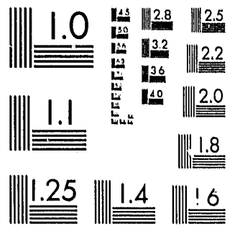

U. S. Department of Justice
National Institute of Justice

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Research Report

The Development and Implementation of Bail Guidelines:

Highlights and Issues

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James K. Stewart
Director

The Development and Implementation of Bail Guidelines:

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U.S. Department of Justice
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THE DEVELOPMENT AND IMPLEMENTATION OF BAIL GUIDELINES: HIGHLIGHTS AND ISSUES

Introduction

Beginning in 1978, at a time when the guidelines reform strategy had been adopted in a number of jurisdictions in the United States to address paroling and sentencing decision practices, the National Institute of Corrections funded the Bail Decisionmaking Project to study the feasibility of developing a guidelines approach to bail in the Philadelphia courts. The motivating idea was to learn whether the promising features of the guidelines approach (described in detail in Section II), as suggested in its paroling and sentencing applications, might productively be brought to bear on difficult problems continuing to characterize American bail practices and the institution of pretrial detention.

Based on the encouraging results of the feasibility study, in 1981 the National Institute of Justice joined N.I.C. in sponsoring a rigorous experiment to test the utility of a first version of bail guidelines. The results of the two-phase research project have been described in two reports--Bail Decisionmaking: A Study of Policy Guidelines and Judicial Decision Guidelines for Bail: The Philadelphia Experiment--available through the National Criminal Justice Reference Service. This publication is intended to provide a brief overview of the goals and findings of the research as well as to serve as a practical guide to questions about the application of the guidelines strategy to pretrial release decisionmaking problems.

I. PROBLEMS WITH BAIL AND PRETRIAL DETENTION: THE NEED FOR FURTHER REFORM

The Limits of Bail Reform

The possibility of studying an application of the guidelines concept to bail was raised after a review of the difficult issues that continued to face

that early stage of criminal justice decisionmaking after two decades of bail reform, including new dimensions added by jail overcrowding and a new public emphasis on community protection. The initial reform efforts of the Vera Institute during the 1960s (Ares, 1962; Ares, Rankin and Sturz, 1963) focused on the phenomenon of large numbers of indigent accused who were needlessly detained pending trial, often in connection with minor criminal matters and for simple lack of small amounts of cash bail (Beeley, 1927; Foote, 1954; Alexander et al., 1958). The Vera strategy, widely replicated across the United States in subsequent years, sought to reduce unnecessary pretrial detention by providing judges with an informational resource ("objective" information relating defendants' community ties) that would persuade judges to release more "dependable"[1] defendants on nonfinancial bail or ROR (release on personal recognizance). Criticism of traditional bail practices was widespread and focused on such issues as: the abuse of judicial discretion, inequitable bail and detention practices, the effectiveness of bail practices in minimizing absconding and criminality among released defendants, due process and the presumption of innocence and its meaning for the pretrial confined.[2]

Receptivity for bail reform reached its height in the mid- and late 1960s as symbolized by the National Bail Conference (Freed and Wald, 1964), the passage of landmark Federal legislation (the Bail Reform Act of 1966)[3] and the widespread adoption of Vera-type ROR programs around the nation (Goldman et al., 1973; National Center for State Courts, 1975). The further contributions of bail reform were measured in two national evaluations of bail reform (Thomas, 1976; Toborg, 1983). Key among these were such innovations as increased use of personal recognizance (ROR), deposit bail and conditional release programs. However, the national evaluations as well as other research

have raised questions about the ultimate impact of bail reform 20 years after its inception (Thomas, 1976; Friedman, 1976; Goldkamp, 1979). Not only have doubts been expressed about whether the Vera strategy (and its progeny) successfully reached its targeted population,[4] but its impact on judicial practices has also been queried (Goldkamp, 1984a).

Continuing Questions About the Effectiveness of Bail: Jail Crowding versus Public Safety

Added to uncertainty about the accomplishments of bail reform and long-standing issues that still have not been resolved[5] are the concerns of the 1970s and 1980s about jail crowding on a national level and about the ability of bail and detention practices to protect the community from dangerous defendants. Current concerns about overcrowding in the nation's jails, echoing the main focus of the earliest bail reform efforts, cast suspicion on bail practices because of the belief that they may be unnecessarily filling the jails with defendants who could be trusted to return to court if released, and who would be unlikely to pose any danger to the community. But simultaneously, the effectiveness of bail practices has been called into question by those who believe that bail permits the release of large numbers of dangerous defendants before trial who return to prey upon the public.

Although the thrust of these recent criticisms of bail practices are not contradictory--for, like two sides to the same coin, they impugn the effectiveness of bail processes--their implications for jails are at odds. The first perspective, based on the belief that too many defendants are needlessly jailed before trial, would seek to reduce and limit the use of pretrial detention. The second, the community-protection point of view, would seek to expand the use of pretrial detention. That this latter orientation may

seriously exacerbate crowding in the nation's jails is well-supported by the spate of new laws expanding the use of pretrial detention (Goldkamp, 1984b; Toborg, 1983; NAPSA 1978).

Legislative versus Judicial Approaches to Bail Practices: Guidelines as a Focus on Judicial Decisionmaking

Given the history of reform and the recent attempts to confront the danger agenda in what amounts to a second generation of bail reform, two strategies for change in bail and detention practices continue to present themselves: the first, and currently most popular, approach is to legislate revision of bail and pretrial detention laws;[6] the second, the focus initially pursued by the Vera reform strategy, is to focus on the judges who decide bail and to develop methods for improving their decision practices. A goal of the research discussed in this report was to determine whether the latter focus on judicial decisionmaking held promise for addressing not only the most recent bail concerns (such as danger and crowding) but some of the fundamental criticisms about bail practices that were not fully answered by the years of bail reform through adaptation and application of a guidelines approach.

II. THE GUIDELINES CONCEPT: EXAMINATION OF BAIL DECISIONMAKING AS A BASIS FOR JUDICIAL POLICY REVIEW

The Guidelines Concept: A Judge-Oriented Approach

The guidelines decisionmaking strategy was posed as a possible resource for bail because of the similarity of some of the current issues in bail and those addressed in research in the areas of parole and sentencing reform by D. Gottfredson and Wilkins (1978). Those efforts involved social scientists in a collaborative relationship with criminal justice decisionmakers to examine empirically policy themes inherent in their decisions, and to facilitate a process for the revision of policy for the enhancement of future decisionmaking.[7] Like the bail decision stage, parole and sentencing decisions are highly discretionary, facing such difficult questions as the liberty or confinement of individual offenders, the prediction of their future performance, and the fairness of the procedures used to make those decisions.

Although sharing these and other decision themes in common with sentencing and parole, the bail function is characterized by unique features--chiefly that the persons about which decisions with such important consequences are being made are only accused, not convicted of crimes. A key difference between bail decisionmaking and parole and sentencing, however, is the often indirect character of the bail decision that ultimately determines whether a defendant will be confined or released before trial. Whereas components of both paroling and sentencing decisions involve direct "in" or "out" determinations, "in" or "out" in bail may or may not result from the intentions of the bail judge. Rather, whether or not a defendant has the ability to pay a given dollar amount may be the principal determinant of confinement or liberty at bail. Thus, the traditional reliance on cash bail--even in a "reformed" jurisdiction such as Philadelphia where the study was

conducted--adds a major dimension of arbitrariness to the problems associated with pretrial release decisionmaking.

The term, "guidelines," has become increasingly common in criminal justice jargon. Two meanings--one broad, the other narrow and specific--are current. The different meanings, and the definition adopted in this study, are well-illustrated by the example of bail. Guidelines for bail, in the broader sense, exist in the form of standards (e.g., NAPSA, 1978; ABA, 1978), and in caselaw and statutes (Goldkamp, 1979). But because they are typically general, especially in the instance of many state laws, they leave open questions about the goals of the bail decision and pretrial detention and of the criteria that ought to be employed by judges in arriving at their decisions. Some statutes, for example, mention few or no criteria, while others list so many as to be meaningless (Goldkamp, 1979: 55-75). When criteria are specified, no instructions are given to emphasize their relative importance. Thus, such broad "guidelines" provide standards that are distant, removed from the actual work of making decisions, and as a consequence, may have little impact on judges' decision processes, and certainly could not be used to explain sufficiently the manner in which bail decisions are produced.

The meaning of guidelines adopted in this research does not refer to "laws," but to rules that are specific and precise, though not overly complex, and are responsive in a more direct fashion to the concerns of the decisionmakers. These guidelines set forth appropriate decision options for similarly situated defendants, but, at the same time, permit and even encourage noncompliance when special circumstances are present. Thus guidelines, as employed in the Philadelphia research, are intended to have a direct impact on decisions, as well as to embody ideal or theoretical bail policy. They are

narrow enough to promote consistency in decisions, yet do not lose sight of the individual defendant.

Finally, it is essential to point out that the guidelines process of policy review and change is, at its core, collaborative, based on the view that meaningful change is most likely to occur and to be effective when the principal decisionmakers, whose behavior is the subject of the change effort, are themselves centrally involved in the process of study and change. It is restating the obvious to note that the thrust of the bail reform efforts of the last decades has aimed at judicial decision practices. A starting assumption of the Philadelphia research was that the initial focus of bail reform on judicial decision practices was correct, but that as reform progressed, it failed to involve judges centrally in the business of defining the issues and formulating plans for change.

The Guidelines Method

Guidelines development of the variety undertaken in the Philadelphia bail study (modeled after the work of D. Gottfredson and L. Wilkins) proceeds in two stages: a descriptive and a prescriptive stage. The objective of the first phase of guidelines research in the jurisdiction under study, is to describe current decision practices as well as possible using social science methods. If current practices do not conform to desired policy--a determination made by the decisionmakers upon digesting descriptive data--guidelines research may move into the second, prescriptive phase, during which guidelines governing future decision practices may be formulated.

