Test by Number of Positive Tests, All Districts Combined, 1999

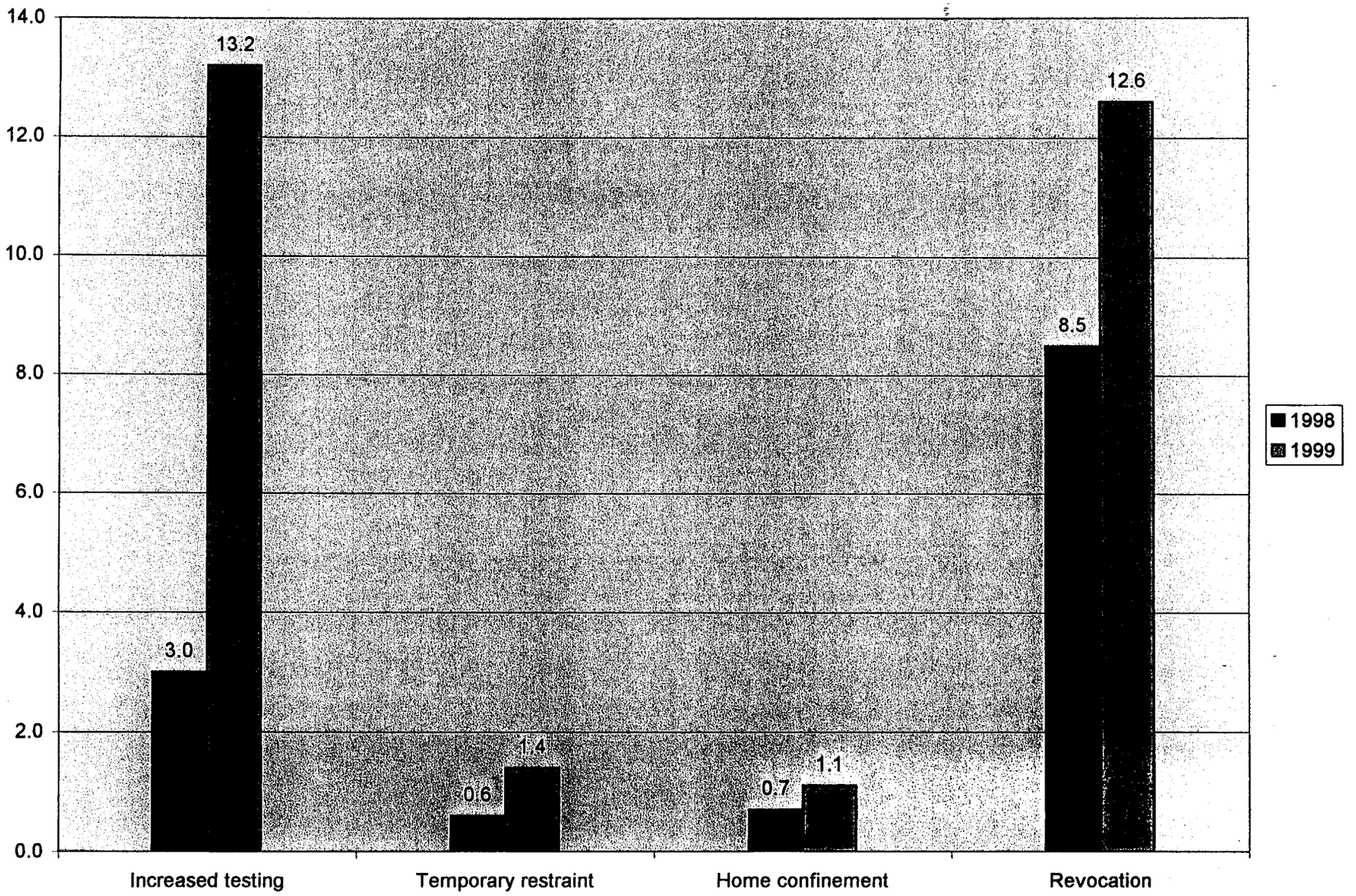
Number of positive tests	Number of defendants	Increased testing (%)	Revocation (%)	Home confinement (%)	Temporary restraint (%)
1	156	6.4	9.6	0.6	0.6
2	70	4.3	12.9	0.0	1.4
3	35	5.7	2.9	0.0	0.0
4	30	0.0	6.7	0.0	0.0
5	27	0.0	7.4	0.0	0.0
6 or more	46	0.0	8.7	0.0	0.0



Note: Responses include: increased testing, temporary restraint, home confinement and bail revocation.

