

124015

U.S. Department of Justice
National Institute of Justice

This document has been reproduced exactly as received from the person or organization originating it. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the National Institute of Justice.

Permission to reproduce this material has been

granted by
Public Domain/NIJ

U.S. Department of Justice

to the National Criminal Justice Reference Service (NCJRS).

Further reproduction outside of the NCJRS system requires permission of the owner.

Guidelines for Bail and Pretrial Release

in Three Urban Courts

VOLUME II

THE IMPLEMENTATION AND EVALUATION OF BAIL/PRETRIAL RELEASE GUIDELINES IN MARICOPA COUNTY SUPERIOR COURT, DADE COUNTY CIRCUIT COURT AND BOSTON MUNICIPAL COURT

by

John S. Goldkamp, Ph.D.
Department of Criminal Justice
Temple University

Michael R. Gottfredson, Ph.D.
Department of Management and Policy
University of Arizona

Peter R. Jones, Ph.D.
Department of Criminal Justice
Temple University

The Bail/Pretrial Release Guidelines Project
December, 1988

This project was supported by Grant No. 84-IJ-CX-0056 awarded to Temple University by the National Institute of Justice, U.S. Department of Justice. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice.

124015

Guidelines for Bail and Pretrial Release
in Three Urban Courts

VOLUME II

THE IMPLEMENTATION AND EVALUATION OF BAIL/PRETRIAL RELEASE GUIDELINES IN MARICOPA
COUNTY SUPERIOR COURT, DADE COUNTY CIRCUIT COURT AND BOSTON MUNICIPAL COURT

by

John S. Goldkamp, Ph.D.
Department of Criminal Justice
Temple University

Michael R. Gottfredson, Ph.D.
Department of Management and Policy
University of Arizona

Peter R. Jones, Ph.D.
Department of Criminal Justice
Temple University

The Bail/Pretrial Release Guidelines Project
December, 1988

This project was supported by Grant No. 84-IJ-CX-0056 awarded to Temple University by the National Institute of Justice, U.S. Department of Justice. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice.

CONTENTS

List of Tables	Page vii
List of Figures	viii
Acknowledgments	xi
 Chapter One	
INTRODUCTION: IMPLEMENTATION AND EVALUATION OF JUDICIAL DECISION	
GUIDELINES FOR PRETRIAL RELEASE	1
A Review of the Bail/Pretrial Release Guidelines Produced: Their Form and Substance	2
The Defining Dimensions	4
Ranking the Severity of Charges	8
Classifying Defendants According to Risk of Flight or Rearrest During Pretrial Release	9
The Decision Choices Suggested by Guidelines	9
Taking Exception to the Guidelines: Unusual Circumstances	12
A Note about the Evaluation of Decision Guidelines	13
 Chapter Two	
THE IMPLEMENTATION OF PRETRIAL RELEASE GUIDELINES AT INITIAL APPEARANCE	
IN SUPERIOR COURT, MARICOPA COUNTY	15
The Rationale for Pretrial Release Guidelines in Superior Court	15
The Implementation of the Guidelines at Initial Appearance: Changes in the Tasks of Pretrial Services Staff and the Superior Court Commissioners	17
Changes Required of Pretrial Services Staff	17
The Court Commissioners and the Guidelines	18
Proposed Procedural Innovation	19
 Chapter Three	
EVALUATION OF THE INITIAL USE OF PRETRIAL RELEASE GUIDELINES	
IN SUPERIOR COURT, MARICOPA COUNTY	21
The Evaluation Design in Maricopa County	21
PREPARATION OF THE GUIDELINES BY PRETRIAL SERVICES	22
Errors in Classifying Defendants according to the Guidelines	26
Use of the "Police" Risk Item	27
The Notation of Unusual Circumstances	29
Suggestions for Special Conditions of Release	29
USE OF THE PRETRIAL RELEASE GUIDELINES BY SUPERIOR COURT	
COMMISSIONERS	30
Agreement of the Commissioners' Decisions with the Guidelines	31
Agreement within Guidelines Decision "Zones"	32
Analysis of Agreement Based on Selected "Cells"	32
Agreement from Commissioner to Commissioner	35
Notation of Reasons by Decisionmakers Making Exceptions	35
PRETRIAL RELEASE DECISIONS BEFORE AND DURING THE GUIDELINES	36
Comparing the Use of Nonfinancial Release within Decision "Zones": 1984 to 1987	36
Comparing the Use of Nonfinancial Release within Selected Cells: 1984 to 1987	39
Comparing the Use of Secured Bond: 1984 to 1987	40
The Use of Pretrial Detention: 1984 to 1987	40
THE PERFORMANCE OF DEFENDANTS DURING PRETRIAL RELEASE: COMPARING	
THE EFFECTIVENESS OF PRACTICES, 1984 TO 1987	43
Of FTA, Rearrest, Felony Rearrest, and "Failure" Rates	43
Changes in the "Effectiveness" of Pretrial Release, 1984 to 1987	44
Comparing Effectiveness Using Decision Zones as Categories	44

Comparing Effectiveness Using Guidelines Cells as Categories	45
Comparing the Effectiveness of Decisionmakers	47
THE EQUITABLE TREATMENT OF DEFENDANTS, 1984 TO 1987	47
THE INITIAL IMPACT OF THE GUIDELINES: SUMMARY AND RECOMMENDATIONS	50
Summary of the Maricopa County Evaluation Findings	50
Pretrial Services	50
The Use of Guidelines by the Commissioners at Initial Appearance	51
Changes in Pretrial Release Decisionmaking	51
Changes in Pretrial Release and Detention	51
Rates of Misconduct among Released Defendants	52
Changes in the Effectiveness of Pretrial Release	52
Equitable Decisionmaking	52
Recommendations	53
Strengthened Use of the Pretrial Release Guidelines	53
Resources for Supporting the Pretrial Services Function	53
The Targeted Use of Supervised Release Needs to Be Supported and Carefully Monitored	53
Analysis by Pretrial Services and Court Administration of These Findings to Make Recommendations Concerning the Use of Guidelines	54
The Development of an Information Mechanism for Monitoring the Use of Guidelines and the Effectiveness of Pretrial Release	54
The Need for a Case/Custody Status Review Shortly after Initial Appearance	55
Planning for the Effect of Drug Testing on Guidelines and Pretrial Release Decisionmaking	56
 Chapter Four	
THE IMPLEMENTATION OF BAIL GUIDELINES IN DADE COUNTY CIRCUIT COURT	57
The Need to Implement "Minor" Changes in Procedure to Achieve the Desired Results: the Key Roles of Pretrial Services and the Judges	58
Change on the Level of Pretrial Services	59
The Role of the Judges under the Circuit Court Guidelines System	65
Implementation of the Guidelines (June-July, 1987)	67
 Chapter Five	
EVALUATION OF THE INITIAL USE OF PRETRIAL RELEASE GUIDELINES IN CIRCUIT COURT, DADE COUNTY	69
Constraints of Funding: The Timing of the Evaluation in Dade County	69
The Evaluation Design in Dade County	69
The Limits of the Evaluation: Comparability of the Samples	70
THE PREPARATION OF GUIDELINES AND CLASSIFICATION OF DEFENDANTS BY PRETRIAL SERVICES: CLARIFICATION OF THE TARGET GROUP	72
The Ranking of Defendants Charges According to Severity	76
The Classification of Defendants According to Risk of Misconduct	76
Classification of Defendants within the Guidelines	79
The Notation of Unusual Circumstances	81
Special Conditions of Release	83
Conclusions: Problem Areas in Preparation of the Guidelines by Pretrial Services	85
JUDICIAL USE OF THE BOND HEARING GUIDELINES	85
Agreement with Guidelines by Zone	87
Agreement with Guidelines by Cell	89
Agreement with Guidelines by Judge	90
Reasons for Departures from Guidelines	91
Conclusion: the Judges' Failure to Use the Guidelines	91
THE IMPACT OF BOND HEARING GUIDELINES ON PRETRIAL RELEASE DECISIONS	92

Nonfinancial release: 1984 and 1987	92
The Use of Financial Bond: 1984 and 1987	93
The Use of Pretrial Detention: 1984 and 1987	93
THE PERFORMANCE OF DEFENDANTS DURING PRETRIAL RELEASE: COMPARING THE EFFECTIVENESS OF PRACTICES, 1984 TO 1987	94
Of FTA, Rearrest, Felony Rearrest, and "Failure" Rates	94
Comparison of the Effectiveness of Pretrial Release	96
Effectiveness within Selected Cells of the Guidelines	98
THE EQUITABLE TREATMENT OF DEFENDANTS, 1984 TO 1987	98
THE INITIAL IMPACT OF THE GUIDELINES: SUMMARY AND RECOMMENDATIONS	102
Incomplete Implementation: A Glass Half Full	102
Pretrial Services: Problem Areas Surfacing in the Early Stages of Implementation	105
The Failure of the Guidelines to Engage the Judges	105

Chapter Six

THE EXPERIENCE WITH BAIL GUIDELINES IN BOSTON MUNICIPAL COURT: THE DECISION NOT TO IMPLEMENT	109
SELECTED FINDINGS	111
Poor Information Relating to Defendants and Their Cases at the Arraignment Stage in the Boston Municipal Court	111
Characteristics of Defendants Entering the BMC and Their Cases	111
Release Before Trial among BMC Defendants	112
The Performance of BMC Defendants During Pretrial Release	113
The Focus of the Research: BMC Bail Decisions	113
Differentiating Defendants Released within One Day of Booking and Those Not Securing Release: The Absence of Clear Patterns	115
The Performance of Defendants Released as a Result of BMC Decisions: The Effectiveness of Bail Practices	115
Development of Predictors of Flight and/or Crime among Released Defendants	115
Suffolk County Superior Court	116
The Suffolk County Jail: An Analysis of the Population and Impact of Bail	118
THE DEVELOPMENT OF DECISION GUIDELINES FOR BAIL AND RELATED STRATEGIES	120
The Principal Problem Areas Identified in the Research	120
Overcrowding in the Charles St. Jail	120
Defaulting Defendants	120
Inconsistency in the Application of Bail	120
Problems with the Availability and Reliability of Potentially Useful Information about the Arraignment Bail Stage	121
Could Bail Guidelines Help?: The Point of the Study	121
The Logistics of Applying Bail Guidelines: Can It Be Done in Boston?	121
Given the finding that information available at arraignment is not always adequate, how do you expect to implement a guidelines program that depends on reliable information?	122
Isn't it true that preparation of guidelines for the judges would require staff? If so, how could a guidelines program be implemented?	122
How would guidelines in the BMC help jail crowding?	123
Conclusion	124

Chapter Seven

CONCLUSION: THE LESSONS CONCERNING THE PROMISE OF DECISION GUIDELINES FOR BAIL AND PRETRIAL RELEASE	125
Conclusion	128
The ubiquity of the matrix form	129

Successful implementation requires strong judicial leadership	129
Equity and safety are not incompatible results of a good guidelines system	131
The need to monitor the guidelines	131
The urge for subjectivity	132

References

Appendix A	Supplemental Tables
Appendix B	Data Collection Instruments

LIST OF TABLES

Table 3.1	The distribution of pretrial services errors in calculating risk scores, Maricopa County, 1987
Table 5.1	Error rate for individual risk items in Dade County, 1987
Table 5.2	Change in the "effectiveness of pretrial release among entering felony defendants in Dade County Circuit Court from 1984 to 1987, by guidelines "cell"
Table A3.1	Comparison of samples of entering felony defendants in Maricopa County, January, February and September, 1987, by selected characteristics
Table A3.2	Comparison of pretrial release decisions and outcomes between June-July, 1984, and January-February, 1987 for entering felony defendants in Maricopa County, by selected guidelines "zones"
Table A3.3	Comparison of pretrial release decisions and outcomes between June-July, 1984, and January-February, 1987 for entering felony defendants in Maricopa County, by selected guidelines "cells"
Table A5.1	Comparison of cases in which guidelines were completed and not completed, for entering felony defendants in Dade County Circuit Court, 1987, by selected attributes
Table A5.2	Selected bail decision and pretrial release outcomes for entering felony defendants in Dade County Circuit Court, by guidelines "zone"

LIST OF FIGURES

- Figure 3.1 The (guidelines) severity of criminal charges of felony defendants entering Maricopa County Superior Court, by sample
- Figure 3.2 The (guidelines) risk classification of felony defendants entering Maricopa County Superior Court, by sample
- Figure 3.3 The classification of felony defendants entering Maricopa County Superior Court, by guidelines "zone," by sample
- Figure 3.4 The Classification of defendants according to guidelines "cells", by sample
- Figure 3.5 The notation of "unusual circumstances" by pretrial services in the cases of felony defendants entering Maricopa County Superior Court, by sample period
- Figure 3.6 The suggestion of "special" conditions by pretrial services in the cases of felony defendants entering Maricopa County Superior Court, by sample period
- Figure 3.7 Agreement between commissioners' decisions at initial appearance and the guidelines suggestions in the cases of felony defendants entering Maricopa County Superior Court, by sample
- Figure 3.8 Agreement between commissioners' decisions at initial appearance and the guidelines suggestions in the cases of felony defendants entering Maricopa County Superior Court, by zone, by sample
- Figure 3.9 Agreement between commissioners' decisions at initial appearance guidelines suggestions in the cases of felony defendants entering Maricopa County Superior Court, by selected guidelines cell, by sample
- Figure 3.10 Agreement with decisions suggested by guidelines, by selected cell, by defendants sample
- Figure 3.11 Agreement with decisions suggested by guidelines, by commissioners, by sample
- Figure 3.12 Comparison of reasons given for not following suggested guidelines decisions by defendants sample
- Figure 3.13 Change in use of nonfinancial release (OR) in the cases of entering felony defendants in Maricopa County Superior from 1984 to 1987, by guidelines "zone"
- Figure 3.14 Change in the use of nonfinancial release (OR) in the cases of entering felony defendants in Maricopa County Superior Court from 1984 to 1987, by selected "cell", by sample
- Figure 3.15 Change in the use of secured bond in the cases of entering felony defendants in Maricopa County Superior Court from 1984 to 1987, by selected "cell"
- Figure 3.16 Change in use of pretrial detention (held more than two days) among entering felony defendants in Maricopa County Superior Court from 1984 to 1987, by guidelines "zone", by sample
- Figure 3.17 Changes in use of pretrial detention (held more than two days) among entering felony defendants in Maricopa County Superior Court from 1984 to 1987, by selected "cell"

LIST OF FIGURES (cont'd)

- Figure 3.18 Change in defendant misconduct during pretrial release among felony defendants released in Maricopa County Superior Court, 1984 to 1987
- Figure 3.19 Change in the "effectiveness" of pretrial release among decisions for entering felony defendants in Maricopa County Superior Court from 1984 to 1987, by guidelines "zone"
- Figure 3.20 Change in the "effectiveness" of pretrial release among decisions to entering felony defendants in Maricopa County Superior Court from 1984 to 1987, by selected cell
- Figure 3.21 The "effectiveness" of pretrial release among decisions for entering felony defendants in Maricopa County Superior Court during January-February 1987, by commissioner
- Figure 3.22 Equity as consistency: comparing agreement with guidelines, by "zone", by sample
- Figure 3.23 Equity as consistency: comparing agreement with guidelines, by selected "cells", by sample
- Figure 5.1 The guidelines severity of criminal charges of felony defendants entering Dade County Circuit Court, by sample
- Figure 5.2 The (guidelines risk classification of felony defendants entering Dade County Circuit Court, by sample
- Figure 5.3 The classification of felony defendants entering Dade County Circuit Court, by guidelines "zone," by sample
- Figure 5.4 Classification of defendants entering Dade County Circuit Court according to guidelines "cell," by sample
- Figure 5.5 Completion of guidelines information for defendants entering Dade County Circuit Court, by sample
- Figure 5.6 Accuracy of pretrial services severity ranking for defendants entering Dade County Circuit Court
- Figure 5.7 Accuracy of pretrial services risk classification for defendants entering Dade County Circuit Court
- Figure 5.8 Accuracy of guidelines classification of felony defendants entering Dade County Circuit Court, by guidelines "zone," by sample
- Figure 5.9 Accuracy of guidelines classification of felony defendants entering Dade County Circuit Court, by guidelines "cell." by sample
- Figure 5.10 The notation of "unusual circumstances" by pretrial services among felony defendants entering Dade County Circuit Court during the 1987 sample periods
- Figure 5.11 The type of "unusual circumstance" noted by pretrial services for felony defendants entering Dade County Circuit Court, by sample period

LIST OF FIGURES (cont'd)

- Figure 5.12 The suggestion of "special conditions" by pretrial services for felony defendants entering Dade County Circuit Court during 1987 sample periods
- Figure 5.13 The type of "special conditions" noted by pretrial services for felony defendants entering Dade County Circuit Court, by sample period
- Figure 5.14 Disagreement between judicial decisions at bond hearing and the guidelines suggestions among felony defendnats entering Dade County Circuit Court, by sample
- Figure 5.15 Disagreement between judicial decisions at bond hearing and the guidelines suggestions among felony defendnats entering the Dade County Circuit Court, by "zone, by sample
- Figure 5.16 Disagreement between judicial decisions at bond hearing and the guidelines suggestions among felony defendants entering Dade County Circuit Court, by "cell," by sample
- Figure 5.17 Agreement between judicial decisions at bond hearing and the guidelines suggestions among felony defendants entering Dade County Circuit Court, by judge
- Figure 5.18 Change in the use of nonfinancial release (OR) among decisions for entering felony defendants in Dade County Circuit Court from 1984 to 1987, by guidelines "zone"
- Figure 5.19 Change in the use of secured bond among decisions for entering felony defendants in Dade County Circuit Court from 1984 to 1987, by guidelines "zone"
- Figure 5.20 Change in the use of pretrial detention (held more than two days) for entering felony defendants in Dade County Circuit Court from 1984 to 1987, by guidelines "zone"
- Figure 5.21 Change in defendant failure to appear rates for entering felony defendants in Dade County Circuit Court from 1984 to 1987, by guidelines "zone"
- Figure 5.22 Change in defendant rearrest rates for entering felony defendants in Dade County Circuit Court from 1984 to 1987, by guidelines "zone"
- Figure 5.23 Change in the failure to appear "effectiveness" of pretrial release for felony defendants entering Dade County Circuit Court from 1984 to 1987, by guidelines "zone"
- Figure 5.24 Change in the rearrest "effectiveness" of pretrial release for felony defendants entering Dade County Circuit Court from 1984 to 1987, by guidelines "zone"
- Figure 5.25 Change in the misconduct effectiveness of pretrial release for felony defendants entering Dade County Circuit Court from 1984 to 1987, by guidelines "zone"
- Figure 5.26 Equity as consistency: comparing agreement with guidelines by "zone," by sample
- Figure 5.27 Equity as consistency: comparing agreement with the guidelines by "cell," by sample

ACKNOWLEDGMENTS

The research undertaking we describe in this series of reports involved a massive data collection effort that was made possible only because of the hard work and cooperation of many people in Maricopa County, Arizona, Dade County, Florida, Boston, Massachusetts, and in our home base at Temple University in Philadelphia. Although the numbers of individuals to whom we are indebted for their assistance is daunting, we would like to mention some of their names so that we can express our deepest gratitude. Certainly, we are appreciative of the support and patience of our funding agency, the National Institute of Justice.

Maricopa County, Arizona

During our three years of work with the Superior Court in Maricopa County, we had the privilege of working with two presiding judges, the Honorable B. Michael Dann and Robert C. Broomfield, and three criminal presiding judges, the Honorable John H. Seidel, the Honorable Cecil Patterson, and the Honorable Thomas O'Toole. We were invited to select Maricopa County as a site by Judge Broomfield because of his concern for jail overcrowding in Maricopa County and questions about the role of pretrial release decisionmaking in that problem. When Judge Broomfield moved to the Federal bench, we next had the pleasure of working with Judge Dann who was equally concerned about the processing of criminal cases at the pretrial stages, the equity of the determination of pretrial release and detention at the initial appearance court, and implications for public safety. Under Judge Dann's leadership, the research process reached its culmination; pretrial release guidelines were finalized, implemented and evaluated. The research team left Maricopa County Superior Court feeling greatly encouraged about the potential for social science research in addressing policy issues faced by criminal courts, thanks to the active participation of Judge Dann and his criminal presiding judges.

Throughout our working relationship with Superior Court, our data collection efforts and planning for the implementation of the guidelines were greatly assisted by the staff of the Court Administrator for Superior Court, Gordon W. Allison, particularly Pete Anderson, Lance Wilson and, most recently, Mark Weinberg. Of course, central to the entire guidelines development process were Terri Jackson and Tom Morrison--and their entire pretrial services staff--who spent many hours reviewing our findings, debating their interpretation, planning for the implementation of the guidelines and, most of all, implementing them. And, certainly, little meaningful progress could have been made without the full participation of the Superior Court commissioners, who, ultimately became

the chief consumers of the guidelines. These individuals were always open, candid and constructive with us in their review of research findings and consideration of pretrial release policy. We owe thanks to Commissioners Nastro (now Judge Nastro), Lobue, Strohson, Keifer, and Jackson. Finally, our analysis of the jail could not have been accomplished without the assistance of the staff of Sheriff Dick Godbehere.

Dade County, Florida

In Dade County, we are also greatly indebted for the assistance of a large number of individuals. At the top of our list, however, are two individuals, the Honorable Gerald T. Wetherington, Presiding Judge of the 11th Judicial Circuit, and Timothy J. Murray, Director of the Pretrial Services Agency of the Metropolitan Dade County Corrections and Rehabilitation Department. Throughout our working relationship with the Circuit and County Courts in Dade County, Judge Wetherington was challenging, fair and demanding in his appraisal of the research undertaking. It was principally because of Timothy Murray's persistence that we decided to select Dade County as one of our sites. Although he was a newly appointed pretrial services head at that time, he was determined to bring resources to bear on improving pretrial release and detention practices in Dade County. Tim took the lead in arguing for the project in Dade County and in opening the doors to the research process--including offering the hospitality of his own agency, office and--on more than one occasion--home. We are more than grateful for his effort on our behalf; we are impressed by his example of dedication to public service. We must add our special thanks to Marty Murray, Amanda and Emily who over the long months of research showed us such thoughtful hospitality and friendship that we discovered a home away from home in Miami.

We feel very fortunate for our opportunity to work with and to learn from the The Honorable Gerald Kogan--then Administrative Judge for the Criminal Division in Circuit Court and currently Justice of the Florida Supreme Court. Judge Kogan supervised the working committee created for the project, guided its direction, and otherwise made his time and advice available when need (which was often) as various findings and versions of bond hearing guidelines were being considered. Former County Court Judge Chuck Edelstein took a special interest in our work and gave advice and constructive criticism that sent the research in productive directions. We welcomed his thoughtfulness, especially considering his long record of commitment to issues relating to improving pretrial release and addressing overcrowding in Dade County. Judge Marshal Ader of County Court and Judge Sydney Shapiro also contributed useful input to the project as members of the working committee. As the implementation

stage of the guidelines research approached, the late Honorable Edward D. Cowart, the Honorable Ralph Person and the Honorable Herbert M. Klein, in turn, played important roles in managing the process.

Fred Crawford, Director of Metropolitan Dade County Corrections and Rehabilitation Department, in particular, went out of his way to make sure the research team was able to gather the data related to the correctional facilities throughout the three years of the research. His staff, including Deputy Director Kevin Hickey and (then) Assistant Division Director for Administration, Frank Brophy, deserve our special thanks for making our data collection easier by clearing the path of obstacles. In short, we were greatly impressed by the cooperation and professionalism of the Metro-Dade Corrections staff, both at the jail and in the central office.

A division of that Department was Tim Murray's Pretrial Services staff which deserves a word of thanks all its own. It is impossible to express fully our gratitude and appreciation for the hard work and professional spirit of Dade County's Pretrial Services staff at all levels. Most of the work, most of the innovation, most of the re-training, most of the change involved in the development and deployment of bond hearing guidelines fell to them. Among those to whom we owe thanks most directly are Wilhemina Tribble, Julio Morales, Maxine Harris, Julie Oglesby, Will Davis, Larry Turini and Mary (Mericie) Lantes, to confine ourselves to just a few of the many.

Lastly, but far from least considering the importance of data collection to this undertaking, we would like to thank M. David McGriff and his former staff--and the current administrative staff of Circuit Court--for assisting us in obtaining the large amount of data we required for the studies we conducted. Dr. McGriff, then Criminal Court Coordinator and now Executive Director of the Advocate Program, Inc.--was a resource beyond our dreams in this area: he assisted us in drawing our sample, in understanding Dade County practices, in obtaining access to the agencies holding the data we needed and in appraising our findings with a sharp critical perspective and his good humor. He even found us working space in an already crowded court. We are especially grateful to his recent counterparts as well, Susan Witkin, Director of the Research and Systems Division of the Circuit Court and Ann Green, current Criminal Court Coordinator. They have also assisted us in answering our questions about court data and practices and have been very gracious in allowing us to collect our final data and hardly complained when we were underfoot and in the way (which surely was often). Of course, without the special cooperation of John J. Nelson, Officer in Charge, Office of the Clerk, Circuit and County Court in Dade County, and his staff, we would

never have been able to muster the amount and kinds of information we were able to develop in our analysis of Dade bail and detention practices. To him and his staff, we offer our thanks.

Boston, Massachusetts

We decided to select the Boston Courts not because our work there looked to be easy (far from it), but because of the interest expressed by the Honorable Arthur Mason, the Chief Administrative Justice of the Trial Court of the Commonwealth of Massachusetts, Henry L. Barr, Administrator of the Trial Court, and Chief Administrative Justice, the Honorable Thomas R. Morse, Chief Administrative Justice of the Superior Court of the Commonwealth of Massachusetts. These individuals argued that the need for improvement in bail practices and the use of pretrial detention in the Boston area was great and, because of the crowding crisis at the Charles St. Jail, urgent.

Once the decision was made to work in two Boston Courts, the Boston Municipal Court and Suffolk County Superior Court, many other officials offered their cooperation and support. In Suffolk County Superior Court, in addition to Judge Morse, Judges Donahue and Mulligan served on a working committee which reviewed the findings and offered direction for the initial investigations. Our work there was staffed by Michael McEneaney, Chief Bail Commissioner, who assisted us in many ways and showed us hospitality on our many visits to his court. We are grateful as well to Daniel F. Pokaski, Clerk of Superior Court, for his cooperation in allowing us to squeeze in among the office staff to pour through the court files and to record our data. Donald Moran and Ken Lehane of the Superior Court Probation staff were also of valuable assistance.

In the Boston Municipal Court, we had the pleasure of working under the guidance of two Chief Administrative Justices, the Honorable Theodore Glynn and the Honorable Joseph F. Feeney. Although the BMC did not request initially to participate in the research--and some of the judges saw no need for an examination of the BMC's bail and pretrial release practices--we met often with its judges in meetings to discuss findings and individually to learn of their particular concerns. We were treated courteously and experienced some of the most candid debates about our findings and about bail practices we have yet encountered. We are thus appreciative of the time and thought given by each of the judges participating and trust that, although they did not ultimately decide to implement the guidelines produced through the long process, a contribution to the examination of problems areas in court functioning in the bail area was still made. Eugene Levine, Executive Secretary for the BMC, who

served as our day-to-day liaison with the court, has our thanks for his efforts on behalf of the project. (He has, undoubtedly, one of the best offices in Boston.) In addition, we thank the BMC Probation Department, without a doubt one of our most accomodating hosts in Boston. Particularly because of the cooperation of John Tobin, Chief Probation Officer, but also due to the assistance of other members of his staff, especially Francis Burke and Thomas Lally, we were able to find space for data collection, to draw our sample and to ask questions about Boston court practices freely. On a daily basis, we probably inconvenienced no agency more than the BMC Clerk's Office. For the assistance he provided and the patience with our research he exhibited, we would like to give our special thanks Robert E. Block, Assistant Clerk.

A rather unique feature in our Boston work was the interest and cooperation of the office of District Attorney Newman Flanagan. His staff, particularly Paul Leary and Tom McDonough, not only spent considerable time answering our questions but also arranged for us to collect important data available only in the District Attorney's files. Another very positive part of our research experience in that city was the interest and cooperation of two successive Suffolk County Sheriffs, Dennis J. Kearney and Robert Ruffo. These two individuals seemed eager for positive results from our research, seeing in it a possible resource, as we had hoped it would be, for addressing jail overcrowding. Nancy Waggner of the jail staff was particularly helpful in facilitating our data collection at the jail and in serving as a resource for us as we tried to understand Boston's processes and problems in the bail area. The Commissioner of Probation for the Commonwealth of Massachusetts, Donald Cochran, threw the support of his agency behind the research and went very graciously out of his way to help us collect some of the criminal history data our research required. We are grateful for the cooperation of Joyce Murphy, Superintendent of the Massachusetts Correctional Institution at Framingham, who permitted us to collect data regarding female detainees, and to Frank Carney, Director of Research for the Massachusetts Department of Corrections, who helped us make the appropriate arrangements.

The Research Staff

Coordination and supervision of data collection in three geographically remote research sites placed a major responsibility on the shoulders of the research team's supervisory staff. During the evaluation research much of the responsibility for supervision of data collection fell to Lisa Martin. We cannot emphasize enough our appreciation for the major role she played, not only in supervising the data collection, but in managing personnel,

producing graphics and reports and, ultimately, in assisting in the administration of the grant. Lisa's ability to accomplish almost any task professionally came in handy throughout the project. Project coordinator and research analyst Doris Weiland assumed overall analytic duties during the evaluation research; her critical review of the data, her computer and analytic skills and careful attention to detail were responsible in large part for the quality of our final product. We are appreciative of her special contribution. The work of Carolyn Waters as graduate research assistant in the early stages of the research and Navrose Eduljee who later assisted greatly in data processing was especially helpful. LaSaundra Scott ("Radar") was our secretary par excellence; where would we be without her?

In the sites, many hands deserve our gratitude for their labors in data collection during the evaluation phase of the project. Our thanks go to Alice Taddei particularly for her efforts in data collection in Maricopa County. In Dade County, we are especially grateful for the data collection supervision of Evelyn Mesa, and the coding assistance of Evelyn Alvarez, Adriana Fuentes and Jimmy Navarro.

In closing, we would also like to thank D. Alan Henry, Director, and Andy Hall, and J.J. Perlstein, members of the staff of the Pretrial Services Resource Center in Washington, D.C., who served as observers-advisors during the earliest stages of our research in the sites and Walt Smith, of course, who was a critical consumer of some of our earliest reports. Their partnership aided us in our efforts to have a practical impact on the systems involved in our study.

By now, we have easily proved our case that this research depended on the efforts and cooperation of many persons. Due to limitations of space, we have not mentioned them all. For those whose names we have not listed, please accept our warmest thanks for a job well done.

John S. Goldkamp, Ph. D.
Department of Criminal Justice
Temple University

Michael R. Gottfredson, Ph.D.
Department of Management and Policy
University of Arizona

Peter R. Jones, Ph.D.
Department of Criminal Justice
Temple University

December, 1988

Chapter One

INTRODUCTION: IMPLEMENTATION AND EVALUATION OF JUDICIAL DECISION GUIDELINES FOR PRETRIAL RELEASE

Against a background of heightened concerns about crime and jail overcrowding and rapidly changing law in the area of bail and pretrial detention the during the 1980s, the National Institute of Justice funded the Bail/Pretrial Release Guidelines Project to determine whether judicial decision guidelines could be employed to address some of the difficulties--inequity, crime among released defendants, flight from court, and jail overcrowding--associated with American bail practices. Site selection was conducted to produce three sites as different as possible--structurally, politically, geographically and in terms of the laws governing bail and detention. The research in Boston, Dade County and Maricopa County, which followed on the heels of a successful initial experiment in the Philadelphia Municipal Court (Goldkamp and Gottfredson, 1985), was designed to test whether the voluntary guidelines approach pioneered earlier in the areas of parole and sentencing (Gottfredson, Wilkins and Hoffman, 1978) could improve the visibility and rationality of the highly discretionary bail decision process, and make bail practices more equitable and more effective.

In our first volume (Volume I: The Development of Bail/Pretrial Release Guidelines in Maricopa County Superior Court, Dade County Circuit Court and Boston Municipal Court), we described the issues surrounding bail decisionmaking and pretrial release in the United States and the extensive research undertaken in three urban court systems leading to the development of decision guidelines. Because we will not repeat discussion of this important background material here, we urge the reader to examine Volume I. In this volume, we report on the implementation of the guidelines--as the courts considered moving from the abstract to the practical questions of innovating a new approach--and on the evaluation of their initial use, where implementation occurred.

When the research team first met with the candidate courts, an effort was made to explain that the "guidelines" idea involved a process of self-examination in which the judiciary explored difficult policy questions related to the bail function, making use of the research team in a collaborative fashion. We stressed the fact that we were not interested in transplanting a finished product that had been developed for application elsewhere, but instead were interested in applying the lessons learned earlier about a collaborative process that showed promising

results. Any final product, we promised, would be tailor-made to the concerns of each particular jurisdiction and would bear the imprint of each judiciary's policy objectives and priorities.

Perhaps not unexpectedly, the challenges posed for the guidelines approach in each of the courts varied considerably in nature. The process of data collection, group discussion of findings and construction of guidelines--not to mention their implementation and evaluation--proceeded at different paces in each site, depending on the issues that surfaced, the problems encountered and the difficulties associated with data collection. The three processes did not begin at precisely the same time, nor--sometimes to the dismay of the research team and project funders--were they completed within a neatly predictable timetable. Yet, each of the processes accomplished many--if not all--of the goals originally set forth.

In each of the jurisdictions, the guidelines process proceeded through the early stages of descriptive research and problem identification to the development of decision guidelines. Large samples of recent bail decisions were collected to be representative of the decisionmaking of five courts in the three sites.¹ Once final refinements were worked out in Maricopa County Superior Court and in Dade County Circuit Court, the guidelines process proceeded to implementation of guidelines; in the Boston Municipal Court the process did not successfully reach the implementation stage. In this report, we will examine the experience with the guidelines process of these three court systems and report on the evaluation research conducted in two. We conclude by drawing lessons about the guidelines experience, its strengths and weaknesses, and about how bail/pretrial release guidelines can be made to work effectively.

A Review of the Bail/Pretrial Release Guidelines Produced: Their Form and Substance

It may be most helpful to conceive of the voluntary guidelines approach as simultaneously a process and a product. The guidelines process is collaborative in its investigative and problem-solving approach, mixing rigorous empirical study of decisionmaking and its consequences in a jurisdiction with discussions of findings about appropriate policy for bail and pretrial release. It is a process of self-study that moves from the theoretical to the practical and that grounds judicial debate about bail procedures on hard empirical evidence. It is a normative pro-

¹ In Dade County, the working committee at first requested that the decisions occurring in both the misdemeanor-level court (Dade County Court) and the felony-level court (Circuit Court) be studied. At a later stage, the judges decided to focus primarily on the processing of entering felony defendants. In Boston, initially the limited jurisdiction, and major trial courts were the focus of study. Guidelines development proceeded in the Boston Municipal Court.

cess in that the aim of the inquiry is to produce a prescriptive framework to guide a court's future policy in the performance of its bail and pretrial release-related duties. The guidelines framework, then, springs from study of "what is" but is a court's formulation of "what ought to be," not only as a general statement of policy, but as a practical decisionmaking resource for the judges who decide bail on a daily basis.

This product--a representation of the court's general policy and a daily tool for decisionmakers--is itself "temporary" because it can be further molded by the process to adapt to new realities. The product, the decision guidelines themselves, is meant to permit generation of management information--feedback data--similar to the data used in their construction to allow the court periodically to review their fit and appropriateness, as well as the performance of the decisionmakers.

The broad aims of the decision guidelines include making bail/pretrial release policy more visible and reviewable, more explicit and less mysterious, making bail decisions and the consequent use of pretrial detention more equitable (in the sense of more comparable for similarly situated defendants) and more effective (in the sense of maximizing pretrial release and minimizing flight and crime among defendants). In short, decision guidelines of this variety are intended to serve as a tool for the court as a whole as well as for the individual decisionmaker to place bail decisions, pretrial release and detention on a rigorously more rational footing, considering all of the difficulties that must be addressed.

In appearance, the guidelines have turned out to be variations on a theme (or themes). After having facilitated the guidelines development process now in four urban court systems over the last ten years, we are somewhat surprised to discover that each of the courts has selected the same basic model of bail/pretrial release guidelines to prepare. We have been surprised by this because of the great steps taken in the developmental process to introduce a variety of conceptualizations of decision guidelines and because of our strong emphasis on "tailoring" the guidelines to the needs and preferences of the particular jurisdiction. (See our discussions in Volume I of at least eight possible versions of decision guidelines.)

Yet, the popularity of the charge severity/relative risk of misconduct matrix over other possible formats is understandable; the reasoning of the judicial working groups is by now familiar and convincing. Each of the courts has valued the development of an empirical risk classification; yet none valued it so highly as to allow it to dominate

the guidelines constructed. The problem of ranking the severity of defendants' charges, not surprisingly, emerged as fundamental in all of the courts.

On the one hand, the risk dimension summarizes the odds that categories of defendants would pose of failing to appear in court or of being rearrested before trial if released; on the other, the severity dimension of the guidelines serves as a crude yardstick of the possible costs of decisions going awry within specific categories. Judges have explained that making a "mistake" in releasing a low-risk alleged rapist (low-risk/high severity) who then commits another crime is a quite different gambit than permitting a similar mishap involving a high risk alleged numbers runner. The costs of the possible "mistakes" for given categories of defendants are different, and the juxtaposition of risk and severity fairly depicts that difference for the decisionmaker.

Although the development of the pretrial release guidelines have been traced in detail in Volume I of our report, it may be helpful here to display the three "final"² guidelines in question and describe their central features and their purposes. Figures 1.1, 1.2 and 1.3 are copies of the guidelines forms designed in the three jurisdictions. These are the "decision forms" that would be seen by the judges or commissioners presiding at the bail stage. The key to the guidelines is the decision matrix or grid which designates suggested decisions for specified categories of defendants. The important features of the grid are the dimensions that determine the categories and the decision ranges that are framed within the categories. The idea behind the use of the guidelines is that, because they have been designed after careful study of decision practices and debate about preferred policy, they should be relied on in most cases. In a minority of cases--in cases presenting unusual circumstances--judges or commissioners will want to make decisions departing from those suggested by the guidelines.

The Defining Dimensions

Once the working groups in each of the courts had indicated a preference for guidelines that were based on counterbalancing the severity of defendants' charges with their relative risk of misconduct, the next task was to define each of those notions operationally.

² Of course, no guidelines can be "final," certainly not in their first version. They are meant to evolve, to be revised and updated as experience may warrant.

Figure 1.1 Pretrial release guidelines for Boston Municipal Court

Section I: GUIDELINES DECISION MATRIX						
		Charge Severity				
		Least Serious			Most Serious	
		1	2	3	4	
Probability of Failure ↑ Lower ↓ Higher	1	ROR	ROR	ROR	\$100 to 300	B
	2	ROR	ROR/ Conditions	ROR/ Conditions	\$250 to 450	B D
	3	ROR/ Conditions	ROR/ Conditions	ROR/ Conditions to \$200	\$300 to 600	B D
	4	ROR/ Conditions	ROR/ Conditions to \$200	\$300 to 600	\$500 to 1,000	B B

Key
B=higher than average probability of bind over
D=higher than average dropout rate

SECTION II: GUIDELINES SUMMARY

Classification: _____ Severity Level _____ Risk Group _____
Suggested Decision: _____ Nonfinancial (ROR) Yes _____ No _____
 Financial \$ _____ to _____ Specify Conditions (if yes): _____
Unusual Circumstances (check): _____ Not applicable: _____ Applicable: _____
 Specify: _____

SECTION III: JUDGES DECISION

Nonfinancial (ROR) Yes _____ No _____ Conditions: _____
 Financial \$ _____

Departs from guidelines: No _____ Yes _____
 (If yes note reasons)

- ☐ The nature and circumstances of the offense charged.
- ☐ The potential penalty the defendant faces.
- ☐ The defendant's family ties.
- ☐ The defendant's financial resources and employment record.
- ☐ The defendant's history of mental illness.
- ☐ The defendant's reputation and length of residence in the community.
- ☐ The defendant's record of convictions.
- ☐ The defendant's present drug dependency or his record for illegal drug distribution.
- ☐ The defendant's record of flight to avoid prosecution.
- ☐ The defendant's fraudulent use of an alias or false identification.
- ☐ The defendant's failure to appear at a court proceeding to answer an offense.
- ☐ The defendant's status of being on bail pending adjudication of a prior charge.
- ☐ The defendant's status of being on probation, parole, or other release pending completion of sentence for any conviction.
- ☐ The defendant's status of being on release pending sentence on appeal for any conviction.

Other: _____

Judge _____ Date _____

Figure 1.2 Pretrial release guidelines for Maricopa County Superior Court

PRETRIAL SERVICES AGENCY

State of Arizona vs. _____ Defendant

Court: _____

Date: _____

Attorney
Appointment

- ☐ PD
☐ PVT
☐ NE

GUIDELINES CLASSIFICATION

least
serious

Charge severity

most
serious

lowest

1

2

3

4

5

6

Probability of failure

highest

1

2

3

4

OR/ Standard Conditions	OR/ Standard Conditions	OR/ Standard Conditions	OR/ Standard Conditions	OR/Special Conditions to \$685	\$1,507 to \$6,850
OR/ Standard Conditions	OR/ Standard Conditions	OR/ Standard Conditions	OR/Special Conditions	\$685 to \$1,507	\$4,110 to \$8,220
OR/ Standard Conditions	OR/ Standard Conditions	OR/Special Conditions to \$685	\$685 to \$1,507	\$1,507 to \$2,740	\$6,850 to \$13,700
OR/ Special Conditions	OR/Special Conditions to \$685	\$685 to \$1,507	\$1,507 to \$3,425	\$2,740 to \$6,850	\$10,960 to \$20,550

(Enter)

Risk Group	
Severity Level Before Factors	

Special Severity Factors
Considered (check)

Not applicable		No change
Weapon used		Add 1 level
Injury to victim		Add 1 level
Serious counts: 2 or more at 5 or higher		Add 1 level

(Enter)

Final Severity Level	
----------------------	--

UNUSUAL CIRCUMSTANCES: PRETRIAL SERVICES

SPECIAL CONDITIONS: PRETRIAL SERVICES

PTS - supervision

Third party

Other (specify)

THIRD PARTY

name/relationship

OTHER CONDITIONS AND RESTRICTIONS

- ☐ The defendant is not to return to the scene of the alleged crime.
☐ The defendant is not to initiate contact of any nature with the alleged victim(s) and/or witnesses, including arresting officers.
☐ The defendant is not to possess any weapons.
☐ The defendant is not to drink alcoholic beverages and drive, or drive without a valid driver's license.
☐ The defendant is to continue to reside at the present address.
☐ The defendant is to contact the probation/parole officer _____
☐ The defendant is to reside with _____ at _____
☐ Other _____

COMMISSIONER'S DECISION

GUIDELINES FOLLOWED: YES ☐ NO ☐ NA ☐

If no, indicate reason:

- ☐ Defendant nonbondable-Murder 1/Felony while on release
☐ Defendant has Probation/Parole Hold
☐ Defendant serving other sentence
☐ Fugitive of Justice
☐ Other: _____

Nonfinancial/standard conditions

Nonfinancial/special conditions

Secured bond (amount)

Figure 1.3 Pretrial release guidelines for Dade County Circuit Court

CORRECTIONS & REHABILITATION DEPARTMENT METROPOLITAN DADE COUNTY, FLORIDA PRETRIAL SERVICES								
UNIFORM BOND STANDARDS - DADE COUNTY CIRCUIT COURT								
DEFENDANT'S NAME _____				DATE _____				
				JAIL # _____				
<div style="border: 1px solid black; display: inline-block; padding: 5px; margin: 0 auto; width: 60%;">SECTION A: SUGGESTED DECISION</div>								
Least Serious ← Severity ranking → Most Serious								
1 2 3 4 5 6 7 8								
Lowest ↑ I II III IV ↓ Highest	PTS/ Nonfinancial	PTS/ Nonfinancial B D	PTS/ Nonfinancial B D	PTS/ Nonfinancial B D	PTS/ Nonfinancial B D	PTS/ Nonfinancial B D	PTS/ Nonfinancial D	500 to 2,000
	PTS/ Nonfinancial	PTS/ Nonfinancial B D	PTS/ Nonfinancial B	PTS/ Nonfinancial B	PTS/ Nonfinancial	PTS Special	PTS Special	1,500 to 3,000
	PTS Special D	PTS Special D	PTS Special B X	PTS Special B X	PTS Special B	PTS Special to 500 B	PTS Special to 1,000	2,500 to 5,000
	PTS Special B D	PTS Special D	PTS Special to 750	PTS Special to 1,500	1,500 to 3,500	2,500 to 4,500	3,000 to 5,000	6,000 to 11,000
<div style="border: 1px solid black; padding: 5px;"> NOTE: X = higher risk B = higher than average probability of bind down D = higher than average dropout rate </div>								
<div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">SECTION B: UNUSUAL CIRCUMSTANCES</div> <div style="border-bottom: 1px solid black; height: 15px; width: 100%;"></div> <div style="border-bottom: 1px solid black; height: 15px; width: 100%;"></div> <div style="border-bottom: 1px solid black; height: 15px; width: 100%;"></div>				<div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">SECTION C: SUGGESTED SPECIAL CONDITIONS</div> <div style="border-bottom: 1px solid black; height: 15px; width: 100%;"></div> <div style="border-bottom: 1px solid black; height: 15px; width: 100%;"></div> <div style="border-bottom: 1px solid black; height: 15px; width: 100%;"></div>				
<div style="border: 1px solid black; display: inline-block; padding: 5px; margin: 0 auto; width: 60%;">SECTION D: JUDGE'S DECISION</div>								
<div> <div> Check <input type="checkbox"/> PTS/NONFINANCIAL or <input type="checkbox"/> FINANCIAL \$ _____ (amount of bond) </div> <div style="margin-left: 20px;"> PTS/CONDITIONS: _____ _____ </div> <div> <input type="checkbox"/> FALLS WITHIN UNIFORM BOND STANDARDS or <input type="checkbox"/> DIFFERS FROM SUGGESTED DECISION </div> </div>								
<div> <div> Reasons (for deciding out of UBS range): <input type="checkbox"/> Currently on Felony Bond <input type="checkbox"/> Probation/Parole Hold <input type="checkbox"/> Fugitive <input type="checkbox"/> A/C, Outstanding Warrants or Detainers <input type="checkbox"/> Physical or Mental Health <input type="checkbox"/> Added Charges </div> <div style="margin-left: 20px;"> <input type="checkbox"/> Other (please specify) _____ _____ _____ </div> </div>								
<div style="border-bottom: 1px solid black; width: 150px; display: inline-block;"></div> (Judge's signature)								

Ranking the Severity of Charges

As we have explained in more detail in Volume I, a number of approaches to ranking the seriousness of defendants' charges for the purposes of classification according to the guidelines presented themselves. We could have polled the court to develop a purely subjective measure of seriousness; we could have adopted the felony-misdemeanor or other grading scheme found in the penal codes of each of the states for purposes of sentencing. Because the penal codes have overly broad categories of offenses, and because bail decisionmakers drew distinctions among offenses in practice (and sometimes differed with the penal codes' gradings), we ultimately derived a seriousness measure from study of the way decisionmakers appeared to rank offenses in their assignment of bail options (tailored to each of the sites).

In Boston, charges were rank-ordered based on the way the judges appeared to assign ROR (simply, offenses with higher proportions of cases receiving ROR were considered less serious than offenses with smaller proportions). In Maricopa County Superior Court, the guidelines dimension was based on a similar ROR-based ranking but "corrected" for special "severity factors" (whether there was injury to a victim, whether a weapon was used, whether the charges were in serious categories and involved multiple serious counts).

In Dade County, the Circuit Court already had an elaborate severity ranking in its bond schedule. Under that bond schedule, each possible criminal charge was assigned a dollar amount by a committee of judges. Under current practice there, the bond that a defendant would have to pay to gain release at booking (and later at the bond hearing if the judge used the bond schedule to make his/her decision) was the total bonds associated with each of the specified charges. We decided to build on the bond schedule's inherent ranking system, viewing the bond schedule dollars, in a sense, as "severity points" assigned to charges by that court. Thus, using the bond schedule as a charge scoring mechanism, we identified eight rankings of charges in our large 1984 sample of felony defendants, each of the groups being defined by total ranges of bond assigned by the bond schedule right at the booking stage. As simple as this was, and as linked to the bond schedule tradition as it was, we stress that the Dade County guidelines ("Uniform Bond Standards") borrowed the severity ranking implicit in the bond schedule, not the presumptions about cash that should be paid for release.

Classifying Defendants According to Risk of Flight or Rearrest During Pretrial Release

In Volume I, we reported in detail our statistical analyses of defendant performance during pretrial release and the strengths and limitations of prediction as a tool for decisionmakers. The criteria ultimately serving as scoring attributes in the risk classifications were not identical in each of the sites (although in Dade County and Boston, similar risk items could be employed reasonably well) because of differences in the defendant samples on which analyses were based, because of the differential availability of information in each of the systems (see Table A3.1 in Volume I), and because of the different proportions of released defendants "failing" in each site. These classifications differed in content from the classification developed for the Philadelphia Municipal Court guidelines (see Goldkamp and Gottfredson, 1985).

Despite the differences in their detail (see Figures 1.4 and 1.5 showing the pretrial services worksheets used to compute risk), the risk classifications--when incorporated into the decision guidelines as one of the two dimensions--do share a similar function. Based on the classification criteria, they place defendants into one of four risk categories associated with differing probabilities of flight or crime during pretrial release--ranging from relatively low likelihoods to relatively high likelihoods of misconduct. Using the Boston classification, for example, defendants in risk group 1 who flee or are rearrested in about 1 of 6 cases (a rather low probability) or with defendants in risk group 4 who are likely to engage in pretrial misconduct in about three of every five cases (a rather high probability). The risk dimension is not a statement of certainty as to the defendant's anticipated behavior but rather an amalgamation of information dealing with the track-record of defendants generally.

The Decision Choices Suggested by Guidelines

In each of the 24 or 32 "cells" (subcategories) of the guidelines designated by the intersection of risk and charge severity dimensions--depending on the site--the guidelines posit a suggested or "presumptive" decision or range of decision choices. Because many of the judges we have worked with have shown strong reactions against the concept of guidelines initially and seem to rile against the notion of presumptions, it is worth taking a moment to clarify what is meant by suggested or presumptive bail/pretrial release choices.

First, this brand of decision guidelines should be distinguished from the legislative, presumptive sentencing versions of guidelines with which judges are much more familiar. In this instance, the individual court has worked with a research team to develop an outline of a policy intended to be a reasonable approach to the goals and prob-

Figure 1.4 Pretrial services worksheet for Maricopa County Superior Court

PRETRIAL SERVICES AGENCY
MARICOPA COUNTY SUPERIOR COURT
PRETRIAL RELEASE GUIDELINES

Classification Worksheet

Name of Defendant _____ Court _____
Date _____ Calculated by _____

Charge Severity Calculations:

Charges: (list by Code Section Number) Severity level

*For lesser included offenses enter "L10"

*Enter highest charge severity level from above _____

*Enter name of this offense (full) _____

Risk Group Calculations

Check the Applicable Categories Below

Enter Below

Beginning Score of....

