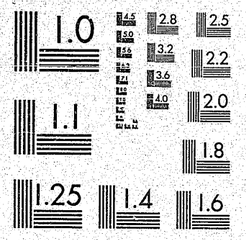


U.S. Department of Justice
National Institute of Justice
Office of Development, Testing and Dissemination

NJ

National Institute of Justice

Issues and Practices

Pretrial Release Program Options

About the National Institute of Justice

The National Institute of Justice is a research branch of the U.S. Department of Justice. The Institute's mission is to develop knowledge about crime, its causes and control. Priority is given to policy-relevant research that can yield approaches and information State and local agencies can use in preventing and reducing crime. Established in 1979 by the Justice System Improvement Act, NIJ builds upon the foundation laid by the former National Institute of Law Enforcement and Criminal Justice, the first major Federal research program on crime and justice.

Carrying out the mandate assigned by Congress, the National Institute of Justice:

- Sponsors research and development to improve and strengthen the criminal justice system and related civil justice aspects, with a balanced program of basic and applied research.
- Evaluates the effectiveness of federally funded justice improvement programs and identifies programs that promise to be successful if continued or repeated.
- Tests and demonstrates new and improved approaches to strengthen the justice system, and recommends actions that can be taken by Federal, State and local governments and private organizations and individuals to achieve this goal.
- Disseminates information from research, demonstrations, evaluations, and special programs to Federal, State, and local governments; and serves as an international clearinghouse of justice information.
- Trains criminal justice practitioners in research and evaluation findings, and assists the research community through fellowships and special seminars.

Authority for administering the Institute and awarding grants, contracts, and cooperative agreements is vested in the NIJ Director. An Advisory Board, appointed by the President, assists the Director by recommending policies and priorities and advising on peer review procedures.

Reports of NIJ-sponsored studies are reviewed by Institute officials and staff. The views of outside experts knowledgeable in the report's subject area are also obtained. Publication indicates that the report meets the Institute's standards of technical quality, but it signifies no endorsement of conclusions or recommendations.

James K. Stewart
Director

9462

Pretrial Release Program Options

by
Andy Hall

with
Elizabeth Gaynes
D. Alan Henry
Walter F. Smith

Prepared for the National Institute of Justice, U.S. Department of Justice by the Pretrial Services Resource Center under subcontract to Abt Associates Inc., contract number J-LEAA–011–81. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice.

June, 1984

U.S. Department of Justice
National Institute of Justice
Office of Development, Testing and Dissemination

Issues and Practices in Criminal Justice is a publication series of the National Institute of Justice. Designed for the criminal justice professional, each *Issues and Practices* report presents the program options and management issues in a topic area, based on a review of research and evaluation findings, operational experience, and expert opinion in the subject. The intent is to provide criminal justice managers and administrators with the information to make informed choices in planning, implementing and improving programs and practice.

ACKNOWLEDGMENTS

This report reflects the effort of many individuals in addition to those listed on the title page. Deserving special mention are Bonnie Lewin, who drafted an earlier program model document on pretrial release, NIJ program monitor John Spevacek, Maureen O'Connor of NIJ, Abt Associates subcontract monitor Gail Goolkasian, and Roseanna Kaplan of the Pretrial Services Resource Center. Ms. Lewin, now at the National Institute of Corrections, also served as a reviewer for this document.

Thanks also to the directors and other staff members of the pretrial services programs surveyed for this report. Their cooperation and candor are gratefully acknowledged.

CONTENTS

TABLES AND FIGURES

EXECUTIVE SUMMARY

The focus of this report is pretrial release programs; specifically, it examines the practice of pretrial release as it has developed in the United States over the last 25 years and highlights the advantages and disadvantages of specific program structures, operations, and policy decisions related to efficient pretrial case management. The report is intended to assist practitioners in addressing the current challenges in the pretrial field. Moreover, it is meant to serve as a basic reference tool for local criminal justice officials and others involved in pretrial release program development, particularly those interested in establishing a specialized agency to serve pretrial decisionmakers.

Bail reform efforts in the 1960s saw the emergence of pretrial release programs as a response to problems noted by critics of the commercial bail system, such as discrimination against indigent defendants, and the effective transferral of the release decision to private bail bondsmen. In 1961, the first of these programs, the Manhattan Bail Project, was initiated in New York City as an experiment in selecting defendants to be released on their own recognizance. The success of the Manhattan Bail Project provided a major stimulus for bail reform across the country.

Three other events had substantial impact on the growing bail reform movement. The National Conference on Bail and Criminal Justice in 1964 provided a forum for practitioners and policy-makers to debate the increased use of non-financial release and to advocate reform of the nation's bail laws. In 1966, Federal legislative efforts culminated in the Federal Bail Reform Act, which created a presumption in favor of release on personal recognizance, introduced the concept of conditional release, authorized 10 percent deposit bail with the court, returnable upon appearance, and emphasized the principle of release under the least restrictive method necessary to ensure court appearance. Although the law applied only to the Federal courts and the District of Columbia, at least a dozen states undertook bail law revisions within five years of its passage. The third major event occurred in 1968 when the American Bar Association (ABA) published the first standards on pretrial release.

As the bail reform movement entered its second decade, it was confronted by intense public concern over reports of a dramatic increase in crime. Thus, programs struggled to reconcile the goal of reducing inappropriate pretrial detention with the need to maintain public safety. Bail reform measures in the 1970s consisted of efforts to improve program practices by expanding the use of non-financial release options and establishing national standards to guide localities in day-to-day practices. Throughout the 1970s, pretrial release

standards were developed by the National Advisory Commission on Standards and Goals (1973), the National Conference of Commissioners on State Laws (1974), the National District Attorneys Association (1977), the National Association of Pretrial Services Agencies (NAPSA) (1978), and the ABA (revised, 1979). While these standards differed somewhat, common elements institutionalized many of the bail reform movement's goals.

Another important development in the 1970s was passage of the District of Columbia Court Reform and Criminal Procedure Act of 1970, which amended the Bail Reform Act of 1966 and directed judges in the District of Columbia to consider the element of community safety as well as the defendant's risk of flight in arriving at an appropriate bail decision. This was the first law that allowed for "preventive detention" of defendants thought likely to commit new crimes if released into the community.

The **legal authority** for the pretrial release program is in part determined by: 1) laws which define the circumstances under which some or all defendants may be released pending adjudication; 2) laws which define the constitutional or statutory rights of the accused and which may directly or indirectly have an impact on the pretrial release process; and 3) laws which specifically mandate or authorize pretrial release programs.

Program practices are determined not only by legal requirements but by **local system structure.** Three court-related issues which affect pretrial release practices are the organizational placement, point of program intervention, and release options available.

Organizational placement refers to the position of the pretrial program with regard to administrative authority and accountability. According to a 1980 survey of pretrial release programs, almost half are directly accountable to some branch of the courts.

Equally important is the time the program initially screens or interviews defendants, i.e., the **"point of intervention."** Most programs are in accord with national standards which urge that interviews be conducted expeditiously in order to make the information available at the first court appearance, where the initial release decision is usually made.

The **range of release options** available in a jurisdiction can also affect pretrial release program practices. These options are usually distinguished in practice between financial and non-financial release, and, among non-financial release methods, the level of supervision provided.

There are five ways in which defendants can secure release without appearing before a judicial officer: three forms of citation release (non-financial), through delegated release authority (financial or non-financial) and through a bail schedule (financial). Arrestees who have not secured release through one of these methods appear at a hearing before a judicial officer. The judicial officer can authorize a variety of non-financial and financial release options, including four types of non-financial release options, and six types of financial release options. The four types of non-financial release are release on recognizance (or written promise to appear), conditional release, supervised release, and third-party custody release. The six types of financial conditions which the court may impose include unsecured bail, privately secured bail, property bail, deposit bail, surety bail, and cash bail.

Two other system features which may play a part in the release of defendants (and the practices of release programs) are the existence and extent of the **surety bail industry** in a jurisdiction and the level of **community social services** available to the court and other system actors.

The practice of allowing commercial bondsmen to post bail for the release of defendants prior to trial has created a commercial business enterprise within the criminal courts. The bail bondsman can frequently determine whether or not defendants required to post surety bail will be released or detained. However, the extent of the bail bondsman's impact on release varies considerably among jurisdictions. States such as Illinois and Kentucky have virtually eliminated the need for commercial bail bond services, while local systems in states such as Georgia, Texas, and California still rely to a large extent on the use of surety bail.

Increasingly, community social service agencies are being called on to provide services to the court so that more defendants can be released with supervision under non-financial release conditions. Pretrial release agencies may serve as catalysts in this process through development of relationships with the various agencies and their identification of defendants who can be assisted by such programs. The same treatment programs used by the court as alternatives to incarceration may also be used prior to adjudication.

There are two types of non-financial release: release on recognizance and conditional release. Release on recognizance (ROR) is defined as "release on one's promise to appear without any requirement of money bond."

A pretrial release program must identify the categories of defendants it will screen, then identify the population it will recommend for release. Definition of the target population can have a tremendous impact on its operation. Defining a target population is accomplished

through the use of screening for eligibility. Exclusion from program consideration for ROR may occur through exclusion from the initial interview, or exclusion from program recommendations for ROR.

Screening procedures for determining defendant eligibility for release on recognizance involve three steps: obtaining background information; verifying that information; and determining the appropriate recommendation.

After background information on defendants has been collected and verified, program personnel must determine which defendants will be recommended for ROR. There are three assessment mechanisms available to pretrial release programs: objective schemes, subjective schemes, or a combination of both. Objective schemes use some type of "point scale" to determine a defendant's eligibility for ROR. The advantages of an objective scheme are that it may provide some level of statistical predictability, it allows recommendations to be applied in a consistent manner, and it may result in higher rates of non-financial release. Difficulties with such schemes are that they may be too restrictive, they may discriminate through the use of invalid criteria, they are often "borrowed" from other jurisdictions without the necessary local validation, and they may lack needed flexibility.

Subjective schemes have the following advantages: they capitalize on the knowledge and experience of trained investigative staff; they allow interviewers to feel greater responsibility for release recommendations; and they provide more flexibility in changing release criteria to respond to individual defendants. The disadvantages of subjective schemes include: the institutionalization of personal bias; the requirement of more experienced staff at the initial interview; and the lack of consistency in application of recommendations.

Concerns over the weaknesses of the two recommendation approaches have led many programs to combine subjective judgment with objective point scales to determine release recommendations.

Following the recommendation determination, most programs prepare written reports which detail the release recommendation and the supportive background information, with copies provided to the prosecutor, defense counsel, and the court. Some programs present only ROR recommendations, while others present a variety of recommendations, including conditional release, supervised release, and money bail amounts.

These techniques differ from ROR in their specification that defendants fulfill some stated requirements which go beyond those associated with ROR. Within these techniques, the distinctions pertain to the level of restrictions placed on defendants, the level of supervision necessary to monitor compliance, and the locus of supervisory authority.

Conditional release techniques provide the judicial officer with a release option in those cases where he or she does not feel that the defendant is a good risk to return to court, but, at the same time, does not feel that pretrial detention is warranted. Through the use of conditional release, programs seek to expand the number of defendants who are eligible for non-financial release, without jeopardizing failure-to-appear or rearrest rates.

Conditional release without supervision entails conditions which can be grouped into four categories: 1) "status quo" conditions, where defendants are required to maintain residence, school, and/or employment status; 2) restrictive conditions, where defendants must restrict their associations or movements, avoid contact with victims, or maintain curfews; 3) contact conditions, where defendants are required to report by telephone or in person to the release program at various intervals; and 4) problem-oriented conditions, where defendants are required to enroll in various social service programs.

Supervised release provides the monitoring component for court-ordered conditions. Monitoring offers several potential benefits to the court: adequately monitored conditions can provide an early warning of non-appearance; the provision of information to the court on the pretrial performance of supervised defendants can assist the court in determining the appropriate sentence for convicted defendants; and the defendant's record of pretrial behavior can provide an indication of likely behavior if a non-incarcerative sentence is considered. Pretrial release programs use various forms of supervised release. Some programs use both contact supervision (e.g., requiring defendants to call or visit the release program on a regular schedule) and mandatory treatment programs, while others use one or the other. Frequency of required call-ins, visits, or treatment program attendance also varies widely.

Third-party custody release is premised on the condition that some agency or individual in addition to the defendant assume responsibility for assuring the defendant's appearance in court. The third-party custodian may be an individual such as a relative, friend, or employer, or a social service agency. Traditionally, this form of release is a direct arrangement between the court and the designated individual or agency, without the involvement of the release program. However, in some jurisdictions release program functions include recommending specific third-party custodians, providing third-party custodians with court date information, establishing criteria for third-party release, and acting to coordinate the work of third-party custodians.

The pool of defendants eligible for consideration for conditional release depends on the jurisdiction's definition of "high risk" defendants. In general, conditional release techniques are used for felony defendants because many alleged felons are ineligible to receive a recommendation for ROR and are likely to have money bail

set, and because felony defendants are less likely to secure release from custody since they tend to have higher bail amounts.

The population of defendants eligible for conditional release in part depends on the point of intervention selected by the program and the procedures for obtaining referrals. Screening before the initial court appearance may enable defendants to secure release more quickly and save both the system and the defendant money. However, determination of appropriate conditions of release may be difficult if outside agencies are used, due to time constraints. Also, it may not be feasible to obtain agreements from such agencies in such a short period of time. Some programs have responded to this concern by presenting a general recommendation for conditional release at the initial court appearance, with specific conditions to be determined later after a subsequent interview. Programs must be careful to guard against "widening the net." This can occur when judges assign conditions to defendants who may have otherwise obtained release without them.

In determining specific conditions of release, programs should strive to meet two criteria. First, conditions should be individualized to the particular circumstances of each defendant and must be reasonably related to minimizing risk of flight and rearrest. Second, the least restrictive set of conditions should be imposed. This pertains not only to the number but also the type of conditions.

In presenting recommendations to the court for conditional release, it is important to ensure that the conditions of release are as specific as possible. Vague conditions such as "cooperating with the program" should be avoided.

There are a number of follow-up activities that release programs may undertake after the accused has been arraigned. Though some of these services are not directly related to the pretrial release decision, they are often provided to other criminal justice agencies.

Among post-release services, many release programs **interview defendants immediately following release** in order to review court proceedings, court dates, attorney information, program requirements, and to answer any questions. Release programs may also act to notify defendants, by phone or mail, of some or all court dates. Recent research results on the impact of **program notification** show that the practice may reduce FTA rates by as much as half in certain charge categories.

Virtually all release programs have established **case-tracking systems** to derive information for monitoring and evaluation of pretrial release program functions and providing information to judges. Associated with systematic data gathering on overall program operations is the **preparation of reports on individual releasee performance**, which

may be used by courts in determining appropriate sentences for those who are convicted. Programs may prepare individual reports on persons released through the release agency, or only for particular defendant groups.

Response to violations of release conditions is an important part of pretrial program activity. However, reporting on every violation may quickly swamp the agency in paperwork. Professional standards suggest some discretion in reporting noncompliance, but it is important to develop standard procedures for dealing with all violations and to involve the judiciary in that process. Three types of sanctions for non-compliance exist: remedial (requiring some program participation), restrictive (limiting travel or associations), and punitive (fines, jail time, or other penalties). In the event of **failure-to-appear**, especially in felony cases, a large percentage of release agencies take action to return the defendant to court. Phone contact and field visits are often used to locate defendants, and some agencies have failure-to-appear units which deal solely with this sub-population.

Supplemental services may include services to the accused or to other system agencies such as information sharing. Program administrators may also be willing to provide "extra" services to speed case processing or make referrals to other programs as part of overall program goals. However, specific non-release supplemental services should be considered in light of the issue of confidentiality of defendant information, and the possibility of jeopardizing more essential services.

Pretrial programs often provide **social service referrals** to defendants who need help in obtaining employment, alcohol or drug abuse treatment, or other services. The maintenance of referral agency listings has become an important part of the work of many agencies.

Indigency screening to determine eligibility for free assignment of counsel is also performed by many release agencies. However, certain professional standards oppose release agency involvement in such screening, since inquiries pertaining to the amount of income, a fact not regarded as relevant to the release issue, may lead to reduced credibility among defendants and with other system agencies, jeopardizing essential services.

Some pretrial programs have both pretrial release and pretrial **diversion screening**. To the extent that the particular diversion program has strict eligibility requirements, the release program can make early assessment as to whether a defendant meets minimum requirements. Separation of the two functions is recommended, even if the two programs are placed in the same agency.

Since it is valuable for the probation department working to provide **presentence investigations** to speed such investigations, pretrial services programs often are involved in supplying appropriate

background data, an important supplemental service in many jurisdictions.

With the problem of jail crowding reaching crisis proportions, pretrial agencies are increasingly being recognized as crucial to jail population monitoring and as a bridge to cooperation between the courts and jail administrators. Pretrial programs are in an excellent position to contribute key facts to the analysis of jail populations and to help devise population reduction plans. In addition to providing data, many programs are directly involved in special population management groups and task forces.

Finally, many jurisdictions have turned to "central intake" systems in an effort to improve case management and overall coordination among criminal justice agencies. With such a system, duplication in information-gathering can be minimized through a comprehensive interview as soon as possible after arrest. Involvement in central intake services can serve the goals of the release program, but issues of confidentiality and credibility can again arise if such screening is performed by the release program.

In addition to the mechanics of program operations and procedures, administrators must deal with a number of important management issues, including staffing, training, fiscal responsibilities, public relations, management information system development, and impact evaluations.

The **planning of staff levels, functions, and allocation** is a complex process in which program administrators must consider budgetary constraints, workload, range of services offered, caseload fluctuations, court scheduling, and a variety of other characteristics.

Staffing decisions are needed in three areas: administrative, investigative, and post-release. Administrative staff functions include supervision of all staff, budget preparation, research, preparing all reports on the program, and ensuring that the goals of the program are clear to all staff through appropriate training. Investigative staff functions include interviewing all defendants eligible for pretrial release screening, verifying the information obtained, and presenting recommendations to the court. Post-release staff functions include monitoring conditional release cases, notifying defendants of court dates, case tracking, and apprehension/-arrest if appropriate.

Staff training and evaluation is an integral part of a release program's activities. A training program should work to keep staff informed of new developments in the release field, as well as in the individual program, and to raise the level of skills available to the program. Such programs usually include interviewing techniques, defendant supervision procedures, report layouts, and basic management

training. Staff evaluations are formalized mechanisms (written and/or oral) to assess a staff member's ability to qualify for a higher grade and appropriate salary increase.

A pretrial program administrator's **fiscal responsibilities** involve preparing annual budget proposals, detailing justifications for proposed increases as they may become necessary, and responding to audits, either from county, state, or federal agencies. Monthly review of expenditures is necessary to ensure that current budget allowances are not exceeded.

Public relations is another important area for pretrial release programs. Programs should prepare materials which describe program goals and operations and how they benefit the public. These materials should be available to three audiences: 1) local criminal justice agencies; 2) community organizations; and 3) legislators, particularly county officials.

A management information system (MIS) allows a program administrator to identify difficulties within the organization by examining statistics and periodic reports. Careful planning for the implementation of an MIS is important to its success. Without first defining precise information requirements, systems may compile excessive data at high cost while leaving essential questions unanswered. The planning process should include: defining questions to be examined; describing data to be collected, and in what format; creating data forms; creating effective reports; involving the staff in planning; and deciding between manual and automated systems.

Topics to be examined may involve release or failure-to-appear rates, management questions such as recommendation rates of individual interviewers, background questions such as defendant characteristics, "housekeeping" information needed in contacts with the defendant, and disposition information such as form of release or sentencing information.

At minimum, a program should collect data on defendant characteristics, program actions, and process outcomes, so that questions concerning the program's effect on the criminal justice system can be answered. Data gathering forms must be designed to accommodate this information and allow for quick compilation.

A carefully devised MIS is critical to the development of the program **"impact evaluation."** Impact evaluations differ from management information systems in that they are designed to test certain research questions concerning program effects on the local criminal justice system. This tool can validate new innovations, diagnose problems, allow the program to make more informed decisions, and test program impact on defendants. The level of complexity or sophistication involved in research evaluation depends on the program's needs, the research questions that demand answers, and the adequacy of the budget.

Several topics have been identified by program administrators as important issues for the 1980s. For several years, advocates have called for **early identification and services outside the jail setting** for mentally disabled persons, public inebriates, and DWI and drug abuse defendants. The numbers of such defendants detained pretrial appears to be growing, according to available statistics. Courts, often without alternatives for "special needs" cases, are beginning to recognize the potential of pretrial services programs to identify such cases and develop pretrial options.

Many jurisdictions have been forced by mounting jail crowding problems and more tightly defined first appearance guidelines to find more efficient ways of dealing with arrestees. One technique of short-cutting direct judicial involvement in release decision-making, citation release, has spread throughout the country in recent years. Many administrators now suggest that **delegation of release authority** to pretrial services programs should be implemented as a natural expansion of the citation release experiment. Though a number of release programs have operated with such authority in handling misdemeanant charges for several years, a few now have some degree of felony release authority.

Another mechanism implemented to expedite the handling of criminal cases is the **central intake system** (CIS). The basic function of the CIS is to gather information on defendants and their cases, verify that information and disseminate it to appropriate operating agencies, thus reducing the duplication of efforts in information gathering and the lack of coordination in case processing that is so common in local systems. The issue of confidentiality impedes many systems in moving to central intake mechanisms, but where pretrial release agencies have assumed chief responsibility, the problem has been dealt with through limiting each agency's access to the information bank, or allowing individual agencies to maintain information unique to their own needs with basic data supplied by the CIS.

Concern over pretrial rearrest rates has grown steadily over the last 15 years, leading many states to pass measures making the **consideration of danger** explicit in their release laws. Opponents of this movement have argued that criminal behavior cannot be accurately forecasted and that denial of bail based on such predictions would contradict basic legal precepts.

Although recent research indicates no improvement in the effort to differentiate between those who will or will not commit bail crimes, safety concerns do affect the bail decision. Many pretrial practitioners, supported by NAPSA, are moving to separate safety considerations from those of court appearance and to propose non-financial release conditions to defendants thought to pose a threat to safety.

The development of **bail guidelines** for local court systems is an attempt to structure judicial discretion to make it more accountable and fair. Developed in Philadelphia by Goldkamp and Gottfredson, a matrix system provides a range of bail choices to guide judges in their release decisions. Research on the Philadelphia system documents increased equity in bail decisions with no significant change in failures-to-appear, pretrial rearrest rates, or release rates. All municipal court judges in Philadelphia are now using the bail guidelines system.

The recent spotlight on the needs of crime victims has resulted in stepped-up efforts by local criminal justice agencies to improve **victim assistance programs** or to initiate programs where there are none. Many pretrial services agencies have been involved in informing the court of the situation of the victim and providing specific recommendations for "stay away" orders. Although increased pretrial program activity is problematic, many programs may be urged to become more directly involved in victim assistance procedures.

Accreditation standards are intended to ensure regularity and consistency and to represent ideal but attainable goals. Advocates of accreditation of pretrial release programs believe that some level of standardization could work to promote the safe release of a maximum number of defendants and make pretrial programs more effective in reducing jail population levels.

The question of how pretrial services programs can help solve the problem of jail crowding looms large on the horizon. It is clear that other criminal justice agencies, especially the courts, are looking to pretrial services agencies for the necessary expertise to reduce incarceration levels while ensuring community safety and the integrity of the court process.

Chapter 1

REFORM EFFORTS AND CURRENT ISSUES

1.0 Introduction

Historically the criminal justice system has relied on money bail as the major mechanism for assuring a defendant's appearance at court. Defendants with the financial means to post bond have secured pretrial release, while indigent defendants have remained in jail. A turning point in the criminal justice system's treatment of indigent defendants occurred in the early 1960s with the establishment of the Manhattan Bail Project, the first program to test the validity of non-financial means of pretrial release. The findings of this project, which indicated that a majority of defendants with ties in the community could be safely released on their own recognizance, generated national interest in bail reform. Since that time, many jurisdictions have adopted similar approaches and have implemented other release mechanisms such as citation release, conditional release, supervised release, and deposit bail. All of these mechanisms were developed to increase the options available to jurisdictions in effecting release while assuring community safety and the integrity of the court process. The use of new options has resulted in the release of many defendants who might otherwise have been unnecessarily detained during the pretrial period.

While the bail reform movement made significant strides during its first decade, current bail practices reflect conflicting pressures. On the one hand, the presumption of innocence, coupled with current jail conditions and escalating costs of maintaining defendants in jail, have led many to argue for a further expansion of the range of pretrial release options. On the other hand, there is continuing concern about failure-to-appear among defendants on pretrial release, and crime committed by defendants on pretrial release. The latter has led many to argue for the imposition of more restrictive forms of release, for the explicit consideration of the defendant's potential dangerousness in setting release conditions, and for the use of pretrial detention for certain defendants.

Local criminal justice officers feel these conflicting pressures strongly. This Issues and Practices report, which examines programmatic non-financial release strategies, is intended to assist pretrial practitioners in addressing the current challenges in the pretrial field. It examines the concept of non-financial pretrial release as it has developed in the United States over the last 20 years, and highlights, where possible, the advantages and disadvantages of specific program structures, operations, and policy de-

cisions related to implementing release on recognizance and conditional release strategies. The report also discusses the positive and negative consequences of each. The audience for this report includes two rather disparate groups: jurisdictions with existing pretrial release programs and jurisdictions considering implementing such programs. Thus it includes information of interest to program designers and program operators. In addition, this report will be useful to legislators and state executives examining the methods of pretrial release currently employed in their state, with an eye to improving statewide services.

The information in this document is drawn from a number of sources. In March 1983, telephone interviews were conducted with 14 pretrial programs. These programs provided detailed information on their structure, operations, and activities. Complementing this programmatic information was a review of the literature on pretrial programs. After consultation with experts in the pretrial field, seven additional programs were chosen for more intensive study. Visits were made to each during the first quarter of 1983. These seven programs were the Pretrial Release Services Division, Baltimore, MD; Own Recognizance Project, Berkeley, CA; Pretrial Court Services, Cobb County, GA; Pretrial Services Unit, King County, WA; Municipal Court Pretrial Services, Marion County, IN; Own Recognizance Project, San Mateo County, CA; and the Pretrial Services Agency, Washington, DC. The experiences of these seven sites are highlighted throughout the report, and are supplemented by information gained through the telephone survey and literature review of other pretrial programs.

1.1 Problems in the Administration of Bail

The presumption that an accused defendant should in most cases be released from custody pending trial has been a longstanding precept of the American criminal justice system. Pretrial release permits the accused to take an active part in planning his defense, permits him to maintain his employment and family ties in the event he is acquitted or given a non-custodial sentence, and spares his family the hardship and indignity of welfare and enforced separation. At the same time, however, the community needs assurance that the accused will appear in court and refrain from criminal activity.

Historically, the principal mechanism used in this country to determine whether a defendant should be released pending trial has been the money bail system. The American bail system evolved from English common law, where private individuals personally guaranteed they would produce defendants for trial. If the accused failed to appear, these private sureties offered themselves as substitutes for the defendant, or forfeited property. By the thirteenth century, sureties provided a sum of money in the event of non-appearance. 1/

American citizens in most jurisdictions have enjoyed an absolute statutory or constitutional right to have bail set in non-capital cases since colonial times. In capital cases, where the defendant's risk of flight may be great, the right to bail is, in many states, discretionary. The Eighth Amendment of the United States Constitution grants a right to all citizens against "excessive bail," although it is silent on any explicit grant of an absolute right to bail. The Judiciary Act of 1789, however, did grant a right to bail in all non-capital cases before trial in the Federal courts. 2/

This right to bail in non-capital cases provided by the Judiciary Act of 1789 (and by the constitutions of 34 states), 3/ coupled with the vastness of the American frontier, meant that a new means had to be developed to supplement the private surety. 4/ By the end of the nineteenth century, the practice of commercial bail bonding largely replaced the private surety, so that a defendant typically had to post a premium with a bondsman in order to gain pretrial freedom. 5/ In return for a non-refundable money premium, the bondsman guaranteed the defendant's appearance at court. If the defendant failed to appear, the bondsman would lose the full amount of the bond. As a measure of protection from forfeiture losses, bondsmen would often require defendants to post collateral. Under this system, defendants who could post the bondsmen's fees and meet other conditions set by the bondsmen secured pretrial release, while those without these resources remained in jail, often for months.

The commercial bail system has remained a prominent form of pretrial release throughout the twentieth century. However, beginning in the early 1920s and continuing to the present day, the inequities of the commercial system have received greater attention. Criticisms directed at the system include the following:

- The practice of framing a defendant's prospect for pretrial freedom in financial terms clearly lends itself to discrimination against indigent defendants.

- The nature of the money bail system requires the practically impossible task of translating risk of flight and/or danger into dollars and cents.

- The premise that financial payments are useful in assuring court appearance is questionable, since fees posted with a bondsman to secure release are not returned when a defendant appears in court.

- Money bail has often been used for purposes other than assuring the defendant's appearance at court. Early studies of the administration of bail by Beeley, Morse and Beattie, and Foote suggested that judges often set unaffordable bail based on the seriousness of the charges in order to punish

arrestees. 6/ Furthermore, as stated by former Supreme Court Justice Arthur Goldberg, "The judge who predicts that a given defendant may commit a serious crime may set the bail at an amount he knows the defendant cannot afford." 7/

- With the rise of commercial bail bondsmen, the court's influence in determining whether a defendant would be released prior to trial was substantially reduced. Today the release decision is effectively transferred to the bail bondsman when the court sets a bail amount.

- The bail bondsman's supervision of the defendant is often minimal, and the function of locating fugitives is primarily performed by law enforcement officials. 8/ In addition, the presumed safeguard for the state--the collection of forfeited bonds upon the defendant's failure-to-appear--is frequently ineffective due to law enforcement policies. 9/

- A great deal of evidence suggests that corrupt and abusive practices have flourished in the commercial bail bond industry. Bribery, kickbacks, payoffs, and racketeering have been well documented. 10/ Also, the efforts of bondsmen to apprehend bail jumpers have often led to situations of abuse and predation. 11/

- The pretrial detention of defendants who cannot accomplish release due solely to the decision of a bondsman is contrary to the law principle that individuals should not be punished until guilt has been established. 12/ Other than the fact of incarceration, punitive effects include loss of employment, inability to participate in defense efforts, and the increased chance of incarceration if found guilty. 13/

1.2 The Bail Reform Movement -- A Response to the Problems in the Administration of Bail

1.2.1 The First Decade of Bail Reform

The 1960s saw the emergence of a significant bail reform effort in the United States. Through the development of alternatives to traditional money bail, reformers sought to reduce the number of defendants detained before trial solely as a result of their inability to post bail, and to make pretrial release practices more equitable. The reform movement was based on two premises: first, that a defendant's community ties, including such factors as length of residence in the community, family membership, employment status, and prior criminal record could be used to assess the risk of flight; and second, that the individual characteristics of a defendant could be used to determine the least restrictive conditions to assure court appearance.

In 1961, the Manhattan Bail Project was created in New York City by the Vera Foundation as an experiment in the selection of defendants to be released on their own recognizance, that is, on a simple promise to return to court. The project sought to test the notion that the strength of a defendant's ties to the community was positively related to the likelihood of appearance in court. After three years of study, the Manhattan Bail Project demonstrated that the overwhelming majority of defendants released on their own recognizance following the recommendation of the Vera staff, and subsequently reminded of their obligation to appear, did appear in court. 14/

The success of the Manhattan Bail Project provided a major stimulus for bail reform across the nation. In the years immediately following, reform efforts burgeoned as activists seized on three principal strategies: the establishment of release programs modeled on the Vera project; the passage of legislation to require pretrial release when the defendants met certain criteria; and the development of national standards. In 1964, the Department of Justice cosponsored with the Vera Institute a National Conference on Bail and Criminal Justice attended by more than 400 criminal justice practitioners, policy makers, and academicians. This conference provided further impetus for the implementation of the above three strategies. 15/

Federal legislative efforts at bail reform, led by Senator Sam J. Ervin, Jr., chair of the Senate Judiciary Subcommittee on Constitutional Rights, culminated in 1966 when the Federal Bail Reform Act was passed. No major changes had been made in Federal bail policy since the Judiciary Act of 1789. The Bail Reform Act created a presumption in favor of releasing defendants on their personal recognizance and introduced the concept of conditional release as a means to expand the number of defendants eligible for non-financial release. It also authorized cash deposit of 10 percent of the amount of the bond with the court, returnable upon appearance, and emphasized the principle of release under the least restrictive method necessary to assure court appearance. 16/ Although the law was applied only to the Federal courts and the District of Columbia, 22 states had adopted the Bail Reform Act model by 1978. 17/

In 1968, the first standards on pretrial release were published by the American Bar Association as part of its 10-year project to formulate a complete set of standards for the administration of criminal justice. The standards set forth recommended policies and procedures to be used at the Federal, state, and local levels, many of which followed the provisions of the Bail Reform Act. However, unlike the Bail Reform Act, the standards called for the abolition of surety bond, with replacement where necessary by a returnable 10 percent cash deposit, and endorsed the setting of non-financial conditions calculated to prevent commission of pretrial crime as well as to deter flight. 18/ The reforms implemented in the 1960s resulted in the release of many defendants who would otherwise have been detained, without adversely

affecting appearance rates, according to research findings. Thomas' study of 19 jurisdictions indicated that between 1962 and 1971 the proportion of felony defendants released from custody prior to trial rose from 48 to 67 percent, due almost entirely to non-financial releases. The overall release rate for misdemeanants also increased, from 60 to 72 percent. Again, non-financial releases accounted for most of the change. By 1971, non-financial releases increased more than fourfold in the felony category, and tripled for misdemeanors. Also, the use of non-financial releases equaled or exceeded bail releases in 11 of 19 cities studied. 19/

While the establishment of pretrial release programs played a major role in expanding the rates of pretrial release, Thomas notes that by 1970 some cities without pretrial release programs had non-financial release rates equal to or greater than cities with projects. Factors which could have contributed to these increases included greater judicial awareness of alternatives to the money bail system, and legislative enactment of bills requiring judicial consideration of non-financial release and/or setting forth a presumption of release according to least restrictive conditions.

