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In this issue:

NATIONAL NOTES	1
CASES	6
CALENDAR	10

National Notes

FUGITIVE SAFE SURRENDER PROGRAM EVALUATED BY KENT STATE UNIVERSITY

The backlog of the millions of active warrants that go unserved each year in the United States presents a variety of problems for the justice system, law enforcement and communities. Locating fugitives is difficult enough, but serving warrants when they are found presents an increased danger to law enforcement officers and the public.

In an effort to address this national problem, in 2006 Congress authorized Fugitive Safe Surrender (FSS) as the first known program of its kind. This program creates a safe and orderly environment to serve and process outstanding warrants in a way that leverages law enforcement, community services, and volunteers from the faith-based community.

This program typically uses churches as the staging area for receiving fugitives that voluntarily turn themselves in. This setting helps to build trust and provides the feeling of a safe refuge that takes the desperateness out of the situation. Fugitives that voluntarily turn themselves in receive “favorable consideration.” If it is found that no warrant exists, the participant is free to go, knowing their true legal status. Some cases are of a minor nature and can be heard immediately by a judge at the church. If the participant meets the criteria for arrest due to violence or other circumstance, they can be remanded to custody. To be successful, FSS programs are a collaborative effort between federal and local law enforcement, the faith-based community, media, volunteers, and participants from the justice system.

Although there have been concerns about the violation of separation of church and state, the ACLU has provided support for the implementation of FSS programs, due to steps taken to ensure that participants have access and receive legal representation and that religious symbols are removed from the court room.

In a recently released report, “The Fugitive Safe Surrender Program: A collaboration of the faith-based community and law enforcement,”

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“The First Appearance procedures place an enormous financial burden on defendants who are able to meet their monetary bonds, and on taxpayers who pay to house those who do not.”

Kent State University authors Daniel J. Flanner, Eric Jefferis and Jeffrey Kretschmar evaluated the effectiveness of FSS. The sample sites included Cleveland, OH; Phoenix, AZ; Indianapolis, IN; Akron, OH; Nashville, TN; Memphis, TN; and Washington, DC. This study concluded that FSS had a significant impact on clearing warrants and on getting participants safely back into the community. One of the most important outcome measures for FSS was whether or not participants appeared for subsequent court dates. Appearance rates in the pilot sites range from 82% to 95%. An additional benefit found was the cost effectiveness of clearing a large number of warrants in a short period of time.

The Kent State report can be downloaded at innovationincompassion.hhs.gov/documents/FugitiveSafe_DJF.PDF

REPRIMAND RECOMMENDED FOR JUDGE’S EFFORTS TO IMPROVE BAIL DECISION-MAKING PROCESS

The Florida Judicial Qualifications Commission has recommended that the state’s Supreme Court publicly reprimand St. Lucie County Judge Cliff Barnes. The recommendation came as a result of actions taken by Judge Barnes to bring attention to the problems in the county’s pretrial release decision making process. In 2006, Judge Barnes filed a suit against the other judges of his court, the State’s Attorney, the Public Defender, and the Sheriff, alleging that these parties were failing to follow Florida court rules pertaining to the initial appearance of a defendant in court.

The suit depicted an initial appearance hearing at which the prosecutor and public defender are often absent, or, if present, make no representations that would assist the court in bail setting, and at which judges simply approve bail amounts that are set by the Sheriff’s Department using the Bail Schedule. “The First Appearance procedures as described place an enormous financial burden on defendants who are able to meet their monetary bonds, and on taxpayers who pay to house those who do not,” wrote Judge Barnes in his suit. “It also has the effect of denying pretrial release to most indigent defendants.”

After the suit was filed, several of the parties that were sued filed complaints with the Judicial Qualifications Commission alleging that Judge Barnes violated a number of Judicial Canons, including demeaning the integrity of the judicial system. The Commission held a hearing on the complaints in April and issued its recommendation in July.

