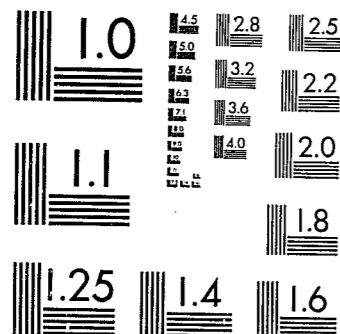




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EVALUATION OF THE
BAIL REFORM ACT OF 1979
AB2
Report No. 1 To The
California Legislature



88159,82



NATIONAL COUNCIL ON CRIME AND DELINQUENCY • RESEARCH CENTER
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BAIL REFORM ACT OF 1979
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Report No. 1 To The
California Legislature

March 1982

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PURPOSE OF THE REPORT

In 1979, the California Legislature enacted Assembly Bill 2, Chapter 873, Statutes of 1979 (Berman). The new law, which took effect on January 1, 1981, seeks to remove inappropriate financial burdens from certain defendants while not endangering public safety or increasing failures to appear at court hearings. Supporters of AB2 asserted that the new pretrial release procedures would not create new costs for local government and might even save money by reducing the need for expensive pretrial detention. Opponents of AB2 predict local governments would lose substantial revenue and that rates of failures to appear (FTA) would increase dramatically. Because of the intense controversy and uncertainty surrounding AB2, the legislature limited its provisions to misdemeanors and mandated a multi-year evaluation of the impact of AB2.

The Office of Criminal Justice Planning (OCJP), in close cooperation with the Judicial Planning Council and the State Bar Association, was directed by the legislature to conduct the evaluation. The Judicial Planning Council (JPC) developed forms to facilitate uniform implementation of the ten percent deposit bail system. JPC staff worked closely with scores of local officials to refine the wording of proposed regulations for administering AB2. OCJP established a Bail Reform Advisory Committee to advise about the evaluation and to ensure that all interested parties and viewpoints were represented. (See Appendix A for list of Committee members).

The Bail Reform Advisory Committee was convened to identify

key evaluation issues and to establish priorities for the research. Committee members assisted OCJP in developing the Request for Proposals (RFP) for consultant services. They also reviewed and rated proposals and conducted interviews with consultant bidders pursuant to making a recommendation to the Executive Director of OCJP. The Advisory group will continue to assist OCJP and the consultants regarding implementation of the research design and will review draft evaluation reports.

The RFP was developed and mailed to over 100 potential bidders. Ten proposals were received. These were reviewed and rated by OCJP staff and a subcommittee of Advisory Committee members. Five finalists were interviewed by a subcommittee who made a recommendation to the full Advisory Committee. The Advisory group made a recommendation for hiring a consultant to the Executive Director of OCJP, who ultimately made the final selection. The National Council on Crime and Delinquency (NCCD) was chosen to design and conduct the evaluation of AB2.

AB2 did not provide funding to implement or evaluate the reforms of the bail system mandated by the new law. The California Council on Criminal Justice approved the allocation of \$100,000 of federal LEAA funds to begin the evaluation effort. The Budget Act for FY 1981/82 contained \$100,000 to continue the research on the impacts of AB2.

The purpose of this first report on AB2 is to describe the scope and methods of the evaluation. Key issues raised during legislative debate will be reviewed. Viewpoints of many criminal justice practitioners about AB2 will be summarized. The research

has been underway since June, 1981, and during that period extensive site visits were completed and a meeting held with the Bail Reform Advisory Committee to finalize research plans. A major product of the evaluation will be a detailed picture of how misdemeanor defendants are processed in California. The research will also generate important policy-relevant data to help shape future legislation in the pretrial area.

THE PERCENTAGE DEPOSIT SYSTEM

Bail reform in California follows similar attempts at revising the pretrial process in a number of jurisdictions including the Federal government, Illinois, Oregon, Kentucky, and Indiana. Each of these bail reform efforts attempted to remove problems associated with the traditional bail bond system. In 1964, Illinois became the first state to enact a bail reform law permitting the defendant to deposit a percentage of the bail with the court in lieu of posting a surety bond. Initially, the legislation permitted the old and new systems to coexist, but in 1965 Illinois dropped provisions for a surety bond system. The Illinois legislature attempted to respond to widespread instances of fraud, corruption, and bribery in the state's bonding industry. Further, the law intended to return to judges or magistrates the decision to release or detain rather than to permit bondsmen, by default, to make these decisions. Research by Ramey (1975) suggests that bondsmen often employ discriminatory, arbitrary, and blatantly unconstitutional grounds for making bonding decisions. In some states bail bondsmen have threatened to disrupt court systems through strikes if their demand for higher premiums

were not met.

Shortly after the passage of the Illinois law, the U.S. Congress enacted the Federal Bail Reform Act of 1966. While the federal legislation shared the intent of the Illinois law, the federal law allowed the judge the discretion to set a ten percent deposit in lieu of traditional bail. In Illinois the ten percent deposit option is available to any defendant when a financial bond is set. The federal law returns the entire deposit to the defendant who appears at all court hearings; the Illinois statute permits courts to retain a portion of the deposit to cover administrative expenses.

Since the passage of the Federal Bail Reform Act, several jurisdictions have adopted similar laws. The Pretrial Resource Center reports the status of ten percent deposit legislation as follows:

- Five states have a percentage deposit system as a defendant option with an accompanying administrative fee requirement
- Fourteen states have percentage deposit as a court option with the administrative fee
- Four states, Michigan, Ohio, Wisconsin and California, have some combination of the above depending on charge (Henry, 1980:6)

BAIL REFORM IN CALIFORNIA

In California criminal defendants in non-capital cases enjoy an absolute right to release on bail. Since release on own recognizance (OR) is discretionary with the court, the right to bail has been available only to those who:

1. qualify for OR under stringent eligibility requirements

2. provide money or security for the full bail
3. pay a certified surety insurer (bondsman) a ten percent non-refundable fee (Ca. Const. Act I, 12; PC 1270, PC 1295 et. seq.)

Critics of California's pretrial procedures argue that many persons are forced to remain in jail for long periods of time prior to a determination of their guilt or innocence. Even more defendants escape pretrial jailing by paying significant sums of money to bondsmen. In recent years, concern about the unfair burden of the bail system on poor defendants has heightened, including constitutional challenges on grounds of due process and equal protection. For example, a San Francisco County Superior Court held that violation of due process existed in that county's bail system (Van Atta v. Scott, S.F. Sup. Ct., #662-928 (1976), later upheld in part at 27C.3d424 (1980)). This case is currently being examined by the State Supreme Court. Governor Edmund G. Brown Jr. and his former legal affairs secretary Anthony Klein have spoken out forcefully in support of bail reform. Klein asserted:

On a certain level the bail system is a device whereby a tax is imposed for being arrested, on people (who are) least able to pay it, for the benefit of a very small group of people who are, in effect, extracting profits from the poor in our society. It is basically a tax not levied by the state - it is a private tax on the poor. (Rubin, 1979:110)

Besides strong executive branch support, bail reform enjoyed powerful legislative backing. AB2 was jointly sponsored by Speaker Leo McCarthy and Assemblyman Howard Berman, who is generally credited as the bill's draftsman. Yet, AB2 was the subject of heated and intense legislative debate. Proponents and critics

offered very different scenarios about whether the new law would accomplish its objectives. The original version of AB2 incorporated felony defendants as well as persons charged with misdemeanors under the ten percent deposit provisions. A final compromise limited AB2's scope to misdemeanors, imposed a five-year sunset provision, and mandated a careful study of the impacts of the new law.

