

MATERIALS ON

***PRETRIAL RELEASE: KEY POLICY ISSUES
AND RELEVANT RESEARCH***

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CORE POLICY ISSUES

1. How does society structure a fair and cost-effective system to enable pretrial release of the maximum number of accused persons, while

(a) Ensuring attendance of the released persons at required court proceedings; and

(b) minimizing threats to public safety?

2. How does society protect against invidious discrimination on grounds of wealth, race, ethnicity, gender, or other unacceptable ground in establishing and implementing effective systems for pretrial release of accused persons?

3. Why are a significant number of defendants still held in pretrial detention in many jurisdictions even though they are charged with non-violent offenses and pose low risks of non appearance or danger to the community?

Arthur Beeley, *The Bail System in Chicago* (1927)

Key Findings:

Most persons accused of crime were taken to a police station, even if the offense was trivial. Little use was made of summons procedures.

In setting bail, the amount was determined on the basis of the offense charged.

No attention was paid to the personality, social history, or financial ability of the accused

Bail was often set at an excessive amount; perhaps equally often at too small an amount.

Alternative procedures such as cash bail and recognizance without security were rarely used

A majority of defendants (and about one-third of those held in detention) were never convicted.

Caleb Foote, Bail Studies in Philadelphia (1954) and New York City (1957)

Key Findings:

**Bail is generally set with little or no regard to either
The defendant's ability to post bond; or
Factors in the defendant's life situation relevant to
possible flight**

**The police charges and (in cases of serious crimes) the
District Attorney's recommendation are the determinative
factors in the judicial officer's bail decision**

**The higher the amount of the bond, the less likely a
defendant is to be able to post it.**

**Alternatives to surety bail (e.g., cash bail or release of
recognizance) are rarely used.**

**Many defendants remain in detention simply because of
inability to raise bail, even when the bail amount appears to
be low.**

**Dispositions in cases of defendants in detention are
consistently less favorable than dispositions of defendants
who gain release.**

Key policy (and constitutional) issue identified:

**Is it permissible to deny release to poor persons solely
because of their inability to meet a bail amount that is
set without regard to their financial ability and without
information regarding the likelihood that they will appear
for scheduled court dates?**

Manhattan Bail Project (1961-64)

The first control group experiment in an American court.

Key Research Questions:

1. Would judges release more defendants on their own recognizance if they had (a) reliable information about the defendant's roots in the community; (b) an independent assessment indicating that the defendant would be a good risk for safe release; and (c) assurance that an independent agency would notify the defendant about upcoming court dates and seek to assure the defendant's return to court?

Experimental Group: 60% granted release

Control Group: 14% granted release

2. Would defendants released under these circumstances appear for court dates as scheduled?

Experimental Group: 1% FTA rate

Daniel J. Freed and Patricia M. Wald, *Bail in the United States: 1964*

Summary critique: “In a system which grants pretrial release for money, those who can afford a bondsman go free; those who cannot stay in jail.”

Costs of the existing system:

Economic costs to the jurisdiction: per day costs x length of detention

Human Costs:

- Disruption of home and family life**
- Loss of employment**
- Humiliating treatment**
- Physical danger**
- Risk of disease**

Adverse impact on defense:

- Cannot help locate witnesses or evidence**
- Difficult to communicate with defense counsel**
- Lack of employment diminishes chance for non-incarcerative sentence**
- Likelihood of less favorable outcome**

Alternatives to the Existing Bail System

Improved fact-finding mechanisms – judicial officers should have reliable information about the defendant’s family, employment, residence, finances, character, and background

Release on Recognizance

Summons in Lieu of Arrest

Release on Conditions other than Money (Supervised Release)

Lower bail amounts:

- **“If the defendant is bailable at all, bail should be set at an amount he can raise. The alternative is hypocrisy.”**

Cash bail / deposit bail (no surety required)

Adequate sanctions for failure to appear

Consideration of detention on showing of dangerousness + speedy trial for detained defendants

- **More open, honest, and fair than setting high bail**

Paul B. Wice, *Freedom for Sale* (1974)

Study of bail and bail reform projects in 11 cities

Key Findings:

The existing money bail system is ineffective in releasing defendants prior to trial.

The bail reform projects of the 1960s are an improvement over the surety bail system, but have not succeeded in addressing the problem of unnecessary detention of indigents.

Critique of the traditional money bail system:

Unequal justice: money bail system punishes defendants who are financially incapable of raising the bond amount

Irrational: Seriousness of the crime has little relation to actual likelihood of flight.

Irresponsible: Gives bondsmen too much influence over who gets released

Expensive for the public: Unnecessary detention of good risk defendants who can't afford bail results in unnecessary financial costs to the taxpayers

Critique of the bail reform projects:

The projects utilize criteria that can be met only by middle-class defendants

- Stable residence
- Employment
- Family and community ties

Can't help the indigent, transient, and youthful defendants

Robert V. Stover and John Martin, *Policymakers' Views Regarding Issues in the Operation and Evaluation of Pretrial Release Programs (1974)*

Survey Question: *What goals should be very important for a pretrial release program? (16 possible goals listed)*

Rankings by respondents:*

1. Making sure that defendants released through the program appear in court when scheduled.
2. Lessening the inequality in treatment of rich and poor by the criminal justice system.
3. Minimizing the time that elapses between arrest and release of defendants who are eligible for release.
4. Gathering data to be used in evaluating the effectiveness of the pretrial release program.
5. Reducing the cost to the public by keeping people out of jail (and employed where possible) while awaiting disposition of their case.
6. Serving the court in a neutral fashion.
7. Gathering data to be used in assessing the effectiveness of pretrial release programs in relation to the operation of traditional bail systems.

