

THE PRETRIAL REPORTER

A BI-MONTHLY PUBLICATION OF THE PRETRIAL JUSTICE INSTITUTE

WWW.PRETRIAL.ORG

VOLUME XXXIV | NO.3 | MAY, JUNE, 2008

In this issue:

NATIONAL NOTES	1
CASES	8
RESEARCH.....	10
INSTITUTE ACTIVITIES	12

EXECUTIVE DIRECTOR'S LETTER

Dear Friends,

The field of bail reform has benefitted these past decades by an impressive array of charismatic leaders, who have inspired, cajoled and challenged us as we go about our difficult and often lonely work. Individuals such as Bruce Beaudin, Alan Henry, John Goldkamp and Barry Mahoney come to mind as champions of pretrial justice. They are internationally known for their tireless efforts on behalf of safe and rational justice systems and for the influence they have exerted on the field. I would like to take this opportunity to recognize another individual who is as deserving of recognition but whom, like most of you, goes about his daily tasks without much fanfare. John Clark, PJI's Director of Technical Assistance, has consistently contributed to our collective efforts for over 25 years. I first met John when we both worked at the D.C. Pretrial Services Agency. John left there in the late '80s to work at the Pretrial Services Resource Center (now PJI) where he has quietly gone about building a record of outstanding

National Notes

NEW JAIL POPULATION STATISTICS RELEASED

According to the latest survey of jails by the Bureau of Justice Statistics, 62 percent of the jail population nationally is comprised of inmates who have not been convicted. The total jail population grew 1.9 percent from midyear 2006 to mid-year 2007. This is the second year in a row that the rate of growth has been lower than the average annual rate – 3.3 percent – since 2000.

Construction of new beds outpaced the population growth in 2007. While the jail population rose by 14,571 inmates during the 12-month period ending June 29, 2007, the number of new beds rose by 15,502. Still, local jails were operating last year at 96 percent of capacity, up from 90 percent at midyear 2001. Larger jails were most likely to be crowded; jails with 1,000 or more inmates were operating at 99.5 percent capacity, and jails with 500 to 999 inmates were operating 99.3 percent capacity. On the other hand, jails with fewer than 50 inmates were at 64.5 percent capacity. The total rated capacity of local jails was 813,502 at midyear 2007, up from 677,787 at midyear 2000.

The number of women in jail reached its highest level ever, at 100,047, up from 70,414 in 2000. The jail incarceration rate at midyear 2007 was 259 inmates per 100,000 U.S. residents, up from 226 in 2000.

A copy of "Jail Inmates at Midyear 2007" is available at www.ojp.usdoj.gov/bjs.

GROUP LOOKS AT IMPACT OF JAILING POLICIES ON LOCAL COMMUNITIES

The Justice Policy Institute has released a report that addresses "the serious consequences" of rising jail populations for local communities. The report pulls together data from a number of sources to show what those consequences are. For example, the report cites figures showing that local spending on corrections grew from \$3 billion a year in 1983 to \$18 billion in 2002, a 500%

EXECUTIVE DIRECTOR'S
LETTER
(CONTINUED)

contribution to pretrial justice that is the envy of our more widely known leaders (I asked them).

John has written over twenty publications and articles on every aspect of our work. He has conducted hundreds of training sessions targeted at pretrial interviewers and supervisors, judges and others. He has worked with statewide, city and federal pretrial programs earning consistently rave reviews. He has been a fixture at state and national pretrial conferences and is sought out at these events by practitioners. John has personally handled thousands of technical assistance requests with respect and professionalism. Those of you who have contacted John know personally of his patience, enthusiasm and love for our work. He takes the time to answer every question, no matter how many times he has answered it before.

Finally, in addition to his other duties, John alone has served as writer and editor of the PTR for 20 years. John is not someone who clamors for the spotlight or seeks personal recognition – he leaves that to the Executive Director. Instead, he goes quietly about his work, concerned only that we are doing the best we can to support you. Don't worry – this is not a professional eulogy. John is not leaving PJI. John has worked too long and too hard without the public recognition he deserves, for all he has done for PJI and me. Thanks John - we are all better practitioners because of you.

increase. Jail populations have been rising at a much higher rate than prison populations, growing 21 percent between 2001 and 2006, compared to 11 percent for prisons.