CONTENTS OF AB2

Prior to January 1, 1981, when AB2 went into effect, persons arrested for misdemeanors would be released if they caused the full bail to be deposited with the clerk of the court or if they paid a bondsman to execute a surety bond on their behalf (PC1269). In addition, courts or magistrates could release persons charged with misdemeanors on their own recognizance. Law enforcement officers and jailors also could exercise the option to release defendants with a citation or notice to appear at a court hearing. No provisions existed for requiring conditions for pretrial release or requiring an appearance bond from the defendant. Failure to appear in court was a separate misdemeanor offense only if the defendant was released on OR. Now, under Assembly Bill 2 Chapter 873, Statutes of 1979 (Berman), the following changes are in place:

1. Own Recognizance

A presumption in favor of OR release is established for misdemeanor defendants "unless the court makes a finding upon the record that an own recognizance release will not reasonably assure the appearance of the defendant as required." OR releases

must file a signed release agreement which differs slightly from the old form of agreement. The main change is to add a promise not to leave the state without court permission.

2. Release on Appearance Bond

An appearance bond is a written promise by the defendant to pay full bail if they fail to appear as required. This new instrument is the basis for a judgement against the individual if they do not in fact appear. According to AB2 a misdemeanor defendant may be released upon execution of an appearance bond alone.

3. Ten Percent Deposit Release

This is the most controversial element of AB2. Any misdemeanant for whom a bail figure is established (exceeding \$149) must be released upon deposit of ten percent of that amount and the execution of an appearance bond and release agreement. The amount of bail is contained in the arrest warrant if one exists. Otherwise, the bail amount is determined by the court bail schedule. Since these procedures can be handled entirely by jail officials, the defendant should be able to obtain early release under this formula. When the case comes before the court or a magistrate, that official may increase or decrease the bail amount and attach certain specified conditions to the release such as:

- a) requiring the defendant to report at reasonable intervals to a designated person
- b) requiring the defendant to notify the court of residence changes
- c) requiring the defendant to inform the court of his employer's name and address

These conditions may also be substituted for the ten percent deposit and/or release bond.

Unlike the private bondsman system in which defendants lose the entire ten percent (as well as placing themselves within certain powers of that third party), the new statute assures the defendant a return of 90 percent of the ten percent deposit after all required court appearances have been completed.

If the defendant fails to appear, however, the deposit is lost. After an additional 90 days (notice required in certain cases), the court may enter judgement for the entire bail - collectable through civil enforcement procedures. Willful failure to appear after execution of an appearance bond is itself a misdemeanor. Finally, if during release the defendant violates court imposed conditions or if new facts or changed circumstances come to light which increase the risk of non-appearance, the court or magistrate may add conditions and/or increase the bail amount.

EVALUATING THE IMPACT OF AB2 - MAJOR RESEARCH QUESTIONS

AB2 provides an excellent opportunity to monitor and evaluate the course of bail reform in California. More than just the study of one bill, the on-going research described below provides an intensive description of the processing of misdemeanor defendants in California. The pretrial stage of the criminal justice system represents a highly complex but little understood area of criminal law. Data produced by this evaluation will pinpoint potential problem areas for future legislative considerations. The following key research questions will guide the

evaluation of AB2.

1. Will AB2 Increase Rates of Failure to Appear and Pretrial Crime?

A large concern about AB2 is the potential effects on rates of failure to appear (FTA) for court appearances. The bonding industry claims that many more defendants will fail to appear for their court dates. However, data from a number of jurisdictions using ten percent deposit have not shown an appreciable increase in FTA rates. In Illinois one researcher reports FTA rates low or lower under the ten percent deposit system compared to the older system (Thomas, 1976). The Philadelphia pretrial agency reported an FTA rate of 7.5 percent in its first year of operations of ten percent deposit bail. Wayne County, Michigan reported an overall 4 percent decline in FTA rates from 1977 to 1978 in their 10 percent deposit clients. Kentucky had an FTA rate of 6.4 percent based on a sample of its ten percent deposit cases although comprehensive FTA figures were not available for the pre-bail reform cases.

While most data reveal relatively low rates of FTA for ten percent deposit clients, these findings should be carefully examined since they are based on a variety of definitions* (see Kirby, 1979). The lack of consensus on a rigorous (and uniform) definition of FTA prevents meaningful nationally comparable rates.

*A study of pretrial release conducted by the Office of Economic Opportunity in 1973 found 37 definitions of "failure to appear" in use among fifty-one programs surveyed. (Hank Goldman, et al, The Pretrial Release Program, pp 21-22.)

Problems in the definition and measurement of FTA have been long recognized in the pretrial field. To avoid some of the existing definitional confusion this study will define an FTA as a missed court appearance, whatever the reason, resulting in a formal court reaction - the issuance of a bench warrant. This definition of FTA, although somewhat conservative, possesses some obvious advantages. It is based on a well-recorded and unmistakable event - a court-ordered warrant. This is an important consideration in view of the uneven quality of many court records. In examining court files, the research team observed that in some courts one can be quite confident that every time the defendant was not in court that fact would be noted. In other courts this record keeping was not as uniform. The proposed limited definition of FTA solves some of the subjectivity involved in "deciphering" court files.

The suggested definition of FTA incorporates two distinct types of FTA: a technical failure to appear, where the defendant missed a court appearance because of accidental reasons (i.e., not knowing the court date, going to the wrong court room, or being ill), and a deliberate failure to appear where the defendant consciously missed the court date. Because of limited resources the study must rely on an intensive search of court files which usually do not describe the defendant's state of mind. To determine if an FTA was "accidental" or "willful" would require personal interviews with defendants, and even these defendant accounts would be of uncertain reliability.

Limitations of the proposed definition of FTA must be noted.

There are incidents of missed court appearances in which the courts decide to continue the proceedings and to not issue bench warrants. By our definition (FTA = a bench warrant for failure to appear) such cases will not be identified as FTA's. However after examining a large sample of court dockets from selected courts in the diverse counties, the research team determined that the number of cases in which a court will not act on FTA's by issuing a bench warrant is very small. Further, utilizing any other information except for formal court actions calls for broad interpretations and creates problems of consistency in coding.

Another issue related to the definition of FTA requiring careful consideration is the procedure used in actually calculating the FTA rates. Two methods most often used and easily interpreted are:

- 1) A defendant-based rate - the proportion of defendants who missed at least one court appearance and had a bench warrant issued
- 2) An appearance-based rate - the proportion of scheduled court appearances that are missed for which a bench warrant was issued

Both rates will be included in the AB2 study since each reflects an important aspect of the evaluation. The defendant-based measure is needed for analyses relating defendant characteristics to FTA likelihood; appearance-based rates reflect the overall "disruption" of the court process.

The proposed definition of FTA (a bench warrant issued for failure to appear) taking into consideration both defendant-

based rates and appearance-based rates presents a structured and reliable approach to measuring FTA rates over time and across diverse municipal courts.

