United States General Accounting Office

# Report to the Chairman, Subcommittee on Courts, Intellectual Property, and the Administration of Justice, Committee on the Judiciary, House of Representatives



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November 13, 1989

The Honorable Robert W. Kastenmeier
Chairman, Subcommittee on Courts,
Intellectual Property and the
Administration of Justice
Committee on the Judiciary
House of Representatives

Dear Mr. Chairman:

As you requested, this report provides information on the impact of the Bail Reform Act of 1984 in selected district courts. We worked in four judicial districts—northern Indiana, Arizona, southern Florida, and eastern New York. Specifically, the report provides information on pretrial and post-conviction custody rates, reasons for custody, the length of time defendants were in custody, and sentencing outcomes for offenders kept in custody or released under the new law and the Bail Reform Act of 1966. The report also discusses judicial officers' views about information they received to assist them in making bail decisions.

As arranged with the Subcommittee, unless you publicly announce the contents of the report earlier, we plan no further distribution until 30 days from the date of this report. At that time, we will send copies to the Attorney General; the Chief Justice of the United States; the Chief Judge of each district court we visited; the Director, Administrative Office of the United States Courts; the Executive Office for U.S. Attorneys; and other interested parties.

The major contributors to this report are listed in appendix II. If you have any questions on this report, please call me on 275-8389.

Sincerely yours,

Lowell Dodge

Lowell Dodge
Director, Administration
of Justice Issues

# Executive Summary

## Purpose

The Chairman of the House Judiciary Committee's Subcommittee on Courts, Intellectual Property and the Administration of Justice requested that GAO examine the impact of the Bail Reform Act of 1984 in selected district courts. This law replaced the Bail Reform Act of 1966. The Chairman asked GAO to

- obtain court officials' views on changes in the number of persons held in custody before trial under the old and new bail laws;
- determine whether convicted offenders were held in custody while awaiting sentencing or pending resolution of their appeals;
- determine the length of time defendants were held in custody;
- compare sentencing outcomes for offenders held in pretrial custody with those for offenders released before their trials; and
- determine if judicial officers receive timely information to assist them in setting bail.

This report is the second prepared at the request of the Chairman that addresses the impact of the Bail Reform Act of 1984 in the selected courts. The first report dealt with initial bail or detention decisions, reviews and changes to these decisions, and crime on bail or failure by defendants to appear for court proceedings during the pretrial period.

## Background

In the federal criminal justice system, one of the first decisions a judicial officer (i.e., a federal judge or magistrate) makes after a defendant comes into federal custody is whether the defendant will be released or detained before trial. To decide, the judicial officer has a bail hearing to obtain information about the defendant.

The Bail Reform Act of 1984 greatly expanded the extent to which judicial officers can order defendants detained. It contains a provision that may be applied to certain defendants whom the law defines as flight or danger risks. The act also changed the basic instructions to judicial officers regarding release for convicted offenders pending imposition of sentences or resolution of their appeals.

The 1984 act directs judicial officers to detain convicted offenders unless they find by clear and convincing evidence that the offenders are not flight or danger risks. Before releasing appellants, judicial officers must additionally find that the appeals are not for delay and that they raise substantial questions of law or fact likely to result in reversal, an order for a new trial, or a sentence that does not include a term of imprisonment.

## Results in Brief

On the basis of its work in four of the 94 district courts, GAO estimates that pretrial custody rates (the percentage of defendants held in custody during the entire pretrial period) increased under the new law in three of the districts visited and it decreased in the fourth. The reasons that defendants are held in custody before trial under the new law have changed from those under the old law, with fewer being held because they did not pay financial bail and more being held because they are considered a flight and/or danger risk. Court officials GAO interviewed provided varying reasons for changes in the extent and nature of pretrial custody between the old and new bail laws.

GAO estimates that custody rates for offenders awaiting imposition of sentences increased slightly under the new law in three districts and decreased in the fourth. Further, court officials told GAO that offenders who appealed their cases were released more frequently under the old law than under the new law.

GAO estimates of the number of days defendants were in custody both before trial and during the post-conviction phase (from determination of guilt to sentencing) were about the same under both laws. Also, defendants released for all or a portion of the pretrial period received fewer prison sentences, and shorter sentences than defendants in custody the entire pretrial period.

Judicial officers who set bail in the four districts GAO visited did not always receive timely information on the backgrounds of defendants. However, they said when they did receive such information, it was useful in making bail decisions.

## GAO's Analysis

### Pretrial Custody

GAO's analysis of criminal cases showed that pretrial custody rates varied among the four districts, but overall an estimated 26 percent and 31 percent of defendants were in custody during the entire pretrial period under the old and new laws, respectively. In addition, all of the defendants in pretrial custody in the four districts under the old law were held because they did not pay the money bail set by the courts.

The reason for holding defendants changed under the new law with most defendants in three of the four districts being held because they

were considered to be a flight and/or danger risk. In the fourth district, failure to pay money bail remained the predominant reason for defendants remaining in custody. Court officials GAO interviewed provided varying reasons for changes in the extent of pretrial custody between the old and new bail laws; some attributed the change to the new law while others attributed the difference to changes in the types of defendants in the districts. (See p. 15.)

## Post-Conviction Custody

GAO estimates that there was a larger percentage of offenders detained while awaiting imposition of sentence under the new law than under the old law (39 versus 31 percent). Defendants in the four districts who appealed their convictions or sentences and who were sentenced to a term of imprisonment were released pending disposition of their appeals about 10 percent of the time under the new law. Court officials told GAO that appellants were released more frequently under the old law. (See p. 21.)

## Time in Custody

GAO found the new law had little impact on time defendants were held in custody. Defendants in custody during the entire pretrial period in the four districts were in custody an estimated average of 114 days under the old law and an estimated average of 106 days under the new law. The court may detain defendants between the time of a guilty verdict and the imposition of sentence. The post-conviction custody period for offenders in custody the entire pretrial period averaged an estimated 50 days under the old law and an estimated 56 days under the new law. (See p. 24.)

## Sentencing Outcomes

For offenders whose pretrial custody status was determined under the old law and who received a term of imprisonment, the median sentence imposed by the courts was (1) 48 months for those in custody the entire pretrial period, (2) 36 months for those who spent some period of time in pretrial custody, and (3) 12 months for offenders released during the entire pretrial period. For offenders who received a term of imprisonment and whose pretrial custody status was determined under the new law, GAO's analysis showed that the courts imposed similar median sentences. (See p. 25.)

## Recommendations

GAO is not making any recommendations.

## Agency Comments

GAO discussed this report with judicial branch and Department of Justice officials who agreed with the facts presented.

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## Tables



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# Introduction

In the federal criminal justice system, after a defendant comes into federal custody, a judicial officer (i.e., a federal judge or magistrate) must decide whether to release or detain the person before trial. Officials make similar decisions for defendants who are convicted of an offense while they are awaiting sentencing and/or the outcomes of appeals. The Bail Reform Act of 1984 replaces a 1966 statute, enabling judicial officers to detain defendants considered dangerous and/or likely to flee before trial who previously would have been released if they were able to meet the conditions of bail.

This is the second report prepared at the request of the Chairman of the House Judiciary Committee's Subcommittee on Courts, Intellectual Property and the Administration of Justice that addresses the impact of the Bail Reform Act of 1984. The first report dealt primarily with the bail decisions made during the pretrial period.[1]

## The Bail Process

Shortly after a person comes into federal custody, a judicial officer holds a bail hearing. The primary purpose of the hearing is to determine whether the defendant should be released on bail. At the hearing, the prosecutor and the defense attorney each make a recommendation to the judicial officer regarding bail. These recommendations are based on the defendant's background and criminal history, the charges against the defendant, the circumstances surrounding the arrest, and any other relevant information. In addition, probation or pretrial service officers, who work for the courts, are required to provide the judicial officers with background information on the defendant and to recommend appropriate release conditions.

