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PUBLIC DANGER AS A FACTOR IN PRETRIAL RELEASE

A Study Conducted in Cooperation with the National Association of Pretrial Services Agencies

VOLUME I

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VOLUME I: FINAL REPORT

PUBLIC DANGER AS FACTOR IN PRETRIAL RELEASE

by

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PUBLIC DANGER AS A FACTOR IN PRETRIAL RELEASE

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- Hon. Nicholas S. Nunzio, Associate Judge, Superior Court of the District of Columbia. Judge Nunzio has served as a trial court judge for 15 years; during that time he has made many release decisions involving dangerous defendants. His participation in the study provided a firsthand perspective, based on years of experience, about the difficulties of making individual release decisions and about the factors that should influence them.

- Hon. Harold H. Greene, Associate Judge, U.S. District Court for the District of Columbia and formerly Chief Judge of the Superior Court of the District of Columbia. Judge Greene possesses a unique perspective on pretrial dangerousness issues, because he has served both as a federal judge and as the chief judge of a major, busy local trial court that works daily with a complex danger law. As Chief Judge, he handled many court management issues related to the implementation of the preventive detention statute for the District of Columbia. Additionally, at both the Superior and District Courts, he has had to deal with the overall problems posed by the release of dangerous defendants.

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We would also like to thank the many members and affiliates of the National Association of Pretrial Services Agencies (NAPSA) who assisted with this study through their comments to us about the study design and draft products at NAPSA's annual Conference on Pretrial Services in 1984, 1985 and 1986; their review of various study products; and the insights they provided to us about pretrial practices regarding dangerous defendants in their local jurisdictions. This general assistance from the NAPSA Network--over and beyond NAPSA's role in specific study tasks--was enormously helpful to us. We would like to give particular thanks to Mr. John Hendricks, President of NAPSA, and to NAPSA's Board of Directors for their willingness to include discussions of the study in the annual conference agenda and for their support, interest and helpful comments about the project.

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Finally, many other persons helped us implement various aspects of this study. Although they are too numerous to mention individually, we would like to take this opportunity to express our thanks and appreciation to each of them.

PREFACE

When this study began in 1983, there was great national concern about the problem of pretrial dangerousness. This was reflected in speeches by such notable public figures as President Ronald Reagan and Chief Justice Warren Burger and in the daily news accounts around the country of instances of crime-on-bail.

Since 1983, that concern has in no way diminished--indeed, it has increased. This is shown, for example, by the enactment of the Federal Bail Reform Act of 1984 which provides--for the first time in the nation's history--for the pretrial detention at the federal level of selected defendants who are considered likely to endanger community safety, if released. This statute, and the case law that is developing from it, is having widespread impact on the pretrial processing of defendants in federal courts and can be expected to have a major impact on state laws concerning pretrial dangerousness as well. In fact, some states are already considering revisions in their state danger laws to pattern them more closely on the federal model.

Because of the continued legislative activity and public concern over pretrial dangerousness, the topics covered in the present study are particularly timely. The study reviews existing state laws regarding pretrial dangerousness, looks at how selected dangerous defendants are now being handled before trial, assesses a variety of important issues posed by danger laws--such as our ability accurately to identify dangerous defendants and the legal issues posed by laws targeted at such defendants--and presents a series of recommendations for consideration by legislators and other policy-makers who are trying to preserve both community safety and defendants' civil liberties as they deal with the difficult problem of pretrial dangerousness.

Completion of a project of this magnitude and scope required the considerable efforts of a great many people. As Principal Investigator, I would especially like to thank the staff at Toborg Associates and the pretrial practitioners involved in the study through the National Association of Pretrial Services Agencies (NAPSA) for their hard work on behalf of the project.

As we look to the future, we can expect continued legislative activity, additional research efforts and further attempts by criminal justice practitioners to improve current practices regarding the handling of dangerous defendants before trial. Those of us who worked on this study hope that it will provide insight about the many issues posed by pretrial dangerousness that will help in the development of enlightened policies in this important--and evolving--area of criminal law and criminal justice administration.

Mary A. Toborg
Principal Investigator

INTRODUCTION

Crime-on-bail has been of increasing concern to the general public and criminal justice policymakers alike in recent years. A defendant arrested for a second offense while awaiting trial on another charge is widely viewed as a person who has successfully flouted the law and perpetrated a preventable crime on an innocent victim. To much of the public, the first crime was perhaps unavoidable, but the second (if it was indeed committed by the defendant) would clearly have been avoided by detaining the defendant on the first charge.

The extent to which crimes are committed by defendants awaiting trial has been decried by many public officials and criminal justice practitioners, including President Ronald Reagan and Chief Justice Warren Burger. Concern about pretrial dangerousness has also been reflected in the "standards" for pretrial release developed by such organizations as the American Bar Association (ABA) and the National Association of Pretrial Services Agencies (NAPSA); those standards recommend assessment of community safety risk as part of the pretrial release process and pretrial detention for certain categories of defendants for whom no conditions of release will adequately protect community safety.

In response to the widespread concern about crime-on-bail, most jurisdictions have passed laws permitting the consideration of pretrial "dangerousness" when pretrial release or detention decisions are made. Before enactment of such "danger laws," the sole consideration underlying pretrial release decisions

had been whether a defendant was likely to return to court for trial. Thus, in the past, defendants who posed little risk of pretrial flight could not legally have been denied release because they posed risks of endangering community safety.

Currently, 32 states and the District of Columbia have enacted laws that permit the consideration of pretrial dangerousness when release decisions are made. Moreover, with the passage of the Bail Reform Act of 1984, defendants in federal courts are now assessed for risks of pretrial dangerousness as well as flight.

Although there has been widespread concern for some time about pretrial dangerousness, there has been little systematic analysis of the responses to it or the impact from those responses. The present study, funded by the National Institute of Justice, partially fills this gap by considering a broad range of issues relating to pretrial dangerousness and ways of protecting the public from crime-on-bail, while preserving defendants' civil liberties. The study was conducted by Toborg Associates, Inc., a Washington, D.C.-based research firm, which subcontracted with NAPSA--the professional association for the pretrial services field--for assistance with several important tasks. Thus, the study reflects both researcher and practitioner perspectives on the problem of pretrial dangerousness.

The results of the study, entitled Public Danger As a Factor in Pretrial Release, are presented in a three-volume Final Report.

A separately bound Summary of major findings, conclusions and recommendations is also available.

The remainder of Volume I consists of five monographs prepared during the course of the project. The first, "A Comparative Analysis of State Laws," examines the provisions of the "danger laws" passed in 32 states and the District of Columbia. It considers the ways those laws define dangerousness, the types of restrictions they permit on the pretrial release of defendants so defined, and the procedural steps required before those restrictions can be imposed.

The next three monographs consider the perspectives of various groups about pretrial dangerousness issues and the implementation of the state danger laws. "Newspaper Coverage of 'Pretrial Danger'" summarizes nationwide newspaper coverage of pretrial dangerousness issues over a two-and-one-half-year period. This is considered a good overall barometer of public opinion about these issues.

"The Dynamics of State Law Development" examines the legislative history of 10 recently enacted danger laws. It looks at the perceptions and expectations that surrounded these laws at the time of their development as well as at the key factors leading to their enactment.

"Practitioner Perspectives" presents the findings from 50 in-depth telephone interviews with criminal justice practitioners, located in 11 cities where danger laws are in effect around the nation. These practitioners were asked to assess

the impact of the local danger law and to describe its implementation. They were also asked for their views on such matters as how dangerousness should be defined and what restrictions should be placed on the pretrial liberty of defendants found to be dangerous.

The last monograph in Volume I is entitled "Crime-on-Bail and Pretrial Release Practices in Four Cities." It presents the results of detailed analysis of four cities (Phoenix, Tucson, Milwaukee and Memphis) regarding the ways in which defendants charged with robbery, rape or felony crime-on-bail--charges that are often specified by state laws as indicative of dangerousness--were handled before trial (that is, whether they were released or detained and through what mechanisms) as well as the extent of crime-on-bail by those defendants who were released to await trial.

Volume II consists of a "Digest of State Laws." This summarizes the provisions of the danger laws passed by 32 states and the District of Columbia. Originally intended to cover only laws passed through the end of 1982, the volume was updated to include the 1983 Iowa law as well as an appendix on the Federal Bail Reform Act of 1984. Each danger law summary describes (1) the types of defendants who are not entitled to pretrial release; (2) the types of defendants to whom the danger provisions of the law apply; (3) special conditions that may be imposed on dangerous defendants, including whether such defendants may be detained before trial; (4) special procedures that are necessary

in order to invoke the dangerousness provisions, including the required findings, factors to consider, standard of proof, burden of proof, hearing requirements and speedy trial rules; and (5) the review/appeals procedure. (Recall that the provisions of these individual laws are compared in the Volume I monograph entitled "A Comparative Analysis of State Laws.")

Volume III consists of a series of issues papers, commissioned through NAPSA by practitioners in the pretrial field. "What Is 'Public Danger' in Pretrial Release?" considers the various definitions that have been proposed for pretrial dangerousness--by state laws; public officials; the news media; criminal justice researchers and practitioners; the courts (through judicial pronouncements in leading cases); and the general public, as articulated through public opinion polls.

"Alternatives for Reducing the Risk to Community Safety Posed by Pretrial Release of the Dangerous Defendant" looks at restrictive release conditions--short of preventive detention--that might be imposed on defendants to enhance public safety during the pretrial period. Such options as intensive supervision, drug testing and electronic surveillance are among those discussed.

"Accommodating Victim Interests in the Pretrial Release Process: Alternative Strategies" considers ways that victims' rights and defendants' rights can be balanced at the pretrial stage. By way of illustration, two theoretical models for doing so are presented and described. Also discussed are key policy

issues that would arise in the development and implementation of each model.

"Experience to Date Under the State Danger Laws: Reasons for Underutilization and Possible Ways to Increase Their Use" discusses the problem posed by the fact that state danger laws are seldom invoked; instead, the setting of high money bail is commonly used to try to detain defendants who are considered dangerous. The paper points out that the experience at the federal level has been sharply different since the enactment of the Federal Bail Reform Act of 1984--i.e., the detention provisions of that statute are used frequently--and discusses the reasons for this. Finally, the paper offers a series of recommendations for increasing the use of the existing state laws regarding pretrial dangerousness.

A COMPARATIVE ANALYSIS OF STATE LAWS

by

Barbara Gottlieb

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CHAPTER I. INTRODUCTION

"Crime-on-bail"--the commission of crimes by defendants who are out on bail or other forms of pretrial release--has in recent years become a nationwide concern. Thirty-two states, the District of Columbia and the Federal Government have passed laws that permit judges, when setting bail or other pretrial release conditions, to consider whether a released defendant might pose a danger to the community. Such "danger laws" mark a departure from the traditional practice of basing release decisions solely on the likelihood that a defendant will return for court proceedings.

This monograph examines the state danger laws, including their different definitions of dangerousness, the types of restrictions they permit on pretrial release, and the procedural steps required before those restrictions can be imposed.[1] Originally intended to cover only state danger laws passed through the end of 1982, the monograph was updated to include the 1983 Iowa law as well as a brief description of the Federal Bail Reform Act of 1984.

Prepared as part of a broader study of pretrial danger, the analysis presented here is based solely on a review of the relevant sections of state constitutions, statutes and court rules.[2] It does not address the

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[1]Earlier work to identify and categorize the danger laws appears in Elizabeth Gaynes, Typology of State Laws Which Permit Consideration of Danger in the Pretrial Release Decision, Pretrial Services Resource Center, Washington, D.C., May 1982; and John Goldkamp, Two Classes of Accused (Cambridge, Mass.: Ballinger Publishing Company, 1979), Chapter 4.

[2]In addition to the comparative analysis of the danger laws presented in this paper, a separate report has been prepared that summarizes the laws of the individual states. See Barbara Gottlieb and Phillip Rosen, Public Danger as a Factor in Pretrial Release--Summaries of State Danger Laws, Toborg Associates, Inc., Washington, D.C., April 1985.

development of case law on the subject, nor does it attempt to evaluate the implementation or impact of danger laws. For these reasons, no judgments are made in this paper about the efficacy of the various laws for handling dangerous defendants before trial. The laws are not labeled as "good" or "bad"; neither are they rated relative to one another as "better" or "worse" at dealing with problems concerning pretrial danger. Rather, the range of provisions in the laws is presented and compared.

For ease of reading, no statutory citations appear in the text. However, the full citations to all state danger laws are provided in Appendix A.

Two closely related types of laws are excluded from the analysis. The first consists of laws that deny pretrial release to persons charged with capital crimes (or, in some cases, crimes punishable by life imprisonment), when the proof is evident or the presumption great. This or similar wording, found in the majority of state constitutions, is widely interpreted as addressing the potential not for dangerousness but for flight, as a defendant facing death for a crime may find little incentive to appear for trial. The second exclusion is of laws that restrict the pretrial release of defendants who pose a threat of immediate physical harm to self or others. Such statutes appear to be designed to protect (or to protect society from) intoxicated or mentally disturbed defendants or to protect potential victims of spousal or parental abuse. The detention authorized by these laws amounts to a "cooling-off" period, after which the defendant is released with a minimum of restraints while awaiting trial. The targets of these laws are not widely considered to be defendants who are dangerous to the general public.

CHAPTER II. DEFINITIONS OF DANGEROUSNESS

Existing laws exhibit three major approaches to defining dangerousness; the first is based on the offense for which arrested and charged, the second considers the defendant's prior criminality, and the third relies solely on judicial discretion to determine whether a defendant is likely to commit a crime if released before trial. Many laws use some combination of more than one of these approaches, as shown in Table 1. (See Appendix B for more detailed information about specific criteria for each state.)

A. Offense Charged

Twenty states and the District of Columbia[3] screen defendants for danger based at least in part on the offense with which they are charged; statutes in these states commonly list specific offenses as threshold indicators of dangerousness. Most laws refer to physical violence in the commission of the alleged crime or to the commission of a felony, usually with aggravating circumstances (e.g., prior convictions, on bail, etc.). Only three states--Alabama, Nebraska and in certain instances Michigan--rely solely on the current charge as the determinant of danger; the others require that a judicial finding of dangerousness or a record of prior criminality accompany the current charge.

B. Prior Criminality

Prior criminal involvement, a second criterion for defining danger, is used by 22 states. This may refer to prior convictions or to probation or parole status at the time of arrest; it may also encompass the alleged commission of a crime by a defendant awaiting trial, i.e., crime-on-bail.

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[3]For ease of exposition, the District of Columbia will be considered a state in subsequent counts of jurisdictions.

TABLE 1. STATE APPROACHES TO THE DEFINITION OF PRETRIAL DANGEROUSNESS

State	Arrest Charge Against Defendant	Prior Criminality		Discretionary Predictive Finding
		Alleged Crime on Bail	Prior Conviction (or Parole or Probation)	
Alabama	X			
Alaska	X			X
Arizona	X	X		X
Arkansas	X	X		X
California	X			X
Colorado	X	X	X	X
Delaware				X
District of Columbia	X	X	X	X
Florida	X	X	X	X
Georgia	X	X	X	
Hawaii	X		X	X
Illinois	X	X		X
Indiana	X	X	X	
Iowa				X
Maryland	X	X	X	
Massachusetts		X		X
Michigan	X	X	X	
Minnesota		X		X
Nebraska	X			
Nevada	X	X		
New Mexico	X	X	X	X
New York	X	X		
North Carolina				X
Rhode Island		X		
South Carolina				X
South Dakota				X
Tennessee		X		
Texas	X	X	X	
Utah	X	X	X	
Vermont		X		X
Virginia				X
Washington				X
Wisconsin	X	X	X	X

As Table 1 shows, 21 states consider an alleged crime-on-bail to indicate that a defendant is dangerous. Seven of these states can base a designation of dangerousness on any instance of crime-on-bail; the rest specify that either the pending charge or the charge for which the defendant was arrested while out on bail be of a certain severity. Twelve states consider prior convictions or active parole or probationary status at the time of arrest to be a prima facie indicator of dangerousness. Most of these laws apply where the current charge is a felony or a serious, violent or dangerous crime, and where the prior offense was of equal severity.

C. Judicial Discretion

The third approach to defining dangerousness asks judges to decide which defendants are likely to commit a new crime if released. This is accomplished by means of a formal finding which a judge must reach based on assessment of the defendant's alleged offense, background, and circumstances. Typical of the requirements for a judicial finding of dangerousness is the following from the Massachusetts law: "...the court shall then determine, in the exercise of its discretion, whether the release of said prisoner will seriously endanger any person or the community."[4]

Some danger findings refer only to danger to persons; others apply to persons and property. A danger finding may specify that it refers to the risk of future felonies (as in Georgia's law), or that the threshold of danger would be the defendant's unconditional release (as in Illinois). Regardless of variation in terms, these findings differ from definitions based on current charges or prior criminal acts in that they are based not on concrete or enumerated criteria but rather on subjective assessments

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[4]Mass. Gen. Laws Ann., Chap. 276, Sec. 58, as amended Acts of 1981, Chap. 802.

by the judge. In addition, rather than responding to past acts, they attempt to predict future ones. In all, 21 states include this type of discretion in their laws, most frequently in conjunction with other definitional elements.

As this chapter documents, the parameters that are accepted as indicating dangerousness vary greatly from state to state. At one extreme, a judge's exercise of discretion may be all that is needed to authorize special restraints on a defendant during the pretrial period. At the other extreme, sanctions against dangerousness may be reserved for defendants charged with committing a violent felony while on pretrial release from a separate, pending violent felony charge.

CHAPTER III. CONTROLLING DANGEROUS DEFENDANTS PRIOR TO TRIAL

A. Restrictive Conditions of Release

Once a state has determined that a defendant is dangerous, it may apply a variety of legal sanctions to forestall dangerous or criminal acts during the pretrial period. The most extreme such sanction is preventive detention. Most states, however, also provide a range of sanctions far less severe. Typically, state statutes enumerate various conditions that the court may impose on the dangerous defendant's release from jail, and allow substantial judicial discretion in deciding which ones should be set in any individual case. Table 2 displays the 21 states whose laws specify conditions of release for dangerous defendants, along with the conditions they permit.

Among the range of release conditions applied to dangerous defendants, two distinct tendencies may be seen. One is to restrict the defendant's movement and/or activity during the pretrial period; the other, to rely on a monetary incentive for good behavior. Seventeen states have established behavior-related conditions of release. Some states also make "good behavior" an explicit condition of release; violation of this condition (i.e., by committing a crime when on bail) may be made a separate criminal offense, as may violation of any release condition. This creates an additional legal lever by which the state may hope to discourage--or, after the fact, to punish--crimes committed while on pretrial release.

Control of dangerous defendants through the use of monetary incentives (surety bond, deposit bond, etc.) is allowed in 14 states. Monetary conditions are sometimes combined with the behavior-related restrictions described above.

TABLE 2. CONDITIONS OF RELEASE FOR DANGEROUS DEFENDANTS

State	Place Under Supervision	Restrict Travel	Restrict Association	Restrict Abode	Prohibit Drugs	Prohibit Alcohol	Prohibit Weapons	Return to Custody After Certain Hours	Deny Own-Recognizance	Require Bail Bond	Increase Bail Bond	Require Secured Bail Bond	Change or add Conditions, Including "Any Necessary"
Alabama											X		
Alaska	X	X	X	X				X		X		X	X
Arizona													X
Arkansas	X	X	X		X	X	X						X
Colorado									X		X		X
Delaware 1/	X	X	X	X	X	X						X	X
District of Columbia	X	X	X	X				X		X		X	X
Hawaii	X	X	X		X	X	X						X
Illinois 1/	X	X	X		X	X	X				X		X
Iowa	X	X	X	X				X				X	X
Maryland									X				
Minnesota	X	X	X	X				X				X	X
New Mexico							X						X
North Carolina												X	
South Carolina	X	X	X	X				X	X			X	X
South Dakota	X	X	X	X				X	X	X		X	X
Tennessee											X		
Vermont	X	X	X	X				X		X		X	X
Virginia								X					X
Washington	X	X	X		X	X	X						X
Wisconsin	X	X	X	X			X			X		X	X

1/ Delaware and Illinois may require defendants to obtain medical or psychiatric treatment and to support their dependents. Illinois may also require treatment for drug or alcohol addiction; work or study; residence in or attendance at a designated facility; and, for minors, attendance at school or other program and contribution to their own support.

Many statutes also list a series of factors for the court to consider when selecting conditions of release that will reasonably assure the public safety. Typically, these factors include the nature and circumstances of the offense charged; the defendant's family ties, length of community residence, employment and financial resources, character and mental condition; and record of prior convictions, failures to appear in court, or flight to avoid court proceedings. The same factors are often used to assess the likelihood that a defendant would flee, if released; in fact, in many cases the same list serves both functions.

This apparent inconsistency of purpose seems to reflect the development of danger laws in the broader context of bail reform since 1966, when the Federal Bail Reform Act was first passed. Many states enacted legislation in the late 1960's that established release conditions to reduce the likelihood of flight. The inclusion of dangerousness as a valid consideration has been a more recent addition, and many states seem to have amended their existing, flight-oriented laws without clearly distinguishing between danger and flight.

B. Preventive Pretrial Detention

Apart from applying restrictive conditions of release for some dangerous defendants, 25 states have enacted danger laws that authorize preventive detention for dangerousness. Because preventive detention is the most extreme form of state power wielded over a defendant who has not been found guilty, it is examined here in some detail. Of particular interest are the circumstances under which detention is permitted.

This study has identified seven categories of offenses for which pretrial detention is authorized. Table 3 shows these categories and the states that permit detention in each. As the table suggests, there is no widely

TABLE 3. STATES AUTHORIZING PRETRIAL DETENTION, SHOWING CATEGORY OF DETAINABLE ALLEGED OFFENSE

STATE	Prior Criminality-Based				Discretion-Based		Other
	Crime-on-bail, where good behavior is a condition of every release	Felony-on-bail, nature of pending charge not specified 1/	Felony-on-bail, pending charge must also be a felony 2/	Prior conviction accompanies current charge 3/	Judicial finding of danger; no prior convictions, no pending cases required 4/	Judicial finding of danger accompanies charge of crime-on-bail/parole/probation 3,4/	Current charge only
Arizona			X		X		
Arkansas		X					
California					X		
Colorado			X	X			
District of Columbia		X	X	X	X	X	
Florida					X		
Georgia			X	X		X	
Hawaii		X		X	X		
Illinois		X	X				
Indiana 5/		X					
Maryland			X			X	
Massachusetts						X	
Michigan 6/			X	X	X		X
Nebraska 7/							X
Nevada		X					
New Mexico		X		X			
New York			X				
Rhode Island	X	X					
South Dakota 8/					X		
Texas			X	X			
Utah			X	X			
Vermont		X					
Virginia					X		
Washington 8/					X		
Wisconsin		X		X	X		

1/ Law may specify that the post-release felony be of a particular type or class, e.g. a violent felony.

2/ Law may specify the nature of the felony in the current case, in the pending case, or both.

3/ Law may refer to prior convictions or may specify that the defendant was on parole or probation from a prior conviction at the time of the current charge. It may also specify the type or class of crime in the present or the prior instance, or may establish a time frame within which the prior crime must have been committed.

4/ Law may specify the nature of the charge, e.g. felony, violent felony, enumerated felony.

5/ Indiana permits revocation of bail for commission of a felony or of a Class A misdemeanor on bail.

6/ Michigan permits denial of bail to defendants charged with first-degree criminal sexual conduct (i.e. rape), armed robbery, or kidnapping for the purpose of extortion, unless the defendant shows by clear and convincing evidence that he/she is not likely to present a danger to any other person.

7/ Nebraska permits denial of bail to defendants charged with forcible rape.

8/ South Dakota and Washington permit detention for capital charges only. While defendants in capital cases are generally excluded from the study, they are included for these states because detention is permitted only if a predictive finding of danger (or flight) is made by the court.

shared consensus among the states as to the type of infraction that merits detention. For example, the alleged commission of a felony by a defendant with a pending felony case is grounds for detention in 10 states. At the same time, it is not grounds for detention in 23 other "danger" jurisdictions, to say nothing of the 18 states without danger laws.

Four of the detention categories shown in Table 3 involve some history of prior criminal involvement, either prior conviction or a pending case. The broadest of these is the alleged commission of a crime during pretrial release, i.e., crime-on-bail. This alone may be grounds for detention in Rhode Island, where all released defendants are instructed to "keep the peace and be of good behavior," thus making rearrest on bail a violation of the terms of release. Other states permit detention for crime-on-bail under more limited circumstances: the alleged commission of a felony on bail, or alleged commission of a felony while on release from a pending felony charge. Nine states authorize the detention of defendants having a prior criminal conviction; this includes defendants on parole or probation at the time of arrest.

Another widely established basis on which states may deny or revoke pretrial release is a discretionary judicial finding that the defendant's release would pose a danger to another person or the community. Ten states permit pretrial detention following such findings alone. Normally, these findings apply as the threshold for detention only where the defendant is charged with a violent felony or a dangerous crime; no record of prior criminal involvement need exist. Four states authorize detention on the basis of a judicial finding of danger applied in conjunction with a history of prior convictions or crime-on-bail. Hawaii and Virginia are notable among the "detention" states in that they accept a finding of likely future

dangerousness as sufficient grounds for detention, without regard to the defendant's prior record or the nature of the current charge.

Finally, both Michigan and Nebraska amended their state constitutions to permit detention of defendants charged with specific non-capital crimes. The charges which are grounds for detention are forcible rape in Nebraska and first-degree sexual assault (i.e., rape), armed robbery, or kidnapping for purposes of extortion in Michigan.

In short, variation among state danger laws arises not only in regard to their definitions of dangerousness, but also in regard to the restraints that may be imposed once a determination of dangerousness has been made. The following example illustrates the range of responses authorized under state laws. Consider a defendant arrested on a first offense and found potentially dangerous by a judge. Ten states can detain this defendant until trial. Eleven others will recognize the defendant as dangerous but apply much milder sanctions, such as conditional release or a secured bail bond. Twelve other states, although they have danger laws on the books, will not restrict this defendant's pretrial release because they do not consider first offenses, in the absence of any prior criminal record, to be adequate predictors of dangerousness.

CHAPTER IV. COMPARISON OF PROCEDURAL REQUIREMENTS IN STATE DANGER LAWS

The final dimension along which the state danger laws are compared is the nature of the procedures required to find a defendant dangerous and to apply restrictions to that person's pretrial release. Procedural elements that are frequently specified in the danger laws include:

- o the standards of proof for establishing defendant dangerousness;
- o requirements for special hearings to determine defendant dangerousness or to determine what release restrictions to impose; and
- o limits on the length of pretrial detention.

The states' use of these elements is summarized in Table 4 and discussed below.

A. Standards of Proof

The standard of proof represents the level at which danger-related findings must be substantiated in court. In over two-thirds of the danger states, this standard is "judicial discretion." Only 10 states set a more rigorous standard; for example, Indiana requires that the evidence presented be "clear and convincing," and Florida requires "proof beyond a reasonable doubt."

B. Special Hearings on Dangerousness

Special hearings are required in 15 states to determine defendant dangerousness or to revoke or alter bail.[5] In the most elaborate of these

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[5]Where special hearings are not required, release decisions for potentially dangerous defendants are made in routine bail determination hearings. For more information on special hearings and other procedural requirements see John P. Bellassai, Pretrial Detention of Dangerous Defendants Under Existing State Laws: A Statutory Review, with Particular Emphasis on Ways to Increase the Use of Such Laws in Appropriate Cases, a paper prepared under the sponsorship of the National Association of Pretrial Services Agencies (NAPSA) as part of the study, "Public Danger as a Factor in Pretrial Release," presented at the 1984 Annual Conference on Pretrial Services (New Orleans, Louisiana, July 1984).

TABLE 4. STATE USE OF KEY PROCEDURAL ELEMENTS

State	Standard of Proof	Special Hearings on Dangerousness	Limit on Detention
Alabama	Discretion	No	N.A.[1]
Alaska	Discretion	No	N.A.[1]
Arizona	Clear and convincing evidence	Yes	60 days
Arkansas	Discretion	No	9 months[2]
California	Clear and convincing evidence	No	60 days[2]
Colorado	Discretion	Yes	90 days
Delaware	Discretion	No	N.A.[1]
District of Columbia	Substantial probability of guilt; clear and convincing evidence	Yes	60-90 days
Florida	Substantial probability of guilt; proof beyond a reasonable doubt	Yes	90 days
Georgia	Discretion	Yes[3]	2 court terms
Hawaii	Discretion	No	6 months[2]
Illinois	Clear and convincing evidence	Yes	60 days
Indiana	Clear and convincing evidence	No	6 months[2]
Iowa	Discretion	No	N.A.[1]
Maryland	Discretion	Yes[3]	180 days[2]
Massachusetts	Discretion	Yes	60 days
Michigan	Clear and convincing evidence	Yes[3]	90 days
Minnesota	Discretion	No	N.A.[1]
Nebraska	Discretion	No	6 months[2]
Nevada	Discretion	Yes	60 days[2]
New Mexico	Discretion	Yes	60 days[4]
New York	Reasonable cause to believe	Yes	90 days
N. Carolina	Discretion	No	N.A.[1]
Rhode Island	Discretion	Yes	6 months
S. Carolina	Discretion	No	N.A.[1]
S. Dakota	Discretion	No	None[5]
Tennessee	Discretion	No	N.A.[1]
Texas	Substantial showing of guilt	No	60 days
Utah	Discretion	Yes[3]	30 days[2]
Vermont	Discretion	No	90 days[2]
Virginia	Discretion	No	5 months[2]
Washington	Discretion	No	60 days[2]
Wisconsin	Clear and convincing evidence	Yes	60 days

[1] Not applicable; detention is not authorized for dangerousness.

[2] All defendants.

[3] Defendants face a presumption of ineligibility for release; hearings permit attempts to rebut this presumption.

[4] Sixty days for certain dangerous defendants; six months for all defendants.

[5] Statute provides for dismissal of charges, if there is unnecessary delay.

hearings, evidence must be presented in open court and the defendant has the right to confront, to be represented by counsel, to call witnesses and to cross-examine government witnesses. In most cases the defendant's testimony is not admissible on the issue of guilt in any subsequent judicial proceedings; it may be admissible for perjury proceedings and for purposes of impeachment, however. Some states set a limit on the length of time a defendant may be detained while awaiting a danger hearing; for example, in Wisconsin a special hearing must be held within 10 days of the defendant's incarceration or appearance before the court on a warrant. Wisconsin and five other states--Arizona, the District of Columbia, Florida, Illinois and New York--stand out for the degree to which they specify the details of danger hearing procedures.

Four states--Georgia, Maryland, Michigan and Utah--provide hearings for defendants charged with crimes that usually preclude release. The hearings in these cases start with the presumption that the defendant will be detained; the burden lies on the defense to convince the court that the defendant can and should be released. A defendant may have to petition for such a hearing to be held, and a specific finding must be made that the defendant is not dangerous before release can be granted.

C. Limits on Length of Pretrial Detention

"Speedy trial" rules stipulate that a detained defendant be brought to trial within a specified time frame; if not, bail or other release must be offered. Twelve of the 25 states that permit detention for dangerousness require that specific speedy trial deadlines be met for dangerous defendants who have been detained; the remaining 13 "detention" states apply to dangerous defendants the same speedy trial requirements that apply to their general detained populations.

Detention may also occur while the defendant is awaiting a hearing to determine dangerousness. Six states specifically limit this detention; these limits vary from 24 hours in Arizona to a maximum of 15 days under certain circumstances in Illinois.

CHAPTER V. PRETRIAL DANGER: A VARIETY OF RESPONSES

A. Historical Trends in Danger Law Development

The earliest state danger laws were enacted in the late-1960's, as shown in Table 5. Of these, only Maryland's law explicitly permits detention of dangerous defendants. Vermont's law, while it did not expressly authorize detention, was used for a number of years to allow detention; rulings by the Vermont State Supreme Court in 1975 and 1978 limited use of the detention provision to bail revocation. The other early danger laws do not permit pretrial detention of defendants found potentially dangerous.

This first wave of danger laws is further characterized by definitions of dangerousness that rely on judicial discretion rather than defendants' past acts, and by a minimum of procedural due process requirements. None sets a standard of proof more rigorous than judicial discretion, and the only state among them to require a special hearing on danger (Maryland) established it to allow defendants who met the dangerousness criteria to rebut a presumption of ineligibility for release. Speedy trials for dangerous defendants, in the two of these states that permit detention for dangerousness, were required in accordance with the state laws that pertained to all defendants. In short, the earliest of these laws left danger-related bail and detention decisions to judicial discretion, with a minimum of guidance from the legislative branch.

