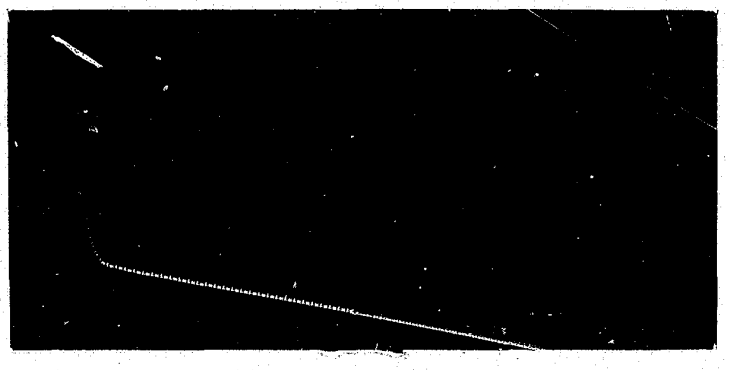

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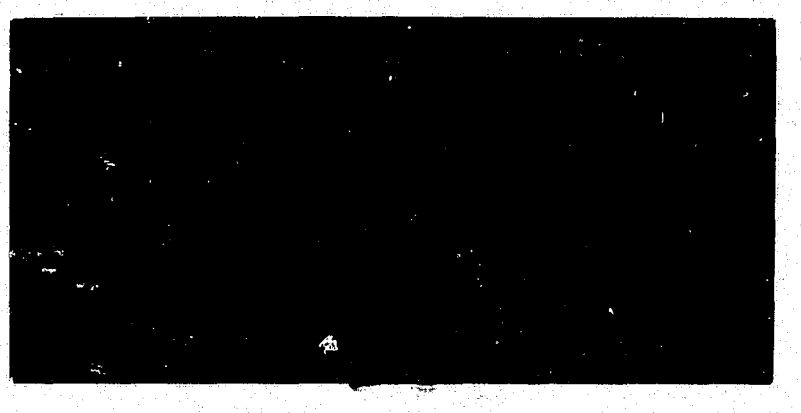

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THE IMPACT OF DECRIMINALIZATION ON THE INTAKE PROCESS FOR PUBLIC INEBRIATES

T/A #: 344

ASSESSMENT OF THE OPERATIONS OF THE PRE-TRIAL RELEASE PROGRAM OF THE JEFFERSON COUNTY CRIMINAL DISTRICT COURT, BEAUMONT, TEXAS

January 1978

Consultant

Bruce D. Beaudin

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I. INTRODUCTION

The Honorable Larry Gist, the Presiding Judge of the Criminal District Court of Jefferson County in Beaumont, Texas requested technical assistance from LEAA's Criminal Courts Technical Assistance Project at the American University through the Criminal Justice Division of the Texas Executive Department to study the operations of the Court's Pre-Trial Release Program.

The Pre-Trial Release Program has been in operation since 1974 through an LEAA grant. In September of 1977 the grant expired and the Jefferson County Commissioners appropriated funds to enable the program to continue. As a requirement of the LEAA grant, the program had been evaluated at the completion of each year of its operation by an outside evaluator.

Judge Gist submitted this request for technical assistance in February of 1977. As a result of the fact that the LEAA grant was due to expire in September and there was some uncertainty as to whether the program would be continued with County funding, site work was delayed until the County Commissioners reached their funding decision. After the Commissioner's favorable decision, a determination was made to focus the technical assistance site work in the following areas:

- an assessment of the programs operations, including procedures, jurisdiction and staffing, and
- an assessment of the need and feasibility of expanding the program's range of activity, particularly in the area of client services.

The consultant who was selected to provide this assistance was Mr. Bruce D. Beaudin, Esquire. Mr. Beaudin, Director of the District of Columbia Bail Agency (Washington D.C.'s Pre-Trial Release Agency) has been employed by in the field of pre-trial services for fourteen years. He is Chairman of the Board

of Trustees of the Pre-Trial Services Resource Center, Co-chairman of the Advisory Board of the National Association of Pre-Trial Service Agencies, and has provided technical assistance to more than forty pre-trial programs across the nation and around the world.

After reviewing relevant materials, Mr. Beaudin spent three days on site in Beaumont, Texas. During this time, he worked closely with Judge Gist, Mr. Randy Kitchens, Court Coordinator of the Criminal District Court, and Mr. Russell Ortego, Director of the Pre-Trial Release Program. He also met with other representatives of involved court, county and private agencies.

Mr. Beaudin's analysis and recommendations are contained in the following report.

II. ANALYSIS OF EXISTING SITUATION

Effective January 1, 1966, the Texas Legislature enacted laws permitting state courts to release those accused of crimes on personal bond. In June of 1973, legislation was enacted which permitted any county with a population in excess of 124,000 to establish an agency to assist the courts in implementing the earlier law. In September of 1977, Jefferson County (population 250,000,) established such an agency under county auspices following thee years of funding by the Law Enforcement Assistance Administration. To understand how the agency functions it is necessary to look first at the criminal justice system and, briefly, at the historical development of the concept of release.

