Pretrial Decision Making in the 24th Judicial District

A Research Report by the Metropolitan Crime Commission

March 2003
New Orleans, Louisiana

Table of Contents

Introduction 1
Purpose and Scope of the Report.....1
Methodology.....1
Background.....2
Summary of Louisiana's Bail Law 2
The Pretrial Process in the 24th Judicial District Court 3

Assessment of Pretrial Practices in the 24th Judicial District.....6
Lack of Judicial Control.....7
Over Reliance on Commercial Surety Bail Bonding 7
Extent and Pattern of Use of Commercial Surety Bail Bonds in the 24th JD 8
The Potential Corrupting Influence of Commercial Surety Bail Bonds 10
High Failure to Appear and "At Large" Rates.....12

Conclusions and Recommendations 15
Conclusions.....15
Recommendations.....15

Appendix A: Recent Examples of Corruption Associated with Bail Bonding for Profit.....21
Appendix B: Illinois Deposit Bail Bond Law 23
Appendix C: Modern Pretrial Programming.....25

Pretrial Decision Making in the 24th Judicial District

I. Introduction

Purpose and Scope of the Report

The purpose of this report is to examine the pretrial decision making process, the pretrial release options used in Jefferson Parish involving individuals arrested on state charges, and to examine some of the impacts of this process on the justice system and the citizens of Jefferson Parish.

It is the goal of this research to promote improvements in the management of felony and misdemeanor cases in Jefferson Parish by:

- Providing public officials, criminal justice leaders, and citizens with objective information about the performance of key agencies involved in the pretrial process.
- Promoting greater accountability in the pretrial process
- Increasing public awareness about the importance of the pretrial process
- Offering alternatives to current pretrial practices

Deciding who is released following arrest on state charges, and under what conditions, is a vitally important process. The policies adopted by criminal justice officials that guide pretrial release decisions can affect crime in the community, criminal justice expenditures, for example the need for new prison construction, and of great importance, they can create the potential for corruption. For these reasons, over 300 jurisdictions across the country have established pretrial programs.

This report describes a pretrial process in Jefferson Parish by which defendants are released to the community pending trial, how they are released, and under what conditions, a practice that results in a high "failure to appear rate", and a high rate of "at large" defendants; and describes a system that exhibits an over reliance on the use of commercial surety bonds as a means of pretrial release, a practice which can have a corrupting influence on the parish's criminal justice system.

Several references are made in this report to a prior study of the Jefferson Parish justice system that was completed by Pulitzer/Bogard and Associates in 1997, entitled, *Jefferson Parish, Louisiana Adult Jail/Juvenile Detention Crowding Study.* As the title suggests, the study was undertaken to find ways to address the lack of juvenile detention and adult jail space in Jefferson Parish. A section of the report, however, examined the impact of pretrial release practices on the Jefferson Parish adult criminal justice system, and many of the findings, although often based on anecdotal information, give added weight to the conclusions and recommendations reached by the MCC. The MCC study, which focuses specifically on the pretrial process, provides needed empirical data, and together, these two studies point to the need for a major overhaul of the pretrial process in the 24th Judicial District (JD).

Methodology

MCC staff drew a random sample of 937 criminal cases filed in the Twenty Fourth Judicial District Court (JDC) between June 1, 1999 and May 31, 2000, and tracked these defendants from

the time of their arrest through the final disposition of their cases. The sample, which was obtained from the Criminal Data Information System (CDIMS), which maintains automated data on 24th Judicial District Court's civil and criminal cases and is operated by the 24th Judicial District Clerk of Court's Office, and represents almost 10 percent of all arrests on state felony and misdemeanor arrests made during that period.

Extensive data were collected on each defendant. These data were obtained from CDIMS and from the Jefferson Parish District Attorney's Office. Information was also obtained through interviews with individuals who work in the Jefferson Parish justice system. Information on commercial bail bonds was obtained from the State Department of Insurance. The data collected were compiled in a database for analysis using SPSS software. Although the research presented in this report is based on a sample of the total population of defendants, the results discussed are statistically significant at the 95 percent level. That is, we are 95 percent confident that the characteristics of those in the study sample, for example the methods by which defendants are released following arrest, represent the characteristics of the entire population.

There has been a significant development in Jefferson Parish since data for this report were collected — the opening of a new jail in the intervening period. According to the data from the sample, 30 percent of the defendants arrested on state charges were released pursuant to emergency release procedures instituted because of jail crowding. These procedures remain unchanged, however, as the new jail, with a population of about 450, is at or near its capacity.

Background

Summary of Louisiana's Bail Bond Law

Louisiana law defines "bail" as "the security given by a person to assure his appearance before the proper court whenever required." (C.Cr.P.Art.311)

According to Louisiana law, there are three types of bail available to a judicial officer:

- Bail posted through a surety, either commercial or private, which includes
  - commercial surety bond – bond underwritten by a commercial surety company (La.C.Cr.P.Art.314)
  - secured personal surety bond – a third party specifically mortgages immoveable property (La.C.Cr.P.Art.318)
  - personal surety bond – third party who assigns any assets equal to the amount of the bond (La.C.Cr.P.Art.15)
  - unsecured personal surety bond – a third party is not required to assign any assets (La.C.Cr.P.Art.317)
- Bail that can be posted as cash or property to the court (La.C.Cr.P.Art.324)
- Bail without surety – personal bond undertaking or release on recognizance (La.C.Cr.P.Art. 325)

When a commercial surety bail is posted, the defendant must pay a non-refundable fee of 12 percent of the amount of the bail. Under Louisiana law, a bond amount must be set for each separate charge, Ten percent goes to the bail bonding company, and the bondsman pays two percent directly to the parish sheriff by check or cash at the time the bond is issued. The two percent fee is later divided equally among the district court, the sheriff's department, the district

attorney's office, and the Indigent Defender Program. Each of these agencies receives approximately $220,000 annually from the two percent bond fee. Prior to August 1999, the two percent bond fee was paid by the national insurance companies quarterly to the Louisiana Department of Insurance.

Separate and apart from the two percent bond fee, the JPSO also charges each defendant a $15.00 fee for each bond that is set in connection with each charge that is made at the time of arrest. This fee is levied under R.S.33:1432 which states that sheriffs are entitled to compensation for their services in criminal matters including "for taking appearance bond when required to do so, fifteen dollars, unless suspended by a judge of the district court of the parish. A judge of a district court of the parish shall waive this fee if a defendant has been tried and found not guilty or if the charges against the defendant are dismissed." This fee, which is collected by commercial bail bondsmen along with their underwriting fee, generates over $400,000 annually for the JPSO. The great majority of this total is levied in connection with the issuance of commercial surety bonds.

All persons are entitled to have bail set, except those charged with specified crimes of violence, with production, manufacture, distribution, or sale of specified controlled dangerous substances (La.C.Cr.P.Art.330), or with a capital offense. (La.C.Cr.P.Art.331.)

The law specifies that the bail set should be calculated to assure the appearance of the defendant in subsequent court proceedings and to assure public safety. (La.C.Cr.P.Art. 334.) The factors to be considered in determining the amount of bail are:

- The seriousness of the offense charged;
- The weight of the evidence against the defendant;
- The defendant's prior criminal record;
- The ability of the defendant to give bail;
- The nature of the danger to public safety that would be posed by the defendant's release;
- The defendant's voluntary participation in a pretrial drug testing program;
- The absence or presence of controlled substances in the defendant's blood at time of arrest;
- Whether the defendant is currently out on bond in another case;
- The type and form of bail; and
- "Any other circumstances affecting the probability of defendant's appearance." (Article 334)

The Pretrial Process in the 24th Judicial District Court

Under Louisiana law, persons arrested must have bond set within 72 hours of arrest. In Jefferson Parish, bond might be set by any one of three different officials: the Justice of the Peace, who also serves as a magistrate, a Criminal Commissioner, and a District Judge. The 24th JDC does not provide around the clock on-site magistrate service and a judge or judicial officer must be contacted by telephone after hours and on weekends. During the one-year study period, 88 percent of all individuals arrested on state charges were released by these judicial officials on some type of bond prior to the disposition of their cases.

