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PRETRIAL RELEASE: A DESCRIPTION OF THE WISCONSIN SYSTEM AND DISCUSSION OF PRETRIAL RELEASE EVALUATION IN WISCONSIN AND SELECTED STATES

STAFF BRIEF 80-4

Wisconsin Legislative Council Staff

State Capitol

Madison, Wisconsin

June 16, 1980

PREFACE

On May 30, 1980, the Legislative Council established the Special Committee on Pretrial Release. In accordance with SEC. 12, Ch. 112, Laws of 1979, the Special Committee is directed to:

> Conduct a study of the use of pretrial release, with special attention to the use of bail evaluation units and to the retrieval of information regarding a defendant's pending legal status under the criminal justice system.

The Special Committee is further directed to report to the Legislative Council by December 15, 1980, so that any Council recommendations resulting from the study can be reported to the Legislature when it convenes in 1981, as required by Ch. 112.

This Staff Brief was prepared to provide the Special Committee with background information relevant to the use of pretrial release evaluation in Wisconsin and selected states.

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Wisconsin Legislative Council Staff — Madison, Wisconsin

Special Committee on Pretrial Release — June 16, 1980

STAFF BRIEF 80-4*

PRETRIAL RELEASE: A DESCRIPTION OF THE WISCONSIN SYSTEM AND DISCUSSION OF PRETRIAL RELEASE EVALUATION IN WISCONSIN AND SELECTED STATES

INTRODUCTION

In recent years, there has been substantial interest throughout the country on the subject of pretrial release of criminal defendants. Researchers, law enforcement agencies and the legislative, judicial and executive branches of both state and federal governments have explored the subject. [Part III of this Staff Brief identifies some of the current research on this subject.] A principal reason for this focus of attention is the pressure on the criminal justice system which has resulted from jails which are overcrowded with persons who have been incarcerated awaiting trial.

In the 1979-80 Wisconsin Legislative Session, several proposals were introduced dealing with various aspects of the subject of pretrial release. Chapter 34, Laws of 1979 (Biennial Budget), eliminated the commercial bail bondsman (corporate surety) by generally requiring bail sureties to be natural persons willing to furnish security for the release of an individual on a nonprofit basis.

Chapter 112, Laws of 1979, made a number of changes in statutes relating to bail, including:

1. Abolishing the judicial option of allowing a defendant to be released on bail by depositing 10% of the amount of bail set by the judge.

2. Recognizing that refraining from committing a new crime is always a condition of release on bail.

3. Establishing a procedure for revoking the bail of a person who allegedly commits a "serious crime," as defined in the law, while released on bail. [Chapter 112 also contains the study directive which gave rise to the creation of this Special Committee (see Preface).]

In addition to the legislation described above, several proposals were introduced to amend the Wisconsin Constitution so as to authorize the

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denial of pretrial release to certain "dangerous" persons. One such proposal, 1979 Assembly Joint Resolution 125, was introduced by the Legislative Council pursuant to the recommendation of a special study committee.

Currently, the Wisconsin Constitution requires courts to set bail for all defendants except those accused of a capital offense [Wis. Const. art. I, s. 8]. Since no capital crimes exist in Wisconsin, all defendants are eligible for pretrial release if they can make bail.

The principal objectives of this Staff Brief are to describe briefly the current system of pretrial release in Wisconsin (PART I) and, in response to the study directive to this Committee in Ch. 112, Laws of 1979, provide information regarding present and past pretrial release evaluation systems in this and selected other states (PART II). Lastly, the Brief will provide information regarding major studies dealing with pretrial release in order to clarify the issues to be resolved in any effort to improve the pretrial release decision-making process in this state (PART III). Several appendices supplement the text of the Staff Brief by setting forth relevant statutes and rules, pretrial release evaluation forms and other relevant materials.

PART I

PRETRIAL RELEASE IN WISCONSIN

A. RELEASE WITH OR WITHOUT BAIL BY A JUDGE OR LAW ENFORCEMENT OFFICER SUBSEQUENT TO AN ARREST

Except for persons accused of a capital offense--currently, no capital crimes exist in Wisconsin--every criminal defendant in this state's criminal justice system has a constitutional right to have bail set [Wis. Const. art. I, s. 8]. Although this right does not assure release since the defendant may not be able to make bail, excessive bail is specifically precluded under both State and Federal Constitutions [Wis. Const. art. I, s. 6; 8th Amendment to U.S. Constitution]. Various provisions of Ch. 969, Wis. Stats., reflect these constitutional principles. [Appendix A contains a copy of Ch. 969.]

In State v. Whitty, 34 Wis. 2d 278, 149 N.W. 2d 557 (1967), the State Supreme Court emphasized that the purpose of bail is to assure the appearance of the accused at subsequent criminal proceedings. This reflects a fundamental premise of our criminal justice system that a person should not be punished for a criminal offense until the state demonstrates guilt beyond a reasonable doubt. The Supreme Court in Whitty, went on to set forth proper considerations for fixing the amount of bail. The Wisconsin statutes codify the purpose of bail as prescribed by the Whitty case, as set forth below:

> 969.01 (4) CONSIDERATIONS IN FIXING AMOUNT OF BAIL. The amount of bail shall be determined in reference to the purpose of bail to assure the appearance of the defendant when required to appear to answer a criminal prosecution. Proper considerations in fixing a reasonable amount of bail which will assure the defendant's appearance for trial are: the ability of the arrested person to give bail, the nature, number and gravity of the offenses and the potential penalty the defendant faces, whether the alleged acts were violent in nature, the defendant's prior criminal record, if any, the character, health, residence and reputation of the defendant, the character and strength of the evidence which has been presented to the judge, whether the defendant is currently on probation or parole, whether the defendant is already on bail in other pending cases, whether the defendant has been bound over for trial after a preliminary examination, whether the defendant has in the past forfeited bail or was a fugitive from justice at the time of arrest, and the policy against unnecessary detention of the defendants pending trial. [Section 969.01 (4), Wis. Stats., as amended by Ch. 112, Laws of 1979.]

Once the amount of bail has been determined by the judge, usually at the time of the initial appearance, the defendant may be released pursuant to s. 969.02, Bail in Misdemeanors, or s. 969.03, Bail in Felonies. If the amount of bail and other conditions have been set by a court, a law enforcement officer may take the bail and release the defendant with the

understanding that the defendant will appear in accordance with the conditions set immediately following arrest. This procedure is most common in the case of misdemeanors where a judge may authorize a law enforcement officer to impose the cash bail schedule for misdemeanors which has been adopted by rule of the Supreme Court pursuant to s. 969.06, Wis. Stats. An officer is not required to release a defendant from custody when the officer is of the opinion that the defendant is not in a fit condition to care for his or her own safety and would constitute, because of his or her physical condition, a danger to the safety of others. If not released by a law enforcement officer, a number of options are available to a judge regarding release on bail.

In the case of misdemeanors, s. 969.02 authorizes the judge to release the defendant without bail or upon execution of an unsecured appearance bond (commonly referred to as release on personal recognizance) in an amount specified by the judge. The judge may require the defendant to execute a secured appearance bond or deposit the entire amount of the bond in cash. Similar options are available to a judge under s. 969.03 in the case of felonies. However, release without bail is not authorized.

In addition to monetary conditions, the judge may place the defendant in the custody of a designated person or organization agreeing to supervise him or her, place restrictions on travel, association or place of abode of the defendant or prohibit the defendant from possessing a dangerous weapon. Where the defendant is charged with a felony, the judge may impose any other condition deemed reasonably necessary to assure appearance as required or deemed reasonably necessary to protect public or individual safety, including a requirement that the defendant return to custody after specified hours. By statute, as a condition of release in all cases, the defendant is required to refrain from committing any crime.

Other provisions of Ch. 969, as affected by Ch. 112, Laws of 1979, deal with matters such as reducing bail or increasing bail for a violation of a condition of release or, if the alleged violation is the commission of a "serious" crime, revoking bail release [s. 969.08, Wis. Stats.]. The forfeiture of bail for failure to comply with the conditions of release is also authorized [s. 969.13, Wis. Stats.]. Under s. 969.08 (1), if a defendant is unable to meet his or her conditions of release, an automatic right of review of those conditions is provided for any defendant who is detained 72 hours after his or her initial appearance.

B. RELEASE FOR INSUFFICIENT GROUNDS BY A LAW ENFORCEMENT OFFICER SUBSEQUENT TO AN ARREST

A law enforcement officer having custody of a person arrested without an arrest warrant may release the person arrested without requiring him or her to appear before a judge, if the law enforcement officer is satisfied that there are insufficient grounds for the issuance of a criminal complaint [s. 968.08, Wis. Stats.]. A law enforcement officer may arrest without a warrant only if he or she has reasonable grounds to believe that the person is committing or has committed a crime [s. 968.07 (1) (d), Wis. Stats.]. Therefore, the exercise of the

authority under s. 968.08 should properly occur only when the information which formed the basis for the reasonable grounds determination at the time of the arrest appears to have been incorrect or otherwise deficient.

C. RELEASE PURSUANT TO THE ISSUANCE OF A SUMMONS BY A DISTRICT ATTORNEY OR JUDGE IN LIEU OF AN ARREST WARRANT

After issuing a complaint, which is a statement of the essential facts constituting the offense charged, a district attorney may issue a summons in lieu of requesting a court to issue an arrest warrant [ss. 968.01 and 968.04 (2) (a), Wis. Stats.]. A summons commands the defendant to appear before a court at a certain time and place. The defendant remains free from custody until his or her scheduled court appearance.

A judge also has the option of issuing a summons in lieu of an arrest warrant [s. 968.04 (1), Wis. Stats.]. In misdemeanor actions where the maximum imprisonment does not exceed six months, a judge is required to issue a summons instead of a warrant unless he or she believes that the defendant will not appear in response to a summons [s. 968.04 (2) (b), Wis. Stats.].

D. RELEASE PURSUANT TO THE ISSUANCE OF A CITATION BY A LAW ENFORCEMENT OFFICER SUBSEQUENT TO AN ARREST

In essence, a citation is a written order issued by a law enforcement officer or, in cities of the first class, other designated city employes which directs a person accused of committing a specified offense to appear in court on a specified date to answer to the charges against him or her. [See s. 300.02 (2), Wis. Stats., as affected by Ch. 22, Laws of 1979.] In Wisconsin, a citation is used primarily for violation of municipal ordinances [s. 300.02, Wis. Stats.], statutes and rules administered and enforced by the Department of Natural Resources [s. 23.53, Wis. Stats., as affected by Ch. 34, Laws of 1979] and statutes regulating traffic and motor vehicle transportation [s. 345.11, Wis. Stats., as affected by Ch. 34, Laws of 1979]. Penalties for violation of the statutes, rules and ordinances which are subject to the citation procedure are civil forfeitures, except in the case of certain traffic and motor vehicle transportation offenses where criminal penalties are applicable.

Other states have had more experience than Wisconsin in the use of a citation release for criminal offenses. A discussion of the experience in several states that have enacted "citation release" statutes is contained in American Bar Association Standards Relating to the Administration of Criminal Justice - Pretrial Release. [A copy of this document will be furnished to Committee members.]

PART II

PRETRIAL RELEASE EVALUATION PROGRAMS

A. INTRODUCTION

Currently, in Wisconsin, there is no uniform system whereby courts obtain the information necessary to set monetary and other conditions of bail release which, in accordance with s. 969.01 (4), Wis. Stats., are reasonably necessary to assure appearance at subsequent proceedings in the criminal justice process (see discussion on page 3 of this Staff Brief). Since bail is usually set at the time of the defendant's initial appearance, which must be conducted within a "reasonable" time after arrest [s. 970.01, Wis. Stats.], data upon which to base the release decision must be readily accessible if it is to be useful to the court. While the statutes do not specify the amount of time that is unreasonable, judicial decisions make it clear that "an unreasonable detention amounts to a denial of due process under the Wisconsin Constitution and renders inadmissible any confession obtained during such unreasonable detention." [See State v. Hunt, 53 Wis. 2d 734, 193 N.W. 2d 858 (1972), citing Reimers v. State, 31 Wis. 2d 457, 143 N.W. 2d 525 (1966).]

In Reimers, the court made it clear that "...the fact that Sundays and holidays intervene [between the time of arrest and the initial appearance], standing alone, will not justify unreasonable detention." Thus, it is apparent that a court has only a minimal amount of time between the arrest and initial appearance to obtain the information necessary to set the conditions of bail release.

Because of the short interval of time between arrest and the initial appearance, the court must rely primarily on the prosecutor, law enforcement agencies and the defendant and his or her legal counsel for the data necessary to make the bail release decision in accordance with the statutory criteria described in Part I of this Staff Brief.

Through law enforcement agencies, the court has access to the Transaction Information for Management of Enforcement (TIME) System in the Crime Information Bureau (CIB) of the Wisconsin Department of Justice. By utilizing a TIME computer terminal, information is immediately available regarding outstanding court warrants or authorized "wants" (wanted persons) pertaining to individuals identified in the automated CIB files. The System is interfaced with the National Crime Information Center (NCIC) files, which contain similar information, the State Department of Transportation's vehicle registration and driver information computerized files and several local computerized records systems (Milwaukee city and county systems and Madison system). As of May 1980, the TIME System also provides information regarding a person's current probation/parole status.

Obviously, the current information system is not capable of providing the court, in every instance, with all the information necessary to apply the criteria appropriate to determining conditions of release as set forth in s. 969.01 (4), Wis. Stats. (reproduced on page 3 and in

Appendix A). In fact, the principal criticism leveled at the bail legislation enacted in 1969, which essentially established the current system of bail in Wisconsin, was the lack of a system of bail investigation or evaluation to aid the courts. [See "Criminal Law--Pretrial Release--Wisconsin Bail Reform," 1971 Wis. Law Review 594.]

Although there presently is no bail evaluation system operating in Wisconsin, a bail evaluation unit did operate in Milwaukee County from 1972 through 1976 and the program is currently being reinstated. Further, bail evaluation programs are currently in operation in various states and local jurisdictions throughout the country. The remainder of Part II of this Staff Brief describes the Milwaukee County program and the programs in Kentucky and Oregon. The programs in Kentucky and Oregon were chosen for description primarily because of their statewide impact.

B. MILWAUKEE COUNTY BAIL BOND EVALUATION PROGRAM

1. Background

A Special Evaluation Unit was created in 1972 and attached for administrative purposes to the Milwaukee County Sheriff's Department. One component of this agency was a bail bond evaluation program.

As originally conceived, the program was to perform a bail evaluation on both misdemeanants and felons. However, staff reductions resulting from budgeting constraints limited bail evaluations to felons only.

2. Program Operations

In general, evaluations were performed between the time the person was charged by the District Attorney and the initial appearance. Five evaluators were involved in the preparation of the reports.

As described in the Report by the Special Evaluation Unit to the Milwaukee County Board, July 30, 1976 (hereafter, the "Report"), the bail evaluation report consisted of three parts. The first portion provided the background history of the defendant. Information such as length of residence, employment history, family ties and other information relating to the individual's stability in the community was assessed. The second part dealt with the defendant's criminal history but did not include information regarding the nature or seriousness of the present offense. The third part provided a summary of the first two portions and a rating based on the information contained in these parts.

The rating scale ranged from -8 to +17 and was broken into four main categories of poor, fair, good and excellent. The Report does not disclose the precise meaning of these rating categories. However, a description of the "benefits" of bail evaluations in Table III, p. 9, of the Report, discloses, among other benefits, that the evaluation served the purpose of alerting the court and District Attorney as to "aggressive and hostile offenders" in order that these characteristics of the

defendant could be "taken into consideration in setting bail type and amount" and "[t]he victim can then be reasonably assured that threatening offenders will not be returned to the community to prey further upon the community." Appendix B contains the entire portion of the Report pertaining to bail evaluations. Appendix C contains copies of the bail bond investigation report form, bail bond rating summary form and bail investigation scale.

3. Program Results

The Report contains several observations regarding the impact of the bail evaluation program on the criminal justice system and jail population in Milwaukee County. Actual cost savings are claimed as a result of bail evaluations by the bail evaluation unit as compared to the costs associated with bail evaluations conducted by a judge in open court.

Based on data in Tables IV and V of the Report, the bail evaluations performed by the unit had "impressive predictive capability." Based on this conclusion, it is suggested on p. 10 of the Report that "...if time allowed to complete an evaluation was increased to two days, the bail evaluation process could probably supplant many of the present time consuming pre-sentence investigations conducted by the State of Wisconsin." Large savings to Milwaukee County were predicted if such a program were instituted.

Despite the favorable report on the operations and estimated savings resulting from the bail evaluation unit, the program was not refunded by the Milwaukee County Board. Bail evaluations ceased in December 1976. However, the Milwaukee County Board in March 1980 approved funding for the reinstatement of the bail evaluation unit.

For the current fiscal year (calendar year 1980), the program is budgeted for two evaluators and one secretarial-clerical employe. The process of hiring the evaluators is now underway. A master's degree in social work is required for these positions. The positions are in the classified service compensation range 24, which provides for a salary range of $19,600 to $22,900. A request for three additional evaluators has been proposed for the 1981 Budget.

C. KENTUCKY PRETRIAL RELEASE PROGRAM 1/

1. Background

In 1976, the Kentucky Bail Reform Act was enacted. The primary thrust of the legislation was to disallow commercial bail bonding. This significant and controversial prohibition was coupled with other reforms, including the establishment of a statewide pretrial release program.

The Kentucky Supreme Court has statewide responsibility for the establishment and administration of the pretrial program. Courts with criminal jurisdiction are required to provide pretrial release investigations and services [s. 431.515, Ky. Rev. Stats.].

To implement the legislation, the Supreme Court established the Pretrial Services Agency as part of the Administrative Office of the Courts (AOC). Appendix D contains relevant Kentucky Rules of Criminal Procedure relating to pretrial release which have been promulgated by the Kentucky Supreme Court. A three-person central staff coordinates and monitors operations throughout the state. One of these persons is a field supervisor who spends his or her time traveling throughout the state providing on-the-job training, technical assistance, field audits and crisis management.

Each of Kentucky's 56 judicial circuits is served by a pretrial services program which operates through a Pretrial Release Office in each judicial circuit. The pretrial release program functions in accordance with statewide guidelines concerning eligibility, assignment of "points" to individual defendants being considered for release recommendations and other program procedures. Pretrial officers are not organizationally attached to circuit or district courts; rather, they are employes of the AOC.

The administrative structure of the local pretrial programs varies from district to district with large staffs in metropolitan areas and small staffs of as few as one or two pretrial officers who must cover several counties in rural areas. In the rural areas, pretrial officers generally function on-call during evening hours.

According to its Third Annual Report (July 1, 1978 - June 30, 1979), the Pretrial Services Agency spent $1,874,107 during fiscal year 1978-79. The Agency is budgeted for $2,072,611 for the 1979-80 fiscal year. The Agency was staffed by 135 permanent and 30 part-time employes on June 30, 1979. Additionally, several volunteers, Comprehensive Employment Training Act (CETA) and summer youth workers and college interns were serving the Agency on that date.

As disclosed in its Annual Report, staff turnover has been a continuing problem for the Agency, particularly in urban areas. It is commonly agreed that the turnover results from two factors. First, the work involves long hours, late shifts and in some areas unpleasant and cramped working conditions in the jails. Second, salary levels are generally low in comparison with other positions requiring similar training and demanding the same amount of responsibility. Indicative of the problem, the starting salary for corrections officers (jailers) in Louisville is almost $2,000 per year above that of pretrial officers.

2. Program Operations

The initial contact by an arrested person with the program occurs immediately after the person is booked by a law enforcement officer--the program operates on a 24-hour, seven-day a week basis. At this time, the arrestee is given an opportunity to be interviewed by a pretrial officer. An arrestee is informed of the right to refuse pretrial services and forego an interview. If the arrestee refuses the interview, several release options may still be available: posting of a bail bond pursuant to the Uniform Schedule of Bail, posting 10% cash deposit or executing a bail bond secured by property, cash or securities.

Certain defendants are not eligible for a program interview. These include defendants in a federal case, juveniles, probation or parole violators (who are being held for that reason), escapees from custody, persons with mental disorders, accepted referrals to diversion programs and prisoners in transit to another jurisdiction.

The objective of the interview is to obtain information about the family, community and economic ties of the defendant. The interviewer may also secure an affidavit of indigency from the defendant. After the interview form is completed, the pretrial officer verifies the validity of statements through one or more of the references supplied by the defendant. The defendant's prior criminal record is checked through local services and/or the state police. The agency has 24-hour access to computerized records maintained by the state police.

Once the information is verified, it is evaluated on an objective point scale to determine if the defendant is eligible for release on personal recognizance (ROR). The Pretrial Services Agency serves as a neutral source of information for the court. It does not make recommendations, but simply presents the information it has collected and informs the court whether a person appears to be a good risk for ROR, based on its point-scale evaluation of verified information.

In making the point-scale evaluation, defendants are awarded positive points for such things as permanent residence in the area, property ownership, steady employment and so on. Points are subtracted for felony convictions within the past two years as well as for previous failures to appear at various criminal proceedings.

Points are only awarded for verified information. Total negative points are subtracted from total positive points and a net figure is computed. Defendants are eligible for ROR release prior to trial if they have a verified permanent address and eight or more net points. [Appendix E contains a copy of the interview form and point-scale.]

If a defendant has the requisite number of points and is not disqualified for any other reason, the pretrial officer normally telephones a judge to present the information. The trial judge then makes the release decision and causes the issuance of a release order. Only a judicial officer can make the release decision. This officer is usually the district judge but may be a trial commissioner or circuit judge in some instances.

If the defendant declines his or her opportunity to be interviewed, is found ineligible for the program due to a lack of sufficient points or is rejected by the judge for recognizance release, he or she may be released by one of the other alternative methods described above. The judge may order the defendant released on conditions that attempt to rectify the lack of points. For example, a defendant may be released with the requirement that a certain residence be maintained or a job secured.

A special "24-hour review" is available to any defendant who continues to be detained 24 hours after imposition of release conditions because of inability to meet those conditions. To assist the court, the pretrial program will update the defendant's interview form, attempt to verify unverified information and re-tally the points earned. All pertinent information is presented to the judge, who must provide written reasons if release is still denied.

Once the release decision is made, the pretrial officer routinely notifies each defendant of his scheduled court appearance dates and monitors compliance with the conditions of release. [Appendix F contains a copy of the custody release form.] If an individual fails to make his or her appearance, and if he or she cannot be located by the pretrial officer, law enforcement agencies are notified. Pretrial officers secure bail jumping warrants against defendants who fail to appear.

3. Program Results

Appendix G contains a description of the statewide pretrial release "Program Impact" from the Delivery System Analysis of Jefferson County (Louisville), Kentucky, prepared by A. William Saupe, for the Lazar Institute (March 1979). Also contained in Appendix G are "Highlights" and "Defendant Outcomes Summary" from the Outcomes Analysis of [Pretrial Release In] Louisville, Kentucky, prepared by Martin D. Sorin, Ph.D., for The Lazar Institute (May 1979).

D. OREGON PRETRIAL RELEASE PROGRAM 2/

1. Background

The 1973 revision of Oregon's bail law indirectly eliminated commercial bail bonding by making it nonprofitable by allowing release on 10% deposit of the designated security amount and the law reformed the system of pretrial release, generally. [Appendix H contains a copy of the Oregon Pretrial Release Law as set forth in 1979 Oregon Revised Statutes.]

Circuit judges are responsible for the implementation of the new law at the county level. Unlike the Kentucky program, the state has virtually no role to play in the administration of the law and provides no funding.

Under the revised law, a release decision must be made within 48 hours after arraignment if a security (monetary) release has not been requested [s. 135.245 (2), ORS (Oregon Revised Statutes)]. Except for persons charged with murder or treason, defendants have a right to a security release [ss. 135.240, 135.245 and 135.265, ORS]. Even in the case of persons charged with murder or treason, release may be denied outright only "when the proof is evident or the presumption is strong that the person is guilty" [s. 135.240 (2), ORS]. In other words, the charge of treason or murder is insufficient grounds to deny release and the judge must find evidence reasonably sufficient to result in the conviction of the defendant in order to deny release.

Because arraignment is required during the first 36 hours of custody, the defendant becomes eligible for release within this time period. Three release options are available:

a. Recognizance [see s. 135.230, ORS].

b. Conditional [see ss. 135.250 and 135.260, ORS].

c. Security [see s. 135.265, ORS].

2. Program Operations

The Oregon law emphasizes release on personal recognizance and places the burden of proof on the state to show why a person should not be released on recognizance. In this regard, s. 135.245 (3), ORS, provides:

> (3) The magistrate shall impose the least onerous condition reasonably likely to assure the person's later appearance. A person in custody, otherwise having a right to release, shall be released upon his personal recognizance unless release criteria shows to the satisfaction of the magistrate that such a release is unwarranted.

To aid the presiding circuit judges, the law provides that a release assistance officer (RAO) may be appointed by the judge. The RAO is required, except where it is impractical, to interview every person detained pursuant to law and charged with an offense [s. 135.235, ORS].