The 1970's witnessed the passage of 13 new danger laws. The first bill of the decade, for the District of Columbia, was passed in 1970 by

TABLE 5. SUMMARY OF DANGER LAW CHARACTERISTICS

Year of Passage 1/	State	'Acts-based' Definition of Danger? 2/	Detention Authorized?	Detailed Procedures? 3/
Prior to 1970				
1967	Alaska	No	No	No
	Delaware	No	No	No
1969	Maryland	No	Yes	No
1969	South Carolina	No	No	No
1967/69	Vermont	No	Yes[4]	No
1970's:				
1970	District of Columbia	No	Yes	Yes
1972/74	Rhode Island	Yes	Yes	Yes
1973/75	North Carolina	No	No	No
1975	Illinois	No	Yes	Yes
1975/78	Virginia	No	Yes	No
1976	Alabama	Yes	No	No
	Arkansas	No	Yes	No
	Washington	No	Yes	No
1977	Texas	Yes	Yes	Yes
1978	Michigan	No	Yes	Yes
	Nebraska	Yes	Yes	No
1979	Minnesota	No	No	No
1979/82	Colorado	No	Yes	Yes
1980's:				
1980	Hawaii	No	Yes	No
	Nevada	Yes	Yes	No
	New Mexico	No	Yes	No
	South Dakota	No	Yes	No
	Utah	Yes	Yes	No
1981	Indiana	Yes	Yes	No
	Massachusetts	No	Yes	No
	New York	Yes	Yes	Yes
	Tennessee	Yes	No	No
	Wisconsin	No	Yes	Yes
1982	Arizona	No	Yes	Yes
	California	No	Yes	No
	Florida	No	Yes	No
	Georgia	No	Yes	No
1983	Iowa	No	No	No

1/ Determination of a single date of passage was difficult in some cases, as laws were amended and added to over the years. Shown here are the dates of the first or the major danger provisions passed by each State.

2/ Definition of dangerous defendant reflects charge, pending charges, prior convictions or probation/parole only; judicial discretion is limited. States that use acts-based definitions in some but not all circumstances are shown as "no."

3/ Provides two or more of the following: standard of proof more rigorous than judicial discretion; special hearing to determine dangerousness; and "speedy trial" limit on detention for dangerous defendants.

4/ Vermont's law was initially used to allow detention. Court rulings in 1975 and 1978 limited the court's detention powers to cases of bail revocation.

the U.S. Congress.[6] The provisions of the D.C. law were the most detailed that had as yet been seen. They authorize detention in a variety of different circumstances; they spell out extensive procedures for reaching a determination of danger, including a special hearing and rigorous standards of proof; and they establish a speedy trial limit on the length of pretrial detention of dangerous defendants. This law was passed with much fanfare and publicity, in part because it was drafted, debated and approved in a national, not a local, forum. Many observers thought that it would serve as a model for subsequent danger legislation, but no state has adopted an identical law.

The other 12 danger laws passed during the 1970's do, however, exhibit some of the elements characterizing the D.C. law. Most striking is the clear predominance of states authorizing detention. The states that passed danger laws in the 1970's created detentive powers for their courts by a ratio of three to one. Another difference from the pattern set by the early danger laws was a movement toward definitions of dangerousness based on the defendant's prior acts--either prior convictions, probation or parole status, or pending charges. While the earlier laws all relied on judicial discretion for identifying dangerousness, four of the 13 statutes passed in the 1970's used prior-acts-based criteria. A shift is also visible

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[6]D.C. Code Sections 23-1322 et seq., as amended (1982 Ed.). For a thorough discussion of why Congress in 1970 decided to depart from the provisions of the Federal Bail Reform Act of 1966 to allow for preventive detention of dangerous defendants in the District of Columbia, see generally Amendments to the Bail Reform Act of 1966, Hearings before the Subcommittee on Constitutional Rights of the Committee on the Judiciary, U.S. Senate, 91st Congress, 1st Session (1969); and Preventive Detention, Hearings before the Subcommittee on Constitutional Rights of the Committee on the Judiciary, U.S. Senate, 91st Congress, 2nd Session (1970). For a good analysis of the legal and constitutional issues presented by the enactment of the D.C. law, see Hermine Herta Meyer, "Constitutionality of Pretrial Detention," 60 Georgetown Law Journal 1381 (June, 1972).

in the degree to which the laws of the 1970's specified procedures to protect defendants' rights. While seven states do not provide strong procedural guarantees, six others provide at least two of the following: rigorous standard of proof, special danger hearing, and/or speedy trial.

A total of 13 danger laws were passed during the entire decade of the 1970's; 15 more were passed in the first few years of the 1980's alone. The laws enacted in the early 1980's are characterized by their extensive authorization of detention: 13 of the 15 permit not just the use of restrictive conditions of release but pretrial detention. A slight trend is noticeable back to the use of discretionary determinations of dangerousness in place of definitions based on the defendant's prior acts. As for procedures, 10 of the 15 laws call for at least two of the three procedural due process elements discussed above.

B. The Development of Model Legislation

The diversity of approaches to dealing with dangerous defendants exists despite attempts to develop "model" legislation for use by the states. Both the American Bar Association (ABA) and the National Association of Pretrial Services Agencies (NAPSA) established standards pertaining to the handling of dangerous defendants before trial. While both sets of standards have had some impact on various state statutes, no state has fully adopted either model. The Federal preventive detention statute, enacted in October 1984--and described later in this chapter--bears, as evidenced in its legislative history, the earmarks of both models.

The ABA's Pretrial Release Standards define as dangerous those defendants shown by clear and convincing evidence to have committed a criminal offense while on pretrial release or to have violated a condition of release designed

to protect the community.[7] They also require a finding that no conditions short of detention could sufficiently protect the community. This definition refers exclusively to criminal acts allegedly committed during pretrial release. In the words of the ABA's Criminal Justice Section Task Force on Crime:

> ...the present Standards allow preventive detention only where an already-released defendant has demonstrated his danger to the community through specific post-release actions. They eschew predictions of future dangerousness.[8]

However, following debate and passage of the Federal danger law, the ABA agreed to consider making changes in its definition of dangerousness. These proposed changes would expand the class of detainable defendants beyond those charged with crime-on-bail to include defendants charged with a crime of violence and having a prior felony conviction. The ABA's House of Delegates is expected to vote on the proposed changes to its Pretrial Release Standards in 1985.

The definition of dangerousness adopted by NAPSA allows denial of pretrial release before crimes are committed on bail.[9] Under this definition, detention serves preventive purposes, not solely remedial ones. To invoke pretrial detention under the NAPSA Standard, the court first must find that substantial probability exists that the defendant committed the offense

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[7]American Bar Association, Standards Relating to the Administration of Criminal Justice: Pretrial Release, Standards 10-5.2, 10-5.8 and 10-5.9 (1978).

[8]ABA Criminal Justice Section Task Force on Crime, Report to the House of Delegates (Washington, D.C.: American Bar Association, February 1983), p. 13.

[9]National Association of Pretrial Services Agencies, Performance Standards and Goals for Pretrial Release and Diversion: Pretrial Release, Standard VII (Washington, D.C.: National Association of Pretrial Services Agencies, 1978), pp. 35-36.

for which charged. The court must then find by clear and convincing evidence that (1) the defendant is charged with a crime of violence; (2) the defendant "poses a substantial threat to the safety of the community"; (3) the defendant has been convicted of a crime of violence within the past 10 years, or is on probation, parole or pretrial release for a crime of violence, or has exhibited a pattern of behavior which poses a substantial threat to the safety of the community; and (4) no condition(s) of release would reasonably minimize the substantial risk of danger to the community.

Under both sets of standards, pretrial detention can be ordered only after a hearing is held before a judicial officer. Moreover, procedural safeguards guarantee the defendant's right to representation by counsel at the hearing as well as the rights to appear in person, to present witnesses and evidence, and to confront and cross-examine witnesses. Where a hearing results in a finding of danger and an order for detention, both standards require that a written statement summarize the findings and the reasons why detention, not some lesser restriction, is imposed.

In October 1984, President Reagan signed a danger law that now applies to criminal defendants in the Federal judicial system.[10] This complex piece of legislation contains provisions permitting conditional release of certain dangerous defendants and detention, subsequent to a danger hearing, of specified others.[11]

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[10]H.J. Res. 648, "The Federal Bail Reform Act of 1984," codified at 18 U.S.C. Sections 3141-3151, as amended.

[11]For a thorough discussion of the detention provisions and why Congress concluded they were needed, see Bail Reform, Hearings before the Subcommittee on the Constitution of the Committee on the Judiciary, U.S. Senate, 97th Congress, 1st Session (1981). See also, "Final Report of the Attorney General's Task Force on Violent Crime" (Washington, D.C.: U.S. Department of Justice, August 17, 1981), pp. 50-51, for a summary of the Administration's view on the need for such a change in the law.

Under the law, all Federal defendants are evaluated for potential dangerousness. If the court finds that a defendant's pretrial release on personal recognizance or on an unsecured appearance bond will endanger the safety of any other person or the community, conditions of release may be imposed. The conditions applicable to dangerous defendants are behavior-related, e.g., custody and supervision; restrictions on association, travel or place of abode; curfew; return to custody after specified hours; etc. Monetary conditions also may be set; however, the statute specifically prohibits setting a monetary condition that results in the detention of the defendant.[12]

Several types of defendants are subject to pretrial detention. These are persons charged with a crime of violence; with an offense punishable by death or by life imprisonment; with a Federal drug offense punishable by 10 years' imprisonment or more; or with any felony, after the defendant has been convicted of two or more of these other offenses. Also detainable is a defendant charged with any Federal offense, who has been convicted within the previous five years of any of the above offenses while on bail.

Detention can be ordered only subsequent to a hearing where the defendant has the right to be represented by counsel, to testify, to present witnesses, and to present information by proffer or otherwise. The rules of evidence governing criminal trials do not apply. The required finding of dangerousness--that no condition(s) of release will reasonably assure the safety of any other person and the community--must be supported by clear and convincing evidence. However, defendants charged with the above-described drug offenses, where probable cause is found, face a rebuttable presumption that no conditions

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[12] 18 U.S.C. 3142(c).

will suffice to assure public safety. The same is true for defendants charged with any Federal offense who have prior convictions within five years for any of the specified charges.

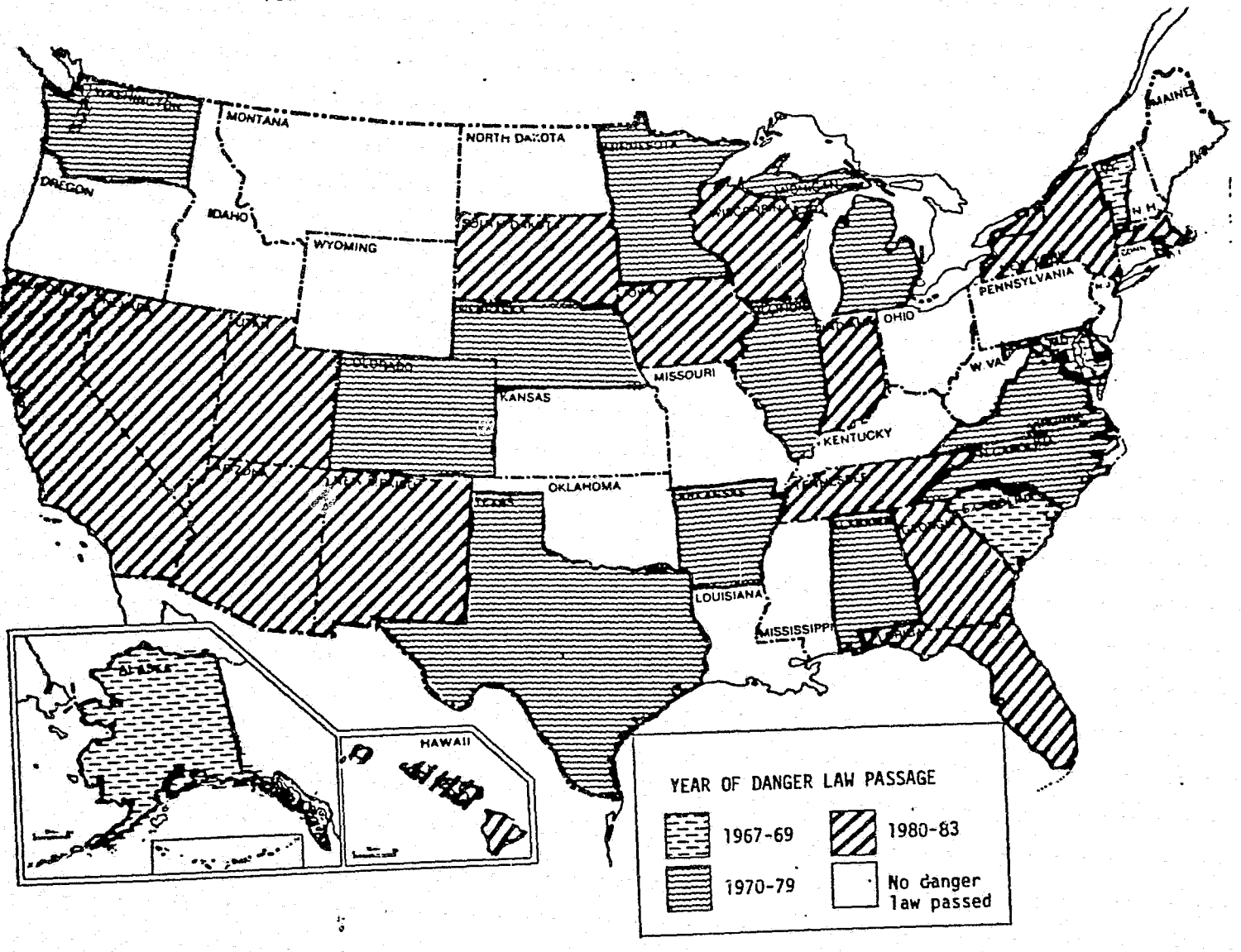
The Federal danger law also requires that defendants released conditionally be provided a written statement of all the conditions of release and be advised of the penalties for violating these conditions. Special jail terms are established for defendants who violate danger-related conditions of release or who commit additional crimes while on pretrial release under this law.

C. Concluding Remarks

This monograph has identified the salient features of state danger laws and compared their similarities and differences. As shown in Figure 1, a total of 32 states and the District of Columbia have enacted such laws, while 18 states have not.

Although the majority of states have passed danger legislation, these laws differ widely in detail, in scope, and presumably in effect. No consensus exists among them as to who is dangerous, how that determination is to be reached, or what to do once a dangerous defendant has been identified. Consensus exists only in the fact that the public concern over the risk posed by the release of dangerous defendants is a real one and in the fact that the search must continue for ways to reduce this risk.

FIGURE 1: DANGER STATES, SHOWING DECADE OF LAW'S PASSAGE



APPENDIX A.

EXISTING STATE DANGER LAWS

ALABAMA *
Alabama Code Secs. 15-13-2, 3, 4, 5, 6 and Rules of Judicial Admin. 2

ALASKA *
Alaska Constitution Art. I, Secs. 11, 12
Alaska Statutes Secs. 12.30.010 et seq.

ARIZONA
Arizona Constitution, Art. II, Sec. 22
Arizona Revised Statutes Secs. 13-604 & 13-3961 et seq.
Rules Criminal Procedure 7, 8.1b, 8.2b

ARKANSAS
Arkansas Constitution, Art. 2, Sec. 8
Rules Criminal Procedure 9.3, 9.6

CALIFORNIA
California Constitution, Art. 1, Sec. 12
Annotated California Code, Secs. 1268 et seq.

COLORADO
Colorado Constitution, Art. 2, Secs. 19, 20
Colorado Revised Statutes, Secs. 16-4-101 et seq.

DELAWARE *
Delaware Constitution, Art. I, Secs. 11, 12
Delaware Code Annotated 1953, Art. II, Secs. 2101 et seq.

DISTRICT OF COLUMBIA
DC Code Secs. 23-1321 et seq.

FLORIDA
Florida Constitution, Art. I, Sec. 14
Florida Statutes Annotated Sec. 907.041
Rules of Criminal Procedure, Rule 3.131

GEORGIA
Official Code of Georgia, 1982, Sec. 17-6-1

HAWAII
Hawaii Rev. Stat. Secs. 660-30 et seq., 804-1 et seq.

ILLINOIS
Illinois State Constitution, Art. I, Sec. 9
Illinois Annotated Statutes, Sec. 38-110-1 et seq.

INDIANA
Indiana State Constitution, Art. 1, Sec. 17
Indiana Code Sec. 35-33-8-1 et seq.

IOWA *
Iowa Constitution, Art. 1, Secs. 10, 12
Iowa Code Ann., Sec. 811.2, 813.2
Iowa R. Crim. Proc. 2, 3, 27.

MARYLAND
Maryland Constitution, Art. 25
Annotated Code of Maryland, Art. 27, Secs. 616 1/2, 638A, 638B
Maryland Rules of Procedure 721, 777

MASSACHUSETTS
Massachusetts General Laws Annotated, Ch. 276, Sec. 58

MICHIGAN
Michigan Constitution, Art. I, Sec. 15
Michigan Court Rules 770

MINNESOTA *
Minnesota Constitution, Art. 1, Sec. 7
Minnesota Statutes 629.44, 629.52
Minnesota Rules Crim. Procedure 6.02, 6.03, 19.05

NEBRASKA
Nebraska Constitution, Art. 1, Sec. 9
Revised Statutes of Nebraska, 1943, Sec. 29-901

NEVADA
Nevada Constitution Art. 1, Secs. 6, 7
Nevada Revised Statutes, Secs. 178.484 et seq.

NEW MEXICO
New Mexico Constitution, Art II, Sec. 13
New Mexico Rules of Crim. Proc. for District Courts, Rules 22-26

NEW YORK
Consolidated Laws of N.Y. (McKinney's), CPL, Secs. 510.30, 510.60, 530.60

NORTH CAROLINA *
North Carolina General Statutes, Art. 26, Secs. 15A-533 et seq.

RHODE ISLAND
Rhode Island Constitution, Art. I, Secs. 8, 9
General Laws of Rhode Island Secs. 12-13-1 et seq.
Super. Ct. Rules Crim. 46

SOUTH CAROLINA *
South Carolina Constitution, Art. 1, Sec. 15
South Carolina Code, Sec. 17-15-10 et seq.

SOUTH DAKOTA
South Dakota Constitution, Art. 6, Secs. 8, 23
South Dakota Codif. Laws Annotated Secs. 23A-43-2 et seq.

TENNESSEE *
Tennessee Constitution, Art. 1, Sec. 11a
Tennessee Code Annotated, Secs. 14-11-101 et seq.

TEXAS
Texas Constitution, Art. I, Secs. 15, 16
Texas Crim. Procedure Code Annotated Secs. 17.01 et seq.

UTAH
Utah Constitution, Art. I, Secs. 8, 9
Utah Code Annotated (1982 ed.), Ch. 20, Sec. 77-20-1 et seq.

VERMONT
Vermont Constitution, Ch. 2, Sec. 40
Vermont Statutes Annotated, Title 13, 7551-4

VIRGINIA
Virginia Code Sec. 19.2-120 et seq.

WASHINGTON
Washington Constitution, Art. I, Secs. 14, 20
Revised Code of Washington Annotated Secs. 10.19.010 et seq.
Criminal Rules 213

WISCONSIN
Wisconsin Constitution Art. 1, Secs. 6, 8
Wisconsin Statutes Annotated Secs. 969.001 et seq.; 940.01 et seq.; 940.49; and 971.14(1).

* These laws do not authorize pretrial detention, only restrictive conditions of release for dangerous defendants.

APPENDIX B

DEFINITIONAL FACTORS USED TO ASSESS DANGEROUSNESS

The three tables that follow offer more specific information on states' definitions of dangerousness. This information, alluded to in the text and summarized in Table 1, has been held in reserve for the appendix to avoid deluging the reader with detail while basic concepts and definitions were being presented.

Table A specifies, for those states using a "charge-based" definition of danger, the criminal charges which each state accepts as indicating pretrial dangerousness. Table B shows the nature of the pending charges or prior criminal record utilized by states to define danger in reference to prior criminality. And Table C shows how states requiring a judicial finding of dangerousness apply that finding to different categories of alleged offenders.

It should be noted that, although these elements are presented separately, they are very often used in combination.

TABLE A. CURRENT CRIMINAL CHARGE AS AN ELEMENT IN THE DEFINITION OF PRETRIAL DANGEROUSNESS

Note: The current charge may not be the sole determinant of a designation as "dangerous."

State	Criminal Charge
Alabama	Crimes involving violence in their commission.
Alaska	Felonies; crimes of domestic violence.
Arizona	Felonies; felonies on bail.
Arkansas	Felonies on bail.
California	Felonies involving acts of violence on another person or accompanied by threats of great bodily harm to another.
Colorado	Crimes of violence on bail/probation/parole for a crime of violence or with a prior conviction for a crime of violence.
District of Columbia	Dangerous crimes; crimes of violence on bail/probation/parole for a crime of violence or with a prior conviction for a crime of violence, or while addicted to a narcotic drug.
Florida	Dangerous crimes on bail/probation/parole for a dangerous crime.
Georgia	Enumerated felonies on bail/probation/parole for any of these crimes or with prior convictions for any of these crimes.
Hawaii	Serious felonies; serious felonies on bail.
Illinois	Forcible felonies on bail.
Indiana	Felonies or Class A felonies on bail.
Maryland	Enumerated felonies on bail for any of these enumerated felonies.
Michigan	Violent felonies on bail/probation/parole for a violent felony; violent felonies with prior convictions for violent felonies; first-degree criminal sexual conduct; armed robbery; kidnapping with intent to extort.
Nebraska	Sexual offenses involving penetration by force or against the will of the victim.
Nevada	Felonies on bail.
New Mexico	Felonies with prior felony convictions; felonies using deadly weapons and with prior felony convictions; serious crimes on bail.
New York	Class A or violent felonies on bail.
Texas	Felonies on bail for a felony; felonies with prior felony convictions; felonies using deadly weapons and with prior felony convictions.
Utah	Felonies on bail/probation/parole from a felony.
Wisconsin	First-degree sexual assault; violent crimes with prior convictions for violent crimes; serious crimes on bail.

TABLE B. PRIOR CRIMINAL INVOLVEMENT AS AN ELEMENT IN THE DEFINITION OF PRETRIAL DANGEROUSNESS

Note: Prior criminal involvement may not be the sole determinant of a designation as "dangerous."

Threshold for Danger Determination	States Using This Criterion
Alleged crime on bail	
Charged with committing any crime while on pretrial release	Arkansas, Illinois, Indiana, Massachusetts, Minnesota, Rhode Island, Tennessee
Charged with committing a felony or serious crime while on pretrial release	Arkansas, Illinois, Indiana, Nevada, New Mexico, Wisconsin
Charged with committing a dangerous or violent crime while on pretrial release	District of Columbia
Charged with committing a felony while on pretrial release from an alleged felony	Arizona, Texas, Utah
Charged with committing a dangerous or violent crime while on pretrial release from an alleged felony	New York
Charged with committing a dangerous or violent crime while on pretrial release from an alleged dangerous or violent crime	Colorado, District of Columbia, Florida, Georgia, Maryland, Michigan
Following a prior conviction	
Charged with committing a felony or serious crime and having prior convictions for a felony or serious crime	Hawaii, New Mexico, Texas
Charged with committing a dangerous or violent crime and having prior convictions for a dangerous or violent crime	Florida, Maryland, Michigan, Wisconsin
Charged with committing any crime while on probation or parole	Indiana, District of Columbia
Charged with committing a serious crime while on parole	Hawaii
Charged with committing a felony while on probation or parole for a prior felony conviction	Utah
Charged with committing a dangerous or violent crime while on probation or parole for a dangerous or violent crime	Colorado, District of Columbia, Florida, Georgia, Michigan
Charged with committing a dangerous or violent crime while on probation or parole and having prior convictions	Colorado

TABLE C. USE OF DISCRETIONARY, PREDICTIVE JUDICIAL FINDINGS IN THE DEFINITION OF PRETRIAL DANGEROUSNESS

Note: A judicial finding may not be the sole determinant of a designation as "dangerous."

State	Discretionary, Predictive Finding of Dangerousness Applies to Which Defendants?
Alaska	All defendants.
Arizona	Defendants charged with felonies; special provisions for those charged with felony crime on bail from a felony.
Arkansas	All defendants.
California	Defendants charged with felonies; special provisions for violent felonies.
Colorado	Defendants charged with a crime of violence alleged to have been committed on probation, parole or bail from a crime of violence, or after two prior felony convictions or one prior conviction for a crime of violence.
Delaware	All non-capital defendants.
District of Columbia	All defendants; special provisions for dangerous crimes, crimes of violence, threatening prospective jurors or witnesses, drug addiction, crime on probation, parole or mandatory release pending completion of sentence and first-degree murder.
Florida	Defendants charged with any of 12 specified dangerous felonies and who have prior convictions for a crime punishable by death or by life imprisonment, or who have been convicted of a dangerous crime within the last 10 years, or who are on probation, parole or other release pending completion of sentence, or are on pretrial release for a separate dangerous crime.
Georgia[1]	Defendants charged with any of eight enumerated felonies who have prior convictions for any of these or who when arrested were on probation, parole or pretrial release for any of these charges.
Hawaii	All defendants; special provisions apply to those charged with a serious crime on bail.
Illinois	All defendants; special provisions for a crime on bail or forcible felony on bail.
Iowa	All defendants.
Maryland[1]	Defendants charged with any of nine enumerated felonies while on bail for any of these offenses; defendants charged with any of the enumerated crimes after a prior conviction for one of those crimes.
Massachusetts	Defendants charged with crime on bail.
Michigan[1]	Defendants charged with first-degree criminal sexual conduct, armed robbery or kidnapping with intent to extort.
Minnesota	All non-capital defendants.
New Mexico	All defendants; special provisions for those charged with a felony and having two or more prior felony convictions; with a felony involving the use of a deadly weapon and having a prior felony conviction; and charged with committing a serious crime on bail.
North Carolina	All defendants.
South Carolina	All non-capital defendants plus those not punishable by life imprisonment.
South Dakota	All defendants, including capital defendants; special provisions for crimes committed on personal recognizance release.
Utah[1]	Defendants charged with a felony while on bail from a pending felony or while on probation or parole from a prior felony.
Vermont	All non-capital defendants.
Virginia	All defendants, including capital defendants.
Washington	All defendants. Special provisions for capital cases.
Wisconsin	All defendants. Special provisions apply to those charged with first-degree murder; first-degree sexual assault; with committing or attempting a violent crime, having a prior conviction for a violent crime; or with committing a serious crime on bail.

1/ Defendants are presumed ineligible for release based on the crime charged; they may be released only if the court makes a finding of non-danger.

Newspaper Coverage of "Pretrial Danger"

by

Barbara E. Gottlieb

NEWSPAPER COVERAGE OF "PRETRIAL DANGER"

The appropriate handling of defendants after arrest and prior to court determination of innocence or guilt is a controversial issue for contemporary criminal justice. Central to this controversy is the role played by bail and other forms of pretrial release. Traditionally, bail has been used to assure the appearance of the accused in court without necessitating detention between the time of arrest and the time of trial. However, in the past several years many prominent public officials have suggested that the pretrial release of various types of defendants, especially those accused of violent crimes, subjects the community to an unacceptable risk of repeated offenses by these defendants. From this concern has arisen the proposal that judges, in determining eligibility for bail or other pretrial release, be permitted to consider the danger that the defendant might pose to the community. Prominent officials who have expounded this view include Chief Justice Warren Burger, Attorney General William French Smith and President Ronald Reagan.

Rising public concern over the issue has led to the passage in many States of laws explicitly mandating consideration of dangerousness in pretrial release decisions. A recent review of State laws identified over 30 States that permit the potential for danger to be considered when pretrial release decisions are made.

Another measure of public interest in pretrial release policies is the volume of newspaper coverage it has generated. The present paper summarizes newspaper coverage of defendant dangerousness during a two and a half year period, from October 1980 through March 1983. It is based

on a review of newspaper clipping files maintained by the Pretrial Services Resource Center in Washington, D.C. Their files contain news articles and commentaries compiled by Press Intelligence, Inc., a commercial clipping service, from 1,400 daily newspapers, 3,000 weeklies and 1,000 magazines in all 50 States and the District of Columbia. The Resource Center's files represent the most complete compilation of news clippings on pretrial issues to which Toborg Associates had ready access. However, it is evident from the material that is present that certain coverage is missing. Some omissions are significant, as in the case of the Colorado file, which includes several editorials on an upcoming public referendum on bail release laws, but no coverage of the referendum's outcome. And in the case of one State (Hawaii) where "dangerousness" legislation was challenged in the courts in 1982, coverage is missing completely.

These and other problems associated with the clippings files impair their reliability, and thus that of the present newspaper-coverage survey, as a precise tool of analysis. However, from the more than 500 articles we reviewed, some clear patterns emerged. These are summarized in the sections that follow.

Scope of this Paper

In reviewing over 570 news articles and editorials, we attempted to answer the following questions:

- In which States did the issue of public danger in pretrial release cases receive attention in the local press?
- What prompted local press attention? Did it come in response to a single, highly visible or sensational crime? To what extent was it a reflection of a high incidence of crimes committed on bail? Were other factors involved in making the issue newsworthy?

- In States where newspapers voiced opinions on the subject of pretrial release, what were these opinions? What was the overall balance of editorial opinion?

Volume of Coverage

Files of all 50 States plus the District of Columbia were reviewed. (For the purpose of this study, the District of Columbia has been treated as a State.) In all, 572 articles were read and categorized. These were generated by newspapers in 43 States; eight States offered no coverage of the defendant dangerousness issue. Just over half of the States (27, or 55 percent) had minimal coverage of the issue (i.e., there were fewer than 10 articles in the two and a half years under examination). Newspapers in seven States provided moderate coverage (10-20 articles), while in nine States newspapers devoted substantial coverage (more than 20 articles) to the issue. Of these latter States, four (California, the District of Columbia, Florida and New York), where danger legislation was under consideration, generated more than fifty articles apiece. These and other statistics reflecting newspaper coverage may be found in Table 1.

Types of Coverage

Of the articles examined, 59 percent (339) are reporters' news accounts; the remaining 41 percent are opinion pieces, either editorials (182) or signed columns (51). Certain themes appear consistently in the news articles and the editorials. As the patterns are somewhat different in the two categories, they are described separately in the sections that follow.

TABLE 1

Summary by State of Newspaper Coverage of Pretrial Danger Issues

State	Total Newspaper Coverage[1]	"Hard" News Articles	Editorials			Topics Addressed[4]	
			Total	Restrict[2]	Maintain[3]	State Legislation	Federal Initiatives
Alabama	5	2	3	0	1	0	4
Alaska	0	0	0	0	0	0	0
Arizona	5	4	1	1	0	0	1
Arkansas	5	3	2	2	0	0	2
California	53	29	24	6	6	43	5
Colorado	5	2	3	2	1	3	0
Connecticut	8	4	4	2	0	0	2
Delaware	3	3	0	0	0	1	0
District of Columbia	70	48	22	6	2	34	12
Florida	51	26	25	15	5	26	6
Georgia	18	11	7	4	1	1	5
Hawaii	0	0	0	0	0	0	0
Idaho	1	1	0	0	0	0	0
Illinois	38	19	19	11	4	22	6
Indiana	2	2	0	1	0	0	1
Iowa	5	3	2	2	0	2	1
Kansas	4	2	2	2	0	0	3
Kentucky	2	2	0	0	0	0	0
Louisiana	4	4	0	0	0	0	0

[1] Reflects both "hard" news reporting and editorials.
[2] Advocated some restriction of the right to pretrial release in the interest of public safety.
[3] Advocated maintaining greatest possible access to pretrial release; opposed pretrial detention
[4] Reflects both "hard" news reporting and editorials.

Table 1 (Continued)

State	Total News-Paper Coverage[1]	"Hard" News Articles	Editorials			Topics Addressed[4]	
			Total	Restrict[2]	Maintain[3]	State Legis-lation	Federal Initia-tives
Maine	5	5	0	0	0	0	0
Maryland	21	12	9	7	0	1	8
Massachusetts	11	6	5	3	2	7	5
Michigan	10	6	4	2	0	0	1
Minnesota	1	0	1	1	0	0	1
Mississippi	3	1	2	1	0	0	1
Missouri	1	1	0	0	0	0	0
Montana	2	1	1	0	0	0	0
Nebraska	11	9	2	2	0	9	0 5/
Nevada	5	5	0	0	0	0	0
New Hampshire	0	0	0	0	0	0	0
New Jersey	10	5	5	0	2	1	1
New Mexico	0	0	0	0	0	0	0
New York	61	34	27	11	6	11	14
North Carolina	4	2	2	0	2	0	2
North Dakota	0	0	0	0	0	0	0
Ohio	4	1	3	3	0	0	4
Oklahoma	15	7	8	7	0	6	2
Oregon	5	1	4	1	1	0	3

[1]Reflects both "hard" news reporting and editorials.
[2]Advocated some restriction of the right to pretrial release in the interest of public safety.
[3]Advocated maintaining greatest possible access to pretrial release; opposed pretrial detentio
[4]Reflects both "hard" news reporting and editorials.
[5]Supreme Court response to the Nebraska danger law was counted in the State legislation column.

