The State of Wisconsin

PRETRIAL RELEASE PRACTICES

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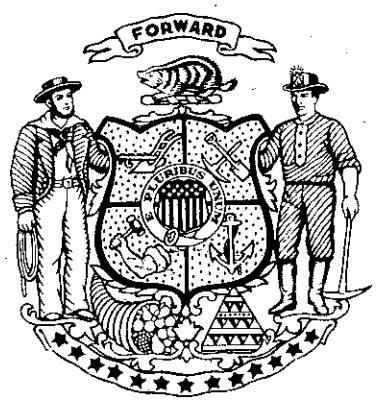

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PRETRIAL RELEASE PRACTICES

HIGHLIGHTS

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PRETRIAL RELEASE PRACTICES

I. INTRODUCTION: THE PROBLEM

> "For instance," the Queen went on... "there's the King's messenger. He's in prison now, being punished: and the trial doesn't even begin til next Wednesday; and of course the crime comes last of all." "Suppose he never commits the crime?" said Alice. "That would be all the better, wouldn't it?" the Queen said...

Most students of American jurisprudence would question this type of reasoning. Nonetheless, a growing number of persons believe that logic similar to the Queen's in Through the Looking Glass motivates the bail system. The rationale for bail is that the appearance of the accused at his trial will be assured if he has a financial interest at stake. Yet the way the system has developed, the accused pays a fee to a bondsman who then puts up a bond. Once this transaction has taken place, the accused has lost the money that he paid for the premium and the bondsman is the only person with a financial interest at stake in the accused's appearance. If the accused does not appear for his trial, it is the bondsman who is liable for the forfeited bond.

Furthermore, under this system each year approximately 1-1/2 million citizens accused of crimes are imprisoned prior to trial, not because of guilt or danger to society, but because they are unable to afford bail, while approximately 10 million others are allowed pretrial liberty because they are able to afford bail, although many of these - particularly the professional gangster - may well be a threat to society.

However, the problem in the present system of pretrial release is not primarily the failure of persons who have been released to return for their trial. The rate of nonappearance at trial seems to range from 2 to 3 per cent under any system of pretrial release that has been used. The major concern of those who are working towards reform of the bail procedures is the number of defendants kept in prison before trial because they lack the financial ability to obtain a bail bond.

Various aspects of the role of financial ability in the administration of justice have received considerable attention in the United States for the past several years. Although the duty of government to relieve a person's poverty may be questioned, there can be little controversy concerning the duty of government to minimize the impact of such poverty on a person's guilt or innocence. To allow anything else would be to sanction a system of government in which poverty, in effect, becomes a punishable crime. The greater realization of just how far the criminal law procedures have strayed from the principle of equality before the law has led to considerable discussion of the several elements of criminal procedures, including the policy of monetary bail.

Prepared by Mary Lou Kendrigan, Research Analyst.

II. THE FUNCTION OF BAIL

No one quite knows when the concept of bail originated. Scholars have traced it back at least to early Anglo-Saxon law. The principle of bail developed to insure the appearance of the accused when the trial was held without depriving him of his right to pretrial freedom. The original idea of bailment was to have some well-established third party come into court and take personal responsibility for the appearance of the prisoner when his trial was called. If the prisoner failed to appear, a severe penalty was imposed on the third party. The penalty usually consisted of a heavy fine, which would theoretically reimburse the court for its expense in having to locate the culprit again. In England today the bail surety relationship continues to be a personal one. At the same time the discretionary nature of the bail procedure is sufficiently flexible to permit denial in cases where the magistrate believes that the defendant is likely to tamper with the evidence or commit a crime.

In America, the development of bail rights and obligations has followed a different course. The United States Constitution did not specifically grant a right to bail. The Eighth Amendment states only that excessive bail shall not be required. Prior to ratification of the Bill of Rights, however, Congress had provided in the Judiciary Act of 1789 that "upon arrest in criminal cases, bail shall be admitted, except where the punishment may be death..." Substantially the same right was guaranteed by state constitution or statute in all but 7 states. Thus, theoretically, in noncapital cases every accused person has the right to be released on bail prior to conviction. A United States judge's discretion in setting pretrial bail has consistently been interpreted to allow latitude only in determining the bail amount. In the leading Supreme Court case on the subject, Chief Justice Vinson said that the aim of the bail system was to secure the assurance of the presence of the accused...bail set at a figure higher than an amount reasonably calculated to fulfill this purpose is "excessive" under the Eighth Amendment. (Stack v. Boyle, 341 U.S. 1,5 (1951). In addition, a few state legislatures have enacted statutes expressing a similar standard for fixing the amount of bail. For example, Wisconsin provides that bail bond should be sufficient to secure the appearance at trial (Sec. 954.15 (1)). Thus, in theory, the overwhelming number of accused persons in the United States are legally guaranteed the right to pretrial release - if they can afford it.

As in many human institutions, however, the theory and practice of the bail system bear little resemblance to one another. A considerable number of persons are kept in jail prior to their trial simply because they do not have the money for the bail bond. This incarceration is usually for a significant length of time and the results are often serious to the individual - even to the individual who is found innocent of the charges. Some dramatic examples cited by the United States Attorney General's Committee on Poverty and the Administration of Justice illustrate the present problem:

> A man was jailed on a serious charge brought last Christmas Eve. He could not afford bail and spent 101 days in jail until a hearing. Then the complainant admitted the charge was false...

A man could not raise $300 bail. He spent 54 days in jail waiting for a traffic offense, for which he could have been sentenced to no more than five days.

A man spent two months in jail before being acquitted. In that period he lost his job and his car, and his family was split up. He did not find another job for four months.

III. VARIATIONS IN PRACTICE

It is difficult to generalize about bail practices in the United States because of the great variations in these practices throughout the country. These variations have been spotlighted by a study initiated in 1963 by the American Bar Association on Defense of the Poor in Criminal Cases in American State Courts. Studies such as this one have led to considerable speculation as to whether these variations result in a violation of a citizen's right to equal protection of the laws. For example, in 1962, judges set original bail at $5,000 or more in 75% of Cook County (Chicago) felony cases. By contrast, Philadelphia set such high bond in only 1.2% of its cases. In consequence, only 25% of Cook County felony defendants were able to go free on bail compared with 86% of those in Philadelphia.

This variation exists not only between states but also between counties within the same state. For example, in one Idaho county the typical bail on nonviolent felonies is $300, while in another it is $5,000. In 2 Indiana counties in which bail schedules are used, one lists $10,000 for voluntary manslaughter, while the other lists $3,000 for the same offense.

There is also considerable variation as to who actually determines the amount of bail. In some of the counties bail schedules are relied upon heavily, resulting in the offense being the most often used criterion. In other counties some attempt is made to consider the circumstances of the individual. In some counties the magistrate routinely sets bail, while in others the judge of the court of record usually makes these decisions. In many places the U.S. Attorney, the district attorney or the police play the dominant role.

IV. RELATION TO FINANCES

In spite of the considerable differences, every detailed study of bail administration in the United States clearly delineates the relationship between the financial status of the accused and the enjoyment of the right to bail. Perhaps most startling is the data indicating the inability of large numbers of the accused to post bail even when the amount set is quite small. The Attorney General's Committee on Poverty and the Administration of Justice did a 4-district survey of bail schedules. In 2 of the 4 districts, over half of those required to provide financial security as a condition of pretrial release were unable to do so when bail was set at the $1,501-$2,500 level. In one district over three-quarters of the accused failed to make bail under $500. In the fourth, over 50% failure did not occur until bail was set between $5,001 and $10,000.

Table I - Ability to Furnish Bail at Certain Amounts

Area	Amount	Bail Made	Percentage	Bail Not Made	Percentage
Northern District, California (San. Fran.)	$ 500 or less	89	71%	37	29%
	501 - 1,500	83	40%	126	60%
	1,501 - 2,500	66	47%	74	53%
	2,501 - 5,000	28	35%	53	65%
	5,001 -10,000	10	20%	41	80%
	10,001 -25,000	8	13%	53	87%
	Over 25,000	1	25%	3	75%
Northern District, California (Sacramento)	$ 500 or less	2	22%	7	78%
	501 - 1,500	20	24%	63	76%
	1,501 - 2,500	6	7%	82	93%
	2,501 - 5,000	11	29%	27	71%
	5,001 -10,000	2	20%	8	80%
	10,001 -25,000	0	-	7	100%
	Over 25,000	0	-	1	100%
Northern District, Illinois	$ 500 or less	30	64%	17	36%
	501 - 1,500	107	63%	62	37%
	1,501 - 2,500	22	49%	23	51%
	2,501 - 5,000	54	60%	36	40%
	5,001 -10,000	14	56%	11	44%
	10,001 -25,000	2	18%	9	82%
	Over 25,000	0	-	0	-
Connecticut	$ 500 or less	55	89%	7	11%
	501 - 1,500	32	73%	12	27%
	1,501 - 2,500	10	77%	3	23%
	2,501 - 5,000	43	70%	18	30%
	5,001 -10,000	6	43%	8	57%
	10,001 -25,000	8	44%	10	56%
	Over 25,000	0	-	5	100%

Source: Report of the Attorney General's Committee on Poverty and the Administration of Criminal Justice (1963), p. 135.