1

1

☐ Prior FTAs

☐ One..... 36

☐ Two or more..... 40

☐ Police: Flight Risk Facts

☐ Police note facts defendant might flee.. 67

☐ Property Offense

☐ Charges involve Property..... 34

☐ Defendant Lives Alone

☐ Lives along..... 37

☐ Robbery Offense

☐ Charges involve robbery..... 45

☐ Police Risk with FTAs

☐ With one prior FTA.... 8

☐ With two or more..... 17

☐ Police Risk and Lives Alone

☐ Police: flight risk and lives alone..... 28

TOTAL COLUMN IN SPACE AT RIGHT

Points	Risk Group
1 to 34	Group 1 []
35 to 67	Group 2 []
68 to 107	Group 3 []
108 or more	Group 4 []

☐ INDICATING CHARGE SEVERITY LEVEL HAS BEEN CIRCLED ON COMMISSIONER'S MATRIX

☐ RISK GROUP HAS BEEN CIRCLED ON COMMISSIONER'S MATRIX

Figure 1.5 Pretrial services worksheet for Dade County Circuit Court

**CORRECTIONS & REHABILITATION DEPARTMENT
METROPOLITAN DADE COUNTY, FLORIDA
PRETRIAL SERVICES**

UNIFORM BOND STANDARDS: CLASSIFICATION

DATE _____

DEFENDANT'S NAME _____ JAIL # _____

STEP 1

Risk Group Classification

IF ANSWER IS "NO", ENTER 0 IN BOX IF ANSWER IS "YES", ENTER NUMERICAL VALUE		Value	Column N	Column P
Ties:	Lives with spouse and/or child	1		
	Has a telephone	2		
Charges:	Property charge	2		
	Drug-related charges	1		
Prior History:	Robbery charges	2		
	Not arrested within 3 yrs.	1		
	One arrest	1		
	Two or more	2		
	Prior arrests: drug charges (two or more)	2		
	Has one or more prior felony convictions	2		
	No prior FTAs	1		
	1 prior FTA	1		
	2 or more FTAs	2		
TOTAL POINTS			N Total	P Total

STEP 2

Complete only if N total is larger or equal to the P total

Enter and
find
difference

N	
P	

Complete only if P total is larger than N total

Enter and
find
difference

P	
N	

STEP 3

RISK GROUP	POINTS
I	5 or more
II	2 to 4
III	1 to - 2
IV	- 3 or less

Circle Risk Group.
Enter on Judge's Form.

STEP 4
Charge Severity Classification

Bond Schedule	Severity Ranking
\$ 1 - 1,000	1
1,001 - 1,500	2
1,501 - 2,000	3
2,001 - 3,000	4
3,001 - 4,000	5
4,001 - 5,000	6
5,001 - 7,500	7
7,501 or higher	8

STEP 5

Additional Information

Total defendant's bond and circle
Severity Ranking. Enter Ranking on
Judge's Form.

PRETRIAL SERVICES OFFICER _____ NAME _____

lems associated with bail/pretrial release decisionmaking. Thus, the judges using the guidelines have directly or indirectly played a part in the problem-solving process that produced the guidelines product. If that process has been well conducted, then the guidelines should reflect an in-depth examination of evidence concerning bail practices as well as a thorough debate and formulation of desirable court policy.

Taking Exception to the Guidelines: Unusual Circumstances

As an information resource for decisionmaking, the guidelines have been designed as a tool to characterize defendants and their cases along the most pertinent dimensions (as decided by the judicial working group) in a compact, short-hand fashion that judges can understand at a glance. Implicit in their suggestion of decisions as well is the message that, considering these (guidelines charge- and risk-related) criteria, defendants usually should be assigned one of the decision choices suggested by the guidelines and that, usually or in most cases, the guidelines will point to the optimal decision.

However, in a minority of cases, other kinds of information about the defendant could be so important as to cause the judge to set aside the guidelines suggestion and to select another release option. Out-of-the ordinary circumstances are noted on the guidelines form by pretrial services staff preparing the guidelines. Thus, a defendant's history of escape from penal institutions, his/her mental health history of suicide attempts, or the willingness of an organization to guarantee supervision and custody of the defendant might, beyond the usual guidelines classification, persuade the judge that a more or less restrictive bail/pretrial release choice might be appropriate.

When these exceptional decisions are taken by the judge or commissioner, however, the guidelines system counts on the notation of reasons for the departure by the judge, so that when the use of guidelines is reviewed periodically, appropriate modifications can be made. The judges' practice of taking exceptions can also be reviewed for appropriateness in light of the overall court policy and data describing the experience of defendants in each of the guidelines categories.

A related feature of the guidelines matrix is the notation of categories of defendants in which higher than ordinary "drop out" rates among the entering criminal cases occur (see the Maricopa and Dade guidelines) or in which a higher than average "bind down" rate is seen (see the Dade guidelines). These kinds of indicators that may be added to the guidelines can make the judges aware--in the face of the pressures of jail overcrowding or crowded

dockets--that certain kinds of cases usually have charges dropped within a short period of time or are usually transferred for processing as misdemeanors.

A Note about the Evaluation of Decision Guidelines

From a scientific point of view, of course, the impact of an innovation is best measured through experimentation. That is, under ideal conditions, some method of randomly allocating defendants to guidelines decisionmaking and to traditional decisionmaking during the same period in time would best show the strengths and weaknesses of the approaches being compared. This is the approach we followed in our study of the use of bail guidelines in the Philadelphia Municipal Court, for example. Given our financial and time constraints, we decided to compare practices before the use of decision guidelines at initial appearance with practices after their adoption. Although there are difficulties associated with the pre/post method of evaluation,³ a great deal can nevertheless be learned to provide important feedback on the effects of the bail/pretrial release guidelines. The leadership of the Boston Municipal Court was unsuccessful at implementing guidelines (although it expressed a desire to have them). We evaluated the guidelines implemented in Maricopa County and in Dade County to the extent possible with the resources at our disposal.

³ The principal question that arises using this approach is the possible effects of other phenomena than the one being investigated on the later outcomes. For example, if greater use of OR and pretrial release is found generally in 1987 when compared to 1984, we would want to be assured that something other than the guidelines had not caused the change.

Chapter Two

**THE IMPLEMENTATION OF PRETRIAL RELEASE GUIDELINES AT INITIAL APPEARANCE IN
SUPERIOR COURT, MARICOPA COUNTY**The Rationale for Pretrial Release Guidelines in Superior Court

During the period between November of 1984 and December of 1986, the leadership of the Superior Court of Arizona in Maricopa County worked with the staff of the Bail/Pretrial Release Guidelines Project to examine its pretrial release and detention practices and to devise pretrial release guidelines⁴ for use by pretrial services and commissioners at initial appearance.⁵ The initial version of the Court's pretrial release guidelines was put into use during January, 1987. During the descriptive research which led to the design of decision guidelines, the Court focused on a number of concerns related to the conduct of pretrial release and detention decisionmaking in Superior Court. For the sake of brevity, these concerns can be divided into two groupings: those relating to the pretrial release decisionmaking process and those relating to the possible impact of the guidelines.

Concerns related to the pretrial release process included a wish to clarify the pretrial services recommendation function, to encourage greater consistency among the decisions of the commissioners presiding at initial appearance and to consider implementing a program of supervised release as well as a case review procedure for eliminating unnecessary cases from the court caseload as well as from the jail population. Questions about the impact of pretrial release decisionmaking in Superior Court were raised because of the history of jail overcrowding in Maricopa County.⁶ The County's recently completed jail facility opened its doors to discover a second generation of crowding problems. Concerns about the effect of pretrial release practices in minimizing flight and crime among defendants granted release before adjudication were also a high priority principally because of occasional and rela-

⁴ As we pointed out in Volume I, the terminology describing bail proceedings differed in each of the courts--as ultimately did the name of the decision guidelines developed. In Maricopa County, bail was referred to as bond, financial bail as secured bond and first appearance was initial appearance. At one of the earliest project meetings, the then criminal presiding judge insisted that the decision guidelines to be developed be called "pretrial release" guidelines to emphasize the overall importance of the decision at initial appearance and to distinguish the guidelines from a bond schedule, which is what he believed "bail guidelines" conjured up.

⁵ The findings from the research describing pretrial release and the development of pretrial release guidelines in Maricopa County has been summarized in earlier reports.

⁶ In fact, one of the reasons the Court invited the research was to discover whether development of a guidelines resource might serve as a resource in addressing crowding problems. When the research began in 1984, the old jail was seriously crowded. By the time the research was completed, a new jail had been opened and filled to capacity and was again facing overcrowding crises.

tively rare episodes of crimes committed by released defendants that received a great deal of publicity, even though large numbers of released defendants were not shown to fail to appear in court or be rearrested during the study period.

Given the press of these kinds of concerns, it was logical for the Court to review its decisionmaking processes. Thus, as we reported in detail in Volume I, the research examined the procedures employed by the pretrial services agency responsible for interviewing defendants prior to their initial appearance in court and for preparing recommendations concerning pretrial release for submission to the commissioners who presided at that stage. In addition, large numbers of pretrial release decisions and conditions assigned to defendants were studied and their outcomes (in terms of release and subsequent misconduct) contrasted. The result of this process of self-examination was the development of pretrial release guidelines that could assist the Superior Court in two ways: as a general policy and management resource and as a practical tool to assist the court commissioners in the conduct of their day-to-day pretrial release decisionmaking. The version of decision guidelines for pretrial release that resulted from this process was described in Volume I and Chapter One of this report (see Figure 1.1).

One of the special features of the Maricopa County guidelines was that neither the severity of a defendant's current charges nor the categorization of a defendant within the empirically derived risk classification served as the sole emphasis in suggesting pretrial release options. Because of the Court's special concerns about cases involving victims of crime, particularly victims who had been injured, and about crimes involving weapons use or repetitive serious criminal charges, these attributes of defendant's cases were given special structural prominence within Superior Court's guidelines framework.

The Court's concern to minimize the use of unnecessary pretrial detention of defendants while maintaining very low rates of misconduct among released defendants was further reflected by the designation of suggested decisions (ranges and options) within each of the guidelines categories. To the extent that the guidelines could be implemented and be employed appropriately by the commissioners at initial appearance, the Court's policy goal of achieving equitable pretrial release and detention decisions would also have been realized--in the sense that similarly situated defendants (defendants with similar guidelines classifications) would be receiving reasonably comparable decisions.

The Implementation of the Guidelines at Initial Appearance: Changes in the Tasks of Pretrial Services Staff and the Superior Court Commissioners

Because in developing the decision guidelines for pretrial release the Superior Court sought to bring about improvement in a number of areas--such as the reduction of unnecessary pretrial detention--their implementation involved change on the part of pretrial services staff and the Superior Court commissioners who decided pretrial release. The required changes ranged from seemingly (but not always) minor new procedures and paperwork to more substantive differences.

Changes Required of Pretrial Services Staff

For the pretrial services program, the implementation of the pretrial release guidelines would require a fairly notable change. Under the former, pre-guidelines procedures, pretrial services customarily considered the defendant's background and criminal history information and then recommended to the commissioners that a defendant should be released under nonfinancial conditions; otherwise they made no recommendation, from which the commissioners were free to conclude that the defendant was a better candidate for secured (financial) bond. In Volume I we described the very influential part played by the subjectively formulated pretrial services recommendation in the commissioners' choices and the defendant's prospects for pretrial release or detention.

Under the guidelines approach, the pretrial services staff would no longer make subjective recommendations to the commissioners regarding pretrial release. Instead, they would "classify" defendants according to the guidelines criteria--based on risk of misconduct, the severity of criminal charges and the "special" severity factors--and indicate for the commissioner the decision options usually suggested in similar cases. Thus, the "recommendation" function under the guidelines would be eliminated and be replaced by an objective fact-gathering and information prioritizing scheme.

This change was not minor for the pretrial services staff for at least two reasons. First, pretrial services might have felt that an important decisionmaking role (making a subjective recommendation regarding nonfinancial release to the commissioners) was being deprived them. Second, the new "objective" procedures eliminated discretion in choosing which kind of defendant information was most important. Instead, items were to be ranked, scored and summed. Thus, a successful implementation of the guidelines system would require an adjustment in the attitude or outlook of the staff as well as training in the new procedures. On a smaller scale, therefore, it would be

natural for pretrial services staff to feel what commissioners or judges might fear, that the key part of their role was being replaced by a cold, "computerized" decision process.

The Court Commissioners and the Guidelines

It is fair to say that the commissioners, who had been participating in the research process throughout, regarded the advent of implementation of decision guidelines with some trepidation. The guidelines development process until that point may have seemed academic--the meaning of various findings were freely debated at the many meetings--but as the date of implementation approached, some of the commissioners clearly became uncomfortable. The procedures and forms were revised a number of times to incorporate suggestions from the commissioners and the pretrial services staff so that the guidelines would be as simple, understandable and practical as possible. Finally, the process of preparation came to an end when one of the commissioners suggested that the suggested decisions were too lenient and the ranges of secured bond "were just too low" and recommended that the upper limit of guidelines be left open ended. What the commissioner was expressing, in fact, was his feeling of discomfort with the guidelines, with the idea of an explicit policy that would constrain his exercise of discretion.

At this last meeting, the operation of the guidelines was reviewed and the intent was reiterated and reclarified--that the guidelines were designed to be a useful reference in most cases, not all cases; that commissioners were free to depart from the guidelines, only they were asked to note reasons for their departures, and so forth. Finally, the presiding judge set a date for their implementation and urged the commissioners to make best use of them, noting that we would study their use and come up with recommendations for change after an initial period, if change seemed appropriate.

For the commissioners, some change was involved. Formerly, they considered the recommendation of the pretrial services staff and often agreed with it, though they were not in the slightest bound by it. In this instance, a "presumptive," usual-case decision or choice of decision options was pointed out. The guidelines were a more explicit representation of court policy; though they were not binding, they required reasons for exceptional decisions and fostered the feeling that commissioners were accountable for their decisions.

Proposed Procedural Innovation

Just as the implementation of the guidelines strategy required individuals to cooperate in trying out the new procedures, the implementation plan also called for the "system" to do some new things--though perhaps not all of them at once. Two of the Court's most important planned innovations involved a) establishing a more forceful program of supervised release and targeting its use to particular categories of defendants (those falling within the "special conditions" guidelines cells), and b) instituting a review of the status of defendant's situations from three to five days after the initial appearance decision.

The first proposed innovation, developing a supervision program for medium risk defendants, was problematic because additional resources would need to be deployed to keep track of defendants falling into the OR/Special Conditions part of the guidelines matrix. Although commissioners had been releasing defendants on conditions involving supervision previously, the pretrial services program did not have the resources to mount an effective program. Thus, very little supervision had generally been involved in "supervised release" previously. However, a meaningful program of supervised release would clearly be pivotal under the guidelines, because one of the ways the guidelines were designed to reduce unnecessary detention was to target formerly detained categories of defendants (medium risk/medium severity) for nonfinancial release under restrictive conditions, e.g., supervised release.

The second suggested innovation was based on the recognition that improvements at the initial appearance stage alone could not accomplish some of the Court's goals in the areas of pretrial release and detention and that a second stage consideration of the defendants' custody and case status should be closely linked to implementation of the guidelines.

The developmental research produced several findings supporting this recommendation: For example, it was learned that once a defendant failed to secure release at the initial appearance stage in Maricopa County, there was little likelihood and/or chance for change of his/her custody status throughout the remainder of the case. The research also pointed to categories of defendants who, although they had not been released at initial appearance, could well have been released later (within the next couple of days) without posing higher risks than defendants gaining immediate release.

Often, the explanation was that additional information needed to be obtained by pretrial services (perhaps regarding residence or employment or out of state warrants) before a favorable recommendation could be made, but because of the short period between arrest and initial appearance, it was sometimes impossible. In analyzing the processing of entering felony cases, we found that a large proportion were dropped or dismissed within the first 90 days, including large numbers of defendants held in detention.

In short, linked with the implementation of the guidelines system at initial appearance, the Court sought to establish complementary procedures that would address the use of pretrial detention and release in other ways. Taken together, decision guidelines and the related procedures had the dual goals of assuring that appropriately restrictive conditions of release were applied to cases posing the most serious risks of crime and flight and preventing unwarranted and wasteful confinement in the other cases.

Chapter Three

EVALUATION OF THE INITIAL USE OF PRETRIAL RELEASE GUIDELINES IN SUPERIOR COURT, MARICOPA COUNTY

The Evaluation Design in Maricopa County

Given the strict constraints of limited project resources and limited time (we wanted to give prompt feedback to the Superior Court), we decided to collect data describing the use of guidelines at the very beginning of their implementation and to attempt to collect a smaller, later sample to indicate the nature of guidelines use after several months of operation. Data describing pretrial release decisions and a 90 day follow up were collected for roughly the first 500 cases entering Superior Court during January, 1987 (the first month of guidelines use) and during February, 1987 (n=991). Defendants securing release within 48 hours were followed up for a period of 90 days to determine whether any failures to appear in court (FTAs) or rearrests for crimes occurring during pretrial release were recorded.⁷ In addition, data describing the use of guidelines for 436 cases entering the process during a two week period beginning September 23, 1987, and ending October, 4, 1987, were also collected. The purpose of this more recent sample was limited to examining the use of guidelines subsequent to the initial start-up; it was not possible to follow the progress of the cases during pretrial release. Our evaluation of the use of the pretrial release guidelines was limited to these samples--and thus does not address their use throughout 1987.⁸

As we will do in our discussion of guidelines in Dade County in Chapters Four and Five, we would like to emphasize here that we were constrained to evaluate the use of the guidelines in Maricopa County at a very early stage (at the very beginning). Ordinarily, it would be preferable to allow some time for implementation difficulties to be identified and sorted out when evaluating the performance of a difficult innovation. It would be normal for a system implementing guidelines to take several months of trial and error and correction before having things run

⁷ This represents a shortened method of studying defendants' performance during pretrial release when compared to the 1984 study upon which guidelines development was based. In that study, we followed cases for up to 90 days first to determine whether they were released. If released during that period, we then followed the cases for up to 90 days of pretrial release (or until adjudication of the case). Thus, nearly six months of follow-up was required for the study of cases released late in the process. Because we did not have that amount of time or the necessary staffing available, we chose to study release as an immediate result of the initial appearance decision. Thus, we determined whether or not a defendant had secured release within two days and then conducted a 90 day follow up to determine whether rearrests or failures-to-appear had occurred.

⁸ However, the Pretrial Services Agency produced a report for the second half of 1987 that summarizes information relating to the use of guidelines during the latter period, although the agency report employs a different methodology.

smoothly enough to be fairly tested. Because our funding was concluding, we did not have the luxury of that time (especially given the necessary follow-up). We were forced to examine the performance of a system just beginning to organize the new procedures and to put them into practice. A year long study would probably show ups and downs in the effects of the guidelines strategy, and offer more experience from which to draw conclusions. For these reasons, we added the September-October sample to capture practices at a more seasoned stage of their development in the hopes that it would offer useful feedback to the Court and to the Pretrial Services Agency.

Certainly caution must be exercised in interpreting findings in a pre-post comparison. Because the samples of defendants entering Superior Court in 1984 and during the two periods in 1987 are not precisely similar (they differ somewhat in the severity and risk attributes of their defendants), overall comparisons can be made only with great caution.⁹ (See Figures 3.1 and 3.2.⁹ See Table A3.1 for a more detailed comparison of the attributes of defendants included in each of the samples.) The most informative comparisons are made when contrasting subcategories of defendants with similar characteristics, such as defendants classified within the same guidelines "zones" or "cells."

PREPARATION OF THE GUIDELINES BY PRETRIAL SERVICES

Just as the staff of the Pretrial Services Agency played a central role in the development of the guidelines, they carried a major share of the burden for implementing the system at initial appearance stage as well. To prepare the guidelines and to summarize relevant information for the commissioners who preside over initial appearance in Superior Court, pretrial services staff interviewed each defendant and reviewed other potentially important case or history related information. To situate each defendant within the guidelines--and, thus, to

⁹ What is evident is that the January-February and September, 1987, samples of entering defendants differ little from one another in the areas of risk and charge severity. The severity of the defendants' charges seemed to differ between 1984 and 1987 in one area: the final severity ratings (the defendants' classification once the victim injury, weapons and repetitive serious counts criteria are taken into account) showed that more 1984 defendants were charged with offenses placing them in severity level 4 while the 1987 defendants were more often placed within severity level 3. Yet the proportions of defendants in the highest severity levels were reasonably similar in the two years.

¹⁰ These differences rely on the classification of charges in the 1987 samples by the pretrial services staff. Our data collection for these samples did not include copies of police paperwork listing offenses; instead we only recorded what the pretrial services staff indicated on the guidelines paperwork. To the extent that errors were made in classifying criminal charges for the guidelines, actual sample differences may be greater or lesser than shown in the figures. The classification of charges for the 1984 sample was done on the basis of much more complete charge information--including police paperwork and a computer case-history check.

Figure 3.1 The (guidelines) severity of criminal charges of felony defendants entering Maricopa County Superior Court, by sample

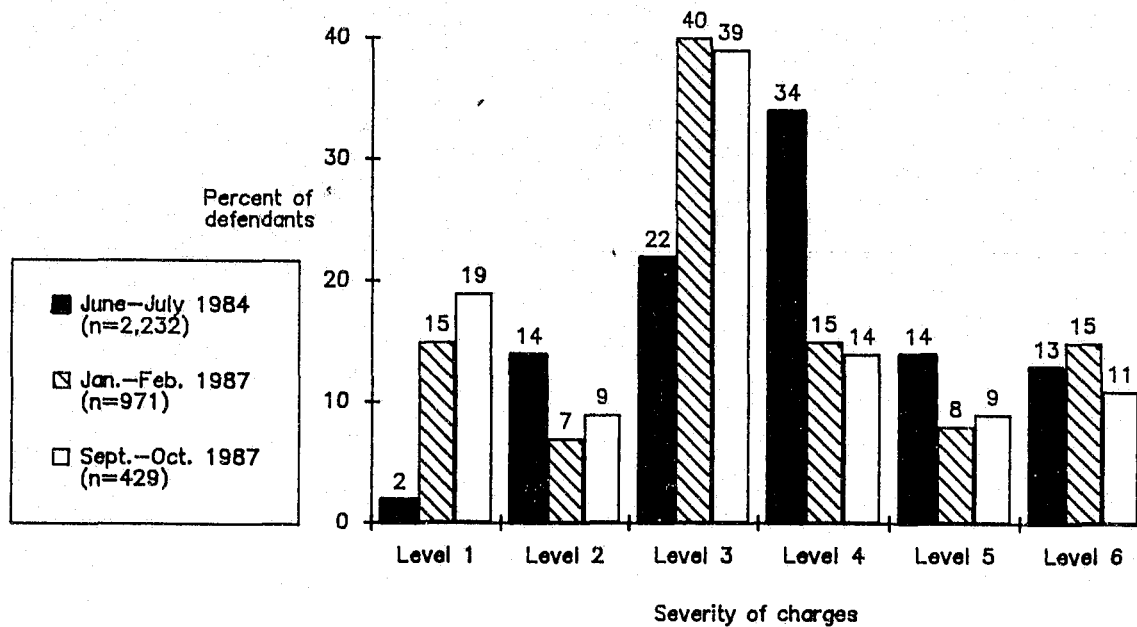
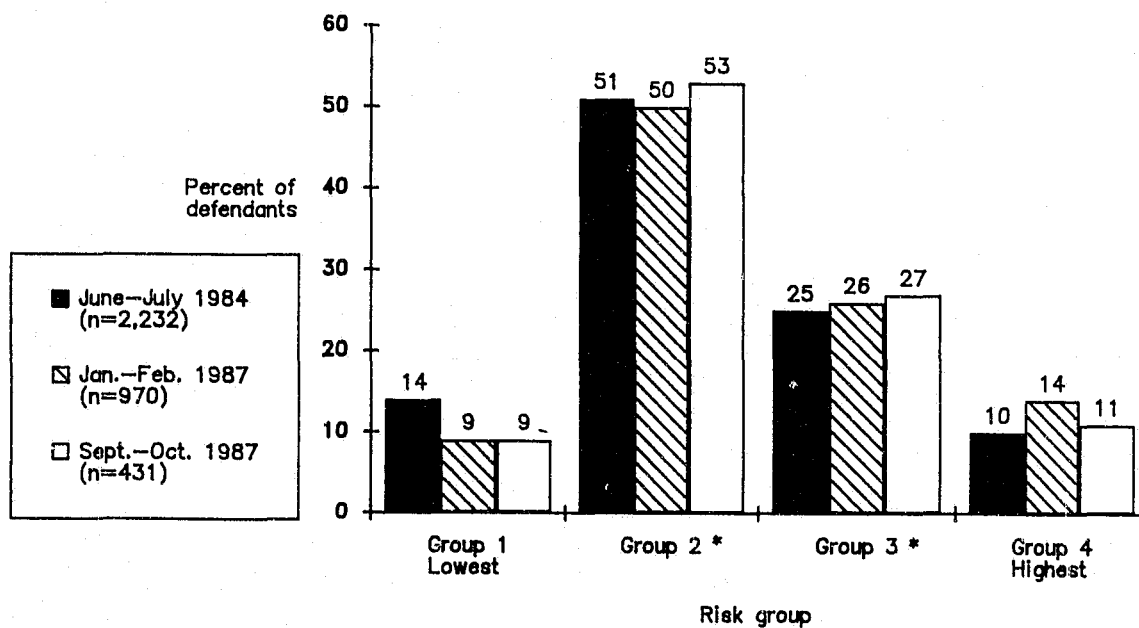


Figure 3.2 The (guidelines) risk classification of felony defendants entering Maricopa County Superior Court, by sample



* Chi-sq.s were not significant at $p = .05$.

indicate the pretrial release option suggested by the guidelines for like defendants--the pretrial services staff was required to correctly classify the defendant's criminal charges and determine the risk category to which the defendant belongs.

To determine the charge severity level, the interviewer followed procedures for designating the most serious criminal charge facing the defendant and reviewed the relevance of the special severity factors relating to victim injury, weapons use and repetitive serious charges. If the "special" factors were in evidence, the restrictiveness of the defendant's guidelines classification was increased. To place the defendant within the appropriate risk group--with choices ranging from Group 1 (the lowest risk) to Group 4 (the highest risk)--the pretrial services staff member scored the defendant according to the items shown on the pretrial services worksheet. See Figure 1.4. Ordinarily, the risk and charge classifications would permit the interviewer to indicate for the commissioner in which guidelines category the defendant fell. By circling that category on the commissioner's guidelines form, the commissioner would be able to see the pretrial release option usually suggested for defendants with given charge and risk attributes.

When relevant, however, the pretrial services staff member would also indicate other unusual aspects of the case or about the defendant's background that the commissioner would need to know to make the most appropriate decision at initial appearance. Thus, even before the commissioner could make the pretrial release decision, the pretrial services agency would have already performed several key functions.

Figure 3.3 displays the distributions of the January-February, 1987, defendants (combined) and of the September, 1987, defendants with the June-July, 1984, defendants within the decision "zones" of the guidelines.¹¹ More than half of the 1987 defendants were classified within categories not calling for financial conditions (secured bond), most of these (45 percent of the January-February defendants and 48 percent of the September defendants) fell into the least restrictive categories involving only "standard" conditions of release.¹²

Figure 3.4 displays the distribution of 1987 defendants among specific guidelines categories or "cells" (and compares them with the 1984 cases). The patterns of the January-February and September defendants are quite

¹¹ By "zones," we mean the broad areas of the guidelines grid defined by the four kinds of suggested decision options: OR/Standard (conditions of release), OR/Special (restrictive conditions of release), OR/Special to low bond (a choice of restrictive conditions or low amounts of secured bond), and various ranges of secured bond.

¹² By "standard" conditions of release are meant conditions, such as returning to court and refraining from criminal activity, that do not seriously restrict a defendants activities.

Figure 3.3 The classification of felony defendants entering Maricopa County Superior Court, by guidelines "zone," by sample

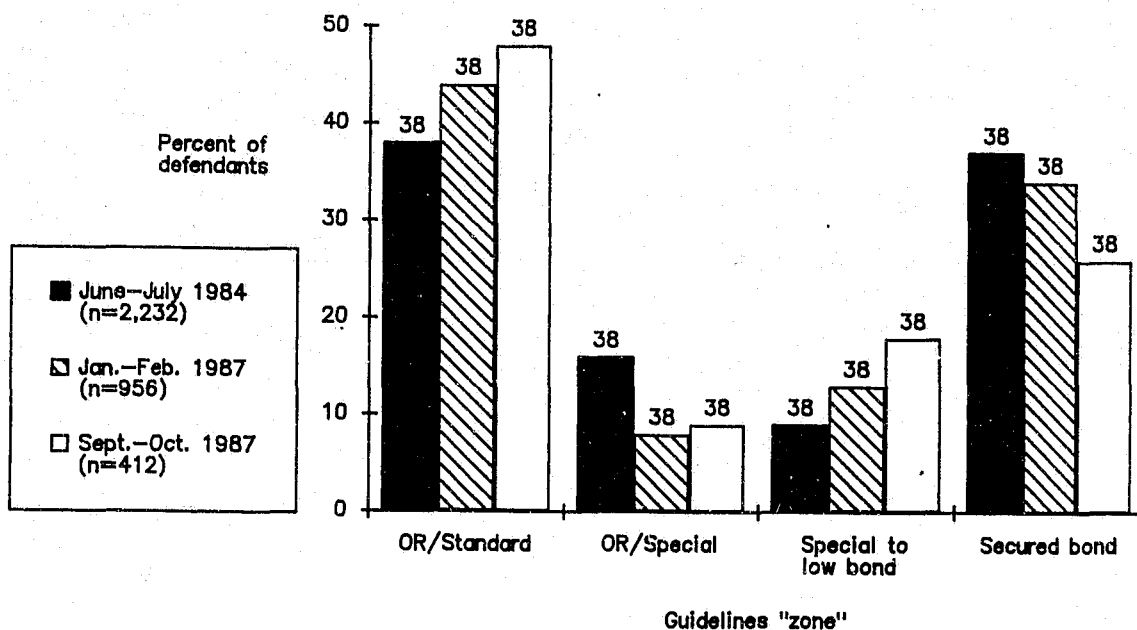
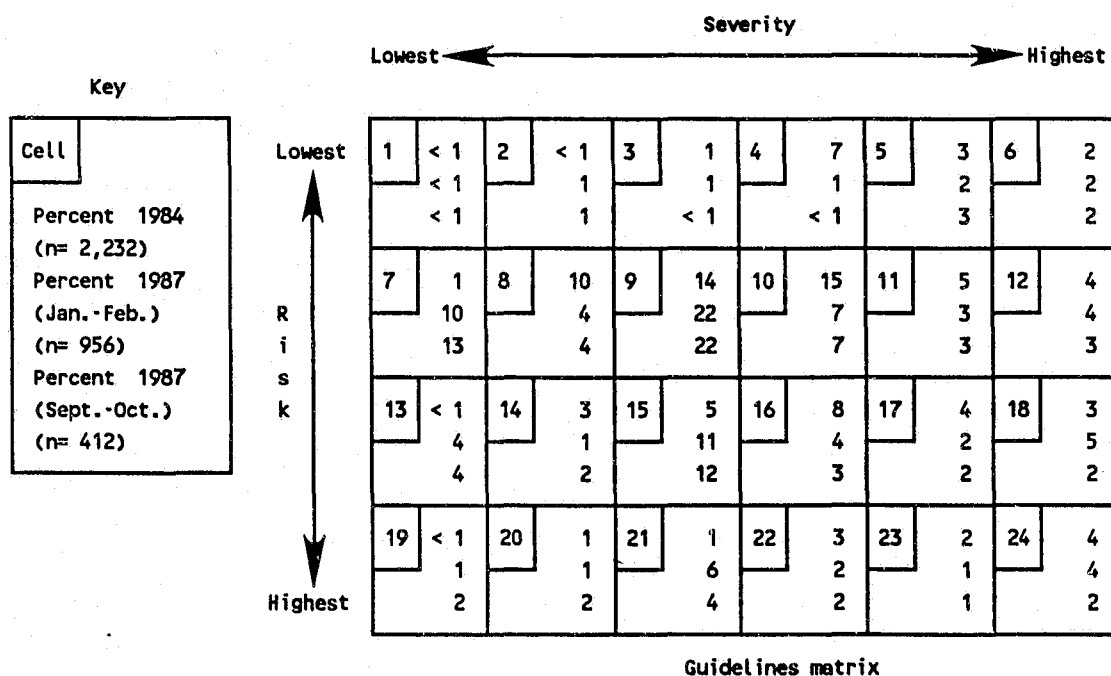


Figure 3.4 The classification of entering felony defendants in Maricopa County according to guidelines, by sample



similar. In particular, it can be seen that, although 1987 defendants are scattered among many guidelines "cells," there are three important exceptions. Fully one-fifth (22 percent) of the 1987 defendants fell in Cell 9, the cell designated by severity level 3 and risk group 2 of the guidelines. Over one-fifth of the 1987 defendants were equally divided among Cell 7 and Cell 15 as well. With nearly half of all entering criminal defendants in these three categories (Cell 7 and Cell 9 calling for OR/Standard Conditions and Cell 15 calling for Special Conditions or secured bond up to \$750), it becomes clear that the utility of the pretrial release guidelines will depend heavily on the decisions made within these categories.

Errors in Classifying Defendants according to the Guidelines

It would be unusual to expect that persons employing new procedures and completing new paperwork during implementation of the guidelines system would make no mistakes in classifying defendants--in ranking their criminal charges, or in scoring them according to the risk dimension. It would be especially rare to discover no inaccuracies during the first two months of a new program. (In the first use of decision guidelines during the Philadelphia experiment, for example, simple math mistakes were found in completing risk classifications in about 5 percent of the cases.) Because of the importance of proper classification of defendants within the guidelines for achieving the policy goals of the guidelines, we briefly mention our examination of the classification of Superior Court defendants during the two sample periods.

In focusing on risk, our cursory review could do two things: examine the way defendants were scored (comparing defendant/case information with the ratings given by pretrial services) and check the addition of the risk scores and the subsequent placement of defendants into risk groups for the guidelines.¹³ Our computer check on the addition of points assigned by the pretrial services interviewer revealed a roughly 6 percent error rate. When we more thoroughly reviewed the scoring of items for the 991 defendants entering during the January-February period sampled, we found errors in 135 cases (or about 14 percent of the time). Of these errors, about half (7 percent) were of a magnitude leading to an erroneous classification under the pretrial release guidelines. The majority of these (58 percent) placed the defendant within a less restrictive suggested decision category, while the remainder

¹³ We were unable to review the accuracy of rankings of criminal charges according to the guidelines severity dimension because we collected only the pretrial services worksheet (we did not see the police forms with the initial charges). Thus, we can only assume that this part of the guidelines classification went mostly well.

(42 percent) led to mistakenly more restrictive suggested decisions. The errors were distributed among the seven risk items in the fashion exhibited in Table 3.1.

Table 3.1 The distribution of pretrial services errors in calculating risk scores

<u>Risk Item</u>	<u>Number of errors</u>	<u>Percent of errors</u>
Prior FTAs	42	26
Police facts re flight	0	0
Property offense (no person crimes)	29	18
Defendant lives alone	39	24
Robbery offense	3	2
Police facts & FTAs	32	20
Police facts & lives alone	17	10
Total	162 ¹⁴	100

Use of the "Police" Risk Item

During the development of the guidelines, two risk classifications were developed for consideration. One relied on the notation by police that the defendant might flee. In roughly 25 percent of the 1984 cases, police noted that they believed defendants might flee. Incorporation of this item into the risk component of the guidelines raised some questions about the possible misuse of this item by the police once they realized their ability to have input into the defendant's guidelines classification.

Rather than merely soliciting the arresting officer's subjective opinion, the police release questionnaire was revised to ask "What facts does the state have that indicate the defendant will flee if released?" The pretrial services interviewer preparing the guidelines information assigned 67 "negative" points if there was such an indication on the police release form, regardless of the kind of facts. In combination with poor ratings on "prior FTAs" and "defendant lives alone," the police item can earn a defendant an additional 45 points in the direction of a higher risk rating.

Review of the use of the police item during the January-February sample showed that 26 percent of defendants received negative ratings on this item. During the September-October sample, only 11 percent of defendants were so rated. Thus, it appears at least that negative ratings by the police regarding the flight risk posed by defendants had not grown at all but was appropriately restricted.

¹⁴ Note that because some cases had more than one error, 135 cases produced 162 errors in all.

Although the use of this item did not therefore appear to be running rampant among arresting officers as some had feared, still examination of the kind of responses the police were giving in the release questionnaire may raise some questions about just how this item should be used. For example, the police "facts" often took one or more of the following forms:

the defendant was "transient,"
 "transient and very mobile,"
 "unemployed,"
 had "no work address,"
 had "no community ties,"
 had "only temporary work,"
 "nature of the charge,"
 "prior FTAs,"
 "prior criminal history,"
 "subject attempted to avoid arrest by fleeing."

A question to be considered in future revisions of the guidelines might be to determine whether Pretrial Services should regard any response to that question to the police as sufficient reason to increase the risk ratings of defendants or whether only certain categories of responses are appropriate.

Two problems are raised by this risk item. First, as the form the police response has changed to a more factual one, the substance of the response has changed. Second, as the substance has changed, sometimes replicating the kinds of information pretrial services will use to assign risk categories to defendants, scoring problems result.

Consider, for example, the impact on a defendant's risk rating of a police "nature of the charge" response. First, at a minimum, the defendant will be assigned the 67 points. This is because the police response is completed--whatever it says. (Note that accumulation of points increases the likelihood of a higher risk classification and, ultimately, a more restrictive release decisions.) Then, if the charge is a property offense, or involves robbery charges, additional points will be assigned by pretrial services on separate items. Furthermore, the severity dimension of the guidelines will also place the defendant into a more restrictive category--because it is based wholly on the notion of "nature of the charge." In other words, because of the police officer's notation, aspects of the defendant's charges will be given inordinate weight.

A more extreme example is seen when the police officer notes that his/her "fact" for believing the defendant might flee is the defendant's prior record of FTAs. The defendant receives the 67 points because of this police "facts" response, receives at least an additional 8 points under the "police facts & prior FTA" risk item and receives

at least 36 additional points under the item designed to consider prior FTAs, "Prior FTAs." One approach to avoiding the problems of double or triple counting that can result is to exclude the "police facts" item when the police are merely reporting facts that Pretrial Services will be recording elsewhere, such as under prior FTAs, etc.

The Notation of Unusual Circumstances

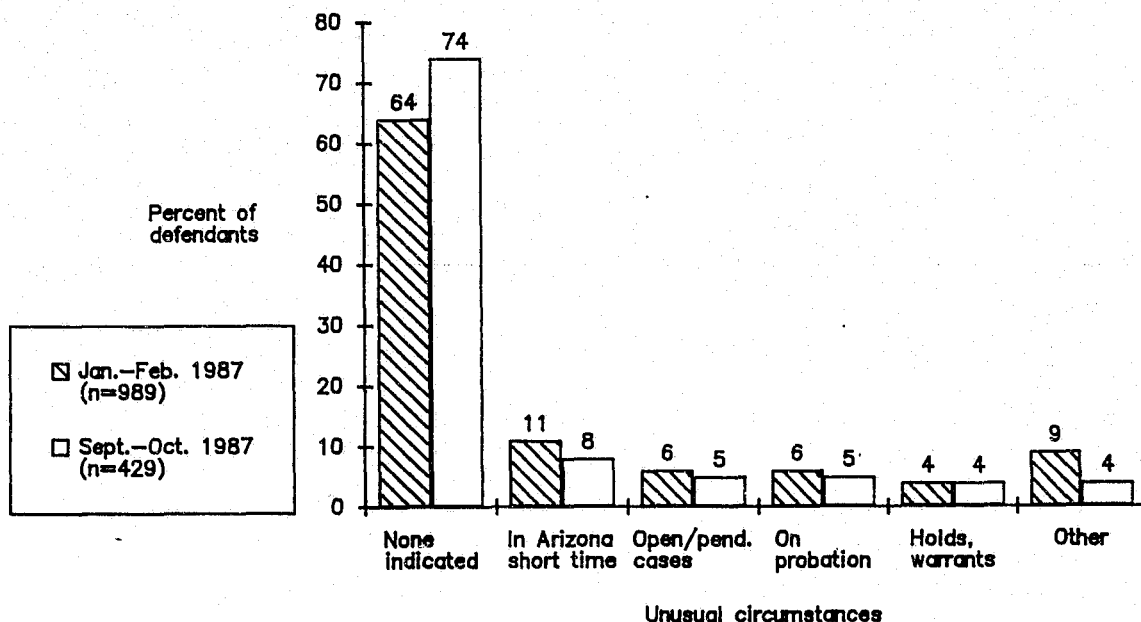
In completing the "Unusual Circumstances" section of the commissioner's guidelines decision form, the pretrial services interviewer is indicating that there are special features of the defendant's case or situation that ought to be included among the other kinds of information the commissioner considers. The "unusual" in the title was purposely intended to suggest a restricted use of this section; it was not designed, for example, to include general biographical data or notes about employment status, etc. Review of the use of this section in the January-February cases revealed that "unusual circumstances" were found in roughly one-third (36 percent) of the cases. (See Figure 3.5.) Although the level of use was, then, held to a minority of the cases, it could not be characterized as rare. Analysis of the September-October cases shows that "unusual" factors were being found much less frequently, in only one-fourth (26 percent) of all cases.

The importance of the proper use of this section of the guidelines is underscored when its relationship with the commissioner's decisions is examined. When any unusual circumstance is noted by pretrial services, the chances that the commissioner will make a decision that departs from the guidelines doubles. Thus, for this section to be of practical use to the commissioner, its use needs to be carefully monitored. Figure 3.5 also shows the relative frequency of kinds of circumstances found to be unusual, when any were found. Most common were "in Arizona only a short time," defendant has "open" or "pending cases," the defendant is "on probation or parole," or other holds or warrants were indicated.

Suggestions for Special Conditions of Release

According to the guidelines classifications of the 1987 defendants we studied, just under 10 percent of defendants fell within guidelines categories calling for OR with special conditions of release to be assigned. Between 13 and 18 percent (depending upon the month) of defendants fell within categories suggesting either OR with special conditions to be assigned or a low secured bond.

Figure 3.5 The notation of "unusual circumstances" by pretrial services in the cases of felony defendants entering Maricopa County Superior Court, by sample period

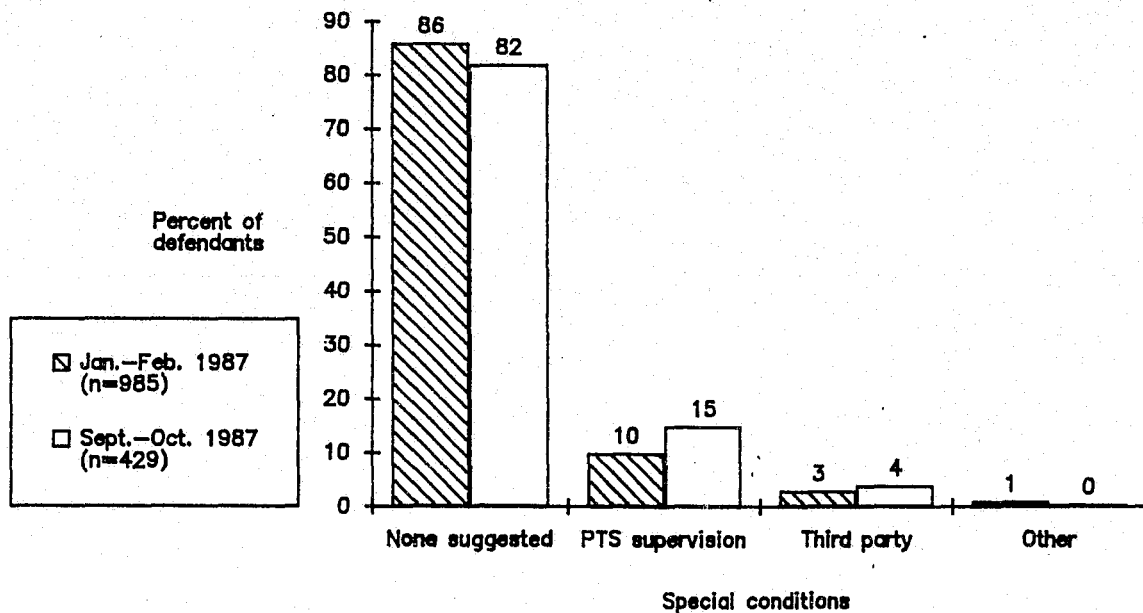


Theoretically, pretrial services should specify which restrictive conditions would be most appropriate in these cases (and would be unlikely to specify special conditions for cases falling in other categories). Figure 3.6 shows that the suggestion of special conditions occurred in less than 20 percent of the cases, a level closely in line with the goals of the guidelines classification.

USE OF THE PRETRIAL RELEASE GUIDELINES BY SUPERIOR COURT COMMISSIONERS

In designing the decision guidelines for use at initial appearance by the commissioners, the Court did not propose or expect that the guidelines would be followed unthinkingly by commissioners in all cases. Rather, the idea was to provide general guidance which would be appropriate in most cases and yet to provide the flexibility to accommodate unusual cases. Thus, while the guidelines were to provide a strong compass for general bearings in pretrial release decisionmaking, they also provided the information--through the work of the Pretrial Services Agency--on the basis of which commissioners could decide to make decisions different than those suggested by the guidelines.

Figure 3.6 The suggestion of "special" conditions by pretrial services in the cases of felony defendants entering Maricopa County Superior Court, by sample period



[Note: In the 1984 sample, 7 percent of defendants were recommended PTS supervision, 10 percent third party.]

By definition, though, departures from the suggested decisions were expected to occur relatively infrequently, in a minority of instances. Moreover, ideally departures would be equally divided among those involving more restrictive and those involving less restrictive options. Again, ideally, we would have expected commissioners' choices to agree with guidelines suggestions in roughly 75 percent of the cases. Finally, our evaluation of the initial use of the guidelines would also examine the notation of reasons by the commissioners in the exceptional cases to provide important feedback to the Court in its review of guidelines and consideration of possible modifications.

Agreement of the Commissioners' Decisions with the Guidelines

Figure 3.7 displays the extent to which the commissioners' decisions at initial appearance agreed with the guidelines during January-February and September-October, 1987. In the first two months of the guidelines, commissioners agreed in about 70 percent of the cases, a level of agreement very close to the hypothetical ideal of 75 percent. By September, however, the level of agreement by commissioners slipped noticeably to only 62 percent.

While this still technically qualifies as agreeing "in most cases," it represents a much weaker degree of compliance than an effective system would look for. Figure 3.7 also reveals that when the commissioners departed from the guidelines, their decisions were five times more likely to be in the direction of more restrictive than less restrictive choices. In short, decisions made outside of the guidelines grew and grew in the direction of more restrictive decisions by a dramatic margin.

Agreement within Guidelines Decision "Zones"

Figure 3.8 shows in more detail the agreement of commissioners' decisions as defendants fell within different areas ("zones") of the guidelines. During January-February, commissioners agreed roughly 70 percent of the time with the suggested guidelines decisions regardless of the kind of decision (zone) specified. During September-October, agreement dropped 25 percentage points in the OR/Special Conditions cells (from 68 percent to 43 percent) and 8 percentage points in the OR/Standard Conditions and Secured Bond categories.

Analysis of Agreement Based on Selected "Cells"

To evaluate the guidelines more closely--either with the aim of modifying the suggested decisions or of encouraging greater compliance among the decisionmakers--examination of specific guidelines categories (cells) may be more helpful. (See Figures 3.9 and 3.10).¹⁵ Reasonably high levels of agreement are seen for January-February decisions across cells, with the exceptions of Cells 12, 15, and 24. While it is not unusual to see frequent departures in the highest risk, highest severity categories (Cell 24 is the highest), disagreement in Cell 12 and Cell 15 is more problematic because, remember, roughly 10 percent of all entering defendants (i.e., 20 percent taken together) will fall within each of these cells. High levels of disagreement in these categories will result in a disproportionate effect on the overall use of the guidelines. On the other side of the ledger, the cell containing the largest number of defendants, Cell 9, produced one of the highest levels of commissioner agreement during January-February. Among the September-October, 1987, decisions, slippage is noted across cells, although decisions for defendants falling within Cell 21 were still agreeing with guidelines more than 80 percent of the time. Agreement was exceptionally low in Cells 8 and 10, reaching only 40 percent in Cell 8 (a drop of 30 percentage points) and 53 percent in Cell 10 (a drop of 16 percentage points from the January-February levels).

¹⁵ We can only discuss cells within which a sufficient number of defendants were found for analysis.

