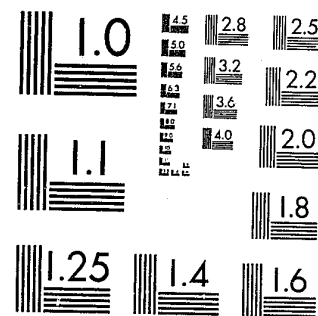


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Introduction

ACQUISITIONS

The issue of jail overcrowding within the jurisdiction of New Jersey is inherently complex. It involves two distinct custodial systems (county and state) which are statutorily mandated to provide institutional facilities for specific categories of detainees/inmates. The County Jail Overcrowding Study focuses on the county jail system and the detention population within those facilities awaiting indictment, or trial either in the municipal or Superior Courts. While this study does not examine categories of sentenced offenders in county institutions, some information on the number and type of sentences being served is included in order to provide a complete picture regarding the number of persons detained in county facilities.

The thrust of this study has been managed under the auspices of three separate efforts, each addressing a specific area of the county pretrial detainee system. First and foremost has been the issuance and compilation of a statewide county population questionnaire designed to cultivate a comprehensive picture of the character of the county detention population. The second represents a detailed analysis of a county pretrial system which isolates and examines contributing elements of the criminal justice system in relation to the pretrial detainee/county jail population. Finally, is an examination of the impact modifications to Rule 3:3 governing the issuance of warrants to summons has had on the increased use of summons over warrants.

I. COUNTY JAIL POPULATION QUESTIONNAIRE

As indicated above, a precise picture of the county jail detention population is absolutely necessary in order to effectuate rational decision making. The questionnaire (see Appendix A) was distributed to 25 county facilities (four counties possess multi-facilities) and was designed to glean information which addressed the following areas:

Background Data - In order to develop a degree of uniformity as to the specific nature of each facility/county, the questionnaire requested the respondent to indicate: (a) the number of actual facilities the county possessed, (b) the rated capacity of the facility, (c) who established the capacity figure, (d) how was capacity figure determined and (e) were any legal actions pending against the facility.

This basic core information formed the building block for the balance of the information supplied in the questionnaire. Background data also indicated the basis for determining capacity figures which proved to vary from self-imposed to standards promulgated by New Jersey Department of Corrections.

Bail Administration - The second area of concern is the capacity at which the jail administers bail/pretrial release. Obviously, if a facility fails to process a defendants bail (especially when the county offices are closed), detention time for defendants would be perpetuated which is in direct conflict with Court Rule 3:26-1(a).

Jail Population History - This issue of jail overcrowding is real, yet poorly defined in relation to time frames. The objective of this section was to review the county jail facilities population for the preceeding eight years. The 1972 through 1978 segment requested the yearly high-low points, plus the averaged (mean) monthly population.

The goal of this exercise was to outline population patterns, as well as to determine if the jail administration maintained records which are conducive for good planning practices.

Jail Population Analysis-January 1981 - The most critical aspect of the questionnaire was the six characteristic segments of the jail population. Any Tuesday, Wednesday, or Thursday for the month of January 1981 was selected for completing this segment. These mid-week days were used since they were considered most demonstrative of the minimum jail population flow as compared to Fridays through weekends which traditionally inflate population patterns to their maximum.

The actual development of the population analysis was conducted under the auspices of a stratification study whereby the aggregate number of sentenced inmates for the day under examination were assigned one of six possible titles. The first three titles were pretrial status, with the remaining representing post trial situations. These areas were (1) hold population: pre-arraignment* detention of arrested/defendant in jail by police/municipal court without commitment papers; (2) temporary committed population: pre-arraignment detention of arrestee/defendant in jail by police/municipal court with commitment papers; (3) Committed population: post arraignment incarceration of defendant pending further hearings**; (4) sentenced population: inmates sentenced to county institutions; (5) housing of inmate population: inmates sentenced awaiting space in state institutions; (6) specialized cases: inmates sentenced with special status, i.e. work release, weekend sentences and furloughs.

In addition to the six major areas of differentiation, the first three pretrial populations requested further refinement in the form of 1) committed-no bail set (excluding C.R. 3:26-2 cases); (2) committed-bail set/can't post; 3) committed-bail set/detainer filed; and 4) no bail set (C.R. 3:26-2 cases/jurisdiction of Superior Court).

The goal of this section was to isolate possible problem areas by dividing the population into their natural-classification to determine where the majority of inmates placed. Disproportionately high counts in any segments, allowing for the assigned purpose of the facility (jail, penitentiary) would be viewed as possible problem areas, necessitating closer scrutiny.

*The use of term arraignment means a defendant's first appearance under R.3:4-2

**This category includes both defendants awaiting grand jury and those under indictment, awaiting trial.

Comments - This final section of the questionnaire was designed to glean information from the county jail staff, isolating their subjective impressions as to what contributes to the facilities overcrowding problem. While their information is not quantifiable, it is extremely valuable because it represents intangible comments which have been generated by functioning-line staff professionals.

As of April 14, 1981 an analysis of the data from 23 county facilities has been completed and is summarized as follows:*

A. Rated capacity of 23 facilities: 4,177

It should be noted that the capacity determination source for facilities varies among the counties. Some sources identified were:

1. architect;
2. jail administration
3. New Jersey Department of Corrections;
4. freeholders;
5. sheriff;
6. federal guidelines;
7. warden; and
8. county.

In addition, the capacity figure may be based on three other variables:

1. actual beds;
2. square footage per inmate; and
3. inmates per cell.

* NOTE: (a) There is a 1% error span in the data due to imprecise reporting from several counties.

(b) As of April 14, 1981, questionnaires had not been received from Essex County Correction Center and Passaic County Jail.

Another qualification within the capacity rating system is the differentiation of the jail population segments. For example, within each county jail, the population can be separated into: young/old, male/female, violent/non-violent, detainee/sentenced sentenced/work release, etc. This partial listing of population segments is drawn to illustrate the potential number of variables addressed by correctional facilities identification systems. Each of these variables demands separate and distinct physical housing within a facility, compounding the complexity of an overcrowding problem.

B. Population of facilities on date of questionnaire completion: The total population within the county facilities documented by the questionnaire was 4,177 persons. The following chart presents the questionnaire data in comparison with an updated (May 4, 1981) facility population review. While the statistical median of 105% has remained stable, the statistical range and accompanying ranking of the institutions has changed between the January and May dates.

COUNTY JAIL REVIEW

Median-Ranking/Percent of Rated Capacity					
January 1981 ¹			May 4, 1981 ²		
County Jails	Rank	% of Capacity	County Jails	Rank	% of Capacity
Sussex	1	27	Sussex	1	33
Mercer (C.C.C.)	2	36	Mercer (C.C.C.)	2	49
Hunterdon	3	50	Hunterdon	3	53
Cape May	4	66	Cape May	4	62
Camden	5	77	Bergen	5	84
Bergen	6	80	Cumberland	6	84
Somerset	7	89	Camden	7	98
Mercer (C.D.C.)	8	91	Essex (C.C.C.)	8	100
Ocean	9	97	Morris	9	100
Burlington	10	98	Warren	10	100
Middlesex	11	100	Monmouth (C.C.I.)	11	102
Monmouth (C.C.I.)	12	105	Middlesex	12	105
Cumberland	13	107	Burlington	13	105
Hudson	14	111	Hudson	14	105
Hudson (C.P.)	15	111	Hudson (C.P.)	15	105
Warren	16	113	Somerset	16	106
Atlantic	17	116	Atlantic	17	110
Union	18	117	Middlesex (C.W.H.)	18	117
Morris	19	119	Gloucester	19	118
Middlesex (C.W.H.)	20	121	Passaic	20	118
Gloucester	21	124	Ocean	21	119
Essex	22	129	Mercer (C.D.C.)	22	123
Salem	23	158	Essex	23	124
Essex(C.C.C.)	Union	24	125
Passaic	Salem	25	166

Range: 27%-158% Range: 33%- 166%

Reading Ranks: 1 (Low Population) to 25 (High Population)

¹Median = 105% ²Median = 105% (Includes Essex C.I., Essex C.C.C., Somerset C.I.)

C. Pretrial population within facilities:

The largest portion of the county jail population are pretrial detainees. Of the 4,177 inmates in county facilities on the date selected in January 3,002 were pretrial detainees, representing 71.8% of the total population.

The pretrial component within individual facility is composed of following subgroups:

1. Hold Population: Pre-arraignment detention of arrested/defendant in jail by police/municipal court without commitment papers (arrest report, etc.) [5.36% of pretrial population].
2. Temporary Commitment Population: Pre-arraignment detention of arrested/defendant in jail by police/municipal court with commitment papers [10.47% of pretrial population]
3. Commitment Population: Post arraignment incarceration of defendant pending further hearing/s. [84.16% pretrial population]

The pretrial population can be further differentiated by the "bail set status" of detainees:

- (a) No Bail Set - Defendants detained without a bail figure assigned [3.32% of pretrial population].
- (b) Bail Set/Can't Post - Defendants detained with assigned bail figure, who cannot satisfy established surety (or non-financial conditions). [71.32% of pretrial population].
- (c) Bail Set/Detainer Filed - Defendants detained with set bail figure, who cannot be released due to a detainer(s). [18.42% of pretrial population].
- (d) No Bail Set/ R. 3:26-2 Cases - Defendants detained without a bail figure set due to category of offense. [certain offenses- murder, kidnapping, manslaughter, aggravated manslaughter, aggravated sexual assault, sexual assault, aggravated criminal sexual contact, robbery, and aggravated assault- must have pretrial release conditions set by a judge of Superior Court.] [6.91% of pretrial population].

Of the 3,002 pretrial detainees, the following chart portrays by designated categories reported aggregate data:

The following chart portrays a breakdown of the 3,002 pretrial detainees by the "bail set status" within each of the three sub groups (Hold, Temporary Commitment, Committed):

3002	PRETRIAL POPULATION FOR DAY
27	<u>HOLD POPULATION</u> NO BAIL SET
107	BAIL SET/ CANNOT POST
20	BAIL SET/ DETAINER FILED
7	NO BAIL SET 3:26-2 CASES
34	<u>TEMP. COMM. POP.</u> NO BAIL SET
219	BAIL SET/ CANNOT POST
52	BAIL SET/ DETAINER FILED
10	NO BAIL SET/ 3:26-2 CASES
39	<u>COMM. POPULATION</u> NO BAIL SET
1818	BAIL SET/ CANNOT POST
482	BAIL SET/ DETAINER FILED
191	NO BAIL SET/ 3:26-2 CASES

(NOTE: 1% ERROR SPAN IN DATA)

The most pervasive segment of the total jailed population within the (23) reporting facilities were defendants for whom bail figures were set but could not be posted. Defendants in this category represent 51.3% of the total jailed population. The following chart portrays by facility and pretrial stratification this population:

BAIL SET/CANNOT POST			
	Hold	Temp. Committed	Committed
Atlantic CJ	—	16	92
Bergen "	—	31	176
Burlington "	3	22	22
Camden "	—	—	100
Cape May "	—	4	33
Cumberland"	12	—	61
Gloucester "	—	4	33
Hudson "	9	53	202
Hudson Pen."	—	—	—
Hunterdon "	—	—	—
Mercer COC	—	2	128
Mercer CCC	—	—	—
Middlesex ADC	—	4	62
Middlesex CWH	47	—	19
Monmouth CCI	—	39	173
Morris CJ	—	—	38
Ocean "	5	14	10
Passaic"	—	—	—
Salem "	6	—	51
Somerset "	—	—	43
Sussex "	—	—	6
Union "	—	30	141
Warren "	25	—	—
TOTALS*	107	219	1,818

(Additional Tables covering pretrial data appear as Appendix A¹)

NOTE: [There is a 1% error span in data due to imprecise reporting in the population stratification by several counties.]

*Addendum:

Essex County Jail -

Committed - Bail Set/Cannot Post: 423

D. Sentenced Population

1. Sentenced population within facilities: 1,240.
2. Sentenced population minus those sentenced to serve weekend sentences was 1,155.

It is important to differentiate between the sentenced population/and sentenced population "weekender status." As the title implies, a weekend inmate (excluding weekends) is not physically part of a facility's population. Therefore, subtracting this segment of the population from the reported aggregate data is necessary in order to determine full time jail population.

When averaging the total sentenced populations with the remaining total population categories the average (mean) sentenced population for the facilities was 34.85%.

The following chart indicates a more detailed examination of the sentenced population:

RATED CAPACITY OF ALL FACILITIES-----	4,177
POPULATION ON QUESTIONNAIRE COMPLETION DATE-----	4,178
TOTAL AGGREGATE SENTENCED-----	1,240
SENTENCED POPULATION - NON SPECIAL STATUS-----	769
(HOUSED POPULATION (State Sentenced) -----	243
((County Housed) -----	
(WORK RELEASE-----	142
SPECIAL (WEEKENDERS-----	85
STATUS (-----	
(FURLOUGHS-----	1

(Additional tables covering sentencing data appears as Appendix A²)

E. The final segment of the questionnaire contained subjective comments on overcrowding by the staffs of the county facilities. Portrayed in ranked order of prevalence which in their estimation contributes to jail overcrowding are:

1. New Penal Code
2. Lack of clear bail policy - resulting in high bails and possible preventive detention scenarios
3. Economic Conditions/Crime Increase Correlation
4. Slow processing of indictable cases by courts
5. Municipal Courts utilization of county jails as holding facilities
6. State Prison System Overcrowding
7. Failure of County Governments to assist facilities (e.g. Freeholders not providing finances to expand and address current issues)
8. Shrinking status of health system (closing of programs due to lack of funds)

What can be interpreted from the jail data in relationship to the general overcrowding issue is that thirteen (13) of the twenty-three(23) facilities met or exceeded capacity on the day of the questionnaire completion. This data is analyzed in relation to a 100% facility capacity status. However, if the data was analyzed in relation to the 94% capacity status, which represented recommended contingency space allocation within the field of corrections, 15 of 23 reporting counties would have been over capacity.

The ninety-four percent capacity space allocation figure is an abstract concept within the corrections field. However, it finds general support among New Jersey corrections professionals. In contrast, Vorhees Associates, a recognized correctional consulting firm associated with the National Institute of Corrections, feels that a more realistic contingency figure is 80% of jail capacity. This higher contingency figure apparently conforms more closely to the realistic classification capability of most facilities. Once a facility exceeds 80% of capacity its ability to adequately classify and segregate offenders, e.g. violent/non-violent, male/female, young/old, addicted/non-addicted, etc., becomes more difficult and the potential for conflict within the facility increases.

II. Two Month Study of Pretrial Detainees - Burlington County

With the general/comprehensive exercise outlined in Section I, the following will describe a more detailed study which focused upon one county (Burlington) and its treatment of every pretrial detainee who passed from the municipal court level to the county jail on a detention status.

472 pretrial detainees committed to the Burlington County facility during January and February (1981) formed the basis of this study. These detainees were selected as candidates for the study upon being placed in a Hold status by the local police/municipal courts, state police or county court system. This linear study followed each defendant from the point of arrest through initial bail determination, arraignment, further hearings, sentencing at municipal level or grand jury, bail reduction - through March 31, 1981.

Accompanying this linear progression was the isolation of a number of variables, including, but not restricted to the following points of interest: form of release, amount of cash as a function of offense, total length of time detained, time bail set upon onset of hold/commitment, time of release upon bail determination, length of time-span between registered hold/commitment and indictment (grand jury) designation, and number of detainment days in county jail according to the municipal courts (or committing authority).