*Program sets
up bail fund
for illegal
immigrants
facing removal
hearings.*

In a written opinion, the Commission concluded that, while Judge Barnes may have had some valid points to make and his motives were “high minded and proper,” the approach he used did violate Judicial Canons. “Without question, this was a political controversy of long standing and it may well have deserved the serious attentions and efforts of Judge Barnes,” stated the Commission’s opinion. “However, he should not have effectively sued all of the other elected public officials, asserting they were refusing to apply the law.”

After the Commission issued its recommendation, the local newspaper, *The Palm Beach Post*, printed an editorial stating that Judge Barnes should not be reprimanded. The editorial stated that Judge Barnes’ “actions were aimed at reforming a bad system for deciding who goes to jail and who gets released. It treats the poor unfairly, and for years has been under the tight control of a few powerful individuals who created fiefdoms in St. Lucie County. (*The Palm Beach Post*, 8/09/08.) There was no word as to when the Florida Supreme Court will act upon the Commission’s recommendation.

AGENCY HELPS IMMIGRANTS POST BAIL

A Maryland-based immigrant advocacy group has been helping suspected illegal immigrants caught in Immigration and Customs Enforcement (ICE) raids post bail. Casa de Maryland, a community organization founded in 1985, has been helping immigrants for years by providing emergency food and clothing, immigration assistance, employment, etc. They have since added to their repertoire of programs by teaming up with the National Immigrant Bond Fund (NIBF) to help immigrants picked up in ICE raids to post bail. Casa’s motive behind this program is to help these immigrants to remain with their families, in their communities and to work more closely with their attorneys for their defense.

The bond fund puts up 50 percent of the bond, leaving the defendant responsible for the other half. The rationale for this is to give immigrants incentive to report for removal hearings. The program is only available for those picked up on ICE charges; any immigrants with criminal charges are not eligible.

The idea for the bond program arose last year when Robert Hildreth, founder and president of International Bank Services, Inc., helped 40 out of 200 immigrants picked up in Massachusetts post bail. “We were able to make a difference in the lives of 40 people, so we thought, let’s go national,” noted Hildreth. With that,

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he contributed almost all of the \$200,000 in Casa's fund to help in Maryland.

The bond program made Maryland and national news after a June raid on an Annapolis painting company in which Casa's fund was able to free 10 of the 46 immigrants picked up in an ICE sweep by posting bails ranging from \$3,500 to \$20,000.

Their work, however, has stirred up opposition. Brad Botwin, the leader of Help Save Maryland, an anti-illegal immigration group is upset that Casa, which receives 45 percent of its funding from the government, is helping suspected illegal immigrants make bail. He argues that citizens should not be forced to contribute to such an effort. (*The Washington Post*, 7/1/08.)

LEGISLATORS IN TWO STATES RESTRICT PRETRIAL RELEASE OF DOMESTIC VIOLENCE DEFENDANTS

Lawmakers in Indiana recently passed legislation stating that persons arrested for domestic violence are not eligible for release on bail for the first eight hours after arrest. This applies both to defendants who wish to bond out before having an initial court appearance and to defendants who do appear in court for their initial hearing within eight hours of arrest. The rationale for the law is to protect domestic violence victims from retaliation immediately following arrest and to give victims time to relocate and seek a protective order. "There are people who post bond and are right back on the streets," stated state Senator Jim Arnold, who introduced the bill. "They are still in a violent mode, and they want to get right back to the person who put them in jail." (*Courier Press*, 7/3/08.)

A new law in Michigan allows judges to order defendants charged with domestic violence to wear GPS devices as a condition of pretrial release. The devices allow domestic violence victims to receive an alert via cell phone if the defendant enters a prohibited zone, or gets within a specified range of the victim. To determine the defendant's proximity to the victim, the victim must also wear or carry an electronic device. The law was passed in response to the murder of a woman by her estranged husband after she had moved out of her home, changed jobs, and obtained a protective order. (*Kalamazoo Gazette*, 7/29/08.)

TEXAS COUNTIES ARE BEHIND IN REPORTING CRIMINAL ADJUDICATIONS

According to a recent assessment by the Criminal History Records Bureau of the Texas Department of Public Safety, counties within the state have submitted adjudications for only 69 percent of criminal cases filed in 2006. Texas law requires counties to report all dispositions of criminal cases. Records Bureau Director Angie Klein attributed the problem to difficulties counties face in maintaining adequate information systems and retaining trained personnel.