By 1970, many of the pretrial programs were encountering a number of problems which limited their effectiveness. 20/ Thomas, Dill, and others identify several areas of difficulty faced by these programs:

- Funding. Many programs had serious problems obtaining funding for a strong program. Some of the early programs were initially funded by private foundations; while some of them experienced a smooth transition from private to public funding, others were not so fortunate.

- Bureaucratization. In many jurisdictions, release programs initially started by independent agencies became adjuncts of the courts or probation. As a consequence, a number of changes often occurred in the organization and role of the projects. The institutionalization of these projects within the courts or probation often led to more conservative release policies.

- Subjective release criteria. Many of the programs favored a subjective approach for determining a defendant's eligibility for release rather than an objective approach. While both methods considered the same factors, programs using subjective criteria often recommended considerably fewer defendants, with no appreciable benefit in the failure-to-appear rate.

- Eligibility for release on recognizance. Many of the early projects developed a set of exclusionary criteria, often based on charges placed, which prevented a number of defendants from even being considered for non-financial recommendations. While it was hoped that the number of exclusions could be reduced as the performance of the defendants released on their own recognizance became recognized, this did not always occur. An associated problem was the frequent adoption of the point scale developed by the Vera Foundation for the Manhattan Bail Project. Research to determine the appropriateness of direct application of the Vera design to a different setting was often neglected.

- Delays in interviewing defendants and verifying information. Many projects experienced interviewing delays and employed cumbersome verification procedures. These factors, together with the time spent on writing lengthy reports, resulted in the defendant spending unnecessary additional time in jail before being considered for release.

By the end of its first decade, there was a growing consensus that while the bail reform movement had achieved a measure of success, there was room for further improvement in pretrial release practices. Despite the increase in release rates, the detention of defendants remained a serious problem in many jurisdictions, often exacerbated by the restrictive procedures of pretrial release programs. As stated by Wald:

> In retrospect, bail reform efforts in the sixties have probably had their greatest impact in releasing good defendants who might otherwise have had to pay a bondsman or go to jail. They did not, however, do much to solve the problems of the defendant who needs supportive help in the community to succeed on release. Nor have they reduced the staggering costs society and the individual still pay for detaining persons not yet convicted of any crime. Finally, the abhorrent conditions under which presumably innocent men are detained, have, on the whole, gotten worse, not better, due to overcrowding, physical deterioration of facilities, and a steadfast refusal to allocate adequate funds to this part of our criminal justice system. 21/

1.2.2 The Second Decade of Bail Reform

As the bail reform movement entered the 1970s it was confronted by intense public concern over reports of a dramatic increase in reported crime. Criminal justice officials began to search for ways to address this phenomenon, and those involved with bail reform efforts struggled to reconcile their goal of reducing unnecessary and inappropriate pretrial detention with demands that those arrested for crimes be treated punitively.

A national survey of pretrial release program directors, prosecutors, law enforcement officials, judges, and others working in the crime control area underlined a new level of tension in defining the efforts of pretrial release agencies. Although program directors and other officials could agree that release programs should emphasize assuring court appearances, reducing inequality in treatment between rich and poor, and saving public monies, there was much less consensus on the question of detaining those thought to be dangerous and on increasing levels of supervision of those released before trial. The chief goal of bail reformers during the previous decade, that of maximizing the number of defendants released before trial, was no longer unanimously recognized. 22/

Those in the field responded by moving to 1) revise program practices to expand the range of non-financial releases, 2) develop national standards to further institutionalize the aims of the bail reform movement, and 3) make consideration of community safety in release decision-making and program practices explicit.

Program Practices

To expand the rate of pretrial release, programs focused on modifying their procedures for release on recognizance and expanding the range of other release alternatives. In certain jurisdictions, steps were taken to reduce the delays in interviewing defendants and thereby decrease unnecessary short-term detention. Programs often instituted bail review procedures to provide the opportunity for reconsideration of a defendant's detention status. In several jurisdictions, pretrial release programs began to use conditional release with supervision for defendants ineligible for release on recognizance recommendations. Under this form of release, defendants were granted non-financial release on the condition that they fulfill specific requirements aimed at increasing their likelihood of court appearance while maintaining community safety. Typically, these defendants were released on the condition that they maintain frequent contact with the pretrial program or participate in services, provided either directly by the pretrial program or by outside referral agencies.

In other jurisdictions, deposit bail became more prevalent. Rather than pay a non-refundable fee to a bail bondsman, defendants were allowed by the court to post a percentage of the bail set, typically 10 percent, returnable upon disposition of the case. Also, in many jurisdictions police began to issue citations in lieu of arrest for certain misdemeanor charges.

With the expansion of non-financial release alternatives, many programs increased their range of activities and became known as pretrial services agencies. These agencies provided a variety of pre-release and post-release services to defendants and the criminal justice system. In addition to the traditional activities of

interviewing arrested persons, verifying the information, and presenting recommendations to the court, these programs began to (1) monitor released defendants to maintain contact and help assure compliance with release conditions; (2) assist releasees in securing various social services; (3) provide information to the courts on the pretrial conduct of releasees; and (4) in some cases, locate and apprehend defendants who failed to appear.

Despite these efforts, many of the problems noted at the end of the first decade of bail reform continued into the 1970s and remain today. For example, certain categories of defendants remain ineligible for pretrial release interviews and recommendations in many jurisdictions. A 1980 survey by the Pretrial Services Resource Center indicated that virtually half (49.6 percent) of the release programs surveyed automatically excluded some defendants, on the basis of charge alone, from being interviewed for release on recognizance. Further, over 75 percent of the projects surveyed automatically denied release on recognizance recommendations to certain categories of interviewed defendants. 23/

The survey also reported that nearly half of the programs recommended that money bail be set in certain circumstances and/or recommended specific bail amounts. 24/

National Standards

On the national level, various efforts were undertaken to further the aims of the bail reform movement. In 1973, the National Association of Pretrial Services Agencies (NAPSA) was established for pretrial release and diversion programs. In 1976, Congress passed legislation which established pretrial release agencies in 10 Federal judicial districts. Throughout the 1970s, various sets of standards on pretrial release were developed. In 1973, the National Advisory Commission on Criminal Justice Standards and Goals reported its standards; in 1974, the National Conference of Commissioners on State Laws formulated the Uniform Rules of Criminal Procedure; in 1977, the National District Attorneys Association developed National Prosecution Standards; in 1978, NAPSA issued Performance Standards and Goals for Pretrial Release; and in 1979, the American Bar Association (ABA) issued Revised Standards for Pretrial Release. While these standards differ in certain respects, common threads include the presumption favoring non-financial release on the least restrictive conditions, abolition of surety bond, due process requirements if defendants are to be detained, and establishment of independent pretrial agencies and/or court-based offices in each jurisdiction to provide information to the court for pretrial release decision-making and to monitor defendants' compliance with release conditions.

Community Safety

Increased concern over the problem of crime committed by defendants on release led to a debate on the proper role of community safety in release decisionmaking during the 1970s. While some subscribed to the view that the only legitimate function of bail is to assure appearance at court, others maintained that protection of the community from dangerous defendants was also a legitimate and constitutionally permissible consideration in the release decision-making process. Proponents of both philosophies rely in part on two landmark cases containing contradictory dicta. Ironically, both reached the U.S. Supreme Court in the fall term of 1951. Although neither applied directly to state court bail issues, both are recognized as the first significant cases on bail to be dealt with by the High Court.

Advocates of the "appearance only" view cite the case of Stack v. Boyle 342 U.S. 1 (1951). In Stack dicta the court set forth the principle that defendants in non-capital cases were presumed to have a right to bail conditioned on the defendant's willingness to be tried and punished if found guilty. Proponents of the "dangerousness" view cite Carlson v. Landon 243 U.S. 524 (1952). This case involved detention of aliens for deportation, a civil matter, but dicta in the case dealt generally with bail issues. Contrary to the discussion in Stack, the Supreme Court found no constitutional right to bail or presumption favoring release, only that money bail, where permitted, should not be excessive. Also in the Carlson dicta, the concept of "apprehension of hurt" was introduced as a rationale for denying bail, foreshadowing the use of community safety as a primary concern in bail setting. 25/

The concern over community safety was first explicitly addressed in Washington, DC, in the late 1960s when the Bail Reform Act came under attack by law enforcement officials and trial judges who complained that it required the release of dangerous defendants. In 1968 and 1969, a committee of the District of Columbia Judicial Council chaired by Judge George L. Hart, Jr., recommended that some form of preventive detention be adopted. This recommendation was supported by the Department of Justice, which in 1969 proposed a Preventive Detention Law for all Federal courts. The issue of preventive detention was a controversial one, prompting a series of hearings in 1970 by the Senate Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, chaired by Senator Sam Ervin, Jr., a staunch opponent of preventive detention.

Realizing that Senator Ervin's Subcommittee could block a proposal for preventive detention at the Federal level, the Department narrowed its proposal to be applicable to the District of Columbia alone. After months of extensive hearings, the District of Columbia Court Reform and Criminal Procedure Act of 1970 was signed into law. 26/ It amended the Bail Reform Act of 1966, affecting release decisions made

for defendants arrested and charged with a violation of the D.C. Code. The D.C. Crime Act of 1970, like the Bail Reform Act, set forth a presumption in favor of non-financial release. However, the Act also directed judges to consider dangerousness, as well as risk of flight, in setting release conditions and allowed for pretrial detention under certain restricted conditions. 27/

Still, concern over pretrial crime heightened among members of the criminal justice community and the public. These concerns resulted in a variety of changes and proposals for change in the release decision-making process. A number of jurisdictions began to recognize community safety as a legitimate factor to be considered in the release decision-making process. As of 1980, 18 states had provisions in their state statutes which permitted consideration of the potential for danger in determining pretrial release. These jurisdictions were: Alabama, Alaska, Arkansas, Colorado, Delaware, Kentucky, Michigan, New Hampshire, New Mexico, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Vermont, Virginia, Washington, and the District of Columbia. 28/ (Since 1980, 14 other states have added such provisions.) 29/ Also, professional associations urged pretrial programs to explicitly consider the community safety issue and fashion recommendation schemes to include this issue along with considerations of flight. The recent standards promulgated by NAPSA in 1978, and the ABA in 1979, now authorize the use of non-financial conditions of release to protect the community as well as to assure the defendant's appearance at court.

Both sets of standards allow for the use of pretrial detention for certain defendants under certain circumstances. While the ABA and NAPSA standards are similar in their authorization of pretrial detention for defendants whose risk of flight cannot be offset by available conditions of release, and for defendants who pose a threat to the integrity of the judicial process, they differ significantly in the circumstances under which pretrial detention is permitted in order to protect the community. The NAPSA standards, following the language contained in the D.C. statute, consider the nature of the present charge and the likelihood of future dangerousness. In contrast, the ABA standards are keyed to specific conduct of the accused while on pretrial release. The judge must find either that the defendant has committed a new crime while on release or that the defendant has violated a condition of release designed to protect the community, and that no additional condition of release would provide such protection. Both standards specify rigorous due process requirements before pretrial detention can be permitted. 30/

1.3 Current Issues

In discussions on critical issues in the pretrial field today, program administrators raise several topics with particular consistency. They

include 1) the attitude of the community toward the pretrial release agency in the "get tough on crime" 1980s; 2) the apparently worsening problem of jail crowding and its effects on bail practices; 3) the rapid development of information system technology; and 4) the problem of maintaining standards of confidentiality in the handling of defendant information.

1.3.1 Community Safety and Public Sentiment

Any enumeration of current concerns must include the attitude of the surrounding criminal justice system and the larger community toward the role of the release program. Perhaps the most common public perception of the release agency is as the advocate for release of all defendants, but little research has been carried out on public attitudes toward bail. What is available is consistent with the "get tough on crime" approach. For example, the 1981 Field Institute survey in California showed 65 percent of the respondents agreed strongly with the statement, "...So many crimes are committed by persons awaiting trial who have been freed on bail that the entire bail system should be examined and changed." 31/

This concern is reflected in the legislative movement toward mandating danger-based criteria. While it is shared by pretrial administrators, it has placed them in a difficult position. Responding to the conflict between fairness for the accused and safety of the public has become the central dilemma for all involved in release decision-making. As one agency director has pointed out:

> It should strike one as peculiar that any agency that strives to present alternatives from which a judge may select to accomplish that which the law requires, viz., release on the least restrictive conditions possible, should be cast in such a pejorative light. 32/

1.3.2 Jail Crowding

Crowding of a jail or jail system is a disturbingly frequent malady in the United States today. In fact, jail populations may now exceed locally established capacity (or that established by the Federal judiciary) in more jurisdictions than was the case when Beeley began to advocate bail reform in response to jail crowding in the mid-1920s. No state has escaped the wave of jail crowding suits that has swept the nation over the past 15 years.

Although jail crowding can be traced to a number of causes, including increased jail sentencing, sentence length, and "back-ups" of sentenced prisoners bound for state prison systems, space for pretrial detention appears ever more scarce. Recent statistics on the nation's jails indicate that over 80 percent of all jail inmates are housed in

less than the recommended minimum of 60 square feet of cell space. 33/ Of the approximately 212,000 persons in jail in the U.S. on any day, 60 percent are awaiting trial, 34/ and those held in the most crowded conditions are often persons who have not been tried. 35/

Individuals unable to make bail constitute a large proportion of most pretrial detainee populations. 36/ Although data are being generated by release units in most large jurisdictions on defendants who warrant consideration for pretrial release, few courts receive information or analysis on those who remain in detention. But release administrators are beginning to play a major role in efforts to deal with jail crowding, and the development of local research designs to study the remaining detainee population appears promising. If release rates can be increased without increasing failure-to-appear and pretrial rearrest rates, as recent national research has suggested, 37/ then release programs will have a responsibility to make certain that such data are made known to judicial officers.

1.3.3 Information Explosion

The sudden boom of technology in criminal justice information systems has brought many in the pretrial services field face-to-face with a new, unanticipated problem--the setting of limits in the gathering and manipulation of data. As the grasp of release agencies is expanded by the increasing sophistication of data systems and new information pertaining to the criminal defendant or the crime itself becomes available, administrators are discovering new applications and new ways to be of service to the court and other operating agencies.

The blessings of computer technology are many, including enhanced capability for local research designs, demonstration of the feasibility of changes in recommendation schemes and conditional release practices, speedy verification of information on potential citation releasees, and so on.

The involvement of release agencies in modifying caseflow procedures to achieve a more efficient decision-making system cannot be faulted, except where the goal of efficiency in case handling begins to affect an agency's concentration on devising appropriate release conditions for individual defendants and new release options. Jay Carver, President of the National Association of Pretrial Services Agencies, has recognized the potential for release agencies to become information managers and brokers "possibly at the expense of their ability to work as catalysts for change" in local systems.

Defining the release agency's proper role in compiling information for use by other system actors has thus become a key concern. Many agencies maintain direct and frequent contact with police, tracking and utilizing all available information from the case against the defendant. Others avoid contact with arresting agencies and do not

include information such as police reports and statements of facts in developing recommendations.

Although the effect of the availability and use of such information on release practices is speculative, release officials are approaching the explosion of information with considerable caution. Clearly, greater efficiency can be achieved through use of automated data systems and the establishment of a clearinghouse/coordination function within a pretrial services agency. Manipulation of data on movement of cases through adjudication can lead to benefits for all operating agencies. But professionals in the pretrial field recognize that care must be taken to assure that the gathering of more detailed information does not produce unwanted results that may violate individual civil rights.

1.3.4 Confidentiality of Information

Problems concerning the appropriate uses of information gathered by pretrial agencies have faced the pretrial field since the inception of the original Manhattan Bail Project. That program initiated the practice of assembling information about a defendant's community ties and background characteristics with the expectation that the defendant would provide most of the required information. This situation posed an immediate problem for pretrial personnel concerning the potential difficulties of speaking to defendants without legal counsel. While programs required community ties information in order to secure release on recognizance, they did not want to encourage confessions or pass on prejudicial information to other criminal justice actors. 38/

Obtaining and verifying accurate criminal histories was a second area of concern. Often, the only available information on prior record appeared on inaccurate police rap sheets. Agencies attempting to verify dispositions faced specific laws limiting access to juvenile records, history of narcotics use, court records, and psychiatric and other medical records. In addition, the recent development of sophisticated computer information systems has posed special problems of access and dissemination.

In attempting to find solutions to these problems, programs are examining the different kinds of information to which they have access. The first type of information is that generated by the initial interview during which agency personnel and unrepresented, detained defendants interact in an atmosphere which is often one of extreme tension and pressure. Arguments for preserving total confidentiality of the initial interview are based on the need to preserve fundamental fairness by avoiding direct conflict between the right to release and the right against self-incrimination.

Interviewers in many release agencies make it clear that the agency has no interest in, nor should the defendant offer, details of the

arrest or charge. Moreover, the Miranda warning is often given to indicate that the agency cannot provide total confidentiality should the defendant give such information. Programs may provide information given by the defendant in the event that subsequent testimony or information given to other agencies contradicts that held by the release agency. Confidential information may also be made available to qualified persons for research purposes, with the identity of individual defendants withheld.

A second type of information is that compiled during the pretrial period itself, i.e., the record of the interaction between the defendant and the agency concerning the defendant's location, employment, compliance with release conditions, or future court dates. This represents a different issue from that raised by initial interview data, in that the very effectiveness of release programs depends to a certain degree on sanctions imposed for violations of conditions of release.

A third type of information is that provided by outside sources such as drug and alcohol program personnel, counselors, psychiatrists, psychologists, and other individuals with access to highly personal and confidential information. Most pretrial program personnel feel such material should be totally confidential except in those cases where the consent of the accused is obtained after consultation with counsel. This information is usually elicited in the context of assistance to the accused.

While the above issues are currently uppermost in the minds of those involved in pretrial release practices, other issues, some first identified 15 years ago, still demand attention. They include identifying local characteristics that might be associated with failure-to-appear, and translating that information into better release recommendations and decisions; identifying characteristics that are associated with pretrial crime; establishing and maintaining the credibility of the program's work with other criminal justice system actors; developing and maintaining an information system that provides management with the data to support or challenge proposed changes; and the problem of establishing and maintaining funding levels sufficient to support needed services.

FOOTNOTES

1/ National Center for State Courts, An Evaluation of Policy Related Research on the Effectiveness of Pretrial Release Programs (Denver, Colorado, 1975), p. 5.

2/ Patricia Wald, "The Right to Bail Revisited: A Decade of Promise Without Fulfillment," in Stuart S. Nagel, ed., "The Rights of the Accused," Sage Criminal Justice Annals, Vol. I (1972), p. 178.

3/ John S. Goldkamp, Two Classes of Accused: A Study of Bail and Detention in American Justice (Cambridge, Massachusetts: Ballinger Publishing Company, 1979), p. 54.

4/ Wayne A. Thomas, Bail Reform in America (Los Angeles, California: University of California Press, 1976), p. 12.

5/ Malcolm M. Feeley, Court Reform on Trial (New York: Basic Books, 1983), p. 41.

6/ Arthur L. Beeley, The Bail System in Chicago (Chicago: University of Chicago Press, 1927; reprinted in 1966); Wayne L. Morse and Ronald H. Beattie, "Survey of the Administration of Criminal Justice in Oregon, Report No. 1: Final Report on 1,771 Felony Cases in Multnomah County," Oregon Law Review, Vol. 11, no. 4 (June 1932); and Caleb Foote, "Compelling Appearance in Court: Administration of Bail in Philadelphia," University of Pennsylvania Law Review, Vol. 102 (1954).

7/ Testimony of Honorable Arthur J. Goldberg before the Subcommittee on Constitutional Rights of the Committee on the Judiciary, U.S. Senate, July 11, 1970.

8/ Thomas, op. cit., 1976, p. 255.

9/ Paul Wice, Freedom for Sale (Lexington, Massachusetts: D.C. Heath and Company, 1976), p. 59.

10/ Daniel J. Freed and Patricia M. Wald, Bail in the United States: 1964 (Washington, DC: U.S. Department of Justice and the Vera Foundation, Inc., 1964), p. 34; Ronald Goldfarb, Ransom (New York: Harper and Row, 1965), p. 92; and Forrest Dill, "Discretion Exchange and Social Control: Bail Bondsmen in Criminal Courts," Law and Society Review, Vol. 9 (Summer 1975), p. 647.

11/ Wice, op. cit., pp. 59-60.

12/ Although in Bell v. Wolfish, 441 U.S. 520, (1979), the Court held that the conditions of pretrial detention under consideration did not amount to punishment of the detainee, it did acknowledge that certain conditions or restrictions of pretrial detention might amount to punishment if the condition or restriction is arbitrary or purposeless.

13/ Stevens H. Clarke, Susan Turner Kurtz, Elizabeth W. Rubinsky, Donna J. Schleicher, "Felony Prosecution and Sentencing in North Carolina: A Report to the Governor's Crime Commission and the National Institute of Justice" (Institute of Government, University of North Carolina at Chapel Hill, May 1982), p. 47. See also Goldkamp, op. cit., p. 211.

14/ Charles Ares, Anne Rankin, and Herbert Sturz, "The Manhattan Bail Project: An Interim Report on the Use of Pretrial Parole," New York University Law Review, Vol. 38 (1963), p. 67.

15/ National Conference on Bail and Criminal Justice, Washington, DC, Proceedings and Interim Report (April 1965); and Bail and Summons: 1965 (August 1967).

16/ 18 U.S.C. Section 3146(a). Federal legislation is now being considered to include dangerousness as a legitimate consideration in the pretrial release process. The Reagan Administration has expressed support for such a change.

17/ Timothy J. Flanagan, Michael J. Hindelang, and Michael R. Gottfredson, eds., Sourcebook of Criminal Justice Statistics--1979 (Washington, DC: U.S. Department of Justice, 1980), pp. 214-215.

18/ American Bar Association, Standards Relating to the Administration of Criminal Justice: Pretrial Release (New York: Institute of Judicial Administration, September 1968).

19/ Thomas, op. cit., 1976, p. 252.

20/ Ibid., pp. 121-150.

21/ Wald, op. cit., p. 188.

22/ Russel V. Stover and John A. Martin, Policymakers' Views Regarding Issues in the Operation and Evaluation of Pretrial Release and Diversion Programs: Findings from a Questionnaire Survey (Denver, Colorado: National Center for State Courts, 1975).

23/ Donald E. Pryor, Programs Practices/Release, Practices of Pretrial Release Programs: Review and Analysis of Data (Washington, DC: Pretrial Services Resource Center, February 1982), pp. 24-28, 34-37. Hereinafter cited as Program Practices/Release. The program sample used for this review indicated a similar proportion recommending bail and/or bail amounts.

24/ Ibid., pp. 37-38.

25/ Goldkamp, op. cit., pp. 18-20. Discussion of the constitutionality of detaining a defendant pretrial on the basis of a prediction of future dangerousness has not finally been determined. The Supreme Court recently rejected two opportunities to decide whether the Eighth Amendment confers an absolute right to bail in non-capital cases. The high court declined to hear an appeal of a D.C. Court of Appeals ruling which upheld the D.C. preventive detention statute [Edwards v. U.S. (80-5017), cert. denied, 3/22/82]. The Supreme Court also vacated a decision by the U.S. Court of Appeals for the Eighth Circuit that declared unconstitutional a Nebraska law that denied bail to defendants charged with forcible sexual offenses. The high court held that the case was moot [Murphy v. Hunt (80-2165), 3/2/83].

26/ Thomas, op. cit., 1976, pp. 229-231.

27/ The D.C. Pretrial Services Agency identified 1,902 defendants from a total of 13,219 possible cases during 1982 as technically qualified for pretrial detention hearings under the statute. Hearings were held for 422 defendants, 3.2 percent of the total.

28/ Goldkamp, op. cit., p. 74.

29/ Elizabeth Gaynes, "Typology of State Laws Which Permit the Consideration of Danger in the Pretrial Release Decision" (Washington, DC: Pretrial Services Resource Center, May 1982), p. 1.

30/ American Bar Association, American Bar Association Standards for Criminal Justice, Second Edition, Vol. II, Chapter 10, "Pretrial Release" (Boston: Little, Brown & Company, 1978), Standard 10-5.9, pp. 10.95-10.97. Hereinafter cited as ABA Standards. National Association of Pretrial Services Agencies, Performance Standards and Goals for Pretrial Release and Diversion: Release (Washington, DC: Law Enforcement Assistance Administration, 1978), Standard VII, pp. 35. Hereinafter cited as NAPSA Release Standards. Also, in response to concerns over community safety, the D.C. Pretrial Services Agency modified its recommendation procedures in July 1980 so that individualized recommendations for non-financial release conditions are made for defendants which separately address community safety and appearance concerns. Under the new recommendation scheme, the Agency hopes to reduce even further the unnecessary detention of persons who are not dangerous and the imposition of financial release conditions. The National Institute of Justice awarded a grant to the Agency in 1980 to study the implementation and results of those new recommendation procedures. The Lazar Institute is conducting this research for the Agency, and the findings of this soon-to-be-released study should have significant implications for pretrial release practices.

31/ Field Institute, Attitudes of Californians Toward Prisons and Jails, Punishment and Some Other Aspects of the Criminal Justice System, August 1981.

32/ Bruce D. Beaudin, "Bail Reform, 1980: A Brief For Change," Pretrial Services Annual Journal, Vol. IV (Washington, DC: Pretrial Services Resource Center, July 1981), p. 95.

33/ Joan Mullen, American Prisons and Jails, Volume I: Summary Findings and Policy Implications of National Survey (Washington, DC: National Institute of Justice), October 1980, p. 75.

34/ Jail Inmates 1982, U.S. Bureau of Justice Statistics, Pub. No. NCJ-87161.

35/ Miller v. Carson, 401 F.Supp 835, 839 (M.D. Fla. 1975).

36/ Data collected by the U.S. Bureau of the Census in 1978 indicated that 57 percent of inmates in pretrial status with bail set stated they could not afford bail.

37/ Thomas, op. cit., 1976, pp. 101-102; Mary Toborg, National Evaluation Program Phase II Report--Pretrial Release: A National Evaluation of Practices and Outcomes (Washington, DC: National Institute of Justice, October 1981), p. 59. Hereinafter cited as NEP Phase II.

38/ This situation represents an apparent conflict between the Eighth Amendment's proscription of excessive bail and the Sixth Amendment's protection against self-incrimination. Courts have hinted and even ruled that there really is no conflict since a right to bail (in non-capital cases) presumes that an accused need say nothing to secure this right. Yet most trial courts demand information to justify the release conditions set, and this information has its source in the accused.

Chapter 2

FACTORS AFFECTING PRETRIAL SERVICES

2.0 Introduction

Those who wish to start a release program or change an existing one must first understand the existing surroundings and how those surroundings affect the development of pretrial services. An analysis of law enforcement agencies, local jails, court systems, legislative bodies, and those in positions of leadership in each area would be an elementary step in understanding local systems, as would a review of legal mandates (court rule, case law, or legislation) relating to pretrial release. Beyond this, several specific areas must be explored to gain a full picture of the environmental factors that can affect the pretrial release agency and determine the most appropriate developmental model. The following sections discuss those factors.

2.1 Legal Authority for Pretrial Release and Pretrial Release Programs

The operation of a pretrial release agency is in part determined by three lines of legal authority:

- Laws which define the circumstances under which defendants may be released or detained pending adjudication. These laws include:
  - state and Federal constitutional provisions which deal with bail and, in some states, limit the right to bail;
  - state statutes which may define:
    - the purpose of bail (appearance only, or appearance and community safety)
    - the factors that courts must consider in determining appropriate release conditions
    - the conditions (financial and non-financial) under which a defendant may be released;
  - state or local court rules; 1/ and
  - Federal or state cases which interpret the statutory laws, elaborate upon the right to bail and the circumstances under which bail may be denied, and address methods for determining when bail is excessive. 2/

In some states, release laws have remained virtually unchanged for generations and emphasize methods and regulations concerning the setting of bail, licensing of bondsmen, establishment of bond schedules, and clerical details of posting bail. These laws can be contrasted with the 1976 release law of Kentucky, which emphasizes non-financial release alternatives and eliminates surety bail altogether. 3/

Statutory schemes such as those in Kentucky are based on the federal Bail Reform Act of 1966, which sets forth a presumption in favor of release on recognizance (ROR) and lists criteria on which the release decision will be based. 4/ These criteria include:

- the nature of the offense charged;
- the weight of the evidence against the accused;
- the accused's family ties;
- employment;
- financial resources;
- character;
- mental health;
- length of residence in the community;
- record of convictions; and
- record of appearance at court proceedings, or of flight to avoid prosecution. 5/

These criteria (or similar ones drawn from state statutes) are often the basis for the release program's recommendation scheme. Questions asked of defendants are generally designed to determine the extent to which they satisfy the criteria, the likelihood that they will satisfy the release purpose (appearance and/or safety), and the appropriate method of release.

Statutes which set forth possible conditions of release other than ROR and money bail (travel restrictions, curfews, placing the defendant in the custody of a designated person or organization agreeing to supervise him or her 6/) may lend support to program efforts to initiate supervised release/third-party custody services to the court. Conversely, a statute which places heavy emphasis on financial release conditions, or fails to state a preference for ROR or non-financial release, 7/ may impair the development of such options.

- Laws which define other constitutional and statutory rights of the accused and which may directly or indirectly affect the pretrial release process. These laws (derived from constitutional provisions, criminal procedure codes, court rules, and case law) govern a variety of procedures such as arrest, arraignment, speedy trial, appointment of counsel, and determination of probable cause.

For example, in Gerstein v. Pugh, 8/ the United States Supreme Court ruled that the Fourth Amendment assures the defendant a prompt hearing by a neutral magistrate for a "judicial determination of probable cause as a prerequisite to extended restraint of liberty following arrest." As a result of that principle and other state code provisions enacted to assure the right of the accused to a prompt determination of probable cause, a defendant arrested without a warrant will be given an opportunity to have conditions of release set at this first court appearance. Therefore, the procedure and timing of the first appearance—an event established in connection with a fundamental right guaranteed by the Fourth Amendment, rather than the Eighth Amendment's bail clause—affects pretrial release practices and, generally, program practices as well. In at least one jurisdiction, the pretrial agency reviews probable cause allegations. 9/ Often, the timing of the interviews or other program policies are determined on the basis of arrest and arraignment procedures. (See Section 2.2.2.)

- Laws which mandate or authorize pretrial release programs. Most programs operate under the authority of state or Federal statute and/or court rule. 10/ These laws may specifically mandate the establishment of an agency within stated guidelines. The Federal Speedy Trial Act, Title II, originally established demonstration projects in 10 Federal districts; recent legislation mandates pretrial programs in every Federal district. 11/ A Kentucky state law established a statewide system of pretrial release programs in 1976. 12/ The Philadelphia Pretrial Services Division was established by court rule in 1971.

Programs may also be mandated by local government. For example, the Des Moines pretrial services program was established in 1971 by a resolution of the Polk County Board of Supervisors.