The following charts present a breakdown of data according to the variables studied:

1. <u>Utilization of release options:</u>	<u>JAN.</u>	<u>FEB.</u>
Released on Own Recognizance-----	8%	5%
Cash Bail-----	31%	14%
Corporate Surety (Bail Bondsman)-----	22%	15%
Real Estate Bail-----	3%	1%
Released by Court Order-----	15%	41%
*Sentenced-----	16%	19%
Other (charges dropped, detainer-----	5%	5%
returned to Department of Corrections)		

*Sentenced Category included within Release Option Category as a portion of detainee/inmates were actually sentenced on charges prior to posting bail

2. 93% of Cash Bails fall between \$100 - \$20,000:

(Includes both indictable and disorderly offenses)

	<u>JAN.</u>	<u>FEB.</u>
\$ 100-----300 Bails-----	23%	27%
300-----500 Bails-----	7%	12%
500----1,000 Bails-----	19%	21%
1,000----5,000 Bails-----	27%	26%
5,000---10,000 Bails-----	7%	8%
\$10,000---20,000 Bails-----	9%	4%
BALANCE-----	8%	2%

3. Detainees Held/Committed With Accompanying Bail

Figures Established Within:

	<u>JAN.</u>	<u>FEB.</u>
24 hours-----	80%	86%
72 hours-----	89%	92%

4. Time parameters for release of detainee upon bail determination:

	<u>JAN.</u>	<u>FEB.</u>
24 hours-----	53%	63%
48 hours-----	66%	75%
72 hours-----	83%	81%

5. Accumulated detention time prior to pretrial release (or sentencing, dropped charges, etc.):

	<u>JAN.</u>	<u>FEB.</u>
24 hours-----	33%	51%
48 hours-----	48%	63%
72 hours-----	56%	73%
96 hours-----	70%	83%

On January 13, 1981, 74% of the facilities population were pretrial detainees. The following chart isolates the composition of this population:

<u>JANUARY 1981</u>	<u>FEBRUARY 1981</u>
Disorderly Persons--28%	Disorderly Persons--37%
Contempt-----13%	Contempt-----18%
Indictables-----59%	Indictables-----45%
TOTAL-----100%	TOTAL-----100%

(Additional tables covering Burlington County appears as Appendix B)

III. Warrant/Summons Issuance Ratio: 79-80-81 Court Years

The warrant/summons analysis plays a comparatively minor, yet critical role in the control of pretrial detainees within the county jail facilities. The discretion delegated to the local police/municipal courts as to whether the issuance of a summons or a warrant upon complaint is used, directly impacts upon the pretrial detainee population. Inherent in the issuance

of a warrant is the accompanying custody/bail process.

Court Rule 3:3-1 which governs the issuance of a warrant or summons upon complaint was revised in September, 1980 to insure the rational application of the warrant/summons options. A study of complementing time frames for CY 1979-80 (pre court rule modification) and CY 1981 (post court rule modification) indicates a proportionate increased usage of 8.379% for summons over the issuance of warrants. While this suggests that increased use of summons has resulted, there appears to be further room for expanding use of summons over warrants.

(Additional information covering the warrant/summons study appears as Appendix C)

IV. RECOMMENDATIONS

This section contains a series of recommendations targeting policy and administration functions of the Judiciary within the Pretrial area. Also included are recommendations regarding the general area of county facility management and disposition alternatives.

The policy and administration recommendations are divided into two parts. The first deal with suggestions for immediate consideration and implementation; while the second address long term overall improvement in the administration of pretrial services in New Jersey.

Every assignment judge should be responsible for developing an action plan covering the pretrial area within his vicinage. In developing this plan he should enlist the aid of the county sheriff and warden, prosecutor, pretrial coordinator, trial court administrator, a municipal court judge, and other members of the Judiciary. The plans should address the implementation of the recommendations contained herein, along with any other steps felt necessary to address this issue. All plans must be developed in accordance with the following guidelines and submitted to the Supreme Court for approval prior to implementation.

i - If the county jail is currently over capacity and has been over capacity for the major portion of the first quarter of 1981 (January-April) recommendations A¹, A², A³, A⁴, A⁵, and A⁶ should be implemented.

immediately. Simultaneously, a contingency plan should be developed which would implement recommendations A⁷, A⁸, A⁹ and A¹⁰. After review of the jail capacity status thirty days following implementation of recommendations A¹ through A⁶, if it is found that the facility is still at or over capacity, the assignment judge should immediately implement the contingency plan encompassing A⁷ through A¹⁰.

ii - If a county jail facility has been at or under capacity for the last four months, the assignment judge should develop an action plan encompassing recommendations A¹ through A¹⁰ within 30 days. However, the plan should not be implemented unless the jail facility exceeds capacity or is likely to exceed capacity within 90 days following the development of the plan.

iii - All assignment judges should develop comprehensive pretrial service plans addressing recommendations B¹ through B⁶, and C¹ and C². The steps outlined in these plans should be considered as long range improvement of the administration within the pretrial area. The plans should be submitted for Supreme Court review by October 1, 1981. Phased implementation of these plans is recommended and should commence on January 1, 1982. The order of implementing the several recommendations should be left to the discretion of the assignment judge, however, the plans should detail a logical order which reflects progressive movement toward building comprehensive management and administration of pretrial services. The final plans will encompass all the recommendations contained in this report.

While many of these recommendations may appear radical, they reflect the drastic action which must immediately be considered to both ease the present situation as well as to avoid a calamity. Because the jail overcrowding situation has reached an acute stage, the Judiciary and other agencies within the criminal justice system must undertake an affirmative approach, being prepared to extend hours, delay vacations or modify summer schedules and otherwise cooperate in a concerted attack on the problem.

The Administrative Director should convene a meeting of representatives working on the local action plans on or before June 15, 1981. This meeting should be for the purposes of reviewing the steps being taken locally to address the pretrial/overcrowding issue so that the Administrative Director can report the situation to the Supreme Court.

JUNE - 1981

FINALIZED SET OF
SERIES A RECOMMENDATIONS

COUNTY JAIL OVERCROWDING -
RECOMMENDATIONS FOR IMMEDIATE IMPLEMENTATION

June 11, 1981

1. Assignment Judges should encourage staff of the county pretrial release units to be available on holidays and weekends to assure that bail is set and to assist in bail determinations with regard to both indictable and non-indictable cases. If additional funds are required, the matter should be discussed with the Freeholders.
 - (a) Assignment Judges should consider implementing a program whereby no defendant is committed to the county jail without bail or conditions of pretrial release set with regard thereto.
2. All non-indictable offenses, which are not accompanied by indictables, must be tried within 72 hours after defendant is incarcerated, or the defendant must be released absent contrary order by the Assignment Judge.
 - (a) District or regional municipal courts should be considered for purposes of trying jail non-indictable cases. If District Court resources are not available, cross-assignment orders can be entered so that a municipal judge is sitting daily to try jail cases or other matters assigned by the Assignment Judge in each region.
 - (b) Public Defender cooperation should be solicited with respect to non-indictable jail cases under N.J.S.A. 2A:158A-5.2, wherever downgrades in jail cases are involved. In the absence of a municipal court defender, accelerated assignment should be made under R. 3:27-2.
 - (c) The Assignment Judge personally may grant extensions from this non-indictable "try or release rule" in drug cases, where counsel is not available, for non-residents or for other special circumstances.
3. The Criminal Assignment Judge should receive immediate notice on all no-bill remands, no-bills, administrative dismissals, and administrative remands so that discharge on revised bail and conditions of pretrial release can be immediately established.
4. The 10% option shall be made available throughout the State as permissive condition of pretrial release unless otherwise ordered by the court.
5. A Superior Court judge should review the bail or conditions of pretrial release on each case, including non-indictable cases, upon commitment to the county jail.

County Jail Overcrowding-
Recommendations - page 2

6. Each Assignment Judge should review R. 3:3-1 and the summons-warrant procedure with all police chiefs, municipal court judges and municipal court clerks within the vicinage.
7. Sentence review on municipal appeals should be de novo, pursuant to State v. DeBonis, 58 N.J. 182 (1971), but appeals from the sentence in plea cases should be accelerated by the Assignment Judge on filing.
8. Assignment Judges should personally monitor jail lists on a periodic basis with at least one in-person review of cases involving no more than 21 days of incarceration.

B. POLICY AND ADMINISTRATION (OTHER)

- B¹. The pretrial release rules advanced by the Supreme Court Committee on Criminal Practice should be adopted by the Supreme Court.

The 1979 Report, submitted by the Supreme Court Committee on Criminal Practice, recommended a codification of existing practice and procedure within pretrial release [a copy of that Report appears as appendix F]. In essence, the recommendation of the Committee would bring together all existing authority governing practice and procedure and would set forth pretrial release options on a continuum. While all the options set forth in their report are presently available, some such as ten percent and conditional releases, are only used to limited degrees. Adoption of the Committee's recommendation would both implement relevant provisions of National Standards* relating to pretrial release and provide a mechanism for meaningful pretrial release investigations which could lead to release of more defendants more quickly. Moreover, the mechanism would produce for the court the right information in order to have more stringent conditions of release established in certain cases. The process would carry with it a strong presumption in favor of pretrial release on the defendant's promise to appear or personal recognizance which is supported by constitutional principles, policy considerations and practical experience.

*See: ABA Standards Relating to Pretrial Release (1968); National Advisory Commission on Criminal Justice Standards and Goals - Courts and Corrections (1973); National Conference of Commissioners on Uniform State Laws, Uniform Rules of Criminal Procedure (1974); and Performance Standards and Goals For Pretrial Release, National Association of Pretrial Service Agencies, (1978).

B². Development of County Jail Population Classification System

Analysis of the County Jail Population Survey highlighted difficulties many county facilities experience in outlining the jail population by status within the pretrial process. For example, some institutions were unable to easily distinguish between cases charging offenses enumerated under R. 3:26-2 -- where bail must be set by the Superior Court -- and others where jurisdiction rests with municipal courts. Moreover, some facilities had difficulty in separating defendants incarcerated without pretrial condition being set prior to commitment and those with conditions established but unable to meet those conditions.

The identification units within county jails should be able to generate information which reflects the exact status of the jail's population on an aggregate as well as individualized basis. This information will afford the jail staff, pretrial program and court with a monitoring tool that will enhance routine decision making.

- B³. A concerted effort should be undertaken to consolidate the administration of pretrial service and to place responsibility for the pretrial release, PTI and presentence investigation within the rubric of a consolidated unit.

This recommendation advances the concept of verticalization within the early stage of the court process. It is intended to (a) bring together a number of duplicative functions presently carried out by several different units; (b) conservation of resources; and (c) provide a greater degree of control and coordination of cases in concert with the Criminal Court Delay Reduction Program.

The verticalization approach will combine the functions of pretrial release and diversion into a single unit with the responsibility for preparing and monitoring cases processed for release as well as applicants enrolled and rejected from PTI. When a case enters the system, a case monitor will insure the pretrial release (bail) review of the case within a designated time period. This initial review will form the core informational unit from which the remaining activities will evolve.

Shortly after completion of the bail information and subsequent review, an automatic Pretrial Intervention application will be considered. If the defendant is enrolled in PTI, program staff will carry out the enrollment conditions. When a PTI rejection is forthcoming, the pretrial unit will initiate plea discussion between the prosecutor and defense counsel in an effort to effectuate an early disposition.

The final phase will be conducted by the monitor upon trial completion or plea. This activity will entail the development of a presentence report and recommendation of sentence.*

An additional function which should be incorporated within the Verticalized Scheme is the monitorization of Bench Warrants. The processing of bench warrants is an important part of the criminal process. Any delay in their execution impacts on the speedy disposition of cases as well as on the trial calendar. Therefore, it is important that the court monitor the status of bench warrants

*The presentence function for these cases will be the responsibility of the pretrial unit only where a non-custodial term is being recommended. All others will continue to be the responsibility of the probation department.

and control those aspects which bear directly on the work of the court.

When a defendant fails to appear, and the court determines that a bench warrant should issue, the warrant will be prepared for the signature of the judge. Once the bench warrant has been signed, it will be forwarded to the Pretrial Service Unit. If the Pretrial Service Unit had previously interviewed or had contact with the defendant, they should attempt to contact the defendant based on their existing information. However, the Pretrial Service Unit contact attempt should not delay transmittal of the warrant to the fugitive apprehension squad.

If the Pretrial Service Unit is able to contact the defendant prior to transmittal of the warrant to the fugitive apprehension squad, arrangements should be immediately made with the judge issuing the warrant for a scheduled appearance by the defendant. In such cases, the warrant should be returned to the court of issuance.

If the Pretrial Service Unit is unsuccessful in its effort to contact a defendant, or once contacted a defendant fails to appear, the warrant should be forwarded directly to the fugitive squad along with any update on the defendant's whereabouts. The bench warrant monitoring program will be conducted on forms provided by the Administrative Office of the Courts.

It should be noted that pretrial release and PTI programs are presently both administered by county probation

departments and other court agencies without probation. This recommendation does not advance the position that programs administered without probation should now become the responsibility of probation or vice versa. This subject is being studied by committees of the Supreme Court and, therefore, nothing should be done to alter the present administration pending a review and analysis of those recommendations.

However, every effort should be made to implement this recommendation regardless of which agency currently handles these functions. A cooperative level should be reached in counties where the functions fall within two separate agencies as a mutual endeavor to advance the efficiency of the courts.

B4. Implementation of supervised pretrial-unsupervised post-trial probation.

The concept of supervised pretrial-unsupervised post-trial probation comes from an awareness within the criminal justice system to address certain non-violent defendants who are unlikely candidates for pretrial intervention, yet who do not necessarily dictate the imposition of the traditional closely monitored probation sentence. Basically, it builds on the closely monitored pretrial release activities whose experience can be used as a gauge in developing sentencing alternatives.

This new series of events would be initiated by the case monitor who would recommend supervised pretrial release to the designated bail judge. Once approved, the candidate

would be instructed as to the ramifications of such a pretrial/conditional release and what extent their cooperation may eventually have on their case. Assuming that the defendant appears at all scheduled court appearances, meets the non-violent criteria and gains the recommendation of the case monitor at sentencing, the court can credit the defendant with pretrial release time and post an additional sentence of unsupervised probation where deemed appropriate. At the completion of the unsupervised probation term, the case is reviewed and if without problems, it can be closed. Flagging through the SBI will alert the court to any new arrest which can immediately initiate violation proceedings.

B5. Expanded Utilization of Probation Volunteer Services

The successful implementation of the Volunteer Services Corp. by the Probation Departments within New Jersey highlights a valuable resource that could be utilized by other agents within the criminal justice system. The preceding policy issues have outlined the need for alternative resources which are a function of the shrinking financial base and the volunteer program assistance in this area.

Therefore, as a natural extension of the existing volunteer program, volunteers should be used for pretrial release and PTI cases. Such will allow pretrial program staff larger time frames for indepth defendant interviews and subsequent recommendation preparation, as well as providing more intense service and counseling where needed. The

volunteer activity would serve a critical need and may actually appeal to certain individuals volunteering service who do not desire the more demanding relationship associated with post conviction probation.

B⁶. Mandatory bi-lingual bail/ pretrial release material should be available in every county institution.

The listing of policy considerations would not be complete without considering the dilemma confronted by a defendant who is unfamiliar with the criminal justice system and is viewed by an overtaxed intake staff as another body. Problems are compounded when the individual has a poor command of the English language and must answer critical questions promptly in order to effectuate speedy processing.

While illiteracy is not the fault of the system, this very basic issue has a dramatic impact on case movement for poor, uneducated decision making must be addressed by the defendant and/or criminal justice system at a later date. Bail reductions, pleas, unnecessary telephone calls could be dramatically reduced if the defendant was educated in a simplistic fashion as to what his/her pretrial rights and options are. This task should not be left to the "jail-house lawyers" who merely perpetuate routinized, yet potentially misconceived, frequently incorrect notions. Cases of defendants retaining the services of a bail bondsman when the defendant possesses the necessary cash to post bail are all too familiar and subject defendants to undue hardships.

Therefore, it is recommended that a very simple publication (pamphlet) be issued to every arrestee/detainee who will be subjected to pretrial detention and its inherent release process, i.e. bail. In the pamphlet, which should be prepared in bi-lingual fasion (English and Spanish), will be the defendant's responsibilities, rights and options starting with the 3:4-2 hearing: bail evaluation, PTI application notification, 5A completion (public defender application). Foremost in the literature will be an explanation of the various release options offered in the county and the ramifications of each possibility.

(NOTE: Refer to Appendix E for data representing minority populations with New Jersey.)

C. JAIL FACILITY MANAGEMENT AND DISPOSITIONAL ALTERNATIVE

C¹. A review should be undertaken of ways to provide alternate detention facilities for short-term detainees and commitments on non-indictable offenses.

