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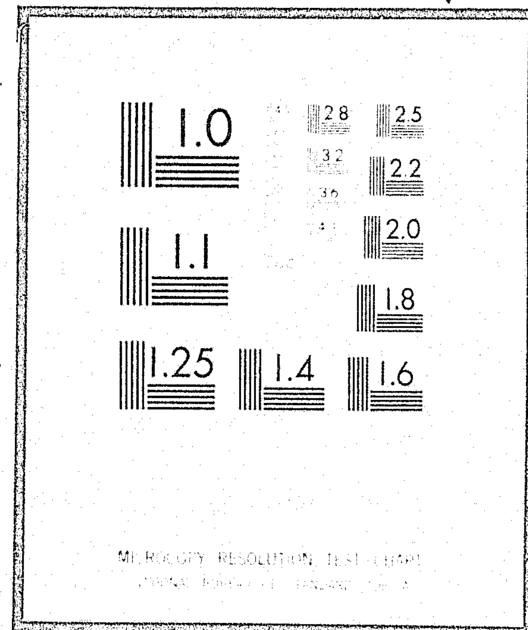

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MONITORING REPORT ON THE SUPERVISED RELEASE PROGRAM IN ALAMEDA COUNTY

NCJRS

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ACQUISITIONS

OFFICE OF THE PRETRIAL SERVICES COORDINATOR

JULY 12, 1976
(REV. 7/14/76)

MONITORING REPORT ON THE SUPERVISED RELEASE PROGRAM IN ALAMEDA COUNTY

Summary of Findings and Recommendations

This report reviews the operations of the Supervised Release program in Alameda County. The program has been operating since November 1975 as components of the Pretrial Services Division, Probation Department, and the Berkeley Own Recognizance Project. This report reviews the program's goals and operations and makes recommendations for changes in both.

Supervised Release Program Goals

Findings

- The program is guided at the present time by two somewhat conflicting goals:

  -- To provide a mechanism for the successful pretrial release of, and delivery of special services to, defendants who otherwise would have been detained.

  -- To provide special services to pretrial defendants upon request of the Court, regardless of whether or not those defendants would be released by the Court without those services.

- A consequence of the conflict of goals is that two extreme types of cases are placed on supervised release. On the one hand, a significant proportion of supervised release cases are charged with serious felonies. This is an indication that the program is used by the courts in conformance with the first goal. On the other hand, nearly 40% of all supervised release defendants are charged only with a misdemeanor - and more than a third of those have no known criminal histories. Many of these defendants are referred to supervised release only in order to insure that they receive services, rather than being referred for actual supervision.

Recommendation

- The Judicial Coordinating Committee on Pretrial Services should adopt a policy position which would clearly identify supervised release as a "last resort" release mechanism for high risk defendants who are unable to post bail and who, in the absence of the program would remain in custody. If accompanied by improvement of other services to the Courts as recommended below, the Courts' interest in insuring swift delivery of appropriate services to defendants would be met. The implementation of these recommendations would also allow the supervised release program to work toward fully developing its potential for actually affecting the number of defendants in detention, and the amount of time they spend there.

Services to the Court

Findings

- No adequate mechanism currently exists within the Pretrial Services Division, particularly in the North County unit which services the Oakland Municipal Court, to evaluate different types of requests or referrals from the Courts. Many of the referrals which could be met to the satisfaction of the Court without a full supervised release evaluation and placement now nonetheless do result in supervised release placement.

- Judicial satisfaction with the Division generally, and the supervised release program specifically, depends in large measure on the performance of the court representatives.

- Many Division staff do not have an adequate knowledge of services available to pretrial defendants.

Recommendations

- Court representatives should be encouraged and instructed to exercise as much discretion as possible when dealing with judicial referrals or requests.

- One or two staff members currently assigned to the Division's North County supervised release or drug units should be reassigned to the Oakland Municipal Court to serve as back-up for court representatives.

- In order to assist the court representative, the Courts may need to be more precise in making referrals. "Supervised release" as a catch-all rubric should be eliminated. A case should be referred to supervised release only when <u>supervision</u>, or an evaluation for possible release under supervision, is desired. "Supervision" as used here is limited to (1) conditions of release which require the defendant to maintain contact, of whatever frequency, with pretrial staff or (2) any pretrial release in which the Court expects reports during the pretrial period about the defendant or his circumstances on either a regular basis or when there is a significant change in his status or circumstances.

- At all levels of operation, emphasis should be placed on satisfying referrals or requests through the <u>least complex manner possible</u>.

- There is a need to develop within the Division the position of "community services specialist" to keep abreast of available services and to insure that Division line staff are kept aware of their availability.

Deputy Probation Officer's Veto of Supervised Release Recommendations

Findings

- Before making a recommendation for release to the Court, Probation Department policy requires the Pretrial Division staff to obtain the approval of the deputy probation officer when defendants whom they are evaluating are active to probation. In effect, D.P.O.s have authority to veto Division recommendations for supervised release.

Recommendation

- Whenever a defendant is active to probation and is being evaluated by supervised release staff, the deputy probation officer should always be consulted about the defendant. The D.P.O. should be asked whether he wants to make a recommendation regarding pretrial release. If he does, the reasons for the recommendation should be clearly stated in the supervised release report to the Court. At no time, however, should the D.P.O. have authority to veto a recommendation to the Court for release. There should be no interference with the Court receiving full and complete information about the case.

Cost Savings

Findings

- A reduction in the jail population and cost savings to the County are possible only if the supervised release program results in the release of individuals <u>not</u> affected by bail or unsupervised O.R. release. Unfortunately, it is not possible now to estimate accurately the number of supervised release clients who, in the absence of the program, would otherwise have remained in jail awaiting trial.

Recommendation

- It is important that as the monitoring of the supervised release program continues, every effort be made to accurately estimate the proportion of defendants granted supervised release who would have remained in custody in the program's absence. Given the newness of the program, and lacking reliable data on what the "substitution" effect is between S.R. and straight own recognizance release, it would be premature at this time to estimate the cost savings to the County.

Employment Status of Supervised Release Defendants

Findings

- Two-thirds of all supervised release defendants are unemployed.

Recommendation

- Study should be made of the feasibility of providing job development assistance for supervised release defendants.

Defendant Evaluation Criteria

Findings

- Criteria for evaluation of defendants for possible supervised release are not applied consistently by supervised release staff.

Recommendations

- Generally, criteria should be used as guidelines rather than hard-and-fast rules in deciding whether to recommend a defendant for possible supervised release.

- There should be continuing workshops on supervised release criteria among all pretrial staff (including the Division and Berkeley O.R. personnel) who conduct supervised release evaluations.

Use in the Pre-Sentence Report of Summary Information About Supervised Release Defendants

Findings

- Supervised release staff acquire during the course of their supervision of defendants valuable information about those defendants which is not being effectively used by the investigating deputy probation officer in the pre-sentence report.

Recommendation

- Procedures should be modified to insure that the investigating deputy probation officer receives a report about a defendant from supervised release staff in a timely manner.

Failure to Appear

Finding

- Evaluation by supervised release staff prior to placement on supervised release appears to have the effect of reducing the likelihood of a failure to appear. While 24.5% of those placed on supervised release without staff evaluations failed to appear, only 11.6% of those placed on supervised release after staff evaluations failed to appear.

Recommendation

- The Courts should request staff evaluations of defendants before placing them on supervised release.

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INTRODUCTION

The Supervised Release (S.R.) components of both the Pretrial Services Division (Division) of the Probation Department and the Berkeley Own Recognizance Project began operations in November 1975 after several months of planning. At its October 29, 1975 meeting, the Judicial Coordinating Committee on Pretrial Services, the body responsible for setting program policy, approved the S.R. plans presented to the Committee by the two agencies. At that same time the Committee requested that a "progress report on the cost and effectiveness of the program" be prepared after the first 90 days of the programs' operations.

This report has been delayed beyond that time for two reasons. First, the Pretrial Services Coordinator, who was asked by the Committee to coordinate the preparation of the report felt that the programs should be allowed to operate for a longer time before they were evaluated. Second, the Coordinator and his staff, as well as other evaluators of the County's pretrial program, faced several lengthy delays in obtaining clearance for access to CORPUS criminal histories. It was not until March, 1975 that this clearance was obtained.

This monitoring report is not an "impact evaluation" of supervised release -- the program is too new for that. The Courts, the Berkeley O.R. Project, and the Division, together with the Coordinator, are still clarifying the program's goals and objectives, refining present procedures and policies, and testing new ones. In approving funding of supervised release for 1976-77 fiscal year, the Board of Supervisors also recognized that the program is new and experimental.

It would be appropriate after supervised release has been operating for a year to do a follow-up study that would rigorously evaluate the program's impact on the pretrial process in Alameda County. Between now and then, there should also be continual monitoring to help the program operate as effectively and efficiently as possible in serving the needs of the Courts and the policies of the Board of Supervisors.

The primary researcher and author of the report is Mr. Anthony Jiga of the Pretrial Services Coordinator's Office. The project was conducted under the overall supervision of the Pretrial Services Coordinator, Mr. Allen Hellman.

The author wishes to express sincere appreciation to the staff and directors of the Pretrial Services Division and the Berkeley Own Recognizance Project for their assistance and cooperation. He also wishes to thank the several Judges who shared their thoughts and concerns about supervised release.

The staff of the Alameda Office of Criminal Justice Planning (OCJP) pretrial services evaluation team were very helpful in providing critical comments and insights and valuable data.

The author owes special gratitude to Ms. Raelene Peters and Ms. Joy Zimmerman for their dedicated and skillful assistance.

I. BACKGROUND AND GOALS OF SUPERVISED RELEASE

A. History

The supervised release concept was first formally proposed in Alameda County in 1974 by a team of consultants headed by Kaiser Engineers.[1] Kaiser recommended the establishment of a supervised release program to be modeled after the one in Des Moines, Iowa, and which would be reserved for "higher risk" defendants who are unable to post bail and who are not released on their own recognizance (O.R.). Kaiser recommended that the program have the following characteristics:

1. Supervised release (Kaiser called it a "Supervised Social Service Project") should be reserved for those defendants charged with felonies who do not have drug or alcohol addiction problems. (The report contained other recommendations to deal with alcohol-dependent and drug-dependent defendants.)

2. Supervised release should intervene only after the defendant is denied O.R. at arraignment.

3. The supervised release staff should explain court procedures and remind defendants of court dates; provide direct "crisis" counseling when necessary; provide vocational and educational counseling; and make appropriate referrals to social agencies and manpower programs. Emphasis should be on placing defendants in jobs and/or educational programs.

4. Periodic progress reports on clients should be made to the Court.

5. Close cooperation should exist between the release agency (seen by Kaiser as being an independent County department) and the Probation Department in order that supervised release information could be used in pre-sentence reports.

6. Supervised release staff should have prior experience working with low-income minority people.

The Pretrial Services Steering Committee, which was created by the Board of Supervisors in late 1974 to analyze the Kaiser report, determined that there was a need for a supervised release project. The Committee recommended that S.R. components be created in the Pretrial Services Division and the Berkeley O.R. Project.

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[1] Study of the Detention Requirements of Alameda County: Final Report, Kaiser Engineers, July 15, 1974.

The purpose of the program would be to provide the Courts with an alternative to incarcerating marginal defendants who could not post bail, and to assist defendants in making contacts with community treatment programs dealing with drugs, alcohol, and mental health problems.[2] Specifically, the Steering Committee established the following functions for the supervised release program:[3]

1. Upon case assignments from Court, maintain minimum of once-a-week contact with defendants in addition to reminding them of all court dates;

2. Assist defendants in contacting all treatment programs as the Court directs or as deemed necessary;

3. Assist defendants in obtaining any other type of services as required such as psychiatric counseling, job counseling, housing, DMV, GED and medical assistance;

4. Promptly inform Court as to defendant's non-compliance with conditions of release, rearrest and need for review of release status;

5. Facilitate defendant's reinstatement with Court when failure to appear does not seem to be intentional;

6. Assist law enforcement agencies in locating defaulting defendants;

7. Prepare summary report of defendant's adjustment on supervised release for inclusion in probation officer's R & S report if defendant is convicted;

8. Provide Pretrial Services Coordinator with necessary unit data for inclusion in monitoring system.

The Board of Supervisors accepted the Steering Committee's recommendations. Planning for the implementation of supervised release units in both the Pretrial Services Division and the Berkeley O.R. Project began immediately thereafter, in the spring of 1975.

At the same time as the Steering Committee was identifying specific functions of various components of the proposed Pretrial Services Division, it was also promulgating goals for the County's pretrial program.

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[2] Letter to the Board of Supervisors from Loren Enoch, County Administrator (February 13, 1975).

[3] Memo to the Pretrial Services Steering Committee, from Subcommittee II. Subject: Report on Monitoring and Evaluation of Pretrial Services (January 9, 1975).

B. Goals

In February 1975, the Board adopted without modification the three goals for the County's pretrial services activities recommended by the Steering Committee. These goals, which apply to all of the County's pretrial program are:

1. To provide such supportive information and services to the courts as are necessary to support the judicial process;

2. To significantly reduce the number of defendants in detention at all phases of the judicial process prior to conviction and sentencing consistent with public policy and safety; and

3. To reduce the total pretrial detention cost to the County.

Four months after the Board adopted the Steering Committee's recommendation there was no consensus in the County on the proposed project's objectives, and consequently its target population. At that time the Pretrial Services Coordinator recommended that development of forms and procedures and implementation of S.R. be postponed until the project's objectives (and hence its target population) were clearly identified, and discussed by the Pretrial Services Advisory Committee and the Judicial Coordinating Committee on Pretrial Services.[4] Although a clear statement of goals and objectives as recommended by the Coordinator was never made, early drafts of S.R. procedures indicate that in light of the overall goals set by the Board there was an implicit goal being used as a guide in planning the program:

> To provide a mechanism for the successful pretrial release of, and delivery of special services to, defendants who otherwise would have been detained.[5]

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[4] Memo to Robert S. Yee, Division Director, and Floyd Hawkins and Robert Leigh, Supervising Pretrial Specialists (Pretrial Services Division) from Allen Hellman, Pretrial Services Coordinator. Subject: Development of Supervised Release Program Objectives (June 23, 1975).

[5] Successful is defined as making all court appearances, not being rearrested during the pretrial period and complying with all other conditions of release.

When draft procedures for supervised release were presented to the Judicial Coordinating Committee at its October 1975 meeting, concern was expressed by several Judges that supervised release would apply only to defendants meeting certain pre-established criteria. In response to this concern, the Committee approved certain minimal criteria which must be met in order for a defendant to be considered for supervised release, but also made it clear that the Court could refer to supervised release any defendant not meeting those criteria.[6] In addition to court referrals for evaluation and recommendation, the practice subsequently developed of Judges ordering that a person be placed on supervised release without an evaluation first being conducted. These twin policies imply a second goal for supervised release:

> To provide special services to pretrial defendants upon request of the Court, regardless of whether or not those defendants would be released by the Court without those services.

To a certain extent, the goals are in conflict. The first goal limits supervised release to those defendants who would be detained in the absence of the program. This implies that the program's services and supervision should be reserved for relatively high-risk felony defendants. The second goal, on the other hand, makes S.R. services and supervision available to any defendant whom a Judge wishes to have receive any special services and supervision while released on his own recognizance. As it did a year ago, "supervised release" today means different things to different people. Conflicting goals and differing expectations have resulted in some difficulties in operations which are discussed later in this report, and for which remedies are proposed.