It is not startling to visit the Jefferson County Criminal District Court (felony court) detention facility and discover that it is filled to the breaking point - far in excess of the capacity contemplated in its design when it was completed in 1923. Over 200 prisoners are crammed into quarters which permit little movement. Despite the crowded conditions, the jail is cleaner than most and the guards are a vast improvement over what one normally finds. These facts do not minimize the total lack of exercise areas, privacy, etc. It is indeed a tribute to the Sheriff's department that Jefferson County has, to date, been able to avoid the fate of Harris County. The fact that there has been no Federal or State intervention as in Harris County (see Alberti v. Sheriff of Harris County Texas [D.C. 1975] 406 F. Supp. 649 for a vivid description of what can happen to County Commissioners who neglect the rights of the pre-trial accused) is no doubt due to the care and concern with which the jail is run. Despite the fact that a new jail facility is about to be constructed, the long term answer for what to do about those charged with a crime and where and how to hold them until trial will not be found in new and bigger jails. Experience teaches us that as soon as new jails are completed they are quickly filled to capacity.

Most of the inmates are guests of the County because they have been accused of a crime, have had a bail set which they are unable to meet, and must wait their turn for trial. Since the average time from arrest to indictment is 60 days and the average time from indictment to trial is 6 months most of the inmates can expect to spend 8 or 9 months sitting around, eating at County expense, not working and therefore not contributing to the County tax base, and in general, costing the County considerable expense. With a law that permits release on personal bond there is a question as to whether all 200 prisoners need to be kept in jail awaiting trial. The answer is probably, "No", but as a distinguished jurist once observed "The large print giveth and the small print taketh away."[1] In this case the large print is the 1966 law permitting release on Personal Bond with the posting of no surety, while the small print is contained in the regulations which govern the activities of the Pre-Trial Program and prevent it from reaching its full potential. More will be said about this later in this report.

At the time the 1966 law was enacted Texas possessed what can be perceived to be an unique situation when compared to the rest of the United States. Its jails, as in many states, were filled to the breaking point and beyond. Crime was increasing more rapidly than jail space and courts could handle it. Pre-Trial accused unable to post bond were waiting months in jail. In Texas, however, unlike any other state, surety bonds were actually posted for the most part by attorneys and not by commerical bondsmen. Thus release or lack of it was controlled by lawyers. The system about to be described then is premised on the implementation of laws designed to benefit attorneys and not bondsmen. In 1966 there were not many bonding companies flourishing in Jefferson County.

1. Hon. Larry Gist, Judge, Criminal District Cout.

A report prepared in August 1975 disclosed that 81% of persons charged with crime in Jefferson County who secured release before trial did so through attorneys.[2] Of the balance only 10% secured release through Bail-Bond, 5% through the Pre-trial Program, and 5% via other avenues.[3] Today, the only shift that has occurred has resulted in a declining rate of releases secured by attorneys and a rising rate of professional surety releases. The percentage securing release through the efforts of the Pre-Trial Program remains steady at about 5%.[4] When the processing of an arrestee is analyzed against the backdrop of attorney interest in posting bail the reasons become clear.

Jefferson County has basically four detention facilities. Two are "city" run and two are "county" run. They are located in Beaumont and Port Arthur. Law Enforcement officials with arrest powers include employees of the Sheriff's Office (County), the State Police (State), the Texas Rangers (State), and the Department of Public Safety (City and County). Persons arrested are brought to the city or county holding facility. Misdemeanants (those charged with crimes punishable by a maximum of 2 years in prison) are booked at the jails and bond is automatically set at $200.00 - $500.00 depending on the class of the offense. Those charged with felonies are held to await the arrival of a Justice of the Peace (there are six in the County) who conduct immediate Accusation Hearings at which time bail is set. Once bond is set the accused felon is then permitted a call to contact an attorney or bondsman to see about securing release. The fee permitted to be charged for this service is 10% of the face of the bond.

Unlike attorneys and bondsmen, the Pre-Trial Program does not have access to arrestees until they have been detained a minimum of 24 to 48 hours. Also, the maximum fee that can be charged by the Pre-Trial Program is 3%. The

2. A Descriptive Study of Pre-trial Release on Personal Bond In Jefferson County (Beaumont) Texas - A thesis presented to the Institute of Contemporary Corrections and the Behavioral Sciences, Sam Houston State University, by Ronald James Pry, August 1975.
3. Id.
4. Interview with Russell Ortego, Director Pre-Trial Program.

importance of this economic advantage is quickly apparent. Given a choice any defendant would be foolish to choose to pay $100 on a $1,000 bond when he could pay only $30. Yet, no choice is offered. The defendant is not advised of the availability of services from the Pre-Trial Program until he has been detained for a miminum of almost two days. The reason (referring to the "small print" mentioned above) that the Pre-Trial Program does not have access immediately upon arrest is to permit attorneys and bondsmen to have "first crack" at all arrestees. Certainly, in the early days of the program its very existence depended upon the good will of the Bar. Perhaps this is not the case today.

From this point on, arrestees are processed much as in any jursidiction. Those charged with misdemeanors may elect trial on the "speedy trial docket" or waive speedy trial and wait a minimum of 120 days on the non-jury (plea) docket. Those charged with felonies appear for Examining Trials (to determine whether there is sufficient evidence to bind the case over to the Grand Jury), await indictment and subsequent trial, or if the District Attorney chooses, the case is dismissed with 72 hours of the Accusation Hearing if no charges are filed.