The descriptive stage of the research is important because it may provide the point of departure for prescriptive guidelines, depending on the degree to which decisionmakers may wish to anchor future practices on the foundation of

what is desirable in current practices. The assumption of this method of reviewing decisionmaking policy, however, is that with the feedback provided by the empirical study of past decisions, the decisionmakers are in a better position to chart their future course.

As a result of review and reformulation of operating bail policy, the product envisaged in the Philadelphia research was a decision framework based on specific criteria--made visible and explicit--that would be subject to ongoing scrutiny and debate and, when necessary or desirable, subsequent revision. The guidelines that emerged from the collaboration of judges and researchers--unlike the bail schedules of the past--do not consist of fixed, rigid rules that preordain decisions for every case. On the contrary, guidelines are conceived as ranges or "ball park" boundaries within which the court has agreed that most bail decisions ought to fall. The ranges produced through the guidelines construction process are meant to enhance the consistency of bail decisions within the jurisdiction, by specifying the normative decision for defendants who are defined, based on carefully weighted guidelines criteria, as "similarly situated." (See the attached examples of guidelines in use in Philadelphia in Appendix A.)

Although guidelines are designed to provide decision ranges to cover a majority of the cases processed, guidelines are not intended to apply perfectly or automatically to the endless variety of complex decisions that confront judges. In fact, a principal feature of the approach is its provision for the unusual or "unique" case. In these instances, judges may feel that certain circumstances require a decision alternative, tailored to the individual before him/her, other than that suggested by the guidelines. Because guidelines have been constructed with an eye to guiding decisions in the majority of cases, it is expected that exceptions will occur, by

definition, relatively infrequently. When an "unusual" case presents itself, the decisionmaker merely makes the required decision and then notes the reasons for the exception-taking. Studying the reasons for departures from the guidelines at a later time permits evaluation of the utility of guidelines as a practical policy tool and suggests areas where modifications may be needed.

A major feature of the guidelines decision approach, possibly of great value in the bail arena, is its provision for periodic feedback to the judges about the use of the guidelines by the court and their associated effects on key issues of concern. Guidelines thus are meant to generate information about their performance and to be revised and updated in an effort to maintain their relevance as a current policy instrument. It is this feedback and fine-tuning approach that distinguishes the guidelines strategy as an evolutionary mechanism, one designed to foster incremental change in decisionmaking and to institutionalize a framework for "learning from experience."

Study of Bail Practices in Philadelphia's Municipal Court: Descriptive Findings

When initially asked about their possible interest in participating in a guidelines study, the judges of Philadelphia's Municipal court expressed a variety of views about the practice of bail, pretrial detention and the likely utility of "statistical" studies in learning about and perhaps improving bail. Some judges were skeptical about the ability of social science methods to be of value in describing an overall policy when, in their minds, each bail decision--each defendant--was "unique" and posed unique problems. An interesting debate ensued about whether all cases, by definition, could be unique or whether patterns or themes would emerge that signaled implicit

decisionmaking policy. On the whole however, there was a willingness to participate in a study of bail and a curiosity about how well or how poorly the court as a whole or individual judges, performed the bail function.

At the same time, there was an awareness among the judges of the crowding problems besetting Philadelphia's correctional facilities, and although this was a concern expressed by a number of the judges, it was not a primary motivation in embarking on the study. Many judges believed that if they were "doing their jobs" in setting bail, there was little they could do about the shortage of jail space. Rather, their motivation was in learning how well they were "doing their jobs" at bail and how that performance might be improved. (An interesting part of the process involved a debate about what the "job" of bail was and how its performance might be measured.)

Finally, it should be pointed out that in agreeing to participate in the study, the Municipal Court made no promises about "imposing guidelines of any sort in the future." The judges specifically reserved the right to make up their minds about the state of bail and detention practices after reviewing descriptive findings.

In attempting to describe bail decision practices and their consequences, the research staff framed the empirical investigation after discussion with the judges about the areas of principal interest to them. The study was based on an analysis of data collected on 4,800 defendants entering the criminal process at the first judicial stage between the summers of 1977 and 1979.[8]

The following is a brief summary of the findings produced in the descriptive phase of the study on the basis of multivariate analysis:

(1) The analysis of bail decisions was organized into two components: the assignment of ROR and the selection of amounts of cash bail. The study documented the pre-eminence of the criminal charge as a theme in both decision components, but noted differences in factors of secondary importance. In addition to the severity of the charge, the choice of ROR over

cash bail was made on the basis of prior contact with the criminal justice system in the form of arrests, convictions, prior FTAs and pending charges, and the defendant's employment status and living arrangements. Defendants who were less seriously charged, had less serious prior records, were employed or living with a spouse or a child were more likely to be granted ROR. In addition female defendants were more likely to receive ROR, other factors being equal.

(2) As a result of the ROR versus cash bail screening component of the decision, defendants with relatively serious charges and prior records and with poor "community ties" were faced with the cash bail option. The selection of a particular cash amount by judges for these defendants appeared again to be influenced by the seriousness of the current charge and, secondarily, by prior record. Some of the themes important in the ROR choice figured in the cash decision (e.g., prior arrests and convictions and pending charges) while others did not enter the picture (e.g., prior FTAs and community ties measured as employment or living arrangements). The descriptive study concluded that failure to appear in court and pretrial crime may be nearly co-equal concerns in the granting of ROR (in that likely absconders and defendants deemed "dangerous" will not be assigned ROR), but that pretrial crime (defendant "dangerousness") may be the dominant theme in the selection of cash bail amounts by judges.

(3) In addition, the empirical analysis of bail decisions in Philadelphia discovered relative agreement (with some variability) among judges in the ROR component but noticeable variation in their use of financial bail. It was concluded that disparity is a feature of bail decisonmaking, but it derives mostly from the cash bail component in which judges decide upon particular dollar amounts for defendants not viewed as good risks for ROR. These findings were interpreted as indicating that judges can agree generally on which defendants are good risks but cannot agree as well on how to assign cash bail for defendants viewed as moderate or serious risks.

(4) A related finding was that, because the allocation of pretrial detention among defendants is tied directly to cash bail practices, the resulting use of pretrial detention is to an extent disparate or inconsistent when decisions of individual judges are compared.

(5) Surprisingly, the notable variability in decision practices and the related use of detention did not appear to translate into dramatic differences among judges in the FTA and rearrest rates generated by release defendants. Despite minor differences among individual judges, as a rule no single judge stood out as markedly better or worse than his/her colleagues at predicting absconders and defendants who would be rearrested during pretrial release. Overall, 12 percent of the 4,800 defendants

failed to appear in court and 16 percent were rearrested within 120 days for additional crimes.

III. DEVELOPMENT OF BAIL GUIDELINES AS A JUDICIAL RESOURCE: POLICY CHOICES

During the descriptive component of the developmental phase of the bail guidelines research in Philadelphia, data were analyzed to fuel debates concerning the goals of the bail decision and the standards that governed it. An initial task, for example, was to describe the current practices of judges deciding bail as accurately as possible and to identify those criteria that appeared to influence their decisions most heavily. Discussion of current practices--of what "was"--served then as a springboard for discussion of what ought to be.

A first step involved appraisal by the judges of the current "state of affairs" in bail in Philadelphia. The following kinds of questions were addressed by the judges using the empirical findings as a point of departure: Were bail decisions made in line with appropriate goals or criteria for evaluating defendants? Was there reasonable consistency in the decisions of the Municipal Court judges? To what extent did pretrial detention result from bail practices and for what kinds of defendants? To what extent did defendants abscond or become rearrested for crimes committed during the pretrial period?

A central goal of this second, prescriptive component of the feasibility study, was to develop models for improving Philadelphia bail decisions in the event that the Municipal Court judges viewed that as desirable. At the request of the judges, the research staff developed three models of guidelines, each having different policy implications, for consideration by the judges.

(1) The first most nearly reflected the current practices of the Municipal Court judges and, apart from providing consistency, offered little substantive revision of the court's bail practices.

(2) The second model was purely actuarial, setting forth suggested decision ranges for bail purely based on empirical assessment of defendant risk. Were bail decisions in the future to follow the actuarial model, great alterations in existing decision themes and practices would result. (It was found that empirical correlates of defendant failure during pretrial release on which the risk classification was based differed dramatically from factors influencing actual bail decisions.) Moreover, the debate about the consequences of predictive decisionmaking added to the problematic nature of the actuarial model.

(3) The third model combined features of the previous models, pulling a charge severity dimension from the "current practices" model and a defendant risk dimension from the "actuarial" model.

Suggested decisions under each of the guidelines alternatives were arrived at through analysis of past use of ROR and cash bail, past use of detention, and past rates of FTA and rearrest for defendants in each of the guidelines categories. A final feature of the guidelines format developed was provision for notation of reasons for departures by judges from the decisions suggested by the guidelines.

In constructing the "rules" to be used to guide the exercise of discretion in the bail function, significant questions of public policy arose inexorably. Perhaps most fundamentally, the goals of the bail decision needed careful consideration and articulation. Discussions among the judges in this area reflected the confusion, ambiguity and polarity that has characterized debate about bail and pretrial detention generally over the decades in the United States (Goldkamp, 1979).

Another important debate focused on discretion: How much judicial discretion in bail is desirable? How much is too much and how much is too little? Related to this discussion were reflections concerning the "tightness" and "looseness" of guidelines and the factors that should provide a rationale for making decisions that departed from the guidelines. How "good" were judges at predicting likely absconders and "recidivists"? Other

issues, though less central, needed to be debated by the judges in the development of the policy matrix--such as the preparation and maintenance of the information required for use of the guidelines, provision for future feedback, etc.

After lengthy debate of each of the versions of possible guidelines and their respective features and implications (and after statistical modeling of their likely effects), the judges selected the third, combined approach to be revised and subsequently tested in an experimental phase. In an important sense, the concrete results of difficult policy debates were built into the final version of the bail guidelines produced during the developmental stage: in the nature of the dimensions--risk and charge severity--defining the decision matrix, in the formulation of the suggested bail decision ranges, and in the provision for noting reasons when departures from the guidelines format would occur. Each of these facets of the guidelines format was the result of coming to grips with difficult, long-standing bail issues by the judges of the Municipal Court. An example of the bail guidelines that resulted is provided in Appendix A.