Figure 3.7 Agreement between commissioners' decisions at initial appearance and the guidelines suggestions in the cases of felony defendants entering Maricopa County Superior Court, by sample

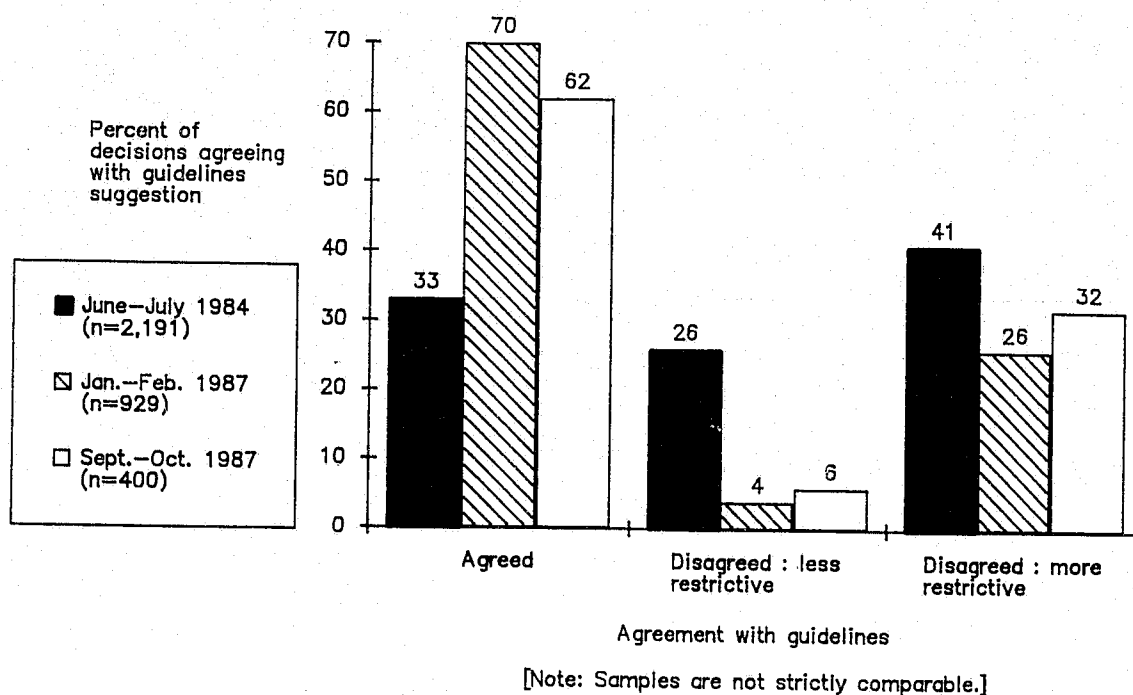


Figure 3.8 Agreement between commissioners' decisions at initial appearance and the guidelines suggestions in the cases of felony defendants entering Maricopa County Superior Court, by zone, by sample

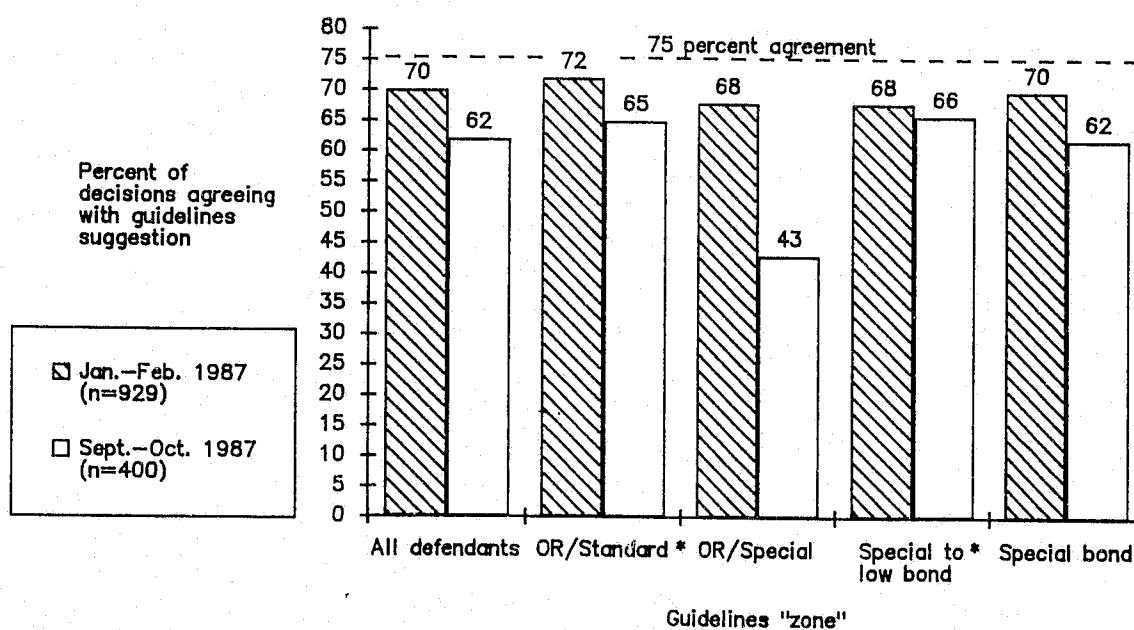


Figure 3.9 Agreement between commissioners' decisions at initial appearance and the guidelines suggestions in the cases of felony defendants entering Maricopa County Superior Court; by selected guidelines cell, by sample

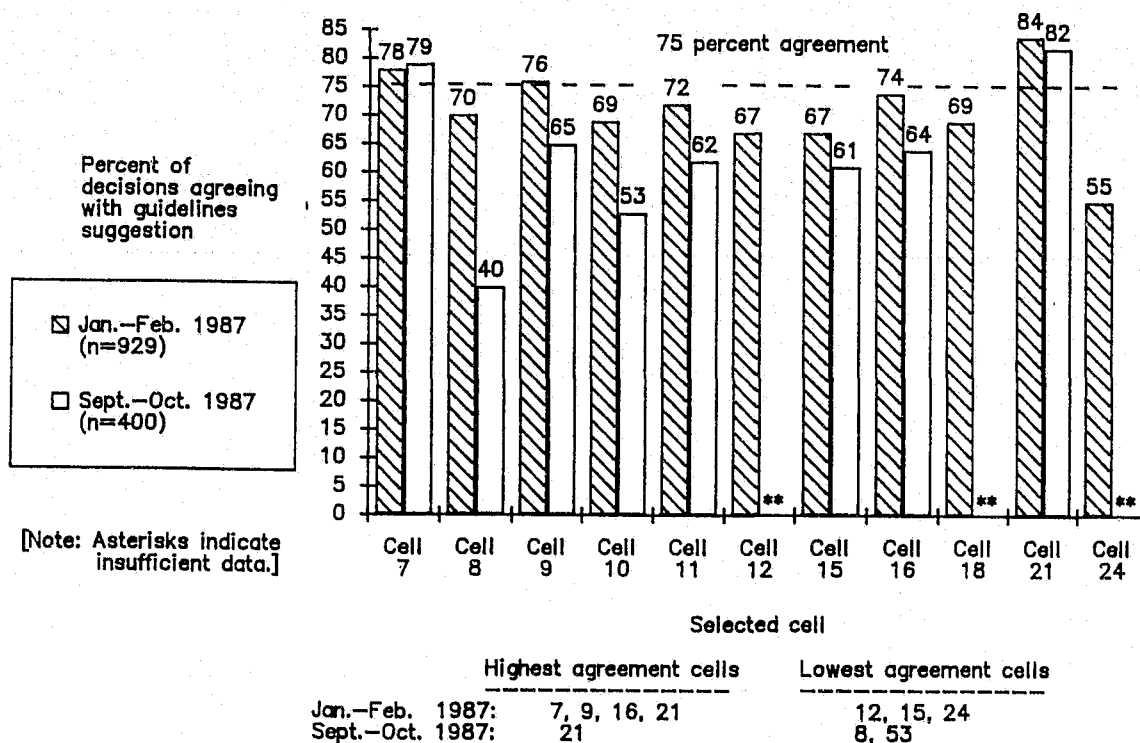
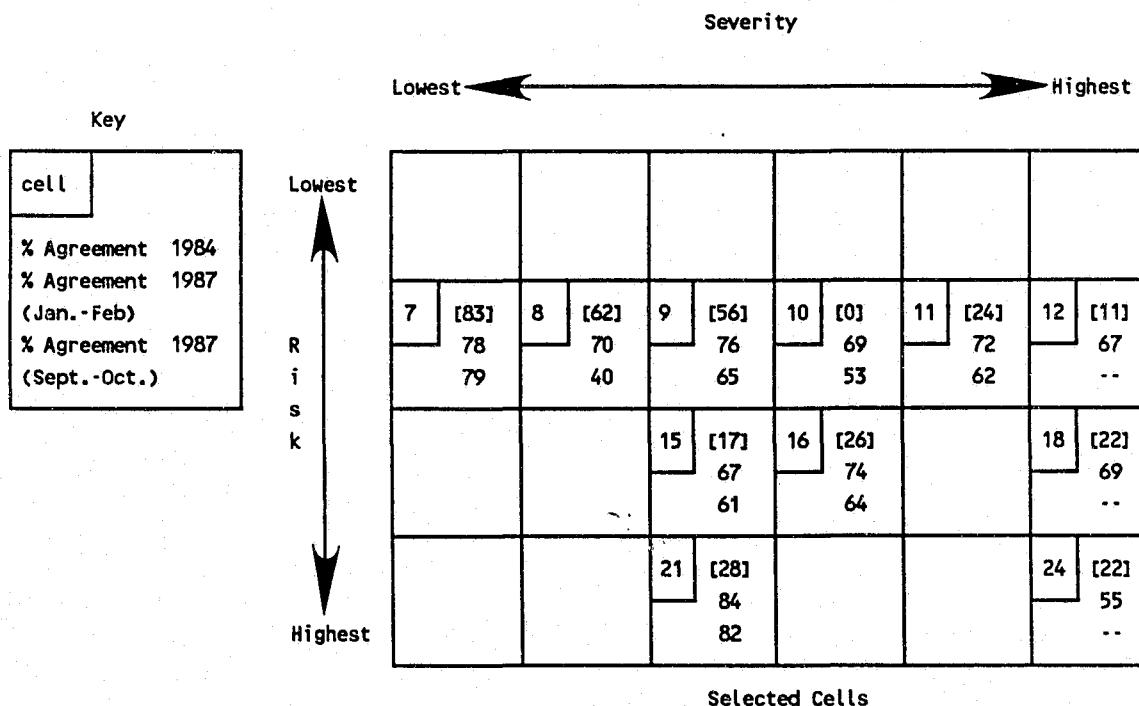


Figure 3.10 Agreement with decisions suggested by guidelines, by selected cell, by sample



[Note: Ideal agreement is 75 percent. Only cells with sufficient numbers of cases are included in the table.]

Figure 3.10 places the same results within the guidelines matrix, making the cell analysis a little easier to visualize. It also brackets the percentages of 1984 decisions "agreeing" with the guidelines ranges. These data are useful in showing categories in which the commissioners' current decisions are even less aligned with the direction signalled by the guidelines than past decisions were. Thus, commissioners decisions have fallen slightly short of past decision standards in Cell 7 (in January-February and September), in Cell 8 (in September).

Agreement from Commissioner to Commissioner

Figure 3.11 depicts the extent to which individual commissioners' decisions agreed with those posited by the pretrial release guidelines.¹⁶ In comparison with the expected level of general agreement (about 75 percent), three commissioners were making use of guidelines during the January-February period in the fashion envisaged. Commissioners 2, 5 and 6 agreed with guidelines, however, at notably lower levels. By October, only the decisions of Commissioner 3 showed the expected level of agreement with guidelines. Commissioner 1's former high level of agreement had fallen slightly (3 percentage points), Commissioner 4's level of agreement had fallen dramatically (16 points from 74 to 58 percent). The low level of agreement shown by the decisions of Commissioner 5 during the January-February period appeared to have fallen even further (10 percentage points) to only 56 percent of his cases.

Notation of Reasons by Decisionmakers Making Exceptions

In a well-implemented program of pretrial release guidelines, the decisionmakers are asked to provide notation of reasons when the decisions they make depart from those suggested by the guidelines. During subsequent review of the use of guidelines, the reasons commissioners have noted can help determine whether the guidelines should be modified or, perhaps, whether the decisionmakers should be encouraged to follow the guidelines more frequently. During the initial use of guidelines in Superior Court, commissioners took exception to the guidelines suggestions 30 percent of the time. In the great majority of these instances (75 percent of the time), the commissioners did note reasons for the exceptions, failing to do so only rarely. During the fall, 1987, sample the commissioners gave reasons when exceptions were taken less frequently, only 65 percent of the time.

¹⁶ Note that all commissioners are not necessarily represented by the same numbers and kinds of cases. For example, data for Commissioners 2 and 6 did not produce sufficient numbers of cases during the September-October sample period to be included in part of the analysis.

Figure 3.12 displays the use of reasons in cases requiring such notation. Generally, the reasons cited by the commissioners were appropriate, given the goals of the guidelines. A couple of reasons were not of the variety envisaged by the guidelines system. For example, prior failures to appear would not be viewed as appropriate reasons for departures generally, given the pronounced role of that criterion in the guidelines in the first place. "Guidelines--too low" also is not the kind of reason useful to the court in reviewing the use of the guidelines; rather more useful would be an explanation of why, in the particular instance, the guidelines appeared too low to the commissioner.

PRETRIAL RELEASE DECISIONS BEFORE AND DURING THE GUIDELINES

Examination of the preparation and use of pretrial release guidelines sets the stage for consideration of the extent to which decisionmaking at initial appearance and its outcomes has changed in the desired directions as a result of the guidelines program. This section first briefly compares decisionmaking in 1984 and 1987--focusing on the use of nonfinancial release, secured bond and detention. Subsequently, we will examine the consequences of the decisions in terms of the performance of defendants given pretrial release. (In addition to the figures indicated, tabular results are reported in Appendix A.)

Analysis of the use of nonfinancial conditions is central to evaluation of the impact of the guidelines because of the earlier findings showing that resort to secured bond by commissioners in Maricopa County was tantamount to detaining defendants. Thus, to the extent that personal recognizance release (with or without conditions) could be increased in appropriate areas, for example, pretrial release would be increased.

Comparing the Use of Nonfinancial Release within Decision "Zones": 1984 to 1987

Figure 3.13 shows that the use of nonfinancial release (OR)¹⁷ appeared to have increased slightly (5 to 6 percent) during 1987.¹⁸ Because of the slight differences in the composition of the various samples, however, we must be cautious in interpreting this difference without looking closely at the use of nonfinancial release within categories of defendants having similar characteristics. A useful way to compare "similar" defendants is to use the guidelines framework itself. Using the broad decision "zone" categorizations first, we can compare the use of OR

¹⁷ We are speaking of OR with or without conditions, special or standard.

¹⁸ This difference is not statistically significant, however.

Figure 3.11 Agreement with decisions suggested by guidelines, by commissioner, by sample

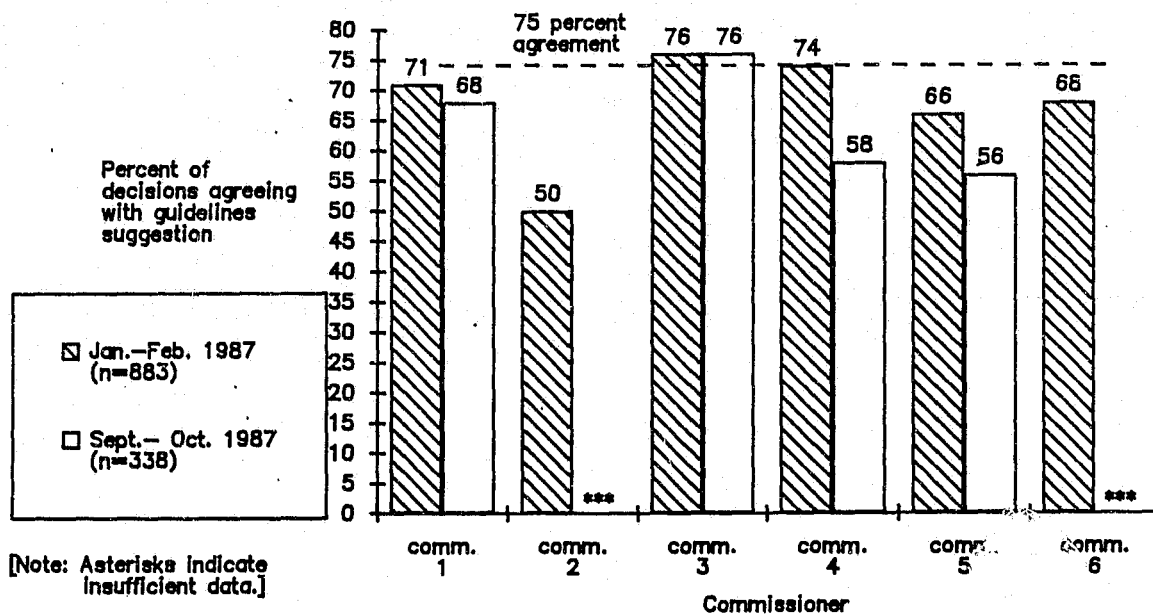


Figure 3.12 Comparison of reasons given for not following suggested guidelines decisions, by defendant sample

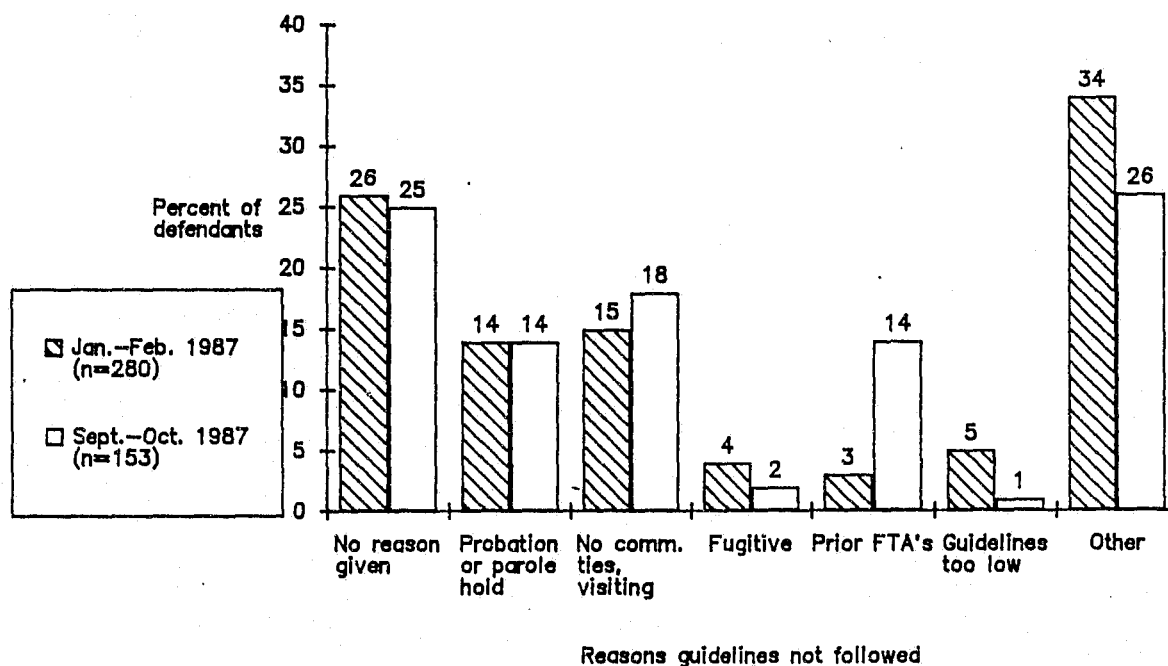
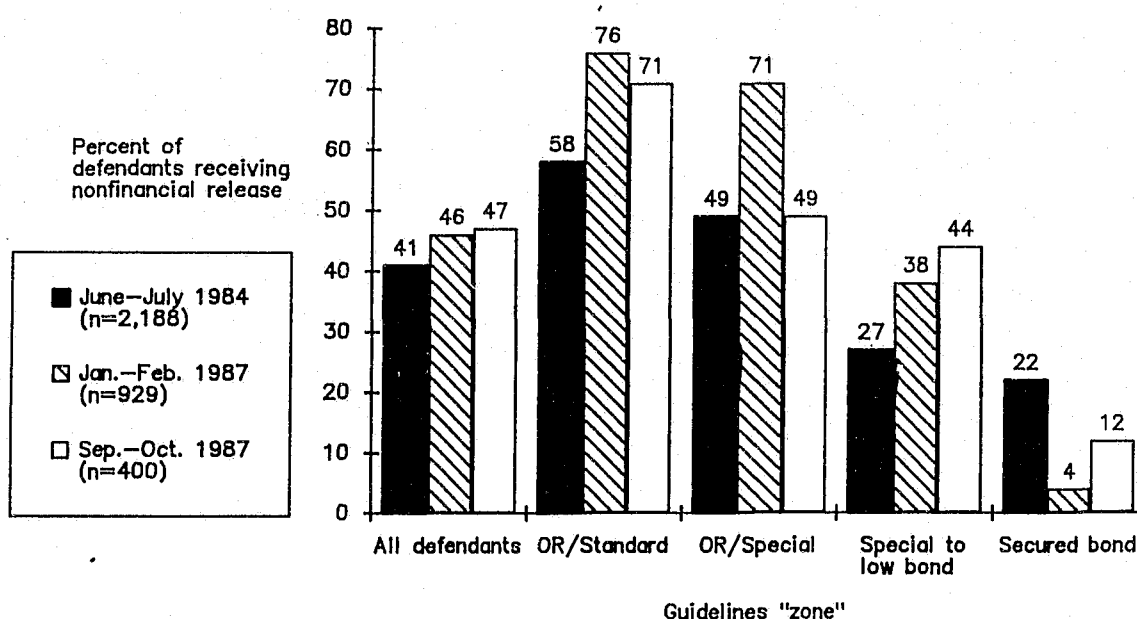


Figure 3.13 Change in use of nonfinancial release (OR) in the cases of entering felony defendants in Maricopa County Superior Court from 1984 to 1987, by guidelines "zone"



during the 1987 samples with its use for similar defendants entering the Court during the June-July study period in 1984.

Figure 3.13 shows that for defendants with attributes classifying them as OR/Standard, the assignment of nonfinancial conditions had grown 18 percentage points during January-February and dropped back to a 13 percent increase during September-October over 1984.

Within the OR/Special Conditions zone, the news was at first dramatic: Figure 3.13 shows that during January-February, 1987, OR had grown to 71 percent from the 1984 level of 49 percent. Although this represents slightly less than the hoped for agreement with the guidelines in this section of the guidelines, January-February decisions contributed a major improvement over the 1984 decisionmaking. However, that dramatic increase had been nearly eliminated by the time of the September-October study. Only 49 percent of defendants within this zone were receiving OR during that sample period (this is roughly equivalent to the use in 1984.)

Comparison of decisions for defendants within the OR/Special Conditions to Low Bond decision zone, showed increases in OR over 1984 levels in both defendant groups: OR assignment to the January-February, 1987,

defendants increased 11 percentage points (to 38 percent) over 1984;¹⁹ it increased 17 percentage points to 44 percent during September-October.

Among 1987 defendants classified presumptively as Secured Bond defendants, the use of OR plunged dramatically from 22 percent of the 1984 to only 4 and 12 percent during January-February and September-October.

Two conclusions can be drawn from these findings:

- a) First, guidelines appear to have contributed to a dramatic increase in the use of nonfinancial release in three of the four decision zones. This is particularly important when we recall from Figure 3.3 that more than half of 1987 defendants fell within these sections of the guidelines.
- b) However, second, apparently by the fall--at least as shown by the September-October sample--this progress was slipping, particularly within the OR/Special Conditions groups.

Comparing the Use of Nonfinancial Release within Selected Cells: 1984 to 1987

The guidelines system can provide more specific feedback concerning pretrial release decisions by examining decisions within guidelines cells. For example, earlier (in Figures 3.4 and 3.5), we noted that the three most influential "cells" of defendants among our 1987 decisions were Cells 9, 7 and 15.

Figure 3.14 and Table A3.2 show that among the Cell 9 defendants (comprising roughly one-fifth of the 1987 defendants), the use of nonfinancial release went up 24 percentage points (from 56 percent to 80 percent) in the January-February, 1987, sample. By October-September, however, the use of OR in that category had begun dropping back (down to 74 percent of defendants).

Among Cell 7 defendants, nonfinancial release went down slightly among January-February defendants (4 percentage points) and went back up to the 1984 rate in the fall of 1987.²⁰ Among Cell 15 defendants, in the January-February sample OR increased 8 percentage points over the level in the 1984 sample and 13 percentage points in the September-October sample.²¹

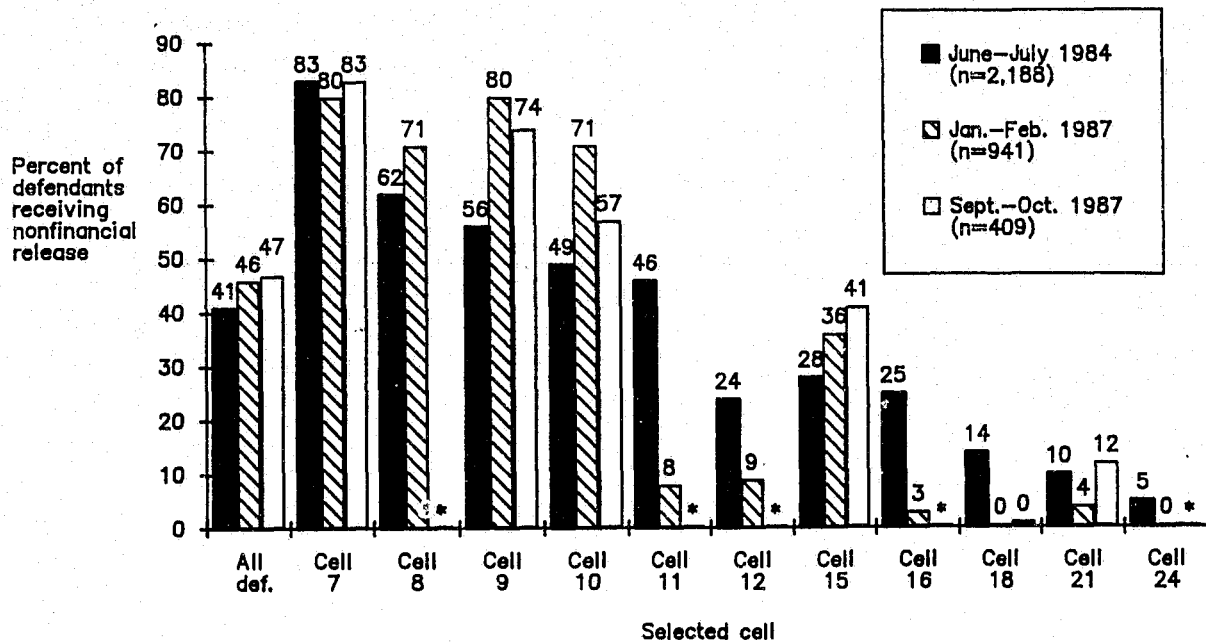
For the purposes of brevity, we do not review the progress made or lost in each of the defendant categories, but rather hope to illustrate how the cell-specific analysis can identify areas needing attention. For example, one

¹⁹ This difference is not statistically significant.

²⁰ This difference is not statistically significant.

²¹ This difference is not statistically significant.

Figure 3.14 Change in the use of nonfinancial release (OR) in the cases of entering felony defendants in Maricopa County Superior Court from 1984 to 1987, by selected "cell", by sample



[Note: Asterisks indicate insufficient data.]

might argue particularly that OR release should not be allowed to decrease even slightly from previous (pre-guidelines) levels among Cell 7 defendants (10 percent of the defendants population) given their low risk, low severity attributes. Examination of the rates of agreement with guidelines suggestions within this category might point to a need for stressing action in this area.

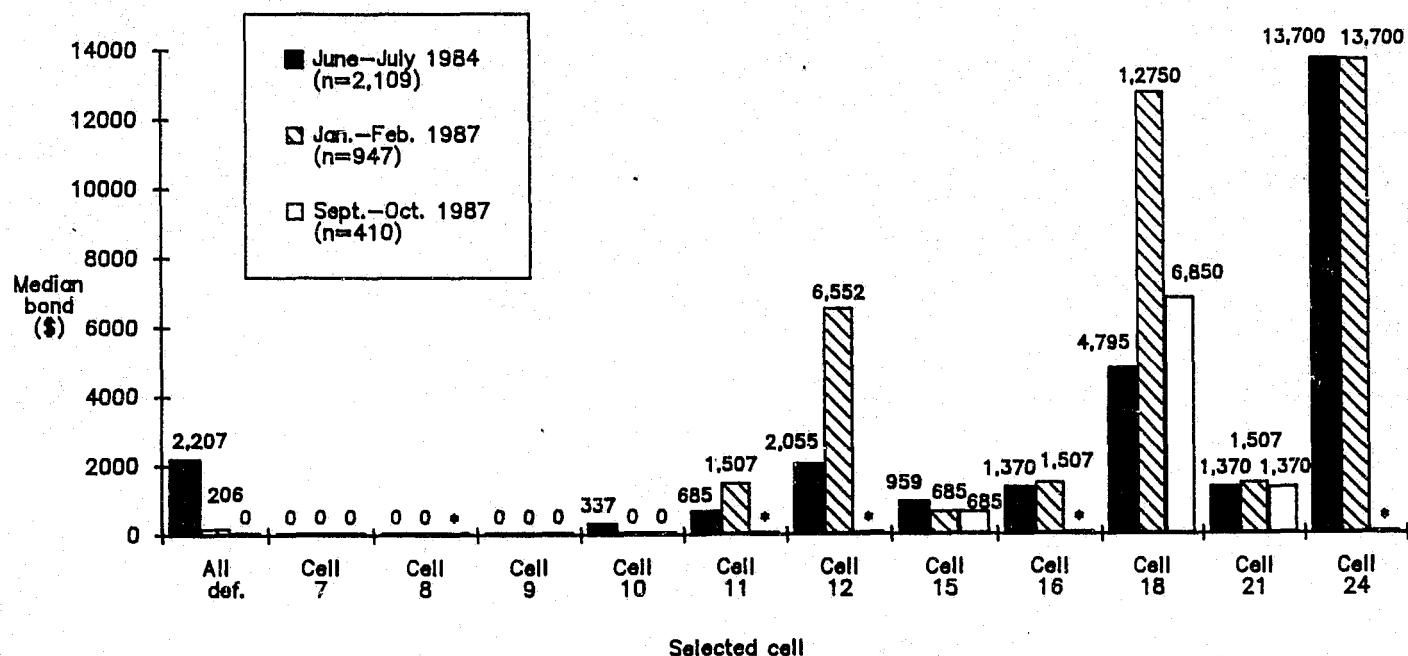
Comparing the Use of Secured Bond: 1984 to 1987

The use of secured bond not only was reduced importantly but the level of bond was lowered considerably overall. Figure 3.15 and Tables A3.2 and A3.3 in the Appendix show that to be true except for cells within the Secured Bond zone, in which increases in bond amounts were noted.

The Use of Pretrial Detention: 1984 to 1987

Perhaps the outcome of greatest concern to the Superior Court's review of the initial use of pretrial release guidelines is the impact on the use of pretrial release and detention. Because of time constraints, in this evaluation we measured pretrial detention as whether a defendant gained release within 2 days to study release in the January-

Figure 3.15 Change in the use of secured bond in the cases of entering felony defendants in Maricopa County Superior Court from 1984 to 1987, by selected "cell"



[Note: This figure employs median bond amounts. OR is considered as equal to \$0 secured bond. Asterisks indicate insufficient data.]

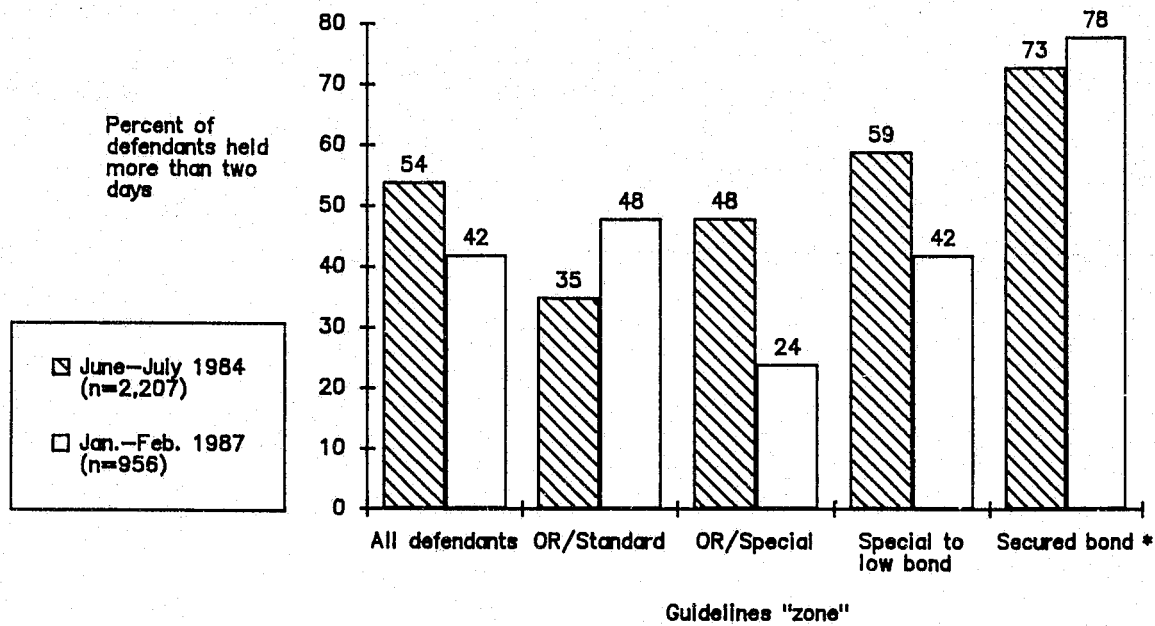
February, 1987, sample. Figure 3.16 reveals that overall the use of pretrial detention dropped noticeably and significantly during the initial guidelines period: 54 percent of the 1984 defendants were held longer than two days; only 43 percent of the January-February, 1987, defendants were so held.

The use of pretrial detention was cut in half among defendants classified within the OR/Standard Conditions zone: in 1984 35 percent of defendants with these attributes were held more than two days, in January-February, 1987, 16 percent were held. The same figure also shows a halving of detention in the OR/Special Conditions zone and a 17 percentage point reduction in the OR/Special to Low Bond categories. Detention for more than two days was increased 4 percentage points among the Secured Bond defendants.

Figure 3.17 and Table A3.3 show how the use of pretrial detention had been affected by the guidelines system within selected cells. For example, in Cell 9, the most populated cell of the guidelines during January-February study period, pretrial detention was reduced 22 percentage points (from 37 percent in 1984 to 15 percent in 1987).

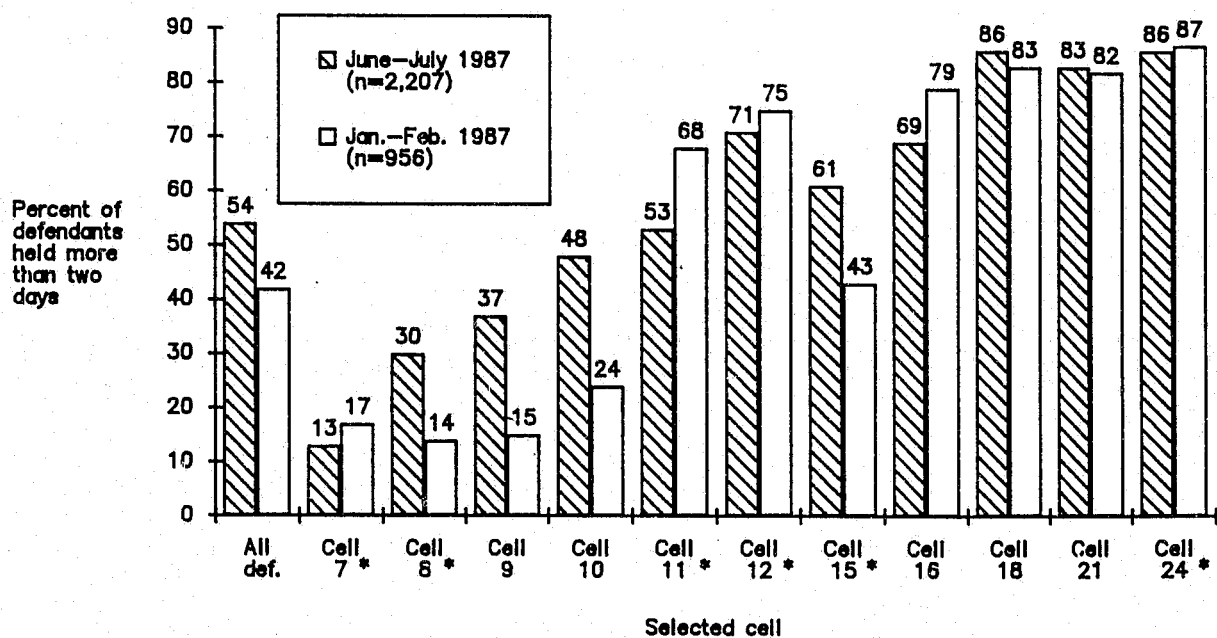
²² In our previous research we measured detention two ways: whether or not a defendant was released within 90 days, or whether or not the defendant gained immediate release--say within 1 or 2 days of the initial appearance decision. We were not able to study release and detention among the September-October decisions.

Figure 3.16 Change in use of pretrial detention (held more than two days) among entering felony defendants in Maricopa County Superior Court from 1984 to 1987, by guidelines "zone", by sample



* Chi-sq.s were not significant at .05.

Figure 3.17 Changes in the use of pretrial detention (held more than two days) among entering felony defendants in Maricopa County Superior Court from 1984 to 1987, by selected "cell"



[Note: followup information regarding pretrial detention was not available for the September - October cases.]

* Chi-sq.s were not significant at .05.

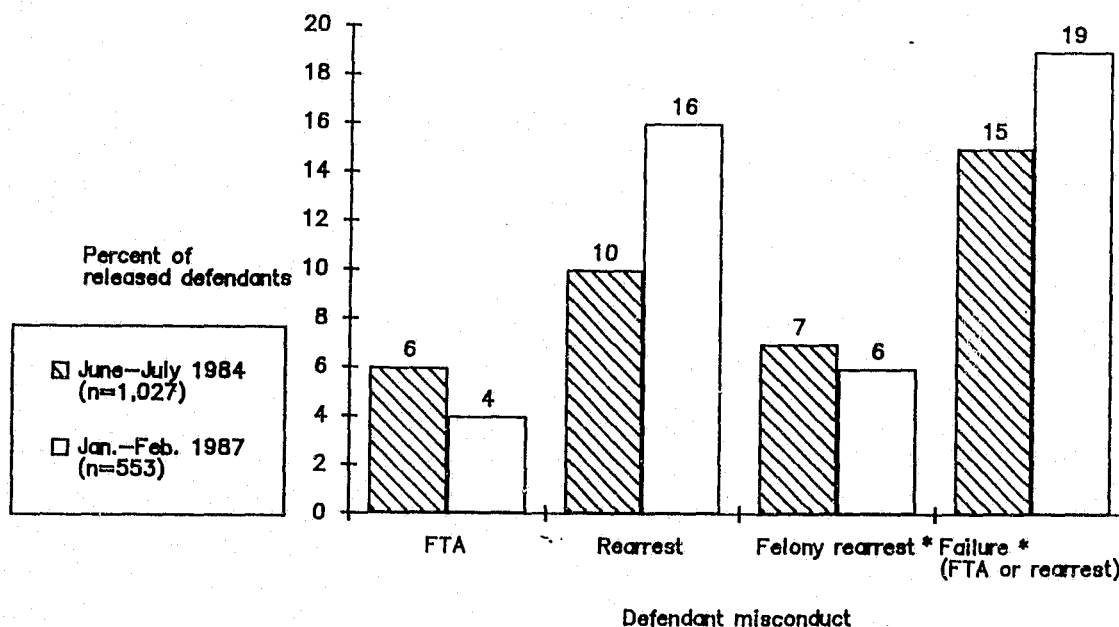
In Cell 7, an OR/Standard Conditions category, however, detention increased slightly (4 percentage points). In the third key cell, Cell 15, detention was reduced 17 percentage points.

THE PERFORMANCE OF DEFENDANTS DURING PRETRIAL RELEASE: COMPARING THE EFFECTIVENESS OF PRACTICES, 1984 TO 1987

Of FTA, Rearrest, Felony Rearrest, and "Failure" Rates

Figure 3.18 compares the rates of misconduct recorded by released defendants in the June-July, 1984, and January-February, 1987, samples.²³ The slightly lower failure-to-appear rate recorded by the 1987 defendants overall was not statistically significant. A slightly higher rearrest rate (6 percentage points) was shown by the defendants released in the 1987 sample. However, when rearrest for felonies (as opposed to rearrest for any offense) was analyzed, no difference in the two samples was shown. When rearrest and FTA rates are combined as one measure--to indicate "failure" during pretrial release--an increase of 4 percentage points in 1987 is shown.

Figure 3.18 Change in defendant misconduct during pretrial release among felony defendants released in Maricopa County Superior Court, 1984 to 1987



²³ A follow-up study of defendants in the September-October sample was not conducted.

Changes in the "Effectiveness" of Pretrial Release, 1984 to 1987

As we noted in our discussion of the measurement of the effectiveness of pretrial release in Volume I, the simple statistics just reported are quite misleading and, though popular, are not very helpful. The reason is that comparing "failure" rates without paying attention to release and detention rates at the same time is not fully informative. Perhaps we can illustrate this point best by recalling our comparison of what we have termed the "effectiveness" of release practices in the three cities we studied. We start with the notion that to be effective, practices must release as many defendants as possible, first, and, second, minimize "errors" (defendants who abscond or commit crimes) among those released. The formula for effectiveness then "marks off" for a) not releasing defendants, and b) releasing defendants who record misconduct. Using this definition, we found in our discussion in Chapter 9 of the Volume I report that compared to Boston Municipal Court and Dade County Circuit Court defendants, Maricopa County Superior Court was the least effective jurisdiction we studied--primarily because of its dramatically high rate of pretrial detention.

The same measure, taking into account the different release and detention rates, is useful to apply to the analysis of defendant performance in Superior Court between 1984 and 1987. When this measure was calculated to compare both years, it is seen that the overall "effectiveness" of pretrial release increased noticeably under guidelines during the initial period, moving from 39 percent in 1984 to 47 percent of defendants in 1987. (See Figure 3.19.)

Comparing Effectiveness Using Decision Zones as Categories

The effect is much more dramatic, however, when decision zones are considered separately. See Figure 3.19. For defendants classified in the OR/Standard zone, effectiveness increased 13 percentage points. Within the OR/Special category defendants, effectiveness increased 14 percentage points. Within the OR/Special to Low Bond zone, effectiveness increased 9 percentage points. Within the Secured Bond zone, effectiveness decreased 3 percent. The drop in this category is explained by the drop in the use of nonfinancial release and the increased use of higher bonds.

Comparing Effectiveness Using Guidelines Cells as Categories

In considering revisions to the guidelines, it would be helpful to examine the effectiveness of pretrial release within each guidelines cell (or, at this stage, at least, the cells having a sufficient number of defendants to analyze). Figure 3.20 shows increases in the effectiveness of pretrial release in 6 of the 11 cells we can compare. The effectiveness was increased most in the cell containing the largest number of defendants: the effectiveness of pretrial release increased 15 percentage points in Cell 9.

In considering what to propose about the effectiveness ratings in each of the cells, it may be helpful to keep in mind the following:

- a) Effectiveness of pretrial release can be improved by increasing pretrial release, decreasing failure among released defendants, or both. Increased release can be brought about by greater compliance with guidelines suggestions or by modifying the guidelines suggestions to permit greater release. Reduced "failure" can be brought about by application of more restrictive conditions of release. For example, by using the information provided in Table A3.3, improved effectiveness might occur both by encouraging greater compliance and by changing the guidelines suggestion to include "special" conditions of release.
- b) Some cells falling within the Secured Bond zone of the guidelines have lower rates of effectiveness because of the high amounts of bonds set by the commissioners and the higher rates of pretrial detention that accompanies that practice. (It was in these areas where agreement with guidelines was lowest.) Thus, greater agreement with the guidelines might bring bonds down and encourage greater release and hence effectiveness.

Or, in some cells including defendants with the highest risk and most serious criminal charge attributes, it might be argued that because detention is expected to be at a higher level, the effectiveness of pretrial "release" is expected to be low. The standard in these kinds of cells should at least be that we do no worse under guidelines than before (in 1984).

Figure 3.19 Change in the "effectiveness" of pretrial release among decisions for entering felony defendants in Maricopa County Superior Court from 1984 to 1987, by guidelines "zone"

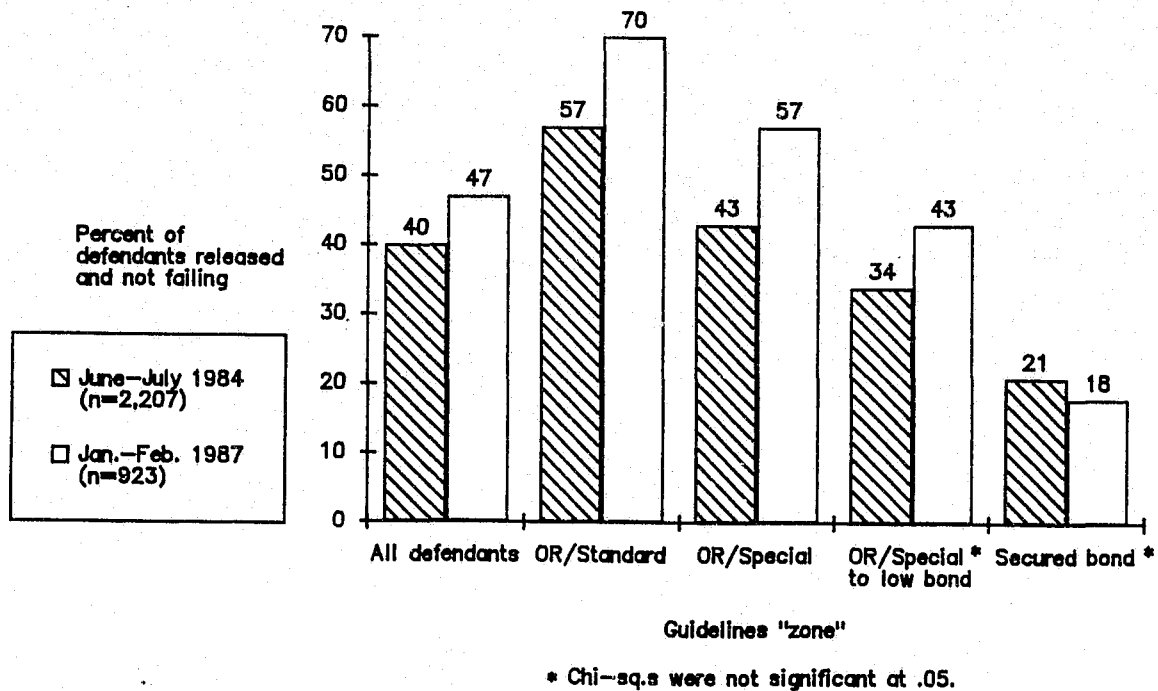
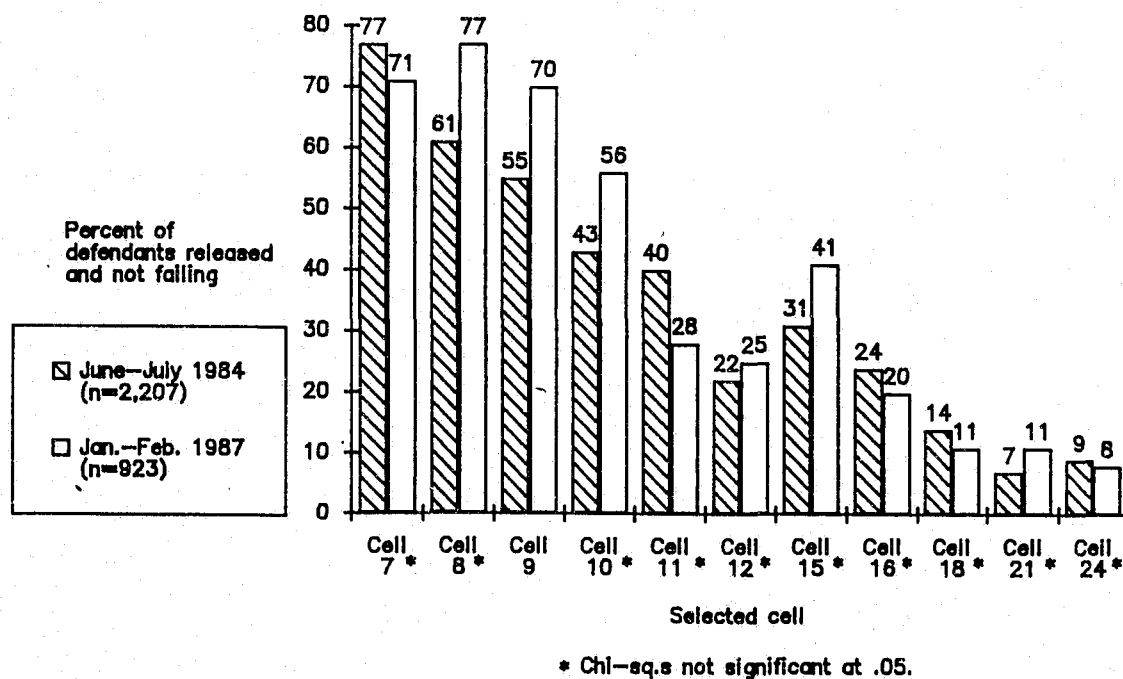


Figure 3.20 Change in the "effectiveness" of pretrial release among decisions to entering felony defendants in Maricopa County Superior Court from 1984 to 1987, by selected cell



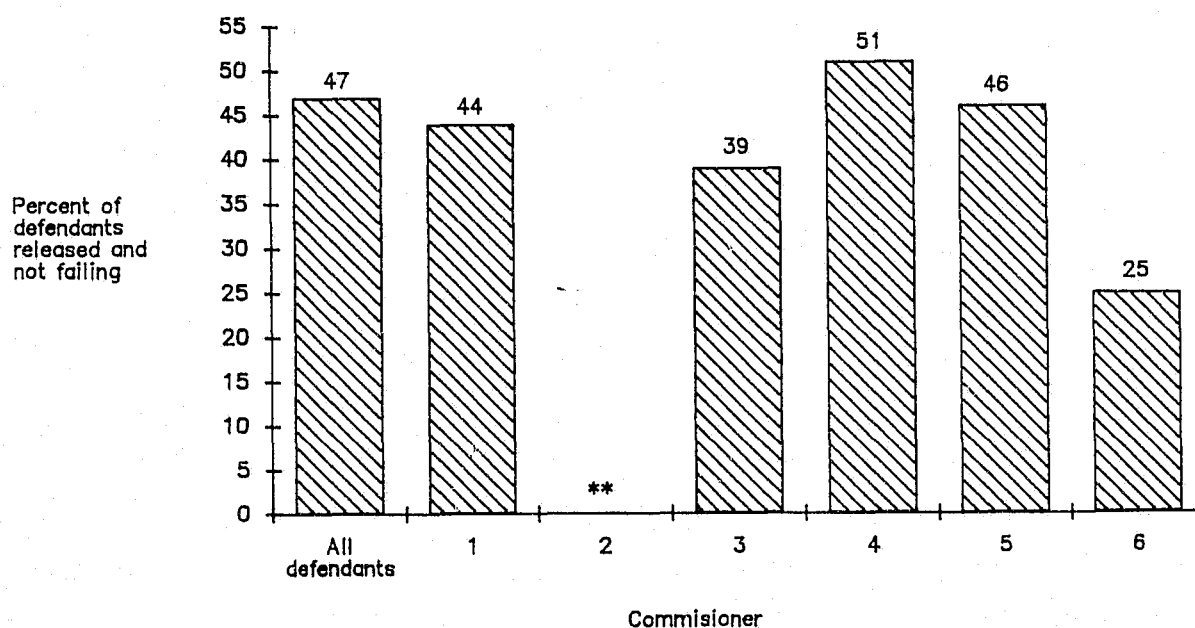
Comparing the Effectiveness of Decisionmakers

The same analysis can be applied to examination of the decisionmaking of each commissioner. Figure 3.21 compares the effectiveness of pretrial release associated with each of the commissioners presiding over initial appearance during the January-February study. Although a much larger sample covering longer periods throughout the year would be more desirable, rather divergent rates of effectiveness can be seen when commissioners are compared, ranging from a low of 25 percent (Commissioner 6) to a high of 51 percent (Commissioner 4).

THE EQUITABLE TREATMENT OF DEFENDANTS, 1984 TO 1987

In response to research findings showing disparity to be as much a characteristic of bail/pretrial release decisionmaking as of sentencing, one of the hypothesized goals of decision guidelines for pretrial release decisionmaking is to encourage more equitable treatment of defendants. One way guidelines can contribute to this end is in the establishment of a policy yardstick by which the decisions given to defendants can be evaluated. By building the guidelines around acknowledged goals--such as the minimization of flight and crime and unnecessary pretrial detention--and setting forth criteria for pursuing those goals in an explicit decision framework, the mechanism is set in place that can encourage greater equity (to the extent guidelines are followed by the decisionmakers).

Figure 3.21 The "effectiveness" of pretrial release among decisions for entering felony defendants in Maricopa County Superior Court during Jan.-Feb. 1987, by commissioner



[Note: Asterisks indicate insufficient data.]

Formerly, answering the question, "Are similarly situated defendants treated similarly at the bail stage?", was difficult because the definition of "similar" was problematic. Often it focused vaguely on the single criterion, seriousness of defendants' charges (hence, the rationale for the traditional bond schedule, for example). But because the guidelines represent the culmination of policy decisions about why and how the pretrial release decision should henceforth be conducted, the guidelines represent a fuller and more relevant gauge by which equity can be evaluated.

Simply put, defendants with characteristics like defendants falling in the OR/Standard Conditions zone should usually receive OR with Standard Conditions. Defendants with attributes placing them within guidelines Cell 9 should usually--except in unusual circumstances--receive decisions like other defendants in Cell 9. One measurement of improvement in the equity of decisions between 1984 and 1987 study periods, then, involves comparison of the numbers of defendants with given characteristics (as defined by the guidelines dimensions) having similar (guidelines suggested) decisions. That is, we should find more consistency in the treatment of given categories of defendants under the guidelines system.

We can evaluate the comparative "consistency" of decisions under guidelines by referring to Figure 3.22. Using guidelines zone as the frame of reference, Figure 3.22 compares the percentages of defendants receiving specified decisions between June-July, 1984, January-February, 1987, and September-October, 1987. The same figure shows that substantially (14 percentage points) more defendants with traits placing them within the OR/Standard zone received OR in January-February, 1987, than in the 1984 period. A somewhat greater share (7 percentage points more) of September-October defendants than their 1984 counterparts received OR.

Very few 1984 defendants falling in the OR/Special Conditions zone received OR with special conditions (partly because the 1987 definition of "special" or restrictive conditions does not translate perfectly to 1984 practices). Sixty-eight percent of such defendants in January-February received OR with special conditions, though. However, nearly a third less of similar defendants in the September-October sample received OR with special conditions. We can see that, compared to like defendants in 1984, greater shares of 1987 defendants falling within the remaining two zones received the specified decisions.