Given the above-described set of conditions it is not difficult to understand why the Pre-Trial Program is involved in so few decisions concerning release. Perhaps the operation of the program has been designed to give it such a minimal role.

Each day the Program Director scans the jail "lock-up" sheet to determine whether there are any likely candidates for the program. If any are found (probably no more than one or two a day) they are interviewed, background information is obtained, and in many cases a Pre-Trial bond at the rate of 3% is recommended. In most cases the bond is approved and the "cut-rate" County Bonding Company writes the bond, collects the fee, and adds a statistic much as any other Bondsmen do. From this point on, however, the Pre-Trial

Program does much more.

Each day, according to a schedule set by the Program, "check-in" calls from those at liberty under the Program's auspices are received.[5] Letters of notification are sent. Arrangements for obtaining counsel or for having counsel appointed are coordinated by the program. Limited assistance with narcotic, alcoholic, and other problems is offered by the Program through other community organizations. Finally, like a mother duck leading its young to drink, program personnel march to court with their due-in clients trailing behind.

In a jurisdiction that indicts over 1,500 felons a year and processes about 9,000 misdemeanors yearly it is not surprising to find that a Pre-Trial Program with only two employees concentrates most of its resources on felony cases. It is also not surprising that the main holding facility is overcrowded. It is surprising to learn that few people are released on personal bond and even more surprising to learn that the Pre-Trial Program depends for its continued existence on how much it can generate in bond fees. An examination of the premises on which the Program has functioned is overdue. The remarks and recommendations that follow are not intended as criticism of anyone. They are written to provide the fodder for thought about alternatives that might be available. They are intended to help Jefferson County continue to conduct its business in the Criminal Courts in a manner consistent with the leadership role it is already perceived as having by other jurisdictions in its own state. These recommendations are based not only on philosophical grounds, but on the practical applications of that philosophy as they have been implemented in other jurisdictions. They may not all work. They are, however, worth considering.

5. On Wednesday, December 8 there were 121 people at Liberty under the Program's supervision. About 20 calls are taken on any given day.

III. SUMMARY OF RECOMMENDATIONS

The recommendations that follow have been divided into two groups. Those which should pose little debate and can perhaps be easily adopted in Section A, while those that might be more controversial and require longer range planning are contained in Section B.

A. Section A

1. Confirm in writing the standards and practices under which the Pre-Trial Program is to conduct its business, submit them for approval to the Board of Directors of the program and see to it that all actors in the system are informed.

2. Once the interview and verification stages have been completed prepare a written abstract of the information and distribute copies to the Court, the Prosecutor, the Defense Attorney and the Defendant.

3. Eliminate the practice of accompanying all persons under program supervision into the courts in which they are to make appearances.

4. At the conclusion of a case (by guilty plea or jury finding of guilt) of persons under program supervision a summary report of condition compliance should be prepared and forwarded to the Court or Probation Office.

5. Terminate the practice of automatically surrendering the bond of a program participant who is rearrested.

6. In conjunction with Lamar University, develop a clinical - Interm Program that would provide the Pre-Trial Program with additional resources, and University students with practical experience.

7. Write and distribute a simple brochure that describes the program functions in easily understandable terms.

B. Section B

1. Develop an objective point system (or some variation) that will permit recommendations to be formulated by those unskilled in pre-trial services work.

2. Encourage the courts, the City and the County to prepare written release orders describing the conditions, obligations, and penalties of any bail conditions set.

3. Formulate a plan that would permit program staff to interview all arrestees prior to the time of the accusation hearing to permit the preparation of a written report about the community ties of the accused for consideration by the bail setting authority.

4. Consider automating some of the functions of the Pre-Trial Program such as notification and, at a minimum, consider proving terminal access to Criminal District Court data.

5. Consider adopting some form of early release on recognizance (citation release) for those charged with misdemeanors.

6. Consider adopting a plan that would permit those unable to secure release on personal bond to deposit an amount into the registry of the court that would be returned (less a certain sum for handling charges) upon successful completion of the bond.

7. Encourage the prosecutor to experiment with a formalized diversion or intervention program prior to a plea or finding of guilt.

8. Consider the adoption of some objective standards to govern the determination of indigency for purposes of appointing counsel.

IV. RECOMMENDATIONS AND COMMENTARY

A. Section A

1. Confirm in writing the standards and practices under which the Pre-Trial Program is to conduct its business, submit them for approval to the Board of Directors of the program and see to it that all actors in the systems are informed.

Commentary: Failure to have written standards can be a two edged sword. On the one hand if the policies by which the program operates are hidden then the success of the program rises or falls on the reputation of its Director. At the same time there is great pressure on the Director never to make a mistake and such presssure will almost always result in a most conservative approach to problem solving.

On the other hand if the policies are written down there is little room to manipulate, and accountability for decision making is there for all to see. While such a circumstance may be viewed as threatening by some, Mr. Oretego, the present Program Director, would welcome the opportunity to design such policies, reduce them to writing, and submit them to the Board. The benefits should far outweigh any perceived liabilities.

In the first place, once the policies are reviewed by all concerned and mofidied as necessary to accommodate individual needs, there will exist a basis for continued program operation that has the support of the whole criminal justice system. This support will be vital if the program is to continue to expand to better serve the needs of the system.