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[6] The criteria limit the inclusion of defendants evaluated for supervised release to felony defendants whose bail is less than $10,000 as of the date the preliminary hearing is set.

II. PROGRAM DESCRIPTION

This section briefly describes the operation of supervised release, roughly following the "flow" of defendants through the system. The next section will provide an analysis of each phase of those operations.

There are two different agencies operating supervised release programs in the County, and within the larger of those two agencies, the Pretrial Services Division, there is a North County unit and a South County unit. The North County unit services the Alameda and Oakland-Piedmont-Emeryville Municipal Courts, and the Superior Court; the South County unit services the Fremont-Newark-Union City, Livermore-Pleasanton, and San Leandro-Hayward Municipal Courts. Most staff are assigned to work primarily in certain judicial districts, or even departments within a district. It would not be worthwhile, nor possible, to point to all the differences among these various operating units. Therefore, only those differences which are of policy relevance to other units will be discussed in Section III of this report.

A. Referral Process

With the exception of the Alameda and the Livermore-Pleasanton Municipal Courts, there are three ways in which a defendant may be placed on supervised release: (1) post-arraignment evaluation, (2) court referral, and (3) direct Court placement. These three procedures are explained below, and are graphically represented in Diagram A.

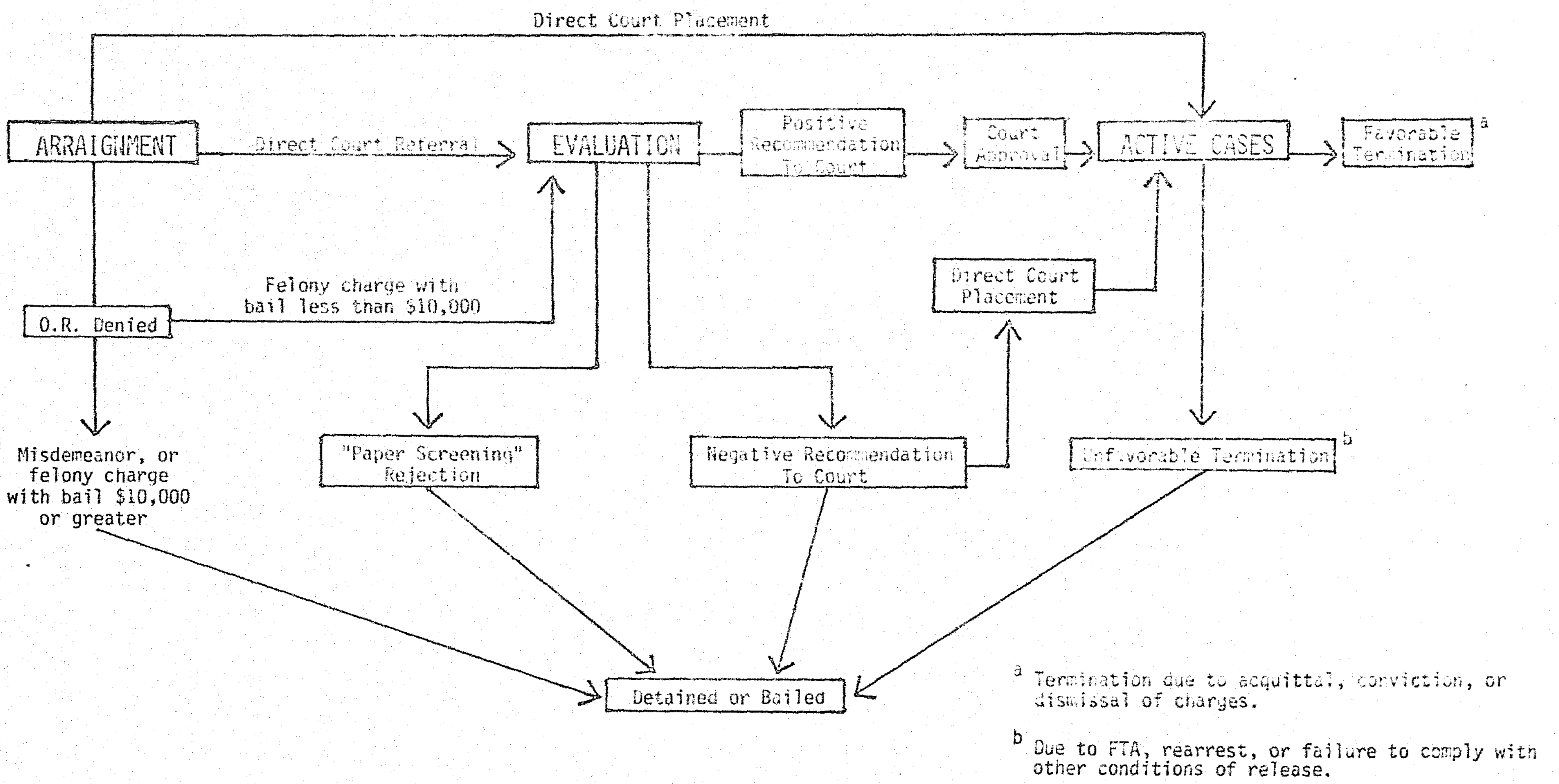
1. Program-initiated evaluation

Felony cases with bail less than $10,000 where the defendant is denied O.R. at arraignment are automatically evaluated by pretrial staff for a possible supervised release recommendation. If they fail to meet further eligibility criteria (described in Section II-B, below) they are rejected. For those not rejected, and who have not already been released from custody, a positive recommendation, usually in a written report, may be submitted to the Judge for consideration, with copies to the District Attorney and the defense counsel . With the Judge's approval, the defendants are granted supervised release.

2. Court referral

Any defendant may be referred by the Court at any time for a supervised release evaluation. The result of the evaluation is a report to the Court recommending either for or against supervised release. If the Court accepts the positive recommendation, or rejects a negative recommendation, the defendant is granted supervised release.

DIAGRAM A: Simplified Flow Chart of the Supervised Release Process



3. Direct Court placement

The Court may order that a defendant be placed on supervised release, without the benefit of a S.R. staff evaluation, at any time.

The process described above is essentially the same throughout the County, with the exception of the Alameda and the Livermore-Pleasanton Municipal Courts. The same Division pretrial specialist in each of these two Courts performs the jail interviewing, Court representation and supervised release evaluation and follow-up functions. With the concurrence of the arraignment Judges in these Courts, the pretrial specialists routinely consider before arraignment each defendant they interview for a possible supervised release evaluation and recommendation. Although most supervised release decisions are made by the Court at arraignment, referrals to, and direct placements on, supervised release are also made after arraignment.

B. Defendant Evaluation

The various steps described below, and the sources of information for the defendant evaluations, generally hold true throughout the County. However, as noted earlier, there are also variations in the procedures followed. The significant differences will be referred to in Section III of this report.

1. Pre-interview screening

The first step in the program-initiated evaluation process, and usually the court referral process also, is "paper screening". Staff review for further eligibility consideration the defendant report form completed from the initial jail interview for all felony defendants who, having been denied O.R. release, are in custody after their first court appearance, and have bail set at less than $10,000. During this paper screening stage the following criteria are generally applied to eliminate defendants from further consideration: (a) current charges entailing violence, (b) use of a weapon, (c) narcotics sales, (d) residential instability (lacking a genuine Bay Area address), (e) O.R. or bail defaults within the past year, (f) a parole hold, or (g) enroute out-of-county charges.

If a defendant remains eligible after the first part of the screening process, his CII and CORPUS criminal histories (if any exist for him) are reviewed. Staff look for evidence of "violence proneness" or patterns of aggressive behavior. According to a recent memo " . . . Patterns of aggressive offenses and/or the use of weapons, as well as a lengthy arrest record generally disqualify the defendant."[7] If a defendant is active

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[7] Memo from Robert S. Yee, Division Director (Pretrial Services Division) to all Senior Pretrial Specialists. Subject: Follow-Up Investigations (Drug Component and Supervised Release) (June 8, 1976).

to probation, the deputy probation officer (D.P.O.) is contacted by telephone to obtain the officer's impression of the defendant and a recommendation regarding release. If the D.P.O. recommends against release, Probation Department policy requires Pretrial Division staff to make a negative recommendation to the Court in the case of court referrals, and to reject the case if it is a program-initiated evaluation. The Berkeley O.R. Project is not bound by the D.P.O.'s recommendation.

2. Interviewing

Defendants who have passed the above eligibility tests are then interviewed. The "diagnostic" interview includes questions about the defendant's family and employment circumstances and his physical and mental health, including his use of drugs and alcohol. Questions also cover the defendant's prior criminal justice involvement. If minor warrants exist, these are discussed with the defendant and an effort is made to have the defendant, a friend, or a relative, post the required bail to remove the holds placed on the defendant as a result of the warrants. An important question asked of most defendants during the interview is where the defendant would go if released today, and for how long he would remain there.

Before the interview is completed, the interviewer explains the supervised own recognizance release program and the need for compliance with Court-ordered conditions if the defendant is released. The interviewer also makes a partial assessment of the defendant's potential threat to the community, and his willingness to cooperate with conditions of release. The evaluation may be terminated after the interview, or it may continue for a post-interview investigation.

3. Post-interview investigation

During the post-interview investigation references are contacted to verify what the defendant said during the interview. Depending on the case, the investigation may also involve checking with the defendant's family, and sometimes checking with the complaining witness/victim.

If the Division S.R. staff conclude at any point in the evaluation process that the defendant is drug-dependent, he will usually be referred to the Division's drug component staff, and thus be "rejected" from supervised release. There are, however, several exceptions to this. If the case is a court referral to supervised release, the North County S.R. staff are not permitted to refer the case to the drug component; they must either accept it as a supervised release case or reject it. If a drug-dependent defendant is a direct Court placement in North County, S.R. staff are required by Division policy to accept the case. In South County, drug-dependent defendants' cases that are evaluated for potential supervised release are referred to the South County drug component if the staff of that component has the capacity

to handle the case. If the drug staff is already handling its capacity of cases, the case will be rejected for possible S.R. or drug treatment. In Berkeley, most defendants with drug dependency, for whom the Court wants treatment, are charged with felonies. These cases are handled by the supervised release staff.

4. Conditions of release

Staff may conclude on the basis of the evaluations that the defendant is a good candidate for supervised release. If the defendant has personal needs which require attention, an effort will be made to match those needs with available services. These include: in-patient and out-patient treatment for mental health problems, alcoholism, and other medical disorders; family counseling; job development; welfare and housing assistance; educational referrals.

Regular reporting to pretrial staff either in person or over the telephone is usually required of all defendants.

5. Report to the Court

If a positive recommendation results from a post-arraignment referral, a report is prepared for the Court. There is no communication with the Court regarding rejected post-arraignment evaluations, unless the case is subsequently referred by the Court. For all court referrals, a report and recommendation is submitted, whether it is positive or negative.

If the recommendation is positive, a set of recommended conditions will be included in the report. If the recommendation is negative, the reasons for recommending against supervised release usually will be included.

C. Follow-Up

1. Progress reports

If release is approved by the Court, the defendant will be instructed to report to the Pretrial Services Division or the Berkeley O.R. Project and to comply with their instructions. Staff usually require the defendant to report personally and meet with S.R. staff at least once after release. Staff may then decide to continue requiring personal meetings, or allow the defendant to check-in at a prescribed frequency (usually weekly) by phone. If the defendant is active to probation, Division staff usually contact the defendant's D.P.O. to coordinate reporting requirements in order to avoid having the defendant report to the Probation Department more often than the D.P.O. and Pretrial Division staff agree is necessary.

Progress reports with recommendations for or against the defendant's continuation on S.R. are usually made to the Court at every pre-trial hearing. In Oakland the report is made in writing, with copies going to the defense attorney and District Attorney; the Judges in some of the smaller Courts prefer only oral reports; other Judges prefer an oral report, with a written report submitted later for the file.

2. Termination

Termination from supervised release may be either "favorable" or "unfavorable". Favorable termination occurs when the defendant is acquitted, sentenced, or his case is dismissed before he is terminated from supervised release. Unfavorable termination results from the Court revoking S.R. due to the defendant's failure to appear, arrest on a new charge, or failure to comply with other conditions of his release.

Unfavorable termination is usually preceded by a progress report from pretrial staff recommending termination. However, a new arrest, FTA, or other failure to comply with conditions does not necessarily result in a recommendation to the Court for revocation.

If termination is for reasons other than dismissal or acquittal, and if the Probation Department prepares a pre-sentence report, procedures in both the Berkeley O.R. Project and the Division require the S.R. staff person who supervised the defendant to provide information to the investigating D.P.O. for use in the report.

III. FINDINGS

This section analyzes the process described in Section II, relying on both quantitative and qualitative data for the conclusions and recommendations presented. The several sources of statistical data used in this report are as follows:

- During the five-month period November 1, 1975 through March 31, 1976 there were 207 supervised release cases opened in Alameda County. The distribution of those cases among the County's several courts is shown in Table 1. The primary statistical base for this study is an 83% countywide sample of all S.R. cases initiated during that time.

- Monthly logs -- Logs containing information about cases considered for supervised release are maintained by the Division and the Berkeley O.R. Project.

- OCJP data -- The Alameda Regional Office of Criminal Justice Planning (OCJP) is currently conducting an evaluation of the County's pretrial services program. As part of that study, OCJP recently assembled a massive data base which includes data on booking, detention and judicial proceedings for nearly 100% of all persons booked in Alameda County exclusive of those booked solely for public intoxication (P.C. 647(f)) during four selected weeks of 1975. Some of this data is used in this report for comparing the characteristics of S.R. defendants with other defendants.

Qualitative, or non-statistical data used in this analysis is based primarily on interviews with Division and Berkeley O.R. staff and observation of their procedures, and interviews with Judges. Appendix A provides a more complete description of the methodology.

During the five-month period November 1, 1975 through March 31, 1976, there were 207 supervised release cases opened in Alameda County. A comparison of each Court's proportion of supervised release cases with the proportion of defendants arrested in the County who were arraigned in those Courts shows that some Courts are using supervised release in a relatively greater number of cases than are others. Alameda, for example, with 3% of the total arrests in the County, accounts for nearly three times that proportion of supervised release cases. By contrast, in Berkeley, the proportions are nearly the same. Most of the defendants in Superior Court S.R. cases were initially arraigned in Oakland.

Table 1

Distribution of Supervised Release Cases
Among Alameda County Courts
(N=207)

Court	
Alameda	8.7%
Berkeley	9.9
Fremont	9.9
Livermore	9.2
Oakland	51.4
San Leandro-Hayward	2.7
Superior	8.2
	100.0%

A. Referral Process

1. Program-initiated cases

One way in which cases are considered by the Court for supervised release is through post-arraignment program-initiated evaluations of defendants charged with felony offenses where the defendant is in custody and bail is less than $10,000. Some of the defendants whose cases are evaluated through this process secure their release from custody before a recommendation can be made to the Court, but after the supervised release evaluation process has begun. This is an "occupational hazard" pretrial staff must face. Although this hazard is present with court referrals as well as non-referral post-arraignment evaluations, the problem is more acute in the latter situation due to the higher volume of cases.

In March there were 261 cases reviewed post-arraignment by the Division for possible supervised release, where the defendants were denied O.R. at arraignment, charged with felonies, and whose bail was set at less than $10,000. Of the North County cases, about 18% secured their release from custody by the time a report could be made to the Court; in South County the rate was nearly equal, about 20% (see Table 2).[8] Although we do not know the reasons for the releases from custody, it is probable that most were due to the defendant posting bail.