The RAO collects information about the defendant based on statutory criteria (unlike Kentucky, there is no formalized point system in the Oregon system) and either submits it to the judge with a release recommendation or makes the release decision directly. The presiding circuit judge of a judicial district is authorized to delegate release authority to the RAO [s. 135.235 (2) (b), ORS]. The presiding circuit judge is also authorized to appoint release assistance deputies who are responsible to the RAO [s. 135.235 (3), ORS]. Since RAO's normally do not work on weekends, jailers are commonly authorized to conduct interviews and make release decisions in the absence of an RAO.

The nine release criteria are specified in s. 135.230 (6), ORS, as follows:

> (a) The defendant's employment status and history and his financial conditions;
>
> (b) The nature and extent of his family relationships;
>
> (c) His past and present residences;
>
> (d) Names of persons who agree to assist him in attending court at the proper time;
>
> (e) The nature of the current charge;

(f) The defendant's prior criminal record, if any, and, if he previously has been released pending trial, whether he appeared as required;

(g) Any facts indicating the possibility of violations of law if the defendant is released without regulations;

(h) Any facts tending to indicate that the defendant has strong ties to the community; and

(i) Any other facts tending to indicate the defendant is likely to appear.

The chief costs of implementing the law result from the use of RAO's in large jurisdictions. Small counties have generally not added personnel; and judges continue to make release decisions based on available information.

The state does not reimburse the larger counties for the added personnel and other administrative expenses. Some costs are partially offset by the 10% administrative fee which is imposed on partial security deposits. In lieu of depositing the full amount of the security required for release in the form of cash, stocks, bonds or real or personal property, a defendant may deposit 10% of this amount in cash; 10% of the amount of the deposit is retained to cover administrative costs. Another source of funds is the forfeited security amounts from individual offenders, but this is not always collectible.

Release assistance officers' salaries vary from county to county. In the populous county of Marion (151,309 population, 1970 U.S. Census), two release officers were paid approximately $24,900 in 1976. Whereas, in one small county, a local attorney served as an RAO on a part-time basis for $200/month.

Significant cost savings appear to have resulted from the new pretrial release program. In Polk County in 1974, 235 defendants were released before trial--the year of implementation of the new pretrial release program. In 1975, the comparable figure was 425, although the number of bookings declined by only 8.9%. In Yamhill County, the 1974 and 1975 figures are 263 and 689, respectively; bookings increased by 2.2% from 1974 to 1975 in that County.

3. Program Results

The principal objectives of the Oregon pretrial release program may be described as:

a. A person's release prior to trial should not be based upon the ability to post bail.

b. Release should be accomplished promptly.

c. Release on recognizance is the favored release option.

Researchers Michael Kannensohn and Dick Howard 2/ conclude that the objectives of the system are being met, as the table below appears to indicate. The data shows that anywhere from 42% to 87% of the individuals interviewed are released on recognizance or otherwise released without security requirements.

Individuals Interviewed and Release Rates for Specified Years in Certain Counties

	1975 Yamhill	*1975 Polk*	*1976 Marion*	*1976 Lane*	*1976 Wash-ington*	*1977 Mult-nomah*
Interviewed	485	530	2,629	1,765	N/A	6,797
Released on recognizance	423	223	1,499	851	1,702	2,773
Failed to appear (FTA)	21	4	32	90	46	158
Percentage FTA	5.0	1.8	2.1	10.6	2.7	5.7
Released on security....	N/A	202	240	N/A	560	N/A
Percentage FTA	N/A	N/A	N/A	N/A	N/A	N/A

N/A—Not available.

While the data is incomplete, the Oregon experience seems to demonstrate that release on security deposit (monetary conditions) does not assure appearance at trial to a significantly greater extent than release on recognizance. For example, in Oregon's most populous county, Multnomah, 5.7% failed to appear. Although actual failure to appear (FTA) figures for persons released on security are unavailable, 2% or 3% is the FTA estimate.

PART III

RESEARCH ON THE SUBJECT OF PRETRIAL RELEASE

Although the principal objectives of this paper are to summarize current forms of pretrial release in this state and to describe briefly several pretrial release evaluation systems currently in effect (Milwaukee County, Kentucky and Oregon), the paper would not be complete without a brief discussion of research that is currently under way regarding various aspects of pretrial release.

Rather than listing and summarizing the various major research projects, Appendix I contains several documents which highlight the various research efforts and some of their findings.

The excerpt from the December 1979 issue of Pretrial Issues which is contained in Appendix I provides a review of current research concerning pretrial release. Also contained in Appendix I is a copy of "Significant Research Findings Concerning Pretrial Release" which was prepared by Donald E. Pryor, Ph.D., Research Associate, Pretrial Services Resource Center, Washington, D.C., for use by the National College for Criminal Defense. Of particular interest is the extensive bibliography to this document.

Additionally, members of the Special Committee will be furnished, separate from this Staff Brief, copies of "standards" relating to pretrial release which have been prepared by the American Bar Association and the National Association of Pretrial Services Agencies. Both publications contain extensive commentary which is intended to explain and justify the proposed standards and reflects a substantial amount of research on the subject of pretrial release.

SPH:men;ws

FOOTNOTES

1/ Data from Kannensohn, Michael D., and Howard, Dick, Bail Bond Reform in Kentucky and Oregon, Council of State Governments (RM 645, August 1978); Third Annual Report (July 1, 1978 - June 30, 1979), Kentucky Pretrial Services Agency; Saupe, A. William, Working Paper No. 3, Delivery System Analysis of Jefferson County (Louisville), Kentucky [Pretrial Release Program], prepared for the pretrial release study being conducted by The Lazar Institute, Washington, D.C. (March 1979).

2/ Data from Kannensohn, Michael D., and Howard, Dick, Bail Bond Reform in Kentucky and Oregon, Council of State Governments (RM 645, August 1978).

APPENDIX A

CHAPTER 969, WISCONSIN STATUTES,
AS AFFECTED BY CHAPTERS 34 AND 112,
LAWS OF 1979

CHAPTER 969, WISCONSIN STATUTES

969.01 Right to bail.
969.02 Bail in misdemeanors.
969.03 Bail in felonies.
969.04 Surety may satisfy default.
969.05 Endorsement of bail upon warrants.
969.06 Bail schedules.
969.07 Taking of bail by law enforcement officer.
969.08 Grant, reduction, increase or revocation of bail.
969.09 Conditions of bond.
969.10 Notice of change of address.
969.11 Bail upon arrest in another county.
969.12 Sureties.
969.13 Forfeiture.
969.14 Surrender of principal by surety.

969.01 RIGHT TO BAIL. (1) BEFORE CONVICTION. Before conviction, a defendant arrested for a criminal offense shall be admitted to bail, except as provided in s. 971.14 (1).

(2) AFTER CONVICTION. (a) Release pursuant to s. 969.02 or 969.03 may be allowed in the discretion of the trial court after conviction and prior to sentencing or the granting of probation.

(b) In misdemeanors, bail shall be allowed upon appeal.

(c) In felonies, bail may be allowed upon appeal in the discretion of the trial court.

(d) The supreme court or a justice thereof or the court of appeals or a judge thereof may allow bail after conviction.

(e) Any court or judge or any justice authorized to grant bail after conviction for a felony may, in addition to the powers granted in s. 969.08, revoke the order admitting a defendant to bail.

(3) BAIL FOR WITNESS. If it appears by affidavit that the testimony of a person is material in any felony criminal proceeding and that it may become impracticable to secure his presence by subpoena, the judge may require such person to give bail for his appearance as a witness. If the witness is not in court, a warrant for his arrest may be issued and upon return thereof the court may require him to give bail as provided in s. 969.03 for his appearance as a witness. If he fails to give bail, he may be committed to the custody of the sheriff for a period not to exceed 15 days within which time his deposition shall be taken as provided in s. 967.04.

(4) CONSIDERATIONS IN FIXING AMOUNT OF BAIL. The amount of bail shall be determined in reference to the purpose of bail to assure the appearance of the defendant when required to appear to answer a criminal prosecution. Proper considerations in fixing a reasonable amount of bail which will assure the defendant's appearance for trial are: the ability of the arrested person to give bail, the nature, number and gravity of the offenses and the potential penalty the defendant faces, whether the alleged acts were violent in nature, the defendant's prior criminal record, if any, the character, health, residence and reputation of the defendant, the character and strength of the evidence which has been presented to the judge, whether the defendant is currently on probation or parole, whether the defendant is already on bail in other pending cases, whether the defendant has been bound over for trial after a preliminary examination, whether the defendant has in the past forfeited bail or was a fugitive from justice at the time of arrest, and the policy against unnecessary detention of the defendant's pending trial.

History: 1977 c. 187; 1979 c. 112.

Trial court exceeded authority in granting bail to revoked probationer pending review of probation revocation. State ex rel. Shock v. H&SS Department, 77 W (2d) 362, 253 NW (2d) 55.

Under (1), judges and court commissioners have power, prior to the filing of a complaint, to release on bail persons arrested for commission of a felony. 65 Atty. Gen. 102.

Pretrial release; Wisconsin bail reform. 1971 WLR 594.

969.02 BAIL IN MISDEMEANORS. (1) A judge may release a defendant charged with a misdemeanor without bail or may permit him to execute an unsecured appearance bond in an amount specified by the judge.

(2) In lieu of release pursuant to sub. (1), the judge may:

(b) Require the execution of an appearance bond with sufficient solvent sureties, or the deposit of cash in lieu thereof.

(2M) In addition to or in lieu of the alternatives under subs. (1) and (2), the judge may:

(a) Place the person in the custody of a designated person or organization agreeing to supervise him or her.

(b) Place restrictions on the travel, association or place of abode of the defendant during the period of release.

(3) In addition to or in lieu of the alternatives under subs. (1) and (2), the judge may:

(a) Place the person in the custody of a designated person or organization agreeing to supervise him or her.

(b) Place restrictions on the travel, association or place of abode of the defendant during the period of release.

(c) Prohibit the defendant from possessing any dangerous weapon.

(4) As a condition of release in all cases, a person released under this section shall not commit any crime.

(5) Once bail has been given and a charge is pending or is thereafter filed or transferred to another court, the latter court shall continue the original bail in that court subject to s. 969.08.

(6) When a judgment for a fine or costs or both is entered in a prosecution in which a deposit had been made in accordance with sub. (2), the balance of such deposit, after deduction of the bond costs, shall be applied to the payment of the judgment.

(7) If the complaint against the defendant has been dismissed or if the defendant has been acquitted, the entire sum deposited shall be returned. A deposit under sub. (2) shall be returned to the person who made the deposit, his or her heirs or assigns, subject to sub. (6).

(8) In all misdemeanors, bail shall not exceed the maximum fine provided for the offense.

History: 1971 c. 298 ss. 10, 13; 1979 c. 111, 112.

NOTE: Chapter 112, laws of 1979, which amended this section, contains legislative findings in section 1.

969.03 BAIL IN FELONIES. (1) A defendant charged with a felony may be released by the judge upon the execution of an unsecured appearance bond or the judge may in addition thereto or in lieu thereof impose one or more of the following conditions which will assure his appearance for trial:

(a) Place the person in the custody of a designated person or organization agreeing to supervise him.

(b) Place restrictions on the travel, association or place of abode of the defendant during the period of release.

(c) Prohibit the defendant from possessing any dangerous weapon.

(d) Require the execution of an appearance bond with sufficient solvent sureties, or the deposit of cash in lieu of sureties. If a judgment for a fine or costs or both is entered, any deposit of cash shall be applied to the payment of the judgment.

(e) Impose any other condition deemed reasonably necessary to assure appearance as required or deemed reasonably necessary to protect public or individual safety, including a condition requiring that the defendant return to custody after specified hours. The charges authorized by s. 56.08 (4) and (5) shall not apply under this section.

(2) As a condition of release in all cases, a person released under this section shall not commit any crime.

(3) Once bail has been given and a charge is pending or is thereafter filed or transferred to another court, the latter court shall continue the original bail in that court subject to s. 969.08. A single bond form shall be utilized for all stages of the proceedings through conviction and sentencing or the granting of probation.

History: 1971 c. 298; 1979 c. 112.

NOTE: Chapter 112, laws of 1979, which amended this section, contains legislative findings in section 1.

Judicial Council Note, 1971: [As to sub. (1) (d)] The change in the first sentence makes it clear that the statute does not permit a judge to require cash and not permit a surety bond. The addition of the 2nd sentence makes the felony procedure consistent with the misdemeanor procedure. See s. 969.02 (4). [Bill 867-A]

See note to art. I, sec. 8, citing Schilb v. Kuebel, 403 US 357.

969.04 SURETY MAY SATISFY DEFAULT. Any surety may, after default, pay to the clerk of the court the amount for which he was bound, or such lesser sum as the court, after notice and hearing, may direct, and thereupon be discharged.

969.05 ENDORSEMENT OF BAIL UPON WARRANTS. (1) In misdemeanor actions, the judge who issues a warrant may indorse upon the warrant the amount of bail. If no indorsement is made, s. 969.06 shall apply.

(2) The amount and method of posting bail may be indorsed upon felony warrants.

969.06 BAIL SCHEDULES. The judicial conference shall develop a schedule of cash bail for all misdemeanors which the supreme court shall adopt by rule. The schedule shall contain a list of offenses and the amount of cash bail applicable thereto as the judicial conference determines to be appropriate. If the schedule does not list all misdemeanors, it shall contain a general clause providing for a designated amount of bail for all misdemeanors not specifically listed in the schedule. The schedule of bail may be revised from time to time under this section.

History: 1971 c. 298; 1977 c. 449.

969.07 TAKING OF BAIL BY LAW ENFORCEMENT OFFICER. When bail conditions have been set for a particular offense or defendant, any law enforcement officer may take bail in accordance with ss. 969.02 and 969.03 and release the defendant to appear in accordance with the conditions of the appearance bond. The law enforcement officer shall give a receipt to the defendant for the bail so taken and within a reasonable time deposit such bail with the clerk of court before whom the defendant is to appear. Bail taken by a law enforcement officer may be taken only at a sheriff's office or police station. The receipts shall be numbered serially and shall be in triplicate, one copy for the defendant, one copy to be filed with the clerk and one copy to be filed with the police or sheriff's department which takes the bail. Nothing herein shall require the release of a defendant from custody under this section when an officer is of the opinion that the defendant is not in a fit condition to care for his own safety or would constitute, because of his physical condition, a danger to the safety of others. If a defendant is not released pursuant to this section, s. 970.01 shall apply.

Law enforcement officers may be authorized by court rule to accept surety bonds for, or, under specified circumstances, 10% cash deposits of, the amount listed in a misdemeanor bail schedule when an accused cannot be promptly taken before a judge for bail determination. However, such rules may not afford officers discretion as to the amount or form of bail an individual accused must post. 63 Atty. Gen. 241.

969.08 GRANT, REDUCTION, INCREASE OR REVOCATION OF BAIL. (1) Upon petition by the state or the defendant, the court before which the action is pending may increase or reduce the amount of bail or may alter the conditions of bail or the bail bond or grant bail if it has been previously revoked. Except as provided in sub. (5), a defendant for whom conditions of release are imposed and who after 72 hours from the time of initial appearance before a judge continues to be detained in custody as a result of the defendant's inability to meet the conditions of release, upon application, is entitled to have the conditions reviewed by the judge of the court before whom the action against the defendant is pending. Unless the conditions of release are amended and the defendant is thereupon released, the judge shall set forth on the record the reasons for requiring the continuation of the conditions imposed. A defendant who is ordered released on a condition which requires that he or she return to custody after specified hours, upon application, is entitled to a review by the judge of the court before whom the action is pending. Unless the requirement is removed and the defendant thereupon released on another condition, the judge shall set forth on the record the reasons for continuing the requirement.

(2) Violation of the conditions of bail or the bail bond constitutes grounds for the court to increase the amount of bail or otherwise alter the conditions of bail or, if the alleged violation is the commission of a serious crime, revoke bail under this section.

(3) Reasonable notice of petition under sub. (1) by the defendant shall be given to the state.

(4) Reasonable notice of petition under sub. (1) by the state shall be given to the defendant, except as provided in sub. (5).

(5) (a) A court shall proceed under par. (b) if the district attorney alleges to the court and provides the court with documents as follows:

1. Alleges that the defendant is admitted to bail for the alleged commission of a serious crime;

2. Alleges that the defendant has violated the conditions of bail by having committed a serious crime; and

3. Provides a copy of the complaint charging the commission of the serious crime specified in subd. 2.

(b) 1. If the court determines that the state has complied with par. (a), the court may issue a warrant commanding any law enforcement officer to bring the defendant without unnecessary delay before the court. When the defendant is brought before the court, he or she shall be given a copy of the documents specified in par. (a) and informed of his or her rights under s. 970.02 (1) and (6). The court may hold the defendant in custody and suspend the previously imposed bail conditions pending a hearing on the alleged breach. The hearing under this paragraph and the preliminary examination under s. 970.03, if required, shall be a combined hearing, with the court making the separate findings required under this paragraph and s. 970.03 at the conclusion of the combined hearing. The hearing shall be commenced within 7 days from the date the defendant is taken into custody. The defendant may not be held without bail for more than 7 days unless a hearing is held and the findings required by this paragraph are established.

2. At a hearing on the alleged violation the state has the burden of going forward and proving by clear and convincing evidence that the violation occurred while the defendant was admitted to bail. The evidence shall be presented in open court with the right of confrontation, right to call witnesses, right of cross-examination and right to representation by counsel. The rules of evidence applicable in criminal trials govern the admissibility of evidence at the hearing.

3. Upon a finding by the court that the state has established by clear and convincing evidence that the defendant has committed a serious crime while admitted to bail, the court may revoke the bail of the defendant and hold the defendant for trial without bail. No reference may be made during the trial of the offense to the court's finding in the hearing. No reference may be made in the trial to any testimony of the defendant at the hearing, except if the testimony is used for impeachment purposes. If the court does not find that the state has established by clear and convincing evidence that the defendant has committed a serious crime while admitted to bail, the defendant shall be relased on bail subject to conditions of bail deemed appropriate by the court.

4. If the bail of any defendant is revoked under subd. 3, the defendant may demand and shall be entitled to be brought to trial on the offense with respect to which he or she was formerly released on bail within 60 days after the date on which he or she appeared before the court under subd. 1. If the defendant is not brought to trial within the 60-day period he or she shall not be held longer without bail and shall be released on bail subject to conditions of bail deemed appropriate by the court. In computing the 60-day period, the court shall omit any period of delay if the court finds that the delay results from a continuance granted at the exclusive request of the defendant.

5. The defendant may petition the court for reinstatement of conditions of bail if any of the circumstances authorizing the revocation of bail is altered. The altered conditions include, but are not limited to, the facts that the original complaint is dismissed, the defendant is found not guilty of that offense or the defendant is found guilty of a crime which is not a serious crime.

(6) If the judge before whom the action is pending, in which a person was admitted to bail, is not available, any other circuit judge of the county may act under this section.

(7) If a person is charged with the commission of a serious crime in a county other than the county in which

the person was admitted to bail, the district attorney and court may proceed under sub. (6) and certify the findings to the circuit court for the county in which the person was admitted to bail. That circuit court shall make the bail revocation decision based on the certified findings.

(8) Information stated in, or offered in connection with, any order entered under this chapter setting bail need not conform to the rules of evidence, except as provided under sub. (5) (b) 2.

(9) This section does not limit any other authority of a court to revoke the bail of a defendant.

(10) In this section:

(a) "Commission of a serious crime" includes a solicitation, conspiracy or attempt, under s. 939.30, 939.31 or 939.32, to commit a serious crime.

(b) "Serious crime" means any crime specified in s. 940.01, 940.02, 940.05, 940.06, 940.08, 940.09, 940.19 (2), 940.20, 940.201, 940.21, 940.225 (1) to (3), 940.23, 940.24, 940.25, 940.29, 940.31, 940.32, 941.20 (2), 941.26, 941.30, 943.01 (2) (c), 943.02, 943.03, 943.04, 943.06, 943.10, 943.30, 943.32, 944.12, 946.01, 946.02, 946.43 or 947.015.

History: 1971 c. 298; 1977 c. 449; 1979 c. 112.

NOTE: Chapter 112, laws of 1979, which created this section, contains legislative findings concerning bail in section 1.

969.09 CONDITIONS OF BOND. (1) If a defendant is admitted to bail before sentencing the conditions of the bond shall include, without limitation, the requirements that he will appear in the court having jurisdiction on a day certain and thereafter as ordered until discharged on final order of the court and that he will submit himself to the orders and process of the court.

(2) If the defendant is admitted to bail upon appeal, the conditions of the bond shall be that he will duly prosecute his appeal, that he will appear at such time and place as the court directs, and that if the judgment is affirmed or reversed and remanded for a new trial or further proceedings upon notice after

remittitur, he will surrender to the sheriff of the county in which he was tried.

(3) A defendant shall receive a copy of the bond which he executes pursuant to this chapter.

969.10 NOTICE OF CHANGE OF ADDRESS. A person who has been admitted to bail shall give written notice to the clerk of any change in his address within 48 hours after such change. This requirement shall be printed on all bonds.

969.11 BAIL UPON ARREST IN ANOTHER COUNTY. (1) If the defendant is arrested in a county other than the county in which the offense was committed, he shall, without unreasonable delay, either be brought before a judge of the county in which arrested for the purpose of setting bail or be returned to the county in which the offense was committed. The judge shall admit him to bail under this chapter to appear before a court in the county in which the offense was committed at a specified time and place.

(2) If the defendant is released on bail pursuant to sub. (1), the judge shall make a record of the proceedings and shall certify his minutes thereof and shall forward the bond and bail to the court before whom the defendant is bound to appear.

969.12 SURETIES. (1) Every surety under this chapter, except a surety under s. 345.61, shall be a resident of the state.

(2) A surety under this chapter shall be a natural person, except a surety under s. 345.61. No surety under this chapter may be compensated for acting as such a surety.

(3) A court may require a surety to justify by sworn affidavit that he is worth the amount specified in the bond exclusive of property exempt from execution. The surety shall provide such evidence of financial responsibility as the judge requires. The court may at any time examine the sufficiency of the bail in such manner as it deems proper, and in all cases the state may challenge the sufficiency of the surety.

History: 1979 c. 34.

969.13 FORFEITURE. (1) If the conditions of the bond are not complied with, the court having jurisdiction over the defendant in the criminal action shall enter an order declaring the bail to be forfeited.

(2) This order may be set aside upon such conditions as the court imposes if it appears that justice does not require the enforcement of the forfeiture.

(3) By entering into a bond, the defendant and sureties submit to the jurisdiction of the court for the purposes of liability on the bond and irrevocably appoint the clerk as their agent upon whom any papers affecting their bond liability may be served. Their liability may be enforced without the necessity of an independent action.

(4) Notice of the order of forfeiture under sub. (1) shall be mailed forthwith by the clerk to the defendant and his sureties at their last addresses. If the defendant does not appear and surrender to the court within 30 days from the date of the forfeiture and within such period he or his sureties do not satisfy the court that appearance and surrender by the defendant at the time scheduled for his appearance was impossible and without his fault, the court shall upon motion of the district attorney enter judgment for the state against the defendant and any surety for the amount of the bail and costs of the court proceeding. Proceeds of the judgment shall be paid to the county treasurer. The motion and such notice of motion as the court prescribes may be served on the clerk who shall forthwith mail copies to the defendant and his sureties at their last addresses.

(5) A cash deposit made with the clerk pursuant to this chapter shall be applied to the payment of costs. If any amount of such deposit remains after the payment of costs, it shall be applied to payment of the judgment of forfeiture.

History: 1971 c. 298.

969.14 SURRENDER OF PRINCIPAL BY SURETY. (1) When the sureties desire to be discharged from the obligations of their bond, they may arrest the principal and deliver him to the sheriff of the county in which the action against him is pending.

(2) The sureties shall, at the time of surrendering the principal, deliver to the sheriff a certified copy of the original warrant and of the order admitting him to bail and of the bond thereon; such delivery of these documents shall be sufficient authority for the sheriff to receive and retain the principal until he is otherwise bailed or discharged.

(3) Upon the delivery of the principal as provided herein, the sureties may apply to the court for an order discharging them from liability as sureties; and upon satisfactory proof being made that this section has been complied with the court shall make an order discharging them from liability.

APPENDIX B

"BAIL EVALUATIONS" FROM
REPORT BY THE SPECIAL EVALUATION UNIT
(JULY 30, 1976)

BAIL EVALUATIONS

The bail evaluation process was developed in response to an ever increasing number of felony warrants being issued by the District Attorney's Office. The nature of the offenses committed is becoming more serious, and the offenders are becoming more sophisticated with a larger number of repeaters.

The increased volume made it very difficult for the courts to obtain reliable information upon which to base decisions relating to the level of bail to be set. In addition, with the numerous courts involved, there was no assurance that the same information was being used to determine bail levels. The courts and the District Attorney's Office had no way to confirm or refute self-serving information that might be presented on behalf of a defendant.