In Jefferson Parish, the judicial officer making the pretrial release decision consults a court-adopted bond schedule to guide bond setting. That schedule lists a dollar range within which a bond should be set for each specific charge. Bond amounts for state misdemeanor charges are

pre-set, thus defendants charged with a misdemeanor need not appear before a judicial officer for bond determination and are eligible to post bond at the lockup immediately following booking.

Commercial surety bonds (CSB), personal surety bonds (PSB), and "split bonds", a combination of a CSB and PSB, are the most often used methods of posting bail in the 24th JDC. A fourth method of release, emergency release, granted by the JPSO, does not involve the actual posting of bail by the defendant. The defendant simply signs an "appearance bond" in the amount of the bond set by the court. JPSO personnel use a risk assessment process termed "code 6" to determine the relative risk level of defendants prior to their release. Property and cash bonds are rarely used and make up only about two percent of all bail bonds.

The office of Criminal Commissioner, which was created in 1997 by the Louisiana Legislature (La.R.S.13:717), is responsible for setting most of the bonds in the 24th Judicial District Court (24th JDC). The office is funded by a special fee imposed by the court on individuals convicted for state felony and misdemeanor offenses, and by a fee of $50.00 on each $10,000 worth of surety bonds underwritten by commercial surety bail bond companies in the 24th JDC.

Two Criminal Commissioners rotate duty on a weekly basis and are responsible for setting bond at the first court appearance for those individuals charged with state offenses. The judges of the 24th JDC en banc appoint criminal commissioners. The duty commissioner conducts bond hearings beginning at 9:00 AM Monday through Friday in the Jefferson Parish Corrections Center (JPCC) operated by the Jefferson Parish Sheriff's Office (JPSO). The judges and commissioners set bonds in all cases that carry a mandatory hard labor penalty. By state law, each offense must have a separate bond amount. At the time of the first appearance, defendants and their sureties are personally served with a notice by the commissioner to appear in court for a status hearing in 45 days. Unlike in Orleans Criminal District Court, prosecution and defense attorneys are normally not present at bail-setting hearings.

The Justice of the Peace (JOP) in Jefferson Parish also provides a magistrate function and holds court every weekday in the parish jail beginning at 11:00 AM, however, the JOP is on call 24 hours a day and on weekends. The JOP sets bonds for felony charges that do not require hard labor (class 3 felony offenses). The JPSO provides the JOP with a daily magistrate list containing the names of all individuals arrested (since 5:00AM the previous day) and their charges. This list serves as the JOP's daily docket. The JOP sets a bond amount for each charge and enters this information on the magistrate list. Bond amounts for defendants charged with state misdemeanors are determined by a bond schedule, and the great majority gain their release following booking.

The JOP administers a small pretrial services program. A chief investigator, one clerical person, and one part-time investigator staff the program. The investigator interviews those defendants charged with misdemeanors and class 3 felonies, and presents that information to the justice of the peace, who also has the arrest report and often the criminal record. During the study period, about 650 defendants were released through the pretrial program. Defendants are released under a personal surety bond (PSB) in which a third party agrees to insure the defendant's appearance in court. The third-party surety is responsible for paying the amount of the bond if the defendant

fails to appear in court. Pretrial program personnel contact defendants and their sureties by telephone to remind them of upcoming court appearance dates.

Jefferson Parish also provides the court access to a drug screening program that is intended to serve both pretrial and probation populations in the 24th JD. Based on interviews with parish criminal justice officials, however, the program has been re-organized on several occasions but remains a greatly under utilized resource.

During the evening hours and on weekends, one of the elected district judges, or "duty judge", assumes bond setting duty on a weekly rotating basis. There is no rule, however, that prevents a defendant or a representative of a commercial surety bonding company from contacting a district judge not on duty to set a bond. The duty judge or other judge is usually contacted by telephone by a commercial bail bondsman, the defendant, or an attorney to request a bond. The defendant's criminal history information is transmitted via FAX by the JPSO to the duty judge. The bail bond order is usually transmitted by the judge to the JPSO by FAX.

Judges of the 24th JDC also use a "split bond", a combination of a CSB and a PSB, to satisfy the bond requirement set by the court. For example, a $50,000 bond amount set by a criminal commissioner could later be split by a judge into a $25,000 CSB and a $25,000 PSB thus reducing the defendant's cash outlay to get out of jail from $6,000 to $3,000. Split bonds are most often used in cases involving a high bond amount.

Once a bond decision has been made by a judge or officer of the court, that information is provided to Jefferson Parish Sheriff's Office (JPSO) personnel who compile a daily inventory of all persons arrested over the past 24 hours, their charges, the Code 6 rating and the bond amount. This information is reportedly made available at the intake section of the jail to all commercial bondsmen. In the case of CSB's, the JPSO actually completes the paperwork, which includes the "appearance bond" and a "power of attorney". The JPSO maintains the only comprehensive information on the issuance of commercial surety bail bonds in the 24th JDC.

Exhibit One provides a breakdown of the method of release for those defendants who were released pending trial.

Exhibit One:
Method of Pretrial Release of Defendants in Sample

Method of Release	Percent
Released on commercial surety bail	38%
Emergency release due to jail crowding	30%
Released on split commercial/personal surety bond	14%
Released on personal surety bond	16%
Released on property or cash bond	2%
ROR/Other	<1%
Total	**100%**

Source: MCC research

As shown in **Exhibit One**, the JPSO played a prominent role in making pretrial release decisions during the study period. The judges of the 24th Judicial District Court granted the JPSO emergency release powers in 1991 as a means of addressing the problem of limited jail space. The JPCC operated at full capacity during the study period, and as can be seen, 30 percent of all defendants gaining their pretrial release did so through the emergency release process.

Once a bond is set, a hearing to increase or reduce the bond amount that includes the DA's Office is required to modify the original bond. If a motion to reduce a bond originally set by a commissioner is filed with the court and the case has not yet been allotted to a section of court, then a Commissioner or judge can reduce the bond. If a motion to reduce a bond set by a commissioner is introduced prior to allotment, then the bond reduction hearing is randomly allotted to another court section. However, if a judge sets the original bond, by court rule, only that judge can modify the bond.

As an alternative to actually reducing the bond amount, some judges "split" the amount of the bond between commercial surety bond and a personal surety bond which reduces the amount of cash required to make bond.

II. Assessment of Pretrial Practices in the 24th JD

The framework for the analysis that follows uses the recently adopted version of the Pretrial Release Standards of the American Bar Association (ABA). The ABA first published standards for pretrial release in 1968, and has updated them several times, most recently in 2002. These standards have served as a guide for reviewing the pretrial release decision-making processes throughout the country.

The ABA standards call upon every jurisdiction to establish a pretrial services program (Standard 10-1.10.) that is responsible for conducting an investigation "in all cases in which the defendant is in custody and charged with a criminal offense" (Standard 10-4.2.), and the investigation should be conducted prior to the defendants' first appearance in court (Standard 10-1.10 (a). The investigation "should focus on assembling reliable and objective information relevant to determining pretrial release and should be organized according to an explicit, objective, and consistent policy for evaluating risk and identifying appropriate release options." (Standard 10-4.2 (g).)

