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Report of

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An Evaluation of
Pre-Trial Release and Bail Bond
in Memphis and Shelby County

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An Evaluation of Pre-Trial Release and Bail Bond in Memphis and Shelby County

by

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The research in this study was conducted under a grant from the Law Enforcement Assistance Administration (LEAA) to Shelby County. The research was executed by Professor Michael P. Kirby.

INTRODUCTION

The purpose of this report is to describe and evaluate the Pre-Trial Release Program and the bail bondsmen operating in Memphis and Shelby County. This study is funded by the Law Enforcement Assistance Administration (LEAA) through the Tennessee Law Enforcement Planning Agency and the Memphis-Shelby County Metro Law Enforcement Planning Agency. Matching funds for the study were provided by Shelby County. The study was conducted by the Policy Research Institute at Southwestern College with Professor Michael P. Kirby as the study director. The report is divided into the following sections:

Chapter I is a synopsis of the findings and proposals of this report. The reader who prefers only an overall view of this extensive report may refer to this chapter.

Chapter II describes the bail process and defines terms used in the report.

Chapter III is devoted to a description and evaluation of the Pre-Trial Release Agency. This chapter also presents measures which compare the effectiveness of the Pre-Trial Release Agency and the bail bondsmen. These measures include such things as forfeiture rates, rearrest rates, and dispositional rates.

Chapter IV is a description and a critique of bail bondsmen. A range of things are described including the business structure of the bail bond companies, the nature of their operation and the lack of statutory limitations on their activities.

Chapter V discusses the implementation of a public bonding system called the Illinois 10% Plan. The Illinois 10% Plan would eliminate the bail bond companies from the Memphis system. This chapter describes the 10% Plan and evaluates objections to its implementation.

Chapter VI examines the forfeiture rates and rearrest rates in Memphis and Shelby County. We suggest ways in which the forfeiture rates and rearrest rates can be substantially reduced.

Chapter VII discusses the data used in the study and the methods employed in gathering information.

The research for this study commenced in April, 1974 and was recently completed. We selected approximately 1,300 felonies and misdemeanors which first appeared on the City Court dockets in January through April, 1973. These cases were tracked through the criminal justice process. We determined dispositional and forfeiture rates for misdemeanors and felonies. Cases bound over to the Criminal Courts were traced and their disposition and forfeiture rate determined. For the felonies we also examined Police Department statistics to determine rates of rearrest while on bond and recidivism rates after the disposition of the case. The cases were then defined according to the form of bond; specifically whether the defendant used a bail bondsman or the Pre-Trial Release Program. This tracking procedure produced objective measures by which the effectiveness of bail bondsmen and Pre-Trial Release can be compared.

The study also extensively observed the courts and the activities of the Pre-Trial Release Program. We interviewed a sizeable number of lawyers, judges, bail bond companies and other officials. In addition, the State statutes were examined for their regulation of bail bondsmen. In order to verify lack of regulation, we made a field trip to regulatory agency offices in Memphis and Nashville. We gathered all the literature available about bonding, bail bond companies, and Pre-Trial Release programs. We visited the Minneapolis-Hennepin County Pre-Court Screening Unit. Paul Wice, a Department of Justice consultant, visited the local Pre-Trial Release program, and gave us his evaluation of its effectiveness. Wice also made suggestions for the design of the study.

CHAPTER I

SUMMARY OF FINDINGS AND RECOMMENDATIONS

Chapter II: Description of Bail and Pre-Trial Release

* Interviews with the judges showed that they viewed bail first as a method for compelling court appearance and secondly as a way of protecting society.

* Bail bondsmen constitute the dominant mode of release before trial.

* Most bonds are below $2500.

* Most charges are less serious felonies such as burglary and property crimes.

Chapter III: The Pre-Trial Release Program

Organizational Variables

Staff Size and Function

* As the project case load of Pre-Trial Release increases, additional personnel will be required.

* Additional employees should be used in counseling and supervision.

* An additional secretary should be used for creating a more efficient system for dictating and typing reports.

* More authority and responsibility should be given to the senior investigators.

* The director of the agency needs to delegate responsibility.

* The director needs to become more involved in publicizing the activities of the Pre-Trial Release Program.

* A brochure should be created making all defendants aware of their rights to an OR release.

Staff Characteristics

* The program staff is highly mission oriented.

Degree of Supervision

* The internal supervision of the program director is responsible for its success in its early years.

* Externally, the Pre-Trial Release Program should continue without day to day supervision of the Criminal Court judges because it would inhibit the effectiveness of the agency.

* Supervision should continue as it is now, on an ad hoc basis, as issues arise.

Salaries and Budget

* The Program is secure as an operational department of County government.

* Salaries of personnel are abysmally low, resulting from the VISTA beginnings of the program.

* If senior investigators are to be given greater responsibility, they ought to be more highly compensated.

* Very low compensation can eventually have a deleterious effect on agency spirit.

Data Collection

* Data collection facilities are excellent.

* Case completions are being computerized in conjunction with this grant.

Operational Procedures

Interviewing

* The Pre-Trial Release Program reaches defendants relatively quickly.

* New offices in the new criminal justice complex, making defendants accessible to the program, are absolutely necessary.

* The continued use of an office from which to make verification in the Memphis Police building is absolutely essential.

* The Memphis Police Department needs to provide better access to the defendant.

* The agency needs more frequent interview times in the City jail.

Criteria for Release

* The objective system, used with discretion, provides an effective tool for making release decisions.

Verification

* A high percentage of cases are verified.

* Verification is taken seriously and is not pro forma.

Recommendation to Court

* The courts accept a very high percentage of program recommendation, except for reduced bond in City Court.

* City Court judges prefer that the Criminal Court make decisions on marginal cases.

* Public opinion and victim presence have an impact on the judge's decision.

* The program has lower forfeiture and rearrest rates for more serious crimes.

* Judges should be less reluctant to release defendants charged with more serious crime to Pre-Trial Release.

* Burglary and property crimes such as forgery have the highest rate of forfeiture and rearrest.

* Assault to murder has the lowest rate of forfeiture and rearrest.

Release

* Some limited form of station house release for misdemeanors is required.

* Station house release exists for misdemeanants able to pay $250 bail or able to obtain a bondsman.

* Not to have OR on the weekends or evenings for misdemeanors is economic discrimination.

* Station house release should be attempted on an experimental basis and studied to determine if the forfeiture and rearrest rates are affected.

Supervision

* The call-in system is used effectively by the agency.

* Some program resources need to be allocated to counseling.

Relative Effectiveness of Pre-Trial Release and Bail Bondsmen

Release Rate

* The agency releases 13% of the felonies and 5% of the total misdemeanors.

* The bail bondsmen release 69% of the felonies and misdemeanors.

* The argument that Pre-Trial Release had good forfeiture rates because it only takes the cream of the crop is not valid.

* The agency takes numerous felonies against person which are bad rearrest and forfeiture risks.

* The best risks, defined by ability to pay, are bail bond clients.

* Bail bondsmen many times obtain the release of defendants that the program is going to recommend for release.

* A large percentage of Pre-Trial Release cases are not handled by bondsmen and thus the defendant is in jail at the time he is bound over.

* A bail bond attorney claimed the bondsmen could not exist on bad risks.

* The agency gets good forfeiture rates by supervising the defendant closely, not by only taking the best risks.

Forfeiture Rate

* Pre-Trial Release forfeiture is considerably lower than that of the bondsmen.

* For felonies, the forfeiture (failure to appear) rate is 19% for bondsmen and 7% for Pre-Trial Release.

* For misdemeanors, the forfeiture (failure to appear) rate is 16% for bondsmen and 11% for Pre-Trial Release.

* For felonies the deliberate forfeiture rate is 10% for bail bondsmen and 2% for Pre-Trial Release.

* For felonies the fugitive rate is 7% for bail bondsmen and 1% for Pre-Trial Release.

* Pre-Trial Release rearrest rate is considerably lower than that of the bail bondsmen.

* For felonies the rearrest rate is 25% for bail bondsmen and 16% for Pre-Trial Release.

* Pre-Trial Release clients are arrested on less serious charges.

* Pre-Trial Release revokes a client upon a felony rearrest.

Dispositional Rates

* Pre-Trial Release clients have higher probation rates than bail bond clients.

* Other dispositional rates are slightly more favorable for Pre-Trial Release clients.

Recidivism

* There was little difference in recidivism rates for bail bondsmen and Pre-Trial Release

Unsupervised OR

* A considerable percentage of OR's are released without Pre-Trial Release recommendation or supervision.

* These OR defendants have a high felony forfeiture rate.

* These cases are more apt to be disposed of in the City Court, than to be bound over.

* The unsupervised OR is confusing since its forfeitures are often attributed to Pre-Trial Release.

Chapter IV: Bail Bondsmen

* One bail bond company has 58% of the misdemeanors and 41% of the felonies.

* There is no one bail bond company that specializes in large bonds or serious charges.

* Bail bondsmen get clients through:

  Defendant, relatives or friend.

  In court by soliciting

  Contacts with lawyers

  Directly approaching the defendant.

* Bond referral by obtaining list of prisoners is a major concern to numerous officials.

* The contract between the bondsman and his client is only protective of the bondsman and not the client or public.

A bondsman can surrender the client for any reason.

If a client is surrendered, the bondsman does not have to return the premium.

The cosigner or the defendant pay all of the costs incurred by the bail bond company.

* The bail bondsman does not do any supervision of the defendant.

* There is a problem of collecting final judgements in the City Court. This appears to be a problem in the City Clerk's office.

* Few final judgements are declared in Criminal Court.

* When a final judgement is declared, the bail bond company obtains that amount from either the defendant or cosigner.

* The chaining of a client in a basement is symbolic of the corruption of the bail bond industry.

* Bond surrenders without cause are a major hardship for defendants.

* It is a myth that the bail bondsman is extensively involved in pursuing defendants.

Most of the work is done by the Sheriff's Fugitive Squad.

Many times the bondsmen wait for the defendant to be rearrested and then ask that the forfeiture be set aside.

* Tennessee statutes are inadequate to control the bail bond industry.

The statutes exempt local bail bond companies which claim to be insurance companies.

If the bail bondsmen remain an integral part of the local system, major statutory and regulatory changes are essential.

The State Department of Insurance and Banking does not regulate bondsmen.

The following reforms need to be implemented immediately if the decision is made to continue bail bond companies.

* A bond should be written for the entire length of a defendant's case.

* If a defendant is surrendered back to the court, he should be refunded his entire premium.

* The requirement for a cosigner should be eliminated.

* The 10% rate should be enacted by statute.

* Fee splitting between attorneys and bail bondsmen should be declared illegal.

* Bail bondsmen should be prohibited by law from soliciting in court.

* Bail bondsmen should be prohibited by law from contacting the defendant without referral.

* It should be a crime for an official to release a list of jail inmates to a bail bondsman.

* It should be a crime for a bail bondsman to be involved in the disposition of a case.

* It should be a crime for a bail bondsman to detain a defendant, unless it is for the purpose of surrender.

* The bail bond company ought to deposit 20% of the total bond in with the court to cover possible forfeitures.

* As soon as it is apparent to a court that the defendant has deliberately forfeited, a final judgement should be declared.

* Bail jumping statutes should be used on a regular basis.

* Bail bondsmen found guilty of misdemeanors or felonies should be prohibited from writing bail bonds. Bail bondsmen currently under indictment for felonies should be prohibited from writing bail bonds until the case has been disposed of.

* Bail bond company records should be audited on a regular basis.

Chapter V: The Illinois 10% Plan

* This chapter argues that Tennessee should have public bonding because:

The bondsmen have exceptionally high forfeiture and rearrest rates.

Bondsmen do not supervise their clients.

Bondsmen have no economic motivation to improve their forfeiture or rearrest rates.

There is no regulation of the bondsman at either the state or local level.

The bondsman works a hardship on the defendant.

Bail jumping statutes are seldom used.

The American Bar Association and the National Advisory Commission on the Causes and Prevention of Crime recommend public bonding.

* The arguments against public bonding were found fallacious.

The present system does not work well.

The free enterprise argument is not valid since the bondsman functions as an officer of the court.

Public bonding would not require an extensive bureaucracy.

Public bonding would release defendants more quickly.

Forfeitures and rearrests would not increase under public bonding.

Under public bonding, the bondsman would go out of business.

The size of the fugitive squad would not increase since it already does most of the work in apprehending the defendant.

Under the public bonding, bonds would increase in size, but this would not affect the rate of release.

The revenues under public bonding would more than pay any cost of implementation.

Chapter VI: Forfeitures and Rearrest

Forfeitures

* Forfeiture rates are exceptionally high in Memphis and Shelby County.

* Prosecution orientation by judges will not decrease forfeitures.

* Forfeitures will be decreased by 59% if trial were held 90 days from arrest.

* A speedy trial is the major solution for reducing the forfeiture rate.

* Lack of a notification system increases the non-deliberate forfeiture rate.

* More serious charges forfeit in lower percentage.

Even when the size of bond is taken into account, this relationship continues to hold.

These figures should be used with care since the number of large bonds in the study were relatively small in number.

* Further study is required to determine the affect of prior record, and community attachment.

* Lack of use of the bail jumping statute encourages a lack of respect for court appearance.

The bail jumping statute should be employed where there is a deliberate forfeiture.

* The Federal Courts use the penalty of bail jumping rather than monetary bond to guarantee court appearances.

Rearrest Rate.

* Using rearrest for felonies, misdemeanors and ordinance violations, the rearrest rate was 21%.

* The felony forfeiture rate was 13%, not entirely different from that of other cities.

* Rearrests are unfairly used by police and the media to pressure judges to set higher bail in all cases.

* High bail should be used discriminately, where court appearance and threat to the community are a real problem.

* Interviews show that the local judges are concerned about protecting the community when making bail decisions.

* More serious charges are rearrested in much lower percentages.

* Generally, the original charge does not predict the crime for which the defendant will be rearrested.

Felony non person was the one exception to this.

* If trials were held 90 days after arrest, rearrest rates would be reduced by 50%.

CHAPTER II

DESCRIPTION OF BAIL AND PRE-TRIAL RELEASE

Definition of Bail

The purpose of this report is to describe and evaluate the activities of the Pre-Trial Release Program and bail bondsmen in the Memphis-Shelby County criminal justice system. Bail is central to this system. Bail is defined as a sum of money posted by a defendant or his representative to secure his release from jail until the disposition of his case. This amount of money is used as an incentive to encourage the defendant to appear for his court dates. If the defendant does not appear, the court has the option of retaining his bail deposit as a punishment for not appearing.

Purpose of Bail

The literature suggests that the major purpose of bail is to secure the court appearance of the defendant. However, the purpose of bail may also include protection of society and punishment. We have interviewed local judges to determine their views of the purpose of bail.

The judges stated that the major puspose of bail is to secure the defendant's appearance in court. If a defendant does not appear, court proceedings are disrupted and the state incurs a cost in apprehending fugitives. Failing to appear also presents a philosophical problem since defendants are attempting to escape the legal consequences of their crimes.

The second purpose of bail is to protect society. A number of judges admitted that "society needs to be protected, especially from the violent criminal." One judge stated that in setting high bonds he is incarcerating the dangerous defendant until his case is disposed. For example, bonds of $25,000 are not unusual for armed robbery suspects. By setting such a bond the judge is not only incarcerating the defendant, but he is also serving a warning to others who are contemplating the same crime.

A third purpose of bail may be to punish the individual involved in the crime. Many times defendants, through various legal processes, are able to obtain dismissal of a charge, in spite of obvious guilt. The judge may be aware that the evidence is not sufficient to convict. However, the judge sets a high bond insuring that the individual spends at least some time in jail for the commission of this crime. There is considerable indication that officials playing major roles in the local criminal justice system eschew the punishment philosophy. Attorney General Hugh W. Stanton was quoted in the local newspaper as saying that the purpose of bond "is to insure the appearance of a person in court, not to penalize him." (Press Scimitar, 3-8-75). When the judges were asked whether the punishment philosophy was central to their philosophy in making bail decisions, they generally suggested that it was not. For example, one judge pointed out that he set bail decisions in terms of how a case would ultimately be disposed. Being a former

prosecutor, he knows that many charges are eventually reduced through plea bargaining. This particular judge attempts to make some determination from the facts, as to which cases would be reduced. He then makes a bail decision on the basis of his perception of the ultimate disposition decision. Therefore, this judge does not operate by a punishment philosophy. Although interviews with lawyers suggested that some judges operated by a punishment philosophy, the judges did not admit this in their interviews.

In summary, interviews with the judges show that judges primarily set bail to make sure a defendant appears for his court date and secondly, attempt to protect society, especially in cases of crimes involving violence. There was a suggestion that some judges use bail as a form of punishment although this was not widespread and was not openly discussed by the judges.

Description of the Bail Process

This section will describe the role of bail in the criminal justice system from arrest to trial disposition of the case. This process begins with the arrest of a suspect by the Memphis Police Department. The suspect is taken to the city jail and booked on suspicion of an offense. Normally, the police will charge a defendant with a particular crime within 48 hours. During this period the detectives assigned to the case may do background investigation and question the suspect. When a suspect is charged with a crime his name is entered in the City Court docket and he becomes a defendant in a criminal case. Entry is made by the Desk Sergeant. A suspect remains in jail during this 48 hour period until he is charged. Bail cannot be set for an individual before the charge is entered on the docket book.

Bail is decided in one of two ways, depending upon the nature of the crime. There are two types of crimes: misdemeanors and felonies. A misdemeanor is any violation of state law which is punishable with a fine of $1,000 or less and up to 11 months and 29 days of time in jail. A felony is any violation of state law which is punishable with a fine over $1,000 and one year or more of time in jail.

Since misdemeanors involve minor charges which are apt to be witnessed by a policeman, charges may be set immediately upon booking. In misdemeanor cases, the defendant's bail is automatically set at $250. Unless a reduction from this amount is requested, the defendant does not appear in court for a Bond Hearing. The bond in City Court is referred to as a City Appearance Bond. In the case of some violations of city ordinances only, the City Appearance Bond is set at the amount of the fine. In some ordinance cases, the defendant wanting to plead guilty simply forfeits his bond. This is not true of either felonies or misdemeanors. In the case of felonies, bail is generally set by a judge in open court, except on weekends or when court is not in session. As the suspects are charged, they are put on the docket. At 7:00 AM every morning the felony docket is taken to the city clerk's office to be heard by a judge at 9:00 that morning. Any defendants charged after this time in the morning are entered on the 1:30 docket. At 9:00 AM the judge examines the facts in the case and determines the level of bail to set in that particular felony.

The judge's decision to set bail may be based on a number of considerations which attempt to determine if a defendant will appear for his court date and/or commit another crime while on bond. The interviews with local judges suggest that the nature of the offense is the most important factor in a bail decision. The commission of a felony against person is prima facia evidence to the court that bail should be set at a high level. For example City Court Judge Ray Churchill has publically stated that all defendants charged with armed robbery will be assessed a $25,000 bond. The second most important factors include prior record and the defendant's community stability. A number of the judges made a point of stating their reluctance to set low bail on a multiple offender. Community stability includes such factors as employment, a stable family situation and city residence. The third most important factor was the presumption of guilt. If the evidence appears substantial, the judges are less apt to set low bond.

There are a number of ways a defendant can pay his bond and obtain release from jail until the disposition of his case. First, a defendant can post cash bail. For example, if bail is set at $250, as it is automatically in misdemeanor cases, the defendant can post the entire $250 with the court. After his case has been disposed of, the court returns the entire $250 to the defendant, whether guilty or innocent of the charge. Secondly, a defendant can obtain his release by using a bail bondsman. A bail bondsman guarantees the payment of the amount of bail if the defendant fails to appear for his trial. For this guarantee the bail bondsman obtains approximately a 10% fee from the defendant. A bail bondsman requires at least one cosigner to guarantee the bond and in certain cases of a large bond may require collateral such as property. In the case of a $1,000 bond, the defendant pays the bail bondsman $100 which is not returned to the defendant. The bondsman guarantees that the defendant will appear for his trial.

Thirdly, a defendant can obtain his release through a public agency called the Pre-Trial Release Program. A defendant bailed through Pre-Trial Release is "released on recognizance" (O. R.) O. R. means that the court is reasonably sure that the defendant will appear for his trial and therefore requires no bail. In the case of a felony the court requires a bond of $1 rather than O. R. The $1 bond is the same of O. R., except a technicality of state law is construed to require that the minimal bond be posted in order for the defendant to be liable under the state's bail jumping statute. Pre-Trial Release examines a defendant's social background such as his family stability and employment background. They examine his prior record, the nature of the offense, and a number of other factors which determine if this defendant is a good risk to appear for his trial. Pre-Trial Release makes a recommendation to the judge who then may decide to place a defendant on O. R., $1 bond or a reduced bond. In the latter case the original bond is reduced and the defendant is put under the supervision of Pre-Trial Release. Under certain circumstances a judge may decide to release a defendant on O. R. or $1 bond without consulting Pre-Trial Release or putting the defendant under Pre-Trial Release's supervision. Many times these latter cases are confused with Pre-Trial Release cases.

This study examined types of bail release for felonies and misdemeanors over a four month period in early 1973. The percentage of cases released by each method are detailed in Table 1.

Table 1

Type of Bail Release for Misdemeanors and Felonies

Type of Release	Misdemeanors	Felonies
Pre-Trial Release	5%	13%
Bail Bondsmen	69%	69%
Cash Bail	10%	--
O. R., not Pre-Trial Release	3%	6%
Bail not set or posted	13%	12%
%=	100%	100%
N=	681	645

Table 1 shows the predominant mode of release to be through bail bondsmen handling 69% of the felonies and misdemeanors. In 12.5% of the cases no bail is involved. There are cases where disposition is made on the first court appearance. If the judge has not set bail, or the defendant is unable to post bail, the Pre-Trial Release Program may handle the case. They have 5% of the misdemeanors and 13% of the felonies. Cash bail is posted in 10% of the misdemeanors while felony defendants seldom use this method. Examining the O. R. cases not involving Pre-Trial Release, the release rate is 3% and 6% for felonies and misdemeanors respectively.

Table 2 shows the size of the bonds set by the City Court judges and made by the defendants. This table includes only felony bonds where the defendant used a bail bondsman.

Table 2

Bail Amount, by Percentage

Bail Amount	Percentage
$500 or below	40%
$501 to $999	13%
$1,000 to $2,500	34%
$2,501 to $5,000	8%
$5,001 to $9,999	1%
$10,000 or above	4%
%=	100%
N=	448

Table 2 shows that the largest percentage of cases have bail set at $500 or below. However a large number of cases have bail set at $1,000 to $2,500.

A misdemeanor is disposed of in City Court and therefore, only the City Appearance Bond is required. For a felony, the City Court holds only a preliminary hearing. It is for this preliminary hearing period that the court sets the City Appearance Bond. The preliminary hearing is a hearing before a City Court judge to determine if there is probable cause to believe an individual committed a crime. If the judge feels there is probable cause he "bonds over" the individual to the state. This simply means that the case is sent to the grand jury and, if the defendant is indicted, he is tried in Criminal Court. After being bound over, the defendant is put in the custody of the Sheriff's Office. Consequently, he must arrange for a new bond with the Criminal Court. There is an arrangement between the Criminal Court and the City Court whereby the Sheriff's Office will accept bonds set in City Court when the defendant is bound over. After the defendant is indicted the Criminal Court may decide to leave the bond as it is, or if there is a request by the defendant, his attorney, the Attorney General or Pre-Trial Release, the Court may decide to raise or lower the bond.

There is one type of case not examined in this study. The Grand Jury may decide to indict a suspect before his arrest. Then warrant is issued and bond is set by a Criminal Court judge or the Attorney General's office through the Sheriff.

The bond of the defendant generally remains in force for the duration of the case, unless the defendant either does not appear for a court date or commits another crime. In addition, a bond may be set while a case is being appealed. There are many cases where defendants do not appear for their court dates. At the time of that non-appearance the judge may declare a forfeiture. Forfeiture means that the state can begin proceedings to recover the amount of money the individual posted for his bond.

There are two basic reasons why an individual does not appear. First, a defendant may not appear because he is not informed about his court date or is confused about when to appear. The second reason defendants do not appear is deliberate. They may feel that non-appearance will result in their cases being dropped or they may be afraid of appearing in court. We have estimated that 65% of the forfeitures are of the deliberate type.

This section will now briefly describe the process by which the court declares a forfeiture. When a defendant misses his court date, a judge declares a conditional forfeiture. At the same time, the judge may issue either a bench warrant or a capias. The bench warrant is an order from the City Court judge to the police to arrest the defendant, while the capias is an order by the Criminal Court judge to the Sheriff's Office to arrest the defendant. The bench warrant is sent to the Warrant Squad of the Memphis Police Department, while the capias is sent to the Fugitive Squad of the Sheriff's Department.

If a defendant appears before the court and gives the reasons why he did not appear, the judge may set aside the forfeiture. If the defendant does not appear, the City Court orders a Scire Facias hearing at which time the bonding company or defendant must show cause why the defendant did not appear for his court date. If the judge is not satisfied, he may order the bonding company to pay to the city clerk the amount of the bond. In the case of an individual who posted a cash bail, the judge simply seizes the amount of cash bail.

In the Criminal Court the judges give the bonding company at least one full term of Criminal Court during which to produce a defendant. There are three court terms in a year. Therefore, if a defendant does not appear for his trial on February 1, the bondsman may be given until the September term to produce the defendant. At that time, the judge has the option of declaring a final judgement by ordering the bail bondsman to pay the amount of bond to the Criminal Court Clerk.

CHAPTER III

THE PRE-TRIAL RELEASE PROGRAM

Introduction

This chapter describes and evaluates the Pre-Trial Release Program. Specifically, it presents: (1) a history of the program; (2) a description of the agency and its activities; (3) an evaluation based on organizational variables, operational procedure and a comparison of Pre-Trial Release and bail bondsmen. Organizational variables include the size and nature of the staff, the degree of supervision, and data gathering facilities. Operational procedures include an evaluation of interviewing procedures, release and judicial criteria, verification and supervision. The examination of relative effectiveness of Pre-Trial Release and bail bondsmen will use variables such as release rates, forfeitures, disposition and recidivism.

Guidelines for determining the material included in an evaluation of this type come from two types of sources. First of all, Barry Mahoney and Jan Gayton of the National Center for State Courts, a LEAA-funded agency, have prepared a check list of minimum standards of data collection and evaluation for Pre-Trial Release programs. This report has incorporated their suggestions for the type of data to be collected.

Secondly, the report has collected extensive information and material about Pre-Trial Release programs around the country. The reports serve as both examples and comparative data for our own report. Much of this material has been reprinted in evaluation reports or in legal periodicals. Among the best of these are an evaluation of the Santa Clara Pre-Trial Release Program, Handbook on Community Corrections in Des Moines, a report by the Office of Economic Opportunity, and extensive research by Paul Wice. Wice has reprinted his research in two different publications. The initial report of his findings is a study entitled, Bail and Its Reform: A National Survey. This project was supported by a grant from LEAA. Wice later reprinted some of the same data and information in a book entitled, Freedom for Sale, published by Lexington. The Wice writings on bail reform are especially useful. They provide insight into how bail reform projects work and what some of their limitations may be. Wice uses frequency distributions and percentages to determine effectiveness ratings for various organizational types and operating procedures. As the data for Memphis is examined, the report will compare it to Wice's findings in other pre-trial release programs.

History

During the nineteen sixties there was increasing awareness of the injustices of the American bail bond system and the need for developing alternatives to professional bail bondsmen. A body of research developed which suggests that bail decisions are related to sentencing and conviction. For example, Anne Rankin has shown that defendants remaining in jail before trial were more apt to be convicted and less apt to receive probation. A considerable body of

literature pointed out abuses and corruptions in the bail bond industry. These abuses included the absence of the bondsman's accountability, his corrupting influence on other criminal justice officials, the grant of power in the bail bond contract, and the bondsman's use of police power. The first project to provide an alternative to bail bondsmen was the Vera Bail Reform Project implemented in New York City in 1961. The Vera Program was the first to make extensive use of the recognizance program. The project argues that the appearance of a defendant in court could be assured without using cash bond. In the process the defendant's rights were protected, the safety of the public was assured and there was considerable financial saving to the taxpayer.