Court decisions can also affect pretrial programs. In 1975, a Federal court in Houston, Texas, ordered that operational control of the Harris County Pretrial Services Agency be transferred from the County Commissioners Court to the State District Judges trying criminal cases in Harris County, and ordered the county to provide the necessary staff "so that the Agency can operate on a 24 hour basis, seven days per week." The court also ordered the county not to restrict the operation of the agency to indigent persons. 13/

In some jurisdictions the laws do not establish programs, but may enable counties or districts to establish programs at their dis-

cretion, often within certain guidelines. For example, the Oregon statute specifically extends to the presiding circuit court judge of each judicial district the authority to empower a release assistance officer to perform release program functions, and even to delegate authority to make the release decision. 14/

In states where laws do not include specific mention of pretrial release programs, permissive authority for counties or other units of government to establish pretrial agencies may exist. Courts themselves may request an agency to conduct interviews and provide information and services to judges to assist them in release decision-making. In states where laws mandate that the courts consider certain release criteria or permit conditions of release which require supervision, the county or the court may request or contract with an agency to provide needed information and/or perform supervision services. In such cases, these functions may be performed by an existing agency or department (probation or corrections), by a public agency or private non-profit agency specifically designed for that purpose, or through a variety of other workable structures. (A more detailed discussion of the organizational placement of pretrial programs is set forth in the following section.)

The extent of the authority conferred on pretrial programs varies considerably. In some jurisdictions, this authority is limited to providing information to the courts concerning the defendant. However, recent data suggest that almost 90 percent of all programs make specific release recommendations to the court rather than presenting only information without recommendations, and nearly one quarter of all programs have the authority to release some defendants on their own without judicial approval, prior to the initial court appearance. 15/

2.2 Criminal Justice System Structure

Program practices will be determined not only by legal requirements for the release decision, but by the existing criminal court structure. This structure is made up of all criminal justice system components which participate in processing a case/defendant from arrest to sentencing. Prior to trial, this will normally be limited to the agencies involved in the defendant's arrest, booking, detention, prosecution, defense, and arraignment (or first court appearance), as well as pretrial release screening.

The role of the pretrial release program in processing cases through the court system is determined by a number of factors. Two key factors--which may be determined by, or have an effect on, other structural issues--are (1) the organizational placement of the pretrial program within the court/criminal justice system structure, and (2) the point of intervention, i.e., the point at which the program screens defendants for possible pretrial release.

2.2.1 Organizational Placement

Organizational placement refers to the agency or department which administers the pretrial release program, or to which the program is accountable. Release programs currently operate under a wide variety of arrangements. 16/

Both the NAPSA and ABA pretrial release standards recommend that agencies be independent of, and avoid bias toward, the prosecution or the defense, 17/ but no clear recommendation is made concerning the best form of organizational placement. Nonetheless, NAPSA standards have warned that program placement within a component of the system which has a vested interest might compromise the program's neutral posture. Programs also need to consider how the nature of the supervisory authority might affect their credibility and access to needed information, their long-range funding prospects and security within the system, and the flexibility of their operations.

According to a 1980 survey of 119 pretrial release programs, almost half are directly accountable to some branch of the courts. Probation departments sponsor the second largest concentration of programs, while other public agencies and private non-profit agencies administer a smaller percentage. 18/

Some of the advantages and disadvantages of each form of organizational placement are discussed below:

- Court-based programs. One advantage of court sponsorship may be the increased likelihood of cooperation from judges in approving release recommendations made by program staff. Expedited access to court records and other official information, potential designation of pretrial program personnel with release authority, and program security may also be enhanced by this form of organization.

On the other hand, placement of pretrial services within the courts might lead to subordination of the agency's goals and financial needs. Court sponsorship may result in program emphasis on a neutral information-gathering function rather than innovation and expansion of release alternatives. Recommendation policies might also become patterned to achieve a high rate of agreement between program and judge, rather than an appropriate rate of release.

- Probation-based programs. Programs administered by probation departments may have the benefit of a staff and/or administrator with expertise in providing similar services, including interviewing and supervising defendants. Such programs may also be able to profit from the established relationship the probation department often enjoys with the court, the prosecutor, and other system components.

However, probation-administered programs may suffer from bureaucratic constraints and overly restrictive release policies. A recent comparison of the performance of 10 experimental federal pretrial services agencies found that five independently structured programs appeared to have higher initial release rates, higher rates of non-financial release, lower pretrial detention rates, less use of supervised release, and lower pretrial rearrest rates. The probation-run programs, on the other hand, appeared to have somewhat lower failure-to-appear rates. 19/

Thomas' review of pretrial agencies in 1970 also found that probation-run programs had lower release rates than independent agencies. 20/ When the New York City Office of Probation assumed responsibility for operating Vera's Manhattan Bail Project in 1964, staff attempted to provide the court information on all defendants interviewed, not just those who met the requirements for ROR. But the outcome was erratic; judges began to place less credence in the agency's reports, and release rates fell. According to one observer:

> "The information from probation comes to the court in only about one-half of the cases, and it comes without verification, without oral advocacy, and without the promise of follow-up procedures, all of which were critical parts of the original project. The result is that the judges often do not have reports, and often do not read them when they do have them." 21/

The philosophical stance of probation may be incompatible with that of a pretrial release program. Several observers have suggested that probation officers, trained to deal with convicted offenders, treat pretrial defendants as if they were guilty and render release recommendations in a punitive, or at least conservative, manner. 22/ Thomas also hypothesized that poor performance found among probation-run programs in the early 1970s was due to their tendency to provide only that which the courts desired, with ROR recommendations for only the best risks, and high numbers of exclusions based on arrest charges or prior record. 23/

- Other public agencies. Some programs exist under the administration of corrections departments, sheriff's departments, district attorneys, or county boards. The advantage of placement within organizations such as sheriff's or corrections departments includes the likelihood of easy access to defendants in connection with processing at the booking or detention facility, along with the incentive of these agencies to decrease jail populations.

On the other hand, such control may orient the programs toward incarceration and supervisory functions, along with restrictive release policies. In addition, problems of confidentiality may arise

when uniformed law officers carry out release screening, and these problems are magnified in prosecutor-run agencies. 24/

- Private non-profit programs. Some jurisdictions have entrusted pretrial programs to private non-profit organizations, either on a voluntary or contractual basis. Such an arrangement may encourage independent release advocacy, but may suffer from lack of cooperation from law enforcement and less credibility with the court. In addition, private groups may focus on discrete types of pretrial service, such as ROR or third-party custody.

A recent study of pretrial release services in New York State stressed the importance of operational independence, recommending that pretrial programs be administered by an independent policy board or oversight agency to mitigate the importance of organizational placement. The report states:

> ...The issue of departmental placement for administrative purposes (Office of Court Administration [OCA] or Probation) becomes somewhat less important if the principle of an independent oversight agency is accepted. In this case, singularity of purpose and focus of funding could technically be achieved under either department. However, because of the more protected and independent status of OCA, and its established relevance to overseeing judicial organization and policies, it seems the most appropriate unit to assist in the organization and fostering of the oversight agency. Being directly associated with the courts would tend to focus more judicial attention and awareness on the importance of and approaches to pretrial release. Gaining greater involvement by the judiciary in pretrial release policy and services should be a major part in any strategy to improve release performance. 25/

2.2.2 Point of Intervention

Equally important in the relationship between the release program and the greater criminal justice structure is the point at which the program screens and interviews defendants. The significance of this timing varies considerably among jurisdictions, and depends greatly on how the criminal justice system is organized. For a program to determine how it can be most effective, analysis of individual variations in the functioning of other system components is critical.

One consideration in determining the point of intervention is the timing of prosecutorial intervention. Where prosecutorial screening results in a large number of decisions not to prosecute, program resources might better be invested in cases remaining after this screening. While early intervention may result in earlier release for

defendants whose charges will be dropped, it may also result in unnecessary interviews. However, where prosecutorial screening is delayed until the first appearance or later, many programs will want to interview prior to this point in order to ensure that the court has adequate information for its initial release decision. 26/

To determine when intervention should occur, programs need to carefully analyze the existing criminal justice structure to determine a range of events, including the timing of prosecutorial intervention, the timing of dismissals, the point of defender participation, the existence of a bond schedule, whether the first appearance court is the first line of release decision-making, the timing of the first appearance, and the release rates at each point of intervention. A choice can then be made to enable the pretrial release screening mechanisms to mesh with the overall court and criminal justice structures. (See Chapter 3, Section 3.1.3, for further discussion of point of intervention.)

2.3 Bailbond Industry

The practice of bailbonding for profit is a third major factor which affects the provision of pretrial services. Surety bonding, or bonding for profit, in the United States evolved from a system of personal sureties, in which the defendant was released to the custody of a relative or friend, to a system of commercial sureties, in which a promise was made to pay money to the court if the accused failed to appear. As one early study noted, "This development ushered in the professional bondsman who saw an opportunity for financial gain. In return for the payment of a fee, the bondsman would post a bond on behalf of the accused." 27/ By the beginning of the twentieth century, commercial bondsmen played an important role in the pretrial release process, collecting non-refundable premiums in exchange for promising to either assure the defendant's appearance in court or forfeit the full bail amount. This role was upheld by the U.S. Supreme Court in 1912, in an opinion which stated that "the interest to produce the body in court is impersonal and wholly pecuniary." 28/

A symbiotic relationship between bondsmen and the courts exists in many jurisdictions, in which bondsmen may write bonds for defendants who would otherwise be detained, maintain control over defendants prior to trial, and assist in locating those who fail to appear—but only where court policies assure the profitability of bailbond operations. 29/

In discussing the functions provided to the criminal justice system by bondsmen, Dill notes that bondsmen "facilitate pretrial release of large numbers of arrested persons. Of course, the defendant must pay for a defendant's release, the only question in which the bondsman has any real interest is whether the defendant will pay the fee for what is in effect a loan of money. This means that monetary considerations

override other concerns, such as the offense with which the defendant is charged, the likelihood of guilt, the probability of re-arrest, or even the risk of flight." 30/

At the time of this writing, five states -- Nebraska, Wisconsin, Kentucky, Oregon, and Illinois — have effectively eliminated the business of bail bonding for profit. In all of the other states, bail bondsmen continue to operate and effectively decide, for a large number of defendants, who will be released pretrial. Organizations such as the American Bar Association, the National Association of District Attorneys, the National Advisory Commission on Criminal Justice Standards and Goals, the National Conference of Commissioners on Uniform State Laws, and the National Association of Pretrial Services Agencies have advocated the elimination of bail bonding for profit, but there remain today over 5,000 professional bail bondsmen in the United States. 31/

2.4 Community Resources

With the expansion of non-financial release alternatives in the 1970s, pretrial release agencies began to refer more releasees to community social services for counseling or treatment for drug abuse, alcoholism, mental and physical illnesses, and other problems detected in release screening. This practice creates a fourth major factor relevant to pretrial programs. Prior to the 1970s, social service providers had functioned in the court system primarily through probation agencies. It became clear, however, that the same services ordered by a court as a condition of probation in lieu of incarceration could be applied prior to adjudication with the same effect: persons who would otherwise have been held in jail could be conditionally released to the community. Release agencies began to recommend specific conditions of release related to the identified problems; at the same time, the agencies began identifying those community programs that could be called on to provide the needed services.

Today, budget cutbacks have led to reductions in available community services in most jurisdictions. Yet even in communities rich with assistance programs, barriers to the placement of pretrial releasees may be numerous. Many such programs wish to deal only with convicted individuals because of the sanctioning power available. Others find the defendant's necessary attendance at court appearances disruptive to treatment plans. In-service programs to promote understanding between pretrial service workers, police, and social service agency workers can counter such resistance.

Though pretrial release operations share hundreds of clients with social services units, there may be a tendency to deal with problems in isolation. Meeting the needs of those who require specialized services usually requires aggressive efforts on the part of release

programs. Release programs have approached this problem through increased public education, task forces to address special needs, interagency information sharing, and participation in the process of city and county social services planning.

2.5 Existing Release Options

There are a variety of ways in which an arrested defendant may secure pretrial release. The most important distinctions in practice are between financial and non-financial release and, among non-financial methods, the level of supervision provided. Further important differences relate to the particular stage of the criminal justice system and the type of releasing authority.

The range of release options is defined below. In any given jurisdiction, not all of these options will be available; in some jurisdictions, several of the options will be combined. Also, jurisdictions may use different terminology in referring to the techniques described.

2.5.1 Non-Judicial Release

There are several ways in which defendants can secure release without appearing before a judge, bail commissioner, or other magistrate of the court. There are three forms of citation release available at this stage, all of which permit the arrestee to be released without money bail on a written promise to appear in court, direct release authority by pretrial program, and one form of financial release, the bail schedule.

2.5.1.1 Field Citation Release

Under this form of release, an arresting officer releases the arrestee on a written promise to appear in court, at or near the actual time and location of the arrest. This procedure is commonly used for misdemeanor charges and is similar to issuing a traffic ticket. The criteria used by the arresting officer are those established by the local police department in conformity with the provisions of state statutes. At a minimum, these criteria require that the arrestee be properly identified and have no outstanding warrants. A field citation release is the least formal non-financial technique available to assure court appearance of an arrestee. 32/

2.5.1.2 Stationhouse Citation Release

Under this form of release, the determination of an arrestee's eligibility and suitability for release and the actual release of the arrestee are deferred until after he or she has been removed from the

scene of an arrest and brought to the department's stationhouse or headquarters. Stationhouse release allows the police officer or pretrial services officer to verify the information provided by the arrestee prior to the issuance of a citation and permits the release of an arrestee without booking. Stationhouse release may save the police officer some traveling time in that it eliminates transporting the arrestee to jail where final booking takes place.

2.5.1.3 Jail Citation Release

Under this form of release, the determination of an arrestee's eligibility and suitability for citation release and the actual release of the arrestee is deferred until after he or she has been delivered by the arresting department to a jail or other pretrial detention facility for screening, booking, and/or admission. This form of release is used extensively in California. In some counties in California, the booking sergeant or watch commander in the jail is assisted in the selection of persons for citation release by pretrial program staff.

2.5.1.4 Direct Release Authority by Pretrial Program

To streamline release processes and reduce length of stay, courts may authorize pretrial programs to release defendants without direct judicial involvement. Where court rule delegates such authority, the practice is generally limited to misdemeanor charges, but felony release authority has been granted in some jurisdictions. (See also Chapter 6, Section 6.2.)

2.5.1.5 Bail Schedule

Under this form of release, an arrestee can post bail at the stationhouse or jail according to amounts specified in a bail schedule. The schedule is a list of all bailable charges and a corresponding dollar amount for each. Schedules may vary widely from jurisdiction to jurisdiction. An arrestee may effect release by posting the full amount of bail required or by engaging a bondsman who will post the bail amount for a fee (usually 10 percent of the total bail).

2.5.2 Judicial Release

Arrestees who have not been released either by the police or jailer and who have not posted bail appear at the hearing before a judge, magistrate, or bail commissioner within a set period of time. In jurisdictions with pretrial release programs, program staff often interview arrestees detained at the jail prior to the first hearing, verify the background information, and present recommendations to the court at arraignment. At the arraignment hearing, the judicial officer can authorize a variety of non-financial and financial release options. There are two types of non-financial release options: release on recognizance and conditional release.

• Release on recognizance. Under this form of release, the defendant is released on a promise to appear, without any requirement of money bond. This form of release is unconditional, that is, without imposition of special conditions, supervision, or specially provided services. The defendant must simply appear in court for all scheduled hearings.

• Conditional Release. Under this form of release, the defendant is released on a promise to fulfill some stated requirements which go beyond those associated with release on recognizance. Four types of conditions are placed on defendants, all of which share the common aims of increasing the defendant's likelihood of returning to court, and/or maintaining community safety: (1) status quo conditions, such as requiring that the defendant maintain residence or employment status; (2) restrictive conditions, such as requiring that the defendant remain in the jurisdiction, stay away from the complainant, or maintain a curfew; (3) contact conditions, such as requiring that the defendant report by telephone or in person to the release program or a third party at various intervals; and (4) problem-oriented conditions, such as requiring that the defendant participate in drug or alcohol treatment programs. While some defendants are released on conditions without supervision, the effectiveness of conditional release is enhanced when the conditions are supervised. When the defendant's release conditions are supervised, either by a release agency or a third-party individual or agency, the supervising entity agrees to monitor the defendant's activities regularly and notify the court of any violation of the conditions set.

In addition to these non-financial release options, there are six types of financial release conditions which the court may impose: unsecured bail, privately secured bail, property bail, deposit bail, surety bail, and cash bail.

• Unsecured bail. This type of bail permits the release of the defendant with no immediate requirement of payment. However, if the defendant fails to appear, he or she is liable for the full amount.

• Privately secured bail. With this type of bail, a private organization or individual posts the bail amount, which is returned when the defendant appears in court. In effect, the organization provides services akin to those of a professional bondsman, but without cost to the defendant.

• Property bail. With this type of bail the defendant may post evidence of real property in lieu of money.

• Deposit bail. With this type of bail, the defendant deposits a percentage of the bail amount, typically 10 percent, with the court. When the defendant appears in court, the deposit is

returned, sometimes minus an administrative fee. If the defendant fails to appear, he or she is liable for the full amount of the bail.

• Surety bail. With this type of bail the defendant pays a percentage of the bond, usually 10 percent, to a bondsman who posts the full bail. The fee paid to the bondsman is not returned to the defendant if he or she appears in court. The bondsman is liable for the full amount of the bond should the defendant fail to appear. Bondsmen often require posting of collateral to cover the full bail amount.

• Cash bail. With this type of bail, the defendant pays the entire amount of bail set by the judge in order to secure release. The bail is returned to the defendant when he or she appears in court.

FOOTNOTES

1/ In Michigan, the entire pretrial release law is set forth in GCR 790, a rule of the state's Supreme Court. Local court rules may expand upon aspects of state law, such as the Philadelphia court rule which establishes the option of 10 percent deposit bail.

2/ In Stack v. Boyle, 72 S. Ct. 1 (1951), the Supreme Court issued its landmark bail opinion establishing the right to bail in non-capital cases "to prevent infliction of punishment prior to conviction" and defining "excessive bail" as bail set at a higher figure than the amount reasonably calculated to fulfill the purpose of assuring that the accused will stand trial.

3/ Kentucky also made bail bonding for profit a crime.

4/ 18 USC 3146.

5/ 18 USC 2146(b).

6/ For example, D.C. Code 23-1321 (a) (1) and (2).

7/ See, for example, Texas Code of Criminal Procedure, Art. 17.01 et seq.

8/ 420 U.S. 103 (1975).

9/ Santa Clara County, California's, pretrial release program reviews probable cause affidavits in warrantless arrests.

10/ Program Practices/Release, p. 11.

11/ The Pretrial Services Act of 1982.

12/ See note 3.

13/ See Alberti et al. v. Sheriff of Harris County, 406 F. Supp. 649 CH.D. TX, (1974).

14/ Oregon Statute 135.235.

15/ Program Practices/Release, p. 33.

16/ Program Practices/Release, p. 12, indicates that more than 30 percent of all programs are directly operated under local or state courts, with another approximately 15 percent (all in New Jersey) administered by local probation departments under the overall authority of a county assignment judge. In addition, the 10 demonstration Federal pretrial agencies are all ultimately responsible to

the Federal Administrative Office of the Courts although half are administered under independent boards and half by probation departments.

17/ ABA Standards, 10-4.4, 10.61; NAPSA Release Standards, IX, p. 53.

18/ Program Practices/Release, pp. 12-13.

19/ Administrative Office of the U.S. Courts, Fourth Report on the Implementation of Title II of the Speedy Trial Act of 1974 (Washington, DC: June 29, 1979).

20/ Thomas, op. cit., 1976, p. 130.

21/ Harry I. Subin, "New York's Bail Riots," Legal Aid Review, Vol. 67, (1970), p. 30.

22/ For example, see Forrest Dill, "Bail and Bail Reform: A Sociological Study" (Ph.D. dissertation, University of California, Berkeley, 1972).

23/ Thomas, op. cit., 1976, p. 130.

24/ ABA Standards 10-4.4, 10.59, discusses the importance of pretrial agency independence from the prosecution and defense offices.

25/ Center for Governmental Research Inc., An Empirical and Policy Examination of the Future of Pretrial Release Services in New York State, Vol. II: Final Report (Rochester, New York: March 1983), p. 297.

26/ Yet delayed interviews may represent a wise use of available resources in some instances. As Pryor notes, op. cit., p. 28, "Some programs which conduct all defendant interviews prior to the initial court appearance may be missing further opportunities (e.g., through subsequent bond reviews) to help effect more releases."

27/ Roscoe Pound and Felix Frankfurter, eds., Criminal Justice in Cleveland (Cleveland, Ohio: The Cleveland Foundation, 1922), pp. 290-292.

28/ Leury v. United States, 224 U.S. 567 (1919).

29/ Mary A. Toborg, "Bail Bondsmen and Criminal Courts", The Justice System Journal, Summer 1983.

30/ Forrest Dill, op. cit., p. 643. Little additional research exists on bondsmen and their role in the criminal justice system. However, a national study on the practice of surety bonding is now being completed by Toborg Associates, Washington, DC, funded by the National Institute of Justice.

31/ Published figures supplied by the Professional Bondsmen of the United States, and the National Association of Bail Bondsmen.

32/ For a review of issues and practices on this subject, see Debra Whitcomb, Bonnie Lewin, and Margaret Levine, Citation Release (Washington, DC: National Institute of Justice, March 1984).

Chapter 3

PROGRAM PROCEDURES AND SERVICES

3.0 Introduction

This chapter discusses operational procedures for two types of non-financial release: release on recognizance and conditional release. For each technique, information is presented on definition and basic objectives; target groups; screening procedures; and recommendation options. The advantages and disadvantages of various procedures are also discussed.

3.1 Release on Recognizance

3.1.1 Definition and Basic Objectives

Release on recognizance (ROR) is defined as "release on one's promise to appear without any requirement of money bond." 1/ Theoretically, this form of release is "unconditional"; that is, without imposition of any special condition, supervision, or services. However, in practice, those released on personal recognizance are, according to both the American Bar Association (ABA) and the National Association of Pretrial Services Agencies (NAPSA) Standards, required to adhere to two basic conditions: to appear as required by the court, and to refrain from criminal activity. 2/

The ABA Standards also provide that the defendant "refrain from threatening or otherwise interfering with potential witnesses." According to the ABA:

> Release on own recognizance is not inconsistent with the imposition of other non-monetary conditions reasonably necessary to secure the presence of the accused and to protect the safety of the community. 3/

However, for the purposes of this chapter, release with the addition of any condition, such as defendants being required to phone a pretrial agency weekly to inform the program of their whereabouts, will be considered "conditional release" and discussed in Section 3.2. Release on recognizance is based on the assumption that defendants with certain background characteristics and ties to the local community can be released solely on the promise to appear, with minimal probability of failing to return to court. This hypothesis, which was originally tested with success by the Manhattan Bail Project, has been confirmed by experience in numerous jurisdictions. The goal of such programs is to provide reliable information for release decisions, thereby increasing the number of defendants

released pretrial under non-financial conditions. The Pretrial Services Resource Center's telephone and on-site surveys of 21 release programs in early 1983 found that, in addition to these goals, program administrators strive to:

- identify the most appropriate means to release defendants on the least restrictive conditions deemed necessary to assure court appearance;
- minimize failure-to-appear rates and maintain community safety;
- reduce the costs incurred by the community in providing pretrial detention;
- reduce jail overcrowding; and
- eliminate discriminatory practices in bail setting. 4/

3.1.2 Target Group

Each pretrial program must identify the categories of defendants it will screen, then identify the population it will recommend for release, or act to release on its own authority. These decisions will vary according to legislative mandates, jail crowding problems, the availability of social service programs, local system constraints, and the individual philosophies of program administrators.

How a program defines its target population can have tremendous impact on its operation. The underlying issue is whether the program will focus its attention on the "best risks" or will take chances on "poorer risks" as well. A program may restrict its ROR eligibility, for example, to defendants highly likely to appear in court and employ conditional or supervised release recommendations for those who seem less likely to appear. The following section discusses the eligibility criteria employed by different pretrial release programs for release on recognizance and their effect on defendant release and detention.

Pretrial release programs employ formal criteria, informal criteria, or both, to exclude certain types of defendants from consideration for release on recognizance. Exclusion can occur at two points: exclusion from initial interviewing, and, for those interviewed, exclusion from project recommendation for ROR. The three criteria employed most frequently to determine defendant eligibility for ROR consideration are the nature of the current charge, the extent of previous involvement with the criminal justice system, and the existence of a local address. The ABA, NAPSA, and the National District Attorneys Association (NDAA) pretrial release standards suggest that programs should not deny eligibility to defendants based

solely on the offense charged. 5/ Pertaining to capital cases, the NDAA Standards emphasize the defendant's eligibility for release except where the court can be shown "evident proof and great presumption" that the defendant has committed the offense charged. 6/

Those standards also suggest that a combination of factors such as community ties and previous record be used to assess each defendant individually. The ABA Standards state specifically that:

> (c) ...Inquiry of the defendant should carefully exclude questions concerning the details of the current charge.
>
> (d) The inquiry should be exploratory and should include such factors as:
>
> (i) defendant's employment status and history and the assets available to defendant to meet any monetary condition upon release;
>
> (ii) the nature and extent of defendant's family relationships;
>
> (iii) defendant's past and present residence;
>
> (iv) defendant's character and reputation;
>
> (v) names of persons who agree to assist defendant in attending court at the proper time;
>
> (vi) defendant's prior criminal record, if any, and if previously released on other charges, whether s/he appeared as required;
>
> (vii) any facts indicating the possibility of violations of law if defendant is released without restrictions; and
>
> (viii) any facts tending to indicate that defendant has strong ties to the community and is not likely to flee the jurisdiction. 7/

However, many programs appear to exclude defendants from consideration for ROR based on charge alone. According to results from a phone survey of 119 release programs conducted by the Pretrial Services Resource Center in 1980, almost half (49.6 percent) of the surveyed programs do exclude some defendants from ever being interviewed, **solely on the basis of their current charge.** Thirty percent of the programs have no automatic exclusions; 20.2 percent employ some exclusions, but none based on charge alone. 8/ (Also, see Tables 3.1

and 3.2.) In the Pretrial Services Resource Center's 1983 21-agency practices review, only four agencies were found to operate with no automatic exclusions from the interview process. Ten of the 21 programs based at least some exclusions solely on current charges. Program administrators cite statutory interpretations, local court rules and/or judicial practices, and staff limitations as reasons for practicing this form of exclusion.

3.1.3 Point of Intervention/Coverage 9/

The 1978 NAPSA Standards state that pretrial release should be accomplished as quickly as possible following arrest 10/ and that pretrial agency personnel should be continuously available for interviewing defendants. 11/ Some programs have discovered, however, that there are difficult trade-offs in deciding when to intervene and with what population. There are several options available.

Programs can decide if they will interview all defendants:

- as part of the booking procedure (as practiced, for example, in Salt Lake County, UT, and San Mateo County, CA);
- immediately after booking (for example, in the Baltimore, MD, and Monroe County, NY, programs);
- before the initial appearance but not necessarily immediately after booking, which allows defendants able to post bail to do so (a practice followed in Cobb County, GA, and Hennepin County, MN); or
- after the initial hearing (current procedure in the Lehigh Valley, PA, pretrial services program).

3.1.3.1 Screening Before the Initial Court Appearance

In making the initial intervention decision, programs recognize that the longer defendants are detained, the greater the likelihood that they will post bond rather than wait for a program interview and the possibility of non-financial release. The National Center for State Courts' survey of pretrial release programs (1975) reported that the majority of programs surveyed attempted to interview and recommend defendants to the releasing authority at or before the first court appearance. 12/

Table 3.1

PROGRAMS WHICH AUTOMATICALLY EXCLUDE PRETRIAL DEFENDANTS FROM BEING INTERVIEWED, BASED ON CHARGE ALONE

Types of Exclusions	No. of Programs	% of Programs
None — everyone is interviewed	36	30.2
Some exclusions, but none based on charge alone	24	20.2
All misdemeanors	10	8.4
All misdemeanors plus other specific charges	1	.8
All felonies	2	1.7
All felonies plus other specific charges	2	1.7
Miscellaneous specific charges	44	37.0
TOTAL	119	100.0

Source: Pryor, Program Practices/Release, p. 78.

Table 3.2

OTHER REASONS WHY PROGRAMS AUTOMATICALLY EXCLUDE PRETRIAL DEFENDANTS FROM BEING INTERVIEWED

Types of Exclusions a/	No. of Programs	% of Programs
Warrant/detainer from another jurisdiction	38	31.9
Outstanding warrant/same jurisdiction	16	13.4
No local address	6	5.0
On probation, parole, or pretrial release	11	9.2
Prior record of FTA	6	5.0
Prior record of rearrest(s) on release	3	2.5
Suspected mental/emotional problems	2	1.7
Prior arrest or conviction record	6	5.0
Miscellaneous	6	5.0
Program interviews only upon request, after initial release decision, etc.	7	5.9

a/ Program may exclude defendants for more than one reason.
Source: Pryor, Program Practices/Release, p. 79.

Programs using this approach can usually recommend more defendants for release than programs which delay intervention until after the initial court appearance. Program intervention after the first appearance, for example, can cause delays of several days and sometimes more than a week until the defendant can secure release.

Twenty-four-hour-a-day, seven-day-a-week coverage with release authority or access to a releasing authority at night and on weekends will provide the most expeditious pretrial release after arrest. However, where such coverage is not feasible for economic or other considerations, screening before the initial court appearance can still assure the earliest possible release within a jurisdiction.

3.1.3.2 Screening After the Initial Court Appearance

Programs which screen for release on recognizance after the initial court appearance focus their resources on those defendants unable to make bail or otherwise gain release prior to or at the initial hearing. 13/ These programs maintain that by restricting the pool of interviewees to those unable to make bail, they are able to provide more attention to those who need their services most -- those unable to satisfy financial conditions of release. A program that interviews virtually all defendants, in contrast, may be interviewing many persons able to effect their own ROR through the court without an interview, or who are able to satisfy a financial bond. To avoid this, many programs delay the interview until after the first court appearance.

One disadvantage of this practice is that the ability to effect early release is limited and may cause some defendants to post money bond who might not find money bail necessary if reached earlier. The pre- versus post-initial appearance issue should not be overdrawn, however. As noted by Pryor (1982), approximately two-thirds of all programs combine the two approaches to advantage. 14/

3.1.3.3 Scheduling and Coverage

While assessing advantages and disadvantages of various intervention options, programs consider the booking and detention facilities for peak and slack jail intake periods, as these affect scheduling and coverage patterns. A number of options are available. In Baltimore City the program provides around-the-clock interviewer coverage of each police district or precinct. In Des Moines, program staff periodically check with all three jails to obtain the latest information on arrests. Also, part-time interviewers augment the staff during high-volume periods. In Washington, DC, pretrial interviews for citation release are done by telephone between police stationhouses and the program office.

Rural jurisdictions have more difficulty maintaining staff coverage. With the Kentucky Pretrial Services Agency statewide system, one officer may be responsible for covering several counties and is thus not able to interview arrestees quickly. However, cooperation between the jailer, pretrial services officer, and judge has resulted in program interviews of over 90 percent of arrestees, almost always within 12 hours of arrest. Also, district judges in some counties are available for release decisions 24 hours a day. This encourages pretrial staff to increase the number of night interviews and make greater efforts to contact all arrestees quickly. The jailer is also encouraged to call the pretrial officer as soon as an individual is booked into jail.

In contrast, logistical problems may cause delays in processing. System procedures may preclude interviews until a complete criminal records check is in hand, a process that may take several hours, as is the case in Marion County, IN.

3.1.4 Screening Procedures

Screening procedures for determining defendant eligibility for release on recognizance involve two steps: obtaining background information, and verifying background information. Programs differ, however, in their approach to each of these steps. This section discusses these differences as well as some of the advantages and disadvantages of the procedures.

3.1.4.1 Obtaining Background Information

Programs may obtain information on a defendant's background from several sources. The most universal method involves interviewing the arrestee about employment or educational status, residence, family contacts, previous criminal justice involvement, and financial status. Programs also obtain information from police and other criminal justice agency records (e.g., those of probation or parole agencies) to supplement the interview. In addition, family members are frequently contacted, sometimes at the jail or court, to provide additional facts concerning the defendant.

In many instances the gathering and verification of background information may not be necessary, especially in cases involving minor charges. The NDAA Pretrial Release Standard 10.4 states that:

> In all cases in which the defendant is in custody and the maximum penalty exceeds one year, an inquiry into the facts relevant to pretrial release should be conducted prior to or contemporaneous with the defendant's first appearance. However, no such inquiry need be conducted if the prosecution advises that it does not oppose release on order to appear or on own recognizance. 15/

NAPSA Standards agree that no inquiry is necessary if the prosecution so advises. 16/ The ABA Standards presume that such inquiry is unnecessary for misdemeanant offenders and place a burden of notice of opposition to ROR on the prosecutor or other law enforcement officials. 17/

3.1.4.2 Verifying Background Information

ROR programs attempt to verify as much of the defendant's information as possible to ensure that accurate information is available both for the initial release decision and to expedite contact with defendants who fail to appear.

