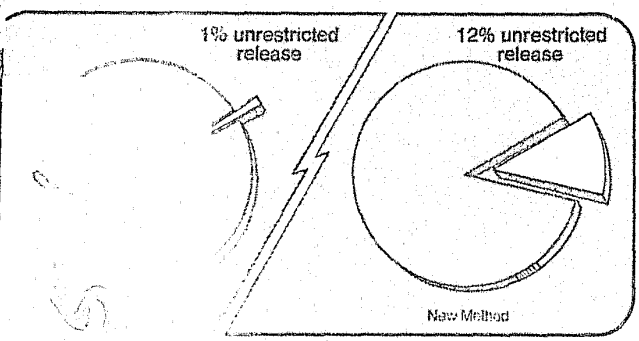
Pretrial Release Assessment of DANGER & FLIGHT: METHOD MAKES A DIFFERENCE



- Slight decrease in failure-to-appear rates
- No change in pretrial arrest rates

PRETRIAL RELEASE ASSESSMENT OF DANGER AND FLIGHT: METHOD MAKES A DIFFERENCE

SUMMARY

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ABSTRACT

In July 1980 the D.C. Pretrial Services Agency (PSA) adopted a new method of risk assessment and release recommendation development. The new method provides separate assessments of danger and flight risks, as well as recommended release conditions to try to reduce risks to acceptable levels. The impact of the new approach is summarized in this report, through comparisons of outcomes for eighteen-month periods before and after the change.

Under the new method PSA increased its recommendations for unrestricted personal recognizance (PR) release and for nonfinancial release in general (both unrestricted and conditional PR). PSA also reduced the average number of conditions recommended for defendants.

The changes in PSA's actions affected judges' decisions and defendants' subsequent release outcomes. Unrestricted PR release increased, although total rates of nonfinancial release were unchanged. Also, judges set fewer conditions for the average defendant under the new system.

Failure-to-appear and pretrial arrest rates remained virtually the same. Thus, the less restrictive release practices were attained with no increases in rates of pretrial misconduct.

Another topic studied was whether risk assessments might be improved by using a quantitative forecasting model. The results suggest that this approach has much merit and should be given further consideration.

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I. INTRODUCTION

After an arrest has been made, a prompt decision must follow about whether to release the defendant before trial and, if so, on what conditions. To make this determination requires an assessment of the potential release risk posed by the accused. Historically, most release decisions in the United States have been based on judgments about the likelihood that defendants would appear for court. In recent years, however, concern has increased about the need to protect the public from the risk of crimes committed by persons awaiting trial. In response to this concern, many jurisdictions, including the District of Columbia, have modified their laws governing pretrial release to permit consideration of potential danger to the community as well as risk of flight.

Although many communities have enacted pretrial release laws that cover both danger and flight, few jurisdictions have implemented systematic procedures for assessing both risks. One community that has done so is the District of Columbia. On July 21, 1980, the D.C. Pretrial Services Agency (PSA) adopted a new method of pretrial risk assessment, which rates defendants separately for danger and flight risks.1/

PSA bases its risk determinations on criteria that reflect potential danger or flight problems (e.g., drug abuse, lack of fixed address, prior failure to appear for court). The existence of such problems may be identified in several ways. First, they may be discovered during PSA's interviews with defendants. Conducted shortly

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1/ The discussions in this paper apply to defendants processed through the central lockup of the Superior Court of the District of Columbia. Although most defendants are handled in this way, some persons are released at the police station, usually on "citations" issued after PSA has conducted telephone interviews with the defendants. Additionally, different procedures are used for defendants prosecuted on Federal charges in the U.S. District Court.

before the release hearing, those interviews cover residence, employment and family ties and ask about references who could verify the responses. Indicators of risk may also be isolated during the verification process, when PSA calls the defendant's relatives, friends or other sources of information. Finally, risk problems related to community safety may surface during PSA's checks of various computerized data bases to determine the defendant's criminal record.

Any identified release problems are rated as high or medium risk and are then matched by PSA with specific conditions that can be recommended to the court to try to reduce risks to acceptable levels. No conditions are recommended for defendants rated as low risks.

The most stringent condition recommended is that the defendant be held for a preventive detention hearing. D.C. law authorizes detention for 90 days for defendants charged with "dangerous" or "violent" crimes (including robbery, burglary, rape, assault with a dangerous weapon and sale of narcotics). However, a defendant can be held under this provision only if a hearing determines that there is a substantial probability that the person committed the offense and that no release conditions would reasonably assure the safety of the community.2/

Other conditions that may be recommended to reduce risks include limitations on behavior (e.g., curfews, requirements to live at a certain address or to stay away from specific places or individuals), third party custody, drug abuse treatment, and periodic reporting to PSA or another organization. Court imposition of such conditions will, it is hoped, reduce risks sufficiently to permit the defendant's safe release.

2/ D.C. Code § 23-1322. Preventive detention hearings are initiated by motions made by the prosecution. The law also provides, under certain circumstances, for five-day detention for a defendant on probation or parole and for three-day detention for a person charged with a dangerous or violent crime committed while awaiting trial on another case.

The new risk assessment and recommendation method continues three principles long adopted by PSA: (1) risk assessment is done objectively; (2) any release conditions recommended are the least restrictive ones needed to try to reduce risks to acceptable levels; and (3) financial release conditions are never recommended. Despite these similarities to the old method, the new system reflects three important changes:

- Each defendant receives explicit, dual ratings of risk: one for danger and one for flight.
- Whenever a risk problem is identified, a "solution" is developed to try to reduce risk to an acceptable level. When appropriate, a recommendation for a detention hearing is made and supplemented with an alternative recommendation in the event the prosecutor concludes that such a hearing is not warranted.
- Each defendant receives a specific release recommendation, ending the earlier practice of making no recommendations for many defendants.

During the first 18 months of operation under the new risk assessment method, 28 percent of felony cases involved defendants considered to pose both danger and flight risks; 33 percent, danger risks only; 26 percent, flight risks only; and 13 percent, no risks of either danger or flight. In contrast to felonies, 55 percent of misdemeanor cases involved defendants assessed as flight risks only. In addition, 10 percent were considered danger risks only; 11 percent, both danger and flight risks; and 24 percent, no risks.

