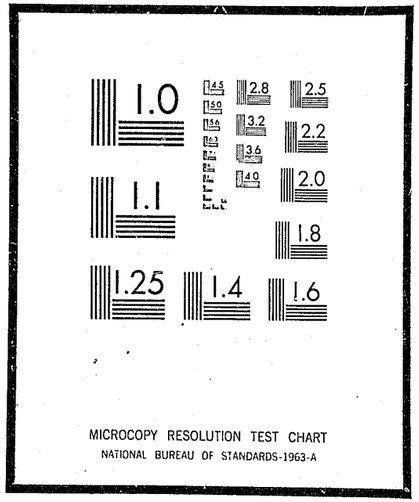

The Pretrial Process in the Sixth Circuit: A Quantitative and Legal Analysis

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Special recognition should also be extended to the New Haven Foundation and the Law School for their matching contributions to the cost of this study. This report is the third in a series of examinations of the administration of pretrial justice in New Haven which has benefited from the continuing support from the New Haven Foundation. Needless to say this interest and support is most welcome and appreciated.

Finally I want to express appreciation to Deborah Anderson and Edna Marcarelli for their heroic typing efforts.

List of Tables

Summary of Major Findings and Observations in Part I

The following list of statements is an attempt to briefly summarize the major findings and observations of the study. This list, however, should be read precisely for what it is, a brief summary. The reader is urged not to substitute the statements below for a reading of the study, since frequently these observations can only properly be understood in their textual setting where they are frequently surrounded by amplification, qualification, and speculation. By themselves they can erroneously reduce an elaborate and complex process to a unidimensional and false picture. The summary is intended as a convenient introduction and guide to the text, as a reference source, and it is hoped that it will only be used in this way.

Characteristics of The Defendants and Cases

1) Sixth Circuit Court dispositions account for roughly 95% of all criminal dispositions in New Haven (excluding motor vehicle and intoxication only charges) (p. 6).

2) Defendants are disproportionately young (70% are under 30 years of age) (p. 8).

3) Blacks and Puerto Ricans are over-represented among defendants while Whites are under-represented in comparison to their numbers in the New Haven population (p. 8).

4) Males are over-represented and females under-represented in comparison to their numbers in the New Haven population (p. 8).

5) Just over half (51%) of the defendants have prior arrest records, and most (70%) are for serious (class A) misdemeanors or felonies (p. 8).

6) Most (63%) of the defendants are charged with only one offense, and almost all with no more than two (89%) (p. 9).

7) Crimes against public order (including breach of peace and disorderly conduct), constitute the single largest category of most serious offenses (43%), followed by crimes against property (20%), public morality (15%), persons (12%), and justice (9%) (pp. 10-12).

8) Breach of peace charges account for the single largest offense category (26%), followed by disorderly conduct (9%)(pp. 11-12).

9) Class B misdemeanors constitute the single largest class of charges (33%), followed by class C (24%) and class A (20%) misdemeanors, and class D felonies (11%) (p. 13).

Pretrial Release

10) In terms of numbers of persons and length of time in detention, the pretrial release problem is not restricted to those detained until disposition, but also includes those held for short periods of time before eventually securing release (pp. 28-29).

11) The overwhelming majority (86%) of all defendants are released prior to disposition (p. 14).

12) The most frequently used pretrial release condition is promise to appear (PTA) (35% of all defendants), followed by bond (33%), and citation (15%) (p. 14).

13) Eleven percent of all defendants are detained until disposition of their cases (p. 14).

14) A little over 40% of all defendants held to disposition have their cases disposed of at their first court appearance (p. 16).

15) Detained defendants are more likely to plead guilty than are released defendants (70% to 51%) (p. 17).

16) Most (61%) defendants are released within three hours of arrest (p. 18).

17) A sizable proportion of defendants (22%) appear to be held over night or longer, and a much smaller percent (6%) for two or more days (p. 20).

18) Most of the defendants released on PTA were released within three hours, although roughly one-quarter of those whose initial release conditions were PTA's were held for more than three hours before being released, and a handful were held for as many as several days (p. 22).

19) About sixteen percent of all defendants have their initial conditions of release lowered, with about forty-two percent being changed from bond to PTA (p. 25).

20) A little over one-quarter of all those who have their initial bail conditions modified are never released prior to disposition (p. 25).

21) Most defendants who receive reductions in their initial conditions of release, receive them within twenty-four hours. However, roughly twenty percent of them are held for longer than one day and a number for several days before securing such reductions (p. 25).

22) While most of those initially held on bond but eventually released on PTA had low or moderate bonds, about one-third had bonds of $1000 or over (p. 26).

23) Governmental costs of pretrial detention are more likely to be associated with capital expenditures, rather than operating costs (p. 29).

Failures to Appear and Rearrests

24) Slightly over one-third of all defendants released on citation or PTA thereafter fail to appear at least once (p. 30).

25) Fourteen percent of all released defendants fail to appear, as measured by the more "serious" indicator (a warrant issued for rearrest) (p. 30).

26) Overall the background characteristics of those failing to appear look quite similar to those who do appear (pp. 30-31).

27) Twenty percent of those released on PTA fail to appear, 15% of those released on citation do so, and only 7% of those released on bond do so (p. 33).

28) Defendants charged with serious offenses are just as likely to fail to appear as those charged with minor offenses (p. 33).

29) Neither personal background characteristics nor community ties are significantly related to eventual nonappearance (p. 34), although some variables are more highly related than community ties (pp. 36-37).

30) Reliable predictors of nonappearance are not likely to be forthcoming on the basis of any of the currently gathered types of information (p. 37).

31) Only a fraction (roughly 22% of those who fail to appear are ever re-arrested for, and formally charged with, failure to appear (p. 37).

32) Most of those formally charged with failures to appear are rearrested only when stopped and charged with another unrelated offense (p. 38).

33) None of those formally charged with failures to appear were ever convicted of this charge (p. 38).

34) Bail Commissioners' letters of warning to those failing to appear for the first time seem to have some positive effect in securing subsequent appearance (p. 39).

35) Roughly 4% of the released defendants are rearrested (and had their files joined) for an offense alleged to have occurred while they were out on bail (p. 40).

36) Overall the background and charge characteristics of those rearrested (for something other than FTA) look quite similar to those who are not rearrested (p. 40).

37) Reliable predictors of those likely to be rearrested while free on pretrial release are not likely to be forthcoming on the basis of any of the currently gathered types of information (pp. 42-44).

Pretrial Diversion and Police Citation

38) The Pretrial Diversion Program handles about 1% of the total caseload of the court (p. 45).

39) The diversion program is not likely to make a significant impact on the court's workload (p. 45).

40) Most defendants appear to meet the initial ("hard") eligibility criteria of the diversion program (pp. 46-47).

41) Overly strict eligibility criteria do not appear to be major factors in explaining why so few defendants participate in the diversion program (p. 50).

42) The use of both citations and PTA releases has increased since the initial pilot phases of the citation program in 1970-71 (p. 51).

43) The increase in the use of citation releases has been coupled with an increase in the FTA rate for those released on citation (p. 53).

This study reports on the pretrial process in the criminal section of the Sixth Circuit Court. This court, whose jurisdiction includes New Haven, Woodbridge, and Bethany, handles all misdemeanors and class D felonies, that is all criminal offenses whose maximum penalty does not exceed five years imprisonment and/or a fine of $5000. In addition it is the arraignment court for all offenses and can accept pleas of guilty for more serious felonies. The annual caseload of this court, excluding motor vehicle offenses is in excess of 12,000 cases. Normally three judges sit at any given time and are assigned for a three-month period on the basis of a rotating statewide schedule. In addition there is a prosecutor's staff of five full-time and four part-time attorneys and a public defender's office consisting of six full-time attorneys.

The Sixth Circuit has been the site of a number of innovative programs dealing with the pretrial process. One of the first, the police field citation program, was initiated in 1968.* The Bail Commission, established by statute in 1967 to facilitate pretrial release review, has a staff of three in the Sixth Circuit Court.** The Redirection Center, a project sponsored by a grant from the State Planning Commission and administered by the Department of Correction since 1972, is located in the Whalley Avenue Jail and is responsible for aiding pretrial detainees secure release.*** The Pretrial Services Council's Diversion Program has been in operation since 1972

*See Chapter 7, below, and also Mark Berger, "Police Field Citations in New Haven," 1972 Wisconsin Law Review, pp. 382-417.

**See Chapter 8, below, and also Thomas O'Rourke and Robert Carter, "The Connecticut Bail Commission," 79 Yale Law Journal 513-530 (1970).

***See the report to the Department of Corrections by Daniel J. Freed, Dennis E. Curtis, Tim Terrell, and Carl Anduri, Jail - Based Pretrial Release: The Pilot Redirection Center at the New Haven Community Correctional Center, January - August 1972 (December 1973 - revised).

and is a pilot program designed to remove certain types of defendants from the criminal process entirely.* A new jail on the Whalley Avenue site to house pretrial detainees has been planned and is currently under construction. Perhaps most important is the Pretrial Service Council itself. Established in 1971 in response to the growing concern for the number of pretrial detainees and for the several different pretrial programs, the Council has begun to examine the system-wide effects of various programs and to serve as a coordinating unit for the various pretrial agencies.

Despite this demonstrated interest and concern, the problems and a sense of unease continue to persist. Some argue that despite the variety of pretrial release alternatives and programs, needless detention continues, and others point to the high rate of failures to appear as support for the opposite contention. Still others press for a greater variety of pretrial alternatives. This self-questioning is further illustrated by the number and type of reports, studies and evaluations which have examined the functions and activities of individual programs and agencies in the Sixth Circuit. Many of these discussions have pointed to the interrelationship and the shared responsibilities of the several agencies, and suggest the need for a comprehensive, system-wide examination of the problem. With such an end in mind, the Council commissioned this study, which is a step in the direction of a system-wide analysis and evaluation of the New Haven criminal justice system.

At the outset it was generally agreed by the Bail Study Subcommittee

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*See Chapters 6, 12, and 13 below, for discussions of various aspects of pretrial diversion. In addition, see Daniel J. Freed, Edward DeGrazia and Wallace Loh, "The New Haven Pretrial Diversion Program--A Preliminary Evaluation," (Report to the New Haven Pretrial Services Council, Sept., 1973).

of the Pretrial Service Council that the study should focus only on criminal cases in the Sixth Circuit Court, and that the sample be large enough for meaningful statistical analysis and be representative of the overall case load handled by the Court. Consequently a 100% sample of cases for three months was obtained. Two types of cases were excluded from consideration: Motor vehicle cases, because they are handled separately from the other criminal cases and do not present substantial problems of interest to the Pretrial Service Council; and cases in which the only charge was intoxication, because of their large numbers and the uniform and routine way in which almost all of them are handled. In the following discussion all references to the sample or to the defendants will refer to the sample as described here. In addition, there is no reason to believe that there is any significant seasonal distortion arising from the fact that the sample was drawn from cases disposed of during the summer months.

To compile a comprehensive statistical picture, two alternative approaches were available. Defendants could be identified either (1) at an early stage in the process (at the detention center or from police reports) and then tracked forward through the system to gain the necessary follow-up information, or (2) at disposition and their relevant pretrial histories traced back. After investigation and discussion with various officials in the system, the latter alternative was adopted. Because of excellent cooperation provided by a number of persons, it proved considerably easier and more reliable to trace pretrial histories of a large number of defendants than to follow such a large number step-by-step through the system. It was determined that almost all the necessary information on defendants could be ob-

tained at a single point, in court on the day of disposition. Data were obtained on a daily basis with the cooperation of the Circuit Court personnel, and with no substantial disruption of the court's routine. Additional information was made available through the cooperation of the Bail Commissioners and the records division of the Police Department.

Data began to be systematically collected on June 4; this continued for twelve weeks, until August 24. Data on 1642 cases, involving about 1800 separate incidents and over 2400 separate charges, have been obtained. For each case, information on the defendant, his initial charges, his pretrial release history, failure to appear record (if any), and subsequent rearrest (if any) were obtained. This information was coded, punched on IBM cards, and processed by computer.

The result was an ability to present a rather detailed description of the flow of defendants through the pretrial process and an ability to examine a variety of relationships. This second point is particularly important in that most studies of the flow of defendants through court systems rely on aggregate data and hence are severely limited in their ability to examine relationships between two or more processes and stages or among different types of defendants and charges. By tracking individuals through the system and gathering information of each of them this study has been able to avoid the limitations of the studies using aggregate data, and it is the examination of relationships that constitutes the core of the empirical analysis reported in Part I.

Chapter one presents an overview of the characteristics of the defendants and the types of charges brought into Sixth Circuit Court. Chapter two considers the conditions and consequences of an arrestee's pretrial

status. Chapter three focuses on the length of time in detention. Chapter four explores the magnitude of the nonappearance problem and attempts to identify some correlates and determinants of nonappearance. Rearrest for alleged crime on bail is the subject of chapter five, and here too a search for correlates and determinants of rearrest is reported.

Chapter six presents still a different type of analysis. Two pretrial programs, those dealing with diversion and police citation, are considered, largely as illustrations of how the operations of individual agencies can profitably be examined in light of the system as a whole. The goal here was not to give an exhaustive analysis of the internal operations of these two programs, but rather to show how they seem to fit into the whole and to serve as a basis for estimating their impact on the system and their possible future potential for affecting the system.

The major goal of Part II is to describe in detail a number of the more important decision-making agencies and processes in the pretrial system and to identify the formal duties and interrelationships of the various officials. This has been done by first identifying the major actors and then summarizing and synthesizing descriptions of their official functions and obligations as identified by statute, applicable case law, and agency guidelines and directives. It is hoped that this will serve a useful purpose by compiling in a single and readily accessible document a description of the duties of each of the number of relatively independent yet interrelated agencies.

Each chapter deals with the pretrial release responsibilities of a particular agency or process. Chapter seven examines the responsibilities of the police, and chapter eight those of the bail commission. Chapters

nine and ten deal with the pretrial release procedures for circuit and superior courts respectively. Chapter eleven deals with sureties. Chapter twelve deals with problems of pretrial diversion generally, and then focuses specifically on the New Haven Pretrial Diversion Program.

One last set of observations before proceeding to the study itself: First, this report is not a comprehensive system-wide examination of criminal justice in New Haven. As already indicated two types of offenses--intoxication (FI) and noncriminal motor vehicle offenses--have been eliminated from consideration for practical considerations and because of the distinct set of problems these pose. Second, the picture presented here--from the perspective of the Sixth Circuit Court--is not identical to the one that might be drawn from another perspective, for instance, the Whalley Avenue jail which deals not only with Sixth Circuit pretrial detainees, but also detainees and those sentenced from other circuits and from Superior Court. Third, no detailed attention has been given to Superior Court or to the interrelation of Superior and Circuit courts, other than to identify the numbers and types of bindover cases. Fourth, juvenile court has not been considered here.

1. CHARACTERISTICS OF DEFENDANTS AND CHARGES

Because the Circuit Court does handle by far the largest volume of criminal cases in the city, the profile of defendants in Circuit Court is

also a profile of the "clientele" of the entire adult criminal justice system in New Haven. For instance in 1972 the Sixth Circuit Court disposed of over 12,000 non-motor vehicle criminal cases, as compared to only about 950 in New Haven Superior Court.* In many respects then, while this profile is strictly speaking drawn only from circuit court dispositions, it also reflects the day to day problems for many of the various agents in the New Haven criminal justice system--from police to corrections. That is, it is these defendants who constitute the overwhelming bulk of all those arrested and it is these types of cases that constitute the bulk of the incidents investigated and arrests made by the police.

In this section the profile of the defendants in Sixth Circuit Court is presented in two ways: 1) by several characteristics of the defendants, and 2) by the most serious charge. The first description should provide a useful overview of who the defendants in circuit court are, and the latter will provide a breakdown--in several ways--of the types of charges that tend to "define" or "dominate" individual cases. Together they should provide a useful summary of the types of defendants and the nature and magnitude of the workload of the Sixth Circuit Court, and cases disposed of by the courts.

Defendants' Characteristics

Four characteristics of the defendants are arrayed in Table I: age, race, sex, and prior record. First, looking at age, it is seen that the defendants tend to be disproportionately young. 769 or 47% of them are

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*The Criminal Justice System in Connecticut - 1972 (Connecticut Planning Committee on Criminal Administration, Hartford, Ct.), pp. 89, 114.

Table I

Selected Characteristics of Defendants

CHARACTERISTICS		N	%
Age:	15-17	113	07%
	18-21	345	21
	22-25	311	19
	26-29	206	13
	30-33	148	09
	34-37	110	07
	38-41	97	06
	42-45	72	04
	46-49	83	05
	50-53	51	03
	54-60	55	03
	over 60	34	02
		1625	99%*
Sex:	Male:	1311	80%
	Female:	330	20
		1641	100%
Ethnicity:	White:	630	38%
	Black:	865	53
	Puerto Rican:	123	08
	Other:	24	01
		1642	100%
Prior Record:	(Prior record):		
	Misd-C	50	03
	Misd-B	178	11
	Misd-A	222	14
	Felony-D	220	13
	Felony-B,C	136	08
	Other/DK	22	01
	Subtotal, prior record:	828	(50%)
	No prior record:	808	49%
	Total	1636	99%*

*rounding error

under 21 years of age and all but 30% are under 30 years of age. After this they tend to taper off rapidly. Turning to ethnicity, as indicated on police reports, it is seen that Blacks constitute 58% of the sample, Whites 38% and Puerto Ricans 8%. Given the ethnic composition of New Haven, this indicates a sharp "overrepresentation" of Black and Puerto Ricans and "underrepresentation" of Whites.* Likewise, an even greater "imbalance" is found when sex of defendants is considered: males constitute 80% of the defendant population as opposed to only 20% for females. It is further seen that just over half, 51% of the sample, had a New Haven police department record, and that of those with prior arrest records, most were for moderately serious offenses (27% for Class A Misdemeanors and 26% for Class D Felonies; those with prior records of Class C Misdemeanors constituted only 6% of the sample).

CHARGES

Turning from the characteristics of the defendants to the frequency, nature and types of charges, Table II reports on the numbers of charges per defendant. As is seen most (63%) of the defendants were charged with only one offense.

Those with additional offenses diminished rapidly, with only 2% having been charged with five or more separate charges.

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*The 1970 Census indicates the following ethnic and racial breakdown for the 137,721 residents of the city of New Haven: Black 26%, all Spanish Speaking 4%, and White 70%. Males constituted 47.5% of the population and females 52.5%. Source is U.S. Bureau of the Census of the Population: 1970 General Social and Economic Characteristics. Final Report (PC (1))-C8 Connecticut.

Table II

Distribution of Number of Charges per Defendant

Number of charges	N	%
1	1027	63%
2	424	26
3	118	07
4	44	03
5 or more	25	02
Total	1638	101%*

*rounding error

While the breakdown by number of charges is helpful in presenting a total picture of the activity of the court, it is probably not the most useful summary picture of the court's workload since the unit of consideration for most of the actors in the system is not the total number of charges, but rather the most serious charge.* Consequently particular attention has been given to these charges, and they are presented in several different ways, first by individual charges, and then in summary form by statutory classification (or equivalent).

Table III organizes the separate offenses into five general categories; offenses against persons, property, public morality, public order, and justice, giving the figures for each individual charge and subtotals for each of these categories. While the charges tend to be spread out broadly and rather thinly across the entire spectrum, two offenses stand out: breach of peace and disorderly conduct, which constitute 26.37% and 9.34% of the sample respectively. In continuing order of their frequency of occurrence are larceny (5.19%), possession of marijuana (4.95%), and resisting arrest (4.46%).

*Throu hout this report seriousness has been ranked by class of of-

Table III

Distribution of Individual Charges (most serious charge per case)

	N	%
1. Crimes against persons		
Assault 1	19	1.16
Assault 2	34	2.08
Assault 3	46	2.81
Threatening	60	3.66
Reckless Endangerment 1	7	.43
Statutory Rape	1	.06
Rape 1	2	.12
Conspiracy to Commit Rape	1	.06
Deviate sexual intercourse 3	2	.12
Robbery 1	7	.43
Robbery 2	6	.37
Robbery 3	3	.18
Risk of injury	2	.12
Other	10	.61
subtotal	200	12%
2. Crimes against property		
Larceny 1	1	.06
Larceny 2	29	1.72
Larceny 3	50	3.05
Larceny 4	85	5.19
Criminal Mischief 2	3	.18
Criminal Mischief 3	42	1.65
Trespass 1	6	.37
Trespass 2	15	.92
Trespass 3	27	1.65
Burglary 1	8	.49
Burglary 2	15	.92
Burglary 3	21	1.28
Illegal Use of Credit Card	1	.06
Fraud Obtaining State Aid	3	.18
Forgery 1	7	.43
Forgery 2	2	.12
Forgery 3	1	.06
Tampering with Motor Vehicle	1	.06
Arson 3	1	.06
Other	11	.67
subtotal	329	20%

	N	%
3. Crimes against public morality		
Prostitution	18	1.10
Soliciting sexual intercourse	3	.18
Patronizing a prostitute	6	.37
Gaming	70	4.27
Policy playing	10	.61
Pool selling	2	.12
Possession of marijuana	81	4.95
Possession of marijuana with intent to sell	7	.43
Possession of cocaine	2	.12
Possession of cocainewith intent to sell	4	.24
Possession of controlled drugs	12	.73
Possession of controlled drugs with intent to sell	5	.31
Possession of heroin	6	.37
Possession of heroin with intent to sell	5	.31
Illegal dispensing of other controlled drugs	1	.06
Selling liquor without permit	2	.12
Keeping liquor with intent to sell	3	.18
Other	11	.67
subtotal	248	15%
4. Crimes against public order		
Breach of peace	432	26.37
Disorderly conduct	153	9.34
Loitering on school grounds	3	.18
Vagrancy	2	.12
Found intoxicated	31	1.89
Keeping/carrying pistol	3	.18
Carrying dangerous weapon (in/out auto)	35	2.14
Possession, sale or discharge of fireworks	29	1.77
Other	21	1.28
subtotal	709	43%
5. Crimes against justice		
FTA F-D or M-A	36	2.20
Violation of probation, parole, or conditional discharge	17	1.04
Non-support of wife/child (1 yr.)	12	.73
Resisting arrest (or interfering)	73	4.46
False information to police	2	.12
False report of an incident	3	.18
Other	6	.37
subtotal	149	09%
6. Miscellaneous Offenses		
All other offenses	4	.24
	[illegible]	100%

One problem with such widespread distribution of offenses is that no single charge--with the exceptions noted above--is likely to affect the system as a whole or the overall workload of the court. For example, one of the more frequently made arguments for decriminalization is that it would result in a corresponding reduction of case load, thereby allowing greater attention to be given to the remaining (presumably more serious) charges and defendants. While proponents for the decriminalization of "victimless crimes" tend to define their terms differently, what is clear is that unless a wholesale elimination of a number of offenses (e.g. all offenses against public morality) were effected, there would not be any substantial reduction of case load. As illustration, only slightly over two percent of the court's volume dealt with the three charges involving prostitution. Based on observations in the courtroom, it is probably also safe to conclude that these cases took even less than two percent of the court's time. Nevertheless, for those interested in decriminalization as one means of increasing the court's ability to move with more deliberateness, Table III provides the information necessary for the first step by pointing to the proportion of the total each specific charge represents.