When the program was originally conceived, it was planned to perform a bail evaluation on both misdemeanants and felons. Subsequent revisions downward of the size of the Special Evaluation Unit made it possible to provide bail evaluations for felons only. These evaluations are done mainly when the person is charged in the District Attorney's Office and before he goes to court for his first appearance. Warrants issued against individuals in their absence do not return to the District Attorney's Office before appearing in court. In these situations the court submits a special request to the Special Evaluation Unit. This type of bail evaluation is usually done in the confines of the County Jail and ordinarily is done within 24 hours of the time that the request is received from the court.

A bail evaluation as prepared for the Milwaukee County criminal justice system is composed of three parts. The first portion relates entirely to the background history of the defendant. Such things as length of residence, employment history, family ties, and other information which relates to the individual's stability in the community are assessed. The second portion relates entirely to the individual's criminal history. In this portion however, no consideration is given to the nature or seriousness of the offense with which the individual is charged. That is properly left to the discretion of the District Attorney and the courts. The third portion of the bail evaluation is essentially a summary of the first two portions and a rating based upon the information obtained therein. The bail rating scale has a range from -8 to +17. This is broken into 4 main categories, poor, fair, good, and excellent. When a bail evaluation is completed, what is presented to the court is essentially an abbreviated pre-trail investigation that compares the individual being evaluated with most other individuals who have been charged with felonies in the Milwaukee County criminal justice system.

TABLE III

SUMMARY OF 1975 BAIL EVALUATIONS

Bail Evaluations Completed	(Total)	2118
Special Requests	(Sub-Total)	279

Bail Evaluations benefit the community in the following ways:

1.) Various agencies benefit from the standardized and verified information which is made available to the system at the earliest possible time.

2.) The court and the District Attorney are aware of aggressive and hostile offenders and can take this into consideration in setting bail type and amount.

3.) The victim can then be reasonably assured that threatening offenders will not be returned to the community to prey further upon the community.

4.) The taxpayer is saved the cost of jail incarceration of individuals who are good risks in the community and pose no threat while the case is pending.

5.) An additional benefit accrues to the County when the case is returned to court for a bail reduction hearing or for a preliminary hearing. The investigation conducted by the Special Evaluation Unit is a written record which remains with the case throughout its court history. It is available to all parties to the case for further discussion and study so the court and the District Attorney can respond to requests by the defense attorneys for reduction in bail.

Advantages to the defendant are less easy to define. The stable, high rated individual benefits in that he can return to his family and home and employment and therefore avoid further cost to the community for welfare and for keeping him incarcerated. The low rated defendant obviously can be considered to have no benefits from the bail evaluation. He will probably remain incarcerated awaiting trial, and from the community standpoint, properly so.

The bail evaluation program results in a jail population made up almost entirely of serious offenders and high risk prisoners. This, of course, is what a County Jail is designed to do.

The bail evaluation process has the effect of eliminating much of the guess work from determining bail levels. In addition, it conserves considerable time for the courts the District Attorney's Office.

In 1975 a total of 2118 bail evaluations were completed for the courts by the five evaluators in this Unit. This large number of cases certainly has had a considerable effect upon the court system in terms of time saved for the judge, the District Attorney's Office, the Police and Sheriff's Departments,

and witnesses. In addition, the court is able to make a decision with greater assurance that the information they are using is valid.

Preliminary results of a statistical study now being performed by the Special Evaluation Unit indicate the following important information:

1.) Individuals rating high on a bail evaluation usually stay in jail a shorter period of time and usually make bail no matter how high it is set.

2.) Conversely, individuals rating low on bail evaluations consistently do not make bail.

3.) Individuals who have a good bail or a high bail rating generally are considered for probation.

4.) Individuals who rate low are more frequently denied probation and are sentenced to penal institutions.

Tables IV and V following indicate that the bail evaluation as it is now performed has an impressive predictive capability. It can also be tentatively concluded that if the time allowed to complete an evaluation was increased to two days, the bail evaluation process could probably supplant many of the present time consuming pre-sentence investigations conducted by the State of Wisconsin. If such a program were instituted there would be considerable time and money saved by Milwaukee County. The savings would occur as a result of the reduced time that defendants spent in Jail awaiting trial. A secondary savings would also occur in that the number of court appearances would also be reduced thereby saving court and District Attorney and public defender time and money.

In 1975, this Unit completed 2118 bail evaluations. If a judge in open court conducts a bail evaluation that information is available only in the court reporter's stenographic records. Obviously the information originally elicited by the court would once again have to be determined in any subsequent hearings regarding bail. Considering that 66% of the cases have at least two court hearings relating to the amount of bail set, the savings are as follows: (See also Appendix V).

Total 1975 savings (2118 x $32.22 x 166%). . . $113,281

Total 1975 savings to Milwaukee County
(2118 x $24.45 x 166%). . . $ 85,963

BAIL RATING RELATED TO TIME IN CUSTODY PRIOR TO TRIAL

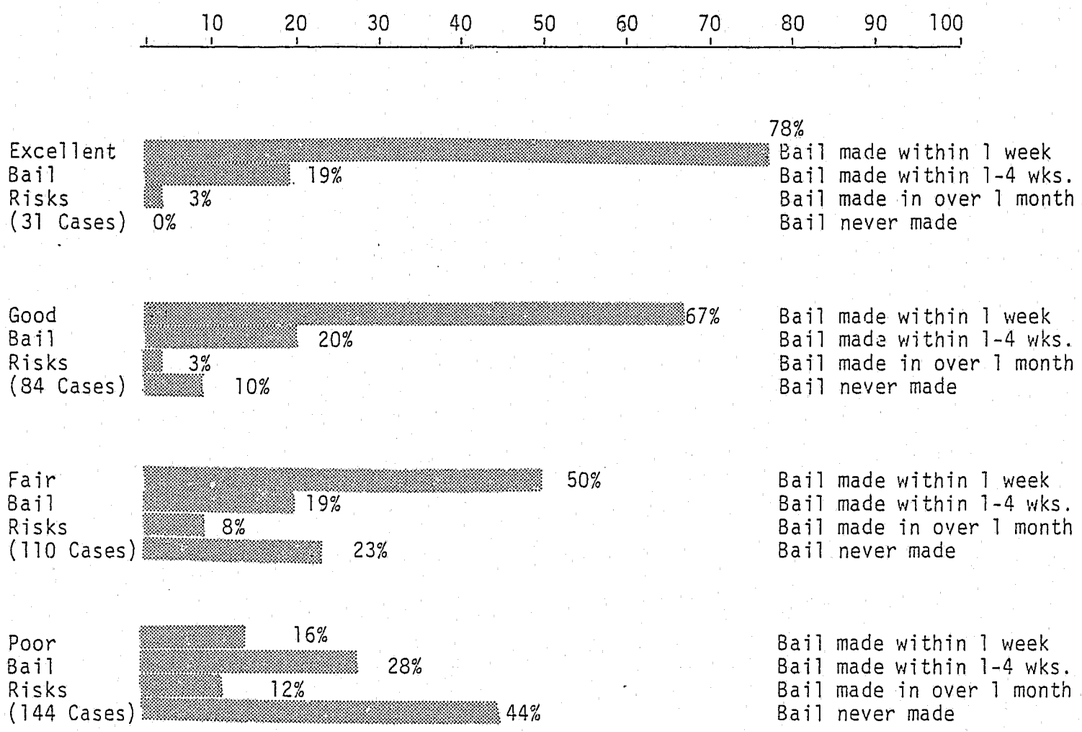

TABLE IV

ULTIMATE DISPOSITION IN COMPARISON TO THE BAIL EVALUATION RATING

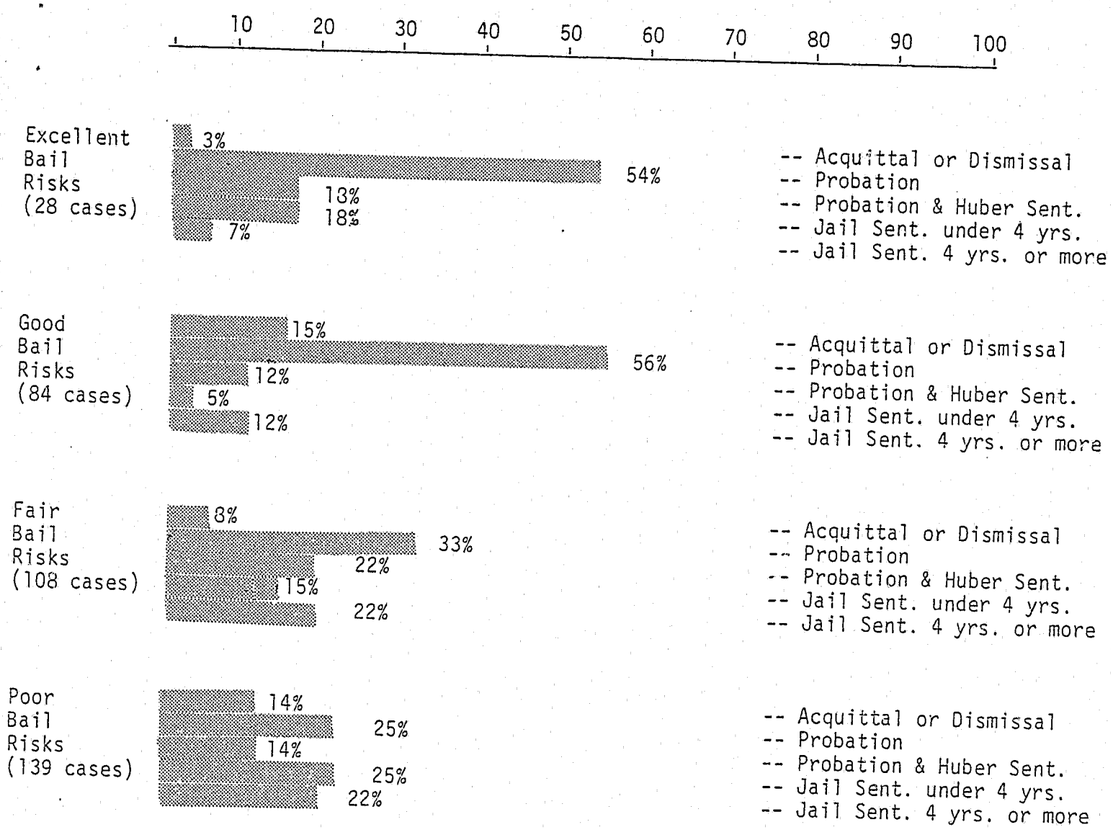

TABLE V

APPENDIX I(a)

WORKLOAD HISTORY

BAIL EVALUATIONS

		1974	1975	1976 (1/1 -- 6/30)
Bail Evaluations Completed	(Total)	1704	2118	953
Special Requests	(Sub-total)	70	279	199

CLASSIFICATION AND ORIENTATION FUNCTION

	1974	1975	1976 (1/1 -- 6/30)
Inmates Contacted:			
Total	849	3928	1526
Male	736	3810	1413
Female	113	118	113

APPENDIX V

AVERAGE TOTAL COST OF BAIL EVALUATIONS IF DONE BY THE COURTS FOR 1975

Personnel	Hourly Rate	x Hours involved per case	= Total Cost	Cost to Milw. County
1.) Circuit Court Judge	$23.31 20.33*	0.33	$ 7.69	$ 6.71
2.) Deputy Court Clerk I (3rd Step)	$ 8.81 8.81*	0.33	$ 2.91	$ 2.91
3.) Deputy I (3)	$ 7.90 7.90*	1.00	$ 7.90	$ 7.90
4.) Circuit Court Reporter	$11.23 11.23*	0.33	$ 3.71	$ 3.71
5.) District Attorney (2nd Assistant, 1st Step)	$12.78 9.75*	0.33	$ 4.22	$ 3.22
6.) Police Officer (2) (Milw. Police Dept.)	$ 8.78 ---	0.66	$ 5.79	0000
Total Cost Per Case			$32.22	$24.45

* These dollar amounts represent the total dollar amounts represent the total dollar cost minus any state reimbursements.

APPENDIX C

MILWAUKEE COUNTY

- BAIL BOND INVESTIGATION REPORT
- BAIL BOND RATING SUMMARY
- BAIL INVESTIGATION RATING SCALE

MILWAUKEE COUNTY CIRCUIT AND COUNTY COURTS

BAIL BOND INVESTIGATION REPORT

CASE NO._____

I. GENERAL:

NAME_____ DATE:_____
Last First Middle

ADDRESS:_____ PHONE:_____

Date of Birth_____ Age_____ Sex_____ Ht._____ Wt._____ Race_____

Social Security No._____ Educational Level Attained_____

Marital Status_____

Military:_____

II. RESIDENCE:

How Long at Present Address_____ Lives with_____

Previous Address:_____ How Long_____

How Long in Milwaukee County_____ _____ _____
Came From Place of Birth

III. FAMILY TIES:

Relatives in Milwaukee Area:

1._____
Relationship Name, Address, and Phone No.

2._____
Relationship (or a Personal Reference) Name, Address, and Phone No.

Frequency of Contact 1._____ Frequency of Contact 2._____

IV. EMPLOYMENT:

Present Employer_____ How Long_____ Phone_____

Former Employer _____ How Long_____ Phone_____

Physical Condition_____

If on Welfare - Case No._____ Worker's Name & Phone No._____

Other Means of Support_____

_____

Assets_____

T-1115-1R1 REVISED

Milwaukee County Circuit and County Courts
Bail Bond Investigation Report

V. PRESENT OFFENSE AND PRIOR RECORD:

Offense Charged_____ Date of Arrest_____

Details of Alleged Offense_____

_____

Prior Record:_____

_____

_____

Arrest Other Than Milwaukee:_____

_____

Probation/Parole Status_____

Pending Charges_____

VI. REMARKS:

_____

_____

_____

I understand that the information given by me may be used by the court to help determine my bail status. I have consented to this investigation and have given this information freely and voluntarily. I certify that the information given is true and correct to the best of my knowledge, and that references given by me can be verified except_____

_____.

Signature:_____ Date:_____

Interviewer/Witness:_____ Date:_____

T-1115-2R1

MILWAUKEE COUNTY CIRCUIT AND COUNTY COURTS

BAIL BOND RATING SUMMARY

NAME:_____ OFFENSE:_____ CASE NO:_____

I. INTERVIEW POINTS

Residence _____

Family Ties _____

Employment _____

Prior Record _____

*Discretionary _____

THIS REPORT DOES NOT CONSIDER THE NATURE AND QUALITY OF THE ALLEGED OFFENSE.

TOTAL INTERVIEW POINTS _____

Reason for Discretionary Points _____

_____

Interviewer:_____ Date:_____

II. VERIFIED POINTS

Residence

How verified_____

_____ Initials_____ Date_____

Family Ties

How verified_____

_____ Initials_____ Date_____

Employment

How verified_____

_____ Initials_____ Date_____

Prior Record

How verified_____

_____ Initials_____ Date_____

RANGE: -8 TO +17

+11 TO +17: EXCELLENT
+ 7 TO +10: GOOD
+ 4 TO + 6: FAIR
+ 3 TO - 8: POOR

T-1114R1

MILWAUKEE COUNTY CIRCUIT AND COUNTY COURTS

BAIL INVESTIGATION RATING SCALE

I. RESIDENCE (LOCAL)

Points	
3	Present residence - two years or more.
2	Present residence - one year.
1	Present residence - six months.

II. FAMILY TIES (LOCAL)

Points	
4	Lives with family and has contact with other relatives.
3	Lives with family.
2	Lives away from family but has regular contact with relatives.
1	Lives with non-family person and gives this person as a referenc

III. EMPLOYMENT

Points	
3	Present job - two years or more.
2	Present job - one year.
1	Temporary or periodic employment in either of above lines, OR currently employed, OR unemployed 3 months or less, with 9 months or more on prior OR receiving unemployment compensation, social security, veteran benefits, or welfare, OR supported by family (wives, students, disabled, etc.)
-1	Able to work, not doing so, no visible means of support.

IV. PRIOR RECORD

Points		Pending Cases	
-3	No prior convictions.	+1	In all categories for no pending cases.
-2	No convictions in past five years.	-1	In all categories for any pending cases.
-1	No convictions in past four years.		
-1	Convictions in past three years.		
-2	Convictions in past two years.		
-3	Convictions in past year.		

V. DISCRETIONARY POINTS

-3 to -3	Interviewer's impressions as to stability of defendant. Must be substantiated in Remarks Section. (Aged, infirm, owns business or property in area, needing medical care, long time resident, etc.)

RANGE: -8 to +17

+11 to +17: Excellent
+7 to +10: Good
+4 to +6: Fair
+3 to -8: Poor

APPENDIX D

KENTUCKY REVISED STATUTES
(1978 CUM. SUPP.)

RULES OF CRIMINAL PROCEDURE --
PART IV BAIL

IV. BAIL

RULE.
4.00. Recognizance and bail; Definitions of terms.
4.02. Bailable offenses; Eligibility for pre-trial release.
4.04. Authorized methods of pre-trial release.
4.06. Duties of pre-trial services agency.
4.08. Confidentiality of pre-trial services agency records.
4.10. Release on personal recognizance; Unsecured bail bond.
4.12. Release on nonfinancial conditions.
4.14. Nonfinancial conditions on release.
4.16. Amount of bail.
4.18. Motor vehicle traffic violations; Guaranteed arrest bond certificate.
4.44. Record of discharge.
4.46. Application of deposit to fine or costs.
4.48. Forfeiture of bail.
4.50. Surrender of defendant; Exoneration.

RULE
4.20. Use of uniform schedule of bail.
4.22. Ten per cent deposit.
4.24. Officers authorized to take bail.
4.26. Receipt for and record of cash deposit or bond.
4.28. Custody of cash deposits or bail; Monthly accounting.
4.30. Qualification and sufficiency of sureties.
4.32. Persons not qualified as sureties.
4.34. Justification of security.
4.36. Recording of a real property bond.
4.38. Mandatory review after twenty-four hours.
4.40. Review of conditions of release.
4.42. Change of conditions of release; Bond forfeiture.
4.52. Judgment against surety.
4.54. Continuation of bail.
4.56. Defects in bond or recognizance.
4.58. Credit for incarceration.

Rule 4.00. Recognizance and bail; Definitions of terms.—As used in these rules the following terms mean:

(a) "Bail bond" means a written undertaking, executed by the defendant or one or more sureties, that the defendant designated in such instrument will, while at liberty as a result of an order fixing bail and of the execution of a bail bond in satisfaction thereof, appear in a designated criminal action or proceeding when his attendance is required and otherwise render himself amenable to the orders and processes of the court, and that in the event he fails to do so, the signers of the bond will pay to the court the amount of money specified in the order fixing bail.

(b) "Cash bail bond" means a sum of money, in the amount designated in an order fixing bail, posted by a defendant or by another person on his behalf with a court or other authorized public officer upon condition that such money will be forfeited if the defendant does not comply with the directions of a court requiring his attendance at the criminal action or proceeding involved and does not otherwise render himself amenable to the orders and processes of the court.

(c) "Conditions of release" may include financial as well as nonfinancial requirements upon which the defendant's release is dependent. All methods of pre-trial release include the conditions of release requiring the defendant to appear before court when required and to submit himself to the orders and processes of the court.

(d) "Pre-trial release" is release of a defendant from custody before his trial date. It may be secured by any authorized method of pre-trial release including but not limited to release on personal recognizance, on nonfinancial conditions or upon execution of a bail bond. It does not include the procedure for issuance of citation as provided in KRS. 431.015.

(e) "Pre-trial services agency" means the agency established or authorized by Supreme Court order to provide pre-trial release investigation and services for trial courts having jurisdiction of criminal causes.

(f) "Release on personal recognizance" means release of a defendant on personal recognizance when, having acquired control over his person, the court permits him to be at liberty during the pendency of the criminal action or proceeding upon his written promise to appear whenever his attendance before court may be required and to render himself amenable to the orders and processes of the court.

(g) "Surety" means a person other than the defendant who executes a bail bond and assumes the obligations therein.

(h) "Unsecured bail bond" means a bail bond for which the defendant is fully liable upon failure to appear in court when ordered to do so or upon breach of a material condition of release, but which is not secured by any deposit of or lien upon property. (Adopted June 18, 1976, effective June 19, 1976; amended October 18, 1977, effective January 1, 1978.)

Rule 4.02. Bailable offenses; Eligibility for pre-trial release.—(1) All persons shall be bailable before conviction, except when death is a possible punishment for the offense or offenses charged and the proof is evident or the presumption is great that the defendant is guilty.

(2) All defendants charged with bailable offenses shall be considered for pre-trial release without making formal application except when a capital offense is charged. A person charged with a capital offense must make an application for pre-trial release.

(3) On the hearing of an application for admission to pre-trial release made before or after indictment for a capital offense, the burden of showing that the proof is evident or the presumption is great that the defendant is guilty is on the Commonwealth. (Amended June 18, 1976, effective June 19, 1976.)

Rule 4.04. Authorized methods of pre-trial release.—(1) The only authorized methods of pre-trial release are on:

(a) personal recognizance
(b) unsecured bail bond
(c) nonfinancial conditions
(d) executed bail bond
  (i) with sufficient personal surety acceptable to the court; or
  (ii) with a deposit with the court of a sum of money equal to at least ten per cent of the bond; or
  (iii) with a deposit with the court of cash equal to the amount of the bond; or
  (iv) with stocks or bonds which are not exempt from execution and which over and above all liabilities and encumbrances and have a value equal to the total amount of the bond; or
  (v) with real property having a value over and above all liabilities and encumbrances, equal to twice the value of the bond; or
  (vi) in cases of motor vehicle traffic violations, with a guaranteed arrest bond certificate as provided in KRS 431.021.

(2) Nonfinancial conditions may be imposed upon any bail bond.

(3) The court shall determine the method of pre-trial release and the manner in which a bail bond is executed. (Amended June 18, 1976, effective June 19, 1976.)

Rule 4.06. Duties of pre-trial services agency.—The duties of a pre-trial services agency authorized by the administrative office of the courts to serve the trial court shall include interviewing defendants eligible for pre-trial release, verifying information obtained from defendants, making recommendations to the court as to whether defendants interviewed should be released on personal recognizance and any other duties ordered by the Supreme Court. (Amended June 18, 1976, effective June 19, 1976.)

Rule 4.08. Confidentiality of pre-trial services agency records.—Information supplied by a defendant to a representative of the pre-trial services agency during his initial interview or subsequent contacts, or information obtained by the pre-trial services agency as a result of the interview or subsequent contacts, shall be deemed confidential and shall not be subject to subpoena or to disclosure without the written consent of the defendant except in the following circumstances:

(a) information relevant to the imposition of conditions of release shall be presented to the court on a standardized form when the court is considering what conditions of release to impose;

(b) information concerning the defendant's last known address shall be furnished to law enforcement officials upon request if the defendant fails to appear in court when required;

(c) information concerning compliance with any conditions of release imposed by the court shall be furnished to the court upon its request for consideration of modification of conditions of release or of sentencing or of probation.

At the beginning of his initial interview with a representative of the pre-trial services agency, the defendant shall be advised of the above uses of information supplied by him or obtained as a result of information supplied by him. (Amended June 18, 1976, effective June 19, 1976; amended October 18, 1977, effective January 1, 1978.)

Rule 4.10. Release on personal recognizance; Unsecured bail bond.—A defendant shall be released on personal recognizance or upon an unsecured bail bond unless the court determines, in the exercise of its discretion, that such release will not reasonably assure the appearance of the defendant as required. In the exercise of such discretion the court shall give due consideration to recommendations of the local pre-trial services agency when made as authorized by order of the Supreme Court. (Amended June 18, 1976, effective June 19, 1976.)

Rule 4.12. Release on nonfinancial conditions.—If a defendant's promise to appear or his execution of an unsecured bail bond alone is not deemed sufficient to insure his appearance when required, the court shall impose the least onerous conditions reasonably likely to insure his appearance as required. Such conditions of release may include but are not limited to placing the defendant in the custody of a designated person or organization agreeing to supervise him or to placing restrictions on his travel, association or place of abode during the period of release.

Commensurate with the risk of nonappearance the court may impose any other condition including a condition requiring the defendant to return to custody after specified hours. (Amended June 18, 1976, effective June 19, 1976.)

Rule 4.14. Nonfinancial conditions on release.—The court shall cause the issuance of an order containing a statement of any conditions imposed upon the defendant for his release. The defendant shall sign the statement of conditions and receive a copy thereof. The order shall inform the defendant of penalties applicable to violation of conditions and advise that a warrant for his arrest will be issued if conditions are violated. The court shall also inform the local pre-trial services agency of the conditions of release. (Amended June 18, 1976, effective June 19, 1976.)

Rule 4.16. Amount of bail.—(1) The amount of bail shall be sufficient to insure compliance with the conditions of release set by the court. It shall not be oppressive and shall be commensurate with the gravity of the offense charged. In determining such amount the court

shall consider the defendant's past criminal acts, if any, his reasonably anticipated conduct if released and his financial ability to give bail.

