NATIONAL EVALUATION PROGRAM

Series A
Number 15

Pretrial Release Programs

Phase 1 Report

National Institute of Law Enforcement and Criminal Justice
Law Enforcement Assistance Administration
United States Department of Justice

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NATIONAL EVALUATION PROGRAM
PHASE I SUMMARY REPORT

Pretrial Release Programs

By

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April 1977

National Institute of Law Enforcement and Criminal Justice
Law Enforcement Assistance Administration
United States Department of Justice

NATIONAL INSTITUTE OF LAW ENFORCEMENT AND CRIMINAL JUSTICE

Gerald M. Caplan, *Director*

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FOREWORD

During the past 15 years, a dramatic change has taken place in pre-trial release practices. From an almost total reliance on money bail, the emphasis in the 1960s shifted to extensive use of release-on-recognizance and other non-financial forms of release.

This survey of more than 100 pre-trial release programs found that most program directors place a high priority on two long-standing goals of bail reform programs: making sure that defendants appear in court when scheduled and lessening the inequality in treatment of rich and poor.

In contrast, there was a lack of consensus on the relative importance of "public protection" as a goal. Many program directors surveyed, for example, regard expansion of release rates as more important than reducing crime committed by releasees.

This perception of priorities is interesting in light of the controversies surrounding pre-trial release practices. One of the most troublesome issues is pre-trial crime. No one knows the extent of pre-trial crime nationwide, but it is a substantial problem in many jurisdictions. Institute-sponsored research in the District of Columbia found that more than 25 percent of felony arrests in Washington involve defendants on some form of conditional release -- bail, probation, or parole -- stemming from a previous offense. This was true for almost one-third of the robbery and burglary defendants.

The Institute plans to sponsor a more intensive study of pre-trial release to shed some light on the extent of pre-trial crime and to answer other questions about the success of pre-trial release and the value of different types of programs.

Gerald M. Caplan
Director
National Institute of Law
Enforcement and Criminal
Justice

PREFACE

The Phase I Evaluation of Pretrial Release Programs was conducted by the National Center for State Courts under a grant from the National Institute of Law Enforcement and Criminal Justice, Office of Research Programs. It is one of several Phase I studies of innovative programs designed to reduce crime or improve the criminal justice system which together comprise the Institute's National Evaluation Program.

The principal objective of this Phase I evaluation has been to provide a quick assessment of the current state of knowledge concerning the effectiveness of pretrial release programs. We have sought to determine what is currently known about the effectiveness of these programs, to assess whether existing knowledge is sufficient to be useful in planning and funding decisions, and to develop research designs for obtaining necessary additional information.

The study would obviously have been impossible without the cooperation of the programs themselves, and we therefore gratefully acknowledge the assistance received from pretrial release program directors across the country. The directors of 110 programs participated in comprehensive, structured telephone interviews with Phase I staff which pr duced a wealth of information concerning the organizational structures and operating procedures of the programs. In addition, the staff conducted on-site visits in ten cities to observe ongoing activities and to determine the impact of these activities on the pretrial custody of defendants. Our work in these cities was aided in great measure by the cooperation and assistance of program directors, judges, law enforcement officials, attorneys, court clerks and local government officials.

Barry Mahoney, the National Center's Associate Director for Programs, prepared the proposal for this study and also served as project director for the first three months. After I assumed the role of project director, Barry continued to provide valuable assistance in reviewing draft reports and offering project guidance. He has also made significant contributions to the writing and editing of sections of the final report.

The Phase I staff, which had been assembled before I became Project Director, proved to be extremely competent. Drafts of each of the work products produced during this study were prepared originally by one of the three senior staff members: Janet Gayton, Robert Davis, and Roger Hanson. In conducting the phone survey and site-visits, the project had the able assistance of several research assistants: Vicky Cashman, Forrest Futrell, Bruce Harvey, Sarah Hemphill, Robert Hurley, and Ann Williams. All of the computer work of the Phase I study was handled by Robert Davis and John Martin. Vicky Cashman aided in the presentation of the survey results and editing of the final reports. The project was also fortunate to receive valuable assistance from two consultants, Richard Rykken and Malcolm Feeley.

I would like to thank Edward B. McConnell, Director of the National Center, who took the time to read drafts of the reports and provided valuable comments and suggestions. Particular note should be made of the support and helpful suggestions provided by Richard Barnes, Cheryl Martorana, Carolyn Burstein, and Carla Kane of the National Institute of Law Enforcement and Criminal Justice. Joe Nay of the Urban Institute aided in a variety of ways.

A special thanks is owed to our project secretary, Phyllis Mays, who did most of the typing work and who also served as our office manager and kept a diligent eye on project expenditures. The final typing of the reports was handled principally by Maryann Karahalios. Elizabeth S. Anderson, the National Center's Director of Publications, reviewed the final report and made many helpful suggestions.

To all who assisted in this study, I extend my sincere thanks.

WAYNE H. THOMAS, JR.
Project Director

I. INTRODUCTION

During the past fifteen years, the traditional American practice of conditioning the pretrial release of criminal defendants upon the posting of financial bail has been the target of major reform efforts. The principal aim of this reform movement has been to eliminate or modify the money bail system--a system which makes pretrial release almost wholly contingent upon a person's ability to post bond in an amount of money set by a judge.

The pretrial release problem has long troubled persons concerned with problems of the poor as well as persons concerned with the criminal justice process. In a pretrial release system which relies almost exclusively upon money bail, it is axiomatic that improverished individuals will suffer the most. Such a system makes pretrial freedom a commodity to be purchased. The discriminatory nature of the system is compounded by the fact that in establishing the cost of pretrial freedom--i.e., in setting the amount of bail--allowance has seldom been made for individual differences among defendants based on the likelihood that they will appear at trial or the amount of bond they can afford. In setting bail judicial officers have generally known only the charge against the defendant and perhaps his prior arrest record.[1]

An advisory committee of the American Bar Association's Project on Minimum Standards for Criminal Justice criticized the traditional bail system in these words in a 1968 report:

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[1]See Daniel J. Freed and Patricia Wald, Bail in the United States: 1964 (Washington, D. C.: U. S. Department of Justice and Vera Foundation, Inc., 1964), p. 18; also Note, "Compelling Appearance in Court: Administration of Bail in Philadelphia," Univ. of Pennsylvania Law Review, Vol. 102 (1954), pp. 1031-1048.

> The bail system as it now generally exists is unsatisfactory from either the public's or the defendant's point of view. Its very nature requires the practically impossible task of translating risk of flight into dollars and cents and even its basic premise--that risk of financial loss is necessary to prevent defendants from fleeing prosecution--is itself of doubtful validity. The requirement that virtually every defendant must post bail causes discrimination against defendants who are poor and imposes personal hardship on them, their families and on the public which must bear the cost of their detention and frequently support their dependants on welfare. Moreover, bail is generally set in such a routinely haphazard fashion that what should be an informed, individualized decision is in fact a largely mechanical one in which the name of the charge, rather than all the facts about the defendant, dictates the amount of bail.[2]

The routine manner in which bail decisions have traditionally been made belies the fact that the decision is one of critical significance. The consequences of the bail decision are vitally important to both the defendant and the community. The President's Crime Commission succinctly discussed many of these consequences in its 1967 report:

> A released defendant is one who can live with and support his family, maintain his ties in the community, and busy himself with his own defense by searching for witnesses and evidence and by keeping in close touch with his lawyer. An imprisoned defendant is subjected to the squalor, idleness, and possibly criminalizing effects of jail. He may be confined for something he did not do; some jailed defendants are ultimately acquitted. He may be confined while presumed innocent only to be freed when found guilty; many jailed defendants after they have been convicted, are placed on probation rather than imprisoned. The community also relies on the magistrate for protection. If a released defendant fails to appear for trial, the law is flouted. If a released defendant commits crimes, the community is endangered.[3]

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[2]American Bar Association Project on Minimum Standards for Criminal Justice, Standards Relating to Pretrial Release (New York: Institute for Judicial Administration, 1968), p. 1.

[3]President's Commission on Law Enforcement and the Administration of Criminal Justice, The Challenge of Crime in a Free Society (Washington, D.C.: U. S. Government Printing Office, 1967), p. 31.

Although the workings of the money bail system have been subject to recurrent criticism for more than half a century,[4] it was not until the 1960s that the first significant effort was made to reform pretrial release practices. That pioneering effort--the Manhattan Bail Project, undertaken in the criminal court in New York City, under the auspices of the Vera Foundation[5]--was widely acclaimed as a major success, and led directly or indirectly to the development of a number of other bail reform efforts throughout the nation. During the 1960s, the bail reform movement was marked by the convening of two national conferences on bail and alternative forms of pretrial release, the passage of important bail reform legislation on both the national and state level, and the establishment of a number of pretrial release programs designed to implement the reform ideas.[6]

By the end of 1965, pretrial release projects were operational in over 60 jurisdictions. Today, identifiable pretrial release programs are operating in well over 100 jurisdictions and, in addition, many of the basic ideas and operating assumptions of the bail movement have been

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[4]See Roscoe Pound and Felix Frankfurter, eds., Criminal Justice in Cleveland: Reports of the Cleveland Foundation Survey of the Administration of Criminal Justice in Cleveland, Ohio (Cleveland, Ohio: The Cleveland Foundation, 1922) and Missouri Association for Criminal Justice, The Missouri Crime Survey (New York: The MacMillan Company, 1926). The first major empirical study focusing upon the bail system itself was Arthur L. Beeley's landmark book The Bail System in Chicago (Chicago, Illinois: University of Chicago Press, 1927; reprinted in 1966).

[5]The Manhattan Bail Project's history and operational format, and preliminary findings from an accompanying research study, may be found in Charles Ares, Anne Rankin, and Herbert Sturz, "The Manhattan Bail Project: An Interim Report on the Use of Pretrial Parole," New York University Law Review, Vol. 38 (1963) pp. 67-83.

[6]For a helpful review of the diffusion of bail reform ideas and the roles of the 1964 and 1965 conferences in the development of bail reform projects, see Lee S. Friedman, The Evolution of a Bail Reform: A Working Paper (New Haven: Institution for Social and Policy Studies, Yale University, 1974), pp. 40-50. The federal law is the Bail Reform Act of 1966, Public Law 89-465, 18U.S.C.§3146.

incorporated into the court practices of other jurisdictions where no special program is in operation.

The purpose of this report is to summarize what is presently known about pretrial release programs--how many there are, what goals they have, what functions they perform, what patterns of funding and organizational structure they have developed, what is known about their effectiveness in achieving their goals, and--perhaps most important--what we don't know but should try to find out in order to develop sound policies for the handling of criminal defendants during the period between arrest and case disposition.

This "Phase I" evaluation of pretrial release programs is not intended to be a definitive evaluation of the effectiveness of such programs. Rather, it is intended mainly to present an overview of the current state of knowledge in the field and provide a starting point for further research. The report itself builds upon an earlier assessment of the research literature in the pretrial release field that was undertaken by the National Center for State Courts in 1974-75.[7] This report goes beyond the earlier study, however, in incorporating preliminary findings from a structured telephone interview survey of representatives of 110 pretrial release programs and observations made during site visits to ten jurisdictions in which such programs are operating.

As the report makes clear, there are a number of key issue areas where there has been very little in the way of sound empirical research. Nevertheless, a considerable amount of useful information has been compiled on

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[7] National Center for State Courts, An Evaluation of Policy Related Research on the Effectiveness of Pretrial Release Programs (Denver, Colo.: October, 1975).

the operation of pretrial release programs. Chapter II provides a brief overview of the field, outlining the range of different types of programs and discussing the principal goals, key operating assumptions, and common functions shared by the programs. Chapter III provides a summary assessment of the programs, organized in terms of what is known about their effectiveness in achieving specific goals. Chapter IV focuses on what is not known, and suggests some priority areas for future research in the field.

II. OVERVIEW OF PRETRIAL RELEASE PROGRAMS

A. The Range of Programs

Over the past fifteen years, police agencies and courts in a large number of jurisdictions have changed their practices regarding pretrial custody and release in response to calls for reform of the money bail system. In many places, for example, police departments now routinely issue a summons or citation requiring a person to appear in court at a future date to answer charges against him, instead of arresting and holding him in custody until he posts bail. Many courts no longer rely solely on the operation of the money bail system to determine whether a defendant is to be released; instead, they utilize nonfinancial release options such as release on recognizance and release under specified nonfinancial conditions. Another option is release on "deposit bail" in which the defendant deposits a percentage of the total bond amount--usually ten percent--with the court, instead of using the money to purchase the services of a professional bondsman. Unlike the fee paid to a bondsman, money deposited with the court is returned to the defendant upon completion of the case.

In this short-term study, we have concentrated upon the operations of organized and identifiable pretrial release programs whose primary function is to facilitate the release of defendants prior to trial on a nonfinancial basis. For purposes of focusing the analysis, we have somewhat arbitrarily excluded from the study several types of programmatic activities that are generally within the pretrial release field. These include, most notably, the following: (a) summons and citation programs operated by police agencies; (b) pretrial release programs operated solely in conjunction with

juvenile or family courts; and (c) ordinary court operations which have incorporated some of the ideas of the bail reform movement (e.g., non-financial release in lieu of money bail), but which do not utilize staff specially designated to perform the functions commonly performed by pre-trial release project personnel.

Limiting the universe in this fashion, we were able to identify some 115 entities that, as of mid-1975, could be described as pretrial release programs that provided an alternative to the traditional money bail system. Each of these entities was contacted by telephone, and a representative of the program was asked to respond to a set of questions designed to elicit information about its organizational structure and operating procedures. One hundred and ten of the programs responded to the telephone inquiries, and 69 of these replied to a follow-up mailed questionnanire that requested program performance data. Preliminary findings from the survey are incorporated in this report.[8]

The survey, together with other published data and our own observations from site visits to ten jurisdictions, indicates that while different pre-trial release programs perform a number of common functions (see infra, pp. 15-24) they also vary considerably along a number of dimensions. The wide range of programs is reflected in the ways in which they differ in the following areas:

- Administrative Authority. In the early years of the bail reform movement, release projects were operated by a

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[8] See Appendix A, pp. 68-84, which includes 21 tables summarizing these preliminary findings. For the most part, our findings were roughly comparable to those in a 1973 survey conducted by the Office of Economic Opportunity that asked many of the same questions. See Hank Goldman, Devra Bloom, and Carolyn Worrell, The Pretrial Release Program (Washington, D.C.: Office of Planning, Research and Development of the U. S. Office of Economic Opportunity, 1973).

variety of organizations and individuals, including law students, bar associations, attorneys, public defenders, district attorneys, police agencies, and private foundations, as well as by the courts and probation offices.[9] Our survey showed that today most of the pretrial release programs (86%) are being operated by public agencies, primarily by probation departments (34%) and courts (31%).[10]

- Funding. The amount of funding with which programs operate varies enormously. Some projects survive through the ingenuity and perseverance of one or two individuals, with no special funding whatsoever, while the largest programs have budgets in excess of $1,000,000.[11] Likewise, the sources of funding vary from one project to another. Of 109 projects that indicated their sources of funding, 51 were supported primarily by local (county or municipal) government, while 41 were supported mainly by LEAA block or discretionary grant funding. Seventeen had other primary sources of funding.[12] Significantly, 55 of the programs noted that

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[9] See National Conference on Bail and Criminal Justice, Bail and Summons: 1965 (August 1966), p. 8.