IV. IMPLEMENTING GUIDELINES: THE PHILADELPHIA EXPERIMENT

Choosing to Test Guidelines Through an Experiment: Logistics

Although the findings of the feasibility study strongly suggested a constructive use for the guidelines approach in the area of bail and pretrial detention, it was argued that implementation of bail guidelines should be planned with a rigorous evaluation component built in. This position, which was strongly supported by the President Judge of the Philadelphia Municipal Court, Joseph R. Glancey, as well as the funding agencies (the National Institutes of Corrections and Justice), was influenced by the knowledge of many examples of promising reforms in criminal justice that were marketed in advance of sound research demonstrating their worth.

Deciding upon and designing the experimental research approach to assessing the impact of bail guidelines was difficult enough, though perhaps satisfying to the research staff on an academic level. Operationalizing the experiment in a large urban criminal court system presented quite another set of challenges that were practical in nature. The principal dilemma was the fact that two bail approaches would be occurring simultaneously in one court system. Each of the approaches demanded different actions from participants in the normal bail process--not to mention different sets of paper work.

The first task in attempting to move toward implementation of the experiment illustrated very well the distance between the theoretical niceties of research design and the pragmatic realities of bringing about change in actual criminal justice settings. It is one task to randomly allocate judges to experimental or control groups on paper, it is quite another to discuss the imminent use of guidelines with the uninitiated "volunteers." Yet, even with the cooperation of the guidelines draftees, two other participants in the bail process required preparation for important roles in the experiment.

Perhaps the greatest work was required of the pretrial services interviewers whose job it was to prepare summaries of defendants' backgrounds for the judges presiding over bail proceedings. Normally, they interviewed defendants shortly after arrest and before preliminary arraignment (initial appearance) to assess their community ties, prior records, prior histories of FTAs or rearrests and to recommend to the judge whether the defendant should be granted ROR. No recommendations were made under normal procedures concerning cash bail, in fact, such a practice would have run contrary to the philosophy of reform underlying the Vera-type ROR interview procedures practiced in Philadelphia at the time.

Under the bail guidelines the pretrial services role was different. While the interviewers still provided a general descriptive summary to the judge for each defendant, they were now required to characterize each defendant along the guidelines dimensions. This meant the interviewers now had to classify the defendants according to charge (levels 1 to 15) and according to risk (groups 1 to 5). The charge classification meant careful consideration of statutory ranking and selection of charges designated as "most serious" under the guidelines framework. Moreover the risk classification meant correcly assigning points to defendants according to attributes related to flight or rearrest, adding the points and placing defendants in risk categories defined by ranges of points.[9] (See Appendix A.)

The Philadelphia Bail Experiment: Hypotheses and Findings

The purpose of the random designation of judges as experimental (guidelines users) and controls (nonguidelines judges) was to produce for study two comparable groups of decisionmakers. Defendants were stratified according to charge seriousness and assigned within strata to judges in a fashion similar

to the feasibility study, thus assuring equality of cases for each judge and sufficient variability in offenses for each judge. Each case was followed up to ascertain whether the defendant, if released, absconded or was rearrested. The aim of the analysis, then, was to contrast the decisions, characteristics and outcomes of defendants having bail decided under the different approaches.

Some of the questions examined in the study of bail decisions and followup of released defendants and selected findings from the experiment are briefly highlighted here:

1. Would judges actually make use of the bail guidelines and comply with them to the extent desired? By definition, for guidelines to be useful, judges should feel comfortable in employing them in a majority of bail decisions. In fact, the guidelines judges decided bail within the suggested ranges roughly three-fourths of the time--taking exception in a minority of the cases.

2. To what extent and in what ways would decisions produced through use of the bail guidelines differ from traditional (nonguidelines) decisions? Clearly, a goal of the guidelines experiment was to examine the possibility of bringing about significant change in intended areas. However, if after use of guidelines, the decisions of the experimental judges did not differ from those of the control judges in any significant manner, then the study would have to acknowledge that bail decisionmaking had not been affected in either a positive or negative fashion. (For example, is entirely possible to make decision guidelines so "loose-fitting" as to encourage great apparent compliance but with the real effect of having restructured nothing.)

Analysis did reveal similarities between the two bail decision approaches (for example, in the level of ROR used and in the proportion of defendants who were detained) as well as differences (for example, the average cash bail

decision was distinctly lower under the guidelines). Subsequent examination showed, however, that surface similarities between the bail approaches masked real differences in the kinds of decisions given defendants. ROR, for example, seemed to be awarded more liberally to nonseriously charged defendants and more stringently to seriously charged defendants by guidelines judges than by judges who did not use the guidelines. Moreover, the guidelines approach distinguished itself (by differing to the greatest degree from the traditional approach represented by the control judges) in precisely the region associated with the greatest inequities: the use of cash bail in moderate to serious cases.

3. Did the use of bail guidelines foster a more equitable approach?

Because of the debate over the appropriate goals of the bail decision and pretrial detention and the questioning of the criteria guiding judges' decisions (e.g., the seriousness of the charged offense versus the defendant's community ties), definition of "similarly situated" for criminal defendants--the framework used for evaluating equitable treatment--has proven difficult. Yet the equity issue at bail was a major concern of the Philadelphia judges and a principal reason for their willingness to explore the utility of a guidelines approach.

By using the guidelines classification as the framework for evaluation of bail decisions for "similarly situated "defendants--arguing that the court had defined similarly situated by establishing the dimensions of risk and severity as the standards that should govern bail in the Municipal Court--the question examined in the experiment was whether similar categories of defendants were treated "more comparably" under bail guidelines than under normal practices. The analysis found that bail decisions assigned using bail guidelines were dramatically more consistent, both overall and in a substantial majority of

individual guidelines categories examined. The final report (Goldkamp and Gottfredson, 1983:95) concluded that "the guidelines approach to bail decisionmaking may represent a substantial tool for reducing the inequities associated with the bail function and the resulting use of pretrial detention."

4. Did the guidelines bring about a more rational approach to bail decisionmaking? In questioning the "rationality" of bail practices, the experimental approach was not aimed at elimination of "irrationality" but at encouraging a decisionmaking policy that was both more explicit than traditional practices and more directly based on criteria tied to the outcomes of concern, such as defendant flight and pretrial criminality.

By offering a decisionmaking framework based on known criteria that have been debated and adopted by the Municipal Court, the question was whether sub rosa decisionmaking (and the resulting pretrial detention) could be moved several steps into the open, into the "sunlight" of scrutiny.

The results of the evaluation of the "rationality-enhancement" hypothesis were mixed. First, the experiment was successful in implementing an explicit approach to bail decisionmaking based on the rational study of recent bail decisions and debate about their possible modification. Yet, the hypothesis that the decisions of the experimental judges should be markedly more related to the severity and risk standards underlying the bail guidelines than the control counterparts was not supported. The effect was only slightly in the direction of a greater relationship.

5. Did the guidelines bring about more effective bail decisions? Can guidelines reduce the rates of failure-to-appear in court (FTAs) among released defendants and the rates of rearrest for new crimes committed during the pretrial period? Like the equity hypothesis described above, answers to

questions about the effectiveness of bail and detention practices are not as simply obtained as may at first be imagined.

Although such a question is direct and highly practical, its measurement is deceptive and deserves a word. The difficulty is illustrated, for example, by the knowledge that bail practices not permitting the release of many defendants at all before trial could well produce very low rates of FTA and rearrest and thus be labeled highly effective. That is, if, for example, Philadelphia judges detained all defendants before trial except those charged with the least serious category of misdemeanors, having no prior records of arrest or conviction, and having favorable community ties (such as an intact, well-regarded family and longstand employment), one might expect a very low rate of "failure" during the release period.

Though impossible to operationalize, a true measure of the effectiveness of bail procedures, on the other hand, would need to take into account not only the proportion of released defendants absconding or becoming rearrested, but also the proportion of all defendants released. Moreover, an accurate effectiveness measure would also record the proportion of defendants inappropriately confined, i.e., those who would have been successful if permitted release (or, conversely, the proportion of detained defendants who would have committed crimes or absconded if granted release). Because of the difficulty in learning about the latter kind of phenomenon, discussions of effectiveness in bail are seriously limited.

With this caveat in mind, the experimental analysis nevertheless compared the failure rates among defendants released under the guidelines and nonguidelines decision approaches: the differences were so slight as to be inconsequential. The report concluded that although the rates of defendant failure were not greatly reduced under the first-draft version of guidelines, they

were not increased as a result of their use--and this was viewed as a positive finding, given the other dramatic changes that had been brought about (such as the greater visibility of bail policy and improved equity of bail decisions). Moreover, it was further noted that the guidelines approach held potential for future improvement in effectiveness when revision of the guidelines based on analysis of category-specific failure rates would later occur.

In addition, when a partially improved effectiveness measure was calculated taking into account rates of failure and overall rates of release, guidelines decisions were rated more effective in four of six charge categories (defendants charged with third, second and first degree misdemeanors and defendants charged with second degree felonies) and two of three guidelines "zones," with the most distinguishing difference occurring in the presumptive cash zone. (See Appendix D of the final report.)

6. Did guidelines result in a different, reduced or more selective use of pretrial detention? The guidelines experiment hypothesized that bail decisions could be made more consistent, more explicit and more equitable. Although pretrial detention--at least in the Philadelphia study--was not decided directly (except in murder cases, in which denial of bail outright was routine) but resulted indirectly from the judges' manipulation of cash bail, a question posed by the study was whether the use of pretrial detention would, by extension, also be modified.

Comparison of the level and duration of detention between the groups of guidelines and nonguidelines defendants did not reveal pronounced differences. Qualitative differences noted at the bivariate level of analysis (that the guidelines judges assigned detention more generously among the more seriously charged and less commonly among the less seriously charged than normal practices) did not survive multivariate analyses. The report (Goldkamp and

Gottfredson, 1983:97) concluded that "when statistical controls are exercised, the kinds of defendants detained under each of the approaches are roughly similar."