The impact of these rising populations has been felt by jails large and small. According to the report, many counties are facing multi-million dollar lawsuits over crowded conditions, creating “more fiscal obligations that the community must shoulder.” At midyear 2006, 35 of the 50 counties with the largest jail populations were filled to at least 90 percent capacity, with half of these over 100 percent of capacity.

The report states that much of the increase in jail populations has been driven by growing numbers of defendants being held pretrial. The report cites Bureau of Justice Statistics data showing that pretrial detainees accounted for 85 percent of the growth in jail populations between 1996 and 2006. Pretrial release rates have declined for all categories of offenses. Those arrested for violent offenses were released at a rate of 32 percent in 2002, compared to 56 percent in 1992. For property offenses, the release rate fell from 64 percent in 1992 to 50 percent in 2002, for drug offenses from 57 percent to 49 percent, and for public order offenses from 49 percent to 40 percent.

The report states that the decline in violent crime, which began in 1993, allowed police to focus more on drug crimes, with drug arrests growing 150 percent between 1986 and 2005. This growth has also helped fuel the rises in jail populations. In 1986, according to the report, those jailed for drug offenses comprised less than 10 percent of jail populations. By 2002, almost one-quarter of all jail inmates had a drug offense.

The report includes several recommendations for reducing jail populations, including: implementing pretrial services programs; developing alternatives to incarceration; re-examining policies that result in detention for non-violent offenses; diverting persons with mental illness and substance abuse problems; and diverting spending from expensive jail construction and operation costs to less expensive community supervision.

A copy of the report, “Jailing Communities: The Impact of Jail Expansion and Effective Public Safety Strategies,” can be downloaded at www.justicepolicy.org.

*Pretrial
detainees
accounted for
85 percent of
the growth in
jail populations
between 1996
and 2006.*

GUIDE ON JAIL REENTRY RELEASED

With funding from the Bureau of Justice Assistance, the Urban Institute and John Jay College of Criminal Justice have released a guide on introducing reentry initiatives in local jails. According to the document, while prisons were the original focus of reentry efforts, more and more jails are recognizing the need to establish reentry services as well. The document notes that jails face several challenges in initiating reentry services that prisons do not face, including short lengths of stay, minimum capacity within the jails to provide treatment or training, and the high level of service needs, such as homelessness, mental health issues, substance abuse problems, and lack of employment skills, of many jail inmates.

But these challenges are offset somewhat because “jails are uniquely positioned to facilitate the transition process, compared with state prisons. Shorter lengths of stay and the community location of most jail facilities translate into less time away from – and even continued contact with – family, friends, treatment providers, employers, faith institutions, and other social supports. The proximity of the jail also allows for the possibility of community-based providers to begin interventions with individuals prior to release, improving the chances that they will continue to receive care after release.”

The document identifies several opportunities for intervention to improve reentry outcomes. These include: assessing risks and needs at classification; identifying specific interventions and developing a reentry plan; providing some level of prerelease activity while in jail; preparing individuals for the first few hours after release; and establishing continuity of care in the community after release.

Providing reentry services to the pretrial population presents special challenges, according to the document, given unpredictable release dates. “Sometimes, pretrial detainees are released directly from court without returning to the correctional facility, leaving no time to plan for an orderly discharge. To prepare for this uncertainty, jails can map out the various points of release from the system and have discharge plans – or at least resource packets – available at each of its exit points.”

The document recommends that jails looking to implement reentry services should form a committee of the key stakeholders – including the jail administrator, sheriff, chief law enforcement officers, a judge, a prosecutor, a public defender, pretrial services, probation, substance abuse and mental health treatment providers, housing agencies, workforce development agencies, a former inmate, and victim advocates. Agreements of this committee on how to implement reentry services should then be formalized in a memorandum of understanding.