“That’s astonishing,” stated Williamson County District Attorney John Bradley, reacting to the low compliance figure. “That’s leaving a substantial number of criminals unreported in the system. That’s the biggest threat to public safety that you can imagine.”

While some counties are efficient in reporting dispositions – Harris County has 100 percent reporting compliance – others are way behind. Webb County had updated only two percent of its 2006 cases, and Travis County only 13 percent. Other counties have made progress in the most recent reporting year, but are having difficulties in catching up from previous years. Dallas County, for example, is up to 71 percent reporting for 2006 cases, but has filed less than half the dispositions for 2001 and 2002, and about two-thirds for 2003. County officials do not expect to ever be able to catch up with missing dispositions from the 1990s.

The missing records have significant implications beyond the criminal justice system. Since Texas law requires criminal record checks for hiring to certain positions, such as teachers and caregivers, and many private employers routinely run criminal histories for prospective employees, cases that resulted in dismissals but are not recorded are costing people job opportunities. (*Dallas Morning News*, 8/21/08.)

COOK COUNTY SHERIFF AND CHIEF JUDGE DEBATE ABOUT PRETRIAL RELEASE DECISION MAKING

A 1988 federal consent decree gave the Cook County (Chicago) sheriff the authority to release pretrial detainees on electronic monitoring to keep the jail within a court-ordered cap. For the past 20 years, the decree has resulted in tension between the sheriff’s department and the Cook County Circuit Court. The sheriff’s department has argued that circuit court judges should be making decisions about which detainees should be released pretrial, and the court has countered that the sheriff is bound by the requirements of the consent decree to be making those decisions.

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The issue began heating up recently when Tom Dart took office as the new sheriff. Sheriff Dart has reduced the number of pretrial detainees on electronic monitoring from a high of 1,500 to a current level of about 300. “For me, blindly, to be letting people out, is not right,” stated Sheriff Dart. In response, Chief Circuit Court Judge Timothy Evans notes that “as long as the [consent decree] is still the law, the sheriff has to do what the sheriff has to do under the decree.” Nonetheless, Chief Judge Evans says he hopes to create “a model pretrial system that has never been in place anywhere in the country.” (*Chicago Tribune*, 8/22/08.)

While this debate goes on, the pretrial detainee population at the Cook County Jail continues to draw attention. In July, the *Chicago Sun-Times* ran a story highlighting the number of persons who have been held in the jail for substantial periods of time awaiting trial. According to the story, 13.7 percent of the pretrial detainee population is comprised of inmates who have been held for at least one year. A total of 430 inmates have been awaiting trial for two years or more, including 36 who have been waiting for at least five years. (*Chicago Sun-Times*, 7/7/08.)

Also this summer, the Civil Rights Division of the U.S. Department of Justice submitted a report to Cook County stating that the constitutional rights of inmates at the jail, most of whom are pretrial detainees, are being violated, and threatening the county with a lawsuit if conditions are not improved. According to the report, the jail “fails to adequately protect inmates from harm and serious risk of harm from staff and other inmates; fails to provide inmates with adequate medical and mental health care; fails to provide adequate suicide prevention; fails to provide adequate fire safety precautions; and fails to provide safe and sanitary environmental conditions.”

The report says that crowding is a major cause of these failures. According to the report, hundreds of inmates were sleeping on the floor each night, and many were housed three to a two-person cell. One dormitory was operating at twice its designed capacity.

Cases

DESLANDES V. VIRGINIA, COURT OF APPEALS OF VIRGINIA, NO. 2033-07-2, 7/8/08

Cary Deslandes was arrested in Chesterfield County, Virginia on December 24, 2005 for breaking and entering. He was released later that same day on a \$2,000 bond. One condition of that

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bond was that he not leave Virginia while the case was pending. Notwithstanding this condition, Deslandes voluntarily traveled to New York to see family. Shortly after arriving in New York, Deslandes was arrested and jailed. As a result, he was not present for a February 9, 2006 court date in Chesterfield County, and a bench warrant was issued.