At the same time that this national movement was exploring alternatives to the money bail system, it became apparent that reform was required in Memphis and Shelby County's bail system. Defendants held in pre-trial detention had to wait many months in jail while their cases were being disposed. The bail was set in their cases on the basis of the alleged crime and their prior record without any evaluation of the risk of flight or committing dangerous acts. In many cases poor people arrested for even minor crimes could not meet their bond, and spent months in jail awaiting trial. If a defendant was literally "lost in jail" there was no agency responsible for obtaining that defendant's release before his trial. The defendant who remained in jail was humiliated, was unable to assist in his own defense and could not work so that he could pay a private attorney. The consequence of not being able to work was that the family had to turn to welfare. The costs to the public were large. The defendant's family which had to go on welfare presented a great burden to the state welfare system. It costs a considerable amount of money to detain an individual in jail for an extended period of time. In cases where there was no need for detention, the City and County were unnecessarily spending public money. With these facts in mind, in the summer of 1969 Criminal Court Judge Odell Horton and Shelby Penal Farm Superintendent Mark Lutrell, Sr., discussed the need to aid defendants incarcerated in the local jails pending trial. Lutrell allowed some VISTA volunteers working at the Penal Farm to assist Judge Horton in conducting interviews of defendants in the County jail. In July, 1970, a new group of VISTA volunteers replaced the original group whose term had expired. Judge Otis W. Higgs, who had replaced Judge Horton, made a firm commitment to the continued operation of the program.

September 1, 1971 marked the inception of the program as a Shelby County agency with three full-time employees and VISTA volunteers. At that time, Richard Borys was appointed full-time director of the program. The program grew in both quality and size. Mr. Borys is a tough administrator who requires a total commitment on the part of his employees. Consequently he has employed individuals with a firm commitment who have been willing to work long hours in obtaining the release of defendants from the City and County jails. Reactions to the program from the Police and Sheriff's Department have changed from hostility to respect. The antipathy of many of the judges toward the program has given way to acceptance of the work of the Pre-Trial Release Program. Many of these judges now request Pre-Trial Release recommendations in their courts. Mr. Borys is a former VISTA worker who became involved in Pre-Trial Release when the initial VISTA group worked with Judge Horton. He received a Bachelors and Masters Degree in mechanical engineering from Clarkson College of Technology. From January, 1968 to 1970 he served in the United

States Army. He joined VISTA and was assigned to the Shelby County Penal Farm in July, 1970.

The Pre-Trial Release Program has stated numerous times that it provides benefits to both the community and the defendant. Pre-Trial Release aids the defendant by making the following possible:

a) He is able to aid in the preparation of his own defense.

b) He can retain his own counsel and be able to pay for it.

c) He can continue supporting himself and his family.

d) There is an increase in the possibility of probation or dismissal of the case while the defendant is on bond rather than in jail.

To the community the program gives the following benefits:

a) It reduces jail costs.

b) It reduces the necessity of welfare payments to the family or the incarcerated individual.

c) It reduces the burden of various public agencies such as the public defender's office since the individual cannot pay for the retention of his own counsel and services.

The Pre-Trial Release Program is a County Agency partially sustained by grants from the Law Enforcement Assistance Administration (LEAA). The Agency received a LEAA grant from 1971 to 1975 that required 25% local matching funds. The budgets of the agency for each of the years are described in Table 3.

Table 3

Budget of Pre-Trial Release

	LEAA Budget	LEAA Expenditure	County Budget	County Expenditure	Funds Returned To County
1971-1972	34,298.05	32,051.63	34,298.05*	31,095.63*	24,038.72
1972-1973	66,664.00	64,490.96	61,359.00*	58,294.26*	47,916.29
1973-1974	89,495.00	91,029.39	78,889.00* (80,222.00 after raise 4/1/74)	80,423.39*	72,362.06
1974-1975	55,556.00	---------	124,489.00	---------	---------

*Difference in rent and administrative overhead, considered in grant but not considered in county.

In the summer of 1974 a grant proposal was made to LEAA to increase the scope of the Pre-Trial Release Agency's services. For that purpose a grant describing comprehensive pre-trial services was written. The new program would have provided screening of all defendants arrested in Shelby County charged with a felony and

some screening of prior records of all defendants charged with a misdemeanor. This information would be presented to the judges and the attorney general for decisions concerning pre-trial release. The project would have supervised and provided supportive resources for the defendant from the time of his release until his case terminated. Hopefully by processing individuals this way the program would have reduced the number of cases clogging the local criminal justice system.

The proposed program would have added greater screening capabilities to the Pre-Trial Release Agency, but most of all it would have provided a diversion component to the local criminal justice system. In a diversion program defendants meeting strict criteria, such as the lack of a prior record and the commission of a non-violent felony, are recommended to the Attorney General for diversion. Diversion means that the individual's prosecution in the case is terminated for a stated period of time, such as a year. The individual who is diverted does not make a court appearance. Rather, he is put in the custody of an agency which supervises his conduct and helps solve his personal problems. For example, the agency may provide help through counseling, employment and other referral services. At the time of diversion the defendant is put on a behavioral contract. If he meets all the requirements of his contract, his case is dismissed at the completion of the contract. Any person not meeting his contract is immediately sent back to court and processed through the criminal justice system in the normal way.

LEAA awarded a grant to Shelby County for $200,000 for this Comprehensive Pre-Trial Services program. The grant was rejected by the local Attorney General, Hugh Stanton, Jr., with the statement that he lacked the authority to conduct a diversion program under existing state law. To hold warrants in abeyance under the law, Stanton said, he would need an act of the legislature. Without the Attorney General's approval and his agreement that he would not prosecute diverted cases, the diversion program and the grant died for the year. There was considerable publicity about this issue, with numerous groups being critical of the Attorney General for his rejection of the $200,000 grant. As a consequence of these criticisms and his personal view that diversion is a useful program, Attorney General Stanton proposed a statutory revision to a state law authorizing diversion programs in Tennessee. At this time two bills have been introduced in the state legislature. It remains to be seen whether authorization for the diversion program will be passed by the state legislature. Hopefully the act will pass, LEAA will renew their grant for comprehensive pre-trial services and this grant will be assigned to the local Pre-Trial Release Agency.

Description of the Pre-Trial Release Program

The process used by the Pre-Trial Release Program in obtaining the release of defendants can be divided into the following steps: screening and interviewing, verification, release criteria, recommendation to the court, actual release, supervision and revocation. In the following sections, this report will describe each of these processes as they are carried out by the local agency.

Screening and Interview. Screening and interviewing take place in two locations, the City and County jails. We will examine the process at City jail first. Before a defendant can be interviewed, the Pre-Trial Release Program must screen him. There are two investigators assigned by Pre-Trial Release

to the City jail. These two investigators inspect the docket for names of individuals charged with misdemeanors or felonies who are still in jail, but have not been released to a bail bondsman or posted cash bail. The list of these names is taken to the Police Department's Bureau of Identification. From the Bureau of Identification the Pre-Trial Release investigator obtains information on the defendant's record and current bond status. If a defendant has a lengthy record, especially of dangerous offenses, or if he is currently on bond, then he is automatically a "no-interview" and Pre-Trial Release does not recommend him for release. If that defendant is to obtain his release, he must do it through conventional means such as posting cash bail or using a bail bondsman. Defendants with minimal prior records, not out on previous bond, are interviewed by the investigator. The investigator approaches the desk sergeant with the names of the defendants to be interviewed. The desk sergeant has the defendants brought from the jail. Defendants are interviewed by the two investigators in a room next to the desk sergeant's area. If an interview takes place when the defendant is already in court, the investigator interviews the defendant in a room adjacent to the court room.

The Pre-Trial Release investigator explains the bail process to the defendant. In the case of a felony, the investigator may explain the charge, the fact that the defendant is going to a preliminary hearing, the meaning of the preliminary hearing and how the defendant can obtain bond. Basically, the Pre-Trial Release program provides information to the defendant so that he can intelligently choose among his options about bail. The Pre-Trial Release investigator informs the defendant that his case is scheduled for the morning docket when the judge will set bond. The defendant is further informed that the Pre-Trial Release Agency requires background information which is used to make a recommendation to the judge about O. R., $1 bond, or reduced bond. No guarantees are made to the defendant and it is emphasized that the Pre-Trial Release investigator is not a bail bondsman or an attorney. It is explained that Pre-Trial Release provides this service without cost. In this study we found the Pre-Trial Release Agency very meticulous in their approach to the interviews. In every case we witnessed, the investigator advised the defendant that he should obtain an attorney as quickly as possible. Our statistics show that 80% of Pre-Trial Release clients used a private attorney, while 69% of the defendants who were not Pre-Trial Release clients used a private attorney. We asked the Pre-Trial Release investigators whether they give any legal advice to clients or if they refer clients to any specific attorney. The answer was that the investigators have been strictly prohibited by the director of the agency from acting in any capacity as attorneys. In fact, they instruct the defendant that it would be to his advantage to obtain a private attorney.

The investigator then informs the defendant that he is going to ask him a series of questions and that these questions will be verified. The defendant is told that if he lies to the Pre-Trial Release investigator, all contact between the agency and the individual will be immediately terminated. The interview proceeds along an extensive form which includes questions about prior record, family life and work history. These factors are later used as the basis for making a recommendation to the court.

After the interview has been terminated, the defendant is sent back to the jail. On a busy morning it may not be possible for the Pre-Trial Release Agency

to interview every eligible defendant. When this happens, they interview the felonies first, then the misdemeanors. The interview process described above takes place between approximately 6:45 and 8:00 AM. A third investigator who works in the City, and reduces the work load of the morning investigators, is known as the "night man." The "night man" comes in at noon and leaves about 9:00 PM. He interviews individuals on the next morning's docket who have been charged that day. In some cases he can obtain the release of misdemeanors by going to night court at 6:00 PM. The "night man" has regular interviews at 4:00 and 8:00, but is dependent upon the desk sergeant to allow him access to defendants. An investigator is also present in the City on Saturday morning and Sunday evening. Since courts are not in session after Saturday at noon, the investigators will generally interview and do some verification.

Screening and interviewing for the Criminal Courts is less difficult than for the City. Most of the defendants in the Criminal Courts have been bound over either from the City Court or General Sessions Court. Consequently, the defendants were probably screened by the Pre-Trial Release Investigator in the City jail, and rejected. Therefore the case which the investigator is considering in the Criminal Courts is probably a borderline case.

There are several reasons why these defendants are still in jail. They may be unable to afford even a small bond. Their bond many have been set abnormally high. Or, they may be unable to obtain a cosigner for a bond and therefore a bondsman will not take the case. Consequently there are two types of defendants who remain in jail: those who have an abnormally high bond and those who cannot meet the bondsman's requirements. In the latter case, the defendants should be released and should not remain incarcerated simply because of economic circumstances, when other defendants similarly charged are released. At this stage the role of Pre-Trial Release is to do interviewing and screening to determine which of these defendants should be released either on $1 bond or reduced bond.

The actual screening for Criminal Court defendants takes place in the Shelby County jail. The investigator in the Criminal Court initially screens jailed defendants from a list provided by the Criminal Court Clerk's office. From this list the investigator selects defendants who meet Pre-Trial Release criteria for possible recommendation for release. Furthermore, the Pre-Trial Release investigator may receive a request from an attorney or a judge that he examine a defendant for possible recommendation. Referral of this type often happens in open court when an attorney makes a motion for reduced bail. Referral also may take place at the request of friends, relatives, the prosecutor, a policemen or the public defender.

Verification. Verification is a method used by Pre-Trial Release to determine the validity of the information received during the interview. The investigator in City Court goes to his office after he has interviewed the defendants. At that time he examines the interviews to determine which defendants merit further consideration. If he determines that the defendant is a bad risk, he will not bother to verify the information. If the defendant meets the criteria. the investigator verifies the information by calling individuals referred to him by the defendant. Generally the investigators

try to reach one family member and an employer. If the defendant is under the supervision of a public agency, that agency will also be called. For example, if the defendant is working with the Department of Vocational Rehabilitation the investigator may call his counselor. If he has been on juvenile probation, then the Juvenile Court Counselor will be called. In the interview which is conducted over the phone, the investigator determines if the information given by the defendant is true.

Release Criteria. In determining whether an individual will be released, the Pre-Trial Release investigator takes into account a number of factors. These factors include residence, family ties, employment, character and prior record. It is assumed that a defendant who resides in Memphis, lives with his family, and has full time employment is more likely to appear for his court dates. Prior record is used as a counter balance because an individual who has previously committed crimes is more likely to be convicted and sentenced to jail. Thus his stakes in leaving the jurisdiction to escape trial may be much greater. Furthermore, an individual with a prior record is a greater threat to the community once he is released. Figures on recidivism show that a large percentage of crime is committed by individuals with a prior record. Thus, the Pre-Trial Release Program attempts to avoid this problem by not recommending major recidivists for release.

The Pre-Trial Release Program uses an objective form to determine which defendants should be released. This form is called a point system. The defendant receives a certain number of points for being a resident of Memphis, for having family ties and for being employed. If a defendant has a prior record, he receives minus points depending on the nature of the offense. The point system is reprinted on Page 8 to show the factors that are taken into account when the points are totaled.

An example might further clarify the way in which the point system is used. A "hypothetical" defendant might be given points for various characteristics: living at present residence for two years (2 points), in Memphis for six years (1 point), lives with his family (3 points), works for less than 6 months on his job (2 points). However, this hypothetical defendant has a prior record of one adult misdemeanor in the last five years. He would lose one point for this. This produces a total of seven points. The Pre-Trial Release Agency uses an objective weighting scale requiring six points for recommendation to the court.

The Pre-Trial Release Program does not exclude any offenses from eligibility for release. Pre-Trial Release investigators recommended a variety of defendants ranging from misdemeanors to first degree murder. As we will discuss later, the ability of the program to obtain the release of defendants on various offenses ultimately depends on the judge. Therefore, Pre-Trial Release can recommend anyone it wants, but there is no guarantee the judge will abide by this recommendation. Generally, when the defendant has a Memphis residence, family ties, employment and prior record to justify his release, many judges will release serious offenders. Therefore the agency has recommended for release defendants charged with felonies such as armed robbery, rape, and murder. However, these very serious crimes constitute only a very small proportion of the Pre-Trial Release cases and the defendant is released only where the community clearly is not threatened.

POINT SYSTEM

To be recommended, a defendant needs:
1. A Memphis address where he can be reached AND
2. A total of six points from the following:

Int	Ver	
		RESIDENCE (In Memphis area; NOT on and off)
4	4	Present residence 15 years OR buying home (has paid 3 or more years on mortgage).
3	3	Present Residence 2 years OR present and prior 3 years.
2	2	Present Residence 6 months OR present and prior 1 year.
1	1	Present Residence 4 months OR present and prior 6 months.
		TIME IN MEMPHIS AREA
2	2	15 years or more.
1	1	5 years or more.
		FAMILY TIES (In Memphis Area)
3	3	Lives with family.
2	2	Lives with non-family friend AND has contact with other members of his family.
1	1	Lives with non-family friend OR has contact with other members of his family.
		EMPLOYMENT OR SUBSTITUTES
5	5	Present job over 5 years where employer will take back.
4	4	Present job over 1 year where employer will take back.
3	3	Women with children for whom she is responsible.
3	3	Present job over 6 months where employer will take back.
3	3	Receiving public assistance 3 or more years.
3	3	Student in GOOD standing with the school.
2	2	Worked less than 6 months at his job but employer can give satisfactory recommendation.
2	2	Laid off his job for reasons other than personal or ability to carry out job.
2	2	Receiving public assistance at least one year.
1	1	(a) Present job 4 months or less OR present and prior job 6 months. OR (b) Current job less than a month where employer will take back. OR (c) Unemployed 3 months or less than 9 months or more single prior job from which not fired for disciplinary reasons. (d) Receiving unemployment compensation, welfare, etc. (e) Full time student. (f) In poor health. (g) Pending workmen's compensation case.
		CHARACTER
1	1	Prior negligent no show. OR run-away from juvenile Detention Center.
2	2	Definite knowledge of drug addiction or alcoholism. (Rebuttable if on program).
		PRIOR RECORD
1	1	Note: Use chart below for single offenses and for combination of offenses. For reasoning and offensive weights, see Explanatory Memo.
2	2	
3	3	Code One adult felony = 7 units if five years ago and no previous record within the five year period.
4	4	One adult felony = 10 units if within a five year period from present charge.
5	5	One adult misdemeanor = 2 units if within a five year period from the date of present charge.
etc.		One adult misdemeanor = 1 unit if five years ago and no previous record within the 5 year period.

0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	
				1							–2						–3				–4	etc.

The Recommendation. Once the defendant has the necessary points, the investigator presents the recommendation to the judge. The recommendation procedure for the City Court is slightly different from the Criminal Court. In the City Court the investigator usually gives an oral report to the judge. The investigator usually appears before the judge assigned to hear misdemeanors and felonies during that week. The Pre-Trial Release investigator presents background information about the defendant especially in the area of record, residence, family stability and employment. In Criminal Court the procedure is much more formal. The bond arraignment hearing may take place in the judge's chamber or in open court. The latter is usually the preferred method. If the recommendation is made before indictment, the agency is free to choose any division of Criminal Court. After the indictment, the agency must take the case to the division assigned. About 65% of the total Pre-Trial Release petitions in Criminal Court are presented to Division IV because of the close working relationship between Judge Higgs and the agency. Unlike City Court the Criminal Court judges demand that the recommendation be in writing. Therefore an extensive report is usually submitted to the judge giving the same information which is orally presented in the City Courts.

The investigator assigned to the case has a number of procedures he must follow before appearing in Criminal Court. All relevant parties must first be notified. The investigator must check with the Attorney General and determine if he is prepared for the case. Next the Criminal Court Clerk is notified to make sure that the defendant will be in court. He checks with the attorney or the public defender to find out if they are prepared to argue the bail case. And the investigator presents a copy of the written report to the judge prior to his calendar call. The investigator then summarizes the report before the judge and defends its more controversial aspects.

Release. In the City Court there is usually not over a period of 24 hours from the time the defendant is originally interviewed to the time he obtains his release. In the case of misdemeanors the investigator in night court can obtain the release of those individuals charged during the day. In the case of felonies, the bond hearing must await the 9:00 docket of the court. Once the defendant is released by the judge, it is only a short period of time before he obtains his release from jail. On being released from the jail, the defendant and his family are taken to the Pre-Trial Release office. The investigator describes the program and the conditions of the release to the defendant. The defendant is given a release letter which indicates he understands the conditions of his release. Furthermore the defendant must read and sign a form about bail jumping which is retained for the Pre-Trial Release files. The investigator stresses the seriousness of the charges against the defendant and the consequences if he does not appear for his court dates.

Supervision. Most defendants under Pre-Trial Release are required to call the office once a week. When the defendant demonstrates stability, he may be allowed to call less often. The call-in is used to determine if the defendant is remaining in the community. Furthermore, the investigator can determine if the defendant has found a job, a lawyer or is solving his personal problems. The call is a good way to communicate with the defendant about his trial date and to instruct him that he must appear for his trial date. If the defendant has fled the jurisdiction, the Pre-Trial Release Program finds out immediately

since his call-ins have probably terminated. A quote from one of the investigators shows the philosophy of the agency:

> "I think the process of calling in is valuable. It is a very strong indicator of how dependable and what good intentions the person has. There is no excuse for a man not being able to pick up a telephone once a week and call our office. It takes about a minute and if that is all it costs him to stay out on bond with us, I think it is very little to ask."

If the defendant has not been calling in, the supervising investigator is to contact that defendant. The defendant will be told that he has not been calling in and that the agency is concerned about his appearance in court. If there appears to be a particular reason why the individual does not call in he may be required to come to the office at which time an interview will ensue.

The Pre-Trial Release Agency prepares a delinquent list every month to determine which defendants are not calling in. This information is entered in the defendant's record card. If the judge asks the agency for information during sentencing, the investigator may provide information based on the period of supervision.

One investigator in charge of supervision has as many as 185 cases. Other investigators who have court responsibilities also have cases to supervise, but nowhere near the number as the primary investigator in charge of supervision. In summary, supervision involves contact with the defendant through phone. It is difficult for the agency to supervise the defendants in person. It is only when warning signs appear such as the lack of call-ins or the rearrest on a subsequent charge that the agency begins to closely examine the defendant.

Revocation. The Pre-Trial Release Program may revoke the $1 bond, O.R. or reduced bond of a defendant under supervision. In revocation, the agency examines the defendant as an individual in the totality of circumstances that caused the problems requiring his return to jail. Reasons given by the agency for revocation include: (1) the arrest of the defendant on a felony, (2) the deliberate forfeiture by the defendant, (3) the refusal to abide by the conditions of his release. The agency by itself cannot revoke a client but rather makes a recommendation to the court that the bond in the particular case be increased. The agency usually states in writing what the reasons are for the requested revocation and reinstatement of the original bond.

A forfeiture is not always deliberate and not always grounds for revocation. To eliminate non-deliberate forfeiture, the defendant may be asked to come to the office and an investigator will accompany him to the court room. However, many defendants go to their lawyer's office or appear directly in court. If a defendant does not appear for his trial date, one of the investigators in the court will usually be aware of it. In many cases defendants have not been able to find the proper court. In that case the Pre-Trial Release investigator tries to locate the defendant in the courts. In other cases there may be a mistaken notion as to the court date and therefore the investigator calls the defendant to warn him to be in court.

At the time the defendant does not appear, the judge issues a conditional forfeiture. An arrest warrant is sent to the Police Department's Warrant Squad or to the Sheriff Department's Fugitive Squad. On some occasions in City Court the Pre-Trial Release investigator tells the judge that he expected the individual to appear and the bench warrant is not issued until later in the day or week. In the Criminal Courts, a capias is issued and sent to the Fugitive Squad. The Criminal Court judges generally may hold the capias. Therefore, the investigators inform the Fugitive Squad that they are going to surrender the defendant in a stated period of time. The Fugitive Squad holds the warrant until they receive information from the Pre-Trial Release Agency. If the agency finds the defendant did not deliberately forfeit, they will normally notify the lawyer of the defendant. The Pre-Trial Release Agency, the attorney and the defendant appear in court at the same time. They explain to the judge the reasons for the defendant's not appearing for the trial and ask the judge to set aside the forfeiture. In the case of non-deliberate forfeiture, the Pre-Trial Release Agency continues to supervise a defendant.

When there is a deliberate forfeiture and the defendant is a fugitive, the Fugitive Squad or Warrant Squad is responsible for apprehending that defendant. The Pre-Trial Release Agency gives those agencies all available information about the defendant. The defendant is called at home and told to surrender himself to the court. In other cases the Pre-Trial Release Agency may pursue the defendant. The agency has its infamous "field trip." One or two investigators go out to the home address of the defendant to persuade him to surrender to the court. The agency makes very few field trips because of the danger involved. For the most part the agency communicates with the Warrant Squad and the Fugitive Squad, providing information for the apprehension of the defendant.

Organizational Variables

This section evaluates the organizational variables within the Pre-Trial Release Program. Organizational variables include adequacy of staff size, staff assignments, the character of the staff, the degree of internal and external supervision and data collection facilities. Where possible, other reports are used to compare the Memphis Pre-Trial Release Program to similar programs around the country.

Staff Size. Before pursuing the question of staff size, an examination of Wice's conclusions is useful. He takes a series of Pre-Trial Release programs, examines their staff size, and attempts to determine if staff size is related to two measures of effectiveness -- the release rate and the forfeiture rate. He concludes that programs with moderate to large staff sizes are able to release greater numbers of defendants than those with very small staffs. For example, Wice says, "Without sufficient staff, the project spends all its time and energy interviewing defendants many of whom will ultimately decide to pay a bail bondsman rather than wait for the project to complete its investigation and verification." (p. 117) Wice finds that the small projects also have very high forfeiture rates because they do not have the resources to supervise the defendants. The Wice study finds that there is no difference in the release and forfeiture rates of projects with moderate -

and large staffs. Therefore, after a certain level, staff size does not relate to success.

Does Memphis Pre-Trial Release Program have an adequately sized staff to cope with the demands made upon it? One way to answer this is to compare the Memphis staff to other cities. A list of cities is presented in Table 4. The figures in Table 4 are standardized for population size.

Table 4

Population Per Staff Member
in Selected Cities

City	Staff Size	Population per Staff Member
Chicago	4	840,706
Atlanta	1	497,024
St. Louis	4	155,559
Los Angeles	28	100,575
Indianapolis	8	93,071
Baltimore	12	75,479
Memphis	10	62,375
San Francisco	18	39,759
Washington	26	29,404

The figures suggest that Memphis ranks in the middle of these cities. However, the figures are limited since they do not take into account the amount of crime or the number of defendants in each city. Further, the figures were gathered in an earlier time period and may not be totally comparable.

Another way of determining the adequacy of the size of the agency is to consider increasing numbers of criminal defendants in Memphis and Shelby County. It can be assumed that crime will continue rising at fairly dramatic rates. For example, the FBI's Uniform Crime Report shows an increase of 12% in major crime in Memphis between 1973 and 1974. The number of defendants will increase in at least the same proportion as crime since the City and County will employ both additional law enforcement personnel, judges and prosecutors. Additionally, the case load at the Pre-Trial Release Program has been increasing at dramatic rates. Table 5 displays the increase in interviews and defendants released.

Table 5

Percentage Increase in Defendants
Interviewed and Released

	Percentage Increase Over Prior Year	
	Interviewed	Released
1972	48%	35%
1973	63%	45%
1974	33%	36%

Table 5 shows that the increase in interviews and releases were about a third from 1973 to 1974. The figures on both increasing crime and substantially increasing numbers of interviews and defendants released to the program suggests the need to expand the program. The figures comparing the agency to other cities suggest that its staff size could be expanded without the program size becoming oversized when compared to the population size and crime level of Memphis.

Staff Distribution. In addition to staff size, this report needs to examine the way in which the staff is divided to perform the functions of the agency. Each of the positions in the Pre-Trial Release Program is described and evaluated according to work load. After evaluating each position separately, the report reaches some general conclusions as to the work load and the nature of the staff.

The director of the program is the major liaison with all outside agencies. He is in charge of publicity for the program. Furthermore, the director monitors the activities of the program very closely. He closely follows all cases where defendants are to be recommended for Pre-Trial Release or are terminated from the program. He coordinates and assigns the staff members of the program to their various responsibilities. The director makes sure that the staff fulfills their general responsibilities. Furthermore, the director is in charge of data collection and supervises the case completions and the summary statistics of the program.

In our observation of the agency we find that the director is intimately involved in all phases of the operation. On a typical day he may spend some time in the office making assignments for the coming week; he may go to court to make an actual recommendation in a serious case; he may go to the Attorney General's office to discuss a case; or he may work on statistics for the program. The director's job is by definition almost too extensive. We find the director working a considerable number of evenings to keep up with his duties. Clearly he is doing a commendable job in making this an effective and efficient organization. We therefore recommend that the director clearly decide how authority in the organization can be disseminated to other staff members. For example,

the senior investigators in both the City and Criminal Court could be given greater authority in record keeping. Perhaps those same senior investigators could be given greater authority in release decisions. The director should be prepared to delegate a greater range of activities.

The administrative assistant has some secretarial duties, some data collection duties and some clerical duties. She coordinates all the paper work in the program, receives phone calls when clients call, obtains information from the Criminal Courts about new indictments and dispositions, prepares some files and even does a small amount of supervision. The administrative assistant is indispensible since she is responsible for having information available to both the director of the program and the investigators. The report recommends that her duties continue as they are.

Both the City and Criminal Courts have one senior investigator assigned to them. The senior investigator coordinates all the activities of the investigators in those particular courts. He is responsible for obtaining a list of defendants admitted to the City jail or County jail. He determines whether the defendants are interviewed, their information verified and their recommendation made. Senior investigators are the day to day liaison in court between the program and the judges. In addition to supervising the activities of the other investigators in the court, the senior investigators also do some interviewing and verification. In commenting about the senior investigators, this is a useful organizational position for the Pre-Trial Release agency. It creates a direct line of authority and responsibility in each of the courts. And it also frees the senior investigator from some mundane activities so that he can concentrate on direct contact with the judges. If we make any suggestions about the function of the senior investigators, it is that they should not be supervising clients. Rather, all their activities should be solely aimed towards working within the court which they supervise and providing information and statistics about those particular activities to the director. The program should work clearly in defining the role of the senior investigator as having major court responsibility.

Investigators assigned to each of the courts do interviewing and verification. They check all police records and other relevant court information about the defendant. They are in charge of encouraging their client's appearance in court. The investigator is stationed in the courts. If a question arises concerning the supervision and behavior of a defendant while on Pre-Trial Release then the investigator is available to answer all questions. In the City there is a full time investigator who works from approximately 8:30 AM to 3:00 PM. This investigator works in conjunction with the senior investigator in the City by doing interviewing, verifications, and recommendations. The Criminal Court has one full time investigator who aids the senior investigator in making interviews, verifications, and recommendations. There are two investigators who work in both courts as they are needed. One investigator in the Criminal Court spends two to three hours a day in the City helping make verifications and doing some interviewing. He is employed because the City Courts are especially busy and a large number of defendants may require interviewing. There is also an investigator called the "night man."