A sampling of cases from a 3-year period in the Southern District of New York shows that over half of the accused were denied pretrial liberty when bail was set at the $501 - $1,500 level. Thirty-six per cent of the accused were unable to supply bail when set at $500 or less. A Philadelphia study revealed that in the Magistrate Courts 15% of the defendants failed to make bail when set below $500, 22% when set between $500 - $750, 68% when set over $1,000. A New York City study revealed that over half the accused failed to furnish bail when set at the $2,500 level, at $500 28% failed to make bail. A Dane County bail study discovered that in one year (1963), of the 103 defendants who failed to meet the initial amount of bail set, 30 could not make the comparatively low amounts of $200 or less. One

person even failed to make bail of $25. For these reasons there has been considerable sentiment expressed that, for the indigent or the poor, any bail may well be considered excessive and in violation of the Eighth Amendment.

V. DURATION OF PRETRIAL INCARCERATION

According to the American Bar Association study, the period of pretrial detention ranged from 3 weeks to over one year in the 63 districts that reported. According to the statistics published by the Federal Bureau of Prisons for the fiscal year ending June 30, 1960, there were 23,811 instances of persons held pending trial. The average period of detention from arrest to disposition of the case by dismissal, acquittal, probation, sentence, or the like, was 25.3 days. In particular districts the average detention period of offenders aged 22 years and over ranged from a low of 11 days to a high of 49 days. In the study of the District of Columbia, of 521 defendants whose cases were dismissed, 91 or 17% had spent more than 6 months in jail. The median time of detention for those unconvicted defendants was 35 days. In the Dane County study there was one case of a defendant who was acquitted after spending 106 days in detention. In another case the defendant had been incarcerated for 80 days. Those unable to raise bail spent an average of 23.91 days in jail. (This includes all the time spent in jail between arrest and conviction, or acquittal or dismissal, but does not include time spent undergoing mental observation.)

Furthermore, the length of time between arrest and trial may be expected to increase in the future. Because of the recent Supreme Court decisions, defendants in state courts will be more frequently represented by counsel. In more and more places, financial provisions will be made for a proper defense at state expense. Taking advantage of pretrial motions and of opportunities of pretrial discovery, a vigorous paid advocate is not likely to be a force for speeding up the court calendar.

VI. CONSEQUENCES FOR THE INDIVIDUAL

A. Effect on Final Disposition of the Case

During the first 2 years of the study, the Manhattan Bail Project set up a control group to evaluate the program's effects. Of those they considered qualified, the staff recommended only every second person for pretrial release.

In this way they were able to analyze 2 rather similar groups and compare the various statistical differences between bail and release on recognizance.

Using these control groups, they concluded that those who are at liberty while awaiting trial are 3 times as likely not to be convicted and 9 times as likely to draw a suspended sentence if convicted.

Similarly, the Attorney General's Committee on Poverty and the Administration of Justice has concluded that a man forced to stay in jail before trial is more likely to be convicted. If convicted, he is more likely to get a jail term; and if sentenced to a jail term, he is likely to get a longer sentence. The report

to the National Conference on Bail and Criminal Justice (May 1964) concluded that the man who is jailed is less likely to get equal treatment of the courts.

The reasons for these conclusions can be rather easily understood. A jailed defendant finds it more difficult to assist in the preparation of a proper defense. He cannot contribute to the location of witnesses or the finding of evidence. Because state-provided funds to assist the defense are limited, where they exist at all, a defendant's inability to raise money by working, seriously limits the effectiveness of his defense. Indeed a jailed defendant is likely to be tempted into a hasty plea or to insist upon an early trial in spite of the disadvantages flowing from unduly hurried work by the defense lawyer. Interviews with the defense counsel are less easily arranged for a jailed defendant and may take place in an uncongenial atmosphere. When a jailed defendant enters the courtroom for trial he comes through the door leading from the lockup in the company of an officer - a point not likely to be lost on a jury. A person free on bail can remain at home, hold a job and thereby give the appearance of one already well along the way toward rehabilitation.

The Manhattan Bail Project also undertook a statistical study to analyze the relationship between pretrial detention and other factors relevant to the outcome of a defendant's case. The group that was studied included only persons for whom bail was set. The factors analyzed besides release on bail were: prior record; the amount of bail; whether the accused has a private or court-assigned attorney, family relationships and employment stability. Among the cases analyzed in this study, the most important factor in the final disposition of the charges - among release on bail, prior record, bail amount, type of counsel, family integration and employment stability - was release on bail (See Tables II-V). Perhaps most surprising of the facts disclosed by this study is the fact that jailed first offenders are not only twice as likely to be convicted and 6 times as likely to receive prison sentences as bailed first offenders, but that jailed first offenders are half again as likely to receive prison sentences as bailed repeat offenders. According to this study, a defendant with a prior record who manages to obtain bail stands a far better chance of probation or suspended sentence than a first offender who is held in detention. An explanation of the method used and the source for Tables II through V can be found in the article by Anne Rankin, "The Effect of Pretrial Detention," New York University Law Review (June 1964).

Table II - Relationship Between Detention and Unfavorable Disposition When Previous Record Is Held Constant

	No Previous Record		Previous Record		Not Ascertained*	
	Bail	Jail	Bail	Jail	Bail	Jail
Disposition	(%)	(%)	(%)	(%)	(%)	(%)
Sentenced to prison	10	59	36	81	7	29
Convicted without prison	42	17	43	4	11	9
Not convicted	48	24	21	15	82	62
Number of defendants	(195)	(121)	(108)	(169)	(71)	(68)

*The cases marked Not Ascertained are those for which no fingerprint record was attached to the case papers.

Table III - Relationship Between Detention and Unfavorable Disposition When Bail Amount Is Held Constant

	Low Bail ($500 or under)		High Bail (Over $500)	
Disposition	Bail (%)	Jail (%)	Bail (%)	Jail (%)
Sentenced to prison	12	54	25	68
Convicted without prison	40	14	31	7
Not convicted	48	32	44	25
Number of defendants	(217)	(115)	(157)	(243)

Table IV - Relationship Between Detention and Unfavorable Disposition When Type of Counsel Is Held Constant

	Private Attorney		Court-Assigned Attorney	
Disposition	Bail (%)	Jail (%)	Bail (%)	Jail (%)
Sentenced to prison	16	60	21	64
Convicted without prison	40	12	28	9
Not convicted	44	28	51	27
Number of defendants	(212)	(40)	(130)	(306)

Table V - The Relationship Between Detention and Unfavorable Disposition When Number of Favorable Characteristics Is Held Constant

	Number of Favorable Characteristics							
	None		One		Two		Three	
Disposition	Bail (%)	Jail (%)	Bail (%)	Jail (%)	Bail (%)	Jail (%)	Bail (%)	Jail (%)
Sentenced to prison	72*	82	26	73	17	52	6	-
Convicted without prison	6*	2	42	8	44	24	48	-
Not convicted	22*	16	32	19	39	24	46	-
Number of defendants	(18)	(107)	(68)	(110)	(122)	(62)	(67)	(2)

*Indicates the number of cases is small and the percentage should be read with caution.

B. Prison Conditions

According to the Attorney General's Committee on Poverty and the Administration of Justice, most United States prisons (including jails) are characterized by "conditions of overcrowding, bad sanitation, indiscriminate mixing of offenders of all degrees of sophistication, lack of adequate recreational facilities and much more." In many institutions the unconvicted accused is provided the same facilities

and treatment as that afforded the entire jail population. What is even more remarkable is that in other institutions the conditions of imprisonment sustained by the accused are more rigorous than those provided the sentenced offender. For example, there is seldom any provisions made for work or study programs for these "prisoners." Former Director of the Federal Bureau of Prisons, Mr. James V. Bennett, has reported that conditions of pretrial imprisonment continue to be seriously deficient in many areas. His bureau contracts with local institutions throughout the country to provide detention for persons charged with federal crimes. Out of more than 3,200 county jails in the country, it uses about 700, and some of those 700 in certain sections of the country are substandard. Thus, even before his trial, the defendant experiences a truly punitive regimen if he cannot afford bail.