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[8] County figure excludes Berkeley.

Table 2

Potential Supervised Release Cases That Were Not in Custody by the Time of the Next Court Appearance

	North County (N=125)	South County (N=136)
Not in custody	17.6%	19.9%
Remained in custody	81.4	79.1
	100.0%	100.0%

We do not know how much evaluation work had already been done by staff on these cases prior to their release from custody. It may have been none, or may have been a complete evaluation including an interview and preparation of a report for the Court. Thus, the amount of staff time spent without apparent benefit cannot be accurately estimated.

In an effort to reduce the frequency of this occurrence, the Division's South County unit does not complete the paper screening process until after the attorney and plea hearing. This provides defendants with the opportunity to post bail in an amount that may be reduced from the original amount. If a defendant remains in custody after the counsel and plea hearing and passes all of the S.R. eligibility tests that are applied, he then is interviewed and the evalaution is completed. One problem with waiting to complete an evaluation is that those defendants who cannot post bail are also denied the opportunity of having their cases reviewed for release at the earliest possible time. Another consequence of the South County policy is that by not presenting to the Court completed supervised release evaluations at the attorney and plea hearing, most of the supervised release cases there result from court referrals made at that hearing.

There is very little that can be done to reduce the incidence of expending effort on potential S.R. defendants who subsequently bail, other than delaying the defendant evaluations, or alternatively, speeding-up the S.R. process to include defendants in S.R. before they can bail. Each alternative involves an undesirable trade-off. By delaying the evaluation, defendants who have no ability to post even a reduced bail are denied the opportunity of the earliest possible consideration by the Court of a supervised release report on their behalf. If they are subsequently granted supervised release, both the County and the defendant pay the cost of additional time in pretrial custody.

On the other hand, by speeding-up the evaluation, and presenting a completed report and recommendation to the Court at the attorney and plea hearing, some defendants who would have been able to post bail after that hearing or who may have been granted straight O.R. at the hearing, may be placed on supervised release.

We believe that, in general, the latter alternative -- completing defendant evaluations and reporting to the Court at the earlies possible time -- should be an objective of the County's supervised release program. This objective corresponds with the goals adopted by the Board of Supervisors for the County's pretrial program (see page 5 of this report) for the following reasons:

- The judicial process is improved by providing the Court with additional information about defendants earlier, rather than later, in the process.

- The goals of reducing the number of defendants in detention and reducing pretrial detention costs are served by early release of defendants from custody.

Staff in the Division's South County unit, in an effort to speed-up the S.R. evaluation process and to reduce the number of times the Court rejects positive S.R. recommendations will try on an experimental basis having the court representative confer briefly and informally with the Judge on selected felony cases as soon as possible after O.R. is denied. Under this scheme, court representatives will attempt to determine whether or not the defendant is a likely candidate for subsequent supervised release. If the Judge feels very strongly that the defendant should not be released, even under supervision, staff time will have been saved by not doing an evaluation of that defendant for that Judge. On the other hand, if the Judge is able to specify under what conditions he would consider releasing the defendant, staff time again is saved and we are insured that there is, at least, some potential for release. Details of the proposal remain to be worked-out, and several questions must be answered. For example, what criteria should the court representatives use in selecting defendants? When should the court representative confer with the Judge?

This proposal for the preliminary screening of potential supervised release cases and case conferences with judges has considerable merit and should be pursued on a trial basis, with its results carefully monitored. If it is successful in some of the smaller and lower volume Courts, then its application in Oakland should be considered.

2. <u>Court referrals</u>

Recently, a number of referrals have been made by judges in the Oakland-Piedmont Municipal Court for the specific purpose of receiving more information about a defendant and his circumstances, or information about the condition and attitude of the victim or complaining witness. In other instances, referrals have been made specifically in order to have defendants placed in programs of various types, where no post-release "supervision" was necessarily expected or desired by the Court. These cases nevertheless were evaluated according to the standard procedures, and a report was made to the Court.

Several of the reports were seen by the Judges who made the referrals as being unsatisfactory; the reports did not address the specific needs of the Judges making the referrals. For example, one report recommended against S.R. because the charge was "too serious". The Judge in this case was clearly aware of the charge (assault with a deadly weapon) at the time the referral was made. What was wanted, though, was more information about the circumstances of the event, including whether or not the complaining witness would object to the defendant's release. The information desired was not included in the report to the Court.

In other cases, some Judges have felt it necessary to use supervised release as a "charade" in order to secure a particular service for the defendant or more information for the Court. Judges have placed defendants on supervised release in order to insure that they received medical attention, psychiatric care, treatment for alcoholism, and even emergency housing. In all of these instances, an S.R. referral was made because the Judges, or their court representatives, believed there was no other mechanism whereby they could receive the desired action or information from other staff in the Pretrial Services Division. And in all these cases, the Court was not overly concerned about whether the defendant maintained regular contact with pretrial staff.

There are several reasons for these difficulties. First, the very term "supervised release" means different things to different people. In the minds of some Judges and Division staff it has evolved into a "service" unit which receives all court referrals that the court representatives cannot satisfy, and which are not specifically designated as "drug referrals". (However, there appears to be some uncertainty even with respect to "drug referrals". At least one Judge refers cases to both supervised release and the Division's drug component.)

The Division's supervised release staff typically respond to these referrals as they would to any potential supervised release case. That is, a full evaluation is conducted with an eye toward recommending for or against supervised release. *No adequate mechanism currently exists within the Division to evaluate different types of requests or referrals from the Courts, many of which could be met to the satisfaction of the Court without a full supervised release evaluation, recommendation, and placement.*

Second, judicial satisfaction with the Pretrial Services Division generally, and the supervised release program specifically, depends in large measure on the knowledge, flexibility, and diligence of the court representatives. Some court representatives believe their roles to be unnecessarily circumscribed. They feel that, time permitting, they would be able to directly satisfy more judicial referrals and requests if they were encouraged to do so and if they had a greater knowledge of resources and services available for pretrial defendants.

The diligence with which individual court representatives carry out their responsibilities is also important. A judge is more likely to be satisfied with the pretrial agency generally, and supervised release in particular, if the court representative fully understands: (1) the reason for a court referral, (2) what response is expected, (3) when it is expected, and (4) in what form the response is expected (oral, written, or both).

This implies that *judicial referrals or requests need to be clear and precise if they are to be fully satisfied.* Currently, this is not always the case. In part this lack of precision has been due to a belief, mentioned earlier, that the only way to get additional information on a case, to order placement in a program, or to insure the delivery of some immediate services to the defendant where "supervision" by pretrial staff is not necessary or desired,is through an S.R. referral. The tendency has been, under these circumstances, for both the Judge and the court representative to refer a case to the supervised release unit without carefully specifying what is desired.

In the South County and Alameda Courts where the court representative typically is also the person who conducts the supervised release evaluation, the communication is usually better, and judicial satisfaction usually higher. However, even in these Courts, there is evidence that supervised release is used when what is desired does not necessarily entail supervision of the defendant. In Berkeley, where there is close communication between the pretrial staff and the Judges, supervised release is less likely to be used inappropriately.

Most Judges interviewed feel that when they make a referral to pretrial staff it should be discharged without the Judge needing to be concerned with what unit, section, or component of the agency does or should handle the referral. What is important to the Court is that the substantive matter be dealt with effectively and expeditiously. It is clear that a new method is needed for handling judicial referrals that would de-emphasize bureaucratic categorizations and focus on responsiveness to the Courts' needs. Therefore, we recommend that the following changes in the Division's operations be implemented:

- *Court representatives should be encouraged and instructed to exercise as much discretion as possible when dealing with judicial referrals or requests. There should be no restrictions placed on what court representatives can do in responding to judicial referrals, with the following exceptions: (1) limitations dictated by time constraints, or by the individual court representative's ability or knowledge, (2) routinely performing functions which normally are those of the court clerk or marshall, (3) routinely maintaining a supervised release caseload (Oakland only).*

- *The Division should make a concentrated effort to identify as many different types of service programs that are available to its clients as possible. Information about such programs should be included in the training of its court representatives so that they have sufficient knowledge to make direct referrals, especially in misdemeanor cases, rather than refer them to supervised release (or any other component) for an "evaluation".*

- *One or two staff members currently assigned to the Division's North County supervised release or drug units should be reassigned to Oakland Municipal Court to serve as back-up for court representatives. These individuals should be particularly knowledgeable in the availability of community and County resources, and should handle all requests for services which court representatives are unable to respond to and which do not require full S.R. evaluations. Their concentration should be in the misdemeanor departments where a rapid response to requests is often required. Since the overall caseload of the S.R unit should be reduced by such an effort, no additional staff should be required.*

- *In order to assist the court representative, the Court may need to be more precise in making referrals. "Supervised release" as a catch-all rubric should be eliminated. A case should be referred to supervised release only when <u>supervision</u>, or an evaluation for possible release under supervision is desired. "Supervision" as used here is limited to (1) conditions of release which require the defendant to maintain contact, of whatever frequency, with Division staff or (2) any pretrial release in which the Court expects reports during the pretrial period about the defendant or his circumstances on either a regular basis or when there is a significant change in his status or circumstances.*

- *At all levels of operation, emphasis should be placed on satisfying referrals or requests through the <u>least complex manner possible</u>. Every referral or request should be evaluated with the following questions in mind:*

  <u>Who is asking?</u>

  -- The Court?
  -- The defendant directly and voluntarily?
  -- The defendant under orders from the Court?
  -- An attorney on behalf of his client?
  -- Et cetera

What is being requested?

Information:

-- about the defendant?
-- about the circumstances surrounding the alleged offense?
-- about the victim and/or complaining witness?
-- by the defendant about his case or his obligations during the pretrial period?

Or:

-- an evaluation of the defendant for possible placement in a program?
-- referral assistance?
-- "counseling" or consultation with the defendant?
-- supervision of the defendant?
-- Et cetera

What response is expected?

-- A report made orally to the Judge directly or through the court representative?
-- A written report to the Judge?
-- A report with or without recommendations?
-- Placement in a program with or without an initial report or progress reports back to the Court?
-- No response?
-- Et cetera

When is the response expected?

-- The same day?
-- The next day?
-- At or before the next court hearing?
-- Et cetera

Development of a concise form to be used by the Judge to note requests or referrals when the court representative is not in the courtroom is needed.

- *Improved communication between the Court and all professional staff -- supervisory as well as "line" staff -- is necessary. Small, informal workshops between "line" staff and Judges should be held on a regular basis -- perhaps two or three times a year. Meetings with supervisorystaff, including senior pretrial specialists, should occur more frequently.*

Since the time these recommendations were first presented to the Division, the Division has taken some actions to implement them. A meeting was arranged for Oakland Judges, Division management, the Oakland court representatives and the North County supervised release senior and other Division staff. Several of the problems discussed above were discussed at the meeting. Several of the arraignment Judges in the Oakland Municipal Court are now testing a new form used for noting judicial referrals (see Appendix B, page 1).

3. Direct Court Placements

About 28% of the 171 supervised release cases in the study sample were placed directly on S.R. by the Courts, and most of those are misdemeanor cases. We cannot say how many were placed on supervised release for reasons other than supervision as defined above.

B. Defendant Evaluations

1. Application of evaluation criteria

Evaluation criteria can serve as a useful guide for staff as they evaluate a defendant's potential for supervised release. Some criteria clearly serve the purpose of helping to avoid fruitless labor: for example, not considering for supervised release defendants with out-of-county criminal holds. Other criteria which refer to the nature of the alleged offense or the defendant's character can help to guard against basing conclusions about a defendant exclusively on a subjective evaluation.

Subjective evaluations alone also often make the evaluator's job unreasonably difficult. Subjective impressions frequently cannot be adequately articulated to others, such as the Court, who rely on professional evaluations from pretrial staff However, criteria should not be looked upon as hard-and-fast, black-and-white rules to be rigidly applied in all cases. Rather, those criteria that concern the defendant's character and the alleged offense should be viewed as "guidelines", which, when combined with subjective, or "gut" reactions, allow pretrial staff to make an informed and professional evaluation of a defendant. This now happens infrequently.

Eligibility criteria are not applied uniformly throughout the County. Until recently, for example, the Division's North County unit tended to be less restrictive in application of violence and weapons use criteria than South County, where use of a weapon or a charge of narcotics sale usually served as reasons for automatic rejection of a case. North County staff have been more likely to further explore cases with such characteristics before making a decision. Table 3, which presents the reasons for rejecting defendants from supervised release eligibility, highlights the difference between the two units of the Division in the reported use of "Current charge too serious"

Table 3

Reasons for Rejecting Defendants from
Supervised Release Eligibility, by Location

Reason for Rejection	Location: North County (N=56)	Location: South County (N=85)
Current charge	1.8%	63.5%
Residential Instability	3.6	3.5
Non-resident Bay Area	--	4.7
Enroute out-of-county	2.1	2.3
Criminal history	7.1	5.9
Holds (unspecified)	12.5	1.2
Probation officer	10.7	9.5
Unverified information [b]	12.5	4.7
Drug involvement	3.6	--
Default within the past year	1.8	1.2
Refused interview/unable to interview	3.6	2.3
Other	21.4 [a]	1.2
Total	100.0%	100.0%

[a] Includes 11 cases where no reason was given.

[b] Unable to verify statements made by the defendant during the supervised release diagnostic interview.

SOURCE: North County and South County monthly supervised release logs for March 1975.

as a criterion for rejection.[9] Comparable data was not reviewed for Berkeley. Discussions with Division staff about this disparate application of criteria, and recent staff changes, have probably had the effect of reducing this disparity.

Agreeing on the best way to use evaluation criteria or guidelines is not easy. As noted earlier, rules cannot be developed for this. However, the goal to strive for is consistency -- both in terms of equal treatment of similar cases by an individual pretrial staff member and in terms of consistent policies being followed by different staff members. One way to promote this goal is communication among those persons who perform the evaluations. *There should be regular, continuing workshops on supervised release criteria among all pretrial staff (including Division and Berkeley O.R. personnel) who conduct supervised release evaluations.*

2. Deputy probation officer's veto of supervised release recommendations

If a defendant is active to probation, the deputy probation officer (D.P.O.) is contacted by phone to obtain the officer's impression of the defendant and a recommendation regarding release. In accordance with Probation Department policy, D.P.O.s may veto an otherwise positive recommendation for supervised release. That is, a D.P.O.'s objection to the release of a defendant prevents the Pretrial Services Division from making any positive recommendation regarding release to the Court. Frequently, however, D.P.O.s will not recommend one way or another. But when they do, there is variation among staff in how this information -- and the Departmental policy -- is regarded and used. Some Pretrial Division staff view the deputy probation officer's assessment of the defendant as crucial in determining whether the defendant is violence prone, is likely to make his court appearances, and, in general, whether "he can make it on the streets" -- meaning stay out of trouble. Other Division staff also value the officer's assessment, but feel competent to make their own independent recommendations. They resent the policy of the D.P.O.s' ability to veto their recommendations because they feel it unnecessarily interferes with their relationship with the Court.