In the second place, the Director will be able to use more initiative provided that he explains his reasons for deviating from the norm, and those reasons have a solid foundation for experimentation. To analyze and evaluate the progress of Pre-Trial the first step has to be to reduce to writing those standards against which future activities will be measured.

2. Once the interview and verification stages have been completed prepare a written abstract of information and distribute copies to the Court, the Prosecutor, the Defense Attorney, and the Defendant.

Commentary: The Jefferson County Pre-Trial Program prides itself on being able to produce - and to produce rather quickly - information that is critical to informed bail setting and information that is unbiased either toward the defense or the prosecution. This is the case with most Pre-Trial Programs. Logistics may at times preclude the presence of a program staff member at the actual time that bail is set. If a report has been prepared it can be submitted to all concerned parties in a manner that provides for lasting accountability.

A second reson for preparing a separate written report is that the gathering of raw data often cannot be accomplished in a neat and tidy fashion. Extraneous notes and remarks that are unnecessary to the bail setting magistrate often appear on the data collection instrument (interview form.) The report can be entered as part of the Court Record and "follow" the case through to its conclusion.[6]

A third reason to prepare a separate report is so that the identity of certain "verifiers" can be protected and not become a matter of public record. While many persons called upon to verify information given by the defendant have no objection to disclosing their identities, unless it becomes vital, (as in the case where the system is attempting to locate a defendant who has failed to appear), there is really no need to identify those persons.

Finally, to preserve the reputation of being unbiased the program should make its information known to all parties at the earliest possible point in time to permit the correction of any erroneous information. At the same time the program should retain in its files for quick reference an exact

6. In The District of Columbia and in other jurisdictions as a "case" moves judges change. New judges often read the Pre-trial report to get a "feel" for the defendant and often refer to it at sentencing.

3. Eliminate the practice of accompanying all persons under program supervision into the courts in which they are to make appearances.

Commentary: There are three principle reasons that program personnel accompany releasees under their supervision to court: 1) to see that they don't get lost; 2) to record what happens to them; 3) to be available for any questions the magistrate may have. Once the program has developed its credibility there is little need to continue this practice. It is clearly a time consuming process and yields few benefits that cannot be realized in a less costly manner.

Program defendants can be directed to the appropriate court and trusted to get there. If they appear in the program's office there is not much reason to believe they'll fail to continue on to court. In the event some problem arises program personnel can be on call to answer any question the court may have.

Dispositions can easily be obtained either by asking the defendants to report back with the results of what happened (some programs use this contact as a reinforcement tie with defendants) or by checking with the Court Coordinator or appropriate Clerk or Secretary.

Finally, if any problems occur - certainly failure to appear is of the highest priority - program personnel can respond immediately to judicial notification that some corrective action is in order.

Personnel time saved by adopting this recommendation may save up to as much as 10% of personnel resources and permit investing those resources in a more beneficial manner.

4. At the conclusion of a case (by guilty plea or jury find of guilt) of a person under program supervision a summary report of condition compliance should be prepared and forwarded to the court or Probation Officer.

Commentary: It goes without saying that a judge imposing sentence is charged with a serious responsibility in exercising his discretion in the best interests of the community. Balancing punishment and rehabilitation prospects probably poses the most awesome task faced by a judge. Any information that bears directly on the sentencing process must be made available so that this serious responsibility can be exercised to meet both equitable and humanitarian concerns.

A defendant who has been under supervision pending trial has compiled a wealth of information on the very issue that is most crucial to sentence. He has responded positively or negatively to Court imposed conditions much like those normally imposed if sentence is suspended and probation granted. What better predictor of how a defendant might respond to probation than the record of how he has responded to the conditions of pre-trial release during the period immediately preceding sentence?

The Pre-Trial Program keeps careful records on such items as the number of times the defendant has called, the number of appearances made, how he has met payment schedules for his bond, how he has cooperated with efforts to coordinate appointment of counsel, etc. This information could be easily summarized or even filled in on a "checklist" type letter and forwarded to the court and the presentence writer. In cases where no presentence report is prepared such a report might be useful if given to the prosecutor for purposes of "plea bargaining." In any event, the information should be put to use and not ignored.

5. Terminate the practice of automatically surrendering the bond of a program participant who is rearrested.

Commentary: No one wants ever to give a dog more than one bite. It is perhaps because of this unspoken but prevalent belief that the pre-trial program almost without fail not only refuses to take out on bond someone who

has been rearrested, but also "surrenders" bond in the original case. There are a number of reasons that this policy should be reconsidered not the least of which is the presumption of innocence. Some other more practical reasons include:

- The offense for which the defendant is rearrested may in fact have occurred prior to the original offense;
- The offense for which the defendant is rearrested may be totally unrelated to the "life style pattern" of the original and of a non-serious nature;
- The offense for which the defendant is rearrested may be one that poses little or no threat to community safety e.g. possession of a marijuana cigarette, prostitution, etc;
- The defendant may have compiled an excellent record during the period of release on the first offense and demonstrated his reliability with respect to risk of flight;
- The defendant may well not be guilty of either offense.

The list is limited only by the combination of circumstances that make each case unique. At a minimum, where the crimes charged are not violent in nature or where other circumstances warrant, a decision whether to "bond" a new case, surrender an old, etc. should be made on a case by case basis.