Related to concerns about increased FTA rates are fears that AB2 will contribute to increases in crime by releasing defendants without suitable supervision (by bondsmen). No reliable pre/post data on pre-trial arrests of ten percent deposit clients exists from other jurisdictions. A pretrial crime rate is based on the proportion of released defendants whose records show one or more arrests while awaiting trial. Research on pre-trial crime (Sorin, et al, 1978; Toberg, et al and Pyne, 1979) conducted in three jurisdictions showed an overall rate of 12 percent. Defendants with financial releases possessed a 17 percent pretrial crime rate compared to 10 percent for non-financial cases (e.g. OR or Supervised Release). The available research is limited on the relative importance of seriousness of charge, defendant attributes and release conditions on rates of pretrial crime. In this study pretrial crime rates will be computed for all methods of misdemeanor release (Citation, OR, Bail, and Ten Percent).*

Changes in FTA rates and pretrial crime will be measured by collecting data on a sample of 2000 misdemeanant cases processed through a sample of 11 municipal courts in four counties for 1980

*One exception will be police field citation release. Because of resource limitations it will be impossible to gather systematic data on the extremely diffuse system of field citation operated by most California police agencies.

(before implementation of AB2) and each year thereafter (1981, 1982, 1983). This will create a total sample of 8,000 cases for the entire study. Data on FTA's will come from municipal court records and pretrial arrests will be collected from the California Department of Justice. It is important to note that FTA rates and pretrial crime rates will be calculated for all methods of release (Sheriff's Citation, OR, Bail, and Ten Percent) permitting analysis of changes in how different types of defendants released are affected by these release decisions. For example, there might be an apparently high FTA rate for ten percent deposit releases but this FTA rate may be similar to the rate for private bail bond releases. Similarly we may find changes in FTA rates for all methods of release due to other factors such as new court policies about issuing bench warrants. These basic data on FTA rates and pretrial arrest rates from the case records will provide information previously unavailable on the effectiveness of various pretrial alternatives in several California jurisdictions.

2. Will AB2 Increase Costs to Local Government?

The costs of operating the ten percent deposit system have generated considerable controversy. Proponents of AB2 argued that AB2 can make money as well as save it. They explain that the ten percent fee would be going to the court instead of the bonding industry and these fees could be invested to earn interest. AB2 provides no appropriation to local governments for administrative costs incurred, but bail reform supporters believe these

costs could be easily covered by a portion of the fees paid. Critics of AB2 predict that counties will have to spend \$250 million a year to replace the private bail system now in place. A lobbyist for the California Advisory Board of Surety Agents estimates that the bail bond industry employs 5,000 persons and yields \$700,000 a year in taxes. However, other jurisdictions using the ten percent deposit system have reported no dramatic increase in processing costs.

Another area of fiscal concern is the potential loss of revenue to local governments from bail forfeitures. The bail bond industry estimates that \$3-5 million are paid to counties in misdemeanor summary judgements. They argue that AB2 will reduce these payments by 90 percent. Researchers at the University of California at Davis estimate that bail forfeiture revenue is \$3.6 million on a face value of \$120 million in commercial bonds. But these figures are difficult to interpret because processes for collecting commercial bond forfeitures are complicated and because the process of exoneration occurs in 80 percent of forfeiture cases. In contrast, the AB2 provisions for forfeiture appear straightforward, but it remains to be seen whether collecting on forfeited bonds will be practical and cost-effective for most counties. Chicago, Philadelphia and Kentucky have reported no loss in revenue under their percentage deposit systems (Henry 1980). The California Department of Finance estimated that statewide annual net revenue loss to the counties under AB2 would be about \$235,000.

The research on AB2 will document additional processing costs

on lost forfeiture revenue in two ways in a selected sample of counties. First, the provision of additional personnel or staff reassignments to handle the new AB2 workload will be recorded. This analysis will include a detailed description of how municipal courts in the sample counties process ten percent deposits and what mechanisms are established to collect defaulted bonds. Secondly, each year a state-wide survey of municipal court clerks and jail administrators will be completed to gauge their estimations of increased or decreased costs attributable to AB2.

3. Will AB2 Reduce Pretrial Jail Crowding?

Supporters of AB2 predict a decline in California's pretrial jail population as a result of the broadened pretrial release options. Yet, data from other jurisdictions using the percentage deposit system provide little direct evidence on this question. Even where declining jail populations were observed, it was difficult to attribute these drops to the deposit system (Henry, 1980:11). The Los Angeles Sheriff's Department testified during committee hearings that AB2 would exert minimal effect on their crowded jail because expanded OR programs, police citation programs and traditionally low bail for many misdemeanors presently permits 78 percent of those charged with misdemeanors to be released (L.A. Daily Journal, Nov. 18, 1980). According to a L.A. Sheriff's Department official, those defendants charged with misdemeanors who remain would not qualify for ten percent bail because

(1) they were also charged with felonies

- (2) they are repeat offenders
- (3) they possess outstanding warrants.

A recent L.A. County Jail survey showed that on a given day only 700 of the 5,500 persons in the men's central jail were misdemeanor charged detainees. Jail administrators in San Francisco, Alameda and San Diego also report that felons comprise the majority of their pretrial daily population. However, it is true that misdemeanors do comprise a large majority of total admissions to pretrial detention. Ten percent deposit release may not increase the absolute number of pretrial releases but may slightly reduce the current rate of bail bond release, which in L.A. County accounts for about eight percent of all misdemeanor releases.

Concerns have been expressed that municipal courts will vastly upgrade their bail schedules in response to AB2. Another hypothesis is that the ten percent deposit system will cause counties to make OR or citation decisions more selectively. Some predict that non-financial releases will actually decline as a result of AB2. Another provision of AB2 to be watched is the extent to which courts impose conditions other than the ten percent deposit to ensure the defendant's appearance. The conditional release was intended to assist the truly indigent defendant but both law enforcement and civil libertarians have expressed reservations about this part of AB2. The ACLU attorneys fear the imposition of unconstitutional restraint, while law enforcement officials argue that the non-cash conditions are not enforceable and AB2 provides no mechanisms for penalties for individuals who violate these conditions.

Data on jail populations in many California counties are, at best, uneven. Only a few counties possess systematic data about jail intake and releases. Many counties do not separately record misdemeanants and felons in their pretrial populations. This absence of data makes it difficult to determine historical trends in jail populations. Moreover, it will be difficult to directly attribute changes in pretrial jail populations to AB2. Other forces such as federal court orders or changing law enforcement policies can profoundly change these statistics. The study will attempt data collection on the monthly pretrial misdemeanor and felon population in the study counties both before and after the passage of AB2. Through annual surveys of jail administrators in all 58 counties estimates will be gathered on changes in the pretrial population as well as perceptions on whether AB2 is significantly reducing the pre-trial population.