Modified 3/30/01

New Chapter 5 Any Response 9899



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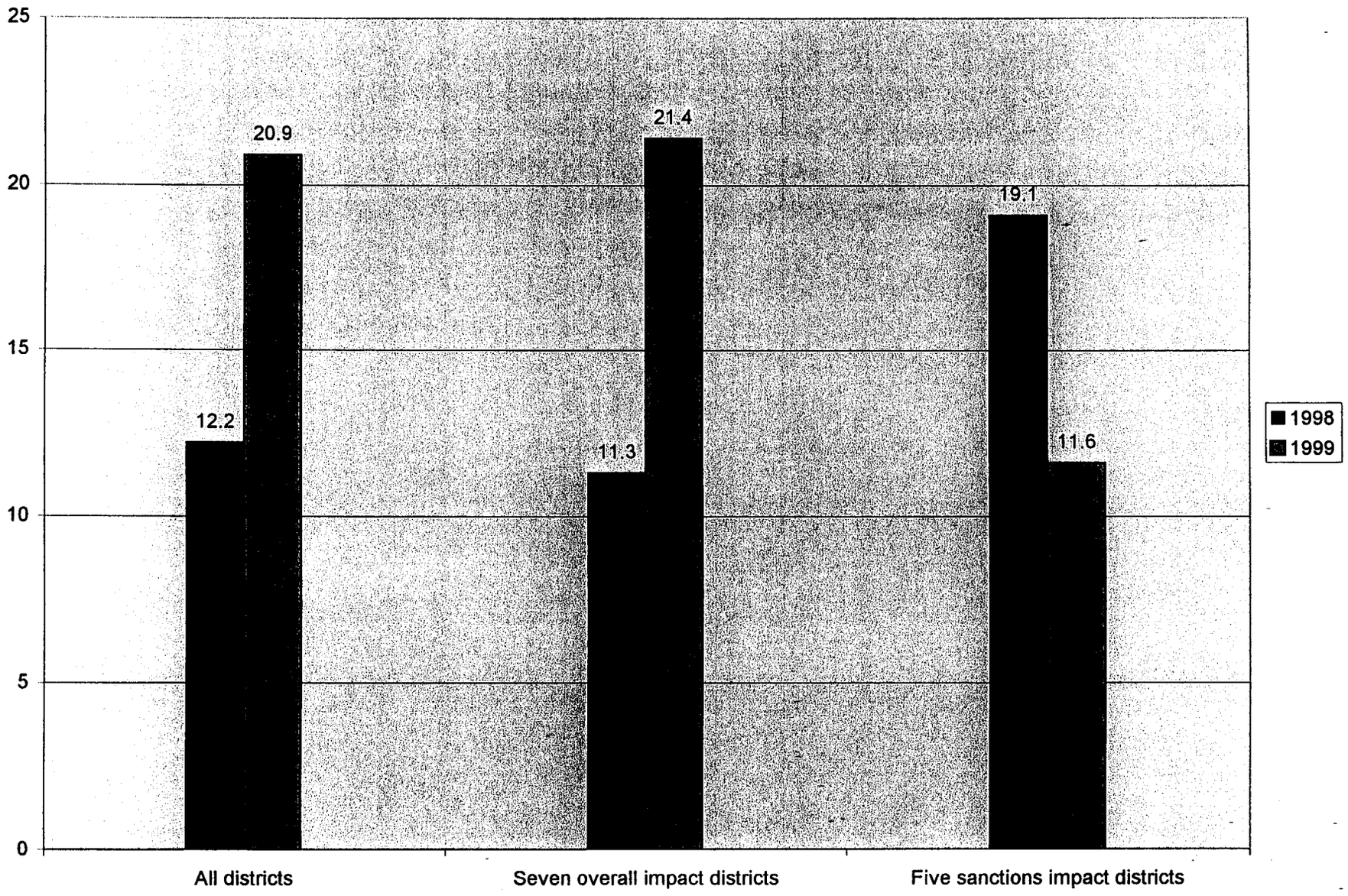
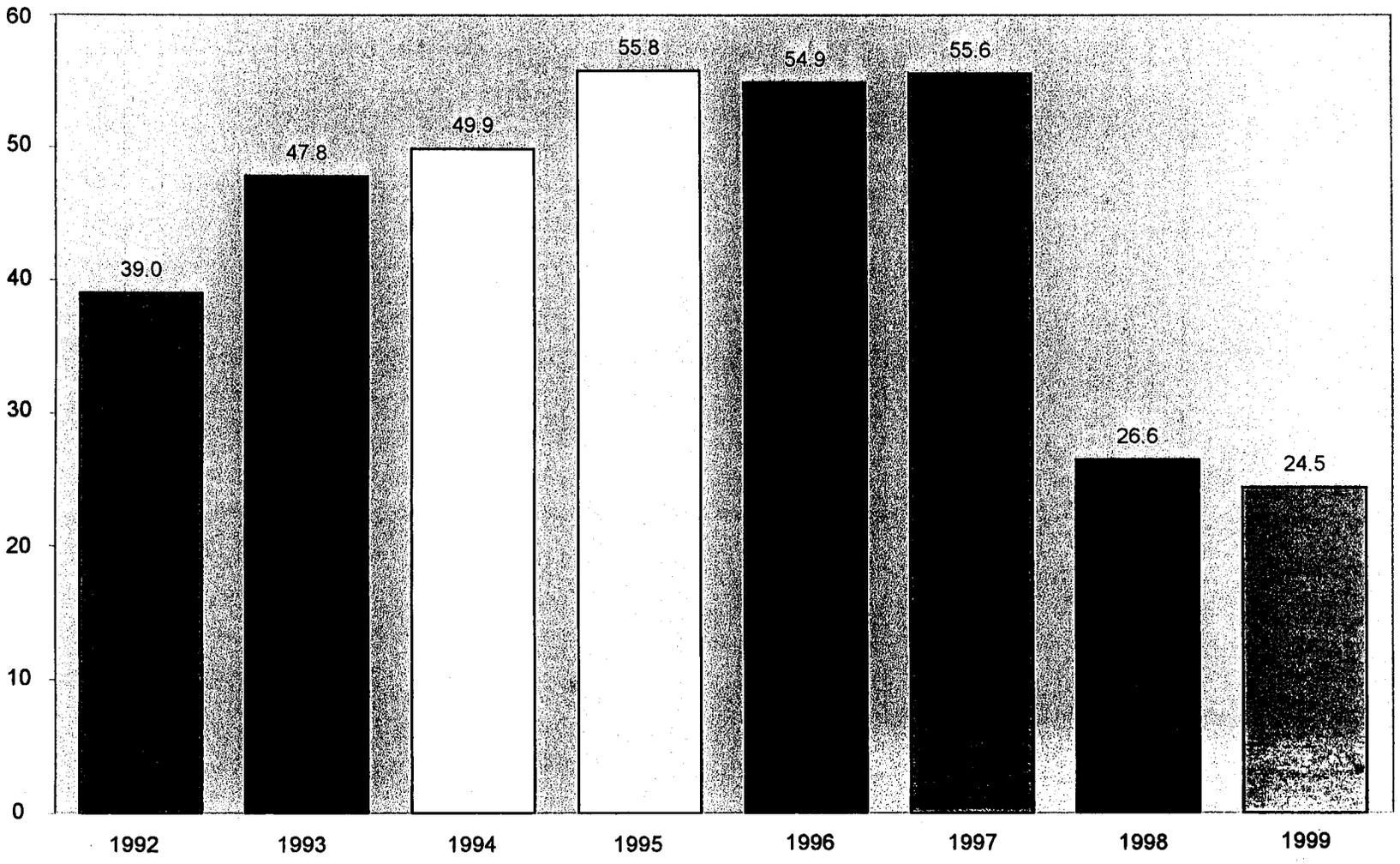
New Chapter 5 Any Pos Test 9899