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[9] It must be noted that this difference is somewhat overstated. The North County staff report only one reason for rejection, whereas South County staff report up to three reasons on their monthly log of cases considered for supervised release, from which this data was taken. Some of those cases where "Current charge" is shown in Table 3 as a reason for rejection in South County, also had other reasons associated with them. Nevertheless, 42% of the South County cases had "Current charge" only reported, this figure being comparable to the 1.8% figure for North County. Also, 11 cases in North County were rejected after an interview was completed, but no reason was given; undoubtedly, some of these cases were rejected in combination with other factors, because the current charge was too serious.

In contrast to the Probation Department's policy the Berkeley O.R. staff accept the deputy probation officer's comments as another datum of information, but are willing to reject -- and have rejected -- D.P.O.s' negative recommendations regarding release. Invariably, such disagreement is noted in the report to the Court.

The Probation Department policy was established in reaction to the independent recommendations to the Court made by the former TASC program. The former TASC director, according to the Pretrial Services Division Director, was of the opinion that neither he nor his staff could legally exchange information about TASC clients with the defendants' probation officers. Therefore, if a defendant was active to probation and was being considered by TASC for placement in a drug program, a recommendation would be presented to the Court without consulting the D.P.O. Occasionally this resulted in a TASC worker and a D.P.O. each urging the Court to take different actions.

In order to avoid this type of conflict between the new Pretrial Services Division and the Adult Division, the Directors of the two Divisions agreed early in July, 1975 to a policy that requires pretrial staff to contact the D.P.O. any time pretrial staff interview a defendant in jail who is active to probation. Pretrial specialists are required to (1) ascertain whether, in fact, a probation officer is supervising the defendant, and (2) ask the D.P.O. for a recommendation regarding release. The policy has been extended beyond the initial jail interview to also include investigations for possible pretrial placements in drug programs and for supervised release. The effect of this extension was to grant D.P.O.s the authority to override pretrial recommendations for supervised release.

An assumption that the adult probation officer is better able than pretrial staff to predict whether a probationer is a flight risk or a danger to the community is another reason for the Departmental policy of allowing the D.P.O. to veto possible positive S.R. or drug placement recommendations to the Court. This assumption rests on the belief that generally the probation officer, after repeated contact with a defendant has a better knowledge of him than the pretrial specialist has. The probation officer can examine his file on a defendant and make conclusions about his likely future behavior in light of his past behavior. The conclusion, of course, could be either in favor of, or not in favor of, releasing the defendant.

The assumption of the D.P.O.'s superior ability to predict a defendant's behavior denigrates the ability of pretrial staff to evaluate information from a wide variety of sources and to make an informed recommendation to the Court based on that information. The sources of information typically include the defendant report form, the police arrest report, the probation

officer's comments, the criminal history, an interview with the defendant, and where appropriate, comments from the victim or complaining witness -- much of which the probation officer does not normally have available to him at the time he is consulted regarding the release recommendation.

This is an important issue which addresses the concept of a professional Pretrial Services Division staff. It is appropriate and necessary that consultation take place whenever a defendant who is active to probation has passed other screening criteria and is being considered for a possible supervised release or drug placement recommendation to the Court. But the consultation should be just that: one professional consulting with another professional, seeking an informed opinion and recommendation about a client. The pretrial staff should not have to request permission to make a favorable recommendation.

An analogy is the preparation of the pre-sentence report. Currently, the investigating D.P.O. generally, but not always, is contacted by the pretrial specialist who supervised a defendant while on supervised release. The pretrial specialist gives a summary of the client's conditions of release and his conformance with those conditions. If appropriate, a recommendation is also made to the D.P.O. on whether the defendant should be placed on probation, and under what conditions. The deputy probation officer uses this information in deciding on a recommendation, but pretrial specialists, regardless of the extent of their knowledge about the defendant, are not authorized to veto any recommendation by the D.P.O. to the Court.

An equally important reason for changing the present policy is to insure that the Court benefits from the informed, professional judgement of Division staff as an aide to the Court's release decision. The Court alone makes the ultimate release decision, and its discretion should not be pre-empted by withholding information. *DPOs should not have authority to veto Division recommendations.*

The solution to this conflict between the Pretrial Division and the Adult Probation Division should be as follows:

1. *Whenever a defendant is active to probation the deputy probation officer should always be consulted about the defendant. The D.P.O. should be asked whether he wants to make a recommendation regarding release. If he does, the reasons for the recommendation should be clearly stated. (In cases where defendants are inactive to probation, there should be no requirement that pretrial staff consult with the former deputy probation officer. Due to the time required to get information from closed probation files, these also should not normally be used unless needed in individual cases to make an informed judgement.)*

2. *In the event the deputy probation officer's recommendation is divergent from that of pretrial staff, the officer's objection, with substantiating reasons, should be made part of the supervised release report to the Court.*

3. *If the probation officer feels strongly enough about his position, the option is available to him of placing a hold on the defendant, and justifying at a probation revocation hearing why the defendant should remain in custody. The probation officer's intention to place this hold and seek revocation should be included in the supervised release report to the Court which is considering the defendant's release.*

As part of the continuing evaluation of supervised release, careful study should be made of the relationship between D.P.O. recommendations and successful completion of supervised release.

3. Post-interview investigation

Several Judges commented during interviews that supervised release may be an appropriate release mechanism in certain cases when the alleged crime involved violence or the threat of violence, or when there remained the possibility of future violence. This is especially true in the case of domestic violence, or assault and/or battery involving a person the defendant is likely to interact with after leaving custody. (We know that about 19% of the supervised release cases opened between November 1, 1975 and March 30, 1976 involved an assault or battery as the principal charge although we do not know in how many of those cases the victim or complaining witness was a relative or acquaintance of the defendant.)[10] Judges who otherwise would not release defendants under these circumstances may grant supervised release.

At least one Judge also feels it would be helpful in making the release decision if the complaining witness'/victim's opinion about the defendant's release were presented to the Court. The same Judge also suggested that it would also be helpful, in certain cases where the defendant is granted S.R. and there is a potential for future violence, if the complaining witness or victim could immediately notify the Court and/or staff if the defendant began to threaten.

The following recommendation, therefore, is made: When a defendant is being considered for supervised release and there are indications that the defendant may pose a threat to specific persons if released, S.R. staff should consider contacting these persons and asking their opinions about the defendant being released. In certain cases, especially if the complaining witness/victim does not object to release, but does feel some hesitancy, that person should be urged to contact the pretrial staff if he or she later feels threatened by the defendant. However, it should be made clear that a call to pretrial staff cannot substitute for a call to the police if the defendant poses a clear and immediate danger.

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10 Section IV-B contains a more complete discussion of charges against S.R. defendants.

4. General Conditions of Release

The conditions of release recommended by supervised release staff and agreed to by the Courts range from relatively unrestrictive (contact with S.R. staff once a week) to very restrictive (reside in a 24-hour residential therapeutic community). About 82% of the defendants in our sample were required to maintain weekly contact with S.R. staff. Another 11% were required to maintain contact more frequently than once each week (Table 4). We do not know in how many cases in-person as opposed to telephone contact is required.

Table 4

Number of Weekly Contacts Required of Supervised Release Clients (Entire County) (N=171)

Number of Contacts Per Week	Percent
None	6.4%
One	79.6
Two or more	10.5
Not Ascertained	3.5
Total	100.0%

The most frequently placed programmatic condition is enrollment in either a residential or non-residential alcohol program. Table 5 compares several types of programmatic conditions.

Table 5

Programmatic Conditions of Release [a] (N=124)

Program Type		Percent
None		65.0%
Medical		b
All Alcohol		19.5
Residential	7.3	
Non-Residential	9.8	
Not Ascertained	2.4	
All Drug		4.0
Residential	1.6	
Non-Residential	2.4	
All Mental Health		5.7
Residential	3.3	
Non-Residential	2.4	
Vocational Training		2.4
Enrollment in School		2.4
Total		100.0%

[a] Based only on those cases where the file maintained by pretrial staff was examined.

[b] Less than one percent.

Additionally, those defendants who already were participating in a program at the time of their arrest were generally required to maintain that participation. Other conditions of release included: seek employment (12.9%), submit to urinalysis (4.8%), stay away from victim (8.1%) and reside at a particular place, other than a program (16.1%).

What conditions are appropriately placed on a supervised release client depends, in large part, upon the motivation for this type of release. If the purpose is mainly control of the defendant, then conditions of release limited to those necessary to maintain contact with the defendant and surveillance of his behavior appear appropriate. Regular telephone calls or personal visits to check-in with a clerk would largely meet this need.

If, on the other hand, early initiation of rehabilitation of the defendant and effecting a change in his lifestyle is the sole, or a companion purpose, then conditions beyond mere contact with pretrial staff are appropriate and necessary. These conditions might include "rapping"/counseling with professional pretrial staff and/or referral to services of various types.

In fact, both control and rehabilitation are given by Judges and pretrial staff as reasons for supervised release. Staff and Judges view the application of supervised release to some defendants as mainly a control mechanism; for other defendants S.R. is primarily an attempt at early rehabilitation. For still other defendants, it is a combination of both.

The conditions of release, then, should ideally depend upon the facts of the particular case at hand. An attempt was made in this study to determine how the characteristics of cases in fact relate to the conditions set. The data were first examined to determine whether a relationship existed between the level (felony/misdemeanor) and category of the current charge and the conditions imposed. No significant relationships were found, with two exceptions.

Persons charged with assault were more likely to be required to stay away from the victim than defendants charged with other offenses. This is a common-sense finding that requires no further analysis or explanation. The second finding, however, is of greater interest. Defendants charged with assault and defendants charged with burglary were more likely to be required to report to the pretrial staff more often than once per week.[11] This suggests that Judges and/or pretrial staff may be more concerned about these defendants in terms of the potential threat they pose to the community or their likelihood of flight.

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[11] This is not a large number of cases, though, as seen in Table 4.

More than once-a-week contact is a way of exercising more control over the defendant. Indeed, there is some evidence that frequency of reporting is related to whether a defendant keeps his court appearances (see Section V-A). Also, by placing more responsibility on the defendant, the Court increases its opportunity to revoke O.R. due to failure to comply with those conditions.

Of course, the current charge is only one of a defendant's characteristics that are considered when conditions of release are set. If our available data base were larger, it would allow us to consider multiple characteristics (i.e., charge, criminal history, reported needs) simultaneously. We might then be able to demonstrate a stronger correlation between these characteristics and the conditions of release. This should be done in the evaluation of the program in the coming year.

Local practices of individual Courts and the skill, knowledge, and attitude of pretrial staff also influence what conditions are set for defendants. The requirement of weekly contact is an example. Maintaining a "minimum of once-a-week contact with defendants in addition to reminding them of all Court dates" was one of eight functions established for supervised release by the Pretrial Services Steering Committee in January 1975, and has remained a part of supervised release policy in Berkeley and North County since that time. But recently in South County there has been a trend away from setting weekly contact as a <u>standard</u> condition of release. There it is more likely to be used only if it is clear that the intent of the Court is for staff to maintain surveillance over the defendant. Defendants who are placed in residential programs usually do not fall into this category and therefore are not required to check-in regularly with pretrial staff. Rather, *prior to a scheduled post-release Court hearing, staff telephone the facility where the defendant is residing, and based on information gathered at that time, prepare a progress report to the Court. This appears to be an appropriate use of the check-in as a condition of release.*

In another location, one staff person believes that some Judges in the Court he serves have an "expectation" that programmatic conditions above and beyond simple check-in with pretrial staff will be placed on defendants with more serious charges. Other things being equal, he is more likely to recommend involvement with a program the more serious the charges are and the stronger he believes the case against the defendant is. (He makes deductions about the strength of the case from the police arrest report and the defendant's criminal history.) The additional conditions, this person believes, are seen by the Judges as an added form of security which is necessary for the defendant to be released. On the face of it, this is an inappropriate attempt by staff to anticipate the desires of the Judge in deciding upon conditions for supervised release. It is even more inappropriate to use enrollment in a program primarily as a means of control rather than as a means of addressing a real medical or mental health need of a defendant.

Recommending release of a defendant without conditions will not necessarily "insult" the Court as one pretrial staff member said during an interview. The defendant may have been held in custody after arraignment for reasons that need not preclude his subsequent release on S.R. For example, a rap sheet may not have been available at arraignment; the Judge may have needed more information on the case. *Judges interviewed expect staff at all times to make professional evaluations based only upon the merits of the cases, and not upon their attempt to second-guess the Judge who will receive the report. This includes recommending straight O.R. without conditions, or a neutral recommendation, in those cases where staff believe after a careful evaluation that this is a reasonable recommendation to the Court because they cannot conscientiously recommend for or against release.*

5. <u>Service programs as a condition of release</u>

The use of programs as a condition of release depends to a great extent on the availability of programs -- and the knowledgeability of staff about what is available. More than one Division staff member reported that they would probably recommend involvement with certain types of programs, especially alcohol and psychiatric, more frequently if they had more knowledge about what is available.

Other staff members, while acknowledging the existence in the Division of two different directories of "programs and services", said that without actually visiting and seeing the programs, they remain just names and addresses on paper. Unless a program has been personally visited and inspected, they report, it will not come to mind when the needs of a particular client are identified. And many staff are reluctant to require clients to seek assistance from programs which they personally have not visited.

Currently, no one person in the Division is responsible for developing and maintaining a liaison with programs (both County and private) that are able to provide services for clients. To the extent that Division staff do become aware of what services are available, this awareness is acquired in a piecemeal way and is generally limited to supervised release or drug unit staff. (The willingness to learn about programs and services is clearly present. One court representative, for example, devoted an entire Saturday without remuneration to visiting and learning about programs to serve alcoholic defendants.) As the supervised release caseload increases, the opportunities for staff to learn about programs and services will decrease. *The need for one person to have as his or her primary responsibility liaison with service programs and dissemination to other staff of information about these programs is clearly evident.*

The need carries through the entire Division, North County and South County, and all levels of operation. To the extent court representatives are well-informed about services availability, referrals of defendants' cases to other Division personnel can be minimized.

The position of "community services specialist" should be established within the Division. The responsibilities of the position would include developing and maintaining contacts with a comprehensive network of public and private service providers, both within and outside of Alameda County (see recommendation on page 18). The specialist would meet regularly with other Division staff to inform them about the availability of various types of programs and to keep abreast of their needs, and the needs of the Courts. It is not feasible for all staff to visit all programs before making referrals to them. The community services specialist must be able to visit programs regularly and convey to other Division staff essential information about various programs. It would also be this person's responsibility to keep the programs informed about the Division's needs.

Since the specialist's job would be one of substantial responsibility, he or she should meet with Judges as well as with program directors and should be able to speak for the Division in the area of program needs. The position should be of the equivalent level of a senior pretrial specialist, and be primarily "staff" rather than "line". The person should report directly to the Division Director.

Also, the County's Social Services Agency is in the process of compiling a computerized inventory of all human services available in Alameda County. The inventory will be a continually updated computerized record of at least 3,000 separate listings. The target date for completion of the inventory is January 1, 1977. *The Pretrial Services Coordinator should consult with the staff that is preparing the inventory to consider the feasibility of listing services that will especially serve the unique needs of pretrial clients.*

6. Initial report to the Court

Reports to the Court on program-initiated evaluations are often delayed until the next scheduled court date. If the evaluation report is not complete by the time of the attorney and plea hearing, the Court frequently will not receive the report in felony cases until the preliminary examination, even though staff had completed, or were capable of completing, the report before that time. Likewise, court referrals usually do not result in a report being made to the Court until the next scheduled court date, even though staff may be able to complete the report before that time.