On the basis of information provided during the hearing, the defendant may be: (1) released on personal recognizance, nonfinancial conditions such as unsecured appearance bond (i.e., a bond whereby the defendant promises to pay a specified amount of money if he/she fails to appear for a judicial proceeding), or compliance with other conditions relating to travel, custody, or treatment programs for drug or alcohol abuse; (2) released on condition that the individual meet financial bail conditions such as cash deposit, surety, or collateral bond; (3) kept in custody for failure to meet bail conditions; or (4) detained without bail (pretrial detention). In the latter case, the judicial officer must hold a separate

[1]The previous report was titled Criminal Bail: How Bail Reform Is Working in Selected District Courts, (GAO/GGD 88-6; Oct. 23, 1987). For the purposes of these reviews, we defined the pretrial period as the time between the date the defendant came into federal custody until either the date the defendant's trial began or the date a judicial officer accepted the defendant's guilty plea.

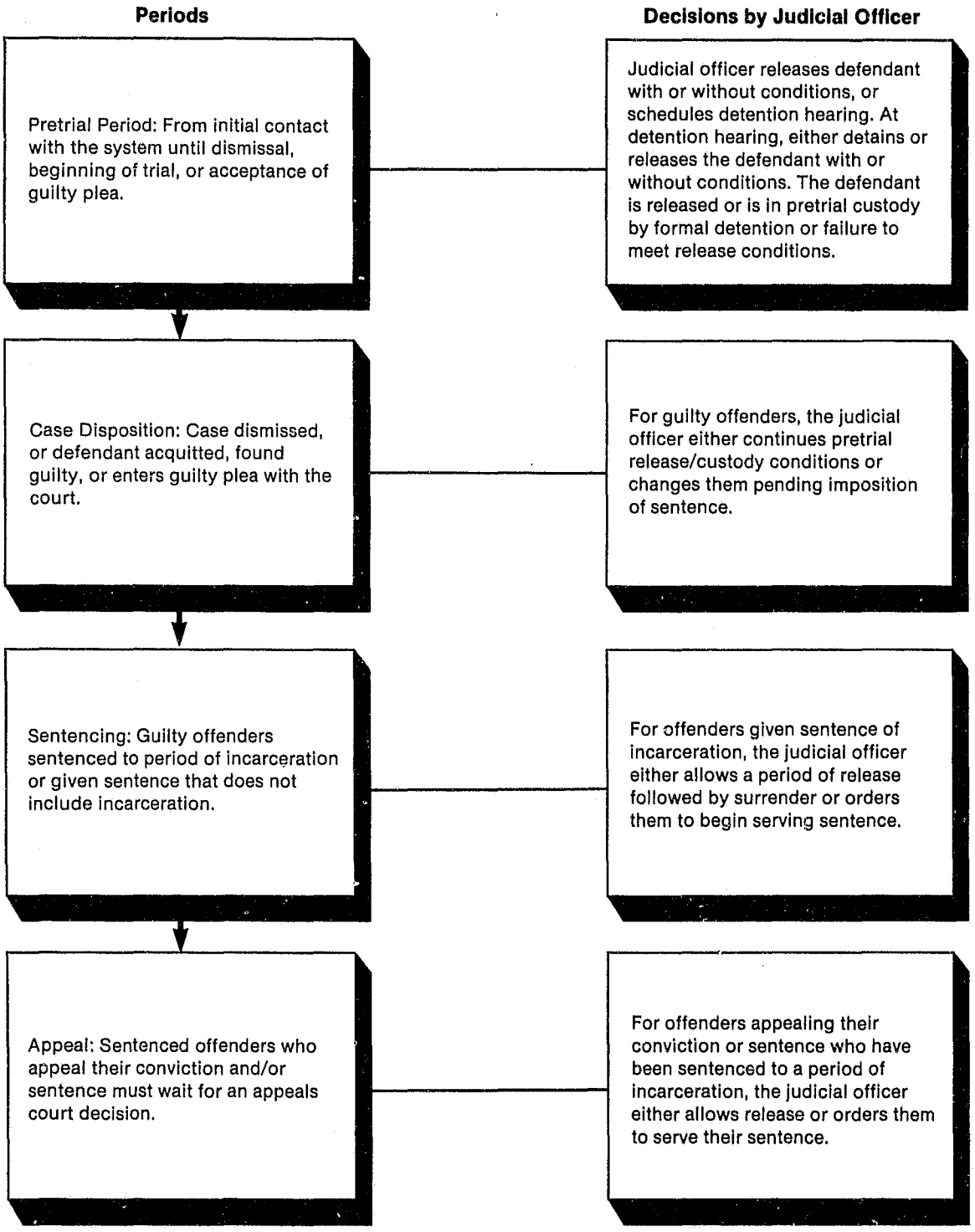
detention hearing to determine whether detention is warranted or whether any release condition(s) will ensure the person's appearance and the safety of the community.

Temporary detention (up to 10 working days) may also be ordered so that appropriate officials can be notified if it is determined that the defendant, when arrested, was on probation or parole as a result of a prior conviction, was not a citizen of the United States or had not been lawfully admitted for permanent residence. The defendant may also be detained temporarily if it is found that he or she was on bail for another criminal charge and may flee or pose a danger risk to others or the community.

Those persons later convicted of an offense may also be released from custody pending the imposition of a sentence and/or the outcome of appeals. The judicial officer must make a new determination to continue the initial custody decision, make release conditions more or less stringent, establish release conditions for a defendant held in pretrial custody, or remand a previously released defendant to custody.

Figure 1.1 illustrates the periods and decision points pertaining to release or custody of a federal defendant from pretrial to sentencing and appeal. It should be noted, however, that judicial officers can change release or detention decisions at any time during the judicial process.

Figure 1.1: Decision Points for Custody or Release of Federal Defendants



## Detention and Release Decisions Under the 1966 and 1984 Bail Reform Acts

The major difference between the 1966 and 1984 Bail Reform Acts is in the circumstances under which defendants are released or detained. The new law specified a wider range of defendants that can be detained as dangerous and provides specific criteria for identifying who is dangerous. By so doing, the new law was supposed to eliminate sub rosa detention, which refers to the setting of an extremely high money bail as an indirect method of detaining defendants considered dangerous.

Under the Bail Reform Act of 1966, the primary purpose of bail was to assure that the defendant appeared at judicial proceedings. To do this, a judicial officer could set financial and/or nonfinancial release conditions. The old law permitted a judicial officer to set money bail at an amount that would assure the defendant's appearance, whether the defendant could pay it or not. The dangerousness of defendants and the threat they posed to others while released on bail could be considered by judicial officers only if the defendant was charged with a capital offense (i.e., one punishable by death).

Under the 1966 bail law, judicial officers had to use the same release standards for those persons who had already been convicted and were awaiting sentencing as the officers do for pretrial defendants. Unless there was reason to believe that no condition of release would reasonably assure that these offenders would not flee or pose a danger to any other person or to the community, the person was to be released. The law also directed judicial officers to follow pretrial release standards for appellants unless there was reason to believe they would flee, posed a danger to any person or the community, or their appeals were frivolous or taken for delay.

The Bail Reform Act of 1984 was also aimed at assuring the appearance of defendants at judicial proceedings, but it greatly expanded the extent to which judicial officers could consider dangerousness in the bail setting process. In addition to capital offenses, as prescribed under the old law, defendants can be detained if charged with (1) a crime of violence;[2] (2) an offense for which the maximum sentence is life imprisonment or death; (3) a drug offense that has a maximum term of imprisonment of 10 years or more; or (4) any felony providing the defendant has two or more prior convictions for the above mentioned crimes. Defendants can

[2]A crime of violence is defined as an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or any felony that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense (18 U.S.C. Section 3156).

also be detained if judicial officers or prosecutors believe there is a serious risk either of flight or of obstruction of justice through injury, threat, or intimidation of a prospective witness or juror.