Turning from the individual charges to seriousness of charge, Table IV presents the breakdown for the sample. Seriousness is represented here by class of offense, ranging from least serious (Misdemeanor, class C) to most serious (Felony, class B). While the great majority of all the offenses are officially classified by class by statute, a number of them are not. When we were confronted with nonclassified offenses, they were placed into the category that most closely approximated the sanction limits of the

classified offenses. Generally this presented no problem since the most appropriate categorization was obvious. Occasionally for some offenses, however, the incarceration range tended to fit one class while the fine range fit another. In this instance, the incarceration range was allowed to dominate the assignment of classification.

Table IV

Distribution of Total Number of Most Serious Charges, by Class of Offense

Class	N	%
Misd. C	400	24
Misd. B	546	33
Misd. A	325	20
Felony D	184	11
Felony C	44	03
Felony B	38	02
Other/DK	101	06
Total	1638	99

Not surprisingly the great bulk of the cases handled in circuit court are misdemeanors. Felonies of Class B and C constitute only 5% of the sample. On the other hand, the single largest set of charges are not the least serious offenses, but rather are Class B misdemeanors.

2. PRETRIAL RELEASE/DETENTION: A PRELIMINARY INQUIRY ON THE CONDITIONS AND CONSEQUENCES

The purpose of this chapter is to examine two interrelated sets of questions: 1) Who is released and who is detained prior to disposition? and 2) What are the consequences of pretrial status for the eventual outcome of the case? The first question seeks to identify the magnitude and nature of the pretrial detention population, explore some of the conditions of detention, and then compare the frequency with which each of the various forms of pretrial release is used. The latter question seeks to determine if the tendency for harsher disposition treatment for detainees found to exist in many other jurisdictions is also found in the Sixth Circuit Court.*

Focusing on the first question, Table V indicates that nearly everyone in the Sixth Circuit Court is released prior to the final disposition of his case. 1376 defendants or 86% of the sample for whom data were available were released prior to disposition.

Table V

Release/Detention Rates for the Sixth Circuit

Condition immediately prior to disposition	N	%
Released on citation:	244	15%
Released on PTA:	565	35
Released on bond:	509	32
Released, DK	58	04
(Subtotal: Released:)	(1376)	(86%)
Detained to Disposition	166	11
Other on DK	26	02
Total	1568	99%

Furthermore, most of those released were released without the inconvenience necessitated by raising bond. Police field citation accounted for 15% of the sample and release on promise to appear (PTA) for another 35%. On the other hand, 166 or 11% of the sample was not released at all prior to dis-

*See for example, Plaintiff's Memorandum in Bellamy et al. vs. The Judges and Justices--(New York Supreme Court, Appellate Division-First Department, 1972).

position. This is a relatively small percent as compared with reports and impressions from other jurisdictions, but in light of the alternative--pretrial freedom--it should not be regarded casually, nor be easily dismissed as "low enough." At a minimum this small but especially significant group warrants additional attention.

While being detained prior to trial tends to conjure up an image of a lengthy pretrial incarceration, this group of detainees also includes those defendants who were arrested and promptly brought into court at which time their case was disposed of. On one hand these defendants have technically not been released prior to their trial, but on the other many of these were not likely to have been held for any significant length of time. In order to examine this factor, the "detained-to-trial defendants" were divided into two groups, those who were never released but whose cases were disposed of at first appearance, and those who were never released but whose cases required more than one appearance. The former group consists almost entirely of persons who were arrested on one evening and had their cases disposed of the next (or longer if on a weekend) day, and the latter, those who spent a number of days in pretrial detention. Table VI compares these two groups of pretrial detainees, breaking them down by number of appearances. Not surprisingly, a rather high proportion, about two-fifths, of the "detained-to-trial" defendants had their cases disposed of at initial appearance. This reduces the "more serious" detained population to 98, or roughly 6% of the total number of defendants. While 6% appears to be an even more desirably low figure for pretrial detainees, even this figure does not adequately and completely characterize the magnitude of the "pretrial population" or the

Table VI

Number of Court Appearances for those Detained Immediately Prior to Disposition

Number of Appearances to Disposition:	N	%
One	68	41%
Two or more:	98	59
Total:	166	100%

"serious detainee" problem. It merely shows that those defendants who are held for more than one appearance and up to disposition constitute a very small portion of the entire population. A problem that will be examined shortly involves the length of pretrial detention (irrespective of whether one was released at some point prior to disposition of his case) and not simply detention until trial.

Detention status immediately prior to disposition is, however, of interest for still another reason. A number of students of criminal justice have argued that pretrial status is highly correlated with outcome of case such that detained defendants suffer unwarranted harsh consequences from it. That is, it is argued that those in detention are much more likely to be found guilty and/or receive harsher sentences than those released prior to trial. The basic thrust of these arguments is that there is a much greater incentive for the detainee to plead guilty in order to escape continued detention, and that the released defendant is in a considerably better position to organize his defense than is the detainee. Still others argue that there is a bias on the part of the prosecutor and judge against

the detainee and that this accounts for harsher sentences. To the extent that it is possible with these data these assertions will now be examined for the Sixth Circuit Court. Before proceeding, however, a word of caution is in order. Since only 11% of the defendants in this sample were detained until disposition, a comparison between them and the 89% who were released is somewhat tenuous because of the initial unequal distribution.

Nevertheless, it is possible to summarize the overall differences. Table VII reports on the comparisons of guilty rates and sentence rates respectively.

Table VII

Comparison of Outcomes for Those Released and Detained Immediately Prior to Disposition*

	Released		Detained	
	N	%	N	%
Guilty (one or more charges)	586	51%	102	70%
Nolle, etc. (all charges)	565	49	44	30
	1151	100	146	100

*Excluded from consideration here are those cases bound over to Superior Court and those defendants failing to appear.

Whatever the precise causes, the distribution in Table VII indicates that detained defendants are substantially more likely to be found guilty than those released prior to disposition. While the guilty/not guilty distribution for those released is 51% and 49% respectively, the case outcome results shift dramatically for those detained prior to disposition. 70% of

all the latter are found guilty, while only 30% have all their charges nolled or dismissed. This difference is great enough that it would seem to add support to the arguments of critics or pretrial detention.

However a counter interpretation is also available. This argument would hold that detainees are, in fact, simply more likely to be found guilty than those released. Since an experimental design and release program were not constructed and implemented for these arrestees, this interpretation always remains a possibility. But to raise it to a reasonable inference one would be required to show that nonappearance occurs disproportionately among those with a "stronger case" against them. There is some evidence to suggest that this is <u>not</u> the case; nonappearance rates are higher for those released on PTA and citations than bond, and the severity of release conditions is strongly related to seriousness of charge (which is not identical to strength of evidence). While this is also incomplete evidence, it is clear that more attention should be given to the possible consequences of pretrial detention as it affects eventual case outcome.

3. PRETRIAL RELEASE/DETENTION: LENGTH OF TIME

It has been found that in the Sixth Circuit the overwhelming majority of all defendants are released prior to disposition. However, since release can occur at any point up to the moment of disposition, and since cases frequently require a number of weeks and court appearances before termination, reliance on these figures alone could be somewhat misleading. In this section, therefore, the length of time in pretrial detention--regardless of eventual pretrial status--is examined. Here the questions are: How long are defendants held prior to their release (whether through pretrial

release or through disposition)? By what means do they secure release? At what point in the process are they released? How frequently is pretrial freedom gained only after a change in release conditions? What is the magnitude of these reductions? How frequently are defendants still unable to post bond even after it has been reduced? This section will attempt to supply answers to some of these questions.

Table VIII provides a breakdown of the length of time defendants were detained before securing their freedom either by pretrial release or by disposition of their case. Length of time has been figured from the time of initial appearance at the detention center to the time of eventual release or disposition. The first entry, "0," identifies those released on police field citations issued at the location and time of arrest. Further, a number of cases have been excluded from consideration here due to incomplete data and/or because the defendants had a complicated pretrial history involving at least one rearrest and two or more bail determinations. Their omission is not likely to affect the presentation of the overall picture of the flow of pretrial releases, but the reader should keep in mind that in addition there is a small group of cases that constitute an especially complicated problem by itself.

As is seen a majority of defendants are released either immediately (17% on citation) or within three hours (44%). Not surprisingly after this, the numbers drop rapidly: an additional 6% are released in the next four to seven hours, 7% between eight and twelve hours, and 5% between 13 and 24 hours. A substantial number, 16%, were released at an undetermined time but within the first 24 hours. Although the precise time of release for the arrestees in this group could not be determined, almost

Table VIII

Length of Time in Pretrial Detention*

Hours	N	%
o (citation)	244	17
0-3 hours	624	43
4-7 hours	82	06
8-12 hours	92	06
13-24	73	05
exact time undetermined but within 24 hours	235	16
2 days	31	02
3 days	10	01
4-7 days	12	01
8-20 days	18	01
over 20 days	17	01
Total	1438	99%**

*Excluded here are those defendants for whom data was unavailable and those with a bail history involving at least two separate arrests and more than one set of release decisions.

**Rounding error.

all of them are people who were arrested late one day and released in court the next morning. This would make the actual detention time for most of them to be about eight to twelve hours, although for some it could be more and for others less. On the other hand, 88 defendants or 6% of the total, were held for a period of longer than one day.

There are a number of reasons for this spread on lengths of detention. For the most part those released within three hours were released on PTA or were immediately able to post bond, and the short period of detention represents "processing time." For many others, however, it took some time to locate a source of funds and have friends, relatives and/or a bonds-

man to bring it to the detention center at Whalley Avenue jail. Still others were unable to raise the necessary amount and were released only after a reduction in the original conditions. In addition it should be noted again that these figures contain those defendants who never were released at all pending the final outcome of their cases.

While Table V in the preceding section indicated that the overwhelming numbers of defendants were released prior to disposition, Table VIII indicates that these releases frequently take some time to obtain. For instance, 39% of the sample were detained for longer than three hours. In short, what the discussion in this and the preceding section indicates is that in terms of numbers of defendants, the pressing pretrial detention problem is not only in terms of release/detention immediately prior to trial, but also includes the more subtle problem, pretrial release after a period of pretrial detention.

While there are a number of factors contributing to delayed release, and some of them have been noted above, one particularly interesting reason is found when the change of release conditions are considered. In order to examine this problem at some length, detention rates for those arrestees having no changes in their conditions of release have been distinguished from those whose conditions were later reduced at least once (to a lower bond, or from a bond to PTA). Tables IX and X present information on the lengths of detention for these two groups and further breaks them down by form of release.

Looking first at the release and detention patterns of those 1243 defendants for whom there was no change in release conditions, Table IX indicates that most of them secured their freedom within a short period of

Table IX

Time in Detention by Pretrial Release Status:

No Changes in Conditions of Release*

Length of time in detention	cite	PTA	bond	Yes/DK	Not Released	N
0 (cite)	242	0	0	0	0	242
0-3 hours	0	379	201	1	13	594
4-7 hours	0	18	30	0	7	55
8-12 hours	0	6	42	0	19	67
13-24 hours	0	6	20	0	15	41
within 24 hours	0	58	108	0	33	199
2 days	0	1	7	0	9	17
3-7 days	0	1	5	0	5	11
over 7 days	0	2	8	0	7	17
N =	242	471	421	1	108 Total	1243

*Excluded here are those defendants for whom data was unavailable and those with a bail history involving at least two separate arrests and more than one set of release decisions.

time. By scanning the table it can be seen that most of these releases are accounted for by citations or PTA's. While most of the defendants in this group were released within three hours, and almost all of them within 24 hours, still 45, or roughly 4% of them were detained for more than one day before gaining pretrial release.

Looking at the lengths of detention by specific forms of release, the PTA releases are particularly interesting. Most of those so released appear to have been released soon after booking, as soon as the necessary forms were completed (i.e. within three hours). However, a number of them were held longer than would normally be necessary just to complete the paper work attendant to release. Of particular note, 58 defendants were released

in the period within 24 hours. As discussed earlier, this grouping consists almost entirely of defendants who were arrested on one evening and released the next morning while court was in session. It is impossible from our data to determine why someone whose initial (and only) release condition was PTA would remain in detention for a period as long as 24 hours, although it is suspected--based on impressions gathered from talking to persons in the detention facility--that many of these defendants were intoxicated and in no condition to leave the facility or were juveniles whose parents were expected to appear before they could be released PTA. In addition, there is some chance that for some of these defendants, an earlier but unrecorded bail, was set. While comparing notes on the "cell block cards" with the bail histories on the bail interview forms and informations, it was occasionally found that an initial low bond was set by the police but later changed and not recorded on either the bail interview form or information. Such an explanation is the only way that we can account for those four defendants who were held for two or more days yet released on PTA without any formal indication of a change in release conditions.

The second largest release length category consists of 108 persons who were released within 24 hours. As indicated, these are almost all those who were arrested one evening and released the next day, probably after arranging with family, friends, or a bondman the next morning to obtain the needed money. On the other hand, twenty persons were detained for two or more days before they were able to secure release.

The "not released" column includes all those who were detained until disposition and for whom no reductions in bail were made. Like most of the

other pretrial detainees, most of these defendants were also held for only a short time, the only difference is that these cases were settled without any continuances. Still, however, twenty-one were held for more than one day. When coupled with those who were released, the figure for those detained one or more days without a reduction in bail rises to forty-one. While small as compared to the entire number of persons in the pretrial process, it is nevertheless a significant number to have been detained (apparently) solely for an inability to raise bond. Unfortunately, no data were available on how many of these arrestees had made unsuccessful requests for bail reduction.

Turning to Table X and those 188 defendants who secured a formal reduction of release conditions, several interesting patterns are observed. Most of those having their release conditions modified were also released within a rather short period of time, indicating that the decisions to grant reductions tended to be made rather promptly. More specifically, most of the 188 (146 or 77% of those securing reductions), were released within 24 hours, or if not released, had their cases disposed of by the court.

On the other hand, a number of arrestees (46) had their release conditions reduced, but still remained in detention for some period of time. Of particular interest are those eighteen defendants who were eventually released on PTA, but who were detained for more than one day. One cannot help but wonder why a person who eventually appeared to be such a good risk as to be released on PTA could have ever been detained for up to seven days before this reevaluation and judgment was made. This same question can also be asked for those fourteen defendants eventually re-

Table X

Time in Detention by Eventual Pretrial Release Status:

Reductions in Initial Release Conditions*

Length of time in detention	Eventual Form of Release: cite	PTA	bond	Yes/dk	Not Released	N
0 (cite	0	0	0	0	0	0
0-3 hours	0	17	8	1	1	27
4-7 hours	0	18	8	0	1	27
8-12 hours	0	8	7	0	10	25
13-24 hours	0	11	11	0	10	32
within 24 hours	0	11	9	1	14	35
2 days	0	5	7	0	2	14
3-7 days	0	6	3	0	2	11
over 7 days	0	7	4	0	6	17
N =	0	83	57	2	46	Total 188

*Excluded here are those defendants for whom data was unavailable and those with a bail history involving at least two separate arrests and more than one set of release decisions.

leased after one or more days on reduced bond. Here, however, it was impossible to determine when the reduced bond was set and when release occurred. Some of the delay could be attributed to delay in obtaining bail money, and not necessarily delay in reducing the bail.

Perhaps what is more revealing in Table X is the number of defendants who obtained a reduction in release conditions, but were still never released pending trial. Forty-six persons had their bonds reduced but nevertheless remained in detention until disposition of their cases. While most of these had their cases disposed of within one day, it is impossible to determine how many of them would have wanted to continue their

cases had they not faced the prospect of still more pretrial detention. Further, one quarter of them did remain in jail for more than twenty-four hours.

Of particular interest are those defendants who initially had a bond set but were eventually released on PTA. Since PTA is an especially desirable condition of release, representing a particularly favorable judgment of the defendant, it is interesting to compare the initial release judgment (as indicated by initial bond amount) with the final release judgment (PTA). Table XI, below, summarizes the frequency of initial bond amounts for those eventually released on PTA.

Table XI

Distribution of the Amount of Initial Bond

for Those Eventually Released PTA

Initial Amount	N	%
$20 or under	2	1.7
$25	3	2.5
$50	25	21.0
$100	26	22.0
$200	8	7.0
$300	7	6.0
$500	11	9.0
$501-1000	28	24.0
$1001-2500	8	7.0
$2501-10,000	1	1.0
Total	119	100.0%

Over all the initial conditions were not necessarily small amounts. Only four percent had initial bonds of less than $50.00, while $50.00 and $100.00 bonds together constituted 43% of the entire grouping. On the other extreme bonds of $500.00 or larger constituted an almost equally large number (41%). The single largest grouping of initial bond amounts was $1000.00,* which is rather high for almost anyone in the Sixth Circuit. Eight percent had still higher initial bonds. What seems to be clear is that those eventually released on PTA were not only those who were initially judged a "pretty good" risk requiring a low bond. Rather they come from all types of arrestees whose initial bonds ranged from very low to very high, with a sizable portion tending toward the latter.

Conclusions for the Section

From these data it is difficult to make any conclusive assessment about the release practices in the Sixth Circuit, although a number of observations can be offered. Most defendants are released pending trial, but they are not always released promptly (i.e. within three hours). A substantial number of defendants are detained for periods between three and twenty-four hours, and a small, yet sizable number are never released at all. While twenty-four hours can be considered a relatively short period of time, if considered in light of the typical sentence handed down in the Sixth Circuit Court, it tends to take on a much larger significance. Twenty-four hours in jail--especially before a determination of guilt or innocence--seems more than comparable to a suspended sentence or a $10.00 or $25.00 fine, the typical sentence handed down in circuit court.

A substantial number of defendants are released only after reduc-

*Within the category $501 - $1000, almost all the bonds were at the round figure of $1000.

tions in their initial conditions, most frequently a reduction from bond to release on PTA. These data can be interpreted in two diametrically opposing ways. On one hand, it is assuring to find that bail conditions are reviewed and at times reduced to the benefit of the defendants. On the other, these reductions can be read to indicate "failure" of the pretrial release system, in that a reduction and eventual release is also an indication that the initial decision was likely to have been in "error," one that cost the defendant anywhere from a few hours to a few days incarceration. This feeling tends to be reinforced when the initial bail amounts for those eventually released PTA are considered.

Those detained up to disposition are more likely to plead guilty than those released. However, from these data alone it is impossible to assert with certainty how many plead guilty in order to avoid continued pretrial detention, or for that matter how many of those released plead guilty in order to recover the use of the money tied up in bond. As indicated earlier, there are a number of reasons to lead to the conclusion that such incentives do operate to induce pleas of guilty for at least those in detention. One of the more compelling reasons is that very few defendants in circuit court ever receive a sentence requiring incarceration. The chances are, therefore, that one who pleads guilty will be released without any additional incarceration.

Another more general conclusion that can be drawn from this and the preceding section is that in terms of total numbers of defendants and total numbers of hours in pretrial detention, the problem is not restricted solely or even primarily to those held until disposition of their case, but rather

must also include the far greater number of defendants who are detained for some period of time before eventually securing release. As in many other areas of social life, the major problems seem to be caused by the accumulation of many minor irritations of low visibility, rather than a handful of glaring and obvious mistakes. Here both types of problems are seen.

An important question following from this analysis involves the total cost of pretrial detention. Since some persons are detained for an extended length of time and a great many more are held for short periods, the net result might lead to a considerable expense to the system. In light of the increasing reluctance of courts (including apparently the Sixth Circuit Court) to impose post-trial incarceration, a careful examination of pretrial detention would seem to be in order. While it is probably the case that detention costs, particularly for periods of a few hours are negligible, the cumulative effects for a large number might prove that this judgment is incorrect. More important, however, are the costs likely to be incurred through the implementation of long range plans for building and staffing pretrial detention facilities.

4. FAILURE TO APPEAR

Likelihood of appearance in court is particularly important for two reasons. First, it constitutes the only judgment that by law is to be considered in the setting of release conditions. Second, the failure to appear rate in the Sixth Circuit involves a sizable number of persons and consequently poses a rather serious administrative problem for the system.

The administration of FTA's involves several decision points and alternatives and appears to be routinized. If a person is released on citation or PTA and fails to appear for a first time he is sent what amounts to a warning letter, which includes notification of a rescheduled appearance. Typically, the rescheduled appearance is one week later. 279 defendants, roughly 34% of all those released on citation or PTA, were sent such letters. A second failure to appear results in a warrant issued for the defendant's arrest, charging him with another offense (FTA), and the setting of bail by the court. If a person is initially released on bond, a warrant for rearrest is issued if he fails to appear for the first time.*

The issuance of a warrant is by far the more serious indicator of nonappearance and has been the measure used for the analysis of the FTA problem in this study. In the case of those released on citations or PTA, the issuance of a warrant indicates at least two failures to appear and in the case of those released on bond, one. Table XII indicates that a total of 234 warrants for rearrest for nonappearance were issued, and that these constituted a total of 14.3% of all defendants.

The next step was to examine the characteristics of the PTA defendants. Table XIII provides a comparison between this group and all those who did appear along several dimensions: age, race, sex, form of initial release, and most serious current charge.

By age those failing to appear look remarkably similar to those who did appear. That is, there are roughly the same percentages for the two groups within each of the several age categories. Any differences that do exist are within only a few percentage points, too small to be interesting or suggestive. On the other hand, there is some considerable difference between the FTA rates and race. Blacks and Puerto Ricans constitute a higher

* The practices described here vary somewhat. At times a defendant released on a surety bond may not initially be served a warrant for rearrest. Rather the judge will issue a stay of forfeiture in order to allow a bondsman the opportunity to locate his client. In these instances, the case is treated much like a continuance rather than disposed of as a "failure to appear."

Table XII

FTA Letters Sent to Those Released on Citation and Bond and Warrants Issued for Those Released

Indicator	N	%
FTA letter sent to Defendants released on Citation or PTA		
Yes	279	34.5%
No	530	65.5
	809	100.0%
FTA Warrant issued to all Releasees		
Yes	234	14.3%
No	1407	85.7
	1641	100.0%

Table XIII

Comparison of Those Defendants who Failed to Appear (Warrant Issued) with all Defendants by Selected Characteristics

	FTA Warrants Issued		All Others	
	N	%	N	%
AGE				
15-17	10	4.3	102	7.3
18-21	74	32.2	357	25.7
22-25	33	14.3	191	13.7
26-29	31	13.5	174	12.5
30-33	27	11.7	120	8.6
34-37	14	6.1	96	6.9
38-41	16	7.0	81	5.8
42-45	14	6.2	87	5.8
46-49	1	0.4	59	4.2
50-53	4	1.7	47	3.4
54-60	4	1.7	48	3.5
over 60	2	.9	34	2.4
	230	100.0%	1390	100.0%
RACE				
Black	142	61.5	699	51.4
White	58	25.1	550	40.5
Puerto Rican	28	12.1	90	6.6
Other	3	1.3	20	1.5
	231	100.0%	1359	100.0%
SEX				
Male	180	77.9	1088	80.1
Female	51	22.1	270	19.9
	231	100.0%	1358	100.0%
FORM OF INITIAL RELEASE				
Cite	36	19.5	208	18.4
PTA	113	61.4	452	40.0
Bond	35	19.1	473	41.6
	184	100.0%	1133	100.0%
INITIAL CHARGES				
Misd. misc., BC	65	55.5	406	56.5
Misd. A	29	24.8	192	26.7
Felony, misd., D	19	16.2	94	13.2
Felony, C,B,A	4	3.5	26	3.6

proportion of FTAs than those not failing to appear. That is, these two groups seem to be more likely to fail to appear than do Whites.* Turning to sex, both males and females proportionately fail to appear as appear. Form of release, however, presents the greatest differences of the several characteristics.* Those released on citations comprise a little over 61% of those failing to appear, although they compose only 40% of those appearing. Conversely, those released on bond comprise only 19% of those failing to appear and over 41% of those appearing. Another way of illustrating the FTA-form of release relationship is by examining the FTA percentages for each type of release grouping (row percentages). Doing this, it was found that 15% of those defendants issued a citation later failed to appear, 20% of those released on PTA received a warrant, and only 7% of those posting bond failed to appear. The data here then tend to support the proposition that a liberal pretrial release policy (i.e. for releases) tends to be at the expense of an increase in failures to appear. This conclusion is further warranted when it is recalled that those released on citation and PTA were the added beneficiaries of a written warning and rescheduling while those released on bond were not. When this is considered, the efficiency of bond in securing appearance appears to be even more persuasive, although it must be emphasized that none of these relationships was statistically significant.