(2) If a defendant is charged with an offense punishable by fine only, the amount of bail shall not exceed the amount of the maximum penalty and costs.

(3) Amount of bail may also be set in accordance with the uniform schedule of bail prescribed for designated misdemeanors and violations in Appendix A—Uniform Schedule of Bail, of these rules. (Amended June 18, 1976, effective June 19, 1976.)

Rule 4.18. Motor vehicle traffic violations; Guaranteed arrest bond certificate.—(1) Notwithstanding any other provisions of these rules, a guaranteed arrest bond certificate presented by the person whose signature appears thereon shall be accepted in lieu of cash bail in an amount not to exceed two hundred dollars ($200) as a bail bond to guarantee the appearance of such person in any court of this commonwealth, at the time required by such court, when he is arrested for violation of any law of this commonwealth or traffic ordinance of any municipality therein relating to the operation of a motor vehicle. A guaranteed arrest bond certificate so presented as a bail bond is subject to the same forfeiture and enforcement provisions as a bail bond or cash bail. However,

(a) The violation must have been committed prior to the expiration date shown on the guaranteed arrest bond certificate, and

(b) A guaranteed arrest bond certificate may not be accepted when a person is arrested for violation of KRS chapter 281 or subsection (2) of KRS 189.520.

(2) As used in this rule 4.18, "guaranteed arrest bond certificate" means a printed card or other certificate issued by the association to any of its members, which is signed by the member and contains a printed statement that such association and a surety company licensed to do business in this commonwealth:

(a) Guarantee the appearance of the person whose signature appears on the card or certificate, and

(b) Will, in the event of the failure of such person to appear in court at the time set for appearance, pay any fine or forfeiture imposed upon such person in an amount not to exceed two hundred dollars ($200). (Amended June 18, 1976, effective June 19, 1976; amended October 18, 1977, effective January 1, 1978.)

Rule 4.20. Use of uniform schedule of bail.—(1) The defendant may execute a bail bond in accordance with the uniform schedule of bail (Appendix A) for designated misdemeanors and violations without appearing before a magistrate. If a defendant chooses to execute a bail bond in accordance with the schedule without appearing before a magistrate and proceeds to do so, he waives his statutory right to be considered for other authorized methods of pre-trial release. Before said waiver is effective, the defendant must be informed of his right to appear before a magistrate without unnecessary delay, in no event more than twelve hours, and to be considered for release on personal recognizance.

(2) In the exercise of its reasonable discretion, the court may refuse to set bail in the amount prescribed by Appendix A, but if it sets bail at an amount other than so prescribed, written reasons must be given for the deviation. (Amended June 18, 1976, effective June 19, 1976.)

Rule 4.22. Ten per cent deposit.—(1) If a ten per cent cash deposit to the court is accepted, in no event shall it be less than ten dollars.

(2) A ten per cent deposit will not be accepted to secure bail in the amount designated on the uniform schedule for bail for traffic, boating, fish and wildlife offenses listed therein. (Amended June 18, 1976, effective June 19, 1976.)

Rule 4.24. Officers authorized to take bail.—When the amount of bail has been fixed either by the court or by the uniform schedule of bail, it may be taken by the clerk of the court in which the defendant is held to appear. Any other bonded public officer may be authorized by the chief judge of the circuit court to take bail, but only if the clerk of the court is unavailable. The individual with whom deposits are made is responsible for the sufficiency of bail taken by himself or his deputies. (Amended June 18, 1976, effective June 19, 1976.)

Rule 4.26. Receipt for and record of cash deposit or bond.—When an authorized officer receives cash deposits or bail, he shall give a receipt to the person from whom he receives the money. Two copies must be filed with the court in which the case is pending. The receipt must indicate: date, name and address of defendant, offense charged, names and addresses of surety or sureties, type and amount of bond, amount of cash deposited, or court having jurisdiction of the case. The receipt must be signed by the defendant and his surety or sureties. (Amended June 18, 1976, effective June 19, 1976.)

Rule 4.28. Custody of cash deposits or bail; Monthly accounting.—Cash deposited with an individual authorized to take bail in the absence of the clerk shall be delivered to the clerk by the next business day. The clerk shall forthwith deposit the money in an escrow account for all cash deposits and bail, which account may include other funds held by the court. The clerk shall make a monthly cumulative report on all such deposits to the Administrative Office of the Courts within 30 days after the last day of each calendar month. (Amended June 18, 1976, effective June 19, 1976; amended October 14, 1977, effective January 1, 1978.)

Rule 4.30. Qualification and sufficiency of sureties.—Each surety, except a corporate surety that is approved as provided by law, shall be a resident or owner of real estate within the commonwealth and shall justify his sufficiency by affidavit in which he shall describe the property by which he proposes to justify his sufficiency. No bond shall be approved unless the surety thereon appears to be qualified.

If there is only one (1) surety he shall be worth the amount specified in the bond exclusive of the amount of any other undertaking on which he may be principal or surety, and exclusive of property exempt from execution and over and above liabilities. If there are several sureties they shall in the aggregate be worth that amount exclusive of the amount of other undertakings, and of the exemptions and liabilities mentioned above. (Amended June 18, 1976, effective June 19, 1976.)

Rule 4.32. Persons not qualified as sureties.—No attorney at law, sheriff, deputy sheriff, judge, magistrate, clerk, deputy clerk or master commissioner shall be taken as surety on any bail bond, including bail on appeal under Rule 12.78. (Adopted June 18, 1976, effective June 19, 1976.)

Rule 4.34. Justification of security.—(1) If the bail bond is secured by real estate, the defendant or surety must file with the bond a sworn schedule and a statement of value from the property valuation administrator of the county in which the real estate is located. The sworn schedule shall contain:

(a) legal description of the real estate;

(b) description of any and all encumbrances on the real estate including the amount of each and the holder thereof; and

(c) market value of the unencumbered equity owned by the affiant or affiants.

(2) If the bail bond is secured by stocks and bonds, the defendant or surety must file with the bond a sworn schedule which shall contain:

(a) descriptions sufficient for identification of the stocks and bonds deposited;

(b) present market value of each stock and bond; and

(c) total market value of stocks and bonds listed.

(3) In either case, unless the defendant or his relative is using his own property as security, a statement must be filed stating that the property has not been used or accepted as security on a bail bond in the commonwealth during the twelve months preceding the date of the bond.

(4) The sworn schedule in either case must further include a statement that affiant or affiants are the sole owners of the unencumbered equity; that the property is not exempt from execution; and that the property is security for the appearance of the defendant in accordance with the conditions of release imposed by the court. (Adopted June 18, 1976, effective June 19, 1976.)

Rule 4.36. Recording of a real property bond.—A certified copy of the bail bond and a schedule of real estate accompanied by necessary recording fee which shall be paid by the defendant or sureties, must be filed by the clerk of court requiring bail bond in the office of the county clerk of each county in which the real estate is situated.

The county court clerk may record copies of the bail bond and schedule and the commonwealth then has lien upon the real estate. Such records shall be kept in the miscellaneous encumbrance book provided by county court clerk. (Adopted June 18, 1976, effective June 19, 1976.)

Rule 4.38. Mandatory review after twenty-four hours.—If a defendant continues to be detained 24 hours from the time of the imposition of conditions of release because of inability to meet such conditions, the court that imposed the conditions must review them on defendant's written application or upon its own motion. If the court refuses to modify them, it must state in writing the reasons for its refusal. (Adopted June 18, 1976, effective June 19, 1976.)

Rule 4.40. Review of conditions of release.—(1) The defendant or the commonwealth may by written motion apply for a change of conditions of release at any time before the defendant's trial. The motion shall state the grounds on which the change is sought. The moving party may request an adversary hearing on his motion, and is entitled to such hearing the first time he requests it. Requests for adversary hearings made in subsequent motions for review of conditions of release shall lie within the discretion of the court.

(2) Written reasons for denial of any motion for change of conditions of release shall be furnished by the court upon request of the moving party.

(3) Motion for change of conditions of release must be in good faith. Where the defendant has appeared when required at previous proceedings in the case, the commonwealth must demonstrate by clear and convincing evidence the need to modify existing conditions of release. (Adopted June 18, 1976, effective June 19, 1976.)

Rule 4.42. Change of conditions of release; Bond forfeiture.—(1) If at any time following the release of the defendant and before he is required to appear for trial the court is advised of a material change in his circumstances or that he has not complied with all conditions imposed upon his release, the court having jurisdiction may order his arrest and require him or his surety or sureties to appear and show cause why the bail bond should not be forfeited or the conditions of his release be changed, or both.

(2) A copy of said order shall be served on the defendant and his surety or sureties. The court shall order the arrest of the defendant only when it has good cause to believe he will not appear voluntarily upon notice to appear.

(3) Where the court is acting on advice that the defendant has not complied with all conditions imposed upon his release, the court shall not change the conditions of release or order forfeiture of the bail bond unless it finds by clear and convincing evidence that the defendant has wilfully violated one of the conditions of his release and that there is a substantial risk of nonappearance.

(4) Where the court is acting on advice of a material change in the defendant's circumstances, it shall not change the conditions of his release or order forfeiture of the bail bonds unless it finds by clear and convincing evidence that a material change in circumstances exists and that there is a substantial risk of nonappearance.

(5) Before the court may make the findings required for change of conditions or forfeiture of bail under this rule, the defendant and his surety or sureties shall be granted an adversary hearing comporting with the requirements of due process. Whenever the court changes conditions of release (except upon motion of the defendant) or orders forfeiture of bail, it must furnish the defendant and his surety or sureties with written reasons for so doing. (Adopted June 18, 1976, effective June 19, 1976.)

Rule 4.44. Record of discharge.—(1) When the court orders a discharge upon the defendant's compliance with conditions of release, the clerk of the court that required a bail bond or released on personal recognizance shall make a record of the discharge and the date of discharge.

(2) Upon discharge of the defendant's and surety's obligations under the bail bond, the court shall return all stocks and bonds and cash deposited with the court except when a 10% deposit was made. In such cases the clerk of court shall retain 10% of the 10% deposit, in no event less than five dollars.

(3) If the defendant was released on a property bond, the clerk of the court requiring the bond shall notify in writing the county court clerk of each county where the real estate is situated. The lien on real estate must be discharged and the release recorded on the margin by that county court clerk. (Adopted June 18, 1976, effective June 19, 1976; amended July 27, 1976, effective August 1, 1976.)

Rule 4.46. Application of deposit to fine or costs.—(1) Upon a final rendition of judgment against the defendant for a fine and costs, or either, in the prosecution of a cause in which money has been deposited as bail by the defendant himself, if the money still remains on deposit

and unforfeited, and such fine and costs, or either, have not been paid, such money, or so much thereof as may be necessary, shall be applied to the payment of such fine and costs, or either.

(2) Upon motion by the defendant, the court may order the amount repayable to the defendant to be paid to his attorney. (Adopted June 18, 1976, effective June 19, 1976.)

Rule 4.48. Forfeiture of bail.—(1) If the court has ordered forfeiture of bail following a show-cause hearing as described in Rule 4.42(5), or following the wilful failure of the defendant to appear in court when required, the court shall serve a copy of the forfeiture order on the defendant and his surety or sureties at their last-known addresses; if the defendant or his surety or sureties do not appear within 20 days after service of the order or return of not found and satisfy the court that appearance or compliance by the defendant was impossible and without his fault, the court may order judgment against the defendant and his surety for the amount of the bail or any part thereof and the costs of the proceedings.

(2) If the declaration of forfeiture is made by a trial court other than the circuit court and the amount of bail is beyond its jurisdiction, or a lien on real estate is involved, the bond shall be filed with the clerk of the circuit court of the county.

(3) A forfeiture may be set aside upon such conditions as the court may impose if it appears that justice does not require its enforcement.

(4) When bail is forfeited, the clerk of the court shall enter a record of the forfeiture and date of forfeiture. When real estate is affected, the clerk shall forthwith send notice of the forfeiture and date thereof to the county clerk of each county where the real estate is situated. The county clerk of the latter county shall make an appropriate entry at the end or on the margin of the record of the commonwealth's lien on the real estate. (Adopted June 18, 1976, effective June 19, 1976.)

Rule 4.50. Surrender of defendant; Exoneration.—(1) At any time before forfeiture, any surety may procure a certified copy of the bail bond which shall authorize any peace officer to whom it is presented to arrest the defendant in any county within the Commonwealth and to deliver him and the certified copy of the bail bond to the jailer in the county in which the prosecution is pending. The jailer shall acknowledge the surrender in writing.

(2) Upon presentation of the writing executed by the jailer, the court before which the defendant has been held to answer shall, after five (5) days' notice to the county attorney, order that the surety or sureties be exonerated from liability on the bond or recognizance and that any money or bonds that have been deposited as bail be returned to the person making the deposit. (Adopted June 18, 1976, effective June 19, 1976; amended October 18, 1977, effective January 1, 1978.)

Rule 4.52. Judgment against surety.—(1) By entering into a bail bond (including bail on appeal under Rules 12.78 to 12.82, inclusive) the surety submits himself to the jurisdiction of the court or courts in which the charge is or may thereafter be pending. His liability may be enforced on motion without an independent action. The motion shall be served on the surety at his address which shall be shown on the bond, or at his last known address, at least 20 days prior to the date of hearing thereon. In the event of bail pending appeal, for purposes of this Rule 4.52 the court from which the appeal is or may be taken shall be considered to be the court in which the charge is pending.

(2) After entry of judgment the court for sufficient cause may remit wholly or in part the sum specified in the bail bond.

(3) Unless there are reasonable grounds to believe that the principal has caused himself to be incarcerated elsewhere, or elects to remain under such detention though able to secure his release through

bail or otherwise, for the purpose of delaying or avoiding appearance, the court shall not declare a forfeiture of bail (or, having declared a forfeiture, shall remit the amount thereof) if it is proved that his appearance is prevented by detention in a jail or penitentiary outside the commonwealth or in custody of the United States. An affidavit of the jailer, warden or other responsible officer of such jail or penitentiary or appropriate federal officer, shall be adequate evidence of such detention, and other affidavits may be considered as evidence. (Adopted June 18, 1976, effective June 19, 1976; amended October 18, 1977, effective January 1, 1978.)

Rule 4.54. Continuation of bail.—(1) Bail taken at any stage of the proceedings shall continue in effect to insure the appearance of the defendant for any and all purposes at all stages of the proceedings, subject to increase, decrease, revocation or other modification by the court in which the charge is thereafter pending. It shall terminate (a) when the principal is acquitted or the prosecution is dismissed; (b) when the principal, following conviction appealable to the circuit court, fails to perfect his appeal within the limit under Rule 12.04; (c) when an appeal taken or attempted to be taken by the principal to the circuit court is dismissed; and (d) when the principal, following conviction appealable to the Court of Appeals or Supreme Court, files notice of appeal under Rule 12.52 or the time limit under Rule 12.54 for filing such notice expires, whichever is earlier.

(2) Bail taken pursuant to Rules 12.78 to 12.82, inclusive, pending appeal shall continue in effect, subject to increase, decrease, revocation or other modification by the court in which the bail was allowed, until (a) the appeal is denied or dismissed or is not perfected within the time limit under Rule 12.58, or (b) receipt of a mandate affirming the conviction. In event of a reversal granting the principal a new trial, such bail shall continue in effect during further proceedings in the trial court as provided under paragraph (1) of this Rule 4.54.

(3) Control over bail taken by a trial court other than the circuit court shall pass to the circuit court (a) in the event of appeal, when the appeal is perfected and (b) in the instance of examining trials, as soon as the circuit court is in session. Physical transfer of the bond from one court to another shall not be necessary unless so ordered by the court in which the charge is pending.

(4) The efficacy of a bail bond shall not be affected by the fact that the defendant is prosecuted for an alleged offense or offenses different from but arising out of the same occurrence as the charge named in the bail bond. (Adopted June 18, 1976, effective June 19, 1976; amended October 18, 1977, effective January 1, 1978.)

Rule 4.56. Defects in bond or recognizance.—(1) Neither a bail bond nor a recognizance shall be invalid because of any defects of form, omission, recital, or condition, or because of any other irregularity, provided the official before whom it was entered into was legally authorized to take it, the amount of bail is stated, and it can be ascertained therefrom before which magistrate or court the principal is bound to appear.

(2) If no day is fixed for the appearance of the defendant, or an impossible day, or a day in vacation, the bond or recognizance, if for a preliminary hearing, shall bind the defendant to appear within ten (10) days from the time it is given; if for a trial, shall bind the defendant to appear on the first day of the term of court which commences more than ten (10) days from the time it is given. (Adopted June 18, 1976, effective June 19, 1976.)

Rule 4.58. Credit for incarceration.—Any person incarcerated on a bailable offense who does not supply bail or is not otherwise released and against whom a fine is levied on conviction of such offense should be allowed a credit of $5.00 for each day so incarcerated prior to conviction except that in no case shall the amount so allowed or credited exceed the amount of the fine. (Adopted June 18, 1976, effective June 19, 1976.)

APPENDIX E

KENTUCKY PRETRIAL RELEASE

- INTERVIEW FORM
- POINT SCALE

NAME Last First Middle Birthdate: ___/___/___ Age.___
Mo. Day Year

Verified Yes	Verified No	
		Charge(s):
		Date of Arrest: Court: Court Date:

RESIDENCE

Pres. Address: No. Street Apt. # City State Zip Code Telephone ( )

Length of Res. Yrs. ___ Mos. ___
Length of Prior Res. ___ ___
Length of Res. in Area: Yrs. ___ Mos. ___
☐ Rents ☐ Owns ☐ Other Property Owned Type of Auto Auto Tag #
Drivers License ☐ Yes ☐ No

Alternate Residence: No. Street Apt. # City State With Whom? Phone #

Contact Other than Residence or Place of Employment:

FAMILY TIES

Lives with: ☐ Alone ☐ Spouse ☐ Parents ☐ Children ☐ Brother/Sister ☐ Other Relatives ☐ Other

Are Family Contacts in this County? ☐ Yes ☐ No Frequency: ☐ Daily ☐ Weekly ☐ Monthly ☐ Yearly ☐ None

Marital Status: ☐ Single ☐ Married ☐ Divorced ☐ Widowed ☐ Common Law ☐ Separated
Number of Children:

Length of Marriage: Yrs. Mos.
Spouse's Name:

Number of Dependents:
Amount of Support:
☐ Full ☐ Partial ☐ None

EMPLOYMENT / SCHOOL

Employed? ☐ Yes ☐ No
If yes, how long? Yrs. Mos.
If Unemployed, how long? Yrs. Mos.
Can Contact Employer? ☐ Yes ☐ No

Employer: Job Position:

Employer's Address: No. Street City State Phone No. ( )

☐ Full-time ☐ Part-time ☐ Seasonal ☐ Welfare ☐ Unemployment ☐ Other Income Source
*If Seasonal, When:

Prior Job: Company Name:___ Job Position:___
Address Phone = Length of Employment

Attends School? ☐ Yes ☐ No
School Name:
Address:
Can Contact School? ☐ Yes ☐ No

PRIOR CRIMINAL RECORD

Prior Convictions? ☐ None ☐ Yes (List Previous Record on Back)

On Probation? ☐ Yes ☐ No
On Parole? ☐ Yes ☐ No
Pending Charges? ☐ Yes ☐ No
How Released:

Probation/Parole Officer's Names?
Address:
Outstanding Warrants ☐ Yes ☐ No ___Number

References:

	Name	Address	Relationship	Phone	In Court?
1.					
2.					
3.					
4.					
5.					

Verifiers:
Miscellaneous Comments:

Eligible Ineligible (Circle One)

___ Point Total

Court's Initial Decision___ Judge:___

Released: Date___ Time___

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PRIOR CRIMINAL RECORD

DATE	OFFENSE	COURT	DISPOSITION

PRETRIAL RELEASE POINTS

Circle only one number for each category of criteria except "miscellaneous."

RESIDENCE

5 Has been a resident of the area for more than one year.
3 Has been a resident of the area for less than one year but more than three months.

PERSONAL TIES

4 Lives with spouse, children, parents, and/or guardian.
3 Lives with other relative whom individual gives as a reference.
2 Lives with non-related roommates.
1 Lives alone.

ECONOMIC TIES

5 Has held present job for more than one year OR is a full-time student.
3 Has held present job for less than one year but more than three months.
3 Is dependent on spouse, parents, other relatives, or legal guardian.
2 Is dependent on unemployment, disability, retirement, or welfare compensation.
1 Has held present job for less than three months.

MISCELLANEOUS

3 Owns property in the area.
1 Has a telephone.
1 Expects someone at arraignment.

PREVIOUS CRIMINAL RECORD (+)

3 No convicitons on record (excluding traffic violations) in last two years.

(A)——TOTAL POSITIVE POINTS

PREVIOUS CRIMINAL RECORD (—)

— 3 AWOL on record (current military personnel only).
— 5 Felony conviction in last two years, without FTA's.
— 5 FTA on traffic citation in last two years.
—10 FTA on misdemeanor charge in last five years.
—15 FTA on felony charge at any time.

(B)——TOTAL NEGATIVE POINTS

——TOTAL PRETRIAL RELEASE POINTS ("A" minus "B")

WARNING

This interview form will be used by the court to set bail and may also be used for probation and sentencing should you be convicted, and for your apprehension should you fail to appear in court when scheduled. It may also be used should you apply for a change in your conditions of release; and the court may permit your lawyer or the prosecutor or the probation officer to inspect it. Except for these situations, any information which you provide will be confidential and will not be disclosed without your written consent. You have the right to remain silent and you are not required to say anything or to answer any questions. You may stop answering at any time. Signing this form indicates that you understand your rights, and that you wish to conduct this interview.

☐ REFUSED TO SIGN AFTER BEING WARNED AT _____ Time _____ p.m. a.m.

_____
S/DEFENDANT

Date _____

Witnessed by: _____

Interviewer, Date and Time: _____

APPENDIX F

KENTUCKY PRETRIAL RELEASE FORM

Example

District Court

______ County

Commonwealth of Kentucky

Commonwealth

FIELDS, JAMES EDWARD — Defendant's Name

[illegible] — Defendant's Address

Case No. [illegible]

[illegible] — Defendant's Phone No.

YOU ARE HEREBY RELEASED FROM CUSTODY ON THE CONDITIONS INDICATED BELOW:

PERSONAL PROMISE	X	PERSONAL RECOGNIZANCE. Your personal recognizance, provided that you promise to appear at all scheduled hearings, trials, or otherwise as required by the Court.
MONEY BOND OF $	☐	UNSECURED BAIL BOND. Your personal unsecured appearance bond, to be forfeited should you fail to appear as required by the Court.
	☐	GUARANTEED ARREST BOND CERTIFICATE.
Amount in accordance with uniform schedule of bail YES ___ NO ___	☐	PARTIALLY SECURED BOND. Upon execution of bail bond, to be forfeited should you fail to appear as required by the Court, secured by a deposit ___ of such deposit to be returned when the Court determines you have performed the conditions of your release. You will deposit with the clerk of the Court $______
	☐	SURETY BOND. Upon execution of bail bond with approved surety. ______ (Surety's Name) (Surety's Complete Address)
	☐	CASH BAIL BOND. Full amount of bail paid into the court, to be forfeited should you fail to appear as required by the Court.
	☐	REAL PROPERTY BOND. Real property worth twice as much as the bail is offered to secure the bail bond. If you fail to appear as required by the Court the state will foreclose on the property used as security.
	☐	OTHER ______

YOU ARE RELEASED ON THE FOLLOWING ADDITIONAL NON-FINANCIAL CONDITIONS:

1. ☐ Inform ______ (Program Name) (Program Address) (Program Phone No.) of current address and any relocation without undue delay.
2. ☐ Remain in the area unless otherwise agreed to by the court.
3. ☐ Report any new arrest immediately - failure to do so will result in a review of the case by the presiding judge.
4. ☑ Phone Pretrial Services every Monday 5884142
5. ☑ Stay away from prosecuting witness - Evelyn Smith
6. ☐ ______

Violation of Conditions:
You are warned that failure to comply with the above provisions will be deemed to be a violation of the terms and conditions of your release for which a warrant may be issued for your arrest; you may be detained, the release privilege revoked, and any bail bond posted may be forfeited.

Failure to Appear:
For any failure to appear as required before a judge or other judicial officer, you shall be subject to the following penalties:
(IF FELONY CHARGE) A fine to be determined by the Court not more than $10,000 and imprisonment for not less than 1 and not more than 5 years;
(IF MISDEMEANOR CHARGE) A fine of not more than $500 and imprisonment for not more than 1 year.

NEXT DUE BACK: in courtroom #1 at 1 AM/PM on July 20, 1978 or when notified and you must appear at all subsequent continued dates. You must also appear ______

DEFENDANT'S SIGNATURE ▷ X ______ I understand the penalties which may be imposed on me for willful failure to appear or for violation of any condition of release and agree to comply with the conditions of my release and to appear as required. I have received a copy of this order.