The Court's use of a completed supervised release evaluation would be expedited if it received the completed report as soon as possible. This may be facilitated in two ways: *(1) pretrial staff should request the Court to set special hearing dates for positive supervised release recommendations that result from program-initiated evaluations, and (2) the Court should consider setting hearing dates for two to four days after supervised release referrals are made (if another hearing is not already scheduled in that period of time).*

7. Progress reports and case summaries

An important part of the supervised release program is the preparation of progress reports by the supervised release staff for the Court during the course of a defendant's pretrial period. The reports are usually made in writing, with copies to the defense attorney and the District Attorney.[12] At least one Judge, however, prefers to receive only oral reports from the pretrial specialist assigned to his Court. In some Courts, an oral report is first made to the Judge, and a written report for the file is submitted later, copies of which are normally given to the District Attorney and the defense attorney.

Progress reports contain a summary of the conditions of release, how well the defendant is complying with them, and a recomendation for or against continuance on S.R. They are usually made at the time of each Court hearing. An exception is when there is a serious violation of the conditions of release -- such as a new arrest, a "split" from a program, a repeated failure to contact S.R. staff, etc. -- when a report is made to the Court prior to the next scheduled hearing, often with a recommendation that S.R. be terminated. After receiving a negative report, the Court, in its discretion, invariably revokes supervised release or issues a warning to the defendant.

Every indication we have is that progress reports perform a valuable function in keeping the Court informed of whether or not the defendant is meeting his contractual obligations with the Court: the defendant who is placed on supervised release promises to comply with the conditions of release, as determined by the Court and supervised release staff. This, however, is only one of several possible uses of information about a defendant's behavior during the pretrial period. There are at least three others. First, a defendant's case may be continued while he is on supervised release to allow the Court to evaluate his behavior in contemplation of dismissal. Second, the defense attorney and District Attorney may take into account a defendant's pretrial behavior while negotiating a plea. Third, the Court may consider the defendant's pretrial behavior when sentencing.

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[12] A new form has recently been developed for making these reports to the Court (see Appendix B, page 2).

The extent to which supervised release information is being used in these ways is a question we cannot answer now because we do not have a sufficient statistical base to compare supervised release defendants with others; nor did we interview a representative sample of Judges and attorneys to provide conclusive answers. However, we do have some interview and anecdotal information to shed light on different uses of supervised release reports.

One Judge in a small Court said he "occasionally" continues cases on supervised release in contemplation of dismissal. This is invariably done with the concurrence of the District Attorney and defense attorney. The Judge evaluates the supervised release progress reports in a manner akin to post-sentence probation reports. If the defendant can demonstrate over a period of time that the problem which led to the arrest has been solved, and the defense and prosecution agree, the case will be dismissed. Other Judges reported that they "rarely" or "never" use supervised release in this fashion.

From an administrative point of view, use of supervised release to continue a case in contemplation of dismissal could present problems if done on a large scale. It would almost certainly increase the supervised release caseload. The practice would probably be limited to misdemeanor cases, thereby diverting resources from possible savings of detention days.

Among assistant public defenders, attitudes were found to differ about how progress reports about a defendant's performance while on supervised release may be used in felony cases. One assistant public defender informed the evaluator that any defense attorney should use favorable supervised release reports on his client's behalf. Another public defender, on the other hand, feels that favorable reports are not of much value. He formulates his opinion about a case early and contends that his defense strategy decisions are based on facts available before any supervised release progress reports are available. For that reason this particular public defender believes that the progress reports are of little value to him.

Perhaps the single most valuable quality of the progress reports is their neutrality. During the early part of the supervised release program some staff persons had a tendency to emphasize positive qualities about defendants, and to minimize the negative aspects of their reports. This has changed with time and experience. Not hearing any reports to the contrary, we can now safely say that the supervised release staff of the Berkeley O.R. Project and the Pretrial Services Division can be relied upon to present fair and accurate summaries of defendants' demeanor and compliance with conditions of release.

Another way in which supervised release information is used by the Courts is in sentencing. This information may be contained in the pre-sentence report prepared by the Adult Probation Division, or presented directly by pretrial staff, or both. Practices vary throughout the County as to how the supervised release data is used. Berkeley supervised release staff urge clients to list the S.R. staffer as a reference for the investigating deputy probation officer to contact when doing the pre-sentence report. The D.P.O. then typically sends a letter to the S.R. staff requesting comments about the defendant who is being investigated. In response, a one to two page letter is promptly prepared for the D.P.O.'s use. The letter generally is divided into four sections: (1) a brief history reporting how the S.R. counselor became involved with the client, (2) a report on the conditions of release and compliance with those conditions, (3) the counselor's evaluation of the client, and (4) the counselor's recommendations regarding probation. Usually there is no phone contact between the S.R. staff and the D.P.O. when a case is closed.

In both the South County and North County units of the Pretrial Services Division, communication with investigating D.P.O.s is limited to a phone call initiated by the pretrial specialist. The D.P.O. is frequently, but not always, contacted. Some Division staff members believe they are obliged to do so, others do not. When the D.P.O. is contacted, the information he receives is usually a summary of the conditions of release, how well the defendant complied with those conditions, the pretrial specialist's evaluation of the client, and possibly recommendations regarding probation. Demographic information about the client and the results of contacts with his references -- all of which are necessary for the pre-sentence report -- are usually not relayed to the D.P.O. It is apparent that a more efficient system is needed in order to reduce duplication of effort and to insure that the D.P.O. and the Court benefit from whatever insight into the defendant's character the S.R. staff obtained during the period of supervision.

Several months ago the Pretrial Services Coordinator devised a case summary form (see Appendix B, page 3) in cooperation with the Pretrial Services Division and the Berkeley O.R. Project that was primarily intended to be the chief data collection instrument for supervised release evaluation and monitoring. It was also felt that this would be a satisfactory means for transmitting information to the D.P.O. (one copy of the three-copy form would remain in the Pretrial or the Berkeley O.R. file, one copy would be forwarded to the Coordinator and the third copy was to be transmitted to the deputy probation officer). Currently, the forms are not getting to the D.P.O.s in time to be used in their pre-sentence report. This is because the forms are not completed until a case is closed, and cases are not closed until the time of sentencing. *To remedy this, the form should be completed to the greatest extent possible as soon as a case is assigned by the Court for a pre-sentence report. One copy*

of the report should then be transmitted to the investigating D.P.O. Berkeley O.R. should include a copy of the case summary with their letter to the D.P.O. When the supervised release case is finally closed, the two remaining copies should then be completed by adding relevant case disposition information.

Although there were several drafts of the case summary form prepared before the one being used now was printed, both the Coordinator and the supervised release staff have discovered ways in which the form could be more useful if revised. *These two parties should meet with representatives of the Adult Probation Division to consider changes that might be made in developing a new form which would satisfy the needs of all parties. Consideration should also be given to ways in which the information can be transmitted in a more timely manner.*

IV. CHARACTERISTICS OF THE DEFENDANTS

A. Demographic Characteristics

The typical supervised release defendant is a young (46% are under 25) black (47%) male (82%) (Table 6). He has never been married (51%), is unemployed (66%), and reports either no monthly income (35%) or a very low income. Approximately 40% of the clients never graduated from high school, and fewer than 10% were enrolled in school or college either full-time or part-time at the time of their arrest (Table 7).

Unemployment is pervasive among all ages of supervised release clients. No more than 46% of the members of any age group are employed. When these people do get jobs they don't hold on to them for long. Of the clients who were employed at the time of their supervised release interview 59% had been at their job for less than one year. A majority of clients (52%) reported a health problem of some kind to the pretrial interviewer at the time of their arrest, or at the time of their supervised release diagnostic interview. An alcohol-related problem was the most frequently self-reported health problem.

The reader must be reminded here of the limitations of the data on which these statistics are based. The supervised release data relies on an 83% sample of all cases opened between November 1, 1975 and March 31, 1976. Certain characteristics of the S.R. population undoubtedly have changed since then due to different types of judicial referrals. In May, for example, a substantial number of street drinkers were placed on S.R. by the Oakland misdemeanor arraignment Courts. These cases are not reflected in the available data used to prepare this report. The comparison data is from the OCJP evaluation of the County's pretrial program. Time constraints have not permitted that data to be disaggregated in a manner that would best facilitate its use in comparative analysis of the supervised release data. However, these problems may be resolved through a continuing evaluation of the program and availability of the OCJP data base. The reader should proceed to a comparison of the demographic characteristics of the supervised release population with other groups of defendants with these caveats in mind.

Table 6 presents comparison data on the age, race and sex of a countywide sample of all persons booked on any criminal or traffic charge (except public intoxication alone -- P.C. 647(f)) during four selected weeks of 1975. A perusal of the table reveals that there are slightly more women on supervised release than in the arrest population as a whole, and a somewhat larger proportion of persons from minority racial groups. The supervised release population is also slightly younger than the larger population of all persons booked for other-than public drunkeness. Forty-six percent of the S.R. population is under age 25, compared with approximately forty percent of the other group.

Table 6

Age, Race, and Sex of
Supervised Release Clients and All Persons Booked [a]

	Supervised Release (N=171)	All Persons Booked (N=1,990)
Sex		
Male	81.7%	83.5%
Female	18.3	16.5
Total	100.0%	100.0%
Not Ascertained	(2)	(1)
Race		
Black	47.2%	45.5%
White	37.4	43.2
Chicano	10.4	8.0
American Indian	1.3	---
Oriental	1.3	2.2
Other	2.4	---
Total	100.0%	100.0%
Not Ascertained	(8)	(7)

	Supervised Release		All Persons Booked	
	Frequency	Cummulative Frequency	Frequency	Cummulative Frequency
Age				
18-21	27.1%	27.1%	23.1%	23.1%
22-24	18.9	46.0	16.7	39.8
25-29	20.5	66.5	21.8	61.6
30-34	8.3	74.8	11.6	73.2
35+	25.2	---	26.8	---
Total	100.0%	100.0%	100.0%	100.0%
Not Ascertained	(1)		(2)	

[a] All persons booked in Alameda County during four selected weeks of 1975, except for persons booked only on public inebriation charges (P.C. 647(f). See Appendix A for a more complete description.

Table 7

Selected Demographic Characteristics of Supervised Release Clients and All Persons Booked [a]

	Supervised Release (N=171)	All Persons Booked [a] (N=732)
Marital Status		
Single	51.0%	61.0%
Married [b]	17.5	18.4
Divorced	13.3	11.2
Separated	13.9	7.6
Widowed	4.2	1.8
Total	100.0%	100.0%
Not Ascertained	(6)	(0)
Living With Status		
Self/alone	26.2%	16.0%
Spouse only	14.5	7.5
Children w/out spouse	1.8	2.8
Parents	24.8	33.2
Other family	13.3	20.7
Friend/other	19.4	19.8
Total	100.0%	100.0%
Not Ascertained	(6)	(0)
Reported Monthly Income		
None	35.0%	not available
$1-200	13.0	
$201-400	28.0	
$401+	24.0	
Total	100.0%	
Not Ascertained	(71)	
Employment Status		
Employed, full-time	14.3%	c
Employed, part-time	8.9	c
Employed, not ascertained whether full- or part-time	10.7	37.7%
Unemployed	66.1	46.2
Total	100.0%	100.0%
Not Ascertained	(3)	(0)
Highest Grade Completed		
Less than 12th grade	39.3%	not available
High school diploma	42.1	
More than high school	18.6	
Total	100.0%	
Not Ascertained	(69)	

Table 7 - (CONTINUED)

	Supervised Release	All Persons Booked [a]
Currently Enrolled in School?		
Yes	9.5%	6.0%
No	90.5	94.0
Total	100.0%	100.0%
Not Ascertained	(3)	(0)
Self-Reported Health Problems		
None	47.0%	41.2%
Alcohol (only) [d]	15.0	2.9
Drug (only) [d]	8.9	11.1
Physical (only) [d]	8.9	20.4
Mental	11.3	5.2
Combination	8.9	c
Pregnancy	c	1.6
Total	100.0%	100.0%
Not Ascertained	(0)	(0)

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[a] All persons booked in Alameda County during four selected weeks of 1975 in whose court files defendant report forms were found (public inebriates (P.C. 647(f) excluded). See Appendix A for a more complete description.

[b] Includes common-law.

[c] Not available.

[d] The "only" designation applies solely to supervised release.

Table 7 compares other characteristics of the supervised release population with all those persons booked who had defendant report forms (based on jail interviews by the Pretrial Services Division or Berkeley O.R.) in their court files. The data are reported regardless of whether or not it was verified.

The most striking differences between the supervised release clients and all persons booked are revealed in comparison of employment status and self-reported health problems. Two-thirds of the S.R. clients are unemployed -- almost 50% more than the already high unemployment rate for all persons booked and for whom a defendant report form was available. *This high rate of unemployment suggests that job development is an important service which needs to be provided directly or through referral by supervised release program.*

Another apparently significant difference between the two groups is in their self-reported health problems. Almost five times as many S.R. clients reported an alcohol problem as did all persons booked, and more than twice as many voluntarily reported a mental health problem. The small number reporting drug problems among S.R. clients is largely due to the Division's policy of referring such cases to its drug unit rather than placing them on supervised release. The greater proportion of physical problems reported for all persons booked may include a large number of complaints which later could not be verified. One observer of the jail interview process believes that many defendants feign physical problems in hopes of working on the Judge's sympathy.[13]

Nearly five times as many supervised release clients reported alcohol problems, and more than twice as many reported mental health problems. This indicates that supervised release is being used as a mechanism to provide services to defendants with these problems. Other data (not shown) supports this. Virtually all supervised release clients who reported a verified alcohol or mental health problem were required to seek professional assistance related to said problem, or to continue working with a program they were already involved with. *These data tend to support what a number of Judges in the County have believed for some time: that the underlying problem of a large number of defendants they see in their Courts are medical -- alcoholism, dependence on other drugs, or mental disorders.*

B. Criminal Characteristics

1. Current charge

One way of inferring whether supervised release clients are persons who otherwise would have been granted unsupervised own recognizance release is by comparing their criminal

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[13] Conversation with Stuart Lichter, member of the OCJP evaluation team.

CONTINUED

1 OF 2

characteristics with other groups of defendants. In making this comparsion, we find two indications that supervised release defendants tend to be charged with more serious offenses than other defendants. First, there are more felony defendants on supervised release than are in the arrest population as a whole. Cases where a felony was the most serious filed-on charge comprised 60% of the supervised release population during the five-month period beginning in November 1975. This compares with a countywide proportion of 26% of the total bookings during the year 1975.[14] Second, there is a substantially greater proportion of assault, burglary and theft cases among the supervised release population than among any of three comparison groups: (1) all persons arrested, (2) all persons released on their own recognizance, and (3) all persons detained at Santa Rita after at least one Court appearance. Table 8 illustrates this difference.[15]

What is especially significant about those supervised release defendants charged with the serious crimes of robbery, assault and battery, burglary, and theft, is that most of the charges were felonies at the time of release. Table 9 shows this quite clearly. *This is strong evidence that the Courts are using supervised release to effect the release of defendants who might otherwise have remained in custody. On the other hand, Table 9 indicates that supervised release is also being used with many misdemeanor defendants who probably would have been released in its absence, or would not have spent very much time in custody pretrial.*

2. <u>Other criminal justice involvement</u>

Complete Event Histories ("rap sheets") were available from the County's criminal justice computer system (CORPUS) for all but seven of 171 supervised release cases studied. (Event Histories contain accurate records of all bookings for criminal and traffic violations that occurred in Alameda County during the past 2 years.)