Modified 3/30/01

New Chapter 5 Any sanction 98 99

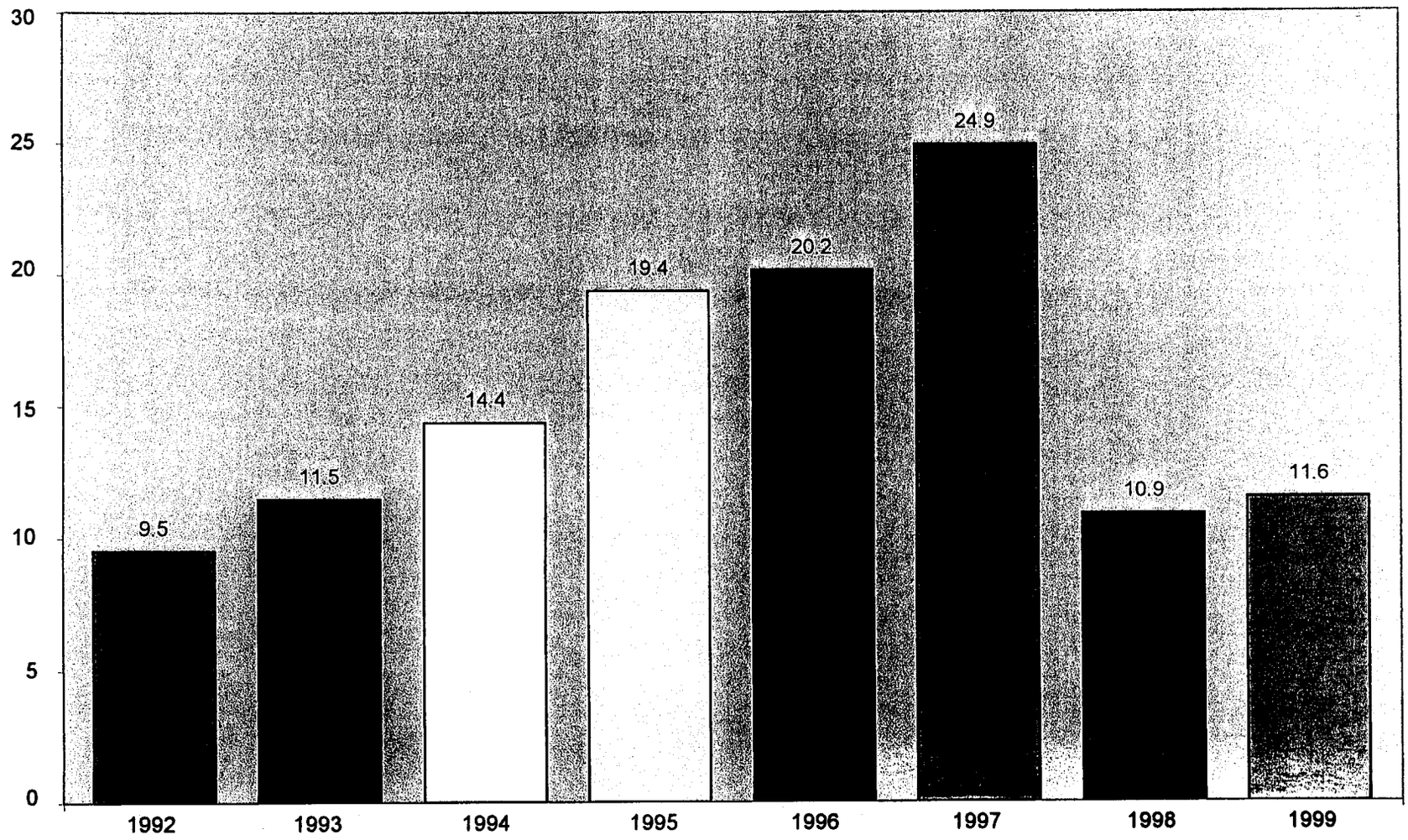
Figure 5.4: Drug Violations as a Percent of Total Violations, 23 ODP Districts Combined, 1992 to 1999