[10] See Table 1, Types of Agencies Operating Pretrial Release Programs, Appendix A, p. 70.

[11] See Table 2, Annual Budgets of Pretrial Release Programs, Appendix A, p. 70.

[12] See Table 3, Current (1975) Primary Sources of Program Funding, Appendix A, p. 71.

their original support came mainly through LEAA funding via either a discretionary grant or a grant made by a state planning agency.[13]

- Staffing. Staff size ranges from one person to as many as 120 people. A few programs are run entirely by part-time personnel, but almost half of those surveyed have only full-time staff.[14]

- Target Populations. Wide variations are found in the number and types of defendants that projects become involved with. Of the 69 programs that responded to a question on the number of interviews conducted, 14 (20%) reported interviewing fewer than 1,000 per year, and 16 (22%) reported interviewing more than 5,000 annually.[15] Most of the programs we surveyed have a formal or informal list of exclusions which limit the number of defendants eligible for project consideration. A few programs handle only felony cases (9%) or only misdemeanor cases (7%). In addition, nearly half of the programs do not

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[13] See Table 4, Original Sources of Programs' Primary Funding, Appendix A, p. 71.

[14] See Table 6, Program Staffing, Appendix A, p. 72.

[15] See Table 7, Number of Defendants Interviewed Annually by Programs, Appendix A, p. 73.

interview or present recommendations in cases involving crimes of violence.[16] Exclusions based on factors other than the charged offense (e.g., detention on a warrant from another jurisdiction; lack of a local address) are also frequently employed.[17]

- Operating Procedures. While variations in the size of the defendant clientele are related in part to differences in the size of the jurisdictions in which different programs operate, the operating procedures of the programs also have a bearing on the scope of program coverage. For example, the point in the criminal justice process at which the program conducts its initial interview, the verification procedure used, and the types of recommendations made all vary from program to program. These procedures will affect the number as well as the characteristics of the defendants serviced. Operating procedures are discussed in greater detail at pages 16-27, infra.

There are other important differences among programs, too--notably in the socio-political environments in which they operate and in the personalities of key staff members, judges, and other influential actors whose views may affect program operations. The diversity of the programs and their

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[16] See Table 8, Types of Criminal Charges Cited by Programs as Basis for Excluding Defendants from Consideration for Release Through Program, Appendix A, p. 74.

[17] See Table 9, Types of Non-Offense Related Factors Cited by Programs as Basis for Excluding Defendants from Consideration for Release Through Program, Appendix A, p. 75.

extensive integration into the criminal justice process make it difficult to isolate and measure the impact which ongoing programs have on pretrial release practices and to determine the relative effectiveness of different operational procedures.

A second factor which complicates the evaluation task is the lack of complete consensus, on the part of criminal justice policymakers, regarding the relative priority to be accorded to two possible "end goals" of the programs that are somewhat inconsistent with each other: on the one hand, maximizing release rates; on the other hand, helping to ensure that persons who might be dangerous to the community are not released. As we shall see from the following section, there is considerable agreement with respect to other end goals of the programs, but the disagreement over the "public protection" role of the programs is one that may have important consequences in terms of any evaluation of program impact.

B. Principal Goals and Key Operating Assumptions

A 1974 survey of the views of criminal justice policymakers regarding issues in the operation of pretrial release programs, conducted by Robert V. Stover and John A. Martin in conjunction with the National Center's study of the research literature on the pretrial release field, produced some valuable data relevant to the identification of the goals of these programs.[18] Findings from the portion of the questionnaire survey that addressed the problem of what possible goals should be regarded as most

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[18] Robert V. Stover and John A. Martin, "Results of a Questionnaire Survey Regarding Pretrial Release and Diversion Programs," in National Center for State Courts, Policymakers' Views Regarding Issues in the Operation and Evaluation of Pretrial Release and Diversion Programs: Findings From A Questionnaire Survey (Denver, Colorado, April 1975).

important by the programs are summarized in Chart A on page 13 .[19] Two sets of findings reflected in this chart seem particularly important.

First, as the chart indicates, there was a high degree of consensus among nearly all the respondents--program directors, judges, county officials, district attorneys, public defenders, police chiefs, and sheriffs--that very high priority should be placed upon two long-standing goals of bail-reform programs. Those goals are: (1) making sure that defendants released through the programs appear in court when scheduled; and (2) lessening the inequality in treatment of rich and poor by the criminal justice system. In addition, there was almost as strong a consensus on the importance of two other end goals: (3) minimizing the amount of time between arrest and release for defendants who are eligible for release; and (4) producing cost savings to the public.

In contrast to the broad consensus on the importance of these four goals, there was an observable lack of general agreement among the respondents on the relative importance of other possible goals. The contrast is particularly marked with respect to views concerning possible "public protection" roles that projects might have. Thus, for example, project

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[19]This chart is drawn from Table 11 in the Stover-Martin paper, ibid., p. 25. It is based on responses to a list of 16 possible goals of pretrial release programs, with respect to each of which a respondent was asked to select a point on a seven-point scale that represented his view of the relative importance that should be placed on that goal. Responses to the question were coded so that a "1" indicated that a respondent thought the goal was of great importance, a "2" of somewhat less importance, and so on. A "7" indicated that a respondent thought that a particular item should not be a goal at all. A low mean score on a particular goal means that the respondents in a group tended to place a relatively high importance on that goal. The "SD's" in the table are standard deviations, which provide summary measures of the lack of consensus on each item for each group. The larger the SD, the greater the disagreement within the group.

CHART A

RESPONSE PATTERNS OF ALL CATEGORIES OF PRETRIAL RELEASE
RESPONDENTS TO THE SIXTEEN COMMON "POSSIBLE GOALS" - "SHOULD" SCALE

Goal		Program Directors	Judges	County Executives	Public Defenders	District Attorneys	Police Chiefs	Sheriffs	Consensus of Respondents other than Directors
1. Making sure that individuals granted pretrial release through the program appear in court when scheduled.	Rank	1	1	1	3	1	1	1	1
	Mean	1.37	1.13	1.30	1.64	1.73	1.12	1.27	1.36
	SD	1.02	.34	.57	1.06	1.76	.42	.57	.44
	N	54	23	20	28	26	32	34	163
2. Lessening the inequality in treatment of rich and poor by the criminal justice system.	Rank	2	2	1	2	5	3	2	2
	Mean	1.49	1.43	1.30	1.30	1.93	1.39	1.56	1.50
	SD	1.10	1.36	.92	.72	1.70	.71	1.03	1.13
	N	53	21	20	27	28	31	33	160
3. Minimizing the amount of time that elapses between arrest and release of defendants who are eligible for release.	Rank	3	3	3	1	7	7	3	3
	Mean	1.53	1.50	1.40	1.22	2.11	2.22	1.58	1.70
	SD	1.25	.86	.82	.64	2.06	1.40	1.00	1.29
	N	53	22	20	27	28	32	33	162
4. Gathering data to be used in evaluating and improving the effectiveness of one's own program.	Rank	4.5	7	6	6	2	4	6	4
	Mean	1.56	2.76	1.75	2.14	1.79	1.75	1.78	1.96
	SD	.98	2.21	1.12	1.67	1.42	1.37	1.16	1.52
	N	54	21	20	28	28	32	32	161
5. Maintaining good relations with judges and other court personnel.	Rank	4.5	13	10	13	12	11	13	12
	Mean	1.56	3.67	2.35	3.04	3.07	2.78	2.36	2.85
	SD	1.06	2.44	1.72	2.19	2.36	2.08	1.73	2.10
	N	54	21	20	28	27	31	33	160
6. Reducing the cost to the public by keeping people out of jail (and employed where possible) while awaiting disposition of their case.	Rank	6	5	4	9	4	8	8	5
	Mean	1.58	2.27	1.60	2.48	1.89	2.30	2.03	2.11
	SD	.91	1.45	1.09	2.19	1.34	1.51	1.74	1.62
	N	53	22	20	27	28	31	31	159
7. Maximizing the number of persons at liberty between arrest and final disposition of their case.	Rank	7	8	10	4	15	12	4	13
	Mean	1.65	2.86	2.35	1.74	3.79	2.92	1.62	2.93
	SD	1.30	2.21	1.42	1.66	2.17	2.03	.94	2.13
	N	52	22	20	27	28	28	29	166
8. Gathering data to be used in assessing the effectiveness of pretrial release programs in comparison to the operation of traditional bail systems.	Rank	8	10	12	8	9	5	7	7
	Mean	2.09	3.18	2.45	2.31	2.25	2.00	1.82	2.27
	SD	1.50	2.04	1.64	1.76	1.60	1.70	1.40	1.70
	N	51	22	20	26	28	32	34	162
9. Serving the court in a neutral fashion.	Rank	9	4	5	10	3	9	11	6
	Mean	2.26	1.80	1.68	2.80	1.85	2.50	2.22	2.19
	SD	1.82	1.85	1.29	2.45	1.59	2.03	1.41	1.84
	N	49	20	19	26	27	32	32	156
10. Minimizing the potential danger to the community of persons released prior to trial, by maintaining supervision in appropriate cases.	Rank	10	9	7	12	6	6	9	8
	Mean	2.30	3.00	1.85	3.00	1.96	2.03	2.06	2.29
	SD	1.89	2.18	1.69	2.21	1.63	2.00	2.00	1.98
	N	54	20	20	26	27	30	34	157
11. Reducing overcrowding in jails.	Rank	11	11	9	7	11	14	10	10
	Mean	2.54	3.48	2.20	2.19	2.96	2.43	2.12	2.73
	SD	1.82	2.57	1.58	1.96	2.15	2.18	1.62	2.08
	N	54	23	20	26	28	30	33	160
12. Reforming the bail system by reducing the use of money bail and minimizing the role of bail bondsmen.	Rank	12	12	13	5	13	10	14	11
	Mean	2.63	3.62	2.80	2.08	3.20	2.61	2.42	2.74
	SD	2.20	2.65	2.14	2.12	2.26	2.00	1.90	2.17
	N	52	21	20	25	26	31	33	156
13. Acting as an advocate for defendants regarding pretrial release when eligibility requirements are met.	Rank	13	16	16	11	14	16	15	15
	Mean	2.65	5.00	3.95	2.89	3.64	3.52	2.53	3.46
	SD	1.92	2.68	2.30	2.37	2.51	2.35	1.60	2.37
	N	51	18	20	26	28	31	32	155
14. Helping to ensure that individuals who might be dangerous to the community are not granted pretrial release.	Rank	14	6	8	14	8	2	5	9
	Mean	2.66	2.38	2.00	4.61	2.14	1.25	1.77	2.30
	SD	2.11	2.11	1.97	2.35	2.07	1.08	1.82	2.16
	N	53	21	20	26	28	32	34	161
15. Maintaining good relations with police officials.	Rank	15	14	14	16	10	13	12	14
	Mean	2.72	4.54	2.95	4.75	2.85	3.03	2.33	3.35
	SD	1.57	2.52	1.73	2.05	2.23	2.01	1.83	2.23
	N	54	22	20	28	27	31	33	161
16. Providing information to the court or to probation officials for use in sentencing determinations.	Rank	16	15	15	15	16	15	16	16
	Mean	2.78	4.91	3.50	4.64	4.78	3.47	3.19	4.04
	SD	2.09	2.50	2.50	2.64	2.34	2.49	2.35	2.53
	N	50	22	22	28	27	27	32	161

directors, as a group, regarded "maximizing the number of persons at liberty between arrest and final disposition of their case" as an appreciably more important goal than "helping to ensure that defendants who might be dangerous to the community are not granted pretrial release." The other criminal justice officials questioned (with the exception of public defenders) placed a much higher priority on the achievement of the latter goal.

This difference between project directors and other policymakers in perception of priority project goals is important for an understanding of some of the controversies that have developed in recent years over the operation of pretrial release programs. While the figures are susceptible of differing interpretations, it seems fairly clear that program directors regard expansion of release rates as a more important program goal than reduction of crime committed by pretrial releasees. There is considerable evidence that program directors are concerned about pretrial crime, too, but the data suggest that they regard this as a less important goal of the programs.[20]

Analysis of the Stover-Martin survey results, as well as of the pre-existing literature in the field, led the authors of the earlier National Center study of research literature in the pretrial release field to

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[20] To some extent this disagreement over the importance of reducing pretrial crime as a program goal mirrors the debate over whether risk of pretrial crime is a factor that should legitimately be taken into account in setting bail or otherwise decidng upon the pretrial custody status of a defendant. As a practical matter, virtually all pretrial release programs at least implicitly take account of the potential "dangerousness" of a defendant, through use of eligibility criteria that restrict or prevent them from recommending the release of defendants who are charged with particularly serious crimes or who are known to have particularly serious prior records. See infra, pp. 22-24.

identify six general issue areas as being of particular importance for an assessment of program effectiveness. They are:

1. Release Rates - How effective is a particular program in terms of securing the release of the largest possible proportion of the total defendant population?
2. Speed of Operations - How quickly does a program operate to secure the release of a defendant who is eligible for such release?
3. Equal Justice - How effective is a program in minimizing differential treatment of defendants based on wealth or other invidious distinctions?
4. Failure-To-Appear Rates - How effective is a program in ensuring that released defendants return for scheduled court appearances?
5. Pretrial Crime - How effective is a program in obtaining release for persons who do not commit crimes while released awaiting trial?
6. Economic Costs and Benefits - How cost-effective is a particular program, in economic terms?

These six issue areas, it should be emphasized, do not encompass the full range of issues that may be relevant to an assessment of the performance of different types of pretrial release programs. They do, however, include the principal measures of effectiveness identified as most important by policymakers responding to the questionnaire used in the earlier survey. They are also the issue areas most frequently examined by researchers concerned with the effectiveness of the bail system and of alternative pretrial release programs.

These issue areas can be phrased in terms of program goals or effectiveness measures, as outlined in Chart B on page 17. They are also reflected in the key operating assumptions of the programs, which may be phrased as follows:

> First, that by providing a court with information on a defendant's ties to the local community (thus supplementing information concerning current charge and prior record) and by making recommendations for nonfinancial release in cases that meet certain criteria, a program can lessen the likelihood of differential treatment based on wealth and increase the proportion of defendants released on nonfinancial conditions prior to trial.
>
> Second, that defendants released on nonfinancial conditions on the basis of such information and recommendations will, with the help of follow-up contacts by the program, perform at least as well as defendants released on money bail in terms of
>
> (a) returning for scheduled court appearances; and
>
> (b) abstaining from criminal conduct.
>
> Third, that in economic terms the benefits produced by the programs outweigh the costs of their operation.

C. Common Functions

Based on the underlying assumptions outlined in the preceding section, the programs examined in this study typically allocate their resources to five basic functions: interviewing, verification, screening for release eligibility, preparing and submitting information and/or recommendations to the court, and maintaining "follow-up" contact with released defendants.[21]

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[21] Flow diagrams that show the interrelationship of these functions may be found in Appendix B, infra, pp. 85-86.