Table 1 (Continued)

State	Total News-Paper Coverage[1]	"Hard" News Articles	Editorials			Topics Addressed[4]	
			Total	Restrict[2]	Maintain[3]	State Legis-lation	Federal Initia-tives
Pennsylvania	22	8	14	5	7	0	8
Rhode Island	0	0	0	0	0	0	0
South Carolina	9	7	2	2	0	0	0
South Dakota	2	2	0	0	0	0	0
Texas	12	12	0	0	0	0	2
Tennessee	29	17	12	7	3	3	9
Utah	2	1	1	0	0	0	0
Vermont	9	6	3	2	0	9	0
Virginia	7	4	3	1	1	0	0
Washington	0	0	0	0	0	0	0
West Virginia	4	3	1	0	0	0	0
Wisconsin	28	18	10	2	0	24	0
Wyoming	0	0	0	0	0	0	0
TOTAL	572	339	233	111	44	83	109

[1]
[2]Reflects both "hard" news reporting and editorials.
[3]Advocated some restriction on the right to pretrial release in the interest of public safety.
[4]Advocated maintaining greatest possible access to pretrial release; opposed pretrial detention
Reflects both "hard" news reporting and editorials.

Reportorial Coverage of Dangerousness

So-called "hard" news reporting focuses, by its nature, on events. In contemplating this study, we had anticipated that event-oriented news coverage of defendant dangerousness would focus on crimes committed by defendants released prior to trial. Coverage of this so-called "revolving door" syndrome, in which offenders are arrested for a crime only to be released, after spending minimal time in jail, to commit another crime, could be expected to reinforce a negative public view of pretrial release.

In fact, examination of the newspaper files revealed that articles featuring crimes committed by defendants on bail (or otherwise released prior to trial) play a smaller role than anticipated. Of 339 news articles that discuss defendant dangerousness and pretrial release, only 34 report actual occurrences of crime-on-release. In short, the impetus for coverage arises in only 10 percent of the news articles surveyed from actual instances of current and locally occurring abuses of pretrial release.

Instead, two other categories account for the bulk of news coverage of the dangerousness issue. The most common takes the form of general or background articles, focusing not so much on individual crimes but on apparent trends in crime and prevailing philosophies governing local bail practices. Forty percent of the articles are of this sort. Many of these articles concern the release of felons on what is perceived to be low bond. In other words, they reflect the concern that released defendants may commit additional crimes while

released; they only rarely document actual cases of such abuses. A sample of this type of article, from the Oklahoma City Times, appears as Appendix A. In reviewing attitudes toward bail release, it notes that "bail has become a four-letter work to many Oklahomans—police and district attorneys included." At the same time, the article goes on to note that "no State or local organization keeps track of how many people are rearrested while free on bail, officials said."

The second most frequently occurring category of newspaper article is that pertaining to State legislation on the defendant dangerousness issue. Thirty-six percent of the news articles fall into this category. Most of this coverage traces the legislative and public debate over danger bills prior to their passage. In cases where a voter referendum is involved, such as amendment of a State constitution, news coverage is especially heavy. By and large, there is very little post-enactment follow-up coverage. Appendix B is a representative article describing a constitutional amendment introduced into the Delaware General Assembly.

A final category of news coverage accounts for about 10 percent of the news articles. These pieces report activity at the Federal level pertaining to pretrial release. For example, Senate Judiciary Committee hearings on pretrial detention of potentially dangerous defendants; activity by the Supreme Court on bail reform; and speeches by Chief Justice Warren Burger, Attorney General William French Smith and President Ronald Reagan all prompted coverage in many local papers. In total, the newspaper clipping files contain as many articles on Federal initiatives concerning pretrial release as they do articles on crimes committed by defendants on pretrial release. Coverage of Burger's 1981 speech to the American Bar Association—as reported in the Houston Post—is Appendix C.

This finding—that leadership at the Federal level played an important role in focusing newspaper attention on issues of defendant dangerousness—is strengthened when editorial coverage is considered. Patterns of editorial coverage are discussed in the following section.

Editorial Coverage of Dangerousness

A total of 233 opinion pieces deal with pretrial release, defendant dangerousness and bail reform. Of these, over three-quarters are editorials representing the perspective of the newspaper in which they appeared. The remainder are signed columns (or in a few cases, letters) propounding the viewpoint of their author.

Three topic areas account for virtually all these editorials and columns. Roughly one-third concern State-level danger legislation. While many advocate a position in regard to a particular bill, a sizeable fraction are more purely "public service" pieces, bringing a bill to public attention or summarizing its positive and negative aspects. An editorial from the Grand Junction Sentinel, Appendix D, takes a stance on a proposed amendment to the Colorado constitution.

The next largest category of editorials deals broadly with questions of defendant dangerousness and pretrial release. These tend to be broad critiques of release policies, frequently written in response to a particular incident. Another third of the articles fall into this category. Appendix E, an editorial from the Racine (WI) Journal, discusses the value of Wisconsin's bail amendment, passed in 1981 in response to a rape/murder case.

The third category of editorials treats Federal initiatives on pretrial release issues. Like the news articles on this subject, the editorials cover speeches by prominent Federal officials, the introduction of bail reform legislation in Congress and Supreme Court decisions related to dangerousness. For example, Chief Justice Burger's

speech in February 1981, calling for tighter restrictions on bail and pretrial detention for dangerous defendants, drew 14 editorials in 11 States. Twenty-one editorials were written concerning Federal legislative efforts to make bail more difficult to obtain for violent crimes, to authorize preventive detention in some cases and to increase the penalties for crimes committed on bail. In total, 64 editorials (27 percent) refer to Federal action on dangerousness.

Opinion Trends in Editorial Coverage

The preceding section deals with questions on how much editorial coverage the dangerousness issue elicited and what events prompted this coverage. The questions that remain are perhaps the most essential: What impressions are conveyed by editorials about pretrial release? What conclusions are newspaper readers encouraged to draw about pretrial release, and why?

Of the 233 opinion pieces reviewed, two-thirds take a clear position in regard to pretrial release. (The remaining editorials tend to be informational in nature, conveying facts or data rather than drawing conclusions or taking a stand.) One hundred and eleven editorials favor restricting pretrial release in specified circumstances, usually in cases of violent crimes, crimes committed on bail and/or repeated felonies. Forty-four editorials oppose more restrictive use of pretrial release. Thus by a margin of two and a half to one, editorial opinion recommends, out of concern for public safety, the denial or limitation of pretrial release.

The majority editorial opinion is frequently argued through appeal to general social perceptions about crime: that crime is pervasive in

society; that crime on bail accounts for a large proportion of today's lawlessness; and that the right of the law-abiding majority to a safe community justifies some restrictions on the traditional rights of the accused. An example of such an editorial, from the Pensacola, Florida Journal, appears as Appendix F. It observes that under Federal bail procedures, the only matter to be considered in pretrial release is the question of defendant appearance in court. This, it says, is "an absolutely ridiculous provision" in regard to defendants who have threatened someone's life or who are accused of committing crimes while on bail. In other instances, editorials opposing release may emphasize a particularly brutal crime. Rarely are data cited as the basis for an editorial position.

The 44 editorials opposing restrictions on pretrial release generally base their arguments on appeals to the Constitution's injunction against "excessive" bail and on the belief that pretrial detention may be used only to prevent a defendant's flight. Any other use of detention, according to this line of thought, inflicts punishment prior to trial and erodes the Constitutional principle of "innocent until proven guilty." An example of this editorial position from the Albany, New York Knickerbocker News appears in Appendix G.

The finding that Federal-level initiatives on the danger issue constitute a noticeable proportion of newspaper coverage of the issue prompted a closer look at this phenomenon. This subject is addressed in the next section.

Distribution of Newspaper Coverage of Federal Initiatives on Defendant Dangerousness

Taken jointly, editorial and reportorial coverage indicate that Federal initiatives in the "dangerousness" area have played a significant role

in making the issue newsworthy. Together they account directly for close to one-fifth of the press attention paid to pretrial release. Since the opinions expressed at the Federal level called uniformly for limitations on pretrial release, it may be expected that a preponderant focus on the Federal perspective would incline readers toward a more negative view of pretrial release. This question comes into play in seven States where coverage of the Federal arena accounts for half or more of the articles on the danger issue. These seven States are Alabama, Indiana, Kansas, Minnesota, North Carolina, Ohio and Oregon. As a rule, these States have small populations and low population density.

In contrast, more heavily urban States focused less on Federal perspectives on pretrial release and more on local developments. This is most notably true of the nine States affording extensive coverage (more than 20 articles apiece) to the danger issue. These are California, the District of Columbia, Florida, Illinois, Maryland, New York, Pennsylvania, Tennessee and Wisconsin. Most of these States have large populations and include major urban centers. In addition, almost all were considering passage of legislation on dangerous defendants at some point during 1980-83, and coverage of the issue was extensive. Not surprisingly, locally oriented coverage of defendant dangerousness in most of these States far outstripped Federal. However, the Federal Government helped shape local perceptions of the danger issue, even in these States, where Federal leadership broadly influenced the terms of State-level debate.

Summary of Findings

This brief analysis of newspaper coverage is, of course, insufficient basis for conclusive statements on the role of newspapers in shaping public opinion about pretrial release of potentially dangerous defendants. Most difficult, and not attempted in this paper, is the question of attribution, that is, assigning a cause and effect relationship to the dynamic interaction between mass media and public perceptions. At the same time, some factual observations can be made. The major objective findings of this paper may be summarized as follows:

- Standards for pretrial release of potentially dangerous defendants were a newsworthy issue around the country in the period of late 1980 through early 1983. Newspapers in forty-three States provided coverage of this issue.

- While half of the States gave only minimal coverage to defendant dangerousness, roughly one-third provided moderate coverage (10 to 20 articles) or substantial coverage (more than 20 articles).

- News coverage, as distinct from editorials, focused on two topics: local pretrial release practices (or court practices in general) and State legislation to restrict pretrial release. These topics accounted for close to 80 percent of news reporting on defendant dangerousness.

- Most of the remaining 20 percent of news coverage split evenly between two other topics: actual instances of crimes committed by defendants released prior to trial and Federal efforts to restrict pretrial release.

- Editorial opinion ran two-and-a-half to one in favor of some restriction on pretrial release for potentially dangerous defendants.

- Crime-on-bail accounted for a smaller proportion of total newspaper coverage than anticipated. In contrast, the Federal role accounted for more. Taken together, editorial and reportorial coverage of Federal activity to tighten bail laws were the focus of one-fifth of all articles surveyed.

APPENDIX A

Crime-on-bond extent unknown

By Mike Carrier

Innocent until proven guilty is a vital phrase in American society, and over the years the process of obtaining bail to get out of jail has become an equally important part of a citizen's civil rights.

But with the climbing crime rate touching one out of every three homes in the country, bail has become a four-letter word to many Oklahomans — police and district attorneys included.

Many people believe bail only lets a criminal out of jail to commit another crime while his case is pending.

Oklahoma County District Attorney Robert Macy believes the number of people committing crimes while on bond is high and needs to be corrected.

"Of course, under the Constitution they are entitled to bond. But if their history or the crime has proven them to be a threat to society, then higher bonds or no bonds need to be the rule."

However, no state or local organization keeps track of how many people are rearrested while free on bail, officials said.

Checks with the Oklahoma City Police Department, Oklahoma County district attorney's office, Oklahoma State Bureau of Investigation and several city bondsmen show such figures don't exist, despite what several termed a severe need for such documentation.

County and city officials are hoping their computer systems will allow them to keep track of such offenders in the near future.

"We are going to have those figures on the computer when we get into the new building in September 1982," said Jana Bagwell, Oklahoma City municipal court administrator.

"We've wanted to keep a total on that for a long time, but we've been unable to for a variety of reasons."

Assistant district attorney Clinton Dennis hopes the county's computer system will also be put to a similiar use. "We need to have those figures. I don't have any figures on people arrested while on bail and I don't know anybody who does."

Several local bail bondsmen said any figures that would be currently available would probably be inaccurate, for several reasons.

"The D.A.'s office would only have a select few, like alcoholics, and you couldn't get an accurate count depending on the records that are kept today," said Glenda Perry of A-1 bail bonds.

Bondsman J.B. Askins said people in his firm know if a person is rearrested after being bonded, but totals are not kept.

"If it is a serious crime especially, we know about it because we might reconsider the case. But if anybody in this state keeps figures like that, I don't know it."

From: Oklahoma City Times
May 12, 1981

APPENDIX B

Riddagh proposes 'no bail'

By CRAIG SHEARMAN
Staff Writer

DOVER—Persons accused of committing violent sexual crimes, armed robbery, kidnapping or treason could be denied bail under a constitutional amendment the General Assembly will consider in 1982.

Rep. Robert W. Riddagh, R-Smyrna, said he introduced the amendment Monday because "many a crime is committed while a person is out on bail, including ones for which they're not caught."

While the amendment could prevent some crimes, it may violate the U.S. Constitution, Delaware Attorney General Richard S. Gebelein said.

"I haven't seen the legislation yet, but it would strike me that it would have to be looked at carefully because of the constitutionality," Gebelein said.

There have been several U.S. Supreme Court decisions concerning denial of bail, Gebelein said. In Delaware, bail may be denied only when a person is charged with murder.

Constitutional problems aside, Gebelein said, Delaware judges are doing a good job of keeping violent criminals off the streets under existing law.

Setting a high dollar amount on a defendant's bail can have the same effect as denying bail if the person is unable to pay.

"I'm not sure too many (criminals) are out (on bail) who could do damage to society," Gebelein said.

But Riddagh claimed judges are complaining about not being able to deny bail in cases that are serious but fall short of murder.

"If you talk to judges and ask why someone accused of rape is out on bail, the judges answer, 'I can't do anything else but,'" Riddagh said.

Riddagh said he expects opposition to the bill from the American Civil Liberties Union.

He claimed his bill would not violate a defendant's constitutional rights to bail or due process because it would apply only to repeat offenders and persons accused of violent crime.

Gebelein said denial of bail to an increased number of persons could contribute to prison overcrowding, a problem Delaware is attempting to solve by opening a new prison in 1982.

Under Riddagh's amendment, bail could be denied to persons accused of:

- Murder.
- Treason.
- Violent sexual crimes, such as rape.
- Armed robbery.
- Kidnapping.
- A violent felony while on bail for a previous offense.
- Any crime if the defendant has been convicted of two or more violent felonies.

From: Dover Delaware State News
December 22, 1981

'Swift and certain'

Chief justice urges get-tough stance on suspects

by MARK WINIARSKI
Post Reporter

Chief Justice Warren Burger Sunday called for "swift nd certain consequences" for criminals as a means of ombatting the nation's rise in crime.

He said the nation's concern for protecting the rights f the accused is leading to an impotency in its ability o deal with crime, when what is needed is "swift arest, prompt trial, certain penalty and — at some point - finality of justice."

Burger, making his 12th "state of the judiciary" message to the American Bar Association's midyear meeting, offered suggestions ranging from larger and better-rained police forces and more money for law enforcement to the jailing of defendants pending trial based on redictions of "future dangerousness."

Burger's 35-minute speech in the regal-red ballroom f the Hyatt Regency was interrupted several times by pplause, especially when he stressed basic values and asic protections against crime.

Afterward, Leon Jaworski, former Watergate prosecutor and former ABA president, lauded the speech as 'bold, very courageous and somewhat innovative." But ruce Ennis, national legal director of the American ivil Liberties Union, sharply criticized several of urger's ideas.

Burger mentioned several reasons for the country's approaching the status of an impotent society whose apability of maintaining elementary security . . . is in loubt."

"Is a society redeemed if it provides massive safeguards for accused persons including pre-trial freedom or most crimes, defense lawyers at public expense, rials and appeals, retrials and more appeals — almost vithout end — and yet fails to provide elementary rotection for its law-abiding citizens?"

Burger questioned state and federal laws that pro~~ide pre-trial freedom~~ for defendants awaiting trial, aying: "It is clear that there is a startling amount of rime committed by persons on release awaiting trial."

Burger asked the bar association to work to "restore o all bail release laws, state and federal, the crucial lement of future dangerousness based on a combination of the particular crime charge, the evidence then before the court and past record."

Ennis of the ACLU, in a news conference after the Burger address, said he has extensively surveyed research in predicting "future dangerousness" and "no one is able to predict future dangerous behavior."

Research, he said, indicated that attempts at predictions are "wrong about 95 percent of the time."

"It turns the presumption of innocence entirely on its head," Ennis said.

Burger's second controversial suggestion would confine all legal review of convictions, after the appellate level, to questions of "miscarriages of justice" rather than technical questions irrelevant to guilt.

"The judicial process becomes a mockery of justice if it is forever open to appeals and retrials for errors in the arrest, the search or the trial," Burger said.

"Our search for justice . . . must not be twisted into an endless quest for technical errors unrelated to guilt or innocence," he said.

Ennis criticized the concept, saying "miscarriage of justice" was "an extremely vague and ambiguous phrase." Additionally, the concept would lead to a situation when "even if the government itself broke the law or violated constitutional rights of an individual, if the individual is guilty, that would not be considered a miscarriage of justice."

Leon Jaworski said he believed the chief justice, in raising the issue of error, was alerting local officials to avoid "senseless errors used as reasons for review."

Many of Burger's suggestions were roundly applauded. Burger called for prison reform, including rehabilitation of facilities and institution of educational, vocational and recreational programs for inmates. He also called for trials "within weeks of arrest" for accused.

Swift action was necessary, Burger said, "to divert the next generation from the dismal paths of ruin." Jaworski said of Burger's appeal, "I think he'll get a response."

In a seminar earlier Sunday, ACLU officials said the 1980s may be "ominous" for individual freedoms. One indication of problems is "fear of foreigners and foreign domination," said Ira Glasser, ACLU executive director.

Economic issues, he said, are creating conditions where the middle classes "are afraid for their own economic security" — which makes for a "time of scapegoating."

From: Houston, Texas Post
February 9, 1981

APPENDIX D

Yes on bail reform

People are innocent until they have been proved guilty. That's one of the basic tenets of our society. And until guilt is proved at a trial, a person can secure his freedom by bailing out of jail. This year there's an amendment on the ballot that would deny bail to some people and, some say, erode that historic presumption.

But there's another right involved in this issue — the right innocent people have to be safe from those who have a history of acts of violence or anti-social behavior. Lately, a significant number of offenses have been committed by people for whom crime seems to be a career. Often, these people are free to roam the streets despite their record.

Those are the kind of people targeted by Amendment 2, a carefully drafted constitutional amendment which would provide the courts with the authority to deny bail to violent, repeat offenders.

Under the proposal, a person accused of a crime of violence could be denied bail in if he or she:

— was on probation or parole resulting from a conviction of a crime of violence;

— was on bail pending disposition of a crime of violence charge;

— had two previous felony convictions, or;

— had one previous felony conviction for a crime of violence.

In all of those situations which bail could be denied, the rights of the accused would continue to be protected. A bail hearing would have to be held within four days of defendant's arrest and a finding would be required that the accused represented a significant threat to the community. In addition, the judge would have to find that "the proof is evident or the presumption is great" that the new crime was committed by the person accused before denying bail.

So the denial of bail will be far fromautomatic.Vote yes on Amendment 2.

From: Grand Junction, Colorado Sentinel
October 22, 1982

Opinion

Bail amendment

It comes as good news to Wisconsin voters that their overwhelming recommendation to allow holding without bail suspects of serious crimes may soon come to be. The Wisconsin Supreme Court has upheld — unanimously, it should be noted — the constitutionality of the April 1981 referendum amending the Wisconsin Constitution and authorizing the Legislature to authorize judges to allow withholding bail for defendants considered too dangerous to be freed while waiting trial.

The timing of the court decision is interesting. It was announced the day after the State Senate passed, by a 30-3 vote, a bill to put the consitutional changes into effect.

It's been a long wait for Wisconsinites, who voted 505,902 to 185,405 in favor of the amendment last April. It's been an even longer wait for Mr. and Mrs. Robert Esser, Racine parents of 22-year-old Joanne Esser, whose tragic death started the move to amend the State Constitution. Miss Esser was raped and murdered by a man who had been free on low bail after being charged with several sexual assaults.

"It's justice delayed," said State Sen. James Rooney. "Thank God, it wasn't justice denied."

His sentiments are echoed across the state.

But there are times it's better that the wheels of justice move slowly. In this case, it indicates the State Supreme Court gave careful thought to an issue which has raised a question: does the no-bail provision represent a chipping away at the concept that an individual is innocent until proved guilty?

However, Justice Donald Steinmetz, who wrote the decision, summarized it well. The purpose of the amendment, he wrote, is to guarantee bail to those entitled to it, to allow release of some persons without requiring money bail and to enable authorities to hold others for limited periods without the option of bail "when a court determines that such action is necessary to protect the community..."

Protect the community — that's the issue. The citizenry has shown its concern about violent crime, habitual criminals and people who resort to violence while they are out on bail awaiting trial for other violent crimes.

An amendment designed to protect the community is a good amendment. The concern now — providing the Assembly also passes the bill and the governor signs it — is that courts don't abuse the amendment and use it as a vehicle to deny individual rights.

From: Racine, Wisconsin
Journal-Times
March 31, 1982

Justice for public must be considered

(First of two parts.)

MAYBE, just maybe, the nation will now begin to move toward a justice system geared a little less in favor of the "rights" of the accused and more toward protection of the public.

This was implicit in President Ronald Reagan's anti-crime speech in New Orleans this week, especially in two areas which these editorial pages have long contended abuses are rampant:

— The matter of bail.

— The matter of the exclusionary rule.

Federal bail procedures fail in one major respect.

And that is in the fact that the only matter supposed to be considered in the setting of bail for the accused — or even someone who has been convicted and is appealing — is the question of whether he will appear in court to answer the charges.

No matter that he's threatened someone's life, no matter that he has once again been accused of a crime while on original bail, if the prosecutor can't show the defendant is likely to skip town, the judge must under federal law grant bail.

It's an absolutely ridiculous provision.

And President Reagan, in line with the just-released report of the Attorney General's Task Force on Violent Crime, calls for the amendment of the law to provide that the court can refuse to set bond if the accused is found to be dangerous or is likely to commit another crime.

Particularly should this be so, said the Task Force, when the accused has been found guilty and is simply waiting on the results of his appeal.

As to the second matter, the Task Force found:

"The fundamental and legitimate purpose of the exclusionary rule — to deter illegal police conduct and promote respect for the rule of law by preventing illegally obtained evidence from being used in a criminal trial — has been eroded by barring evidence of the truth, however important, if there is any investigative error, however unintended or trivial."

Hear! Hear!

Murderers have gone free, rapists unpunished, robbers released because some police officer during the course of an arrest or thereafter neglected to dot some "i" or cross some "t" of investigative rules.

The truth is what's wanted.

And in pursuit of the truth, as the Task Force says, such evidence should be considered if the officer obtained it while "acting in the reasonable, good faith belief" that he was following constitutional principles.

Many of the other things President Reagan said Monday are important as well, principally his strong assertion that individuals must be held responsible for their actions and that justice must be "swift and sure."

But the reform of both bail practices and the exclusionary rule are absolutely vital to the success of any anti-crime program.

From: Pensacola, Florida Journal
September 30, 1981

Violent suspects: In jail or on bail?

We live in an increasingly violent society, or so it seems. How will we deal with it?

One of the stickiest problems of a sorry lot involves prelrial detention of accused criminals: Is it just to lock up suspects thought dangerous to protect society from crimes they might commit if they were freed on bail?

Warren Burger, chief justice of the United States, thinks it is. He has said "preventive detention" is necessary, and laws involving bail should be changed to permit it.

The way things work now, of course, *de facto* preventive detention is a reality — if a judge thinks a suspect might be a danger to others, the judge simply sets bail so high there's no practical chance the defendant can come up with the money. That's of shady legality; bail is only supposed to be high enough to insure the defendant's appearance at future court sessions, not impossibly expensive. But Mr. Burger would go even farther and permit judges and police officers to openly determine who goes free and who doesn't.

We don't agree. We suspect that if police and courts begin nibbling away at the inconspicuous edges of rights guaranteed each of us by the Constitution, the nibblers won't stop, and we won't be able to stop them. The presumption that everyone is innocent until proven guilty is a cornerstone of our freedom. And to jail presumably innocent persons — for months, even for years, considering the deplorable state of our court system — merely because someone, somewhere suspects they may commit another crime while out on bail is to trample on inviolable rights.

There is a problem with our argument that must be faced. We separate human emotions from idealistic justice, but that is easy to accomplish in intellectual terms. What happens when you or someone you know — a husband, mother, good friend, boss, neighbor — is hurt or killed by an accused defendant out on bail, possibly for the very offense he was first charged with? How can the court system turn dangerous men and women loose to continue their depredations while awaiting excruciatingly slow justice?

But, how can we possibly justify the arbitrary jailing of everyone who *might* be dangerous, the innocent and the guilty alike? We can't. Each small encroachment on the personal liberty of some eats away at the freedom of everyone.

Part of the solution may be to speed up the system of justice: Fewer crimes would be committed by those out on bail if the time between arrest and trial were shorter.

It is only a short step from jailing an accused armed robber to jailing a dissident suspected of plotting terrorism. And it is an even shorter step after that to jailing anyone who would speak out in opposition to those in power.

From: Albany, New York
Knickerbocker News
March 4, 1981

THE DYNAMICS OF STATE LAW DEVELOPMENT

by

Barbara Gottlieb

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CHAPTER I. INTRODUCTION

The handling of defendants after arrest and before trial has become a controversial issue facing our criminal justice system. Central to this controversy is the question of how to treat defendants who are perceived to be dangerous. Release of such defendants on bail has been met in recent years with strong criticism from sectors of the criminal justice system, the public and the mass media.[1] Inherent in their criticism is a profound challenge to this country's traditional view of bail.

Traditionally, courts have held that all defendants except those charged with capital crimes have a right to bail, unless they are found likely to flee if released. The emerging view on dangerousness holds that a separate finding--that a defendant's release would endanger an individual or the community--should also be grounds for denial of bail. This point of view is gradually working its way into the fabric of American law. Since the mid-1960's, 32 states and the District of Columbia have passed legislation allowing some degree of restriction on the pretrial release of defendants who are considered "dangerous".[2] These restrictions range from conditions imposed on that release to outright detention without possibility of bail.

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[1]See, for example, Warren E. Burger, "Annual Report to the American Bar Association," February 8, 1981 and Attorney General's Task Force on Violent Crime: Final Report (Washington, D.C.: U.S. Department of Justice, August 17, 1981).

[2]These states are Alabama, Alaska, Arizona, Arkansas, California, Colorado, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New Mexico, New York, North Carolina, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, and Wisconsin.

The provisions of these laws and their impact on crime and the criminal justice system are the focus of the present study, conducted by Toborg Associates and commissioned and funded by the National Institute of Justice, U.S. Department of Justice.

Another part of this study summarized the major provisions of the 33 state "danger laws".[3] This monograph examines the major legislative development of 10 danger laws, the 10 enacted or significantly modified during the years 1981-1982. It looks at the perceptions and expectations that surrounded these laws at the time of their development and seeks to answer the following questions:

- What events, problems or needs prompted the introduction and passage of recent danger laws?
- Who supported the passage of danger legislation? Who opposed it? What arguments were raised on either side?
- What was the role of public opinion? How did public opinion manifest itself?
- What factors influenced the final wording of these bills?
- What impact was anticipated to result from their passage?

This report does not attempt to provide quantitative answers to the questions it poses. Rather, it illustrates in case study fashion both the common elements that underlay the development of this legislation and some of the particularities that characterized the legislative process in individual states. It is based on interviews with two or three key legislators or criminal justice personnel in each state who helped to draft, influence or oppose local danger legislation. (The questionnaire used

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[3] Public Danger as a Factor in Pretrial Release: A Comparative Analysis of State Laws, Toborg Associates, Inc., Washington, D.C., April 1985.

to guide these interviews appears as Appendix A.) Where available, testimony, legislative records and other written documents were also consulted. The 10 states examined are Arizona, California, Colorado, Florida, Georgia, Indiana, Massachusetts, New York, Tennessee and Wisconsin.

It should be noted that the focus on states which significantly changed their laws in 1981-1982 limits the universality of the findings. States that enacted pretrial release laws in recent years were probably not responding to the same factors that influenced earlier danger legislation. Crime rates may have changed, the political climate altered or new circumstances arisen, such as jail and prison overcrowding, that did not impact earlier policies concerning detention and release. In addition, later laws were written in the light of prior experience; they had the benefit of earlier efforts, both successful and unsuccessful. For all these reasons, the findings presented in this monograph do not reflect the whole spectrum of debate and law-making about pretrial release. However, they do represent a distillation of recent experience.

The 10 states examined in this monograph present an interesting variety of features. They are geographically diverse and include both urban centers and predominantly rural areas. States pursued different approaches to passing danger legislation, with some utilizing voter referenda while others worked solely through their state legislatures. In some cases the laws examined here represent a first attempt to deal legislatively with the issue of pretrial dangerousness; in others, they constitute a revision of existing law. While this diversity strengthens the study, in fact a more pragmatic concern guided the selection of states. Reliable data on legislative efforts could be obtained only on relatively recent events,

due to the volume of issues handled each year by legislators and the inadequacy of legislative archives in some jurisdictions. The years 1981 and 1982 were chosen for this reason, and selection of the states was dictated by selection of the time frame.

A brief summary of the legislative changes enacted in each state follows, to orient the reader to the subsequent discussions.

II. CHANGES ENACTED IN STATE DANGER LAWS, 1981-1982

This chapter provides a brief summary of the changes in pretrial release laws that were enacted in 1981 and 1982 in the 10 states under study: Arizona, California, Colorado, Florida, Georgia, Indiana, Massachusetts, New York, Tennessee and Wisconsin.

Arizona: A constitutional amendment passed in 1982 modifies earlier release practices. Prior to the amendment, the right to bail was denied where defendants were charged with capital offenses or with felonies committed on bail from a prior felony charge. The 1982 amendment adds the provision that bail can be denied to persons charged with a felony if there is sufficient evidence that the person has committed the offense, if the person poses "a substantial danger to any other person or the community..." First-offense felony arrests are thus subject to pretrial detention if a finding of danger is made. A special hearing is required, and pretrial detention is limited to 60 days.

California: California passed a constitutional amendment in 1982 expanding the state's right to detain dangerous defendants pretrial. The California amendment permits denial of pretrial release to persons charged with violent felonies, or with any felony when the defendant has threatened another person with great bodily harm, and where the court has found substantial likelihood that release would result in great bodily harm. "Clear and convincing evidence" is required; however, no special hearing is convened to hear arguments on the question of dangerousness.

Colorado: Colorado's danger law allows the denial of bail to defendants charged with crimes of violence when the court finds (1) that proof is

evident or the presumption great that the crime was committed; (2) that "the public would be placed in significant peril" if the defendant were released on bail; and (3) when the defendant allegedly committed this crime of violence while on probation or parole from a prior conviction for a crime of violence; while on bail for a prior crime-of-violence charge for which probable cause has been found; or subsequent to two prior felony convictions, or one such conviction if it was for a crime of violence. An initial hearing must be held within 96 hours of arrest and with public notice, and the defendant must be brought to trial within 90 days after the denial of bail. This amendment to the Colorado State Constitution was passed by the electorate in 1982.

Florida: A constitutional amendment passed in 1982, enabling legislation, and changes in the court rules all became effective during the course of 1983. Their effect is to permit the detention of defendants charged with dangerous felonies, when several danger-related findings are made. These findings are: (1) substantial probability that the defendant committed the felony charged; (2) the circumstances of the crime indicate "disregard" for the community's safety; (3) no conditions of release could protect the community from the risk of physical harm to persons; and (4) the defendant has a prior conviction for a crime punishable by death or life imprisonment, or a prior conviction within 10 years for a dangerous crime, or was on probation, parole or bail for a dangerous crime at the time of arrest. The court rules require that the need for detention be shown "beyond a reasonable doubt."

Georgia: Georgia's danger law, enacted by the State Legislature in 1982, denies persons charged with any of eight enumerated felonies the

right to bail, if the person has previously been convicted of one of the enumerated felonies or if the present arrest occurred while the defendant was on parole or probation, bail or own-recognizance release from one of the enumerated charges. Defendants meeting these criteria may petition the Superior Court for release; in order to be granted release, they must demonstrate that they pose no significant threat or danger to any person or to the community or to any property in the community.