A new provision included in the 1984 act establishes a "rebuttable presumption" that may be applied to certain defendants. Under this provision, a defendant who has committed one of the crimes specified is presumed to be a flight or danger risk. Once facts are presented to establish that the defendant committed one of the specified crimes, the burden then falls on the defendant to produce evidence to rebut the presumption that he/she is not a flight or danger risk.

The 1984 act also provides guidance to judicial officers for detaining convicted persons while they await sentencing and/or the results of their appeals. A judicial officer is to order persons convicted of crimes to remain in custody unless there is clear and convincing evidence that they are not likely to flee or pose a danger to the community if released. Also, the officers must find that the appeals are not for the purpose of delay and that they raise substantial questions of law or fact likely to result in reversal, an order for a new trial, or a sentence that does not include a term of imprisonment.

## Objective, Scope, and Methodology

The objective of this review was to gather information about the impact of the 1984 act. We were asked to follow up on our October 1987 report, which dealt primarily with bail reform issues during the pretrial period. We were specifically asked about:

1) Court officials' views on the impact of the 1984 act on pretrial custody matters, including pretrial custody rates, why judicial officers did not detain defendants covered by the rebuttable presumption provisions of the new law and whether pretrial detention was used to coerce defendants to plead guilty;

2) Court officials' use of the new law to detain offenders after conviction;

3) The length of time defendants were held in custody;

4) Sentencing outcomes for offenders held in pretrial custody and those released before their trials; and

5) Pretrial services information provided to judicial officers before bail hearings to assist them in setting bail.

As agreed with the Subcommittee, we did our review in four of the 94 judicial districts—northern Indiana, Arizona, southern Florida, and eastern New York. We chose districts for our study with caseloads ranging from small to large. We selected Arizona, southern Florida, and eastern New York because our review of statistics from the Administrative Office of the United States Courts indicated that the rates of criminal defendants committing a new crime while on bail and failure to appear for judicial proceedings were high compared to other judicial districts. We selected northern Indiana because of its small caseload. We reviewed criminal cases and interviewed judiciary and Department of Justice officials in the four districts.

To obtain the views of judicial officials on the potential impacts of the Bail Reform Act of 1984, we interviewed at least three judicial officers and prosecutors, defenders, and probation and/or pretrial services officers in each district. We interviewed a total of 48 individuals.

To compare custody and sentencing rates and outcomes, we examined in each district a sample of felony defendants whose cases were initiated between January and June 1984 under the Bail Reform Act of 1966. We also looked at a second sample of criminal felony defendants whose cases were initiated between January and June 1986 under the new law. The sample cases were randomly selected from listings of criminal filings obtained from the Statistical Analysis and Reports Division of the Administrative Office of the United States Courts. These samples were the same as those used in our prior review of bail reform.

We analyzed the case files of 639 defendants whose cases were initiated under the old bail law and we projected the results to an adjusted universe of 2,086 defendants in the four districts. Similarly, we analyzed 747 defendants whose bail was set under the new law and projected the results to an adjusted universe of 2200 defendants in the four districts. Details on our sampling methodology and confidence intervals for all estimates in this report are presented in appendix I.

To determine how the new law's provisions covering bail pending appeal were being implemented, we examined all criminal cases filed in the four districts in calendar year 1986 and subsequently appealed. For these 511 cases, we examined the docket sheet (a chronology of activities for each case) and material in the court clerk's file as necessary to ascertain

the custody status of appellants during the period in which their appeals were being considered. We also questioned judicial officials to obtain information concerning custody or release of appellants under the old law.

We did our audit work from April 1988 to March 1989 using generally accepted government auditing standards. We spoke to responsible officials about our statistical analysis and incorporated their comments in the report where appropriate.

# Impact of 1984 Bail Law on Pretrial Custody Matters: Court Officials' Views

The predominant feeling of court officials in the four districts was that the new bail law was an improvement over the old and that it made the process more forthright and honest. Overall, 26 percent and 31 percent of defendants were in custody the entire pretrial period under the old and new laws, respectively; and pretrial custody rates varied among the four districts. The reasons they were in custody changed, however, with fewer defendants being held because they could not pay financial bail and more defendants being detained because they were considered to be a flight and/or danger risk. Court officials we interviewed provided varying reasons for changes in the extent of pretrial custody between the old and new bail laws; some attributed the change to provisions of the new law while others attributed the difference to changes in the types of defendants in the districts.

In those cases where the rebuttable presumption provisions applied, the courts sometimes found that evidence supplied by the defense supported release decisions and the defendants were therefore released. Court officials generally expressed the view that in these cases the defense overcame the burden of production of evidence imposed by the rebuttable presumption. Furthermore, court officials did not believe prosecutors were using the threat of pretrial detention as a means of coercing guilty pleas from defendants.

We also followed up on the Department of Justice plans to issue guidelines for prosecutors to use in deciding whether to seek detention or release of defendants. Justice has decided not to develop such guidelines and those prosecutors we talked to in the four districts told us that they did not believe such guidance was necessary.

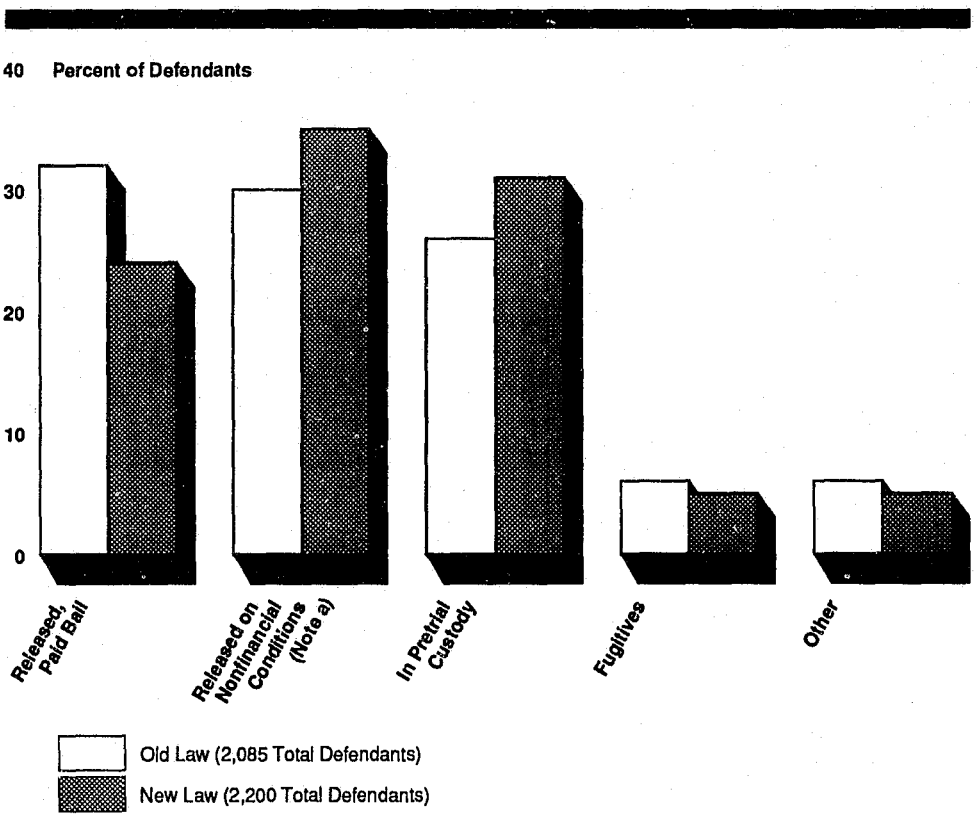
## Pretrial Custody Rates and the Basis for Custody Have Changed Under New Law

In our 1987 report on bail reform, we provided details on custody rates and the basis for custody under the old and new laws in four districts. We revisited those four districts, updated the data, and found that, for the most part, our estimates remained the same. Under the old law, we estimate that 534 of 2,086 defendants, or 26 percent, were in custody during the entire pretrial period, while under the new law, 687 of 2,200 defendants, or 31 percent, were held.