CHART B

ISSUE AREA	PROGRAM GOALS/EFFECTIVENESS MEASURES	EVALUATION QUESTIONS
1. RELEASE RATES	Increase the proportion of defendants released on nonfinancial conditions prior to trial.	What impact do programs have on the percentage of defendants released prior to trial? On the percentage released on their own recognizance and other forms of nonfinancial release?
2. SPEED OF OPERATION	Minimize the time that elapses between arrest and release of defendants who are eligible for release.	How quickly following an arrest do programs operate? What impact do they have on reducing the time from arrest to release?
3. EQUAL JUSTICE	Lessen the inequality in treatment of rich and poor by the criminal justice system.	How effective are the programs in serving the needs of poor or indigent defendants, who are the most obvious victims of the financial bias inherent in the use of money bail?
4. ECONOMIC COSTS AND BENEFITS	Reduce the costs to the public by keeping people out of jail (and employed where possible) while awaiting disposition of their cases.	To what extent are pretrial release programs cost-effective? Do the benefits gained through reduced detention costs and savings in other areas offset the costs of operating the program?
5. FAILURE TO APPEAR RATES	Make sure that individuals granted pretrial release through the program appear in court when scheduled.	What impact does the intervention of pretrial release programs and the use of nonfinancial forms of release have on the percentage of defendants who fail to appear at scheduled court proceedings?
6. PRETRIAL CRIME	Minimize pretrial crime, by (a) helping to ensure that individuals who might be dangerous to the community are not granted pretrial release; and/or (b) maintaining supervision in appropriate cases.	What impact does the intervention of pretrial release programs and the use of nonfinancial forms of release have on the percentage of defendants who commit criminal acts while on pretrial release?

However, it must be emphasized that the methods or techniques which the programs use to perform these functions vary enormously, and the variations are likely to affect the extent to which a program succeeds in achieving specific goals. This section briefly discusses these operational functions and some of the potential effects of alternative procedures.

1. Interviewing

All of the pretrial release programs that we surveyed interview defendants who are in pretrial custody, in order to obtain information about their backgrounds and ties to the local community. The programs differ, however, in the timing of these interviews and in the selection of defendants to be interviewed. Two general approaches to interviewing can be identified:

The first approach calls for interviewing defendants as soon after their arrest as possible--and in any event prior to their initial court appearance--in order to begin gathering data relevant to the release decision as quickly as possible. This approach, followed by a majority of the programs, increases the likelihood that the court will have background information on defendants at the time of the initial decision, when such information is most critical.[22] Programs utilizing this approach are generally able to favorably recommend many more defendants than programs which delay intervention until after the first court appearance, when at least some portion of the "good risk"

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[22]See Table 10, Primary Point of Program Intervention, Appendix A, p. 76.

defendants--those that are able to affort to post bond--will have obtained release on money bail.[23] A further advantage of early intervention is a reduction in the amount of time released defendants must spend in detention. Whereas delays of several days--and sometimes a week or more--exist in release through programs which do not intervene until after the first appearance, programs which intervene close to the time of arrest are generally able to secure the release of eligible defendants prior to or at their first court appearance.[24]

The second approach, used by about a third of the surveyed programs, is based on the theory that only those defendants most obviously in need of the program's services should be interviewed. The underlying assumption is that the program will be less costly, but at the same time achieve nearly the same result in reducing the pretrial detention population, if it only interviews those defendants who cannot achieve release through normal court procedures--including the posting of money bail. These programs thus do not interview defendants immediately after arrest, but instead wait until the defendants have appeared in court and demonstrated their inability to secure release by their continued incarceration.[25]

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[23]See Paul B. Wice, Bail and Its Reform: A National Survey (Ph.D. dissertation, University of Illinois at Champaign-Urbana, 1972), pp. 258-260.

[24]See infra, pp. 33-39.

[25]See Table 10, Primary Point of Program Intervention, Appendix A, p. 76. Table 10 shows that, of 105 programs that responded to a question designed to indicate the stage in the criminal justice process where the program sought to intervene in order to secure the release of a defendant, 41 (37%) indicated that their primary point of intervention was after the defendant's first court appearance. Our questionnaire survey did not ask for data on time of interview in relation to time of arrest or court appearance.

Programs also differ in the selection of defendants to be interviewed. A few programs try to interview all pretrial detainees, on the theory that each is a potential candidate for release on nonfinancial conditions and that the information will be helpful to the court in reaching a custody determination even if the defendant is clearly a poor risk for nonfinancial release. Most programs, however, operate on the theory that persons who are not likely to be eligible for nonfinancial release should not be interviewed. These programs generally do not attempt to interview defendants who are charged with serious offenses or who are known to have extensive prior criminal records.[26] They assume that there is very little likelihood that such defendants will be granted nonfinancial release regardless of the strength of their community ties, and that it would not be an efficient use of project resources to attempt to interview them. These programs typically screen the list of detained arrestees, eliminate those who fall in an exclusion category, and interview the remainder. How broadly a program draws its exclusion list will obviously have a great bearing on the number of interviews conducted.

2. Verification

Verification of the information provided by defendants in the initial interviews is an integral part of the workings of most pretrial release projects. Underlying this verification activity is an assumption that a defendant who has an obvious interest in securing pretrial release cannot be trusted to provide totally accurate information during his interview and that, therefore, a project should not make

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[26] See Tables 8 and 9, Appendix A, pp. 74-75.

pretrial release recommendations until this information has been independently verified.

A few programs have dispensed with the verification requirement in cases where the defendant is charged with a minor offense, at least insofar as to not require verification beyond that available from the papers carried on the defendant's person. The vast majority of programs, however, still require that at least one independent source verify the information provided by the defendant.[27] Some programs require two verifications and at least one, San Francisco's, requires three independent verifications before it will recommend release in a felony case.[28]

In order to verify the information supplied by the defendant, most programs attempt to contact an employer, friend, or relative of the defendant by telephone. Primarily because of the heavy, often exclusive reliance placed upon the telephone for verification, pretrial release programs frequently have difficulty obtaining verifications. Sometimes a defendant cannot supply phone numbers for any references, and often it is impossible to contact a reference even when a phone number is given. In recognition of this problem, some programs now employ field investigators to assist in contacting references who are not reachable by phone. Other programs will send letters to references who cannot be contacted by telephone, but the

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[27] See Table 11, Program Verification Practices, Appendix A, p. 77.

[28] See National Center for State Courts, "Phase I Evaluation of Pretrial Release Programs - Work Product II: Project Narratives and Flow Diagrams" (Denver, Colorado, February 1976 [mimeo]).

majority of the programs--57 percent of those that responded to our survey--still rely exclusively on the telephone.[29]

Programs that attempt to present their recommendations at the defendant's first court appearance have a particularly serious problem with verification because of the limited time available for this activity. Some of these programs, however, will present unverified information to the court at first appearance, although withholding any pretrial release recommendation. Not infrequently the judges will grant nonfinancial releases on the basis of this unverified information--a practice which suggests that those programs that present only verified cases to judges may be unnecessarily limiting their impact upon release rates.[30] Whether it is verified or not, the information collected by the programs may be valuable to the court in making bail decisions.

3. Screening for Release Eligibility

Implicit in the operational procedures of all pretrial release programs is the belief that nonfinancial releases should be selectively

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[29]See Table 11, Program Verification Practices, Appendix A, p. 77.

[30]There is very little quantitative data on the extent to which programs present unverified information to the court or on the extent to which such information is utilized by a judge in granting nonfinancial release. The statements in the text are based mainly on impressions gathered in unstructured interviews of program personnel and observations made during site visits to courts served by specific programs. However, see S. Andrew Schaffer, Bail and Parole Jumping in Manhattan in 1967 (New York: Vera Institute of Justice, 1970. Schaffer found that a report from the program then operating in Manhattan was before the court in only about 29% of the cases in which a judge ordered a defendant released on his own recognizance.

employed. As a basis for determining whether to recommend particular defendants for release, all programs have adopted some selection criteria. The basic criteria have been the same ones used by Vera's original Manhattan Bail Project: community ties (measured by employment status, residence, and family contacts), prior record, and current charge. A basic difference among pretrial release programs is, however, whether a defendant's eligibility should be measured against these criteria on a pre-determined point scale or considered individually and subjectively. The objective approach, which Vera adopted very early in the Manhattan Project, assigns a numerical value to each item of information about community ties and prior record, with the defendant's release recommendation (assuming that he is not excluded from consideration because of the nature of the pending charge or other criterion of exclusion) being contingent upon accumulating a set number of points.[31] Although many early pretrial release programs adopted the point scale approach, our survey indicates that most release programs today use either entirely subjective or combined objective-subjective screening techniques.[32]

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[31]See Charles Ares, Anne Rankin and Herbert Sturz, "The Manhattan Bail Project: An Interim Report on the Use of Pretrial Parole," supra note 5, p. 67.

[32]See Table 12, Program Screening Procedures for Reports Prepared for First Court Appearance. As Table 12 and the accompanying note indicate, only 16 of 60 programs (27%) that prepare recommendations for defendants' first court appearance report using only an objective point scale. Of 83 programs that prepared reports for bail re-evaluation hearings, only 17% used solely objective scales. The remaining programs are about evenly divided between those that do subjective screening and those that use some combination of objective and subjective evaluations. The types of point systems used vary, of course, from one jurisdiction to another. In most cases they do not come into use at all until it is clear that the arrestee is not to be excluded from consideration because of a non-charge-related factor such as the lodging of a warrant from another jurisdiction. See Tables 9 and 10, Appendix A, pp. 75-76.

Underlying this screening procedure, regardless of what method is employed, is the theory that a defendant with strong ties to the local community has an intrinsic motivation for remaining in the jurisdiction, and is therefore unlikely to flee. Consideration of the pending charges and the defendant's prior record is justified mainly on the theory that both of these factors will have a bearing on the defendant's sentence if he is convicted. The implicit assumption is that the more serious the potential sentence, the more likely the defendant will be to flee. The current charge, in fact, is sometimes given an overriding importance by pretrial release programs. Most programs have exclusion criteria which bar them from either conducting an interview or presenting any release recommendation for defendants charged with certain offenses. Nearly half of the 110 programs that responded to our survey reported that they excluded from consideration all defendants charged with any crime of violence.[33] The effect of using relatively strict eligibility criteria is, of course, to eliminate from consideration a large number of potential releasees. The more restrictive the criteria, the smaller the proportion of defendants likely to be released through the program.

4. Release Recommendations

Our survey indicates that of the 66 programs that prepare reports for presentation at or prior to the defendant's initial court appearance, 60 (91%) will try to present a recommendation to the court, at least if they have been able to verify the interview information. The remaining programs submit information on the persons they interview

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[33]See Table 8, Types of Criminal Charges Cited by Programs as Basis for Excluding Defendants From Consideration for Release Through Programs, Appendix A, p. 74.

but make no recommendations regarding release.[34]

Since 1970, one of the most significant changes that has occurred in the operation of pretrial release programs relates to the number and types of recommendations made. The Manhattan Bail Project and most of the other early projects focused their attention upon identifying defendants qualified for release on their own recognizance and recommending their release to the court. Today, however, most projects provide the court with information on all the defendants they have interviewed. In those cases where the defendant does not qualify for nonfinancial release under the program's own criteria, the programs either make no recommendation or make a negative one. Of the 66 programs we surveyed which prepare reports for the defendant's first appearance, 34 (52%) will make a recommendation against the use of nonfinancial release when they feel it is warranted.[35]

The manner in which the recommendations are presented varies among jurisdictions. Some programs present recommendations only at a defendant's regularly scheduled court appearance, while others will present the recommendations personally to a judge in chambers as soon as they are prepared. Still others have authority to contact judges by phone. Eighteen of the 110 programs that we surveyed have been delegated authority to release qualified defendants charged with minor offenses on their own recognizance without seeking prior judicial

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[34] See Table 13, Program Recommendation Practices, Appendix A, p. 78.

[35] Ibid.

approval.[36] Such authority to release defendants without judicial approval obviously increases a program's ability to obtain speedy releases for eligible defendants.

Another significant development which has occurred in the recommendation practices of pretrial release programs involves the use of conditional releases. Started initially in the District of Columbia, the use of conditional release has grown remarkably over the past few years. Sixty-four percent of the programs we surveyed which intervene at first appearance indicated that they make conditional release recommendations in appropriate cases.[37] Through the use of conditional nonfinancial releases, the programs are seeking to expand the number of defendants released without bail. The assumption is that such a practice will enable the court to safely release additional, higher-risk, defendants. Conditions which are typically imposed on defendants include requirements that they maintain periodic contact with the pretrial release program, live at a certain address, not associate with certain persons or groups, obtain or maintain a job, enroll in school or a job training program, abide by curfew restrictions, or obtain counseling for alcohol or drug abuse. Two major issues are raised by the use of conditional releases: First, do they in fact provide for the release of additional higher risk defendants? Second, are they genuinely valuable in reducing the risk posed in the release of criminal defendants?

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[36]See Table 18, Release Procedures Prior to First Court Appearance, Appendix A, p. 81.

[37]See Table 13, Program Recommendation Practices, Appendix A, p. 78.

5. Follow-Up Procedures

Most pretrial release programs make some effort to ensure that persons they have assisted in gaining release return to court as scheduled. At a minimum, programs will generally send a reminder letter or postcard alerting defendants of upcoming court appearances.[38] Many also utilize phone reminders. Some programs require that a defendant contact them within 24 hours of release, while others require periodic check-ins by defendants over the entire release period. Beyond this, however, some programs--particularly those which have expanded into conditional releases--are concerned with monitoring the defendant's performance with respect to the conditions imposed on his release. In these programs, contact with the defendant is continued over the period of his pretrial release.

Most programs will also make some effort to locate defendants who have failed to appear in court when scheduled and attempt to persuade them to return, and in some cases the program's staff will assist the police in locating the defendant for the purpose of making an arrest. Twenty-four percent of the programs surveyed have the authority to serve bench warrants and make an arrest themselves, although many of them apparently do not use this authority.[39]

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[38]See Table 14, Program Procedures to Remind Defendants of Upcoming Court Dates, Appendix A, p. 79.

[39]See Table 16, Types of Program Action Taken After Defendant Fails to Appear in Court, Appendix A, p. 80.

III. EVALUATING THE IMPACT OF PRETRIAL RELEASE PROGRAMS

A. Pretrial Release Projects as Instruments for Changing Traditional Bail Practices: Initial Impact

The original pretrial release program, the Manhattan Bail Project, significantly influenced pretrial release practices in New York City during the early 1960s. This success in turn led to the development of a national bail reform movement and efforts to replicate the project throughout the country.[40] The movement has enjoyed remarkable success. The almost total reliance on money bail that existed prior to the 1960s has given way in many jurisdictions to the extensive use of release on recognizance and other nonfinancial forms of release.