N.J.S.A. 30:8-1 et seq. sets forth the responsibility of the sheriffs with regard to accepting arrestees within county institutions. Refusing to accept such offenders is a crime of the fourth degree (see N.J.S.A. 2C:43-1). Thus, county facilities must accommodate all pretrial detainees, offenders sentenced to county terms and must hold offenders sentenced to state prison until accepted and transferred to State institutions. Notwithstanding the provision of N.J.S.A. 2C:43-10(e), which requires the transfer of defendants sentenced to state prison within 15 days, there is a breakup of state sentenced prisoners within several institutions.* Thus, a dichotomy exists where on the one hand county facilities must accept all commitments, and hold sentenced state prisoners, which contributes to overcrowding conditions, while the state system refuses to accept state sentenced offenders because of overcrowding within state institutions. Of course, the situation is exasperated by the fact that adequate facilities do not exist at either the local and state levels.

*Note: There are currently legal suits pending in Essex, Middlesex and Union Counties, which raise this issue. The jail survey showed that as of January 31, 1981 there were 188 state sentenced offenders awaiting transfer to State Prisons. The 11 county facilities over 100% capacity accounted for 112 state sentenced inmates.

Legislative changes should be sought which would place ceiling limits on commitments to county institutions of offenders charged with non-indictable offenses and defendants awaiting first appearance on indictable offenses. Municipalities would thus have to share the burden of "jailing" minor offenders and pretrial detainees during periods when the county facility was at maximum capacity. Many municipalities have local detention facilities and could on a mutual basis, cooperatively work with municipalities without such facilities. While the function of these municipal facilities would be limited in scope, it is a feasible alternative to county jail overcrowding within the context of the pretrial and non-indictable population. As indicated in the Burlington County Jail Study, 83% of the pretrial detainees were released within 72 hours. In light of this, a significant portion of the pretrial detainee population could be release from the regional holding facilities relieving the county of this responsibility.

In addition to the contribution the pretrial population makes to the jail overcrowding issue, the efforts put forth by the local police departments to transport detainees to and from the county jail can be characterized as "lost time" from their traditional mission of protecting society. Therefore, it is recommended that local municipalities without facilities enter into a per diem/plus yearly contributing fee agreement and establish regional holding facilities,

ideally coordinated with existing physical sites. This regionalized/per diem-yearly fee agreement will relieve the county jail of comparatively trivial cases, plus the added benefit of reduced transport time for local police departments.

The cost of these municipal facilities will be absorbed by the municipalities, however, the cost will be minimized via the per diem payment schedule, plus the regionalized facility structure which reduces the need for every municipality possessing separate facilities.

Implementation of such a plan would require the close scrutiny of the State Department of Corrections to insure that minimal jail standards are maintained.

C². Courts should make every effort to maximize use of pretrial intervention and post trial dispositional alternatives

The courts with the aid of the community must sheppard the maximum use of both pre and post trial dispositional alternatives in appropriate cases. While the primary focus of this report has been the pretrial release population, efforts to alleviate overcrowding would be incomplete without some discussion of dispositions.

New Jersey has provisions for three types of pretrial diversion programs, (1) Pretrial Intervention (N.J.S.A. 2C: 43-12 et seq.) geared to the criminal offender who meet

eligibility criteria and gain the approval of the program director, prosecutor and court; (2) conditional discharge for certain drug offenders (N.J.S.A. 24:21-27) intended to interrupt the substance abuse cycle of offenders charged with certain drug offenses; and (3) alcohol rehabilitation (N.J.S.A. 26:2B-17). Programs, and units within the probation service, have been developed over the last several years, staff with trained personnel to provide the professional intervention, counseling and supervision services required of offenders approved for participation under one of these alternatives. PTI functions exclusively within the Superior Court*while conditional discharge is available both in certain Superior and municipal court cases. Alcohol diversion is only available in the municipal court. Statistics compiled on participation suggest that these alternatives could be used more extensively. For example, PTI figures indicate that only 29% of those applying are enrolled. The enrollments run the range from a low of 13 percent in Union County to a high of 59 percent in Sussex County.

Utilization of post trial alternatives are likewise encouraged. The criminal code offers a variety of sentencing alternatives running the gamut from a suspended sentence, to restitution/community service and probation. Even within the range of custodial sentences to county institutions there are a number of alternatives: (1) weekend sentences; (2) community service; (3) work release; (4) furlough;

*The feasibility of extending PTI to non-indictable offenses has been reviewed by the Supreme Court Committee on PTI and a recommendation on this subject will be made by that Committee in its forthcoming report.

and (5) trustee.* While all of these require some incarceration time, nevertheless, they allow the inmate some autonomy by permitting the offender to leave the institution for specified time periods. This, to some degree helps to relieve some of the pressure of confinement while assisting in the rehabilitation of the offender.

Municipal court judges should pay particular attention to alternative dispositions for non-indictable cases. Local citizen advisory groups should be formed to assist the municipal court when fashioning particular alternatives. Civic and business groups should be requested to provide input and garner the backing of the community to aid the courts with alternative dispositions. Judges should have small community panels who can be called upon to raise the awareness of the community to the problem of providing some level of resources and assistance with alternative dispositions. Such groups could serve as an appendage of the Volunteers in Probation Programs, insuring that assistance is being provided by trained community volunteers. This approach finds its genius in the concept of the Juvenile Conference Committees (see R.5:10-2). Conference committees have worked well within the juvenile areas mainly because the committee while serving as an arm of the Court is composed of local community members who have an interest in addressing behavioral problems arising from juveniles within their communities. A similar forum to address young adult offenders

falling within the jurisdiction of the municipal courts should be explored.

*Trustee status, while not a mechanism which allows the release of an offender, it is a tool which can help to release tension within a facility.

APPENDIX

A... County Jail Questionnaire

A¹ Questionnaire Data - Pretrial

A² Questionnaire Data Sentences

B... Burlington County Study Data

C... Warrant/Summons Study Data

D... Probation Volunteer Data

E... Minority Population Data

F... Report of Supreme Court Committee on Criminal Practice

G....Central Criminal Intake Form

APPENDIX A

COUNTY JAIL QUESTIONNAIRE -

ADMINISTRATIVE OFFICE OF THE COURTS
STATE OF NEW JERSEY

ROBERT D. LIPSCHER
ADMINISTRATIVE DIRECTOR OF THE COURTS



STATE HOUSE ANNEX
CN-037
TRENTON, NEW JERSEY 08625
609-292-4636

February 18, 1981

MEMORANDUM TO: County Wardens

FROM: Robert D. Lipscher *RDL*

RE: County Jail Population Questionnaire

At the February meeting of the New Jersey County Wardens' Association, Mr. Neal Frank of the Administrative Office of the Courts discussed a County Jail Population Questionnaire that will be issued to all county jail facilities.

As you know from the discussion, the Administrative Office is most interested in assisting the county jails in dealing with the overcrowding problem, however, the complex nature of the situation necessitates the gathering of specific data/variables in order to cultivate a clear picture of the actual problem. The enclosed questionnaire represents the information we feel will enable us to address this situation.

You are requested to complete each section as accurately as possible, excluding any section that is not applicable to your particular operation. Since time is of essence, please complete the questionnaire by March 6, 1981 and forward it to:

Mr. Neal Frank
Pretrial Services Unit
Administrative Office of the Courts
State House Annex, CN-037
Trenton, NJ 08625

If any questions or difficulties arise, please contact Mr. Frank at (609) 292-8909. In advance, I would like to thank you for the time you are taking to complete this information and the Wardens' Association for its

Page two
County Wardens

February 18, 1981

endorsement of this project. It is through this type of unified effort that major gains are produced.

RDL:lg

Enclosure

cc: Assignment Judges
Trial Court Administrators

NEW JERSEY ADMINISTRATIVE OFFICE OF THE COURTS
COUNTY JAIL POPULATION QUESTIONNAIRE

I. COUNTY: _____ DATE: _____
PERSON COMPLETING QUESTIONNAIRE: _____ POSITION: _____
NAME OF YOUR FACILITY: _____

II. BACKGROUND DATA

- A. Does your county have more than one county jail facility:
[] yes [] no
if yes, list names of additional facilities and indicate the functions of each facility, e.g. used to hold: presentenced, sentenced populations.
1. NAME: _____ TYPE: _____
2. NAME: _____ TYPE: _____
3. NAME: _____ TYPE: _____
- B. Rated capacity of your jail: _____
- C. Who established capacity figure: _____
- D. How was capacity figure established (e.g. based on (1) inmate per cell, number of actual beds, square footage per/person):

- E. Are any legal actions presently pending against your jail for overcrowding and/or conditions: [] yes [] no. If yes, explain, identifying whether the action is pending in State or Federal Court.

III. BAIL ADMINISTRATION

- A. Are defendants/sureties allowed to post bail at the jail:
[] yes [] no
If yes, are there conditions to this process, e.g. night-time only, only indictable cases.

IV. JAIL POPULATION HISTORY

Complete this section with jail population data for: A corresponding years (1972-78), B - corresponding months of (1979-1980).

	Highest Count	Lowest Count	Average Monthly Population
A.			
1972	_____	_____	_____
1973	_____	_____	_____
1974	_____	_____	_____
1975	_____	_____	_____
1976	_____	_____	_____
1977	_____	_____	_____
1978	_____	_____	_____

PART B CONTINUED ON PAGE TWO

Page Two

	Highest Count	1979 Lowest Count	Average Monthly Population		Highest Count	1980 Lowest Count	Average Monthly Population
B.							
Jan.	_____	_____	_____	Jan.	_____	_____	_____
Feb.	_____	_____	_____	Feb.	_____	_____	_____
Mar.	_____	_____	_____	Mar.	_____	_____	_____
Apr.	_____	_____	_____	Apr.	_____	_____	_____
May	_____	_____	_____	May	_____	_____	_____
June	_____	_____	_____	June	_____	_____	_____
July	_____	_____	_____	July	_____	_____	_____
Aug.	_____	_____	_____	Aug.	_____	_____	_____
Sept.	_____	_____	_____	Sept.	_____	_____	_____
Oct.	_____	_____	_____	Oct.	_____	_____	_____
Nov.	_____	_____	_____	Nov.	_____	_____	_____
Dec.	_____	_____	_____	Dec.	_____	_____	_____

V. JAIL POPULATION ANALYSIS - JANUARY/1981

Complete the following tables, selecting any Tuesday, Wednesday or Thursday from the month of January, 1981. Each category pertains to a specific classification point in the jail process. The sum total of categories A - through - F should equal the total number of inmates incarcerated for the day selected.

Give date selected: _____

Population of facility on the day selected: _____

(Definitions of the terms in the categories A - through - F are listed following section F).

A. HOLD POPULATION:

1. HOLD - NO BAIL SET (excluding C.R. 3:26-2 cases) []
2. HOLD - BAIL SET/CAN'T POST []
3. HOLD - BAIL SET/DETAINER FILED []
4. HOLD - NO BAIL SET (C.R. 3:26-2 CASES/ JURISDICTION OF SUPERIOR COURT) []

(Do the figures above represent: below normal [], normal [], above normal [] distributions in each category. If figures reflect below/above normal data, please comment on what you think caused this situation-

_____)

B. TEMPORARY COMMITMENT POPULATION:

1. TEMPORARY COMMITMENT - NO BAIL SET (excluding C.R. 3:26-2 cases) []
2. TEMPORARY COMMITMENT - BAIL SET/CAN'T POST []
3. TEMPORARY COMMITMENT - BAIL SET/DETAINER FILED []
4. TEMPORARY COMMITMENT - NO BAIL SET (C.R. 3:26-2 CASES/JURISDICTION OF SUPERIOR COURT) []

(Do the figures above represent: below normal [], normal [], above normal [] distributions in each category. If figures reflect below/above normal data, please comment on what you think caused this situation-

_____)

C. COMMITTED POPULATION:

1. COMMITTED - NO BAIL SET(excluding C.R. 3:26-2 cases)
2. COMMITTED - BAIL SET/CAN'T POST
3. COMMITTED - BAIL SET/DETAINER FILED
4. COMMITTED - NO BAIL SET (C.R. 3:26-2 CASES/
JURISDICTION OF SUPERIOR COURT)

(Do the figures above represent: below normal ☐, normal ☐, above normal ☐ distribution within category. If figure reflects below/above normal data, please comment on what you think caused this situation-

_____).

D. SENTENCED POPULATION:

1. NUMBER OF SENTENCED INMATES (excluding Section F)

(Does the figure above represent a: below normal ☐, normal ☐, above normal ☐ distribution within category. If figure reflects below/above normal data, please comment on what you think caused this situation-

_____).

E. HOUSING OF INMATE POPULATION: (from state/or other facilities)

1. NUMBER OF INMATES

(Does the figure above represent a: below normal ☐, normal ☐, above normal ☐ distribution within category. If figure reflects below/above normal data, please comment on what you think caused this situation-

_____).

F. SPECIALIZED CASES:

1. INMATES ON WORK RELEASE
2. INMATES ON WEEKEND SENTENCES
3. INMATES ON FURLOUGH

(Does the figure above represent a: below normal ☐, normal ☐, above normal ☐ distribution within category. If figure reflects below/above normal data, please comment on what you think caused this situation-

_____).

Definition of specific terms - question IV:

1. HOLD POPULATION - pre-arraignment detention of arrestee/defendant in jail by police/municipal court without commitment papers.
2. TEMPORARY COMMITMENT POPULATION - pre-arraignment detention of arrestee/defendant in jail by police/municipal court with commitment papers
3. COMMITMENT POPULATION - post arraignment incarceration of defendant pending further hearings
4. SENTENCED POPULATION - inmates sentenced to county institutions
5. HOUSING POPULATION - inmates sentenced awaiting space in state institutions
6. SPECIALIZED CASES - inmates sentenced with special status

VI. COMMENTS:

- 1) Do you feel your facility has an overcrowding problem.
☐ yes ☐ no ☐ not certain
If yes, in your opinion what has caused the overcrowding conditions
- _____
- _____
- _____

- 2) If overcrowding problems exist, have you initiated any activities to address problem. ☐ yes ☐ no ☐ not applicable
If yes, indicate activities:
- _____
- _____
- _____

- 3) If overcrowding problems exist, do you feel that certain contributing factors are beyond your control e.g. financial, political.
☐ yes ☐ no ☐ not applicable
If yes, indicate factors:
- _____
- _____
- _____

- 4) Please feel free to provide any additional comments, suggestions or recommendations that you feel can assist us in securing a better understanding of the overcrowding problem.
- _____
- _____
- _____

Thank you for your cooperation!