Interestingly, the data for the sixth circuit shows no substantial differences in the appearance rates for defendants grouped by seriousness of offense. That is, the FTA's within each offense category are distributed more or less equally in proportion to the frequency of each offense category. Further for each group the most frequent types of initial charges were minor (class B and C) misdemeanors, and the smallest were more serious felonies (class B and A).

This overview has reported on an attempt to establish some correlates

*Even these differences, however, are not statistically significant

of nonappearance in the hopes of isolating some caused determinants. However, with any two variable frequency distributions, the possible interrelationships of several factors renders any percentage differences or even any low statistical differences highly suspect. That is, suppose Whites are more frequently charged with felonies than Blacks and felony defendants have a lower FTA rate than other defendants, frequency distributions would be unable to distinguish the race effect from the charge effect on appearance rate. Multivariante, probit, regression analysis is a technique able to deal with this problem in that it is able to separate the several factor effects, and in essence determine the independent contribution of each of them separately.* The following discussion reports on the findings of such an analysis.

Multiple regression analysis is a statistical technique to predict a single dependent variable from any number of independent variables. If there are a large number of possible causal variables it is possible to isolate the independent effects that each variable contributes separately. This technique is similar in some ways to physically controlling for a third variable when examining a relationship between two other variables. For instance one might want to examine a relationship between seriousness of charge and case outcome. However, another possible independent variable might be prior record. In order to examine the specific contribution of seriousness of charge, the sample could be divided into prior and no prior arrests with a separate analysis undertaken for each. One draw

*For a discussion of these and other multivariante techniques, see Hubert Blalock, Social Statistics (New York: McGraw Hill & Co., 1960) pp. 326-358.

back to this approach is that the more the number of controls, the larger the sample size. Regression analysis, however, controls statistically rather than physically, and consequently is more parsimonious. More important, it facilitates more sophisticated analysis and comparison among a number of independent variables such that the contribution of each can be measured and compared. The results can be expressed in terms of the contribution each variable makes to the total.

The relationship of FTA to the factors already discussed was investigated in the multiple regression analysis as well as that between FTA and several other factors frequently regarded as being contributory factors in failures to appear. The first group of independent variables were those frequently regarded as rational bases for release decisions. They included the nature of the charge, marital status, residency, length of time in area, employment status and number of dependents. The second group, thought to contain significant factors, included some of the factors discussed above--race, age, sex, and others, legal representation and police recommendation. The regression analysis was carried out with three objectives in mind; to determine which characteristics were significant indicators of FTA likelihood, to determine which factors were not, and, if possible, to distill a predictively useful model of FTA propensities.

The analysis centers around three numbers. The first is the coefficient generated for each of the independent variables. This number gives some idea what weight any particular variable should be given relative to other independent variables when accounting for the variation in the dependent variable. The second number is the standard error of the coefficient. This number is a measure of the confidence associated with any variable. If the standard error is as large as the coefficient then it is quite possible that the true value of the variable is zero. It is most likely that for the entire population the value of the coefficient is the value generated. However, it is also highly likely that the true value lies somewhere between the coefficient plus or minus the standard error. The last number of interest is the square of the multiple correlation, (R^2 term). This number measures how much of the variation in the dependent variable is accounted for by the several independent variables taken together. This number ranges from 0 to 1 with predictive ability increasing as the R^2 term approaches 1.

The regressions were run on a program which ranked the several independent variables according to their influence on the R^2 term. After the point was reached where adding successive variables did not increase the R^2 term by more than .01 (the point at which it would require 100 such variables to explain all the variation in the dependent variable) the program simply printed the coefficients of the remaining variables and the R^2 term generated by the variables encountered up to that point.

The results for the first regression were dismaying to say the least. When testing the factors which the law implies are indicative of FTA propensities, none of the indices proved to be significant. All the independent variables, seriousness of the charge, prior record, marital status, the number of dependents, residency, time in area and employment status all proved to be statistically insignificant at the 5% level. Equally disap-

Table XIV

Regression Results for Attempt to Account for Failures to Appear

Variable Description	Coefficient	Standard Error of Coefficient	Standardized Coefficient	Unique Variance
Race*	-0.0627	0.036	-0.092	.008
D. had counsel*	-0.0020	0.001	-0.080	.006

*Statistically insignificant at the .05 level.

Multiple Correlation (R) = 0.130
Multiple Correlation Squared (R^2) = 0.017

Partial Correlations with Dependent Variable (FTA) for Variables Not Entered in Multiple Regress (i.e. None of them Increased R^2 by more than 0.010).

Variable Description	Partial Correlation
Original Charge	0.024
Original Charge	-0.027
Original Charge	-0.034
Prior Convictions	-0.038
Original Charge	-0.074
Marital Status	0.046
Dependent	0.030
New Haven Address	0.049
Length of Time in Area	0.007
Employed at Present	0.023
Reasons for Release Given	0.043
Reasons for Release Given	-0.006
Reasons for Release Given	-0.021
Sex	-0.016
Age	0.052

pointing, taken together the variables could account for little more than 1% of the total variation of the dependent variable.

The attempts to find other useful indicators of FTA likelihood were equally disappointing. When age, sex, race, and legal representation were introduced the R^2 term improved only slightly, to about 2%. As indicated in the summary presented in Table XIV, of all the variables (including those specified by law) race and legal counsel were most important but, even they were insignificant at the 5% level.

Of what use then is this information? If the system is in fact operating under the assumption that insuring appearance at trial is its sole purpose then it seems that better indicators of FTA should be sought. It is likely that such indicators do not exist among the information routinely collected by the court. It is possible that the operation of the court itself might provide the most important clues to understanding who does and who does not show up for trial. Examining how well defendants understand court procedure, how much respect they have for the court and the police, how well aware they are of scheduled court appearances and what penalties they believe they face if they fail to appear may give a much clearer picture of FTA behavior.

Turning now to the question of those rearrested and charged with failure to appear, it was found that of the 1642 different defendants and the over 2000 separate charges there was a total of 64 defendants charged with failures to appear. Of these exactly half were rearrested on the basis of a warrant issued for their failures to appear, while the other half were rearrested for a new and unrelated offense before it was discovered that

they were wanted for previous non-appearance. In other words only half of those persons rearrested and formally charged with FTA were rearrested because the warrant for their rearrest was served on them. The other half were rearrested only when a new incident (and charges) brought them to the attention of the police.

Further, the numbers formally charged with FTA are only a small portion of those defendants who were officially recorded as having failed to appear and had a warrant for their rearrest issued by the court. While only 64 defendants or slightly over 4% of the defendants, were formally charged with FTA, warrants were issued for 234 or 14.3% of the defendants. Thus it is clear that there is a slackness in the follow-ups on non-appearances. Only 27% of those whom the court had identified as failures to appear were formally charged with the offense. Apparently warrants are not successfully served with any great regularity. Rather the general policy on FTA's seems to be to wait until the defendant is rearrested at a later date for other charges and then serve him with the warrant. Another factor which no doubt accounts for the low frequency of FTA prosecutions is that upon occasion someone who has been issued a warrant voluntarily appears soon after its issuance and the warrant is quashed and the FTA charge dropped. No data are readily available on the frequency of this practice.

Perhaps what is most interesting is that of those 64 defendants who were formally charged with FTA's, none of them was convicted on this charge. While a nolle on the FTA charge was usually coupled with a plea of guilty on some other charges, the consistent failure to prosecute FTA's or even serve FTA warrants cannot help but give the impression that the

FTA problem is being treated rather casually by everyone involved. Perhaps this is understandable given the lack of facilities, the high volume, and the general confusion surrounding the day to day operations of the court. Among other things this atmosphere is conducive to failure to appear, and defendants frequently claim that their non-appearance was a result of getting bored and confused and leaving court only after having waited for some time in the gallery. Others have a variety of excuses ranging from what appear to be sound and acceptable to the transparently thin. Still most others never do appear so that their reasons are never known. What does seem to be the case is that it is regarded as too difficult and time consuming by many to make a concerted effort to review and distinguish the excuses in order to prosecute even the most serious FTA charges. On the other hand, a variety of administrative devices might be adopted to reduce the non-appearance rate. Bond probably performs such a function and no doubt this accounts for the substantially lower FTA rate among those out on bond (7% as opposed to 15% and 20% for PTA's and citations respectively). Likewise, there is some evidence that the follow-up letter sent to those non-appearants released on PTA and citation have some small but not insignificant effect.

5. REARREST RATES OF THOSE RELEASED PENDING TRIAL*

While not a statutory concern of those charged with establishing release conditions, it is nevertheless of considerable law enforcement and

*Those rearrested for FTA only have been dropped from consideration here for two reasons: 1) they pose a distinct problem separate from those arrested on other "substantive" charges, and 2) the FTA problem already has been examined in the preceding section.

public interest to determine the extent to which those released are charged with committing additional offenses while awaiting trial. Proponents of pretrial detention argue that future public safety is or ought to be a legitimate consideration in the determination of pretrial release. On the other hand, opponents argue that the notion undermines the presumption of innocence and that it is virtually impossible to predict who is and is not likely to engage in and be arrested for future illegal actions.

Of the over 1600 defendants considered here, only 104 or roughly 7% were rearrested for additional offenses alleged to have been committed during their release. While this constitutes only a small proportion of the total, it is still a significant number. A question that immediately comes to mind is whether it is possible to distinguish those who were rearrested from those who were not. As already indicated critics of detention have argued, and with persuasiveness, that it is extremely difficult, if not impossible, to successfully isolate the distinctive features and characteristics of such a small group (here only 7%) from the much larger group.

While we have not gone to the same lengths here as we did in the preceding section on FTA's, a cursory look at Table XV indicates that such a predictive capability is not likely to be forthcoming. Of the characteristics examined, none produced any appreciable differences between the two groups of defendants, i.e. those rearrested and those not rearrested prior to trial.

On the whole, there are few even noticeable differences between the distributions of the characteristics of the rearrest and the no arrest

Table XV

Comparison of Those Rearrested on Charges for Offenses Occurring While Out on Bail with All Others (excluding arrests for FTA only)

Variable	Rearrested N	Rearrested %	No Rearrest N	No Rearrest %
AGE:				
19-21	23	26.1	218	18.5
22-25	13	14.8	261	22.2
26-30	23	26.1	194	16.5
31-40	13	14.8	235	19.9
Over 40	16	18.2	270	22.9
	88	100.0	1178	100.0
RACE:				
White	29	27.9	550	40.5
Black	67	64.4	695	51.2
Puerto Rican	8	7.7	95	7.0
Other/DK	0	0.0	17	1.3
	104	100.0	1357	100.0
SEX:				
Male	77	74.8	1065	78.4
Female	26	25.2	293	21.6
	103	100.0	1358	100.0
PRIOR RECORD:				
Misdemeanor	34	48.6	363	56.2
Felony	36	51.4	283	43.8
	70	100.0	646	100.0
TYPE OF INITIAL CHARGES:				
against persons	23	22.3	142	10.5
against property	21	20.4	273	20.2
against morality	15	14.6	224	16.5
against order	25	24.3	610	45.1
against justice	19	18.4	100	7.4
against misc.	0	0.0	4	.3
	103	100.0	1353	100.0

groups. The age profiles only produce variations of a few percentage points, and do not point to any good predictors. Race, on the other hand, does produce some larger differences. Whites constitute a much smaller percentage in the rearrest group than in the no rearrest group (27.9% to 40.5%). Puerto Ricans remained almost unchanged in the two groups. Even this percentage spread does not, however, point to even a weak predictive candidate when the percentages of Whites and Blacks rearrested is considered (row percentages). While 10% of all Blacks are rearrested, and only 5% of all Whites, the overwhelming majority of both races (90% and 95% respectively) are not rearrested. The difference is marginal, statistically insignificant and might even completely wash out if other controls were introduced. Consequently it is not a good candidate for a predictor.

Neither "sex" nor "prior record" produces any substantial differences between the rearrests and no arrests, while type of "initial charges" produces only some modest differences. In the latter case, the differences seen on the offenses "against persons," "public order," and "justice" categories while all larger than 10%, fall victim to the same problem that was seen with race. Those rearrested in each of these three categories still constituted such a small portion of the total number in the category so as not to point to a good predictor.

Given so few and such small differences to begin with and coupled with the lack of any statutorily prescribed or theoretically compelling candidates as predictors of rearrest (independent variables), no multivariate analysis has been reported here. There is simply no likelihood of establishing anything approaching a predictive capacity. Again, one

conclusion that can be drawn is that there apparently are a large number of factors contributing to rearrest during pretrial release and it is not likely that they can be readily identified and examined in such a way that a good predictive capability of likelihood of rearrest can be developed. Whatever such variables might be, they too seem to be widely distributed, and not even closely associated with any of the several standard characteristics examined here.

If this is the case or even something like it, then any hopes of trying to reduce additional crimes by means of pretrial detention are likely to exact a high price. It is much more likely that the most frequent "error" would not be in releasing someone who was later rearrested during release, but rather in holding someone who would not have been rearrested. For those data a rough estimate is that detention on the average holds fourteen persons who would not have committed additional offenses for everyone that is prevented. It is questionable that such a trade-off is worth it.*

One last note of caution. It might be argued that the rearrest rate is so low (and hence so difficult to deal with) precisely because those who are likely to commit additional offenses are the very ones who are never re-

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*These findings here are generally consistent with the conclusions of a study reported in the Harvard Civil Rights and Civil Liberties Review. There, the pretrial detention standards of Washington, D.C. were "applied" by a group of lawyers to defendants in Boston's criminal court. In summary, the result was that only very few of those who would have been detained under the D.C. standards but were released in Boston were rearrested. The study estimates that if the standards were to go into effect for every rearrest avoided, from ten to twenty unnecessary detentions would take place, despite the elaborate attempts to weed out the "good risks" beforehand. See "Preventative Detention: An Empirical Analysis," 6 Harvard Civil Rights and Liberties Review (March, 1971), pp. 291-396, 317, 323.

leased in the first place. While it is certainly true that it has been impossible for us to construct an ideal experimental design and study to directly examine such a hypothesis, some indirect evidence leads us to reject the proposition. First, almost everyone in the sixth circuit is released, so that the detained population is extremely small. In many respects then the sixth circuit's liberal policy does provide us with a modified experimental study. Second, in a separate analysis of who was detained and released, no simple characteristic or set of characteristics was able to account for the release-detention distinction. That is, the characteristics of those detained did not look substantially different from those who were released. This further reinforces the belief that it is impractical from an administrative point of view to isolate the distinctive, explanatory differences between those detained and those released. Consequently, this tendency toward diffusion indirectly lends support to our conclusions about the likely consequences in increases (or decreases) in pretrial detention rates.

6. EXAMINATION OF TWO PROGRAMS

The major purpose of this chapter is to illustrate the use of system-wide data in examining the activities of particular agencies or programs within the system. By contrasting the actions and outcomes of a particular segment against the backdrop of the system as a whole, the functions and impact of the particular agencies or programs can be sharply defined and clarified. There are a number of concrete advantages to such an approach: It can identify in great detail the precise impact each particular agency has on the whole. Since the administration of criminal

justice is generally characterized by low levels of information compounded by diffused responsibilities and high expectations for new programs, the ability to see how each program and agency fits into the whole can be particularly useful. Such a picture can be helpful in determining the reasonableness and validity of stated and expected objectives of programs and in making assessments of what can reasonably be expected in the future. Further, the particular "contribution" or functions of different agencies can be compared in relation to their impact on the system as a whole, thereby providing the basis for comparative evaluation and serving an important function in the allocation process.

Of the many agencies and separate organizations operating in the pretrial system in the sixth circuit, two programs have been selected for consideration here, the New Haven Pretrial Diversion Program and the police field citation program. They have been chosen because of availability of information and because they are of particular interest to the Pretrial Services Council. It is important to note, however, that the following discussion is intended only as illustrative rather than exhaustive and further that the approach could be equally useful in examining a number of other agencies in New Haven, such as the Redirection Center, family relations office, drug treatment programs, etc.

The Diversion Program

During the period of this study, from early June to late August 1973, nineteen persons were terminated from the Pretrial Service Council's Diversion Program, all but three of them satisfactorily. During the same period, over 1600 defendants had their cases disposed of by the Court. In this section we propose to examine the diversion program's practice and eligibility criteria in light of this larger group in an effort to assess its impact on the overall pretrial system in the sixth circuit, to deter-

mine its potential for the future, and its likely impact if program eligibility requirements were altered.

While supporters of diversion programs are enthusiastic about them for a number of different reasons, one of the more frequently made arguments is that they contribute to the reduction of court congestion by removing cases from the system at an early stage. What this argument assumes is that there are enough "minor cases" and eligible defendants such that their diversion from the regular court routine would make a noticeable and important reduction in the court's work load. The argument further presupposes that a substantial number of those eligible for diversion will in fact want to participate rather than follow the standard route through the court system. Both these assumptions are open to question in light of the data gathered for the Sixth Circuit.

Given a heavy work load, a marginal reduction in numbers of defendants is not likely to alter the basic manner in which cases are routinely handled. Nor, in fact, is it clear that the time a prosecutor and judge spend on a divertee's case is less than the time spent on a regular case. Also, if the additional costs of operating the diversion program are included in a total, system-wide assessment, what is likely to result is a net increase in "processing" time and costs per defendant rather than a net decrease. That is even if there is a minimal reduction in workload and costs to the regular court system, they may be more than off-set by the substantial increases in costs incurred by the new diversion program. At present there is little doubt that such negative and pessimistic assessments are warranted.*

*Whether this is due to the newness and experimental nature of diversion programs (which necessarily tend to be small) or an inevitable result of shortsighted and overly optimistic planning cannot now be made, although answers to some of the questions can be gathered. For a detailed study of the New Haven diversion project, see the report by Daniel Freed, Edward DeGrazia and Wallace Loh, "The New Haven Pretrial Diversion Program - A Preliminary Evaluation" (May 16, 1972 - May 1, 1973).

Perhaps the most frequently made explanation of such extremely low numbers of participants in (and consequently the high per capita costs of) diversion programs is that the eligibility criteria are so restrictive that they tend to eliminate from consideration at the outset most defendants. This argument is frequently made by proponents of the diversion programs who see liberalization of eligibility requirements as desirable from both a treatment and rehabilitative point of view and as a means of increasing the numbers of participants in their undersubscribed programs. The data gathered here, however, tend to question this latter argument.

The relevant initial entrance criteria for the New Haven diversion program are that a participant must:

1) Be over 16 years of age.

2) Have no other pending criminal charge against him.

3) Not be involved in the illegal use of narcotics or addicted to alcohol-related charge.

4) Not have more than one previous felony or three previous misdemeanor convictions during the past five years. If the individual was incarcerated during any part of the previous five years, the period shall be extended by the amount of time spent in incarceration.

5) Have resided within New Haven or a contiguous town for a period of at least the past six months.

6) Is unemployed or underemployed.

The initial task is to determine how inclusive or exclusive these criteria are. Table XVI reports on the distributions on each of them for the sample of defendants in this study.

Table XVI

Pretrial Diversion Eligibility Criteria: Proportion of Defendants Meeting Each of the Criteria

Criteria	Eligible
1) Meets age criteria	98%
2) Meets pending charge criteria	95%
3) Meets prior record criteria	79%
4) Meets narcotics/alcohol criteria	92%
5) Meets residency criteria	97%*
6) Meets employment criteria	48%*

*Based on figures for a subsample for whom data were available.

Several interesting features emerge from the table. First, it is seen that five of the six criteria are not all restrictive: almost everyone meets them. Only the prior record and employment criteria tend to eliminate large numbers of persons, with eligibility percentages of 79% and 48% respectively. That is, while almost everyone met four of the six criteria for which data were collected, only a little over three out of four defendants met the prior record criteria and fewer than half met the employment eligibility criteria. It should be noted, however, that these figures presented here on prior record and employment substantially <u>overstate</u> the restrictiveness of these two criteria.* While the Diversion Program's requirements hold that one cannot have more than three convictions within the past five years, we did not obtain information on prior record

*Indeed, since this study began the employment criteria has been officially dropped since it was not being used in fact.

in precisely this manner, but rather looked at <u>total</u> number of prior convictions. We therefore included as "ineligible" all those who had more than three prior convictions regardless of the time period in which they occurred. Again, we gathered data on whether or not a person was employed at the time of arrest, while the Pretrial Service Council also considers "underemployed" defendants as potentially eligible. Given the types of employment of most of those appearing in circuit court, a strong case could probably be made that almost all of them are "underemployed."

Even with these conservative figures, it would be difficult to conclude that the reasons for such low numbers of participants is the result of overly restrictive eligibility requirements. Although by these figures half the sample was defined as ineligible because they held a job of some sort, still over 800 defendants were processed through circuit court, and only 19 participated in the program. Even this proportion of divertees to total defendant population is minimal, especially if it is viewed as a means of unclogging the courts.

This harsh judgment should be partially modified because of one additional factor, the mutually exclusive and cumulative effects of the two most restrictive criteria. That is, while some persons are not eligible because of employment, others may be ineligible because of prior records. Still others may fail on both counts. To the extent that these eligibility conditions are <u>not</u> concurrent or overlapping, the examination of percentages of those eligible on each specific factor taken by itself tends to understate the problem since in total the numbers excluded by failing on only one of the several criteria may be quite large. To some extent this is the case.

On a sample of cases the following distribution was found.

	Eligible on Employment		
Eligible on prior Convictions	Yes	No	
yes	56	54	110
no	39	19	58
	95	73	N = 168

The table indicates that while 56 of the 168 met both eligibility requirements, only nineteen were ineligible on both. The much larger numbers of those ineligible (the groups of 54 and 39) were so on only one of the two criteria. Furthermore, it was seen that employment (54) was more restrictive than prior convictions. What all this indicates is that the cumulative effects of the several criteria can be (and are) considerably more restrictive than the indications for any single criteria would tend to show. On the other hand, it should be emphasized that our proxies for these two most restrictive criteria--employment and prior record--are considerably more stringent than those used by the Diversion Program so that these figures and rough proportions are still much more conservative than in actual practice.