*Jail reentry
presents many
challenges,
but many
opportunities as
well.*

One chapter of the document provides descriptions of 42 jail reentry efforts currently in place around the country.

A copy of the document, "Life After Lockup: Improving Reentry from Jail to the Community," is available on the Urban Institute web site at www.urban.org.

NEW DOCUMENT LOOKS AT PRETRIAL DETENTION INTERNATIONALLY

The Open Society Justice Initiative recently released a document that examines the use of pretrial detention throughout the world. According to the document, which is comprised of 12 articles written by different authors, an estimated 2.4 million people were held in pretrial detention during 2006. During any given day, about one-third of all incarcerated persons worldwide are in pretrial detention. The document included in the definition of pretrial detention all those held without bail and those held on bail amounts that they cannot post.

The first article notes that the "broad international consensus favors reducing the use of pretrial detention." It cites the Universal Declaration of Human Rights, which states that "everyone charged with a penal offense has the right to be presumed innocent until proven guilty according to law in a public trial at which he has held all the guarantees necessary for his defense." It also cites the principle established by the Eighth United Nations Congress on the prevention of Crime and Treatment of Offenders, which states that pretrial detention is appropriate only when "there are reasonable grounds to believe that the persons concerned have been involved in the commission of the alleged offenses and there is a danger of their absconding or committing further serious offenses, or a danger that the course of justice will be seriously interfered with if they are let free." Another article points out that most countries violate not only these international laws, but also "routinely contravene...their own domestic pretrial detention laws and regulations."

The document presents eight case studies from countries that have attempted reforms of pretrial detention practices. In one of these countries, Chile, pretrial detention reform was part of a complete re-write of that nation's criminal codes. Implemented in 2000, the new pretrial detention laws introduced into that nation four new rules governing pretrial detention: that defendants are presumed innocent and pretrial detention is to be used only as "an exceptional measure;" that a judge could place a defendant in detention only after formal charges have been filed by the prosecutor; that detention was inappropriate if it was disproportionate to the gravity

*“Broad
international
consensus
favors
reducing the
use of pretrial
detention.”*

of the offense or the likelihood of incarceration if convicted; and that non-custodial measures, such as house arrest, regular reporting requirements, and travel restrictions, be used as alternatives to detention. These reforms experienced a setback in 2005 when the legislature, in the midst of national elections, rolled back some of the new rules. Still, data show that the use of pretrial detention in Chile has been going down.

Another case study looked at Russia, which revised its criminal code in 2001 to transfer the authority over pretrial detention from prosecutors to judges. The new code also required judicial review of an arrest within 48 hours, with the defendant to be released immediately if such review does not occur on time. The code also shortened to two months the amount of time that a defendant can typically be held in pretrial detention. This period can be extended to six months, but only for good cause and only by the same judge who ordered the original detention. Extending detention beyond 12 months requires an order by a higher level court. Under no circumstances can detention be extended beyond 18 months. As in Chile, the Russian legislature rolled back some of these changes, giving prosecutors more time to request pretrial detention and to file criminal charges. Furthermore, the courts have not been following these new laws in all cases. The author of this case study concluded that “progressive changes – even that introduced by government itself – are not sustainable without changes in the attitudes and values of law enforcement and justice officials. Even with the existence of political and institutional support to sustain these changes, nothing can be done without shifting the attitudes and values of those implementing the reforms.”

Among other case studies are ones that looked at deploying prosecutors to police stations in Nigeria to check for bad arrests and facilitate pretrial release, the introduction of paralegals in Malawi to expedite trials and reduce the use of pretrial detention, and juvenile detention reform in the United States.

All the case studies showed a degree of success in reducing pretrial detention, but as one author noted, “{p}rogress in pretrial detention is not a triumphant trend but rather an occasionally rewarded impulse.”

To obtain a copy of the report, “Pretrial Detention,” contact the Justice Initiative at info@justiceinitiative.org.

About one-in-five veterans returning from Iraq and Afghanistan face major psychiatric problems.