Indiana: The State Legislature in 1981 passed an act that allows bail to be revoked if a defendant is charged with a felony or a Class A misdemeanor while on pretrial release from any pending charge. Bail may also be revoked for defendants who, while on bail, violate any condition or their release order; thus, if good behavior is a condition of release, rearrest on any charge can become grounds for detention. "Clear and convincing" proof is needed for revocation of bail, but no special hearing on dangerousness is required.

Massachusetts: Defendants charged with any offense while on pretrial release may be detained for up to 60 days, if a finding of dangerousness is reached and detention is found necessary to "reasonably assure the safety of any person or the community." A special probable cause hearing is required. The law was passed by the legislature in 1981.

New York: Bail denial and detention for up to 90 days are permitted where a defendant is charged with committing a Class A or violent felony while on pretrial release. Class A felonies include murder in the first and second degree and arson, kidnapping and drug sales in the first degree. More than 35 crimes are categorized as violent. A special hearing is required; findings of future dangerousness are not. The law was enacted in 1981.

Tennessee: Tennessee's danger law, passed by the State Legislature in 1981, calls for bail to be set in all cases of crime on bail at not less than twice the customary level. No special procedures are required.

Wisconsin: All defendants are assessed for potential danger to the community; dangerous defendants may be released on monetary or non-monetary conditions. Special provisions apply to defendants charged with first-degree murder, first-degree sexual assault, or with committing or attempting to commit a violent crime, when the defendant has previously been convicted of committing or attempting to commit a violent crime. Release may be denied in these cases, after a hearing and a finding of dangerousness. In addition, good behavior is always a condition of pretrial release; a violation--that is to say, rearrest--may lead to an increase in bail or other alterations in the conditions of release. If the alleged violation is a commission of a serious crime, release may be revoked. These provisions were authorized by a constitutional amendment in 1981 and were spelled out in enabling legislation passed in 1982.

III. ORIGINS OF DANGER LEGISLATION

In seeking to understand the significance of recently passed danger laws, this study looked first at the events and the forces that put pretrial dangerousness and crime-on-bail onto the legislative agenda. Legislators and other respondents interviewed were asked to rate the impact of public opinion, news media coverage, and special-interest lobbies such as victims' rights groups in initiating danger laws. In addition, open-ended questions were raised about the origins of and support for this type of legislation. A variety of answers were received. Pressure from constituents in response to specific incidents of crime-on-bail was frequently cited as a contributing factor; so was constituent pressure on issues of crime in general. High public awareness of crime and of specific crimes also reflects the media's indirect role. Other commonly cited factors were the initiative taken by an individual legislator and leadership from other government officials, including mayors, governors and state's attorneys.

In three of the 10 states examined--Arizona, Indiana and Wisconsin--danger legislation was drafted in direct response to a specific instance of pretrial crime. Several common elements characterize these cases. All involved crimes committed by defendants on bail. The crimes were brutal murders committed as the culmination of rape or robbery. All were widely publicized in the news media, and all led to an outpouring of public protest that clearly impacted on the passage of danger legislation.

The decisive impact of public opinion is most vividly illustrated in the passage of Wisconsin's danger law. There a young woman was raped and then murdered by a defendant at liberty on pretrial release from two

pending rape charges. The victim's parents undertook a campaign to change the state's pretrial release laws, a campaign which evolved into a drive to amend the State Constitution. The family's efforts received extensive media coverage, not only in Wisconsin but nationally, and are widely credited as the determining factor in putting pretrial detention on the ballot and securing its passage.

Even where no specific incident of crime-on-bail galvanized the public, a more diffused sense of concern about crime appeared to influence the passage of danger legislation. Comments to this effect were made by legislators, prosecuting attorneys or members of judicial reform committees in almost every state polled. In the words of a Georgia legislator who authored a successful danger bill, "the populace at large is very concerned about crime. The increase in crime and the apparent inability of the criminal [justice] system to stem the flood is one issue that gets an immediate and intense reaction from voters."

This public concern about crime led in California to a "grass roots" movement for legislative reform. Former tax crusader Paul Gans organized a voter initiative campaign there to put on the ballot a constitutional amendment proposing sweeping changes in the criminal law. One of these changes would have made "public safety" the primary consideration in setting bail. A more limited bail denial amendment, drafted in the State Legislature, was also placed on the ballot. While the more moderate version out-polled the Gans proposal, the Gans-led initiative was successful in assuring that one bail-denial measure, if not another, would become law.

The role played by the state legislature is another variable in the development of danger legislation. In some cases, a single legislator

has been instrumental in raising the issue of defendant dangerousness or in securing the passage of a bill. This seems to have been the case in Georgia, where a first-term representative raised the issue of bail denial. He did so as a result of his door-to-door electoral campaign, which revealed vehement citizen concern about perceived leniency of judges. While the subsequent development of the Georgia bail-denial law came to be influenced by other sources, the efforts of this one legislator appear to have initiated the debate. Similarly, in Tennessee, a single legislator appears to have played a major role by drafting danger legislation in a form that the State Legislature found palatable. Bills had been introduced into several earlier legislative sessions to deny the right to bail for crime on bail, but none had progressed beyond the Judiciary Committee. This legislator, working from his personal belief that bail "was never intended for multiple offenses," authorized a bill requiring that bail for a defendant with a pending case be set no lower than twice the customary level. The bill passed handily.

Other government entities may also provide influential guidance to legislative bodies. It is not unusual, for example, for a state's attorney's office to draft crime-related legislation. Arizona's constitutional amendment on pretrial dangerousness was submitted by the State's Attorney's Office. Indiana's danger law was drafted by a prominent district attorney; Colorado's, by the State District Attorney's Association. Appointed study commissions on judicial reform may also formulate legislative proposals: the Governor's Task Force on Criminal Justice Reform in Florida took the lead in designing danger legislation and submitting it to the State Assembly. In Georgia, the Criminal Justice Coordinating Council picked up a legislative effort introduced by a neophyte legislator and lobbied on its behalf.

Finally, prominent elected officials may press for bail legislation as part of their own agendas. This was the case in Massachusetts, where then-Governor Edward King proposed a danger law as part of his electoral "anti-crime" platform; the danger bill was drafted by his legal counsel. Similarly, Mayor Edward Koch of New York endorsed the concept of preventive detention as part of his criminal justice platform. The bail revocation statute passed by the State Assembly was, according to one legislator, "the closest thing he [Koch] was able to wring out of the legislature."

Public perceptions concerning bail and dangerousness seem to be both reflected and intensified by the mass media. Newspaper coverage of the issue of defendant dangerousness was the subject of an earlier monograph in this study and so is not addressed here; however, two observations bear inclusion.[4] One is that media coverage of specific instances of crime-on-bail, especially sensational crimes, was rated frequently in the legislative history interviews as having a "moderate" to "high" impact on the development of state danger legislation.

The other point--one raised by a state legislator who opposed his state's danger law--is that the news media more frequently discuss the sensational aspects of a crime than the complex issues that underlie its

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[4]Public Danger as a Factor in Pretrial Release: Newspaper Coverage of "Pretrial Danger", Toborg Associates, Inc., Washington, D.C., April 1983. Among its conclusions: The issue of pretrial release of potentially dangerous defendants received newspaper coverage in 43 states during the time period examined (late 1980-early 1983). Local pretrial release practices and state legislation to restrict pretrial release together accounted for almost 80 percent of this coverage; actual documentation of cases of crime-on-bail comprised only about 10 percent. Editorial opinion ran two-and-a-half to one in favor of some restriction on pretrial release for potentially dangerous defendants.

disposition. As a result, news coverage can contribute to the perception that sensational crime is beyond control. A contributing factor in this regard is that criminal justice systems are not featured in the news media when they function routinely, for example, when a defendant is released on bail and does not commit a crime. After all, systems are not newsworthy if they work as planned. In addition, news media rarely seek out opportunities to discuss issues such as the right to bail or other topics that might influence public debate on criminal justice reform.

While support for danger laws has been widespread among legislators, the general public and the news media, there has been opposition. This opposition has been most consistently raised by defense attorneys and civil liberties' advocates; where active pretrial services agencies exist, they too have often played an active role testifying against detention or other pretrial restrictions. Essentially, opponents of pretrial detention raise three arguments. The first is constitutional: that committing a defendant to jail without a judicial finding of guilt erodes the presumption of innocence which is at the heart of Anglo-American law. This argument challenges the assumption that future crimes can be predicted and calls for defendants to be incarcerated only as punishment for crimes proven to have been committed, not in anticipation of future acts. The second argument is both humanitarian and pragmatic. It notes that restrictions on pretrial release add to the already serious problems of jail overcrowding and increase the burden on already overworked courts. Finally, opponents of danger laws point out that existing research has failed to demonstrate that more stringent pretrial release measures will result in a decrease in crime.

The following section scrutinizes more closely the legislative process in four states, focusing on the period between introduction of a bill and its passage into law. It examines who supported danger legislation, who opposed it, and what were the results in Indiana, Massachusetts, Wisconsin and Colorado.

IV. THE ROLE OF LEGISLATIVE DEBATE: FOUR CASES

The process of advancing legislation from proposal to law is a crucial stage in the formulation of policy, and one where the public often has little direct say. Rather, it is an arena where legal specialists and key political figures lock horns over the technical details that actually determine the content of a law. In the development of legislation concerning pretrial release, states' attorneys, public defenders, judges, legal aid lawyers and advocacy groups such as ACLU chapters and victims' rights groups may play a role. However, these forces can array themselves in a variety of combinations and with differing results. The following examples are selected to illustrate the point.

Indiana's danger law was drafted by the elected prosecutor of Marion County, the county which encompasses Indianapolis, the largest city in the state. The prosecutor reportedly played a major role in securing the law's passage. He worked closely with the Criminal Law Study Commission, an advisory body whose members are citizens, legislators, judges and lawyers appointed by the governor. The Commission's Executive Director is politically close to the Marion County prosecutor and works part-time under him as a Deputy Prosecutor. The Commission firmly backed the bill. Also supporting the danger bill were a victims' rights organization and the local newspapers. Opposition to the bill was raised by the Public Defender Council, whose Executive Director also sat on the Criminal Law Study Commission; he himself assessed his opposition as having little impact, given the conservative climate of the state.

Indiana's law makes revocation of bail subject to a finding that the alleged crime "demonstrates instability and a disdain for the court's authority to bring [the defendant] to trial." This unusual language is not found in any other state's danger law. It was drawn from an Indiana Supreme Court case and was incorporated into the danger statute as a means of bolstering the bill's likelihood of passage. The law in its final form calls for revocation of bail for defendants charged with a felony or serious misdemeanor committed while on bail, or with any bailable offense committed while on probation or parole. The State Legislature is said to have wanted to deny bail entirely to violent offenders, but the State Constitution permits denial of bail only in cases of murder; thus, constraints established by the State Constitution were a major determinant of the wording of the law.

The Governor of Massachusetts, Edward J. King, sponsored that state's danger law, which permits detention for up to 60 days for crime-on-bail offenses. The Governor, known for being "tough on crime," proposed this law to the State Legislature as part of an election-year platform which included a number of "anti-crime" planks. Extensive research was devoted to the bill's formulation. Federal proposals for preventive detention were reviewed, as were existing statutes from other states and the pretrial release standards established by the American Bar Association (ABA) and the National Association of Pretrial Services Agencies (NAPSA). Input in drafting the bill was sought from the Pretrial Services Resource Center (PSRC) as well as from the Massachusetts Civil Liberties Union. The Governor's support played a major role in the bill's passage; other influential support came from a retired chief justice of the Superior Court, from other judges and from district attorneys. The Governor's legal counsel, who actually

drafted the bill, noted that outspoken support from Chief Justice Burger of the U.S. Supreme Court for preventive detention helped create a more receptive atmosphere for danger legislation.

Opposition to the bill, mounted by the Massachusetts Civil Liberties Union, the Association of Criminal Defense Lawyers, and the Office of Bail Administration, concentrated on efforts to strengthen procedural protections for defendants, as efforts to defeat the bill seemed totally unrealistic.

Wisconsin's constitutional amendment to restrict pretrial release was ratified directly by the voters. However, the precise parameters of the law and its required procedures were established by the State Legislature through implementing legislation. This legislation was shaped by an unusual coalition of liberal legislators, judges, district attorneys and private attorneys, who set out to draft the danger law in terms as narrow as possible. They were led by the District Attorney of Milwaukee, President of the Wisconsin District Attorneys' Association. Uncomfortable with the concept of preventive detention but recognizing that a detention bill faced inevitable passage, he spearheaded a successful attempt to limit the law's scope. The result is a law which applies to only a small number of dangerous or violent crimes, requires a high level of proof and utilizes a complex hearing process. According to a high-ranking member of the Wisconsin judiciary, the final draft of the bill was passed as a "law-and-order" measure that would permit judges to impose preventive detention; yet, apparently because it is both so narrowly drawn and so complex, it is almost never used.

Colorado's constitutional amendment, in contrast, generated little controversy and sailed through both houses of the Legislature almost unnoticed. In fact, in the words of the Executive Director of the Colorado Civil Liberties

Union, "those of us who resisted this [danger legislation] were not at all organized....We were not properly alert. We missed it." The Civil Liberties Union and the Public Defender's Office ultimately testified against the bill at its final hearing, but without effect. The danger amendment was sponsored by a State Representative who believed that "there were people who committed violent crimes who were being released....I felt they shouldn't be out on the streets." The bill attracted numerous co-sponsors in the Legislature, including the Speaker of the House, and passed and was presented to the voters in its original form. The amendment was adopted in the popular vote by a huge margin.

These case studies illustrate the variety of ways in which laws to reduce pretrial dangerousness have been proposed and enacted. The next section considers the impact from their passage.

V. IMPLEMENTATION OF THE DANGER LAWS

Finally, to conclude the legislative history interviews, the question of impact was raised. Once laws are enacted to restrict the pretrial release of dangerous defendants, what is achieved? The question, in fact, encompasses many issues: How frequently are the "danger laws" invoked? Does their use actually result in detention? If so, have they caused a measurable change in detention rates? In crime rates? In jail overcrowding? In court workload? What is the public response, once these laws are passed? Do the laws provide added protection or a sense of security to those they are designed to protect? Although the interview results do not provide definitive answers to these questions, the responses were sufficiently uniform to permit some generalizations.

First, it should be noted that inquiries to legislators about implementation of the bills they sponsored provided little information. The average legislator apparently had little involvement with the legislation after it became law and received little feedback as to its effect. As a consequence, legislators by and large were unable to evaluate the effectiveness of the legislative remedies they had created and helped to enact.

When questions of impact were posed to criminal justice practitioners, they often resulted in conflicting responses. Persons who had been involved in drafting legislation or lobbying for it tended to believe that the product was a useful and utilized tool. People who had opposed the same legislation tended to believe that it was neither. However, an overall consensus did emerge, that spanned the states surveyed and that united persons holding differing philosophical and institutional perspectives. This consensus

is that, for better or for worse, the danger laws are not being used on a consistent basis in any of the 10 states examined. In fact, they are used only sporadically in those states where they are invoked at all. This perception was reinforced by spot checks with district attorneys and pretrial personnel, who generally reported that the laws, where they are being utilized, are called upon infrequently, perhaps two or three times a month at most.

A variety of reasons were suggested to explain why these laws--passed in the midst of intense public concern and often by substantial or landslide margins--today remain virtually unused. One reason is that some of these laws were intended to be used infrequently. As a district attorney in California explained about California's danger law: "you use it in those one or two cases a year where you need it....Abuse of a statute like that leads to its demise; denial of bail is contrary to centuries of legal thinking." Drafted so that they apply to a limited range of offenses, requiring high levels of proof, and sanctioning a severe infringement on the liberty of a person not yet convicted, these laws are kept in reserve for extremely grave cases, according to this respondent.

Another reason commonly cited for lack of use of the danger laws is inertia: the slowness of institutions to change established ways of operating. As a staffperson for Georgia's Criminal Justice Coordinating Council observed, "once a law has been passed, for it really to be implemented in this state, if there's not some sort of public outcry about it, takes two to four years." The difficulty of keeping up-to-date on new legislation and the absence of training programs to help prosecutors identify and implement new laws were among the reasons he suggested to explain this time lag. Besides

lack of familiarity, simple resistance to change may inhibit the adoption of the danger laws. In Indiana, according to a prosecutor there, judges are reluctant to revoke bond on dangerous defendants; instead, they continue to set bond according to a bond schedule, reflecting the nature of the charge and not the particular characteristics of an individual charge or defendant. According to this informant's pessimistic assessment, the most likely means of introducing change into his state's judiciary is "attrition."

Another reason given for lack of use of the danger laws is that many of them involve invoking procedures which are perceived to be cumbersome and time-consuming. For instance, where a hearing is called for to establish a defendant's dangerousness, a number of findings may be required that may be difficult to prove. The state may be required, for example, to demonstrate with clear and convincing evidence that the defendant poses a substantial danger to the community such that no conditions of release would reasonably assure the community's safety. The hearing may also be viewed as disadvantageous to successful prosecution of the case, in that prosecutors must first obtain and then disclose substantial amounts of evidence far earlier in the judicial process than would otherwise be required. This can lead to unwillingness to invoke the danger law, if some simpler means of detaining dangerous defendants can be found.

Herein lies what may be the fundamental answer to the question of non-use of the danger laws. A simpler means of detention does exist, and has been in use in most jurisdictions for decades. It is the use of high money bond. In virtually every state surveyed, respondents voiced the observation that judges continue to do "what they have always done": set high bond to detain defendants they think are dangerous.

Prosecutors as well as judges often take the same approach. A district attorney in California, asked whether he would seek to apply California's constitutional amendment to achieve denial of bail or push for high money bond, replied that he would "use whichever is most advantageous." A colleague noted that in cases where he was unable to demonstrate a defendant's dangerousness clearly enough to persuade a judge to set a high bond, it would be unlikely that he would be able to demonstrate it to satisfy the danger law either. Given that situation, and given the reluctance of judges to invest the time required for a danger hearing, he would opt for requesting high bail, knowing that in most cases he would be "able to get bail set at a high enough level to obviate the need" for more involved proceedings.

VI. CONCLUDING REMARKS

The danger laws passed in 1981 and 1982 illustrate the variety of origins, of pathways and even of content that such legislation can assume. Beneath this variety, however, lies common ground: a willingness to set new limits on the rights of defendants' pretrial release. While different viewpoints on the issue still contend for public acceptance, it seems clear that the viewpoint in the ascendance is that represented by the growing body of danger laws. This view holds that the likelihood of future crime is so great, and so apparent, for certain defendants that it warrants denial of the traditional right to presumption of pretrial release. It also implies that a definition or description of who and what is truly dangerous at the pretrial stage can be drawn with enough accuracy that the rights of the non-dangerous are not impaired.

Legislative support for this point of view has been enhanced when restrictions on pretrial release are accompanied in the law by procedural safeguards for defendants' rights. Such elements as required findings of probable cause or of potential danger, special hearings, and a specified standard of proof are credited by a number of legislators with removing the legislative designation of dangerousness from the stigma of arbitrariness. In addition, a limit on the time a defendant may be detained pretrial is seen as assuring due process. With the incorporation of these and other procedural safeguards, lawmakers from a variety of philosophical backgrounds have found danger bills to be suitable for their support. And voters have shown themselves to be at least as enthusiastic as their lawmakers in their

support for pretrial danger laws.

Despite the strong feelings that surround the issues of pretrial release and detention, and the high degree of public and legislative support for danger laws, a constructive response cannot automatically be assumed to lie in the direction of legislating "more of the same." The authors of existing laws cannot assess their respective laws' efficacy; in fact, legislators were quite frank in admitting that they have little idea what impact their legislative remedies actually now provide. Hence, there is a need for objective evaluation of the practices that courts apply to potentially dangerous arrestees. Only then can reasonable conclusions be drawn, either about what is being done or what should be done to control the problem of pretrial crime.

APPENDIX A

LEGISLATIVE HISTORY OF DANGER LAWS

TELEPHONE INTERVIEW GUIDE

LEGISLATIVE HISTORY OF DANGER LAWS

TELEPHONE INTERVIEW GUIDE

Hello. My name is Barbara Gottlieb; I work with Toborg Associates in Washington, D.C.; and we are conducting a study on bail reform and pretrial release.

I understand that you played a major role in the drafting/enactment of (State)'s pretrial release law in (Year). I would like to ask you about this law, how it was developed and why.

1. The first question asks about your involvement in the drafting and passage of (State)'s pretrial release law.

   -At what point in the process did you first become involved?
   -What was your position at that time?
   -How did you, personally, get involved with the danger issue?
   -How major a role did you play in the law's drafting?

2. How familiar would you say you are now with the provisions of the current pretrial release law?

3. The law in your State affects the following types of defendants:
   (A brief synopsis follows of law's scope.)

   -Why was that pool of defendants chosen?
   -Were other defendants considered for inclusion under the law? (If yes: Why were they ultimately dropped?)
   -Were other types of restrictions considered for controlling dangerous defendants? (If yes: Why were they ultimately dropped?)
   -(Where appropriate, ask:)
   --Was any enabling legislation enacted to implement the constitutional amendment?
   --Were any court rules or Rules of Criminal Procedure also adopted?
   --Please clarify the section of the law that reads:_____

4. What were the major factors that influenced the final wording of the pretrial release law?

5. I am going to read a list of factors that have influenced pretrial release laws in other States. For each factor, please tell me if you think it had high, moderate or low impact on the development of the legislation in (State).

   a. Media attention to specific incidents of crime on bail; sensational cases.
   b. Media attention to crime on bail in general.
   c. Testimony before legislative committees. (Whose?)

d. Laws of other States, used as models.
e. Pretrial release standards developed as models by National Association of Pretrial Services Agencies, American Bar Association, or other organizations.
f. Views of national leaders such as Chief Justice Burger, President Reagan.
g. Views of particular legislators or other State officials. (Who?)
h. Views of criminal justice personnel within the State. (Who?)
i. Views of organizations within the State. (Who?) (Victims' groups, bar association, ACLU, sheriffs' association . . .)

6. Who or what was responsible for introducing danger legislation in the first place?
Who were the major individuals or groups advocating this legislation?
Who were the major individuals or groups opposing this legislation?
What were the major points made for and against the law?
Which seem to have been the most persuasive?
How did the controversy affect the law in its final form?

7. While the pretrial release danger law was being developed, how concerned was the public about the danger issue?
How did public concern express itself?

8. Do you think local newspaper coverage of the danger issue accurately reflected public concern about it? If not, why not?

9. Since passage of this law, has public concern about dangerous defendants increased, decreased or stayed about the same?
Did passage of the law itself affect public fear about crime on bail?
If so, how?

10. While the pretrial release law was being developed, was there much concern about possible legal challenges to the law? (If yes: What efforts were made to avoid possible legal challenges?)
Has the law been challenged since it was passed? On what grounds? What was the outcome?

11. I am going to read a list of concerns that have been raised about pretrial release laws in various States. For each one, please tell me if it received high, moderate, low or no concern from the legislature in drafting your law.

-Need to avoid excessive bail.
-Erosion of presumption of innocence.
-Inability to predict dangerousness accurately.
-Standard of proof should be more demanding than "judicial discretion."
-The law would increase jail overcrowding.
-The law would increase the workload of the criminal justice system.
-The law provides inadequate due process for defendants.

12. I am going to read you a list of statements that may or may not reflect the impact of the pretrial release law in your State. For each statement, tell me if you agree or disagree; and if you agree or disagree strongly or slightly.

a. Before the law was passed, the courts in (State) were releasing too many dangerous defendants prior to trial.
b. Today the courts in (State) are releasing too many dangerous defendants prior to trial.
c. As a result of the law, many defendants who are not dangerous are being unnecessarily detained prior to trial.
d. Jail overcrowding is a bigger problem than crime on bail in this State.
e. Because of passage of the law, pretrial crime in this jurisdiction has declined.
f. Judges in (State) still set the amount of bail high so as to detain dangerous defendants.

13. The next questions ask you to rate your level of satisfaction with the current pretrial release law. First, concerning the wording of the law itself: Would you say you are very satisfied, somewhat satisfied, somewhat dissatisfied or very dissatisfied with it?
Specifically, what points are you (dis)satisfied with?

14. Concerning implementation of the law, would you say you are very satisfied, somewhat satisfied, somewhat dissatisfied or very dissatisfied with how it is carried out?
Specifically, what aspects of implementation are you (dis)satisfied with?
Do you think the law is used frequently enough?
Are the appropriate sanctions imposed on dangerous defendants?
Do judges rely on high money bond to avoid invoking the pretrial release law?

15. Do you think any changes are needed in the pretrial release law or its implementation? What would you recommend? Is anything pending, or likely to happen, in the State legislature?
Is there anything else we should know on this subject?

Thank you very much for your assistance.

PRACTITIONER PERSPECTIVES

by

Barbara Gottlieb

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I. INTRODUCTION

The professionals who enforce criminal law -- judges, police, pretrial services personnel, prosecutors and defense attorneys -- offer an essential perspective on pretrial release policy. As criminal justice practitioners, they make decisions that determine which defendants will be released prior to trial, and which detained. They may do this indirectly, by offering testimony or recommendations when criminal justice legislation is formulated or policies reviewed. They also do it directly, in the course of their professional practice, where they determine for individual cases how the existing pretrial release law is enforced. Their impact on policy implementation is both immediate and concrete.

The perspectives of criminal justice practitioners are equally vital in evaluating pretrial release policy. Their views are informed by experience; their judgment results from first-hand, operational knowledge of a criminal justice system in action. Thus, their input is an important component in any assessment of pretrial release.

This report presents the findings of in-depth telephone interviews with 50 criminal justice practitioners. These interviews were conducted in the first half of 1984 as part of a larger study, commissioned by the National Institute of Justice, U.S. Department of Justice, to assess the impact of state "danger" laws: statutes which restrict the right to pretrial release in an effort to minimize the danger to the community posed by potentially recidivistic defendants. Criminal justice practitioners were interviewed in 11 cities in 8 states, selected to represent a wide range both geographically and in terms of the type of state danger law they have. All eight states

permit pretrial detention of "dangerous" defendants; however, the criteria for defining dangerousness, the procedural aspects of the laws, and the standards of proof required to invoke the laws vary widely. Brief synopses of the laws of the relevant states are presented in the next section.[1]

The cities where interviews were conducted are Buffalo and Rochester, NY, and Miami, FL, in the east; Detroit, MI, and Omaha, NE, in the Midwest; Houston and Dallas, TX, in the southwest; and Denver, CO, Seattle, WA, and San Francisco and Los Angeles, CA, in the west. Paired cities were selected in three states to allow us to examine the extent to which local legal culture, and not the formal framework of the state's danger law, shaped practitioner outlooks.

We attempted to interview in each city the chief of police, the district attorney, a senior public defense attorney, the head of the pretrial services agency, and the chief judge of the criminal court. Some respondents, notably among police chiefs, referred our questions to public relations spokespersons or staff attorneys. A few declined or were unavailable to be interviewed; hence the total number of interviews was 50 instead of 55.[2] Respondents were asked to assess the impact of the existing danger law in their state and to describe its implementation. They were also asked how they would

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[1]More complete summaries of all the existing state danger laws, as well as the Federal Bail Reform Act of 1984, may be found in Barbara Gottlieb, Public Danger as a Factor in Pretrial Release: Digest of State Laws, Toborg Associates, Washington, D.C., April 1985. Key components of the laws are compared in Barbara Gottlieb, Public Danger as a Factor in Pretrial Release: A Comparative Analysis of State Laws, Toborg Associates, Washington, D.C., April 1985.

[2]Two public defenders, two police chiefs and one district attorney could not be interviewed.

define a "dangerous" defendant, and what restrictions they would place on such a defendant's pretrial release.

Our overwhelming finding in regard to existing state law was that traditional bail practices, rather than the relatively recent danger laws, provide the mechanism for pretrial detention or release. Most practitioners felt that their states' danger laws were invoked rarely and had minimal impact. For this reason, the impact of existing danger laws is discussed only briefly. Later sections present practitioner views on the dangerous defendant independent of the framework of existing law.

II. PRACTITIONER VIEWS OF THEIR OWN STATES' LAWS

While it is generally true that little impact was found from state danger laws, some differences do exist among states, and some between different cities operating under the same state law. For that reason, we present a brief state-by-state review of the major features of each law and its overall use. While we focus on states' powers to detain defendants prior to trial, many of the danger laws also provide the option of conditional release or other sanctions less severe than pretrial detention.

New York: The law allows bail revocation where defendants are charged with committing a violent or a class A felony while on pretrial release from any pending felony. A hearing must be held in which the defendant may cross-examine witnesses and may testify on his or her own behalf. If the court finds "reasonable cause to believe" that the defendant committed a specified felony on bail, the defendant may be detained for 90 days. More than 35 crimes are classified as violent; they include robbery, rape, burglary, and use or threatened use of a gun or knife in the commission of a crime. Class A felonies include first and second degree murder, arson, kidnapping, and first degree drug sales.

The consensus among practitioners in both Rochester and Buffalo was that their court systems rarely use this law. The most commonly cited reason was the relative ease of imposing a high money bond on the defendant for the second charge, achieving the desired detention without necessitating either the increased workload or the exposure of evidence required by a hearing. Practitioners also cited the relative infrequency of serious felony crimes on bail.

Texas: The law allows denial of bail and detention for up to 60 days of any defendant charged with a non-capital felony committed on bail from a pending felony, or involving the use of a deadly weapon, if the defendant had a prior felony conviction. (The law also includes a "habitual criminal" clause that applies to felony defendants with two prior felony convictions; this category of offenders is not addressed in our study.) In the probable cause hearing, the prosecution must prove a "substantial showing of guilt" in the currently charged offense.

Practitioners in Dallas agreed that the danger law is applied infrequently there. In fact, several practitioners were unfamiliar with the law, despite the fact that it was established by constitutional amendment, not by statute. Our findings were noticeably different in Houston. There, practitioners seemed familiar with the law and indicated that it was used "frequently." They referred, however, not only to denial of bail but also to the use of higher bail as a response to defendant dangerousness.. Respondents may have been referring, in fact, to the "habitual criminal" law. Regardless, the interviews in Houston suggested a higher level of concern over potential defendant dangerousness and more frequent use of danger-based restrictions on pretrial release.

California: "Proposition 4," a constitutional amendment passed simultaneously with the highly publicized "Victims' Bill of Rights" in 1982, applies to defendants charged with a violent felony, or with any felony accompanied by a threat of violence. It incorporates a prediction of future violence as one element of its definition of dangerousness, in that release may be denied if the court finds, by clear and convincing evidence, a "sub-

stantial likelihood" that the defendant's release would result in great bodily harm to another person.

Despite the publicity that surrounded the popular-vote passage of this constitutional amendment, San Francisco practitioners report that the law is virtually never used in their city. As one respondent observed, "Nobody mentions it any more." In Los Angeles, on the other hand, the spirit if not the letter of Proposition 4 is more apparent. Persons interviewed in Los Angeles reported "bail deviation" hearings to be a frequent response to perceived defendant dangerousness, with the existing bail-setting schedule being set aside and higher bail, or no bail, imposed instead. One practitioner estimated the number of bail deviations in Los Angeles to be about 10 to 20 per week, with perhaps 15 bail denials being granted in the course of a year.

Washington: All defendants are assessed for potential pretrial danger. Defendants charged with capital offenses may be detained if the court finds the defendant to "pose a substantial danger to another [person] or to the community." Defendants charged with lesser crimes may be released on restrictive conditions, if the court finds "substantial danger that the defendant will commit a serious crime" if released unconditionally. Authorized conditions include restrictions on travel, association and activities; bans on possession of weapons or on use of alcohol or drugs; and supervision by the court or another agency or person.

Practitioners in Seattle indicated that the danger law serves mainly to codify practices that already existed. Judges and prosecutors considered danger when making pretrial decisions even prior to passage of the law, we were told. The law does serve to establish a presumption of release

for the non-dangerous. However, it appears that little use is made of release on conditions, reportedly because inadequate resources are available for the supervision of released defendants. In short, the law seems to have had little direct or noticeable impact.

Colorado: This is a complex law that takes into account the potential for pretrial dangerousness in a number of situations. The state's 1982 constitutional amendment permits the denial of release to defendants charged with a crime of violence allegedly committed on bail, probation or parole from a prior charge of (or conviction for) a separate crime of violence, or having a prior record of felony convictions. Two findings are required: proof evident or presumption great that the defendant committed the current charge, and "significant peril" should the defendant be released prior to trial. Defendants must be given a special hearing within 96 hours of arrest to determine if such "significant peril" (i.e., future dangerousness) exists.