3/30/01

New Chapter 5 Figure 5.4

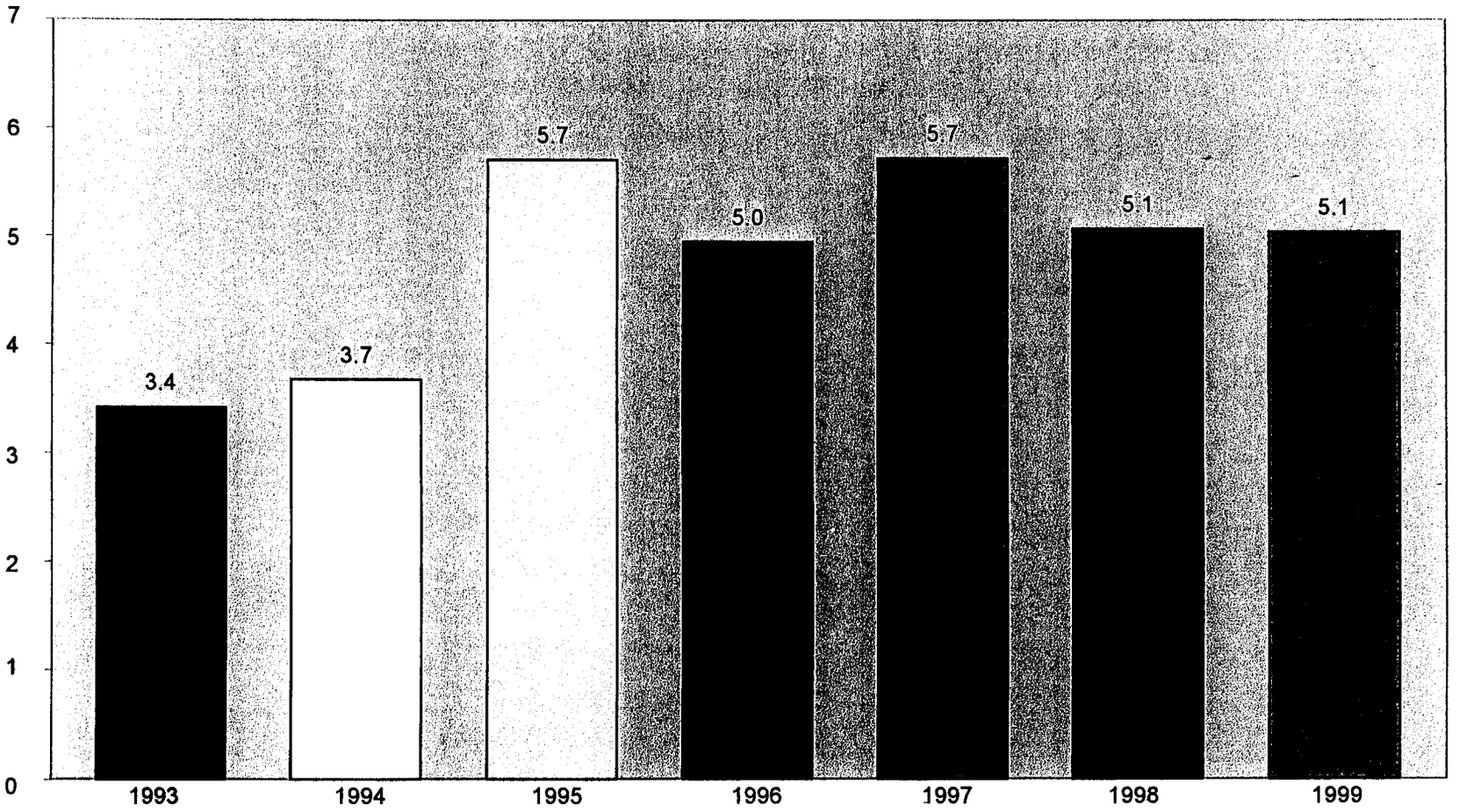
Figure 5.5: Drug Violations as a Percent of All Defendants Released, [illegible]



