The Pretrial Release Decision Making Process: Goals, Current Practices, and Challenges

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I. INTRODUCTION

Every year in this country approximately 14 million arrests are made. Nearly three million of these are for index crime offenses (murder, rape, robbery, aggravated assault, burglary, larceny-theft, motor vehicle theft, and arson). Over 700,000 involve violent crimes and over two million are property crimes.[1]

The sheer numbers coming into the criminal justice system each year require efficient processing. Any slip up, error or unnecessary delay in one part of the system results in a domino effect of further problems throughout the system. Efficiency therefore must first be achieved in two decisions that are made at the "front-end" of the criminal justice system. In the government's assessment, is the charge worth pursuing? If so, in the court's determination, should the arrestee be released pending trial or held in jail? This paper will examine issues relating to the latter question, assuming that the first — whether or not to charge — has been answered in the affirmative.[2]

[1] Federal Bureau of Investigation, *Crime in the United States, 1992* (Washington, D.C.: U.S. Department of Justice, U.S. Government Printing Office, 1993) p. 217.

[2] While an examination of the charging decision is beyond the scope of this article, there are compelling reasons to look at this important decision as well. For example, despite the benefits that have been identified for the early screening of cases by prosecutors (see Andy Hall, et al, *Alleviating Jail Crowding: A Systems Perspective*, (Washington, D.C.: National Institute of Justice, November 1985), pp. 18-19) a recent survey of prosecutors' offices found that the percentages of instances where prosecutors reviewed felony arrests before the initial court appearance fell from 80 percent in 1974 to 47 percent in 1990. John M. Dawson, *Prosecutors in State Courts, 1990*, (Washington, D.C.: U.S. Department of Justice, Bureau of Justice Assistance (NCJ-134500), March 1992), p. 4.

The pretrial release decision addresses a basic liberty right to freedom. The majority of states and the federal court system have adopted specific statutory wording requiring that in making a decision to release or hold in custody, judicial officers start with the presumption that a person charged with an offense should be released pending trial, a presumption that must be overcome before pretrial incarceration can be allowed.[3] Society has in effect said that arrest should not equal detention, except in limited cases and that the decision as to who might prove to be the exception should be carefully derived.[4]

The pretrial release decision is important for another crucial reason. Research has shown that decisions made when an individual first enters the criminal justice system have far-reaching implications, particularly for defendants who are unnecessarily detained. Defendants detained pretrial plead guilty more often, are convicted more often, and are sentenced to prison more often than defendants who are released pretrial. These relationships hold true even when other relevant factors are controlled for, such as current charge, prior criminal history, family ties, and type of counsel.[5]

The pretrial release decision making process has two, potentially conflicting, goals: (1) to allow, to the maximum extent possible, pretrial release for persons who have been accused of criminal offenses pending adjudication of their charges; but also (2) to assure that accused persons appear in court to face their charges and that they do not pose a threat to the public or any specific individual during this period.[6]

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[3] John S. Goldkamp, "Danger and Detention: A Second Generation of Bail Reform," *The Journal of Criminal Law & Criminology*, Volume 76, 1985.

[4] As the U.S. Supreme Court noted in a decision upholding the pretrial detention provisions in federal law for persons deemed to present a threat to the community, "[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *U.S. v. Salerno*, 481 U.S. 739 (1987).

[5] Anne Rankin, "The Effect of Pretrial Detention," *New York University Law Review*, Volume 39, 1964; Patricia Wald, "The Right to Bail Revisited: A Decade of Promise Without Fulfillment," in Stuart S. Nagel, ed. *The Rights of the Accused*, (Beverly Hills, California: Sage Publications, 1972),; William M. Landes, "Legality and Reality: Some Evidence on Criminal Procedure," *Journal of Legal Studies*, Volume 3, 1974; Hans Zeisel, "Bail Revisited," *American Bar Foundation Research Journal*, 1979; Stevens H. Clarke and Susan T. Kurtz, "The Importance of Interim Decisions to Felony Trial Court Dispositions," *Journal of Criminal Law and Criminology*, Volume 74, 1983; and Michael R. Gottfredson and Don M. Gottfredson, *Decision Making in Criminal Justice: Toward a Rational Exercise of Discretion*, (New York, New York: Plenum Press, 1988).

[6] Historically, the sole purpose of bail had been to assure court appearance. In 1970, the District of Columbia was the first jurisdiction to require that the threat to community safety be weighed in the pretrial release decision along with the risk of flight. At last report, 34 states, the District of Columbia, and the federal system require danger to be considered as well as flight risk. In addition, the laws in 25 states, the District of Columbia, and the federal system allow judicial officers to detain without bail persons charged with serious offenses or who have been convicted previously of a serious offense. (Updated from Goldkamp, supra note 3.) While this last formal survey of state pretrial release statutes was

Reconciling the conflict between these two goals requires a balancing of the defendant's interest in pretrial release with society's interests in the orderly administration of justice and the safety of the public. Achieving this balance is often spoken of in terms of maximizing rates of pretrial release while minimizing risks of pretrial misconduct.

A preliminary scan of data — across time and across jurisdictions — relating to the pretrial release decision making process reveals a number of indicators of problems in striking that balance. For example:

- Jail populations more than doubled between 1982 and 1992; most troubling about this growth is that one-half the inmates in local jails have not been adjudicated — they are awaiting trial.[7]

- Studies of failure to appear in felony cases in the 1960s and 1970s showed substantially lower rates than are currently recorded.[8]

- Wide variations exist in local jurisdictions in the proportion of felony arrestees released pending trial.[9]

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published in 1985, the Pretrial Services Resource Center tracks changes in state laws. Based on the results of that effort, the information presented here still appears to be accurate.

[7] Between 1970 and 1992, there was a 120 percent increase in the number of jail inmates per 100,000 U.S. residents. In 1978, jails were operating at 65 percent of their rated capacity; by 1992 that figure had jumped to 99 percent. In 1992, jails in 131 jurisdictions were under court order or consent decrees to limit their populations. This figure amounted to over one-quarter of the 503 jails in the nation that hold 100 or more inmates. Allen J. Beck, Thomas P. Bonczar, and Darrell K. Gillard, *Jail Inmates 1992* (Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics (NCJ-143284), 1993).