The increase which has occurred in the use of nonfinancial release has been particularly dramatic in several jurisdictions which implemented pretrial release programs in the 1960s and early 1970s. A national study of pretrial release practices by Wayne Thomas showed, for example, that from 1962 to 1971 the rate of nonfinancial release in felony cases increased from zero to 56 percent in Washington, D.C.; from three to 47 percent in Des Moines, Iowa; from five to 45 percent in San Diego; and from zero to 33 percent in Philadelphia.[41] Overall, in the 20 cities that Thomas studied, the rate of non-

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[40] See Friedman, supra note 6, pp. 8-39. The heart of the Manhattan Bail Project was a controlled experiment in which the project prepared recommendations for all of the defendants who had the requisite number of points on its point scale, but deliberately did not communicate a portion of the recommendations to the court. Out of 363 cases in which the project made recommendations to the court during its first 11 months of operation, nonfinancial release was granted in 215 (60%). By contrast, only 14% of the defendants in the control group were granted such release. And, of those released during the early years of the project, only about one percent failed to appear in court--a rate far lower than the overall failure to appear rate for persons released on bail. See Ares, Rankin and Sturz, supra note 5, pp. 82, 86; Freed and Wald, supra note 1, p. 62.

[41] Wayne H. Thomas, Jr., Bail Reform in America (Berkeley: University of California Press, 1976), pp. 40-41. Thomas' findings are based on analysis of 400 case samples drawn from each of 20 jurisdictions for the years 1962 and 1971.

financial release in felony cases increased from less than five percent of the defendant population in 1962 to over 23 percent in 1971.[42] In misdemeanor cases the increase was from 10 percent in 1962 to over 30 percent in 1971.[43]

Thomas' study also shows that this increase in the use of non-financial release was reflected in a decrease in the percentage of criminal defendants detained in custody for the duration of the pretrial period. In felony cases the detention rate in the 20 cities studied decreased from 52 percent in 1962 to 33 percent in 1971.[44] The detention rate was also decreased in misdemeanor cases, going from 40 percent in 1962 to 28 percent in 1971.[45] Thomas observed, however, that the detention percentage in misdemeanor cases was heavily influenced by the large number of cases which terminated at the defendant's initial court appearance. He found that very few of the defendants involved in these cases secured pretrial release. Considering only those misdeneanor cases which advanced beyond first appearance, Thomas found that the percentage of detained defendants decreased from 21 percent in 1962 to just 12 percent in 1971.[46]

It is clear from Thomas' study that the development of pretrial release programs has coincided with considerable expansion both in the percentage of defendants released prior to trial and in the percentage

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[42] Ibid., p. 39

[43] Ibid., p. 72.

[44] Ibid., p. 37.

[45] Ibid., p. 65

[46] Ibid., p. 70.

granted nonfinancial release. The extent to which changes occurred in jurisdictions implementing pretrial release programs in the 1960s does not mean, of course, that the programs were solely responsible for that change or that a jurisdiction starting a program today will achieve similar results.[47] The correlation which exists between the creation of pretrial release programs and changes in release practices indicates, however, that the programs have played a major role. Whether the programs initiate the changes or are merely the vehicle through which an existing desire for change is implemented, the fact is that significant changes have occurred in many jurisdictions following program implementation.[48]

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[47]There are several reasons for the inability to give the programs full credit for this increase. First, the speed with which the bail reform movement spread in the 1960s indicates that dissatisfaction with the traditional bail system was widespread. Clearly, the time was right for bail reform and proponents of pretrial release programs capitalized. Second, over the period from 1962 to 1971 most jurisdictions experienced a large increase in the number of persons arrested for criminal offenses--particularly for offenses involving narcotic and drug laws--and this increased arrest rate, in the face of limited jail capacities, may have had a significant influence on the changes which did occur. It is thus possible that some changes in pretrial release practices would have occurred even without the rise of pretrial release programs. Third, Thomas' study reflects changes which occurred from a year, 1962, in which nonfinancial release was a little used and little understood method of pretrial release to a year, 1971, when the bail reform movement was in full bloom. By 1971 Thomas found that even in jurisdictions which had never had a pretrial release program, the use of nonfinancial releases was sometimes substantial.

[48]The success which pretrial release programs have had in promoting the use of nonfinancial release varies greatly from one jurisdiction to another. External factors such as the receptivity of local judges to the use of non-financial releases, the degree of overcrowding which does or does not exist in local detention facilities, and the cooperation which the program receives from the court, police, prosecutor's office and defense attorneys can all have an important bearing on whether a program is successful or not. Likewise, the program's own policies governing when and who to interview, the extent to which the interview information must be verified, and the release criteria employed can influence the number of favorable release recommendations made.

Furthermore, the changes which have occurred in the use of nonfinancial release appear to be lasting ones. Since the initial development of pretrial release programs in the 1960s, we have witnessed an increasing use of nonfinancial releases by judicial initiative, wholly independent of any program intervention,[49] and in the use of nonfinancial releases at the police level in the form of citation releases.[50] This suggests that the programs have had two major types of impacts: (1) increasing the number of defendants released prior to trial; and (2) changing police and judicial attitudes toward the use of alternative methods of release generally.

B. Pretrial Release Programs as Long-Term Ongoing Agencies: The Current State of Knowledge About Program Performance

One of the most significant questions to emerge from this study

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[49]The first clear indication of judicial willingness to use nonfinancial releases without pretrial release program intervention was a New York City study by Andrew Schaffer of the Vera Institute of Justice. Schaffer's study showed that of the 5,358 defendants granted nonfinancial release during the first three months of 1967, only 28.8 percent had been interviewed by the probation department's pretrial release program and just 16.9 percent had been favorably recommended for release. S. Andrew Schaffer, Bail and Parole Jumping in Manhattan in 1967, supra note 30, p. 2. Thomas' study of 1971 cases in 20 jurisdictions disclosed a similar pattern in many of the cities with programs, and also reported that some cities without programs had nonfinancial release rates comparable to cities with programs. Thomas, supra note 41, pp. 151-154.

[50]Fifty-three of the pretrial release program directors that were contacted in our survey (48% of those who responded to this question) indicated that some form of field citation was used in their jurisdiction for offenses other than traffic, housing, or health code violations. This represents a substantial increase in the use of field citations over the 29% figure reported in the 1973 OEO survey. See Goldman, Bloom, and Worrell, supra note 8, p. 11. Compare Table 17, Use of Field Citations for Offenses Other Than Traffic, Housing and Health Code Violations, Appendix A infra, p. 80.

concerns the extent to which pretrial release programs have a positive continuing impact as long-term, ongoing agencies. Although the programs have demonstrated an ability to bring about initial changes in the release practices of jurisdictions where money bail had theretofore been the sole mechanism for obtaining pretrial release, the critical question today--at least in those jurisdictions where the use of nonfinancial release has become a fairly well established practice--is whether the continued existence of a special pretrial release program is warranted once the demonstration has been made.

In order to answer this question, it would be desirable to have sound empirical data on the effectiveness of pretrial release programs in achieving the goals outlined above on pp. 15-17. It would also be desirable to have cross-program data that would enable us to know which alternative program models are most effective in achieving specific goals under particular sets of circumstances.

Unfortunately, such a data base does not exist. Although the bail reform movement is now 15 years old, and although numerous pretrial release programs (many of which were supposed to have been independently evaluated) have been funded during this period, there has been a paucity of sound empirical research in the field. As the recent National Center study of the research literature on pretrial release programs observed,

> Most of the questions that were unanswered a decade ago are still unanswered--though with respect to some issues we do know more now than we did in 1964.
>
> The most glaring problem is the lack of comparative analysis on the performance of the money bail system vis-a-vis the various alternatives to it. As a practical matter, the most reliable way of doing such a comparative analysis is through controlled experiments. None have been conducted over the past

> decade. There has not even been very much in the way of well designed quasi-experimental research, which as a practical matter may be a more feasible research approach in the pretrial release field. It is somewhat ironic that the bail reform movement, which received so much of its early impetus from the dissemination of the results of the control group experiment conducted by the Manhattan Bail Project, should have so totally ignored the potential benefits of well designed research studies during the past decade.[51]

Despite the lack of sound evaluation research addressed to key issues of program performance, it is possible to formulate some preliminary conclusions about the effectiveness of the programs as well as to identify critical gaps in knowledge. In this section, we discuss the current state of knowledge about the effectiveness of the programs, as ongoing agencies, in achieving the end goals outlined previously.

1. Impact Upon Release Rates

In assessing the impact of pretrial release programs as ongoing agencies, one critical question is the extent to which they reduce the detention population below what it would be in the absence of the programs. Do they, in fact, result in an increase in the proportion of defendants who obtain some form of pretrial release? Do they result in an increase in the proportion granted release on nonfinancial conditions?

Answering these questions is complicated by the fact that most programs--and all of the largest and most successful ones in terms of number of nonfinancial releases generated--do not concentrate their activities

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[51] National Center for State Courts, An Evaluation of Policy Related Research on the Effectiveness of Pretrial Release Programs, supra note 7, pp. 54-55.

solely upon persons who cannot afford bail. Reflecting their judgment that the injustice of making a person buy his release is sufficient to merit program intervention in all cases where the defendant qualifies for release, 63 percent of the programs we surveyed intervene either prior to or at the time of the defendant's first bail hearing.[52] There are some very good reasons for the programs to take this approach, but it makes it exceedingly difficult to measure the program's impact on the rate of pretrial detention since one of the consequences of early intervention is program involvement in at least some cases where the defendant would be fully capable of securing release even without the program's services. We do not know what proportion of the cases fall into this category, but it is clear that there is not a one-to-one relationship between the number of nonfinancial releases granted and the reduction of jail population.

Two observations made during the course of this study prompt us to question how much difference a program's intervention actually makes in a jurisdiction's pretrial release practices once the jurisdiction has moved away from allowing release solely on money bail. First, there is evidence that a very high proportion of the defendants released as a result of program interventions are charged with misdemeanors or

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[52]See Table 10, Primary Point of Program Intervention, Appendix A, p. 76.

relatively low grade felony offenses.[53] While it is probably true that in the past many of these persons would have remained in custody because of failure to post bail, it is certainly questionable whether--given the changes that have taken place in judicial attitudes toward the use of nonfinancial releases since the inception of the bail reform movement--such would be the case today. There is evidence indicating that in many jurisdictions, if the programs did not exist, the judges themselves would question the defendants about their ties to the community and would release a substantial proportion of them on nonfinancial conditions.[54]

Second, in interviews with pretrial release program directors and judges, we found little discernible difference between the pretrial release philosophies of the programs and the judges. Although pretrial release programs may pose a significant initial challenge to bail

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[53]Our questionnaire survey did not request data on program releases broken down by crime charged. We did find, however, that nearly half the programs automatically excluded defendants charged with any crime of violence. (See Table 9, Types of Criminal Charges Cited By Programs as Basis for Excluding Defendants from Consideration for Release Through Program). And even when defendants charged with such crimes are not automatically excluded, the seriousness of the charge is often considered by the program (and the court) in making the release decision. Thomas' study, for example, found nonfinancial releases rarely used in felony assault, robbery and burglary cases. Overall, he found that the percentage of nonfinancial releases in felony cases in most cities ranged from 10 to 20 percent of the felony defendants. There are, of course, exceptions, the principal one being Washington, D. C., where the D. C. Bail Agency has been involved for several years in the nonfinancial release of over 50 percent of the felony defendants.

[54]See note 49, supra p. 31, and accompanying text.

practices in a jurisdiction where nonfinancial release had not been widely used, it appears that over time the attitudes of the court and program tend to merge on when a nonfinancial form of release is appropriate. This, we believe, explains in large part why the programs are generally well received in the jurisdictions in which they are operating and why favorable program recommendations have a high rate of acceptance by the judges.[55] Indeed, there is evidence that some judges not only routinely grant nonfinancial release on the favorable recommendation of the programs but, in addition, often grant releases to defendants not recommended (usually because the program had only unverified information) and occasionally grant such release despite a negative program recommendation.[56] If we can conclude from this that the programs are recommending only the most highly qualified defendants for release on recognizance but that the judges are willing to release others, then it appears likely that many persons now recommended by the programs would continue to be released even without program recommendation.

The danger in this supposition, however, is that it considers program impact only in terms of the recommendations which are made. This may be a very misleading measure of program impact on release rates. Pretrial release programs, as ongoing agencies, may have more indirect influence. It may be that while the recommendation made is not crucial, the background information on community ties provided by

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[55]Thirty-two of the programs contacted in our survey were able to provide data from which to compute the percentage of nonfinancial release recommendations that were accepted by the court. The average acceptance rate was 82 percent.

[56]See note 30, supra p. 22, and accompanying text.

the program is. Even in those cases in which the judge grants a nonfinancial release without a favorable program recommendation or despite a negative recommendation, the background information supplied by the program may have played a critical role in the judge's release decision. We cannot at this time, therefore, discount the possibility that the programs do influence the use of nonfinancial releases and that this influence goes beyond simply those cases in which the program presents a favorable release recommendation.

Furthermore, pretrial release programs may indirectly influence the court's use of nonfinancial releases through their capacity to provide supervision for defendants granted this form of release. In maintaining contact with defendants on own recognizance, the programs are filling a role normally assumed, if at all, by bondsmen. Moreover, in most jurisdictions pretrial release programs actively participate in efforts to return the defendant to court if he once fails to appear.[57] Whether or not this follow-up activity is genuinely valuable in reducing "skips," the fact that it is provided may increase the use of nonfinancial release by the court.

At this time, we are simply unable to reach any firm conclusion as to the impact of pretrial release programs--as continuing agencies--on expansion of release rates and consequent reduction in detention populations. This is a particularly critical gap in knowledge, because any anlysis of the cost effectiveness of the programs is dependent in

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[57]See Table 16, Types of Program Action Taken After Defendant Fails to Appear in Court, Appendix A, p. 80.

large part upon a determination of the extent to which they actually provide for the release of persons who would otherwise remain in detention.

2. Impact Upon Speed of Release

In analyzing the extent to which pretrial release programs have the effect of accelerating the release of arrested defendants, it is important to bear in mind that there are two fundamentally different approaches to the operation of the programs. One approach--followed by a substantial majority of the programs--is to interview all defendants (or at least all defendants not clearly ineligible for release on the basis of the charges against them or other factors known at the time of arrest) as soon after arrest as possible, with the objective of enabling a recommendation for pretrial release to be implemented at or before the defendant's initial court appearance. The other approach is to focus only on defendants who will clearly be unable to obtain release without program intervention. Programs taking this approach will typically wait to interview a defendant until after his first court appearance, when it is clear that there will be further proceedings in the case and that the defendant will be unable to post money bail.

Some programs following the first approach have been able to show dramatic results in reducing the time between arrest and release for persons eligible for release. A study of the Santa Clara County (California) Pretrial Release Program, for example, showed that that project had succeeded in reducing the average time from arrest to non-financial pretrial release in misdemeanor cases from 74 hours in 1970 (before the program started) to just 2.4 hours in 1971, which was the

first year of program operations.[58] Several aspects of program operation appear to have contributed to this speedy handling of persons eligible for release:

- The project is located at the main jail (where 76% of the defendants are booked), adjacent to the jail's booking desk. Project staff personnel are thus able to interview most arrestees within minutes after they are booked.