Using selected guidelines cells as the frame of reference, Figure 3.23 helps us examine the consistent use of decisions for more specific categories of defendants. The percentages of the two 1987 samples with decisions falling

Figure 3.22 Equity as consistency: comparing agreement with guidelines, by "zone", by sample

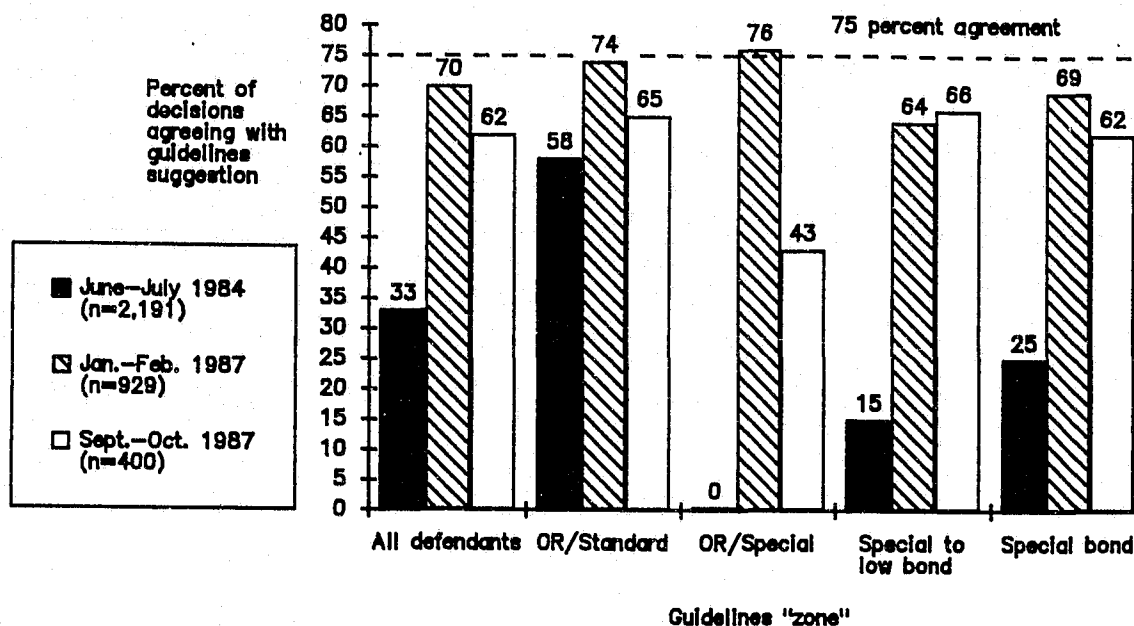
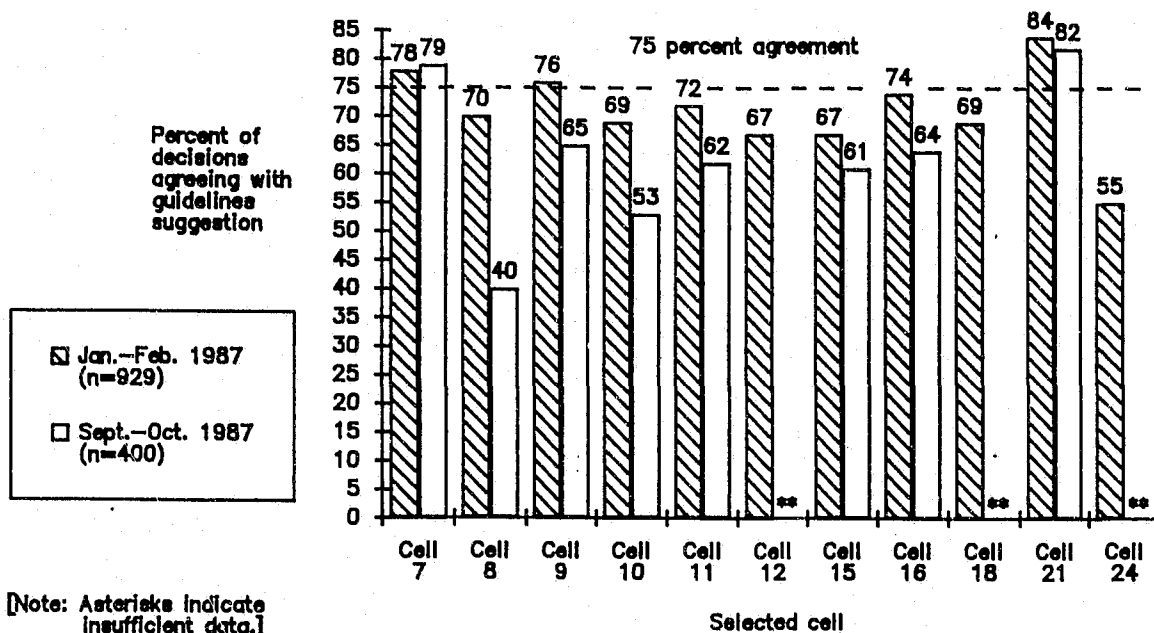


Figure 3.23 Equity as consistency: comparing agreement with guidelines, by selected "cells", by sample



	Highest agreement cells	Lowest agreement cells
Jan.-Feb. 1987:	7, 9, 16, 21	12, 15, 24
Sept.-Oct. 1987:	21	8, 53

within the range suggested by the guidelines appear above the percentage of 1984 defendants set in brackets. Note that in 10 of the 11 cells depicted, greater shares of January-February, 1987, defendants received decisions within the ranges specified by the guidelines than 1984 defendants did. The only cell showing less consistent treatment is Cell 7.

Of the 8 cells with sufficient numbers of cases for analysis, greater proportions of the September-October decisions fell within the specified decision ranges in only 6 cells. That is, defendants with attributes placing them within Cells 7 and 8 were treated less consistently under the guidelines.

THE INITIAL IMPACT OF THE GUIDELINES: SUMMARY AND RECOMMENDATIONS

Summary of the Maricopa County Evaluation Findings

We collected two relatively small samples of data reflecting pretrial release decisionmaking at initial appearance in Superior Court in Maricopa County to evaluate the effect of the recently implemented decision guidelines on key aspects of release practices. The first sample described decisions in felony cases entering the criminal process during January and February of 1987 and representing the very first weeks of the new guidelines program. We also collected a small sample reflecting initial appearance decisionmaking during September and October of that year so that we could obtain a reading on the functioning of guidelines once the new program had a chance to ripen and become more routine. Because time and funding did not allow, we were unable to collect follow-up data describing the release and performance during pretrial release of the fall defendants.

1. Pretrial Services

In a short period, the Pretrial Services Agency set in motion the procedures necessary to the successful implementation of the guidelines system. Certainly, the kinds of errors by pretrial services staff we detected in employing the guidelines for the very first time were normal and easily correctable with a little experience.

Our review suggests that in other respects the agency had implemented the program reasonably well. The policy of pointing out unusual circumstances to the commissioners was appropriately performed, but should be carefully monitored in the future. Perhaps the major difficulty we found was in the area of "special conditions of release." During our January and February samples, the suggestions for special supervision were made for the

appropriate categories of defendants, but no resources were in place for the supervised release option; however, a new program of supervision has been set in place since.

2. The Use of Guidelines by the Commissioners at Initial Appearance

During the first two months of the new program, the overall agreement between the commissioners' decisions and those suggested by the guidelines reached almost the desired level. (The guidelines were designed so that they should be viewed as appropriate suggestions in a majority of case--with an ideal goal of about 75 percent of the cases; 70 percent of the commissioners' decisions agreed with the guidelines during the January-February samples.) By fall, however, the use of the guidelines by the commissioners appeared to have fallen off noticeably--to only 62 percent of the cases. The move away from the guidelines in the fall sample appeared to be systematic, applying across guidelines categories.

When the decisions of each commissioner were examined, it was found that use of guidelines varied noticeably from commissioner to commissioner. Two began as strong consumers of the guidelines, with a third commissioner not far behind. In our fall study, one maintained his consistently frequent agreement with the guidelines suggestions; one fell off somewhat. Agreement with guidelines in the decisions of the other commissioners dropped off dramatically or lowered an already low rate of agreement by the time of the fall sample.

3. Changes in Pretrial Release Decisionmaking

Although the overall use of nonfinancial release (OR) increased from the 1984 levels somewhat, use within several important subcategories of defendants increased dramatically. Among the highest risk--most seriously charged defendant groups, its use was reduced. When secured bond was employed, its average level was reduced somewhat as well. Where agreement with the guidelines was strong, use of nonfinancial release was strong. Where departures from guidelines became more pronounced--as was particularly the case during the September-October study--the use of nonfinancial release was set back, in some instances to levels slightly lower than the 1984 baseline comparison.

4. Changes in Pretrial Release and Detention

Overall, pretrial detention (as measured at the 48 hour mark) dropped approximately 11 percent during the initial use of guidelines. In some categories of defendants, larger and more dramatic drops in detention were observed. These strong and positive findings from the January and February samples of decisions were threatened,

however, by the findings of lower use of guidelines and lower assignment of nonfinancial conditions evident in the September-October study. Although, as we have explained, we were unable to follow up the subsequent release and performance of defendants in the September study, our analysis of the decisions made during that period suggests that the detention rate may have been moving back up toward its former high levels.

5. Rates of Misconduct among Released Defendants

Release of an additional 11 percent of the entering felony defendants resulted in an overall FTA rate that was no higher than previously, and a slightly higher rearrest rate. However, the rearrest rate for felony offenses among the 1987 releasees was no higher than in 1984.

6. Changes in the Effectiveness of Pretrial Release

Rates of misconduct during pretrial release are very misleading because they do not take into account the use of release and detention. (Recall that Superior Court in Maricopa County and Circuit Court in Dade County showed similar rates of misconduct among released defendants--only Circuit Court released roughly 50 percent more felony defendants.) The effectiveness of pretrial release can be measured as the percent of all entering defendants put on release and not "failing" (through FTA or rearrest).

The overall effectiveness of pretrial release increased under the guidelines during their initial use. Substantial improvement in "mistake-free" release was noted among defendants falling within the nonfinancial sections of the guidelines. Effectiveness appeared to be best when agreement with the guidelines was most frequent.

7. Equitable Decisionmaking

Decisions were more consistent within categories during the January-February sample period--although analysis of individual cells reveals some exceptions. This at first dramatic effect appeared to have begun dissipating by the time of the September-October sample.

In summary, we report a number of positive outcomes and promising directions associated with the initial use of the pretrial release decision guidelines at initial appearance in Superior Court. Perhaps most troublesome is the finding that a) agreement of guidelines fell just a little bit short of the intended goal in January and February of 1987, and b) agreement was decreasing substantially by the time of the September-October defendant sample. It appears that important improvements were within reach, but only as long as the guidelines were employed effectively.

Recommendations

1. Strengthened Use of the Pretrial Release Guidelines

It is clear that achievement of the goals underlying the implementation of the guidelines at initial appearance depends on a reasonable level of use of the guidelines by the commissioners. We have pointed to particular categories of defendants in which greater agreement with the suggested decisions (particularly nonfinancial release) should be encouraged. The September-October findings, however, are more worrisome. They seem to suggest a more general moving away from the guidelines for some reason. The reasons for the lower agreement rates among commissioners ought to be discovered and addressed so that use of the guidelines can be strengthened.

2. Resources for Supporting the Pretrial Services Function

Early in our research in Maricopa County we were surprised to see the relatively small size of the pretrial services program and its limited resources, given the relatively substantial size of the entering felony caseload. We found, and the agency frankly acknowledged, that there were some functions that could not be carried out. The operation of a forceful and narrowly targeted supervised release program was an obvious one.

Yet, a goal of the guidelines has been to increase the use of pretrial release systematically and carefully and to reduce needless pretrial detention. The success of this goal depends on a new release monitoring approach, so that middle-risk defendants do not add FTAs to the Court's backlog nor crimes to threaten public safety. Our findings demonstrate that the greater pretrial release goal appears to be within the realm of the possible--at least it was initially. Now, as overtaxed jail resources will be eased, a growing burden is placed on the already limited pretrial services resources. Greater numbers of released defendants mean a greater demand for pretrial services, particularly of the "special conditions" or supervisory kind. Thus, it would be unrealistic and ultimately self-defeating to fail to develop the resources to support the release monitoring capacities of the Pretrial Services Agency.

3. The Targeted Use of Supervised Release Needs to Be Supported and Carefully Monitored

The model of guidelines implemented by the Superior Court explicitly assumed that more middle category defendants could be released (defendants from categories formerly detained) safely to the community as long as a strengthened mechanism providing meaningful "special" restrictive conditions of release would be put in place. If that did not occur in the targeted categories, the predictable result would be a somewhat higher incidence of FTAs

and rearrests. Clearly, this was not and could not have been implemented in the first two months of the guidelines program for a number of practical reasons, including lack of resources for a forceful supervision program. We understand that the program has been developed since then. Its importance is fundamental to the use of pretrial release under the guidelines in Maricopa County.

4. Analysis by Pretrial Services and Court Administration of These Findings to Make Recommendations Concerning the Use of Guidelines

The findings we have described in this evaluation point to specific areas that may need to be addressed as the guidelines program reaches maturity. We have made some general recommendations that we think will lead to improvement in pretrial release decisionmaking; however, pretrial services and court administration may wish to look in greater detail at key areas since review and management of the use of the guidelines would be a court function in the future.

5. The Development of an Information Mechanism for Monitoring the Use of Guidelines and the Effectiveness of Pretrial Release

Like other court programs, the successful use of pretrial release guidelines is most effective when monitored--either by pretrial services or by court administration. The goal is to provide the court periodically (e.g., semi-annually) with feedback which would allow it to make any modifications that appear necessary as new problems arise and old ones disappear.

The proposed information system could take any one of a number of forms depending on the preferences and resources of the particular jurisdiction. For example, the current computer history of case processing could be modified to include items specifying a defendant's presumptive guidelines decision (the cell number alone tells us that, as well as the severity of a defendant's charges and his/her risk classification), the commissioner's decision, agreement or disagreement, unusual circumstances, special conditions recommended by pretrial services, and the commissioner's reasons for departing from the guidelines. Another approach would be to devise and install a software program that records these items for report purposes as cases enter the system.

The goal is to permit examination of categories of defendants where either effective current practices should be encouraged or new options need to be deployed to achieve the desired results. Thus, step by step the system can perfect itself, rather than reacting globally to periodic crises. (Rather than saying rearrests are up, we can now say we have one or two troublesome categories of defendants that need some attention, for example.)

Since we completed our research in Maricopa County, we have been made aware of the efforts of the Pre-trial Services Agency to incorporate data regarding the use of the guidelines into their periodic reports for the Court. The positive news is that on the basis of this information, the Court convened a meeting with pretrial services and the commissioners to review the use of guidelines and to encourage their continued use. Thus, the feedback function that will allow for "mid-course corrections" is already being developed by the pretrial services agency in conjunction with court administration.

6. The Need for a Case/Custody Status Review Shortly after Initial Appearance

In planning with the court administration staff for the implementation of guidelines, an important related component was to be a review of the status of the defendant's custody shortly (one or two days) after initial appearance. Several of our earlier findings pointed to the need for such a routinized mechanism: After initial appearance, very few defendants gained later release; most remained detained throughout the duration of their cases. Some defendants for whom complete information was not available in time for initial appearance--and who were thus more likely to have secured bond set and be detained--clearly could have benefitted from a review a short time after initial appearance, but routine follow-up procedures did not exist.

Another finding illustrates why a "case" and custody review would be helpful at this stage: a majority of defendants who were held (and those who were not) had their cases withdrawn, dropped or dismissed within 90 days. Many of these were defendants for whom the pretrial release bond decision had been made but who discovered a few days later that their cases were "scratched" by the prosecutor--sometimes to be "refiled" at a later date, sometimes not. This high washout rate--much of it due to the prosecutor's "scratching" practice resulted in a great deal of needless or inappropriate use of pretrial detention--whether temporary or not.

If the case/custody review were to be staffed by opposing attorneys and a pretrial services representative, for example, cases could not only be kept away from the jail, but could in some instances be cleared out of the criminal process at an early stage. At the same time, this review could also play an important role in strengthening the application of the guidelines, because, as the custody status of defendants was being reviewed, the guidelines framework could serve as an important yardstick.

7. Planning for the Effect of Drug Testing on Guidelines and Pretrial Release Decisionmaking

As our research was concluding in Maricopa County, the Arizona legislature passed a law that would require that all felony arrestees submit to drug testing so that the results could be available to the judge, justice, or commissioner making the pretrial release determination at initial appearance. Thus, an operating system of pretrial release guidelines--one based on collection and organization of the most appropriate information--will need to consider if and how drug testing ought to be coordinated with the guidelines and how the law may effect the use of guidelines and the policy goals that shaped them. Knowledge of drug test results is proposed as an important predictor of likely defendant conduct during pretrial release. For guidelines the question is partly empirical, "Can the risk classification incorporated into the guidelines be enhanced by drug test information? If so, how?" (For a discussion of analysis of this question as studied in Dade County, Florida, see Goldkamp and Gottfredson, 1988b.)

Chapter Four

THE IMPLEMENTATION OF BAIL GUIDELINES IN DADE COUNTY CIRCUIT COURT

Our two years of research in the Dade County criminal courts revealed a very challenging situation: The criminal caseload was large and growing, was characterized by more serious criminal charges than the other courts participating in the research, and the jail facilities were critically overburdened. The bail process was very traditional in that a bond schedule dominated the release prospects of defendants, both at the booking and at the bond hearing stage, and bondsmen were routinely involved in the process. A single County Court judge usually presided over bond hearing during the twice-daily sessions on weekdays, while on weekends Circuit Court judges would sit on a rotating basis, not more than one or two weekends a year. Thus, although in a sense a major trial court function (Circuit Court), felony bond hearings were for most of the week handled by a County Court judge who reported to the presiding judge of that court.

Yet, it was clear to the research staff from the beginning of the project that, as concerned as it was with the public safety implications of pretrial release in felony cases, the leadership of the Circuit Court was greatly preoccupied with the seriously overcrowded condition of the Dade County jail facilities. Just prior to the project's start, the Court had directed a search to replace the director of the pretrial services program that operated from within the county corrections department. That search was given high priority because of the jurisdiction's need to strengthen and upgrade the then fledgling pretrial services agency so that it could play a greater role in addressing the crowding crises.

As the guidelines project began in Dade County, the newly employed director of pretrial services was meeting on a frequent basis with the newly appointed Administrative Judge for the Criminal Division as the jail population met and then exceeded the limit set by the Federal Court. It was against this background of unrelenting jail crowding that the Presiding Judge agreed to participate in the guidelines research and asked the Administrative Judge for the Criminal Division to supervise the project, hoping--though perhaps not expecting--that some new strategies might result.

The two years of descriptive research revealed some interesting results. Despite the challenging caseload of the felony court and the dominance of the bond schedule in pretrial release determinations, the re-organizing pre-

trial services program managed to facilitate the release of a large share of felony defendants with no-worse than average failure rates (rearrests and FTAs). (Given the composition of the criminal caseload, in fact, in comparison with our other sites overall release practices were somewhat more "effective.") However, our findings in Volume I suggested that several factors, such as the central role given the bond schedule and the reliance on one or two judges to decide bond, combined to minimize the prospects of releasing more and different categories of defendants. Despite the efforts of the jurisdiction, given the critical state overcrowding had reached, our analysis and discussion with the judicial working group suggested that a guidelines system--and all the changes that would imply--could make an important difference in Dade County.

In fact, in our estimate of the theoretical maximum impact the final version of guidelines was likely to have if successfully implemented in Circuit Court (see the discussion in Chapter Twelve of Volume I), we projected that rather dramatic changes could be facilitated through guidelines: nonfinancial release could be increased as much as 12 percent among incoming felony defendants (much of this by focusing use of special or restrictive conditions of release on medium-risk defendants ordinarily detained); the average financial bond could be cut in half and the resulting detention (for more than 48 hours) could be reduced approximately 18 to 25 percentage points; and the average jail-days per entering defendant could be more than cut in half.²⁴

The Need to Implement "Minor" Changes in Procedure to Achieve the Desired Results: the Key Roles of Pretrial Services and the Judges

Of course, in practice the impact decision guidelines could have in Dade County would fall short of the theoretical maximum depending upon how effectively the Uniform Bond Standards were implemented. We explained in Volume I that one of the limitations of the analyses of the likely impact of the bond hearing guidelines was that they over-stated the likely effects because they had to assume for the statistical projections that judges would comply with the guidelines 100 percent of the time. Yet, in reality a guidelines system aims ideally for a lesser level of compliance; as noted above, the guidelines were designed to be followed in "most cases," say, 75 percent of the time. (Statistically, of course, we could not estimate which 25 percent of the cases would be the exceptions; hence, the necessity to begin with the 100 percent compliance yardstick.)

²⁴ As we explain in Volume I, these estimates represent a maximum possible effect, depending on the extent to which judges would agree with the guidelines.

But, in order for the guidelines to be successful in obtaining the goal of approximately 75 percent compliance--initially achieved in the Philadelphia experiment and quite nearly reached in the Maricopa County Superior Court program--two seemingly small innovations in procedure would have to be accomplished during the implementation:

- a) pretrial services would have to re-organize the collection of background information and alter their method for presenting the information and recommendation (now to be guidelines suggestion) to the judge in court at the bond hearing; and
- b) the judges would have to cooperate in operationalizing the new arrangements at bond hearing and to consider the information and suggestions offered by the guidelines.

Change on the Level of Pretrial Services

In a general sense, the substance of the pretrial services role would not change under the guidelines program. The pretrial services staff would continue to collect and to prepare information relating to defendants, their backgrounds and cases that would enable the judge at bond hearing to make an informed bail/pretrial release decision. The focus of the information collection and the form of its summary would change as pretrial services would classify defendants under the guidelines by following specific and objective procedures for weighting the information and preparing recommendations for conditional release.

Rather than using the results of a wide-ranging defendant interview as the basis of a subjective in-court recommendation to the bond hearing judge as was normally done, under guidelines the pretrial services staff--though still interviewing each defendant--would first complete the information required to rank the defendant on the severity and then the risk dimension. In Chapter One, we described the bond-schedule derivation of the charge severity ranking. The advantage of relying on the severity ranking of charges inherent in the Dade bond schedule was that it was a ready-made charge severity scoring system under the supervision of the Court and it was available at the booking stage. The pretrial services staff merely needed to determine what the total "bond schedule bond" was to place the defendant's charges in one of eight severity categories. (See Figure 1.5 repeated here as Figure 4.1.)

The adoption of the risk classification of the guidelines was more involved, however, and clearly represented the site of conflict between the former, subjective ways of evaluating defendant background information and the newer, guidelines scoring checklist that was purely objective and empirically derived. The new system meant

Figure 4.1 Pretrial services worksheet for Dade County Circuit Court

**CORRECTIONS & REHABILITATION DEPARTMENT
METROPOLITAN DADE COUNTY, FLORIDA
PRETRIAL SERVICES**

UNIFORM BOND STANDARDS: CLASSIFICATION

DATE _____

DEFENDANT'S NAME _____ JAIL # _____

STEP 1

Risk Group Classification			Column N	Column P
IF ANSWER IS "NO", ENTER 0 IN BOX IF ANSWER IS "YES", ENTER NUMERICAL VALUE		Value	the Proper Column Below	
Ties:	Lives with spouse and/or child	1		
	Has a telephone	2		
Charges:	Property charge	2		
	Drug-related charges	1		
Prior History:	Robbery charges	2		
	Not arrested within 3 yrs.	1		
	One arrest	1		
	Two or more	2		
	Prior arrests; drug charges (two or more)	2		
	Has one or more prior felony convictions	2		
	No prior FTAs	1		
	1 prior FTA	1		
	2 or more FTAs	2		
TOTAL POINTS				

N Total P Total

STEP 2

Complete only if N total is larger or equal to the P total

Enter and find difference	N	
	P	

Complete only if P total is larger than N total

Enter and find difference	P	
	N	

STEP 3

RISK GROUP	POINTS
I	5 or more
II	2 to 4
III	1 to -2
IV	-3 or less

Circle Risk Group.
Enter on Judge's Form.

STEP 4
Charge Severity Classification

Bond Schedule	Severity Ranking
\$ 1 - 1,000	1
1,001 - 1,500	2
1,501 - 2,000	3
2,001 - 3,000	4
3,001 - 4,000	5
4,001 - 5,000	6
5,001 - 7,500	7
7,501 or higher	8

Total defendant's bond and circle Severity Ranking. Enter Ranking on Judge's Form.

STEP 5

Additional Information

PRETRIAL SERVICES OFFICER _____ NAME _____

that staff would need to set aside their intuition concerning certain kinds of information to score the defendant on each item correctly, and then to add the defendant's scores to arrive at one total score placing the defendant in one of four risk groups--just as the Maricopa pretrial services staff had learned to do earlier.

During the training sessions conducted with the Dade pretrial services staff it was clear that some workers felt that something vital and important, the role for their own personal judgment, was being eliminated by these procedures. A great deal of discussion centered on the value, goals and limitations of the empirical risk classification. In part, the new guidelines procedures were telling the pretrial services staff that it was not appropriate for them to be acting as "judges" as to the releasability of defendants, that rather their responsibility was factual, designed to assist the bond hearing judge in making his or her judgment. A common fear shared by some of the pretrial services staff in the process of learning the new procedures, in fact, was that the guidelines would be too restrictive, that they would not allow release of defendants typically already being released as a result of pretrial services recommendations--subjective as they may have been.

That is not to say that the pretrial services role under the guidelines did not call for judgment at all, however. After having classified the defendants according to the charge severity and risk dimensions that serve as the basis of the guidelines, pretrial staff were then required to note important "unusual circumstances" that the bond hearing judge ought to be aware of in considering the appropriateness of the guidelines suggestion. In training sessions, an effort was made to make clear the difference between "unusual circumstances" and other, general background information that pretrial services staff were used to noting, such as employment, ties to the community, etc.

The definition of "unusual" was that the information was so important as to be "mind-changingly important" to the judge or so essential that without it the judge would make an inappropriate decision. Examples of "unusual" aspects of the defendant or of his or her case discussed during the pretrial services preparation included having obvious history of drug addiction, of domestic violence or of escape from custody. So that the concept could be made as clear as possible, the director of pretrial services developed a list of the kinds of information that would qualify as "unusual."

Although these requirements challenged the pretrial services staff to relinquish "old habits" with long traditions to institute new guidelines procedures, perhaps the most significant change in pretrial services practices posed

by the guidelines lay in the presentation of the guidelines information and decision suggestions in court. No longer would the staff make a subjective formulation--and oral argument--as to the defendant's releasability at the bond hearing. Rather, the agency representative would present the guidelines classification indicating the suggested decision for the relevant category of defendants and any unusual circumstances or special release recommendations called for to the judge presiding. The oral presentation would be to clarify information or explain the special conditions that may be proposed. Theoretically, the judge would review the guidelines form (see Figure 1.2 repeated here as Figure 4.2), make a decision to follow the guidelines suggestion or not, and note a reason in cases in which guidelines were not followed.

To understand just how much this represented a departure from normal practice--and, thus, more of a "major" innovation than a "minor" change, it may be useful to review how bond hearings usually transpired in Circuit Court prior to the guidelines. Rather than presenting the judge with a written summary of the information and the recommendation for pretrial release--as might occur in other jurisdictions--the Dade County pretrial services staff would speak in court mainly to respond to the bond hearing judge when he would ask whether "pretrial services will take him." (The nature of the interaction in court varied depending on the judge presiding. Some judges would take more time to inquire of pretrial services concerning particular facts related to the defendant's background or prospects for support during release.) Pretrial services staff soon became familiar with the prejudices and preferences of the judges with whom they worked most often. Some, for example, particularly abhorred drunken-driven related charges; others reacted strongly to drug-related charges or other charges that might attract special notice of the news media.

Over time, this kind of interaction served to put pretrial services staff "in their place." The bond hearing, often dominated by what had been specified by the booking stage bond schedule, resembled a competition in which the pretrial services representative was thrust into the position of an advocate for pretrial release against a presumption in favor of the dictates of the bond schedule. Given the pressures of the jail crisis toward avoiding all unnecessary pretrial detention (pretrial services is a division of the corrections department), the end result would often be that pretrial services staff might agree to "take" defendants they would not have recommended and might not have assigned to them by the judge many defendants considered appropriate risks for some form of nonfinancial pretrial release.

Figure 4.2 Pretrial release guidelines for Dade County Circuit Court

CORRECTIONS & REHABILITATION DEPARTMENT METROPOLITAN DADE COUNTY, FLORIDA PRETRIAL SERVICES									
UNIFORM BOND STANDARDS - DADE COUNTY CIRCUIT COURT									
DEFENDANT'S NAME _____				DATE _____					
JAIL # _____									
<div style="border: 1px solid black; display: inline-block; padding: 5px; margin: 0 auto; width: 60%;">SECTION A: SUGGESTED DECISION</div>									
Least Serious Severity ranking Most Serious									
<div style="display: flex; justify-content: space-around; width: 100%;"> 12345678 </div>									
Relative Risk ↑ Lowest ↓ Highest	I	PTS/ Nonfinancial	PTS/ Nonfinancial	PTS/ Nonfinancial B D	PTS/ Nonfinancial	PTS/ Nonfinancial	PTS/ Nonfinancial D	500 to 2,000	
	II	PTS/ Nonfinancial	PTS/ Nonfinancial B D	PTS/ Nonfinancial B	PTS/ Nonfinancial B	PTS/ Nonfinancial	PTS Special	PTS Special	1,500 to 3,000
	III	PTS Special D	PTS Special D	PTS Special B X	PTS Special B X	PTS Special B	PTS Special to 500 B	PTS Special to 1,000	2,500 to 5,000
	IV	PTS Special B D	PTS Special D	PTS Special to 750	PTS Special to 1,500	1,500 to 3,500	2,500 to 4,500	3,000 to 5,000	6,000 to 11,000
NOTE: X = higher risk B = higher than average probability of bind down D = higher than average dropout rate									
<div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">SECTION B: UNUSUAL CIRCUMSTANCES</div> <div style="border-bottom: 1px solid black; height: 15px; margin-bottom: 5px;"></div> <div style="border-bottom: 1px solid black; height: 15px; margin-bottom: 5px;"></div> <div style="border-bottom: 1px solid black; height: 15px; margin-bottom: 5px;"></div>				<div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">SECTION C: SUGGESTED SPECIAL CONDITIONS</div> <div style="border-bottom: 1px solid black; height: 15px; margin-bottom: 5px;"></div> <div style="border-bottom: 1px solid black; height: 15px; margin-bottom: 5px;"></div> <div style="border-bottom: 1px solid black; height: 15px; margin-bottom: 5px;"></div>					
<div style="border: 1px solid black; display: inline-block; padding: 5px; margin: 0 auto; width: 60%;">SECTION D: JUDGE'S DECISION</div>									
Check									
<input type="checkbox"/> PTS/NONFINANCIAL									
or									
<input type="checkbox"/> FINANCIAL \$ _____ (amount of bond)									
<input type="checkbox"/> FALLS WITHIN UNIFORM BOND STANDARDS									
or									
<input type="checkbox"/> DIFFERS FROM SUGGESTED DECISION									
PTs/CONDITIONS: _____ _____									
Reasons (for deciding out of UBS range):									
<input type="checkbox"/> Currently on Felony Bond									
<input type="checkbox"/> Probation/Parole Hold									
<input type="checkbox"/> Fugitive									
<input type="checkbox"/> A/C, Outstanding Warrants or Detainers									
<input type="checkbox"/> Physical or Mental Health									
<input type="checkbox"/> Added Charges									
<div style="border-bottom: 1px solid black; width: 100%;"></div> (Judge's signature)									
<input type="checkbox"/> Other (please specify) _____ _____ _____									

In short, the presumption appeared to be (and this is supported by the empirical research) that pretrial services had the job of convincing the judge why he should not go along with the amount suggested by the bond schedule. When pretrial services did persuade the judge to assign a defendant to the agency's care, the implications were clear: pretrial services (i.e., corrections) not the Court accepted the risks and responsibilities for that defendant's pretrial release--and any blame that might come from the defendant's misbehavior during pretrial release.

To emphasize the provisional nature of the arrangement (the assignment of a defendant to pretrial services for nonfinancial release or supervision), the judge routinely set "alternate bond." Alternate bond--again usually exactly the amount of bond designated by the booking stage bond schedule--seemed to be the Court's way of saying that, had the Court not been willing to give pretrial services the benefit of the doubt in a particular case, the defendant would have had the specified amount of bond assigned. Alternate bond, similar to "unsecured bond" in other jurisdictions, had the effect of serving as the "backup" bond decision for defendants taken back into custody, but it also had the odd effect of permitting defendants preferring not to be supervised by pretrial services to bond out via a bondsman or, sometimes, their own pocketbooks.

Taken most seriously, implementation of the guidelines system would result in a shift in focus (and in burden) from the pretrial services agency back to the judge as the bail/pretrial release decisionmaker. Looked at one way, the guidelines were designed to improve on the uni-dimensional thrust of the bond schedule by adding and compactly organizing key information for the judge's bond hearing decision that went beyond just the criminal charges. The idea was that pretrial services would collect and prepare relevant information that would classify defendants according to the guidelines and that the presumption would be that judges would want to follow the Court's judicial guidelines--rather than the Court's booking stage bond schedule which was originally designed as a crude release mechanism for booking stage release--except when information gathered by pretrial services demonstrated that other approaches perhaps should be taken.

In short, not only would the former pretrial services recommending function be made objective, but the recommendation function would be eliminated. The pretrial services job at the bond hearing stage would become the factual classification of defendants according to the guidelines and summary of pertinent information for the judge that may assist the judge in deciding whether or not to go along with the guidelines suggestion.

The Role of the Judges under the Circuit Court Guidelines System

The principal aim of the Circuit Court's Uniform Bond Standards (the formal title given to the bond guidelines) was to provide a practical resource that would assist individual judges presiding over bond hearing in making bond and pretrial release decisions, while also serving as a vehicle for the Court as a whole for managing and reviewing bail policy. Two years of collaborative research supervised by the Court's working committee demonstrated empirically that, despite the Court's efforts in meeting the demands of an increasing and serious felony caseload and of extreme jail crowding, there was room for improvement at the initial pretrial release (bond hearing) stage. Although the Court could congratulate itself for performing better than might be expected under the circumstances--better in some respects perhaps than other comparable jurisdictions--the presiding judge determined that it was worth exploring whether bond hearing practices could be improved further by means of the voluntary guidelines decision resource.

Ideally, introduction of the Uniform Bond Standards would pose little change to the normal routine of the judge presiding at bond hearing, but would bring to bear a fully developed informational resource. The guidelines would be prepared by pretrial services staff, would indicate the relative risk posed by the defendant of risk of flight or crime during pretrial release and would point to a suggested decision that would "in most cases" serve the multiple goals of the bond hearing decision, minimizing risk to public safety and court processing of criminal cases, making decisions more equitable and avoiding unnecessary pretrial detention (as mandated in Florida's bail law). The judge would consider the information (including the severity of the charges and the relative risk posed by the defendant) and the guidelines suggestion and make the decision. The difference would be that judges would note briefly the reasons for taking exception to the guidelines.

Depending on one's perspective, one could argue that the Uniform Bond Standards would basically replace the bond schedule as the "rule-of-thumb" yardstick for bond hearing decisions. Looked at this way, the most noticeable change would be in asking the judge to review (at a glance) the summary paperwork and to note reasons in cases in which the guidelines were not followed. This proposed guidelines routine in reality called for two innovations in the judge's role:

- a) reviewing the information describing a defendant (at least understanding the implications of the severity and risk classifications)--hitherto left totally to the pretrial services staff--and

- b) deciding the appropriateness of decisions suggested by the guidelines as well as providing reasons for exceptional decisions.

Prior to the implementation of the guidelines judges had shown little interest in knowing the reasons for pretrial services' recommendations (preferring only to know whether pretrial services would accept a defendant). They showed little interest in reviewing descriptive information relating to defendant's background, no matter how briefly summarized. They had never been asked to provide reasons for decisions they made.

Just as the ultimate contribution of the guidelines could only be measured if the daily bond hearing judges cooperated in the effort to implement the new program, the overall success of the innovation would be determined chiefly by the role played by the judicial working committee, which supervised the development of the guidelines, and by the leadership of the court in their implementation. The working committee supervised by the Administrative Justice for the Criminal Division of the court certainly left its mark on the guidelines, in directing the empirical investigation of bail decisionmaking practices and their effects on the system and in shaping the decision guidelines ultimately produced for use by the judges.

Unfortunately, just as the project reached the implementation stage, the strong committee dissolved. Its supervising judge was appointed to a higher Florida court by the governor. One of the most active judges, the one most versed in the issues and practicalities of reform in the area of bail in the United States, decided to step down from the bench. Suddenly, the guidelines effort was without its principal source of support and leadership. The working committee was to have been an important springboard to introducing the new approach to the judges in the two Dade courts who would be deciding bond in the near future. It was left to the Presiding Judge to set the guidelines in motion. He appointed a new head of the Criminal Division who was not familiar with the guidelines research or the needs it sought to address. Just as the new criminal chief was becoming familiar with the project and preparing to support its implementation, however, he died.

In light of the bad luck and unfortunate circumstances and rather than experiencing a lengthy delay which would probably mean the loss of all momentum and possibly the end of the project, the Presiding Judge decided to move the plans for implementation forward by emphasizing the role of the pretrial services agency. As a result, it fell almost single-handedly to pretrial services to implement the new system and to educate or "break in" new bond hearing judges as the court schedule dictated. Although the Presiding Judge tried to assist the pretrial services director in making the judges aware of the new program, at their introduction the pretrial release guidelines lacked

the more systematic introduction to judges and demonstration of their use that was originally planned. This development, as we shall see, turned out to be instrumental in setting the tone for the guidelines experience, at least through the evaluation period, and explains why decision guidelines apparently were not able to serve as the decisionmaking resource for the judiciary they were designed to be.

Implementation of the Guidelines (June-July, 1987)

Once the general version of decision guidelines had been decided upon by the working committee, the research staff worked closely with the director of pretrial services at the direction of the Administrative Judge for the Criminal Division to produce a refined set of guidelines ready for implementation. Preparation for implementation first involved working with pretrial services to develop procedures and to conduct training so that the agency could be primed for its new responsibilities. The presiding judge asked the research staff and pretrial services director to introduce the soon-to-be implemented guidelines at a meeting of the Criminal Justice Coordinating Council for Dade County. At that meeting, the concepts and procedures were explained to heads of the relevant justice agencies (such as the District Attorney's Office, the Public Defender's Office, the Police and Probation Departments). Individual visits were made to the District Attorney's staff and the Public Defender's staff to review the program and to answer questions. The research staff and pretrial services director prepared explanatory materials for and met with the weekday bond hearing judge who would be the first to employ the guidelines to review the guidelines goals and procedures.

The guidelines went "into use"--were prepared and presented by pretrial services--in mid-June, 1987, at the bond hearing. At first, the pretrial services staff complained that completing the guidelines took more time than the former procedures and caused backups in presenting defendants at bond hearing. As these problems began to be addressed, however, some of the "minor" changes for which pretrial services had trained ran up against their first tests. First, the bond schedule continued to be announced formally at the beginning of each defendant's appearance and appeared to dominate the judges' considerations at the hearings.

Second, the bond hearing judge who had been elaborately briefed on the operation of guidelines instructed the pretrial services staff not to show him any of the guidelines information. When he would ask the pretrial services agency if they would "take" or "wanted" the defendant, they responded that the Court's Uniform Bond Standards *suggested* a certain decision option or range of options. When he responded, "I am asking if you will take

this defendant or not," the pretrial services staff would either say "yes" (reverting to the pre-guidelines custom) or would steadfastly repeat the guidelines suggestion, risking the judge's ire. Next, when the judge made a decision that departed from the guidelines (which he had scarcely considered), the judge would not agree to give a reason for the departure, and certainly would not note one in writing. (The more courageous of the pretrial services staff asked the judge to give the reasons orally and then noted the information on the form.)

On that frustrating note, the trial implementation of guidelines began. Because the opportunity had been lost to make use of the judicial working committee to introduce the guidelines to their colleagues as a resource of their own making, the "minor" changes in procedure practiced by the newly trained pretrial services staff began to have the look of major reform. During the first month, various efforts were made to obtain feedback from the pretrial services staff, to offer additional training and problem-solving sessions and to work with the Court to acclimate the judges to the new routine.

Chapter Five

EVALUATION OF THE INITIAL USE OF PRETRIAL RELEASE GUIDELINES IN CIRCUIT COURT, DADE COUNTY

Constraints of Funding: The Timing of the Evaluation in Dade County

Under ideal conditions, a useful evaluation of newly implemented guidelines would occur once the participants have had an opportunity to shake out the "bugs" for a couple of months or would wait until new procedures had become more familiar and the early logistical problems had been resolved. Unfortunately, because of delays at various of the earlier stages of the research, the project was running out of time and funding for the evaluation task was being exhausted. Thus, we were forced to begin our evaluation--to collect data describing the initial use of the bail/pretrial release guidelines in Dade County in a large sample of cases--immediately, during what amounted to the "shakedown" period of the innovation. Because we feared that we would not be presenting the evaluation in its fairest light in this fashion, we decided also to study a much smaller sample of defendants entering the process several months later, during November of 1987, by which time we believed many of the early logistical problems would have had a chance to have been worked out.

The Evaluation Design in Dade County

To compare bond/pretrial release decisions once guidelines were in effect to decisions "pre" guidelines (represented by our sample of over 2,000 felony defendants entering between April and October, 1984),²⁵ we collected data describing bond hearing decisions in the cases of 2,995 felony defendants entering Dade County Circuit Court during June-July 1987 (the first two, "shakedown" months of guidelines use).²⁶ All the cases of defendants securing release within 90 days (or a shorter period if adjudication of the charges had occurred) were followed for a period of 90 days to determine whether any failures to appear in court (FTAs) or rearrests for crimes occurring during pretrial release were recorded. In addition, we collected data relating to a smaller sample of 366 defendants entering the criminal process several months later, between November 9 and November 13, 1988, to permit at least a superficial analysis of decisions under guidelines at a stage when the guidelines procedures ought to have become

²⁵ See a more complete discussion of sampling methodology in Chapter Three of Volume I.

²⁶ All defendants entering the felony court process during this period who were charged with bondable offenses were included. Thus, the sample is a complete sample of felony defendants entering Circuit Court from June 9th through July 24, 1987.

more routine.

The Limits of the Evaluation: Comparability of the Samples

Before beginning to contrast the bond/pretrial release decisions and their outcomes in the two periods, one additional caveat is in order: Although we drew samples of defendants likely to be reasonably comparable in make-up so that comparisons would be appropriate, the three samples being discussed could not be "exactly" comparable. Figures 5.1 and 5.2 contrast the charge and risk characteristics of the samples. Although overall they appear very similar, some differences can be noted. The cases in the 1987 samples seem to involve somewhat more seriously charged cases, for example. In addition, the risk characteristics of the three samples differ slightly but not greatly.²⁷ Because of these slight differences, we caution that, to a minor extent, in overall comparisons reported differences may be due in part to differences in the make-up of the samples, not to actual differences in decision practices or their outcomes. For that reason, we have more confidence in comparisons between subcategories of defendants, when key (risk and severity "zone" or "cell") characteristics of cases are controlled.

Thus, in addition to asking questions about the overall use of the decision guidelines, we will want to compare the decisions assigned to defendants within "zones" and "cells" of the guidelines, where sufficient numbers of cases permit such comparisons. Figure 5.3 contrasts the distributions of the defendant samples from each of the time periods according to guidelines zone. The chief difference between samples seems to be that greater proportions of defendants in the 1984 sample were classified within the OR/Standard Conditions zone of guidelines (i.e., were lower-risk, less seriously charged defendants) than of 1987 defendants.

Figure 5.4 compares defendant samples based on specific guidelines cells.²⁸ If defendants were equally distributed throughout the guidelines, we would expect roughly 3 percent to fall within each cell. Using this as a basis for comparison, defendants are found half as often or less than expected in six cells across samples: rarely evident are defendants in cell 1 (PTS/Standard), cell 3 (PTS/Standard), cell 4 (PTS/Standard), cell 5 (PTS/Standard), cell 8 (Financial Bond) and cell 25 (PTS/Special). In only cell 22 were defendants found in each of the samples

²⁷ The large number of missing cases in the risk classification results from the failure of pretrial services staff to classify all defendants during the June-July, 1987, sample but also during the later, November sample. Because the purpose here is to contrast the samples for similarity, we employ a "corrected" measure of these variables. See the discussion of pretrial services preparation of the guidelines below.

²⁸ The comparisons based on cell are limited by the numbers of cases falling within each category.

Figure 5.1 The guidelines severity of criminal charges of felony defendants entering Dade County Circuit Court, by sample

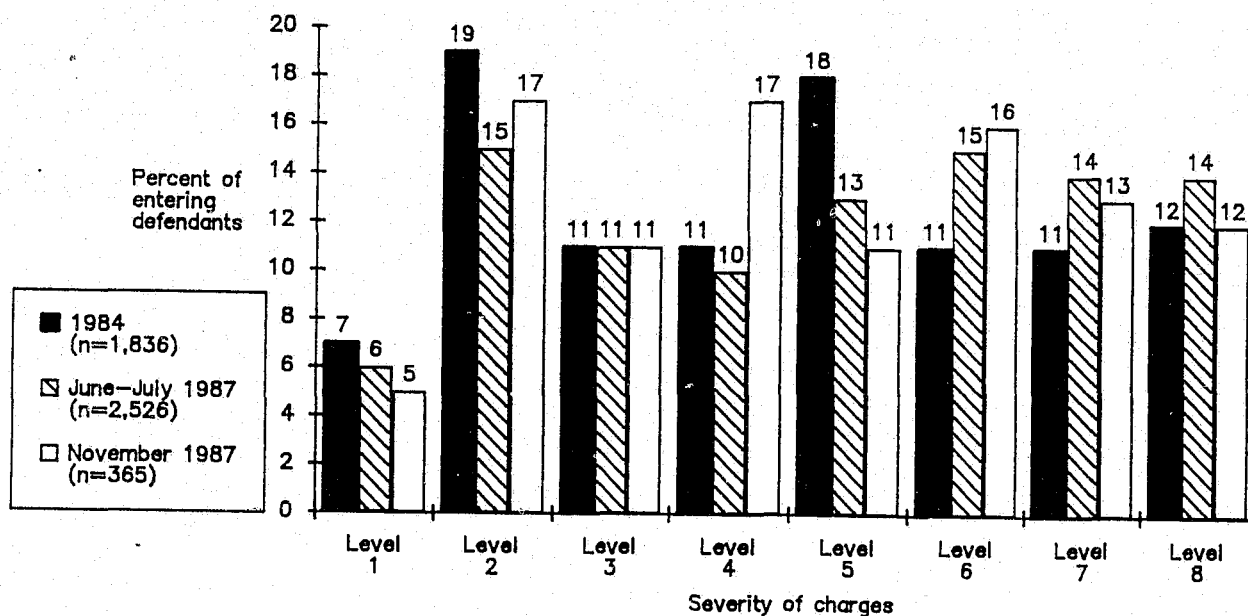


Figure 5.2 The (guidelines) risk classification of felony defendants entering Dade County Circuit Court, by sample

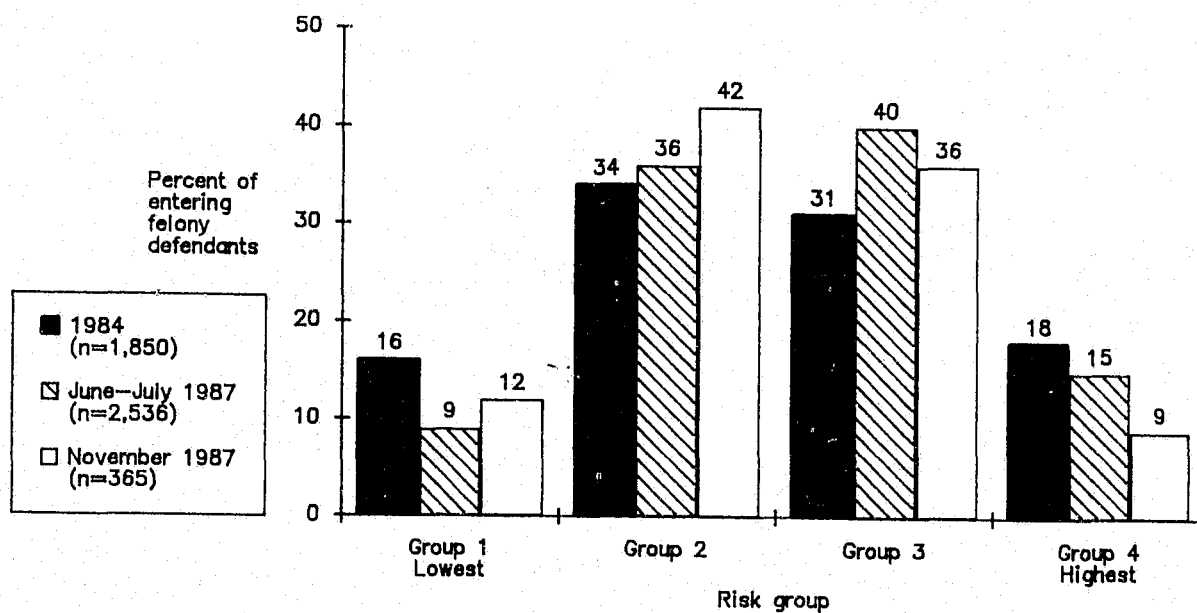
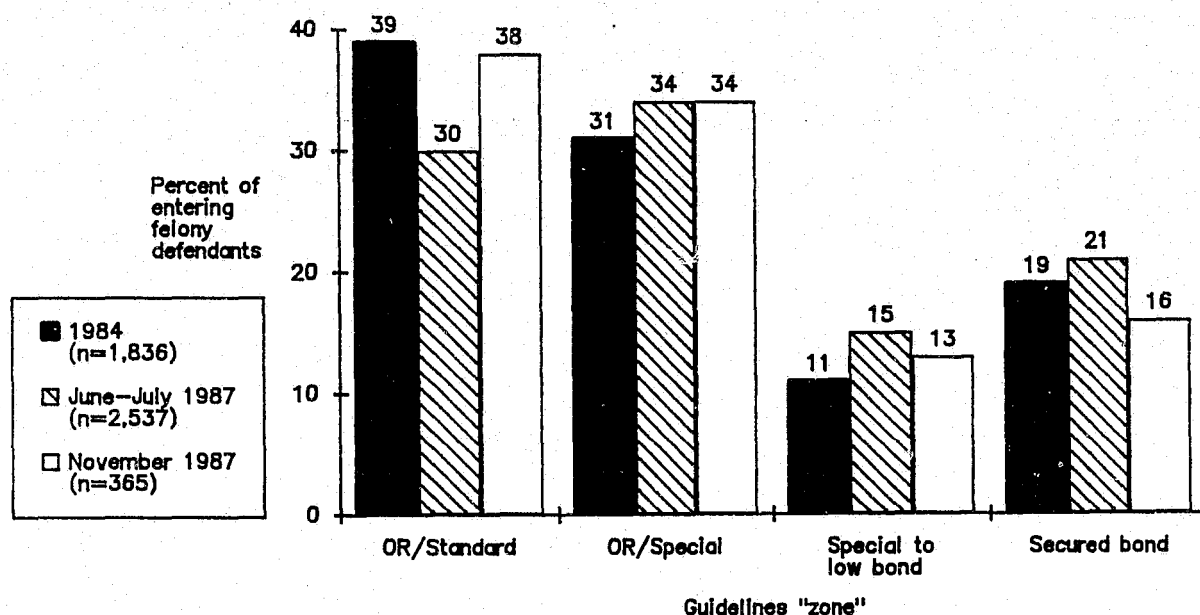


Figure 5.3 The classification of felony defendants entering Dade County Circuit Court, by guidelines "zone", by sample



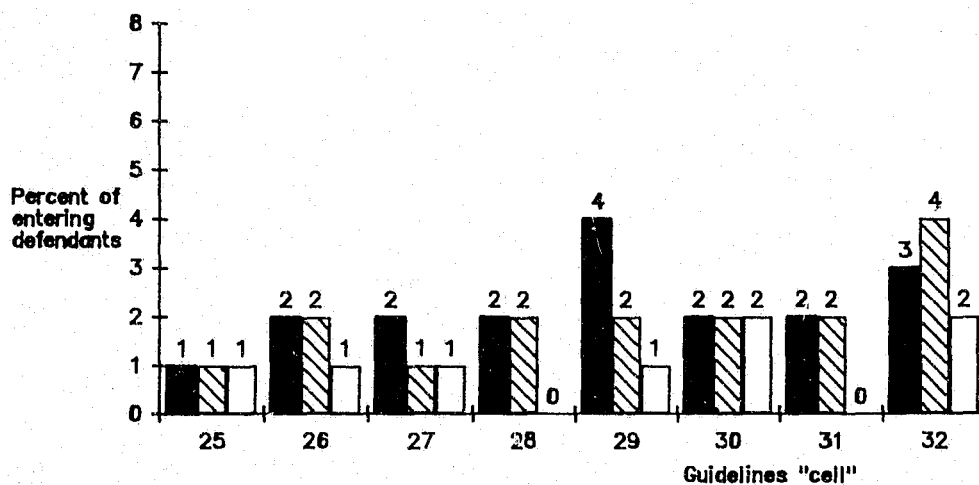
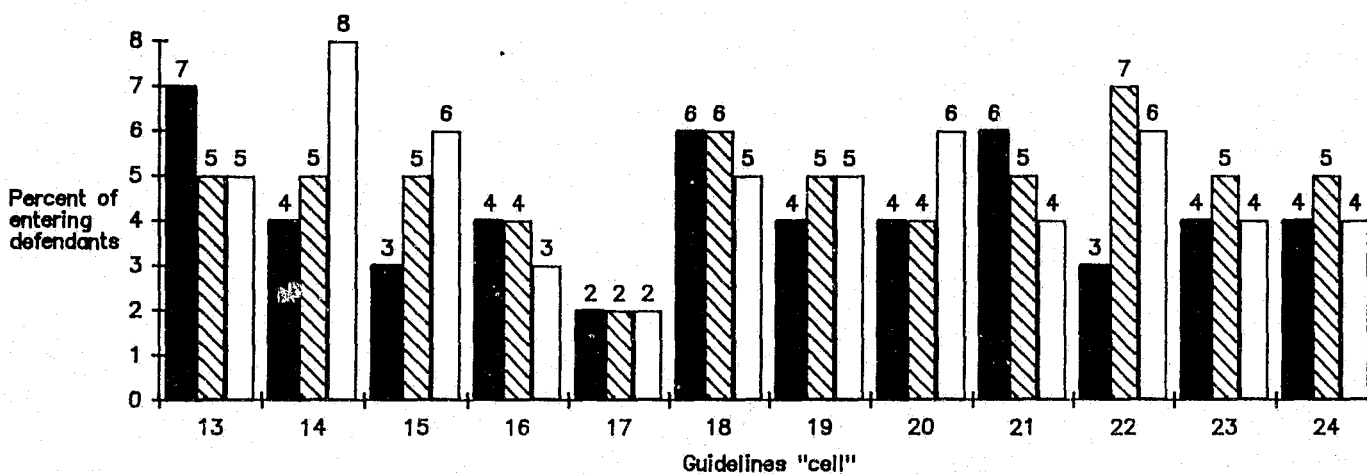
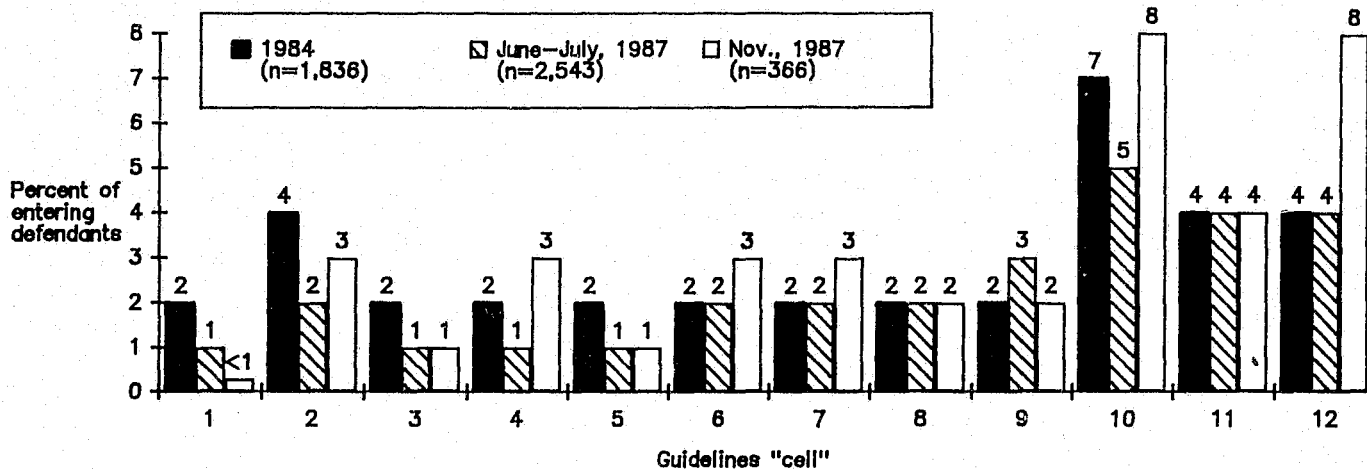
consistently to include twice the proportion of defendants expected (6 percent) or more. In four cells, 10, 13, 14 and 18, more than 5 percent of all defendants were classified in each sample. In general, the 1987 samples appeared to be somewhat more heterogeneous, more evenly distributed among all guidelines cells.