The rest of this report presents the major findings from a study of the impact from implementing the new method of risk assessment.3/ The study compares the last eighteen months of operations under the old method with the first

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3/ More detailed findings, including analyses by quarter, are presented in the full-length final report, available from the authors or the D.C. Pretrial Services Agency.

eighteen months of activity under the new system. Changes in PSA's recommendations, judges' decisions and defendants' release outcomes are analyzed, along with differences in failure-to-appear and pretrial arrest rates of released defendants.4/ The study also considers whether risk assessment could be improved and offers recommendations toward that end.5/

4/ The comparisons of outcomes under the old and new methods of risk assessment are based on approximately 35,000 cases where formal charges were filed at arraignment and where the defendants involved were processed through the Superior Court lockup between January 21, 1979, and January 20, 1982. Because the cases analyzed comprise all cases meeting the selection criteria, sampling error was not an issue for those analyses. All differences were "real" ones, although some were too small to be deemed important.

5/ All analyses are based on data collected by PSA to assist in developing pretrial release recommendations for defendants. This information is maintained in an automated data base, updated as a case progresses to show instances of failure to appear for court and pretrial arrest as well as final case disposition.

II. IMPACT FROM NEW METHOD OF RISK ASSESSMENT

A. Changes in PSA's Release Recommendations

PSA's release recommendations changed dramatically after introduction of the new risk assessment method. Recommendations for unrestricted personal recognizance (PR) release increased sharply for both felonies and misdemeanors. During the first 18 months of the new system an average of 13 percent of felony cases and 23 percent of misdemeanor cases received unrestricted PR release recommendations, as compared with fewer than 1 percent of the cases under the old system. The total percentage of cases with recommendations for any type of PR release—either unrestricted or conditional 6/—also increased (from 52 percent to 64 percent for felonies and from 58 percent to 85 percent for misdemeanors), as did the percentage with recommendations of "holds" for preventive detention hearings or other reasons (e.g., parole or probation revocation hearings).

Under the new method PSA eliminated the "no recommendation" category, which had accounted for 24 percent of all felony cases and 40 percent of all misdemeanor cases during the last 18 months of the old method. The Agency added a category of "other" recommendations, such as making an inquiry in open court to resolve conflicting information about the defendant's identity or address. These recommendations accounted for 7 percent of felony and 10 percent of misdemeanor cases under the new method.

6/ In this study "conditional" PR release includes all types of nonfinancial release except unrestricted PR. Thus, conditional PR includes supervised release, third party custody, etc.

PSA's new risk assessment method also changed the Agency's policies regarding recommendations for release conditions (e.g., pretrial supervision, drug abuse treatment, curfews, etc.). The new method requires that conditions be recommended only in response to risk "problems" identified by the assessment system. As a result, the average number of conditions recommended for a conditional PR case decreased under the new method from 2.2 to 1.4 conditions for felonies and from 2.1 to 1.3 conditions for misdemeanors.

B. Changes in Judges' Release Decisions

Changes in judges' release decisions paralleled the changes in PSA's recommendations in one major respect, namely, the increased use of unrestricted PR release for both felony and misdemeanor cases under the new method: 9 percent of felony cases and 15 percent of misdemeanor cases involved this type of release under the new method, as compared to 1 percent of the cases under the old approach.

The increased judicial use of unrestricted PR release was offset by a decline in the use of release on PR with conditions. As a result, the overall rate of nonfinancial release was unchanged for felony cases (62 percent) and virtually unchanged for misdemeanor cases (74 percent, old method; 73 percent, new method). The average number of nonfinancial conditions set by judges declined under the new risk assessment method: from 3.4 to 2.3 conditions per felony case with conditional release, and from 3.3 to 2.0 conditions for misdemeanors.

Orders for preventive detention hearings or other holds were relatively rare throughout the time period studied, despite the fact that PSA had recommended such actions for a substantial proportion of felony cases. This raises the possibility that the Agency's recommendations in this area have little relevance. Indeed, PSA's policies suggest this, because an alternative recommendation is always provided for preventive detention hearings, though not for other recommended decisions.

Another area where judicial decision-making diverged sharply from PSA's recommendations is in use of financial

release conditions (that is, various types of bond). 7/ Although PSA did not recommend bond under either the old or new methods, financial release conditions were set by judges during both periods. Judges' use of bond increased slightly for felony cases (from 31 percent to 33 percent) and remained the same for misdemeanors (26 percent) under the new method.

C. Changes in Defendants' Release Outcomes

As expected, defendants' release outcomes mirrored judges' release decisions:

- More release on unrestricted PR occurred under the new risk assessment method.
- The percentage of cases with nonfinancial release was virtually unchanged and averaged 62 percent for felonies and 73 percent for misdemeanors.8/

7/ The type of bond set most often in the District of Columbia was surety bond, under which the defendant pays a nonreturnable fee to a commercial bail bondsman ("surety"), who in turn posts the bond with the court. The bond is exonerated if the defendant makes all the required court appearances and can be ordered forfeited otherwise. Other types of bond available are percentage bond, under which the defendant posts a percentage (usually 10 percent) of the full bond amount with the court and gets those funds back, if all court appearances are made; cash bond, under which the defendant (not a surety) posts the full bond amount (not a percentage) with the court and gets those funds back, if all court appearances are made; and cash-surety option, under which the defendant may post either a cash or surety bond. An unsecured appearance bond may also be set, under which the defendant is released upon a promise to pay the full amount of the bond, if a court appearance is missed, but no money must be paid initially to secure release.

- There was little change in the percentage of cases involving release on bond or detention until trial.

- Total release rates for felony cases were 76 percent under the old method and 77 percent under the new method; for misdemeanor cases, 89 percent under the old method and 88 percent under the new.