In addition, statutory law passed prior to the amendment allows the courts to revoke, increase or alter bail bonds in cases of alleged felonies where the defendant is subsequently charged with committing another felony while out on pretrial release from the first.

Criminal justice practitioners interviewed in Denver were unanimous in their assessment that the state's new law, though passed by constitutional amendment, is virtually never used. This may be due to the stringency of its requirements, especially the requirement for a hearing within 96 hours; one practitioner noted that such basic information as the police report cannot be made available within this time, making it impossible to hold a meaningful hearing.

Conflicting assessments were offered on the lack of use of the statutory provision concerning felony crime on bail. Most of the practitioners with whom we spoke shared the perceptions of the respondent who said:

> As a practical matter, the statute involving an increase in bond in the first case is of no benefit. D.A.'s don't use it. When asking for bond on the second case, they just bury the guy.

Others observed that district attorneys do not always coordinate the prosecution of a pending case with that of an alleged crime on bail, especially if the two are heard in different courts; hence, no move is made to revoke bail on the first offense. Also, if bond is raised or revoked in the pending case and the defendant does not secure release, then the defendant is entitled to a trial within 90 days. This pressure for speedy prosecution reportedly deters district attorneys from seeking to implement the law.

With such sporadic use, no noticeable impact is thought by practitioners to have resulted from these danger laws.

Nebraska: A 1978 constitutional amendment provides that defendants charged with forcible rape, in addition to persons charged with murder or treason, may be denied pretrial release at judicial discretion. Proof evident or presumption great must be shown that the defendant committed the crime; no further findings or procedures are required.

This law apparently is used, although the Omaha District Attorney's Office, the Public Defender's Office and a judge provided three quite different estimates of the extent of its use. Despite this discrepancy in perceptions, all respondents agreed that the bail-denial law had little impact on detention

rates, because prior to its passage rape suspects were held on high money bail. In addition, cases of forcible sexual assault are reportedly relatively rare in Omaha.

Note that this type of blanket exemption from the right to pretrial release is applied by virtually every state to capital offenses, which are not discussed in our study of danger legislation. Nebraska's law was included because its passage -- in response to a highly publicized, brutal crime committed by strangers on an essentially randomly selected victim -- typifies the development of danger legislation in many states.[3]

Michigan: Defendants may be detained up to 90 days if charged with a violent felony allegedly committed on probation, parole or pretrial release from a prior violent felony, or if charged with first degree criminal sexual conduct, armed robbery or kidnapping for extortion. In regard to the latter charges, the defendant can win release only by rebutting by clear and convincing evidence a presumption that he or she presents a danger to any person.

Practitioners in Detroit agreed that denial of release is seldom imposed for danger. In the words of one respondent, "In Detroit, there's no one who can't get bail, even [if charged with] homicide." This reflects the local legal culture, the source noted, adding that higher bail is frequently required for lesser crimes in other parts of the state.

Florida: Danger provisions apply to defendants charged with an enumerated "dangerous crime" allegedly committed on probation, parole or pretrial release from a separate dangerous crime, or to defendants convicted of

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[3]See historical notes in Gottlieb, Digest of State Laws, op. cit. See also Barbara Gottlieb, Public Danger as a Factor in Pretrial Release: The Dynamics of State Law Development, Toborg Associates, Washington, D.C., April 1985.

a dangerous crime within the previous 10 years, or previously convicted of a capital offense. These defendants may be detained prior to trial, if the court finds in a formal hearing and beyond a reasonable doubt that "the defendant poses a threat of harm to the community" and that "no conditions of release can reasonably protect the community from risk of physical harm to persons." Should this latter finding not be reached, the court can release the defendant subject to specified conditions.

The four practitioners interviewed in Miami all reported that the danger law is not being used. Among the reasons cited: (1) a low rearrest rate among defendants charged with dangerous crimes; (2) the extremely high standard of proof required, equal to that required for conviction; (3) severe jail overcrowding and a federally-imposed "cap" on the jail population that militates against non-essential detention; and (4) the use of a less formal preliminary hearing (the "Arthur" hearing) that can be used in capital cases or when the charge is punishable by life imprisonment to deny release with a minimum of due process.

Our interviews indicate, overall, that criminal justice practitioners in a number of the cities selected have only spotty familiarity with their respective state's danger law. For this reason and because frequent use of the laws may seem disadvantageous from a prosecutorial perspective, these laws -- passed with a great deal of public scrutiny and debate -- remain largely unused.

III. IDENTIFYING THE POTENTIALLY DANGEROUS DEFENDANT

One objective of the practitioner interviews conducted under this study was to determine how criminal justice practitioners assess the potential dangerousness of a criminal defendant. Practitioners were asked in a variety of ways to indicate which defendants they thought would, if released prior to trial, commit crimes during the pretrial period. First, they were asked whether crime-on-bail could be predicted on the basis of the offense with which the defendant was currently charged. Later in the standard interview, they were asked about the predictive value of such factors as the defendant's prior criminal record, age, drug or alcohol use, and prior acquaintance with the victim.

A. Current Charge

Three out of every four respondents (39 out of 50) cited at least one criminal charge in the latest case as grounds for anticipating future crime-on-bail. Two charges -- burglary and robbery -- were selected by a majority of practitioners as predictive; in both cases the margin of selection was 28 out of 50, or just over half the respondents. The tally refers, for burglary, to both residential and commercial burglaries. The robbery count includes aggravated, armed and simple robberies, although some practitioners specified that they were referring to armed robberies only.

Three other types of charges were singled out as crime-on-bail indicators by a substantial, if less than majority, number of respondents. Sexual assault charges (including rape, sexual battery and related crimes) received a "positive" prediction rating from about one-third of the practitioners in all categories. Serious assaults -- another composite category, consisting of aggravated assault charges plus any charge involving use of a weapon, violence or serious injury to a victim -- was cited as having predictive value by one-fourth of the respondents.

Finally, almost one-half of the respondents singled out the presence of a current charge of crime-on-bail as a legitimate basis for predicting future commission of crime-on-bail. Because crime-on-bail is defined in reference to a pending criminal charge, it is discussed more fully in the subsequent section on defendants' prior criminal record.

Rivalling all these findings, however, was the response volunteered by almost half of the respondents (23 out of 50): no particular criminal charge <u>alone</u> provides an adequate basis for predicting future crime-on-bail. These practitioners rejected the concept that behavior during pretrial release can be predicted from the offense charged alone. They proposed, instead, that prediction be based on knowledge of multiple factors. Those most frequently recommended were prior criminal record, drug use, and the particular circumstances of the new case and/or a defendant's background. The remarks of a judge more fully articulate this perspective:

> The charge is not a fair basis for prediction [of future crime]. For example, murder may be the result of passion, or may be an internal family affair. In either case, it's not likely to repeat...The nature of the crime comes into consideration in regard to the potential length of the sentence and, therefore, the likelihood that the defendant will jump bail.

> But it doesn't tell us much about the danger of repeat crime. For that, it makes more sense to look at [the defendant's] prior record.

This view, propounded by almost half the respondents overall, was supported by at least half of the judges, public defenders and pretrial services agency directors interviewed.

On the face of it, this finding -- 23 respondents rejecting current charge as a basis for predicting future crime-on-bail -- contradicts the finding reported above that 39 respondents accepted at least some current charges as valid indicators of future crime. The discrepancy reflects specific distinctions that respondents made in formulating their answers. For example, 13 of those who cited robbery or burglary as predictive of future crime-on-bail added the proviso that other factors (e.g., drug use, prior offenses) accompany the charge; they rejected total reliance on the charge alone. Similarly, some respondents who in general rejected the predictive value of the current charge qualified their position by making exceptions for specific charges (e.g., DWI, burglary). The range of opinions may be summed up by saying that the majority of practitioners thought that being charged currently with certain criminal offenses indicated a high risk of future crime-on-bail; a sizeable minority expressed discomfort with laws and practices that would restrict pretrial liberty solely on the basis of the current charge.

B. Prior Criminal Record

Almost all respondents (46 out of 50) agreed that a defendant's prior criminal record is key to predicting future crime-on-bail. But beyond

that general consensus, practitioner views on how to assess prior record diverged on all but one point.

The sole element of a defendant's prior criminal history that was commonly cited (by 24 respondents, or almost half of those interviewed) as a reliable indicator of future crime-on-bail was prior commission of a crime while on bail. Comments made by practitioners holding this view reflected a depth of feeling elicited by few other questions. A district attorney, for example, argued that committing a crime-on-bail "shows complete disregard for the criminal justice system and for the predicament [the defendant] is in." This view was closely echoed by a public defender, who stated:

> Crime on bail shows disregard for the court's prior conditions [of release], implied if not stated; to issue those conditions again seems meaningless. Also, it suggests a complete lack of fear of the system.

While crime on bail was widely cited, practitioners differed over the predictive value of other prior record elements. The length and seriousness of the prior record, the frequency of offenses, and the number of charges for specific crimes or types of crimes (for example, violent offenses) were common concerns. So were patterns in an individual's criminal past: defendants whose records showed repeated assaultive crimes, or repetition of any single offense, were judged by many respondents to be likely future offenders, and thus more likely to commit crimes while out on bail. So were those with prior criminal involvement for the currently charged offense. A checkered history, showing charges for a variety of crimes, or showing a first-time involvement for the current charge, was felt to defy prediction of repeat offenses; sentiment was correspondingly stronger in such cases to refrain from predicting future behavior while on bail.

Some controversy emerged over the propriety of basing assessments of future dangerousness on prior records of arrest, as opposed to convictions. The argument for using arrest data is illustrated by a district attorney who noted, "there are many, many reasons other than innocence why a defendant is not convicted." He suggested that the total number of contacts a defendant has with the criminal justice system indicates with some accuracy whether that defendant is crime-prone.

Other practitioners favored exclusion of arrest data on the grounds that its consideration violates the presumption of innocence. One pretrial services director, for example, cautioned that reliance on arrest data was unfair in his jurisdiction, because police arrests of minority youth were disproportionately high and the police tended to rearrest suspects they had arrested previously. Another district attorney, underscoring the differences between jurisdictions, noted that "you've got to know your police department to be able to compare arrests to convictions" when assessing the significance of prior arrests.

Judges, on whom the responsibility ultimately falls to assess prior records, were divided. Some emphatically rejected the use of arrest data, calling it improper; others acknowledged that they find such information useful, like to have access to it, and factor it in when determining pretrial release. As one judge remarked, "Judges look at arrests...although unofficially." Another stated that he consults prior arrest records, even though he is more concerned about prior convictions, because arrest data in his city are more complete.

C. Other Factors of Concern

Respondents' answers to our questions point to a need to consider a wide variety of factors in reaching pretrial decisions for detention or release. The particular circumstances of an alleged crime; the pattern of a defendant's prior behavior; changes in the defendant's attitude, resources or material conditions -- these and other case-specific factors are weighed when courts make pretrial danger assessments. The following sections describe practitioner views on three defendant-based factors: age at arrest, abuse of drugs and alcohol, and prior acquaintance between defendant and victim.

1. Age at Arrest and Juvenile Record

The role of age in predicting crime on bail split the respondents, with about half stating that youth makes crime-on-bail more likely. The split extended through practitioner categories almost as neatly, with most categories split down the middle. Only among pretrial services agencies did one outlook predominate, with twice as many agency directors accepting age as a significant factor as rejecting it. Those who viewed age as a significant factor targeted the adult age range of 18 to 24 as the highest risk.

While many practitioners felt that age at the time of arrest was not a predictor of crime-on-bail, the majority felt that a history of juvenile arrests was. In general, respondents evaluated a juvenile record much as they did an adult one, with particular attention to the types of offenses

charged, the frequency of charges, the presence of weapons charges and a history of violence. Among practitioner categories, judges had the highest sentiment for utilizing juvenile histories to assess an adult defendant's propensity for future crimes.

2. Substance Abuse

Twenty-nine of the 50 practitioners queried, or 58 percent, cited drug use as a defendant characteristic indicating a likelihood of future crime on bail. Half of those 29 persons noted that they were referring to addictive drugs specifically, and many cited the underlying financial link between these drugs and crime: addicts need a high income to support their drug dependency. The crimes that practitioners most frequently associated with drug addiction were property crimes -- such as burglary, theft, car theft and robbery -- and drug-related charges such as possession and trafficking. As one respondent noted about defendants charged with burglary or robbery, "[w]e assume they're trying to support a family or feed a [drug] habit."

Judges, police and public defenders were the most consistent in the view that drug use is a reliable pretrial crime indicator. The most frequent opposition to this view came from district attorneys, the majority of whom felt that drug addiction in and of itself was an inadequate barometer of behavior and needed to be assessed in conjunction with other factors.

Alcohol use was rejected by more than two-thirds of the respondents as a basis for predicting future crime. Reasons cited for this included the widespread use of alcohol by non-offenders, and the incompetence of

habitual alcoholics to commit many types of crime. A frequently noted exception was drunken driving, which by definition involves alcohol abuse and often involves repeat offenses. Other charges associated with alcohol-abusing defendants were panhandling, family abuse, assaults and drunkenness.

3. Relationship Between Victim and Defendant

If an alleged crime involved a defendant and a victim who already knew each other, then prediction of future crime must reflect knowledge of the particular circumstances; the charge alone is not enough. This was the consensus of the 29 respondents who discussed the role of prior acquaintance in predicting crime on bail.

Respondents stressed that most conflicts between prior acquaintances are situational: they arise from a moment or circumstance, they are not planned, and most (with the exceptions noted below) will not be an integral or on-going part of the defendant's daily life or livelihood. Such conflicts are not generally associated with professional criminality, and their recurrence ranges from unpredictable to unlikely. Thus, even though these crimes can result in serious harm to the victim, respondents tended to view them as less menacing than stranger-on-stranger crime, especially in regard to dangerousness while on pretrial release. Even murder, arguably the most dangerous crime, may be a poor predictor of future crimes; several respondents suggested that defendants charged with murder in crimes of passion could be released prior to trial with relative certainty that they would not pose further danger to the community.

Charges of rape, domestic violence and assault on an acquaintance were viewed with particular wariness by many practitioners, who warned against generalizing about these charges. Charges of rape between adults who had previously been sexually involved, for example, were not generally viewed as predictive of future sex crimes; rather, they were seen as acts stemming from complex but not always dangerous interpersonal relations where the criminal justice system need not in all cases play a role.

However, physical abuse within a family, either incest or violent assault, while viewed as a poor predictor of generalized "criminality," was considered a dangerous situation where such crimes of abuse were likely to recur. Many practitioners stressed the need in those cases for the courts to take preventive action, such as removal of the defendant or the victim from the home. More extreme pretrial measures, such as detention, were not advocated. Conflicts between neighbors, another common source of criminal charges among acquaintances, must also be evaluated individually, according to respondents, who identified threats and prior conflict as more valuable indicators of potential danger than the charge alone.

In short, practitioners identified a range of defendant-related and situational elements that they felt enhanced the ability to predict future crime-on-bail. However, our interviews did not reflect any internal consensus among the practitioners as to what elements (other than charge-related ones) were the most reliable predictors. In addition, some of the elements cited -- for example, the prior relationship between defendant and victim -- call for case-by-case assessment rather than adherence to a rule. This complexity renders more difficult the attempt to codify legal definitions of dangerousness.

IV. PRETRIAL DETENTION OF DANGEROUS DEFENDANTS

A. Viewpoints Favoring Detention

The principle of preventive detention -- jailing defendants charged with but not convicted of a crime, on the grounds that their pretrial release would subject the community to the danger of future crimes -- was widely accepted by the criminal justice practitioners interviewed. Thirty-five of the fifty respondents, or 70 percent, agreed that pretrial detention is appropriate in some circumstances.

The overall acceptance of pretrial detention masks notable differences among practitioner categories. All 10 of the district attorneys interviewed, and all nine of the police spokespersons, cited situations in which they would condone preventive detention. Eight out of 11 judges indicated that they would opt for detention to preserve public safety. However, only five out of eleven pretrial services agency personnel and three of nine public defenders endorsed the principle of pretrial detention.

Most practitioners who accepted the concept of pretrial detention were very specific about the circumstances in which they would use it. Most common was the sentiment to detain defendants currently charged with "dangerous" crimes; this view was voiced by a majority of police representatives and judges, usually in regard to violent crimes, armed offenses and robbery. However, as the preceding chapter suggests, many practitioners would take a number of other factors into consideration in deciding which defendants to detain.

Sentiment for pretrial detention based on other factors was mixed. Prior record was considered an important element to weigh in deciding for or against detention. Other grounds cited were, for the most part, complex criteria requiring individualized assessment. For example, one respondent urged that all defendants be considered for pretrial release, with a decision to detain being based on the defendant's prior criminal history, community ties, personal attitude and potential danger to the community.

Judges' opinions about the dangerousness of crime-on-bail, and their views on detention in such cases, varied considerably. One judge stated that, when faced with defendants charged with pretrial crime, "I hold them uniformly." Another remarked that he would detain someone charged with committing a felony on bail, "assuming the defendant had been duly warned" at the time of release about the consequences of rearrest. "Not all defendants grasp the court's values, or the implications of their own actions within the system," he observed. Yet a third perspective was voiced by a judge who called prior crimes while on pretrial release "an indicator" of potential future crime-on-bail, but insisted that "it wouldn't stop us from setting bail" on a defendant, depending on other factors in the case.

Perhaps the concern voiced most frequently by practitioners was that the courts be able to detain defendants whose release might expose the community to impersonally motivated physical violence. Self-evident as this may seem, it is a significant finding, because the problem of pretrial crime is often discussed only as a concern over crime-on-bail generally. That violent crime, and not solely the blatant lawlessness of crime-on-bail, is the focus of practitioners' concern became apparent in two ways. First, respondents were asked to list those crimes that were considered "dangerous"

because they indicated a likelihood of additional crime-on-bail. Most practitioners answered only in terms of the violent crimes they thought would recur. A comprehensive answer to the question presumably would have included all charges that manifest high rearrest rates, including prostitution, shoplifting and driving while intoxicated. Instead, it appears that respondents heard the expression "dangerous defendant" and replied in terms that reflected their own definition of the term. This definition for most practitioners was violence-based, not recidivism-based.

Additional evidence of the concern over violence was found in judges' discussions of pretrial release decisions. With jail overcrowding making detention for lesser crimes an impossibility in many cities, prioritization of defendants for pretrial detention becomes a necessity. Many judges to whom we spoke indicated that they would opt to detain defendants with a history of physical violence, even when this meant releasing defendants they expected would commit additional but non-violent crimes.

This was most clearly stated by a judge who discussed his handling of defendants charged with burglary. In this judge's eyes, burglary represents "high odds to reoffend but low odds that anyone will get hurt." Therefore, in this judge's court, "a burglar is more likely to get bail" than to be detained. Some practitioners believe that the possibility of face-to-face confrontation between resident and intruder makes home burglary a potentially violent crime, and thus they might dispute his assessment of the crime. But this issue aside, the essential point remains: it is physical danger, not the risk of any offense against the law, that determines "danger" in the minds of the majority of the practitioners surveyed.

B. Viewpoints Opposing Detention

Certain criminal justice practitioners expressed much greater levels of support for pretrial release. Public defenders, as a group, took a strong stand for a presumption of pretrial release, based in most cases on the constitutional presumption of innocence. In the words of one public defender:

> I favor release [for potentially dangerous defendants]. There's always a risk involved; it's a guess by the system. But now what they're doing is presuming someone guilty based on a particular charge, and not releasing him. I don't like it. I believe in the presumption of innocence.

Pretrial services agency representatives tended to favor making all release decisions based on individual evaluation of defendants, with the goal of releasing as many defendants as possible on the least restrictive terms. As one agency director put it:

> I don't see any charges where I would deny release on the face of the charge alone....You could release someone charged with murder, depending on the person. In regard to violent crimes in general, it would depend on the prior criminal record. And while some charges may have a high likelihood of coming back into the system as crime on bail, I still wouldn't detain them: bad checks, for example; burglary, for another.

A few of the judges indicated hesitancy on constitutional grounds to detain defendants prior to trial. One asserted that, "in most cases, if we go by the presumption of innocence, a defendant should be released on bond in an amount to assure his return to court." This position, he noted, "is not what I think, it's what the Constitution requires." At the same time, this judge acknowledged setting high bond as a means of effecting detention in cases that he considered dangerous. In short, while

some judges shared a philosophical objection to pretrial detention, they also had recourse to it in cases where they thought community safety was at stake.

V. THE USE OF HIGH BAIL TO EFFECT DETENTION

One goal of legislation allowing courts to consider public danger in pretrial release decisions is to make the outcome -- detention or release -- independent of the defendant's access to money for bail. Our interviews suggest that this goal is not attained in many court systems in states where pretrial danger laws are on the books.

A. Views Favoring Use of Bail to Effect Detention

Thirty of the practitioners interviewed (60 percent) endorsed the practice of using high money bail purposely to detain dangerous defendants. These practitioners found it an appropriate and effective means of assuring incarceration prior to trial, either generally or in specific circumstances. Perspectives correlated closely with practitioner category: 10 of 11 judges found the practice acceptable, as did seven of 10 district attorneys and eight of nine police spokespersons. Yet only two of nine public defenders and three of 11 pretrial services agency officials subscribed to this view, and then only with certain reservations.

Acceptance, however, should not be read as enthusiasm. A number of practitioners sounded the theme that using high money bail as a means of detention was only acceptable for want of a better method of keeping dangerous defendants off the streets. Because the decision to impose high money bail lies ultimately with the court, the viewpoints expressed by judges are of particular interest. In this regard, nine of the 11 judges interviewed

stated that it was common, in the cities where they served, for judges to set high money bail in order to keep dangerous defendants off the streets. Five acknowledged doing so themselves. As one candidly explained:

> Technically, judges are not supposed to consider dangerousness in setting the amount of bail. In fact, they do. I set high bail openly for danger; if you want to appeal me, go ahead....I would be very reluctant to P.R. [personal recognizance release] someone for a crime of violence, and if a weapon is involved, forget it: I am not going to P.R. someone, and I am going to set a high bail. It may be turning the presumption of innocence around, but I'm not going to take the risk of releasing such a defendant into the community.

Several judges expressed reservations about using a wealth- or assets-based system for determining who goes free prior to trial and who stays in jail. One noted, "If there were a non-monetary way to restrain or control defendants, I would favor it." He called the money bail system "hypocritical" because it "puts a premium on personal wealth." However, lacking other means to obtain detention in all the cases where he thought it necessary, he too would employ the money-based means at his disposal to effectuate detention.

Another judge cited certain advantages of a cash-dependent release system:

> It allows for more individual attention, more judicial discretion. I don't like mandatory legislative dictates to the discretion of the court. [Bail] is a judicial ruse, if you like; we set bail we know they can't make. But things can develop: the individual facts of the case, or what we know. And each month, bail is reviewed; we can reconsider the bail status of the detained defendant.

B. Views Opposing Use of High Money Bail to Effect Detention

Eleven respondents, about a fifth of the total, held the view that money bond should never be used as a means of denying release to dangerous

defendants prior to trial. Most of the practitioners holding this view were public defenders, who took a strong position in support of the constitutional right to pretrial release. In the words of one public defender:

> In my opinion, we should take the Constitution literally when it says excessive bail shall not be required. Bail should be for appearance; it is not a preventive measure. We should set bail commensurate with what is required to see that the defendant appears for trial.

Another grounds for objecting to the use of bail as a determinant of detention is its discriminatory effect in favor of those with money. While bail laws in most states instruct judges to set bail levels which reflect, among other things, the financial means of the defendant, numerous practitioners pointed to the high levels of de facto detention on bail in their jurisdictions of indigent defendants charged with such non-life-threatening crimes as shoplifting or public drunkenness.

A very different outlook underlies the opposition of certain other practitioners to the use of high money bail to achieve detention. Their concern reflects the view that pretrial release under any terms is not appropriate for the truly dangerous defendant, and that the option for a dangerous defendant to achieve release through posting a bond -- even a high money bond -- should not be allowed to arise. The following statements articulate this perspective with striking similarity:

> Either they are [dangerous], or they're not. Either they are not a danger and you should let them out under less restrictive conditions, or they are a danger and should not be released at all.
>
> -- District Attorney

> Either a defendant is reliable enough to be released, or he's not. The money amount [of bond] doesn't have much effect on court appearances or on the commission of additional crimes.
>
> -- Pretrial Services Agency Director

Many practitioners sharing this view called on the judicial system to make explicit designations of danger, and to respond with terms of release designed to deal specifically with dangerousness. To jail a dangerous defendant on high bond under the guise of preventing flight, when in fact the concern is over dangerousness, as one prosecutor put it, "perpetuates myths in the criminal justice system." In the view of these practitioners, setting money bond does not guarantee detention and therefore does not adequately protect the community from the risk posed by the dangerous defendant who is able to post bail.

VI. SUMMARY AND CONCLUSIONS

This report has presented the findings of in-depth telephone interviews with 50 criminal justice practitioners. These interviews were conducted in early 1984 as part of a larger study that assesses state "danger" laws, i.e., statutes that allow restrictions on pretrial release so as to minimize the danger posed to community safety by the release of defendants determined to be likely to commit crimes while on bail.

Respondents were asked to assess the impact of the existing danger law in their state and to describe its implementation. They were also asked how they would define a "dangerous" defendant, and what restrictions they would place on such a defendant's release before trial.

Interviews were conducted in 11 major cities in eight states, selected for their geographic diversity and the variation in the types of danger laws they have. All of these states permit pretrial detention of "dangerous" defendants; however, the criteria for defining dangerousness, the procedural aspects of the laws, and the standards of proof required to invoke the law vary widely.

The selected cities were Buffalo and Rochester, NY; Miami, FL; Detroit, MI; Omaha, NE; Houston and Dallas, TX; Denver, CO; Seattle, WA; and San Francisco and Los Angeles, CA. Whenever possible, interviews were conducted with the chief judge of the criminal court, the district attorney, a senior public defense attorney, the director of the pretrial services agency and the chief of police.

Several salient findings emerge from the interviews conducted.

- The majority of the 50 practitioners interviewed think that crime on bail can be predicted. Three-fourths of the practitioners cited at least one criminal charge as predictive of future crimes. Robbery and burglary were each identified by more than half the respondents as predictive of future crime. Moreover, a current charge of crime on bail was considered strongly predictive of future crime on bail.

- Despite the predictive value practitioners gave to the current charge, most commented that the current charge, viewed alone, does not provide adequate information for predicting future crimes. Forty-six of the 50 practitioners interviewed urged that the defendant's criminal record also be considered. However, there was little consensus on how best to assess a prior record. Prior commission of crime on bail and the existence of a juvenile record were generally thought most significant. Also cited were the length and seriousness of the record, the frequency of offenses, patterns of repeated offending, defendant age and use of addictive drugs.

- A variety of responses suggested that the underlying concern of practitioners is violence. The majority of criminal justice practitioners want the option to detain defendants whose release may subject the community to violence, especially random, stranger-on-stranger violence. Of much less concern is non-violent crime on bail. Practitioners generally opposed the pretrial jailing of defendants charged with such frequently recidivating crimes as prostitution, forgery and shoplifting.

- Most practitioners found pretrial detention to be acceptable in specified circumstances. Although the option exists in most states for sanctions less severe than detention, practitioners had little to say about such programs as supervised release, third party custody or release on restrictive conditions. In many cities, inadequate resources for supervision prevented widescale use of alternatives to detention.

- Practitioners stated that the relatively new danger laws are rarely used, even where they were passed with much public attention, for example, where a state constitution was amended by popular referendum. Consequently, money bail continues to be the primary mechanism for pretrial detention.

- Where defendants were labelled as dangerous, most respondents were willing to see money bail used to effect detention, although many voiced ambivalence over their reliance on a money-based apparatus for determining who would be free prior to trial. Practitioner perceptions of dangerousness often extended to defendants not covered by state danger laws, and high money bail was viewed as a way to detain those persons. In addition, money bail was also considered a simpler mechanism to effectuate detention in

also considered a simpler mechanism to effectuate detention in many instances.

Crime-on-bail remains a problem without a neat solution for most of the criminal justice practitioners interviewed. Those interviewed indicated that, in their cities at least, state "danger laws" that permit pretrial restrictions on defendants who might commit crimes if released -- including pretrial detention without chance for bail -- are not being used. Why are these laws so rarely used in dealing with a problem of such great concern?

Practitioners suggest several reasons for this. First, many say they are not concerned with crime-on-bail per se, but with pretrial (or other) occurrence of violent crime. Many of the danger laws do not apply to all violent crimes. Of the eight states considered here, for example, only California's law would permit pretrial detention for a first-offense charge of armed robbery. While other states' laws do address violent felonies, some establish pretrial detention powers only in cases of felony charges while on bail, probation or parole. Numerous practitioners indicated that they want the power to detain armed robbery defendants, not only after an alleged offense on bail, but at the first charged offense. Second, practitioners want a system that permits them to operate with a maximum of flexibility. Charge-based danger statutes are widely considered too rigid to accommodate the complex nature of the realities in many arrest situations: such statutes don't apply to some charges where practitioners want the power to detain, and do apply to others where practitioners think detention is unnecessary. Examples of the latter situation arose when practitioners talked about criminal charges, even such violent charges as rape or serious assault, brought among prior acquaintances.

Also, those danger laws that most carefully protect defendants' rights, by requiring a special hearing, special findings, etc., were perceived by some practitioners -- correctly or not -- to be cumbersome and inefficient to use. As a result, where detention could be effected by more expeditious means, it was.

Money bail generally provides a more encompassing, efficient and flexible means to insure pretrial detention. It can be used to detain all or virtually all releasable defendants with no predetermined limitations based on charge, etc. It can be imposed for a first offense as well as on a repeat crime-on-bail. Where crime-on-bail does occur, the court does not need to hold a special hearing to increase or revoke the existing bail on the pending charge; no additional court resources are required to set even a prohibitively high money bail in the new case. No specified findings of future dangerousness must be reached or stated for the record, and if challenged, a judge or bail commissioner can maintain that the high money bail was set in response to fears that the defendant would flee.

Given the existence of such a familiar and flexible option as money bail already in place, it may seem unlikely that practitioners will choose to invoke their states' danger laws often. One new development suggests that this need not be so. A federal pretrial detention law aimed at dangerous defendants was enacted several months after the conclusion of our interviews. This law specifically <u>forbids</u> the use of money bail to detain dangerous defendants. According to initial data on the frequency of federal detention hearings gathered by the U.S. Department of Justice, the law received rapid implementation and frequent use across the country. This occurred even though the law is fairly narrowly drawn in terms of its definition of who

is a dangerous defendant, requires a special due process detention hearing, and can preventively detain only on a finding of dangerousness substantiated at the level of clear and convincing evidence. The frequency and successfulness of the federal courts in utilizing their new danger law may lead to more frequent use by the states of their own preventive detention statutes.

CRIME-ON-BAIL AND PRETRIAL RELEASE PRACTICES IN FOUR CITIES

by

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I. INTRODUCTION

A. Background

This monograph is one in a series prepared by Toborg Associates as part of the study, Public Danger as a Factor in Pretrial Release. Funded by the National Institute of Justice, U.S. Department of Justice, the study considers a broad range of issues relating to protecting the public from crimes committed by defendants awaiting trial on other charges, while preserving the civil liberties of those defendants.

Crime-on-bail has been of increasing concern to the general public and criminal justice policymakers alike in recent years. A defendant arrested for a second offense while awaiting trial on another charge is widely viewed as a person who has successfully flouted the law and perpetrated a preventable crime on an innocent victim. To much of the public, the first crime was perhaps unavoidable, but the second (if it was indeed committed by the defendant) would clearly have been prevented by detaining the defendant on the first charge.

The extent to which crimes are committed by defendants awaiting trial has been decried by many public officials and criminal justice practitioners, including President Ronald Reagan and Chief Justice Warren Burger.[1] Concern about pretrial dangerousness has also been reflected in the "standards" for pretrial release developed by such organizations as the American Bar Association and the National Association of Pretrial Services Agencies; those standards recommend assessment of community safety risk as part of the pretrial release process for certain defendants.[2]

In response to the widespread concern about crime-on-bail, many jurisdictions have passed laws permitting the consideration of pretrial "dangerousness" when pretrial release or detention decisions are made. Before enactment of such "danger laws," the sole consideration underlying pretrial release decisions had been whether a defendant was likely to return to court for

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[1] In a speech to the American Bar Association, meeting in Houston, Texas, on February 8, 1981, Chief Justice Burger stated, "[i]t is clear that there is a startling amount of crime committed by persons on release awaiting trial....It is not uncommon for an accused finally to be brought to trial with two, three, or more charges pending." President Reagan expressed similar sentiments in a speech to the International Association of Chiefs of Police on September 28, 1981.