Other defendants included in our study who were not held in pretrial custody were (1) released on bail, (2) fugitive and never appeared for an initial judicial proceeding, or (3) not considered for bail for various reasons, such as they were already incarcerated for another offense. Figure

2.1 shows the overall results of our analysis of criminal cases in the four districts.

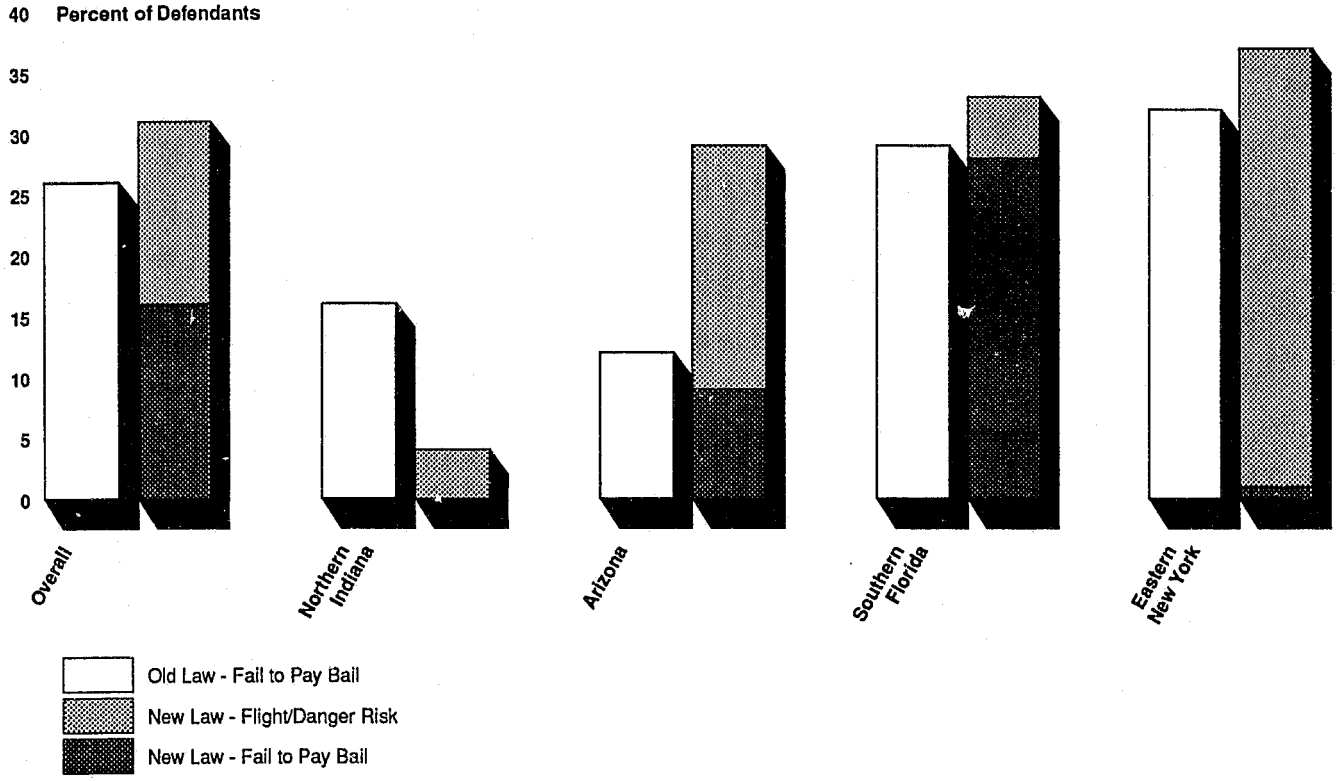
**Figure 2.1: Analysis of Criminal Defendants Under the Old and New Bail Laws**




Note: Includes defendants released on their own recognizance.

The pretrial custody rates varied among the districts. We estimate that pretrial custody rates increased in three districts (Arizona, southern Florida, and eastern New York) and it decreased in northern Indiana. In addition to the overall increase in pretrial custody, the basis for pretrial custody changed substantially. Under the old law, all defendants in pretrial custody were held because they failed to pay bail. Under the new law, defendants in pretrial custody were held because they failed to pay bail or were held as flight and/or danger risks. As shown in figure 2.2, the basis for custody varied across districts with the majority of defendants in northern Indiana, Arizona, and eastern New York being held because of flight and/or danger risk and defendants in southern Florida continuing to be held for failure to pay bail.

**Figure 2.2: Estimated Pretrial Custody Rates Under Old and New Bail Laws**




## Court Officials' Views of New Law's Impact on Pretrial Custody

Court officials in two districts (northern Indiana and Arizona), attributed the change in the pretrial custody rates in their districts to the change in the law. Court officials in the other two districts believed that the change did not result from the new law.

In northern Indiana, judicial officers told us the drop in the pretrial custody rate (from 16 to 4 percent) was expected because of the change in the basis for holding defendants in custody. They said the new law does not allow financial bail to be set in an amount the defendants cannot pay as was done under the old law. They said the only criteria under which defendants can be detained are those specified in the new law, and these are more limiting than the criteria for setting financial bail under the old law.

Judicial officers in the district of Arizona told us that the new law caused an increase in the district's pretrial custody rate (from 12 to 29 percent) because it allowed judicial officers to detain some types of

defendants who they might have released under the old law. For example, native Americans committing violent crimes on reservations in Arizona were released under the old law because they were not considered flight risks. The officials said that such native Americans are being detained under the new law because of the violent nature of the alleged acts.

In the southern district of Florida, the detention rates under the old and new laws were about the same (29 and 33 percent, respectively); therefore there was no apparent impact resulting from the new law. In this regard, one magistrate said the 4-percent increase in the detention rate was not noteworthy. Another magistrate told us the new law simply codified practices under the old law; that is, detention of defendants who were perceived as flight risks or a danger to the community. A third magistrate who commented on these detention rates said that the rates indicated that there was little impact on defendants' rights.

Judicial officers in eastern New York expressed the view that the 5-percent increase we estimated for their district (from 32 to 37 percent) was probably due more to an increasing number of defendants being charged with drug crimes than in the change in the bail law. They said that these types of drug defendants would probably have been held under high financial bail under the old law as well.

## Denial of Detention in Rebuttable Presumption Cases

As we discussed in our 1987 report, when the government moves for pretrial detention of a defendant, the prosecutor can benefit from the rebuttable presumption provisions in the new law. This provision presumes that certain types of defendants are flight and/or danger risks, shifting the burden to the defendant to produce evidence to show otherwise. Under the 1984 law, a prosecutor can invoke the rebuttable presumption if the judicial officer finds that the defendant

- committed a drug offense for which the maximum term of imprisonment is 10 years or more;
- used or possessed a firearm while committing a federal offense 18 U.S.C. Section 924(c); or
- committed a crime of violence, an offense for which the maximum sentence is life imprisonment or death, a serious drug offense, or any felony, if the defendant has a prior criminal record of two or more convictions for any of the first three offenses; and the defendant has a prior conviction for one of these crimes, the crime was committed while

the defendant was on release pending trial, and the defendant was convicted or was released from incarceration for the crime within the past 5 years.

The law authorizes but does not require the government or judicial officers to move for pretrial detention against defendants who meet the criteria for a rebuttable presumption. The legislative history (Senate Report No. 98-225, p.19) merely states that, for such defendants, a strong probability arises that no form of conditional release will be adequate. We previously reported that, in keeping with Department of Justice policy, federal prosecutors did not always seek pretrial detention when rebuttable presumptions applied. We also reported that, when prosecutors sought pretrial detention of defendants who qualified for the rebuttable presumption, they were successful 61 percent of the time. Judicial officers set release conditions for defendants the other 39 percent of the time.