The need for screening and pretrial management of defendants released pending trial become particularly important in the 24th JD, a jurisdiction **in which 88 percent of those arrested during the study period were returned to the community pending disposition of their cases. Nationally, 63 percent of defendants are released pending trial.** While the MCC does not suggest that the release percentage be reduced, it is recommended that a system of screening and release options be implemented. With the exception of the small pretrial program operated by the JOP, however, the 24th JDC has not developed a system of screening and alternative release options, essentially leaving emergency release and commercial surety bonds as the only available options. Absent such a system, the following analysis will show that the pretrial phase in the 24th JD lacks rationality resulting in a process that is characterized by the following interrelated problems:

- A lack of control by the judges of the 24th JDC over who is released pretrial, how, and under what conditions
- An over reliance on and the inappropriate use of commercial surety bonds as a means of gaining pretrial release
- High "failure to appear" (FTA) and "at large" rates that undermine the credibility of the criminal justice system and bring inefficiency and added cost to the system

Lack of Judicial Control

As noted, 88 percent of all individuals arrested on state charges in the 24th JD during the study period were released pending trial. The judges of the 24th JDC, however, were directly involved in the release decision in only 16 percent of the cases in which defendants gained their release – those cases involving the issuance of PSB's.

This is the case because as shown in **Exhibit One**, in 30 percent of all cases in which defendants were released pretrial, the JPSO and not the court made the release decision. In an additional 52 percent of all pretrial releases, a bail bondsman was involved. **Though judges and judicial officers set the bail amount, the determination as to whether a defendant is actually released lies not with the judge or judicial officer, but with the bail bondsman's willingness to write the bond, the bail bondsman's access to the defendant, and the defendant's ability to secure the necessary fee.** As one judge once put it, "the professional bondsmen hold the keys to the jail in their pockets."[1] As discussed in the following section **(see Exhibit Four)**, the end result is an irrational system in which the lowest risk defendants must pay a commercial bondsman to get out of jail while high-risk defendants are granted emergency release.

Although the thousands of defendants released from jail following their arrest on state charges are under the jurisdiction of and are the responsibility of the judges of the 24th JDC, the court exercises little meaningful control over this population. The judges have chosen instead to relinquish their responsibility to the JPSO and, in effect, to the commercial bail bond industry. It is primarily to promote judicial responsibility that the ABA calls for all jurisdictions to establish pretrial services programs that provide for risk assessment and a range of release options for defendants released pending trial that reduce reliance on the use of commercial surety bonds.

Over Reliance on Commercial Surety Bail Bonding

The ABA in its 2002 pretrial release standards calls for the abolishment of commercial surety bonds. In fact four states – Wisconsin, Oregon, Illinois, and Kentucky – have banned the use of commercial surety bail bonds.

The reasons the ABA has taken this stance include:

- The corrupting influence of the commercial bail bond industry on the criminal justice system
- As discussed previously, the loss of control of pretrial decision making to bondsmen
- As discussed later in this report, commercial surety bonds do little to ensure defendants' court appearance
- The use of commercial surety bonds discriminates against the indigent

[1] *Pannell v. United States*, 320 F. 2d 698, 699 (D.C. Cir, 1963, concurring opinion of Judge Skelly Wright.

When financial bail must be imposed to ensure the defendant's appearance in court, the ABA standards state, "the defendant should be released on the deposit of cash or securities with the court of not more than ten percent of the amount of the bail, to be returned at the conclusion of the case." Financial bail includes release on commercial surety bond, property bond, and cash bond.

Extent and Pattern of Use of Commercial Surety Bonds in the 24th Judicial District

Contrary to ABA standards, the use of commercial surety bonds remains the predominant type of release in Jefferson Parish. As **Exhibit One** (page four) shows, 52 percent of defendants in the sample who gained their released prior to disposition of their cases did so through the intervention of a commercial bail bonding company — 38 percent on straight commercial bail and 14 percent on a split commercial and personal bond, in which both a bonding company and a private individual are responsible for the appearance of the accused.

By comparison, a 1998 Bureau of Justice Statistics study[2] of bonding practices nationally found that on average, 38 percent of felony defendants in the nation's 40 largest jurisdictions that gained their released did so through a commercial surety bond. **See Exhibit Two.** In fact, only six jurisdictions included in the study had an equal or greater reliance on commercial surety bonds. It is also important to note that in the 24th JDC, ROR is not used at all. Although it might be argued that emergency release in the 24th JDC is similar to ROR releases in other jurisdictions, important distinctions exist: in most cases the court makes the ROR release decision, not law enforcement, and ROR releases typically involve lower-risk defendants than those granted emergency release in the 24th JD. Nationally, 28 percent of the defendants that are released pretrial are released on ROR or conditional ROR. In Orleans Parish, ROR accounts for 34 percent of those who are released pretrial. **In the federal court system, which operates a comprehensive pretrial supervision program, 80 percent of defendants are released on ROR and other non-financial conditions, and only 18 percent are required to post a financial bond.**

Exhibit Two:
A Comparison of Pretrial Release Methods
24th JDC and National Average[3]

Jurisdiction	Pretrial Release Method						
	CSB	ROR	Deposit	PSB	ER	Cash/Prop.	**Total**
24th JDC	52%	0%	0%	16%	30%	2%	**100%**
National Avg.	38%	28%	8%	12%	6%	8%	**100%**

Source: MCC research and BJS

Exhibit Three shows that 22 percent of state charges made at the time of arrest in the 24th JDC were fourth-class misdemeanors (first offense possession of marijuana, theft, simple battery) and 57 percent were third-class felonies (felony drug possession, burglary, forgery). Only 21 percent of the charges were for the more serious second-class felonies (armed robbery, rape drug distribution), and less than one percent were for first class or capital offenses. This offense

[2] *Felony Defendants in Large Urban Counties, 1998,* Bureau of Justice Statistics

[3] The national averages for "PSB" and "ER" represent the "conditional release" and "unsecured bond" categories respectively in the BJS study.

profile suggests that a substantial percentage of the defendants are suitable for release methods that provide alternatives to commercial surety bonds.

Exhibit Three:
Class of Offense for the Most Serious Charge Made at Time of Arrest

Class of Offense	% Total
Class 1	<1%
Class 2	21%
Class 3	57%
Class 4	22%
Total	**100%**

Source: MCC research

Exhibit Four below shows on which type of bond defendants arrested for class 2,3, and 4 offenses were released during the study period. The data show that CSB's were used at a much higher rate with low-risk defendants than with higher risk defendants. Fifty-five percent (55%) of all individuals arrested for a misdemeanor offense (class 4) had to obtain a straight CSB to gain their release, while only 15 percent of the individuals arrested for class 2 offenses and 38 percent of those charged with class 3 felonies were released on a CSB.

There are several reasons why class 2 and 3 defendants had a lower rate of release on commercial surety bonds than class 4 defendants: One, they could not afford to pay the higher bond fees; two, the commercial bondsman simply chose not to write the bonds and assume the risk; and, three, these defendants opted not to post a CSB hoping for eventual emergency release. Finally, since only 22 percent of class 4 misdemeanants were granted emergency release, essentially one option remained for gaining their release from jail – a commercial surety bond. ABA standards call for the use of non-financial release conditions for low-risk defendants.

By comparison, 37 percent of those charged with a class 2 offense received an emergency release and 18 percent a PSB. Thirty-seven percent of defendants charged with class 3 felonies also received an emergency release.