[2] The American Bar Association standards are discussed in the ABA Journal, Volume 71 (1985), p. 128; the National Association of Pretrial Services Agencies' standards were published as Performance Standards and Goals for Pretrial Release and Diversion: Release (Washington, D.C.: National Association of Pretrial Services Agencies, 1978).

trial. Thus, in the past, defendants who posed little risk of pretrial flight could not legally have been denied release because they posed risks of endangering community safety.

Momentum for changing pretrial release policies to reflect both flight and danger risks grew after 1970, when the U.S. Congress enacted a law permitting the pretrial detention of certain defendants arrested in the District of Columbia whose pretrial release might endanger public safety. This highly controversial law stimulated widespread debate--in the U.S. Congress and elsewhere--about the overall merits of detention as a response to concerns about pretrial dangerousness and about specific provisions of the law, including its definition of dangerous defendants and the procedural requirements that must be met before their detention could be ordered.[3]

Currently, in addition to the District of Columbia, 32 states have laws that permit the consideration of pretrial dangerousness when release decisions are made. Moreover, with the passage of the Bail Reform Act of 1984, defendants in federal courts are now assessed for risks of pretrial dangerousness as well as flight.[4]

Although there has been widespread concern for some time now about pretrial dangerousness, there has been little systematic analysis of the nature of the responses to it or of the impact of those responses. The present study partially fills this gap by reviewing the provisions of the state laws that have

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[3]See, for example, Sam J. Ervin, Jr., "Foreword: Preventive Detention--A Step Backward for Criminal Justice," Harvard Civil Rights--Civil Liberties Law Review, Volume 6 (1971), p. 297; Frederick D. Hess, "Pretrial Detention and the 1970 District of Columbia Crime Act--The Next Step in Bail Reform," Brooklyn Law Review, Volume 37 (1971), p. 277; Wayne H. Thomas, Jr., Bail Reform in America (Berkeley, CA: University of California Press, 1976); U.S. Senate, 91st Congress, 1st session, Amendments to the Bail Reform Act of 1966, Hearings before the Subcommittee on Constitutional Rights of the Committee on the Judiciary (1969); and U.S. Senate, 91st Congress, 2nd session, Preventive Detention, Hearings before the Subcommittee on Constitutional Rights of the Committee on the Judiciary (1970).

[4]The Bail Reform Act of 1984 was enacted October 12, 1984, as part of the Comprehensive Crime Control Act of 1984, Public Law 98-473. It is codified at 18 U.S.C. §§ 3141 et seq. Enactment of this law marks the first time in the nation's history that dangerousness can legally be assessed when pretrial release decisions are made in federal courts; under previous law, those decisions were governed solely by flight considerations.

been passed to deal with pretrial dangerousness, assessing the impact of those laws, and considering the various ways in which communities have attempted to reduce the public safety risk posed by the release of defendants to await trial.[5]

To implement the study, a variety of tasks were undertaken, including:

- analysis of the provisions of the various state danger laws, in which summaries of each state law were prepared, and a comparative analysis of all laws was developed; two monographs resulted from this phase of the project: Digest of State Laws and A Comparative Analysis of State Laws;

- assessment of the development of the danger laws, including a short description of newspaper coverage of the pretrial danger issue (Newspaper Coverage of "Pretrial Danger") and a brief legislative history analysis for several states (The Dynamics of State Law Development);

- a small-scale telephone survey of 50 criminal justice system practitioners in 11 cities to assess their views about the danger laws and the manner of the laws' implementation (summarized in Practitioner Perspectives); and

- development of a set of issues papers discussing (1) definitions of "public danger"; (2) alternative strategies for reducing the risk posed by the pretrial release of selected dangerous defendants; (3) alternative ways to accommodate victim interests in the pretrial process; (4) the scope of current danger laws and possible ways to increase their use; and (5) legal challenges to the state danger laws.[6]

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[5]Impact from enactment of the federal Bail Reform Act of 1984 is excluded from this study, because decisions about study design and scope were made well before that law was passed. Unlike many state laws, the federal law is being widely used: data compiled by the Criminal Division of the U.S. Department of Justice show that as of October, 1985, more than 1,600 motions for use of the detention provisions of the law had been reported from the field and that more than 1,300 of those motions had resulted in detention orders. Moreover, these figures are widely considered to underreport the true extent of use of the law.

[6]These issues papers will be published in the Justice System Journal, forthcoming issue, 1986.

In addition, detailed analysis of four jurisdictions was undertaken to provide an in-depth assessment of the pretrial danger issue and the response to it in those jurisdictions. This analysis included field data collection from court records for a sample of cases as well as limited interviews with a few key criminal justice practitioners in each area.

Although originally intended to assess the impact from enactment of selected state danger laws, the four-site analysis was restructured when we found that danger laws had been used only rarely in virtually all jurisdictions.[7] This lack of use of the state danger laws, in view of the intense public concern that often led to their enactment, raises important questions: how are "dangerous" defendants now being processed prior to trial, and how "dangerous" are those defendants when they are released before trial? Are they being inappropriately released and endangering the public? Alternatively, are they being detained, due to inability to make bond? Or are they being released but only rarely causing public harm before trial, as others maintain? Because the appropriate public policy response will vary, depending on which of these alternative views is correct, the four-site analysis was designed to address these issues.

B. Selection of "Dangerous" Defendants for Study

In each site a sample of "dangerous" defendants was selected, and data were collected on their release outcomes, pretrial rearrests, case dispositions, etc. The definition of "dangerousness" used for sample selection was derived from the analysis of the specific provisions of the state danger laws. In those laws a common criterion of dangerousness is the presence of crime-on-bail. The danger laws of twenty states and the District of Columbia specify that arrested defendants who have a pending case of some sort can be considered dangerous. As a result, we decided that one part of the study sample would consist of crime-on-bail cases.

We selected the specific crime-on-bail criterion of a defendant arrested on a felony charge while having a pending felony case. Although state laws vary considerably in terms of specific crime-on-bail criteria, few states allow the current charge to be less serious than a felony for a dangerousness finding. The states are about evenly split concerning whether the pending case must be a felony or can be any charge, including a misdemeanor. We selected the felony criterion for the pending case because it reflects the more serious crime-on-bail situations.

In addition to crime-on-bail, state laws often specify certain arrest charges as indicators of dangerousness. Consequently, we also selected two felony arrest charges--rape and robbery--for

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[7]See the discussion in Barbara Gottlieb, The Dynamics of State Law Development (Washington, D.C.: Toborg Associates, Inc., 1985), pp. 19-22.

inclusion in the study sample. These charges are both of serious concern to the public and likely to occur frequently enough to permit quantitative analysis.[8]

C. Site Selection

The study sites were selected to provide variation in geographic location, type of danger law, and extent of use of the danger law. Sites also had to meet such pragmatic criteria as ease of access of the data required for analysis and willingness to participate in the study. Four sites were chosen:

- Memphis, Tennessee;
- Milwaukee, Wisconsin;[9]
- Phoenix, Arizona; and
- Tucson, Arizona.[10]

Memphis, Tennessee, is broadly representative of much of the southern and central regions of the country. Tennessee's danger law, passed in 1981 but not widely used, provides for

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[8]A defendant who had an arrest charge of rape or robbery and had a pending felony charge could be selected for both the rape/robbery sample and the felony crime-on-bail sample.

[9]Milwaukee was substituted for Chicago, where data collection was interrupted when cases from the study period were subpoenaed by the federal government in connection with its investigation ("Operation Greylord") of corruption in the Cook County courts. It appeared unlikely that these cases would become available for use in our research before the end of the data collection period, so Chicago was dropped as a site. Chicago had been chosen because it is a large, northern city, where the use of deposit bond has eliminated bail bondsmen. Also, Chicago has not been included in recent studies of pretrial release practices. Moreover, the danger law in Illinois, passed in 1975, provides for different responses, depending on the extent of dangerousness shown by the defendant's crime-on-bail status and whether the charges are for forcible felonies or other offenses.

[10]Technically, the samples were chosen from the counties within which these cities are located: Pima County (Tucson), Arizona; Maricopa County (Phoenix), Arizona; Milwaukee County (Milwaukee), Wisconsin; and Shelby County (Memphis), Tennessee. For ease of exposition, and because their respective cities account for most of the arrests in these counties, the cities' names are used in this monograph.

setting bail that is at least twice the "customary" amount for defendants who are rearrested while awaiting trial. This is a particularly interesting response to pretrial dangerousness, in view of the fact that laws permitting detention before trial are often not used because it is apparently easier to set high money bond and attempt to detain dangerous defendants through their inability to post it.[11]

Milwaukee was chosen for study, because it is a northern city in a state that allows neither surety (posted through a bondsman) nor deposit bond.[12] Hence, any bond set in Wisconsin must be posted in full by the defendant (or the defendant's family or friends). Wisconsin's danger law, although rarely used, was highly publicized when passed and contains very detailed procedural due process requirements.[13]

Phoenix and Tucson share the same state law regarding dangerous defendants, but the two jurisdictions reportedly have implemented that law quite differently. Thus, analysis of these sites should provide a useful comparison of the effects of different approaches to implementation of a danger law. Arizona's danger law has two parts. The first, passed in 1970, permits denial of release to defendants charged with felonies while having pending felony cases. The second part, resulting from a constitutional amendment passed in 1982, permits denial of release to any defendant charged with a felony offense who poses "a substantial danger to another person or the community."[14] According to local sources contacted before data collection began, Phoenix was using the earlier law on a routine basis and had also used the later law in a few cases, while Tucson had not used either law.

D. Sampling Period and Sample Size

Because data collection began in the fall of 1983, and because we wanted to allow sufficient time for cases to have

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[11]See Barbara Gottlieb, Practitioner Perspectives (Washington, D.C.: Toborg Associates, Inc., 1985), pp. 25-28.

[12]Under deposit bond, a percentage of the bond must be posted with the court (usually 10 percent), and most of that deposit (usually 90 percent of it) is returned if the defendant appears in court as required.

[13]See Barbara Gottlieb and Phillip Rosen, Digest of State Laws (Washington, D.C.: Toborg Associates, Inc., 1985), pp. 76-79; and Barbara Gottlieb, The Dynamics of State Law Development (Washington, D.C.: Toborg Associates, Inc., 1985), p. 17.

[14]Constitution of the State of Arizona, Article II, Section 22.

reached disposition, we chose the first six months of 1982 as the period from which to select the sample of arrests. We anticipated having sample sizes of 300 crime-on-bail cases and 300 rape or robbery cases. These numbers were approximated in Memphis, by extending the sampling period to the first seven months of 1982, but not in the other sites. Consequently, in the other sites we extended the sampling period to include all of calendar year 1982 and selected all relevant cases. As Table 1 shows, final sample sizes were 1006 cases for the rape or robbery sample and 628 cases for the felony crime-on-bail sample.

Table 1. Sample Size by City and Type

City	Rape or Robbery Charges	Felony Crime-on-Bail Charges
Tucson	130	156
Phoenix	294	109
Milwaukee	297	107
Memphis	285	256
TOTAL	1006	628

E. Data Collection

In each site extensive data were collected on the sample (or "study") case; the pending case, if any; and the pretrial rearrest case, if any. For each case information was collected about the offense charged, the nature of the victimization that occurred, the release conditions set by the court, whether the defendant met those conditions and secured pretrial release, and the disposition of the case. Additionally, information was obtained about the defendant's socio-demographic characteristics, prior criminal record, drug and alcohol use, and the extent of failure-to-appear for court.

The major source of data was court records, usually the individual case files. However, this information was supplemented in some sites by data maintained by pretrial services agencies, prosecutors' offices or other organizations.

The data collection process was implemented in two different ways. In Tucson, Phoenix and Milwaukee the data collection activities were coordinated through the National Association of Pretrial Services Agencies (NAPSA), the subcontractor for the study. Individual data collectors were recruited through NAPSA's network of contacts in each of these cities. The data collectors were then trained by key project staff from both NAPSA and Toborg Associates.

On-site coordinators were selected in each city to review the completed data forms before forwarding them to project headquarters in Washington, D.C., where they were double-checked for consistency and completeness. Any problem cases were returned to the on-site coordinators for follow-up. When all problems with a case had been resolved, it was added to the computerized data base for that city.

In Memphis data collection was done under the overall direction of the Consulting Investigator for Data Analysis, who lives there. He recruited, trained, and supervised students from the local university where he teaches in the acquisition of the needed data.

F. Characteristics of Defendants in the Sample

Table 2 presents a brief summary of selected information on defendant characteristics in each site (for more detailed information, see Appendix A). As shown in Table 2:

- More than 60 percent of the defendants in each site were 25 years of age or younger.
- Defendants studied in Memphis and Milwaukee were primarily black; the samples in Tucson and Phoenix had substantial percentages of Hispanics and whites as well.
- The defendants studied were overwhelmingly (more than 90 percent) male.
- Most defendants (from 54 to 71 percent) were unemployed in the three cities where this information was available (Tucson, Phoenix and Milwaukee).
- From 13 to 19 percent of the defendants were on probation when arrested for the study case, and from 5 to 8 percent

Table 2. Selected Defendant Characteristics for All Cases Studied in Each City

Characteristic	Tucson	Phoenix	Milwaukee	Memphis
Percentage 25 years of age or younger	61%	61%	61%	64%
Percentage black	21%	29%	68%	84%
Percentage Hispanic	31%	28%	7%	0%
Percentage male	93%	94%	92%	92%
Percentage unemployed	54%	61%	71%	*
Percentage on probation	13%	15%	19%	*
Percentage on parole	5%	8%	7%	*
Mean number of prior arrests:				
For all charges	4.2	5.7	2.8	2.8
For violent felonies	0.7	0.9	0.4	0.3
No. of cases**	267	385	378	493

* This information was not available in Memphis.

** The numbers shown here are less than would be derived by adding the number of cases for each sample from Table 1. This is because the same case was included in both the rape/robbery and the felony crime-on-bail samples, if it met the criteria for both samples. See Appendix for information on the defendant characteristics for cases in each sample.

were on parole (this information was available only for Tucson, Phoenix and Milwaukee).

- Defendants in Tucson and Phoenix had longer prior records than those in Milwaukee and Memphis, as reflected in higher mean values for the number of prior arrests for all charges and for violent felony charges.

G. Questions Addressed

Based on analysis of this sample of defendants, the rest of this monograph considers such questions as the following:

- How were "dangerous" defendants handled prior to trial? Were there important differences for defendants considered dangerous because of felony crime-on-bail, as compared to those charged with rape or robbery? Were there important differences across the four sites studied?

  --What release conditions were set?

  --Were special release procedures (e.g., special hearings) used?

  --How many of these defendants secured release prior to trial?

- What were the pretrial rearrest rates for the defendants charged with felony crime-on-bail or rape/robbery who secured release? What were the pretrial rearrest charges?

- To what extent were "dangerous" defendants processed under danger law provisions as compared to other mechanisms?

Analysis of these questions in turn permits consideration of the broader issue of whether additional legislation or changed criminal justice procedures are needed to respond to problems posed by the pretrial release of dangerous defendants and, if so, the nature of such legislation or other changes.

These and related issues are discussed in the following chapters of this monograph. Chapter II considers release practices and outcomes; Chapter III, the pretrial criminality of released defendants; Chapter IV, several special issues regarding pretrial dangerousness (e.g., the extent of victimization reflected in the crimes studied and the use of drugs and alcohol by the defendants arrested for them); and Chapter V, conclusions and recommendations.

II. RELEASE PRACTICES AND OUTCOMES

A. Rates and Types of Release

The impetus behind many state danger laws is to prevent the pretrial release of certain defendants and to impose restrictive release conditions on others, so that the risk they present to public safety will be reduced. Hence, a threshold question regarding the defendants studied concerns the extent to which they were released or detained before trial. As shown in Table 3, rates of release in the four cities ranged from 42 percent to 54 percent for defendants charged with rape or robbery and from 39 percent to 64 percent for defendants charged with felony crime-on-bail.[15]

The highest release rates for each sample were found in Tucson and the lowest, in Phoenix. This great disparity between two cities located in the same state suggests that--at least with regard to the types of defendants included in this study--local factors are more important than the state law in determining release or detention outcomes.

By sample type, release rates were higher for rape or robbery than felony crime-on-bail cases in Phoenix and Milwaukee, and the reverse was found in Tucson and Memphis. Hence, there was no consistent pattern with regard to release rates when the two sample types were compared.

What about the type of release for these defendants: were they released without restrictions, or were conditions imposed that had to be met before release could be obtained? As indicated

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[15]These data suggest, as expected, that defendants charged with rape, robbery, or felony crime-on-bail are being detained at higher rates than other defendants. Although comparable data on release rates for all defendants are not available for the cities and time periods studied here, an evaluation of pretrial release practices in eight jurisdictions over the 1976-78 period found that overall release rates for all defendants ranged from 73 to 92 percent. See Mary A. Toborg, et al., Pretrial Release: A National Evaluation of Practices and Outcomes, National Evaluation Program Phase II Report, Series B, Number 2 (Washington, D.C.: National Institute of Justice, U.S. Department of Justice, October 1981), p. 6.

Table 3. Release Outcomes by Sample Type and City

City	Rape or Robbery Charges		Felony Crime-on-Bail Charges	
	No. Released	Percentage Released	No. Released	Percentage Released
Tucson	71	54%	99	64%
Phoenix	124	42	43	39
Milwaukee	143	48	48	45
Memphis	143	49	140	55

in Table 4, for rape or robbery cases, Phoenix had the highest rate (54 percent) of release on recognizance (ROR), and Tucson had the highest rate (39 percent) of supervised release or release to third party custody. When one recalls that Phoenix had the lowest rates of overall release and Tucson, the highest, the following pattern emerges: in Phoenix, for the defendants studied, release was relatively hard to secure, but when granted, was often granted unconditionally; in Tucson, in contrast, release was obtained more easily but was often constrained by supervisory or custodial requirements.

In comparison with the Arizona cities, both Milwaukee and Memphis made greater use of secured money bail for rape or robbery cases. The nature of secured bail in these two cities is quite different, however. Because bail bonding for profit is illegal in Milwaukee (as elsewhere in Wisconsin), secured bonds there are posted by the defendants or their relatives or friends. In Memphis bonds may also be secured in this manner, but reliance on commercial bail bondsmen is far more common.

For felony crime-on-bail cases, Phoenix once again had the highest rate (61 percent) of release on recognizance, and Tucson had the highest rate (24 percent) of supervised release or release to third party custody. Milwaukee and Memphis again relied almost exclusively on money bail--either secured or unsecured--as the type of release for these cases. As with rape or robbery cases, Memphis primarily used secured bonds

Table 4. Type of Release, by Sample Type and City

Sample Type and City	Percentage of Released Defendants Released On:						No. of Cases
	Own Recog-nizance	Unsecured Bond	Secured Bond	Supervised Release	Third Party Custody	TOTAL	
Rape or Robbery							
Tucson	17%	0%	44%	25%	14%	100%	71
Phoenix	54	0	37	2	7	100	123
Milwaukee	3	24	61	13	0	100	143
Memphis	0	0	93	7	0	100	143
Felony Crime-on-Bail							
Tucson	25%	0%	51%	23%	1%	100%	99
Phoenix	61	0	37	0	2	100	43
Milwaukee	6	40	51	2	0	100	47
Memphis	0	0	94	6	0	100	138

Note: Percentages may not add to 100%, because of rounding.

for felony crime-on-bail cases, while Milwaukee used unsecured bonds as well.

Memphis was the only site where not a single defendant in either sample was released on recognizance or unsecured bond. Memphis relied overwhelmingly on secured bond as the release mechanism for the defendants studied, although a few defendants (7 percent of the rape/robbery releasees and 6 percent of the felony crime-on-bail releasees) were released with supervision.

For the other three cities (see Table 4), rates of release on recognizance or unsecured bond were higher for the felony crime-on-bail cases than for the rape or robbery cases. As shown in Table 5, this can be explained in part by the fact that the charges in the felony crime-on-bail samples were, on the whole, less serious than rape or robbery.

Table 5. Arrest Charges in the Felony Crime-on-Bail Sample by City

Charges	Tucson	Phoenix	Milwaukee	Memphis
Rape or Robbery	12%	17%	24%	19%
Burglary	27	20	34	26
Assault	5	8	0	6
Drug possession or sale	12	20	9	2
Larceny	24	10	8	34
Fraud	8	7	8	12
Other	12	17	16	1
TOTAL	100%	100%	100%	100%
No. of cases	156	109	107	255

Note: Percentages may not add to 100%, due to rounding.

Burglary and larceny accounted for more than one-half the charges in the felony crime-on-bail sample in Tucson and Memphis. In Milwaukee the most frequent felony crime-on-bail charge was burglary, comprising approximately one-third of the sample. Milwaukee also showed a disproportionately high number of rape and robbery cases in the felony crime-on-bail sample; this was largely because the rape statute in Wisconsin is broader than in the other states studied and, hence, results in more rape charges. Phoenix showed the greatest diversity of felony crime-on-bail charges; the most frequent charges were burglary and drug possession or sale, each of which accounted for 20 percent of the sample, followed by rape/robbery and "other" charges (e.g., vandalism, prostitution, disorderly conduct, etc.), 17 percent each.[16]

B. Mechanisms Used for Detention

As indicated earlier (see Table 3), defendants were detained until trial in approximately one-half of all the cases studied. Table 6 shows that by far the most common reason for detention in each city was that defendants did not post bond. For the rape or robbery sample more than 85 percent of the defendants detained in each city were detained because they did not post bond; less than 15 percent of the detention occurred because the defendants were held without bond.

Phoenix had a sharply higher rate (35 percent) of outright detention for felony crime-on-bail detainees than for rape or robbery cases. This finding is consistent with the reports we received before starting field data collection that Phoenix was using the provision of Arizona's danger law that permits outright detention of defendants charged with felony crime-on-bail (see the discussion in Chapter I).

Milwaukee also showed greater use of outright detention for the felony crime-on-bail detainees than for rape or robbery detainees (19 percent versus 14 percent). There was no difference

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[16]A comparison of charges in the pending and study cases for the felony crime-on-bail sample shows that burglary and larceny--and, to a lesser extent, drug possession or sale--were more commonly charged in the pending cases; while in the study cases fraud and "other" charges were more frequent in Tucson and Phoenix, and rape or robbery charges were more likely in Milwaukee and Memphis. Hence, overall, the defendants in the felony crime-on-bail sample had been previously released on somewhat more serious charges than the study charges in Tucson and Phoenix and on less serious charges in Milwaukee and Memphis. The Appendix provides data on the charges in the pending cases for the felony crime-on-bail sample.

Table 6. Mechanisms Used for Detention by Sample Type and City

Sample Type and City	Percentage of Detained Defendants			No. of Cases
	Held Without Bond	Did Not Post Bond	TOTAL	
Rape or Robbery				
Tucson	12%	88%	100%	60
Phoenix	4	96	100	169
Milwaukee	14	86	100	152
Memphis	11	89	100	146
Felony Crime-on-Bail				
Tucson	12%	88%	100%	57
Phoenix	35	65	100	65
Milwaukee	19	81	100	59
Memphis	3	97	100	116

between the two samples for Tucson; and in Memphis, rates of outright detention were higher for the rape/robbery detainees.

Because of the importance of bond in the overall detention of defendants, the effect of bond amount on detention rates was assessed. As shown in Table 7, detention rates tended to increase as bond amounts increased. However, even at the highest bond levels, some defendants still posted bond.[17] Hence, if high bond is being used to attempt to detain dangerous defendants in these cities, it is an imperfect mechanism for doing so.

As this chapter has shown, approximately one-half the defendants charged with rape/robbery or felony crime-on-bail in the four cities studied were released before trial. The next chapter considers the extent to which they endangered the public during the pretrial period, as reflected in pretrial rearrests and convictions for those rearrests.[18]

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[17]The sole exception occurred for bonds of $20,000 or more in Milwaukee, where the full bond amount must be posted by the defendant (or relatives or friends of the defendant).

[18]Of course, those defendants may have engaged in pretrial criminality that did not result in rearrests, but we have no reliable way to assess this possibility.

Table 7. Detention Rates by Bond Amount for Each Sample Type and City*

Sample Type and Bond Amount	Tucson	Phoenix	Milwaukee	Memphis
Rape or Robbery				
$1,000 or less	0%	46%	15%	0%
$1,001 - $5,000	41	79	72	21
$5,001 - $10,000	69	73	86	59
$10,001 - $20,000	69	80	80	72
$20,001 or more	94	94	100	86
TOTAL detention rate for all bond amounts	64%	78%	60%	49
No. of bonds set (secured only)	83	207	215	260
Felony Crime-on-Bail				
$1,000 or less	33%	25%	35%	29%
$1,001 - $5,000	31	67	84	38
$5,001 - $10,000	63	90	80	62
$10,001 -$20,000	75	86	75	60
$20,001 or more	93	80	100	88
TOTAL detention rate for all bond amounts	50%	72%	66%	46%
No. of bonds set (secured only)	100	58	71	243

Note: Some of the detention rates shown are based on very small numbers of cases. See Appendix for this information.

* Percentages show the detention rates for those defendants for whom bonds were set in the amounts indicated.

III. PRETRIAL CRIMINALITY OF RELEASED DEFENDANTS

A. Pretrial Rearrest Rates in the Four Cities

Danger laws have been passed in various states to try to reduce crime-on-bail, either by outright detention of dangerous defendants or through imposition of release conditions designed to lessen pretrial criminality. As the preceding chapter showed, about one-half of the defendants charged with rape, robbery or felony crime-on-bail were released before trial. Of those defendants, 13 percent were released under supervision or third party custody; 64 percent, on secured bond; and the remaining 23 percent, without restrictions (17 percent on own recognizance and 6 percent on unsecured bond).

Did the release of these defendants pose a threat to community safety? To answer this question requires analysis of pretrial rearrests for those defendants. As shown in Table 8, pretrial rearrest rates ranged from 9 percent to 35 percent for the rape/robbery releasees and from 12 percent to 41 percent for the felony crime-on-bail releasees. Additionally, some defendants had more than one pretrial rearrest; this was most common in Memphis and Tucson and least common in Phoenix. For the four cities studied, there was no relationship between release rates and pretrial rearrest rates. Although one might expect that low release rates would be correlated with low rearrest rates, and vice versa, this did not occur. For the rape/robbery sample, the lowest pretrial rearrest rate was found in the city (Tucson) with the highest pretrial release rate.[19]

As Table 8 indicates, the pretrial rearrest rates in Memphis were sharply higher than those in the other three cities studied. For the rape/robbery releasees, Memphis' pretrial rearrest rate was two-and-one-half times that of the next highest rate; and for the felony crime-on-bail releasees, almost double. Table 9 shows that this disparity diminishes when only more serious charges are considered. When rearrests for felonies only are analyzed, pretrial rearrest rates for rape/robbery releasees range from 6 percent to 25 percent, with the rate for Memphis approximately double that of the next highest rate. For felony crime-on-bail releasees, pretrial rearrest rates range from

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[19]Tucson also made the greatest use of supervised and third party custody release, but we do not have sufficient information to assess whether that may account at least in part for this finding.

12 percent to 31 percent, with Memphis' rate about one-and-one-half times that of the next highest rate.[20]

Table 8. Pretrial Rearrests by Sample Type and City

Sample Type and Rearrest Information	Tucson	Phoenix	Milwaukee	Memphis
Rape or Robbery Charges				
No. of pretrial rearrests	6	15	20	50
Pretrial rearrest rate	9%	12%	14%	35%
Felony Crime-on-Bail Charges				
No. of pretrial rearrests	21	5	7	58
Pretrial rearrest rate	21%	12%	15%	41%
Combined Samples				
No. of pretrial rearrests*	25	19	27	102
Percentage of rearrested defendants with more than one pretrial rearrest	32%	5%	19%	30%

* A pretrial rearrest for a defendant in both the rape/robbery and felony crime-on-bail samples is counted only once.

[20]Based on information provided by local sources in the four cities, it appears that data on pretrial rearrests for misdemeanors were more complete in Memphis than elsewhere. If so, the inclusion of misdemeanor rearrests in Table 8 exaggerated the true difference in pretrial rearrest rates between Memphis and the other sites. Nevertheless, elimination of any such bias, as shown in Table 9, still found Memphis with pretrial rearrest rates substantially higher than those of the other cities.

Table 9. Pretrial Rearrests for Felonies by Sample Type and City

City	Rape or Robbery Charges		Felony Crime-on-Bail Charges	
	No.	Percentage	No.	Percentage
Tucson	6	9%	20	20%
Phoenix	15	12	5	12
Milwaukee	9	6	6	13
Memphis	36	25	44	31

Although Memphis had relatively high rates of pretrial rearrest, Table 10 shows that many of those rearrests occurred in the less serious charge categories. Fully 37 percent of Memphis' pretrial rearrests were for larceny, as compared with 11 percent to 24 percent of the rearrests in the other sites. Only 10 percent of Memphis' rearrests were for robbery and rape charges--the lowest percentage of any site--although the absolute number of pretrial rearrests for those charges was about the same as for the other sites. When pretrial rearrest rates for violent charges[21] only are considered, as shown in Table 11, Memphis' rate for rape/robbery releasees is still almost double that of the next highest rate (10 percent versus 6 percent); but its rate for felony crime-on-bail releasees--while still the highest found--is matched by Tucson's rate (5 percent).

B. Possible Reasons for High Pretrial Rearrest Rates in Memphis

What accounts for the fact that Memphis' pretrial rearrest rates are higher than those of the other cities studied? To some extent this is due to the fact that Memphis had by far the slowest case processing--and, hence, the longest pretrial

[21]As used here, violent charges are defined as murder, manslaughter, arson, kidnapping, robbery, rape and assault.

Table 10. Percentage Distribution of Pretrial Rearrest Charges by City

Charge	Tucson	Phoenix	Milwaukee	Memphis
Rape or robbery	20%	42%	33%	10%
Burglary	16	16	11	11
Assault	4	0	0	10
Drug possession or sale	16	16	4	11
Larceny	24	11	15	37
Fraud	12	5	4	6
Other	8	11	33	16
TOTAL	100%	100%	100%	100%
No. of Pretrial Rearrests	25	19	27	102

Note: Percentages may not add to 100 percent, because of rounding.

Table 11. Pretrial Rearrests for Violent Charges* by Sample Type and City

City	Rape or Robbery Charges		Felony Crime-on-Bail Charges	
	Number	Percentage	Number	Percentage
Tucson	3	4%	5	5%
Phoenix	8	6	1	2
Milwaukee	8	6	1	2
Memphis	15	10	7	5
TOTAL	34	7%	14	4%

*As used here, violent charges are murder, manslaughter, arson, kidnapping, robbery, rape and assault.

periods--of the sites studied.[22] As shown in Table 12, only 4 percent of the cases of released defendants reached disposition in Memphis within 90 days; comparable percentages for the other sites were 17 percent, Tucson; 27 percent, Milwaukee; and 58 percent, Phoenix. Indeed, only 49 percent of Memphis' cases had reached disposition within 240 days; in the other sites, the comparable percentages ranged from 78 percent (Milwaukee) to 91 percent (Phoenix).

Table 12. Time to Disposition for Released Defendants by City

Time to Disposition	Tucson	Phoenix	Milwaukee	Memphis
Within 90 days	17%	58%	27%	4%
Within 120 days	38	66	39	10
Within 240 days	79	91	78	49
No. of released defendants	156	159	179	266

Although Memphis' cases experienced a longer pretrial period than in the other sites, this does not account fully for Memphis' higher pretrial rearrest rates. After controlling for time-at-risk, as shown in Table 13, Memphis still had higher pretrial rearrest rates than the other sites.[23]

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[22]Although many pretrial rearrests occur soon after release and thus would probably not be affected by faster case processing, as will be discussed in Chapter IV, a longer pretrial period nevertheless provides a longer time for a defendant to be "at risk" of rearrest; hence, reducing the length of the pretrial period should lead to some reduction in pretrial rearrests.

[23]Note that Phoenix processed cases relatively quickly: 58 percent of the cases there reached disposition within 90 days. This is also reflected in data on the median number of days until case disposition: this was 72 days for the rape/robbery sample in Phoenix, as compared to 111 days for Milwaukee, 153 days for Tucson, and 253 days for Memphis. For the felony crime-on-bail sample, the median was 53 days for Phoenix, 109 days for Milwaukee, 125 days for Tucson, and 171 days for Memphis.