The night man works in the Criminal Court from noon to 4:00 PM and in the City from 4:00 to 8:00 PM. For misdemeanors in the City he may perform the verification and can make a recommendation in night court. In the case of a felony he may prepare all the necessary information and in some cases do the verification so that the investigator in the morning can make the recommendation directly to the judge.

The report finds the allocation of authority to the individual investigator adequate. The investigators are usually less experienced members of the program who work under the supervision of the senior investigator. The idea that an investigator spend some time in each of the courts depending upon work load allows the agency to service all the courts. Even though the investigator does not specialize in one court, the chance to experience a variety of judges and court personnel is a healthy procedure. Each of the investigators also has their own case load to supervise. The case load usually involves about 40 - 50 people. Because the investigator spends the greatest percentage of his time in the court, it becomes difficult for him to closely supervise his clients. Therefore the investigators are usually given the clients who present less of a risk. We recommend that the case load of the investigators in the court be reduced as much as possible so that they can concentrate on interviewing, verification and recommendation. If new personnel are added, they should be allocated to counseling and supervision.

The investigators in the Criminal Court operate under a severe handicap. In an earlier section it was noted that all recommendations to the judges in the Criminal Court must be written. An investigator spends a considerable amount of time preparing a thorough report which can be defended on the stand. We found that the investigators spend from one to two hours writing each of these reports. Interviewing and verification may require another hour. Some procedure should be developed to decrease the amount of actual time the investigator spends in writing reports. Many of the investigators actually take the reports home at night to write them where they are unencumbered by other duties. This latter procedure increases individual investigator's work load beyond acceptable limits. We recommend that the program consider the purchase of a dictaphone for each of the investigators working in the Criminal Courts. On a trial basis the program could purchase two dictaphones for the investigators and one transcriber for the secretary. If the investigators are able to use a dictaphone system effectively, they would decrease the actual amount of time spent in preparing reports. This would eventually require the services of another secretary. This would, in turn free the investigators for court related duties.

The program has one full time secretary who types plus the administrative assistant who aids in some of the typing functions. Considering our previous recommendation for a dictaphone system, we suggest that perhaps the agency would need an additional secretary. In the long run, this would save the program money and allow the investigators to concentrate on their other duties.

At the present time the program has two counselors. The job of the counselors is to supervise the defendants under Pre-Trial Release. The counselor gathers information in the Clerk's office and supervises the defendant's appearance in court. In our study we found that one of the counselors had 180 cases, while the other had 100. The counselor with 100 cases was given the more serious cases, while the 180 represented some less serious in addition to some serious cases. With the other responsibilities, the case load of 180

and 100 is far too large. One of the ideas behind the Pre-Trial Release Program is that through the counselors the program can offer some secondary services to the defendant. These secondary services may involve referral to other community agencies, attempting to find a job for the defendant or, in some cases, may involve some personal counseling. It is assumed that if the program can work intensively with the defendants under its supervision, that the defendants are more likely to appear for their court date. And when the case is being disposed of, they may be able to show the judge that he has solved some of his personal problems that lead to criminal behavior.

Staff Size Recommendation. The case load of the program will increase because of the increasing number of cases in the local courts. Therefore, as the caseload increases the staff size will also have to proportionately increase. A rough guideline for staff expansion is the number of defendants being interviewed and and released. The number of investigators and counselors is divided into the number of interviews and releases to obtain the caseload per employee for 1974. The agency interviewed 3,405 defendants and released 990. Assuming 10 employees, the average number of interviews and releases is 340 and 99 respectively. Thus, as the caseload rises by these figures, an additional employee is required.

We suggest that an additional person to be employed by Pre-Trial Release Program in the near future be given counseling and supervision duties. We also suggest that the program purchase a dictaphone system and hire an additional secretary to allow the investigators in the Criminal Courts to expand their activities without diminishing the work load of the agency as a whole. We also suggest that the director of the program consider a greater allocation of authority to the senior investigator in both the City and Criminal Courts. Perhaps the director may wish to consider the appointment of an assistant director from among his staff to be given the responsibility of some of his present activities.

The director is highly effective in supervising his staff and that he is effective in interactions with the judiciary, attorneys, and prosecutors. However, the director of the agency is not doing an adequate job in publicizing the activities of the program. His ability to relate to the general public is limited because internal administrative duties. This requires some reallocation of work load. Another way of providing greater information for the public is for the director of the agency to authorize publication and dissemination of a brochure which describes the nature of the program and its effectiveness. Such a brochure has been prepared by an intern assigned to the program. The brochure is of first quality and is highly descriptive of the actual functioning of the program. We suggest that the director move quickly to print this particular brochure. We also suggest that another brochure be prepared for all defendants who are arrested. This brochure should state clearly and simply what Pre-Trial Release does, how the Pre-Trial Release Program saves the defendant money, and the way in which Pre-Trial Release can be contacted by the defendant. Such a brochure should make all defendants aware of their rights to obtain an O.R. release from the courts. It should also demonstrate that the Pre-Trial Release Program can obtain a speedy release for the defendant. Of course, such a brochure may increase the number of defendants who would request to be interviewed by the agency and recommended for release.

Staff Characteristics. Does the type of individual employed as an investigator for the agency lead to greater success in program work? Paul Wice presents some guidelines in evaluating the sources of staff. According to Wice, projects using quasi-volunteers had the highest release rates and the lowest forfeiture rates. (page 118) The volunteers worked with the program on a full time basis and attended school on a part time basis. Wice also found that projects with VISTA volunteers did especially well. Why did these projects have such high release and low forfeiture rates? Wice states that

> Volunteer and student staff members strongly believed in the purpose of bail reform and carried on their job with a missionary-like zeal. Because the education of law students in the field of criminal justice is usually defense oriented, these young law students come to the project with a keen sense of the injustices currently plaguing the criminal justice system.

In the Memphis project we find parallels to the successful Pre-Trial Release projects that used volunteers. First, the Memphis program was started as a VISTA program. The director of the current program was one of the original VISTA volunteers. In fact, some courthouse employees still refer to Pre-Trial Release as VISTA. Secondly, the agency is made up of recent college graduates, some of whom are in the position as a two or three year interlude before entering graduate school or law school. All of the staff members are highly motivated and have a genuine concern for the defendant. The investigators and counselors work long hours and frequently take their work home. There is clearly a mission orientation on the part of these staff members. Without a doubt this program is alive with interest. It is to be commended for the types of individuals working within it.

Degree of Supervision. The next problem to be considered is the importance of the degree of supervision to the success of the program. Wice suggests that agencies with a strong director are more apt to be successful. This certainly is the case in Memphis where Dick Borys is a very strong personality and wields a great deal of control over his staff.

Furthermore, Wice states that the success of the program is related to the degree of supervision from a source external to it. Let us review the way in which the program is supervised. Historically, the program began when Judge Odell Horton brought in some Penal Farm VISTA volunteers to interview defendants and to make recommendations to the court. Judge Higgs, who took Judge Horton's place, continued working with the program and generally acted as a confidant of the program. When the program was first started, many of the judges in the courts refused to accept Pre-Trial Release recommendations. However, Pre-Trial Release has been able to demonstrate their effectiveness as a real asset to the court. Therefore, more judges began to accept Pre-Trial Release recommendations.

Hierarchically there never has been a procedure whereby direct supervision is asserted by the judges. This is a healthy situation. For example, Paul Wice shows that the most successful programs are those with the weakest level of supervision from the courts. Wice makes the comment that unless the supervision is weak or the supervisor is convinced of the necessity of reform, a

project is doomed to failure. In Memphis Judge Otis Higgs is committed to the idea of bail reform and has given extensive aid to this project. Furthermore, the general supervision of the Criminal Court judges is a problem oriented or issue oriented. Whenever a problem arises, Dick Borys is called into a meeting with the Criminal Court judges. He must justify or explain his actions. This procedure probably should be continued. It has the inherent flexibility since close day-by-day supervision by the courts is not exercised over the program. Consequently the program is free to do its job in a highly professional manner but is accountable to the judges by having to justify controversial operating procedures.

The relationship between the Criminal Court judges and Pre-Trial Release is not clearly defined. For example, one judge said that "the Criminal Court judges set up Pre-Trial Release and therefore have control over it." Another judge comments differently, suggesting that the Criminal Court judges have very little need or desire for control over the program. Considering the recent success of the program, greater day-to-day control by the Criminal Court judges would not be in the public interest.

Salaries and Budget. According to Wice, for a Pre-Trial Release program to be effective, it must have

> "the financial security which only the public treasury can and should provide. At the same time it is providing this security the city should be careful to allow the bail reform projects sufficient independence in its daily operation, recruitment policies and other policy decisions. It is clear from the projects visited that as the courts attempt to impose closer financial and policy making control over the projects the more conservative and less effective the bail project becomes." (125)

In the case of Memphis the agency started as a volunteer program using VISTA volunteers. From that point it has been funded by the LEAA as an experimental program. As an experimental program, the Pre-Trial Release Program eventually obtained departmental status in Shelby County with a continuing budget from the County Court. The program appears to be financially secure.

In discussing funding it is probably necessary to examine the salaries of the employees working for Pre-Trial Release to see if they are comparable to positions with similar agencies. The salaries for Pre-Trial Release are as follows:

Director	$13,100
Senior Investigators	7,944
Investigator	7,944

As a point of comparison, an investigator with the Attorney General's and Public Defender's office makes over $12,000 and $13,000 respectively. The director of an Alabama project starts at $15,000, while the salary range for the Des Moines project is $18,000 to $22,956. The salary ranges at the local Pre-Trial Release Program is low compared to other programs. This no doubt reflects the origin of the agency using VISTA volunteers. We have

suggested earlier that the agency director give greater responsibility to the senior investigators. Senior investigator's salaries should be raised commensurately with their added responsibilities.

Data Collection. The last organizational variable to be considered is data collection. The Office of Economic Opportunity (O.E.O.) study of Pre-Trial Release Program examines information systems within various jurisdictions. Their conclusion is

> "most projects keep extremely little data about the scope and character of their operations and about the effectiveness of their operations vis-a-vis the number of people coming into the criminal justice system. The lack of good data about project operations is probably the major problem facing most projects and the major impediment to further improvement of pre-trial release agency operations."

The O. E. O. study observes that of the 75 projects studied, 37 do not know the failure to appear rate for persons on recognizance and 57 of the 75 do not know the rearrest rate for their clients. Of the 73 programs only 12 indicate to this survey that they had access to a computer. The O. E. O. study asked the various projects for information as to whether they collected data on about five different items including such things as number of defendants interviewed and failure to appear rates. The percentages of programs collecting data on these items ranges from 6% for the former to 90% for the latter.

The local Pre-Trial Release Program keeps data on every one of these variables. In terms of record keeping, the local program is one of the outstanding projects in the country. Record keeping facilities of the local agency can be divided into incoming cases and closed cases. Concerning incoming cases, the Pre-Trial Release Program keeps a monthly interview summary for both the Criminal Court and the City Court. For the City Court, their statistics are divided on the basis of felonies and misdemeanors. Information is provided about the total number of interviews, the number of defendants not recommended after verification, the number not recommended after the initial interview, the number of defendants who elected to remain in jail, the number who made bond after the initial interview, the number who had a private attorney or public defender enter their case, the number recommended for O. R., $1 bond and reduced bond, the number of those granted and refused by the judge, and the number placed under Pre-Trial supervision. Thus the statistics for incoming cases are very comprehensive.

The program also keeps information about cases as they are disposed of. This information includes such things as the nature of the charge, the disposition of the court, the number of days the defendant is on Pre-Trial Release, the number of defendants who forfeited and the characteristics of the defendants. This information is entered onto what the agency calls "the pad." The pad is simply a compilation of the names of defendants whose Pre-Trial Release is completed. This system of case close-outs is unwieldy and does not allow the director of Pre-Trial Release to have ready access to statistics on close-outs. For the most part these remained in the pad and are not summarized. We suggest that the program immediately undertake the revision of its case completion forms and that these case completion forms be put into a computer format. Using the old form as a guideline, this study

is working with the director of the Pre-Trial Release program in preparing a new computerized form. Each of the completed cases is put on a separate card and keypunched. The keypunch data is run on the computer to obtain frequency distributions on a series of variables relating to the defendant and his activities while under the supervision of Pre-Trial Release. The form which this report has created is contained in the appendix. A frequency distribution for each of the variables will be provided for a six month period of case completions. This period was between September 1 and February 1 . The computer read-out will be used by the director of the agency to prepare reports which can be forwarded to interested parties such as the judges, Attorney General and County Quarterly Court.

Operational Procedures

Operational procedures of Pre-Trial Release include such things as interviewing, verification, release and supervision. This section will evaluate the agency's performance in these areas and, where advisable, make suggestions for revising these procedures.

Interviewing. The first procedure to be discussed is interviewing. The major question is whether the Pre-Trial Release Program is interviewing the defendants as soon after charging as possible. For comparative purposes, let us look at Wice's figures for eight of the largest projects in the country. Excluding the Indianapolis project which reaches the defendant in 3 hours, the remainder of the projects require from 12 to 270 hours from the time of arrest until they first interview a defendant. The local Pre-Trial Release Program is able to interview most defendants within twelve hours. According to Wice's figures, this would make Memphis the second fastest program in reaching the defendant.

In the City Court the agency interviews defendants twice a day; once between 4:00 and 7:00 PM and again between 7:00 and 8:00 AM. At those two times the Pre-Trial Release Program is able to interview defendants charged during that day and the previous night. The program interviews the defendants for the City Court on Saturday morning, but does not interview again until Sunday evening. Since a judge does not sit on the weekend after Saturday noon, it makes no sense for the program to interview any earlier. Those interviewed on Sunday are recommended on Monday morning. In the Criminal Court a defendant is located either through a referral or an examination of the docket. As soon as the referral or docket information is received, the program interviews defendants in the County jail. Less time is required to interview defendants for Criminal Court than for the City Court. The Sheriff gives the Pre-Trial Release investigators greater access to the defendants in the County jail. Also, the number of defendants who must be interviewed in the County jail is substantially smaller than in the City. Therefore the program is reaching the defendant as quickly as a judge can be found to hear the case.

Wice discusses some of the reasons why Pre-Trial Release projects have difficulty reaching the defendant. This report examines these impediments to see if they exist in Memphis and Shelby County. One of the major reasons for delay may be poor location of the program in relation to the jails. The Pre-Trial Release Agency in Memphis is located in the basement of the old Courthouse at 140 Adams Street. Its major office is not in either of the buildings where the jails are located. But, the main office is in very close

proximity to both the City and the County jails. Therefore, the investigators have a very short walk to either of these facilities. In the City, the Pre-Trial Release investigators share facilities with the City Probation Department on the first floor of the Police building. The room, which was originally a court room, is cramped with many desks pushed together. There is no privacy afforded the Pre-Trial Release investigator. However, this office gives him ready access to a telephone from which he can do his verification. The room in the Police Building is absolutely crucial to the agency. If the investigator must go from the interview to the Bureau of Identification and then back to the main office to verify, and then come back to the City Court, an inordinate amount of time would be consumed. To be able to walk to an adjacent office and make the necessary telephone calls in the small amount of time allotted in the morning allows the agency to verify a larger percentage of people than they would otherwise do. No such room exists in the county. Since a recommendation cannot be made on the same day in Criminal Court, a proximate interview room is not especially crucial in the County jail.

There has been a proposal in Memphis to build a new criminal justice complex. The architects of this complex, Mahan and Shappley, were interviewed for this report. We asked them if the jail facilities would have rooms available to Pre-Trial Release for private interviewing of the defendants and if the Pre-Trial Release Program would be given an office directly adjacent to the jail. The architects assured us that such rooms were available in the area of the jail where recently arrested defendants would be held. The central office of the agency will be moved to the new complex. A strong recommendation of this report is that if the new facilities are constructed, office space should be provided for Pre-Trial Release investigators to use for verifications. This is especially crucial in obtaining the quick release of the defendant. Since both the City and County jail are to be centralized in the same building, it will be necessary to move the entire Pre-Trial Release offices into the new complex to maximize their access to the defendants. Therefore another recommendation of this report is that all the offices of Pre-Trial Release be contained in the new criminal justice complex. To do otherwise would work a hardship on the defendants who would be released through Pre-Trial Release's auspices.

Another question developed in our research concerning the access of the Pre-Trial Release investigators to the defendants. The Police Department has been especially helpful to Pre-Trial Release by giving access to the dockets and names of all defendants. However, there are problems once Pre-Trial Release decides to interview a defendant. First, defendants are accessible to Pre-Trial Release only during two short periods a day. This makes it difficult for the agency to interview all defendants, especially on a busy day. Part of the problem is that the jail layout is exceptionally inconvenient and it is time-consuming for the Police to bring defendants to the interview area. Secondly, defendants in the holding area next to the Court are difficult to interview. Given the lack of privacy in the holding area, a good interview is difficult to conduct. Further, access and exit are difficult for the investigator. Recently, an investigator was locked in the area until the officer who let him in returned. Thirdly, investigators have to wait until the desk sergeant permits an individual prisoner access to the Pre-Trial Release investigator. This is especially true in the late afternoons and in the evenings. There have been instances when the desk sergeant has told Pre-Trial Release that a defendant was out on bond.

When checking over the records the next day, the investigator found out these defendants had not been bailed out. This practice prevents Pre-Trial Release from having immediate access to the defendant. It may be a vestige of the earlier days when there was great hostility between Pre-Trial Release and some jailers. At that time Pre-Trial Release had a difficult time gaining access to the defendant. Some of the hostility has dissipated as Pre-Trial Release investigators and desk sergeants cooperate on a day-to-day basis. We praise this decrease in hostility but strongly recommend that when requested Pre-Trial Release be given immediate access to defendants at the appointed time. Further, we recommend that additional interview times be scheduled.

We further recommend that in the City jail, stress should be on obtaining the release of individuals without bond, if they qualify. Therefore Pre-Trial Release should develop some sort of booklet or flier which can be passed out to all defendants who are arrested. Such a booklet would explain the differences between Pre-Trial Release and the bondsmen. It would also explain the circumstances in which the individual may obtain an O. R. under the auspices of Pre-Trial Release. We suggest that such a pamphlet be distributed to all defendants who are arrested and charged by the Memphis Police Department.

Pre-Trial Release cannot interview a defendant until he has been charged. The police have the right to hold a suspect for a reasonable period before he is charged. During that period they may do an intensive investigation to see if there is sufficient evidence to charge the suspect. A large percentage of suspects arrested are not charged by the police. Limiting interviews to defendants actually charged creates an acceptable work load for the program.

General Criteria for Release. The question has been asked many times whether objective or subjective criteria for release are the best. An objective system uses points to determine if a defendant should be released, while a subjective system lets the investigator's perception of the defendant determine release. Memphis operates on an objective system. An objective system has a number of advantages. It eliminates the individual biases of the investigator and permits him to quickly determine if the defendant should be released. Furthermore, it makes it appear that the defendant is being released by an objective point system rather than through the biases of any particular investigator. This protects the agency when its decisions are challenged. If a defendant forfeits, the point scale can be blamed rather than the faulty judgement or biases of the agency investigator. Paul Wice states that cities with objective point systems release four times as many defendants as those who use subjective systems. Therefore the objective system is clearly defensible.

Discussions with the investigators showed that the objective system has some "loopholes." For example, during the interview process the investigator gets a subjective feeling of whether the defendant would be a good person to release. When the defendant ranks in the borderline area of 5 to 7 points, (6 points are required for release) the investigator generally can use his discretion. For example, if the defendant has five points, not quite enough for release, the investigator may go through the points once again and attempt to recalculate. This slightly subjective intrusion into the objective system is understandable. One authority stated:

"Most information of the defendant's background such as length of residence and job stability does not fall neatly into one of the point slots. One is frequently dealing with periods of time which fall between categories and must therefore rely on his common sense and intuition to dispose of these constantly reoccurring subjective decisions." (Wice, p. 130) Even in examining these variations in the Memphis system, it is difficult to find any criticism of the way the objective system is used.

Verification. The purpose of verification is to determine the accuracy of the information given by the defendant and the extent to which the defendant is a good risk. If a defendant lies to the Pre-Trial Release investigator, the program's relationship with him immediately terminates. Furthermore in talking to family friends, relatives and employers the program finds out a great deal about the individual. Some of the problems in verification include difficulties of reaching the relative because of a lack of a phone or no one being home, the threat to the employment possibilities of the defendant if the program talks to an employer and the problem of a defendant remaining in jail if verification is difficult to obtain. Another problem in some Pre-Trial Release projects is that the verification procedure is pro forma. In other words, programs do not take the process seriously.

We directly observed the Memphis Pre-Trial Release investigators in the verification process. Investigators did not especially enjoy making the telephone calls to verify information. In fact, it was a tedious task which simply had to be performed. However, the investigators did call two, three and sometimes four individuals to verify information. We noticed that during verification the investigator gained insight into the problems of a defendant and in some cases could not recommend him because of information learned during the verification procedure. We found that in City Court, Pre-Trial Release rejected 6% of the total number interviewed because of information uncovered during verification. We also attempted to determine what happens if verification is not possible. The investigators have found that in the early morning someone is usually at home. If the family does not have a telephone, many times a neighbor is called to contact the family. If the family is not contacted, many times the investigator can talk to them in court. If all these methods fail, then the agency must let the defendant remain in jail. Release does not take place without verification. The importance of verification is shown by the fact that the agency was unable to verify only 7% of the cases in time for court. The verification procedure is a very important part of the Pre-Trial Release process and we recommend its continued use in the very conscientious way currently employed by the investigators.

Recommendation to Court. Pre-Trial Release does not release defendants. Rather it makes recommendations to the court which in turn releases the defendant to the custody of Pre-Trial Release. One judge we interviewed stated that in most cases they accept the Pre-Trial Release recommendations. To determine the extent to which judges accept Pre-Trial Release recommendations, we examined the percentages of accepted recommendations from the inception of the program to the present. This information is contained in Table 6.

Table 6

Percentage of Pre-Trial Release Recommendations Rejected by Judges from Inception of Program

	Misdemeanors	Felonies	Total
City Court O.R. and $1 Bond	1%	7%	4%
City Court Reduced Bond	-	23%	23%
Criminal Court $1 Bond	-	3%	3%
Criminal Court Reduced Bond	-	7%	7%

Table 6 shows that City Court judges accept most agency recommendations for misdemeanors. They reject only 1% of Pre-Trial Release's recommendations for O.R. or $1 bond. The rejections of $1 bond recommendations for felonies are slightly higher giving a total rejection rate of 4% in the City for $1 bond and O.R. The rejection rates in the Criminal Court for both $1 bond and reduced bond were 3% and 7% respectively. These figures display the judges' confidence in the recommendations made by the program. This confidence was reiterated by the judges during our interviews. Most of the figures in Table 6 show exceptional levels of agreement between the courts and the agency. However, the rejection rate of reduced bond recommendations in City Court is an exceptionally high 23%.

Why do judges turn down the reduced bond recommendations in higher percentages? This was not made entirely clear in our interviews with the judges. We received such comments as "We make a decision on the facts." An investigator with Pre-Trial Release estimated that 50% of the rejected recommendations are caused by the seriousness of the offense, while another 25% of the rejected recommendations are caused by the defendant's record. Secondly, the judge holds final responsibility for the decision. Thus, he may receive information from the attorney, the prosecutor, the police and Pre-Trial Program. If these recommendations are in conflict, it is the judge's responsibility to sort them out. Thirdly, the judges may feel pressure to reject recommendation for release because of the nature of the charge, newspaper publicity or because the victim is present in the court room. Being a political official, the judge may respond at least unconsciously to this pressure. Fourthly, the City Court Judges may feel that because of the gravity of the charge, the Criminal Court should set bond, since that court will supervise the defendant during the trial period. We suspect that the latter two reasons explain the high rejection rates for reduced bonds in the City Court.

Excluded Offenses. The Memphis Pre-Trial Release program does not automatically exclude any defendant because of the severity of his offense. Exclusion of particular cases may take place because a judge is unwilling to accept a recommendation or the program feels that the defendant is not a good risk for reasons other than the seriousness of the charge. Program investigators have complained that many judges do not release to them defendants with more serious charges. This was confirmed when some judges told us that they wanted to restrict Pre-Trial Release to only misdemeanors and felonies non person. Judges argue that defendants charged with serious crimes are more apt to forfeit and/or be rearrested while on bond because they have a high stake in escaping the consequences of severe punishment. But Pre-Trial Release investigators argue that severe felons are more reliable risks to appear for court dates. Among the reasons advanced are the fact that many serious crimes are crimes of passion, that these defendants are first offenders, and that many defendants with a serious charge are from higher socioeconomic circumstances and have a greater stake in the community. Some also argue that these defendants are deterred by greater interest by law enforcement officials if they become fugitives.

In Chapter VI we extensively examine the relationship between the severity of the charge and the propensity of the defendant to either forfeit or be rearrested on another charge while on bail. In this section we will summarize the results, as they apply to the Pre-Trial Release Program. For a complete exposition of the role of severity of charge and a discussion of how both forfeitures and rearrests were measured, the reader should consult Chapter VI.

Judges regularly make their bail decisions on the basis of the seriousness of the charge against the defendant. How valid is the assumption that those charged with serious crimes are less apt to appear in court? The data in Table 7 shows that the severity of the charge is not related to the forfeiture rate.

Table 7

Severity of Charge and Forfeiture Rate

	Felony Person	Felony Non Person	Misdemeanor
Forfeiture Rate	8%	20%	14%
N =	146	498	681

This table shows that felonies against person have a substantially lower forfeiture rate than either felony non person or misdemeanors. The table totally discredits the assumption that the forfeiture rate can be limited by making bail decisions solely on the basis of the severity of the charge. The reader will note that in Chapter VI we examined this relationship while taking into account the size of bail. The results in Table 7 were not altered when using

this statistical procedure. Further, when examining particular charges we found that armed robbery (4%) and assault to murder (2%) had the lowest forfeiture rates. Crimes against property such as forgery had the highest forfeiture rates (25%) in the study. Do these relationships continue to hold for cases handled by Pre-Trial Release? Table 8 shows this is the case.

Table 8

Severity of Charge and Forfeiture
for Pre-Trial Release Cases

	Felony Person	Felony Non Person	Misdemeanors
Forfeiture Rate	0	8%	11%
N =	13	73	36

Table 8 shows that there is a linear relationship between charge and forfeiture rate for the Pre-Trial Release cases. The lowest percentages of forfeiture are for the felony person, while the highest percentage of forfeitures are for the misdemeanors. As far as the forfeiture rate, these figures show conclusively that the more severe felonies present a lower forfeiture risk.

Does this same unexpected relationship appear for the rearrest rate of defendants while they are on bond. Table 9 examines this question.

Table 9

Rearrest Rate for Felony Against
Person and Non Person

	Person	Non Person
Rearrest Rate	11%	23%
N =	146	498

This table conclusively demonstrates that the defendant charged with a felony against person is a substantially better risk than the defendant charged with a non person felony. In examining specific crimes we found that assault to murder had the lowest rearrest rate of 7%, while burglary excluding armed robbery had the highest rearrest rate. To determine if these figures continued to hold for Pre-Trial Release cases, we examined the data in Table 10.

Table 10

Severity of Crime and Rearrest
Rate for Pre-Trial Release

	Felony Person	Felony Non Person
Rearrest Rate	8%	18%
N =	13	73

Table 10 shows that for the Pre-Trial Release case the rearrest rate for felony person was 8% while the rearrest rate for felony non person was 18%. These figures further confirm that defendants charged with felony against person are better risks.

What are the implications of this data for judges evaluating Pre-Trial Release recommendations for the release of defendants charged with more serious crimes?

1. The best possible risk both in terms of forfeiture and rearrest rate is the defendant charged with assault to murder. Judges should make every effort to release these individuals either on O.R. or on a very small bond. They do not appear to constitute a great threat to the community or to the administration of the court docket.

2. In terms of both rearrest and forfeiture the greatest problem to the court appears to be non-violent felonies. Defendants charged with burglary and property crimes forfeit at exceptionally high rates. Those charged with burglaries are rearrested in extremely high percentages. It would be our recommendation that the courts consider placing more non-violent felonies under the supervision of Pre-Trial Release so that the activities of these defendants may be monitored while on bond.