We interviewed court officials in all four districts about the use of the rebuttable presumption in their districts. They said the decision as to whether a defendant will be detained hinges on evidence produced by both parties. Court officials told us that judges and magistrates sometimes denied detention for defendants in cases where rebuttable presumption was used by the prosecutor because the defense produced evidence that the defendant was not a serious flight and/or danger risk. To illustrate, a magistrate in Arizona told us about the detention hearings he held the day before our interview with him. Four defendants were considered in a drug conspiracy case and the rebuttable presumption provision was applicable. The magistrate issued detention orders for three of them and he released the fourth because testimony convinced him that there was a strong family relationship and because the defendant appeared to be less culpable than the others.

## Defense Attorneys' Views of the Possible Use of Detention to Coerce Guilty Pleas

We were asked to obtain defense attorneys' views about prosecutors' use of pretrial detention to coerce defendants to plead guilty. All 18 defense attorneys we interviewed told us they had neither observed nor heard of any instances in which federal prosecutors used detention, or the threat of it, to coerce defendants to plead guilty. In addition, 29 of 30 judges, magistrates, probation and pretrial services chiefs, and prosecutors we interviewed said they had never observed or heard of defendants being coerced into pleading guilty through the use or threat of pretrial detention. The other official told us he was in no position to know about any such possible activity.

## Justice Concluded Additional Guidance for Pretrial Detention Not Needed

We previously reported that federal prosecutors in the four districts used different criteria in seeking detention. The primary difference among the districts was in their application of the statutory presumption of dangerousness. Also, we previously reported that a Justice headquarters official told us that there was an ongoing study of the issue and that Justice believed it needed to provide more detailed guidance to prosecutors on when to seek pretrial detention.

However, in an April 1988 letter to the Subcommittee, the Assistant Attorney General, Office of Legislative Affairs, stated that additional guidance for prosecutors to use when seeking pretrial detention for dangerousness was not needed. Justice's position was based on the prosecutors' need for flexibility in making release or detention recommendations. Justice said that decisions concerning detention requests require that attorneys most familiar with individual cases and local circumstances be permitted to exercise discretion and good judgment.

To ascertain whether Justice provided any additional guidance since our October 1987 report we reviewed the chapter in the U.S. Attorney's Manual concerning release and detention of defendants and found that the guidance provided had not changed. Furthermore, prosecutors we interviewed in the four districts all expressed a need for discretion in their application of possible detention provisions of the act. None saw any need for additional guidance.

# Offenders Held in Custody After Conviction

We estimate that, in the four districts we visited, about 31 percent and 39 percent of persons convicted were detained while awaiting sentencing under the old and new laws, respectively. Furthermore, under the new law, most offenders who appealed their conviction or sentence were in custody during the appeals process.

## Detention While Awaiting Sentencing

The 1984 law changed the instructions to judicial officers regarding the release or detention of offenders awaiting imposition of their sentences. The 1966 bail law provided for the release of these offenders unless there was reason to believe the offenders would flee or pose a danger to any individual or the community, thereby establishing a probability for post-conviction release. In contrast, the 1984 bail law directed the judicial officer to detain these offenders unless evidence was found that warranted release, thereby creating a probability against post-conviction release.

Our analysis of criminal cases in the four districts showed an increase in the detention rates between the old law and new law for offenders awaiting sentencing. Of the 2,086 old law defendants, we estimate that a post-conviction bail decision was made for 1404 offenders who were awaiting sentencing. We estimate that 434 of the 1404 offenders (31 percent) were detained while awaiting imposition of sentence. For the 2,200 new law defendants, we estimate that a post-conviction bail decision was made for 1667 who were awaiting sentencing. Of the 1667 offenders, we estimate that 656 offenders (39 percent) were detained while awaiting imposition of sentence.

Just as we found with pretrial detention, post-conviction detention rates varied among the districts. Post-conviction detention rates increased by about 10 percentage points in Arizona, southern Florida, and eastern New York, and decreased by about 15 percentage points in northern Indiana.

It should be noted that in almost every case offenders who were in custody during their entire pretrial periods were kept in custody while awaiting imposition of sentence. Similarly, offenders who were released during the pretrial period were generally released to await imposition of sentence. The increase in the percentage of offenders held in custody pending sentence imposition thus reflected the increase in pretrial custody. Table 3.1 shows a comparison of post-conviction bail decisions for offenders awaiting sentencing under the old and new laws by their pretrial custody status.

**Table 3.1: Estimated Number of Offenders Held in Custody While Awaiting Sentencing**

| | Old Law | | | | New Law | | | |
|---|---|---|---|---|---|---|---|---|
| Pretrial Custody Status | Total | Held in Custody | Released | Percent in Custody | Total | Held in Custody | Released | Percent in custody |
| Confined entire pretrial period | **396** | 393 | 3 | 99% | **607** | 591 | 16 | 97% |
| Confined part of pretrial period | **621** | 40 | 581 | 6 | **606** | 62 | 544 | 10 |
| Released | **387** | 1 | 386 | 0 | **454** | 3 | 451 | 1 |
| **Total** | **1,404** | **434** | **970** | **31%** | **1,667** | **656** | **1,011** | **39%** |

## Detention While Awaiting Outcome of Appeals

The 1966 bail law directed judicial officers to release offenders who filed appeals unless there was reason to believe they were a flight risk or posed a danger to an individual or the community, or if it appeared the appeal was frivolous or instituted for delay. The 1984 bail law directs judicial officers to keep appellants in custody unless (1) there is clear and convincing evidence that these appellants are not likely to flee or pose a danger to any individual or the community, and (2) the appeal is not for the purpose of delay and that it raises a substantial question of law or fact likely to result in reversal, an order for a new trial, or a sentence that does not include a term of imprisonment.

Cases we reviewed that were initiated under the old law were appealed after the new law was enacted and release or detention decisions reflected the provisions of the new law. In addition, we were concerned that our sample would not produce a sufficient number of appeals for us to reliably project detention rates. Therefore, we did not make such projections. Instead, we analyzed court records for all criminal cases in the four districts that were initiated in 1986 where the person was convicted and sentenced to incarceration and where the conviction and/or sentence was appealed, and we talked to court officials about their experiences with the old and new laws.

Of the 511 persons who appealed their conviction and/or prison sentence, 462 (90 percent) were in custody while their appeals were being processed. Table 3.2 depicts the number of appellants in our review who were detained or released, on a district-by-district basis.

**Table 3.2: Custody Status of Appellants Pending Resolution of Their Appeals**

| District | Total appeals[a] | Appellants released | Percent | Appellants in custody[b] | Percent |
|---|---|---|---|---|---|
| Northern Indiana | 8 | 0 | 0% | 8 | 100% |
| Arizona | 54 | 4 | 7 | 50 | 93 |
| Southern Florida | 320 | 29 | 9 | 291 | 91 |
| Eastern New York | 129 | 16 | 12 | 113 | 88 |
| **Total** | **511** | **49** | **10%** | **462** | **90%** |

[a]These numbers are actual numbers of appellants who appealed their conviction and/or sentence from all criminal cases that were initiated in the four districts during calendar year 1986.

[b]This category includes two offenders who were fugitives because they failed to surrender as directed by the court.

Judges and other court officials in three of the districts (northern Indiana, southern Florida, and eastern New York) told us that appellants were much more likely to be in custody under the 1984 law than under the 1966 law. In the Arizona district, court officials were not able to provide us with a comparison of the custody of appellants under the old and new law.

# Defendants' Length of Custody Under Old and New Laws

We estimate that the number of days persons remained in custody (whether during the pretrial period or the post-conviction period) was about the same under both laws. Furthermore, under both laws, offenders in custody for the entire pretrial period were sentenced to imprisonment more often and for longer periods than offenders who were released during the pretrial period.