Table 13. Pretrial Rearrest Rates by Elapsed Time After Release, by City

Pretrial Rearrest Rate After No. of Days Shown	Tucson	Phoenix	Milwaukee	Memphis
30 days	2%	3%	3%	7%
60 days	6	6	6	13
90 days	9	7	8	18
120 days	12	9	11	21
240 days	14	11	13	30
All	15	12	14	36

The relatively high pretrial rearrest rate in Memphis may result in part from the fact that judges making release decisions there apparently did not have as much information about a defendant available at the initial bail hearing as was available in the other cities. For example, no information about the defendants' drug use or whether they were on probation or parole was found in the Memphis bail hearing records, maintained in the court files used for data collection. This suggests that such information was not systematically available as part of the release decision-making process, although it may have been provided in selected cases. Because such factors as drug use and probation/parole status have often been associated with rearrest,[24] the absence of this information--and, hence, judges' inability to consider it--at the release hearing may have resulted in the release

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[24]See, for example, William Rhodes et al., Pretrial Release and Misconduct in Federal District Courts, prepared for the Bureau of Justice Statistics, U.S. Department of Justice, December 1984, and summarized in the Bureau of Justice Statistics Special Report, "Federal Offenses and Offenders: Pretrial Release and Misconduct," January 1985; Jeffrey A. Roth and Paul B. Wice, Pretrial Release and Misconduct in the District of Columbia, PROMIS Research Project Publication No. 16 (Washington, D.C.: Institute for Law and Social Research, April 1980); Mary A. Toborg, et al., Pretrial Release: A National Evaluation of Practices and Outcomes, prepared for the National Institute of Justice, U.S. Department of Justice, August 1981, and summarized in National Evaluation Program Phase II Report, Series B, Number 2 (Washington, D.C.: National Institute of Justice, U.S. Department of Justice, October 1981); and Mary A. Toborg, et al., Pretrial Risk Assessment in the District of Columbia: The Effects of Changed Procedures, prepared for the D.C. Pretrial Services Agency, May 1984.

of a higher percentage of recidivist-prone defendants in Memphis than elsewhere.

One reason that Memphis' judges do not have better information available to them when making release decisions is that the pretrial release program there is quite limited in scope. Unlike many cities, where the pretrial release program provides information about the vast majority of defendants to the judge making the release decision,[25] Memphis' program is less comprehensive. Defendants facing very serious charges--such as the felony rape, robbery or crime-on-bail charges covered in this study--are typically excluded from the information-gathering activities of the program. As a result, judges making release decisions for such defendants do so in Memphis without having available to them the sytematically compiled information that is provided in many other cities by pretrial release programs.[26]

Another factor that may affect pretrial rearrest rates in Memphis is that many offenders incarcerated in Tennessee's badly overcrowded prisons receive early release, including persons sentenced for serious offenses. As a result, dangerous offenders may return from prison to the community more quickly in Memphis than in the other cities studied. If so, this may help account for Memphis' higher rates of pretrial rearrest.

The pretrial rearrest rates in Memphis may also be affected by the heavy reliance on surety bond as a pretrial release mechanism. For the defendants studied, Memphis made little use of third party custody, supervision, or other forms of court-ordered conditional release that might reduce pretrial rearrest rates by restricting defendants' pretrial activities.[27] Although bondsmen may impose release conditions on defendants, those conditions are likely to be designed to help assure court appearance,

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[25]For information on practices in other cities, see Donald E. Pryor, Practices of Pretrial Release Programs: Review and Analysis of the Data (Washington, D.C.: Pretrial Services Resource Center, February 1982); and Mary A. Toborg, et al., Pretrial Release: A National Evaluation of Practices and Outcomes, op. cit.

[26]There is also some evidence that judges in Memphis assessed the information that was available differently than judges in the other cities did. For example, the defendant's prior criminal record seemed to have had less of an effect on the release/detention decision in Memphis than in the other cities.

[27]This lack of use of conditional release in Memphis may well be related to the fact that the pretrial release program has such a limited role there. In other cities development of appropriate conditions to reduce pretrial release risk is often a function of pretrial release programs. See, for example, Donald E. Pryor, op. cit., pp. 39-47; and Mary A. Toborg, et al., Pretrial Risk Assessment in the District of Columbia, op. cit., pp. 5-7.

which is typically the bondsman's major--or even sole--concern. Because failure-to-appear for court is the only basis upon which a bond can be ordered forfeited, there is no particular incentive for a bondsman to be concerned about the protection of community safety as part of the bond-writing process. Ideally, of course, such concern would be reflected in judges' initial release decisions, so that defendants would not be given the option of posting bond if their release would endanger community safety.

Another possible explanation for the high pretrial rearrest rates in Memphis is that criminal justice practitioners involved in pretrial release decision-making there are less sensitive to the issue of pretrial dangerousness than in the other cities studied. In this regard it is noteworthy that Tennessee is the only state of the three studied in which the issues of crime-on-bail and pretrial dangerousness had not resulted in substantial public outcry and demands for changed criminal justice procedures before the time of our data collection activities.

In both Wisconsin and Arizona public concern had resulted in major changes--adopted amid great public fanfare--in the state laws regarding pretrial dangerousness. Although Tennessee has enacted a danger law, it is quite limited in scope (it provides that bond be set for defendants charged with crime-on-bail at an amount at least double the customary amount) and was passed with little public debate over the need for it or over its content.

The lack of public attention to the pretrial dangerousness issue in Tennessee--as compared to the great public attention the issue received in Wisconsin and Arizona--raises the possibility that extensive, heated public discussion of the pretrial danger issue itself changes the way that potentially dangerous defendants are handled prior to trial. Even if the specific provisions of the laws passed in response to the public's concerns are rarely used, the public debate over pretrial dangerousness may so heighten the awareness of criminal justice practitioners to the problem that they change their decisionmaking. If this indeed occurs, then the full impact from the enactment of pretrial danger laws cannot be assessed by considering only the extent of use of those laws.[28]

C. Responses to Pretrial Rearrests

In addition to analysis of the rates of pretrial rearrest, it is important to consider the criminal justice system's processing of the rearrests: for example, to what extent were the rearrested

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[28] It has also been suggested that the fact that the case sample in Memphis was selected at indictment may have resulted in higher pretrial rearrest rates than if the sample had been chosen at initial appearance, as in the other cities. We have no way to determine whether this is so, although it does appear that the cases selected in Memphis were somewhat stronger ones to prosecute than elsewhere, as shown by lower rates of dismissals.

defendants again released to await trial? Release rates for rearrested defendants were highest in Memphis (67 percent), followed by Tucson (56 percent), Milwaukee (37 percent), and Phoenix (16 percent)--the same ranking as had been found for the initial study sample arrests (see Table 3).

What about the dispositions of the pretrial rearrests? More than three-fourths of the pretrial rearrests (77 percent in the rape/robbery sample and 80 percent in the felony crime-on-bail sample) resulted in convictions. More than 80 percent of those convicted (83 percent in the rape/robbery sample and 88 percent in the felony crime-on-bail sample) received sentences of incarceration. Hence, for the defendants studied, a pretrial rearrest was highly likely to result in a conviction, which in turn was highly likely to be accompanied by a sentence of incarceration.

A related issue concerns the extent to which the sentences levied for pretrial rearrests were imposed consecutively, as compared to concurrently, with any sentences levied for the original arrest. As Table 14 indicates, concurrent sentences were far more common than consecutive ones.[29]

Table 14. Consecutive Versus Concurrent Sentences for Pretrial Rearrest Cases

Item	Tucson	Phoenix	Milwaukee	Memphis
No. of defendants sentenced for both study arrest and pretrial rearrest	9	7	17	49
Percentage with concurrent sentences	89%	100%	71%	69%
Percentage with consecutive sentences	11%	0%	29%	31%

[29]Concurrent sentences were also far more common than consecutive ones for those defendants having pending cases when arrested who were subsequently sentenced for both cases.

D. Concluding Remarks

As this chapter has shown, pretrial rearrest rates for released defendants charged with rape, robbery or felony crime-on-bail ranged from 9 percent to 41 percent in the four cities studied. Pretrial rearrest rates were consistently higher in Memphis than in the other three cities, although the differences diminished when rearrests for only the more serious charges were considered. Even so, 10 percent of the released defendants who were charged with rape or robbery in Memphis were rearrested before trial on a violent charge (defined as murder, manslaughter, arson, kidnapping, robbery, rape or assault), as were 5 percent of those charged with felony crime-on-bail; comparable percentages for the other sites ranged from 4 percent to 6 percent for the rape/robbery sample and from 2 percent to 5 percent for the felony crime-on-bail cases.

These findings must be viewed within the context that only about one-half of the defendants charged with rape, robbery or felony crime-on-bail were released before trial. Because those defendants were presumably the best risks for release, their rates of pretrial rearrest show that the problem of protecting community safety from harm by defendants awaiting trial is still a cause for concern in the cities studied.

IV. SPECIAL ISSUES

Although the primary focus of this monograph was to assess the pretrial release and pretrial rearrest outcomes of the defendants studied, the data collected also permit consideration of several special issues related to pretrial dangerousness. These issues, discussed in the following sections of this chapter, include:

- the nature of the victimization that occurred;
- the defendants' involvement in drug and alcohol use;
- the impact that speedier trials might have had on reducing pretrial rearrests;
- the dispositions (i.e., conviction rates and sentences) of the arrests; and
- the extent to which the defendants failed to appear for court.

A. The Nature of the Victimization

In recent years greater attention has been focused on the victims of crime. This concern received national prominence in 1982 when the President's Task Force on Victims of Crime issued its Final Report,[30] which documented the poor treatment that the criminal justice system gives to many victims and led to heightened awareness of the impact of crimes on their victims. Consideration of the nature of the victims is particularly relevant in the present study, because many state danger laws were passed in response to specific instances of particularly heinous crimes in which the perpetrator was found to have been awaiting trial on another charge.

Tables 15 and 16 present data on victimization for the felony crime-on-bail and rape/robbery samples, respectively. As shown, the percentage of cases with victims ranged from 71 percent in Phoenix to 98 percent in Memphis for the felony crime-on-bail sample; all cases in the rape/robbery sample, of course, had victims. For most cases in either sample there was only a single victim; this was so in 70-80 percent of the rape/robbery sample and in 67-84 percent of the felony crime-on-bail sample, depending on the site.

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[30]President's Task Force on Victims of Crime, Final Report (Washington, D.C.: U.S. Government Printing Office, 1982).

Table 15. Nature of Victimization in Felony Crime-on-Bail Sample, by City

Item	Tucson	Phoenix	Milwaukee	Memphis
Cases with Victims				
Number	115	77	90	237
Percentage of all cases	74%	71%	84%	98%
Number of Victims				
One	67%	81%	84%	78%
Two	25	16	14	15
Three or more	8	4	2	8
TOTAL	100%	100%	100%	100%
No. of cases	49	77	87	236
Relationship to Victim				
Stranger	43%	43%	49%	43%
Commercial	25	39	32	43
Relative or prior acquaintance	25	14	12	12
Other	7	4	7	3
TOTAL	100%	100%	100%	100%
No. of cases	44	72	90	236
Cases with Victim Injury				
Number	20	8	16	18
Percentage of all cases with victims	17%	10%	18%	8%

Note: Percentages may not add to 100 percent, because of rounding.

Table 16. Nature of Victimization in Rape/Robbery Sample, by City

Item	Tucson	Phoenix	Milwaukee	Memphis
Number of Victims				
One	70%	75%	80%	75%
Two	18	13	13	15
Three or more	12	12	8	10
TOTAL	100%	100%	100%	100%
No. of cases	113	293	285	280
Relationship to Victim				
Stranger	37%	52%	47%	46%
Commercial	44	37	21	31
Relative or prior acquaintance	16	10	32	23
Other	3	1	0	0
TOTAL	100%	100%	100%	100%
No. of cases	93	264	295	281
Cases with Victim Injury				
Number	45	114	150	68
Percentage of all cases with victims	35%	39%	51%	24%

Note: Percentages may not add to 100 percent, because of rounding.

Typically, victims were either strangers or commercial establishments (e.g., convenience stores, liquor stores, etc.), although there was a substantial number of cases in which the victims were relatives or prior acquaintances. For the rape/robbery sample, victim injury occurred in 51 percent of the cases in Milwaukee, 39 percent in Phoenix, 35 percent in Tucson, and 24 percent in Memphis. As one might expect from the fact that, overall, the charges in the felony crime-on-bail sample were less serious than rape or robbery (see Table 5), victim injury occurred less often than in the rape/robbery sample. Nevertheless, 18 percent of the felony crime-on-bail cases with victims resulted in victim injury in Milwaukee, and 17 percent did so in Tucson (comparable percentages for Phoenix and Memphis were 10 percent and 8 percent, respectively). In each sample, approximately one-half of the injured victims were either hospitalized or treated at the emergency room for their injuries.

Table 17 considers the way in which cases with victims in the felony crime-on-bail sample were handled, as compared with all cases in that sample. As shown, release before trial was somewhat less likely for cases with victims, although the differences were not great. Outright detention was no more likely for cases with victims than for other cases; instead, inability to make bond accounted for the somewhat higher detention rates among cases with victims. As this finding suggests, bond was set at somewhat higher amounts for cases with victims than for other cases.

Pretrial rearrest rates were virtually identical in all four sites for cases with victims and for other cases. These rates for cases with victims ranged from 12 percent in Phoenix to 41 percent in Memphis.

A related issue concerns the use of weapons. This is important to consider, because the possibility of serious victim injury is greater when weapons are involved. Moreover, even if no injury occurs, the fear felt by the victim is likely to be greater when a weapon is used in the crime.

As indicated in Table 18, the use of a weapon was more likely for the rape/robbery cases than for the felony crime-on-bail cases. In terms of <u>type</u> of weapon, a gun was used more often than other types of weapons. Table 18 also shows that release rates were usually much lower for cases involving a gun than for other cases. Once again, the mechanism by which detention occurred was likely to be inability to post bond, rather than outright detention without possibility of release.

Where a gun was used, victim injury resulted in 6 percent to 21 percent of the cases, depending on the site and sample type. The most likely victims in cases where guns were used were commercial establishments, followed by strangers. For

Table 17. Release and Pretrial Rearrest Outcomes for Cases with Victims, As Compared with All Cases, in the Felony Crime-on-Bail Sample by City

Item	Cases with Victims				All Cases			
	Tucson	Phoenix	Mil-waukee	Mem-phis	Tucson	Phoenix	Mil-waukee	Mem-phis
Release Outcomes								
Released	58%	33%	41%	52%	64%	40%	45%	55%
Could not make bond	37	46	49	46	32	39	45	44
Detained outright	5	22	10	2	5	21	10	2
TOTAL	100%	100%	100%	100%	100%	100%	100%	100%
No. of defendants	115	77	90	237	156	109	107	256
Type of Release								
Own recognizance or unsecured bond	19%	52%	46%	0%	25%	61%	47%	0%
Secured bond	55	48	51	96	51	37	51	94
Supervised release or third party custody	25	0	3	4	24	2	2	6
TOTAL	100%	100%	100%	100%	100%	100%	100%	100%
No. of released defendants	67	25	37	121	99	43	47	138
Bond Amount Set								
$1,000 or less	5%	6%	32%	10%	6%	7%	37%	10%
$1,001 - $ 5,000	44	43	45	62	51	47	44	62
$5,001 - $10,000	28	19	8	17	24	17	7	17
$10,001 - $20,000	5	13	7	4	4	12	6	4
$20,001 or more	18	19	8	7	15	17	7	7
TOTAL	100%	100%	100%	100%	100%	100%	100%	100%
No. of defendants with bond set	79	47	62	228	100	58	71	243
Pretrial Rearrests								
Percentage of released defendants with pretrial rearrests	22%	12%	14%	41%	21%	11%	15%	41%
Number of pretrial rearrests	15	3	5	50	21	5	7	58

Percentages may not add to 100%, because of rounding.

Table 18. Use of Weapons by Sample Type and City

Item	Rape or Robbery Charges				Felony Crime-on-Bail Charges			
	Tucson	Phoenix	Milwaukee	Memphis	Tucson	Phoenix	Milwaukee	Memphis
Type of Weapon Used								
Gun	34%	43%	36%	43%	9%	18%	11%	13%
Other weapon	33	18	17	22	6	8	8	9
Unknown type of weapon	1	0	2	1	1	0	0	0
No weapon	32	39	45	34	83	73	82	78
TOTAL	100%	100%	100%	100%	100%	100%	100%	100%
No. of cases having information on weapon type	117	287	292	280	151	109	105	242
Release Outcomes in Cases Where Gun Was Used								
Released	38%	39%	30%	45%	36%	25%	18%	26%
Could not make bond	58	60	62	48	50	55	73	68
Detained outright	5	1	9	7	14	20	9	7
TOTAL	100%	100%	100%	100%	100%	100%	100%	100%
No. of cases where gun was used	40	123	104	119	14	20	11	31
Percentage of Defendants Released in ALL Cases	54%	42%	48%	49%	64%	39%	45%	55%
Victim Injury in Cases Where Gun Was Used								
Percentage of cases with victim injury	21%	17%	17%	14%	20%	6%	18%	16%
No. of cases with victim injury	6	20	18	17	2	1	2	5
No. of cases having information on gun use and victim injury	28	120	104	119	10	17	11	31
Relationship to Victim in Cases Where Gun Was Used								
Stranger	13%	31%	44%	40%	10%	24%	46%	29%
Relative or prior acquaintance	3	2	10	9	30	18	9	29
Commercial	73	66	47	51	50	53	46	39
Other	10	1	0	0	10	6	0	3
TOTAL	100%	100%	100%	100%	100%	100%	100%	100%
No. of cases having information on gun use and relationship to victim	30	119	105	119	10	17	11	31

Percentages may not add to 100%, because of rounding.

the rape/robbery sample, the percentage of the cases involving guns that had strangers for victims were Milwaukee, 44 percent; Memphis, 40 percent; Phoenix, 31 percent; and Tucson, 13 percent. The comparable percentages for the felony crime-on-bail sample were Milwaukee, 46 percent; Memphis, 29 percent; Phoenix, 24 percent; and Tucson, 10 percent.

B. Drug and Alcohol Use

Because of the widespread interest in substance abuse and its relationship to crime and pretrial dangerousness, we attempted to collect data on whether defendants were using drugs or alcohol when arrested. In Phoenix and Milwaukee, these data were available on a sufficient number of cases to permit analysis; in Memphis, substance abuse data were totally lacking in the court records; and in Tucson, such data were available for less than 15 percent of the defendants studied. Hence, the following analyses consider only Phoenix and Milwaukee.

Even in Phoenix and Milwaukee, as shown in Table 19, there was a considerable amount of missing information for both drug and alcohol use: more than one-third of the cases in each site had missing drug use information; and more than one-fourth of the cases, missing alcohol use information. Overall rates of drug use were higher in Milwaukee than Phoenix (27 percent and 17 percent, respectively), while overall rates of alcohol use were the same (38 percent). Also, the rate of alcohol use exceeded that of drug use--by more than double in Phoenix and by about 40 percent in Milwaukee. In each site, for the sample of defendants studied, marijuana accounted for about one-third of the drug use, while heroin and cocaine jointly accounted for about another 30 percent.

Table 20 shows the extent of substance abuse by charge in the two cities. As indicated, in Phoenix defendants charged with drug possession or sale, larceny or fraud were more likely than other defendants to be drug users; however, the total number of defendants with such charges was relatively small. In Milwaukee, defendants charged with robbery, burglary, drug possession or sale, the "most serious" charges (i.e., murder, manslaughter, arson or kidnapping) and "other" charges (e.g., vandalism, prostitution, disorderly conduct, etc.) were more likely than other defendants to be drug users; however, only the charges of robbery and burglary had substantial numbers of cases.

When alcohol use is considered, defendants charged with rape or robbery--a substantial number of persons in each site--were

Table 19. Substance Abuse in Phoenix and Milwaukee

Type of Substance Abuse	Phoenix		Milwaukee	
	Number	Percentage	Number	Percentage
Drugs				
Using drugs*	67	17%	100	27%
Not using drugs	183	48	141	37
Do not know about drug use	135	35	137	36
TOTAL	385	100%	378	100%
Alcohol				
Drinking**	148	38%	142	38%
Not drinking	139	36	130	34
Do not know about alcohol use	98	26	106	28
TOTAL	385	100%	378	100%

* Type of drug use in Phoenix was marijuana, 35 percent; heroin, 23 percent; hallucinogens, 10 percent; cocaine, 8 percent; and other, 24 percent; in Milwaukee, marijuana, 33 percent; cocaine, 20 percent; barbiturates, 14 percent; heroin, 10 percent; and other, 23 percent.

** In Phoenix, 35 percent were intoxicated, and 65 percent had been drinking but not to the point of intoxication; comparable percentages for Milwaukee were 39 percent and 61 percent, respectively.

Table 20. Substance Abuse by Charge in Phoenix and Milwaukee

Charge	Phoenix		Milwaukee		Phoenix		Milwaukee	
	Number	Percentage Using Drugs	Number	Percentage Using Drugs	Number	Percentage Using Alcohol	Number	Percentage Using Alcohol
Murder, manslaughter, arson or kidnapping	0	0%	2	50%	1	0%	1	100%
Rape	34	21	68	21	49	73	71	54
Robbery	150	22	117	47	172	56	141	56
Assault	4	0	0	0	6	17	0	0
Burglary	16	13	30	60	17	24	29	48
Drug possession or sale	17	82	3	100	14	7	6	0
Larceny	9	78	5	40	5	20	6	33
Fraud	7	43	7	14	7	0	8	13
Other	13	8	9	67	16	50	10	70
TOTAL	250	27%	241	42%	287	52%	272	52%

more likely than other defendants to have been using alcohol.[31] These findings suggest that the role of alcohol use in the commission of rape or robbery offenses may warrant further study.

Table 21 considers the release, pretrial rearrest and failure-to-appear outcomes for drug and alcohol users, as compared to non-users. As indicated, drug users--when compared to non-users--are less likely to be released and more likely to be rearrested before trial and to fail to appear for court; indeed, the failure-to-appear rates of drug users are approximately double those of non-users. Alcohol users are, like drug users, less likely to be released than non-users. However unlike drug users, they are less likely than non-users to be rearrested before trial and only slightly more likely than non-users to fail to appear for court.

Although the findings presented above are provocative ones, they should be used with caution--as guides to identifying topics deserving further study, rather than as the basis for drawing definitive conclusions. This is because: (1) the analyses cover only two sites; (2) even in those two sites, there was a considerable amount of missing information; and (3) there are relatively few cases for many of the analyses (e.g., charge by substance abused); hence, multivariate analyses could not be performed to determine whether the differences between substance abusers and non-abusers were indeed due to substance abuse, rather than other factors, such as age, charge, prior record, etc.

Nevertheless, the findings do suggest the following conclusions:

- Substance abuse, particularly drug abuse, should be given greater attention in the release decisionmaking process; this finding parallels that of many other studies that have found strong links between drug abuse and criminality.[32]

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[31] In Milwaukee defendants charged with the "most serious" and "other" charges were also likely to be alcohol users, but there were few cases with these charges.

[32] For a review of this literature, see Robert P. Gandossy, et al., Drugs and Crime: A Survey and Analysis of the Literature (Washington, D.C.: National Institute of Justice, U.S. Department of Justice, May 1980) and Eric D. Wish, et al., "The Impact of Substance Abuse upon Criminal Careers," monograph prepared for The National Research Council, Panel on Research on Criminal Careers, December 6, 1984.

Table 21. Release, Pretrial Rearrest and Failure-To-Appear by Substance Users Versus Non-Users in Phoenix and Milwaukee

Outcome	Phoenix		Milwaukee		Phoenix		Milwaukee	
	Drug Users	Not Users of Drugs	Drug Users	Not Users of Drugs	Alcohol Users	Not Users of Alcohol	Alcohol Users	Not Users of Alcohol
Release								
Number released	24	77	36	83	58	63	63	73
Percentage released	37%	42%	36%	60%	39%	45%	45%	57%
Pretrial Rearrest								
Number of defendants with pretrial rearrests	3	7	9	14	2	10	10	13
Percentage of released defendants with pretrial rearrests	12%	9%	24%	16%	3%	16%	16%	17%
Failure-To-Appear								
Number of defendants who failed to appear	8	11	11	14	10	8	13	15
Percentage of released defendants who failed to appear	33%	15%	33%	17%	17%	14%	22%	21%

- The relationship of alcohol abuse to certain types of crimes, especially rape and robbery, is deserving of greater study; public concern about abuse of such drugs as heroin and cocaine may, unfortunately, have diverted research attention from the analysis of the role of alcohol as a potentially criminogenic substance.

C. "Speedy Trial" As a Response to Crime-on-Bail

It has sometimes been suggested that an effective response to the problem of crime-on-bail would be to reduce the length of the pretrial period by bringing cases to trial more quickly. However, as Table 22 shows, speedier trials would only partially solve the crime-on-bail problem. Typically, "speedy trial" proposals specify a 90-day period, and in all sites at least half the pretrial rearrests occurred within 90 days of release.

Indeed, a substantial percentage of pretrial rearrests occurred even sooner than 90 days: the percentage of pretrial rearrests occurring within 60 days of release ranged from 36 percent to 56 percent in the four sites; and within 30 days, from 12 percent to 28 percent. Hence, while speedier trials would avoid some pretrial rearrests, the bulk of them would still occur under the operation of reasonable speedy trial laws, such as those providing for a 90-day limit--and many would still occur if the time limit allowed by law for going to trial were even shorter.

Table 22. Percentage of All Pretrial Rearrests Occurring Within Specified Time Periods After Release, by City

Item	Tucson	Phoenix	Milwaukee	Memphis
Percentage of Pretrial Rearrests Occurring Within:				
30 days of release	12%	28%	22%	20%
60 days of release	40	56	41	36
90 days of release	60	61	56	50
Number of Pretrial Rearrests	25	18	27	98

D. Conviction and Sentencing Outcomes

It is important to consider the conviction and sentencing outcomes of the cases studied, because those outcomes affect our judgments about the seriousness of the cases. As shown in Table 23, most of the defendants arrested for rape, robbery or felony crime-on-bail in the cities studied were convicted: often of the most serious charge against them and, if of a lesser charge, usually still a felony. Overall conviction rates ranged from 79 percent to 85 percent in the rape/robbery sample and from 66 percent to 96 percent in the felony crime-on-bail sample.

Once convicted, most of the offenders were incarcerated: from 69 percent to 95 percent in the rape/robbery sample and from 73 percent to 98 percent in the felony crime-on-bail sample. Median sentence lengths for the most serious type of sentence imposed ranged from 36 to 60 months in the rape/robbery sample and from 24 to 36 months in the felony crime-on-bail sample.

Another finding from the analyses of conviction and sentencing outcomes is the importance of considering all cases in which a defendant is involved, rather than only one. This is illustrated by the defendant who was detained until trial on a $50,000 bond for a pretrial rearrest for robbery that was subsequently dismissed. From this information alone, it would seem that the defendant was treated unfairly, because he was detained on a charge that was later dismissed. However, the pretrial rearrest was apparently dismissed as part of a plea bargain in which the defendant pled guilty to the study case (also robbery) in exchange for dismissal of the pretrial rearrest case (and another robbery case as well). The defendant was sentenced to 20 years in prison for the study case.

E. Failure-To-Appear for Court

Although the primary focus of this study was on defendants' pretrial dangerousness and ways to reduce it, pretrial release practices are also designed to assure the defendants' appearance in court. For this reason, failure-to-appear rates are considered here.

As shown in Table 24, failure-to-appear rates in the four sites ranged from 13 percent to 32 percent for the rape/robbery releasees and from 18 percent to 32 percent for the felony crime-on-bail releasees. Additionally, some defendants failed to appear on more than one occasion: from 14 percent to 19 percent of the defendants who failed to appear missed more than one court appearance.

Table 23. Conviction and Sentencing Outcomes by Sample Type and City

Outcome	Rape or Robbery Charges				Felony Crime-On-Bail Charges			
	Tucson	Phoenix	Mil-waukee	Mem-Phis	Tucson	Phoenix	Mil-waukee	Mem-phis
Convictions								
Number convicted	105	249	236	241	127	72	79	246
Total percentage convicted	81%	85%	79%	85%	81%	66%	74%	96%
Percentage of all defendants convicted of:								
Most serious charge	44%	52%	56%	41%	55%	48%	65%	45%
Less serious felony charge	35%	30%	15%	40%	19%	13%	2%	46%
Sentences								
Number incarcerated	72	202	180	230	96	59	58	240
Percentage of convicted defendants who were incarcerated	69%	81%	76%	95%	76%	82%	73%	98%
Median sentence length in months for most serious type of sentence	48	60	36	60	36	36	31	24

Table 24. Failure-To-Appear by Sample Type and City

Sample Type and Failure-To-Appear Information	Tucson	Phoenix	Milwaukee	Memphis
Rape or Robbery Charges				
No. of failures to appear	9	18	23	45
Failure-to-appear rate	13%	15%	16%	32%
Fugitive rate*	3%	3%	4%	1%
Felony Crime-on-Bail Charges				
No. of failures to appear	18	11	14	45
Failure-to-appear rate	18%	26%	29%	32%
Fugitive rate*	5%	2%	8%	1%
Combined Samples				
No. of failures to appear**	27	29	36	85
Percentage of defendants who failed to appear who had more than one failure-to-appear	15%	17%	14%	19%

* Calculated as the number of defendants who never returned to court divided by the number of released defendants.

** A failure-to-appear for a defendant in both the rape/robbery and felony crime-on-bail samples is counted only once.

Most of the defendants who failed to appear did, however, subsequently return to court; fugitive rates ranged from 1 percent to 4 percent for the rape/robbery sample and from 1 percent to 8 percent for the felony crime-on-bail sample. Interestingly, Memphis--which had the highest failure-to-appear rates and, one will recall from the last chapter, the highest rates of pretrial rearrest as well--had the lowest fugitive rates (1 percent) for each sample.

This chapter has discussed several special issues regarding pretrial release that were not critical to the study of pretrial dangerousness per se but that nevertheless merit consideration by criminal justice policymakers and practitioners. The analyses of these special issues--as well as the analyses of pretrial release practices and crime-on-bail that were presented in preceding chapters--suggest a number of important conclusions and recommendations. These are discussed in the following chapter.

V. CONCLUSIONS AND RECOMMENDATIONS

This monograph has presented the findings from analyses of crime-on-bail and pretrial release practices in four cities--Tucson, Phoenix, Milwaukee and Memphis. In each city two samples of defendants were selected for study: those charged with rape or robbery and those charged with felony crime-on-bail. This chapter discusses the major conclusions and recommendations stemming from those analyses.

A. Release and Detention Practices

Approximately one-half of the defendants included in this study were detained until trial--the vast majority of them because of inability to post money bond. Only 10 percent of the defendants detained on rape or robbery charges and 15 percent of those detained on felony crime-on-bail charges were detained outright, with no possibility of release (on bail or otherwise).

Defendants facing higher bonds were less likely to secure pretrial release than persons with lower bonds. Nevertheless, some defendants posted even the highest bond amounts. Hence, setting high bond did not assure the detention of a defendant in the cities studied.

Money bond was not only the most common mechanism for detention, but it was also the most frequent means of release for the defendants studied. Only in Phoenix was another mode of release (release on recognizance, or ROR) used more often. Little use was made of conditional release as a way to protect community safety by constraining defendants' pretrial activities. Of the cities studied, Tucson made the greatest use of supervised pretrial release and third party custody, but even there these conditions were applied to less than half the released defendants; a higher percentage obtained release on secured money bond.

Although the four cities made extensive use of money bail, this is of questionable efficacy as a way to protect community safety. Because money bail has traditionally been viewed as a means of assuring court appearance, the financial incentives for the person posting the bail--usually a bondsman--are oriented around court appearance. Bail may be ordered forfeited if the defendant fails to appear for court but not for other aspects of the defendant's pretrial behavior, such as the commission of crimes while awaiting trial.[33]

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[33]Nothing would preclude a bondsman from developing and running a conditional release program, designed to reduce defendants' pretrial dangerousness; however, that is not the way the money bail system is currently designed to operate.

Recommendation: The overwhelming reliance on money bail as the mechanism for determining the release or detention of a potentially dangerous defendant should be reconsidered. Setting a high bail amount will not assure detention for those defendants where it is warranted, nor will the possibility of financial loss necessarily be an adequate condition to protect community safety from harm by defendants released on bail. In addition to allowing for continued use of money bail, most state danger laws provide a variety of other conditions (including outright preventive detention in some instances as well as a number of possible restrictions on pretrial behavior) that can be imposed to reduce release risks; greater experimentation in the use of such nonfinancial mechanisms to protect community safety would seem highly desirable.

B. Crime-on-Bail

Pretrial rearrest rates in the four cities studied were somewhat higher for released defendants charged with felony crime-on-bail than for those charged with rape or robbery. However, the felony crime-on-bail releasees were substantially less likely to be rearrested for violent offenses (defined here as charges of murder, manslaughter, arson, kidnapping, robbery, rape or assault). Only 15 percent of the pretrial rearrests of the felony crime-on-bail releasees were for violent offenses, as compared with 37 percent of the pretrial rearrests for the rape/robbery releasees.[34]

Recommendation: Drafters of a state danger law should give careful consideration to the types of pretrial rearrests they are trying to prevent. Although the findings from the four cities studied here are limited in scope and must be viewed as such, they suggest that focusing on defendants already charged with crime-on-bail may reduce overall rates of subsequent crime-on-bail but that focusing on defendants charged with more serious offenses may be more effective in reducing pretrial rearrests for violent offenses.