[8] A 1962 study of 20 large jurisdictions showed an average failure to appear rate of six percent. A followup study in the same jurisdictions in 1971 revealed an average failure to appear rate of nine percent. Wayne Thomas, *Bail Reform in America*, University of California Press, 1976, p. 89. The rate of failure has continued to increase: by 1992 a broader examination of felonies in 40 large jurisdictions participating in the National Pretrial Reporting Program (NPRP) — including eight of the sites in the two earlier studies — reported an average failure to appear rate of 25 percent, two and a half times the level of failure earlier reported. These data are taken from the 1992 National Pretrial Reporting Program (NPRP), a program sponsored by the Bureau of Justice Statistics of the U.S. Department of Justice since 1988. NPRP is a biennial data collection series conducted by the Pretrial Services Resource Center with a sample of 40 of the nation's largest counties that are randomly selected to represent the 75 largest counties. Information is collected on persons awaiting trial, including demographics, criminal history, current relationship with the criminal justice system, type of pretrial release, failure to appear and rearrest, adjudication and sentence. This paper draws extensively from data provided in the most recent cycle, 1992.

[9] 1992 NPRP data show release rates ranging from a high of 88 percent in one jurisdiction to a low of 30 percent in another. A summary of 1992 NPRP data in each of the 40 jurisdictions examined appears in the Appendix.

- Wide variations in release rates also exist in the Federal system, even though the same statute governs pretrial release decisions in all Federal districts.[10]

- Widely disparate rates of failure to appear and rearrest are found in local jurisdictions.[11]

- Financial bail is set in large numbers of felony cases, leaving the ultimate outcome of release or detention to defendants' ability to post the bail or to hire a commercial bail bonding agent.[12]

- Finally, minorities — especially African-Americans — have a greater likelihood to be detained pretrial, even when controlling for charge and prior record, a greater likelihood to be detained longer before obtaining pretrial release, and a lesser likelihood to be released by financial means, particularly through a commercial bail bonding agent.[13]

Any of these indicators considered alone may not be cause for concern. Taken together, however, these examples are sufficient to warrant further examination as to whether the goals of the pretrial release decision making process are being accomplished.

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[10] Pretrial release rates spanned from a high of 68 percent to a low of 18 percent. U.S. Pretrial Services Database, 1993, Administrative Office of the United States Courts. Interestingly, variations in release rates in the Federal system were first noted by then-Attorney General Robert F. Kennedy at the 1964 National Conference on Bail and Criminal Justice. As he noted: "[t]here is no question that circumstances vary in every district, just as they vary in our own community. There are perfectly sound explanations for variations in the number of persons released without bail. But for the rate to vary from under four percent in some districts to over 65 percent in others indicates a far greater range than should be tolerated within a single judicial system." *Proceedings and Interim Report of the National Conference on Bail and Criminal Justice*, Washington, D.C.: U.S. Department of Justice, April 1965, p. 298.

[11] Failure to appear rates in the 1992 NPRP data range from two percent to 56 percent, while rearrest rates vary from near zero to 37 percent.

[12] For example, the 1992 NPRP data show that judicial officers set financial bail in 55 percent of all felony cases. Brian A. Reaves and Jacob Perez, *Pretrial Release of Felony Defendants, 1992*, (Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, (NCJ-148818) November 1994), extracted from Table 2, p. 2.

[13] Jolanta Juszkiewicz, *Processing of Felony Defendants, 1992: A Profile in Disparity?*, (Paper presented at the American Society of Criminology Conference, November 1994.) There is also evidence that decisions made at each stage of the criminal justice process, beginning with the pretrial release decision, have a cumulative effect that have racially disparate outcomes. (For a review of the literature on this issue, see: Coramae Richey Mann, *Unequal Justice: A Question of Color*, (Bloomington, Indiana: Indiana University Press, 1993). One of the chief ways in which the pretrial release decision has been identified by this author as contributing to the overrepresentation of minorities in jail and prisons is through the continued reliance, in many jurisdictions, on financial bail (p. 167).) This cumulative effect has contributed to an overrepresentation of minorities in jail and prison populations. Michael Tonry, "Racial Politics, Racial Disparities, and the War on Crime", *Crime & Delinquency*, Volume 40, Number 4, October 1994.

In this paper, we review the efforts that have been made over the past 30 years to identify the best ways of achieving the goals of maximizing release while minimizing misconduct, principally using state and federal statutes and criminal justice professional standards as benchmarks. Drawing on those statutes and standards, we define improved pretrial decision making as an objective for achieving the goals, and compare and contrast current practices to that objective. Finally, we discuss some of the challenges facing the pretrial release decision making process that affect improved decision making.

II. THE STATE OF THE PRETRIAL RELEASE DECISION MAKING PROCESS

HISTORICAL OVERVIEW

Until the early 1960s, two features characterized pretrial release decision making. First, the decision generally was made in such a "haphazard fashion that what should be an informed, individualized decision is in fact a largely mechanical one in which the name of the charge, rather than all the facts about the defendant, dictates the amount of the bail."[14] The second feature was an almost exclusive reliance by judges on financial bond. As a result, defendants with the financial means to post bail secured pretrial release while indigent defendants remained in custody.

Efforts to change the way that pretrial release decisions were being made began in the early 1960s, in what came to be called the Bail Reform Movement. In 1961, the Manhattan Bail Project was established in New York City with the intention of making pretrial release decisions more consistent and outcomes less dependent on financial means. The project's underlying hypothesis was that persons with strong ties to the community — regardless of their economic status — were likely to return to court if released. The results of this project showed that many pretrial defendants with community ties could be safely released without financial bail.[15]

This movement was strengthened in 1966 by passage of the Federal Bail Reform Act. This law contained provisions that represented major departures from past pretrial release decision making practices. First, the new law laid out specific factors that a judicial officer was to take into account in making the decision. Second, the law established for the first time a prioritized list of options that a judicial officer must consider, beginning with release on recognizance — a simple promise to appear when required — followed by various forms of conditional release. The last option listed was obtaining a surety bail through a commercial bail bonding agent.[16]

In 1968, the American Bar Association published the first set of criminal justice standards that addressed the pretrial release decision. These standards and others that followed[17] were virtually

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[14] American Bar Association Project on Minimum Standards for Criminal Justice, *Standards Relating to Pre-Trial Release* (New York: Institute for Judicial Administration, September 1965), p. 1.

[15] Thomas, supra note 8, pp. 3-6.

[16] 18 U.S.C., Sec. 3146. Although the Bail Reform Act of 1966 only applied to federal courts and the District of Columbia, many states emulated the federal law in creating a presumption in favor of release on recognizance in their own statutes.

[17] National District Attorneys Association, *National Prosecution Standards*, Chapter 10, Pretrial Release, 1977; National Association of Pretrial Services Agencies, *Performance Standards and Goals for Pretrial Release*, 1978;

identical to the 1966 federal bail reform act with two important additions: first, the standards introduced the issue of potential danger to the community as a factor that should be considered by the judicial officer in making his decision;[18] and second, the standards called for the abolition of surety bail as an option, citing the long history of abuses associated with the practice.[19]

In 1984, the Federal Bail Reform Act was amended to allow consideration of danger and preventive detention. Currently, at least 45 states and the District of Columbia specify a number of factors that must be considered in the release decision; 25 states and the District of Columbia, in addition to the Federal system, allow for pretrial detention in certain limited circumstances.[20]

OBJECTIVE OF THE PRETRIAL RELEASE DECISION MAKING PROCESS: IMPROVED DECISION MAKING

Taken together, the standards and statutes have set forth a number of changes to the pretrial release decision making process that can be categorized in terms of a three-fold objective to improve the pretrial release decision making process by: (1) having pretrial release decisions be made only by a qualified decision maker; (2) basing such decisions on specific, relevant, timely, and accurate information; and (3) making available to the decision maker a range of relevant options from which to choose when making a decision.