Following his release in New York on September 11, 2006, Deslandes returned to Virginia. However, he did not contact the Court Clerk's Office upon his return to determine the status of the breaking and entering charge, believing he was to appear in court on December 6, 2006. Additionally, sometime before December 6, 2006, he traveled to New York once again, and was again arrested. When these new charges were dropped, New York officials held the Deslandes in custody until Virginia authorities came to get him on the failure to appear warrant. Back in Virginia, Deslandes was convicted in a bench trial for failure to appear on the breaking and entering charge. In reaching that verdict, the trial court found that Deslandes had violated the terms of the bond and that it was a willful and intentional act on his part, and the fact that he was then subsequently arrested did not serve as an adequate excuse for not being able to appear in court.

The case then went to the Virginia Court of Appeals, which reviewed the law on willful failure to appear. That law, Code 19.2-128(B), states that the term 'willfully' has "the customary meaning that the act must have been done 'purposely, intentionally, or designedly'." The court also found that "[w]hen the government proves that an accused received timely notice of when and where to appear for trial and thereafter does not appear on the date or place specified, the fact finder may infer, absent additional credible evidence negating such an inference, that the failure to appear was willful. Evidence that a defendant with notice of his trial date left the state without notifying the court in violation of the conditions of his bail bond is relevant to determining whether his subsequent failure to appear was willful."

The court noted that Deslandes voluntarily left Virginia to go to New York despite his knowledge of the condition prohibiting him from leaving the commonwealth. In addition, he was arrested in New York for criminal behavior he engaged in after he arrived there, and he made no effort to contact the Virginia trial court or his appointed counsel either while he was incarcerated or after he was released on September 11, 2006, although he returned voluntarily to Virginia a few days later. The commonwealth was only able to address the charges at hand after the appellant returned to New York a second time, was again arrested there on new charges, and was returned to Virginia pursuant to an interstate detainer after New York

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conditions of
pretrial release
from a jail cell.*

determined it would not prosecute him on the new charges. The Court of Appeals believed this evidence, in its entirety, was sufficient to support the conviction for willful failure to appear, and thus affirmed the trial court's ruling.

WISCONSIN V. DEWITT, WISCONSIN COURT OF APPEALS, DISTRICT III, NO. 2007AP2869-CR, 7/29/08

Travis Dewitt was arrested and charged with multiple offenses, resulting in the filing of three separate cases – one involving misdemeanors and the others involving felonies. Dewitt was released on a signature bond on the misdemeanor case, but remained in jail because he was unable to post the cash bonds on the two felony cases. A condition of both the signature and the cash bonds was that Dewitt have no contact with the victim in these cases. Dewitt then allegedly called the victim nine times from the jail. As a result, prosecutors filed a fourth case – bail jumping, for violating the no-contact condition on the misdemeanor signature bond. Dewitt entered guilty pleas covering all four cases and he was sentenced. Shortly thereafter, Dewitt filed a motion seeking to withdraw the pleas, arguing that the bail jumping convictions were improper because he could not violate conditions of pretrial release while he was detained. The trial court denied the motion and Dewitt appealed.

The Wisconsin Court of Appeals pointed out that while the pretrial release statutes (Section 946.49 and 969.02) do not explicitly define “release,” the court must interpret statutory language in a way that does not lead to “absurd or unreasonable results.” The court noted that judges are authorized under Wisconsin law to impose the condition that a defendant return to custody after specified hours. “Because it would be absurd to conclude that conditions of release would apply when a defendant was outside jail, but be ‘turned off’ upon return to custody, it is evident that ‘release’ refers to the defendant posting the bond, be it signature or cash, and need not be accompanied by the defendant’s physical departure from the jailhouse.”

Moreover, the court stated that Dewitt was not obligated to sign the signature bond on the misdemeanor case, especially if he knew that he would not be posting the cash bonds on the felony cases. By signing it, however, “he therefore committed himself to its conditions.” Thus, the court concluded, “while not physically released, Dewitt was released as contemplated by WIS STAT Section 969.02 when he fulfilled the signature bond.”