The importance of verification in program procedures is evident in the findings of the 1979 survey conducted by the Pretrial Services Resource Center. That survey indicated that 35 programs (29.4 percent) automatically exclude defendants from ROR recommendation for whom they are unable to verify information. 18/

Programs also verify information concerning the defendant's past criminal record, as such information is sometimes found to be unreliable. The prosecutor may report, for example, that the defendant has six previous felony arrests and therefore is a poor risk for release on recognizance. However, by verifying the past criminal history, the pretrial agency may discover that the charges were dropped for four of the arrests and the other two charges were changed to misdemeanors, only one of which ended in a conviction for malicious mischief. Program staff may also find out about outstanding warrants and prior failures-to-appear that would have otherwise been unknown to the court.

The 1977 National Evaluation Program Phase I Summary Report: Pretrial Release Programs reported that over 90 percent of pretrial programs try to contact someone to check the accuracy of the defendant-supplied information. Although 40 percent of the programs used methods to supplement phone verification (e.g., relatives in court, field investigation, search of police records), over half of the programs relied exclusively on phone contact for verification purposes. 19/ The Lazar Institute (1981) reported similar findings on verification practices and difficulties: all eight sites verified as much defendant-supplied information as possible through phone calls to references and checks of official criminal records. 20/

Many programs experience time constraints in preparing for initial court appearance, and complete verification may not be accomplished for all interviewed defendants, causing some release decisions to be based on unverified information.

The extent to which judges make release decisions without background information or with unverified information is unknown. However, as

noted above, the NDAA, NAPSA, and ABA standards suggest that an inquiry to obtain and verify background information should not be necessary for all defendants.

Support for less extensive verification requirements comes from those who believe that the process can often result in unnecessary delays and resulting confinement for otherwise "good risks" when programs are unable to reach references. While comparisons have been made between failure-to-appear rates of defendants with and without verified information, 21/ the lack of control groups has presented methodological problems in drawing conclusions about the usefulness of verification.

3.1.5 Determining Whom to Recommend for Release on Recognizance

After the background information on defendants has been collected and verified, program personnel must determine which defendants will be recommended for ROR. Program practices reveal three assessment options: objective systems, subjective systems, or a combination. Both objective and subjective approaches may use the same information (i.e., community ties and prior record), but the process of arriving at a recommendation is different. 22/

Objective systems usually use a "point scale" to measure a defendant's eligibility for ROR. With this procedure, a defendant is given plus or minus points based on information obtained from an interview. Most programs award positive points for residence, family ties, and employment or substitutes (e.g., homemaker or student). Some programs also allow positive points if the defendant has a telephone in the home, has special responsibilities (e.g., children), shows certain health or age characteristics, or has someone accompany him or her at arraignment. Programs often deduct points for prior convictions, prior failures-to-appear, drug use, prior violation of probation or parole, prior escape, current awaiting of trial on another charge, current probation or parole, or AWOL record. 23/ If the defendant obtains a certain number of points, a recommendation will be made to the judge that the defendant be released on recognizance. 24/ Subjective systems, in contrast, use a qualitative judgment arrived at through an interview, rather than a score on a quantitative scale, to determine who is eligible.

3.1.5.1 Objective Systems: Assessing Strengths and Weaknesses

The use of objective criteria to determine eligibility for ROR has a number of advantages for pretrial programs. Those who recommend that objective criteria be employed as a screening device provide a number of reasons for this recommendation. These include the following:

- The objective system can provide some level of predictability in failure-to-appear (FTA) or rearrest. Though not perfect, it can provide statistical probabilities as to FTA or rearrest likelihood. Lazarsfeld's review of one agency's point scale demonstrated an inverse relationship between points obtained and FTA rates (see Table 3.3).

- A point scale can be more equitable, since formal guidelines are provided by which defendants will be chosen for recommendation. Recommendations are applied consistently and with the greatest possible predictability.

- The use of objective criteria may result in increased non-financial release. 25/ Where the individual obtains a high point total, release on recognizance can be recommended without further program contact.

- Studies show that point scales can distinguish between higher- and lower-risk defendants. 26/

Objective systems have raised the following criticisms:

- Point ratings reflect only a probability that a percentage of a group would fail to appear, rather than an absolute statement about the future behavior of each defendant.

- The scale may discriminate against low-income defendants, minorities, and women, among others, due to its emphasis on employment and community ties, marital status, financial assets, and place of residence. 27/

- The point scale may be too restrictive in not recommending certain low-risk defendants to be released on their own recognizance, resulting in the detention of defendants who would not necessarily fail to return to court (i.e., false positives). 28/

- Firm adherence to the point scale may be too rigid a stance, since recommendations are based on specific totals without allowing room for discretion in particularly sensitive cases. 29/

- Some recent research has found that there is little correlation between the entire point scale (or individual items within it) and violation rates. Some studies have shown some community ties indicators to be relatively unimportant predictors of the violation rates (i.e., rearrest, failure-to-appear, or violation of bail conditions). 30/

Programs may also err in implementing ready-made recommendation schemes, such as applying a point scale taken from another

Table 3.3

NUMBER OF POINTS ON SIX ITEMS BY PERCENT FAILING TO APPEAR ONE OR MORE TIMES

Number of Points on Scale	Percent of FTAs	Number in Category
0	34.5	113
1	32.9	310
2	26.8	623
3	15.9	879
4	13.7	1,116
5	12.0	1,067
6	7.7	607
		4,715

Source: Paul Lazarsfeld, An Evaluation of the Pretrial Services Agency of the Vera Institute of Justice: Final Report, New York, 1974.

jurisdiction where crime rates, geography, size of population, population demographics, mobility, and other factors are quite dissimilar. Pre-testing, as well as ongoing local evaluation, has proven important in validating recommendation schemes. Still, many programs have failed to do so. 31/

3.1.5.2 Subjective Systems: Assessing Strengths and Weaknesses

Those who recommend that subjective systems be used to screen defendants for ROR point to the following strengths of such a system:

- Subjective criteria allow the program to more quickly identify the good risks by capitalizing on the experience and knowledge of the investigative staff.
- Subjective systems allow interviewers to assume greater responsibility for individual recommendations.
- Subjective systems provide more flexibility in changing recommendation criteria to respond to individual defendants.

In contrast, critics of subjective systems suggest that:

- Subjective systems often lack accuracy and may lead to the institutionalization of personal bias into selection decisions.
- The possibility of bias could lead to equal protection litigation.
- Interpretation of clinical devices requires skilled staff at high pay levels. Research suggests that clinical judgments cannot predict any better than formal systems. 32/
- Informal devices lack consistency in application and may result in more conservative recommendation decisions. 33/

3.1.5.3 "Combination" Systems

Concerns over the weaknesses of the two recommendation approaches have led many programs to allow staff to combine subjective judgment with objective point scale evaluations in arriving at release recommendations. The Allen County, IN, Bail Services Division uses such an approach in its assessment scheme. Other programs, such as Maricopa County, AZ, Lehigh Valley, PA, and Baltimore, MD, currently use point scales as guides for staff and allow for some subjectivity. Also, "discretionary points" are frequently awarded by programs with "objective" screening devices.

This use of discretionary criteria with objective systems is important to bear in mind when examining results of the 1979 survey conducted by the Pretrial Services Resource Center, which found that 21 percent of pretrial programs employ objective types of assessment, 39 percent report using only subjective criteria in defendant assessments, and 40 percent report using objective criteria with subjective, or discretionary, elements (see Table 3.4). These findings are very similar to those reported in the NEP Phase I Summary Report (1977), which found 37 percent of pretrial programs using subjective evaluations, 37 percent using a combination of objective and subjective criteria, and 27 percent using objective schemes (i.e., points only) (see Table 3.5).

In addition, programs vary in the weights they assign specific criteria in their screening mechanisms (thus placing greater or lesser emphasis on particular defendant characteristics in different jurisdictions), the range of positive points in the scale, and in the totals necessary for ROR. A 1981 analysis of point systems in four jurisdictions (Baltimore, MD, Washington, DC, Jefferson County, KY, and Santa Clara County, CA) found, for example, that Washington, DC, gave greater weight to community ties factors than did either Jefferson County or Santa Clara County. Prior failure-to-appear was given a great deal of negative weight in Jefferson County, while no points were subtracted for that item in Santa Clara County. Similar discrepancies were noted for drug use. Baltimore City and Washington, DC, subtracted up to two points (on four- and six-point scales, respectively) while Jefferson and Santa Clara Counties subtracted nothing (see Table 3.6). 34/

Thus it appears that programs consider different factors as greater or lesser predictors of future defendant behavior and have developed point scales which reflect these assessments. However, few point scales have been evaluated to determine their validity in local application. Criteria may be discriminatory and the relative importance of various items may vary between communities and overtime. Thus, for most programs it remains unclear whether the weights given to individual items or the scales themselves are predictive of defendants who appear for trial. Several observers have noted the low level of activity in the validation of point scales and have stressed the need for increased local research and periodic assessment of prediction instruments. 35/

3.1.6 Presenting Recommendations for ROR

Following the interview and verification process, the program makes a recommendation to the court. Written reports which detail the release recommendations and the supportive background information are preferred (according to both the ABA and NAPSA Standards), with copies

Table 3.4

PROGRAMS USING OBJECTIVE AND SUBJECTIVE METHODS OF ASSESSING DEFENDANTS

Types of Assessment	No. of Programs	% of Programs
Objective (point scale) only	25	21.4
Subjective only	45	38.5
Objective combined with subjective	47	40.2
TOTAL	117	100.1 a/

a/ Rounding error

Source: Pryor, Program Practices/Release, p. 80.

Table 3.5

PROGRAM SCREENING PROCEDURE FOR REPORTS PREPARED FOR FIRST COURT APPEARANCE

Procedure	Distribution No.	Distribution %
Objective (points only)	16	27
Subjective evaluation	22	37
Combination objective and subjective	22	37
TOTAL	60	101a/

a/ Rounding error

Source: National Center for State Courts, National Evaluation Program Phase I, Summary Report, Pretrial Release Program, April 1977.

TABLE 3.6

ANALYSIS OF POINT SYSTEMS

ITEM	POINT RANGE				AS A PERCENTAGE OF TOTAL POINTS NEEDED FOR OR RECOMMENDATION			
	BALTIMORE CITY, MARYLAND	WASHINGTON, D.C. (citations)	JEFFERSON COUNTY, KENTUCKY	SANTA CLARA COUNTY, CALIFORNIA	BALTIMORE CITY, MARYLAND	WASHINGTON, D.C. (citations)	JEFFERSON COUNTY, KENTUCKY	SANTA CLARA COUNTY, CALIFORNIA
Positive Points:								
Residence	0 to 5	0 to 3	1 to 5	0 to 3	0 to 83%	0 to 75%	13% to 63%	0 to 60%
Family Ties	0 to 3	0 to 4	0 to 4	0 to 3	0 to 50%	0 to 100%	0 to 50%	0 to 60%
Employment or Substitutes	0 to 4	0 to 4	0 to 5	0 to 3	0 to 67%	0 to 100%	0 to 63%	0 to 60%
Subtotal, Community Ties	0 to 12	0 to 11	1 to 14	0 to 9	0 to 200%	0 to 275%	13% to 176%	0 to 180%
Other Positive Points (see details below)	0 to 2	0 to 2[a]	0 to 8	0 to 3	0 to 33%	0 to 50%	0 to 100%	0 to 60%
Subtotal, Positive Points	0 to 14	0 to 11[a]	1 to 22	0 to 12	0 to 233%	0 to 325%	13% to 276%	0 to 240%
Negative Points:								
Prior Convictions	-4 to 0	-4 to 0	-5 to 0	-1 to 0	-67% to 0	-100% to 0	-63% to 0	-20% to 0
Other Negative Points (see details below)	-6 to 0	-8 to 0	-33 to 0	0	-100% to 0	-200% to 0	-413% to 0	0
Subtotal, Negative Points	-10 to 0	-12 to 0	-38 to 0	-1 to 0	-167% to 0	-300% to 0	-476% to 0	-20% to 0
TOTAL POINT RANGE	-10 to 14	-12 to 11	-37 to 22	-1 to 12	-167% to +233%	-300% to +325%	-463% to +276%	-20% to +240%
Points Needed for OR Recommendation	6	4	8	5	100%	100%	100%	100%

(CONTINUED)

TABLE 3.6 (CONTINUED)
ANALYSIS OF POINT SYSTEMS

ITEM	POINT RANGE				AS A PERCENTAGE OF TOTAL POINTS NEEDED FOR OR RECOMMENDATION			
	BALTIMORE CITY, MARYLAND	WASHINGTON, D.C. (citations)	JEFFERSON COUNTY, KENTUCKY	SANTA CLARA COUNTY, CALIFORNIA	BALTIMORE CITY, MARYLAND	WASHINGTON, D.C. (citations)	JEFFERSON COUNTY, KENTUCKY	SANTA CLARA COUNTY, CALIFORNIA
Analysis of "Other Positive Points": Homeowner	0	0 to 1	0 to 3	0	0	0 to 25%	0 to 38%	0
Telephone	0	0 to 1	0 to 1	0	0	0 to 25%	0 to 13%	0
Health or Age Considerations	0 to 1	0	0	0 to 1	0 to 17%	0	0	0 to 20%
Prior Conviction Record	0	0	0 to 3	0 to 2	0	0	0 to 38%	0 to 40%
Special Responsibilities (e.g., children)	0 to 1	0	0	0	0 to 17%	0	0	0
Soneone Expected at Arraignment	0	0	0 to 1	0	0	0	0 to 13%	0
Analysis of "Other Negative Points": Prior Failure to Appear	-4 to 0	-1 to 0	-30 to 0	0	-67% to 0	-25% to 0	-375% to 0	0
Drug Use	-2 to 0	-2 to 0	0	0	-33% to 0	-50% to 0	0	0
Prior Violation of Probation or Parole	-4 to 0	0	0	0	-67% to 0	0	0	0
Prior Escape	-4 to 0	0	0	0	-67% to 0	0	0	0
Currently Awaiting Trial	0	-5 to 0	0	0	0	-125% to 0	0	0
Currently on Probation or Parole	0	-5 to 0	0	0	0	-125% to 0	0	0
AWOL Record (Current Military Personnel Only)	0	0	-3 to 0	0	0	0	-38% to 0	0

[a] The 2 points in the "other" category are awarded only if they are needed for the defendant to reach the 4 point total required for an OR recommendation.

SOURCE: Information reported in delivery system analyses of individual jurisdictions, Working Papers No. 1 (Baltimore City), 3 (Jefferson County), 7 (Santa Clara County), and 8 (Washington, D.C.).

Source: Mary Toborg, et al, Pretrial Release; An Evaluation of Defendant Outcomes and Program Impact, Volume I, Release Practices and Outcomes - A Cross-Sectional Analysis of Eight Jurisdictions (Washington, DC: Lazar Institute, March, 1981), p. 43.

provided to prosecutor, defense counsel, and the court. NAPSA Standard X states that pretrial services agencies should include:

- communication of a written summary of interview information and recommendations to judicial officers or agencies responsible for making release decisions; and

- appearance in court by staff representatives to answer questions concerning the agency's report and recommendations. 36/

ABA Standard 10-4.4 suggests that:

- "The inquiring agency should make recommendations to the judicial officer concerning the conditions, if any, which should be imposed on the defendant's release. The agency should formulate detailed guidelines to be utilized in making these recommendations, and, whenever possible, the recommendations should be supplied by objective factors contained in the guidelines. The results of the inquiry and the recommendations should be made known to participants in the first appearance as soon as possible." 37/

The Pretrial Services Resource Center 1980 survey showed that almost 90 percent of the 119 pretrial programs it surveyed in 1979 provide release recommendations to the court. 38/ The figures are similar to those provided by the 1977 NEP Phase I Survey, which reported that 60 of the 66 programs assessed (91 percent) presented a recommendation to the court following verification of interview information. 39/

Some programs present only ROR recommendations, positive or negative, while others present a variety of recommendations, including conditional release. The original Manhattan Bail Project, for example, did not provide background information or recommendations for all defendants it had screened, but rather provided a recommendation based on verified community ties, a recommendation based on unverified community ties, or no recommendation. 40/ Also, some agencies such as the D.C. Pretrial Services Agency recommend that a pretrial detention hearing be held in certain instances. 41/

In the case of a positive recommendation, the program is stating that the defendant before the judicial officer has met certain criteria which indicate that he or she will appear for court on required dates. Where a negative recommendation or no recommendation is made, the program is indicating that such established criteria have not been met or that certain factors have been brought to light in the interview, verification, or criminal records check which preclude a positive recommendation. The placement of this "dividing line" (between a positive and negative recommendation) varies substantially across the country. As previously discussed, some programs will not make a

positive recommendation on the basis of certain charges, lack of verification, or other local constraints. In some instances, these differences in recommendation schemes are based on research done within the particular jurisdictions. Often, however, perceived political realities within the jurisdiction may be more determinant, leading to a more "conservative" or "liberal" recommendation scheme than research might indicate is appropriate.

It is within this context that the question of defendant dangerousness arises. ROR programs are continually faced with the problem of defining their role in the release or detention of "dangerous" individuals who, while likely to appear in court, are also considered likely to commit additional crimes if released on recognizance.

Some programs will, in certain cases, recommend release with conditions to provide the court an alternative to pretrial detention for "high risk" defendants and/or may recommend detention. Washington, DC, does both. But recent research findings show that any use of pretrial detention will substantially increase the number of "false positives" (those unnecessarily detained) while having little effect on pretrial crime. Harsher sanctions for release conditions violations, increased supervision of "high risk" defendants, and expedited court processing of such defendants have been suggested as alternatives to pretrial detention. 42/

3.1.7 Release Authority

In most jurisdictions, release authority is restricted to judicial officers (e.g., judges, magistrates, bail commissioners). These officials normally make their decisions following receipt of defendant background information from the pretrial release program and their own questioning of the defendant at the initial hearing. However, if only judges can grant release, non-availability after daytime business hours will slow the process of pretrial release for many defendants. In some jurisdictions the judiciary has taken steps to assure the prompt release of eligible defendants on nights and/or weekends by permitting release programs to effect releases on their own.

Such "release authority" may be used as a form of stationhouse citation release by the pretrial services officer, as an impartial decision-maker. In San Mateo County, CA, the release program uses court-ordered release authority to make citation releases at the time defendants enter the county jail. Over 90 percent of misdemeanor arrestees brought to the jail are handled in this way, on a pre-booking basis.

Other jurisdictions have delegated such authority to the release agency or other criminal justice actors (e.g., police, sheriffs, deputies, bail commissioners, and other nonjudicial officers) for certain categories of cases.

One common arrangement is to split the releasing power, by permitting nonjudicial officials to release defendants charged with minor offenses (usually misdemeanors and less serious felonies) and requiring judicial approval for release of defendants charged with more serious crimes.

Other forms of non-judicial release authority include police field citation, stationhouse citation release, and sheriff's own recognizance release. 43/ In Washington, DC, police may issue field citations, or may transport the arrestee to the local precinct and, if appropriate, contact release program personnel who interview defendants by telephone, verify information, and develop a release recommendation for defendants potentially eligible for police release. In San Mateo County, CA, project staff have the authority to release defendants who qualify for personal recognizance during the booking/-classification process. Since the release agency conducts jail classification, its release authority is seen as a form of classification.

The King County, WA, Pretrial Services Unit has been granted relatively broad release authority in felony cases under its Felony Administrative Recognizance Release (FARR) program. Jail crowding in the county stimulated the judiciary to grant the release program power to release on most felony charges with the exception of the more serious statutory category. (See Appendix A for a full description of the FARR program.)

In summary, jurisdictions may be able to decrease the amount of pretrial detainee confinement time by increasing the power of release delegated to nonjudicial officers who come in contact with the defendant before the initial court appearance. This policy is supported by the NAPSA Standards, which urge release at the earliest time and by the least restrictive procedure possible. The same standards suggest permitting the use of stationhouse citation release in felony cases as well. 44/

3.2 Conditional Release

3.2.1 Definitions and Basic Objectives

In addition to the widespread use of ROR, many pretrial programs have implemented a variety of non-financial conditional release techniques. As pointed out previously, pretrial programs use different terminology in referring to these techniques. However, three forms of conditional release will be examined in this section: **conditional release without supervision, supervised release, and third-party custody release.** As a group, these techniques differ from ROR in their specification that defendants fulfill some stated requirements which go beyond those associated with ROR. However, within these techniques, the important distinctions pertain to the level of restrictions placed on

defendants, the level of supervision provided to defendants for monitoring their compliance with the conditions, and the locus of supervisory authority.

Conditional release was originally developed for use where the presumption favoring release on recognizance was counter-balanced by factors associated with the defendant's background or the charge filed. The Federal Bail Reform Act of 1966 authorized its use when ROR could not reasonably assure the appearance of the defendant and called for the setting of additional conditions consistent with the principle of applying the least restrictive sanctions necessary. The current ABA and NAPSA Standards, as well as 26 state statutes, reiterate this authorization. Both sets of standards go beyond the Federal Bail Reform Act in supporting the use of non-monetary conditions of release for the purpose of community protection. 45/

Conditional release techniques aim to provide the judicial officer with an alternative release form in those cases where he or she does not feel that the defendant is a good risk to return to court, but at the same time does not feel that a period of pretrial detention is warranted. A key assumption underlying conditional release is that in exchange for the benefit of release, defendants will comply with court-ordered conditions of release designed to assure their appearance and maintain community safety. 46/ Through the use of conditional release techniques, programs seek to expand the number of defendants who are eligible for non-financial release without jeopardizing failure-to-appear or rearrest rates. In addition to the presumption favoring pretrial release, impetus for the expanded use of conditional release techniques comes from current jail overcrowding conditions and the cost of maintaining defendants in jail. 47/

3.2.1.1 Conditional Release Without Supervision

This form of release is distinguished from supervised release and third party custody release in that it does not entail active supervision on the part of the agency. The types of conditions placed on defendants can be grouped into four categories, all of which share the common aim of increasing the defendant's likelihood of returning for court while assuring community safety:

- "Status quo" conditions. Defendants are released on the condition that they maintain their residence, school, or employment status.

- Restrictive conditions. Defendants are released on the condition that they restrict their association or movements by remaining in the jurisdiction, avoiding contact with the victim or complainant, or maintaining a curfew.

- Contact conditions. Defendants are released on the condition that they report by telephone or in person to the release program at various intervals. Contact conditions may be applied to assure that the defendant is aware of the court date and to provide a mechanism for adjusting court dates if necessary, in addition to the common aim of increasing the likelihood of court appearance. This type of condition is premised on research which shows that an effective way to decrease the failure-to-appear rate in a jurisdiction is to increase the amount of defendant/system contact. 48/

- Problem-oriented conditions. Defendants are released on conditions that relate to specific defendant problems that could affect court appearance. In many jurisdictions, the pretrial release agency will establish contact with various social service agencies which provide drug and alcohol treatment, employment, and mental health services, and recommend release on the condition that the defendant enroll in one of the identified programs. In effect, problem-oriented conditions seek to "create" community ties for defendants. Provision of services may also affect criminal behavior, since the conditions address personal difficulties that might have led to criminal involvement.

While many programs recommend conditional release without supervision, some have questioned whether the mere existence of conditions reduces the defendant's propensity for flight. It is now argued that the value of conditional release is enhanced when the conditions are monitored. If defendants see that conditions imposed upon them are not monitored, they are likely to presume that they can safely violate them without adverse consequences. If this occurs, the deterrent value of conditional release is diminished. As stated by the ABA:

> No matter how detailed and imaginative the conditions of release...may be, they are likely to be ineffective if the resources to enforce them are not provided. Unfortunately, however, many jurisdictions provide no meaningful supervision...The conditions are openly flouted and are ineffective in preventing either flight or recidivism. 49/

3.2.1.2 Supervised Release

Under supervised release, the pretrial services agency actively monitors defendant compliance with court-ordered conditions. For this form of release, it is assumed that adequate supervision will increase the likelihood of compliance and diminish the defendant's opportunity to flee. As suggested by the ABA in its discussion of the purposes of non-monetary conditions, adequately monitored conditions may provide an early warning system of flight. If the conditions are tailored to

the problems of individual defendants, those likely to fail to appear in court may well violate one or more conditions before doing so. Since release is based on an agreement with the court and/or the release agency to comply with these conditions, failures-to-appear may be prevented through reassessment triggered by the defendant's lack of compliance.

In addition to assuring the defendant's appearance at court through provision of support and contacts in the community during the pretrial release period, supervised conditional release programs may also reduce criminal behavior among releasees and add to the court's base of information on defendant behavior in fashioning sentences for those convicted. Preliminary findings from one research effort conducted in three urban court systems indicate that supervised releases had significantly lower rates of failure-to-appear compared to other forms of release, and that pretrial rearrest rates were equivalent to other release methods. It was also determined that the provision of social services together with supervision had no impact on FTA or rearrest rates. 50/ The same research found supervised release to be of limited value in increasing pretrial release rates or controlling jail populations because of limited use, particularly with felony admission populations. However, some release agencies, such as the Salt Lake County program, claim success in using this form of release as a principal mechanism in jail population control efforts.

Although the majority of state statutes limit the use of conditions to those that are directly related to assuring the defendant's appearance in court, contacts and supportive services undertaken to curtail the defendant's opportunity to flee may have the effect of minimizing the defendant's involvement in pretrial crime. As stated by the ABA, "Adequately supervised conditions of release may deter criminal activity by reducing the temptation to commit crimes and increasing the chance of being apprehended." 51/ And as noted in the discussion of problem-oriented conditions above, enrollment in social services programs can affect criminal behavior by dealing with problems that might have contributed to initial criminal involvement.

The provision of information to the court on the pretrial performance of defendants released under supervision may assist the court in determining the appropriate sentence for convicted defendants. The defendant's record of adhering to conditions during the pretrial release period may provide an indication of likely behavior if a non-incarcerative sentence is considered.

Pretrial programs which provide supervised release differ in a number of ways, including (1) the type of supervised release activities; (2) arrangements for providing these activities; and (3) the frequency of contact and level of supervision provided to monitor defendant's compliance with the conditions. These variations, which are discussed below, reflect differences in program philosophy, in existing pro-

cedures for ROR, in cost considerations, and in availability of services.

Type of supervised release activities. Some programs provide both contact supervision and services, while others are limited to one or the other. Further, in some programs only contact conditions are ordered by either the court or the release program, while services are voluntary. In other programs, both contact and service conditions are ordered. For example, in Delaware, defendants released under supervision may be ordered to participate in services provided by outside agencies and have little direct contact with the pretrial agency.

In Des Moines, defendants released under supervision are required to maintain direct contact with the pretrial program and participate in supportive services. The program provides direct services and referrals to public and private agencies. However, in Salt Lake City supervised release defendants are only required to maintain contact with the program. While the program provides some direct services and outside referrals, these services are voluntary, with the exception of a small number ordered by the court.

Arrangements for providing services. Supervised release programs vary in regard to how services are provided, either providing them directly or through referrals. While programs which provide direct services can assure that defendants' needs are met, several problems may arise from this approach, including the need for specialized expertise which may duplicate that available in other community agencies, the variety of services which might be needed (some of which may only receive limited use at any one time), and high staffing costs. For these reasons, programs typically use outside referral agencies, either singularly or in combination with limited direct services offered by the program. One exception is the Wisconsin Correctional Service Court Intervention Program in Milwaukee, which provides in-house drug and alcohol abuse treatment.

Many release programs have experienced resistance to the idea of providing social services to those accused of crimes or have found community resources otherwise limited. For example, the Lazar study notes that a jailer in Santa Cruz estimated that 30 percent of the defendants detained could have been released from jail--if treatment programs had been available. 52/

In response to these concerns, some programs use purchase of service mechanisms to secure assistance for defendants released under supervision. For example, in Milwaukee the Court Intervention Program (CIP) has funds available to contract with outside agencies which provide contact and services to defendants under supervision. While purchase of service arrangements often requires substantial program resources for soliciting bids, negotiating contracts, and monitoring

compliance with the contracts, these mechanisms can improve a pretrial program's ability to assure effective service. According to the ABA's Cost Analysis of Correctional Standards: Pretrial Programs, the purchase of service mechanism offers these advantages:

- It promotes accountability in service delivery. If service providers are not performing adequately, the supervised release program can terminate funding.
- It creates an effective demand for needed conditional release services and induces supply.
- It can be significantly less expensive than direct service provision by the criminal justice system.
- Where an adequate supply of services has been called forth, purchase contracts can be directed toward the most efficient and effective providers, thereby increasing the return on criminal justice expenditures. 53/

However, the disadvantage of a purchase for service arrangement, in contrast to the use of external agencies at no direct cost, is that it transfers otherwise external costs to the criminal justice system, thereby increasing public expenditures for pretrial release.

Frequency of contact and level of supervision. Adequate supervision of conditions is essential for two reasons: first, it enables the program to report any serious failure to comply with release conditions, and second, it enables the program to provide valuable information for pre-sentence reports. Both the NAPSA and ABA Standards recommend that pretrial service agencies develop procedures for monitoring defendants' compliance with conditions of release.

Most programs cannot afford to provide intensive supervision for all defendants released under condition(s). The resource constraints experienced by most programs underline the importance of limiting the number of defendants who receive conditional release to those who cannot be released under less restrictive forms, and limiting the number and type of conditions placed on particular defendants.

There is considerable variation among programs regarding frequency of contact and level of supervision over supervised release defendants. Among numerous options, defendants may be required to have a minimum number of in-person contacts with outside service agencies each week with no requirement to contact the release program, may be required to participate in a service agency program as well as maintain daily telephone contact with release program counselors, or may be required to report in person to the release program several times each week with no treatment services participation requirement.

Although the frequency of contact required may be identical in two jurisdictions, the pretrial release programs involved may provide differing levels of supervision depending on several factors, including the number of defendants released under supervision at any one time, the number of staff available to monitor compliance, and the degree of coordination between release programs and service referral agencies.

Typically, pretrial programs that maintain direct contact with defendants released under supervision maintain low staff/defendant caseloads to ensure adequate supervision. In King County (Seattle), WA, the Pretrial Services Unit maintains a caseload ratio of 20 to 25 defendants per supervisor. However, in some programs, larger caseload ratios such as 60 to 1 are common. In these instances, it is obviously more difficult to monitor the defendants' compliance on a routine basis. The San Mateo County, CA, Own Recognizance Project requires periodic telephone contact from supervised releasees, but supervised release staff also conduct field visits in selected cases to verify information and provide informal counseling.

3.2.1.3 Third-Party Custody Release

Under third-party custody, a defendant is released on the condition that someone in addition to the defendant assume responsibility for the defendant's appearance in court. The third-party custodian may be an individual, such as a relative, friend, employer, or attorney, or a social service agency which may provide or arrange for specialized services in addition to the supervisory services routinely required. When the third-party custodian is a social service agency, this arrangement is more akin to supervised release.

Traditionally, this form of release is a direct arrangement between the court and the designated individual or agency, without the involvement of the pretrial services agency. However, in many jurisdictions the pretrial program plays some role in third-party custody arrangements. In addition to making a recommendation for third-party custody release, the program's function may include recommending a specific third-party custodian, providing third-party custodians with court date information, establishing criteria for third-party release, and supervising third-party custodians.

The ABA Standards recommend that pretrial services agencies assume the responsibility for supervising individuals or agencies which serve as custodians for released defendants and for advising the court as to the eligibility, availability, and capacity of such individuals or agencies. 54/

The D.C. Pretrial Services Agency adopted these provisions in 1978. The Agency maintains informal relationships with third-party custodians designated by the court. This involved providing the

custodians with space, phone, photocopy services, and notification information. The Agency is statutorily responsible for coordinating the activities of these agencies and recommends specific third-party custodians, some of whom receive direct funding by the program from a $200,000 "line item" in the Agency's annual budget. In addition, the D.C. Superior Court has established certification procedures for custodians. The individuals or organizations must meet specific standards before they can be certified. These standards address such issues as the relationship of custodians to the pretrial services program; staff-client ratio; required minimum number of contacts with defendants; arrangements for facilitating defendants' court appearances; and procedures for handling noncompliance with conditions and for locating defendants who fail to appear in court. 55/

3.2.2 Target Group

The adoption of conditional release techniques and, in particular, supervised release techniques, can greatly expand the scope of pretrial programs. Program decisions on the target group, point of intervention, screening procedures, referral sources, eligibility determination and condition setting, and presentation of recommendations will have a significant impact on the internal operation management and cost of pretrial programs, and on the number of defendants affected by them. Program experience and research findings on some of these issues are presented below.