THE PREPARATION OF GUIDELINES AND CLASSIFICATION OF DEFENDANTS BY PRETRIAL SERVICES: CLARIFICATION OF THE TARGET GROUP

Our examination of the use of bond hearing guidelines in Dade County begins with an assessment of their preparation by the pretrial services staff. As we explained above, the first and most important guidelines task performed by pretrial services involved the classification of defendants along the severity and risks dimensions of the guidelines, so that the presumptive guidelines decision could be arrived at and indicated for the judge. Each of these dimensions involved new procedures, although the risk scoring was likely to involve more mistakes in the early going.

Of course, a goal of the guidelines system was to prepare all defendants entering the court process at the bond hearing stage for classification within the guidelines. Given the large volume of cases in the Dade courts and

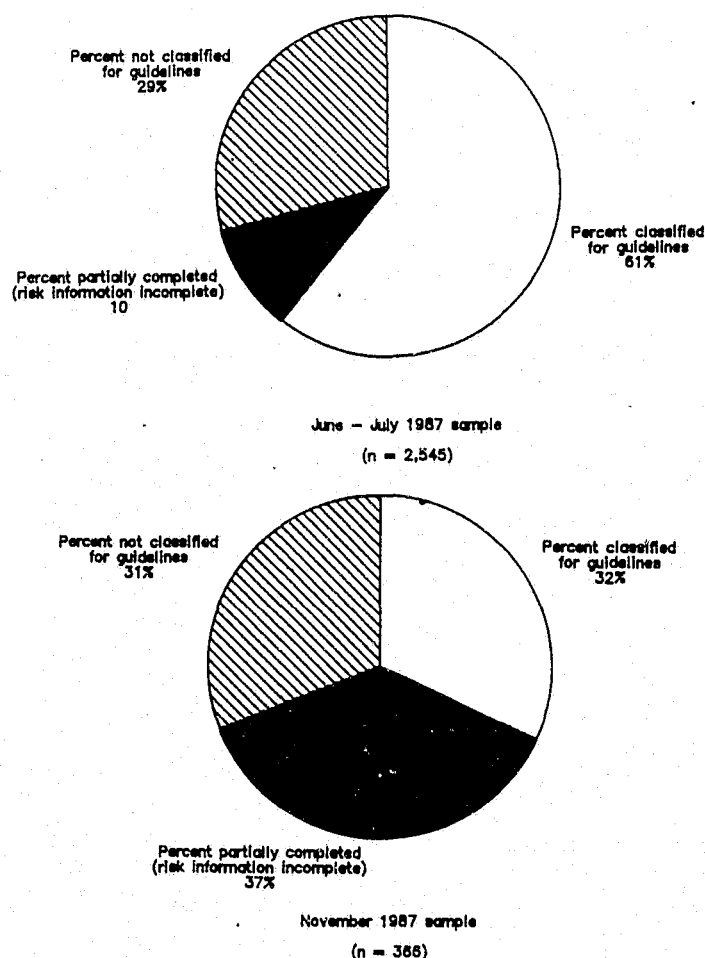
Figure 5.4 Classification of defendants entering Dade County Circuit Court according to guidelines "cell", by sample



the extra time the new procedures required of the pretrial services staff at first, this ideal was not initially reached. (It was not possible to choose to begin guidelines implementation during a "slow time" in Circuit Court; there was none.) At times the strain of the volume of cases waiting to be interviewed before bond hearing--and the limited number of pretrial services staff available--caused supervisors to suspend full guidelines "workups" on defendants. For example, when a large sting operation by police brought in a large number of defendants at once or when pretrial services was required to release a large number of defendants in an emergency to bring the population level back down to near the court-imposed capacity limit, guidelines might not be completed. Thus, we found that guidelines materials had not been attempted in about 29 percent of the cases in both 1987 samples.

In addition to these crisis situations when interviews were not done (nor certainly were guidelines prepared), perhaps because of the same reasons, guidelines appeared not to be completed in certain other instances. Thus, we found guidelines materials begun but purposefully shortened without filling out the full risk and charge-related information in another 10 percent of the June-July, 1987, sample and another 37 percent of the one-week, November sample. (See Figure 5.5.)

Figure 5.5 Completion of guidelines information for defendants entering Dade County Circuit Court, by sample



Analysis comparing cases not having guidelines materials prepared with cases having the guidelines information completed revealed several themes governing the pretrial services guidelines preparation experience. (See Table A5.1.) These themes point to court policies limiting the applicability of guidelines (or of eligibility for release generally) that were clarified as the guidelines were being implemented.

Because they were potentially non-bondable, defendants entering the process on new charges who were already on pretrial release for open felony charges, for example, were often not classified within the guidelines framework nor were defendants in jail having new felony charges lodged. Defendants who were discovered to be on probation or parole at the time of their recent arrest often were not prepared because of the Court's policy of denying bond to these individuals until the former sentencing judge could review the case. Defendants who had been previously supervised by pretrial services but who had been rearrested usually did not have the guidelines information prepared, for the simple reason that pretrial services representatives would be requesting the judge to rescind pretrial release for noncompliance at bond hearing because of the new arrest.

But guidelines would not be completed as a practical matter also in cases in which the bond schedule amount was exceedingly high, because the pretrial services staff saw little potential that judges would consider guidelines options in very seriously charged cases. In addition, backed up calendars on weekends sometimes resulted in expedited release procedures by the judge who would grant nonfinancial release to numbers of defendants in court prior to completion of the usual paperwork by pretrial services. To some extent the findings that guidelines were not prepared at all for some defendants was a predictable outcome of an evaluation conducted at the very beginning of implementation before the agency had a chance to perfect procedures.

To some extent, the finding that guidelines were not completed for a certain proportion of defendants reflects the idealism with which the pretrial services staff approached the challenge of implementation. The no-release policy for defendants on active probation or parole status had been known to the staff, just as it had been known that the court would not consider nonfinancial release (nor anything but a very high bond) in drug trafficking cases, for example. However, noting that strong arguments for nonfinancial release could sometimes be made in those kinds of cases for given appropriate conditions of release, the director of the pretrial services program thought it worthwhile not to exclude cases routinely from the guidelines process--at least to begin with. The early data show,

however, that the judges did not adjust their positions regarding these kinds of cases, causing pretrial services to drop plans to prepare guidelines on "all" defendants.

Thus, in large part, the numbers of incomplete cases can be explained by rather firm court policies and represent categories of generally non-bondable cases that ordinarily would not have been included in our analysis of the effect of guidelines on decisions in the cases of bondable felony defendants. Of course, the analysis of the impact of guidelines on the judges and on other areas of interest will be restricted to cases in which the guidelines were completed.

The Ranking of Defendants Charges According to Severity

By referring to the total bond schedule bond noted in each defendant's cases, the pretrial services staff member could locate each defendant within one of eight severity categories as shown in Figure 5.1. In the same fashion, because we were able routinely to collect bond schedule information, we were able to compare the severity level indicated by pretrial services with the correct severity level. The selection of the correct severity classification did not appear as straightforward as had been supposed in its design.

In roughly 15 percent of the June-July cases and 19 percent of the November cases for which pretrial services classifications were found, pretrial services had not correctly ranked the severity of defendants charges. More than one-third (37 percent) of the errors in the June-July sample and one-half (48 percent) in the November sample resulted in placing the defendant into a lower severity level. Two-thirds of the misclassified June-July and nearly one-half of the misclassified November defendants had their charges ranked too seriously. (See Figure 5.6.) Obviously, mistakes in the ranking of defendants' charges meant that the final guidelines designation was likely to be inappropriate and might have translated into unfair treatment of defendants in the event judges consider the guidelines.

The Classification of Defendants According to Risk of Misconduct

The calculation of the defendant risk group required the pretrial services staff to score defendants on a series of nine risk items (see Figure 5.7.) The individual scores were added to obtain a total score which was used to locate defendants in one of the four risk groups. In "degree of difficulty," the classification of risk offered greater potential for error than the ranking of criminal charges. Our experience in reviewing the initial preparation of

Figure 5.6 Accuracy of pretrial services severity ranking for defendants entering Dade County Circuit Court

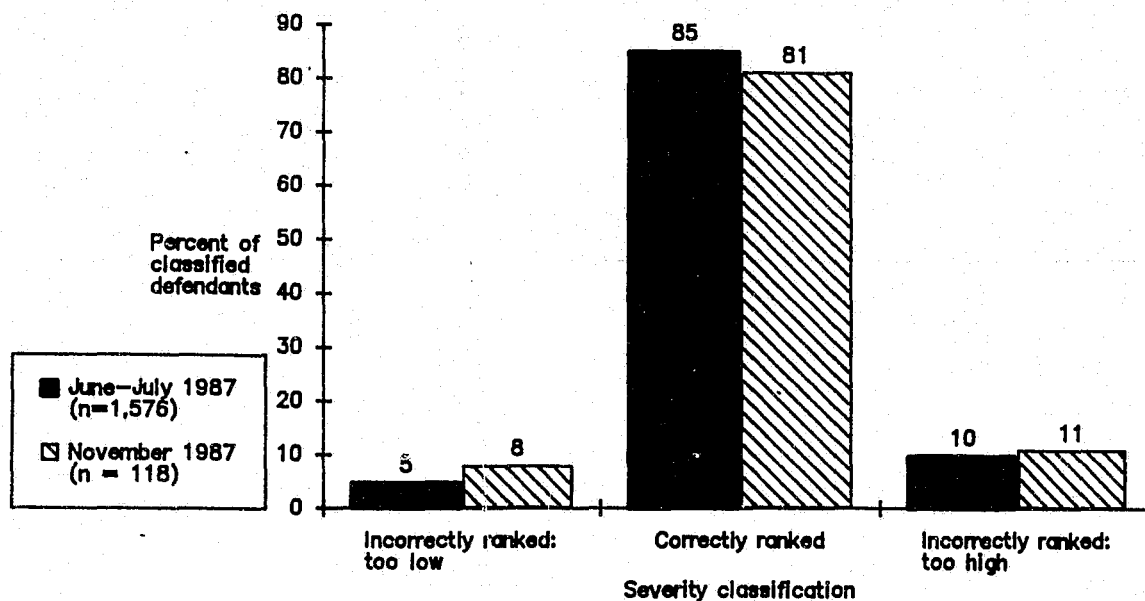
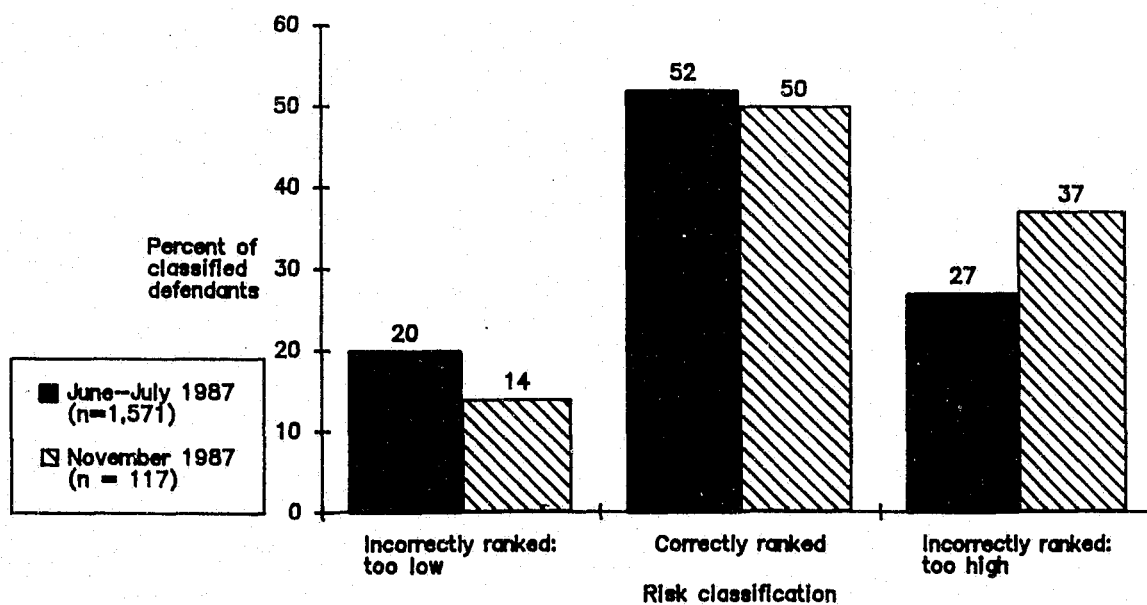


Figure 5.7 Accuracy of pretrial services risk classification for defendants entering Dade County Circuit Court



guidelines in Philadelphia and in Maricopa County has shown us that a certain margin of error initially is to be expected in this area.

We were able to observe three kinds of errors in the risk classification of Dade felony defendants. A first kind of error was produced when pretrial services staff did not correctly score the presence or absence of an attribute. For example, when robbery charges were present, the defendant was scored as if they were not. Second, the staff member may have correctly noted the presence of the attribute (yes, there were robbery charges), but may have assigned an incorrect or invalid score. For example, the only valid risk codes for "robbery charge" are "0" (no robbery charges present) or "-2" (robbery charges present), but in a number of cases a "1" or other number was recorded. The third kind of error involved the incorrect addition of scores which resulted in some cases to the selection of an incorrect risk group classification for the defendant.

With the exception of "living arrangements" each of the individual risk items could be directly checked against an alternative variable for accuracy. The first two kinds of error in the cases classified by pretrial services are summarized in Table 5.1. One or more items were wrongly scored (shown as not involving robbery when robbery was involved, for example) in a total of 71 percent of the classified cases. One or more items were assigned invalid scores (scores that did not exist) in 10 percent of the classified cases. Overall, we found errors associated with at least one individual risk item in 75 percent of the cases for which the risk classification had been completed.

In more than one-third (37 percent) of the cases, pretrial services did not correctly score the "property charges" item, which asked them to assign 0 points if a crime against the person was involved and 2 points if no crime against the person was included in any of the defendants' charges. Recent prior arrests were incorrectly indicated in 30 percent of the cases and other aspects of a defendants prior record also appeared troublesome. Just plainly invalid scores were less common but still troublesome. Addition errors were found in about 10 percent of the cases, about one-third resulting in lower and two-thirds in higher risk classifications. This rate of addition error is relatively consistent with error rates found in other jurisdictions during initial implementation periods and has been shown to disappear as the new procedures become more routine. There was a slight diminution of addition errors from the June-July sample (10 percent error rate) to the November sample (4 percent error rate), but not much of a change in the other kinds of risk classification errors.

Table 5.1 Error rate for individual risk items in Dade County

<u>Risk item</u>	<u>Item wrongly scored</u> Percent	<u>Item given invalid score</u> Percent	<u>Total errors</u> Percent	Number
Phone ownership	3.9	0.2	4.1	68
Property charge	36.8	0.3	36.9	614
Drug charges	3.7	1.2	4.8	79
Robbery charge	1.2	0.5	1.4	29
Recent arrests	30.2	5.0	33.5	560
Prior drug arrests	12.1	1.0	12.9	215
Prior convictions	15.9	0.8	16.6	277
Prior FTAs	17.9	3.9	21.0	350
Total	72.9	10.1	74.9	1688

Overall, only 55 percent of the June-July felony defendants and only 48 percent of the November defendants for whom guidelines risk classification was carried out were assigned to the correct risk category. The risk classification errors were not evenly divided in the direction of the misclassification; the majority resulted in rating defendants in higher risk categories than they should have been: Of incorrectly assigned defendants in the June-July sample, 59 percent were placed in a more serious risk category. Among those incorrectly classified in the November sample, 73 percent were placed mistakenly in a higher risk category. (See Figure 5.7.) In no other site has such a strikingly high error rate been observed.

Classification of Defendants within the Guidelines

Of course, the errors in ranking the severity of defendants' charges and in scoring them on the various risk attributes translate into overall misclassification of defendants within the guidelines. Figures 5.8 and 5.9 compare the pretrial services classification of defendants for whom guidelines materials were prepared with what would have been their correct classification to zones and cells of the Uniform Bond Standards, underscoring the impact of misclassification as an implementation problem. *Among June-July, 1987, defendants only 44 percent were correctly classified by pretrial services into the appropriate guidelines cells.* Using the broader decision zone designation (OR/Standard, OR/Special, OR/Special to low bond, bond), the overall agreement rate was 64 percent. *The classification of defendants in the November sample showed an even lower rate of correct placement within the guidelines--only 40 percent of defendants were placed in the correct guidelines cells and 61 percent in the correct decision zones.* Unfortunately, the misclassification of defendants by pretrial services according to severity

Figure 5.8 Accuracy of guidelines "zone" classifications of felony defendants entering Dade County Circuit Court, by sample

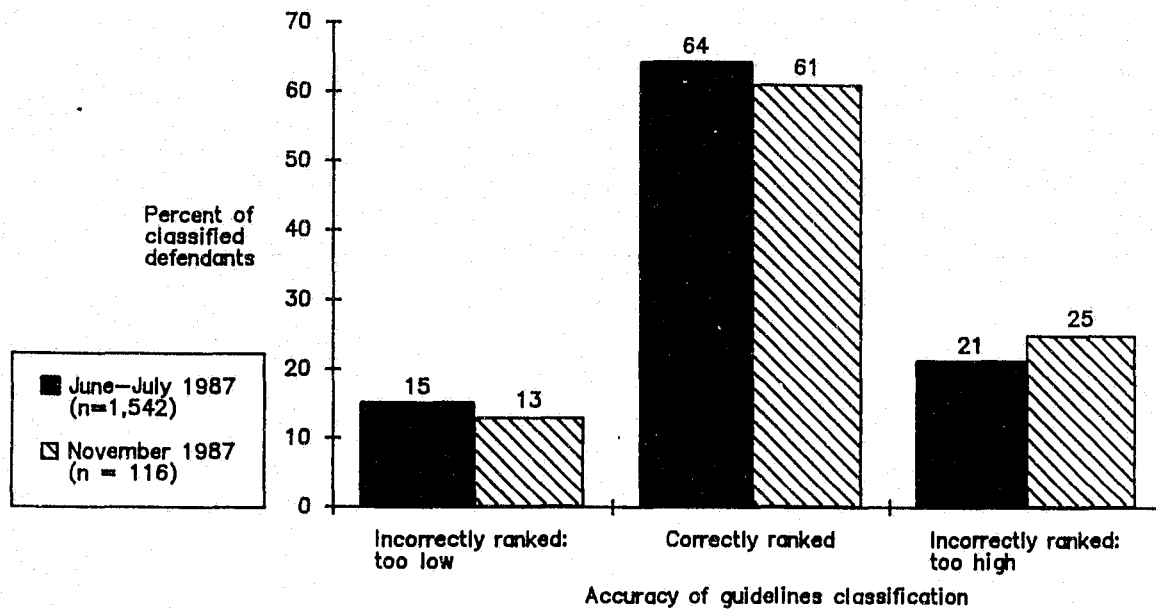
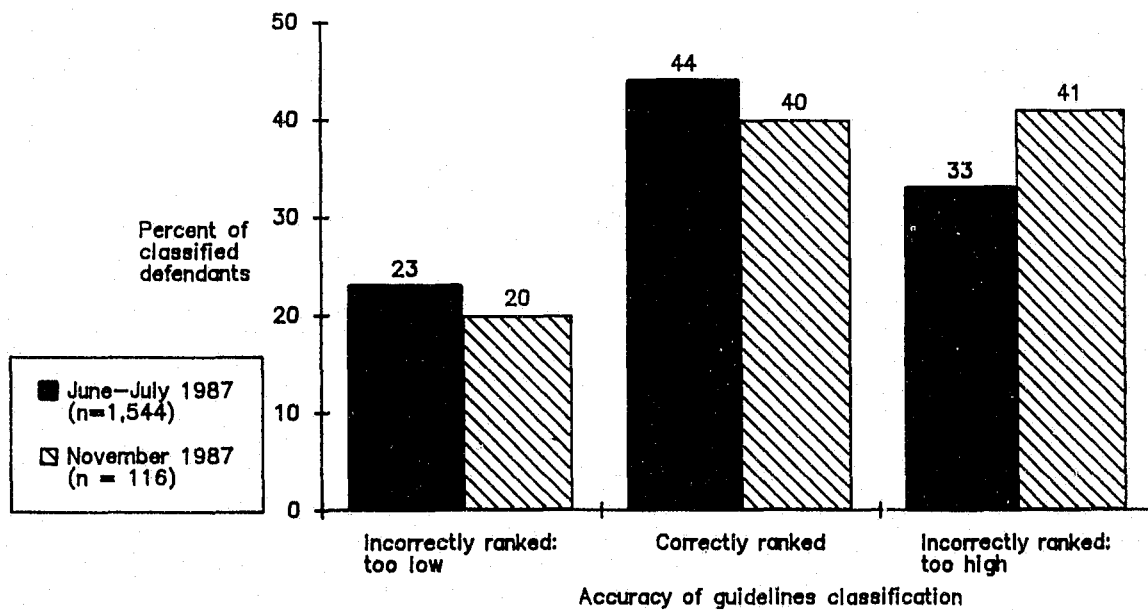


Figure 5.9 Accuracy of guidelines "cell" classifications of felony defendants entering Dade County Circuit Court, by sample



of criminal charges and risk of flight or rearrest was more often in the direction of a more restrictive guidelines decision category. In a system in which judges relied heavily on the guidelines to inform their bail choices, this magnitude of misclassification may have translated into a sizeable number of inappropriate decisions. Obviously, such a level of misclassification limits the ability of the guidelines to affect the problems--such as jail crowding--they were designed to address.

The Notation of Unusual Circumstances

As we explained above, in addition to placing the defendant within the appropriate guidelines subcategory based on the severity and risk rankings, the pretrial services task also included pointing out to the judge special circumstances about a defendant or his/her case that might shed extra light on the appropriateness of the decision choices suggested by the guidelines. The aim of this feature of the Uniform Bond Standards was to call attention to critically important unusual features of a case, not to allow the pretrial services worker to add other biographical data of general interest. Ideally, properly employed, this feature would be evident in a restricted number of cases (for example, to be "unusual," these circumstances ought to appear in a minority of cases).

During June and July, among the defendants having guidelines information prepared, pretrial services staff noted 'unusual circumstances' over one-third of the time (34 percent). During the November sample period, a smaller proportion of cases had unusual circumstances recorded, one sixth (16 percent). (See Figure 5.10.) Interestingly, these findings compare very closely with the findings in Maricopa County regarding the notation of unusual circumstances. By definition, especially at the very beginning of the guidelines implementation period, it appears that the "unusual" notation was somewhat too "usual" given its intended use.

Among the most common reasons noted by the staff under the heading of "unusual circumstances" were that the defendant was on probation or parole at the time of arrest, the defendant was on release on felony bond (a potentially nonbondable situation), the defendant was on pretrial release in other matters, the current charge was an added charge (meaning the defendant was in jail already for failing to post bond in an earlier felony matter), the defendant had no immediate ties to the area, the defendant was a "high bond" defendant (meaning the bond was likely to be so high that guidelines were not realistic), and the defendant refused the interview. (See Figure 5.11.) Other reasons were more rarely given, some of questionable appropriateness, such as "drug charge," "bench warrant," "uses drugs," "alcohol problem," "not arrested before, and "scored outside guidelines," among others.

Figure 5.10 The notation of "unusual circumstances" by pretrial services among felony defendants entering Dade County Circuit Court during 1987 sample periods

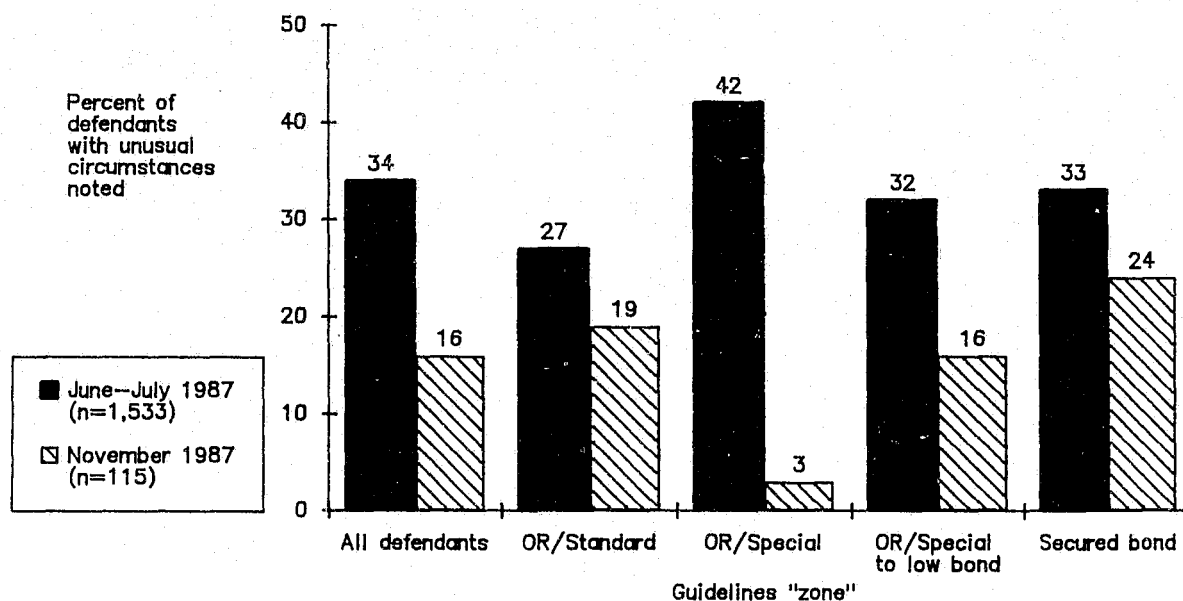
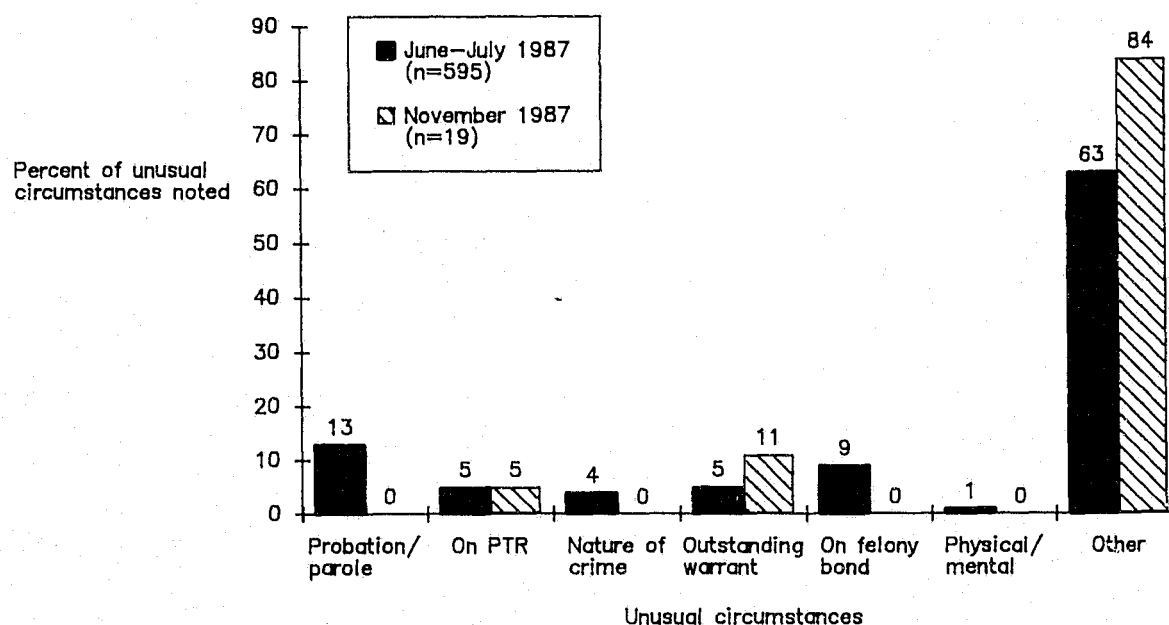


Figure 5.11 The type of "unusual circumstance" noted by pretrial services for felony defendants entering Dade County Circuit Court, by sample period



Special Conditions of Release

A final task in the preparation of the Uniform Bond Standards classification for the bond hearing judge was to complete the section of the guidelines designating special conditions of release recommended by pretrial services in relevant cases. Special conditions were to be provided for defendants falling within zones 2 (OR/Special) or 3 (OR/Special to low bond) of the guidelines. The purpose was to provide the bond hearing judge with an option permitting the release of medium-risk/medium-severity defendants while minimizing the risks of flight or crime. Such special conditions might include supervision by pretrial services, drug/alcohol treatment, domestic violence treatment, etc. By design, special conditions were not intended to be dispersed throughout the guidelines categories at the discretion of the pretrial services staff, but were to be targeted in the "special conditions" categories of the guidelines.

As we have noted earlier, our corrected classification of defendants (see Appendix A) would have placed approximately one-third of the June-July defendants and of the November defendants into zone 2, which included cells suggesting OR/Special Conditions and located roughly 15 percent of each sample in zone 3, which suggested either OR/Special Conditions or some low bond amount. Of the cases actually classified by pretrial services (the only ones we could study in this regard), the picture was not very different, except that the November sample placed more defendants in zone 3 (16 percent) and fewer defendants in zone 2 (25 percent).

Figure 5.12 shows the recommendation of special conditions of release by pretrial services among the two samples of 1987 defendants. Special conditions were suggested in 49 percent of the June-July sample and 71 percent of the November sample; both rates are higher than would be expected under a policy of restricted and targeted use of special conditions of release would suggest. Moreover, special conditions were specified for kinds of cases not associated with use of special conditions: during the June-July sample 40 percent of special conditions were attached to cases classified within zones 1 or 4 of the guidelines--zones which did not require any special conditions. During the November sample, 54 percent of special conditions were assigned in those zones.

Figure 5.13 exhibits the special conditions most frequently used in cases where at least one such condition was noted. A glance at these options reveals that some of the conditions listed as "special" were not especially restrictive as meant by the designation. For example, release to pretrial services for low risk supervision is more of a "normal" or standard nonfinancial release option that is not necessarily restrictive. Thus, analysis of the kinds of

Figure 5.12 The suggestion of "special conditions" by pretrial services for felony defendants entering Dade County Circuit Court during 1987 sample periods

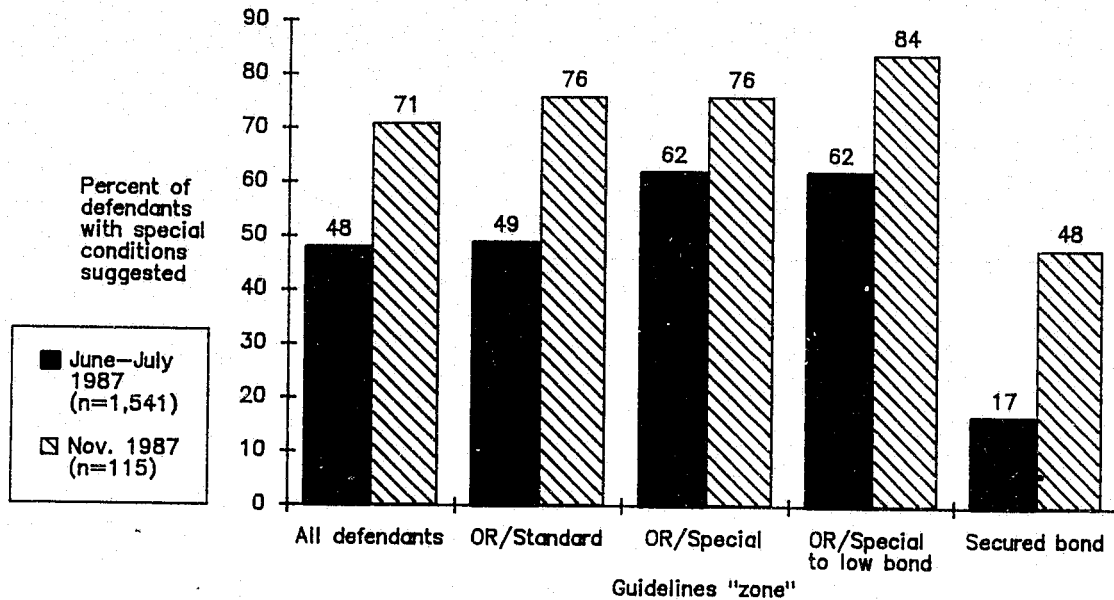
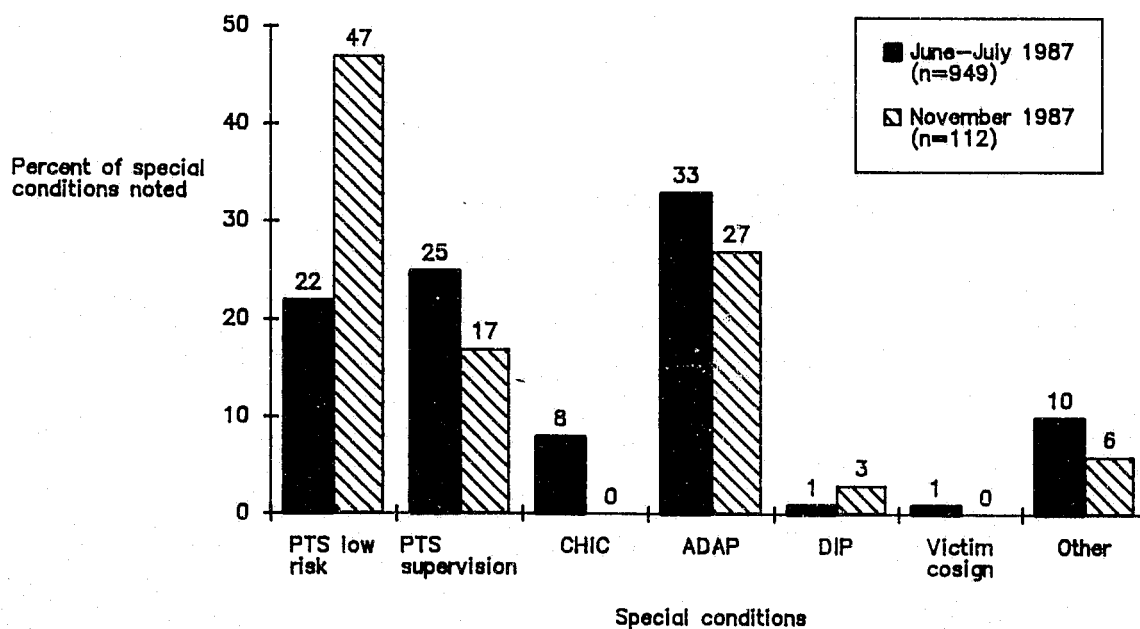


Figure 5.13 The type of "special conditions" noted by pretrial services for felony defendants entering Dade County Circuit Court, by sample period



conditions suggested shows that, after all, special conditions are perhaps not being employed at a level very much greater than called for by the guidelines. However, some clarification of the appropriate use of special conditions (and differentiation between special conditions and normal conditions) might prove helpful as the use of the guidelines continues.

Conclusions: Problem Areas in Preparation of the Guidelines by Pretrial Services

Although an immediate evaluation of the guidelines innovation in Dade County might not have offered the fairest opportunity to show the program in the best light (we could have expected better results and smoother sailing if the evaluation began after a few months of their operation), it offered the advantage of surfacing some of the problems areas that require attention during the initial implementation phase. In a large urban court system, the first problem is trying to reach the full target population entering the judicial process in the short period before the initial appearance or bond hearing. In Dade County, the continuing and critical jail overcrowding crisis periodically produced the need for expedited release procedures, often not allowing time for defendant interviews or guidelines classification.

But another difficulty reflected in these data is the mastery of the guidelines classification processes by pretrial services, not only in the severity rankings of the criminal charges, but in the scoring of defendant risk groupings. An error-free implementation of the guidelines classification was certainly not a reasonable expectation; however, when cases were prepared for the guidelines, the amount and kind of errors resulting in misclassification of defendants within the guidelines are a serious problem. The applications of special conditions of release and the notation of unusual circumstances were also areas needing some further sharpening. Each of these problems of implementation if left uncorrected would seriously limit the prospects for the guidelines approach to address constructively the problems of public safety, jail crowding and equity that were of such great concern to the jurisdiction.

JUDICIAL USE OF THE BOND HEARING GUIDELINES

Because decision guidelines for bail and pretrial release are intended ultimately as a judicial policy management and decisionmaking resource, a key aspect of the evaluation of the guidelines is their use by Circuit and

County Court judges deciding bail at bond hearing in Circuit Court. Of course, we are able to gauge the impact of guidelines on the areas of concern only to the extent that they were effectively put into use by the judges.

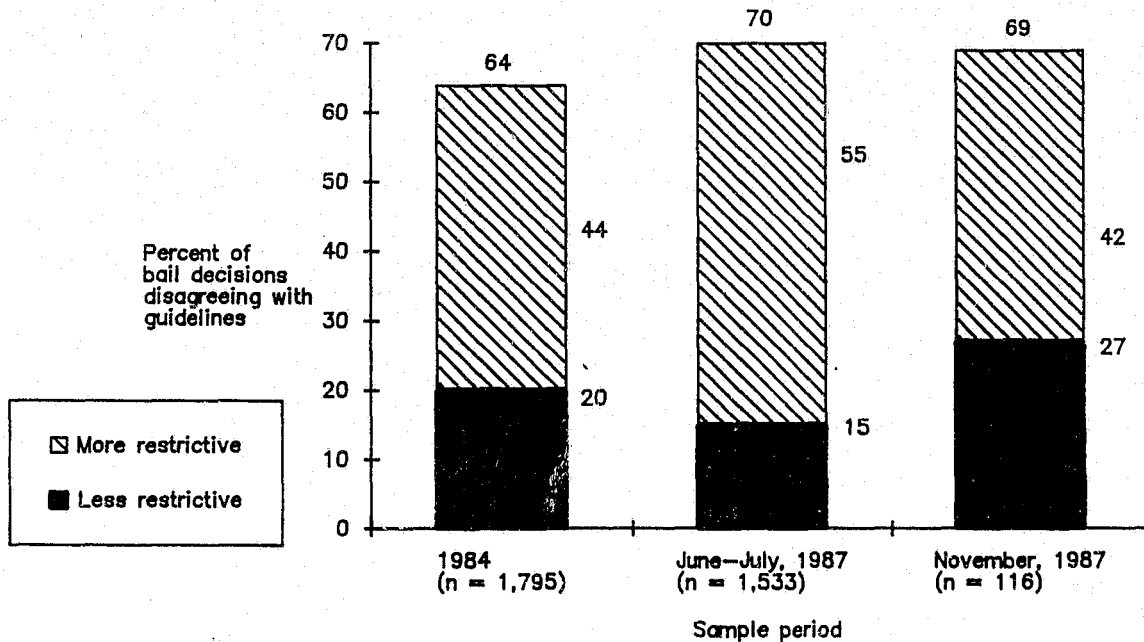
Given the findings we described above regarding the preparation of the guidelines, we are limited in two respects by our focus on the early period selected. First, as we noted earlier, we can analyze the effects of the guidelines approach only in cases that were prepared and classified by pretrial services within the guidelines for the judges. Second, our analysis of the impact of the guidelines on bail decisions is limited by the finding that in a large share of cases (nearly half) defendants were incorrectly classified.

It is difficult to guess whether the initial classification errors by the pretrial services staff had any effect on the judges use of the guidelines. For example, we do not know whether defendants may have seemed too often placed in less or more restrictive decision categories than appropriate to the judges, thus adding to their impression that guidelines suggestions seemed inappropriate or "off base." For the purposes of analysis, we can assume--as probably was the case--that the misclassifications by pretrial services were largely invisible to the judges, who were mainly reacting to the fact of a new procedure, not its details, at least at first. As a result, we will proceed with our analysis on the working assumption that the judges believed that the guidelines were appropriately prepared and would have had little reason to suppose otherwise.

We can evaluate the use of the guidelines by the judges and their impact meaningfully using two points of references: a) first, remember that to achieve their desired results, guidelines were designed to achieve agreement by judges in a sizeable majority of cases (say, 75 percent); b) second, we would want to compare the rate of agreement in the 1987 cases with how the 1984 decisions would have agreed with guidelines (had they been in effect) to see whether any change in decision practices had been brought about in comparison with a base-rate describing former decision practices.

When the judges agreement with the guidelines in the cases prepared by pretrial services is examined, we see that far from the "sizeable majority" ideal has been obtained. (See Figure 5.14.) *During June-July, agreement between judicial decisions and the guidelines was only 30 percent; in November, judges agreed in only 31 percent of the cases. When comparing this rate of agreement with the extent to which 1984 decisions would have agreed (without having seen guidelines)--which is 36 percent of the time--we can conclude that overall judges did not change their decision practices to make use of the newly developed Uniform Bond Standards.*

Figure 5.14 Disagreement between judicial decisions at bond hearing and the guidelines suggestions among felony defendants entering Dade County Circuit Court, by sample



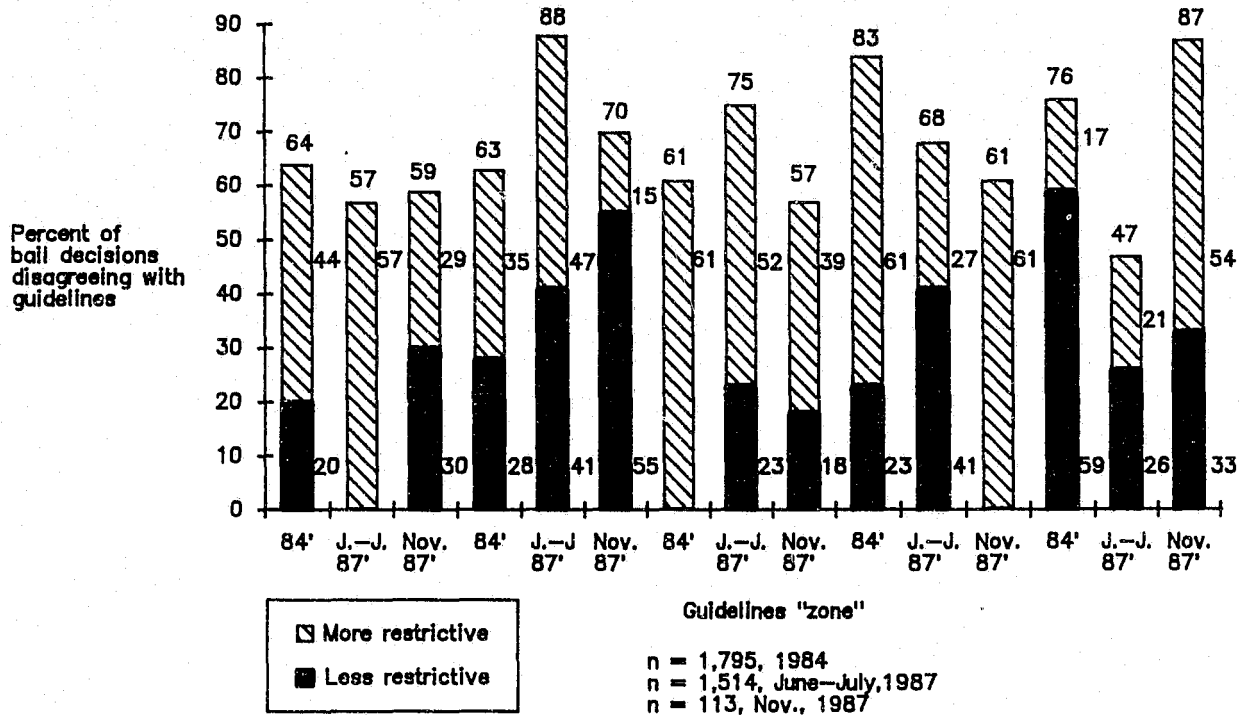
On the surface, then, this finding suggests that the Dade County judges seldom referred to the guidelines--or that, if they did, they were largely uninfluenced by them. The cases decided out of the suggested guidelines ranges were primarily one-directional among 1987 cases (in the direction of more restrictive bond decisions).

Agreement with Guidelines by Zone

In our introduction we cautioned against focusing largely on overall sample comparisons, noting that aggregate results could be traced in part to differences in the characteristics of the samples and that overall findings could mask findings that may be apparent when subcategories are examined. Figure 5.15 serves as a good illustration of this principle by contrasting the agreement rates when specific zones of guidelines are examined.

Although we describe as not very great the differences between samples in the overall rates of agreement of judges decisions with guidelines suggestions, analysis based on zone helps make the nature of that agreement/disagreement clearer. For example, 39 percent of both 1987 sample defendants with attributes placing them within zone 1 (OR/Standard) categories of the guidelines received decisions at bond hearings that agreed with the guidelines--obviously far short of the hypothesized ideal rate of roughly 75 percent. This represents a slight

Figure 5.15 Disagreement between judicial decisions at bond hearing and the guidelines suggestions among felony defendants entering Dade County Circuit Court, by "zone", by sample



decrease over comparable 1984 cases, among which 43 percent received OR or OR with non-restrictive ("standard") conditions.