Still, given these limitations and indications of cumulative restrictiveness, it is not likely that if entrance criteria were liberalized or eliminated entirely, that the diversion program would make any substantial dent in the overall case load. Taking the most optimistic projection if these two criteria were entirely eliminated and the pool of those eligible doubled and further assuming that the number eligible defendants

participated in the same rate as the others, there would be an increase of only sixteen successful participants per quarter. While this would be a 100% increase in the workload of the Program, it would only reach an additional one percent of the defendant population. As indicated above, however, even this is an optimistic projection since neither prior record nor employment criteria are interpreted by the Program as rigidly as they have been here. Apparently only on rare and infrequent occasions has an otherwise eligible defendant been denied admission to the diversion program because he or she was employed. A more realistic projection then is that if these two eligibility requirements were eliminated on a few, more would enter the Program as a result. This should not be taken to suggest that no changes in eligibility criteria be made. Rather, it is only to project that such changes are not likely to produce any substantial changes in the caseload of the Program or have any substantial effect on the system as a whole.

The Citation Program

New Haven has a variety of forms of release alternatives, and one of the more innovative and highly regarded is the police field citation program, a practice which allows arresting officers to issue citations to arrestees at the location of the incident at question. Two important and practical features are said to derive from this program of early release:

> . . . all activity occurs at the point of the police-citizen encounter; the unnecessary hardships and indignities of being hauled off in a paddy wagon to the police station and detained there for a period of time are eliminated.*

Secondly, the practice produces benefits for law enforcement officials as well:

*Mark Berger, "Police Field Citations in New Haven," 1972 Wisconsin Law Review, 382-417, 386.

> . . . the time required to process an arrestee, including the administration of a bail interview, was eliminated. The estimated savings was 10 minutes per arrestee . . . The delay involved in processing arrestees was reduced, and some reduction in the overcrowding of the detention facility effected: but no actual cash saving resulted . . .*

This section will examine the citation program against the backdrop of the defendant population as a whole and in light of a study reporting on the citation program as it operated in 1970-71. With this comparison it will be possible to compare operations of the program now with operations during the pilot phases of the program. In addition, some attention will be given to the problem of failures to appear to determine how those released on citation compare with those released on PTA and bail, both now and in the earlier stages of operation.

The Berger study of the citation program during its initial twelve month period in 1970-71 found that a total of 669 defendants arrested on misdemeanor charges other than motor vehicle or city regulations were released by means of a citation issued by an arresting officer. This figure constitutes roughly 6.6% of all arrests during that period. It will be interesting to compare this and other figures from the earlier period with data on the administration of the citation program during the period of this study.

Table XVII summarizes several of the more interesting comparisons that we were able to make. It shows increased police support for the citation practice in that the percentage released by citations rose from 6% in 1970-71 to 15% for the current period. Not surprisingly this increase in citations was paralleled by a decrease in PTA releases. What this apparently indicates is that some persons who once would have been released PTA at the detention centers are

*Op. cit., p. 410.

Table XVII

Selected Comparisons of the Citation

Program Between the 1970-71 and 1973 Periods

	1970-71	1973
A) Rates for pretrial releases on:		
Citation	6%	15%
PTA	39	32
Total	45%	47%
B) FTA (warrants issued) rates for those released on:		
Citation	5.3%	15%
PTA	not available	20.0
Bond	not available	07.0

now being released in the field. Further the figures show that despite the increase in citations, PTA's continued to be used at a rate higher than might have been expected. The totals of release by citations and PTA speak to this most clearly in that a 2% increase in these two forms of release has occurred between the two periods. Both citations and PTA's seem to be used more readily now than two years ago.

This net increase in releases without financial conditions is particularly encouraging since the 1970-71 figures represent the release practices during the pilot phases of the citation program, a period that is usually associated with inflated results. That is, during the experimental

stages of many programs, a heightened concern for an interest in the success of the program frequently leads to high initial success, only later to be followed by the institutionalization and routinization of the program and subsequent decline in effectiveness. In this instance, however, the citation program has not only continued to maintain its original levels, but has substantially increased the numbers released.

Success is not without its consequences, however, as section B of Table XVII indicates. Here it is seen that the increase in the issuance of citations has been followed by an increase in the failures to appear. In 1970-71 the FTA rate was 5.3% of all those released on citations, while in the 1973 the percentage jumped to 15%.

Unfortunately, no corresponding comparisons on PTA and bond rates could be made. This jump is considerable and no doubt is a consequence of the increased reliance on citation releases. As indicated earlier, however, failures to appear seem to be curbed only at the expense of inconvenience or detention for large numbers of other persons who do or would appear, so that any attempt to reduce the FTA rates for those released on citations might be counterproductive.

PART II

FORMAL DUTIES OF THE ACTORS IN THE PRETRIAL PROCESS

FORMAL DUTIES OF THE ACTORS IN THE PRETRIAL PROCESS

INTRODUCTION

Part II is based on a compilation and synthesis of the various duties and responsibilities of the primary pretrial agencies and actors that are prescribed by statute, case law, and agency guidelines. Its purpose is to provide a guide for examining current programs, practices and operating policies of the various agencies engaged in securing pretrial release and plans for new programs.

What is clearly indicated in this review and synthesis is that the State legislature has indicated an unswerving commitment to pretrial release, and prompt release with a minimum of conditions. To this end an elaborate multi-layered system of decision-making and review has been constructed and a variety of pretrial release alternatives provided for. The police can make an initial decision at the site of arrest and then again at the detention center; if the accused is not released, a bail commissioner is then immediately required to make a decision; if the accused is not released at this stage, a judge at arraignment or subsequent appearances is required to review the decision if requested by the defendant; and further review is avaiable in the trial court, appellate courts, and through the efforts of the various diversion and redirection programs. Further, the purpose of bail is clearly laid out in the statutes, although, as is noted below, some policy guidelines of the court and New Haven police department seem to be more restrictive than, and hence in conflict with the statutes. Release alternatives include the use of summonses rather than warrants, police citations rather than detention center bookings, release on PTA rather than bond, and both surety and cash bond. At each level of decision-making and with each alternative, the over-riding single factor is to be the maximization of the likelihood of future appearance with the least restrictive conditions of pretrial release.

The discussion in chapters one through four has indicated that almost all defendants are released at some point prior to the disposition of their cases. As a consequence the Sixth Circuit might appear to be among the leaders in comparison to the release practices of other urban areas in the United States. However the examination of eventual release alone is an inadequate basis by which to demonstrate the extent of compliance with the letter and spirit of the Connecticut law on pretrial release. The more detailed look at time and stages or release indicates that release is often not secured at the earliest stage or by the first available decision-maker. Viewed in this way there seems to be considerable variance between the spirit of the Connecticut laws and the actual practices in the Sixth Circuit.

One way to focus on the nature and magnitude of this 'gap' is to inquire whether each decision that results in initial detention, but involving a case in which the accused is subsequently released, is an 'error'. That is, if a person is eventually released prior to disposition, can any detention beyond the time it takes to book the defendant properly be regarded as a failure of the system? So defined, 'failures' can occur for a variety of reasons, ranging from the inability of the defendant to immediately raise the necessary bond amount, to inadequate information about his reliability to appear if released, to a tardy review and reduction in pretrial release conditions by a bail commissioner or judge. Whatever the reasons, however, it would seem reasonable to assume that the various actors in the pretrial release decision process would seek to minimize such 'errors' by holding the amount of bond -- if any -- to a minimum and/or by initially undertaking a careful investigation into the defendant's ties to the New Haver Community such that there would be minimal need for any additional information to be gathered at a later

date.

It is important to consider bail commissioners and bail hearings in court as means for rectifying early errors rather than primary vehicles for effective pretrial release. In the long run, if initial pretrial release mechanisms of the police stage were operating efficiently, there would be relatively few if any reviews and releases at the later stages. The other agencies would exist primarily to catch the occasional few who slipped through. To this extent, the Pretrial Services Council might consider a review of the pretrial release practices and policies of the police department and bail commission to order to reduce any differences between them and to expedite the release of those defendants who are eventually released, but only after some delay and a change in release conditions. One first step along these lines might be to review the police department and circuit court statements of policy, which as the following discussion will indicate, tend at certain points to be in conflict with each other and in at least partial conflict with the Connecticut bail statutes.

Another problem of considerable magnitude as the discussion in chapter four indicated is the high rate of defendants who fail to appear. While the data available to us do not include reasons for failures to appear, they do point out that a large percentage of defendants fail to appear, even after an initial letter of warning by the bail commissioner. What is unanswered in the following summary of Connecticut law and agency policies on pretrial release is the question of what to do with those defendants who fail to appear or have in the past failed to appear. Because of the high nonappearance rate, this constitutes a rather serious problem for the court and should certainly receive considerable attention from the Pretrial Services Council. At a minimum, careful study of the

variety of reasons for failures to appear should be undertaken, and policy guidelines on how to handle nonappearances should be drafted in order to establish a uniform policy for implementation by the police, bail commissioners, and the court. In addition concerted effort to reduce nonappearances should be considered. The following discussion of the formal duties of an limitations on each of the primary sets of actors in the pretrial process can, we think, serve as a first step in such an examination.

1. The Police

A. The arresting officer -

In Connecticut, the alleged offender enters the criminal process through the arrest process. The police arrest a suspect either as a result of the issuance of an arrest warrant based on a finding of probable cause[1] by the court, or when the police (1) observe a crime being committed, (2) act on the speedy information of others, or (3) in the case of felonies only, have "reasonable grounds" to believe a felony has been or is being committed.[2] Persons arrested pursuant to a Superior Court bench warrant must be advised of their rights and brought before the superior court "without undue delay" or taken to a community correction center when the court is not in session.[3] Persons arrested pursuant to a circuit court arrest warrant must be "presented with reasonable promptness before proper authority".[4] This second group, together with all those arrested without previous warrants being issued, are subject to procedures much different from those established for persons arrested pursuant to a bench warrant (i.e., the bail procedures in the circuit court and the superior court differ markedly). These differences will be explored in some detail below.

An alternative to incarceration of the arrestee is open to the arresting officer in cases involving a penalty of not more than one year's imprisonment and/or one thousand dollars fine; i.e., in misdemeanor cases. "Any person who has been arrested with or without a warrant .... may, in the discretion of the arresting officer, be issued a written complaint and summons[5] and be relased on his written promise to appear on a date and time specified."[6] This procedure is

known as a citation arrest and is the subject of a New Haven Department of Police Services General Order discussed immediately below. If the recipient of a citation fails to appear in court at the specified time he is subject to the issuance of an arrest warrant and chargeable with a separate offense for failing to appear.[7]

The New Haven Department of Police Services conducts a Misdemeanor Citation Program.[8] General Order 71-4[9] deals with both the Citation Program and Bail Policy, and is "intended to insure that individuals arrested are treated equitably and in accordance with law."[10] The portions applicable to the Citation Program are set out below.

II. Misdemeanor Citation Arrests

A. General

Every New Haven Police Officer is authorized to release misdemeanor offenders over 16 years of age on their written promise to appear in court. (For arrestees between 16 and 21 years of age, the signature of a parent or guardian on the citation form is required.) The procedures for misdemeanor citation releases, described in detail below, involve the issuance of a citation to the arrestee at the scene of the arrest in appropriate cases. This process avoids the unnecessary delays and inconveniences caused by the transportation of arrestees to the detention facility prior to release.

B. Procedures

1. Arrest

The issuance of a citation is not a substitute for arrest and has no effect on the status of an arrest. Citations can only be issued after an arrest has been made. Each police officer, therefore, must continue to determine that an arrest should be made based upon his judgment that an offense has been committed and an arrest is appropriate. Every person arrested, must, as always, be informed of his constitutional rights.

2. Arrestees Eligible for Citations

Every individual arrested for a misdemeanor is eligible for a citation except:

a. Arrestees under 16 years of age.
b. Arrestees between 16 and 21 years of age who cannot

secure the signature of a parent or guardian on the citation form.

c. An arrest for an offense involving the possession or use of a weapon.
d. An arrest for a sex-related offense.

If the individual is not eligible for a citation, he must be transported to the detention facility for booking. If he is eligible, the officer must decide whether he should receive a citation instead of being taken to detention.

3. Citation Standards

If an individual is eligible for the issuance of a citation based upon the above criteria, a decision must still be made whether to issue a citation or transport the suspect to the detention facility. This decision is to be based upon the citation standards set out below:

a. Is there a substantial danger that if immediately released the arrestee will continue the offense?
b. Is there a need to detain the arrestee to prevent him from injuring himself, the arresting officer or other persons?
c. Does the arrestee understand that he has been arrested and must appear in court?
d. Does the arrestee demonstrate sufficient ties to the New Haven area to make it likely that he will appear in court?

The first three factors are to be judged on the basis of the situation at the time of arrest. They require the exercise of individual judgment by each police officer on the basis of all facts available. The fourth factor, likelihood of appearance in court, should be evaluated from the information gained in the citation interview. Ties to the New Haven area will form the basis of this judgment. No specific length of residence or job or number of local relatives is required. The existence of some tie based upon any one factor or combination is enough to satisfy the likelihood of appearance standard. If the citation standards are not satisfied, it means that there is a reason to bring the arrestee to the detention facility. But, if there is not good reason for detention based upon the standards, the arrestee shall be given a citation and released.

4. Citation Interview Procedure

If an arrestee is eligible for the issuance of a citation based upon the criteria of section II(B) of this order, he must be considered for the issuance of a citation. The first step in this process is the consideration of the first three standards for citation issuance in section II(B) (3) of this order based upon the facts existing at the time of arrest. If none of the first three standards precludes issuance of a citation, the likelihood of the suspect's appearing in court must be determined. If the suspect is likely

to appear in court, a citation shall be issued and the suspect released.

To determine the suspect's likelihood of arrearing in court, a citation interview must be held. This involves completion of the citation form. Experience with the citation program has shown that it is helpful to fill out the confidential information section of the citation form first. That way, if the suspect's ties to the area are very weak, the whole form will not have been filled out unnecessarily.

The citation interview must be proceeded by warning the suspect of his constitutional rights. Arrestees should also be told that if they refuse to answer the citation questions or sign the citation form, they will have to be taken to the detention facility for formal booking.

The suspect must produce some adequate identification to be released on a citation. If he has identification and if his answers to the interview questions indicate a likelihood that he will appear in court based upon some tied to the New Haven area, he shall be issued a citation and released.

5. Citation Issuance

> To issue a citation, merely complete the form and be sure that it is signed by both the arresting officer and the arrestee. Allow up to two weeks in setting a court appearance date and warn the arrestee that failure to appear in court will subject him to rearrest and additional charges. For any case in which a misdemeanor is not released with a citation, the arresting officer shall indicate the reasons for the non-issuance of a citation in his report.

The General Order uses imperative language throughout, obstensibly making the entire procedure mandatory upon the arresting officer, i.e., if the arrestee passes each stage of eligibility the police officer must go on to the next step in the procedure. Thus, "... if there is no good reason for detention based on the standards, the arrestee shall be given a citation and released." (emphasis supplied).[12] Such mandatory language would imply a high number of citation releases and a very high correspondence between the eligible arrested population (independently determinable from the court files) and the number released on citation. The portions relating to community ties are extremely brief, but: "The existence of some tie based upon any one

factor or combination is enough to satisfy the likelihood of appearance standard."

It should be noted that the underlying statute, Conn. Gen. Stat. 6-49a, places the decision regarding issuance of citations squarely within the discretion of the arresting officer. Thus, examination of the "reasons for the non-issuance of a citation" to be indicated in the police reports, as required by the General Order, would reveal the criteria upon which individual police officers are exercising their discretion. Such examination could indicate to the Police Department itself the validity and/or usefulness of the criteria set forth in the General Order, and could, perhaps, assist the Legislature in evaluating the utility of such discretionary measures within the criminal process.

B. The Lock-up

For those persons arrested on a superior court bench warrant and brought to the detention facility when court is not in session, the process is straightforward: they either post the bond set by the superior court at the time the warrant was issued[13] or they do not - either because the amount of the bond is beyond their financial resources or because a bondsman will not take them.[14] If they can, they may either employ the services of a bondsman or post a cash bail.[15] In either case the bond is taken by the police or corrections officials at the detention center.[16] If they cannot make the bond a mittimus is issued committing them to custody "until ... discharged by due course of law."[17] It should be noted here that, in Connecticut, there is both a Constitutional[18] and a Statutory[19] right to bail in all but capital cases. The recent Connecticut case of State v. Aillon[20]

held that, in light of the U.S. Supreme Court's decision invalidating the death penalty as it is presently constituted,[21] even murder cases are bailable. Apparently, then, until such time as the Connecticut General Assembly enacts a constitutionally acceptable death penalty, all cases in Connecticut are bailable as of right.[22] This does not mean, however, that there is any right to bail in an amount that is within the defendant's financial capability to post,[23] even though the only purpose for bail authorized by statute is assuring the accused's "appearance before the court having cognizance of the offense."[24] And, while the circuit court and bail commission[25] are bound by statute to a preferred order of release conditions, the superior court is permitted "to fix bond for the apperance of ... (the accused) ... in such amount as (to the judge) ... appears reasonable."[26]

The Bail Reform Act of 1967, as amended,[27] sets out a lengthy and detailed procedure of informal interviews and bail decisions at several stages of the process leading into the circuit court. Under Connecticut General Statutes Section 54-63c,[28] the chief of police, or his authorized delegate (generally the detention officer), is required to do the following:

1. "Promptly" advise the arrestee of his rights to silence and counsel.[29]
2. Advise the arrestee "of his right to be interviewed concerning the terms and conditions of release" and that, at his request, "his counsel may be present during such interview."
3. "Unless ... (the arrestee) waives or refuses such interview ... (the) police officer shall promptly interview ... (the arrestee) to obtain such information relevant to the terms and conditions

of his release from custody, and shall seek independent verification of such information where necessary."

4. After a waiver, refusal, or interview, unless the police officer "finds custody to be necessary to provide reasonable assurance of ... (the arrestee's) appearance in court, he shall promptly order release of ... (the arrestee) upon his execution of a written promise to appear or his posting of such bond as may be set by ... (the police) officer."

5. If the police officer "finds custody to be necessary and ... (the arrestee) has not posted bail," the police officer "shall immediately notify a bail commissioner" for the circuit.[30]

This sequence presupposes two things. First, that the arrestee has been booked and adequately identified.[31] Second, that the circuit court is not in session, for if it were the arrested could be presented immediately and have his conditions of release set by the court.[32] Assuming both conditions are satisfied, let us examine the mandate of the statute. The police must advise the arrestee of his rights, interview him "promptly", seek "independent" verification where "necessary", set a bond or release on PTA,[33] and, if the arrestee is not released, notify a bail commissioner "immediately."[34] It should be noted that the statute delegates the initial bail setting decision to the police, yet does not establish a preferred order of release conditions, favoring the least restrictive necessary, as is the case with the bail commission[35] and the circuit court.[38]

The New Haven Police Department General Order 71-4 discussed above also deals with the Department's bail policy, in Part III, Bail and ROR Policy:[37]

> All arrestees brought to the detention facility must have release conditions set for them. The only exceptions are offenders who face capital charges who shall be held without bond,

> and suspects arrested during court hours who may be immediately arraigned. All other arrestees must be given a bail interview and be permitted to secure release. A bail interview form (CCT-168) must be completed for each arrestee, whether or not he is released. The conditions set for release shall be the minimum necessary to assure the arrestee's appearance in court.

This section follows the statute in respect to requiring a bail interview for all arrestees except capital offenders and those immediately arraignable. As pointed out above, there are no capital offenses at this point in time, so all arrestees must be interviewed or arraigned. While the statute directs this to be done "promptly", the General Order does not. On the other hand, the General Order goes beyond the literal requirements of the statute to implement its general purpose by directing the "minimum necessary" release conditions.

B. Procedures

1. Bail Interview

> All arrestees, except those noted in section III(A) above, must be given a bail interview after being warned of their rights. Any police officer may conduct the interview which shall consist of completion of the bail interview form (CCT-168). Each arrestee has the right to refuse to answer the bail interview questions and must be so informed. If he refused, this fact shall be noted on the interview form and only a bail release is authorized. All arrestees who answer the questions must be considered for ROR release. If the suspect is physically unable to be interviewed, this fact shall be noted on the interview form.

Section B makes a questionable determination that those refusing the interview are eligible only for a bail release. The statute indicates that "after...refusal, unless...(the police) officer finds custody to be necessary to provide reasonable assurance of ... (the arrestee's) appearance in court, ...(the police officer) shall promptly order release of such person upon his execution of a written promise to appear or his posting of such bond as may be set by such officer."[38] Such a blanket denial of PTA release to those who refuse the interview would

seem to be in conflict with the statute, since it plainly includes the group of "refusees" within those to be considered for ROR release.

2. Release conditions

> By law, department personnel are required to set release conditions which are the minimum necessary to assure the arrestee's appearance in court. This decision is the responsibility of the desk officer at detention or any supervisor called in to assist him. Arrestees shall be released on their written promise to appear in court (ROR) unless, based on the facts gathered in the bail interview, a bond is required to assure his appearance in court."

As noted above, the statute does not in fact require the police to set the minimum release condition necessary, although the spirit of the Bail Act does seem to favor such minimally restrictive release conditions. At least such a policy is explicitly prescribed for the bail commission and the circuit court.[39] It is particularly important to note that in setting release conditions, the general Order accurately reflects the only permissible consideration under the statute - assuring appearance of the accused in court. Because such assurance is the only purpose of bail permitted by statute in Connecticut,[40] no other considerations (or goals) should be allowed to influence the bail decision.

3. Standards

> The suspect's ties to the New Haven area are the basis for determining his likelihood of appearance in court. They are:
>
> a. Family ties: a suspect either living with or having relatives in the New Haven area demonstrates family stability.
> b. Residence: a suspect living in a particular apartment or in the New Haven area for a period of over six months demonstrates strong ties to the community which increase with the length of residence.
> c. Employment: a suspect with a job demonstrates economic stability.
>
> Consideration of these factors will help you evalute the likelihood of the suspect's appearing in court. The existence of any one to a strong degree of a combination of two or three to a lesser degree, will meet the likelihood of appearance in court standard and justify ROR release. If not, bond should be set as a release condition. Here, too, the amount set must be the minimum necessary to assure the defendant's appearance in court. The reason for failure to release an arrestee on ROR must be stated on the arrestee's bail interview form.
>
> It is to be noted that the procedures for bail apply in all offenses, felonies as well as misdemeanors. Special care should be taken in making bail determinations for felony suspects due to the greater seriousness of the charges involved. This does not mean, however that a felony suspect is automatically ineligible for ROR release. Bail decisions for felons must be reached on the same basis and pursuant to the same general standards as bail for other offenders."

According to this section of the General Order, the only standards to be considered in all cases are the "suspect's ties to the New Haven area (which) are the basis for determining his likelihood of appearing in court." No mention is made of any other purpose or any other criteria. No categories of offenders are excluded, no consideration is directed to the arresting officer's assessment of the arrestee or the circumstances surrounding the arrest. In short, this section excludes all considerations save the statutorily mandated one of assuring court appearance, and bases that on the suspect's ties to the community and nothing else. The written reason[41] contained in the bail interview forms for every arrestee not released ROR should show how fully these standards are complied with. One would expect a very high degree of correspondence between the arrested population showing community ties (ascertainable from the court files as well as the bail interview form) and the number of arrestees actually released ROR, for the General Order explicitly directs that such demonstrable community ties are the standards to be employed. Again, the General Order calls for the "minimum" conditions necessary to assure appearance in court.