D. Summary and Possible Reasons for Findings

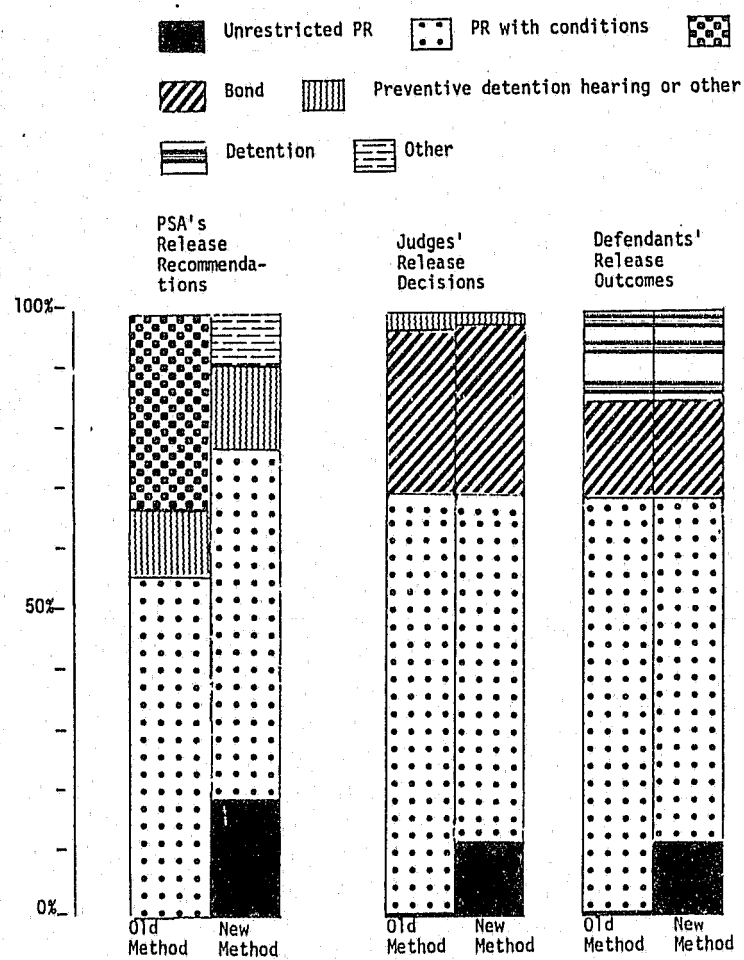
Figure 1 indicates PSA's recommendations, judges' decisions and defendants' release outcomes under the old and new methods of risk assessment. As shown, the major change in both decisions and outcomes was the increase in unrestricted PR release under the new method. This change reflects PSA's increased use of unrestricted PR release recommendations under the new approach. However, other changes in PSA's recommendation practices, such as increased recommendations for nonfinancial release in general, were not reflected in changed decision-making by judges or in changed release outcomes for defendants.

Defendants who were released nonfinancially faced considerably fewer pretrial restrictions under the new risk assessment method. Rates of unrestricted personal recognizance release increased from negligible levels under the old method to an average of 12 percent under the new approach (9 percent for felony cases and 15 percent for misdemeanors). In addition, the number of restrictions imposed on defendants who were released with conditions declined substantially.

8/ It is noteworthy that nonfinancial release rates were relatively high at the start of the study period. A comparative analysis for 1977 of eight jurisdictions found that the District of Columbia had the second highest rate of nonfinancial release. Mary A. Toborg, et al., Pretrial Release: A National Evaluation of Practices and Outcomes, National Evaluation Program Phase II Report (Washington, D.C.: National Institute of Justice, U.S. Department of Justice, October 1981) p. 6.

FIGURE 1. PSA'S RECOMMENDATIONS, JUDGES' DECISIONS AND DEFENDANTS' RELEASE OUTCOMES UNDER PSA'S OLD AND NEW RISK ASSESSMENT METHODS

Note: The number of cases varies somewhat for the comparisons of PSA's recommendations, judges' decisions and defendants' release outcomes, because of missing data. For the comparison of defendants' release outcomes, the number of cases is 13,047 under the old method and 21,244 under the new method.



It is important to consider whether these differences might have been caused by other factors than PSA's changed method of risk assessment. For example, the characteristics of defendants may affect release practices. Presumably, as the characteristics of defendants change, release decisions will also change. One expects lower release rates and release on more stringent conditions for defendants whose characteristics suggest they pose higher release risks.

On the whole defendants in cases handled under both the old and new methods of risk assessment had very similar characteristics. Under both methods defendants were usually black males who had not completed high school. About half were under 26 years of age. Typically, defendants were District of Columbia residents, unmarried and employed. About half lived with family of some type (spouse, parents, other relatives).

Two major differences in defendants were apparent over time. First, defendants were more involved in criminality during the time period of the new risk assessment method. This is shown by both a higher percentage of defendants with prior convictions (59 percent of felony defendants under the new method, as compared to 49 percent under the old; for misdemeanor defendants, 53 percent and 47 percent, respectively) and a higher percentage of defendants on probation, parole or pretrial release for another case when arrested (48 percent for felony defendants under the new system, as compared to 41 percent under the old; for misdemeanor defendants, 46 percent and 41 percent, respectively).

The second major difference in defendant characteristics is the increased use of drugs under the time period of the new risk assessment method. The percentage of defendants reporting a current drug abuse problem at the time of arrest increased from 10 percent to 17 percent for felony cases and from 14 percent to 20 percent for misdemeanor cases.

Both the increased involvement of defendants in criminality and the increased drug use would be likely to make release decisions more stringent, if those characteristics affected release decisions. Hence, the impact from PSA's new risk assessment method may have been underestimated in the earlier discussion.

In addition to defendants' characteristics and PSA's recommendations, the release philosophies of the judges making the decisions may affect release outcomes. A comparison of time periods when decisions were made by "tough" versus "lenient" judges may reflect primarily the differences in the judges, not changes due to PSA's policies.