3/30/01

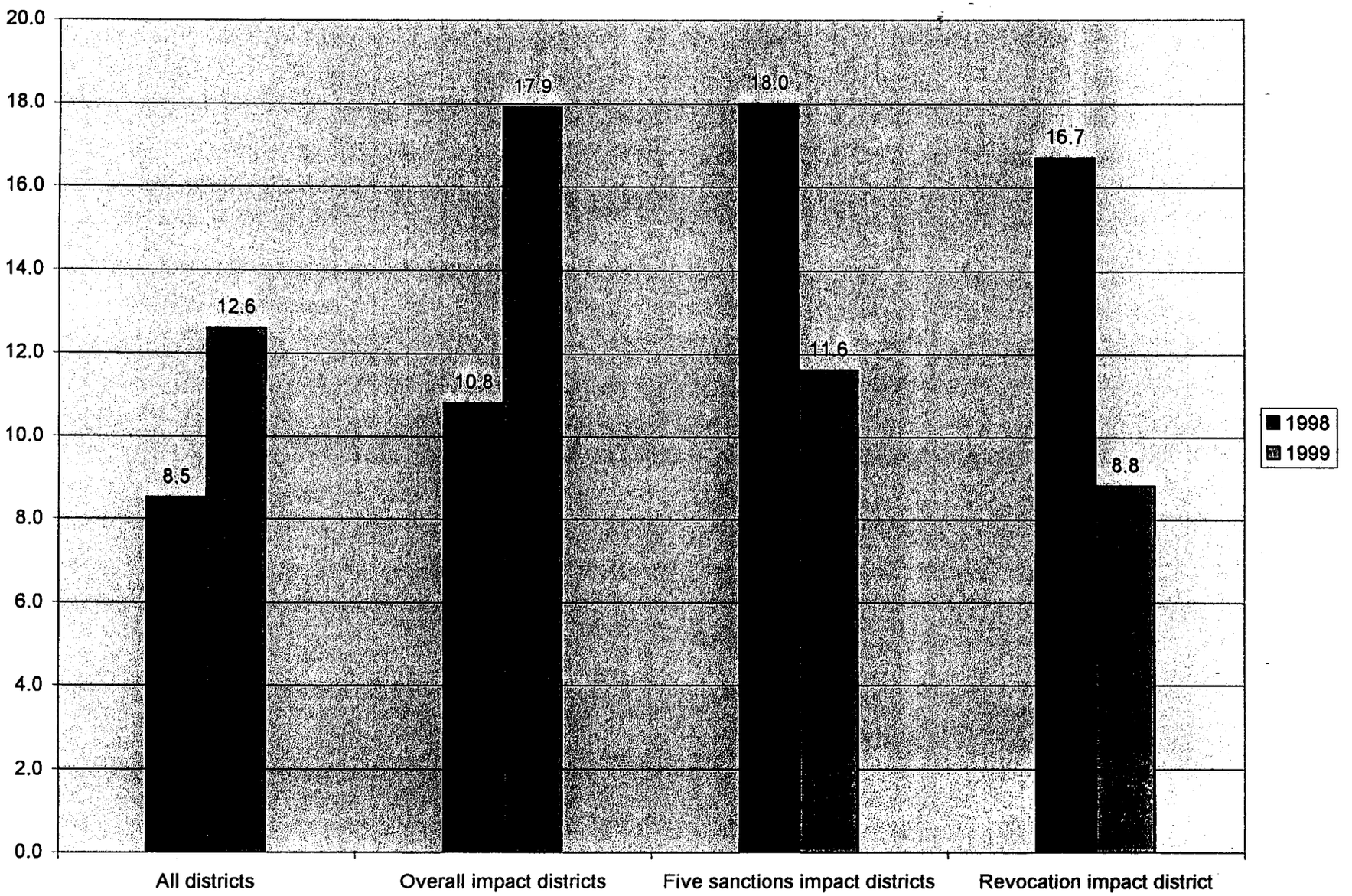
New Chapter 5 Fig 5.5

Figure 5.6: Bail Revocation Rates, 23 ODT Districts Combined, 1993 to 1999



3/30/01

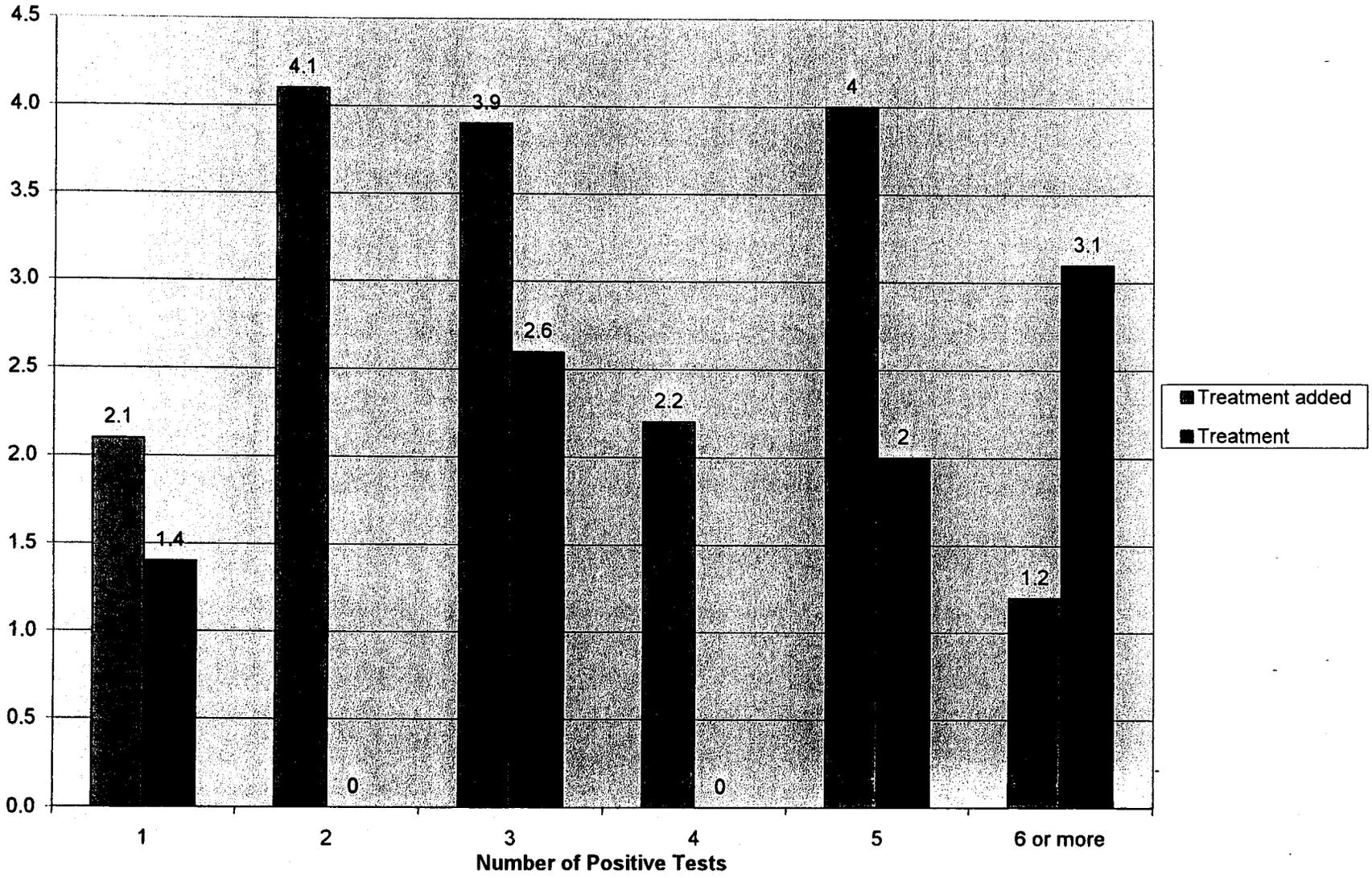
New Chapter 5 Fig 5.6