VII. CONSEQUENCES FOR SOCIETY

In addition, putting the accused person in jail is an expensive way of guaranteeing his appearance in court. He must be fed, guarded and housed. If the cost of light, heat, manpower, security, and real estate beyond the mere subsistence is considered, this can run up to $50 a day per prisoner. In 1963, persons accused of federal crimes spent about 600,000 days in jail and cost the United States government $2 million. The bail study in the District of Columbia estimated that $105,768 per year in prison expenses might be saved by the release of all bond-eligible defendants. Pretrial detainment costs are equally oppressive for state and local government. In 1964 in St. Louis, 900 prisoners who were unable to raise bail were held for an average detention period of 6 weeks at the cost to the taxpayer of $2.56 per prisoner per day. In New York City in 1962 over 58,000 persons spent an average of 30 days in pretrial detention at a cost of over $10 million. At the present time in Wisconsin, it costs more than 10 times as much to imprison an offender as it does to supervise him on probation or parole - $22 per month for parole or supervision, $226 per month for incarceration.

Furthermore, a man in jail cannot continue his job. His family is often forced to go on public welfare. (In Wisconsin, public assistance monthly grants averaged $73.15 per person in 1965.) Since it becomes more difficult for him to retain counsel, the number of persons for whom counsel must be provided at public expense increases. The increasing effort to provide counsel for indigent defendants increases the urgency of modifying bail laws to insure that they do not foster indigency.

VIII. INEFFECTIVENESS OF BAIL BONDS

In addition to the fact that many persons are kept in pretrial confinement solely because they do not have the funds to pay the bail, the converse criticism of the bail system is that it does not effectively detain persons who are considered dangerous to society. Courts often intentionally impose high bail when the likelihood exists of flight or of further criminal conduct. In theory, these considerations involve improper uses of bail; but, perhaps of equal significance, the bail system often appears ineffective in such situations. Even if the court has correctly evaluated the defendant, all that high bail does is discriminate between the dangerous rich and the dangerous poor. In no area are high bonds more uniformly set than in cases involving the prosecution of major racketeers, and in no area does high bail seem more ineffective. For example, the following bails were set for

some well-known defendants in the Appalachin case: $100,000, $40,000, $30,000 and $25,000. Not one of these defendants failed to make bond. Organized criminals are capable of getting the money for bonds and, when they wish, forfeiting them. The New York Commissioner of Narcotics, Henry L. Giordano, explains that some of the bonds forfeited are quite large - $20,000, $50,000, $97,000. One-third of the fugitives in New York City are men who have forfeited large bail.

IX. THE ROLE OF THE BONDSMAN

The United States and the Philippines are the only countries which allow the commercial bondsman. Apart from authorizing pretrial confinement to hinge solely on the financial ability of the accused to post a bond, the bail system is criticized for allowing the judiciary to abdicate an important part of its public responsibility in the administration of criminal law to the private bondsman. Although the judges set the amount of bail required, the power to determine whether the accused shall obtain his pretrial freedom often lies with the bondsman, not with the judiciary. The judge might use his discretion in setting bail, but the bondsman decides who is a good risk. He decides, in other words, if collateral is required, and if so, how much. The bondsman in this way often determines who is to remain in jail and who is to put up bail.

A. Bonding Procedures

Obtaining a bail bond is somewhat similar to making a loan. The defendant must pay a fee and often must also put up collateral. The bondsman then agrees to be responsible for the appearance of the defendant at court. If he believes the defendant is about to flee pending trial, the bondsman has the right to turn the defendant over to the court at any time, dissolving the bond but keeping the premium. The bondsman also has the common law right to go after the defendant who is fleeing, arrest him and bring him back to custody. When the defendant does not appear, the bondsman is liable for the entire amount of the bond, but the over-all rate of default among defendants is not high. The Surety Association of America reports that losses from bond forfeitures among all companies are less than 2.4 per cent.

B. Charges for Issuing a Bond

As in most other aspects of the bail procedure, the amount charged by the bondsman for issuing a bond differs markedly throughout the country. The standard premium rate in the United States seems to be 10 per cent, known to prevail in such cities as Atlanta, Cincinnati, Detroit, Denver and St. Louis; in the states of Illinois and California; and in most federal courts. However, rates as high as 14 per cent have been reported in Wisconsin and even 20 per cent for some offenses in Birmingham, Alabama. If the rate charged is 10 per cent and the bail amount is $1,000, bail costs the defendant $100. He loses this amount even if the charges are dismissed or if he is acquitted. Some examples of legal rates for bail bonds are:

New York	5% up to $1,000; 4% on second $1,000; and 3% on balance.
Pennsylvania (Other than Phil.)	10% on the first $100, and 5% on the balance.
Philadelphia	8% plus a service charge.
Baltimore	10% on the first $2,500, then 6%.
Des Moines	5%.
Boston	10% across the board without collateral; 5% with collateral.
Dist. of Columbia	8% on the first $1,000; 5% on the balance.

Within the legal maximums, however, bondsmen frequently bargain for special rates, particularly in high volume, low risk offenses like gambling. Disputes between bondsmen over price cutting and allegations of illegal overcharging are common. Furthermore, premiums do not tell the whole story on the cost of commercial bail. Service charges are added in many jurisdictions. Bondsmen in Baltimore charge a minimum fee of $25 no matter how small the bond, and in California a standard $10 fee is added to the premium.

In some states, bonds written at the time of arrest must guarantee the presence of the accused until the case is finally disposed of by the trial court. In every state, a new bond may be required on appeal. A defendant may be forced to pay premiums on 4 different bonds in the course of a criminal proceeding: from arrest to preliminary hearing, preliminary hearing to indictment, indictment to trial, and verdict to appeal. In such cases the defendant may be amenable to a deal for a single bond at a high premium rate to carry him through the case. The bondsman's legal right to cancel a bond any time he surrenders the defendant to court is sometimes used as a lever to collect additional fees simply to keep the original bond in force.

C. Collateral

To protect against what they consider inadequate premiums and the ever-present threat of forfeiture, many bondsmen require a defendant or his relatives to furnish collateral equal to all or part of the bond. Because collateral and indemnity agreements are not regulated by statute, the bondsman may require the deed to the home of the accused or a relative to be put up as collateral before posting bond. The amount of security which the bondsman is able to obtain from accused persons varies. One hundred per cent collateral is rarely obtainable and is required only for bad risks or for unusually large bonds. Some efforts to obtain collateral serve not to assure indemnification against monetary loss but as a psychological deterrent to flight by the accused. One bondsman in the District of Columbia has even taken a dog as collateral. A story circulated among bondsmen in Florida concerns one of their number who carried a collateral box in which he collected such

items as wedding rings and false teeth. On one occasion he is supposed to have kept the child of the accused.

D. Abusive Practices of Bondsmen

Although many bondsmen are backed by surety companies and are therefore subject to state laws governing insurance practices, the amount of state or local regulations over bondsmen has been minimal. Charges of corruption and collusion between bondsmen and court officials, police, lawyers, and organized crime have been frequent. Bail bond scandals often occur, with bondsmen offering substantial kickbacks to lawyers, court clerks or jail officers if they will simply suggest the name of a particular bondsman to prisoners needing bail.

The 1964 New York City Bar Report contains a catalogue of abuses involving bondsmen. These include the frequent requirement by bondsmen that a particular attorney be selected to defend the case, coupled with kickbacks by attorneys to bondsmen. In Pittsburgh a recent investigation disclosed that certain jail officials received part of every premium written; in another city it was admitted that desk sergeants get $2 per bond and that policemen are "hired" by bondsmen to arrest defendants who fail to appear. A 1959 Chicago scandal resulted in the indictment of a municipal judge.

Courts have often been found quite lax in requiring the bondsmen to pay the forfeited bonds. In the 3-year period from 1956-59, the Municipal Court of Chicago recorded only one forfeited payment of $5,955. A 1960 investigation disclosed that $300,000 in forfeitures had been set aside by one judge. Their reinstatement caused 5 bonding companies to go out of business. A 1962 investigation in Cleveland disclosed an estimated loss to the city of $25,000 from failure to collect personal bonds. Milwaukee discovered an $18,000 loss. Bond collection may also be thwarted by companies inadequately financed to pay when the time comes. North Carolina has lost an estimated $10,000,000 in uncollected forfeitures over the last 10 years from small surety companies that have gone bankrupt. Philadelphia's collection rate in 1950 was only 20 per cent on forfeited and unremitted bonds. A recent crackdown in Houston produced $70,000 on "bad bonds" in less than one year.

E. Bondsmen in Wisconsin

At present, as in most states, the bondsmen in Wisconsin are regulated by the Commissioner of Insurance (Secs. 204.37 to 204.54). During the study of Dane county bail procedures (sponsored by the Dane County Bar Association, the Dane County Legal Aid Society and the University of Wisconsin Law School), interviews with a bondsman revealed that collateral requirements for bail are not fixed but are variable depending upon the risk. This risk is determined by the bondsman upon evaluation of the defendant's past record, the nature of the offense involved, recommendations of the defendant's attorney, and the recommendation of knowledgeable law enforcement officers. The bondsman interviewed represented a bonding insurance company. He estimated that he rejects about 20 per cent of the defendants who seek a bail bond from him and rarely accepts payments for premiums on an installment basis. One premium usually carries the defendant to the conclusion of the case but does not include an appeal.