3. Cases involving death and armed robbery have exceptionally low forfeiture and rearrest rates when compared to other types of crime. A great deal of publicity is generated when these defendants are released into the community on a reduced bond or $1 bond. However, we think that the courts should seriously consider releasing through Pre-Trial Release defendants who are good risks in these categories. The agency has shown that it does a good job of monitoring the activities of these people while on bond. Therefore the risk of the defendant forfeiting or being rearrested is relatively low. The unwillingness of some judges to release these defendants charged with more serious crimes on $1, O.R. or a reduced bond is a function of newspaper publicity and resulting public pressure. Therefore this recommendation is two fold. First we recommend that the judges revise their procedures. Secondly we recommend

that the newspapers more accurately portray the rearrest rates of defendants released on bond. A particular sensational case singled out as an example of extensvie Pre-Trial crime or forfeiture for serious crimes does disservice to justice in the community. The newspapers and the media need to be much more accurate in their reporting of cases where crime takes place while defendants are out on bail.

Release and Recommendation to the Court. This section discusses the types of release available to the program. The program is able to obtain release for misdemeanors in City Court on recognizance (O.R.). Recognizance simply means that defendants are released without bail on their own good name. In the case of felonies a $1 bond is assessed. The basic idea behind the $1 bond is to make sure that the defendant can be prosecuted under the state bail jumping statutes. We question the practice of assessing a $1 bond against a defendant on the assumption that the bail jumping statutes do not apply to defendants charged with O.R. After a reading of the statutes, we believe that the O.R. release is sufficiently established in law so that the bail jumping statutes do in fact apply. O.R. is a form of bail. However, since this is no great problem, there is no reason why the court cannot continue using the $1 bond as opposed to O.R. In addition to using O.R. and $1 bond, the local Pre-Trial Release Program can use a reduced bond. The use of a reduced bond has advantages when the judge does not want to release a defendant without any monetary incentive. By arguing for a reduced bond, the program is able to get defendants released who normally would not be eligible for $1 or O.R. release.

Two comments should be made about reduced bond. First, when Paul Wice visited the Memphis agency, he stated that reduced bond was used in very few jurisdictions. He was highly laudatory of the concept of a reduced bond and liked the idea that it made more defendants eligible for release. There are some situations in which reduced bond is inappropriate. At least two of the judges interviewed did not want to put a defendant in the custody of Pre-Trial Release on either $1 bond or O.R. In as many cases as possible these judges want to assess some monetary bond. As one judge told us, he feels that the assessment of a limited monetary bond, even though it may be reduced, represents for a poor person the same hardship that a much larger bond would for a defendant who is slightly more affluent. Therefore, this judge saw the reduced bond in the same context as regular bond, serving as a monetary incentive and hardship. In another case we asked a judge about his frequent use of reduced bond. This particular judge appeared to be very defensive about his use of the reduced bond and assured us that from that point on he would not employ reduced bond except when specified by the facts in the case. It seems to us that these two judges are using the reduced bond contrary to its spirit.

We believe that some type of station house release of misdemeanants should be available to defendants through Pre-Trial Release. In station house release the Pre-Trial Release investigator is authorized to release individuals on their own recognizance if they meet certain criteria. For example, an agency may specify the number of points required before an individual can be released, or that the crime be non-violent, or some other combination of criteria. An

example of a jurisdiction which uses jail house release is Hennepin County, Minnesota. The procedure manual of the Hennepin County Pre-Court Screening Unit describes the program.

> Any person charged with a misdemeanor and scoring three on the verifiable release criteria scale is eligible for release from jail. This release is authorized by the delegation of authority from the sixteen judges of the municipal court to the pre-court screening officer who is on duty that night. The screening officer must sign for each release and assure that a defendant knows his court date in time. In almost all cases in division 1 this will be the following morning at 9:00 A. M. In any suburban division it will take 24 hours to process the paper work and the court appearance should be scheduled for 8 hours from the time of release. Formally the jail staff will process routinely any release readied by the court screener. However, it is part of the screener's duty to insure that no case he has interviewed has been forgotten due to an insurge of new arrests or bookings.

In Minneapolis, the Pre-Court Screening Unit has the power to release individuals charged with misdemeanors who meet certain criteria. They may release defendants only when the judges are not sitting, in the evening and on weekends. We visited the Hennepin County program and observed it for two days. We spent one day in the jail actually observing the investigator in the release procedure. Direct observation suggested the program was highly workable.

Why should Memphis consider a station house release program on weekends? First, defendants charged with misdemeanors who cannot meet bail sit in jail over the weekend. This is unfair, inequitable to the defendant and is economic discrimination of the worst kind. Secondly, a type of station house release is already operating in Memphis. Any defendant charged with a misdemeanor is eligible to be released on bail of $250 as soon as he is charged. He only need post $250 in cash or obtain a bail bondsman to underwrite the bail for him. This process does not involve a judge, but rather is automatically set for the defendant. Therefore, moving into some form of OR for defendants unable to provide their own bail through station house release does not appear to be a violation of accepted practices and procedures in Memphis. Thirdly, the city jails are currently overcrowded. The jailers make every attempt to secure release of defendants as expeditiously as possible. It does not make sense to continue holding defendants charged with minor crimes.

We discussed instituting OR station house release with the judges. They felt that this would be intruding into their prerogatives and they were not entirely sure that they would be in favor of such a concept. One judge referred to it as an "idealistic concept." We feel that the concept is not idealistic but practical in many jurisdictions. The judges are not giving up their prerogatives since the practice of releasing a defendant without a court hearing on bail is already permissible for a misdemeanor. Further, the judges can strictly define the characteristics of defendants they would want to see released.

We suggest a station house release program be tried on an experimental basis for a limited period of time. The results should be studied, including an examination of the forfeiture rate of those defendants. This experiment should be initiated with one City Court judge granting the Pre-Trial Release Program authority to release in his name. The City Court judges should set up some criteria for defendants' release. For example, initially only defendants without a record should be released. The Pre-Trial Release point scale should be employed and a defendant lacking a verified point total of at least six should not be released through this form of OR. Once the station house release program has been in operation for a month on an experimental basis, an outside service should be brought in to evaluate its operation. If the forfeiture rates for the station house release defendants do not exceed the forfeiture rates for the misdemeanors found in our study, then the judges should consider expanding the program.

A third problem related to release is the time it takes to get a defendant released. This has been discussed at least partially above. We pointed out that the local program was among the best in the country in releasing defendants. The recommendation for misdemeanors is made to the court within two hours after the initial interview and the individual is released almost immediately after the judge has accepted the OR. In the case of felonies in the Criminal Courts the process is more time-consuming. A hearing must be scheduled, the judge, prosecutor, and defendant must be notified, and a rather extensive report written for the court. This report usually takes two to four hours to prepare. It involves a considerable amount of investigation into the background of the individual. We view this as a very positive aspect of the program. The defendants who are being considered for $1 or reduced bond in Criminal Court frequently have more severe records or are charged with more serious offenses. Therefore it is important for Pre-Trial Release to obtain all possible information about these defendants.

The fourth point we want to discuss in terms of release is the number of defendants released through the Pre-Trial Release Program. Table 11 shows the number of defendants released and interviewed from the inception of the program.

Table 11

Number of Interviews and Releases for Pre-Trial Release

	Total number interviews	Defendants released	Percent Released
Misdemeanors and felonies from 11/71 to 3/72	218	74	34%
City Misdemeanors from 4/72 to 12/74	2259	1012	45%
City Felonies from 4/72 to 12/74	3182	1201	38%
Criminal Court Felonies from 4/72 to 12/74	2917	569	20%
Total number of Cases	8358	2782	33%

Table 11 shows that from its inception in late 1971 the Pre-Trial Release Program has interviewed over 8,000 cases. Of this number Pre-Trial Release obtained the release and supervised over 2,700 defendants. Using the figures for three full years in which Pre-Trial Release has been in existence, we find that they have been releasing and supervising over 900 defendants a year. This clearly is an astronomical number of cases. Furthermore, these figures show that 569 felonies were released by the Criminal Court as opposed to 1201 felony releases from the City Courts. Therefore the largest percentage of the program's business is in the City Courts since they handle the greatest number of cases. The number of misdemeanor releases in the City was 1012, while the felony releases in the City were 1201. This indicates that the agency gave slightly more preference to felonies because misdemeanors can obtain their release through a very minimal bond.

In our interview, one judge stated that the Criminal Court judges started Pre-Trial Release and perhaps its activities were spreading too widely and should simply be limited to the Criminal Court. Such thinking should be discouraged. Historically, Pre-Trial Release was started as an agency under the auspices of one judge, not the Criminal Court. Further, all of the charges that the program deals with in the City Court are state charges, both felonies and misdemeanors. Many of the decisions on bond are made in the city and are usually accepted by the Criminal Court judges. Therefore, although Pre-Trial Release obstensibly works in the City, its work does not go for naught as far as the Criminal Courts are concerned.

In examining Table 11 we find that the total release percentage for the agency has been somewhere around 33% or one third of all the cases it interviews. How significant is this figure? Studies of other Pre-Trial Release programs gave us no guidelines. The best data is from the Office of Economic Opportunity (OEO) study. This study was limited because half the projects interviewed did not give any data nor did they know what percentage of the people they interviewed were actually released through the court. The OEO data showed that approximately 58% of the projects recommended a higher percentage of the total number of interviews that did the local pre-trial release program. Why does the local program not rank any higher? There are a number of reasons for this. The agency feels that it is necessary to give every possible defendant an opportunity for release if he deserves it. Therefore if his record does not indicate otherwise the agency is more than willing to interview a defendant, although they may not give him a recommendation for Pre-Trial Release. Many defendants do not want to wait in jail the few hours it takes the program to make the recommendation to the court. Therefore Pre-Trial Release has found many cases where the recommended defendants have been released before the program can reach them after the court hearing. Further, as was earlier demonstrated, the rejection rates in City Court for reduced bond were very high.

Table 11 shows an additional reason for the program's relatively low release rate. The release rate for the Criminal Court is considerably lower than the rate in the City. For example, the release rate in the Criminal Court was 20% as compared to the total rate of 33%. The release rates in the City Courts were 45% for misdemeanors and 36% for felonies. These figures are well above those for the Criminal Court. Why is the release rate for the Criminal Court so much lower? First, the cases in Crim-

inal Court are much more serious and many defendants probably had been rejected by Pre-Trial Release in the initial screening in the City. The more serious nature of the cases is shown by the larger number of reduced bonds as opposed to $1 bonds. Another reason the release percentage is smaller in the Criminal Court is that the judges want Pre-Trial Release to do background investigations. These background investigations may provide nothing more than information for the judicial decision-making process. Therefore, Pre-Trial Release interviews a defendant, not necessarily for the purpose of obtaining his release, but rather to provide greater information for the Criminal Court judges. This is a highly commendable procedure and ought to be continued. In fact, we encourage the Criminal Court judges to continue using Pre-Trial Release for this purpose. The third reason for a low release rate in Criminal Court is that defendants are referred to Pre-Trial Release by a variety of sources including attorneys. In many cases these defendants have no hope of obtaining a release under Pre-Trial Release, but the attorneys want to give their clients the best chance of bail.

Supervision. Pre-Trial Release supervision is clearly related to its low forfeiture rate. Paul Wice provided guidelines on the importance of supervision. He examined the level of supervision and the forfeiture rate in a number of cities. He found that the amount of supervision was among the strongest predictors of forfeitures. He states that his data "clearly shows that as the project increases its supervision over the defendant it is able to achieve a lower forfeiture rate." What are some of the tools which can be used with the program in supervision? They include:

1. Contact by telephone and letter during the pre-trial period.
2. Requiring the defendant to phone in or appear at the Pre-Trial Release office on a regular basis.
3. Actively searching for defendant if he fails to appear.
4. Supervising a variety of special release conditions.
5. Providing employment and rehabilitation services for the defendant.

We evaluate the effectiveness of the Pre-Trial Release agency in Memphis by measuring the extent to which it uses these elements of supervision. The major way in which the program supervises these defendants is by having the defendant call in. A defendant may be required to call into the agency once a week, once every two weeks, or once a month depending upon his risk factor. More than likely a defendant on reduced bond will be asked to report more often than a defendant on OR. If a defendant appears to be a risk to the program, they may ask him to report in person on a regular basis. When the defendant calls the program the counselor taking the call has a card. On that card he records the date of call and may inquire about any questions marked on the card related to defendant's problem. The defendant may be asked if he is working, if he has obtained a lawyer or if he is taking rehabilitation for a problem. On a regular basis the program combs through a list of defendants to determine who has not called in. These latter defendants are particularly troublesome to the program. The program must call them and find out the reason for lack of contact. The defendant is then coerced into calling the agency on a more regular basis. These are clearly problem cases which the agency is alerted to.

The investigator or counselor who talks to the defendant on the phone is usually not familiar with the defendant's problems. We heard more than once the investigator talking to a client as though he knew that individual and his problems on a very personal basis. After hanging up the phone the investigator would look at me and say, "I don't know that man from Adam." This is a problem with the program because of its very large case load. However, the procedures within the agency make this less of a problem than would appear on the surface. The program keeps good records and uses the call-in card system for each defendant. Therefore the agency gives the defendant a sense of relationship that should positively motivate him. The procedure is more than adequate especially considering that the problem cases are sorted out for special handling.

Of the five criteria discussed earlier, we find that the Pre-Trial Release Program uses the phone call-in the most. However, where necessary, they use additional phone calls and letters during the pre-trial period. They certainly search for a defendant who fails to show for his trial. If that client has not been calling in, they may supervise a series of special conditions. The agency involvement in rehabilitation and in employment services is limited. This is clearly a function of staff size. The agency is so overburdened with checking call-ins, making recommendations to the court and verification that it can't assign counselors to be used strictly in the area of employment and rehabilitation. This does not mean that no personal services are given. In some cases clients are actively aided by investigators who take an extremely personal interest in them and help them find jobs or solve some of their problems. This is costly to the individual investigator since it is in addition to his other duties. Therefore, there is some rehabilitative service attempted in a very transitory way. We would suggest that if the agency is able to obtain funding for an additional person that this person could be used as a counselor.

The defendant who is rearrested on a felony during this period of supervision is apt to have his bond with Pre-Trial Release terminated. Bail bondsmen and some lawyers interviewed during our study severely criticized the Pre-Trial Release Program for not caring whether their clients forfeited. They reasoned that since the program did not suffer a monetary loss of bail bond, there was no stimulus for them to pursue the defendant. They also stated that because of the absence of this financial impetus, the forfeiture rates of the Pre-Trial Release Program would be higher. The following section demonstrates that Pre-Trial Release has lower forfeiture rates that the bail bondsmen. We extensively observed the Pre-Trial Release Program during the year of the study. We saw that the director was tremendously concerned whenever a forfeiture was declared against a client. Since it is not a private enterprise company the program may not be able to define its success in terms of dollars and cents. However, it does define its success in terms of the forfeiture rates and rearrest rates of its clients. Since the program had traditionally operated in a hostile environment, it has been necessary for them to have good figures to justify their continued existence. Whenever a forfeiture takes place, an investigator feels personally responsible. We observed a case where the investigator was extremely reluctant to tell the director of the program that a forfeiture took place. In the few times we saw a forfeiture, there was great consternation on the part of the entire staff.

Relative Effectiveness of Pre-Trial Release and Bail Bondsmen

This portion of the study evaluates the Pre-Trial Release Program by comparing the relative effectiveness of the bail bondsman and the Pre-Trial Release Program. There are a multitude of studies critiquing bail bondsmen. The National Advisory Commission on Criminal Justice Standards and Goals argues that private bonding companies should not be allowed as sureties for profit. In spite of this literature the bondsmen and their supporters claim that they are highly successful at selecting good risks and therefore have relatively low forfeiture and rearrest rates. Pre-Trial Release programs dispute this and claim that bail bondsmen take anyone who can meet the 10% fee and obtain a cosigner. Pre-Trial Release programs argue that they, rather than bondsmen, select the best risks. Furthermore, they state that with their supervision capabilities, even more defendants could be released under Pre-Trial Release without being a threat to the community.

This is a classic confrontation with each side claiming that it represents the best system for releasing defendants. There is a considerable amount of confusion as to whether bail bondsmen or Pre-Trial Release have the best forfeiture rates. We have heard one judge state that the bondsmen actually have a much lower forfeiture rate. We have heard bailiffs in the court make the point that the $1 bond people being released into the community are committing crimes in great numbers. These assumptions, confusing information and lack of data are carefully examined in this section of our analysis. This study of relative effectiveness of the Pre-Trial Release Program and the bail bondsman in Memphis and Shelby County will be done in the context of the following variables: release rates, forfeiture rates, rearrest rates, dispositional rates, and recidivism rates.

Release Rate. First of all, we examine the percentages of defendants being released under Pre-Trial Release by the bail bondsmen. Pre-Trial Release accounted for 13% of the defendants released for felonies while the bail bondsmen accounted for 69%. Pre-Trial Release accounted for 5% of the misdemeanor releases while bail bondsmen released approximately 69%. Bail bondsmen are releasing the same percentage of felonies and misdemeanors while the Pre-Trial Release program has a much higher percentage of felonies than misdemeanors. This is logical since the agency interviews felons in two courts. Further, since the bond for misdemeanors is $250, most defendants are able to post bond quickly. Thus, the agency's assistance is not required to obtain release for misdemeanors. This data clearly shows that the Memphis system relies on bail bondsmen to obtain the release of the greatest number of defendants.

Next we examine the demographic variables of age, sex and race to determine if there are any differences between the cases handled by Pre-Trial Release and bail bondsmen. Rather than presenting all of the data, we summarize some of the key findings. The data shows that Pre-Trial Release clients charged with felonies are considerably younger than those handled by bail bondsmen. Probably these clients have no substantial assets and are unable to raise bond through the bondsmen. The data also shows that Pre-Trial Release has a slightly lower percentage of female defendants. The agency had 10% fewer females as clients than bondsmen. It is difficult to find a reason for this difference except that in many cases the husband or the boyfriend of the defendant attempts to get her

out of jail as soon as possible. Thus he is unwilling to wait for Pre-Trial Release to do an interview. In the case of felonies we find the percentages of black and white for both bail bondsmen and Pre-Trial Release to be identical. For misdemeanors, the program had a lower percentage of blacks than did the bail bondsmen. For example, 47% of Pre-Trial Release cases were black while 65% of the bail bondsmen cases were black. We do not know why the figures diverge in the case of misdemeanors.

Another way of examining release rates is to determine if the defendants under Pre-Trial Release are charged with less serious offenses than the bail bond clients. These figures are presented in Table 12.

Table 12

Felony Arrest Charge for
Pre-Trial Release and Bail Bondsmen

Arrest Charge	Pre-Trial Release	Bail Bondsmen
Person	15%	21%
Non Person	85%	79%
Per Cent =	100%	100%
N =	86	448

Table 12 shows that bail bondsmen have a slightly higher percentage of felonies against person. However, it is surprising that Pre-Trial Release has a considerable percentage (15%) of defendants charged with crimes against person. When examining the non person felonies, we found that the bondsmen had more burglary defendants, while Pre-Trial Release had a higher percentage of property crimes such as forgery.

There are those who argue that Pre-Trial Release takes only the "cream of the crop." What does the data show on this point? First, Pre-Trial Release does in fact take a lower percentage of felonies against person. However, we argue in Chapter VI that felonies against person have lower forfeiture and rearrest rates than felonies non person. Secondly, Pre-Trial Release takes a very high percentage of property crimes which have among the highest forfeiture and rearrest rates. Thirdly, if the best risk is defined by ability to pay, these are cases which the bail bondsmen get. Since it may take Pre-Trial Release up to 12 hours to get defendants released in the City Court, defendants willing to pay may use bail bondsmen to get more prompt release. Fourthly, there are many cases where bondsmen obtain the release of defendants by the time the agency is making a recommendation to the court. Fifthly, we have shown in prior sections of this chapter that a large percentage of Pre-Trial Release clients remain in jail until they are bound over to the Criminal Court. If

these defendants are such good risks, the bondsmen could have obtained their release from jail. Lastly, we witnessed a public hearing in which an attorney for a bonding company claimed that it could not do business if it got only bad risks or what he called "culls." Thus, we see no validity in the cream of the crop argument.

Forfeiture Rate. A traditional argument made by the bail bondsmen is that they choose defendants who are likely to appear in court. Further they claim to have the resources to maintain contact with the defendants to guarantee their appearance. On the basis of this, bondsmen claim that their forfeiture rates are lower than those for Pre-Trial Release programs. Pre-Trial Release programs, on the other hand, say that they skillfully screen and closely supervise defendants. Furthermore, Pre-Trial Release argues that the bondsmen do not supervise their defendants and in fact the financial incentives of the bail bond system are such that there is no need for them to. We will discuss this particular argument in full in the next section. However, right now let us find out if the bail bondsmen or Pre-Trial Release programs have lower forfeiture rates.

Briefly, forfeiture is defined in the same way that the local courts define conditional forfeitures and the literature defines failure to appear (FTA). Very simply we counted as an FTA or a conditional forfeiture any defendant who did not appear for a court date and had a forfeiture written into either the docket book or his jacket. Initially, we did not distinguish between deliberate forfeitures and the defendant who accidentally skipped his court date. The forfeiture (FTA) percentages are described in Table 13.

Table 13

Forfeiture Percentages for Pre-Trial Release and Bail Bondsmen

	Felonies		Misdemeanors	
	Pre-Trial Release	Bail Bondsmen	Pre-Trial Release	Bail Bondsmen
Forfeiture Percentage	7%	19%	11%	16%
Total Number of Cases	86	448	36	468

Pre-Trial Release has a substantially lower forfeiture rate for felonies than the bail bondsman. The percentages are 7% and 19% respectively. These are very impressive figures and indicate that Pre-Trial Release takes great care to guarantee the defendant's appearance for trial. As we mentioned earlier, the program has an investigator in the courts whose responsibility is to monitor defendant appearance dates. In addition the program contacts the defendant by

mail before every court appearance. Furthermore the process of supervision by phone leads to a defendant's appearance. The figures in Table 13 for the misdemeanors show an improvement in the figures for bail bondsmen and less impressive figures for Pre-Trial Release. Still, Pre-Trial Release has a lower percentage of forfeitures in misdemeanor cases than the bail bondsmen. The rates are 11% for Pre-Trial Release and 16% for bail bondsmen.

Thus, both in the cases of misdemeanors and felonies Pre-Trial Release exerts substantial influence on the defendant. We are very pleased that the rates for forfeiture for the defendants are lower in the felony cases since these defendants are viewed by the public as a greater threat to the community than the misdemeanants. A point needs elaborating at this time. We earlier discussed whether the misdemeanant or the felon was a greater risk for forfeiture. One investigator has told us that he attempted to convince at least one of the judges that Pre-Trial Release had lower forfeiture rates for felonies. The information in Table 13 solidifies the argument. It also solidifies the argument about the relationship between the severity of the charge and the forfeiture rate. That is, for Pre-Trial Release a severe charge does not mean that a defendant will necessarily forfeit since there was a higher percentage of forfeitures in the misdemeanor than the felony cases. In summary, these figures conclusively demonstrate that the forfeiture rate for Pre-Trial Release is substantially lower than that of the bail bondsmen.

For the felony cases, we also want to know whether Pre-Trial Release and bail bondsmen have similar forfeiture rates for both City and Criminal Court. This information is in Table 14.

Table 14

Felony Forfeiture Rate for Pre-Trial Release and Bail Bondsmen by Court

Court of Forfeiture	Pre-Trial Release	Bail Bondsmen
Criminal Court	67%	77%
City Court	33%	21%
Both City and Criminal Court	0	2%
Percent	100%	100%
Total Number of Forfeitures	6	87

In examining Table 14 we find that Pre-Trial Release has a slightly lower forfeiture rate in Criminal Court than the bail bondsmen. A slightly higher percentage of Pre-Trial Release's cases are in the City Court. The cases where there was a forfeiture by the defendant in both courts are bail bond cases.

In data gathering it was virtually impossible to determine from the records whether a forfeiture was deliberate or not. We assumed that in many cases defendants did not appear for their trials because they became confused, did not receive proper notification, or forgot about the court date. We attempted to determine the number of deliberate forfeitures. For that purpose we have displayed the type of distinctions contained in the docket books and jackets. This information is in Table 15.

Table 15

Types of Felony Forfeiture for
Pre-Trial Release and Bail Bondsmen

Type of Forfeiture	Pre-Trial Release	Bail Bondsmen
Set aside with cost	1%	3%
Set aside without cost	2%	6%
Set aside -- no indication of cost	0	1%
Defendant at large	0	4%
Final judgement	1%	3%
No disposition of forfeiture	2%	2%
Forfeiture Percent	*6%	19%
Total Number of Cases	86	448

*rounding error

In attempting to determine the number of deliberate forfeitures, we made some assumptions. If the judge assessed a cost against a defendant, if the deferdant was at large for at least one court term, or if a final judgement was declared, we assumed that these cases involved deliberate forfeitures. Using Table 15 and making these assumptions, we found the deliberate forfeiture rate of Pre-Trial Release was 3%, while the deliberate forfeiture rate for the bail bondsmen was 13%. Therefore, using a second indicator of forfeiture, we find that bail bondsmen do not have as good a record as Pre-Trial Release.

The forfeiture rate was also computed a third way by examining the fugitive rate. When a defendant in the Criminal Court forfeits, the judge gives the bail bondsman or Pre-Trial Release at least one full court term to produce the defendant before the final judgement is declared. With this in mind, we defined a fugitive as any case continued for at least one full term or a case in which a final judgement was declared. The fugitive rate for Pre-Trial Release was 1% while the fugitive rate for the bail bondsmen was 7%. Thus once again the Pre-Trial Release program had a better rating than the bail bondsmen on the forfeiture rate.

All three indicators showed conclusively that Pre-Trial Release had a substantially lower forfeiture rate than the bail bondsmen. This is a major finding of this study. This data, plus additional personal observations, shows that Pre-Trial Release makes a greater effort to insure court appearance and does a better job of selecting defendants. In conclusion, Pre-Trial Release does a better job of expediting the administration of the court docket since its defendants appear for their court dates.

Rearrest. Rearrest refers to the defendant being arrested on another charge while still out on bail. Rearrest rates are especially important because of the concern in this community about crimes being committed by offenders awaiting trial on other charges. We found many instances of the general public being incensed by rearrests. The newspaper media implies criticism of judges by regularly reporting that defendants charged with sensational crimes are out on bond for a prior charge. Both Pre-Trial Release programs and bail bondsmen claim the rearrest rates for defendants under their supervision are lower since they only select good risks. This section will examine the validity of each side's claims. For a discussion of the computation of the rearrest rate, the reader should see Chapter VI. We examined the rearrest rates in Table 16.

Table 16

Rearrest Rates for Pre-Trial Release and Bail Bondsmen

	Pre-Trial Release	Bail Bondsmen
Rearrest Percentage	16%	25%
N =	86	448

Table 16 shows the bail bondsmen have higher rearrest rates. 25% of the bail bondsmen's cases resulted in rearrest while Pre-Trial Release had 16% of its cases resulting in rearrest. Using this indicator, Pre-Trial Release defendants pose a lesser threat to the community. This same question was examined from a slightly different perspective. What is the nature of the crime for which defendants are being rearrested? This information for both Pre-Trial Release and the bail bondsmen is contained in Table 17.

Table 17

Seriousness of Rearrest Crime for
Pre-Trial Release and Bail Bondsmen

Crime	Pre-Trial Release	Bail Bondsmen
Felony Person	7%	6%
Felony Non Person	43%	57%
Misdemeanor	50%	37%
Percentage =	100%	100%
N =	14	110

In Table 17 we found that the percentage of defendants rearrested for felony against person was approximately equivalent for Pre-Trial Release and bail bondsmen. However, the bail bondsmen had a substantially higher percentage of defendants rearrested for felonies non person. The percentages were 57% for the bail bondsmen and 43% for Pre-Trial Release. In the case of misdemeanor rearrests, we found a substantially higher percentage of cases for Pre-Trial Release than bail bondsmen. The percentages were 50% and 37% respectively. This data leads to the conclusion that Pre-Trial Release defendants who are rearrested in smaller number than those of the bail bondsmen, are also rearrested on less serious charges. We examined this factor of rearrest from one additional perspective. We computed the number of occasions on which the defendant was rearrested. These figures are contained in Table 18.

Table 18

Number of Rearrests for Pre-Trial Release and Bail Bondsmen

Number of arrests	Pre-Trial Release	Bail Bondsmen
One	64%	57%
Two	29%	28%
Three and above	7%	15%
Percentage	100%	100%
N =	14	110

The data in Table 18 shows that of the defendants rearrested, Pre-Trial Release defendants were rearrested and charged on a fewer number of occasions. For example, 64% of the Pre-Trial Release defendants were rearrested one time, while 57% of the bail bondsmen's clients were rearrested on one occasion. Rearrest percentages on 3 or more occasions were 7% and 15% respectively for Pre-Trial Release and bail bondsmen. Further, Pre-Trial Release only had one defendant rearrested more than twice, while the bail bondsmen had a considerable number of multiple rearrests. These are presented in Table 19.