NATION'S FIRST VETERANS TREATMENT COURT OPENS IN NY

Officials in Buffalo, New York have introduced the nation's first "Veterans' Treatment Court." Similar to drug and mental health courts, this specialized court serves military veterans and their families, giving them a chance to avoid jail and get their lives back on track. Judge Robert Russell, who created both the drug and mental health treatment courts in Buffalo, started the court after he began noticing more and more veterans, many with drug and psychiatric problems, coming through the system.

The court typically handles non-violent offenses. Instead of serving jail time, veterans undergo mental health or substance abuse counseling, and are given assistance in finding jobs. The goal of the court, which uses other veterans as mentors to overcome resistance to treatment, is to reintegrate veterans back into society and aid them in getting their lives back together. Typically, the court meets either weekly or bi-weekly. Veterans then follow up by reporting their progress back to the courts once a month. Judge Russell said that based on his experience with other treatment courts, veterans will remain with the treatment court for a year or more before they are able to demonstrate that they are ready for their charges to be reduced or cases adjourned.

In the military, mental trauma and severe stress are often an unavoidable part of the job. The RAND Corporation released a study citing that 19 percent of veterans who have returned from Iraq and Afghanistan report "symptoms of post-traumatic stress disorder or major depression." C. West Huddleston, of the National Association of Drug Court Professionals, stated that the veterans court is "just a fantastic idea, instead of punishing them, honoring them for their service."

This veterans treatment court may be the first of many such efforts. The U.S. Department of Health and Human Services is offering grant money to community programs that divert persons with trauma-related disorders, particularly veterans, from the criminal justice system. (*USA Today*, 6/01/08.)

INDIGENT DEFENSE SYSTEMS IN PERIL

In the same month that the U.S. Supreme Court ruled that the Sixth Amendment right to counsel attaches at a defendant's initial court appearance (see Case below), several developments have taken place that cause concern about the availability and quality of that counsel. In Miami-Dade County, Florida, the Public Defender's Office announced plans to stop accepting most felony

“There is a line as public defenders we cannot walk across. The judicial system is crumbling.”

cases, which could number 2,000 a month. In announcing the plan, Public Defender Bennett Brummer stated that his office is so underfunded and understaffed that it can no longer provide constitutionally-required representation. “We’re dancing as fast as we can. We can’t keep this up. We don’t have any alternative,” stated Brummer. (*Miami Herald*, 6/3/08.)

In neighboring Broward County, Public Defender Howard Finklestein is considering the same action. “No public defenders office can provide effective assistance because we are overwhelmed with cases and have inexperienced lawyers and high turnover,” stated Finklestein. “There is a line as public defenders we cannot walk across. The judicial system is crumbling.” Finklestein blamed the state legislature, which cut budgets of state agencies across the board to address a major budget shortfall. (*Miami Herald*, 6/3/08.)

Similar budget cutting by the Georgia legislature has led to the closure of a Fulton County defenders office that handled cases that could not be taken by the county’s public defenders office due to co-defendant conflicts. The office has been representing about 1,850 indigent clients. The closure was ordered by the Georgia Public Defender Standard Council, which governs the delivery of indigent representation in the state. According to the Council, the closure was needed because the legislature cut the budget for conflict cases from \$9 million this past fiscal year to \$5.4 million in the fiscal year beginning July 1. (*The Atlanta Journal-Constitution*, 6/10/08.)

A study that looked at the level and quality of indigent representation in ten counties in Michigan found not one that was “constitutionally adequate.” The study, which was conducted by the National Legal Aid & Defender Association and the State Bar of Michigan, was requested by the Michigan legislature. The ten counties that were studied were selected by an Advisory Board to be representative of the state. The report identified a number of problems, including: lawyers being appointed to cases for which they are unqualified; defenders not meeting with clients until the eve of trial and holding such meetings in non-confidential settings, such as courthouse corridors; attorneys failing to identify obvious conflicts of interest; and attorneys violating their ethical canons to zealously advocate for their clients. The report also noted that, despite U.S. Supreme Court rulings holding that indigent misdemeanor defendants are entitled to counsel, such defendants “are routinely processed through the criminal justice system without ever having spoken to an attorney.”