4. Releasing the arrestee

> If the arrestee cannot meet the release condition, the bail commissioner must be notified immediately. If the conditions can be met, an Appearance Bond Form (CCT-159) must be filled out, including court appearance date and the arrestee's signature;

one copy shall be given to the arrestee so that he will know his court appearance date.

This section restates the applicable statutes.[42]

5. Other

Individuals arrested on intoxication charges are eligible for release under the same conditions as other suspects once their physical condition is such that they may safely be released. Note also that all arrestees must be interviewed and a bail interview form completed for them. All bail interview forms shall be forwarded to the Assistant Chief of Operations.

By Order of:
s/
Biagio DiLieto
Chief of Police

The provision for holding intoxicated persons until "their physical condition is such that they may be safely released" appears to be without any statutory authority. The police may escort intoxicated persons to a "civil treatment facility" in lieu of arrest,[43] but, once arrested, such persons must be "promptly" interviewed and have bail set for them[44] like anyone else. The bail interview forms, required to be completed for "all arrestees"[45] by the police officers in the detention facility, should, according to this General Order, contain all information asked for on the form itself (unless the interview is refused) and written reasons for failure to release on ROR (unless released ROR).

A few more observations remain to be made. The court appearance date set for an arrestee who is released need not be the next regular sitting of the court, as is the case with an arrestee who is unable to secure his release.[46] The police, like others in the bail process, are protected from civil liability for any "damages on account of the release of any person" on a written promise to appear on bail bond.[47] There is no practical difference between a written promise to appear and a bond without surety, regardless of the amount. Although the

state could enforce the obligation in the full amount, there is apparently no evidence that this had ever been done.[48] In those cases where the police set a bond with surety, the arrestee has three alternatives: (1) post a cash bail in the full amount[49] which is usually beyond the means of most arrestees, particularly when the bond is of any appreciable amount; (2) try to post some valuable property with the court as security;[50] or, (3) try to procure the services of a bondsman.[51] Nearly all arrestees may be expected to rely on the third alternative.

If the arrestee cannot secure his release on the conditions initially set by the police then the bail commissioner enters the scene.

Points and Issues . . .

1. Connecticut Statutes, case law, and administrative directives unanimously direct that persons arrested be released on the least restrictive conditions necessary to assure appearance in court. No other goals or purposes are permitted in fixing bail, at least explicitly.

2. There are significant differences between bail procedures in the Circuit and Superior Courts which give rise to inequities (which will be further explored in later chapters). Particularly relevant is the practice of setting bail amounts in the arrest warrant itself which is never altered except by the court itself.

3. Since the release criteria is substantially the same, there should be a very high use of citation by police officers in the field, as the first opportunity for release. Examination of police reports showing reasons for non-issuance should provide data on compliance with or effectivenss of the criteria for decision, which the General Order purportedly restricts to community tied of the arrestee.

4. The Bail Reform Act does not clearly mandate the preferred order of release conditions for police action as it does for the Bail Commission

and Circuit Courts. It should be amended to make that preference explicit.

5. All arrestees should be considered for ROR - or whatever minimally restrictive release conditions are found necessary to assure appearance - by the police, including those refusing or waiving bail interview, those arrested on intoxication charges, and those charged with felonies.

6. QUAERE: Are all data collection sources regarding pretrial release decisions, e.g. bail interview sheets, police operations reports showing reasons for non-issuance of citations, etc., reviewed by supervisory authorities on a regular and systematic basis to determine the (1) extent of compliance with stated decision criteria, (2) validity of decision criteria, and (3) extent to which the particular decision process is aiding the goals of the underlying policy involved.

Notes, Chapter 7

1. For authority of the circuit court to issue arrest warrants and of the police to serve them, see Conn. Gen. Stat. § 54-2a and discussion, p. , infra. For Superior Court arrest warrants, called bench warrants, see Conn. Gen. Stat. § 54-43, and discussion, p. , infra.

2. Conn. Gen. Stat. §§6-49.

3. Conn. Gen. Stat. §§54-43.

4. Conn. Gen. Stat. §§6-49; see also Conn. Gen. Stat. §§54-63c(e), which provides for presentment at the next regular session of the circuit court, and discussion, p. , infra.

5. Referred to as a "citation", not be be confused with a summons which may be issued only by the prosecutor, see p. , infra.

6. Conn. Gen. Stat. §§6-49a.

7. Conn. Gen. Stat. §§53a-173.

8. See generally, Isadora Wecksler, The Police Decision on Release and Bail: The View from the Lock-Up, May 1971, (unpublished) on file in the Yale Law Library; and Ira Block, Citation Release and the Arrest Process, June 1971, (unpublished) on file in the Yale Law Library.

9. New Haven Department of Police Services, General Order 71-4, "Re: New Haven Police Bail Policy", dated April 22, 1971.

10. Ibid., Section I.

11. There is apparently one statutory provision making such information confidential. But see, contra, Rice, Bail and the Administration of Bail in Connecticut, 4 Conn. L. Rev. 1, (1971), n. 19, p. 4; and, of course the General Order under discussion, describing that section of the citation form relating to community ties as "confidential" - Section II(B) (4).

12. General Order 71-4, B(3).

13. Cf., p. , infra.

14. See discussion Ch. 5.

15. Conn. Gen. Stat. §§54-66.

16. Conn. Gen. Stat. §§§ 54-43, 54-53, 54-64.

17. Conn. Gen. Stat. §§ 54-43.

18. Conn. Const., Art. I, § 8 provides: "In all criminal prosecutions, the accused shall have a right * * * to be released on bail upon sufficient security, except in capital offenses, where the proof is evident or the presumption great.* * *"

19. Conn. Gen. Stat. §54-53.

20. 295 A2d. 666 (1972).

21. Furman v. Georgia,.....U.S....., (1972)

22. See discussion p....., infra.

23. 2 See State v. Menillo, 159 Conn. 264 (1970), and discussion, p. infra.

24. Conn. Gen. Stat. § 54-53; cf. Conn. Gen. Stat. §§ 54-43, 54-63e.

25. See Chapter 8, The Bail Commission, p. , infra; and Chapter 9, The Circuit Court, p. , infra. Both the Bail Commission and the Circuit Court are expressly bond to release the accused on the first condition found sufficient to assure the appearance of the accused in court, beginning with written promise to appear, bond without surety, and bond with surety.

26. Conn. Gen. Stat. § 54-43.

27. Conn. Gen. Stat. §§54-63a through 54-63g.

28. Conn. Gen. Stat. § 54-63c(a) through (f)

29. Set out in Conn. Gen. Stat. § 54-1b.

30. For the duties of the bail commissioner at this point, seet Ch. 2, part B.

31. The police are under no compulsion to accept bail bond until the identity of an arrested person is established. See: State v. Styfco, 25 Conn. Sup. 339 (1964).

32. Conn. Gen. Stat. §§ 54-1b, 54-63c(e), 54-64a.

33. i.e., a written promise to appear.

34. The key words, e.g., "promptly," "immediately", "necessary", etc., will be discussed in Ch. 8.

35. See Ch. 2.

36. See Ch. 3.

37. General Order, op. cit.

38. Conn. Gen. Stat. § 54-63c(a).

39. See Ch. 2, p. 9, Ch. 3, p.

40. Conn. Gen. Stat. §§ 54-43, 54-53, 54-63e.

41. A written reason is not required by the statute, cf. Conn. Gen. Stat., (Rev. of 1958, Rev. to 1968) § 54-63c(a).

42. Conn. Gen. Stat. §§ 54-63c(a), 54-63c(c).

43. Conn. Gen. Stat. § 53a-184.
44. Conn. Gen. Stat § 54-63c(a).

45. Earlier in the General Order, Section III(A), capital offenders were excluded along with those immediately arraigned. At present, there are no capital offenses in Connecticut, see Note 22, supra, and accompanying text.

46. Conn. Gen. Stat. § 54-63c(e).

47. Conn. Gen. Stat. § 54-63c(f).

48. See O'Rourke and Carter, The Connecticut Bail Commission, 79 Yale L. J. 513, (1970), at page 516.

49. Conn. Gen. Stat. § 54-66.

50. See Rice, Bail and the Administration to Bail in Connecticut, 4 Conn. L. Rev. 1, (1971), at pp. 22-26.

51. See Ch. 5.

8. The Bail Commission

A. General

The Bail Commission was created by the Bail Reform Act of 1967, enacted as §§ 54-63a through 54-63g.[1] Several studies and articles have dealt with the Bail Commission and its activities both before and after the 1969 cut-back in its personnel and responsibilities.[2] This paper, however, will not go beyond the scope of the present statutory duties of the bail commission. § 54-63b,[3] which establishes a bail commission provides for the appointment of bail commissioners by the circuit court judges, deals with other administrative matters, and ends with the statement: 'A bail commissioner shall be available at all times in each circuit to facilitate the prompt release of any person, regardless of his financial resources, pending final disposition of his case, unless custody is necessary to provide reasonable assurance of his appearance in court." It is important to note that this general section sets out an unmistakeable purpose: "to facilitate the prompt release of arrestees, regardless of financial resources. To achieve this purpose, a bail commissioner is to be available "at all times."

The next subsection in the act provides for an annual report by the chief bail commissioner to the chief judge of the circuit court "which shall include an evaluation of the agency in implementing the purposes of... (the Bail Reform Act.)"[4]

B. At the Lock-Up

Whenever the police have determined that custody is necessary and an arrestee cannot make the bond as set by them,[5] they must immediately notify the bail commissioner.[6] Once the bail commissioner is so notified, he:

> shall promptly conduct such interview and investigation as he deems necessary to reach an independent decision, and unless... (the) commissioner finds custody to be necessary to provide reasonable assurance of...(the arrestee's) ... appearance in court, he shall promptly order release of such person on the first of the following conditions of release found sufficient to provide such assurance: (1) Upon his execution of a written promise to appear; (2) upon his execution of a bond without surety in no greater amount than necessary; (3) upon his execution of a bond with surety in no greater amount than necessary. When the bail commissioner determines that the accused person should be held in custody or that a bond with surety is necessary, he shall set forth his reasons therefor, in writing.

It is important to note that the bail commissioner is required to conduct only such interview and investigation as he determines necessary to reach an independent decision as to conditions of release. That is, unless the bail commissioner feels it necessary, he need not conduct any interview at all, so long as he reaches an independent decision. Unlike the police, the bail commissioner is explicitly required by the statute to set the least restrictive release conditions necessary to assure his appearance in court. And, again unlike the police, the bail commissioner is explicitly required to state in writing his reasons for setting a bond with surety or no bail at all. There is no clear statement in the statutes as to what reasons are legally sufficient for refusing release on PTA or bond without surety. It remains to be seen whether the reasons need have any basis in fact in order to be sufficient to deny release.

The Police are required to promptly comply with the bail commissioner's order of release, unless they object and advise a prosecuting attorney for the circuit, who then may authorize a delay in the release until a hearing can be held in the circuit court.[8] Whoever takes the PTA or bond must give a copy of the Appearance Bond Form[9] to the defendant.[10]

Any persons not released after the bail commissioner's independent decision must be presented before the next regular session of the circuit court.[11] And neither the bail commissioner nor any other actor in the release process may be held liable in a civil action for damages on account of the release of any accused person.[12]

A memorandum[13] issued by the office of the Chief Judge of the Connecticut Circuit Court after quoting the portion of the statute relevant to the duties of the bail commissioners, goes on to say: "Thus, the Bail Commissioners at the police station may keep the bond as it is set by the police officer, reduce the bond, or change the bond to a written promise or non-surety bond." The memo goes on to speak of its being

> virtually impossible for the Bail Commissioner to be available at all hours in the smaller circuits. In these circuits where only one bail commissioner is assigned he is expected to contact the Police Department(s) in his circuit early in the morning (approximately 7:00 A.M.) to determine which defendants are being held in lieu of bail. At that point the Bail Commissioner can modify the bond or leave the bond as set by the Police Department.*** The Bail Commissioner is also expected to be available on Saturday and Sunday mornings to facilitate the release or lowering of bond for defendants arrested on Friday and Saturday nights.*** In the larger urban circuits, where more than one Bail Commissioner is assigned, the services of the Commissioners are also expected to be available during the evening hours...

It is interesting to note some of the differences between the statutory duties and the memorandum issued by the Chief Judge, the Chief Bail Commissioner's immediate superior. The Chief Judge's own language does not emphasize the preferred order of release conditions provided by the statute. Although perhaps inadvertent, his stated order is (1) bond with surety in the amount set by police, (2) reduced bond with surety, (3) written promise to appear or bond without surety -- the exact reverse of the statutory order of preference. And while it may indeed be "virtually impossible for the Bail Commissioners to be available at all hours"

in the small circuits, no doubt due to the 1969 cutback in personnel and responsibilities imposed by the General Assembly,[14] the statute plainly calls for the bail commissioner to be "available at all times."[15] Finally, it directs that the bail commissioners contact the police to "determine which defendants are being held in lieu of bail." Since the statute expressly requires the police to "immediately notify a bail commissioner" whenever an arrested person cannot make bail,[16] they presumably routinely and promptly do so, but, of course, not every statutory mandate is not automatically complied with and this provides a useful check.

B. In the Circuit Courtroom

Among the duties imposed upon bail commissioners by the Bail Act is "to make recommendations on request of any judge, concerning the terms and conditions of release of arrested persons from custody pending final disposition of their cases."[17] This does not require the bail commissioner to make a recommendation in every case, nor does it require the circuit court judge to consider any recommendation so made. The Chief Judge's Memorandum[18] also directs that: "After contacting the Police Department(s) the Bail Commissioner will go to court to aid the presiding Judge in bond determinations and to follow-up on defendants who have been released without bond and have failed to appear." This "follow-up" activity seems to have no statutory authorization, but neither is it expressly prohibited.

A follow-up that is provided for in the statute involves situations where

> (a) bail commissioner...has reason to believe that a person released... (through any circuit court bail procedure, including police and bail commission bail setting activities)...intends not to appear in court as required by the conditions of release...(the bail commissioner) may apply to a judge of the court before which such person is re-

> quired to appear, and verify by oath or otherwise the reason for his belief, and request that such person be brought before the court in order that the conditions of his release be reviewed. Upon finding reasonable grounds that the released person intends not so to appear, such judge shall forthwith issue a capias[19] directed to a proper officer or indifferent person, commanding him forthwith to arrest and bring such person to the court for a hearing to review the conditions of release.***[20]

One other section of the Bail Act dealing with the bail commission raises a number of important questions. It reads:

> All information provided to the bail commission shall be for the sole purpose of determining the conditions of release, and shall otherwise be confidential and retained in the bail commission files, and not be subject to subpoena or other court process for use in any other proceeding or for any other purpose." 21

While providing for confidentiality and immunity from judicial process for all information provided to the bail commission, the statute makes no mention of information obtained by the police in the bail interview they conduct.[22] Further, the New Haven Police General Order[23] does assert that information obtained by the police is confidential, although the language of the statute does not support that assertion. Both the police and bail commission interviews are provided for in the same subsection[24] of the Bail Act and the confidentiality provision is itself part of that same act, and it may be that all such information provided to the police, the bail commission, and perhaps even the court, was intended by the legislature to be confidential; the plain fact remains that the statute refers only to "the information provided to the bail commission." While this apparent discrepancy between intent and language may be due to inadvertence on the part of the legislature,[25] and a court, in construing the confidentiality section, may rely on the overall intent of the entire Bail Act to include the police interview under the protective umbrella, it cannot now be assumed to be confidential under the statute as written.

A question that is closely related is the extent to which such information is confidential. Upon careful reading of the statute it would certainly appear that the information obtained by the bail commissioner may certainly be used for the "purpose of determining the conditions of release," i.e., for the purpose of setting bail. One would expect, therefore, that the circuit court judge, the defense attorney, and the prosecutor should have access to the information for the purpose of setting bail and/or challenging the bail as previously set by the police, the bail commissioner, or the court.[26] In an unpublished paper, The Connecticut Bail Commission,[27] Mary Gallagher relates an interview with Frederick Danforth, one of the principal architects of the original Bail Reform Act, in which he "stressed that an important purpose of the Act was to begin litigating the meaning of bail in open court."[28] Only by insuring that all the actors in the bail process have access to the information on which the decision is to be based, according to the statutes, can the "meaning of bail" be litigated and thus defined authoritatively.

In another interview reported by Gallagher, Danforth indicated "that the confidentiality provision was designed to prevent the records of the commission being used for prosecutorial purposes or by extra-judicial entities, such as credit bureaus."[29] Gallagher goes on to state: "Because the purpose of the provision is to protect the individual accused, it may also be inferred that it was never intended to foreclose studies of Commission activities, as long as individual identities were protected."[30] The language of the statute supports this inference in that its specific prohibition is that the information "not be subject to subpoena or other

court process..." Before the statute is authoritatively construed by the courts, however, its meaning can only be speculated upon. Yet it would seem that the data, stripped of individual identities, must be lawfully available for legitimate research purposes, including planning and for an evaluation of pretrial release practices. If this is not the case, it would be difficult for the Chief Bail Commissioner to fulfill his statutory duty to prepare an annual report which must "include an evaluation of the agency in implementing the purposes of...(the Bail Act),"[31] since the report itself "shall be a public record"?[32]

One final portion of this troublesome "confidentiality" section remains to be examined. "All information provided to the bail commission... shall...be...retained in the bail commission files.."[33] There is no further mention of retaining the information anywhere in the statute, at least not directly. A few analogies may, however, be drawn. First, agencies of the executive branch of the Connecticut State Government are under the jurisdiction of a "records management committee" which has the authority to determine whether state records and documents are to be retained or discarded. Indeed, only "(i)f the committee determines that ...(certain) books, records, papers and documents are of no administrative, fiscal, legal or historical value, ... shall (it) approve their disposal, whereupon the head of the state agency or political subdivision shall dispose of them as directed by the committee."[34] Second, when an accused is bound over to the superior court the circuit court transmits "a copy of the files and records in such case..."[35] The Gallagher paper reports that the 8th Circuit bail commissioner "even inserts the confidential interview sheets in the court file at bindover in order to facilitate Superior Court notification

procedures."[36] And, finally, the official records of court proceedings - transcripts, documentary evidence, court orders, etc. - must be retained at least ten years.[37] While it is true that the bail commission is a judicial agency and not an executive one, it is apparent that the legislature has mandated its interest in preserving state records until they are "of no administrative, fiscal, legal or historical value, "and, in the case of court records, no sooner than ten years at any rate. While the information obtained by the bail commissioners may not be expressly part of the official court records, surely it is nonetheless an important part of the court's record in each case. Furthermore, the information has legal value in that bail decisions are based upon the information and those decisions may be considered evidence of the basis of bail decisions under review, and the destruction or removal of such evidence could conceivably be a felony.[38] Given these analagous statutory provisions, and the language "shall...be...retained in the bail commission files," it would seem that all such information should be retained in the bail commission files at least ten years, if not indefinitely.

Points and Issues . . .

1. The thrust of the Bail Reform Act is that a bail commissioner is to be available at all times to facilitate the prompt release of <u>any</u> person, regardless of financial resources, unless custody is found necessary to provide reasonable assurance of appearance in court.

   a. a bail commissioner is to be available at all times, yet there aren't enough of them, nor are they "available" at all times.

   b. the Act applies to all arrestees - not just misdemeanants: "any person".

   c. all arrestees are to have their release facilitated by the bail commissioners unless they find custody necessary to provide reasonable assurance of court appearance and can state, in writing, their reasons

for so finding. These reasons should be checked as to their validity and conformity with providing "reasonably assurance" of appearance at trial.

2. The annual report should contain an evaluation of the commission in implementing the goals of the Bail Reform Act, and should affirmatively lead the way in determining what, if any, predictors are reliable for forming an informed judgment regarding "reasonable assurance of ... appearance".

3. If an arrestee can't make the police-set conditions for release, the police should notify the bail commissioner immediately who is then to conduct such investigation and interview as he deems necessary to reach an independent decision.

a. what interview and investigation is generally conducted?

b. to what extent are bailcommissioner's decisions independent of the police decision; can they be; should they be?

c. are the conditions of release set by the bail commissioner's independent decisions as minimally restrictive as necessary to assure appearance? How do we know, what criteria are being employed, verified, etc.?,

4. Is the chief judge's memorandum to the extent it seems to contradict or fail to implement the statute, simply an acknowledgement of the actual situation as it exists or an attempt to make the best of a situation perceived of as self-contradictory at best.

5. The Bail Reform Act does not provide for any follow-up, supervision, or continuing contact with released defendants by the bail commission.

6. The issue of confidentiality needs to be resolved.

a. the police interview is not expressly covered by the statute.

b. access to data and the bail commissioner's reasons for denying non-surety release by other actors - defense counsel, judge, prosecutor -

is not expresaly permitted. Should it be?

c. access to information for legitimate research is currently restricted. Should it be?

7. Bail Commission records should be retained in the bail commission files, but for how long?

Notes for Chapter 8

1. Conn. Gen. Stat. §§54-63a through 54-63g

2. See: O'Rourke & Carter, op. cit.; Rice, op. cit.; Gallagher, The Connecticut Bail Commission, (1971), (unpublished), on file in Yale Law Library.

3. Conn. Gen. State. §§54-63b(b).

4. Conn. Gen. Stat. §§54-63b(c).
See Foote, The Coming Constitutional Crisis is Bail I and II, 113 U.Pa. L. Rev. 959 and 1125 (1965); but see State v. Menillo, 159 Conn. 264 (1970), holding that an amount higher than the defendant can make not unconstitutional per se; cf. Stack v. Boyle, 342 U.S. 1 (1951); see also discussion in Ch. III; and Rice, op.cit., pp. 12-14. As a result of these requirements, one might expect the annual reports include data on the population of arrestees whose release was facilitated by bail commissioners, the effectiveness of the methods employed, and whether the bail commission has effected any reduction in reliance on financial conditions of release, which has frequently resulted in the charge of an unconstitutional denial of equal protection of the law on the basis of wealth or lack of it.

5. This dual requirement is not clear. Apparently if the arrestee cannot make bail as set by the police and they do not lower it or set less restrictive conditions of release, they have determined that custody is necessary to assure the accused's appearance in court. Therefore, whenever an arrestee has not secured release from custody the police must notify the bail commissioner immediately.

6. Conn. Gen. Stat. §§54-63c(a). See also Ch. 7, Gen. ORder 71-4.

7. Conn. Gen. Stat. §§54-63c(a). The bail commission interview form has a space for the written reasons explaining the setting of bond with surety or non-release; see 4 Conn. Practice-Form 51.

8. Conn. Gen. Stat. §§54-63c(b).

9. 4 Conn. Practice - Form 45.

10. Conn. Gen. Stat. §§54-63c(c).

11. Conn. Gen. Stat. §§54-63c(e).

12. Conn. Gen. Stat. §§ 54-63c(f).

13. Memorandum of July 21, 1969 from the Circuit Court Administrative Office, One Grand Street, Hartford, Conn., signed by Chief Judge Daley, 4 Conn.Prac. .326.

14. 1969, PTA. 826, §§1,2, effective July 1, 1969. Amedning Conn. Gen. Stat. (Rev. of 1958, Rev. to 1968) §§ 54-63b, 54-73c.