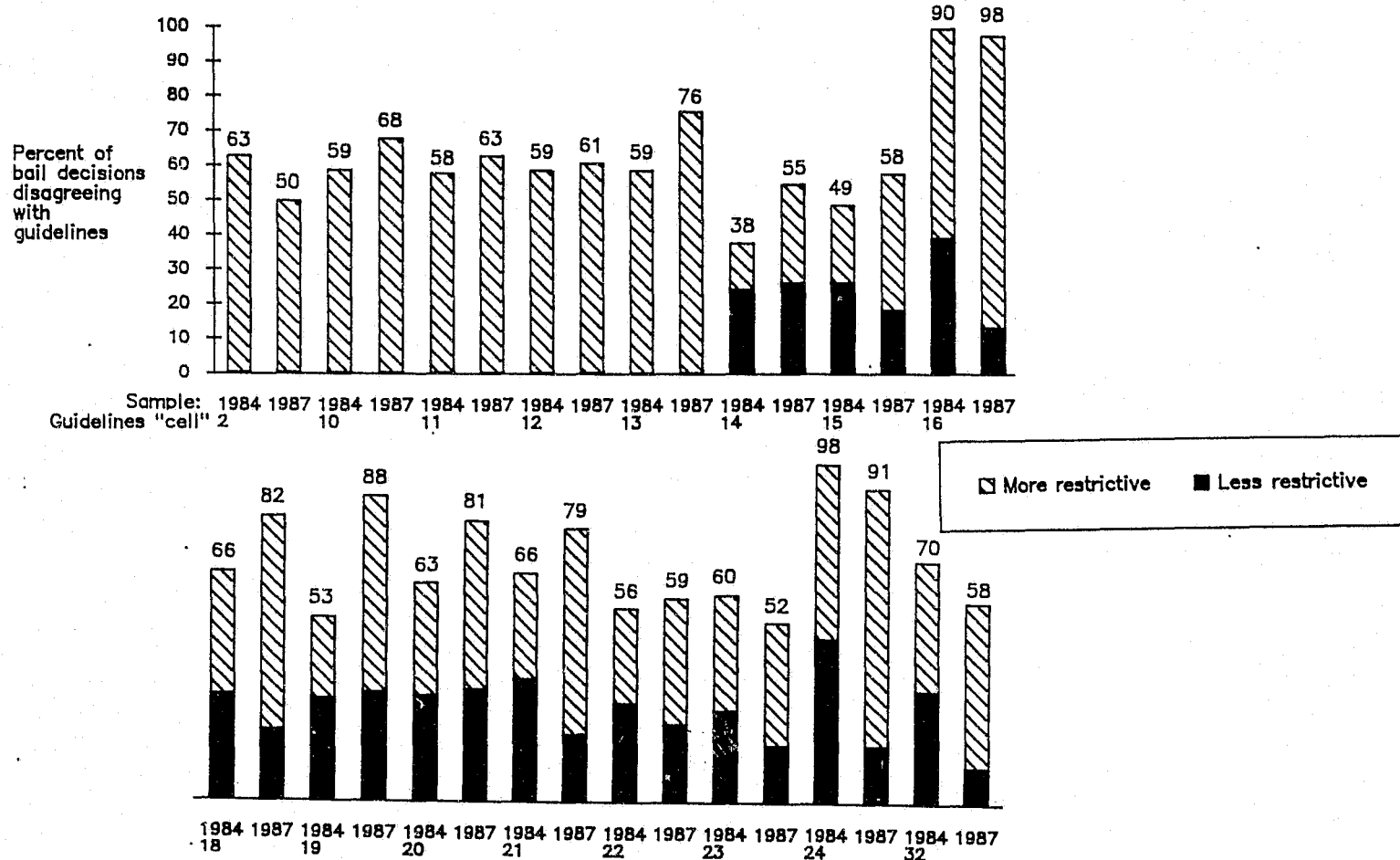
Zone 2 defendants, who accounted for about one-third and one-quarter of defendants in each of the respective sample periods, had a similar experience. Formerly (in the 1984 sample), these kinds of defendants received nonfinancial release with restrictive conditions about 41 percent of the time. In the 1987 samples, judges assigned them decisions that agreed with the special conditions suggestion less often, in 25 percent of the cases in the June-July sample and in 24 percent of the cases in the November, 1987, sample.

Among zone 3 defendants, 1987 decisions by Dade judges agreed more frequently with guidelines--43 percent of the June-July sample and 53 percent of the November sample--than did 1984 decisions by comparison (which agreed about 38 percent of the time). Only slight differences among 1987 defendants were found when contrasted to 1984 defendants within the zone 4 category: judges' decisions agreed with the guidelines suggestions from between 13 to 17 percent of the time, far from the strong majority hoped for.

Agreement with Guidelines by Cell

As with the discussion of agreement by "zone," examination of agreement by judges based on specific cells helps point to both successful and troublesome areas. Figure 5.16 shows the variation in consensus by selected cell (taking the 1987 samples together to maximize the number of cases)--from 50 percent agreement in cell 2 to less than 10 percent agreement in cells 16 and 24.²⁹ The cells representing the lowest level of agreement by Circuit Court judges are those comprising cells 8, 16 and 24. In each of these cells the guidelines suggest secured bond of varying amounts even though the defendants are not classified in the highest risk category. Interestingly, in the case of cell 8 (data not presented), judges are more or less evenly divided in the direction of their disagreement with the guidelines--with 43 percent of cases involving a less restrictive bail decision and 57 percent a more restrictive decision.

Figure 5.16 Disagreement between judicial decisions at bond hearing and the guidelines suggestions County Circuit Court, by "cell", by sample among felony defendants entering Dade



²⁹ Figure 5.16 excludes cells with less than 50 cases in both 1984 and 1987. Agreement rates in excluded cells range from 74 percent in cell 29 to 0 percent in cell 8.

Perhaps at this early stage, the point is that at this level of analysis comparison of these 1987 data with the 1984 decisions reveals many specific cells where the rate of consensus has changed quite dramatically--in both directions--from 1984 practices. For example, in several cells involving OR/Standard bail decisions there has been a substantial increase in judicial agreement, for some reason. Not only do we expect guidelines preparation to go more smoothly in the period following the early months of implementation, but we expect as well to use analyses such as these to focus either on adjustments to the guidelines suggestions (keeping in mind the original goals relating to detention and public safety, however) or to encourage greater reliance on guidelines by judges who seemed not to employ them as originally intended.

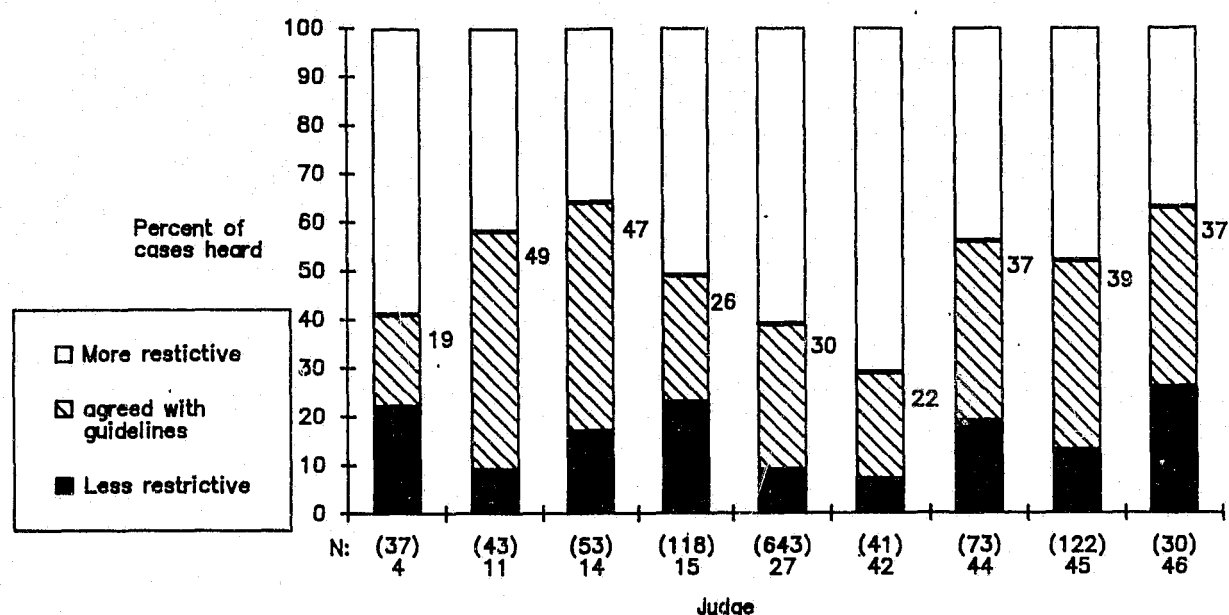
Agreement with Guidelines by Judge

In trying to understand the Court's initial experience with the guidelines, it is also helpful to consider the practices of individual judges who decided bond during the periods studied. Unfortunately, our current study was not designed to guarantee that equal kinds and numbers of cases representing each judge would be included in the evaluation (following the method we employed in our study of the Philadelphia experiment, for example) because our focus was on the effect of court bond practices overall. In fact, 45 different judges were involved in deciding bond during the two 1987 sample periods studied, although many presided over just a handful of cases. In examining the degree to which individual judges agreed with the decisions suggested by the guidelines, we have restricted the analysis to 9 judges hearing a minimum of 30 cases.

Figure 5.17 reveals that not one judge even approached the hoped for agreement rate of a "substantial majority" of about 75 percent. Indeed, the decisions of none of the judges agreed with the guidelines even 50 percent of the time. Of special note is the experience of Judge 9 who was the initial guidelines judge and who, as the summer schedule would have it, decided a disproportionate share of the June-July, 1987, cases. In cases in which pretrial services had prepared the guidelines, he selected decisions agreeing with the guidelines less than one-third of the time.³⁰ (Eighty-seven percent of his/her "disagreements" were in the direction of more restrictive bond decisions.)

³⁰ Two other judges (Judges 15 and 45) together heard as many as 18 percent of cases. No other single judge in either of the 1987 samples heard as many as 5 percent of the cases.

Figure 5.17 Agreement between judicial decisions at bond hearing and the guidelines suggestions among felony defendants entering Dade County Circuit Court, by judge



Reasons for Departures from Guidelines

An important feature of the guidelines, designed to provide feedback to the Court later about their use, was the provision of reasons by the judges when they made decisions differing from the choices suggested by the guidelines. Reasons, however, were seldom provided by the judges presiding over bond hearing in Dade County: during the June and July sample, reasons were noted only 48 percent of the time; reasons were provided for only 34 percent of the exceptions made to guidelines during the November sample. The notation of reasons for exceptional decisions varied considerably by the particular bond hearing judge from a low of 24 percent of Judge 16's departures to a high of 56 percent of Judge 14's and 64 percent of Judge 8's departures, and 72 percent of Judge 47's departures (although these last three judges presided over only about 12 percent of the bond hearing decisions studied).

Conclusion: the Judges' Failure to Use the Guidelines

The evidence we presented above suggests strongly that--in the aggregate--the guidelines made little impression on the judges presiding at the bond hearing in Dade County. Their very low rate of agreement--with a few notable exceptions--and their failure to cooperate in the notation of reasons when making decisions departing

from the guidelines create the impression that the guidelines program had failed to engage the judges in Circuit Court during the early going.

THE IMPACT OF BOND HEARING GUIDELINES ON PRETRIAL RELEASE DECISIONS

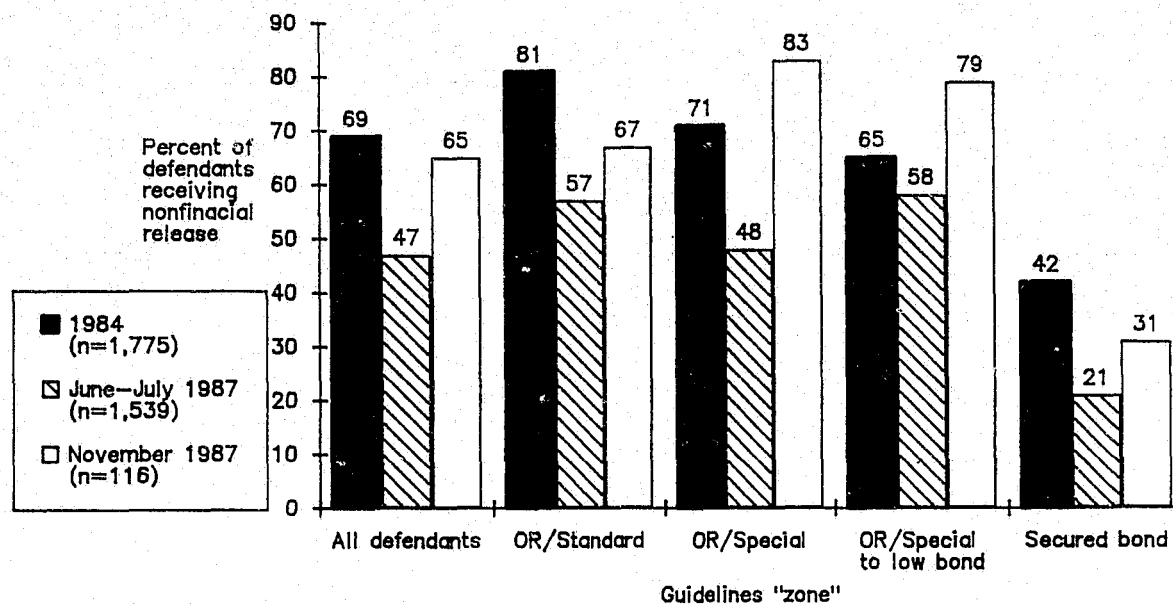
Had the guidelines been successfully implemented to provide a resource for Circuit Court judges and to encourage the desired reliance on their information and suggested decision choices, we could hypothesize as well that a number of other goals could have been achieved, such as changes in the use of nonfinancial pretrial release, in detention and in defendant misconduct during pretrial release. Given the findings related to the judges' failure to consider the guidelines during the initial period, however, there can be little "impact" due to the guidelines we can meaningfully evaluate. Thus, the data contrasting decisionmaking during the 1984 and 1987 sample periods discussed in this section might best be understood as contrasting decision practices and outcomes among Dade felony defendants during two periods unaffected by the guidelines implementation.

Nonfinancial release: 1984 and 1987

Our analyses of bond decisions in Dade County in 1984 (see Volume I) showed that when judges resorted to bond in making their decisions, a substantial majority of defendants were detained as a result. Thus, the use of nonfinancial release (ROR) of any form under the guidelines--whether routine or restrictive conditions were attached--would have had an important impact on the overall rate of release or detention.

Overall, judges' decisions during the two sample periods in 1987 revealed a substantially reduced use of nonfinancial pretrial release (ROR). Figure 5.18 shows that the use of nonfinancial release decreased quite significantly in the period immediately following implementation of the guidelines, from 69 percent in the 1984 sample to 47 percent during the June-July, 1987, but returned to 1984 levels once again by the November sample (65 percent). The same figure shows that the use of nonfinancial release dropped in each zone of the guidelines between 1984 and the June-July, 1987, sample. Interestingly, as the overall rate of nonfinancial release began to move back up to the previous levels during the November, 1987, sample, it even moved to higher than 1984 levels among zones 2 and 3. However, the results are a far cry from the levels that would have been expected had guidelines been employed in the fashion intended by the Dade County judges.

Figure 5.18 Change in the use of nonfinancial release (OR) among decisions for entering felony defendants in Dade County Circuit Court from 1984 to 1987, by guidelines "zone"



The Use of Financial Bond; 1984 and 1987

As the assignment of ROR by bond hearing judges dropped during the 1987 samples, the use of financial bond increased notably from 31 percent of defendants in the 1984 study to 53 percent in the June-July 1987 sample. The use of bond had nearly returned to the 1984 level by the November, 1987 sample (35 percent).

The overall cost of pretrial release as measured by the levels of bond set increased as well from 1984 to 1987, overall and across zones of the guidelines. Figure 5.19 displays the median financial bond for the two sample periods (both 1987 samples combined). (Note: ROR is considered the same as \$0 bond.)

The Use of Pretrial Detention: 1984 and 1987

One of the primary concerns of the guidelines strategy is its potential impact on the use of pretrial detention. To reflect the immediate impact of bond hearing decisions, we measured release and detention of defendants after a 48 hour period, although we also collected data looking at release occurring up until 90 days from booking.³¹

³¹ The data describing the longer measure of pretrial release and detention (within 90 days of prior to adjudication of a case, whichever comes first) are summarized in Table A5.2.

As illustrated in Figure 5.20, use of pretrial detention appeared to increase quite dramatically during the June-July, 1987, guidelines period when contrasted to the 1984 levels. Overall, detention moved from 36 percent of the 1984 sample to 53 percent among guidelines-prepared cases during June-July, 1987, then almost returned to the 1984 rate during the November period (39 percent).³² Had we reported above that the guidelines were employed routinely by the Dade judges, we would infer that an effect of the guidelines had been to increase the use of pretrial detention. Because we found instead that the Dade judges did not rely on guidelines, we conclude that this increase in detention is explained instead by two factors: the differences in the composition of the 1984 and 1987 samples and an apparent trend toward more restrictive bond decisions among Dade judges during the study period.³³

Again, recalling our admonition about the problems with comparing overall rates of possibly dissimilar samples, we examined the use of detention among the guidelines zone and cell subcategories of defendants. Figure 5.20 shows substantial increases in pretrial detention for more than 48 hours in three of the four guidelines zones from 1984 to the June-July 1987 sample. Only in zone 3, the zone formed of cells with suggested decisions including special conditions of release or a low amount of bond did the level of detention not change notably. In the small November sample, the detention rates appeared to have dropped somewhat--but not back to 1984 levels--in zones 1 (OR/Standard Conditions) and 4 (Bond). In zones 2 and 3, the categories involving special release conditions, the rates had dropped to below 1984 levels.³⁴

THE PERFORMANCE OF DEFENDANTS DURING PRETRIAL RELEASE: COMPARING THE EFFECTIVENESS OF PRACTICES, 1984 TO 1987

Of FTA, Rearrest, Felony Rearrest, and "Failure" Rates

If the guidelines were strictly based on a risk classification --and did not include the severity dimension--one might expect to find that the guidelines had an impact on the rate of misconduct of defendants who gained pretrial release. Of course, as we have explained in Volume I and elsewhere (Goldkamp and Gottfredson, 1985), because the severity dimension--which was not related to risk of flight or rearrest--has been purposely incorporated into the

³² See Chapter Three to contrast the experience of Maricopa County with Dade County regarding pretrial detention.

³³ This view is supported when data from cases decided during the same period but not processed for the guidelines are contrasted with the guidelines cases. See Table A5.1.

³⁴ Examination of the proportion detained using a cell-specific analysis (only possible for the June-July sample and then only in selected cells) confirms these general findings. (See Table A5.4.)

Figure 5.19 Change in the use of secured bond among decisions for entering felony defendants in Dade County Circuit Court from 1984 to 1987, by guidelines "zone"

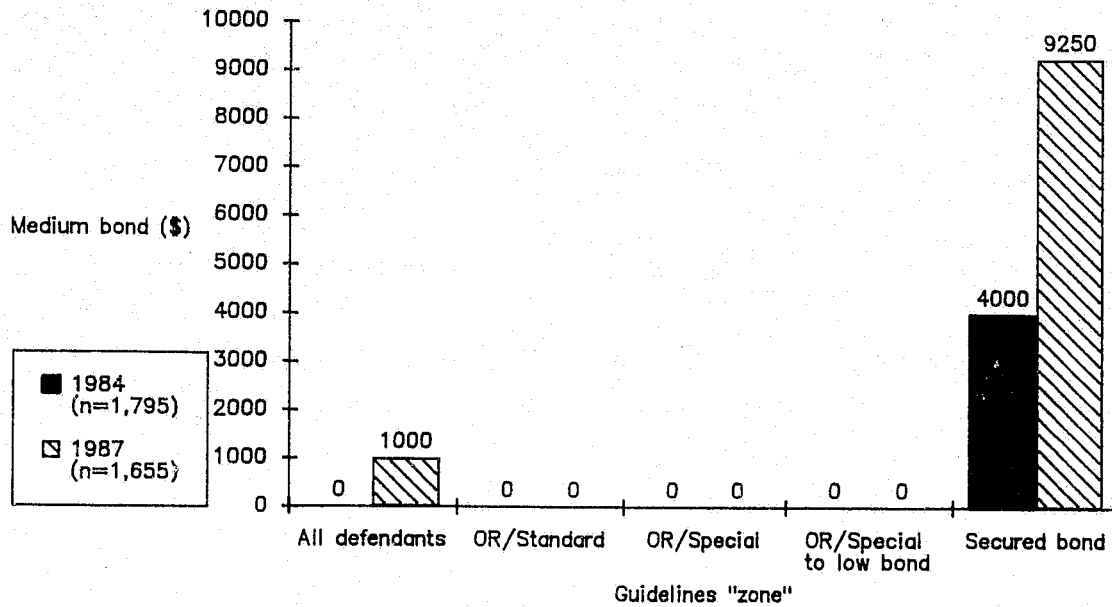
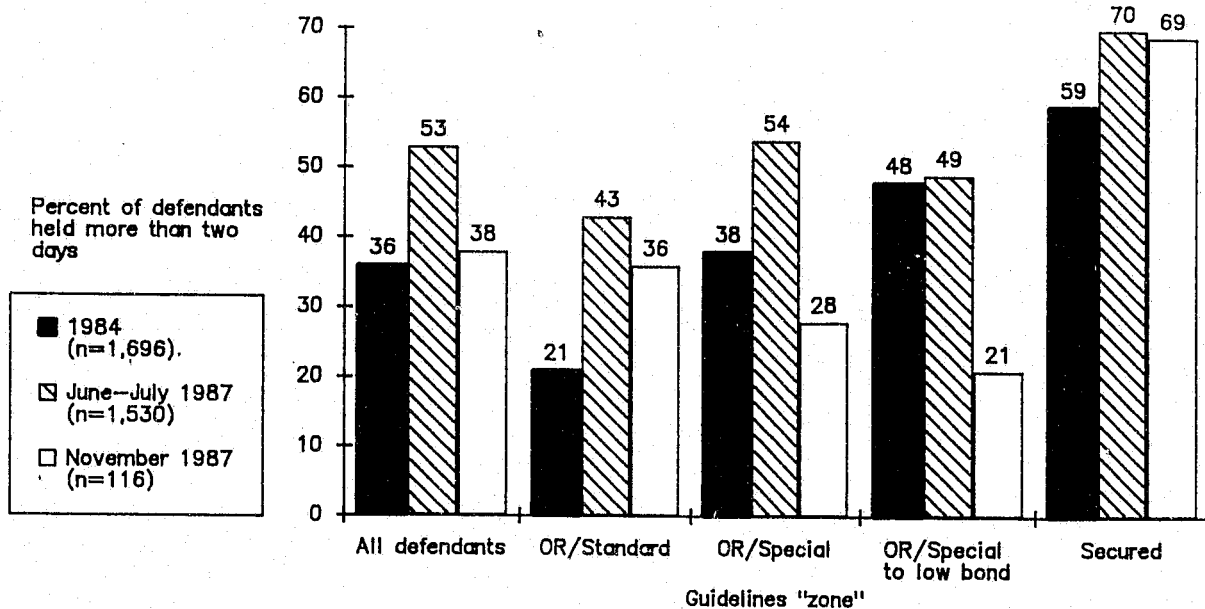


Figure 5.20 Change in the use of pretrial detention (held more than two days) for entering felony defendants in Dade County Circuit Court from 1984 to 1987, by guidelines "zone"



guidelines to counterbalance the risk dimension (and perhaps unequally), the use of guidelines does not offer a straightforward test of an ability to reduce defendant misconduct. Given also our finding that the guidelines were not influential in judges' decisions in Dade County, the strength of the risk classification in reducing misconduct rates cannot be said to have been tested in a real sense at all.

Nevertheless, Figure 5.21 and 5.22 compare the failure to appear and rearrest rates for defendants released within two days of booking in the 1984 and the 1987 samples respectively. (Note that the 1987 samples are combined in this analysis because of the small number of cases in the November sample.) Using this somewhat misleading, general comparison, it appears that overall defendant misconduct rates--however measured--were higher during the 1987 samples.³⁵ Failure-to-appear rates increased from 12 to 17 percent between the two sample periods, while rearrests increased from 7 to 17 percent. When defendant performance is examined by guidelines zone, however, we find that FTA rates decreased among zone 4 defendants, increased only slightly among zone 2 and 3 defendants, but increased notably among zone 1 defendants. Rearrest rates among released defendants, however, increased within each zone.

Just as we have explained that comparison of overall rates has to be viewed with some caution (and therefore comparison of subcategories is more appropriate), we remind the reader--as we have earlier Volume I and in our discussion of Maricopa County in this volume--of the limitations of the use of these kinds of misconduct rates in the first place. Because the rates of defendant misconduct are so dependent on the proportions and kinds of defendants released during each sample period, their comparison has little meaning.

Comparison of the Effectiveness of Pretrial Release

A better measure of the effectiveness of pretrial release decisionmaking takes into account both the use of pretrial detention and pretrial release. To be effective, given the legal presumption favoring release under the least restrictive alternatives in many jurisdictions and the concerns for jail crowding, court systems releasing as many defendants as possible while not increasing the threat to public safety or the risk of defendant flight are considered "effective." When 100 percent of a court's entering caseload is considered as the frame of reference,

³⁵ The comparisons are misleading, for one thing because of the problems involved in comparing samples that may have been dissimilar. Again, that these samples are related to an overall trend not linked to guidelines cases is supported by analysis of the companion data collected during the same period. See Table A5.1 showing the misconduct rates among release defendants in contemporaneous non-guidelines cases.

Figure 5.21 Change in defendant failure to appear rates for entering felony defendants in Dade County Circuit Court from 1984 to 1987, by guidelines "zone"

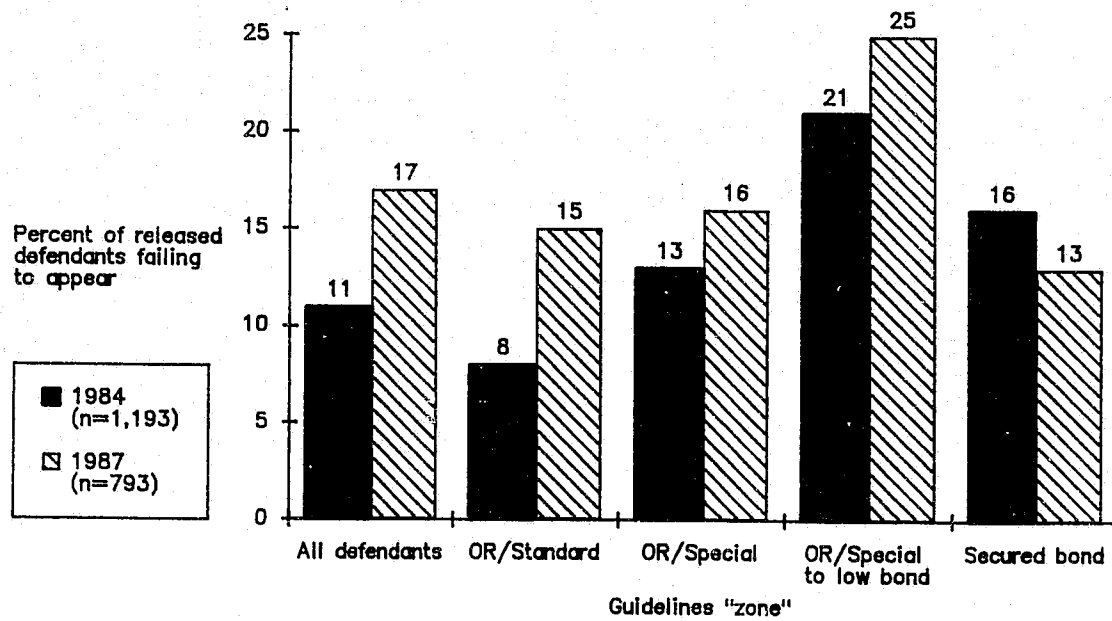
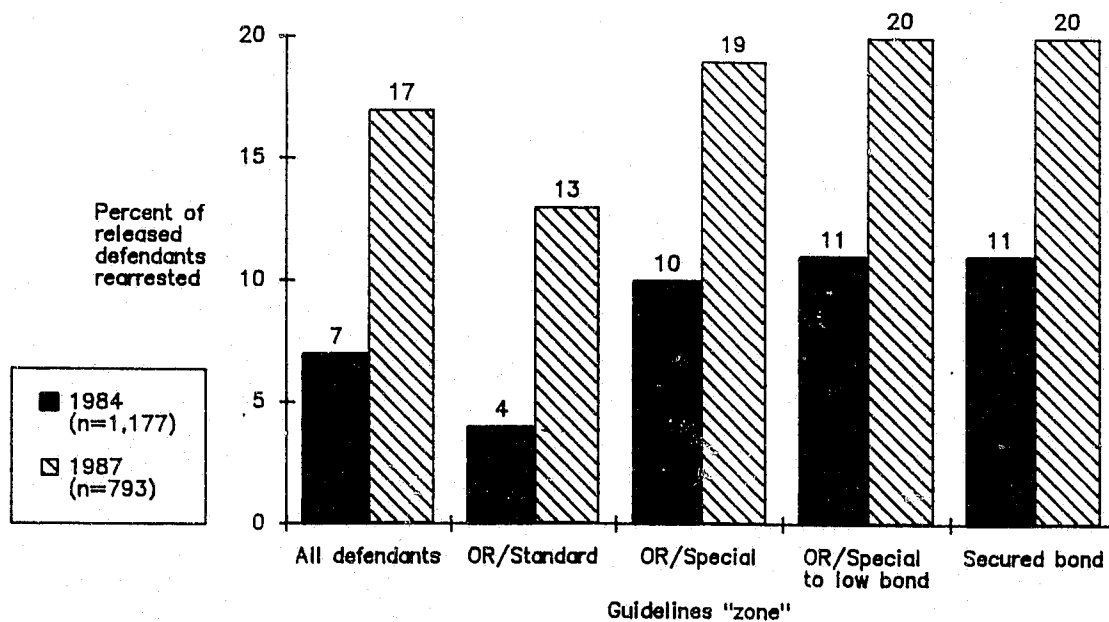


Figure 5.22 Change in defendant rearrest rates for entering felony defendants in Dade County Circuit Court from 1984 to 1987, by guidelines "zone"



"ineffectiveness" is generated in two ways: a) by not releasing defendants; and b) by "mistakenly" releasing defendants who commit new crimes or who fail to appear in court. The effectiveness measure therefore is equivalent to the proportion of all defendants released and not engaging in misconduct.

Figures 5.23-5.25 compare the effectiveness rates--considering flight, rearrest and both together--associated with the samples of Dade defendants from 1984 and 1987. From the perspective of FTAs, the effectiveness of pre-trial release dropped from 55 percent of defendants in 1984 to only 40 percent of defendants during 1987. Rather dramatic drops in effectiveness of pretrial release in failure-to-appear were found within each of the guidelines zones. Roughly similar findings are found when rearrest and "failure" are the focus.

Effectiveness within Selected Cells of the Guidelines

Ordinarily--setting aside the finding of a low initial use of the guidelines by Dade judges--a useful way to review the performance of the guidelines would be to examine the effectiveness of decision within each specific defendant cell category. By analyzing specific cells, the Court may consider particular actions to take to improve outcomes in targeted areas. Thus, the impact of too much or too little release, or too much defendant misconduct can be considered in light of the kinds of decisions judges made, their rate of exceptions and the reasons they provide to explain the departures.

In this instance, we can see from Table 5.2 that in selected cells (cells having a minimum of 50 defendants for analysis), the pattern toward greater ineffectiveness during 1987 throughout defendant categories prevails. Thus, the implication is that adjustments in decision practices need to be made at a broader level, such as within zones.

THE EQUITABLE TREATMENT OF DEFENDANTS, 1984 TO 1987

We have noted earlier in our introduction and in Volume I that research has suggested that disparity is as much a feature of bail/pretrial release decisionmaking as it is of sentencing. An important philosophical goal of the guidelines strategy, therefore, has been to encourage and to bring about a more equitable treatment of defendants. To achieve this goal requires the establishment of some policy baseline against which individual decisions can be evaluated. The guidelines themselves are built on the explicitly acknowledged goals of concurrently minimizing pretrial flight and crime and reducing unnecessary pretrial detention. The guidelines therefore offer a mechanism by which greater equity can be achieved (to the extent that the guidelines are followed by decisionmakers).

Figure 5.23 Change in the failure to appear "effectiveness" of pretrial release for felony defendants entering Dade County Circuit Court from 1984 to 1987, by guidelines "zone"

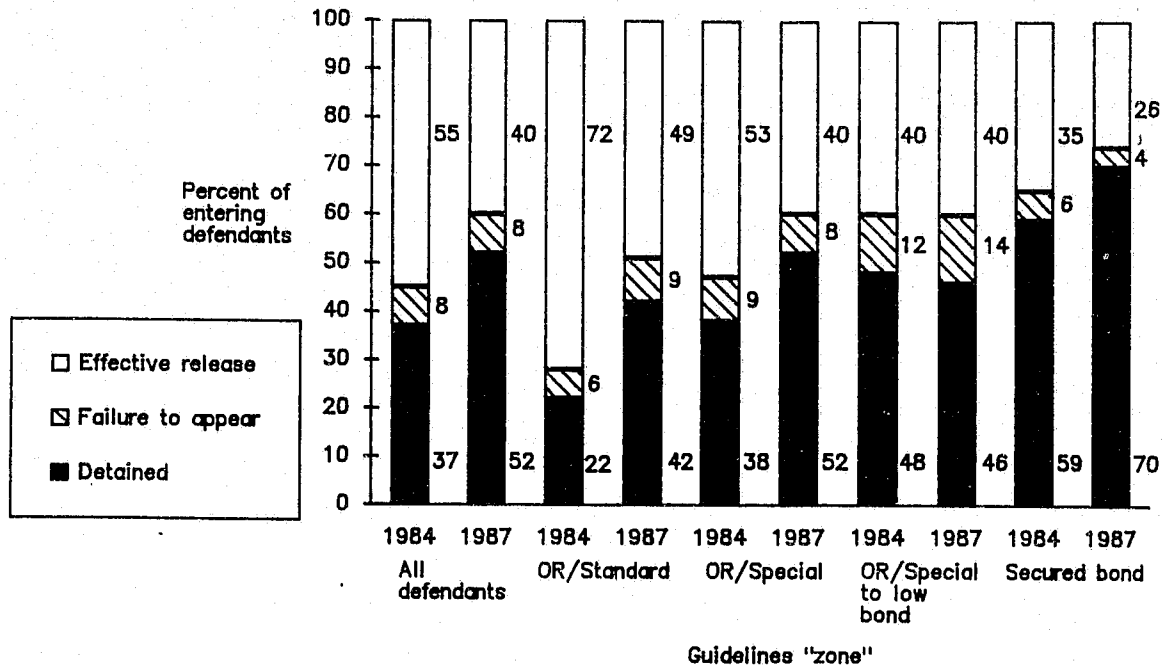


Figure 5.24 Change in the rearrest "effectiveness" of pretrial release for felony defendants entering Dade County Circuit Court from 1984 to 1987, by guidelines "zone"

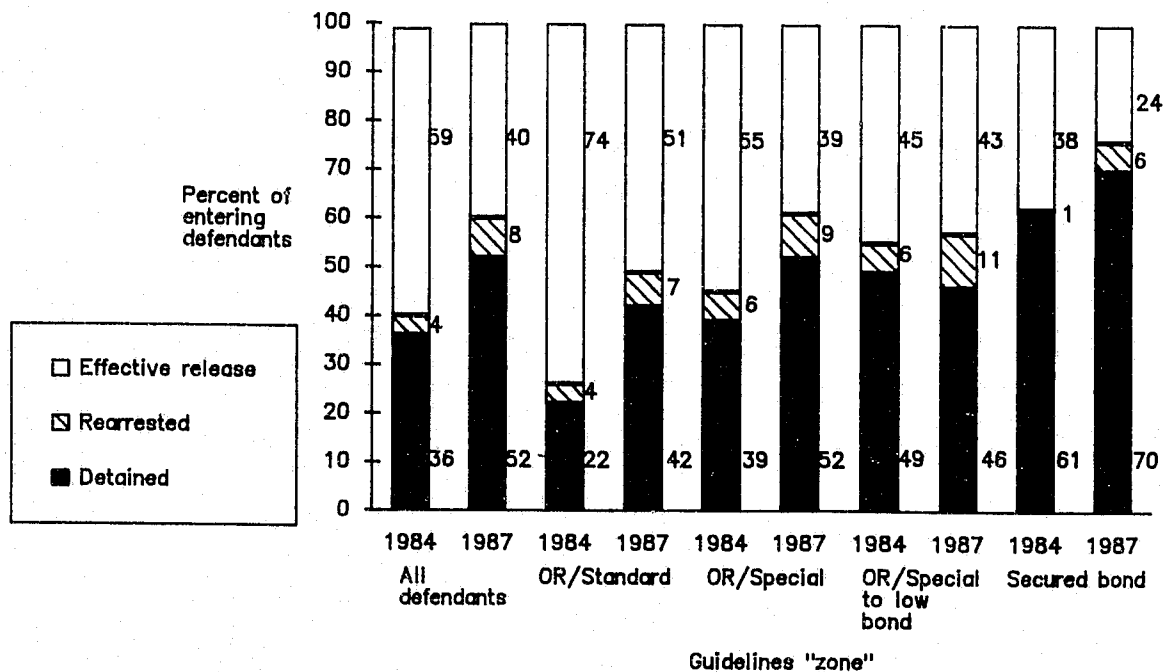
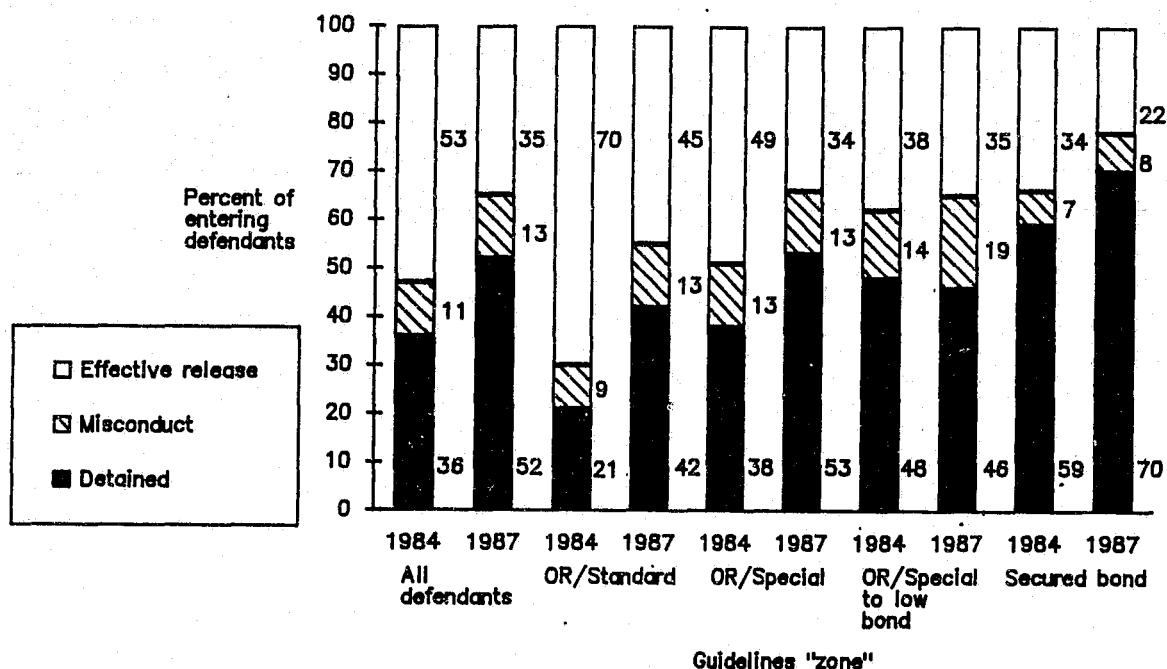


Figure 5.25 Change in the misconduct "effectiveness" of pretrial release for felony defendants entering Dade County Circuit Court from 1984 to 1987, by guidelines "zone"



Prior to the guidelines it was difficult to answer the question "Are similarly situated defendants treated in like fashion at the bail stage?" Often the focus was on the single criterion, the seriousness of defendants' charges (such as in the rationale underlying the traditional bond schedule, for example). The guidelines, based as they are on a set of policy decisions about the desired aims and practices of bail decisionmaking in each particular court, offer a more relevant and valid gauge by which equity can be evaluated.

The measure of equity derived from the guidelines is quite simple: Defendants with attributes which place them in cell 24 should usually--except in unusual circumstances--receive decisions comparable with other defendants with cell 24 attributes. Specifically, they should receive secured bond within the range of \$2,500 to \$5,000. Thus, one measure of improvement in the equity of decisions between 1984 and 1987 is to compare the proportion of defendants with like characteristics (as defined by the guideline dimensions) receiving like decisions. Essentially, we are looking for more within-cell consistency in the treatment of defendants under the guidelines system.

Figure 5.26 does not reveal that substantially more defendants with attributes placing them within the OR/Standard or OR/Special zones received OR in June-July or November of 1987 than in 1984. A slight increase in equity was found between 1984 and June-July 1987 for zone 4 defendants, though in this case the increase was

Table 5.2 Change in the "effectiveness" of pretrial release among entering felony defendants in Dade County Circuit Court, from 1984 to 1987, by guidelines "cell"

Guidelines Cell	Sample Year	Total		Effective release		Released with Misconduct		Detained	
		N	Percent	N	Percent	N	Percent	N	Percent
2	1984	59	100.0	51	87	2	3	6	10
	1987	53	100.0	32	60	6	11	15	28
10	1984	118	100.0	84	71	11	9	23	20
	1987	79	100.0	26	33	14	18	39	49
11	1984	62	100.0	36	58	6	10	20	32
	1987	60	100.0	21	50	9	15	30	35
12	1984	67	100.0	39	58	6	9	22	33
	1987	73	100.0	33	45	11	15	29	40
13	1984	119	100.0	71	60	14	12	34	28
	1987	100	100.0	36	36	8	8	56	56
14	1984	79	100.0	53	67	9	12	17	21
	1987	82	100.0	36	44	14	17	32	39
15	1984	53	100.0	36	68	5	9	12	23
	1987	80	100.0	33	41	9	11	38	48
16	1984	63	100.0	28	21	6	10	31	49
	1987	59	100.0	22	19	5	8	43	73
18	1984	96	100.0	48	50	8	8	40	42
	1987	76	100.0	22	29	8	10	46	61
19	1984	61	100.0	25	41	11	18	25	41
	1987	74	100.0	22	30	12	16	40	54
20	1984	58	100.0	23	39	12	21	23	39
	1987	74	100.0	25	33	12	16	39	51
21	1984	98	100.0	50	51	8	8	40	41
	1987	90	100.0	27	30	6	7	57	63
22	1984	46	100.0	26	57	6	13	14	30
	1987	96	100.0	36	37	19	10	41	43
23	1984	73	100.0	34	47	8	11	31	43
	1987	88	100.0	33	37	21	24	34	39
24	1984	65	100.0	28	43	5	7	32	50
	1987	110	100.0	24	22	6	5	80	73
32	1984	53	100.0	9	18	2	3	42	79
	1987	57	100.0	3	5	2	4	52	91

marginal. Furthermore, by November the rate of agreement for zone 4 defendants fell back to its 1984 level. For zone 3 defendants, the comparative equity of 1987 decisions seemed to have improved slightly from 38 percent in 1984 to just 43 percent in June-July 1987.

Using selected cells (those with a minimum 50 cases) as the frame of reference, Figure 5.27 displays the unevenness of the 1987 trends. For defendants with attributes placing them in cells 23, 24 and 32 the 1987 decisions showed increased equity. However, within most other cells (i.e., the more seriously charged, higher risk cases) the 1987 decisions revealed a notable worsening in equitable treatment of defendants.

Once again, our conclusions about the impact of guidelines on the equitable treatment of defendants in Dade County during the initial period is tempered by our earlier finding that judges did not rely on the guidelines. Thus, what we are noticing in the data are trends, regarding the use of nonfinancial release, pretrial detention as well as equity, that appeared to have been occurring in the Court regardless of guidelines--and, regrettably, it is precisely these sorts of deteriorating conditions that the guidelines were designed to address.

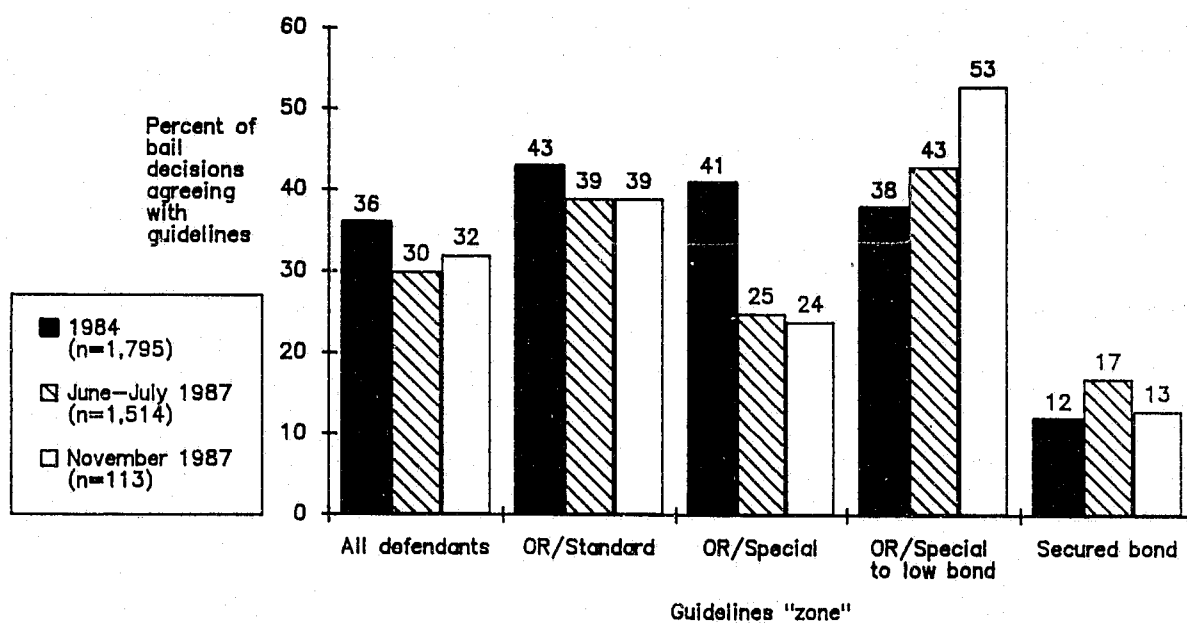
THE INITIAL IMPACT OF THE GUIDELINES: SUMMARY AND RECOMMENDATIONS

Incomplete Implementation: A Glass Half Full

The results of our comparison of 1987 bond hearing decisions and their consequences to the 1984 decisions raise the question of whether it can be said that the guidelines developed for Dade County were indeed implemented.

The pretrial services staff invested considerable effort in the preparation and implementation of the guidelines program. As we have shown, their classification of defendants according to guidelines criteria resulted, at least in the very earliest stages of implementation, in a very high rate of error--such a high rate of error that, had judges relied on the guidelines suggestions, inappropriate bond hearing decisions would have resulted in a large number of cases. Had this been the only difficulty, however, it would have been viewed as correctable and partly attributable to the learning curve of the early implementation phase associated with any innovation. (We stressed our concern about the usefulness of evaluating the program in its very first weeks of existence.) In fact, if we were only limiting ourselves to the efforts of pretrial services, we could be confident in concluding that the first major steps toward implementation of guidelines had indeed taken place.

Figure 5.26 Equity as consistency: comparing agreement with guidelines, by "zone", by sample



The second difficulty was, however, more fundamental, considering that the aim of the entire innovation was to provide a judicial policy and decisionmaking tool--in the fashion achieved earlier in Philadelphia and Maricopa County. The new policy apparently was never effectively introduced to the judges in Dade County and, as a result, was not taken seriously or taken advantage of by them when they took their turns presiding at the bond hearing.

We report this knowing full well that ideal research designs rarely confront the program evaluator. The action world complicates and corrupts designs in every instance. The question facing this program, like many others, is whether a sufficient "amount" of the program had been implemented (whether enough "treatment" has been delivered) to make for a meaningful evaluation at the earliest stages. Such a question cannot be answered in the abstract (on one level, any deviation from an experimental design is undesirable and increases the probability of making a faulty inference). It can only be answered in the context of the program being implemented--in this case, guidelines.

We believe that the difficulties involved in the implementation of the Dade guidelines are important for learning where and how such guidelines may work best. When placed in the context of our other work in Maricopa County, Boston and in Philadelphia, the implementation results suggest the importance of centralized authority and modern, well-funded pretrial services organizations under the direction of the court--or at least working in a very close relationship. But we reserve this discussion for the concluding section of this report (see Chapter Seven). Here, rather than interpreting the effects of the guidelines on bond hearing decisions, detention and defendant misconduct as we might have expected to, we must decide whether guidelines were implemented in Dade County during the period studied.

Our conclusion is hedged--for the most part they were not implemented in line with the original intention to provide a judicial resource, although perhaps they were implemented enough to allow us to learn better what the effects of well-run guidelines might be if they were fully implemented in Dade County. Unfortunately, despite the accomplishments of the pretrial services program, the Dade site cannot rigorously test the theoretical virtues of the guidelines (apart from the implementation issue) as well as hoped.

Pretrial Services: Problem Areas Surfacing in the Early Stages of Implementation

The difficulties associated with pretrial services were largely explained by the challenge of training a large staff working on shifts around the clock to perform new procedures in a very short period of time. In the first weeks of the guidelines program, the principal difficulties had to do with perfecting the preparation of the guidelines for the judges, particularly in completing the criminal charge and defendant risk information accurately. Given the large volume of cases entering the jail and the limited staff, it was difficult on normal days to process the full number of defendants entering the criminal process. The extra time initially required for the staff to learn and streamline new guidelines procedures meant that the implementation of the program occurred at the height of a very busy time. This meant that the new procedures had sometimes to be dropped on the busiest of days when interviews backed up so that defendants could be brought to court on time for the bond hearing. Unfortunately, it could not have been otherwise; it was not possible to choose a quiet or "slow" time to put the program into effect. Thus, the leadership of the program and its supervisory staff put in many extra hours to make the transition to the guidelines procedures as effective as practically possible.

In our three years of research in Dade County, we observed the hard work and dedication of that agency in planning and carrying out the new program against the background of the continuing jail crowding crisis. But the fact is, although the guidelines strategy ultimately depends on the hard work of the pretrial services agency as its foundation, it was envisaged as a judicial resource--and it is on those terms questions about its potential for improving pretrial release decisionmaking must be gauged.

The Failure of the Guidelines to Engage the Judges

The findings describing the use of guidelines by the Dade judges are unmistakable: they were seldom relied on. Because the judges rarely employed the guidelines in the expected fashion, few of the positive results hoped for--like those relating to greater use of nonfinancial release and reduced use of pretrial detention produced in Maricopa County Superior Court, for example--were in evidence. Moreover, the poor reception of the pretrial services presentations of guidelines information by the judges may ultimately have served as a disincentive to pretrial services to implement the program forcefully.

Normally, the purpose of a first--and very early--review of the use of guidelines in a court is to provide direction for improving the initial implementation effort and suggestions for modification of the guidelines system.

In fact, our first report to the court is intended to illustrate the use of the "feedback" generating function of the guidelines. Thus, results of evaluation of the earliest stages of implementation are employed to chart the next stages of implementation, hence fostering an evolutionary approach to problem solving and improvement.

In this light, our first finding, and therefore first problem to solve, is that the guidelines failed to engage the judges in the fashion intended, apparently not even for a trial period. We are unable to move beyond this finding to point to specific recommendations regarding particular categories of defendants showing very positive or very negative results, for example. Rather, the most important task in improving the operation of the guidelines is to determine why judges did not participate in the guidelines program to the extent anticipated. Several explanations might productively be considered.

First, having lost our supervising group of judges just prior to the implementation phase, we may have failed to work sufficiently with the Court to "educate" the judges about the goals and advantages of the bond hearing guidelines. Although we are aware of the Court's efforts in this area,³⁶ as well as the efforts of the pretrial services program and the research staff, judges may not have been made familiar with the program in a practical fashion.

Or, second, the Dade County judges may have understood quite well the implications of the guidelines and simply rejected them as undesirable on an individual basis. Certainly, because of frustrating experiences with sentencing guidelines, we were made aware at an early stage that many judges had a strong reaction against the notion of guidelines of any sort. Thus, our attempts to explain the difference between the legislative variety of guidelines and the court-developed, self-help version with which we worked may have fallen on deaf ears.