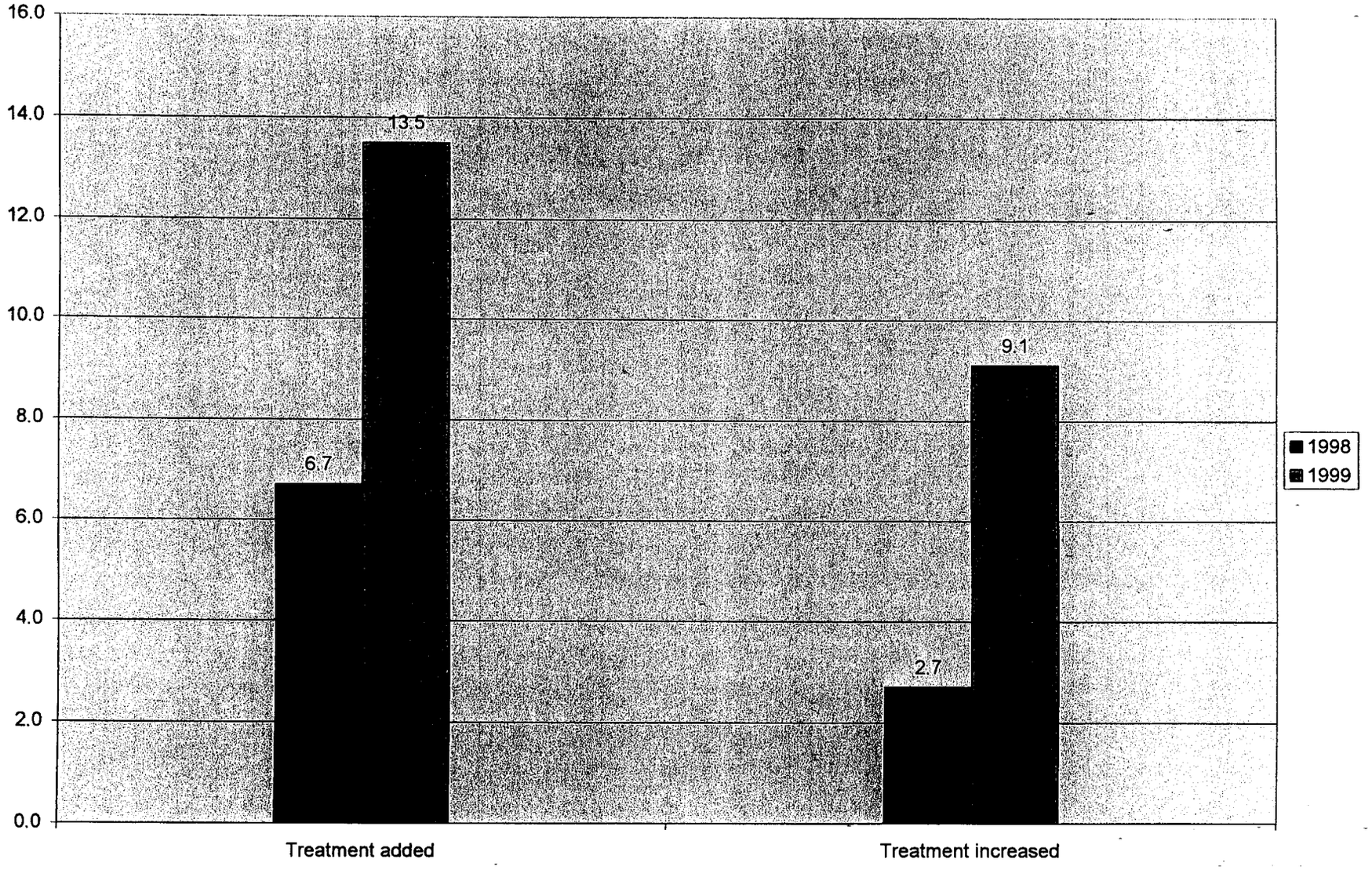
Modified 3/30/01

New Chapter 5 Revocation 98 99

Figure 6.1: Percent of ODT Defendants with Treatment Response to Positive Surveillance Test, by Number of Positive Tests, All Districts Combined, 1998