15. Conn. Gen. Stat. § 54-63b(b).

16. Conn. Gen. Stat. § 54-63c(a).

17. Conn. Gen. Stat. § 54-63b(a).

18. Memorandum, op. cit.

19. For discussion and form of a capias, see 4 Conn. Practice - Form 52.

20. Conn. Gen. Stat. § 54-69a.

21. Conn. Gen. Stat. § 54-63d.

22. Cf. the citation interview, which is also described as "confidential"; see discussion of both the citation and police bail interviews in Ch. 1.

23. Gen. Order 71-4, op. cit.

24. Conn. Gen. Stat. (Rev. of 1958, Rev. to 1968) § 54-63c(a).

25. The Bail Act as originally enacted provided for all bail interviews to be conducted by the bail commission. Under the 1969 cutback, see note 14a. Supra, the police were given the responsibility for conducting the initial interview. The confidentiality provisions, and other sections, of the Bail Act were not then amended to provide for the differences enacted into the main sections of the Bail Act. Thus, it may have been due to legislative inadverterence that the police are not expressly covered by the various other provisions of the act. See Gallagher, op. cit., pp. 8-9.

26. See discussion of challenging bail determinations in Ch. 3, Section , Appeals.

27. Gallagher, op. cit.

28. Ibid., p. 39.

29. Ibid., p. 38.

30. Ibid., p. 38.

31. Conn. Gen. Stat. § 54-63b(c).

32. Ibid.

33. Conn. Gen. Stat. § 54-63d.

34. Conn. Gen. Stat. § 54-34.

35. Conn. Gen. Stat. § 54-10.

36. Gallagher, op. cit. p. 38.

37. Conn. Gen. Stat. § 51-36.

9. The Circuit Court

A. Initial Process -

Of all persons moving through the criminal process, only those arrested pursuant to a superior court bench warrant[1] do not appear before the circuit court. All others do, including those arrested and charged with offenses within the jurisdiction of the superior court (who are bound over to the superior court only after a hearing to determinine probable cause has been held in circuit court). All cases in the circuit court are initiated by one of three ways: arrest pursuant to warrant issued by the circuit court; summons issued by the prosecutor; and arrest without warrant.[2]

"In all criminal cases the circuit court, or any judge thereof, may issue ... warrants of arrest upon complaints made of crimes."[3] The procedure for obtaining an arrest warrant in the circuit court is as follows:

> When any complaint is made to a prosecutor, he may apply for a warrant or may summon the person or persons against whom complaint is made to appear before the court. If he shall determine to proceed by the issuance of a warrant, he shall present an information, upon oath or affirmation, to the court or a judge thereof, and request issuance of the warrant. A warrant shall be directed to any officer authorized to execute it.* * *"[4]

Note that this section allows for two methods of initiating the criminal process: summons by the prosecutor and arrest warrant issued by the court. The summons commands the potential defendant to appear in court, but does not require his being taken into custody, as is invariably the case with the arrest warrant. Apart from this provision in the Connecticut Practice Book there is no authorization for the issuance of summons for accused persons.[5] The courts do not have the authority to issue summons to accused persons and must rely on bench warrants. The prosecutor, however, may decide whether to issue a summons or request a warrant, and

the decision is entirely his. A summons may be served by personal delivery, leaving it at the accused's home with a person "of suitable age and discretion," or by mailing it to the last known address of the accused.[6] "Upon the failure of the accused to respond to a summons, the prosecutor may proceed by information and warrant to cause the arrest of the accused and his appearance before the court."[7] The Comparative Analysis of American Bar Association Standards for Criminal Justice with Connecticut Law, Rules, and Practice, prepared by the Junior Bar Section, Connecticut Bar Association,[8] states that "warrants are usually issued," but goes on to say:

> "Summons should be authorized in many more situations than they are at present. Unless there is some significant danger the defendant will fail to appear when served a summons, a summons rather than a warrant should be issued. * * * The summons should become a common alternative to the arrest warrant."[9]

At present, the majority of cases probably originate in arrests without warrants (see discussion in Chapter 7, supra). The Connecticut Practice Book provides that:

> When any person is arrested without a warrant, the prosecutor shall review the facts complained of and determine whether it appears that there is reasonable cause for him to believe that an offense has been committed within the jurisdiction to the court and that the person arrested committed the offense. If the prosecutor shall determine that such reasonable cause exists, he shall present an information to the court, setting forth the nature of the offense with which the accused is charged.[10]

B. Presentment -

For all defendants released on bail by the police or bail commisioner the penalty for failure to appear is set out in §§ 53a-172, 173 of the Connecticut General Statutes, which make failure to appear in a felony case a felony and in a misdemeanor case, a misdemeanor. These defendants

(those free on bail before trial) need not be scheduled to appear at the next regular session of the court,[11] but those who have not been able to make bail for whatever reason must be.[12]

§ 54-1a of the Connecticut General Statutes sets the criminal jurisdiction of the circuit court:

> The circuit court shall have jurisdiction of all crimes and of all violations of ordinances, regulations and bylaws of any town, city, borough, district, or other municipal corporation or authority which are punishable by a fine of not more than five thousand dollars or imprisonment for not more than five years of both.* * *

Cases involving a penalty greater than five thousand dollars and/or five years imprisonment must be disposed of in superior court, where they are transferred after a bindover hearing (see below).

Section 54-1b of the Connecticut General Statutes sets out the procedure as to the presentment of the prisoner (circuit court arraignment):

> Any accused, when he is arraigned before the circuit court, shall be advised by a judge that he has a right to counsel, that he has a right to refuse to make any statement, and that any statement he makes may be introduced in evidence against him. Each such person shall be allowed a reasonable opportunity to consult counsel. The court shall continue, modify, or set conditions of release, in bailable offenses, unless it finds custody to be necessary to provide reasonable assurance of the appearance of the accused in court, upon the first of the following conditions of release found to be sufficient to provide such assurance: (1) Upon his execution of a written promise to appear, (2) upon his execution of a bond without surety in non greater amount than necessary, (3) upon his execution of a bond with surety in no greater amount than necessary, conditioned that he shall appear before the circuit court and before any other court, if he is bound over to the criminal terms of another court having jursdiction of the offense.* * *

The principal requirements here are the judge's advising the accused of his rights to silence and counsel, without which any admission, confession or statement obtained from the accused shall be inadmissible.[13] If the accused is indigent or the "interests of justice so require," a public defender may be appointed.[14] At the arraignment, if the de-

fendant pleads not guilty he may then elect trial by the court or by jury. Unless he claims a jury of twelve he will be tried by a jury of six (in all but those cases punishable by death or life imprisonment - which are not within the jurisdiction of the circuit court).[15]

As pointed out in Chapter 7, there exists a constitutional and statutory right to bail in Connecticut. In addition to the constitutional provision, the general bail statute, and the arraignment statute (all discussed above), the circuit court is directed yet again:

> When any arrested person is presented before the circuit court, said court shall, in bailable offenses, promptly order the release of such person, unless custody is found necessary to provide reasonable assurance of his appearance in court, upon the first of the following conditions of release found sufficient to provide such assurance: (1) upon his execution of a written promise to appear, (2) upon his execution of a bond without surety in no greater amount than necessary, (3) upon his execution of a bond with surety in no greater amount than necessary.[16]

Thus it seems clear that the legislature has determined that accused persons should be released on the least restrictive conditions possible to assure their appearance in court.[17] The informal determinations made by the police and bail commissioner "may at any time be modified by the court or any judge thereof ..."[18] according to the order of preference as set out in the statutes discussed above. What is important to note here is that the police first set the bail, but are under no statutory obligation to set the least restrictive conditions of release necessary to assure the accused's appearance in court. If this initial determination results in continued incarceration then the decision is to be reviewed by the bail commissioner, who is bound to employ the least restrictive conditions of release found necessary. Then when the defendant appears in court for the first time, the circuit court passes on the decision regarding bail, and is also bound by several statutes to set the least restrictive conditions of release found necessary.

Beyond the obvious difficulty of determining just what is necessary there will arise questions as to whether the circuit court and bail commissioner are in fact utilizing the least restrictive conditions of release and whether the sole purpose and consideration in making the release determination is in fact the risk of non-appearance of the accused in court.

Once the court has made its bail determination, the clerk, or the police detention officer may take the written promise to appear on bond,[19] if the defendant can raise it. Also, as mentioned above, a cash bail may be posted in lieu of a surety bond.[20] The bond form used here is the same as is employed by the police and bail commissioners earlier in the process.[21]

C. Bail hearings -

1. Generally -

Informal procedures are generally followed at bail hearings, both at arraignment and upon motions to modify bail. Strict rules of evidence are not followed and hearsay in the form of factual representations by counsel are freely admitted. The court, like the police and bail commissioner, attempts to informally gather information with which to make a determination as to the most appropriate conditions of pretrial release. Such informal procedures have even been approved in a capital case, so long as the accused assents to them.[22] If, however, there is any likelihood of appealing the conditions of release as set by the court there must be formal findings of fact and conclusions of law,[23] which may be obtained only through formal offers of proof and/or stipulations between opposing counsel.

Perhaps it would be worthwhile to review the purpose of bail at this point. In State v. Menillo,[24] in which the denial of bail in a murder case was overturned, the Connecticut Supreme Court said:

> The fundamental purpose of bail is to ensure the appearance of the accused throughout all proceedings, including final judgment. But the bail provision of section eight of article first of our Constitution makes clear that it was intended that in all cases, even in capital cases not falling within the exception, bail in a reasonable amount should be ordered. This is reinforced by a further provision in the same section of our Constitution prohibiting a requirement of "excessive bail", which thus prevents a court from fixing bail in an unreasonably high amount so as to accomplish indirectly what it could not accomplish directly, that is, denying the right to bail. But a reasonable amount is not necessarily an amount within the power of an accused to raise. It is an amount that is reasonable under all the circumstances relevant to the likelihood that the accused will flee the jurisdiction or otherwise avoid being present for trial.[25]

The factors "relevant to the likelihood that the accused will ... avoid being present for trial": are not specified in the statutes. The function of bail is, however, limited to assuring the presence of the accused in court, both by statute[26] and case law.[27] It would seem that only those factors which can be shown to be relevant to the likelihood of appearance ought to be considered, and those of dubious value in determining such likelihood ought to be ignored.[28]

One such factor that might offer some indication of the likelihood of appearance is an accused's history of failure to appear at past court dates. The effect of such prior failures to appear on the setting of bail is not specified by either statute or caselaw, but has been noted as an important consideration in the fixing of bail, at least at the police level. In her study, The Police Decision of Release and Bail: The View from the Lock-up,[29] Isadora Wecksler observed that "those charged with 'failure to appear' are not interviewed" for bail and that if there is an outstanding warrant for failure to appear "the defendant will not be released."[30] Prior cases of the accused's failing to appear presumably had no effect on the bail setting by the police since the existence of the prior failure to appearwas generally not

known to anyone but the accused himself. Only information on current warrants was available to the police at the time of the Wecksler study.[31]

The question of the constitutionality of financial bail set in amounts beyond the reach of indigents is an interesting one, but will not be considered here.[32] As noted above in the Menillo case, money bail is not unconstitutional in Connecticut just because it is set higher than that which the accused is able to raise.[33]

2. Review of the Conditions of Release -

After the accused has been arraigned and has bail set by the circuit court, the conditions of release may be reviewed by the court upon motion by the defendant, the prosecutor, the bail commissioner, or the surety.

Whenever the defendant or the prosecutor determines that the terms of pretrial release should be modified he may apply to the court having jurisdiction of the case, or any judge thereof for a hearing. After notice has been given to all the interested parties (the defendant, prosecutor, bail commissioner, and surety, if any) the judge will conduct a hearing and will continue or modify the conditions of release according to the statutory order of preference; i.e., unless custody is found necessary, release will be ordered on the first condition found sufficient to provide reasonable assurance of the accused's presence in court: (1) PTA, (2) bond without surety, (3) bond with surety, in no greater amount than necessary.[34]

Whenever a bail commissioner has reason to believe that a released defendant does not intend to appear in court, he may apply to a judge of the court where the person has been instructed to appear, verify the reasons for his belief, and request that the accused be brought before the court for a hearing to review the conditions of release. If the judge finds "reasonable grounds" to believe that the

accused does not intend to appear he may order the accused rearrested and brought before the court for a hearing. Such a hearing may be held only after notice has been given to all interested parties (i.e., the defendant, prosecutor, bail commissioner, and surety, if any).[35]

Finally, an accused's surety (usually a bondsman, see Chapter 9) if he believes the accused intends to abscond may apply to a judge of the court where the accused has been instructed to appear and verify the reasons for his belief and the fact of his suretyship. If the judge concurs in the belief that the accused intends to abscond, he can order the surety released and the accused rearrested until further bail is set.[36]

3. Appellate review -

> Any accused person or the state, aggrieved by an order of the circuit court concerning release, may petition the appellate division of the court of common pleas for review of such order. Any accused person or the state, aggrieved by an order of said appellate division or the superior court concerning release, may petition the supreme court for review of such order. Any such petition shall have precedence over any other matter before said appellate division or supreme court and the hearing shall be held on one day's notice to the parties concerned.[37]

This provision allows for appellate review of the conditions of release as set by the circuit court, and as set by the appellate court after review by the supreme court. As pointed out in the discussion of procedure at bail hearings above, there must be a formal hearing with findings of fact and conclusions of law before an appeal can be heard.[38]

D. Bindover Hearings -

Those cases involving charges carrying a penalty greater than five thousand dollars and/or five years imprisonment, but which were not initiated by bench warrant (or superseded by the subsequent issuance of a bench warrant), are arraigned in circuit court. If the more serious

charge is prosecuted these cases have to be disposed of in superior court. When any such case is brought before the circuit court:

> It shall conduct a hearing in probable cause and if it finds probable cause, it shall, if the offense, is bailable, continue, modify or set conditions of release, unless it finds custody to be necessary to provide reasonable assurance of the appearance of the accused in court, upon the first of the following conditions of release found sufficient to provide such assurance: (1) upon his execution of a written promise to appear, (2) upon his execution of a bond without surety in no greater amount than necessary, (3) upon his execution of a bond with surety in no greater amount than necessary, conditioned that he shall appear before the criminal term of the court having jurisdiction of the offense next to be held in the county in which the offense was committed, to answer to the complaint and abide the order and judgment of such court therein; and, if he is not released, the court shall order him committed to the custody of the commissioner of correction until the next criminal term of the court having jurisdiction of the offense or until he is discharged by due course of law.[39]

One interesting thing to note here is that those defendants who come through the circuit court via the bindover hearing, as opposed to those arrested on a bench warrant and arraigned immediately in the superior court, have a much better chance of being released on less restrictive bail conditions, for the circuit court must release on the "first" condition found sufficient: PTA, then bond without surety, and finally bond with surety "in no greater amount than necessary."[40] There is no similar requirement that the superior court release on the least restrictive condition necessary.[41]

Once the accused has been bound over to the superior court as a result of the probable cause hearing, copies of the case files and circuit court records are transmitted to the superior court[42] and the defendant executes a new bond form[43] if he can make bail at all.[44]

E. Other Appearances-

Although it is rarely applicable in circuit court due to the practice of continuances and subsequent court appearances on a weekly or bi-weekly basis, there is a provision that any person who has not

made bail and is being detained must be presented to the court at least every forty-five days. At each "such presentment ... (the) court may reduce, modify or discharge such bail, or may for cause shown remand such person to the custody of the commissioner of correction."[45]

There are several routes open at this point for diversion of defendants from the criminal process. The statutory schemes encompass mental cases, alcoholics, drug dependent and unemployed persons. The avenues are important, and properly belong under this heading, but will be discussed in a later section due to their complexity and length.

There are of course other appearances, such as hearings on motions for discovery, suppression of evidence, dismissal of charges, etc., and trials, sentencings, and more. But for the purposes of a study concerned with pretrial release and final disposition, the intricacies of trial procedure, the laws of evidence, appellate procedure, etc. are not relevant and will, for that reason, be omitted here.

After conviction, if the defendant appeals he may be released on post-conviction bail. Unlike pre-conviction bail, this type of release is solely within the discretion of the court and is subject to other considerations and purposes.[46] If the defendant does not appeal and is sentenced by the court, he is entitled to a credit against the sentence imposed for all the time he spent in jail due to being unable to make bail.[47]

Points and Issues . . .

1. The Circuit Court is a court of limited jurisdiction and generally handles only misdemeanants and minor felons, binding over the more serious cases to the Superior Court.

2. The Circuit Court is bound by statute to the same standard of pretrial release (unless custody is found necessary to provide reasonable assurance of the accused's appearance in court) and sequence of release conditions as is the Bail Commission.

3. Failure to appear (FTA) is a separate crime in Connecticut, punishable by relatively stiff prison terms, at least in theory.

4. FTA charges on an arrestee's record may have been (and perhaps still are a bar to release on non-surety conditions.

Should an unproven charge form the basis for such detention? Shouldn't it, given that it is possibly a good indicator of the likelihood of appearance? Is it a good indicator?

5. The very informality in bail hearings which is encouraged and often the rule may sometimes be a bar to appellate review of bail decisions.

Notes for Chapter 9

1. See Chapter 7 and 8.
2. See Chapter 7.
3. Conn. Gen. Stat. § 54-2a.
4. 4 Conn. Practice § 828.
5. Note the distinction between a summons issued by the prosecutor, which does not involve an arrest but rather orders the accused to appear in court directly, and citations, which are issues after arrest by the police officer. A citation, although referred to as a "complaint and summons" in Section 6-49a of the Connecticut General Statutes, is actually a form of pretrial release.
6. 4 Conn. Practice § 831.
7. 4 Conn. Practice § 832.
8. (1973), Ed. J.D. Harbaugh.
9. Ibid, pp. 18-19.
10. 4 Conn. Practice § 827.
11. Conn. Gen. Stat. § 54-1b.
12. Conn. Gen. Stat. § 54-63c(e).
13. Conn. Gen. Stat. § 54-1c.
14. Conn. Gen. Stat. § 54-81a.
15. Conn. Gen. Stat. § 54-82.
16. Conn. Gen. Stat. § 54-64a. Note also that this sequence of release conditions is the opposite of that found in Chief Judge Daly's Memo, p.____, supra.
17. Only three conditions of release are specifically authorized by statute: written promise to appear, bond without surety, and bond with surety; and only for the purpose of assuring the accused's appearance in court. Conn. Gen. Stat. § 54-63e.
18. Conn. Gen. Stat. § 54-63c(d).
19. Conn. Gen. Stat. § 54-64.
20. Section 12 and accompanying text. Conn. Gen. Stat. § 54-66.
21. 4 Conn. Practice - Form 45.

24. 159 Conn. 264 (1970).
25. 159 Conn. 264 (1970), at p. 269.
26. See note 17, supra.
27. Stack v. Boyle, 342 U.S. 1 (1951); State v. Bates, 140 Conn. 326 (1953).
28. See Rice, op. cit., pp. 10-12.
29. (unpublished), (1971), on file in the Yale Law Library.
30. Ibid., p. 39.
31. Ibid., pp. 59-60.
32. See Ch. 7, note 23, and accompanying text.
33. See also Stack v. Boyle, 342 U.S. 1 (1951), holding that the amount of bail is reasonable if it is an amount necessary to assure the accused's appearance at trial.
34. Conn. Gen. Stat. § 54-69.
35. Conn. Gen. State. § 54-69a.
36. Conn. Gen. Stat. § 54-65.
37. Conn. Gen. Stat. § 54-63g.
38. See note 2, supra; see also State v. McCoy, 4 Conn. Cir. 109, and Rice, op. cit., pp. 14-17.
39. Conn. Gen. Stat. § 54-1a.
40. Ibid.
41. See Ch. 10.
42. Conn. Gen. Stat. § 54-10.
43. 4 Conn. Practice - Form 46.
44. See Ch. 11.
45. Conn. Gen. Stat. § 54-53a.
46. See; e.g., State v. Chisolm, 29 Conn. Sup. 339 (1971); State v. Menillo, 159 Conn. 264 (1970); 4 Conn. Practice - Forms 46, 47; Conn. Gen. Stat. § 54-63f.
47. Conn. Gen. Stat. § 18-98.

10. The Superior Court

The Superior Court may obtain jurisdiction over the defendant either as a result of his being bound over by the circuit court after a probable cause hearing or by the service of a superior court bench warrant.[1] A bench warrant may be issued even after the accused has begun the route through the circuit court (i.e., after arrest without warrant, even up to the time of actual bindover), in effect superseding the circuit court process. When this occurs the bench warrant institutes a new and separate judicial proceeding, necessitating a new bond[2] (in the amount set in the bench warrant see below). A bench warrant may be issued "upon the representation of any state's attorney that he has reasonable grounds to believe that a crime has been committed within his jurisdiction."[3] The Connecticut Supreme Court has held that the Fourth Amendment requires that the state's attorney applying for a bench warrant submit facts, supported by oath or affirmation, from which the judge or court can make an independent determination that probable cause exists for the issuance of a bench warrant.[4]

At the same time the bench warrant is issued the superior court, or judge thereof, fixes "a bond for the appearance of...(the accused) in such amount as to said court or to such judge appears reasonable."[5] It is important to note the striking difference between this provision and the provisions regarding bail in the circuit court. Here there is no preferred order of release; indeed, no mention of any condition of release except bond "in such amount as...appears reasonable." Furthermore, the bail commission plays no part in the bail process, either as a reviewing agent or auxiliary to the court to assist it in making its determination. Indeed, as it has been reported by Rice[6] and the Junior

Bar Section of the Connecticut Bar Association,[7] the superior court "makes its decision as to bail solely on the basis of the scanty information furnished by the state's attorney in his request for a bench warrant,"[8] resulting in the establishment of the same bond, or "blanket bond" being established for given types of offenses.[9] This situation has been strongly criticized both by Rice and the Junior Bar.[10] Of course the initial bail may be subsequently reviewed and appealed from (see below), but this offers no immediate relief for the incarcerated defendant who cannot make the bond as set in the bench warrant.

When any person is arrested on a bench warrant the arresting officer must take the arrestee to the office of the superior court clerk "without undue delay," and if that office is closed, to the nearest community correction center, again "without undue delay."[11] Either the superior court clerk of the designated official at the correction center must "thereupon advise such person that he has a right to retain counsel, that he has a right to refuse to make any statement, and that any statement he makes may be introduced in evidence against him."[12] "Any admission, confession or statement, written or oral, obtained from an accused person who has not been (so) informed of his rights ... shall be inadmissible."[13] After advising the arrestee of his rights, the court clerk or community corrections official will take the bond "with surety to the state in such sum as ...(the superior court) or...judge has fixed conditioned that ...(the arrestee) shall appear before the superior court... to answer the bench warrant and information filed in such case."[14] If the arrestee cannot meet the amount of the bond or cannot secure the services of a surety,[15] a mittimus will be issued "committing such person to a community correction center until he is discharged by due process of law."[16] If the arrestee is unable to post the bail as set in the bench

warrant he has a number of options. He may apply for a court hearing to review the conditions of release, seeking a reduction in the amount of the bond or less restrictive release conditions.[17] If the reduction is denied he may appeal to the Connecticut Supreme Court.[18] Furthermore, an arrestee who is confined to jail for want of bail may apply to the superior court for a speedy trial, and he must be given one within the same term of the court which begins on or after the date application is made.[19] If the superior court is not in session when such application is made the chief court administrator "shall assign a judge of such court to hold a session of such court for the ...purpose of such trial."[20] If the accused pursues none of these remedies, or is unsuccessful in all of them, he must be presented to the court at least every forty-five days. "On each such presentment, ...(the) court may reduce, modify or discharge...(the accused's) bail, or may for cause shown remand such person to the custody of the commissioner of correction."[21]

When an accused is presented to the court and is "without funds sufficient to employ counsel" for his defense, a public defender will be assigned to represent him.[22] A private attorney may be appointed as a special public defender "if, in the opinion of ...(the superior court) judge such appointment should be made."[23] Furthermore, the superior court public defender may request that the circuit court public defender who represented the accused on bindover be appointed to act as a special public defender for the accused in the superior court.[24]

As in the circuit court, either the defendant or the state's attorney may seek review of the conditions of release.[25] But in the superior court there is no bail commissioner, and, consequently, no provision

for the bail commissioner to apply for a bail review hearing. The surety, if any, is also entitled to seek the rearrest of the accused and release from his obligation if he has reason to believe that the accused intends to abscond.[26]

Beyond the power of the superior court to sentence convicted defendants to terms in excess of five years and impose fines in excess of five thousand dollars, there are no additional significant differences between the circuit court and the superior court, at least for the purposes of this paper.