As indicated earlier, conditional release techniques are intended to secure the release of defendants who are ineligible for ROR due to insufficient community ties or previous criminal justice involvement. However, in a given jurisdiction, the pool of defendants eligible for consideration for conditional release techniques is dependent upon the jurisdiction's definition of "high risk" defendants. While jurisdictions generally use the same categories of information for determining ROR release (i.e., a combination of community ties, prior criminal justice involvement, prior appearance history, and nature of the charge), there is variation regarding the types of defendants who are initially excluded from being interviewed for ROR consideration, the circumstances which automatically exclude those interviewed from being eligible for ROR, and, in jurisdictions which use point scales, the weights assigned to specific criteria in the screening mechanisms.

In general, however, conditional release techniques, particularly supervised release, are used for felony defendants for two reasons. First, many defendants charged with felonies are ineligible for ROR recommendation and consequently have money bail set. Second, since felony defendants tend to have higher bails set, they are less likely to secure financial release from custody than those charged with less serious offenses. Further, when felony defendants do obtain financial release it is likely to take longer as a result of the bail amount.

Conversely, misdemeanant defendants are less likely to be released on supervised conditions, due to the strong presumption in favor of ROR for these defendants. And while conditions may be appropriate for some misdemeanants, some jurisdictions exclude such defendants from eligibility for supervised release, feeling that judges may tend to place conditions on misdemeanant defendants who would otherwise be released without conditions.

Two concerns have been noted regarding the definition of the target group for conditional release techniques. First, given that the majority of pretrial programs have not undertaken efforts to validate their point scales for determining eligibility for ROR, it is not clear whether defendants who fail to meet the eligibility criteria for ROR are in fact high risk defendants. Screening procedures for ROR may be too restrictive in many cases. The National Evaluation Program Phase II Summary Report on Pretrial Release found that release recommendation criteria could be less restrictive. An experimental analysis tested the effect of extending ROR eligibility to defendants ineligible under normal practices.

> This experiment had the strongest impact on release outcomes of any conducted. More defendants were released; more were released non-financially; release was secured more quickly, and release outcomes showed greater equity by ethnicity and employment status. Despite the fact that many more defendants were released, the rates of failure-to-appear and pretrial arrest for the experimental group were no different than those for the control group. 56/

Also, many programs have discovered that judges often grant release on recognizance to defendants who do not meet existing ROR criteria. If it is clear that the court is using less stringent release standards without negatively affecting FTA or rearrest rates, recommendation criteria should be reviewed for possible revisions.

Second, conditional release techniques often do not reach the intended "high risk" audience. Several studies have documented that use of these techniques often results in the release of defendants who ordinarily would have received release without conditions. For example, Wayne Thomas notes that while the introduction of conditional release in Washington, DC, in 1970 had the desired effect of increasing the rate of non-financial release, it also resulted in reducing the rate of personal recognizance release. Judges tended to overuse conditions in two ways: first, by imposing them on too many defendants, and second, by imposing too many conditions on a single defendant. 57/

Conditional release techniques may have several undesired consequences. First, they may widen the "net of control," contrary to the principle of release under the least restrictive alternative. Second, the inappropriate use of conditional release techniques places increased costs and burdens on pretrial agencies. When not employed prudently, conditional release can generate an inordinate amount of paperwork, with little, if any, positive effect on failure-to-appear, rearrest or pretrial detention rates.

In light of these concerns, programs must define the target group for conditional release techniques to ensure that defendants eligible for consideration are those who cannot be released on less restrictive conditions. 58/ As a starting point, programs considering the implementation of conditional release should first assess their current eligibility criteria for ROR to determine whether steps can be taken to expand the number of defendants who can be recommended for release without conditions. In addition, programs could institute bail review procedures for cases not recommended for ROR at the initial screening point (i.e., where the program was previously unable to verify information which later was verified) or for cases recommended for release, but rejected by the judicial officer.

3.2.3 Point of Intervention and Referral Sources

The population of defendants eligible for conditional release techniques is in part dependent upon the point of intervention selected by the program and the procedures for obtaining referrals for consideration for these release techniques.

3.2.3.1 Screening Before the Initial Court Appearance

Programs that screen for conditional release prior to the first court appearance focus on defendants who fail to qualify for a recommendation for ROR. Screening defendants for conditional release prior to the first court appearance may enable defendants to secure non-financial release more quickly, saving the system and the defendant money.

However, there are disadvantages associated with screening at this point. For instance, the determination of appropriate conditions of release, be they either contact- or problem-oriented, often requires more time on a case-by-case basis than is the case for ROR, where a simple positive or negative recommendation occurs. Because of the time constraints that exist in most jurisdictions, it may be difficult for the agency to determine the appropriate conditions of release or, if outside agencies or third-party custodians are used, to determine the appropriate agency and obtain agreement from the agency to accept the defendant for supervision.

Some jurisdictions have responded to this concern by presenting a general recommendation for conditional release at the initial court appearance, with specific conditions to be determined later during a follow-up interview. This allows the program to follow initial screening with a more in-depth interview to determine which conditions would be most appropriate for the particular defendant, while at the same time notifying the judge that the particular defendant needs some form of supervision. On the other hand, some release agencies feel that they are able to adequately determine which conditions would be most appropriate in particular cases during their initial screening and, at the initial presentment, provide a specific conditional recommendation for defendants determined ineligible for ROR.

Also, as noted above, screening for conditional release prior to the first court appearance may result in widening the net. If judges see that these techniques are available at this point, they may tend to assign them to defendants who otherwise would have been released without conditions.

3.2.3.2 Screening After the Initial Court Appearance

Programs which screen for conditional release after the first court appearance focus on defendants who failed to initially qualify for ROR either because they did not receive a recommendation favoring ROR or because they were recommended for ROR by the program but were refused release by the judicial officer. Typically, programs screening at this point have a separate unit which reviews the cases of defendants who remain in jail, unable to post money bail. The Des Moines, IA, program operates in this fashion, utilizing a Release With Services unit, as does Philadelphia's Pretrial Services Division, which operates a separate Conditional Release (CR) section.

Following a set period of time, usually 24 to 48 hours, the release agency will conduct a more intensive screening process and recommend specific conditions of release as appropriate. The advantages of screening after the initial court appearance are twofold. First, it limits the universe of possible conditional releasees to those who cannot secure pretrial release under less restrictive conditions. Second, it provides the program with more time to determine specific conditions of release and obtain agreements from outside referral agencies, if needed. However, certain disadvantages are associated with screening at this point. First, the more intensive screening efforts and the scheduling of an additional court appearance means that defendants will spend more time in jail pending consideration of conditional release. The lengthy screening and judicial approval process may also prompt many defendants to opt for posting money bail, perpetuating a practice many release agencies would like to see abolished. (This process of elimination by financial bail may be viewed favorably from the standpoint of those who would prefer to concentrate scarce resources on defendants clearly unable to secure release by any means other than supervised release.)

3.2.3.3 Source of Referrals

In addition to the point of intervention, a program's procedures for obtaining referrals affects the population of defendants eligible for conditional release. For example, in some programs referrals for considerations for supervised release are initiated by the defense attorney or the judicial officer. The drawback of this procedure is that there may be qualified defendants who are not referred for program consideration. In contrast to this procedure, other programs, such as those in Maricopa County, AZ, and Essex County, NJ, automatically screen all defendants who are in jail following the initial court appearance.

3.2.3.4 Screening Procedures

The screening procedures for determining a defendant's eligibility for conditional release parallel those used for determining a defendant's eligibility for release on recognizance. Background information on defendants must be obtained and verified, and decisions made on whether to recommend defendants, and if so, under what conditions. However, each of these steps requires more intensive effort than is required for release on recognizance, particularly when defendants are released on the condition that they participate in services.

3.2.3.5 Obtaining and Verifying Background Information

Programs use several sources of information to determine a defendant's eligibility for conditional release techniques. First, background information is obtained on the defendant's community ties and previous criminal justice involvement. Additional information will be gathered on specific defendant problems such as drug and alcohol use, mental disorders, and on the defendant's treatment history for any of these problems. Second, programs contact probation and parole officers about defendants currently under their supervision. Third, the defendant's family may be contacted for information on specific defendant problems. And finally, when outside referral agencies are used, these agencies are contacted to determine whether they are willing to provide services to the defendant.

As indicated earlier, the intensity of these screening procedures depends upon the point of intervention and range of conditional release activities. For example, programs which screen for release prior to the first court appearance may not have sufficient time to contact the parole or probation officer or the defendant's family. However, if only contact supervision is offered, less information is needed to qualify a defendant for this form of release, making screening prior to the initial court appearance more feasible.

Screening for problem-oriented conditions usually involves more extensive efforts. Programs often wait until after the initial court

appearance to screen defendants, when there is more time to collect and verify information and to make appropriate arrangements with defendants. The Correctional Services CIP Program in Milwaukee operates this way. Programs which screen for conditional release after the initial court appearance and in which all defendants have initially gone through the interviewing process for ROR can expedite the screening process by using information obtained from the defendant during the initial screening, but this generally involves conducting an additional interview with the defendant. This method is used in Maricopa County, AZ, and in the Close Street Supervision program in Multnomah County, OR.

3.2.3.6 Determination of Eligibility and Condition-Setting

Once the background information is collected, the screening staff must determine which defendants are eligible for a recommendation for conditional release and under what conditions. In contrast to the prevalent use of objective point scales for determining eligibility for release on recognizance, programs which screen for conditional release typically combine objective and subjective techniques. The qualitative judgment of a defendant's eligibility depends on various factors, such as whether the defendant appears amenable to various types of conditions, the type of information received from the defendant's family and friends and from probation and parole officers, and the availability of referral services, if necessary.

To overcome the potential for inconsistent decision-making in the screening process, programs typically assign specialized staff to conduct screening for conditional release. In King County, WA, five Supervised Release Program (SRP) counselors evaluate detainees unable to obtain any other type of release, identifying problems such as alcohol or drug abuse, and developing a possible release program for each detainee. SRP counselors are also responsible for supervision of those released, maintaining caseloads of approximately 25 defendants each.

In some programs, specialized staff have a background in social work which may enable them to elicit information on the service needs of defendants. In Milwaukee the Correctional Service Court Intervention Program (CIP) utilizes interviewers with such training to concentrate on defendants held in jail over 72 hours with alcohol, drug, or mental health treatment needs.

In determining the specific conditions of release, programs should strive to meet two criteria. First, the conditions should be individualized to the particular circumstances of each defendant and must be reasonably related to assuring a defendant's appearance in court and protecting the safety of the community. Fashioning conditions related to appearance and danger is often difficult, since our knowledge of factors related to such behavior is far from adequate.

In particular, the fashioning of problem-oriented conditions is at best an inexact science. For example, if a defendant has a drug addiction problem, conditioning release on pretrial participation in a drug treatment program is probably more defensible than conditioning the defendant's release on participation in counseling, in light of research which shows a correlation between drug addiction and failure-to-appear. 59/ While in the latter case the defendant might derive some benefit from counseling, the empirical basis for this condition is less apparent.

The process of considering problem-oriented conditions may result in the assignment of conditions unrelated to appearance for many defendants. This problem has been documented in several programs. For example, in Baltimore County, the introduction of conditional release involving referrals to social service agencies led to dramatic increases in the proportion of defendants assigned to intervention program services, from 30 percent in 1972 to 48 percent in 1976. The staff were criticized for being too emotionally involved with their clients and too oriented toward social work activities, and were requested to curtail their interventionist recommendations. 60/ In San Mateo County, the supervised release program encountered considerable opposition from defense counsel and judges because of doubts regarding the constitutionality of the conditions placed upon the defendants, since it appeared that the conditions recommended by the program were only indirectly related to assuring the defendants' appearance at court. 61/ The provision of social services has also been shown to have no impact on court appearance and pretrial rearrest rates among supervised release defendants. 62/

A second criterion in determining specific release conditions is that the least restrictive set of conditions should be imposed. This pertains not only to the number but also the type of conditions.

As noted, there may be a tendency to impose too many conditions on a single defendant. This not only places an extra burden on pretrial agency staff, who must monitor the defendant's compliance, but also increases the likelihood that defendant rights will be violated. As stated by Weisberg:

> The greater the number of conditions imposed upon a releasee, the greater potential for violation, and therefore the greater risk to the defendant of being treated with greater prejudice in future proceedings. 63/

Also, in some instances the type of conditions may be more restrictive than necessary. Conditioning a defendant's release on participation in an inpatient program for a drug problem when an outpatient program would be as appropriate is an example of this problem.

A final step in the screening process may involve obtaining the defendant's agreement to be considered for release. In some programs, this agreement is in writing and includes language indicating that the defendant voluntarily agrees to be considered for release with conditions, and states that if the court approves release, it is conditioned on compliance with designated court-ordered conditions and that failure to comply may result in apprehension for a hearing on the alleged violations. 64/

3.2.4 Presenting Recommendations for Conditional Release

Following the screening process, programs using conditional release techniques present their recommendations to a judicial officer. In some programs, conditional release recommendations are also reviewed by the District Attorney and Public Defender. Programs vary on the formality of these proceedings. For example, the Milwaukee Court Intervention Program (CIP) schedules separate hearings with judges to review conditional release recommendations. At these hearings, CIP representatives make written and verbal presentations. Representatives from outside referral agencies may also be in attendance. In Allen County (Ft. Wayne), IN, the procedures are less formal. No special hearing is required. The court simply reviews a written report prepared by the supervised-release staff.

In presenting recommendations to the court for conditional release, it is important to ensure that the conditions of release are as specific as possible. For example, the frequency of contact requirements should be delineated. As mentioned above, the fashioning of specific conditions of release is more feasible when screening occurs following the initial court appearance. Vague conditions, such as "cooperate with the program," should be avoided. Specific conditions ensure that the defendant understands the circumstances under which he or she is released, and, in the event of noncompliance, provides the program with a stronger case for recommending either to change the release conditions or revoke the defendant's release.

Jurisdictions which conduct release hearings typically obtain the defendant's written agreement to the judicially approved conditions of release. Agreements such as those utilized by programs in Cobb County, GA, and King County, WA, spell out the specific conditions of release and other provisions pertaining to reporting requirements, such as notifying the release program of changes in address, and conditions under which the defendant may be brought back to court for reconsideration of the release status (see Figures 3.1 and 3.2).

FIGURE 3.1

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,
Plaintiff,
vs.
Defendant,

NO.
CONDITIONS OF SUPERVISED RELEASE FOR DEFENDANT
PENDING TRIAL

IT IS HEREBY ORDERED that the above-named defendant shall be released from the King County jail is ordered to appear personally for court hearings and for trial.

This release is on the following conditions:

(X) Be evaluated and accepted for the Supervised Release Program.

(X) Sign and comply with all conditions of a Supervised Release Contract with the King County Pretrial Services Unit.

(X) To the custody of the King County Pretrial Services Unit.

( ) On execution of an unsecured appearance bond in the amount of $_____.

( ) On execution of an appearance bond in the amount of $_____ and deposit in court in cash or other approved security 10% thereof (to be returned to defendant upon performance of the conditions of release)

( ) On execution of a surety bond or posting of cash in the amount of $_____.

( ) On condition:_____

_____

_____

_____

In addition to the above conditions, defendant is not to leave the State of Washington without specific approval by court order.

DATED this_____day of _____, 19_____.

_____
JUDGE

STATEMENT OF DEFENDANT:

My address and phone number will be_____

_____

I HAVE READ THIS ORDER. I understand that if I violate conditions of release I can be arrested and punished for contempt of court. If I fail to appear for court hearings, I will be committing an additional crime of bail jumping as defined in RCW 9A.76.170.

_____
(Signature of defendant)

Presented by:

Attorney for Defendant

F-678, Modified 2-11-82

MARIETTA, GEORGIA FIGURE 3.2

STATE OF GEORGIA **CASE**_____

vs.

_____

It appearing to the Court that the defendant herein qualifies for the Pretrial Court Services Program. It is therefore considered and ordered that the defendant be released from custody subject to the following conditions:

1) You are to appear in the Superior Court of Cobb County when notified by the Pretrial Court Services agency. The notice will be sent to you at:

_____

_____

If you change your mailing address, you are required to notify the Pretrial Court Services Agency at: Public Safety Building, P. O. Box 649, Marietta, Ga. 30061, or phone 404-422-2320, ext. 253 or 254. Failure to notify the Pretrial Court Services Agency of your new address could result in a bench warrant being issued for your arrest.

2) You are to report to Cobb Pretrial Court Services as directed by the conditional release of said agency.

3) You are not to change your present place of residence, move outside the jurisdiction of the Court, or leave the State for any period of time without permission of a Pretrial Court Services representative.

4) You are to maintain your present employment or obtain employment within seven days and report it to the Pretrial Court Services Office.

5) You are to be of general good behavior and not violate any local, state or federal laws.

6) You are to avoid places and associations of an undesirable character.

7) You are to avoid use of narcotics, dangerous drugs, and excessive use of alcoholic drinks.

8) You are to support any legal dependants to the best of your ability.

9) Other special conditions ordered by the Court as follows:

_____

_____

_____

_____

_____

_____

_____

It is the further order of the court that any violation of a condition of the release shall subject the defendant to a fine or imprisonment for contempt of court and result in the revocation of the release.

SO ORDERED this _____ **day of** _____, **19**____

_____

JUDGE, SUPERIOR COURT
COBB COUNTY, GEORGIA

FOOTNOTES

1/ Thomas, op. cit., p. 21.

2/ See NAPSA Release Standards, III, p. 16; ABA Standards, 10-1.2(c), p. 10.11-10.11.

3/ See ABA Standards, loc. cit., 10-1.2(c), 10.11.

4/ These "secondary" goals were cited by one or more program administrators during the Pretrial Services Resource Center review of the practices of 21 release agencies conducted in February and March, 1983. Hereafter, all references to program practices are taken from that survey, unless otherwise specified.

5/ See ABA Standards, 10-5.1, p. 10.51 NAPSA Release Standards, XI, p. 64; and National District Attorneys Association, National Prosecution Standards, Standard 10.5, p. 137. Hereinafter cited as NDAA Standards.

6/ NDAA Standards, 10.5 (a)1., p. 137.

7/ ABA Standards, 10-4.4, p. 10.44.

8/ Programs Practices/Release, pp. 24-27. In the Pretrial Services Resource Center's 1983 21-agency practices review, only four agencies were found to operate with no automatic exclusions from the interview process. These included the Essex County, NJ, Lehigh Valley, PA, San Mateo County, CA, and Washington, DC programs. Ten of the 21 programs based exclusions solely on current charges.

9/ The "point of intervention" is the point in the criminal justice process at which a program most frequently attempts to secure the release of defendants on a non-financial basis. This may not be the only point at which a program attempts to secure release for defendants, as it is possible for a program to intervene at more than one stage. For example, some programs have been given the authority to release certain misdemeanor defendants prior to the initial court appearance, but are limited in felony cases to making recommendations at the initial court appearance. In addition, many programs whose primary point of intervention is at or before the initial court appearance will also intervene at later points in the process, particularly where additional relevant information is required and the defendant has been unable to obtain release on money bail.

10/ NAPSA Release Standards, II, p. 11.

11/ Ibid., Standard X, p. 58.

CONTINUED

1 OF 2

12/ Wayne H. Thomas et al., National Evaluation Program Phase I Summary Report: Pretrial Release Programs (Washington, DC: National Institute of Law Enforcement and Criminal Justice, April, 1977), p. 76.

13/ In those jurisdictions utilizing citation release, for example, a defendant may have missed an opportunity for release prior to the initial appearance by being judged ineligible for citation release.

14/ Program Practices/Release, op. cit., p. 30.

15/ NDAA Standards, 10.4, p. 137.

16/ NAPSA Release Standards, III-D, pp. 15-16.

17/ ABA Standards, 10-4.3 and 10-4.4, pp. 10.56-10.61.

18/ Program Practices/Release, p. 37.

19/ Thomas et al., op. cit., 1977, p. 76; also pp. 18-20 for discussion of timing of interview.

20/ Mary Toborg et al., Pretrial Release: An Evaluation of Defendant Outcomes and Program Impact, Volume I, "Release Practices and Outcomes - A Cross-Section of Analysis of Eight Jurisdictions" (Washington, DC: Lazar Institute, March, 1981), p. 43.

21/ Vera Institute of Justice, Further Work in Criminal Justice Reform: A Five-Year Report from the Vera Institute of Justice (New York: 1977), p. 21.

22/ Regardless of the assessment option used, some programs, such as Kentucky's statewide system, do not provide explicit recommendations to the court, although Kentucky pretrial officers do provide the court with point scale scores on each defendant.

23/ Toborg et al. op. cit., pp. 39-44.

24/ Three programs, the Hennepin County, MN, Pretrial Unit, the Monroe County, NY, Pretrial Services Corporation, and the NYC Criminal Justice Agency, indicated strict application of program point scales in the 1983 PSRC 21-program survey.

25/ Thomas, op. cit., 76, p. 146.

26/ See, for example, John Goldkamp, Michael Gottfredson and Susan Mitchell-Herzfeld, Bail Decisionmaking: A Study of Policy Guidelines (Washington, DC: National Institute of Corrections, 1981).

27/ Paul Lazarsfeld, An Evaluation of the Pretrial Services Agency of the Vera Institute of Justice: Final Report (New York: Vera Institute, 1974), p. 70.

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

29/ See, for example, Chris Eskridge, "The Point Scale: Its Use and Abuse in Pretrial Release," prepared for National Symposium on Pretrial Services, Louisville, Kentucky, April, 1979.

30/ Jan Gayton, "The Utility of Research in Predicting Flight and Danger," prepared for the Special National Workshop on Pretrial Release, San Diego, CA, April, 1978, p. 15; Michael Kirby, Findings 1, "Recent Research Findings in Pretrial Release "(Washington, DC: Pretrial Services Resource Center, 1977); Donald Pryor, Pretrial Issues, No. 1, "Current Research: A Review," Washington, DC: Pretrial Services Resource Center, 1979; Kirby, FTA, "Failure-to-Appear: What Does It Mean? How Can It Be Measured?" (Washington, DC: Pretrial Services Resource Center, 1979); Michael R. Gottfredson, "An Empirical Analysis of Pretrial Release Decisions," 2 Journal of Criminal Justice 287.

31/ Program Practices/Release, p. 32.

32/ For example, see Monahan, op. cit.; and Walker, Psychiatry, I, January, 1978, pp. 37-50.

33/ Thomas, op. cit., 1976, p. 146.

34/ Toborg et al., op. cit., pp. 39-44.

35/ Mary A. Toborg and Martin D. Sorin, "Pretrial Release Program Recommendation Practices: Should They Be Revised?", Pretrial Services Annual Journal, July, 1981, Vol. IV, pp. 153-154; and Donald E. Pryor and D. Alan Henry, Pretrial Issues, No. 2, "Pretrial Practices: A Preliminary Look At The Data" (Washington, DC: Pretrial Services Resource Center, April, 1980), pp. 19-20.

36/ NAPSA Release Standards, X, p. 57.

37/ ABA Standards, 10-4.4(e), p. 10.58.

38/ Program Practices/Release, p. 82.

39/ Thomas et al., op. cit., 1977, p. 24.

40/ Charles Ares, Anne Rankin and Herbert Sturz, "The Manhattan Bail Project: An Interim Report on the Use of Pretrial Parole," New York

University Law Review, January, 1963, Vol. 38, pp. 67-95. The net effect of this practice, however, is identical to that of presenting both positive and negative recommendations.

41/ D.C. Code S23-1331(3) and (4), (1971).

42/ NEP Phase II, p. 23.

43/ Many states and local jurisdictions have established citation systems, where the power of release has been delegated to the arresting officer or his/her superior in certain charge categories. The process involves little more than the officer obtaining basic demographic information about the defendant and informing the individual of the date and time that he/she will be expected to be in court.

44/ NAPSA Release Standards, II(C), pp. 9-10; the ABA Standard 10-2.2 argues for the presumption of citation release for all defendants charged with misdemeanors.

45/ NAPSA Release Standards, IV, pp. 22 and 24; and ABA Standards, 10-5.2, pp. 10.68-10.69.

46/ Bonnie Lewin, Supervised Release Program Test Design (Washington, DC: National Institute of Justice, February, 1980), p. 5. This publication provides a valuable overview of the emergence of supervised release in addition to a comprehensive design for testing supervised release approaches.

47/ Ibid., p. 3.

48/ DC Bail Agency, How Does Pretrial Supervision Affect Pretrial Performance? (Washington, DC: May, 1970) p. 13.

49/ ABA Standards, 10-5.3, p. 10.73.

50/ James Austin, Barry Krisberg and Paul Litsky, Supervised Pretrial Release Test Design Evaluation -- Interim Report (San Francisco, CA: National Council on Crime and Delinquency Research Center, November, 1982) p. 71. Note: The final report of the Supervised Pretrial Release Test Design Evaluation, by James Austin, Barry Krisberg, and Paul Litsky, on the use of supervised release in three sites, Dade County, FL, Milwaukee, WI, and Portland, OR, is due to be completed and published by the National Institute of Justice in early 1984. The report is intended to provide data on the strengths and limitations of supervised release strategies.

51/ ABA Standards, 10-5.2, p. 10.71.

52/ Toborg et al., op. cit., p. 56.

53/ Susan Weisberg, Cost Analysis of Correctional Standards: Pretrial Programs (Washington, DC: American Bar Association, May, 1978), p. 45.

54/ ABA Standards, 10-5.3(e), p. 10.72.

55/ For example, in Washington, DC, individual custodians must meet the qualifications for release on recognizance.

56/ NEP Phase II, p. 59.

57/ Thomas, op. cit., 1976, pp. 172-173.

58/ Lewin, op. cit., p. 13.

59/ James C. Weissman, Samuel W. Marr, and Elaine Lawrie, "Pretrial Release Performance of Addict Defendants: Examination of Court Non-Appearance and Rearrest Rates," Drug and Alcohol Dependence, 5 (1980), pp. 311-319.

60/ See Kristina Peterson, Pretrial Release: An Evaluation of Defendant Outcomes and Program Impact-Case Study of Baltimore County, Maryland, Part 1 Delivery Systems Analysis (Washington, DC: Lazar Institute, 1979).

61/ See Robert Rice, Evaluation of the Des Moines Community-Based Corrections Replication Program: Summary Report, Washington, DC, 1979.

62/ Austin et al., op. cit., p. 71.

63/ Weisberg, op. cit., p. 109.

64/ Lewin, op. cit., p. 17.

Chapter 4

POST-RELEASE AND SUPPLEMENTAL SERVICES

4.0 Introduction

This chapter discusses activities conducted by release programs following the release decision. Services which may be provided to the accused or to other criminal justice agencies in addition to those directly related to release or detention are also described.

4.1 Post-Release Activities

> The success of any pretrial release program is measured not only by the number of arrestees released, but also by the kinds of follow-up efforts provided by the program after the accused has been released. 1/

Pretrial release programs provide a wide range of follow-up services to released defendants to better assure their subsequent appearance for trial. Both the number and quality of such services vary widely by jurisdiction. This section discusses those activities and how they differ.

4.1.1 Post-Release Interview

A number of programs interview defendants immediately following release and provide them with a review of the court date, notification requirements (e.g., report change of address), penalties for failing to appear, and answers to any questions they might have concerning the release period. Cobb County, GA, for example, has found that a review of call-in requirements, next court date, defendant address, and available community services can often avert future difficulties.

4.1.2 Notification

NAPSA Standard X Commentary states:

> To comply with one of the basic conditions of release, appearance in court, defendants need to know when and where they are to appear. While some court systems maintain comprehensive notification systems, the function of defendant notification is often carried out or supplemented by the pretrial services agency. Written notification should include the date, time and exact location of the

> court appearance as well as the telephone number and name of a person to call if the defendant has questions regarding the time and place of appearance. 2/

Release programs may notify defendants by phone and/or mail of initial, and in some cases all, court dates. Programs in Des Moines, IA, Maricopa County, AZ, New York City, NY, and Washington, DC, mail ROR defendants reminders of all court appearances. 3/ Des Moines and Maricopa Counties also call defendants to remind them of court appearances. King County, WA, and San Mateo County, CA, send notices of defendants' first court appearance only, while other agencies provide no notice of court dates.

Few studies have assessed the impact of these variations in notification practices. However, a 1977 study of New York's Pretrial Services Agency (now the Criminal Justice Agency) using random assignment to experimental and control groups found that the impact of notification varied for different groups of defendants. The results indicated that:

> In certain charge categories, PTSA's (the agency's) notifications reduced the FTA rates by half. The impact was greatest when the time between release and court appearance was short, and it diminished markedly after six weeks. 4/

Findings such as these suggest that notification does make a difference in assuring defendant appearance for trial. Further research is needed, however, to document reliable results regarding the effects of different levels and types of notification.

4.1.3 Maintenance of a Case-Tracking System

All programs have established case-tracking systems which include various levels of information such as defendant charges, criminal record, release status, court appearance, adjudication, sentencing, and ultimate case disposition. Such systems assist the program in answering defendant questions concerning release, and also allow the monitoring and evaluation of the system and provide valuable feedback to judges on defendant performance.

The automated data systems used in New York City and Washington, DC, for example, are critical to speedy preparation of reports and recommendations for court, handling report-in calls, and monitoring and analysis of defendant performance on release. Many programs, such as those in King County, WA, and Maricopa County, AZ, utilize highly developed manual tracking systems. (See Chapter 5, Section 5.5, for a fuller discussion of such management information systems.)

4.1.4 Pre-Sentence Compliance Reports

Adhering to the philosophy that a defendant's pretrial behavior provides a barometer of potential behavior under sentence, many agencies provide compliance information directly to the court or to the probation agency preparing pre-sentence investigations.

For instance, the Cobb County, GA, and Baltimore, MD, programs prepare reports on defendant performance for pre-sentence consideration. This information is considered essential in the pre-sentence investigation process for determining the appropriate recommendation to present to the sentencing judge.

There are several varieties of this type of follow-up service. Programs may prepare compliance reports for all defendants recommended for release, for all defendants released through the release agency, whether originally recommended or not, or only for particular defendant groups, such as those released under supervised conditions.

4.1.5 Responding to Conditional Release Violations

Typically, some defendants will fail to comply with certain release conditions at some point during the pretrial period. 5/ However, reporting on every violation could overburden the pretrial agency and the court with paperwork. In developing procedures for reporting on noncompliance, programs must strike a balance between filing scores of reports of trivial violations and failing to take appropriate action when the defendant's noncompliance might have serious consequences.

NAPSA Standards suggest that release agencies should have some discretion in determining what circumstances warrant reporting noncompliance to the court. Factors that should be considered include the nature of the condition, the reason for noncompliance, and the degree of violation. 6/ For example, if a defendant has failed to make a telephone contact with the pretrial program, or has missed a treatment appointment, the program should attempt to reestablish contact and resolve the situation without recourse to the court.

It is important for programs to involve the judiciary in developing procedures for handling instances of noncompliance to ensure a clear understanding of circumstances necessitating reports to the court. Some programs have established written agreements with the court and prosecutor setting forth specific condition violations which must be reported. Such items may include violations of conditions to stay away from the complaining witness, violations of third-party custody provisions, violations of requirements that the defendant refrain from drug or alcohol use, and/or violation of conditions to participate in treatment programs.

Some programs, such as those in Cobb County, GA, and Mecklenburg County (Charlotte), NC, have deputized staff to arrest serious conditions violators, including those failing to appear for court, without a court warrant. In Cobb County, apprehension unit staff also carry out field visits to the listed addresses of releasees who may have missed several successive required phone contacts with the program.

The NAPSA Standards recommend that programs establish standard procedures for handling violations. At a minimum, these procedures should include: handling of minor violations without reporting to the court; submission of a written report by the monitoring agency to the court; distribution of a written notice of the allegation to the defendant, his attorney, and the prosecutor; and authority for the court to order a hearing with written notice of the hearing date and the alleged violations distributed to the defendant, his attorney, and the prosecutor. (A warrant may be issued for the defendant's arrest and, if executed, a hearing should be held within 72 hours of the arrest.) 7/

The NAPSA Standards further recommend that sanctions imposed by the court be tailored to the seriousness of the violation and be imposed only after notice to the defendant and an opportunity to respond have been provided. Three general types of sanctions are available to the court:

- Remedial sanctions, requiring the defendant to participate in drug or alcohol abuse treatment, to obtain or maintain employment, to obtain marital or psychological counseling, and to become involved in other programs designed to stabilize the defendant's behavior and minimize the probability of nonappearance or pretrial crime;

- Restrictive sanctions, requiring a curfew, restricting movement, travel, and associations, and, if necessary, revoking release; and

- Punitive sanctions, involving the imposition of jail sentences, fines, conviction for contempt of court, consecutive jail sentences, and other penalties. 8/

Also, because revocation of release deprives the defendant of his liberty, the NAPSA Standards suggest that the court should be required to find that the initial release conditions were reasonably calculated to decrease risk of flight and related to some specific indicator of that risk, that the violation signifies a substantial increase in risk of flight or pretrial crime, and that nothing short of revocation would reduce that risk. 9/

4.1.6 Location and Apprehension of Defendants Who Fail to Appear

In instances when a defendant has missed a scheduled court appearance, the NAPSA Standards recommend that programs should immediately attempt to locate the defendant and persuade him or her to return to court voluntarily before a warrant is executed. 10/ This procedure has the advantage of reducing police and court expenditure for executing warrants, particularly on defendants who unintentionally fail to appear as a result of confusion or because of circumstances beyond their control.