The possible effect of judicial differences on release decisions and outcomes over time was assessed by identifying a group of judges who made a substantial number 9/ of release decisions under both the old and new risk assessment methods. Release decisions made by these judges under the old and new methods were virtually identical to the decisions made by all judges. Thus, it is unlikely that differences in the release philosophies of judges could account for the decrease in release restrictiveness that occurred after PSA's new method of risk assessment began.

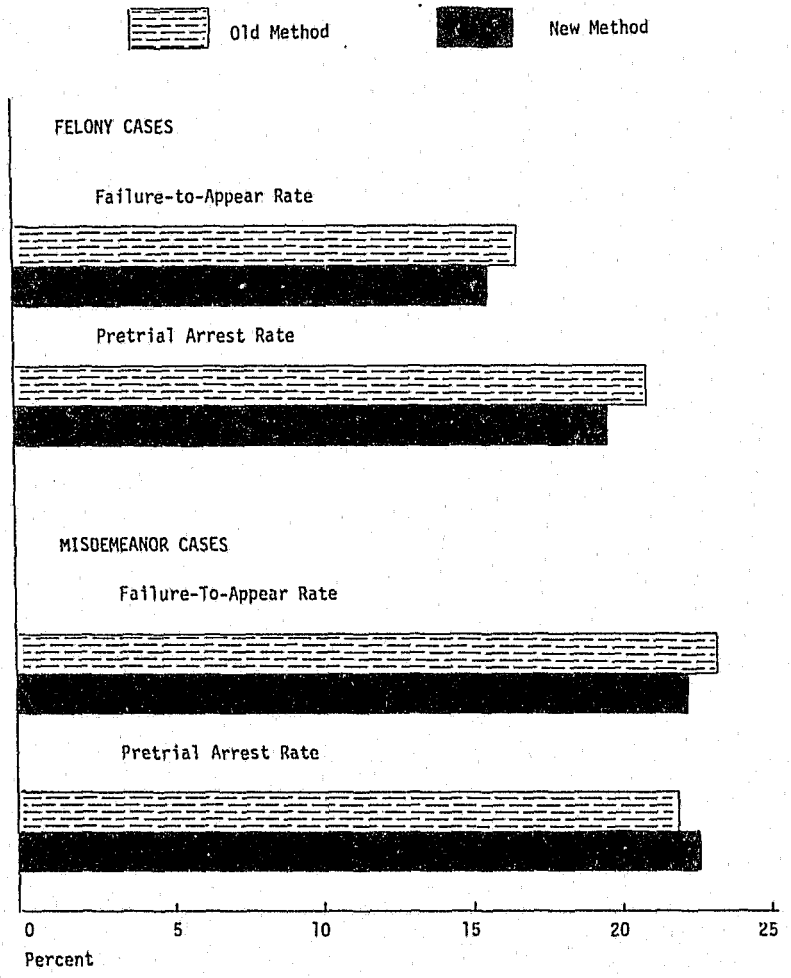
E. Pretrial Misconduct of Released Defendants

Although one might expect a decline in release restrictiveness to be accompanied by an increase in rates of pretrial misconduct, this did not occur. Both failure-to-appear (FTA) and pretrial arrest rates remained virtually unchanged under the new risk assessment method, as shown in Figure 2.

9/ Only judges who made at least 1 percent of all release decisions under both the old and new systems were included. Collectively, this group of 15 judges accounted for 62 percent of all release decisions under the old method and 55 percent of all release decisions under the new method.

FIGURE 2. FAILURE-TO-APPEAR AND PRETRIAL ARREST RATES OF RELEASED DEFENDANTS UNDER PSA'S OLD AND NEW RISK ASSESSMENT METHODS

Note: The total number of felony cases where defendants were released was 4,112 under the old method and 6,285 under the new method; comparable numbers for misdemeanor cases are 6,778, old method; and 11,475, new method.



A total of 15.5 percent of felony cases had a failure to appear under the new method, versus 16.2 percent under the old approach. Comparable percentages for misdemeanor cases were 22.1 percent and 23.1 percent, respectively.

To assess community safety, the primary indicator used was rearrest before trial. For felony cases pretrial arrest rates declined very slightly under the new risk assessment method (from 20.7 percent to 19.4 percent). Rates for misdemeanor cases were virtually unchanged (21.9 percent under the old method and 22.3 percent under the new approach).

These results suggest that PSA's adoption of a new method of risk assessment was beneficial for the jurisdiction. More defendants were released on less restrictive conditions under the new method, but no offsetting increases in failure-to-appear or pretrial arrest rates were experienced. This occurred even though the characteristics of defendants changed in the direction of greater risk.

F. Impact from PSA's Elimination of "No Recommendation" Category

A major change in PSA's risk assessment and recommendation approach was to end the practice of making no recommendations for some persons. All defendants now receive specific release recommendations, based on assessments of their appearance and safety risks.

An analysis of the impact of eliminating the "no recommendation" option was conducted by comparing release decisions and outcomes under the old and new methods for specific categories of defendants who would not have received recommendations under the old method.10/ The results showed increased rates of nonfinancial release for the vast majority of defendant categories studied. Specific increases in nonfinancial release rates for these categories were as follows:

10/ The eight categories considered accounted for approximately 80 percent of all "no recommendation" reasons under the old method.

- Address problems—from 31 percent (old method) to 51 percent (new method) for felonies and from 53 percent to 67 percent for misdemeanors.

- No ties in area—from 21 percent to 35 percent for felonies and from 49 percent to 60 percent for misdemeanors.

- Bail Reform Act convictions—from 17 percent to 28 percent for felonies and from 39 percent to 42 percent for misdemeanors.

- Outstanding warrants—from 8 percent to 12 percent for felonies and from 25 percent to 27 percent for misdemeanors.

- Violations on pending cases—from 12 percent to 24 percent for felonies and from 34 percent to 42 percent for misdemeanors.

- Unsatisfactory adjustment on probation or parole—from 17 percent to 28 percent for felonies and from 40 percent to 49 percent for misdemeanors.