Qualified decision maker

The first objective is simple and straightforward: the pretrial release decision should be made by an official who is qualified to make the decision. With carefully defined exceptions,[21] state and

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Updated American Bar Association, *Standards Relating to the Administration of Criminal Justice*, Chapter 10, Pretrial Release, 1985.

[18] National District Attorneys Association, supra note 17, Standard 45.1(a); National Association of Pretrial Services Agencies, supra note 17, Standard VII; and American Bar Association, supra note 17, Standard 10-5.4.

[19] National District Attorneys Association, supra note 17, Standard 45.6 and accompanying Commentary; National Association of Pretrial Services Agencies, supra note 17, Standard V; and American Bar Association, supra note 17, Standard 10-5.5.

[20] Updated from Goldkamp, supra note 3.

[21] In most jurisdictions, law enforcement officers have the statutory authority to release on citation persons charged with certain types of offenses such as misdemeanors and, in some jurisdictions, low level felonies. However, persons released on citation are required to appear in court within a period that is usually specified by statute so that a judicial officer can review release status. As the ABA has explained: "Useful as the device [citation release] may be, however, law enforcement agencies should not be directly responsible to determine detailed conditions for release of arrestees or supervision of released defendants. For that reason, the policy embodied in the standard is that defendants released on citation should be required to appear before a judicial officer within a few days after a citation has been issued, who then can impose more detailed conditions governing release pending final adjudication." (American Bar Association, supra

federal pretrial release statutes and court rules vest a judicial officer with the responsibility of deciding whether to authorize the release of a person charged with a crime pending trial.[22] Qualifications for making pretrial release decisions entail both (1) a knowledge of the factors that must be considered in making a release decision and an ability to properly assess these factors in determining defendants' risk of pretrial misconduct and (2) a knowledge of available options and an ability to assess their effectiveness in limiting defendants' pretrial misconduct.

Current practices:

Some progress has been made in clarifying how the decision should be reached. As indicated above, many states re-wrote their pretrial release statutes after the passage of the Bail Reform Act of 1966 to provide clear guidance to the judicial officer by listing the factors that the judicial officer should consider at the release hearing and the release options that are available.[23]

Statutes in several states, however, still provide no information on the factors that should be considered,[24] and 18 state statutes contain no provisions for conditional pretrial release.[25] Even in states where the statute does list the factors to be considered in the release decision, many of the factors can be vague and difficult to apply. For example, many statutes require courts to consider a defendant's "character, reputation, and mental condition" or "past general conduct," without defining how such terms should be assessed.[26]

The need for interpreting these factors underscores the importance of judicial training, yet the extent of such training on the pretrial decision making process is minimal. A 1990 survey of 48 state judicial educators found that only eight states provide any type of educational program that covers the pretrial release decision making process.[27]

An issue that must be addressed in any discussion of qualified decision makers is the extent of the role played by the commercial bail bonding industry in making pretrial release decisions.

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note 17, Commentary to Standard 10-2.1.)

[22] These judicial officers are either elected or appointed by the chief executive of the jurisdiction or by higher-level judicial officers.

[23] Goldkamp, supra note 3, p. 8.

[24] *Ibid*

[25] *Ibid*., p. 12.

[26] *Ibid*., p. 9.

[27] This telephone survey was conducted by the Pretrial Services Resource Center.

While some argue that commercial bail bonding agents are only making release possible for defendants for whom judicial officers have authorized release on financial bail, others characterize this role as the power to decide who is released.[28]

Regardless of how one views the decision making role of commercial bail bonding agents,[29] it is clear that they play a role in a significant number of cases. For example, an examination of release decisions in urban jurisdictions across the country shows that bonding agents had an opportunity to release defendants in at least 37 percent of all felony cases studied.[30]

Informed decision making

According to standards, four types of information should be available to the judicial officer: information about the nature of the charge and strength of the evidence; information about the defendant's background; information about the risks posed by the defendant and methods to address those risks; and feedback on the outcomes of past decisions.

Federal law and most state statutes require the judicial officer to consider, among other factors, the nature of the charge and the weight of the evidence in making the pretrial release decision.[31] While in most cases, judicial officers have a statement of facts or police report available, the presence of prosecution and defense counsel when the pretrial release decision is made can assure that both parties are available to make presentations concerning how these factors are weighed in the pretrial release decision.

Most statutes also list other types of information that must be considered, including: criminal history, history of failure to appear in court, current status with the criminal justice system (i.e.;

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[28] As the American Bar Association has noted, "although courts as a matter of form determine whether and on what conditions defendants should be released pending trial, in practice private sureties can override judicial orders by refusing to write bail bonds or surrendering bailed defendants at will." American Bar Association, supra note 20, Commentary to Standard 10-5.5.

[29] This review of the objective of the pretrial release decision making process has relied upon pretrial release statutes and standards in discussing how that process can be improved. There is one area in which the statutes and standards disagree — on the role of the commercial bail bonding industry. Statutes in most jurisdictions (Kentucky, Oregon and Wisconsin statutes do not permit commercial bail bonding) list release to a commercial bail bonding agent as a lawful option available to the judicial officer. The standards, on the other hand, are in agreement with all other common law countries in the world (see for example, F.E. Devine, *Commercial Bail Bonding: A Comparison of Common Law Alternatives*, New York, Praeger Publishers, 1991) — that commercial bail bonding should not be permitted in the pretrial release decision making process. Making pretrial release decisions with the goal of maximizing profits is inconsistent with the goals of maximizing release while minimizing risks of pretrial misconduct.

[30] Extrapolated from Reaves, supra note 12.

[31] Goldkamp, supra note 3.

is the defendant on probation or parole?), existence of warrants or holds from other jurisdictions, current address, length of residence in the community, employment status, and health status (including existence of drug, alcohol or mental health problems).[32]

Pretrial services programs can play an important role assuring that this information is collected and made available to the pretrial release decision maker.[33] Such programs also play an important role in assessing risks of pretrial misconduct. There are several benefits to using an objective instrument to measure risks rather than relying upon subjective judgment. An objective instrument ensures consistency in the application of criteria to assess defendants' risks, and equity by treating similarly situated defendants similarly. It also makes the criteria used to arrive at the assessment more visible. Finally, with an objective instrument, factors related to risk can be isolated — allowing a jurisdiction to continually refine its risk assessment as more information becomes available and as circumstances change.