V. LESSONS FROM THE PHILADELPHIA BAIL EXPERIMENT: QUESTIONS AND ANSWERS

The research described in this discussion and in two reports (Bail Decisionmaking: A Study of Policy Guidelines and Judicial Decision Guidelines for Bail: The Philadelphia Experiment) attempted to address some of the continuing issues facing bail and pretrial detention practices in the United States by bringing to bear a decisionmaking improvement strategy--guidelines--developed elsewhere in the areas of parole and sentencing. A number of possible benefits were hypothesized, if the decisionmakers themselves could become the catalysts of policy review and the focus and locus of change, including structuring judicial discretion at bail; making the bail agenda more visible and rational and more frequently conducted on the basis of explicit criteria; enhancing the equity and effectiveness of bail decision; and generating feedback to bail judges about their decisions. Because of the importance of the bail decision for the operation of the courts, for public safety, for jail crowding and for the rights of criminal defendants, it was postulated that the guidelines technology could serve as a major resource for the judges responsible for its conduct.

As we have just seen, the results of the comprehensive feasibility study and subsequent experiment on the whole suggest great promise for the bail guidelines strategy. However, one of the arguments for approaching the study of bail guidelines as a rigorous experiment, it must be recalled, was so the relative strengths and weakness of the innovation would be examined in advance of a wider-scale implementation. As a result of that research approach, criminal justice practitioners concerned with the bail and pretrial detention related issues addressed by the guidelines approach are now in a position to weigh more fully its various features. Rather than trying to decide whether they are "good" or, "bad" in some global sense based on a full-scale

implementation, the experiment has provided an opportunity to contrast the effects of guidelines with customary bail practices occurring contemporaneously in the same court.

Although the reader of the summaries in Sections III and IV (and, hopefully, of the full-length reports) will have noted several rather positive and promising findings, he/she will also have pondered questions posed by other, more mixed findings. In fact, the findings of the research raise questions both for Philadelphia, as the Municipal Court continues its use of bail guidelines, and for other jurisdictions, which may wish to consider the possible benefits guidelines might bring.

The Practical Implications of Bail Guidelines: Questions for Philadelphia

The judges of Philadelphia's Municipal Court decided on the basis of the findings from the experimental research to adopt bail guidelines for use by the entire court (of 22 judges) beginning in the late spring of 1982. As a result of that decision, the logistics of such a shift in court policy had to be faced and then carried out. Although simple to say, this meant redesigning and re-routing paperwork, updating the pretrial services function, familiarizing judges who had not previously used the guidelines with the procedures, and modifying the on-line computer to incorporate items of information necessary to guidelines decisionmaking. Now that these kinds of needs have been attended to, however, there are a number of questions the Municipal Court will have to face in the near future.

One important question, of course, will be whether meaningful use of the guidelines will be sustained by the court or whether they will fall into disuse, either as the "novelty" wears off or as a generation of newly elected judges replaces those sitting on the Municipal Court bench at the time of the

guidelines research and innovation. This question can only be answered with the passage of time and depends upon the extent to which new judges are "educated" concerning the use and purposes of the guidelines.

What was implemented and experimented with in Philadelphia's Municipal court was a first-draft version of bail guidelines, and being the first attempt with no other, previous efforts to inform its construction, it would be surprising if the first version were found to be perfect in all or even most respects. Thus, it would be logical to expect that the judges would wish to make adjustments in areas shown to be in need of improvement. In fact, a well-operating guidelines system is theorized to provide the capacity for periodic revision of the guidelines based on new realities suggested by periodically summarized data relating to their use and effectiveness.

The initial signs that the Municipal Court understands this feedback feature of guidelines are quite favorable. Not only have the guidelines been revised once slightly at the conclusion of the experiment and before full-scale implementation by the Court based on the comments of the first "user" judges, but they have been revised subsequently based on the specific recommendations made in the final report (Goldkamp and Gottfredson, 1983: Chapter 8). At the same time, the Court has developed a computer-assisted procedure for producing periodic reports for evaluating the use of guidelines by Municipal court judges.

Another question with significant implications for the use of bail guidelines is about the extent to which guidelines decisionmaking at bail becomes an integrated part of the overall decisionmaking in Philadelphia's criminal justice system. The guidelines project in Philadelphia, it is true, was only intended to be a resource for initial bail decisions. The project was carried out in Municipal Court because its judges have the responsibility for deciding

initial bail for all criminal cases entering Philadelphia's court system (although the cases are subsequently tracked either to remain in Municipal Court for misdemeanor trials or to move to the Court of Common Pleas, where felony cases are tried).

Although this was considered the decisionmaking arena in bail with the most immediate consequences for the defendant, the public, the courts and the detention facility, reviews of initial bail decisions may occur at a number of subsequent stages, some of which are out of the jurisdiction of the Municipal Court. It will be important in assessing the full contribution of guidelines to learn whether subsequent bail decisions made by other judges take into account the process and information going into the guidelines-influenced initial bail decision.

The Contribution(s) of Bail Guidelines: Questions for Other Jurisdictions

In short, there are a number of questions about the impact and utility of bail guidelines as developed and implemented in Philadelphia that could not be answered by the findings of the recent experiment but that will be important to consider in the near future. The research findings and the experience of the Philadelphia Court, however, also raise questions that may be weighed by other jurisdictions contemplating possible use of bail guidelines. Because the Philadelphia research was designed with issues relating to the conduct of bail and the use of pretrial detention in the United States generally in mind, it may be helpful at this point to consider a number of these broader but essentially practical questions:

1. Don't guidelines--bail or other kinds--simply calcify existing practices that are supposedly the targets of reform?

It is possible to construct guidelines based only on a summary of existing current practices. It is conceivable as well, therefore, if existing

practices are deficient, that guidelines based only on a description of current practices will mostly institutionalize what is "bad" about "bad" decision practices.

Two comments need to be made in response to this criticism, however. First, the guidelines process carried out in Philadelphia (and pioneered by D. Gottfredson and L. Wilkins in Federal parole) did not stop short at the description of existing practices, but rather employed information describing existing decisionmaking as fuel for policy debate among the judges and as a springboard for crafting prescriptive guidelines which--as the experimental findings demonstrated--produced a different kind of bail decisionmaking. Because changed practices resulted, it was a far cry from calcification of the status quo.

Secondly, it should be noted that the first model of bail guidelines offered for discussion by the judges--called the "status quo" model--was based essentially and intentionally on descriptions of current practices only. Although this approach was rejected by the judges, it is not true that adoption of guidelines of this variety--based on description--would have made no contribution. On the contrary, judges would have, for the first time, been adopting explicit policy, thus making the basis of their decisions known. Furthermore, more consistent, less erratic decisionmaking would have been produced, had such a version of guidelines been adopted.

It should finally be noted that this approach to guidelines is based on the voluntary efforts of the judiciary. While the Municipal Court judges were committed, as a first step, to examining current practices and reviewing operating bail policy, they made no promises in advance that they would seek to change those practices and that policy, no matter what they discovered.

Neither their motivation nor that of the research staff included change for the sake of change.

For an excellent discussion of this question as it relates to guidelines generally, the reader is referred to M. Gottfredson and D. Gottfredson (1984).

2. Are guidelines uniquely suited to Philadelphia? If not, what results may be expected elsewhere?

The guidelines strategy was tested in a rigorous experiment before being implemented in the Philadelphia court in a comprehensive fashion. This kind of experiment has not preceded other kinds of bail reforms, nor has it characterized uses of guidelines in sentencing and paroling decisions where the concept was first developed. Although, as a result, the strength of the findings permits conclusions to be drawn with more confidence than if other less rigorous (or no) research approaches had been employed. What we know so far has to do with the experience of bail guidelines in Philadelphia. Bail guidelines have simply not been tried elsewhere.

There are features of the Philadelphia site that might raise questions about whether the success of bail guidelines may be explained by factors unique to Philadelphia. For example, the pretrial services function in that city is well-developed and has been in the forefront of progressive bail measures for more than a decade. This may have contributed to interest in the proposed research on the part of the Municipal Court; it certainly made it possible to collect the kind of data necessary for the research. Also, Philadelphia happened to have a judicial system that centralized initial bail decisionmaking in one court. Moreover, the leadership of that Court happened to be open to the idea of the research. Once the research was underway, in

fact, the President Judge of the Municipal Court not only viewed the project as a valuable resource, but worked actively to support the research process.

Thus, given all these factors contributing to the guidelines experience in Philadelphia, it is entirely possible to imagine other settings where the research either would not have been possible or would not have produced such positive results. The attitudes of the judiciary and other justice agencies, local politics (the dynamics of the "local legal culture") and the availability of data are all variables that could militate against the success of such a collaboration between social scientists and the judicial leadership elsewhere.

On the other hand, the selection of Philadelphia was mindful of questions relating to the generalizability of the findings. Its unique characteristics aside--and all jurisdictions possess attributes that make them different from others--Philadelphia was chosen as the site for the experiment because it was a major urban center with all the crime- and justice-related problems of other American cities. In 1978, at the beginning of the study, reported crime was on the rise in Philadelphia, as was the caseload in the backlog of the criminal courts, as was the population of the city correctional facilities, as was unemployment, etc. In these regards, it was argued that the lessons learned by the Philadelphia experience with bail guidelines would serve other similar urban jurisdiction as well.

In brief, at this point it is fair to expect that other jurisdictions with at least some features similar to Philadelphia should expect comparable results. Nevertheless, because guidelines have not been attempted in other kinds of jurisdictions, the potential impact of other implementations--even of other versions of guidelines--remains to be determined.

3. Can other jurisdictions simply adopt the Philadelphia guidelines, or is a lengthy, comprehensive research project a prerequisite?

The research process that produced bail guidelines in Philadelphia was an essential part of the reason the Municipal Court found the concept useful and later moved to experiment with and then to adopt them in a full-scale implementation. Because the judges were able to "study themselves," debate the findings and discuss alternative models for revising their bail practices, the subsequent guidelines took on a certain meaning and utility that would not have been possible--in Philadelphia at least--had the researchers produced the guidelines independently and sought their implementation. Thus, part of the response to this question is that the collaborative, data-grounded policy review process is a very important ingredient to the development and usage of decision guidelines.

