

U.S. Department of Justice
Bureau of Justice Statistics



Bureau of Justice Statistics Special Report

Pretrial Release and Detention: The Bail Reform Act of 1984

The decision to release or detain defendants prior to trial is one of the most basic decisions of the American system of justice. The Bail Reform Act of 1984 made substantial changes in Federal pretrial release and detention practices. (See box on page 2 for a discussion of the Act.) This report focuses on the effects of these changes on Federal defendants. In particular, it examines changes in the likelihood that defendants will be "held until trial" and in the rate of "pretrial detentions"; changes in the characteristics of defendants held until trial; and changes in violation rates for defendants released before trial.

¹ In this report, held until trial includes all defendants held for the entire period until trial either for failure to meet bail or on pretrial detention; pretrial detention includes only defendants held without the option of release on bail.

Because the Act became effective in November 1984, the report compares defendants whose prebail investigation began between August 1 and December 31, 1983, with those from the same months in 1985. Both groups were limited to defendants whose cases were concluded within 12 months in order to follow the release status of defendants through adjudication.

The data in this report suggest that pretrial detention has largely been used as an alternative to bail as a means of holding defendants. About two-thirds of defendants who were held until trial after the Act were held on pretrial detention, compared with 7% before the Act.

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This Special Report presents data concerning the operation of the Bail Reform Act of 1984. The Act has substantially altered the basis for judicial decisions on the pretrial release and detention of Federal defendants. This report should be of interest to legislators, policymakers, criminal justice practitioners, and others who must deal with the difficult problem of balancing the rights of the accused with the safety of society.

We gratefully acknowledge the assistance of the Administrative Office of the U.S. Courts, whose data on Federal defendants made this study possible.

Steven R. Schlesinger
Director

Other major findings include:

- The percent of Federal defendants held for the entire time prior to trial, either on pretrial detention or for failure to make bail, increased from 24% before the Act to 29% after the Act.
- Among defendants held until trial after the Act, 49% were charged with drug offenses, 19% with immigration violations, and 14% with violent offenses.
- The likelihood of being held until trial was 21% higher after the Act for defendants charged with violent offenses involving firearms, 20% higher for persons charged with drug offenses carrying possible 10-year penalties, and

26% higher for persons charged with other drug offenses.

◦ The likelihood of being held until trial was 63% higher after the Act for those defendants who had caused injury and 17% higher for those who were classified as dangerous during pretrial interviews.

◦ After the Act, defendants required to post bail were more likely to raise the necessary bail and be released (63%) than before (50%).

◦ There was an increase in the percent of defendants violating their conditions of release--from 5% to 7%--mainly due to an increase in technical violations, such as violations of restrictions on travel and association.

Detention of Federal defendants

Both before and after the Bail Reform Act of 1984, about half (54%) of all defendants were released without financial conditions (table 1). These defendants were generally released on their own recognizance or on other nonfinancial conditions.

The percent of defendants held on pretrial detention, that is, without bail, increased from less than 2% before the Act to 19% after. This increase was equal to the decrease in the percent of defendants required to post financial bail (44% before the Act, 27% after the Act). This suggests that pretrial detention has largely been substituted for bail as a means of detaining defendants.

Among defendants required to meet financial bail conditions after the Act, a higher percentage were able to post the required amount and were released

Table 1. Federal pretrial release conditions, 1983 and 1985

Release conditions	Percent of defendants	
	1983	1985
All defendants	100%	100%
Held on pretrial detention	1.7	18.8
Financial conditions set ^a	44.1	27.5
Released without financial conditions ^b	54.2	53.7

Note: The 1983 sample includes 7,623 defendants; the 1985 sample includes 9,551 defendants. Percents may not add to 100% due to rounding.

^aIncludes all persons subject to collateral, surety, or 10% appearance bond, whether released or not.

^bIncludes defendants released on their own recognizance or unsecured bond or, in a lesser number of cases, defendants released to the custody of an individual or subject to other nonfinancial conditions.

Table 2. Percent of Federal defendants released or held until trial, 1983 and 1985

Release status before adjudication	Percent of defendants	
	1983	1985
All defendants	100%	100%
Held until trial	23.8%	28.9%
Pretrial detention	1.7	18.8
Did not make bail	22.1	10.1
Released	76.2%	71.1%
At initial hearing		
Made bail	11.6	8.3
Nonfinancial conditions	51.2	48.4
After initial hearing		
Made bail	10.4	9.1
Nonfinancial conditions	3.0	5.3

before trial. About 50% of defendants with bail conditions were released in 1983, compared to 63% in 1985. This also suggests that requiring high bail was less likely to be used to hold defendants after the Act than before.