F. Regulation of Bondsmen

A few states have attempted to remedy some of the abusive practices engaged in by bondsmen and have enacted comprehensive legislation modeled after the Uniform Bail Bond Act proposed by the National Association of Insurance Commissioners in December 1962. This legislation requires that bondsmen and their employes be licensed (after serving an apprenticeship and passing a state examination), fingerprinted and photographed, be of good character, keep public records, remain solvent, abide by prescribed bond rates and obtain only reasonable collateral. Such a bill was introduced in the 1963 Wisconsin Legislature (Senate Bill 465), but it did not pass. As will be seen further in this report, most suggestions for legislation have centered around bail procedures which would eliminate or drastically limit the necessity of commercial bondsmen. There has not been much recent agitation for greater regulation of commercial bondsmen.

X. ALTERNATIVES TO THE BAIL BOND

A Governor's task force in Kentucky, Judicial Councils in California, Colorado, Michigan, New Jersey and Rhode Island, and a Legislative Council in Virginia are conducting bail studies, while the Attorneys General of Delaware, Iowa, Michigan, New Jersey, West Virginia and Wisconsin and State Bar Associations in California, Missouri, Ohio and Texas are developing state-wide programs to reduce unnecessary detention of persons accused of crime. Since May 1964 more than 20 professional organizations have placed bail on their agendas or have organized special bail conferences on a national, regional or state basis.

The ultimate question is, of course, whether the defendant will return for trial on his own without the incentive of the bail bond. If he will, the savings are enormous not only in the implementation of our constitutional guarantees but also with respect to the individual's self-respect and welfare, his facilities for assistance in his own defense, the welfare of his family, and the costs to the community of the defendant's incarceration itself. On the other hand, there are powerful considerations relating to the welfare of the community as a whole, namely, the basic right and obligation of society to protect itself against the lawless and to bring to justice those who, it may reasonably be supposed, have committed offenses against it. Thus, the crucial issue is, can we bring to justice the defendant without imposing upon him the incarceration that in itself is the penalty for violation of the law.

Several suggestions have emerged as alternatives to monetary conditions for release. Not only can such conditions afford the opportunity of pretrial liberty for those presently unable to secure it, but in many cases such alternatives provide greater assurance against forfeiture and flight. Alternatives include: (1) release on recognizance, (2) summons in lieu of arrest, (3) cash bail, (4) supervised release, (5) third party parole, (6) daytime release, and (7) penalties for nonappearance.

A. Release on Recognizance

The Attorney General's Committee on Poverty and the Administration of Criminal Justice defined release on recognizance as the procedure whereby the accused is

granted liberty upon his execution of a personal bond in the form of a surety or other acceptable securities. This is not a new idea but has been utilized in the Detroit Federal Court for at least 20 years. The concept of release on recognizance has been increasingly used in the past few years and is becoming the most often considered alternative to the bail bond.

(1) Study projects

For at least 50 years it has been increasingly obvious that the monetary bail bond system has many inadequacies. The missing factor necessary to generate the mood for change has been, however, the lack of evidence that any other method of dealing with accused persons would have fewer disadvantages than monetary bonds. Thus a great deal of the impetus for bail reform can be attributed to the pretrial release projects which have been initiated in the various courts.

(a) The Manhattan Bail Project - In late 1960 a wealthy retired chemical engineer, Louis Schweitzer, became appalled with the situation created by the bail procedures in New York City. He established a nonprofit organization, the Vera Foundation, to study and develop alternatives to the present bail procedures. Assisted by a $115,000 grant from the Ford Foundation and staffed by New York University law students under the supervision of a Vera Foundation director, the project interviewed approximately 30 newly arrested felony defendants in the detention pens each morning prior to arraignment. The interviews were conducted in a cell set aside by the Department of Correction and consumed about 10 minutes. In evaluating whether the defendant was a good parole risk, 4 key factors were considered: 1) residential stability, 2) employment history, 3) family contacts in New York City, and 4) prior criminal record. Each factor was weighted in points. If the defendant scored sufficient points and could provide an address at which he could be reached, an attempt was then made to verify the information which he had provided. The investigation was confined to references cited in the defendant's signed statement of consent and was generally completed within an hour, obtained either by telephone or from family or friends in the courtroom. Occasionally it became necessary for a student to make a field trip to track down a reference. The Vera Foundation staff reviewed the case and decided whether to recommend parole. If paroled, Vera would then send notification letters to each parolee telling him when and where to appear in court. If he was illiterate, he was telephoned; if he could not speak or understand English well, he would receive a telephone call or letter in his native tongue. Notification was also sent to any reference who had agreed to help the defendant get to court. The parolee was asked to visit the Vera office in the courthouse on the morning his appearance was due. If he failed to come to court, Vera personnel attempted to locate him, and - when his absence was for good cause - they sought to have parole reinstated.

The City of New York was convinced of the merits of Vera's efforts. In January 1964 the City Board of Estimates appropriated $181,600 to the Office of Probation to take over Vera's work. Since the start of the Manhattan bail project at least 44 jurisdictions in the United States have experimented with similar release projects (see Tables VI and VII).

Table VI - Administration of Pretrial Release Projects

Place	Statistical Period	Sponsor	Staff	Charges*	Time Until Interview	Pre or Post Arraignment
Berekeley, Cal.	13 mos.	Court	Jailer	F & M	Within 24 hours	Pre
Los Angeles, Cal.	15 mos.	Court	Court Investigators	F	Within 48 hours	Both
Oakland, Cal.	10 mos.	Ford Foundation	Probation Officer	M	1 - 5 days	Pre
San Francisco, Cal.	13 mos.	Bar Assn.	Law Students	F & M	Within 12 hours	Pre
Sunnydale, Cal.	21 mos.	Police	Police	M	Within 3 hours	Pre
Denver, Colo. (District Court)	10 mos.	Court	Probation Officers	F	3 - 5 days	Both
Denver, Colo. (District Court)	3-1/2 mos.	Sheriff	Deputy Sheriff	F & M	Within 3 hours	Pre
Connecticut State-wide	3-1/2 mos.	Court	Officer Family Relations	F	Within 12 hours	Pre
New Haven, Conn.	2 mos.	Legal Assis. Assn.	Students	F & M	Within 3 days	Pre
Wilmington, Del.	2 mos.	Citizen's Crime Comm.	Students	F & M	Within 12 hours	Pre
Washington, D.C.	20 mos.	Ford Foundation	Students	F & M	Within 12 hours	Pre
Atlanta, Ga.	10 mos.	Court	Attorneys	F & M	Within 48 hours	Pre
Chicago, Ill.	9 mos.	Public Defender	Investigators	F & M	2 - 4 days	Post
Des Moines, Iowa	6 mos.	Private Foundation	Students	F & M	Within 48 hours	Both

Table VI - Administration of Pretrial Release Projects - Cont.

Place	Statistical Period	Sponsor	Staff	Charges*	Time Until Interview	Pre or Post Arraignment
Lexington, Ky.	3 mos.	Gov. Task Force	Students	F & M	Within 24 hours	Both
Louisville, Ky.	13 mos.	Court	Students	F & M	Within 12 hours	Pre
Prince George Cty. Maryland	13 mos.	State's Attorney	State's Attorney	F & M	2 - 3 days	Usually Pre
Boston, Mass.	3 mos.	A.B.C. Inc.	Students	F & M	Within 12 hours	Pre
Kansas City, Mo.	1 year	Parole Board	Parole Officers	F & M	1 - 20 days	Post
St. Louis, Mo. (Circuit Court)	2-1/2 years	Probation Officer	Probation Officer	F	Within 24 hours	Post
St. Louis, Mo. (County Court)	5 mos.	Court	Students	F & M	Within 12 hours	Pre
Burlington, N.J.	9 mos.	Court	Probation Officer	F & M	24 hours	Pre
Hackensack, N.J. Bergen Cty.	7 mos.	Probation	Probation Officer	F & M	2 - 3 weeks	Post
Newark, N.J. Essex Cty.	15 mos.	County Court	Probation Officer	F & M	Defendant Applies	Post
Albuquerque, N.M.	1 year	Law School	Law Students Prob. Off.	M	24 hours	Post
New York City	17 mos.	Probation	Law Students Prob. Off.	M	24 hours	Pre
Nassau Cty. New York	2 years	Probation	Probation Officer	M	24 hours	Post
Plattsburg, N.Y. Clinton Cty.	5 mos.	Probation & University	Sociology Students	M	24 hours	Post
Rochester, N.Y.	4 mos.	Bar Assn.	Students	F	24 hours	Pre

Table VI - Administration of Pretrial Release Projects - Cont.