WITNESSED BY Pretrial Officer (title or agency) PRETRIAL SERVICES

YOUR LOCAL PRETRIAL RELEASE AGENCY IS LOCATED AT ROOM 300 LEGAL ARTS BLDG.
200 SOUTH 7th STREET
PHONE Phone No. 588-4142 or 588-4451
CHIEF OFFICER ______

(Release from Custody)
TO the Jailer of HALL OF JUSTICE,

You are hereby commanded to release James Edward Fields (Defendant's Name) who is in your custody charged with the offense of Asslt 3rd (?)

Case No. 78 M004 299

So Ordered.

Witness my hand as Judge of said Court, this 13th day of June, 1978

Judge District Court

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151542

WHITE - COURT YELLOW - DEFENDANT PINK - PRETRIAL GOLDENROD - JAIL

APPENDIX G

KENTUCKY PRETRIAL RELEASE

- STATEWIDE "PROGRAM IMPACT"
- "HIGHLIGHTS" AND "DEFENDANT OUTCOMES SUMMARY" FOR LOUISVILLE, KENTUCKY

DESCRIPTION OF PRETRIAL RELEASE STATEWIDE "PROGRAM IMPACT" FROM DELIVERY SYSTEM ANALYSIS OF JEFFERSON COUNTY (LOUISVILLE), KENTUCKY (MARCH 1979).

II. PROGRAM IMPACT

A. Release Rates

During calendar year 1977 the Pretrial Services Agency reports that 194,277 individuals were arrested and placed in custody in Kentucky.[11] Of those arrested 65% were contacted by a pretrial officer and offered Agency services.[12] The remaining 35% was accounted for by those immediately posting bond or pleading guilty, along with those automatically ineligible for program consideration (e.g., Federal prisoners).

The Agency also reports that 34% of the total arrestees were interviewed by the program. Of those 66,557 individuals, 47,932 (or 72%) were found eligible for personal recognizance release based on the objective point scale. Of this group, 1,860 defendants had their cases resolved prior to presentation; the remaining 46,072 were presented to the judiciary for release. For various reasons, 20% of the eligible defendants presented were rejected by the judiciary for program release. The courts rejected the Agency's determinations somewhat less frequently in the opposite situation, but did order non-monetary release for 2,927 of the 18,625 persons found ineligible by the program.

Table 1 provides information on the types of release for defendants who were released through the Agency.

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[11] Statistical Report, Calendar Year 1977, Kentucky Pretrial Services Agency, p. 1.

[12] Ibid., p. 2.

Table 1. Type of Release Secured by Defendants Released Through Pretrial Services Agency

Type of Release	Number	Percentage of Total Arrested	Percentage of Total Interviewed
Own Recognizance	29,978	15.4%	45.0%
Unsecured Bail Bond	5,458	2.8	8.2
Non-Financial Conditions	1,437	0.7	2.2
Released After 24-Hour Review	84	-	-
Total	37,757	18.9%	55.4%

Source: 1977 Statistical Report, Kentucky Pretrial Services Agency.

B. Court Appearances

The Pretrial Services Agency measures its success in terms of both its ability to contact and interview arrested individuals and its ability to ensure that those people released through the Agency prior to trial appear in court. During 1977 the Agency reports that 1,311 persons released through the program failed to appear as scheduled. Of those 1,207 had been released on own recognizance; 69 on unsecured bonds and 35 with non-financial conditions. This represents the following failure-to-appear (FTA) rate:

- 2.22% of all required court appearances; and
- 3.55% of all defendants released through the agency.[13]

[13] Ibid.

It should be pointed out that 85% of those failing to appear were charged with misdemeanors. Somewhat over half of the total FTA's involved alcohol-related charges or traffic violations. Also, a majority of those who fail to appear are quickly apprehended. However, the Agency reports that of the 1,311 clients who failed to appear in 1977, 438 (or 33%) had not been located by January 1, 1978. This represents the following fugitive rate:

- 0.74% of all scheduled court appearances; and
- 1.18% of all persons released through the program.[14]

Because accurate records were not kept by the courts or by private bail bondsmen, it is difficult to compare this rate of appearance with that under the old system. However, in its First Annual Report, the Agency cites figures furnished by a bail bonding company that operated in the 55th Judicial Circuit before the program came into existence. For the year ending June 1, 1975, 12% of the defendants upon whom bonds were written by this company failed to appear. Approximately 33% of these later voluntarily surrendered themselves to the authorities.[15]

C. Rearrests

Pretrial criminality is a continuing source of controversy in the field of pretrial release. Many people in Kentucky, particularly prosecutors and law enforcement officers, feel that the Pretrial Services Agency should not be concerned solely with equitable release for those who will appear for trial. It is felt that the protection of society from pretrial crime is of equal importance.

[14] Ibid., p. 4.

[15] First Annual Report, Kentucky Pretrial Services Agency, July 1, 1976-June 30, 1977, p. 12.

The Agency attempts to identify those persons who are arrested for a second offense while on program release. However, these figures provide only a very rough indicator of pretrial criminality. That is because a distinction cannot be made from the data between those who are rearrested for a crime committed during program release, and those who, while on program release, happen to be arrested for an offense committed prior to their initial arrest. A common illustration of this situation is a person who writes a series of bad checks and who is arrested for an earlier check while awaiting trial for a later crime.

Despite these problems with the data, the Agency reports that 1,657 program releasees were rearrested while on program release during 1977. That represents 4.4% of the 37,757 persons released through the Agency during that year.[16]

D. Program Acceptance

The passage of the legislation that abolished commercial bail bondsmen and created the Pretrial Services Agency was so rapid that there was little initial opposition. Soon, however, the bonding community brought a series of court challenges. The Supreme Court of Kentucky upheld the constitutionality of the new law in Stephens v. Bonding Association of Kentucky. The Court held that it was within the police power of the legislature to outlaw the "inherent evils and abuses of the compensated surety in the bail bond system."[17]

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[16] Ibid.

[17] Supreme Court of Kentucky, File No. 76-504, June 11, 1976, p. 6.

The Court rejected the argument that the statute unconstitutionally deprived bonding agents of a legitimate livelihood:[18]

> The bail bonding business by compensated surety is not 'an ancient honorable and necessary calling,' but one whose evils have been tolerated, because of deep rooted antipathy against confinement of persons entitled to a presumption of innocence pending trial. Bail bonding by compensated surety has never enjoyed a favorable status, but exists because no better system has been provided.

The Court's opinion seems to reflect the prevailing attitude throughout most of the criminal justice system in Kentucky: the old bonding system was corrupt and unfair; any change represented an improvement.

Nevertheless, there was a good deal of skepticism about the use of non-financial release. Some County, Police, and Quarterly Court judges resisted the change simply because it was a change, and because they were jealous of any possible encroachment on their authority. Prosecutors also resisted the change. They had virtually controlled the criminal trial courts, since many of the trial judges had no legal education. As a result, release decisions were effectively made by prosecutors in many cases. Although they were aware of the drawbacks of commercial bail bonding, they feared that dangerous criminals might be set loose on society by the new program.

With the passage of time, most of this resistance has lessened. The Pretrial Services Agency has demonstrated its ability to predict who will appear for trial, by recording low FTA rates as well as low rearrest figures. This alone has changed the attitudes of many skeptics, but the most significant factor in winning acceptance of the Agency has been the reorganization of the court system. The impact of this reform cannot be overemphasized.

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[18] Ibid., p. 7.

The new district judges all took office in January 1978. Unlike their predecessors, they were required by law to be qualified attorneys with at least two years experience. They entered a system in which the Pretrial Agency was now an integral component, rather than a threatening interloper. In many cases, pretrial officers were the only court officials to remain in office throughout the transition. They were thus able to help the newly elected judges familiarize themselves with their jurisdictions. In the rural circuits especially, judges came to rely on the pretrial officers as their only professional staff.

The benefits have flowed in both directons. The pretrial officers have provided reliable release information to the judiciary and have perhaps been equally helpful in other informal capacities. In return, the judges have cooperated with the pretrial program and have been releasing greater numbers of eligible defendants.

The court clerks have also been more cooperative since the court reform. They are now part of the same organizational structure and work more effectively with the Pretrial Agency.

A minor problem that continues, although it has been largely overcome, has been poor relations with the jailers. Because of the fee system per inmate on which they are paid, jailers in rural Kentucky have an incentive to retain arrestees in custody as long as possible. Nevertheless, cooperation is improving. In the cities, the corrections officials, who are salaried, have accepted the presence of pretrial services, though minor frictions still exist.

The police also appear to tolerate the pretrial program, although the officers out in the field do not always understand the principles behind it. There have been cases of police officers pressuring local pretrial investigators not to assist in the release of certain individuals, but

this is apparently not a widespread phenomenon.

E. Summary

Kentucky's statewide Pretrial Services Agency has brought order and fairness to a system that was disorganized and reputed to be corrupt as well. Today it is rare for an individual eligible for non-financial release to remain in jail for more than a few hours, whether the arrest occurs in Louisville or in a small town in the mountains. Persons entitled to the presumption of innocence are no longer required to pay bondsman's fees to obtain their release. Revenue generated by the current bail system now goes to the State and not to a handful of private individuals.

Another achievement of the Agency has been to foster better communication among all branches of the criminal justice system, primarily through the local advisory boards. The Agency was also instrumental in expediting the recent court reform and continues to assist the trial bench in a variety of ways.

The directors attribute this success to several factors. First, they believe that the neutral posture of the program has been important. Serving solely as an information gathering branch of the courts, they have gained the cooperation of the trial bench and defused much of the criticism they would have encountered in a more partisan role.

Second, the internal structure of the Agency itself is believed to account for much of its success. The central staff is small and responsive to local concerns. Decision-making is decentralized, with input actively sought from everyone involved with the program.

Finally, the support of the Governor has been extremely important in the Agency's development. He almost singlehandedly brought it into exist-

ence and therefore had a stake in its survival. Cooperation with the State Police, for example, would probably not have been possible without the Governor's support. Now, however, the Pretrial Services Agency appears to be sufficiently well established to survive on its own.

"HIGHLIGHTS" AND "DEFENDANT OUTCOMES SUMMARY" FROM OUTCOMES ANALYSIS OF LOUISVILLE, KENTUCKY (MAY 1979)

HIGHLIGHTS

Background

Data on a sample of 435 City of Louisville defendants arrested during calendar year 1977 was collected to address the issues of rates of release, equity of release, failures to appear, and pretrial crime. To the extent it can be gauged, the sample was reasonably representative of the characteristics of all Louisville defendants.

Types of Release

Of the 432 defendants in the sample for whom release data was available, 346 (80%) were released, including 141 (41%) released on their own recognizance (OR) with program approval, 11 (3%) OR'ed without or against program recommendation (Judge OR), 175 (51%) released on ten percent deposit bond (Deposit Bond), and 19 (5%) released on bail bond (Public Bail). Of the remaining 86 defendants, 64 (15%) were never offered release and 22 (5%) did not post the bonds authorized for them.

Among OR and Deposit Bond defendants there were many differences. The latter tended to have weaker community ties and worse prior records than the former. Their present charge distributions did not differ significantly. Deposit bond defendants tended to receive lower point scale totals than OR's.

Equity of Release

Defendants who were not released tended to have the most prior arrests and the weakest community ties in the sample. Of special significance was the prevalence of drunkenness and liquor law violations among their current charges. There were no significant race or sex differences between released and detained defendants but the latter tended to be older, in keeping with their longer records.

As a whole, detained defendants tended to be convicted, mostly as the result of guilty pleas, more often than those released. Their sentences tended to be short due to the nature of their charges.

The outcomes of OR and Deposit Bond cases tended to be quite similar.

Failures-to-Appear

Fifty-nine defendants in our sample failed to appear at least once and did so an average of 35 days after release. These consisted of 14% (20) of the OR's, 20% (35) of the Deposit Bonds, and 21% (4) of the Bails. None of the Judge OR's failed-to-appear. When appearance-based rates are examined, the program OR's do much better than the Deposit Bonds. However, this is largely an artifact of differences in average numbers of appearances to be made.

Those who failed to appear had weaker community ties and more contact with the criminal justice system than those who did not fail to appear (FTA). Court responses to FTA's generally was fairly tough and included arrest, revocation of release, or issuance of a bench warrant in many cases.

Pretrial Arrests

Louisville had an exceptionally high rate of pretrial arrests. Seventy-four (21%) of all released defendants were rearrested, including 29 (21%) of the OR's, 38 (22%) of the Deposit Bonds, 4 (21%) of the Public Bails, and 3 (27%) of the Judge OR's. In addition, over one-third of those re-arrested were rearrested more than once in the pretrial period with a total of 109 rearrests for these 74 defendants.

Persons rearrested but not convicted of pretrial crime tended to be similar to those convicted. When persons rearrested but not convicted were compared to those not rearrested, the former differed only in having more prior convictions and FTA's and more current trial appearances. Looking at all persons rearrested, original charge type tends to be moderately related to rearrest charge type.

Pretrial Crime Convictions

Forty-three of the seventy-four rearrested defendants were convicted for pretrial crimes: 21 (15%) of the OR's, 20 (11%) of the Deposit Bonds, and 2 (11%) of the Public Bails. None of the Judge OR rearrestees were convicted.

Pretrial criminals (as measured by convictions) more frequently had economic and property original charges than other defendants.

Pretrial criminals were more often convicted on their original charges and were given harsher sentences. About one-third of their sentences for pretrial crimes involved incarceration.

Pretrial criminals tended to have more serious prior records, weaker community ties, and more serious cases at original arrest. OR and Deposit Bond release groupings had similar incidences of convictions for rearrests.

DEFENDANT OUTCOMES SUMMARY

Study Period: January 1, 1977—December 31, 1977

Sample: 435 (approx. 2% of Approx. 19,000 defendants jacketed in Police Court, City of Louisville)

Released:

Type	Number	Percent of Releasees (N=346)	Percent of Known Release Types (N=432)
Own Recognizance (OR)	141	40.8%	32.6%
Non-Program OR	11	3.2%	2.5%
OR, All Types	(152)	(44.0%)	(35.1%)
10% Deposit Bond	175	50.6%	40.5%
Public Bail	19	5.4%	4.4%
Total Released	346	100.0%	80.1%

Not Released:

Type	Number	Percent of Known Release Types (N=432)
Bail Not Made	22	5.1%
Detained	64	14.8%
Total Not Released	86	19.9%

Release Type Unknown: 3 (0.7% of 435 defendants in sample)

Failure-to-Appear:

Type of Release	Total FTA's on Major Arrest Charge (Defendants)	Percent of Released Defendants (N=346)	Appearance-Based Rate
Own Recognizance	20	14.2%	6.9%
Non-Program OR	0	0.0%	0.0%
10% Deposit Bond	35	20.0%	19.0%
Public Bail	4	21.1%	8.0%
Total	59	17.1%	10.9%

Pretrial Criminality:

Type of Release	Defendants Arrested		Defendants Convicted		
	Number	Percent of Released Defendants (N=346)	Number	Percent of Type Released	Percent of Released Defendants (N=346)
Own Recognizance	29	20.6%	21	14.9%	6.1%
Non-Program OR	3	27.3%	0	0.0%	0.0%
10% Deposit Bond	38	21.7%	20	11.4%	5.8%
Public Bail	4	21.1%	2	10.5%	0.5%
Total	74	21.4%	43	12.4%	12.4%

APPENDIX H

OREGON PRETRIAL RELEASE PROGRAM

· SECTIONS 135.230 TO 135.295, OREGON REVISED STATUTES (1979)

SECTIONS 135.230 TO 135.295, OREGON REVISED STATUTES (1979)

RELEASE OF DEFENDANT

135.230 Release of defendants; definitions. As used in ORS 135.230 to 135.290, unless the context requires otherwise:

(1) "Conditional release" means a nonsecurity release which imposes regulations on the activities and associations of the defendant.

(2) "Magistrate" has the meaning provided for this term in ORS 133.030.

(3) "Personal recognizance" means the release of a defendant upon his promise to appear in court at all appropriate times.

(4) "Release" means temporary or partial freedom of a defendant from lawful custody before judgment of conviction or after judgment of conviction if defendant has appealed.

(5) "Release agreement" means a sworn writing by the defendant stating the terms of the release and, if applicable, the amount of security.

(6) "Release criteria" includes the following:

(a) The defendant's employment status and history and his financial condition;

(b) The nature and extent of his family relationships;

(c) His past and present residences;

(d) Names of persons who agree to assist him in attending court at the proper time;

(e) The nature of the current charge;

(f) The defendant's prior criminal record, if any, and, if he previously has been released pending trial, whether he appeared as required;

(g) Any facts indicating the possibility of violations of law if the defendant is released without regulations;

(h) Any facts tending to indicate that the defendant has strong ties to the community; and

(i) Any other facts tending to indicate the defendant is likely to appear.

(7) "Release decision" means a determination by a magistrate, using release criteria, which establishes the form of the release most likely to assure defendant's court appearance.

(8) "Security release" means a release conditioned on a promise to appear in court at all appropriate times which is secured by cash, stocks, bonds or real property.

(9) "Surety" is one who executes a security release and binds himself to pay the security amount if the defendant fails to comply with the release agreement. [1973 c.836 §146]

135.235 Release Assistance Officer. (1) The presiding circuit court judge of the judicial district may designate a Release Assistance Officer who shall, except when impracticable, interview every person detained pursuant to law and charged with an offense.

(2) The Release Assistance Officer shall verify release criteria information and may either:

(a) Timely submit a written report to the magistrate containing, but not limited to, an evaluation of the release criteria and a recommendation for the form of release; or

(b) If delegated release authority by the presiding circuit court judge of the judicial district, make the release decision.

(3) The presiding circuit court judge of the judicial district may appoint release assistance deputies who shall be responsible to the Release Assistance Officer. [1973 c.836 §147]

135.240 Releasable offenses. (1) Except as provided in subsection (2) of this section, a defendant shall be released in accordance with ORS 135.230 to 135.290.

(2) When the defendant is charged with murder or treason, release shall be denied when the proof is evident or the presumption strong that the person is guilty.

(3) The magistrate may conduct such hearing as he considers necessary to determine whether, under subsection (2) of this section, the proof is evident or the presumption strong that the person is guilty. [1973 c.836 §148]

135.245 Release decision. (1) Except as provided in subsection (2) of ORS 135.240, a person in custody shall have the immediate right to security release or shall be taken before a magistrate without undue delay. If the person is not released under ORS 135.270, or otherwise released before his arraignment, the magistrate shall advise the person of his right to a security release as provided in ORS 135.265.

(2) If a person in custody does not request a security release at the time of arraignment, the magistrate shall make a release decision regarding the person within 48 hours after the arraignment.

(3) The magistrate shall impose the least onerous condition reasonably likely to assure the person's later appearance. A person in custody, otherwise having a right to release, shall be released upon his personal recognizance unless release criteria show to the satisfaction of the magistrate that such a release is unwarranted.

(4) Upon a finding that release of the person on his personal recognizance is unwarranted, the magistrate shall impose either conditional release or security release.

(5) Before the release decision is made, the district attorney shall have a right to be heard in relation thereto.

(6) This section shall be liberally construed to carry out the purpose of relying upon criminal sanctions instead of financial loss to assure the appearance of the defendant. [1973 c.836 §149]

135.250 General conditions of release agreement. (1) If a defendant is released before judgment, the conditions of the release agreement shall be that he will:

(a) Appear to answer the charge in the court having jurisdiction on a day certain and thereafter as ordered by the court until discharged or final order of the court;

(b) Submit himself to the orders and process of the court;

(c) Not depart this state without leave of the court; and

(d) Comply with such other conditions as the court may impose.

(2) If the defendant is released after judgment of conviction, the conditions of the release agreement shall be that he will:

(a) Duly prosecute his appeal as required by ORS 138.005 to 138.500;

(b) Appear at such time and place as the court may direct;

(c) Not depart this state without leave of the court;

(d) Comply with such other conditions as the court may impose; and

(e) If the judgment is affirmed or the cause reversed and remanded for a new trial, immediately appear as required by the trial court. [1973 c.836 §150]

135.255 Release agreement. (1) The defendant shall not be released from custody unless he files with the clerk of the court in which the magistrate is presiding a release agreement duly executed by the defendant containing the conditions ordered by the releasing magistrate or deposits security in the amount specified by the magistrate in accordance with ORS 135.230 to 135.290.

(2) A failure to appear as required by the release agreement shall be punishable as provided in ORS 162.195 or 162.205.

(3) "Custody" for purposes of a release agreement does not include temporary custody under the citation procedures of ORS 133.045 to 133.080. [1973 c.836 §151]

135.260 Conditional release. Conditional release may include one or more of the following conditions:

(1) Release of the defendant into the care of a qualified person or organization responsible for supervising the defendant and assisting him in appearing in court. The supervisor shall not be required to be financially responsible for the defendant, nor to forfeit money in the event he fails to appear in court. The supervisor, however, shall notify the court immediately in the event that the defendant breaches the conditional release.

(2) Reasonable regulations on the activities, movements, associations and residences of the defendant.

(3) Release of the defendant from custody during working hours.

(4) Any other reasonable restriction designed to assure the defendant's appearance. [1973 c.836 §152]

135.265 Security release. (1) If the defendant is not released on his personal recognizance under ORS 135.255, or granted conditional release under ORS 135.260, or fails to agree to the provisions of the conditional release, the magistrate shall set a security amount that will reasonably assure the defendant's appearance. The defendant shall execute the security release in the amount set by the magistrate.

(2) The defendant shall execute a release agreement and deposit with the clerk of the court before which the proceeding is pending a sum of money equal to 10 percent of the security amount, but in no event shall such deposit be less than $25. The clerk shall issue a receipt for the sum deposited. Upon depositing this sum the defendant shall be released from custody subject to the condition that he appear to answer the charge in the court having jurisdiction on a day certain and thereafter as ordered by the court until discharged or final order of the court. Once security has been given and a charge is pending or is thereafter filed in or transferred to a court of competent jurisdiction the latter court shall continue the original security in that court subject to ORS 135.280 and 135.285. When conditions of the release agreement have been performed and the defendant has been discharged from all obligations in the cause, the clerk of the court shall return to the person shown by the receipt to have made deposit, unless the court orders otherwise, 90 percent of the sum which has been deposited and shall retain as security release costs 10 percent of the amount deposited. The amount retained by a clerk of the court shall be deposited into the county treasury, except that the clerk of a municipal court shall deposit the amount retained into the municipal corporation treasury. However, in no event shall the amount retained by the clerk be less than $5 nor more than $100. At the request of the defendant the court may order whatever amount is repayable to defendant from such security amount to be paid to defendant's attorney of record.

(3) Instead of the security deposit provided for in subsection (2) of this section the defendant may deposit with the clerk of the court an amount equal to the security amount in cash, stocks, bonds, or real or personal property situated in this state with equity not exempt owned by the accused or sureties worth double the amount of security set by the magistrate. The stocks, bonds, real or personal property shall in all cases be justified by affidavit. The magistrate may further examine the sufficiency of the security as he considers necessary. [1973 c.836 §153; 1979 c.878 §1]

135.270 Taking of security. When a security amount has been set by a magistrate for a particular offense or for a defendant's release, any person designated by the magistrate may take the security and release the defendant to appear in accordance with the conditions of the release agreement. The person designated by the magistrate shall give a receipt to the defendant for the security so taken and within a reasonable time deposit the security with the clerk of the court having jurisdiction of the offense. [1973 c.836 §154]

135.280 Forfeiture and apprehension. (1) Upon failure of a person to comply with any condition of a release agreement or personal recognizance, the court having jurisdiction may, in addition to any other action provided by law, issue a warrant for the arrest of the person at liberty upon a personal recognizance, conditional or security release.

(2) A warrant issued under subsection (1) of this section by a municipal officer as defined in subsection (6) of ORS 133.030 may be executed by any peace officer authorized to execute arrest warrants.

(3) If the defendant does not comply with the conditions of the release agreement, the court having jurisdiction shall enter an order declaring the security to be forfeited. Notice of the order of forfeiture shall be given forthwith by personal service, by mail or by such other means as are reasonably calculated to bring to the attention of the defendant and, if applicable, his sureties, the order of forfeiture. If the defendant does not appear and surrender to

the court having jurisdiction within 30 days from the date of the forfeiture or within such period satisfy the court that appearance and surrender by the accused is impossible and without his fault, the court shall enter judgment for the state against the defendant and, if applicable, his sureties, for the amount of security and costs of the proceedings. At any time before or after judgment for the amount of security declared forfeited, the defendant or his sureties may apply to the court for a remission of the forfeiture. The court, upon good cause shown, may remit the forfeiture or any part thereof, as the court considers reasonable under the circumstances of the case.