(A copy of this study, “A Race to the Bottom – Speed and Savings Over Due Process: A Constitutional Crisis,” can be downloaded at www.nlada.org.)

*U.S. Supreme
Court
re-affirms
that Sixth
Amendment
right to counsel
attaches at
initial court
appearance.*

Cases

ROTHGERY V. GILLESPIE COUNTY, TEXAS, SUPREME COURT OF THE UNITED STATES, NO. 07-440, 6/23/08

The question presented in this case was whether a defendant's Sixth Amendment right to counsel attaches at the defendant's initial appearance in court if the prosecutor was not present, or even aware of, the defendant's arrest. The question arose after Walter Gillespie was arrested on a charge of being a felon in possession of a weapon. The basis for this charge was the erroneous belief that Rothgery had a prior felony conviction.

After his arrest, Rothgery spent one night in jail before seeing a magistrate. At that initial appearance, at which no prosecutor was present, Rothgery requested that a lawyer be appointed for him. The magistrate responded that if he wanted to proceed with the hearing and have bail set, he would have to waive his right to an attorney; otherwise, he would have to wait until an attorney could be appointed. Rothgery agreed to a temporary waiver and bail was set at \$5,000, which he then posted through a bail bondsman. Once released, Rothgery renewed his requests for an attorney, making daily telephone calls to court officials for several weeks. These requests were denied in accordance with Gillespie County's unwritten policy of not appointing indigent council until after a defendant's first appearance following an indictment.

Rothgery's indictment did not come until six months after his arrest. Upon indictment, the court increased his bail to \$15,000. Rothgery could not pay that amount and he was jailed. At the hearing at which the bail was raised, as well as for several days thereafter, Rothgery repeated his requests for an attorney. A week later, the court finally appointed him an attorney, who immediately obtained proof that Rothgery had no prior felony convictions. On the basis of that information, the district attorney moved for the dismissal of charges and Rothgery was released. He then sued the county under U.S.C. § 1983 on the ground that the county had violated his Sixth Amendment right to counsel. The U.S. District Court granted summary judgment for the county.

This decision was affirmed by the U.S. Court of Appeals for the Fifth Circuit, which disregarded two previous U.S. Supreme Court cases (*Michigan v. Jackson*, 475 U.S. 625, and *Brewer v. Williams*, 430 U.S. 387) that held that the right to counsel attaches at initial appearance. The reasoning of the Circuit Court was that neither

*Court throws out
FTA conviction
because
defendant
never signed OR
agreement.*

of these cases addressed the issue of prosecutorial involvement. Since the prosecutor was not involved in, or even aware of, Rothgery's initial appearance, it cannot be said that an adversarial proceeding had begun, which would have required that Rothgery be given an attorney.

The U.S. Supreme Court accepted Rothgery's appeal of this ruling and, in an 8 to 1 decision, held that the Fifth Circuit's reliance on the role of the prosecutor "is wrong." The Court stated that it does not matter "whether the machinery of prosecution was turned on by the local police or the state attorney general." What matters, the Court wrote, is not the involvement of the prosecutor, but the commitment to prosecute. According to the Court, "an accusation filed with a judicial officer is sufficiently formal, and the government's commitment to prosecute it sufficiently concrete, when the accusation prompts arraignment and restrictions on the accused's liberty to facilitate the prosecution."

In its conclusion, the Court reiterated that "a criminal defendant's initial appearance before a judicial officer, where he learns the charge against him and his liberty is subject to restriction, marks the start of the adversary judicial proceedings that trigger the attachment of the Sixth Amendment right to counsel."

The Court vacated the judgment of the Court of Appeals and remanded the case for further proceedings.