The percent of Federal defendants held until trial, either on pretrial detention or for failure to meet bail, increased from 24% before the Act to 29% after the Act (table 2). During this period the basis on which defendants were held changed markedly. Among defendants held until trial, the percent on pretrial detention increased from 7% to 65%; prior to the Act almost all (93%) were held for failure to meet bail conditions.

Type of offense

Among defendants held until trial in 1985, 40% were charged with drug offenses, 19% with immigration offenses, and 14% with violent offenses (table 3). General property offenses and regulatory offenses accounted for 5% and 2% of defendants who were not released, respectively.

In 1983 drug offenders and persons charged with violent and immigration offenses also accounted for substantial proportions of defendants held until trial; 32% of defendants held until trial were charged with drug violations, 20% with violent crimes, and 15% with immigration offenses. These differences reflect changes in the incidence of offenses during the different time periods and the rate of release, as well as the impact resulting from the Act.

Both before and after the Act, defendants charged with fraudulent property offenses accounted for over a third of all those released at the initial hearing. Only 4% of defendants released at the initial hearing in either year were charged with violent offenses. About 26% of defendants released at the initial hearing in 1985, however, were charged with drug offenses; this compared to 21% of such defendants in 1983.

In 1983 about 56% of defendants charged with violent offenses that involved firearms were not released before trial, compared with 68% in 1985—an increase of 21% (table 4). (About 5% of defendants charged with such offenses were held on pretrial detention in 1983; 53% in 1985.)

Of defendants charged with drug offenses that carried possible 10-year sentences in 1983, 28% were held until trial, compared with 33% in 1985—an

The Bail Reform Act of 1984

Persons charged with Federal offenses may be released or detained prior to trial. The determination is typically made by a judge or magistrate at a hearing shortly after arrest. Specifically, the defendant may be:

- released on nonfinancial conditions (generally, personal recognizance, unsecured bond, or compliance with other conditions relating to travel, custody, or treatment);
- released on condition that the individual meet financial bail conditions (deposit, surety, or collateral bond), possibly in conjunction with other nonfinancial conditions;
- detained for failure to meet bail conditions; or
- detained without bail (pretrial detention).

Under the Bail Reform Act of 1966, the judicial officer was generally required to impose the minimal conditions of release necessary to assure only that the defendant appear in court. Further, while an individual might be held for failure to post bail, detention without bail was permitted only in cases involving capital crimes.

The Bail Reform Act of 1984 materially changed these provisions. In particular, the Act provides that, in reaching decisions on bail and release, the court shall give consideration not only to ensuring the defendant's appearance in court but also to protecting

the safety of individuals and the community.

The pretrial detention provisions of the Act make special reference to particular categories of offenses and offenders. The Act authorizes pretrial detention for defendants charged with crimes of violence, offenses with possible life (or death) penalties, major drug offenses, and felonies where the defendant has a specified serious criminal record.

Additionally, the Act creates a rebuttable presumption that no conditions of release will assure the appearance of the defendant and the safety of the community under the following circumstances: the defendant committed a drug felony with a 10-year maximum sentence; the defendant used a firearm during the commission of a violent or drug trafficking offense; or the defendant was convicted of specified serious crimes within the preceding 5 years while on pretrial release.

The Act does not require that prosecutors request pretrial detention for all defendants in these groups.

The Act also provides for temporary detention (up to 10 working days) of illegal aliens or persons under pre- or posttrial release, probation, or parole at the time of the current offense. This provision was added for the purpose of allowing time for other law enforcement or immigration officials to take appropriate action.

increase of 20%. (In 1983, 1% of defendants in this group were held on pretrial detention; in 1985, 25%.)

Defendants charged with drug offenses not carrying a maximum 10-year sentence were also significantly more likely to be held until trial in 1985; the rate increased 26% after the implementation of the Act.

Among persons charged with immigration offenses in 1983, 51% were not released, compared with 67% in 1985. About half of the increase in the percentage of immigration defendants not released occurred for cases resolved within 10 working days; this may reflect that the Act specifically authorizes temporary detention for up to 10 working days of persons who cannot demonstrate that they are U.S. citizens or legal residents.

With the exception of fraudulent property and regulatory offenses (in which the incidence of release was high), changes in the release rate for other categories of offenses were not significant. In most categories, though, a higher percentage of defendants were held until trial.