- The project has immediate access to information about these defendants' prior records, through an on-line computer system with a terminal located at the interviewer's desk. The computerized criminal history information is supplemented by a card file on former arrestees that is maintained at the jail by the Sheriff. With access to this information, supplemented by inquiries of the defendant during the interview process, the program is able to make a relatively rapid decision concerning the defendant's "reliability" as a pretrial releasee.

- The project is able to provide around-the-clock staff coverage of the main jail, and to conduct interviews at all other facilities in the county at least once a day.

- Perhaps most important, the project staff has the authority to release any misdemeanor defendant who meets the project's release criteria, subject only to a seldom exercised immediate review by the police desk officer.[59]

Not surprisingly, the Santa Clara project also showed a relatively high release rate--54.5% during the first year of project operations.[60] Quite consistently, pretrial release programs that interview close to the time of arrest are involved in more nonfinancial releases than

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[58] See American Justice Institute, "Santa Clara County Pretrial Release Project Final First-Year Evaluation Report" in Ronald J. Obert, et al., Pretrial Release in an Urban Area: Final Report, Santa Clara County Pretrial Release Program (1973), p. 53.

[59] Ibid., pp. 3-12, 86-110.

[60] Ibid., p. 53.

programs that intervene later. This relationship between the speed with which a program operates and the number of nonfinancial releases generated is, of course, not a surprising finding. Conditions in American jails being what they are, defendants tend to secure release by whatever method is fastest--including surety bail.[61]

Programs that wait to intervene until after a defendant's first court appearance are likely to have appreciably lower release rates than the early intervention projects. However, these projects, too, may greatly reduce jail time for their releasees, since in the absence of the programs many of these persons would be likely to remain in detention until the disposition of their cases.[62]

3. Considerations of Equal Justice

From the beginning, one of the principal concerns of bail reformers has been to increase the fairness with which the system treats poor people. Recognition of the fact that large numbers of poor defendants were detained prior to trial because of an inability to post bail led to creation of the Manhattan Bail Project, and initially the project

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[61] See Wice, supra note 23, pp. 258 ff,; also Thomas, supra note 41, p. 80.

[62] Evaluators who in 1971 studied a small pretrial release program in Dallas, Texas, that followed the delayed intervention approach reported that in one 10-day period, out of 1,199 persons screened for possible release, only 170 interviews were conducted and only 28 releases were obtained. The average time from arrest to release through the project was nine days. However, the project did appear to be achieving the release of persons who would otherwise have stayed in jail throughout the pretrial period. See Robert L. Bogomolny and William Gaus, "An Evaluation of the Dallas Pretrial Release Project," Southwestern Law Journal, Vol. 26 (1972), pp. 515-522.

assisted in the release of only those defendants represented by the Legal Aid Society.[63] Improving the fairness with which the pretrial release system treats the poor is still considered a major goal for pretrial release programs.[64]

However, as the earlier discussion of differing approaches to the interviewing function indicates, most programs have adopted the view that their services should be extended to all defendants who might be qualified for release, and have sought to interview defendants as soon after the arrest as possible without regard to their economic status. Such an approach has obvious advantages in terms of providing the court with timely information about defendants' backgrounds, accelerating the release of "good risk" defendants, and reducing dependency upon the money bail system. In terms of achieving the objective of lessening the inequality of the bail system for poor or indigent people, though, it is not clear whether early intervention is the most efficient approach. With early intervention, the danger exists that a program can achieve an impressive number of nonfinancial releases by "skimming off" the best release risks but be failing the persons the bail reform movement was originally intended to benefit--those persons too poor to post bail. One of the consequences of delayed interviewing is likely to be a sizeable reduction in the number

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[63] See Ares, Rankin and Sturz, supra note 5, p. 3.

[64] See Chart A, supra p. 13. As this chart indicates, the goal of "lessening the inequality in treatment of rich and poor by the criminal justice system" was regarded as second in relative priority, among 16 possible program goals, by both program directors and respondents other than directors.

of persons released through program intervention. However, by concentrating on persons not released by the time of their first court appearance, delayed intervention programs should need less staff, and at the same time may focus more directly upon the persons most in need of assistance. On the other hand, the delayed intervention approach also increases the likelihood that defendants who are not indigent, but for whom the cost of posting bond would be severe, will seek release via money bail despite the financial hardship.

As of now, we simply do not know what kind of "trade-offs" occur in this area. In view of the fact that equal justice has been at the heart of the bail reform movement from its inception, it is disheartening to find a paucity of research addressing the impact which the programs have on the release of poor people. If one of the initial results of a program is to increase the number of defendants released prior to trial, it might be assumed that this increase is principally the result of expanded release of persons who were previously unable to make bail. However, there are other hypotheses (e.g., increased arrests but no expansion in jail capacity) that might account for the increase in releases.[65] And once a program becomes institutionalized and the use of nonfinancial releases becomes an established procedure, the impact of the program in enhancing the fairness of the bail system becomes even more difficult to measure. The question then is not

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[65] See note 47, supra p. 30.

simply whether the program is providing for the release of persons who cannot afford bail, but whether it is providing for the release of persons who could neither post bail nor secure nonfinancial release by a judge without program intervention. Thus, the question of whether programs have an impact on the release of poor or indigent defendants is intimately wedded to the question of their impact on release rates generally. As discussed earlier, this is an issue on which reliable information is lacking.

In another sense, however, it is possible to conclude that the programs do have some impact on equal justice. The information which the programs provide the court allows consideration of individual factors in making a decision regarding custody or release status. In this sense the programs increase the fairness and rationality of bail decisions generally. Even if this increased rationality means simply that a defendant who could post bail is saved the cost of a bail bonding fee by being released on his own recognizance, this would still seem to be a very significant gain. Many defendants who do post bail undergo significant financial hardship in doing so, and saving the defendant this expense is a gain for equal justice.

Other aspects of the "equal justice" area relate to the question of possible discriminatory treatment of defendants on the basis of factors such as age, sex, and race. To date, however, there has been very little data collection or analysis that would shed light on

differential treatment along any of these lines.[66]

4. Economic Costs and Benefits

Despite the fact that pretrial release programs are now operating in well over 100 jurisdictions, and although many appear to be well integrated into the local criminal justice system, the future of the programs is far from assured. It seems obvious that in the life of every pretrial release program a decision will have to be made at the state or local level as to whether the benefits derived from the program make it worthy of continued tax-levy funding. Many of the programs which started in the 1960s did not survive this decision and were terminated when initial grants from foundations ran out and the local jurisdiction was confronted with the burden of program funding.[67] As a

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[66] A few studies of pretrial release practices in single jurisdictions have collected such data, and one of them--conducted by a research team from Ohio State University--did find some evidence of differences in treatment of blacks and whites, in terms of release decision and ultimate case disposition. However, because of lack of other possibly relevant data elements, the authors could not control for the possible influence of other factors that might affect treatment and outcome. See Marshall Bell, et al., Bail System Development Study [focusing on Franklin County (Columbus) and Hamilton County (Cincinnati) Ohio] (Columbus, Ohio: The Ohio State Research Foundation, 1974). With respect to possible discrimination along sex lines, we sometimes found, in our survey and site visits, that pretrial release program coverage of women's detention facilities was less than the coverage of men's facilities. Some program representatives suggest that it is more likely that women will be released by a judge, and that the need for pretrial services for women is therefore not as great as for men. Others acknowledge that increased program services could reduce custody time and/or bond costs for women defendants, but that such coverage would increase operating budgets without generating sufficient releases to be cost effective. The issue area is one in which further research seems warranted.

[67] Lee S. Friedman, comparing a Vera Foundation list of 89 programs which were started prior to 1969 with the Office of Economic Opportunity list of programs operating in 1973, found that 30 of the 89 early programs were no longer operating as of 1973. See Friedman, supra note 6, p. 47.

result, despite the 15 year history of pretrial release programs, most of the programs in existence today have been operating for only a relatively short time. Of the programs we surveyed, 35 percent had been in operation for less than two years and over two-thirds had been started in the last five years.[68] Moreover, the majority of the new programs have been supported primarily by federal funds provided through the LEAA program.[69] Hence, although pretrial release programs now appear to be enjoying a wave of success, a critical issue concerns their staying power. Do pretrial release programs continue to influence pretrial release practices as long-term, on-going agencies and, if so, is their constructive impact sufficient to justify their continued funding from the tight budgets of financially hard-pressed local jurisdictions after initial federal funding runs out?

It is clear that in the past many decisionmakers at the local level have not been fully persuaded that pretrial release programs are cost-effective operations--that the benefits derived from the programs exceed the cost of program operation. This is not surprising, because to date there have not been any really sound cost-benefit analyses of pretrial release programs. Although some of the evaluation studies of individual pretrial release programs contain useful insights into the problems of calculating the costs and benefits of the programs, none of them are without significant methodological problems. As of now we

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[68] See Table 5, Primary Sources of Current (1975) Funding by Age of Programs, Appendix A, p. 71.

[69] Ibid.; see also Table 3, Current (1975) Primary Sources of Program Funding, Appendix A, p. 71.

simply do not have an adequate basis upon which to assess the cost effectiveness of the programs.[70]

The threshold problem in calculating program costs and benefits is essentially the same one adverted to earlier in the discussion of program impact upon release rates--i.e., to what extent does a program have the effect of reducing the detention population below what it would be in the absence of the program? That is by no means the only relevant question here, of course, but surely it is a critical one--the most obvious savings produced by a program are those that result from reduced detention costs. As of now, there is no reliable information upon which to base a calculation of these costs--or, for the most part, to calculate the dollar value of other possibly relevant costs and benefits, such as

- Costs to defendants, in terms of lost income, if they are not released.
- Costs to the jurisdiction, in terms of added welfare payments to the family and other expenses, if the defendant is not released.
- Costs to defendants of obtaining release through a bail bondsman, if release through a program is not possible.
- Costs to the jurisdiction of attempting to apprehend released defendants who would otherwise be in detention.
- Costs to the jurisdiction that result from crime committed by released defendants who would otherwise be in detention.

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[70] The several studies which have been done in this area have generally concluded that the programs are cost-effective. However, in addition to proceeding on the questionable assumption that the persons released by the program would have otherwise remained in jail, there are other methodological problems with the studies. The most common are (a) the highly questionable assumption that the period of time from arrest to disposition would have been the same had the defendant not secured release; and (b) the failure to distinguish between fixed and variable jail costs in computing the per day savings of jail population reduction.

- Benefits to the jurisdiction that result from operation of a system than minimizes distinctions in determination of pretrial custody status based upon economic status of defendants.

5. Failure to Appear (FTA) Rates

The increase which has occurred over the past 15 years in the percentage of defendants released prior to trial has apparently been accompanied by an increase in failure to appear (FTA) rates. Thomas' study, the only one which has computed failure to appear rates over time and across jurisdictions, showed that the overall FTA rate in the 20 jurisdictions he studied increased from 6 percent in 1962 to 9 percent in 1971.[71] The increase in failures to appear occurred with both bail and nonfinancial releases. While there may exist some general relationship between higher release rates and increases in the failure to appear rate (since presumably more "poor risk" defendants will be among those released), Thomas' study suggests that such a relationship does not exist in every jurisdiction. His data show that some jurisdictions substantially increased the rate of pretrial release with no adverse consequences whatsoever for the rate of non-appearance, and that those jurisdictions with the highest pretrial release rates and the greatest use of nonfinancial releases did not have the highest nonappearance rates.

Whether there is any difference between bail and nonfinancial release in assuring the appearance of defendants in court is not totally clear from the available data. Thomas found little difference between the respective failure to appear rates for defendants on bail and non-

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[71] Thomas, supra note 41, p. 87

financial release in the 20 cities he studied. The nonappearance rate for defendants on nonfinancial release was lower than the rate for defendants on bail in some cities and higher in others, but the difference either way was generally not significant.[72] In our own survey of 110 pretrial release programs, only 12 programs were able to provide any sort of comparative FTA rates for defendants on nonfinancial and bail release. Seven reported a lower rate for defendants on nonfinancial release, two said the rates were about the same, and three indicated that bailed defendants had a lower rate.[73]

Interestingly, the 42 programs that were able to provide failure to appear information for nonfinancial releases reported much lower nonappearance rates than those in the Thomas' study. Two-thirds of the programs reported a nonappearance rate of 5 percent or less and 88 percent of the programs reported rates of 10 percent or lower.[74] However, the lower rates reported by the programs appear to be mainly due to different methods of defining what is meant by "failure to appear."[75] Another possibly significant factor in the lower rates reported by the programs is that

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[72] Ibid., p. 98.

[73] See Table 19, Failure to Appear Rates Reported by Programs, p. 82.

[74] Ibid. Compare this data with the findings of the Thomas study at pp. 96-97.

[75] While Thomas considered every missed court date at which the defendant's presence was required to be a failure to appear, the programs often used a much narrower definition--willful failure to appear, nonappearance in which the defendant was not located and returned to court within a specified period of time, etc. Since failure to appear may be defined and the nonappearance rate calculated in a variety of ways, and since pretrial release programs have an obvious interest in reporting low nonappearance rates, it is difficult to know what significance to place on program-supplied data in this area.

60 percent of the programs considered only persons they had recommended for nonfinancial release in computing the nonappearance rate. An earlier study of bail jumping in New York City, by Andrew Schaffer, found that persons granted nonfinancial release on the basis of a program's recommendation had a lower nonappearance rate (9%) than did persons who were released even though not interviewed by the program (16%) or persons who were released even though they had been interviewed but not recommended for release (19%).[76] This suggests that the combination of two critical functions--initial screening to identify "good risk" defendants, plus follow-up contact with released defendants--may be vital to minimizing FTA rates.

One of the most interesting findings to emerge from our analysis of the nonappearance problem is that low release rates do not necessarily produce low FTA rates. The Thomas study showed that jurisdictions highest in the use of nonfinancial releases did not have failure to appear rates higher than other jurisdictions.[77] This finding suggests that programs with relatively restrictive screening criteria might be able to relax those criteria (and thus increase their release rates) without affecting nonappearance rates. Small-scale experiments reported by the programs provide further indication that such an increase in releases will not significantly increase FTA rates. In 1972, as a result of a serious overcrowding problem in the Santa Clara County jail, the pretrial release program in that jurisdiction was authorized to release all

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[76] See Schaffer, supra note 30, p. 4.

[77] Thomas, supra note 41, p. 101.

misdemeanants, except public intoxification defendants, during a short period in 1971.[78] The result was that nearly 90 percent of all misdemeanor defendants were released and the nonappearance rate remained virtually unchanged. Perhaps even more instructive, because it involved expanding the release rate in felony cases, was the experience of the Brooklyn Pretrial Services Agency during a two-week period in 1974. During this period, the program's release rate increased from a norm of 42 percent to 66 percent without adversely affecting the nonappearance rate.[79]

There are, of course, a number of factors which may influence the rate of nonappearance aside from the program's selection criteria. These include the personal attributes of defendants, the severity of the alleged offense, the procedures employed by the program and the court in notifying defendants about future court dates, the supervision provided during the release period, local practices regarding apprehension and prosecution of defendants who fail to appear, and the amount of delay between release and case disposition. To date, however, there has been very little research addressing the question of what factors influence the nonappearance of criminal defendants. The two most thorough studies--one by Malcolm Feeley and John McNaughton, the other by William Landes--suggest that it is difficult to find a positive correlation between any background variables and likelihood of

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[78] See Santa Clara study, supra note 58.