ADDITIONAL AREA FOR COMMENTS:

APPENXID A¹

COUNTY JAIL QUESTIONNAIRE
PRETRIAL POPULATION DATA

PRETRIAL POPULATION
COUNTY JAIL QUESTIONNAIRE DATA

DATA PRESENTED AS REPORTED IN QUESTIONNAIRE	Rated Capacity	Population on Questionnaire Completion Date	% of Population in rel. to Rated Capacity	Sentenced Population	Pretrial Pop.	TOTAL OF POPULATION BAIL SET - CAN'T POST
Atlantic County Jail	168 Male 18 Female	216	116%	71	145	108
Bergen County Jail	467	372	80%	131	240	207
Burlington County Jail	135	132	98%	34 ^{1/}	98	47
Camden County Jail (24 work rel.)	250 Male 18 Female	226	77%	69	156	100
Cape May County Jail	114	75	66%	22	55	37
Cumberland County Jail	126	135	107%	79	101	73
Essex County Jail	550	763	139%	55	708	423
Essex County Correction Center	INFORMATION NOT SUPPLIED AS OF 3/31/81					
Gloucester County Jail	59	73	124%	27	64	37
Hudson County Jail	200 dbl. cell +60 beds	509	111%	168	341	264
Hudson County Penitentiary						
Hunterdon County Jail	46 beds 12 work rel.	29	50%	16	13	5
Mercer County Detention Center	196	178	91%	12	162	130
Mercer County Correction Center	220	79	36%	79	N/A	N/A
Middlesex County Jail	102	102	100%	9	93	66
Middlesex County Work House	150	181	121%	89	92	66
Monmouth County Corr. Institute	285 Male 40 Female	340	105%	92	248	212
Morris County Jail	123	146	119%	80	66	38
Ocean County Jail	128	124	97%	58	66	29
Passaic County Jail	INFORMATION NOT SUPPLIED AS OF 3/31/81					
Salem County Jail	65	103	158%	45	58	57
Somerset County Jail	65	58	89%	12 ^{2/}	46	43
Sussex County Jail	86	23	27%	9	12	6
Union County Jail	219 19 work rel.	278	117%	70	208	171
Warren County Jail	32	36	113%	13	30	25
TOTALS	4177	4178		1240	3002	2144
* Hudson County Penitentiary Data combined with Hudson County Jail Data ^{1/} Work Release housed at New Lisbon ^{2/} Weekends excluded Week- enders			MEDIAN OF 105% RANGE= 27% -158%	Includes County sent., State sent., Work rel. Weekenders Furlough!	TOTAL 71.8% OF POPULATION	TOTAL 51.3% OF POPULATION

(SENTENCE) + (PRETRIAL) = POPULATION 1% ERROR SPAN IN DATA

APPENDIX A²

COUNTY JAIL QUESTIONNAIRE
SENTENCED POPULATION DATA

SENTENCED POPULATION								
COUNTY JAIL POPULATION QUESTIONNAIRE								
DATA PRESENTED AS REPORTED IN QUESTIONNAIRE	Rated Capacity	Population on Ques. Comple. Date	Total Aggregate Sentence	Sent. Pop.	Housed Inmates	Work Release	Week- enders	Furloughs
				Non-Sp. Status	SPECIAL STATUS CASES			
Atlantic County Jail	168 Male 18 Female	216	71	41	12	7	11	—
Bergen County Jail	467	372	131	83	33	8	7	—
Burlington County Jail	135	132	34	18	2	11 ^{1/}	3 ^{1/}	—
Camden County Jail (24 W.R.)	250 Male 18 Female	226	69	30	15	24	—	—
Cape May County Jail	114	75	22	14	2	4	2	—
Cumberland County Jail	126	135	79	50	6	4	19	—
Essex County Jail	550	763	55	—	55	—	—	—
Essex County Correction Center	INFORMATION NOT SUPPLIED AS OF 3/31/81				—	—	—	—
Gloucester County Jail	59	73	27	9	—	18	—	—
Hudson County Jail	200 dbl. cell +60 beds	509	168	134	16	11	7	—
Hudson County * Penitentiary	—	—	—	—	—	—	—	—
Hunterdon County Jail	46 beds 12 W.R.	29	16	8	—	8	—	—
Mercer County Detention Center	196	178	12	3	6	—	2	1
Mercer County Correction Center	220	79	79	73	—	4	2	—
Middlesex County Jail	102	102	9	4	5	—	—	—
Middlesex County Work House	150	181	89	66	5	10	8	—
Monmouth County Corr. Institute	285 Male 40 Female	340	92	64	25	2	1	—
Morris County Jail	123	146	80	62	4	1	13	—
Ocean County Jail	128	124	58	44	7	7	—	—
Passaic County Jail	INFORMATION NOT SUPPLIED AS OF 3/31/81				—	—	—	—
Salem County Jail	65	103	45	12	8	20	5	—
Somerset County Jail	65	58	12	7	5	—	NOT REPORTED	—
Sussex County Jail	86	23	9	8	1	—	—	—
Union County Jail	219 19 W.R.	278	70	33	32	3	2	—
Warren County Jail	32	36	13	6	4	—	3	—
TOTALS	4177	4178	1240	769	243 ^{2/}	142	85	1
NOTE: Sentence, Housed, Work Release, Weekenders and Furloughs = 29 % of Population				Includes: Special & Non-Special Status Inmates				
* Hudson County Penitentiary Data combined with Hudson County Jail Data				62% OF SENTENCED POPULATION				
^{1/} Housed at New Lisbon				19.5% OF SENTENCED POPULATION				
^{2/} Inmates Sentenced Awaiting Space in State Institutions				11.4% OF SENTENCED POPULATION				
				6.8% OF SENTENCED POPULATION				
				470 INMATES OR 38% OF SENTENCED INMATES				

APPENDIX B

BURLINGTON COUNTY DATA STUDY

JANUARY 1981

JANUARY 1981

U=264 CASES

FORM OF RELEASE

OFFENSE	ROR	CASH	SURETY BAIL	REAL ESTATE	RELEASE BY CT. ORDER	TIME SERVED	SEN- TENCED	CHARGES DROPPED	DE- TAINER	RETURNED TO CORRECTIONS
<u>3:26-2 CASES</u>										
Murder										
Kidnapping										
Manslaughter										
Agg. Mans.										
Agg. Sex. Asslt.				1						
Sex Asslt.					1					
Agg. Crim. Sex Asslt.										
Robbery	4		3	1						
Agg. Asslt.	2		6				1			1
Ind. All Others	9	23	44	5	23		10		3	3
Contempt		15	1		8		4		2	1
Disor. Persons	1	13			3	1	17		1	
Petty Disor.							1			
Motor Veh.	2	22	1				4			1

TOTAL LENGTH OF TIME DETAINED

JAN 1981

* Detained
 ** Sentenced
 *** Charge Dropped

	DAY 1	DAY 2	DAY 3	DAY 4+	Day 6+	Day 8+	10+12+	14+	16+	18+	20+	22+	24+	26+	28+	30+	31+
<u>OFFENSE</u>																	
<u>3:26-2 cases</u>																	
MURDER																	
KIDNAPPING																	
MANSLAUGHTER																	
AGG. MANS.																	
AGG. SEX. ASSLT.		1															
SEX. ASSLT.	1																
AGG. CRIM. SEX ASSLT.																	
ROBBERY	1	4		1				1									
AGG. ASSLT.	1		2		2	1	1		1							1	
IND. ALL OTHERS	35	15	8	15	3 2* 1**	4	2	4	2	1	2 1*	2 1*	1	1 1*	3	1	9 2* 2**
CONTEMPT	15	5 1**	1	4 1*, 1**		1**	1	1	1	1							
DISOR. PERSONS	8 1**	4 2**	3 1***	4 2*, 1**	2 4**	1**			2	1							
PETTY DISOR.		1						1	1						1**		1
MOTOR VEH.	18	3	4	3				1	1*								

AMOUNT OF CASH BAIL AS A FUNCTION OF OFFENSE
(bail figures do not necessarily indicate a release)

JAN 1981

OFFENSE	\$0	\$50	\$100	\$300	\$500	\$1000	\$5000	\$10,000	\$20,000	\$40,000+
3:26-2 CASES										
Murder										
Kidnapping										
Manslaughter										
Agg. Mans.										
Agg. Sex Asslt.						1				
Sex Asslt.				1						
Agg. Crim. Sex Asslt.										
Robbery						2	1	1		
Agg. Asslt.						7	1			
Ind.-All Others			6	1	20	38	15	19	7	1
Contempt		5	13	4	4	5				
Disor. Per.			13	5	14	6				
Petty Disor.			2							
Motor Veh.	1	2	16	4	5	1				

TIME OF RELEASE UPON BAIL DETERMINATION (includes sent./credit time served, fines & cost)																		*Detainer **Sentenced	***Charge Dropped
OFFENSE	Day 1	2	3	4+	6+	8+	10+	12+	14+	16+	18+	20+	22+	24+	26+	28+	30+	32+	
3:26-2 CASES																			
Murder																			
Kidnapping																			
Manslaughter																			
Agg. Mans.																			
Agg. Sex Asslt.	1																		
Sex Asslt.	1																		
Agg. Crim. Sex Asslt																			
Robbery	5	2																	
Agg. Asslt.	8		1		1					1**									
Ind.-All Others	59	13	4	10	1** 1*	2	1**	2	1 1**			1 1** 1*	1*		2 2*		1*	3 1** 2*	
Contempt	14	4 2**	1	3 2**	1**	1**	1*	1**		1 1*									
Disor. Per.	9 2**	4 1**	2 2**	3 2** 1***	2 4**	1**		1	1 1**	1					1**	1		1**	
Petty Disor.		1**																	
Motor Veh.	17	2 1*	2 1**	3				1**				1*							

TIME BAIL SET FROM HOLD/COMMITMENT

JAN 1981

[illegible]

JAN 1981

[illegible]

* Detainer JAN 1981
** Sentenced

[illegible]

NUMBER OF DAYS IN JAIL ACCORDING TO MUNICIPAL COURT

*Detainer
**Sentenced

JAN 1981

[illegible]

*Detainer
**Sentenced JAN 1981

[illegible]

FEBRUARY, 1981

FEBRUARY 1981

U= 208 cases

FORM OF RELEASE

OFFENSE	ROR	CASH	SURETY BAIL	REAL ESTATE	RELEASE BY CT. ORDER	TIME SERVED	SEN- TENCED	CHARGES DROPPED	DE- TAINER	RETURNED TO CORRECTIONS	OTHER
<u>3:26-2 CASES</u>											
Murder											
Kidnapping											
Manslaughter											
Agg. Mans.											
Agg. Sex. Asslt.							1				
Sex Asslt											
Agg. Crim. Sex Asslt.											
Robbery	1										
Agg. Asslt.	1		5				1				
<u>Ind. All Others</u>	5	7	23	2	38			1	3		
Contempt	1	5			19		10				
Disor. Persons	1	9			12		14		2		1
Petty Disor.									1		
Motor Vehi		6	1	1	12	1	11				

(Data does not necessarily indicate bail/release)

TOTAL LENGTH OF TIME DETAINED

FEB 1981

* Detained
** Sentenced
*** Charge Dropped

	DAY 1	DAY 2	DAY 3	DAY 4+	Day 6+	Day 8+	10+	12+	14+	16+	18+	20+	22+	24+	26+	28+	30+	32+
OFFENSE																		
3:26-2 cases																		
MURDER																		
KIDNAPPING																		
MANSLAUGHTER																		
AGG. MANS.																		
AGG. SEX. ASSLT.	1**																	
SEX. ASSLT.																		
AGG. CRIM. SEX ASSLT.																		
ROBBERY									1									
AGG. ASSLT.	2		1	2				1**										
IND.-ALL OTHERS	36	9	9	8	4	3	2	1*	2	1	1							
						1*												
CONTEMPT	20 1**	6 1**	2 1***	2 2**	1*	1			1	1***								1
DISOR. PERSONS	14 3**	2 2**	2 3**		1**		1		1*		1							1***
PETTY DISOR.		1*		1***														
MOTOR VEH.	18 3**	2	1 1**	1***	2**		1***		1*		1***							

AMOUNT OF CASH BAIL AS A FUNCTION OF OFFENSE
(bail figures do not necessarily indicate a release)

FEB 1981

OFFENSE	\$0	\$50	\$100	\$300	\$500	\$1000	\$5000	\$10,000	\$20,000	\$40,000+
3:26-2 cases Murder										
Kidnapping										
Manslaughter										
Agg. Mans										
Agg. Sex Asslt.										
Sex Asslt										
Agg. Crim Sex Asslt.										
Robbery						1				
Agg. Asslt.						3	1	1		
Ind.-All Others			4	3	12	27	12	6	4	
Contempt	1	3	12	6	8	5				
Disor. Per.	1		7	4	9	5				
Petty Disor.			1							
Motor Veh	2		12	6	5	2				

OFFENSE	FEB 1981																
	Day	2	3	4+	6+	8+	10+	12+	14+	16+	18+	20+	22+	24+	26+	28+	30+
3:26-2 CASES																	
Murder																	
Kidnapping																	
Manslaughter																	
Agg. Mans.																	
Agg. Sex Asslt.	1**																
Sex Asslt.																	
Agg. Crim.																	
Sex Asslt																	
Robbery	1																
Agg. Asslt.	3	1		1			1***										
Ind.-All Others	51	8	3	4	2	1 1*		1*	2	1 1*	1						
Contempt	18 5**	7	1	2 3**		1		1	1***	2***							
Disor. Per.	13 5**	2 2**	2 3**		1 1***			1*	1								1**
Petty Disor.		1*															
Motor Veh.	17 4* 1**	2	1 1**	1 1**	2**	1**			1***								

*Detainer
Sentenced *Charge
Dropped

TIME BAIL SET FROM HOLD/COMMITMENT

FEB 1981

[illegible]

NUMBER OF DAYS IN JAIL ACCORDING TO MUNICIPAL COURT

* Detainer
** Sentenced FEB 1981

MUNICIPAL COURT	Day 1	2	3	4+	6+	8+	10+	12+	14+	16+	18+	20+	22+	24+	26+	28+	30+	32+
Beverly City	1	1 1**	1															
Bordentown City	1																	
Bordentown Twp.	3 3**	2 1*, 1**	1	1 2**	1**													
Burlington City	4 1*, 2**	2	1		3 2**	1					1							
Burlington Twp.	2	1		1					1									
Chesterfield Twp.				1														
Cinnaminson Twp.			1	1*	1				1**	1*								
Delanco Twp.	2				1													
Delran Twp.	1**							1*										
Eastampton Twp.	3	4							1**									
Edgewater Park Twp.	2			1**														
Evesham Twp.	5		4**															
Fieldsboro Boro																		
Florence																		

MUNICIPAL COURT	NUMBER OF DAYS IN JAIL ACCORDING TO MUNICIPAL COURT																	
	Day 1	2	3	4+	6+	8+	10+	12+	14+	16+	18+	20+	22+	24+	26+	28+	30+	32+
Hainesport Twp		2	1	1														
Lumberton Twp.	1**		1**															
Mansfield Twp.	3	1		1														
Maple Shade Twp.	2	2			1**		1**	1*	1									
Medford Twp.	2 1**	1																
Medford Lakes Boro																		
Moorestown Twp	6	1																
Mount Holly Twp.	6 1* 1**	1		1		1				1*								
Mount Laurel Twp.	14	1			1		1											
New Hanover Twp. & Wrightstown Boro						1*												
N. Hanover Twp.	1**																	
Palmyra	1		1															
Pemberton Boro				2							1							
Pemberton Twp.	3 1*		1	1**	2	1			1*									
Riverside Twp.	1	1																

*Detainer
**Sentenced

FEB. 1981

*Detainer
**Sentenced FEB 1981

[illegible]

APPENDIX C

WARRANT/SUMMONS DATA STUDY

WARRANT/SUMMONS STUDY
COURT YEARS 1979-80-81

(7/1/79- 8/31/79 [CY 79])		(9/1/79- 12/31/79 [CY 80])		(7/1/80- 8/31/80 [CY 80])		(9/1/80- 12/31/80 [CY 81])	
WARRANTS	SUMMONS	WARRANTS	SUMMONS	WARRANTS	SUMMONS	WARRANTS	SUMMONS
12,610 I	2,967 I	23,402 I	5,683 I	14,182 I	3,855 I	23,377 I	9,731 I
12,896 NI	25,418 NI	19,364 NI	41,706 NI	12,302 NI	32,007 NI	16,025 NI	51,750 NI
25,506	28,385	42,766	47,389	26,484	35,862	39,402	61,481
TOTAL		TOTAL		TOTAL		TOTAL	
53,891		90,155		62,346		100,883	
-A-		-B-		-C-		-D-	
WARRANTS = 47.328%		WARRANTS = 47.436%	+ .1	WARRANTS = 42.479%	-4.9	WARRANTS = 39.057%	-3.4
SUMMONS = 52.671%		SUMMONS = 52.563%	- .1	SUMMONS = 57.520%	+4.9	SUMMONS = 60.942%	+3.4
						TOTAL	
						-8.3	
						+8.3	

I = Indictable
NI = Non-Indictable

READ CHART IN LINEAR FASHION - A-B-C-D

TOTAL FIGURES DISPLAYED IN PART D = WARRANT/SUMMONS VARIATIONS OVER STUDIED TIME SPAN

CONTINUED

1 OF 2

APPENDIX D

PROBATION VOLUNTEER DATA

As of February, 1981, the following numbers of volunteers were providing these services on a one-to-one basis:

Burlington	1
Camden	27
Essex	1
Hudson	2
Middlesex	17
Monmouth	2
Morris	17
Union	45

All of these counties except Hudson, were also supervising some adults on probation from the Superior Courts. The numbers varied from 169-Camden to one (1) in Union County. On a County-by-County basis, the following numbers of Volunteers in the 19 VIP Programs were awaiting assignment:

Atlantic	3	Hunterdon	0
Bergen	14	Mercer	8
Burlington	48	Middlesex	15
Camden	46	Monmouth	15
Cape May	18	Morris	0
Cumberland	10	Ocean	102
Essex	75	Passaic	98
Gloucester	12	Salem	7
Hudson	15	Somerset	3
		Union	0

APPENDIX E

MINORITY POPULATION DATA

NEW JERSEY HISPANIC POPULATION

1980 CENSUS

<u>COUNTY</u>	<u>TOTAL POPULATION</u>	<u>HISPANIC POPULATION</u>	<u>% HISPANIC</u>
Atlantic	194,119	7,590	3.9
Bergen	845,385	28,514	3.4
Burlington	362,542	8,658	2.4
Camden	471,650	20,626	4.4
Cape May	82,266	1,190	1.4
Cumberland	132,866	12,525	9.4
Essex	850,451	76,568	9.0
Gloucester	199,917	2,407	1.2
Hudson	556,972	145,163	26.1
Hunterdon	87,361	908	1.0
Mercer	307,863	10,580	3.4
Middlesex	595,893	34,138	5.6
Monmouth	503,173	12,915	2.6
Morris	407,630	10,952	2.7
Ocean	346,038	8,444	2.4
Passaic	447,585	62,123	13.9
Salem	64,676	1,005	1.6
Somerset	203,129	4,080	2.0
Sussex	116,119	1,764	1.5
Union	504,094	40,756	8.1
Warren	84,429	961	1.1
TOTAL	7,364,158	491,867	6.7

SOURCE: New Jersey 1980 Census Counts of Population of Race and Spanish Origin. Dept. of Labor & Industry, Division of Planning & Research, Office of Demographic and Economic Analysis. March 1981.