Points and Issues . . .

1. Superior Court tries the more serious felony cases, and far fewer than the circuit court.

2. For superior court cases initiated by bench warrant, which sets the amount of the defendant's bail, there is no provision for any bail decision prior to the defendant's first appearance in court.

3. The Bail Reform Act does not apply to the Superior Court, the Bail Commission does not cover Superior Court defendants.

4. Bench warrants tend to employ blanket bonds.

Notes for Chapter 10

1. See State v. Luban, 5 Conn. Sup. 312 (1969); discussion of the bindover hearing, p. , supra (Chapter 9); and note that a grand jury is required in cases involving penalties of death or life imprisonment before the accused may be put to plea or held for trial. Conn. Gen. Stat. (Rev. of 1958, Rev. to 1968) § 54-45.
2. See Ch. 11.
3. Conn. Gen. Stat. § 54-43.
4. State v. Licari, 153 Conn. 127 (1965).
5. Conn. Gen. Stat. § 54-43.
6. Op. cit., p. 2.
7. Comparative Analysis of American Bar Association Standards for Criminal Justice with Connecticut Law, Rules, and Practice, prepared by the Junior Bar Section, Connecticut Bar Association, (1973).
8. Ibid., p. I-14.
9. Ibid., p. I-13.
10. Rice, op. cit., pp. 2-3; Junior Bar, op. cit., pp. I-13 - I-14.
11. Conn. Gen. Stat. § 54-43.
12. Ibid.
13. Conn. Gen. Stat. § 54-43a.
14. Conn. Gen. Stat. § 54-43.
15. See Ch. 11.
16. Conn. Gen. Stat. § 54-43.
17. Conn. Gen. Stat. § 54-69; see Section 9, p. , supra, and note that here the superior court is bound to release on the least restrictive condition found necessary, and, if setting a bond, to set it in "no greater amount than necessary.
18. Conn. Gen. Stat. § 54-63g; see also discussion in Section 9, p. supra.
19. Conn. Gen. Stat. § 51-180.
20. Conn. Gen. Stat. § 51-180a.
21. Conn. Gen. Stat. § 54-53a.
22. Conn. Gen. Stat. § 54-80.

23. Conn. Gen. Stat. § 54-81.
24. Conn. Gen. Stat. § 54-81b.
25. Conn. Gen. Stat. § 54-69.
26. Conn. Gen. Stat. § 54-65.

11. Sureties

A. Sureties in General -

A bond with surety is basically the same as a bond without surety except that the accused must obtain the services of some third party to assume the financial risk of his failing to appear as required by the agreement in the bond, generally until final disposition of his case. The surety becomes obligated to the state for the full amount of the bond in the event of the principal's (accused's) failure to appear in court. For private sureties, i.e., someone other than a bail bondsman, some form of security must be posted with the clerk of the court. This security is usually in the form of a bank book or title to real property, although Rice has reported that there is often real difficulty in posting title to real property in that complex and even expensive procedures are required before the courts will accept such title as security on bail bonds.[1] Furthermore, under the provisions of Connecticut General Statutues §§ 54-66, cash may be deposited with the court in lieu of surety bond. This is actually another form of security.

Once the surety has executed the appearance bond form[2] and posted some form of security with the court, or, in the case of professional bondsmen, made oath as to their assets,[3] the accused is released into the custody of the surety, who is then responsible for producing the accused in court as agreed in the bond. If he fails to produce the accused the bond may be forfeited and the security taken by the state. However, it is the general practice of the courts to give the surety a grace period in which to locate the accused and produce him in court at the next appearance date.[4] If the surety is unable to recapture

the accused and the bond is eventually forfeited, the prosecutor may "compromise and settle bonds to the state after forfeiture".[5] Thus the surety might not, in fact, be risking the full amount of the bond at any rate.

In light of the financial risk assumed by the surety, he has extraordinary powers of arrest at common law, and may surrender the accused to the court at any time, for any reason, and thereby be released from his obligation under the appearance bond.[6] As discussed above,[7] if the surety believes that the accused intends to abscond he may apply to the court having jurisdiction of the case and verify the reasons for his belief. If the court concurs, it may order the accused rearrested and the surety released from his obligation under the bond.[8] It may be argued that this provision implicitly restricts the common law power of the surety to rearrest his principal (the accused) before he has absconded. After the accused has in fact fled or otherwise avoided the jurisdiction of the court (i.e., has missed a court appearance) the surety may pursue him anywhere, rearrest and return him to the court without complying with any of the rigorous safeguards of extradiction required for law enforcement agencies.[9] This extraordinary power of the surety is based on the contractual relationship between the surety and the principal and not on any process or form of criminal procedure.

B. Bail Bondsmen -

There are two types of bail bondsmen in Connecticut, those individuals licensed as agents for insurance companies which are, in turn, licensed to do business in suretyships and bonds, including bail bonds;[10] and those individuals licensed under the State Police

Commissioner as professional bondsmen.[11] Insurance companies and their agents are licensed and regulated by the Insurance Commissioner. Their rates are based on a competitive scale[12] instead of a fixed fee like the professional bondsmen,[13] and are currently set at 10% of the amount of the bond, with a $20 minimum fee.

Professional bondsmen are specifically covered by statute and are further regulated and licensed by the Commissioner of State Police.[14] A Professional Bondsman is defined as "(a) any person who makes a business of furnishing bail in criminal cases or who furnishes bail in five or more criminal cases in any one year, whether for compensation or otherwise," and "(a)ny resident elector of the State of Connecticut who is of good moral character and of sound financial responsibility may, upon obtaining a license therefor ... engage in the business of professional bondsman within the state."[15] To obtain a license, application must be made through the Commissioner of State Police. As part of this application there must be "set forth under oath a statement of the assets and liabilities of the applicant,"[16] so that his financial soundness may be thereafter be investigated.[17] Then, based on the total equity the applicant is found to have in both real and personal property, he may be authorized to serve as surety on bonds up to that amount (in the aggregate). Each year the license must be renewed and the bondsman's financial state reexamined.[18] If there is any material change in the bondsman's assets or liabilities during the year, it must be reported immediatley to the State Police Commissioner.[19] The State Police Commissioner may also require, at any time, a statement of assets and liabilities, including all bonds under which the bondsman is obligated.[20] If the bondsman makes a false oath or charges an

accused person more than the maximum fee allowed by statute (see below), he is subject to a fine of up to one thousand dollars and to imprisonment of up to two years, and premanently forfeits his business as a professional bondsman.[21] The fee charged an accused person may be no "more than twenty dollars for the amount of bail furnished ... up to three hundred dollars, (nor) more than seven percent of the amount of bail furnished ... from three hundred dollars up to five thousand dollars, nor more than five percent of the amount of bail furnished ... on sums in excess of five thousand dollars."[22] The bail bondsman must report annually to the State Police Commissioner the names of persons for whom the bondsman became surety, with the date, the amount of bond and the fee charged and paid by the accused.[23]

All bondsmen, both professional and insurance company agents, may verify their assets by oath instead of posting security with the court.[24] Only one fee may be charged for each bond upon which they serve as surety,[25] and each bond for pretrial release continues until the accused appears "before the court having congnizance of the offense"[26] and until such time as he shall "abide the order and judgment" of that court,[27] or any other court to which he may be bound over.[28] If the bond is modified any time before or after bindover, any fee already paid must be credited toward the fee of any increased or new bond with surety.[29]

If the superior court issues a bench warrant for the same offense after the defendant has already been arrested and started on the route to the superior court via bindover (and paid a fee for a surety bond), a new bond may have to be executed in the amount set in the bench warant, since it institutes a new and entirely different criminal proceeding. This can result in hardship on the defendant who may have to pay two fees for two separate bonds (for the two proceedings) or be returned

to custody and lose both is pretrial freedom and the fee paid on the circuit court bond.[30]

It should be noted that while the activities of bail bondsmen are regulated by the state, they are not required to accept any application for their services as surety where the accused is able to pay their fee. In their absolute discretion they may refuse to write any bond for any reason. Their decisions are irreversible and not subject to judicial review or any regulation. Consequently, the "right" to bail can rest upon the arbitrary discretion of the bail bondsman.[31]

Points and Issues . . .

1. It is difficult, if not impossible to post collateral with the court; generally a professional bondsman must be employed on a security bond.

2. The bail bondsman or surety has extraordinary powers of rearrest and supervision over the released defendant he has provided the bond for.

3. Bail bondsman are further insulated in that they may obtain release from their bond or compromise of a forfeited bond, in addition to extensive grace periods.

4. While regulated by the State, bail bondsmen are not subject to any control over whom they will accept -- or not accept, nor are their decisions reviewable. The "right" to bail can rest upon the arbitrary discretion of the bail bondsman.

Notes for Chapter 11

1. Rice, op. cit., p. 5 and footnote 28.
2. 4 Conn. Practice - Form 45. Attorneys may not give bonds "in any criminal action or proceeding in which (they) are interested as attorney." Conn. Gen. Stat. § 54-67. But an appeal from conviction is not a "criminal proceeding" within the meaning of § 54-67. State v. Costello, 61 Conn. 497 (1892).
3. Conn. Gen. Stat. §§ 29-150.
4. Rice, op. cit., p. 21.
5. Conn. Gen. Stat. §§ 54-70.
6. Taylor v. Taintor, 83 U.S. 366 (1872).
7. Chs. 9 and 10.
8. Conn. Sen. Stat. §§ 54-65.
9. Taylor v. Taintor, 83 U.S. 366 (1872).
10. Conn. Gen. Stat. § 38-69 et seq.
11. Conn. Gen. Stat. § 29-144 et seq.
12. Conn. Gen. Stat. Ch. 682.
13. Conn. Gen. Stat. § 29-151.
14. Conn. Gen. Stat. § 29-141 et seq.
15. Conn. Gen. Stat. § 29-144. But no law enforcement officer or person vested with police powers may be licensed as a professional bondsman. Conn. Gen. Stat. § 29-145.
16. Conn. Gen. Stat. § 29-145.
17. Conn. Gen. Stat. § 29-146.
18. Conn. Gen. Stat. § 29-147.
19. Conn. Gen. Stat. § 29-148.
20. Conn. Gen. Stat. § 29-148.
21. Conn. Gen. Stat. § 29-152.
22. Conn. Gen. Stat. § 29-151.
23. Conn. Gen. Stat. § 29-151.
24. Conn. Gen. Stat. § 29-150.

25. Conn. Gen. Stat. § 54-63e.

26. Conn. Gen. Stat. § 54-53. See also § 54-63e.

27. 4 Conn. Practice - Form 45.

28. Conn. Gen. Stat. § 54-63e.

29. Conn. Gen. Stat. § 54-63e. But see Conn. Gen. Stat. § 29-151 which authorizes an entirely new fee if the bond is increased at bindover.

30. See Rice, op. cit., pp. 19-20.

31. See Rice, op. cit., p. 30. For discussions of the shortcomings of the bail bondsman system see: Pannel v. United States, 320 F. 2d 698 (DC. Cir. 1963); Goldfarb, Ransom (1965); Forrest Dill, Bail and Bail Reform: A Sociological Study, Ch. III, Bail Bondsmen and Criminal Law Administration.

12. Pretrial Diversion

A. General

Pretrial diversion is relevant to a study of the pretrial release process and its effect on, or at least comparison with the final disposition of cases. For not only does diversion offer a number of alternative routes for release from pretrial incarceration, it also may provide for final disposition in some cases, or at least have a significant effect on the disposition. Furthermore, diversion alternatives that are actually post conviction alternatives will be briefly considered, since the existence and utilization of these alternatives may also frequently affect the formal disposition of a case. Consequently, any data on final dispositions must be read with the realization that diversion alternatives may have played a vital part in arriving at some unknown number of dispositions and may actually have altered their effect from that of the purely formal characterizations tabulated in the data.

In Connecticut there are a number of statutory schemes for the diversion of cretain types of persons from the criminal process. There are specific statutory provisions for the pretrial diversion of mental defectives and insane persons, alcholics, drug dependent persons, juveniles, and pretrial defendants generally. Post conviction diversion alternatives (sentencing alternatives really) are also available for these same groups. As well, there are general provisions allowing for conditional discharge or probation for such persons when "present or extended institutional confinement of the defendant is not necessary for the protection of the public and such disposition is not inconsistent with the ends of justice.[2] The sentencing court may impose a wide variety of conditions upon any defendant sentenced to probation or conditional discharge, including "medical or psychiatric treatment ... in a specified institution, when required for that

purpose," resident "in a community residential center," and "any other conditions reasonably related to his rehabilitation."[3] THus, the court has a wide range of alternatives to the traditional use of incarceration which may be utilized before and/or after conviction. This chapter will describe the specific statutory schemes available for diversion, including the mentally ill, the intoxicated, the drug-dependent, the youthful, and the pretrial defendant generally.

B. The Mentally Ill -

Under the provisions of Section 54-40 of the Connecticut General Statutes, a defendant awaiting trial, who may be so mentally defective or ill that he is unable to understand the proceedings against him or to assist in his defense, is to be examined by at least two psychiatrists, or committed to a state mental institution for examination, prior to a hearing to determine his mental condition. Such a hearing, upon notice to the state's attorney or prosecutor, may be sought by anyone acting on behalf of the accused, any officer having custody of the accused, or the court on its own motion. If the court finds that the accused is mentally ill, he is to be committed to a mental institution; if not, the trial proceeds. If the accused is committed there are provisions for reports on his mental condition to be furnished to the court and counsel for both the accused and the state at least every six months. If the superintendent of the mental institution is of the opinion that the accused is not mentally ill a second hearing may be held. This hearing is similar to the initial hearing. If the accused is found to be still mentally ill he shall be recommitted; if not, he will be brought to trial. At the time of commitment the court must set a maximum period of commitment which cannot exceed the maximum period of imprisonment fixed by statute for the offense with which the accused is charged. The accused also receives a credit for any time he was confined prior to his commitment.[4] Another alternative is

available to the corrections official having custody of pretrial detainee who appears to be mentally ill. Connecticut General Statutes §§ 17-194a provides:

> When in the opinion of the commissioner of correction ... any person ... held in jail pending disposition of his arrest has become mentally ill or appears to be mentally ill, said commissioner ... shall, immediately, cause such person to be examined by a physician. If it appears from such examination that such person is mentall ill ... such person (may be transferred) to a state hospital for the mentally ill, there to be safely kept ... until the disposition of his arrest, or until such person has recovered his sanity.

C. The Intoxicated Person -

Section 53a-184 of the Connecticut General Statutes deals with persons found intoxicated either by alcohol or drugs.[5] Note that it provides for diversion both prior to arrest, 'in lieu of arrest", and prior to conviction. It reads:

> (a) A person is guilty of intoxication when he is under the influence of alcohol or controlled drug, as defined in section 19-443, or other substance, to the degree that he may endanger himself or other persons of property, or annoy persons in his vicinity.
> (b) The court in its discretion may commit to the custody and control of the department of mental health or to any appropriate facilit within that department for not less than thirty days nor more than twelve months, or until discharged within that period by the commissioner of mental health: (1) any person charged under this section who requests such commitment, if the court finds that there is reasonable ground to believe such a person is an alcoholic and if such request is granted before conviction, the criminal proceeding shall be dismissed; (2) any person found guilty under this section who has been convicted previously, under this section or under section 53-246 of the general statutes, revision of 1958, revised to 1968, at least twice in the last-preceeding six months or four times in the last-preceeding year.
> (c) Notwithstanding the provisions of subsection (a) in lieu of arrest, a police officer in his discretion may escort an intoxicated person to a civil facility for the care of alcoholics or drug dependent persons.
> (d) Intoxication shall be deemed an unclassified misdemeanor, the sentence for which shall be imprisonment for a period of not more than thirty days or a fine of not more than twenty dollars or both.

D. Drug Dependent Persons -

The Connecticut General Assembly has recognized "that the treatment of drug-dependent persons is a medical problem although the control of illicit traffic in controlled drugs is a regulatory problem"[6] Accordingly,

the General Assembly has specifically provided for the treatment and possible diversion of drug-dependent persons from the criminal process.[7]

1. Drug law violators-

For those persons accused of violating the drug laws,[8] the prosecution may be suspended while the accused receives treatment from the department of mental health.[9] The prosecutor, the court on its own motion, or the accused may seek a drug examination to determine if the accused was "probably drug-dependent" at the time of the offense. If so found, and the prosecutor and the accused agree, the court may suspend the prosecution while the accused is treated. The commissioner of mental health may utilize "facilities other than state-operated facilities for such treatment subject to compliance by such facilities with the requirements of this chapter" (see below). While the prosecution is suspended the statute of limitations "shall be tolled."[10]

While the prosecution is suspended and the accused is receiving treatment, the commission on adult probation "periodically" reports to the court "concerning the progress and behavior of the accused person ..." and makes a recommendation to the court "not later than one month prior to the termination of the period of such suspension" as to whether the charge(s) should be dismissed.[11] "If such accused person complies with the requirements of the commission on adult probation and commission of mental health and demonstrates reasonable likelihood that he will not engage in criminal behavior, the court may dismiss the charges against him."[12] If he does not comply, or does not show "reasonable likelihood," of not engaging in criminal behavior, "the suspension of prosecution may be terminated and the person brought to trial for the crime."[13] If convicted, he is credited with the time spent in an inpatient facility and sentenced to imprisonment or treatment in addition to any other penalty imposed by the court.[14]

A person convicted of a violation of the drug laws who the court finds to be "drug dependent and that his violation was committed for the primary purpose of sustaining his drug dependence or because he was drug dependent," may be committed to the commissioner of mental health for treatment for twenty-four months.[15]

2. Accused persons charged with offenses other than drug law violations

> If a prosecutor or judge of any court before whom a criminal charge is pending has reason to believe that a person accused of a crime ... (other than a drug law violation of other excluded offenses, see below), was a drug-dependent person at the time of the offense, the prosecutor or the accused may apply to the court for, or the court on its own motion may order, a drug dependency exam by one or more physicians to determine "the probability of ... (the accused's) having been a drug-dependent person at the time of the offense.

In the case of applicaton by the accused, "the court in its discretion may grant or deny such motion." "If the accused person is reported to have been probably drug-dependent" by the examining physician(s), and "upon agreement between the prosecutor and accused person," the court may suspend the prosecution for the crime and release the accused to "the custody of the commission on adult probation for treatment by the commissioner of mental health," who "may utilize facilities other than state-operated for such treatment" subject to the requirements discussed below. The statute of limitations "shall be tolled during the period of suspension" which shall not exceed "one year for a misdemeanor and two years for a felony."[16]

The commission on adult probation periodically reports to the court "concerning the progress and behavior of the accused person" and includes a "recommendation as to whether the charge should be dismissed" in its full report "not later than one month prior to the termination of the period of suspension."[17] "If the accused person complies with the requirements of the commission on adult probation and commissioner of mental health and demonstrates reasonable likelihood that he will not engage in criminal behavior, the court may dismiss the charges

against him."[18] If he does not "comply" or does not "demonstrate reasonable likelihood" of not engaging in criminal behavior, the suspension of prosecution "may be terminated and the person brought to trial for the crime." If he is thereafter convicted he shall receive credit for the time spent "hospitalized in an inpatient treatment facility,"[19] and may receive a special shorter sentence[20] and treatment instead of the usual sentence of imprisonment.[21]

3. Discharge from Commitment -

If the commissioner of mental health finds that any person committed to his custody prior to conviction is "no longer a drug-dependent person or no longer needs medical or psychiatric treatment in an inpatient treatment program, "he may notify the committing court and cause the person to be discharged from commitment to him or from an inpatient treatment facility.[22] The Commissioner may similarly discharge or return persons no longer requiring treatment to the control of the court.[23]

4. Probation and excluded offenses -

Connecticut General Statute §§ 19-500 provides for periodic testing and release from control after a period of drug-free time. Furthermore, certain violent crimes and persons having gone through drug programs three times already are excluded from special treatment again for drug-dependency.[24]

5. Treatment facilities and programs

As mentioned above, the problem of drug-dependency is basically a medical one, subject to the necessary regulatory activity of the illicit use of controlled drugs.[25] This problem is approached through one of two vehicles, community treatment programs[26] or inpatient treatment facilities.[27]

Community treatment programs are established by the commissioner of mental health in consultation with the commissioner of health and the drug advisory council, and are designed for the treatment of drug-dependent persons "while they reside in the community."[28] Only certified facilities (see below) may receive and treat drug-dependent persons as patients in a community treatment program,[29] unless the commissioner of mental health has authorized non-certified physicians and facilities to treat them for the purposes "of research and evaluation only...."[30] Probationers and parolees may also be enrolled in community treatment programs, but remain under the primary control of the parole board or probation department.[31] All persons enrolled in community treatment programs (enrolled patients) may be required to submit to laboratory analysis and medical examinations as a condition of continued enrollment.[32] The staff of a community treatment program may administer, or authorize non-certified physicians and nurses to administer controlled drugs to enrolled patients.[33] Of course, non-certified physicians may continue to prescribe and administer controlled drugs to drug dependent persons for the purposes of treating conditions other than drug-dependence, or to persons other than drug-dependent persons in accordance with law.[34]

The commissioner of mental health has authority to establish standards and procedures for the certification of hospitals[35] for the treatment of drug-dependent persons,[36] including state, community and privately

owned medical and mental health hospitals and clinics.[37] Once such hospitals meet the standards and comply with the procedures established by the commissioner of mental health[38] they are known as "certified treatment facilities."[39]

The commissioner of mental health must also establish and administer standards and regulations for the certification of "community facilities and organizations which provide counseling, rehabilitation and other related services directed to drug dependent persons." Such facilities are termed "certified community service facilities."[40] While only "certified community service facilities may receive and assist drug-dependent persons by providing counseling, rehabilitational and other related services," other organizations may provide services, such as "hospitals licensed or operated by the commissioner of health or commissioner of mental health, physicians, individual members of the clergy, state or municipal employment or occupational training services or programs, and those organizations and facilities which provide only food or lodging or both without providing such counseling, rehabilitational and other related services."[41] These community facilities may be included in the operation of the community treatment program and the commissioner of mental health may provide state personnel to work with them to "ensure the operation of the program in any community."[42] In the operation of the community treatment program, the commissioner of mental health may also "establish or utilize suitable facilities for the temporary hospitalization of enrolled patients or of person applying for enrollment."[43]

In addition to the community treatment program, the commissioner of mental health has an inpatient treatment program for more difficult cases of drug dependency. Once established at "one or more institutions within ... (the) department (of mental health), facilities for inpatient

medical care, treatment and supervision of drug-dependent persons,' may receive and treat "any person who believes himself to be a drug-dependent person' and "all persons committed to (the mental health department's) custody for inpatient medical care under the provisions of this chapter,[44] hold them under supervision for not more than twenty-four months and cause medical care and treatment to be administered to them."[45] The provisions of the Penal Code dealing with escape[46] apply to all patients involuntarily committed to the custody of the commissioner of mental health.[47] In addition to the inpatient treatment program institution(s), hospitals "licinsed by the commissioner of health or commissioner of mental health, or both, may also receive drug-dependent persons as hospitalized patients for treatment or drug dependence", subject to regulation by the commissioner of mental health.[48] Furthermore, "(t)he commissioner of correction shall cooperate with the commissi ner of mental health in establishing treatment and rehabilitation programs for drug-dependent persons sentenced to or confined in correctional institutions. The commissioner of correction shall have the authority to transfer persons in his custody to the commissioner of mental health for treatment and rehabilitation upon agreement of the commissioner of mental health."[49]

A person enrolled as a patient in a certified treatment facility may be transferred to an inpatient treatment facility after a hearing in circuit court, "if the staff of a certified treatment facility finds that an enrolled patient requires confinement in an inpatient facility because of lack of cooperation, or repeated violation of regulations ... or pronounced danger to himself or to the community...."[50]

E. Youthful Offenders

If a person between the ages of sixteen and eighteen[51] is charged with a crime[52] which is not a class A felony and has no prior record of felonies or of being adjudged a youthful offender,[53] he may be eligible for special consideration as a youthful offender.[54] Upon motion by the defendant, his counsel, the state's attorney or prosecutor, or the court on its own motion, an investigation may be made as to the eligibility of the defendant to be adjudged a youthful offender, and the information or complaint sealed as to the public.[55]

> (a) If the court grants such motion or if the court on its own motion determines that the defendant should be investigated hereunder and the defendant consents to physical and mental examinations, if deemed necessary, and to investigation and questioning, and to a trial without a jury, should a trial be had, the information or complaint shall be held in abeyance and no further action shall be taken in connection with such information or complaint until such examinations, investigation and questioning are had of the defendant. Investigations ... shall be made by an adult probation officer.
> (b) Upon the termination of such examinations, investigation and questioning, the court, in its discretion based on the severity of the crime and the results of the examinations, investigation and questioning, shall determine whether such defendant is eligible to be adjudged a youthful offender. If the court determines that the defendant is eligible to be so adjudged, no further action shall be taken on the information or complaint and the defendant shall be required to enter a plea of "guilty" or "not guilty" to the charge of being a youthful offender. If the court determines the defendant ineligible to be so adjudged, it shall order the information or complaint to be unsealed and the defendant shall be prosecuted as though the proceeding hereunder had not been had.