***Respondents: Police Chiefs, Sheriffs, District Attorneys, Public Defenders, Judges, County Executives, and Pretrial Release Program Directors in 89 jurisdictions. Response rates varied by category of respondent – above 50 % except for judges and County Executives.**

Barry Mahoney et al., *An Evaluation of Policy Related Research on the Effectiveness of Pretrial Release Programs (1975)*

Key Findings from review of research literature:

There are practical alternatives to the surety bail system that have proven feasible in many communities;

- ROR
- Conditional release
- Deposit bail

Development of alternatives to the traditional surety bail system has enabled release of some persons who would not have been released under the traditional system.

The relative effectiveness of traditional surety bail and alternative forms of pretrial release rates has not yet been satisfactorily measured in terms of some key criteria: FTA rates, re-arrest rates, and economic costs.

- **BUT: The alternatives clearly operate in a more equitable fashion than the traditional surety bail system**

It is possible for a pretrial release system to operate wholly without bondsmen – e.g., Oregon, Illinois.

The swifter a program's operation – in terms of time required to interview defendants, verify information, and convey recommendations or exercise delegated authority to release – the greater the proportion of defendants released through the program.

Main factors critical to program effectiveness:

- Opportunity for program staff to interview defendants promptly after arrest.
- Enough staff to do prompt interviewing and verification.
- Prompt access to each defendant's prior record and current charge information.
- Delegated authority to release in routine cases.
- Rapid access to a judge to whom recommendations for release can be made in other cases

**Mahoney et al., An Evaluation of Policy Related Research on the Effectiveness of Pretrial Release Programs (1975)
(Continued – p. 2)**

Questions for further research:

What are comparative FTA rates for defendants on different types of pretrial release rates?

- **What factors – in defendants' backgrounds and in type of supervision (if any) - tend to produce low FTA rates?**

What are comparative re-arrest rates for defendants on different types of pretrial release rates? What factors tend to produce low re-arrest rates?

To what extent is it possible to develop criteria by which to accurately predict which defendants will flee the jurisdiction or commit pretrial crime if released?

To what extent do different types of pretrial release programs contribute to reducing inequalities based on race or economic status?

How effective are different forms of pretrial release programs in reducing the time from arrest to release for defendants who are released?

What are the comparative costs and benefits of different types of pretrial release programs?

What are the advantages and disadvantages of different types of alternative operational procedures? E.g.:

- **Possible organizational location**
- **Use of objective, subjective, or combined criteria**
- **Exclusion of specific categories of defendants**
- **What types of verification and notification procedures work best?**

To what extent does pretrial release contribute to delaying case disposition? Are there ways to minimize delays while maximizing the number of persons released prior to trial?

Wayne Thomas, Bail Reform in America (1976)

Study of bail reform efforts and impacts, 1962-1971, focusing on 20 U.S. cities

Key Findings:

Significant increase in felony release rates, nationally:

1962: 48 percent

1971: 67 percent

Proportion of felony defendants released on money bond remained constant:

1962: 44 percent

1971: 44 percent

“The increased use of non-financial releases was a major influence on the reduced custody rate.”

Wide variations in felony release rates as of 1971:

Minneapolis: 87 percent

Boston: 38 percent

Main policy recommendation: Develop a comprehensive system of pretrial release that operates like a series of filters:

Police citation release

Pre-court release on deposit bail

In-court individualized consideration of release options, with maximum use of non-financial releases

- **ROR**
- **Conditional (supervised) non-financial release for higher risk defendants**
- **Deposit bail for defendants deemed at high risk of flight**

PLUS: Monitor overall system performance – track overall release rates, proportion released at each stage, FTA and re-arrest rates

DEVELOPING A NATIONAL RESEARCH STRATEGY

KEY COMPONENTS

Starting Point: Accurate descriptions of pretrial release/detention systems in single jurisdictions

Show full range of release processes and supervision options

Show what options are followed under what circumstances

Quantitative data showing the number and proportion of cases – by case category – that follow each main path

Quantitative data that show **OUTCOMES** of release/detention decision-making

- Release rates
- FTA rates
- Re-arrest rates (by charge category)

Qualitative data (from interviews and observation) that can help illuminate the reasons for release/detention patterns

Implementation Needs:

Workable definitions of key terms (e.g., release rate, FTA rate, bench warrant) to enable cross-jurisdictional comparisons

Capacity to look at the entire release/detention systems of specific jurisdictions – NOT solely at pretrial programs

Organizational base (or set of bases) for conduct of comparative research + knowledgeable researchers

Funding support for longitudinal research

Support and cooperation from local jurisdictions

Capacity for building on research findings

ILLUSTRATIVE RESEARCH QUESTIONS

At the Single Local Jurisdiction Level:

What pretrial options are used for what categories of defendants?

Who remains in jail more than 24 hours (What categories of defendants)? Why?

What is the overall pretrial release rate?

What are the main obstacles to release?

What is the FTA rate? How does this vary for major categories of defendants, by type of release and supervision arrangements? Break by:

- Charge type
- Prior record
- Substance abuse history
- Mental health
- Other relevant categories

What is the rate of pretrial re-arrest, by similar categories?

At the National Level (Cross-jurisdictional Comparisons)

Which jurisdictions have the best combination of high release rates and low FTA and re-arrest rates?

What strategies do the high performing jurisdictions use to achieve these results?

- How do these strategies and practices differ from those of jurisdictions that (a) have low release rates and/or (b) have high FTA and/or re-arrest rates?

What are the economic costs and benefits of alternative approaches to pretrial release/detention practices?

What are the impacts on the principle of equal justice of alternative approaches?

What approaches to risk assessment appear to be most effective in providing guidance to judicial officers?

What risk assessment and supervision practices are effective in enabling safe release of defendants who have long records of low-level offenses?