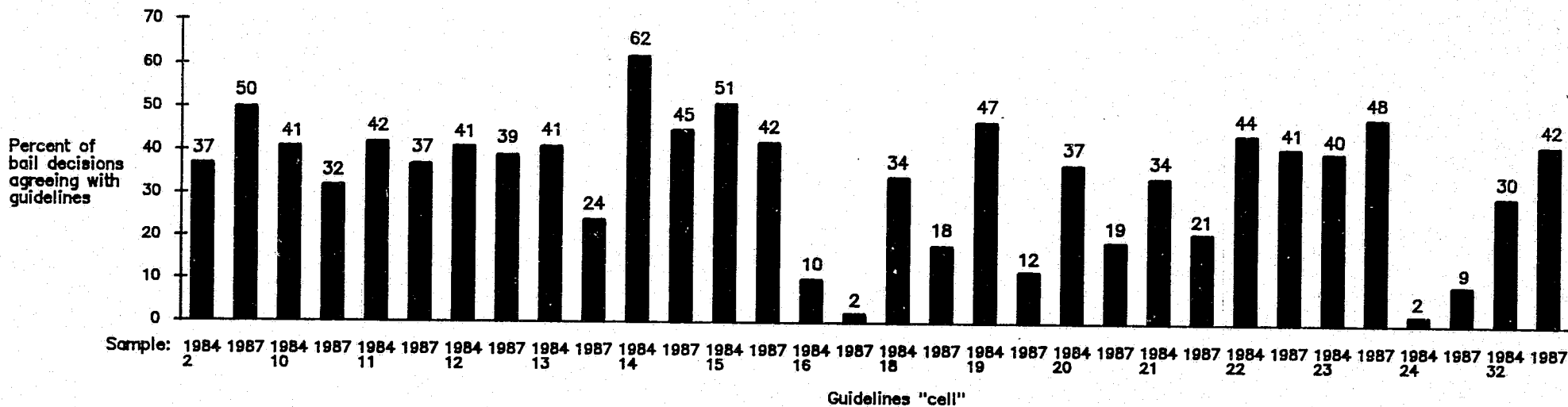
Finally, we may also have underestimated the influence--the obstacle--of tradition in the Dade County court. In our descriptive research (see Volume I), we described the central role of the bond schedule in the determination of pretrial release in that urban jurisdiction. The bond schedule exercised its dominant influence in two principal ways: first, a large number of entering felony defendants (about 20 percent) gained release immediately after the booking stage by posting the bond designated by the bond schedule, often by making use of the services of bondsmen. Second, the bond schedule amount influenced the judges heavily at the bond hearing stage; in fact, there

³⁶ In fact, at one point in response to the continuing crowding crisis in the Dade jail facilities, the leadership of Circuit Court even drafted an administrative order authorizing the pretrial services staff to release defendants falling within the zone of the guidelines suggesting outright nonfinancial release (under the auspices of pretrial services) prior to a bond hearing appearance. This draft was superseded by more expansive emergency release procedures before going into effect.

seemed to be an underlying assumption that the bond schedule should be followed at the bond hearing--unless pretrial services could offer a good argument for nonfinancial release and would accept responsibility for the defendant during pretrial release.

Thus, during the initial use of the guidelines, because of the court's decision to place the responsibility for the innovation with pretrial services, judges may have seen the guidelines as strictly something that pretrial services employed for its own internal defendant classification purposes, rather than as a new, modernized version of the bond schedule based on more comprehensive information. Instead of a new presumption that the Uniform Bond Standards should usually be followed, the old assumption that the bond schedule showed the appropriate option seemed to remain firmly in place. In attempts to improve the use of the guidelines--or bond decisions generally in Circuit Court--the implications of the bond schedule for the performance of the guidelines will need to be addressed.

Figure 5.27 Equity as consistency: comparing agreement with guidelines, by "cell", by sample



Chapter Six

THE EXPERIENCE WITH BAIL GUIDELINES IN BOSTON MUNICIPAL COURT: THE DECISION NOT TO IMPLEMENT

In undertaking the research we have reported in these two volumes, our goal was to learn--through case study and by illustration--whether and how the positive lessons of the Philadelphia experience with bail guidelines could be brought to bear in other jurisdictions similarly concerned by bail and pretrial detention related issues. In each of the sites, our agreement with the participating courts was to work with the steering committees to examine bail practices and to develop decision guidelines to address the issues that surfaced. We did not ask for or receive a commitment in advance from any of the courts to adopt a particular end product--such as decision guidelines--but rather obtained their agreement to participate in the collaborative research process to determine whether such a resource might be useful. The fact that the guidelines process resulted in implementation of guidelines in three jurisdictions (if we include Philadelphia, the first jurisdiction to devise and implement bail guidelines) may leave the misleading impression that adoption of decision guidelines for pretrial release was a preordained fact.

Our experience in the Boston courts serves as a reminder that courts may participate fully in the guidelines process only to exercise their option not to proceed further. In fact, after two and a half years of research, reports, meetings, interviews and guidelines development, and after a formal request from the presiding judge to prepare guidelines for implementation, the Boston Municipal Court decided not to go forward to implement the guidelines at arraignment. In explaining their wish to postpone implementation of a guidelines system, the Municipal Court judges cited a range of arguments including doubts about the impact that guidelines would have on the jail crowding situation (because many other courts were "more" responsible for the make-up of the jail population), beliefs that other problems--such as information management--needed to be addressed before guidelines would be appropriate, questions about the additional court resources that would be needed to mount a guidelines program (would the existing probation department be upgraded to serve a more developed pretrial services role), and opinions among some judges that--despite the research findings--bail decisionmaking was operating quite well in its current state.

Although some might regard the BMC's decision not to implement the guidelines developed as a failure of the voluntary guidelines approach--or at least, that the failure to implement guidelines in a jurisdiction where they could have been helpful was at least disappointing--we believe that in other respects the guidelines research process

played a positive role for the courts and related agencies in Boston. We review some of the key findings here and discuss the potential role a guidelines mechanism could play in that jurisdiction. In the conclusion, we try to make some inferences about the prospects for implementation of voluntary guidelines, drawing in part on the lessons of Boston.

In discussing the prospects of working in the Massachusetts courts originally, it was agreed that, although a number of area courts might have benefitted, the project would attempt to focus on practices in both the Boston Municipal Court and the Suffolk County Superior Court. Superior Court participation was viewed as important because of its bail review function as well as its responsibility for a large share of the detention population in the Charles St. Jail for whom bail decisions were made at arraignment. The Boston Municipal Court was selected because it was a central, urban court with substantial bail related responsibilities at the beginning of the criminal process.

Because of limited resources, however, it was necessary to decide after initial descriptive analyses that the primary emphasis should be on the Boston Municipal Court given its volume of criminal cases. Thus, the secondary emphasis was placed on bail practices in the Superior Court. Resource availability aside, the possibility of working with both courts offered an unique opportunity to examine questions pertaining both to initial bail decisions and their subsequent review.

To commence the guidelines research in Boston, we studied a sample of approximately 2,000 defendants entering the system at BMC arraignment between April and October, 1984, and tracked the progress of their cases forward into the system to measure their outcomes. Once the sample was selected, relevant records kept by eight cooperating agencies offices were examined to collect more than 200 items of information regarding each case. (Data collection involved many more local agencies, however, such as the Suffolk County Sheriff's Office, the District Attorney's Office, the clerks' offices of each of the courts, the probation offices of each of the courts, the Massachusetts Probation Commissioner's Office and the Massachusetts Department of Corrections.) The study also included a sample of Superior Court cases, an analysis of the jail population, and interviews and questionnaires submitted to judges. (See Volume I for details concerning the descriptive research.) This summary will highlight some of the central findings produced in the two years of research and review the major questions and conclusions.

SELECTED FINDINGS

1. Poor Information Relating to Defendants and Their Cases at the Arraignment Stage in the Boston Municipal Court

A first and fundamental finding in our study of bail in the Boston Municipal Court was discovered in trying to assemble data descriptive of defendants moving into the system: important information describing defendants, their backgrounds, histories, and cases was often not available--at least in reliable form--in time for judges' decisions at arraignment in the BMC. Information difficulties were obvious, both in terms of the needs of the bail/pretrial release task at the arraignment stage and in comparison to other court systems.

In its efforts over many months to reconstruct information concerning each of the BMC cases in the study from the records of the cooperating agencies, the research team encountered serious problems relating to the availability and quality of important information. Particularly in comparison with other jurisdictions studied, Boston judges--who of course did not have the luxury of time that the researchers had to assemble data--appeared often to make bail decisions in the absence of what to other courts is deemed central information. A key problem, for example, involved the availability and reliability of prior criminal history information, though other kinds of information needs were also not consistently and rigorously met.

2. Characteristics of Defendants Entering the BMC and Their Cases

BMC defendants possessed the following general characteristics:

Demographic: The median age of BMC defendants was 24 years old; half were female; 44 percent of the defendants were white, 47 percent were black, 6 percent were Hispanic, and 3 percent were of other ethnicities.

Criminal Charges: Most defendants entering the BMC process at arraignment were charged with crimes with penalties of less than five years in prison. Only an estimated 13 percent of all entering cases were charged with crimes categorized as "index crimes" (the most serious according to the FBI crime classification) and 87 percent were charged with "non-index" (or lesser crimes). ("Index" crimes in the study included murder, rape, robbery, aggravated assault or its equivalents, burglary and arson.)

Prior Criminal History: An estimated 40 percent of BMC defendants entering the system did not have prior records of arrests; 9 percent had one previous arrest; 6 percent had two previous arrests, and 45 percent had

three or more. Seventeen percent had been arrested for serious crimes against the person in the past. Sixty-four percent of defendants showed no prior record of convictions.

Overall, an estimated 14 percent of entering defendants had some kind of outstanding warrants for prior defaults ("FTAs") from court in addition to their new criminal charges. Twenty-one percent of entering defendants had records of prior defaults. Approximately 10 percent of incoming BMC defendants were on pretrial release in connection with pending criminal cases.

3. Release Before Trial among BMC Defendants

Release after Arrest at the Police Station: Forty-eight percent of Municipal Court defendants entering at arraignment had been released from custody at the police station after arrest; 52 percent had been held in custody until the Municipal Court appearance. Of those not released after booking, 31 percent did not have bail set (in effect, they were denied bail by the commissioner). The remaining 69 percent were held because they were unable to post the required amount of bail set by the commissioner. Thirty-two percent of all defendants--or 71 percent of all those gaining release at this stage--were released on ROR. The remaining 29 percent were released as a result of being able to post the cash bail set by the commissioner.

Bail and Release at Arraignment in the Boston Municipal Court: For the estimated 4,500 defendants entering the court system between April and October during 1984, bail was decided at arraignment in the following fashion: 2 percent had bail denied, 68 percent were assigned ROR, 28 percent were assigned some form of financial bail, and 2 percent were given other bail options. For the 28 percent of defendants assigned cash bail at arraignment, the median bail was \$100.

When "pretrial release" was defined as whether a defendant secured release either before 90 days had passed or prior to adjudication of his/her case (whichever was earlier), we found that an estimated 94 percent of entering defendants gained pretrial release at some stage. When pretrial release was measured more simply, calling persons released those who were freed immediately after arraignment (or within one day of booking), then the picture is a little different. More than three-quarters (78 percent) of entering BMC defendants secured release within one day of booking. Thus, 22 percent of defendants experienced detention for at least some period more than one day. Still, it is interesting that by the time one week had passed, nearly nine tenths (89 percent) of all

defendants had secured pretrial release. By the time a second week had passed, nearly 94 percent had gained release.

4. The Performance of BMC Defendants During Pretrial Release

Defendants who secured release before adjudication of their cases were studied for a follow-up period of 90 days or until their cases were disposed, whichever came first, to determine whether they failed to appear in court (defaulted) during the "pretrial" period or were rearrested for additional crimes.

Twenty-eight percent of BMC defendants defaulted at least once during the processing of the cases we studied (during our 90 day period of observation). (Twenty percent were defaults resulting in a warrant.) The median time passing from release to a default among absconding defendants was 21 days.

Approximately 15 percent of the BMC defendants were rearrested for crimes committed during the pre-adjudicatory release period. The great majority of the charges for which defendants were rearrested fall under the minor miscellaneous or public order categories (including disorderly conduct, prostitution, minor thefts, etc). Rearrests for serious offenses were notably rare. The median time on pretrial release until defendants were rearrested was 27 days. Approximately 38 percent "failed" during pretrial release when either rearrest and/or defaults are considered as misconduct.

5. The Focus of the Research: BMC Bail Decisions

The project undertook a systematic, multivariate study of the defendant and case factors related to judicial decisions and to failure (defaulting or crime) during pretrial release. This section briefly summarizes the key findings from that study.

Information Available for the Decision: As noted above, a general finding--affecting both our ability to analyze the data and the judge's ability to consider a full spectrum of information--is that information potentially relevant to the bail decision at arraignment was often difficult to locate, uneven in character, and sometimes of questionable reliability.

Explaining the Judges' Choices of Financial versus Nonfinancial Bail: Judicial Inconsistency or Information Difficulties?: For conceptual purposes, one may view the bail decision traditionally as involving first a choice for the judge between nonfinancial (ROR) and financial bail options, and secondarily requiring selection of a particular amount of bail if nonfinancial release is not going to be assigned. The first decision component is important

because it designates defendants who will be definitely released and places other defendants into a category of defendants who may not be released depending on the bail to be set.

Efforts to explain the judges' first choice, between nonfinancial (ROR) and financial bail options through multivariate analysis were not very successful. Forty items of information relating to the 17 criteria specified in Massachusetts law as appropriate bail considerations were considered to determine their influence in the judges' decisions.

Only four of the statutory criteria appeared to play roles, and minor ones at that: the potential penalty, flight to avoid prosecution (current bench warrants), the defendant's financial resources, and illegal drug distribution. The race or gender of defendants did not appear to change the chances for nonfinancial release, once other factors were considered. Overall, however, it was difficult to identify criteria which strongly and consistently differentiated between the judges' use of ROR instead of financial bail.

Perhaps surprisingly, two unusual factors were found to exert some influence in the outcomes of the judges' nonfinancial versus financial choices. The district attorney's recommendation and whether the defendant had been held in custody before arraignment at the police stage were found in statistical analyses to contribute to the prospects that judges would choose cash bail over ROR after the effects of other factors had been taken into consideration. The identity of the presiding judge did not appear to make a notable difference in the chance for receiving ROR.

Given the relatively weak ability to explain nonfinancial decisions statistically--to be able to "predict" bail decisions on the basis of known factors--one conclusion is that the Municipal Court's use of nonfinancial bail options was inconsistent or athematic (could not be predicted statistically) when similar defendants are compared. This conclusion is ventured cautiously in the context of the knowledge of the difficulties found in gathering information describing defendants' cases.

Choosing Cash Amounts at the Bail Stage: In a jurisdiction concerned about the appropriateness of the use of pretrial detention, not only the use of nonfinancial bail (outright pretrial release) but also allocation of varying amounts of cash bail by judges is important. When we analyzed the judges' choices of particular cash amounts for defendants who would not receive ROR, we found that the judges' choices corresponded to a traditional pattern: most simply put, the greater the possible penalty and the more serious the charges, the higher the likely bail. (This

approach has been criticized in the literature because studies have not shown the seriousness of the charges to be a good indicator of risk of flight or crime by defendants during pretrial release.)

6. Differentiating Defendants Released within One Day of Booking and Those Not Securing Release: The Absence of Clear Patterns

It may be argued that how the bail decision is made (and understanding the factors relied on by judges in arriving at them) is not as important as examination of the result: that some defendants are released and some are not (or, at least, are not released until later). In this sense, we were attempting to determine the criteria that judges appeared to employ as a court in dividing defendants into two classes of accused (the released and the detained).

In our statistical analyses, we were unable to identify clear, appropriate themes--such as those listed by statute--explaining the custody status of defendants after arraignment.

7. The Performance of Defendants Released as a Result of BMC Decisions: The Effectiveness of Bail Practices

Of course, concerns for rates of default or rearrest of defendants prior to trial have to been considered in the context of the extent to which defendants were released. The bail decisions of Boston Municipal Court judges produced an overall release rate of 94 percent of entering defendants before trial. Of these, 29 percent missed court proceedings at least once and an estimated 15 percent were rearrested on new charges for crimes allegedly occurring within the pretrial period. Thirty-one percent failed during pretrial release when the measure is for default (FTA) and/or rearrest.

From the perspective of "effectiveness" (see discussions earlier in this volume and in Volume I), Boston Municipal Court bail decisions produce a "failure-free" rate of release of 63 percent of entering defendants. (This rate is obtained by subtracting the percent of defendants detained--or 6 percent--and the percent of defendants released but engaging in misconduct--or 31 percent.) This is poorer, for example, than the rate generated by the felony court in Dade County and better than the rate shown by the felony court in Maricopa County, the two other study jurisdictions. Considering that the BMC cases are more misdemeanor-like in nature, this is a low rate of effectiveness.

8. Development of Predictors of Flight and/or Crime among Released Defendants

Predictive analysis was undertaken to identify factors associated with misconduct among released defendants. The results (incorporated into the guidelines developed for the BMC) produce a means for evaluating

the relative risks posed by entering defendants, depending on whether the Court is interested in problems of flight, crime, or both considered together.

9. Suffolk County Superior Court

The Suffolk County Superior Court was studied at the suggestion of its Chief Justice because of its involvement in bail at three important stages: in the arraignment of entering criminal defendants on direct indictments, in the arraignment of cases bound over from Boston Municipal and other district courts, and in reviewing the petitions of defendants requesting review of bail set in Municipal or other district courts.

Direct Indictments: We studied all defendants entering the criminal process as a result of direct indictment in Superior Court in Suffolk County during 1984. Though fewer by far in number than Municipal Court cases (355 entered Superior Court during that year), direct indictment defendants were charged with notably more serious offenses: more than half with offenses having penalties over 5 years, more than half involving crimes against the person. About 27 percent were charged with drug related offenses, 28 percent with offenses involving a weapon. These defendants had notably more serious prior records of arrests and convictions as well, compared to BMC defendants. Forty-five percent of direct indictment defendants had prior histories of defaults from court in other cases. Seventeen percent had been on pretrial release in other cases at the time of their arrests.

The bail decisions in Superior Court reflected the seriousness of the cases. Four percent were held without bail, 43 percent were assigned personal recognizance release, and 53 percent had some amount of financial bail set. When set, the cash bails were notably higher than those set in Municipal Court: the median bail amount was \$2,500.

The result of bail decisions in direct indictment cases was that 61 percent secured pretrial release within one day of booking, 72 percent had gained release by the time 90 days had elapsed or their cases had been completed. Thus, 28 percent did not gain pretrial release. Of those gaining release, only 4 percent recorded defaults for not appearing in court as required. Ten percent were rearrested for crimes allegedly occurring during pretrial release.

Cases Bound Over to Superior Court: During 1984, 2,183 defendants were bound over from lower courts for further criminal proceedings in Suffolk County Superior Court (thus bindovers contributed 6 to 7 times the volume of "direct indictments" to the Court's caseload). To learn about this component of the Superior Court

caseload as it related to bail decisionmaking, we studied only a sample of BMC cases reaching Superior Court after being bound over during 1984.³⁷

In their seriousness, the charges of bound over defendants entering processing in Superior Court exceeded even those of the direct indictment defendants: more than half charged with crimes of possible penalties of 21 years or more. Again, these Superior Court defendants had fairly lengthy criminal histories: more than 80 percent had been arrested previously, 46 percent had been convicted--24 percent for crimes against the person, 24 percent for drug crimes.

Just under half of the BMC bind-over defendants (41 percent) had recorded defaults in the past. Sixteen percent were on probation or parole at the time of their arrest. Sixteen percent were on pretrial release at the time of arrest in another case.

Roughly three-quarters (76 percent) of the bound over BMC defendants had not been released prior to Superior Court processing. In Superior Court at arraignment, 2 percent had bail denied, 68 percent had financial bail assigned, and 25 percent were granted ROR (personal recognizance release), other arrangements were made in 5 percent of the cases. When cash bail was set, the amounts were, however, not very high. Roughly half were between \$500 and \$1,000. The Superior Court bail decision represented no change of status from the prior BMC bail decision in 63 percent of the cases. In the remaining cases, roughly half had higher bails set and half had less restrictive bails assigned.

The overall effect of Superior Court bail decisions in BMC bind over cases was to increase release among defendants. About 8 percent of the cases going forward from arraignment in Superior Court (4 percent had been disposed at arraignment) remained confined during the 90 day period following their arrest. Of those released, 13 percent defaulted from court proceedings and 10 percent were rearrested for new crimes during pretrial release.

Petitions for Review of Bail: During 1984, Superior Court judges in Suffolk County heard 564 petitions to review the bail of confined defendants having cases processed in district courts or in the BMC.³⁸ Defendants

³⁷ Because of our limited resources, we were not able to study "bind overs" from all courts contributing to the Superior Court caseload. Because a segment of our BMC sample ultimately was bound over (n=183 cases bound over between April 1 and October 30, 1984), we made use of a sample already in hand and for which we had merely to collect additional information relating to transactions in Superior Court.

³⁸ Although ten courts contributed cases to the review caseload of Superior Court, the four biggest contributors were the following: Boston Municipal Court (27 percent), Roxbury District Court (22 percent), Dorchester District Court (20 percent), Chelsea District Court (9 percent).

petitioning for immediate review of their bail status were charged with an assortment of offenses that, in contrast with the other kinds of criminal cases in Superior Court, were not characterizable as uniformly serious. Once again, however, nearly one quarter had to do with drug charges.

Because of the locations of the courts contributing these cases and the study's limited resources, full description of the defendants' backgrounds and prior histories was not possible. We are able to report that in 51 percent of the reviews, Superior Court judges did not change the bail status of the case; in 47 percent, however, bail was lowered; in 3 percent it was raised. In many of the cases receiving lower bails, ROR was granted. The result was that roughly one-third of the petitioning defendants gained release from jail.

The study was not able to obtain follow-up information for defendants released as a result of the Superior Court reviews because of the difficulty in obtaining default information in each of the separate courts and in obtaining rearrest information from the Commissioner of Probation.³⁷

10. The Suffolk County Jail: An Analysis of the Population and Impact of Bail

Of course, one of the concerns of the Courts in inviting our research was the overcrowding at the Charles St. Jail. Because an aim of the project was to assist in improving bail decisionmaking, it was important to examine the make-up of the detention population at the jail. Although the results of our study of a "typical" day (November 18, 1985) are described in Volume I, several findings are repeated here by way of summary.

A single, "typical" day was studied to describe the make-up of the population as "usually" found in the Suffolk County Sheriff's custody. Of course, the population may certainly change in character as special crowding measures⁴⁰ are undertaken and/or special crime problems develop. However, the method was undertaken because of its general usefulness in describing the kind of clientele the jail has had to deal with in its crowded state.

Obviously, most of the inmates of the jail held on that date were held awaiting trial. Only 74 percent were held only because of one pending matter, however. Others were held not only on bail but also on bench warrants and probation and parole detainers, for example.

³⁷ The Commissioner of Probation had already graciously assisted in checking the histories of a subsample of BMC cases and the sample of direct indictments. It was not possible to burden the staff any further unfortunately for follow up information for these cases.

⁴⁰ The date studied followed the November 6, 1985 court order (#15) and preceded the December 16, 1985 order (#16). These orders are discussed in the separate report describing the jail population.

Charles St. defendants were held on an array of charges, many serious. For example, 17 percent were held on armed robbery, 15 percent were held on drug related charges (the manufacture or distribution of controlled substances), 11 percent were held to answer for first degree murder. Sixty-percent of the defendant's charges involved crimes against the person, although rarely with injury to a victim. Many had prior records of arrests and/or convictions.

Roughly one-fifth (19 percent) had other criminal matters in process at the time of their confinement on their charges holding them. About one-third (36 percent) had records of prior defaults. Apparently, 11 percent had been on release earlier in the current case now holding them.

About 37 percent of those held had been interviewed by Legal Services staff for bail review in Superior Court. Assuming most of these actually had reviews conducted, we were able to see no change in bail status in about 70 percent of the cases. Of those having their bail changed, half had received lower bails, half had received higher bails in their Superior Court reviews.

The cases of more than half (52 percent) of the detained defendants had reached a stage in processing subsequent to Superior Court arraignment; 39 percent were between arraignment in a district court (or the BMC) and a probable cause hearing; 9 percent had completed that hearing and were either awaiting indictment or arraignment in Superior Court.

Defendants were held on an assortment of bails: 38 percent were held on bails of \$1,000 or less. The median time spent by Suffolk County detainees in detention on the date of the study (since their admission) was 63 days. A rather sizeable share of the population of the pretrial detained had been confined for rather short periods (26 percent for two weeks or less). Forty-three percent had been confined for more than 3 months.³⁸

³⁸ The jail report, prepared by the project during the spring of 1986 for the jurisdiction, provides much more detail than we have been able to include here, of course. In a brief final section of that report, the likely impact of the release criteria suggested in court orders on the population of the jail was also analyzed.

THE DEVELOPMENT OF DECISION GUIDELINES FOR BAIL AND RELATED STRATEGIES

The Principal Problem Areas Identified in the Research

In our meetings with judges and other officials during two and a half years to discuss the findings, several areas of concern relating to bail practices were identified. They might best be narrowed down to the four following problem areas:

1. Overcrowding in the Charles St. Jail

A continual theme in our studies and discussions was the constant state of crisis caused by crowding at the Suffolk County Jail which served as the repository of the bail decisions made by Boston area courts. Unlike other jails with whom we have been, the crowding problem in Boston was almost solely a "pretrial" problem. Throughout the study we observed a number of crisis oriented procedures being implemented to relieve pressures on the jail until some more long-term and systematic relief could be found.

2. Defaulting Defendants

When we first visited the courts in Boston to discuss participation in the study, the Boston Globe was in the midst of a series describing the large number of defaults (failures to appear) from court hearings among BMC defendants. In many ways, our study confirms an exceptionally high rate of defaults. While it is common to see higher rates of absconding among misdemeanor cases (and the BMC caseload is predominantly misdemeanor-like), the high rate of defaults was found among the more seriously charged defendants as well. Default (FTA) rates among BMC defendants charged with "index" crimes--at 25 percent--was more than twice as high as the rates shown by similar Dade County and Maricopa County defendants.

3. Inconsistency in the Application of Bail

To be fair and effective, bail decisions should arguably be influenced by concerns and factors appropriately related to the goals of the bail task. Statistical analyses of bail decisions in our study, however, were hard put to detect patterns or themes governing judges' decisions rationally related to the concerns of the bail task. Lack of overriding patterns--e.g., such as concerns for community ties, prior defaults, etc.--suggests inconsistency in the treatment of similar defendants. This raises questions about the criteria that do and/or should govern bail as well as about the equitable treatment of defendants at the pretrial release stage.

4. Problems with the Availability and Reliability of Potentially Useful Information about the Arraignment Bail Stage

The apparently inconsistent nature of BMC decisions may be traceable to the highly subjective and discretionary nature of the judge's task at bail (and our interviews with judges lend support to this view) and/or by the fact that the information judges have had to rely on is often rather poor or incomplete. While it is also true that even with a wealth of sound information available about defendants and their cases judges might take very different approaches to defendants at bail, it is certainly true that inadequate information will accentuate the subjective nature of the decisions and the diversity of approaches. The result was a lack of evenhandedness in the application of bail and the use of pretrial release and detention.

Could Bail Guidelines Help?: The Point of the Study

Perhaps the whole aim of the study has been to learn whether a decisionmaking resource could be crafted through careful examination of bail practices and their effects, one that could address some of the key problems identified during the research process. As we explained in some of our reports to the Massachusetts courts and in our meetings with the judges, we did not arrive in Boston or in the other sites with a pre-packaged plan to be applied to bail practices. Rather we came with a method of analysis and of resource development designed to be responsive to the particular, localized concerns that would surface.

We believe that the findings of our exhaustive study of bail practices support the view of many of the judges and administrators that clarification of policy issues and improvement decision practices should be a high priority. We believe as well, therefore, that some version of bail/pretrial release guidelines could serve as a useful tool for making progress in those number of key areas. Viewed as a policy vehicle for the court overall as well as a compass for decision makers, bail guidelines can serve as a voluntary yardstick against which issues such as fairness of decisionmaking, the appropriateness of detention, defendant flight and crime can be evaluated on an ongoing basis. We believe that guidelines would be useful not only at the initial bail stage in court, but that they could be directly useful in emergency release procedures with some modification.

The Logistics of Applying Bail Guidelines: Can It Be Done in Boston?

In our view the research has documented the need for action in bail-related areas. The stumbling block has not been because the judges have found the examination of bail practices irrelevant in our opinion, but rather

because of a belief that too many obstacles lay in the way of implementing a program that would attempt to bring about the needed improvements using a guidelines-related approach.

Several questions in this vein have been repeatedly asked of us:

1. Given the finding that information available at arraignment is not always adequate, how do you expect to implement a guidelines program that depends on reliable information?

At a minimum, bail guidelines are intended to be an excellent informational resource for bail decisionmakers based on the collection and organization of reliable and pertinent information. In the draft guidelines we developed at the Court's request, a number of kinds of information are combined, for example, to evaluate the risk posed by defendants; clearly this approach depends on the availability of good information. Quite understandably, therefore, a number of rather skeptical judges have asked whether, given the problems the Court has in the information area, a guidelines program must be ruled out.

We believe this is a fundamentally serious question that can be answered only by knowing whether the Court views the information problem as serious enough to want to improve the situation. In a sense, however, it is not a question to be asked just in the context of implementing guidelines. It is a problem that should be addressed in any case because for the BMC (or other courts) to make informed decisions concerning bail at various stages, trustworthy and complete information is essential.

Our research, meetings and interviews with judges pointed to a need for improving the Court's information capacity at the earliest stages. To illustrate our point, in one exercise, we asked the BMC judges to rank the criteria listed by statute for guiding the bail decision in the order of their importance to the judges in making decisions. We then asked them to rank the information with which they had the greatest difficulty (i.e., in obtaining or in relying on). Oddly, several of the items they viewed as most important they also rated as most problematic.

The short answer, however, is that, because good decisionmaking is based in part on the availability of good information, improvement of the information capacity for the bail stage would have to be a component of the guidelines program.

2. Isn't it true that preparation of guidelines for the judges would require staff? If so, how could a guidelines program be implemented?

It is true that a guidelines program requires a support staff of some sort having the responsibility for collecting the appropriate information. It is also true that there is no court-based or jail-based pretrial services

program in the Boston area resembling what is found serving other courts in other major urban jurisdictions. We believe that with or without a guidelines approach, a pretrial services apparatus is sorely needed to support the judges at the initial bail stage (not only in the BMC), but also to coordinate the reviews of bail in Superior Court and to monitor emergency release because of crowding.

Various parts of a pretrial services function are handled improvisationally at present, either by the BMC Probation staff, for example, or by the legal services division of the jail staff--usually in an atmosphere of crisis. We believe that a guidelines program is an appropriate vehicle for organizing these various pretrial services support functions so that an overall policy may be pursued evenly and with continual feedback and accountability.

What shape should a pretrial services support function take in Boston? There are a number of models that may be appropriate, including a jail based program serving the jail and the courts, a probation based program, or a separate program reporting to the Trial Court.

3. How would guidelines in the BMC help jail crowding?

We believe that guidelines would bring a rational, explicit policy framework to the hectic world of BMC bail decisionmaking. By improving bail decisions (from the point of view of rationality, fairness or effectiveness, for example), the appropriateness of pretrial release and detention would be enhanced--of course, for BMC defendants only.

It is true that this may or may not cause the population of the Suffolk County Jail to be reduced, especially given that the BMC is only one contributing court. However, at a minimum guidelines help establish a yardstick by which detention may be evaluated--a tool sorely needed in Boston. If a court acknowledges particular goals and adopts certain criteria as appropriate for governing bail in designing the decision guidelines, then discussion of the crowding crisis and strategies to manage it can be evaluated within an agreed upon policy context. In fact, in designing the draft decision guidelines for the BMC, we were required by the Court to make certain that they would not increase the use of pretrial detention if deployed.

There is also the possibility that implementation of a guidelines program--linked with considerations for strengthening the pretrial services support function--could involve other central courts at the same time. Clearly, a much greater impact on jail crowding, defendant flight and crime in the Boston area will be possible if a multi-court, centralized pretrial release guidelines approach were adopted.

Conclusion

Although at the stage of the process at which it was time to decide whether to move forward to implement the guidelines developed in the Boston Municipal Court, the Court was not unanimous in its conclusions concerning the timeliness of bail guidelines, we believe the guidelines process was productive.

We had studied the bail decisions of the Boston Municipal and Suffolk County Superior Court judges and their consequences and had outlined major problems in obtaining reliable information, with failure to appear and rearrest of released defendants, and with equity in the use of bail and pretrial detention. We feel that the process at least contributed hard empirical analysis to inform planning about how to address bail and jail-related issues in the near future and substance to the debate about policy directions to be taken. In the end, the process was successful because, given its voluntary, self-help orientation, the Boston courts directed the empirical investigation into relevant areas, considered the findings about their decision practices and made an informed decision about the status of the issues that surfaced.

Nevertheless, implementation did not take place in Boston. We do not regard the level of disagreement or concern about the utility of guidelines among the judges to have been any greater than in any of the other courts (in Philadelphia, Maricopa County and Dade County), we have studied. What did differ was the sense (perhaps realistic sense) that there was any way guidelines could be done in the Boston court. The Municipal Court lacked staff and lacked control over staff it did have (e.g., its probation department reports to the state commissioner of probation). It lacked funds. And, apparently, it lacked centralized decisionmaking authority in its chief judge over the judiciary as a whole.

Whereas in each court we have studied each judge is, fundamentally, independent, Boston had perhaps the least evident "line-authority" administrative and decisionmaking structure we have seen. Because it will perhaps always be true that inertia in these types of courts will impede change (they are often seen, rightly or wrongly, by judicial incumbents as way-stations to higher office), a strong and influential leader is a requisite to any change at all. During the period of our research, such unfortunately was not the case in Boston.

Chapter Seven

CONCLUSION: THE LESSONS CONCERNING THE PROMISE OF DECISION GUIDELINES FOR BAIL AND PRETRIAL RELEASE

In this volume of our research findings, we have described the results of evaluative research designed to throw light on the "success" of the decision guidelines approach in realizing its goals in different American court systems under very different kinds of conditions. For a number of reasons, our evaluation of these guidelines efforts are unsatisfying: For example, we conducted a "small" evaluation in Maricopa County, a "large" evaluation in Dade County and no evaluation in Boston. In our evaluations, we were forced by circumstances to evaluate the implementations of the new programs in their very beginning weeks rather than waiting until several months of routinization could occur. As a result, we have reported both positive and negative findings that might have been mediated with the passage of time as program procedures matured. We emphasize this point particularly because guidelines systems are intended to be evolutionary and are designed to accommodate adjustments and corrections. In fact, rather than producing "evaluations" designed to make pronouncements concerning the "failure" or "success" of the guidelines at this point, normally we would be reporting these findings back to the respective courts for review so that they could consider appropriate action.

In concluding this review of the implementation of guidelines in these sites, we believe it would be useful to use as a measuring stick of the experiences of each of our sites the definition of the guidelines development process described in M. Gottfredson and D. Gottfredson (1988:11) in their discussion of the essential aspects of guidelines as a "specific method of policy control." They specify the following components to the development of voluntary decision guidelines:

1. **A general policy for decisionmaking, including a statement of the goals sought, articulated in explicit terms, within which individual case decisions are made.**

In each of the three sites, the guidelines development process was grounded on discussion and clarification of bail and pretrial release policy in explicit terms. In Maricopa County, the Court made explicit several policy objectives including more even-handed and predictable decisions and use of a risk dimension in the guidelines grid that classified defendants based on probabilities of flight and crime during pretrial release. This was not unusual as it both reflected the concerns of Arizona law and continued in the tradition of the Philadelphia bail guidelines. In

addition, however, the severity dimension of the Superior Court guidelines incorporated specific crime-related concerns, including special provisions for persons charged with crimes involving injury to victims, use of weapons or charges involving repeated counts of serious charges. These explicit policy concerns were juxtaposed to another of the Court's specific policy objectives, to minimize unnecessary pretrial detention.

In Dade County, the over-riding concerns of the Court's steering committee were quite similar. Public safety concerns--mirroring those expressed in Florida law--as well as concerns for defendant failure-to-appear were at the heart of the guidelines structure. But an emphatic policy constraint upon which the Circuit Court conditioned development of its decision guidelines for bond was that the guidelines should not increase the use of pretrial detention over its then current level; in fact, if the other goals could be realized, the Court expressed a preference for a guidelines model that would reduce the use of pretrial detention.

In development of the Boston guidelines, clear policy aims of the Municipal Court were reflected in the guidelines that were drafted. There was a focus on defendant misconduct--on both the likelihood of defendant flight and crime--but special emphasis was placed on the implications of the bail guidelines for jail overcrowding.

2. **Explicitly defined criteria for decision making, with the specific weights to be given to these criteria also explicitly defined.**

In each of the jurisdictions, guidelines were developed using an explicit format based on rankings of criminal charges according to severity and on dimensions differentiating defendants according to probability of flight or rearrest during pretrial release. As we described in detail in Volume I and in Chapter One of this report, each of these dimensions were based on very specifically defined criteria with explicit weighting schemes.

3. **Within the general policy model, guidelines in the form of a chart (matrix or grid) are used in the process of arriving at a particular decision. The most important policy concerns, decided by those responsible for the decision making policy, are reflected in the dimensions of the grid. In most models one axis reflects the seriousness of the offense and the other reflects the characteristics of the offender. The intersection of the appropriate columns and rows for the two axes provides an expected decision for cases possessing the attributes used in classifications for the chart.**

The guidelines development process in each site not only successfully formulated overall policy aims for the bail/pretrial release decision process and outlined specific criteria to guide decisions but also constructed suggested or "presumptive" decision options to achieve those aims. Thus, the guidelines drafting process within each working group arrived at decision choices that counterbalanced the various policy objectives of each court. The result was that, assuming the guidelines would be employed in the sense intended, each court had constructed a framework for

orienting day-to-day decisionmaking and for reviewing the performance of court decisionmakers in reaching policy goals on a periodic basis.

4. **The guidelines grid is intended to structure the use of discretion but not eliminate it. There are two ways in which discretionary judgments are required of the decisionmaker.**
 - a) **Some discretion must be exercised within the cells of the two-dimensional grid...**
 - b) **Considering the facts of the case, the decision maker is expected sometimes to reach a decision that is a departure (that is, an exception) from the suggested decision outcome.**
5. **When departures are made, the decision maker must provide explicit reasons for the exception from the usual decision...**

Once the guidelines were finalized in each of the courts, they were put into use in two of the jurisdictions. In offering them for use to the judges presiding at the bond stage, the Superior Court in Maricopa County and the Circuit Court in Dade County conceived of them as a decisionmaking resource that pointed the decisionmaker in desirable directions--when thinking about equity, defendant misconduct and the use of pretrial detention, for example--not as some sort of ironclad, computerized mandatory bail scheme. Each court did emphasize the voluntariness of the resources but also explained that the guidelines were based on a long process including not only of rigorous empirical study of bail practices but also of debate of desirable policy directions.

The requirement for judges to note reasons when they chose to depart from the options suggested by the guidelines was designed to establish a system of accountability in decisionmaking as well as to provide important data for reviewing the use and appropriateness of guidelines at periodic intervals. In the first use of the guidelines in the two sites, we found that a majority of initial appearance commissioners in Maricopa County but less than half of the judges in Dade County noted reasons when taking exceptions.

6. **There is an established system of monitoring to provide periodic feedback to the authorities responsible for the decision policy, giving the percentage of decisions falling outside each guideline category and the reasons given for those decisions.**

An important and often overlooked feature of the decision guidelines strategy involves monitoring the use of guidelines and periodic review of their impact by the judicial leadership. This requires a procedure for collecting data describing the use of guidelines by the judges, the kinds of reasons given by them when making decisions outside of the suggested alternatives and the consequences of decisions (such as the use of nonfinancial release and bond, pretrial detention, failure-to-appear and rearrest among released defendants). Since our evaluation of the

early use of the guidelines in Arizona and Florida, the respective pretrial services agencies have initiated procedures that will allow them to report on the use of guidelines to the courts.

The pretrial services agency in Maricopa County, for example, has incorporated data using guidelines categories, decisionmakers and outcomes into its quarterly, semi-annual and annual reports. Their initial statistics tended to confirm the directions suggested in our evaluation of the initial use of guidelines and have been employed by the Court to monitor developments and to plan meetings based on the issues raised. In Dade County, such reports have not yet begun in a systematic fashion, but information relating to the use of guidelines has been designed into the new court-based computer information system so that such periodic reports can be routinely made available to pretrial services and the court.

7. The authorities may modify the guidelines at any time.
8. The general policy, including the guidelines incorporated within it, is not regarded as a "once and for all" statement of "right" policy; but rather, the policy statement and the procedures are designed to facilitate an evolutionary system of policy development changing in response to experience, resultant learning, and social change.
9. The policy in general, and the guidelines specifically, are open and available for public review.

The purpose of these data is to allow the court to consider modifications to the guidelines or to be made aware of use of the guidelines that may be falling below the desired level. Early results in each of the two guidelines locations have not yet suggested actual modifications to the guidelines but rather have pointed to the need for encouraging more appropriate use of the guidelines by the judges. However, having the reporting procedures in place guarantees that data will be available to permit continual review of the guidelines.

Conclusion

We now have experience with the development, implementation and evaluation of pretrial release guidelines in four large urban court systems (Philadelphia, Maricopa, Boston and Dade). Although by ordinary research standards it represents a small sample, we do believe that this body of work permits some general inferences about the problems of implementation and the prospects for this type of system to structure the discretion of an important decisionmaking body. Therefore, keeping in mind the tentative nature of these conclusions, we offer these findings as road signs for future research in the area.

1. The ubiquity of the matrix form

The original guidelines work in parole and sentencing (Gottfredson, Wilkins and Hoffman, 1978) settled on a two-dimensional "grid" form of guidelines, with one dimension relating to the current offense or to its seriousness and the other dimension relating to the risk, however established, posed by the person. In Philadelphia, the bail judges adopted a similar set of concerns, even though the stage in the criminal justice process was profoundly different (Goldkamp and Gottfredson, 1985).

In this set of studies, we presented to the various advisory bodies an array of possible decisionmaking forms, critiqued them together and sought, the best we could, to assess their potential consequences if adopted. We never "pushed" one set of concerns over another and we always tried to pay strict attention to the ideas and desires of the judiciary. Nevertheless, each site saw the grid form as the most appropriate for them and selected some version of the two dimensional structure to try out. The conclusion seems inescapable--the issues of the seriousness of the conduct for which the defendant is being considered and the potential risk to the community posed by the defendant simply overwhelm all other concerns. And this seems to be true at all stages of the criminal process (Gottfredson and Gottfredson, 1988). Even the U.S. Sentencing Commission, which initially sought other models, has settled on this established form.

There are, of course, a variety of reasons why the interplay between risk and seriousness may dominate the criminal justice system. Issues of desert, incapacitation and deterrence all come into play. But whatever the theoretical rationale for the empirically established regularity, it is highly noteworthy that it does seem to be an empirically established regularity. Guidelines and the matrix form seem to go hand in hand, judging by the work reported here.

2. Successful implementation requires strong judicial leadership

In every court we have studied there has been a majority of the judiciary who, in the end, believed that the voluntary guidelines would be a good idea for their court. They participated fully in the development of the guidelines, putting in long hours and engaging in serious, sustained policy debate. Yet full implementation has taken place only in Philadelphia and Maricopa, with partial implementation in Dade.

Clearly, belief in the appropriateness of the guidelines and willingness to work toward that idea are not sufficient. Guidelines seek to make justice more evenhanded and more rational; as a consequence they also seek to

remove some judicial discretion and force the giving of reasons for decisions. Because every such decision is a critical one from the perspectives of accountability, community safety and the deprivation of individual liberty, proponents of guidelines believe that these intrusions on judicial discretion are justifiable. After all, compliance is still voluntary and judges always retain the right to go their own way. But from the point of view of some judges they go too far. From the point of view of others, they defeat the principal of individual responsibility for decisions and relegate these tasks to the group. Such debates are longstanding in criminal justice and will forever be argued.

The consequence of all this, it seems to us, is that the implementation and maintenance of voluntary guidelines of the type we have studied depend on the extent to which there is a centralization of authority within the court such that once the collective decision to implement has been made it can be carried out. Such particularly was the case in Maricopa County during this research and in Philadelphia's Municipal Court during the previous guidelines research.

But centralized authority without adequate resources is not sufficient to establish these types of discretion structuring systems. It is also the experience of these studies that large urban court systems require modern data collection and retrieval systems and a staff of sufficient numbers and quality, directly reporting to the authority of the court, for implementation. Where modern, "data ready" pretrial services agencies have been in place, guidelines seem to have worked well. In their absence there appears to be little promise of an effective system.

It must also be noted that urban court systems have plenty to do to occupy their attention. Guidelines, and the issues of fairness and rationality with which they attempt to deal, compete with a host of other pressing problems confronting court leadership. Staffing problems, overcrowded dockets, scheduling changes, press coverage of sensational cases, the current focus on drug crime, jail overcrowding, and the like are more than enough to keep any court administrator busy. The agenda that guidelines seek to bring to focus is an important one, more important for some jurisdictions than for others perhaps, and the success of a guidelines implementation rests in no small measure on the centrality of this agenda to the court and to the court leadership. It is fair to say that in recent times this agenda has become less of a concern of the judiciary than other agendas in the political world in which courts operate.

3. Equity and safety are not incompatible results of a good guidelines system

Our evaluation research in Maricopa County and in Philadelphia indicate that, when implemented, voluntary guidelines can enhance the equity of the process and can do so without increasing the risk posed to the community by the pretrial population.

When "similarly situated defendants" is operationally taken to mean defendants within cells of the guidelines matrix (see Goldkamp and Gottfredson, 1985 for a discussion) and "equal treatment" refers to the extent of liberty deprivation or the conditions of release, our research strongly suggests that the guidelines increase equity of treatment at the bail stage. Similar results have been shown to hold for parole guidelines (Gottfredson, 1979). In both the Philadelphia and the Maricopa samples this increase in equity came without an increase in felony-level arrests. In fact, it came with overall increases in the proportion of defendants given the least restrictive release conditions at the bail stage. In Maricopa County, it also came with a substantial decrease in the rate of pretrial detention. It seems fair to conclude, at this stage of guidelines evaluation research, that voluntary guidelines properly implemented can achieve a substantial disparity reduction function. And when the definition of equally situated includes a judgment of risk, an objective risk instrument as part of voluntary guidelines can ensure that equity and less restrictive conditions of release do not have to be sacrificed to "community safety."

4. The need to monitor the guidelines

It has been said that measurement creates improvement. When people have a firm idea of what they are doing, and cannot be led astray by the unusual or idiosyncratic cases, things will get better. Like all other aspects of human affairs bound by rules, those who decide cases under guidelines will soon drift from them if there is no enforcement of the rules. In this case, the enforcement is meant to be part of the guidelines themselves through the provision of the giving of reasons for departures and systematic empirical feedback to the decisionmakers of recent past experience.

But evidence from these evaluations suggests that the "reason giving" provision of guidelines remains problematic. There is the tendency to make exceptions to the guidelines and to cite as a reason factors already incorporated into the guidelines structure. And there is some evidence from Maricopa County that the departures from the guidelines norm tend to be in directions more restrictive much more frequently than in the less restrictive directions. Furthermore, there is evidence that individual judges will differ considerably in their compliance with

the guidelines, again suggesting that the feedback and monitoring function that is a part and parcel of the guidelines system must be taken as central to any operating system. This in turn re-emphasizes the importance of centralized authority and an effective pretrial services agency.

5. The urge for subjectivity

Guidelines increase the objectivity of criminal justice decisionmaking by stating the rules openly and applying them as uniformly as possible. In the pretrial arena, like most criminal justice decision points, the common practice is to attempt to individualize decisionmaking and to take into consideration the "totality of the circumstances" of any given case. Guidelines remove discretion; decisionmakers seek to restore it. This tension is exhibited time and again in our evaluation of pretrial guidelines systems; it surfaces by the initial and strong reaction against any formalized rules by pretrial services staff (and may account in part for implementation problems). It surfaces as well in the concern about empirical risk measures used by guidelines in lieu of the subjective or more "clinical" methods used by pretrial services agencies. In any event, our experience in evaluating this process of development and implementation of guidelines serves to underscore for us the constant tension in the system to individualize and to make "sensible" decisions. For those who subscribe to explicit decision rules based on the best available experience, the drive toward subjectivity reinforces the belief that such guidelines are necessary.

REFERENCES

References

Goldkamp, J. S. and M. R. Gottfredson

1985 Policy Guidelines for Bail: An Experiment in Court Reform. Philadelphia, PA: Temple University Press.

Goldkamp, J. S. and M. R. Gottfredson

1988 Guidelines for Bail and Pretrial Release in Three Urban Courts: Volume I--The Development of Bail/Pretrial Release Guidelines in Maricopa County Superior Court, Dade County Circuit Court and Boston Municipal Court. Philadelphia: Department of Criminal Justice, Temple University. (Draft)

Gottfredson, D. M.; L. T. Wilkins and P. B. Hoffman

1978 Guidelines For Parole and Sentencing. Lexington, Massachusetts; Toronto: Lexington Books.

Gottfredson, M. R. and D. M. Gottfredson

1984 "Guidelines for Incarceration Decisions: A Partisan Review. University of Illinois Law Review. Vol.2.

Gottfredson, M. R. and D. M. Gottfredson

1988 Decisionmaking in Criminal Justice: Toward the Rational Exercise of Discretion. New York: Plenum Publishing.

APPENDIX A.