Any statement, admission or confession made by the defendant during the course of these investigations and determination by the court are inadmissible as evidence.[56] If the defendant is in custody during this stage of the proceedings, and before trial, during trial or after judgment and before sentence, he must be segregated from other incarcerated defendants over the age of eighteen.[57]

> If the defendant enters a plea of 'not guilty' or if the court on its own motion so directs, the defendant shall be tried for the purpose of determining whether he shall be adjudged a youthful offender. The trial shall be held by the court without a jury.[58]

Again, any statement by the defendant made during the course of the investigation of his eligibility are inadmissible.[59] Furthermore, the trial and all other proceedings other than the initial motion for investigation of eligibility are to be private and conducted apart from those areas of the courthouse where adult criminal proceedings are being held.[60] The court, however, has the same powers over the defendant as though he were an adult charged with crime[61] and the provisions of the criminal law[62] apply insofar as they are not inconsistent with the provisions regarding youthful offender status.[63]

> If the defendant enters a plea of guilty to the charge of being a youthful offender or if, after trial, the court finds that he committed the acts charged against him in the information or complaint the court shall adjudge the defendant to be a youthful offender and the information or complaint shall be considered a nullity and of no force or effect.[64]
>
> The court, upon the adjudication of any person as a youthful offender, may (1) commit the defendant, (2) impose a fine of not exceeding one thousand dollars, (3) suspend sentence, or (4) impose sentence and suspend the execution of the judgment. In either of the latter two cases, the defendant may be placed on probation for a period not to exceed three years, provided the court in its discretion may from time to time, while such probation is in force, extend such probation for a period not to exceed five year, including the original probationary period. If the court has reason to believe that the person adjudicated to be a youthful offender is or has been an unlawful user of narcotic drugs as defined in section 19-444, and the court places such youthful offender on probation, the conditions of probation, amont other things, shall include a requirement that such person shall submit to periodic tests to determine, by the use of 'synthetic opiate antinarcotic in action,' nalline test or other detection tests, at a hospital or other facility, equipped to make such tests, whether such person is using narcotic drugs. A failure to report for such tests or a determination that such person is unlawfully using narcotic drugs shall constitute a violation of probation. Commitment hereunder shall be for a period not to exceed three years and shall be to any religious, charitable or other correctional institution authorized by law to receive persons over the age of sixteen years. Whenever a youthful offender is committed by the court to any duly authorized religious, charitable, or other institution, other than an institution supported or controlled by

> the state or a subdivision thereof, such commitment shall be made, when practicable, to a religious, charitable or other institution under the control of persons of the same religious faith or persuasion as that of the youthful offender. If a youthful offender is committed by the court to any institution other than an institution supported or controlled by the state or a subdivision thereof, which is under the control of persons of a religion or persuasion different from that of the youthful offender, the court shall state or recite the facts which impel it to make such disposition, and such statement shall be made a part of the record of proceedings.[65]
>
> "No determination made under the provisions of sections 54-76b to 54-76n, inclusive (i e., judgment of youthful offender status), shall operate as a disqualification of any youth subsequently to hold public office or public enployment, or as a forfeiture of any right or privilege to receive any license granted by public authority and no youth shall be denominated a criminal by reason of such determination, nor shall such determination be deemed a conviction."[66]

Thus, being adjudged a youthful offender is as near an example of complete diversion from the criminal process as there is in Connecticut. Although the machinery of the criminal justice system is employed, the defendant has no criminal record and is not labeled a criminal for life.

F. New Haven Pretrial Services Council Diversion Program

The New Haven Pretrial Services Council Diversion Programs seeks to assist the arrestee "in finding stabilized and productive employment," and to improve "the ability of the criminal justice system to deal with defendants in the pretrial stage of the criminal process."[67] Specifically, the Diversion Program provides in-house counseling and job placement for selected defendants, admitted with the prosecutor's consent, during a ninety day period of suspended prosecution. If the conditions of the diversion referral are satisfied, the prosecution may be nolled or the case dismissed. Initially, legal authorization for the program was not based on legislation or court rule, but on informal but explicit understandings with local criminal justice officials. Now, of course, the Accelerated Rehabilitation Act[68] provides statutory authority for this and other pretrial diversion programs.[69]

Project staff members (screeners) interview those defendants held in

lieu of bail each morning and decide whether to recommend them to the prosecutor for participation in the program. Those defendants who have been able to secure their release from custody are contacted and, if interested in participating in the program, interviewed. If these people are determined to be potentially successful participants after such interview, they are also recommended to the prosecutor on the day of their arraignment. If the prosecutor approves he may request a ninety day continuance with release on a written promise to appear, conditioned on participation of the program.[70] The judge virtually always grants such requests.[71]

The screening procedure prior to recommendation to the prosecutor is a two step process. First, the potential participant must either be referred by the state's attorney or prosecutor for interview or meet the fixed, formal, "hard" criteria. The "hard" criteria are to be eligible for consideration, that the arrestee must:

> "A. Be over 16 years of age.
> B. Be charged with a crime within the jurisdiction of the Sixth Circuit Court (misdemeanor or class D felony).
> C. Have no other pending criminal charge against him.
> D. Not be involved in the illegal use of narcotics or addicted to alcohol (regardless of whether the individual's arrest was for a narcotics or alcohol related charge).
> E. Not have more than one previous felony of three previous misdemeanor convictions during the past five years. If the individual was incarcerated during any part of the previous five years, the period shall be extended by the amount of time spent in incarceration.
> F. Have resided within New Haven or a contiguous town for a period of at least the last six months.[72]
> G. Is unemployed or underemployed."

All those meeting these "hard" criteria are then contacted by a screener, who, after carefully explaining the nature of the program and the defendant's legal rights with respect thereto,[73] is to interview those arrestees who indicate an interest in participating in the program. After verifying the information obtained, "the screener will evaluate the results based upon three criteria."[74] These "soft" or

discretionary criteria are:

"1. Does the individual express a sincere interest in securing employment or job training and seem likely to benefit if this need is met?
2. Does the individual, in the judgment of the screener, seem to be interested in securing counseling assistance and overcoming personal problems?
3. Is the individual free of serious emotional or psychological problems beyond the ability of the project staff to overcome?[75]

During the ninety day period of participation in the program the individual "must attend all counseling sessions and be employed, in a training program or attending school."[76] If the participant fails "to live up to the obligations of the program",[77] the prosecutor is informed and the individual dropped from the program. Such "negative termination" will not "adversely prejudice" the defendant.[78]

For those who continue in the program the project staff reviews their cases one week prior to the participant's scheduled court date. This review is for the purpose of determing whether to recommend a "favorable disposition" in the case. "If the individual has met all of his obligations, is working in a job, participating in a training program or attending school as a student, and has been adjusting to a productive role in society, the project will recommend that the individual's case be dismissed or nolled."[79] Such recommendations are subject to approval by the prosecutor and the court. "Unsuccessful participation in the program will also be reported to the prosecutor who may proceed with whatever course of action is deemed appropriate including re-prosecution without adverse prejudice resulting from unsuccessful participation."[80]

Points and Issues . . .

1. Diversion alternatives, both pretrial and post-conviction, may have played a part in arriving at a particular disposition of a case, either indirectly or directly through the operation of a specific diversion alternative.

2. Diversion alternatives may be significant pretrial release avenues for defendants who cannot make bail as set by bail commissioners or the court. (To some extent it may be fair to say that some diversion programs really compensate for the inadequacy of the Bail Commission to the extent the statutes fail to give it the authority and resources to conduct supervised releases.)

3. Pretrial diversion alternatives cover mentally ill and defective persons, intoxicated, drug-dependent, youthful, and pretrial defendants generally.

4. While the Pretrial Services Council Diversion Project was the only one observed during the study that was includible under the Accelerated Rehabilitation Act, that Act should give rise to numerous potentialities in the field, and, hopefully, some proposals for programs to fill the existing lacunae in the pretrial services scheme.

1. See below.
2. Conn. Gen. Stat. § 53a-29.
3. Conn. Gen. Stat. § 53a-30.
4. See appendix A to Chapter 12.
5. See Neeser, _____
6. Conn. Gen. Stat. § 19-487.
7. Conn. Gen. Stat. § 19-484 through 19-504, inclusive.
8. Conn. Gen. Stat. Ch. 359.
9. Conn. Gen. Stat. § 19-484.
10. Conn. Gen. Stat. § 19-484(a).
11. Conn. Gen. Stat. § 19-484(b).
12. Conn. Gen. Stat. § 19-484(c). See also § 19-499(a), discussed on p.
13. Conn. Gen. Stat. § 19-484(d). See also § 19-499(c).
14. Ibid.
15. Conn. Gen. Stat. § 19-485(a).
16. Conn. Gen. Stat. § 19-497(a).
17. Conn. Gen. Stat. § 19-497(b).
18. Conn. Gen. Stat. § 19-497(c). And see §§ and 19-500, p.
19. Conn. Gen. Stat. § 19-497(d).
20. Conn. Gen. Stat. § 19-497(d).
21. Conn. Gen. Stat. § 19-498(a).
22. Conn Gen. Stat. § 19-499(a).
23. Conn. Gen. Stat. § 19-499(c).
24. Conn. Gen. Stat. § 19-501.
25. Conn. Gen. Stat. § 19-487.
26. Conn. Gen. Stat. § 19-489.
27. Conn. Gen. Stat. § 19-493.
28. Conn. Gen. Stat. § 19-499(a).
29. Conn. Gen. Stat. § 19-489(b).

30. Conn. Gen. Stat. § 19-492(a).
31. Conn. Gen. Stat. § 19-491.
32. Conn. Gen. Stat. § 19-489(c).
33. Conn. Gen. Stat. § 19-490.
34. Conn. Gen. Stat. § 19-489(b).
35. Conn. Gen. Stat. § 19-486, hospital defined.
36. Conn. Gen. Stat. § 19-488(a). See § 19-488 (a) through (f).
37. Conn. Gen. Stat. § 19-488(b).
38. Conn. Gen. Stat. § 19-488 (b) through (f).
39. Conn. Gen. Stat. § 19-488(e).
40. Conn. Gen. Stat. § 19-488(g). See § 19-488 (g) through (k).
41. Conn. Gen. Stat. § 19-488(h).
42. Conn. Gen. Stat. § 19-489(e).
43. Conn. Gen. Stat. § 19-489(f).
44. i.e., Ch. 359, Conn. Gen. Stat.
45. Conn. Gen. Stat. § 19-493(a).
46. Conn. Gen. Stat. § 53a-168 through § 53a-171, inclusive.
47. Conn. Gen. Stat. § 19-493(b).
48. Conn. Gen. Stat. § 19-493(c).
49. Conn. Gen. Stat. § 19-492(b).
50. Conn. Gen. Stat. § 19-495.
51. Conn. Gen. Stat. § 54-76b.
52. Conn. Gen. Stat. § 54-76m. The age of defendant at the time he allegedly commits the crime is controlling.
53. Conn. Gen. Stat. § 54-76b.
54. Conn. Gen. Stat. §§ 54-76b through 54-76n.
55. Conn. Gen. Stat. § 54-76c, 54-76d.
56. Conn. Gen. Stat. § 54-76f.
57. Conn. Gen. Stat. § 54-76h.
58. Conn. Gen. Stat. § 54-76e.

59. Conn. Gen. Stat. § 54-76f.

60. Conn. Gen. Stat. § 54-76h.

61. Conn. Gen. Stat. § 54-76i.

62. Conn. Gen. Stat. Titles 53, 53a and 54, including the right of appeal.

63. Conn. Gen. Stat. § 54-76n.

64. Conn. Gen. Stat. § 54-76g.

65. Conn. Gen. Stat. § 54-76j.

66. Conn. Gen. Stat. § 54-76k.

67. Memo, "New Haven Pretrial Services Council Diversion Program", p. 2.

68. Public Act 73-641, approved June 12, 1973.

69. This program was the only one observed during the study period that could properly be includible under Publ. Act 73-641.

70. Ibid., p. 14.

71. See the report by Daniel Freed, Edward de Grazia and Wallace Loh, "The New Haven Pretrial Diversion Program - A Preliminary Evaluation," (Report to the New Haven Pretrial Services Council, September, 1973).

72. Memo, p. 7-8.

73. See Memo, pp. 12-13, which outlines an extensive explanation of the program's purpose, goals, eligibility criteria and the defendant's legal rights in respect thereto. But cf. the Freed report, which suggests that this explanation does not take place until after the defendant has been accepted into the program and approved by the prosecutor. Indeed, only after he has been taken back to the Program's office is the explanation given in detail.

74. Memo, p. 8.

75. Ibid, p. 8.

76. Ibid, p. 2.

77. Ibid, p. 3.

78. Ibid, p. 3.

79. Ibid, p. 3.

80. Ibid, p. 3.

Appendix A

Full Text of Conn. Gen. Stat. § 54-40.

(a) The officer in charge of any person committed for trial to jail, on binding over process, mittimus, bench warrant or appeal, or anyone acting on behalf of such accused, if it appears to such officer or to anyone acting on behalf of such accused, at the time of such commitment or before or during the trial, that such accused is so insane or so mentally defective that he is unable to understand the proceedings against him or to assist in his own defense, immediately present such fact to the judge having jurisdiction of the offense with which such accused is charged, and such judge shall, on such presentation, or may, on his own motion, if he is of the opinion that the mental condition of the accused is probably so defective that he is unable to understand the proceedings against him or to assist in his own defense, hold a hearing to determine the mental condition of the accused, motive of such hearing having been given to the state's attorney or prosecutor of the court having jurisdiction of the offense and to counsel for the accused.

(b) The judge shall appoint at least two reputable, disinterested and qualified physicians specializing in the practice of psychiatry, who shall examine the accused as to his mental condition and make written report thereof to the court, duly verified, and testify at the hearing, and their report shall be then placed in evidence, so far as it may be relevant and material. Such judge may order the accused to be committed to a state hospital for mental illness in this state for the purpose of such examination for such period as such judge determines to be necessary for the purpose. The judge may direct that a reputable, disinterested and qualified physician specializing in the practice of psychiatry retained by the defendant be permitted to witness the examination. The report of this examination shall be filed with the clerk of the court, who shall cause copies to be delivered to the state's attorney or prosecutor of the court having jurisdiction of the offense and to counsel for the accused. Any evidence regarding the accused's mental condition may be introduced at the hearing by either party.

(c) If the court, upon the hearing, decides that the accused is able to understand the proceedings against him and to assist in his own defense, it shall proceed with the trial, but, if it decides that the accused is so insane or mentally defective that he is unable to understand the proceedings against him or to assist in his own defense, it shall commit him to one of the state hospitals for mental illness in this state or to an institution for the mentally retarded in this state, for confinement and treatment until the time of his trial. Such person's hospital expense during such confinement shall be computed and paid for in the same manner as is provided for persons committed by a probate court under the provisions of chapter 308. If the superintendent or other official acting as manager of such institution is of the opinion that the accused is neither insane nor so mentally defective as to be unable to understand such proceedings and to assist in his own defense, he shall report such opinion to the court which committed the accused. Upon receipt of such report, the court shall fix a time for a hearing to

determine whether the accused is able to understand such proceedings and to assist in his own defense. Such hearing shall be conducted in the same manner as the hearing in the first instance to determine the mental condition of the accused. If, after such second hearing, the court decides that the accused is able to understand such proceedings and to assist in his own defense, it shall proceed with the trial; but, if it decides that the accused is still not able to understand such proceedings or to assist in his own defense, it shall recommit him to a state hospital for mental illness in this state or to an institution for the mentally retarded in this state. The expense of such examination shall be paid in the same manner as expenses in criminal prosecutions in the superior court.

(d) The foregoing notwithstanding, at the time of any commitment under subsection (c), the court shall set a maximum period of commitment, which maximum shall not exceed the maximum sentence which could have been imposed for the offense for which the accused is awaiting trial. To such maximum period of commitment there shall be credited the number of days spent by the accused in a community correction center or other confinement prior to such commitment under said subsection (c). In the case of a class A felony, the maximum period shall be twenty-five years. During the period of confinement, the superintendent of the hospital or institution shall, at least every six months, issue a written report to the court stating his opinion of the mental condition of the accused. This report shall be filed with the clerk of the court who shall cause copies to be delivered as in subsection (a).

1974 PLAN

CATEGORY NUMBER	TITLE OF PROJECTS(S)	NO. OF PROJECTS	TOTAL FUNDING	STATUS
74:2.9	Community Involvement in Crime Reduction	5	115,000	Underway (Fall completion).
74:2.10	Crime Reduction Demonstration	2	200,000	Underway (completion of Phase I in Fall).
74:3.7	Statewide Organized Crime Investigative Task Force	1	200,000	Underway (Fall completion).
74:4.2	Community Based Direct Service	16	897,000	To begin March 1 and be completed by September 30 (contract with University of Hartford).
74:4.6	Youth Service Bureaus	26		
74:4.9	Outreach Centers	1		
74:4.12	Juvenile Court Program	1		
74:4.9	Community Service Unit (Hartford)	1	130,000	Underway (Fall completion). Contract between DCYS and UConn School of Social Work.
74:5.7	Reentry Program for Drug Offenders	1	120,000	RFP being developed. Study to be conducted in Spring, 1975.
74:6.12	Private-Public Resources Expansion	1	340,000	Underway (completion by May 31). Contract with Dr. Gorff and Dr. Green - UConn School of Social Work.
	TOTALS	55	$2,002,000*	

$7,895,000 - Total Awarded Connecticut

*$2,002,000 - 25.4% Evaluated

1973 PLAN

CATEGORY NUMBER	TITLE OF PROJECTS(S)	NO. OF PROJECTS	TOTAL FUNDING	STATUS
73:2.6	Statewide Enforcement Coordinating Committee	1	360,000	Completed May, 1974.
73:4.5	Group Home Coordinating Committee	1	575,000	Underway (March 31, 1975 completion). Contract Dr. Wilson, University of New Haven.
73:6.4	Pilot Redirection Center	1	210,000	Underway (February, 1975, completion). Contract - Dr. Herder.
73:8.2	Police Legal Advisors	9	120,000	Completed October, 1974.
73:1.5 73:1.7	Pre-Trial Diversion Bail Re-Evaluation	3	220,000	Underway. Completion in Spring, 1975. Contract - ABT.
DF	Prisoner Transportation	1	220,000	Underway. Completion in May, 1975. Contract - Dunlop Associates.
P	Youth Services Study (statewide overview)			Completed April, 1974. Contract Dr. Wilson, University of New Haven.
	TOTALS	16	$1,705,000*	

$7,895,000 - Total Awarded Connecticut

*$1,705,000 - 21.6% Evaluated.

1972 PLAN

CATEGORY NUMBER	TITLE OF PROJECT(S)	NO. OF PROJECTS	TOTAL FUNDING	STATUS
72:2.6	Statewide Enforcement Coordinating Committee	1	330,000	Completed October, 1973.
72:4.5	Group Homes	15	563,000	Completed November, 1973. Contracted NCCD.
72:4.13	Summer Youth Employment	4	81,000	Completed February, 1973.
72:6.4	Pilot Redirection Center	1	168,000	Completed. Dan Freed, Yale Law School.
72:6.11	Joint Training Academy	1	348,000	Completed November, 1973. Dr. Matthews, University of Southern Illinois.
72:8.3	Police Aide Program New Careers Juvenile Probation Aides	1 1 1	79,000	Completed May, 1973.
72:8.4	Training Systems Development	1	28,108	Completed November, 1973. Frank Leahy of P.R.C., Inc.
72:8.5	Statewide Penal Code Training	3	148,000	Completed August, 1973.
72:9.3	Case Incident Reporting System	1	160,000	Completed August, 1973.
72:2.1	Study of Police Services	1	9,950	Completed October, 1973. Contracted Dr. John Herder Associates.
	TOTALS	30	$1,915,058*	

$6,805,000 - Total Awarded Connecticut

*$1,915,058 - 28.1% Evaluated

1970 AND 1971 PLANS

CATEGORY NUMBER	TITLE OF PROJECT(S)	NO. OF PROJECTS	TOTAL FUNDING	STATUS
A71:2.4	Experimental Team Patrol	1	18,300	Completed May, 1973. Contract Dr. John Herder Associates.
A70:2.1	Expansion of Toxicology Lab Facilities	1	44,000	Completed February, 1972.
A70:8.2	Planning and Budget Unit	1	17,800	Completed July, 1972.
A71:4.1	Teen Community	1	17,500	Completed July, 1972.
	TOTALS	4	$97,600	

END