Yet, it may not be unreasonable to speculate that other jurisdictions--perhaps with a greater consensus in the judiciary that guidelines could be of assistance--might well establish guidelines through a much shortened process. It is important to point out, however, that bail guidelines differ from bail schedules, for example, in that they are based on knowledge and critique of current practices and not purely on what officials--in isolation of knowledge of actual practices--might concoct.

It is fair to say that Philadelphia judges were surprised at some of the findings shown to them, such as the average levels of bail set by them, their use of pretrial detention and the rates of absconding and rearrests among defendants they released. If, in advance of the research, the judges had been asked to guess how high bails were usually set and to guess about other characteristics of the bail process, the judges' hunches would have been at odds with what the data eventually showed--in some areas to a noticeable

extent. If, similarly, guidelines had been based only on what the judges believed to be true (as opposed to their critique of descriptions of how bail was in actuality practiced), such guidelines would have brought about automatically different bail decisionmaking--different both from the status quo and from the revised version of bail the judges might have believed they were creating. For this reason, some part of the collaborative, research process--whether or not a shorthand version of the Philadelphia model--would seem to recommend itself.

4. Can bail guidelines be adapted usefully to assist bail decisionmaking in jurisdictions governed by a variety of laws that may or may not resemble those in effect in Pennsylvania?

Although laws governing bail and pretrial detention across the United States vary in a number of regards--such as in the goals or criteria expressed as guiding bail decisions (Goldkamp, 1979; Goldkamp, 1984b)--they do not differ in two important areas: (1) all laws leave a considerable role for judicial discretion in the bail task; and (2) all require the judge to be able to gauge the risk of flight or likelihood of criminality posed by defendants. Bail guidelines, as illustrated by the Philadelphia model, are intended to aid the judiciary in structuring and improving discretionary decisionmaking. Although different judiciaries might wish to emphasize different goals or decision standards--and as a result produce alternatives to the guidelines model employed in Philadelphia--guidelines have the potential for being a useful decision resource regardless of the laws in effect.

5. Can guidelines be expanded in scope to involve a fuller range of release options than just the ROR and cash bail decisions utilized in the Philadelphia guidelines?

Guidelines may be viewed as establishing a classification system for use in evaluating defendants in anticipation of the bail decision. In the Philadelphia version, the classification scheme may be conceptualized as a matrix defined by risk and charge severity "scores." The aim of such a classification was to aid judges in differentiating among defendants on the basis of dimensions agreed upon by the court as central to the bail task and then to suggest decision alternatives tailored to the classification results.

Critics have argued, for example, that cash bail should be abolished because of its discriminatory side-effects and because of its questionable value as a deterrent to flight or crime by defendants who have posted bail before trial (Foote, 1954; NAPSA, 1978; Gottfredson and Goldkamp, 1984)--especially when the services of a bondsman are involved as well. The Philadelphia judges discussed the traditional reliance on cash bail, but argued that, in the short term at least, its imperfections were outweighed by other practical requirements. Other jurisdictions may wish to produce guidelines incorporating other alternatives, such as conditional release, third party custody, or intensive supervision.

Although the Philadelphia model did not follow that approach, the President Judge of the Municipal Court, Hon. Joseph R. Glancey wrote in his foreword to the final report (Goldkamp and Gottfredson, 1983:xi):

> Possibly, then, one value of the guidelines will be that they have made us confront more squarely the fact that in setting bail we are really making a detention decision. We may eventually arrive at a point where, instead of camouflaging our decision in terms of cash bail, we may establish more direct decision categories such as 1) outright cash release, 2) alternatives to jail involving conditions (e.g., conditional release, supervision), or 3) detention--with no dollar signs attached. Will we have the courage to do that?

Although bail research has not yet focused on study of the conditions of release most effectively associated with given categories of defendants, the guidelines format may be an important step in that direction because of its

classification features, an eventual result of which might conceivably be a more diverse array of decision alternatives in the guidelines.

6. Are guidelines something that pretrial services agencies may implement on their own?

Within the meaning of the term as used in the Philadelphia research (following the conceptualization by D. Gottfredson and Wilkins) by definition "guidelines" involve direct participation, supervision and monitoring by the judges responsible for bail decisions and are designed to be a resource of "their own making." In jurisdictions where they exist, pretrial services agencies will have an important role to play in gathering the information describing defendants which is an essential ingredient of the guidelines and in assisting the judiciary in monitoring the use and consequences of guidelines. However, guidelines cannot be implemented without the decisionmakers themselves playing the central role.

7. Do bail guidelines lend themselves to a legislative as well as (or as opposed to) a judicial approach?

Observers of criminal justice are aware of the legislative approaches to sentencing reform referred to as "sentencing guidelines." Thus, it is clear that legislatures may decide to develop guidelines in bail as they have in other important public policy areas, such as sentencing. Just as clearly, legislatures have been taking increasingly active roles in reforming laws governing bail and pretrial detention in many states during recent years (Goldkamp, 1984b). Nevertheless, it is useful to differentiate between legislatively imposed guidelines and guidelines developed by judiciaries as resources for decisionmaking at difficult criminal justice decision stages.

Two principal differences between judicial and legislative guidelines approaches ought to be recognized: a) the difference in method, and b) the difference in likely impact.

The difference in method may be so great as to favor an argument that "guidelines" developed in the legislative context have a different meaning. Just as the judicial approach involves a data-grounded review of bail policy that may result in a reformulation of certain aspects of bail practice and the use of pretrial detention, the legislative approach too may employ social science methods in constructing guidelines and may entail an elaborate review of decisionmaking policy. However, different in the legislative example is that review of judicial policy is being carried on by a different branch of government--and, although many may argue its legitimacy, that method for modifying judicial practices is likely to be viewed as far from collaborative in nature by the affected judiciary.

Second, legislatively and judically developed guidelines to bail may differ significantly in their impact precisely because legislated change in judicial practices is generally viewed by judges for what it is, change imposed from the "outside." Consequently, legislative guidelines may generate resistance rather than cooperation or compliance among the judges who are the targets of the guidelines.

Of course, guidelines developed by the judiciary to govern one of its areas of decisionmaking responsibility may still be met by resistance on the part of some recalcitrant member judges. Nevertheless, this form of guidelines will be viewed as an effort to bring about change in judicial practices coming from within, from the judges themselves. Resistance to intra-mural innovation is of a different sort.

One assumption of the Gottfredson-Wilkins guidelines approach is that change brought about by the decisionmakers themselves concerning their own behavior will have a greater chance of gaining acceptance and support than externally imposed change efforts. It remains a subject of debate whether needed changes in bail practices may ultimately be viewed as so pressing as to preclude the voluntary guidelines approach and to require instead an externally imposed legislative approach. Given the increased frequency of revised bail and pretrial detention laws in the last decade, apparently some legislatures and (in states where constitutional amendments have been ratified) some publics are convinced of precisely such a need.

8. Are guidelines intended to be an instrument of and could they bring about a pretrial version of "selective incapacitation" of dangerous defendants?

As this synopsis of the bail guidelines research in Philadelphia has perhaps demonstrated, the guidelines approach was not devised to address only one bail or pretrial detention issue; rather a broad spectrum of issues was addressed, including the following: the exercise of discretion at bail, the goals of the bail decision, the rationality and visibility of bail decision-making, and the equity and effectiveness of bail decisions. The question of the potential dangerousness of defendants released on bail before trial--a question dealt with under the rubric of the effectiveness hypotheses examined in the research--was a focus in the development of the Philadelphia guidelines in the judges' decision to incorporate into the guidelines a risk dimension designed to classify defendants according to their relative probability of absconding and/or becoming rearrested for new crimes.

Not only was it admitted that the community protection agenda was one practiced sub rosa by most judges but it was argued as well that authority for addressing the danger concern existed under the Pennsylvania Rules of Criminal

Procedure promulgated by the Supreme Court.[10] For that reason, the Philadelphia bail guidelines did, among its other concerns, attempt to respond to the danger agenda.

The answer to the question about whether guidelines have been designed in part to serve as a vehicle for effectuating "selective incapacitation" at the pretrial stage depends on what one means by "selective incapacitation" (Greenwood and Abrahams, 1982). The theory that social science methods may accurately isolate persons who, if they could be confined now, would be prevented from committing a disproportionate share of future crimes is not as new to the pretrial arena as it is to sentencing debate. Proposals that would deprive a convicted person of liberty beyond what might be normally ordained by the penal code based on predictions of future behavior have been highly controversial (Von Hirsch and D. Gottfredson, 1984). Despite the seductiveness of the idea, the difficulties with implementing a just system of "preventive detention" (as the concept of selective incapacitation has been known in the pretrial area) are even more complex, principally because the margins of error associated with such "preventive" confinement raise weightier issues when the persons confined have been accused but not convicted of any crime (Foote, 1954, Dershowitz, 1970; Tribe, 1970; Ervin, 1971; Angel et al., 1971).

In short, although bail guidelines in Philadelphia were designed to take the likelihood that a defendant might commit additional crimes into account, they were not specifically designed as a system of preventive detention.

That having been affirmed, it is necessary to deal further with the issue of "selectivity" that underlies the appeal of the notion of selective incapacitation and its meaning for bail and the use of guidelines. While it may not be reasonable to characterize bail guidelines as a tool of selective pretrial

incapacitation; it most certainly is reasonable to argue that guidelines have been designed, inter alia, to improve the overall "selectivity" of bail decisions and the use of pretrial detention.

The distinction is important. In attempting to improve the rationality of bail policy, the guidelines in Philadelphia have sought to institutionalize criteria (charge severity and risk of defendant misconduct) more strictly related to the aims of the bail decision and the use of pretrial detention. At the same time, the guidelines sought to improve the overall effectiveness of bail decisions--that includes releasing under least onerous conditions as many defendants as not likely to abscond or to commit serious crimes that threaten the safety of the community or of victims or witnesses.