Exhibit Four:
Offense Class of Defendants By Method of Release

Method of Release	Offense Class			
	1	2	3	4
Commercial Surety Bond	0	15%	38%	55%
Split Bond (CSB/PSB)	0	29%	10%	8%
Emergency Release	0	37%	37%	22%
Personal Surety Bond	0	18%	14%	13%
Property bond	0	0	2%	2%
Total		**100%**	**100%**	**100%**

Source: MCC research

These data strongly suggest the need for a more rational system of pretrial release decision-making in the 24th JDC. Substantially expanding the use of alternative means of pretrial release for individuals arrested for class 4 misdemeanors, and requiring more restrictive release

conditions for class 2 felony defendants would be a good place to start. For releasing almost 40 percent of the most serious offenders under the least restrictive conditions, and requiring 55% of the lowest risk offenders to obtain a CSB can only make sense to the bail bondsmen who collect hundreds of thousands of dollars each year writing bonds for misdemeanor defendants who pose a relatively low risk to the community.

Recognizing that defendants pose a wide range of risks, the ABA standards call for pretrial release conditions that provide a wide range of options to address those risks (Standard 10-1.2.). The ABA standards state that jurisdictions should promote the release of low risk defendants on their own personal recognizance (Standard 10-1.4 b). Defendants charged with class 4 offenses, which are misdemeanors, are obvious candidates for ROR or PSB consideration in lieu of a CSB.

The standards also call for a range of non-financial conditions for higher risk defendants who cannot be safely released on their own recognizance (Standard 10-1.4 (b).), and the use of financial bail, specifically deposit bail, "when no other conditions will ensure appearance" (Standard 10-1.4 (c)).

The Potential Corrupting Influence of Commercial Surety Bail Bonding in Jefferson Parish

The ABA recognizes in its pretrial standards that a jurisdiction that relies heavily on commercial bail bonding, as does the 24th Judicial District, creates the appearance of impropriety and the potential for corruption.

Outlined below are examples of on-going and prior investigations, news accounts, and incidents reported to the MCC that point to the potentially corrupting influence of the bail bond industry in Jefferson Parish.

- The FBI is now leading an investigation of possible corrupt bail bond practices in Jefferson Parish that grew out of information obtained from wiretaps of former 24th JDC judge, Ronald Bodenheimer and others.
- The Jefferson Parish District Attorney's Office initiated an investigation in 1997 of corrupt bail bond practices amid allegations that Jefferson Parish deputies were illegally funneling bail bond business to a favored company. The investigation remains ongoing.
- The media have reported stories alleging collusion between JPSO personnel and bail bond company personnel.
- As reported in the media, a sitting judge in the 24th JDC received $5,000 in cash from an employee of a commercial bonding company during a meeting in the judge's chambers.
- As reported in the media, a (then) sitting judge with the 24th JDC and personal friend of the owner of a commercial bonding company, amended the sentence of a twice-convicted felon and employee of the bondsman. It is illegal in Louisiana for a convicted felon to work as a bail bondsman.

Nationally, evidence of corrupt practices by bail bondsmen goes back decades,[4] and little has changed in recent years in those jurisdictions that continue to rely on bail bonding for profit. See

[4] For example, as one author related in a 1976 book, "In city after city investigations by grand juries, bar associations, the press, and other local groups disclosed evidence of payoffs and corruption in the activities of commercial bail bondsmen. In the New York City area alone there were four full-scale grand jury investigations of

Appendix A for a list of very recent reported examples of corrupt practices associated with bail bonding companies. As the ABA has noted, "the commercial bail bond business has been one of the most tawdry parts in the criminal justice system."[5]

The commercial bail industry in Jefferson Parish is sizeable and is monopolized by one company, Bail Bonds Unlimited, which wrote 98% of the commercial surety bonds issued in the 24th Judicial District during the study period. That a single company has what is essentially a monopoly of the writing of commercial surety bail bonds in a jurisdiction can have a potentially negative impact on the criminal justice system.

Based on information obtained from the Louisiana Insurance Commission, the licensing authority for the bail bond industry, commercial surety bonds with a total liability of $32 million were written in the 24th JD over the study period. The national insurance company underwriting those bonds declared bankruptcy in 2001, however, making collection of any forfeited bonds problematic. According to information furnished to the MCC by the Jefferson Parish DA's Office, $268.5 million in commercial surety bonds were written in Jefferson Parish during the six- year period 1997-2002, an average of $44.7 million per year. This total includes commercial surety bonds written in the 24th JD as well as bonds written in the parish courts. As previously noted, the bail bond company – usually Bail Bonds Unlimited and the national surety company – receive 10 percent of this amount or over $4 million in fees annually in Jefferson's Parish alone.

Additionally, it was reported to MCC researchers during interviews with parish criminal justice officials, that in addition to the 10 percent bond fee, defendants who cannot pay the entire bond fee upfront are asked to sign a promissory note for the balance at an exorbitant interest rate of 39 percent or remain in jail. The limited financial resources of these defendants could be much better spent paying their fines, court costs, and probation fees.

Local commercial bail bond companies doing business in the 24th JD apparently take very little risk in their business. Over one third (34%) of all CSB's written in the 24th JDC were for class 4 offenses – misdemeanors. These defendants are facing little if any jail time and have little incentive not to appear in court. Only 7 percent **(Exhibit Six)** of straight CSB's written are for defendants charged with class 1 and 2 offenses and who are facing sentences of mandatory hard labor.

Further, the law governing the forfeiture of CSB's (La.RS15:85) is complex and is written strongly in favor of the bail bond industry. If a defendant released on CSB fails to appear in court as ordered, the commercial bond company has a great deal of time to "surrender" the defendant to the court and avoid forfeiting the bond. Quoting from RS 15:85, ..." no judgment of bond forfeiture shall be enforced or collected until 10 days after the expiration of six months after the mailing of proper notice of the signing of the judgment of bond forfeiture." In addition, and a "suspensive appeal" can be filed by the bond company, which suspends the enforcement of the judgment of bond forfeiture for an indeterminate period of time. As a result, only $200,000 in

---

bondsmen between 1939 and 1960." Wayne H. Thomas, Jr., *Bail Reform in America*, University of California Press, 1976, pp. 13-15.

[5] American Bar Association, Commentary to Standard 10-5.5, Pretrial Release Standards, Second Version, 1988.

CSB's were actually forfeited in the 24th JDC in 2001, less than one percent of the total amount of the bonds written that year.

High "Failure To Appear" and "At Large" Rates

FTA Rates

One of the results of a lack of judicial control over the pretrial population under the jurisdiction of the 24th JDC is a high "failure to appear" rate (FTA), which is defined as a released defendant's failing to appear for at least one scheduled court appearance following their arrest, and which results in the issuance of an attachment for their arrest. Additional evidence of the need for an increased level of judicial control is the relatively high rate of "at large" cases on the docket – cases in which defendants have disappeared prior to final disposition of their cases.

Exhibit Five below shows the FTA rate for defendants by the method of their release.

Exhibit Five:
FTA Rate by Method of Release

Method of Release	FTA %
Commercial Surety Bond	38%
Split Bond (CSB/PSB)	31%
Emergency Release	68%
Personal Surety Bond	16%
Property bond	38%
Overall FTA Rate	**44%**

Source: MCC research

To place the 44% overall FTA rate for the 24th JDC in perspective, the overall FTA rate for the 75 largest counties studied by BJS in 1998 was 22 percent, and Orleans Parish Criminal District Court had an FTA rate of 20% over the same time period.

The FTA rate ranged from a low of 16 percent for defendants released on PSB's to a high of 68 percent for those given a code 6 emergency release. What factors might account for this wide variation in FTA rates? The conditions of release and differences in the seriousness of the charges **(Exhibit Six)** for the different release methods could both contribute to variations in the FTA rates.