[79] James W. Thompson, Pretrial Services Agency Operations Report, April 1 - April 28, 1974 (Brooklyn, N. Y., May 1974).

nonappearance.[80]

6. Pretrial Crime Rates

The extent to which defendants on pretrial release engage in criminal activity is a subject of considerable controversy, but is one with respect to which there has been very little in the way of empirical research.

Only a few studies have made any attempt to collect and analyze data comparing the incidence of pretrial crime committed by defendants on different types of pretrial release (e.g., surety bail v. nonfinancial release), and only one of these studies has held constant such possible relevant factors as the defendant's age, employment status, prior record, and current charge. Thus, while the evidence from these studies indicates no appreciable difference in likelihood of rearrest for persons on different types of release, it is insufficient to form a basis for concluding that type of release is unrelated to incidence of pretrial crime.[81]

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[80] See Malcolm M. Feeley and John McNaughton, The Pretrial Process in the Sixth Circuit: A Quantitative and Legal Analysis (New Haven, Conn., March 1974), pp. 29-39; William M. Landes, "Legal Theory and Reality: Some Evidence on Criminal Procedure," Journal of Legal Studies, Vol. 3 (June 1974), pp. 287, 320-325. Interestingly, one study has found that released defendants charged with serious felonies had much lower FTA rates than most defendants charged with minor misdemeanors. See Schaffer, supra note 30, pp. 25-28. Two studies have found that follow-up procedures appear to be especially important in minimizing FTA rates. See Wice, supra note 23; also Stevens H. Clarke, et al., Bail Risk: A Multivariate Analysis (Institute of Government, University of North Carolina at Chapel Hill, February 1976), pp. 44-45.

[81] See Santa Clara Study, supra note 58, pp. 59-60; Peter S. Venezia et al., Pretrial Release with Supporting Services for High Risk Defendants--Evaluation Report No. 3 (Davis, California: National Council on Crime and Delinquency, May 1973), pp. 48-50. The Clarke study, supra note 80, which did attempt to control for type of offense and various background characteristics, found that defendants released through a pretrial release program in Charlotte, North Carolina, had slightly lower rearrest rates than defendants released on money bail in that jurisdiction.

Although pretrial release program directors as a group place a relatively lower priority on the goal of "helping to ensure that defendants who might be dangerous to the community are not granted pretrial release"[82] than do most other criminal justice policymakers, it is clear--both from the program directors' responses to the Stover-Martin questionnaire survey and from analysis of the screening criteria used by the programs--that the commission of crime by released defendants is a major concern of the programs.[83] One of the dilemnas faced by the programs, however, is that no set of indicators has yet been developed which is capable of predicting the likelihood of future crime with any degree of accuracy. Evidence from the principal empirical research efforts undertaken to date indicates that no single factor in a defendant's background is a reliable indicator of future criminal behavior.[84] One of the studies goes further, asserting that, even when taken collectively, the criteria most commonly suggested as appropriate for identifying defendants who should be held in preventive detention are not

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[82]See Chart A, supra p. 13 and accompanying text at pp, 12-14.

[83]Although this "public protection" goal was given lower relative priority, as a goal of the program, than were 13 of the other 15 goals listed, program directors did not regard it lightly. The mean score given to it by program directors as a group was 2.66--well over toward the "of great importance" side of the seven-point scale used to record responses to this series of questions. And, as indicated by Table 8 of the Appendix, almost half of the programs automatically exclude from consideration defendants charged with any violent crime.

[84]See Clarke, supra note 80; J. W. Locke et al., Compilation and Use of Criminal Court Data in Relation to Pretrial Release of Defendants: Pilot Study, National Bureau of Standards Technical Note 535 (Washington, D. C.: U. S. Department of Commerce, 1970); Arthur Angel et al., "Preventive Detention: An Empirical Analysis," Harvard Civil Rights-Civil Liberties Law Review, Vol. 6 (1971).

capable of isolating even a small group of defendants containing a majority of potential recidivists.[85]

Both current charge and prior record are, of course, employed to at least some extent in the operations of all pretrial release programs. Indeed, one of the criticisms of the programs from some quarters is that they pay too much attention to these factors (particularly to the nature of the current charge), with the result that the programs are too cautious in making recommendations and that release rates are lower than they safely could be. From other quarters, the charge is made that programs do not pay sufficient attention to these factors, with the result that too many dangerous criminals are being released. One basic problem here is that there is no agreement on what constitutes an unacceptable level of crime committed by persons released prior to trial. Indeed, as of now, there is very little empirical data on the amount of crime committed by defendants while on pretrial release, regardless of type of release. We simply do not know the true

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[85] Angel et al., supra note 84, p. 51. There is, however, some indication that two factors--the severity of the current charge and the seriousness and extent of the defendant's prior record--are "statistically significant" predictors of pretrial crime. See Landes, supra note 80, pp. 308-320, 336. A major difficulty with the Landes study is that it does not indicate how accurate these factors are as predictors of future crime. There is a great difference between "statistically significant predictors" and "reliable indicators of future criminal behavior."

dimensions of the problem.[86]

Considerably more is known about the relationship between length of time on pretrial release and incidence of pretrial crime. Several studies have found that the length of time between release and case disposition is positively associated with rearrest. As pretrial delay increases, so

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[86]Some indication of the confusion in this area can be found in the conflicting findings reported by several studies that attempted to determine the extent of crime committed by defendants in the District of Columbia. A 1966 study by the District of Columbia Crime Commission found that persons released pending disposition of felony charges during the 1963-1965 period, only 207 (7.5%) were later held for action of the grand jury on one or more felonies alleged to have been committed while on bail. Report of the President's Commission on Crime in the District of Columbia (Washington, D. C.: U. S. Government Printing Office, 1966), p. 514. A 1969 report by a committee of the D. C. Judicial Council found generally similar rearrest rates for felony defendants. See Report of the Judicial Council Committee to Study the Operation of the Bail Reform Act in the District of Columbia (Washington, D. C., May 1969), reprinted in Hearing on Preventive Detention Before the Subcommittee on Consittutional Rights of the Senate Committee on the Judiciary, 91st Congress, 2d Sess (1970). Perhaps the most methodologically painstaking study, that undertaken by the National Bureau of Standards and published in May of 1970, found a rearrest rate of 11 percent for released defendants generally, and 17 percent for released felony defendants. However, only about 5 percent of the released felony defendants were rearrested on further charges. J. W. Locke et al., supra note 83, pp. 51. By contrast, other studies focusing on specific defendants and using other measures of criminal involvement reported much higher incidence of pretrial crime. For example, a Metropolitan Police Department study of indicted armed robbery defendants reported that 34.6 percent of those free on bail in 1967-68 had been reindicted while on release. See "Survey of the Apparent Abuse of the Bail Release System---A Study Prepared for the Metropolitan Police Department by Robert E. Lewis, July 24, 1968," reprinted in Hearing on Amendments to the Bail Reform Act of 1966, before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, 91st Congress, 1st sess. (1969), p. 670. A critique of this study, prepared by Norman Lefstein of the Department of Justice, appears at p. 676 of the same hearings. See generally Thomas, supra note 41, pp. 227-248.

does the likelihood that the defendant will be rearrested.[87]

C. The Validity of the Programs' Operating Assumptions

The marked expansion which has occurred nationally over the past 15 years in the use of release on recognizance and other forms of nonfinancial release is strong evidence that pretrial release programs have had a major influence on pretrial release practices. In light of the changes that have taken place in jurisdictions which have implemented such programs, we feel the programs have adequately demonstrated that:

- The traditional money bail system is unduly harsh and inequitable in its reliance upon financial resources as the criterion for release of defendants who are otherwise (in terms of charge and prior record) similarly situated.
- Through their interviewing and screening of pretrial detainees, pretrial release programs can provide information and recommendations to the court which are given considerable weight by judges in making pretrial custody/release decisions.
- The provision of such information and recommendations can contribute to the release on nonfinancial conditions of many defendants who would otherwise have been detained or forced to secure their release at the cost of a bail bond.

With respect to the validity of the basic assumptions which underlie the programs' operation as ongoing agencies, however, the evidence is for the most part inconclusive. As outlined above on page 16, the basic assumptions are that the performance of certain functions will lead to the achievement of specific goals. However, as the preceding discussion of the current state of knowledge about program performance should make abundantly clear, there is simply not very much in the way of empirical

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[87] See Locke et al., supra note 84, pp. 162-165; Angel et al., supra note 84, pp. 359-360; Clarke et al., supra note 81, pp. 30-31.

data to demonstrate that the programs have been effective in achieving these goals. Chart C, on page 57, summarizes our findings with respect to the extent that the programs' basic operating assumptions appear to have been validated by available empirical data.

Significantly though, despite the lack of empirical data to validate their operating assumptions. pretrial release programs appear to have gained fairly wide acceptance among policymakers who are familiar with them. Thus, for example, findings from the 1974 National Center questionnaire conducted by Robert Stover and John Martin show that more than 90% of the criminal justice policymakers who responded to the survey felt that the pretrial release programs operating in their jurisdictions either improved the criminal justice process very significantly (56%) or helped somewhat (36%).[88] Ninety-two percent indicated that they generally favored the operation of such programs.[89]

Further evidence that the programs are viewed favorably by local policymakers may be found in our data on program funding, which indicate that 61 of the 110 programs we contacted are supported mainly by state, county, or municipal government.[90] This commitment of tax-levy funding to the continued operation of the programs suggest that, in these communities, the programs are regarded as valuable components of the criminal justice system. While more analysis is needed with respect to what types of programs are most favorably regarded and why, these

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[88] Stover and Martin, supra note 18, p. 80.

[89] Ibid., p. 81.

[90] See Table 3, Current (1975) Primary Sources of Program Funding, Appendix A, p. 71.

CHART C

OPERATING ASSUMPTIONS	EVIDENCE REGARDING VALIDITY
1. By providing a court with information on a defendant's ties to the local community (thus supplementing information concerning current charge and prior record) and by making recommendations for nonfinancial release in cases that meet certain criteria, a program can lessen the likelihood of differential treatment based on wealth and increase the proportion of defendants released on nonfinancial conditions prior to trial.	1. Substantial evidence that programs have had these effects in the past, in jurisdictions where release programs had not previosuly been operating (e.g., Manhattan Bail Project findings; data from Thomas study). Widespread belief that, once established as ongoing agencies, the programs continue to have these effects, but empirical data is lacking on the extent to which long-established programs are responsible for (a) the release of persons who would be unable to afford money bail; or (b) the release of persons who would not be granted nonfinancial release even in the absence of a program.
2. Defendants released on nonfinancial conditions on the basis of such information and recommendations will, with the help of follow-up contacts by the program, perform at least as well as defendants released on money bail in terms of: (a) returning for scheduled court appearances; and (b) abstaining from criminal conduct.	2. (a) Fragmentary available evidence shows no consistent pattern of lower FTA rates for any particular form of release, including money bail. Some evidence suggests that defendants that are released on program recommendations have lower FTA rates than defendants granted nonfinancial release in the absence of positive recommendation from program (e.g., Schaffer study) and that program follow-up contacts are important for minimizing FTA rates (e.g., Wice study). Though data base is weak, tentative finding is that the assumption is valid with respect to relationship between program activities and defendants' performance in meeting scheduled court appearances. (b) Assumption that defendants released through programs perform as well as those on bail in abstaining from criminal conduct has not been established.
3. In economic terms the benefits produced by the programs outweigh the costs of their operation.	3. Assumption has not been established. Lack of methodologically sound comparative studies of bail and alternative pretrial release programs means, a fortiori, that costs and benefits cannot be calculated. Note that costs and benefits are likely to vary over time, and that evidence of cost effectiveness is stronger for new programs in jurisdictions that had previously relied solely on money bail. Also, note difficulty of calculating dollar benefits in areas of equal justice.

generalized expressions of opinion suggest that pretrial release programs, as alternatives to the surety bail system, have fairly wide support from policymakers familiar with their operation.

IV. FUTURE RESEARCH

A. Priority Areas for Future Research

The preceding discussion has identified a number of gaps in knowledge concerning the effectiveness of pretrial release programs and the validity of some key operating assumptions. In so doing, it implicitly suggests an agenda for future research. This section briefly summarizes our views regarding the subject areas that ought to receive priority attention in future research and the critical questions that ought to be addressed.

1. Program Impact Upon Release Rates

The most critical questions with respect to release rates have to do with the impact of the programs as on-going agencies, in light of the growing use of police citation releases and the practice that many judges have developed of granting release on nonfinancial conditions even in the absence of program recommendations. If pretrial release programs are not achieving the release of at least some persons who would otherwise remain in detention, then their continued existence is of doubtful value. Priority research questions:

> To what extent are particular types of programs responsible for the release of persons who would be unable to afford money bail?
>
> To what extent are particular types of pretrial release programs responsible for the release of persons who, in the absence of the program, would not be granted nonfinancial release?

2. Pretrial Crime

This is a highly controversial area, one in which little has been

done in the way of sound empirical research. The undertaking of such research is complicated by difficulties in measuring the extent of pretrial crime, but it is an area in which further research is critical. Key questions:

> How much crime is actually committed by persons who have been released prior to trial? What types of crimes are committed by persons with particular characteristics (e.g., current charge, prior record, type of release, etc.)?
>
> What are the comparative pretrial crime rates for defendants on different types of pretrial release (e.g., release on recognizance, supervised release, deposit bail, traditional money bail)?
>
> What effect does a particular type of pretrial release program have on the likelihood that a defendant will commit crime while on release? What factors tend to produce low pretrial crime rates?
>
> To what extent is it possible to develop criteria by which to accurately predict which defendants will commit crimes if released?

3. Failure to Appear Rates

Although there is more and better information in this area than with respect to release rates and pretrial crime, there are still some important unanswered questions, including these:

> What effect do particular types of program operating procedures have on the likelihood that a released defendant will return for scheduled court appearances? What factors tend to produce low FTA rates?
>
> What are the comparative failure-to-appear rates for defendants on different types of pretrial release?
>
> To what extent is it possible to develop criteria by which to accurately predict which defendants will fail to appear if released?

4. Equal Justice

Research in this area should be closely related to research on programmatic impact on release rates generally. Principal research question:

> To what extent do different types of pretrial release program operating procedures contribute to reducing inequities based on economic status, race, sex, or other factors which are not relevant to a defendant's performance in terms of returning for scheduled court appearances and abstaining from criminal activity?

5. Economic Costs and Benefits

An accurate assessment of the costs and benefits of any pretrial release program depends upon sound knowledge of the program's effectiveness in the four areas discussed immediately above--particularly the questions related to release rates. Only by obtaining sound data in each of these areas can one begin to estimate the dollar costs--and savings--produced by specific types of programs. Once a sound basis has been established for estimating the dollar costs and savings, the primary questions are:

> To what extent do the economic benefits of particular types of programs outweigh the costs? In particular, what are the relative costs and benefits of alternative program models (including police citation release) that follow the early intervention approach vis-a-vis models that follow a delayed intervention approach?