6. <u>In conjunction with Lamar University, develop a Clinical-Intern Program that would provide the Pre-Trial Program with additional resources and University students with practical experience.</u>

<u>Commentary:</u>

No matter what part of the country one visits, no matter what criminal justice agencies one interviews, no matter what university professors one knows, there are two principles that surface time after time. On the one hand, actors in the criminal justice system decry the lack of practical experience possessed

by those trying to enter it. On the other hand, many professors complain that there is no place their students can go to apply the ppinciples they are learning. Add the ingredient of the lack of resources usually complained of in the criminal justice system and a hypothesis begins to emerge.

In many areas students provide the primary source of manpower for pre-trial services programs. They may work for money on a full or part-time basis, as volunteers for experience, or in conjunction with University approved programs for course credit. (In the District of Columbia the law which governs the pre-trial release program requires that staff be selected from among law students and graduate students. The D.C. program has been in operation 14 years and has always been staffed primarily with students.)

The need for additional resources when coupled with the excellent results of the use of students by other programs and by the proximity of Lamar University suggest that an attempt be made as soon as possible to interest Lamar in a clinical program arrangement to be operated jointly with the Pre-rial Program. While it is true that certain administrative liabilities may occur, particularly in the area of training, the positives of fresh approach, less expensive resources, availability, and part-time and full-time options make the student resource pool extremely attractive.

7. Write and distribute a simple brochure that describes the program in easily understandable terms.

Commentary: There are many people inside and outside the criminal justice system who do not understand what pre-trial is and what it does and doesn't do. A simple fold-out brochure written in common English terms that describes the role of the program, how it functions, the people it serves etc., can serve many functions. Most important, it can save a great deal of time usually devoted to explanation that can be better spent on other efforts. On a more subtle level it can do the public relations work that is so vital

to community acceptance. Once prepared, a blanket mailing to news media, business organizations, community groups and to people in the system with whom the program is constantly in contact will accomplish more toward community acceptance than most of the specific "good" accomplished within the program structure.

There are many types and varieties of brochures. Most are cheap, succinct, and eye-catching in some regard. Some follow a question and answer format while others parallel a cookbook list of ingredients. Whatever the form, the utility is high.

B. Section B

1. Develop an objective point system (or some variation) that will permit recommendations to be formulated by those unskilled in pre-trial services work.

Commentary: Many programs use point systems while many don't. The arguments for and against are legion. The principal benefit touted by those who use it is that it eliminates to the maximum extent possible the personal biases of individual interviewers. The principle objection of those who decry its use is that it requires a slavish dedication to theory that may well at times fly in the face of common sense. As usual, the truth probably lies somewhere in-between.

A typical point system represents an attempt to objectively quantify community tie information so that when values are attached to particular interview information and a quota is reached, a recommendation for or against release may be determined by a simple process of addition. For example. To the community tie of "Residence" let us suppose we fix a value of 3 points for 2 years or more at the same one, 2 points for one year or more, and 1 point for 6 months. To the community tie of "Employment" let us fix 4 points for 1 year or more at the same job, 3 points for 6 months or more, 2 points for any job to which

defendant can return and 1 point for appropriate substitutes such as school, etc. If our recommendation level is 4 points then it is a simple matter to determine on the basis of verified interview information whether to recommend release or not.

The above example is not to be taken as a sample to be tried but is intended only as an illustration of how such a system works. It was first used in the 1960 experiment conducted by the Manhattan Bail Project in New York City. It has been used and continues to be used by most pre-trial release programs across the nation. (The D.C. Bail Agency uses it in conjunction with a Citation Program operated jointly by the Agency and the Metropolitan Police Department.) Its use has been analyzed and criticized by many. The most recent analysis and critique has been prepared by the Pre-trial Services Resource Center, 1010 Vermont Avenue, N.W., Washington, D.C. Copies are available upon request.

In any event, in addition to the reasons cited above one of the most important reasons to design and implement such a system can be summed up in the word "accountability." The reasons for recommending release or not are immediately apparent to all concerned. Not only does this inspire confidence once all the "users" have agreed to the standards but it permits the kind of analysis leading to change than can be justified to everyone's satisfaction. Since the Board of Directors consists of those with vital roles to play in the adjudication of those charged with crime it should not be an insurmountable task to "adopt" a point system from another jurisdiction, change it to suit local needs, and implement it. (A point system in use in the District of Columbia is contained in the publication District of Columbia: Handbook on Procedures: July 1976.)

2. Encourage the Courts, City and County, to prepare written release orders describing the conditions, obligations, and penalties of any bail conditions set.

Commentary: The two main factors prompting this recommendation are those of fairness and accountability. Particularly in felony cases the situtation is such that bail determinations made by Justices of the Peace carry through into the Criminal District Court after Indictment. In order to preserve for the record the exact action taken in a particular case the preparation and signing of a court order best accomplishes this end.

At the same time, any defendant released pre-trial should have a copy of the standards with which he is expected to comply during the period of release. Such information as his exact bail conditions, the next court date, the attorney's name and phone number, and penalties for failure to appear and non-compliance can be set out. In the event that there might be a challenge posed to some of the conditions set, or in the event of an attempt to impose some sanction for violation of conditions short of bond forfeiture, there would then exist an accurate and easily accessible record. (A reproduction of a Release Order presently in use in the District of Columbia is contained in the "Handbook" referred to above.)