Table 19

Number of Rearrests By Frequency

Number of Rearrests	Pre-Trial Release	Bail Bondsmen
One	9	63
Two	4	31
Three	0	7
Four	1	4
Five	0	1
Six	0	1
Seven	0	1
Eight	0	2

Although the number is not exceptionally large Table 19 shows that the bail bondsmen take cases where defendants are on bond for many prior arrests.

In summary, rearrest figures show that Pre-Trial Release defendants are less of a threat than the clients of the bail bondsmen. Pre-Trial Release defendants are rearrested for less serious crimes than those of the bail bondsmen. Also, the figures for the number of rearrests suggest bail bondsmen handle a number of defendants rearrested numerous times.

Dispositional Rates. Dispositional rate refers to decisions by the trial court of guilt and/or innocence and sentencing. The Pre-Trial Release Program claims that the dispositional rates for its clients are better than those for bail bondsmen. Why is this the case? First of all, the charges are less severe for Pre-Trial Release cases and therefore more apt to receive probation. Secondly, the Pre-Trial Release Program keeps a record on the defendant which can be used in providing information for the judge, the presentence reports, and prosecutors. Furthermore, Pre-Trial Release urges the defendants to obtain an attorney and employment. It is argued that both of these factors can lead to a greater chance of obtaining probation or being found not guilty.

We examine probation figures for both Pre-Trial Release and bail bondsmen in Table 20.

Table 20

Percentage of Cases with Probation for
Pre-Trial Release and Bail Bondsmen

	Felonies		Misdemeanors	
	Pre-Trial Release	Bail Bondsmen	Pre-Trial Release	Bail Bondsmen
Probation Rate	19%	9%	55%	52%
N =	86	448	36	468

For misdemeanors we found very little difference in probation figures. The Pre-Trial Release Program had a 55% probation average while the bail bondsmen had 52%. This difference was minimal. For felonies we found that the probation rate for Pre-Trial Release was 19% while the bail bondsmen's rate was 9%. Therefore, in the case of felonies, we find that Pre-Trial Release defendants have a better chance of obtaining probation. Is this ability of Pre-Trial Release to obtain probation for its clients a function of the charge or do Pre-Trial Release cases fare better across various kinds of charges? To test this question, we separated the felonies between person and non person. The results are displayed in Table 21.

Table 21

Probation for Pre-Trial Release and Bail Bondsmen
Controlling for Seriousness of Charge

	Felony Person		Felony Non Person	
	Pre-Trial Release	Bail Bondsmen	Pre-Trial Release	Bail Bondsmen
Probation Rate	8%	2%	21%	11%
N =	13	93	73	355

First, Table 21 shows that few of the felonies against person lead to probation. Second, examination of the figures for Pre-Trial Release and bail bondsmen show that Pre-Trial Release has more clients on probation for more and less serious charges. Therefore, the agency's high probation rate is not a function of the charge.

We next examined the cases to find out if Pre-Trial Release clients were more apt to have more favorable dispositional rates. The results for misdemeanors are in Table 22.

Table 22

Misdemeanor Disposition Rates
Pre-Trial Release and Bail Bondsmen

Disposition	Pre-Trial Release	Bail Bondsmen
Not Guilty	21%	38%
Guilty -- reduced charge or lesser counts	58%	39%
Guilty of original plea	21%	23%
Percent =	100%	100%
N =	34	439

We found that the number of defendants found not guilty is higher for bail bondsmen than it is for Pre-Trial Release. However, we found just the opposite for the charges reduced to city ordinance violations. Forty-nine percent of the Pre-Trial Release cases were reduced, while 39% of the bail bondsmen's cases were reduced. The figures for guilty of original charge are generally the same. Thus we find that the typical Pre-Trial Release case is more apt to involve a reduction to an ordinance violation or a lesser number of counts or charges, while the bail bondsmen have a greater percentage of people being found not guilty. Thus, for misdemeanors, the bail bond cases have a slightly better performance.

We next examined the dispositional rates for felonies. They are displayed in Table 23. It shows that Pre-Trial Release had a higher percentage of cases disposed of in City Court than the bail bondsmen. The figures were 29% and 13% respectively. This means a more favorable disposition for the defendant because it means a case was dismissed or reduced to a misdemeanor. The table also shows that Pre-Trial Release has a much higher percentage of cases found not guilty in Criminal Court. The percentages are 21% and 13% for Pre-Trial Release and bail bondsmen respectively. Not guilty is defined as a finding in trial, dismissed warrant, nolle prosque, and not true bill by the Grand Jury. The guilty by trial percentage was similar for both groups. However, Pre-Trial Release clients had a considerably lower guilty by plea rate than bail bondsmen. The percentages were 41% and 63% respectively.

Table 23

Felony Disposition Rates for
Pre-Trial Release and Bail Bondsmen

Disposition	Pre-Trial Release	Bail Bondsmen
City Disposition	29%	13%
Not Guilty	21%	13%
Guilty Plea	41%	63%
Guilty by Trial	9%	11%
Percent =	100%	100%
N =	76	399

In summary, the Pre-Trial Release defendant has more favorable probation and felony disposition rates. Bail bond clients have a slightly more favorable rate for misdemeanors.

Recidivism. Many argue that those who are supervised by Pre-Trial Release are less apt to commit a crime after the felony case has been disposed of. In supervision, the Pre-Trial Release program works with the defendant. We tested this assumption by examining recidivism. Recidivism is defined as arrests after disposition of a case. Recidivism rates are contained in Table 24.

Table 24

Felony Recidivism for
Bail Bondsmen and Pre-Trial Release

	Pre-Trial Release	Bail Bondsmen
Recidivism Rate	16%	16%
N =	86	448

The data in Table 24 shows no difference between Pre-Trial Release and bail bondsmen. To get at this question of recidivism in another way, we examined the charges against Pre-Trial Release and bail bond clients to determine whether they had committed more serious crimes. This information is contained in Table 25.

Table 25

Most Serious Crimes for
Bail Bondsmen and Pre-Trial Release

	Pre-Trial Release	Bail Bondsmen
Felony Person	14%	7%
Felony Non Person	43%	46%
Misdemeanor	43%	47%
Percent =	100%	100%
N =	14	71

In examining Table 25, we found that the argument that Pre-Trial Release recidivists committed less serious crimes is fallacious. In fact, a slightly higher percentage of Pre-Trial Release recidivists committed a felony against person.

We examined this notion again by looking at the number of different occasions the defendants were arrested after the disposition of the case. This information is contained in Table 26.

Table 26

Number of Recidivism Arrests for
Pre-Trial Release and Bail Bondsmen

	Pre-Trial Release	Bail Bondsmen
One arrest	79%	62%
Two arrests	21%	20%
More than three arrests	0	18%
Percent =	100%	100%
N =	14	71

We examined the data for the number of arrests. A larger percentage of Pre-Trial Release defendants were arrested one time only after the disposition of the case, whereas many bail bond clients had three or more arrests.

In examining the data we reject the claim that the Pre-Trial Release client is less apt to be a recidivist. In fact, a major reason for this is that Pre-Trial Release may not spend a great deal of time in rehabilitation activities. The aim of the proposed Comprehensive Pre-Trial Services proposal was to increase their activity in this area. Whether that would have an impact on the level of recidivism, we have no way of knowing. However, as far as the data is concerned we find little difference between bail bondsmen and Pre-Trial Release defendants on recidivism.

Unsupervised O.R. Pre-Trial Release investigators have expressed concern that there were a number of defendants released on O.R. and $1 bonds who forfeited in the City Courts. The Pre-Trial Release Program was blamed for these forfeitures and held responsible by the individual judge. However, investigators pointed out that they did not interview, recommend or supervise these defendants. Apparently the judge on his own discretion lawfully released these defendants without Pre-Trial Release supervision. These cases are called "unsupervised O.R.'s." How substantial was the number of unsupervised O.R.'s? Approximately 6% of the total felonies were unsupervised O.R. cases. This compares to 13% of the cases supervised by Pre-Trial Release. 3% of the misdemeanor cases were unsupervised O.R. cases as opposed to 5% that were Pre-Trial Release cases. Although the number of unsupervised O.R.'s is not substantial in the perspective of the total number of cases, it is substantial when compared to the number of Pre-Trial Release cases.

How valid is the claim that the unsupervised O.R.'s have a higher forfeiture rate?

Table 27

Forfeiture Rates for Unsupervised O.R. and Pre-Trial Release

	Unsupervised O.R.	Pre-Trial Release
Felony - forfeiture rate	24%	7%
Felony - deliberate forfeiture rate	11%	2%
Felony - fugitive rate	11%	1%
Misdemeanor - forfeiture rate	8%	11%

Table 27 shows that the forfeiture level of the felony cases for unsupervised O.R. is high. The forfeiture rate (FTA), deliberate forfeiture rate and fugitive rate are all considerably higher than Pre-Trial Release. However, for misdemeanors, the forfeiture rate is slightly below Pre-Trial Release. The remainder of this discussion will be limited to felonies because

of the high forfeiture rate. Next we wanted to know if these unsupervised O.R. cases were minor felonies. We found that 32% of the unsupervised O.R. cases were felony non person, while 85% of the Pre-Trial Release cases were in this category. Clearly, unsupervised O.R. included a substantial percentage of more serious felonies. None of the data discussed thus far explained why these cases were given special treatment. We hypothesized that perhaps these cases had less substantial evidence and were more apt to be disposed of in the City Courts or to be found not guilty in Criminal Court. This hypothesis was examined in Table 28.

Table 28

Felony Dispositional Rates for Unsupervised O.R. and Pre-Trial Release

Disposition	Unsupervised O.R.	Pre-Trial Release
City disposition	79%	29%
Not guilty	3%	21%
Guilty by plea	15%	41%
Guilty by trial	3%	9%
Percent =	100%	100%
N =	33	76

The figures in Table 28 partially confirm the hypothesis. Seventy-nine percent of the unsupervised O.R. cases were disposed of in City Court as opposed to 29% for Pre-Trial Release. These cases were either dismissed in City Court or amended to less serious charges. However, a lower percentage of unsupervised O.R. cases were found not guilty in Criminal Court. These data clearly show that most of the unsupervised O.R. cases are dismissed in City Court.

Do these felony cases differ substantially in other criteria? We found that in fact they did. We used the three demographic variables of age, sex and race to describe the major differences. Unsupervised O.R. defendants were older than Pre-Trial Release clients. For example, 32% of the unsupervised O.R. defendants were over 40 years of age, while only 9% of the Pre-Trial Release clients are from this age category. Unsupervised O.R. cases have slightly higher percentages of female defendants. However, there is a much higher percentage of unsupervised O.R. defendants who are white. The percentage of white defendants was 49% compared to 23% for Pre-Trial Release cases.

Our examination shows that the defendant on unsupervised O.R. has a higher forfeiture rate. They are more apt to have their cases disposed of in the city as opposed to being bound over. They are charged with less serious felonies. They are considerably older and slightly more apt to be females. Given these characteristics, we guess that the unsupervised OR cases are more affluent with strong ties in the community. The fact that there are unsupervised O.R. cases does not bother us. What does bother us is the exceptionally large forfeiture rate for these cases. Furthermore, we are concerned that the Pre-Trial Release Program is receiving the blame from the judges when these defendants forfeit. We would suggest that the judges consider one of the two following options. The first option would be to release no defendants on O.R. without a Pre-Trial Release investigation or release them in the custody of the program. Therefore, the program could supervise these defendants, inform them of their court dates, and be responsible for getting them to court. We suggest that, given the the operations of the program and its success with other clients, that this would substantially reduce the forfeiture rate. A second option is to invent a name which would distinguish unsupervised O.R.'s from those which are Pre-Trial Release cases. We suggest that this distinction could be entered in the docket book. At the very least the judges should be slightly more careful in blaming Pre-Trial Release for O.R.s which are not under their supervision. We suggested in an earlier section that the program is sensitive its forfeiture rate, that its reputation is staked on this rate and that they can substantially reduce the forfeiture rate for the clients they supervise. Therefore, care must be taken to dissociate these non Pre-Trial Release cases from the program or to find another name for unsupervised release.

CHAPTER IV

BAIL BONDSMEN

Introduction. In this section we discuss the role of the bail bondsman, one of the crucial elements in the Memphis-Shelby County criminal justice system. A bail bondsman is a private businessman who is able to obtain the release of defendants by guaranteeing their bail. To be released by a bail bondsman, a defendant pays the bail bondsman a fee equal to 10% of the total bond assessed by the court. Before he obtains the release of the defendant, the bail bondsman demands that the defendant obtain cosigners for the bond. The cosigner is responsible for paying the bondsman if the defendant forfeits and the court declares a final judgement. The bondsman may also require the defendant or cosigner to post collateral with the bondsman. For example, if the court sets the defendant's bond at $1,000 the defendant must give the bondsman a 10% fee of $100. That money is not refundable because the bondsman keeps it as a fee for services rendered. In addition, both the defendant and the cosigner agree to pay any costs incurred by the bail bondsman in the execution of the contract. The bail bondsman does not actually post the $1,000 with the court. Rather he is a surety who is given power of attorney by an insurance company. The insurance company guarantees that it will be liable for the final judgement. Therefore, the bail bondsman, using this power of attorney from the insurance company, obtains the release of the defendant. The only money changing hands is from the defendant to the bail bondsman. The County or City receives no funds from this transaction.

At the time we gathered the data for our study we found that the bail bondsmen handled approximately 69% of the felonies in our sample. The remainder were bailed out through Pre-Trial Release, unsupervised OR or they remained in jail. 68% of the defendants charged with misdemeanors were released through bail bondsmen. Bail bondsmen constitute the preferred method of release from jail before trial for a large majority of defendants.

The Bail Bond Companies. The bail bondsman is a transitory animal. At the time of our study there were five bail bond companies operating in the city. At the present time one of these bail companies has left the city and two more have entered. Except for a few firms there is a lack of permanence as far as bail bond companies doing business over a long period of time. In examining the staff of the individual bonding companies, we were surprised that a relatively large and thriving industry operated. We found that Company C had four employees with two regularly writing bond. Company A, the largest of the bonding companies, had eleven employees though they stated that not all of them wrote bail bond. Company B had six or seven employees, all having the power to write bonds. Company F, not in existence when we first gathered the data, had five employees, three of whom wrote bonds. Not all employees can write bonds. In order to write bonds, an employee must be a licensed resident agent designated by the State Commissioner of Insurance and Banking to write a particular type of insurance known as surety. Surety allows the employee to write bail bonds without making any deposits with the court.

In interviews and discussions with various officials in the criminal justice system we heard that a large majority of cases, especially misdemeanors, were handled by one bail bond company. To verify this, we examined a sample of felonies and misdemeanor cases. This information is contained below in Table 37. Since this information was difficult to obtain from City records, we had to select a sample of felony cases.

Table 37

Percentage of Cases by Bail Bonding Company

Bail Bond Company	Felony	Misdemeanor
A	41%	59%
B	23%	3%
C	17%	17%
D	17%	11%
E	2%	0
Percent	100%	100%
N	151	472

Table 37 shows that the largest percentage of cases for both felonies and misdemeanors was handled by Company A. Company A had 59% of the misdemeanor cases. The company that handled the second largest number of misdemeanors had 23% of the cases. We found that Company A had the largest number of felony cases with 41%. Thus, the bail bond industry in Memphis-Shelby County is monopolized by Company A. What are some of the reasons for this monopoly? Bonding Company A has been in operation for quite some time. It has a large staff and numerous contacts with lawyers, defendants and law enforcement officials. Bonding Company A's business quarters and operational style are more professional than other bonding companies.

We were also interested in knowing if any of the bail bond companies tended to specialize in particular types of felonies. Hypothetically, Bonding Company A takes such a large percentage of misdemeanors, it may be also taking a high percentage of less serious felonies. Thus it may be leaving the more serious felonies, which are less desirable cases, to other bonding companies. To make this determination, we ran the arrest charge against the bail bond companies. This data is displayed in Table 38.

Table 38

Charge for Bail Bond Companies

Bail Bond Companies	A	B	C	D
Felony Person	10%	17%	17%	8%
Felony Non-Person	90%	83%	83%	92%
N=	63	35	24	25

Table 38 suggests that our hypothesis has limited validity. Company A has among the highest percentage of felonies nonperson in Table 38. However, the figures suggest that although two companies have more of the severe felonies, this does not amount to specialization. Company E was excluded from the analysis since it had only 3 cases. To further determine if specialization may exist in felony bonding according to the size of the bond, we presented the data in Table 39.

Table 39

Size of Bond for Bail Bond Companies

Bail Bond Companies	A	B	C	D
Below $500	57%	52%	52%	52%
$501-999	21%	3%	22%	22%
$1,000-2,500	23%	42%	26%	22%
$2,501-5,000	3%	3%	0%	0%
$5,001-9,999	0%	0%	0%	0%
$10,000 & above	0%	0%	0%	4%
Percent =	100%	100%	100%	100%
N =	57	33	23	23

Table 39 also suggests that the specialization hypothesis has little validity. Though there are some differences, such as bonding Company B taking slightly larger bonds, the differences are not especially great. In summary these figures suggest the one bonding company has a high percentage of cases, especially misdemeanors. For the felonies, we found little specialization concerning either bond size or charges.

How the Bondsman Gets His Clients. We interviewed representatives of four bail bond companies currently in operation in Memphis to determine ways in which they acquire clients. We also interviewed various court personnel, judges and lawyers to supplement our interviews with the bondsmen. The first way in which a defendant obtains a bondsman is either by calling the bondsman himself, or having a relative call the bondsman on his behalf. In discussions with court personnel it was suggested that the bonding business is a repeat business. The defendant seeking a bondsman is probably a recidivist and therefore was under bond at some prior date. This defendant or his family is likely to call the bonding company used previously, especially if the service was satisfactory. This probably accounts for the large percentage of business which Company A has in the local bond market. Being the oldest bonding company in the city, Company A has developed considerable personal contact with the defendants and their families. The bondsman's second way of obtaining clients is to approach the defendants in court. The bondsmen have employees who monitor court hearings. Either before the hearing takes place or after bond is set, the bondsman may approach the defendant and give him a card urging him to call the bondsman when the need arises. We found that bondsmen considered this an exceptionally important way of obtaining clients. The third major way in which the bonding company obtains clients is by referral of the attorney. An attorney may take a case while the defendant is still in jail and wants to obtain his release as quickly as possible. Obviously the attorneys prefer using a particular bondsman because of the friendships involved or because the services offered by the bondsman in the past has been satisfactory. Company A, the oldest bonding company in the city, said that they got a large number of clients through contact with attorneys simply because they were the oldest bonding company in the city and had developed contact with attorneys. The fourth way in which bail bondsmen obtain their clients is by obtaining a copy of the docket or a jail listing and approaching the defendants directly in jail. This is a particularly effective technique in the case of misdemeanors since a court hearing is not required. Therefore the bonding company involved does not have to wait for a court appearance when there would be greater competition among the various bondsmen in the court room. The misdemeanor is not a great risk to the bail bondsman because of the small amount of money involved. With the large number of misdemeanors, a large and substantial business can be built up quickly. It should be stressed that in our interviews the bail bondsmen, to a person, denied that they solicited clients in this way. One of the bail bondsmen indicated that this method was illegal. In our discussion with judges, attorneys, and court personnel, there was the clear allegation that this practice took place.

There are three major problems in the ways bail bondsmen solicit their clients. As far as we know none of these are illegal under current statute but we suspect that they are highly irregular in terms of procedures set up by local officials. First of all, let us examine the method of bondsmen obtaining a list of defendants in the city jail and directly contacting them there. This discussion is limited to the Memphis city jail. According to the procedure of the Police Department, the bondsman must be in the company of a defendant's attorney or relative. The bondsman fills out a form which indicates who referred the defendant to the bondsman. Without referral, the bondsman is not supposed to see the defendant. However, according to

our sources, the bondsman obtains a list of defendants in the jail and then directly contacts them. The bail bondsman must still fill out a card which indicates referral. One police official told us that he had found bail bondsmen putting names and addresses of dead people and vacant lots as people who had referred the bail bondsman to that particular client. We also heard of cases where the bail bondsman first talked to the client and asked him to provide the name and address of a relative or friend who could be put on the referral card. Then, after contacting the defendant, the bail bondsman entered that name as a referral.

The referral problem is a controversy which was aired by the newspapers as early as May of 1972. Attorneys were cited as complaining that their clients were being released from jail without solicitation by the lawyer or a family member. The article said that "for the bondsmen to know the name of the prisoner must involve a breach of police policies that forbid the giving of names of bondsmen to prisoners or the prisoners' names to bondsmen." This allegation was denied by the bondsmen and the police. This controversy remains a major concern. The problem of referral does not border on illegality. As far as we can tell, the only violation is of Memphis Police Department administrative regulations dealing with access and release of information to bondsmen. One police official stated outright that police officers should not have anything to do with either the bail bondsmen or the docket. We contacted a City Court judge to ask him why the court was not willing to do anything about this problem of bond referral. The judge stated that he had no personal knowledge of this situation. Secondly, he stated that this problem was in the Police Department's jurisdiction and that he, as a judge, was not going to intrude into that area. He said that there are certain areas of court administration which belong to the judges and other areas of the jail administration which belong to the Police Department. The judges in the City Courts appeared very reluctant to cross this line. We have no direct proof or personal observation of such activities by the bondsmen. However, the allegations came from a wide variety of sources tending to give them some credibility. Therefore we recommend that the Memphis Police Department give considerable thought to putting court or civilian employees in charge of the docket and arrest list. The police would then simply be responsible for security in the jail. Further, we recommend that no bondsman be allowed access to defendants without actual referral by relative, friend, or lawyer. This procedure should also be clearly monitored by the Police Department.

A second problem is bail bondsmen solicit clients in the court room and jail area. This does not help to create a sense of dignity in the court room. For example, we feel that a list of bail bondsmen might be posted at an accessible point for the defendant and that the bail bondsman not be allowed to contact defendants directly in the court. In interviewing various court personnel, we were told that certain judges forbid bail bondsmen in their court. We viewed this as a very positive step. However, this practice has been challenged in court. There are two Chancery Court cases in which the bail bondsmen appealed the ruling of local officials. In one case, a judge ordered a bondsman out of his court and forbade solicitation in the court room. The Chancery Court reversed the judge's ruling. Another case involved the former Chief of the Memphis Police Department. The Chief issued

an administrative ruling that ordered bail bondsmen out of the cage area. This case was taken to the Chancery Court and it was ruled that the Chief of Police could not deprive the bail bondsmen of a right to earn a living by restricting the cage area.

Not restricting the cage area leads to some abuses of the system. In the few times we were in the area, one of our investigators witnessed such a case. In this particular case a mother wanted her minor daughter arrested for delinquent activities, of a criminal nature. The mother apparently came to the City Jail with a bail bondsman who was to help the mother get her daughter jailed and then to write the bond in the case. The desk sargeant asked the bail bondsman to leave the cage area. The bail bondsman refused repeatedly and was subsequently jailed by the Memphis Police Department for disturbing the peace. During the altercation the bail bondsman told the desk sargeant that he did not want the desk sargeant to call another bail bondsman. The bail bondsman appeared in court, there were some rather harsh words exchanged between the prosecutor and the bail bondsman, but the case was finally dismissed by the judge. Such cases suggest to us that there should be some clear definition of areas and methods in which bail bondsmen can use to obtain their clients. Direct contact either in the court or through the process of direct interview are unacceptable.

The Bail Bond Contract. At the time bail is posted, the defendant and his cosigner must sign a bond agreement or contract with the bail bond company. The bond contract is the heart of the relationship between the bail bondsman and the defendant. The contract gives the bail bondsman a great deal of control over the defendant. It guarantees that the final judgement and any expenses incurred by the bail bond company in the execution of the agreement. We obtained a copy of a bail bond contract. We have not seen contracts for all of the companies, but we assume from discussions with local court personnel that other contracts are similar to this. Among the features found in this particular contract are the following:

1. The defendant agrees to employ an attorney.
2. The defendant must notify the bondsman of any change of address.
3. If the defendant or cosigner are unable to pay money owed to the bonding company as a result of the bond, the bondsman can return the defendant to jail.
4. If the defendant does not appear in court the bondsman can require an additional deposit.
5. If the defendant is arrested on another charge, the bondsman has the right to cancel the contract.
6. The contract is for one year only. If the case requires longer than one year to dispose of, the defendant must write another bond with the company or be returned to jail.
7. If the bond is cancelled for any reason, the bail bondsman does not have to return any premium.

8. The defendant agrees to remain in Shelby County.
9. If there are any costs involved in surrendering the defendant either the defendant or the cosigner is responsible for such costs. In addition any costs in locating, apprehending, arresting and searching for defendant can be billed to him or his cosigner.
10. If the defendant does not appear for his trial date and a conditional forfeiture is issued, the cosigner will pay the bondsman the amount of the bond. The money is held in escrow until the defendant returns to the jail and/or the forfeiture is set aside by the judge.
11. If any payments are due on the bond premium or money is advanced for fines or court costs, the defendant and cosigner are liable for paying this amount when it is due.

The bail bond contract is a document which thoroughly protects the bail bondsman, but gives the defendant no rights. How does it protect the bondsman? First, the bondsman requires that the defendant obtain a cosigner. This cosigner is responsible for any liabilities incurred by the defendant. Secondly, all costs incurred by the bondsman, including location, apprehension, and return of the defendant, are the responsibility of the defendant and his cosigner. Under this arrangement, the bondsman suffers no economic loss if the defendant forfeits. Thus, there is no economic or legal motivation to encourage bondsmen to closely monitor the defendant's activities. Thirdly, the bondsman may surrender the defendant at any time for any reason without any refund or premium. Lastly, the bond is a recurring yearly fee for the defendant, even though there is no business cost to the bondsman.

Supervision. The literature shows that bail bondsmen across the country claim that they do a good job because they closely supervise their clients. This certainly has been disproved in the literature and is not true in Memphis. We asked the four bail bond companies if they have any contact with the defendant after release. The response in each case was that they do not. In some cases they said that the attorney was expected to monitor the defendant. Judges indicated that if the bail bondsmen had a weak point, it was in the area of supervision. One judge said that if the bail bondsman knows a client is about to jump bail, he would not take any action. Furthermore, he stated that when a client does jump bail, the bondsman usually waits until the defendant is rearrested. Therefore, according this judge, the bail bondsman does not perform his function of assuring court appearances.

From our interviews and observations it is clear that the bail bondsmen do not supervise the defendants. The bail bondsmen do not provide the defendant with information about his court date. The major reason for the high forfeiture rates for the bail bondsmen is this lack of supervision. As pointed out in Chapter III, Pre-Trial Release, which has an intensive supervision system, also has a much lower forfeiture rate than that of the bail bondsmen. Therefore, if forfeiture rates are to be decreased in Memphis and Shelby County, either the bail bondsmen must begin supervising the defendants more intensively or the bonding function must be turned over to a program more interested in supervision.

Forfeiture and Final Judgement. This section describes the forfeiture process in both the City and the Criminal Court. In the City Court when a defendant fails to appear for his trial a conditional forfeiture is declared and the case is rescheduled at a later period of time, usually four weeks. In the meantime, the judge issues a Scire Facias for the bail bondsman to produce the individual for the hearing. At the same time the Scire Facias is issued, the City Court judge issues a bench warrant for the arrest of the defendant. If the Scire Facias hearing is held, the bail bondsman must show cause why the defendant did not appear for his trial and the final forfeiture may be taken. The judge then orders the bail bondsman to pay to the clerk the amount of the forfeiture. At any time before the Scire Facias hearing the defendant may voluntarily appear before the judge and explain why he did not appear. The judge then has the option of setting aside the forfeiture, taking the forfeiture or reinstituting a higher bail. In our interviews with the bail bondsmen, they stated that upon learning that a client did not appear for his trial date, they call the attorney or the defendant and ask them to appear before the judge immediately to have the forfeiture set aside.

What are some of the problems in the City's forfeiture process? First, the problem exists of notification of court date. Since the bail bondsman does not give his client any notification of court date, the defendant must depend on his attorney to inform him of the court date. Given the confusion in City Court, many defendants forfeit by mistake or from lack of information. It has been estimated in this study that about 65% of the defendants deliberately forfeit. The second problem in the forfeiture process has to do with Scire Facias hearing. By law, a defendant and a bail bond company are required to have a Scire Facias hearing before the judgement is taken. However, in speaking to some judges, we found that the Scire Facias hearing is not always held and for that reason some of the final judgements are not collectable in the city.

