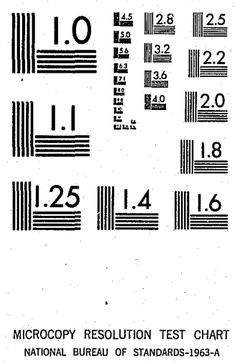

PRETRIAL RELEASE AND DETENTION

HEARINGS
BEFORE THE
SUBCOMMITTEE ON
GOVERNMENTAL EFFICIENCY
AND THE DISTRICT OF COLUMBIA
OF THE
COMMITTEE ON
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE
NINETY-FIFTH CONGRESS
SECOND SESSION
ON

H.R. 7747

AN ACT TO AMEND TITLE 23 OF THE DISTRICT OF COLUMBIA CODE WITH RESPECT TO THE RELEASE OR DETENTION PRIOR TO TRIAL OF PERSONS CHARGED WITH CERTAIN VIOLENT OR DANGEROUS CRIMES, AND FOR OTHER PURPOSES.

JANUARY 31 AND FEBRUARY 6, 1978

[illegible] the use of the Committee on Governmental Affairs

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ADDITIONAL MATERIAL SUBMITTED FOR THE HEARING RECORD

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Statement of

Jeffrey A. Roth, Senior Economic Analyst
Institute for Law and Social Research
Washington, DC

before the

U.S. Senate
Governmental Affairs Subcommittee on
Governmental Efficiency and the District of Columbia

February 6, 1978

Mr. Chairman and Members of the Subcommittee:

I wish to thank you for the opportunity to testify on behalf of the Institute for Law and Social Research concerning H.R. 7747, a bill to amend Title 23, Subchapter II of the District of Columbia Code, which prescribes procedures governing pretrial release and detention.

Under funding by the Law Enforcement Assistance Administration's National Institute of Law Enforcement and Criminal Justice, I recently completed an econometric study of pretrial release in the District of Columbia. As you may know, econometric studies test economic theories of behavior by applying statistical tools to available data. This study made use of 1974 data from PROMIS (Prosecutor's Management Information System), a computerized information system operating in the Superior Court Division of the Office of the U.S. Attorney, Mr. Earl J. Silbert. Although it could not have been completed without the cooperation of Mr. Silbert's office and the financial support of the Law Enforcement Assistance Administration, I wish to point out that my conclusions may not necessarily be shared by either of those agencies.

Our study addressed, in part, the following three questions:

- What attributes of the alleged crime, the defendant's criminal history, and the defendant's socioeconomic status seem to predict the pretrial release conditions set at initial appearance?
- What attributes seem to predict failure to appear by released defendants?
- What attributes seem to predict pretrial crime by released defendants?

Two by-products of the study were statistical equations to predict the probabilities of failure to appear and pretrial crime. We were also able to reach some conclusions concerning the effectiveness of financial release in reducing failure to appear and pretrial crime, and in guaranteeing due process to accused defendants.

Exhibit 1 of my statement is taken from the study, which is nearing publication. It compares factors that seem to predict the use of financial bond with factors that seem to predict pretrial misconduct by released defendants. At the top of each column is an event that may occur during the life of a case: imposition of bond instead of non-financial release by a judge, failure to appear by a released defendant, and pretrial rearrest of a released defendant. At the left-hand side of each row is an attribute of the alleged offense or of the defendant that, according to my results, influences the probability of at least one of the events. The symbols within the chart indicate the direction of influence. For example, a plus indicates that homicide defendants are more likely than others to receive financial conditions; while zeroes indicate that homicide defendants are no more or less prone than others toward nonappearance or pretrial rearrest.