(4) When judgment is entered in favor of the state, or any political subdivision of the state, on any security given for a release, the district attorney shall have execution issued on the judgment forthwith and deliver same to the sheriff to be executed by levy on the deposit or security amount made in accordance with ORS 135.265. The cash shall be used to satisfy the judgment and costs and paid into the treasury of the municipal corporation wherein the security release was taken if the offense was defined by an ordinance of a political subdivision of this state, or into the treasury of the county wherein the security was taken if the offense was defined by a statute of this state. The provisions of this section shall not apply to:

(a) Money deposited pursuant to ORS 484.150 for a traffic offense.

(b) Money deposited pursuant to ORS 488.220 for a boating offense.

(c) Money deposited pursuant to ORS 496.905 for a fish and game offense.

(5) The stocks, bonds, personal property and real property shall be sold in the same manner as in execution sales in civil actions and the proceeds of such sale shall be used to satisfy all court costs, prior encumbrances, if any, and from the balance a sufficient amount to satisfy the judgment shall be paid into the treasury of the municipal corporation wherein the security was taken if the offense was a crime defined by an ordinance of a political subdivision of this state, or into the treasury of the county wherein the security was taken if the offense was a crime defined by a statute of this state. The balance shall be returned to the owner. The real property sold may be redeemed in the same manner as real estate may be redeemed after judicial or execution sales in civil actions. [1973 c.836 §155]

135.285 Release decision review and release upon appeal. (1) If circumstances concerning the defendant's release change, the court, on its own motion or upon request by the district attorney or defendant, may modify the release agreement or the security release.

(2) After judgment of conviction in municipal, justice or district court, the court shall order the original release agreement, and if applicable, the security, to stand pending appeal, or deny, increase or reduce the release agreement and the security. If a defendant appeals after judgment of conviction in circuit court for any crime other than murder or treason, release shall be discretionary. [1973 c.836 §156]

135.290 Punishment by contempt of court. (1) A supervisor of a defendant on conditional release who knowingly aids the defendant in breach of the conditional release or who knowingly fails to report the defendant's breach is punishable by contempt.

(2) A defendant who knowingly breaches any of the regulations in his release agreement imposed pursuant to ORS 135.260 is punishable by contempt. [1973 c.836 §157]

135.295 Application of ORS 135.230 to 135.290 to certain traffic offenses. ORS 135.230 to 135.290 do not apply to a criminal proceeding or criminal action by means of which a person is accused and tried for the commission of a traffic offense as defined by subsection (10) of ORS 484.010. [1974 s.s. c.35 §1]

APPENDIX I

- A REVIEW OF CURRENT RESEARCH CONCERNING PRETRIAL RELEASE
- SIGNIFICANT RESEARCH FINDINGS CONCERNING PRETRIAL RELEASE

PRETRIAL ISSUES

Current Research - A Review

December 1979

PRETRIAL ISSUES

CURRENT RESEARCH - A REVIEW

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Volume 1 No. 1

Pretrial Services Resource Center

INTRODUCTION

Too often important research findings are released to a narrow audience and/or presented in a language which discourages the non-technician. Typically, reviews are limited to professional journal articles and to debates between researchers. As a result, practitioners and policy-makers are deprived of important knowledge or are unable to interpret the information they do receive.

Through this document we wish to bridge that gap by discussing five important pretrial research projects which are near completion or have been published recently. These projects have addressed many questions related to the day-to-day operations of pretrial systems and to the future of those systems. The five studies are particularly significant for a variety of reasons:

- As a group these studies review aspects of three major elements of pretrial alternatives: release, diversion, and dispute resolution (mediation/arbitration); and they cover a representative number of programs throughout the country.

- The studies address not only questions raised by practitioners but also those which are important to policy-makers.

- Each study has sufficient methodological strengths and/or data to lend significance and credibility to its findings.

- Implications of each study are not limited per se to the programs examined, but may (and quite probably will) be applied to pretrial alternatives in general.

Three of the research projects are devoted to pretrial release practices, one to pretrial diversion, and one to dispute resolution. They are discussed in the following order:

1. Study of Pretrial Release and Misconduct in the District of Columbia, conducted by the Institute for Law and Social Research (INSLAW);

2. Phase II National Evaluation of Pretrial Release, conducted by The Lazar Institute;

3. Evaluation of the Speedy Trial Act of 1974, Title II, including both a report of the Administrative Office of the U.S. Courts and a data analysis report from the

CONTINUED

1 OF 2

Federal Judicial Center, each of which addresses the administration and operation of federal pretrial services agencies established pursuant to Title II;

4. Evaluation of the Court Employment Project (diversion) in New York City, conducted by the Vera Institute; and

5. National Evaluation of the Neighborhood Justice Center concept, conducted by the Institute for Social Analysis. 1/

It is unrealistic to expect a study author to evaluate his/her own project objectively; also, individual studies are not always placed in the larger context of other research and trends. Our intent with this publication is to provide a clear and concise impression of the scope of each study, its major findings, its limitations, and any questions that still need to be addressed. 2/

To do so, the following format has been adopted:

- A brief description of the project and its purpose, significance, and current status;
- Explanation of the methods used;
- Major findings and conclusions reached by the authors; and
- Analysis of the limitations and implications of the study.

In summary of these individual reviews, a broader discussion is also presented which assesses the combined relevance of the findings and suggests where further research and actions appear necessary.

PRETRIAL RELEASE RESEARCH

A number of important issues facing the pretrial release field have been addressed, at least in part, by one or more of the three release studies reviewed here. The interrelated concerns of pretrial crime, preventive detention, and what to do about the "dangerous" defendant are foremost among these. Related issues also addressed by the studies are:

1/ Several other research projects of significance are also nearing completion, particularly in the diversion and dispute resolution areas. They are not yet available for review but will be discussed by the Resource Center in the future.

2/ In drafting this document, Dr. Donald Pryor consulted with persons closely associated with each research effort; he discussed the interpretations of their work and provided them with an opportunity to react. Where relevant, their comments are included in the discussion.

- How well can we predict or identify those likely to commit additional crimes and/or to fail to make court appearances if released?
- Are judicial officials making appropriate decisions regarding who should be released, how much bail should be set, etc.?
- Could more defendants who are currently being detained pretrial be released without increases in the rates of flight or pretrial crime?
- Do pretrial release programs themselves make enough of a difference, particularly once initial reforms and procedures are instituted in a community, to justify their continued existence?

INSLAW STUDY IN THE DISTRICT OF COLUMBIA

This study is one of 17 conducted under a four-year, $1.5 million grant from LEAA's National Institute of Law Enforcement and Criminal Justice (NILE) to the Institute for Law and Social Research (INSLAW) in Washington, DC. The studies are based on DC Superior Court records and the Prosecutor's Management Information System (PROMIS). 3/

This research was significant for a number of reasons: (1) It included some 11,000 defendants charged in the District with a felony or serious misdemeanor. (2) It examined the extent to which different types of defendants were more likely to miss subsequent court appearances and/or to be rearrested pretrial. (3) The study also attempted to assess whether the types of information that seem to shape judges' release decisions were, in fact, related to either measure of pretrial misconduct (failure to appear or rearrest).

The original draft of this study's report was prepared for LEAA review in March 1978, with a revision in October 1978. Subsequently, the report has not been officially published; nonetheless, parts of it have been widely quoted. Therefore, it was considered important to review the document here. 4/

3/ PROMIS is an information system designed for the use of prosecutors and courts. When this study was undertaken, the DC Pretrial Services Agency also maintained computerized records on defendants arrested in the District. These records contained some information not available through PROMIS, but it was not possible to use those records in the study. Thus INSLAW's analyses had to be based on PROMIS data. This led to some problems, as noted later under Limitations of the Research.

4/ One impetus behind the creation of Pretrial Issues was to allow timely discussion of important research documents, thereby allowing responsible criticism to become part of the public discussion of such documents. The draft report has previously been quoted in such forums as the LEAA Newsletter, The Washington Post, and testimony before Congress. LEAA provided clearance for publication in July 1979. INSLAW officials indicate that the report (Pretrial Release and Misconduct in the District of Columbia, co-authored by Jeffrey Roth and Paul Wice) is currently undergoing final editing and will be published in early 1980. For further information, contact Brian Forst at INSLAW, 1125 15th Street, NW, Washington, D.C. 20005.

RESEARCH APPROACH

All defendants charged in 1974 with a felony or serious misdemeanor in the District were included in the study. A wide range of information was available for each defendant--including charge, previous record, various defendant descriptive characteristics, release conditions set at arraignment, subsequent court appearance, pretrial rearrest and conviction information, etc.

Using some of the information available to judges when making the initial release decisions, the study attempted to determine what information predicted, respectively, judges' release decisions and defendants' pretrial misconduct (failure to appear in court and rearrests while on release).

The PROMIS data did not indicate which defendants, of those for whom financial conditions (money bail) were set, were eventually released. To determine this information, the researchers had to select from other court files a random sample of those defendants for whom money bail was set. This sample (about 22% of all such defendants) was used in the prediction analyses and in determining actual release rates for those for whom money bail was set.

MAJOR FINDINGS AND CONCLUSIONS

The study's primary findings are outlined below. Several seem clearly substantiated by the data; others are subject to certain limitations of the study.

Findings Not Subject to Limitations

The following findings and conclusions presented in the report appear justified by the data, despite the limitations noted later:

- More than 80% of all defendants obtained release prior to disposition of their cases, most without financial conditions. 5/
- Most released defendants returned for their court appearances (89%, including similar proportions of misdemeanors and felonies).
- Only about 4% of all released felony defendants and 3% of all misdemeanants willfully failed to appear. 6/

5/ About 62% of all defendants charged with felonies were released without financial conditions (including 17% released to a third party). Another 18% were released after posting either cash deposit or surety bond. About 80% of the misdemeanor defendants were released without financial conditions (9% to a third party). Another 12% were released on money bail. The report does not indicate how soon defendants released on money bail were able to actually post bail.

6/ "Willful" failures to appear were defined as those which either led to the defendant's arrest on a Bail Reform Act violation or had prevented disposition of the case when the data base was constructed in August 1975.

- Pretrial rearrest rates were slightly higher than failure-to-appear rates.

  About 13% of all defendants originally charged with felonies were rearrested pretrial, although only 5% were convicted on those new charges. For misdemeanors, the corresponding rates were 7% and 3% respectively.

- Although judges were generally similar in the frequency with which they set bail, the decisions as to types of financial or nonfinancial conditions set varied considerably.

  There was relatively little variation between judges either in the proportions of defendants released with financial conditions or in the bond amount set in such cases. However, there were variations among judges in the following: proportions of defendants released on personal recognizance (versus those released to a third party) and proportions for whom surety versus cash bond was set.

- The closer the jail population was to capacity, the greater was the likelihood of nonfinancial release conditions being set for defendants arraigned in the next month.

- Variables associated with pretrial rearrest were found to be quite similar to those associated with recidivism over a five-year follow-up period.

  This was based on a comparison of this study's findings with those of a separate INSLAW study of recidivism for defendants arrested in the District in a four-month period beginning in late 1972. The authors suggested that, given the different defendant populations and time periods of the two studies, the consistency of findings in both tends to support the ability to predict pretrial rearrests.

Findings Subject to Research Limitations

The following reported findings and conclusions should be interpreted cautiously in the context of the various limitations of the research discussed in the next section:

- Those released on personal recognizance appeared least likely to either be rearrested pretrial or to willfully fail to appear in court.
- The types of information (defendant characteristics, previous record, charge) which appeared to influence the judicial release decision (i.e., whether financial or nonfinancial conditions were set) had little relationship to those which were associated with failure-to-appear or pretrial rearrest. That is, those for whom financial conditions were set by judges did not appear to constitute a "high-risk" group in terms of either measure of pretrial misconduct.

A variety of characteristics or types of information which appeared to influence judges' release decisions had no significant relationship to either pretrial rearrest or FTA (failure to make court appearances); and the reverse was also true: various characteristics which did show a statistical relationship to pretrial rearrest and/or FTA appeared to have no influence on initial release decisions. Very few characteristics appeared to predict both the judicial decision and the likelihood of pretrial misconduct.

- Pretrial rearrests seemed to be more predictable than failures to appear in court.

  Several characteristics appeared to predict pretrial rearrests. Defendants charged with felonies—especially burglary, robbery, larceny, arson, and property destruction--were more likely to be rearrested, as were those with "an extensive criminal history" and drug abusers. Employed, white, and older defendants seemed less likely to be rearrested. On the other hand, relatively few characteristics appeared to predict failure-to-appear. Employed defendants appeared to be better risks; drug users were less likely to appear. None of the previous record indicators were shown to be related to FTA.

- For cases in which money bail was set, the greater the amount, the less the likelihood of release (for both cash and surety bonds). 7/ However, the amount initially set appeared to have no relationship to the likelihood of court appearance.

- The study concluded that if judges based their release decisions more consistently on the types of information that actually appear to predict failure to appear and rearrests, numbers of defendants detained pretrial could be significantly reduced with no increase in the amounts of pretrial misconduct; alternatively, if a different emphasis were desired, levels of pretrial misconduct could be reduced with no increase in the number of people detained pretrial.

  Specifically, by focusing on those most likely to miss their court appearances, the number of missed appearances could be reduced by 11% with no increase in the detained population; or, if the focus were on reducing the number of those detained, a 17% reduction could be effected with no increase in the nonappearance rate. Similarly, with no increase in the number detained, the number of pretrial rearrests could be reduced by 36% through more careful prediction; or the pretrial detained population could be reduced by 42% with no increase in the numbers rearrested.

7/ Yet even for defendants with low surety bonds set (less than $2,000), more than 40% never obtained their release.

LIMITATIONS OF THE RESEARCH

Despite the important issues raised by the study, the admirable attempts at developing predictor models, and the value of some of the information presented, the research has limitations which suggest that caution is advisable in interpreting and using the results:

- The reliance on PROMIS data led to problems. 8/

  —PROMIS maintained no information on whether bail amounts set at arraignment were subsequently reduced or eliminated. Thus, for example, there was no way of knowing what bail amounts were actually in force when defendants for whom money bail was set were subsequently released.

  --Because detailed release information was not available through PROMIS for defendants for whom money bail was initially set, a smaller sample of those defendants had to be selected to determine that information. However, the resulting sample sizes were too small for some of the analyses (particularly those comparing effects of different release conditions). This led the report's authors to admit that the ability to draw firm conclusions by type of release was somewhat restricted. 9/ Also, no data were presented to indicate whether the sample selected was, in fact, representative of the entire group of defendants for whom bail was initially set. Therefore, conclusions in the report concerning effects of types of release conditions (especially financial) should be viewed with caution.

  —PROMIS contained no data on a defendant's length of time in the community or at the present address, both of which are often considered by pretrial programs in determining their release recommendations. Various other indicators of community ties and socioeconomic status were also unavailable. These could have affected the levels of prediction possible.

- One of the report's central findings—that there is little relationship between factors or information affecting judicial release decisions and those affecting pretrial misconduct—is severely compromised because the reported relationships applied to different groups of the defendant population. Although never stated in the text, careful examination of the tables indicates that the judicial decision predictions were based only on felony cases; but the misconduct predictions were based on the combination of both misdemeanor and felony charges.

8/ INSLAW researchers acknowledge this, and point out that they and D.C. Pretrial Services Agency officials preferred to use the PSA's data base (see footnote 3). However, technical problems prevented this, leaving PROMIS data as the alternative.

9/ INSLAW's Director of Research, Brian Forst, correctly notes that there were some "statistically significant effects despite the alleged small sample problem". Nonetheless, the report itself labels conclusions based on comparisons of types of release "very tentative".

Because of the way the information was presented, it is impossible to determine what effect this discrepancy had on the conclusions. It may be that the overall conclusion of little relationship would not have changed, but this cannot be conclusively determined from the report in its current form. (However, co-author Jeffrey Roth has acknowledged this problem and indicates that the final report will make the needed changes and spell out the policy implications.)

- Differing numbers of defendants were used in various analyses with no explanation why.

  At best this was confusing; at worst, somewhat damaging to the overall reliability and credibility of the report. (Director of Research Brian Forst indicates that explanations will be provided in the published report.)

- The study demonstrated an ability to predict pretrial misconduct. However, it is uncertain from the analyses whether significant reductions of pretrial detention and/or of pretrial misconduct could result if judges made their release decisions more systematically based on factors identified by the study.

  --Although the statistical analyses indicated that pretrial misconduct could be predicted at a better-than-chance level, there would be many errors made in predicting what a particular individual would do. (INSLAW researchers agree, but emphasize that their predictions would lead to an improvement over current decision making practices.)

  --The factors or types of information used in the study to predict pretrial misconduct included some information which would be of no value to a judge in making a decision whether or not to release someone. That is, the reported prediction levels were inflated by including, in the pretrial misconduct predictions, information about the type of release conditions assigned by the judge. The problem with this, of course, is that this information would be known only after the judicial decision has been made and, therefore, would have limited predictive utility in aiding the judge in making those decisions. Thus a judge's ability to predict misconduct would presumably be somewhat less than that reported by the study. (Jeffrey Roth suggests, however, that it is the composite effect of predictors and release conditions that is important, and that a judge should consider this joint effect in the release decision. However, some of the concerns stated earlier about the sample size for defendants assigned money bail still suggest caution in interpreting any predictions based in part on release conditions.)

  --Before making definitive statements about the extent of reduction possible in pretrial detention and/or pretrial misconduct rates, the predictions should have been checked against a more current sample of defendants, i.e., a group of defendants not included in the data base used to determine the original predictive relationships. If the predictions were to

hold up for an independent group of defendants (from a different year), then the conclusions would be justified. The authors themselves pointed out in their report "the importance of validating results across samples", yet they did not do so. This may understandably have been beyond the scope of this study, but the report's conclusions should then have been qualified accordingly. (INSLAW researchers agree with this point, saying that they were prevented from doing this by a limited research budget.)

In addition to these limitations in the study as carried out, there were also omissions which were less crucial. Had the study incorporated them, further interpretations of the data could have resulted:

- The study "lumped" all conditional or supervised releases (except for third party) together with true own-recognizance releases, into a combined personal recognizance release category.

  The ability to further differentiate cases on conditional or supervised release from those on own-recognizance release would have been helpful in assessing the value and appropriateness of various release conditions.

- The study made no attempt to assess the effect of "exposure time" (the amount of time a defendant was released pending case disposition).

  Much previous research has suggested that the longer the time from arrest to trial, the greater the probability of rearrest and failure to appear. The authors noted the importance of this issue, suggesting that it "should be addressed in future research", but concluded that it was beyond the scope of the study. Such information could have been helpful, for example, in assessing the potential impact of enforcing speedy trial guidelines on pretrial misconduct.

STUDY IMPLICATIONS

The implications of this study are difficult to assess, given the limitations noted. It is unfortunate that a study of such scope and visibility appears to have such serious limitations. Nonetheless, it has made a contribution in raising serious questions about: (1) the relationship of judicial release decisions to subsequent pretrial misconduct, and (2) the issue of preventive detention in the context of the "dangerous defendant".

More specifically:

- The research performs a valuable service in questioning the extent to which systematic, rational release decisions are made. The potential value of and need for more direct feedback to judges on their release decisions is strongly suggested by the research.

Although the study's conclusions may be less definitive than indicated in the INSLAW report, it still appears that there were important differences between the factors or types of information that seem to affect judges' release decisions and those that were actually associated with FTA or pretrial rearrest.

- Although the magnitude of predictive capability claimed by the study should be questioned, there did appear to be some ability to identify a "higher-risk" defendant and perhaps even to improve on the ability to reduce the detained population without increasing pretrial misconduct.

  It is possible that the ability to predict could be further enhanced if additional types of information not available to INSLAW at the time of the study could be used in making the predictions.

LAZAR NATIONAL EVALUATION OF RELEASE

The Lazar Institute is currently midway through the final year of its three-year Phase II national evaluation of pretrial release. The evaluation was designed as a follow-up to the Phase I study, conducted by the National Center for State Courts. The Phase II evaluation is being funded by LEAA's National Institute of Law Enforcement and Criminal Justice.

The evaluation was designed to address several issues suggested and left unresolved by the Phase I study. Among those issues were: (1) the extent and predictability of pretrial criminality and of failure-to-appear in court, (2) the relationship between different types of release and such pretrial misconduct, (3) whether factors affecting judicial release decisions are similar to those affecting pretrial misconduct, (4) the impact of pretrial programs on release rates and pretrial misconduct, (5) the cost effectiveness of those programs, and (6) the nature of the operations of release programs and how they interact with other parts of the criminal justice system.

This evaluation is important not only for the significance of the issues it considers, but also for the fact that those issues are analyzed using a large data base from a number of sites offering a wide range of release services and procedures. Thus overall findings can be reported, but variations can also be related to differences in program or in local context.

To date, Lazar has published a number of interim reports containing partial analyses of the data. 10/ These include descriptions and process analyses of eight programs and their relationships with the

10/ For further information contact Mary Toborg at the Lazar Institute, 1800 M Street, NW, Washington, DC 20036.

criminal justice system, outcome analyses in some of those sites, a preliminary analysis of defunct release programs, preliminary three-site summary (aggregate) outcome analyses, 11/ and preliminary eight-site aggregate analyses on pretrial rearrests. 12/

The evaluation is scheduled for completion no later than November 1980, and Lazar anticipates completion several months prior to that time. Although farthest from completion of any of the studies being reviewed here, the significance of this evaluation and the fact that some new information has recently been reported by Lazar made it appropriate for discussion at this time.

RESEARCH APPROACH

Ten different jurisdictions currently providing formal pretrial programs are included in the evaluation. Descriptive and process analysis, retrospective (after-the-fact) outcomes analysis, and experimental design techniques are used to study the issues addressed by the evaluation. In addition, two other jurisdictions with no formal release program are being analyzed in depth (one is a defunct program site; the other has never had a program). Several other sites were also studied in less detail as part of the defunct program analysis.

It is significant that some form of experimental analyses (with control groups) are underway in four of the ten program sites, although there are some problems with the experimental portion of the evaluation. 13/ The opportunity to undertake such experimental approaches is rare in the pretrial field. Perhaps even less frequent are cost effectiveness analyses, which this study is also attempting in the four experimental sites.

The total number of defendants included in the data analyses is expected to exceed 5,000 (both misdemeanors and felonies). A considerable amount of information is available for each case. Included are various community tie indicators (time in community and at local address, living arrangements, marital and employment status, etc.); previous arrests, convictions, and pretrial misconduct information; point scale scores; age, sex, and race; charge; release status; whether bond was met or not; pretrial rearrests (and convictions); and disposition and sentence on original arrest. Also included is information on exposure time (i.e., length of time on release). As in the INSLAW research, variables are being related to the type of release decision and to subsequent failure to appear and pretrial rearrest in an attempt to determine whether release decisions appear to be made on a rational, systematic basis.

11/ Published in the 1979 Pretrial Services Annual Journal.

12/ In "Crime During the Pretrial Period: A Special Subset of the Career Criminal Problem," co-authored by Mary Toborg, of Lazar, and Brian Forst, of INSLAW, for presentation to the Career Criminal Workshop sponsored by NILE in September 1979.

13/ Primarily related to obtaining program agreement to use experimental approaches in their programs. Those ultimately agreeing have various unique characteristics that may somewhat limit the ability to generalize the findings. Further comments on the designs employed in each site will be deferred until results from the experimental analyses become available.

MAJOR FINDINGS AND CONCLUSIONS

All findings from the study are tentative at this point. Only those recently reported by Lazar will be discussed here. Most of them pertain either to pretrial criminality or to the preliminary analysis of defunct programs. 14/

Findings Not Subject to Limitations

As in the INSLAW discussion, the study findings which appear most defensible are separated from those where more caution is necessary. The findings and conclusions which appear most justified include:

- About one of every six defendants released across all eight retrospective sites was rearrested at least once during the release period.

  Of those rearrested, almost 1/3 were rearrested more than once; just under 40% of the rearrests were for serious crimes (FBI Part I offenses). In preliminary three-site findings, about half of those rearrested were convicted on the new charges.

- Defendants with more serious original charges had higher pretrial rearrest rates (almost one in four) than did those charged with less serious crimes (about one in eight).

- Those rearrested were twice as likely as those not rearrested to have had some type of active criminal justice system involvement (on pretrial release, probation, or parole) at the time of their arrest on the instant charge (36% versus 18%).

- Those rearrested had more extensive prior records than those not rearrested (an average of 5 prior arrests and 2.5 convictions versus 3 and 1 respectively) and were more likely to have been unemployed or on public assistance when arrested on the instant charge.

- Courts frequently took no serious action if a defendant was rearrested pretrial or failed to appear in court.

  Upon a rearrest, courts most frequently increased the bond or set it for the first time; but, in more than 1/3 of the cases, release circumstances from the first arrest were continued with no further action taken. A similar pattern existed for a second rearrest.

14/ The pretrial criminality preliminary findings are based on data from the eight retrospective site sample of about 3,500 defendants. None of the experimental data are yet available. Preliminary findings from the defunct program analysis are based on 12 programs which had either completely ceased to exist or had had services suspended for a time and then subsequently resumed. Information was obtained through telephone interviews with former program directors, judges and other criminal justice officials in the jurisdictions; two site visits; and review of existing program reports or research analyses, where available. Lack of adequate information from several of these "defunct" sites suggests that caution should be placed on the interpretations of the findings, but the questions they raise are important.