Appeals court

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OHIO V. CHAMBLISS, COURT OF APPEALS OF OHIO, EIGHTH APPELLATE DISTRICT, NO. 91272, 7/31/08

An Ohio appeals court has made clear that a judge cannot revoke a defendant's bail without a "change in circumstance" from when the bail was originally set. The issue arose when three co-defendants, who had worked out a plea agreement with prosecutors, appeared in court to enter their pleas. When the court refused to accept the agreement, the three co-defendants withdrew their pleas. In response, the court revoked their bails and ordered the three remanded into custody. The three appealed and requested an immediate stay of the bail revocation order. The Ohio Court of Appeals granted that stay pending a hearing on the case.

After the hearing, the appeals court noted that the bail revocation decision was made "with no notice, no opportunity to be heard, and no legally sufficient cause articulated upon the record." According to the court, "there is no evidence whatsoever that [the co-defendants] had come to pose any greater danger to the community than they did when the bonds were first set, nor is there any evidence in the record that they had ever failed to appear as scheduled or breached any conditions of their bonds." Finding that there was "no change of circumstances whatsoever from conditions when the original bond was set," the court vacated the trial court's order of revocation.

BULL V. CITY AND COUNTY OF SAN FRANCISCO, U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT, NO. 06-15566, 8/22/08

The San Francisco Sheriff's Department instituted a blanket policy of strip searching all arrestees who are housed in the jail prior to their arraignment. This policy was adopted after finding many arrestees charged with minor offenses carrying contraband into the jail. The U.S. Court of Appeals for the Ninth Circuit was asked to decide whether this blanket policy violates the U.S. Constitution. The court concluded that it does.

Mary Bull and a class of similarly situated arrestees brought a § 1983 suit against the jail alleging that the strip searches violated the Fourth and Fourteenth Amendments. In response to the suit, the Sheriff argued that the strip search policy was permitted under the U.S. Supreme Court ruling in *Bell v. Wolfish* (441 U.S. 520), which held that pretrial detainees can be strip searched with less than probable cause. In addressing these competing claims, the appeals court noted that *Bell* did not address a blanket policy where no

INSTITUTE ACTIVITIES

With the support from the JEHT Foundation, PJI is conducting the fourth *Survey of Pretrial Programs* throughout the country. The survey opened on-line in July and will remain open after NAPSAs annual conference to ensure that any programs not yet included can be part of the project. Email ken@pretrial.org if your program has not been contacted to participate.

This month, Senior Research Associate Dr. David Levin left PJI for a new opportunity. After nearly three years of hard work, Dr. Levin has started a new chapter of his life and we wish him the best.

Other work during this summer included staff supporting the Association of Pretrial Professionals of Florida (APPF) in preparing a response to a proposed legislative bill restricting pretrial services agencies actions. We have also participated heavily with our membership association, the National Association of Pretrial Services Agencies (NAPSA), creating and organizing workshops, speakers and logistics for the upcoming 36th Annual Conference and Training Institute in Milwaukee, Wisconsin.

suspicion was required. It cited a long line of cases affirming the need for reasonable suspicion to conduct strip search. The court concluded, “a policy of strip searching arrestees based solely on their classification for housing in the general population violates the arrestees’ clearly established constitutional rights.”

Calendar

Time is running out to book a hotel room for the National Association of Pretrial Services Agencies’ 36th Annual Conference and Training Institute, to be held September 28 to October 1 in Milwaukee, Wisconsin. The conference hotel, the Hyatt Regency Milwaukee, is sold out, but overflow rooms have been blocked at the same conference rate of \$99 per night at the Doubletree Hotel, City Center – a five block walk from the Hyatt. To get the conference rate, reservations must be made by September 15. You can book on-line by going to www.doubletreemilwaukee.com and using the conference code of “PTS.” Early registration for the conference, which must be postmarked by September 5, is \$325 for members of the Association and \$425 for non-members. Late or on-site registration is \$355 for members and \$450 for non-members. For more information, go to www.napsa.org.

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