**PEOPLE V. MOHAMMED, CALIFORNIA COURT OF
APPEAL, SIXTH APPELATE DISTRICT,
H030980, 5/02/08**

Salee Amina Mohammed had been charged with perjury and released on her own recognizance (OR). For some reason, at the time of that release she did not sign the written promise to appear as required under Section 1318 of the California Penal Code. When she failed to appear for trial on that charge she was then charged with one count of failure to appear while on OR. She was ultimately convicted of both the underlying perjury charge and the failure to appear charge. She appealed her failure to appear conviction, arguing that, since she had not signed a promise to appear as required by the statute, she was never on OR.

The trial court had determined that as a matter of law a defendant could be convicted of failure to appear while on OR if there has been substantial compliance by the court with the mandate of Section 1318. Upon review, the Court of Appeals found nothing ambiguous or unclear in Section 1318, which states that the court shall not release the defendant on OR until the defendant signs the release

*Fifty-seven
percent
of felony
defendants
released
prior to
adjudication.*

agreement and files it with the clerk of the court or other person authorized to accept bail. The court considered the case of *People v. Jenkins*, 146 Cal.App.3d 22, which had concluded that a defendant released from custody without the written agreement specified in Section 1318 is not a defendant released on his or her own recognizance.

The court found that the legislative intent of Section 1318 went beyond the original statutory requirements of OR release, requiring a much more specific and detailed form of written agreement for such release. Accordingly, a written agreement was established in which the defendant not only promised to appear, but also acknowledged that he or she had been informed of the consequences and penalties applicable if they violated the conditions of release. The written agreement of the defendant is not simply an agreement to show up in court, the court held, but serves as notice that the defendant understands and acknowledges that he or she is out on OR and what that means in terms of violating the agreement.

The court ruled that since no evidence of a written agreement conforming to Section 1318 was produced at trial, there was insufficient evidence to convict Mohammed of willful failure to appear while out on OR. The court reversed the judgment of the trial court.

Research

2004 STATE COURT PROCESSING STATISTICS BULLETIN

The Bureau of Justice Statistics (BJS) has released its bulletin for the 2004 State Court Processing Statistics (SCPS) Project. The SCPS program analyzes data collected every two years by the Pretrial Justice Institute on the processing of felony defendants in state courts. This data includes demographic characteristics, pretrial release information, criminal histories, adjudication and sentencing information. The SCPS program is comprised of 40 large counties identified by the U.S. Census Bureau to represent the 75 most populous counties in the United States. From the 2004 cycle, it was estimated that 57,497 defendants were charged with a felony offense in May of that year. According to the bulletin, 57 percent of these felony defendants were released prior to adjudication.

Eighty-eight percent of defendants that were charged with murder were detained throughout the pretrial period, as were 61 percent of

*Age is a
strong
predictor
of pretrial
misconduct
in New York
City, study
finds.*

those charged with motor vehicle theft, 58 percent of those charged with robbery, and 54 percent of those charged with burglary. Defendants that were involved with the criminal justice system at the time of their arrest were less likely to be released pretrial. The various involvements in the criminal justice system includes the defendant being on probation or parole, released on an open case, on a diversion program, or active arrest or bench warrants. Fifty-eight percent of defendants with one or more of these types of involvement with the system were detained.

Surety bail was the most prominent form of pretrial release, at 43 percent, followed by personal recognizance (25 percent), conditional release (16 percent) and deposit bail (9 percent). Of released defendants, about 35 percent engaged in pretrial misconduct, i.e., rearrest on a new charge or failure to appear, while waiting for their adjudication or sentencing.

For a copy of this bulletin or to check for previous SCPS program reports, please visit the BJS website: <http://www.ojp.usdoj.gov/bjs/welcome.html>.

NYC LOOKS AT RISK FACTORS OF DV DEFENDANTS

The New York City Criminal Justice Agency conducted an analysis of 14,599 domestic violence (DV) cases disposed in the Criminal Court during the First Quarter of 2001 and the Third Quarter of 2002. The research sought to answer two questions: (1) What are the factors that influence the likelihood of pretrial rearrest among DV defendants? (2) What are the factors that influence the likelihood of pretrial failure to appear and/or pretrial rearrest for new DV offenses among DV defendants?