A large percentage of release agencies take at least some steps to see that the defendant returns to court. Most attempt to contact by phone and many make field visits to locate defendants and urge return to court. 11/ (Table 4.1 shows steps taken by 117 release programs in the instance of failure-to-appear, from the 1979 Pretrial Services Resource Center survey.) The D.C. Pretrial Services Agency, for example, has a Failure to Appear Unit which attempts to make contact with the defendant and encourage him or her to come to court, so that issuance of a warrant can be prevented. The unit has had significant impact on the percentage of warrants executed. In Philadelphia, ROR investigators are responsible for the apprehension of ROR defendants who fail to appear for court hearings.

In the case of willful failure-to-appear, the NAPSA Standards recommend that the court should be authorized to impose punitive sanctions, including jail sentences. But, as with other violations, the court should be required to make positive findings of fact relating to risk of flight and pretrial crime and the necessity of revocation. 12/ As discussed in the Lazar Institute report, certain programs may recommend that ROR status be revoked, and in some jurisdictions failure-to-appear on a felony charge is itself a felony. 13/

4.2 Supplemental Services

A pretrial program may provide services in addition to those directly related to the defendant's pretrial release. These may be services to the accused, such as social service referrals, services to other criminal justice system components, or direct assistance in such functions as pre-sentence investigations, jail classification, or screening for program admission.

Suggestions that pretrial programs deliver such services generally take into account a number of factors:

- Pretrial programs often have the first contact with the accused.

Table 4.1

PROGRAMS WHICH TAKE SPECIFIC STEPS TO ASSURE THAT DEFENDANTS WHO FAIL TO APPEAR WILL RETURN TO COURT

Specific Steps Taken a/	No. of Programs	% of Programs
None	16	13.7
Send letter to defendant urging voluntary return	64	54.7
Make phone call to defendant urging return	93	79.5
Make home visit to defendant urging return	53	45.3
Program staff may arrest	16	13.7
Assist police in locating defendant	67	57.3
Try to locate defendants who may have left jurisdiction	37	31.6
Request bench warrant/file with court	19	16.2
Miscellaneous	7	6.5

a/ Programs may undertake one or more of these steps. Thus the totals exceed the 117 programs which responded to this question.

Source: Pryor, Program Practices/Release, p. 89.

- Pretrial programs generally collect a wide variety of information, including criminal record, performance during pretrial period, and community ties information.

- Pretrial programs often verify information received from defendants, thus obtaining more accurate data than criminal justice agencies.

- Pretrial programs are designed as neutral fact-finding agencies and assume a non-adversarial position vis-a-vis the accused as well as the courts and other agencies.

- Pretrial programs may be able to increase release rates and reduce detention time by providing services which speed up case processing (for example, reducing time between conviction and sentence by facilitating pre-sentence investigations) or which expand the defendant's opportunity to "succeed" while on release (through referrals to programs which create a more supportive environment).

Some supplemental functions within a pretrial program are endorsed by the NAPSA Standards, which indicate that services should be provided to enhance the agency's "utility to the jurisdiction and credibility with the courts." 14/ But not all supplemental services serve this purpose. A number of issues must be considered in determining whether a particular non-release function enhances or detracts from utility or credibility:

- Confidentiality: some information sharing which may occur in providing services to other agencies may threaten the integrity of the pretrial program's policy regarding confidentiality, and thereby its credibility.

- Release services reduction: adding additional services may drain resources and jeopardize the essential services that have a direct impact on the release of defendants. 15/

- Neutrality: providing services to a non-neutral agency may compromise the program's relationship with the defendant or with other agencies.

The following services may be provided by pretrial programs, and need to be examined in the context of the issues mentioned above.

4.2.1 Social Service Referrals

The NAPSA Standards note that:

> Many defendants on pretrial release need some type of social service such as aid in obtaining employ-

> ment, alcohol or drug abuse treatment, psychiatric or family counseling, housing, medical aid, vocational and educational guidance, day care, etc. The pretrial services agency should, at a minimum, maintain a list of referral agencies. 16/

In addition to maintaining a list of referral agencies, pretrial programs can maintain a relationship with agencies that can provide needed services and are willing to assist defendants.

4.2.2 Indigency Screening

A basic right of a defendant upon arrest is to have the assistance of counsel, including the assignment of counsel if he or she cannot afford to retain a lawyer. 17/ Screening the defendant for the court or the public defender to determine whether, according to the laws and rules of the jurisdiction, he or she is eligible for such assignment generally occurs before or at the defendant's first court appearance. This screening may be done by a pretrial program, as in Hennepin County, MN, and in the Kentucky statewide program. Alternatively, relevant information gathered by the pretrial program may be made available to the indigency screening agency, consistent with policies on confidentiality. Where the public defender does indigency screening, confidentiality of pretrial program records is not generally a significant problem since the defendant's lawyer is privy to information contained in the pretrial release agency file. 18/

However, the NAPSA Standards oppose pretrial agency involvement in indigency screening, as it could lead to "reduced credibility with the system which is 'too great' a price to pay for the assistance." 19/ According to the Commentary on Standard X:

> Because the defendant's income and assets are difficult to verify, they may become issues of contention and may jeopardize the ability of the agency to collect and verify other information. In many instances the fact of employment is relevant to the release issue while the amount of income is not. Bearing in mind the agency's primary goal--collection and verification of information for release purposes--where the income amount is in dispute, the credibility of the agency and its ability to resolve conflicting information may be called into question. 20/

This view suggests that the additional service which could be provided by a pretrial release agency might jeopardize its more essential services. In addition, where the service is viewed by defendants as adversarial (or by the prosecutor as "pro-defendant"), the perception of the agency's neutrality, and thereby its credibility, may be altered.

4.2.3 Diversion Screening

Pretrial diversion programs provide an alternative to prosecution for defendants with less serious offenses; participation in most diversion programs results in the dismissal of charges for those who successfully comply with program requirements. The participant's eligibility may be determined by the prosecutor, the courts, or the diversion program itself. To the extent that information concerning the defendant's background and offense (relevant to diversion screening) is gathered by the release program, it may be appropriate for a release program to make non-confidential information available to the agency charged with the decision to accept a defendant into a diversion program. 21/

Some pretrial programs have both release and diversion components, and initial information-gathering may be performed by one or both components. The individual characteristics of the program may dictate the most logical division of labor. To the extent that the diversion program has strict eligibility requirements (e.g., nonviolent misdemeanor defendant with no previous convictions), the release program can make an early assessment as to whether a particular defendant meets the minimum entry requirements for the diversion program.

It should be noted, however, that the NAPSA Standards on diversion recommend that "the pretrial diversion option should be presented only after an initial determination has been made by the court that the defendant will be released pretrial." 22/ This would suggest that discussion or assessment of the defendant's eligibility for pretrial diversion would be inappropriate at the time of release screening, due to the possibility of coercion. In addition, the NAPSA diversion standards oppose the enrollment of a defendant in a diversion program unless he or she has had the opportunity to consult with counsel. 23/ This opportunity only rarely occurs prior to the release screening process. Therefore, it would seem that release and diversion screening functions might best be separated, even if the release program provides information to the diversion program or if the two co-exist within the same agency. 24/

4.2.4 Classification Information

Defendants not released prior to booking into the jail will generally be subjected to screening to determine appropriate placement within the facility. In some jurisdictions, state law or jail standards require inmate classification to separate inmates on the basis of legal status or behavioral needs. For example, many jails house pretrial detainees separately from sentenced inmates.

While jail classification is normally the responsibility of the jailer (sheriff or local corrections department), 25/ preliminary information from the pretrial screening mechanism can be of assistance, both in

the quality of information and the efficiency with which it is assembled. Especially in jurisdictions where classification does not occur for some time after admission, information obtained by pretrial staff with regard to potential mental or physical impairments may be critical.

4.2.5 Pre-Sentence Investigation

In most jurisdictions judges require pre-sentence reports for some defendants upon conviction. These reports are generally prepared by the probation department, and may include background information concerning the offender or crime and may make recommendations concerning an appropriate sentence.

Much of the background information ordinarily included in a pre-sentence report may have already been collected and verified by the pretrial program. In addition, the extent of a defendant's compliance with pretrial release conditions may be useful in determining the effectiveness of a non-incarcerative sentence. 26/ Therefore, it would be valuable for the probation department to receive nonconfidential data from the pretrial program, in order to avoid repetitive information-gathering, to speed the investigation, and perhaps to assist in determining an appropriate sentencing recommendation.

4.2.6 Jail Population Monitoring

Jail crowding has reached crisis proportions, and many jurisdictions are finding it increasingly important to reduce jail populations. Efforts to maximize release require an analysis of who is in the jail, under what circumstances, and for how long. Such analysis often reveals that the system components that have the greatest impact on who is sent to jail are not responsible for the administration of the jail, and corrections officials who run the facility have little control over admissions. There is often no bridge between the courts and the jails to foster cooperation in the alleviation of crowding. However, pretrial agencies can provide such a bridge, as part of a comprehensive planning program to monitor the jail population and identify target populations for increased release. 27/

This role can be filled in a number of ways. In some communities, the pretrial program may participate in a special coordinating group or an Overcrowding Task Force. For example, the director of the Monroe County (Rochester), NY, program is a member of such a task force. In other communities, the release agency can provide data needed for effective population monitoring. For instance, weekly jail population reviews are performed by the Cobb County, GA, and Salt Lake County, UT, release programs. Such activity is consistent with the agency's internal need to track cases and monitor system efficiency, a function recommended and described in the NAPSA Standards:

> The pretrial services agency should maintain a case-tracking system which includes information on charges, court appearances, failures-to-appear, adjudication, and sentencing, as well as time spans between arrest, notification of charges, release, and case disposition. Without this information, the pretrial services agency could not answer questions from individual defendants nor could it monitor the overall efficiency of the system. 28/

In at least one program, collection and dissemination of information on the detainee population is statutorily mandated. 29/ Information gathered in an agency's case-tracking system may be relevant not only to the local criminal justice system but to the oversight court or parties in cases where the facility is under litigation for overcrowding. Pretrial programs should consider whether fulfillment of a monitoring function will serve its other objectives. 30/

4.2.7 Central Intake

Concern about the consequences (in terms of cost and efficiency) of inadequate coordination among criminal justice agencies has led to proposals of mechanisms to improve case management. Such mechanisms, loosely referred to as "central intake" or "intake services" systems, seek to improve efficiency and fairness in the administration of justice. The basic function of most central intake models is the gathering of demographic information about the individual defendant for verification and distribution to appropriate criminal justice agencies.

As noted earlier, much of the information-gathering function performed by the pretrial program is duplicated at various points during the criminal case process by police, defenders, prosecutors, probation officers, corrections personnel, and other system actors. With a central intake system, this duplication might be replaced with one comprehensive interview taking place as soon as possible after arrest and distributed among interested agencies, presumably leaving individual agencies with more time to devote to their critical decision-making responsibilities.

The NAPSA Standards urge that "in determining whether or not to expand its services...the agency should examine proposed activities to assure that they will not detract from its primary objective of facilitating non-financial release in the greatest number of instances possible." This cautionary note applies to the supplemental services discussed above as well as to central intake.

As discussed in a recent issue of The Pretrial Reporter, central intake services can serve the goals of a release program:

> For example, many jurisdictions find that a judge who sets bail does not know if the bond amount leads to release or detention of the defendant. As a result, the judge may continue bail-setting practices which virtually guarantee needless and unintended detention. A central intake system, by tracking defendants from the initial release determination until case disposition, can provide judicial officers with a "scorecard" that shows the outcome of their decisions. 31/

Despite these advantages, not all central intake systems will be consistent with the needs and goals of a pretrial release program. Issues of confidentiality and credibility may arise if central intake screening is performed by the release program. If, on the other hand, the release program is served by a central intake unit not located within the pretrial program, it must have confidence in the intake services if it is to base its recommendations on the information provided.

Further, central intake systems:

> ...cannot hope to do much more than reduce duplication and move cases to prosecution in a more methodical manner unless there are policy agreements and well-defined goals on the use of less restrictive options in intake, custody and community supervision. Overemphasis on simple standards of efficiency may result in a loss of system accountability and fairness. 32/

FOOTNOTES

1/ Handbook on Procedure, Post-Release Services (Washington, DC: D.C. Pretrial Services Agency, April, 1979), p. 1.

2/ NAPSA Release Standards, X, p. 59.

3/ At the Washington, DC, Pretrial Services Agency and the New York Criminal Justice Agency, computer systems automatically generate reminders of all court appearances which are mailed to all defendants.

4/ Vera Institute of Justice, op. cit., p. 21.

5/ As previously noted, failure to comply may be a function of assigning multiple conditions to individual defendants.

6/ NAPSA Release Standards, VI, p. 31.

7/ NAPSA Release Standards, IV, p. 32.

8/ Ibid.

9/ NAPSA Release Standards, VI, p. 33.

10/ NAPSA Release Standards, X, pp. 59-60.

11/ Program Practices/Release, p. 48

12/ NAPSA Release Standards, VI, p. 32

13/ Toborg et al., op. cit., p. 64.

14/ NAPSA Release Standards, X, p. 61. Standard X(B) states that "the pretrial services agency should also provide other services not directly related to the release decision but which are appropriate to its role, its access to information, and its relationship to defendants. Such services, however, should be limited to those which do not conflict with the agency's primary responsibility of providing neutral aid to facilitate nonfinancial release and which do not infringe upon a defendant's rights..."

15/ A recent decision by the United States Court of Appeals for the Ninth Circuit referred to an affidavit of the county's director of pretrial services stating that the priority of the pretrial services office has shifted from arranging for "own recognizance" releases to making sure that adequate affidavits from arresting officers are presented in a timely fashion to the court for probable cause determinations, and that because of "finite resources," the former program "has suffered." Bernard v. County of Santa Clara, No. 81-4462, 2/25/83.

15/ NAPSA Release Standards, X, p. 61.

17/ Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

18/ For example, the D.C. Pretrial Services Agency's policies provide that defense counsel are entitled to all information maintained by the pretrial agency in the defendant/client's file.

19/ NAPSA Release Standards, X, p. 61.

20/ Ibid.

21/ NAPSA Release Standard X(C)(1) states that "the pretrial services agency should cooperate with other agencies providing services to defendants to assure that comprehensive services are available. Such cooperation may include but not be limited to:...[a]ssistance to other programs which may intervene in the case process at a later point (e.g., diversion programs) through the provision of any information which is not considered confidential to the pretrial release program..."

22/ NAPSA, Performance Standard on Pretrial Release and Diversion: Pretrial Diversion, Washington, DC, 1978, Standard 1.2, p. 36.

23/ Ibid., Standard 1.1, p. 27.

24/ Where screening functions are simultaneous, it is more likely that the defendant will view the likelihood of release increased by his or her willingness to participate in a diversion program. The voluntariness of acceptance of a diversion agreement may thereby be compromised, a possibility which may be more likely at the release screening stage when assistance of counsel is not generally available.

25/ Some pretrial programs, such as the San Mateo OR Project, are responsible for jail classification as part of the booking process. Jail citation release, ROR and supervised release are viewed as forms of classification.

26/ NAPSA Release Standards, X, p. 61, states, "Defendant's behavior while on pretrial release may be of substantial aid to the court in determining appropriate sentences after conviction. If a defendant has complied with conditions of release, the court may consider that compliance justification for probation rather than incarceration. In keeping with its policy on confidentiality the pretrial services agency should make information on the degree of compliance available to persons conducting presentence investigations, and may actually aid in the investigation itself."

27/ See Walter Busher, Jail Overcrowding: Identifying Causes and Planning for Solutions (Washington, DC: U.S. Department of Justice, Office of Assistance, Research and Statistics, February, 1983).

28/ NAPSA Release Standards, X, p. 59.

29/ D.C. Code 23-1303(h)(6) requires the DC Pretrial Services Agency to file monthly pretrial detention reports with the court.

30/ NAPSA Release Standards, X, p. 61.

31/ The Pretrial Reporter, Volume VII, No. 1, February, 1983, p. 16.

32/ Ibid.

Chapter 5

PROGRAM MANAGEMENT ISSUES

5.0 Introduction

In addition to the mechanics of program operations and procedures, pretrial release administrators address a number of critical management concerns, including staffing, training, fiscal responsibilities, public relations, management information system development, and the use of impact evaluations. This chapter discusses these issues.

5.1 Staffing

5.1.1 Staff Planning

The planning of staff levels, functions, and allocations is a complex process in which program administrators must consider budgetary constraints, workload, range of services offered, caseload fluctuations, court scheduling, and many other characteristics. Susan Weisberg's 1978 analysis of pretrial program costs presents a method of arriving at staffing requirements for a hypothetical pretrial services agency. 1/

Weisberg's hypothetical program assumes a largely urban county of 300,000 people with an annual arrest rate of some 11,400. The program is assumed: 1) to favor maximum use of alternatives to detention consistent with a low failure-to-appear rate; 2) to endorse release on recognizance, conditional release, and referrals to specialized treatment agencies; and 3) to make such referrals to services only after release has been secured on ROR or conditions. Further, it is assumed that surety bail does not exist in the jurisdiction, but that percentage deposit bail as well as field and stationhouse citations are used.

In the model, case flow volume from arrest through various points of intervention to supervision and follow-up is projected to arrive at an estimated number of line, supervisory, administrative, and clerical support staff. Weisberg concludes that the agency would need 13 line staff, 3 supervisors, 1 director, 1 deputy director, and 6 support staff, for a total of 24 staff persons. 2/ She cautions that this estimate may appear high to some agencies, but that it includes labor that could be derived from part-time staff, volunteers, student interns, and staff paid by sources other than the agency budget. 3/

One other model estimate of staffing requirements suggests a ratio of 4.6 staff persons per 1,000 bookings per year. This model also assumes some consolidation of the functions of pretrial release,

diversion, probation, and counseling services. But it is estimated that the release services function alone would require at least three staffers per 1,000 bookings. 4/ This staffing estimate appears roughly comparable to the Weisberg model. 5/

5.1.2 Staffing Patterns

Once staff organization and levels have been determined, the pretrial program must find the personnel to provide the services within the budget. The core of the staff will most likely comprise full-time personnel to cover peak periods. Permanent clerical personnel will be required as well in almost all programs. In addition, some programs use para-professionals, consulting staff such as psychologists and employment specialists, and may also employ ex-offenders in counseling roles. For instance, the Cobb County, GA, program utilizes a psychologist on a part-time basis to provide counseling to voluntary participants.

5.1.3 Temporary Personnel

Pretrial agencies have also attempted to supplement their staff with temporary personnel such as student interns and volunteers. Many release programs begin by drawing on volunteers within their communities, following the example set by the Manhattan Bail Project. The general practice is to draw students from universities and law schools in the area to do the pretrial screening, notification, monitoring, and supervision. The use of volunteers has decreased as program administrators have encountered difficulty in program planning on a long-range basis. However, programs such as the Berkeley, CA, OR Project continue to base their services on volunteer staff. The Monroe County, NY, program also uses a large number of community volunteers with good results.

While the use of volunteers appears to have decreased in release agencies across the country, the use of student interns seems to be increasing. 6/ "Intern" may be defined as any student working for at least one academic term and receiving a grade and/or stipend of some sort for work done at the end of the term. Since the stipend amount is usually quite low, the administrator is able to fill a number of positions relatively inexpensively with students for an agreed upon period of time. Federal legislation authorizing the D.C. Pretrial Services Agency recognized the value of student input by suggesting that agency staff persons be drawn from "law school students, graduate students, and other available sources as may be approved by the Executive Committee." 7/ Kentucky's system of pretrial release officers relies heavily on student interns. Officials there claim that the use of interns, as opposed to full-time paid staff, has resulted in substantial budgetary savings while providing beneficial experience for participating students.

The use of temporary personnel has certain drawbacks, however, such as high turnover, scheduling problems, and constant training needs. The more rapid the staff turnover, the more time that must be spent on recruiting and training. This can adversely affect the efficiency of any program.

5.1.4 Permanent Staff

Pretrial release agencies in most urban areas of the United States currently employ predominantly full-time professional staff. Full-time staff, with a lower rate of turnover, lend continuity and stability to a program. It is essential that administrative and supervisory positions be filled with full-time professional staff.

Release staff functions generally fall into three categories: administrative, investigative, and post-release. The size of the administrative staff within a pretrial release agency obviously varies, depending on the size of the jurisdiction and defendant population. The functions assigned to the administrative staff minimally include supervision of all the staff, budget preparation, research, preparation of necessary reports, and ensuring that the goals of the agency are clear to the staff and are accomplished. The investigative staff's primary duty is to interview all those defendants eligible for pretrial release screening, verify the information obtained, and, in some jurisdictions, present that information in court. The functions assigned to post-release staff vary, again depending upon the size of the release agency. The functions might include monitoring of conditional release cases, notifying those defendants on pretrial release, providing social services to defendants in need, case tracking, and apprehension/arrest.

Different organizational models are used to achieve these diverse functions. Some programs use separate divisions, with each providing a particular service or sequence of services within the administrative, investigative, and post-release categories. Others appear to use a more centralized model which emphasizes the performance of similar task categories--for example, administration, screening, and post-release follow-up--by the same personnel for the range of services offered under the program. Staff size and administrative style are major determinants of staff organization along the continuum between the decentralized and centralized approaches. Very small programs may employ one or two people to handle all functions within one area, and tend to favor more basic functional designs, if only due to the practical impossibility of decentralized structure. 8/

Obviously, the range of possibilities is great as pretrial release agency staffing patterns and organizational models demonstrate. In urban areas the most effective staffing seems to be full-time, professional staff complemented by student interns. In rural areas, on the other hand, the pretrial release functions are in many

instances carried out by existing system actors such as probation officers or court clerks, or by a pretrial officer serving several jurisdictions, as in Kentucky.

However, in determining staffing patterns, agencies must be aware that low salary levels may make it difficult to attract and hold quality people. Furthermore, long hours, late shifts, difficult working conditions, and the routinized nature of much of the work may generate dissatisfaction in many employees and may produce a deterioration in operational effectiveness. Some programs have tried to address these problems of routinization and adverse working factors by instituting staff rotation or an individualized case assignment system instead of "assembly-line" processing by people permanently assigned to the same task. In Washington, DC, for example, pretrial service officers rotate among supervision, failure-to-appear, interview and verification, and court work units. Rotational staffing allows staff to move from one job to another within the agency, thus varying shifts and conditions, and provides a less routinized work experience, with greater exposure to, and a better understanding of, the entire pretrial process.

5.2 Training

Since the inception of pretrial release programs as formal entities, training in all aspects of pretrial services has been identified as a high priority by program administrators. 9/ In the evolution from pilot project to formal system entity, in some instances involving changes in program goals, programs have needed to assure the availability of adequate educational tools to carry out successful staff transitions. In addition, pretrial program staff turnover is often high, and new staff are quite often unfamiliar with the field. In response to these needs, NAPSA has sponsored regular conferences and training sessions since 1973, designed to respond to specific training needs identified by pretrial program administrators. From 1977 to 1982, the Pretrial Services Resource Center received federal monies to provide national and regional training exercises for staff and administrators of pretrial programs. 10/ Both efforts (usually held concurrently) have attempted to provide three distinct training foci: line staff "mechanics," such as interviewing techniques, defendant supervision procedures, and improved report layouts; basic management training; and discussion and/or debate on issues of national concern, such as preventive detention.

The 1975 National Conference included introduction and discussion of two training packages covering communication skills and management theory for pretrial release personnel which were developed as part of a court improvement training grant given to the National Center for State Courts. These two packages, available from the Pretrial Services Resource Center, are self-contained sets of learning materials which include videotape, articles, discussion topics, and field exercises. They are based on the premises that:

- Pretrial service programs differ widely with respect to fundamental objectives, target population, size, scope of effort, level of development, organizational context, and political support.

- Every training program must be sensitive to the unique needs and expectations of the target audience and, therefore, some modification of the packaged curriculum may be necessary.

- Benefits would result from training in a variety of substantive areas. However, a number of areas, such as program administration and coordination with other criminal justice agencies, have been identified as having high priority training needs.

- Few programs have the in-house capability of delivering a wide variety of extensive training workshops. Packages such as these could assist in filling the gaps. 11/

At the same time, individual agencies have been developing their own training techniques and programs. While techniques may be dictated by unique circumstances, certain basic areas have been covered by most urban programs. These include a discussion of the history, philosophy, and legal authority for the program; agency policy and procedures; interviewing techniques; 12/ verification techniques; report preparation; orientation to the operation of the local criminal justice system; and key terms, both legal and "jargon," that the new employee must be familiar with. Some programs have prepared manuals to help in the training, 13/ while others tend to emphasize "on-the-job" training. Some publish newsletters to disseminate developments in technique and program operation. 14/

Probably the most formalized training system for pretrial release programs is the one developed by the D.C. Pretrial Services Agency under the direction of a full-time training officer. The program provides an initial two-week orientation for new employees, as well as formalized continuing education or in-service training for the staff on a monthly basis. In-service education is provided using role playing (e.g., mock interviewing), skits (e.g., mock bail hearings), and lectures.

Employee evaluation is also a part of the D.C. training program. In carrying out this function, the training officer makes use of a formal system for assessing a staff member's ability to qualify for a higher grade and appropriate salary increase. The training officer and the employee's supervisor determine whether the employee has the appropriate written, oral, or technical skills required for the new position. 15/

Other programs employ a variety of training techniques and assessments. The Des Moines Community Corrections Program uses rotational orientation. Each new employee is assigned for a short time to each component of the program to meet its staff, learn its procedures, and understand its problems. The Baltimore City Pretrial Services Division requires new staff to complete a six-week training course followed by a six-week "apprenticeship" before taking on full responsibilities.

The Philadelphia Pretrial Services Division takes a unique approach to orientation. All professional staff are required to begin in the most menial position--file clerk. As they demonstrate proficiency they may move up to positions of greater responsibility. This procedure, it is believed, gives supervisors and middle management staff a better grounding in the operations of the whole system and a better understanding of the problems facing lower-echelon personnel.

Finally, at least three states have regular training sessions for pretrial services staff--Connecticut, Iowa, and Kentucky. In Iowa, pretrial services are provided under the auspices of the State Community Corrections Act, and segments of the state correctional association conferences are dedicated to improved pretrial services delivery. In Connecticut and Kentucky, a small central administrative staff is responsible for training of officers or bail commissioners throughout the state. This centralized training function ensures that effective training occurs for less cost than would be feasible for the many individual offices in the state.

5.3 Fiscal Responsibilities

Most pretrial agencies currently receive the majority of their funding from a single local funding source--usually a county or municipal government. 16/ At the same time, these agencies are usually answerable to the local courts, either directly or through a probation department, for their budget. 17/ When this is the case, the pretrial program administrator's fiscal responsibilities are usually explicit, and follow guidelines established for other governmental agencies within the jurisdiction. These responsibilities often include preparing annual budget proposals, detailing justifications for proposed increases as they may become necessary, and responding to audits by the local budget office.

For programs with multiple funding sources, including grants, contracts, and endowments, fiscal responsibilities are often expanded, usually including regular (often quarterly) fiscal reports to the funding sources identifying funds expended and remaining to date, and the purpose(s) of the expenditures. In some instances funding sources may also require that the program submit to an audit by an independent auditor selected or approved by the funding source.

In short, the size 18/ and organizational focus of most pretrial agencies dictate that most of the time spent on fiscal matters is devoted to budget preparation and monthly review of expenditures to ensure that current budget allowances are not exceeded. 19/

5.4 Public Relations

An important first step in public relations for pretrial agencies involves the identification of potential local supporters, e.g., the Bar Association, League of Women Voters, Jaycees, Legal Aid Office, and the criminal justice agencies such as the Sheriff's Department. 20/

At the same time, agencies often prepare materials such as brochures or pamphlets, which describe program goals and operations and how they benefit the public. These materials are made available to three audiences: 1) agencies within the local criminal justice system (e.g., police, courts, and corrections); 2) the local community (e.g., schools which have criminal justice departments, League of Women Voters, business clubs, community and service organizations); and 3) legislators, particularly county officials.

In addition, programs can provide representatives for panels, seminars, speeches, and meetings with school, church, and civil groups. An example of such activity is found in the Cobb County, GA, Pretrial Court Services Program, which coordinates "Consequences of Crime," a project aimed at familiarizing school children in the county with the operation of the criminal justice system.

The manner in which the program administrator deals with the local press can be a key element in developing an effective public relations effort (and possibly in the survival of the program itself). While many administrators suggest that programs should not make contact with the press except when absolutely necessary, 21/ others feel such an approach leads to serious communication problems in the event of a negative incident, such as the rearrest of a pretrial releasee for a heinous crime. 22/ Whichever approach is adopted by an agency head, he or she should, at a minimum, ensure that positive results of agency activity (awards, jail population decreases, judicial recognition) are reported in the press, and that a plan is developed to ensure that, in the event of a negative incident resulting from agency actions, the press will be handled with courtesy and in a responsible manner by designated agency representatives.

In summary, programs should develop a public relations program that is "well planned sufficiently in advance and includes a broad variety of actors within the system." 23/ They must:

- explain the cost effectiveness of release versus detention in clear and simple terms;

- seek support at the grassroots level;
- create a positive working relationship with the local judiciary;
- contact, and develop relationships with, local media representatives;
- provide local legislators with sound proposals in advance of budget decisions; and
- understand the local legislative process and begin to work with the appropriate committees that will make decisions affecting the program. 24/

5.5 Management Information Systems

A management information system (MIS) is a data collection system designed to furnish pretrial policymakers with information to assess the effectiveness of their programs and, in many cases, of the pretrial process in general. 25/

An MIS can be used to collect and organize data and thereby provide continual feedback for informed decision-making. It can be used to assist the release agency in making decisions about case flow and personnel deployment, assessing the impact of release practices, and detecting strengths, weaknesses, or need for change in the functioning of the agency. The following sections describe issues which should be considered in creating an MIS for a pretrial release agency, including its value and potential implementation difficulties. 25/

5.5.1 Uses of an MIS

Though rudimentary, maintenance of project records may nonetheless be the most important function of an MIS. Project records are the starting point of the system, since they are the source of data which are used for statistical description and report purposes. The record for each defendant must be accurate, easily coded, retrievable, and must provide all necessary information.

An MIS allows an administrator to identify difficulties within an organization by examining periodic statistics and reports. For example, if release rates are decreasing, an MIS should point to the reasons for the change, such as an increased use of money bail by particular judges, or staff recommending a lower percentage of defendants for release.

As with the New York City, NY, Washington, DC, and Rochester, NY, systems, program administrators can communicate summary types of information in report form on a regular or periodic basis to staff

members and outside decision-makers such as criminal justice planners, judges, or legislators. An MIS can also be a very important aid in preparing an impact evaluation (see Section 5.6). For example, it can compare the impact of different types of pretrial release on FTA rates.

5.5.2 Planning an MIS

Careful planning for the implementation of an MIS is imperative. Without first defining precise information requirements, systems may be implemented which compile excessive data at high cost to an agency, but which still leave essential questions unanswered.

In designing an MIS it is very important to first assess the extent to which information can be accessed in a form and format responsive to the diverse needs of a program. The planning process discussed below includes: 1) defining questions to be examined; 2) describing data to be collected, and in what format; 3) creating data forms; 4) creating effective reports; 5) staff involvement; and 6) developing manual or automated systems of processing the data.

5.5.2.1 Questions

The questions to be examined, often called problem statements, define the key topics for which information must be gathered. Problem statements may include a variety of topical areas such as substantive questions, management questions, background information, housekeeping information, and disposition information.

Substantive questions refer to key processes of the agency, e.g., release, detention, failure-to-appear, and rearrest rates. Many agencies prepare a report of the total number of defendants in the system, number interviewed by the agency, number verified, number recommended, and type of release.

Management questions relate to data such as the recommendation rates of individual staff members, changes in characteristics of defendants, and profiles of defendants who fail to appear for court dates.

Background information includes defendant characteristics like community ties, charge, prior record, sex, and point scale score, if applicable.

Housekeeping information includes defendant's name, address, phone number, and court dates. Although housekeeping information will not be tabulated, it is needed in contacts with the defendant (e.g., notification, services, check-in).

Disposition information is broadly construed to include any decision involving the court, such as form of release, court appearances, and findings of adjudication and sentencing.

5.5.2.2 Data Collection

Although an MIS can be designed to include a great deal of information, limited staff time for data gathering requires selection of the most important issues. The MIS should include only those items which have an identifiable purpose and do not exceed the agency's fiscal capacity.