4. How Will AB2 Impact The Private Bail Bond Industry?

There are over 1,000 licensed bondsmen in California regulated by the State Insurance Commission. In 1978 the face amount of bonds written was \$300 million. Three major companies handle about 80 percent of penal bonds in California providing collateral and providing underwriting services for smaller bonding companies. Some backers of AB2 have pointed to the political and economic influence of the bail bonds industry as the main impediment to bail reform in California. Industry spokespersons assert that bondsmen serve crucial functions for California's criminal justice system. For example many critics of private bail have charged

that the system discriminates against poor defendants. Bondsmen respond that they often help low-income persons get out of jail by extending credit and that they supervise defendants to assure appearance at court dates.

There has been speculation that AB2 will eliminate or at least severely curtail the surety bond business in California. Bondsmen fear that after AB2 only bad risks will come to them. Lobbyist Gerald Desmond claimed:

The bonding companies will stop accepting bonds the day the governor signs the bill....it's an actuarial business--you have to have some good risks to offset losses. (Rubin, 1979:110)

Another issue in dispute is the role of bondsmen in bringing in fugitives. Proponents of AB2 argue that computerized warrant systems make it easier to spot fugitives and that the majority of fugitives are located when they are re-arrested by law enforcement agencies for other offenses and not through the independent efforts of bondsmen.

In jurisdictions where the ten percent deposit system was adopted the private bail bonding system has virtually disappeared (Henry, 1980:11). But in these instances the bail reform legislation included felons as well as misdemeanants. It remains an important research issue whether losses to the industry from AB2 will affect how bonding agencies deal with felony defendants. Effects of AB2 on the bonding industry will be monitored through an annual survey of bondsmen in the selected study jurisdictions. Data will also be gathered from statewide industry associations on changes in the volume and amounts of bail bonds written during the study period.

Summary

Data from a number of non-California jurisdictions offer few clues on the possible consequences of ten percent deposit bail in California. Past research provides only partial data on the anticipated effects of a ten percent deposit system on rates of FTA and pretrial crime. The impact of the AB2 percentage deposit system on jail crowding is unknown. While the ten percent deposit system did not appear to substantially increase local government costs in several states, implementing the new system may prove somewhat more costly than the private bonding system in certain jurisdictions. Past research indicates that implementing a ten percent deposit system also may lead to a decline in usage of non-financial forms of release.

RESEARCH DESIGN FOR AB2

The research design for AB2 is separated into two major components: an impact design and a process design. The impact design entails an intensive defendant-based case tracking data system for eleven municipal courts in four counties. This highly quantitative design will compare the 1980 rates of FTA's, pretrial crime, municipal court operating costs, and pretrial detention rates with subsequent years to determine the impact of AB2. The process evaluation component will focus on changes in law enforcement, court practices, and correctional policy both affecting and being affected by the AB2 legislation. This aspect of the design is more qualitative in nature. Process data will be drawn from on-site interviews with legislators and officials representing the bondsmen and the criminal justice

system. Process data will also be collected in structured questionnaires administered to samples of court clerks, bondsmen, and jail administrators.

Impact Design for AB2

Impact data will be gathered from a small number of municipal courts chosen to reflect key aspects of California's diversity. The primary data collection effort will involve examining the records of a systematic random sample of defendants booked into jail for misdemeanor offenses and processed through these municipal courts (defendant-based sample). Data on the following items for each case will be gathered:

- 1- arrest and charge data
- 2- method(s) of release
- 3- defendant socio-economic characteristics
- 4- final court dispositions
- 5- number of pretrial court appearances
- 6- number of bench warrants issued for failure to appear
- 7- length of time from arrest to final court disposition(s)
- 8- amount of pretrial jail time
- 9- number and type of pretrial arrests

These data will be drawn from the sheriff's booking logs, municipal court records and the state's centralized statewide criminal history files. Beginning with 1980 (pre-AB2) data from defendant-based samples will be collected for 1981, 1982 and 1983. The legislature requested a five-year analysis of AB2 with annual updates because of past experience with the relatively slow state-wide implementation of new criminal justice legislation.

Comparing data from 1980 with 1981 (the first year of AB2) will reveal the impact of the law, which was only tentatively and experimentally being fitted into already complex pretrial systems. Counties have already reported a wide range of adjustments due to ambiguities in AB2 as well as subsequent legal tests of its execution. Impact results from the 1982 defendant-based sample should generate a better test of AB2's effects. Tracing the evaluation data over several years also will generate information about the results of any legislative amendments or Judicial Council clarifications that alter procedures for administering the ten percent deposit system.

Selection of the Impact Jurisdictions

The diversity of California's 58 counties and its 261 municipal courts is formidable to researchers. To capture the full spectrum of statewide pretrial practices would require an enormous research investment. Selecting a few counties to stand for the many was the primary task of the early months of the evaluation of AB2. OCJP and the Bail Reform Advisory Committee recommended the selection of Los Angeles County and three other counties reflecting differences in population density and north/south location. This approach suggested a number of candidate counties as potential study sites. Inquiries were made with the Bureau of Justice Statistics, the Judicial Planning Council and among the research community to determine locales with the most complete and accurate criminal justice data. Telephone conversations with officials in potential sites were made to understand how AB2 was being implemented. Members of

the Advisory Committee offered suggestions for the jurisdictions to be selected. After a narrowing process evaluation staff visited a small number of counties, met with criminal justice officials and bondsmen, and examined the available data.

One striking finding was the number of municipal courts that exist even within sparsely populated rural counties. Los Angeles County alone contained 26 separate municipal courts; Yolo County had 3 separate courts and a branch station. The diversity among the L.A. County municipal courts required that the defendant-based sample be drawn from several courts within L.A. rather than just one court. Within L.A. County it was important to include the L.A. Municipal Court, which handles the largest volume of cases. The three remaining courts were selected to represent the suburban portions of the county. OCJP and the Advisory Committee requested that other study jurisdictions to be selected were to represent the highly populated northern Bay Area of the state as well as an extremely rural jurisdiction. The final site selection reviewed and approved by OCJP and the Advisory Committee is as follows:

Los Angeles County (Southern/Urban/Suburban)

Central
Citrus
Pomona
Whittier

Alameda County (Northern/Urban/Suburban)

Oakland/Piedmont

Santa Cruz County (Northern/Suburban)

Santa Cruz
Watsonville

Yolo County (Northern/Rural)

Woodland
Davis
Carmichael
Winters branch

Table 1 shows the volume of misdemeanor filings in the selected courts during 1978-1980. These courts reflect a wide range of geography and resident demographic characteristics, law enforcement practices and judicial policies, but it is important to note that impact results presented in future reports will be limited to the effects of AB2 in 11 municipal courts situated in 4 counties.

Selection of the Defendant-Based Impact Samples

To answer the evaluation questions on (1) rates of FTA and pretrial crime and (2) to determine which types of defendants are choosing the ten percent deposit system, requires following cases through municipal court processing. Cases will be tracked from the point of jail booking through final case disposition. The universe to be sampled consists of all persons arrested and booked for misdemeanors in the 11 municipal courts. Table 2 shows the number of cases to be reviewed in each county. These sample sizes will yield statistically acceptable estimates of the rates of pretrial crime and FTA's.