Effectiveness also means that pretrial detention should be reserved--much more "selectively"--only for defendants who represent the gravest risks of these outcomes and for whom no other alternatives of release will suffice to restrain them from actualizing these risks. In this summary as well as in the final report of the Philadelphia bail experiment, the authors acknowledge a) that effectiveness is difficult to measure (if not impossible as regards the use of pretrial detention) and b) that, in contrast to what may be a positive potential capacity of guidelines, data concerning the actual impact of guidelines in Philadelphia do not support a conclusion that bail guidelines were substantially more effective or selective.

9. What value do bail guidelines have for coming to grips with jail overcrowding?

As jail overcrowding has surfaced as an increasingly stubborn criminal justice issue of the 1970s and 1980s, critics have naturally focused on the role of bail practices as a major contributor to crowded jail populations. One of the central interests of the funding agencies at the earliest stages of

the research as well as at its completion was to learn what implications bail guidelines might have for jail crowding. The question was additionally apt regarding the study site, for Philadelphia had been contending with crowding-related litigation since 1971.[11] Although this was not a question directly treated by the research, there appeared to be two principal ways in which the development and use of bail guidelines have relevance for the problem of jail overcrowding.

To discuss the first, it may be useful to recast the question in the following manner: Will use of bail guidelines lower the population of the jails? The answer must be: it depends.

The hypothesized value of guidelines is that the bail task may be organized and refocused in a fashion not otherwise achievable. To the extent that bail practices in a given jurisdiction have been highly chaotic, inconsistent or improvisational, pretrial detention populations may reflect their poorly operating gatekeeping mechanism. If bail guidelines could be implemented to bring greater order (rationality) to the judicial bail task, one likely result might be the more "appropriate" use of pretrial detention. Depending on whether the jail in a given jurisdiction has in fact been holding persons who would be expected to perform quite reasonably if granted pretrial release, guidelines, through institutionalizing better initial screening of defendants through improved bail decisionmaking, might result in a reduced use of pretrial detention with relief from crowding accruing to the jail.

It is equally possible that guidelines-improved bail practices may lead to the holding of additional categories of persons who had not been confined under the previous system. Though the makeup of the population may be modified through better bail screening under guidelines, it is quite conceivable that "better" bail practices will cause no lowering of the overall level of

pretrial detention. Moreover, in a jurisdiction with periodic reviews of the bail status of confined defendants, it may even be the case that such mechanisms will already have kept detention to its lowest possible level and that guidelines, though improving the quality of initial bail decisions (and thus the appropriateness of the initial stages of pretrial detention), may have little power to alter population levels among the pretrial detained.

It must be noted, however, that to the extent that the use of cash bail remains the mechanism most commonly bringing about the detention of defendants before trial--rather than a direct "in/out" decision--the impact of bail guidelines on pretrial detention will remain once-removed or indirect. They may importantly affect the use of cash bail, but will they dramatically influence the defendant's ability to raise given amounts of bail and thereby his/her prospects for release or detention? In contrast, guidelines may directly affect who will <u>not</u> be detained by formulating specific policies for use of personal recognizance.

These confounding factors notwithstanding, there is nevertheless an important second way in which bail guidelines have implications for attacking prison crowding: Indeed, crowding has reached such levels in some localities that officials are being forced to adopt emergency makeshift methods for expediting the release of significant numbers of detainees. Methods are often proposed that not only cause great controversy but produce unsatisfactory, self-defeating results.

For their part, the judges who decide bail have conceptual difficulty with <u>ad hoc</u> measures that have the effect of countermanding their initial bail decisions, feeling strongly that such measures ignore the deliberations that underlie the original judicial decisions. If it is correct to view the responsibility for bail policy as that of the judiciary (and, admittedly, some

legislators might debate this), then it is logical to argue that evaluation of the appropriateness of pretrial detention in crowded jails reaching the crisis point ought to be framed in terms corresponding to the yardsticks defining judicial bail policy--at least in jurisdictions where there is reason to hope that such policy has been well thought out and evenly applied.

Bail guidelines may prove to be a valuable resource in examining the crowding dilemma because the judges developing guidelines would have held the necessary but seldom conducted judicial debate about which goals and factors ought to govern bail and have incorporated them into operating decision guidelines. (Using the example of the Philadelphia guidelines, the Municipal Court judges instituted change severity and indicators of risk of flight and/or crime as the relevant standards.) Thus, where guidelines exist, although they were not designed to be a jail classification tool, they may serve as a lens through which the appropriateness of pretrial detention may be judged.

When the jail population was examined from this perspective in Philadelphia, it was found that a small percentage of defendants had characteristics placing them in categories for which outright release (on ROR) was prescribed by the newly developed bail guidelines. (See Chapter 7 of the final report.) A large percentage were found to be held on bails much higher than would have been suggested had the guidelines been in force at the time of the examination of the jail population. In a system where guidelines had been in operation for a long period of time, use of guidelines as a classification tool for the evaluation of the appropriateness of pretrial detention might reveal, on the other hand, that most inappropriate detention had been eliminated. The debate about jail crowding might then be forced to shift to other questions about

insufficient jail space--or might result in a demand that the bail guidelines themselves be re-examined.

NOTES

1. Beeley (1927) termed defendants who were confined but who appeared to be suitable risks for pretrial release based on social background characteristics "dependable" in his study of Chicago's County Jail during the 1920s.

2. For a review of these issues, see Chapter One of the report of the feasibility study of bail guidelines (Goldkamp, Gottfredson and Mitchell-Herzfeld, 1981). See also Foote (1954, 1965a, 1965b); Freed and Wald (1964); Goldkamp (1980).

3. 18 U.S.C. §§3146-3152.

4. Thomas (1976), for example, questioned whether the community ties approach endorsed by the bail reform movement actually eliminated large numbers of indigent defendants from pretrial jail populations. See also Friedman (1976).

5. See Chapter One of the report of the feasibility study (Goldkamp, Gottfredson and Mitchell-Herzfeld, 1981) and Goldkamp (1980).

6. The efficacy of a number of legislative approaches may be questioned on at least two grounds. First, legislative changes in judicial behavior has always been an undertaking with less than illustrious results (Baar, 1980; Nimmer, 1978). Second, there is little empirical support for the view that such laws will, to a noticeable extent, reduce the level of serious crimes committed by defendants on pretrial release. Perhaps the best existing study, by Angel et al. (1971), examined what the effects of the District of Columbia preventive detention law would have been if applied to Boston defendants. That study concluded that in exchange for a barely noticeable reduction in the amount of serious crime, it would have been necessary to confine approximately 100 defendants to have restrained 10 from committing the feared offenses. For a comprehensive analysis of current danger-related bail and pretrial detention measures, see Goldkamp (1984b).

7. For a discussion of the application of guidelines to parole and sentencing and the issues raised by their use, see in addition to D. Gottfredson and Wilksins (1978), Blumstein et al. (1983), Galegher and Carroll (1983) and M. Gottfredson and D. Gottfredson (1984).

8. Because a special thrust of the study was to examine decision-maker variability, the study employed a design stratified by judge (20 judges) and seriousness of charge (6 gradings of misdemeanors and felonies). The results, thus, were not designed as estimates of Philadelphia defendants overall.

9. Interestingly, the predictions of local critics that pretrial services interviewers would be unable to "add" proved unfounded. Mistaken calculations of risk were shown to be very infrequent.

10. Pa. Rules Crim. Pro. 4003 (3) conditions the granting of ROR on, among other factors, whether "the defendant poses no threat of immediate harm to himself or others."

11. Jackson v. Hendrick, Philadelphia Court of Common Pleas (No. 2437, February 1971).

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APPENDIX A: THE PHILADELPHIA GUIDELINES FORM

Date ______ Log # ______ Name of Defendant ______ Police Photo # ______ Calculated by ______

Bail Guidelines Judicial Work Sheet

LEAST SERIOUS CHARGES ································ MOST SERIOUS CHARGES

Risk Groups	1	2	3	4	5	6	7	8	9	10	11	12	Risk Groups (points)
LOWEST RISK OF FAILURE TO APPEAR AND REARREST	ROR 01	ROR 06	ROR 11	ROR 16	ROR 21	ROR 26	ROR 31	ROR-$1,500 36	ROR-$1,500 41	$800-$3,000 46	$1,000-$3,000 51	$2,000-$7,500 56	I (+19 to +13)
	ROR 02	ROR 07	ROR 12	ROR 17	ROR 22	ROR 27	ROR 32	ROR-$1,500 37	ROR-$1,500 42	$800-$3,000 47	$1,000-$3,000 52	$2,000-$7,500 57	II (+12 to +10)
⋮	ROR 03	ROR 08	ROR 13	ROR 18	ROR 23	ROR 28	ROR-$1,500 33	ROR-$1,500 38	$500-$1,500 43	$1,000-$3,000 48	$1,000-$3,000 53	$2,000-$7,500 58	III (+9 exactly)
GREATEST RISK OF FAILURE TO APPEAR AND REARREST	ROR 04	ROR 09	ROR 14	ROR-$1,000 19	ROR-$1,000 24	$500-$1,500 29	$500-$1,500 34	$500-$2,000 39	$800-$2,500 44	$1,000-$5,000 49	$1,000-$5,000 54	$2,500-$7,500 59	IV (+8 to +4)
	ROR 05	ROR-$500 10	ROR-$1,000 15	$300-$1,000 20	$500-$1,000 25	$500-$1,500 30	$500-$2,000 35	$500-$2,000 40	$800-$3,000 45	$1,500-$5,000 50	$1,500-$5,000 55	$3,000-$10,000 60	V (+3 to -13)

Charge Severity Dimension—Charge Levels

Risk Severity Dimension—Risk Groups

"n" Negative / "p" Positive

CONSTANT	4
crim. categ.	
arrests	
cr. + arrs.	
pend'g chgs.	
FTA's	
age of def't	
age + FTA's	
comm'ty ties	
Col. Total	
Subtract "n" (if smaller)	0
TOTAL POSITIVE	

(*Nos. & ltrs. for coding purposes)

Selected Guidelines Range:

Actual Decision:

☐ ROR ☐ ______ (amount)

IF OUTSIDE GUIDELINES, CHECK REASON BELOW

IF YOU GO BELOW THE GUIDELINES AMOUNT—SHOW REASON: [DEPARTING FROM GUIDELINES BY USING A LOWER FIGURE (ROR, or lower financial bail, than in guidelines decision) CHECK THE APPLICABLE BOX(ES) ACROSS TO THE LEFT]

☐ A (LIKELY) Prosecution Will Be Withdrawn··VERSUS··Will Be Convicted (LIKELY) ☐ G

☐ B (GOOD)··Court Room Demeanor of Defendant··(POOR) ☐ H

☐ C (VERY UNLIKELY)··Physical or Mental Health Concerns··(LIKELY) ☐ I

☐ D Sponsor at Prel. Arr.··VERSUS··Interference With Witness(es)··Cause Guardian to be Notified of Arrest ☐ J

☐ E N/A ··POSSIBILITY of Mandatory Sentence ☐ K

N/A ··CURRENT/OUTSTANDING Warrants/Detainers/Wanted Cards ☐ L

☐ F ··OTHER··(Show REASON to Right)··(Indicate DIRECTION OF DEPARTURE) ☐ M ☐ N

REASONS

[DEPARTING FROM GUIDELINES BY USING A HIGHER BAIL AMOUNT (money bail instead of ROR, or a greater money amount than within guidelines) CHECK BOX(ES) TO RIGHT]:
IF YOU GO ABOVE THE GUIDELINES AMOUNT—SHOW REASON:

Guidelines Decision By ______________________

APPENDIX A: PRETRIAL SERVICES WORKSHEET

WORKSHEET—FOR BAIL GUIDELINES

Date ______ Log # ______ Name of Defendant ______

Police Photo # ______ Calculated by ______

CHARGE SEVERITY CALCULATIONS:

Charges: (list by Code Section Number)	Severity Level*	Offense Cat. (1-3/n/a)

* For Conspiracy enter "C"; for lesser included offenses enter "LIO".

• ENTER HIGHEST CHARGE SEVERITY LEVEL FROM ABOVE TO RIGHT ______ • CIRCLE PROPER OFFENSE CATEG'Y 1 2 3 n/a

• ENTER NAME OF THIS OFFENSE (FULL) ______

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

RISK GROUP CALCULATIONS:

Check the Applicable Categories Below		Circle Value	COLUMN N	COLUMN P (And Enter in the Proper Column Below)
☑ BEGINNING SCORE of········		④		4
☐ OFFENSE CATEGORY CRIME	☐ Category 1 (serious)····· ☐ Category 2 (miscel.)····· ☐ Category 3 (prop'ty)·····	9 5 3		
☐ RECENT ARRESTS (w/i 3 yrs.)	☐ 1 Recent Arrest········ ☐ 2 Recent Arrests········ ☐ 3 or More Rec. Arr'ts	2 4 6		
☐ OFFENSE CATEGORY 1 WITH REC. ARRESTS	☐ With 1 Rec. Arrest······· ☐ With 2 Rec. Arrests······ ☐ With 3 or More·······	2 3 5		
☐ OTHER PENDING CHARGES	☐ 1 Pending Charge········ ☐ 2 or More Pend. Charges	2 4		
☐ FTA'S (w/i 3 yrs-willful)	☐ 1 Prior FTA········ ☐ 2 or More Prior FTA's··	1 2		
☐ OVER 44 YEARS of Age········		4		
☐ OVER 44 WITH PRIOR FTA'S	☐ With 1 Prior FTA········ ☐ With 2 or More FTA's····	5 9		
☐ TELEPHONE AT ADDRESS where Residing······		2		

• TOTAL EACH COLUMN IN THE SPACE PROVIDED TO RIGHT

☐ If Column P is larger than Column N: ENTER COLUMN N AMOUNT BENEATH COLUMN P AMOUNT TO FAR RIGHT AND SUBTRACT THE COLUMN N (SMALLER) AMOUNT FROM THE COLUMN P (LARGER) AMOUNT AND ENTER TO FAR RIGHT

☐ If Column N is larger than Column P—Automatically Risk Group V

RISK GROUPS:

☐ INDICATING RISK GROUP HAS BEEN CIRCLED ON JUDGE'S MATRIX

☐ GROUP V - points 0 to -13
☐ GROUP V - points +3 to 0
☐ GROUP IV - points +8 to +4
☐ GROUP III - points exactly +9
☐ GROUP II - points +12 to +10
☐ GROUP I - points +19 to +13

Level	Charge Description	Statute	Off. Cat.	Grade
L-5	AGGRAVATED ASSAULT (also F2)	18-2702	1	M1
L-10	AGGRAVATED ASSAULT	18-2702	1	F2
L-6	Arson-Endangering Prop. (also F1)	18-3301	3	F2
L-12	Arson (also F2)	18-3301	1	F1
L-10	Assault by Prisoner	18-2703	1	F2
L-6	Attempted Burglary	18-3502	3	F2
L-11	Att. Invol. Dev. Sexual Intercourse	18-3123	1	F2
L-11	Attempted Kidnapping	18-2901	1	F2
L-10	ATTEMPTED MURDER	18-2502	1	F2
L-11	Attempted Rape	18-3121	1	F2
L-4	Bad Checks—Over $200	18-4105	3	M3
L-7	Bribery in Official/Polit. Matters	18-4701	2	F3
L-9	BURGLARY	18-3502	3	F1
L-12	Causing A Catastrophe	18-3302	3	F1
L-1	Cigarette Tax Act Violations	72-3169-901-4	2	M3*
L-5	Corruption of Minors	18-3125	2	M1
L-3	Crim. Misch.- $100 $1000 (also M3)	18-3304	3	M2
L-4	Crim. Misch.- Over $1000 (also M3)	18-3304	3	M2
L-3	Crim. Tresp.-Defiant Tresp. (also F2)	18-3503	3	M3
L-6	Crim. Tresp.-Bldgs./Occup. (also M3)	18-3503	3	F2
L-4	Cruelty to Animals	18-5511	2	M2
L-1	Disorderly Conduct	18-5503	2	M3
L-1	DRIVING UNDER INFL. ALCOHOL/DRUGS	75-3731	2	M2
L-3	Duty to Stop Motor Vehicle Accident	75-3742	2	M3
L-4	Endanger Welfare of Children	18-4304	2	M2
L-4	Escape (also F3)	18-5121	2	M2
L-7	Escape—Facil., Fel., etc. (also M2)	18-5121	2	F3
L-4	Failure to Disperse	18-5502	2	M2
L-5	False Alarms Agencies of Pub. Safety	18-4905	2	M1
L-3	False Rept. to Law Enf. (also M2)	18-4906	2	M3
L-4	False Rept. to Law Enf. (also M3)	18-4906	2	M2
L-6	Forgery—Money, Securities, Stamps	18-4101	3	F3-3
L-12	F1 Off's Not Otherwise Incl'd	N/A	2	F1
L-9	F2 Off's Not Otherwise Incl'd	N/A	2	F2
L-7	F3 Off's Not Otherwise Incl'd	N/A	2	F3
L-1	Gambling (Devices & Included)	18-5513	2	M1
L-7	Hind. Appreh./Prosec.F1 & F2 Off's	18-5105	2	F3
L-5	Incest	18-4302	1	M1
L-4	Indecent Assault	18-3126	1	M2
L-4	Indecent Exposure	18-3127	1	M2
L-4	Interference With Custody of Child	18-2904	2	M2
L-12	Invol. Dev. Sexual Intercourse	18-3123	1	F1
L-5	Involuntary Manslaughter	18-2504	2	M1
L-4	Liability For Conduct of Another	18-0306	2	M2
L-12	Kidnapping	18-2901	1	F1
L-1	Liquor Code Violations	47-4-491-3	2	M3*
L-3	Loitering	18-5506	2	M3
L-1	LOTTERIES (& includ. offenses)	18-5512	2	M1
L-7	MANUF./DELIV. MARIJ. OR DANG. DRUGS	Title 35	1	M1*
L-6	MANUF./DELIV. OF NARCOTIC DRUGS	Title 35	3	M1*
L-8	Manuf./Deliv. of Synthetic Drugs	Title 35	1	M2*
L-1	Miscel. M3 Viols. (not § 18 in code)	N/A	2	M3
L-4	Misuse of Credit Cards-$50-$500	18-4106	3	M2
L-13	Murder	18-2502	1	F1
L-5	M1 Off's Not Incl'd (Non-Prop.)	N/A	2	M1
L-5	M1 Off's Not Incl'd (Prop. Off's)	N/A	3	M1
L-4	M2 Off's Not Incl'd (Non-Prop)	N/A	2	M2
L-4	M2 Off's Not Incl'd (Prop. Off's)	N/A	3	M2
L-3	M3 Off's Not Incl'd (Non-Prop.)	N/A	2	M3
L-3	M3 Off's Not Incl'd (Property Off's)	N/A	3	M3
L-4	Obstructing Administration of Law	18-5101	2	M2
L-1	Poolselling and Bookmaking	18-5514	2	M1
L-5	POSSESSING INSTRUMENTS OF CRIME	18-0907	2	M1
L-2	POSS. MARIJUANA OR DANG. DRUGS	Title 35	1	M3*
L-2	POSS. OF SYNTHETIC/NARCOTIC DRUGS	Title 35	1/3	M3*
L-5	Prohibited Offensive Weapons	18-0908	2	M1
L-8	Promoting Prostitution	18-5902	N/A	F3
L-4	Propulsion of Missiles Onto Roadway	18-2707	2	M2
L-3	Prostitution	18-5902	N/A	M3
L-7	Perjury	18-4902	2	F3
L-13	Rape	18-3121	1	F1
L-4	Reckless Endangerment	18-2705	2	M2
L-5	Removal/Sale of ID-Fraud. Intent	75-7102	3	M1
L-5	Resisting Arrest	18-5104	2	M2
L-4	Retail Theft (also M1,F3)	18-3929	N/A	M2
L-5	Retail Theft (also M2,F3)	18-3929	N/A	M1
L-7	Retail Theft (also M2,1)	18-3929	N/A	F3
L-7	Riot	18-5501	2	F3
L-7	Risking A Catastrophe (also F1)	18-3302	3	F3-8
L-11	Robbery (also F3,1)	18-3701	1	F2
L-11	Robbery (also F3,1)	18-3701	1	F2
L-12	ROBBERY (also F2,3)	18-3701	1	F1
L-3	Sale or Illegal Use of Solvents	18-7303	2	M2
L-7	SALE OF MARIJUANA OR DANGEROUS DRUGS	Title 35	1	F3*
L-11	SALE OF NARCOTIC DRUGS	Title 35	3	F2*
L-11	Sale of Synthetic Drugs	Title 35	1	F2*
L-7	Sexual Abuse	18-6312	1	F3-8
L-3	Sim. Ass.-Mutual Fight (also M2)	18-2701	2	M3
L-4	Sim. Ass.-Not Mut. Fight (also M3)	18-2701	2	M2
L-11	Statutory Rape	18-3122	1	F2
L-7	Tamp. Pub. Record-Int. Defr./Injure	18-4911	2	F3
L-4	Tamper With Witness or Informant	18-4907	2	M2
L-5	Terroristic Threats	18-2706	2	M1
L-3	Theft (also M2,1,F3)	18-3901-33	3	M3
L-4	THEFT (also M3,1,F3) (except § 3929)	18-3921-33	3	M2
L-5	Theft (also M3,2,F3) (except § 3929)	18-3921-33	3	M1
L-7	THEFT (also M3,2,1) (except § 3929)	18-3921-33	3	F3
L-7	Threats/Imp. Infl.Off./Pol. Matters	18-4702	2	F3
L-3	Unsworn Falsification to Authorities	18-4904	2	M2
L-1	Viols. No Fault Insur. Act	40-1009-405-3	2	M3*
L-8	VIOLATIONS OF UNIFORM FIREARMS ACT	18-6102-17	2	M1
L-4	Voluntary Deviate Sexual Intercourse	18-3124	1	M2
L-10	Voluntary Manslaughter	18-2503	1	F2
L-7	Witness or Informant Take Bribe	18-4909	2	F3