It was only if there was a third rearrest that the pattern changed substantially—with higher proportions of detentions and increases in bond amounts, and no further action taken in only about one of six cases reaching that point.

Preliminary three-site data indicated that in about one of every five FTAs, no action was taken, although in most cases some combination of the following took place: a bench warrant was issued, bail was set, own-recognizance release was revoked. However, prosecution was rare for failure-to-appear in court (less than 10% of all FTAs); even fewer were convicted of an FTA.

- Most rearrests occurred fairly early in the release period: 16% within one week of the original arrest, 45% within four weeks, and 67% within eight weeks.

Findings Subject to Greater Caution

Those preliminary findings from the Lazar study which should be treated with more caution follow. The first findings appear justified by the data but must be labelled as tentative, since they are based on only three sites:

- Those rearrested pretrial were also twice as likely to fail to appear at least once in court proceedings for the original arrest as were those not rearrested (26% vs. 13%).

  The nature of this overlap between rearrests and FTAs and its cause-and-effect implications will be addressed further by Lazar.

- There appears to have been a more consistent relationship between those factors affecting the judicial release decision and those affecting pretrial misconduct (FTA or rearrest) than appeared to be the case in the INSLAW analysis.

  If these findings hold up, they indicate that previous criminal record and some aspects of community ties may in fact have a significant relationship to both the judicial release decision and pretrial misconduct.

The following findings concern "defunct" programs and should be treated with caution because of the tentative and incomplete nature of the data on which they were based (see footnote 14):

- Evidence was mixed but suggested relatively minimal impact of the 12 defunct programs.

  Interview findings suggested that the programs had resulted in increased release rates, lower failure-to-appear rates, and no increase in pretrial rearrest rates. Data gathered from existing reports appeared to confirm some program impact on increasing release rates during the life of the program. In the two sites where relevant data existed, release rates continued at about the

same levels after the program's demise, suggesting that judicial attitudes may have been changed—but that the programs may no longer have been making an added contribution to increasing the release rates. What little data were available suggested that there may have been some slight program effect in holding down FTAs, but the evidence was flimsy at best.

- Lazar concluded that programs may not have done sufficient initial work in planning or in soliciting and involving key officials (including those opposed to the program concept) in the program development efforts.

  In several cases they apparently failed to build a strong support base and, therefore, had no constituency of supporters to help when the "fiscal crunch" came.

LIMITATIONS OF THE RESEARCH

The analysis of defunct programs was clearly limited by the inadequacy of reliable data for most of the programs. The conclusions, therefore, are speculative; but the issues they raise are important for the pretrial field to consider. Lazar is currently studying one defunct program site in greater detail through analysis of outcomes for samples of defendants processed before, during and after the program, and through an in-depth consideration of release practices over those time periods. This may offer additional insights concerning causes and consequences of program demise.

The findings reported to date are preliminary and have not yet controlled for defendant characteristics (including previous record and current charge) in assessing what impact different types of release may have in preventing pretrial misconduct. However, Lazar indicates that such analyses are in process and that findings will be reported subsequently.

Other questions or possible limitations about the research will be discussed when more information is released by Lazar in the future.

STUDY IMPLICATIONS

- Based on data from the eight retrospective sites, substantial proportions of those released (16%) were rearrested. Preliminary analyses suggest that correlates of such "danger to the community" can be identified with at least better-than-chance accuracy. This could potentially increase the ability of judges to make "safer" release decisions, given proper feedback on what types of information appear related to pretrial crime. Subsequent analyses will address the impact of supervised release and the various other forms of release on pretrial crime. They should also begin to isolate possible "high-risk" types of defendants for whom

certain conditions or forms of supervision might most appropriately be tried to reduce the risk. These analyses should provide useful information in the debate over what might be possible to deal with the problem of "danger".

- If most rearrests occur within two months of the original charge, as the data indicate, a 90-day requirement for speedy trials may not itself be a panacea for dealing with "dangerous" defendants, as some have thought. However, a prioritized speedy trial calendar, focusing on even earlier trials for some, may make important inroads toward reducing pretrial rearrests. The final Lazar reports will deal further with this issue.

STUDY OF FEDERAL PRETRIAL SERVICES AGENCIES

Title II of the Federal Speedy Trial Act of 1974 authorized the establishment of demonstration pretrial services agencies (PSAs) within ten federal district courts. Congress further mandated that in five of the districts the agencies be operated through existing federal probation offices and that in the other five the agencies be created as independent operations responsible to boards of trustees. Between October 1975 and April 1976, all agencies became operational.

The Director of the Administrative Office of the U.S. Courts was required to submit to Congress by mid-1979 a detailed evaluation of the agencies. That report was to address the accomplishments of the ten PSAs, with particular emphasis on their effectiveness in reducing pretrial crime and in reducing unnecessary pretrial detention. The report was also to compare the respective accomplishments of the Board and Probation agencies.

The Research Division of the Federal Judicial Center was requested by the Chairman of the Probation Committee of the Judicial Conference to undertake an independent analysis of the data base constructed by the Administrative Office of the Courts (AOC). The Judicial Center report became an appendix to the full final report of the AOC, which was completed in June. The entire report has gone to Congress and will serve as part of the basis for Congressional hearings (scheduled to begin shortly) on the future of the agencies. 15/

Congress has previously appropriated enough money to assure that the PSAs can function through mid-1980. By that time it is expected that Congress will have decided on the future of the PSAs. Thus the research and report are significant, as the conclusions will affect the future of the federal pretrial release system. 16/

15/ For more information about the report, contact Guy Willetts, of the Administrative Office of the U. S. Courts, Pretrial Services Branch, 1030 Executive Building, 15th and L Streets, NW, Suite 1000, Washington, DC 20005.

16/ It should be noted that the Administrative Office's report itself is significant because of the frequent use of graphs to present the major findings of the study. As a result, the report is easy to follow. This attention to style of presentation is a good example of concern for one's audience and a desire to make the information easily accessible to busy decision makers.

RESEARCH APPROACH

More than 30,000 cases, processed both before and during the existence of the PSAs, are included in the data base. This represents the largest data base ever available to researchers in the pretrial release field. As such, opportunities exist for addressing nearly any issue of pertinence to the release field. 17/ This is particularly true inasmuch as the data make possible a comparison of probation and independent release agencies, and allow for comparisons between defendants processed through formal pretrial agencies and nonagency procedures.

The information available on each defendant is quite comprehensive. A variety of characteristics of the person, his or her ties to the community, previous record, type of charge, etc. is combined with detailed information on the type of release, bail amount, bail review hearings, whether placed under PSA supervision, various types of bail violations, time on release, time detained prior to release, case disposition, and sentences. 18/

All cases processed through the ten PSAs since their beginnings in 1975-76 were included in the data base. To provide a comparison with what happened in the same districts prior to the establishment of the PSAs, samples were also drawn of defendants processed in the two years immediately preceding the startup of the new agencies. Furthermore, in order to control for the effect of the Speedy Trial Act, five federal districts without PSAs were selected as comparison sites. 19/ A sample of almost 3,000 defendants was selected from the comparison districts from 1974, before the PSAs began, and 1977, the second year of the PSA operations. This enabled a pre-post comparison of non-PSA districts to see whether improvements were occurring in those districts without the effect of a formal program.

In selecting the samples from the pre-PSA years in the ten demonstration districts and from both years (1974 and 1977) in each of the comparison (non-PSA) districts, only convicted defendants were used, since presentence investigation reports were the best source for the data, and such reports are typically prepared only after conviction. Therefore, analyses involving any types of comparisons of what happened before and after the PSAs began necessarily focused strictly on convicted defendants. 20/

17/ Caution, however, should be exercised in generalizing too much from federal to nonfederal agency data.

18/ There is no information on subsequent bail reductions, nor is there an indication of what the actual original program release recommendation was for PSA defendants. There is an indication of whether the type of release followed PSA's recommendation, but no ability to determine what the specific recommendation was if it differed.

19/ This was designed to help assure that any changes noted over time in the ten PSA districts could be attributed to the agencies and not to effects which would have occurred anyway without the PSA, such as effects associated with speedy trial requirements.

20/ Nineteen percent of all Probation district cases and 23% of all Board cases were defendants who were never convicted (according to information from the

Separate analyses were undertaken by the Judicial Center and by the AOC. These analyses frequently employed different procedures, used different bases of comparisons, and had different emphases. The Judicial Center placed more emphasis on comparisons of the PSA and non-PSA districts. The AOC, on the other hand, placed greater emphasis on comparisons between the Probation and Board agencies. The AOC also focused more on measuring changes in variables from year-to-year. 21/

MAJOR FINDINGS AND CONCLUSIONS

As will be seen in the limitations section which follows, there are few findings from either the Judicial Center or AOC analyses which can be stated conclusively. Either because of differences in interpretation or analysis between the two reports or because of unanswered questions, most of the findings are questionable at this point. It does not mean that these findings were necessarily wrong, but simply that whether they were correct or not cannot be determined from the data presented in the two reports. All findings presented here pertain only to convicted defendants unless otherwise noted.

Findings Reflecting Agreement

The following findings and conclusions reflect general agreement in the Judicial Center and AOC analyses (or were dealt with by only one of the reports). However, even such agreement may not be justified, subject to the limitations discussed in the next section:

- Comparison districts (those with no PSAs) as a group showed a faster rate of improvement from 1973-74 to 1977-78 in (1) increasing initial release rates, (2) increasing proportions of nonfinancial release and (3) decreasing proportions of defendants detained at any point pretrial than did either Board or Probation districts.

  Although the comparison districts improved more rapidly over the five-year period, the PSA districts nonetheless remained superior to the comparison districts on all three of those measures.

- A survey of 54 judges, magistrates, U.S. Attorney's staff, and defense attorneys in the ten PSA districts provided generally positive support for the impact of PSAs and for their continuation in the future.

- Board districts had lower overall detention rates and showed greater reductions in those rates over time, compared with Probation districts.

21/ This was done through use of time series analyses. Rather than combining numbers into single pre and post totals (as the Judicial Center did in most of its analyses), time series analysis involves plotting the different types of information at various points in time, enabling trends to be more readily determined.

However, the Judicial Center authors attributed the apparent Board advantage to differences in seriousness of offense and use of money bail in the Board and Probation districts.

- Board PSAs have had more nonfinancial releases and have increased those rates over time more than Probation districts.

  This relationship was maintained when comparing directly for the same types of serious charges.

- Board PSAs have also increased the rates of release at the initial appearance for nonconvicted defendants, compared to a decline for Probation districts. For convicted defendants, Board agencies have maintained a less pronounced advantage.

- A higher proportion of defendants was placed on supervision in Probation than in Board districts.

- There was a significantly greater reduction in FTA rates over time in Probation districts than in Board PSAs.

Findings Reflecting Disagreement

The following findings reflect disagreement between the Judicial Center and AOC reports:

- The reports differed on the impact of PSAs in reducing FTA rates.

  The Judicial Center indicated that although PSAs did reduce them, the rate of reduction was no greater than occurred over time in the comparison (non-PSA) districts. The AOC report, on the other hand, indicated that PSAs were considerably more effective in reducing FTA rates than were the comparison districts.

- The reports also differed on PSA impact on pretrial rearrests.

  The AOC report indicated that the PSAs had led to significant reductions in rearrest rates over time, while the comparison district rates had increased. The Judicial Center report concluded that PSAs did do better in reducing rearrest rates for those released following felony charges; but the opposite effect was indicated for misdemeanors, although the difference was not statistically significant.

- The reports differed on Board vs. Probation impact on pretrial crime.

  The AOC report concluded that Board agencies showed more reduction of pretrial crime over time than did Probation; the Judicial Center report, however, indicated that there were no significant differences between the two in amounts of reductions over time.

- The ultimate report recommendations, made by the AOC, were for Congress to grant statutory authority to maintain the ten PSAs and to expand to other district courts "when the need for such services is shown". New units should be "independent of the probation service, except in those districts in which the caseload would not warrant a separate unit".

  The Judicial Center report made no specific recommendations.

LIMITATIONS OF THE RESEARCH

The question becomes, what does all of the above mean? Despite the somewhat anti-PSA and pro-Probation conclusions of the Judicial Center analyses and the pro-PSA, pro-Board conclusions of the AOC analyses, there is no clear answer. Given the lack of controls built into the research and some of the limitations already suggested above, the ambiguity of the results is not surprising.

It is understood that some analyses could not realistically have been addressed at this time. Nonetheless, some issues and analyses which were realistic and which seem necessary to provide unambiguous answers to Congress were not addressed, either by the Judicial Center or the AOC. The information presented frequently did not go far enough to adequately answer many of the key questions.

- In both reports, few analyses attempted to adequately control for differences in the types of defendants and charges across the various samples.

  For example, the comparison districts appeared to have been substantially different from the PSA districts, particularly in terms of changes over time in the proportions of cases included in the sample from each district and in the type of charges and previous record of the defendants. Clearly, this would affect the interpretation of the PSA vs. non-PSA findings. In fact, there appeared to have been decreases in the proportions of "higher-risk" defendants over time in both the comparison and Board districts (based on somewhat unclear data presented in the Judicial Center report). 22/ What impact would analysis of such changes have had on the conclusions? And those apparent trends pertained only to convicted defendants; what was the corresponding pattern for the nonconvicted? These questions were not dealt with in the analyses.

- If the characteristics of defendants in each group are different, the analyses should first make that fact clear and then proceed to statistically control for those differences to answer the subsequent question: "For those who are similar in the different samples, which approach makes the biggest difference?"

22/ Board districts have the highest absolute proportions of higher-risk defendants of all the districts in 1977-78, despite the decreases over time.

--To be more specific, defendants' characteristics, previous criminal activities, and the charges must be delineated much more precisely for each group (convicted vs. nonconvicted, PSA vs. comparison districts, pre-PSA vs. post-PSA years, Board vs. Probation, etc.). The characteristics should be monitored separately for each year to enable trends to be noted.

--The following types of variables should have been analyzed: u s e of various types of release (rather than simply financial vs. nonfinancial), percentage of recommendations accepted by the judge, bail amounts set, extent of assignment to agency supervision, days detained prior to release, etc. Have the types of release options used, bail amounts assigned, etc., changed over time? It is important to know how similar types of defendants fared against these variables in the different districts in order to judge the impact of the PSAs and the relative impact of Board and Probation districts.

--Once such questions are answered, it would become important to assess pretrial crime and FTA rates for similar defendants released through the various options. The Judicial Center report made some attempts at these types of analyses but did not go nearly far enough.

- Any subsequent analyses of the data should include a more careful analysis of all defendants, not just the convicted ones.

  Analyses indicated clear, statistically significant differences between convicted and nonconvicted defendants. This is important because, as noted in footnote 20, about one of every five defendants in all districts were not convicted; yet many of the analyses were based only on convicted defendants. Of 18 defendant and case-processing characteristics measured, 15 showed significant differences between the samples, leading the Judicial Center authors to conclude that their report's findings (based only on convicted defendants) could not be generalized to the nonconvicted defendants.

  AOC officials indicate that it was simply impossible to obtain even small samples of non-PSA nonconvicted defendants. Nonetheless, at least all analyses of Probation vs. Board agencies should have included both convicted and nonconvicted defendants, since such data were always available for the PSAs. Unfortunately, the Judicial Center report excluded the nonconvicted from virtually all analyses, and the AOC report was inconsistent in its use of the convicted and nonconvicted groups.

- The analyses included all defendants in the districts, including those not processed by the PSAs. The fact that in some cases the number of non-processed defendants was substantial could have affected the conclusions considerably and in unknown ways. Only cases actually interviewed by the PSAs should have been included in the analyses.

STUDY IMPLICATIONS

The Judicial Center report implies that the federal release programs (PSAs) have made little difference. The Administrative Office of the Courts not only says that the programs have made a difference but that Board-run or independent programs are preferable to Probation-run agencies. Unfortunately, neither set of conclusions seems justified at this time. In fact, the only firm conclusion that seems reasonable is that there is no firm conclusion which is justified by the analyses done thus far.

Congress will hold hearings on Title II in the near future. It is hoped that additional analyses will be done before a permanent decision is made about the future of federal PSAs.

Perhaps it is appropriate here to quote the Judicial Center's report, which in its conclusions stated:

> "There is much more that can be done to understand better the relationships between pretrial services, detention, crime on bail and characteristics of defendants. We readily agree that further analysis could conceivably change the above findings." (emphasis added)

OVERALL IMPLICATIONS AND FUTURE RESEARCH NEEDS IN PRETRIAL RELEASE

- Among the key issues raised at the beginning of this section on release were the interrelated ones of pretrial crime, preventive detention, and what should be done about the "dangerous" defendant. What have we learned about these issues from the three studies just discussed, and what is still to be learned?

  Both the Lazar and INSLAW studies suggest that it may be possible to identify with some limited degree of accuracy a "higher-risk" group of defendants. Assuming that some ability to predict such defendants at the point of making release or detention decisions does in fact exist, the question is then how that information is to be used.

  It may be that many "dangerous" defendants can be released without undue risk under certain types of restrictions or conditions. More research is needed to determine experimentally whether different conditions or levels of supervision can help reduce subsequent pretrial misconduct for defendants with varying degrees of "risk." Such research is presently being contemplated for funding by NILE and could have significant implications for future directions in the release field.

Data from earlier studies, now being confirmed in several sites in the Lazar research, suggest that courts take relatively little serious action once a defendant on release is rearrested or fails to appear for a court appearance. This suggests that more consistently-applied follow-up efforts by the courts might also have a positive impact in reducing pretrial misconduct.

- The issue of the appropriateness of using community ties to identify who should be released under what conditions is certainly not resolved by the research reported here. There seems to be some indication, however, that at least certain indicators of ties to the community (employment foremost among them) are associated not only with judges' decisions but also with subsequent appearance in court. What is clear is that there are few automatic, across-the-board predictors of pretrial misconduct. Variables differ from jurisdiction to jurisdiction, and may even vary over time as conditions change. As such, there is a need for programs to periodically reassess the appropriateness of the criteria being used in their jurisdictions to determine release eligibility.

- Of importance to the future of the release field are the issues of the impact of the bail bondsman and of percentage deposit bail on pretrial misconduct for similar types of defendants. The Lazar research may be able to shed some light here in its subsequent analyses, and the federal data have the potential to do so as well. In addition, a federal study of the impact of bondsmen may be funded next year by the National Institute.

- Finally, two of the three studies have addressed the questions of the relative impact of pretrial programs on the criminal justice system and the need for continuation of such programs after a certain point. The findings are far from conclusive as yet, but they raise important questions which should be seriously addressed by the field. For example:

  —It may be that some programs in the future should be playing a more active supervisory role—perhaps spending less effort on making recommendations or verifying information--as a way of releasing more people and assuring that the community is "protected" from "dangerous" defendants.

  —In other cases, it may be that programs have been unnecessarily cautious in their approach to release recommmendations and need to begin to loosen up their overly-restrictive criteria.

  The key is for programs to assess their role more realistically and to be willing to attempt new approaches as needed on an experimental, demonstration basis.

SIGNIFICANT RESEARCH FINDINGS CONCERNING PRETRIAL RELEASE

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SIGNIFICANT RESEARCH FINDINGS CONCERNING PRETRIAL RELEASE

The summary of research that follows has been organized according to eleven major issues which are relevant to individual release decisions and to systems reform. The discussion highlights findings as they relate to measures of both court appearance and pretrial rearrest because the law in some states allows a consideration of the "danger" factor in addition to an assessment of risk of flight.

Conclusion No. 1

The vast majority of defendants who are released awaiting disposition of their case return for all court appearances and remain arrest-free while on release.

Careful research conducted in numerous sites around the country indicates that upwards of 90 percent of all defendants released while awaiting disposition of their cases do appear as directed for all scheduled court sessions. 1/ Appearance rates exceed 95 percent in several jurisdictions, particularly those in which there are active pretrial release programs. 2/ Willful failures to appear in court, where the defendant absconds or is returned only after being apprehended, typically do not exceed 4 percent of all released defendants. 3/ Thus the clear consensus of the research findings is that few defendants escape prosecution as a result of being released into the community while awaiting disposition of their case.

Rates of pretrial criminality are more difficult to assess, primarily due to difficulties in defining and reliably measuring pretrial crime. 4/ Not surprisingly then, estimates of the amount of such pretrial activity vary considerably across research studies. Several indicate rearrest rates of between 10 and 15 percent, with corresponding conviction rates of between 5 and 10 percent. 5/ Other research has reported lower rearrest rates of between 3 and 8 percent. 6/ Most of the studies suggest that even where the overall rearrest rates seem to be high, there are relatively few rearrests for serious or dangerous crimes during the pretrial period (with reported rates typically not exceeding 5 to 7 percent). 7/

Conclusion No. 2

Release on recognizance and other non-financial forms of release are as effective as, if not better than, financial methods of release in assuring appearance in court and minimizing pretrial rearrests.

Several studies have shown that defendants released through the auspices of a pretrial release agency or through other non-financial means have higher court appearance rates and lower pretrial rearrest rates than do defendants released on money bail. 8/ Other research has shown more mixed findings, but with few significant differences in rates between those released through non-financial and financial methods. 9/ The data from nearly all studies, confirm that there is no basis for the continued widespread use of financial money bail. Based on the research findings, two noted commentators in the field have unequivocably stated that most jurisdictions could significantly increase their use of own

recognizance and other non-financial forms of release without increasing the rates of non-appearance or of pretrial rearrest. 10/ In fact, in the 1970s, substantial increases in own-recognizance release were instituted on an experimental basis in two communities, in California and New York, with no increase in non-appearance rates. 11/

It should also be noted that those ultimately released on high money bail do not appear to be any more likely to return for their court appearances than those with lower bail set. This is another indication that money bail frequently does not provide an incentive to return to court, as was once thought. 12/ Moreover, available information suggests that that released through bail bondsmen are more likely than those released through pretrial release programs to fail to appear in court or to be rearrested pretrial. 13/ To the extent that financial release continues to exist, tentative data suggest that those released on percentage deposit bail (e.g., 10 percent) are as likely to appear in court as those released through bondsmen or other forms of financial release. So far there is insufficient data available to know the effect of percentage deposit bail on pretrial rearrests. 14/

Conclusion No. 3

The establishment of effective pretrial release recommendation procedures can lead to significant reductions in the pretrial detainee population, without increasing the rates of rearrest or of non-appearance in court.

The National Bail Study, conducted by Wayne Thomas, indicated that between 1962 and 1971 there were significant reductions in the proportions of defendants detained from arrest to disposition in the 20 cities studied. Despite the fact that there was about a 30 percent reduction in the detention rates during that period, the court appearance rates actually increased in some cities. There was a slight overall increase in the failure rate across all 20 cities, but Thomas concluded that in the future most jurisdictions could safely increase their rates of non-financial release without negatively affecting appearance rates. 15/

Data from Philadelphia indicate that the introduction of a pretrial release agency (in conjunction with the establishment of 10 percent deposit bail) led to a 28 percent reduction in the pretrial jail population over a five-year period when the number of arrests was increasing by 5 percent. This reduction took place without a corresponding increase in the rates of failure to appear in court or of pretrial rearrests. 16/ Separate studies in Denver, Colorado; Rochester, New York; and San Francisco, California, have demonstrated the impact of release programs in reducing the detained populations in ways that were cost effective for their communities. 17/

Although there were problems with some of the analyses, data in a recent study on pretrial release and misconduct in Washington suggested that release decisions based on predictions developed during the study could lead to substantial reductions in the detained population in the District of Columbia, with no increase in the numbers of defendants rearrested or failing to appear in court. 18/ Further support for such reductions comes from a comparison of outcomes of release decisions made by two judges in Washington for similar

groups of defendants meeting the District's criteria for eligibility for preventive detention. Bail conditions set by one judge allowed 80 percent of the defendants to gain release, compared to only 49 percent for the other judge. Despite the difference, the rearrest rates were almost identical (9 and 8 percent respectively). Thus a substantial number of additional defendants could have been released with no appreciable impact on crime in the District. 19/

The extent of reduction of detainees possible obviously depends in large part on the procedures, practices, and philosophies adopted by the release program when compared with those in existence prior to the advent of the program. Thus the impact will vary somewhat across jurisdictions. But the general conclusion should apply to most areas: Jail populations can be reduced without adversely affecting the community.

Conclusion No. 4

The expense of pretrial release programs can be favorably compared with the costs associated with unnecessary pretrial detention.

The actual extent to which a given program can prove to be cost effective depends on how it operates, its staff size, how often it recommends own-recognizance release, the frequency with which its recommendations are accepted by a judicial officer, the point at which the recommendations are made and the release occurs, etc. Clearly, an effective release program can save a jurisdiction money, as demonstrated in several studies in different types of communities. 20/

Moreover, many defendants are detained throughout the country during the entire pretrial period with minor charges and with low bonds set, simply because of an inability to post even those low amounts. A number of these could be safely released without financial conditions being imposed. 21/ Furthermore, many defendants are detained for short periods of time and then released pending trial. There are substantial costs--to both the defendant and the system--associated with such unnecessary short-term detention. The compound effect of these two categories of pretrial detainees is to substantially increase unnecessary pretrial detention costs, with little or no added protection to the community or to the judicial process.