Exhibit Six:
Method of Release
By Offense Class*

Offense Class	Method of Release			
	CSB	ER	PSB	Split
1	0	0	0	0
2	7%	20%	22%	39%
3	58%	65%	56%	45%
4	34%	15%	22%	15%
Total	**100%**	**100%**	**100%**	**100%**

Source: MCC research
*Rounding error present
Class 1=murder, homicide **Class 2**=rape, robbery, drug dist., residential burglary
Class 3=theft, felony drug poss., auto theft **Class 4**=misc. theft, simple battery, poss. marijuana

Defendants granted an emergency release had no personal financial loss to consider and no third party involvement to prompt a court appearance. As to seriousness of charge, **Exhibit Six** shows that 85 percent of emergency releases were class 2 (20%) and class 3 (65%) felony defendants. With the lowest level of release conditions, and facing among the most serious charges, those receiving emergency releases clearly had the least to lose by not showing up for court. The result was a 68 percent FTA rate.

Defendants released on a straight PSB had the lowest FTA rate – 16 percent (**Exhibit Five**). Roughly half of those released on a PSB were in the JOP's pretrial program. The involvement of a third party in PSB's guaranteeing the presence of the defendant at all court hearing, the involvement of the pretrial services program in screening many of the defendants receiving PSB's and making periodic contact with them prior to court hearings, were likely factors contributing to the low FTA rate. As shown in **Exhibit 6,** the seriousness of the charges against defendants released on PSB's was similar to the charges for those receiving an emergency release.

Despite the fact that defendants released on split bonds had a more serious charge profile than defendants released on a straight CSB, those released on a split bond still had a somewhat lower FTA rate. This fact again suggests that the involvement of a third party – that is, a family member, relative or friend – as surety, more so than a straight CSB, increases the likelihood that the defendant will appear in court as ordered. The high FTA rate of 38 percent for those released on CSB's demonstrates that the use of CSB's does little to ensure a defendant's appearance in court.

Further suggesting a need for greater control of the pretrial population, six percent of the individuals arrested in the 24th JDC over the study period were determined to be "at large" as compared with a two percent "at large" rate over the same period in Orleans Criminal District Court. Defendants are determined to be "at large" by the court when repeated efforts to bring them before the court have failed and they cannot be located. **Exhibit Seven** provides data showing that defendants released following arrest because of prison overcrowding, or 30 percent of all defendants released pending trial, composed a disproportionately high 58 percent of the "at large" population.

Exhibit Seven:
Percent Defendants At Large
By Method of Release

Method of Release	% Released Population	% Defendants At Large
CSB	38%	30%
ER	30%	58%
PSB	16%	4%
Split	14%	6%
Other	2%	2%
Total	100%	100%

Source: MCC research

By comparison, although individuals released on a personal surety bond made up 16 percent of the study sample, they composed just 4 percent of the "at large" population. Defendants released on split bonds were also significantly underrepresented in the "at large" population. Those released on a straight CSB made up 38 percent of the released population and 30 percent of the "at large" population.

In summary, almost 70 percent of emergency releases by the JPSO failed to appear for a scheduled court hearing and contributed disproportionately to the sizeable "at large" population in the 24th JD. Almost 40 percent of the defendants released on straight CSB's failed to appear for at least one court hearing. Only 16 percent of the defendants released on PSB's failed to appear and they are disproportionately underrepresented in the "at large" population.

While calculating the cost of a high FTA rate and a sizeable "at large" population are beyond the scope of this study, there is no doubt that these costs are considerable. The wasted time of law enforcement personnel, prosecutors, defense attorneys, court personnel, civilian witnesses, jurors, re-sceduled court hearings, and additional crimes committed while at large, are all real costs to taxpayers. Additionally, the integrity of the court system is undermined when a high percentage (44 percent) of those scheduled to appear miss at least one court appearance.

Conclusions and Recommendations

During the one-year study period, 88 percent of the individuals arrested on state charges in Jefferson Parish were released pending disposition of their cases. However, the judges of the 24th JDC, gave the authority for deciding who, how, and under what conditions those individuals were released, to the JPSO and, in effect, to a single commercial bail bond company that holds a monopoly over the bail bond industry in Jefferson Parish.

By not assuming control of pretrial release and detention decision-making and creating additional release options, the pretrial process in the 24th JD is overly reliant on the use of commercial surety bail bonds and operates more for the benefit of the commercial bail bond industry than for the citizens of Jefferson Parish thereby creating the potential for corruption. The 24th JD has a very high failure to appear rate of 44 percent, twice the national average of 22 percent.

Further, the JPSO, which is authorized by the court to make pretrial release decisions, granted emergency release to almost 40 percent of the defendants charged with second and third class felonies while those charged with a class 4 misdemeanor had to find other means of getting out of jail, most often (63%) through the involvement of a bail bondsman. Only 22 percent of class 4 misdemeanor defendants were granted emergency release, as compared with 37 percent of class 2 and 37 percent of class 3 felony defendants.

Recommendations

Offered below are short and long-term recommendations for addressing the issues presented in this report: high FTA and "at large" rates; lack of judicial control over pretrial populations; and over-reliance on the use of commercial surety bonds as a means of pretrial release.

The Short Term

1. In the short term, it is recommended that the JPSO work with the judiciary, Clerk of Court, and the District Attorney to develop a system for monitoring those defendants granted emergency release, particularly high-risk defendants, as a means of reducing the high FTA and "at large" rates. New procedures could include contacting all emergency releases prior to scheduled court hearings to remind them of pending court dates and to encourage their appearance. Emergency releases accounts for almost half (46%) of all failure to appear cases in the 24th JDC.

2. Re-design the court's drug testing program and require periodic drug testing as a condition of pretrial release. This might be best achieved by assigning administration of the drug testing program to the JPSO or the Jefferson Parish District Attorney's Office. Centralized, on-site drug testing with rapid turnaround of results would add an important dimension to the JPSO's current screening process and provide the judges of the 24th JDC with important information on released defendants allotted to their court sections. Monitoring of this type would also help reduce the FTA and re-arrest rates.

The Long Term

The MCC offers the following long-term recommendations to the judges of the 24th JDC.

1. Develop a deposit bond system as an alternative to the use of commercial surety bonds.
The judges of the 24th JDC, criminal justice officials, and parish leaders should work with the Louisiana Legislature to amend the Code of Criminal Procedure to allow for a deposit bail system in Jefferson Parish. The Pulitzer/Bogard study also recommended that Jefferson Parish consider a deposit bond system as a means of reducing reliance on commercial surety bonds and funding alternative pretrial programs. The MCC strongly urges that such a system be adopted.

Under such a system the defendant deposits with the court, usually the office of the clerk of court, an amount that is equal to 10 percent, or under current Louisiana law 12 percent, of the face amount of the bail set by the court. If the defendant appears in court for all hearings, the bulk of the deposit is returned to the defendant — a characteristic that distinguishes this type of release from bail bonding for profit, in which the defendant must pay the bondsman a non-refundable fee. Typically, one percent of the deposit is retained by the court to cover administrative costs. Approximately 30 states allow for deposit bail. In addition, the ABA, in its standards, calls for the use of deposit bail whenever financial bail is imposed.

Given the fact that the 24th JDC, the Jefferson Parish District Attorney's Office, the JPSO and the State Indigent Defender Program each now receive about $250,000 annually from a 2 percent fee on commercial bail bonds, it might be necessary to continue to collect the 12 percent deposit now required by state law.

A deposit bond option would address two major problems that were identified in this report. First, it would diminish the role of commercial bail bonding for profit and the problems that go along with it. Second, since defendants using a ten percent deposit system know they will get most of their money back if they appear in court, they may be more likely to be able to post a bond, reducing the demand for jail space. Additionally, the potential for the return of most of the deposit amount back at the completion of the case should reduce the FTA rate.