Place	Statistical Period	Sponsor	Staff	Charges*	Time Until Interview	Pre or Post Arraignment
Syracuse, N.Y. (Onondaga Cty.)	7 mos.	Probation	Probation Officer	F & M	12 hours	Pre
Cleveland, Ohio (Cuyahoga Cty.)	4 mos.	Court	Investigators	F	24 hours	Pre
Dayton, Ohio	1 mo.	Bar Assn.	Attorneys	F	3 days	Pre
Toledo, Ohio	11 mos.	Bar Assn.	Law Students	F		Pre
Willoughby, Ohio	4 mos.	Bar Assn.	Bailiff	F & M	3 - 5 days	Post
Tulsa, Okla.	1-1/2 yrs.	Bar Assn.	Attorneys	M	3 hours	Pre
Tulsa, Okla.	1-1/2 mos.	Bar Assn.	Vista Volunteers	F	24 hours	Post
Bucks Cty., Pa.	3 mos.	Private Foundation	Investigators	F & M	48 hours	Post
Westmoreland Cty. Pennsylvania	1 mo.	Court	Parole Officers	F & M	3 days	Post
Salt Lake City, Utah	3 mos.	Bar Assn.	Law Students	F & M	12 hours	Pre, Post
Charleston, W. Va.	14 mos.	Welfare Dept.	Social Worker	F & M	12 hours	Post
Huntington, W. Va.	10 mos.	Welfare Dept.	Probation Officer	F & M	3 days	Post
Madison, Wis. (Dane Cty.)	7 mos.	Bar Assn. Legal Aid	Law Students	F & M	12 hours	Pre

*F - Felony; M - Misdemeanor.

Source: Bail and Summons, 1965, p. 8.

Table VII - Results of Pretrial Release Projects

Place	Number Interviewed	Number Recommended for R.O.R.*	% Recommended of Interviewed	Number Court R.O.R.'d	% Court R.O.R.'d of Recommended	Number of Jumpers
Berkeley, Cal.	1,034	---	---	228		8
Los Angeles, Cal.	1,690	approx. 456	27%	456	100%	10
Oakland, Cal.	801	388	48%	252	65%	18
San Francisco	1,480	523	35%	487	93%	9
Sunnydale, Cal.	2,607	1,286	---	1,286	---	--
Denver, Colo. (Municipal Court)	approx. 2,000	1,492	75%	1,492	100%	28
Denver, Colo. (District Court)	819	144	18%	144	100%	3
Connecticut State-wide	363	123	34%	118	96%	4
New Haven, Conn.	210	142	67%	141	99%	2
Wilmington, Del.	203	11	5%	11	100%	0
D.C.	approx. 3,000	1,422	47%	1,213	85%	35
Atlanta, Ga.	1,200	233	19%	233	100%	10
Chicago, Ill.	1,403	706	50%	706	100%	19
Des Moines, Iowa	1,536	1,172	76%	1,146	97%	15
Lexington, Ky.	approx. 45	25	56%	20	80%	0
Louisville, Ky.	976	343	35%	149	43%	4
Prince George Cty. Maryland	40	30	75%	30	100%	0

Table VII - Results of Pretrial Release Projects - Cont.

Place	Number Interviewed	Number Recommended for R.O.R.*	% Recommended of Interviewed	Number Court R.O.R.'d	% Court R.O.R.'d of Recommended	Number of Jumpers
Boston, Mass.	approx. 100	45	45%	15	33%	0
Kansas City, Mo.	334	126	37%	118	88%	2
St. Louis, Mo. (Circuit Court)	1,621	421	26%	388	92%	3
St. Louis, Mo. (County Court)	68	29	43%	26	90%	1
Burlington, N.J.	79	39	49%	39	100%	3
Hackensack, N.J. Bergen Cty.	102	19	19%	17	89%	1
Newark, N.J. Essex Cty.	181	---	---	9	---	0
Albuquerque, N.M.	150	69	46%	69	100%	2
New York City	10,918	9,079	82%	6,732	74%	79
Nassau Cty. New York	1,028	411	40%	388	95%	4
Plattsburg, N.Y. Clinton Cty.	25	20	80%	15	75%	0
Rochester, New York	118	48	40%	---	---	---
Syracuse, N.Y. Onondaga Cty.	161	103	64%	100	97%	1
Cleveland, Ohio Cuyahoga Cty.	380	174	46%	174	100%	0

Table VII - Results of Pretrial Release Projects - Cont.

Place	Number Interviewed	Number Recommended for R.O.R.*	% Recommended of Interviewed	Number Court R.O.R.'d	% Court R.O.R.'d of Recommended	Number of Jumpers
Dayton, Ohio	38	22	55%	21	95%	0
Toledo, Ohio	265	105	40%	105	100%	---
Willoughby, Ohio	8	1	13%	1	100%	---
Tulsa, Okla.	---	4,087	100%	---	---	---
Tulsa, Okla.	---	36	---	36	---	0
Bucks Cty., Pa.	15	4	27%	4	100%	0
Westmoreland Cty. Pa.	118	11	9%	11	100%	0
Salt Lake City, Utah	17	4	24%	4	100%	1
Charleston, W. Va.	211	156	74%	106	65%	1
Huntington, W. Va.	65	15	23%	10	67%	0
Madison, Wis. Dane Cty.	70	26	37%	11	42%	0

*R.O.R. - release on recognizance.

Source: Bail and Summons: 1965, p. 8.

(b) Findings of the pretrial release projects - The pretrial release projects which have been initiated indicate that an analysis of such factors as the accused's verified roots in the community, family ties, job, reputation, past criminal record and residential stability are much more useful criteria for an evaluation of pretrial release than the mere use of money. A basic defect of the bail system has been lack of such facts. Unless the committing magistrate has information concerning the likelihood that the accused will return for trial, the amount of bail he sets bears only a chance relation to the sole lawful purpose of setting it at all. So it is that virtually every experiment and every proposal for improving the bail system in the United States has sought to tailor the bail decision to information on this central issue. The emphasis in all these projects is on identifying the good risks - none undertakes to release defendants indiscriminately. Several jurisdictions have found that a simple, rapid procedure can be devised to produce all the facts that are needed. From 1961-1964, Vera interviewed over 10,000 defendants, and approximately 3,500 were released on their own recognizance. Of these, 98.5% appeared in court for trial when they were supposed to. Almost 3 times as many defendants who were on bail during this time failed to appear for trial. Release on recognizance has been equally successful in the other areas in which it has been tried. As of September 27, 1965, 20,591 persons were released on their own recognizance in those jurisdictions that had experimented with release projects. Only 262 or 1.21% have failed to appear for trial in contrast to the fact that 2.5% to 3.0% of those released on bail failed to appear at trial. (See Table VII)

Similar results were obtained in two Wisconsin studies, one in Milwaukee, sponsored by the Milwaukee Junior Bar Association and the Wisconsin Service Association, and one in Madison, sponsored by the Dane County Bar Association, the Dane County Legal Aid Society and the University of Wisconsin Law School. The month-long preliminary Milwaukee study resulted in recommendations of release without bail in 155 or 68% of 229 cases. Of the 155 cases the court concurred in 72% or 112 cases and disagreed in 43 cases. Only 3 failed to appear at trial. In the first 8-1/2 months of the Dane County project, from October 1, 1964 to May 15, 1965, 70 persons were interviewed, release was recommended for 26 or 37%. Eleven persons were released on recognizance, or 42% of those recommended. None failed to appear at trial.

Various fact-finders that have been used included law students, probation officers, prosecuting attorneys, defense attorneys, public defenders, court staff investigators, police, sheriff, or the welfare department. One critical question yet to be answered is: Who is best suited to administer pretrial release projects? The orientation of each of these groups toward an accused may be very different and may reflect itself in the operation and result of the project. Any agency which undertakes prearraignment interviewing is treading on sensitive ground.

A major finding of the Vera study was that recommendations based on facts nearly quadrupled the rate of release. In order to study the influence of its own recommendations, Vera initiated the project with the use of an experimental control procedure. Out of all the defendants believed by the project to be qualified for release, half were in fact recommended to the court, while the other half were placed in a control group and their recommendations withheld. In the project's first year,59% of its parole recommendations were followed by the court,compared to only 16% paroled in the control group. The availability of information concerning the

defendant's personal background greatly increased the accused's chances of pretrial release.