6. The Institutionalization Process

Of the 110 programs that responded to our survey, 41 (38%) were supported primarily by federal funds provided through the LEAA program. Over the next several years, as this federal funding support phases out, these programs will be seeking to continue their operation with local

funding. Not all of them will be successful in obtaining such funding, but the examination of the process through which the decision is made regarding institutionalization of the program at the local level may produce some valuable information. Key questions:

> What determines whether an experimental pretrial release program obtains local tax levy funding? What are the factors that influence the decision by local policymakers?
>
> If a project does obtain local tax-levy funding, what changes occur in terms of control over project operations, structural arrangements, staffing, and other factors affecting performance? What factors contribute to an effective transition from federal to local funding?
>
> If a project fails to obtain local continuation funding, what happens to pretrial release practices in the jurisdiction when it is discontinued? To what extent are the gains produced by the program, in terms of increased nonfinancial release rates, lasting ones? To what extent (if at all) do nonfinancial release rates decline after termination? How does termination of the program affect overall pretrial release rates in the jurisdiction? How does termination affect FTA rates? Pretrial crime rates?

7. Program Operating Procedures

As a corollary to evaluating the effectiveness of particular types of programs in light of the criteria outlined earlier, researchers and program managers could profitably experiment with alternative operational procedures that may bear upon effectiveness. For example, one of the basic operating assumptions of the programs is that notification and follow-up procedures can significantly affect failure-to-appear rates. However, although jurisdictions vary widely in the types of contacts that are made with defendants during the pretrial period, little is known about the comparative effectiveness of alternative procedures.

Small-scale control group research could be helpful in answering questions such as:

> Are follow-up contacts with released defendants helpful in minimizing FTA rates? If so, what types of contacts (e.g., mailed notices, telephone calls, personal check-in requirements) are most helpful? Is one agency--e.g., a pretrial release program, a court clerk's office, a defender agency--a more effective source of contacts than other sources? How does the nature and timing of follow-up contacts affect the FTA rate? What correlations exist between defendant characteristics, type of contact employed, and FTA rate?

8. Conditions and Consequences of Pretrial Detention.

Although not covered at all in this study, further research in the pretrial release field should include consideration of the main alternative to release of any type--i.e., incarceration in a local jail, pending disposition of the case. Questions:

> What are the conditions under which detained defendants are held pending trial? What relationships exist between conditions of detention and case outcome?
>
> Of the defendants that are not released prior to trial, what proportion serve jail or prison time after disposition of their cases?
>
> What categories of defendants go free (either through acquittal or through being placed on probation, given suspended sentences, and/or being sentenced to time served) only at the point of disposition? If a jail or prison sentence is not appropriate for these defendants after disposition, why was it felt to be necessary before disposition?

B. Considerations Relevant to Future Research

There are a variety of research approaches that could be employed to address the questions outlined above, on either a single-program or national scope research basis. The purpose of this section is not to

propose any particular approach, but rather to outline several considerations which--based on our experience in this study--seem particularly important in designing future research in the field.

1. The Importance of Detailed Descriptive Information

In order to develop a viable research strategy at either the local or national level, it is important to have good descriptions of the pretrial release systems in particular jurisdictions--descriptions that indicate the full range of alternative release processes which exist in a jurisdiction and that show which alternatives are employed under what circumstances. In the absence of such descriptions, it is impossible to understand how any one component (e.g., a release on recognizance project or the traditional money bail procedure) fits into the overall system. Such an understanding is a prerequisite to making comparisons among programs, whether within a single jurisdiction or across jurisdictions. Some such descriptive data has been collected through the telephone survey and site visits made in the course of this study, and additional useful material may be found in other previously published studies. Much more remains to be done, however. We particularly emphasize the importance of going beyond the records of individual programs or projects to collect relevant information on court structures and processes, on the environmental contexts within which pretrial release systems operate, and on the performance of releasees in terms of skipped court appearances and rearrests.

2. The Need for Comparative Analysis

Regardless of whether research is being conducted on a local or national level, it is critically important to focus on comparative analysis of different types of systems and programs. Within individual jurisdictions, for example, it is essential to know (to the extent possible) how similarly situated defendants are treated by the bail system and by a pretrial release program. By the same token, for purposes of identifying optimum program operating procedures, it is important to know how different procedures will affect release rates, speed of release, and defendants' performance (in terms of FTA rates and pretrial crime) while on release. The best way to obtain such comparative data is through experiments that use control groups, experimental groups, and a random selection process. While such experiments are not without problems, it is clearly possible to undertake them (as, indeed, was done in the case of the original Manhattan Bail Project), and the results of appropriately designed control group experiments are likely to be highly useful in answering two basic questions:

> First, are pretrial release programs necessary--to what extent do they, as ongoing agencies, influence pretrial release decisions?
>
> Second, what types of program operating procedures tend to maximize program effectiveness in achieving the goals previously identified?

Classic experimental research tends to be expensive, however, and consideration should also be given to the use of various types of "quasi-experimental" research designs. The central objective should be the

development of meaningful comparative data on the relative merits--in terms of the measures of effectiveness employed here plus such other measures as may seem appropriate--of alternative types of pretrial release systems and programs. Any research design should, of course, ensure that to the extent possible, the individuals studied for the purposes of comparison are similar in terms of relevant characteristics such as current charge, prior record, age, sex, race, employment status, etc.

3. The Desirability of Coordinating National Scope Research and Local Level Research

To produce useful results on a national scale, the types of controlled experiments adverted to above ought to be undertaken in several different jurisdictions. The fact that one type of program intervention appears to work well in one jurisdiction does not necessarily mean it will work equally well in a second. If, however, experimental research with different types of program operating procedures produces essentially the same results--e.g., that one particular model works best in terms of the achievement of priority program goals--there is a much more solid basis for making generalizations about the utility of different program procedures. Alternatively, if such experimentation produces differing results in different jurisdictions, we will at least be in a better position to begin analyzing how different combinations of program operating procedures interact with external factors. The undertaking of such a program of systematic

multi-jurisdictional experimentation would, of course, be a formidable task, involving complex problems of research design, organization (including obtaining commitments from different jurisdictions to participate fully in the study), and management.

4. The Need for a Mix of Research Skills.

Many of the evaluation studies examined in the course of this study and the earlier National Center study of the research literature in the pretrial release field showed evidence of considerable experience in quantitative analysis, but little evidence that the researchers understood the nuances of the criminal justice process. At the same time, other studies exhibit a good working knowledge of that process but a lack of methodological sophistication. Our work in the field convinces us that both capabilities--i.e., familiarity with the criminal justice process and experience in the use of a variety of research designs and methods--are essential to the generation of sound research reports that will be viewed as credible and useful by knowledgeable policymakers.

APPENDIX A

PRELIMINARY FINDINGS FROM QUESTIONNAIRE SURVEY OF PRETRIAL RELEASE PROGRAMS

Although the Manhattan Bail Project served as a model for many of the early pretrial release programs, the pretrial release movement today is characterized by diversity. Variations in state and local laws, funding sources, program staffs, and jurisdictional politics have resulted in considerable differences in the programs' operating goals, structures, and procedures. The tables contained in this appendix highlight some of the more significant differences among programs.

The tables have been developed from responses to a two-part survey of pretrial release programs conducted during the summer of 1975. The first part of the survey requested descriptive information on program operations, structure and administration through telephone interviews with program directors or senior staff members. The second part employed mailed questionnaires to request performance information--e.g., release rates, failure to appear rates, and pretrial crime rates.

The list of programs to contact was compiled from information supplied by the National Association of Pretrial Services Agencies, the records of researchers who had done similar studies, and the Law Enforcement Assistance Administration. It should be noted that in spite of careful efforts taken in compiling the list, some pretrial release agencies, particularly, those with minimal funding or which operate within the structure of a parent organization, may have been inadvertently omitted. We believe, however, that these data are representative of pretrial release programs generally. The operational definition of a pretrial release program used in the survey was any organized and identifiable project or agency which has as its primary function facilitating the release of defendants prior to trial on a non-financial basis.

The response rate for the Part I interviews was excellent with information received from 110 of the 115 programs identified and contacted by telephone. The response rate for Part II--the mailed questionnaire--was considerably lower, with 69 projects responding.

Although 110 programs responded to the telephone survey, we seldom have data from all 110 for a particular question. In preparing the tables in the following pages, we have (unless otherwise noted) computed percentage distributions on the basis of the number of actual responses to the question rather than the number of programs that were asked the question.

Many of the questions asked in our survey were similar to those asked in 1973 by a team of researchers in the U. S. Office of Economic Opportunity.* Our preliminary analysis indicates that the findings from the survey are for the most part similar to the findings from the OEO survey, but further analysis may be helpful in noting discrepancies and identifying trends in the field. We emphasize that the tables in the following pages represent only initial analyses of rough data collected under severe time constraints.

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*See Hank Goldman, Devra Bloom, and Carolyn Worrell, The Pretrial Release Program (Washington, D. C.: Office of Planning, Research and Development of the U. S. Office of Economic Opportunity, 1973).

Table 1

TYPES OF AGENCIES OPERATING
PRETRIAL RELEASE PROGRAMS

Type of Agency	Distribution No.	Distribution %
Probation or Parole	36	34%
Court	32	31%
District Attorney, Public Defender or Other Public Agency	22	21%
Private, Non-Profit Agency	15	14%
TOTAL	105	100%

Table 2

ANNUAL BUDGETS OF PRETRIAL RELEASE PROGRAMS

Size of Budget (To nearest thousand)	Distribution No.	Distribution %
Less than $21,000	20	19%
$21,000 to $40,000	17	16%
$41,000 to $60,000	11	11%
$61,000 to $100,000	20	19%
$101,000 to $150,000	17	16%
$151,000 to $200,000	6	6%
$201,000 to $500,000	6	6%
$501,000 to $999,000	4	4%
$1,000,000 or over	3	3%
TOTAL	104	100%

Mean Annual Budget: $149,000
Median Annual Budget: $ 73,000

Table 3

CURRENT (1975) PRIMARY SOURCES OF PROGRAM FUNDING

Funding Source	Distribution No.	Distribution %
Municipal government	13	12%
County government	38	35%
State funds	10	9%
LEAA block grants	36	33%
LEAA discretionary grants	5	5%
Other Federal agencies	3	3%
Other	4	4%
TOTAL	109	101%*

Table 4

ORIGINAL SOURCES OF PROGRAMS' PRIMARY FUNDING

Source	Distribution No.	Distribution %
LEAA - Direct or through State Planning Agency	55	54%
Municipal or County	25	25%
State	10	10%
Private	9	9%
Other	2	2%
TOTAL	101	100%

Table 5

PRIMARY SOURCES OF CURRENT (1975) FUNDING, BY AGE OF PROGRAMS

Program Age	Primary Source of Funding: State or Local	Federal	Other	Totals
Under 2 years	10	27	1	38
2 to 5 years	24	12	1	37
Over 5 years	27	5	2	34
	61	44	4	109

*Does not add to 100% due to rounding.

Table 6

PROGRAM STAFFING

Full-Time Staff	Distribution		Part-Time Staff	Distribution	
	No.	%		No.	%
No full-time staff	5	5%	No part-time staff	50	46%
1-2 full-time	24	22%	1-2 part-time	19	18%
3-4 full-time	24	22%	3-4 part-time	7	6%
5-6 full-time	14	13%	5-6 part-time	12	11%
7-8 full-time	9	8%	7-8 part-time	4	4%
9-10 full-time	7	6%	9-10 part-time	3	3%
11-15 full-time	7	6%	11-15 part-time	3	3%
16-20 full-time	7	6%	16-20 part-time	4	4%
Over 21 full-time	11	11%	Over 21 part-time	6	5%
	108	99%*		108	100%

*Figures do not add to 100% due to rounding.

Table 7

NUMBERS OF DEFENDANTS INTERVIEWED ANNUALLY BY PRETRIAL RELEASE PROGRAMS

Number of Interviews	Distribution No.	%
Less than 1000	14	20%
1001 - 2500	14	20%
2501 - 5000	8	12%
5001 - 7500	4	6%
7501 - 10,000	2	3%
10,001 - 15,000	6	9%
15,001 - 20,000	1	1%
20,001 - 30,000	1	1%
30,001 - 50,000	1	1%
More than 50,000	1	1%
Do not know	17	25%
TOTAL	69	99%*

Note: Of the programs that responded to this question, the 10 most active--those that interview more than 10,000 defendants per year--are: New York City (Release on Own Recognizance Program, Office of Probation); Baltimore (P.T.R. Division, Supreme Bench of Baltimore City); District of Columbia Bail Agency; Los Angeles (Recognizance Service); St. Louis, Missouri Pretrial Release; Hauppauge, New York (Suffolk County Probation Department ROR Unit); Santa Anna, California, Detention Release (Orange County); Minneapolis (Hennepin County Pretrial Services); Pittsburgh Bail Agency; Newark Municipal Court Bail Project. There are several programs not represented in this list which may conduct more than 10,000 interviews annually, but which did not provide any information in response to this question.

* Does not add to 100% due to rounding.

Table 8

TYPES OF CRIMINAL CHARGES CITED BY PROGRAMS AS BASIS FOR EXCLUDING DEFENDANTS FROM CONSIDERATION FOR RELEASE THROUGH PROGRAM

Type of Charge	Programs Which Exclude These Charges	
	No.	%
Homicide	63	59%
Other violent crimes	51	48%
Narcotics offenses	24	22%
Public intoxication or DWI	21	20%
Other	31	29%
All misdemeanors excluded	10	9%
All felonies excluded	7	7%

Note: 107 programs responded to this question.

Table 9

TYPES OF NON-OFFENSE RELATED FACTORS CITED
BY PROGRAMS AS BASIS FOR EXCLUDING DEFENDANTS
FROM CONSIDERATION FOR RELEASE THROUGH PROGRAMS

Type of Exclusion	Programs Which Exclude These Defendants	
	No.	%
Accused held on warrant or detainer from another jurisdiction	72	67%
Accused lacks local address	43	40%
Project unable to verify information given by the defendant	39	39%
Defendant has a record of prior failures to appear in court	37	35%
Accused was arrested while on probation, parole, or pretrial release	32	30%
Accused has a prior record of crime committed while on pretrial release	24	24%
Defendant is addicted to narcotics	20	19%
Defendant's prior record is not available	15	16%

Note: 104 programs responded to this question.

Table 10

PRIMARY POINT OF PROGRAM INTERVENTION

Primary Point of Intervention	Distribution	
	No.	%
Prior to First Court Appearance	20	18%
At First Court Appearance	49	45%
After First Court Appearance	41	37%
TOTAL	110	100%

Note: "Primary point of intervention" refers to the period in the criminal justice process at which a program most frequently attempts to secure the release of defendants on a nonfinancial basis. This designation does not imply, however, that the primary point of intervention is the only point at which a program attempts to secure release for defendants. It is possible for a program to intervene at more than one stage, and 61 percent of the programs surveyed reported having more than one point of intervention. For example, some programs have been given the authority to release certain misdemeanor defendants prior to the initial court appearance, but are limited in felony cases to making recommendations at the initial court appearance. In addition, many programs whose primary point of intervention is at or before the initial court appearance will also intervene at later points in the process--particularly where additional relevant information is required and the defendant has been unable to obtain release on money bail. Of the programs surveyed, 95 (86%) indicated that they sometimes prepared reports for the court for bail re-evaluation hearings.