Decisions concerning what data to collect and how those data should be described should be made early in the planning process. At a minimum, **an agency administrator should collect data on defendant characteristics, program actions, and process outcomes** so that questions concerning agency operations and the agency's effect on the criminal justice system can be answered. Defendant characteristics might include age, sex, race, charge, prior record, and community ties (however defined in the local jurisdiction). Process outcomes might include bail amount set, whether the defendant was released, the method of release, changes in bail amount, failure-to-appear, rearrest, and disposition information.

In addition, more general forms of process information might be included--the number of defendants arrested, the number securing release before agency intervention (through citation, bail schedules, etc.), and the time periods between criminal justice process points (arrest, first appearance, release, disposition). Program action data elements might include number of defendants interviewed, number recommended, type of recommendations made, interviewer, extent of notification, and amount of supervision (if any). It is also important for an agency to keep information on the reasons why it does not take certain actions, for example, the reasons why defendants are not interviewed, are not eligible for ROR recommendation, or do not receive an agency recommendation for pretrial release. This type of information can assist an agency administrator in determining what type of agency operational changes can have the most impact on the detained population.

5.5.2.3 Data Forms

The information must then be transferred onto a data-gathering form. The decisions which guide how the information will be transferred must be specified in precise detail before the process begins. For example, if information is gathered on current charge or charges, a decision will have to be made on how to summarize the data, since it would be too difficult to tabulate in handwritten form. Charges have to be defined (e.g., transcribing only the most serious charge if multiple charges are present), along with a numerical designation (e.g., 1 first degree murder, 5 armed robbery, etc.). This is often a difficult process, since the information must be **exhaustive** (every possible charge must be included), **exclusive** (every possible charge must fit into only one category), and **scaled** (the charges have to be listed from most serious to least serious).

Data-gathering forms must be designed to accommodate this information. An effective form will produce more accurate information at less cost. For example, a form requiring extensive handwritten entries will provide less accurate data than one involving checked items. In short, data forms for MIS should be designed to allow quick compilation of information so that answers can be provided to key questions.

A number of procedures can be used in creating more effective forms: 27/

- The forms must be simple to understand, easy to fill out, and use check marks rather than written comments wherever possible.
- The form should be 8-1/2" x 11" in size for economy and ease of storage.
- The case number chosen from court records should be in a readily visible location.
- The number of the form and the date of issuance should be indicated in small type at the bottom of the form.
- The title which defines the purpose of the form should be at the top of the sheet.
- The information should be in a logical sequence, such as chronological order.
- Instructions should appear either on the back of the form or on a separate sheet.
- Sufficient space should be allocated to enter the information onto the form. Boxes should be used whenever possible and forms should be designed so that they can be easily coded for computer entry, manual reporting, or keypunching.
- Information should be entered in a format that can be photocopied.
- Although only a single form should be used for each defendant, it should be divided into distinct parts and pages for easy identification.

5.5.2.4 Reports

The reports from an MIS may be valuable, but are often not effectively used. A typical report may be overloaded with raw information and seemingly unrelated statistics. The following suggestions may make for more effective use of report forms:

- Reports intended for external audiences such as judges and decision-makers should be concise, contain a minimum of statistics, and be easily assimilated by a lay audience.

- A standard reporting format should be used during each reporting period.

- A short explanation should be made of the key findings.

- Pictorial representations should be used to supplement raw numerical scores. Bar graphs, pie charts, and graphic techniques are effective ways of communicating key results.

- The information in a report should be in a comparative context so that its meaning is more evident to the casual reader. The figures can be compared to the goals of an agency (e.g., keep FTA rate below 10 percent), to prior reporting periods (earlier quarters), or to some other process (did FTA rates increase when the release rate increased?). The comparison to earlier periods (called "trend study") is essential in understanding the data from an MIS.

- Overly short reporting periods may cause readers to lose interest. Quarterly and annual reports are best for decision-makers, while monthly reports are valuable for the staff.

- A distinctive format should be employed so that the report is a recognized agency product. The annual, quarterly, or monthly report may be put into a standard folder that makes the agency's product easily identifiable, but is not expensive to create. Variations in color, logo, and size may be used to create distinctive and attractive report covers.

- The agency should report both successes and problems by referring to objective information rather than subjective impressions.

5.5.2.5 Staff Involvement

Involvement of staff is essential to the creation of an effective MIS. Staff participation can inform the administrator of information required for the staff's client activities. Program staff can provide effective feedback by reacting to the utility, reliability, and accuracy of the information. Every effort should be made to assist the staff in understanding both the value and mechanics of the MIS through office meetings, seminars, visits to other agencies, and reading material.

5.5.2.6 Manual and Automated Collection

An MIS can be used to collect and organize data on pretrial operations either in a manual or an automated form. Manual systems such as the Rochester, NY, MIS can be designed to provide data for program description and monitoring. The decision to advance to an automated system is generally based on a desire for an increased ability to evaluate system performance and to use the automated system in daily operations (i.e., generating reports, notification letters, etc.).

In order to determine whether or not an automated system is appropriate, it is important to understand how well the current system is working, assuming that a manual system is already in place. If the current manual system is not providing the pretrial policy-maker with the information that he or she needs, or if the information is not accurate, the current system may only need adjusting, or the problem may be resolved through training. Two other considerations in deciding whether to use an automated system are the number of defendants processed through the system and the budget necessary to maintain an automated system. It is important to remember, however, that in many jurisdictions a poor manual system has led to the implementation of a poor automated system.

To conclude these sections on management information systems, a series of miscellaneous planning issues that are important in creating an MIS should be noted:

- A consultant may be used for the more technical aspects like developing computer formats, designing forms, and describing information. However, determining the utility and functional aspects of the system (pre-testing the forms, designing the report format) should be done by the agency and its staff.

- In creating the system, the consequences of every problem statement, form, and report mechanism should be thoroughly discussed by the agency staff. It is costly and disruptive to redesign a system. However, the system should be flexible, so that it can easily respond to changes in the courts, law, and agency procedures.

- Federal and state confidentiality laws are apt to limit the gathering and dissemination of certain types of data. Specialized publications provided by the Law Enforcement Assistance Administration describe federal legislation. 28/

- There should also be an understanding of how the system will be implemented. A formal schedule should be created along with a milestone chart indicating the implementation phase

and various responsibilities. The system can also be modularized so that the less disruptive aspects can be implemented first.

5.6 The Use of Impact Evaluations

While management information systems are data collection devices which summarize information and present descriptive analyses of a program or system, impact evaluations are designed to test certain research questions concerning the effect agency operations are having on specific aspects of the criminal justice system such as the jail population or the release rate in a jurisdiction.

Reliable answers to such questions can only be obtained through carefully designed research. If proper care is not taken from the earliest design period to assure that accurate data are collected, research questions are well thought out, appropriate analyses are undertaken, and findings are well documented, the end result may be criticized for poor execution. Such problems have been highlighted in many reviews of the literature on evaluations.

According to Kirby, impact evaluations have the following useful applications:

- Evaluation is often required when funding decisions are made about programs.
- Research validating innovations and new practices in the criminal justice system is a prerequisite to the dissemination of information on those innovations and the assurance of their long-term existence.
- A pretrial agency can be "crippled" when a sensational event involving one of its clients is publicized. Using research which demonstrates a positive impact on clients and community is one way to overcome this problem.
- If an agency is not operating up to expectations or if the quality of operations is limited, then evaluation can be a useful diagnostic tool.
- Research allows the program to make more sophisticated and informed program decisions.
- Specialized research can be used to examine the impact that pretrial programs have or can have on more serious offenders. 29/

Disadvantages of research evaluations have also been documented, but these can generally be traced to poor design and execution. Kirby (1979) noted these problems to be avoided: allowing the evaluation to address the wrong questions, completing an evaluation after a decision has been made, inadequately communicating evaluation findings, and overuse of relatively weak findings. 30/

Even though evaluations can sometimes be expensive (and are sometimes misused), they are a valuable instrument in management and decision-making. Gaining knowledge about the probable effectiveness of a program, or specific procedures used by that program, is crucial to attaining desired goals and assessing impact.

Many release program questions lend themselves to evaluation. A pretrial release program may want to experiment with different cut-off scores, test different notification procedures, experiment with and assess the effect of interviewing and/or recommending previously excluded defendants for release, or experiment with different levels of supervision to determine which may be appropriate for certain types of defendants. Such experimental designs can address the goals of the agency through the effect on release rates, the effect on failure-to-appear rates and/or pretrial rearrest rates, the impact on judicial acceptance of program recommendations, the effect on the average daily jail population, and the effect of modifications on the equity of release practices in the jurisdiction.

The level of complexity or sophistication involved in careful research evaluations depends on the agency's needs, the research questions that demand answers, and the budget to carry out the task. Too often, evaluators use complex statistical analyses when other more easily understood methods will suffice. However, the answers to complex questions can sometimes only be derived through complex statistical techniques. In these instances, the evaluator should be encouraged to prepare a report which simplifies the research results into easily understood language that the program administrator and other system officials can interpret.

It is important also to stress the usefulness of full administrative involvement from the initial stage of any research project, so that administrators can participate in decisions that have to be made during the course of the evaluation.

FOOTNOTES

1/ Weisberg, op. cit., pp. 59-60.

2/ Ibid., p. 62.

3/ Ibid., p. 61.

4/ John J. Galvin et al., Instead of Jail: Pre- and Post-Trial Alternatives to Jail Incarceration (Sacramento, California: American Justice Institute, September, 1976), Vol. V, p. 39.

5/ Although it is possible to compare the Weisberg model with the staffing levels of the 21 agencies surveyed by the Pretrial Services Resource Center in early 1983 only in the roughest terms, it is clear that virtually all comparable programs fall far below the model's ideal ratio of approximately 2.4 staff persons per 1,000 interviews. Most would find it necessary to double or even triple their existing staff size to attain such levels.

6/ The 1980/1981 Directory of Pretrial Services and TASC of the Pretrial Services Resource Center lists 33 release programs (including the statewide system in Kentucky) that use interns.

7/ See D.C. Code 23-1306 (1970).

8/ See generally Friesen, Gallas, and Gallas, Managing the Courts (Indianapolis: Bobbs-Merrill Co., 1971) for an excellent discussion of management issues peculiar to the justice system. The National Association of Pretrial Services Agencies (NAPSA) and the Pretrial Services Resource Center have both focused on staff evaluations at their conferences and training sessions since 1975. In 1974 NAPSA, together with the National Center for State Courts, sponsored a Pretrial and Diversion Services Management Training Institute to attempt to provide pretrial administrators with some basic management information and training, much of which was focused on staff interaction and evaluation.

9/ Stover and Martin, op. cit.

10/ See Proceedings publications for 1977-1982 National Conferences on Pretrial Services, sponsored by the Pretrial Services Resource Center with funding from the Law Enforcement Assistance Administration. Annual proceedings available from the Pretrial Services Resource Center.

11/ NAPSA, NCSC, and ABA National Pretrial Intervention Service Center, Final Report: 1975 National Conference on Pretrial Release and Diversion, October, 1975, p. 2.

12/ Many programs have employed the Interviewing Techniques Packet, developed by Murray and Youngs, under contract with NAPSA. The packet is currently available from the Pretrial Services Resource Center.

13/ An excellent example of a training manual for release agencies is that prepared for the Des Moines, IA, release program.

14/ The D.C. Pretrial Services Agency provides procedural information in its official newsletter, The Advocate, and holds agency personnel responsible for this information in its certification examination.

15/ D.C. Pretrial Services Agency Policy Statement (Washington, DC: D.C. Pretrial Services Agency, January, 1980), p. III-6.

16/ Program Practices/Release, pp. 21-22. The program sample used for this review indicated a similar proportion recommending bail and/or bail amounts.

17/ Ibid., pp. 12-13.

18/ In the survey cited above, Pryor found that 75 percent of all programs contacted had budgets under $200,000 annually, with slightly more than half having budgets less than $100,000.

19/ For an in-depth analysis of cost analysis questions involving pretrial release programs, including a sample budget for an urban pretrial program, see Susan Weisberg, op. cit.

20/ As the entity usually targeted for suits raised because of jail crowding, sheriffs and jailers are often anxious to support programs that may contribute to a jail population reduction. In addition, the sheriff and his or her staff may be able to cite clear examples of unnecessary pretrial detention.

21/ Most program administrators surveyed by Pretrial Services Resource Center staff in early 1983 responded to questions on local press relations by indicating that they endeavored to maintain a "low profile" in the media.

22/ Merrill Joan Grumer, "The News Media: Will it Help or Hurt?", Final Report: National Conference on Pretrial Release and Diversion (September, 1976), pp. 45-46.

23/ William Barker and Arthur Spears, "Lobbying, Using the Media and Developing Community Support," Proceedings of the National Symposium on Pretrial Services, 1978 (Washington, DC: Pretrial Services Resource Center, 1978), p. 36.

24/ Ibid.

25/ For a listing of the types of data collected by pretrial release programs, see the National Center for State Courts, An Evaluation of Policy Related Research on the Effectiveness of Pretrial Release Programs (October, 1975), pp. 91-100, and NAPSA Release Standards, XIII, pp. 71-73.

26/ See also Jan Gayton, Management Information for Pretrial Release Programs: A Working Paper (Denver, CO: National Center for State Courts, 1975).

27/ Paul Verento and Edwin Zimmy, Jr., "Manual Case Processing: A Model System," State Court Journal, National Center for State Courts, Vol. II, 1 (Winter 1978).

28/ Confidentiality of Research and Statistical Data (Washington, DC: Law Enforcement Assistance Administration, 1978); Monitoring for Criminal Justice Planning Agencies (Washington, DC: National Institute of Law Enforcement and Criminal Justice, 1975).

29/ Michael Kirby, Management 1: "The Role of the Administrator in Evaluation" (Washington, DC: Pretrial Services Resource Center, February, 1979), pp. 6-7.

30/ Ibid., p. 8.

Chapter 6

FUTURE ISSUES

6.0 Introduction

As a result of the survey undertaken in preparation for this document, several topics were identified as emerging issues in the pretrial field. The widespread problem of jail crowding appears to have brought four of these topics to prominence. Specifically, expanded agency release authority, early identification of arrestees in need of special services, the development of central intake mechanisms, and the establishment of accreditation procedures are viewed by practitioners as potentially effective measures in dealing with crowded jail conditions. The desire for greater operational efficiency and reduced expenditures also accounts for much of the interest in these practices. Increasing concern for community protection and the plight of the crime victim brings victim assistance and the consideration of danger in release decisions into sharper focus as important issues for pretrial administrators in the 1980s. Also, interest in achieving greater equity in release outcomes brings the "bail guidelines" approach to the forefront.

6.1 Identification of Special Needs

For several years, advocates of alternatives to jailing for public inebriate and DWI defendants, drug abusers, and the mentally disabled have pointed to the critical need for early identification and services outside the jail setting for arrestees with such problems. The statistics are impressive. Public intoxication is the single most common offense for which American adults are arrested each year, accounting for approximately 16 percent of all arrests. 1/ DWI arrests run a close second. 2/ High numbers of those otherwise arrested have substance abuse problems or were under the influence of drugs or alcohol when the crime was committed. 3/ Moreover, several large jurisdictions have reported percentages of severely mentally disabled ranging from 10 to 30 percent of their total jail populations. 4/

Further, the number of those in need of specialized services appears to be growing. DWI arrests and jailings are increasing during the current crackdown on intoxicated drivers. The phenomenon of deinstitutionalization of mental hospitals during the 1970s, coupled with a lack of transitional support and/or outpatient services, is credited for the influx of mentally ill and retarded in the jails. 5/

Judges are often perplexed in dealing with such cases, having little or no information and no alternatives other than ROR or money bail. However, courts are beginning to recognize the potential of release programs in obtaining needed information and developing release

options for "special needs" defendants. Recognizing the problems facing the courts, NAPSA Release Standards specifically call for consideration of the defendant's physical and mental condition, including abuse of drugs or alcohol, in the release decision process 6/ (NDAA Standards also suggest the defendant's mental condition be taken into account. 7/)

In addition, NAPSA Standard X-B(1) recommends that release agencies should "...provide other services not directly related to the release decision but which are appropriate to its role, its access to information, and its relationship to defendants." 8/ The Association recognizes that such activities as maintaining referral agency listings for alcohol or drug abuse treatment and psychiatric counseling, and establishing relationships with such agencies, can aid pretrial programs in enhancing their credibility with judges and other system actors. 9/

Among programs surveyed by the Pretrial Services Resource Center in early 1983, several identify those with special needs and develop conditional release techniques. Multnomah County, OR, uses a specially trained staff person to screen mentally ill defendants and has obtained limited authority to place mental health holds on persons in custody so that a counselor can identify options that may be appropriate. For those who can be released to the community, the program acts to establish third-party custody agreements with agencies to assist the defendant. In Cobb County, GA, staff screening for mental health problems can result in a referral for evaluation by a consulting psychiatrist. The Cobb County program also provides the court with specific recommendations on treatment alternatives for those identified as mentally ill.

In the area of drug and alcohol abuse, the Delaware Office of Pretrial Services and the Maricopa County, AZ, program are connected with special substance abuse screening and treatment programs for such special needs defendants. In Maricopa County, diversion services are offered through the well-known Treatment Alternatives to Street Crime (TASC) program model. Other alternatives to jail for public inebriates exist throughout the country, including detoxification centers, post-detoxification treatment programs, night shelter programs, and halfway houses for rehabilitated alcoholics.

Although such programs exist in many locales, major obstacles continue to stand in the way of effective intervention:

- Local treatment facilities and funding sources are often lacking.
- Communication and cooperation between professional service providers and criminal justice agencies is often limited.

- Custodial practices may conflict with expanding rights to treatment, especially in the area of mental health care.
- For substance abusers, the problem is difficult to recognize if the charge does not involve alcohol or drugs.
- Poor training poses a serious problem in identifying mental disability as well. 10/

The worsening epidemic of jail crowding may force many criminal justice systems to tackle these and other obstacles to special needs intervention. Professionals in alcohol and drug abuse treatment and mental health care have recognized that pretrial services programs may be key to early identification and appropriate referral. 11/ Moreover, those inside local criminal justice systems may also recognize the potential of release programs in relieving jail crowding through special needs screening. If the view should gain currency that jail is the wrong place for the mentally disabled and chronic substance abusers, pretrial programs stand to be called upon with increasing urgency as the most appropriate agencies to lead the way toward new policies and practices.

6.2 Delegation of Release Authority

Efforts to identify and decrease unnecessary incarceration have led an increasing number of jurisdictions to test alternatives to arrest and detention. For instance, the practice of citation release by law enforcement agencies, begun in the mid-1960s by the Manhattan Summons Project, has now spread across the country. As a natural expansion of that successful experiment, pretrial release of defendants without direct judicial involvement has been tested by a number of release agencies. Defendants arrested on a Friday night must often spend three or more nights in detention before being considered for release by a first appearance judge. Similarly, mid-day arrestees often must remain incarcerated overnight because initial appearances are held only in the mornings. To streamline the process and reduce defendant time in custody, courts may place some release decisions in the hands of release programs.

Moreover, as litigation focuses more directly on issues relating to jail crowding remedies, courts are likely to define the right to prompt presentment in terms of a specified number of hours. Two recent California decisions, one issued by the Ninth Circuit of the U.S. Court of Appeals, dealt directly with this question. 12/ Compliance with such mandates may be difficult if not impossible for many court systems, prompting more to turn to the option of delegating release authority or expanding the range of charges dealt with through existing release authority procedures.

One of the first pretrial programs to have been delegated release authority was Marion County, IN, which began to release qualified misdemeanant defendants in 1970. Though it would be difficult to demonstrate a trend toward the practice, 24.4 percent of programs surveyed by Pryor in 1980 reported they could release at least some defendants prior to initial court appearance without judicial approval. 13/

Most courts have limited this practice to less serious offenses, primarily misdemeanor charges. However, some degree of felony release authority is now delegated to many programs, including those in Marion County and Allen County, IN, and King County, WA. (See Appendix A for a description of King County's Felony Administrative Recognizance Release Program.) In Oregon, the Lane and Marion County court systems require that release decisions be made by a judge only in capital cases (murder and treason). Release programs in both counties have had release authority for several years and report high release rates, low failure-to-appear rates, and substantial cost savings in jail and court operations. 14/

The experience of these and other jurisdictions, coupled with heightened judicial interest in expediting court processes and eliminating or reducing defendant detention time, may lead to an increase in the number of jurisdictions adopting delegated release policies.

6.3 Central Intake

One mechanism that has been implemented to facilitate the orderly management of cases through the criminal justice system is a central intake system. Though a variety of central intake mechanisms exist, their basic function is to gather socio-demographic information about individual defendants, verify that information, and distribute it in an orderly manner to actors in the local criminal justice system. The purpose is to establish a central repository of information and to reduce the redundant collection of information that characterizes most local systems. This ensures that system decisions can be made as quickly and as efficiently as possible to minimize needless detention time and the inefficient expenditure of scarce resources.

The issue of confidentiality appears to be the major roadblock in the development of central intake systems. However, in jurisdictions in which a pretrial release agency has evolved into a central intake system and expanded its data gathering to include information necessary for such functions as indigency screening, jail classification, and diversion screening, the issue of confidentiality has generally been resolved in one of two ways: 1) each criminal justice agency has had limited access to the central information bank; or 2) information unique to the decision-making requirements of a particular criminal justice agency has remained a function of that agency, with other case processing data supplied by the central intake system.

Pretrial release programs have traditionally established their credibility with defendants by confining the information gathered through interviews to that necessary for the judicial officer setting release conditions. However, this left prosecutors, public defenders and jail administrators to re-interview the defendant and compile the information relevant to their needs. A well designed central intake system eliminates this redundant information-gathering by reducing initial defendant interviews to one comprehensive review, and then providing the relevant information to all criminal justice system actors.

Given the emphasis on and need for efficient case processing in jurisdictions with crowded or near-crowded jails, pretrial release programs are being asked to expand their scope of activity and provide information to all parts of the system. This movement reflects the overall shift in program goals and objectives from reducing the impact on unconvicted defendants to system goals such as efficient case management and jail population reduction.

6.4 Consideration of Danger

Concern over "bail crime" and pretrial rearrest rates has grown steadily over the last 10 to 15 years, as evidenced by the surge of state legislative activity relating to dangerousness and release laws. Of the 32 state measures that now allow dangerousness to be considered in pretrial release decisions, nearly all have been enacted in the past 10 years, with many occurring in the last two to three years. 15/

But the movement toward using bail laws to assure community safety has caused considerable debate; traditionally, the purpose of bail is limited to assuring the defendant's appearance in court. Opponents of the consideration of potential dangerousness argue that there is no way to accurately forecast criminal behavior, especially in the pretrial release process, and that even if such were possible the denial of bail would constitute punishment prior to adjudication, a contradiction of basic legal precepts. 16/

Although research efforts have attempted to identify predictors of future criminality, the results have attracted heavy criticism. As Foote has stated:

> The only errors which show up--and they are ones of which judges and parole boards are made painfully aware--[are] where a defendant given probation or parole turns out to be dangerous. The errors on the other side of the ledger--the cases of those sent to prison as bad risks but who in fact would not have proved to be bad risks--are never identified and therefore cannot be counted. But all experience with the scientific study of prediction

shows that this back side of the moon is where most of the errors will in fact occur. 17/

More recent statements by researchers in this area point out no substantial improvements in the prediction effort. 18/

Still, whether or not community safety is a statutorily authorized consideration in setting bail, safety concerns do exist in the bail decision. Judges regularly use danger criteria in setting bail. 19/ Further, the legislative trend and the day-to-day reality of danger-based release criteria have convinced many pretrial professionals that the consideration of potential danger to the community must be dealt with openly. NAPSA Standards further recommend that safety considerations be separated from those of court appearance, 20/ and that non-financial release conditions be considered for defendants who pose a threat to safety; 21/ this is in order to eliminate the use of high money bonds, which many have labelled sub rosa preventive detention.

Advocates of this bifurcated appearance/safety bail process believe that judges should have the opportunity to set conditions to control or change the behavior of defendants determined to constitute a safety risk. Open consideration of danger and the fitting of least restrictive conditions, just as with appearance risks, would ensure the defendant's presumptive right to release and provide an alternative to detention due to high money bond set under the guise of protecting against flight.

In July of 1980 the D.C. Pretrial Services Agency implemented a risk assessment/ recommendation procedure based on these principles. Under this approach:

- Defendants receive dual risk ratings: one for flight and the other for community safety.
- When a risk problem of either type is identified, a "solution" is developed to reduce the risk to an acceptable level (under certain conditions, a preventive detention hearing is recommended). 22/

Risk assessment is carried out through the use of an objective screening device. Figure 6.1 depicts the basic workings of this system. Defendants are rated first according to their risk of non-appearance, then for safety. Risk levels are identified and restrictive conditions are matched to specific risk problems for the development of recommendations to the court. Financial release conditions are not recommended in any instance. This system is now being reviewed by an independent evaluator to determine its effectiveness.

The Washington, DC, program's bifurcated recommendation system is linked directly to a preventive detention statute, consistent with NAPSA Standard VI. Detention before trial is one approach that is now being used by several states for the purpose of reducing pretrial rearrest rates. 23/ (Also, see Chapter 3 Section 3.1.6 for listing of other approaches.) Under such a procedure defendants may be ordered detained if the court determines that no restrictive release condition would reduce the risk of danger to an acceptable level. 24/ Again, proponents point to the common use of high money bond to effect detention without due process safeguards, asserting that this practice is illegal and that the only constitutionally sanctioned use of money bond is in guaranteeing appearance. 25/ Preventive detention statutes would, they suggest, actually reduce overall use of preventive detention while providing due process and fairness to the defendant. 26/ Opponents see such a statutory system as likely to operate in a discriminatory fashion and to result in the incarceration of many who would not commit crimes on release in order to detain the few who would. 27/

Consideration of dangerousness and preventive detention is perhaps the most hotly debated topic in the pretrial field and it is likely to remain so for the foreseeable future. Even though the impact of "danger" laws and pretrial detention mechanisms may be much less than either proponents or opponents expect, 28/ this area remains highly important for future research, particularly since it appears that interest in the Washington, DC, model is spreading in the pretrial services community.

6.5 Bail Guidelines

One of the more recent innovations in bail decision-making is the concept of bail guidelines. The idea of using guidelines for decisions concerning bail and pretrial release, similar to those which have been in use in sentencing and parole, is an effort to address the problem of wide variation in the treatment of similar cases. Bail guidelines are an attempt to structure judicial discretion--to control its abuse, to open it to public scrutiny, to improve the fairness of its impact, and to enhance its effectiveness. Developed in Philadelphia by Drs. John S. Goldkamp and Michael R. Gottfredson in collaboration with an advisory board of Philadelphia Municipal Court judges, bail guidelines are designed to provide judges with a tool which defines explicit criteria for bail decision-making while at the same time providing the flexibility necessary for individual decision-making.

The Philadelphia bail guidelines consist of a two-dimensional matrix or grid (see Figure 6.2). One dimension lists a 15-category charge severity index, the other a five-category scale of pretrial risk (based on points associated with responses to a questionnnaire completed by the local pretrial agency). Defendants are categorized

on each dimension and the intersection of the two dimensions provides a range of bail choices to "guide" judges in their decision-making. The bail decision was conceptualized as a two-stage process: whether or not to grant ROR; and, if not, what particular amount of cash bail to assign. 29/ Thus, the 75 cells in the matrix are further divided into three decision "zones": presumed ROR, either ROR or a range of cash bail, and presumed cash bail. The matrix is not expected to be appropriate for every individual bail decision. Departures from the guidelines are expected, but judges are asked to provide written reasons when their decisions fall outside the guideline range in a particular cell.

The findings concerning the development and implementation of bail guidelines in Philadelphia are documented in two reports. 30/ The results demonstrated that, while disparity among judges using the guidelines was considerably reduced, increasing the equity of bail decisions, the guideline system did not result in significant changes in levels of ROR, cash bail, and pretrial detention. Thus, the results show that the substantive change brought about by the guidelines (i.e., increased equity in decision-making) was accomplished without a worsening of failure-to-appear or pretrial rearrest rates among released defendants. As a result of the research experiment, the Philadelphia Municipal Court decided in April 1982 that all Municipal Court judges would use the guidelines for future bail decision-making.

6.6 Victim Assistance

Another area in which release programs may become increasingly involved during the 1980s is that of victim assistance. Attention continues to be focused on the manner in which victims are treated by the criminal justice system, as evidenced by the recent report of the President's Task Force on Victims of Crime. 31/ As a result of such efforts, police, prosecutors, and courts in many jurisdictions are working to initiate victim assistance programs, or, where such programs exist, to provide increased resources.

While victim service programs have traditionally been operated by law enforcement agencies or prosecutors, background on the circumstances of the victim is now a part of the pretrial release program report in many jurisdictions. In instances of violent felony charges, program reports may include information on the victim's physical condition and whether hospitalization has been necessary. In addition, most agencies regularly attempt to obtain the address of the victim so that release conditions may include specific orders that the defendant stay away from that area.

A question yet to be faced is whether the release agency should be the foundation for the expansion of victim services that is so desperately needed in most systems. It is clear that such responsibilities would

raise difficult questions concerning confidentiality and the possible effect of victim information on release agency recommendation and supervision procedures.

6.7 Accreditation

Accreditation of pretrial release programs has been widely debated in recent years. The primary concern is whether or not accreditation is needed in the pretrial release field; and, if so, what benefits can be expected. In general, accreditation is intended to ensure regularity and consistency in organizational practices and to establish standards which represent ideal but presumably attainable goals. Advocates of the procedure argue that by establishing agreed upon criteria, accreditation would supply the pretrial release field with a measuring tool which could be used to begin to standardize practices, and that it would create a system of rational policies governing pretrial release practices and activities.

The question of whether or not accreditation is necessary for the pretrial release field is a difficult one. On one hand, the increasingly important role of pretrial release programs in reducing jail population levels means that programs need to continually improve practices and functions within criminal justice systems in ways that promote the safe release of the maximum number of defendants. Accreditation in this sense might be seen as a blueprint for these activities.

On the other hand, the question of what would motivate a pretrial release program to seek accredited status remains unresolved. The recent experience of the American Correctional Association with such a program shows that the involvement of local jails has been very limited. Only 14 local adult detention facilities have been awarded accreditation status, and, at the time of this writing, only 13 additional jails are involved in the process. 32/

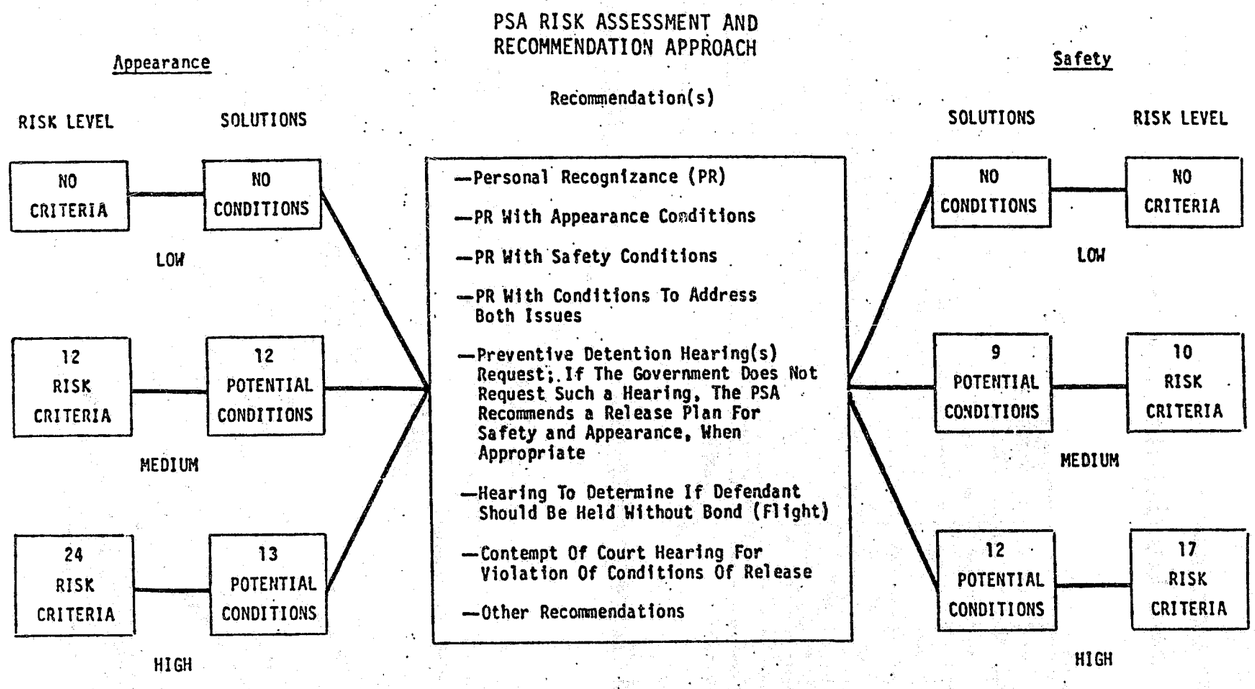
The issue of accreditation for pretrial release programs is being investigated presently by NAPSA. The interest that has been shown in this issue to date characterizes it as an important one, but much remains to be resolved on such questions as who should select and refine standards, how accreditation criteria should be developed, and who should award accreditation status.