An effective information system is also important to assure that information such as criminal history and prior failures to appear is readily available for decision making, and to provide feedback to judicial officers on the outcomes of their decisions.

Current practices:

Since judicial officers are required to make probable cause determinations within 48 hours of arrest,[34] some information about the charge is routinely available. Little data are available, however, on the extent to which judicial officers have input from the prosecution and defense concerning how information about the charge is considered when making the pretrial release decision.[35]

A 1992 survey of state prosecutor's offices found that 62 percent of the offices surveyed reported that the criminal records they had available for use at any stage of the criminal justice process — including the point of the pretrial release decision — were incomplete, 41 percent responded that the records were inaccurate, and 36 percent noted that the records were not received in a timely

[32] Ibid.

[33] The American Bar Association recommends that "every jurisdiction should provide a pretrial services agency or similar facility." American Bar Association, supra note 17, Standard 10-1.4.

[34] *Riverside County, Calif. v. McLaughin*, 500 U.S. 44 (1991).

[35] Although data are not available regarding the number of jurisdictions where prosecutors and defense attorneys are present at the initial appearance, the Bureau of Justice Statistics' National Prosecutor Survey Program reports that "[s]ome prosecutors are notified [of an arrest] only after the arresting agency has filed papers in a special or 'lower' court" and the initial bail hearing has been held. Dawson, supra note 2, p. 4.

manner.[36]

As for information about the defendant's background, in many jurisdictions pretrial services programs have been established to provide information to the judicial officer for the pretrial release decision.[37] Although the scope of services provided by programs vary greatly, they typically interview defendants before the initial court appearance, gather information related to their community ties, employment status, drug and alcohol use, and criminal history, and provide that information to the court at the initial hearing. Using the information gathered, many programs formulate an assessment of the risks posed by each defendant and translate that assessment into a recommendation to the court. Some provide feedback information to the court concerning pretrial misconduct.

But the mere existence of such programs does not guarantee that judicial officers are receiving the needed information. A 1989 survey of pretrial services programs at local, state, and federal levels found, for example, that 63 percent of pretrial programs automatically exclude certain defendants from interviews based on charge alone.[38] The same survey showed that one out of four pretrial programs did not make an assessment of risk and translate that assessment into a recommendation to the court.[39] Of those programs that did make a recommendation, only 60 percent used objective instruments,[40] and only one of five programs that used objective instruments had ever validated them to test how accurate they are in assessing risks.[41]

In many jurisdictions, the only feedback that judicial officers receive about their decisions is when they see the failures in front of them — defendants who were released appear again before them on a new charge or on a failure to appear warrant.[42] As has been noted, judicial officers

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[36] Ibid., p 5. It should be noted, however, that the Bureau of Justice Statistics is currently leading efforts to improve the quality of criminal records through the Criminal History Record Improvement Program.

[37] While the exact number of jurisdictions where pretrial services programs are present is unknown, a 1989 survey sent to all sheriff's and probation departments in the country plus to all known pretrial services programs yielded a response from 201 state and local agencies indicating that they performed pretrial services functions. Kristen L. Segebarth, *Pretrial Services and Practices in the 1990s: Findings from the Enhanced Pretrial Services Project* (National Association of Pretrial Services Agencies, 1991), p. 3.

[38] *Ibid*., p. 45-48.

[39] *Ibid*., p. 68.

[40] *Ibid*., p. 73.

[41] *Ibid*., p. 79.

[42] Only 68 percent of pretrial programs even track the jurisdiction's failure to appear rate, only 42 percent know the rearrest rate, and less than half (48 percent) know the release rate. Ibid., p. 106.

"make release decisions in virtual ignorance of their consequences. Only through feedback can such ignorance be reduced. Only with a reduction of present ignorance can rational decision making in pretrial release decisions be claimed with any assurance."[43]

Range of options

The third objective derived from standards and statutes is that pretrial release decision makers should have options available that are designed to minimize risks for pretrial misconduct. These options should recognize the wide range of risks posed by defendants.

Pretrial release standards of the American Bar Association, National District Attorneys Association, and National Association of Pretrial Services Agencies are in agreement that in cases where release on recognizance is inappropriate, the next step is to determine whether non-financial release conditions can be imposed,[44] and that those conditions should range in intensity to match the level of risk posed by each individual defendant.[45] The standards see imposition of financial conditions as being appropriate only when non-financial conditions can not reasonably assure appearance,[46] and pretrial detention only if no condition or combination of conditions can reasonably assure appearance or the safety of the community.[47]

The standards describe several benefits to using non-financial over financial conditions of release. One is that they are more equitable; when financial bail is set, only those who have the financial resources are able to obtain release. Another benefit is that the judicial officer making the release decision controls whether or not the defendant is actually released. With financial conditions, the defendant is released only when — or if — the bail is posted or if a commercial bail bonding agent agrees to release the defendant from jail. "Adequately supervised" non-financial release conditions can be a deterrent to criminal activity "by reducing the temptation to commit crimes and increasing the probability of detection and arrest."[48] In addition, they can act

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[43] Gottfredson, supra note 5, p. 111.

[44] American Bar Association, supra note 17, Standard 10-5.2; National District Attorneys Association, supra note 17, Standard 45.5; National Association of Pretrial Services Agencies, supra note 17, Standard IV.

[45] Ibid.

[46] American Bar Association, supra note 17, Standard 10-5.3; National District Attorneys Association, supra note 17, Standard 45.6; National Association of Pretrial Services Agencies, supra note 17, Standard V. All three sets of standards are clear that financial conditions should never be used as a means to assure the safety of the community.

[47] American Bar Association, supra note 17, Standard 10-5.4, 1985; National District Attorneys Association, supra note 17, Standard 45.8, 1991; National Association of Pretrial Services Agencies, supra note 17, Standard VII.