Table 11

PROGRAM VERIFICATION PRACTICES

Verification Methods	Distribution No.	Distribution %
Phone used exclusively	56	52%
Phone verification supplemented by other method(s) (relatives in court, field investigation, use of police records)	43	40%
Verification methods not specified	4	4%
No verification methods employed	4	4%
TOTAL	107	100%

Note: These are the verification practices employed to provide support for program actions at the primary point of intervention as defined in the note to Table 10.

Table 12

PROGRAM SCREENING PROCEDURES FOR REPORTS PREPARED FOR FIRST COURT APPEARANCE*

Procedure	Distribution No.	Distribution %
Objective (points only)	16	27%
Subjective Evaluation	22	37%
Combination Objective and Subjective	22	37%
TOTAL	60	101%*

Note: Programs were also asked to indicate the screening procedures used for reports prepared for bail re-evaluation hearings. Responses from 83 programs (a larger number than shown in the table, because of the sizeable number of programs that will continue their attempts to secure the release of defendants after bail has been set at the initial appearance), indicated a larger percentage using subjective evaluations (45%) at this later point than at first court appearance. Seventeen percent of the programs used objective and 38 percent used combination objective and subjective screening procedures for bail re-evaluation reports.

*Does not add to 100% due to rounding.

Table 13

PROGRAM RECOMMENDATION PRACTICES

Type of Recommendation Made at First Court Appearance*	Distribution* No.	%
Release on Recognizance (ROR) with no conditions or supervision requirements	37	56%
Conditional release	42	64%
Supervised release	24	36%
Release to a third party	29	44%
Denial of release	34	52%
Specific bail amounts	23	35%
Deposit bail (10% bail)	15	23%
No recommendation made - information presented	6	9%

*Note: 66 programs indicated that they prepare reports for court at defendant's first court appearance. Percentages shown in the table are based on this total.

Table 14

PROGRAM PROCEDURES TO REMIND DEFENDANTS OF UPCOMING COURT DATES

Procedure	Yes	No	No Response	Total
Project Reminds Defendants of Upcoming Court Dates	76	32	2	110
Defendant Required to Acknowledge (Phone, letter, or personal contact)	42	31	3	76

Table 15

PROGRAM CHECK-IN PROCEDURES

Type of Contact Required	Programs	
	No.	%
Single check-in within 24 hours of release	29	27%
Check-in at regular intervals throughout release period	42	40%
No post-release contact required	35	33%
TOTAL	106	100%

Table 16

TYPES OF PROGRAM ACTION TAKEN AFTER
DEFENDANT FAILS TO APPEAR IN COURT

Type of Action	Programs	
	No.	%*
Program attempts to secure voluntary return of defendant	87	81%
Program provides information to police to aid in the apprehension of the defendant	66	64%
Program has power of arrest*	26	24%

Note: Of the 26 programs which have the power to arrest, 11 report that it is seldom if ever used.

*Percentages add to more than 100 because programs may utilize several types of action.

Table 17

USE OF FIELD CITATIONS FOR OFFENSES OTHER THAN TRAFFIC,
HOUSING AND HEALTH CODE VIOLATIONS

Offense Category	Number of Programs Reporting Use of Citation Release in Their Jurisdictions
Minor misdemeanors	29
All misdemeanors except assault	4
All misdemeanors	17
All misdemeanors and minor felonies	2
Field citation used, but no offense information provided	1
TOTAL	53

Note: 110 programs responded to this question. The fact that a program may have reported that a form of field citation release was used in its jurisdiction does not mean that the program itself is involved in such field releases. On the contrary, 88% of the programs reporting use of field citations in their jurisdictions indicated that the programs had not been involved.

Table 18

RELEASE PROCEDURES PRIOR TO FIRST COURT APPEARANCE

Approach	Number of Program Directors Reporting this Approach Used in Their Jurisdiction
Law enforcement officials release arrestees on their own authority	22
Pretrial release programs release arrestees on their own authority	18
Pretrial release programs release arrestees on approval of court representative (e.g., duty judge)	7
Pretrial release programs make recommendations to law enforcement	5
Court-appointed official makes release decision	4
No systematic attempt is made to release defendants prior to first court appearance	54

Note: 110 programs responded to this question. In some jurisdictions more than one approach is used.

Table 19

FAILURE TO APPEAR RATES REPORTED BY PROGRAMS

Reported FTA Rates	Percent of Programs: Nonfinancial Release	Percent of Programs: Financial Release
0 - 5%	67%	33%
6 - 10%	21%	25%
Above 10%	12%	42%
TOTAL	100%	100%
	N = 43	N = 12

Comparison within Jurisdictions:	Number of Programs
Nonfinancial Rate < Financial Rate	7
Nonfinancial Rate = Financial Rate	2
Nonfinancial Rate > Financial Rate	3

Note: This table is based on data supplied by programs for defendants on release in their jurisdictions. However, this data is not strictly comparable across jurisdictions or across types of release, for two reasons. First, failure to appear may be defined and the non-appearance rate calculated in a variety of ways--every missed court date, "willful" failure to appear, nonappearance in which the defendant was not located and returned to court within a specified period of time, etc. Second, as the column on the far right indicates, only a small number of programs (12) maintain data on FTA rates for both defendants released on bail and on nonfinancial release. Also, it is doubtful that defendants released on bail and on nonfinancial release are similar in terms of possibly relevant characteristics such as current charge, prior record.

Table 20

PRETRIAL REARREST RATES REPORTED BY PROGRAMS

Program Reported Rearrest Rate of:	Percent of Programs: Nonfinancial Release	Percent of Programs: Financial Release
0 - 5%	68%	0%
6 - 10%	11%	25%
Above 10%	21%	75%
TOTAL	100%	100%
	N = 19	N = 4

Comparison within Jurisdictions:	Number of Programs
Nonfinancial Rate < Financial Rate	2
Nonfinancial Rate = Financial Rate	0
Nonfinancial Rate > Financial Rate	2
	N = 4

Note: These figures are open to serious question. As the table indicates, very few programs have any rearrest data at all, and the survey did not attempt to identify the primary sources for the information reported here.

Table 21

SUMMARY OF MISSING DATA

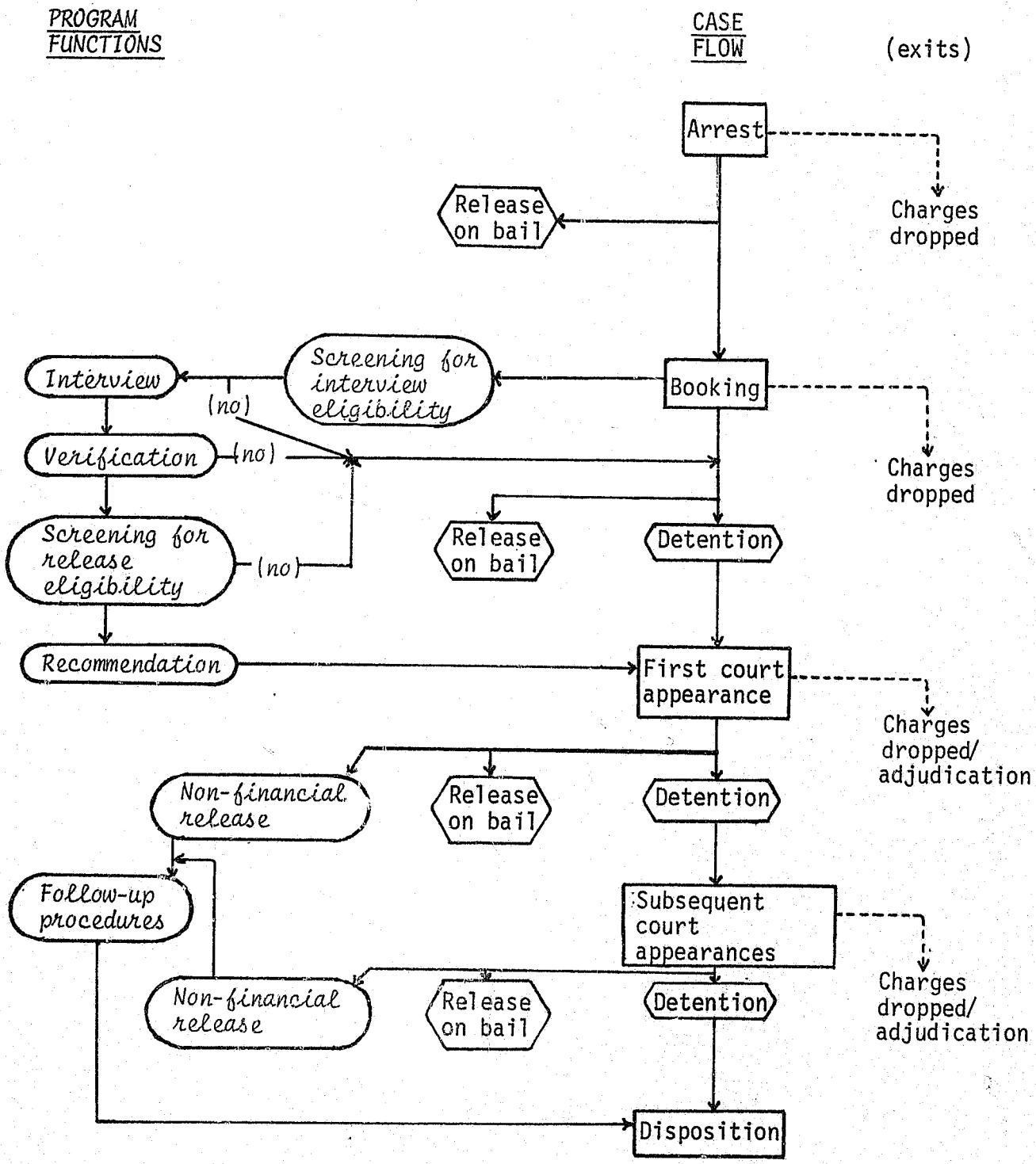
Data Requested	Number of Programs From Which Data Were Requested	Number of Programs Failing to Return Questionnaire	Number of Programs Indicating Data Unavailable	Percent with Data Missing*
Defendants Booked	115	46	33	48% - 69%
Defendants Interviewed	115	46	17	25% - 55%
Defendants Recommended for Nonfinancial Release	115	46	28	41% - 64%
Defendants Granted Nonfinancial Release	115	46	30	43% - 66%
Failure to Appear Rates				
Nonfinancial Releases	115	46	26	38% - 63%
Bail Releases	115	46	57	83% - 90%
Rearrest Rates				
Nonfinancial Releases	115	46	50	73% - 84%
Bail Releases	115	46	65	94% - 97%

* The percentage range was computed as:
  100 x Projects Indicating Data Unavailable/Projects Responding
  100 x (Projects Failing to Respond + Projects Indicating Data Unavailable)/Projects asked for data
  The first of these percentages is equivalent to an assumption that the projects which failed to respond were similar in their nature to the projects which did respond. The second percentage assumes that all projects which did not respond did not have the relevant data.

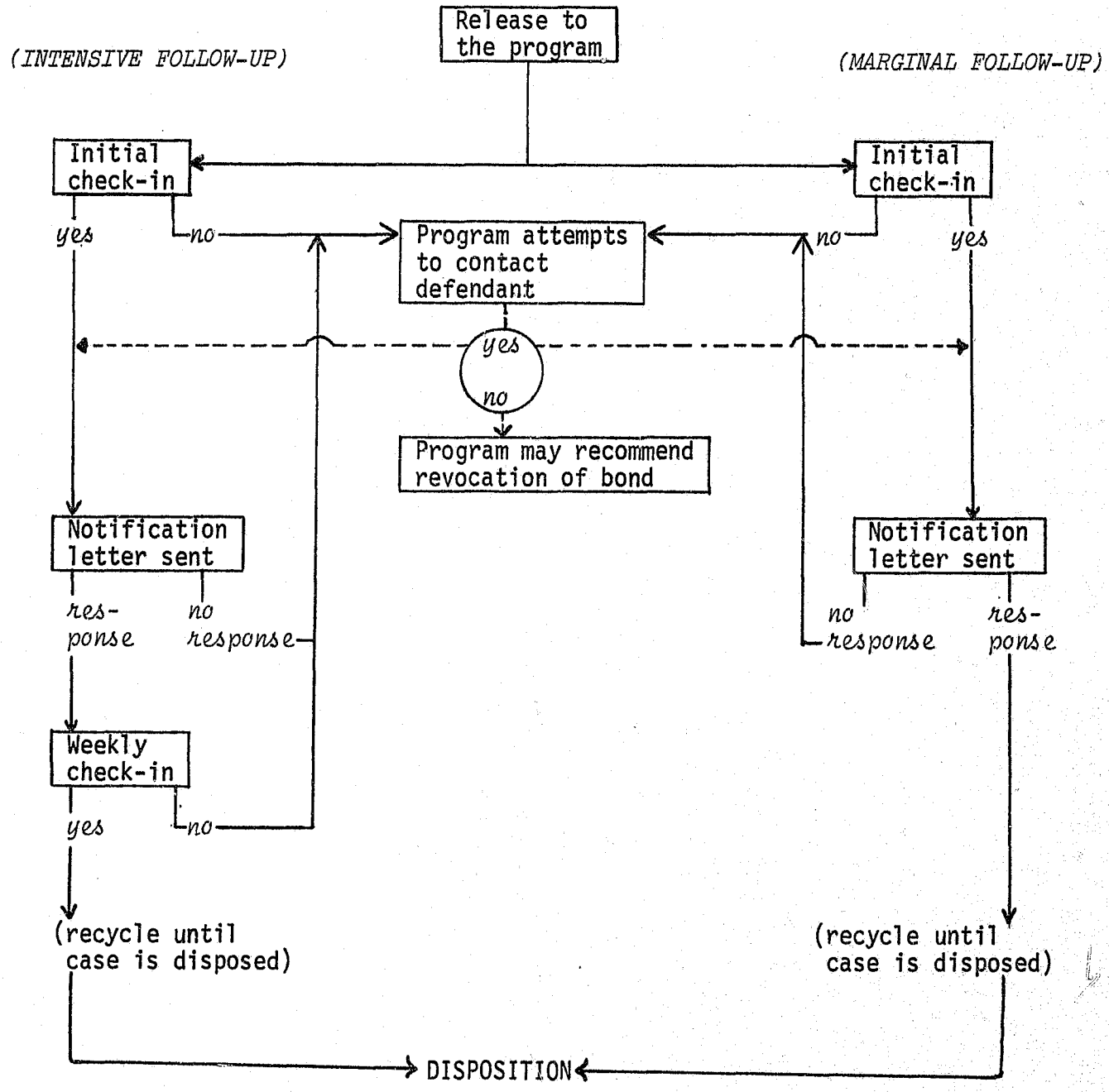
APPENDIX B

FLOW DIAGRAMS

FLOW CHART I: Typical Operations - Early Intervention Programs



FLOW CHART II: Follow-Up Procedures For Released Defendants



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