Of all the future issues and programmatic developments being considered by the field, it appears that the driving force for the 1980s will continue to be the question of how release programs can help solve the problem of jail crowding. The most recent U.S. Bureau of Justice Statistics report shows a steady increase in the number of persons held in local jails and a startling increase in the portion of that population awaiting trial. 33/ This phenomenon, coupled with the enormous cost of building additional jail facilities, has forced

communities to examine their jail populations more and more closely to be certain that existing detention levels are necessary.

Many communities are likely to rely on pretrial services agencies for such examinations. By constantly evaluating their internal policies, and carrying out revisions where needed, agencies will play a pivotal role in local efforts to determine appropriate levels of pretrial incarceration while ensuring the safety of the community and the integrity of the court process.

FIGURE 6.1

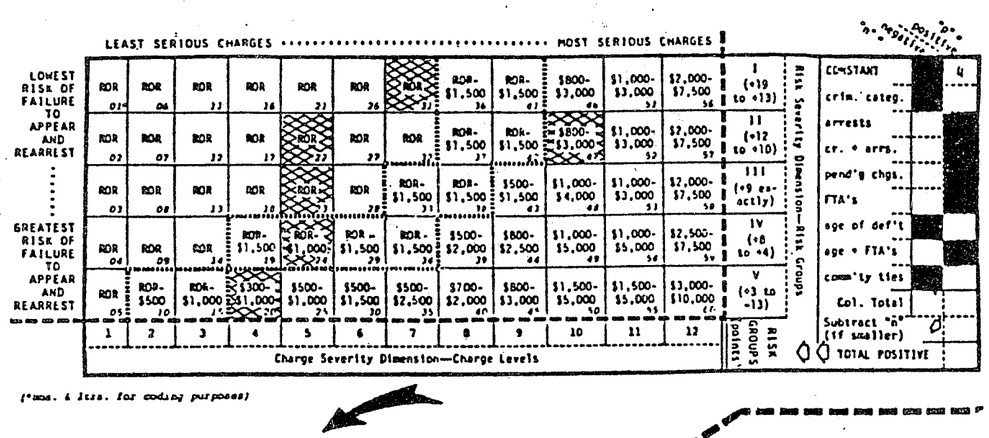


Source: Report of the District of Columbia Pretrial Services Agency, 1982, p.21.

FIGURE 6.2

Date _____ Log # _____ Name of Defendant _____ Police Photo # _____ Calculated by _____

Bail Guidelines Judicial Work Sheet



(*mos. & hrs. for coding purposes)

Selected Guidelines Range: Actual Decision:

_____ ☐ ROR ☐ _____ (amount)

IF OUTSIDE GUIDELINES, CHECK REASON BELOW:

a* b c d e N/A N/A f

IF YOU GO BELOW THE GUIDELINES AMOUNT—SHOW REASON: [DEPARTING FROM GUIDELINES BY USING A LOWER FIGURE (ROR, or lower financial bail, than in the guidelines decision) CHECK THE APPLICABLE BOX(ES) ACROSS TO THE LEFT]:

OTHER (Show REASON to Right) _____

(Indicate DIRECTION OF DEPARTURE) _____

CURRENT/OUTSTANDING Warrants/Detainers/Wanted Cards _____

POSSIBILITY of Mandatory Sentence _____

Cause Guardian to be Notified of Arrest (LIKELY) _____

Sponsor at Prel. Arr. VERSUS (VERY UNLIKELY) Interference with Witness(es) (LIKELY) _____

Physical or Mental Health Concerns (GOOD) _____

Court Room Demeanor of Defendant (POOR) _____

Prosecution Will Be Withdrawn VERSUS Will Be Convicted (LIKELY) _____

REASONS

[DEPARTING FROM GUIDELINES BY USING A HIGHER BAIL AMOUNT (money bail instead of ROR, or a greater money amount than within guidelines) CHECK BOX(ES) TO RIGHT]:

IF YOU GO ABOVE THE GUIDELINES AMOUNT—SHOW REASON: ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐

Guidelines Decision By _____ J.

FOOTNOTES

1/ Timothy J. Flanagan, David J. van Alstyne, and Michael R. Gottfredson, eds., Sourcebook of Criminal Justice Statistics--1981 (Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, 1982), p. 341.

2/ Ibid.

3/ Profile of Jail Inmates: Sociodemographic Findings from the 1978 Survey of Inmates of Local Jails (Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, 1981), p. 8.

4/ The Pretrial Reporter, Vol. VII, No. 2, April, 1983, p. 17.

5/ See Paul Lerman, Deinstitutionalization and the Welfare State (Camden, NJ: Rutgers University Press, 1982); and Howard H. Goldman, Neal H. Adams, and Carl A. Taub, "Deinstitutionalization: The Data Demythologized," Hospital and Community Psychiatry, February, 1983.

6/ NAPSA Release Standards, III, p. 15.

7/ NDAA Standards, 10.5, p. 137.

8/ NAPSA Release Standards, X, p. 57.

9/ Ibid., p. 61.

10/ See "Have We Failed the Mentally Disabled Defendant?", a summary of a presentation by Carole Morgan, published in Proceedings of the National Symposium on Pretrial Services 1980 (Washington, DC: Pretrial Services Resource Center, 1980), pp. 59-61.

11/ Ibid.

12/ Bernard v. County of Santa Clara, CA 9, 2/25/83, No. 81-4462; and Youngblood v. Gates, C 203343. See also ABA Standards, 10-4.1, p. 10.43, which recommends that defendants should be presented for first appearance no later than six hours following arrest, excepting nighttime hours.

13/ Programs Practices/Release, p. 34.

14/ Telephone interviews with Dan McCoy, Director of the Custody Referee program, Lane County, OR, and Billy Wasson, Director of Marion County, OR, Community Corrections program, on 22 June 1983.

15/ Gaynes, op. cit., p. 1.

16/ Reynolds v. United States, 80 S. Ct. 30, 32-33 (Douglas, J., Circuit Justice, 1959).

17/ Caleb Foote, "The Coming Constitutional Crisis in Bail: II." University of Pennsylvania Law Review, June, 1965, 113, 1172.

18/ See Teri I. Martin, "The Prediction of Dangerousness in Mental Health and Criminal Justice," Pretrial Services Annual Journal, July, 1981, Vol. IV, pp. 3-19; Malcolm M. Feeley, Statement Before the Subcommittee on Courts, Civil Liberties and the Administration of Justice of the House Judiciary Committee of the U.S. Congress, June 16, 1983; and Monahan, op. cit.

19/ Bruce D. Beaudin, Donald E. Pryor, and D. Alan Henry, "A Proposal for the Reform of Pretrial Release and Detention Practices in the United States", Pretrial Services Annual Journal, July, 1981, Vol. IV, p. 75.

20/ NAPSA Release Standards, IV(C), pp. 21, 23.

21/ NAPSA Release Standards, VII, p. 38.

22/ D.C. Pretrial Services Agency, Annual Report 1982 (Washington, DC, 1982), p. 19.

23/ Gaynes, op. cit., Appendix B.

24/ D.C. Code S1301-1332.

25/ For example, see NAPSA Release Standards, VII, p. 38.

26/ Beaudin et al., op. cit., p. 93.

27/ See Proceedings of the National Symposium on Pretrial Services 1980, op. cit., pp. 19-20.

28/ NEP Phase II, p. 50.

29/ The developers of the bail guidelines admit side-stepping entirely the questions concerning the utility of cash bail, but suggest that a "more developed" version of the guidelines might include such alternatives as conditional release, supervised release, or the use of bail sponsors.

30/ The first report documenting the collaboration and construction of bail guidelines for the Philadelphia Municipal Court is Bail Decision-Making: A Study of Policy Guidelines, by John S. Goldkamp, Michael R. Gottfredson, and Susan Mitchell-Herzfeld (Washington, DC: National Institute of Corrections, October, 1981). The report describing the results of the research experiment to test the use and

effectiveness of the guidelines is Judicial Decision Guidelines for Bail: The Philadelphia Experiment, by John S. Goldkamp and Michael R. Gottfredson (Washington, DC: National Institute of Corrections and National Institute of Justice, June, 1983).

31/ President's Task Force on Victims of Crime Final Report (Washington, DC: 1982).

32/ Conversation with Chuck Reusing, Director of Operations, American Correctional Association Commission on Accreditation, 24 June 1983.

33/ Jail Inmates 1982, op. cit.

GLOSSARY

PRETRIAL RELEASE

The federal and state governments have laws and court rules regulating who may be released pretrial and under what conditions and circumstances. Conditions of release may be financial (bail) or non-financial and have traditionally been tied to ensuring appearance in court.

The pronouncement by the police, bail commissioner, or judicial officer of the conditions precedent to pretrial release is generally referred to as SETTING BAIL. The colloquial term "setting bail" is used to refer to the pretrial release decision-making process, even when no financial conditions are set. Bail (or other conditions) may be set at or prior to the FIRST APPEARANCE in court. When the decision occurs in court, the process is normally referred to as the BAIL HEARING. If financial conditions are set and the defendant cannot MAKE BAIL (satisfy the conditions imposed), he or she may have a BAIL REDUCTION HEARING or make a written motion to lower the bail which has been set.

Types of pretrial release and terms used in the procedure of determining release include:

SUMMONS - An alternative to an arrest warrant, a summons constitutes a request that the defendant appear in court to face charges. Summonses may be delivered in person or mailed. While they usually do not have specific conditions of release attached, failure to respond to a summons does constitute failure-to-appear.

FIELD CITATION - Field citations are issued by law enforcement officers in lieu of the actual booking of a defendant, thus substantially reducing the costs associated with arrest. In some jurisdictions pretrial release agencies cooperate with law enforcement officers by aiding in a telephone check of background information about the defendant. A number of jurisdictions now use field citations widely for misdemeanor charges, and some are using field citations for low-level felony charges.

STATIONHOUSE RELEASE, STATIONHOUSE CITATION or DESK APPEARANCE TICKET - Stationhouse release generally refers to release on personal recognizance authorized by personnel at the booking facility before or after an arrestee is booked. Release is contingent upon the written promise of the defendant to appear in court as specified.

RELEASE ON RECOGNIZANCE - Release on recognizance or release on personal recognizance (ROR, PR, OR) refers to release of a defendant on his promise to appear. Stationhouse release, field citations, and

summons-to-appear are all forms of release on recognizance. As the term is used here, ROR implies no additional conditions of release other than that the defendant appear in court as required.

UNSECURED BAIL - Release on an unsecured bond is similar in practice to release on recognizance, with the exception that a bail amount is set by the court for which the defendant is liable should he or she fail to appear. Unsecured bonds may be administered through release by a judicial officer or as a form of stationhouse release.

CONDITIONAL RELEASE - Conditional release refers to a form of non-financial release in which the defendant is required to meet specified conditions during the pretrial period. These conditions may include checking in with a pretrial release agency, maintaining a specified place of residence, avoiding complaining witnesses, etc.

SUPERVISED RELEASE - As opposed to conditional release, supervised release implies more frequent and intense contact between the supervising agency and the defendant. For example, the defendant may be required to participate in counseling, attend a drug abuse treatment program, or to work with vocational counselors to secure employment.

THIRD-PARTY RELEASE - With third-party release, another person or organization shares the responsibility of assuring that the defendant will appear in court. Third-party releases may involve release to the custody of a parent, relative, or other individual, or to an organization, such as a halfway house or treatment program.

DEPOSIT BAIL - Deposit bail, also known as 10 percent bail, differs from surety bond in that the defendant (or friends or family) posts a specified portion of the face value of the bond (often 10 percent) with the court. At the disposition of the case, the amount posted is returned to the defendant (usually minus a 1 to 3 percent administrative fee). In some jurisdictions it is the defendant's option to satisfy money bail in this way; in other jurisdictions the court decides whether bail may be satisfied by "10 percent" or whether a surety bail is required.

CASH BAIL - Cash bail requires that the defendant post the full amount of the face value of the bail bond to secure release. The money posted is returned to the defendant following disposition of the case, if the defendant appears as required.

SURETY BAIL - Still the most commonly used form of financial pretrial release, surety bail is necessary when the defendant is unable to post the full amount of the bail and does not have the deposit bail option. Under this arrangement, a surety agent agrees to pay the full amount

of the bail to the state if the accused fails to appear as required. The agent's promise to pay is usually provided in the form of a BAIL BOND.

BAIL BONDSMAN - A private businessman or woman who charges a fee for the service of posting bail on behalf of a defendant. The bail bond business can be a component of the insurance industry--the bondsman's fee is essentially an insurance PREMIUM. In the event of loss--bail forfeiture due to the defendant's failure-to-appear as required--the bondsman is responsible to the court for the full face value of the bond. However, the premium/fee paid by the defendant is not returned, regardless of whether he or she makes all court appearances and regardless of the verdict. The premium is usually 10 percent of the bail amount, and additional collateral of real or personal property may be required, thus minimizing actual risk to the bondsman. It is within the discretion of the bondsman whether to post bail for an individual. As a result a judge may not know after the defendant is ADMITTED TO BAIL (bail set) whether there has been a TAKING OF BAIL (wherein the court clerk or other official accepts the bail offered, i.e., whether the surety qualifies), or whether the defendant has been RELEASED ON BAIL.

PRIVATELY SECURED BAIL - Privately secured bail works in much the same way as the bail bondsman, except that the person or organization posting the funds does not charge the defendant for the service.

PROPERTY BAIL - In some jurisdictions the defendant may post property or other assets in the place of cash with the court.

DETENTION prior to trial is permitted for one or more of three reasons, depending on the jurisdiction:

- The defendant poses a serious risk of flight from prosecution.
- The release of the defendant would be likely to result in the disruption of the judicial process; such as destruction of evidence, threats or harm to witnesses or jurors, etc.
- The release of the defendant would be likely to result in serious harm to another person or in the commission of a criminal offense. Detention on the third basis is usually referred to as PREVENTIVE DETENTION.

The following terms relate to aspects and functions of a pretrial release agency:

COMMUNITY TIES - Recommendations made to the court by a pretrial release program are usually based on some evaluation of the defendant's probability of appearance. This evaluation usually includes an analysis of the ties the defendant has to the community. Specifically, community ties may include the length of time the

defendant has resided in the community, whether other family members or relatives live in the area, whether the defendant is employed in the area, and whether he or she has a home telephone.

POINT SCALE - The first ROR program, the Manhattan Bail Project, based its recommendations on an objective system of assigning a certain number of points for different defendant background characteristics. For instance, if a defendant lived in the jurisdiction for a long time, he might receive 2 "residence" points as opposed to the defendant who lived outside the jurisdiction, who would receive no "residence" points. The total number of points earned by the defendant on all scales (community ties, criminal history, etc.) would be tallied, and those defendants with more than a certain number of points would receive a recommendation for release on recognizance. The point scale is based on factors thought to be indicators of appearance.

RECOMMENDATION SCHEME - Some programs base their recommendations on point scales, but others rely on the intuition of their interviewers. Some use a combination of "objective" points and "subjective" criteria. The particular modifications which form the basis of an agency's method are known as its recommendation scheme.

NOTIFICATION - The process of communicating to a defendant where and when he or she is to appear in court. Notification may be accomplished in a number of ways--either by the pretrial release agency, by the court, or by a combination of efforts, by letter, by telephone, or by notice given the defendant at the end of a court appearance.

VERIFICATION - Before finishing an assessment of a defendant's apparent probability of appearance in court, pretrial release programs usually attempt to check the accuracy of the information gathered in the interview. Verification is generally accomplished through checking the records of other information sources (such as verifying criminal history information by checking police records) and through cross-checking with personal references (for example, verifying that the defendant lives at a certain address by telephoning other residents at that address).

Other Terms Used Commonly in the Pretrial Release/Supervision Area:

ADJUDICATION - The final determination by a judicial authority of acquittal or conviction of a defendant is called adjudication.

ARRAIGNMENT - The hearing before the court having jurisdiction in a criminal case, and in which the defendant is required to enter a plea. Information of charges and rights and bail setting may also take place at the arraignment. See also INITIAL APPEARANCE.

BENCH WARRANT or CAPIAS (from Latin: you should seize) - This type of order is issued from the "bench" of a court in session. In the pretrial context, a bench warrant may be issued when a defendant fails to appear in court at the appointed time or when the supervising pretrial agency determines that some other serious violation of the release agreement has occurred and is cause for revocation of release status.

BOOKING - When an arrested person is brought to a detention facility, the process is generally referred to as "booking". Booking is often considered the final step in making an arrest. At this point, basic information on the facts of the arrest and the identity of the arrestee is gathered. Fingerprinting may also occur. Pretrial release interviewing may be carried out as part of the booking process or immediately thereafter. The practice of stationhouse or jail citation release may obviate the need for booking.

CAPITAL OFFENSE - An offense which may be punishable by life imprisonment or by death.

CENTRAL INTAKE - A system developed by local jurisdictions to organize the process of information gathering and decision-making among the various criminal justice operating agencies as cases move through the system. The central intake system may also facilitate reports on system operations and measurements of the effectiveness of a jurisdiction's procedures. The scope and quality of information gathered by the pretrial services agency can provide the basis of a central intake system.

FAILURE-TO-APPEAR (FTA) - The act of not appearing for a required court proceeding. Measures of failure-to-appear are usually either defendant-based (e.g., the number of defendants who miss a court appearance) or appearance-based (e.g., the number of court appearances which are missed).

FELONY - A criminal offense, including capital crimes, punishable by incarceration or by death. The lower limit of punishment is usually one year. In differentiating between felonies and MISDEMEANORS, the length of punishment may not be the only consideration, but the most serious crimes in a jurisdiction are felonies, the most minor are misdemeanors. Most jurisdictions operate a bifurcated judicial system, in which misdemeanors are tried in lower courts and felonies in higher courts, although both felony and misdemeanor defendants are usually brought before the lower court in the initial appearance; felony cases may then be "bound over" to the higher court.

HOLD (or DETAINER) - A notice from a local, state or federal agency that a person being held by a detention facility not be released without notifying the requesting agency and giving the agency time to respond. Some jails have significant numbers of "holds", persons held

pending trial or to serve a sentence in other jurisdictions, such as neighboring counties, the state probation agency, the state prison system, or federal law enforcement agencies.

INITIAL APPEARANCE - The first appearance of an accused person before the court having jurisdiction in his or her case. In minor misdemeanor cases the initial appearance may be the only appearance. At this point the defendant is generally informed of his or her rights, informed of the charges, and has bail set. Determination of legal representation will generally also take place. The timing of the initial appearance is determined by the jurisdiction's laws governing the maximum time a person can be held without court appearance. In many jurisdictions the term ARRAIGNMENT may be used instead to refer to the first appearance in court. The entering of an initial plea of guilty or not guilty constitutes the completion of the arraignment. A defendant may not have the opportunity to enter a plea at the initial appearance.

MISDEMEANOR - A criminal offense punishable by incarceration, but generally for a period of a year or less, and in a local jail.

MIRANDA RIGHTS - The set of rights which a person has during police interrogation, first stated by the U.S. Supreme Court in the case of Miranda v. Arizona (1966), and of which the accused must be informed before interrogation. The basic elements of the "Miranda warning" include information (1) that the accused has a right to remain silent, (2) that any statement may be used in court against the accused, (3) that he or she has the right to have an attorney present during interrogation, (4) that an attorney will be provided at no charge if the accused cannot afford one, and (5) that if the accused chooses to give information, he/she has the right to refuse further information at any time.

PRESENTENCE INVESTIGATION - An investigation into the circumstances, personality, and past behavior of a person convicted of a crime, which is conducted at the request of the court to assist in determining the most appropriate sentence. Such investigations are usually undertaken by the local probation agency, but may involve pretrial services agencies which may submit non-confidential information, particularly that relating to the individual's compliance with release conditions, to the probation agency or directly to the court.

Appendix A

Pretrial Services Unit Procedures
Felony Administrative Recognizance Release
King County, Washington

04.03.00 FELONY ADMINISTRATIVE RECOGNIZANCE RELEASE

04.03.01 Definition and Authority

Felony Administrative Recognizance Release differs from 04.01.00 "Felony Recognizance Release" in that the Recognizance Screeners are authorized to release qualifying persons held for investigation of charge(s) of the less serious offenses without judicial approval on their promise to appear at the Initial Hearing and Plea calendar.

The Recognizance Screeners shall review persons being held on investigation of more serious felonies. Qualifying persons in this category shall be presented to the "duty judge" for consideration of a Judicial Recognizance Release.

Felony Administrative Recognizance Release is governed by the criteria and procedures spelled out below:

04.03.02 Crime Categories Excluded from Felony Administrative Recognizance Release

No Class A felonies shall be eligible for any type of release prior to a preliminary appearance. The duty judge may hold such a preliminary hearing, but adequate notice must be provided to the Prosecuting Attorney's Office and the arresting agency.

Persons held for investigation of crimes listed below will be automatically excluded from consideration of Felony Administrative Recognizance Release. The procedure for release of persons being held on investigation of these crimes includes the review by the Recognizance Screener and a recommendation to the duty judge. The duty judge can grant a Recognizance Release or set bail on persons held on investigation of these (non-Class A) crimes (the name, date and time of the authorization should be indicated in the release document). See 04.03.06 for procedures.

(1) Any homicide, including manslaughter or negligent homicide.

(2) Any felony assault.

(3) Any rape.

(4) Any statutory rape.

(5) Any robbery in the first or second degree.

(6) Any kidnapping.

(7) Any burglary in the first degree and any residential burglary involving in excess of $5,000 loss or multiple residential burglary (more than one).

(8) A commercial burglary involving more than $5,000.

(9) Any arson.

(10) Theft in the first degree, Possession of Stolen Property in the first degree, or Forgery involving the loss of property in excess of $5,000.

(11) Possession or sale of narcotics or dangerous drugs of a value over $5,000.

(12) Bribery.

(13) Intimidating a witness or juror.

(14) Extortion in the first degree.

(15) Fugitive warrants.

(16) Escape in the first and second degrees.

(17) Malicious mischief in the first degree (in excess of $5,000).

(18) All other violent felony offenses.

(19) Attempts, solicitation or conspiracy to commit any nonreleasable offense.

04.03.03 EXCLUSION:

A Recognizance Release shall not be made for any of the following:

1. where there is concern for the safety of the victim.
2. where in the evaluation of the Recognizance Screener there appears to be sufficient threat of flight, or strong enough likelihood of re-offense, to offset community ties.
3. where there is sufficient concern for the detainees mental state to cause the Recognizance Screener to recommend that unstructured release would be a danger to the community and/or the detainee him/her self.
4. where there is reason to believe that the detainee is part of an organized group (shoplifting ring, etc.) and has the mobility to quickly move from area to area.

04.03.04 Additional Situations for Excluding Felony Administrative Recognizance Release

The following situations will preclude authorization of Felony Administrative Recognizance Release for persons who do not fall into the above high-impact crime categories:

(1) The law enforcement agency's objection to release has not been resolved. The reasons for such objection must be stated and should

be related to probability of flight, re-offense or victim safety. Verified community ties and lack of a previous failure to appear history should be viewed as necessary to resolve a law enforcement general concern that the detainee might not appear if released.

(2) The person is currently involved in the adjudication process for another alleged felony offense.

(3) The person is on active parole or probation for a felony offense in another state.

(4) The person in on active parole or probation for a felony offense and Adult Probation and Parole has not concurred in the release.

(5) Felony Administrative Recognizance Release will not be effected if there are other matters which will prevent the detainee from actually being released (e.g., out of county hold, no bail misdemeanant warrant, etc.).

04.03.05 Felony Administrative Recognizance Release Eligibility

A person who is qualified for Felony Administrative Recognizance Release (hereafter, FARR) must have charges not falling into any of the nineteen categories as specified in 04.03.02 and/or the five (5) situations as specified in 04.03.04, or exclusions as specified in 04.03.03.

It is the policy of the King County judicial system that persons held for investigation of a misdemeanor or gross misdemeanor offenses are also included within FARR.

Persons whose eligibility to FARR is not precluded by 04.03.02 and 04.03.03 or 04.03.04 would be eligible for such release without judicial approval if that person has a verified address and a total of four (4) points on the "Felony Recognizance Point Scale: (see Appendix).

**EXCEPTION: The only exception to the requirement for four points would be investigative holds for dangerous drugs in which the estimated value of the dangerous drugs is under $500.00. In such cases, a verified address and/or the cooperation of a third party who will always know how to reach the detainee will be sufficient to authorize release.

04.03.06 Non-Hearing Judicial Recognizance Release

The following instances apply to this type of Recognizance Release:

(1) Persons whose offense or circumstances make them ineligible for FARR release.

(2) Persons who would be affected by FARR guidelines

04.03.03 Exclusion relating to the individual.

04.03.04 Situations relating to other legal proceedings and conditions.

Class A Felony offenses are not eligible for review or release by this procedure.

This procedure shall serve as the process for a Recognizance Screener or attorney to appeal the results of a negative FARR evaluation.

The principal function of this release option shall be to provide persons being held on investigation of any of the offenses listed in 04.03.02 (with the exception of Class A felonies) an opportunity to be considered for a pre-charge release.

If the arresting agency has objected to the release the Recognizance Screener shall:

(1) Attempt to communicate with the arresting agency to review their reasons for objection.

(2) Attempt to seek the input of the victim(s).

(3) Communicate with the designated deputy prosecuting attorney.

This information, plus telephone numbers should be made available to the "duty judge".

04.03.07 Locate New Bookings and Determine Inverview Priority

(1) Consult 04.01.02.

(2) Consult 04.03.02, 04.03.03, 04.03.04, 04.03.05.

04.03.08 Verifying Information

(1) Consult 04.01.04.

(2) Attempts will be made to verify as much information as possible. The minimum for any verification will be a confirmation of residence. Efforts will be made to verify the detainee's criminal history. Depending on the circumstances, verification could include inquiries to law enforcement agencies in other states.

(3) In order to accurately assess eligibility for release, whether it be initially by Recognizance Screeners or later by a judge, the arresting officers will be required to complete a "Suspect Information Report" (or "Superform") or the "Arresting Agency Detainee Information Sheet "(or ADDIS) at the time of booking of any person on a felony investigation. The jail must be presented with the completed form prior to accepting the person being booked. This form can be obtained from the detainee's packet to aid the screener to verify information obtained from the interview.

04.03.09 Detainee's Criminal History Inquiry

Detainees with not more than six (6) months in at least one of the following will require a criminal history teletype check with the Washington State Identification Center:

(1) Employment (one employer); or

(2) Residence (one residence)

The purpose of such a check is to determine whether:

(1) The detainee is being truthful.

(2) To obtain a semi-accurate record of the detainee's criminal history.

(3) To determine if the person is currently on probation or parole.

Persons who have been residents of the state of Washington for less than six (6) months and do not have a creditable residence and/or employment will have a criminal history and warrant request teletyped to the jurisdiction from where the detainee most recently lived.

04.03.10 Reviewing Information

When making a review regarding to Felony Administrative Recognizance Release eligibility, the following factors will be deliberated seriously:

(1) Is the alleged offense within the guidelines for an administrative or a judicial consultation release?

(2) Does the detainee's rating on the Felony Recognizance Release Point Scale meet program standards:

**Offense categories eligible for FARR.....4 points

EXCEPTION: 04.03.05 regarding investigative dangerous drugs

(3) Does the copy of the "Superform" or the "AADIS"

indicate any reason that the detainee should not be released? Has that objection been removed or resolved?

(4) Has the arresting agency expressed objection to the release of the detainee? Has the objection been removed or resolved?

(5) Is there any question as to the detainee's identity?

(6) Are there any special conditions (e.g., no contact with a person or place) which are warranted to be placed on a release?

04.03.11 Court Appearance and Referral to Judge

(1) Persons who are to be released under FARR shall agree to appear at the Initial Hearing and Plea Calendar on the second regular court date following arrest. The person will appear in courtroom #1049 at 1500 (3:00 PM) hours. The arrest date shall be determined by the actual calendar date (thus midnight cut off rather than the jail recap cut off).

EXCEPTION: Persons released as an exception, VUCSA under $500 will not be required to appear until they have received a summons or warrant. No court date will be set for some held solely on this charge.

(2) For those persons whose charge fits within the FARR (see 04.03.04 "Felony Administrative Recognizance Release Eligibility") but whose interview indicates that they do not meet the minimum four (4) points on the "Felony Recognizance Point Scale", or that they are noted as "exceptions" by the Recognizance Screener, these cases will be referred to the appropriate judge who will evaluate for a bail release. See 04.03.06.

(3) Persons held on investigation bookings outside FARR guidelines who are being released as a result of phone contact with duty judge during non-judicial hours shall be required to execute a condition of release form and be given a court date in the same manner as a person released as part of this program. The name of the judge shall be indicated and documents attached and distributed in the same manner as 04.05.00.

(4) Any attempted release by other than duty judge shall be reported immediately to the Pretrial Services Unit Supervisor. The Pretrial Services Unit Supervisor shall report the incident to the presiding or acting duty judge, and the Chief or an Assistant Chief Deputy Prosecutor.

04.04.00 DISTRIBUTION OF RECOGNIZANCE SCREENING DOCUMENTS

The Pretrial Services Unit staff has the responsibility to provide the following documents to the indicated no later than 0900 hours of each court day (i.e., Monday to Friday):

04.04.01 For Release

(1) Seattle District Court:

a. Release Agreement (original)
b. Felony Administrative Recognizance Release Point Scale (original)
c. Interview Form (copy)
d. Copy of Superform and/or AADIS

(2) Office of the Prosecuting Attorney:

a. Release Agreement (Xerox copy)
b. Interview Form (Xerox copy)
c. Copy of Superform and/or AADIS
d. Felony Administrative Recognizance Release Point Scale (Xerox copy)

(3) Pretrial Services Unit Office:

a. Release Agreement (copy)
b. Felony Administrative Recognizance Release Point Scale (Xerox)
c. Interview Form (original plus two copies)
d. Copy of Superform and/or AADIS
e. Felony Administrative Recognizance Release Checklist

04.05.00 CLERICAL PROCEDURES

The following clerical procedures are to be performed by the Pretrial Services Office Assistant III:

04.05.01 General Office Duties

(1) The Pretrial Services Office Assistant III is responsible for maintaining attendance record of all staff members of the Unit daily in the "Attendance Report Form: (Form A-107) and submitting such form to the Division's Payroll Clerk on the appropriate bi-monthly transmittal days.

(2) She/he will maintain office supplies and make order when supplies are low.

DIVISION OF CORRECTIONS
PRETRIAL SERVICES UNIT

Name_____

B/A_____

FELONY RECOGNIZANCE RELEASE POINT SCALE

INT	VER	
		RESIDENCE (Puget Sound Area) (Must have at least one point in this area)
3	3	Present residence one year or more
2	2	Present residence 6 months OR one year at present and prior address
1	1	Resided in King County area for at least last 5 years OR present residence 3 months OR six months at present and prior address
		Note - Add 2 points if buying house or condominiums
		FAMILY TIES
3	3	Lives with spouse/cohabitant and has contact with other family
2	2	Lives with spouse/cohabitant or parents
1	1	Lives with adult family person whom he/she gives as reference
		Note - Add 1 point if has telephone
		EMPLOYMENT (Puget Sound Area)
4	4	Present job or in school one year or more
3	3	Present job 6 months OR six months at present and prior job
2	2	Present job 3 months OR six months at present and prior job
1	1	Has present job which is still available OR unemployed 3 months or less with 0 months or more on prior job OR receiving unemployment compensation OR welfare OR supported by family OR on disability payments.
		CRIMINAL RECORD WITHIN LAST TEN YEARS
2	2	No convictions
1	1	Serious or simple misdemeanor convictions
0	0	Aggravated misdemeanor convictions
-1	-1	One felony convictions OR two misdemeanor convictions in last year
-2	-2	Two felony convictions
-3	-3	Three or more felony convictions
		Note - Deduct one point from above categories if defendant has been convicted of a forcible felony: Murder I & II, Sexual Abuse, Kidnapping, Robbery, Arson I, Burglary I or Felonious Assault.
		MISCELLANEOUS
2	2	Currently participating in a drug or alcohol program
-1	-1	Present drug or alcohol abuse
-1	-1	Prior failure to appear on PR or Supervised Release
-4	-4	Prior willful _conviction_ failure to appear
____	____	TOTAL

KDRS F-691 Revised 4/82

END