## Length of Custody From Arrest to Sentencing

The average time offenders remain in custody from arrest to sentencing was about the same under both laws (158 days under the old law, 162 days under the new law). For defendants in the four districts who were in custody their entire pretrial periods, we estimate that the pretrial custody periods averaged 114 days for defendants whose bail decisions were made under the old law and 106 days for defendants whose bail decisions were made under the new law. For defendants in pretrial custody for only a part of their pretrial periods, we estimate this custody to average 22 days under both laws.

These averages varied among the districts we visited. Table 4.1 shows estimated pretrial custody periods for defendants in custody their entire pretrial periods and for those in custody only part of their pretrial periods.

**Table 4.1: Estimated Days of Pretrial Custody Under the Old and New Bail Laws by Pretrial Custody Status and by District**

| | Pretrial Custody | |
|---|---|---|
| **District** | **Old law** | **New law** |
| Northern Indiana | | |
| Confined entire pretrial period | 91 | 88 |
| Confined part of pretrial period | 13 | 10 |
| Arizona | | |
| Confined entire pretrial period | 74 | 91 |
| Confined part of pretrial period | 29 | 14 |
| Southern Florida | | |
| Confined entire pretrial period | 135 | 115 |
| Confined part of pretrial period | 21 | 22 |
| Eastern New York | | |
| Confined entire pretrial period | 79 | 100 |
| Confined part of pretrial period | 14 | 29 |

Those defendants in custody during the entire pretrial period generally remained in custody during the period from a finding of guilt to sentencing. The post-conviction custody period for those defendants averaged 50 days under the old law and 56 days under the new law.

## Sentencing Outcomes

We estimate that offenders who had been in custody during the entire pretrial period under both the old and new laws were twice as likely to be incarcerated for their crimes as those who had not been in pretrial custody. About 95 percent of those offenders in custody during the entire pretrial period were incarcerated compared to about 44 percent of those offenders who had no pretrial custody. About 69 percent of the offenders in custody part of the pretrial period were incarcerated.

In addition, the median sentences were greater for those who were in custody the entire pretrial period when compared to median sentences for offenders with no pretrial custody. We estimate that the median sentence for those offenders in custody the entire pretrial period was about 48 months, compared to the median sentence for those with no pretrial custody, which was about a year. We estimate that the median sentence for offenders in custody part of the pretrial period was about 36 months.

We discussed these results with judges, magistrates, prosecutors, defenders, and pretrial services staff in the four districts. They attributed the differences to the characteristics of defendants and crimes, not to the defendants' pretrial custody status. They told us, however, that more severe outcomes in terms of incarceration and length of incarceration for defendants in pretrial custody most likely came about because of the same conditions that led to pretrial custody. These conditions include the severity of the crime and criminal history of the offender.

# Pretrial Services Information Is Useful but Not Always Timely

Under the Pretrial Services Act of 1982, pretrial services officers or probation officers in the district courts are required to collect, verify, and report to judicial officers before the bail hearings, background information on all persons charged with a misdemeanor or felony, and to recommend appropriate release conditions for such individuals. This information is intended to assist judicial officers in setting bail and release conditions. Magistrates we interviewed in the four judicial districts we visited said that information they received was useful, but it is not always provided as required. The Pretrial Services Act Information System[1] data also indicate that magistrates are not always given the information.

## Usefulness of Pretrial Services Information

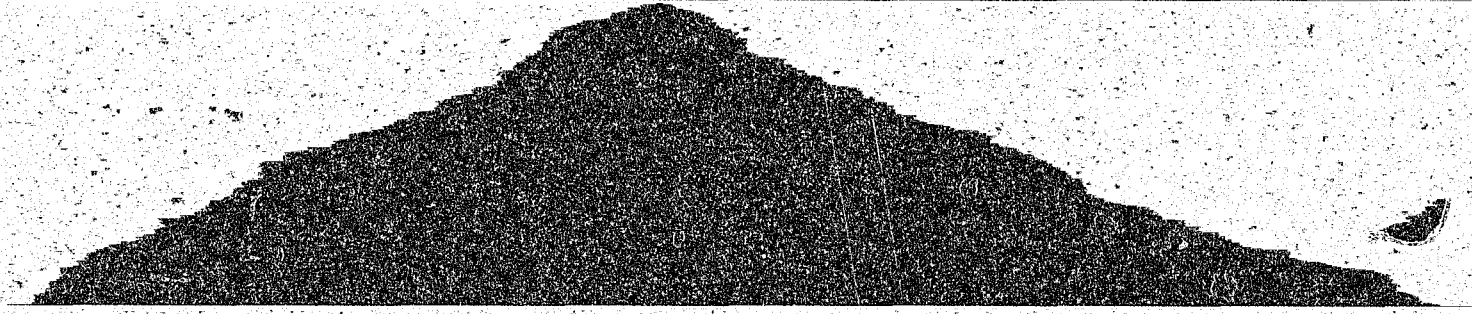
The principal method for obtaining information about each defendant is through an interview with the defendant. Information obtained during the interview includes (1) ties to the community, (2) employment and financial data, (3) substance abuse history, and (4) criminal history and pending criminal charges. Pretrial services officers or probation officers are to verify this information by various means, such as checking for a prior criminal record and calling individuals acquainted with the defendant. The information obtained is provided to the prosecutor, defense attorney, and judicial officer at the bail hearing in a pretrial report.

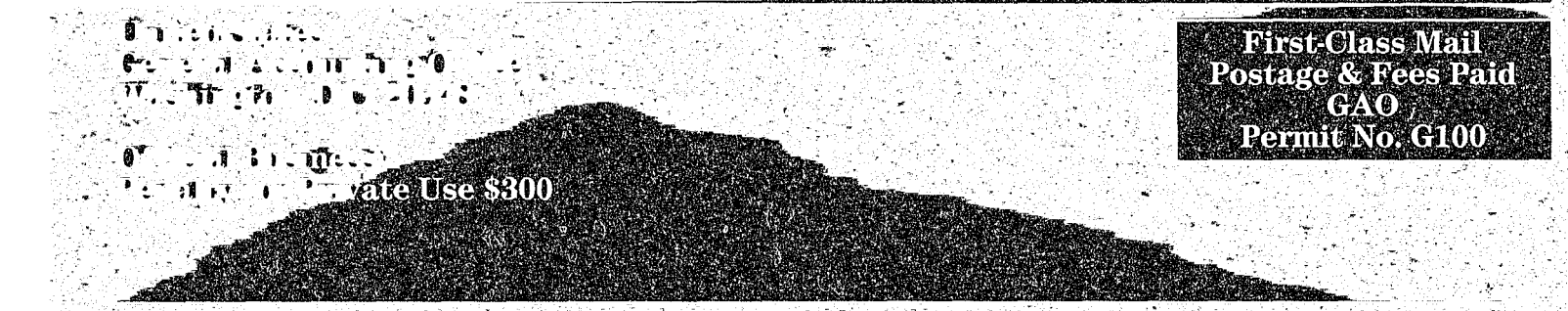
All 15 magistrates we interviewed in the four districts told us that pretrial services reports are useful. Generally, the magistrates believed that the information contained in the report enabled them to make more informed judgments about the defendants. One magistrate said it reduces the time necessary for the bail hearings because participants had access to the pretrial services report at the hearings and only contested items were discussed. Another magistrate said that without pretrial services reports she had to make decisions on generally conflicting information provided by the prosecutor and defense attorney.

## Availability of Pretrial Services Information

Four of the 15 magistrates experienced problems with timeliness of pretrial services information. In addition, data from the Pretrial Services Act Information System for court statistical year 1988 (12 months ending June 30, 1988) indicated that pretrial services information was almost always available in two districts (northern Indiana and eastern

[1]This system is used by the Administrative Office of the U.S. Courts to meet the Pretrial Services Act of 1982 requirement to monitor and evaluate bail activities.





New York) and was available to judicial officers in Arizona and southern Florida 69 percent and 84 percent of the time, respectively. Table 5.1 shows pretrial services report availability for bail hearings in the four districts for this period.