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[14] Based on a Countywide sample of all police bookings (excluding P.C. 647(f)) during four selected weeks of 1975. Of 2,938 booking records examined, 71% had an indication of felony or misdemeanor as the highest level of charge at booking. Of those, 538, or 23.8% were felonies.

[15] The comparison is not exact because there is not a perfect correspondence of arrest charges for the several groups (noted in the table with footnote c). But in the categories where percentages are given for all groups, the same Penal Code sections apply. The large residual categories of "Other" and "Not Ascertained" in the three comparison groups are accounted for mainly by the inclusion of the first two categories, "Disturbing the Peace", and "Public Drunkeness". Finally, it should be noted that when there were multiple charges in a case, only the first in the series (which usually is the most serious) is reported in Table 8.

Since the time the supervised release data were collected, there

Table 8

Comparison of Arrest Charges for Four Groups of Defendants

Charge [a]	Supervised Release (N=171)	Santa Rita Pretrial Detainees (N=376)	All O.R. (N=665)	All Arrests (N=2,341)
Disturbing the Peace	4.2%	b	b	b
Public Drunk	1.8	b	b	b
Homicide, Rape	0	2.4%	c	c
Robbery	5.3	9.0	1.5%	2.3%
Assault & Battery	18.2	8.8	9.9	8.2
Burglary	21.1	15.4	7.7	5.2
Theft	13.5	2.7	2.1	1.3
Petty Theft	0	5.9	9.0	7.2
Receiving Stolen Property	4.1	1.9	3.6	1.7
Fraud	0	c	c	c
Auto Theft	2.3	2.9	2.3	1.1
Forgery	2.9	1.9	1.7	1.3
Other Sex	3.5	2.7	c	c
Controlled Substances	11.7	12.0	14.3	8.7
Weapons	1.8	3.7	2.7	2.1
Driving	4.1	7.5	21.4	30.6
Other	2.4	23.2 (Other and Not Ascertained combined)	23.8 (Other and Not Ascertained combined)	30.3 (Other and Not Ascertained combined)
Not Ascertained	2.3			
Total	100%	100%	100%	100%
Number of Cases	171	376	665	2341

[a] See Appendix C for definition of charges.

[b] No comparable charge category; most of these cases are in the "Other" category.

[c] Less than 1.0% but greater than zero.

Table 9

Charge Category by Level of Charge
For Supervised Release Clients

Charge Category	Felony	Misdemeanor	Not Ascertained
Disturbing Peace	-	6	-
Public Drunk	-	3	-
Robbery	8	-	1
Assault & Battery	17	12	2
Burglary	29	7	-
Theft	15	7	1
Receiving Stolen Property	7	-	-
Auto Theft	2	2	-
Forgery	1	4	-
Other Sex	2	4	-
Controlled Substances	12	7	1
Weapons	1	2	-
Driving	-	8	-
Other	3	1	-
Not Ascertained	1	2	2

[a] See Appendix C for definition of charges.

According to this record, approximately 40% of all the supervised release cases did not have any other criminal or traffic bookings (prior to, or subsequent to the booking resulting in supervised release) reported in Alameda County during the previous 2 years.

When viewed alone, this would indicate that a substantial proportion of supervised release clients were first-time adult offenders. To check this, we compared the presence of a criminal history, as indicated by CORPUS, with the presence in the court files of a CII rap sheet. We found first, that 84% of the court files examined did not contain CII rap sheets.[16] Second, of all the supervised release cases whose court files were examined, 37% had neither a criminal history indicated by CORPUS nor by a CII rap sheet. Although the presence of a CII rap sheet in the court file is not a reliable measure of its existence, it is the best indicator we have. *Thus, the available data supports the inference that at least 37% of the supervised release defendants have no known criminal histories.* If those records of only past or pending traffic matters are excluded from our examination of the CORPUS Event Histories, the proportion of first-time offenders is even higher (see Table 10).

Table 10

Characteristics of Supervised Release Defendants Who Have No Known Criminal Histories

As indicated by CORPUS bookings only, includes misdemeanor traffic (N=169)	40.4%
As indicated by CORPUS bookings and absence of CII rap sheet from Court file (N=86)	37.2%
As indicated by CORPUS bookings only, exclusive of misdemeanor traffic bookings (N=169)	48.0%
As indicated by CORPUS bookings and absence of CII rap sheet from Court file, exclusive of misdemeanor traffic bookings (N=86)	41.9%

An obvious question is "What charges are brought against those supervised release defendants who have no known criminal histories?" Table 11 provides the answers. Twenty-nine percent of the defendants in the Countywide sample and about thirty-seven percent of the defendants in the Oakland sample are

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have been some shifts in the proportions in various charge categories. For example, there are now at least three persons charged with homicide on supervised release, and during May there were many persons charged with 647(f) placed on supervised release. The impact of these charges on the percentages reported in Table 8 cannot be accurately estimated.

16 Time and staff constraints permitted examination of Court files only for Oakland superivsed release cases (94 of the 171 cases in the total Countywide sample).

Table 11

Level of Charge Against Supervised Release Defendants Who Have No Known Criminal History

Charge[a]	Countywide[b] (N=62)	Oakland Only[c] (N=32)
Felony	67.7%	56.3%
Misdemeanor	29.0	37.5
Not Ascertained	3.2	6.3
Total	100.0%	100.0%

[a] Most serious charge of D.A. filing.

[b] No other offense in Alameda County within the past two years, as reported by CORPUS Event Histories.

[c] No other offense in Alameda County within the past two years, as reported by CORPUS Event Histories, and no CII rap sheet in court file.

charged with misdemeanors. *A significant proportion of all defendants on supervised release Countywide -- 15.2% -- have a misdemeanor as the most serious charge, and have no known criminal histories.* All of these cases were court referrals or the defendant was placed on supervised release directly or by the Court. An analysis was not done to see what the conditions of release were for these defendants, but it is probable that many of them were directed to supervised release by the Court only in order to insure that the defendant was referred to an appropriate service provider. *These figures, and the overall proportion of misdemeanor defendants on supervised release, 39%, very clearly illustrate the conflict in goals of the County's supervised release program.*

We also know the following about other criminal justice involvement of supervised release defendants:

- At the time of their arrest, 43.9% were active to probation.
- Among those whose CORPUS Event Histories indicated other criminal justice involvement, 18.8% had other felony charges in process, and 23.2% had other misdemeanor charges in process at the time of their arrest. A slightly larger percentage of defendants, 28.2%, had other misdemeanor traffic offense charges pending (see Table 12).

We were unable at the time of this writing to compare the criminal characteristics with those of other defendants. Nor have we been able with our present data base to associate defendants' criminal histories with their behavior while on supervised release. Both of these are areas that will be explored in the continuing evaluation of supervised release during the coming year.

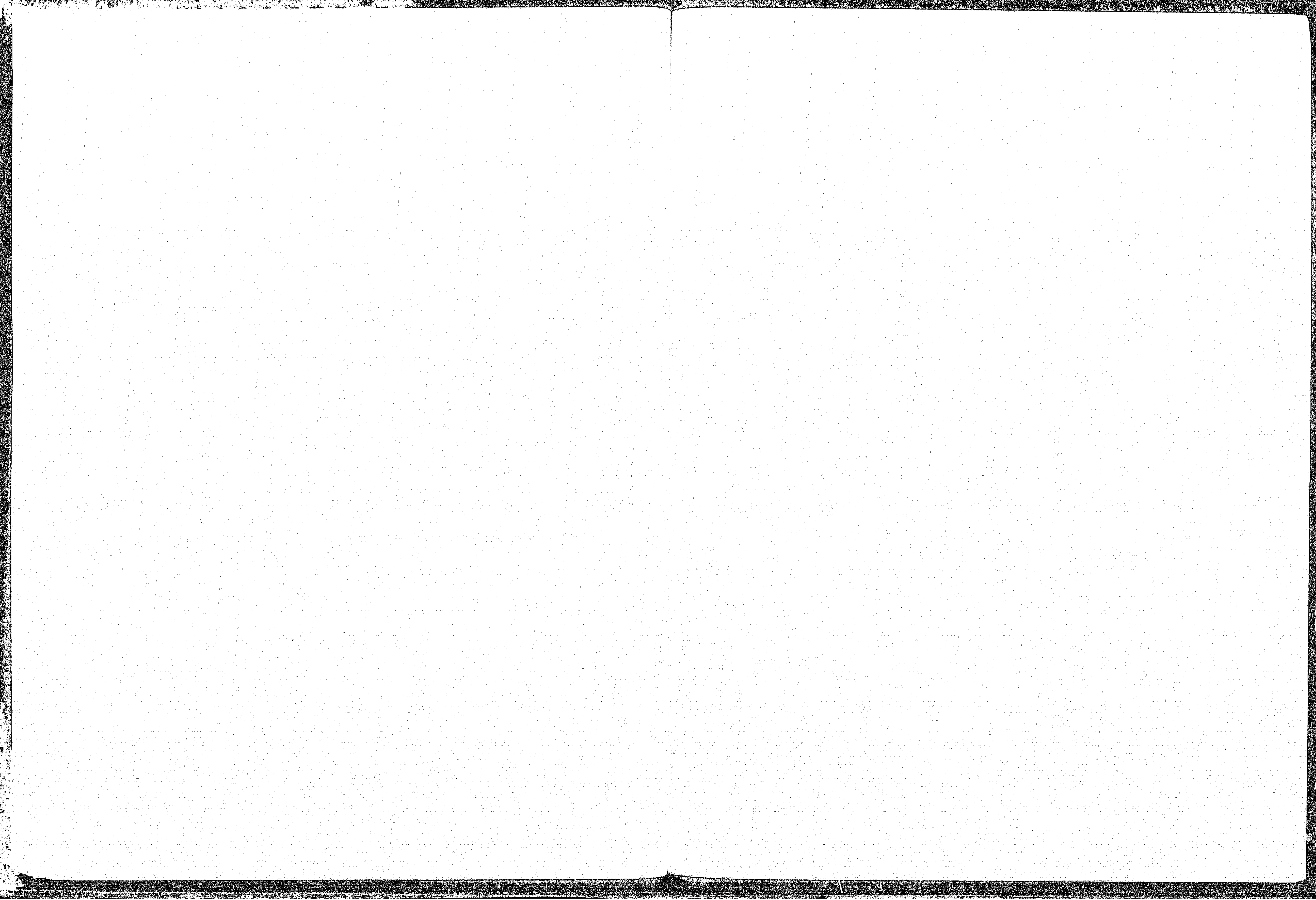

Table 12 -- (CONTINUED)

Number of Alameda County Vehicle Code events in which FELONY is highest charge.

In Process	
None	98.2%
One	1.8
Total	100.0%
Convicted	
None	100.0%
Acquitted/Other Disposition	
None	100.0%

Number of Alameda County Vehicle Code events in which MISDEMEANOR is highest charge.

In Process	
None	71.8%
One	16.6
Two	6.1
Three or more	5.5
Total	100.0%
Convicted	
None	85.4%
One	11.0
Two or more	3.6
Total	100.0%
Acquitted/Other Disposition	
None	95.7%
One or more	4.3
Total	100.0%

[a] There were seven cases out of the total of 171 for which the data presented in this table was not ascertained.

V. FAILURES TO MAKE COURT APPEARANCES AND NEW ARRESTS

The second of the three goals for the County's pretrial program as recommended by the Pretrial Services Steering Committee and adopted by the Board of Supervisors is "To significantly reduce the number of defendants in detention at all phases of the judicial process prior to conviction and sentencing consistent with public policy and safety." Although the "public policy" to which the statement refers is not explicitly stated, it is clear that it reflects concern about the failure of defendants to make their Court appearances and the commission of (additional) crimes by defendants who are released from custody pretrial. Pretrial release is desirable for all defendants if it can be granted without jeopardizing public safety, and without increasing beyond reasonable levels the number of arrestees who fail to appear in Court.

Rates of failure to appear and new arrests are two indicators of any pretrial release program's success. In this section, we use these indicators to compare supervised release with other types of release.

A. Failures to Appear

One purpose of supervised release is to provide a release mechanism for persons generally thought to be "higher risk" defendants -- risk being defined in terms of risk of failure to appear as well as risk of commission of new offenses. If the failure to appear rate for supervised release is no greater than that for all defendants granted O.R., then this is a strong indicator that the program is having one of its intended effects. Table 13 compares the failure to appear rates of supervised release defendants with all persons granted own recognizance release.[17] The overall supervised release failure to appear rate is lower than that for all O.R. releases. Although no data are now available on the rate of default, the percentage of S.R. cases where a bench warrant actually was issued was 9.0%.[18]

Rate of failure to appear was examined on the basis of a variety of personal and case characteristics for all persons granted supervised release in an effort to find meaningful correlates. The number of cases with valid data in all of the variables examined was small and the results therefore, are inconclusive. However, the analysis does suggest that predictable relationships between failure to appear and other variables do exist.

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[17] The source of the FTA data for all persons O.R.d is CORPUS. There currently is no way of reliably knowing from CORPUS if and when a defendant has bailed. Therefore, we do not have comparative FTA rates for defendants who bail.

[18] Default is defined as not appearing voluntarily within seven days of the failure to appear.

The first relationship of interest is that of level of charge and failure to appear. Table 13 suggests that felony defendants are more likely to make their scheduled Court appearances than persons charged with misdemeanors. Although the relationship is not very strong, it is reported because if conforms with other research which indicates that, in general, felony defendants do have lower FTA rates than misdemeanor defendants.

Table 13

Failure to Appear Rates for Supervised Release and All Own Recognizance Releases, by Levelof Charge [a]

Type of Release	All Charges	Felony	Misdemeanor
Supervised release [b]	16.6% (N=163)	15.7% (N=98)	19.7% (N=65)
Own recognizance [c]	25.4% (N=3,032)	22.5% (N=1,334)	28.5% (N=2,853)

[a] Failed to Appear: Defined as having either a bench warrant issued or bench warrant ordered to issue.

[b] In 8 cases from the total sample of 171 it was not ascertained whether or not there was an FTA.

[c] Based on CORPUS records of all criminal dockets in the County (except Berkeley) where an O.R. grant occurred from July 1, 1975 through February 29, 1976. The CORPUS records were searched by computer in May 1976 for bench warrants ordered to issue or bench warrants issued.

Second, *whether the defendant was placed on S.R. by the Court without first receiving an evaluation and recommendation from the S.R. staff has a pronounced effect on whether or not a defendant is likely to FTA.* Of those cases where we have valid data on both variables 49 were direct Court placements. Nearly 25% of these cases resulted in a failure to appear, compared with only 12% which were not direct Court placements (Table 14) .

Table 14

Failure to Appear by Type of Placement

	Pretrial Evaluation and Recommendation (N=107)	Direct Court Placement Without S.R. Evaluation (N=49)
Appeared	88.4%	75.5%
FTA	11.6	24.5
Total[a]	100.0%	100.0%

[a] There were 15 cases from the total sample excluded from this table due to not ascertained values on one of the variables.

The Pretrial Services Steering Committee assumed that those persons placed on supervised release would present a greater risk of non-appearance than those released on straight O.R. To help reduce this risk they recommended that defendants be reminded of all court dates as a part of every supervised release follow-up. This does, in fact, usually occur. A relevant question is: how effective is the reminder? As expected, the more frequent the contact, the less likely the defendant is to miss a Court appearance.