To answer these questions, researchers developed logistic regression models that included several categories of variables: criminal history, release recommendation, community ties, charge characteristics, release characteristics, and geographic and demographic characteristics. They also introduced two control variables, one to correct for selection bias associated with likelihood of release, and the other to take into consideration time at risk.

Addressing the first question, which referred only to risks of rearrest, researchers found that time at risk was the strongest predictor of rearrest for any offense – the longer the defendant was on release the greater the likelihood of a rearrest. Also predictive were age (the younger the defendant the more likely to be rearrested), criminal history (specifically, any prior arrests, two or more open cases at the time of arrest, and a larger number

INSTITUTE ACTIVITIES

As we enter the summer months, PJI has been busy working on some very exciting projects. We have been assisting the National Association of Pretrial Services Agencies and Justice 2000 with the planning of the upcoming conference in Milwaukee, Wisconsin. Our staff has been working with NAPSA in putting together this year's curriculum, selecting speakers and organizing logistics. Look for the upcoming NAPSA conference from September 28 to October 1.

Staff from PJI also recently went to Lansing, Michigan to kick off our judicial workshop on pretrial decision making. Staff and judicial consultants, Judge Bruce Beaudin and Judge Truman Morrison presented their workshop at the 2008 Michigan Judicial Symposium. While in Michigan, staff then conducted a workshop for pretrial and community corrections officers on the importance of accurate and effective pretrial decision making. Our Michigan trip kicked off the first of three judicial workshops scheduled for this year under a BJA grant.

PJI was also solicited by BJA to provide mental health technical assistance to those counties who were not selected

of prior misdemeanor convictions), and being unemployed. Defendants released after, as opposed to at, the arraignment and defendants released on bail, as opposed to OR, were less likely to be rearrested.

Looking specifically at the likelihood of rearrests for domestic violence offenses, the study found that having a larger number of misdemeanor convictions had no effect on the likelihood of rearrest on a domestic violence charge, but having prior arrests and two or more open cases did have an effect. Age was related, but not as strongly as for any arrest. Type of release had no effect. On the other hand, the relationship between the defendant and the victim influenced the likelihood of rearrest on a domestic violence offense, but not on any rearrest.

The second question addressed the combined risk of rearrest and failure to appear. Researchers found that age was a strong predictor of pretrial misconduct. The next strongest predictors were whether the defendant had any prior arrests and whether the defendant was unemployed, followed by whether the defendant expected anyone at arraignment, whether the defendant had two or more prior bench warrants, and whether the defendant was charged with criminal contempt – which usually results from violating a protection order. As with the first question, defendants released on bail were less likely to engage in pretrial misconduct.

As to this last finding, the researchers speculated that the lack of availability of supervised release may be a factor in this finding. “Setting conditions of release, particularly by requiring supervised release for some DV defendants, may be an effective way to address concerns about both FTA and pretrial rearrest for new DV offenses. This would require development and implementation of a supervised release program, since none currently exists in New York City.”

Researchers recommended such a program for New York City. “DV defendants should be interviewed on the day of their arraignment in Criminal Court to provide contact information as well as information for a risk assessment. Each defendant should be provided at that time with a full explanation of the conditions of release, including the TOP (Temporary Orders of Protection). Defendants should be required to make contact with an oversight agency by telephone or in person for a specified number of times per week while the case is pending. The oversight agency should contact the defendant if s/he fails to check in as required. The oversight agency should also notify the defendant of upcoming court appearances, report to the court about the defendant's compliance or noncompliance with conditions of release, and

INSTITUTE ACTIVITIES (CONTINUED)

for BJA's mental health court grant. PJI will have the opportunity to go into multiple counties to provide technical assistance to administrators interested in improving or creating a mental health court.

Ken Rose is preparing the fourth survey of pretrial programs. This survey will begin the process of creating our Pretrial Helpdesk, where pretrial practitioners, attorneys, judicial officers and community corrections officers can turn to for resources regarding the operation and management of pretrial programs from around the country.