NEW JERSEY MUNICIPALITIES

WITH A HISPANIC POPULATION OF 10.0% OR MORE

ATLANTIC COUNTY	Total Pop.	Hispanic Pop.	% Hispanic
Egg Harbor City	4,618	716	15.5
Mullica Township	5,243	706	13.5
[Atlantic City	40,199	2,323	5.8]
BERGEN COUNTY			
[Englewood City	23,701	2,076	8.8]
Hackensack City	36,039	3,741	10.4
BURLINGTON COUNTY			
[New Hanover Township	14,258	1,376	9.7]
Wrightstown Borough	3,031	337	11.1
CAMDEN COUNTY			
Camden City	84,910	16,308	19.2
CAPE MAY COUNTY			
Woodbine Borough	2,809	462	16.4
CUMBERLAND COUNTY			
Vineland City	53,753	9,804	18.2
ESSEX COUNTY			
[Irvington Town	61,493	5,181	8.4]
Newark City	329,248	61,254	18.6
GLOUCESTER COUNTY			
None			
HUDSON COUNTY			
East Newark Borough	1,923	480	25.0
Guttenberg Town	7,340	1,878	25.6
Harrison Town	12,242	2,515	20.5
Hoboken City	42,460	17,074	40.2
Jersey City	223,532	41,672	18.6
North Bergen Township	47,019	9,472	20.1
Union City	55,593	35,525	63.9
Weehawken Township	13,168	4,621	35.1
West New York Town	39,194	24,735	63.1

HUNTERDON COUNTY

None

MERCER COUNTY

[Trenton City 92,124 7,360 8.0]

MIDDLESEX COUNTY

New Brunswick City 41,442 4,883 11.8
Perth Amboy City 38,951 15,841 40.7

MONMOUTH COUNTY

[Long Branch City 29,819 2,617 8.8]

MORRIS COUNTY

Dover Town 14,681 3,917 26.7

OCEAN COUNTY

[Lakewood Township 38,464 3,252 8.5]
[South Toms River Bor. 3,954 292 7.4]

PASSAIC COUNTY

Passaic City 52,463 17,933 34.2
Paterson City 137,970 39,650 28.7

SALEM COUNTY

None

SOMERSET COUNTY

None

SUSSEX COUNTY

None

UNION COUNTY

Elizabeth City 106,201 28,305 26.7
[Plainfield City 45,555 3,291 7.2]

WARREN COUNTY

None

SOURCE: New Jersey 1980 Census Counts of Population of Race and Spanish Origin. Dept. of Labor & Industry, Division of Planning & Research, Office of Demographic and Economic Analysis. March 1981.

MUNICIPALITIES WITH 20.0%-29.9% BLACKS (continued)

CUMBERLAND

Commercial Township	4,674	1,296	27.7
Lawrence Township	2,116	479	22.6

ESSEX

Montclair Town	38,321	11,057	28.9
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GLOUCESTER

Elk Township	3,187	715	22.4
Paulsboro Borough	6,944	1,787	25.7

HUDSON

Jersey City	223,532	61,954	27.7
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MIDDLESEX

New Brunswick City	41,442	11,811	28.5
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MONMOUTH

Long Branch City	29,819	6,014	20.2
Red Bank Borough	12,031	3,101	25.8
Tinton Falls Borough	7,740	2,010	26.0

MORRIS

Morristown Town	16,614	4,145	24.9
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SALEM

Mannington Township	1,740	492	28.3
Quinton Township	2,887	676	23.4

SOMERSET

Franklin Township	31,358	7,028	22.4
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UNION

Hillside Township	21,440	6,381	29.8
Roselle Borough	20,641	5,743	27.8

MUNICIPALITIES WITH 10.0%-19.9% BLACKS

ATLANTIC

Buena Vista Township	6,959	1,386	19.9
Egg Harbor Township	19,381	1,961	10.1
Egg Harbor City	4,618	509	11.0
Hamilton Township	9,499	1,378	14.5

BURLINGTON

Beverly City	2,919	565	19.4
Bordentown City	4,441	617	13.9
Burlington Township	11,527	2,170	18.8
Edgewater Park Township	9,273	1,219	13.1
Mount Holly Township	10,818	1,730	16.0
North Hanover Township	9,050	1,252	13.8
Palmyra Borough	7,085	818	11.5

CAMDEN

Berlin Township	5,348	652	12.2
Lindenwold Borough	18,196	2,265	12.4
Magnolia Borough	4,881	592	12.1
Somerdale Borough	5,900	766	13.0

CAPE MAY

Middle Township	11,373	1,645	14.5
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CUMBERLAND

Deerfield Township	2,523	487	19.3
Greenwich Township	973	130	13.4
Maurice River Township	4,577	630	13.8

ESSEX

S. Orange Village T'ns'p.	15,864	1,593	10.0
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GLOUCESTER

Clayton Borough	6,013	1,021	17.0
Glassboro Borough	14,574	2,348	16.1
Logan Township	3,078	366	11.9
Monroe Township	21,639	2,699	12.5
Swedesboro Borough	2,031	394	19.4
Woodbury City	10,353	1,753	16.9
Woolwich Township	1,129	136	12.0

NEW JERSEY MUNICIPALITIES
WITH A BLACK POPULATION OF 10.0% OR MORE

MUNICIPALITIES WITH 50% OR MORE BLACKS

	<u>Total Population</u>	<u>Black Population</u>	<u>% Black</u>
ATLANTIC			
Pleasantville City	13,435	6,321	50.0
CAMDEN			
Camden City	84,910	25,739	53.0
Chesilhurst Borough	1,590	1,058	66.5
Lawnside Borough	3,042	2,967	97.5
CUMBERLAND			
Fairfield Township	5,693	2,867	50.4
ESSEX			
East Orange City	77,025	64,354	83.5
Newark City	329,248	191,743	58.2
Orange City	31,136	17,840	57.3
MONMOUTH			
Asbury Park City	17,015	8,535	50.2
UNION			
Plainfield City	45,555	27,420	60.2

MUNICIPALITIES WITH 40.0%-49.9% BLACKS

ATLANTIC			
Atlantic City	40,199	20,029	49.8
BERGEN			
Englewood City	23,701	9,629	40.6
MERCER			
Trenton City	92,124	41,860	45.4
SALEM			
Salem City	6,959	3,057	43.9

MUNICIPALITIES WITH 30.0%-39.9% BLACKS

BURLINGTON			
Willingboro Township	39,912	15,102	37.8
CUMBERLAND			
Bridgeton City	18,795	6,500	34.6
ESSEX			
Irvington Town	61,493	23,397	38.0
MONMOUTH			
Neptune Township	28,366	9,242	32.6
MORRIS			
Victory Gardens Borough	1,043	318	30.5
PASSAIC			
Paterson City	137,970	47,091	34.1
SALEM			
Penns Grove Borough	5,760	1,908	33.1

MUNICIPALITIES WITH 20.0%-29.9% BLACKS

BERGEN			
Hackensack City	36,039	7,497	20.8
Teaneck Township	39,007	9,184	23.5
BURLINGTON			
Burlington City	10,246	2,301	22.5
Chesterfield Township	3,867	913	23.6
Fieldsboro Borough	597	165	27.6
New Hanover Township	14,258	3,969	27.8
Pemberton Township	29,720	5,984	20.1
Westampton Township	3,383	712	21.0
Wrightstown Borough	3,031	797	26.3
CAMDEN			
Woodlynne Borough	20,034	4,330	21.6
CAPE MAY			
West Cape May Borough	1,091	301	27.6
Wildwood City	4,913	1,051	21.4
Woodbine Borough	2,809	802	28.6

MUNICIPALITIES WITH 10.0%-19.9% BLACKS (continued)

MERCER

Ewing Township	34,842	4,744	13.7
Hightstown Borough	4,581	458	10.0

MIDDLESEX

Jamesburg Borough	4,114	529	12.9
Piscataway Township	42,223	6,162	14.6

MONMOUTH

Aberdeen Township	17,235	1,725	10.0
Allentown Borough	1,962	214	10.9
Freehold Borough	10,020	1,981	19.8

OCEAN

Lakewood Township	38,464	5,406	14.1
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PASSAIC

Passaic City	52,463	10,364	19.8
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SALEM

Carneys Point Township	8,396	1,052	12.5
Oldmans Township	1,847	303	16.4
Pilesgrove Township	2,810	490	17.4
Pittsgrove Township	6,954	725	10.4
Woodstown Borough	3,250	449	13.8

SOMERSET

Somerville Borough	11,973	1,320	11.0
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UNION

Elizabeth City	106,201	19,289	18.2
Linden City	37,836	6,247	16.5
Rahway City	26,723	4,879	18.3
Scotch Plains Township	20,774	2,285	11.0

APPENDIX F

REPORT OF THE
NEW JERSEY SUPREME COURT'S
COMMITTEE ON CRIMINAL PRACTICE
PART IV

Mark Addison
David S. Baime
Matthew P. Boylan
Donald R. Conway
Barry H. Evenchick
Thomas W. Greelish
C. Judson Hamlin
Donald Horowitz
Burrell Ives Humphreys
Michael Patrick King
William J. Marchese
Patrick J. McGann, Jr.
Ralph G. Mesce (deceased)
A. Jerome Moore
Oscar W. Rittenhouse (deceased)
Edwin H. Stern
Edwin H. Stier
Anne E. Thompson
Stanley C. Van Ness
Harvey Weissbard
Leo Yanoff
Nicholas Scalera, Chairman

TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF
THE NEW JERSEY SUPREME COURT

The Supreme Court Committee on Criminal Practice herewith
respectfully files Part IV of its 1979 Report:

PRETRIAL RELEASE

The Committee recommends adoption of the following rules:

RULE 3:4. [PROCEEDINGS BEFORE THE
COMMITTING JUDGE] PRETRIAL RELEASE

3:4-1. Procedure After Arrest

[A person arrested under a warrant issued upon a complaint shall be taken, without unnecessary delay, before the court named in the warrant.] A person making an arrest without a warrant shall take the arrested person, without unnecessary delay, before the nearest available [committing] judge and a complaint shall be filed forthwith and either a warrant issued thereon or, if the person taking the complaint has reason to believe that the defendant will appear in response to a summons, a summons issued. [The judge before whom the arrested person is taken shall advise such person of his rights in accordance with R.3:4-2.] If a warrant issues following arrest or if the arrest was made under a warrant, the defendant shall be informed without unnecessary delay of the conditions he must satisfy for pretrial release which conditions shall be determined by a person authorized to do so under these rules. A defendant remaining in custody then shall be taken before a judge authorized to determine or redetermine pretrial release conditions for a hearing pursuant to R.3:4-6 without unnecessary delay, but in no event later than 72 hours after arrest.

3:4-2. Inquiry Before First Appearance

In all cases in which the defendant remains in custody and in which release conditions have not been determined at a hearing before a court, or in which such hearing was held prior to the inquiry hereinafter described, an inquiry into the facts relevant to pretrial release shall be conducted forthwith by the probation department or other agency or person(s) approved by the Assignment Judge and designated as the "Bail Unit." The inquiry shall determine, if possible, from any available source and without being restricted by rules of evidence, facts relevant to the criteria set forth in R.3:4-5. The approved agency or persons may make recommendations regarding the conditions, if any, which should be imposed with respect to pretrial release. The result of the inquiry and any recommendations shall be made known to the prosecution and the defendant at the first appearance.

3:4-3. Authority to Determine Pretrial Release Conditions

(a) Authority of Judges. A judge of the Superior Court assigned to the county in which the offense was committed or the arrest made may determine pretrial release conditions. Any other judge may determine pretrial release conditions for any person charged with any offense except murder, kidnapping, manslaughter, aggravated sexual assault, sexual assault, aggravated criminal sexual contact, robbery, aggravated assault if it constitutes a crime of the second or third degree as defined by N.J.S.A. 2C:12-1b, attempts to commit any of such offenses, and any other offense involving significant violence to the person, or a person arrested in any extradition proceeding.

(b) Authority of Persons other than Judges. In the absence of the municipal court judge, a person arrested and charged with an offense with respect to which such judge may determine pretrial release conditions may, before his appearance before the judge, be released on his promise to appear or upon execution of a secured or unsecured recognizance as determined by the clerk, or in his absence, by any other person authorized by law to admit persons to bail other than the arresting officer, designated for such purpose by the judge.

(c) Release of Defendants Charged in More than one County. Upon application by the defendant, a judge of the Superior Court assigned to the county in which the defendant is in custody may determine pretrial release conditions with respect to all charges pending against the defendant in any county or municipality in the State,

provided that the prosecutors of all other counties in which such charges are pending shall be given notice and opportunity to be heard concerning such determination.

3:4-4. First Appearance

(a) First Appearance. At the defendant's first appearance before the court following the filing of a complaint, the judge thereof shall inform the defendant of the charge made against him and if a copy of the complaint has not previously been furnished to the defendant, shall furnish him with a copy thereof. The judge shall also inform the defendant of his right not to make a statement as to the charge against him and that any statement made by him may be used against him. In counties where a pretrial intervention program is approved by the Supreme Court for operation under R.3:28, the judge shall also inform the defendant of the existence of such program, the name of the program director and the location at which application may be made for enrollment in such program.

(b) Advice to Defendant. The judge shall also inform the defendant of his right to retain counsel or, if indigent and constitutionally or otherwise entitled by law to counsel, of his right to have counsel furnished without cost. If the defendant asserts he is indigent, unless he affirmatively and with understanding states his intention to proceed without counsel, the judge shall have him complete the appropriate form as prescribed by the Administrative Director of the Courts. If the complaint charges the defendant with an indictable offense, the court shall refer him to the Office of the Public Defender. If the complaint charges the defendant with a non-indictable offense and the court is satisfied that he is indigent and that he is constitutionally or otherwise entitled by law to

have counsel furnished, the court shall assign counsel to represent him in accordance with R.3:27-2. The court shall allow the defendant a reasonable time and opportunity to consult counsel before proceeding further.

(c) Additional Advice for Defendants Charged with Indictable Offenses. If the complaint charges the defendant with an indictable offense, the court shall inform him of his right to have a hearing as to probable cause pursuant to R.3:4-12, and of his right to indictment by the grand jury and trial by jury, and if the offense charged may be tried by the court upon waiver of indictment and trial by jury, the court shall so inform the defendant. All such waivers shall be in writing, signed by the defendant, and shall be filed and entered on the docket. If the complaint charges an indictable offense which cannot be tried by the court on waiver, it shall not ask for or accept a plea to the offense.

(d) Hearing for Defendants in Custody. If the defendant is in custody and if there has been no such previous determination by a judicial officer, the court shall determine, from the complaint or from an affidavit, deposition or testimony under oath whether probable cause exists to believe that an offense has been committed and that the defendant has committed it.

(e) Inquiry Concerning Pretrial Release. The court shall determine pretrial release conditions as provided in these Rules. Inquiry of the defendant regarding the facts relevant to pretrial release pursuant to R.3:4-2 may be conducted by the judge in open

court where such inquiry has not yet been made or to supplement such inquiry which has been made prior to the first appearance.