Table 15 appears to show this quite clearly. However, the data should be interpreted with caution because of the small numbers involved.[19] Another reason this data must be seen as suggestive rather than definitive, is that the interactions of various characteristics were not taken into account here. For example, the fact that a person is charged with a misdemeanor and was directly placed on S.R. by the Court may be more important than either one of these characteristics alone. Our small number of cases, however, prevents us from measuring this.

Table 15

Failure to Appear by
Frequency of Required Contacts

	Number of Contacts Required Per Week		
	None (N=11)	One (N=134)	Two or More (N=18)
Appeared	63.6%	84.4%	94.4%
Failed to appear	36.4	15.6	5.6
Total[a]	100.0%	100.0%	100.0%

[a] There were eight cases from the total sample excluded from this table due to not ascertained values on one of the variables.

A final reason why caution must be used in drawing conclusions from these data relates to the method used in calculating the rate. With the small number of cases in our data base, and the short period of time during which the program has been operating, there is the problem of what number to use as the base in calculating the FTA rate for supervised release: the entire sample of 171 cases, or only the number of cases that had terminated from S.R. by the time the data was collected. Using 171 as the base may artificially lower the rate. This is because some persons in the sample were on supervised release for only a short period of time before data from their cases were included in the sample. Hence, they had less "opportunity"

[19] To illustrate, suppose two more cases were added to the category of cases where two contacts per week were required, and each of those two cases resulted in FTAs. This would change the 5.6% FTA rate to 14.3%.

to be rearrested while on S.R. On the other hand, if only those cases that were terminated by the time of the data collection are used as the base, another type of bias is introduced. This bias results from the fact that a disproportionate share of early terminations were unfavorable: FTAs, rearrests, or failures to comply with other conditions of release. Other cases that were opened at the same time and eventually resulted in termination due to conviction, acquittal or dismissal, will have remained active for a longer period of time, and many may have been active at the time the data was collected. This same dilemma applies to calculating the rearrest rate.

B. New Arrests

In a memo of July 10, 1975, to the Judicial Coordinating Committee, the Pretrial Services Coordinator summarized the difficulties encountered in measuring the incidence of new offenses by defendants during the pretrial period.

> Although it is not generally stated as one of the purposes of bail, the probability of a defendant's engaging in criminal activity while on pretrial release is one of the foremost concerns of the Court when making pretrial release decisions. Because of this concern for community safety, the frequency with which defendants commit criminal acts during the pretrial period must be considered in gauging the success of any form of pretrial release . . . . Measurement of [this] frequency . . . however, is wrought with difficulties because the use of arrest statistics as an index of criminal behavior is problematic.
>
> First, since an arrest only represents an *alleged* crime, until a defendant is convicted we cannot state that a rearrested defendant has in fact committed any crime. Second, persons on pretrial release may be more "visible" to the police, and therefore may be more likely to be arrested for a given crime. As a result, it is possible that the ratio of the number of arrests to the number of convictions would be lower for defendants on pretrial release than for persons who do not have charges pending against them. On the other hand, it has been documented that the number of crimes which result in arrest grossly underrepresents the actual amount of crime taking place in our society.[20] Also, it has been estimated that as much as 30% of all crime takes place outside the

[20] See *Preliminary Report of Impact Cities Crime Survey Results*. Unpublished Report prepared for the Law Enforcement Assistance Administration, United States Department of Justice, Autumn, 1974. Also see *Crime and Victims: A Report on the Dayton/San Jose Survey of Victimization*, Law Enforcement Assistance Administration, United States Department of Justice, June, 1974.

> original (residential) jurisdiction. [Yet, in spite of the] strong indications that arrest statistics both overestimate and underestimate the frequency of criminal behavior , . . . researchers have so far been unable to come up with a better all-purpose index of pretrial criminal activity than rearrest rates.

The Coordinator noted at that time that it may be preferable to limit the measure of pretrial criminal activity to rearrests resulting in convictions, but that the cost and time generally associated with securing that information is prohibitive. Therefore, he recommended the use of rearrest rates in reviewing pretrial programs, but cautioned against reliance on these statistics as accurate measures of criminal behavior. It is also appropriate to distinguish rearrests on bench warrants due to an FTA from rearrest on other charges.

In addition to the difficulties just mentioned, there are others which apply to the measure of rearrests among the supervised release population in this study. First, there is the difficulty of determining when a rearrest occurred. Some defendants may have been rearrested outside of the County, or even within the County, unknown to the supervised release staff. Second, as with computation of the FTA rate, there is the problem of what number to use as the base in calculating a rearrest rate. For these reasons, further work in this area is necessary and should be done within the coming year as part of a continuing evaluation process.

The following data should be interpreted with the above qualifications in mind. Approximately 11% of the defendants granted supervised release during the five-month period from November 1, 1975 to March 31, 1976 were rearrested during that time. We are unable to tell what proportion of those rearrests are the result of bench warrants, and what proportion are for other charges.

Table 16 shows a breakdown of such rearrests by level of the original charge. There appears to be no relationship between the level (felony/misdemeanor) of the original charge and whether or not the defendant was rearrested. Approximately the same proportion of defendants were rearrested in each of the two charge groups. Also, there is no evidence of any demonstrable relationships between rearrest and other personal and case characteristics, including prior arrests and convictions, and conditions of release.

Table 16

Rearrests While on Supervised Release by Level of Original Charge

New Arrest Charge	Original Charge: Felony (N=101)	Original Charge: Misdemeanor (N=60)
No new arrest	87.1%	90.0%
Felony	8.9	5.0
Misdemeanor	4.0	5.0
Total [a]	100.0%	100.0%

[a] There were ten cases from the total sample excluded from this table due to values not ascertained on one of the variables.

C. Future Analysis

As the supervised release data base expands, it will be important to continue this type of analysis during the coming year. We should attempt to relate policy variables and individual characteristics with defendants' likelihood of failing to appear or being rearrested. With a substantially larger number of cases and more reliable data, we can and will examine the relationships of several variables simultaneously on the post-release behavior. We will attempt to determine the importance of certain personal characteristics (such as current charge, criminal history, age, employment) in forecasting behavior, and how certain policy variables (such as conditions of release) may effect that behavior.

This type of analysis will be especially valuable to the Courts. It would assist individual Judges in making release decisions, as well as providing assistance to the Judicial Coordinating Committee in setting policy for the County's pretrial program.

VI. COSTS AND BENEFITS

It is usually easier to measure the costs of governmental programs than to measure their benefits. Costs are tangible quantities that can be measured in terms of dollars spent for salaries, employee benefits, capital costs, "services and supplies", etc. Benefits, on the other hand, are more difficult to measure, especially when the goals of the program do not allow the degree of their achievement to be rigorously valuated in monetary terms. Benefits are frequently intangible, and can only be identified.

To the extent the goals of a governmental program identify its purpose as being cost savings to that government, valuating the benefits is made easier. The goals of the supervised release program in Alameda County, as articulated by the Pretrial Services Steering Committee and approved by the Board of Supervisors, is (1) to provide the Courts with an alternative to incarcerating marginal defendants who could not post bail, and (2) to assist defendants in making contact with community programs. The goal is not clearly stated in terms of cost-savings to the County, although that is clearly one of the interests of the Board of Supervisors.

A. Costs

1. Total costs

The projected total annual (1976-77 fiscal year) of supervised release for the Pretrial Services Division is $152,373, or about 15% of the total Division budget. This figure is broken down as follows:

Salaries and Benefits	$132,889
Services and Supplies	19,484
	$152,373

Comparable figures for the Berkeley O.R. Project's supervised release unit are as follows:

Salaries and Benefits	$31,889
Services and Supplies	6,939
	$38,828

The cost of supervised release represents about 49% of the total Berkeley O.R. Project's budget. The much larger proportion than the Division's is accounted for by the nature of the Berkeley O.R. staffing. The Project relies heavily on volunteers to perform the Project's non-supervised release functions. Two of the five salaried personnel on the staff work exclusively on supervised release. This largely accounts for the much higher proportion of their total budget that the Berkeley O.R. Project spends on supervised release.

2. Cost per release

There are several ways to calculate cost per release. The method used here is cost per release of all cases.

Pretrial Services Division cost per supervised release: There were an average of 52 releases per month during the five-month period January through May, 1976. When the average monthly cost of supervised release ($152,373 ÷ 12 = $12,698) is divided by this number ($12,698 ÷ 52.4 = $242), the resulting average cost per release is $242.

Berkeley O.R. Project cost per supervised release: There were an average of 3.4 releases per month during the seven-month period November through May, 1976. When the average monthly cost of supervised release ($38,828 ÷ 12 = $3,236) is divided by this number ($3,236 ÷ 3.4 = $952), the resulting average cost per release is $952.

The large difference in the two programs' per-release cost of supervised release is accounted for in part by differences in policies, the primary one being placement of misdemeanants on S.R. Based on the sample used on this study, misdemeanants account for about 40% of the Division's caseload, whereas out of 24 cases opened in Berkeley between November and May, only one was a misdemeanor. But the added supervision provided for felony defendants does not seem to justify such a large unit cost.

We have estimated cost data from two other supervised release programs to use for comparison (Table 17).[21]

Table 17

Comparison of Costs Per Release of Four Supervised Release Programs

Program	Cost Per Release[a]
Berkeley O.R. Project	$952
Pretrial Services Division	242
Polk County (Des Moines)[b]	460
Santa Clara County[c]	445

[a] Costs based on salaries, fringe benefits, and services and supplies.

[b] Derived from data in R.O. Staggerada and P.S. Venezia Community Based Alternatives to Traditional Corrections: 1973 Evaluation of the Fifth Judicial District Department of Court Services -- State of Iowa, February, 1974.

[c] Derived from data in G. Taylor, "An Evaluation of the Supervised Pretrial Release Program," (mimeo) June 1, 1975.

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21 These cost data are accurate revisions of costs presented in a June 8, 1976 report by this evaluator to the Judicial Coordinating Committee.

The Division's costs are substantially lower than those for either Santa Clara or Polk County. The Berkeley O.R. Project's costs, on the other hand, are nearly double that of the next most costly program. It would appear, based on the costs per release for the other three programs, that the Berkeley O.R. Project's supervised release costs are unreasonably high. *Every effort should be made by the Berkeley O.R. Project in cooperation with the Berkeley-Albany Municipal Court to bring the number of supervised releases of persons who otherwise would remain in custody closer to the budgeted projection of 10 per month.*

B. Benefits

Simply developing a caseload or having (relatively) low unit costs does not necessarily make a program a success. Rather, it must be demonstrated that its benefits outweigh its costs. There are potentially three main beneficiaries from supervised release: the County as a whole, the Court, and the defendant. Benefits to the Courts have been noted throughout this report.

1. Financial benefits to the County

A reduction in the jail population and cost savings to the County are possible only if the supervised release program results in the release of individuals not affected by bail or unsupervised O.R. release. Unfortunately, it is not possible now to estimate accurately the number of supervised release clients who, in the absence of the program, would otherwise have remained in jail awaiting trial. We do have indications that some substitution (of supervised release for unsupervised release) is occurring.

First, we know that about 40% of the total number of supervised release cases have as their most serious charge a misdemeanor, and many of those apparently have no criminal history. The defendant in many of these cases, and some felony cases, would have been released on unsupervised O.R. in the absence of the program. Second, as noted earlier in this report, several Judges and pretrial staff have made referrals of defendants to supervised release for purposes other than securing release under supervision. Supervised release program is often viewed as the only mechanism for obtaining additional detailed information on a defendant or his case prior to the release decision or for involving a defendant with a particular service program where follow-up supervision is not required. Third, the policy guidelines established by the Judicial Coordinating Committee on Pretrial Services provide for the Court to determine the appropriateness of supervised release and to place any defendant on supervised release.

It is important that as the monitoring of the supervised release program continues, every effort be made to accurately estimate the proportion of defendants granted supervised release who would have remained in custody in the program's absence. Given the newness of the program, and lacking reliable data on what the "substitution" effect is between S.R. and straight own recognizance release, it would be premature at this time to estimate the cost savings to the County.

2. Benefits to defendants

There are several probable benefits to defendants from being placed on supervised release which cannot be easily measured in monetary terms. These include maintaining a job that otherwise would have been lost (34% of the clients are employed at the time of arrest) and receiving alcohol, psychiatric, or other forms of counseling or assistance that may be helpful in contributing to early rehabilitation. In addition, there is the inherent value to defendants of maintaining their freedom which enables them to play a more active role in preparing their defense and reduces the disruptive effect on their home life.

VII. THE SUPERVISED RELEASE TARGET POPULATION AND SERVICE TO THE COURTS -- ALTERNATIVE POLICIES

Let us briefly review the different statements of purpose that preceded establishment of the supervised release program:

- The Kaiser report recommended the establishment of a program reserved for higher risk defendants unable to post bail and who are not released on their own recognizance.

- The Pretrial Services Steering Committee said the purpose of the program would be to provide the Courts with an alternative to incarcerating "marginal" defendants who could not post bail, and to assist defendants in making contact with community programs.

- The Judicial Coordinating Committee reserved supervised release for felony defendants who are in custody after arraignment and whose bail is less than $10,000, provided that the Court could refer any defendant to supervised release. And, as noted earlier, the practice has developed in some Courts of ordering defendants to be placed on supervised release without an evaluation.

A recommendation is made earlier in this report that defendants not be placed on supervised release unless the Court specifically desires supervision of the defendant, or monitoring of his behavior, during the pretrial period. Other recommendations are also made which are designed to insure that the Court's needs involving delivery of services to defendants are met. If these recommendations are successfully implemented, there should be a reduction in the number of cases placed on S.R. where supervision is not desired. The question then remains: What should be the target population for supervised release?

Because supervised release is a costly enterprise, Kaiser and the Steering Committee referred to "high risk" or "marginal" defendants who could not post bail and who otherwise would not be granted O.R. Although we cannot at this time accurately estimate the proportion of defendants placed on supervised release who otherwise would have been granted straight O.R., the data suggest it is a significant proportion. It is likely that many misdemeanor defendants (40% of all supervised release cases) and some felony defendants would have been released on O.R. in the absence of supervised release. In the light of these findings and the recommendations regarding improvements of service delivery, it is appropriate for the Judicial Coordinating Committee to consider the following alternative policies for the supervised release program.

A. Improve Services to the Courts and Reserve Supervised Release as a Release Mechanism of "Last Resort"

Improve services to the Courts and clearly reserve supervised release for high risk defendants who are unable to post bail and who, in the absence of the program, would remain in custody. Generally, use supervised release for felony defendants.

Adopt the recommendations made in this report regarding improved service delivery to the Courts:

- Encourage court representatives to exercise as much discretion and responsibility as possible when dealing with judicial referrals or requests and improve the training of court representatives to increase their knowledge of available services for defendants.
- Strengthen the capability of the Division to identify and to keep abreast of available services.
- Assign Division staff to provide back-up for court representatives in the Oakland Municipal Court, particularly in the misdemeanor departments where a rapid response to court requests is often required.

Arguments in favor of this alternative are:

- The Courts' interest in insuring swift delviery of appropriate services to defendants is met. This is especially true in high-volume misdemeanor Courts.
- The supervised release program can work toward developing its potential for actually affecting the number of defendants in detention and the time they spend there. Not only can more defendants be released, but they can be released at an earlier time. Also, as the number of inappropriate cases on supervised release is reduced, the time available to more intensively supervise high risk cases increases.
- This alternative appears to be the one that is most consistent with the interests of the Board of Supervisors, as expressed in the goals the Board adopted for the County's pretrial program, and in recent discussions of supervised release.