The third problem is one of collecting final judgement. There is a body of literature which suggests that this is a major problem in any system with bail bondsmen. For example, one of the reasons for the institution of the public bonding in Illinois was because of the huge backlog of unpaid final judgements in the Chicago Municipal Courts. We became very intrigued with this question and approached it from a number of points of view. First we examined the City Courts to see if there were a large number of unpaid final judgements. We asked the appropriate people in the city to find out the exact amount of money due. We were not able to find that information and were told "it is not a substantial amount." This matter would have remained closed except for an article which appeared in the Memphis Commercial Appeal on January 22, 1975. In this article, the City Court Clerk, David Vance, stated that from July to December, there was over $260,000 in default judgements with about 15% of those default judgements being good or collectable money. The article was quoted as saying that a default judgement occurs when a defendant fails to show up in court. Therefore, we would assume that this referred to the final forfeiture or the final judgement. We tried to determine the reason for the lack of payment of final judgements in City Court. We were told by more than one official that in many cases a Scire Facias hearing was not held and therefore according to state law, the final judgement was not collectable. In other cases, the problem is not with the bonding companies, but rather the disorganization of the City Clerk's office. One official gave us examples where bonding companies had not been notified that the forfeited amounts were due. In the City Court, when the chief judge calls the bail bondsmen and tells them to pay their final judgement, they quickly comply because of the threat of being cut off from writing bonds in the City. The major problem is in organizing the City Clerk's office so that bail bond companies can be immediately notified of the need to pay the final judgements.

The forfeiture procedure is essentially the same for the Criminal Courts. In the Criminal Court a forfeiture is declared and the judge issues a capias, which is an arrest document forwarded to the Sheriff's fugitive squad ordering them to apprehend the defendant. If the forfeiture is declared, the Criminal Court routinely gives the bail bondsman at least one full term of court before the final judgement must be paid. On the third Monday of each term, the judges hear final judgements. At that time the bail bondsmen may either be ordered to pay the final judgement or given a continuance until the next term of the court. The bondsman must pay the final judgement within 30 days of the final order.

What are some of the problems in the forfeiture process in Criminal Court? First, we asked the Criminal Court Clerk's office if there was a backlog of unpaid final judgements for the bail bondsmen. We were not able to obtain this amount. However, we were assured that the bail bondsmen pay within 30 days of final judgement and there was no outstanding money on the books from the operating bail bond companies. Given the well-defined procedures in the Criminal Court Clerk's office, we believe that this assertion is true. A second problem has to do with bail bond companies who go out of business. What happens to their forfeitures? We talked to the Clerks on this point. It was estimated that one bail bond company had $50,000 in forfeitures when it went out of business. It should be stressed that this was not $50,000 in actual forfeitures. Though insurance companies are supposed to guarantee the payment of the final judgement on a number of occasions the insurance companies also declared bankruptcy. Therefore, final judgements are not collectable.

A third major problem in the Criminal Courts was the length of time given the bondsmen to produce the fugitive before a final judgement is issued. In the study of felony cases, we found numerous instances where judges continued cases for three or four terms of court. An interview with personnel in the Clerk's office showed that there were cases in which continuances were literally granted for years. Why do judges grant continuances on the final judgement as a matter or routine? First, some judges feel that the purpose of bail is not to make a profit, but to assure the appearance of the defendant. If the judge feels that an attempt is being made to apprehend the defendant, he will grant a continuance. Secondly, some judges said that is a final judgement was taken, the bail bondsmen would not suffer since they can go to Civil Court and obtain the final judgement from the defendant's cosigner. Thus, an innocent member of the public can be hurt when a final judgement is declared. We can sympathize with both of these reasons. However, it is our feeling that whenever there is a deliberate forfeiture, a final judgement should be taken. Furthermore, we do not feel that the entire burden of the final judgement should fall on the cosigner. We think, for example, that the

bail bondsmen should have some monetary stake in the final judgement and therefore have a reason for pursuing and locating the defendant.

The third problem we found in the Criminal Court forfeiture process was that an extremely high percentage of cases are set aside and the final judgement is not collectable. The data on type of forfeiture in this court is displayed in Table 40.

Table 40

Criminal Court Cases for each Forfeiture Catagory

	Criminal Court
Set aside--no cost	24%
Set aside--cost	39%
Set aside--no indication of cost	1%
At large	23%
Final judgement taken	5%
No disposition	8%
Per cent	100%
N	79

In Criminal Court we found that only 5% of the forfeitures resulted in final judgements. In another 23% of the cases the defendant was at large for at least one court term without a final judgement being declared. In these at large cases, the defendants, at the time of our study, had between one and five court terms without the final judgement taken. In observations of the procedure on "final judgement day" we found the attorney for the bonding company giving the judge an excuse which was readily accepted by the judge without further questioning. We also examined the very high percentage of cases where the case was set aside. Over 63% of the forfeitures in Criminal Court were set aside. Given the estimate of 50% of forfeitures being deliberate, at least in some of these cases final judgement should be declared. These figures for final judgements and forfeitures being set aside suggest that the idea of a forfeiture is hollow. A bail bondsman need not worry about defendants appearing for trial since he knows a final judgement will not be taken. The multitude of continuance for final judgement makes the administration of the docket and the certainty of a case coming to trial less than adequate.

In addition to serving as an impediment to efficient administration of

the docket, the practice of routinely continuing cases has resulted in a large economic loss to the County. We examined two divisions for the January, 1975 term of Criminal Court. We found that these two divisions had $66,101 which had come to final judgement. Of the 33 cases coming to final judgement, only three were collected. And it was only the smaller bonds of $1, $250 and $500 which were collected. This constituted 1% of the total amount due. The remainder of the bonds were given a continuance. In examining all the divisions of Criminal Court we found about $190,000 which could be collected. Only 2.5% of this amount was collected.

Before leaving the topic of forfeiture and bondsmen, let us consider how the bail bondsmen obtains his money when there is a final judgement. The four bail bondsmen we interviewed identically described the same process. The bail bondsman first attempts to persuade the defendant and cosigner to pay the amount of the final judgement. If this fails, then the bail bondsman files suit in Civil Court to obtain a judgement against the cosigner. In cases where a piece of property is collateral, the bondsman takes possession of that property.

Surrender and Apprehension of the Defendant. Once a bench warrant or capias has been issued for arrest of a defendant who does not appear for court, the Fugitive Squad of the Sheriff's Department and the Warrant Squad of the Police Department try to apprehend the defendant and return him to jail. When a bond is surrendered by the bondsman, the same procedure takes place. For example, in Criminal Court the Clerk copies the surrender document and gives a copy to the bail bondsman. The original document is sent to the Fugitive Squad in the Sheriff's Department which is then in charge of returning the defendant. Let's discuss the surrender process from the bail bondsman's point of view. According to the bail bondsman's contract he has the legal right to surrender a defendant for whatever reason he wants. Also, according to the contract, the bondsman need not return any of the 10% fee which the defendant gave to him. Thus, for example, if one day after the bail bondsman received the 10% fee, he decides to return the defendant to jail for any reason, there is nothing in the law or contract to prevent this.

During the time of the study there was an extreme example of this procedure. AAA Bonding Company was charged with kidnapping thd extortion because they chained a defendant in their basement. The case received a great deal of newspaper publicity. The judges were infuriated. Eventually the Grand Jury decided to indict the bail bondsman involved. It was virtually impossible for that bondsman to practice in Memphis since the judges threatened to throw him out of their courts. This particular bondsman surrendered all his cases, both felonies and misdemeanors, to the City and Criminal Courts. The bondsman did not return any of the premiums which the defendants had paid to him even though there was no reason for the defendants to be surrendered to the court. They had not committed any additional crimes. They were not a greater threat to the community and they did not default on any payments to the bondsman. The problem was that this particular bondsman was going out of business. The defendants had no recourse under the law. Therefore, the defendants under bond to AAA were surrendered back to the courts and returned to jail. Then they had to arrange bail once again with another bonding company, suffering unfairly. This case study shows that there is

nothing in the law or in the bail bond contract to prevent bondsmen from engaging in this practice.

Must the judge accept the bond surrender? We found that the Criminal Court judges felt legally responsible for accepting a surrender whenever it took place. In the City Court, however, a judge may order a hearing at which time he could order the bail bondsman to show cause why the defendant should be surrendered. One judge told us that if the bail bondsman did not provide him with adequate reasons for the surrender, he would simply refuse to accept the defendant and would order the defendant retained on bond with that particular bail bond company. We suspect that the City Court judges have insisted in an extra-legal way that cause be shown in bond surrenders. They have used threat or coercion to indicate to the bondsmen that their rights to write bonds in the City would be limited by the court if they did not go through proper procedures. Unfortunately, we feel that this has no legal basis. We asked the judges of their reactions to bond surrenders. This appeared to be one of their "least favorite" aspects of the bail bond system. One judge in particular was incensed that defendants in his court had their bonds revoked simply because the bondsman had gone out business. However, we got the opposite reaction from another official in the criminal justice system who said that "the surrendered people were simply out of luck," Thus, we feel the process of surrender is one of the "seedier" aspects of the bail bond system.

Another problem in the bonding system involves the traditional right of the bail bondsman to do whatever is necessary to procure a defendant who is a fugitive. The bail bondsman has this right according to the Taylor vs. Tainter decision by the Supreme Court.

> When bail is given, the principle is regarded as delivered to the custody of his sureties. Their demand is a continuance of the original imprisonment. Whenever they choose to do so, they may seize him and deliver him up in their discharge; if that cannot be done at once, they may imprison him until it can be done. They may exercise their rights in person or by agent. They may pursue him into another state; may arrest him on the Sabbath; and if necessary may break and enter his home for that purpose. The seizure is not made by any virtue of due process. None is needed. It is likened to the arrest made by the Sheriff of an escaping prisoner ... it is said the bail bondsmen have their principal on a string, and they may pull their string whenever they please, and render him in their discharge

This principle, dated almost a century ago, continues to be enforced today. Are there examples where the bail bondsman has exceeded his authority, yet has not broken the law because of the Taylor vs. Tainter decision? Two bondsmen from Atlanta, Georgia, were jailed because they attempted to return a Memphis man to that state. They were quoted as wanting to return him dead or alive and were found to be threatening him with a pistol. The bondsmen were each placed under $2,000 peace bond and fined for carrying a pistol. The bondsmen claimed that "on the basis of a contractual agreement, a bond company has the right to apprehend a man who forfeits bonds for refusing to appear in court." (March 1, 1970)

As far as we can tell the problem of bail bondsmen using their extra-legal power to enforce the bail bond contract is not used locally. There are two reasons for this. First, the bail bondsmen rely on the Fugitive Squad to arrest defendants. Secondly, there is no need for bail bondsmen to make any great effort to produce fugitives since the judges seldom declare final judgement on bondsmen to obtain the forfeited bond from the cosigner. We suspect it is only in cases where it appears that the cosigner will be unable to pay the amount of the final judgement, that the bail bondsman is apt to take this sort of action.

We did find a local case which generated a great deal of newspaper publicity involving James Douglas Sloan, the owner of AAA Bail Bond Company. Sloan had been a bondsman in Nashville but had to leave the city when the Attorney General threatened to bring a forgery charge against him before the Grant Jury. Sloan detained a defendant in his basement for a week because the defendant could not obtain a cosigner for his bond. Sloan was indicted and tried on the charges of kidnapping and extortion. In Court, Sloan claimed that the defendant pleaded not to return him to jail. The defendant made the charge that he was not fed more than three times during his confinement and lost 27 pounds. The bail bondsman denied that this was the situation and then said, "whenever he ate, he ate." The bail bondsman also said that he provided the defendant with a TV and allowed the defendant's girl friend to stay there for five nights. Under cross examination the bail bondsman said his only regret about his treatment of the defendant was that the episode led to a trial in Criminal Court. The jury found Sloan not guilty of the crime as charged.

One other aspect of surrender and apprehension needs to be discussed. Whenever the defendant is arrested out of state, the Sheriff's Fugitive Squad sends deputies to bring that defendant back to Memphis. The cost of bringing back the defendant includes air fare, meals, and other fees. The expenses are charged to the bail bondsman who in turn is paid by the defendant or his cosigner, as per the terms of the bail bond contract. We approached the Criminal Court Clerk's office and the Fugitive Squad to find out how many defendants they had to extradite and to total cost of this extradition. They were not able to give us an actual figure. The Fugitive Squad told us that they extradited 170 defendants in 1970. We took a sample of 10 fugitives who were extradited. Using the case jackets, we found the total cost for these ten defendants was $4,133.09. Using these figures an estimated figure for the 170 defendants was $70,262. This amount was paid by the bondsmen to the county and in turn probably was recovered from either the defendant or cosigner.

Myth and Reality. The bail bondsman tries to perpetuate the myth that he always gets his man. The bondsmen want it to appear that they have an extensive enforcement network used to track down clients in Memphis or out of the city. One of the bonding companies claims that they apprehend 99 out of 100 clients who forfeit. Supporters of bondsmen claim that if the bail bondsmen were not available for tracking down fugitives, not only would the forfeiture rate increase, but the number of fugitives at large would also substantially increase. The other side of the argument states that the bail bondsman has no incentive to produce the defendant since he does not have final judgements declared. And if a final judgement is declared, it is the defendant or his cosigner who must pay. We asked one judge whether the bail bondsmen did a good job in bringing defendants back to the court. Once a defendant is truly a fugitive and cannot be reached by telephone, he suggested that the bail bondsmen do very little. He said that

the bail bondsmen provide information to the Sheriff's Fugitive Squad, which does the actual work.

In order to distinguish myth from reality on this point we interviewed both the Sheriff's Fugitive Squad and the Warrant Squad of the Police Department. We first asked what procedure is followed after the bench warrant or capias is issued. According to the Sheriff's Fugitive Squad, when the capias is issued, they fill out a complaint form which is entered in a record book. The capias is given to two deputies who try to find the fugitive. These deputies work day and night shifts. If the fugitive is found, he is arrested. However, because of limited time and funds, the deputies do not look for the fugitive for an extended period of time. In the case of the bench warrant in the Memphis Police Department, the Warrant Squad tries to locate the fugitive by phone. According to the squad, they are too under-staffed to do much more than this. If they cannot find him by phone, his name is put in a pick up box. They have men on the squad who look for these fugitives. However, they do not look for long and usually wait for the fugitive to be rearrested on another charge.

We then asked what procedures are used if the fugitive has gone out of state. According to the Sheriff's Fugitive Squad, they put the information in the NCIC which is the federal Computer system. They try to get information from individuals who know the fugitive. If they suspect that the fugitive is in another state, they send information to those state officials. Those state officials may look for him, but they usually wait for him to be rearrested on another charge. In order to be returned to Tennessee, the fugitive must sign a waiver or he must be extradicted by the Governor. According to the Warrant Squad of the Memphis Police Department, they have no authority to pursue a defendant outside the confines of Memphis. If the fugitive is arrested in another county or state, the local officials may or may not find out that he is wanted in Memphis. We asked if in the case of a misdemeanor the officials wait for the fugitive to be arrested on other charges or if they pursue him. The response they gave was that the Fugitive Squad and the Warrant Squad treat misdemeanors in the same way as felonies.

We asked how closely the officials worked with the bail bondsmen. It was stated by the Sheriff's Fugitive Squad that they worked with the bail bondsmen. Whenever the bail bondsmen wants to catch someone, he must go through the Fugitive Squad. However, the bail bondsman usually lets the Fugitive Squad find the defendant. According to the Warrant Squad there was no real contact with the bail bondsman. The Warrant Squad serves papers on the people in the county. If the fugitive is caught by the bail bondsman or the Fugitive Squad, and this defendant has a warrant in the city, he must be cleared through the City. This is the only real contact the Warrant Squad has with the bail bondsmen. We asked if the bail bondsmen have an extensive formal network to track down the fugitives. The response of the Fugitive Squad was that they do have such a network, but they had no idea how extensive it is. The bail bondsmen apparently pay a reward for information, but they generally let the Fugitive Squad catch most of the defendants. The Warrant Squad did not know if such an informal network exists since they do not have much contact with the bail bondsmen.

What is myth and what is the reality? We find that the bail bondsmen are only slightly involved in procuring fugitives. Most of the work after the initial contact between the Fugitive Squad and the bondsmen is by the Fugitive Squad itself. Bondsmen are only incidental to the apprehension.

Statutes. A discussion of the Tennessee State Statutes is crucial to understanding the activities of the bail bondsman in Memphis and Shelby County. Both the general public and officials in the criminal justice system in Tennessee are confused about the effect of statutes on bail bondsmen. There are two sets of statutes. First, Chapter 14 of the State Criminal Statutes purport to regulate "professional bondsmen." However, a technicality in the professional bail bond statutes limits the applicability of those statutes to regulation of bail bondsmen. Chapter 40-1402 states, "none of the provisions of this chapter shall apply to insurance companies subject to inspection, regulation and control by the Commissioner of Insurance and Banking of the state and by such commissioner duly authorized to write bonds in the state." Thus, the professional bail bond statutes clearly exempt any insurance companies. As we will explain below, this has been taken to mean that any surety or bail bondsman at the local level who is registered to write surety insurance claims to be exempt from these statutes. In our interviews we asked the jduges why the bondsmen were not regulated under the professional bondsmen statutes. They stated that whenever this was attempted the lawyers for the bail bond companies claim the company is an insurance company and therefore not liable under the statute. We posed this same question to an official in the State Department of Insurance and Banking in Nashville. This person said that the provision applies only to insurance companies and could in no way be interpreted as applying to the individual agents. However, another staff member of the department claimed that individual agents were exempted.

A review of Professional Bail Bond Statutes shows what the bail bondsman is trying to escape in terms of regulation when he claims to be an insurance company. A number of more relevant sections are described below:

Section 1403 deals with regulating the bonding company by semi-annual reports to the clerk of the Circuit or Criminal Court. The bail bond company is to report its assets and liabilities as of the preceding December 31 and June 30 respectively. Reports are to be issued not later than January 15 and July 15 of each year. The semi-annual report includes information on the amount of real estate owned by the company, all personal property held to secure payment of any debt owed to the bail bondsman, the full amount of the bondsman's liability on forfeitures, all bills and accounts payable, names and addresses of each agent, and the names and addresses of each person having interest in the bonding company.

Section 1405 states that the judge of any court which handles a criminal bond may inquire at any time as to the solvency of any bondsman and investigate the value of his assets and extent of his liabilities. In the James Douglas Sloan case, one of the Criminal Court judges wanted an extensive investigation of the entire bonding system. This was rejected and another judge pointed out that the Criminal Court judges do not have such authority under section 1405 of this statute.

Section 1496 states that a court can order a prohibition of executing bonds if a bondsman fails to comply with any of the sections. Further, the court can impose any reasonable limitation on the total liability of a bondsman in his court.

Section 1407-1409 states that it is unlawful for a professional bail bondsman to charge, demand, contract or accept, collect or receive money for the following: 1) fixing of the disposition, 2) promising immunity or protection, 3) hampering in any way the trial, pre-trial or post-trial action. The bondsman cannot give legal advice or help pay for an attorney. If he violates these sections, he is guilty of a misdemeanor and can be punished by a fine not less than $50 nor more than $500 or by imprisonment not less than 30 days or more than 6 months.

Section 40-1414 states than any bondsman convicted of a felony is unacceptable as a surety. Under this statute a bail bonsman cannot be a surety if he has been indicted or convicted of a felony in any state or federal court within a prior 5-year period.

Section 40-1415 also provides for a reduction or refund of the premium if a defendant is surrendered back to the court, unless the defendant was arrested on another charge.

Under the professional Bondsmen Statutes the local courts can inquire as to the assets and activities of the bail bondsmen. Under the present practice only the insurance companies and not the individual agents must issue a report to the state Department. Since the contact between the insurance companies and the bail bondsmen is very limited, the reports show nothing about the activities of the bondsmen at the local level. Therefore, the bondsmen who are supposedly regulated under the insurance statutes, do not have to provide the state with any information about their operations.

According to statutes the insurance company must file a statement of assets and liabilities, submit a plan of operation, and require all persons involved to be of good character. The Insurance companies file this information but the individual agent does not. We conclude that the definition of an agent as an insurance company is not valid. Outside of this, the insurance statutes do not regulate or control the bail bondsmen. We wrote the insurance department and received the following comment in regard to this situation.

> You asked the way in which this department regulates the bail bondsmen. They are regulated just the same as the person who sells or solicits insurance and must qualify and be licensed under the provisions of the Tennessee code, annotated Section 56-01, which provides for the license of agents other than life, health, and accident insurance.

We also inquired whether it was possible to get information about the individual bail bond companies. It was explained that the standard operating procedure of the department was to assign an auditor to the home office of the insurance company. They do not send auditors to the agency or to examine

the records of the individual agents. He did say, however, according to the statutes, the Commissioner of Insurance and Banking can make an audit of the books of an individual agency. He said that this would be very difficult and time-consuming and he doubted that insurance department had the expertise to carry out such an audit.

The peculities of the insurance department are such that they do not enter a case until they havereceived a written complaint from someone. We asked the insurance department why no action had been taken against James Douglas Sloan, the man with AAA Bonding who was responsible for the detaining of the defendant in his basement. The response was,

> insofar as I know, no complaint has been filed with this department; and if that is the case, where a person was chained to a bed for several days, I know of no action this department could take. There must be a violation of the insurance clause before we can enter into any case; and as a rule we receive written complaints to enter into the case.

How does a bail bondsman get the power to write bonds under these statutes? First, he must obtain a license from State Insurance and Banking Department to write bonds as a surety. The agents whose records we examined in Nashville were only allowed to write surety bonds. In practice this is for the most part restricted to bail bonds. Once an individual is so certified, he obtains from the insurance company a document called qualifying power of attorney. The qualifying power of attorney allows the bail bondsman to write bonds up to a maximum amount of money. The qualifying power which we saw was limited to $25,000. The attorney for the bonding company then files a petition with the court through the Criminal Court Clerk for that agency or company to write bonds. The Clerk's office checks with the Memphis Police Department to determine if the individual has an arrest or a felony record in Memphis. The investigation goes no further. We asked why references were not checked or further information solicited. The answer was that it was time-consuming and in fact the insurance department had already certified the agents. The information which the judges see is incomplete and it is virtually impossible for them to make a rational decision on the qualifications of the individual bondsman or the company. The qualifications for a bonding company as described above are presented to the Criminal Court judges. The judges decide among themselves whether this individual or company should write bonds. Before a bondsman is qualified, at least 4 judges must sign the order. We were told by the Clerk's office that there has never been a case where the bondsman had not been qualified by all the judges.

We made inquiries in the City Court whether they made an independent determination of whether an individual was qualified to write bonds in the City. The response was that the certification of the Criminal Court judges was accepted. We spoke with the Criminal Court judges about the need to exclude certain bondsmen from writing bonds. They told us that if the individual possesses license as a resident insurance agent, there is little they could do to exclude him from writing bonds.

Chapter V
Public Bonding: The Illinois 10% Plan

Introduction

It is the recommendation of this report that the State of Tennessee adopt a form of public bonding called the Illinois 10% Plan as quickly as possible. The purpose of the Illinois 10% Plan is to remove the bondsman from the state bail system. It was enacted in Illinois after a period of scandals. Large numbers of forfeitures were going unpaid, bondsmen were making huge profits, society was not protected, serious criminals were being freed and other defendants were remaining in jail because they could not raise the necessary bond.

Under the Illinois 10% Plan, a defendant arrested for a crime has his bail set by the judge. In order to obtain his release, the defendant posts 10% of his bond with the court. If he willfully fails to appear for his court date, the defendant forfeits the 10% deposit to the court. In addition, the state may obtain the remainder of the bond through civil processes. An arrest warrant is issued and if recaptured, the defendant is not only liable for his offense, but may be prosecuted for bail jumping. Forfeitures are discouraged by employing the bail jumping statutes against fugitives. For defendants who make their court dates, all but 10% of their deposit (which amounts to 1% of the total bond) is returned. This latter practice deviates from the traditional bail bondsman's practice of retaining the full deposit. Therefore, given a choice between using a bail bondsman or this form of public bonding a defendant will always choose the form which returns the deposit. As we indicate below, this form of bonding is more equitable for the defendant and does not result in any greater threat to the community. In addition, the 10% plan is a self liquidating program since the funds for its operation come from the 1% administrative fee.

The Illinois 10% Plan has been enacted in Connecticut, Philadelphia and Illinois. Furthermore, the State of Tennessee Law Revision Commission has recommended its implementation in Tennessee.

In the following sections we argue that the Illinois 10% Plan should be implemented. Further, we discuss some of the objections to the plan. Data showing its possible effects is drawn from our data on the current operation of the Memphis-Shelby County bail system. Our study, which required a year to complete, examines all aspects of the Memphis-Shelby County bail system. We selected over 1300 felonies and misdemeanors which first appeared on the City Court dockets in January through April, 1973. Each of these cases was tracked through the judicial process. Files were examined in the City Clerk's Office, Criminal Clerk's Office, Police Department files and Pre-Trial Release Agency's files. We computed forfeiture rates and rearrest rates (while on bond) for these cases. The statistics on forfeitures and rearrests were computed separately for bondsmen and Pre-Trial Release. The study did extensive interviewing and examined the operations of both Pre-Trial Release and the bondsmen. We also examine the available literature and data on public bonding

in Philadelphia and Illinois. This chapter is a summary of some of our findings.

Why Should Tennessee Adopt Public Bonding?

1. The traditional bail bond system gives the private bondsman the keys to the jail. The program does not protect society and limits the judge's role in determining who should go free and who should remain in jail before trial. The data in this study shows that bondsmen in Memphis and Shelby County have exceptionally high forfeiture and rearrest rates.

   * The felony forfeiture rates (defined by failure to appear) are 19% for bail bondsmen and 7% for Pre-Trial Release.
   * The misdemeanor forfeiture rates are 16% for bail bondsmen and 11% for Pre-Trial Release.
   * The felony deliberate forfeiture rates for bail bondsmen are 10% and 2% for Pre-Trial Release.
   * The felony fugitive rates are 7% for bondsmen and 1% for Pre-Trial Release.
   * The felony rearrest rates are 25% for bail bondsmen and 16% for Pre-Trial Release.

2. The bondsmen are not selective in choosing their clients and do not monitor their clients while on bond. This accounts for their astronomical forfeiture and rearrest rates.

   * The bondsmen will take any client who has a 10% deposit, cosigners and/or collateral.
   * The bondsman accepts no responsibility for supervision of the defendant. He expects this to be done by the attorney, cosigner and courts.
   * There is no reason for the bondsman to monitor his client since final judgements are seldom declared in Criminal Court. Of the cases involving a fugitive in Criminal Court, only 22% resulted in a final judgement. Other cases were continued for as many as 4 terms of court.
   * In cases where final judgements are declared, the bondsman suffers no penalty since he recovers the judgement from the cosigner or seizes the collateral.

3. There is no regulation of bail bondsmen at the local level. Bondsmen have relative autonomy in operation.

   * The bondsman is exempt from state statutes regulating bail bondsmen by claiming to be an insurance company. The "Professional Bondsmen" statutes exempt insurance companies from its provisions.

   * Local judges are unwilling and/or unable to exact guidelines for regulating the behavior and/or activities of the bondsman.
   * Bondsmen, who go out of business, sometimes leave uncollectable final judgements.
   * Bondsmen have been charged with a variety of crimes including forgery, kidnapping, carrying a pistol and extortion.
   * Bondsmen may obtain continuances on their final judgements which may extend for several years. When a defendant is rearrested on another charge, the final judgement is set aside.

4. The bondsman works a tremendous hardship on the defendant.

   * If the bondsman refuses to accept a defendant as a client, the defendant may have to remain in jail.
   * Bondsmen have surrendered defendants back to the court without cause.
   * When a defendant is surrendered, for whatever reason, the bondsman keeps his 10% fee.
   * Even if a defendant is found innocent by the court, he suffers an economic hardship since his 10% fee is not returned.
   * Even though a defendant may have the 10% deposit, a bondsman will not accept him as a client without at least one cosigner and in some cases collateral.

5. Under the present system, there are few procedures designed to limit forfeitures. Under the Illinois 10% Plan clearly defined procedures can be used to limit forfeitures.

   * The forfeiture rate is an astronomical 17% for felonies and 13% for misdemeanors.
   * Bail jumping charges are seldom used, even though the forfeiture rate is astronomical. We found only four current cases on the Criminal Court docket which involve a bail jumping charge.
   * Where bail jumping charges are employed, the judge may sentence the defendant concurrently with other charges.
   * The notification system is nonexistent in City Court and inadequate in Criminal Court.

6. Two prestigous organizations studying the bail bond system have suggested that local communities institute the Illinois 10% Plan and eliminate the role of bail bondsmen in the pre-trial process.