3:4-5. Criteria for Pretrial Release

In all cases, except those in which a crime punishable by death is charged and the proof is evident or presumption is great, the defendant may be released on his promise to appear unless it is found that there is substantial risk that he will not appear at appropriate times. Promise to appear means the written promise of the defendant that he will appear when required until final disposition of the case. In determining whether there is a substantial risk of non-appearance, the court shall take into account the following factors:

- (1) the nature of the offense presently charged, whether violence is involved, the apparent probability of conviction and the extent of the probable sentence;
- (2) the length of defendant's residence in the community;
- (3) his employment status and history and his financial condition;
- (4) his family ties and relationships;
- (5) his reputation, character, physical and mental condition .
- (6) his prior criminal record, including any record of prior release on promise to appear or with conditions and history of response to legal process;
- (7) the identity of any responsible members of the community who would vouch for defendant's reliability;
- (8) any other factors indicating defendant's ties to the community or bearing on the risk of failure to appear.

3:4-6. General Procedures

(a) Hearing. Whenever a court conducts a hearing to determine or redetermine pretrial release conditions, the defendant and the prosecutor shall have the right to present witnesses and documentary or other evidence in a summary manner.

(b) Statement of Reasons. If following such hearing, the court determines that the release of a defendant on his promise to appear is unwarranted in accordance with R.3:4-5, that a secured recognizance is required in accordance with R.3:4-3(a) or that new or additional release conditions are required in accordance with R.3:4-10, it shall include in the record a statement of its reasons and of the evidence relied on.

3:4-7. Conditions Upon Release.

(a) Upon a finding that release on the defendant's promise to appear is unwarranted, the court shall impose the minimum conditions necessary to reasonably assure defendant's appearance when required. The court may impose one or more of the following conditions:

- (1) execution and signing by the defendant of an unsecured recognizance in an amount specified by the court;
- (2) release of the defendant into the care of some responsible person or organization agreeing to supervise the defendant and assist him in appearing in court;
- (3) placement of defendant under the supervision of an appropriate public agency or official;
- (4) imposition of any reasonable restriction or requirement with respect to the activity, movement, associations or residence of defendant which is designed to assure the defendant's appearance; or
- (5) imposition of any other reasonable conditions including a secured recognizance subject to R.3:4-8.

(b) If the defendant is to be supervised then the court shall set forth the nature, terms and conditions of supervision and the responsibility assumed by the person or agency so supervising.

3:4-8. Secured Recognizances; Form and Place of Deposit; Location of Real Estate; Record of Recognizances, Discharge and Forfeiture Thereof

(a) Secured Recognizances. A secured recognizance may be required by a court as a condition of pretrial release if other conditions of release will not reasonably assure the defendant's appearance in court. The recognizance shall be in an amount reasonably required to assure the defendant's appearance in court. In determining the need, nature and amount of such recognizance, the court shall take into account the factors enumerated in R.3:4-5. Upon a finding that a secured recognizance should be required, the court may require the execution and signing by the defendant of a recognizance in an amount specified by the court which may be secured at the court's option:

- (1) by the obligation of qualified sureties from whom additional security may be required;
- (2) by the deposit in court of cash equal to a set percentage of the face amount thereof as determined by the court, which deposit shall be returned at the conclusion of proceedings provided the defendant has not defaulted in the performance of the conditions of the recognizance, or

(3) by real estate having sufficient equity value.

(b) Terms; Place of Execution and Deposit. A defendant of whom a recognizance is required shall, together with his sureties if required, sign and execute a recognizance before the person author-

ized to take recognizances or, if the defendant is in custody, the person in charge of the place of confinement. The recognizance shall contain the terms set forth in R.1:13-3(b) and shall be conditioned upon the defendant's appearance at all stages of the proceedings until final determination of the matter, unless otherwise ordered by the court. In proper cases no security need be required of a surety. A corporate surety shall be one approved by the Commissioner of Insurance and shall execute the recognizance under its corporate seal, cause the same to be duly acknowledged and shall annex thereto proof of authority of the officers or agents executing the same and of corporate authority and qualification. Recognizances and security in the Superior Court shall be deposited with the clerk of the county in which the offense was committed.

(c) Limitation on Individual Surety. Unless the court for good cause otherwise permits, no surety, other than an approved corporate surety, shall enter into a recognizance if there remains undischarged any previous recognizance entered into by the surety.

(d) Real Estate in Other Counties. Real estate owned by a surety or by the defendant which is located in a county other than the one in which the recognizance is taken may be accepted, in which case the clerk of the court in which the recognizance is taken shall forthwith transmit a copy of the recognizance certified by him to the clerk of the county in which the real estate is situated, who shall record it in the same manner as if the recognizance had been taken in his county.

(e) Record of Recognizance. The clerk of every court, except the municipal court, before which any recognizance shall be entered into shall record immediately, in alphabetical order in a book kept for that purpose, the names of the persons entering into the recognizance, the amount thereof and the date of its acknowledgment. Such book shall be kept in the clerk's office of the county in which such court shall be held, and be open for public inspection. In municipal court proceedings the record of the recognizance shall be entered in the docket book maintained by the clerk.

(f) Record of Discharge; Forfeiture. When any recognizance shall be discharged by court order upon proof of compliance with the conditions thereof or by reason of the judgment in any matter, the clerk of the court shall enter the word "discharged" and the date of discharge at the end of the record of such recognizance. When any recognizance is forfeited, the clerk of the court shall enter the word "forfeited" and the date of forfeiture at the end of the record of such recognizance, and shall give notice of such forfeiture to the county counsel. When real estate located in a county other than the one in which the recognizance was taken is affected, the clerk of the court in which such recognizance is given shall forthwith send notice of the discharge or forfeiture and the date thereof to the clerk of the county where such real estate is situated, who shall make the appropriate entry at the end of the record of such recognizance.

(g) Cash Deposit. When cash is deposited by a person other than the defendant, the defendant shall file an affidavit as to the lawful ownership thereof and upon discharge, such cash may be returned to the owner named in the affidavit.

3:4-9. Justification of Sureties

Every surety, except an approved corporate surety, shall justify by affidavit and be required to describe therein the property by which he proposes to justify and the encumbrances thereon, the number and amount of other recognizances entered into by him and remaining undischarged, if any, and all his other liabilities. No recognizances shall be approved unless the surety thereon shall be qualified.

3:4-10. Violations of Release Conditions

(a) Application. Upon failure by defendant to appear in court when required or upon written application based upon a showing under oath that a defendant has violated any condition of his release or alleging facts relevant to the risk that the defendant will not appear in court at appropriate times which were not known or considered at the time release conditions were last determined, the court may summon defendant or may issue a warrant directing that the defendant be arrested and produced without delay for a hearing. Such hearing shall be held within 72 hours of the defendant's arrest, provided that continuances may be granted at his request. If the defendant fails to appear when required, the court may also proceed pursuant to R.3:26-2.

(b) Sanctions. If it is found that the defendant has willfully violated any condition of his release or that the facts shown justify an alteration of release conditions, the court may impose different or additional release conditions. If reasonable cause is found, the court may detain the defendant and institute proceedings to further detain him pursuant to R.3:4-11.

3:4-11. Detention Order

(a) Application. In any case in which the defendant is charged with an indictable offense, an application by the prosecutor for a detention order may be made in the Superior Court. Upon such written application, based on a showing under oath of facts giving reasonable cause to believe a detention order is justified under the requirements set forth in paragraph (d) of this rule, the court may order the defendant, if he is in custody, produced for a hearing or may issue a warrant for his arrest.

(b) Hearing. If the court is satisfied that an application is sufficient under paragraph (a) of this rule, it shall schedule a hearing to be held within 72 hours if the defendant is in custody. If the defendant is not in custody such hearing shall be held within 72 hours of his arrest. Continuances may be granted at the request of the defendant. At such hearing, the State shall have the burden of proving the necessity for detention by clear and convincing evidence.

(c) Procedures. The defendant shall have the right to be represented by counsel at the hearing and to the assignment of counsel if he is indigent. He shall also have the right to disclosure of the evidence against him, to confront and cross-examine adverse witnesses and to present witnesses and other evidence on his own behalf. If the defendant testifies on his own behalf, he may be cross-examined but his testimony shall not be admissible against him in any proceeding thereafter. A verbatim record of the hearing shall be made.

(d) Findings; Order. If the Court finds that:

(1) There is a high degree of probability that:

(i) if the defendant is released or continued upon release, he will threaten or inflict serious bodily harm upon another for the purpose of intimidating or incapacitating witnesses or of otherwise interfering with the prosecution; or

(ii) if the defendant is released or continued upon release, he will flee the State or otherwise make himself unavailable for the purpose of avoiding trial no matter what conditions of release are ordered, or of secreting or disposing of the fruits of the alleged crime; and that:

(2) No release conditions or restraints upon defendant are adequate to insure against such acts, the court may order the defendant detained pending trial and shall include in the record a statement of the specific reasons for each of its findings and of the evidence relied on therefor.

(e) Restraining Order. If the court finds that a detention order is not warranted, it may nevertheless release the defendant subject to an order:

(1) restraining him from frequenting certain geographical areas or premises;

(2) restraining him from initiating contact or communication with designated persons or classes of persons;

(3) restraining him from possessing any dangerous weapon;

(4) requiring him to report to a law enforcement agency or probation office at frequent intervals;

(5) imposing any other reasonable restrictions calculated to prevent anticipated threats, harm or flight.

(f) Violation of Restraining Order. A hearing to determine whether the defendant has violated a restraining order may be initiated in the manner provided in R.3:4-10(a). Such hearing shall be held in accordance with the procedures set forth in this rule. If the court finds that the defendant has willfully violated such order, the court may impose different or additional restraints upon his release. If the court makes the findings required in paragraph (d) of this rule, it may revoke release and issue a detention order.

3:4-12. Hearing as to Probable Cause on Indictable Offenses

(a) If the defendant does not waive indictment and trial by jury but does waive a hearing as to probable cause, the court shall forthwith bind him over to await final determination of the cause. If the defendant does not waive a hearing as to probable cause and if before the hearing an indictment has not been returned against the defendant with respect to the offense charged, after notice to the county prosecutor the court shall hear the evidence offered by the State within a reasonable time and the defendant may cross-examine witnesses against him. If, from the evidence, it appears to the court that there is probable cause to believe that an offense has been committed and the defendant has committed it, the court shall forthwith bind him over to await final determination of the cause; otherwise, the court shall discharge him from custody if he is detained. Notice to the county prosecutor may be oral, or in writing. An entry shall be made on the docket as to when and how such notice was given. A probable cause hearing shall be prosecuted by the municipal prosecutor in the absence of a county prosecutor.

(b) After concluding the proceeding the court shall transmit, forthwith, to the county prosecutor all papers in the cause. Whether or not the court finds probable cause, it shall continue in effect any bail previously posted in accordance with R.3:4, or any other condition of pretrial release not involving restraints on liberty;

and any bail taken by the court shall be transmitted to the county clerk. If the defendant is discharged for lack of probable cause and no indictment is returned within 120 days, the bail shall thereafter be returned and conditions of pretrial release terminated.

3:4-13. Proceedings in Arrest Under Uniform Fresh Pursuit Law
and Extradition Proceedings

(a) Fresh Pursuit. If an arrest is made in this State by an officer of another state in accordance with the provisions of N.J.S. 2A:155-1 to N.J.S. 2A:155-7, inclusive (Uniform Law on Fresh Pursuit), he shall take the arrested person, without unnecessary delay, before the nearest available judge who shall conduct a hearing for the purpose of determining the lawfulness of the arrest. Upon determination that the arrest was lawful, the judge shall commit the person to await, for a reasonable time, the issuance of an extradition warrant by the Governor of this State, or admit him to bail for such purpose. If the judge determines that the arrest was unlawful he shall discharge the person arrested.

(b) Extradition. Where a person has been arrested in any extradition proceeding, he may be admitted to bail until such time as the Governor's extradition warrant issues, except where he is charged with a crime punishable by death or life imprisonment under the laws of the State in which it was committed.

3:4-14. Effect of Technical Insufficiency or Irregularity in
the Proceeding

A defendant held in custody under a commitment after a hearing as to probable cause shall not be discharged nor shall such hearing be deemed invalid because of any technical insufficiency or irregularity in the commitment or prior proceedings not prejudicial to the defendant, or because the offense for which the defendant is held to answer is other than that stated in the complaint or arrest warrant.

3:4-15. Release on Failure to Indict or Commence Trial

If a person detained without release conditions for a crime punishable by death has not been indicted within a reasonable time after commencement of his detention, or if trial upon an indictment or accusation against any detained defendant shall not have commenced within a reasonable time after entry of the plea, a judge of the Superior Court shall reconsider or redetermine conditions of release.

3:7-8. Issuance of Warrant or Summons Upon Indictment or Accusation

Upon the return of an indictment or the filing of an accusation, if pretrial release conditions have been determined on the charge, or if the prosecuting attorney requests a summons, the county clerk shall issue a summons. In all other circumstances, a warrant shall be issued by the county clerk in the manner provided by law for each defendant named in the indictment or accusation [who is not under bail, but upon the request of the prosecuting attorney, he shall issue a summons instead]. The county clerk, upon request, shall issue more than one warrant or summons for the same defendant. If the defendant fails to appear in response to a summons, a warrant shall issue.

RULE 3:26. [BAIL] SUPPLEMENTAL

PRETRIAL RELEASE PROCEEDINGS

3:26-1. Pretrial Release for Witness

Every judge shall, when the interest of justice requires, determine pretrial release conditions, in accordance with the provisions of R.3:4, for all persons who can give testimony against one accused of a crime punishable by death or by imprisonment in state prison, whether or not the offender is arrested, imprisoned, released or bailed.

3:26-2. Forfeiture

(a) Declaration. Upon breach of a condition of a recognizance, the prosecuting attorney shall move the court for a declaration of forfeiture and the clerk of the court shall forthwith send notice of the forfeiture to the county counsel or the municipal attorney, as appropriate, who shall forthwith proceed to collect the forfeited amount.

(b) Setting Aside. The court may direct that a forfeiture be set aside, upon such conditions as it imposes, if its enforcement is not required in the interest of justice.

(c) Enforcement; Remission. When a forfeiture is not set aside, the court shall on motion enter a judgment of default and execution may issue thereon. After entry of such judgment, the court may remit it in whole or in part in the interest of justice.

3:26-3. Exoneration

When the condition of the recognizance has been satisfied or the forfeiture thereof has been set aside or remitted, the court shall exonerate the obligors and release any deposit. A surety may be exonerated by a deposit of cash in the amount of the recognizance or by a timely surrender of the defendant into custody.

RULE 7:2. INDICTABLE OFFENSES; PROCEEDINGS

UNDER UNIFORM FRESH PURSUIT LAW

The provisions of R.3:2 (complaint), R.3:3 (warrant or summons upon complaint) and R.3:4-1, [3:4-2, 3:4-3 and 3:4-5 (proceedings before the committing judge)] 3:4-4, 3:4-12 and 3:4-14 are applicable to the municipal and county district courts in respect of indictable offenses; the provisions of R.[3:4-4] 3:4-13(a) are applicable to such courts in proceedings under the Uniform Fresh Pursuit Law.

RULE 7:3. NON-INDICTABLE OFFENSES; COMPLAINT,
SUMMONS, WARRANT, NOTICE IN LIEU
OF COMPLAINT

7:3-1. Complaint; Warrant or Summons; Preliminary Hearing

The provisions of R.3:2 (complaint), R.3:3 (warrant or summons upon complaint), R.3:4-1 [(appearance before committing judge) and R.3:4-2 (procedure after filing of complaint)] (procedure after arrest) and R.3:4-4 (first appearance) are applicable to municipal and county district courts in respect of all non-indictable offenses, except as follows:

- (a) ... no change
- (b) ... no change
- (c) ... no change

[(d) A summons may issue in lieu of a warrant if the person taking the complaint has reason to believe that the defendant will appear.]

7:4-6. Sentence and Judgment

(a) Sentence. If the defendant has been convicted or pleaded guilty to an indictable offense, the court may postpone imposition of a sentence for a period not exceeding 30 days in order to obtain a presentence investigation from the chief probation officer of the county. If the defendant has been convicted or pleaded guilty to a non-indictable offense, sentence shall be imposed immediately unless the court postpones sentencing for a period not exceeding 30 days in order to obtain a presentence report or for other good cause. Pending sentence the court may commit the defendant or continue or alter [the bail] release conditions. Before imposing sentence the court shall afford the defendant and his counsel an opportunity to make a statement on defendant's behalf and to present any information in mitigation of punishment. Where a sentence has been opened and vacated, the defendant shall be resentedenced forthwith, except where a new trial is granted.