Included as Appendix B is a copy of the 10 percent deposit provision of the Illinois statute. Illinois was the first state to implement a 10 percent deposit system, which it did in 1963. The statute lays out in detail how the deposit system works. The bail is posted to the clerk's office, and, if the defendant appears for all court appearances, 90 percent of that deposit is returned to the defendant after the case is adjudicated. The remaining 10 percent is retained as an administrative fee by the clerk's office. With a change in the Louisiana statute, a similar system could be implemented in Jefferson Parish.

2. Expand the magistrate function to include around the clock, on-site bond magistrate services.
The Pulitzer/Bogard study also identified the need for on-site magistrate services 24 hours a day, seven days a week, noting that most jurisdictions the size of Jefferson Parish, including New Orleans, typically have around the clock magistrate services.

Around the clock magistrate services would provide for more informed bail decisions and expedite the release process. In addition, it would minimize the "judge shopping" employed by bondsmen and attorneys which can create an unflattering public perception of favoritism by the judiciary.

Around the clock magistrate and screening services would require three additional criminal commissioners or magistrates to provide for on-site magistrate services and support from the Clerk of Court's Office.

3. Establish a comprehensive pretrial services program to serve the 24th JD and the citizens of Jefferson Parish. [6]

Comprehensive pretrial services programs have two major program components:

- **Screening and risk assessment** that systematically provides the judges, commissioners, and other judicial officers with accurate information on the nature of the charge, the background, and the level of risk posed by individuals arrested on state charges. The Code 6 process developed by the JPSO could provide a good basis for a risk assessment instrument. The court now has access to defendants' criminal history information. The MCC recommends that this information be supplemented by specific information on the nature and extent of the defendant's community ties including length of time in the community, extended family ties, employment status, substance abuse history, and accurate telephone numbers and addresses.

- **A range of release options** that provide the court with alternatives that are designed to minimize pretrial misconduct and maximize the court appearance rate through "hands on" control of those defendants released pending trial. The means of court control can range from periodic to twice-weekly contact, curfew restrictions, electronic monitoring, house arrest and drug testing.

Screening and Risk Assessment

The 24th JDC should expand its pre-initial appearance investigation capability to assure that **all** defendants are screened before their initial appearance before a justice of the peace, commissioner, or judge. Screening would include an objective, validated risk assessment instrument that tracks La.C.Cr.P Art. 334 and addresses factors related to failure to appear risk (e.g. community ties) and danger to the community. An important element in the screening process is drug testing. As noted, the court's drug testing program is currently under utilized and must be revamped to become a useful tool in the screening and monitoring of defendants released pending trial.

Since the judge or commissioner must make a bail decision in every case, even in those cases where the defendant is not likely to be released, the judicial officer should have accurate and complete information about each defendant. According to the ABA standards, in making the release decision the court should consider, in addition to the nature and circumstances of the offense, the defendant's "character, physical and mental condition, family ties, employment status and history, financial resources, length of residence in the community, community ties, past conduct, history related to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings." (Standard 10-5.1 (b) (ii).)

The MCC concurs with the Pulitzer/Bogard study which points out that these types of services are "highly successful means of getting defendants out of jail and back to court", and

[6] The outline of a model pretrial program is included as Appendix C.

underscores the great importance of basing effective release decisions on information gathered during screening of defendants, particularly the extent of their community ties.

Unless this function was assumed by existing JPSO personnel, an additional three to four full time pretrial services staff would be required to interview and assess all defendants on an around the clock basis and provide the information to the judicial officer making the pretrial release decision.

Develop a Range of Pretrial Release Options

The pretrial services program should develop non-financial release conditions that provide the court with a range of options to address the range of risks that will be identified through the screening and risk assessment process. In doing so, the court controls who is released, when, and under what conditions.

Non-financial release options should include:

- ROR for defendants presenting the lowest risk, particularly defendants charged with misdemeanors (class 4 offenses)
- Conditional ROR with specific release conditions for higher risk defendants
- Expanded use of PSB in which a third party insures the amount specified in a bail bond

Specific conditions of release that are used in many jurisdictions include:

- referral to substance abuse treatment or mental health services
- reporting to the program, either in person or by telephone, on a regular basis
- third party custody to a community organization
- home confinement or restricted movement by electronic monitoring
- attending a day reporting center.
- at a minimum, all individuals released pending trial should be advised by pretrial program staff of impending court dates.
- drug testing

Unless supplemented by existing JPSO personnel, two to three additional full time positions would be required to handle referrals and notify defendants of pending court dates.

The release alternatives outlined should reduce significantly the need for "emergency release" practices, which are counterproductive, lack rationality, and are inequitable. As stated in the Pulitzer/Bogard study, "emergency release is crisis management, not a long-term solution to jail crowding. Continuation of the emergency release program significantly diminishes the effectiveness of the criminal justice system in the Parish."

Implementing the Pretrial Program

The MCC recognizes that there are difficult political and financial hurdles to overcome in instituting a deposit bond system and a pretrial program. Those in the bail bond business will obviously voice strong objection to any reform effort of this type and will lobby to prevent it. Further, as noted, all major components of the criminal justice system in Jefferson Parish, with the exception of the Clerk of Court's Office, now receive approximately $250,000 annually from the commercial bail bond fees that are collected. However, the $400,000 in bond processing fees

discussed earlier that are collected annually by the JPSO would not be affected by a deposit bond system as the $15.00 fee could be charged for processing deposit bonds as well as commercial surety bonds.

Additionally, planning and designing the pretrial program that best meets the needs of the 24th JDC and the citizens of Jefferson Parish, determining the administrative location of the program, staffing requirements, and nailing down program funding requirements will also present a significant challenge to the court.

National Pretrial Program Profile

The following general information taken from a 2001 national survey[5] of pretrial programs is intended to give the reader some perspective on the organization and funding of pretrial programs.

- Over 300 pretrial programs exist nationally
- 63 percent of pretrial programs receive at least half of their funding from county government
- The survey found that 34 percent of the pretrial programs started since 1990 have budgets of between $50,000 and $200,000, 25 percent between $200,00 and $400,000, and 20 percent have budgets of over $400,000
- 31 percent of the pretrial programs surveyed in 2001 were located in local probation programs, 29 percent were administered directly by the courts and 19 percent in jails
- The average staff size for pretrial programs nationally is 18, with 10 percent of programs having just one staff and two percent over 200.
- In 2001, 46 percent of pretrial programs served jurisdictions with populations of between 100,000 and 500,000

Estimated Program Costs and Funding

The following are **gross estimates** of the annual costs of the major program components outlined above. As general "estimates" these program costs are intended to be used for discussion purposes only.

Deposit bond component: $100,000 to $150,000 annually

Expanded magistrate services: $300,000 to $350,000 annually

Pretrial services component: $250,000 to $300,000 annually
Total estimated cost $650,000 to $800,000

The court-based deposit bond system outlined above could provide a significant part of the funding for the proposed pretrial program through the court's retention of a percentage of the deposit bond amount as an administrative fee and through the collection of a supervision fee for defendants released on non-financial conditions. Other jurisdictions keep from one to 4 percent of the deposited amount.

---

[5] PRETRIAL SERVICES PROGRAMMING AT THE START OF THE 21ST CENTURY, Pretrial Services Resource Center

Based on the estimated face value of commercial surety bonds written in the 24th JD, which according to information obtained from the Louisiana Department of Insurance is approximately $35 to $40 million dollars annually, and based on the retention of one percent of the bond deposit amount, and a fifty percent reduction in the total amount of bonds written due to the increased use of non-financial release options, an *estimated* $200,000 in revenue would be generated. Retaining four percent at this reduced bond total would generate approximately $800,000 in revenue.