The sampling procedure will begin with jail booking logs for each year (starting with 1980). Depending on the volume of misdemeanor bookings, a fixed number of cases, e.g., every nth case booked into the jail from the appropriate municipal court, will be identified and the basic arrest, offender and release

TABLE 1

California Municipal Courts
Summary of Nontraffic Misdemeanors and Infractions
Fiscal Years 1978-79 and 1979-1980*

County and District	Total Filings		Total Dispositions	
	1979-80	1978-79	1979-80	1978-79
Los Angeles				
Central	67,060	62,650	60,344	60,242
Citrus	8,638	8,804	7,490	7,223
Pomona	3,315	3,640	2,469	2,902
Whittier	3,927	4,600	3,575	4,047
Alameda				
Oakland/Piedmont	12,106	13,505	12,817	11,622
Santa Cruz				
Santa Cruz/ Watsonville	8,374	5,759	6,260	5,650
Yolo				
Woodland/Davis/ Carmichael/Winters	3,302	3,087	2,707	2,328
Totals	106,722	102,045	95,662	94,014
State Totals	593,231	586,825	528,283	535,669
% of State Totals	17.9%	17.3%	18.1%	17.5%

* Excludes felonies reduced to misdemeanors

Source: Judicial Council: Part 1 1981 Annual Report
to the Governor and the Legislature

TABLE 2

Sample Sizes For Defendant-Based Analysis
By County

County	Annual Sample	Four Year Sample
Los Angeles - Central	500	2,000
Los Angeles - Other	300	1,200
Alameda	400	1,600
Yolo	400	1,600
Santa Cruz	400	1,600
Totals	2,000	8,000

data will be recorded from jail records. These cases will be tracked through municipal court records to gather information on court appearances, FTA's and case disposition. Data from the California Department of Justice will be collected to record pretrial arrests. The chief advantage of this sampling approach is that data will be generated on all types of misdemeanor pretrial release. Thus FTA rates or defendant data can be compared across release options such as OR, Sheriff citation, traditional bail bonding, and ten percent deposit.

Two limitations to this sampling method are that some defendants will be excluded from the analysis, including those (1) who are arrested and given field citations by law enforcement agencies or (2) who bail out of police lockups or sub-stations. These limited gaps do not appear too troublesome because the framers of AB2 clearly were trying to reduce county jail admissions. While persons receiving field citations constitute a useful group to examine in terms of FTA's rates and pretrial crime, the necessary data collection among many decentralized police agencies would require a separate study. Where feasible, aggregate data will be gathered on field citations to determine if AB2 has impacted their use in the selected court districts.

THE PROCESS STUDY

Supplementing the quantitative impact data gathered through the successive defendant-based samples, a process study of AB2 will be conducted in the selected jurisdictions. A process study describes the context and circumstances under which impacts occur - helping interpret the policy significance of

impact findings. Process data will be collected through periodic on-site interviews with criminal justice practitioners and bondsmen in the selected jurisdictions. In addition, annual mail surveys will be administered to samples of bondsmen, jail administrators and municipal court clerks to assess their changing perceptions of AB2. Finally, open-ended interviews will be completed with key statewide figures who were intimately involved in the debate and passage of AB2. As preliminary findings emerge from the defendant-based sample or the process data, these will be informally presented to knowledgeable persons in the study sites and members of the Advisory Committee for suggested analyses and interpretations. Both process and impact data will be integrated and reported together with policy recommendations.

CURRENT PERCEPTIONS OF BAIL REFORM IN CALIFORNIA

As part of the early process study of AB2, a number of surveys were conducted to assess the perceptions of various groups and organizations toward AB2 and related criminal justice issues. These surveys describe part of the context of bail reform in California and define early problems in the implementation of AB2. Data presented here are no more than perceptions or highly subjective assessments made by persons who often hold strong views about bail reform. While these perceptions are important to policy analysis, they must be viewed as hypotheses to be tested by the research design. Indeed, one will notice the diverse range of opinions presently held by criminal justice officials as to the presumed effects of AB2.

It is also important to note that ten percent deposit release was used on a limited basis in 1981. For example, the L.A. County Sheriff reports that AB2 releases account for approximately 3-4 percent of all misdemeanor cases booked into their facilities. As the ten percent system becomes more familiar to defendants and practitioners, these attitudes toward AB2 may change.

Four separate surveys were conducted. The first survey was a statewide opinion poll of a random sample of 1,018 adult Californians. This survey took advantage of an on-going public policy opinion poll conducted by the Field Institute. A limited set of questions were developed about public attitudes toward the bail system. Questions were developed jointly by the staff of OCJP, NCCD and the Field Institute. The public has rarely been polled on issues relating to bail and these results must be viewed as tentative. Survey questions were not directly related to AB2 and there are many other issues of public opinion toward the pretrial processes of the criminal justice system that should be measured in the future. Since public support for criminal justice reforms is so crucial the Field Institute data provide important contextual data for the evaluation of AB2.

The three other surveys were specific to AB2 and were administered to samples of municipal clerks, jail administrators and bail bondsmen. The sampling methods for each of the four surveys are described below:

1. California Public Opinion Poll

The Field Institute conducts regular public opinion surveys on public policy issues. Staff of the Institute conducted telephone interviews with 1,018 California adults. The sample was drawn using a computer program that generates

random telephone numbers. This design gives all areas of the state and all neighborhoods an appropriate chance of being included.

2. Municipal Court Clerks Survey

There are 261 municipal courts with chief clerks in California. Using the latest directory of the Judicial Council, a random sample of 75 chief clerks was selected. This group represents approximately 30 percent of all court clerks. Of this sample, successful interviews were completed with 68 Municipal Court Clerks - or a response rate of 91 percent.

3. Jail Administrators Survey

Attempts were made to contact jail administrators in all 58 counties. A total of 53 telephone interviews were completed (response rate of 91 percent). Usually the survey was completed with the under-sheriffs in charge of the jail but in small counties interviews were conducted with the Sheriff.

4. Bail Bondsmen Survey

The exact number of bondsmen in California is difficult to estimate. There are over 1,000 but many small-scale operators go out of business and new bonding firms are constantly emerging. Even the latest telephone directories provide out-of-date information. Rather than attempting a strict random sample of all bondsmen, the survey relied on a variety of approaches, including phone book samples and suggestions from the state association of bondsmen. In all, 94 attempts were made to contact bondsmen in the study counties and two others. Seventy or 74 percent of these contacts were successful. Table 3 summarizes the attrition rates for this survey.

PUBLIC ATTITUDES TOWARDS THE BAIL SYSTEM

Californians possess only limited direct knowledge about the workings of the criminal justice system. Their familiarity with specific bail reform issues is likewise limited. But this lack of information (except via media portrayals or statements of political leaders) has not prevented the formulation of firm attitudes about the bail system. Californians overwhelmingly believe that the bail system requires major

TABLE 3

Sampling and Attrition Rates of Bondsmen Survey

<u>County</u>	<u>Number of Attempted Contacts</u>	<u>Successful Contacts</u>	<u>Response Rate</u>
Alameda	12	10	83%
Contra Costa	9	8	89%
Los Angeles	36	28	78%
San Diego	30	17	57%
Santa Cruz	3	3	100%
Yolo	4	4	100%
Total	94	70	74%

reform (Table 4). Of those interviewed, 83.4 percent agreed with this statement - "So many crimes today are committed by persons awaiting trial who have been freed on bail that the whole bail system should be re-examined." Only 11.5 percent of respondents disagree with this statement. Interestingly this intensely negative attitude toward pretrial release practices is virtually uniform across specific voter groups. Differences are small between northerners and southerners, liberals and conservatives or among ethnic groups. Even among those who label themselves strong liberals, fully 71.6 percent are critical of the bail system because of concerns over pretrial crime.