Nonfinancial release rates for cases with unverified information were virtually unchanged, as were the rates for felony cases with charges of failure to appear. Of the categories studied, only misdemeanor cases with FTA charges showed a decline in nonfinancial release rates (from 29 percent to 23 percent) under the new method.11/

The increase in nonfinancial release rates for former "no recommendation" categories was in most cases accompanied by no change or by declines in failure-to-appear and pretrial arrest rates. The major exceptions were the pretrial arrest rates for cases where defendants had

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11/ Defendants within each "no recommendation" category had very comparable characteristics under the old and new risk assessment methods. The major differences were that defendants processed under the new method were more heavily involved in criminality and more likely to be abusing drugs than defendants handled under the old method.

outstanding warrants (increased from 17.0 percent to 22.5 percent) or unsatisfactory probation/parole adjustment (increased from 26.6 percent to 31.0 percent). For the other categories considered—unverified information, address problems, no ties in the area, Bail Reform Act convictions, FTA charges, or violations on pending cases—both failure-to-appear and pretrial arrest rates declined or remained about the same.

Once again, increases in nonfinancial release rates were largely attained without offsetting increases in failure-to-appear or pretrial arrest rates. This suggests that ending the practice of making no recommendations for some defendants was a beneficial change.

- Recommendation: PSA should continue its current practices of making specific release recommendations for all defendants, assessing both appearance and safety risks, and recommending release conditions in response to identified risk problems. The adoption of these practices resulted in more defendants securing release on less restrictive conditions, with no offsetting increases in failure-to-appear or pretrial arrest rates.

- Recommendation: PSA should review its policies regarding bond and preventive detention hearing recommendations. In both of these instances, judges' practices are so different from PSA's policies as to suggest the policies may have little effect.

III. PREDICTION OF PRETRIAL ARREST

Analysis of whether PSA's risk assessments might be improved focused on safety risk, because preliminary analysis found those ratings less accurate than the ones for appearance.12/ This is not surprising, in view of the way the risk assessment system was developed. To assess appearance risk, PSA relied on experience and judgment that had been acquired over a period of almost 20 years. To assess safety risk, a more recent concern, PSA relied primarily on statutory criteria. Not only did PSA have little experience in assessing safety risk, but the drafters of the relevant statute had little as well. Thus, one would expect greater accuracy for the assessment of appearance than safety risk.

To assess whether safety risk ratings could be improved, analysis was undertaken to identify the "best" predictors of pretrial arrest.13/ This was accomplished through

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12/ Also, risk ratings for "medium" risk, although relatively infrequent, were not very accurate for either safety or appearance. As a result of these findings, PSA plans to eliminate medium risk ratings.

13/ Pretrial arrest was considered the best available measure of pretrial criminality, even though it excludes crimes that do not result in arrests and includes arrests that do not result in convictions.

development of a forecasting model, using multivariate analysis techniques, to identify the defendant characteristics most closely associated with pretrial arrest and to determine the likely extent of improved risk assessment if such characteristics were to be used by PSA.14/

The best predictors of pretrial arrest were found to be certain charges (burglary, drugs, possession of the implements of crime, larceny, robbery, stolen property, fraud, prostitution, forgery or automobile theft), on probation or parole when arrested, prior conviction, younger, black, unemployed, self-reported drug problem, no pending case when arrested, and charged with a dangerous or violent offense.

In addition to pretrial arrest for any charge, the prediction analysis considered pretrial arrest for "dangerous or violent" charges, as defined by D.C. statute, because of the greater level of concern about such charges. The significant predictors of pretrial arrest for a dangerous or violent charge were as follows, in order of greatest effect: arrest for a dangerous or violent offense, arrest for a drug or larceny offense, arrest for a dangerous or violent offense in the past, on probation or parole when arrested, on probation or parole and had a pending case when arrested, black, and prior conviction. In addition, the following characteristics made defendants significantly less likely to be rearrested for a dangerous or violent offense before trial (again, shown in order of greatest effect): arrest for murder, both arrest charge and past charge for dangerous or violent offenses, arrest for robbery, employed at time of arrest, and older.

14/ Development of a forecasting model required analysis of defendants, rather than the earlier analysis of cases. Consequently, the case-based data file was transformed into a defendant-based file by using the unique identifier for each defendant included in the data base. The sample selected for analysis was a random, 20 percent sample of all 1981 arrests where charges were filed at arraignment in Superior Court and where the defendants were subsequently released before trial. Note that citation release cases, which had been excluded from earlier analyses, were included.

It is noteworthy that drug use was a major predictor of pretrial arrest. An earlier study of the District of Columbia also found that drug use was a significant predictor of pretrial arrest.15/ These findings show the importance of the program recently initiated by PSA to provide urinalysis surveillance of selected drug users before trial in an effort to reduce pretrial criminality.

In addition to identifying pretrial arrest predictors, the forecasting model was used to simulate release decisions based on it. These results were compared to those from other criteria for release decision-making. When compared with a model based on PSA's indicators of safety problems, the forecasting model provided better estimates of pretrial arrest. Also, when compared with a model that used seriousness of the arrest charge to predict pretrial arrest, the forecasting model performed better in terms of dividing the defendant population into groups with high and low risks of pretrial arrest.

Despite this, the forecasting model's identification of high risk defendants was wrong more often than right. That is, most of the defendants identified as high risk would not have been rearrested before trial. This outcome was due to the "low base rate" for pretrial arrest among defendants as a whole. Because most defendants were not rearrested before trial—indeed, only about 20 percent were—even a model that correctly identifies defendants who are twice as likely to be rearrested before trial as the average defendant will find a group with a 40 percent pretrial arrest rate, or, conversely, a group where 60 percent of the defendants are not rearrested before trial.

15/ Jeffrey A. Roth and Paul B. Wice, Pretrial Release and Misconduct in the District of Columbia, PROMIS Research Project Publication 16 (Washington, D.C.: Institute for Law and Social Research, April 1980), p. 62.

This example demonstrates the importance of distinguishing accuracy of prediction for individual defendants from identification of groups of defendants who reflect sharply different levels of risk. At present, only the latter can be accomplished. Presumably, this should be the minimum requirement of a pretrial release system that detains some defendants, imposes release conditions on others, and releases still others without restrictions. If these groups do not at least represent differential release risks, the underlying fairness of the release decision-making system may be questioned. Although the forecasting model does not provide perfect predictions for individual defendants, it does identify groups of defendants who pose different levels of risk.