Conclusion No. 5

The outcome of the pretrial release decision (whether the defendant is released or detained prior to trial) can have a significant impact on his/her ultimate disposition and sentence.

Research has consistently confirmed that a defendant's pretrial release or detention status affects his/her ultimate disposition and sentence. Proponents of this point of view generally attribute this to one or a combination of three factors: (a) reduced access of the detained defendant to counsel and in general a reduced ability to prepare his/her defense, (b) pressure on the detained defendant to plea bargain, and (c) a negative perception of the detainee on the part of the court and/or jury.

Findings have shown that released defendants are more likely to have their cases dismissed; less likely to be convicted; and, if convicted, less likely to be incarcerated. 22/ . One researcher has suggested that some judges may set high bail to help assure pretrial detention as a means of imposing a form of "pretrial punishment" on defendants accused of serious crimes and/or with lengthy records. 23/

More recently, one researcher has raised questions about some of the earlier findings, suggesting that they may be less clear cut than has been assumed. His study in Philadelphia indicated that pretrial custody had no effect on the disposition of the case but that it did influence whether the defendant was sentenced to jail. Thus he concludes that pretrial detention may negatively impact on a defendant's ultimate sentence if convicted. 24/ Recent findings for felony cases in Houston suggest a similar conclusion. 25/

Conclusion No. 6

The longer a defendant is on pretrial release, the greater the probability that s/he will miss a court appearance and/or be rearrested.

Most studies which have assessed this "exposure time" variable have concluded that substantial proportions of both missed appearances and pretrial rearrests occur several weeks or even months into the release period. Even when a study in North Carolina took into account such factors as previous record and nature of current charge, exposure time on release was the most important factor in explaining both missed court appearances and rearrests. 26/ Other studies have shown that more than 60 percent of all rearrests and failures to appear occur after more than two months on release. 27/ Although a few studies suggest that significant proportions of both missed appearances and rearrests occur earlier, 28/ the overall findings lead to the conclusion that speedier trials and/or specific prioritization of court calendars could be instrumental in significantly reducing the amount of missed court appearances and crimes committed while on release. 29/

Conclusion No. 7

The risk of nonappearance or of serious pretrial crime does not appear to increase with the seriousness of the original charge.

In contrast to the "conventional wisdom" that defendants with serious charges and/or a strong probability of conviction will fail to appear in court, most research has shown no such effects. 30/ In fact, there is considerable evidence that in many cases defendants charged with the more serious offenses are the best risks. 31/ Some studies have shown that particular charges have specific relationships to failure-to-appear rates (e.g., alleged property offenders and those charged with prostitution may have higher FTA rates; persons charged with assault may be more likely to appear). But the overall conclusion of those who have systematically reviewed the literature in this area is that severity of charge is not a good predictor of nonappearance in court. 33/

The data on the relationship between original charge and subsequent pretrial rearrest are less clear. There are a few studies which suggest that those charged with more serious crimes are no more likely to be rearrested than are those charged with less serious offenses. 34/ On the other hand, several studies have indicated that there is a greater likelihood of rearrest associated with particular original charges such as robbery, larceny, and burglary--and that those charged with homicide are relatively unlikely to be rearrested if released. 35/ Several authors have also pointed out that rearrests for violent or other serious charges are relatively low (even among those defendants originally charged with serious offenses). 36/ On balance, there is little basis for concluding that the original charge can accurately predict a defendant's probability of committing any subsequent offense while on release, much less a serious one. 37/

Conclusion No. 8

Many nonappearances are due to system problems or to factors other than willful nonappearance by defendants.

As noted earlier, willful failures to appear in court, where the defendant absconds or appears only after being apprehended, are rare. They typically amount to less than 4 percent of all defendants released. 38/ One author has estimated that nearly half of all nonappearances are involuntary and caused by the defendant's either forgetting or not being adequately notified of the scheduled appearance. 39/ This is supported by data from New York City, Louisville, and Washington, DC. These data indicate that system-related factors, uncontrollable reasons, forgetfulness, and appearances at the wrong place or time led to many of the nonappearances. 40/

Conclusion No. 9

The use of notification procedures, supervision, and/or conditional release can be used to increase the number of releases while reducing court nonappearances and (apparently) pretrial rearrests.

Many pretrial release agencies routinely notify defendants of future court appearances. The little formal research that has been done on the impact of such procedures indicates that they are effective in reducing FTA rates, especially for early court appearances. 41/ No formal assessment of the impact of notification on rearrests has been reported.

Use of supervision (or conditional release) has been shown to be effective in reducing rates of nonappearance in court and seems to also have an impact in reducing rearrest rates. 42/ This appears to hold true even where "high risk" defendants are being released under special supervision programs as in Des Moines and Philadelphia. 43/ Such programs have been suggested as ways of releasing more defendants who might otherwise be detained (under a preventive detention statute or because money bond cannot be raised) while maintaining acceptably low rearrest and nonappearance rates. 44/ A detailed national study of supervised release programs is about to be funded by the National Institute of Justice.

Conclusion No. 10

Preventive detention based on any prediction system developed to date will result in the detention of large numbers of defendants who would not be rearrested if released.

The criminal justice system's ability to predict danger (or subsequent rearrests) is--like our ability to predict suicide or other violent acts in a mental health context--limited at best. To the extent that we attempt to predict what an individual defendant is likely to do, overprediction will occur. In other words, to detain a true "dangerous" defendant, a number of non-dangerous defendants would also be unnecessarily detained. The resulting errors in prediction are known as "false positives". 46/

The District of Columbia was the first jurisdiction to implement a preventive detention statute. The National Bureau of Standards studied defendants who were released but could have been considered eligible for preventive detention under that statute. The study found that only 5 percent of those defendants were subsequently rearrested for a similar alleged serious crime while on release. Thus, in order to have prevented each of those arrests, 19 defendants would have been inappropriately detained. 47/

In another study using a sample of defendants who would have met the basic eligibility criteria for preventive detention, a group of researchers developed two separate prediction equations to determine who should have been detained. In order to prevent all subsequent pretrial rearrests, the best equation would have incorrectly detained the equivalent of 5.5 defendants for every one correctly detained (i.e., for each one who was subsequently rearrested). There was no formula derived which would have resulted in more correct than incorrect detentions. 48/

Judicial predictions are equally fallible. As noted earlier, two judges using the same legal standards had significantly different release rates (80 and 49 percent), yet comparable subsequent rearrest rates. Thus it can be concluded that a significant number of defendants were inappropriately detained. 49/

It has been suggested that one alternative to the difficulties inherent in such inaccurate predictions is to make additional use of conditional release, as suggested above. 50/ Also, preliminary findings from a national evaluation nearing completion indicate that courts frequently take no serious action if a defendant is rearrested pretrial or fails to appear in court. Suggestions have been made that pretrial criminality might be reduced through harsher sanctions for violating release conditions and/or consecutive sentences for those found guilty of any crimes committed while on release. 51/ Each of these alternative approaches has problems and is by no means a panacea, but they should perhaps be considered as options which may be preferable to the widespread use of preventive detention.

Conclusion No. 11

Objective criteria should be used in making release decisions. The criteria to be applied will vary among jurisdictions and therefore should be developed and periodically validated at the local level.

The Vera point scale was an important pioneering development in the bail reform movement, with its emphasis on verified information about a defendant's community ties and other factors thought to be important in predicting subsequent court appearance. However, the same scale has often been used in various jurisdictions, with no attempts to determine its appropriateness in those different settings.

Summaries of national research suggest that there is little ability to accurately and reliably predict who will fail to appear in court and who will be rearrested while on release--and that what ability does exist varies considerably over time and from jurisdiction to jurisdiction. 52/ Because the factors that do predict--and those that shape actual judicial release decisions--do vary so widely, it is important that each community and/or release program maintain, on a systematic basis, the ability to collect and analyze information on how well its recommendation procedures predict and to change those procedures as the need arises. Information available from about 120 release programs around the country suggests that this capability does not now exist within most jurisdictions. 53/

Those who make release decisions frequently do not ever learn the outcomes of their decisions. If bail is set, they may never know if the defendant made bond or not. If the person is released, the judicial officer, release program practitioner, or police officer who set the release conditions often never learns whether the defendant subsequently makes all of his/her court appearances and/or is rearrested while awaiting trial.

In the absence of this information about individual cases, and without adequate systemwide data, it is not surprising that release decisions are often based, at least in part, on factors that are unrelated (or even negatively related) to the ability to predict who will fail to appear for court appearances and who will be rearrested if released. 54/ In other words, because release decision makers often lack sufficient knowledge of what has happened to previous defendants, subsequent inappropriate decisions may be made which lead to unnecessary detention of defendants who would otherwise appear for court and avoid rearrests. It is unrealistic and unfair to expect more appropriate release decisions to be made without more complete and accurate information. With more direct feedback of such information to judges, prosecutors, defense attorneys, and release program officials, such conditions can begin to be corrected in the future.

The footnotes that follow include complete references to the studies on which this summary was based. Readers interested in more information can contact the Pretrial Services Resource Center, 918 F Street, NW, Washington, D.C. 20004; telephone (202)638-3080.

SIGNIFICANT RESEARCH FINDINGS CONCERNING PRETRIAL RELEASE

Footnotes

Conclusion No. 1

1/ See, for example, Wayne Thomas, Bail Reform in America, Berkeley, CA: University of California Press, 1976, pp. 87-105; Paul Wice, Freedom for Sale, Lexington, MA: Lexington Books, 1974, pp. 65-73; Jeffrey Roth and Paul Wice, Pretrial Release and Misconduct in the District of Columbia, Washington, D.C.: Institute for Law and Social Research, 1978 unpublished draft, pp. II-54,55; Mary Toborg, Martin Sorin, and Nathan Silver, "The Outcomes of Pretrial Release: Preliminary Findings of the Phase II National Evaluation", Pretrial Services Annual Journal (Vol. II), Washington, D.C.: Pretrial Services Resource Center, 1979, pp. 150-151; S. Andrew Schaffer, Bail and Parole Jumping in Manhattan in 1967, New York, NY: Vera Institute of Justice, 1970, p. 3; Stevens Clarke, Jean Freeman, and Gary Koch, "The Effectiveness of Bail Systems: An Analysis of Failure to Appear in Court and Rearrest While on Bail", Chapel Hill, NC: Institute of Government, University of North Carolina, 1976, Table 1. More generally, see also Michael Kirby, Findings 1, "Recent Research Findings in Pretrial Release, Washington, D.C.: Pretrial Services Resource Center, 1977 (hereinafter cited as Findings 1; Kirby, FTA, "Failure to Appear: What Does it Mean? How Can it be Measured?", Washington, D.C.: Pretrial Services Resource Center, 1979 (hereinafter cited as FTA); Donald Pryor, Pretrial Issues, "Current Research: A Review", Washington, D.C.: Pretrial Services Resource Center, 1979 (hereinafter cited as Issues).

2/ Wice, Ibid; Thomas, Ibid; Administrative Office of the United States Courts, Fourth Report on the Implementation of Title II of the Speedy Trial Act of 1974, Washington, D.C.: June 1979, p. 54, Table C-1 (hereinafter cited as AOC Report); Directory of Pretrial Services (1979/1980 Edition), Washington, D.C.: Pretrial Services Resource Center (hereinafter cited as Directory).

3/ Wice, Supra 1, p. 65; Thomas, Supra 1, pp. 102-104; Roth and Wice, Supra 1, pp. II-56-58; Directory, Supra 2.

4/ John Goldkamp, Two Classes of Accused: A Study of Bail and Detention in American Justice, Cambridge, MA: Ballinger, 1979, pp. 95-96.

5/ Mary Toborg and Brian Forst, Crime During the Pretrial Period: A Special Subset of the Career Criminal Problem, Washington, D.C.: prepared for Career Criminal Workshop, sponsored by the National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, September 1979, pp. 3-4; Roth and Wice, Supra 1, pp. II-48, 50, 51 (felonies only); Issues, Supra 1, pp. 5, 12; J. W. Locke, R. Penn, J. Rick, E. Bunten, and G. Hare, Compilation and Use of Criminal Court Data in Relation to Pretrial Release of Defendants: Pilot Study, Washington, D.C.: National Bureau of Standards, U.S. Department of Commerce, 1970, p.2; Arthur Angel, Eric Green, Henry Kaufman and Eric VanLoon, "Preventive Detention: An Empirical Analysis", Harvard Civil Rights-Civil Liberties Law Review (Vol. 6), 1971, pp. 308-309; Clarke et al., Supra 1, Table 1.

6/ Roth and Wice, Supra 1, pp. II-49-50, 52 (misdemeanors only); Wice, Supra 1, p. 75; AOC Report, Supra 2, p.54; Gerald Wheeler and Carol Wheeler, "Two Faces of Bail Reform: An Analysis of the Impact of Pretrial Status on Disposition, Pretrial Flight and Crime in Houston", Houston, TX: unpublished, 1980, pp. 18-19; William Landes, "Legality and Reality: Some Evidence on Criminal Proceedings", Journal of Legal Studies, (Vol. 3), 1974, p. 309; Malcolm Feeley and John McNaughton, The Pretrial Process in the Sixth Circuit: A Quantitative and Legal Analysis, unpublished, 1974, p.40.

7/ Locke et al., Supra 5, p. 2; Michael Gottfredson, "An Empirical Analysis of Pretrial Release Decisions", Journal of Criminal Justice (Vol. 2), 1974, p. 292; Goldkamp, Supra 4, p. 96; Report of the President's Commission on Crime in the District of Columbia, Washington, D.C.: U.S. Government Printing Office, 1966, p. 515.

Conclusion No. 2

8/ Clarke, et al, Supra 1, Table 4; Roth and Wice, Supra 1, pp. II-48-58; Michael Kirby, An Evaluation of Pretrial Release and Bail Bond in Memphis and Shelby County, Memphis, TN: The Policy Research Institute, Southwestern College, 1974, p. 4 (hereinafter cited as Bail Bond in Memphis). All show clear differences in favor of nonfinancial release on both court appearance and rearrest variables. Also see, Findings 1, Supra 1, p. 8, note 43, p. 12; FTA, Supra 1, pp. 3, 7.

9/ Wice, Supra 1, p. 75; Thomas, Supra 1, pp. 87-105; Toborg, et al., Supra 1, p. 151.

10/ Thomas, Supra 1, p. 101; Goldkamp, Supra 4, p. 101.

11/ Thomas, Supra 1, pp. 101-102; James Thompson, "Pretrial Services Agency Operations Report, April 1-April 28, 1974", Brooklyn, NY: mimeographed, Pretrial Services Agency, May 1974.

12/ Goldkamp, Supra 4, p. 102; Issues, Supra 1, p.6; Schaffer, Supra 1, Table 9-a.

13/ Bail Bond in Memphis, Supra 8, p. 4; Roth and Wice, Supra 1, pp. II-48-58; Clarke, et al., Supra 1, Table 4.

14/ John Conklin, "The Percentage Bail System: An Alternative to the Professional Bondsman", Journal of Criminal Justice (Vol. I), 1973, pp. 299-317; Thomas, Supra 1, pp. 192-196; D. Alan Henry, Ten Percent, "Ten Percent Deposit Bail", Washington, D.C.: Pretrial Services Resource Center, 1979, pp. 7-11.

Conclusion No. 3

15/ Thomas, Supra 1, pp. 37-46, 65-79, 87-105.

16/ Dewaine Gedney, "The Philadelphia Detentioner Population", Philadelphia, PA: Pretrial Services Division, Court of Common Pleas, 1977; David Runkel, "More Suspects are Staying Home Awaiting Trial", Philadelphia, PA: The Sunday Bulletin, December 4, 1977, p. 1; Henry, Supra 14, p. 9.

17/ Pretrial Services Program, Denver, Colorado: Cost Benefits and Effectiveness, Denver, CO: unpublished, 1976; Cost-Benefit Analysis of the Monroe County Pretrial Release Program, Rochester, NY: Stochastic Systems Research Corporation, 1972; Elisabeth Jonsson, Benefits and Costs of Own Recognizance Release: An Empirical Study of the San Francisco OR Project, San Francisco, CA: School of Public Policy, June 1971.

18/ See discussion of Inslaw study by Roth and Wice in Issues, Supra 1, pp. 6-10.

19/ Thomas, Supra 1, pp. 239-240; Report of the Judicial Council Committee to Study the Operation of the Bail Reform Act in the District of Columbia, Washington, D.C.: Judicial Council of the District of Columbia Circuit, printed in Hearings on Preventive Detention before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, 91st Cong., 2nd Session, 1970, p. 149 (hereinafter cited as 1970 Hearings).

Conclusion No. 4

20/ See note 17, supra. See also Chapter VI of "Pretrial Intervention Mechanisms: A Preliminary Evaluation of the Pretrial Release and Diversion from Prosecution Program in New Orleans Parish", New Orleans, LA: unpublished, 1976; Susan Weisberg, Cost Analysis of Correctional Standards: Pretrial Programs, Washington, D.C.: National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, May 1978, p.54; California State Board of Corrections, Report of Inspection of Local Detention Facilities to the California Legislature, March 1980, p. 190.

21/ See, for example, Roth and Wice, Supra 1, pp. II-44-47, IV-18-21; Issues, Supra 1, p. 6, note 7.

Conclusion No. 5

22/ Caleb Foote, "Compelling Appearance in Court: Administration of Bail in Philadelphia", University of Pennsylvania Law Review (Vol. 102), 1954, pp. 1052-3; George Alexander, Michael Glass, P. Kind, J. Palermo, J. Robers, and A. Schurz, "A Study of the Administration of Bail in New York City", University of Pennsylvania Law Review (Vol. 106), 1958, pp. 705, 726-7; 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. 77-85; Anne Rankin, "The Effect of Pretrial Detention", New York University Law Review (Vol. 39), 1964, pp. 641-55; Eric Single, "The Unconstitutional Administration of Bail: Bellamy v. The Judges of New York City", Criminal Law Bulletin (Vol. 8), 1972; Landes, Supra 6. Some of these studies controlled for such variables as severity of charges, previous record, and other defendant characteristics; others did not. Regardless, the findings were consistent, as stated in the text.

23/ Landes, Ibid.

24/ Goldkamp, Supra 4, pp. 185-211.

25/ Wheeler and Wheeler, Supra 6, pp. 9-15. See also, Marvin Zalman, Charles Ostrom, Phillip Guillaims, Garret Peaslee, Sentencing in Michigan: Report of the Michigan Felony Sentencing Project, Lansing, MI: Michigan Office of Criminal Justice, July 1979, pp. 267-268, which suggests similar findings, although that study does not focus primarily on the pretrial custody issue.

Conclusion No. 6

26/ See generally, Clarke, et al., Supra 1.

27/ Angel, et al., Supra 5, pp. 324, 360; Locke, et al., Supra 5, pp. 162-165; Bail Bond in Memphis, Supra 8, pp. VI-6, 17; N. H. Cogan, "Pennsylvania Bail Provisions: The Legality of Preventive Detention", Temple Law Quarterly (Vol. 44), Fall 1970, p. 51; Thomas, Supra 1, p. 105; Gottfredson, Supra 7, p. 293. See more generally, FTA, Supra 1.

28/ Schaffer, Supra 1; Marian Gerwitz, "Brooklyn PTSA Notification Experiment", New York, NY: unpublished, Pretrial Services Agency, 1976, p. 4; Toborg and Forst, Supra 5, p. 13.

29/ Thomas, Supra 1; Jan Gayton, "The Utility of Research in Predicting Flight and Danger", prepared for the Special National Workshop on Pretrial Release, San Diego, CA, April 1978, p. 15; Goldkamp, Supra 4, p. 97; Clarke, et al., Supra 1; Issues, Supra 1, p. 15.

Conclusion No. 7

30/ Clarke, et al, Supra 1; Feeley and McNaughton, Supra 6; Roth and Wice, Supra 1.

31/ Schaffer, Supra 1, Table 7-a; Chris Eskridge, An Empirical Study of Failure to Appear Rates Among Accused Offenders: Construction and Validation of a Prediction Scale, Columbus, OH: Program for the Study of Crime and Delinquency, Ohio State University, 1978; John Galvin, Instead of Jail: Pre- and Post-trial Alternatives to Jail Incarceration, Washington, D.C.: National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, 1977, Vol. 2, pp. 76-78.

32/ Bail Bond in Memphis, Supra 8; Chris Eskridge, "The Point Scale: It's Use and Abuse in Pre-Trial Release", prepared for National Symposium on Pretrial Services, Louisville, KY, April 1979; Roth and Wice, Supra 1, p. IV-15; Robert Wilson, "A Practical Procedure for Developing and Updating Release on Recognizance Criteria", Wilmington, DE: College of Urban Affairs, University of Delaware, 1975; Schaffer, Supra 1, Tables 7a, 8a.

33/ FTA, Supra 1, p. 7; Gayton, Supra 29, p. 8; Goldkamp, Supra 4, pp. 92, 102.

34/ Clarke, et al., Supra 1; Feeley and McNaughton, Supra 6.

35/ Daniel Welsh, "Is Pretrial Performance Affected by Supervision?", Washington, D.C.: D.C. Bail Agency (D.C. Pretrial Services Agency), May 1978, pp. 15, 19; Locke, Supra 5, p. 135; Roth and Wice, Supra 1, p. IV-15; Angel, et al., Supra 5, pp. 382, 384; Bail Bond in Memphis, Supra 8, p. VI-14; Toborg and Forst, Supra 5, p. 7.

36/ Angel, et al., Supra 5, pp. 382, 384; Locke, Supra 5, pp. 2, 135; Gottfredson, Supra 7, p. 292; Goldkamp, Supra 4, p. 96.

37/ Yet, even though charge is not an accurate predictor of either court appearance or pretrial rearrest, many pretrial release programs automatically exclude defendants from consideration for release on own recognizance eligibility. See, Donald Pryor and D. Alan Henry, Pretrial Issues, "Pretrial Practices: A Preliminary Look at the Data, Washington, D.C.: Pretrial Services Resource Center, 1980, pp. 13-14.

Conclusion No. 8

38/ See note 3, Supra. Definitions of nonappearances (FTAs) may vary considerably. For a more complete discussion of this issue, see FTA, Supra 1.

39/ Wice, Supra 1, p. 65.

40/ Stan Boyton, Warrant Study, New York, NY: Pretrial Services Agency (Criminal Justice Agency), 1977; FTA, Supra 1, pp. 6-7; Second Annual Report, July 1, 1977 to June 30, 1978, Frankfort, KY: Kentucky Pretrial Services Agency, p. 17; D.C. Pretrial Services Agency, unpublished data, 1980.

41/ Gerwitz, Supra 28; Wice, Supra 1, p. 71.

Conclusion No. 9

42/ The following studies have shown supervision and/or conditional release programs to be effective in reducing both nonappearance rates and pretrial rearrest rates (or in maintaining rates which are as low as, if not lower than, those of defendants released through other means): Peter Venezia, Pretrial Release with Supportive Services for "High Risk" Defendants: The Three-Year Evaluation of the Polk County (Iowa) Department of Court Services Community Corrections Project, Davis, CA: National Council on Crime and Delinquency, 1973; Herbert Miller, William McDonald, Henry Rossman, and Joseph Romero, Second Year Report: Evaluation of Conditional Release Program Philadelphia, Pennsylvania, Washington, D.C.: Georgetown University Law Center, Institute of Criminal Law and Procedure, 1975. In addition, Welsh, Supra 35, found supervision to be effective in increasing appearance rates, but to have no impact on reducing rearrest rates.

43/ Venezia, Ibid; Miller, et al., Ibid.

44/ Wice, Supra 1, p. 173; Issues, Supra 1, p. 21; FTA, Supra 1, p. 7.

45/ Thomas, Supra 1, p. 173; Clarke, et al., Supra 1.

Conclusion No. 10

46/ John Monahan, "Ethical Issues in the Prediction of Criminal Violence", presented at the Conference on Solutions to Ethical and Legal Dilemmas in Social Research, Washington, D.C.: February 1978.

47/ Locke, et al., Supra 5, p. 2.

48/ Angel, et al., Supra 5, pp. 314-316.

49/ Thomas, Supra 1, p. 240; 1970 Hearings, Supra 19.

50/ Angel, et al., Supra 5, p. 362; Toborg and Forst, Supra 5, pp. 12-13.

51/ Toborg and Forst, Ibid.

Conclusion No. 11

52/ Eskridge, Supra 32; Gayton, Supra 29; Findings 1, Supra 1; FTA, Supra 1; Issues, Supra 1; Goldkamp, Supra 4.

53/ Pryor and Henry, Supra 37.

54/ Roth and Wice, Supra 1; Toborg, et al., Supra 1; Issues, Supra 1.