EXHIBIT 1

COMPARISON OF VARIABLES EXPLAINING FINANCIAL CONDITIONS, FAILURE TO APPEAR, AND PRETRIAL REARREST

	Behavior Being Explained		
Explanatory Attribute	Imposition of Bond	Failure to Appear	Pretrial Rearrest
Current Charge			
Homicide	+	0	0
Assault	-	-	0
Drug Viol.	-	0	0
Bail Viol.	+	0	0
Sex. Aslt.	0	-	0
Weapon Viol.	0	-	0
Robbery	0	0	+
Burglary	0	0	+
Larceny	0	0	+
Arson/Prop. Dest.	0	0	+
Crime Severity			
Weapon Used	-	0	+
Defendant History			
Parole/Probation	+	0	0
FTA Pending	+	0	0
No. Pending	+	0	+
No. Priors/All	+	0	0
No. Priors/Persons	0	0	+
Arr. Lst 5 Yrs?	+	0	0
No. Arr./12 Mo.	0	0	+
Defendant Descriptors			
Local Residence	-	0	0
Employed	-	-	-
Low Income	-	0	0
Drug User	0	+	+
Caucasian	+	0	-
Older	0	0	-

I wish to focus attention on the shaded areas of the chart, which seem especially pertinent to the debate surrounding this bill. In contrast to the homicide result, the next two shaded areas indicate that felony robbery, burglary, larceny, arson and property destruction defendants, and those accused of using a weapon during an offense, are more likely than other defendants to be rearrested if they are released before trial. Yet they are no more likely than other defendants to be held on bond. Further down the chart, we note that defendants arrested while on conditional release have bond imposed more frequently than other defendants; yet defendants within that group who obtain release are no poorer risks than other defendants. Still further down the chart, we observe that defendants with a local residence are financially detained less often than other defendants; yet they are no better risks than others in terms of appearance for trial or pretrial crime. Finally, we see that defendants with a known history of drug use are more likely than others both to fail to appear for trial and to be rearrested before trial. Yet this fact does not encourage judges to require bond of drug users more often than other defendants.

The picture presented in Exhibit 1 may, I think, be fairly summarized as follows. In deciding whether or not to require bond, arraignment judges appear to consider the items of information prescribed for this purpose in Subsection 1321(b), including the defendant's prior record. However, they appear to stress those aspects of the record, such as prior arrests, which are commonly thought to predict future crime rather than failure to appear. However, the empirical evidence is that except for employment status, the factors that influence release

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conditions have little in common with the factors that actually predict either crime or failure to appear. Consequently, some defendants--notably nonlocal residents and rearrested parolees and probationers--are detained unnecessarily; while other defendants--notably drug users--are released nonfinancially despite evidence that they represent poor risks in terms of both nonappearance and pretrial crime.

The problem of inappropriate use of bond is aggravated still further, because the eventual outcome--whether the financially detained defendant returns to the street or not--is determined by his lawyer's persistence in seeking bond reductions and his own ability to pay. In a city where over 80 percent of all defendants are classed as indigent, this has disturbing implications for equity. The $1,000 voucher limit in felony cases for the court-appointed attorneys who represent about 85 percent of indigent defendants may discourage them from investing time and effort to seek bond reductions. In cases where the bond required exceeds the indigent defendant's ability to pay, it is reasonable to speculate that the financial burden may shift to his friends or family, who have been accused of nothing.

By making pretrial incarceration a matter of ability to pay, bond requirements not only cause inequity; they introduce variables--income and wealth--that have no identifiable relationship to the risk of nonappearance or pretrial crime. In short, bond requirements keep many of the wrong defendants in jail. This is demonstrated by a special study of 424 randomly selected defendants who had financial release conditions imposed during 1974. Of these, 254 eventually obtained release by

posting bond; while the remaining 170 remained in jail until trial. Using statistical equations to predict pretrial rearrest and nonappearance based on attributes of the defendant and the alleged crime, I estimated that incarcerating these 170 defendants prevented approximately 20 failures to appear and 21 pretrial rearrests.

From virtually any perspective, performance would have been improved if the defendants to be incarcerated had been chosen with respect to pretrial risk instead of ability to pay. If one's goal were to minimize unnecessary pretrial incarceration, detention according to predicted risk instead of ability to pay could have reduced the number incarcerated from 170 to 98 with no expected increase in the number of rearrests, or from 170 to 141 with no expected increase in failure to appear.[1] If preventing failure to appear were the goal, a different group of 170 defendants could have been selected from the 424, preventing an estimated 23 failures to appear instead of 20. If pretrial crime control were the goal, selection of a different group of 170 could have prevented an estimated 29 rearrests instead of 21.[2] Parenthetically, I should note that only data routinely collected by the U.S. Attorney's Office were included in the statistical equations predicting pretrial risk. If the extensive data collected by the D.C. Bail Agency for use by judges could be brought

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[1]There are two possible causes for the greater improvement with respect to rearrests. Perhaps rearrests are inherently more predictable than failures to appear, or perhaps we lacked some data items that are highly correlated with failure to appear.