A second question asked respondents to react to the statement - "Too many persons who have not been convicted of a crime are being held in jail simply because they can't afford to pay bail." This statement reflects some of the basic logic of the bail reformers. Public opinion is somewhat more split on this issue with a plurality of respondents (48.4 percent) agreeing with the statement and 35.8 percent disagreeing (Table 4). Another 15.7 percent of respondents are not sure of their views on the traditional premise of bail reform. Opinions about the unfair effect of the bail system on poor defendants divide along predictable demographic lines. Northerners, Democrats, Liberals and ethnic minorities are more likely to agree with the statement. A significant majority of Black respondents (72.8 percent) agree that the bail system hurts the poor defendant. Southern Californians, Republicans, Conservatives and Whites tend to doubt the existence of gross economic inadequacies in

TABLE 4

PUBLIC PERCEPTIONS TOWARD
BAIL REFORM, PRETRIAL RELEASE AND
PRISON/JAIL CONSTRUCTION*

Survey Question	Percent Agree
I have some statements about crime and the different people and agencies that make up the Criminal Justice System. Please tell me whether you agree or disagree.	
So many crimes today are committed by persons awaiting trial who have been freed on bail that the entire bail system should be re-examined and changed.	83.4%
Too many persons who have not been convicted of a crime are being held in jail simply because they cannot afford to pay bail.	48.4
Some of the people who are in jail awaiting trial should be released if space is needed in the jails to house convicted criminals.	43.9
The number of prisons and jails that now exist in California are adequate to meet our current needs.	16.9
The number of prisons and jails that now exist in California are adequate to meet our needs for the foreseeable future.	11.1
Prisons and jails in California today are overcrowded and more need to be built.	77.1
I would like you to tell me how you feel about each possible tax increase measure as a means of raising money for building and expanding prisons and jails.	Percent Favor
Do you favor or oppose increasing the state sales tax for this purpose?	37.9%
Do you favor or oppose increasing taxes on residential property?	14.6
Do you favor or oppose increasing taxes on business property for this purpose?	51.8
Do you favor or oppose increasing state alcohol and tobacco taxes for this purpose?	80.5
Do you favor or oppose increasing state personal income taxes for this purpose?	15.4
Do you favor or oppose increasing state business income taxes for this purpose?	51.2

Source: August, 1981 Field Institute/NCCD Public Opinion Poll

the bail system. Support for the statement declines from 67.5 percent of strong liberals to 41.7 percent as one moves toward the conservative end of the political spectrum.

The third bail related question asked for opinions on the idea that "Some of the people who are in jail awaiting trial should be released if space is needed in the jails to house convicted criminals." A plurality of Californians (48.1 percent) disagreed with this statement while 43.0 percent agreed. For most groups opinions were mixed with a slight margin for those disagreeing with the statement. Only persons who label themselves "strong liberals" gave this idea majority support (58.9 percent). All other ideological groups were more likely to disagree with lowering the pretrial population to house more convicted offenders.

During this same poll questions were also asked about perceptions of the seriousness of prison and jail crowding. By a large majority the public reports that current prisons and jails are crowded and more need to be built. Yet there is little support for raising taxes to pay for more prisons and jails. Generally, Californians favor bond measures and reductions in other government services to finance additional jail construction. On balance these results do not suggest great public support for traditional bail reform approaches. The survey suggests that pockets of support do exist for increasing pretrial release options, but the public must be convinced that release measures do not endanger their safety.

BONDSMEN'S PERCEPTIONS OF AB2

Not surprisingly, bondsmen believe AB2 was an ill-conceived idea. Of those bondsmen surveyed, 78.3 were opposed to AB2 (Table 5). One bondsmen captured this feeling:

Once the state realizes the absurdity and impracticability of this new law, it will ask me and other similarly situated members of the community to reshoulder our old responsibilities. But, we won't pick up the stick. They will have forever negated the option of allocating the burden of risk on our shoulders.

Bondsmen believe that rates of FTA in general are much higher under AB2 and that FTA rates for ten percent deposit clients will exceed those for OR or commercial bonds. Bondsmen are less likely to agree that rates of pretrial crime or bench warrants have increased. For example, only 20.3 percent of those surveyed reported that all misdemeanor pretrial arrests had increased under AB2. Few respondents (28.3 percent) believed that jail population had increased under AB2.

One-third of surveyed bondsmen reported a positive impact on their business. This minority of bondsmen expressed the view that misdemeanor cases were high risk, low profit cases which they were eager to turn over to the county. Without misdemeanor cases they could concentrate on the more lucrative felony cases. Those who reported declining business were often misdemeanor-focused agencies and reported they were having to take higher risk defendants because of AB2. Six bondsmen in the sample reported going out of business. As one informant explained:

With the smaller (bail bonds) firms, their present position can be analogized to the plight of passengers sitting on the promenade deck of the Titanic. They know they've

TABLE 5

Summary Results of Bondsmen Survey
On The Impact of AB2

Survey Item	%
% opposed to 10% cash bail (AB2)	78.3
% reporting increases in felony bonds written	30.4
% reporting increases in misdemeanor bonds written	5.8
% reporting increases in rates of misdemeanor FTA's	95.6
% reporting increases in rates of misdemeanor pre-trial arrests	20.3
% reporting higher FTA rates for 10% cases compared to own recognizance cases	94.9
% reporting higher FTA rates for 10% cases compared to bail bond cases	73.6
% reporting judges issuing higher numbers of arrest warrants for misdemeanor FTA's	47.5
% reporting increases in jail population	28.3
% reporting positive effects on business resulting from AB2	33.3

been hit and are in the process of sinking. The only issue that remains is just how long they have to keep afloat.

Few bondsmen (5.3 percent) report writing more misdemeanor bonds and increasing revenue. By contrast, 30.4 percent report increasing numbers of felony bonds written, thus substantiating the views cited above claiming a shift from misdemeanor to felony cases. Bondsmen claim that increased rates of FTA will create more costs for counties. As one bondsmen explained:

The people of the State are the big losers. They'll have to absorb the costs when these defendants fail to appear in court.

Many bondsmen reject the criticism that they prey on poor defendants. They explain that bondsmen often extend credit to worthy clients. It is also claimed that defendants sometimes have good reasons for not appearing and that the bondsmen often reinstate bonds at no additional cost. AB2 is criticized by bondsmen as being too inflexible on these issues. Fundamentally the bondsmen resent the new public sector competition for misdemeanor clients - "The new law leads to more government interference in the free enterprise system."