An argument against this alternative is:

- It limits the Court's discretion in utilizing supervised release.

B. Improve Services to the Courts, But Make No Change from the Present Supervised Release Target Population

Do not limit supervised release to high risk defendants who in its absence would remain in custody. Do adopt the recommendations for improved services to the Courts summarized in alternative A.

Arguments in favor of this alternative are:

- The Courts' interest in insuring swift delivery of services to defendants is met. This is especially true in high volume misdemeanor Courts.
- The Courts retain the same unlimited discretion they now have in the use of supervised release.

Arguments against this alternative are:

- Supervision and monitoring of behavior continue to be applied to defendants who in the absence of S.R. would not remain in custody.
- A concentrated effort to develop the potential of supervised release to affect detention requirements -- a policy of the Board of Supervisors -- is not made.
- When the supervised release budget is reviewed again by the Board of Supervisors, it may be difficult to demonstrate what cost savings are accruing to the County as a result of the program.

C. No Change From Present Procedures and Policies

Do not implement any of the recommendations of this report relative to improving services. Do not in any way restrict placements made by the Courts of defendants on supervised release.

An argument in favor of this alternative is:

- The Courts retain the same unlimited discretion they have now in the use of supervised release.

Arguments against this alternative are:

- Judicial satisfaction with supervised release and the speedy delivery of services does not increase.

- Supervision and monitoring of behavior continue to be applied to defendants who in the absence of S.R. would not remain in custody.
- Supervised release remains open to abuse.
- A concentrated effort to develop the potential of supervised release to affect detention is not made.

An excellent recent example of how abuse of supervised release can occur involves defendants arrested for public drunkeness in Oakland. The County adopted a policy in April which provided that persons arrested on a charge of P.C. 647(f) for the third time within 12 months would be prosecuted, rather than sent by police to an alcohol detox facility. The Courts were urged by the Board of Supervisors to sentence convicted offenders to at least 30 days at Santa Rita where they were to receive treatment. Judges in the Oakland Municipal Court began sentencing defendants, only to discover that the program had not been fully implemented at Santa Rita. Rather than continuing to send defendants there post-conviction, Judges in the misdemeanor arraignment Courts were ordering the defendants placed on supervised release, with instructions that they be referred to alcohol treatment programs. When these referrals began, they were at the rate of 6 to 10 per day.

Supervised release was called-upon to fill the void left by another program that was not properly functioning. Although the Pretrial Services Division said it could handle up to two referrals a day, it soon became clear that even this number put a severe strain on the supervised release staff.

D. Recommendation: Adopt Alternative A

We recommend that the Judicial Coordinating Committee on Pretrial Services adopt the policy for supervised release set forth in Alternative A. Supervised release should be viewed by the Courts, the Division, and the Berkeley O.R. Project, as a release mechanism of last resort reserved for those defendants who would remain in custody in the program's absence. Improvement of other services to the Courts as discussed in this report is an integral part of this recommendation.

APPENDIX A

METHODOLOGY

APPENDIX A

Methodology

There are four sources of quantitative data -- case data, based on 171 actual supervised release cases; supervised release screening data, based on monthly logs maintained by the Berkeley O.R. Project and the North County and South County units of the Pretrial Services Division; cost data, derived from budget information of the two programs; and data from the Office of Criminal Justice Planning's evaluation of the County's pretrial services program.

Case Data

The case data was collected during the first five months of the formal operation of supervised release in Alameda County: November 1, 1975 through March 30, 1976. The primary source of data were case summaries that were completed by pretrial staff on every S.R. case closed since late December. The case summary is a multiple-copy NCR form; one completed copy of which is forwarded to the Pretrial Services Coordinator after a supervised release case is closed.

The case summaries, while providing valuable data, could not adequately serve alone data needs of this study. The closed case summaries were supplemented by examination of actual pretrial staff case files on closed and open cases, examination of court files, and examination of CORPUS Event Histories. Due to time and staff limitations, this supplemental data was not obtained on all cases.

The exact nature of the data used in each judicial jurisdiction is described below:

- Oakland -- This is the most complete data base used in the study. The files of all supervised release cases opened between November 1, 1975 and March 30, 1976 were carefully studied, and data on the conditions of release and activity of the pretrial staff were recorded. Files in the Oakland-Piedmont Municipal Court on all open and closed cases were examined, as were CORPUS Event Histories.

- Alameda, Fremont, San Leandro-Hayward, Livermore and Superior Court -- The files of all open cases as of April 2, 1976 were examined. All closed case summaries submitted to the Pretrial Services Coordinator's Office were also included in the study. No Court records were examined, but complete CORPUS Event Histories were obtained on all open cases and all closed cases for which case summaries were available.

- Berkeley -- Only cases whose summaries were received by the Coordinator's Office as of April 2 were included in the study. Thus, only closed supervised release cases from Berkeley are included. CORPUS Event Histories were obtained for these cases, but Court files were not examined.

APPENDIX A -- (CONTINUED)

S.R. Screening Data

The North County and South County units of the Pretrial Services Division and the Berkeley O.R. Project each maintain monthly logs on supervised release activity. The logs report the numbers of persons who were screened for supervised release, and the results of that screening. The Division's March logs were used in this study to report statistics on the evaluation process. Due to the relatively low volume in Berkeley, the logs for the five-month period January through April were used. All of the statistical data on individual cases and on the monthly logs was coded, key punched, and analyzed through the use of a computer.

Cost Data

The cost of supervised release was based on budgetary data supplied by the Probation Department and the Berkeley O.R. Project. The use of supervised release by the Courts has been increasing rather substantially in the last few months. The caseload figures used in computing average costs are those that were accurate as of May 28.

OCJP Data

The Alameda Regional Office of Criminal Justice Planning (OCJP) is currently conducting an evaluation of the County's pretrial services program. As part of that study, OCJP recently assembled a massive data base which includes booking, detention and judicial proceedings data on nearly 100% of all persons booked in Alameda County exclusive of those booked solely for public intoxication (P.C. 647(f)) during four selected weeks of 1975. The data base also includes a "snapshot" description of all pretrial defendants incarcerated at Santa Rita on one day of 1975.

Non-Quantitative Data

Supervisory and line staff in the Berkeley O.R. Project and in the Probation Department were interviewed and asked about supervised release procedures and policies and asked about their attitudes toward the use of S.R. Ten Judges from various judicial districts in the County were also interviewed and asked about their familiarity with supervised release, how frequently they have used it, and how satisfied they are with the way it presently operates.

APPENDIX B

SELECTED SUPERVISED RELEASE FORMS

APPENDIX B-1

ALAMEDA COUNTY PROBATION DEPARTMENT
PRETRIAL SERVICES DIVISION

INSTRUCTIONS TO PRETRIAL SERVICES COURT REPRESENTATIVES

Court: ______________________ Date: __________

Defendant: __________________ Docket: ________ Next Court Date: __________

☐ Perform the following on this case (please check):

☐ Contact Parole/Probation Officer: ______________________

☐ Contact complaining witness: ______________________

☐ Referral to community agency: ______________________

☐ Other: ______________________

☐ Specific questions to be answered for the court: ______________________

☐ Placed on Supervised Release under the following conditions:

☐ Report __________ to Pretrial Services at 400 Broadway, 4th Fl. Annex

☐ ______________________

☐ ______________________

☐ Refer to Supervised Release Unit for evaluation

☐ Refer to Drug Unit for evaluation

vfc

ALAMEDA COUNTY PROBATION DEPARTMENT
PRETRIAL SERVICES DIVISION

PROGRESS REPORT

Date of Hearing: ______________

Docket No.: ______________

CEN No.: ______________

PFN No.: ______________

To: Judge ____________________ Court ______________ Dept. # ______

Re: Defendant ____________________ AKA ____________________

From: Pretrial Specialist ____________________ Date Prepared: __________

Approved by: ______________________________

Conditions of Release: (1)

(2)

(3)

Progress and Recommendation:

The defendant's progress ☐ is ☐ is not satisfactory.

№ 1112

PRETRIAL SUPERVISED RELEASE
(Case Summary)

NAME ______ PFN ______

CASE NO. ______ CEN ______

1. COURT: ______ DOCKET NO. ______ ATTY: [ ] P.D [ ] PRIV
2. CHARGE(S): (1) [ ] F [ ] M ______ (2) [ ] F [ ] M ______ INIT CT BAIL $ ______
3. HOLDS AT ARRGNMNT: A [ ] TRAFFIC (# "ONE-POINTERS" ___) (# OTHER TRAFFIC ___) B [ ] PROB PAROLE (# ___) C [ ] BENCH WARRANT (# ___) D [ ] CYA (# ___)
4. PRIOR ARRESTS: [ ] F (# ___) [ ] M (# ___) [ ] FTA (# ___) [ ] INF. (# ___) PRIOR CNVCTNS: [ ] F (# ___) [ ] M (# ___) [ ] FTA (# ___) [ ] INF (# ___)
5. REFERRAL SOURCE: [ ] COURT [ ] PTSO BORP [ ] DEF. ATTY [ ] OTHER.
6. SUP. REL. RECOMMENDATION: [ ] FOR [ ] AGAINST [ ] OTHER COURT ACTION: [ ] DEF RELEASED [ ] DEF NOT RELEASED
7. REASON FOR "AGAINST" RECOMMENDATION: [ ] NON-RESIDENCE [ ] VIOLENCE PRONE [ ] CHRG TOO SERIOUS [ ] RECORD TOO SERIOUS [ ] OTHER ______
8. LENGTH OF CURRENT RESIDENCE IN ALAMEDA COUNTY: ______ YRS. ______ MOS.
9. ARREST DATE: ___ ARRGNMENT DATE: ___ S.R. INT DATE: ___ S.R. RELEASE DATE: ___

PERSONAL

10. AGE: ______ YRS. SEX: [ ] F [ ] M ETHNICITY: [ ] A.I. [ ] BL. [ ] CHI [ ] OR. [ ] WHITE [ ] OTHER
11. MARITAL STATUS: [ ] SINGLE [ ] MARRIED [ ] DIVORCED [ ] COMMON LAW [ ] WIDOW [ ] SEPARATED [ ] OTHER # CHILDREN ______
12. LIVES WITH: [ ] ALONE [ ] SPOUSE [ ] PARENTS [ ] CHILDREN [ ] OTHER FAMILY [ ] OTHER ______
13. INCOME: $ ______ MO SOURCES: [ ] WAGES [ ] FAMILY [ ] S.S [ ] WELFARE [ ] V.A [ ] U.I [ ] OTHER ______
14. EMPLOYED: [ ] NO [ ] YES [ ] FULL-TIME [ ] PART-TIME HOW LONG? ______ YRS. ______ MOS
15. IN SCHOOL? [ ] NO [ ] YES [ ] FULL-TIME [ ] PART TIME CURRENT GRADE ______ HIGHEST GRADE DEFENDENT COMPLETED. ______
16. IN VOCATIONAL TRAINING PROGRAM? [ ] NO [ ] YES HOW LONG? ______ YRS. ______ MOS.. TYPE ______
17. SKILLS OCCUPATION ______
18. IN TREATMENT PROGRAM? A [ ] ALCOHOL TREATMENT [ ] T.C [ ] OUT-PATIENT B [ ] DRUG TREATMENT [ ] T.C. [ ] OUT-PATIENT C [ ] OTHER (A) ______ (B) ______
19. HEALTH PROBLEMS: [ ] ALCOHOL [ ] DRUG [ ] OTHER PHYSICAL [ ] MENTAL EXPLAIN. ______

SUPERVISION/SERVICES

20. REQUIRED CONTACTS: # OF CONTACTS ______ [ ] WEEK [ ] MONTH
21. OTHER CONDITIONS: ______
22. NEW PROGRAM SERVICES UTILIZED. A [ ] EDUCATION B [ ] COUNSELING C [ ] VOC. TESTING D [ ] JOB PLACEMENT E [ ] VOC. TRAINING F [ ] ALCOHOL TREATMENT [ ] T.C. [ ] OUT-PATIENT G [ ] DRUG TREATMENT: [ ] T.C [ ] OUT-PATIENT H [ ] OTHER (A) ______ (B) ______

CASE INFORMATION

23. PTS COMMENTS: ______
24. CT. APPRNCS REQUIRED? ______ MADE? ______ BENCH WARRANTS ORDERED TO ISSUE? [ ] NO [ ] YES (# ______) BENCH WARRANTS ISSUED? [ ] NO [ ] YES (# ______)
25. UNFAVORABLE TERMINATION: [ ] NO [ ] YES FAILURE TO COMPLY WITH: [ ] CHECK IN REQUIREMENTS [ ] SERVICE PROGRAM REQUIREMENTS
26. REARREST WHILE ON SUP. REL.? [ ] NO [ ] YES IF YES, CHARGE(S): (1) [ ] F [ ] M ______ (2) [ ] F [ ] M ______ DATE(S): (1) ______ (2) ______
27. CASE DISPOSITION: [ ] PLEAD GUILTY [ ] FOUND GUILTY [ ] NOT GUILTY [ ] DISMISSED [ ] CHRGS DROPPED [ ] OTHER DATE: ______
28. SENTENCE (If Applicable): A [ ] COSTS ($ ______) B [ ] FINE ($ ______) C [ ] RESTITUTION ($ ______) D [ ] JAIL (______ MOS.) CHECK IF: [ ] SUSP [ ] CREDIT TIME SERV. [ ] PROB. (______ MOS. YRS.) E [ ] ST. PRISON (______ YRS.) CHECK IF: [ ] SUSP [ ] CREDIT TIME SERV. [ ] PROB. (______ MOS. YRS.)

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APPENDIX C

DEFINITION OF CHARGE CATEGORIES

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Definition of Charge Categories

Sections of the Penal Code and penal sections of other California Codes are grouped into more than 40 categories by the California Bureau of Criminal Statistics (BCS). We used the BCS list as a guide in creating the charge categories in this report. The actual BCS list is about 20 pages long, and therefore only a summary of the charge categories are provided here.

Disturbing the Peace

Lewd conduct, disturbing the peace and rioting, malicious mischief, liquor violations (except public drunkeness), and other misdemeanors and local ordinances (except traffic).

Public Drunkeness

P.C. 647(f) only.

Homicide, Rape

P.C. Sections 187, 189, 192, 220, 261.

Robbery

P.C. Section 211.

Assault and Battery

All assault charges including wife and child beating.

Burglary

All illegal entry and possession of burglar's tools.

Theft

All theft except petty theft and auto theft.

Petty Theft

P.C. Sections 484b, 488, 666, 667.

Receiving Stolen Property

P.C. 496.

Fraud

APPENDIX C -- (continued)

Auto Theft

All auto theft including P.C. Sections 487.3 and 499b and V.C. Sections 10851.

Forgery

All bad checks and credit card charges.

Other Sex

Includes prostitution, pimping, lewd and lascivious conduct, child molestation, etc.

Controlled Substances

All Health and Safety Code and Business and Profession Code Sections dealing with drugs, including marijuana.

Weapons

All carrying, concealment charges. Does not include assault with a weapon.

Driving

All major Vehicle Code violations; excludes "one-pointers".

Other

Offenses not listed above, including escape from custody, kidnapping, bookmaking, abortion, arson, bigamy, bribery, extortion, neglect, perjury, other felonies and minor Vehicle Code offenses.

END