Completing PJI's list of new work, PJI will be teaming up with the National Association of Counties (NACo) to create the first ever guide for elected county officials on Pretrial Justice. Look for this and other reports to be released by PJI in the future.

contact defendants who miss court appearances to encourage them to return to court. The oversight agency should also contact the victim to verify the defendant's compliance with the TOP, however this must be done carefully to avoid endangering the victim."

A copy of the report, "Predicting Pretrial Misconduct Among Domestic Violence Defendants in New York City," can be obtained by contacting the New York City Criminal Justice Agency at (646) 213-2500.

Calendar

The dates for the 36th Annual Conference and Training Institute of the National Association of Pretrial Services Agencies is rapidly approaching – September 28 to October 1. The conference will be held at the Hyatt Regency Milwaukee in Milwaukee, Wisconsin. Book your room by August 25 to get to get the conference rate of \$99 per night. To get that rate, register through the NAPSA web site at www.napsa.org. Fees for early registration for the conference are \$325 for members and \$425 for non-members. See the NAPSA web site for information on registering and on discount air fares.

Job Announcement

The National Association of Counties (NACo) is seeking a Senior Associate, Community Services Division. The position will be focused on the subject of local justice programs, including juvenile justice, the impact of methamphetamine on counties, alternatives to incarceration for low-level offenders, and jail reentry. The successful candidate will be responsible for a variety of professional and technical work assignments aimed to educate county officials, develop their leadership capacity to improve both adult and juvenile justice systems, and successfully fulfill the requirements of several grant agreements with the Department of Justice and other foundation and private funding agencies. Qualifications include a Bachelor's Degree plus a minimum of three years experience, although a Master's Degree and experience in juvenile or criminal justice is preferred. Salary starts at \$42,000. To apply, submit a resume and cover letter by July 18 to Lesley Buchan, Program Director, National Association of Counties, 25 Massachusetts Avenue NW, Suite 500, Washington, DC 20001, lbuchan@naco.org.

THE PRETRIAL REPORTER

A BI-MONTHLY PUBLICATION OF THE PRETRIAL JUSTICE INSTITUTE

WWW.PRETRIAL.ORG

VOLUME XXXIV | NO.3 | MAY., JUNE., 2008

INSTITUTE STAFF

EXECUTIVE DIRECTOR

Timothy J. Murray

CHIEF OPERATING OFFICER

Cherise Fanno Burdeen

TECHNICAL ASSISTANCE DIRECTOR

John Clark

SENIOR PROJECT ASSOCIATE

Ken Rose

SENIOR RESEARCH ASSOCIATE

David J. Levin, Ph.D.

SENIOR PROJECT ASSOCIATE

India L. Ochs, Esq.

SCPS MANAGER

Becky Mensch

PROJECT STAFF

Jessica Young, M.A.

Tracy Loynachan, M.S.

PJI
PRETRIAL JUSTICE INSTITUTE
PJI
FOUNDED 1977

Since 1977, the Pretrial Reporter has been keeping readers abreast of developments in pretrial. Articles are not copyrighted and may be condensed, re-written, or used verbatim. Whenever Pretrial Reporter materials are reproduced in another publication, the Pretrial Justice Institute should be credited with the reprint and a copy of the publication in which the materials appear should be mailed to the Editor.

PTR is an electronic publication emailed to subscribers. To aid in delivery, please ensure PTR@pretrial.org and emails with attachments are not blocked by your system. Special accommodations can be made for law libraries. To subscribe, log onto www.pretrial.org and enter the The Library. There, you may either download a subscription form or subscribe with a PayPal or credit card. The subscription rate is \$225 for two years. If you are mailing your subscription form, please send a check and the completed form (with email address where the subscription is to be sent) to:

Pretrial Justice Institute.

927 15th Street, NW, Suite 300, Washington, DC 20005-2323

202.638.3080 F: 202.347.0493

E: ptr@pretrial.org • www.pretrial.org



(l to r) Tim Murray, Dan Ryan (consultant), Ken Rose



Clockwise from right - Becky Mensch, Amy Peko (CPA), Cherise Burdeen, Tracy Loynachan, Jessica Young, John Clark, David Levin, India Ochs