Because no highly accurate risk predictions can be made for individuals, it is especially important that defendants be handled in accordance with due process requirements. This is particularly so for defendants rated as high risks, who are presumably the persons most likely to be detained before trial or to be released on conditions that are highly restrictive of pretrial liberty. The D.C. statute governing preventive detention deals with this concern by providing such procedural safeguards as a special hearing in which the defendant is entitled to representation by counsel and may present information or call witnesses.

When combined with appropriate procedural protections, the use of risk forecasts offers several advantages. First, such an approach seems likely to generate more accurate assessments of high and low risk than now occur. Second, it would provide an empirical basis for risk ratings. Finally, it would permit the percentage of defendants identified as high risks to be varied as circumstances change. In effect, the forecasting model ranks each defendant in terms of risk. One could then pick the appropriate cut-off point above which defendants would be considered high risk and for whom special sanctions would be imposed.

This cut-off point could be changed at any time. For example, if jail crowding became severe and higher release rates were desired, a lower cut-off point for "high risk" could be selected. Under such an approach the determination of the percentage of defendants to be considered high risk would be a policy variable, rather than a constraint set solely by outside forces (as occurs with, for example, charge-based predictors of high risk).

Note that when changes in the percentage of defendants considered high risk were necessary, those changes could be implemented so that the highest risk defendants continued to receive the most stringent release conditions. In the earlier example of lowering the high risk cut-off point to alleviate jail crowding, the least risky defendants would be removed from the high risk group, while the status of the highest risk defendants would be unchanged.

While such an approach focuses on identifying high risk defendants and providing more restrictive release conditions for them, it would also assure the unconditional release of the lowest risk defendants. Thus, systematic use of a forecasting model for release decision-making could help avoid detaining defendants who are relatively low risk.16/

PSA is in an excellent position to include risk forecasts in its risk assessment system, because Agency procedures are automated. The data needed to generate a defendant's risk score from a forecasting model are currently entered into the computer as part of the Agency's routine operations. Thus, risk scores could be derived within a matter of seconds, by programming the computer to calculate them.

If PSA decides to include risk forecasts in its rating system, several steps must be taken. First, a decision must be made about the appropriate data to include when developing the risk forecasts. In this study all relevant data were used, because of the concern with obtaining forecasts that were as accurate as possible. As a result, the model included some variables whose use might be legitimately questioned. An example is age: should younger defendants be penalized for that circumstance, when they can do nothing to affect it? This may be considered unjust, even though younger age alone would not be sufficient to generate a high risk score but only younger age in combination with a specific past pattern of criminality and other risk-related characteristics.

16/ The forecasting approach is similar in concept to the point systems used in many jurisdictions to guide release decisions. However, the forecasts would be empirically derived, whereas most point systems are apparently based on "best guesses" about key factors affecting risk.

The trade-off to be made is an important but difficult one. If variables are excluded from the risk forecast because they are not considered legitimate, then the forecasts will be less accurate. Consequently, more inappropriate risk ratings will be made and, presumably, more inappropriate release decisions will result. Hence, the issue is to determine which types of error a jurisdiction is most willing to tolerate: those caused by inclusion of variables that by themselves seem unjust, even if they are accurate indicators of risk, or errors stemming from inaccurate predictions caused by the exclusion of those variables.

Decisions are also required about the proper weighting of various risks. Are appearance and safety of equal concern? Should safety risk be further refined to consider risk of pretrial arrest for a dangerous or violent charge separately from risk of pretrial arrest for any charge? Such decisions about both the risk indicators and their relative weights will affect the forecasting approach.

Finally, decisions must be made about the appropriate level of effort to allocate to developing a forecasting model. Although the model derived in this study has useful features, particularly in comparison to other risk assessment approaches, it also has important limitations. Reducing these limitations would generate better forecasts of risk but increase the initial development costs.

- Recommendation: PSA should continue its efforts to improve assessments of risk. This is particularly important for safety risk, because those ratings have apparently been less accurate than appearance ratings.

- Recommendation: PSA should consider basing its risk assessment ratings in part on forecasts generated by an empirically derived model of risk. This study has demonstrated the potential utility of such an approach for identifying groups of defendants with different levels of risk.

IV. CONCLUDING REMARKS

Several observations made during the course of this study merit consideration, although they deal with topics outside the formal scope of the project. First, there are relatively few conditions available to reduce safety risks for released defendants in the District of Columbia. Such conditions now consist mainly of limitations on behavior (e.g., orders to stay away from certain locations, live at a specific place, remain in the area or abide by a curfew) or requirements to report to probation, parole or PSA. Also, some use is made of third party custody and drug abuse treatment conditions.

PSA has suggested other options, such as requiring the defendant to report periodically to the police precinct, but these have not been implemented. In addition, capacity limitations at halfway houses have restricted the use of that condition. Thus, the number of options actually available to reduce safety risk is small.17/

An expanded range of alternatives for reducing safety risk could be considered, including house arrest or requirements to spend each night in a special residential facility. Such options, although perhaps hard to implement, would increase the jurisdiction's ability to respond to the safety problems posed by released defendants who are awaiting trial.

- Recommendation: Efforts should be undertaken to expand the range of alternatives available for reducing safety risk for released defendants.

17/ The lack of options to reduce risk seems more serious for safety than appearance. Many appearance problems are caused by defendant forgetfulness, which is likely to be reduced by reporting requirements. Also, PSA has a special unit to follow up with defendants who failed to appear and try to return them to court as soon as possible. This reduces the number of defendants who never return to court.

A second observation concerns the orientation of PSA's recommendation system around the defendant's initial release hearing, with no systematic Agency involvement in subsequent "bail review." In the past such review was hindered, because PSA did not routinely receive information about defendants who posted bond and so could not easily identify the individuals who were still detained.