**Table 5.1: Report Availability for Bail Hearings** (For 12 Months Ending June 30, 1988)

| District | Pretrial services act cases activated[a] | Reports available | Availability rate |
|---|---|---|---|
| Northern Indiana | 315 | 310 | 98% |
| Arizona | 1,275 | 883 | 69 |
| Southern Florida | 2,547 | 2,140 | 84 |
| Eastern New York | 1,269 | 1,253 | 99 |

[a]A case is to be activated for every criminal defendant.
Source: Pretrial Services Act Statistical Information for Statistical Year 1988.

The Chief of Pretrial Services for the District of Arizona explained that the 69-percent rate in Arizona resulted primarily from problems in the Tucson Division. One of these problems is that the volume of defendants makes it very difficult to interview them all. Another is that court sessions are held at a specific time each day and when defendants are brought in too close to that time, there is insufficient time to interview them, verify information, and prepare a report. The Chief also pointed out that court statistical year 1988 is somewhat atypical in that for a period of about a month, there were no prebail hearing interviews or reports in Tucson. These contacts were suspended by direction of the Tucson magistrates until questions about the propriety of pretrial services staff interviewing defendants before these defendants consulted with counsel were resolved.

The Chief told us that, to compensate for the lack of prebail reports in Tucson, the Tucson office stratifies defendants and interviews first those who are most likely to qualify for release on bail. For example, U.S. citizens charged with misdemeanors are likely to be interviewed first and illegal aliens charged with importing significant quantities of drugs are likely to be interviewed last or not at all since there is little chance they could be released.

The Chief of Pretrial Services in southern Florida cited two reasons the pretrial reports were not available at the time defendants appear for their bail hearing. First, one of the courts usually holds hearings at a specific time each morning and there is not enough time to do the pretrial report for those persons arrested just before that time. Second, the pretrial services officers were not aware of the defendants' appearance

before the magistrates and thus did not prepare a pretrial report. The Chief of Pretrial Services said that he has established procedures with the U.S. Attorney's office for notifying pretrial services officers about defendants' appearances before magistrates.

# Sampling Methodology and Statistical Projections

This appendix describes how we selected our sample of criminal case files, and how we projected the sample data. Confidence limits for the major figures in the report are included in this appendix.

## Sampling Methodology and Analysis

We selected a stratified sample of 605 defendants whose bail was set under the old bail law (cases were initiated between January and June 1984) and a second sample of 613 defendants whose bail was set under the new bail law (cases were initiated between January and June 1986). Our sample cases were randomly selected from listings of criminal filings obtained from the Statistical Analysis and Reports Division of the Administrative Office of the United States Courts.

In the earlier review, we were specifically interested in defendants who were held under pretrial detention, committed new crimes while released on bail, or failed to appear for at least one scheduled judicial proceeding. As a part of that review, we attempted to identify manually all defendants in these three categories in the four courts whose cases were initiated during the January through June 1984 and 1986 time periods. However, we did not analyze all pretrial detention cases in the eastern New York district because of the large volume of defendants in the category (185). Instead, we increased the size of our basic random sample for the period of January through June 1986 for the district. We examined all these supplementary case selections in this review.

We analyzed the criminal case files of 639 defendants—605 from the random sample and 34 manually selected—whose cases were initiated under the old bail law and we projected the results to an adjusted universe of 2,086 defendants in the four districts. Similarly, we analyzed 747 defendants—613 from the random sample and 134 manually selected—whose bail was set under the new bail law and projected the results to an adjusted universe of 2,200 defendants in the four districts. In most instances, numbers and percentages are rounded up or down to the nearest whole number. Table I.1 presents the universe and sample sizes for each of the districts and overall for both bail laws' time analysis periods.

## Projection of Sample Results and Sampling Errors

Statistical sampling enables us to draw conclusions about the universe of interest on the basis of information in a sample of that universe. The results of a statistical sample are always subject to some uncertainty or sampling error because only a portion of the universe has been selected for analysis. Our particular sample of defendants is only one of a large number of samples of equal size and design that could have been selected. Each of these samples that produce a different value for most characteristics being estimated. An estimate's sampling error measures the variability among the estimates obtained for all the possible samples. From the sample estimate, together with an estimate of its sampling error, interval estimates can be constructed with prescribed confidence that the interval includes the average result of all possible samples. All confidence intervals are reported at the 95-percent level of confidence. That is, for the projections in this appendix, the chances are 95 in 100 that the actual value would be between the ranges shown.

**Table I.1: Universe and Sample Sizes**

| District | SARD universe[a] | Adjusted universe[b] | Random sample | Manual sample | Total sample |
|---|---|---|---|---|---|
| 01/01/84 -06/30/84 | | | | | |
| Northern Indiana | 86 | 86 | 86 | 0 | **86** |
| Arizona | 450 | 445 | 175 | 11 | **186** |
| Southern Florida | 1,169 | 1,157 | 191 | 23 | **214** |
| Eastern New York | 419 | 398 | 153 | 0 | **153** |
| **Total** | **2,124** | **2,086** | **605** | **34** | **639** |
| 01/01/86 -06/30/86 | | | | | |
| Northern Indiana | 145 | 129 | 89 | 3 | **92** |
| Arizona | 474 | 457 | 154 | 65 | **219** |
| Southern Florida | 1,190 | 1,097 | 190 | 59 | **249** |
| Eastern New York | 565 | 517 | 180 | 7 | **187** |
| **Total** | **2,374** | **2,200** | **613** | **134** | **747** |

[a]Universe obtained from the Statistical Analysis and Reports Division (SARD) of the Administrative Office of the United States Courts.

[b]The Statistical Analysis and Reports Division universe included cases which were not felonies or were commenced outside the selected 6-month periods. The adjusted universe reflects the smaller universe after the cases which did not meet our criteria were dropped.

For each case reviewed, we examined the docket sheet, the court clerk's file, the Probation Office's presentence investigation report (if one had been prepared and could be located), or information from the pretrial services officers if a presentence investigation report was not available. In a substantial number of 1986 sample cases in eastern New York, the official court records did not give specific information about the outcome of the initial bail hearing. In those instances, we used information from personal records maintained by the head of the pretrial services unit of the Probation Office.

There are limits to the conclusions that can be drawn from a study that compares two samples drawn from cases initiated at two different points in time, 2 years apart. Although we attempted to control for as many of these factors as possible in order to construct equivalent groups, we recognize that the two groups may differ in unanticipated ways due to variations over time in the mix of defendant characteristics, case variables, and particularly, systems variables. The latter would include, for example, changes in prosecution policies, court practices, and major law enforcement efforts; changes in district idiosyncrasies; and historical effects, which may have introduced an unknown bias into our sample.

**Table I.3: Confidence Limits at 95-Percent Confidence Level for Mean Day Estimates Based on Old Law Sample**

| Category by district | Mean in days | | |
|---|---|---|---|
| | Observed rate | Upper confidence level | Lower confidence level |
| In custody from arrest to sentence | | | |
| Combined districts | 158 | 190 | 126 |
| In custody entire pretrial period | | | |
| Northern Indiana | 91 | 91 | 91 |
| Arizona | 74 | 93 | 55 |
| Southern Florida | 135 | 190 | 80 |
| Eastern New York | 79 | 101 | 58 |
| Combined districts | 114 | 139 | 89 |
| In custody part of pretrial period | | | |
| Northern Indiana | 13 | 13 | 13 |
| Arizona | 29 | 50 | 8 |
| Southern Florida | 22 | 44 | 5 |
| Eastern New York | 14 | 25 | 4 |
| Combined districts | 22 | 35 | 10 |
| Custody—guilt to sentence for those who were in custody entire pretrial period | | | |
| Combined districts | 50 | 71 | 29 |
| Custody—guilt to sentence for those who were in custody part of pretrial period | | | |
| Combined districts | 7 | 18 | 2 |
| Custody—guilt to sentence for those who had no pretrial custody | | | |
| Combined districts | [a] | [a] | [a] |

[a]Confidence limits for combined district average not calculable because there was only one offender in this category in all four districts which received any post-guilt detention.