3. Formulate a plan that would permit the interview of all arrestees prior to the time of the accusation hearing to permit the preparation of a written report concerning the community ties of the accused for consideration by the bail setting authority.

Commentary: This recommendation is based on two assumptions: 1) the judges and Justices of the Peace want to have all the information about the defendant that can be gathered quickly and accurately; and 2) the Pre-Trial Program or some substitute has the capacity to develop this information.

The first assumption is one about which there can be little doubt since the Supreme Court of the United States in 1951 in the case of Stack v. Boyle, 342 U.S. 1, directed that bail setting be an individualized process that treats both the offense charged and the individual circumstances of each defendant

who appears to have bail set. In addition, any magistrate who imposes sentence does so (usually) only after careful analysis of the defendant. Is the same magistrate willing to formulate a decision that may have the same effect as a sentence (i.e. commitment to jail in lieu of ability to post pre-trial bond for as much as 8 or 9 months) without benefit of the same kind of information?

In many jurisdictions the only information upon which a bail setting magistrate acts at initial presentment or Accusation Hearing is that supplied by the law enforcement officer concerning the offense. It goes without saying that any information about the defendant and his individual circumstances is just as relevant to considerations of appearance. This information is supplied in many jurisdictions by agencies similar to the Pre-Trial Program.

The second presumption, that the Pre-Trial Program or a substitute can provide the information, might be difficult to implement without developing a program of volunteer service such as that described in recommendation A6. On the other hand, absent the presence of program staff to conduct interviews and investigations, bail setting magistrates might consider using an abbreviated interview form prepared by the Pre-Trial Program, obtaining answers to community tie information under oath and subject to futher amplification upon subsequent referral to the Pre-Trial Program and use the information so obtained to supplement that provided by the arresting agent.

4. Consider automating some of the functions of the Pre-Trial Program such as notification and at a minimum, consider providing terminal access to the Criminal District Court data.

Commentary: This recommendation may appear almost ludicrous when the total current caseload of the Program is 120. At the same time because of the various supervisory tasks performed by the program, because of the recent implementation of a partially automated system that links the Criminal District Courts and the Prosecutor, because of the planned automation of the County Courts, and because of the planning for relocation into the new court facility

once it is completed, this is the ideal time for systems to plan for integration of the data gathered by the Pre-Trial Program.

Even if the above suggestion seems too "far-fetched" to consider now it is not out of line to think about supplying a terminal to the Pre-Trial Program to permit access to court dates, Prosecutor case information, and whatever else is planned. The minimal cost of such a terminal (provided that the Pre-Trial Program is located in the same building as the "host" computer)-should be less then the cost of the time required under present conditions for Program personnel to gather and check data regularly available in the present automated system.

5. Consider adopting some form of early release on recognizance (citation release) for those charged with misdemeanors.

Commentary: At present, persons charged with misdemeanors who secure their own release do so by posting 10% of a $200 or $500 bond with attorneys or bondsmen. In a few cases, release occurs through the auspices of the Pre-Trial Program. In many jurisdictions across the nation police departments either in conjunction with Pre-Trial Programs or on their own initiative are designing and implementing programs that provide for release on "personal bond" or Citation immediately after booking. These programs all follow similar patterns. Verified community ties argue for release and there is a strong presumption in favor of release. In those few cases that seem to pose a threat to the safety of any person or to the community discretion rests with the police officer to deny such release.

Citation programs have a great deal to recommend themselves. In the first place arresting authorities can schedule their cases for prosecutorial review so that extra night duty and overtime can be avoided. In addition, they can return to the street more quickly and are not out of circulation so long. Transportation costs are lowered. Defendants don't have to post bond to secure release and appear as scheduled with little or no failure. Court

time assessing bail risk is eliminated in many instances.

There are many examples of different types of Citation Programs. In the District of Columbia a law was passed in 1967 which created the program.[7] In 1968, the first full year, the program processed only 1,000 cases. In 1977 over 11,000 cases were processed. The tremendous increase in the use of the program is attributable to two principal factors: 1) police officials have recognized a substantial savings in manpower, and 2) defendants released have a less than 1% failure to appear rate.

The initial hesitancy to use the program as reflected by the release of only 1,000 out of a potential of 15,000 was directly connected with police reluctance to turn right around and release the person they had just arrested. As more and more police worked with the program and participated in such benefits as not having to "hang around" after their tour was finished to screen cases with the prosecutor, the use of the program increased dramatically.

On the civil liberties side of the issue it became obvious that since defendants released appeared as required there was no need to use money as a means to get them to court. After all, many traffic "summonses" or "citations" are issued in most jurisdictions with practically the same results. Thus, consideration of implementing such a program for Jefferson County is timely.

6. Consider adopting a plan that would permit those unable to secure release on personal bond to deposit an amount into the registry of the Court that would be returned (less a certain sum for handling charges) upon successful completion of the bond.