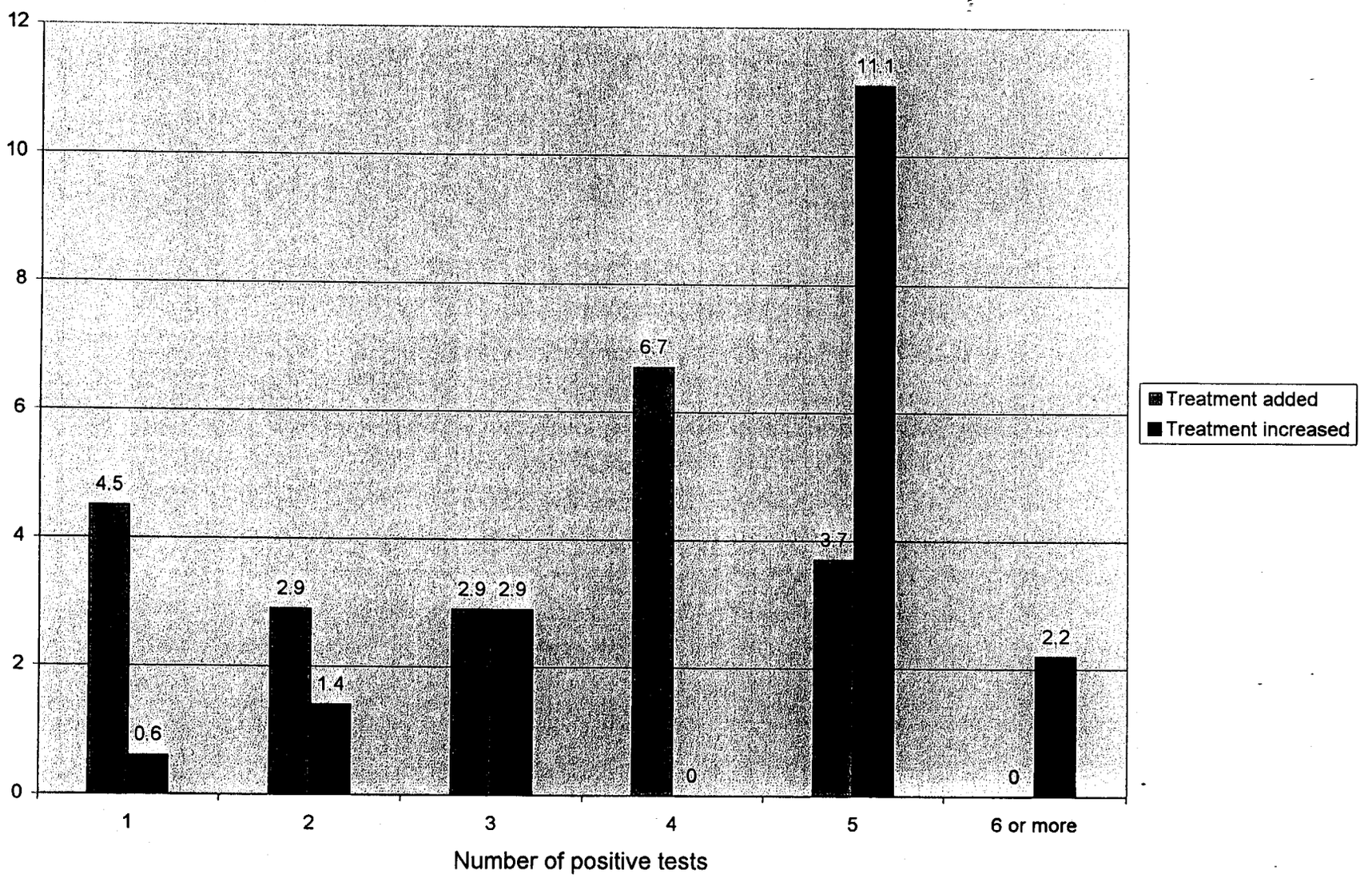
Charts Figs 5-6



Modified 4/18/01

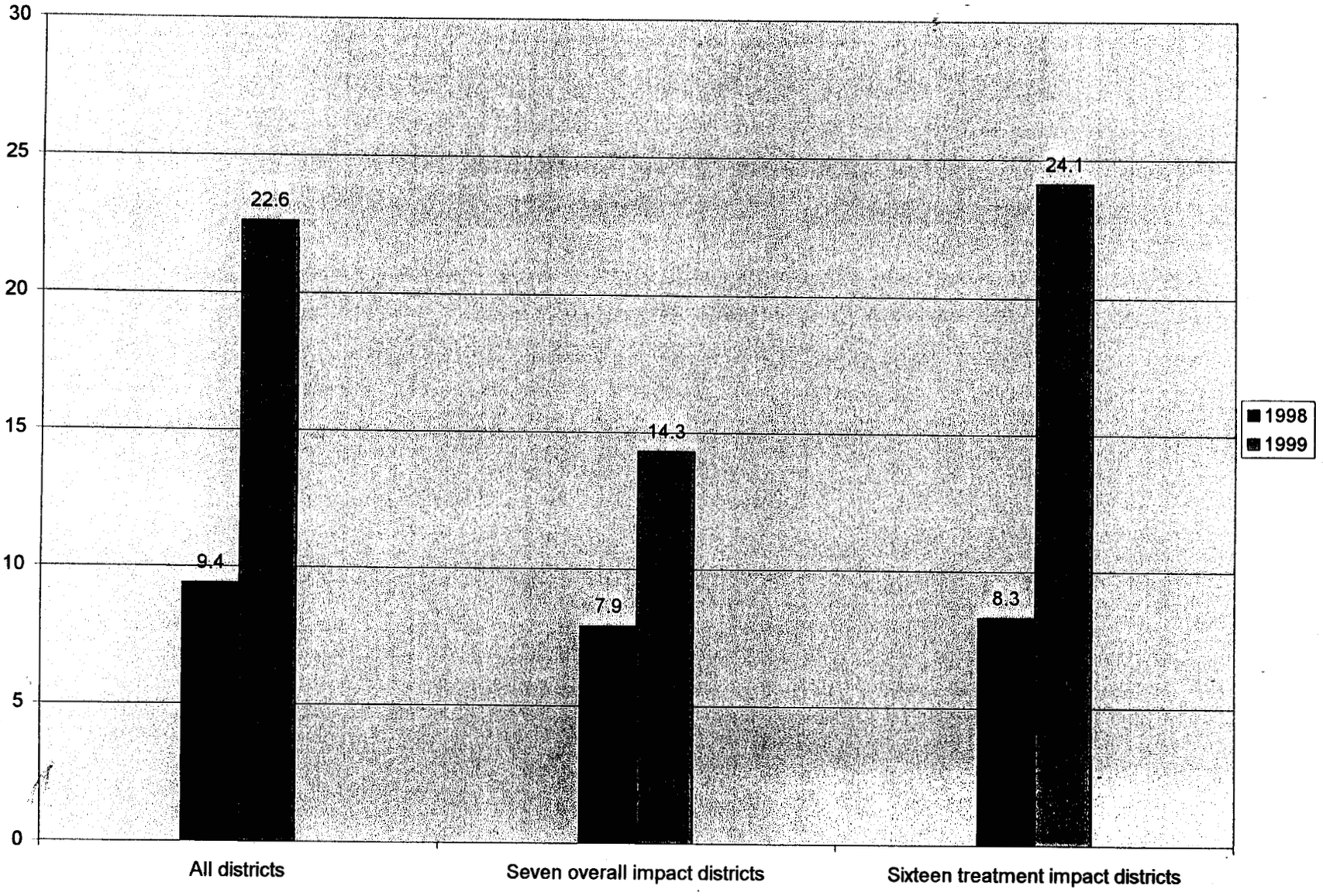
Charts Figs 5-6 Table 6.2

Figure 6.3: Percent of GDT Defendants with Treatment Response to Positive Surveillance