[2]In evaluating the significance of pretrial rearrests, it is pertinent that in 1976, 32 percent of them resulted in conviction, four percentage points higher than the overall rate of 28 percent of all arrests.

to bear on the problem, I suspect that even greater performance improvements would result.

Because the judge's assessment of pretrial risk of rearrest seems preferable to ability to pay as a release criterion, efforts to substitute preventive detention and supervised nonfinancial release for the use of bond seem defensible on grounds of both equity and efficiency. The question remains how directly H.R. 7747 addresses this goal.

Section I of the bill makes first-degree murder defendants eligible for pretrial detention if they present a risk of nonappearance or danger to the community. Since such defendants are already eligible for detention if they are on conditional release or have conviction records for violent crimes (under Subsection 1322(a)(2)), the newly affected group would appear to consist of homicide defendants without extensive criminal histories.

Our results indicate that homicide defendants are not, on average, especially poor risks for pretrial release. However, perhaps because judges fear the consequences of releasing these defendants without bond, the usual outcome of arraignment is to require financial bond. Thus, ability to pay rather than threat to the community determines which homicide defendants remain in jail. In this situation, the extension of pretrial detention eligibility to first-degree murder defendants seems to provide an alternative to the inequity and inefficiency of financial conditions described earlier.

Section I of the bill also extends pretrial detention eligibility to defendants accused of armed robbery or forcible rape, if they present an undue threat of nonappearance or danger to the community. A defendant

accused of one of these crimes is apparently already eligible for pretrial detention under Subsection 1322(a) if he has a record of convictions for violent crimes, if he is arrested while on conditional release, or if he is shown to present a danger to the community. Therefore, the only additional armed robbery and forcible rape defendants made eligible by this part of the bill are those who have no prior convictions for violent crimes but who present a threat of nonappearance.

While our study did not single out forcible rape and armed robbery defendants specifically, it did analyze the broader charge categories of robbery and sexual assault. Defendants in these two groups were not found to be held on bond more often than other defendants. However, released robbery defendants were found to present a greater risk of pretrial crime than other defendants; while released sexual assault defendants presented a smaller risk of nonappearance but no greater risk of pretrial crime than others. If these results hold with respect to the narrower charge categories used in the bill, then the rationale for adding this subgroup of armed robbery and forcible rape defendants is not apparent to me. The extra pretrial crime risk associated with accused robbers appears to be already addressed by Subsection 1322(a)(1), and the appearance record of sexual assault defendants does not seem to warrant adding risk of nonappearance to the criteria for their preventive detention.

Section 3 of the bill makes a person arrested for any offense while on pretrial release for a felony offense eligible for a pretrial detention hearing unless his release is revoked, and extends from five days to ten the time period during which a person arrested while on parole or

probation may have his conditional release revoked. If his conditional release is not revoked, the bill requires a preventive detention hearing. Since parolees and probationers accused of violent crimes are already eligible for preventive detention under Subsection 1322(a)(2), the group made eligible by this Section contains pretrial releasees, parolees, and probationers charged with nonviolent crimes.

Our results indicate that this group, like homicide defendants, is currently more likely than other defendants to receive financial release conditions, despite a pretrial misconduct risk no greater than that of other defendants. However, unlike the homicide defendant situation, the problem here may be that judges, perceiving that five days has been widely acknowledged as too short a period for parole and probation authorities to adequately consider release revocation, may be attempting to remedy the problem by imposing financial conditions instead of depending on parole and probation authorities to act. If the ten-day period proves adequate, defendants in this group who present undue risk of nonappearance or additional crime presumably can be identified, and their releases revoked, by the appropriate authorities without benefit of a pretrial detention hearing. Therefore, with the extended time period, the need to broaden pretrial detention eligibility to this group is not clear.

Mr. Chairman, my thanks to you and the Members of the Subcommittee for your kind attention. I shall be happy to respond to your questions at this time.

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