[48] American Bar Association, supra note 17, Commentary to 10-5.2.

as an "early warning system" to identify defendants who, because of failure to comply with release conditions, may have shown themselves to be too high a risk to remain on pretrial release.[49] Finally, non-financial conditions have been shown to be more effective in minimizing risks of pretrial misconduct than financial conditions.[50]

Current practices:

There has been progress in expanding the range of supervised options available to judicial officers. They include requiring regular contact with a pretrial services program, establishing a curfew, drug or alcohol testing or treatment, electronic monitoring, and release to a relative or friend as a third party custodian.[51]

Given the preference stated in criminal justice standards for the use of non-financial conditions to minimize identified risks, the benefits that such release has been shown to have over financial conditions, and the large percentage of defendants with risk factors who are being released, it seems reasonable to conclude that non-financial conditions of release would be used extensively, perhaps more than any other form of release. However, data from the National Pretrial Reporting Program (NPRP) show non-financial release conditions being imposed far less frequently than either release on recognizance or release on financial conditions. While 36 percent of the NPRP sample were released on recognizance and 36 percent were released financially, only 13 percent were released with non-financial conditions.[52]

Looking at the failure rates for these types of releases suggests that many defendants are being released with inadequate supervision. Defendants released on recognizance had a failure to appear rate of 26 percent and a rearrest rate of 15 percent. Those placed on non-financial conditions, on the other hand, failed to appear at a rate of 19 percent and were rearrested at a rate of 10 percent — comparable to the failure to appear rate (18 percent) and rearrest rate (12 percent) of defendants released on financial conditions.[53]

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[49] *Ibid.*

[50] "[T]he most important finding revealed in this study is that defendants released with conditions pose far less risk to the community of new arrests and failures to appear in court than defendants ordered to post bond without conditions." *Alternatives to Incarceration Phase I: Pretrial Evaluation*, (Hartford, CT: The Judicial Education Center, Inc., 1993).

[51] Andy Hall, et al., *Pretrial Release Program Options* (Washington, D.C.: U.S. Department of Justice, National Institute of Justice, June 1984).

[52] Extrapolated from Reaves, supra note 12.

[53] *Ibid.* Caution must be used in drawing conclusions regarding these failure rates. Because the proper analyses to show a causal relationship between type of release and failure rates can not be done with the NPRP data, any relationships that are found may disappear if other variables were introduced.

SUMMARY

In the past 30 years some progress had been made in achieving the objective of an improved pretrial decision making process through limiting pretrial decision making to qualified officials, basing decisions on relevant and accurate information, and having available reasonable and appropriate pretrial release options. Many statutes have clearer pretrial release provisions that specify the factors to be considered, the options available, and the priority in using them to check defendants' pretrial misconduct. Through improved information systems and the establishment of pretrial services agencies more information is available about the defendant's background and risks of pretrial misconduct. Recognition that certain conditions, such as drug treatment, supervision, alcohol and domestic abuse counseling, can effectively control defendants' likelihood of misconduct has resulted in the expansion of options that are available to the pretrial release decision maker.

This progress, however, has been inconsistent across jurisdictions. In many jurisdictions, judicial officers continue to set money bail, thus assuring that commercial bail bonding agents still play a prominent role in deciding who will be released pretrial. There are indications that judicial officers are not receiving training to make those decisions. The information necessary for making informed decisions — whether supplied by the prosecutor, defense or pretrial services — is often not available at all or incomplete. The options needed to match the range of risks posed by arrestees are not available or very limited in many jurisdictions.

In short, improved pretrial decision making has not been universally achieved. The pretrial release decision is often: not made by a qualified decision maker; not based on relevant and accurate information; and not made with an appropriate number or type of options available.

III. CURRENT AND EMERGING CHALLENGES TO IMPROVING THE PRETRIAL RELEASE DECISION MAKING PROCESS

There are a number of reasons given for the differences between the standards and the practices described above. While resources, or lack thereof, is frequently mentioned,[54] several other challenges can be identified. They include changes in public policy, jail crowding, and the continued reliance on commercial bail bonding.

CHANGES IN PUBLIC POLICY

There have been a number of public policy changes in recent years, some just beginning, that have affected the pretrial release decision making process. These changes have challenged enhanced pretrial release decision making for the most part by bringing new populations into the system, each presenting different types of risks and requiring different types of release options.

The "drug war"

Perhaps the best example of this is the change in drug law enforcement policies beginning in the 1980s. As part of the "war on drugs," arrests on drug charges soared from 580,900 in 1980 to 1,361,700 in 1989.[55] This growing volume of drug cases, which a 1991 General Accounting Office (GAO) report concluded could not be adequately absorbed by the criminal justice system led to, among many other problems, worsening jail crowding and higher rates of failure to appear.[56]

With research showing a link between drug use and pretrial misconduct,[57] some jurisdictions

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[54] Scarce resources is a problem facing virtually every local jurisdiction. But many jurisdictions have decided that a reallocation of resources is sometimes a better investment in the long run. An example of just such a decision is evident in recent action taken by the state of Virginia, enacting a statute that authorized the establishment of pretrial services throughout the state. Costing a little over one million dollars for the first year (1995), this action was taken at the same time that existing programs in the state were required to absorb substantial cuts.

[55] Extrapolated from Timothy J. Flanagan and Maureen McLeod, eds., *Sourcebook of Criminal Justice Statistics — 1982.* (Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, 1983), p. 390, and Kathleen Maguire and Timothy J. Flanagan, eds., *Sourcebook of Criminal Justice Statistics — 1990*. (Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, 1991), p. 412

[56] *The War on Drugs: Arrests Burdening Local Criminal Justice Systems*, (Washington, D.C.: United States General Accounting Office, April 1991)), pp. 8-9.

[57] Mary A. Toborg and Michael P. Kirby, *Drug Use and Pretrial Crime in the District of Columbia*, (Washington, D.C.: U.S. Department of Justice, National Institute of Justice, October, 1984).

attempted to respond to this challenge by implementing urine testing projects. Defendants were tested for drug use before the judicial officer made the pretrial release decision with the drug test results becoming a part of a package of information that formed the assessment of risk. Defendants showing indications of drug use would be tested regularly during the pretrial period.[58]

Studies on pretrial drug testing's effectiveness in assessing risk and as a supervision tool have not been conclusive,[59] and such testing prior to deciding release or detention is currently limited. However, the effort to address the change in public policy through drug testing has been a response to the need for more information and more options, and it has created the opportunity to test the value of the information and options that are made available through testing.[60]

The mentally ill

Changing public policies that lead to the deinstitutionalization of the mentally ill during the 1970s continue to pose challenges in the pretrial release decision context. According to a 1992 survey of nearly 1400 jails nationwide, 69 percent of the jails reported seeing more mentally ill inmates entering their facilities than 10 years previously.[61] The survey also found that 7.2 percent of the inmates in the jails surveyed were defined as "mentally ill."[62] The five most common types of charges for which mentally ill persons were jailed were: assault/battery, theft, disorderly conduct (typically urinating in public or vagrancy), illegal drug or alcohol possession or use, and trespassing.[63] Furthermore, once released, 46 percent of the jails did not know

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[58] In 1984, the District of Columbia Pretrial Services Agency began the first comprehensive pretrial drug testing program. (John A. Carver, *Drugs and Crime: Controlling Use and Reducing Risk Through Testing*. (Washington, D.C.: National Institute of Justice, September/October 1986.)) Seven other jurisdictions received funding between 1987 and 1991 from the Bureau of Justice Assistance to replicate the pretrial drug testing model that was established in the District of Columbia. (*Integrating Drug Testing Into a Pretrial Services System*, (Washington, D.C.: Bureau of Justice Assistance, June 1993.))