*These offenses are not graded; they have been assigned equivalent grades.


Level	Charge Description	Statute	Off. Cat.	Grade
L-4	Liability For Conduct of Another	18-0306	2	M2
L-5	POSSESSING INSTRUMENTS OF CRIME	18-0907	2	M1
L-5	Prohibited Offensive Weapons	18-0908	2	M1
L-10	ATTEMPTED MURDER	18-2502	1	F2
L-12	Murder	18-2502	1	F1
L-10	Voluntary Manslaughter	18-2503	1	F2
L-5	Involuntary Manslaughter	18-2504	2	M1
L-3	Sim. Ass.-Mutual Fight(also M2)	18-2701	2	M3
L-4	SIM. ASS.-Mot Mut.Fight (also M3)	18-2701	2	M2
L-10	AGGRAVATED ASSAULT	18-2702	2	F2
L-5	AGGRAVATED ASSAULT (also F2)	18-2702	2	M1
L-10	Assault by Prisoner	18-2703	2	F2
L-4	Reckless Endangerment	18-2705	2	M2
L-5	Terroristic Threats	18-2706	2	M1
L-4	Propulsion of Missiles Onto Roadway	18-2707	2	M2
L-11	Attempted Kidnapping	18-2901	1	F2
L-12	Kidnapping	18-2901	1	F1
L-4	Interferance With Custody of Child	18-2904	2	M2
L-11	Attempted Rape	18-3121	1	F2
L-12	RAPE	18-3121	1	F1
L-11	Statutory Rape	18-3122	1	F2
L-11	Att. Invol. Dev. Sexual Intercourse	18-3123	1	F2
L-12	Invol. Dev. Sexual Intercourse	18-3123	1	F1
L-4	Voluntary Deviate Sexual Intercourse	18-3124	1	M2
L-5	Corruption of Minors	18-3125	2	M1
L-4	Indecent Assault	18-3126	1	M2
L-4	Indecent Exposure	18-3127	1	M2
L-12	Arson (also F2)	18-3301	1	F1
L-6	Arson-Endangering Prop. (also F1)	18-3301	1	F2
L-3	Crim. Misch. $500 $1000 (also M2)	18-3304	3	M3
L-12	Causing A Catastrophe	18-3302	3	F1
L-7	Risking A Catastrophe (also F1)	18-3302	3	F3-2
L-4	Crim. Misch.-Over $1000 (also M3)	18-3304	3	M2
L-6	Attempted Burglary	18-3502	3	F2
L-9	BURGLARY	18-3502	3	F1
L-4	Crim. Tresp.-Bldgs/Occup (also M3)	18-3503	3	F2
L-3	Crim. Tresp.-Defiant Tresp. (also F2)	18-3503	3	M3
L-11	Robbery (also F2,1)	18-3701	3	F3
L-11	Robbery (also F3,1)	18-3701	3	F2
L-12	ROBBERY (also F3,2)	18-3701	3	F1
L-3	Theft (also M2,1,F3)	18-3921-32	3	M3
L-4	THEFT (also M3,1,F3)(except §3929)	18-3921-32	3	M3
L-5	Theft (also M3,2,F3)(except §3929)	18-3921-32	3	M1
L-7	THEFT (also M3,2,1) (except §3929	18-3921-32	3	F3
L-4	Retail Theft (also M1,F3)	18-3929	M/A	M2
L-5	Retail Theft (also M2,F3)	18-3929	M/A	M1
L-7	Retail Theft (also M2,1	18-3929	M/A	F3
L-6	Forgery--Money, Securities, Stamps	18-4101	3	F2-3
L-4	Bad Checks--Over $200	18-4105	3	M2
L-4	Misuse of Credit Cards - $50-$500	18-4106	3	M2
L-5	Incest	18-4302	1	M1
L-4	Endanger Welfare of Children	18-4304	2	M2
L-7	Bribery in Official/Polit.Matters	18-4701	2	F3
L-7	Threats/Imp. Infl. Off./Pol. Matters	18-4702	2	F3
L-7	Perjury	18-4902	2	F3
L-3	Unsworn Falsification to Authorities	18-4904	2	M3
L-5	False Alarms Agencies to Pub. Safety	18-4905	2	M1
L-3	False Rept. to Law Enf. (also M2)	18-4906	2	M3
L-4	False Rept. to Law Enf. (also M3)	18-4906	2	M2
L-4	Tamper With Witness or Informant	18-4907	2	M2
L-7	Witness or Informant Take Bribe	18-4909	2	F3
L-7	Tamp. Pub. Record-Int. Defr./Injure	18-4911	2	F3
L-4	Obstructing Administration of Law	18-5101	2	M2
L-2	Resisting Arrest	18-5104	2	M2
L-7	Hind. Appreh./Prosec.-F1 & F2 Off's	18-5105	2	F3
L-4	Escape (also F3)	18-5121	2	M2
L-7	Escape--Facil., Fel., etc. (also M2)	18-5121	2	F3
L-7	Riot	18-5501	2	F3
L-4	Failure to Disperse	18-5502	2	M2
L-1	Disorderly Conduct	18-5503	2	M3
L-3	Loitering	18-5506	2	M3
L-4	Cruelty to Animals	18-5511	2	M2
L-1	LOTTERIES (&includ. offenses)	18-5512	2	M1
L-1	Gambling (Devices & included	18-5513	2	M1
L-1	Poolselling and Bookmaking	18-5514	2	M1
L-5	Promoting Prostitution	18-5902	N/A	F3
L-2	Prostitution	18-5902	N/A	M3
L-5	VIOLATIONS OF UNIFORM FIREARMS ACT	18-6103-17	2	M1
L-7	Sexual Abuse	18-6312	1	F3-2
L-3	Sale or Illegal Use of Solvents	17-7303	2	M3
L-1	Viols. No Fault Insur. Act	40-1009-601-3	2	M3*
L-1	Liquor Code Violations	47-4-491-3	2	M3*
L-1	Cigarette Tax Act Violations	72-3169-901-8	2	M3*
L-1	DRIVING UNDER INFL. ALCOHOL/DRUGS	75-3731	2	M3
L-3	Duty to Stop, Motor Vehicle Accident	75-3742	2	M3
L-5	Removal/Fals. of ID-Fraud.Intent	75-7102	3	M1
L-2	POSS. MARIJUANA OR DANG. DRUGS.	Title 35	1	M3*
L-3	POSS. OF SYNTHETIC/NARCOTIC DRUGS	Title 35	1/3	M3*
L-7	SALE OF MARIJUANA OR DANGEROUS DRUGS	Title 35	1	F3*
L-7	MANUF./DELIV. MARIJ. OR DANG. DRUGS.	Title 35	1	M2*
L-11	Sale of Synthetic Drugs	Title 35	1	F3*
L-8	Manuf./Deliv. of Synthetic Drugs	Title 35	1	M2*
L-8	MANUF./DELIV. OF NARCOTIC DRUGS	Title 35	3	M1*
L-11	SALE OF NARCOTIC DRUGS	Title 35	3	F2*
L-1	Misc. M3 Viols. (not § 18 in code)	M/A	3	M3
L-3	M3 Off's Not Incl'd (Non-Prop.)	M/A	2	M3
L-3	M3 Off's Not Incl'd (Property Off's)	M/A	3	M3
L-4	M2 Off's Not Incl'd (Non-Prop.)	M/A	2	M2
L-4	M2 Off's Not Incl'd (Prop. Off's)	M/A	3	M2
L-5	M1 Off's Not Incl'd (Non-Prop.)	M/A	2	M1
L-5	M1 Off's Not Incl'd (Prop. Off's)	M/A	3	M1
L-6	F2 Off's Not Otherwise Incl'd	M/A	2	F2
L-7	F3 Off's Not Otherwise Incl'd	M/A	2	F3
L-12	F1 Off's Not Otherwise Incl'd	M/A	2	F1

* These offenses are not graded; they have been assigned equivalent grades.

END