- (b) ... no change
- (c) ... no change
- (d) ... no change
- (e) ... no change
- (f) ... no change
- (g) ... no change

RULE 7:5. [BAIL] RELEASE

7:5-1. Applicability of Superior Court Rules

Except as otherwise provided by R.7:5-2 and 7:5-3, the provisions of [R.3:26-1(a) (bail before conviction, 3:26-2 (authority to admit to bail), 3:26-3 (bail for witness), 3:26-4 (deposit of bail), 3:26-5 (justification of sureties), 3:26-6 (forfeiture), and 3:26-7 (exoneration)] Rule 3:4 (pretrial release) and Rule 3:26 (supplemental pretrial release proceedings) apply to the municipal and county district courts.

7:5-3. [Authority to Admit to Bail] Taking of Recognizance

In any case in which the municipal court judge has fixed the amount of bail, he may [designate] permit the taking of the recognizance by the clerk or any other person authorized by law to take recognizances, other than the arresting officer. [In the absence of the judge, a person arrested and charged with a non-indictable offense which may be tried by the judge, may, before his appearance before him, be admitted to bail by the clerk of the court; and in the absence of the judge and the clerk, may be admitted to bail by any other person authorized by law to admit persons to bail other than the arresting officer, designated for such purpose by the judge.]

7:5-4. [Bail] Release After Conviction

When a sentence has been imposed and an appeal from the judgment of conviction has been taken, the trial judge shall [admit the appellant to bail] grant the appellant release [for a period not exceeding 10 days during which time the appellant shall enter into a recognizance with sufficient surety conditioned for] with sufficient conditions imposed to assure his appearance before the court to which the appeal is taken and to abide the judgment thereof. Thereupon the trial court shall forthwith discharge him from custody. [The recognizance] Release conditions shall be subject to the approval of the court to which the appeal is taken. If a recognizance is required and is not submitted within [the said] 10 days of the date release was granted, or if [submitted but is not approved] a submitted recognizance or other release condition is disapproved, then in the court's discretion [bail] release conditions may be altered or revoked. The judge or his clerk shall transmit to the county clerk any cash deposit and any recognizance so taken.

In its 1975 Report, the Committee recognized the need for a comprehensive revision of our rules governing pretrial release. In Part II of our 1976 Report, the Committee recommended significant amendments to the rules governing pretrial release as well as the rules concerning issuance of summons or warrant. The Report was comprehensively reviewed by the Supreme Court during the summer of 1976 and, after further communications with the Committee, in the fall of 1977. In March of 1978, the Court referred the entire package of pretrial release rules back to the Committee for further reconsideration in light of various developments both in New Jersey and throughout the nation. The following proposal is designed to codify, compile and, in some respects, amend New Jersey practice with respect to the pretrial release procedures. It represents almost five years of work by the Criminal Practice Committee and several members of the Committee, who, no longer serve thereon, have been consulted with respect to the present draft. While a philosophy concerning pretrial release is embodied in the attached, the primary thrust of the proposal remains to codify and compile the criteria and procedures for implementation of expeditious and meaningful determination of the proper conditions of pretrial release in each case. Hence, this package is basically procedural and designed to impose proper conditions in each case.

Part II of our 1976 Report contains a commentary which should be referred to in analyzing this proposal. It is incorporated herein, and in order to save space, is not repeated at length. However,

upon reflection, various amendments have been made to the 1976 proposal, and those changes are noted in this Report. To that extent, the 1976 commentary is now outdated.

The Committee proposes codification of all rules concerning pretrial release in R.3:4 and all rules concerning supplemental proceedings (bail for witnesses; forfeiture and exoneration) in R.3:26. Much of the attached proposal embodies existing rules which are set out herein because they are renumbered. Where existing rules are amended, this commentary makes note of same. Moreover, Part VII rules are also amended, as noted in this Report, to incorporate amended references to Part III rules. Other technical amendments to rules embodied in Parts I, II and V, not included in this Report, are in the possession of Criminal Court Services in the Administrative Office of the Courts. Moreover, Rules which are to be deleted because of renumbering are not set out herein. All Part III and VII Rules, as they will appear after revision, are included.

1. R.3:4-1 - is the present R.3:4-1 and is substantially amended to make clear that the defendant should be advised of the conditions of pretrial release, where appropriate, even prior to his first appearance before the judge, and, in any event, requires an appearance before a judge within 72 hours of arrest. (The 1976 proposal had a 48-hour requirement.)

2. R.3:4-2 - is new and would require an investigation by a "Bail Unit" designated for that purpose in every county. The Committee is of the view that a thorough and proper investigation is essential to the proper establishment of pretrial release conditions in every case.

Bail Units can be created by the Assignment Judge pursuant to N.J.S.A. 2A:168-5 and/or R.1:33-3. The 1976 proposal is amended to delete the last phrase regarding reconsideration of conditions.

3. R.3:4-3 - combines the present R.3:26-2 and 7:5-3 except that it amends R.7:5-3 to make clear that, in the absence of a judge, the clerk can determine conditions of pretrial release on all offenses where a municipal court judge has jurisdiction to do so and that in the absence of a clerk, a person authorized by law (see N.J.S.A. 2A:8-27) may do so. At present, this practice may be invoked only with regard to nonindictable offenses. R.7:5-3. Sub-paragraph (c) is new and would permit the establishment of pretrial release conditions for all offenses, despite where they may be pending, by a Superior Court judge of the county in which the defendant is in custody. The 1979 proposal amends aspects of the 1976 proposal in light of the recent constitutional amendment.

4. R.3:4-4 - essentially embodies the provisions of the existing R.3:4-2 except that R.3:4-4(d) is new and embodies the requirements of Gerstein v. Pugh, 420 U.S. 103 (1975) and sub-paragraph (e) is new and permits an inquiry on the record if the "Bail Unit" investigation has not been completed. The requirements of sub-section (d) apply to all the defendants in custody; defendants charged with indictable offenses also have a right to a probable cause hearing under R.3:4-12.

5. R.3:4-5 - replaces and amplifies the existing R.3:26-1 and sets out the essential criteria for establishing the conditions of pretrial release. It amends the 1976 proposal in two essential respects. It provides that a defendant may (instead of shall) be released on his promise to appear unless it is found that there is substantial risk that he will not appear at appropriate times and includes an additional criteria indicating that any factor bearing on defendant's ties to the community and risk of non-appearance shall be taken into consideration. The Rule is significant in terms of detailing the criteria for pretrial release to be considered in determining the risk of nonappearance. See State v. Johnson, 61 N.J. 351 (1972).
6. R.3:4-6 - is new and establishes the requirement of a hearing with respect to pretrial release conditions (for all defendants remaining in custody for 72 hours, see R.3:4-2, supra, if they have not previously been before the court) and requires a statement of reasons if certain conditions are established. The present proposal deletes the 1976 recommendation which would have permitted continuous or repetitious motions directed to the conditions of pretrial release.
7. R.3:4-7 - is new and provides that, when release on the defendant's promise to appear is unwarranted, the court shall impose the minimum conditions necessary to assure defendant's appearance. The conditions (one or more of which may be established) are detailed. The 1979 proposal also permits that the court shall set forth terms and conditions

- of supervision and the responsibility assumed by persons or agencies supervising a defendant during the period of his release.
8. R.3:4-8 - essentially embodies the existing R.3:26-4 in terms of establishing the conditions and terms of secured recognizance and surety bail when it is used. However, by way of emphasis, the 1979 proposal makes clear that a secured recognizance may be required if other conditions of pretrial release will not reasonably assure the defendant's appearance. This is a change in approach from the 1976 draft which would have permitted the use of secured recognizance only if no other condition would have been found appropriate. Upon a finding that a secured recognizance should be required, the court may require the execution and signing by the defendant of a recognizance in an amount and nature as established by the court, at its option, as detailed in the Rule. It should be noted, however, that corporate sureties, real estate and cash bail are included; however, cash bail may be set at any percentage as determined by the court and not necessarily ten percent.
9. R.3:4-9 - is the present R.3:26-5 concerning justification of sureties, with a minor deletion for purposes of conforming the rule change to the entire series.
10. R.3:4-10 - is new and establishes procedures for revoking or amending conditions of pretrial release upon violation or when new facts concerning the risk of nonappearance are brought to the attention of the court. (Such new facts may include, for example, a new

criminal arrest, although the pending charges would otherwise be taken into consideration when pretrial release conditions are established with respect to the new charges.) The proposal has been amended since the 1976 draft to make clear that a defendant may be summoned in appropriate circumstances for a hearing to change the conditions of pretrial release and need not be arrested pursuant to warrant in all such circumstances giving rise to amendment to the conditions of pretrial release. The proposal was also amended to make clear that if a defendant fails to appear, forfeiture proceedings may be commenced as provided in proposed R.3:26-2 (the present R.3:26-6).

The 1979 proposal also makes clear the intent of the 1976 drafters to provide that, upon violation of release conditions, additional or new conditions may be imposed and the court need not commence proceedings for detention as permitted in R.3:4-11.

11. R.3:4-11 - is new and is the most controversial provision in the proposal. As to R.3:4-11, six Committee members dissented from the recommendation that it be adopted.

R.3:4-11 would provide for a detention order and a procedure with regard to the entry of same in situations where "there is a high degree of probability that" the defendant will harm or intimidate a witness or witnesses or otherwise will interfere with the prosecution, or that the defendant will flee from the state, otherwise make himself unavailable for purposes of avoiding trial, or of secreting or disposing

of the fruits of the crime. (The reference to defendants who might otherwise make themselves "unavailable" is new and constitutes an addition to the 1976 recommendation.) The Committee has considered a recommendation to permit detention orders for an additional reason, i.e., upon the conduct of a new criminal offense. That recommendation is not, however, embodied in this Report for various reasons including the desire for further study in light of the constitutional questions involved if the new matter is at a pretrial stage, the ability to set pretrial release conditions thereon, and the desire to further study this question. However, as indicated in our 1976 Report, the Committee has exhaustively studied and re-studied the issue of the constitutionality of this proposal. While the "preventive detention" concept has been upheld in other jurisdictions, despite Eighth Amendment claims, see, e.g., United States v. Gilbert, 425 F. 2d 490 (D.C. Cir. 1969); United States v. Wind, 527 F. 2d 672 (6th Cir. 1975), the New Jersey Constitution, Art. I, Par. 11, contains an additional right to bail except in certain capital cases. The Committee, after exhaustive debate, has concluded that the detention order rule, with the procedural requirements applicable when bail is set and otherwise

consistent with the procedure established in the Rule, would be constitutional. See State v. Johnson, 61 N.J. 351, 360 (1972).

The Rule permits the court to impose certain restraints as appropriate when full detention pending trial is not warranted, and violations of restraining orders would permit further amendments to the conditions of pretrial release or detention as provided in Rules 3:4-10 and 3:4-11.

12. R.3:4-12 - in essence constitutes the present R.3:4-3 with amendments to that Rule as detailed in Part II of our 1979 Report. In addition to the reasons embodied in the commentary to Part II of our Report, we emphasize that the Gerstein hearing as required by R.3:4-4(d) in custody cases may be held contemporaneously with the probable cause hearing mandated by this Rule, where possible.

We also emphasize that the 1976 proposal, then embodied in draft R.3:4-12, providing for mandatory release on failure to commence trial, has been abandoned in the 1979 proposal. Since the decision of our court in State v. Szima, 70 N.J. 196, cert. den. 429 U.S. 896 97 S.Ct. 259, 80 L. Ed. 2d 180 (1976), the Committee is no longer of the view that strict time limits should be adopted within the context of a "try or release" or "try or dismiss" context. Moreover, under our proposed R.3:4-15, the conditions of pretrial release will be reevaluated if a defendant is not brought to trial within a reasonable period of time.

13. R.3:4-13 - was R.3:4-14 in the 1976 package. It is basically the present Rules 3:4-4 and 3:26-1(d) maintaining the word "bail" in light of statutory obligations. Sub-paragraph (b) is basically the present R.3:26-1(d) except that it amends same to make clear that bail may not be set after an extradition warrant issues. See In re Lucas, 136 N.J. Super. 24 (Law Div. 1975), aff'd o.b. 136 N.J. Super. 460 (App. Div. 1975).

14. R.3:4-14 - is the present R.3:4-5.

15. R.3:4-15 - in essence is the present R.3:26-1(b) and (c) re-drafted in slightly different form and provides that on failure to indict for a capital offense or on failure to commence trial on any offense within a reasonable period of time, the court shall reconsider the conditions of pretrial release.

16. R.3:7-8 - is basically a conforming amendment but makes clear that warrants need not issue calling for defendant's arrest if pre-trial release conditions were previously determined and satisfied.*

17. R.3:26-1 - is the present R.3:26-3 with some conforming language. Please note that because of the consolidation of portions of the present 3:26 into the proposed 3:4, the remaining portions of R.3:26 deal exclusively with supplemental proceedings and consolidate same.

18. R.3:26-2 - is the present R.3:26-6.

* Of course, all of the standards and rules concerning the setting of pretrial release conditions and the amendment of same, including the detention order, would apply when pretrial release conditions are initially set after indictment.

19. R.3:26-3 - is the present R.3:26-7.

20. R.7:2 and 7:3-1 - are merely conforming amendments for purposes of incorporation of revised Part III rules into Part VII. Note, however, that paragraph (d) of R.7:3-1 may be deleted as no longer necessary because, since 1971, the ability to issue a summons has been incorporated into R.3:4-1. The sub-paragraph (d) may be retained, however, for purposes of emphasis and the Committee is continuing its study of the subject of summons in lieu of continued detention. Possible amendments to Rules 3:3-1 and 3:4-1 in this regard may soon be the subject of a report to the Court.

21. R.7:5-3 - is a conforming amendment but is partially omitted in light of the consolidation of its particulars into R.3:4.

In summary, the Committee respectfully urges adoption of these Rules as a codification of practice with respect to assuring expeditious and meaningful determinations of the conditions of pretrial release in all cases. Two members of the Committee, who, for varying and different reasons, dissent from different portions of this package, have indicated that they will file a separate dissent.

ADDENDUM

We note that on February 12, 1979, the American Bar Association's House of Delegates approved Standards Relating to Pretrial Release. We have reviewed our proposal in light thereof and find, with certain exceptions, that it generally comports with the basic philosophy and thrust of the ABA Standards. Moreover, the adoption of the Standards by the ABA emphasizes the need and desirability of the Supreme Court's review and codification of New Jersey practice relating to pretrial release. (35-77*)

* This indicator constitutes the agenda item assigned to the matter by the Committee.

Respectfully submitted,

Mark Addison
David S. Baime
Matthew P. Boylan
Donald R. Conway
Barry H. Evenchick
Thomas W. Greelish
C. Judson Hamlin
Donald Horowitz
Burrell Ives Humphreys
Michael Patrick King
William J. Marchese
Patrick J. McGann, Jr.
Ralph G. Mesce (deceased)
A. Jerome Moore
Oscar W. Rittenhouse (deceased)
Edwin H. Stern
Edwin H. Stier
Anne E. Thompson
Stanley C. Van Ness
Harvey Weissbard
Leo Yanoff
Nicholas Scalera, Chairman

Herewith a Dissent prepared by Harvey Weissbard
to the proposed adoption of R.3:4-11. Mark
Addison, John Cannel, Donald R. Conway, Barry
H. Evenchick and Donald Horowitz join in this
dissent.

I dissent from the majority proposal to adopt a new rule, R.3:4-11, entitled "Detention Order". In essence the new provision would provide for incarceration of criminal defendants prior to trial without bail upon a finding that (1) the defendant will threaten or inflict serious bodily harm on another for the purpose of (a) intimidating or incapacitating witnesses or (b) of otherwise interfering with the prosecution; or (2) that the defendant will flee the State or (3) that he will otherwise make himself unavailable for the purpose of avoiding trial or (4) that he will secrete or dispose of the fruits of the alleged crime. These findings would have to be based on a "high degree of probability" and the rule would also require a finding that no release condition or restraints upon the defendant are adequate to insure against such acts.