JAIL ADMINISTRATORS' PERCEPTIONS OF AB2

Jail administrators in California hold more favorable views of AB2 than bondsmen (table 6). Almost half of the respondents (49.0 percent) favor AB2, 35.8 percent oppose the new bail reform law while 15.2% hold no opinion. Those favoring AB2 believe that jail crowding will be somewhat reduced and that low-income defendants will get a better deal under the new law. Opponents of AB2 worry that the new law makes it too easy for

TABLE 6

Summary Results of Jail Administrators' Survey
On The Impact of AB2

Survey Question	%
% opposed to 10% cash bail (AB2)	35.8
% reporting increases in felony pretrial bookings	43.7
% reporting increases in misdemeanor pretrial bookings	50.0
% reporting increases in staff workload	79.6
% reporting increases in rates of misdemeanor FTA's	37.1
% reporting higher FTA rates for 10% cases compared to own recognizance cases	44.1
% reporting higher FTA rates for 10% cases compared to bail bond cases	50.0
% reporting judges issuing higher numbers of arrest warrants on misdemeanor FTA's	28.9
% reporting increases in jail population	25.0
% reporting increases in duties of officers	76.5
% reporting positive effects on jail operations	55.1

certain defendants to be released.

It is too easy, in some cases, for people to bail out. It's caused some citizens to lose respect for the criminal justice system if they... (see) that police agencies have apprehended a criminal and released him, even in light of the fact that the individual is a likely candidate to FTA. Word gets out.

Opinions of jail administrators are mixed on whether ten percent deposit clients will have higher FTA rates. The majority (60.0 percent) reported no change in misdemeanor FTA rates while 37.1 percent believed they had increased under AB2. Most administrators also (46.7 percent) believed that AB2 releases would fail-to-appear at the same rate as those posting commercial bonds while 50.0 percent believed that AB2 releases would show higher rates of FTA compared to commercial bond clients. Few jail administrators (25.0 percent) believe that AB2 has adversely affected jail populations. But among those who favor AB2, the main reason for supporting the reform legislation is its potential to alleviate pretrial jail crowding. As one sheriff explained:

Officers on the street don't like it because it works like a revolving door. They'll have to deal with the defendant again, frequently the same day... however, anything that helps to reduce the county's inmate population must be viewed as a plus.

Respondants from larger jurisdictions were more likely to favor AB2 because it presents another option for reducing jail crowding whereas jail administrators from small counties were far more critical of AB2 and worried about the rise in FTA rates and pretrial crime.

The most universal complaint of jail administrators (79.6

percent) was that AB2 had increased staff workload by creating additional paperwork. But only one of 53 county jail administrators reported increasing the number of deputies to handle the extra workload of AB2. Jail personnel also requested further clarification of the law. In their opinion AB2 is too vague, leaving broad discretion for local interpretation. Jail staff perceive AB2 is not being applied uniformly across jurisdictions. They are especially anxious for "clean-up" legislation to clarify eligibility criteria.

MUNICIPAL COURT CLERKS' PERCEPTIONS OF AB2

A majority (59.3 percent) of court clerks surveyed were opposed to AB2 (Table 7). Only 15.6 percent of the clerks favored the bail reform legislation and 23.4 percent were undecided on the value of AB2. Most clerks surveyed felt that misdemeanor rates of FTA were increasing after AB2 (49.3 percent) but were not fearful that pretrial crime was going up (20.3 percent reporting increases in pretrial arrests). Of those surveyed, 58.2 percent felt that FTA rates for ten percent clients were higher than for commercial bonding clients. A large majority of clerks (73.4 percent) felt that bail forfeitures had increased. Few clerks believed that AB2 had increased or reduced pretrial jail populations.

Most clerks (79.0 percent) reported that AB2 caused an increase in their duties and 60.9 percent felt that AB2 was having a negative impact on the court. Reasons cited for the negative impact were that AB2 was not cost effective (45.0 percent), that it had increased FTA's (22.5 percent) and that AB2

TABLE 7
Summary Results of Municipal Court Clerks
On The Impact of AB2

Survey Question	%
% opposed to 10% cash bail (AB2)	59.3
% reporting increases in felony cases filed	54.4
% reporting increases in misdemeanor cases filed	74.6
% reporting increases in bail forfeitures	73.4
% reporting increases in staff workload	90.5
% reporting increases in misdemeanor pre-trial arrests	20.3
% reporting increases in rates of misdemeanor FTA's	49.3
% reporting higher FTA rates for 10% cases compared to own recognizance cases	56.9
% reporting higher FTA rates for 10% cases compared to bail bond cases	58.2
% reporting judges issuing higher numbers of arrest warrants on misdemeanor FTA's	16.9
% reporting increases in jail population	9.8
% reporting increases in duties of staff	79.0
% reporting positive effects on the court's operations	23.4
% reporting changes in methods of collecting or processing forfeitures	90.9

required more staff work (10.0 percent).

Although one clerk reported diligent efforts to collect on forfeitures, most clerks said they expected little success in collecting summary judgements for the AB2 cases:

This court had little success in collecting summary judgements, therefore...they no longer attempt to go after them.

Or

The default factor is out of sight with no recovery at all. It's not cost effective to spend \$30 to collect \$5.

Several clerks reported that historically they collected only about 1 percent of summary judgements. Clerks explained that the courts and police are so overburdened with more serious crimes that going after AB2 clients or any misdemeanor defendant who fails to appear is a low priority. Some feel that a FTA has little practical consequences for the defendant and this situation creates disrespect for the court's authority to administer justice.

A few clerks reported increased bail amounts for drunk drivers and prostitution cases to avoid the intended effects of AB2. One county reports lowering the bail amount to \$149 for certain offenses to avoid the provision of AB2. In contrast, there are several municipal court clerks who feel that clean-up legislation could make ten percent deposit a viable alternative to commercial bonds. One clerk stated: "Any possible means of releasing deserving people from jails should be utilized." Similar to the sheriffs, the clerks are anxiously awaiting clean-up legislation to make AB2 more uniform in its application

throughout the state.

SUMMARY OF BONDSMEN, JAIL, AND MUNICIPAL COURT SURVEYS

Table 8 cross-tabulates the responses of the Jail, Municipal Clerks and Bondsmen surveys to equivalent survey questions. Clearly, there is much disagreement among these three groups with respect both to their support of AB2 and their perceptions of AB2's impact on the criminal justice system. Predictably, bondsmen emerge as firmly opposed to AB2. They believe it has increased FTA rates for misdemeanor cases and that ten percent cases possess the highest FTA rate compared to traditional pre-release options. Jail administrators and municipal court clerks, while not overly enthusiastic about the possible positive impact of AB2, are less negative at this time. Their major complaints center on administrative problems which may be resolved through clean-up legislation and routinization of the law's procedures. Interestingly, there is a consensus that AB2 will not significantly impact the jail's pretrial population - a major goal of the legislation.

The controversies surrounding AB2 will not be resolved by these surveys. Indeed, these perceptions raise even more research questions than they answer. The opinions reported were largely based upon selective perceptions of respondents and not on rigorous statistical analysis of the misdemeanor court operations. It should be remembered that during legislative debates over AB2 considerable disagreement existed over its impact because of a basic lack of data about how municipal courts and local jails administered available release

TABLE 8
Summary Table of Survey Responses
By Organizational Affiliation

Survey Question	Bondsmen	Jail Administrators	Clerks
% opposed to 10% bail	78.3%	35.8%	59.3%
% reporting increases in misdemeanor FTA rates	95.6%	37.1%	49.1%
% reporting increases in pre-trial misdemeanor arrests	20.3%	44.1%	56.9%
% reporting higher FTA rates for 10% cases compared to O.R. cases	94.9%	50.1%	58.2%
% reporting higher FTA rates for 10% cases compared to bail bonds	73.6%	28.9%	20.3%
% reporting increases in jail population	28.3%	25.0%	9.8%

options. Research to be completed in the next year will resolve some of these controversies through systematic data collection. Future reports will inform legislators on needed adjustments in bail policies and other aspects of criminal court pretrial processes.