* The American Bar Association through its "Standards Relative To Pre-Trial Release" states that compensated sureties should be abolished and in those cases in which money bail is required, the defendant should ordinarily be released upon the deposit of cash plus security equal to 10% of the amount of bail.

* The National Advisory Commission on the Causes and Prevention of Crime, set up by the U.S. Department of Justice, states that "no person should be allowed to act as a surety for compensation." The Advisory Commission states "criminal law administration is a public business and ought not be delegated to private individuals where no safeguards protect the person involved. The private bondsmen have not been accountable to the public, nor have they felt obligated to pursue the public interest. The abolition of the bail bondsman would improve the system of criminal justice."

7. Whenever the Illinois 10% Plan has been enacted it has had a beneficial effect on the local criminal justice system.

8. In Memphis-Shelby County the plan is generally accepted by a large number of judges, lawyers and criminal justice officials. For example, four of the five Criminal Court judges we interviewed are in favor of the plan. Three of the five City Court judges are strongly in favor of the Illinois 10% Plan, while only one City Court judge is opposed to the 10% Plan. However, there continue to be many who also favor the retention of bondsmen. Some of these truly enjoy working with bondsmen. Others do not like enacting a new system with which they are not familiar.

Objections To The Illinois 10% Plan

There have been a number of objections expressed to the Illinois 10% Plan. Through the interviews we collected a list of all possible arguments and objections to the Illinois 10% Plan. We want to list some of these objections because they are impediments in making this change. In the following section we list the objections to the Illinois 10% Plan and assess the validity of each objection.

1. Why change to the Illinois 10% Plan when the bail bond system works so well? The current system is not working well because it does not protect either the defendant or society. The current system gives the bail bondsman, a private businessman, the keys to the jail. A defendant found innocent of a crime still must pay a penalty of 10% for obtaining his release on bond. Forfeiture rates are very high. Many defendants are unable to obtain release unless a bondsman agrees to write a bond. Criminal justice is too important to be entrusted to bondsmen with poor reputations and no concern for the public interest.

2. The bail bond system is a free enterprise system and any change from that system would be a further diminution of free enterprise. The traditional system is not a free enterprise system since the bail bondsman is in essence an officer of the court. As officer of the court, he has certain powers and control over a client which are quasi-legal. There are areas where the power of bondsmen may exceed that of a law enforcement official. The way bondsmen have used this power as court officers indicates that society has made a bad choice in giving the bondsmen these types of controls.

3. The implementation of the Illinois 10% Plan would create a huge governmental bureaucracy. This argument is absolutely false. The beauty of the Illinois 10% Plan is its absolute simplicity. There need be only a few clerical employees hired. The clerks who now accept bonds can continue in the same capacity under the 10% Plan. If the local courts want to decrease the forfeiture rate substantially, additional employees would be required for notification of court dates and retrieval of fugitives. This cost would not exceed the income produced by the plan.

4. Given the way government functions, it would take much longer to obtain the defendant's release on bail. This claim is not true. Under the Illinois 10% Plan, misdemeanors would be handled in the same way as they are now in the City Courts. Bond is automatically set at $250 and the defendant is able to post bond with the court at any time he wishes. In the case of felonies, the practice would remain the same, with the bond being set by the judge. The only difference is that after the bond has been set, the defendant would post the bond with the clerk. This form of bail results in quicker release since the defendant posts 10% with the court, rather than spending time locating a bondsman, a cosigner and collateral.

5. Defendants would forfeit in large numbers if the 10% Plan is implemented. This argument is fallacious. First, the forfeiture rate is already astronomical. There is no reason for the bondsman to reduce the forfeiture rate since he suffers no economic penalty for a forfeiture. Consequently, a change to reduce that rate is in order. Secondly, this contention is disproved by examining statistics for the State of Illinois and the city of Philadelphia,both of which implemented public bonding. Philadelphia has lower forfeiture rates than Illinois. This can be attributed to Philadelphia's greater effort to notify defendants of their court appearances and to screen them prior to court appearances.

In a period from January to March of 1974, the Philadelphia program had a failure to appear rate of 7.4%. Failure to appear simply means that the defendant missed a court appearance, for a variety of reasons, including non-deliberate reasons. The willful forfeiture rate for the same period was 5.8%. The fugitive rate for the defendants who had not been apprehended was 2.3%. These figures are very similar to those of previous years of operation in the program.

Despite dire predictions to the contrary, the forfeiture rate for Chicago did not change substantially with the implementation of public bonding. Table 41 displays the forfeiture rates in Chicago from 1962 to 1971.

Table 41

Forfeiture Rates for Bondsmen and Public Bonding

Year	Bondsman Forfeiture Rate	Public Bonding Forfeiture Rate
1962	10%	--
1964	11%	7%
1965	--	10%
1966	--	11%
1967	--	10%
1968	--	10%
1969	--	13%
1970	--	13%
1971	--	13%
1972	--	14%

According to Judge Pete Bakakos, the chief administrative judge of the city of Chicago, the failure to appear rate for Chicago is currently 14%. Figures from 1965 through 1974 show the failure to appear rate ranged between 10 and 14%. In 1964, the one year when both the 10% Plan and bail bondsmen were able to operate, the forfeiture rate for the 10% Plan was 7% and the rate for the bail bondsmen was 11%. In evaluating Chicago's experience with the 10% Plan, a recent study used these figures as evidence that forfeiture rates did not rise dramatically with the implementation of the 10% Plan, but remained relatively stable. In the original implementation, Charles Bowman, the author of the plan, stated that the "Joint Committee felt that if we could devise a system which would result in initial forfeitures of no more than 13 per cent..., it would not be substantially different from the actual experience of other jurisdictions throughout the nation." Note that this compares with the Memphis rate of 17%.

Another comparison between a 10% Plan and bail bondsmen was made in the U.S. District Court in Washington, D.C. In this court the judge is allowed to determine whether the 10% Plan or a bail bondsman will be used. A study found that there was a failure to appear rate of 3.1% in the 10% cases, while the failure to appear rate for the bail bond cases was 9.6%.

One has to conclude on the basis of these findings that the Illinois 10% Plan does not lead to substantial increases in the failure to appear rate. In the case of the city of Philadelphia, it also appears that the forfeiture rate is not substantially increased. The dire predictions of the bail bondsmen that criminals would be invading the city of Philadelphia to take advantage of the bail bond program and that the number of failure to appears and willful forfeitures would increase substantially have not been proven to be true.

6. Under the Illinois 10% Plan the bail bondsman would still remain in business. He would be able to put up the 10% without having the risk of making sure a client appears, as with the traditional system. This argument is fallacious. First of all, bail bondsmen go out of business in 10% cities. Given the choice between paying a bondsman 10% and not receiving that money back, or posting 10% with the court and getting that back, the defendant would always choose posting 10% with the court. In addition, the public system requires no collateral or cosigner. If these differences are clearly explained to the defendant, there should be very few cases in which a bail bondsman is used. Secondly, Illinois law states that only the defendant can make the deposit. The administrative judge does not allow bondsmen to make the deposit. The clerks must return the deposit by check payable to the defendant. Because of these regulations, there have been virtually no commercial bail bonds written in Illinois since 1965.

7. In the case of a forfeiture, only 10% of the bond would be forfeited. Where would the court get the other 90%? The opponents of the 10% Plan seem abnormally concerned about the court's obtaining the remaining 90% of the final judgement. First of all, the purpose of bail is not to make a profit, but to ensure that the defendant appears for his trial. It is assumed under the present system that the bail bondsmen quickly pay the forfeiture to the court when their client does not appear. We have demonstrated in Chapter IV that this is not true. The court gives the bail bond company at least one full term of court before requiring the final forfeiture. In many cases continuances are granted routinely. And in many cases where the defendant is at fault, costs are assessed rather than the forfeiture collected. Final judgements were collected in only 4% of the cases in the Criminal Court where defendants failed to appear for trial.

8. The bondsman is required to keep forfeitures low. This objection assumes that the bail bondsman does a good job of supervising his clients and making sure that they appear for their court dates. This is not the case. Chapter IV demonstrates that bondsmen do not monitor their clients.

Further, when comparing the felony percentages for Pre-Trial Release and the bail bondsmen, we find that bail bondsmen have a forfeiture rate of 19% while Pre-Trial Release has 7%. The reason for this difference is that Pre-Trial Release actively monitors their clients requiring them to phone in to the office on a regular basis. In most cases, the bail bondsmen do not have contact with the defendant again until a subsequent arrest or if the defendant must renew the bond for a second year. Therefore, the argument can be dispensed with by showing that the bail bondsmen have not done a good job in supervising their clients.

9. Even if forfeitures stay the same, the county would have to create a larger Fugitive Squad to track down the people who are forfeiting. This objection assumes that the bail bondsmen make a substantial effort to track down defendants who forfeited. This is not true. First of all, the bail bondsman has no motivation to expend money tracking down fugitives since he has a secured bond with a cosigner which comes due to him in the case of a final judgement. Secondly, some of the officials we interviewed indicated that the bail bondsmen in Shelby County are making no great effort to track down fugitives. Rather, it was stated that the Sheriff's Fugitive Squad did most of the tracking down. Further evidence that the amount of work required in tracking down fugitives would not increase is that the fugitive rate did not increase in cities using the 10% Plan. In discussing the Illinois 10% Plan in Chicago, Judge Bakakos said that there was no increase in the retrieving done by law enforcement officials. There should be an increased effort currently in Shelby County to apprehend defendants who have not appeared for their trials. This procedure should be undertaken whether or not the Illinois 10% Plan is implemented.

10. The bondsmen provide free services to the county. The argument is that bondsmen monitor clients and make sure they appear for their trials; that they do most of the tracking of defendants who do not appear for their trial dates and that they have to pay the expense of bringing an individual back to Memphis if he is apprehended in another jurisdiction.

The latter point is true. If an individual is apprehended in another state, the deputies bring him back and the bail bondsmen must pay the cost. However, this cost is passed on to either the defendant or the cosigner since the bail bond contract reads that the cosigner must pay all expenses incurred by the bail bondsman. Therefore, the innocent party (the cosigner) rather than the bail bondsman must pay for the retrieval. Admittedly, the 10% Plan does not have this financial aspect built into it. We questioned the Sheriff's Fugitive Squad to find out how many cases a year they had to retrieve and the cost of these cases. We found that the Fugitive Squad of Shelby County had to retrieve a total of 170 defendants. We could not obtain the total cost that the County charges the bondsmen for these defendants. However, we randomly sampled 10 cases and used the figure to estimate the total expenses for one year. This produced a figure of $70,262. This money would not be recoverable under the Illinois 10% Plan. However, we show below that other sources of fees actually provide an excess of financial benefits over costs.

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11. If the 10% Plan is implemented, there would be an influx of criminals. The elimination of the bail bondsmen should reduce the amount of crime. There have been suggestions that bail bondsmen have been implicated in crimes such as carrying a pistol, kidnapping, exotrtion and forgery. An article recently appeared in the local newspaper in which a defendant stated that the reason he led a life of crime was to be able to raise the necessary money to pay the bail bondsman. Eliminating the bail bondsman from the system will eliminate this source of motivation for committing crimes. In Philadelphia, bail bondsman Moe Fisher commented in a newspaper article in the Philadelphia Enquirer that "there will be an influx of criminals coming to Philadelphia because they will know how easy it is to get out on bail without coming to trial." Abraham Needleman, a lawyer for four national surety companies, was also quoted in the Evening Bulletin as saying the city would become a haven for the professional traveling criminal. However, the President of the Board of Judges of Philadelphia, D. Donald Jamieson, referred to the 10% Plan as a major step forward in court administration. He commented that the dire predictions of the bail bondsmen would not hold true once the system was implemented. The statistics we have cited on the Philadelphia program clearly show that the forfeiture rates are exceptionally low for the 10% Plan. Any city which can get forfeiture rates that low must be operating a model program.

12. The implementation of a 10% Plan would mean that the bonds for individual cases increase in size. This argument is apparently true. The judges apparently feel very protective of society. A recent study shows that both misdemeanor and felony bonds increased in two Illinois cities -- Champaign-Urbana and Peoria. For example, the percentage of felony bonds in amounts of greater than $2,999 increased from 24% to 41% in the former city and from 28% to 57% in the latter city. Bonds stayed about the same in Chicago. However, the fact that the amount of bail increased did not have impact upon the defendant's ability to post bail. Between 1962 and 1971 in Champaign-Urbana custody rates were reduced from 43% to 19%. In Peoria the same rate changed from 27% to 22%. Custody rates for Chicago changed from 60% to 30%.

13. The implementation of the Illinois 10% Plan would cost the county an immense amount of money. Rather than costing the city or the county money the Illinois 10% Plan would bring in additional revenue. We contend that for the plan to work at its maximum efficiency some of this revenue should be sunk back into the administration of the program. This means that the county and city could add some personnel who notify and occasionally supervise some defendants. The Illinois 10% Plan can be implemented without these aids. However, we feel that it would be helpful to add personnel to the Fugitive Squad, the Warrant Squad, the Clerks Office and Pre-Trial Release Agency. The salaries for this personnel would not exceed the total revenue incoming from the Illinois 10% Plan.

Let us briefly assess the revenue produced by the Illinois 10% Plan. The revenue would come from a number of sources. First of all, the courts would retain 1% of the total bond as an administrative fee for handling the defendant's bond. Secondly, when there is a forfeiture, the courts may retain the entire 10% posted with the court. We assume that under the 10%

Plan the courts would be willing and able to make more final judgements. We expect that in all cases where the forfeiture is deliberate a final judgement would be taken. Thirdly, the county and the city would still have the option of recovering the remaining 90% of the forfeited bond. They can do this by filing suit in civil court to obtain the outstanding amount. This will be a difficult amount of money to obtain and therefore we conservatively estimate a 10% recovery rate. We expect that many defendants who have forfeited will eventually be in jail or financially unable to pay the forfeited amount. Fouthly, the county and the city would hold the 10% deposit for the defendants during the period of their trial. This 10% deposit can be invested in long term securities. The number of deposits will never decrease, but in fact will increase as the number of defendants in the criminal justice system increase. Therefore, the number of incoming deposits will always at least equal the amount of deposits being withdrawn by the defendants.

We computed the income from the 10% Plan for the Shelby County Criminal Court. In examining current records, we found that $3,800,000 in bonds were written in Criminal Court for 1974. We assumed the 10% deliberate forfeiture rate found in this study for bail bond cases. The income is as follows:

Administrative Fee (1% of $3,800,000)	$38,000
Final Judgement on 10% Deposits (10% of $380,000)	$38,000
Recovery of Remaining 90% of Final Judgement (The remaining 90% is $342,000. We have no way of knowing the recovery potential. We will assume 25%.)	$85,000
County Investment (The 10% deposit will produce $380,000 which can be invested. This amount never increases/ decreases since incoming deposits will equal or exceed returning deposits. This sum can be invested in long term securities. We assume a rate of 7% of $380,000.)	$26,000

It must be remembered that these figures are only estimates. Depending upon the way in which the Illinois Plan is structured, a considerable amount of revenue can be generated. It is our suggestion that this incoming revenue will compensate the county for any costs it might incur in the administration of the program. Furthermore, we have not calculated the incoming fees for misdemeanors and felonies which are not bound over. It is our suggestion that perhaps all of these fees for both felonies and misdemeanors should be turned over to the County. In turn, the County should be totally responsible for the administration of the program, including a system of court notification, screening of felonies and misdemeanors, and the apprehension of those defendants who are fugitives.

CHAPTER VI

FORFEITURES AND REARREST

Forfeiture Rate

The forfeiture rate is an especially important statistic both to the courts and to other agencies in the criminal justice system. A high forfeiture rate, first of all, indicates that the judges and other officials responsible for deciding who should be released may be making decisions either haphazardly or using criteria which are not good predictors of a defendant's propensity to forfeit. Secondly, it may be that the system has not made adequate provisions for notifying and supervising the defendant while he is on bail. Perhaps, the defendant simply does not know about his court date, or if he reaches the court, becomes so thoroughly confused that he is unable to locate the place of his trial. This fear factor operates to drive off the defendant who goes home in utter fear and desperation. Thus one of the reasons for a high forfeiture rate may well be the confusion in the court room or the lack of notification procedure on the part of the court personnel. Thirdly, the forfeiture rate may be used to discredit the bail practices of judges who release defendants on low bonds. The media can use these statistics, though they are more apt to use rearrest while on bond to discredit judges and to put pressure on the judiciary to set higher bond, and therefore keep defendants incarcerated during the pre-trial period.

A forfeiture has very serious consequences to the judicial system. First of all, it totally disrupts a court system which has enough difficulty managing a docket with a backlog of cases. For example, a defendant who forfeits when a court appearance has been scheduled for him has an attorney, a judge and a prosecutor, witnesses, and policemen who are to be at the trial. Therefore the cost to both the state and the private sector is great when the defendant does not appear for trial, even though it was by mistake. Therefore we argue that the failure to appear, even though it may not be deliberate, costs the criminal justice system a great deal in efficiency and should be avoided at all costs. On the other hand, the willful or deliberate forfeiture is a direct attempt by a defendant to escape the consequences of the law. In some ways we view the deliberate forfeiture as much more serious than the crimes which the defendants initially committed. We had the opportunity to witness one of the very few cases where the bail jumping statute was used against a defendant. The defendant was given six months in jail for his crime and eleven months, twenty-nine days in jail for bail jumping. We view this as a healthy sign because of the very serious consequences of the deliberate forfeiture.

The Data. We examined the percentage of total forfeiture for both felonies and misdemeanors. We found the forfeiture rate for all felony cases to 17%, while the misdemeanor forfeiture rate was 13%. How many of these forfeitures were deliberate? This was a very difficult statistic to determine. It has been estimated

by some officials that the actual number of deliberate forfeitures in Memphis is approximately one half of the total number of forfeitures. The 50% figure seems to be generally relied upon by criminal justice officials across the country. We tested this maxim by examining the felony forfeitures. An examination of dockets and jackets for felonies revealed the information in Table 42.

Table 42

Felony Forfeiture Rate, by Category

	Forfeiture Rate
Forfeiture set aside with no cost	3%
Forfeiture set aside with cost	5%
Forfeiture set aside with no indication of cost	1%
Defendant at large for one term	3%
Final judgement taken	3%
No disposition	2%
Total Forfeiture Percentage =	17%
N =	645

The total forfeiture rate is 17%, defined as failure to appear for a trial date. As we examine Table 42 we assume that a defendant has his forfeiture set aside without cost, it was probably not a deliberate forfeiture. There is, however, no objective way in which the validity of this assumption can be tested. A deliberate forfeiture is defined as a case in which the forfeiture set aside with cost, the defendant was at large for at least one term, or a final judgement was taken. In examining these figures, we calculated an estimated deliberate forfeiture rate of 11%

We also tried to define a fugitive rate by listing those who were fugitives for at least one court term. When a forfeiture is declared in Criminal Court, the bail bond company or the defendant is given one full court term before a final judgement is taken. Therefore we computed a fugitive rate from the defendants in Criminal Court who had either a final judgement declared or had their case continued to one full court term plus all of the final judgements in City Court. This produced a total fugitive rate of 6%. In Chapter IV we criticized the time given the bondsmen by the Criminal Court to return fugitives. Of the 81 forfeitures in Criminal Court, 18 or 22% of forfeitures were at large for at least one term of court. Only four cases or 5% of Criminal Court forfeitures resulted in a final judgement. This compared

to 45% of the cases in the City which came to final judgement.

What do these statistics mean? First of all we would like to compare these figures from Memphis with figures from around the country. However, this cannot be done since the ways in which various jurisdictions compute the forfeiture differs. For example, there are some cities that keep a record of which forfeiture is deliberate or not. In Memphis we have no such record and therefore we had to make assumptions and estimates. There are cities which define the fugitive rate in slightly different terms. If the defendant must be arrested or pursued by either a warrant or a fugitive squad, some cities consider that individual fugitive and compute him in the fugitive rate. As we have seen in Memphis we have described our fugitive rate as one where the case has gone to the final judgement stage or if the defendant is a fugitive for at least one term. Therefore comparisons with other cities is highly difficult because the forfeiture rate as computed in different jurisdictions tends to differ according to the procedure used by the local officials.

Does this mean that our definitions of forfeiture is useless and inaccurate? No, it does not mean that at all. In fact these figures were gathered very systematically and tell us a great deal about the level of forfeiture taking place in the community and the predictors of that forfeiture rate. If we keep in mind how the figures were gathered and the assumptions made, then in fact we make comparisons between various subgroups of cases. For example, if we compare Pre-Trial Release's forfeiture rates to bail bond forfeiture rates, we have an unusually accurate statistic as to how good a job each are doing. The rates for both the bail bondsmen and Pre-Trial Release were computed in exactly the same way from exactly the same data. Therefore, inaccuracy of definition is <u>not</u> a problem.

An Explanation of the Forfeiture Rate

In this section we will examine and evaluate the reasons put forth as explanations of the forfeiture rate. Among the reasons examined include judicial responsibility, the length of time it requires to dispose of a case, the lack of an effective system of notification, the criteria used by judges in setting bail and the lack of use of the bail jumping statutes.

<u>Is the Judge to Blame?</u> Unfortunately many times the forfeiture rate and the rearrest rate are used to force the judges to be tougher in setting bail. This report is <u>not</u> critical of the judges either in City Court or Criminal Court in the size of bonds they set. In our interview, we found them concerned and preoccupied with the impact of releasing a defendant back into the community. Further, we do not feel that the judge has any real control over the bail system. Except in capital cases, it is a statutory requirement that a defendant has the right to a reasonable bail. Therefore by law, a judge cannot refuse to set bail except in capital cases. Many have suggested that judges should be more prosecutor-oriented and that this would reduce the forfeiture rate. We discussed this hypothesis by rating judges according to their prosecution orientation. The scale in Table 43 shows judge A as the most prosecution-oriented, while judge F is the least prosecution-oriented.

Table 43

Forfeiture Rate for Judges, as Measured by Prosecution Orientation

	Judge					
	A	B	C	D	E	F
Forfeiture Rate	21%	8%	21%	17%	7%	18%

The data suggests that whether the judge is prosecution-oriented has very little to do with the forfeiture rate. In fact, the highest forfeiture rate is by the judge who we rated to be the most prosecution-oriented of the Criminal Court judges. We did find one crucial variable however. It seemed to us that the judge who displayed the greatest degree of pride in the way in which he monitored the bail bondsmen and their forfeitures had the lowest forfeiture rate. Generally, the figures suggest to us that the forfeiture rate for the judges does vary some, but we are not able to explain the variations.

Is the time required to hear a case to blame? We believe that the answer to this question is yes. For example, there are considerably less forfeitures in City Court than in Criminal Court even though there were more felony defendants in the City Court. City Court was not more efficient. These factors would lead us to expect a much higher forfeiture rate in the City Court than in the Criminal Court. However, this was not the case. We found the City Court had 27% of the total felony forfeitures, while the Criminal Court had 73% of the total felony forfeitures. A key difference between the two courts is that cases in the Criminal Court take considerably longer to complete than the cases in the City Court. We examined the forfeitures to determine at what period in the time after arrest and bound over date that the defendant forfeited. The findings are summarized in Table 44. By examining the figures for both arrest to forfeiture and bound over to forfeiture, we find an extremely high number of cases which resulted in forfeitures after 90 days. For example, using the computation of arrest to forfeiture in Criminal Court we find that 59% of the forfeitures took place after 90 days. In the case of the bound over date to forfeiture, 51% of the forfeitures took place after 90 days. There is considerable discussion at the present time in both national and Tennessee criminal justice circles that a statute should be enacted requiring that defendants in criminal cases be tried within 90 days. The Shelby County Grand Jury recently recommended a speedy trial for habitual criminals and defendants charged with major crimes within 30 to 60 days after indictment. The Grand Jury suggested that a speedy trial could not only deter crime while on bail, but it would also relieve overcrowding in the jails. The report also indicated that there was a backlog of 4,212 cases awaiting trial on December 31, 1974. This was an increase of 238 cases over the previous year.

Table 44

Number of Days to Forfeiture in Criminal Court

Number of days	Percent of all defendants forfeiting in the period: From arrest to forfeiture	From bound over date to forfeiture
1 to 30 days	5%	6%
31 to 60 days	12%	19%
61 to 90 days	24%	24%
91 to 120 days	9%	4%
121 to 180 days	15%	16%
181 to 270 days	18%	20%
271 to 365 days	12%	5%
365 days or above	5%	6%
Per cent =	100%	100%
N =	81	81

Examining the figures for Memphis, if the 90 day from arrest requirement were put into effect, forfeitures would be reduced by 59%. If the 90 day period was computed from "bound over" date, the forfeitures would be reduced by 51%. A trial within 90 days would require some considerable amount of change in the procedures and the number of courts in Memphis and Shelby County. For the same reason, there would be some savings in efficiency since the forfeiture rate would have been decreased a considerable amount. More importantly, justice would be more certain since defendants could not escape the consequences of their actions by "jumping bail." Therefore one of the major ways in which forfeitures can be reduced is by decreasing the amount of time between the time of arrest and the final disposition of the case. Our figures tend to prove this conclusively.

Is the notification system to blame? In Criminal Court the clerk sends out a notification form for the first appearance of the defendant. For each of the subsequent continuances, the defendant and his attorney are responsible for making sure the defendant knows his court date. There is no such notification in the City Courts. One way to determine if more extensive notification will reduce forfeitures is to compare the Pre-Trial Release cases, where there is notification, with the remainder of the cases where notifica-

tion does not take place. Pre-Trial Release sends out a form to the defendant at least one week before his court appearance indicating the date of his scheduled appearance and the time and division at which he is to appear. This procedure must have some impact since Pre-Trial Release has a forfeiture rate of 7% as opposed to the 18% forfeiture rate for the remainder of the felony cases in the court. We think that one of the reasons that Pre-Trial Release defendants appear in greater percentages is because of this notification procedure. It is our argument that if notification were made before every scheduled court appearance, the forfeiture rate might be reduced for those who would not deliberately forfeit. This would require that the clerk keep more extensive and up to date files containing addresses and phone numbers of the defendants. It would also increase the work load of the clerk's office.

Is the criteria used by the judge to blame? In interviewing judges, we found that the severity of the crime is the most important factor in setting bail. The commission of a felony against person is prima facia evidence to the court that bail should be set at a high level. Since the defendant charged with a serious crime is more apt to be sentenced for a long period of time, it is assumed that he will also have a greater propensity to flee the jurisdiction. It is uncritically accepted that high money bond will prevent defendants charged with crimes against person from forfeiting. We will examine this assumption to see if defendants charged with more serious crimes do forfeit in larger percentages, and if defendants with high bail also forfeit in lower percentages. We evaluated these arguments by examining the relationship between the seriousness of the charge, the bail size and the forfeiture rate. We used eight categories of charges in this study ranging from the most serious to the least serious. These changes are ranked and described below.

1. Death - includes such charges as murder and manslaughter.
2. Armed Robbery
3. Sex - includes such charges as rape.
4. Assault - includes all assault to murder cases.
5. Burglary - includes all burgulary charges.
6. Property - includes non-burgulary property crimes such as forgery.
7. Drug charges - not including possession charges.
8. Misdemeanors - includes all misdemeanor charges.

We will first examine the assumption that the severity of the crime is related to the forfeiture rate. This is examined in Table 45. In Table 45 we must be cautious about two sets of figures. The figures for sex and drug charges have a relatively small number of cases. Therefore the results have limited validity. The number of cases for the other categories are substantial so that we can make valid inferences. We will, however, discuss the figures for both sex, and for drug cases with this limitation in mind.

Table 45

Severity of Charge and Forfeiture Rate

	Forfeiture Percentage	N =
Death	15%	33
Armed Robbery	4%	53
Sex	21%	19
Assault	2%	41
Burglary	18%	370
Property	25%	104
Drug	13%	16
Misdemeanors	14%	681

Examination of Table 45 clearly indicates that the operating assumption that severity of crime is related to forfeiture is totally fallacious. The largest forfeiture or failure to appear rates, excluding sex and drugs, are for burglary and property crimes. Defendants charged with property crimes such as forgery fail to appear in rates of one out of four persons. On the other hand, when examining the violent felonies excluding sex, we find that the forfeiture rate ranges from 3% to 15%. The forfeiture rate for assault and armed robbery are 2% and 4%, while the rate for cases including some form of death is 15%. The addage expressed by one of the Pre-Trial Release investigators seems to hold true: "Give me an armed robber any day and I'll make sure he appears for his trial, but watch out for those check forgers."