Public safety considerations

A major change established by the Act was the inclusion of public safety as a factor to be considered in release and detention determinations. Among the factors for which data were available, those that might indicate danger to the community include the use of firearms, injury to the victim or arresting officer during the offense, and classification of the defendant as dangerous by a Pretrial Services Agency (PSA) interviewer.

In both 1983 and 1985 the likelihood of being held until trial was substantially higher among defendants who showed some indications of being dangerous to the community, compared with those without these characteristics (table 5).

Between 1983 and 1985, however, the likelihood increased that defendants who showed indications of being dangerous to the community would be held until trial. Defendants classified as dangerous by PSA interviewers were 17% more likely to be held until trial; defendants using firearms were 23% more likely to be held; and those causing injury were 63% more likely to be held. This probably reflects the fact that the Act made danger to the community a criterion for pretrial detention. There were, however, also increases in the detention rates for defendants who did not fall within these groups.

The majority of all defendants held until trial in 1985 were on pretrial detention; by contrast, in 1983 almost all were held for failure to meet bail.

Table 3. Characteristics of Federal defendants who were released or held until trial, by offense charged, 1983 and 1985

Offense charged	Percent of defendants who were:			
	Held until trial		Released at initial hearing*	
	1983	1985	1983	1985
All offenses	100%	100%	100%	100%
Violent				
With firearms	6.8	5.4	1.0	.8
Without firearms	13.0	8.1	3.2	3.3
Drug				
With 10-year maximum sentence	16.3	22.6	10.6	16.2
Other	15.8	17.2	10.4	9.8
Property				
General	10.0	5.4	15.2	12.4
Fraudulent	11.6	12.0	34.5	33.8
Immigration	15.0	19.4	4.5	3.1
Regulatory	1.1	1.9	4.1	5.2
Other	10.6	8.2	16.5	15.5

*Includes defendants released on their own recognizance or unsecured bond and

defendants released after meeting financial or other bail conditions.

Table 4. Detention rate of Federal defendants, by offense charged, 1983 and 1985

Offense charged	Percent of defendants charged with a particular offense who were held until trial			
	Total		Pretrial detention only	
	1983	1985	1983	1985
All offenses	23.8%	28.9%	1.7%	18.8%
Violent				
With firearms	55.9	67.9	4.6	53.2
Without firearms	51.6	46.8	1.3	30.7
Drug				
With 10-year maximum sentence	27.6	33.1	1.0	25.4
Other	28.5	35.9	1.4	23.3
Property				
General	18.1	16.0	1.6	9.5
Fraudulent	10.5	14.1	1.0	8.5
Immigration	50.6	67.1	3.0	34.1
Regulatory	7.7	13.6	.8	9.4
Other	17.8	18.6	3.4	12.9

Table 5. Detention rate of Federal defendants, by public safety considerations, 1983 and 1985

Public safety considerations	Percent of all defendants with characteristic who were held until trial			
	Total		Pretrial detention only	
	1983	1985	1983	1985
Firearms				
Used firearms	40.8%	50.1%	3.3%	39.2%
Did not use firearms	22.7	27.6	1.6	17.6
Injury				
Injury reported	30.2%	49.3%	3.0%	37.9%
No injury reported	23.7	28.4	1.7	18.4
Danger classification*				
Considered dangerous	40.2%	47.0%	2.6%	35.5%
Not considered dangerous	21.8	25.0	1.6	15.2

*Classification made by Pretrial Services Agency interviewer and

included in defendant's record.

Table 6. Detention rate of Federal defendants, by criminal history, 1983 and 1985				
Defendant's criminal history	Percent of all defendants with characteristic who were held until trial			
	Total		Pretrial detention only	
	1983	1985	1983	1985
Escape or failure to appear				
Prior record	46.3%	47.0%	4.5%	35.1%
No record	20.6	26.5	3.5	35.1
Arrest or conviction record				
Felony				
Violent	43.5%	45.6%	3.5%	35.1%
Nonviolent	30.0	33.5	2.9	22.0
Misdemeanor only				
Violent	19.3%	19.6%	1.1%	14.5%
Nonviolent	17.4	22.2	.9	11.1
No prior record	16.7%	24.6%	.8%	15.7%

Criminal history of defendants

Between 1983 and 1985 there was no significant increase in the likelihood that defendants with a history of escape or failure to appear in court would be held until trial (table 6). This may reflect the fact that an assurance of the defendant's appearance at trial was a basic criterion of being held prior to the Act.