Another Vera finding was that the final disposition of the accused's case is significantly affected by whether he is released prior to his trial. When the case histories of defendants in the 2 control groups were later analyzed, they showed that 60% of the recommended parolees had either been acquitted or had their cases dismissed, compared with only 23% of the control group. Moreover, of the 40% who were found guilty out of the parole group, only one out of 6 was sentenced to prison. In contrast, 96% of those convicted in the control group were sentenced to serve a jail term. The Attorney General's Committee on Poverty and the Administration of Criminal Justice found similar results in their study. (See Table VIII)

There are differences in the various jurisdictions as to the crimes which are excepted from the operation of the plan. The Manhattan Bail Project excluded homicide, narcotics, and certain sex crimes, which means automatic exclusion of about 20% of the defendants contacted. Des Moines omitted murder, forcible rape and sex crimes against minors. Tulsa was open to misdemeanors only, but plans to open it to felonies also. Detroit releases persons accused on any offense, including mandatory sentence offenses and even guilty pleas. The Washington D.C. project excluded no categories of crimes. In the first year of operation, the District of Columbia released 16 persons accused of homicide, 12 persons accused of assault with dangerous weapons, 42 persons accused of robbery, 4 persons accused of rape, 38 persons accused of housebreaking, 37 persons accused of car theft, and 4 persons accused of narcotics violations.

Reports indicate that of the number of defendants who have been released on recognizance, the number who are rearrested is not great and that the vast majority of such further arrests are not for violent crimes. For example, in one project, less than one-tenth of one per cent committed other offenses while on bail. Furthermore, such offenses usually involve gambling or liquor violations. A 1962 sampling conducted by the Metropolitan Police Department of Washington D.C. showed that only 16 of 2,192 bailed defendants committed offenses while on liberty awaiting trial, and a similar survey by the Vera Foundation showed that less than 1% had been rearrested on serious charges (about 20 persons from over 3,200). In St. Louis 4 defendants out of 170 releases were rearrested; in Des Moines, 2 out of 160 - one for attempted burglary and one for forgery.

Among the other results of these projects, several report a decrease in the jail population. One report showed that the recognizance project represented 6,000 man days of confinement, which would have cost the city $36,000 under former practices. In St. Louis, with 75 defendants on recognizance in the first month of the project, the jail population was reduced to below capacity for the first time in 6 months.

Another interesting development occurred in the Des Moines project. Of the 160 persons released on recognizance, only 11 eventually went to prison. Most of them either were found not guilty, their indictments were not returned by the grand jury, or they were given suspended sentences. Hence, in the vast majority of these cases, any time spent in jail prior to their disposition would have been a total waste in view of that disposition.

Table VIII - Effect of Bail on Outcome of Case

Outcome	District I (North. Dist. Cal.-San. Fran. Div.) Bail Made	Not Made	District II (North. Dist. Cal.-Sacramento Div.) Bail Made	Not Made	District III (Conn.) Bail Made	Not Made
Dismissal	57	49	11	4	34	8
Per cent	20%	13%	27%	2%	22%	14%
Acquittal	6	5	1	1	9	1
Per cent	2%	1%	2%	1%	6%	2%
Guilty Plea	171	304	24	182	99	36
Per cent	60%	79%	59%	93%	64%	62%
Guilty Adjudication	50	27	5	2	12	7
Per cent	18%	7%	12%	1%	8%	12%

Source: Report of the Attorney General's Committee on Poverty and the Administration of Criminal Justice (1963). p. 142-44.

(2) The United States Attorney General

The Attorney General's Committee on Poverty and the Administration of Criminal Justice reported in 1963 that the practices varied widely among federal district attorneys insofar as recommending release of defendants on their own recognizance. In Connecticut, for example, during one 3-year period, 65% of all defendants were released on their own recognizance while in Delaware, the District of Columbia, certain districts of Georgia, and Washington, there were no such releases during the same period. In those cases where release on recognizance ("r.o.r.") was used, however, a very minor percentage - less than 3% of 3,390 cases - failed to appear.

On March 11, 1963, the Department of Justice instructed all United States Attorneys to recommend use of r.o.r. whenever possible. A follow-up study by the Justice Department in March 1964 to determine the impact of the Attorney General's r.o.r. directive on the federal system showed: (1) district courts generally have followed the U.S. Attorney's recommendations; (2) the rate of r.o.r. recommendations and releases nearly tripled between 1960 and 1964, from 6.4% to 17.4% of all criminal cases; (3) over 6,000 defendants in federal criminal cases had been released on recognizance in 1964 with a default rate at trial of only 2.5%; and (4) 16 of the 92 federal districts reported releasing more than 30% of all defendants on r.o.r. with the District of Alaska (72.4%), Eastern Michigan (71.7%), Connecticut (71.1%) and Massachusetts (66.7%) topping the list.

Rule 86 of the Federal Rules of Criminal Procedure was amended, effective July 1, 1966, making it the policy of the federal courts to avoid all unnecessary detention.

(3) Federal legislation

The Senate Judiciary Committee began work on federal legislation in 1964. Public Law 89-465, effective September 20, 1966, marks the first major overhaul of federal bail law since 1789. The Bail Reform Act goes far towards eliminating bail. It creates a presumption of release without payment of money before trial and pending appeal. Release without money becomes the norm, not the exception. At his initial appearance before a United States commissioner or district judge, a noncapital defendant shall be ordered released pending trial on his personal recognizance or on personal bond unless the judicial officer determines that these methods will not adequately assure his appearance. In that event the officer may impose one of the following conditions:

(a) supervised release;

(b) a restriction on the travel, association, or place of abode of the person during the period of release;

(c) requirement for the execution of an appearance bond in a specified amount and the deposit in the registry of the court, in cash or other security as directed, of a sum not to exceed 10% of the amount of bond, such deposit to be returned upon the performance of the conditions of release;

(d) requirement for the execution of a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof; or

(e) imposition of any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after specified hours.

The judicial officer must determine conditions of release in each case on the basis of "available information," which need not conform to rules governing the admissibility of evidence. The factors to be considered are the nature and circumstances of the offenses charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and his record of appearance at court proceedings.

The same release provisions apply to a person charged with an offense punishable by death or one who has been convicted and is awaiting sentence or appeal, unless the court has reason to believe that no conditions will reasonably assure that the person will not flee or pose a danger to the community. Should either of these risks exist or the appeal be found frivolous or taken for delay, the court may order the person detained. Such detention orders may be challenged only through pre-existing avenues of judicial review.

(4) State Legislation

Although there seems to be no question but that the court has the authority without statutory approval, a good number of states have statutes which specify that the court may release defendants on their own recognizance. Other than the Illinois and Michigan laws, which will be discussed later in this report, recent state legislation primarily involves authorization of release on recognizance.[1] The California law specifies the conditions under which release is to be granted. (Most of these laws also have a provision to make bail jumping a crime.) States which have passed such laws include California, Kansas, Kentucky, Maryland, New Jersey, Ohio and Texas.

B. Summons in Lieu of Arrest

To the extent that release on recognizance is successful, it suggests that in certain offenses and for appropriate defendants the arrest process might be avoided altogether. Extended use of summons or citations have long been urged in these cases. A summons or citation is an order issued by a judge or police officer to the accused directing him to appear in court at a designated time for hearing or trial. The Attorney General's Committee endorsed the use of summons as often as is practicable. In a variety of situations involving minor crimes or misdemeanors, estimated to constitute over 90% of all American crime, the comparatively small likelihood that the defendant will flee suggests little need to invoke the arrest process with its consequent reliance on bail. Freeing the accused on a police citation to appear for arraignment on trial in simple misdemeanors can avoid jail altogether for a significant number of defendants who are arrested on the spot without a warrant. It also frees the police officer to remain on his beat. In the

[1] See, California, Laws of 1963, Chapter 1493; Kansas, Laws of 1965, Chapter 229; Kentucky, Laws of 1966, Chapter 255; Maryland, Laws of 1965, Chapter 36; New Jersey, Laws of 1964, Chapter 265.

case of a station house summons, it saves him from personally carrying through the arrest to court arraignment. For a first offender, the summons is a means to avoid the stigma of arrest and booking, particularly in cases of ultimate acquittal or out-of-court settlement. The effectiveness of the summons is said to have been demonstrated in many situations. For example, prosecutors in Washington D.C. and a number of other areas use an informal summons to bring defendants and witnesses together for precourt conferences. Although this type of notice to appear carries no legal sanctions, the compliance rate is high. The formal summons, based upon statutes which contain financial or penal sanctions, presumably would evoke an even higher percentage of returns.

Although approximately 28 states and the federal courts have statutory provisions for judicially issued summons in lieu of sight arrests, their use is presently limited largely to traffic offenses and violations of municipal codes and county ordinances. In Cincinnati and Dayton, summonses or notices to appear are used widely in warrant misdemeanor cases. After a warrant is issued and the defendant's background has been investigated, the police are allowed to suspend its execution and issue a summons for appearance instead. Philadelphia recently passed a compulsory summons law applicable to all misdemeanors except sight arrests which carry penalties of less than 2 years' imprisonment. Restrictive interpretations have limited its application to private warrant offenses and blue law cases. Juvenile court laws throughout the country instruct police officers in all but the most serious on-the-spot arrests to discharge the juvenile in the custody of his parents, with a notice to appear before the judge or court social workers. Very few parents fail to appear with their child at the requested time.