Given current arrest and release rates involving those charged with a state offense, charging a nominal pretrial supervision fee of $25.00 to $50.00 to defendants released on non-financial conditions could generate a projected $100,000 to $200,000 annually.

Summary of Anticipated Benefits

- Reduced potential for corruption resulting from over reliance on commercial bail bonds
- Increased public safety through better control of pretrial populations
- Reduced FTA and "at large" rates and increased system efficiency
- A more rational and equitable pretrial decision-making process
- Increased public confidence in the criminal justice system
- Increased accountability in pretrial decision making

APPENDIX A

RECENT EXAMPLES OF CORRUPTION ASSOCIATED WITH BAIL BONDING FOR PROFT

1. A Dade County, Florida bail bondsman has been arrested and charged with 287 counts of forgery and other offenses after allegedly filing fraudulent court orders intended to free his bail bonding company of about $150,000 in unpaid forfeitures. According to the Dade County State's Attorney, the bondsman forged the signatures of judges on at least 95 court orders. (Office of the State Attorney, 11th Judicial Circuit of Florida, 7/10/02.)
2. Two New Haven, Connecticut bail bondsmen have been arrested on racketeering, conspiracy, forgery, and larceny charges for allegedly posting fraudulent bail bonds in the state. According to prosecutors, the bondsmen accepted bond money from defendants totaling over $6,000,000 and then filed forged documents stating that a Texas insurance company had insured the bonds, when in fact it had not. Many of the defendants released on these bonds have failed to appear and are now fugitives. (State of Connecticut, Division of Criminal Justice, 7/2/02.)
3. A former DeKalb County, Georgia sheriff was convicted for ordering the assassination of the man who ousted him in his re-election bid in an effort to forestall an investigation into corruption at the jail under the former sheriff's administration. At his trial, the jury heard testimony from a female bail bonding agent that she engaged in sexual relations with the sheriff and paid him kickbacks in exchange for permission to write bails in the jail. (*Atlanta Journal-Constitution*, 7/10/02 and 7/11/02.)
4. In Riverside County, California, two bail bonding agents were arrested after they allegedly paid $15,000 to inmates at the jail to solicit business. (*The North County Times,* 5/02/02.)
5. A Maryland state senator who was experiencing personal financial difficulties was reprimanded by the senate after accepting a $10,000 loan arranged by a bail bondsman, failing to report or pay back the loan, and then sponsoring bills favorable to the bail bonding industry. (*Baltimore Sun*, 2/27/02.)
6. The Burlington County, New Jersey prosecutor's office filed charges against a local bail bondsman alleging that the bondsman demanded sex in return for writing bonds for female defendants and then forcing them into a prostitution ring to pay off the bondsman's fees. (*Burlington County News*, 12/06/00.)
7. Owners of a Colorado bail bonding business were arrested on 17 offenses. Among the allegations were that the owners knowingly accepted money from a bank robbery as payment for bonding out the accused bank robber, and then spent $25,000 of the stolen cash that had been offered as collateral. (*Daily Sentinel*, 6/18/00.)
8. In Davidson County, Tennessee two bail bondsmen were arrested and charged with money laundering for their part in an alleged scheme to have false death certificates issued for two defendants bailed out by the bonding company who failed to appear in court. Both defendants fled to Mexico after they were bonded out, where the fake death certificates were issued after the bondsmen allegedly made payments to an intermediary. (*Pecos Enterprise*, 3/26/99.)
9. A Bexar County, Texas bail bondsman was sentenced to 15 years in prison after admitting in federal court to fraudulently operating several bail bonding companies,

failing to pay taxes on the company's earnings, and then hiring a hit man to silence a business partner who was cooperating with a federal tax investigation. By pleading guilty to these charges, the bondsman avoided a trial for murder, resulting from the fact that the hit man that he hired, who also worked for him as a bounty hunter, was killed in a shoot-out with the intended victim during the attempted hit. The intended victim of the hit was the bondsman's brother-in-law. (*San Antonio Express-News*, 9/16/98.)

8. A former Starr County, Texas sheriff was sentenced to two years in federal prison for accepting kickbacks from a local bail bondsman to refer inmates to the bondsman's company. (*Abiline Reporter-News*, 5/27/98.)

APPENDIX B

LLINOIS COMPILED STATUTES
CRIMINAL PROCEDURE
CODE OF CRIMINAL PROCEDURE OF 1963
725 ILCS 5/

ARTICLE 110. BAIL

Sec. 110-7. Deposit of Bail Security.

(a) The person for whom bail has been set shall execute the bail bond and deposit with the clerk of the court before which the proceeding is pending a sum of money equal to 10% of the bail, but in no event shall such deposit be less than $25. The clerk of the court shall provide a space on each form for a person other than the accused who has provided the money for the posting of bail to so indicate and a space signed by an accused who has executed the bail bond indicating whether a person other than the accused has provided the money for the posting of bail. The form shall also include a written notice to such person who has provided the defendant with the money for the posting of bail indicating that the bail may be used to pay costs, attorney's fees, fines, or other purposes authorized by the court and if the defendant fails to comply with the conditions of the bail bond, the court shall enter an order declaring the bail to be forfeited. The written notice must be: (1) distinguishable from the surrounding text; (2) in bold type or underscored; and (3) in a type size at least 2 points larger than the surrounding type. When a person for whom bail has been set is charged with an offense under the "Illinois Controlled Substances Act" which is a Class X felony, the court may require the defendant to deposit a sum equal to 100% of the bail. Where any person is charged with a forcible felony while free on bail and is the subject of proceedings under Section 109-3 of this Code the judge conducting the preliminary examination may also conduct a hearing upon the application of the State pursuant to the provisions of Section 110-6 of this Code to increase or revoke the bail for that person's prior alleged offense.

(b) Upon depositing this sum and any bond fee authorized by law, the person shall be released from custody subject to the conditions of the bail bond.

(c) Once bail has been given and a charge is pending or is thereafter filed in or transferred to a court of competent jurisdiction the latter court shall continue the original bail in that court subject to the provisions of Section 110-6 of this Code.

(d) After conviction the court may order that the original bail stand as bail pending appeal or deny, increase or reduce bail subject to the provisions of Section 110-6.2.

(e) After the entry of an order by the trial court allowing or denying bail pending appeal either party may apply to the reviewing court having jurisdiction or to a justice thereof sitting in vacation for an order increasing or decreasing the amount of bail or allowing or denying bail pending appeal subject to the provisions of Section 110-6.2.

(f) When the conditions of the bail bond have been performed and the accused has been discharged from all obligations in the cause the clerk of the court shall return to the accused or to the defendant's designee by an assignment executed at the time the bail amount is deposited, unless the court orders otherwise, 90% of the sum which had been deposited and shall retain as bail bond costs 10% of the amount deposited. However, in no event shall the

amount retained by the clerk as bail bond costs be less than $5. Bail bond deposited by or on behalf of a defendant in one case may be used, in the court's discretion, to satisfy financial obligations of that same defendant incurred in a different case due to a fine, court costs, restitution or fees of the defendant's attorney of record. The court shall not order bail bond deposited by or on behalf of a defendant in one case to be used to satisfy financial obligations of that same defendant in a different case until the bail bond is first used to satisfy court costs in the case in which the bail bond has been deposited.

At the request of the defendant the court may order such 90% of defendant's bail deposit, or whatever amount is repayable to defendant from such deposit, to be paid to defendant's attorney of record.