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EVALUATION OF THE
BAIL REFORM ACT OF 1979
AB2
Report No. 1 To The
California Legislature

March 1982

EXECUTIVE SUMMARY

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EVALUATION OF THE BAIL REFORM ACT OF 1979: REPORT #1

EXECUTIVE SUMMARY

In 1979 the California Legislature enacted Assembly Bill 2, Chapter 873, Statutes of 1979 (Berman). The new law, which took effect on January 1, 1981, seeks to remove inappropriate financial burdens from certain defendants while not endangering public safety or increasing failures to appear (FTA) at court hearings. Supporters of AB2 assert that the new pretrial procedures will not increase costs to local governments and might even save money by reducing the need for expensive pretrial detention. Opponents of AB2 predict that local governments will lose substantial amounts of money and that rates of failure to appear will rise dramatically. Because of the intense controversy and uncertainty surrounding AB2, the legislature limited its provisions to misdemeanor defendants and mandated a multi-year evaluation. The Office of Criminal Justice Planning (OCJP), in close cooperation with the Judicial Planning Council and the State Bar Association, was directed to conduct the evaluation. OCJP established an Advisory Committee to identify and prioritize key issues for research. The Advisory Committee assisted OCJP in the development of a Request for Proposals and reviewed the applications of potential consultants. After recommendations from the Advisory Committee, the Executive Director of OCJP selected the National Council on Crime and Delinquency (NCCD) to develop and implement the research on AB2. The Advisory Committee will continue to assist OCJP and NCCD in implementing the research design and will review draft evaluation reports.

The most controversial aspect of AB2 involves its provisions creating a ten percent deposit release system for misdemeanor defendants. In lieu of using private bail bonding services, misdemeanor defendants may deposit ten percent of their bail (which must exceed \$149) with the municipal court. Upon successful completion of all scheduled court appearances the defendant is returned 90 percent of the deposit. In theory this system should be less burdensome to low income defendants and expand the range of pretrial release options available to misdemeanants.

The mandated multi-year study of AB2 will focus on the following questions:

- WILL AB2 INCREASE RATES OF FAILURE TO APPEAR AND PRETRIAL CRIME?
- WILL AB2 INCREASE COSTS TO LOCAL GOVERNMENT?
- WILL AB2 REDUCE PRETRIAL JAIL CROWDING?
- HOW WILL AB2 IMPACT THE PRIVATE BAIL BOND INDUSTRY?

The evaluation will consist of detailed reviews of a four year (1980-1983) stratified sample of over 8000 misdemeanor defendant records from 11 municipal courts in Los Angeles, Alameda, Santa Cruz and Yolo counties. These data will be used to determine the impact of AB2 on pretrial crime, FTAs, local county costs, jail crowding, and the bail bond industry. As of this date, 75% of the 1980 court data have been collected and are now being analyzed. This analysis will appear in subsequent reports to the legislature. In addition to the quantitative data gathered from court records, the research will also include annual surveys of court clerks, jail administrators and bondsmen to assess their evolving attitudes towards AB2. On-site interviews will be

conducted with criminal justice officials, bondsmen and knowledgeable persons to learn about the process of implementing AB2 in several jurisdictions. Not only will the research provide a rigorous evaluation of AB2, the data will permit an in-depth view of the processing of misdemeanor defendants booked into California jails.

For this first report an effort was made to gather survey data on perceptions of various key actors about AB2 and the pretrial system. More detailed and complete analysis of these surveys appear in the full report. These perceptions often reflect intensely held beliefs and do not reflect the objective impacts of AB2. Preliminary field visits and selective county criminal justice information reports indicate that AB2 was used infrequently in 1981. We estimate that AB2 is being used in only 3-20% of all misdemeanor pretrial releases during its first year of implementation. However, there are reports that the usage rate is increasing as the bill becomes more familiar to criminal justice officials and defendants. The subjective judgements reported in the surveys constitute no more than hypotheses to be tested by the research in progress. But, these perceptions are revealing about the context of bail reform in California.

One survey took advantage of an on-going state-wide public opinion poll conducted by the Field Institute. A limited set of questions were developed about public attitudes towards the bail system. The public has been rarely polled on issues related to bail and the results must be viewed as tentative. Because public support for the criminal justice system is so crucial, the Field

Institute data provides useful information for the study of bail reform in California. Survey questions were not directly related to AB2 and there are many other issues that should be explored in future surveys. In the Field poll, 83 percent of respondents agreed with the statement that "Many crimes today are being committed by persons awaiting trial who have been freed on bail, that the entire system should be re-examined and changed." In the same poll, 48 percent agreed with the statement, "Too many persons who have not been convicted of a crime are being held in jail simply because they cannot afford to make bail." Of those polled, 44 percent felt that "some people who are in jail awaiting trial should be released if space is needed to house convicted criminals." On balance, these results do not suggest great public support for traditional bail reform approaches. The survey suggests that pockets of support do exist for increasing pretrial release options, but the public must be convinced that these measures do not endanger their safety.

A survey of 71 bondsmen from six counties revealed that the vast majority of bondsmen are opposed to AB2. Their opposition is based on their predictions of high rates of FTA for ten percent deposit clients and increased costs for local government. Many bondsmen report that small bonding agencies, specializing in misdemeanor defendants, are going out of business. However, agencies specializing in felony bonds have not been significantly effected by the new law. Virtually all agencies in the bondsmen survey reported some decline in their business due to AB2, although about one-third of the respondents reported that AB2 had a

positive effect on their business by diverting away the high risk misdemeanor cases which yield low premiums and high rates of FTA.

Surveys of court clerks and jail administrators reported that the ten percent deposit release was not being frequently used by misdemeanor defendants. In the 4 study counties Sheriff's citation and own recognizance release continue to be the major forms of pretrial release for misdemeanor cases. Jail administrators tend to support AB2 as another tool to reduce pretrial jail crowding. Most clerks in the survey oppose the new law because they fear high rates of FTA and increased difficulties in collecting forfeitures. Jail administrators report no major difficulties in processing AB2 releases, but county clerks admit that many of the details about handling forfeitures have not been faced. Municipal court clerks and jail administrators report that AB2 is not being interpreted uniformly throughout their jurisdictions. Clean-up legislation is requested to clarify defendant eligibility. Neither jail administrators nor court clerks believe that AB2 will significantly reduce pretrial jail population: a major goal of the legislation.

The controversies surrounding AB2 will not be resolved by these surveys. Indeed, these perceptions raise even more research questions than they answer. Considerable legislative disagreement existed over AB2's impact because of a basic lack of data about how municipal courts and local jails administered available release options. Research to be completed in the next year will resolve some of these controversies through systematic data collection.

Subsequent research reports will inform legislators on needed future adjustment in bail policies and other aspects of the pretrial criminal court process.

END