**Table I.2: Confidence Limits at 95-Percent Confidence Level for Percentage Estimates Based on Old Bail Law Sample**

| Category by district | Percentages | | |
|---|---|---|---|
| | Observed rate | Upper confidence level | Lower confidence level |
| Pretrial custody because of failure to pay money bond | | | |
| Northern Indiana | 16 | 16 | 16 |
| Arizona | 12 | 16 | 8 |
| Southern Florida | 29 | 35 | 23 |
| Eastern New York | 32 | 38 | 27 |
| Combined districts | 26 | 29 | 22 |
| Release on money bail | | | |
| Combined districts | 32 | 36 | 28 |
| Release on nonfinancial conditions | | | |
| Combined districts | 30 | 34 | 27 |
| Fugitive cases | | | |
| Combined districts | 6 | 8 | 4 |
| Other category cases | | | |
| Combined districts | 6 | 8 | 4 |
| Offenders detained awaiting sentence who were in custody entire pretrial period | | | |
| Combined districts | 99 | 100 | 97 |
| Offenders detained awaiting sentence who were in custody part of pretrial period | | | |
| Combined districts | 7 | 13 | 3 |
| Offenders detained awaiting sentence who had no pretrial custody | | | |
| Combined districts | 0 | 1 | 0 |
| Offenders detained awaiting sentence who had a pretrial custody decision | | | |
| Northern Indiana | 21 | 21 | 21 |
| Arizona | 25 | 33 | 16 |
| Southern Florida | 32 | 50 | 15 |
| Eastern New York | 35 | 48 | 22 |
| Combined districts | 31 | 39 | 23 |
| Offenders sentenced to incarceration who were in custody entire pretrial period | | | |
| Combined districts | 94 | 98 | 87 |
| Offenders sentenced to incarceration who were in custody part of pretrial period | | | |
| Combined districts | 67 | 80 | 55 |
| Offenders sentenced to incarceration who had no pretrial custody | | | |
| Combined districts | 44 | 56 | 32 |

**Table I.4: Confidence Limits at 95-Percent Confidence Level for Offender Estimates Based on Old Law Sample**

| | Offenders | | |
|---|---|---|---|
| Category by district | Estimated number | Upper confidence level | Lower confidence level |
| Offenders for whom a post-conviction custody decision was made | | | |
| Northern Indiana | 70 | 70 | 70 |
| Arizona | 237 | 250 | 214 |
| Southern Florida | 749 | 825 | 656 |
| Eastern New York | 348 | 351 | 336 |
| Combined districts | 1404 | 1471 | 1336 |
| Offenders detained post-conviction | | | |
| Northern Indiana | 15 | 15 | 15 |
| Arizona | 58 | 89 | 27 |
| Southern Florida | 241 | 371 | 110 |
| Eastern New York | 120 | 166 | 75 |
| Combined districts | 434 | 541 | 327 |

**Table I.5: Confidence Limits at 95-Percent Confidence Level for Percentage Estimates Based on New Bail Law Sample**

| | Percentages | | |
|---|---|---|---|
| Category by district | Observed rate | Upper confidence level | Lower confidence level |
| Pretrial custody because of failure to pay money bond | | | |
| Northern Indiana | 0 | 2 | 0 |
| Arizona | 9 | 13 | 6 |
| Southern Florida | 28 | 33 | 22 |
| Eastern New York | 1 | 3 | 0 |
| Combined districts | 16 | 19 | 13 |
| Pretrial custody because of flight/danger risk | | | |
| Northern Indiana | 4 | 6 | 4 |
| Arizona | 20 | 21 | 18 |
| Southern Florida | 5 | 7 | 5 |
| Eastern New York | 36 | 38 | 35 |
| Combined districts | 15 | 17 | 15 |
| Pretrial custody for both reasons | | | |
| Northern Indiana | 4 | 9 | 4 |
| Arizona | 29 | 38 | 20 |
| Southern Florida | 33 | 45 | 21 |
| Eastern New York | 36 | 48 | 25 |
| Combined districts | 31 | 37 | 26 |
| Release on money bail | | | |
| Combined districts | 24 | 27 | 20 |
| Release on nonfinancial conditions | | | |
| Combined districts | 36 | 39 | 33 |
| Fugitive cases | | | |
| Combined districts | 5 | 6 | 3 |
| Other category cases | | | |
| Combined districts | 5 | 7 | 3 |
| Offenders detained awaiting sentence who were in custody entire pretrial period | | | |
| Combined districts | 97 | 99 | 94 |

| Category by district | Percentages | | |
|---|---|---|---|
| | Observed rate | Upper confidence level | Lower confidence level |
| Offenders detained awaiting sentence who were in custody part of pretrial period | | | |
| Combined districts | 10 | 18 | 2 |
| Offenders detained awaiting sentence who had no pretrial custody | | | |
| Combined districts | 1 | 3 | 0 |
| Offenders detained awaiting sentence who had a pretrial custody decision | | | |
| Northern Indiana | 6 | 14 | 6 |
| Arizona | 34 | 45 | 23 |
| Southern Florida | 42 | 57 | 28 |
| Eastern New York | 43 | 56 | 31 |
| Combined districts | 39 | 46 | 32 |
| Offenders sentenced to incarceration who were in custody entire pretrial period | | | |
| Combined districts | 96 | 99 | 92 |
| Offenders sentenced to incarceration who were in custody part of pretrial period | | | |
| Combined districts | 74 | 85 | 62 |
| Offenders sentenced to incarceration who had no pretrial custody | | | |
| Combined districts | 46 | 59 | 33 |

**Table I.6: Confidence Limits at 95-Percent Confidence Level for Mean Day Estimates Based on New Law Sample**

| Category by district | Mean in days | | |
|---|---|---|---|
| | Observed rate | Upper confidence level | Lower confidence level |
| In custody from arrest to sentence | | | |
| Combined districts | 162 | 180 | 143 |
| In custody entire pretrial period | | | |
| Northern Indiana | 88 | 88 | 88 |
| Arizona | 91 | 107 | 76 |
| Southern Florida | 115 | 142 | 87 |
| Eastern New York | 100 | 130 | 69 |
| Combined districts | 106 | 120 | 92 |
| In custody part of pretrial period | | | |
| Northern Indiana | 10 | 23 | 9 |
| Arizona | 14 | 23 | 6 |
| Southern Florida | 22 | 44 | 1 |
| Eastern New York | 29 | 75 | 12 |
| Combined districts | 22 | 36 | 7 |
| Custody—guilt to sentence for those whe were in custody entire pretrial period | | | |
| Combined districts | 56 | 64 | 48 |
| Custody—guilt to sentence for those who were in custody part of pretrial period | | | |
| Combined districts | 7 | 13 | 3 |
| Custody—guilt to sentence for those who had no pretrial custody | | | |
| Combined districts | [a] | [a] | [a] |

[a]Confidence limits for combined district average not calculable because there was only one offender in this category in all four districts with any post-guilt detention.

**Table I.7: Confidence Limits at 95-Percent Confidence Level for Offender Estimates Based on New Law Sample**

| Category by district | Offenders | | |
|---|---|---|---|
| | Estimated number | Upper confidence level | Lower confidence level |
| Offenders for whom a post-conviction custody decision was made | | | |
| Northern Indiana | 72 | 77 | 61 |
| Arizona | 337 | 354 | 311 |
| Southern Florida | 800 | 838 | 743 |
| Eastern New York | 458 | 465 | 440 |
| Combined districts | 1667 | 1728 | 1605 |
| Offenders detained post-conviction | | | |
| Northern Indiana | 4 | 10 | 4 |
| Arizona | 113 | 149 | 77 |
| Southern Florida | 338 | 455 | 221 |
| Eastern New York | 200 | 257 | 142 |
| Combined districts | 656 | 771 | 540 |

# Major Contributors to This Report

| | |
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