Both before and after the Act, defendants with a prior record of felony arrests or convictions were more likely than other defendants to be held until their trial (44-46% for violent felonies, and 30-34% for other felonies, compared with 24-29% for all defendants).

The percentage of defendants held through trial increased significantly after the Act for those with a record of arrest or conviction for felonies or nonviolent misdemeanors and for those with no prior record. These increases may partly reflect correlations between the defendant's criminal history and the charged offense. Defendants with no criminal history or only nonviolent misdemeanors, for example, were more likely than other defendants to be charged with immigration offenses. The detention rate for persons charged with immigration offenses was substantially higher after the Act.

Socioeconomic characteristics

The socioeconomic characteristics of defendants not released before trial were generally similar in 1983 and 1985. More than 9 in 10 were male, and about 7 in 10 were white (table 7). Three-quarters of both groups were between 21 and 40 years old. About a third were Hispanic in 1983, compared to almost half in 1985.

The likelihood of being held until trial increased for offenders in almost all socioeconomic groups after the Act (table 8). The increase was slightly smaller for blacks than whites. There was no significant increase in the percentages of non-Hispanics and persons earning over \$20,000 per year who were held.

Table 7. Socioeconomic characteristics of defendants held until trial, 1983 and 1985		
Defendant characteristics	Percent of defendants held until trial	
	1983	1985
Sex		
Male	91.9%	90.5%
Female	8.1	9.5
Race		
White	68.6%	73.5%
Black	26.0	22.7
Other	5.4	3.8
Ethnicity		
Hispanic	32.6%	47.1%
Non-Hispanic	67.4	52.9
Age		
16-20	6.2%	6.5%
21-30	43.3	41.9
31-40	32.2	33.7
Over 40	18.2	17.9
Employment status at arrest		
Employed	38.8%	47.0%
Not employed	61.2	53.0
Income		
None reported	65.7%	54.4%
\$1-10,000 per year	18.9	28.1
\$10,001-20,000	11.1	11.6
More than \$20,000	4.2	6.0
Note: Percents may not add to 100% due to rounding.		

Table 8. Detention rate of Federal defendants, by socioeconomic characteristics, 1983 and 1985				
Defendant characteristics	Percent of defendants with characteristic who were held until trial			
	Total		Pretrial detention only	
	1983	1985	1983	1985
Sex				
Male	26.4%	31.5%	1.9%	20.5%
Female	11.3	16.3	.9	10.8
Race				
White	23.7%	30.0%	1.8%	18.5%
Black	23.2	26.4	1.7	19.1
Other	30.2	30.1	1.2	22.9
Ethnicity				
Hispanic	47.9%	54.6%	2.7%	33.2%
Non-Hispanic	19.2	20.4	1.6	14.1
Age				
16-20	26.1%	33.6%	1.4%	18.2%
21-30	26.4	32.1	1.7	20.5
31-40	24.4	29.1	1.8	19.7
Over 40	18.1	21.6	1.7	14.9
Employment status at arrest				
Employed	16.6%	22.8%	.6%	13.4%
Not employed	32.0	37.2	3.0	26.2
Income				
None reported	32.5%	37.2%	3.0%	26.3%
\$1-10,000 per year	18.4	31.5	.5	18.0
\$10,001-20,000	15.3	18.0	.6	11.1
More than \$20,000	10.1	12.6	.4	8.1

Violations of release conditions

Reported violations of conditions of release include arrest or conviction for a felony or misdemeanor, failure to appear for a scheduled court appearance, and technical violations relating to the conditions of release. Both before and after the Act, few released defendants were charged with any violation during release (table 9). The increase from 5% to 7% essentially reflects an increase in the percent of released defendants with technical violations such as violations of restrictions on travel and association. There was no significant increase in the percent of defendants arrested for felonies or misdemeanors.

These findings should be interpreted cautiously because they do not control for differences in the length of time required to dispose of different types of cases.

Impact on criminal justice resources

Both the percent of defendants held at any time before trial and the average time held increased after the Act (table 10). The percent of defendants held at any time (including those detained initially and subsequently released, those initially released and subsequently detained, and those held for the entire period until trial) increased from 40% to 45%. This reflects the fact that after the Act 5% more defendants were held for the entire period before trial.

The average length of time held also increased by 5% (from 50-53 days). This increase probably also reflects the increase in the percentage of defendants held until trial since such defendants are generally held for longer periods than defendants who are released for some portion of the pretrial period.