[59] Christy Visher, *Pretrial Drug Testing*, (Washington, D.C.: U.S. Department of Justice, National Institute of Justice, September 1992); John Goldkamp, et al., "Pretrial Drug Testing and Defendant Risk," *The Journal of Criminal Law and Criminology*, Northwest University School of Law, Fall 1990; Mary Toborg, et al., *Assessment of Pretrial Urine Testing in the District of Columbia*, (Washington, D.C.: U.S. Department of Justice, National Institute of Justice, December 1989).

[60] *Pretrial Services Program: Program Brief*, (Washington, D.C.: U.S. Department of Justice, Bureau of Justice Assistance, September 1990), p. 4.

[61] E. Fuller Torrey, et al., *Criminalizing the Mentally Ill: The Abuse of Jails as Mental Hospitals*, National Alliance for the Mentally Ill and Public Citizen's Health Research Group, 1992, p. v.

[62] Ibid., p. 4.

[63] Ibid., p. 19.

whether mentally ill persons were being placed in outpatient services.[64]

Experience has shown that problems caused by the increasing numbers of mentally ill entering jail can be addressed during the pretrial process by focusing on identifying the risks mentally ill defendants pose and developing options that are appropriate, and then educating the pretrial release decision maker.[65]

Addressing violent crime through sentencing enhancements

The passage of more mandatory minimum sentencing, "truth-in-sentencing" and "three- strikes-and-you're-out" legislation exemplifies a more recent shift toward addressing violent crime. While this public policy shift is not necessarily bringing into the criminal justice system a new population, it has changed the way the system views the risks posed by those arrested. There are already indications that such changes are leading to many problems for pretrial processing.

For example, a recent report examining the impact of the "three strikes" legislation enacted in California in 1994 found that "most counties set bail for second-strike offenders at twice the usual bail amount and refuse bail for third-strike offenders."[66] The reasoning behind this is that defendants facing higher mandatory sentences have an incentive to flee to avoid prosecution.

With the expected rise in jail admissions (because of the higher bails being imposed) and in the length of stay (the new law has also led to a significant increase in the number of jury trials, thus increasing case processing times), detention populations will grow. Indeed, as the report noted, the population of the Los Angeles County jail, which was comprised of 60 percent sentenced offenders and 40 percent pre-sentenced defendants before the law went into effect had changed

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[64] Ibid., p. v.

[65] The Wisconsin Correctional Service (WCS) of Milwaukee, Wisconsin, has been doing this since 1978. WCS is a private, non-profit organization that operates, among other projects, a pretrial services program and a Community Support Program (CSP). The pretrial services program screens all defendants being booked into the county jail for pretrial release consideration by a judicial officer. When pretrial program staff encounter a defendant who may be suffering from mental illness, a second, more thorough screening is conducted by CSP staff. When CSP staff identify a defendant who is suitable for the program, the court is notified and the defendant is often ordered by a judicial officer to participate in the program as a condition of pretrial release. Mentally ill defendants placed in CSP have available a number of services, including medication and psychotherapy, money management, and assistance with housing and other support needs. In addition, defendants may be required to report to the program daily. As to the education of judicial decision makers about the assessment of risks and options available through CSP, one judge has remarked that confidence in the program is "as high as it could be," while another has commented that the court "can not do without the program." Douglas C. McDonald and Michele Teitelbaum, *Managing Mentally Ill Offenders in the Community: Milwaukee's Community Support Program* (Washington, D.C.: National Institute of Justice, March 1994.

[66] *The "Three Strikes and You're Out" Law: A Preliminary Assessment*, California Legislative Analyst's Office, January 6, 1995, p. 5.

less than one year later to be 70 percent pre-sentenced.[67]

As of May 1, 1994, at least ten states had passed new repeat offender sentencing laws and about half the remaining states were considering such laws.[68] A "three-strikes" provision was also passed into federal law in 1994.[69] Thus, it is likely that the impact of this type of legislation on the pretrial release decision making process will spread to more jurisdictions.

As the pretrial release decision making process prepares to respond to the effects of this change, it is important to keep in mind the research that has shown that, contrary to conventional wisdom, defendants charged with the more serious offenses and facing lengthy prison terms are among the most likely to appear in court.[70]

Juvenile crime

Between 1988 and 1992, there was a 68 percent increase in the number of juveniles whose cases were transferred from juvenile court to criminal court. A record number of nearly 12,000 juveniles were prosecuted in adult court in 1992.[71]

While still small, the numbers are growing dramatically as states increase the opportunities for prosecuting juveniles in criminal court. In 1994 alone, legislators lowered the age at which juveniles could be transferred to criminal court in at least five states, expanded the instances in which juvenile court jurisdiction was statutorily excluded in nine states, and mandated that juveniles transferred to criminal court must remain under the jurisdiction of that court until they become adults in one state.[72] In addition, voters in one state passed a ballot measure mandating the transfer to criminal court of juveniles 15 and older who are charged with specified felonies.[73]

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[67] *Ibid*.

[68] Criminal Justice Newsletter, Vol 25, No. 12, June 15, 1994, p. 1.

[69] Violent Crime Control and Law Enforcement Act of 1994.

[70] For a review of this research see: Donald E. Pryor and Walter F. Smith, Pretrial Issues: *Significant Research Findings Concerning Pretrial Release* (Washington, D.C.: Pretrial Services Resource Center, 1982), p. 10.

[71] Melissa Sickmund, *How Juveniles Get to Criminal Court* (Washington, D.C.: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, 1994). This figure does not include the 176,000 16- and 17-year-old youths prosecuted in adult court in the 11 states where youths of those ages are considered adults.

[72] "Update: State Laws on Transferring Juveniles," *Child Protection Report*, October 28, 1994.

[73] Oregon Ballot Measure 11.

This trend presents several challenges to pretrial release decision makers. One challenge is obtaining the information needed to make a pretrial release decision, including juvenile court records, which traditionally have been kept confidential. Another is whether accurately assessing risks of pretrial misconduct of children, some as young as 13, can be made using the same criteria as used for older defendants. A third is identifying appropriate release options for this unique population.

Domestic violence

Up until the late 1970s, police departments throughout the country pursued an "arrest-avoidance" policy in domestic violence cases. A gradual change began in 1977 with an Oregon statute that required police to make an arrest when responding to a domestic violence call.[74] At last report, arrest is mandated in statutes in 14 states and the District of Columbia, and is the statutorily-listed "preferred approach" in all but three of the remaining states.[75] These policies have brought large numbers of persons into the criminal justice system charged with domestic-violence related offenses.