Efforts are now underway to eliminate this information gap. If these efforts are successful, PSA could become more active in bail review. The Agency could, for example, periodically review the detained population to identify persons rated as relatively low release risks. Those defendants could receive special attention, such as an updated interview or a revised set of recommended release conditions.

➢ Recommendation: PSA should, if possible, implement systematic bail review procedures. Such actions would help insure that low risk defendants were not detained unnecessarily.

A third area for consideration involves PSA's management information system. As a result of this study, PSA is now in a position to track Agency actions and their effects on judges' decisions and defendants' release outcomes. PSA could conduct the types of analyses discussed in this report on a continuing basis. This would provide a brief summary of pretrial release activities as well as identify important trends over time. This should in turn facilitate a more rapid identification of potential problems and a speedier resolution of them.

➢ Recommendation: PSA should consider revising its management information system to include quarterly reviews of information similar to that presented in this study. Because the data are routinely available and the necessary computer programs have been written, such reports should be relatively easy to generate and would provide considerable on-going insight about Agency operations and impact.

Finally, although this study was designed solely to consider the District of Columbia's experiences with the new risk assessment method, as compared to the old one, a few comments are in order about the potential utility

of such an approach for other jurisdictions. It is likely that persons making pretrial release decisions around the country will need to give increasing attention to the issue of community safety. Thirty-one States, in addition to the District of Columbia, have passed legislation permitting safety to be considered for at least certain defendants,18/ and other jurisdictions are considering similar legislation. Levels of public concern suggest that the search for ways to reduce safety risk will continue to be an important legislative and programmatic issue.

The approach PSA has taken to dealing with this problem is a systematic, objective one. Each defendant is screened for potential safety problems, as indicated on a list derived largely from the relevant D.C. statute. If a safety problem is identified, release conditions are recommended to try to lower those risks to acceptable levels. A similar process is used to assess appearance risk and to develop recommended conditions to try to reduce it.

PSA's approach seems a reasonable one that other jurisdictions may wish to adopt. However, as discussed in the last chapter, it appears that more accurate risk ratings could be developed from empirically derived forecasts of risk. Hence, jurisdictions considering the implementation of a risk assessment method similar to PSA's may also wish to consider the feasibility of including risk forecasts in the rating system.

In conclusion, the introduction of PSA's new method of risk assessment and recommendation development was apparently a beneficial change for the District of Columbia: more defendants secured release in less restrictive ways, but no increases were experienced in rates of failure-to-appear or pretrial arrest. Moreover, the explicit consideration of possible danger and flight problems provided a more systematic assessment of defendants' release risks than had occurred previously. This facilitated both the protection of the community and the operations of the court.

18/ Barbara Gottlieb, The Pretrial Processing of Dangerous Defendants: A Comparative Analysis of State Laws, paper prepared as part of the study, "Public Danger as a Factor in Pretrial Release" (Washington, D.C.: Toborg Associates, Inc., January 1984), p. 1.

DISTRICT OF COLUMBIA
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ICE D. BEAUDIN, ESQ.
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Deputy Director

June 6, 1984

Mary Toborg
President
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2000 K Street, N.W.
Suite 425
Washington, D.C. 20006

Dear Ms. Toborg:

We have received a copy of your report entitled "Pretrial Release Assessment of Danger and Flight: Method Makes a Difference" and wish to compliment you and your staff for having written an accurate and well documented piece.

We have circulated the report throughout the Agency and have discussed it in several meetings. We felt that we would be remiss were we not to give you our impressions and reactions.

Certainly in a project of this length and depth, some facts, philosophical bases, etc., cannot be examined to the degree that we would all choose. At the same time, we feel that you have captured the real "essence" of our purpose for launching this program.

In the attachment we have tried to respond to the recommendations contained in the report in a way that gives some emphasis to our reasons for doing or not doing things. It is our hope that we have put into "perspective" what we do and why we do it; thus we have called our comments "The Agency Perspective."

Again, may we commend you and your staff for the genuine interest, dedication, and professionalism you have all shown throughout what has turned out to be a two year project. We appreciate your views and, as you know, we have already begun implementing some of the changes recommended.

Yours Truly,

Bruce D. Beaudin

Bruce D. Beaudin

THE AGENCY PERSPECTIVE

When we revised our risk assessment system in 1980, we hoped this would stimulate a number of changes in the pretrial processing of defendants—both by our Agency and by the rest of the criminal justice system. We commissioned a study of the new system's impact, so that we could determine whether such changes occurred. We also expected that the study's findings would assist us in planning for the future.

Because the study was designed to be used by decision-makers, we think that this report would be incomplete were we not to make some statement now with regard to our approach to implementing the recommendations made. What follows is our plan for doing so.

> Recommendation 1. PSA should continue its current practices of making specific release recommendations for all defendants, assessing both appearance and safety risks, and recommending release conditions in response to identified risk problems. The adoption of these practices resulted in more defendants securing release on less restrictive conditions, with no offsetting increases in failure-to-appear or pretrial arrest rates.

We agree with this statement and intend to continue our bifurcated approach to recommending conditions of release. Indeed, in addition to the study findings, conversations with judges, prosecutors, and defense counsel confirm our own belief that this approach is the only sensible one in an environment governed by a law which requires separate considerations of safety and appearance.

> Recommendation 2. PSA should review its policies regarding bond and preventive detention hearing recommendations. In both of these instances, judges' practices are so different from PSA's policies as to suggest the policies may have little effect.

We agree that at this time our policies with regard to these stated items seem to have little effect. At the same time, it was also argued in 1963 when the Bail Project began in the city that our policy of recommending release on recognizance was having "little or no effect" since less than 5 percent of those released were released on recognizance. (Today, 20 years later, closer to 90 percent of those released are released on recognizance.)

We are committed to forging policies that "set the tone" for what we believe to be the requirements of the law. If these policies do not seem to comport with current practice, we do not feel it incumbent upon us to change them only to reflect the status quo. At the same time, we recognize a real need to evaluate our policies to see whether our main goal—bringing system decisions closer to what the law intends them to be—is being met.