No relationship was found between pretrial rearrest rates and release rates in the four cities studied. Although one might expect low release rates to be correlated with low pretrial rearrest rates, because--presumably--only the best risks would

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[34]This occurred in part because the felony crime-on-bail releasees included many persons charged repeatedly with such non-violent offenses as larceny or inhaling toxic vapors (e.g., sniffing paint or glue).

be released when release rates were low, this did not occur. Indeed, for the rape/robbery sample, the lowest pretrial rearrest rate was found in the city (Tucson) with the highest pretrial release rate.

Overall pretrial rearrest rates for three cities--Tucson, Phoenix, and Milwaukee--ranged from 9 percent to 14 percent for rape/robbery releasees and from 12 percent to 21 percent for felony crime-on-bail releasees. Pretrial rearrest rates for Memphis were sharply higher: 35 percent for rape/robbery releasees and 41 percent for felony crime-on-bail releasees. However, this disparity between Memphis and the other cities is reduced when pretrial rearrests only for more serious charges are considered. For example, for rape/robbery releasees, pretrial rearrest rates for violent offenses ranged from 4 percent to 6 percent in Tucson, Phoenix and Milwaukee, while the comparable rate for Memphis was 10 percent. For felony crime-on-bail releasees, pretrial rearrest rates for violent offenses ranged from 2 percent to 5 percent in Tucson, Phoenix and Milwaukee; the comparable rate for Memphis was 5 percent--within the range found for the other three cities.

There are a variety of possible explanations for the relatively high overall rates of pretrial rearrest in Memphis. These include:

- slow case processing (less than half the cases studied in Memphis reached disposition within 240 days);
- the apparent unavailability on a routine basis at the bail-setting hearing of such key information as whether defendants were on probation or parole when arrested or whether they were using drugs or alcohol;
- the fact that the pretrial release program in Memphis does not routinely interview defendants charged with serious felonies, so no local agency systematically collects information that judges could use when making pretrial release decisions for such defendants;
- the great extent of overcrowding in Tennessee's prisons, which may result in returning crime-prone individuals to the community more quickly than in the other cities studied;
- the heavy reliance on money bail--which has traditionally been viewed as a means of assuring court appearance, not of protecting community safety--as virtually the only pretrial release mechanism for the defendants studied in Memphis, rather than making greater use of third party custody, supervised pretrial release or other forms of court-ordered conditional release that would restrict defendants' pretrial activities; and

- the fact that Tennessee alone of the three states studied had not had a major public debate--leading to major legislative changes--over the issue of pretrial dangerousness and, hence, criminal justice decision-makers there may be less sensitized to or concerned about public opinion on this issue than in the other two states.

Whether these or other factors explain the higher pretrial rearrest rates in Memphis seems deserving of further study. Of particular interest to officials and citizens of Memphis would be analyses designed to identify the characteristics associated with a high likelihood of pretrial rearrest and consideration of ways that data on those characteristics could be systematically included in pretrial release decision-making.

The widespread interest around the country in pretrial dangerousness suggests that at some point Tennessee is likely to consider revising its danger law. When that occurs, having a more complete explanation of the real reasons underlying our findings about pretrial rearrest rates in Memphis would seem enormously helpful in shaping an appropriate legislative response to the problem of pretrial dangerousness. Such analysis could also be useful to other jurisdictions that are trying to reduce pretrial dangerousness--both by providing a detailed example of the ways in which the nature of the problem can be systematically assessed and by developing a range of possible responses to it.

> Recommendation: Further study should be undertaken to assess the reasons for the relatively high rates of pretrial rearrests in Memphis and to suggest appropriate ways that those rates responsibly could be reduced.

Another aspect of the crime-on-bail problem is the extent to which multiple pretrial rearrests occur. This was clearly a problem in the cities studied, as shown by the fact that approximately one-fourth of the defendants who were rearrested at all before trial were rearrested more than once.

Many pretrial rearrests occurred soon after release, and more than half of them occurred within 90 days of release. Hence, efforts to have trials take place within 90 days (i.e., "speedy trials")--which have sometimes been proposed as the best solution to the crime-on-bail problem--would have no effect on much of the crime-on-bail that now occurs.

When rearrested before trial, a defendant was highly likely to be convicted and highly likely to be incarcerated as a consequence. More than three-fourths of the pretrial rearrests (77 percent in the rape/robbery sample and 80 percent in the felony crime-on-bail sample) resulted in convictions. More than 80

percent of those convicted (83 percent in the rape/robbery sample and 88 percent in the felony crime-on-bail sample) received sentences of incarceration.

Sentences ultimately handed down for pretrial rearrests that resulted in convictions were usually imposed concurrently with any sentences levied for the original arrests. This could result in a tendency among defendants to think they can commit "two crimes for the price of one"--although the high extent of incarceration imposed for instances of crime-on-bail may offset any such tendency.

> Recommendation: Further analysis is needed of the effect on offenders of concurrent versus consecutive sentences. Do concurrent sentences reduce the incentive to abstain from pretrial crime; or, alternatively, are overall sentences viewed as taking pretrial crime into account?

The extent of pretrial rearrest found in the four cities studied suggests that crime-on-bail remains an important problem. Moreover, the pretrial rearrest rates must be viewed within the context that only about one-half the defendants studied--presumably the half who posed the lowest release risks--were released before trial.

> Recommendation: Efforts should continue to develop ways to reduce crime-on-bail. These efforts should include devising improved methods of risk assessment, so that more restrictive release conditions--and, for those instances where no condition or combination of conditions can adequately protect community safety, pretrial detention--can be imposed on higher risk defendants, as well as developing and using new types of conditional release designed to protect community safety.

C. Nature of Victimization in Cases Studied

The cases studied reflect a considerable degree of victimization. The overwhelming majority of the cases had victims--from 71 percent to 98 percent of the felony crime-on-bail cases, depending on the city, and all the rape/robbery cases. Victims were most likely to be strangers or commercial establishments (e.g., convenience stores, liquor stores, etc.), although there were many cases in which the victims were relatives or prior acquaintances of the defendants.

For the rape/robbery sample, physical injury of the victim occurred in one-fourth to one-half of the cases studied in each city. Although victim injury was not so common in the felony crime-on-bail sample, it still occurred in a significant minority of the cases (ranging from 8 percent to 18 percent across the cities studied).

The simple fact that a victim was involved in the offense apparently had little effect on pretrial release decisions--perhaps because the presence of a victim in the cases studied was so common. Although release before trial was somewhat less likely when there was a victim than otherwise, the comparative differences in release rates were not large. Additionally, outright pretrial detention was no more likely for cases with victims than for other cases; instead, inability to post bail accounted for the detention. If released, the defendants in cases involving victims posed no greater risk to community safety than other defendants: pretrial rearrest rates were virtually identical for defendants whose cases had victims and for other defendants.

The use of weapons--usually guns--was a common occurrence in the rape/robbery cases but much less likely in the felony crime-on-bail cases: weapons were used in 55 percent to 68 percent of the rape/robbery cases and in 16 percent to 26 percent of the felony crime-on-bail cases, depending on the city. Where a weapon was used, it was a gun in 50 percent to 70 percent of the rape/robbery cases and in 56 percent to 69 percent of the felony crime-on-bail cases, again depending on the city.

Rates of pretrial release were usually much lower (typically, more than one-third lower) for cases involving a gun than for other cases; this difference was particularly evident for the felony crime-on-bail sample. Hence, while the presence of a victim per se had little effect on release outcomes, the presence of a gun--with its potential for increasing the harm done to, and the fear felt by, the victim--did apparently result in a notable decrease in the likelihood of release.

It is an open question as to whether greater attention should be given--as some have proposed--to victims' interests when pretrial release or detention decisions are made. Unless and until the defendant has been tried and found guilty, one cannot assume that the defendant indeed committed the victimization; hence, taking it into account at the pretrial release hearing may be unfair and inappropriate. On the other hand, because the defendant could not be prosecuted without probable cause to believe that he or she had in fact committed the offense charged, it may be reasonable for the nature of the victimization to affect the release decision--at least to the extent of trying to set release conditions that would reduce the likelihood of any subsequent victimization. At a minimum, the topic would seem deserving of further study, including consideration of whether innovative new approaches to restrictive pretrial release

conditions might be developed that would better protect the rights of both victims and defendants.[35]

> Recommendation: Additional analyses should be undertaken of the extent to which the nature of any victimization affects pretrial release or detention decisions and of ways in which victims' interests might appropriately be accommodated when those decisions are made.

D. Drug and Alcohol Use

Although we wanted to analyze the relationship of drug and alcohol use to pretrial rearrest, only two of the cities studied--Phoenix and Milwaukee--gathered or recorded such information on file for a substantial number of cases; and even in those cities information on drug use was missing in approximately one-third of the cases and on alcohol use, in approximately one-fourth of the cases. Hence, only a very preliminary analysis could be undertaken--one designed to identify topics deserving further study, rather than one able to offer definitive conclusions. Despite the limitations of the analysis, the findings are nevertheless intriguing and provocative ones.

In Milwaukee 27 percent of the defendants studied used drugs at the time of their arrest, as compared with 17 percent in Phoenix. Rates of alcohol use at time of arrest were the same for both cities--38 percent--and were considerably higher than the rates of drug use.

Defendants charged with "economic" crimes, such as burglary, robbery and larceny, were more likely than other defendants to be active drug users. When alcohol use is considered, defendants charged with rape or robbery--a substantial number of persons in each site--were more likely than other defendants to have been using alcohol when arrested. This finding suggests that the role of alcohol use in the commission of certain crimes maybe underrated.

> Recommendation: The relationship of alcohol use to the commission of such crimes as rape and robbery should be given further study. Although the public is understandably concerned about such "hard drugs" as heroin, cocaine and phencyclidine (PCP), the possible role of alcohol use in serious criminality should not be overlooked.

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[35]On this point, see the discussion in James C. Weissman, "Accommodating Victim Interests in the Pretrial Release Process: Alternative Strategies," one of the issues papers prepared as part of the study on Public Danger as a Factor in Pretrial Release.

When compared to non-users of drugs, drug users were less likely to be released before trial and more likely, if released, to be rearrested before trial and to fail to appear for court. Pretrial rearrest rates in Milwaukee were 24 percent for drug users and 16 percent for non-users; in Phoenix, these rates were 12 percent and 9 percent, respectively. Alcohol users were, like drug users, less likely to be released than non-users; however, unlike drug users, they were less likely to be rearrested before trial and only slightly more likely to fail to appear for court. Pretrial rearrest rates in Milwaukee were 16 percent for alcohol users and 17 percent for non-users; in Phoenix, these rates were 3 percent and 16 percent, respectively.

> Recommendation: Active drug use by defendants should receive greater consideration in the pretrial release decision-making process. This study--and many others[36]--have documented that active drug users are much more likely than non-users to be rearrested before trial and to fail to appear for court. Nevertheless, many jurisdictions--including two of the four that participated in this study--do not have any information on past or current drug use routinely available when pretrial release decisions are made.

E. Effects of Local Legal Culture

The findings of this study illustrate the importance of local legal culture--that is, local criminal justice values, traditions and beliefs as well as established procedures and customs--in determining pretrial release practices. This is shown most dramatically in the study's findings for Tucson and Phoenix--two cities that share the same state danger law but have responded to the problem of pretrial dangerousness quite differently.

For the cities and defendants studied, Tucson had the highest rate of release before trial and also made the greatest use of supervised pretrial release and release to third party custody. Phoenix, on the other hand, had the lowest overall rate of release but the highest rate of release on recognizance. Hence, in Phoenix, release was relatively hard to secure but, once granted, was often granted unconditionally. In contrast, in Tucson, release was obtained more easily but was often conditioned on supervisory or custodial requirements. Additionally, Phoenix made substantially greater use of outright pretrial detention, without possibility of bail, than did Tucson--although detention in both cities was most likely to be due to inability to post money bail. These two approaches to pretrial release achieved

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[36] See footnote 32, supra.

mixed results when the two cities' pretrial rearrest rates were compared: Tucson had lower pretrial rearrest rates for the rape/robbery sample, and Phoenix had lower pretrial rearrest rates for the felony crime-on-bail sample.

These vastly different outcomes in two cities that share the same state law show that enacting a law will not, by itself, determine the acceptance or frequency of use of the law. Instead, the manner of its implementation--as affected by local legal culture--will play an important and perhaps predominant role in its impact on the problem.

Phoenix also had the shortest case processing time of any city studied--for released defendants, 58 percent of the cases reached disposition within 90 days in Phoenix, as compared to 17 percent for Tucson, 27 percent for Milwaukee and 4 percent for Memphis. It would be interesting to explore the reasons why Phoenix is able to dispose of cases so much more quickly than the other cities studied. Presumably, much of the answer lies in an analysis of its local legal culture.

Similarly, it would be interesting, as discussed previously, to study the reasons for the relatively lengthy case processing and relatively high pretrial rearrest rates in Memphis. Although various explanations have been suggested, again much of the answer is likely to lie in the nature of the local legal culture and the ways it affects pretrial decision-making.

Local legal culture may also lead to a variety of indirect effects from enactment of a danger law. For example, in one of the cities studied, we were told that the passage of the state's danger law had had much greater impact than would be evident from analysis of the extent of use of its provisions alone. This was so, reportedly, because the prosecutor was now able to get high money bail set more easily--and to discourage defense attorneys from filing motions for bail reduction--by indicating that a detention hearing would be requested if high bail were not set. Defense attorneys did not want to risk having their clients precluded from any possibility of pretrial release. They reportedly did not object as much as one might expect to the general practice of setting high money bail--ostensibly to protect against flight but in fact to protect against danger--because of their even greater opposition to the practice of pretrial detention. Whether this is true is less important than the fact that it may be true--and that a variety of other factors, not easily observed in analyses of quantitative data alone, may affect the nature of the real impact from enactment of a danger law.

Recommendation: Further analyses should be undertaken of the effects of local legal culture--that is, local criminal justice values, traditions, beliefs, procedures and customs--on

pretrial release practices. Such analyses could provide greater insight about the determinants of pretrial release decisions as well as suggest ways in which those decisions might appropriately be influenced and improved. Such analyses should include on-site observation of pretrial release decision-making and extensive interviewing of key criminal justice actors, as well as quantitative data analysis.

F. Use of Danger Laws

Despite the enactment of laws designed to reduce crime-on-bail by taking dangerousness into account when making pretrial release decisions, pretrial crime remains a serious problem in the four cities studied. This is shown by the fact that pretrial rearrest rates for defendants charged with rape, robbery or felony crime-on-bail ranged from 9 percent to 41 percent in those cities. The continuation of this problem may stem in part from lack of use of the new state laws designed to address it; in all cities, the most common action at a release hearing was to set money bail, rather than to use the danger laws' provisions for imposing restrictive release conditions or ordering outright pretrial detention. The most important task facing policymakers who are concerned about reducing crime-on-bail may be to develop incentives to encourage the use of the options already specified in many of the extant laws on pretrial dangerousness.

Although the state danger laws have not been widely used, they have been used to some extent in some jurisdictions. For example, in Phoenix, 32 percent of the felony crime-on-bail cases studied resulted in the defendants' outright detention until trial, without possibility of bail. Additionally, some outright pretrial detention occurred in the other three cities studied. This shows that state danger laws can be used. The requirement of most laws that a hearing be held, on the record, to consider the merits of detention is not per se--as some have suggested--so burdensome as to preclude all use of the laws.

Recommendation: Jurisdictions should experiment with greater use of the various provisions of their state danger laws. Limited experience with use of these laws in some cities suggests that additional use of them could be made, without necessarily creating undue court delay or case backlog. Additionally, open use of the danger laws' provisions for outright (or "preventive") detention, after a hearing on the merits of this alternative, would seem both fairer to defendants and more likely to protect community safety than the current, apparently widespread, practice of setting high money bail in the hope that the defendant ultimately will be detained because of inability to post it.

A related point in this regard concerns the experience with the Federal Bail Reform Act of 1984, which became effective

on October 12, 1984. This law provides--for the first time in the nation's history--for the open consideration of defendants' pretrial dangerousness when release or detention decisions are made in federal courts. Imposition of a variety of restrictive release conditions for "dangerous" defendants as well as outright pretrial detention are specified in the law for certain defendants under certain circumstances, once a due process hearing has found the defendant to be dangerous within the meaning of the statute.

Unlike the situation with many state danger laws, which have for the most part been used only rarely, the federal danger law has been widely invoked--starting immediately after its enactment and continuing to the present day. Although no statistics have been compiled on the extent to which restrictive release conditions have been imposed to try to reduce pretrial dangerousness, the Criminal Division of the U.S. Department of Justice does collect data on the use of the detention provisions of the statute. During the first 12 months after passage of the law, almost 1500 detention hearings had been held, and detention had been granted in 82 percent of those hearings.[37] Moreover, these data are widely considered to underestimate--perhaps by as much as 50 percent--the true extent of use of the law, due to problems with the reporting mechanism used. Nevertheless, the numbers are impressive and demonstrate extensive use of the federal danger law in its first year.

What factors led to the widespread use of the federal law, and what impact has resulted from it? These questions cannot be answered at the present time, although they are important ones to address in the future--and could provide great insight about actions states could take to increase the use of their danger laws and about the likely impact from such increases in use.

> Recommendation: A study should be undertaken to analyze both the reasons for the widespread use of the provisions of the Federal Bail Reform Act of 1984 and the resulting impact from the use of those provisions. Such analyses would not only shed light on the federal system but would also be of great utility at the state level in assessing the viability of reducing pretrial crime through greater use of the state danger laws.

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[37] James I. K. Knapp, "The Bail Reform Act of 1984: Our First Year," speech made to the National Conference of the National Association of Pretrial Services Agencies, Lexington, Kentucky, October 7, 1985.

G. Concluding Remarks

In considering pretrial dangerousness and how best to respond to it--as with many other criminal justice issues--a careful balancing of alternative concerns is required. These include the protection of community safety, which is essential to the social fabric of the nation, from unnecessary harm by defendants awaiting trial; the preservation of those defendants' civil liberties and due process rights, which are at the core of American Constitutional law; and assurance to victims that their concerns, such as protection from intimidation and the desire to be informed about the progress of the case, will be appropriately addressed by the criminal justice system.

This monograph has documented the ways in which issues relating to pretrial dangerousness have been addressed in four cities. The challenge for the future--for those cities and for other jurisdictions as well--is to improve their responses to the concerns raised by pretrial dangerousness and, in the process, to improve the search for justice itself--which, in the words of Judge Learned Hand consists of "the tolerable accommodation of the conflicting interests of society." It is hoped that the findings, conclusions and recommendations presented in this monograph will facilitate that end by promoting thoughtful reflection on the issues posed by pretrial dangerousness in contemporary American law and criminal justice practice.

APPENDIX

SUPPLEMENTARY TABLES

LIST OF TABLES

Table A-1. Characteristics of Defendants in the Rape/Robbery Sample, by City

Characteristic	Tucson		Phoenix		Milwaukee		Memphis	
	No.	Percent	No.	Percent	No.	Percent	No.	Percent
Age								
21 or younger	39	31%	112	38%	103	35%	109	39%
22 - 25	35	28	61	21	72	24	70	25
26 - 30	24	19	58	20	62	21	60	21
31 - 40	19	15	48	16	47	16	37	13
41 or older	10	8	15	5	13	4	9	3
TOTAL	127	100%	294	100%	297	100%	285	100%
Median age	23		24		24		23	
Ethnicity								
White	63	49%	112	39%	67	23%	48	17%
Black	24	19	89	31	202	70	237	83
Hispanic	36	28	79	27	17	6	0	0
Other	5	4	9	3	3	1	0	0
TOTAL	128	100%	289	100%	289	100%	285	100%
Gender								
Male	123	95%	277	94%	275	93%	272	95%
Female	7	5	17	6	22	7	13	5
TOTAL	130	100%	294	100%	297	100%	285	100%
Employment Status								
Full-time employment	37	30%	73	25%	32	14%	**	**
Other employment*	24	20	39	14	31	14	**	**
Unemployed	61	50	177	61	165	72	**	**
TOTAL	122	100%	289	100%	228	100%	**	**
Probation Status When Arrested								
On probation	12	10%	44	15%	56	19%	**	**
Not on probation	110	90	241	85	235	81	**	**
TOTAL	122	100%	285	100%	291	100%	**	**

Continued

Table A-1. Characteristics of Defendants in the Rape/Robbery Sample, by City

-Continued-

Characteristic	Tucson		Phoenix		Milwaukee		Memphis	
	No.	Percent	No.	Percent	No.	Percent	No.	Percent
Parole Status When Arrested								
On parole	7	6%	28	10%	21	7%	**	**
Not on parole	114	94%	257	90%	270	93%	**	**
TOTAL	121	100%	294	100%	291	100%	**	**
Number of Prior Arrests								
None	38	38%	67	25%	96	33%	94	33%
One	15	15	39	14	58	20	78	28
Two to five	27	27	85	31	96	33	95	34
Six to 10	10	10	41	15	31	11	10	4
11 or more	10	10	40	15	10	3	6	2
TOTAL	100	100%	272	100%	291	100%	283	100%
Mean	3.4		4.8		2.4		2.3	
Number of Prior Arrests for Violent Felonies***								
None	63	64%	174	64%	213	73%	215	76%
One	14	14	41	15	51	18	55	19
Two to five	20	20	52	19	25	9	12	4
Six or more	2	2	4	2	1	0	1	0
TOTAL	99	100%	271	100%	290	100%	283	100%
Mean	0.9		0.8		0.4		0.3	
Number of Prior Convictions								
None	49	53%	90	33%	135	46%	121	43%
one	15	16	54	20	62	21	82	29
Two to five	23	25	90	33	78	27	69	24
Six or more	5	5	37	13	16	6	11	4
TOTAL	92	100%	271	100%	291	100%	283	100%
Mean	1.3		2.6		1.4		1.6	

Continued

Table A-1. Characteristics of Defendants in the Rape/Robbery Sample, by City

-Continued-

Characteristic	Tucson		Phoenix		Milwaukee		Memphis	
	No.	Percent	No.	Percent	No.	Percent	No.	Percent
Number of Prior Convictions for Violent Felonies***								
None	76	82%	218	79%	239	82%	244	86%
One	10	11	34	12	39	13	34	12
Two or more	7	8	23	8	12	5	5	2
TOTAL	93	100%	275	100%	290	100%	283	100%
Mean	0.3		0.3		0.3		0.2	
Number of Pending Cases When Arrested								
None	111	85%	268	92%	249	84%	234	82%
One	14	11	20	7	33	11	44	15
Two or more	5	4	5	1	14	4	7	3
TOTAL	130	100%	293	100%	296	100%	285	100%

* Includes homemaker, student, etc., as well as part-time employment.

** This information was not available for Memphis.

*** As used here, violent felonies are murder, manslaughter, arson, kidnapping, robbery, rape and assault.

Note: Percentages may not add to 100% percent, because of rounding.

Table A-2. Characteristics of Defendants in the Felony Crime-on-Bail Sample, by City

Characteristic	Tucson		Phoenix		Milwaukee		Memphis	
	No.	Percent	No.	Percent	No.	Percent	No.	Percent
Age								
21 or younger	63	41%	43	40%	46	43%	100	39%
22 - 25	36	23	28	26	26	24	71	28
26 - 30	26	17	17	16	21	20	49	19
31 - 40	21	14	18	17	9	8	30	12
41 or older	10	6	2	2	5	5	6	2
TOTAL	156	100%	108	100%	107	100%	256	100%
Median age	23		23		23		23	
Ethnicity								
White	68	44%	52	48%	24	23%	34	13%
Black	37	24	26	24	71	67	222	87
Hispanic	50	32	30	28	10	9	0	0
Other	0	0	0	0	1	1	0	0
TOTAL	155	100%	108	100%	106	100%	256	100%
Gender								
Male	143	92%	102	94%	98	92%	227	89%
Female	13	8	7	6	9	8	29	11
TOTAL	156	100%	109	100%	107	100%	256	100%
Employment Status								
Full-time employment	32	22%	27	25%	9	9%	**	**
Other employment*	31	21	17	16	20	20	**	**
Unemployed	85	57	65	60	70	71	**	**
TOTAL	148	100%	109	100%	99	100%	**	**
Probation Status When Arrested								
On probation	20	14%	11	10%	18	17%	**	**
Not on probation	123	86	96	90	88	83	**	**
TOTAL	143	100%	107	100%	106	100%	**	**

Continued

Table A-2. Characteristics of Defendants in the Felony Crime-on-Bail Sample, by City

-Continued-

Characteristic	Tucson		Phoenix		Milwaukee		Memphis	
	No.	Percent	No.	Percent	No.	Percent	No.	Percent
Parole Status When Arrested								
On parole	5	3%	4	4%	4	4%	**	**
Not on parole	141	97	103	96	102	96	**	**
TOTAL	146	100%	107	100%	106	100%	**	**
Number of Prior Arrests								
One	30	23	15	14	22	21	79	31
Two to five	56	43	39	37	56	52	141	55
Six to 10	29	22	20	19	21	20	27	11
11 or more	15	12	32	30	8	8	9	4
TOTAL	130	100%	106	100%	107	100%	256	100%
Mean	5.0		8.1		4.3		3.7	
Number of Prior Arrests for Violent Felonies***								
None	85	65%	55	52%	73	69%	186	73%
One	24	19	24	23	23	22	57	22
Two to five	18	14	24	23	10	9	12	5
Six or more	3	2	3	3	0	0	1	0
TOTAL	130	100%	106	100%	106	100%	256	100%
Mean	0.7		1.1		0.5		0.4	
Number of Prior Convictions								
None	60	52%	27	26%	39	36%	7	3%
One	15	13	15	14	21	20	106	41
Two to five	30	26	38	36	38	36	124	48
Six or more	10	9	25	24	9	8	19	8
TOTAL	115	100%	105	100%	107	100%	256	100%
Mean	1.7		3.9		2.1		2.7	

Continued

Table A-2. Characteristics of Defendants in the Felony Crime-on-Bail Sample by City

-Continued-

Characteristic	Tucson		Phoenix		Milwaukee		Memphis	
	No.	Percent	No.	Percent	No.	Percent	No.	Percent
Number of Prior Convictions for Violent Felonies***								
None	109	90%	86	82%	97	92%	205	80%
One	9	7	13	12	6	6	45	18
Two or more	3	3	6	6	3	3	6	2
TOTAL	121	100%	105	100%	106	100%	256	100%
Mean	0.2		0.3		0.1		0.3	
Number of Pending Cases When Arrested								
One	127	81%	92	84%	76	72%	204	80%
Two or more	29	19	17	16	30	28	52	20
TOTAL	156	100%	109	100%	106	100%	256	100%

* Includes homemaker, student, etc., as well as part-time employment.

** This information was not available for Memphis.

*** As used here, violent felonies are murder, manslaughter, arson, kidnapping, robbery, rape and assault.

Note: Percentages may not add to 100 percent, because of rounding.

Table A-3. Arrest Charges in the Pending Case, Felony Crime-on-Bail Sample Only by City

Charges	Tucson	Phoenix	Milwaukee	Memphis
Murder, manslaughter, arson or kidnapping	4%	1%	0%	1%
Rape or robbery	9	15	11	9
Burglary	33	21	47	31
Assault	5	9	0	5
Drug possession or sale	11	23	8	4
Larceny	24	14	12	40
Fraud	6	2	8	10
Other	9	16	14	1
TOTAL	100%	100%	100%	100%
No. of cases	156	109	107	256

Note: Percentages may not add to 100 percent, because of rounding.

Table A-4. Detention Rates by Bond Amount, Rape/Robbery Sample, by City*

Bond Amount	Tucson		Phoenix		Milwaukee		Memphis	
	No.	Percent	No.	Percent	No.	Percent	No.	Percent
$1,000 or less	1	0%	13	46%	66	15%	19	0%
$1,001 - $5,000	27	41	81	79	83	72	86	21
$5,001 - $10,000	26	69	48	73	29	86	76	59
$10,001 - $20,000	13	69	30	80	20	80	29	72
$20,001 or more	16	94	35	94	17	100	50	86
TOTAL (for all bond amounts)	83	64%	207	78%	215	60%	260	49%

* Percentages show the detention rates for those defendants for whom bonds were set in the amounts indicated.

Table A-5. Detention Rates by Bond Amount, Felony Crime-on-Bail Sample, by City*

Bond Amount	Tucson		Phoenix		Milwaukee		Memphis	
	No.	Percent	No.	Percent	No.	Percent	No.	Percent
$1,000 or less	6	33%	4	25%	26	35%	24	29%
$1,001 - $5,000	51	31	27	67	31	84	151	38
$5,001 - $10,000	24	63	10	90	5	80	42	62
$10,001 - $20,000	4	75	7	86	4	75	10	60
$20,001 or more	15	93	10	80	5	100	16	88
TOTAL (for all bond amounts)	100	50%	58	72%	71	66%	243	46%

* Percentages show the detention rates for those defendants for whom bonds were set in the amounts indicated.

Table A-6. Case Processing Time, Rape/Robbery Sample, by City

Item	Tucson	Phoenix	Milwaukee	Memphis
Time from Arrest to Disposition				
Mean number of days	177	95	147	294
Median number of days	153	72	111	253
Number of cases	129	289	291	281
Time from Arrest to Release				
Mean number of days	18	12	22	22
Median number of days	7	2	9	5
Number of cases	69	122	143	137
Time from Release to Disposition				
Mean number of days	165	105	152	323
Median number of days	128	76	122	281
Number of cases	68	120	137	135

Table A-7. Case Processing Time, Felony Crime-on-Bail Sample, by City

Item	Tucson	Phoenix	Milwaukee	Memphis
Time from Arrest to Disposition				
Mean number of days	170	70	137	213
Median number of days	125	53	109	171
Number of cases	151	108	104	256
Time from Arrest to Release				
Mean number of days	17	11	14	12
Median number of days	6	8	5	3
Number of cases	96	42	48	136
Time from Release to Disposition				
Mean number of days	155	86	169	224
Median number of days	121	43	142	187
Number of cases	92	41	45	136

Table A-8. Case Dispositions, Rape/Robbery Sample, by City

Disposition	Tucson		Phoenix		Milwaukee		Memphis	
	No.	Percent	No.	Percent	No.	Percent	No.	Percent
Convicted of most serious charge	57	44%	153	52%	167	56%	116	41%
Convicted of less serious felony charge	46	35	89	30	44	15	115	40
Convicted of misdemeanor charge	2	2	7	3	25	8	10	4
Found not guilty	5	4	17	6	5	2	19	7
Dismissed	19	15	25	9	49	17	22	8
Case open	1	1	3	1	6	2	2	1
TOTAL	130	100%	294	100%	296	100%	284	100%

Note: Percentages may not add to 100 percent, because of rounding.

Table A-9. Case Dispositions, Felony Crime-on-Bail Sample, by City

Disposition	Tucson		Phoenix		Milwaukee		Memphis	
	No.	Percent	No.	Percent	No.	Percent	No.	Percent
Convicted of most serious charge	86	55%	52	48%	70	65%	114	45%
Convicted of less serious felony charge	30	19	14	13	2	2	117	46
Convicted of misdemeanor charge	11	7	6	6	7	7	15	6
Found not guilty	1	1	1	1	3	3	2	1
Dismissed	24	15	35	32	22	21	8	3
Case open	4	3	1	1	3	3	0	0
TOTAL	156	100%	109	100%	107	100%	256	100%

Note: Percentages may not add to 100 percent, because of rounding.

Table A-10. Conviction Charges by Sample Type and City

Conviction Charge	Rape or Robbery Sample				Felony Crime-on-Bail Sample			
	Tucson	Phoenix	Milwaukee	Memphis	Tucson	Phoenix	Milwaukee	Memphis
Murder, manslaughter, arson or kidnapping	3%	1%	0%	0%	2%	0%	1%	0%
Rape or robbery	72	80	87	72	11	13	23	12
Assault	5	1	0	5	6	8	0	7
Burglary	5	2	0	0	24	22	34	20
Drug possession or sale	0	0	0	0	10	14	10	2
Larceny	5	12	9	22	28	14	10	45
Fraud	0	0	0	0	7	8	6	12
Other	11	4	3	0	11	21	15	2
TOTAL	100%	100%	100%	100%	100%	100%	100%	100%
Number of cases	105	249	236	241	127	72	79	245

Nore: Percentages may not add to 100 percent, because of rounding.