(g) If the accused does not comply with the conditions of the bail bond the court having jurisdiction shall enter an order declaring the bail to be forfeited. Notice of such order of forfeiture shall be mailed forthwith to the accused at his last known address. If the accused does not appear and surrender to the court having jurisdiction within 30 days from the date of the forfeiture or within such period satisfy the court that appearance and surrender by the accused is impossible and without his fault the court shall enter judgment for the State if the charge for which the bond was given was a felony or misdemeanor, or if the charge was quasi-criminal or traffic, judgment for the political subdivision of the State which prosecuted the case, against the accused for the amount of the bail and costs of the court proceedings; however, in counties with a population of less than 3,000,000, instead of the court entering a judgment for the full amount of the bond the court may, in its discretion, enter judgment for the cash deposit on the bond, less costs, retain the deposit for further disposition or, if a cash bond was posted for failure to appear in a matter involving enforcement of child support or maintenance, the amount of the cash deposit on the bond, less outstanding costs, may be awarded to the person or entity to whom the child support or maintenance is due. The deposit made in accordance with paragraph (a) shall be applied to the payment of costs. If judgment is entered and any amount of such deposit remains after the payment of costs it shall be applied to payment of the judgment and transferred to the treasury of the municipal corporation wherein the bond was taken if the offense was a violation of any penal ordinance of a political subdivision of this State, or to the treasury of the county wherein the bond was taken if the offense was a violation of any penal statute of this State. The balance of the judgment may be enforced and collected in the same manner as a judgment entered in a civil action.

(h) After a judgment for a fine and court costs or either is entered in the prosecution of a cause in which a deposit had been made in accordance with paragraph (a) the balance of such deposit, after deduction of bail bond costs, shall be applied to the payment of the judgment.
(Source: P.A. 91-94, eff. 1-1-00; 91-183, eff. 1-1-00; 92-16, eff.
6-28-01.)

APPENDIX C
MODEL PRETRIAL PROGRAMMING

The following is a framework for pretrial services program development that is based on a model developed in 1988 by PSRC as part of the "Enhanced Pretrial Services" (EPS) program.[3] The model showed each function of an optimally-run pretrial services program and how the program should meet that function.

INFORMATION GATHERING AND ASSESSMENT PROCESS

Population Targeting

The pretrial services program should interview prior to the initial appearance before a judicial officer everyone arrested or charged with a felony or misdemeanor, with the following possible exceptions:

1) Those arrested solely on a probation or parole violation;
2) Where the defendant is released by other means before the initial court appearance; and,
3) System factors preclude interviews of certain defendants, such as imminent release by virtue of disposition at the initial court appearance.

Pretrial Interview

The interview should elicit information concerning the defendant's community ties, criminal history, and mental health or substance abuse problems.

Records Check

Both in and out of county criminal records should be checked, including arrests and dispositions. Also checked should be the defendant's present criminal justice status (e.g., whether or not the arrestee has a pending charge or hold) and history of failure to appear.

Verification

Verification consists of confirming the information provided by the defendant by contacting references, and when discrepancies arise, re-interviewing defendants. Programs should attempt to verify as much information as possible prior to the initial appearance. If the defendant is not released because of unverified information, the program should continue verification efforts until the pertinent information is verified. The court should be immediately notified when such verification occurs.

---

[3] This effort was funded by the Bureau of Justice Assistance (BJA) of the U.S. Department of Justice under grant number 88-DD-CX-K007.

Risk Assessment

The pretrial program should use a risk assessment scheme that in a consistent and equitable fashion assesses the defendant's risks of failing to appear at future court hearings or posing a risk to community safety. The assessment scheme should be the product of local research and evaluated or reviewed periodically, but not less than every five years.

The assessment should place the defendant in a risk level and should identify any condition or combination of conditions designed to address the identified risks. A range of options should be available, such as release on recognizance, restrictive non-financial conditions, and as the last resort, financial conditions (financial conditions are only imposed to assure appearance). Conditions should be recommended on a graduated basis from least to most restrictive. Where applicable (i.e., in states with preventive detention legislation), recommendations indicate if preventive detention is appropriate.

Submission of Report to Court

The program should submit a report to the court and provide defense counsel and prosecution access to the report. Pretrial staff should be either present in court or readily available to the court during the release/detention hearing.

MONITORING AND FOLLOW-UP

Supervision of Release Conditions

Supervision includes contact supervision and referral to or provision of services. Compliance of defendants in supervision should be monitored. Supervision should be individualized and based on a scheme of graduated contacts and level of supervision dependent on conditions imposed. If adjudicated guilty, a final report on the defendant's compliance with release conditions should be prepared to assist in the compilation of pre-sentence report information. The effectiveness and reliability of services provided by any agency to which defendants are referred should be regularly monitored by the program.

Court Date Notification System

The program should carry out or supplement court date reminders to all defendants except those released on surety bail. The reminder should specify the date, location, and time of appearance before each subsequent court appearance. When no court date is issued at the time of the court appearance, the program should provide written notification of the telephone number and name of a person to call who will provide such information (i.e., the date, time, and exact location of the court appearance).

Review of Pretrial Custody Population

The program should review the case of each pretrial detainee at least weekly to determine if factors associated with the initial detention decision still apply and reports new findings to the court.

PROGRAM MANAGEMENT

Mission Statement

The pretrial program should have a concise, written mission statement. The mission statement should be more than the statutory language incorporating the program; it reflects the program's aims and purposes.

Operations Manual

The pretrial program should have a written, up-to-date "how to" manual that explains in detail the procedures that must be followed in performing each function of pretrial operations. The manual should explicitly detail the procedures for the pretrial interview, records check and verification, risk assessment, supervision, and use of information systems.

Training

The pretrial program should have a structured orientation and training program for new staff, ongoing training for line staff, and management training for supervisory staff.

Checks for Consistency

Procedures should exist to ensure that program staff use the risk assessment scheme accurately and consistently. A supervisor should check every report before it is presented to the court. In addition, a supervisor should check all reports sent to the court regarding compliance with conditions of release.

Information System

The program should maintain a systematic automated case tracking and information system for the following purposes: monitoring defendant pretrial performance, measuring program performance/effectiveness, validating program practices, diagnosing problems, and testing the impact of implemented or proposed changes. Specific data elements follow.

Defendant-based data elements:

- defendant characteristics, including:
  - age,
  - sex,
  - race/ethnicity,
  - length of residence in county,
  - marital status,
  - drug use, and
  - other factors deemed to be appropriate in the county;
- prior record information, including:
  - the number of previous felony and misdemeanor arrests/convictions,
  - number of previous failures to appear,
  - number with previous parole/probation revocation,
  - number with previous pretrial release revocation,
  - number previously incarcerated;
- current defendant criminal justice information, including
  - arrest date,
  - initial appearance date,
  - pretrial release date,
  - date(s) when defendant failed to appear,
  - date defendant was returned to court,
  - date of final adjudication, and
  - sentencing date.

Regularly generated reports:

- aggregate program data, including the number of persons interviewed, the number of persons recommended for release by type of conditions, reasons for not recommending release;
- court actions and final outcome information, including release decision, adjudication, and sentence, lengths of sentences imposed (by charge and form of release or detention), time between arrest, initial release from detention, and case disposition; and,
- current criminal justice information, including the number of persons arrested and charged with a criminal offense (misdemeanors and felonies), the number of persons released prior to trial on each form of release, the number of persons detained prior to trial according to charge and length of detention, the number of persons who failed to appear at a scheduled court appearance (by charge and form of release), and the number of persons rearrested (by initial charge and rearrest charge and form of release).

System Interaction

The program should have regular meetings with its supervising body, and with judicial officers. The program should have regular contact with the community, including the media.