This development has created a particular dilemma for the pretrial release decision making process. The prompt release of persons charged with domestic violence offenses causes concerns for the safety of the victim who may be "especially vulnerable during the pretrial period" to retaliation or obstruction of justice from the domestic partner/perpetrator.[76] To address that concern, judicial officers typically require as a condition of release that domestic violence defendants avoid any contact with the victim while the case is pending.[77]

THE IMPACT ON PRETRIAL PROCESSING CAUSED BY JAIL CROWDING

In some instances, the tremendous growth in the jail population described earlier has served to enhance pretrial decision making. The crowding crisis has forced greater attention to front-end decision making, with jurisdiction after jurisdiction establishing task forces to look into ways that the pretrial release decision making process has contributed to crowding.[78] Several pretrial

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[74] Barbara J. Hart, *State Codes on Domestic Violence: Analysis, Commentary and Recommendations*, Reno, Nevada: National Council on Juvenile and Family Court Judges, 1992, p. 69.

[75] *Ibid*., p. 63.

[76] Gail A. Goolkasian, *Confronting Domestic Violence: The Role of Criminal Court Judges*, (Washington, D.C.: U.S. Department of Justice, National Institute of Justice, November 1986), p. 4.

[77] *Ibid*.

[78] *The Pretrial Reporter*, (Washington, D.C.:, Pretrial Services Resource Center, October 1991), pp. 8-10; see also Hall, et al., supra note 2.

services programs have been established specifically to address crowding.[79] In at least one jurisdiction, Harris County, Texas, the federal court overseeing the jail crowding suit ordered the county to implement a pretrial services program.[80]

In other ways, however, the jail population growth has impeded progress, by shifting the focus of the pretrial release decision making process away from an assessment and management of risks function to a management of the jail population function.[81] The worst example of how crowding affects the pretrial decision can be found in "emergency releases." When population caps on jails are imposed as part of a court order or consent decree, non-judicial officers — such as sheriffs, jail administrators, or special masters — are usually assigned the responsibility of assuring that the cap is not exceeded. Once caps are reached, these officials must either grant emergency release to persons already incarcerated, refuse to accept additional persons, or both.

Although the total number of defendants given emergency release nationwide is relatively small,[82] in some jurisdictions it can comprise a significant percentage of all persons released. In Hamilton County, Ohio, for example, over half (56 percent) of all felony defendants in the 1992 NPRP sample who were released pretrial were released by the sheriff on an emergency basis due to a federal court order.[83]

Not surprisingly, the failure rate of persons released through such schemes exceeds other types of release. NPRP data show that defendants obtaining emergency release in 1992 failed to appear in court at a rate of 49 percent — double the rate for all released defendants, and were rearrested at a rate of 18 percent — compared to 14 percent for all those released.[84]

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[79] A 1989 survey of 201 state and local pretrial services programs identified seven programs that were established as a result of court-ordered jail caps or consent decrees. Segebarth, supra note 37, p. 42.

[80] *Alberti et al. v. Sheriff*, 406 F.Sup. 649, H.D. TX. 1975.

[81] The 1989 survey of pretrial programs identified 25 programs, one-eighth of those surveyed, that relaxed the criteria used to assess risks as a response to jail crowding. Segebarth, supra note 37, p. 42.

[82] Emergency releases comprised two percent of felony cases in the 1992 NPRP data. Reaves, supra note 12.

[83] In the 1992 NPRP data, emergency releases were granted in 16 percent of felony cases in Wayne County, Michigan, and 15 percent in Cook County, Illinois. Supra note 8.

[84] Reaves, supra note 12, p. 10-11. In addition, in Cook County, Illinois, the Illinois Criminal Justice Authority recently conducted a study to measure the impact of such releases in the county. The study found that defendants released by the sheriff on emergency release — numbering 22,807 in fiscal year 1991 — had substantially higher failure to appear and rearrest rates than defendants released by other means. In the study, 52 percent of the men and 54 percent of the women who were given emergency release failed to appear in court, compared to 34 percent of the men and 31 percent of the women who were released by the court. Forty-seven percent of the men and 34 percent of the women on emergency release were rearrested for a new offense while their initial cases were pending, compared to 33 percent of the

CONTINUED RELIANCE ON COMMERCIAL BAIL

The continued reliance on the commercial bail bonding industry affects efforts to improve pretrial decision making in a number of ways. Obtaining the services of a commercial bail bonding agent can be beyond the reach of indigent defendants, leaving them detained until trial.[85] There have been repeated examples of commercial bail bonding agents exerting a corrupting influence on the pretrial release process.[86] Another problem is that the industry is designed only to assure appearance of defendants in court, leaving no consideration for community safety risks.[87] Finally, and most important, the goal of the commercial bail bonding agent — to maximize profits — provides no reconciliation of the two conflicting goals of the pretrial release decision making process.

A number of theories have been advanced as to why the commercial bail bonding industry continues to survive despite so many calls for its elimination. One is that, despite these numerous calls and the presentation of alternative methods, there is still a lack of awareness in many jurisdictions of these alternatives.[88] Similar to this theory is one that holds that judicial officers fall easily into making decisions "on the basis of local custom and practice" in which commercial bail bonding has always been the prevalent pretrial release mechanism.[89]

Another author has posited that judicial officers prefer having an "all-purpose decision option that has the appearance of an actual decision," but that in reality takes responsibility for whether

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men and 19 percent of the women who were released by the court. Christine Martin, et al., *Cook County Pretrial Release Study*, Illinois Criminal Justice Information Authority, June 1992.

[85] National District Attorneys Association, supra note 17, Commentary to Standard 10.8.

[86] American Bar Association, supra note 17, Commentary to Standard 10-5.5; National District Attorneys Association, supra note 17, Commentary to Standard 10.8; and National Association of Pretrial Services Agencies, supra note 17, Commentary to Standard V.

[87] As one federal judge wrote, when the court "allow(s) purchase of a bail bond, society's interest in avoiding the risk of further criminal acts receives no additional consideration when the defendant pays the premium. The bondsman's only concern is risk of flight, not community safety." James G. Carr, "Bail Bondsmen and the Federal Courts," *Federal Probation*, Volume LVII, Number 1, March 1993, p. 11.

[88] Devine, supra note 29, p. 205. Also, as the Kentucky Supreme Court wrote in an opinion rejecting a challenge from the commercial bail bonding industry to the law that made bail bonding for profit a crime in that state: "Bail bonding for compensated surety has never enjoyed a favorable status but exists because no better system has been provided." (*Stephens v. Bonding Association of Kentucky*, 538 S.W. 2d 580 (S.C. Ky., 1976), at 583.)