The demand for detention facilities and corresponding manpower support is based on the number and characteristics of defendants held and the number of detention days per defendant. The increase in both the percentage of defendants held and the average length of time held resulted in a 17% increase in the number of detention days per defendant (from 20 to 24 days). Thus, it appears that, assuming no change in the number or characteristics of defendants or the offense distribution, the demand for detention resources may increase 17%.

Table 9. Violation of release conditions by defendants, 1983 and 1985

Nature of first violation	Percent of released defendants with violations	
	1983	1985
All	4.6%	6.5%
Felony	1.2	1.3
Misdemeanor	.6	.7
Failure to appear	1.5	1.8
Technical violations	1.2	2.6
Average days from release to violation	54 days	59 days

Note: Percents may not add to totals due to rounding.

Table 10. Impact of the Bail Reform Act of 1984 on detention resource demands

Year	Percent of defendants held at anytime*	Average length of detention	Detention days per defendant
1983	40.0%	50.3 days	20.1 days
1985	44.6	52.7	23.5

*Includes defendants held until trial, defendants released after initial detention, and defendants detained after initial release.

Methodology

In July 1983 the Pretrial Services Agency (PSA) in the Administrative Office of the U.S. Courts (AO) implemented a national reporting system to track pretrial services in all Federal courts. This data system collects records on individuals charged with Federal crimes. Data collected include information on the individual's background, release or detention before and after adjudication, offenses allegedly committed while under pretrial release, and the sentence for defendants found guilty. The PSA data base for this study covers cases initiated from July 1983 through December 1986. A sample of these records is used to examine pretrial release and detention before and after the 1984 Act. PSA data currently show about 30,000 new cases per year.

The AO record of all Federal cases shows about 50,000 cases per year. The difference appears to reflect two factors. First, cases involving certain crimes are less likely to be entered in the PSA data base. These include misdemeanors, regulatory offenses, and tax law violations.

Second, some district offices are less likely to enter cases than others. Of the 94 districts in the AO records for 1984, 15 had very low reporting rates of PSA cases. The 15 districts are spread across the country with no obvious pattern.

The sample of cases considered in this report is based on defendants whose prebail investigation was initiated from August 1 through December 31 in either 1983 or 1985. Only cases that reached final disposition within 12 months after initiation were included.

Restricting the analysis to cases reaching disposition within 12 months after initiation appears to exclude very few cases. Cases in the August through December 1983 sample have at least 3 years of information available. By 1 year after initiation, 72% of these cases had reached final disposition.

Further, when PSA records were compared with AO records, it appears that the bulk of the remaining cases represent missing data. Thus, cases disposed of within 1 year were about 95% of the cases for which data were available. The cases without final disposition data were not markedly different in terms of offenses or the frequency of release at the initial hearing.

The two central measures reported in the analysis are release/detention outcomes and information on the use of financial restrictions. Release/detention outcomes were coded as follows:

Persons were coded as released at the initial hearing if the data indicate that they were released then or made bail then or that they were never detained.

Persons were coded as released after the initial hearing if there were any indications that the defendant either made bail or was released at a subsequent hearing.

All remaining defendants were coded as not released.

For persons who were released, use of financial conditions was coded with reference to the person's first release. The codes were based on codes for each hearing indicating whether financial conditions were imposed and whether they were met. Defendants held until trial were coded as held under financial conditions if any financial conditions were imposed at any time.

Of the 17,714 cases involved, 458 did not include definite information on the conditions used. Since 84% of these were released at the initial hearing, it seemed likely that they usually represented cases without financial conditions, and they were coded as involving no financial conditions.

Finally, in any tabulation comparing outcomes before and after some event, there is always concern that the effects of changes in other factors may be erroneously attributed to the event being considered. In this case, two obvious areas of concern are changes in the distribution of cases either over courts or over offenses. As a partial check on this, detention rates were recalculated for each offense category as a weighted average of rates for that offense category for each U.S. circuit, using as weights the overall percentage of cases in that circuit for the two periods. Overall detention rates were then calculated from these offense category rates using the overall percentage of cases in that offense category for the two periods. The results suggest that changes in the geographic and offense distribution of cases had little effect.

Because the data used for this analysis do not include findings of probable cause or indicate whether the defendant was convicted of other offenses while on pretrial release, the analysis focuses only on the offense with which the defendant was charged and other offender characteristics.

All comparisons presented in the text are statistically significant at the 95% confidence level, meaning that the estimated difference between values being compared was roughly equal to or greater than twice the standard error of this difference.

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