With regard to money bond, the law clearly states that its use is appropriate in some instances. The American Bar Association, the Pretrial Services Resource Center, and other respected groups have suggested that money bond is often a vehicle by which many people secure release earlier than would otherwise be possible. (We might add that such an early release mechanism, with no opportunity for prosecutorial or judicial scrutiny, can raise serious public safety questions in some cases.) Judges and prosecutors in this jurisdiction have criticized our policy of avoiding recommending money bond. Indeed, money bond has a solid but questionable place in the traditional approach to pretrial release in this country and has been condoned by the courts.

Our own policy which omits the use of money bond is premised on the belief that there exist other alternatives that are much more effective both at releasing or detaining persons charged with crime and at assuring appearance in court as required. As part and parcel of this belief, we think that the background facts which can be gathered by the time of judicial consideration of release options cannot include data on financial capacity of the defendant or the defendant's family or friends—a key element in the analysis of what amount is appropriate.

We feel that it is almost impossible to decide first whether a person charged with a crime should be released or detained pretrial for either safety or appearance reasons and THEN have to decide what dollar amount will produce the desired result. Without knowing the financial resources available, no intelligent decision with regard to amount can be made.

At the same time, while we acknowledge that in some cases money at risk—which may be returned at case disposition—might motivate some to appear, certainly there is no argument that dollar amount protects the community. Indeed, all the release conditions extant designed to protect the safety of the community are added to any money bond set.

Thus, as to the issue of money bond, we are not ready to concede that our policies should be revised to conform to current practice. As the National Association of Pretrial Services Agencies has stated:

> "The adoption of totally nonfinancial release systems in place of money bail increases the equity of the pretrial release system, and brings pretrial release considerations more directly in line with the expressed purposes of bail." (Performance Standards and Goals for Pretrial Release and Diversion: Release; Washington, D.C.; 1978; p. 25.)

We believe that current practice—if it is that money bond continues to result in the release of some who shouldn't be released and the detention of some who shouldn't be detained—should itself be changed.

With regard to detention hearing recommendations, it is, perhaps, time to take another look at our policies. Initially, we felt that it was our role to apply the terms of our statute to the particular situations of individual defendants and alert the court and parties to pretrial release consideration of all of the options appropriate. It is precisely because the hearings contemplated by statute

are designed to elicit facts unknown to us at the time we make our recommendations that we adopted this policy. Perhaps, in light of this recommendation, we should take another look at our rationale.

> Recommendation 3. PSA should continue its efforts to improve assessments of risk. This is particularly important for safety risk, because those ratings have apparently been less accurate than appearance ratings.

We agree. We believed that our ability to predict safety risk was "iffy" at best. Defining the risk to be assessed has been our most difficult task. For example—should we be most concerned about rearrest? conviction? type of crime? Is a person charged with a new act of commercial sex or gambling the same as someone charged with a violent crime? We continue to assess these concerns and will also consider the study results. We note, nevertheless, that some risk factors in the safety category—specifically drug use—have a high correlation with subsequent arrest.

> Recommendation 4. PSA should consider basing its risk assessment ratings in part on forecasts generated by an empirically derived model of risk. This study has demonstrated the potential utility of such an approach for identifying groups of defendants with different levels of risk.

We agree. While we believe that only particular circumstances and individual concerns should be applied in determining release (or detention) conditions, certainly one of the many legitimate criteria would be group classifications. To the end of determining those classifications that would be most appropriate, we would welcome the opportunity to be able to classify better. Certainly the determination of which conditions might minimize any perceived risk must include consideration of potential as well as real risks.

Recommendation 5. Efforts should be undertaken to expand the range of alternatives available for reducing safety risk for released defendants.

Assuming that a proper "needs assessment" has been conducted, i.e., we have determined what activity is of such threat to safety that it must be controlled during pretrial release, then we agree that we must seek new behavior control options that are consistent with both community safety and civil liberty.

We have, for example, already begun an empirical and systematic study of drug use and crime. Although this project, funded by the National Institute of Justice, is but a few months old, we have already discovered "needs" and have seen those needs met on an emergency basis by the city. We expect to continue this and other approaches we have conceived to the end that we improve our ability both to diagnose risk and then to minimize it.

Recommendation 6. PSA should, if possible, implement systematic bail review procedures. Such actions would help insure that low risk defendants were not detained unnecessarily.

We agree. A rule of court and the D.C. Code both require that the Chief Judge review the status of detained defendants periodically. In addition to a monthly meeting attended by Court, PSA, Jail, Prosecutorial, and Defense Personnel, at which the detention status of every defendant with a case pending is reviewed, the Court has established a jail project whose sole function is to examine each day's commitment papers. We may be doing as much as we can by exchanging information (both manual and automated) on a daily basis with the jail project office. We will examine this recommendation in light of the activities described above.

Recommendation 7. PSA should consider revising its management information system to include quarterly reviews of information similar to that presented in this study. Because the data are routinely available and the necessary computer programs have been written, such reports should be relatively easy to generate and would provide considerable ongoing insight about Agency operations and impact.

We agree. Since the Deputy Director meets daily with the operations managers to deal with discrete problems in a timely manner, we think that weekly meetings to analyze trends would be in order. We expect to make much more use of the data we collect by examining pre-formatted reports on a weekly basis. We intend, at a minimum, to complete quarterly reviews.

* * * * * *

Finally, a few comments are in order for jurisdictions considering adoption of a risk assessment system similar to ours. An immediate response of a jurisdiction asked to consider a bifurcated approach might be "to what end? We do not have a law that permits (requires) consideration of danger." We faced that same issue here, since we serve both the Federal court (where danger may not be considered) and the local court (where danger must be considered).

It was our belief—one which seems to have been borne out by the study—that "forcing" decision-makers to think separately about danger and appearance leads to a more rational approach to the release setting process. Even in the Federal courts we noticed that arguments being made for and against release seemed to abandon traditional lines and concentrate on the particular risk identified. This kind of change enabled us to suggest behavior modifying conditions that were appropriate to the risk presented.