The percentages for armed robbery and assault, which are extremely low, necessitate further explanation. We suspect that assault is a crime committed by a friend against another friend or a family member against another family member. These are crimes of passion committed in many cases by persons with strong roots in the community. So, there is no reason or willingness on the part of these defendants to leave the community to escape consequences of their action. We find the figure of 4% for armed robbery much more difficult to explain. There may be two explanations for this phenomena. The first explanation may be an economic one. The armed robber is attempting to provide for his family in the best way he knows. He usually has clear family roots in the community and sees little reason to leave the community. The second explanation is that the armed robber may feel that his charge is of sufficient gravity that if he leaves the jurisdiction the law will pursue him with all

the resources at its disposal. Therefore, he may feel that his ability to run is severely limited by law enforcement activities. We have no data to back up these arguments for they are only possible logical explanations for this very low forfeiture rate for armed robbers.

We next examined the forfeiture rate for misdemeanors, the least serious criminal charges. The forfeiture rate for misdemeanors was 14%. We have no way of knowing if this 14% is in any way comparable to the failure to appear rate for felonies. It must be remembered, first of all, that the felony failure to appear rate is computed from information from two courts, the Criminal Court and the City Court. The defendant who is bound over had the possibility of forfeiting in either the City or Criminal Court. Secondly, most misdemeanors are disposed of in a much shorter period of time than are the felonies. Thus, using a time perspective we can conclude that there is less propensity for a misdemeanor to forfeit. A third possible explanation is that there are considerably more middle class defendants with strong family and community ties who commit misdemeanors as opposed to felonies. The DWI (driving while intoxicated) is the classic white collar, middle class type of crime. This type of individual will not run to escape the wrath of the charge and he is able to hire an attorney who more carefully prepares his case. This defendant makes sure that he meets his court dates and he clearly understands the consequences of not appearing for his trial. To test this latter argument we took out the cases which might involve a greater percentage of middle class defendants. Specifically we took out the DWI cases and compared the forfeiture percentage for DWI's to the rest of the misdemeanors. This information is displayed in Table 46.

Table 46

Misdemeanor Forfeiture Rate

	DWI	Non-DWI	All Misdemeanors
Forfeiture Percentage	17%	13%	14%
N =	192	489	681

The figures in Table 46 discredit the hypothesis that DWI forfeiture rates are lower than those for other charges. In fact, we found the DWI rate to be 17% while the non-DWI rate was 13%.

A final way to discredit the assumption that charge is related to forfeiture is to compare the rates for felonies against person, felonies non person and misdemeanors. These are displayed in Table 47.

Table 47

Severity of Charge and Forfeiture Rate

	Felony Person	Felony Non Person	Misdemeanor
Forfeiture Percentage	8%	20%	14%
N =	146	498	681

Table 47 offers dramatic evidence that less serious felonies have a substantially higher forfeiture rate than more serious felonies. Misdemeanors also have a higher rate than felony against person. However, the misdemeanor rate is deceptively low. Earlier we demonstrated that felonies requiring longer judicial proceedings have substantially higher forfeiture rates. Since misdemeanors are disposed of in a shorter period of time, the forfeiture rate, in a comparative context, is more substantial than it appears. There is also an unstated assumption that the higher the bond, the less apt the defendant is to forfeit. We tested this assumption by examining the felony cases which involve money bond. The data is presented in Table 48. We examined this question because there is concern by both the media and law enforcement officials that bonds are too low. The relationship between bond size and forfeiture rate is examined in Table 48.

Table 48

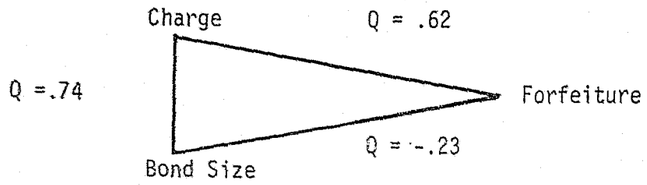
Bond Size and Forfeiture Rate

	$2-$500	$501-$999	$1000-$2500	$2501-$5000	$5001 or more
Forfeiture Rate	22%	27%	17%	13%	5%
N=	184	59	157	38	22

Table 48 shows that as the bail increases, the percentage of forfeitures decreases. For example, the forfeiture rate is 27% for $501-$999 category, while it is 13% for the $2501-$5000 category. This data and the previous data on seriousness of charge presents a crucial question. The prior data suggests that defendants with more serious charges are less apt to forfeit. Defendants with higher bonds are also less apt to forfeit. What are the judges to do? Are they to lower the bond of serious offenders because they forfeit less? Or are they to increase the bond because defendants with higher bond forfeit in lower numbers? The problem in this analysis is the close relationship of the two variables since judges set higher bonds for more severe crimes. Is the severity of charge related to the forfeiture rate because judges set higher bonds for these cases? This presents a "classic" problem in multi-variate modeling.

Table 49

Model of Charge, Bond Size and Forfeiture



For statistical reasons (sample size) the data for Table 49 has been dichotomized for both charge and bond size. The data for charge has been separated on person and non person felonies. The data on bond has been separated into below $1000 and $1000 and above. Yule's Q, a correlational statistic for dichotomas tables was computed for each of the variables. The Q values show that defendants charged with person felonies are less apt to forfeit, while defendants with large bonds are less apt to forfeit. However, the size of the correlations indicates that the charge variable is a more important explanatory variable. Further, we controlled for charge and examined the relationship between bail and forfeiture. For person charges the correlation was +.10, while for non person charges the correlation was -.10. Thus, the relationship between bail and forfeiture was reduced further. When examining the relationship between charge and forfeiture, controlling for bail, the magnitude of the relationship between charge and forfeiture was not disturbed.

Thus, in a limited way, we attempted to define whether charge or bail size was the controlling factor on forfeiture. It shows that bond size has little to do with the forfeiture rate. Setting bonds at high levels, the data suggests, will not reduce the forfeiture rate. Given the liberties we took in creating dichotomas variables, these results should be used with care.

What about other criteria such as the defendants prior record and his integration into the community? Are these predictors of the forfeiture rate? We were not able to get at this information because of the additional difficulty and time restrictions. This is unfortunate because our findings could have given the judges a further indication as to what variable to use in making their releases. It is hoped that at some future time that the funds can be invested to additionally examine these criteria. We would suggest a study in which the researchers obtain information about defendants at the time they are charged. This would allow the researcher to get extensive personal information which could further be used in defining the predictors of forfeitures (and rearrests).

Is The Forfeiture Rate Caused By The Lack Of Use Of The Bail Jumping Statute?

We calculated that approximately 11% of the forfeitures are deliberate, while 6% were fugitives. It is possible that the imposition of the bail jumping statutes might deter forfeitures. According to these statutes, if a defendant jumps bail while being charged with a misdemeanor he can be fined up to $50 and one year imprisonment. In the case of a felony, he can be imprisoned for more than one year but less than 5 years. As far as we can tell with interviews, the bail

jumping statutes are not invoked against defendants who do not appear for court dates. The current Criminal Court dockets had 6 defendants charged with bail jumping. Furthermore, one informant told us that bail jumping will usually run concurrent with the other sentences. In fact, as we described, there is seldom a penalty for either the bail bondsman or the defendant if he does not appear for his date in court.

Generally, the Federal Court system relies on the threat of using bail jumping penalties rather than cash bond to deter forfeitures. Under the federal system, little actual cash money changes hands between the defendant and the bail bondsman or the court. Most defendants are released on O.R. When released, the defendants sign a form which requires him to show up for trial or face the fine of $5,000 and two to five years in jail. If there is some doubt about the possibility of the defendant showing up for trial, the judge may require a secured bond. The bond may be met in three ways. The defendant or someone else may put up the cash; an amount of property (with a price two times the amount of bond) may be put up to cover the bond; or the defendant may secure release through a bail bondsman. The Treasury sends a list of bail bondsmen who can write a federal bond. However, according to the high clerk of the local Federal Court, there is little bail bond activity since most defendants are released on O.R. If a defendant does jump bond, a warrant is issued for his arrest by the U.S. Marshall. It is this threat of pursuing an individual with the full resources of the federal government and the use of the stiff penalties of the bail jumping statutes, which the federal people feel deters bail jumping in federal court.

Whether or not the bail jumping statute would by itself deter the great amount of bail jumping taking place in Memphis and Shelby County is highly problematic. However, with some of the other reforms we have suggested, such as a more extensive notification system and a limitation as to the time a defendant can be out on bond before his trial, we feel that bail jumping could be reduced substantially.

Rearrest Rates

Introduction. The rearrest rate is of great concern to both the public and officials in the criminal justice system. By definition, a rearrest rate is the amount of crime committed by defendants out on bail. The rearrest rate in Memphis was computed from statistics of the Memphis Police Department. Three categories of crime were used in computing the rearrest rate: felonies against person, felonies non person, and misdemeanors and ordinance violations. Ordinance violations were included because Police Department statistics do not clearly indicate whether a defendant was arrested for an ordinance violation or a misdemeanor. We did not count all arrests in our analysis. Only when a defendant was actually charged by the Police Department was he included as a rearrest statistic. We found an inordinate number of cases where suspects were arrested for investigation and held for a day or two and released. To have counted these suspects as rearrests would have been seriously inaccurate. Furthermore, in computing the rearrest statistics we counted a defendant as one rearrest even though he may have been rearrested on a number of different occasions. However, we did make provision for the number of times arrested in our data.

Our data does not depict the total amount of crime being committed by defendants on bail. We have computed rearrests, not actual crime rates which are unknown. However, the rearrests do provide a surrogate or an insight into the actual amount of crime. Secondly rearrests were computed from Memphis Police Department statistics; therefore our rearrest figures are only for crimes committed in the jurisdiction of the Memphis Police Department. We only have the rearrest rates for felonies.

How high is the rearrest rate in Memphis? First, of the 645 felons in our study, approximately 137 were rearrested on another charge during their bail period. This constitutes a rearrest rate of 21%. We next examined the most serious crime for which the defendant had been rearrested. We found that 5% had been rearrested for felonies against person, 57% for non person felonies, whiel 38% had been charged with misdemeanors and ordinance violations. We then examined the number of different occasions a suspect had been rearrested. For example, if a suspect was charged with three different crimes or three different counts on one occasion, we counted that as one rearrest. However, if that suspect was arrested and charged in two different periods of time (for example, one month apart) we would count those as two separate rearrests. The data showed that 60% of the rearrests were for one charge, 27% were for two charges, while 13% were for three or more charges. We found a maximum of 8 rearrests on 2 occasions.

What does this data mean? First of all, it means that one out of five defendants on bond are rearrested for another crime. More than likely this crime will not be a felony against person, but will be a non person felony. For example, we found 57% of the defendants being rearrested for this latter charge. We found a smaller number of defendants being rearrested for misdemeanors and ordinance violations than for felony non person. The largest percentage of individuals rearrested were rearrested on one occasion. 87% of the cases were for two or less rearrests. We had to interpret these figures generally. Although the total rearrest rate of 21% is abnormally high, the low rate for felony against person surprised us. For example, in the original sample, felonies against person constitute approximately 23% of all felonies. We find that only 5% of all defendants rearrested are charged with felonies against person and only 8% of the total felony rearrests were felonies against person. This figure seems abnormally low to us, but it constitutes our one very positive finding in the area of rearrests. Furthermore, if we note the number of times an individual was rearrested we find that a large percentage were rearrested on one occasion only.

How do these figures compare with other cities? A comparison is difficult since methods of determining rearrest rates vary. Differing opinions concerning methodology and proper interpretation of evidence have created a statistical morass. However, we will present some of the findings to the reader to be used cautiously. In a national survey, Paul Wice estimated that the nationwide forfeiture rate was approximately 7%. However, he disputed this figure because it included a number of small and medium sized cities where the rearrest rate was especially low; therefore, his figures are not helpful for cities the size of Memphis. In Wasington, D.C. prior to the passage of the preventive detention act, a crime commission found that 7.4% of all defendants were charged with a felony while on bond. A U.S. Attorney's office recomputed the statistics at a later time and found the percentage to be approximately the same. The Police Department was skeptical of these figures and computed its own finding the forfeiture rate to be as high as 35%. These latter figures were discredited because of the way in which they were gathered. For example, if a defendant was rearrested three times he was counted three times in the rearrest statistics as though he had been three different individuals. This seriously inflated the percentage of rearrest. In an attempt to clarify this statistical morass, the Department of Justice commissioned a survey in the District of Columbia which found that almost 12% of the defendants committed felonies while awaiting trial. A later study was done in Indianapolis which found the rearrest rate to be 11%, very similar to the latest Washington, D.C. study.

How do these figures compare with Memphis? The Memphis rearrest rate is approximately 13% when computed in approximately the same way as these other studies; however, this figure includes only rearrest for felonies. This compares to 11% for the last two studies which are viewed as the most reputable. Thus we would say that the rearrest rate in Memphis is only very slightly higher than it is in Washington, D.C.

An Explanation of Rearrests

In this section we examine and evaluate some of the reasons put forth as explanations for the rearrest rate. Among the reasons examined include judicial responsibility, criteria used by judges, length of time it takes to dispose of a charge and statutory change.

Is the judge to blame? In examining the newspapers during the period of our study, we frequently found editorials and new articles critical of defendants out on bond committing crimes. We do not think that the overt or implied criticism of the judges for releasing individuals is entirely fair. First, the judge is responsible for setting reasonable bail. Since the bail bond system is designed so that the individual who has the money can pay, the judges have limited control over retaining custody of a defendant. It is probably fair to say that there are no variables that predict who will commit a crime while on bail or how serious the crime will be. For example, we found that the rearrest rate is not affected by the prosecution orientation of the judge. Further, the rearrest rates of 13% for felonies and 5% for felonies against person lead us to believe that the media use some sensational cases to pressure judges to set higher bail as a form of punishment. Our interviews with judges showed them to be a highly conscientious group who are especially concerned about the impact of rearrest on their constituencies. The judges do not want dangerous criminals roaming the streets and so take every possible precaution to remove the most dangerous from the public. However, one judge did point out that a defendant is presumed innocent until proven guilty by a court of law. To require excessive bail of all defendants would clearly be arbitrary and inequitable. Since 4 out of 5 defendants are not rearrested on another charge, and almost 9 out of 10 are not rearrested on a felony, and 99 out of every 100 are not rearrested on a felony against person, we believe that the concern about the rearrest rate is probably too great. We suggest that in a few particular cases which involve sensational crimes the fact that the defendant is on bond is used unfairly to

condemn all defendants on bond. We know that the rearrest rate is a serious matter; however, it should be viewed in perspective. We think that the judges do not contribute to the rearrest rate, nor do we see a way in which they can deter rearrests without requiring every defendant to remain in jail until trial.

Is the criteria used by judges to blame? In interviewing judges, we found that the severity of the crime is the most important factor in setting bail. The commission of a felony against person is prima facia evidence to the court that bail should be set at a high level. It is assumed that the defendant charged with a serious crime will also have a greater propensity to commit another serious crime. It is uncritically accepted that high money bond will prevent defendants charged with crimes against person from being rearrested. We will examine this assumption to see if defendants charged with more serious crime are rearrested in larger percentages, and if defendants with high bail are also rearrested in lower percentages.

We would now like to examine the data to see if there is the hypothesized relationship between the severity of the crime and the fact that defendants are rearrested while on bond. The information is displayed in Table 50.

Table 50

Severity of Crime and Rearrest Rate

	Death	Armed Robbery	Sex	Assault	Burglary	Property	Drug
Rearrest Rate	15%	15%	16%	7%	26%	15%	25%
N =	33	53	19	41	370	104	16

Again, the number of sex and drug cases are relatively small and should be used with care. However, the figures for the other charges are much more substantial. Excluding sex and drug cases, we found that the rearrest rate for felonies against person is lower than it is for the felonies non person. For example, we found that the highest percentage of rearrests were for defendants charged with burglary. However, the rearrest rate for property crimes, death and armed robbery are in the 15-17% range. The conclusion we draw from this is that defendants charged with burglaries are rearrested in great numbers, while defendants charged with other felonies of property, death and armed robbery are rearrested in a percentage nowhere near that of burglaries. Once again, the assault cases exhibited the same relationship that they did when discussing forfeitures. Assault cases had a rearrest rate of a very low 7%. This table shows that crimes against person had substantially lower rearrest rates than the non person felonies. Therefore, deterring rearrest cannot be accomplished by detaining defendants charged with serious crimes.

We tried to answer the same question by examining the relationship between the amount of bail and the rearrest rate. These figures are contained in Table 51.

Table 51

Amount of Bail and Rearrest

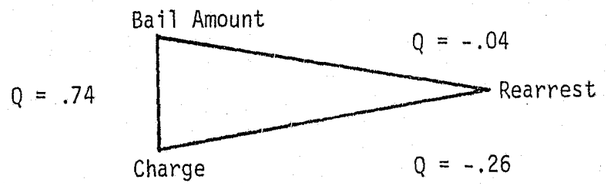
	Below $500	$501-$999	$1000-$2500	$2501-$5000	$5001 and above
Rearrest Rate	20%	33%	25%	36%	5%
N =	181	56	153	36	22

In examining these figures we found no clear pattern in the relationship of the amount of bail and the rearrest rate. The highest rearrest rates were for those with bail from $501 to $1000 and $2501 to $5000. The 22 people with bail set at $5001 or more had a very low rearrest rate. However, the small number of cases involved limited the reliability of these statistics as a basis for proposed changes, so we can only say that increasing the amount of bail for the defendant would be ineffective unless it kept the defendant in jail during his pre-trial period.

As with the earlier discussion of judicial criteria and the forfeiture rate, we want to determine if the bail amount or charge are predictors of rearrest. We have modeled this information below in Table 52.

Table 52

Model of Charge, Bond Size and Rearrest



We compressed the charge into a dichotomas variable of person and non person. We computed a correlational statistic Q to show the strength of the relationship. Bail amount was compressed into bail below $1,000 and $1,000 and above. The reader can see from Table 52 that the more serious the charge, the less the propensity to be rearrested. This finding contradicts the conventional wisdom that more serious criminals are more frequently rearrested. The table which compressed earlier data also shows that bail amount is unrelated to rearrest. Since bail amount is unrelated to rearrest multi-variate analysis is unnecessary. However, given the liberties we took in creating dichotomas variable, the results should be used with care.

We tried to determine whether criteria predicts the rearrest rate by also examining the relationship between the original charge and the charge for which the defendant was rearrested. This information is contained in Table 53.

Table 53

Original Charge and Rearrest Charge

Rearrest Charge	Original Charge: Felony against Person	Original Charge: Felony Non-Person
Felony Person	18%	3%
Felony non-person	29%	62%
Misdemeanor and Ordinance	53%	35%
Percentage =	100%	100%
N =	17	93

Table 53 shows that a defendant charged with a felony against person is more apt to commit a subsequent felony against person than a defendant who had originally committed a felony non-person. However, only one in five defendants committed a felony person in the former case. One-half of the defendants originally charged with felony person were rearrested on misdemeanor charges. What are the implications of this complex chart? (1) Those defendants originally charged with felony against person are slightly more inclined to be rearrested on that same charge. (2) Those defendants charged with felony non-person show a stronger tendency to be charged with the same felony on rearrest.

Is the time required to hear a case to blame? Some literature suggests that this is true. A study by the Temple University Law Review shows that two thirds of the crimes committed by defendants awaiting trial took place at least three months after the initial arrest. To test this pattern in Memphis, we examined the length of time between initial arrest and rearrest. This information is contained in Table 54.

This information in the table is not quite as dramatic as the data for forfeitures, although 50% of the rearrests take place after 90 days. Thus, a 90-day pre-trial period would reduce rearrest rates more noticeably than any other method.

Table 54

Time Patterns of Rearrest

Number of days	Percent Rearrested
1 to 30 days	26%
31 to 60 days	14%
61 to 90 days	10%
91 to 120 days	10%
121 to 180 days	12%
181 to 270 days	11%
271 to 365 days	7%
Above 365 days	10%
Percentage =	100%
N =	136

Is statutory change needed? A statutory change which would require the disposition of cases in a ninety day period would cut the rearrest rate by 50%. We have previously discussed this particular piece of legislation in the section on forfeitures, but we feel that it would generally have the same impact of curtailing the number of rearrests that take place.

A second major statutory change which has been discussed by local criminal justice officials is to revoke the defendant's bond if he is arrested on a felony while awaiting trial on another charge. Our figures show that only 5% of the sample was charged with crimes against person. Thus the deterrent value of this sort of legislation on crimes against person would be fairly limited.

We feel that the same objective could be accomplished much more equitably if the pre-trial waiting period were limited to a three month period. Furthermore such a law is applied to a crime which has already taken place rather than acting as a deterrent or precautionary device. As we know in dealing with crime, the only true preventive method is to remove the individual from society before he commits a subsequent crime. The only way to do this under our system of laws and justice is to give an individual a speedy trial, a right which he is guaranteed by the United States Constitution.

APPENDIX I

Publicity Booklet

WHAT IS BAIL?

* Bail is a form of collateral used as a means of assuring the appearance of a defendant in court.

* It is sometimes used to protect and guarantee the safety of the public by making it difficult for dangerous criminals to be released.

WHY A PRE-TRIAL RELEASE PROGRAM?

* Many people in police custody find it very difficult to post money for bail.

* In this sense, bail rewards those who are able to pay and discriminates against defendants without money.

* To eliminate this flaw in the bail system PTR believes that other things are better than money as assurance of court appearance such as:

  -length of residence in a community
  -employment
  -family ties and background
  -character and severity of police records.

* To aid the courts in making a decision about bail, PTR does a background investigation. Depending upon this investigation and the seriousness of the crime, PTR may recommend a release on $1.00 bond or release on recognizance.

HOW DOES THE PRE-TRIAL RELEASE PROGRAM WORK?

* Defendants considered for bail reduction or release on recognizance are interviewed.

* Verification is made of information gathered.

* Based on an objective point system, the defendant is rated on a scale to determine his risk to the county.

* Depending upon this rating, recommendation to reduce bail, or to release on recognizance is made to the court.

* Those released are placed under PTR supervision until the case is completed.

* Some defendants may be released only on special conditions such as being required to enter a narcotics treatment program, return to school or to seek employment.

HOW DID THE PROGRAM START?

* In some cases persons charged with minor crimes were required to spend months in jail only because they could not afford the cost of bail.

* In an attempt to relieve this problem, PTR was established in Memphis in 1969.

IS THE PROGRAM RELEASING DANGEROUS CRIMINALS INTO THE COMMUNITY?

* PTR does not recommend the release for all defendants that are referred.

* PTR does not have the power nor the authority to release anyone; we can only make a recommendation. The judge makes the final decision as to release or the amount of bail.

* In very serious or violent cases where crime against person is committed, PTR will not make a recommendation to the court at all.

IS PRE-TRIAL RELEASE THE SAME AS A BAIL BONDING COMPANY?

* No, PTR is not at all the same as a bail bonding company.

* Bondsmen extract a fee for their service; PTR performs as a service to the community.

* Bondsmen may surrender a client at anytime without cause, if they so desire.

* PTR supervises the client more closely, thus producing a lower forfeiture rate. This is supported by a recent study conducted by Professor Michael Kirby at Southwestern.

* PTR works with the client in gaining employment and in helping with personal problems.

IS THE PROGRAM JUST FOR POOR PEOPLE?

* Regardless of the individual's income, if arrested he will be considered for release under the PTR program.

* From its very existence, PTR has served Shelby County residents from all walks of life -- from professional workers to the welfare recipient.

  For example: Last year 78% of PTR's clients were males, 22% females, 60% blacks, 40% whites, and 70% were 25 years old and below.

* If a defendant can not pay he is not considered for release by the bonding company.

* Bonding Companies will take hard and dangerous criminals if they can pay the ten per cent deposit and obtain a cosigner.

HOW MUCH DOES THE PROGRAM COST THE TAX PAYER?

* Based on the cost of holding defendants in Jail, PTR results in a great savings to the Shelby County-Memphis Community.

* A conservative estimate suggests a large amount of public funds is saved each year because of the inflated cost of incarceration.

* Beyond this though, the savings, to the defendant and his family, can not be estimated in dollars and cents. For example, many defendants released through the PTR Program return to work, thus making it possible to raise money for an attorney and continue to provide for their families kept from going on public assistance.

* Along with financial advantages, PTR Assists the courts in expediting cases and in giving the court important information that may help make different dispositions.

* Along with financial advantages, PTR assists the courts in expediting cases and in giving the court important information that may help make different dispositions.

HOW DOES ONE GET RELEASED THROUGH PRE-TRIAL RELEASE?

* If you or anyone you know should need PTR, have your attorney, a friend or a relative contact PTR.

* PTR telephone number is 528-3048.

* Our office is located in the basement of the Shelby County Court House at 140 Adams between the hours of 8:00 A.M. and 4:30 P.M. Mondays through Fridays.

PRE-TRIAL RELEASE PROGRAM

at MPD Central Records for New Arrests.

Checked ☐ Yes ☐ No

CASE COMPLETION SHEET

For Criminal Court Cases file must be checked at MPD

Date Checked _____

I. PERSONAL

Last Name _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ (1 - 19)

First Name _ _ _ _ _ _ _ _ _ _ _ _ _ _ (20 - 29) Middle Initial _ (30)

On Program (Mo. & Yr.) _ _ _ _ (31 - 34)

Age (35)
1=Below 18
2=18-21
3=22-25
4=26-30
5=31-40
6=41=50
7=51-60
8=Over 60

Marital (37)
1=S
2=M/T
3=M/D
4=M/S
5=M/W

Race (38)
1=Black
2=White
3=Other

Sex (39)
1=Male
2=Female

School (36)
1=None
2=1-8
3=9-11
4=12
5=H.S. Dipl.
6=Some College
7=Grad., Tech. Sch.
8=Grad., College

II. BAIL

Before PTR (40)
1=No Bail
2=$250 (Misd. Bail)
3=U/$1000
4=$1000 - $2500
5=$2501 - $5000
6= Over $5000

After PTR (41)
1=OR, $1.00
2=$500 or below
3=below $1000
4=$1000 - $2500
5=$2501 - $5000
6=Over $5000

III. DISPOSITION

Court (44)
1=City
2=General Sessions
3=Criminal
4=Other

Division (45)
1=Div I
2=Div II
3=Div III
4=Div IV
5=Div V
6=Div VI

Disposition (46)
1=Trial Verdict, Guilty
2=Guilty Plea
3=Abated by Death
4=Trial Verdict, Not Guilty
5=Charge Dismissed
6=Warrant Dismissed
7=Not True Bill
8=Indictment Dismissed
9=Noll Pross

Court (42)
1=City
2=General Sessions
3=Criminal
4=Other

Division (43)
1=Div I
2=Div II
3=Div III
4=Div IV
5=Div V
6=Div VI

Counsel (48)
1=Private
2=Public
3=Not Applicable

Petition For Susp. Sent. (47)
Blank=City or Gen.Ses.
1=No Petition
2=Petition Granted
3=Petition Denied
4=Petition to be reheard after P.F.

No. of Court Appearances
_ _ (49 - 50)

END

IV. CHARGE, NEW ARRESTS, FORFEITURES					
Charge	PTR Arrest (51)	Convictions (52)	New Arrests (53)	New Convictions (54)	PTR Sentence Code (55)
(1) Capital					
(2) Felony-Person					
(3) Felony-Non Person					
(4) Misdemeanor					
(5) Ordinance					

New Arrests (56)	Increase and/or Revocation (57)	Fail to Appear (58)
Blank=No New Arrests	Blank=No Increase or revocation	Blank=Appeared
1=Felony, remain in jail	1=Bond Increase by Judge w/o PTR	1=1 FTA
2=Felony, bond w/o PTR	2=New Felony, def. rev.-Jail	2=2 FTA
3=Felony, bond w/PTR	3=New Felony, def. rev.-Bond	3=3 FTA
	4=Forf., def. rev. - Jail	4=4 FTA
Wilful Forfeiture (59)	5=Forf., def. rev. - Bond	5=5 FTA
Blank=Not Wilful	6=Forf., def. in jail new charge	6=6 FTA
1=Yes, Not apprehended	7=General Non-Compliance	
2=Yes, apprehended	8=Other	
3=Yes, apprehended-New Charge		

V. DAYS

Days under PTR (do not count release day, count disp. day) _ _ _ (60 - 62)

Days to wilful forfeiture (count forfeiture day) _ _ _ (63 - 65)

Days to New Arrest (Count New Arrest Day) _ _ _ (66 - 68)

VI. EMPLOYMENT (69)

0=Unemployed throughout
1=Continues to work full-time or substitute
2=Continues to work part-time or substitute
3=Change from no work to part-time
4=Change from no work to full-time
5=Change from part-time to full time
6=Change from part-time to no work
7=Change from full-time to part-time
8=Change from full-time to no work
9=Disabled, Retired, Welfare

Investigator making recommendation

_ _(70 - 71)

Investigator to Completion

_ _(72 - 73)

PUT REMARKS ON BACK

PTR Form 7C-74