As with release on recognizance, sound extension of the summons in criminal cases requires at least a brief preliminary investigation into each defendant's background. The Vera Foundation and the Police Department launched an experimental project in the 14th Police Precinct of New York City. The Manhattan Summons Project is designed to test the efficacy of replacing arrest and bail in certain common misdemeanors such as petit larceny and simple assault, with a station house summons. Based upon Police Department and Criminal Court regulations which authorize the use of summons for specified offenses, the project utilizes on-the-spot interviews by Vera personnel stationed in the precinct house to determine the community roots of persons brought before the desk officer on the designated charges. If the accused consents, the information he furnishes is immediately verified by phone. No interviews are held when the accused is intoxicated or agitated or the police feel that the offense is likely to recur immediately. Recommendations for issuance of a summons are made to the desk officer on a point system similar to that used in the Manhattan Bail Project. Released defendants are warned that, in the event of default, a bench warrant will issue. Where summons recommendations are not made, or when they are rejected by the desk lieutenant, the accused is booked, detained, and taken before a magistrate. Whenever the project recommendation is followed, the initial arrest is converted officially into a summons. Project personnel assume responsibility for reminding the defendant and, in some cases, a relative, friend or employer of the scheduled court appearance. In less than 2 months of active operation, 101 cases have

been interviewed, 58 recommended for summons, and 53 recommendations adopted. All 47 summoned defendants whose arraignment dates have so far arrived, have appeared on time; 2 had their cases dismissed, one had bail set, and 44 have been released on their own recognizance. In addition to the 2 dismissals, 10 defendants pleaded guilty and received suspended sentences. Speaking at the 1966 District Attorneys Convention in Oshkosh, Attorney General La Follette said that there seems to be no reason why the summons could not be used successfully in Wisconsin in cases involving petty crimes or misdemeanors. He pointed out that if the officer refuses to issue a summons, the court may still grant release in a later proceeding, and expressed his belief that an expansion of the use of the summons in Wisconsin could be beneficial.

C. Cash Bail

In some jurisdictions a defendant may, in lieu of a bail bond, deposit directly with the court a smaller amount of cash or securities. Except for a service charge, the deposit would be returned to the defendant on his appearance at trial. Cash bail eliminates the bondsman as a middleman and reduces substantially the financial loss to the defendant who fulfills his obligation. It provides opportunity for immediate release wherever posting bond at the police station is permitted.

New York City has had some limited experience with cash bail. The judge may set bail in the alternative - $1,000 bond or $100 cash. This gives the defendant the choice of posting a bondsman's bond of $1,000 at a premium of $50 unrefundable, or $100 cash refundable except for a 2 per cent service charge. A 1963 New York State legislative report called the "growing tendency" to fix cash bail in low amounts a "praiseworthy development." It recommended that judges be instructed to consider cash bail in every case.

The 1963 Illinois Legislature passed a cash bail law on a 2-year experimental basis. In 1965 this law was made a permanent part of the Illinois Statutes. The essence of the plan is this: Instead of requiring that a defendant secure a bond from a bail bondsman prior to his release, the defendant may post with the court an amount equal to the premium for a bond. If the bail was set at $100, a defendant could post $10 with the court instead of paying the bondsman a $10 premium to put up a $100 bond. When the defendant appears for trial, instead of losing the $10 - as he would have to the bondsman - he gets $9 back from the court. One per cent ($1) would be kept by the court for administrative costs. The expense for the defendant is minimal, only enough to pay for the added paper work and for the occasional costs of tracking down bail jumpers. In case of nonappearances, the full amount of the bail would be forfeited (for example, using the figures above, $100 would be forfeited for nonappearance). There are also penal provisions provided by statute which make bail jumping a crime and fix penalties.

An alternative is also provided. Instead of depositing the 10 per cent of the bond in cash with the court, a defendant may put up the full amount of bail in cash, or he may deposit with the clerk collateral of stocks and bonds in the full amount of the bail, or he may pledge as his collateral any real estate worth twice the amount of the bail. If he appears as required, the entire amount which he deposited is returned to him. The bonding experience then costs him nothing.

The Illinois Code also expressly states the public policy of the state to to be that defendants should be released on their own recognizance in those cases where all circumstances indicate that they will appear. A 1965 bail conference at the University of Illinois reported a phenomenal increase in the use of r.o.r. during 1964 even without the prerelease investigative programs. Several of the downstate judges and magistrates attending the conference reported that they release on recognizance regularly and do not even bother to use the 10 per cent deposit.

Another provision adopted by Illinois provided that only one bond may be required from arrest through appeal. This dispenses with the need, the trouble, and the costs of posting different bonds at different stages of the criminal proceedings. The Illinois program also provides that credit may be given for any detention that is necessitated in lieu of bail and that the defendant is compensated for this detention against any fine imposed upon conviction. To avoid protracted pretrial confinement, a provision was passed requiring the discharge of any defendant who is not tried within 120 days of his arrest. Other provisions allowed notices to appear and summons to replace arrests before trial, and required the posting of notice in police stations and jails of the right to bail.

One criticism made about the efficacy of the 10 per cent deposit provision is that so small a sum really provides no deterrent from flight. The belief is, however, that the danger of flight is no more likely in the case of an indigent defendant than it is under the present system. Furthermore, although $25 or $50 might not keep most men from running away, the possibility of its return might very well make pretrial release possible for some men. If a defendant, in order to make bail, gives a bondsman the $50 premium for a bond, that money is gone. If he gives an equivalent amount of money to the court under this plan, he would get back almost the entire amount when he appears. Moreover, for the defendant who has some property - but cannot afford the cash for bail - and who knows that he will not violate the conditions of his release, the alternative exists to post his property as security at no cost and get it back when he appears for trial.

Cash bail might not be high enough to guarantee, in and of itself, the presence of the accused at trial. On the other hand, cash bail does broaden the access to release for those against whom bail would work a hardship. Cash bail also stresses the personal involvement of the real parties in interest in the bail process and excludes the commercial aspect present in the present bonding system.

Michigan passed a cash bail law in 1965, but this law applies only to traffic and misdemeanor cases. A similar bill was also introduced in the 1965 Ohio Legislature; however, the cash deposit provision was deleted. The law that passed allows the court to release defendants on their own recognizance if the court believes that the accused will appear.

D. Supervised Release

Though largely forgotten since the rise of the bondsman, the Bail Reform Act of 1966 has restored the technique of releasing a defendant in the custody of a designated person or organization agreeing to supervise him. Examples of such supervision include release conditioned on remaining within the court's jurisdiction or at home, surrender of the accused's passport, or periodic check-ins with

the police, probation office or court.

The Attorney General's Committee on Poverty and the Administration of Justice recommended that the Federal Probation Service be enlarged to enable it to perform bail fact-finding and supervised release functions. As a result of these recommendations a pilot project was developed in the federal district court in San Francisco.

Upon request of the defendant or the commissioner of the court, the probation office will conduct a bail investigation. This had been done informally and occasionally in the past and was formalized as a result of the recommendation of the Attorney General's committee. The marshal notifies the probation officer when a defendant does not intend to make bail, and will sign a consent for bail investigation. The probation officer then interviews the defendant to determine factors indicative of his stability, such as his criminal record, employment, financial resources, and residence. The offense for which he is charged is not discussed. Sources for quick information are sought to verify the facts gathered. Then a report is made and submitted to the judge or the commissioner. If release under supervision is decided upon, the probation officer will designate a schedule for reporting.

The St. Louis recognizance project requires all defendants on personal bond to report to their probation officer each Monday. (See Tables VI and VII) Similar supervision has been proposed for inclusion in the forthcoming projects in Philadelphia and Oakland. In Connecticut 13 colleges have formed a league to accept custody and assure appearance of accused students. In New York City, the 11th Street Block Association Mobilization for Youth, the East Harlem Tenants Council and a number of neighborhood settlement houses have made pledges to supervise released defendants. Some civil rights organizations, unable to meet the massive demands of demonstrators' bail in the past, are now volunteering to guarantee their members' appearance in court. When a defendant needs medical or psychiatric treatment, counsel can explore placing him in the custody of a physician, hospital or public health facility. This type of arrangement could become critical in the case of an alcoholic, a narcotic addict or a mentally unstable defendant whose disability might otherwise bar assurance that he will return on time.

E. Third Party Parole

Suggestions have been advanced that a defendant be paroled into the custody of a willing, private, third party, such as his attorney, minister, employer, landlord, school, or labor union. This goes back to the original concept of the personal surety still intact in England. It is widely used in juvenile courts, which often release children into the custody of their parents. Albuquerque now uses third party parole for adult offenders as a substitute for monetary bail.