Test, by Number of Positive Tests, All Districts Combined, 1999



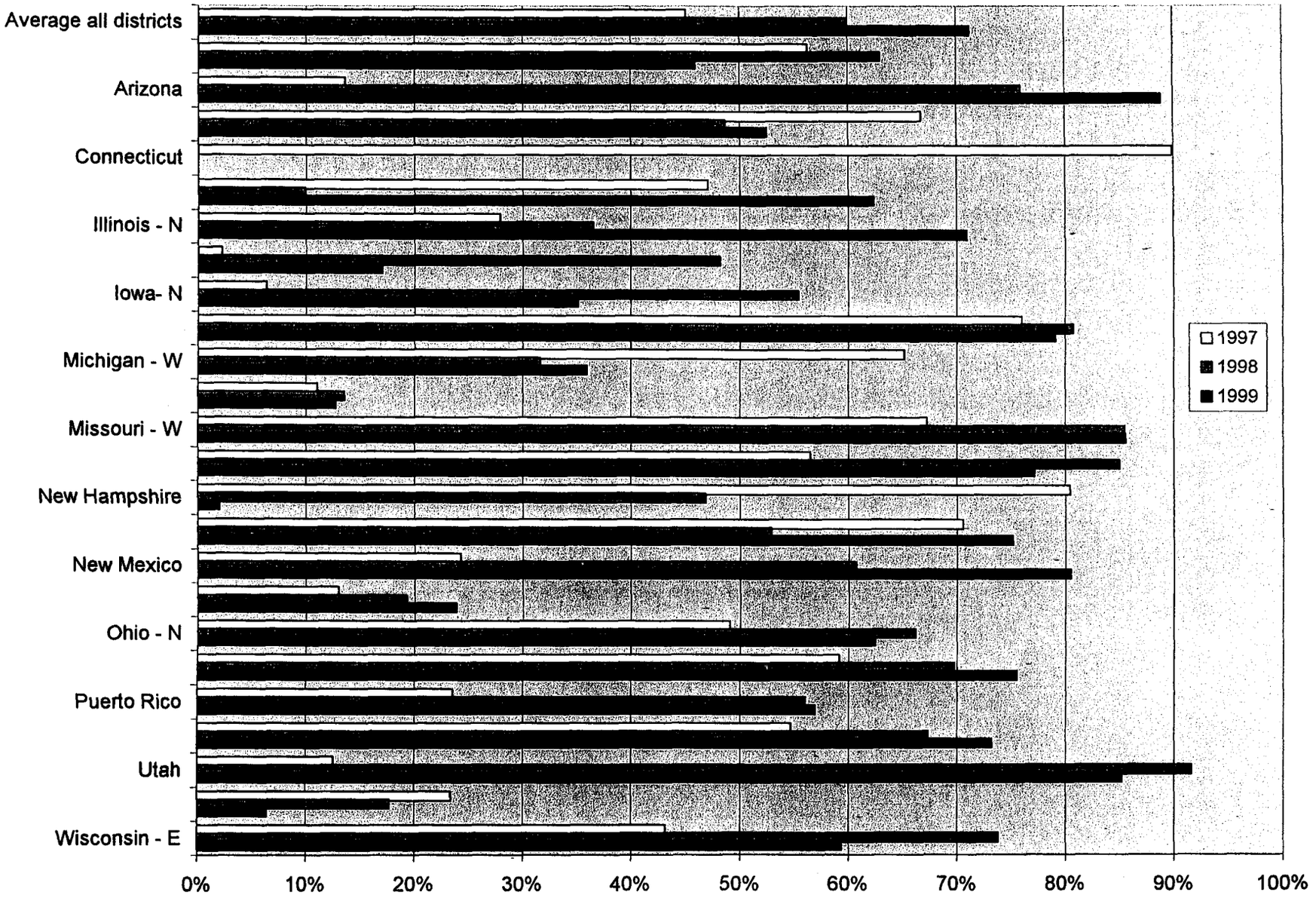
Modified 4/18/01

Charts Figs 5-6 Fig 6.3



Modified 4/18/01

Charts Figs 5-6 Fig 6.4



4/18/01

Charts Figs 5-6 Fig. 6.5