Commentary: Of all recommendations this is probably the most critical and the one requiring the most thought. At the same time, if it is ultimately implemented in some form it will radically change the release procedures

7. Appendix B.

in Jefferson County. The change will bring the system more in line with recommendations made by the American Bar Association, The National Advisory Commission On Criminal Justice Standards and Goals and the basic principles of constitutional law.[8]

In many jurisdictions, particularly Chicago, Philadelphia, Oregon, and Kentucky, 10% programs have been in operation for many years. The typical 10% program provides for an alternative to surety bond release as an automatic right of the defendant. Once bond is set he is permitted to post 10% of the face amount of the bond into the registry of the court. At the conclusion of the case, the money is returned to the defendant minus a handling charge - usually 1% of the bond or $15-$25.

The real benefit of such a system is that it provides options for both the defendant and the county that are not necessarily at odds with each other and it generally results in the total elimination of what has been called the scurrilous practice of posting bond for profit. In other words, no more bondsmen. At the same time it permits the Courts to use the money posted. Defendants have a personal stake in returning to court as required since they can look forward to return of their money.

Consider the possibilities. If there are 2,000 felony arrests with an average of $5,000 bond and all defendants post 10% then 1,000,000 (10% of $10,000,000) will be deposited with the court for an average of 4 months. At 6% interest the income realized would be $20,000 (1/3 of

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8. See Standards Relating to Pretrial Release; American Bar Association Project on Standards For Criminal Justice, 1968 and The National Advisory Commission on Criminal Justice Standards and Goals 1973 Volumes on Courts and Corrections.

$60,000) on interest alone. Add in 9,000 misdemeanors at $200 bond with interest for 2 months and an additional $180 is realized again in interest alone. Finally, retain 1% of the face amount of all bonds posted[9] and an additional $10,000 in felony bonds and $1,800 in misdemeanor bond money becomes available. Total income is $31,980, and these figures are conservative.

Another real benefit to such a program would be the availability of the balance of the 10% deposit to defray the cost of appointed counsel or to pay retained counsel. While there is no case directly on point the Texas Court of Criminal Appeals only recently approved the statutory scheme permitting judges to order a defendant to pay the costs resulting from appointment of counsel as a condition of probation.[10] The case cites an Oregon statute which has been upheld as constitutional that permits the recoupment of legal fees from a defendant who has been convicted.

Last, but certainly not least, no defendant is required to pay for his release - a right which is guaranteed by statute and the Constitution - provided there is no evidence of flight.

7. Encourage the prosecutor to experiment with a formalized diversion or intervention program prior to a plea or finding of guilt.

Commentary: While no one wants to be considered "soft on crime" there are many reasons to provide for alternatives to traditional adjudication. Many circumstances combine to argue in favor of adopting a program that would permit the Prosecutor to hold a case in abeyance while the defendant

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9. The United States Supreme Court has approved such a procedure in Schilb v Kuebel, 404 U.S. 357 (1971).

10. Basaldua v State, 22 Crim. Law Reporter 2191, 11/2/77.

proves that it is worth it to give him a chance to go through life without a criminal conviction. The Court is already open to such a program as indicated by the Deferred Probation Statute and the following example:

On December 7, 1977 Judge Larry Gist imposed a 10 year sentence (the maximum) on a college student guilty of burglary. Sentence was suspended on the condition that the young man stay out of trouble for 10 years. If he does, as the Judge explained to him, then the records will reflect the case was dismissed and his plea of guilty voided.

The Prosecutor's Office has in the past conducted an "informal" type of diversion on an "ad hoc" basis. In certain cases, files were held in suspension until the accused had proved worthy of dismissal of the charges.

In today's society there exist many laws which could safely be removed from the books without disrupting community safety. Yet, violations of those laws when observed or brought to the attention of law enforcement authorities cannot be ignored. Young first offenders are often needlessly stigmatized with a criminal record. The Courts are forced to deal with cases that might be better handled outside the courts.

Many jurisdictions are experimenting with diversionary programs. Most are under the Prosecutor's control since by law (case or statutory) the decision to prosecute or not is his alone. Most provide for dismissal of charges prior to plea on the condition that the defendant comply with certain conditions.

Again, the climate in Jefferson County is right. The prosecutor is at least willing to consider such a program, the follow-up services provided releasees under supervision of the Pre-Trial Program are in many respects

similar to the support services provided by staffs of formalized Diversion programs and the Courts seem willing enough to experiment. Since the National District Attorney's Association, the American Bar Association, and the National Advisory Commission on Criminal Justice Standards and Goals are very supportive of such programs and since they save court time, provide a method of avoiding the stigma of conviction and still permit limited state control of persons charged, they are worth trying.

8. Consider the adoption of some objective standards to govern the determination of indigency for purposes of appointing counsel.

Commentary: While this recommendation may not seem to have much to do with an analysis of the operations of the Pre-Trial Program, it is worth considering.

Jefferson County has long considered representation and release as a combined responsibility of a defendant's attorney. It is probably this circumstance which has resulted in an unwritten but nevertheless extant policy of requiring those defendants who make bond to retain an attorney. There are many reasons why poor defendants may be able to afford to pay for release (or their families and friends may be willing to assist) and not be able to afford counsel.

The Pre-Trial Program has the responsibility of insuring that a defendant appears with counsel and therefore investigates a defendant's ability to pay. The form identified as Appendix C is the one used to report on the status of counsel to the Court. There is a glaring omission of any standards against which determinations of indigency can be made. Mr. Ortego indicated that it is almost always a purely subjective determination.