[89] Carr, supra note 87, p. 9.

the defendant obtains release out of their hands.[90] Still another theory postulates that pretrial services programs that make recommendations for release on money bail prefer to have the ability to avoid a more direct decision.[91]

There is a common belief held by many criminal justice practitioners that the current breadth and influence of the commercial bail bonding industry is on the wane. This belief is summed up in the 1991 edition of the National District Attorneys Association Standards, which notes: "Indeed the institution of bail bondsmen has greatly declined...and there is little reason to believe that this trend will be reversed in the 1990s."[92] Data suggests, however, that commercial bail is not declining in usage and may in fact be increasing.[93] Furthermore, the bail bonding industry has been active in lobbying state legislatures and county officials to enact measures — whether they be laws restricting the use of non-financial release or cut backs in budgets to pretrial services programs — that would further entrench rather than eliminate bail bonding for profit.[94]

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[90] John S. Goldkamp, "Judicial Responsibility for Pretrial Release Decisionmaking and the Information Role of Pretrial Services," *Federal Probation*, Volume LVII, Number 1, March 1993, p. 31.

[91] Carr, supra note 26, p. 9.

[92] National District Attorneys Association, supra note 17, Commentary to Standard 45.6.

[93] NPRP data shows no decline in the usage of surety bail since the bi-annual project began in 1988.

[94] Pretrial Services Resource Center, "Commercial Bail Bonding and the Pretrial Release System: Are We Heading Forward or Moving Backward?," *The Pretrial Reporter*, Volume XVIII, No. 2, April 1992.

IV. CONCLUSION

"It is high time that we who are entrusted with the administration of the bail procedures cleaned our own stables. And speaking of some detention prisons, that is no figure of speech." Justice Bernard Botein of the New York Supreme Court at the Opening Session of the 1964 National Conference on Bail and Criminal Justice, May 27, 1964.

In 1964, then Attorney General Robert F. Kennedy called the first national conference on bail. The purpose was to address a series of problems involving the "front-end" of the criminal justice process in the United States and to call attention to innovative ideas that appeared to be successful in addressing some of those problems.

As a direct result of that conference, enormous changes occurred: statutes — both federal and state — governing the release/detention process were rewritten, a new justice system "actor" — the pretrial services program — gained credence, and bail bonding for profit as an institutional component of the criminal justice system was seriously challenged for the first time.

But over 30 years later, it is not clear that these changes have had the expected impact. This paper has described how current practices differ significantly from the goals and objectives of the pretrial release decision making process as first espoused at that conference and set forth in national criminal justice standards and statutes. It also has provided some explanations for those differences as well as highlighted the challenges that have and continue to put pressure on the pretrial decision making process. Ultimately, this paper is intended to show that the goals and objectives of pretrial release decision making as first stated over three decades ago remain both timely and appropriate to respond to these and future challenges.

To achieve an improved pretrial release decision making process, it is imperative that we address the shortcomings of current practices. There are numerous issues, some new, others disappointingly familiar, which need to be explored:

- Why do courts that function under the authority of similar statutes report such wide variations in their release decisions and outcomes?

- Given the well established view of the importance of the release decision, why is it not the focus of training for prosecutors, defense counsel, and members of the judiciary?

- Why is there a paucity of research on the indicators of pretrial risk when the demand has increased for better assessments of danger and flight risks?

- Why the infrequent use of non-financial conditions of supervised released when its effectiveness has been clearly demonstrated?

- Are pretrial services programs providing the expected level and quality of services?

- Why has bonding from profit remained a prevalent pretrial release option?

These are all empirical questions, whose answers must be sought if the criminal justice system is to confront current and emerging challenges.

SUMMARY OF 1992 NPRP DATA BY SITE

Site	Release Rate	Released Financially	Non-Released Financially	Money Bail Set	FTA Rate	Rearrest Rate
Maricopa, AZ	61%	70%	30%	50%	25%	---
Los Angeles, CA	38%	53%	47%	78%	27%	10%
Sacramento, CA	50%	17%	83%	94%	17%	15%
San Bernardino, CA	45%	71%	29%	62%	18%	---
San Diego, CA	35%	39%	61%	82%	27%	12%
San Francisco, CA	53%	68%	32%	61%	56%	37%
Santa Clara, CA	47%	55%	45%	68%	17%	23%
Washington, D.C.	69%	96%	4%	19%	7%	27%
Broward County, FL	59%	17%	83%	81%	11%	9%
Dade, FL	46%	83%	17%	50%	8%	4%
Duval County, FL	30%	22%	78%	89%	2%	---
Hillsborough, FL	73%	19%	81%	70%	14%	6%
Palm Beach, FL	59%	40%	60%	71%	17%	4%
Pinellas, FL	67%	55%	45%	58%	13%	14%
Fulton, GA	38%	34%	64%	34%	33%	5%
Cook, IL	69%	64%	20%	39%	28%	9%
Montgomery, MD	80%	72%	28%	27%	20%	15%
Essex, MA	86%	83%	17%	36%	25%	N/A
Suffolk, MA	76%	85%	15%	31%	36%	N/A
Wayne, MI	69%	32%	53%	59%	23%	8%
St. Louis, MO	74%	43%	57%	57%	29%	---
Essex, NJ	95%	32%	68%	70%	24%	19%
Bronx, NY	73%	94%	6%	43%	23%	24%
Erie, NY	76%	94%	6%	29%	17%	13%
Kings, NY	76%	76%	24%	37%	28%	21%
Monroe, NY	84%	89%	11%	20%	11%	11%
New York, NY	70%	78%	22%	39%	35%	31%
Queens, NY	70%	63%	37%	48%	25%	16%
Hamilton, OH	84%	21%	25%	36%	39%	19%

Site	Release Rate	Released Non-Financially	Released Financially	Money Bail Set	FTA Rate	Rearrest Rate
Allegheny, PA	84%	60%	40%	49%	18%	2%
Montgomery, PA	87%	70%	30%	40%	38%	10%
Philadelphia, PA	88%	75%	25%	32%	49%	24%
Shelby, TN	56%	25%	75%	77%	7%	13%
Dallas, TX	69%	22%	78%	76%	10%	1%
Harris, TX	38%	13%	87%	75%	8%	6%
Tarrant, TX	60%	15%	85%	86%	15%	21%
Salt Lake, UT	67%	74%	26%	38%	15%	7%
Fairfax, VA	68%	50%	50%	65%	21%	2%
King, WA	65%	86%	14%	41%	29%	14%
Milwaukee, WI	67%	77%	22%	45%	20%	6%

"Release rate" includes defendants released by any means, including non-financial, financial, and emergency release.
"Released non-financially" includes defendants released on ROR, conditional release, or unsecured bond.
"Released financially" includes defendants released on deposit bail, full cash bail, property bail, or through a commercial bail bonding agent.
"Money bail set" includes cases where a financial bail was imposed, regardless of whether the defendant posted the bail and was released.
"FTA rate" includes the failure to appear rate for all types of release.
"Rearrest rate" also includes all types of release.