SUPPLEMENTAL TABLES

Table A3.1 Comparison of samples of entering felony defendants in Maricopa County, January, February and September, 1987, by selected characteristics

<u>Characteristics</u>	<u>Total January-February sample</u>		<u>January sample</u>		<u>February sample</u>		<u>September sample</u>	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total	991	100.0	500	100.0	491	100.0	436	100.0
<u>Demographics</u>								
Median age	990	26.0 yrs.	500	26.0 yrs.	490	26.0 yrs.	435	26.0 yrs.
Race								
Total	852	100.0	414	100.0	438	100.0	359	100.0
White	486	52.0	228	55.0	258	59.0	198	55.2
Black	124	15.0	67	16.0	57	13.0	42	11.7
Hispanic	186	22.0	93	22.0	93	21.0	101	28.1
Native American	25	3.0	14	3.0	11	3.0	12	3.3
Other	31	4.0	12	100.0	19	4.0	6	1.7
Sex								
Total	991	100.0	500	100.0	491	100.0	436	100.0
Male	854	86.0	435	87.0	419	85.0	385	88.3
Female	136	14.0	64	13.0	72	15.0	51	11.7
<u>Case processing measures and outcomes</u>								
Nonfinancial								
v financial decisions								
Total	941	100.0	481	100.0	460	100.0	409	100.0
Nonfinancial	436	46.0	208	43.0	228	50.0	201	49.1
Financial	505	54.0	273	57.0	232	50.0	208	50.9
Median bond								
(OR = \$0)	947	\$206.0	488	\$450.0	459	\$ 0	410	\$ 0
Released within								
90 days								
Total	971	100.0	500	100.0	471	100.0	436	100.0
No	418	43.0	235	47.0	183	39.0	436	100.0
Yes	553	57.0	265	53.0	288	61.0	—	—
Failure to appear								
(90 days)								
Total	545	100.0	259	100.0	286	100.0	n/a	n/a
No	521	96.0	258	100.0	263	92.0	n/a	n/a
Yes	24	4.0	1	0.0	23	8.0	n/a	n/a
Rearrest within								
90 days								
Total	539	100.0	258	100.0	281	100.0	n/a	n/a
No	455	84.0	203	79.0	252	90.0	n/a	n/a
Yes	84	16.0	55	21.0	29	10.0	n/a	n/a
Serious rearrest								
within 90 days								
Total	522	100.0	249	100.0	273	100.0	n/a	n/a
No	489	94.0	222	89.0	267	98.0	n/a	n/a
Yes	33	6.0	27	11.0	6	2.0	n/a	n/a

Table A3.1 Comparison of samples of entering felony defendants in Maricopa County, January, February and September, 1987, by selected characteristics (cont'd)

<u>Characteristics</u>	<u>Total January- February sample</u>		<u>January sample</u>		<u>February sample</u>		<u>September sample</u>	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
<u>Outcomes (cont'd)</u>								
FTA or rearrest								
Total	538	100.0	257	100.0	281	100.0	0	100.0
No	436	81.0	201	78.0	235	84.0	—	—
Yes	102	19.0	56	22.0	46	16.0	—	—
Risk classification (corrected)								
Total	970	100.0	493	100.0	477	100.0	431	100.0
Risk group 1	91	9.0	39	8.0	52	11.0	37	9.0
Risk group 2	483	50.0	224	45.0	259	54.0	229	53.0
Risk group 3	257	26.0	135	27.0	122	26.0	118	27.0
Risk group 4	139	14.0	95	19.0	44	9.0	47	11.0
Guidelines severity ranking								
Total	971	100.0	493	100.0	478	100.0	429	100.0
1	144	15.0	70	14.0	74	15.0	81	19.0
2	72	7.0	39	8.0	33	7.0	38	9.0
3	384	40.0	208	42.0	176	37.0	167	39.0
4	141	15.0	63	13.0	78	16.0	60	14.0
5	80	8.0	31	6.0	49	10.0	57	9.0
6	150	15.0	82	17.0	68	14.0	46	11.0
Guidelines decision zone								
Total	956	100.0	484	100.0	472	100.0	412	100.0
OR/Standard	422	44.0	205	42.0	217	46.0	197	48.0
OR/Special	81	8.0	35	7.0	46	10.0	37	9.0
OR/Special to low bond	129	13.0	64	13.0	65	14.0	73	18.0
Financial	324	34.0	180	37.0	144	31.0	105	26.0
<u>Criminal history</u>								
Prior arrests								
Total	960	100.0	476	100.0	484	100.0	430	100.0
None	454	47.0	211	44.0	243	50.0	211	49.0
One	288	30.0	158	33.0	126	26.0	122	28.0
Two or more	222	23.0	107	23.0	115	24.0	97	23.0
Prior convictions								
Total	944	100.0	467	100.0	477	100.0	431	100.0
None	515	55.0	241	52.0	274	57.0	242	56.0
One	261	28.0	147	31.0	14	3.0	130	30.0
Two or more	168	18.0	79	17.0	89	18.0	59	14.0

Table A3.2 Comparison of pretrial release decisions and outcomes between June-July, 1984 and January-February, 1987, for entering felony defendants in Maricopa County, by guidelines "zone"

		CR/Standard Conditions		CR/Special Conditions		CR/Special Conditions to Low Bond		Secured Bail		All Defendants	
1984 Sample		(n = 851)		(n = 346)		(n = 200)		(n = 835)		(n = 2,232)	
		% RCR (851) 58.3		% RCR (341) 49.3		% RCR (195) 27.2		% RCR (832) 22.0		% RCR (2,188) 40.8	
		MND \$ (843) 0		MND \$ (338) 206		MND \$ (195) 1,370		MND \$ (803) 2,055		MND \$ (2,179) 685	
		% DET > 2 Days (851) 35.2		% DET > 2 Days (341) 47.8		% DET > 2 Days (198) 59.6		% DET > 2 Days (825) 73.2		% DET > 2 Days (2,207) 53.5	
		% FTA (544) 3.1		% FTA (178) 5.1		% FTA (82) 12.2		% FTA (220) 10.5		% FTA (1,024) 5.8	
		% Rearrest (544) 8.8		% Rearrest (176) 13.1		% Rearrest (82) 8.5		% Rearrest (220) 12.3		% Rearrest (1,022) 10.3	
		% Fel. rearrest (546) 5.7		% Fel. rearrest (178) 10.1		% Fel. rearrest (82) 7.3		% Fel. rearrest (221) 6.8		% Fel. rearrest (1,027) 6.8	
		% Failure (546) 11.5		% Failure (178) 18.0		% Failure (82) 17.1		% Failure (221) 20.4		% Failure (1,027) 15.0	
1987 (Combined) Sample		(n = 422)		(n = 81)		(n = 129)		(n = 324)		(n = 991)	
		% RCR (419) 76.4		% RCR (79) 70.9		% RCR (128) 38.3		% RCR (303) 3.6		% RCR (941) 46.3	
		MND \$ (419) 0		MND \$ (80) 0		MND \$ (128) 685		MND \$ (301) 3,425		MND \$ (947) 343	
		% DET > 2 Days (410) 15.9		% DET > 2 Days (79) 24.1		DET > 2 Days (128) 42.2		% DET > 2 Days (322) 77.3		% DET > 2 Days (971) 43.0	
		% FTA (340) 3.8		% FTA (60) 5.0		% FTA (72) 2.8		% FTA (72) 8.3		% FTA (545) 4.4	
		% Rearrest (335) 13.1		% Rearrest (60) 23.3		% Rearrest (72) 20.8		Rearrest (71) 15.5		Rearrest (539) 15.6	
		% Fel. rearrest (326) 4.3		% Fel. rearrest (55) 10.9		% Fel. rearrest (69) 11.6		% Fel. rearrest (71) 7.0		% Fel. rearrest (521) 6.3	
		% Failure (335) 16.4		% Failure (60) 25.0		% Failure (71) 23.9		% Failure (71) 21.1		% Failure (538) 19.0	
Change from 1984-1987		% RCR 18.1		% RCR 21.6		% RCR 11.1		% RCR -18.4		% RCR 5.5*	
		% MND \$ 0		% MND \$ -206		% MND \$ -685		% MND \$ 1,370		% MND \$ -342	
		% DET > 2 Dys -19.3		% DET > 2 Days -23.7		% DET > 2 Days -16.4		% DET > 2 Days 4.1*		% DET > 2 Days -10.7	
		% FTA -0.7*		% FTA 0.1*		% FTA -9.4*		% FTA -2.2*		% FTA -1.4*	
		% Rearrest 4.3		% Rearrest 10.2*		% Rearrest 12.3		% Rearrest 3.2*		% Rearrest 5.3	
		% Fel. rearrest -1.4*		% Fel. rearrest 0.8*		% Fel. rearrest 4.3*		% Fel. rearrest 0.2*		% Fel. rearrest -0.5*	
		% Failure 4.9		% Failure 7.0*		% Failure 6.8*		% Failure 0.6*		% Failure 4.0	

* Indicates chi-squared coefficient is not significant at .05.

Table A3.3 Comparison of pretrial release decisions and outcomes between June-July, 1984, and January-February, 1987, for entering felony defendants in Maricopa County, by selected guidelines cells^a

	Cell 7		Cell 8		Cell 9		Cell 10		Cell 11		Cell 12	
1984 Sample	(n=30)		(n=227)		(n=323)		(n=345)		(n=118)		(n=85)	
	% ROR (29)	82.8	% ROR (226)	62.4	% ROR (323)	55.7	% ROR (340)	49.1	% ROR (114)	45.6	% ROR (83)	24.1
	MND \$ (29)	0	MND \$ (226)	0	MND \$ (321)	0	MND \$ (337)	0	MND \$ (114)	685	MND \$ (83)	2,055
	% DET > 2 days (30)	13.3	% DET > 2 days (224)	29.5	% DET > 2 days (34)	37.4	% DET > 2 days (340)	47.9	% DET > 2 days (116)	52.6	% DET > 2 days (85)	70.6
	% FTA (26)	3.8	% FTA (158)	3.8	% FTA (200)	3.0	% FTA (177)	4.5	% FTA (55)	5.0	% FTA (25)	12.0
	% Rearrest (26)	7.7	% Rearrest (157)	9.6	% Rearrest (200)	10.0	% Rearrest (175)	13.1	% Rearrest (55)	11.0	% Rearrest (25)	20.0
	% Fel. rearrest (26)	3.8	% Fel. rearrest (158)	7.0	% Fel. rearrest (201)	5.0	% Fel. rearrest (177)	10.2	% Fel. rearrest (55)	5.0	% Fel. rearrest (25)	16.0
1987 (Combined) Sample	% Failure (26)	11.5	% Failure (158)	13.3	% Failure (201)	12.4	% Failure (177)	17.5	% Failure (55)	16.0	% Failure (25)	24.0
	(n=92)		(n=37)		(n=208)		(n=70)		(n=25)		(n=40)	
	% ROR (91)	80.2	% ROR (37)	71.1	% ROR (206)	80.1	% ROR (68)	70.6	% ROR (25)	8.0	% ROR (33)	9.1
	MND \$ (91)	0	MND \$ (37)	0	MND \$ (206)	0	MND \$ (69)	0	MND \$ (24)	1,507	MND \$ (31)	6,552
	% DET > 2 days (90)	16.7	% DET > 2 days (35)	8.6	% DET > 2 days (207)	15.0	% DET > 2 days (70)	24.3	% DET > 2 days (25)	68.0	% DET > 2 days (40)	75.0
	% FTA (74)	4.1	% FTA (32)	6.3	% FTA (172)	2.9	% FTA (53)	4.7	% FTA (8)	12.5	% FTA (10)	0
	% Rearrest (23)	9.6	% Rearrest (32)	9.4	% Rearrest (171)	14.6	% Rearrest (53)	24.5	% Rearrest (8)	12.5	% Rearrest (10)	0
Change from 1984-1987	% Fel. rearrest (73)	4.1	% Fel. rearrest (31)	3.2	% Fel. rearrest (163)	5.5	% Fel. rearrest (49)	12.2	% Fel. rearrest (8)	0	% Fel. rearrest (10)	0
	% Failure (23)	13.7	% Failure (32)	15.6	% Failure (171)	17.0	% Failure (53)	26.4	% Failure (8)	12.5	% Failure (10)	0
	% ROR	-2.6*	% ROR	8.7*	% ROR	24.4	% ROR	21.5	% ROR	-37.6	% ROR	-15.0*
	MND \$	0	MND \$	0	MND \$	0	MND \$	0	MND \$	822	MND \$	4,497
	% DET > 2 days	3.4*	% DET > 2 days	-20.9*	% DET > 2 days	-22.4	% DET > 2 days	-23.6	% DET > 2 days	15.4*	% DET > 2 days	4.4*
	% FTA	0.3*	% FTA	2.5*	% FTA	-0.1*	% FTA	1.2*	% FTA	7.5*	% FTA	-12.0*
	% Rearrest	1.9*	% Rearrest	-0.2*	% Rearrest	4.6*	% Rearrest	11.4	% Rearrest	1.5*	% Rearrest	-20.0*
	% Fel. rearrest	0.3*	% Fel. rearrest	-3.8*	% Fel. rearrest	0.5*	% Fel. rearrest	2.0*	% Fel. rearrest	-5.0*	% Fel. rearrest	-16.0*
	% Failure	2.2*	% Failure	2.3*	% Failure	4.6*	% Failure	8.9*	% Failure	-3.5*	% Failure	-24.0*

^a

Cells with insufficient cases for analysis were not included in the table.

* Indicates chi-squared coefficient is not significant at .05.

Table A3.3 Comparison of pretrial release decisions and outcomes between June-July, 1984 and January-February, 1987, for entering felony defendants in Maricopa County, by selected guidelines cells (cont'd)

	Cell 15	Cell 16	Cell 18	Cell 21	Cell 24	All Defendants
	(n = 115)	(n = 187)	(n = 78)	(n = 31)	(n = 97)	(n = 2,232)
1984	% ROR (110) 28.2	% ROR (183) 25.1	% ROR (76) 14.5	% ROR (29) 10.3	% ROR (85) 4.7	% ROR (2,188) 40.8
Sample	MND \$ (110) 959	MND \$ (182) 1,370	MND \$ (76) 4,795	MND \$ (29) 1,370	MND \$ (85) 13,700	MND \$ (2,179) 685
	% DET > 2 days (114) 60.5	% DET > 2 days (185) 69.2	% DET > 2 days (70) 85.7	% DET > 2 days (30) 83.3	% DET > 2 days (94) 86.2	% DET > 2 days (2,207) 53.5
	% FTA (45) 13.3	% FTA (57) 10.5	% FTA (11) 0	% FTA (5) 40.0	% FTA (13) 23.1	% FTA (1,024) 5.8
	% Rearrest (45) 13.3	% Rearrest (57) 10.5	% Rearrest (11) 0	% Rearrest (5) 20.0	% Rearrest (13) 30.8	% Rearrest (1,022) 10.3
	% Fel. rearrest (45) 13.3	% Fel. rearrest (57) 7.0	% Fel. rearrest (11) 0	% Fel. rearrest (5) 20.0	% Fel. rearrest (13) 15.4	% Fel. rearrest (1,027) 6.8
	% Failure (45) 22.2	% Failure (57) 21.1	% Failure (11) 0	% Failure (5) 60.0	% Failure (13) 38.5	% Failure (1,027) 15.0
	(n = 103)	(n = 38)	(n = 48)	(n = 56)	(n = 39)	(n = 991)
1987	% ROR (102) 35.5	% ROR (38) 2.6	% ROR (42) 0	% ROR (56) 3.6	% ROR (31) 0	% ROR (941) 46.3
(Combined)	MND \$ (103) 685	MND \$ (37) 1,507	MND \$ (41) 12,750	MND \$ (56) 1,506	MND \$ (33) 13,700	MND \$ (947) 343
Sample	% DET > 2 days (103) 43.7	% DET > 2 days (8) 75.7	% DET > 2 days (47) 83.0	% DET > 2 days (56) 80.4	% DET > 2 days (39) 89.7	% DET > 2 days (971) 43.0
	% FTA (56) 3.6	% FTA (8) 12.5	% FTA (8) 12.5	% FTA (11) 18.2	% FTA (4) 25.0	% FTA (545) 4.4
	% Rearrest (56) 21.4	% Rearrest (8) 0	% Rearrest (8) 33.3	% Rearrest (10) 35.7	% Rearrest (4) 25.0	% Rearrest (539) 15.6
	% Fel. rearrest (55) 14.5	% Fel. rearrest (10) 0	% Fel. rearrest (8) 23.8	% Fel. rearrest (10) 24.0	% Fel. rearrest (4) 0	% Fel. rearrest (521) 6.3
	% Failure (55) 25.5	% Failure (8) 12.5	% Failure (8) 33.3	% Failure (10) 35.7	% Failure (4) 25.0	% Failure (538) 19.0
Change	% ROR 7.3*	% ROR -22.5*	% ROR -14.5*	% ROR -6.7*	% ROR -4.7*	% ROR 5.5*
from	MND \$ -274	MND \$ 137	MND \$ 7,955	MND \$ 136	MND \$ 0	MND \$ -342
1984-1987	% DET > 2 days -16.8*	% DET > 2 days 6.5	% DET > 2 days -2.7	% DET > 2 days -2.9	% DET > 2 days 3.5*	% DET > 2 days -10.5
	% FTA -9.7	% FTA 2.0*	% FTA 12.5*	% FTA -21.8*	% FTA 1.9*	% FTA -1.4*
	% Rearrest 8.1*	% Rearrest -10.5*	% Rearrest 33.3*	% Rearrest 15.7*	% Rearrest -5.8*	% Rearrest 5.3
	% Fel. rearrest 1.2*	% Fel. rearrest -7.0*	% Fel. rearrest 23.8*	% Fel. rearrest 4.0*	% Fel. rearrest -15.4*	% Fel. rearrest -0.5*
	% Failure 3.3*	% Failure -8.6*	% Failure 33.3*	% Failure -24.3*	% Failure -13.5*	% Failure 4.1

a

Cells with insufficient cases for analysis were not included in the table.

* Indicates chi-squared coefficient is not significant at .05.

Table A5.1 Comparison of cases in which guidelines were completed and not completed, for entering felony defendants in Dade County Circuit Court, 1987, by selected attributes

Selected attributes	Guidelines completed "Zone"									
	All defendants		OR/ standard		OR/ special		OR/special to bond		Secured Bond	
	N	%	N	%	N	%	N	%	N	%
<u>Means of Release:</u>										
Cash bond	862	52	258	48	265	50	92	40	278	78
Nonfinancial	793	48	280	52	267	50	137	60	78	22
<u>Released defendants</u>										
<u>FTA:</u>										
No	661	83	264	85	190	85	92	75	94	88
Yes	132	17	47	15	62	15	31	25	13	12
<u>Released defendants</u>										
<u>rearrested:</u>										
No	661	83	272	88	206	82	98	80	87	81
Yes	132	17	39	12	46	18	25	20	20	19
<u>Effectiveness of release:</u>										
Effective	576	35	239	35	183	35	80	35	79	23
FTA/arrest	215	13	72	13	69	13	43	19	28	8
Not released										
in 2 days	849	52	225	42	277	52	107	46	244	69
<u>Length of time to release</u>										
0-2 days	792	48	311	58	252	48	123	54	107	31
3-90 days	458	28	144	27	146	28	63	27	106	30
Held	390	24	81	15	138	24	44	19	138	39
<u>Agreement of decision with guidelines:</u>										
Less	210	13	n/a	n/a	98	19	29	13	78	23
Agreed	509	31	175	33	167	32	111	49	57	17
More	908	56	358	67	268	49	85	38	205	60
<u>Median bond</u>										
(ROR = \$0)	1000		0		0		0		9500	
<u>Median bond</u>										
(ROR not \$0)	3750		2700		3270		5000		10,000	

Table A5.1 Comparison of cases in which guidelines were completed and not completed, for entering felony defendants in Dade County Circuit Court, 1987, by selected attributes (cont'd)

Selected attributes	Guidelines not completed "Zone"									
	All defendants		OR/ standard		OR/ special		OR/special to bond		Secured Bond	
	N	%	N	%	N	%	N	%	N	%
<u>Means of Release:</u>										
Cash bond	450	37	83	25	151	34	60	32	155	68
Nonfinancial	752	63	253	75	299	66	127	68	74	32
<u>Released defendants</u>										
<u>FTA:</u>										
No	486	85	170	87	179	82	77	84	50	88
Yes	90	15	26	13	39	17	15	16	7	12
<u>Released defendants</u>										
<u>rearrested:</u>										
No	477	83	179	91	166	76	74	80	49	86
Yes	99	17	17	9	52	24	18	20	8	14
<u>Effectiveness of release:</u>										
Effective	409	34	160	48	142	32	64	34	43	19
FTA/arrest	154	13	36	11	76	17	28	15	14	6
Not released										
in 2 days	633	53	136	41	231	51	95	51	171	75
<u>Length of time to release</u>										
0-2 days	564	47	197	59	218	49	92	49	57	25
3-90 days	373	31	60	28	130	29	59	32	89	39
Held	261	22	75	13	101	22	36	19	82	36
<u>Agreement of decision with guidelines:</u>										
Less	231	19	n/a	n/a	122	27	33	18	77	34
Agreed	425	35	128	38	177	39	95	51	25	11
More	544	46	208	62	151	34	58	31	126	55
<u>Median bond</u>										
(ROR = \$0)	0		0		0		0		8,000	
<u>Median bond</u>										
(ROR not \$0)	5000		2000		2750		5000		11,000	

Table A5.2 Selected bail decision and pretrial release outcomes for entering felony defendants in Dade County Circuit Court, by guidelines "zone"

	OR/Standard Conditions		OR/Special Conditions		OR/Special Conditions to Low Bond		Secured Bond		All Defendants	
	(n =681)		(n =562)		(n =201)		(n =351)		(n =1795)	
1984 Sample	% ROR (681)	50.7	% ROR (562)	29.2	% ROR (201)	9.7	% ROR (351)	10.5	% ROR (1795)	32.2
	% DET > 2 days (645)	10.1	% DET > 2 days (534)	20.9	% DET > 2 days (195)	29.4	% DET > 2 days (322)	29.8	% DET > 2 days (1696)	19.4
	% FTA (575)	7.8	% FTA (416)	15.6	% FTA (136)	20.5	% FTA (224)	14.5	% FTA (1352)	12.6
	% Rearrest (571)	4.6	% Rearrest (415)	10.4	% Rearrest (135)	11.5	% Rearrest (220)	5.6	% Rearrest (1340)	7.3
	% Fel. rearrest (571)	2.4	% Fel. rearrest (415)	6.7	% Fel. rearrest (135)	5.7	% Fel. rearrest (220)	2.1	% Fel. rearrest (1340)	4.0
	% Failure (569)	12.0	% Failure (410)	23.8	% Failure (136)	25.0	% Failure (220)	19.0	% Failure (1335)	18.1
	% Fel. Failure (558)	10.2	% Fel. Failure (398)	21.4	% Fel. Failure (131)	22.4	% Fel. Failure (215)	17.3	% Fel. Failure (1303)	16.0
1987 (Combined) Sample	(n =538)		(n =532)		(n =229)		(n =356)		(n =1655)	
	% ROR (538)	33.1	% ROR (532)	18.4	% ROR (229)	12.2	% ROR (356)	4.8	% ROR (1655)	19.4
	% DET > 2 days (528)	16.1	% DET > 2 days (517)	25.9	% DET > 2 days (228)	19.3	% DET > 2 days (341)	41.1	% DET > 2 days (1614)	25.0
	% FTA (443)	11.5	% FTA (383)	11.2	% FTA (184)	17.4	% FTA (201)	8.0	% FTA (1211)	11.7
	% Rearrest (443)	12.2	% Rearrest (383)	17.5	% Rearrest (184)	19.6	% Rearrest (201)	17.4	% Rearrest (1211)	15.9
	% Fel. rearrest (435)	7.8	% Fel. rearrest (371)	10.2	% Fel. rearrest (181)	14.9	% Fel. rearrest (195)	10.8	% Fel. rearrest (1182)	10.2
	% Failure (443)	20.1	% Failure (383)	23.8	% Failure (184)	29.3	% Failure (201)	21.9	% Failure (1211)	23.0
	% Fel. Failure (440)	17.0	% Fel. Failure (376)	18.6	% Fel. Failure (182)	26.9	% Fel. Failure (196)	16.8	% Fel. Failure (1194)	19.0
Change from 1984-1987	% ROR	-17.6	% ROR	-10.8	% ROR	2.5	% ROR	-5.7	% ROR	-13.3
	% DET > 2 days	6.0	% DET > 2 days	5.0*	% DET > 2 days	-10.1	% DET > 2 days	11.3	% DET > 2 days	5.6
	% FTA	1.7*	% FTA	-4.4	% FTA	-3.1	% FTA	-6.5	% FTA	-0.9*
	% Rearrest	7.6	% Rearrest	7.1	% Rearrest	8.1	% Rearrest	11.8	% Rearrest	8.6
	% Fel. rearrest	5.4	% Fel. rearrest	3.5*	% Fel. rearrest	9.2	% Fel. rearrest	8.7	% Fel. rearrest	6.2
	% Failure	8.1	% Failure	0*	% Failure	4.3*	% Failure	2.9*	% Failure	4.9
	% Fel. Failure	6.8	% Fel. Failure	-2.8*	% Fel. Failure	4.5*	% Fel. Failure	-0.5*	% Fel. Failure	3.0*

* Indicates chi-squared coefficient is not significant at .05.

APPENDIX B

DATA COLLECTION INSTRUMENTS

MARICOPA COUNTY

1.

CARD ONE: START

Sequence number
(1-5)

				1
--	--	--	--	---

IDENTIFICATION NUMBERS

01 Booking numbers
(6-11)

--	--	--	--	--	--

02 Date of booking
(12-17)

--	--	--	--	--	--

03 First charge
(18-27)

Gr. Att. W. Drg.

--	--	--	--	--	--	--	--	--	--

04 Second charge
(28-37)

Gr. Att. W. Drg.

--	--	--	--	--	--	--	--	--	--

05 Third charge
(38-47)

Gr. Att. W. Drg.

--	--	--	--	--	--	--	--	--	--

GUIDELINES CLASSIFICATION

06 Severity level: before special factors
(48)

	1-6 = level	9 = missing
--	-------------	-------------

07 Special severity factors
(49)

--

- 1 = weapon used
- 2 = injury to victim
- 3 = two or more serious counts at level 5 or higher
- 4 = 1 and 2
- 5 = 1 and 3
- 6 = 2 and 3
- 8 = no change
- 9 = missing

08 Final severity level
(50)

	1-6 = level	9 = missing
--	-------------	-------------

RISK SCORING

09 Beginning score
(51)

1

10 Prior FTAs
(52-53)

--	--

- 00 = none
- 06 = one
- 40 = two or more

11 Police note flight risk facts
(54-55)

		00 = no	67 = yes
--	--	---------	----------

12 Property offense
(56-57)

		00 = no, person offense	34 = yes
--	--	-------------------------	----------

13 Defendant lives alone
(58-59)

		00 = no	37 = yes
--	--	---------	----------

14 Charges involve robbery
(60-61)

		00 = no	45 = yes
--	--	---------	----------

15 Police flight risk and FTAs
(62-63)

--	--

- 00 = no
- 08 = police note and FTA
- 17 = police note and two or more FTAs

16 Police note risk and lives alone
(64-65)

		00 = no	28 = yes
--	--	---------	----------

17 Total risk points
(66-68)

--	--	--

18 Risk group
(69)

	1-4 = group	9 = missing
--	-------------	-------------

OTHER GUIDELINES INFORMATION

19 Unusual circumstances
(70-72)

1st	2nd	3rd

For values 0 to 6 see coding instructions
7 = other(specify) _____
9 = missing

20 More than 3 unusual circumstances given?
(73)

	0 = no	1 = yes	8 = n/a	9 = missing
--	--------	---------	---------	-------------

21 Suggested decision cell?
(74-75)

		1-24 = cells	99 = missing
--	--	--------------	--------------

22 Suggested special conditions
(76-77)

1st	2nd

- 0 = none indicated
- 1 = PTS supervision
- 2 = third party
- 3 = other(specify) _____
- 9 = missing

23 More than two special conditions?
(78)

	0 = no	1 = yes	8 = n/a	9 = missing
--	--------	---------	---------	-------------

DECISION

24 Commissioners decision
(79)

--

- 0 = nonfinancial standard
- 1 = nonfinancial special
- 2 = secured bond
- 9 = missing

25 Blank
(80)

--

CARD TWO

Sequence number
(1-5)

				2
--	--	--	--	---

26 If secured bond, give amount
(6-11)

--	--	--	--	--	--	--

000001 to

999995 = bond amount in dollars

999996 = more than \$999,995

999997 = no bond amount set

999998 = nonbondable case

999999 = missing

27 Other conditions and restrictions
(12-14)

1st 2nd 3rd

--	--	--

0 = none

1 = scene of the crime

2 = victim

3 = weapons

4 = alcohol, license

5 = reside at

6 = contact

7 = reside with

8 = other

28 More than 3 other conditions
(15) and restrictions
☐ 0 = no 1 = yes 8 = n/a 9 = missing
29 Guidelines followed by commissioner?
(16)
☐ 0 = no 8 = n/a checked
1 = yes 9 = missing
30 If not followed reasons given
(17-20)

1st 2nd

--	--	--	--

00 = nonbondable

01 = prob./parole hold

02 = sentenced

03 = fugitive

04 to

20 = other(specify)

88 = not followed, but no reason given

31 More than two reasons given?
(21)
☐ 0 = no 1 = yes
32 Name of commissioner making decision
(22)

1 = Kiefer

2 = Strohson

3 = Wiehn

4 = Jackson

5 = Lo Bue

6 = Bixby

7 = other(specify) _____

9 = missing

DEMOGRAPHICS/TIES

33 Date of birth
(23-28)

--	--	--	--	--	--

34 Age

(29-30)

--	--

35 Gender (sex)

(31)

☐ 0 = male 1 = female
36 Race/ethnicity
(32)

0 = white

1 = black

2 = Hispanic

3 = Native American

4 = Oriental

5 = other

9 = missing

37 Present address: Maricopa County?

☐ 0 = no 1 = yes 9 = missing
38 Length of residence
(34)

0 = less than one month

1 = 1-3 months

2 = 4-6 months

3 = 7-12 months

4 = 13-24 months

5 = more than two years

9 = missing

39 Phone
(35)
☐ 0 = no 1 = yes 9 = missing
40 Health problems
(37-37)

--	--

00 = none indicated

01 = physical

02 = drug

03 = alcohol

04 = mental health

05 = 1 and 4

06 = 1 and 3

07 = 1 and 2

08 = 2 and 3

09 = 2 and 4

10 = 3 and 4

99 = missing

41 Marital status
(38)

1 = single

2 = married

3 = widowed

4 = divorced

5 = common law

6 = separated

7 = other

9 = missing

42 Defendant's living arrangements
(39)

0 = alone

1 = spouse/child

2 = relative/friend

3 = other(includes institutionalized)

9 = missing

43 Length of employment
(40)

0 = unemployed

1 = 6 months or less

2 = more than 6 months and less than 1 year

3 = 1 year or more

6 = employed, length unknown

8 = n/a, (housewife, student, retired, disabled)

44 Employer indicated?
(41)

☐

0 = no
1 = yes
8 = unemployed
9 = missing

45 Spouse employed
(42)

☐

0 = spouse's employer not given
1 = spouse's employer given
8 = n/a, not married

46 Monthly pay (not net)
(43)

☐

0 = no monthly pay
1 = sum up to \$500
2 = \$501-999
3 = \$1,000-1,900
4 = \$2,000 or more
8 = employed but pay not known
9 = missing

47 Afford lawyer
(44)

☐

0 = requests PD
1 = def. says can afford
9 = missing

48 Social security number
(45-53)

49 Lawyer appointed
(54)

☐

0 = PVT or private
1 = PD
2 = NE
9 = missing

50 IA date (date of initial appearance)
(55-60)

51 Was person released within 48 hrs.? (61)

☐

0 = no 1 = yes 9 = missing

52 Date of release
(62-67)

888888 = not released

53 Date case terminated if within 90 days
(68-73)

000000 = case not terminated before 90 days
Note: if scratched, enter date two days later than IA date.

54 Type of release
(74)

☐

0 = OR
1 = secured bond
2 = other
8 = not released

55 Failure to appear during release?
(75) (within 92 days of IA)

☐

0 = no
1 = yes
8 = not released
9 = missing

56 Blank
(76-80)

CARD THREE

Sequence number

(1-5)

57 Date of FTA
(6-11)

If no date/no FTA -- enter 888888

58 Rearrested during release?
(12)

☐

0 = no
1 = yes
8 = not released
9 = missing

59 Date of rearrest
(13-18)

(Enter date from column following Rearrest/FTA.
If no date--no rearrest (no statute number)
--enter 888888)

60 If rearrested, statute number for new charge
(19-25) Gr.

☐

61 Prior arrests
(26)

☐

0 = none
1 = one
2 = two
3 = three or more
9 = missing

62 Prior convictions
(27)

☐

0 = none
1 = one
2 = two
3 = three or more
9 = missing

63 On probation or parole?
(28)

☐

0 = no 1 = yes

64 Presently out on pretrial release?
(29)

☐

0 = no 1 = yes

CARD ONE: START

Sequence number
(1-5)

				1
--	--	--	--	---

IDENTIFICATION NUMBERS

01 Jail number
(6-14)

8	7							
---	---	--	--	--	--	--	--	--

02 Felony case
(15)

	0 = no	1 = yes
--	--------	---------

03 Court number
(16-23)

8	7						
---	---	--	--	--	--	--	--

04 Court type
(24)

	0 = F	2 = T	4 = P
	1 = B	3 = M	

05 Social security
(25-33)

--	--	--	--	--	--	--	--	--

CHARGE INFORMATION

06 Total charges
(34-35)

--	--

07 Total counts
(36-37)

--	--

08 Number of suspects
(38-39)

--	--

09 First charge
(40-50)

Sev. Att. W. F. Drg.

--	--	--	--	--	--	--	--	--

10 Second charge
(51-61)

Sev. Att. W. F. Drg.

--	--	--	--	--	--	--	--	--

11 Third charge
(62-72)

Sev. Att. W. F. Drg.

--	--	--	--	--	--	--	--	--

DADE COUNTY
coder _____

12 If drug charges, type of drug
(73)

--

- 0 = alcohol
- 1 = marijuana
- 2 = cocaine
- 3 = heroin/opiate
- 4 = barbituate/sedative
- 5 = amphetamine
- 6 = other (specify _____)
- 8 = n/a, no drugs involved
- 9 = missing information

13 Number of drug units
(74-77)

--	--	--	--

14 Number of kinds of drugs involved
(78) in charges

--

- 1-5 = number of drugs
- 6 = more than 5 drugs
- 8 = n/a
- 9 = missing information

VICTIMS

15 Number of victims
(79-80)

--	--

- 01 to 96 = number of victims
- 97 = person crime noted, number unknown
- 98 = n/a, no person victim
- 99 = missing information

If item 15 is 98, enter 8 in items 16-19

CARD TWO

Sequence number
(1-5)

				2
--	--	--	--	---

16 Does defendant know victim(s) ?
(6)

--

- 0 = no
- 1 = child
- 2 = spouse
- 3 = parent
- 4 = sibling
- 5 = friend/acquaintance
- 6 = other
- 7 = combination of 1 thru 6
- 8 = n/a
- 9 = missing information

17 Charges involve victim of sexual
(7) assault

--

- 0 = no
- 1 = yes
- 8 = n/a

18 Charges involve elderly victim(s)
(8) (over 60) ?

--

- 0 = no
- 1 = yes
- 8 = n/a

19 Injury to most serious victim
(9)

--

- 0 = no injury
- 1 = minor harm
- 2 = treated and released
- 3 = hospitalized
- 4 = death
- 8 = n/a, no person victim
- 9 = missing information

LOSS/DAMAGE

20 Premises forcibly entered ?
(10)

--

- 0 = no
- 1 = yes
- 8 = n/a, not a property crime

21 Property stolen and/or damaged
(11)

--

- 0 = no
- 1 = property stolen
- 2 = property damaged
- 3 = stolen and damaged
- 4 = property crime noted, whether stolen or damaged unknown
- 8 = n/a, not a property crime
- 9 = missing information

BOOKING/PRE-BOND HEARING

22 Date of booking (admission)
(12-17)

month	day	year			

23 Total bond schedule bond
(18-23)

--	--	--	--	--	--

000000 = PTA/OR

000001 to

999995 = bond amount in dollars

999996 = more than \$999,995

333333 = nonschedule

999998 = nonbondable case

999999 = missing information

24 Schedule bond for most serious charge
(24-29)

--	--	--	--	--	--

000000 = PTA/OR

000001 to

999995 = bond amount in dollars

999996 = more than \$999,995

333333 = nonschedule

999998 = nonbondable case

999999 = missing information

25 Did defendant post bond before bond
(30) hearing ?

--

(if yes, enter values for N/A
thru question 35)

0 = no

1 = yes

9 = missing information

UBS CLASSIFICATION

26 Severity level
(31)

--

1-8 = level 9 = missing

27 Risk Points

(32-33) Spouse/child

--	--

00 = no +1 = yes

(34-35) Phone

--	--

00 = no +2 = yes

(36-37) Property charge

--	--

00 = no +2 = yes

(38-39) Drug charges

--	--

00 = no -1 = yes

(40-41) Robbery charge

--	--

00 = no -2 = yes

(42-43) Arrests in 3 years

--	--

+1 = 0 -1 = 1 -2 = 2 or more

(44-45) Prior arrests: drugs

--	--

00 = 0 or 1 -2 = 2 or more

(46-47) Prior felony convictions

--	--

00 = no -2 = 1 or more

(48-49) Prior FTAs

--	--

+1 = 0 -1 = 1 -2 = 2 or more

28 Risk points total
(50-52)

--	--	--

+ or -

29 Risk group
(53)

--

1-4 = group 9 = missing

30 Unusual circumstances
(54-56)

--	--	--

0 = none

1-6 = unusual circumstances

7 = other (specify) _____

9 = missing information

31 More than 3 unusual circumstances
(57)

--

0 = no 1 = yes 9 = missing

32 Suggested decision cell number
(58-59)

--	--

1-32 = cell 99 = missing

33 Suggested special conditions
(60-62)

1	2	3

0 = none

1 = PTS low risk

2 = PTS supervision

3 = CHIC

4 = ADAP

5 = DIP

6 = victim cosign

7 = other (specify) _____

9 = missing

34 More than 3 suggested special conditions
(63)

--

0 = no 1 = yes 9 = missing

35 Did PTS ask judge to rescind previous
(64) pretrial release

--

0 = no 1 = yes 8 = not on PTR

BOND HEARING

36 Date of bond hearing
(65-70)

--	--	--	--	--	--

month day year

888888 = n/a, no bond hearing

37 Judges (see coding instructions)
(71-72)

--	--

38 Bond hearing disposition
(73)

--

0 = bond denied

1 = cash bond

2 = PTR

3 = PTR and supervision

4 = PTR and third party

5 = PTR and ADAP/DIP

6 = PTR and CHIC

7 = other (specify) _____

8 = n/a, OR, RIC

9 = missing information

39 Bond hearing bond amount
(74-79) (If item 38 is 1, code amount
to be paid in dollars)

--	--	--	--	--	--

000001 to
999995 = bond amount in dollars
999996 = more than \$999,995
999997 = no bond decision (def. absent)
888888 = nonbondable case
999998 = n/a, nonfinancial disposition
999999 = missing information

40 Were charges totally dismissed at
(80) bond hearing?

	0 = no	1 = yes
--	--------	---------

CARD THREE

Sequence number
(1-5)

				3
--	--	--	--	---

41 Decision departs from suggested
(6) decision?

--

0 = no
1 = yes, it's higher
2 = yes, it's lower

42 Reasons for departure given
(7-12) by judge

1 2 3

--	--	--	--	--	--

00 = none given
1-16 = reasons
17 = other (specify) _____

43 More than 3 reasons given?
(13)

	0 = no	1 = yes
--	--------	---------

44 Guidelines completed by staff in time
(14) for bond hearing?

	0 = no	1 = yes
--	--------	---------

45 Bond hearing alternate bond amount
(15-20) (If alternate bond is set, code
amount to be paid in dollars)

--	--	--	--	--	--

000001 to
999995 = bond amount in dollars
999996 = more than \$999,995
999997 = no alternate bond decision
888888 = nonbondable case
999998 = n/a, no alternate bond set
999999 = missing information

FELONY ARRAIGNMENT

46 Date of arraignment
(21-26)

--	--	--	--	--	--

month day year
888888 = n/a, no arraignment

47 Arraignment bond disposition
(27)

--

0 = no bond set
1 = cash bond
2 = third party custody
3 = PTR
4 = PTR and third party custody
5 = ADAP/DIP
6 = CHIC
7 = other (specify _____)
8 = n/a
9 = missing information

48 Prior bond disposition changed at
(28) arraignment?

--

0 = no
1 = yes, less restrictive
2 = yes, more restrictive
9 = missing information

49 Arraignment bond amount
(29-34) (If item 47 is (1), code amount
to be paid (in dollars)

--	--	--	--	--	--

000001 to
999995 = bond amount in dollars
999996 = more than \$999,995
999997 = no bond decision (def. absent)
888888 = nonbondable case
999998 = n/a, nonfinancial disposition
999999 = missing information

3.

50 Arraignment alternate bond amount
(35-40) (If alternate bond is set, code
amount to be paid in dollars)

--	--	--	--	--	--

000001 to
999995 = bond amount in dollars
999996 = more than \$999,995
999997 = no alternate bond decision
888888 = nonbondable case
999998 = n/a, no alternate bond set
999999 = missing information

CHARGES AT FELONY ARRAIGNMENT

51-52 First charge Sev.
(41-47)

--	--	--	--	--	--	--

53-54 Second charge Sev.
(48-54)

--	--	--	--	--	--	--

55-56 Third charge Sev.
(55-61)

--	--	--	--	--	--	--

57 Disposition of case at arraignment?
(62)

--

0 = no, not disposed
1 = yes, dismissal (all charges)
2 = yes, plead guilty (all charges)
3 = yes, transferred to county court
4 = some dropped, most serious lowered
5 = none dropped, but some lowered
8 = n/a, no felony arraignment
9 = missing information

RELEASE INFORMATION

58 Date of release
(63-68)

--	--	--	--	--	--

month day year
888888 = not released prior to
disposition or within 90 days

59 Means of release

(69)

- 0 = paid own bond
1 = surety release
2 = third party custody
3 = PTR: administrative (A.O.)
4 = PTR: release at low risk
5 = PTR: supervised release
6 = other (specify _____)
8 = n/a, not released
9 = missing information

60 Bonding agency

(70-71) (If item 59 is (1), enter code for bonding agency)

DEMOGRAPHICS/TIES

61 Sex

(72)

0 = male 1 = female

62 Race

(73)

- 0 = white
1 = black
2 = Hispanic (nationality unknown)
3 = Hispanic: Cuban
4 = Hispanic: Puerto Rican
5 = Oriental
6 = other
9 = missing information

63 Refugee status

(74)

- 0 = no
1 = yes
9 = missing

64 Birth date

(75-80)

month day year

CARD FOUR

Sequence number
(1-5)

65 Present address: Dade County

(6)

- 0 = no
1 = yes
9 = missing information

66 Length of residence in the area

(7-9)

- 000 to
996 = number of months
999 = missing information

67 Phone

(10)

- 0 = no
1 = yes

68 Marital status

(11)

- 1 = single, never married
2 = married
3 = widowed
4 = divorced
5 = common law
6 = separated
7 = other
9 = missing information

FINANCIAL STATUS

69 Length of employment

(12)

- 0 = unemployed
1 = 6 months or less
2 = more than 6 months and less than one year
3 = 1 year or more
6 = employed, length unknown
8 = not applicable (housewife, student retired, disabled, inmate, other)

70 Means of support

(13)

- 1 = wages
2 = unemployment compensation
3 = welfare
4 = social security, disability, retirement, V.A.
5 = savings
6 = family/friends
7 = other
9 = missing

HEALTH

71 Physical problems

(14)

0 = no 1 = yes 9 = missing

72 Mental problems

(15)

0 = no 2 = hospitalized
1 = diagnosed 9 = missing

73 Admitted substance abuse

(16-17) (most often used drug)

within last year

current

- 0 = no
1 = yes, daily
2 = yes, weekly
3 = yes, monthly
4 = yes, once a month or less frequently
5 = yes, frequency unclear
9 = missing information

If item 73 = 0, code 8 for items 74-76.

74 Type of drug used

- 0 = no
1 = yes
8 = n/a, no drugs used
9 = missing information

(18-19) Alcohol

within last year

current

(20-21) Marijuana

within last year

current

(22-23) Cocaine

within last year

current

(24-25) Heroin/Opiate

☐ within last year ☐ current

(26-27) Barbituate, Sedative, or Tranquilizer

☐ within last year ☐ current

(28-29) Amphetamine

☐ within last year ☐ current

(30-31) PCP

☐ within last year ☐ current

(32-33) Other (specify _____)

☐ within last year ☐ current

75 Treated for alcoholism
(34)
☐

0 = no
1 = yes
8 = n/a
9 = missing information

76 Treated for drug addiction
(35)
☐

0 = no
1 = yes
8 = n/a
9 = missing information

77 Did defendant admit to prior arrest
(36) *(from interview)
☐

0 = no 1 = yes

78 Did defendant admit to prior conviction
(37) *(from interview)
☐

0 = no 1 = yes

79 Defendant admitted spending a night
(38) in jail before *(from interview)
☐

0 = no 1 = yes

PRIOR CRIMINAL RECORD

80 Number of prior arrests
(39-40)

00 to
96 = number of prior arrests
97 = noted, number unknown
99 = missing information

*If item 80 = 00, code 98 for items 81-99

81 Number of recent prior arrests
(41-42) (within past three years of this case)

00 to
96 = number of recent prior arrests
97 = noted, number unknown
99 = missing information

82 Number of prior arrests for serious
(43-44) personal offenses
(see coding manual for listing of serious personal offenses)

00 to
96 = number of prior arrests for serious personal offenses
97 = noted, number unknown
99 = missing information

83 Number of prior arrests for serious
(45-46) property offenses

00 to
96 = number of prior arrests for serious property offenses
97 = noted, number unknown
99 = missing information

84 Number of prior arrests for drug
(47-48) offenses

00 to
96 = number of prior arrests for drug offenses
97 = noted, number unknown
99 = missing information

85 Number of prior arrests for drug
(49-50) possession only

00 to
96 = number of prior arrests for drug possession only
97 = noted, number unknown
99 = missing information

86 Number of prior arrests for drug
(51-52) manufacturing/sales/distribution offenses only

00 to
96 = number of prior arrests for drug manufacturing/sales/distribution offenses only
97 = noted, number unknown
99 = missing information

87 Number of prior arrests for weapon
(53-54) offenses (see coding manual for listing of weapon offenses)

00 to
96 = number of prior arrests for weapon offenses
97 = noted, number unknown
99 = missing information

88 Number of prior convictions
(55-56)

00 to
96 = number of prior convictions
97 = noted, number unknown
99 = missing information

89 Number of prior felony convictions
(57-58)

00 to
96 = number of prior felony convictions
97 = noted, number unknown
99 = missing information

90 Number of prior misdemeanor
(59-60) convictions

--	--

00 to

96 = number of prior misdemeanor
convictions

97 = noted, number unknown

99 = missing information

91 Number of prior convictions for
(61-62) serious personal offenses
(see coding manual for listing
of serious personal offenses)

--	--

00 to

96 = number of prior convictions for
serious personal offenses

97 = noted, number unknown

99 = missing information

92 Number of prior convictions for
(63-64) serious property offenses
(see coding manual for listing
of serious property offenses)

--	--

00 to

96 = number of prior convictions for
serious property offenses

97 = noted, number unknown

99 = missing information

93 Number of prior convictions for
(65-66) drug offenses

--	--

00 to

96 = number of prior convictions for
drug offenses

97 = noted, number unknown

99 = missing information

94 Number of prior convictions for
(67-68) drug possession offenses only

--	--

00 to

96 = number of prior convictions for
drug possession offenses only

97 = noted, number unknown

99 = missing information

95 Number of prior convictions for
(69-70) drug manufacturing/sales/
distribution offenses only

--	--

00 to

96 = number of prior convictions for
drug manufacturing/sales/
distribution offenses only

97 = noted, number unknown

99 = missing information

96 Number of prior convictions for
(71-72) weapon offenses

--	--

00 to

96 = number of prior convictions for
weapon offenses

97 = noted, number unknown

99 = missing information

97 On probation or parole at time
(73-74) of arrest

--	--

0 = no 1 = yes

9 = missing information

98 Record of appearance at prior
(75-76) felony court proceedings
(number of FTAs)

--	--

00 to

96 = number of Alias Capiases

97 = noted, number unknown

99 = missing information

99 Record of appearance at prior
(77-78) misdemeanor court proceedings
(number of FTAs)

--	--

00 to

96 = number of bench warrants

97 = noted, number unknown

99 = missing information

100 Number of outstanding warrants or
(79-80) detainers

--	--

00 to

96 = number of outstanding warrants or
detainers

97 = noted, number unknown

99 = missing information

CARD FIVE:

Sequence number
(1-5)

				5
--	--	--	--	---

101 Defendant is on pretrial release for
(6) a previous charge

--

0 = no

1 = yes, felony

2 = yes, misdemeanor

3 = yes, charge unknown

9 = missing information

102 Counsel appointed
(7)

--

0 = no

1 = yes, public defender

2 = yes, private counsel

9 = missing information

CASE FOLLOW-UP INFORMATION

103 Review: Current case disposed before
(8) 90 days ?

--

0 = no

1 = yes, dismissed (totally)

2 = yes, pled guilty

3 = yes, acquitted

4 = yes, found guilty

5 = diversion (PTI Guilt Withheld)

9 = missing information

104 Date of case disposition
(9-14)

--	--	--	--	--	--

(If item 103 = 1-5,
code disp. date)

month day year

888888 = case not disposed

DEFENDANT FOLLOW-UP INFORMATION

*If the defendant was released within 2 days
after bond hearing, complete section A. If
the defendant was released within 3 to 90
days after bond hearing, complete section B.

SECTION A

105 Failed to appear within 90 days
(15)

0 = no
1 = yes
8 = not released
9 = missing information

106 Date of first nonappearance in court
(16-21) (of AC or BW)

month day year
888888 = did not fail to appear

107 Bond estreature noted this case
(22)

0 = no 1 = yes 8 = n/a

108 Rearrested within 90 days of release
(23)

0 = no
1 = yes
8 = not released
9 = missing information

109 Most serious offense for which
(24-25) rearrested (see coding manual)

01 = miscellaneous
02 = public order
03 = weapons
04 = public administration
05 = other personal
06 = other property
07 = drugs (manufacture, delivery, sale)
08 = aggravated assault
09 = burglary
10 = robbery
11 = serious personal
97 = not released
98 = not rearrested
99 = missing information

110-111 Statute number of most
(26-32) serious offense Sev.

112 Date of first rearrest
(33-38)

month day year
888888 = n/a, not rearrested

SECTION B

113 Failed to appear within 90 days
(39)

0 = no
1 = yes
8 = not released
9 = missing information

114 Date of first nonappearance in court
(40-45) (of AC or BW)

month day year
888888 = did not fail to appear

115 Bond estreature noted this case
(46)

0 = no 1 = yes 8 = n/a

116 Rearrested within 90 days of release
(47)

0 = no
1 = yes
8 = not released
9 = missing information

117 Most serious offense for which
(48-49) rearrested (see coding manual)

01 = miscellaneous
02 = public order
03 = weapons
04 = public administration
05 = other personal
06 = other property
07 = drugs (manufacture, delivery, sale)
08 = aggravated assault
09 = burglary
10 = robbery
11 = serious personal
97 = not released
98 = not rearrested
99 = missing information

118-119 Statute number of most
(50-56) serious offense Sev.

120 Date of first rearrest
(57-62)

month day year
888888 = n/a, not rearrested

DRUG TEST RESULTS

121 Date of test
(63-68)

month day year

122 Number of drugs tested positively
(69)

1-5 = number of drugs tested positively
6 = more than 5
8 = n/a
9 = missing information

123 Which of the following drugs tested
positively on screening test ?

0 = no 1 = yes 9 = missing
8 = n/a, not tested
(70) marijuana

(71) cocaine

☐

(72) PCP

☐

(73) heroin

☐

(74) other opiates

☐

(75) amphetamines

☐

(76) alcohol

☐

(77) other _____

☐124 Blank
(78-80)☐☐☐

CARD SIX

Sequence number

(1-5)

☐☐☐☐☐6125 Which of the following drugs tested
positively on confirming test ?

0 = no 1 = yes 9 = missing

(6) marijuana

☐

(7) cocaine

☐

(8) PCP

☐

(9) heroin

☐

(10) other opiates

☐

(11) amphetamines

☐

(12) alcohol

☐

(13) other _____

☐ADDRESS OF DEFENDANT126 Address of defendant known ?

(14)

☐

0 = no 1 = yes

127 Print defendant's address

Number

(15-20)

☐☐☐☐☐☐

Street name

(21-40)

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

ST./Ave./etc.

(41-45)

City

(46-60)

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Zip code

(61-65)

☐☐☐☐☐☐128 Blank

(66-80)

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

CARD SEVEN

Sequence number

(1-5)

☐☐☐☐☐7

ADDRESS OF CRIME129 Address of crime known?

(6)

☐

0 = no

1 = yes

130 Print address of crime

Number

(7-12)

--	--	--	--	--	--	--

Street name

(13-32)

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

ST./Ave./etc.

(33-37)

--	--	--	--	--	--

City

(38-52)

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Zip code

(53-57)

--	--	--	--	--	--