While this rule does not go so far as to propose the more generally obnoxious practice of so-called "preventive detention", it is still alien to our jurisprudence and, in my view, unnecessary. No information was presented to the Committee to indicate a pressing need for this type of rule. No prosecutors spelled out the frequency of threats against witnesses or other acts by defendants interfering with pending prosecutions nor did they direct our attention to any instances of a defendant secreting or disposing of the fruits of a crime while on bail. Basically, it seems to me that a drastic innovation in our procedures such as this should at least be based upon a documented need for such action. I see none here. This same rule was proposed several

years ago and, while not acted upon at that time, no statistics have been presented to demonstrate that the problem, if any, has continued or increased during the intervening years. Our court system has functioned, and continues to function, satisfactorily without such rules. In those isolated instances where the described type of conduct has occurred I daresay our judges have been able to deal with the problem under existing law, such as contempt (N.J.S.A. 2A:10-1) and obstruction of justice, (N.J.S.A. 2A:85-1 and 98-1), and their powers pursuant thereto.

More importantly, however, is the barrier posed by our state constitutional provision:

"All persons shall, before conviction be bailable by sufficient sureties, except for capital offenses where the proof is evident or presumption great." Art. 1, par. 11, N.J. Constitution.

Significantly, our constitutional guarantee is much broader than its federal counterpart, the Eighth Amendment, which prohibits only excessive bail. As Justice Francis, speaking for a unanimous Court, said in State v. Johnson, 61 N.J. 351, 355 (1972), "the right of the individual to bail before trial is a fundamental one." He went on to note that to deny bail before trial "is to punish an accused before conviction, and to ignore the presumption of innocence which attends every citizen charged with crime--actions which are not tolerated under our system of justice." The court quoted from Stack v. Boyle, 342 U.S. 1, 4 (1951), that the "traditional right to freedom before conviction permits the unhampered preparation of a defense, and serves to prevent the infliction of punishment prior to conviction.***Unless

this right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning." 61 N.J. at 360.

Johnson makes quite clear our state's strong commitment to the guarantee of pretrial freedom in non-capital cases, "an absolute right to bail". 61 N.J. at 355, fn. 2. Historically, as recognized in Johnson, bail serves the sole purpose of insuring the defendant's presence at trial. It is difficult for me to comprehend how these proposed rules fit within our constitutional scheme as interpreted by our highest court. To pass the present rule would in effect challenge our present Supreme Court to "reinterpret" the constitution and to modify Johnson. I do not see that as our function. A committee such as ours should follow the law, not try to make new law in the guise of procedural rules.

It has been argued that to merely fix bail at unrealistically high amounts in order to effectuate pretrial detention is hypocrisy and that we should meet the matter head-on by permitting a court to merely deny bail altogether. While I also condemn hypocrisy, we cannot permit our frustration to blind us to existing law. If a problem exists, it is because of the constitution. To ignore that is even greater hypocrisy than that which the rule seeks to remedy.

Furthermore, the rule, even as written, is vague and poorly structured. What would constitute "otherwise interfering with the prosecution"? What purpose is served by incarcerating a defendant upon a fear that he will "secrete or dispose" of the fruits of the alleged crime, if that is what the rule means. I would think

that law enforcement authorities would rather have a defendant free so he could hopefully lead them to the fruits of the crime. I should hardly imagine that the loot will be found more readily if the accused is in jail. And will witness intimidation really be deterred by jailing the defendant while his confederates remain free? If the proposal targets organized criminals then it may even be counterproductive in that the defendant will be in jail with a perfect alibi while his associates attempt to silence potential witnesses.

Furthermore, the proposed rule is not accompanied by any automatic right to appeal. I do not think leave to appeal is a satisfactory substitute in such a situation. The Federal Bail Reform Act of 1966, 18 U.S.C.A. §3146-3152, provides for such review when a person is detained because of his inability to meet bail conditions or amounts. 18 U.S.C.A. §3146 (d). It certainly seems that a fortiori there should be a right to immediate appellate review when bail is denied altogether.

In sum, the proposed rule is undoubtedly unconstitutional, is not needed, and lacks important safeguards as drafted. On all scores it should be rejected.

Herewith a Dissent prepared by Burrell Ives Humphreys
to the adoption of the Pretrial Release Rules.

DISSENT

I respectfully dissent in two respects from the Committee's report on the proposed new bail rules, Rule 3:4-1, et seq. (see part 4 of the Committee's Report)

In my judgment, the proposed rules, although considerably improved by this committee, still do not afford sufficient protection from pre-trial release of dangerous and chronic criminals. I recommend that the rules be modified to permit a court in determining pre-trial release to consider "any other factors bearing on the risk of non-appearance, including any potential threat posed to public safety by the defendant being released pending trial".

Secondly, the rules should permit a court, with appropriate safeguards, to revoke the bail of a person who commits an offense while awaiting trial.

I.

POTENTIAL THREAT TO PUBLIC SAFETY

The New Jersey Supreme Court in State v. Johnson, 61 N.J. 351, 364 (1972) said:

"*** the primary purpose of bail in this State is to insure presence of the accused at the trial ***" (emphasis added)

Some argue that the above statement in Johnson means that the sole purpose of bail is to insure defendant's presence at trial. From this shaky footstool, they climb to the conclusion that a court may not in determining bail constitutionally consider the potential threat to public safety resulting from this criminal defendant being released pending trial.

I disagree. The primary purpose of bail is as stated in State v. Johnson to insure the defendant's presence at trial. But this does not in my judgment constitutionally preclude the court from considering other factors.

The court in Johnson recognized that:

"*** release on bail is not simply a formal or automatic matter. A number of factors must be considered in fixing the amount of the bond: ***" P. 364

The court then enumerated those factors. The majority of this committee recommends that those factors be incorporated in the proposed rules.

I can see no valid reason why another factor should not be added as follows:

"Any other factors bearing on the risk of non-appearance, including any potential threat posed to public safety by the defendant being released pending trial."

Chief Justice Burger in this year's annual address February 11, 1979 on the state of the judiciary to the American Bar Association called for a fresh examination of pre-trial release of persons charged with serious offenses. The

Chief Justice pointed out that in the District of Columbia, the percentage of people arrested while on pre-trial release has continued to increase alarmingly.

Chief Justice Burger concluded: "Surely the protection of the public must always be a major factor in the decision to grant bail releases." (emphasis added)

I find it curious that some argue that it is unconstitutional to even consider as "a factor" the protection of the public in determining pre-trial release, when the Chief Justice of the United States concludes that "Surely" the protection of the public "must always" be a "major factor" in that decision. The addition to the rules which I have suggested would simply add as a factor what the Chief Justice has said, must surely always be a major factor.

Considering public safety as a factor in pre-trial release is not unique. In juvenile cases, the court "must" detain a juvenile pre-trial if "The nature of the conduct charged is such that the physical safety of persons or property within the community would be seriously threatened if the juvenile were not detained". Rule 5:8-6(e)(1)(B).

The presumption of innocence and the right to bail spring from our English past. However, I understand that British magistrates routinely deny or limit bail in street crime cases, and are amazed that some American judges feel constitutionally unable to do so.

The right to bail and the presumption of innocence

are vital components of our judicial system. They are as valid and needed today as they were at their birth. But they do not stand alone; they are parts of a mosaic whose purpose is to create a just and orderly society. They must be interpreted and applied in harmony with the rest of the mosaic. Implicit in that mosaic are the imperatives of public safety and order.

The late Chief Justice Weintraub spoke eloquently on the need to keep these bedrock imperatives uppermost in our minds. He said:

"*** the first right of the individual, the right to be protected from criminal attack in his home, in his work and in the streets. Government is constituted to provide law and order. The Bill of Rights must be understood in the light of that mission." State v. McKnight, 52 N.J., p. 52.

"Pre-eminent in the galaxy of values is the right of the individual to live free from criminal attack in his home, his work and the streets. Government is established to that end as the preamble to the Constitution of the United States reveals and our State Constitution, Art. I, §2, expressly says." State v. Davis, 50 N.J. 16, 22 (1967)

"Primarily, governments exist for the maintenance of social order. Hence it is that the obligation of the government to protect life, liberty, and property against the conduct of the indifferent, the careless,

and the evil minded, may be regarded as lying at the very foundation of the social compact". State v. Bisaccia, 58 N.J. 586, 590 (1971) quoting from Chicago v. Sturges, 222 U.S. 313, 322 (1911)

Chief Justice Weintraub spoke in State v. Bisaccia about the victims of crime "for whose protection we hold office". P. 590 Can anyone seriously contend that today we are meeting our obligations to those victims, and adequately protecting their "first civil right", to be free from the ravages of criminals?

Crime in America has reached dizzying heights. Chief Justice Hughes has spoken poignantly of that "terrifying reality of modern day America, the widespread phenomenon of criminal violence and terror, and the pain it brings to our citizens". In only one major county in this state has there been a significant crime reduction in recent years.

Crime is rampant everywhere but conditions are particularly bad in the large cities. Many of our citizens are obliged to remain in these cities by economics, age and racial prejudice. They are angry and fearful. Every day in the Prosecutor's Office we see the sick, the weak, the elderly, the unprotected, the frightened, the fearful, the harmed, the hurt, the bleeding and the battered. These are the victims of crime and their families. They complain of being virtual prisoners in their home, of junkies sleeping in their doorways at night, of giving their children and grandchildren "mugger money" so that the children may survive in the city schools.

If business persons, they talk of mindless vandalism and burglary driving them out of the cities. One prominent businessman in one of our major cities told me several years ago (only half in jest) that if conditions continue to worsen, the city would turn into a western ghost town.

Many of these citizens or their parents came to America to find a haven from persecution abroad. Instead they have found violence and terror in city streets and parks, and even homes. They have a deep distrust for the present criminal justice system. They doubt its ability to furnish them protection from criminals.

The United States of America is neck deep in violent crime, chronic criminals and juvenile crime. Surely we must win all prizes for a head in the sand approach if we now enact pre-trial release rules which deny to a trial court the right to even consider as a factor the potential danger to public safety posed by pre-trial release of violent or chronic criminals.

II.

REVOCATION OF BAIL ON COMMITTING AN OFFENSE

WHILE ON PRE-TRIAL RELEASE

The committee has recommended the enactment of a rule which would permit pre-trial detention without bail under certain very limited circumstances. See Rule 3:4-11 et seq. Primarily, this would apply to cases involving intimidation or incapacitation of witnesses, interference with the prosecution, fleeing the state or disposing of the fruits of crime. Certain safeguards are built into the rule to prevent abuses.

I propose that the rule be expanded to include an additional category, to wit, pre-trial detention of a defendant who commits an offense while on pre-trial release.

Crimes committed by persons on bail have long plagued the administration of criminal justice. A study conducted in the District of Columbia indicated a substantial number of defendants who were released on bail committed additional offenses prior to trial. See Judicial Counsel Committee to study the operation of the Bail Reform Act of District of Columbia 24 (1969). See also "The Debate over Preventive Detention Basis of" McDonald, p.7. See also the remarks of Chief Justice Burger herein.

A typical case came to my attention recently. Defendants were arrested, released on low bail, arrested for a new offense a few weeks later and released again on low bail in the same county. A short time later while awaiting

trial on those two separate incidents, they committed a third offense in another county. This situation is unfortunately not atypical.

The public finds great difficulty in accepting the explanation that our founding fathers intended in the Constitution to permit a person to commit crimes repetitively while awaiting trial. I understand that British magistrates do not have such problems for they routinely revoke bail under such circumstances.

I believe our courts have similar authority. Once a defendant has been charged with an offense, he comes within the administration of criminal justice. He becomes bound to obey certain rules of court procedure. If he does not follow such rules, the court is authorized to take appropriate measures to protect the orderly and lawful disposition of his case. Those measures include the revocation of bail and detention pre-trial. A considerable body of authorities support detention under such circumstances. See authorities cited in U.S. v. Wind, 527 F. 2nd 672 (6th Cir. 1975)

Under the proposed new rules a court may impose certain pre-trial conditions. If the defendant violates them, then the court can revoke bail and detain the defendant pending trial. See Rule 3:4-7 and 3:4-10(b). What would be so startling to include in those pre-trial conditions a prohibition against committing another crime while awaiting trial?

Assume two hypothetical cases. In the first, the court as specifically authorized by proposed Rule 3:4-7(a)(4) imposes a reasonable restriction on the "associations" of the defendant. The defendant violates that condition. Under the proposed new rules, the court may revoke bail and detain that defendant pending trial. See Rule 3:4-10(b).

In the second hypothetical case, the defendant commits a serious crime while awaiting trial, but otherwise complies with all pre-trial release conditions. As I read the new rules, the court may not revoke bail and detain that defendant pending trial. I suspect the public will find it difficult to understand why the first defendant could be detained pending trial but the courts are powerless to detain the second.

I believe the courts under such circumstances, have an inherent authority to act. One court in New Jersey did so. In the case of State v. Noah Lynch (an unreported case in 1976* Essex County) the trial judge revoked the bail and detained a defendant who was charged with a serious offense while on bail. The Appellate Division affirmed and the New Jersey Supreme Court denied leave to appeal, all without opinion.

I am advised that under the Washington, D.C. pre-trial detention statute, a defendant released pre-trial receives a list of pre-trial release conditions. One of those conditions is that ^{if} he is arrested, his bail may be revoked and he be detained pre-trial.

In my opinion, the proposed rules should be modified to reflect the authority of the court to revoke bail and detain a criminal defendant who commits a crime while on pre-trial.

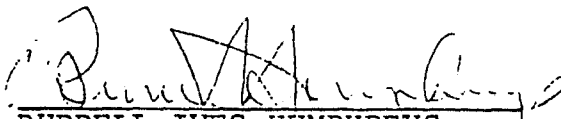
*Indictment Number 3703-74

trial release. Of course, the safeguards set forth in the detention rule should be applicable in order to prevent abuse. Moreover, the defendant and the State should both have a right of appeal of any order granting or denying detention pre-trial.

CONCLUSION

In my judgment, the proposed rules, although considerably improved by this committee, still do not afford sufficient protection from pre-trial release of dangerous and chronic criminals. I recommend that the rules be modified to permit a court in determining pre-trial release to consider "any other factors bearing on the risk of non-appearance, including any potential threat posed to public safety by the defendant being released pending trial".

Secondly, the rules should permit a court, with appropriate safeguards, to revoke the bail of a person who commits an offense while awaiting trial.


BURRELL IVES HUMPHREYS
PASSAIC COUNTY PROSECUTOR

In Memoriam

With the untimely deaths of Ralph G. Mesce on October 24, 1978, and Oscar W. Rittenhouse on March 8, 1979, the Criminal Practice Committee has lost two dedicated and able members, whose counsel and friendship were highly valued. This Report is respectfully dedicated to their memory.

APPENDIX G

CENTRAL CRIMINAL INTAKE FORM

CENTRAL CRIMINAL INTAKE FORM

I. IDENTIFYING DATA

Name _____ Aliases _____ SBI # _____
Sex M F Race B W PR O Marital Status S M W D # of dependants _____
SS #, _____ Own Car Yes No License # _____
Area Resident Y N If, Y for how long? _____

II. ADDRESS INFORMATION

Current address _____
no. street city state zip apt. #
resides with _____ phone # _____
how long there? _____ rent/mortgage payment to _____
Prior address _____
no. street city state zip apt. #
reside with _____ phone # _____
why moved? _____
Other current or mailing address _____

III. EDUCATION/EMPLOYMENT

Currently employed by _____
how long? _____ position _____
weekly salary _____ can verify? Y N
Currently unemployed, supported by _____
how long? _____ if on unemployment/ welfare name of counselor _____
Prior employment with _____
how long? _____ why left _____
Highest grade completed _____ High School graduate Y N
Currently attending _____

IV. PRIOR RECORD

Previously arrested? Y N Where _____
Disposition/Next Court Date _____

List charges: _____

Currently on probation or parole? Y N Where? _____ charges _____
Officer _____ phone # _____

Ever been arrested as a fugitive or failed to appear? Y N when? _____
how many times? _____

V. CURRENT ARREST

charges _____ Date of Arrest _____
Relationship, if any, to complaining witness _____ Next Court Date _____

VI. SUMMARY

Address verified by _____ Employment verified by _____
Received R.O.R. Y N Bail amount _____

END