While it may be difficult to formulate standards to provide for accountability and equal treatment such standards should be set. A youth with no job and no family does not belong in the same category as a laborer with a modest income and modest debts who in turn does not belong in the same category as a single, employed, highly salaried defendant with no debts. Difficult as a sliding scale is to formulate standards should be adopted to protect both the courts and the defendant.

V. CONCLUSION

Jefferson County is in an unique position in the State of Texas to move ahead in criminal justice processing. A new court soon to be constructed will place modern equipment and techniques at the disposal of the judges. New jail facilities will ease crowding and provide impetus for new and rehabilitative programs.

The Pre-Trial Program has an exceptional Director who enjoys the confidence of all the people in the system. The judges are willing to adopt new programs provided there is sufficient reason. The prosecutor is willing to experiment along with the courts with these programs.

The preceding recommendations have been made with the understanding that some if implemented quickly will provide for a more smoothly run system. Others are a goal to be striven for. No one can say what will or won't work. One can only suggest alternatives.

APPENDICES

Appendix A

1. Pam Bonich,(Assistant, Pretrial Program)
2. Lieutenant Doors (Sheriff's Department)
3. Honorable Leonard Giblin (252nd Criminal Court)
4. Honorable Larry Gist (Criminal Court)
5. Ben Johnson (Superintendant, Jefferson County Detention Center)
6. J. Randy Kitchens (Court Coordinator)
7. Wallace McCasland (Justice of the Peace)
8. Tom Maness (Assistant District Attorney)
9. Russell Ortego,(Director, Pretrial Program)
10. Francie Patterson (Assistant District Attorney)
11. James Sparks, Esquire (Defense Attorney)

APPENDIX B

thirty days.

TITLE VII

Citations.
47 Stat. 1485.

SEC. 701. Section 10 of the Act of March 3, 1933 (D.C. Code, sec. 23–610), is amended by inserting "(a)" immediately after "SEC. 10.", and by adding the following new subsections:

"(b) An officer or member of the Metropolitan Police force who, in accordance with section 397 of the Revised Statutes of the United States, relating to the District of Columbia, arrests without a warrant a person for committing a misdemeanor may, instead of taking him into custody, issue a citation requiring such person to appear before an official of the Metropolitan Police force designated under subsection (a) of this section to act as a clerk of the District of Columbia Court of General Sessions.

Ante, p. 734.

"(c) Whenever a person is arrested without a warrant for committing a misdemeanor and is booked and processed pursuant to law, an official of the Metropolitan Police force designated under subsection (a) of this section to act as a clerk of the District of Columbia Court of General Sessions may issue a citation to him for an appearance in court or at some other designated place, and release him from custody.

"(d) No citation may be issued under subsection (b) or (c) of this section unless the person authorized to issue the citation has reason to believe that the arrested person will not cause injury to persons or damage to property and that he will make an appearance in answer to the citation.

"(e) Whoever willfully fails to appear as required in a citation, shall be fined not more than the maximum provided for the misdemeanor for which such citation was issued or imprisoned for not more than one year, or both. Prosecution under this subsection shall be by the prosecuting officer responsible for prosecuting the offense for which the citation is issued."

D.C. Bail Agency.
D.C. Code 23-901.

SEC. 702. (a) Section 2 of the Act entitled "An Act to establish the District of Columbia Bail Agency, and for other purposes" approved July 26, 1966 (80 Stat. 327) is amended to read as follows:

"SEC. 2. There is hereby created for the District of Columbia the District of Columbia Bail Agency (hereinafter referred to as the 'agency') which shall secure pertinent data and provide for any judicial officer in the District of Columbia or any officer or member of the Metropolitan Police force issuing citations, reports containing verified information concerning any individual with respect to whom a bail or citation determination is to be made."

D.C. Code 23-903.

(b) (1) Section 4 of such Act is amended by redesignating subsections (d) and (e) as subsections (e) and (f), respectively, and by inserting the following new subsection after subsection (c):

"(d) The agency, when requested by a member or officer of the Metropolitan Police force acting pursuant to court rules governing the issuance of citations in the District of Columbia, shall furnish to such member or officer a report as provided in subsection (a)."

(2) The second sentence of subsection (f) of such section 4 (as so redesignated by paragraph (1) of this subsection) is amended by inserting ", including requiring the execution of a bail bond with sufficient solvent sureties," immediately after "such conditions".

APPENDIX C

JEFFERSON COUNTY
PRE-TRIAL INFORMATION PROGRAM

JEFFERSON COUNTY COURTHOUSE
ANNEX 2
335 FRANKLIN
BEAUMONT, TEXAS 77701
(713) 835-8620

RUSSELL D. ORTEGO — DIRECTOR

Indigency Report Form

Judge Larry Gist
Criminal District Court ☐

DATE_____

Judge Leonard Giblin
252nd Criminal District Court ☐

Cause #_____

Defendant_____

Charge_____

Defendant is indigent---------- ☐

Defendant has retained counsel---------- ☐

Defendant wants more time to retain counsel---------- ☐

Defendant not in jail---------- ☐

Defendant refused to be interviewed---------- ☐

REMARKS_____

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RUSSELL D. ORTEGO
DIRECTOR

END