Another large-scale program, launched in Tulsa, Oklahoma in July 1963, is experimenting with the release of defendants into the custody of their attorneys. (See Tables VI and VII) To qualify, an attorney must agree that he will not knowingly request the release of a person previously convicted of a felony or within 6 months of an offense involving moral turpitude. Failure to produce his client in court when required results in removal of the attorney's name from the approved

list. Since the program's inception, a total amount of $173,000 in bonds has been waived because the defendants were released to their attorneys. Nearly 200 defendants a month are being released, and 300 members of the Tulsa County Bar Association are participating in the program. Under consideration and likely to occur soon is a plan to extend the program to include felonies. Close to 3,000 defendants have been released to attorneys since this program began, and less than one per cent has failed to appear in court for trial. The bondsmen operating in Tulsa have diminished correspondingly. The bench and bar of Tulsa are happy with the program, while the newspapers and, assumedly, the community in general are behind it. Other cities around the country, including Buffalo, New York; Tucson, Arizona; and Salem, Oregon are considering adoption of the Tulsa program.

F. Daytime Release

For those who cannot safely be granted full-time release, the possibility of part-time or daytime release has been raised to permit the accused to leave for outside employment during the day and return to jail at night. Daytime release is now employed in 14 states for convicted offenders but in none for persons in pretrial detention. This system allows defendants to maintain their jobs and social contacts and to provide for their families as well. The first American legislation permitting daytime parole, the Huber Law, has been operating successfully in Wisconsin since 1913. The federal bail law has listed daytime release as one of the alternatives open to the judge in those cases in which outright release is considered too risky.

G. Penalties for Nonappearance

The bail system is improved by an increase in pretrial release only if the releasees return. Many of the devices for insuring this goal are built into the release conditions already described. Not to be ignored are the deterrents inherent in modern society. The Attorney General's Committee on Poverty and the Administration of Justice cited "the difficulties of fleeing the geographical jurisdictions of the federal courts...policed by national law enforcement agencies of high efficiency and reputation." The same is true to a lesser degree in states with interstate extradition compacts. But criminal penalties are thought by many to be the most effective deterrents to flight. Penal sanctions logically should deter defaulters more strongly than forfeitures of a bond for which the premium has already been lost. Yet, surprisingly, only 7 states have bail jumping statutes, and fewer still inflict criminal penalties for jumping parole or recognizance. The new Illinois bail law provides for a $1,000 fine and one year imprisonment for a misdemeanor bail jumper; $5,000 and 5 years for a felony bail jumper. The 1966 federal bail law sets the same penalties for bail jumping.

XI. BAIL REFORM ACTIVITY IN WISCONSIN

Article I, Section 8, of the Wisconsin Constitution provides in part:

> "All persons shall, before conviction, be bailable by sufficient sureties, except for capital offenses when the proof is evident or the presumption great;"

The Wisconsin Statutes further guarantee the right to bail in all cases, subject to judicial discretion only for those charges which would result in life imprisonment. The sole standard is that, "The bail bond shall be sufficient to secure the appearance of the defendant for trial." (Wisconsin Statutes, Sec. 954.15 (1)) Yet, according to the Dane County Bail Study, of 436 persons who were eligible in 1963, 103 were not able to make bail. These people spent an average of 23.91 days in jail. Of the 103 defendants who failed to meet the initial amount of bail set, 30 could not make the comparatively low amount of $200 or less, one failing to provide bail of $25. The Milwaukee study was not extensive enough to contribute relevant statistics concerning the number of persons in the state who remain in jail because of their inability to meet the financial requirements of pretrial release. The evidence that is available has been sufficient, however, to lead Attorney General La Follette to advocate strongly the need for reform in Wisconsin bail laws.

On June 15, 1965 the Attorney General sponsored a Conference on Bail Reform in conjunction with the Board of Criminal Court Judges and the State Bar of Wisconsin. At that conference several county judges indicated that they knew 95 per cent of the individuals brought before them. In such instances, a system of financial obligations to guarantee court appearances becomes less necessary. The conference concluded by adopting a motion urging a reform in our bail practices.

In October 1966, during the election campaign, Attorney General La Follette issued a position paper advocating release on recognizance as the alternative to bail bonds most suited to Wisconsin counties. Explaining that there is overwhelming evidence to indicate that the combination of prior arrest record, the charges brought by the district attorney and the judge's own knowledge of the defendant's background enables the court to determine accurately on a case by case basis whether release on recognizance is feasible, he further asserted that in the most populous counties a preinvestigation system could be established through the probation bureau or other existing agencies. He also announced that the Department of Public Welfare had already indicated that it would co-operate in the implementation of a release on recognizance program.

In that position paper Mr. La Follette cites 5 basic concepts which should be incorporated into any proposal for revision of Wisconsin's bail laws: First, it should allow the court discretion in deciding what means necessarily need be employed in a particular case in order to assure appearance at trial; second, it should provide for penalties for violation of release conditions; third, it should apply not only to indigents but to all defendants; fourth, time actually spent in jail by a defendant should be credited against the sentence imposed upon him; fifth, the law should reflect the notion that the need for bail is not directly related to the nature or seriousness of the crime involved, rather, the charge should be but one of many factors to be considered in determining whether bail is necessary.

To date, however, there has been little legislative activity in Wisconsin on the subject of bail. There was the 1961 bill cited previously, which attempted to regulate bondsmen.

Chapter 143, Laws of 1961, introduced as Assembly Bill 348 by Mr. Huber and others, provided that in traffic violations the accused may deposit cash with the

sheriff, chief of police or clerk of court, not to exceed the maximum penalty for the offense.

Chapter 82, Laws of 1965, amended Section 954.14 of the statutes to allow county judges to admit to bail a person charged with a crime punishable by imprisonment for life. Previously this could only have been done by Justices of the Supreme Court or circuit court judges. This law was introduced as Senate Bill 195 by Senators Sussman, Schuele and Benson at the request of Milwaukee County.

A bill introduced by Assemblyman G. K. Anderson, to release on their own bonds persons arrested for state traffic violations or for certain misdemeanors was unsuccessful in the 1965 session (Assembly Bill 854). A similar bill has been introduced by Mr. Anderson in the 1967 session (Assembly Bill 177); it would allow bank certificates to be deposited with the clerk of the trial court in lieu of bail bonds. Assembly Bill 95, introduced in the 1967 session by Assemblymen Azim and Uehling, would allow certificates of deposit as collateral for bail bonds (in addition to cash, certified checks, or United States government bond).

A comprehensive bill concerning reform of the bail laws has been introduced in the 1967 session (Assembly Bill 627) at the request of the Milwaukee County Bar Association, by Assemblymen Bellante, Lipscomb, G. K. Anderson, Brown, Steinhilber, Held, Hanna, Shabaz, Devitt, N. C. Anderson, Martin and Uehling. This bill revises the various statutes concerning bail and places them in one comprehensive section. It provides statutory discretion for judges to release persons on their own signature, and lists the factors to be considered in such a determination. The factors listed include the nature and circumstances of the charge, the weight of the evidence, the financial ability of the defendant, and the state policy against unnecessary detention. The bill would also require the district attorney to submit a written report of those who are held more than 10 days without bail and to explain the reasons for this detention.

XII. CONCLUSION

To summarize, it can easily be seen that the preference of any criminal law system should be the release of as many persons prior to trial as can be achieved while considering the community safety and the necessity of the accused's appearance for trial. Pretrial release is advantageous for the accused in that he is saved the "unpleasantries" involved in incarceration and at the same time is free to continue his job, support his family, and work on his defense. This is advantageous to society in that its members are protected from confinement when not guilty and are spared the incarceration costs for pretrial confinement - as well as auxiliary expenses such as public defenders and welfare payments.

It is certainly not advantageous to society, however, to release those who are accused of a crime if they will prove dangerous or if they will flee before their trial. Heretofore the method used to assure the accused's presence at trial has been the bail bond. However, the pretrial release projects to date seem to indicate that there are a significant number of individuals unable to afford monetary bail who do not pose a threat to the community and who will return for trial.

Research seems to indicate that in a control group, at least, factors such as family ties, community stability, and occupation are more useful criteria for determining who should remain in jail and who should be released prior to trial.

On the other hand, the attempted reforms have been too recent to evaluate the difficulties that will result from the substitution of criteria other than money in pretrial release. The most obvious problem that will develop concerns the outcome of a defendant's case in those circumstances where pretrial release has been denied - will such pretrial determination unduly balance the decision towards the defendant's guilt? Other problems can be expected with the substitution of a subjective determination of personal factors for the more objective requirement of a bail bond.

Evaluation of these problems and suggested solutions, however, would probably only be possible within the workings of such a program. Changes in bail procedures are definitely "in the air." The main thrust of discussion has centered around what form these reforms should take. Certainly the possible alternatives that have been discussed will not solve all the problems of what to do with the accused prior to trial, nor will they solve the problems of the poor who run up against the complexity of legal procedures. The hope of those who are working toward alternatives to the bail bond is that they will free persons on terms other than finances. The advantages of this policy have been analyzed. An in-depth study of the ensuing problems will require further experience with such programs.

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